

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

C. Victor Pyle, Jr., Circuit Court Judge

JUL 29 2013

THE STATE,

SC Court of Appeals

RESPONDENT,

V.

JULIAN DEANDRE BATTLE,

APPELLANT

APPELLATE CASE NO. 2011-203746

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2 COUNTY OF GREENVILLE) 2010-GS-23-4603
3)
4 State of South Carolina) TRANSCRIPT OF RECORD
5)
6 -vs-)
7 Julian Deandre Battle)

8 November 17, 2011
9 Greenville, South Carolina

10 B E F O R E:

11 THE HONORABLE C. VICTOR PYLE, Judge.

12 A P P E A R A N C E S

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14 Attorney for the State

15 Daniel Eller, Esquire
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18 Thirteenth Circuit Court Reporter
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25

I N D E X

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DR CR RED REC

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1 THE BAILIFF: All rise. The Honorable C.
2 Victor Pyle presiding.

3 THE COURT: Thank you. Take your seats. Are
4 there any matters we need to take up before we pick the
5 jury?

6 MR. ELLER: Are we on the record now?

7 THE COURT: Yes.

8 MR. ELLER: Judge, I just want to make sure
9 from our conversations the other day, it's my
10 understanding that you've decided that all of our pretrial
11 motions to be decided by reference from the record of this
12 trial September 12, 2011.

13 THE COURT: You're fully protected.

14 MR. ELLER: I just want to make sure that's
15 on the record. Thank you, Judge.

16 MR. STEINBERG: Nothing from the State, Your
17 Honor.

18 THE COURT: I think we might be short two
19 jurors.

20 THE CLERK: I'll call down.

21 (Jury panel enters the courtroom.)

22 THE COURT: Ladies and gentlemen, may I have
23 your attention.

24 At this time we will select a jury in the
25 case of the State against Julian Deandre Battle.

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1 before the commission at 2:00 this afternoon.

2 Now, I understand from the commission that it
3 may very well be that they're going to excuse the retired
4 judges from coming down to this meeting. I have not heard
5 anything from them so I don't know if I have to go down to
6 Columbia or I'm going to be waived. I've got Joelle
7 continuing to call and I haven't gotten any word yet.

8 If I don't get word by 11:30 or 12:00 at the
9 latest, I'm going to have to adjourn abruptly and pick
10 back up tomorrow morning. If we have to do that, please
11 understand that's the reason.

12 All right, solicitor.

13 MR. STEINBERG: State calls Shameka Wells to
14 the stand.

15 THE CLERK: Ms. Wells, if you would come
16 forward to be sworn, please.

17 Please place your left hand on the Bible and
18 raise your right.

19 SHAMEKA WELLS, having been duly sworn,
20 testified as follows:

21 Thank you. You may be seated. State your
22 name for the record.

23 THE WITNESS: Shameka Wells.

24 DIRECT EXAMINATION

25 BY MR. STEINBERG:

State versus Julian Battle

1 Q. Ms. Wells, how are you this morning?

2 A. I'm okay.

3 Q. Ms. Wells, I want to talk briefly about who you
4 are first. Where are you from originally?

5 A. I'm from Brooklyn, New York.

6 Q. What is your highest level of education?

7 A. I am currently in college now.

8 Q. What are you studying in college?

9 A. Early childhood education.

10 Q. And do you have a current job now?

11 A. No.

12 Q. What is the primary job you've had your adult
13 life?

14 A. I was certified nursing assistant.

15 Q. What job did you have in December 25, 2009?

16 A. I was a certified nursing assistant for a hospice
17 company called Abundant Life Hospice.

18 Q. Let's talk about the people in this case. Do you
19 know Rafael Dodd?

20 A. Yes.

21 Q. How did you know him? Were you in a relationship
22 with Mr. Dodd?

23 A. I know him through my god sister, Mikeya Shumate
24 and that's her first cousin.

25 Q. And Mikeya Shumate, what is she to you?

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1 A. She's my god sister.

2 Q. And how long have you known her?

3 A. Twenty-two years.

4 Q. And how old are you?

5 A. I'm thirty-two.

6 Q. And how are you related, if at all, to Jamaal
7 Stewart?

8 A. He's Mikeya Shumate's first cousin.

9 Q. And you know him?

10 A. Yes.

11 Q. Do you know Julian Jamaal Battle?

12 A. Yes.

13 Q. And how do you know him?

14 A. I know him through Mikeya Shumate. He was her
15 ex-boyfriend's cousin.

16 Q. And had you met him prior to this incident on
17 December 25th?

18 A. Yes.

19 Q. Approximately how many times had you met him?

20 A. A few time, maybe five.

21 Q. And do you know Clinonian Dupri Owens?

22 A. Yes.

23 Q. And who is he?

24 A. He's Mikeya Shumate's ex-boyfriend.

25 Q. Was he the boyfriend at the time of December 25,

State versus Julian Battle

1 2009?

2 A. Yes.

3 Q. And what name did Mr. Owens go by?

4 A. Pri.

5 Q. You said you knew Rafael Dodd. What was his
6 temper like on the night in question?

7 A. He was calm.

8 Q. I would like you to give us a rundown. Where did
9 you meet up first with Mr. Battle?

10 A. Mr. Battle and Mr. Owens came to my home that
11 night.

12 Q. And where is your home?

13 A. Park West Apartments.

14 Q. Is this where this incident happened?

15 A. Yes.

16 Q. And did you go any place after this location?

17 A. Yes. When we left my home, we went to Terra
18 Apartments to Mikeya Shumate's aunt's house.

19 Q. What was your reason for that?

20 A. We went over there -- initially when we went over
21 there we went to hangout, play cards and party. They
22 wanted to get marijuana and to stop by her aunt's house to
23 let her cousin's know that we wasn't going to attend they
24 get together.

25 Q. Who did you meet up with at Terra Apartments?

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1 A. At Terra Apartments, we met up with Jamaal and
2 Rafael..

3 Q. Were there any hostilities or anything between
4 Rafael and Pri Owens or Dre Battle?

5 A. No.

6 Q. Did anything occur there? Were there any
7 interactions or transactions between the two of them?

8 A. At that time I didn't know any transactions, but
9 I found out later it was a transaction of marijuana.

10 Q. And who purchased the marijuana?

11 A. Dre.

12 Q. Did Mr. Battle make any statements about the
13 other males that were out there?

14 A. At Terra Apartments?

15 Q. At Terra Apartments or while they were driving.

16 A. No. When we was at my house before we left to go
17 to Terra Apartments he said he didn't want to be around a
18 lot of people he didn't know.

19 Q. Did he give his reason for that?

20 A. He just say he didn't want to be around people he
21 didn't know. He wanted to hang out and party and play
22 cards at my house.

23 Q. Let me ask you a couple of questions about
24 recollection and things of this nature. Were you either
25 drinking or high on the night in question?

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1 A. No. I had a glass of Neuvo, but it didn't
2 influence me.

3 Q. Was Mr. Battle drunk?

4 A. Yes.

5 Q. Did you see what he was drinking?

6 A. I think it was Brandy.

7 Q. After you came back to your apartment, what
8 occurred there?

9 A. When we got back to my apartment Rafael and
10 Jamaal was sitting right in front of my door. When I got
11 out of the car, I walked Rafael right upstairs to my
12 apartment because they actually didn't know which
13 apartment I lived in. I walked them up and Rafael went to
14 the bathroom and Jamaal sat down on the couch and I was
15 trying to fix the stereo, cut the stereo on and then we
16 heard the commotion downstairs with Mikeya and Dupri.

17 Jamaal was asking me what was going on and I
18 told him I didn't know and he went downstairs to see what
19 was going on.

20 Q. Did you hear what was said downstairs?

21 A. I couldn't hear ---

22 MR. ELLER: Objection as to what was said,
23 Your Honor.

24 MR. STEINBERG: Your Honor, res just.

25 THE COURT: Go ahead.

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1 MR. ELLER: If I may, I'm not familiar with
2 the res justis as far as exception to hearsay. I don't
3 think it falls under any of the 803 hearsay exceptions.

4 THE COURT: Okay. Overruled. Go ahead.

5 BY MR. STEINBERG:

6 Q. Did you hear what was being said outside?

7 A. No. I didn't hear word for word what was being
8 said. I just heard the arguing.

9 Q. Did you hear what the argument was about?

10 A. No. I assumed what the argument ---

11 MR. ELLER: Objection to what she had
12 assumed, Your Honor. She just testified that she didn't
13 know what the argument was about.

14 BY MR. STEINBERG:

15 Q. We're just going to ask you only about the things
16 that you know or you heard or you saw to your own
17 recollection.

18 A. Okay.

19 Q. What occurred after you heard this argument
20 downstairs?

21 A. Well, Jamaal went downstairs to quiet the
22 argument or break it up or whatever and then Rafael came
23 out the bathroom and the argument escalated because Jamaal
24 was downstairs and he asked me what was going on and I
25 told him I didn't know and he went downstairs.

State versus Julian Battle.

1 Q. Who are you talking about?

2 A. Rafael.

3 Q. Did Rafael seem upset when he first went
4 downstairs?

5 A. No. He wanted to know what was going on.

6 Q. Which floor are you on in this apartment
7 complex?

8 A. The second floor.

9 Q. Once Rafael got downstairs, could you hear what
10 was being said?

11 A. I heard Rafael ask what was going on.

12 Q. Did anybody respond? Did anybody make any
13 statements?

14 A. I heard somebody say it wasn't none of his
15 business.

16 Q. How did he respond to that?

17 A. He said it was his business because both of them
18 was his cousins.

19 Q. What was Rafael's tone of voice throughout this
20 time?

21 A. To me he sounded concern like he wanted to know
22 what was going on. He was just trying to end the
23 situation.

24 Q. Did you ever go downstairs?

25 A. I went down the steps when I heard him say that

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1 it was his business because they both was his cousins. I
2 went downstairs and then I heard the gunshot and I ran
3 back up.

4 Q. When you ran upstairs after you heard the
5 gunshot, how long did you stay up there?

6 A. A few seconds. I didn't hear anything so I came
7 back down.

8 Q. What did you see when you got outside?

9 A. Mikeya was standing in the parking lot and Jamaal
10 was standing on the porch and to the left Dre and Dupri
11 was standing over Rafael as Rafael was falling over the
12 rail.

13 Q. Who was standing next to Rafael?

14 A. Dre and Dupri.

15 Q. And where was Mr. Dodd, the decedent, where was
16 his body located at this time?

17 A. He was going over the rail.

18 Q. What did you do once you got out there?

19 A. I come out there and I see him run over the rail
20 and I pushed Dre out the way and I was trying to help
21 Rafael and I got behind him and was trying to help him up
22 and I realize he had been shot.

23 Q. How did you realize he had been shot?

24 A. Because I was trying to pick him -- I was trying
25 to help him up and his body went limp. He was like dead

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1 weight and that's when I realized all the blood was coming
2 up.

3 Q. Did you see anything else unusual on the ground?

4 A. Yeah, I seen a gun on the ground and I seen the
5 wallet.

6 Q. Did this Mr. Battle make any statements at this
7 immediate time?

8 A. He said it was just a flesh wound and he'll be
9 alright.

10 Q. How well do you recall that?

11 A. Very clearly.

12 Q. What was Mr. Battle's tone of voice when he made
13 that statement?

14 A. He was calm. He made light of it like it's just
15 a flesh wound, he'll be alright.

16 Q. Outside of the people we just named, were there
17 any other people outside this time of night?

18 A. No.

19 Q. What was Jamaal Stewart doing? What was his
20 reaction at this time?

21 A. He was on the right side, the other side of the
22 porch, the little walk way, and he was standing there and
23 Dupri was in his face arguing with him.

24 Q. Did Dupri ever leave?

25 A. After Dre said it's just a flesh wound let's go,

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1 he left with Dre.

2 Q. And after they left, did Jamaal make any
3 statements?

4 A. He said they took his phone and shot his cousin
5 and he just started crying.

6 Q. Did he make that statement while standing on the
7 patio area?

8 A. Yeah, after they left.

9 Q. After Dre Battle left, how did he leave? Did he
10 run, walk or what?

11 A. They walked.

12 Q. Did you then look at Mr. Dodd again, Rafael Dodd?

13 A. Yeah. Well, before they left when Dupri was in
14 Jamaal's face and Dre was off in the parking lot, I looked
15 back at Rafael and Rafael had raised up and grabbed the
16 gun but then he died.

17 Q. Where was Rafael at the time?

18 A. He was still on the ground.

19 Q. He was already on the ground?

20 A. Yes.

21 Q. He was on his back or on his front?

22 A. Yes.

23 Q. I'm going to show you some photographs that have
24 already been introduced. State's Exhibit 2 through 5, do
25 these accurately reflect how your building looked at the

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1 time.

2 A. Yes.

3 Q. And is this patio what we're talking about?

4 A. Yes.

5 Q. And where were the individuals standing?

6 A. Which ones?

7 Q. Where was Rafael standing? Where is this guard
8 rail you're talking about?

9 A. He was on this rail right here.

10 MR. STEINBERG: Your Honor, may I publish
11 this to the jury at this time?

12 THE COURT: All right.

13 BY MR. STEINBERG:

14 Q. What happened after Mr. Dodd tried to raise his
15 firearm up?

16 A. He picked up the gun and he tried to point it
17 towards Pri and Keya was standing behind Pri and so I
18 tried to get her out the way but when I looked back at him
19 he had died.

20 Q. I want to make sure I understand this and the
21 jury understands this, you said he was tried to pick up
22 the gun the entire time was he on the ground?

23 A. Yes, he was on the ground.

24 Q. When he was moved over or pushed over or however
25 he got over, did he ever stand up after that?

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1 A. No.

2 Q. Thank you, ma'am. Please answer opposing
3 counsel's question.

4 MR. ELLER: Your Honor, I got a brief matter
5 of law to discuss with you.

6 THE COURT: Take the jury out.

7 (Jury exits the courtroom).

8 MR. ELLER: Two things. First before I got
9 into the matter of law, are any of these individuals
10 witnesses?

11 MR. STEINBERG: No. All the witnesses are
12 sequestered.

13 MR. ELLER: And, then, Your Honor, as far as
14 the matter of law pursuant to State v. Joseph, I intend to
15 introduce the prior criminal conviction of Ms. Wells dated
16 December 1, 1999 which was a breach of trust with
17 fraudulent intent for \$1000 and I would ask pursuant to
18 State v. Joseph that she be instructed to only answer yes
19 or no about the conviction and not try to explain away the
20 conviction.

21 THE COURT: I'm not familiar with the case
22 you're citing.

23 MR. STEINBERG: Neither am I.

24 MR. ELLER: If you would like, Your Honor, I
25 could it.

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1 THE COURT: What does it say?

2 MR. ELLER: It says they can't try to explain
3 away a conviction and just answer yes or no.

4 MR. STEINBERG: It's must understanding that
5 they have to answer yes or no but they do have a right to
6 explain it. I don't know if she wants to explain it. She
7 might simply state it.

8 What date is it?

9 MR. ELLER: It's December 1, 1999, but the
10 time period doesn't matter, Your Honor, because breach of
11 trust ---

12 THE COURT: I'm not saying that. I'm not
13 concerned about that.

14 MR. ELLER: One moment, Your Honor, I'm going
15 to see if I can get you a blurb.

16 Your Honor, simply what I'm asking her to do
17 is to instruct her to admit that she did, in fact -- I
18 received these convictions from the Solicitor's Office and
19 I think prior to the later trial we had a stipulation that
20 they would not be allowed to contest or deny their
21 convictions. That goes for all of the convictions. These
22 are for the convictions ---

23 THE COURT: I agree with that, but you're
24 telling me that case says that she doesn't have a right to
25 explain.

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1 MR. ELLER: Explain away the conviction. She
2 was convicted of the crime and that's all I'm asking.

3 MR. STEINBERG: Your Honor, that would make
4 it dispositive but Rule 609(b) says that any charge over
5 ten years old is not admissible unless there is prior
6 written ---

7 THE COURT: No, I think it involves moral
8 turpitude.

9 MR. STEINBERG: Your Honor, if I may I think
10 the aspect involving the truthfulness goes to the lack of
11 -- there's no weighing of prejudicial. I think the ten
12 year limit is true in this case. I'm looking at 609(b).

13 MR. ELLER: Your Honor, we were provided with
14 that literally, I think, 48 hours before the last trial by
15 the Solicitor's Office. They had notice of this
16 conviction for, it's now November, I would say at least
17 three months and they provided me with the conviction.
18 There's absolutely no prejudice that the Solicitor's
19 Office can have saying there's no notice and that this
20 time limit applies.

21 MR. STEINBERG: I did give him evidence. I
22 gave him everything. I have no doubt of what her record
23 is. I don't think the jury is entitled to hear -- at some
24 point, your record is simply not going to be of any use
25 and the ten year limit is that limit, Your Honor, unless

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1 the defendant has a good reason. He has to give me notice
2 and not just notice, it has to be something to sway Your
3 Honor. I've never heard of a ten year charge that carries
4 this amount of time being introduced more than ten years.

5 MR. ELLER: Under 609(a) it's a conviction of
6 moral turpitude. It shall be admissible regardless of the
7 sentence.

8 MR. STEINBERG: Judge, that does not get
9 reached until the ten years.

10 THE COURT: I disagree. As long as it
11 involves dishonesty and false statements, I think the ten
12 year rule does not apply.

13 MR. STEINBERG: I'm not forcing counsel to
14 introduce any proof of this. I agree that what we gave
15 him is accurate.

16 THE COURT: I'm going to let you ask that
17 question and she can explain but you can not mention the
18 sentence.

19 MR. ELLER: Okay. That's fine.

20 THE COURT: Okay. Bring the jury. Hold the
21 jury for a second. Bring in Ms. Mims.

22 Ms. Mims, you handed the bailiff a note that
23 you know Jamaal Stewart.

24 JUROR MIMS: Uh-hum.

25 THE COURT: And how do you know Mr. Stewart.

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1 JUROR MIMS: He dates my cousin.

