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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI- COA
APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
William H. Seals, Jr., Circuit Court Judge
Deadra L. Jefferson, Trial Judge

Appellate Case No. 2023-001847

Jerome Campbell, # 349454,. . . . . Petitioner,

vs.

State of South Carolina, ... Respondent.

APPENDIX
VOLUME II

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A: Right.

Q: --- you were being shot at out of a white Impala. Is that correct?

A: Yeah, I may have said that.

Q: Okay and you didn't say anything about Frank being -- being shot at at the apartments?

A: No, I didn't.

Q: Okay and you didn't say anything about the gunshots at the -- at the Plantation Apartments, correct?

A: Right.

Q: Okay and you didn't elaborate any longer than you needed to as far as when the -- when that -- when the gunshots took place at the ---

A: No, I wouldn't say that. I mean I should have said more, you know, because there was a lot more that went down, but at that time, like I said, you know, I was in -- I could have been gone. So I was kind of shook up. So I may have left a few things out.

Q: Okay. Also in that statement you were asked if you knew who shot the gun. Is that right?

A: Yes.

Q: And what did you -- How did you respond to that?

A: I said I didn't know who shot the gun.

Q: Okay.

MR. MIKELL: Court's indulgence?

THE COURT: Mm-hmm.

Q: Also in your statement you said that when you saw Jerome at the Georgetown Apartments that he sped by in the white Impala. Do you have any -- What's the -- Now we're going to get ---

A: Mm-hmm.

Q: But that's different than how you testified today, correct?

A: No. What I said was and I believe what I wrote that while at the Georgetown Apartments, Jerome sped by, you know, and one time and then came back because I guess he seen us. Then he comes back. When he come back, that's when he made the threat.

Q: Okay. So, Michael, your statement is the most accurate?

A: As far as?

Q: For what happened that night. Is that right?

A: I don't think -- What you mean by that?

Q: You said you believe what you wrote, correct?

A: I said I believe I should have said more. I believe that I did leave some things out, but I tried to be accurate in making my statement.

Q: Okay and that evening your intent was to be accurate in writing the statement, correct?

A: I tried to be, yes.

Q: Okay.

MR. MIKELL: That's all I have, Your Honor.

THE COURT: Any redirect of the witness?

MR. VOIGT: Thank you, Your Honor.

THE COURT: You're welcome.

REDIRECT EXAMINATION

BY MR. VOIGT:

Q: Michael, just to be clear, do you see the person who you heard threaten you in the courtroom today?

A: Yes.

Q: Can you describe what he's wearing?

A: Can I describe what he's wearing now?

Q: Yes, what he's wearing now.

A: He's wearing a tie, a suit jacket and I think from here it look like a lime colored shirt, probably closer to yellow.

Q: What's his name, Michael?

A: Jerome Campbell.

Q: Is that the person who threatened you?

A: Yes, it is.

Q: Is that the person who threatened Anthony?

A: Well, that's the one that Anthony said threatened him, yes.

Q: Okay and as far as you know?

A: Right.

Q: Was it his voice that you heard?

A: Yes, it is.

Q: Was it his voice that you heard at the Georgetown Apartments?

A: Yes, it was.

Q: Was it his voice that you heard coming from the white Impala?

A: Yes, it was.

Q: Do you think those shots were meant for you?

A: Yes, I do.

Q: Do you know of any reason why anyone would take a shot at Michael German?

A: Michael German ain't have anything to do with anything.

MR. VOIGT: Thank you.

THE COURT: Any objection to the witness being excused from the State?

MR. VOIGT: None from the State, Your Honor.

THE COURT: From the defense?

MR. MIKELL: No, Your Honor.

THE COURT: Sir, you're excused.

MR. ALLEN: Thank you.

(Whereupon, the witness leaves the stand at 12:11 p.m.)

THE COURT: The State may proceed with its next witness. You're welcome, sir.

MR. VOIGT: The State calls Anthony German.

THE CLERK: Sir, if you'd put your left hand on the Bible and raise your right hand. Do you swear or affirm that your

testimony will be the truth, the whole truth and nothing but the truth, so help you God?

MR. GERMAN: Yes, sir, I do.

THE CLERK: Be seated. Please speak into the mic and state your full name and then spell your last name for the record.

MR. GERMAN: Anthony Michael German, last name G-E-R-M-A-N.

THE COURT: You may proceed.

MR. VOIGT: Thank you, Your Honor.

THE COURT: You're welcome.

ANTHONY GERMAN, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. VOIGT:

Q: How old are you, Anthony?

A: I'm 23.

Q: How old were you on January 9th, 2009?

A: Twenty years old.

Q: How long had you been a father on that date?

A: Three days.

Q: Who is Michael German?

A: My twin brother.

Q: Are you fraternal twins or identical twins?

A: Fraternal.

Q: Do you know Michael Allen?

A: Yes, I do.

Q: Do you know Frank Haigler?

A: Yes, I do.

Q: Do you know Jerome Campbell?

A: Yes, I do.

Q: Who is Jerome Campbell to you?

A: I guess you would say my uncle-in-law, my wife's uncle.

Q: When did you get married?

A: On the 21st of January.

Q: What year?

A: '09.

Q: Who did you marry?

A: Vasha Candez Lavonna Ladson.

Q: Is she Jerome's niece?

A: Yes, she is.

Q: Did your wife's family, to your knowledge, approve of your relationship with Vasha?

A: No, they didn't.

Q: Did Jerome Campbell approve of the relationship that you had with Vasha?

A: I don't really think he cared. He just intervened at the family's discretion.

Q: On January 9th, 2009, did you know what kind of car Jerome drove?

A: Yes, I do.

Q: What kind of car did he drive?

A: It was a white Chevy Impala with North Carolina plate tags and a little CarMax emblem on the back.

Q: When was the first -- Did you talk to Jerome Campbell on January 9th?

A: Yes, I did -- previous -- I mean numerous -- on numerous occasions.

Q: What did he tell you?

A: He called me while me and my wife were in bed sleeping and informed me that he would be on his way down here to kill me because I wouldn't allow my daughter to come out and see his mother and his sisters.

Q: Your three day old daughter?

A: Yes, sir. I mean yes, sir.

Q: What is your daughter's name?

A: [redacted].

Q: Is that your only child?

A: Not at this time. We had a second one back in 2010.

Q: What's her name?

A: [redacted]

Q: Did you take that threat from Mr. Campbell seriously?

A: Not really because that wasn't the first threat I had received by Jerome.

Q: Now we're talking about Jerome, do you see Jerome in the

courtroom?

A: Yes, I do. He's sitting right there.

(Whereupon, the witness points at the defendant.)

Q: Okay. Was he somebody who was familiar to you back in January of '09?

A: Yes, sir.

Q: When the first time you saw that white Impala?

A: That day?

Q: Yes.

A: When he visited us at our Georgetown Apartment threatening us.

Q: Okay. Did you hear him threaten you directly?

A: Yes, sir, I did.

Q: What did he say?

A: He said that he's coming back, he knows where I lives at now and he's coming back and that he can -- he proceeded to threaten Michael Allen as well.

Q: Do you know of any beef he may have had with your brother, Michael?

A: No, sir, none at all. He didn't even know my brother.

Q: Had he ever met your brother in your presence?

A: No, he has never met my brother before.

Q: After he made that threat at the Georgetown Apartments -- At the Georgetown Apartments ---

A: Mm-hmm.

Q: --- did you see Jerome Campbell at the Georgetown Apartments, your apartment complex?

A: Yes, sir, I did.

Q: Did you hear his voice?

A: Yes, sir, I did.

Q: Did you recognize that voice as his?

A: I recognized him himself because he was wearing glasses and he's fairly dark skinned.

Q: At any time at the Georgetown Apartments did you see a gun?

A: Yes, I did.

Q: And where was that gun?

A: It -- Jerome had it. He pointed it at Frank Haigler.

Q: Did any shots get fired that day?

A: No, sir. Not ---

Q: I mean at the Georgetown Apartments?

A: No, sir.

Q: Okay. Now after the Georgetown Apartments, where did y'all go next?

A: You talking about after he threatened us?

Q: After -- after Mr. Campbell left near your apartment.

A: Mm-hmm.

Q: Where did you and your brother go next?

A: We proceeded to go to the Plantation Apartments with Michael and Frank Haigler and we stopped off to the Kangaroo

gas station.

Q: Now you've been sitting in here, right?

A: Yes, sir.

Q: And you've seen the video a number of times, correct?

A: Yes, sir.

Q: Do you see yourself on that video?

A: Yes, sir, I do.

Q: Do you see yourself on that video going into the store?

A: Yes, sir, I do.

Q: Did you get a beer like what Frank did or like Michael did?

A: No, sir, I didn't. I wasn't of age.

Q: And the same with your brother, right?

A: Yes, sir.

Q: Did you have a gun with you?

A: Yes, sir.

Q: Is this the gun that we're talking about, previously marked as State's 65?

MR. VOIGT: If I may show it to him without actually handing it to him, Your Honor?

THE COURT: You may.

A: Mm-hmm.

Q: Have you ever fired this weapon?

A: No, sir, I haven't.

Q: Why did you take the gun with you to the gas station?

A: For protection.

Q: Protection from whom?

A: Jerome Campbell, AKA Coaxum.

Q: After y'all left the inside of that gas station, the convenience store, where did you go?

A: We stood right I guess where the camera angle is tilted down. We were right up under the camera like on the side of the building. Frank proceeded to go to the Plantation Apartments and he told us to stay back. That's why we stayed right there.

Q: Did you hear gunshots?

A: Yes, sir, I did.

Q: What did you and Michael and Michael do when you heard gunshots?

A: I believe Michael was on the phone.

Q: Which Michael?

A: My brother, Michael, Michael German, and immediately me and Mike, Michael Allen, went around. If you can see in the video, there's dumpsters. We came around because we heard the gunshots coming from, you know, where Michael Allen's apartment would be. So we went around and as we were going around, you heard a second gunshot and so we never made it that far. We saw Frank Haigler running back and my brother he never even really made it like, you know, to where we got as far as we made it because like I said, he was on the phone.

He didn't even know what was going on at the time.

Q: Did you cross the street, Carriage Lane?

A: Yes, sir.

MR. VOIGT: (To clerk) Mike, can you ---

(Whereupon, the overhead projector is turned on for showing pictures on the screen.)

Q: I'm going to show you what's been marked previously as State's 38. Is that your brother's phone?

A: Yes, sir.

Q: Is that your brother's hand?

A: I believe so.

Q: Was he wearing a red jacket that night?

A: Yes, sir.

Q: Was that the phone he would have been on?

A: Yes, sir.

Q: Did your brother bring a gun with him?

A: No, sir.

Q: Did Frank bring a gun with him?

A: No, sir.

Q: Did Michael Allen bring a gun with him?

A: No, sir.

Q: You brought a gun with you?

A: Yes, sir.

Q: You've also seen the videotape of the side of the store, right, as you've been sitting in here?

A: Yes, sir.

Q: As a matter of fact, I've shown you that videotape before, haven't I?

A: Yes, sir.

Q: So you've had a chance to look at that. Does that videotape show you running out behind the store?

A: Yes, it does.

Q: Why did you do that?

A: To get rid of the gun.

Q: What happened when you tried to get rid of the gun?

A: When I went back there, I immediately tried to throw it on the roof of the Kangaroo building and it bounced off the wall and fell on the -- on the ground, so I picked it up and I believe I threw it on the -- the -- the building running parallel to the Kangaroo gas station.

Q: How did the bullets get out there in that alley between the two buildings?

A: I'm guessing they fell out and I didn't notice them.

Q: Did you have that gun when you were by your brother?

A: You talking about right immediately after he was shot?

Q: Yes.

A: Yes, sir, I did.

Q: Did you have it in your hand?

A: No, sir, I didn't. It was on my hip and when I reached to pick my -- like, you know, to see whether there was

anything I could do for him, it fell out and when it fell out, that's when Michael Allen, you know, told me, "Yo, get rid of the gun."

Q: Okay. So rather than attending to your brother, you got rid of the gun?

A: Yes, sir, I did.

Q: Tell me about -- Did you see any cars just before your brother got shot?

A: Yes, sir, I did.

Q: What car did you see?

A: I immediately had pointed my direction toward where Frank was because like past where he jumped on the ground at you could see a white Impala coming and then it made a right turn onto Carriage Lane coming from the Plantation Apartments and when I saw the car, I knew something was coming after that because Mike was saying, yo, they -- you know, that's them. I automatically knew it was them, but I don't think my brother did.

Q: Your brother didn't know Jerome?

A: No, sir, he didn't.

Q: He didn't know Jerome's car?

A: Like the very time Jerome came to our apartment that night, that's when he knew, but I don't think it registered it to him to, you know, be on the lookout for this man and this car right there.

Q: To the best of your knowledge, nobody had ever threatened your brother?

A: No, sir.

Q: After you saw the car, what happened?

A: You talking about on Carriage Lane?

Q: On Carriage Lane.

A: As he came right -- I guess I was standing across the street from the Plantation Apartments and as I turned around, like I said, the car was coming. I heard the first shot and I immediately dropped to the floor and you heard two or three more shots after that and the car just kept moving.

Q: Did you fire your gun at them?

A: No, sir.

Q: Did you fire your gun at all?

A: No, sir.

Q: Did Michael Allen fire a gun?

A: No, sir.

Q: Did Frank Haigler fire a gun?

A: No, sir.

Q: Did Michael, your brother, fire a gun?

A: No, sir.

Q: How far away from your brother were you when the shots -- when you heard the shots?

A: I'd say about five feet.

Q: Were you farther away from the gas station than he was?

A: You talking about at the time he was shot?

Q: At the time he was shot.

A: I'd say I was closer to the gas station. As you can see like in the camera when he's walking, I was in front of him.

Q: All right. Were you in front of him as you were facing towards the pumps?

A: Yes, sir, I was.

Q: So you were closer to the front? Side?

A: He was like picking up the rear. He was like last. Like I said, I knew he was playing with his phone. Even when the shots went out, I don't think it really sinked into him what was going on at the time.

Q: After you threw the gun away, what did you do?

A: I came back and I heard Frank Haigler say, "There go the police." So I turned back and when I looked into the alley, I could see a cop car sitting at the red light. So I tried to run and soon as I took off running, the cop car, you know, it just took off from the light.

Q: Okay. Did you go back to be by your brother?

A: Yes, sir.

Q: What did you observe when you were by your brother?

A: As far as?

Q: What did you see? What was going on by your brother when you came back?

A: I believe by then Michael Allen was still there. He came

-- I think he had like stood there until I came back. As soon as I came back, that's when I saw Michael Allen, you know, walking away because I guess he didn't want to be by it. He just couldn't believe it and I guess Frank -- I know -- Well, I saw Frank Haigler coming back from motioning the police car.

Q: Was there anybody else near your brother?

A: Not until after Frank and Michael already had came back over there. Then I saw like, you know, a crowd of people. I couldn't tell who was who. It was just like, you know, all starting to fade.

Q: Okay. Did there come a time when members of your family came there as well?

A: Yes, sir.

Q: Who came?

A: My mom, my sister and my little brother.

Q: Is that the car that we saw in the video?

A: Mm-hmm.

Q: Who told them to be there?

A: I did.

Q: What did you tell them had happened?

A: That he had been shot.

Q: Were you there when the police got there?

A: Mm-hmm.

Q: Did you give a statement to the police?

A: Yes, I did.

Q: Did you mention in this first statement anything about the gun?

A: No, I didn't.

Q: Did there come a time when Detective Burckhardt came back to ask you about the gun or a gun?

A: Yes, sir, he did.

Q: Did you tell him about the gun then?

A: Yes, sir, I told him the truth.

Q: Did you give him a statement at that time?

A: Yes, sir, I did.

Q: Were you arrested for the unlawful carrying of that gun?

A: Yes, sir, I was.

Q: Did you plead guilty to the unlawful carrying of that gun?

A: Yes, sir, I did.

MR. VOIGT: One moment, Your Honor.

THE COURT: Mm-hmm.

MR. VOIGT: Please answer any questions that the defense may have for you.

THE COURT: You may proceed.

MR. HARRIS: Thank you, Your Honor.

THE COURT: You're welcome.

CROSS EXAMINATION

BY MR. HARRIS:

Q: You just said you wanted to tell the truth that -- when

you talked to the police, right?

A: (No audible response.)

Q: You wanted to tell the truth when you talked to the police?

A: No, I did tell the truth.

Q: Right, right, but when you wrote your statement when the police were asking you questions, you told the truth?

A: Wait, what are we talking about? The first -- the first incident where ---

Q: The second time you talked to the police.

A: Okay. The second time I told the truth.

Q: Okay. The first time you did not?

A: You're talking about the first statement I gave?

Q: Right.

A: No, sir, I didn't.

Q: Okay. So when your brother's just been shot, you didn't tell the police the truth?

A: No, sir.

Q: Okay, a few questions. You said earlier this was -- The family didn't approve of you being with Vasha?

A: Mm-hmm.

Q: You got married to her after this incident happened?

A: Yes, sir.

Q: Why didn't the family approve of you being with Vasha?

A: Well, it was because she was a little bit younger than

me.

Q: How much is that?

A: Three years, four years.

Q: Was she 15 when this happened?

A: Sixteen.

Q: The baby was born when she was 16, but when she got pregnant she was 15?

A: Mm-hmm.

Q: Okay and you were 20?

A: No, I was 19 at the time.

Q: Okay, but she was a 15 year old at the time?

A: Mm-hmm.

Q: Okay. Would that be the reason the family didn't approve?

A: Mm-hmm, it was.

THE COURT: Sir, could you say yes or no? I know it's human nature to say mm-hmm or uh-uh.

MR. GERMAN: I'm sorry.

THE COURT: But if you would say yes or no, that would be helpful.

MR. GERMAN: Yes, ma'am.

THE COURT: You may continue.

Q: Okay. Then you said earlier that Jerome called you -- You said the family called Jerome to intervene, but Jerome didn't care, didn't really care?

A: No. I said that they would call him. He didn't care about, you know, the situation that me and her had about the age difference.

Q: Okay.

A: But he would intervene when the family would pick up the phone and tell him, yo, this is going on. Then he'd call me.

Q: Okay.

A: So he would intervene.

Q: Okay and then just a little while ago you said he called you and said, "You won't let us see the kid. I'm going to kill you."

A: It was an incident earlier that day with me and my wife's mother-in-law and Charise Coaxum ---

Q: Mm-hmm.

A: --- to where, you know, they were asking why we hadn't brought the baby over to see Sandra Coaxum and we told them that, you know, it's too cold out. It's during the winter. We're not going to bring the child out.

Q: Okay.

A: So tensions got raised up from that. I don't know why, but it did and, you know, we just hung up the phone.

Q: Okay.

A: And then after that we went -- we went to go take a nap and Jerome called me.

Q: And said, "You won't let us see the baby. I'm going to

kill you."

A: Mm-hmm.

Q: Okay and you say that when they came by your -- your apartment at Georgetown the first time, you saw Jerome with a gun?

A: Yes, I did.

Q: In the driver's seat?

A: Yes, I did.

Q: He didn't speed by and say anything, he stopped and you saw a gun in his hand?

A: He came -- In the Georgetown Apartments, there's one way in and one way out.

Q: Mm-hmm.

A: So when he came in, yes, we did see his car. We were getting ready to get into the vehicle to go take Michael Allen home. The car came speeding past. I immediately noticed that was his car ---

Q: Okay.

A: --- because it's a white Impala.

Q: Right.

A: So as he's coming by, my mother came and parked and he comes back by and I guess he heard me telling that -- telling, you know, you know, my mom and them to go in the house.

Q: Mm-hmm.

A: That's when he hurried and got off his few words, he

pointed the gun and then he drove off.

Q: Okay. So is this when Frank walked up to the car you saw the gun?

A: Mm-hmm. I was standing like maybe five, six feet away from Frank as he approached the vehicle.

Q: Okay. Was it a shotgun?

A: It was a pistol, a handgun.

Q: Okay. So let's go back to earlier that day. Had you been over at the Plantation Apartments earlier?

A: No, sir.

Q: Okay. When you gave your statement about the gun, about that night, you've never given that statement?

A: Say that one more time?

Q: Do you remember giving a statement to the police twice?

A: Mm-hmm.

Q: Okay. Do you remember when they asked were you and Michael at your brother -- and your brother at Charise Allen's apartment tonight and you said yes.

A: That -- We weren't at her apartment. We were parked in a vehicle away from her apartment. They never saw us.

Q: Okay. They never saw you. So you said -- But you were there earlier before this?

A: We were. Me and my brother were in a vehicle texting and talking on the phone. I was on the phone with my wife and he was on the phone with his girlfriend at the time.

Q: Okay. "Who all was at the apartment? Me, Michael and Lamont." Is Lamont Frank?

A: Mm-hmm.

Q: Okay. "Was there an argument there? We had some back talk, but not heated." So you never went in and talked to anybody?

A: No, I was standing -- I can -- While we were in the car, they all came to the car.

Q: Mm-hmm.

A: You see what I'm saying?

Q: Mm-hmm.

A: And, you know, I had the window down and I could hear what was going on.

Q: Okay. So you heard a heated argument -- you heard an argument?

A: Mm-hmm.

Q: In the street?

A: It was with Michael Allen and Charise. Frank Haigler was trying to calm it down. He told us not to come over there. He told me and my brother to stay in the car.

Q: Okay. So you never got out of that car?

A: We never got out of the car.

Q: So you never saw the -- The only arguments you saw spilled out into the ---.

A: It was out in the street and it was also Charise's son

out there on the phone with his uncle because I know Mike was like, yo, why -- You know, basically telling his -- his son, you know, why would you do that. That's another thing I can remember.

Q: Okay, but she's saying why would you do what?

A: Call up your uncle trying to get -- See, he was on the phone with his uncle telling him, "Yo, hurry up and get over here. Hurry up and get over here." And for what reason, I don't know.

Q: So someone was on the phone with Jerome telling him to hurry up and get over here because ---

A: I don't know whether it was Jerome personally because I wasn't on that phone, but the way it was going down is Michael Allen was, you know, was telling him, yo, he's on the phone with Jerome.

Q: Okay. So but you did go over there. Did you ride with them over there?

A: Mm-hmm.

Q: So you rode with Frank Haigler to the apartments?

A: Mm-hmm.

Q: Even though he said you didn't?

A: I don't recall that.

Q: You were watching him testify, right?

A: No, he said we didn't come into the apartment.

Q: He said you weren't in the car with him.

THE COURT: Be careful of the pitting.

MR. HARRIS: Okay.

Q: Okay, but you did ride over there with Frank Haigler?

A: Yes, I did.

Q: Okay and Michael Allen?

A: Yes, I did.

Q: And your brother?

A: Yes, we all did.

Q: Before ---

A: Before Jerome came to our apartment, yes, we did.

Q: Okay. So you were at Charise Campbell and Michael Allen's apartment ---

A: Yes, we were.

Q: --- before Jerome came to your apartment?

A: Yes, we were.

Q: Okay. All right, you said that you did bring a gun for protection?

A: Yes, I did.

Q: You didn't fire the gun?

A: No, I didn't.

Q: You weren't even holding the gun?

A: No, I was not.

Q: Okay, but when the police came to you afterwards and you gave a statement, you said my brother got shot and I dropped the gun I was holding.

A: It just fell, you know, kind of in the heat of the moment. It was two days after that.

Q: Okay.

A: If I was holding a pistol over my brother, the young man that testified before would have said that because I know for a fact I dropped on the ground, immediately got up, stood over my brother and when I went to go grab him, it fell out.

Q: And you picked it up?

A: And I picked it up.

Q: And immediately ran behind the building?

A: Yes.

Q: And threw it on the roof?

A: Yes.

Q: But the bullets dropped out there?

A: Yes, they dropped out when I tried the first time. It fell and hit the ground and it opened up.

Q: Is that when it's next to your brother or in the back?

A: In the back.

Q: Okay. So your first thought is ---

MR. HARRIS: Can we queue up that video?

MS. GOULD: Which one?

MR. HARRIS: The one with side -- the side angle with the shots coming. Yeah.

(Whereupon, there is a brief pause in the questioning and then the requested video is shown on the screen.)

MR. HARRIS: Back it up there, back to where he walks down.

Q: Okay. So at this point you are with your brother and Michael Allen?

A: When?

Q: Right now or before all this happened.

A: I don't know what happened. Was it before the shots or after?

Q: Yeah, before the shots.

A: Yes. We were standing like pretty much off of this camera view.

Q: You were right here?

A: Mm-hmm.

Q: Okay and then your brother comes from Carriage Lane in a few minutes off of here, right? That's when you said he was standing there on the phone by the building?

A: We -- Before any of the shots went off ---

Q: Were you ---

A: --- at the gas station ---

Q: Here we go. This is your brother coming down. Okay?

A: That's after we heard the first two shots.

Q: Okay.

A: We went over there and he was basically lagging behind us anyway. When we came back, we still beat him back to the gas station because, like I said, he didn't know what was going

on.

Q: Okay.

MR. HARRIS: Can you stop this and go back for just one second. I'm sorry.

Q: Now that's you, right?

A: (No audible response.)

Q: Okay. This is your brother walking by and he's coming down here by the thing. Okay and you're about to see there's smoke there and then you see the gunshot right there, okay? And that's you. I mean that's -- The gunshot hits and that's you running, right?

A: Mm-hmm.

Q: So you're saying after that gunshot hit, you ducked down to check on your brother?

A: No, after the gunshot hit I was on the ground ---

Q: Okay.

A: --- and I stood back up and saw that my brother wasn't moving. He was motionless.

Q: Right and you ---

A: So I walked over to him, bent over and that's when the -- the revolver felled off my hip.

Q: Okay. So you did all that in that little two second span?

A: Yes. I don't -- I don't think that's accurate.

Q: Okay.

A: I think that's like skipping like a second frame by frame or something like that.

Q: Okay. So was it maybe five seconds?

A: I'm not sure. I can't even recall.

Q: So the first thought in your head when your brother gets shot is let me go hide evidence?

A: No.

Q: No?

A: No, that was not the first thought in my head. The first thought in my head was attend to him. I didn't even know the gun had fallen. Like I said before, Michael Allen told me to go get rid of the gun. That's when, you know, it hit me the police are coming, yeah, let me go get rid of this gun.

Q: Okay. So you tended to him?

A: And I realized there -- you know, basically there was nothing I could do. I don't want to go into the details, but at that point in time, you know, I realized there was nothing I could do for him.

Q: He was breathing though?

A: I didn't check him to see. I didn't -- I don't know how to check for a pulse. I didn't notice him breathing.

Q: You didn't notice him breathing?

A: (No audible response.)

Q: Okay. So you brought a gun with you, right?

A: Mm-hmm.

Q: Did you come in a separate car from Michael Allen or did you ride in the car with Michael Allen?

A: We rode -- we all rode in the same white Expedition.

Q: Okay. So you all rode in the same car. You didn't have a separate car?

A: I had my own vehicle, but we did not drive my vehicle that night.

Q: Okay and earlier you had ridden with Frank Haigler. Was that also Michael Allen's vehicle?

A: Mm-hmm.

Q: Or was that Frank's Firenza?

A: It was -- it was an Expedition.

Q: Okay.

MR. HARRIS: I beg the Court's indulgence, Your Honor.

THE COURT: Mm-hmm.

MR. HARRIS: I have nothing further, Your Honor.

THE COURT: Any redirect of the witness?

MR. VOIGT: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. VOIGT:

Q: The shots that came from the white car on Carriage Lane, did you believe those were meant for you?

A: Yes, sir.

Q: In this video, we see you running around. Were you upset that night?

A: I just didn't know what to do.

Q: How old were you then?

A: Twenty.

Q: You stayed on the scene until the police got there?

A: Yes, I did.

Q: You talked to the police?

A: Yes, sir, I did. I think I was like the last witness to leave.

Q: And then you talked to the police again?

A: Yes, sir.

Q: And you came into a courtroom and pleaded guilty for having that gun?

A: Yes, sir, I did.

MR. VOIGT: No further questions, Your Honor.

THE COURT: Any exception to the -- to the witness being excused from the State?

MR. VOIGT: None from the State, Your Honor.

THE COURT: From the defense?

MR. HARRIS: None, Your Honor.

THE COURT: Sir, you're excused.

MR. GERMAN: Thank you.

(Whereupon, the witness leaves the stand at 12:44 p.m.)

THE COURT: The State may proceed.

MR. VOIGT: At this time, Your Honor, the State rests.

THE COURT: Madam Forelady, ladies and gentlemen, the

State has rested their case. There are some matters of law that I need to take up with the attorneys that will probably take us a little beyond one o'clock. So I'm going to let you all go to lunch.

During this break, please do not discuss the case among yourselves or with anyone else. Please do not have any contact with anyone in or about the courthouse. Again, I would not want an innocent conversation to be observed and misinterpreted.

We will resume -- We will resume at 2:30 because I'm thinking that it's going to take us about 30 minutes before we're done and then we have to have an hour for lunch. So during the break, please do not, again, discuss the case among yourselves or with anyone else. Please don't have any contact with anyone in or about the courthouse. I hope that you all have a good lunch. You'll return directly to your jury room by 2:30, at which time we'll resume testimony.

(Whereupon, the jury leaves the courtroom at 12:45 p.m.)

THE COURT: You may be seated. Are there any motions now that the State has rested its case?

MR. VOIGT: None from the State, Your Honor.

THE COURT: Are there any motions?

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

THE COURT: Yes, sir.

MR. HARRIS: Your Honor, we put forward a motion for a directed verdict on all four charges. Your Honor, based on the lack of evidence that points to my client and his shooting a gun, possessing a gun or having gunshot residue on his hands, this is a case based solely on a vehicle. There's not a person that has said they saw my client fire a shot.

THE COURT: Actually, Mr. German says your client pointed a gun. He saw him point a gun at Mr. Haigler, did he not?

MR. HARRIS: I apologize, yes. That -- I apologize. That conflicted with Mr. Haigler's version, but I had forgotten that. He did just say that. Your Honor, this is a case based on circumstantial evidence and conflicting testimony from three victims. The testimony that comes out from ---

THE COURT: Go ahead. I thought that door was open. I apologize. I didn't mean to interrupt you. You may continue.

MR. HARRIS: Okay. The testimony that comes from witnesses that were not biased witnesses points to a different story. A) On the Frank Haigler assault with intent to kill, Frank Haigler himself admits he was not at the gas station. He was across the street. The bullets were fired at the gas station. Mr. Haigler says he was never across the street. He says he ducked into a bush on the other side of Carriage Lane.

THE COURT: But he also testified that he -- that at your client's direction two gentlemen came out of an apartment with

weapons, correct?

MR. HARRIS: He ---

THE COURT: And that's when he was fired upon?

MR. HARRIS: Right. He did testify to that, but he did also testify that my client was standing right in front of him and again, my client didn't -- I mean they say somebody directed somebody to fire bullets at somebody. That's the first time this has been said ever in this. There was never any statement that said Frank -- that said my client said go kill these people or shoot these people or whatever he said. I mean this is gunshots coming from a distance. He never saw who fired. He said he saw two gentlemen with guns. One time it was two shotguns, one time it was automatic weapons, and the other time it was a shotgun and a revolver.

THE COURT: Well, aren't those factual issues in dispute ---

MR. HARRIS: They are.

THE COURT: --- to be resolved. The Court isn't a fact finder, is it?

MR. HARRIS: They are, Your Honor.

THE COURT: Mm-hmm.

MR. HARRIS: So based on those, we'd ask that you direct a verdict in that this is a case based on circumstantial and witness testimony only and like I said, the witnesses that are not biased witnesses tell a different story.

THE COURT: Would the State like to respond?

MR. VOIGT: Your Honor, I believe that in the light most favorable to the State, again, that the evidence supports all of the charges. This is the hand of one theory, so we're not necessarily -- We never intended to necessarily prove that Mr. Campbell fired the weapons.

THE COURT: But you do have to prove some overt or passive act connecting him to some decision, conscious decision that is to enter into a criminal enterprise, do you not?

MR. VOIGT: I do, Your Honor, and I believe that the statements that both Mr. Allen testified to and that Mr. Haigler testified to about what Jerome Campbell said commensurate with the shots being fired I believe establishes that for the State. I believe all the other things mentioned by Mr. Harris would be things that were open to the finder of fact, the jury in this case, to decide whether or not they believe them.

THE COURT: Anything further, Mr. Harris?

MR. HARRIS: Just that, Your Honor, again this is -- this is murder on this count, which is malice aforethought which I don't feel they've shown other than statements that again contradict each other and there's one about somebody killing somebody for not being able to see a baby and there's a lot of different statements that I don't see where the malice

aforethought is transferred to another person in a line that's enough to show that he would be guilty of murder in this case.

Your Honor, I don't believe -- I think that the verdict should be directed on the charge of murder just because the Solicitor went into the malice aforethought before this and I don't believe that -- that you can -- that the line that this is taking can show that he ordered something with malice aforethought even if they're going to claim he ordered this.

THE COURT: Malice can be express or inferred, can it not?

MR. HARRIS: I understand. Yes, it can, Your Honor, but I have nothing further on that.

THE COURT: I'm going to think about it over lunch. Does the defendant have any record?

MR. VOIGT: I believe he has a misdemeanor record for not having a license for selling items. I believe it was -- had to do with the shoes.

THE COURT: Nothing that you would use to try to impeach his credibility, correct?

MR. VOIGT: No.

THE COURT: Sir, if you would stand for me, please, and raise your right hand to be sworn. Do you swear or affirm the testimony you give will be the truth?

MR. CAMPBELL: Yes.

THE COURT: You can put your right hand down, sir. State

your full name for the record?

MR. CAMPBELL: Jerome Renaldo Campbell.

THE COURT: Put your right hand down, sir. State your full name -- I'm sorry. I apologize. You can put your right hand down. Spell your last name for the court reporter?

MR. CAMPBELL: C-A-M-P-B-E-L-L.

THE COURT: Sir, at this time I'm going to explain to you certain of your rights. If you do not understand anything that I say, please let me know. If you need me to repeat something, please let me know. Do you understand?

MR. CAMPBELL: Yes, Your Honor.

THE COURT: We have 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 to the Constitution and that 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 that 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 those statements is outweighed by any prejudicial effect to you, the Solicitor will be able to introduce your record to attack your credibility. However, they have indicated that they do not have any record that they would be seeking to use to impeach your credibility at this time.

If you decide to testify, this decision on your part must be made freely, voluntarily and intelligently with knowledge of the protections given to you by the Fifth Amendment and the consequences of your decision to testify. If you decide not to testify, I will instruct the jury 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. In fact, they will be instructed that it cannot be discussed in any manner whatsoever during deliberations.

It is left entirely up to you whether or not you testify. You may speak with your attorneys, your family members and friends or anyone else that you would like to seek counsel from, but the final decision will be left entirely up to you. Sir, do you understand your rights as I've just explained them to you?

MR. CAMPBELL: Yes, Your Honor.

THE COURT: Do you have any questions about what I've just explained to you?

MR. CAMPBELL: Not except I would like to ask my attorneys some questions.

THE COURT: Okay. I'd -- And my next question is have you discussed with your lawyers whether you should or should not testify?

MR. CAMPBELL: Yes.

THE COURT: Do you wish to speak with them more at this time?

MR. CAMPBELL: Yes, Your Honor.

THE COURT: Okay. We'll adjourn that questioning until he has had the opportunity to speak with his counsel and then as I understand it, Mr. Harris, you have the following witnesses that you intend to call: Charise Coaxum, Christopher Robinson, who is a GSR expert. Did you determine the ETA on him?

MR. HARRIS: He can't get here until six, Your Honor.

THE COURT: Oh, this evening?

MR. HARRIS: Yes, Your Honor.

THE COURT: So you'd have to call him in the morning?

MR. HARRIS: I'm going to call him first thing in the morning. That will be our last witness.

THE COURT: And then Aaron Burnham?

MR. HARRIS: Your Honor, I'll find out at lunch.

THE COURT: Sandra Campbell?

MR. HARRIS: Yes.

THE COURT: Okay. So that's one, two three and then if your client testifies, four for this afternoon, correct?

MR. HARRIS: We'll know that after lunch also.

THE COURT: Okay, all right. We'll stand adjourned until 2:30. Have a good lunch.

MR. VOIGT: Thank you.

MR. HARRIS: Thank you, Your Honor.

(Whereupon, there is a break in the proceedings from 12:53 p.m. until 2:39 p.m. When the proceedings resume, the defendant and all counsel are present. The jury is not yet present in the courtroom.)

THE COURT: Is the State ready to proceed?

MR. VOIGT: Yes, Your Honor.

THE COURT: Is the defense ready to proceed?

MR. HARRIS: Yes, Your Honor.

THE COURT: Mr. Campbell, if you would, stand for me, please. I'll remind you you're still under oath. Have you had an adequate opportunity to discuss with your lawyers whether you should or should not testify?

MR. CAMPBELL: Yes, Your Honor.

THE COURT: Do you have any questions about what the Court has explained to you regarding your right to testify?

MR. CAMPBELL: No, Your Honor.

THE COURT: And, sir, do you have any further questions of your counsel regarding your right to testify?

MR. CAMPBELL: No, Your Honor.

THE COURT: And, sir, do you wish to testify?

MR. CAMPBELL: No, Your Honor.

THE COURT: Okay. You may take your seat. Who is the first defense witness going to be?

MR. HARRIS: Charise Coaxum, Your Honor.

THE COURT: And did you find out the status of your other witnesses?

MR. HARRIS: They're both here. One is for this afternoon and the ---

THE COURT: So Mr. Coaxum is not testifying. Charise Coaxum, however, is. So Christopher Robinson will have to be here tomorrow.

MR. HARRIS: And Sandra Campbell.

THE COURT: Aaron Burnham?

MR. HARRIS: Aaron Burnham is not.

THE COURT: And Sandra Campbell?

MR. HARRIS: Is this afternoon.

THE COURT: Okay.

MR. HARRIS: She will be our last witness today.

THE COURT: You can go ahead and get the jury.

BAILIFF: Yes, ma'am.

(Whereupon, there is a brief pause in the proceedings as

the jury is brought from the jury room.)

THE COURT: Do you have your witness ready?

MR. HARRIS: Yes, Your Honor.

THE COURT: You need to -- Are they in the courtroom?

MR. HARRIS: No.

THE COURT: (To Mr. Harris) You need to go ahead and get them. (To bailiff) Tell them not to bring them in just yet. Wait one second.

(Whereupon, there is a brief pause in the proceedings as the witness is brought into the courtroom.)

THE COURT: Ma'am, if you'd come to the witness stand so that we can swear you when the jury comes in.

THE CLERK: This way, ma'am. I'm sorry.

THE COURT: Yeah, go ahead and tell them to bring the jury in. Go ahead and tell them to bring the jury in.

(Whereupon, the jury enters the courtroom at 2:42 p.m.)

BAILIFF: Your Honor, all are present.

THE COURT: Thank you. You may be seated. Ladies and gentlemen, I hope you had a pleasant lunch recess. We'll now resume with trial testimony. The defense may proceed.

THE CLERK: Put your left hand on the Bible and raise your right hand.

THE COURT: You need to call your witness.

MR. HARRIS: We call Charise Coaxum, Your Honor.

THE CLERK: Do you swear or affirm that your testimony

will be the truth, the whole truth and nothing but the truth, so help you God?

MS. COAXUM: I do.

THE CLERK: Be seated. You need to speak into this mic. You need to be kind of close to it and state your full name and then spell your last name.

MS. COAXUM: Charise Alexandria Coaxum, last name is spelled C-O-A-X-U-M.

THE COURT: You may proceed.

MR. HARRIS: Thank you, Your Honor.

THE COURT: You're welcome.

CHARISE COAXUM, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q: Ms. Coaxum, how are you this afternoon?

A: Good.

Q: Ms. Coaxum, how are you related to Jerome Campbell?

A: He's my brother.

Q: He's your brother. Okay, but you're also related to other people involved in this?

A: Yes.

Q: Is that correct?

A: Yes.

Q: Okay. Are you related to -- And you're married to?

A: Michael Allen.

Q: Okay and to your knowledge Michael Allen has a brother named Frank Haigler?

A: No, sir.

Q: Okay. Is that -- He has a friend named Frank Haigler though?

A: Frank, yes.

Q: Okay and do you know Anthony German?

A: Yes.

Q: Did you know Michael German?

A: Yes.

Q: Okay. Let's go to the night of this incident, the 9th. The -- Go back to your place at [redacted] Plantation Apartments. That's right?

A: [redacted].

Q: [redacted] I'm sorry.

A: Yes.

Q: Okay. Tell us what happened earlier that night?

A: Earlier that night at [redacted]?

Q: Yes.

A: Well, I came -- I went on -- First of all, I went on James Island.

Q: Right.

A: And then I received a text message from my husband stating that my brother called him a punk and he said, "And

your brother called me a punk. Tonight we'll see. Real niggers do real things." So I didn't even respond back to the text.

Q: Okay.

A: I already know, so I went -- we went home. I pick up the kids from school and we went home to get some clothes.

Q: Mm-hmm.

A: And I can't remember exactly what time it was, but we was in the house about ten minutes I heard a knock to the door. I went to the door and I took the one of the locks off. The other lock were still on.

Q: Okay.

A: And there were my husband and Frank Haigler, Michael -- Michael and Anthony German.

Q: Okay. So there was four people at the door?

A: Four people at the door at the time, yes.

Q: Okay. Go ahead.

A: And Michael Allen, he pushed the door open ---

Q: Mm-hmm.

A: --- and he came in. He said he had came looking for my brother. I say, "Y'all came looking for my brother?" I said, "My brother don't live here. Why would y'all come here looking for my brother?" And he said -- they said that my brother told them that he was going to be over there and he sent them a threat.

Q: Okay.

A: So I asked them, "My brother send y'all a threat and y'all come over here?" And I said, "That don't make sense." I said, "Why would my brother send y'all a threat and tell y'all to meet him over here when he doesn't live here? He resides in North Carolina." I said, "This is my place of residence. I'm here with my kids." And Frank and Michael Allen came all the way in.

Q: Okay.

A: Anthony, Michael and -- Anthony German and Michael German came in right close to that front door inside -- inside the apartment.

Q: Okay.

A: They didn't come all the way in the apartment, but they were inside the apartment right by the door like.

Q: Who all was at the apartment with you?

A: At the time, it was me and my three kids, Jordan [redacted], Tyrell [redacted] and Sheena [redacted].

Q: Okay.

A: And so they -- they all were like arguing saying, you know, they looking for my brother. So one of my kids, Tyrell [redacted], I didn't know at the time called my mother ---

Q: Okay.

A: --- and tell my mom that she needed to get over there. So after my mom got there, I was still packing clothes, you

know, because I already decided that I'm going to stay on James Island.

Q: Mm-hmm.

A: And I had to -- I was scheduled to work that night anyway at 11 o'clock that night. So I was just going to stay over there until I had to go to work.

Q: Okay.

A: So my mom came in and I'm -- They all were talking and my mom was trying to get them to leave and she asked them why are y'all there and Michael German stated that he was there because he wanted to protect his brother. He said, "We are Bloods and all Bloods stick together. Your brother gonna die tonight." And Anthony said, "Yeah, your son gonna die tonight."

Q: Okay and then what happened?

A: So my mom tried to tell them that my brother's not even in Charleston, you know, just to throw them off so that they can leave. My mom proceeded -- She grabbed her cell phone to try to call the 9-1-1 and that's when Frank Haigler grabbed her hand, pushed her phone down. She said -- He said, "No, ma'am, you don't need to do that. We're leaving."

Q: Okay.

A: "We're gonna leave."

Q: And then they left?

A: Yeah, they -- they -- they went outside the apartment and

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

CERTIORARI TO CHARLESTON COUNTY
Court of Common Pleas
William H. Seals, Jr., Circuit Court Judge

Appellate Case № 2018-000464
Lower Case No. 2014-CP-10-3019

Jerome Campbell, # 349454, ... Petitioner,

vs.

State of South Carolina, ... Respondent.

APPENDIX VOLUME II

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they all were there and I still was proceeding to pack clothes in there.

Q: Okay.

A: And there were so -- So they had a lot of people with them. There was guys standing at every corner. They hadn't parked their cars out front and they had their cars in the back. So they proceeded -- We started to get in our cars and they proceeded to walk to Foster street.

Q: Okay.

A: And we all -- we all left.

Q: Okay and you never came back?

A: No, I never came back to the apartment.

Q: Okay. So and then this is not -- It's later on that night you get a call from -- Did you get from someone else later that night?

A: Yes. I got a call from Michael Allen.

Q: Okay. That's your husband?

A: Yes.

Q: What was that call about?

A: He said, "Your brother just killed Michael, Michael German."

Q: Okay.

A: And I said, "My brother? Why -- why would you call my brother's name? My brother would not do nothing like that." I said, "Did you see my brother do that?" He said, "No, but I

thought I heard his voice."

Q: Okay.

A: And so I hung up on him.

Q: Okay and then where did you go after that?

A: At that time, I was at my mom's house. I had just pulled in my mom's house when he made that call to me. I answered the phone. I was already back on James Island ---

Q: Okay.

A: --- at that time.

Q: Okay. So your mother came after the people showed up at the door?

A: Yes.

Q: Okay.

A: My mother was there and they were blocking the doors because my mom could hardly get in. I was like, "Let -- let her in. Let my mom in."

Q: Okay.

A: My mom came in.

Q: How long do you think this went on?

A: How long do I think it went on?

Q: Yes.

A: I think they were there from maybe 20 to 30 minutes.

Q: Okay, okay and then everybody left kind of at the same time?

A: Yes, everybody left at the same time. Well, they were

walking, so I never saw them driving their car because they didn't park -- Like I said, they didn't park to the front.

Q: Okay, okay.

MR. HARRIS: I beg the Court's indulgence, Your Honor.

THE COURT: Yes, sir.

Q: Okay. When you got to the apartment and Michael came back and the argument happened, then you left and he left. Did you tell him, you know, here's the key, come back. Did you ---

A: No.

MR. VOIGT: Objection.

THE COURT: Basis?

MR. VOIGT: Leading.

THE COURT: Sustained, leading. Rephrase.

Q: Okay. What did you to say to Michael Allen when he left -- as he was leaving or when he left the house?

A: I told him that I wasn't going to give him a key because I only had that one key and that I will come back. Frank asked me if I could come back and let Michael Allen get his clothes and all his things and I said, "Yes, I will come back and open the door." But I wasn't going to give him my keys to the house.

MR. HARRIS: Okay, okay. Please answer any questions the prosecution may have.

THE COURT: Any questions for the witness?

MR. VOIGT: Just a few, Your Honor.

THE COURT: You may proceed.

CROSS EXAMINATION

BY MR. VOIGT:

Q: Ms. Coaxum, how are you?

A: I'm good.

Q: Did your brother, Jerome, ever go by Coaxum?

A: Yes.

Q: Okay, but he now goes by Campbell?

A: Yes.

Q: Okay. I just wanted to clarify that. About what time did you go to [redacted]? About what time were you there at the same time with Michael Allen, Frank Haigler and the German brothers? Do you recall?

A: I don't remember exactly, but I know I headed back to West Ashley a little after six or 6:30.

Q: Was -- When you left [redacted], was it still light out?

A: No. When I left there, it wasn't light.

Q: It was still dark?

A: It was dark.

Q: Okay. Did you talk to your brother, Jerome?

A: Yes.

Q: When did you first talk to Jerome on January 9th, 2009?

A: I spoke to my brother I think around 3 o'clock that afternoon. We were all on James Island at my mom's house at

that time.

Q: Okay. So earlier in the day you were all -- you were down at your mom's house. Is that on Grimble Road?

A: Yes.

Q: Okay and who was with you down there?

A: It was me and my mom was to the house and Jerome was to the house and the kids came after because they got -- after they got from school.

Q: Okay. So Jerome was down at your mom's house on James Island at 3:30 or so?

A: I -- I can't actually remember the time, but I know he was there before the kids got out of school and they have extra-curriculum at school and I know when they saw him, they all -- they ran to him and he took them out to eat and everything. So I'm not sure exactly what time it was, but I know we all were there on James Island at my mom's house.

Q: Okay. Was Aaron Burnham there?

A: No, not at the time.

Q: And had he driven -- Had Jerome, your brother, driven in that day from Charlotte?

A: Yes.

Q: And why had he driven in from Charlotte?

A: Jerome was like home like every other weekend, so.

Q: So it wouldn't have been unusual for Jerome to drive the three plus hours ---

A: No.

Q: --- down from Charlotte?

A: Not at all.

Q: Did any particular event make Jerome drive down that you recall that day?

A: No, sir.

Q: Okay. How long did you spend with Jerome at your mom's house on James Island?

A: I probably was there about -- about two hours, if that.

Q: And do you have any idea roughly when those two hours would have been, when it would have started and when it would have ended?

A: Let's see. It probably was like about -- Let's see. I would say around time, but I'm going to estimate it probably a little after four because I was home sleeping. I was on eleven to seven shift and I got up. I always get up close to the time the kids get out of school. But I went over there a little earlier that day because of the altercation that went off that morning.

Q: There was an altercation in the morning?

A: Well, for me and my husband, Michael Allen.

Q: When did that happen?

A: I got off of work at seven and when I got there, he was out there in the parking lot at the apartment because of the night before he had got arrested and then he got released, but

he was calling me for the keys and I -- Like I said before, I would not give him the keys to our apartment.

Q: Did you have him arrested?

A: No, sir.

Q: So you got off work at about seven, seven something, in the morning and this is out on Azalea Drive in North Charleston?

A: Yes.

Q: And did you come immediately home from work?

A: Yes, I did.

Q: And so you -- you talked to your husband after you got home from work?

A: I didn't talk to him. I went straight into the apartment. He was sitting in the truck outside.

Q: Okay. So he's outside, but you don't talk to him?

A: No, sir.

Q: Okay and then you go inside and then you go to sleep then?

A: No, sir.

Q: Okay and when you came home that morning, we're talking about January 9th, right?

A: Yes.

Q: Okay. He's out in the truck. Is Frank with him?

A: No, sir.

Q: And -- and neither one of the German brothers are with

him?

A: No, sir.

Q: Okay. When did you go to James Island to go be with your mom and Jerome?

A: See, actually I have to take my kids to school in the morning. So my mom came over there that morning and I went and I took my kids to school and I left my mom and my older son to the house.

Q: How old is your oldest son?

A: He is at the age of 20 now.

Q: Okay. So he doesn't obviously have to go to school like the other ones do, right?

A: No.

Q: And how old were the others? What grade were they in back two and a half or three years ago?

A: [redacted] was in the eighth grade and I think [redacted] was in seventh and [redacted] was in fifth.

Q: Okay.

A: Fourth grade, I'm sorry.

Q: Did they all go to different schools or the same school or ---

A: Yes, they went to -- [redacted] went to James Island Middle School and [redacted] and [redacted] at the time went to Charleston Development Academy Charter School.

Q: Okay.

A: And that's downtown on Line Street.

Q: All right. So and you had to take each one of them to the different places, right?

A: Yes.

Q: Okay. So did you go downtown first or did you go to James Island first?

A: I went to James Island first.

Q: Okay and then from James Island you went downtown?

A: Downtown.

Q: Okay and then once you got downtown and after you dropped your kids off, where did you go after that?

A: I went back to the house.

Q: And we're talking about [redacted]?

A: [redacted] Carriage Lane.

Q: On Carriage Lane?

A: Yes.

Q: Is that when you went and went to sleep finally?

A: Well, I tried to go to sleep, yes.

Q: Okay, but you didn't go to sleep?

A: No, not really.

Q: Okay. How long were you there at the -- the apartment on Carriage Lane before you went to James Island to be with your mom?

A: I think I went on James Island about two o'clock.

Q: Okay and you testified earlier that you stayed there for

about two hours or so?

A: Right. After I got the kids, then we went home.

Q: I'm kind of confused. Now when you're on James Island, do you have the kids?

A: No. I didn't have the -- I didn't have the kids. I didn't have to pick up the kids. I don't have -- I don't pick up my kids in the afternoon from downtown because my mom picks them up.

Q: Okay.

A: So I was already at the house. When she left my house that morning, she went straight to work.

Q: Okay.

A: And I stayed at -- at my apartment.

Q: Okay and then -- then you stayed at your apartment, but -- I'm sorry. I'm not trying to belabor this with you. I'm not sure this is terribly important, but I'm just trying to track where you were during the day, okay? You dropped your kids off at school. You then went to James Island. Your mom's there?

A: I didn't ---

Q: When you got to James Island, was your mom there?

A: No, my mom was at my house. I left my mom at my house on James Island -- I mean on West Ashley.

Q: Okay.

A: I went to James Island to take Jordan to school.

Q: Right and then did you go back to your house or did you stay at your mom's house?

A: No, I went back to my house.

Q: Okay. So then -- So you go from your house to James Island to drop your son off and then you go back to your house?

A: I went downtown and dropped my other two kids off.

Q: Okay. You dropped your other kids off and then you go back to your house?

A: Right.

Q: And your mom, was she already at your house?

A: She was. Yeah, she was already. I left her there.

Q: All right. So at what point do you go to your mom's house?

A: About two o'clock in the afternoon.

Q: Okay.

A: Somewhere around that time.

Q: Did your mom go with you or did she go ---

A: No, my mom left. My mom left when she had to be at work at eight o'clock. My mom left that morning after I got back home, but she went to work.

Q: Okay. So she went to work?

A: Yes.

Q: And then you went to her house, but she wasn't at her house when you got there?

A: In the morning? No, I didn't go to her house in the morning.

Q: No, no, no. I'm talking about ---

A: In the afternoon?

Q: In the afternoon.

A: No, because she gets off like three or something like that.

Q: Okay.

A: She came in after.

Q: All right. Was Jerome at your mom's house at two o'clock when you got there?

A: Jerome came in after, after I was there.

Q: Okay.

A: Because I was standing out in the yard with a neighbor of mine when Jerome pulled up.

Q: Okay and what did he pull up in?

A: His white Impala.

Q: Okay. So that's -- that's Jerome's car?

A: Yes.

Q: You know that? Did Jerome tell you why he was there?

A: No.

Q: But you testified that that's -- it's -- He would come in every other weekend or so. That was ---

A: He would come in every other -- every other weekend and a matter of fact, this was already planned because he couldn't

make it home during the new year, so he said he would be home the next weekend. I have the kids and he would come down here just -- just to see the kids' games.

Q: Okay. So did he come down for the weekend? Was that his plan?

A: Yes.

Q: And do you know where he was going to stay?

A: Yes.

Q: Where was he going to stay?

A: Normally he stay at my house or my mother's house.

Q: Well, I mean those are two different places. Do you know that weekend whether he was going to stay at your mom's or whether he was going to stay with you?

A: Right.