2 THE COURT: You didn't recognize his name
3 when I called the list of witnesses.

4 JUROR MIMS: I didn't hear his name.

5 MR. STEINBERG: Your Honor, should I bring in
6 Mr. Stewart is the same Mr. Stewart.

7 THE COURT: That would be fine.

8 (Witness Stewart enters the courtroom).

9 MR. STEINBERG: I'm going to direct
10 Mr. Stewart to stand next to me.

11 THE COURT: Is this the same Mr. Stewart?

12 MR. MIMS: Uh-hum.

13 THE COURT: Thank you. You can go back.

14 Okay, Ms. Mims, out of an abundance of
15 caution, I need to excuse you from further service in this
16 case. I need you to call back after 6:00 this afternoon
17 to tell you when you report back for jury duty. Okay.

18 (Juror Mims dismissed from the trial of this
19 case.)

20 MR. ELLER: Judge, before you bring the jury
21 back in, could we get a limiting instruction or curative
22 instruction to the jury as to why the two jurors have been
23 dismissed. I'm afraid they're going to insinuate
24 something is going on.

25 THE COURT: No, I'm not going to do that.

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1 The commission was meeting at 9:00 in
2 executive session this morning and they were taking the
3 first judge at 10:00. I haven't heard anything so that
4 tells me I'm going to have to go.

5 Call one more time to see.

6 THE CLERK: Yes, sir.

7 THE COURT: Let me check my email and see if
8 there is anything. I'll be right back.

9 (Whereupon, there was a brief break.)

10 THE BAILIFF: Court will come to session.

11 THE COURT: I got no emails.

12 MR. ELLER: Judge, is there a time you need
13 to be gone by? I didn't want to start with this witness
14 and there's a time you need to be gone by.

15 THE COURT: How long will you be with her?

16 MR. ELLER: I got four, three type written
17 pages of questions, hopefully 10 or 15 minutes. If it
18 would be longer it would be nonresponsive. I don't want
19 to stop and you have to leave.

20 THE COURT: I understand that.

21 MR. ELLER: But I don't want us to go longer
22 and you need to stop.

23 THE COURT: Bring the jury.

24 (Jury re-enters the courtroom).

25 Ms. Pace, would you take that first seat

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1 please, ma'am. Ladies and gentlemen, it's been necessary
2 to excuse Ms. Mims from further services on this case and
3 so Ms. Pace, you are now the foreperson of this jury.

4 All right. Go ahead.

5 CROSS-EXAMINATION

6 BY MR. ELLER:

7 Q. Good morning, Ms. Wells. Ms. Wells, I believe
8 your testimony was that Mikeya Shumate is your god sister,
9 right?

10 A. Yes.

11 Q. So you're very close with Ms. Shumate, right?

12 A. Yes.

13 Q. And before this incident you had known Mr. Dodd,
14 the decedent Rafael Dodd, you known him for a long time
15 prior to this incident, right?

16 A. Yes.

17 Q. And you previously met Mr. Battle before this
18 incident, correct?

19 A. Yes.

20 Q. And isn't it true that you also knew Mr. Owens
21 for about eight or nine months before this incident?

22 A. Yes.

23 Q. And Mr. Owens was Ms. Shumate's boyfriend, right?

24 A. Yes.

25 Q. And you told Investigator Laura Jones on the

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1 night of this incident that Ms. Shumate knew both
2 Mr. Owens and Mr. Battle, right?

3 A. Yes.

4 Q. You do recall actually meeting at the scene with
5 Investigator Laura Jones?

6 A. Yes.

7 Q. Ms. Jones that's seated at this table over here?

8 A. Yes.

9 Q. On the night of December 24, 2009, let's back up
10 a little bit, isn't it true that Mr. Battle and Mr. Owens
11 came to your apartment first.

12 A. Yes.

13 Q. So it was just the three of you there originally?

14 A. Yes.

15 Q. And the plan was for Ms. Shumate to eventually
16 come to your apartment, correct?

17 A. Yes.

18 Q. And when they got there, they being Mr. Owens and
19 Mr. Battle, Ms. Shumate wasn't there yet, right?

20 A. Yes.

21 Q. And they were asking for Ms. Shumate, correct?

22 A. Yes.

23 Q. And isn't it true then that Ms. Shumate did
24 eventually show up to your apartment?

25 A. Yes.

State versus Julian Battle

1 Q. She came in a vehicle on her own, right?

2 A. Yes.

3 Q. And eventually when Ms. Shumate got there the
4 four of you were there hanging out, correct?

5 A. Yes.

6 Q. And then it became evidence that someone in the
7 group wanted some marijuana, right?

8 A. Yes.

9 Q. And isn't it true that Ms. Shumate made it clear
10 that she could get some at another apartment complex where
11 the rest of her family was having a get together?

12 A. Yes.

13 Q. In fact, isn't it true that she told Officer
14 Ooten that Ms. Shumate asked everyone to go with her to
15 her cousin's apartment, right?

16 A. Yes.

17 Q. And that she had a relative visiting from
18 Memphis?

19 A. Yes.

20 Q. And you told Officer Ooten that and that relative
21 from Memphis was actually Mr. Dodd?

22 A. Yes.

23 Q. And then the four of you, y'all decided to leave
24 your apartment and go to another apartment, right?

25 A. Yes.

State versus Julian Battle

1 Q. And the four of you left together?

2 A. Yes.

3 Q. And when you got to that apartment isn't it true
4 that Mr. Stewart and Mr. Dodd they were not there yet?

5 A. Yes.

6 Q. And at the other apartment complex at some point,
7 isn't it true that Mr. Owens became agitated and wanted to
8 leave?

9 A. Yes.

10 Q. And while at the other apartment all of you --
11 let me back up a little bit. At some point Mr. Stewart
12 and Mr. Dodd actually did show up to that apartment
13 complex, right?

14 A. Yes.

15 Q. And isn't it true that all of you and when I'm
16 saying all of you I'm talking about Mr. Stewart and
17 Mr. Dodd and the four of you that came over there together
18 all of you never actually got together at that apartment,
19 did you?

20 A. At the Terra Apartments?

21 Q. Right.

22 A. What do you mean got together?

23 Q. The group of you didn't get together and talk,
24 y'all didn't get together as a group?

25 A. No.

State versus Julian Battle

1 Q. There were two separate groups, right?

2 A. Yes.

3 Q. Mr. Battle, Mr. Owens and yourself I believe was
4 off in one group, correct?

5 A. Uh-hum.

6 Q. And then the other group was Ms. Shumate,
7 Mr. Stewart and Mr. Dodd, they were actually in a vehicle,
8 right?

9 A. Yes.

10 Q. So when Mr. Stewart and Mr. Dodd showed up to
11 this Terra Apartments complex, Ms. Shumate went and got in
12 the vehicle with them, correct?

13 A. Yes.

14 Q. And it was at that point somewhere down the line
15 where Mr. Owens became agitated and wanted to leave.

16 A. No, he was agitated before Jamaal and Rafael
17 showed up.

18 Q. Isn't it true that you already testified that
19 Mr. Owens became agitated and wanted to leave that
20 apartment complex?

21 A. Yes.

22 Q. Wanted to leave Terra Apartment complex?

23 A. Yes.

24 Q. And then ultimately you left the group that
25 you're with, Mr. Owens and Mr. Battle and went to tell

State versus Julian Battle

1 Ms. Shumate come on, let's go, Mr. Owens is getting
2 agitated or wanting the leave, right?

3 A. Yes.

4 Q. And when I say agitated, he's just wanting to get
5 out of there; is that fair?

6 A. Yes.

7 Q. And over at Terra Apartments other than the time
8 that you went over to Ms. Shumate, you remained with
9 Mr. Battle and Mr. Owens. I believe y'all were in a porch
10 area; is that right?

11 A. Yes.

12 Q. And then you went and told Ms. Shumate that
13 Mr. Owens was upset and you actually urged Ms. Shumate to
14 leave, correct?

15 A. Urged her?

16 Q. Yes, or told her come on let's go.

17 A. Yes, I told her.

18 Q. And then the four of you being yourself,
19 Ms. Shumate, Mr. Owens and Mr. Battle, y'all did leave,
20 right, left Terra Apartments?

21 A. Yes.

22 Q. And when y'all left, y'all left together,
23 correct?

24 A. Yes.

25 Q. In one vehicle?

State versus Julian Battle

1 A. Yes.

2 Q. And on your way back to your apartment -- that's
3 where y'all were heading, right?

4 A. Yes.

5 Q. On the way back to your apartment, y'all stopped
6 to buy some cigars?

7 A. I don't know what they went into the store -- we
8 stopped by the store, yes, we did.

9 Q. You previously testified y'all stopped and got
10 cigars, right?

11 A. I previously testified that we stopped by a
12 store.

13 Q. And got some cigars?

14 A. No, I didn't say we stopped and got cigars. I
15 said we stopped by a store.

16 Q. What was the purpose of stopping by the store?

17 A. I don't know.

18 Q. You don't know.

19 A. We stopped by the store, Dre and Pri got out and
20 went into the store. Me and Keya stayed in the car and
21 they came out of the store and we went to the next
22 destination.

23 MR. ELLER: Your Honor, may I approach?

24 THE COURT: Yes.

25 BY MR. ELLER:

State versus Julian Battle

1 Q. Ms. Wells, I'm now showing you a transcript from
2 your last testimony. If you'll look and we'll start at
3 Line 13, read to yourself Line 13 through 16, just to
4 yourself. Don't read it out loud to the jury.

5 A. (Witness complies).

6 Q. Are you finished?

7 A. Yes.

8 Q. Does that refresh your recollection about your
9 previous testimony that y'all went and got cigars?

10 A. It doesn't -- okay, when we went to the store, I
11 didn't know necessarily that they was going to get --
12 nobody said okay, we're going to the store and get cigars.
13 If that's what was said before, then, you know ---

14 Q. So you're not disputing what your testimony was
15 before, then, are you.

16 A. No, I'm not disputing because that's what it says
17 on the paper.

18 Q. After y'all got back to your apartment, you left
19 Terra Apartments, you made a stop at the store, you're
20 back at your apartment now. You get me?

21 A. Yes.

22 Q. When y'all got back, isn't it true that
23 Mr. Stewart and Mr. Dodd were already there in another
24 vehicle?

25 A. Yes.

State versus Julian Battle

1 Q. And isn't it true that Mr. Owens and Mr. Battle
2 did not know that Mr. Stewart and Mr. Dodd were going to
3 meet y'all at your apartment?

4 A. Yes, to my knowledge.

5 Q. And isn't it true that you got out of the car
6 that you were in and went over to see Mr. Stewart and
7 Mr. Dodd?

8 A. Yes.

9 Q. And then you took those gentlemen upstairs to
10 your second floor apartment?

11 A. Yes.

12 Q. And at that time, Ms. Shumate and Mr. Owens began
13 arguing?

14 A. Yes.

15 Q. So just to paint the picture, Ms. Shumate and
16 Mr. Owens they're arguing with one another and you leave
17 with the other gentlemen, Mr. Stewart and Mr. Dodd, and
18 y'all go upstairs?

19 A. No, they was not arguing when we went upstairs.
20 We didn't start hearing the argument until we were
21 upstairs and I was trying to get the stereo together and
22 Mr. Dodd was in the bathroom and then we started hearing
23 the argument.

24 Q. Isn't it true that you told Officer Ooten that
25 when y'all arrived and Mr. Owens and Mr. Battle saw

State versus Julian Battle

1 Mr. Dodd and Mr. Stewart that Mr. Owens started yelling at
2 Ms. Shumate?

3) A. No, I didn't say that.

4 Q. You're disputing that you told Officer Ooten
5 that?

6 A. Yeah, because I didn't say that.

7 Q. At what point then was it that they actually
8 started arguing with one another?

9 A. Once we got upstairs, me, Jamaal and Rafael, we
10 went upstairs, Rafael went to the bathroom, Jamaal sat
11 down on the couch and I started trying to fix the stereo
12 to work and then we heard them arguing.

13 Q. So your testimony is that when you left the group
14 of folks you were with, there was not an argument going on
15 and you went upstairs?

16 A. Yes.

17 Q. Okay. Now, while you were upstairs with Mr. Dodd
18 and Mr. Stewart, isn't it true that you could hear
19 Ms. Shumate and Mr. Owens arguing?

20 A. Yes.

21 Q. You couldn't hear what they were saying but you
22 could hear them arguing?

23 A. Yes.

24 Q. Right?

25 A. Yes.

State versus Julian Battle

1 Q. Now, although you couldn't actually hear what
2 they were saying since you're in a second floor apartment,
3 would you agree with me that it was loud if you could hear
4 them arguing from the upstairs inside your apartment?

5 A. Yes.

6 Q. Now, at some point Mr. Stewart then left the
7 apartment and went outside, right?

8 A. Yes.

9 Q. And he started arguing too, didn't he?

10 A. He didn't come down there to argue but when he
11 went down there he asked what was going on and asked them
12 to stop arguing.

13 Q. I understand that you have an opinion about what
14 he went down there to do but what I'm asking you is when
15 he went down there isn't it true that he started arguing
16 with Mr. Owens and Ms. Shumate?

17 A. The argument escalated. He didn't start an
18 argument with them when he went down there.

19 Q. But he was arguing, wasn't he?

20 A. He got into an argument when he got down there.

21 Q. And you remained upstairs with Mr. Dodd and you
22 could hear Mr. Stewart arguing outside as well, couldn't
23 you?

24 A. Yes.

25 Q. And he was loud enough for you to hear his voice

State versus Julian Battle

1 and recognize that it was him too arguing, right?

2 A. I wouldn't say that he was just arguing. He was
3 trying to figure out what was going on and extinguish the
4 situation.

5 Q. It was loud enough for you to recognize his
6 voice?

7 A. Yes, I could recognize his voice.

8 Q. You clearly recognized Mr. Stewart's voice out of
9 the individuals that were still outside arguing?

10 A. Yes.

11 Q. Now, at some point subsequent to when Mr. Stewart
12 left, isn't it true that Mr. Dodd then left and went
13 outside, right?

14 A. Yes.

15 Q. Now, you remained inside your second floor
16 apartment after Mr. Dodd left, correct?

17 A. Yes.

18 Q. I believe you testified this morning that you
19 heard Mr. Dodd say two things, right?

20 A. Yes.

21 Q. And when you heard him say these two things, he
22 was, in fact, outside and you were upstairs in the second
23 floor apartment?

24 A. Yes.

25 Q. And isn't it true that you heard him say first

State versus Julian Battle

1 what's going on?

2 A. Yes.

3 Q. And the second statement you heard him say was,
4 "It is my business because these two are both my cousins."

5 A. Yes.

6 Q. And you heard those two statements clear as a
7 bell, correct?

8 A. I did, yes.

9 Q. But you could not hear any of the other
10 statements from any of the other individuals who were
11 outside, isn't that right?

12 A. That's right.

13 THE COURT: Mr. Eller, I've got a question
14 from this other jury that's deliberating that I've got to
15 take up.

16 MR. ELLER: Sure, Your Honor.

17 THE COURT: Ladies and gentlemen, I'll give
18 you a recess while I consult with this other jury.

19 You can step down.

20 (Witness leaves the witness stand).

21 Take the jury out.

22 (Jury leaves the witness stand).

23 All right. Let's bring this jury back out.

24 I'm going to let them go.

25 (Jury re-enters the courtroom).

State versus Julian Battle

1 Ladies and gentlemen, I am sorry to say I
2 have not gotten the call that I was expected and so I need
3 to leave for Columbia so we'll have to recess at this time
4 and pick back up tomorrow morning at 9:00. So please
5 remember what I read to you from Chief Justice's order.
6 Please keep your badges on and have them on when you come
7 back in the morning. So please be back in your jury room
8 at 9:00 in the morning. Thank you.

9 (Jury exits the courtroom).

10 Sorry folks. It's beyond my control.

11 MR. ELLER: Your Honor, real quick, if we
12 could get an instruction from you as far as Ms. Wells.

13 THE COURT: Ms. Wells, don't discuss your
14 testimony with anybody, no other witnesses, anybody, do
15 you understand that?

16 THE WITNESS: Yes.

17 THE COURT: If you do so, I will have to hold
18 you in contempt of court.

19 THE WITNESS: Yes, sir.

20 ---END OF TRANSCRIPT RECORD, DAY 1---

21

22

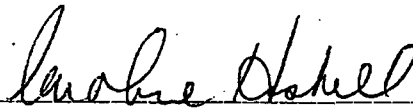
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1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal, in
7 the Court of General Sessions, South Carolina on the 18th
8 day of November, 2011.

9 I do further certify that I am neither of
10 kin, counsel, nor interest to any party hereto.

11
12
13 

14 Caroline Hiskell,
15 Thirteen Circuit Court Reporter
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1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2 COUNTY OF GREENVILLE) 2010-GS-23-4603
3)
4 State of South Carolina) TRANSCRIPT OF RECORD
5)
6 -vs-)
7 Julian Deandre Battle)

8 November 18, 2011 - Day 2
9 Greenville, South Carolina

10 B E F O R E:

11 THE HONORABLE C. VICTOR PYLE, Judge.

12 A P P E A R A N C E S

13 Howard Steinberg, Esquire
14 Attorney for the Plaintiff

15 Daniel Eller, Esquire
16 Attorney for the Defendant

17 CAROLINE HISKELL
18 Thirteenth Circuit Court Reporter
19
20
21
22
23
24
25

I N D E X

WITNESSES

DR CR RED

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ID

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1 THE BAILIFF: All rise. Court is now in
2 session, the Honorable C. Victor Pyle presiding.

3 THE COURT: Are we ready to go?

4 MR. ELLER: As soon as Mr. Steinberg get's
5 back.

6 THE COURT: Bring in the jury.

7 (Jury re-enters the courtroom.)

8 Okay. Good morning. Ms. Wells, please
9 retake the stand.

10 CROSS-EXAMINATION (continued).

11 BY MR. ELLER:

12 Q. Ms. Wells, I believe we left off yesterday just a
13 brief review trying to get us back in line with where we
14 were. We were back at your apartment the night of this
15 incident and I believe you had just testified about being
16 upstairs. Despite being upstairs, you had just loudly and
17 clearly heard two statements from Mr. Dodd. Does that
18 refresh your recollection as to where we left off?