Q: Which one? Did you even know?

A: Well, he was going to stay -- he's was going to have -- If I was going to stay at my house, he was going to come home with me that night.

Q: That was your plan?

A: That was my plan.

Q: Okay and what time did you go back to your house? I'm talking about [redacted] on Carriage Lane. What time did you leave your mom's house to go back to your house?

A: I want to say I left my mama's house somewhere after five. I'm not direct with time and I don't remember the time.

Q: That's okay.

A: But it was somewhere after five.

Q: All right and was Jerome still at your mom's house when you left to go over to your house?

A: Yes.

Q: Okay and was your mom still at your mom's house when you left to go to your house?

A: Yes.

Q: And did you have your children with you?

A: Yes, I did.

Q: All right. When you got to your house, was there anybody else in your house ---

A: No, sir.

Q: --- before you got there?

A: No, sir.

Q: About how long had it been after you got home before you saw Michael Allen, Frank and the German brothers?

A: I'm thinking of what time. I believe they were there I want to say any time after seven or eight.

Q: Okay. So you think they got there about eight o'clock?

A: I think.

Q: What time did your mom get there?

A: I can't remember exactly what time my mom got there, but I know she probably got there about 8:30, something like that.

Q: And how long do you think y'all were there?

A: We were there -- After my mom got there, we probably were there about maybe 30, 30, I'd say 35 minutes because my mom had to be at work at ten o'clock that night.

Q: So she had worked at eight o'clock that morning?

A: Yeah, she has two jobs.

Q: And she had to work at ten o'clock at night?

A: Yes, she worked at eight o'clock in the morning and then she gots her regular job at ten p.m. at night.

Q: Okay and were you going to work that night as well?

A: Yes.

Q: Did you call Jerome while Michael Allen and Frank Haigler and the German brothers were at [redacted] Carriage Lane?

A: I called my brother after they left and told him that they were there looking for him and they said that he was going to die tonight.

Q: So you told Jerome that?

A: Yes, for him to be careful.

Q: Okay and then you told that to Jerome so that he could be careful?

A: Yes, because I know that he -- he sells sneakers. When he's down here, he's coming to sell sneakers and he was supposed to meet someone over there to sell sneakers because normally in the neighborhood when my brother comes home -- because they even bought sneakers from -- from him.

Q: Were you afraid that Michael German was going to do

something to your brother, Jerome?

A: Yes.

Q: Later you talked to your husband on the phone, right?

A: Yes.

Q: And you told Mr. Harris that Michael Allen had told you that your brother had just killed Michael German?

A: Yes.

Q: And you told Mr. Harris that Michael Allen told you that you -- that he had heard Jerome's voice right when this happened?

A: Yes. He said he didn't see him, but he thought he heard the voice.

Q: Okay. Do you know when you got that phone call?

A: I don't remember the time, but I think it was after ten. It might have been after ten and he called.

Q: Where were you when you got that phone call?

A: I was just pulling up in my mom's yard on James Island.

Q: What time did you leave your apartment on Carriage Lane?

A: I left my apartment. It was close -- close to maybe ten o'clock because my mom had to go to work and we all left together. It was probably quarter till.

Q: Okay. So you think that you and your mom left at quarter till ten or thereabouts?

A: Yes.

Q: Did Frank and Michael and Michael and Anthony leave at

the same time?

A: Well, all I could say they proceeded to walk on Foster Street. I don't know if they left or not. I know they left from in front of the apartment.

Q: Okay, but did they leave at the same time you and your mom did?

A: Yes, they were walking.

Q: Okay and did your mom -- Was your mom -- Did your mom and you take separate cars?

A: Yes, we did.

Q: And did your mom to the best of your knowledge go to her other job?

A: Yes, she did went to her other job.

Q: And you went back to her house on James Island?

A: Yes.

Q: And you had your kids with you at that time?

A: Yes.

Q: Had you given Jerome a key to your apartment?

A: No, sir.

Q: Do you recall meeting with Detective Burckhardt on December [sic.] 16th, 2009, about a week after Michael German was murdered?

A: Yes. He was the one that came to the job right here.

Q: At any point in that week on January 9th or 10th or 11th or 12th or 13th, 14th, 15th, did you call the police and relate to

them at all that Michael German had threatened to kill your brother?

A: No, sir.

Q: Did you take that threat from Michael German seriously?

A: Yes, I did. I take any threat seriously.

Q: But specifically, you took a threat from Michael German seriously that he was going to kill your brother, Jerome?

A: Yes, he said it.

Q: And just to be clear, Michael Allen didn't threaten to kill your brother?

A: He just sent me a text and said that my brother called him a punk, tonight we'll see, real niggers do real things.

Q: Okay and that -- those were the words on the text?

A: Yes.

Q: Just what you said?

A: Yes.

Q: Okay and you had the opportunity to tell Detective Burckhardt about that text when he came to interview you?

A: Yes.

Q: Isn't that right?

A: Yes.

Q: And did you relay to him those words just like you relayed them to us?

A: Yes, I did. I showed him the text because I had it in my phone.

Q: Okay. You -- you showed him the text?

A: Yes.

Q: And after that statement was given -- You gave a statement, right?

A: Yes, I did.

Q: Okay and there's a -- there's a part of the statement that's written out what you said. Did you write that out yourself or did they do that for you?

A: I wrote a statement out myself.

Q: You wrote it out yourself?

A: Yes.

Q: Okay and the words that you chose to put in that statement, did they supply those words to you? Did the police tell you what to say?

A: No, sir.

Q: So that was just something -- That was -- That came -- Those were your words, weren't they?

A: They were.

Q: Okay. I'm going to show you what I'm marking as State's 66.

THE COURT: ID only.

MR. VOIGT: For ID only. May I approach the witness, Your Honor?

THE COURT: You may.

Q: Ma'am, could you take a look at that? Now that first

paragraph there on that first page, that's what we were just talking about. Those -- That you wrote, right?

A: Yes.

Q: Okay and in there, right there on that second line, you talk about the text message, don't you?

A: Yes.

Q: Okay. Now on the first line you say that you -- I mean correct me if I'm wrong, but in your own words you say, "I believe sometime after eight I got a text message from my husband." Is that correct?

A: Yes.

Q: Okay and what are the -- what -- What is it that you told Detective Burckhardt here in this statement that that message said? Could you read that out for us?

A: I said, "I got a text message from my husband saying tell my brother that he was on the way and that real people do real things. Your mama called me a sissy and tonight we'll see."

Q: Okay. Now and I'm -- I'm not -- You wrote the word people in that statement, didn't you?

A: Yes, I did.

Q: Okay. Now you were able -- Is that your signature down at the bottom of that statement?

A: Yes.

Q: Were you able to -- And this is a four page statement, right?

A: Mm-hmm.

Q: I mean you can check, but we've got four different pages, right?

A: Two -- two pages from what I wrote.

Q: Excuse me?

A: Two of them from what I wrote.

Q: And then there's some questions that the police officers asked you. Is that in their handwriting?

A: Yes, it is.

Q: Okay and on the bottom of each one of the four pages of the statement do you see your signature?

A: Yes, I do.

Q: Okay. Did Detective Burckhardt -- And I think I'm reading that right. The witness on each one of those says "R. Burckhardt", does it not?

A: Yes.

Q: Okay. On each one of those pages, did Detective Burckhardt give you the opportunity to look at what you had told me, the important things that you had told him, and make any corrections or additions?

A: Yes.

Q: And by this point, by January 16th, your brother had already been arrested, right?

A: Correct.

Q: And you love your brother?

A: Yes, I do.
Q: No doubt?
A: No doubt.
Q: Okay and it was important for you to tell Detective Burckhardt each and every thing that you remembered from that night just in case something was important, right?
A: Yes and I also told him that some things that I didn't remember. At the time I was very nervous writing the statement and I might have missed some things.
Q: Oh, sure.
A: Or say some things not right in the right order.
Q: Sure. Now Detective Burckhardt came to your place of work, right?
A: Yes, he did.
Q: And about how long did you meet with Detective Burckhardt?
A: I think he came to the job I want to say around maybe one and we left a little after three.
Q: So about two hours you think you spent with him?
A: I'm not sure, I'm not sure.
Q: Does that sound about right?
A: Probably is.
Q: Okay. Had you ever gone to any police station or tried to contact the police in any way to tell them about the important things you knew about this case?

A: No, the -- the detective came to me.
Q: Okay.
A: And I told my brother's lawyer at the time, who was his lawyer at the time.
Q: Now when you told Detective Burckhardt what you put in your statement and about the text message, did you want to tell Detective Burckhardt every important fact that you could think of that he needed to know about what happened before Michael German got killed?
A: The best of my knowledge.
Q: Can you look on that statement and find for me where you told Detective Burckhardt that Michael German said, "Your brother gonna die tonight?"
A: I didn't state it what Michael German said, but I -- It's in here.
Q: But in there that -- That's not on -- in that statement anywhere, is it?
A: It's -- it's -- it's worded differently that what they say they was going to do to him.
Q: Where?
A: And I told them Anthony and them was at the house looking for him and what they was going to do to him.
Q: So you've told this jury that somebody who is not here to defend himself told you, "Your brother's going to die tonight." And you didn't think that was important enough to

tell Detective Burckhardt, did you?

A: No. At that time, the police were already involved, so.

Q: That wasn't important?

A: It was important.

Q: Now Anthony German says to your mother, "Your son gonna die tonight." Let me guess. It's not in that statement, is it? You can look if you like.

A: No, it's not in my statement.

Q: Okay. You didn't think that was important enough to tell Detective Burckhardt, did you?

A: I think it all was important.

Q: It's not in that statement because nobody ever said that. Isn't that right?

A: No, that's not right.

Q: You think you can come in here and just make it up, don't you?

A: No, sir, not at all.

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

THE COURT: Any redirect of the witness?

MR. HARRIS: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. HARRIS:

Q: You put your hand on that Bible when you walked in here, didn't you?

A: Yes, I did.

Q: And you said I promise to tell the truth, the whole truth and nothing but the truth, so help you God?

A: Nothing but the truth, God.

Q: Okay. You haven't been sitting in this courtroom this entire three days, have you?

A: No, sir.

Q: You haven't been listening to what was going on in here?

A: No, sir.

Q: You haven't even been in the courthouse?

A: No, sir.

Q: Okay.

MR. HARRIS: I have nothing further, Your Honor.

THE COURT: Any objection to the witness being excused from the State?

MR. VOIGT: None from the State, Your Honor.

THE COURT: From the defense?

MR. HARRIS: None, Your Honor.

THE COURT: Ma'am, you're excused. Counsel, approach the bench, please.

(Whereupon, the witness leaves the stand at 3:21 p.m. and a bench conference is held off the record in the presence of the jury but out of the hearing of the jury.)

THE COURT: You may call your next witness.

MR. MIKELL: Your Honor, the defense calls Ms. Sandra Campbell.

THE COURT: If the witness would come forward to be sworn and do we need to go out in the lobby and get her?

MR. HARRIS: She's in the hall. They're getting her, Your Honor.

(Whereupon, there is a brief pause in the proceedings until the witness enters the courtroom.)

THE CLERK: This way, Ms. Campbell. Put your left hand on the Bible and raise your right hand. Do you swear or affirm that your testimony will be the truth, the whole truth and nothing but the truth, so help you God?

MS. CAMPBELL: Yes.

THE CLERK: Be seated. Ms. Campbell, if you'll please speak into this microphone. You've got to get kind of close to it and state your full name and then spell your last name.

MS. CAMPBELL: Sandra M. Campbell, C-A-M-P-B-E-L-L.

THE COURT: You may proceed, Mr. Mikell.

MR. MIKELL: Thank you, Your Honor.

THE COURT: You're welcome.

SANDRA CAMPBELL, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. MIKELL:

Q: Good afternoon, Ms. Campbell. Ms. Campbell, tell me where are you from?

A: James Island.

Q: Okay.

A: I live at ---

Q: Born and raised -- born and raised there?

A: Yes.

Q: Okay and where did you go to school?

A: Fort Johnson High, graduated from Fort Johnson High.

Q: Okay. After you graduated, did you get married or ---

A: Yes.

Q: Okay and do you have any children?

A: Yes.

Q: Tell me about your children. Who are they?

A: I have Edwina, Katrina, Charise, Jerome and Rosalyn.

Q: Okay. Jerome is your only boy?

A: Yes.

Q: Okay. Let me ask you about Jerome. Tell me how old is he?

A: Thirty-seven.

Q: And what does Jerome do for a living?

A: He was working for -- The last job was working for an insurance company.

Q: Okay.

A: Mm-hmm.

Q: And what -- what did he do for that insurance company?

A: Sold insurance.

Q: Okay and about how long?

A: I would say maybe from six months to a year.

Q: Okay and back January 9th of 2009, was Jerome working for that insurance company?

A: No.

Q: What was he doing then?

A: He was working. He was a loan officer for a bank, Wachovia, if I'm not mistaken, Wachovia.

Q: And where did he have that position?

A: In Charlotte, North Carolina.

Q: Okay. Now tell me about -- about Jerome's education. Where did he go to school?

A: He went to James Island High School. He graduated from -- He went to Spartanburg Methodist, Anderson College, and then he graduated from the University of South Alabama.

Q: Okay. Do you -- did he get a bachelor's?

A: Yes, he did.

Q: Okay and how long had he been working there at -- in Charlotte?

A: I guess about two, three years.

Q: Okay. Is Jerome married?

A: Yes, he is.

Q: Okay. Who is his wife?

A: Sharonda Campbell.

Q: Okay and where did he meet Sharonda?

A: They were high school sweethearts.

Q: Okay. So they met here in Charleston?

A: Yes.

Q: At James Island High School?

A: I don't think they met at James Island High School.

Q: Okay.

A: But I don't know when they met, but I know they -- he was in school when he was seeing her.

Q: Okay. How long have they been married?

A: I think maybe about three years.

Q: Okay and do you have any grandchildren?

A: Yes.

Q: Does Jerome have any children?

A: No, he doesn't.

Q: Okay. So your grandchildren are from your -- your daughters?

A: Yes.

Q: Okay. How many grandchildren do you have?

A: I have eight biological grandchildren and I have four that calls me Grandmother, but I'm not actually their grandmother.

Q: Okay. Your grandchildren from Charise, tell me who are they?

A: Tremaine, [redacted], [redacted] and [redacted].

Q: Okay. So four grandchildren from Charise?

A: Yes.

Q: Okay and how -- Tell me their ages?

A: [redacted] is eleven, twelve. It's between eleven and twelve. [redacted] just had a birthday. He just turned fifteen.

Q: Okay.

A: [redacted] is sixteen and Tremaine is nineteen.

Q: Okay, okay. Thank you. Now I want to call your attention to January 9th, 2009, and ask you about that entire day. So can you tell me how you -- how you started that day? It was a Friday.

A: I was -- I think I worked that night.

Q: Where do you work?

A: I work with Disability Board of Charleston County.

Q: Okay. So when did you work from? Did you ---

A: I worked from ten at night to six a.m. in the morning.

Q: Okay. So we would say you started at ten o'clock on Thursday?

A: Yes.

Q: And then you finished up that job at six a.m. Friday morning.

A: Yes.

Q: Is that right?

A: Yes.

Q: Okay. Now after you got off work, tell me what did you do?

A: I went to bed.

Q: Okay and around what time did you get up from that?

A: It would have been about ten o'clock.

Q: Ten o'clock in the morning?

A: Mm-hmm, mm-hmm.

Q: Okay. When you got up, did you -- Tell me what was the next thing? Did you -- Did you speak with anyone in the house or do you remember?

A: Well, you know, we chat.

Q: And -- and -- and let me ask you, Ms. Campbell, who lives with you?

A: At that time, my daughter, Charise.

Q: Your daughter, Charise?

A: Yes.

Q: Okay. Did Charise have another place that she was living?

A: Yes.

Q: Okay and where was that?

A: She lived with -- Oh, God, Plantation Apartments.

Q: Okay. Now tell me after you woke up that morning, you spoke with Charise for a little while?

A: I can't remember.

Q: Okay.

A: I can't remember exactly.

Q: Okay. That's fine. So let me ask you this: Did you -- When was the first time that you remember talking with Jerome?

A: Jerome, it seemed to me like he came in later on that day.

Q: Okay. Did he come to your house?

A: Yes. He came to my house.

Q: Okay. Did he -- Were you expecting Jerome?

A: No, I wasn't expecting him.

Q: Okay. When -- when he came in, why did he tell you he was there?

A: He came -- He usually comes down to sell sneakers. He sells sneakers. So he usually come down and sell sneakers to, you know, different people.

Q: So it's not uncommon for Jerome to come without you expecting him?

A: No, no, no.

Q: Okay and that's -- And so tell me about him selling sneakers. What's -- what's that all about?

A: Well, he sold the Jordans and I don't -- I'm from the old school, I'm old fashioned, so I don't know about the different sneakers and stuff, but different types of sneakers and people would go to the house and come to the house and sometimes they would call him and ask him to come by their house and you know.

Q: Okay. So tell me later on that afternoon, you said Jerome came to the house?

A: Mm-hmm.

Q: Did you have a chance to talk with him?
A: Yeah. Actually, I -- I was a little -- When he came in, I think I was a little upset.
Q: Okay. Can you tell me why?
A: And well, I had a -- a conversation with someone on the phone and, you know, some things were said and -- and I was kind of upset.
Q: Okay. Let's talk about the conversation on the phone. Can you tell me who you were talking to?
A: Anthony German.
Q: Okay and how -- Did he call your cell phone or ---
A: Yes, yes.
Q: Okay and tell me about that?
A: Well, my daughter was talking to my granddaughter at first and, you know, about some things and so after they hung up the phone, then the phone ring again and then I got told -- I answered the phone and it was him and, you know, we had a conversation. He was kind of, you know, disrespectful to me.
Q: And -- and how was he disrespectful? What do you mean by that?
A: Well, he was using some curse words. I was explaining to him -- It concerned the baby. I was explaining to him that it was no big deal that we couldn't see the baby and I told him, I said, "I have twelve grandchildren and, you know, I'll be able to see them." I said, "When y'all are ready for me to

see the baby, then I'll see her, but until then, you know, it's okay." And he -- he was kind of -- He was disrespectful at first, but, you know, he sort of calmed down and after he calmed down, I think he got a -- a phone call and he told me to hold on, but I -- I hung up the phone on him and, you know, I didn't have any more conversation with him again that day.

Q: You didn't?

A: No.

Q: Okay. Tell me after that phone call, did you stay at home for the rest of the evening?

A: No.

Q: Tell me what was the next thing you did?

A: About -- Later on, I got a phone call that my grandson asked me to come over to the Plantation Apartments.

Q: And who -- and around what time did you get this phone call?

A: I -- I would say between seven and eight.

Q: And who -- who -- who called you? You said your grandson?

A: It was one of the grandsons. At that time, it -- But it had to be [redacted] or [redacted] because they were the ones at home.

Q: Okay. Did they tell you why they wanted you to come over?

A: They didn't tell me why. They just asked me, "Grandmama, please come over."

Q: Okay. So what did you do?

A: So I went over. I got -- You know, I didn't go right then, but I went over and when I got there, do you want me finish it?

Q: Yeah. Around what time did you get there?

A: I'd say it was something to eight.

Q: Okay.

A: Around that time.

Q: Okay and when you got there, who was there?

A: When I got there, Frank was there and he was talking to my daughter in the living room.

Q: Okay, okay and tell me about that when you -- when you came in? Tell me?

A: Well, when I came in, they were talking at the time, you know, they were having a nice conversation. It was nothing, you know, going on. I walked in the -- in the back and I talked to [redacted] and [redacted] and I asked them why they wanted me to come and, you know, their parents were having a little, you know, disagreement and they wanted me, you know, to come, but and then I came back in the area that Charise and Frank was at.

Q: Okay. Did you see Michael Allen?

A: Not at that time.

Q: Okay and how long did you stay there?

A: I would say till something -- We was there till something

to ten.

Q: Okay and so probably about two hours. Is that -- is that accurate?

A: I'd say.

Q: Okay and the entire time it was just Frank in the house with Charise?

A: It was -- it was Frank, myself, my other daughter and the kids were there and I think Mike came in later.

Q: Okay and do you know if anyone else was there?

A: No, there was no one else in the house at that time to my knowledge.

Q: Okay and tell me what was going on for the two hours?

A: Well, Frank and Charise was discussing -- was having a discussion. I listened in on it and they were talking about different things and I stood there for a while and, you know, we talked and talked and I can't remember everything that was said, but the topic that Charise and Frank was talking about was her husband and his friends.

Q: Okay, okay and then tell me what happened around ten?

A: Okay. It wasn't before ten because I have to -- I was supposed to go be to work.

Q: Where -- Is that back at the Disabilities Board?

A: Yes.

Q: Okay.

A: Yeah and I was getting ready to leave. The children was

going to come over with me because Charise had to be to work at eleven o'clock. So I was getting ready to leave and when I opened the door, Michael and Anthony was standing right there at the door.

Q: Okay. What did -- What did they say to you?

A: I asked them, I said, "Why y'all standing in front of the door?" I said, "What are y'all doing here?" I said, "Y'all don't live here." I said, "This is not right for y'all to be." I said, "I couldn't come -- We couldn't come in your area like that, so y'all shouldn't be here."

And Mike -- Anthony said, "Your son's gonna die tonight." I said, "My son?" I said, "Why? Why is my son gonna die?" I said, "What's the problem?" And I said, "Anthony." I said, "You need to go home." I said, "You got a little baby and a wife there, so you need to go home and take care of your little baby and -- and your wife."

And I think he got sort of agitated. We exchanged words and, you know, different words that I cannot remember every word that was said, but we did exchange words.

Q: Okay.

A: And Michael was standing right by Anthony. It was, you know, right there right in front of the door. Michael was standing by Anthony and I said -- I said, "What's your problem?" He said he came here. He said he is a Blood. "I'm a Blood and I come here to kill your punk -- curse word --

son." That's what he said to me and we -- we -- we talked, talked and I said, "Michael." I said, "Son." I said, "Go home." I said, "Trouble is easy to get into and hard to get out." And we, you know, kind of got a little nasty. Michael kind of got -- you know, he just sort of went off and he said he got out of his bed. "I got out of my bed to come here and I'm a Blood and something's gonna happen tonight."

Q: After you heard that -- Did you -- Did you still have to leave or what did you do?

A: Okay. After I heard that ---

Q: Did you call the police?

A: I said I -- I got my cell phone out. I had a flip phone at the time and I took the phone out and I said, "I'm going to call 9-1-1." And that's when Frank grabbed my hand and shut my phone down and he said, "You don't have to do that. We're gonna leave."

Q: Okay and then what happened next?

A: And they left. They went to the street. Fusilier Street is on the side of my daughter's apartment. So they went on Fusilier Street and they went like to the back of the building. When I got in the car with my grandchildren and myself, that's the area we -- we went, Fusilier Street and they were in the back of the building because the car -- Their cars wasn't there, you know, where we were at, so they were in the back of the building. I don't know if their cars were

back there or not. I didn't check to see, but I know when they went in the back of the building, it was -- it was four of them that left there, but in the back of the building there was more than four people.

Q: Okay. Did you have a chance to talk with Jerome?

A: No. I never spoke with Jerome, never.

Q: Okay and then you went to work?

A: I went to work and then I -- I went to work and I got a call, you know, later -- late that, you know, what, you know, everything, that Jerome turned himself in or something like that and that was -- that was it, you know, till. . .

Q: Okay. During that time, were you ever interviewed by any detectives from the ---

A: No.

Q: --- Charleston Police Department?

A: No.

Q: Did anyone from the Charleston Police Department ---

A: One. Somebody came to the house. He came. He had a police officer with him, but he asked to speak to my daughter, Charise.

Q: Okay.

A: And I told them Charise wasn't here, she was at work and I told them what time, you know, she would be here and he left a card for me to give to Charise to tell her to call him.

Q: Okay. Other than that, did anyone ever contact you in

regards to what happened on that night of January 9th, 2009?

A: No.

Q: Okay. Thank you.

MR. MIKELL: No further questions.

THE COURT: Any questions for the witness?

MR. VOIGT: Yes, Your Honor.

THE COURT: You may proceed.

CROSS EXAMINATION

BY MR. VOIGT:

Q: Ms. Campbell, how are you?

A: Fine.

Q: I just have a few questions for you.

(Whereupon, Mr. Mikell approaches the witness stand to retrieve papers.)

MR. MIKELL: I apologize.

MR. VOIGT: Okay.

MR. MIKELL: Thank you.

Q: When -- Let me see if I understand what -- what you said. At the time on January 9th, 2009, your daughter, Charise, was living with you on James Island on Grimble Road?

A: No. She was living at her apartment.

Q: Oh, okay. Was she staying with you on Grimble Road? Did I misunderstand you?

A: She -- she comes there and they used to spend the night from time to time.

Q: Okay and on the morning of the 9th or rather in the afternoon of the 9th, did you pick up -- pick any of the kids up from school?

A: I don't recall picking anyone up.

Q: Okay. During -- Back in 2008, early 2009, did you talk to your son, Jerome, on a fairly regular basis?

A: 2000 what?

Q: Like November, December 2008, January 2009, did you talk to your son, Jerome, on a fairly regular basis?

A: I talked to him, yeah, but I'm -- I'm -- I'm not a phone person and everybody could tell you I'm hard to get in touch with.

Q: Okay. You're hard to reach on the phone?

A: I'm hard to reach. They'll call me and leave a message for me or I'll see that they called.

Q: Okay and I think you told Mr. Mikell that you weren't expecting Jerome that day?

A: No, I wasn't.

Q: Okay. The baby that we're talking about here, that's your ---

A: Great-grand.

Q: Great-grandbaby?

A: Mm-hmm.

Q: And on January 9th that baby was three days old?

A: I -- I really don't -- I really don't know how old the

baby was, but I know that's what the conversation was about the baby.

Q: It was about -- it was about the great-grandbaby and your granddaughter is [redacted]?

A: Yes.

Q: Were you upset that [redacted] was having a child at such a young age?

A: Yes, I was.

Q: Were you upset at Anthony German?

A: Not so much upset with him. I was upset -- upset at the situation.

Q: Was your daughter, [redacted]'s mother, upset to your knowledge?

A: I don't think she was. I can't speak for her.

Q: But y'all have a fairly close family, don't you?

A: Yes, we do.

Q: And these are the kind of things I imagine at this time Vasha getting pregnant was something that y'all talked about?

A: Yes. I think I was the last one to know.

Q: Do you think maybe they were keeping that from you because it might upset you?

A: Of course, it would upset me.

Q: Was your son, Jerome, upset at all?

A: Not at all.

Q: Had you had many dealings with Anthony German?

A: No.

Q: You said that you're difficult to get on the phone. Did you have many telephone conversations with Anthony German?

A: No.

Q: Before January 9th, had Anthony German ever disrespected you on the phone in any way?

A: No, but he disrespected me in my yard.

Q: And this is before January 9th?

A: Mm-hmm.

Q: And if I understand this conversation that you testified to, you were telling -- And I'm not going to -- Tell me if I'm wrong. You were telling Anthony that it was okay because you had other grandchildren and you had kind of been through this before, that it was okay that you didn't see your great-grandbaby right away?

A: Well, first of all, I was at -- I -- It wasn't my decision. I didn't know anything about the baby was supposed to come over to my house. I found that out after -- Actually after the telephone conversation, that's when I found out that Vasha was going to bring the baby over to see me and they didn't bring the baby again because she said they didn't have gas in the car and I was saying that if you needed money for gas, that was not the excuse. I could have -- I could have put gas in the car.

Q: And that was part of the conversation that you had with

Anthony?

A: I -- I was -- Well, actually I wasn't talking on the phone at the time. My daughter was on the phone, but I was saying in the background if that was the case, after I found out why she didn't come, I said that if she needed money for gas, I would have put gas in the car.

Q: I guess my question is that what you just said right here, that wasn't part of your conversation that you had with Anthony?

A: No, no, that wasn't.

Q: That was something -- That was a conversation you had with somebody else? Not Anthony?

A: I was there. My daughter was on the phone when Vasha was telling her on the phone and I was there. I was in the house, but like that was a comment that I made while she was on the phone.

Q: Okay and I'm not trying to confuse you. That's just you -- The putting gas in the car, that wasn't something that you relayed to Anthony during this conversation that you two had on the phone?

A: No, no, I didn't.

Q: Okay and the conversation that you said you had with him involved the fact that for right now you didn't need to see the baby?

A: Well, he was -- he was sort of -- I guess he was upset

and he wanted to know why we were sort of harassing Vasha. I wanted him to know that I was not harassing Vasha. You know, we was talking about the baby and why the baby couldn't come over and I just told him that was okay. I -- I wasn't going to get upset about them not -- I wanted to see the baby, but I couldn't make them bring the baby over to me and I wasn't upset to the point. I just let him know that it's okay you don't want me to see the baby. Whenever I get to see him, I'll see the baby. That was it.

Q: Okay and on this particular day you had worked all night, correct?

A: Yes.

Q: And when you got to your house, your daughter, Charise, was there after working all night? Am I right? I'm sorry. That -- That's a question.

A: I think Charise came later. She wasn't there that early. I think she came -- She might of was there. I can't -- I can't remember right now.

Q: Okay and do you recall what time you would have had this conversation with Anthony?

A: I can't remember the time. I really can't, but I know I had a conversation with him. I can't remember the exact time.

Q: Okay and during this conversation with Anthony, your -- your son Jerome's name didn't come up at all, did it?

A: No. Jerome didn't really come up.

Q: Was Jerome at your house when you had this conversation with Anthony?
A: No, Jerome was not there.
Q: Was anybody else at your house when you had this conversation with Anthony?
A: My daughter was there. I think two of my daughters was there, if I'm not mistaken.
Q: Just so that we're clear, a little bit more clear, which -- which daughters were there?
A: Charise and Candy.
Q: Okay and did you tell your daughters about the conversation that you had with Anthony?
A: They were there.
Q: Okay. Was it a speakerphone situation or did they just hear your end of the conversation?
A: They basically hear my end of the conversation.
Q: All right and you said that at some point Anthony calmed down?
A: Yeah, yeah. We saw that, you know, he was explaining to me about why the baby -- he didn't want to stop us from seeing the baby and, you know, this and that.
Q: Okay and did you know how old the baby was at that point? You may have in 2009, but I know it's been a couple years.
A: I -- I really can't remember what day the baby was born.
Q: The baby just had another birthday, right?

A: In January.

Q: Do you remember? Did you celebrate it at all?

A: No.

Q: Okay. So you had to be at work at ten o'clock that night on January 9th?

A: Yes.

Q: And that's downtown?

A: No.

Q: Is that downtown? Oh.

A: No, that's in James Island.

Q: Okay and -- and I know I'm probably asking a question that you can't answer, but you said that you went to Charise's apartment in Plantation Apartments at something to eight. Do you have any idea? Was it quarter to eight or half to eight or do you have any idea?

A: That night really I was not paying attention to the time. I -- When my grand -- When my grandson called me, I had to get ready, like I said, and I didn't go right then because I have to get prepared to go because I wasn't dressed properly. So I went over there. I did not pay attention to the time. I'm saying it could have been between seven and eight o'clock.

Q: Okay and before you went over there, did you get dressed so that you could go from there to work?

A: No, because I didn't think I was going to be -- I was going to be -- I didn't know. I didn't think I was going to

be over there that long.

Q: Okay. About how long does it take you to get from your house on Grimble Road to Charise's apartment without unusual traffic circumstances?

A: It takes me about 15, 20 minutes.

Q: After you left Charise's apartment later that night, did you have to go back to Grimble Road ---

A: Yes.

Q: --- to get dressed again?

A: Yes, I went back there.

Q: When you got back to your house on Grimble Road, was Jerome there?

A: No, he wasn't.

Q: Was his car there?

A: I don't -- I don't recall.

Q: At any time, did you have the keys to Jerome's car?

A: No.

Q: Other than Jerome, who obviously had keys to his car, do you know of anybody else who may have had keys to Jerome's car?

A: I don't know.

Q: Now when you were at the house -- And I'm sorry. When you were at Charise's apartment, you testified or you told Mr. Mikell that when you got there, that Frank was talking to Charise?

A: Mm-hmm.

Q: And I think you said that Michael came later or Mike came later?

A: Yeah, he came in. I didn't see him. When I first went there, I didn't see him.

Q: And you didn't see Michael German and you didn't see Anthony German either, did you?

A: They weren't in the house at that time.

Q: Did Anthony German or Michael German ever physically walk all the way into the house?

A: They were at the -- the threshold.

Q: The threshold?

A: Mm-hmm.

Q: Okay. Approximately how many times before he died had you met Michael German?

A: I might have been in his company around three, three times.

Q: Three times? Okay. During any of those times, did you ever notice any unusual tattoos on him?

A: No.

Q: Okay. The same for Anthony German?

A: No.

Q: When you left your house on Grimble Road in James Island to go to Charise's apartment after your grandson called you, was Jerome, your son, at your house on Grimble Road?

A: I don't -- I don't recall. I don't remember.

Q: Okay. Did you talk to your son Jerome at any time from the time you left your house on Grimble Road to go to your daughter Charise's apartment and the time you went to work that night?

A: No.

Q: From the time you got to work during that shift that night from the 9th going into the 10th, did you talk to your son, Jerome, at all?

A: No.

Q: Okay.

A: No.

Q: During the time that you were at Charise's apartment from sometime before eight until sometime before ten, did you and Michael ever -- I mean Michael Allen ever have words? Did you ever have any sort of heated conversation between just the two of you?

A: Yeah, we did.

Q: What was the substance? What were you saying to Michael Allen?

A: Well, he was making remarks concerning my son. He wanted my son and I told him, I said, "My son is not here. My son is in Charlotte." And I said, "Why do you want my son?" And he said something about a conversation he had, but I don't know anything about it.

Q: Okay. My question to you was not what Michael told you, but what rather you were telling Michael. What was his -- Were you talking to Michael about the situation he was having with -- with your daughter Charise?

A: No, no. We -- No, no.

Q: Did you feel so threatened by what Michael Allen told you that you called your son, Jerome?

A: I would never do that.

Q: Did you feel so threatened by what Michael Allen told you that you'd pick up your phone and call the police? Just what Michael Allen told you.

A: Well, at that time, I -- I could have, but I didn't.

Q: Okay, I understand. Now you've told Mr. Mikell about a conversation that you had with Michael German about his being a Blood. Did you know what that meant?

A: I -- I thought it -- I didn't know at first, but then I was told that that means a -- a gang.

Q: Okay. So when -- In the story that you've told Mr. Mikell and all of us, Michael German tells you that he's a Blood and he's going to kill your son?

A: Mm-hmm.

Q: Now did you see -- I mean how old was Michael German when you were having this conversation?

A: I -- I haven't the slightest idea how old he is.

Q: He was a teenager?

A: Michael German?
Q: Uh-huh.
A: I don't know. I don't know. I don't know.
Q: And when you're having this conversation and I'm presuming it's in the threshold of your daughter's apartment, did you see a gun, the glimpse of a gun?
A: I -- I didn't see -- I didn't see a gun.
Q: He didn't show you any sort of weapon or anything?
A: No, he didn't.
Q: Did he imply that he had one? Did he put his hand in his pocket or anything?
A: I don't -- I didn't see any.
Q: Did you feel threatened by this teenager?
A: No, but, you know, I might -- Until he -- When he started ranting off, that's when I said I was going to call the police.
Q: Were you worried that he was going to kill your only son, Jerome Campbell?
A: I wasn't. I was concerned, but Jerome wasn't there, so that give me the assurance, you know. He wasn't there.
Q: Do you know where he was?
A: I don't know where he was, but I know he wasn't there at that point.
Q: Okay. How did you -- What did you do to express your concern when you heard Michael German say that he was a Blood

and that he was going to -- and he was there to kill your son? And I think you used some expletives in there. How did you express that concern?

A: That's when I told him, I said, "Son, you need to go home. Trouble is easy to get into and hard to get out."

Q: So you scolded him? Is that fair?

A: If you want to say that.

Q: During the time you were there in the threshold with Anthony German, am I correct to assume that Anthony German was a teenager at the time as well, if you know? You may not know.

A: I don't know.

Q: Okay. What did Anthony German -- How did -- Did Anthony German show any sort of weapon or anything that indicated that he was a threat to your son Jerome?

A: No, he didn't.

Q: To your knowledge, before January 9th, before the day when Michael German was murdered, did anyone in your family that you know of threaten Anthony German?

A: No, not that I know of.

Q: Before that day, before his brother's murder, had Anthony German been welcomed with open arms into your family?

A: I would say yes.

Q: And you testified that when you first got there, Frank Haigler was in the apartment with Charise and they were having

a conversation?

A: Yes.

Q: Could you tell from the tone and the context of the conversation, what you may have overheard, was Frank there to cause problems?

A: I -- I think so.

Q: And you were there for about two hours, right? Roughly?

A: Yeah, I would estimate around that time.

Q: And -- and during that two hours, what sort of trouble was Frank causing?

A: Well, I -- Well, I said trouble because while he was talking to my daughter, he was bad mouthing Michael and he was bad mouthing Anthony. So I would say that was a trouble making to me.

Q: Now when you're saying that Frank was bad mouth -- bad mouthing Michael, which Michael are we referring to?

A: Allen.

Q: Michael Allen. So Frank is talking to your daughter, Charise?

A: Yeah.

Q: And you overhear. Are you in the same room with them?

A: I was in the same room.

Q: And he's bad mouthing Michael Allen?

A: Yes.

Q: And he's also -- And he's bad mouthing Anthony German?

A: Yes.

Q: Is he bad mouthing Michael German?

A: I didn't hear him say anything about Michael.

Q: Okay and how long did that conversation last? Do you know?

A: I'd say about 20 minutes or 20 -- about 20 minutes.

Q: All right. During the time that you were at the apartment, which is approximately two hours, was Frank there the whole time with you?

A: He was there the majority of the time. When I left, you know, before -- He left before I left.

Q: He left before you?

A: Because they were the one that went around the building.

Q: Okay and was he talking to Charise the whole time before he left?

A: He was talking to Charise the majority of the time. You -- you say when I left?

Q: Huh?

A: I don't know about -- I -- I couldn't say that because Charise and I basically left the same time.

Q: Did Frank and Charise ever have heated words between them during the time that you were in that room with them?

A: When I was there, there was no heated words.

Q: Okay. Did Frank make any threats towards Jerome in your presence?

A: No, because the conversation was not about Jerome at -- You know, at that time it wasn't.

Q: So your conversation in the -- in Charise's -- I guess it's a living room area?

A: Right.

Q: It was about Charise and Michael Allen, right?

A: Yes.

Q: Is that a safe assumption?

A: Mm-hmm, mm-hmm.

Q: At the time, your daughter, Charise, was very upset with her husband, Michael Allen, was she not?

A: Well, when I got there, she didn't seem upset to me because her and Frank was talking.

Q: So the -- the talk with Frank had calmed her down somewhat?

A: I couldn't say that. All I know is when I got there, she was -- they were talking.

Q: Now when Frank was getting ready to leave, you said that you were going to call 9-1-1?

A: I said I was -- was going to call 9-1-1.

Q: And Frank closed your phone?

A: Mm-hmm.

Q: Did you feel threatened by that action of Frank's?

A: I didn't feel threatened, but I don't -- I don't think he should have done that. But then when I asked him what, he

said, "Don't do that, we'll leave." So when they left, you know, it was -- it was fine, you know.

Q: Frank said he was going to leave and ---

A: He said, "We'll leave."

Q: And the next thing is they left, right?

A: Yes.

Q: And you said that they went back around to the back side of the apartment. Is that what you said?

A: They went towards Fusilier Street.

Q: Okay. Did you see them getting into a car and leave or anything like that?

A: I didn't see them get in any car.

Q: And then you left and you had driven your car over there?

A: Yes.

Q: And you got into your car and your daughter, Charise, left right around the same time?

A: Yes.

Q: And did she leave with her kids?

A: I -- She had [redacted] and [redacted], I think, and then I had [redacted] with me.

Q: Okay and y'all went back to your house on Grimble Road?

A: Yes.

Q: And then you had to go to work?

A: Mm-hmm.

Q: It was about 15 minutes from your house or rather from

Charise's house to your house on Grimble Road?

A: Yeah, 15 to 20 minutes.

Q: Okay and then approximately how long from your house on Grimble Road back to your work?

A: I can -- I can get to work in about five minutes or ten minutes if I don't have the lights.

Q: Just straight over the connector and there you are. Okay. During that fifteen minute drive to -- from Charise's house to your house on Grimble Road, did you have your phone with you?

A: Yes, I did.

Q: Did you call your son to tell him about the threat on his life by a Blood?

A: No, I didn't.

Q: Did you call the police to let them know that there was this Blood who had threatened your son's life?

A: No, I didn't.

Q: And when you got home and changed to go to work, Jerome wasn't there?

A: No, he wasn't.

Q: And then you went to work and then during that time at work and going to work, did you pick up the phone and call the police and say, "Hey, there's this guy who is threatening my son's life?"

A: No, I didn't.

Q: Okay and you never told Jerome about that threat, did you?

A: No, I didn't.

Q: And I think you told Mr. Mikell that a police officer came to talk to your daughter?

A: Yes, yes.

Q: After your son had been arrested?

A: Mm-hmm.

Q: Do you know how your son got to your -- nearby your house on Grimble Road the night he was arrested?

A: I don't have a clue.

Q: Now a police officer came to your house. Did you tell the police officer about the threats on your son's life from a member of the Blood gang?

A: No. I didn't because I didn't know what he wanted to talk Charise about. He didn't explain to me anything, so I didn't have any reason to, you know, tell him about that.

Q: There was -- there was no reason to tell him?

A: At that time, I didn't think there was.

Q: And then in the months and years afterwards, there has been no reason to tell the police about that, has there?

A: Well, I would say it is a reason to tell them, but I didn't tell them because at that time I felt that, you know, I didn't think anything was going to come up.

Q: So the first time that, for example, a lead detective in

this case has heard that would have been when you told Mr. Mikell about it 40 minutes ago, if you know? You never told that to the police ---

A: No, I didn't.

Q: --- when they contacted you?

A: No.

MR. VOIGT: Thank you.

THE COURT: Any redirect of the witness?

MR. MIKELL: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. MIKELL:

Q: Ms. Campbell, today when you took your oath, you swore to tell the truth, correct?

A: Correct.

Q: Have you done that?

A: Yes, I did.

MR. MIKELL: Okay. No further questions.

THE COURT: Any objection to the witness being excused from the State?

MR. VOIGT: Not from the State, Your Honor.

THE COURT: From the defense?

MR. HARRIS: No, Your Honor.

THE COURT: Ma'am, you're excused.

(Whereupon, the witness leaves the stand at 4:10 p.m.)

THE COURT: The defense may proceed.

MR. HARRIS: Your Honor, may we approach?

THE COURT: You may.

(Whereupon, a bench conference is held off the record in the presence of the jury, but out of the hearing of the jury.)

THE COURT: Madam Forelady, ladies and gentlemen, we're having a little bit of a scheduling challenge with travel with a witness and instead of having you all wait, we're not completely clear as to when that -- whether that person would be able to arrive before the close of business today. So instead of having you wait, I'm going to go ahead and excuse you for the afternoon.

During this break, please do not discuss the case among yourselves or with anyone else. Please do not allow yourselves to be exposed to any media coverage about this case. That includes anything on radio, television -- I'm missing something, newspaper or internet. Please don't do any independent research on the internet.

Again, you are the fact finders in this case and it is absolutely essential that you not make any decisions until you have heard all of the evidence in this case, the arguments of counsel and the Court's closing arguments. Also, please don't have any contact with anyone in or about the courthouse. We would not want an innocent conversation to be observed and misinterpreted.

We will resume in the morning at 9:30. We anticipate that we will finish this case on tomorrow. So I tell you that for purposes -- for your planning purposes. If you would leave your notepads in your seats, we'll secure them during the recess. Have a great evening. We'll see you in the morning at 9:30.

(Whereupon, the jury leaves the courtroom at 4:12 p.m.)

THE COURT: You may take your seats. Did y'all have any requests to charge that you wish the Court to consider? If you do, can you hand those up to me?

MR. VOIGT: Your Honor, I don't have any specific charges. I'll rely on the Court's charges for those things such as hand of one that seem to fit this.

THE COURT: I'm sorry. I didn't hear the last part of that.

MR. VOIGT: I'm sorry. I -- I -- I know how the Court charges reasonable doubt and that's what I prefer anyways and the hand of one, hand of all. I've been through that with Your Honor and I think that that's the appropriate charge. So I don't have any specific charges for you.

THE COURT: Does the defense have any requests to charge that it wishes the Court to consider?

MR. HARRIS: Your Honor, I don't have any written requests right now. I'd ask that if I could do that first thing in the morning, if I could have until then to do that.

THE COURT: If you want to go to that trouble, you can. I can tell you that I have pretty much already written my instruction. I'll be glad to consider anything that you would like to submit, but I prefer to have it way in advance. I don't like to have to think about things ten minutes before I'm going to do it.

MR. HARRIS: I understand, Your Honnor, and the only one I would ask is if there would be a self-defense charge in there.

THE COURT: I assume there's going to be some evidence of self-defense?

MR. HARRIS: I hope so, Your Honor, yes.

THE COURT: Okay. We'll talk about that at charge conference, but I -- I got a little ahead of myself. I'll -- I'm going to give y'all a general overview. We'll have a formal charge conference after the defense rests and I assume based on what you've told me your last witness is Christopher Robinson, your GSR expert?

MR. HARRIS: Yes, Your Honor.

THE COURT: Now, Mr. Voigt, is the State going to have any rebuttal witnesses?

MR. VOIGT: I would anticipate at most two, Your Honor.

THE COURT: Okay. So let's see, we might need to give them lunch orders when they come in in the morning.

THE CLERK: Okay.

THE COURT: Just in case. Do you know how long those rebuttal witnesses might be, Mr. Voigt?

MR. VOIGT: I anticipate for them to be very brief, Your Honor.

THE COURT: Give me just a round number.

MR. VOIGT: With cross examination, maybe about 20 minutes each.

THE COURT: So about 40 minutes?

MR. VOIGT: That would be my estimation.

THE COURT: Okay. Now I took the motion for directed verdict under advisement because I needed time to review my notes and just to -- I don't -- I didn't want to rely solely on my recollection at that moment and, frankly, I wanted some time to think, which I don't think anybody would begrudge me that.

In considering a motion for directed verdict, the Court is concerned with the existence or non-existence of evidence and not its weight. The Court must be careful, however, that the evidence merely -- that the evidence is more than that raising a mere suspicion that the accused is guilty. A suspicion applies to belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.

However, a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis. Again, without being redundant, the Court is

concerned with the existence or non-existence of evidence and not its weight and the Court must determine at a threshold whether there is direct evidence or substantial circumstantial evidence reasonably tending to prove the defendant's guilt.

There has been an argument that the evidence is tenuous at best and does not amount to meeting a prima facie case regarding the State's claims of murder and AWIK and I -- Again, I've reviewed my notes and what I am able to glean at this point is that the issues that have been raised are issues of the weight of the evidence, not the existence or non-existence.

Again, the Court is not the fact finder. It's not for the Court to weigh evidence, only to determine if there is direct evidence or substantial circumstantial evidence reasonably tending to prove the defendant's guilt and there exists both. Therefore, the motion for directed verdict is denied.

Now as it regards the jury instruction -- And I'll give you all this since we have this extra time and then you all can let me know if there is anything else I need to be researching during the evening or the remainder of the afternoon prior to resuming in the morning.

The Court will give a general instruction regarding my responsibility and the jury's responsibility, how they are to judge witness credibility and believability. I'll give a

general instruction on expert witness testimony.

Now I did have a question. There was a -- There was testimony that the defendant was Mirandized and he made a statement which generally amounted to -- I'm trying to remember the exact words, but it was some -- And if I'm -- If I'm inaccurate, overlook that inaccuracy on my part, but the gist of it was: I was working in Charlotte and now I'm in this mess. I mean that's somewhere around that.

Does that -- Are you all going to take the position that that amounts to a statement subject to Miranda? Because I'm asking because generally I would instruct any statements made after Miranda for the jury to weigh that and to determine whether the State has proven beyond a reasonable doubt that the statement was made freely, voluntarily, etcetera, etcetera.

And I was going to give that instruction, but I'll give y'all time to think about that and you can let me know if you have any exception to that during charge conference, which deals with, of course, the usual elements of Miranda: whether the defendant was Mirandized and for the jury to look at things such as the length of detention, the mental ability, capacity, IQ, background, environment, the usual elements that you look at and the fact that the State has the burden of proving beyond a reasonable doubt that the alleged statement was voluntary and if they cannot prove it was voluntary, then

the jury should not consider the statement at all.

I'll give a general instruction from *State v. Grippon* on direct and circumstantial evidence. I will give an instruction that the charge, the arrest and the indictment are not evidence, as well as a general instruction on the presumption of innocence. I'll charge *Victor v. Nebraska* on reasonable doubt and I will give a general instruction regarding the fact that the defendant did not testify.

I debated whether I would instruct on identification as the State having to prove the identity of the defendant as the person who committed the offense beyond a reasonable doubt and I think I probably will give that instruction and it deals with witnesses who have identified him as the person who committed this offense and those usual elements, such as how long a time or short was available to observe him, whether they had an adequate opportunity to observe him at the time of the offense, lighting, whether they had a chance to see or know him in the past, the -- those usual elements.

And I also want to instruct the elements of assault with intent to kill, which I think everybody is familiar with. I don't think I need to go through that, as well as the elements of murder.

Now if there is some evidence that rises to the level of self-defense -- Of course, I would not instruct implied malice, I believe, based on the case law, which is -- would

not be appropriate. I will also instruct mere presence, hand of one, which is accomplice liability, and if there is evidence of self-defense, I will instruct that, but I haven't heard everything yet, so I will hold off on making a final determination regarding that.

And I will give a general instruction regarding multiple indictments. In other words, that each indictment has to be proven on the law applicable to it beyond a reasonable doubt, irregardless of how the jury finds on each individual indictment. In other words, he can be acquitted on all or convicted on all and then I would instruct the form of the verdict.

Is there anything that you all can glean that has been omitted, that needs to be included, that I need to look at this evening or that would have been within the gambit of something you would have requested as an instruction? From the State?

MR. VOIGT: Not at this time, Your Honor.

THE COURT: From the defense?

MR. HARRIS: Nothing at this time, Your Honor.

THE COURT: Okay. I'm going to let -- You know, lawyers are funny, "at this time".

MR. HARRIS: Nothing at all, Your Honor.

THE COURT: It doesn't mean I won't consider something, but please don't bring it to me at noon and ask me to try to

research it. If you want me to consider it, bring it first thing in the morning so that I can look at it. Okay? All right. Is there anything else before we break for the evening from the State?

MR. VOIGT: None from the State, Your Honor.

THE COURT: From the defense?

MR. HARRIS: Nothing, Your Honor.

THE COURT: Have a good evening. Make sure that the court reporter has all the evidence, please, before y'all leave.

(Whereupon, there is a break in the proceedings from 4:21 p.m. on Wednesday, January 25, 2012, until 9:51 a.m. on Thursday, January 26, 2012. When the proceedings resume, the defendant is present along with all counsel. The jury is not yet present.)

--- END DAY THREE OF TRIAL ---

(continued in Volume 4)

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2009-GS-10-6730
	)	CASE NO. 2009-GS-10-6731
	)	CASE NO. 2009-GS-10-6732
	)	CASE NO. 2009-GS-10-6733
THE STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	TRANSCRIPT OF RECORD
	)	(DAYS 4&5 of 5)
	)	
JEROME CAMPBELL,	)	
A/K/A JEROME COAXUM,	)	
	)	
Defendant.	)	
	)	

January 23-27, 2012
Charleston, South Carolina

B E F O R E:

THE HONORABLE DEADRA JEFFERSON, Judge, and a jury

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

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JANUARY 26, 2012

(Whereupon, the proceedings resume at 9:49 a.m. with the defendant and all counsel present. The jury is not yet present.)

THE COURT: Is the State ready to proceed?

MR. VOIGT: Yes, Your Honor.

THE COURT: Is the defense ready to proceed?

MR. HARRIS: Yes, Your Honor.

THE COURT: And is your witness here?

MR. HARRIS: He is, Your Honor.

THE COURT: Okay. You can go ahead and get the jury, Mr. Earl.

MR. VOIGT: Your Honor?

THE COURT: Yes, sir?

MR. VOIGT: Mr. Harris just told me that his client has rejected my latest offer.

THE COURT: Okay. I assumed them when they told me y'all were ready to proceed.

MR. VOIGT: I just wanted to let you know.

THE COURT: And Mr. Harris, while the jury is coming, are there going to be any requests for any lesser included charges?

MR. HARRIS: Your Honor, I think I said I was going to request a self-defense charge, but not lesser includeds.

THE COURT: Okay.

MR. HARRIS: And I can go into that later if we get to it.

THE COURT: We're going to have a charge conference.

MR. HARRIS: Okay.

(Whereupon, these is a pause in the proceedings.)

BAILIFF: Ready, Your Honor?

THE COURT: Mm-hmm.

(Whereupon, the jury enters the courtroom at 9:52 a.m.)

BAILIFF: Jury is all present, Your Honor.

THE COURT: You may be seated. Ladies and gentlemen, I hope that you all had a pleasant and restful evening. We're now going to resume the testimony, but if you all could bear with me one second, I neglected to ask a scheduling question of the attorneys and I need to get some information to my deputy clerk. So if y'all could approach for me, please.

(Whereupon, a bench conference is held off the record in the presence of the jury, but out of the hearing of the jury.)

THE COURT: Thank you all for being so indulgent.

(Whereupon, the Court confers briefly with the clerk.)

THE COURT: You may proceed.

MR. HARRIS: Thank you, Your Honor. The defense calls Christopher Robinson. Your Honor, may I move the podium?

THE COURT: You may.

THE CLERK: This way, sir. I'm going to swear you in.

Put your left hand on the Bible and raise your right hand. Do you swear or affirm that your testimony will be the truth, the whole truth and nothing but the truth, so help you God?

MR. ROBINSON: I do.

THE CLERK: Be seated. Sir, please speak into the mic and state your full name and then spell your last name for the record.

MR. ROBINSON: My name is Chris Robinson, R-O-B-I-N-S-O-N.

THE COURT: You may proceed.

MR. HARRIS: Thank you, Your Honor.

CHRISTOPHER ROBINSON, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q: Good morning, Mr. Robinson.

A: Good morning.

Q: Mr. Robinson, tell me about your background?