19 A. Yes.

20 Q. After you heard these two statements by Mr. Dodd,
21 at that point, that's when you heard the gunshot, right?

22 A. Yes.

23 Q. And I believe your testimony was that you went
24 downstairs, heard the gunshot and then ran back up the
25 stairs?

State versus Julian Battle

1 A. Yes.

2 Q. And then you didn't hear any more gunshots and
3 you went back downstairs; is that right?

4 A. Yes.

5 Q. And so you were inside this entire time, right?

6 A. Yes.

7 Q. And you couldn't see through the door, there's no
8 windows for you to look through?

9 A. No.

10 Q. And you didn't see any type of struggle between
11 Mr. Dodd and Mr. Battle, did you?

12 A. No.

13 Q. You didn't see a flash from the gun?

14 A. No.

15 Q. You didn't see anyone holding a gun?

16 A. No.

17 Q. And after you did hear the gunshot, you
18 ultimately did go outside, right?

19 A. Yes.

20 Q. And when you exited the building, isn't it true
21 that you saw Mr. Dodd hanging over the railing?

22 A. Yes.

23 Q. But that's not what you told Investigator Jones,
24 is it?

25 A. Yes, that's what I said.

State versus Julian Battle

1 Q. Let me understand your testimony. Isn't it true
2 that you told Investigator Jones that Mr. Dodd was lying
3 on the ground when you exited the apartment?

4 A. No, I told her he was hanging over the railing.

5 Q. Do you remember giving the statement to
6 Investigator Laura Jones?

7 A. Yes.

8 Q. Ms. Wells, I'm now showing you a two-page
9 document. I'd like you to look at this document and tell
10 me if you can identify that.

11 A. Yes.

12 Q. Do you recognize that document?

13 A. Yes.

14 Q. And is that in fact the written statement you
15 gave to Investigator Laura Jones?

16 A. Yes.

17 Q. And you gave it to her on December 25, 2009,
18 right?

19 A. Yes.

20 Q. In the hours after this incident you gave this
21 written statement, correct?

22 A. Yes.

23 Q. And is that your signature at the bottom of Page
24 1?

25 A. Yes.

State versus Julian Battle

1 Q. And the statement there says, "I read the above
2 statement is true and correct as best I recall," do you
3 remember that statement before you signed that statement?

4 A. Yes.

5 Q. Now, could you review -- I'm going to direct your
6 attention to Page 2 of that statement. I'll help you
7 Ms. Wells. It's about halfway down here, see where my
8 finger is, if you'll just read that statement I'll ask you
9 if that refreshes your recollection.

10 A. Read it out loud.

11 Q. You don't have to read it out loud, just read it
12 to yourself and then tell me if that refreshes your
13 recollection about the statement you gave Investigator
14 Jones on December 25th of 2009.

15 A. You want me to tell you what?

16 Q. Does that refresh your recollection as to what
17 you told Investigator Jones about where you saw Mr. Dodd
18 lying when you exited the building complex?

19 A. I know what I told her.

20 Q. And what was it that you told her?

21 A. I told her he was hanging over the railing.

22 Q. But that's not what this statement says, it is?

23 A. No.

24 Q. Isn't it true that you told Investigator Jones
25 when you exited that building you saw Mr. Dodd lying on

State versus Julian Battle

1 the ground?

2 A. No, I told her he was hanging over the rail.

3 Q. Ms. Wells, that wasn't my question. I just want
4 to be clear. Isn't it true that this statement that you
5 gave Investigator Jones that you signed having sworn that
6 it was true and correct in this statement, this two-page
7 statement, you told Investigator Jones that you reflected
8 in that statement that Mr. Dodd was lying on the ground?

9 A. The statement says that, yes.

10 Q. Thank you. Now, when you were out there the
11 night of this incident with all the law enforcement
12 officers, do you remember taking to a Deputy Bayne?

13 A. No.

14 Q. Not necessarily Deputy Bayne but some law
15 enforcement individual, the very first man that arrived on
16 the scene?

17 A. Yes.

18 Q. You didn't give a written statement to that
19 individual, did you?

20 A. No.

21 Q. Do you remember taking to a lady that came over
22 and took a test of your fingers, a gunshot residue test, a
23 lady named Investigator Iona Ooten?

24 A. I can't quite remember.

25 Q. Do you recall having a law enforcement

State versus Julian Battle

1 representative, a female, come over and rub your fingers?

2 A. Yes.

3 Q. Do you remember talking to her? I know you
4 didn't give a statement, but do you remember actually
5 conversing with her?

6 A. Yeah, but I can't remember what I said.

7 Q. Okay. Now, when you talked to Officer Ooten,
8 isn't it true that you told her that you saw Mr. Dodd
9 lying on the side of the railing, on the other side of the
10 railing lying down with a gun next to him? Isn't that
11 what you told Officer Ooten?

12 A. I can't remember exactly what I said to her.

13 Q. Now, isn't it true that you told Investigator
14 Jones that you saw Mr. Dodd, the thing that you saw when
15 you exit that building, saw Mr. Dodd lift up a gun and aim
16 it at Mr. Dupri Owens?

17 A. Yes, I said that.

18 Q. And you testified yesterday, too, right?

19 A. Yes.

20 Q. And he was aiming that gun at Mr. Owens, right?

21 A. Yes.

22 Q. Not Mr. Battle but Mr. Owens?

23 A. Yes.

24 Q. Now, yesterday morning you testified that you
25 heard some statements from my client, Mr. Battle. Do you

State versus Julian Battle

1 remember yesterday when you testified that you heard
2 Mr. Battle say it was just a flesh wound?

3 A. Yes.

4 Q. But isn't it true you didn't tell Investigator
5 Jones that you heard Mr. Battle say that, did you?

6 A. Yes, I did.

7 MR. ELLER: Your Honor, may I approach?

8 THE COURT: Yes.

9 BY MR. ELLER:

10 Q. Ms. Wells, I'm now showing you that same two-page
11 written statement that you gave Investigator Jones on
12 December 25, 2009. I'll ask you to review that statement.
13 Can you tell me where in that statement you told
14 Investigator Jones that it was just a flesh wound.

15 A. Well, it didn't say exactly that but it says that
16 he'll be all right, let's go?

17 Q. You didn't tell Investigator Jones it was just a
18 flesh wound?

19 A. The paper doesn't say exactly that but it says
20 that ---

21 Q. "He'll be alright, let's go," that's all you told
22 Investigator Jones you heard Mr. Battle say, correct?
23 That's what in your statement that you signed saying it
24 was true and correct?

25 A. No, that's not what I said. I told her he said

State versus Julian Battle

1 it was just a flesh wound, let's go.

2 Q. What else did you tell Investigator Jones that
3 didn't make it into your statement that you signed on
4 December 25, 2009?

5 A. I'm not sure at this time.

6 Q. You're not disputing that statement doesn't say
7 anything about you telling Investigator Jones it was a
8 flesh wound, right?

9 THE COURT: That's been asked and answered
10 several times. Move on, sir.

11 BY MR. ELLER:

12 Q. You also didn't tell Investigator Jones that you
13 pushed Mr. Battle, did you?

14 A. I can't remember. Maybe I didn't.

15 Q. That's not in your statement?

16 A. That's not in my statement.

17 Q. And you didn't tell Investigator Jones that
18 Mr. Battle was drunk either, did you?

19 A. No, I wasn't asked that. I was just asked what
20 had happened and I told her what happened.

21 Q. But none of that is in your statement, is it?

22 A. None of what is not in my statement?

23 Q. That you pushed Mr. Battle out the way or that
24 you felt like he was drunk.

25 A. That I felt like he was drunk is not in my

State versus Julian Battle

1 statement.

2 Q. And the statement that you testified to yesterday
3 that when you exited the building you pushed Mr. Battle
4 out of the way, that's not in that statement either, is
5 it?

6 A. No, it's not in there.

7 Q. You didn't tell Officer Ooten that you pushed
8 Mr. Battle out the way, did you?

9 A. I don't think Officer Ooten asked me what
10 happened.

11 Q. But you do remember talking to her that night.

12 THE COURT: That's been asked and answered.
13 Move on, please.

14 BY MR. ELLER:

15 Q. Isn't it true that you didn't tell Investigator
16 Jones and it's not in your statement that you saw
17 Mr. Battle jostle his clothes?

18 A. I never said I seen him jostling his clothes.

19 Q. So you didn't see that and you didn't tell
20 anybody that?

21 A. No.

22 Q. In fact, you told Investigator Jones you didn't
23 know who shot Mr. Dodd?

24 A. Yes, I said that.

25 Q. You didn't know if it was Mr. Owens or Mr. Battle

State versus Julian Battle

1 or Mr. Stewart for that matter?

2 A. No, I did not know.

3 Q. And that's because you were inside and you didn't
4 actually see anything, right?

5 A. That's right.

6 MR. ELLER: No further questions.

7 THE COURT: Any redirect?

8 MR. STEINBERG: Very briefly.

9 REDIRECT EXAMINATION

10 BY MR. STEINBERG:

11 Q. Ms. Wells, did either myself or Mr. Eller ask the
12 exact same questions of you that investigators asked the
13 night in question?

14 A. No.

15 Q. Did he ask more questions or different questions?

16 A. Yes, more questions and more detail than what was
17 asked that night.

18 Q. Opposing counsel asked you whether you had said
19 in your statement that Mr. Battle was drunk. Do you agree
20 that you did not say the word drunk?

21 A. No, I didn't say drunk.

22 Q. Did you talk about Mr. Battle having alcohol that
23 night?

24 A. Yes.

25 Q. You talk about Mr. Battle having marijuana that

State versus Julian Battle

1 night?

2 A. Yes.

3 Q. Did you write this statement or was it typed by
4 somebody else?

5 A. It was typed by somebody else.

6 Q. Do you agree that you signed it, though?

7 A. Yes, I signed it. I signed it because it was
8 pretty much of what I said.

9 Q. Yesterday you testified that you heard Mr. Battle
10 say he'll be all right, it's a graze wound; is that
11 correct?

12 A. Yes.

13 Q. In your statement, what language did you use?
14 Let me show you your statement on the second page. What
15 language did you use?

16 A. "He'll be all right, it's a flesh wound."

17 Q. Is that the same statement you're referring to?

18 A. Yes.

19 MR. ELLER: Objection, Your Honor, it's a
20 characterization of the same statement. She's already
21 testified this morning she did not say it was a flesh
22 wound or a graze wound.

23 THE COURT: Overruled.

24 BY MR. STEINBERG:

25 Q. You testified that Mr. Owens had the gun pointed

State versus Julian Battle

1 at him by Mr. Dodd. Where was Mr. Dodd when that
2 occurred?

3 A. Can you say that again?

4 Q. When Mr. Dodd pointed a pistol at Mr. Owens,
5 where physically was Mr. Dodd?

6 A. Mr. Dodd was on the ground.

7 Q. Had he already been shot?

8 A. Yes.

9 MR. STEINBERG: That's all the questions I
10 have.

11 THE COURT: Thank you. Step down.

12 (Witness leaves the witness stand).

13 MR. STEINBERG: The State would next call
14 Julian Jamaal Stewart.

15 THE CLERK: Mr. Stewart, if you would come
16 forward to be sworn in, please.

17 Please place your left hand on the Bible and
18 raise your right.

19 JULIAN JAMAAL STEWART, having been duly
20 sworn, testified as follows:

21 Thank you.. You may be seated.

22 State your full name for the record.

23 THE WITNESS: Julian Jamaal Stewart.

24 THE CLERK: Thank you.

25 DIRECT EXAMINATION

State versus Julian Battle

1 BY MR. STEINBERG:

2 Q. Mr. Stewart, how are you today?

3 A. I'm great.

4 Q. Where are you from originally? Where do you
5 consider your hometown?

6 A. Greenville, South Carolina.

7 Q. What is your highest level of education?

8 A. High school diploma.

9 Q. And what occupation do you have at this point?

10 A. Right now I'm cleaning carpet and I also work at
11 the hospital in housekeeping.

12 Q. What job did you have December 25, 2009?

13 A. I was working at the Marriott of Greenville.

14 Q. I'd like to talk to you about Rafael Dodd.

15 What's his relationship to you?

16 A. That's my cousin.

17 Q. And how old is he in comparison to you?

18 A. He is maybe three years older than me.

19 Q. Did you know where he lived and what he did for a
20 living?

21 A. Yes, he stayed in Memphis, Tennessee and he was a
22 banker.

23 Q. Do you know what his degree was in?

24 A. I know it was MIB or something like that.

25 Q. What was his temper like in general?

State versus Julian Battle

1 A. Very calm.

2 Q. On the night in questions, what was his temper
3 like?

4 A. Very calm.

5 Q. Had he had any prior disputes or hostilities with
6 the defendant Dre Battle?

7 A. He didn't know him.

8 Q. Again, so the jury can understand what the
9 relationship is, what is your relationship with Shameka
10 Wells?

11 A. She's sort of like a cousin. She's been around
12 my family since I been little so we consider her family.

13 Q. What is your relationship with Mikeya Shumate?

14 A. That's my cousin, my actual blood cousin.

15 Q. And Clintonian Dupri Owens, did you know him?

16 A. Yes, I went to middle school with Dupri.

17 Q. How about the defendant, Dre Battle?

18 A. I met him once before.

19 Q. Where did you first meet up with Dre Battle and
20 Dupri Owens on the night in question?

21 A. At Terra Apartments where I was currently staying
22 at the time.

23 Q. And what was your purpose for making contact with
24 them?

25 A. Well, Rafael had to recharge his phone but at the

State versus Julian Battle

1 time they was wanting a smoke bag.

2 Q. The case doesn't understand and I want to make
3 sure we understand that language, what's a smoke bag?

4 A. It's actually like a blunt of marijuana.

5 Q. What was the value of this bag?

6 A. Like \$5.

7 Q. Do you remember -- who sold him the bag?

8 A. I did.

9 Q. And who actually purchased it and gave you the
10 money?

11 A. I gave the money to Mr. Battle.

12 Q. Were there any further drug transactions on the
13 night in question?

14 A. No, sir.

15 Q. Was there any dispute about the money owed or was
16 it all paid in full?

17 A. It was paid in full.

18 Q. Did you stay at Terra Apartments or did you
19 leave?

20 A. We left. We was invited by Mikeya to go to
21 Shameka's house to play cards.

22 Q. Approximately what time did you get to Shameka
23 Wells's house?

24 A. It was a little bit before 12:00 because Rafael
25 actually got killed around 12:00.

State versus Julian Battle

1 Q. When you first got there, what did you see? What
2 did you hear?

3 A. It was raining sideways at night and basically we
4 pulled up. We wasn't even able to get out of the vehicle
5 -- this is my first time going up there so she said she
6 wanted to show us where she said. During that time we got
7 out of the vehicle and we walked up the stairs and she
8 stayed at the top of apartment on the right. Rafael had
9 to use the restroom when we first go there, so we wasn't
10 upstairs but maybe five minutes.

11 Q. Who was inside the apartment at this time?

12 A. Just me, Meka and Rafael. When Rafael went into
13 the restroom, Dupri walked in and grabbed some liquor that
14 was on the floor. I asked him, I said, who liquor is that
15 because I know you don't drink and he said that's Dre's.

16 MR. ELLER: Objection as to what Mr. Owens
17 said.

18 THE COURT: Don't tell us what anybody else
19 said.

20 BY MR. STEINBERG:

21 Q. Do you know whether Dupri Owens drinks?

22 A. Yeah. Every time I've seen him he ain't never
23 drunk.

24 Q. Inside the apartment you said were you, Mr. Dodd
25 and who else?

State versus Julian Battle

1 A. And Shameka Wells.

2 Q. And Shameka Wells. Where was your cousin Mikeya
3 Shumate?

4 A. Still outside. It was raining sideways and keep
5 in mind Mikeya has the second worse Lupus in South
6 Carolina.

7 Q. Let me ask you this, then, are you familiar with
8 her medical condition? Not as a doctor, but are you
9 familiar with her medical condition?

10 A. Very familiar.

11 Q. And being as it was raining outside, did that
12 concern you?

13 A. Yes, it did.

14 Q. Who was outside at this time in the rain?

15 A. It was Mr. Owens and Mikeya.

16 Q. Where was Mr. Battle at this time?

17 A. When I stepped outside he was standing next to
18 the building on the driver's side with his hands above the
19 -- on the top of the roof of the car like this.

20 Q. Do you know if he ever went inside during this
21 time period?

22 A. No, he did.

23 Q. Did you hear anything outside?

24 A. I just heard some yelling. That's what made me
25 go outside and tell Keya and Dupri, you know, it's

State versus Julian Battle

1 Christmas time, come upstairs and have some fun. I wasn't
2 even worry about their degree of argument or whatever, I
3 was just trying to make it peaceful. We all know each
4 other, let's come upstairs and have some fun.

5 Q. How did Mr. Owens take that?

6 A. Auh, man, fuck that ---

7 MR. ELLER: Objection as to what Mr. Owens
8 said, Your Honor.

9 THE COURT: Go ahead. I'll allow that.

10 THE WITNESS: Auh, man, this ain't none of
11 your business, I know you from middle school. Just taking
12 things to a whole nother degree.

13 BY MR. STEINBERG:

14 Q. Did you talk to your cousin Mikeya Shumate?

15 A. I just told her she should come inside. I didn't
16 tell her to come inside by herself, I was saying y'all
17 come inside and let's have some fun, it's Christmas time.

18 Q. Where was the defendant Dre Battle during this
19 time?

20 A. He was still at the car.

21 Q. Did Rafael ever come outside?

22 A. Yes, Rafael came outside like maybe two minutes
23 after Dupri had said what he said and then Mr. Dodd walked
24 out the door to my left side. When he walked out, he was
25 to my left.

State versus Julian Battle

1 Q. And where were you standing during this time
2 period?

3 A. It's about the size of the porch here and I'm
4 right here where the microphone at and Mr. Dodd was right
5 here. This is how tight the porch was.