A: I am a private forensic consultant. I received my Bachelor of Science degree in chemistry from Berry College in Rome, Georgia, in May of 1995. For the past 15 years, I have worked in the field of forensics. I'm certified in the disciplines of firearms, gunshot residue, blood spatter, crime scene, and shooting reconstruction. During the past 15 years, I have logged over 15,000 hours on the comparison microscope,

I've performed over 150,000 firearms examinations, I've completed eight armors courses, I've been to eight manufacturing plants, and I've currently worked over 7,000 actual cases.

Q: How many cases have you testified in as an expert witness?

A: Five hundred and eighteen today.

Q: Okay. So 518, this is the 518th case as an expert witness?

A: Yes, sir.

Q: And how many of those dealt with gunshot residue?

A: I would say in the neighborhood of 100.

Q: Okay and how about firearm -- bullet trajectory?

A: About 150.

Q: Okay. How about differentiating the noise a gun would make?

A: I believe it's around 15 to 20 times.

Q: Okay and where did you work and get this experience?

A: I worked for ten years at the Georgia Bureau of Investigation and then I left there and became the crime lab director for the City of Atlanta Police Department and now, like I said, I'm just a private forensic consultant from Atlanta.

Q: Okay and have you ever been disqualified as an expert?

A: No, sir.

MR. HARRIS: Your Honor, at this time I'd like to tender Mr. Robinson as an expert.

THE COURT: In what area?

MR. HARRIS: In gunshot residue, bullet trajectories and gun sounds, I guess you'd say differentiating gun sounds.

THE COURT: Any questions or objections?

MR. VOIGT: I have no objection to gunshot residue, Your Honor. If I may take a moment to predicate for the others?

THE COURT: You may proceed.

MR. VOIGT: Thank you, Your Honor.

THE COURT: You're welcome.

BY MR. VOIGT:

Q: Thank you, Mr. Robinson.

A: Yes, sir.

Q: You testified that you have testified in court 15 to 20 times in the State of Georgia concerning the noise that firearms make?

A: Yes, sir.

Q: And on each of those were you qualified as an expert in gun noise?

A: Yes, sir.

Q: Okay and is there any sort of special certification involving firearm noise?

A: No, sir. It's more that's just the -- It's a trait of the job, if you will. I've heard so many different guns. Now

I've had cases where I've had a decibel meter and I could actually tell you what the type of sounds a certain gun makes based on the decibel noise, but in most cases I'm called to say can you differentiate between a handgun and a shotgun or a handgun and a high-powered rifle. That -- that's pretty easy. Now when you start talking about handguns to handguns, that -- that's very difficult and I won't even attempt to do something like that. I can tell the difference between one gun from another. You can hear those different sounds, but I would never try to go into caliber wise.

Q: Okay and isn't it true that the -- For you to be able to make that sort of differentiation, you need the best data possible?

A: Sure.

Q: And in each of those cases that you testified as an expert, did you do independent -- independent testing in any of those cases for the purposes of identifying sound?

A: I would say on three to four of them. Most of the cases just involved, like I stated, they wanted to know if it was a handgun or a high-powered rifle, shotgun. The ones that I did do the testing on, I just took the gun out to reproduce the sounds so you could hear them on a recording so we could compare the two.

Q: Is there a specific training or course or school where you can go to learn -- I guess it's the skill of

differentiating between different types of firearms?

A: That was part of the training at the GBI. I was lucky to have the instructors that I did. I was kind of thrown into the fire when I first started there. We averaged about 600 cases a year when I first started. So again, that's what I'm telling you, it's a trade. You just have to hear guns. Now I've been shooting guns all of my life since I was young. So a lot of that comes from just how you're brought up, but the number of guns you listen to.

We have to test fire the guns to put them onto a database. So we have to fire guns constantly, constantly. So that is part of the training that -- But there's also we shot different guns and then they would give me a test. They would shoot something and they would shoot a rifle and I'd have to, you know, just listen to the two sounds and that's how I differentiated it.

Q: Okay and this was on the job training at the Georgia Bureau of Investigations?

A: Yes, sir. Yes, sir.

Q: Okay and that's an agency that's similar in nature to what we call SLED or ---

A: Yes, sir.

Q: --- South Carolina Law Enforcement Division?

A: Absolutely, yes, sir. Yes, sir.

Q: And am I to understand that this skill that you acquired

really is -- is listening?

A: It is.

Q: And knowing what it is that you've heard?

A: Yes, sir. Yes, sir.

Q: Now approximately how many times have you testified as to trajectory?

A: I would say around 150. It's as well as firearms together. I've been asked to reproduce the crime scene just as much.

Q: And that's a much more common skill if you have it that's necessary in criminal cases ---

A: Absolutely.

Q: --- and cases like this?

A: Yes, sir, absolutely.

Q: And that -- What does -- What does the skill of identifying trajectory involve? What -- what -- what sort of -- What are the components of that skill set?

A: Sure. You have to learn, you know, how bullets strike different materials. You can do the -- that passes through glass, first and second shots, inside or out, how they impacted metal, different angles where it strikes the metal.

You use trajectory rods. You can place the rods in certain holes if you can find them and track the -- the lines back to find out where the gun was at the time of the shooting. So it's a very common field, yes, sir.

Q: And -- and the word trajectory, what -- That really means kind of path of travel, right?

A: That's correct.

Q: So I mean you're -- When you're using the skill of the trajectory or path of travel, what you're talking about of the rods those indicate where bullets may have come from, wherever that may be?

A: That's correct.

Q: And then where -- wherever they may go from where, you know ---

A: That's correct.

Q: Okay and that's -- that's something that ordinarily an investigative agency will do on the scene where possible. Is that correct?

A: Yes, sir.

Q: Okay.

MR. VOIGT: I have no further questions, Your Honor, and I have no objection to this witness' qualifications.

THE COURT: The object -- The witness is admitted without objection in the areas of gunshot residue, bullet trajectory and differentiating gun sounds. You may proceed, Mr. Harris.

MR. VOIGT: May I move the podium slightly?

MR. HARRIS: Sure.

MR. VOIGT: Just for my sight sake.

BY MR. HARRIS:

Q: Good morning again, Mr. Robinson.

A: Good morning.

Q: Okay. You've had a -- a chance to review the evidence in this case. Correct?

A: Yes, sir.

Q: Okay. First and foremost, let's -- Explain to me and the jury this -- This case does involve gunshot residue. It involves metals and lead and barium and antimony. Can you explain what a -- how a bullet works?

A: Okay. A cartridge itself has four components. A bullet, the bullet is seated inside of a cartridge casing, you fill the cartridge case up with gunpowder and on the back side of the cartridge case is the primer. The firing pin strikes the primer, igniting the powder, building up pressure inside the barrel and sending the bullet down range. So that is how a particular cartridge works. Now are you wanting me to elaborate?

Q: Well, where -- Now you hear the term and we've heard the term in this courtroom "gunshot residue."

A: Okay.

Q: Now can you kind of differentiate what -- what happens at this point, why there is gunshot residue and where it goes?

A: That's a common misconception. There's two types of gunshot residue. The gunshot residue on your hands from firing a weapon, it's emitted from the sides of the gun or out

of the ejection port on a pistol. So therefore, if you have barium, lead, antimony, zinc, things like that, those are contained within the primer of the cartridge case.

Now the gunshot residue that is sent down range that follows the bullet is the gunpowder, nitrocellulose, nitroglycerin components, vaporous lead, soot, things of that degree, but they only travel so far. After about four to five feet, they're going to fall away from the bullet and the bullet is going to continue down range.

So there's two different types of gunshot residue: Gunpowder, if you will, will come out the muzzle and gunshot is what's emitted from the sides of the weapon.

Q: Okay. When that pin is hit and there's primer at the back of it, where does that primer go?

A: The primer stays within the gun. If it's a revolver, the cartridge case stays in the weapon. If it's a pistol, it would eject the cartridge case, but at the moment it's struck, it lights the powder inside of the cartridge case. But then that's when the cloud of all these elements, barium, antimony, lead, zinc, there's about 25 of them that are in the mixture itself.

So it you're firing a weapon or you're in close proximity to a weapon, that's deposited on your hands. So when you test the person's hands and it comes back positive for gunshot residue, you know they either fired a weapon or they've

recently come into contact with a weapon that's been fired or they're in very close proximity to a fired weapon.

Q: Okay and you said that these casings, do they call -- Are these called shell casings? Is that where the primer and all this stuff is?

A: That's correct.

Q: Okay and that's ejected out of a pistol?

A: That's correct.

Q: And so that's the difference between a pistol and a revolver?

A: That's correct.

Q: So the revolver is the one with the cylinder. The bullet stays in after it's fired?

A: It does just what it says. The cylinder revolves inside the gun. So you have to manually extract those cartridge cases. If you do fire the pistol, it will eject the cartridge cases after each shot until the last shot is fired. The slide locks to the rear, you remove the magazine and reload.

Q: Okay. So when you reviewed the evidence, they found five what they called live rounds in this?

A: That's correct.

Q: And then there's one shell casing, which is where the primer is?

A: That's correct.

Q: And do you recall where they found -- when you reviewed

this evidence where they found that?

A: The one cartridge case was I believe down the road a little ways beyond the gas station and then the live cartridges were found right there down that alleyway.

Q: Okay. Behind the gas station?

A: Yes.

Q: Okay. Now you had a chance to review this case and review the findings of the gentleman, John Roberts. Is that right?

A: Yes, sir.

Q: And what's called his reports and then what are called bench notes?

A: That's correct.

Q: Okay and what did you discover in those?

A: It stated that two of the victims, Michael Allen and Michael German, his reports show there is apparent GSR on the hands. Based on the examination of the elements that were found, the amount that was found, the only way that that gunshot residue could have been on their hands is if they fired a weapon or they were standing right beside a gun when it went off. So I don't see any other way possible that that gunshot residue was on their hands in the levels that were found.

Q: Okay, because they have all the elements, lead, antimony, barium?

A: That's the key.

Q: Okay.

A: That's the ---

Q: These are -- these are things that -- Do these happen in nature?

A: They're not happening in nature at such high levels, no.

Q: Okay. Now hypothetically, let's say a bullet is fired, it hits a wall sixty feet away. Would the person below it -- What would -- What would be on that person below it?

A: What kind of wall was it?

Q: A brick wall.

MR. VOIGT: Objection, Your Honor.

THE COURT: Basis?

MR. VOIGT: Improper hypothetical.

THE COURT: You need to phrase it in the form of a hypothetical, although the way he phrased it was not improper. It was a follow-up question clarifying the nature of the hypothetical and the parameters for which the expert ---

MR. HARRIS: Okay.

THE COURT: --- was to testify, but you may rephrase.

Q: For any kind of wall, doesn't matter.

A: Yeah, I would expect to find whatever substance the wall was made of to have fallen down on top of the people below where the bullet hole was struck.

Q: What else?

A: I wouldn't expect to find too much of anything else. I mean if the bullet fragmented, you might find a couple pieces of lead or you might find pieces of the jacket, be it nickel, copper, whatever jacket it was made of, you might find pieces of that, but I wouldn't expect to find too much else from that distance.

Q: Would you find barium?

A: No.

Q: Antimony?

A: No.

Q: Would you find copper if it was -- I thought you just said copper.

A: The jacket.

Q: Okay, but you might find lead?

A: You might find lead because the lead is the lead core. It's almost in every bullet. They just use different types of metals to make the jackets out of.

Q: So in this scenario, a person could have lead on them?

A: It's possible. I wouldn't expect to see a great deal of lead like -- I mean we're not talking about it's a shower of lead. The bullet fragments in a certain design. They're engineered that way. They're designed to stay together, but when it hits something very hard, of course, they fragment because they have to break apart. But it's not like finite pieces. It's larger pieces.

Q: Could they vaporize?

A: Absolutely not. I've shot bullets into everything you could imagine: wood, steel, concrete. I can still match the bullets back to the guns in almost every situation.

Q: Okay. So in that hypothetical, that bullet wouldn't vaporize into gunshot residue?

A: I've never heard of anything. A bullet vaporizing, I've never heard of any research, any statements from anyone that would make a claim like that.

Q: So in the 7000 plus cases you've worked, this hasn't happened?

A: No, sir.

Q: Okay. So in this case that you've reviewed the evidence on, the gunshot residue -- Oh, one thing. You've reviewed the gunshot residue tests for Jerome Campbell?

A: Yes.

Q: And what were the results of that?

A: Negative.

Q: Does that mean he didn't have it on his hands?

A: That's what it would indicate in this situation, yes, sir.

Q: Okay. What about Anthony German?

A: Again, it revealed no -- the presence of no GSR was detected.

Q: Okay. So in this case with the bench notes and the

reports from the SLED agent that you reviewed with your expert -- Is it your expert opinion that Michael Allen fired a firearm?

A: He has levels to indicate, again, where you either were close to the firearm when it was discharged or you handled it. His levels are low enough to say he could have been standing beside it. On the second victim, Michael German, his levels are to the -- indicate they're on the extreme high level. Now I can't say one hundred percent certainty that he discharged a firearm, but just because you're standing beside one when it goes off, the levels that were indicated on his hands are extremely high, which would indicate to me in my opinion that he fired a weapon.

Q: And how certain would you be that he fired a weapon?

A: I'd say 85 to 90 percent, that high.

Q: Okay. With the levels of gunshot residue on those two people that were standing next to each other, would -- would it show one that had fired a firearm?

A: Absolutely.

Q: One hundred percent?

A: Absolutely.

Q: So in our hypothetical, to get to that level of GSR that's on this case, is that possible from that bullet in the wall?

A: No, sir.

Q: Let's talk about where the gunshot residue is on these two people. Where did they -- Where did they find gunshot residue?

A: Michael Allen, on the right palm, the right back and the left palm.

Q: Okay. So here, here and here?

(Whereupon, Mr. Harris points to his right palm, the back of his right hand and his left palm.)

A: Correct.

Q: What's that -- What's the significance of that?

A: Well, the palms you see I told you if you picked up a firearm, then you handled it, then you could get it on your palms. But how do you account for the back? It has to be from firing the weapon. So -- Or you're standing beside a man that is firing a weapon right beside you, so it gets on you. But how would the man shooting here get on both your palms? No. What am I doing? This right in the vapor, that's not how it happens. It's holding the gun like this.

(Whereupon, the witness demonstrates a two handed gunhold.)

A: My palms, front and back of my hands. That's how it happened, how Michael German, right back, left palm and left back. Again, same thing. So the only way you can get it on the back of your hands is if you're firing a weapon.

Q: Are there occasions -- Are there types of guns that

discharge different types of GSR?

A: Meaning?

Q: Meaning different levels?

A: Absolutely. Pistols, like I told you before, everything has to come out that ejection port and the gun only opens up for about maybe half a second, if you're lucky if it cycles that slow. It's only like an eighth of a second. So it all has to be emitted at that moment. So you would be much less -- And plus, your hand is seated much lower than the ejection port on the gun. On a revolver, it's emitted to all sides of the weapon. So if you're holding it at all, you have higher levels for the revolver.

Q: And it comes out of where? Where the primer is?

A: It comes out of what we call the barrel cylinder gap. It's where the bullet has to jump between the cylinder and the barrel and it's emitted from all sides of the gun around the cylinder, yes, sir.

Q: Okay. Now when someone has -- Is there an occasion -- Is there another occasion where someone could get it on their palms?

A: Sure. If you were in a defensive posture like this, please don't shoot me, and the gun is within about ten inches of your hands, then the cloud -- the victim could be in the cloud with the weapon saying, "Please don't shoot me." But I'm not sure about the back of the hand and if it's that

close, you're going to see gunpowder, stippling, all kind of things on the body of the victim.

Q: And stippling is what?

A: Bruising of the skin by unburned gunpowder particles. They strike the skin and bounce off. So when they bruise the skin, you can see the pattern very clearly.

Q: Okay. So you wouldn't get it on your hands like this if someone is shot from 60 feet away?

A: Absolutely not.

Q: Why is that?

A: Because the gunpowder only travels about -- Five feet is as far as I've ever seen it travel. So anything beyond that, it falls away. So you won't see any kind of certainty with gunpowder from that distance.

Q: Okay. So it's your expert opinion that one or both of Michael Allen and Michael German fired a firearm?

A: Yes, sir.

Q: One hundred percent?

A: Absolutely.

Q: Now you've also looked at -- You've also looked at other evidence. You looked at the diagram?

A: Yes, sir.

MR. HARRIS: I'm going to mark this, Your Honor, if I may.

THE COURT: Have you shown it to opposing counsel?

MR. HARRIS: I did that, Your Honor.

THE COURT: Any objection?

MR. VOIGT: No objection, Your Honor.

THE COURT: Marked and admitted without objection.

(Whereupon, the diagram of the crime scene is marked and admitted as Defendant's Exhibit Number 1.)

THE COURT: And if you would, identify it by number for the record.

MR. HARRIS: This is Defendant's Exhibit 1, Your Honor.

THE COURT: You may proceed.

Q: You've seen the photos and you've seen the pictures. This is the diagram and this is what you were talking about earlier? This over here was what, this 7A?

A: This is a cartridge case, a 9 millimeter cartridge case that was found.

Q: Okay and up there there's four behind the building?

A: That's correct. Those are live rounds I believe that was found.

Q: Okay and you saw up here where the -- the body is, right?

A: Yes, sir.

Q: And you saw a picture of the hole in the wall?

A: I have not clearly seen the hole in the wall yet.

Q: Okay.

A: I've seen the diagram that you're speaking of here.

Q: Okay.

A: And I've read the autopsy report.
Q: Okay. You have read the autopsy report?
A: Yes, sir.
Q: And which direction do you recall in that autopsy report that that bullet traveled into the victim?
A: It struck him on the back left of his head and it came slightly forward into the right. So it went a little bit off center.
Q: Okay. I ---
MR. HARRIS: Your Honor, may I?
THE COURT: Yes.
Q: I'm showing you State's Exhibit 7. That's a hole in a brick wall. Okay?
A: Okay.
Q: And I believe that -- I believe that that's been described as about two inches wide?
A: That's fine.
Q: I believe that's been testified to it's about two inches wide.
A: Well, first of all, that's not a hole, sir. That's just a ricochet mark where the brick broke off.
Q: Okay.
A: When you say a hole, I thought I was going to see a hole that went into the brick. That right there is just a ricochet mark where it broke the brick off when the bullet supposedly

struck it. So that's not a hole at all. That's just a defect in the brick where I guess the bullet in this case supposedly struck the brick. So I beg to differ that how we call it a hole.

Q: Okay. This is the first time you've seen that?

A: That's correct.

Q: Okay. I apologize. I thought it -- I was told this was a hole. Let me ask you: Knowing firearms, being a firearms expert, this 9 millimeter casing here, they've estimated that that's 60 to 70 feet away I believe is what they said earlier. Could a 9 millimeter from 60 or 70 feet create what you saw in that picture?

A: Easily, easily.

Q: Why is that?

A: A 9 millimeter, think about this. The diameter of the bullet is .355 inches, a little bit less than half an inch. It's shot at a thousand feet per second or 700 miles per hour. The energy of the bullet is 330 foot pounds. So that's like me dropping 330 pounds on a target from a foot when it strikes the surface. So that little mark on the -- the brick, easily. I would even go so far as to say, you know, 380s, 25s, even weaker stuff could have made that mark because the -- I was expecting -- When I heard the word a hole, I'm thinking of a nice hole. That's just a ricochet mark. It just chipped off the brick.

Q: Okay.

THE COURT: Could you speak directly into the microphone, please?

MR. ROBINSON: I'm sorry, I'm sorry.

THE COURT: That's okay. I was just having some difficulty hearing you.

MR. ROBINSON: Yes, ma'am.

Q: So that is a ricochet hole there and so a 9 millimeter could easily create that?

A: Absolutely.

Q: So it would not have to be a high-powered rifle?

A: No, sir.

Q: Or high-powered caliber -- high-powered bullet?

A: No, sir.

Q: What is a high-powered, high caliber bullet?

A: Well, that's -- You just made two statements.

Q: Okay.

A: A high-powered would be an AR-15, 223 like a military uses, an AK-47, an SKS. That's the kind of weapons that you see on the street. No one's carrying a bolt action rifle or a lever action rifle. So for this instance, let's just say either a 223 or an AR-15 and then an AK-47 would be the two most common ones.

Q: Okay. So could that come from a shotgun?

A: Absolutely not because there would be multiple defects

unless someone is carrying a sabot, which is a huge slug that's in the end of a shotgun and it would have knocked a hole in the brick. It would have knocked the brick out of the wall, the slug. So we can eliminate that and it was not birdshot because you'd be missing multiple marks. It's not buckshot because you'd see larger marks. So it had to be made from some type of single shot that struck that wall.

Q: Okay and if five shots were fired into that wall or into that corner, what would you expect to see?

A: I would expect to see more defects across the bricks like we saw on the picture you just showed me a minute ago.

Q: Okay. Now you've had also an instance to review the video. Is that correct?

A: Yes, sir.

MR. HARRIS: I beg the Court's indulgence, Your Honor.

THE COURT: Mm-hmm.

MR. HARRIS: For just a minute.

(Whereupon, there is a brief pause in the questioning while counsel confers with staff and the store surveillance video is then shown on the screen again. The portion of the video shown is the outside wall view with no sound.)

Q: Do you remember this video?

A: Yes, sir.

Q: What is this a video of?

A: The outside of the gas station where the victims were supposedly standing.

MR. HARRIS: Okay, okay. Hold on. Let me see this. Can we fast forward?

Q: Okay. Now this is the alley or the side of the building and this is the one we just showed you. Is that right?

A: Yes, sir.

Q: Okay. Here's a person walking into the middle there. Okay, can you tell us what you saw there?

A: Yeah. Can you bring it back, please, to around the 56. Bring it back just a bit farther. Keep going, right before the gentleman walks by. All right, stop right there for a minute. Can you play it?

Q: Okay, sure.

A: Sorry. Do you see right there? It's very grainy up here, but right before -- And you can't even see the wall explode, but right before the wall has the debris coming through the air as if a bullet struck it, there's a great deal of smoke that comes up from this area. Now if this camera is twelve feet high off the ground, so if I fire a weapon and all that smoke and residue is emitted from the sides of the gun, it has to go up to twelve feet until you can get there. That's a great deal of residue that I see on that smoke coming out.

Now the smoke doesn't get there before the bullet does.

It's -- it's impossible. So the bullet has to be fired from another direction. The smoke has to come from underneath this camera as if, again, someone had to fire a weapon from underneath this. Now either it's a really poorly made weapon where all the residue is escaping or either there's multiple weapons being fired here and all that smoke is being emitted and then you see the shot come from another direction that strikes this and you see all that debris.

Now if we're talking about a brick wall, yeah, I would expect to see all that concrete dust and brick on them. But on their hands, there's only way it gets on their hands. They had to fire a weapon.

Q: Okay. Now you also had an occasion to see a video that's on the interior of this gas station. Is that correct?

A: Yes, sir.

Q: And you viewed that tape?

A: Yes, sir.

MR. HARRIS: I'm going to try this again. It kind of worked the other day, it kind of didn't.

(Whereupon, the video view is switched to the store interior surveillance video with sound.)

Q: Do you -- Do you recognize this?

A: Yes, sir.

Q: Okay.

MR. HARRIS: Can you fast forward it to where you hear

the shots?

(Whereupon, the video is played through the shots being heard and then the video is stopped.)

Q: Okay. What was that?

A: Okay, it sounded like gunshots to me. If you listen real close, the first three are very close and even -- You don't have to be experts. The second -- The fourth shot that comes is farther away and then the fifth shot is even farther away. So something is moving at that moment. Can you play that one more time, please?

Q: Sure.

(Whereupon, the video is played again and then stopped after the sounds of the shots being fired.)

A: Can you hear that? Those are the first three shots and even -- You're not experts yourself, but it sounds like two different guns. That's evident to me and you can tell that one is moving farther away. The last two shots, it's louder and it gets softer. So something is moving away at that shooting.

Q: Now is one of those a shotgun?

A: No, sir. It just has a very distinct sound, just like the AK-47 and AR-15. When you hear those, they are very distinct. So ---

Q: So these AK-47s and AR-15s, this would be what you have called a high-powered?

A: Or assault rifle, yes, sir.

Q: Okay. So ---

A: That's not what it sounds like to me. It sounds like -- more like handgun fire.

Q: Okay. So you think all those are handgun fire?

A: Yes, sir.

Q: Okay, but you said that the first two sound close and then the second two kind of like they're going away?

A: That's correct.

Q: Okay.

MR. HARRIS: I beg the Court's indulgence, Your Honor.

THE COURT: Mm-hmm.

MR. HARRIS: Please answer any questions Mr. Voigt has for you.

THE COURT: Any cross examination of the witness?

MR. VOIGT: Just a little bit, Your Honor.

THE COURT: You may proceed when you're ready.

CROSS EXAMINATION

BY MR. VOIGT:

Q: Now, Mr. Robinson, I'm going -- I'm going to ask the cheap questions first. Okay? These are the ones that you're prepared for. You were paid to be here today, right?

A: Yes, sir.

Q: Okay and you don't come -- and you don't come for free. The defense paid you and you traveled here today to testify on

his behalf?

A: Yes, sir.

Q: Fair assessment?

A: Yes, sir.

Q: Okay and here's my second kind of cheap shot and then I'll get into a little more substance. When did you get retained on this?

A: I believe it was early last week.

Q: Okay. So you've been familiar with the facts of this case for at best nine, ten days?

A: Sure.

Q: Okay. I like to get those out of the way early because you know they're coming, right?

A: Yes, sir.

Q: Okay. Now I think Mr. Harris had you testify and I think you did testify that you reviewed all the evidence in this case?

A: Yes, sir.

Q: Okay, but that's not really true, is it?

A: I reviewed the reports that I was given. That -- that's true. That's correct.

Q: Okay. The evidence is kind of a little bit more expansive than the reports and I think -- Let me see. I think Mr. Harris has it. I'm going to show you what's been marked as Defense Exhibit 1. I think I got that right. This is part

of a report, is it not?

A: Yes, sir.

Q: Okay and this report was something that was actually -- Do you know who created this report?

A: I'm sure the -- either the Police Department or SLED did.

Q: Okay.

A: I'm not sure whose or anything.

Q: And it says M.R. Sherman up there and do you have any idea who he is?

A: No, sir.

Q: Okay. He worked for the Charleston Police Department and this is one of those things that you reviewed, right?

A: Yes, sir.

Q: Okay and 7A over here you testified was a 9 millimeter casing?

A: That's what it's listed as, yes, sir.

Q: Okay and that would have -- that -- that indicates that it was collected. Am I right?

A: Yes, sir.

Q: You didn't review what they collected, did you?

A: No, I did not.

Q: Okay and you have no idea how that casing could have gotten there?

A: No, I do not.

Q: And you don't know when that casing got there?

A: No, sir.

Q: And you don't know who shot a firearm or how it may have gotten there?

A: No, sir, I do not.

Q: Okay and it's kind of hard to see, it's a little unclear, 2A, 3A, 4A, 5A up there, but those are bullets which have not been fired.

A: Cartridges, yes, sir.

Q: Cartridges?

A: Yes, sir.

Q: They have not been fired and you haven't looked at those at all, have you?

A: No, sir.

Q: And you haven't eyeballed not a single one of them?

A: No, sir.

Q: Those are evidence in this case and you haven't reviewed that?

A: That's correct.

Q: Okay. Could the same gun have fired both of those?

A: No, sir. Those are .38s. This is a 9 millimeter. This is a pistol. Those are revolvers, but there again, I will tell you I don't know when they came to be there, I don't know how long they've been there and I don't know what brand or anything they are. I just know they're supposed to be .38 rounds and this is a 9 millimeter cartridge case that's been

fired.

Q: And I'm going to just kind of hold up here what's been previously marked as State's 65. I'm guessing this is the first time you've ever put your eyes on this little antique, isn't it?

A: That's correct.

Q: Okay and that's -- This is evidence and this is evidence you never looked at?

A: That's correct.

Q: Okay and you don't know if that gun was ever fired?

A: No, sir, I do not.

Q: Okay. I mean it looks to be ancient. It may have been fired at some point, but you don't know if it was fired on January 9th, 2009, or at any time around there, do you?

A: No, sir, I do not.

Q: You don't even know what caliber of gun it is, do you?

A: I -- I'm assuming it's a .38 just based on the -- the cartridge, but no, I do not, sir.

Q: Okay.

A: But it's an Iver Johnson from the handle, so I'm assuming it's a -- a .38 just from that.

Q: Okay and now -- And because you're an expert and because I'm curious, approximately how old based on that -- on your look that that firearm would be?

A: Some of those Iver Johnson's were made, on those break

open where the top breaks like that, that could have been from the 40's or 50's. Those are extremely old, so.

Q: Okay. So it's a fairly -- fairly antique firearm?

A: Yes, sir. Yes, sir.

Q: Okay. Now let's talk about just something and get it out of the way. One thing that Mr. Harris did not ask you about at all, not a single question, the gunshot residue from inside of Jerome Campbell's car.

A: Okay.

Q: Based on your expert opinion, did John Roberts get that one right?

A: Yes, he did. All indications say that there is gunshot residue that was taken from the car. Yes, sir, it did. It tested positive for gunshot residue.

Q: Okay. So -- And -- and again, and I don't mean to harp on this too much, but when we're talking about reviewing evidence, you didn't review any of the lifts that Mr. Roberts took?

A: No, sir.

Q: All right or rather that were taken by the police and then submitted to Mr. Roberts and you would agree with me, wouldn't you, that you would rather have done all this testing and analysis yourself rather than rely on Mr. Roberts, wouldn't you?

A: Absolutely. I don't -- I told Mr. Harris when I was at

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the GBI or the APD, I did all the testing myself, no technicians. I like to do the whole thing from beginning to end because I just don't trust people.

Q: Okay and that is -- And you would have loved to have looked at those lifts. You didn't, you couldn't, you didn't. And so what you're relying on is reports that other people made and notes that they've made that they based their opinion on?

A: Absolutely.

Q: So you'd agree with John Roberts that there is gunshot residue inside of Jerome Campbell's car?

A: Yes, sir.

Q: Based on what you've reviewed?

A: Yes, sir.

Q: And that the very -- And you said that you looked at the evidence. Did you look at photos of the crime scene? Did Mr. Harris supply those to you?

A: No, sir.

Q: Okay. Getting back to this gun, you have no way of knowing if it's operable or not, do you?

A: Not without looking at it, sir.

Q: Okay and you weren't provided that by the defense?

A: I was just told that it was reported that it was inoperable at the time the officers took possession of it, but I do not know anything about the gun. I've never looked at

it.

Q: And I think that there is a -- Correct me if I'm wrong. It looks like there is a little car drawn on that. Do you know if that was drawn by Officer Sherman or -- Here, let me approach and ---

A: Oh, yeah, the little car at the bottom? I've seen that.

Q: Who drew the little car at the bottom?

A: I don't -- I don't know where that came from. I just know the drawing. So I do not know that, sir.

Q: And this is what you reviewed, right? This?

A: That's correct.

Q: And ---

A: That's correct.

Q: Does that car look to be written in pencil?

A: Yes, sir, it does.

Q: Is the rest of that report in pencil?

A: No, sir, it appears to be in ink.

Q: You wouldn't expect a police report to be written in pencil, would you?

A: No, sir.

Q: Okay. Again, now this has been marked as State's Exhibit 78 [sic.] and this is evidence in this case. You didn't review that, did you?

(Whereupon, counsel is referring to the State's Exhibit which is a color photo showing victim Michael German's

hand next to a cell phone. The State's exhibit number is not 78.)

A: No, sir.

Q: Do you know what that is?

A: Is it a cell phone?

Q: Well, that's part of what's in the picture. Do you know whose hand that is?

A: No, sir, I do not.

Q: Do you see a firearm in that picture anywhere?

A: No, sir.

Q: Now ---

MR. VOIGT: Joann, can you cue up that video just to where Mr. Harris had it, the side view?

MS. GOULD: Yes, sir.

(Whereupon, the store surveillance video showing the side wall of the gas station is shown on the screen at the point where the victims walk into the scene before the shooting.)

Q: That's sort of a ---

MR. VOIGT: All right. Can you back that just a little bit, Joann? Just play it.

Q: Can you tell me where you see a firearm anywhere in that picture?

MR. VOIGT: Can you stop it now, Joann?

A: I did not see one in that picture.

Q: Okay.

MR. VOIGT: Now can you play it a little bit further?

Q: Can you tell me where you see a bullet or a projectile in that picture?

A: I do not.

Q: Okay. Do you see a gun in that picture?

A: No, sir, I do not.

Q: All right. So you don't see any guns in any of the pictures I've shown you. You don't see -- I think you testified earlier that the projectile or the bullet came from one direction, but you can't really see it in that picture. That's ---

A: Yes, sir.

Q: That's just the nature of that particular camera I suppose?

A: That's correct, yes, sir.

Q: And the evidence that you -- The very first time that you ever saw this picture, which is State's 7, was on the witness stand?

A: That's correct.

Q: That's something you would have liked to have reviewed before you took the witness stand, isn't it?

A: Yes, sir. It would have been fine, but I was under the impression it was a hole and it's just a ricochet. Yeah, that would have been good.

Q: Okay and you don't know where on the wall it is, do you? You haven't been out to that crime scene, have you?

A: No, sir. I was told it was like eight and a half feet to nine feet high is all I was told. I -- I've never been to that scene, no, sir.

Q: I'm going to show you, because if I put it up on here it's not going to be visible at all, State' Exhibit 5, again evidence in this case. This isn't evidence though that you've ever reviewed, is it?

A: No, sir.

Q: Okay. Do you see that divot or that -- that mark on the wall?

A: Yes, sir.

Q: Okay. It is hard to tell from there how high up on the wall it is, isn't it?

A: That's true.

Q: Does that appear to be the same mark?

A: Yes, sir, it does.

Q: Okay. Can you tell from that mark the trajectory? Do you even know what made that mark in your expert opinion?

A: No, sir, I do not.

Q: All right. If we make the assumption that a bullet made that mark and I understand that's an assumption from where you're sitting, do you know where that bullet would have landed?

A: No, sir, I do not. I understand the victim was standing close to the -- where the bullet strike came in. So therefore, it could have ricocheted off the wall and struck the victim in the head, but no, it would be impossible to do a trajectory on this because the way it broke the brick out, you know, on all sides here, you know, it's impossible to tell in this area where the bullet actually entered at. I can just tell the bullet hit here.

Now I will say based on the video we watched, the force that was exerted on this wall that caused it to explode, that would be like a bullet, but if you were to ask me do you know with one hundred percent certainty that it was a bullet, no, I do not, but I know a shooting occurred in this area.

Q: And ---

A: So we could assume it was a bullet.

Q: And -- But -- And you would like to be a hundred percent certain?

A: That's correct.

Q: And in your experience in all those thousands and thousands of cases that you've reviewed, your goal, your objective insofar as the evidence will let you get to it is -- is certainty, is it not?

A: Absolutely.

Q: And when you testify in court, certainty is something that you highly prize, isn't it?

A: Absolutely.

Q: I think you told Mr. Harris that you got to review the autopsy report?

A: Yes, sir, I did.

Q: Did you get to review the report from Kenneth Whitler, the ballistics examiner from SLED?

A: No, sir.

Q: Okay. So that was some -- That is some evidence that Mr. Harris didn't share with you?

A: That's true.

Q: Okay. Now you know from reading the autopsy that two pieces of probably some sort of projectile were taken from Mr. German's head, one on the outside behind the ear and then one that traveled through and was the source of his death. Were you able to review that evidence?

A: Just the autopsy report, but not the bullet itself, no, sir.

Q: You don't know if it was a -- And you weren't here to hear Mr. Whitler or to hear Mr. Roberts testify, so you don't know what they would have said?

A: That's true.

Q: As a matter of fact, the only -- the only information you have about what Mr. Roberts may have testified to I'm guessing probably comes from over here. Is that right?

(Whereupon, Mr. Voigt makes a motion towards the defense

table.)

A: That's correct and his reports, yes, sir.

Q: And you -- and so you don't -- There's evidence in this case that was taken from the body in two pieces that was examined to determine what it was, but you didn't do any examination like that?

A: No, sir.

Q: Would -- would the examination of that evidence assist you in coming to an expert opinion on what that may have been that killed Mr. German?

A: I would have liked to have seen it just for the fact that maybe the weight would have indicated possibly the caliber. I understand they're lead fragments is what my understanding is. So the jacket has been stripped off, which is -- which is understandable. It struck a brick wall, so the jacket is stripped off the -- the lead core itself, but I would have liked to have -- to have seen the -- You know, I wasn't here at the time, so I couldn't go out to the crime scene. I would have liked to have tried to find the jacket, but I would have liked to have seen the core. Yes, sir, it could have helped.

Q: Okay.

A: I mean just for me, for my edification now and so far as what I'm being called to testify to, maybe not, but like you said, to be, you know, fully aware of all the -- the facts, sure, it could have helped.

Q: Okay and it would have been helpful if you had been able to find some part of the jacket, would it not?

A: It would have been, but I'm not second guessing the police officers because, again, 700 miles per hour. It's because it struck -- when it struck that, it was traveling extremely fast, so the jacket could have traveled 3-400 yards away from the scene. Just the core hit the victim. The jacket could be anywhere. So I -- I won't say it was even possible to find the jacket. I'm saying it would have been nice, but we don't know that.

Q: So based on your expertise, would the jacket have even been in one piece given the force?

A: No, it could have been in several pieces. You're right, that's correct, sir.

Q: And it could have -- So you're saying that it basically would have -- Now you haven't been to the scene, right? Just ---

A: No, sir, I have not.

Q: And the only -- You don't know what those brick looking objects are made of, do you?

A: No, sir. I mean I'm not a mason. I do some concrete work, but I'm assuming it's made of various materials. So I would never venture a guess on that. That's not my field.

Q: That's just a little beyond ---

A: Yes.

Q: --- what you know?

A: Absolutely, yes, sir.

Q: And -- But I mean you know just as a layman that there are various types of bricks?

A: Oh, absolutely.

Q: And they come in different hardnesses?

A: Depending on how much concrete is used, absolutely.

Q: And how old the bricks are?

A: Sure.

Q: And the age of the bricks sometimes will change. If they're porous, it will change kind of their characteristics and how spongy they might be?

A: Absolutely.

Q: It might also matter how thick the wall behind there is and what it's made of?

A: Absolutely, sir.

Q: And all those things also change the acoustics and that's something you do know something about, right?

A: That's -- Yes, sir.

Q: So, but you don't know what that material is?

A: No, sir, I do not.

Q: And -- and that material may react differently than other types of bricks. You said that you have fired weapons at various sorts of materials?

A: Yes, sir.

Q: But you don't know, you have no point of comparison for this particular material compared to anything else in all your years of experience that you may have had?

A: That's true. I mean I may have shot a brick just like it, but there's no way for me to tell you that it's the exact same material. That's correct.

MR. VOIGT: Now let's go back to that tape, Joann. Same spot? I want to go back to where the action starts.

(Whereupon, the store surveillance video showing the outside wall is shown on the screen again.)

MR. VOIGT: Would you stop it right there? Can you -- Can you go back?

MR. ROBINSON: I don't know.

MR. VOIGT: I'm doing that, aren't I?

MR. ROBINSON: Okay.

MR. VOIGT: Okay, stop.

Q: Now this little -- this little white area up here, this is what you told Mr. Harris was smoke?

A: Here, here, here.

(Whereupon, the witness is standing and motioning toward the screen.)

Q: Yeah, this up there on the right?

A: Here and it's emanating from underneath the camera, yes, sir, absolutely.

Q: It's emanating and -- and the -- what projects up, the

little pieces of what we're presuming is brick and mortar and what -- whatnot, and brick and mortar are different, right?

A: That's true. I mean you put the mortar in between the joints of the brick, yes, sir.

Q: And they have a slightly different composition, they have a different hardness, they -- they respond to pressure and stress differently?

A: Absolutely.

Q: And you might expect them to break differently and traject differently?

A: Absolutely.

Q: But again, we're -- You're not a masonry expert in any way?

A: No, sir.

Q: So that's not -- You're just talking as a layman that that -- to the best of your knowledge?

A: That's correct, absolutely.

Q: Now -- But you called that smoke right there?

A: I do.

Q: Okay. Does gunpowder or does the firing of a weapon -- That -- And I'm just a layman on this, but that ignites gunpowder, right?

A: Sure.

Q: And gunpowder has a specific smell, doesn't it?

A: Yes, sir.

Q: And that smell, if somebody smelled that, whatever that is that you call smoke, if their olfactory was in the normal range, they'd smell something burning, like gunpowder?

A: Sure.

Q: And I think we've all lit fireworks and even if we haven't fired a gun. I think in South Carolina at least we do. I don't know how it is in Georgia. But we light fireworks at least twice a year.

A: I've seen them.

Q: And we're kind of familiar with that smell, right? I mean that's -- So that smoke, what you call smoke, would have a gunpowder smell?

A: Yes, sir.

Q: Okay. What -- What is smoke?

A: What is smoke?

Q: Yeah, what is smoke? And I'm not talking about necessarily smoke from gunpowder, but smoke in general?

A: It's just the burning of different materials. So you have the smoke is the actual emission of the fumes and things like that. So when you're saying you could smell the fireworks or you could smell if a gun was fired, it's how it was burned off. So you could see the smoke. Now in this case, you know, I just think there's a great deal of smoke there. You're saying it could have been fireworks?

Q: Oh, no, no, no. No, no.

A: Okay.

Q: That's not what I'm saying.

A: Okay.

Q: And you know that. Isn't smoke, what we call smoke, light reflecting off particles suspended in the air or in some other gas? That's smoke, isn't it?

A: I guess that's the textbook definition, yes, sir.

Q: And you're an expert, you know textbook definitions, right?

A: Yes, sir.

Q: All right. So those are particles?

A: Okay.

Q: And that's reflecting off the light. The particles suspended in the air reflecting off the light right into that camera, probably the light emitted from that camera, right?

A: Yes, sir.

Q: Are you a hundred percent certain that that is -- those are particles from the firing of a weapon directly below?

A: I would say I'm a hundred percent sure based on the video, based on the GSR, based on the overall things that I was asked to look at. I'm a hundred percent sure, but if you just say -- If you took me this video and you said, "What is that showing there?", then I would say it's a great deal of smoke that comes up right there and I wasn't trying to be rude to you. I'm saying ---

Q: Oh, I know.

A: If you were to say that a fireworks went off down here and it caused that, if I didn't know anything else about the case, then I would say, "Okay, I'll go with that." But based on all the other evidence, yes, sir, I feel pretty confident that all that being emitted right there would be from a gunshot in this location, yes, sir.

Q: Okay. So based on what you got to review, you're a hundred percent certain?

A: Yes, sir.

Q: Okay and did you get to review all the witness statements in this case?

A: No, sir.

Q: No. So that's -- that's evidence that you didn't get to review?

A: That's true.

Q: All right and so if witness statements contradicted that gunfire came from this side of the building, that would have been information that you would have liked to have had to make your expert opinion, wouldn't it?

A: Yes, sir.

Q: Okay, but you weren't -- Nobody made you aware of any of that, did they?

A: No, sir.

Q: So your expert opinion and your hundred percent certainty

isn't based on all of the evidence, is it?

A: That's true.

Q: Now you testified earlier ---

MR. VOIGT: And you can take this down, Joann.

Q: You testified earlier when Mr. Harris put up the inside video showing the cashier and you listened to the shots.

A: Yes, sir.

Q: And would you agree with me that your expert opinion, were you a hundred percent certain that those were gunshots? Or rather that those were -- I bet you were certain those were gunshots.

A: I would say -- I would say so.

Q: I am, too.

A: I'm pretty certain on that.

Q: Yeah, I'm certain about that, too, but were you a hundred percent certain that they were -- the first series of shots were shots from a handgun? Are you a hundred percent certain?

A: I'm -- I'm -- Yes, sir I would say that.

Q: Okay.

A: Yes.

Q: And are you a hundred percent certain that the next couple sounds that we heard were handgun shots as well?

A: Yes, sir. I think they're moving away.

Q: Okay and the basis of your opinion is -- This isn't scientific, this is experience related, right?

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A: That's true. Like I told you, if we went to go out and, you know, again we're at the mercy of a speaker inside of a gas station. So even if I put a decibel meter on the speaker, it would not be the same as me standing beside a 9 millimeter or standing beside a .38. So you're right, I'm just going off of my experience.

Q: And that ---

A: So on a scientific basis, yeah.

Q: And sometimes that's all expertise is is you've been in the field a long time and you kind of get a feel for these things and this is what you think, right?

A: Yes, sir.

Q: Okay and the -- Unfortunately, the narrow lens that you as the expert have to look at this is just what is captured on the store video and the store microphone. Is that right?

A: That's true.

Q: And -- and you're kind of at the whim of the quality of the microphone and the quality of the camera for all these cameras?

A: Yes, sir.

Q: As a matter of fact, when we looked at that camera that we just looked at of outside, did that look like it was going minute or second for second?

A: No.

Q: Or did it seem a little jumpy?

A: It was jumpy, yes, sir.

Q: So we're not even certain that we have the right "one one thousand, two one thousand, three one thousand" in terms of sequence, how fast things seemed to go?

A: Sure.

Q: Because we're -- we're kind of at the mercy of whatever that is, old technology?

A: Yes, sir.

Q: Do you agree with me?

A: Yes, sir.

Q: So when you make your expert opinion based on the evidence that Mr. Harris gave to you, you're really kind of -- you're having to -- you're limited somewhat by the technology that -- that you get to see?

A: I am, I am as it pertains to this video. Yes, sir, I am limited as it pertains to this video.

Q: Now for all the -- Well, let me back up for just a second. You did have the opportunity to review the autopsy in this matter and I think you testified under Mr. Harris' questions that -- that by the weight -- the angle of the bullet, you at least know the trajectory of the path of the fragments through ---

A: Yes, sir.

Q: --- Mr. German's head.

A: Yes, sir.

Q: And that's noted by another expert. That's noted by the pathologist?

A: Yes, sir.

Q: Does that tell you anything as an expert as to where that bullet came from, the trajectory of that fragment?

A: Can we see the photograph of the cartridges and the cartridge case again?

Q: Oh ---

A: Can I -- Could we put that back up?

Q: Is it -- Are you talking about the diagram?

A: Yes, sir.

MR. VOIGT: (To Mr. Harris) Do you have it?

Q: You might have it.

A: I'm sorry, sir.

Q: Okay.

A: I've got it right in front of my face.

Q: That's all right. Here, I'll just bring this up.

A: Again, no trajectory was found on this, but it is very curious to me the 9 millimeter is here, the bullet strike is to the left. So when it strikes, it enters the back of his left head and kind of comes up here to the right a little bit, the midline toward the front. So does that angle -- That looks pretty good to me.

Q: So that looks good to you?

A: That looks good to me as a shot.

Q: It doesn't bother you at all that that what we're calling a bullet mark or a divot or whatever is in the wall eight and a half feet off the ground that -- I'll tell you one thing: Mr. German's not eight and a half feet tall.

A: Yes, sir. I -- Again, I didn't go out here and look at the scene. The cartridge case is from this angle, so if it did ricochet off the wall and strike him in the back of the left head and come through, I'm just saying this angle looks -- looks pretty good.

Now when a bullet strikes a hard surface, it does strange things and no one can -- I would never sit here before you and say I knew exactly what happened when that bullet struck that wall. I can't even tell the trajectory because all the brick is broken out on the wall. So no one could tell you that, but I would say it is peculiar that it strikes at the proper angle that would have came through his head.

Q: So it strikes at the proper angle to enter just above his left ear and travel upwards and by upwards meaning kind of it starts here and then goes here?

A: Sure.

Q: Upwards and to the right and we started this off when I asked you did -- did that trajectory tell you anything about how Mr. German was placed. Does that tell you anything about how his head may have been?

A: Sure. At the time -- Again, I'm not a pathologist, so

let me just tell you that, but the body begins to move. When you say it started down here and it ends up higher, you know, if I tilt my head a little bit, if I'm shooting at someone, a gunshot happens. Now it's going to be milliseconds from the shot to the wall, but at that time, you know, I kind of wince a little bit or I'm ducking down, okay, I changed my direction. It hits the wall, it comes through and then see, my head's kind of down a little bit. So then it does go at an upward angle. That's how I would create it, but again, I'm not a pathologist and I would not presume to tell you that's what happened. I'm just saying it's peculiar to me.

Q: Okay and -- and that's really what I was -- And so we're talking about somebody who -- And I'm outside your expertise, aren't I?

A: Yes, sir.

Q: Somebody may have been ducking, right?

A: That's true.

Q: As a matter of fact, it's reasonable based on what you've seen that that person was ducking?

A: Either ducking or you're kind of, you know, running. You're getting ready to move, you know, anything, any number of things where the head had to be positioned at a certain -- Yes, sir.

Q: Right.

A: Yes, sir.

Q: And this whole conversation is predicated on the fact that 7A is shot from a stationary target? That 7A -- That something got shot there, right?

A: That's still possible. It's still possible you could be in that car moving. It would just be an unfortunate shot is what that would be. If you just -- you're traveling, stick the car -- the gun out the window and you fire. That would be just a, you know, an unfortunate strike.

Q: Could -- Now that's a 9 millimeter and -- and those are the type that eject, right?

A: That's correct.

Q: And is there any way of telling based on where it landed where it may have ejected from?

A: Not in this case. Depending on how fast the car is going, how the gun's being held, if it's held in normal fashion, sideways, all these will eject. When it bounces on the ground, is the surface concrete? Is it dirt, gravel? The cartridge case bounces with the speed of the car. So all of those, sir. I would not even want to venture a guess.

Q: Could it have been caught by part of the car and carried by the car ---

A: Sure.

Q: --- in some way?

A: Sure.

Q: We have no way of knowing if 7A -- All we can say about

7A is that a 9 millimeter casing was found there. We have no way of knowing how it got there and where it started its flight?

A: Absolutely.

Q: Correct?

A: Absolutely.

Q: It could have started its flight up here?

A: Sure.

Q: And been carried in some piece of the car, in some piece of trim, and fallen down here?

A: Absolutely, sir.

Q: So we don't know?

A: No.

Q: And in your expert opinion based on you listening, there was no point where you said, "Oh, that's a 9 millimeter"?

A: No, sir.

Q: You didn't have that opinion?

A: No, sir.

Q: At no point did you go, "Oh, that's the .38"?

A: No, sir.

Q: No and you didn't. The best you can say in your expert opinion is you think that we're listening to handguns?

A: That's correct.

Q: Okay and you weren't able to review the lead fragments that were taken from the body of Mr. German. That may have

assisted you in that -- in a -- in a more thorough determination that that was a handgun?

A: Correct.

Q: Let's -- Let's see what we can agree on. We agree that John Roberts found gunshot residue in Jerome Coaxum's car. We agree and John Roberts testified this way that there was gunshot residue found on Michael German. We agree that there was gunshot residue and you -- I'll say you agree rather with John Roberts' conclusions that there was gunshot residue found on the hands of Michael Allen?

A: Yes, sir.

Q: And we agree that there was no gunshot residue found on the hands of Jerome Campbell?

A: That's correct.

Q: And we -- And were you able to review -- You said you reviewed the evidence, but in -- in what Mr. Harris may have given you, were you able to determine when Mr. Campbell's -- how long Mr. Campbell had between the shooting and the time that sample was taken?

A: I'm not quite sure about that time frame.

Q: Because that wasn't something that was provided to you, was it?

A: He may have told me. I just can't remember, but ---

Q: And if it was hours, that might be significant, would it not?

A: Yes, sir. It does become significant the longer it is, the more surfaces you touch, you put your hands in your pockets, you wash your hands, you're sweating. You're talking about part per million levels here, very, very small levels. So when you start touching things, put my hands in my pockets, all these things, I'm losing a little bit. So normally you would ---

Q: Washing your hands?

A: The policy is within about three hours ---

Q: So ---

A: --- is what we like used to be at GBI, three hours, but ---

Q: So the policy that you got is three hours. That's a little narrower. I mean John Roberts' policy in his testimony was that it was six.

A: Okay.

Q: And you're a little tighter if you're ---

A: It was, yes, sir.

Q: At the Georgia Bureau of Investigation?

A: But that -- that's what we wanted. That's not what happened, but you like it done fairly quickly.

Q: And if you'd had the opportunity to wash your hands, again, no GSR and if you had been wearing gloves?

A: That's correct, that's absolutely correct.

Q: Okay and you don't know about Jerome Campbell's sample?

Now Anthony German is also somebody who was tested and you agree with John Roberts he didn't have GSR on his hands either?

A: I didn't see anything that indicated that, that's correct.

Q: And did the evidence provided to you or that snapshot of evidence provided to you by Mr. Harris, did that let you know who on the scene was reported to have had a weapon?

A: No, sir.

Q: Okay. So nothing that Mr. Harris provided to you indicated witnesses saying that Mr. German did not have a weapon?

A: I understand that someone threw a weapon up on top the roof and it fell back down and they were just trying to get rid of it and I cannot tell you the exact name, but someone was trying to get rid of a -- I guess supposedly this Iver Johnson.

Q: Okay and based on the evidence that you reviewed, including Mr. Roberts' reports, would you have -- would you hazard an expert guess as to who that may have been?

A: No, sir, I would not.

Q: Really, do you disagree with any conclusion ---

THE COURT: Be careful with the pitting, Mr. Voigt. He cannot comment on the veracity of another witness' testimony.

MR. VOIGT: Okay. Thank you. I think if I finish it, I

THE COURT: You're going to -- You've been ---

MR. VOIGT: I ---

THE COURT: Yeah.

MR. VOIGT: I think I'm ---

THE COURT: I'm just cautioning you.

MR. VOIGT: I think I'm going to still ---

THE COURT: You can rephrase the question.

Q: You've reviewed John Roberts' conclusions in his reports?

A: Yes, sir.

Q: Do you agree with all of those conclusions?

THE COURT: That's pitting. Move on. You're asking him to comment on the veracity of another witness' testimony. If you want to ask him the very same questions and elicit much the same answers or different answers, you're allowed to do that.

MR. VOIGT: Thank you, Your Honor.

THE COURT: You're welcome.

Q: Based on what you reviewed, Anthony German and Jerome Campbell don't have GSR, Michael Allen and Michael German do have GSR?

A: Yes, sir.

Q: Michael German has higher levels of GSR than Michael Allen does?

A: Yes, sir.

Q: In the tests that you reviewed, do the test results on Michael Allen contain barium and antimony?

A: Yes, sir.

Q: Okay. The GSR from the inside of the Campbell vehicle is positive and you -- that would be your conclusion based on what you've reviewed?

A: Yes, sir.

Q: Okay. We've talked a little bit about certainty. Based on the evidence that Mr. Harris provided to you, is there any possible way that Michael German got GSR on his hands other than firing a weapon, handling a weapon that had just been fired, or being in close proximity to a fired weapon?

A: No, sir.

Q: And you can say that with a hundred percent certainty based on what Mr. Harris provided to you?

A: Based on that and my training and education, I can a hundred percent say that's the only way in all my training that I know that you can get levels that were seen on that high, yes, sir.

Q: In all those cases that you've done involving GSR when you worked for the State of Georgia -- And I'm assuming that's the lion's share of the numbers is when you were actually employed by the GBI in Atlanta?

A: Yes, sir.

Q: Okay.

A: Yes, sir.

Q: And that's just the nature of the business?

A: Yes, sir.

Q: Have you ever had a GSR result that conflicted with the testimony of witnesses?

A: Yes, sir.

Q: Okay. Have you ever had a GSR result that you could not explain with a person having fired a weapon, being in close proximity to a weapon that has been fired or having handled a recently fired weapon?

A: Numerous in the case of suicides, numerous cases like that. They were unexplainable because of, you know, negative results or, you know, things like that, but in the case of levels this high, yes, it conflicted with the stories of the witnesses, but at the time of a shooting, people are running around, they don't know what they're seeing. I can only go off the hard evidence. As he stated before, I'm scientific, that's what I have to be.

MR. VOIGT: I'm going to object that this is not responsive to my question.

THE COURT: Question is responsive. He can answer yes or no and explain his answer.

MR. VOIGT: Thank you very much, Your Honor. Thank you very much. I don't have any further questions.

THE COURT: Any redirect of the witness?

MR. HARRIS: Briefly, Your Honor.

THE COURT: You may proceed when you're ready.

REDIRECT EXAMINATION

BY MR. HARRIS:

Q: Okay. Does me not giving you the entire file change the science?

A: No, sir.

Q: Is your answer still with a hundred percent certainty Michael German fired a weapon?

A: Yes, sir.

Q: Is your answer still with a hundred percent certainty Michael Allen either fired, handled or was next to a weapon being fired?

A: Yes, sir.

Q: Okay. When you're asked to do forensics on a case, gunshot residue, trajectory, things like that, I mean would what a witness/victim said in a case change the science?

A: No, sir.

Q: Would it change your opinion in this case if both people standing next to them said, "I didn't fire a weapon"?

A: No, sir, it does not. The -- In all fairness, I do like to see the whole report, but I don't care what the witnesses say, I don't care what anyone says. I have to test it and then I'm going to tell them what happened because that's what it has to be. So the fact that I was hired to look at the

GSR, to do certain things, I wasn't asked to look at the bullet, I wasn't asked to look at the cartridge cases, I wasn't asked to look at the weapon. I was asked to come in on this case as a GSR person. So the fact that the witnesses say anything is irrelevant. It's just nice to read so you can keep it in your mind.

Q: Okay. I have another question. You've testified 518 times to date on GSR?

A: Yes, sir.

Q: How many times have you testified for the prosecution?

A: 512.

Q: Okay. So you've testified for the defense six times?

A: Yes, sir.

Q: Okay and that was for the prosecution in Atlanta?

A: In Alabama.

Q: In Alabama?

A: Yes, sir.

Q: Okay. So if -- You're saying if you would have seen the entire file, if I would have gotten you more than a snapshot of the file, that that might have changed your opinion?

A: No, sir. My opinion would be the same about regards to Michael Allen, Michael German, the GSR on the car, the sounds on the video, everything would have been the same as it is.

Q: One hundred percent?

A: Absolutely.

Q: Okay.

MR. HARRIS: I have nothing further, Your Honor.

THE COURT: Any objection to the witness being excused from the State?

MR. VOIGT: Not from the State, Your Honor.

THE COURT: From the defense?

MR. HARRIS: No, Your Honor.

THE COURT: Sir, you're excused.

MR. ROBINSON: Thank you, Your Honor.

THE COURT: You're welcome, sir.

(Whereupon, the witness leaves the stand at 11:17 a.m.)

THE COURT: Madam Forelady, ladies and gentlemen, you all have been sitting about an hour and -- about an hour and 15, 20 minutes. I'm going to give you a brief rest room break. During the break, please do not discuss the case and please leave your notepads in your seats. We'll be out about ten minutes, after which we'll resume the proceedings. Enjoy your break.

(Whereupon, the jury leaves the courtroom at 11:18 a.m.)

THE COURT: You may be seated.

MR. HARRIS: Your Honor, can I give this to the court reporter?

THE COURT: Yes, sir, absolutely.

MR. HARRIS: And I do apologize. This is out of my file. We were trying to figure out the car direction and put the

pencil on there.

THE COURT: Well, I mean y'all can argue that, yeah.

MR. HARRIS: Yeah.

THE COURT: It doesn't matter to me.

MR. HARRIS: Okay.

THE COURT: Yeah. Do y'all still need the element on or can that be -- Can y'all turn it off? We'll be out for about ten minutes. Well, actually, let me ask this question prior to doing that. Is the defense going to have any further witnesses?

MR. HARRIS: None, Your Honor.

THE COURT: Are you going to -- Do you need to -- You said that tentatively. Do you -- Is there something you need to think about or are you telling me no?

MR. HARRIS: No, I'm saying right now that we don't have any more.

THE COURT: So are you ready to rest?

MR. HARRIS: We are.

THE COURT: Why don't you go ahead and rest and I'll hear motions and then we'll take our break and then I'll allow you to rest in the presence of the jury and then you won't have to stop and start again. Is the State still going to have rebuttal witnesses?

MR. VOIGT: Yes, Your Honor.

THE COURT: Are those witnesses present?

MR. VOIGT: Yes, Your Honor.

THE COURT: Okay. Now that the defense has rested their case, are there any motions?

MR. HARRIS: From the State, Your Honor?

MR. VOIGT: Not from the State, Your Honor.

THE COURT: From the defense, are there any motions?

MR. HARRIS: Your Honor, I would renew all previous motions and objections.

THE COURT: Again, the Court would deny the motions based on its previous ruling. Without belaboring time, the Court is concerned with the existence or non-existence of evidence and not its weight and there is direct and substantial circumstantial evidence reasonably tending to prove the defendant's guilt and therefore, the motion is denied.

Enjoy your break. I'll see y'all in about ten minutes. It is 11:19, so I guess -- Well, you might as well just round it out to 11:30.

MR. VOIGT: Thank you, Your Honor.

MR. HARRIS: Thank you, Your Honor.

(Whereupon, there is a break in the proceedings from 11:20 a.m. until 11:43 a.m.)

THE COURT: Is the State ready to proceed?

MR. VOIGT: Yes, Your Honor.

THE COURT: Is the defense ready to proceed?

MR. HARRIS: Yes, Your Honor.

THE COURT: And who is your witness, Mr. Voigt?

MR. VOIGT: Detective Burckhardt, Your Honor.

THE COURT: Okay and if he could go ahead and take the stand for me. You can bring in the jury when they get to the door and who is your other rebuttal witness?

MR. VOIGT: I believe I'm going to call Anthony German again, Your Honor.

THE COURT: Okay and then I'm going to have you rest in the presence of the jury.

(Whereupon, the jury enters the courtroom at 11:44 a.m.)

THE COURT: You may be seated. Ladies and gentlemen, I hope you enjoyed your break. We'll now resume with the trial. Mr. Harris, you may proceed.

MR. HARRIS: Your Honor, at this point, the defense rests.

THE COURT: Ladies and gentlemen, the defense has rested. The State may proceed.

MR. VOIGT: Thank you, Your Honor. The State recalls Detective Richard Burckhardt.

THE COURT: Detective Burckhardt, I'll remind you you're still under oath. You may proceed. Please state your name for the record and spell your last name for the court reporter.

MR. BURCKHARDT: Richard Burckhardt, that's B-U-R-C-K-H-A-R-D-T.

THE COURT: You may proceed.

MR. VOIGT: Thank you.

THE COURT: You're welcome.

DIRECT EXAMINATION

BY MR. VOIGT:

Q: Detective, I'm going to -- You were present through the testimony that we heard yesterday from the defense witnesses?

A: Yes, I was.

Q: Specifically, the testimony of Mrs. -- Mrs. Campbell, Sandra Campbell?

A: I was here, yes.

Q: During the course of your investigation, did you ever have the occasion to go to Ms. Campbell's residence?

A: I did.

Q: And have you -- Tell -- Do you recall approximately when that would have been?

A: I don't have the date. I would say it was about a week after the incident occurred, several days.

Q: Was -- was Mr. Jerome Campbell already -- Had he already been taken into custody by that point?

A: Yes, he was -- he was arrested by then.

Q: And for what purpose did you go to Ms. Campbell's residence?

A: It was two-fold. I went in an attempt to -- I had some trouble locating Ms. Charise Coaxum. I had been to her

apartment and back and forth, so I went to their house on Grimble Road to let her know that I had been looking for her and I needed to speak to her to further the investigation and while I was there, I took the opportunity to -- There were several what I perceived to be family members inside of the residence that I had asked and I told them, I said that Jerome here was in a lot of trouble. He had a serious charge on him and was there anybody in the residence that I could speak to that would -- could add -- could shed any light on this, was there any information that I could get from them and nobody told me anything.

Q: Did they allow you into the residence at all?

A: I did. I was in. I think I made it as far as the living room area.

Q: Were you alone or did you go with another officer?

A: I had a uniformed -- I believe it was Jennifer Havistat, a CPD officer in uniform come in a black and white.

Q: At that point in your investigation, did you believe that Mr. Campbell had operated alone?

A: No.

Q: And what did you believe? Did you believe that there were other persons involved in this?

A: I did.

Q: Did you request assistance identifying those persons from Ms. Campbell and her family?

A: I did.
Q: Was any assistance rendered?
A: No.
Q: As the case agent in this matter, did you -- Were you ever told by any person that this was gang related in any way?
A: No, none whatsoever.
Q: Are you familiar in your experience and training with the gangs that operate in Charleston County?
A: Professionally, I've had a small number of cases that mostly -- Mostly I've had armed robbery cases that have indicated some type of gang affiliation and that information isn't based on me being any gang expert. This is coming strictly from statements from suspects and people that I've arrested during the course of an -- of an investigation that indicated the motivation for this particular crime was some type of gang initiation, if you will.
Q: Are you familiar with Bloods as the name of a gang?
A: I am.
Q: Does that gang operate in Charleston County?
A: There is indication that there is some Blood affiliation to my knowledge in the North Charleston/Goose Creek area.
Q: Is that a national gang?
A: It is and my understanding on gangs -- And I go back to -- I've been -- I've been to a few seminars on gangs, but I won't go any further because I'm not an expert, but it's --

There are gangs and then there are -- There's a national your question was affiliation, yes, but there's also these small cells and if you've heard the term "wannabes", you'll see that on occasion. Do they have a direct line? Do they have a direct connection? I can't answer that. I -- I don't know that for sure.

Q: And -- and what are some of the -- What are some of the things that you would look for to see if someone was associated in some way with the Bloods?

A: In Bloods and other gangs, Crips and such, MS-13, there's a -- They have a -- They're tagged or tatted out with tattoos. They seem to be proud of that. It seems to be a marker. There's also color affiliations. I think it's not unusual or I would think a lot of people know that colors represent certain gang families. Bandannas on certain locations, be it the forearm or around the ankle and things like that, but a lot of it is tattoos mostly.

Q: In your review of this case, were you able to -- Were you -- Was a bandanna of any sort ever found in or around the body of Michael German?

A: No.

Q: During the course of your investigation, did you have the opportunity to review the autopsy of Mr. German, as well as the photographs taken by CPD relating to that autopsy?

A: I had the opportunity to review all of the photographs

that were taken from the autopsy of Michael German.

Q: And this would have been -- Would this have been the body of Michael German without clothing?

A: It would be.

Q: In your review, did you -- Did your review discover any tattoos or other marks associated with any gang activity?

A: My recollection of reviewing the photographs of Michael German didn't indicate any tattoos at all on his body.

Q: Do you have any -- Have you developed in this case in the two and a half years any evidence whatsoever that Michael German or Anthony German or anybody else in this case was associated with a gang?

A: No.

MR. VOIGT: Please answer any questions that Mr. Harris may have for you.

THE COURT: You may proceed.

MR. HARRIS: Briefly. Thank you, Your Honor.

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. HARRIS:

Q: You mentioned three things when you talked about gangs there: tattoos, and MS-13 has a lot of tattoos. That's -- You mentioned MS-13. Is that a gang?

A: I mentioned all of the gangs.

Q: Right.

A: Tattoos seem to be a prime thing that goes with them.

Q: But you're not an expert on gangs?

A: I am absolutely not.

Q: Okay and one thing you did mention is colors?

A: Yes.

Q: Okay. The night of the incident, do you recall what color was the victim wearing?

A: The victim was wearing a red jacket

Q: Okay.

A: Blue jeans, I think, or dark jeans.

Q: What color t-shirt under the red jacket?

A: I believe that was red.

Q: What color sweatshirt was his brother wearing?

A: Red.

Q: Okay and you said that when they came to your house -- or when you went to their house, they didn't talk to you because you were looking for other people?

A: I was looking for information ---

Q: Right.

A: --- to assist in identifying additional suspects.

Q: When you go to the homes of defendants regularly to interview the family, do they talk to you one hundred percent of the time?

A: Not all the time, no.

Q: Okay.

MR. HARRIS: I have nothing further.

THE COURT: Any redirect?

MR. VOIGT: No, Your Honor.

THE COURT: Any objection to the witness stepping down?

MR. VOIGT: None, Your Honor.

THE COURT: Sir, you may step down.

MR. BURCKHARDT: Thank you.

THE COURT: You're welcome.

(Whereupon, the witness leaves the stand at 11:53 a.m.)

THE COURT: You may proceed.

MR. VOIGT: The State calls Anthony German.

THE COURT: (To clerk) You need to swear him. It's been three days.

THE CLERK: Do you swear or affirm that your testimony is the truth, the whole truth and nothing but the truth, so help you God?

MR. GERMAN: Yes, sir, I do.

THE CLERK: Be seated. State your full name and spell your last name for the record.

MR. GERMAN: Anthony Michael German, G-E-R-M-A-N.

THE COURT: You may proceed.

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

THE COURT: You're welcome.

DIRECT EXAMINATION

BY MR. VOIGT:

Q: Mr. German, you're still under oath.

A: Yes, sir.

Q: You heard Charise Coaxum testify yesterday, you heard Ms. Campbell testify yesterday. Is that right?

A: Yes, sir.

Q: Did you ever tell Charise Coaxum, "Your brother gonna die tonight"?

A: No, sir, I didn't.

Q: Did you ever hear your brother, Michael, say, "Your son's gonna die tonight"?

A: No, sir, I didn't.

Q: On January 9th, you were wearing red?

A: Yes, sir.

Q: Why were you wearing red?

A: It was just, you know, if I put on a red shirt, I'm pretty sure my brother's going to try and, you know, put on the same color as me because we're twins. If he wears a blue shirt, then I'm going to put on a blue shirt. If he wears a black shirt, you know, we're twins.

Q: As twins, did you frequently wear the same color as he did?

A: Yes, sir. We were known to wear the same colors.

Q: Did you wear red that night because you were a member of the Bloods?

A: Oh, no, sir.

Q: Do you have any Blood tattoos?

A: I don't have any tattoos.

Q: Did your brother have any tattoos?

A: No, sir, he didn't.

Q: Was your brother a member of the Bloods?

A: No, sir, he wasn't.

Q: Were either of you ever members of any gang of any sort?

A: No, sir.

Q: Did you ever hear your brother say, "I'm a Blood and I'm here to kill your blankety-blank son"?

A: No, sir.

Q: Did Michael ever say any words to that effect?

A: No, sir.

Q: You heard Ms. Campbell say that in a telephone conversation that you were disrespectful to her?

A: Yes, sir.

Q: Do you recall being disrespectful to Ms. Campbell in a telephone conversation?

A: No, sir. I remember I may have used a few profane words, like hell and damn, but it never went further than that.

Q: So your testimony is that you said hell or damn?

A: Yes, sir, but I would never take it further than that because that -- that particular conversation wasn't even a heated conversation at all.

Q: Now you also heard Ms. Charise Coaxum talk about an

arrest that had happened the night before?

A: Yes, sir.

Q: Did you talk to Charise Coaxum about that arrest?

A: Yes, sir, I did.

Q: Was -- And when did you have that conversation with Ms. Coaxum?

A: Later on that night after Michael Allen was arrested, she called me on my cell phone.

Q: Was she upset?

A: Yes, she was.

Q: Why was she upset?

A: Because I guess it was told to her that her husband was with a couple of females that were with my brother and my brother had asked Michael Allen to take him to carry the females home, as well as Frank Haigler's nephew and son.

Q: Do you know what Michael got arrested for?

A: Having an open container, driving with an open container.

Q: And he had two other women in the car?

A: Oh, yes, sir.

Q: Was that while she was at work?

A: I'm not sure.

Q: Was the fact that the women were in the car the reason why she called you upset?

A: Yes, sir.

MR. VOIGT: Please answer any questions that Mr. Harris

may have for you.

THE COURT: Mr. Harris, you may proceed.

MR. HARRIS: Again, briefly. Thank you, Your Honor.

THE COURT: You're welcome.

CROSS EXAMINATION

BY MR. HARRIS:

Q: When you testified yesterday, I asked you if you had lied to the police the first time. Do you remember your answer?

A: Yes, sir, I believe I do.

Q: So you lied to the police?

A: It was like, you know, so quick. I believe I didn't lie, I just didn't tell the truth at the time, like I wasn't asked whether I had a gun.

Q: Okay, but yesterday you said you lied. Did you lie to the police? You said yes.

MR. VOIGT: Objection.

THE COURT: Basis.

MR. VOIGT: I believe it's beyond the scope.

THE COURT: I'm going to give him a little latitude as it may possibly bear on credibility, but you need to tie ends together, Mr. Harris.

MR. HARRIS: Okay. Thank you.

THE COURT: Mm-hmm.

Q: Did you testify yesterday that you lied to the police?

A: Yes, sir.

Q: But you're telling the truth today?

A: Yes, sir.

Q: And yesterday?

A: Yes, sir.

MR. HARRIS: Nothing further.

THE COURT: Any redirect of the witness?

MR. VOIGT: No, Your Honor.

THE COURT: Any objection to the witness being excused from the State?

MR. VOIGT: None, Your Honor.

THE COURT: From the defense?

MR. HARRIS: None, Your Honor.

THE COURT: Sir, you're excused.

MR. GERMAN: Thank you.

(Whereupon, the witness leaves the stand at 11:58 a.m.)

THE COURT: The State may proceed.

MR. VOIGT: That's all the witnesses I intend on calling, Your Honor.

THE COURT: Does the State rest?

MR. VOIGT: It does, Your Honor.

THE COURT: Okay. Madam Forelady, ladies and gentlemen, both the State and the defense have rested their case. There are some matters of law that I need to take up with the attorneys. The next part of the process is closing arguments and the Court's instructions on the law. We have ordered your

lunch, it should arrive by 12:30. So what I'm going to do, I need to debate a little bit about what I'm going -- how -- what we're going to do. I might let you all just go walk around for 30 minutes and then when your lunch comes, you'll -- you know, you can eat and then we can resume with the proceedings, but if you all could indulge me for a moment while I figure that out, I appreciate it. During this break, please do not discuss the case and please leave your notepads in your seats.

(Whereupon, the jury leaves the courtroom at 11:59 a.m. While the jury is exiting, the sound of a cell phone ringer is heard.)

THE COURT: Was that a phone? Was that your phone?

MR. HARRIS: I don't have a phone on me.

THE COURT: That's okay. You may be seated. Now that the State has rested, are there any motions?

MR. VOIGT: None from the State, Your Honor.

THE COURT: Any from the defense?

MR. HARRIS: Your Honor, I'll just again renew my motions from before and objections.

THE COURT: And the Court will mark those renewed and denied based on its previous ruling.

(Whereupon, there is a break in the proceedings as the Court confers with the clerk regarding the lunch delivery.)

CHARGE CONFERENCE

THE COURT: I will give the jury a general instruction regarding their responsibility and my responsibility, how they are to judge witness credibility and believability. I'll give a general instruct -- instruction regarding expert witness testimony.

I'll give a general instruction regarding statements or a statement alleged to have been made by the defendant and how the jury is to judge that statement or whether -- You know, I think you all know the standard language.

And I will give a general instruction from *State v. Grippon* on direct and circumstantial evidence. I'll give a general instruction that the charge, the arrest and the indictment are not evidence, as well as a general instruction on the presumption of innocence.

I will then give a general instruction regarding the fact that the plaintiff -- that the defendant did not testify and that that cannot be considered by the jury in any manner or discussed in any manner in the jury room regarding his constitutional right to remain silent.

I will instruct *Victor v. Nebraska* on reasonable doubt. I will give a general instruction regarding identification testimony and then I will charge the elements of assault with intent to kill.

(Whereupon, there is a break in the proceedings as the

Court confers with the clerk again regarding the lunch delivery time.)

THE COURT: I will then give a -- instruct the elements of murder. I will then give a general instruction regarding mere presence, as well as the hand of one is the hand of all.

I will then give a general instruction regarding the fact that there are multiple indictments in the case. I will go through what each one instructs -- what each one charges, I apologize, and instruct the jury that each indictment is separate and distinct, that each must be decided separately on the evidence and the law applicable to it and that he may be convicted or acquitted on any or all of the offenses charged and that they will have to write a separate verdict on each indictment.

I will then give a general instruction regarding the form of the verdict and I wanted to ask an additional question just for clarity. When we were doing voir dire, you all indicated that y'all were not going to refer to Mr. Campbell as Coaxum. So do we need to redact that from these indictments? Well, it's one indictment, only one indictment has it, which is 6730. The rest just have Jerome Renaldo Campbell.

MR. VOIGT: Your Honor, I believe there was some testimony both by State witnesses as well as defense witnesses that at some point Mr. Campbell used Coaxum as well. His sister's name is Coaxum. I don't think it's unnecessarily

confusing and I don't think it's prejudicial in any way to him.

THE COURT: Mr. Harris?

MR. HARRIS: I don't have an opinion on that. I'm not opposed to redacting or leaving it.

THE COURT: Okay. Well, I would redact it if y'all had consensus on it. I just didn't know whether -- I was just going on what y'all instructed me before because if that was the case, then I would have done it in voir dire and since you all asked me not to and said you weren't going to refer to him in that -- by that name, but then when the testimony was elicited from the witnesses, it sort of threw me off because then there was a reference to him as Coaxum. I'll defer to what -- whatever you all prefer. So do y'all want me to just leave it on there or what do you want to do?

MR. HARRIS: Your Honor, I'm fine with it. I'm not opposed to leaving it on there.

THE COURT: Okay and the State's not opposed either, correct?

MR. VOIGT: Correct.

THE COURT: Then it'll stay on Indictment 6730. Are there any exceptions to the charges proposed from the State?

MR. VOIGT: None from the State, Your Honor.

THE COURT: From the defense?

MR. HARRIS: Your Honor, I'd just again ask for a self-

defense charge.

THE COURT: Tell me what evidence is there of self-defense in the record that would justify an instruction of -- on self-defense?

MR. HARRIS: Your Honor ---

THE COURT: Let me ask the question differently. Does the State have any exception to a request to charge on self-defense?

MR. VOIGT: Yes, Your Honor, the State does have an exception.

THE COURT: Okay, then I'll hear from Mr. Harris and then I'll hear from the State. You may proceed.

MR. HARRIS: Thank you, Your Honor.

THE COURT: You're welcome.

MR. HARRIS: May it please the Court.

THE COURT: Yes, sir.

MR. HARRIS: Your Honor, in the case at hand, I feel that we have put up testimony that this was a possible self-defense case.

THE COURT: Tell me what evidence there is of self-defense.

MR. HARRIS: Expert testimony says that someone fired a shot from that gas station. Expert testimony also put that shots as being the first shots.

THE COURT: Well, I think there's evidence that some

shooting took place. There's evidence there's a bullet hole in the car, but I mean what evidence is there that your client shot at somebody in self-defense? Because that's what self-defense is.

MR. HARRIS: Right.

THE COURT: Self-defense isn't somebody shooting at him.

MR. HARRIS: Right.

THE COURT: That goes to the imminent danger or his perception, you know, the other elements, but I need to know what evidence there is that he shot other than the GSR in his car.

MR. HARRIS: Right. Your Honor, there is testimony from Michael Allen that says he heard my client's voice in his car. There is testimony from everyone that this is the car that fired a shot that killed a person. There's also -- They're using hand of one is the hand of all, so they're saying everyone in the car is responsible for this murder. Therefore, everyone in the car should be afforded the self-defense of the person that is the shooter in that car because if we didn't, we ---

THE COURT: You're arguing defense of others within ---

MR. HARRIS: Right.

THE COURT: --- self-defense.

MR. HARRIS: Yes and castle doctrine also, Your Honor, because it is his automobile. But, Your Honor, I'm arguing

that if we begin to just try one person each in a car that's not the shooter to avoid letting them have a self-defense charge because they're not the ones that admitted shooting the person. I mean I think that they're all in one car, defense of others, it is his car. Therefore, castle doctrine I think applies.

THE COURT: Well, castle applies to your house, not to your ---

MR. HARRIS: It applies to your automobile, too.

THE COURT: Well, I think that's stretching the castle doctrine a little. Castle doctrine means my house is my castle. If you come on my property, I can shoot you. That's lay person's ---

MR. HARRIS: Your Honor ---

THE COURT: --- articulation of the castle doctrine ---

MR. HARRIS: I ---

THE COURT: --- or the privilege of my property.

MR. HARRIS: But ---

THE COURT: But I don't know. If my car is on my property and you're in my car, yeah, I can shoot you, but I don't know on the highway. We'd have the wild, wild west.

MR. HARRIS: Well, Your Honor, the -- in the City of Charleston, everyone has used castle doctrine in a car and there's a case recently where they didn't make an arrest where a gentleman shot a person breaking into his car that was down

the street because the car was considered part of his castle.

THE COURT: You know, what -- what the police do, I ---

MR. HARRIS: I mean the castle doctrine does refer to your automobile, the law -- I mean the amended law does from I believe 2008 and that's before this case. It refers to your automobile. It says that if you feel like someone is -- It's basically saying the carjacking statute. If you feel like someone's coming in to break into your car, you can fight them off with deadly force. It doesn't have to be at your house.

THE COURT: We're not talking about someone breaking into someone's car. We're talking about a car riding down the highway expelling bullets.

MR. HARRIS: I understand, Your Honor.

THE COURT: I think that is an illogical extension of the castle doctrine.

MR. HARRIS: Okay.

THE COURT: You need to move on. You need to tell me what evidence is in the record that supports self-defense.

MR. HARRIS: Okay, Your Honor. The evidence is scientific evidence from an expert that says someone from that gas station fired a shot. Their police officer, Detective Burckhardt, said if there would have been retaliatory -- if there would have been pointing or firing, this would have been a different case because it would have been retaliatory fire, which applies to self-defense. I said -- I said to the

officer, "If I pointed a gun at somebody, can they shoot back at me?" He said, "Yes." But this is defense of others in the car, this is applying self-defense of the shooter to the person driving the car because again, if we ---

THE COURT: Are you going to argue that the people in the car had the right to shoot back to defend Mr. Campbell because someone was shooting at them?

MR. HARRIS: If someone was shooting at them, they're defending the person ---

THE COURT: That wasn't my question.

MR. HARRIS: Yes?

THE COURT: It has -- It has fascinated me lately lawyers never answer the question I ask.

MR. HARRIS: I apologize.

THE COURT: They answer the question they want to answer.

MR. HARRIS: Yes, Your Honor.

THE COURT: I need you to answer the question I asked you, which is: Is your argument going to be that the people in the car, unidentified who the State is going to argue -- He is -- and I'm just going to anticipate the State's argument based on what they said in opening argument, which is that -- and the way the case has developed, which is that Mr. Campbell may not have shot the gun, but he certainly was a part of the collusive effort to make sure the gun was shot.

MR. HARRIS: Right.

THE COURT: In other words, he was a part of the conspiracy to aid and abet this illegal activity.

MR. HARRIS: Right.

THE COURT: Therefore, he is as culpable as the people who shot the gun, even though we cannot identify those folk and we don't have to.

MR. HARRIS: Right.

THE COURT: Now is your argument in response going to be we don't really know who shot the gun in the car, clearly there's GSR in the car, but these people have the right to shoot to defend my client or to protect my client because they were being shot at?

MR. HARRIS: Yes.

THE COURT: Okay. Now I'm clear what you're arguing. All right, you may continue.

MR. HARRIS: Your Honor, I would say that -- Like I said, if we are not going to apply defense of others or self-defense to the people in the car that are being shot at, then what's to keep the prosecution from just trying the people that are riding in the car and not the shooter for murder because they can't exercise self-defense? So that's why I'd ask that a self-defense charge be added.

THE COURT: What's the State's exception?

MR. VOIGT: May it please the Court, Your Honor.

THE COURT: Yes, sir.

MR. VOIGT: I have actually different arguments for different counts and let me refer to the AWIK involving Mr. Frank Haigler. I think that the only evidence in this particular matter as regards to the AWIK against Mr. Haigler by the very definition of self-defense, I believe that the State's evidence has nullified the very first element of a self-defense claim, which is that the defendant was without fault in bringing on the difficulty.

The only evidence before the Court is the testimony of Mr. Haigler, who said he approached as a peacemaker and that Mr. Campbell punched him, said words to the effect of "get it" or "get him" and persons unknown came from within Charise Coaxum's apartment and fired weapons at him, which is the source of the AWIK. I believe that the -- the only evidence negates one of the four elements of self-defense and therefore, self-defense as to that particular charge would not apply.

As to the other charges, there are -- I actually have two arguments: one that involves the elements and then there is a separate one and this kind of goes to Mr. -- goes to Mr. Harris' argument about the defense of others. I'm going to give the Court a cite and I'm going to recognize up front that this cite is not directly on point, but it is *State v. Francis Ann Price*, which is found at 278 SC 266, 294 S.E2d 426. So that's 294, 426.

That case involves another one of the various defenses that defendants can pose and my argument in this particular case is that this defense of self-defense, this is a personal defense under the facts of this case and is not available to the -- is not available to the principal in this matter. In that case, it analyzes when ---

THE COURT: But that's where your query -- that's where your quandary comes in because you're either in for a pound or you're in for a penny. You can't separate it out. Either he's culpable for everything that happened in that car or he's not and you can't say then that -- Because your theory is going to be -- Well, I don't know what your theory will be or necessarily what you're going to argue, so I won't try to anticipate it, but I don't think that you can say that he doesn't have defenses available to him.

If you're going to hold him culpable for the acts of the people in that car and say that he conspired and he aided and abetted them in doing what they did, you cannot then deprive him of a defense as well that would be available because if they were two sitting at that table with him, the three of them would be one person and that it would be applicable to all of them, which of course you know you don't have to try all co-conspirators because it's -- In fantasy on television, you're able to identify everybody, but most times in life you aren't.

MR. VOIGT: And perhaps, Your Honor, I brought up my -- my weakest argument first because I put it out there because there was a cite and I do think that the analysis does bear on this. However, I think the -- the more clear analysis again goes back to the four elements that the State must disprove when self-defense is put forward. In that case, the facts of this case I believe impact all of those four elements.

The fact that the defendant, you know, must be without fault in bringing on the difficulty. The defendant -- And according to the State's theory of the case, after aiding and abetting the shooting of Frank Haigler, shooting towards Frank Haigler, then persons unknown and Mr. Campbell got into Mr. Campbell's car and traveled to where Mr. Allen said, "There they are" -- or where Mr. Allen said that he heard Mr. Campbell's say, "There they are" or words to that effect and then from inside of Mr. Campbell's car, where I believe Mr. Campbell was, shots were fired, as I believe the circumstantial evidence is that Mr. Campbell intended and that is certainly not being without fault in bringing on the difficulty.

And it also impacts the defendant has no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury other than to act as he did in this particular instance. It is clear after the shooting at Frank Haigler that there were a wide variety of behaviors

and actions that the defendant and the persons with the defendant could have taken and they did not necessarily mean driving by and shooting at the German brothers and Michael Allen.

So I believe that the only evidence that we have in this case directly -- directly contradicts two of the elements and as the Court knows, I only have to -- I only have to disprove one of the elements for self-defense not to be applicable.

I believe it also impacts the second element, which is the defendant's belief -- And the third element is his actual belief and we don't have any evidence of his actual belief, but ---

THE COURT: We have testimony from his family that says threats were made and that they communicated -- at some point they had to have been communicated to him.

MR. VOIGT: We have the threats that Ms. Sandra Campbell believed she heard she testified she did not relay to him. She -- Ms. Charise Coaxum did indicate that she had related some of those things to him. But then we have to do the analysis and, you know, whether or not that was reasonable. I think we already have -- We've already knocked out essentially two elements and I'm not sure that we really need to knock out the third. We only need to knock out one.

And again, I would just here mention the line of cases involving mutual combat and that's where mutual combat means

when you both bring guns to a fight, self-defense is not a defense available to you and clearly ---

THE COURT: Well, that's a part of the instruction and actually, self -- mutual combat is -- There are different parts of mutual combat. Of course, if he voluntarily participated in combat for purposes other than protection, then it's not self-defense, even if during the combat he feared death or serious bodily injury.

MR. VOIGT: But those are all the basises [sic.], Your Honor, and I believe that the -- the second two AWIKs and the murder have a slightly different basis than Mr. Haigler's count, but I believe that they all revolve round the same. Thank you.

THE COURT: You're welcome. Would the defense like to respond?

MR. HARRIS: Judge, just that the evidence they brought up has been -- And I understand that it's a jury question, evidence that's been contradicted in different ways. There was a threat to Jerome, the threat was relayed to my client, my client doesn't -- I mean there's case law all over the place that says, you know, if the threats -- you know, that's where we got -- how we got half that stuff in yesterday was from the State's questioning, which you didn't bring up, but, you know, unvoiced threats basically that are brought to the attention.

But, Judge, it's the -- It's the -- their responsibility to disprove it. This is not an affirmative defense anymore. It's -- The jury charge, like you said, with the mutual combat or, you know, if they don't -- if we don't show the elements of self-defense, then the jury has instructions. They don't have to follow self-defense. I mean the jury instructions will cure this problem.

I'm just saying, like I said, if we don't allow the person in the car -- If we're saying the person in the car is just responsible for the person in the back seat and we don't allow them the defense we're giving the person in the back seat, then again, what is going to stop us from just trying the people in the car and not the person in the back seat and getting three convictions for murder because we're not allowing them a self-defense because the State decides or somebody decides to sever all the clients or all the defendants because they may ---

THE COURT: But you don't know who the other defendants are, do you?

MR. HARRIS: No, I don't, Your Honor. Based on that, I would ask that the charge be brought because like we did say that the mutual combat instruction is in there. If it's proven to be mutual combat, the jury can disregard self-defense.

(Whereupon, there is a pause in the proceedings for

several minutes.)

THE COURT: Our case law is very clear that if there is any evidence of record from which it can be reasonably inferred that an accused justifiably inflicted a wound in self-defense, then the accused is entitled to an instruction on the law of self-defense and the failure to do so constitutes reversible error.

I am of -- I would be disingenuous if I said this was not an odd set of facts. It's a very unusual set of facts, probably one that would be a first impression in this state. At least I don't recall ever reading one similar to this although I would not say that there isn't one at all as I would have no way of corroborating that, at least not at this moment. But at least, I don't recall reading any facts similar to these.

I think that it is -- When you listen to all the experts, nobody can tell which -- We know that the shots were fired. There's no one that, at least of independent when we talk about the experts because they weren't there, to say who shot when, who shot first, where it was shot from, what weapon they were expelled from, and there is evidence of words being spoken and threatening words.

There is evidence that there were some significant family disputes that were -- that were going on among the families. Of course, only those there would know, you know, exactly the

complexity of what happened on that evening, whether it was misunderstood or intentional, and there is evidence that the car was hit by a projectile, that being a gunshot, and there is evidence of -- from the defense's expert that other individuals at the scene fired weapons or a weapon.

And so in light of those facts and in light of the hand of one, which is accomplice liability theory, I think that it would be probably be error under those facts with the novel way this case has been presented not to instruct self-defense. I think all the arguments that have been made you all can make those to the jury. In other words, that, you know, he doesn't meet the elements of self-defense. You know, in other words that he had no other way to avoid the danger, that he was not without fault in bringing about the difficulty.

However, I do not think that it would be appropriate for me to instruct defense of others because there is no testimony that he shot a weapon to defend someone else and that's what defense of others is about. It's about you having the ability or the legal right to basically stand in the shoes of someone else and to exercise their right to defend themselves. And so I don't think that -- And actually, to some extent it's -- it's cumulative because it's basically the same instruction.

However, I think I probably will add some language that says -- No, I don't -- Actually, I think that might be confusing. I will leave it as straight because I don't think

defense of others would be -- would be applicable because that would apply -- That's when a defendant shoots someone else to defend someone else who did -- who had the legal right to defend themselves but didn't and I -- and I'm being probably convoluted in -- in that description, but I don't think under these circumstances that would be factually applicable.

So I will give the -- the standard instruction on self-defense from *State v. Fuller* and *Addison* and *Rowell,* which indicate the elements of -- The following elements are required to establish self-defense, that you are without fault. I will instruct that contemptuous language is not available to a person who uses -- who uses language which is so contemptuous that a reasonable person would expect it to bring on a physical encounter and it did. I will instruct mutual combat and then the next element that must be established is that the defendant was actually in eminent danger of death or serious bodily injury or that he actually believed that and I think we know what those elements are.

I will then instruct the right to act on appearances. I will also instruct words accompanied by hostile acts, which is words accompanied by hostile acts may depending on the circumstances establish self-defense. Prior difficulties as well, which is 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 the threat existed and how serious that threat was. Size and age, which is the relative sizes, age and weights of the defendant and the victim may be considered in deciding the apparent or actual need for force in self-defense.

There has been no testimony regarding any reputation of the victim and, therefore, I will not instruct that and there has been no indication of prior violence by the victim. Therefore, I will not instruct that as well.

(Whereupon, there is a brief pause in the proceedings.)

MR. VOIGT: May I interject, Your Honor?

THE COURT: Give me one second.

MR. VOIGT: Okay.

THE COURT: There is no indication of intoxication and I would not instruct that and then the other element, of course, is no other way to avoid the danger. The remaining -- And then I would, of course, instruct that there is no duty to retreat if by doing so you increase your chance of being hurt and then also on the degree of force, as well as continuing until the threat of harm is ended. And give me one second because I need to look at something.

(Whereupon, there is a pause in the proceedings.)

THE COURT: And then threats by the victim, which is threats made by the victim may be considered in determining whether the defendant actually was or believed he was in imminent danger, that being the testimony from the defense

witnesses regarding any alleged threats that were made regarding the life of the defendant.

Also, because self-defense is being instructed, I will not instruct pursuant to *State v. Belcher* anything regarding inferred malice, that being I will instruct that malice may be inferred from conduct showing the total disregard for human life, but I will redact the language regarding inferred malice may also arise when the deed is done with a deadly weapon because our case law has articulated that that is not appropriate when instructing self-defense.

So that would be redacted from both the AWIK and the murder because I think by extension based on the language of *Belcher*, it would be applicable in both situations. Yes, sir?

MR. VOIGT: And I apologize for standing, Your Honor, and I stood because I didn't wish to interrupt, Your Honor. When the Court enunciated the reasons and listed the evidence for which a -- some self-defense could be inferred, one of the things the Court listed, as a matter of fact I think it was the third thing that the Court listed, was a bullet hole found in the defendant's car.

THE COURT: I thought I saw a picture of that.

MR. VOIGT: You saw a picture of a bullet hole in a car in the parking lot at ---

THE COURT: Oh, so it was a different thing?

MR. VOIGT: Completely different car.

THE COURT: Well, then it's -- But it still doesn't impact ---

MR. VOIGT: But it ---

THE COURT: So I stand corrected and I apologize. I misunderstood.

MR. VOIGT: And -- and -- But that would be evidence that someone was firing at the defendant's car

THE COURT: And that's something ---

MR. VOIGT: --- and that would be important.

THE COURT: Mm-hmm.

MR. VOIGT: But we don't have that here, so I just wanted to make that clear.

THE COURT: I'm sorry. I thought that picture was admitted and I misunderstood. It's the same color as the car, isn't it?

MR. VOIGT: It's a completely different car. It was in the parking lot.

THE COURT: But it's the same color as the other car, isn't it?

MR. VOIGT: Well, one is white and one is silver.

THE COURT: Yeah, it all kind of - that silver looks -- yeah.

MR. VOIGT: But I wanted to make sure that we know.

THE COURT: And I'm glad you made that correction for the record because I misunderstood and I apologize. I thought

there was a bullet -- There was a bullet hole in a vehicle, but I misapprehended which vehicle it was. But it doesn't alter the Court's ---

MR. VOIGT: And -- and ---

THE COURT: I think the case law is just so very clear that if there is even a scintilla of evidence about self-defense that we have to instruct it.

MR. VOIGT: And my last one before I'll sit down is that I believe that my argument on the very first day, which is separate and apart in location and time, I don't believe that the factors enunciated by the Court for instructing self-defense as to the other two AWIKs as opposed to the murder are present in that particular case. Based on that ---

THE COURT: I don't think you can separate them out. I think that you have to -- I agree there's testimony regarding Mr. Haigler, but that's for y'all to argue.

MR. VOIGT: Okay.

THE COURT: That's not for the Court to make that distinction.

MR. VOIGT: I just wanted to ---

THE COURT: Because then that would be an impermissible comment regarding the facts on my part and I can't do that. You all have to argue within your argument that even if you believe that self-defense applies to these other things, that it does not apply to this because it doesn't meet the

elements.

But I assume that you're going to argue that it doesn't meet the elements in any of them, so that would cover it and I'm certain Mr. Harris will make his argument, but I can't comment on the facts regarding that because it would be impermissible. Those are facts that you all have to argue within your closing argument. Now we've killed -- I guess lunch got here, huh?

THE CLERK: I'll go check on that.

THE COURT: Okay. What I'm going to do is if y'all would indulge me for a moment to see whether lunch has arrived and then I can let you all know how long y'all have for lunch. Okay?

MR. VOIGT: Thank you, Your Honor.

THE COURT: So if y'all would just stick with me for just a second and then we'll -- Could you for me? Thank you. And then we'll see and then once we get the jury situated, I'll let y'all go to lunch.

MR. HARRIS: Your Honor, can I approach?

THE COURT: Sure and I need y'all to make sure that the -- the court reporter has all of the exhibits.

MR. HARRIS: Judge?

THE COURT: And I need y'all to look at these, too. I'm sorry. I totally forgot.

MR. HARRIS: Okay.

THE COURT: And I think they are in numerical order or they might be in reverse order. I'm not sure.

MR. HARRIS: Okay.

THE COURT: Any exception to the verdict forms as proposed from the State?

MR. VOIGT: None from the State, Your Honor.

THE COURT: From the defense?

MR. HARRIS: None.

THE COURT: Okay, thank you, sir. Yes, sir?

MR. HARRIS: I am -- I brought my computer from my office. I'm letting you know ---

THE COURT: Mm-hmm.

MR. HARRIS: --- because I can't really show much on this. I can't show the clarity. I mean there have been people talking about the clarity of these videos.

THE COURT: Okay.

MR. HARRIS: What I'm asking is is there a way I can put it on the -- on the ---

THE COURT: The problem is you're going to have people leaning over each other trying to ---

MR. HARRIS: Yeah, I thought I could put it up on this. I had forgotten that was flat. Okay, I've got a plug on the other side of there. I just wanted to make sure because -- I mean it's big, it's like watching a TV.

THE COURT: Oh, your TV -- your computer?

MR. HARRIS: Exactly. I brought my office computer with me.

THE COURT: Oh, I thought you meant like a laptop.

MR. HARRIS: No.

THE COURT: Oh, I was confused.

MR. HARRIS: No, that thing down there.

THE COURT: Yeah, you can put it up there if you want to.

MR. HARRIS: Okay.

THE COURT: You just need -- If we need to take a break -- I assume the State is going to open and close? Or are y'all ---

MR. VOIGT: I'm just going to save it for one.

THE COURT: Okay. Well, then if you're going first, then what I would suggest before you leave for lunch is you get all that hooked up.

MR. HARRIS: Okay.

THE COURT: Because there are things -- I can't see. There's stuff -- I think there's an outlet down in the floor somewhere that you're going to have to hook that up to.

MR. HARRIS: There's something over here.

MR. VOIGT: If you can get an extension cord, you can probably ---

MR. HARRIS: I brought one, but there's also two over there.

THE COURT: But you could put it up on there.

MR. HARRIS: Thank you, Your Honor.

THE COURT: Yeah and then get yourself -- you know, get yourself situated and make sure it's working before you go to lunch as well.

MR. VOIGT: Just in case, Your Honor, Mr. Harris, what are we going to -- I just -- How are we going to -- They're going to want to watch this video while they're in there.

THE COURT: We're going to have to -- Does it take special software? No, we didn't watch that one. We watched that one. How -- Does it take special software?

MR. VOIGT: It probably does. I mean I had to download software to get this on here.

MR. HARRIS: It works on mine. I mean like I said ---

THE COURT: It will work on yours without downloading something? It takes special software.

MR. HARRIS: I don't know. Avery, did we have to download something?

AVERY: It works on my computer fine.

MR. HARRIS: Did we have to download something?

AVERY: To play the surveillance cameras?

MR. HARRIS: Yeah.

AVERY: Nothing. It worked on my computer.

MR. HARRIS: It worked on mine.

MR. VOIGT: So it may be something that ---

THE COURT: We can try. We can play with it and see.

MR. VOIGT: Okay.

THE COURT: And experiment and see. Why don't -- and before lunch why don't you all do that as well to see, but, you know, we probably need to -- I don't think -- I say this every trial, civil or criminal, the Court probably doesn't have the money to invest in a laptop to play stuff in the jury room for juries. Actually, what you could do though is if one of y'all's computers works, what we have done lately is sent the computer in with the clerk and a bailiff ---

MR. HARRIS: Mm-hmm.

THE COURT: --- and let them watch it, but instruct them that they can't talk while they're watching it.

MR. HARRIS: Mm-hmm.

THE COURT: And, you know, they can direct the bailiff or usually my law clerk and the bailiff go in and they play it for them.

MR. VOIGT: And I don't want ---

THE COURT: And if they want it replayed, something replayed, you know, they'll just play it several times.

MR. HARRIS: Yeah.

THE COURT: And if they want it stopped or something, they do it, but they're instructed that they cannot deliberate. I think it's a better situation than bringing them in here ---

MR. HARRIS: Right.

THE COURT: --- under the eye of everybody.

MR. VOIGT: I'd just as soon in this particular case, it's going ---

THE COURT: And the lighting actually is much better in there.

MR. VOIGT: --- go over it over and over again.

MR. HARRIS: All right.

THE COURT: So that's what we'll do if they need ---

MR. VOIGT: Okay.

THE COURT: But we'll send it in with them and then I'll instruct them that if they need it played to let us know and we'll send the equipment in for them to do it.

MR. HARRIS: Okay.

MR. VOIGT: Thank you, Your Honor.

THE COURT: You're welcome.

(Whereupon, there is a brief pause in the proceedings while the computer is set up for closing arguments.)

THE COURT: Mr. Harris, you're probably going to need to put it in the middle because the way you have it now, the foreperson wouldn't be able to see it.

MR. HARRIS: Okay.

THE COURT: Or the alternates.

MR. HARRIS: Okay.

THE COURT: But do you have enough room to do that?

MR. HARRIS: I will I think.

THE COURT: And Mike went to get their lunch, so I think it's probably safe to say that we'll be adjourned until 1:30.

MR. VOIGT: Thank you.

THE COURT: And if something changes, we'll call you in your offices, but let's just plan to resume at 1:30.

(Whereupon, there is a break in the proceedings from 12:41 p.m. until 1:57 p.m. When the proceedings resume, the defendant and all counsel are present.)

THE COURT: After the jury ate, they wanted to go downstairs and mingle I guess, take a walk, so I had to accommodate them. I'm sorry that you all had to wait. Is the State ready to proceed?

MR. VOIGT: Yes, Your Honor.

THE COURT: Is the defense ready to proceed?

MR. HARRIS: Yes, Your Honor.

THE COURT: Okay. Please bring in the jury.

(Whereupon, there is a brief pause in the proceedings.)

BAILIFF: Ready for them, Judge?

THE COURT: Yes, sir.

(Whereupon, the jury enters the courtroom at 1:59 p.m.)

THE COURT: You may be seated. Ladies and gentlemen, I hope that you all had a pleasant lunch recess. I think it's about 78 degrees outside, so I'm sure you all enjoyed the sunshine and the air and after eating I'm certain it's going to assist in keeping you all awake.

We -- As I explained, we have -- Both the State and the defense have rested their cases. We have now reached the stage of the trial where we will have closing arguments and the Court's instructions. You will hear from Mr. Harris, followed by Mr. Voigt, and then you will hear from the Court.

Depending on how long arguments take, we may take a break in-between to give you all a rest room break or just the opportunity to stretch a little bit. We appreciate your patience and I would ask that you give the attorneys your undivided attention. Mr. Harris, you may proceed when you are ready.

MR. HARRIS: Thank you, Your Honor.

THE COURT: You're welcome.

MR. HARRIS: May it please the Court.

THE COURT: Yes, sir.

CLOSING ARGUMENTS

MR. HARRIS: Good afternoon, ladies and gentlemen, a lovely day. I thank y'all for being here with us for the last four days. I know you have better places to be, but this is an important process and we do appreciate every minute you give us.

We talked four days ago and we did what they call opening arguments. The prosecutor gave you an opening argument and gave you a PowerPoint presentation. I told you a few things. I said I want you to use your ears and I want you to use your

eyes and I want you to use your common sense. I want you to listen to what -- to what you hear and I want you to watch the videos and I want you to listen to the audio and I want you to watch how people react in that chair when being cross examined and being directly examined and I want you to use your common sense. That's one thing I said most people need when they look at the facts of a case. The prosecutor said that he wanted you to look at this through a lens, through a prism.

THE COURT: Mr. Harris, I need you to speak up so the court reporter can hear you.

MR. HARRIS: Okay.

THE COURT: I apologize for interrupting you, but she's -- Your voice is sort of droning out. You need to speak up for her.

MR. HARRIS: They wanted a lens or a prism. He said it's going to be a difficult case for you to decide. They're going to want you to look at it in a different way. I didn't realize they wanted you to look at through the lens that would distort the facts, a prism that would refract the facts, so maybe you won't notice the lack of evidence in this case that would convict my client.

They want you to look at it in a way that magic bullets, mystery lead dust clouds that have never been heard of by anybody other than a person that's found 50 cases, maybes, a lot of maybes. Remember, we talked about maybes on Monday. I

said let's listen to maybes, possiblies, not facts, but this may have happened, this possibly happened, maybe and possibly are -- Like I said, if anybody knows the Superman movies, kryptonite is what kills Superman. Maybe is what kills beyond a reasonable doubt. You cannot have a maybe and think maybe this happened and find somebody guilty beyond a reasonable doubt.

Now normally in a case where I've got a lot of witness testimony that has a lot of inconsistencies, I sit there and hammer on it all day, but this is one of those cases where we've got so much inconsistency with the witnesses and their stories from three years go and I like calling it three and three. They've had three years and three days of watching this trial and watching testimony to get their story consistent with each other. Even sitting there watching, they still can't get the same story.

They had three different stories three years ago the night of the incident when they were separated by police, three different stories. One of them was there for five seconds and then gunshots rang out, one of them went up and apparently had -- had a party and then came running back, one of them said none of them left the gas station, but all four were standing there and then gunshots rang out. Not one of them said anything about a gun, not one of them said anything about, oh, we went over to the apartments.

That was three years ago. They've had three years of being friends, of saying -- They were not separated by police now. They've had three years to get this story straight. They want to convict Jerome. They want somebody to pay for this thing. They've had three years.

Then they had three days. They've been sitting in here for three days watching. My witnesses didn't sit here for three days. That's called sequestration. They had to sit outside. The victims get to sit in here and watch and they got to listen to every word every person said up there and one would think that they would at least after watching these things come up with the same story.

One person walks up, there's a shotgun out the window, no gun in the front. He doesn't see Jerome with a gun. One person walks up and there's tinted windows apparently in the car doesn't have tinted windows. Another person walks up, no shotgun in the back, but now for the first time in this trial he puts a gun in Jerome's hand. He's never put a gun in Jerome's hand for three years, but Anthony German sat here and said, "Oh, yeah, Jerome was driving the car. He rolled down his window and put a gun in my face." That's the first time anybody's ever heard that.

The prosecutor likes to sit there and say you've had all this time, you didn't call the police, you didn't do that. He never called the police and said, "Oh, by the way, I know

you're trying to convict Jerome Campbell of my brother's murder. By the way, three years ago I remember now he had a gun and put it in my face." He's the only person that puts a gun in Jerome Campbell's hand and he did it after he watched everybody's testimony and realized, wait a minute, nobody put a gun in his hand, I'd better resolve that. He was the last person to testify.

Why, after all these years of getting all this straight, they see the physical evidence, they see the videos, they see the fact they're hiding evidence, they see that they're throwing guns on the roof, they're throwing bullets away, why won't they just say, yeah, we fired or we shot a gun? There is indisputable one hundred percent scientific evidence that one of them shot a gun, but you know why they won't say it? Because then they'll realize and everybody else will realize that they are part of the reason that their brother is dead. They don't want to admit that them firing first, whether it was his brother or whether it was Michael Allen, them firing first not only led to, but caused their brother's death.

You fire into another the car, the car fires back at you, what do you think is going to happen? You go armed to somebody's house with guns after you claim you've seen them with guns, after there's been threats all day. They'll say, oh, he threatened me on the phone. He said if I don't let my grandmother or the grandma see the baby, I'm going to come

down and kill him.

The banker from North Carolina is going to drive down and murder somebody because he won't let the grandmother see the baby. Common sense, that didn't happen, that doesn't make sense. Why would a banker who has a wife, a house, a job, a college degree, lives three hours away, say you won't let the grandmother see the three day old baby, so I'm going to come kill you? It just didn't happen. It's somebody that's creating threats.

Let's go into more threats. You got a text message. The prosecution is going to say, oh, she added words to the text message three years later. The text message says, "Real people do real things. Tell your brother we're coming for him." We ask Michael Allen, what's "real people do real things"? "Oh, I was talking about when she kicked me out. That's just not a real thing." Just back pedaling. Come on, just say you sent the text message and say you were mad at Jerome. Don't give me this, oh well. When you see the thing on the stand, oh, yeah, if I would have sent that message, it would have meant that my wife and I had been having difficulties. She had been kicking me out of the house.