6 Q. You're talking about the porch in front of the
7 main door?

8 A. Right.

9 Q. Who else was on that porch?

10 A. It was just me and Mr. Dodd, my cousin, at the
11 time. I don't know where Shameka was. I think she was
12 actually behind the door and Keya and Dupri was in front
13 of me standing on the vehicle on the front of wheel of the
14 vehicle.

15 Q. When Rafael Dodd came outside, what did Dre
16 Battle do?

17 A. He insisted to walked towards the porch.

18 Q. Did Mikeya or Dupri Owens move at all? Did they
19 stay in that location or did they move?

20 A. Well, Dupri was pretty amped up and move around
21 basically trying to shake me up and I was basically
22 ignoring him and basically just keeping my eyes on
23 everything, which I thought I was keeping my eyes on
24 everything, but I wasn't.

25 Q. You said Dre came up. Where was his final

State versus Julian Battle

1 destination?

2 A. He stood up right in front of my cousin.

3 Q. Where was your cousin physically standing?

4 A. He was standing to the left of me.

5 Q. Was he on the porch or off of the porch?

6 A. On the porch.

7 Q. Did Dre ever get on the porch?

8 A. No, he did. Keep in mind it was a small step
9 right there.

10 Q. Right, I understand. When Dre got up next to
11 Rafael, did he make any statements?

12 A. He was like who are you and he was like I'm
13 Rafael, Keya's cousin. He was basically telling him this
14 was his cousin. I'm not his boyfriend of anything but he
15 took it as if it was someone Keya just invited over that
16 wasn't out cousin.

17 Q. Was Rafael yelling at anybody?

18 A. No. Still calm.

19 Q. What?

20 A. Still calm.

21 Q. Was he using any cuss words or any threats?

22 A. No. If anybody was cussing, it was Mr. Battle.

23 Q. Was there any physical touching? Were they close
24 enough that they could actually physically touch?

25 A. Yes, they was like bumping stomachs without the

State versus Julian Battle

1 hands which is basically the same thing as bucking.
2 Basically like bumping stomachs, you stop bumping me, no,
3 you stop bumping me and Rafael was like no, you stop
4 bumping me. And Mr. Battle continued on bumping him and
5 that's when I seen my cousin Jake towards him and a
6 gunshot went off on my side -- my left side.

7 Q. Did you actually see the gun?

8 A. I didn't physically see the weapon but my weapon
9 was actually on my side. It was very loud and it wasn't
10 on the reverse side. It was actually -- he got shot on my
11 side.

12 Q. What did you do once you heard the gunshot?

13 A. I immediately froze. I thought it was a dream.

14 Q. Was it a dream?

15 A. No, it wasn't.

16 Q. What happened next?

17 A. Basically, I hard pressed 9 on my phone and
18 Mr. Battle took my phone preventing me from calling 911.
19 And I said well, I was just calling the police because
20 y'all just shot my cousin. He walked up to the gate where
21 Mr. Owens was. The was kind of shuffling around. I'm not
22 sure what they was doing. He turned around and walked
23 back to the car like a gun never went off, like something
24 on a movie.

25 Q. I want to ask you a couple of questions about

State versus Julian Battle

1 Mr. Battle's statements. Did Mr. Battle make any
2 statement immediately prior to taking your phone?

3 A. When he walked off he said it ain't nothing but a
4 graze wound. "Don't worry, it's nothing but a graze
5 wound," are his exact words.

6 Q. When you made the statement about I'm going to
7 call the police, what did he say?

8 A. Am I the police.

9 Q. What?

10 A. Am I the police.

11 Q. Who said that?

12 A. Mr. Battle. He said am I the police and I said
13 how am I the police when I just sold you a bag of weed.

14 Q. Did he make the statement are you the police
15 before or after he took the cell phone?

16 A. Well, when he seen me dialing -- well, I'm not
17 sure if he seen me dialing 911 or not but they did see me
18 press 9 to the phone in my hand, but they automatically
19 thought that I was calling the police, which I was.

20 Q. Did you ever see that phone again?

21 A. No, I didn't.

22 Q. Did he give it back to you that night?

23 A. I ain't have a phone until maybe three months
24 later.

25 Q. Did you look at your cousin Rafael Dodd?

State versus Julian Battle

1 A. After they pulled off I did. I actually didn't
2 make to much of any kind of moves until after they pulled
3 off in the car. I was very frightened.

4 Q. When you saw your cousin, what was your position?
5 What was his physical position?

6 A. When I seen him, it was still raining sideways,
7 he wasn't really moving and I automatically knew that he
8 was dead. I ran around -- it's a gate that he was
9 standing at that he flipped over. I walked around and
10 Meka was over there then and I held him. But he still
11 didn't make any moves at all.

12 Q. When Mr. Battle walked away to his car, did
13 anyone chase him or threaten him?

14 A. No. I didn't and Mikeya didn't and Shameka was
15 very frightened as well.

16 Q. You're wearing a very bulky what I call sweat
17 shirt, underneath that are you a very small person, slim
18 person?

19 A. I'm very slim. I don't wear no more than 180,
20 170..

21 MR. STEINBERG: I would ask Mr. Battle to
22 stand up if he would.

23 (Defendant complies).

24 BY MR. STEINBERG:

25 Q. Was Mr. Battle larger or smaller than this in

State versus Julian Battle

1 December of 2009?

2 A. A little larger than that.

3 Q. Did you see Mr. Battle again after this incident?

4 A. Yes, I did.

5 Q. Where were you and what were you doing?

6 A. I was doing what I love to do which is wash
7 vehicles and detail calls. I was right down there on
8 Donaldson Road.

9 MR. ELLER: Your Honor, may we approach?

10 THE COURT: Sure.

11 (Off the record conference).

12 Take the jury out please.

13 (Jury exits the courtroom).

14 MR. ELLER: Your Honor, I would like to renew
15 the defendant's motion that was made pretrial in this
16 case. Actually we argued it September 12, 2011. I know
17 those arguments are incorporated by reference. During the
18 pretrial hearing in this matter, we discussed statements
19 that were made and the admissibility of the subsequent
20 prior alleged crime in intimidating a witness.

21 The case I believe is State v. Edwards that
22 the solicitor relies upon. That case, Your Honor, is
23 distinguishable from our case. That case represents when
24 the defendant in that case is charge with a sexual crime
25 against a minor I believe are the facts and the statements

State versus Julian Battle

1 made to the witness -- the state's key witness to
2 convicting him actually threatened her with harm and
3 intimidated her with harm if she actually would take the
4 stand and testify. Those are not the facts of this case.

5 Mr. Stewart will testify and Mr. Battle will
6 testify if we go into that is that all that happened was
7 that a heated exchange out there. There was never any
8 testimony. We got ample testimony to prove that already
9 when we tried this case once. There was never a statement
10 to the effect that I will harm you, I will injure you if
11 you take the stand in my case, and I will submit to you,
12 Your Honor, that due to the fact that's a highly
13 prejudicial statement that he's been charged with a
14 subsequent crime of intimidating a witness when he has not
15 been found guilty of that and there has been no statements
16 in the last trial of this matter that he actually
17 intimidated him or threatened him in exchange for his
18 testimony.

19 I would believe that those statements are
20 admissible and Mr. Steinberg should not be allowed to go
21 into this subsequent event at the barbershop.

22 MR. STEINBERG: Your Honor, Your Honor heard
23 this case and this issue fully. You reviewed State versus
24 Edwards. This case has actually gotten stronger. After
25 Your Honor ruled in the State's favor, the defendant took

State versus Julian Battle

1 the stand and he admitted that he was there. He admitted
2 a confrontation. I'm not sure which of the two but he
3 either called him a bitch or a snitch or writing a
4 statement and that could be nothing in no way interpreted
5 other than a threat.

6 This witness's testimony was quite clear.
7 Mr. Battle confirmed the incident. This is exactly what
8 we don't want. We don't want witnesses being harmed or
9 threatened and that's a threat when you say: Why did you
10 write a statement on me -- you're a snitch -- I will smash
11 in your face. That's almost a perfect example why Edwards
12 would be applicable in this case. It's actually might
13 even be stronger than Edwards, Your Honor.

14 MR. ELLER: I would dispute the
15 characterization of that, Your Honor. I don't believe the
16 trial transcript actually says that it was about his
17 testimony and in the Edwards case it was crystal clear
18 that it was a future testimony that were to take place and
19 not any kind of statements that occurred in the past, it
20 was if you show up at the trial of this case and you
21 testify in this case, I will harm you. That's not what we
22 have here.

23 THE COURT: I'm going to allow the testimony.

24 MR. ELLER: Your Honor, if we could, just out
25 of judicial economy, could we go ahead and now handle -- I

State versus Julian Battle

1 assume Mr. Steinberg is going to handle after he goes into
2 this since we already got the jury out, can we handle my
3 State versus Joseph motion for Mr. Stewart as well? He's
4 got a conviction for possession with into to distribute
5 cocaine in school zone.

6 THE COURT: I'll sustain your objection so
7 that he can't explain. It's yes or no.

8 MR. ELLER: Your Honor, Mr. Steinberg showed
9 me the OT there is other than cocaine, so it was not
10 cocaine. It was marijuana, but we got an agreement that
11 he is not going to explain away the marijuana charge.

12 MR. STEINBERG: Let me just double check.
13 Do you agree you've been convicted of
14 distribution of marijuana near a school?

15 THE WITNESS: Yes, sir.

16 THE COURT: Okay. Bring the jury.

17 (Jury re-enters the courtroom).

18 BY MR. STEINBERG:

19 Q. In September of 2010, where were you? Where was
20 the location?

21 A. It's called DJ's Fades.

22 Q. And what kind of location is that?

23 A. It's a barbershop. Actually when you get you're
24 hair cut, you can get your car detailed as well.

25 Q. And who was doing the car detailing at the time?

State versus Julian Battle

1 A. I was doing it.

2 Q. Did you see Dre Battle that day?

3 A. Yes, I did. I seen him basically when he was on
4 Anderson Road. He turned right on Donaldson and he passed
5 the barbershop so some antennas raised so I went on and
6 called my old lady and told her to be on the way. She
7 stayed around the corner at the time. I felt like they
8 was coming back which they did and they parked right
9 beside where I was detailing at.

10 Q. Did anybody get out of the car?

11 A. Yes. Mr. Battle and Dupri did.

12 Q. Where did Mr. Dupri Owens go?

13 A. Dupri actually sat on the bench in front of the
14 car and Mr. Battle was on his side of the car with his
15 hands folded just looking at me, staring at me, like no
16 remorse at all for what he done.

17 Q. Did anybody go inside the location, inside the
18 barbershop?

19 A. Me. I was putting up my equipment at the time.

20 Q. When you came back outside, what, if anything,
21 did Mr. Battle say to you?

22 A. Oh, you wrote a statement, you snitching and I
23 was like you would have done the same thing if someone had
24 killed your cousin.

25 Q. What did he say to that statement?

State versus Julian Battle

1 A. He was like: Bitch, you a snitch, I'll smash in
2 your face, so that was intimidation.

3 Q. Did he make any statements about your cousin?

4 A. Basically telling me that he would do the same
5 thing, he could do it again with no remorse again.

6 Q. Did Dre Battle ever approach you at that point?

7 A. Yeah, he did. He tried to run up on me and at
8 that time a couple of guys ran out the barbershop. They
9 could tell I was shook up about something and they said,
10 what's wrong and I said the guy that killed my cousin is
11 outside. I was unaware of him being out on bond.

12 Q. Did Dupri Owens ever assault you or anything?

13 A. No, Dupri was actually trying to break it up and
14 he was just telling me to be quite. That was the main
15 things that was coming out of his mouth to basically be
16 quite like me talking would have made him more madder or
17 something.

18 Q. Did you contact law enforcement after this?

19 A. Yes, I did.

20 Q. And did you file a report?

21 A. Yes, I did.

22 Q. Thank you, sir, please answer opposing counsel's
23 questions.

24 THE COURT: Mr. Eller.

25 MR. ELLER: Thank you, Your Honor.

State versus Julian Battle

CROSS-EXAMINATION

BY MR. ELLER:

Q. Mr. Stewart, good morning.

A. Good morning.

Q. Rafael Dodd, I believe your testimony is he's your cousin, right?

A. Right.

Q. Your first cousin?

A. I'm not sure how that first and second cousin thing work but he is my cousin.

Q. And y'all real close, right?

A. We was close when we was little. Rafael moved off to Memphis when he was about 12 or 13 and he would come back and visit Greenville quite often on holidays.

Q. And Mikeya Shumate, she's also your cousin, right?

A. Yes, she is.

Q. And you're very close to Ms. Shumate, too, right?

A. Yes.

Q. And I believe your testimony was Mr. Dodd and Ms. Shumate, they had a close relationship, too?

A. Yeah. Well, they birth date was on the same day.

Q. Do you consider Shameka Wells to be part of your family?

A. Yes, I do.

State versus Julian Battle

1 Q. And she's not exactly a cousin, but you consider
2 her a very close family friend?

3 A. Yes.

4 Q. And you testified earlier that you sold a smoke
5 bag. Do you remember that testimony?

6 A. Yes.

7 Q. Now, I think your testimony was that bag costs
8 \$5?

9 A. \$5, \$10 or something like that. It ain't over
10 \$10.

11 Q. What's a dime bag?

12 A. A dime bag is three grams of weed, marijuana. It
13 may be two grams to some people but it's basically just
14 two blunts.

15 Q. And what is a dime bag cost?

16 A. \$10.

17 Q. Now, about this marijuana that was transacted on
18 December 24?

19 A. Uh-hum.

20 Q. Isn't it true that you're not sure who bought it
21 and you're not sure who wanted it?

22 A. Well, I remember giving it to Mr. Battle because
23 they was outside smoking a cigarette while Rafael was
24 fixing the charger at my aunt's house. They was in the
25 breezeway smoking a cigarette or something.

State versus Julian Battle

1 Q. Do you remember your prior testimony when you
2 testified you didn't know who bought it or who wanted it?

3 A. No, I don't.

4 MR. ELLER: Just one second. Your Honor, may
5 I approach.

6 THE COURT: Sure.

7 BY MR. ELLER:

8 Q. I'm showing you now if you will review that and
9 tell me if that refreshes your recollection?

10 A. Yeah, I see where I said I didn't know who bought
11 it but it was Dre and Dupri. One of them did buy the
12 weed, but like I say this is a murder case and that didn't
13 have nothing to do with a smoke bag or weed.

14 Q. But you previously testified you don't now who
15 bought it?

16 A. Yeah, it was one of them.

17 Q. But today you testified Mr. Battle bought it?

18 A. Yeah, he did. To my recollection, he did.

19 Q. But the last time you testified you didn't know
20 who bought it, right?

21 A. Right.

22 Q. Okay. Now, isn't it true that you met with an
23 investigator Tracy King on December 25, 2009 to give a
24 written statement?

25 A. Right.

State versus Julian Battle

1 Q. Do you remember that?

2 A. Uh-hum.

3 Q. Do you remember giving Investigator King a
4 two-page statement that you signed?

5 A. Yes, I do.

6 Q. And isn't it true that you told Investigator King
7 that Mr. Owens and Mr. Battle had asked you about buying
8 marijuana and you told them that, "I didn't deal in that
9 anymore?"

10 A. I did. Nobody asked me that. I didn't deal at
11 the time. I just got caught in a case that was actually
12 my personal bag, but it was my cousin, it's Christmas,
13 they want to have fun. I was willing -- hey, here you go,
14 y'all can have it.

15 Q. Caught in a case, isn't it true that you were
16 convicted of possession of marijuana near a school zone
17 with intent to distribute?

18 A. Here you go again about my case. We're here for
19 a murder case.

20 Q. Mr. Stewart, I'm the one that gets to answer the
21 question today.

22 A. I mean ---

23 THE COURT: Hold on. No one can understand
24 if you're talking both at the same time. Now, ask him a
25 question and give him a chance to answer it.

State versus Julian Battle

1 MR. ELLER: And, Your Honor, I would ask give
2 him an instruction that he actually answer the question
3 instead of asking me questions.

4 THE COURT: Answer the question.

5 BY MR. ELLER:

6 Q. Mr. Stewart, isn't it true that you were
7 convicted of possession with intent to distribute
8 marijuana in a school zone?

9 A. Yes.

10 Q. And that charge was against you before this
11 incident, right?

12 A. Right.

13 Q. And when you met with Investigator King the night
14 of this incident, you told Investigator King that you told
15 Mr. Owens and Mr. Battle: I don't deal with marijuana
16 anymore, right?

17 A. Yes.

18 Q. But your testimony this morning is that you sold
19 marijuana to someone on the night of the 24th, correct?

20 A. Right.

21 Q. Now, before you went over to -- let me take you
22 back in time from Terra Apartments where you and Mr. Dodd
23 arrived at the Terra Apartments and on your way to
24 Ms. Wells's apartment. That's Park West, correct?

25 A. Correct.

State versus Julian Battle

1 Q. I just want to make sure that you and I are on
2 the same page about which apartment complex we're talking
3 about. On your way over to Shameka Wells's apartment at
4 Park West, isn't it true that you and Mr. Dodd stopped to
5 get some things out of his car?

6 A. I believe he stopped to put his mother's
7 Christmas gift in the car. I'm not very sure what
8 Mr. Dodd did. I do know he took a package out, I'm not
9 sure what it was, but he did put it in the trunk.

10 Q. But you told Investigator King that y'all stopped
11 over there and y'all went and got some things out of his
12 car, right?

13 A. Well, I wasn't walking behind him so I'm not sure
14 what he got out of the car but I do know he did take
15 something.

16 Q. But you told Investigator King he got something
17 out of the car?

18 A. I'm not sure.

19 Q. Mr. Stewart, I'm now going to show you a two-page
20 handwritten statement and ask you if you can identify
21 that?

22 A. Yeah.

23 Q. And what is that?

24 A. It's a statement.

25 Q. Is that your signature at the bottom of the page?

State versus Julian Battle

1 A. It is.

2 Q. On the bottom of Page 2 which says, "I read the
3 statement of 1 of 2 pages and it's fair and accurate as
4 best I can recall?"

5 A. Yes.

6 Q. And you signed that on December 25, 2009,
7 correct?

8 A. Right.

9 Q. I'm going to ask you to review that statement and
10 I'm going to ask you one more time isn't it true that you
11 told Investigator King that you and Mr. Battle on the way
12 over the Shameka Wells's apartment, you stopped to get
13 somebody out of the car. I'll direct your attention to
14 Page 1.

15 A. When I wrote this statement, I was pretty shook
16 up that night and like I said there was a lot of things
17 that wasn't clear but my car was parked -- my cousin's car
18 was parked in front of the rental car Mr. Dodd was in, I
19 did see him put something in the trunk.

20 Q. I'm not asking you to tell me the things he got
21 out. I just want to know if in this statement in the
22 middle paragraph there on Page 1 ---

23 A. I see that I did say that.

24 Q. And you did say that he got some things out of
25 the car, correct?

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1 A. Yeah, it does say that.

2 Q. And you signed that statement. You verified that
3 it was true and correct on December 25, 2009?

4 A. Yes.

5 Q. When you got to Ms. Wells's apartment, your
6 testimony is that you and Mr. Dodd went upstairs with
7 Ms. Wells, correct?

8 A. Correct.

9 Q. And then you heard some arguing and you went
10 downstairs, right?

11 A. Correct.

12 Q. And it was that arguing that you overheard, it
13 was loud enough for you to hear in a second-story
14 apartment to go outside?

15 A. Yes.

16 Q. Now, did you actually hear the words that they
17 were arguing before you exited the building?

18 A. Just heard a lot of commotion. It sounded like
19 it was more than two people out there arguing.

20 Q. Okay. And when you got out there, isn't it true
21 that you approached Mr. Owens and Ms. Shumate?

22 A. I didn't approach them. I just walked out to the
23 porch and they were just quite a distance from me and I
24 said, look it's Christmas time, let's have some fun.

25 Q. But isn't it true that you engaged in an argument

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1 with Mr. Owens and Ms. Shumate?

2 A. I didn't engage in it. It was more like I was
3 trying to bring peace it. It wasn't like, you know, "f"
4 you too, let's bang it out. You know, I didn't do that.
5 I basically -- I'm not that type of person. I was like
6 look Pri calm down, I don't know if you'd been drinking or
7 something, come on upstairs.

8 Q. But isn't it true that you got in Mr. Owens's
9 face?

10 A. I didn't get in Mr. Owens's face.

11 Q. You didn't get in Mr. Owens's face?

12 A. He got in my face.

13 Q. But y'all were face to face and arguing, right.

14 A. He was arguing with me, too, I wasn't arguing
15 with him.

16 Q. I'm not disputing he wasn't arguing with you,
17 Mr. Stewart.

18 A. I don't know what you trying to dispute, sir.

19 Q. The only thing I'm after here today is the truth,
20 okay, Mr. Stewart. I just want to know ---

21 A. The truth is he murdered my cousin, so what else
22 do you want to know.

23 Q. Okay, Mr. Stewart, we'll get to that in a moment,
24 but what I want to know right now is isn't it true that
25 you were arguing with Mr. Owens.

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1 A. I wasn't arguing with him, he was arguing with
2 me.

3 Q. And isn't it true that you were focused on
4 Mr. Owens because he was, in deed, in your face?

5 A. Yes.

6 Q. And isn't it true that at that time y'all were
7 all out there on the concrete pad in front of the door?

8 A. Yes, sir.

9 Q. Now, earlier you testified that when you went
10 outside Ms. Shumate and Mr. Owens were on the bumper of a
11 car?

12 A. Yes, they was on the fender wheel of the car in
13 front of the porch which is right here because the porch
14 stopped -- this is the porch again.

15 Q. Okay.

16 A. Like I say it stopped right here this is the
17 porch. It wasn't very big at all.

18 Q. I just want to make sure I got your testimony
19 right. You just testified that all of y'all were on the
20 concrete pad on that porch.

21 A. We wasn't all on the concrete pad. They was on
22 the bottom step which is not even a step about like that.
23 I consider that off the porch but still on it. They
24 wasn't actually up on it ---

25 Q. They weren't in the parking lot.

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1 A. Yes. They were one step down from us which is
2 actually about that much of a step. You know me and
3 Mr. Dodd was the only ones on the porch at that time.

4 Q. Mr. Stewart, just so there's no confusion, I'm
5 now going to show you State's Exhibit No. 3 since we're
6 talking about that concrete pad and half step, is that
7 depicted in that photograph?

8 A. Yes, me and Mr. Battle was standing to the left
9 right here and Mr. Battle was standing right here by the
10 gate.

11 Q. Hold on, you're saying here, here, the jury needs
12 to hear the description. Let me ask you here, this
13 photograph, it depicts a door on top of the concrete pad.
14 Again, this is State's Exhibit No. 3, okay. The hinges
15 are on the right hand side. You just pointed to the right
16 hand side where you and Mr. Dodd were standing, correct?

17 A. Mr. Dodd was standing on the side where the
18 hinges were.

19 Q. But I want to take you back in time, though,
20 before Mr. Dodd came out of the door. Where were you
21 standing when you exited that building and Mr. Owens got
22 in your face?

23 A. I was actually still up on the porch.

24 Q. In reference to the hinges and the doorknob?

25 A. I was in the center. I just walked out. So the

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1 door just swung open and I was like let's have some fun
2 and chill with the arguing.

3 Q. So you were in the center of this door here,
4 Mr. Dodd was still inside, and you were in the center of
5 the concrete pad?

6 A. Right.

7 Q. Mr. Owens was in your face and Ms. Shumate ---

8 A. He wasn't in my face right then, but ---

9 Q. At some point he got in your face?

10 A. Right.

11 Q. And y'all were arguing, correct? Or y'all were
12 having a conversation in your testimony?

13 A. Who?

14 Q. You, Mr. Owens and Ms. Shumate.

15 A. Well, Mikeya was trying to calm the situation
16 down. You know, that's my cousin and you need to chill.
17 I was like Pri we go way back, you know, I was trying to
18 bring peace to the situation. I wasn't trying to --

19 Q. On that night, isn't it true that you didn't know
20 that Mr. Dodd was carrying a gun?

21 A. No, I didn't.

22 Q. Now, you testified that Mr. Dodd when he exited
23 the building, he and Mr. Battle were bumping stomachs,
24 right.

25 A. Right.

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1 Q. But isn't it true that in that statement that you
2 gave Investigator King you didn't say anything about the
3 two of them bumping stomachs, did you? You can take a
4 look at it.

5 A. It says something close to it. It wasn't bumping
6 referring to bumping.

7 Q. Your statement does not say Mr. Dodd ---

8 A. It says bucked up, bucking. I think we went
9 through this last time, bumping and bucking is basically
10 the same them. You're trying to trick my words up, man.

11 Q. Now, hold on. Wasn't your testimony last time
12 that bucking up -- I asked you this question on Line 2.
13 "What does the term buck up mean to you? Would you
14 explain that to the jury." And your answer was -- could
15 you read that aloud to the jury.

16 A. "Just reading his eyes like he was getting ready
17 to do something. Just his whole movement. His eyes got
18 bigger and I just knew something was going to happen
19 basically."

20 Q. That question was asked by Mr. Steinberg and your
21 definition of buck up was reading his eyes, right?

22 A. I mean you in his face and you're bucking up
23 against someone and you're looking at him in his eyes,
24 that's the same situation, same thing like bumping and
25 bucking.

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1 THE COURT: Move on.

2 BY MR. ELLER:

3 Q. But you didn't tell -- last time you gave
4 testimony you didn't think that bucking up and bumping
5 stomachs was the same thing?

6 THE COURT: That's been asked and answered.

7 THE WITNESS: Well, I didn't know that the
8 vocabulary ---

9 THE COURT: Hold on.

10 Move on to something else.

11 MR. ELLER: I'd like to admit into evidence
12 Defendant's Exhibit 1, the two-page statement of
13 Mr. Stewart.

14 MR. STEINBERG: No objection.

15 THE COURT: Admitted.

16 (Statement marked as Defendant's Exhibit No.
17 1 for identification and admitted into evidence.)

18 BY MR. ELLER:

19 Q. Mr. Stewart, you testified this morning that you
20 saw Mr. Battle grab Mr. Dodd with his right hand and pull
21 him towards -- what was the term that you used this
22 morning?

23 A. I seen him pull him towards -- my cousin did get
24 grabbed, I seen that. He got grabbed towards him.

25 Q. But in your statement to Investigator King, you

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1 didn't say anything about Mr. Battle grabbing him or
2 grabbing his collar, did you?

3 A. "The next thing I know is I saw Dre kind of buck
4 up on Rafael. I heard the gunshot and I saw the flash and
5 sound of a shot and it hurt my left ear." No, I did.

6 Q. You didn't tell Investigator King that you saw
7 Mr. Battle grab Mr. Dodd's collar, did you?

8 A. I did tell him that.

9 Q. But it's not in your statement, is it?

10 A. It's not in my statement.

11 Q. Now, your testimony earlier is you said that he
12 was, your cousin, was to your left when he came out the
13 building.

14 A. Yes.

15 Q. And you testified also that you believe he was
16 shot to your left; is that right.

17 A. My ear was hurting on this side.

18 Q. But you testified you didn't know where he was
19 shot?

20 A. No, I didn't actually know where he was shot as
21 far as -- you wanted me to explain where he was actually
22 shot up, I was shook up, man. You got to think there's a
23 lot of people and a lot of commotion going on in a small
24 area. I wasn't looking at my -- if that was the case, I
25 could have prevented it.

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1 Q. Those details are very important.

2 A. Yeah, they are.

3 Q. Isn't it true you don't know where Mr. Dodd was
4 shot at the time of this incident, right?

5 A. Right.

6 Q. And isn't it true that you didn't see a gun?

7 A. No, I didn't.

8 Q. And isn't it true Mr. Battle have a gun in his
9 hand?

10 A. No, but I did see my cousin body get snatched
11 towards him, grabbed towards him, so if Rafael had done
12 anything I believe I would have seen it. I would have had
13 time to react to it and I didn't have no time to react at
14 all. It just happened in the heat of the moment.

15 Q. Now, you didn't tell Investigator King about how
16 Mr. Battle or how you believe Mr. Battle shot your cousin;
17 is that right?

18 A. Yes, I did.

19 Q. What did you tell Investigator King?

20 A. I told him it was like something coming out the
21 movie. It's like this guy actually been watching some
22 movie. It's like something you see on a movie.

23 Q. Tell me what you mean by something you see on a
24 movie?

25 A. If somebody grabs someone's collar and bring them

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1 towards them and in close range shot, that's heartless. I
2 didn't know people like that existed out here until then.

3 Q. I guess we don't watch the same movies.

4 A. Maybe we don't.

5 Q. What do you mean by it was something you saw on
6 the movies?

7 A. Like a murder scene. Like someone murdering
8 someone on a movie.

9 Q. But your testimony this morning, you didn't see
10 anything as far as the gun or anything like that.

11 A. No, I did.

12 THE COURT: Hold on, sir.

13 That's been asked and answered. Move on to
14 something else, Mr. Eller.

15 BY MR. ELLER:

16 Q. After the gunshot went off, you testified
17 Mr. Owens held up your cousin over the railing, right?

18 A. After they took my phone -- well, I seen
19 Mr. Owens he was already over there doing something with
20 my cousin's body. I'm not sure what he was doing. Like I
21 said, man, I was scared and after they took my phone I
22 seen Mr. Battle go over that way before he walked off the
23 porch. He walked off the porch. He didn't run at all.

24 Q. Your testimony was Mr. Owens and Mr. Battle held
25 up your cousin, right?

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1 A. Yeah.

2 Q. After the gunshot?

3 A. After the gunshot and after my phone was
4 snatched, Dupri was already over there holding up my
5 cousin and Mr. Battle went over there and they was both
6 holding his body over the rail looking at him.

7 Q. But that's not what you told Investigator King,
8 is it? You didn't tell Investigator King anything about
9 Mr. Battle and Mr. Owens holding up Mr. Dodd over the
10 railing, did you?

11 A. I don't see anything in my statement regarding
12 that.

13 Q. Page 1 the last two sentences on the last full
14 paragraph.

15 A. I see where it was at, where I said that -- what
16 you want me to read it?

17 Q. Yeah. Why don't you start with, "I then saw my
18 cousin Rafael," right after you had just said, "the sound
19 of the shot hurt my left ear."

20 A. "I think saw my cousin Rafael fall over the rail
21 and then it was like Dre turned his attention on me
22 because I was trying to call 911." I hard pressed 9 on my
23 phone first. Like I said I was so shook up at the time,
24 everything wasn't very accurate.

25 Q. So your testimony is today you didn't accurately

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1 give a statement.

2 A. Yeah, I did. It's my statement in my own words
3 and everything and I probably mishandled the words but I
4 did see Mr. Owens holding my cousin's body and Mr. Battle
5 going over there and they both knew it was something more
6 serious than what it was.

7 Q. You didn't tell Investigator King shuffle his
8 clothes after the gunshot, did you? That's not in the
9 statement, is it?

10 A. No, it isn't.

11 Q. Do you remember talking to Officer Iona Ooten at
12 the scene.

13 A. No.

14 Q. Do you remember a female taking a test of your
15 fingerprints?

16 A. Yes, I do.

17 Q. Do you remember actually talking to her?

18 A. I don't remember what I was talking to her about.
19 We're talking like two years ago.

20 Q. But you don't have any recollection you told
21 Officer Ooten that you saw Mr. Battle shuffle his clothes
22 after the gunshot, right?

23 A. After the gunshot? No, I don't remember telling
24 her -- giving her no description of what happened.

25 Q. If you will, look at Page 2 of that statement,

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1 middle paragraph. If you could, please read for the jury
2 the very first sentence that you got there. These are
3 your words to Investigator King.

4 A. Investigator King asked me, "if Rafael had pulled
5 his gun on Dre or if Rafael had mentioned having a gun or
6 threatened to use a gun."

7 Q. So Investigator King asked you if Rafael Dodd had
8 pulled his gun on Mr. Battle; that's correct, right?

9 A. Yes.

10 Q. He also asked you if Rafael made mention of
11 having a gun and you've already testified that you didn't
12 know he had a gun.

13 A. Didn't know he had a gun.

14 Q. And then Investigator King also asked you if
15 Mr. Dodd threatened to use a gun.

16 A. No.

17 Q. You just read that statement.

18 A. Yes, he asked me that.

19 Q. So he asked you three questions, right?

20 A. Yes.

21 Q. And isn't it true that you didn't answer any of
22 those three questions in your statement here?

23 A. Well, he asked me these things but I didn't --
24 like I say Rafael I didn't know he had a weapon. I didn't
25 know it was his weapon that was on the ground. I thought

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1 it was the gun he got shot with.

2 Q. But you didn't answer Investigator King in your
3 statement. You didn't tell Investigator King you didn't
4 know he had a gun, right?

5 A. I did.

6 Q. It's not in your statement, though, is it?

7 A. I guess it's not.

8 Q. And also you didn't answer Investigator King's
9 question to you about whether or not Mr. Dodd had pulled a
10 gun on Mr. Battle, did you?

11 A. What you mean I didn't answer it? I basically
12 answered every question he asked me to answer. Is this
13 Investigator King's report or something?

14 Q. This is your statement that you gave to
15 Investigator King, correct?

16 A. But basically this is my report but I didn't know
17 I had to write down the answers I gave to him on here.
18 You trying to trick me. I don't understand.

19 Q. Mr. Stewart, I promise you I'm not trying to
20 trick you. You just testified that Investigator King
21 asked you three questions, correct?

22 A. Correct.

23 Q. And you read the questions aloud to the jury.

24 A. Yes, but I answered the questions but I didn't
25 put them on paper.

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1 Q. Okay. So your testimony is you told Investigator
2 King the answer to these three questions and they just
3 didn't make it into your statement.

4 A. I did. I did tell him and Rafael didn't mention
5 a weapon. Rafael had been at my house two hours and we
6 had dinner and we sat there and tripped. He's not the
7 type of guy to mention, oh, I got a gun. He's not that
8 type of person.

9 THE COURT: Let's move on to something else.

10 BY MR. ELLER:

11 Q. You testified this morning that Mr. Battle said
12 it was nothing but a graze wound after the gunshot went
13 off, right?

14 A. Right.

15 Q. That's not in your statement either, right? You
16 didn't tell Investigator King about that, did you?

17 A. I said, basically he said don't worry about it,
18 he's be alright and he said it ain't nothing but a graze
19 wound.

20 Q. The statement you said which is your testimony
21 today that Mr. Battle told you it ain't nothing but a
22 graze wound, right?

23 A. Right. Well, he told everybody that.

24 Q. But that's not in your statement?

25 A. No, it's not. He said, He'll be alright, don't

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1 worry about it, he ain't dead," that's what's in my
2 statement.

3 Q. Okay. Let's change course, Mr. Stewart. I want
4 to ask you about your phone.

5 A. Okay.

6 Q. You testified that Mr. Battle took your phone
7 after the gunshot, right?

8 A. Right.

9 Q. Mr. Stewart, the very first police officer -- I
10 call them police officers. There's Sheriff's deputies and
11 police officers. Is it alright if I refer to them as an
12 officer and we're talking about anybody, is that fair?

13 A. Yes.

14 Q. The very first law enforcement officer that
15 showed up at Shameka Wells's apartment after this
16 incident, do you remember that individual?

17 A. Actually I don't.

18 Q. Do you remember talking to the very first officer
19 that showed up that night. I'm not going to ask you his
20 name, I'm just going to ask you if you remember talking to
21 that person?

22 A. It was like a dream still. I don't remember who
23 I talked to.

24 Q. I'm going to now show you ---

25 MR. STEINBERG: I'm going to have to object

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1 if he's going to show a police report to the witness.