You know, like I said, I can sit here all day and all day tomorrow and point out all the problems with the three people who have had three years and three days to get a story straight, but they haven't. You know why they haven't?

Because they're not telling the truth. The story is they drove over to the Plantation Apartments after there had been bickering all day between people on the phones and who threatened who? We don't know. We may never know. We know threats were going back and forth all day long. They go armed to a person's house.

Here is another part that nobody really I guess thought about until Michael Allen tried to change his story and say they came in two cars. If you're taking somebody home and you want to make sure they get there okay, why would you take their car only? I mean you're just going to go there and make sure they're okay with weapons in their car. How are you going to get back? You have your own car. We already heard that. There's a Firenza and there is some other car. They've got their own cars.

And why do they -- why do they need four people when Michael -- We already know Frank Haigler is going to walk up and play peacemaker. Why do they need four people with guns? Because it wasn't them taking Michael Allen home. This was them going after Jerome Campbell. They had just seen him. They claimed he just pointed a gun at them. You know, if we're going to ask why didn't you call the cops to my witnesses, why didn't you call the cops. I tried, but they covered up the phone.

Oh, you didn't call the cops for three years. You got

somebody pointing a gun in your face and you don't call the cops. Anthony German didn't call the cops. Frank didn't call the cops. What did they do? They armed themselves and went over to Jerome's sister's house, where he had said he was going to be. They brought weapons in a car to the house.

But that's almost enough. I -- The way you're going to see this case is the way I told you we were going to see it in the beginning: The facts, hard evidence, science, scientific evidence, video, audio, things that are not biased. You talk about biased testimony. What is biased testimony? Well, let's see. Their witnesses want to convict my client. They're going to say my witnesses want to spare my client. So let's take out any of them that can be biased. Let's look at that.

Let's take out the three people that had three years and three days to perfect the story and yet they didn't. They still came up with different stories. Let's take out my two witnesses that we apparently decided we were going to go through a one hour where were you then, are you sure you didn't get there at 3:20? You said earlier 3:20 and it's 3:00 now. Hold on, let's try to pin you down all day where you had been.

You know, okay, let's take both of those out. Let's take out the fact that my client's family said they came to the house, they threatened Jerome, they were both wearing red and

they said, "We're Bloods. Bloods take care of each other." Let's take that out. Let's say, you know, I'm assuming the prosecutor is going to try to attack those statements. Let's take them out. Let's take out the statements of the witnesses that were there, too, because I think I would argue they're biased, too. I think they have a motive. I think they want Jerome to go to prison.

Now let's do that. Let's look at the unbiased witnesses in this. Tim McCarthy, nice English fellow that was buying cigarettes. He's a boat captain, I believe he said. The gentleman, I can't remember his name, that was sitting behind the counter at the gas station. The experts. You know, they try to say my expert is paid for. He's testified more times -- He's testified 512 times for the prosecution. He's not going to sit here for the small amount of money we give him and say, you know what, I'm going to sully my reputation and what I've been working for for fifteen years and I'm going to make the evidence point to what Stephen Harris wants it to say. It doesn't happen that way, experts don't do that. You would not have a career if you sat there and said, you know what, I'm going to change the way this is.

And I do love the fact that we kept saying what about the little photograph, the snapshot of evidence that Mr. Harris gave you? You know what I gave him? I gave him the scientific evidence that their expert had testified to. We

didn't give him the statements because I wanted to know what science said. I didn't want him to think, oh, well, these people say there wasn't a gun shot. Let me see, what does science say? Science says one hundred percent with gunshot residue this person fired a gun. Remember I walked up and I said one hundred percent and he said one hundred percent they fired a gun.

Could this explosion happen? No. Is there any other way they got it? Mr. Voigt asked him is there any other way they could have gotten this gunshot residue on their hands. No. Not a possibly, not a maybe, but a no.

Let's take out the bias and let's look at it this way. It's not my job obviously to prove that my client didn't do this. It's the State's job to prove that he did beyond a reasonable doubt. But let's say I show you evidence. Let's say I bring up a video, which we've seen videos in this, and I take you to -- I apologize. Can everybody see this? Can y'all see that? Okay.

You've seen this video a bunch I'm assuming. I'm going to fast forward through it and this is the time stamp that you guys didn't see on the other videos. It doesn't show up on those. This is the camera. This is the time stamp not from my computer. This is the evidence that -- This is the video that's into evidence. This is the time stamp you can see 1/9/2009. That's the date that we've been talking about all

week.

Let's go here to what we talked about earlier, this -- this mysterious vapor cloud, dust. Okay, here comes -- Here. We're going to watch and we're going to see. Here comes Michael German. He walks into the picture. He's by himself. We don't know where Michael Allen is. I'm assuming he's over here out of camera like he says he is. He walks up, he reaches his hand in his pocket, steps by, you start to see smoke rise up and then boom, we see debris. Okay?

You can see a little bit clearer. Now this is a little bit clearer than this thing up here. He walks by. Let's see here. Here's where the smoke is. You start to see the smoke. This is the smoke that my expert said that's gun smoke. That's a gun that was fired and if you watch, you look at these numbers down here and when you listen to that video, it's gun smoke. It coordinates with the bullets firing. The State wants you to believe that this is not gun smoke, that this is somehow, like I said, a mysterious lead cloud and it's also apparently -- There goes the bullet come out after smoke, then bullet. Apparently, the wall is anticipating being hit by starting to smoke according to the State, but this is --

Again, I don't understand how this would happen. It's science. We had an expert say that that's gun smoke and then you see the bullet hit. Okay, let's say that was the only thing I have and then I said, "Michael German fired a gun

based on this smoke." You'd all would look at me and you'd go, yeah, it's possible, it's a maybe, a definite maybe, but I'd still like to hear about this mysterious lead explosion, this lead cloud that apparently can cover people with gunshot residue. Okay. Well, if that's all I had, then I don't believe you know, you could that this guy fired a gun.

But let's go back. Let's go to our guy in the store and I want you to hear it because it didn't -- We never had speakers that were good, but if you remember, my expert said I think it's two different firearms and somebody's firing back here close to the building and then there's somebody driving away firing a gun.

(Whereupon, the video of the interior store surveillance with sound is played.)

MR. HARRIS: Okay, I fast forwarded it to, again, the time we're talking about. Okay, you see the cashier? He's doing his business. I'm going to be quiet because I want you to hear it.

(Whereupon, there is a pause in the argument as the video is played through the sound of the gunshots and then stopped.)

MR. HARRIS: Okay. You can hear it a little better now, you hear what they're talking about. It's a bang, bang, crack, crack. When he said -- Let's see it again.

(Whereupon, the same portion of video is played again.)

MR. HARRIS: Okay. After that, he gets up and testifies. He says, yeah, that's gunshots I heard. He said it sounded like it was right outside the building and then I heard two more. He said I heard it right outside the building and this is what he said. He said he heard four shots and he said, well, I heard more like a boom, boom and then two more, bang, bang. Again, my expert testifies those are close fired gunshots.

That microphone is right there. He said it's right above the register. That microphone would not pick that sound up from the road. You tell me that noise is that loud to where he's -- he's scared and you almost see the building shake. But it's a shot from the road from a pistol? No, it's shots from right here and then shots from over here, a car driving away. I mean that's what it sounds like. He even said you don't have to be an expert to hear that.

It's clear and I'm sure you're going to hear it again, but now we got two things, three things actually. We got smoke. There's evidence gunshots go off. We've got bang, bang, crack, crack, and we've got a witness saying it seemed like it happened right outside the building right here. He didn't say it seemed like it happened coming from -- I heard something coming from the street. He said it seemed like it happened right out by the building, and you know this wall they are standing on is right here behind him. So him saying

right out behind the building right here would be right behind the building.

Let's say that's all I had. Let's say that's all the evidence we had that these people fired a gun, shot a gun at my client's car allegedly first. Let's say that's all we have. Okay?

I'd still say, you know, maybe, it's a little more probable, not a hundred percent yet. Okay. Again, I don't have to prove anything beyond a reasonable doubt. I'm trying to prove beyond a reasonable doubt that this guy fired first. I think at the end of this thing we might see that, but let's just say that's the only two I've got.

Well, then let's go to Mr. McCarthy. I believe we've got Mr. McCarthy here. Mr. McCarthy is the English guy, the guy with the -- Sorry, that's this side. Sorry. He's the English guy with the accent who was going to buy cigarettes. He says in his statement originally that I heard two cracks and then saw smoke. I thought the five black guys on the corner were messing with fireworks. That's what he said three years ago. He wrote it, he signed it.

He doesn't know anybody in this case. He's what you would truly call an unbiased witness. He's the guy that stopped there to buy a pack of cigarettes. He's not a guy that knows this family. He's not a guy that knows Michael and his family.

Let's talk about that. Now we're going to bring up something I -- We talked about these -- this view. I'm talking about I want you to look at it in a different view. I want you to -- Okay, the shooting was in a little while at 56. Okay, here he comes. Here he parks his car a couple feet from the thing here, from the pump about three or four feet. He gets out, takes one, two, three paces toward the place, stops, says that where I heard the shots. I looked to my right, I saw the smoke.

Okay, this is where I want to talk about view. Okay? The State's witness earlier where -- They want to show you this view they want you to see it from. Their witness showed you this picture that shows that from there you can see around that corner. You see what I'm saying?

(Whereupon, counsel is showing State's Exhibit Number 10 for the jury to see.)

MR. HARRIS: I mean I can see around the corner a little bit and you can kind of see what was going on around there from this picture. That's the gas pump line right there. There's the gas pump. He's all the way over here. Okay? He's way over here. This is the view they want you to think he had. This is the view their investigator took three weeks before this to show you an accurate depiction of what this crime scene looked like. That's the view they want you to see. They want you to think he's standing at the pump. He

can see so much around the building that he sees what's going on.

They're like, did you see muzzle flare? No, I didn't. You know why? Because he couldn't see through the building. He saw smoke come out, he heard the pops. I said did you look toward where the sound came from? Yeah. You hear pops, you looked over there towards where the sound comes from because the sound comes from the corner and the smoke comes out. Pop, pop, I think they're messing with fireworks. You'll also notice he says they're all standing on the corner when I heard the pops and then I noticed one of them was down. Okay?

He's way out here. He says I looked to my right. So let's say the corner is over there, he's walking toward the gas station. He looks to his right to where the sound is coming from, he hears two pops and sees smoke. He didn't say I heard two pops and I looked at the car in the street. He didn't say I'm standing at the gas pump and I can see around the corner, I can clearly see these guys. He actually said, could you tell the shots came from the corner? No. They wanted him to say that he could see it and they definitely tried, but no, he couldn't because he couldn't see through the store. He could see the gun smoke though.

Let's say that's all I have to show you that Michael German or Michael Allen fired a gun that night. Let's say that's it. Now I've got four or five pieces of evidence that

show that's unbiased, nobody's making it say one thing, nobody's making it say another. This is just testimony from witnesses, this video and audio. This is stuff you cannot edit. This is stuff you cannot make biased. It doesn't change its mind. It's inanimate.

And the two witnesses don't change their mind. They don't care. Why do they care what happens here this week? One guy, you know, what difference does it make if he says I saw bullets or I saw fire or I saw whatever? Mr. McCarthy doesn't care. This doesn't involve him. It's probably more of a burden to him just to be here.

Let's say we got that. Now do we think Michael Allen or Michael German fired a gun first? Well, if we still don't, let's go back to yet another camera. Again, this is physical evidence, folks. This is what I've talked about. This is the physical stuff that you can't change.

All right, remember they said they walked up here, went across, were over by the dumpsters? I mean they do not. You can watch the whole video later on and I'll fast forward it. They do not go up there, they do not walk up there. The only person that walks near there is Michael German. That's the only person we see. Let's see here. Let's go back. We've got Michael German walking. He puts his hand in his pocket. We've got smoke, we've got gunshot, we've got three, four. Oh, wait a minute, didn't even get to four after that gunshot

on this wall. Did you notice how fast a person ran away from there?

We didn't even get to four, yet Anthony German wants you to believe he hit the ground or hit the floor, that's what they kept calling it in this, hit the floor when he heard the shots, gets up. While he's hitting the floor the gun that he said was in his pocket -- He told police three years ago the gun I was holding. Right now I wouldn't say I'm holding my wallet. It's in my pocket. Now I'm holding my wallet. Okay? You know, you talk about mixing words, but he was holding a gun, he dropped it by his brother. He says, "I bent down, checked on my brother." The gun fell out after he hit the floor. He bends down, checks on his brother, sees how he's doing, gun falls out. Michael Allen walks over and says, "Hey, man, get rid of that gun."

In three seconds? Let's give him five. Let's say that this -- According to everybody -- According to the detective this camera is slow. According to Anthony German, it's fast. You know, whatever way helps their case, that's the way the camera goes. It's slow because oh, these things happen simultaneously, but the camera is so slow that it looks like they're separate.

Okay. Well, then that means that he waited less than one second. While his brother is dying, the first thought he had was let me get rid of this gun. It wasn't let me check on my

brother, it was let me go hide evidence, let me get rid of this gun. Why? Because they didn't know if the people in the car were dead. They fired into a car, they don't know if those people are dead, they know that this guy is. But let me go hide evidence because I may have just killed somebody.

That's why he immediately sprints around and you look. He's gone, he comes back, makes sure nobody's watching, goes back, now I'm hiding evidence, still not checking on my brother. I'm hiding evidence, I'm still telling you I'm checking on my brother and my brother is over here giving his last words. What am I doing? I'm still behind the building. I mean how long can somebody be behind the building hiding evidence? He's throwing a gun. Now he comes back running.

We don't know how far he went. There's no camera back there. He didn't tell the cops that night he threw a gun up there. He didn't tell the cops that night that he hid bullets back there. You know why? Because he was afraid that somebody with him, Michael Allen, his brother or himself or Frank Haigler for that matter, they didn't know if they had killed somebody in that car they were shooting at. They fire on a car, they get fired back. They didn't know if they had hit the car or not. They fired first.

So now you still don't think that's enough to show that this shot fired first? Now let's talk about the biggest piece of evidence, maybe even the whole case. These two guys have

gunshot residue all over their hands, experts said to a level that's so high that it could only be one thing, from firing a gun. I said are you one hundred percent sure? I am one hundred percent sure.

So all of a sudden, we've got smoke on video, unbiased video. Of course, it's described as a lead cloud. We've got bang, bang, crack, crack. We've got a guy saying these shots were fired right behind the building. We've got a guy that the State wants you to believe is standing on the gas pump looking around the corner. Meanwhile, he's in the middle of the bay looking through the building, hears two pops, looks in the direction of them, sees smoke. Then we've got a guy hiding evidence. We got a guy hiding not only evidence, but firearms, live ammunition and firearms.

The State may say well, this gun -- the gun we found is so old we don't even know if it works. Some gun they had worked. I don't know what happened. They have two days after this thing because the officer didn't go there until two days later. They cordoned off the crime scene for a whopping two hours. So anybody could have gone over there and gotten whatever they had thrown.

If you look on certain pictures they put the piece of tape right behind those bullets. They don't put it in the ditch across the street. They don't put it in the street. They don't put it in the building next door. He was behind

that building doing something.

They find a broken, old, antique gun. Some gun they had worked though. Somebody had a gun that fired because if they didn't, why do they have all this gunshot residue on the back of their hands and the palm of their hands like they fired a bullet? The guy said they fired a bullet, one hundred percent they fired a gun. It was either Michael or Michael, one of them was firing a gun and the other one was standing next to him.

This cloud theory, this mysterious lead cloud theory, doesn't work. Scientifically, it's impossible. Yes, you can get lead, he said, if you hit that wall with a bullet. I said have you ever found this result from hitting a wall with a bullet? No, but you can have metal on metal in a car, yeah, six times.

What did the guy who had 7,000 cases and testified in 516 say? Nope, not possible, never seen it in 15 years of work. I've tested 150,000 bullets. I've testified as an expert 516 times. I've never seen that, it's not possible. You know why? Because, yes, you can get lead on you if you're around the bullet. Antimony and barium don't, they're not in bullets. They're in the primer. Antimony and barium don't travel with that bullet.

So this exploding, vaporizing bullet theory that sprayed everybody in the parking lot with lead and made it appear that

they had gunshot residue on the inside and outside of their hands doesn't work scientifically. We're talking about science here. We're not talking about something that I can make up, that they can make up, it's science. It's fact. It's not biased. It's true. There was a gun. There was a gun that was fired. If you listen to it, there was a gun that was fired twice.

Another one: If none of this was true and you've got a car that was driving by a building, you've got a 14 foot wall. If that car is driving by and they're trying to shoot three people that are on the corner there, the guy is sitting in the car, he puts the gun out the window and fires five times. Where are the shots? Where are the potholes in the wall? There's one, eight and a half feet up, which suggests a little more that they're being fired on and they do this number and start firing at them because if you fire like that, you're going to shoot eight and a half feet in the air.

If their theory is right, this car is the only car that fired that night. If they fired one shot eight and a half feet up and then four shots fifteen feet in the air, if they're driving by and trying to point at somebody, why -- I mean, I've heard of bad shots, but you've heard the term the broad side of a barn. I mean it's a 14 foot wall high that's about 40 feet wide with another wall in it that almost acts like a catcher's mitt. If you watch, it's like there's a

corner there. It's all concrete, there's no grass, there's no nothing. Where are the other bullets? You've got one bullet. You know why? Because two of them went that way. Two of them were fired that way. Two of them came back.

It's self-defense. It's retaliation. I asked the detective, I said, why would it matter? Why would you ask if he fired a shot? When he said no, why did you ask him again did you point the gun in a threatening manner and I said, Officer, I said, why is that relevant? He said I wanted to make sure it wasn't retaliatory fire and I said oh, so you mean if I point a gun at somebody, not shoot, don't shoot, but point, they can shoot me back? He said yes.

It's self-defense. You don't have to wait till somebody shoots you and kills you to try to shoot back. If you are shot at and they retaliate, again, it's called retaliatory fire. It's self-defense.

Nobody is telling that story on the stand. They're just not. Why? Because them firing first got their brother killed. They took an armed crew of people to go get Jerome Campbell. When they took that armed crew of people, their intent was to kill Jerome Campbell or at worst let's say scare him. They got gun, they admitted it. No one can tell one person knew about it, the other one didn't, you know. I mean at this point, their stories differ so much I don't believe any of them.

That's why I took out the people that are biased in this case and I'm going with just science right now. Like I told you all before, science doesn't leave maybes. Facts, video, audio doesn't leave maybe. It's either this way or it's not and you've seen the video.

They take an armed group of people in one car claiming to be dropping somebody off, but yet they're driving his car. I know when I'm going to drop somebody off, I don't take their car because then I'm stuck. Why did they need four people if Frank Haigler was already going to walk up and make peacemaker. Why do you need four? What's the purpose in having four people there if not but to wait and ambush Jerome Campbell? And when they did, when they fired on him twice, somebody in that car fired back in desperation, maybe hoping that -- I don't know, maybe hoping that if I fire a gun, they'll duck, which they claim they did.

If they had -- The detective said I checked. If they had pointed a gun threateningly, it would have been different. If they would have told the truth three years ago, we would have a different case. We wouldn't be here. If they had told the truth that, yeah, we pointed a gun, we fired a gun, maybe they still would have said we got fired on. The evidence doesn't say that, but maybe they might have said that. It would have been a different case. It would be either self-defense or some other charge, but they would have investigated it

differently.

Remember when he said I switched from investigation mode to apprehension mode that night while I had been there for a few minutes? They quit investigating the case. They stopped looking into this, even two days later when they found that he had a gun, they still looked at it as a murder. Why? Because they had a suspect and they wanted to build their case around the suspect. They said let's make these facts fit Jerome Campbell as a murderer, the 37 year old banker, college basketball player, scholarship athlete at South Alabama, has a wife, a great job at a bank.

What makes more sense? Common sense doesn't say Jerome Campbell called and drove down from Charlotte to organize a hit squad on somebody that wouldn't let him see -- his mother see a baby. What makes more sense? Somebody got disrespected that's a -- Maybe they're a gang member or maybe they're not. They're twenty something -- They're 19 year olds hanging out with 45 year old guys with weapons, going to somebody's house after they claim they had been told don't come over here. If you know what's good for you, don't come over.

Why wouldn't you call the cops then? Why would you go over there? You've been told. According to them, you've been told don't go over there. Wait and see what happens. Why would he go over there? Why would you bring four people over there? Their reason is, well, Frank -- or Michael Allen, we

were taking him home. Well, you'd been there earlier. You know, your mother -- your wife told you not to come back. Your wife kicks you out and she's got the only key. Why are you going home? Oh, in the window. That's what it is.

They weren't going home. They weren't taking Michael Allen home. Michael Allen had his own car. He could have driven home. Why didn't they park the car in front if he was a peacemaker? Why didn't they ever park their cars in front? You know why they didn't park the car in front the first time? Because they had sent Charise a text message saying real people do real things, we're coming to get your brother. They park around back, go in and I'm glad Jerome's not there.

Michael Allen -- or Michael German and Anthony German, Anthony claims they never got out of the car. Frank Haigler says they weren't even in the car. Michael Allen says they weren't even in the car. You know why? It started to lend a little truth to the fact they might have said we're here to kill your brother. We're Bloods and Bloods stick together.

Why wouldn't they -- Why would -- Why would Frank Haigler and Michael Allen not want Michael and Anthony German to be there the first time? Why would they lie on the stand and say they weren't there the first time? Because we know Michael -- or Anthony German said yeah, I was there. I stayed in the car and somehow saw an argument at the front door from behind the building, which it's not true. He didn't stay in the car.

This is the same person that admitted he lied to the police, but he wants you to believe every word he says today.

I didn't have to prove beyond a reasonable doubt that Michael Allen or Michael German fired two shots at my client's car. I didn't have to prove that. I feel like I did. I feel like we showed you through about seven or eight pieces of hard, physical evidence, scientific evidence, that my client's car was taking on fire, somebody fired back and this magic bullet either threw a dust cloud up, nobody ever fired or like he said, this is just a luck shot. This thing goes eight feet in the air, hits, ricochets, bounces down, hits a guy in the back of the head and kills him. Nobody wants anybody to die. This is a bad situation for every person involved here.

But the State wants you to use maybes, magic bullets, lead clouds that defy science. They want you to use that to make somebody pay for this. They want you to make Jerome pay for it. You know, it's like sports. If you go challenge somebody and play them in a sport and then you lose, you can't come back and say, "Hey, ref, that's not fair. Can you make -- can you make them pay? Can you disqualify them?"

They went armed. They went armed to somebody else's house to kill them. One of the people in their party gets killed and they want you to make somebody pay for that. That's not your job. Your job is not to take maybes and theories that are preposterous. Your job is not to take those

and go, well, it could have happened, he could have killed him, maybe this happened. Because you know what? Maybe is not beyond a reasonable doubt. Maybe is not even close to beyond a reasonable doubt. Probably is not beyond a reasonable doubt. More than likely is not beyond a reasonable doubt. Beyond a reasonable doubt is without hesitation it happened.

If you're thinking about it and you say -- They want you to say Jerome Campbell murdered this person with malice aforethought, this was planned, he took advantage, he killed this person and then tried to kill three other people. That was his intention, his plan. They want you to believe beyond a reasonable doubt that's what happened.

If you believe science, if you believe video, if you believe that there was shots being fired at him and people in his car reacted in self-defense, that's reasonable doubt right there. If you believe that he's taking on fire, their car is, somebody fires back.

Nobody in this whole thing has said Jerome Campbell ever fired a shot, by the way, not one person. There's never been gunshot residue on his hands, never been anybody saying he fired a shot. The closest we've come to that is somebody saying he had a pistol. So if you believe that the State has proven beyond a reasonable doubt with maybes, magic bullets, this cloud that just can't exist -- It doesn't have antimony

and barium. Walls don't have that in it, they're concrete. Antimony and barium is in the primer of a bullet. We heard expert testimony to that, one hundred percent those people fired shots. They won't admit they did.

So if you don't believe science, unbiased evidence, video, audio that shows these people fired on them, then they're going to ask you to convict beyond a reasonable doubt. But if you see doubt, if you see, you know what, it's possible that these people fired first, these people fired back and somebody unfortunately died, if you can see that, that's reasonable doubt. That's hesitation to act.

Hesitation to act is you think about it. They said Jerome Campbell murdered this guy and you go, heh, well, maybe. If you say that, you can't find him guilty beyond a reasonable doubt because in your mind you think there's a possibility that he didn't, that maybe these people did fire.

It's not a maybe, they did. There's gunshot residue on their hands. There's smoke coming from the camera that they're implying is something else. You clearly hear two shots here, two shots there. You got a guy that turns and looks and sees the shots from coming over there and then you got the brother who instead of checking on his brother, goes to hide the evidence. That's the first thought that comes to mind, let me get rid of the gun because we might have just killed somebody.

They got their brother killed and they want you to make Jerome pay for it. Don't make Jerome pay for this. Don't make him give his life for them making their brother -- their brother lose his life. You go armed to a gun fight and then you get -- you get a bad result and you want somebody else to get the blame. You don't want to blame yourself, but you realize you got your brother killed. If you feel that that's beyond a reasonable doubt, and I don't see how you can in this case, then we understand.

But remember one other thing I told you at the beginning. You're twelve people. You're twelve judges, twelve individual judges sitting in this room. You've watched the evidence. It's not a team. You're not a team. It doesn't matter what the other person thinks. You vote the way you vote. If you think that they fired on him and they're reacting in self-defense, you acquit. You don't say I think that's possible, but I'm going to go ahead and find beyond a reasonable doubt because you've hesitated to act right there and you haven't followed what the judge is going to tell you to do.

Again, it's not all of y'all have to vote the same way. This is individuals. You are individuals. This is what makes this country beautiful. Each one of you gets to make your own decision. Don't make the decision to make Jerome pay for a mistake made by other people. This is an unfortunate, horrible situation. Nobody wants this, but don't make another

person lose.

You're going to hesitate to act because the evidence, the science, the unbiased shows you what happened. This was self-defense. This was retaliatory fire. This case would have been different if they would have told the truth from the beginning.

I'd ask you as twelve individual jurors to decide the State has not met the burden. If you hesitate to act, the State has not met the burden. Don't make Jerome pay for it. Don't ruin another family over an unfortunate accident.

I ask you when you go back and deliberate, if you think you need to see this again, watch it. Do not make snap judgments on either side of this thing, but I think if you watch the evidence and you see the science, the video, the audio, the unbiased testimony of unbiased witnesses that have nothing to do with this case, I think you only have one choice but to acquit my client and vote not guilty. Thank you.

THE COURT: Ladies and gentlemen, why don't you stand up and get your blood circulating a little bit.

MR. VOIGT: May we approach for just a minute, Your Honor?

THE COURT: Sure.

(Whereupon, a bench conference is held off the record in the presence of the jury, but out of the hearing of the jury.)

THE COURT: Ladies and gentlemen, I'm going to give you an opportunity to -- to go to the rest room. You all have been sitting almost an hour. During the break, please do not discuss the case and please leave your notepads in your seats. If you would, go with the bailiffs for me, please.

(Whereupon, the jury leaves the courtroom at 2:51 p.m.)

THE COURT: You may be seated. You all can go ahead and refresh yourselves.

MR. VOIGT: Thank you, Your Honor.

THE COURT: You're welcome.

(Whereupon, there is a break in the proceedings from 2:51 p.m. until 3:06 p.m.)

THE COURT: You may be seated. Is the State ready to proceed?

MR. VOIGT: Yes, Your Honor.

THE COURT: Is the defense ready to proceed?

MR. HARRIS: Yes, Your Honor, when my client gets here.

(Whereupon, there is a brief pause in the proceedings while waiting for the defendant to enter the courtroom.)

THE COURT: And to just to give you all a heads up, our break was a little longer because we have -- we had a juror that needed to make arrangements for her child care and we're probably going to have to break -- let them break early because he has a -- He's a single parent and he has a child he needs to prepare, you know, make arrangements for. So we're

probably going to have to let them go home by 5:30, six o'clock.

(Whereupon, the defendant enters the courtroom.)

THE COURT: Okay, is the defense ready to proceed?

MR. HARRIS: Yes, Your Honor.

THE COURT: Please bring in the jury.

(Whereupon the jury enters the courtroom at 3:07 p.m.)

BAILIFF: All are present, Your Honor.

THE COURT: You may be seated. Ladies and gentlemen, I hope that you had a pleasant recess. We'll now resume with argument. Mr. Voigt, you may proceed when you're ready.

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

THE COURT: You're welcome.

MR. VOIGT: Ladies and gentlemen, thank y'all for being here and thank y'all for being so patient with us. It's been a long week. Here we are back to where we were and I'm sorry. You'll notice when they designed this courthouse, they made these light fixtures about six inches too low for this -- for this.

Well, science has said so, a hundred percent, therefore I should just be quiet and sit down because science said so. You remember I said at the beginning what lawyers say isn't evidence and what I say isn't evidence and what Mr. Harris says isn't evidence. What science says isn't evidence and I don't think science is a hundred percent, not in this case.

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(Whereupon, the State presents a PowerPoint file on the courtroom screen.)

MR. VOIGT: This is South Carolina versus Jerome Renaldo Campbell and I have listed on there murder, but what it really is a tragedy and I'm not talking about the sense of tragedy that we use today. When things are sad, we say that's a tragedy.

I want to take you back to high school when you studied histories and comedies and tragedies. The tragedy is the fall of a man, usually through his own hubris, through his own bad decisions, a man who has everything and in an instant he ruins it for himself. That's tragedy.

He set out to be a success, a college graduate, a man with a good family, a man with a good job and he reaches too far and he does something out of spite, out of anger, out of carelessness and out of malice and it begets tragedy. The tragedy is Jerome Campbell. Michael German is dead and that's sad, but the tragedy is how he died and who was responsible for that.

A nice, long argument of Mr. Harris, very long and it hits all the good spots for him and misses the bad ones. Of course, you might accuse me of doing the same thing in follow-up.

What about Frank Haigler? I was about 50 minutes in before the name Frank Haigler came up. Did we forget about

Frank? Did we forget about Frank getting shot at? If that's true, then all of what you heard for the last hour and a half doesn't make any difference whatsoever and I'm going to explain.

Never mentioned this piece of evidence and that would be State's 44, a bullet in a car parked outside where Frank says he was shot at, opposite the apartment where he was shot at. It travels into the car parked opposite [redacted]. They don't mention it because it hurts and that's before Jerome gets in that car and before Michael German gets killed and Frank is a peacemaker.

And I admit yesterday I tried to discredit Ms. Coaxum and I tried to discredit in a more gentle way Ms. Campbell, the mother, and because I -- because it's a tragedy. They're covering for their tragic son and brother, but they don't. One of the things that did come through is you've got a sense of this whole family drama and you got a sense that Frank really was the peacemaker when he was sitting up here telling you that. You may have had doubt in your mind and think maybe Frank wasn't all he was cracked up to be, maybe he's not a peacemaker or maybe he stirred this up a bit. No, no, no. When things got hot, he calmed them down.

Things were calm when they left, but they weren't calm when Frank came back to the house and Jerome popped him and told whoever to shoot him. But you don't want to ever mention

that. You want to spend two hours talking about this case, but you don't want to mention the fact that one of the four things he's charged with is shooting at Frank Haigler.

Let's talk a little bit about the law. Murder, we did this before and it's with malice aforethought, either express or implied, malice aforethought. Now one of the things I didn't say about malice aforethought before the trial started and I'll tell you now, it's an element of malice aforethought and I think it comes in the standard jury instructions, is that it can happen in an instant.

(Whereupon, Mr. Voigt snapped his fingers.)

MR. VOIGT: Just like that, you can go from not having the prerequisites of murder to you're there. Something changed. You got a phone call. You saw Frank Haigler. Something changed and in your mind you went from being a banker and having a nice job selling sneakers on the weekends to somebody with the mental intent to kill.

Guns are killing machines. They are killing machines. Oh, they didn't mention it once, gunshot residue inside of Jerome Campbell's car. That's kind of important, isn't it? I think -- I'd like to think so. It's worth a mention. A hundred percent un-contradicted scientific evidence, two experts tell you all about it, inside Jerome Campbell's car.

Assault with the intent to kill, we went through this and you're going to get to go through this again. The hand of

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one, yeah, nobody saw Jerome shoot out of the car and when it comes to Frank Haigler, I'll tell you right now Jerome didn't shoot at Frank. Okay? He didn't. That wasn't -- that wasn't the evidence that you heard. That wasn't the testimony that you heard. It's not the evidence and it doesn't matter.

Again, Frank [sic.] was at his sister's apartment with unknown people, like a spider in a web, he has waited for the moth to be drawn to the light, that moth probably Michael Allen. That's who they think is going over there. Frank? Frank is an afterthought, but they don't want to see Frank either.

Somebody other than Jerome Campbell shot at Frank Haigler. Inconvenient evidence, let's not talk about it. Somebody other than Jerome Campbell shot at him, but it doesn't matter, not in the terms of the law, the law that you as jurors must uphold, that you must consider, that you must find to the highest degree, the law that he is charged with as to Frank, assault with the intent to kill. Because somebody else shot at him, he set them up, he caused it all, he aided, he abetted and he's just as guilty as that mysterious young man.

And we're going to get into the mystery vapor and all that stuff. I don't -- I wish I had a term for it, but instead here at that apartment we have at least two, maybe three, individuals armed with Jerome. Not Frank. Did anybody

ever say Frank had a gun with him at any point ever? Anybody? Any witness? Any indication that Frank had a gun? No.

The peacemaker walks up and the one who's the stirrer, the straw that's stirring this drink, is the tragic man, Jerome Campbell. He punches him in the face, tells his boys to get him and they try and they miss. Thank goodness we don't have two murders.

Aided, abetted, encouraged, set it up. There it is, two or more persons acting together. The judge is going to instruct you on the law and then the judge is going to come back and anytime you need a little clarification on the law, you can ask and the judge will, depending on what the circumstances are and what you ask, do what's appropriate to let you know the law and it's is important that you know.

And I know I'm asking you to bite off a big chunk of law here. I know I am and that's why I said this case has a high degree of difficulty for you as the finders of fact. I know that and I do appreciate the job that you're doing.

Well, we're going to talk about that. We didn't talk about that at the beginning probably because it doesn't apply and by the way, self-defense, somebody's claiming self-defense. Who? Who is claiming self-defense? You're going to hear the instruction on self-defense and you're going to be asked to consider self-defense and Mr. Harris spent a long time walking up here telling you all about self-defense. Who?

Who was defending themselves?

Let's see. When Frank Haigler walks up to Jerome Coaxum, the only testimony you have is from Frank. Frank was popped in the face for his trouble and gets shot at. Who is defending himself? Frank is running, running down and I've got pictures of where he ran and I -- you know, courtyards and pathways and here's one that's State's 20 and here's one that's State's 22, because he's trying to get away from people who are shooting at him. Who -- Who is -- Where is the self-defense there?

Oh, you know what? When we talk about self-defense, let's just talk about it in a vague way, not talk about who, what when and where. Let's not actually talk about the law of self-defense because that way I can confuse you. Oh, wait, if we actually talk about what the law of self-defense is, it seems to have actual legal requirements.

One of things is when you pose the law of self-defense, I have to disprove one of four things. It makes me do something. I'm up to the challenge. My evidence is up to the challenge. The witnesses that you heard, the evidence that you saw disproves more than one of these things and the law is if any one of these things is disproven by me, by the State of South Carolina, you cannot consider self-defense. Even if you're not exactly clear who is defending themself because you weren't told.

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"The defendant was without fault in bringing on the difficulty." Okay, let's start with that one. The defendant there, Mr. Jerome Campbell, is without fault for bringing on the difficulty. What would be the difficulty regarding the assault with intent to kill Frank Haigler? Well, that would be somebody shooting at Frank Haigler. So for him to claim self-defense, he would have to be without fault. Well, that's not the evidence, that's not the case you heard. That's not where we are. There's no self-defense there. I can stop there. Okay?

But this really is a chain of events, a series of unfortunate happenstances. Are they really happenstances? Are they really? Is there nobody really directing these things? No, there really is someone directing this, Jerome Campbell. Ms. Coaxum would have you believe that he comes in every weekend and that everybody was expecting him, but his poor, sweet mom was surprised to see him. He wasn't supposed to be there. Why is he there? I think he's got two reasons to be there and I think you heard two reasons.

The first one was Anthony German, a baby, disrespect for a grandma, a man welcomed with open arms? The Campbell family through their own male representative welcomes the Germans into their family by killing Michael German, not exactly a -- not exactly welcoming with open arms.

You also heard from Michael Allen about the difficulties

that he had with his wife and you heard from his wife about some of those difficulties and you heard -- You heard a couple things from her actually and you actually learned not because we were trying to present it, because, you know, there's -- there is obviously a lot of history with all of these people. I mean there are obviously real issues and problems going on in their relationships, their inter-family relationships.

Nothing that deserved anybody ever shooting anybody, but nevertheless, these are contentious problems and Michael Allen gets arrested with two women in his car while Charise is at work the night before. That's where she would have been and that's what she testified to and you heard testimony that he gets arrested for having an open container and he's got Michael German's girlfriend and another woman in the car. Now that's why he was getting thrown out of the house, folks, and that's why Jerome Campbell makes a surprise visit to mom's house.

And it gets worse from there because now you start to hear about the messages. Jerome telling them I'm going to come, I'm going to be there. You heard from Mrs. Campbell, Ms. Campbell, she's got daughters and a son. He is the only man in the Campbell family of sufficient age to handle all of these problems. He is the one that they look to to handle it. If there's a problem with a niece, Vasha, and her soon-to-be husband and if that's a a problem and people are upset by

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that, someone has to handle it. He's the one.

Charise is having a hard time with Michael Allen. There are problems in that marriage, there is strife, there is contention. There is one man in the family who can be there for her, too. He has to come down. He does.

And to claim self-defense, you have to be without fault from bringing on the danger. Okay? You heard from three people that said that he drove to Anthony's and Michael's apartment complex before any of this happened, before any shooting ever happened and he had unidentified people with him and they had guns. At some point earlier that day, they were on James Island. Somewhere on James Island I'm guessing there are men with guns who know exactly what happened, but we don't. All we know is that Jerome was there and there were guns in that car.

It's not a reach for me to say that guns are threatening. When you bring a gun to an argument and you display a gun in an argument, you don't have to say anything. The person looking at the gun gets your message. Anthony got the message and it scared Anthony and this sad, rusty, decrepit antique is the only gun in this case that I have, this pathetic gun. It looks like it should have been in some old wild west show.

He testified he never fired it and there's no evidence he fired it. There's no expert to tell you a hundred percent that he did one or the other thing with it because the expert

was only -- Talk about looking through a prism. Talk about refracting the truth to the way you want to see it. There are some experts who want to look at the most narrow sliver of something and tell you with a hundred percent certainty that they know exactly what's going on.

Well, thank goodness that we have a law on experts and the judge will give it to you. If it were just experts, we don't need you. Thanks, but we don't need you. Experts got this handled. Of course, we'll just let the experts handle it so we'll know what's going on. That's why you're here because you don't have to take a hundred percent as one hundred percent.

Would you really trust any expert in any field who just told you a hundred percent of everything and would never allow for the possibility that there's some other explanation? I'm not saying being firmly convinced is a bad thing. Be careful of people who are too certain.

Well, let's get back to our story that relates to self-defense. Again, we don't know exactly who was firing in self-defense. There are people in Jerome's car and we think that Jerome is in Jerome's car at that other -- at the Georgetown Apartments. That was the evidence that you heard, the testimony that you heard.

And then we go back to the gas station where all this hard science is, where all the -- where all the hundred

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percent stuff is, and Frank gets shot at and science has nothing to say about that. Apparently, it's a hundred percent of nothing because nobody gets asked and then a car comes squealing out and the testimony is the shots come from the car and the actual evidence and one of those things we'd like to consider when we're considering important questions is that there is gunshot residue in the back seat of that car.

I don't know who's driving the car. I don't know, but I know who set this whole thing up. I know that there was a person making threats earlier in the day. I know that because of the evidence and what the testimony is and that person is Jerome Campbell and I know that that person didn't drive to a place where they never expected him before and that is Anthony and Michael's apartment and he shows up with a gun. It's kind of threatening and then they try to get Michael Allen back into his house and Frank Haigler gets shot at and then the car comes squealing out.

We don't know who is in that car, but there's sign posts all over this courthouse about cell phones. Okay? There's cameras all over this courthouse. I think you get your cell phones confiscated, if I remember correctly, because we don't want you -- Now that cell phones have become little computers we don't want you surfing the web or looking up something or texting while I'm talking. It's real important to pay attention to what I say, so you don't have your cell phones on

you, at least not here, but I do. My cell phone is near me where I've been all week, right here. We're in the modern age, we're connected to them.

In the back seat of the car, that is State's 60 right there, there is Jerome Campbell's cell phone in the back seat of the car, gunshot residue back seat, Jerome Campbell's cell phone back seat. I actually introduced the cell phone as 62B. If he's like everybody else on the planet, he's near his cell phone in the back seat of the car.

Michael Allen says, "I heard him say there they are" or words to that effect and it's not in the police report and I think we got some sense that Mr. Harris was trying to tell you if it wasn't in the statement that they took, well, when there was in shock, 15, 20 minutes after the murder of their friend and their brother, that somehow it couldn't possibly be true because they're going to -- they're going to get together and tell perfectly coherent stories because that's what witnesses do. They get together and they eliminate all the doubt. Right? No, that's not what truthful witnesses do.

Charise Coaxum, who may be telling the truth, what she said was Michael Allen called her and told her exactly that. She used the same words he did. She remembered the phone call that Michael said, "Your brother just killed Michael German. I heard him." He's not back tens or hundreds of yards away back at the apartment, back here at [redacted] and this is State's

13, he's not back here with a real loud voice. He's in that car. Now does he have his finger on the trigger? I don't know. That car speeds by and it's gone. Who is he shooting at? Who are they shooting at? Because we know there's some other people in there.

That's what Detective Burckhardt went out to the family home on James Island to find out. Who were the other people here? Somebody knows who they are. Maybe the person who owns and was in the car knows who they were. The police never find out. We don't know. Frank doesn't know. He can't identify anybody. He doesn't know who those guys are. Who are these guys?

Well, you have to be without fault in bringing on the difficulty. You shoot at someone, you hop in your car, and you say "There they are" and you shoot at them again. You're without fault? I don't think so. That's not how self-defense goes.

So as to the other ones, I don't know if we've got self-defense there either. He actually believed he was in imminent danger of losing his life? He shoots at somebody or rather has his -- his guys shoot at somebody, hops in his car and chases the ones. He knows I saw this one. If I know -- If Frank's here, Michael's not very far away. There they are right there by the gas station. There they are. Bam, bam, bam, bam as they keep driving down Carriage Lane.

The first shots were closer, the next two are farther. Is there only one guy firing from the car? I don't know. Are there two guys firing from the car? Is that why they sound different? There's one guy in the car firing, another guy in the car firing and they sound slightly different? Maybe, I don't know.

He doesn't want me to ever say maybe because in certain worlds it's supposed to all be crystal clear. Most of you can't remember your 21st birthday. It ain't crystal clear in real life. There are certain things, like there are vacations you went on with your family, you don't remember that trip. You don't remember riding in the back seat of the station wagon all the way to Illinois that summer. It blends in with some other memory that you had because the world isn't perfect. Our memories aren't perfect and when people tell the truth, it doesn't come out perfect because each one of those men --

If Michael Allen and Frank Haigler and Anthony German had each taken the stand and their stories had matched perfectly, Mr. Harris has a different theory for that. Oh, no, it's too perfect, too perfect. They got together. They've been sitting in this courtroom. They made it all match. They're not perfect and perfect people and perfect witnesses and normal human beings, people without gang tattoos or any of that. Their memories are not perfect.

So for some of this, we have to rely on the videotapes. The odd thing is that the videotapes actually match what they remembered. I'm not going to show you the videotapes. You saw them over and over and over again and you're going to get a chance and we all talked about this. There may be things you want to see, things you don't want to see, but you can have all the opportunity you want to look at them. All right?

When you do, go back a little ways, go forward a little ways. You know, we kind of kept it into about a three minute period for you, but look at the little details that years later were important. Frank saw a police car at the light. I ran towards it. Remember that little video where you see Mr. McCarthy pull up? Keep going there for a while. We did in court. You may remember this. You may have notes on it, maybe you don't. Maybe it didn't seem important to you, but there's Frank running through the parking lot waving, looks like he's yelling. There's no sound on that and then he stops and then you look off in the distance as the black and white police car pulls off just seconds after the shooting. Frank was so upset. He doesn't know what to do. He's looking around. He sees a police car. His friend was just on the ground and he runs.

The telephone conversation. Michael Allen said I called Charise. Charise said Michael called me. Right there in front of the store, not hiding evidence, not doing anything

nefarious or wrong or evil or sneaky, Michael Allen is on the phone just like he said he was.

He has to believe he's in danger. All right, he hops in the car with some guns and some guys with guns and they go shoot the other guys. But that didn't happen so he doesn't get -- Remember, I only need one of these and there's two.

I'll skip to three because four -- I mean I'll skip to four because three is kind of like two. The defendant had no other probable means of avoiding the danger of losing his life. Now we already -- We know it's not self-defense with Frank Haigler, but when he hops in his car, driving to James Island is a real good idea, not driving looking for Michael Allen, which is exactly what he did. He's looking for Michael Allen because he saw Frank and he was looking for Michael because that's who he wants. There's no self-defense.

This is kind of a corollary and you're going to hear this from the Court as well. It's kind of a part of self-defense. It's kind of like -- And we didn't talk about it in the beginning because I didn't know where we were -- Sometimes you don't know exactly what law is going to apply and this is what we call mutual combat.

It's kind of like the hand of one and I think it goes back to South Carolina. I think the first reported case talking about this legal concept is from 1843. Where a person voluntarily participates in mutual combat, two people fighting

for the purposes other than protection, you can't justify that and self-defense is a part of the law we call justification. Yes, I did what you say I did. I shot and killed somebody or I caused somebody to be shot and killed, but I have a really good reason, actually a legal reason that stopped you from convicting me. Well, that's justification.

Well, you don't get to justify if you kill an adversary, but when you both bring guns to the fight when you -- when you're each -- And this assumes something here that I'm not really willing to concede. That assumes that some gun other than this existed at the Kangaroo station that night that anybody fired towards that car. If they did, and if we all bring guns to the gun fight, none of us get to say self-defense. All right? That's what mutual combat says and it's clear from his actions that he did.

Let's talk a little bit about one of the things that I think is troubling a little bit. Well, let's -- let's talk about what we've just done here a little bit and that's what Mr. Harris would have you do is try Michael German and that's really why he put up those two family members of -- of Mr. Coaxum because we have no evidence in this case that Michael German was anything to anybody, I mean other than a brother to someone that he liked to wear the same kind of clothes as and the same color as his twin brother, because he's a twin.

There was that hundred percent scientific video that

never shows Michael German shoot anybody, never shows it. You know, you heard a lot of talk about the science in this. No video, no witness ever said that Michael German fired a gun ever. What did Mr. McCarthy say? He heard the pops, he ducked and you see him duck on the video and a lot was made that the angle is different. I'm talking here about State's 9 and you can see a little bit of it or it may be State's 10 here.

We do the best we can. Sometimes no matter what we do, we're accused of it and we're really not trying to mislead you, but I think you can imagine that if you were to stand here, remember you can see the camera here in this picture, you could still see the four guys on the corner, on the corner. Now where's the body of poor Michael German? On the corner, right there under the camera on the corner. He didn't see a muzzle flash. He didn't hear the sounds coming from the corner. He didn't hear the gunshots coming from the corner. He didn't hear them coming from out the other side of the grass. That's just lawyer talk. That's just spinning words to make it sound like, ah ha, I've got something here. There's nothing there. He went over immediately and you see it on the video. It doesn't lie.

And I asked him a question and then I asked Mr. Hundred Percent Expert a question and they're tied together. What did you smell when you were over there? Did you smell anything

burning? No.

What does gunpowder smell like? You can smell gunpowder and we all have experienced smelling gunpowder. The same gunpowder that fires bullets fires fireworks into the air. If you light up a whole bunch of black cats on the 4th of July, you know you did it. Even if you -- even if you can't hear it, if you put headphones on, your nose will tell you. Mr. McCarthy didn't smell the gunpowder. Why not? Because the gunpowder was in a car traveling down Carriage Lane. That's where the shots were from. That's why I asked that question and he didn't --

And here's the other thing we all talk about. It's smoke. It's smoke. We talk about it like it's smoke. You can look at it. He's not an expert in everything and I had to kind of back him down as to what smoke actually is and how what we're really talking about is small particles of things reflecting in the light and there's a light up there and this is where you get to use your common sense again and why experts aren't the smartest guys in the room always. Okay?

Smoke particles travel faster than large particles. It's not shocking, it's science. They travel first and you see them first. What you see there in that video is the same impact, the same impact, the same bit of masonry being struck by a projectile at the same time. It's not smoke because if that's smoke, goodness gracious.

To hear this expert talk, you'd think that we were in the 1840's firing flintlock muskets and you know there's powder you stick in there and there's a flash and boom and a big boom and a little ball comes out the front. He'd expect you to believe that a cloud of gunpowder smoke wafts instantly into a camera that's, I don't know, 15 feet in the air. That's what he wants you to believe because that's a hundred percent science.

How about -- That's State's 10 for your benefit. How about a more plausible explanation and I've done a very good job of thoroughly mixing these pictures up so that I will be unable to exactly find the one I want exactly when I want to find it. How about a little hundred percent science instead and this is 5 and 6. How about instead of gunpowder smoke wafting up 15 feet, directly under the camera is the impact of a projectile, the small particles travel first and fastest and then slow down.

That's kind of what smoke does. If you've ever tried to blow chalk out of your hand, it will go pretty quickly and then just slow down and that's what you see. That's what you see there and the large particles require more energy to get them moving and once they get moving, boom, they go and that's what you see. It all happens at the same time, all from this impact, all from the impact that Mr. Hundred Percent Expert never looked at, never saw, never saw a picture of, didn't

consider. When you consider part of the facts, you get part of the answer, but don't -- don't mislead yourself into thinking that you get the whole answer.

Next, needs to avoid the danger. Everybody knows whose car it is. Everybody knows who was in it. Everybody knows who was driving it. A hundred percent science, okay. Mr. McCarthy was immediately over there and he doesn't see a gun. They have -- In Mr. Harris' view, not only does Anthony have to take this rusty thing here and go behind the wall and throw it up, he's got to go gather a gun from this and gather a gun from this one. He's gun gathering and I don't know how fast all that is on that tape, but I know it was pretty fast and we addressed that with him, but he didn't have enough time to do any of that either. He's not grabbing a gun from one and grabbing from another and you don't see that in that video. You don't see all that.

That's what he's got in his hand. That's it. That's the mystery, that's a hundred percent science right there, a scientific photo of the poor deceased young man laying on the ground with his phone, a shot never meant for him, probably meant for Michael Allen or maybe Anthony German or somebody that Mr. Campbell had a beef with. As far as we know, nobody had a beef with Michael German. A lucky shot, an unlucky shot killed the wrong man.

Now Mr. McCarthy, the English guy -- You know, when we

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talk about sounds and what we hear, who's the expert of what, and the sound inside the store, was it close? Was it far? You saw this map, right? It's got Defendant's 1. It has the cute little drawing of a car here and this is Defendant's 1. Closer to the store, farther from the store, closer, farther, same road, same direction of travel, different right here. You need to listen to those sounds. No expert should be able to tell you what you just heard.

One of the things we tell people when we ask them to look at if people are telling you the truth on the witness stand, the veracity, you know, you're looking for clues, each one of you are when the witness takes the stand. Each one of you is looking for little things, little what's going to set this apart? What's going to make you believe and not believe this guy?

One of the things we tell you is when you're uncomfortable with something, you do this with your hand over your face. We tell a witness don't you ever put your hand there. A jury knows. You may not have ever been told that, but you're expected to know that. You know when somebody's not quite believing what they're saying.

Mr. Hundred Percent Expert -- By the way, he's an expert, he is. He's an expert on GSR. He's an expert on trajectory. He's in expert on gun noises. His testimony on trajectory, you probably remember that. Let's talk about the gun noises.

(Whereupon, counsel puts his hand over his mouth and makes some mumbling sounds.)

MR. VOIGT: Maybe you remember that. Now when he's talking about GSR, he's bold. He wants to stand up. He wants to express this to you. He's going to point stuff out to you. He's excited because this is -- That's right down the center for him. Gun noise, well,

(Whereupon, counsel again puts his hand over his mouth and makes mumbling noises.)

MR. VOIGT: Mr. Hundred Percent is not exactly a hundred percent. Trajectory, he's got no idea. He's got no idea. He can't explain, you know, how is this? How does that work? I didn't have to have somebody come tell you that if you duck down like this, maybe something hits you here. It can go up and this way and this again, you know the common sense that you're supposed to use? You can still use it when you apply it in my case. You can still use it. It cuts both ways.

Rather than that kind of weird wing shot that he thought he could do bouncing off, you know, on some angle, don't trust people that are too confident. They're talking out of both sides of their mouth.

Now he's confident on GSR. Okay, he is. He doesn't have to say -- He was qualified in three things and he muddled two, but he got the GSR. That's where he was a hundred percent of the science is, but you know what? He really agreed with John

Roberts almost in every -- every aspect of his case: gunshot residue on Jerome Campbell's car, gunshot residue on Michael and Michael, no gunshot residue on Jerome, no gunshot residue on the one guy with the gun, Anthony.

No possible way on earth under any circumstances ever, ever, ever, ever, ever, ever, ever, ever, ever, ever that it could have happened any other way. That's the only place where he and John Roberts diverge. John Roberts has seen six cases where it has happened another way and it's really hard to explain and he said it could have happened that way, but he also said because he's got a reputation, too, that the normal way you see somebody firing a gun, yep, but that's a lot of gunshot residue, not just boom, boom, that's boom, boom, boom, boom, boom, boom, boom, boom on Michael German.

So are you going to believe the guy who says he reviews the world through a prism where some things don't have any explanations that you can tie bows on or are you going to believe a guy who is a hundred percent certain based on the twenty percent of the evidence that he's looked at? Based on the little snippet that he was allowed to see and then some other things that he saw in court because he would have to do some explaining. He's going to tell you a hundred percent and then at the end he tells you even then he's got some cases he can't explain. Out of those thousands and thousands of cases, he's got some cases he can't explain either. Oh, I guess they

don't count towards the hundred percent.

But what if -- What if you were being asked to ignore all the testimony, all the testimony from Michael, who stays on scene and allows them to search his car. There's no bullets in that car, nothing interesting in the car, nothing in the car, nothing in Michael's pocket, nothing on Michael's person, microscopic traces of lead on his hands.