2 THE COURT: I'm going to have to sustain the
3 objection.

4 MR. ELLER: Your Honor, he just testified
5 that he doesn't recall ---

6 THE COURT: I sustained the objection. Move
7 on.

8 MR. ELLER: Your Honor, I'd like to discuss a
9 matter of law with you, if you don't mind.

10 THE COURT: Take the jury out.

11 (Jury exits the courtroom).

12 Alright, sir.

13 MR. ELLER: I'd like to make a proper
14 outside of the presence of the jury. Mr. Stewart has just
15 testified that he doesn't recall speaking to Deputy Bayne,
16 however, we have a report from Deputy Bayne where he
17 states statements from Mr. Stewart. I'm going to ask him
18 if it refreshes his recollection.

19 THE COURT: All right.

20 (Proper testimony).

21 BY MR. ELLER:

22 Q. Mr. Stewart, this is a report completed by Deputy
23 Bayne's the first officer who arrived at the scene. You
24 gave statements to him. You see down here where you're
25 witness no. 2, Julian Jamaal Stewart. I'm going to ask

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1 you to take a look at that and ask you if that refreshes
2 your recollection about that morning.

3 A. I didn't advise the suspects and I don't ---

4 THE COURT: He's asking you if you recall.

5 THE WITNESS: I don't recall this right here.

6 MR. ELLER: Your Honor, he's got to actually
7 read it and see if it refreshes his recollection.

8 THE WITNESS: I read it and I see what's
9 highlighted right there and I don't recall giving nobody
10 no statement like that.

11 MR. ELLER: Okay.

12 THE COURT: Okay. I have a question for this
13 other jury. Step down and don't talk about your
14 testimony.

15 MR. ELLER: Are we taking a break?

16 THE COURT: Yes.

17 MR. ELLER: Could we instruct the witness not
18 to ---

19 THE COURT: I just did.

20 MR. ELLER: Sorry.

21 (Whereupon, there was a brief break).

22 THE COURT: Mr. Stewart, come back around,
23 you're still under oath.

24 (Witness Stewart returns to the stand.)

25 Bring in this jury.

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1 (Jury returns to the courtroom).

2 Alright, I'm going to give y'all another
3 recess. I'm going to take a plea.

4 (Whereupon, there was a brief break.)

5 MR. STEINBERG: Your Honor, just for
6 housekeeping my next witness will probably be the same
7 length as this witness.

8 THE COURT: Okay.

9 Mr. Stewart, you're still under oath.

10 BY MR. ELLER:

11 Q. Since you gave your written statement on December
12 25, 2009, Defendant's Exhibit No. 1, since you gave that
13 statement, isn't it true that you never sought to amend or
14 change that written statement?

15 A. I didn't know I could.

16 Q. You never asked to change your statement, though,
17 right?

18 A. Actually I came in numerous times.

19 Q. But when you came in numerous times, that was
20 just to discuss your testimony with the Solicitor's
21 Office, right?

22 A. Right.

23 Q. And, in fact, you never discussed your testimony
24 with me, isn't that right?

25 A. Yeah, I have, you called me.

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1 Q. That's right. I'm talking about -- let me back
2 up a little bit here. You did talk to me on the telephone
3 and you did tell me that you didn't see the gun, right?

4 A. Right.

5 Q. You told me you saw a flash and that you only
6 heard it, right?

7 A. Right.

8 Q. And is that a fair statement of our telephone
9 conversation?

10 A. Exactly.

11 Q. But you never came into my office or anything
12 like that, right?

13 A. No.

14 Q. And you didn't ask me to change your statement or
15 anything like that?

16 A. Like I said I didn't know I could do that.

17 Q. I'm just trying to get to that. Now, as far as
18 the barbershop incident, you testified this morning that,
19 I believe your testimony was and correct me if I'm wrong,
20 that Mr. Battle told you he would do it again. Wasn't
21 that what you said this morning?

22 A. He said he was going to smash in your face.

23 Q. No, I'm talking about the incident with Mr. Dodd.

24 A. I said I believe that Mr. Battle would do that
25 again. I don't recall him saying that he would ---

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1 Q. I just want to clarify for the jury ---

2 A. To me he would because the guy don't have no
3 remorse.

4 Q. I just want to clarify your testimony. It
5 sounded to me like the first time you testified that you
6 heard Mr. Battle say that he would have done it again,
7 but, in fact, you just feel like he would do it again. Is
8 that your testimony?

9 A. I felt like that at the barbershop.

10 Q. But you never heard Mr. Battle say at the
11 barbershop that he would shoot Mr. Dodd again; is that
12 right?

13 A. He already had shot him, it was nothing for him
14 to ---

15 Q. I know, but that statement never came out of my
16 client's mouth that he would shoot Mr. Dodd again,
17 correct.

18 A. No. He was dead how can he shoot him again.

19 Q. You would agree with me, wouldn't you,
20 Mr. Stewart, that a lot of the details of your testimony
21 today was not given to Investigator King in your
22 statement.

23 A. No, I do agree.

24 Q. You do agree.

25 A. I actually didn't follow back up with them. Some

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1 things have become more clear to me. I had thought about
2 things that had happened and what have happened.

3 Q. And just in closing, Mr. Stewart, you never saw a
4 gun that night, right?

5 THE COURT: That's been asked and answered
6 several times.

7 MR. ELLER: Then I have no further questions,
8 Your Honor.

9 THE COURT: Any redirect.

10 MR. STEINBERG: I have some very brief
11 redirect.

12 REDIRECT EXAMINATION

13 BY MR. STEINBERG:

14 Q. Do you agree you spoke with Mr. Eller?

15 A. Yes.

16 Q. Do you agree it was your decision to speak with
17 him?

18 A. Yes.

19 Q. Were you willing to speak with him?

20 A. Yes. I thought it was a little weird that he
21 wanted to speak.

22 Q. Did you speak to either myself or Investigator
23 Jones in this case?

24 A. Yes.

25 Q. Prior to this trial. Did you ever change your

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1 story after this?

2 A. To my knowledge what's on paper is not much
3 different than what I said but I mean he's trying to make
4 it sound like it was different.

5 Q. Let's talk about that. Do you think that your
6 statement that you have in front of you, is that
7 substantially correct? Is that accurate?

8 A. Word-wise but certainly little details were left
9 out.

10 Q. If you look on that statement where you and
11 Mr. Eller were talking about bucking up, please read the
12 statement -- the sentence out loud to the jury.

13 A. "The next thing I know I saw Dre kind of buck up
14 on Rafael and I heard a gunshot and I saw a flash and
15 sound of the shot hurt my left ear."

16 Q. The statement before that where it says, "Dre was
17 in," could you please read that statement.

18 A. "Dre was in Rafael's face and arguing with him."

19 Q. Is that what you mean by belly to belly?

20 A. Yes.

21 Q. You gave a statement to Investigator King,
22 approximately what time of night did you give this
23 statement?

24 A. It was 10:00 that morning. I probably came in
25 around 12:30, 12:35 and didn't leave until like 10:00 a.m.

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1 Q. The shooting happened after midnight?

2 A. Actually midnight was when Rafael, I believe, was
3 pronounced dead.

4 Q. Did you ever go home and go to sleep or were you
5 still awake during this time period?

6 A. Still awake.

7 MR. STEINBERG: That's all the questions I
8 have. Thank you very much.

9 THE COURT: Thank you. Step down.

10 MR. STEINBERG: Your Honor, the State's next
11 witness is Mikeya Shumate.

12 THE CLERK: Ms. Shumate, would you place your
13 left hand on the Bible and raise your right.

14 MIKEYA SHUMATE, having been duly sworn,
15 testified as follows:

16 THE CLERK: Thank you.

17 DIRECT EXAMINATION

18 BY MR. STEINBERG:

19 Q. Good morning, Ms. Shumate, how are you today?

20 A. I'm fine.

21 Q. I'm going to ask you a couple of questions about
22 your background and the people involved in this case.

23 Where are you from originally? Where is your hometown?

24 A. Greenville, South Carolina.

25 Q. What is your highest level of education?

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- 1 A. Accounting, college.
- 2 Q. And do you have a job right now?
- 3 A. No, I get disability.
- 4 Q. And what is this disability for?
- 5 A. I have Discord Lupus. It's a skin cancer.
- 6 Q. Do you have any other medical issues?
- 7 A. No, it's just the lupus.
- 8 Q. What is your highest level of education?
- 9 A. Accounting, first year college.
- 10 Q. What has been the primary job you had your adult
- 11 life?
- 12 A. Cashiering and customer service.
- 13 Q. And at what business was that?
- 14 A. CVS.
- 15 Q. And for how long?
- 16 A. Over three years.
- 17 Q. What was your relationship with the deceased,
- 18 Rafael Dodd?
- 19 A. That was my cousin.
- 20 Q. And old are you in comparison to him?
- 21 A. We the same age, same birthday.
- 22 Q. You had your birthday the same year?
- 23 A. Yeah, he's a few minutes older than I am. We was
- 24 born on the same day.
- 25 Q. With that in mind, were you familiar with his

State versus Julian Battle

1 temper and his demeanor?

2 A. Yes.

3 Q. What was his temper and demeanor?

4 A. Rafael is more of a calm, cool, collect person.

5 He always look at the bright side of everything,

6 basically.

7 Q. What was his temper like this night December 25,
8 2009?

9 A. He was fine that night. He was calm because we
10 hadn't seen each other in over six years so we was all
11 excited.

12 Q. What was your relationship with Clintonian Dupri
13 Owens who I'll refer to as Pri from now on?

14 A. He was my boyfriend at the time.

15 Q. Let me talk to you about the incidents that led
16 up to this. What was your intentions this evening? What
17 was your intentions to spend the evening?

18 A. We had all made plans for the family to get
19 together but a couple of things changed so we all ended up
20 at my best friend Shameka's house basically just chilling
21 out because he wasn't going to be there but a couple of
22 days so we had Christmas and the day before Christmas to
23 be there. We was all picking one house and just going.

24 Q. I want to talk about your recollections and
25 impairments. Had you been drinking that night?

State versus Julian Battle

1 A. No, I wasn't drinking.

2 Q. Was it your intention to drink or use drugs?

3 A. Yes.

4 Q. Had you used drugs that night?

5 A. I had smoked a half blunt that night earlier.

6 Q. Was Dre Battle, the defendant in this case,
7 drinking?

8 A. Yes, he was drinking.

9 Q. Did he make any statements about his drinking?

10 A. Yes, he told us he was pretty f'd up.

11 Q. If there is any dispute, I want you to use the
12 actual words he used even if it's a profanity. Please say
13 what the word was?

14 A. When I got in the house he said he was pretty
15 fucked up.

16 Q. When he came back over to Park West, whose car
17 were you in?

18 A. I drove in my mom's car.

19 Q. Did y'all every leave after that?

20 A. Yes, we took Dre's car.

21 Q. And did you ever leave that location and come
22 back to Ms. Wells' apartment, Shameka Wells's apartment?

23 A. We went back to my aunt's house first and then my
24 mom's house and then to Shameka's house.

25 Q. At Shameka's house is where this incident

State versus Julian Battle

1 occurred?

2 A. Yes.

3 Q. Who went inside Shameka Wells's apartment?

4 A. Meka, Rafael, Jamaal went into the house. Me,
5 Pri and Dre stayed outside.

6 Q. What was the weather like at that time?

7 A. It was cold. It was drizzling but it hadn't
8 started raining yet.

9 Q. Does Pri, your boyfriend at the time, does he
10 ever go in the house?

11 A. He went in the house after we got in the argument
12 and got Dre's drinks.

13 Q. How do you know they were Dre's drinks and not
14 Pri's drinks?

15 A. Pri don't drink or smoke.

16 Q. Just smoke marijuana?

17 A. No, he don't drink or smoke.

18 Q. Did you get in a discussion with your boyfriend,
19 Mr. Owens, at the time?

20 A. Yes, we got into a discussion about my cousins
21 and them coming to the house. They thought it was just
22 going to be us, but because plans changed they all met us
23 at the house.

24 Q. During this discussion did it get heated?

25 A. Yeah, he was pissed off.

State versus Julian Battle

1 Q. Where was Dre Battle during this time?

2 A. Dre still over by the car.

3 Q. He's not on the porch?

4 A. No, he wasn't on the porch at that time.

5 Q. Did anyone come out and started to talk to you?

6 A. After me and Pri was out there arguing for a
7 while, Jamaal came out. Once Jamaal came out, it got more
8 heated because Pri felt like Jamaal wasn't supposed to say
9 nothing to him.

10 Q. Did Rafael ever come out?

11 A. Rafael came out a couple minutes later because we
12 never came upstairs or I never came upstairs and he know
13 my situation so he came downstairs and told us we needed
14 to come in the house. If they don't come, if not, let
15 them go.

16 Q. Did Rafael make any statements directed to you
17 when he came out?

18 A. Yeah, he told me Keya you ain't supposed to out
19 here, you need to just go on in the house because if he
20 gonna being doing all that you need to go on in the house,
21 you not supposed to be out here because of the lupus.

22 Q. Did your cousin, Mr. Dodd, make any statements to
23 the other individuals who were out there?

24 A. He was just trying to calm down everything
25 because it was Christmas and there was no need for

State versus Julian Battle

1 everything.

2 Q. What, if anything, did the defendant, Dre Battle,
3 do at this time?

4 A. Dre didn't walk up until he seen Rafael come out
5 the door. Once he seen Rafael come out the door that's
6 when he asked Rafael what he had to do with it. Rafael
7 told him these my cousins to and I'm just trying to get
8 them in the house. That's when Pri and Jamaal got real
9 heated.

10 Q. What did you do at that time?

11 A. I'm trying to get Jamaal and Pri to stop arguing
12 because it was real heated between us three and if I could
13 stop them from arguing then I could calm down the whole
14 situation.

15 Q. During this time, did you hear Dre make any
16 statements directed at Rafael Dodd, the victim?

17 A. Yeah, Dre felt like Rafael wasn't supposed to
18 come out and say nothing. He asked Rafael what he got to
19 do with it.

20 MR. ELLER: Objection as to what he felt
21 like, Your Honor. She can testify as to what he said but
22 not what Mr. Battle felt like.

23 THE WITNESS: That's what he said.

24 THE COURT: Go ahead.

25 BY MR. STEINBERG:

State versus Julian Battle

1 Q. If you would, please say exactly, to the best of
2 your recollection, what Dre Battle said?

3 A. You ain't got nothing to do with this, what are
4 you here for. He told him these was his cousins. He said
5 Pri was his cousin and he got everything to do with it.
6 Rafael was like well these are my cousins, too, I'm trying
7 to see what's going on so we can all get back in the
8 house.

9 Q. Was Rafael being aggressive toward Mr. Battle?

10 A. No.

11 Q. How close were you during this conversation?

12 A. We all sitting on the podium, on the porch. It's
13 a shed above us and it's a little bitty porch where you go
14 in the door at Park West.

15 Q. In feet, approximate feet, how close were you to
16 Rafael Dodd?

17 A. Probably across like this from the book.

18 Q. Two or three feet?

19 A. It was close on this concrete.

20 Q. Did you hear discussions being made there?

21 A. Yeah, we heard everything everybody saying until
22 everything just got rowdy.

23 Q. Did you hear any discussion about robbery?

24 A. No robbery.

25 Q. Did you hear any discussion about jewelry or

State versus Julian Battle

1 jewelry being taken?

2 A. No.

3 Q. Did you hear any discussion about drugs or money
4 owed?

5 A. No money owed.

6 Q. Did you hear any discussion about Rafael Dodd
7 being able to kill Mr. Battle and get away with it?

8 A. No.

9 Q. What happened next?

10 A. We all got to arguing. Pri went into the house,
11 got the drinks, because Dre told him to come on because it
12 wasn't getting no better. So Pri went and got the drinks
13 and he was just like I don't understand -- we just started
14 back arguing again. He went to the car, gave the drinks
15 to Dre. Once all of us got on the podium and everybody
16 was outside, that's when Dre walks up to Rafael. They
17 discussing and the only reason how they knew where Rafael
18 was from because I told Pri. After this they got to
19 arguing and that's when we heard a shot and then once we
20 heard the shot, that's when we all just kind of ducked and
21 everything got quiet.

22 Meka was coming out the door but she didn't
23 get out the door because we heard -- that's when the shot
24 went off. Rafael fell and Dre just stood there. I seen
25 Pri standing on the podium and after we seen that he was

State versus Julian Battle

1 hit, he was shot, we didn't know what to do. And then I
2 seen -- it's still ringing in my ear. I seen Jamaal over
3 by the thing and they trying to -- they got Jamaal held up
4 like this because Rafael is already (inaudible), that's
5 when they left and they took they phone. That's when Dre
6 talking about, oh, it ain't nothing but a flesh wound,
7 he'll be alright.

8 After that, that's when he talking about
9 that's what real niggas do. If you going to do something,
10 that's what real niggas do, it ain't nothing but a flesh
11 wound. After that Dre ain't have no remorse. Dre just
12 stood there, fixed his clothes, popped his collar and
13 that's when he was like he said again, he'll be alright,
14 it ain't but a flesh wound.

15 Q. Would you like some water?

16 A. No.

17 Q. I'll give you just a minute.

18 A. I'm fine.

19 Q. When this gunshot that you heard occurred, how
20 close was Dre Battle to Rafael Dodd?

21 A. He was bucking on Rafael by then and that's when
22 we heard the shot.

23 Q. You made a couple of statements and I'm not sure
24 if I got them correct, but the statement and again I have
25 to apologize for the language in this case but, this is

State versus Julian Battle

1 what real niggas do.

2 A. Yeah.

3 Q. Was that statement made before or after the
4 gunshot?

5 A. This is after?

6 Q. How close was he and where was Mr. Battle facing
7 when he made that statement?

8 A. He was still facing Rafael. That's when he -- he
9 was just standing there. He ain't run, he ain't do
10 nothing.

11 Q. Did you actually look at Mr. Battle?

12 A. Yeah.

13 Q. What did Mr. Battle do to himself? How did he
14 behave at that point?

15 A. He acted emotionless. He popping his collar, he
16 fixing his clothes. He stood there enough to fix his
17 clothes and say the words that he said.