Michael German doesn't move. He doesn't give us any evidence, nothing, nothing in his pockets, nothing that would indicate he had a gun, a video of him before he died walking around, walking in the store, no bulges, nothing, nothing indicating a gun. We have a gun and there it is.

(Whereupon, counsel indicates State's Exhibit Number 65.)

MR. VOIGT: The day after -- You know, the shooting was at night. The detective is working on this case through the night. He gets to the point in the video where he was like that needs an explanation, that's not exactly what I was told and he confronts the 19 year old man who told him about it in the presence of his family. This is kind of a different meeting than we had on James Island, isn't it, than what Detective Burckhardt related to you?

We've got one group that circles the wagons, zip, nothing. Then we got one group that says, Anthony, what was up? Anthony fesses up that's me and I'm throwing this gun and look at the special treatment he got from Detective

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Burckhardt. He got arrested. My office had him convicted. That's the special treatment he got and that's what you heard and he testified to it. That's how the cops work. That's how we do it. Those are the favors we give them so that they tell the right story on the witness stand so that we can convict somebody. That's the footsy we play.

Now there are other people out there. There are people out there who also fired guns. There are people out there just as responsible as Jerome Campbell. Jerome Campbell in a very brief encounter with Detective Burckhardt - Somehow, you know, this car is found very close to the shooting, actually the next day or the day after. It's not where Jerome is. Jerome is on James Island. Don't know how he got there. He won't say. He won't say who took him there. He won't say. He won't say anything. That's justice.

Now I'm going to wrap this up. We've got one more slide here. What's malice? The State also has to prove malice. Malice is proven in this. The one they weren't shooting at, the one who hadn't done anything, the brother, the son, the friend. You hate Michael Allen so you shoot blindly and you kill Michael German. You got issues with Michael, with Anthony, Michael's brother, you shoot blindly, whoever you are. Right there, that's malice in an instant and in that instant Michael German was gone, as his brother came back to hold his hand right there with Tim McCarthy, right there with

the other fellow who was walking his dog, with his friends running around the parking lot trying to get the police.

This is a tragedy, but it's not just a sad story. One man had everything, had everything and in a play in three the acts he threw it away and I can't tell you why. That's the point of a tragedy because it shouldn't have happened. It never should have happened. The tragedy comes when you are held accountable for your sins, for your crimes, for the anger, for the desire for retribution, the desire to save face, the desire to achieve respect through threatening other people.

I am the man of the Campbell family, you must fear me. I will come to where you live. Now I know where you live and I will bring these those you don't know and their fire and I will get you and if you come to my territory, to my sister's apartment where you are not allowed to be, she threw you out, she had me come down here to enforce it. I will show you, Frank Haigler, what's happening to you. I will show you what happens to you when you think you can just walk up to where I am. You don't know me. You don't know me, Frank Haigler. Get him. You don't know me. There they are, every single one of these stinking people who are bothering my family. You disrespected my mother, you disrespected my sister and in an instant he threw it all away and he's guilty and that's a tragedy.

I proved it. Mr. Harris told you to stick to your guns. I'm going to tell you the same thing. I proved it. If you think I did, then vote guilty. Thank you.

THE COURT: Madam Forelady, ladies and gentlemen, you all have been sitting an hour. I'm going to give you a brief rest room break, about five minutes, and then we'll resume with the Court's close -- with the Court's instructions on the law. Please leave your notepads in your seats and please do not discuss the case during the break. You all can take your seats or go to the rest room if you wish to do so.

(Whereupon, they jury leaves the courtroom at 4:03 p.m. and there is a break in the proceedings until 4:19 p.m.)

THE COURT: Is the State ready to proceed?

MR. VOIGT: Yes, Your Honor.

THE COURT: Is the defense ready to proceed?

MR. HARRIS: Yes, Your Honor.

THE COURT: They should be out there by now, you think?

BAILIFF: Bring them in now?

THE COURT: Mm-hmm.

(Whereupon, the jury enters the courtroom at 4:20 p.m.)

BAILIFF: All jurors are present.

THE COURT: You may be seated. Ladies and gentlemen, you have heard the closing arguments of both the State and the defense. You will now hear the Court's instructions on the law.

JURY CHARGE

THE COURT: 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 and I also have the duty to rule upon or pass upon the admissibility of evidence offered during the trial. You are to consider only the competent evidence that is before you, which has been put into the record of this case either through the lips of sworn witnesses or the other evidence that may have been introduced during the course of the trial.

I have the additional duty to charge or instruct you on the law applicable to this case. As the presiding judge, I'm the sole judge of the law of this case and it is your duty as jurors to accept and apply the law as I precisely -- precisely as I now state it to you.

If you have a preconceived idea as to what the law is or what the law ought to be in a case or in this case and it should not agree with what I now tell you the law is, you are obligated under the oath which you have taken to abandon this preconception on your part because you are sworn to accept the law and apply the law precisely as I state it to you.

In every case tried in this court before a jury, the jury becomes the sole and exclusive judges of the facts. You are the judges of the facts in this case. This Court is the judge of the law. The Constitution of our state has declared that a

trial judge shall not intimate, state, comment upon or make any statement to a trial jury about the facts in a case.

Since you, the jury, are the sole judges of the facts in this case, you are not to infer anything from what I have said during the progress of this trial in ruling upon 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. The law does not permit me to have an opinion about the facts.

This is a matter solely for you the jury to determine. As jurors then, it is your duty as I have instructed to determine the effect, the value, the weight and the truth of the evidence presented.

Necessarily, you must assess the credibility of witnesses who have testified in this case. Credibility is simply a legal term meaning believability. It becomes your duty as jurors to analyze and to evaluate the evidence and determine that evidence which convinces you of its truth.

Some of the things you may consider as you decide whether or not to believe a witness' testimony about a particular matter include: What was the manner and appearance of the witness who testified? Was he or she straight forward or hesitant in answering? Was the testimony of a witness consistent or inconsistent? How did the witness come to know the facts that he or she testified to or what was his or her

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ability to know these facts? Is there some reason a witness would want to give testimony which would help or hurt one side or the other? In other words, was the witness biased or prejudiced? And was the testimony of a witness strengthened or weakened by other testimony or evidence?

I instruct you further that in determining the question of the credibility or believability of witnesses who have testified in this case, you may believe one witness as against several witnesses or several witnesses as against 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. If you have a good and sound reason, 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, any bias, any prejudice or other motive in the case. You may consider the demeanor of a witness, that is the manner and appearance of a witness from the witness stand. As I've instructed, you can believe as much or as little of each witness' testimony as you think proper. Ladies and gentlemen, you have but one objective through this process, to seek the truth regardless of its source.

Our 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 their education, training and experience has become an expert in some art, science or profession or calling may state an opinion as to relevant and material matters 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 like any other evidence. Give it the weight you think it deserves. If you decide that the opinion of an expert 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' testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert and you are not required to accept an expert's opinion even though it is not contradicted.

Ladies and gentlemen, there is a statement alleged to have been made by the defendant in this case. While the Court has determined that the statement is admissible, I instruct you that you make the ultimate decision of whether or not the defendant made the statement. If the defendant did make the statement, you must determine whether the statement was made by the defendant voluntarily and of his own free will. This means that the statement was not caused by pressure, force, fear, threats, coercion or intimidation or by hope or a

promise of leniency or a reward of any kind.

In determining whether the statement was voluntary, you should consider both the characteristics of the defendant and the details of any questioning. Some of the factors that you must consider are the age of the defendant, the defendant's education or lack of education, the defendant's mental ability or capacity, the defendant's IQ or intelligence, the defendant's background and environment, the place and length of detention, the nature of the questioning and the lack -- and the advice or lack thereof to the defendant of his constitutional rights, including but not limited to, the right to remain silent, that any statement could be used against him in a court of law, the right to have a lawyer present, that if he could not afford a lawyer, a lawyer would be appointed to represent him without any cost, and that he could stop making a statement at any time.

You must carefully consider all the surrounding circumstances before you give any weight to an alleged statement. The State has the burden of proving beyond a reasonable doubt that the alleged statement was voluntary. If you determine it was, you may give the statement any further consideration that you deem proper. You must decide what weight, if any, should be given to an alleged statement. If you determine that the alleged statement was not the free and voluntary statement of the defendant, you should not consider

the statement at all.

Ladies and gentlemen, 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 asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. 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 this case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty. Conversely, if you are convinced of the guilt of the defendant beyond a reasonable doubt, then you must find him guilty.

I instruct you, ladies and gentlemen, the fact that the defendant was arrested, charged and indicted 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. This documentation, ladies and gentlemen, are simply the formal in -- formal written instruments which contain the charge or charges made against a defendant. They serve as the formal documentation by which the case is

processed or brought into this court.

The defendant has pled not guilty to the indictments and that plea casts a burden on the State to prove the defendant guilty because a person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. I instruct you, Madam Forelady, ladies and gentlemen of the jury, that it is a cardinal and important rule of the law of evidence that the defendant in a criminal trial, no matter what the seriousness of the charge or charges made against him may be, will always be presumed to be innocent of the crime for which he is indicted unless his guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt.

This presumption of innocence does not cease when you retire to deliberate, but it accompanies the defendant from the time of his appearance throughout the trial until you reach a verdict in this case. Our Supreme Court has said that the presumption of innocence is like a robe of righteousness placed about the shoulders of the defendant and it remains with him and assigns him to that class of innocent until that presumptive robe of righteousness has been stripped from his person by evidence satisfying you of that guilt beyond a reasonable doubt.

The presumption of innocence is not 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 his guilt beyond a reasonable doubt.

I instruct you, ladies and gentlemen, and emphasize that the fact that the defendant did not testify is not a factor to be considered by you in any way in your deliberations and in your consideration on the question of the guilt or innocence of the defendant. It must not be considered by you in any manner whatsoever. A defendant has the constitutional right to remain silent and the assertion of this right must not be considered by you in any manner whatsoever in your deliberations.

I repeat, under your oath you are to draw no conclusion whatsoever from the fact that the defendant in this case did not testify. The fact that this defendant did not testify should not even be discussed in the jury room in any manner whatsoever. The burden of proof, as I have stated to you, is on the State. The defendant is not required to prove his innocence. The burden of proof remains on the State to prove his guilt beyond a reasonable doubt.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases where you are told that it is only necessary to prove that a fact is more likely true than not true, such as by the greater weight or the preponderance of

the evidence. In criminal cases, the State's proof must be more powerful than that, it must be beyond a reasonable doubt. 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 crime 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 him the benefit of that doubt and find him not guilty.

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 of 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 crime.

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 the chance to see or know the person in the past.

Once again, I instruct you the burden of proof on the State 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.

Ladies ---

(Whereupon, the Court paused briefly for coughing and throat clearing.)

THE COURT: Excuse me. Ladies and gentlemen, the defendant is charged with assault with intent to kill. In order to prove assault with intent to kill, the State must prove beyond a reasonable doubt that the defendant with malice aforethought unlawfully attempted or offered 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.

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 exist 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 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 proven.

Express malice is shown when a person speaks words which express hatred or ill will for another or when a person prepared beforehand to do the act which was later accomplished. For example, lying in wait for a person or any other acts 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.

Ladies and gentlemen, I further instruct you that if facts are proven beyond a reasonable doubt sufficient to raise

an inference of malice to your satisfaction, this inference would simply be an evidentiary fact to be considered by you, the jury, along with the other evidence in the case and for you to give it the weight and value -- weight and value you decide it should receive.

A specific intent to kill is not an element of assault 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 accidently or involuntary. Intent may be shown by acts and conduct of the defendant 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 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 also be inferred when it is demonstrated that the defendant voluntarily and willfully commits an act the natural tendency of which is to destroy another's life.

Ladies and gentlemen, the defendant is also charged with murder. The State must prove beyond a reasonable doubt that the defendant killed another person with malice aforethought and again, as I've instructed, 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 exist 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 the act is committed. Therefore, there must be a combination of the previous evil intent and the act.

Again, as I've instructed, 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 proven.

Express malice is shown when a person speaks words which express hatred or ill will for another or when a person prepared beforehand to do the act which was later accomplished. Again using the same example for example, lying in wait for a person or any other acts 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. Again, this would simply be an evidentiary fact to be considered by you along with the other evidence in the case and it is for you, the jury, to give it the effect, value and weight you decide it should

receive.

Ladies and gentlemen, I instruct you that mere presence at the scene is not sufficient to prove someone guilty of a crime. A defendant's presence where a crime is being committed or mere association with a person who commits a crime does not make a defendant an accomplice or an aider or abettor of the person committing the crime. The burden is on the State to prove every element of the crimes charged.

If you find after reviewing all the evidence that the State has proven that the defendant was only present at the scene of a crime and that they have not proven beyond a reasonable doubt any other participation in the crime, then you must find the defendant not guilty. The law is that proof of or at the scene of the crime is not sufficient to find someone guilty.

Ladies and gentlemen, I further instruct you that if a crime is committed by two or more people who are acting together in committing a crime, the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a probable or natural consequence of the acts done in carrying out the common plan and purpose.

For example, two people can be guilty of killing another person when only one of the two had a gun, there was only one bullet and only one of the two fired the shot that caused the

death. If two or more people are together, acting together assisting each other in committing the offense, the act of one is the act of all -- is the act of all or as it is sometimes said, the hand of one is the hand of all.

Prior knowledge that a crime is going to be committed without more is not sufficient to make a person guilty of that crime. Mere knowledge that another person is going to commit a crime, even if the defendant is present when the crime is committed, is not sufficient to convict the defendant as a principal. Guilt as a principal is shown by actual or constructive presence at the scene as a result of prior arrangement. Therefore, a finding of a prior arranged plan or common scheme is necessary for a finding of guilt as a principal.

The State must prove beyond a reasonable doubt by competent evidence the theory of the hand of one is the hand of all. A principal in a crime is one who either actually commits the crime or who is present aiding, abetting or assisting in the committing of the crime. When a person does an act in the presence of and with the assistance of another, the act is done by both. Where two or more are acting with a common plan or intent are present at the commission of a crime, it does not matter who actually commits the crime, all are guilty. The hand of one is the hand of all.

Present at the commission of a crime means to be

sufficiently near to aid and abet and assist in the commission of the crime. However, mere presence at the scene of a crime is not sufficient to convict one as a principal on the theory of aiding and abetting.

Intent is also a necessary element for there must have been a common design or intent to commit the crime and the crime must have been committed pursuant thereto with the person aiding and abetting by some overt act. Intent means intending the result which actually occurs, not accidently or involuntarily. Intent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent. The State must prove these elements beyond a reasonable doubt.

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 the evidence, including the evidence of self-defense, then you must find the defendant not guilty. On the other hand, if you have a -- If -- On the other hand you, if you have no reasonable doubt of the defendant's guilt after considering all 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. Self-defense is not available to a person who uses language which is so contemptuous that a reasonable person would expect it to bring on a physical encounter and which did actually contribute to the physical encounter.

If the defendant voluntarily participated in mutual combat for purposes other than protection, the killing of the victim would not be self-defense. This is true even if during the combat the defendant feared death or serious bodily injury. However, if before the killing is committed the defendant withdraws and tried in good faith to avoid further conflict and either by word or act makes that fact known to the victim, he would be without fault in bringing on the difficulty.

For mutual combat, there must be a mutual intent and willingness to fight. This intent may be shown by the acts and conduct of the parties and the circumstances surrounding the combat. In addition, it must be shown that both parties were armed with a deadly weapon.

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 -- to prevent death or serious bodily injury. If the defendant believed he was in imminent danger or death -- 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 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. 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 -- of immediate danger of death or serious bodily injury was reasonable and would have been felt by an ordinary person in

the same situation.

Once the right to act in self-defense arises, a defendant is not required to wait until his adversary is on equal terms or until he has fired or aimed his weapon in order to act. Similarly, the defendant does not have to wait until his assailant gets the drop on him. He has the right to act under the law of self-preservation and prevent his assailant from getting the drop on him.

I further instruct you that words accompanied by hostile acts may, depending on the circumstances, establish self-defense. Also I instruct you that 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.

And you may also consider the relative sizes, ages and weights of the defendant and the victim in deciding the apparent or actual need for force in self-defense and the amount of force needed. I further instruct you that 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 as -- 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. I instruct you that the defendant had 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. I further instruct you that if the defendant is justified in defending himself or others and in firing the first shot, then the defendant is also justified in continuing to shoot until it is apparent that the danger of death or serious bodily injury has completely ended.

Ladies and gentlemen, there are several indictments in this case. Each alleges different offenses against the defendant and they are as follows. The -- They will go into the jury room with you. You don't have to try to write this down.

Indictment 2009-GS-10-6730, assault with intent to kill, Indictment 67 -- Indictment 2009-GS-10-6731, murder, Indictment 2009-GS-10-6732, assault with intent to kill, and 2009-GS-10-6733, assault with intent to kill. Each of these indictments, ladies and gentlemen, 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 any other indictment. The defendant may be convicted or acquitted on any or all of the offenses charged. You will be required to write a separate verdict of guilty or not guilty for each indictment.

Ladies and gentlemen, there are two potential verdicts for each indictment and, again, you don't have to write this down because it will go into the jury room with you and they are as follows and I will read those to you, but, again, I want to emphasize there is no significance whatsoever to the order in which these potential verdicts are stated. It's simply that one must be stated first.

And as to Indictment 6730, which is assault with intent to kill, the options are: We the jury by unanimous consent find the defendant guilty of assault with intent to kill or not guilty. Indictment 6731, we the jury by unanimous consent find the defendant guilty of murder or not guilty. Indictment 6732, we the jury by unanimous consent find the defendant guilty of assault with intent to kill or not guilty. And

indictment 6733, we the jury by unanimous consent find the defendant guilty of assault with intent to kill or not guilty.

Again, ladies and gentlemen, there's absolutely no significance to the order in which these possible verdicts are stated. It is simply that one must be stated first.

Ladies and gentlemen, your verdict must be a unanimous one, which means that all twelve of you must agree in order to reach a verdict. Madam Forelady, when the jury has reached a verdict, it is your responsibility to fill out each verdict form, to sign and date the forms and also to advise -- knock on the door and advise the bailiffs that the jury has reached a verdict and that has to be on all of the indictments, not one at a time and I say that out of just being precautious.

But once the jury has reached a unanimous verdict, which means that all twelve of you must agree on each of the indictments, please knock on the door, advise the bailiffs that you've reached a verdict, but prior to that, of course, fill out the verdict form, sign and date those forms.

If the jury has any questions during deliberations, it will be your responsibility to write out those questions and again follow that same procedure. Knock on the door, advise the bailiffs that the jury has a question. Ladies and gentlemen, if you have any questions during deliberations, please know that there will be a delay in our response and it's not that we're ignoring you, there's just -- There's a

procedure that we must follow in answering your question, so I tell you in advance that if there is a question, there will be a delay because we are following that procedure. Again, ladies and gentlemen, your verdict must be a unanimous one, which means that all twelve of you must agree.

I'm going to ask that you return to your jury room, but do not yet begin your deliberations. I have some matters of law I need to take up with the attorneys that may require further instruction or clarification of an instruction. However, if there is no further instruction, we will send in your notepads and the evidence and at that time we will excuse the alternate and you will be allowed to begin your deliberations.

I will tell you in advance that I know some of you have some challenges with daycare and otherwise. Please know that we're not going to hold you hostage at the courthouse all night. You all can let me know what time you need to leave and we will then allow you to disburse for the evening and then come back in the morning to resume your deliberations if you have not reached a verdict at that point and I know that for some of you that really might be 5:30 or -- or very short thereafter.

So I'm letting you know in advance that if that be the case, you all discuss it among your twelve and you decide what time it is that would be preferable for you all to head home

this evening and then I will excuse you at that time and give you further instructions regarding the -- the recess and then we'll resume in the morning at 9:30 with your deliberations.

Again, please leave your notepads in your seats until we deal with those matters of law and once we have dealt with those, we'll excuse the alternate, send in the evidence and your notebooks and you'll be allowed to begin your deliberations. If you would, go with the bailiffs for me, please.

(Whereupon, the jury leaves the courtroom at 4:52 p.m.)

THE COURT: You may be seated. Any exceptions from the State?

MR. VOIGT: No, Your Honor.

THE COURT: From the defense?

MR. HARRIS: None, Your Honor.

THE COURT: Okay. You all can start going through the evidence. (To bailiff) You can go ahead and start collecting the notebooks except put the alternate's on the bannister so we can find out what she wants to do. (To attorneys) If you all can go through the evidence for me, please, and make sure it's all in place.

(Whereupon, counsel examines the evidence and determines that all exhibits are present.)

THE COURT: There wasn't any ammunition, was there? Can you double check for me? Were they all spent cartridges?

MR. HARRIS: There were some live ones.

THE COURT: There is no ammunition over there, was it?

MR. VOIGT: No, I didn't put any in.

THE COURT: Okay. There's nothing over there that they need gloves or anything, is there?

MR. VOIGT: I don't think so. The gun is there. It has a ---

THE COURT: One of the safety things in it? I just wanted to make there was no ammunition because we can't send both back.

MR. VOIGT: No, I didn't put any ammunition in.

THE COURT: Okay, then we're good to go. All the evidence is in place?

MR. VOIGT: Yes.

MR. HARRIS: Yes, Your Honor.

THE COURT: Perfect. Mr. Robinson, if you could take that for me and then bring the alternate out to us, please.

(Whereupon, there is a brief pause in the proceedings while the evidence is taken to the jury at 4:56 p.m. and the alternate enters the courtroom at 4:59 p.m.)

THE COURT: Ma'am, we want to thank you for your time and your attention to this case. We know that being an alternate is really a thankless job. It's so very necessary though and I've watched and you've been timely, you've been attentive to the proceedings. You are welcome to keep your notes if you'd

like or the bailiffs will destroy them for you.

You are welcome to discuss this case if you would like, but I would ask that you not do it until Monday so that we're assured that the panel has been excused. By the same token, if you do not wish to discuss the case and someone should go beyond your comfort level, please make us aware of it so that we can take the appropriate action to protect your privacy.

If you need a work excuse, I think we probably could still get one for you today, but if not, we'll mail that to you along with your check. I hope this has been educational for you.

JUROR: It has.

THE COURT: And we thank you for your time and your attention.

JUROR: Is there any chance that I will be called in the morning?

THE COURT: No, ma'am. We're done for the week.

JUROR: All right.

THE COURT: So you're done for the week. I'm glad you mentioned that because I forgot to tell you that you're done for the week.

JUROR: All right.

THE COURT: And even if they were coming back, I wouldn't require you to. You've -- you've served us well this week, so we appreciate it. Have a wonderful evening. If you want us

to have someone walk you to the garage, I know it's starting to get late.

JUROR: I'll be all right.

THE COURT: Okay. Thank you, ma'am. Have a good evening.

(Whereupon, the alternate juror leaves the courtroom.)

THE COURT: The record should reflect that the jury began its deliberations at 4:57. Is there anything from the State before we recess before we ---

MR. VOIGT: No, Your Honor.

THE COURT: --- we stand at ease or from the defense?

MR. HARRIS: Nothing, Your Honor.

THE COURT: Okay. We'll await the jury's instructions regarding what time they want to go home. I know that there are at least three parents that have child care issues, so we'll -- we'll see what they -- what they decide they want to do.

MR. HARRIS: May we approach the bench?

THE COURT: Yes, absolutely.

(Whereupon, there is a brief break in the proceedings until a message is received from the jury at 5:00 p.m.)

BAILIFF: Ready for them, Judge?

THE COURT: Yes, sir.

(Whereupon, the jury enters the courtroom at 5:02 p.m.)

BAILIFF: The jury is all present, Your Honor.

THE COURT: Thank you. You may be seated. Ladies and gentlemen, we received your note regarding your daycare challenges and we're going to excuse you for the evening. We'll resume at 9:30 in the morning for you to begin your deliberations. You'll come directly to your jury room in the morning and once all twelve of you assemble, the bailiffs will bring in your notepads and the evidence and then at that time you will be able to begin your deliberations. So I would ask that everyone pay particular attention to being prompt because if there's one person missing, deliberations will not be able to resume.

During the break, it is absolutely essential that you have no discussion with anyone about this case. I know it might seem simple to talk about what you've heard, but that by its very nature is deliberations because it requires you to process what you've heard and then draw conclusions based upon it and that by its very nature is deliberations.

So if I need to be the heavy, say, "I can't discuss it because the judge has told me I can't discuss it" and that will take you off the hook because it's a natural tendency for people to say, oh, you're on jury duty, what are you -- You know, what kind of case are you hearing? What's going on? And it's a natural tendency to respond.

So I would ask that you pay particular attention and guard yourselves against that, as well as having any exposure

to any media coverage. That includes anything that is in the newspaper, radio, television or internet and as tempting as it may be because so much information is available on the internet, you are strictly instructed not to do any independent research of any kind.

As the fact finders, you are bound by your oath to decide this case based on the testimony from the sworn witnesses and the other evidence that has been introduced. So please don't do any independent research of any type regarding any issue or matter involved in the case.

As you are I'm certain aware, now that you have begun the stage of deliberations, it is absolutely essential that you have no interaction with anyone in or about the courthouse. Again, a very innocent conversation could be very easily observed and misinterpreted.

I'm going to have a deputy walk you to the garage this morn -- this evening because it's getting dark and also there's just lots of people milling around the courthouse and I don't want to run into any risk of you all having any inadvertent contact with anyone. So once you assemble and you're ready to walk down, let us know and we'll have the deputy escort you down to the garage.

You all have a wonderful evening. We'll see you in the morning at 9:30. Come directly to your jury room.

(Whereupon, the jury leaves the courtroom at 5:07 p.m.

and the jury note is marked as Court's Exhibit Number 5.)

THE COURT: Any exceptions from the State?

MR. VOIGT: None from the State, Your Honor.

THE COURT: From the defense?

MR. HARRIS: None, Your Honor.

THE COURT: Y'all have a good evening. See you at 9:30.

MR. VOIGT: Thank you, Judge.

THE COURT: You're welcome. Have a good -- Y'all can leave your stuff in here because they're not going to clean in here while you are in here.

(Whereupon, there is a break in the proceedings from 5:07 p.m. January 26th, 2012, until 9:35 a.m. on January 27th, 2012. The jury begins deliberations at 9:35 a.m. and there are no proceedings in the courtroom until 10:06 a.m.)

THE COURT: The jury sent a note that says the jury requests to have elements of law for AWIK, murder and self-defense and mutual combat in writing. It's signed by the foreperson. The response that I will send to them is, "Ladies and gentlemen of the jury, Our procedures do not allow for a copy of the jury charge/instructions to be given to you. If there is a specific instruction that you would like given again or the entire instruction, please advise us and I will accommodate your request immediately."

Is there any exception from the State?

MR. VOIGT: None, Your Honor.

THE COURT: From the defense?

MR. HARRIS: None, Your Honor.

THE COURT: Okay. I assume the next note will be ---

MR. HARRIS: They'll want to hear it?

THE COURT: Yeah. So we'll take that as it comes and then I'll have the note marked as a Court's exhibit.

(Whereupon, the jury note is marked as Court's Exhibit Number 6 and there is a break in the proceedings until 11:43 a.m.)

THE COURT: Go ahead and get the jury. You all can take your seats. I have a note from the jury. "The jury would like to have the instructions regarding self-defense, including mutual combat and the hand of one is the hand of all repeated please." So I'll re-instruct them on hand of one is the hand of all, self-defense. I'll just give them the whole self-defense instruction. Is there any exception from the State?

MR. VOIGT: None from the State, Your Honor.

THE COURT: From the defense?

MR. HARRIS: None, Your Honor.

THE COURT: I've already instructed the bailiffs to get them and I've already got the note marked as a Court's Exhibit and they -- We asked them if they wanted lunch at about 11:15. We told them it would take an hour to an hour and a half and

they said they wanted lunch, so.

MR. HARRIS: Okay.

THE COURT: We've ordered it for them, so it should get here probably about 12:30, give or take.

MR. HARRIS: Okay.

(Whereupon, the jury note is marked as Court's Exhibit Number 7 and the jury enters the courtroom at 11:45 a.m.)

BAILIFF: Your Honor, the jury is present.

THE COURT: Thank you. You may be seated. Good morning, ladies and gentlemen. I guess we're quickly approaching afternoon. I hope that you all had a pleasant and restful evening.

I received your note. "The jury would like to have the instructions regarding self-defense, including mutual combat, and the hand of one is the hand of all repeated please." And I'm going to accommodate that request. I apologize I've got a little frog in my throat. And that re-instruction is as follows:

If a crime is committed by two or more people who are acting together in committing a crime, the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a probable or natural consequence of the acts done in carrying out the common plan and purpose.

For example, two people can be guilty of killing another person when only one of them -- when only one of the two had a gun, there was only one bullet and only one of the two fired the shot that caused the death. If two or more people are -- are together, acting together assisting each other in committing the offense, the act of one is the act of all as is sometimes said, the hand of one is the hand of all.

Prior knowledge that a crime is going to be committed without more is not sufficient to make a person guilty of that crime. Mere knowledge that another person is going to commit a crime, even if the defendant is present when the crime is committed, is not sufficient to convict the defendant as a principal. Guilt as a principal is shown by actual or constructive presence at the scene as a result of prior arrangement. Therefore, a finding of a prior arranged plan or common scheme is necessary for a finding of guilt as a principal.

The State must prove beyond a reasonable doubt by competent evidence the theory of the hand of one is the hand of all. A principal in a crime is one who either actually commits the crime or who is present aiding, abetting or assisting in committing the crime. When a person does an act in the presence of and with the assistance of another, the act is done by both. Where two or more are acting with a common plan or intent are present at the commission of a crime, it

does not matter who actually commits the crime, all are guilty. The hand of one is the hand of all.

Present at the commission of a crime means to be sufficiently near to aid and abet and assist in the commission of the crime. However, mere presence at the scene of a crime is not sufficient to convict one as a principal on the theory of aiding and abetting.

Intent is also a necessary element for there must have been a common design or intent to commit the crime and the crime must have been committed pursuant thereto with the person aiding and abetting by some overt act. Intent means intending the result which actually occurs, not accidently or involuntarily. Intent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent. The State must prove these elements beyond a reasonable doubt.

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 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 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. Self-defense is not available to a person who uses language which is so contemptuous that a reasonable person would expect it to bring on a physical encounter and which did actually contribute to the physical encounter.

If the defendant voluntarily participated in mutual combat for purposes other than protection, the killing of the victim would not be self-defense. This is true even if during the combat the defendant feared death or serious bodily injury. However, if before the killing is committed the defendant withdraws and tried in good faith to avoid further conflict and either by word or act makes that fact known to the victim, he would be without fault in bringing on the difficulty.

For mutual combat, there must be a mutual intent and willingness to fight. This intent may be shown by the acts and conduct of the parties and the circumstances surrounding the combat. In addition, it must be shown that both parties

were -- were armed with a deadly weapon.

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 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. 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 -- of immediate danger of death or serious bodily injury was

reasonable and would have been felt by an ordinary person in the same situation.

Once the right to act in self-defense arises, a defendant is not required to wait until his adversary is on equal terms or until he has fired or aimed his weapon in order to act. Similarly, the defendant does not have to wait until his assailant gets the drop on him. He has the right to act under the law of self-preservation and prevent his assailant from getting the drop on him.

Words accompanied by hostile acts may, depending on the circumstances, establish self-defense. 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 relative sizes, ages and weights of the defendant and the victim may be considered in deciding the apparent or actual need for force in self-defense and the amount of force needed. 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 -- 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.

If the defendant is justified in defending himself -- I apologize, ladies and gentlemen.

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. If the defendant is justified in defending himself or others and in firing the first shot, then the defendant is also justified in continuing to shoot until it is apparent that the danger of death or serious bodily injury has completely ended.

Ladies and gentlemen, that would complete the additional instruction as you requested. If there is anything further that you wish to -- the Court to re-instruct in terms of the law, please do not hesitate to let us know and we will accommodate your request immediately.

We've ordered your lunch and we're hoping it will be here

by 12:30. Thank you very much. If you all will, go with the bailiffs.

(Whereupon, the jury leaves the courtroom at 11:55 a.m.)

THE COURT: Are there any exceptions from the State?

MR. VOIGT: None from the State, Your Honor.

THE COURT: From the defense?

MR. HARRIS: None, Your Honor.

THE COURT: All right, we'll await the jury's further instructions.

(Whereupon, there is a break in the proceedings until 1:57 p.m.)

THE COURT: The jury has reached a verdict and as soon as they're down the hall we'll proceed. I will say, however, before we take the verdict, I know that this has been a very highly charged, emotional trial for both sides involved and I do not expect that there will be outbursts or any audible responses or reactions to the verdict, whatever it may be.

If it is, the deputies or the bailiffs will immediately remove you from the courtroom, so I tell you that in advance, again recognizing that it is an emotionally charged situation and that emotion runs high on both sides of this case. So I would ask that you all would comport yourselves appropriately at the reading of the verdict and I appreciate your compliance with the Court's request in advance.

(Whereupon, the jury enters the courtroom at 1:59 p.m.)

THE COURT: You may be seated. Madam Forelady, is it correct the jury has reached a verdict?

MADAM FORELADY: Yes, ma'am.

THE COURT: You can give the verdict forms to the bailiff for me, please.

MADAM FORELADY: Okay.

THE COURT: Thank you, ma'am. Sir, if you would, stand for the publication of the verdict.

THE CLERK: The verdict forms in the matter of The State of South Carolina versus Jerome Renaldo Campbell, defendant. As to Indictment Number 2009-GS-10-6730, we the jury by unanimous consent find the defendant guilty of assault with intent to kill involving Frank Haigler, signed by the foreperson of the jury on January 27, 2012. Ladies and gentlemen of the jury, if this was your verdict, please raise your right hand.

(Whereupon, all jurors raise their right hand.)

THE CLERK: Thank you. Please let the record reflect that all twelve jurors raised their right hand. As to Indictment Number 2009-GS-10-6731, we the jury by unanimous consent find the defendant guilty of murder, signed -- signed by the foreperson of the jury on January 27, 2012. Ladies and gentlemen of the jury, if this was your verdict, please raise your right hand.

(Whereupon, all jurors raise their right hand.)

THE CLERK: Thank you. Please let the record reflect that all twelve jurors raised their right hand. As to Indictment Number 2009-GS-10-6732, we the jury by unanimous consent find the defendant guilty of assault with intent to kill involving Anthony German, signed by the foreperson of the jury on January 27, 2012. Ladies and gentlemen of the jury, if this was your verdict, please raise your right hand.

(Whereupon, all jurors raise their right hand.)

THE CLERK: Thank you. Please let the record reflect that all twelve jurors raised their right hand. As to Indictment Number 2009-GS-10-6733, we the jury by unanimous consent find the defendant guilty of assault with intent to kill involving Michael Allen, signed by the foreperson of the jury on January 27, 2012. Ladies and gentlemen of the jury, if this was your verdict, please raise your right hand.

(Whereupon, all jurors raise their right hand.)

THE CLERK: Thank you. Please let the record reflect that all twelve jurors raised their right hand.

THE COURT: Is there any request to poll the jury from the State?

MR. VOIGT: None from the State, Your Honor.

THE COURT: From the defense?

MR. HARRIS: None, Your Honor.

THE COURT: You may take your seats. Madam Forelady, ladies and gentlemen, we thank you for your time and your

attention to this matter. I hope that jury service has been educational for you. I say it during jury qualification and people often chuckle that real court is nothing like Judge Judy, Judge Joe Brown or the Peoples Court and it is not and I hope that you all from this experience learned how very valuable you are to the system and that it could not operate without individuals being willing to donate their time to us because really that's what you do. Our system is the only system where twelve individuals sit as fact finders and apply a very complicated set of laws to those facts and render verdicts.

You are welcome to discuss this case if you would like. By the same token, if someone should persist in trying to speak with you and it makes you feel uncomfortable, please make us aware of it so that we can take the appropriate action to protect your privacy.

If you need a work excuse before you leave today, you can get those on the first floor of the Clerk of Court's office on the Circuit Court side. Any of the deputy clerks at any of those windows can give you a work excuse. Otherwise, they will be mailed to you along with your checks.

We will hear post-trial motions and sentencing immediately following this proceeding. If there is anyone that wants to stay for sentencing, please make the bailiffs aware of it and we'll bring you back into the courtroom and

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seat you in the jury box for that purpose.

You are excused with the Court's profound thanks. If you would, go with the bailiffs.

(Whereupon, the jury leaves the courtroom at 2:02 p.m. The Court briefly leaves the bench to personally thank the jurors in the hall. Several jurors return to the courtroom and are seated in the jury box.)

THE COURT: You may be seated. Are there any post-trial motions for the State?

MR. VOIGT: None from the State, Your Honor.

THE COURT: From the defense?

MR. HARRIS: Your Honor, I would reiterate and renew all objections during the trial and all motions made during the trial.

THE COURT: The Court would note those motions and deny them based on its previous rulings. Are we ready? Do we have sentencing sheets?

MR. VOIGT: I'm signing those as we speak, Your Honor.

THE COURT: Did you want to say something, Mr. Harris?

MR. HARRIS: No.

THE COURT: Okay.

(Whereupon, there is a brief pause in the proceedings.)

MR. VOIGT: Your Honor, I have a question.

THE COURT: Sure.

MR. VOIGT: And as to the AWIKs ---

THE COURT: Yes, sir.

MR. VOIGT: Are they considered violent under our law?

THE COURT: I don't have -- I don't think they are. I think they're under the old common law and they are considered misdemeanors, even though they carry ten years.

MR. VOIGT: And I apologize ---

THE COURT: But I think -- I don't think they're violent or serious involving strikes.

MR. VOIGT: And I believe that to be true. Those boxes are checked here.

THE COURT: And we'll double check it.

MR. VOIGT: And I'm going to uncheck it. I don't know how it got checked.

THE COURT: We'll double check it and I'll initial them.

MR. VOIGT: Thank you, Your Honor. I appreciate it.

THE COURT: Yeah, it's not violent.

MR. VOIGT: Or serious, like ABHANs.

THE COURT: Yeah, yeah, they're common law misdemeanors. You're welcome. Thank you. Is there anything further from the State regarding sentencing?

MR. VOIGT: One moment, Your Honor. Your Honor, there are some family members who wish to address the Court when it is their turn to speak.

THE COURT: And if you have each of them, if they're going to speak, to identify themselves for the record and if

they have -- and to spell their last names if -- if it's one that has not been familiar during the trial and in other words, if it's one the court reporter hasn't already heard.

MR. VOIGT: Okay, no problem.

THE COURT: And then also just speak loudly and clearly for us so that the court reporter can take down everything that is being said.

MR. VOIGT: Yes, ma'am.

THE COURT: And I've corrected those sentence sheets. The only one that's violent and most serious is the murder.

MR. VOIGT: Thank you.

THE COURT: Yes, ma'am?

MS. MARCH: My name is Rosalyn Bobo March, last name March, M-A-R-C-H. I am the victim's mother. It's been a long three years. It's really ---

THE COURT: You're Mr. German's mother?

MS. MARCH: Yes, ma'am.

THE COURT: Yes, ma'am, I'm sorry. I didn't mean to interrupt you, but I need the record to be clear. Yes, ma'am?

MS. MARCH: This teared my family apart. Today is my birthday. This is the third year Michael hasn't been here with me to celebrate my birthday, but I thank God that I am here in this courtroom for justice to be done for my son. Thank you.

THE COURT: You're welcome, ma'am. Yes, sir?

MR. GERMAN: My name is Anthony German. I'm the victim of the brother. [sic.]

THE COURT: Yes, sir?

MR. GERMAN: It's just been like, you know, an experience and, you know, throughout these years it's been a lesson to me to, you know, always remember first in situations mind over matter and, you know, it's just like my mom said, it's torn our family apart and I'm happy to be here to see this justice.

THE COURT: Thank you, sir. Mr. Haigler?

MR. HAIGLER: Yes, ma'am.

THE COURT: Please state your name for the record.

MR. HAIGLER: My name is Frank Haigler.

THE COURT: Yes, sir?

MR. HAIGLER: I just want to say this -- this -- this is just a -- a sad day today not only for the German family, but also for the Campbell family. You get what I'm saying? Because I went there as a peacemaker, you know what I mean?

THE COURT: Yes, sir.

MR. HAIGLER: If he'd a just took the time to hear what I was saying, none of this would have happened and that's all I got to say. I can't -- I can't say anymore.

THE COURT: Yes, sir. Anything further from the State? Does anyone else wish from the family to speak?

MR. VOIGT: No, Your Honor, I believe that's it.

THE COURT: Let me ask what may seem like a very simple

question now that this has -- we're at the conclusion of these proceedings and maybe this is a question -- Well, I guess it would be - Has there ever been any indication of the other people who were located in this vehicle? Have they ever been identified?

MR. VOIGT: No, Your Honor. We had reached out to these gentlemen at several points after the police closed the investigation to attempt to find out who these other people were. We have no indication of who they may have been. There's word on the streets, but there's ---

THE COURT: Nothing concrete that's been able to be independently corroborated?

MR. VOIT: That's correct.

THE COURT: Has your client made any indication of whether he intends to offer any information to the State regarding that? I know his posture may have been different prior to verdict.

MR. HARRIS: Right.

THE COURT: But has he -- I mean you may not have had ample time to discuss it with him at this point.

MR. HARRIS: I have not, Your Honor. I have not. I haven't had time to talk to him about it.

THE COURT: If he knows. I mean I don't mean to imply that he does. I just ---

MR. HARRIS: Right. I ---

THE COURT: I'm just curious to know if other folk had been identified and if there was some ---

MR. HARRIS: We haven't had time to talk about that. We discussed, obviously, during the last three years whether --- You know, I've encouraged that if there was somebody else that, you know, we would find out who it was because it would obviously help our case, but I haven't discussed with him if he -- You know, I haven't said, "Do you know somebody?" But I -- I can talk to him about that. I'd need time to talk to him about that.

THE COURT: Well, of course, the Court takes no posture and has no one to reward or punish, but I would think that if he knew, he'd want to disclose that.

MR. HARRIS: Yes, Your Honor.

THE COURT: I think it's certainly -- I don't want to speak for the State and I don't know as how that would color the situation, but certainly it would bring the entire circumstance I think to closure. Again, the Court takes no position regarding it, but I was curious to know whether there was indication of two others shooters, that maybe those individuals could be identified. Anything further from the State?

MR. VOIGT: Nothing further from the State, Your Honor.

THE COURT: Anything further from the defense?

MR. HARRIS: Your Honor, this -- I'd like to speak on

behalf of him. I don't know if the family, his wife or somebody, would like to speak. There's one that wants to.

THE COURT: Certainly. I'd be glad to hear from them and again, the same procedure, if they would identify themselves for the record and spell their last name if it is one that the court reporter would not be familiar with.

MS. WASHINGTON: My name is Rose A. Washington.

THE COURT: Rose?

MS. WASHINGTON: Rose. R-O-S-E

THE COURT: Yes, ma'am. Washington?

MS. WASHINGTON: A. Washington.

THE COURT: Okay.

MS. WASHINGTON: W-A-S-H-I-N-G-T-O-N.

THE COURT: Yes, ma'am?

MS. WASHINGTON: I am an aunt of Jerome Campbell. He's my sister's son and since I've known Jerome from birth to where he sit now, he always been a kind, gentle person, never speak an unkind word to no one. He always help me discipline my children, discipline the rest of our nieces and nephews, but without even raising his voice or anything like that.

I thank my family and friends, the German family and friends, and what I'm asking for is for this Court and everyone to please, you know, have leniency on my nephew because both sides -- something has been taken away from both families. You know, my nephew has been taken -- about to be

taken away from us and sentenced and so has my grand-niece has been taken out of our family also. We're going to miss Jerome at gatherings, we're going to miss my grand-niece together, but I just want Jerome to know that I love him. I just want you, Vasha, to know regardless of the situation, you'll always be in my heart when I pray at night and I thank you right now, in the name of Jesus I thank you. Thank you all.

THE COURT: Could I ask just one question before you proceed? How old was the deceased? I want to make sure that my notes are accurate. At the time of his death.

MS. MARCH: He was 20, Your Honor.

THE COURT: Twenty years old, correct?

MR. VOIGT: Twenty years old.

THE COURT: I wanted to make sure my notes were accurate. Yes, sir. Yes, ma'am?

MS. RICHARDSON: Yes. This go to both families, which I have never met. My name is Percile Richardson. I am the aunt and one of the older aunts of Jerome Campbell. Jerome's father was my nephew. He is an only child from my -- from his father's side and we're just so sad that we're all here together and I want this family to know that we have been looking forward to meeting them and I'm sorry and our family wants you to know that there's no anger or anything from us to you. Okay?

I know perhaps you all have never met us or seen us

before, but I want this Court to please be lenient on Jerome. He has been very good to the family and we don't know what happened. Only God knows. Okay? So please, Jerome, we want you to know that we love you regardless of what happened and we will be here for you. Thank you very much.

THE COURT: You're welcome, ma'am.

MS. RICHARDSON: Did I spell my name for you? Percile Richardson.

THE COURT: Percile, P-E-R-C-E-I-L.

MS. RICHARDSON: P-E-R-C-I-L-E, last name Richardson.

THE COURT: Oh, P-E-R-C-I-L-E.

MS. RICHARDSON: Yes.

THE COURT: I had it spelled wrong.

MS. RICHARDSON: And thank you very much.

THE COURT: Thank you very much, ma'am.

MS. CAMPBELL: I'm Sharonda Campbell. I'm the wife of Jerome.

THE COURT: Could you spell your first name for us?

MS. CAMPBELL: S-H-A-R-O-N-D-A.

THE COURT: Thank you, ma'am.

MS. CAMPBELL: First, I want to say I'm -- for the family I'm sorry and everything, but we are going through it today and when this incident happened, my husband and I had only been married for six months and I hope you guys can sleep at night, but you guys know what happened that night and who done

all that. I hope you guys can sleep at night because now I got to live with this and my husband, too. I just hope you guys can sleep at night. That's all.

THE COURT: Thank you, ma'am. Anything further, Mr. Harris?

MR. HARRIS: Your Honor, I don't know if my client wants to say anything or not.

(Whereupon, Mr. Harris confers with his client briefly.)

MR. HARRIS: Your Honor, I'd like to speak on my client's behalf about the sentencing.

THE COURT: Yes, sir.

MR. HARRIS: Your Honor, Mr. Voigt in his closing argument put it best. This is a tragedy. It's tragic for everybody. It's a sad day, it's been a sad three years. This is not something that anybody would ever wish on their worst enemies.

Jerome is 37 years old. He was a -- worked at a bank as a loan officer, college graduate, he was a basketball player in college. He has a big family support. This is a -- I -- I hope I never live to see the day that I have issues with my family that ever come to something like this. I mean this is two families that have lost two people for a long, long time, one for their life and one for a long time.

And I'd ask you -- I know that murder carries thirty to life. I'd ask you to consider based on the fact that he has

no record and based on the fact that this was, you know, like you said yesterday, you've never heard facts like this. I've never heard facts like this. I've never seen a case like this before where it just seems like things spiraled out of control into a scenario that wound up with someone dead and that's never, ever what anybody wants. I think that this was -- In fact, if somebody tried to tell me the story again, I still wouldn't believe them.

But I'd ask you to consider that the thirty is an appropriate punishment on this. I never thought I would say thirty is an appropriate punishment on anything, but I'd ask you to consider the thirty years. I mean that's day for day. He's going to have to do every day of it and, you know, if he ever gets out, he's going to be an old man and he knows that and his family knows that.

I think that, you know, this is something against somebody that has no record whatsoever until, this other than not having a license and running a business and that was because he was selling something for somebody in the street, on the street. They just didn't have a license.

THE COURT: Oh, I didn't even ask that. Does he have any record? Is that the only record he has?

MR. HARRIS: That's the only record he's got.

THE COURT: Which is selling goods without a license?

MR. HARRIS: Yes.

THE COURT: Or something like that?

MR. HARRIS: Yes. He was fined.

THE COURT: Okay, so something akin to not having a business license?

MR. HARRIS: Right. The person he was working for didn't have a license. He hadn't renewed it and he was given a ticket.

THE COURT: Okay.

MR. HARRIS: Your Honor, I hate this. It's the worst kind of case I have as a lawyer. I don't like, you know, somebody that I've believed, you know, was -- was innocent of something and then is found guilty and I hate standing here and asking for thirty years. It's just -- It's a -- This is a low point for everybody in this room, Judge, and I -- I'd ask you to have mercy on him. This is a person like Mr. Voigt said had it all and in a spiral of just awful coincidences, awful decisions and just personal anger, somebody ended up dead. I'd ask you to consider the thirty as a sentence as opposed to the life part.

THE COURT: Sir, is there anything you'd like to state for the record on your own behalf?

MR. CAMPBELL: No, ma'am.

THE COURT: Anything further from the State?

MR. VOIGT: Nothing further from the State, Your Honor.

THE COURT: Does the State have any position on

sentencing?

MR. VOIGT: None, Your Honor.

(Whereupon, there is a brief pause in the proceedings.)

SENTENCE

THE COURT: Sir, if you would, stand for sentencing. I think that we've all heard the facts and circumstances of this case and there's no need for the Court belaboring it by making any protracted comments, but I think that both Mr. Voigt and Mr. Harris had summed it up by saying that this is just an utter tragedy, young lives just gone and without any ability really to recoup them because irregardless of what the Court does today, the fact of any sentence --

South Carolina -- And it's been interesting to me of late the way our system is perceived because most people are not educated about it and they don't realize that South Carolina is unlike most states in terms of our sentencing structure. So whatever sentence Mr. Campbell receives today will have the net effect of a life sentence irregardless because he will serve it at 85% and at his age, he will be inordinately -- He would have reached a fairly -- because his life expectancy, as much as we don't like like to think about it, is only another 41 years. So as a practical matter, the net effect of whatever the Court does today really at some point becomes a nullity because it all has the same net effect when you look at the way our system is structured.

However, having made that observation, sir, I find it appropriate under the circumstances that on each of the offenses, that being assault with intent to kill, which is Indictment 2009-GS-10-6732, 2009-GS-10-6730 and 2009-GS-10-6733, that you be sentenced to the State Department of Corrections for a period of ten years.

On the offense of murder, which is Indictment 2009-GS-10-6731, you are sentenced to the State Department of Corrections for a period of thirty years.

These sentences will run concurrent with one another. You'll get credit for any time that you have served. That will be calculated and applied by the Department of Corrections.

I have not heard anything regarding any addictions or other things such that it would be necessary for the Court to order the treatment unit. However, I would encourage you, sir, and again, the Court takes no posture about this or regarding this, that if you know the identity of these other individuals, that you would be forthcoming and provide that information to the State, at least for the benefit of the closure of this family.

Thank you very much. Thank you, gentlemen, for a well-tried case. Have a good weekend and if y'all would make sure the court reporter has all of the evidence so that it can be secured in the evidence locker in the event of an appeal.

(The trial ended at 2:25 p.m.)

--- END REQUESTED TRANSCRIPT ---

803

STATE OF SOUTH CAROLINA)

) CERTIFICATE

COUNTY OF FLORENCE)

I, the undersigned, Krystal J. Smith, Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of General Sessions for Charleston County, South Carolina, on the 23rd through 27th days of January, 2012.

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

s/Krystal J. Smith

Court Reporter

Florence, South Carolina

April 13, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)
STATE VS.)
Jerome Renaldo Coaxum)
AKA:)
Race: BLACK Sex: M Age:
DOB: SS#:
Address: City,State,Zip:
CHARLOTTE, NC 282620000
DL#: SID#: SC01410755
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS1006730
A/W#: K342027
Date of Offense: 1/16/2009
S.C. Code § : 16-03-0620, 17-25-0030
CDR Code #: 0768

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: ASSAULT WITH INTENT TO KILL

in violation of § 16-03-0620, 17-25-0030 of the S.C. Code of Laws, bearing CDR Code # 0768
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Voigt, Gregory	75184	Defendant	Attorney for Defendant	SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of $ _____ ; provided that upon the service of _____ days/months/years and/or payment
of $ _____ ,plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 09-GS-10-6731, 6732, 6733
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk
Court Reporter: Krystal Smith
Presiding Judge A.L. Jaffe
Judge Code: 2128
Sentence Date: 1/27/12

SCCA/217 (03/2011)

805

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on September 1, 2009 the Grand Jurors of Charleston County present upon their oath:

Assault With Intent to Kill

That in Charleston County, South Carolina, on or about January 19, 2009, the Defendant, JEROME RENALDO COAXUM aka JEROME RENALDO CAMPBELL, with malice aforethought accompanied by a present ability to complete the act, did attempt to commit an unlawful act of violent injury to Frank Haigler, to wit: the Defendant did shoot at the victim several times; in violation of the Common Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

GREGORY VOIGT
ASSISTANT SOLICITOR

806

GKV20090100316

DOCKET NO. 2009GS1006730

WITNESSES

Richard Burckhardt

Charleston City Police Department

The State of South Carolina

County of Charleston

AGENCY CASE NUMBER

0900512

COURT OF GENERAL SESSIONS

September Term 2009

ARREST WARRANT NUMBER

K342027

09 G285(01)

THE STATE

DATE OF ARREST

January 16, 2009

vs.

JEROME RENALDO COAXUM
aka
JEROME RENALDO CAMPBELL

ACTION OF GRAND JURY

DOB:

Foreperson of Grand Jury

Date: SEP 01 2009

Indictment for

Assault With Intent to Kill

VERDICT

GUILTY

TRUE BILL

Foreperson of Petit Jury

Date: 1/27/12

INDICT

803

807

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)
STATE VS.)
Jerome Renaldo Campbell)
AKA:)
Race: BLACK Sex: M Age:)
DOB: SS#: Address: MIST)
CIRCLE)
City,State,Zip: CHARLOTTE, NC 282620000)
DL#: SID#: SC01410755)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS1006731
A/W#: K352813
Date of Offense: 1/10/2009
S.C. Code § : 16-03-0010, 0020
CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐PLEADS
TO: MURDER

in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐SERIOUS ☒MOST SERIOUS ☐Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐§17-25-45

The charge is: ☒ As Indicted, ☐Lesser Included Offense, ☐Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Voigt, Gregory	7584			
	SC Bar#	Defendant	Attorney for Defendant	SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 09-GS-10-6730, 6732, 6733
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Called
Court Reporter: KRYSTAL SMITH
Presiding Judge D.L. Jeffay
Judge Code: 2128
Sentence Date: 1/27/12

SCCA/217 (03/2011)

808

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on September 1, 2009 the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County on or about January 9, 2009, with malice aforethought, JEROME RENALDO CAMPBELL did kill and murder Michael German by means of shooting the victim, and that Michael German did die in Charleston County as a proximate result thereof on January 9, 2009; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

GREGORY VOIGT
ASSISTANT SOLICITOR

809

GKV20090100316

) WITNESSES

TIMOTHY DASHER

Charleston City Police Department

AGENCY CASE NUMBER

0900512

ARREST WARRANT NUMBER

K352813

DATE OF ARREST

January 10, 2009

ACTION OF GRAND JURY

Foreperson of Grand Jury *Date:* SEP 01 2009

VERDICT GUILTY

TRUE BILL 1/27/12

Foreperson of Petit Jury *Date:*

INDICT

DOCKET NO. 2009GS1006731

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2009

09 0172/61)

THE STATE

vs.

JEROME RENALDO CAMPBELL
DOB:
B/M

Indictment for

Murder

806

810

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)
STATE VS.)
Jerome Renaldo Campbell)
AKA:)
Race: BLACK Sex: M Age:)
36 DOB: SS#:)
Address: CIRCLE)
City,State,Zip: CHARLOTTE, NC 282620000)
DL#: SID#: SC01410755)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS1006732
A/W#: K352814
Date of Offense: 1/10/2009
S.C. Code § : , 16-03-0620, 17-25-0030
CDR Code #: 0768

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☑ CONVICTED OF or ☐PLEADS
TO: ASSAULT WITH INTENT TO KILL

in violation of § , 16-03-0620, 17-25-0030 of the S.C. Code of Laws, bearing CDR Code # 0768
☐ NON-VIOLENT ☐ VIOLENT ☐SERIOUS ☐ MOST SERIOUS ☐Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐§17-25-45

The charge is: ☐ As Indicted, ☐Lesser Included Offense, ☐Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Voigt, Gregory | 7516 SC Bar# | Defendant | Attorney for Defendant | SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 09-GS-10-6730, 6731, 6733
☑ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (If paid in installments)		$ 3.90
TOTAL		$ 133.90

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk
Court Reporter: KRYSTAL SMITH
Presiding Judge A. L. Goodstein
Judge Code: 2128
Sentence Date: 1/27/12

SCCA/217 (03/2011)

811

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on September 1, 2009 the Grand Jurors of Charleston County present upon their oath:

Assault With Intent to Kill

That in Charleston County, South Carolina, on or about January 9, 2009, the Defendant, JEROME RENALDO CAMPBELL, with malice aforethought accompanied by a present ability to complete the act, did attempt to commit an unlawful act of violent injury to Anthony German, to wit: the Defendant did shoot at the victim; in violation of the Common Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

GREGORY VOIGT
ASSISTANT SOLICITOR

812

GKV20090100316

1 WITNESSES

TIMOTHY DASHER
Charleston City Police Department

AGENCY CASE NUMBER

0900512

ARREST WARRANT NUMBER

K352814

DATE OF ARREST

January 10, 2009

ACTION OF GRAND JURY

Foreperson of Grand Jury SEP 01 2009
Date:

VERDICT

GUILTY
Lodilee Hoyle 1/27/12

Foreperson of Petit Jury *Date:*

INDICT

DOCKET NO. 2009GS1006732

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2009

09 0972 (02)

THE STATE

vs.

JEROME RENALDO CAMPBELL DOB:
B/M

Indictment for

Assault With Intent to Kill

608

~~STATE~~ OF SOUTH CAROLINA)
COUNTY OF Charleston)
STATE VS.)
Jerome Renaldo Campbell)
AKA:)
Race: BLACK Sex: M Age: 36)
DOB: SS#: Address:)
City,State,Zip: CHARLOTTE, NC 282620000)
DL#: SID#: SC01410755)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS1006733
A/W#: K352815
Date of Offense: 1/10/2009
S.C. Code § : , 16-03-0620, 17-25-0030
CDR Code #: 0768

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐PLEADS
TO: ASSAULT WITH INTENT TO KILL

in violation of § , 16-03-0620, 17-25-0030 of the S.C. Code of Laws, bearing CDR Code # 0768
☐, NON-VIOLENT ☒ VIOLENT ☐SERIOUS ☒ MOST SERIOUS ☐Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐§17-25-45

The charge is: ☐ As Indicted, ☐Lesser Included Offense, ☐Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Voigt, Gregory	75180			
	SC Bar#	Defendant	Attorney for Defendant	SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 09-GS-10-6730, 6731, 6732
☒* The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk _____
Court Reporter: _____ Krystal Smith
Presiding Judge _____
Judge Code: 2128
Sentence Date: 1/27/12

SCCA/217 (03/2011)

814

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on September 1, 2009 the Grand Jurors of Charleston County present upon their oath:

Assault With Intent to Kill

That in Charleston County, South Carolina, on or about January 9, 2009, the Defendant, JEROME RENALDO CAMPBELL, with malice aforethought accompanied by a present ability to complete the act, did attempt to commit an unlawful act of violent injury to Michael Allen, to wit: the Defendant did shoot at the victim; in violation of the Common Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

GREGORY VOIGT
ASSISTANT SOLICITOR

GKV20090100316

WITNESSES

TIMOTHY DASHER
Charleston City Police Department

AGENCY CASE NUMBER

0900512

ARREST WARRANT NUMBER

K352815

DATE OF ARREST

January 10, 2009

ACTION OF GRAND JURY

Foreperson of Grand Jury SEP 01 2009
Date:

VERDICT GUILTY

LBRIDGE HOLL TRUE BILL 1/27/12

Foreperson of Petit Jury *Date:*

INDICT

DOCKET NO. 2009GS1006733

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2009

09 6172(B)

THE STATE

VS.

JEROME RENALDO CAMPBELL
DOB:
B/M

Indictment for

Assault With Intent to Kill

812

816

ARREST WARRANT

K- 342027

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of CHARLESTON

THE STATE

against

JSRODTE RENALDO COAXUM Address: 1 CHARLOTTE, NC 28262

Race: B Sex: M Height: 6'4 Weight: 280 SSN: DL State: DLN: DOB: Agency ORI#: CPD Prosecuting Agency:

Prosecuting Officer: BURCKHARDT

Offense: ASSAULT WITH INTENT TO KILL

Offense Code: Code/Ordinance Sec: COMMON LAW

This Warrant is CERTIFIED FOR SERVICE in the [ ] County/ [ ] Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Jerome Coaxum on 1-16-09.

_____
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of) AFFIDAVIT
CHARLESTON)

Form Approved by S.C. Attorney General April 21, 2003 SCCA 010

Personally appeared before me the affiant INV. BURCKHARDT who being duly sworn deposes and says that defendant JEROME RENALDO COAXUM did within this county and state on JANUARY 9, 2009 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of CHARLESTON) in the following particulars:

DESCRIPTION OF OFFENSE: ASSAULT WITH INTENT TO KILL
COMMON LAW

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

Signature of Affiant

Affiant's Address: 180 LOCKWOOD BLVD. CHARLESTON, SC 29403

Affiant's Telephone: (843) 577-7434

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of) ARREST WARRANT
CHARLESTON)

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on JANUARY 9, 2009 defendant JEROME RENALDO COAXUM did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of CHARLESTON) as set forth below:

DESCRIPTION OF OFFENSE:

ASSAULT WITH INTENT TO KILL
COMMON LAW

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on JANUARY 15, 2009

_____ (L.S.)
Signature of Issuing Judge

Judge Code: 5627/SMH

Judge's Address: 1720 SAM RITTENBERG BLVD, UNIT 11 CHARLESTON, SC 29407

Judge's Telephone: (843) 766-6531

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

ORIGINAL

BAIL set by

Judge LOMBARD

on JAN 16 2009

Type and Amount: No Bond

Name of Surety:

PRELIMINARY HEARING held by

Judge

on

Defense Attorney:

Decision:

DISPOSITION before

Judge

on

by

(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition:

Sentence:

JURORS

CHECKLIST

MAG. CRT. CASE # 0439 OT 1

W CASE # 0285

REPORT GROUP 0268

SF CODE 7950

WITNESSES

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

CODEFENDANTS

JUDGE J. ARMSTRONG
CLERK OF COURT
2009 JAN 21 AM 9:38
BY

...T COURT FOR ARRAIGNMENT OR
...E CIR. BE HEREIN TO THE
...ERAL SESSIONS LOCATED IN
...STON COUNTY JUDICIAL CENTER
... STREET, CHARLESTON, S.C.
FEB 27 2009 IF YOU DO NOT
..., AN ARREST WARRANT WILL BE ISSUED
FOR YOUR ARREST

AFFIDAVIT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Personally appeared before me, a magistrate of this county one ,who first being duly sworn deposes and says that (Jerome Renaldo Coaxum) Did within this county and state on the (January 9th, 2009) violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
Assault with intent to kill
Common Law

The affiant states there is probable cause to believe that the defendant named did commit the crime set forth and that such probable cause is based on the following facts:

That on 1/9/09, at approx. 2240 hrs, while at Carriage Ln. near apt. D which is located within the county and city of Charleston, SC, the above named defendant along with several other unidentified co defendants did knowingly, willingly, and unlawfully violate SC. Code of laws AWIK in the following manner. The defendant along with several other unidentified co-defendants acted in concert by engaging the victim in a verbal and physical altercation that escalated when the victim, Frank Haigler, attempted to flee the area on foot and as Haigler turned to run, he was shot at several times by the defendant and unidentified co-defendants, Frank Haigler was not struck by the gunfire. The above is true and believable based on the incident occurring as documented by CPD. The furthered investigation of the incident by CPD investigators, and the positive identification of the defendant by Frank Haigler who knows the defendant by name and sight, and who further placed the defendant at the scene at the time of the shooting.

Sworn to and subscribed before me
This 5 day of , 2009

(L.S.)
Signature of Judge

Complaint # 0900512

Affiant
Charleston Police Department
180 Lockwood Dr.
Charleston, SC 29403
(843) 577-7434

819

ARREST WARRANT

K- 352813

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of

CHARLESTON

THE STATE

against

JEROME RENALDO CAMPBELL a/k/a

Address: century 1

CHARLOTTE NC 28262

Phone: ____ SSN: - -

Sex: Male Race: ____ Height: 6OM Weight: 200

DL State: NOL#: ____

DOB: ____ Agency ORI#: ____

Prosecuting Agency: CPD

Prosecuting Officer: DASHER

Offense: MURDER

Offense Code: ____

Code/Ordinance Sec: 16-3-10

This Warrant is **CERTIFIED FOR SERVICE** in the ☐ County/ ☐ Municipality of ____. The accused is to be arrested and brought before me to be dealt with according to law.

____ (L.S.)
Signature of Judge

Date: ____

RETURN

A copy of this arrest warrant was delivered to defendant ____

on ____.

____
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA)
☐ County/ ☐ Municipality of)
CHARLESTON)

Form Approved by S.C. Attorney General April 21, 2003 SCCA 6/99

AFFIDAVIT

Personally appeared before me the affiant ORC R OWEN who being duly sworn deposes and says that defendant JEROME RENALDO CAMPBELL a/k/a Corken did within this county and state on 01-09-2009 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of CHARLESTON) in the following particulars:

DESCRIPTION OF OFFENSE: MURDER
16-3-10

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

Signature of Affiant

STATE OF SOUTH CAROLINA)
☐ County/ ☐ Municipality of)
X)
CHARLESTON

Affiant's Address 180 LOCKWOOD DRIVE
CHARLESTON, SC 29403

Affiant's Telephone 843-577-7434

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 01-09-2009 defendant JEROME RENALDO CAMPBELL a/k/a Corken did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of CHARLESTON) as set forth below:

DESCRIPTION OF OFFENSE:

MURDER

Having found probable cause and the above affidavit 16-3-10 having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on January 10, 2009

____ (L.S.)
Signature of Issuing Judge

Judge Code: 5749(PBB/rbs)

Judge's Address 3841 LEEDS AVENUE
N. CHARLESTON, SC 29405

Judge's Telephone 843-529-7482

Issuing Court: ☐ Magistrate X Municipal ☐ Circuit

ORIGINAL

by

10 2009

Type and Amount: NO BOND

Name of Surety:

PRELIMINARY HEARING held by

Judge

on

Defense Attorney:

Decision:

DISPOSITION before

Judge

on

by

(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition:

Sentence:

JURORS

CHECKLIST

M. CRT. CASE # 263 FT

W CASE #

PORT GROUP 0116

N CODE

WITNESSES

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

NOTICE TO REPORT

YOU MUST REPORT FOR ARRAIGNMENT OR PLEA ON THE CHARGE HEREIN TO THE COURT OF GENERAL SESSIONS LOCATED IN THE CHARLESTON COUNTY JUDICIAL CENTER, 100 BROAD STREET, CHARLESTON SC 2900E ON FEB 06 2009 IF YOU DO NOT REPORT, AN ARREST WARRANT WILL BE ISSU FOR YOUR ARREST

817

AFFIDAVIT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Personally appeared before me, a magistrate of this county one **ROGER OWEN** ,who first being duly sworn deposes and says that (Jerome Renaldo Coaxum) Did within this county and state on the (January 9th, 2009) violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
Murder 16-3-10

The affiant states there is probable cause to believe that the defendant named did commit the crime set forth and that such probable caubased on the following facts:

That on 1/9/09, at approx. 2250 hrs, while at Old Towne Rd. which is located within the county and city of Charleston, SC, the above named defendant along with several other unidentified co defendants did knowingly, willingly, and unlawfully violate SC. Code of laws 16-3-10/Murder in the following manner. The defendant along with several other unidentified co-defendants acted in concert by traveling to the above location in a white in color, Chevrolet, Impalla W/ North Carolina tags and while at that the location, the defendant and codefendants did shoot at the victim, Michael German and did strike the victim in the head region causing the victim to expire at the scene from his wounds. The above is true and believable based on the incident occurring as documented by CPD. The furthered investigation of the incident by CPD investigators, and the positive identification of the defendant by additional victims at the scene who know the defendant by name and sight and who further placed the defendant at the scene in the above described vehicle at the time of the shooting.

Sworn to and subscribed before me
This day of JAN 09 2009

_____ (L.S.)
Signature of Judge

Complaint # 0900512

_____
Affiant
Charleston Police Department
180 Lockwood Dr.
Charleston, SC 29403
(843) 577-7434

822

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618

ARREST WARRANT

K- 352814

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of

~~CHARLESTON~~

THE STATE

against

JEROME RENALDO CAMPBELL AKA

Address: 1 Corrected

CHARLOTTE NC 28262

Phone: SSN:

Sex: M Race: B Height: 601 Weight: 200

DL State: NC Lic#:

DOB: Agency ORI#:

Prosecuting Agency: CPD

Prosecuting Officer: DASHER

Offense: AWIK

Offense Code:

Code/Ordinance Sec: COMMON LAW

This Warrant is **CERTIFIED FOR SERVICE** in the ☐ County/ ☐ Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant _____ on _____.

_____
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
~~CHARLESTON~~)

AFFIDAVIT

Personally appeared before me the affiant OFC R OWEN who being duly sworn deposes and says that defendant JEROME RENALDO CAMPBELL AKA Corrected did within this county and state on ~~01-09-2009~~ violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of ~~CHARLESTON~~) in the following particulars:

DESCRIPTION OF OFFENSE: AWIK
COMMON LAW

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

Signature of Affiant

Affiant's Address 180 LOCKWOOD DRIVE
CHARLESTON, SC 29403

Affiant's Telephone ~~843-577-7434~~

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of)
~~CHARLESTON~~)

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on ~~01-09-2009~~ defendant ~~JEROME RENALDO CAMPBELL~~ AKA Corrected did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of ~~CHARLESTON~~) as set forth below:

DESCRIPTION OF OFFENSE:

AWIK
COMMON LAW

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)
on ~~January 10, 2009~~)
_____ (L.S.))
Signature of Issuing Judge)
Judge Code: 5749(PBB/rbs)

Judge's Address ~~3841 LEEDS AVENUE~~
~~N. CHARLESTON, SC 29405~~

Judge's Telephone ~~843-529-7482~~

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

819

10 2mg

and Amount

Name of Surety:

PRELIMINARY HEARING held by

Judge

on

Defense Attorney:

Decision:

DISPOSITION before

Judge

on

by

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition:

Sentence:

JURORS

JM-CRT CASE #

W CASE #

EPORT GROUP 0708

SI CODE 7900

WITNESSES

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

CODEFENDANTS

NOTICE TO REPORT

YOU MUST REPORT FOR ARRAIGNMENT OR PLEA ON THE CHARGE HEREIN TO THE COURT OF GENERAL SESSIONS LOCATED IN THE CHARLESTON COUNTY JUDICIAL CENTER, 100 BROAD STREET, CHARLESTON ON FEB 06 2008 2:00 PM IF YOU DO NOT REPORT, AN ARREST WARRANT WILL BE ISSUED FOR YOUR ARREST

AFFIDAVIT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ROGER OWEN

Personally appeared before me, a magistrate of this county one Not Complete ,who first being duly sworn deposes and says that (Jerome Renaldo Coaxum) Did within this county and state on the (January 9th, 2009) violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
Assault with intent to Kill
Common Law

The affiant states there is probable cause to believe that the defendant named did commit the crime set forth and that such probable cause is based on the following facts:

That on 1/9/09, at approx. 2250 hrs, while at Old Towne Rd. which is located within the county and city of Charleston, SC the above named defendant along with several other unidentified co defendants did wingly, willingly, and unlawfully violate SC. Code of laws AWIK in the following manner: The defendant along with several other unidentified co-defendants acted in concert by traveling to the above location in a white in color, Chevrolet, Impalla W/ North Carolina tags and while at that the location, the defendant and codefendants did shoot at the victim, Anthony German. The victim, German was not struck by the gunfire.
The above is true and believable based on the incident occurring as documented by CPD,

The furthered investigation of the incident by CPD investigators, and the positive identification of the defendant by additional victims at the scene who know the defendant by name and sight and who further placed the defendant at the scene in the above described vehicle at the time of the shooting.

Sworn to and subscribed before me
This day of JAN 10 2009

(L.S.)
Signature of Judge

Complaint # 0900512

Affiant
Charleston Police Department
180 Lockwood Dr.
Charleston, SC 29403
(843) 577-7434

825

ARREST WARRANT

K- 352815

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of

CHARLESTON

THE STATE

against

JEROME RENALDO CAMPBELL, AKA COMMON

Address: ✓

CHARLOTTE, NC 28262

Phone: SSN: - -

Sex: M Race: B Height: 604 Weight: 200

DL State: NC DL#:

DOB: Agency ORI#:

Prosecuting Agency: CPD

Prosecuting Officer: DASHER

Offense: AWIK

Offense Code:

Code/Ordinance Sec: COMMO. LAW

This Warrant is CERTIFIED FOR SERVICE in the ☐ County/ ☐ Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant _____ on _____.

_____
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

822

STATE OF SOUTH CAROLINA)
☐ County/ ☐ Municipality of)
CHARLESTON)

Form Approved by S.C. Attorney General April 21, 2003 SCCA 618

AFFIDAVIT

Personally appeared before me the affiant OFC R OWEN who being duly sworn deposes and says that defendant JEROME RENALDO CAMPBELL, AKA COMMON did within this county and state on 01-09-2009 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of CHARLESTON) in the following particulars:

DESCRIPTION OF OFFENBE: AWIK
COMMON LAW

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

Signature of Affiant

STATE OF SOUTH CAROLINA)
☐ County/ ☐ Municipality of)
X)
CHARLESTON

Affiant's Address 180 LOCKWOOD DRIVE
CHARLESTON, SC 29403
Affiant's Telephone 843-577-7434

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 01-09-2009 defendant JEROME RENALDO CAMPBELL, AKA COMMON did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of CHARLESTON) as set forth below:

DESCRIPTION OF OFFENSE: AWIK
COMMON LAW

Having found probable cause and the above affidavit being sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on January 10, 2009

_____ (L.S.)
Signature of Issuing Judge

Judge Code: 5749(PBB/rbs)

Judge's Address 3841 LEEDS AVENUE
N. CHARLESTON, SC 29405
Judge's Telephone 843-529-7482

Issuing Court: ☐ Magistrate X Municipal ☐ Circuit

ORIGINAL

826

Bail set by

Surety:

PRELIMINARY HEARING held by

Judge

on

Defense Attorney:

Decision:

DISPOSITION before

Judge

on

by

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition:

Sentence:

JURORS

JM CRT. CASE #

W CASE #

REPORT GROUP 0768

SI CODE 7903

WITNESSES

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

CODEFENDANTS

NOTICE TO REPORT

YOU MUST REPORT FOR ARRAIGNMENT OR PLEA ON THE CHARGE HEREIN TO THE COURT OF GENERAL SESSIONS LOCATED IN THE CHARLESTON COUNTY JUDICIAL CENTER, [illegible] ROAD STREET, CHARLESTON, SC AT 2:00 PM ON FEB 06 [illegible]. IF YOU DO NOT REPORT, AN ARREST WARRANT WILL BE ISSUED FOR YOUR ARREST.

823

AFFIDAVIT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Personally appeared before me, a magistrate of this county one ROGER OWEN a/k/a Campbell ,who first being duly sworn deposes and says that (Jerome Renaldo Coaxum) Did within this county and state on the (January 9th, 2009) violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
Assault with intent to Kill
Common Law

The affiant states there is probable cause to believe that the defendant named did commit the crime set forth and that such probable cause is based on the following facts:

That on 1/9/09, at approx. 2250 hrs, while at Old Towne Rd. which is located within the county and city of Charleston, SC, the above named defendant along with several other unidentified co defendants did knowingly, willingly, and unlawfully violate SC. Code of laws AWIK in the following manner. The defendant along with several other unidentified co-defendants acted in concert by traveling to the above location in a white in color, Chevrolet, Impalla W/ North Carolina tags and while at that the location, the defendant and codefendants did shoot at the victim, Michael Allen The victim, Allen was not struck by the gunfire.
The above is true and believable based on the incident occurring as documented by CPD. The furthered investigation of the incident by CPD investigators, and the positive identification of the defendant by additional victims at the scene who know the defendant by name and sight and who further placed the defendant at the scene in the above described vehicle at the time of the shooting.

Sworn to and subscribed before me
This day of JAN 10 2009

(L.S.)
Signature of Judge

Complaint # 0900512

Affiant
Charleston Police Department
180 Lockwood Dr.
Charleston, SC 29403
(843) 577-7434

828

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Deadra L. Jefferson, Circuit Court Judge
Appellate Case No. 2012-208426

THE STATE OF SOUTH CAROLINA,

Respondent,

v.

JEROME RENALDO CAMPBELL,
a/k/a Jerome Coaxum,

Appellant.

INITIAL BRIEF OF RESPONDENT AND DESIGNATION OF MATTER

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
S.C. Bar No. 5758
P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit
101 Meeting Street, Suite 400
Charleston, SC 29401-2214
(864) 467-8647

ATTORNEYS FOR RESPONDENT

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RESPONDENT'S STATEMENT OF THE CASE 1

ARGUMENT

I. **The trial judge did not abuse its discretion in removing juror Givens prior to any deliberations with an alternate out of an abundance of caution where the removed juror was seen conversing with a member of the Appellant's family, where the removed juror had been instructed prior to the lunch break to not converse with anyone, where the removed juror initially denied the existence of any contact, where a video shows the removed juror grabbing and pulling the family member to her side and where there was an uncontradicted claim that a family member of the Appellant was overheard stating that the juror was "on their side" after the viewed conversation. Discretion, based upon the judge's particular concern that there would be a perception that any verdict was not fair or impartial, allowed the Court to act to remove the juror, even though the court did not conclude the juror's non-disclosure was intentional.** 2

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I. Did the lower court abuse its discretion by allowing the State to challenge and to remove an impartial juror without cause during the second day of trial?

II. Did the lower court impair Appellant's right to a fair jury selection process by giving the State a *de facto* sixth peremptory challenge during the second day of trial?

RESPONDENT'S STATEMENT OF THE CASE

The Appellant, Jerome Renaldo Campbell, *aka* Jerome Renaldo Coaxum, was indicted at the September 2009 term of the Court of General Sessions for Charleston County for assault with intent to kill (Frank Haigler) (2009-GS-10-6730); murder (Michael German) (2009-GS-10-6731); assault with intent to kill (Anthony German) (2009-GS-10-6732); and assault with intent to kill (Michael Allen) (2009-GS-10-6733). The charges arose from an incident on January 9, 2009.

The Appellant was represented by William Stephen Harris and Jason Todd Mikell. The prosecution was handled by Assistant Solicitor Gregory Voigt and Elizabeth B. Riddle of the Ninth Circuit Solicitor's Office. On January 23, 2012, the matter was called to trial before a jury and the Honorable Deadra Jefferson, Presiding Judge. On January 27, 2012, the Appellant was found guilty of all four indictments. Tr. 782-783. He was sentenced by the Judge Jefferson to concurrent terms of imprisonment of thirty (30) years on murder, and ten (10) years on each fo the assault with intent to kill verdicts. Tr. p. 797, l. 5 - p. 798, l. 21.

ARGUMENT

I. The trial judge did not abuse its discretion in removing juror Givens prior to any deliberations with an alternate out of an abundance of caution where the removed juror was seen conversing with a member of the Appellant's family, where the removed juror had been instructed prior to the lunch break to not converse with anyone, where the removed juror initially denied the existence of any contact, where a video shows the removed juror grabbing and pulling the family member to her side and where there was an uncontradicted claim that a family member of the Appellant was overheard stating that the juror was "on their side" after the viewed conversation. Discretion, based upon the judge's particular concern that there would be a perception that any verdict was not fair or impartial, allowed the Court to act to remove the juror, even though the court did not conclude the juror's non-disclosure was intentional.

It has been stated that a criminal defendant does not have a right to be tried by a particular juror, but only to have fair and impartial jurors decide his fate. See State v. Rayfield, 369 S.C. 106, 113, 631 S.E.2d 244, 248 (2006). A trial judge should have the reasonable discretion to replace a juror with an alternate juror "out of an abundance of caution" to preserve the appearance of the fairness of a trial after evidence is presented concerning comments made after the juror is viewed conversing with a member of the criminal defendant's family [1] after being instructed "do not have any contact with anyone in or about the courthouse"[2] by member of the crime victim's family who overhears the defendant's family member state out loud after speaking with the juror "I have them on my side." [3] Discretion should allow under these discrete circumstances the cautionary removal of the same juror when that the juror initially failed to

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[1] Tr.p. 41-42, Court Exhibit 2 (surveillance video of courthouse snack bar), Court Exhibit 3 (statement or Trenell German); Court Exhibit 4 (statement of Tiffany Peacock).

[2] Tr.p. 40, l. 17-19.

[3] Court Exhibit 4.

respond to a general inquiry concerning the contact between jurors and others during the lunch recess about this hidden contact [4], even after the judge particularized to the jury that that the improper contact occurred in the snack bar with members of the defendants's family.[5] Although the trial judge found that the juror's partiality had not been shown nor that her misleading non-disclosure was deliberate, the trial court concluded that she was constrained to remove the juror to avid the perception and avoid any question regarding the partiality of the verdict. Tr.p. 180-182. The trial court's decision to do replace the juror with an alternate, under these circumstances should not mandate a new trial. See State v. Simmons, 599 S.E.2d 448 (2004)(trial court did not abuse its discretion by dismissing a juror after a murder trial had begun, where juror admitted that he had unauthorized contact with his wife about the personal effect of a guilty verdict would have on them, and the trial judge had admonished the jury not to discuss the case with anyone).

Further any error was harmless where the alternate was present throughout the proceeding and the Appellant had not shown he was prejudiced by the substitution prior to any deliberations. State v. Williams, 469 S.E.2d 49 (1996) (defendant was not prejudiced from seating an alternate juror after juror was dismissed). See Ballentine v. State, 390 S.E.2d 887 (Ga. App. 1990) (replacement of regular juror with alternate during deliberations , due to innocent error as to who was regular juror and who was alternate, was harmless error , where correct number of jurors deliberated, extra juror had no influence upon jurors decision, and alternate juror was drawn from same source, in same manner, had same qualifications as other jurors , and listened to same evidence and charge of court); Barker v. State, 487 S.E.2d 494 (Ga. App. 1997) (no harmful

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[4] Tr.p. 47, l. 15- p. 48, l. 21.

[5] Tr.p. 49, l. 4-17, p. 49, l. 18-, p. 50, l. 15.

error in court replacing juror with alternate where court found that juror's conduct amounted to immaterial irregularity," if any , and court would thus have been entitled to retain juror, while it was claimed that investigator stated to juror "we got one ," and that juror repeated the statement and shook hands with investigator, trial court conducted inquiry , and determined that only greetings were exchanged, but excused juror out of an abundance of caution and seated alternate); Lee v. State, 11 S.W. 3d 553 (Ark. 2000)(a defendant must show prejudice when the trial court removes a juror and seats an alternate in the juror's place); Thornberg v. State, 985 P. 2d 1234 (Okla. Crim App. 1999)(removal of juror on less than clear and convincing evidence of misconduct did not prejudice murder defendant and did not require reversal, where removed juror was replaced by alternate who had been passed upon by both the state and the defense); State v. Pettigrew, 860 P. 2d 777 (N.M. App. 1993)(defendant's were not prejudiced by court's excusal of juror following unauthorized contact with public defender intern and replaced with alternate chosen in same manner as excused jurors and defendant had no right to a particular juror on the panel).

The Appellant contends that he is entitled to a new trial due to the qualified juror being replaced by a qualified alternate. He contends because there was no showing that removed juror Robin Givens (juror #70) intentionally concealed information about the encounter with the defendant's family at the snack bar, no inference of partiality was shown and it was error to remove her, citing State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001) and S.C. Code Ann., § 14-7-1020 (1976). He contends that when Judge Jefferson concluded that juror Givens did not intentionally conceal any information, that the court inquiry should have ended at that point and she should have remained on the jury, citing State v. Guillebreaux, 362 S.C. 270, 607 S.E>2d 99

(S.C. Ct. App. 2004). He further contends that even if juror Givens concealed information, that the court erred in allowing the state to challenge Givens because the information concealed would not have been a material factor for a peremptory challenge or support a challenge for cause, citing State v. Stone, 359 S.C. 442, 567 S.E.2d 244 (2002) ("scant acquaintance" insufficient to remove the juror where it would not support a challenge for cause nor a material factor in the state's exercise of a peremptory challenge). He claims that the allegedly similar "scant acquaintance" would not be a material factor in the state's exercise of a peremptory challenge or cause for exclusion had it been revealed. He argues that because the state had exhausted all its peremptory challenges before juror Givens was called, he was not prevented from the intelligent exercise of the strike.

As shown more fully below, the Appellant's assessment is misplaced. The salient factors - recognized by the trial judge - was that juror Givens did not follow the instructions of the court to avoid contact. To the contrary, she was shown actually pulling the family member towards her after juror Givens had initiated the contact with a wave. Further, the juror failed to reveal the existence of the contact after it was learned by a complaint from a member of the victim's family that such improper contact had in fact occurred. It was only after the snack bar surveillance video revealed support for the victim's complaints and a second - more direct - inquiry that juror Givens admitted that there was contact. Although the trial court found that juror Givens' interaction was innocent and that juror Givens had no intention to mislead the court during the original voir dire because the family names were not revealed in her instruction, it is clear that she failed to respond to inquiry after the contact was revealed to the state and the court. While the trial court stated that it was innocent contact by the juror - albeit in derogation of the almost

contemporaneous cautionary instructions by the court - Judge Jefferson recognized that while it was not shown that the case was discussed between them - perception is often the reality and that to preserve the integrity of a verdict she was removed. Where statements were made after the contact by the person that "I have them on our side," discretion was not abused in the removal.

STANDARD OF REVIEW - Abuse of Discretion.

"[A] criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury." Palacio v. State, 333 S.C. 506,511 S.E.2d 62, 68 (1999). " '[I]n order to fully safeguard this protection, it is required that the jury render its verdict free from outside influences of whatever kind and nature.' " State v. Bryant, 354 S.C. 390, 581 S.E.2d 157,160 (2003)[quoting State v. Cameron, 311 S.C. 204,428 S.E.2d 10, 12(Ct.App. 1993)].

A decision on whether to dismiss a juror and replace her with an alternate is within the sound discretion of the trial judge, and such decision will not be reversed on appeal absent an abuse of discretion. State v. Smith, 338 S.C. 66, 525 S.E.2d 263, 265 (Ct. App. 1999). More specifically, "[I]t is within the discretion of the trial court to determine whether bias results from a juror's reception of outside information concerning the case being tried." Washington v. Whitaker, 317 S.C. 108,451 S.E.2d 894, 900 (1994); see State v. Ivey, 331 S.C. 118, 502 S.E.2d 92, 94 (1998)[noting a juror's competence is within the trial judge's discretion and is not reversible on appeal unless wholly unsupported by the evidence]; see also State v. Loftis, 232 S.C. 35,100 S.E.2d 671,675 (1957)[declining to interfere with trial judge's discretion in matter concerning jury, because trial judge has the opportunity to consider credibility of jurors].

"To protect both parties' right to an impartial jury, the trial judge must ask potential jurors whether they are aware of any bias or prejudice against a party." State v. Woods, 345 S.C. 583,

550 S.E.2d 282, 284 (2001).[6] "Determining whether a juror's failure to respond to a voir dire question amounts to intentional concealment is a 'fact intensive determination that must be made on a case-by-case basis.' " State v. Guillebeaux, 362 S.C. 270, 607 S.E.2d 99,101-02 (Ct. App. 2004) quoting State v. Sparkman, 358 S.C. 491, 596 S.E.2d 375, 377 (2004)]. "Intentional concealment occurs 'when the question presented to the jury on voir dire is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable.' " Id. "Concealment is considered unintentional where the voir dire question posed is ambiguous or incomprehensible to the average juror or where 'the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances.' " Id.

The goal of the corrective measures is to insure the defendant's right to a fair trial has not been compromised. State v. Stone, 290 S.C. 380, 382, 350 S.E.2d 517, 518 (1986). Cautionary instructions or substitution of alternate jurors may cure the prejudice caused by the publicity. United States v. Hankish, 502 F.2d 71 (4th Cir.1974). The determination of what curative measures are appropriate in a given case rests in the sound discretion of the trial judge. He should exhaust other methods to cure the prejudice before aborting a trial. Id. at 77.

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[6]"When a juror conceals information inquired into during voir dire, a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges." Id. "Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial. On the other hand, where the failure to disclose is innocent, no such inference may be drawn." Id.

How the Juror Exclusion Issue was Raised.

A. The General Voir Dire

On January 23, 2012, Judge Jefferson made a general voir dire of the potential jury panel. Tr. 17-27. Concerning the particular parties in this criminal action, Judge Jefferson inquired as follows:

> Is there any member of the panel related by blood or marriage to Jerome Renaldo Campbell, Michael Allen, Anthony German, Frank Haigler, or anyone who is related to or a member of - - or have any connection with Michael German? If so, please stand at this time?
>
> (Whereupon, no one stands.)
>
> The Court: Does any member of the panel have a close - - close personal or social relationship with Jerome Renaldo Campbell, Michael Allen, Anthony German, Frank Haigler or anyone who is related to Michael German? If so, please stand at this time.
>
> (Whereupon no one stands.)
>
> The Court: The following are a list of potential witnesses in this case. I would ask that you listen very carefully. Jerome Renaldo Campbell, Charise Coaxum, Christopher Robinson, Aaron Burnham, Sandra Campbell, Jordan Richardson, John Tisdale, Mary Phillips, Anita Moore, Mike Sherman, Richard Wiersman - - Wiersma, W-I-E-R-S-M-A, Richard Burckhardt, Sergeant Scott Ray, Rene Charles, all of the Charleston Police Department, Ryan Kelly, Anthony German, Michael Allen, Timothy McCarthy, James Tawney, Frank Haigler, Kenneth Whitler, John Roberts, all of the South Carolina Law Enforcement Division, Erin Presnell, Medical University of South Carolina, Joshua Briar-Ridgeway, and Joy Glover.
>
> Is there any member of the panel related by blood or

marriage to any of the people that I have just listed or does anyone have a close personal or social relationship with any of these individuals? If so, please stand at this time.

(Whereupon no one stands.)

Tr. p. 21, l. 8 - p. 22, l. 11. During the voir dire, concerning family members in law enforcement, potential juror Robin Givens (70) indicated she had a cousin who was with the North Charleston Police Department. Tr. p. 25, ll. 10-16. Potential juror Erica Gadsden (63) indicated that she had a cousin in the Charleston Police Department. Tr. p. 25, l. 18 - p. 26, l. 1.[7]

B. The Jury Selection

The jury was selected in the following manner:

Name	State	Defense	Seated
Kelly Grobmeyer (82)	1	-	-
Keith Culbreath (42)	-	-	1
Danielle Bowles (14)	2	-	-
Lorilee Hoyle (107)			2
Alicia Brown (16)	-	-	3
Jessica Walters (275)	-	1	-
Cynthia Wilcher (286)	3	-	-
***Erica Gadsden (63)**	-	-	4
Alex Pearson (193)	-	-	5
Henry Cheves (33)	-	-	6
Paul Porter (205)	-	-	7
Helen Spann (25)	-	-	8
Glenda Elayda (52)	-	2	-
Christina Janke (115)	4	-	-
Stacy Stewart (255)	-	-	9
Matthew Sullivan (259)	-	-	10
William Kufner (131)	5	-	-
Cathy Thomas (262)	-	3	-
***Robin Givens (70)**	-	-	11

[7] During the voir dire, Judge Jefferson did not ask the potential jurors concerning whether any of the jurors were acquainted with Jerome Campbell (Coaxum)'s family members. In addition, the appellant's family members were not specifically identified by the court. .

Julie Lowman (143)	-	-	12
Laura Patrick (187)	-	-	1A
Laura Owings (184)	-	1	-
William Latimer (132)	-	-	2A

Tr. p. 28, l. 1 - p. 35, l. 24. Thus, prior to the selection of Juror Givens, the State had already exhausted all five of its peremptory challenges.

C. The Lunch Recess and Cautionary Instructions.

Judge Jefferson then advised the jury panel that they were breaking to discuss scheduling with counsel. In particular, she advised the selected panel concerning the potential lunch break:

> During this break, please do not discuss the case among yourselves. Please don't speculate about what you think it may or could be about...

Tr. p. 36, ll. 22-25.

After a brief break, the jury was returned and sworn. Tr. 38-39. Judge Jefferson gave additional and more specific instructions concerning the lunch break discussions. Tr. 39-41. In particular, she instructed:

> During the break, **please do not discuss the case among yourselves or with anyone else**. Please don't speculate about what you think it may or could be about. Please don't do any independent research. That includes anything that could be found on the internet or any other alternate source. As the fact finders in this case, you are bound to decide this case according to the evidence that you hear from the lips of the sworn witnesses and the other evidence that will be introduced.
>
> **Also, please do not have any contact with anyone in or about the courthouse. There are a lot of witnesses in this case and again, we would not want an innocent conversation to be observed and misinterpreted. ...**

Tr. p. 40, ll. 3-19 (emphasis added).

D. The Initial Motion Concerning Lunch Break Communications.

Subsequently after the lunch break, the court reconvened. At that time, Assistant Solicitor Voigt advised Judge Jefferson that members of the victim's family had reported to him that while they were in the snack bar they saw two members of the jury conversing with a family member or friend of the Campbell group (defendant's).[8] It was reported that one of the Campbell group was overheard to say after the conversation with the jurors that "they're on our side." Tr. p. 41, l. 25 - p. 26, l. 6.

When Judge Jefferson questioned whether they were actually jurors in this case, Solicitor Voigt reported that they had jury stickers on and he suggested it was Erica Gadsden, juror 63, in a yellow shirt and an older woman wearing a dark jacket which fit the description of Ms. Givens (juror 70). Tr. p. 42, ll. 16-25. Solicitor Voigt also proffered that the family member who was identified as making the statement ["on our side"] was present in the court and could be identified. Tr. p. 43, ll. 1-4.

Defense counsel then also questioned whether it was actually a juror in the present case.

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[8]Subsequently, a surveillance video from the courthouse snack bar was presented during a a hearing on the written motion. Court Exhibit # 2 [in possession of the Court]. The silent video reveals what subsequently was determined to be juror Erica Gadsden (Juror 63) in a bright yellow shirt with juror Robin Givens in a red coat (Juror 70) entering the snack bar area at on the video. [12:26:30]. They are viewed sitting down and conversing while eating. A group of four females subsequently enters the snack bar area. Juror Givens waves at group at 1:19:52. One female walks over and juror Givens reaches out and grabs her hand and pulls the female toward her at 1:20:00. This female remains in apparent conversation at the table where Givens and Gadsden are seated while three others briefly move away. This person remains in conversation until 1:20 :36 when she moves away toward her three remaining group members. The female she spoke with in the group goes back toward the door and juror Givens gets up preparing to leave and has another brief conversation with the same female at 1:21:10. The person then leaves while the remaining three members remain [with others who later share pleasantries and replace the departed jurors at the table]. Juror Gadsden leaves, followed by juror Givens at 1:21:25. **Court Exhibit #2.**

Tr. 43-44.

Judge Jefferson stated she would do a voir dire. She also noted how people may perceive matters differently in matters of passing conversation. Tr. 44-46. Judge Jefferson stated that she would voir dire the jury to make sure that they followed her instructions without objection. Tr. p. 46, ll. 9-16.

The Initial Voir Dires Concerning the Contact.

The jury panel was then presented to the court. During her colloquy, she asked the following question:

> Before we begin that process of opening instruction and opening argument, I gave the jury strict instructions that they were not to have any contact with anyone in or about the courthouse who did not have a juror sticker on because, again, very innocent conversations could be very easily misinterpreted and misconstrued. I need to ask you all did any of you during the lunch and recess have any contact with anyone in or about the courthouse who did not have a juror sticker on? If so, if you did, I need you to raise your right hand for me.
>
> (Whereupon, one juror raises her right hand.)

Tr. p. 47, ll. 15-17. Juror Stewart indicated that she was having lunch outside the courthouse and she spoke to a gentleman, but not about the case. Tr. p. 48, ll. 1-13. No response was made by either juror Givens or juror Gadsden.

Judge Jefferson then made further inquiry of the jury:

> The Court: Okay. Is there anyone else who had any contact with anyone in or about the courthouse, either in the snack bar or any other parts of the building that did not have a juror sticker on and you hand any interaction with them?

(Whereupon, there is no further response from any of the jury members.).

Tr. p. 48, ll. 14-21.

Judge Jefferson then re-iterated her earlier instructions about the importance of avoiding innocent conversations which may be misinterpreted, particularly noting that the gallery was full of members from the victim's and defendant's families. She continued:

> **I need for you all to be aware that reports have been made to the Court that conversations took place in the snack bar otherwise with members of -- with differing parts of members of the family and that there was a perception that the jury might be inclined or already predisposed regarding this case.** Again, I don't have any independent information that that is accurate. However, I will reinforce that even an innocent conversation can be easily misinterpreted.
>
> Emotions run very high during a trial. As you are well aware, the allegations in this case are significant and perception becomes reality. so I would ask that you very stringently follow my instructions and have no conversation with anyone in or about the courthouse who does not have a blue juror sticker on....

Tr. p. 49, ll. 4-17. (Emphasis added). See also, Tr. p. 49, l. 18 - p. 50, l. 15. No exceptions to the instructions were raised by the State on defense. Tr. p. 50, ll. 16-18.

Judge Jefferson then continued her instructions on the case. Tr. 50-59. Included within the instructions was another admonishment to not discuss the case with anyone or consider matters outside of the courtroom.. Tr. p. 53, ll. 2-22.

E. The Trial.

During the trial, juror 205 wrote a note claiming that he "knows the brothers." Tr. p. 106, l. 23 - p. 107, l. 2. After further extended inquiry with the juror, it was unclear whether the Campbell brothers he knew in James Island years before were related to the Appellant. Tr. 107-

114. The trial judge concluded that the particular juror could be fair and impartial and he remained on the jury. Tr. 115-16.

F. The Written Motion to Exclude Jurors and Hearing.

On January 24, 2012, the prosecution made a written motion to exclude two jurors. [State's Motion to Exclude Jurors] ROA. The focus of the State's motion again concerned jurors 63 (Gadsden) and juror 70 (Givens). In particular, the motion declared:

> 3. The State is in possession of video from the Snack Bar taken during the Court's lunch break. The video (attached hereto as Attachment #1)[9] clearly shows members of the defendant's family enter the Snack Bar. **One family member, identified as defendant's sister, engages Jurors numbers 63 and 70 in conversation and goes as far as giving Juror number 70 a hug. Later, another of the defendant's family appears to have given the jurors a short greeting.**
>
> 4. The actions captured by the Snack Bar video belie the answers given by these jurors to the Court's clear questions regarding potential improper contact during the lunch break. More troubling than the contact is the jurors' lack of candor towards the court. The jurors' mendacity undermines any faith that these jurors can fulfill their oath fairly.
>
> 5. Had the State known of any familiarity, however, slight, between these jurors and a member of the defendant's family, the State would have exercised its peremptory challenges on these jurors.

State's Motion, p. 1-2. ROA _. (Emphasis added). The State supplemented the motion with Court Exhibit 3 (Statement of Trenell German)[10] and Court Exhibit 4 (Statement of Tiffany

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[9]Court Exhibit #2 described infra, at fn. 2.

[10]In Trenell German's January 23, 2012 statement he declared:

Peacock)[11]. Tr. 154. At the motion hearing, the prosecutor asserted that during the inquiry the day before neither juror raised their hands upon the trial judge's inquiry. Assistant Solicitor Voigt stated that he saw juror Gadsden look into the audience on the inquiry. Tr. p. 156, ll. 2-17. Judge Jefferson commented that in her view she was avoiding her eyes and looked toward the bailiffs. Tr. p. 156, ll. 18-23.

Counsel for the State asserted that in the earlier voir dire, the court gave the jurors the

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I witnessed Candance Ladson speaking with the juror with the yellow shirt on, heavy set female looks like to be about 24, African America, they talked for about two minutes.

Q. How do you know they were jurors?
A. As Jurors were coming out in the courtroom first time she had on blue/white juror sticker.
Q. How do you know Ms. Ladson?
A. She the mother of my sister in law and sister of Jerome Campbell
Q. Where did the conversation take place?
A. Courtroom snack bar.
Q. Describe the juror in question the best you can.
A. She's an African American female on the heavy side she has on a yellow shirt (bright). She had diamond heart earring in her ears. She has pink nail polish (on nails). She looks to be 24.

Court Exhibit 3. ROA. _ .

[11]In Tiffany Peacock's January 23, 2012 statement she declared:

I did on 1-23-2012 observe two of the jury members. The conversation appeared to last approx. 2 -4 min. , and it appeared that the jurors and the family of the defendant knew each other. During the conclusion of the conversation I observed a black female with a brown jacket and pants casual sweat suit making the statement "I have them on our side." I proceeded to ask Trenelle "I thought we could not have contact with the jury." She stated that she thought the same and that she would speak with Mrs. Porcel. The two jury members that I observed were both black females, one heavier set with a yellow screen print type shirt. The other had long wavy hair and a heavy jacket that was dark in color. This conversation took place in the court house snack bar approx. 1:20 PM on 1-23-2012.

Court Exhibit 4. ROA _ .

opportunity for an innocent explanation and now the conversation is shown on the video from the snack bar. Tr. p. 157, ll. 9-18. The State contended that there was deliberate misleading of the court and asked that the jurors be removed. Tr. 157-58.

The defense asserted that he also viewed the juror during the questioning and the person in the video (a cousin, not his sister) was not in the courtroom after lunch as earlier asserted by the State. Tr. 158-59. The defense stated that there was no audio in the video so the conversation is not revealed and suggested it could have been innocent or that they did not know the person was on the jury. Tr. 160. The defense expressed a concern about a mistrial if both jurors are removed due to the earlier concern by juror Porter about the "Campbell brothers", potentially leaving eleven (11) jurors. Tr. 160-61.

The defense stated that juror 70 (Givens) on the video was the only person talking with a relative and the video did not show the juror badge on her, although it shows it on juror Gadsden. Tr. 161. The defense stated: "If Your Honor is going to excuse on that you excuse Ms. Givens based on that you can see somebody talking to her, but we don't know what the conversation entails." Tr. p. 161, ll. 14-17.

Judge Jefferson stated she had viewed the video several times. She stated that some alleged members of the defendant's family walk into the snack bar and made contact with a juror seated at a round table. Tr. p. 161, ll. 18-25. The person is seated with her back to the camera and identified as interacting, but she did not see a hugging. [12] Judge Jefferson described the other juror in the yellow shirt as quiet and exits. **From the video, Judge Jefferson stated it was**

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[12] The video, in fact, reveals the juror reaching out while remaining seated, grabbing a female's outstreached hand and pulling her towards her. Court Exhibit #2, 1:20:00.

difficult, but notes that there was clearly interaction between a juror and a member of the defendant's family that was prohibited in her instructions. Tr. p. 163, ll. 3-9. Judge Jefferson noted that the names German, Coaxum and Campbell were used in the voir dire, but it was possible that they would not have been recognized. However, she noted it was troubling that this contact was not disclosed in the intervening voir dire. Tr. 164.

a. **The Givens Voir Dire**

Judge Jefferson first voir dired juror Givens. Tr. 168-173. Juror Givens declared she had lunch at the snack bar with juror 63 (Juror Gadsden). Tr. 168-69. She confirmed that while having lunch a girl from James Island came up to her. She stated she knew her through a friend and that they had "hung out together a few times", like going to birthday parties. Tr. p. 169, ll. 7-20. Juror Givens stated she had seen the girl last year in June or July, but not since until yesterday. Tr. p. 169, l. 21 - p. 162, l. 1. She did not consider the girl a close friend, did not talk to her on the telephone, but recalled she was named after a champagne or wine. She said that they hailed each other in the snack bar and was surprised to see her. Tr. 170. She did not think she was involved in the case and asserted that she did not have a discussion about the case. Tr. 170-71. She said that they just talked about the friend they had in common and about the girl's grandmother she had moved in with. Tr. 171.

Juror Givens again stated she did not have a discussion about the case and that the girl was not to her knowledge related to the defendant. Tr. 171. Juror Givens stated that she recalled the instructions not to speak with anyone, but admitted that she forgot it when she saw someone from the neighborhood. Tr. p. 172, ll. 4-16. She opined that she could still be fair and impartial and decide the case on the evidence. Tr. 171-72.

The State urged, in reliance on its written motion to remove contending that Juror Givens had misled the court yesterday in her failure to answer the court's questions about the contact. He stated that due to the omission, she was not entitled to any presumption of impartiality. Tr. p. 174, ll. 12-18.

The defense asserted it was not an intentional omission on her part. He asserted it was cleared up when asked if she was in the snack bar and spoke with someone. Tr. 175. He noted her statements about impartiality and that it was a passing acquaintance. Tr. 174-75.

b. The Gadsden Voir Dire

Judge Jefferson next voir dired juror Gadsden (63). Although she initially denied having lunch with Ms. Givens at the snack bar, she then confirmed she had lunch with her, but did not know her name. Tr. 176. She confirmed that someone came up to juror Givens and juror Gadsden asked her if she knew the person from someplace and the girl responded no. Tr. 176-77. Gadsden claimed she did not have further contact with anyone other than Givens. Gadsden had no reason why she did not respond yesterday about having interaction with anyone in the courthouse other than a juror. Tr. 177. She denied knowing anyone who was a family member of Michael German or Campbell. Tr. 177-78. She opined that she could be fair and render a verdict based on the evidence. Tr. 178.

After the inquiry with Gadsden, the State withdrew its motion to remove her. Tr. p. 179, ll. 8-12.

c. The Court's Decision to Remove Juror Givens

Judge Jefferson announced her intent to view the video again. She noted the juror's flat affect. Tr. p. 179, ll. 15-21. Judge Jefferson then stated:

Now I really don't have any concerns about Miss Givens' impartiality. She's indicated she can be fair and impartial and she can render a fair and impartial decision. But I am troubled I guess and I use that word very lightly because I'm not really not troubled by the fact that she didn't disclose when I asked the question because she's a typical juror. They just don't - - The things we think are important they don't think are important and I really don't think she had any intention to mislead the Court and there would have been no reason for her to have disclosed the individuals in voir dire because they weren't in the courtroom and their names specifically were not mentioned and in addition to that, she indicated I really don't even know this person's name. I just know she has the name of a wine or champagne or something.

I do think that the interaction was innocent. **I really don't think it amounts to anything, but out of an abundance of caution I'm going to excuse her just because I don't want there to be any perception that whatever verdict is rendered that it was not fair and impartial.** But I really think that anything she did was innocent. I don't even think she really knows the woman. I think it's one of those things because you can tell on the video the lady is very shocked that she sees her. She's like - - It's almost like, oh, that's you, I haven't seen you in a long time. There is no indication that they discussed anything about this case.

I have no reason to question that she would mislead the Court about it, but perception as I've indicated is often reality for people and I'm going to dismiss her just out of ....

Tr. p. 180, l. 3 - p. 181, l. 5 (emphasis added).

Judge Jefferson brought in Juror Givens to address her removal from the jury with her.

Tr. p. 181, l. 20 - p. 182, l. 19. She stated to her:

The Court: Miss Givens, **out of an abundance of caution,** I do not believe you have misled the Court in any way. I believe you have been candid and I believe the person you interacted with in the snack bar was an innocent interaction with somebody you hadn't seen in a while. **But out of an abundance of caution, I'm going to excuse you as a juror in this case so that there can never be any question regarding**

the impartiality of the verdict. We appreciate your candor and your time.

Tr. p. 181, l. 20 - p. 182, l. 3 (emphasis added).[13] The defense noted its objection. Tr. p. 183, ll. 9-12. The trial judge replaced juror Givens with an alternate, juror Latimer. Tr. 185-86.[14]

ANALYSIS

The Appellant primarily relies upon three cases State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001), State v. Guillebreaux, 362 S.C. 270, 607 S.E.2d 99 (S.C. Ct. App. 2004) and State v. Stone, 359 S.C. 442, 567 S.E.2d 244 (2002) to support his argument for a new trial.[15]

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[13]It is interesting to note that juror Givens was perceived as being happy to be removed as a juror and being ready to go. See Tr.p. 182, l. 5-19.

[14] The defense renewed its prior motions and objections in a summary fashion after the State had rested. Tr.p. 638, l. 7-8. It was denied. A similar general motion was after rebuttal. Tr.p. 652. The Court denied the motions. Tr. P. 652, l. 21-22. After the guilty verdict, the trial court heard post-trial motions. Tr.p. 784-785. Counsel only made a general motion, asserting that he would reiterate and renew all objections during the trial and all motions made during the trial. The trial judge stated that it would note all motions and deny based on its previous ruling. TR.p. 785, l. 8-17. No specific mention was made by counsel or the court concerning the replacement of an alternate. Id.