18 Q. When you say fixing his clothes, I want you to
19 please stand up and demonstrate what you mean by that.

20 A. (Witness complies). He fixed his clothes like
21 this, did his shirt, did like this, it ain't nothing but a
22 flesh wound -- that nigga be alright.

23 Q. What kind of clothes was he wearing that night?

24 A. He wear big clothes.

25 Q. And we can see him here today, was he actually

State versus Julian Battle

1 larger or smaller at that time?

2 A. Oh, he was bigger than that. He done lost
3 weight.

4 Q. After the shot occurred and he made those
5 statements and he touched his clothes, did Mr. Battle stay
6 on scene or did he leave?

7 A. When he took the phone, that's when the walked
8 off and left. Pri didn't leave at first because he was
9 still in my face trying to tell me this is what I'm
10 talking about with your family get in our business this is
11 what I'm talking about. That's when Pri walked off and
12 Dre was already around the corner. Pri walked off and got
13 in the car. We didn't do nothing until they left because
14 we ain't have no phone. After they left, that's when we
15 ran around trying to find a phone.

16 Q. So nobody in your group after they took the phone
17 nobody else had a phone?

18 A. No.

19 Q. Did you see your cousin Rafael at that point?

20 A. Yeah, he was already was over the rail. His body
21 was on the ground but his leg was over the rail.

22 Q. Was he able to speak?

23 A. He was just mumbling.

24 Q. Thank you, Ms. Shumate, please answer any of
25 opposing counsel's questions.

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1 THE COURT: Mr. Eller.

2 MR. ELLER: Your Honor, before we begin, we
3 have a brief matter of law to discuss with the Court.

4 THE COURT: Take the jury out, please.

5 (Jury exits the courtroom.)

6 MR. ELLER: Two things, off the record,
7 please.

8 THE COURT: Okay.

9 (Whereupon, there was a discussion off the
10 record.)

11 MR. ELLER: Your Honor, I want to make my
12 State versus Joseph motion. She's got two convictions,
13 Your Honor, that we intend to question her about. On
14 September 21, 2010 she was found guilty in a bench trial
15 for giving a false name and address to police. And on
16 November 23, 1999, she was convicted of breach of trust
17 for fraud \$1000 or less. Pursuant to State versus Joseph,
18 we ask to reveal that.

19 THE WITNESS: That was ---

20 THE COURT: Hold on just a minute.

21 MR. ELLER: And for her not to be able to
22 explain those away.

23 MR. STEINBERG: Your Honor, I might be able
24 to agree to this.

25 BY MR. STEINBERG:

State versus Julian Battle

1 Q. Do you agree that you were convicted in 2010 of
2 giving false information or address to police officers?

3 A. Yeah, false name.

4 Q. False name. And were you convicted back in 1999
5 of breach of trust with fraudulent intent?

6 A. In '99?

7 Q. Yes.

8 A. Oh, Walmart, yeah.

9 MR. STEINBERG: Your Honor, I don't object.

10 THE COURT: Does anyone need a break?

11 (Whereupon, there was a brief break.)

12 Okay. Bring the jury.

13 CROSS-EXAMINATION

14 BY MR. ELLER:

15 Q. Good morning, Ms. Shumate.

16 A. Good morning.

17 Q. You just testified a moment ago that you believe
18 Mr. Battle was drunk that night; is that right?

19 A. I knew he was drunk because he brought liquor
20 that night and he already drank half of it.

21 Q. But isn't it true that you already testified that
22 he wasn't messed up enough that he couldn't drive or play
23 cards?

24 A. Yeah.

25 Q. So although he had had some alcohol, you didn't

State versus Julian Battle

1 believe he was impaired enough to drive or play cards,
2 right?

3 A. Yeah.

4 Q. Now, Ms. Shumate, at the time of this incident,
5 December 24, 2009, early morning hours December 25, 2009,
6 isn't it true that you and Mr. Owens were boyfriend and
7 girlfriend?

8 A. Yes.

9 Q. And, in fact, y'all had been dating for about a
10 year?

11 A. Yes.

12 Q. When you first talked to Investigator Laura Jones
13 after this incident, isn't it true that you denied knowing
14 Mr. Owens?

15 A. I didn't deny it. I told her I had been knowing
16 him for six months.

17 Q. But isn't it true that you told Investigator
18 Jones that you only knew him as Beast and you didn't know
19 who he was?

20 A. I didn't say I didn't know who he was. I gave
21 her his nickname. I told him at the time that's the only
22 name I knew.

23 Q. Isn't it true that you told Investigator Jones
24 that you only knew him as Beast and then you came back
25 later and said that you knew him as Pri?

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1 A. Yeah, because I was kind of ashamed at the time.

2 Q. And isn't it true that you also told them that
3 his last name, this is when you were talking to
4 Investigator Jones, his last name was either Owens or
5 Arnold?

6 A. No, I said Owens.

7 Q. Now, when you say you were ashamed about
8 Mr. Owens, why were you ashamed about Mr. Owens?

9 A. Because I didn't think things were going to go
10 the way they was and I didn't want them to know that he
11 was the one that was living in my house.

12 Q. Now, isn't it true that Mr. Battle and Mr. Dodd
13 they didn't know each other?

14 A. No.

15 Q. I'm sorry. Maybe that was a bad question. Is
16 your testimony that Mr. Dodd and Mr. Battle knew each
17 other or they didn't know each other?

18 A. They didn't now each other.

19 Q. Sorry. That was a little confusing. As far as
20 Mr. Owens and Mr. Dodd, did they know each other?

21 A. No.

22 Q. Now, you told Investigator King that night --
23 well, do you remember giving a statement to Investigator
24 Tracy King?

25 A. Yes.

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1 Q. This two-page document that I'm showing you, does
2 that look like the statement that you gave Investigator
3 King on December 25, 2009?

4 A. Yeah.

5 Q. If you'll just hold on to that for just one
6 second, Ms. Shumate. You told Investigator King that
7 night that you rode in a car with Shameka Wells, right?

8 A. Yes. I told him I was supposed to go get Shameka
9 so we could go to my aunt's house.

10 Q. But that wasn't ---

11 A. But it was written down as I had already got
12 Shameka.

13 Q. But it's not true that you rode in the car with
14 Shameka Wells that night in your car with Shameka Wells
15 that night, is it?

16 A. I took my mom's car to Shameka's house.

17 Q. But y'all did not ride together in your mom's car
18 either that night?

19 A. No, we rode in Dre's car.

20 Q. So just so the jury is clear from the statement
21 you gave Investigator King you said that you rode in your
22 car with Ms. Wells, but in fact you never rode in the car
23 that night in your car with Ms. Wells, correct?

24 A. No, we was riding in Dre's car together.

25 Q. And isn't it true that you told Investigator King

State versus Julian Battle

1 when y'all got back to the apartment you and Mr. Owens
2 began to argue about who the guys were, and the guys were
3 Mr. Dodd and Mr. Stewart, right?

4 A. Right.

5 Q. The guys that didn't know each other, right?

6 A. Right. The guys that didn't know each other.

7 Q. And isn't it true that the argument between you
8 and Mr. Owens were over who these guys were?

9 A. Well, he knew who Jamaal was. It was Rafael.

10 Q. So he knew Jamaal Stewart -- just so we're clear,
11 Mr. Owens knew who Jamaal Stewart was but he didn't know
12 who Rafael was?

13 A. Yeah.

14 Q. But isn't it true that Mr. Owens did not know why
15 Mr. Stewart and Mr. Dodd were at Shameka Wells's
16 apartment?

17 A. No, because we had left them at my mom's house
18 and they was supposed to go over my cousin's house but
19 that didn't work out so Meka told them they can come on to
20 the house.

21 Q. But Mr. Owens and Mr. Battle ---

22 A. No, they didn't know they was coming.

23 Q. They didn't know that Mr. Stewart and Mr. Dodd
24 was coming over, right?

25 A. No.

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1 Q. And, in fact, you and Mr. Owens was arguing about
2 that fact, correct?

3 A. Yes.

4 Q. Now, you told Investigator King that Jamaal
5 Stewart at some point -- at some point, Mr. Stewart,
6 Mr. Owens and Ms. Wells, they all go upstairs to that
7 second story apartment, correct?

8 A. Yes.

9 Q. And you told Investigator King that Mr. Stewart
10 heard you and Mr. Owens arguing and he came downstairs,
11 right?

12 A. Yes.

13 Q. And I believe your testimony was this morning
14 that when Mr. Stewart came out there, it got escalated?

15 A. Yes.

16 Q. That was the term you used.

17 A. Pri didn't think Jamaal was supposed to same
18 nothing to him because he was my boyfriend and Jamaal was
19 my cousin. He figured Jamaal needed to stay out of it.

20 Q. But the argument between you and Mr. Owens once
21 Mr. Stewart got involved it became escalated. That was
22 the term you used this morning, right?

23 A. Yes, that's when Dri was asking him why was he
24 outside and there wasn't no need for him to be out there.

25 Q. And isn't it true that Mr. Owens and Mr. Stewart

State versus Julian Battle

1 were face to face? They got in each other's face while
2 they were arguing.

3 A. I was between them at that time.

4 Q. But at some point they got face to face, right?

5 A. Yes.

6 Q. Now, and at that time while Mr. Stewart and
7 Mr. Owens were arguing, isn't it true that Mr. Battle was
8 off to the side at that point?

9 A. Yeah.

10 Q. And then after they got in each other's face, you
11 testified this morning that Mr. Battle said, come on,
12 Dupri, let's got, right?

13 A. Yes.

14 Q. So Mr. Battle was trying to get Mr. Owens to
15 leave, correct?

16 A. Yes, at that time.

17 Q. In fact, you told Investigator King that's what
18 Mr. Battle said, right?

19 A. Yeah.

20 Q. You also told Investigator King you tried to get
21 in between Mr. Owens and Mr. Stewart while they were
22 having words, right?

23 A. Yes.

24 Q. And I believe your testimony was this morning you
25 felt if you could get the two of them to separate, that

State versus Julian Battle

1 might diffuse the situation?

2 A. Yes, because Pri was very pissed off at me that
3 night.

4 Q. At some point Mr. Dodd came outside, correct?

5 A. Yes.

6 Q. And he and Mr. Battle were exchanging words,
7 correct?

8 A. Yeah, he wasn't talking to Mr. Battle at first.
9 He was talking to me and Jamaal telling us if Pri was
10 going to continue to argue, let him argue and go on about
11 his business, I need to come upstairs. That's when Dre
12 comes over because again they felt like ain't nobody
13 supposed to say nothing to them.

14 Q. When he came outside, he and Mr. Battle were
15 exchanging words, right?

16 A. Yes, when Mr. Battle walked up to him.

17 Q. Now, isn't it true that when Mr. Dodd and
18 Mr. Battle were arguing with one another, you were focused
19 on Mr. Owens and Mr. Stewart and your argument, correct?

20 A. Yeah, but at that time they had calmed down
21 because we was trying to see what they was saying.

22 Q. But I thought your testimony was earlier and in
23 your statement that you gave Investigator King was you
24 thought that if you could break up Mr. Owens and
25 Mr. Stewart, that Mr. Dodd and Mr. Battle would stop,

State versus Julian Battle

1 right?

2 A. Yes. Because once we heard them -- Dre asking
3 him what did they have to do with it, that's when Pri
4 stopped and said something to Dre.

5 Q. I just want to make sure we're clear. When
6 Mr. Owens and you and Mr. Stewart were arguing, you're in
7 between them trying to get them to stop arguing?

8 A. Yeah.

9 Q. And that's why you told Investigator King that if
10 I got them to stop, Mr. Dodd and Mr. Battle would stop?

11 A. Yeah, because it was heated with them at the
12 time.

13 Q. There were two arguments going on at the same
14 time, correct?

15 A. Yeah, but Pri stopped arguing because he's trying
16 to see what's going on with Dre. That's how we was able
17 to hear what they were saying.

18 Q. Okay.

19 A. And then Jamaal was like, come on, and that's
20 when Pri went at Jamaal again and then it got bad.

21 Q. Two separate argument, though, right?

22 A. Yeah, they arguing over right here and we all
23 staying right here, they right here and Jamaal and Pri are
24 right here. So it's two of them and three of us and we're
25 all on this podium and we could hear each other because

State versus Julian Battle

1 the thing is small.

2 Q. But the arguments were contemporaneous or at the
3 same time?

4 A. Uh-hum.

5 Q. And isn't it true that you were focused on the
6 argument between Mr. Owens and Mr. Stewart, correct?

7 A. Yes.

8 Q. And isn't it true that you also told Investigator
9 King that a few moments later during these contemporaneous
10 arguments, that Shameka Wells opened the front door?

11 A. Yes, I seen the door opened and she tried to come
12 out, but before she could open the door all the way, a
13 gunshot went off.

14 Q. Okay. So Shameka Wells is coming out before the
15 gunshot went off, right?

16 A. Yeah.

17 Q. And before she could get the door open all the
18 way, a gunshot goes off?

19 A. Yeah.

20 Q. I'm now going to show you a photograph. This is
21 State's Exhibit No. 3. This door is a solid door. It's
22 not like a storm door, is it?

23 A. No.

24 Q. So you would agree that Ms. Wells couldn't see
25 through that door, right?

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1 A. No.

2 Q. No, you wouldn't agree or no, you would agree
3 with me that she can't see through that door?

4 A. She can't see through the door.

5 Q. Unless you're peeking through those two little
6 windows?

7 A. Through those windows, yeah. And when you're
8 coming down the steps, you could see through the windows.

9 Q. After the gunshot went off, she didn't come on
10 outside, though, did she?

11 A. No, Meka ran up the steps.

12 Q. And isn't it true that you told Investigator King
13 that you thought that Ms. Wells had hit Dodd, Mr. Dodd ---

14 A. I thought she had hit Jamaal with the door
15 because Jamaal was closer to the door?

16 Q. But in your statement, isn't it true that you
17 thought that she hit both of them?

18 A. I thought the door had hit and that's why they
19 had turned around. That's why Jamaal had turned around
20 but that's when the gunshot went off and I never seen --

21 Q. But what you told Investigator King was that you
22 thought she hit both of those individuals, Mr. Stewart and
23 Mr. Dodd, with the door, right?

24 A. If I said Mr. Dodd, I don't remember, but I knew
25 Jamaal was standing right there. It wasn't open enough to

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1 hit Rafael.

2 Q. I'm going to ask you to view that statement one
3 more time and I'm going to point you in the a direction.
4 If you will look down here at the very bottom, this is
5 Page 1 down here. You don't have to read it aloud, just
6 that middle sentence. It's starting over here and I ask
7 you if that refreshes your recollection.

8 A. It's in there.

9 Q. In there you said that it Rafael and Jamaal. You
10 thought she hit Rafael and Jamaal, right?

11 A. Yes.

12 Q. Okay. And then after you heard the gunshot, you
13 told Investigator King that you saw Rafael fall, right?

14 A. Yeah, that's when Rafael fell and went over the
15 rail.

16 Q. And then you told Investigator King, Jamaal,
17 Mr. Stewart, ran to Mr. Dodd and Dre ran to the car,
18 right?

19 A. Yeah, Dre ran to the -- went to the car after
20 everything was said and done.

21 Q. Now, this morning you testified that Mr. Battle
22 walked away, but isn't it true that you told Investigator
23 King ---

24 A. I put in here ---

25 Q. --- that he ran, right?

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1 A. Yeah, that's what he said.

2 Q. And then you later on told Investigator King that
3 after a moment, Mr. Owens then ran to the car, right?

4 A. Yeah, he ran to the car, Dre didn't run to the
5 car.

6 Q. You told Investigator King ran to the car?

7 A. I see what I said in there.

8 Q. Now, isn't it true that before you heard the
9 gunshot you never saw the gun, right?

10 A. No. I didn't see the gun.

11 Q. And you didn't see anybody pull the trigger, did
12 you?

13 A. Right.

14 Q. You only heard it, right?

15 A. Yes.

16 Q. Now, on that statement, that's your signature,
17 isn't it?

18 A. And you verified on Page 2 that it was true and
19 correct as best as you could recall.

20 Q. As best I could recall?

21 A. Right.

22 Q. Right?

23 A. And then you signed it, right.

24 Q. Right.

25 A. Right.

State versus Julian Battle

1 Q. Now, at the scene, you do recall speaking to
2 Investigator Jones, right.

3 A. Yes.

4 Q. She was the one you told that Mr. Owens was
5 Beast?

6 A. Right.

7 Q. You recall talking to her, right?

8 A. Uh-hum.

9 Q. And you recall the very first deputy that showed
10 up out there, the very first police officer. You didn't
11 give him a statement, but you talked to him?

12 A. No, I talked to a woman. It was only two people,
13 the lady I was talking to and the one who took my prints.

14 Q. Okay. So there was a lady that took your
15 fingerprints and did some gunshot residue testing. Is
16 that Officer Ooten, does that name ring a bell? It was a
17 lady.

18 A. Yes.

19 Q. And she took your prints. Do you remember
20 talking to her?

21 A. She said she needed to take everybody for the
22 gunshots and stuff. That was the only other person who
23 came to talk to me accept for when we got to the Detention
24 Center.

25 Q. That night these details about these statements

State versus Julian Battle

1 that you now testified that you now heard Mr. Battle say,
2 isn't it true that you didn't tell Investigator King any
3 of those statements, right?

4 A. (Inaudible).

5 Q. You didn't tell Investigator King that you were
6 Owens or -- excuse me -- you didn't tell Investigator
7 Jones ---

8 A. Yeah, because he was the one that came to see me
9 because I told him.

10 Q. I misspoke. You told Investigator King that
11 y'all been dating about six months?

12 A. Yeah.

13 Q. And, in fact, y'all been dating about a year?

14 A. Yes.

15 Q. But you didn't tell Investigator Laura Jones that
16 y'all had been dating, right?

17 A. Nobody asked me. Oh, about the Beast?

18 Q. Yes.

19 A. Yes, because she asked me who was he coming to
20 see and I told her he was coming to see me.

21 Q. But you didn't tell her y'all were dating,
22 though, did you?

23 A. No, because she didn't ask for that. She just
24 kept asking me who did he come see.

25 Q. You didn't tell her about any statements that you

State versus Julian Battle

1 supposed heard Mr. Battle say, did you?