[15] Jurors should be admonished not to discuss the case with anyone, including each other, prior to submission of the case. State v. Hoffman, 312 S.C. 386, 440 S.E.2d 869 (1994); Gallman v. State, 307 S.C. 273, 276, 414 S.E.2d 780, 782 (1992). "The rule is well settled that jurors should not, prior to the submission of the case to them, converse with outsiders or among themselves on any subject connected with the trial, or form or express any opinion thereabout; and that the jurors should be so admonished when they are permitted to separate during the trial." State v. Parker, 255 S.C. 359, 361, 179 S.E.2d 31, 32 (1971).

Any unauthorized communication, contact, or tampering directly or indirectly, made by a nonjuror with a juror during a trial about the matter pending before the jury is generally deemed presumptively prejudicial, if not made in accordance with rules of court and the instructions and directions of the court made during the trial, with full knowledge of all the parties. The presumption is not conclusive, but the burden rests heavily upon the nonmovant to establish, after notice to and hearing, that such contact with the juror was harmless. Prejudice may be shown by evidence that an extrinsic factual matter may taint the jury's deliberations. Essentially, an impermissible "outside influence" is an unauthorized communication or overt act by a third party which creates an extraneous influence on the jury.

However, a closer reading of these cases does not support the relief that he seeks in contrast with the unique facts in this proceeding.

In State v. Stone, the Court determined that the trial judge had abused its discretion in removing a juror.[16] In particular, at sentencing, the state called the defendant's aunt as a witness. When she was placed on the witness stand, Juror Thompson indicated to the court that she knew the aunt. Although the aunt had been announced as a witness at the start of voir dire, Thompson later claimed did not know her name. Thompson had lived down the street from the aunt five or six years earlier, and they were casual acquaintances only. Thompson indicated her acquaintance would not affect her ability to be fair and impartial. The Supreme Court concluded that it is patent here that Juror Thompson's failure to disclose her acquaintance with Perry [during the opening voir dire] was innocent. Moreover, the Court concluded that "her scant acquaintance would neither have supported a challenge for cause nor would it have been a material factor in the state's exercise of its peremptory challenges. Thompson clearly indicated her former acquaintance with a witness whose name she did not even know, would not have affected her in

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[16] In Stone, the Court relied upon State v. Woods, 345 S.C. 583, 587-88, 550 S.E.2d 282, 284 (2001), wherein the Court had stated:

> When a juror conceals information inquired into during voir dire, a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges. Thompson v. O'Rourke, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986). Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial. On the other hand, where the failure to disclose is innocent, no such inference may be drawn. State v. Savage, 306 S.C. 5, 409 S.E.2d 809 (Ct.App.1991).

any way." Stone, supra.[17] The Court held the trial court abused its discretion in removing her. However, a closer reading of the case reveals that the new sentencing proceeding was not granted based upon this alleged error. The Court, unlike its response to the issues related to the failed to instruct on certain mitigating circumstances and the failure to give a parole ineligibility charge did not include any similar language that " required reversal."[18] The harmless error issue was not addressed or whether it warranted a new trial standing alone.

The Appellant also relies on State v. Woods, supra. Importantly, in Woods, the Court defined that "intentional concealment occurs when the question presented to the jury on voir dire is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable. Unintentional concealment, on the other hand, occurs where the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances. Necessarily, whether a juror's failure to respond is intentional is a fact intensive determination which must be made on a case by case basis." In Woods, the court found that the juror's failure to reveal the prior relationship with the solicitor's office during the opening voir dire was intentional concealment and would have impacted on the use of the peremptory challenges. Here, there is no concealment, intentional or

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[17]Here, the issue was not about the failure to reveal a scant acquaintance" with the family member during the initial voir dire, but the failure to acknowledge the existence of the contact in the snack bar and the direct violation in the contact with the person and impression it made on the observers and participants in the contact.

[18] The failure to specify that the juror issue "required reversal" is a difference with a distinction. The Court was not required to address the issue concerning prejudice and harmless error concerning the removal. The absence of this language is telling of the limitaation in the holding.

otherwise, of information by a juror on the initial voir dire as determined by Judge Jefferson. Thus, the language from Stone regarding whether the information would have been a material factor in the use of a peremptory challenge is inapplicable to this case.

Here, it was not about the failure to reveal on voir dire that supported juror Givens removal, but her failure to follow the instructions, have the contact with a third party and then failure to reveal it in a response in the court.

In State v. Guillibreaux, the Appellant also seeks support. Therein, the Court of Appeals, through Judge, now Justice Beatty, concluded a juror's failure during voir dire to disclose an alleged social relationship with State witness, who was the confidential informant who purchased crack from defendant, was not intentional. The court of appeals found that the juror's knowledge of who the confidential informant was and a rare exchange of greetings with him in her community did not constitute social relationship. The court found that the juror answered questions posed to her honestly, her failure to reveal her knowledge of confidential informant was reasonable response to question posed. In seeking a new trial based upon the juror's retention and alleged failure to disclosed the unfounded social relationship with the witness, the court concluded that a new trial was not warranted. As the Court stated: "[A]s we find no intentional concealment on Juror's part, we need not further determine whether the information would have been a material factor in the exercise of Guillebeaux's peremptory strikes. [State v.] Sparkman, 358 S.C. at 497, 596 S.E.2d at 377-78. Based on this evidence, we find the trial judge did not abuse his discretion in denying the motion for a new trial."

In Smith v. State, 375 S.C. 507, 654 S.E.2d 523 (2007), the Court cited Guillibreaux addressed whether a juror had intentionally concealed a prior relationship with the defendant.

The Court found that the juror did not intentionally conceal the existence of his prior relationship with defendant during voir dire. The defendant claimed after the trial that he learned that they had been incarcerated together prior to defendant's murder trial at the detention center and did not recognize the juror due to a change in his appearance by his head being shaved and that he knew him only by a nickname "Rum Gully." He claimed without documentation that he had altercations with him in prison. The Court found that the defendant failed to establish that he suffered a per se violation of his due process right to a fair and impartial jury. It concluded that it was reasonable for juror to remain silent when asked during voir dire whether any member of the jury pool was "related by blood or marriage or a close personal friend of [defendant]." The juror testified that he and defendant were not close friends, juror also testified that he did not have any bias or prejudice against defendant, and he and the other members of the jury held the State to its burden of proof before finding defendant guilty of the two murder charges.

Unlike these cases, there was intentional concealment, although not during the initial voir dire. The Appellant asserts that this failure to show intentional concealment during the initial voir dire provides sanctuary and a requirement to have retained juror Givens despite her failure to acknowledge during the later voir dires the existence of the snack bar contact, the failure to follow the no contact instructions. Simply put the setting in this case is different than the settings in Guillibreaux and Stone. He ignores that juror Givens did intentionally conceal her out of court contact with the person in the snack bar when expressly asked the following questions by Judge Jefferson:

> Before we begin that process of opening instruction and opening argument, I gave the jury strict instructions that they were not to have any contact with anyone in or about

the courthouse who did not have a juror sticker on because, again, very innocent conversations could be very easily misinterpreted and misconstrued. I need to ask you all did any of you during the lunch and recess have any contact with anyone in or about the courthouse who did not have a juror sticker on? If so, if you did, I need you to raise your right hand for me.

Tr. p. 47, ll. 15-17. Juror Givens did not respond to this clear inquiry.

Judge Jefferson then made further inquiry of the jury:

The Court: Okay. Is there anyone else who had any contact with anyone in or about the courthouse, either in the snack bar or any other parts of the building that did not have a juror sticker on and you hand any interaction with them?

(Whereupon, there is no further response from any of the jury members.).

Tr. p. 48, ll. 14-21. Juror Givens did not respond to this clearer response!

Judge Jefferson continued:

I need for you all to be aware that reports have been made to the Court that conversations took place in the snack bar otherwise with members of - - with differing parts of members of the family and that there was a perception that the jury might be inclined or already predisposed regarding this case. Again, I don't have any independent information that that is accurate. However, I will reinforce that even an innocent conversation can be easily misinterpreted.

Emotions run very high during a trial. As you are well aware, the allegations in this case are significant and perception becomes reality. so I would ask that you very stringently follow my instructions and have no conversation with anyone in or about the courthouse who does not have a blue juror sticker on....

Tr. p. 49, ll. 4-17. (Emphasis added). See also, Tr. p. 49, l. 18 - p. 50, l. 15. Again, no response about the proven contact by Juror Givens. This can only be concluded as "intentional

concealment." This is more than merely whether the removed juror had a relationship with the defendant's family.

"Determining whether a juror's failure to respond to a voir dire question amounts to intentional concealment is a 'fact intensive determination that must be made on a case-by-case basis.' " State v. Guillebeaux, 362 S.C. 270, 274, 607 S.E.2d 99, 101-02 (Ct.App.2004)(quoting State v. Sparkman, 358 S.C. 491, 496, 596 S.E.2d 375, 377 (2004)). Here, the questions put to juror Givens and the other jurors by the trial judge were reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable.' " Id. These inquiries were not "ambiguous or incomprehensible to the average juror" shortly after the lunch recess and therefore it was not reasonable for Juror Givens to fail to respond.

The snack bar video of January 23 shows the basis of the intentional concealment by Juror Givens. Court Exhibit #2. The video shows juror Erica Gadsden (Juror 63) in a bright yellow shirt and juror Robin Givens in a red coat entering the snack bar area at 12:26:30. They are viewed sitting down and conversing with each other while eating. Shortly thereafter, four females enter the snack bar area at around 1:19. Juror Givens initially waves at group at 1:19:52. One female walks over toward the table where Givens and Gadsden are sitting and juror Givens reaches out, grabs her hand and then pulls the female towards her at 1:20:00. This female remains in apparent close contact conversation at the table where Givens and Gadsden are seated while three others briefly move away. This person remains in conversation at the table until 1:20 :36 when she moves away toward her three remaining group members standing at the end of the snack bar counter. The female Givens spoke with in the group goes back toward the door and

juror Givens gets up preparing to leave and has another brief conversation with the same female at 1:21:10. The person then leaves while the remaining three members remain [with others who later share pleasantries and replace the departed jurors at the table]. Juror Gadsden leaves, followed by juror Givens at 1:21:25. Court Exhibit #2. This information cannot be disputed.

Was there an instruction to not have contact or discussions with anyone? Yes. Did the juror have improper discussions with such a person shortly after the instructions? Yes. Did she reveal the contact after the first inquiries were made after lunch? No. Was this improper contact with a family member of the defendant? Yes.

Appellant applies the wrong standard when he asserts that removal of a juror is only supported when the removed juror intentionally concealed information which would have supported a challenge for cause or a would have been a material factor in the party's use of peremptory challenges, because it does not address all setting that could lead to the need to remove a juror. See Thompson v. O'Rourke, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986) (affirming denial of motion for new trial based on after-discovered evidence where jurors' relationship with doctor's attorney was not a basis for disqualification). See also State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001) (post-verdict motion for new trial should have been granted where juror intentionally concealed prior association with solicitor's office, which denied defendant effective use of peremptory challenges); State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998) (affirming denial of new trial motion based on after discovered evidence based on information that juror attended pro-death penalty rally, where information was not intentionally concealed); State v. Gulledge, 277 S.C. 368, 287 S.E.2d 488 (1982) (pre-verdict mistrial should have been granted for juror's failure to disclose relationship with police officer, where

information would have supported a challenge for cause or would have been a material factor in the exercise of a peremptory strike); State v. Savage, 306 S.C. 5, 409 S.E.2d 809 (Ct. App. 1991) (post-verdict mistrial motion properly denied because no evidence party would have struck juror, and juror's failure to disclose distant relationship with witness was not intentional).

The state agrees Juror Givens concealment during the pre-selection voir dire did not appear to be intentional. However, her failure to respond about the contact after the smack bar incident during the subsequent voir dire is much more troubling. Absent the revelations on the surveillance video, juror Gadsden was the only juror specifically identified, not juror Givens. The video also revealed that it was juror Givens who initially waved and then pulled the defendant's family member towards herself and then engaged in the "close contact" conversation. While the video is silent, it remains uncontradicted that family member orally expressed a comment that "I have them on my side." Court Exhibit #4. The focus of the Appellant is on the initial voir dire before jury selection. However, the critical mistake is juror Givens failure to reveal the unauthorized contact in the snack bar after being instructed to not have the contact and the effect the contact had on others - to both the defendant's family - " I have them on my side." and the victim's family upon seeing and hearing it and then reporting it.

Contrary to the assertions of the Appellant, it is more than the mere fact that juror Givens did not reveal a "scant acquaintance" with a member of the defendant's family during the pretrial voir dire. Instead, this was a wholly different scenario where the juror was perceived after the unauthorized contact as being turned to the defendant's side and then intentionally failed to reveal that there was any contact when the jury was specifically asked. In addition, when the juror physically pulled the family over for close contact conversation, an appearance of

impropriety cannot be disabused, particularly when she failed to reveal it during the post-lunch voir dires. Contrary to Appellant's claims, juror Givens had to be removed to maintain integrity to any verdict after the video surveillance was revealed. In fact, counsel for the Appellant, prior to the voir dire of Givens noted that she was the only person talking with the family member (whom he identified as a cousin - not a sister) and if you excuse on that, you only excuse Givens, not Gadsden. Tr.p. 161, ll. 14-17.

Despite Appellant's contentions, Thompson and the other cases cited above instead provide the standard for the granting of the extreme measures of a mistrial or a new trial, when juror concealment of relevant information is discovered. State v. Kelly, 331 S.C. 132, 146, 502 S.E.2d 99, 106 (1998) (quoting Thompson as the standard for a new trial due to retaining as juror, not as the standard for removal of a juror). Thompson and the other cases mandate when a trial court has to address the problem of newly discovered juror information with new trial or mistrial.

However, trial courts may still as a matter of discretion remove jurors for alternates in lesser circumstances than those which require mistrial as defined by Thompson and its progeny. This standard is discussed below.

"The general rule in this State is that the conduct of a criminal trial is left largely to the sound discretion of th presiding judge and [an appellate court] will not interfere unless it clearly appears that the rights of the complaining party were abused or prejudiced in some way". State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982). Along these lines, the typical appellate standard of review for the discretionary pre-deliberation removal of a juror and replacement with an alternate, is whether or not the trial court's decision was so unreasonable as to be an abuse of

discretion resulting in actual prejudice. State v. Rogers, 263 S.C. 373, 210 S.E.2d 604 (1974); State v. Williams, 321 S.C. 455, 469 S.E.2d 52 (1996). In this case, Appellant can show no prejudice from the seating of Alternate, nor can he show that the trial court's decision to excuse Givens was so unreasonable as to amount to an abuse of discretion.

This case is similar to State v. Williams, 321 S.C. 455, 469 S.E.2d 52 (1996). During trial in Williams, a juror spoke to a minister seated at counsel table. The juror testified he had worked with the minister and had heard him preach. The minister was seated at counsel table because he had assisted the defense in contacting witnesses. The trial court excused the juror and replaced him with an alternate to prevent any problems. The Court rejected the defendant's claim that the excusal violated Batson v. Kentucky, 476 U.S. 79 (1986), and Georgia v. McCollum, 505 U.S. 42 (1992), by first noting that the issues were not preserved. However, the Court went on to hold that there was no reversible error, because (1) there is no right to be tried by a jury composed of particular individuals, (2) the alternate juror had been approved by both sides at the inception of trial, and (3) there was no showing of any prejudice from the seating of the alternate juror. Williams, 321 S.C. at 459-60, 469 S.E.2d at 52.

The same result is warranted here as is warranted in Williams. Appellant has no right to be tried by a particular juror, and the alternate juror in this case was approved by both sides Appellant has identified no sustainable reason why he was prejudiced by the seating of the Alternate . Here, the party aggrieved by the Juror Givens' belated revelations about her contact at the snack bar and disobedience with the trial court's no contact admonishment was the court and the state, not the defense.

The Removal of the Juror Based Upon the Lunch Room Contact Did Not Equate With An Additional Peremptory Challenge.

In his second argument, Initial Brief of Appellant, pages 10-15, Appellant attempts to show prejudice by contending that the effect of the judge's decision was to give the state an extra peremptory strike. This is incorrect. He asserts that the trial court found that because there was no cause to remove juror Givens. However, the trial court's decision, that a juror's improper contact, failure to follow her instructions and acquaintance with a relative of Appellant warrants excusal, is not so unreasonable as to be an abuse of discretion. The trial court acknowledged that it was removing the juror "out of an abundance of caution" to preserve the integrity of the verdict, not to award the state an additional peremptory challenge. Contrary to the characterization by the Appellant, the State was not provided an additional peremptory challenge as a matter of state law or by the action of the trial judge. This action occurred solely because of the post-selection contact between juror Givens and a member of the Appellant's family.

This Peremptory Challenge Issue Is Not Preserved For Appeal.

Nevertheless, this peremptory challenge claim is not preserved for review. At no time did the Petitioner claim that the state was given a de facto additional peremptory challenge. See Tr.p. 44-46, 158-161.174-175. 638, 652, 784-785. As such, this specific claim is not preserved. State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000) (party may not argue one ground for objection at trial and a different ground on appeal); See State v. McWee, 322 S.C. 387, 472 S.E.2d 235 (1996) (Eighth Amendment challenge to parole eligibility not preserved because no constitutional basis was raised at trial); State v. Williams, 321 S.C. 455, 469 S.E.2d 49 (1996) (Batson issue regarding dismissal of juror during trial not preserved where it was not raised at

trial).

Parties are entitled to truthful and accurate information during voir dire so that they may intelligently make peremptory challenges; there is no question that the state did not have this information at selection about the contact in the lunch room and the overheard comments that "I have them on our side" by a family member after the contact because it did not exist until after the selection. See, e.g. State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998). Further, the failure of the juror to accurately respond after the initial inquiries about the contact brings her partiality into reasonable question where the defendant's family is overheard making the "on our side" comments and then followed by the non-disclosure. Although it certainly appears that the relationship was likely minimal based upon juror Givens eventual testimony, the state pointed out its concern about a juror who violated the court's instructions not to speak with people not wearing juror badges . State's Motion, p. 1-2. ROA _. Tr.p. 41-43, 157-158. Like the judge in Williams, where the relationship between the juror and the minister was admittedly more defined than the present case, yet still very casual, the trial court in this case was not unreasonable in deciding to avoid any possible appearance or existence of unfairness by seating the alternate.

The reliance by Appellant on the decision in U.S. v. Harbin, 250 F.3d 532 (7th Cir. 2001) is misplaced on the peremptory challenge issue. In Harbin, the Seventh Circuit reversed a decision by the district court allowing the government to use, in the middle of trial, a statutory peremptory challenge it had foregone during voir dire, when new information about a juror came to light. Id. at 538–39. The defendants had exhausted their strikes during voir dire but were unaware that they might be able to save them and use them during the trial. Id. at 538, 541. The Seventh Circuit held that the district court's decision was erroneous because "[t]he prosecution

was unilaterally granted control over the composition of the jury during the trial stage ... [and the] jury selection process ... failed to minimally inform [defendants] of the procedures that ultimately were followed." Id. at 541 - 42.

The current case is nothing like the situation in Harbin. Here, each side received the statutory number of peremptory challenges. Both sides also knew full well that they were prohibited from using any of their challenges in a racially discriminatory manner nor had the ability to save strikes to use during the trial. All parties to the case were subject to the same requirements, and the jury selection process was not weighted in either the State or Campbell's favor beyond the statutory limits for peremptory challenges. At no point did the state claim any entitlement to an additional strike. To the contrary, they were arguing prior to the voir dire the standard set out by the Court in Woods and Stone due to the improper contact, lack of candor with the court. State Motion, p. 2. He argued that the mendacity undermined that they could fulfill their duty. The Appellant seeks to parse the information and ignore that the motion was additionally based upon the overheard comment that "I have them on my side." Under Stone, Woods, etc., had any prosecutor (or defense counsel) been aware that after contact with a family member by a juror that the juror was reported to be "on my side" that a peremptory challenge would have been used, thus satisfying the materiality component Stone and Woods to have required their removal and a new trial.

SUMMARY

Under these circumstances, the proper way to maintain integrity with the jury selections

was to replace the juror with a qualified alternate.[19] This was reasonable discretion on the judge's part.

A New Trial Is Not Warranted by Harmless Error.

As stated above, Stone itself does not mandate reversal and the grant of a new trial should this Court find that the trial judge abused its discretion. Assuming Appellant is correct in his assertion that the record does not reflect by clear and convincing evidence that Juror Givens violated the rule of sequestration by the conversation with the defendant's family and the failure to acknowledge it upon voir dire after the lunch break, Appellant's argument that this error requires reversal is less convincing. Although Juror Givens may have been improperly removed, she was replaced by an alternate juror who had been passed upon by both the State and defense. Appellant has shown no prejudice from having his case decided by alternate Juror Latimer rather than Juror Givens and this Court should decline to find any. Reversal and a new trial is not warranted.

Although juror Givens claimed only a casual relationship with a family member who she "hung out together a few times," but claimed not to see in around a year and spoke only about a common friend, she claimed she could remain fair and impartial. There is no right to have a juror with a casual connection with the defendant's family to sit as a juror. However, when the removal occurred "out of an abundance of caution," jury deliberations had not begun. In fact,

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[19] The Appellant tries to make the peremptory challenge issue to be supported because it withdrew it motion to remove juror Gadsden after the voir dire of juror Givens and Gadsden. However, the difference in their settings was clear after the testimony revealed the communication was virtually only with Givens, not Gadsden. Although Gadsden did not reveal the brief encounter she had, by the testimony she was an uninvolved bystander to the actions of juror Givens.

only a few witnesses [4] had even testified during the first day. The alternate was qualified in the same manner as juror Givens and was subject to peremptory challenges by both the state and defense with one strike remaining by each. Tr.p. 34-35. The alternate was present throughout the first day of the evidence.

Any error was harmless where the alternate was present throughout the proceeding and the Appellant had not shown he was prejudiced by the substitution prior to any deliberations. State v. Williams, 469 S.E.2d 49 (1996) (defendant was not prejudiced from seating an alternate juror after juror was dismissed).[20] Accord Ballentine v. State, supra.; Barker v. State, 487 S.E.2d 494 (Ga. App. 1997) (no harmful error in court replacing juror with alternate where court found that juror's conduct amounted to immaterial irregularity," if any , and court would thus have been entitled to retain juror, while it was claimed that investigator stated to juror "we got one ," and that juror repeated the statement and shook hands with investigator, trial court conducted inquiry , and determined that only greetings were exchanged, but excused juror out of an abundance of caution and seated alternate); Lee v. State, 11 S.W. 3d 553 (Ark. 2000)(a defendant must show prejudice when the trial court removes a juror and seats an alternate in the juror's place); Thornberg v. State, 985 P. 2d 1234 (Okla. Crim App. 1999)(removal of juror on less than clear

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[20] As the Court stated in Williams,

> In any event, in State v. McDaniel, 275 S.C. 222, 268 S.E.2d 585 (1980), this Court held there is no right to be tried by a jury composed of particular individuals. In McDaniel, an alternate was seated after a juror was dismissed for making improper gestures. The McDaniel court noted the alternate juror had been approved by both sides at the inception of the trial, and there was no showing in what manner the seating of the alternate prejudiced him. As in McDaniel, we discern no prejudice to Williams from the seating of the alternate juror here.

and convincing evidence of misconduct did not prejudice murder defendant and did not require reversal, where removed juror was replaced by alternate who had been passed upon by both the state and the defense); State v. Pettigrew, 860 P. 2d 777 (N.M. App. 1993)(defendant's were not prejudiced by court's excusal of juror following unauthorized contact with public defender intern and replaced with alternate chosen in same manner as excused jurors and defendant had no right to a particular juror on the panel).

CONCLUSION

For all the foregoing reasons, the appeal should be dismissed and judgment of conviction affirmed.

Respectfully submitted,

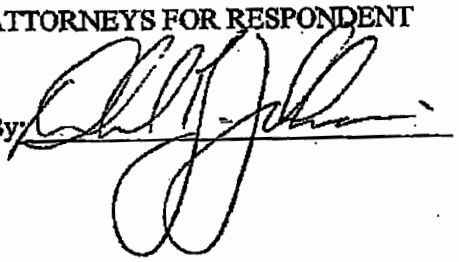
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Columbia, South Carolina
December 27, 2012

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Deadra L. Jefferson, Circuit Court Judge
Appellate Case No. 2012-208426

THE STATE OF SOUTH CAROLINA,

Respondent,

v.

JEROME RENALDO CAMPBELL,

Appellant.

DESIGNATION OF MATTER
TO BE INCLUDED IN RECORD ON APPEAL

The Respondents propose the following additions to be included in the Record on Appeal:
EXHIBITS

1. Court Exhibit 2 - Video of Snack Bar.
2. Court Exhibit 3 - Court Exhibit 3 (affidavit of Trenell German)
3. Court Exhibit 4 (affidavit of Tiffany Peacock)

MOTIONS

1. State's Motion to Exclude Jurors - January 24, 2012.

I certify that this Designation contains no matter which is irrelevant to the appeal.

DONALD J. ZELENKA
ATTORNEY FOR RESPONDENT

December 27, 2012.

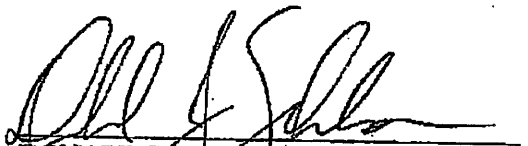
CERTIFICATE OF SERVICE

I, **Donald J. Zelenka,** Hereby certify that I have served the **Initial Brief of Respondent and Designation of Matter** in the foregoing action by depositing copies in the United States mail, postage prepaid, to the following:

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Deadra L. Jefferson, Circuit Court Judge

Case No. 09-GS-10-6730
Case Tracking Number: 2012208426

State of South Carolina,..... Respondent,

v.

Jerome Campbell
a/k/a Jerome Coaxum, ... Appellant,

REPLY BRIEF OF APPELLANT

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ARGUMENTS

I. Appellant preserved for appeal whether Juror Givens was improperly removed.

"Error preservation rules do not require a party to use the exact name of a legal doctrine in order to preserve an issue for appellate review." State v. Brannon, 388 S.C. 498. 502, 697 S.E.2d 593, 595 (2010). In Brannon, the state argued that the court of appeals violated error preservation rules by using a seizure analysis to determine whether an arrest was being made where the Appellant never used the terms "seizure" or "Fourth Amendment" in his directed verdict motion. The Supreme Court disagreed and held that "a litigant is only required to fairly raise the issue to the trial court, thereby giving it an opportunity to rule on the issue." Id. at 502, 596 (citation omitted).

Here, Appellant argued that no cause existed to excuse Juror Givens. Appellant argued that the jurors and the defendant's family had not seen each other prior to the break, that the video did not reflect that Juror Givens and the person in the snack bar knew each other very well, and that the interaction was innocent. [R. p. 158, line 10 – p. 161, line 17] Appellant further argued that any omission to disclose was innocent, that the juror disclosed her conversation in the snack bar when asked the second time, that Juror Givens did not try to mislead or deceive the court, that she did not even know the name of the person in the snack bar, and that Juror Givens could be fair and impartial. [R. p. 174, line 20 – p. 175, line 16] Finally, Appellant attempted to reiterate his objection on this issue, but the court noted the objection without additional argument:

MR. HARRIS: Your Honor?

THE COURT: Mm-hmm.

MR. HARRIS: For the record, can I just – I mean object to the –

THE COURT: You've noted your exception.

MR. HARRIS: Okay.

THE COURT: Yeah.

MR. HARRIS: I just wanted to note my exception for the record.

THE COURT: You've already noted your exception for the record when you made your argument.

MR. HARRIS: Thank you.

THE COURT: You're welcome.

[R. p. 183, lines 2 – 14] A removal of a jury without cause at the request of a party is a *de facto* peremptory strike, and Appellant argued there was no cause for removal of Juror Givens. Accordingly, the issue is sufficiently preserved for this court's review.

II. This Court should not substitute its judgment for the trial court's judgment regarding whether there was cause to remove Juror Givens.

The State argues extensively in its brief that the trial judge had cause to remove Juror Givens. However, the trial judge did not remove Juror Givens for cause. The trial judge removed the juror in "an abundance of caution." [Trial Transcript Vol. II, p. 179, line 15 – p. 182, line 3; p. 34, line 6]

"The trial judge is in the best position to determine the credibility of the jurors; therefore, this Court should grant [the trial judge] broad deference on this issue." State v. Kelly, 331 S.C. 132, 142, 502 S.E.2d 99, 104 (1998); *see also* State v. Harris, 340 S.C. 59, 530 S.E.2d 626 (2000) (holding the trial judge is in the best position to determine the credibility of the jurors). Here, the trial judge, despite hearing the reports of the victim's family members and evaluating the demeanor and credibility of Juror Givens, expressly

found that any concealment was innocent. This Court should not go behind the trial judge's deference and now find that the juror intentionally concealed anything.

Respondent claims that "Appellant applies the wrong standard when he asserts that removal of a juror is only supported when the removed juror intentionally concealed information which would have supported a challenge for cause or a would have been a material factor in the party's use of peremptory challenges, because it does not address all setting that could lead to the need to remove a juror." However, this standard is the precise standard applied by this Court in State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001) and State v. Stone, 350 S.C. 442, 567 S.E.2d 244 (2002). Respondent's assertions are an attempt to excuse the fact that the State did not request any pre-trial *voir dire* that would have disclosed the "scant acquaintance" between Juror Givens and the person in the snack bar.

The record clearly shows that the trial judge's sole reason for removing Juror Givens was "in an abundance of caution." For sound policy reasons, this Court should not allow an "abundance of caution" to serve as a valid reason for a trial judge to remove a juror. To do so would essentially give trial judges unfettered decision-making in the jury selection process and would take part of this process out of the hands of the parties, which is where it belongs. As discussed at length in Appellant's Initial Brief, the judge gave preference and control to the prosecution in violation of the concepts discussed in Harbin. Even if the judge did not label the removal as a peremptory strike at trial, a peremptory strike (a strike at the request of one party without cause) is precisely what it was. Following this Court's precedent in Stone, it is clear that the trial judge erred in removing the juror.

III. This Court should not apply harmless error analysis regarding Appellant's fundamental and substantial right to a fair jury selection that was jeopardized when the lower court gave the state a *de facto* sixth peremptory challenge during the second day of trial.

Respondent urges this Court to apply a harmless error analysis to affirm the trial court. However, this Court should not apply a harmless error analysis. South Carolina has never addressed the issue of whether automatic reversal is required in a case where a judge strikes a juror without cause. However, the Seventh Circuit discussed this issue at length in U.S. v. Harbin, 250 F.3d 532 (7th Cir. 2001), which was argued throughout Section 2 of Appellant's Initial Brief. Notably, the Harbin Court applied a standard where reversal is warranted if the error affects a "substantial right." Also, in Harbin, the trial court's actions did not allow the State to exceed its total number of peremptory strikes, where here the trial court allowed the State to remove a juror mid-trial, without cause, thereby exceeding the statutorily-allowed number of peremptory strikes.

None of the cases cited by Respondent involve the removal of a juror, mid-trial, without cause. For example, the State cites to State v. Williams, 321 S.C. 455, 469 S.E.2d 49 (1996) for the proposition that a harmless error analysis should be applied. In Williams, at the conclusion of the second day of trial, a juror approached counsel table and shook hands with a man sitting with the defendant. The man was a pastor at the defendant's church, and he had assisted defense counsel in contacting witnesses. During an *in camera* hearing, the juror testified he had previously worked with the pastor and had gone to hear him preach on occasion. The trial court, finding that a problem may have arisen by virtue of the pastor's being seated at counsel table, relieved the juror and replaced him with the alternate.

Here, unlike Williams, the trial court found no problems with the challenged juror. The trial judge had no concerns about Juror Givens' impartiality, found that the snack bar interaction was innocent, and was not troubled by the fact that Juror Givens did not disclose the snack bar interaction at the first opportunity.[1] [R. p. 179, line 15 – p. 182, line 3] The trial judge only removed the juror in "an abundance of caution." Further, the Court in Williams found that the challenge as to the removal of the juror for cause was not preserved and did not address the defendant's argument. The Court only focused on whether there was a problem with the alternate. Here and in Harbin, unlike Williams, the juror was removed without cause.

Respondent also cites to State v. Simmons, 360 S.C. 33, 599 S.E.2d 448 (2004). In Simmons, Juror C discussed the case with his wife, including the personal effect of a possible verdict, despite the trial judge's express admonition not to do so. The Supreme Court held that "the trial judge acted within his discretion in excusing Juror C for the juror's unauthorized communication with his wife." Id., S.E.2d at 452. Here, unlike Simmons, the verdict would have no personal effect on the juror, and the trial judge did not remove the juror based upon her conversation.

On appeal, the trial court's disqualification of a prospective juror will not be disturbed where there is a reasonable basis from which the trial court could have concluded that the juror would not have been able to faithfully discharge his or her responsibilities as a juror under the law. *See* State v. Green, 392 S.E.2d 157, 301 S.C. 347 (S.C. 1990); State v. Gaskins, 284 S.C. 105, 326 S.E.2d 132 (1985); State v. Linder, 276 S.C. 304, 278 S.E.2d 335 (1981). Here, because the judge expressly found

[1] Notably, without being prompted, during the second *voir dire* concerning this issue, Juror Givens disclosed her snack bar interaction without hesitation. [R. p. 168, line 7 – p. 169, line 3]

that no reason existed to believe the juror would not have been able to faithfully discharge her responsibilities as a juror under the law, and this Court should reverse and remand for a new trial.

A harmless error analysis in this circumstance would rarely prove fruitful in that there is great difficulty in the aggrieved party to show prejudice. Here, the State was allowed five strikes by statute, and the defense was allowed ten strikes by statute. Granting the State's request to remove the juror, despite the trial judge's express findings that there was no cause to do so, allowed Respondent to alter the composition of the jury with information it learned mid-trial. There is fundamental unfairness here, and no requirement should be imposed on Appellant to show prejudice. *See* State v. Short, 327 S.C. 329, 489 S.E.2d 209 (Ct.App. 1997) (holding the erroneous denial of a criminal defendant's right of peremptory challenge requires automatic reversal where a juror whom the defendant should have been able to strike is a member of a convicting jury).

IV. Because the trial court expressly found no issue with Juror Givens' competence to serve as a juror, the State received an extra peremptory challenge.

"A juror's competence is within the trial judge's discretion and is not reviewable on appeal unless wholly unsupported by the evidence." State v. Simpson, 325 S.C. 37, 41, 479 S.E.2d 57, 59 (1996). Here, the trial judge expressly found no issues with the juror's competence. She removed the juror "in an abundance of caution."

Juror Givens and Juror Gadsden both failed to disclose their snack bar encounter after the lunch break. The State went further to challenge Juror Gadsden's demeanor when the mid-trial *voir dire* concerning the lunch break took place. [Trial Transcript, p.

156, line 24 – p. 157, line 7] Regardless, the State withdrew its motion regarding Juror Gadsden.

It is clear that that State desired to remove Juror Givens as a result of her "scant acquaintance" with the person in the snack bar. This "scant acquaintance" does not amount to a strike for cause, and the judge expressly declined to remove Juror Givens for cause. Accordingly, the result was to allow the State to strike a juror based upon a bias that it "perceived," and the State received a sixth peremptory strike.

CONCLUSION

The lower court erred by allowing the State to challenge and to remove a juror during the second day of trial despite the lower court's express finding that there was no cause to remove the juror. By allowing the State to challenge and to remove an impartial juror on the second day of trial without cause, the lower court gave the State a *de facto* sixth peremptory challenge thereby skewing the jury selection process in the State's favor and adversely impacting the ability of the peremptory challenge process to fulfill its function as a means of ensuring an impartial jury and a fair trial. Appellant is entitled to a jury process that does not give the State one-sided control over the jury's makeup during trial by allowing the State to remove an impartial juror without cause. Accordingly, this Court should reverse and remand this case for a new trial.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA,

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v.

JEROME RENALDO CAMPBELL,
a/k/a Jerome Coaxum,

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Appellate Case No. 2012-208426

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I. Did the lower court abuse its discretion by allowing the State to challenge and to remove an impartial juror without cause during the second day of trial?

II. Did the lower court impair Appellant's right to a fair jury selection process by giving the State a *de facto* sixth peremptory challenge during the second day of trial?

RESPONDENT'S STATEMENT OF THE CASE

The Appellant, Jerome Renaldo Campbell, *aka* Jerome Renaldo Coaxum, was indicted at the September 2009 term of the Court of General Sessions for Charleston County for assault with intent to kill (Frank Haigler) (2009-GS-10-6730); murder (Michael German) (2009-GS-10-6731); assault with intent to kill (Anthony German) (2009-GS-10-6732); and assault with intent to kill (Michael Allen) (2009-GS-10-6733). The charges arose from an incident on January 9, 2009.

The Appellant was represented by William Stephen Harris and Jason Todd Mikell. The prosecution was handled by Assistant Solicitor Gregory Voigt and Elizabeth B. Riddle of the Ninth Circuit Solicitor's Office. On January 23, 2012, the matter was called to trial before a jury and the Honorable Deadra Jefferson, Presiding Judge. On January 27, 2012, the Appellant was found guilty of all four indictments. R.p. 81-82. He was sentenced by the Judge Jefferson to concurrent terms of imprisonment of thirty (30) years on murder, and ten (10) years on each fo the assault with intent to kill verdicts. R.p. 85, l. 5 - p. 86, l. 21.

ARGUMENT

I. The trial judge did not abuse its discretion in removing juror Givens prior to any deliberations with an alternate out of an abundance of caution where the removed juror was seen conversing with a member of the Appellant's family, where the removed juror had been instructed prior to the lunch break to not converse with anyone, where the removed juror initially denied the existence of any contact, where a video shows the removed juror grabbing and pulling the family member to her side and where there was an uncontradicted claim that a family member of the Appellant was overheard stating that the juror was "on their side" after the viewed conversation. Discretion, based upon the judge's particular concern that there would be a perception that any verdict was not fair or impartial, allowed the Court to act to remove the juror, even though the court did not conclude the juror's non-disclosure was intentional.

It has been stated that a criminal defendant does not have a right to be tried by a particular juror, but only to have fair and impartial jurors decide his fate. See State v. Rayfield, 369 S.C. 106, 113, 631 S.E.2d 244, 248 (2006). A trial judge should have the reasonable discretion to replace a juror with an alternate juror "out of an abundance of caution" to preserve the appearance of the fairness of a trial after evidence is presented concerning comments made after the juror is viewed conversing with a member of the criminal defendant's family [1] after being instructed "do not have any contact with anyone in or about the courthouse"[2] by member of the crime victim's family who overhears the defendant's family member state out loud after speaking with the juror "I have them on my side."[3] Discretion should allow under these discrete circumstances the cautionary removal of the same juror when that the juror initially failed to

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[1] R.p. 27-28, Court Exhibit 2 (surveillance video of courthouse snack bar), Court Exhibit 3 (statement or Trenell German); Court Exhibit 4 (statement of Tiffany Peacock). R.p. 88-91.

[2] R.p. 26, l. 17-19.

[3] Court Exhibit 4.

respond to a general inquiry concerning the contact between jurors and others during the lunch recess about this hidden contact,[4] even after the judge particularized to the jury that the improper contact occurred in the snack bar with members of the defendants's family.[5] Although the trial judge found that the juror's partiality had not been shown nor that her misleading non-disclosure was deliberate, the trial court concluded that she was constrained to remove the juror to avid the perception and avoid any question regarding the partiality of the verdict. R.p. 72-74. The trial court's decision to do replace the juror with an alternate, under these circumstances should not mandate a new trial. See State v. Simmons, 599 S.E.2d 448 (2004)(trial court did not abuse its discretion by dismissing a juror after a murder trial had begun, where juror admitted that he had unauthorized contact with his wife about the personal effect of a guilty verdict would have on them, and the trial judge had admonished the jury not to discuss the case with anyone).

Further any error was harmless where the alternate was present throughout the proceeding and the Appellant had not shown he was prejudiced by the substitution prior to any deliberations. State v. Williams, 469 S.E.2d 49 (1996) (defendant was not prejudiced from seating an alternate juror after juror was dismissed). See Ballentine v. State, 390 S.E.2d 887 (Ga. App. 1990) (replacement of regular juror with alternate during deliberations, due to innocent error as to who was regular juror and who was alternate, was harmless error, where correct number of jurors deliberated, extra juror had no influence upon jurors decision, and alternate juror was drawn from same source, in same manner, had same qualifications as other jurors, and listened to same evidence and charge of court); Barker v. State, 487 S.E.2d 494 (Ga. App. 1997) (no harmful

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[4] R.p. 33, l. 15- p. 34, l. 21.

[5] R.p. 35, l. 4-17, p. 35, l. 18-, p. 36, l. 15.

error in court replacing juror with alternate where court found that juror's conduct amounted to immaterial irregularity," if any , and court would thus have been entitled to retain juror, while it was claimed that investigator stated to juror "we got one," and that juror repeated the statement and shook hands with investigator, trial court conducted inquiry, and determined that only greetings were exchanged, but excused juror out of an abundance of caution and seated alternate); Lee v. State, 11 S.W. 3d 553 (Ark. 2000)(a defendant must show prejudice when the trial court removes a juror and seats an alternate in the juror's place); Thornberg v. State, 985 P. 2d 1234 (Okla. Crim App. 1999)(removal of juror on less than clear and convincing evidence of misconduct did not prejudice murder defendant and did not require reversal, where removed juror was replaced by alternate who had been passed upon by both the state and the defense); State v. Pettigrew, 860 P. 2d 777 (N.M. App. 1993)(defendant's were not prejudiced by court's excusal of juror following unauthorized contact with public defender intern and replaced with alternate chosen in same manner as excused jurors and defendant had no right to a particular juror on the panel).

The Appellant contends that he is entitled to a new trial due to the qualified juror being replaced by a qualified alternate. He contends because there was no showing that removed juror Robin Givens (juror #70) intentionally concealed information about the encounter with the defendant's family at the snack bar, no inference of partiality was shown and it was error to remove her, citing State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001) and S.C. Code Ann., § 14-7-1020 (1976). He contends that when Judge Jefferson concluded that juror Givens did not intentionally conceal any information, that the court inquiry should have ended at that point and she should have remained on the jury, citing State v. Guillebreaux, 362 S.C. 270, 607 S.E.2d 99

(S.C. Ct. App. 2004). He further contends that even if juror Givens concealed information, that the court erred in allowing the state to challenge Givens because the information concealed would not have been a material factor for a peremptory challenge or support a challenge for cause, citing State v. Stone, 359 S.C. 442, 567 S.E.2d 244 (2002) ("scant acquaintance" insufficient to remove the juror where it would not support a challenge for cause nor a material factor in the state's exercise of a peremptory challenge). He claims that the allegedly similar "scant acquaintance" would not be a material factor in the state's exercise of a peremptory challenge or cause for exclusion had it been revealed. He argues that because the state had exhausted all its peremptory challenges before juror Givens was called, he was not prevented from the intelligent exercise of the strike.

As shown more fully below, the Appellant's assessment is misplaced. The salient factor - recognized by the trial judge - was that juror Givens did not follow the instructions of the court to avoid contact. To the contrary, she was shown actually pulling the family member towards her after juror Givens had initiated the contact with a wave. Further, the juror failed to reveal the existence of her contact after it was learned by a complaint from a member of the victim's family that such improper contact had in fact occurred. It was only after the snack bar surveillance video revealed support for the victim's complaints and a second - more direct - inquiry that juror Givens admitted that there was contact. Although the trial court found that juror Givens' interaction was innocent and that juror Givens had no intention to mislead the court during the original voir dire because the family names were not revealed in her instruction, it is clear that she failed to respond to inquiry after the contact was revealed to the state and the court. While the trial court stated that it was innocent contact by the juror - albeit in derogation of the almost

contemporaneous cautionary instructions by the court - Judge Jefferson recognized that while it was not shown that the case was discussed between them - perception is often the reality and that to preserve the integrity of a verdict she was removed. Where statements were made after the contact by the person that "I have them on our side," discretion was not abused in the removal.

STANDARD OF REVIEW - Abuse of Discretion.

"[A] criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury." Palacio v. State, 333 S.C. 506,511 S.E.2d 62, 68 (1999). " '[I]n order to fully safeguard this protection, it is required that the jury render its verdict free from outside influences of whatever kind and nature.' " State v. Bryant, 354 S.C. 390, 581 S.E.2d 157,160 (2003)[quoting State v. Cameron, 311 S.C. 204,428 S.E.2d 10, 12(Ct.App. 1993)].

A decision on whether to dismiss a juror and replace her with an alternate is within the sound discretion of the trial judge, and such decision will not be reversed on appeal absent an abuse of discretion. State v. Smith, 338 S.C. 66, 525 S.E.2d 263, 265 (Ct. App. 1999). More specifically, "[I]t is within the discretion of the trial court to determine whether bias results from a juror's reception of outside information concerning the case being tried." Washington v. Whitaker, 317 S.C. 108,451 S.E.2d 894, 900 (1994); see State v. Ivey, 331 S.C. 118, 502 S.E.2d 92, 94 (1998)[noting a juror's competence is within the trial judge's discretion and is not reversible on appeal unless wholly unsupported by the evidence]; see also State v. Loftis, 232 S.C. 35,100 S.E.2d 671,675 (1957)[declining to interfere with trial judge's discretion in matter concerning jury, because trial judge has the opportunity to consider credibility of jurors].

"To protect both parties' right to an impartial jury, the trial judge must ask potential jurors whether they are aware of any bias or prejudice against a party." State v. Woods, 345 S.C. 583,

550 S.E.2d 282, 284 (2001).[6] "Determining whether a juror's failure to respond to a voir dire question amounts to intentional concealment is a 'fact intensive determination that must be made on a case-by-case basis.' " State v. Guillebeaux, 362 S.C. 270, 607 S.E.2d 99,101-02 (Ct. App. 2004) quoting State v. Sparkman, 358 S.C. 491, 596 S.E.2d 375, 377 (2004)]. "Intentional concealment occurs 'when the question presented to the jury on voir dire is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable.' " Id. "Concealment is considered unintentional where the voir dire question posed is ambiguous or incomprehensible to the average juror or where 'the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances.' " Id.

The goal of the corrective measures is to insure the defendant's right to a fair trial has not been compromised. State v. Stone, 290 S.C. 380, 382, 350 S.E.2d 517, 518 (1986). Cautionary instructions or substitution of alternate jurors may cure the prejudice caused by the publicity. United States v. Hankish, 502 F.2d 71 (4th Cir.1974). The determination of what curative measures are appropriate in a given case rests in the sound discretion of the trial judge. He should exhaust other methods to cure the prejudice before aborting a trial. Id. at 77.

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[6]"When a juror conceals information inquired into during voir dire, a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges." Id. "Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial. On the other hand, where the failure to disclose is innocent, no such inference may be drawn." Id.

How the Juror Exclusion Issue was Raised.

A. The General Voir Dire

On January 23, 2012, Judge Jefferson made a general voir dire of the potential jury panel. R. 3-13. Concerning the particular parties in this criminal action, Judge Jefferson inquired as follows:

> Is there any member of the panel related by blood or marriage to Jerome Renaldo Campbell, Michael Allen, Anthony German, Frank Haigler, or anyone who is related to or a member of - - or have any connection with Michael German? If so, please stand at this time?
>
> (Whereupon, no one stands.)
>
> The Court: Does any member of the panel have a close - - close personal or social relationship with Jerome Renaldo Campbell, Michael Allen, Anthony German, Frank Haigler or anyone who is related to Michael German? If so, please stand at this time.
>
> (Whereupon no one stands.)
>
> The Court: The following are a list of potential witnesses in this case. I would ask that you listen very carefully. Jerome Renaldo Campbell, Charise Coaxum, Christopher Robinson, Aaron Burnham, Sandra Campbell, Jordan Richardson, John Tisdale, Mary Phillips, Anita Moore, Mike Sherman, Richard Wiersman - - Wiersma, W-I-E-R-S-M-A, Richard Burckhardt, Sergeant Scott Ray, Rene Charles, all of the Charleston Police Department, Ryan Kelly, Anthony German, Michael Allen, Timothy McCarthy, James Tawney, Frank Haigler, Kenneth Whitler, John Roberts, all of the South Carolina Law Enforcement Division, Erin Presnell, Medical University of South Carolina, Joshua Briar-Ridgeway, and Joy Glover.
>
> Is there any member of the panel related by blood or

> marriage to any of the people that I have just listed or does anyone have a close personal or social relationship with any of these individuals? If so, please stand at this time.
>
> (Whereupon no one stands.)

R. p. 7, l. 8 - p. 8, l. 11. During the voir dire, concerning family members in law enforcement, potential juror Robin Givens (70) indicated she had a cousin who was with the North Charleston Police Department. R. p. 11, ll. 10-16. Potential juror Erica Gadsden (63) indicated that she had a cousin in the Charleston Police Department. R. p. 11, l. 18 - p. 12, l. 1.[7]

B. The Jury Selection

The jury was selected in the following manner:

Name	State	Defense	Seated
Kelly Grobmeyer (82)	1	-	-
Keith Culbreath (42)	-	-	1
Danielle Bowles (14)	2	-	-
Lorilee Hoyle (107)			2
Alicia Brown (16)	-	-	3
Jessica Walters (275)	-	1	-
Cynthia Wilcher (286)	3	-	-
***Erica Gadsden (63)**	-	-	4
Alex Pearson (193)	-	-	5
Henry Cheves (33)	-	-	6
Paul Porter (205)	-	-	7
Helen Spann (25)	-	-	8
Glenda Elayda (52)	-	2	-
Christina Janke (115)	4	-	-
Stacy Stewart (255)	-	-	9
Matthew Sullivan (259)	-	-	10
William Kufner (131)	5	-	-
Cathy Thomas (262)	-	3	-
***Robin Givens (70)**	-	-	**11**

[7] During the voir dire, Judge Jefferson did not ask the potential jurors concerning whether any of the jurors were acquainted with Jerome Campbell (Coaxum)'s family members. In addition, the appellant's family members were not specifically identified by the court.

Julie Lowman (143)	-	-	12
Laura Patrick (187)	-	-	1A
Laura Owings (184)	-	1	-
William Latimer (132)	-	-	2A

R. p. 14, l. 1 - p. 21, l. 24. Thus, prior to the selection of Juror Givens, the State had already exhausted all five of its peremptory challenges.

C. The Lunch Recess and Cautionary Instructions.

Judge Jefferson then advised the jury panel that they were breaking to discuss scheduling with counsel. In particular, she advised the selected panel concerning the potential lunch break:

> During this break, please do not discuss the case among yourselves. Please don't speculate about what you think it may or could be about...

R. p. 22, ll. 22-25.

After a brief break, the jury was returned and sworn. R. 24-25. Judge Jefferson gave additional and more specific instructions concerning the lunch break discussions. R. 25-27. In particular, she instructed:

> During the break, **please do not discuss the case among yourselves or with anyone else**. Please don't speculate about what you think it may or could be about. Please don't do any independent research. That includes anything that could be found on the internet or any other alternate source. As the fact finders in this case, you are bound to decide this case according to the evidence that you hear from the lips of the sworn witnesses and the other evidence that will be introduced.
>
> **Also, please do not have any contact with anyone in or about the courthouse. There are a lot of witnesses in this case and again, we would not want an innocent conversation to be observed and misinterpreted. ...**

R. p. 26, ll. 3-19 (emphasis added).

D. The Initial Motion Concerning Lunch Break Communications.

Subsequently after the lunch break, the court reconvened. At that time, Assistant Solicitor Voigt advised Judge Jefferson that members of the victim's family had reported to him that while they were in the snack bar they saw two members of the jury conversing with a family member or friend of the Campbell group (defendant's).[8] It was reported that one of the Campbell group was overheard to say after the conversation with the jurors that "they're on our side." R. p. 27, l. 25 - p. 28, l. 6.

When Judge Jefferson questioned whether they were actually jurors in this case, Solicitor Voigt reported that they had jury stickers on and he suggested it was Erica Gadsden, juror 63, in a yellow shirt and an older woman wearing a dark jacket which fit the description of Ms. Givens (juror 70). R. p. 28, ll. 16-25. Solicitor Voigt also proffered that the family member who was identified as making the statement ["on our side"] was present in the court and could be identified. R. p. 29, ll. 1-4.

Defense counsel then also questioned whether it was actually a juror in the present case.

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[8]Subsequently, a surveillance video from the courthouse snack bar was presented during a hearing on the written motion. Court Exhibit # 2 [in possession of the Court]. The silent video reveals what subsequently was determined to be juror Erica Gadsden (Juror 63) in a bright yellow shirt with juror Robin Givens in a red coat (Juror 70) entering the snack bar area at on the video. [12:26:30]. They are viewed sitting down and conversing while eating. A group of four females subsequently enters the snack bar area. Juror Givens waves at group at 1:19:52. One female walks over and juror Givens reaches out and grabs her hand and pulls the female toward her at 1:20:00. This female remains in apparent conversation at the table where Givens and Gadsden are seated while three others briefly move away. This person remains in conversation until 1:20 :36 when she moves away toward her three remaining group members. The female she spoke with in the group goes back toward the door and juror Givens gets up preparing to leave and has another brief conversation with the same female at 1:21:10. The person then leaves while the remaining three members remain [with others who later share pleasantries and replace the departed jurors at the table]. Juror Gadsden leaves, followed by juror Givens at 1:21:25. **Court Exhibit #2.**

R. 29-30.

Judge Jefferson stated she would do a voir dire. She also noted how people may perceive matters differently in matters of passing conversation. R. 30-32. Judge Jefferson stated that she would voir dire the jury to make sure that they followed her instructions without objection. R. p. 32, ll. 9-16.

The Initial Voir Dires Concerning the Contact.

The jury panel was then presented to the court. During her colloquy, she asked the following question:

> Before we begin that process of opening instruction and opening argument, I gave the jury strict instructions that they were not to have any contact with anyone in or about the courthouse who did not have a juror sticker on because, again, very innocent conversations could be very easily misinterpreted and misconstrued. I need to ask you all did any of you during the lunch and recess have any contact with anyone in or about the courthouse who did not have a juror sticker on? If so, if you did, I need you to raise your right hand for me.
>
> (Whereupon, one juror raises her right hand.)

R. p. 33, ll. 15-17. Juror Stewart indicated that she was having lunch outside the courthouse and she spoke to a gentleman, but not about the case. R. p. 34, ll. 1-13. No response was made by either juror Givens or juror Gadsden.

Judge Jefferson then made further inquiry of the jury:

> The Court: Okay. Is there anyone else who had any contact with anyone in or about the courthouse, either in the snack bar or any other parts of the building that did not have a juror sticker on and you hand any interaction with them?