2 A. No, because she didn't ask me none of that.

3 Q. You didn't tell her any of the statements you
4 heard Mr. Dodd say, did you?

5 A. She didn't ask none of that. I didn't get
6 questioned until I got to the Detention Center with stuff
7 like that.

8 Q. You didn't tell Investigator Jones about
9 Mr. Battle fixing his clothes or popping his collar, did
10 you?

11 A. No.

12 Q. In fact, when you got to Investigator King and
13 you got to the Detention Center, you didn't tell
14 Investigator King about any of the statements you heard
15 Mr. Battle say either, did you?

16 A. Because he didn't ask me no questions. He only
17 asked me -- when he asked me the questions, he typed down
18 everything. He didn't ask me who said what or what was
19 said?

20 Q. He didn't ask you what happened?

21 A. He asked me what happened, but he wanted to know
22 what ---

23 Q. He wanted to know details about that night.

24 A. He didn't ask who said this and who said that and
25 who said this, he just asked about the scenery.

State versus Julian Battle

1 Q. So Investigator King, you agree with me, you
2 didn't tell Investigator King about any of the statements
3 you heard Mr. Dodd say that night, did you?

4 A. Which one was that?

5 Q. Mr. Dodd. In your statements to Investigator
6 King, you didn't tell him what Mr. Dodd said?

7 A. He is the one that took the statement.

8 Q. But it's not in that statement, is it?

9 A. He didn't ask me that. He never asked me who
10 said what. He asked me what's on paper.

11 Q. Just so we're clear, though, anything that you
12 said that you testified today that you heard Mr. Dodd say,
13 you didn't put it in your statement, right?

14 A. No.

15 Q. Now, isn't it true Ms. Shumate in September of
16 2010, you were convicted of providing a false name and
17 address to police officers?

18 A. Yeah, because I had a suspended license.

19 Q. And isn't it true that in November of 1999 you
20 were convicted of breach of trust ---

21 A. I was a teenager then.

22 Q. You were convicted of breach of trust with
23 fraudulent intent for \$1000 or less?

24 A. I was a teenager, then.

25 MR. ELLER: Your Honor, could you instruct

State versus Julian Battle

1 the witness to answer the question.

2 THE WITNESS: I was convicted but '99. I
3 done did much good since then.

4 BY MR. ELLER:

5 Q. Now, Ms. Shumate, isn't it true that you never
6 told any law enforcement office, Investigator Jones at the
7 scene, Officer Ooten at the scene, or Investigator King
8 when you gave your statement, you never told any of those
9 individuals that Mr. Battle shot Mr. Dodd, isn't that
10 true?

11 A. I just told them I heard a gunshot.

12 Q. But isn't it true you never told anybody from law
13 enforcement that Mr. Battle shot Mr. Dodd?

14 A. No, that wasn't asked.

15 MR. ELLER: No further questions.

16 THE COURT: Redirect.

17 REDIRECT EXAMINATION

18 BY MR. STEINBERG:

19 Q. Ms. Shumate, who asked you more detailed
20 questions Investigator King or the defense attorney?

21 A. Say that again.

22 Q. Who asked you more detailed questions, the night
23 this happened or Mr. Eller today?

24 A. He asked me more questions.

25 Q. Did you testify at a hearing approximately two

State versus Julian Battle

1 months ago in this case?

2 A. Yes.

3 Q. And in that hearing, did you testify to
4 everything you talked about today involving the shooting,
5 the language ---

6 MR. ELLER: Objection, Your Honor. He's
7 attempting to bolster the witness's credibility.

8 MR. STEINBERG: Your Honor, this is proper
9 testimony ---

10 THE COURT: I understand, but don't testify
11 yourself. Just ask the question.

12 BY MR. ELLER:

13 Q. During this prior hearing two months ago, what
14 version did you tell? The same version as here today?

15 A. Yes, sir.

16 Q. Just for one example, in the prior statement, did
17 you refer to the defendant as running away or walking
18 away?

19 A. I told them he was walking away. In here it says
20 he was running away.

21 Q. What did you say two months ago?

22 A. That he was running away.

23 MR. STEINBERG: That's all I have.

24 MR. ELLER: Briefly, before you release this
25 witness, may I check for one thing?

State versus Julian Battle

1 THE COURT: Sure.

2 MR. ELLER: That's all I have.

3 THE COURT: You may step down.

4 Call your next witness.

5 MR. STEINBERG: My next witness will be
6 Clintonian Dupri Owens.

7 THE CLERK: Mr. Owens, would you come forward
8 to be sworn in.

9 Would you please place your left hand on the
10 Bible and raise your right?

11 CLINONIAN DUPRI OWENS, having been duly
12 sworn, testified as follows:

13 Thank you. You may be seated. State your
14 name for the record.

15 THE WITNESS: Clintonian Dupri Owens.

16 DIRECT EXAMINATION

17 BY MR. STEINBERG:

18 Q. Mr. Owens, how are you today?

19 A. I'm alright.

20 Q. I'm going to ask you a few questions about
21 yourself. Where are you from originally?

22 A. From here.

23 Q. And what is your highest level of education?

24 A. GED.

25 Q. Do you have a job at this point?

State versus Julian Battle

1 A. Yes, sir.

2 Q. Where are you working, sir?

3 A. Working at Wings on the Run.

4 Q. Back in 2009, Christmas, what was your job?

5 A. Landscaping.

6 Q. Let me ask you a couple of questions not as to
7 embarrass you but do you have a criminal record?

8 A. Yes, I do.

9 Q. And what does that criminal record consists of?

10 A. It consists of ---

11 MR. ELLER: Objection, Your Honor, if we
12 could approach.

13 (Whereupon, there was a discussion off the
14 record.)

15 BY MR. STEINBERG:

16 Q. Mr. Owens, I'm going to ask you to speak a little
17 bit louder, if you would.

18 A. Yes, sir.

19 Q. Mr. Owens, you have been convicted of a number of
20 counts of grand larceny in 2003?

21 A. Yes, sir.

22 Q. You were convicted of a number of accounts for
23 auto breaking for that same year?

24 A. Yes, sir.

25 Q. Were you convicted of criminal domestic violence

State versus Julian Battle

1 of a high and aggravated nature in the year 2004?

2 A. Yes, sir.

3 Q. Were you convicted of failure to stop for blue
4 lights in 2005?

5 A. I was incarcerated 2005.

6 Q. Were you at any point in the last 10 years
7 convicted of failure to stop for blue lights?

8 A. Yes, I have.

9 Q. 2006 giving false information to police officers?

10 A. No, sir, I don't know nothing about that one.

11 Q. I'm not going to belabor that point. The case in
12 questions, were you also charged in this matter?

13 A. Yes, I was.

14 Q. What were you charged with?

15 A. Murder.

16 Q. Do you understand what your obligation is in this
17 case to testify?

18 A. Yeah.

19 Q. What is your understanding of what's going to
20 happen if you testify in this case?

21 A. That my charges would be dismissed.

22 Q. Have you met with me in preparation for this
23 trial?

24 A. First one or the second one.

25 Q. Between the time of this crime and today, have

State versus Julian Battle

1 you met with me?

2 A. Yes, I have.

3 Q. And have you met with Mr. Eller in the past?

4 A. Not too much.

5 Q. Have you had discussion with him?

6 A. Yes, I have.

7 Q. These people in the front row, are they part of
8 your family?

9 A. They are my family.

10 Q. Are they related to Mr. Battle?

11 A. Yeah, they are related to him.

12 Q. And are they related to you?

13 A. They are my first cousins.

14 Q. In preparation for the trial or other hearings,
15 have you been in rooms and had discussions with the
16 family, getting along with them?

17 A. Yeah, getting reacquainted with my family because
18 I hadn't talked to them.

19 Q. Did you write your cousin's family while you were
20 in jail?

21 A. When I first got arrested?

22 Q. Yes, sir.

23 A. Yes, I did.

24 Q. And did they write to you?

25 A. Yes, sir.

State versus Julian Battle

1 Q. Prior to this shooting, did you hang out with Dre
2 Battle? Were y'all friends in addition to being cousins?

3 A. It's my family.

4 Q. And were you spending time with him on Christmas
5 even 2009?

6 A. Yes, I was.

7 Q. Did you write yourself write to Dre Battle when
8 he was in jail and you were out in the street?

9 A. Yes, I did.

10 Q. Did you hang out as cousins do when you were both
11 out on bond in this case?

12 A. Not really. We just got together one time.

13 Q. Just one time or more?

14 A. Just one time.

15 Q. Were you with him in June shortly after you got
16 out of jail?

17 A. Yeah.

18 Q. Were you with him in September at this incident
19 at the barbershop?

20 A. Yes.

21 Q. Between June and September were there any
22 incidents the times you were together?

23 A. Nothing but the barbershop thing. That was it.

24 Q. Are you loyal to your cousin?

25 A. Yes, sir.

State versus Julian Battle

1 Q. Do you love your cousin?

2 A. Yes, sir.

3 Q. Being as you are cousins and you know him, how
4 does he act around people he doesn't know?

5 A. Mellow, cool, he stay to himself.

6 Q. What was your relationship like with Mikeya
7 Shumate in 2009?

8 A. That was my girlfriend.

9 Q. How well if at all did you know the victim Rafael
10 Dodd?

11 A. I didn't know him.

12 Q. That's the first night y'all every met?

13 A. I never met him.

14 Q. This night, the incident happened?

15 A. I never met him.

16 Q. Did you speak with him at Terra Apartments?

17 A. No.

18 Q. Had you ever seen him before he walked out the
19 door?

20 A. No, sir.

21 Q. Had you seen him when you walked inside Shameka's
22 apartment?

23 A. What you mean?

24 Q. Did you go inside Shameka's apartment to get the
25 alcohol?

State versus Julian Battle

1 A. Yeah, I seen him them. He went to the bathroom.

2 Q. Let's bring us up to the incident when this
3 happened. Shortly after midnight, it was morning of
4 December 25, 2009 where were you?

5 A. I was at home.

6 Q. Whose home?

7 A. My uncle's.

8 Q. I'm talking about the incident at Park West
9 Apartments?

10 A. There you go.

11 Q. Were you there?

12 A. Yes, sir.

13 Q. What were you doing there?

14 A. Just getting together with Mikeya and Meka.

15 Q. And were you drinking?

16 A. No, sir, I don't drink.

17 Q. You don't drink at all?

18 A. No, sir.

19 Q. Was your cousin, Mr. Battle, drinking that night?

20 A. Not much. I had a drink while we was there
21 waiting on Mikeya.

22 Q. 2009, Christmas eve, how many drinks did he have?

23 A. Two drinks.

24 Q. How did y'all get back to Shameka's apartment
25 from the other locations, Terra Apartments and all that?

State versus Julian Battle

1 Who drove?

2 A. I drove.

3 Q. Whose car did you drive?

4 A. My cousin's car.

5 Q. Why were you driving his car?

6 A. Because he was drinking. Why would I let him
7 drive when he had been drinking.

8 Q. When you were outside the apartment, Park West
9 Apartments, did you have any arguments with you
10 girlfriend, Ms. Shumate?

11 A. Yes, sir, I did.

12 Q. What was the argument about?

13 A. It was about us mixing with both of our families
14 together at that point in time.

15 Q. And what was your feelings about that?

16 A. I didn't want to do it.

17 Q. Where was Dre standing during this time?

18 A. Which argument?

19 Q. During this time when you're arguing with Mikeya,
20 where was your cousin, Dre Battle, standing.

21 A. He was behind me.

22 Q. Did anybody else come outside?

23 A. Yes.

24 Q. Who came outside first?

25 A. Jamaal.

State versus Julian Battle

1 Q. What, if anything, did Jamaal say?

2 A. He was ---

3 Q. Just for clarity, if there is any word that you
4 might think improper I would ask you to actually use that
5 word for the rest of my questions.

6 A. He came out he was like what the fuck going on,
7 why y'all arguing, it's Christmas whatever, why you
8 arguing with my cousin and this and that. And then he
9 stopped when I approached him.

10 Q. What did you say to him?

11 A. Mind his business. You need to stay out of it.
12 We arguing didn't have nothing to do with him.

13 Q. Did Rafael ever come outside?

14 A. Yes, he did.

15 Q. What did he say when he came outside?

16 A. He was loud. He didn't say nothing directly to
17 me but when he came out he was like, I ain't from around
18 here, I don't care about this and that. That was it.

19 Q. Did he issue any threats?

20 A. No.

21 Q. Did you give a statement to officers on the night
22 this incident occurred?

23 A. Yes, I did.

24 Q. In this statement, did you say that Rafael was
25 being hostile?

State versus Julian Battle

1 A. Yes, I did.

2 Q. What did you mean by being hostile?

3 A. When he come out, okay, I don't know the man for
4 one and the things he saying, I'm not from around here,
5 what's going on this and that, I take that as being
6 hostile.

7 Q. In your statement, you use the word pushing, did
8 you actually see with your own eyes pushing by Mr. Dodd?

9 A. No, I didn't. I know my cousin wouldn't have
10 said it for no reason.

11 Q. What did your cousin say?

12 A. My cousin said keep your hands off of me.

13 Q. Did you actually see the pushing or just hear
14 that?

15 A. No, I didn't see it. It was behind me.

16 Q. If I heard you correctly, you said your cousin
17 wouldn't say that if it wasn't true?

18 A. No, he wouldn't.

19 Q. Is that correct, though?

20 A. That's correct.

21 Q. You believe because your cousin told you
22 something, you would believe something?

23 A. Right.

24 Q. Approximately how many hours had passed between
25 the time of the shooting and the time you gave this

State versus Julian Battle.

1 statement, I don't need the exact numbers but the same
2 day, later that day?

3 A. It was like a couple of hours after I got to my
4 mom's house and they had apprehended me.

5 Q. When Rafael came outside, where did Dre move to?

6 A. What do you mean? He was behind me. I told you
7 he was behind me a couple questions before this, he was
8 behind me.

9 Q. Did Rafael ever leave the porch area?

10 A. Well, see, I don't discussed this before, you got
11 the platform and the step.

12 Q. So there's no dispute.

13 A. Yeah.

14 MR. STEINBERG: I'm going to hand up State's
15 Exhibit No. 5.

16 BY MR. STEINBERG:

17 Q. This area immediately in front of the door, let's
18 call that the patio. Did Rafael Dodd ever leave that
19 patio?

20 A. Had to because my cousin wasn't on that patio.
21 In order for him to get behind me, he would have to leave
22 it because I was on it.

23 Q. So you were on it and you're saying Mr. Dodd went
24 pass you?

25 A. Yes.

State versus Julian Battle

1 Q. Did Mr. Dodd ever walk back on to the patio?

2 A. I can't -- I can't -- everything happened so
3 quick.

4 Q. Was he ever standing next to the guard rail
5 during this incident, the guard rail that we see in this
6 picture?

7 A. Yeah.

8 Q. You agree that guard rail is attached to the
9 porch patio?

10 A. Yeah.

11 Q. Did Dre Battle make any statements to Rafael
12 Dodd?

13 A. The only statement that I heard was keep your
14 hands off of me.

15 Q. Any other threats or any other statements?

16 A. No.

17 Q. During this time period, was there discussion
18 about money?

19 A. No, sir.

20 Q. Was there discussion by Mr. Dodd demanding
21 jewelry or anything of this nature?

22 A. No, sir.

23 Q. Was the word jury every raised during this
24 conversation?

25 A. No, sir.

State versus Julian Battle

1 Q. Was there a discussion over whether Mr. Dodd
2 could kill Mr. Battle and get away with it?

3 A. I ain't heard it. It was behind me.

4 Q. How close were you?

5 A. I don't know. I can't say. I just know it was
6 behind me.

7 Q. Did you hear the gunshot?

8 A. Yes, sir, I did.

9 Q. Where were you facing when you heard the gunshot?

10 A. In front of the door me and Jamaal.

11 Q. Did you hear your cousin Jamaal make any
12 statements immediately following the shooting?

13 A. No.

14 Q. What happened to the victim's body? Did you see
15 what happened? Did he stand, fall directly where he was
16 shot what happened to it?

17 A. I don't know what happened to his body. I just
18 know I turned around he was already over the rail laying
19 down.

20 Q. Did you ever touch him?

21 A. No.

22 Q. Did you ever approach his body?

23 A. No.

24 Q. How close was Mr. Dodd and Mr. Battle?

25 A. They was behind me. They may have been face to

State versus Julian Battle

1 face then. After his body was laying down I wasn't no
2 where near him and his wasn't either.

3 Q. Did Dre Battle make any statement to Jamaal
4 Stewart?

5 A. As in what?

6 Q. Did he make any statements about law enforcement?

7 A. No. Rafael did.

8 Q. What did Rafael say?

9 A. Rafael said call the police. My cousin didn't
10 say nothing.

11 Q. Did Dre Battle ever approach Jamaal Stewart?

12 A. Yeah.

13 Q. What was he doing with Jamaal Stewart?

14 A. Took his phone and that was it.

15 Q. Did he make any statement immediately before or
16 immediately after about why he took the phone questioning
17 Jamaal Stewart?

18 A. No.

19 Q. Did Mr. Battle leave with the phone he took?

20 A. I don't know.

21 Q. Did you see that phone again? Did you have it in
22 the car with you?

23 A. I not seen it.

24 Q. Did he say why he took the phone? Did he ever
25 tell you why he took that phone?

State versus Julian Battle

- 1 A. No.
- 2 Q. But you are confident that you saw Dre Battle
- 3 take Jamaal Stewart's phone from his hands?
- 4 A. Yeah.
- 5 Q. Did anyone chase you or threaten you or
- 6 Mr. Battle as you left the shooting scene?
- 7 A. No.
- 8 Q. Did you have a phone on you that night?
- 9 A. No, sir.
- 10 Q. Dre Battle ever try to use that phone, Jamaal's
- 11 phone, to call 911 while he was in your presence?
- 12 A. I didn't see no phone.
- 13 Q. Where did you go right after the shooting?
- 14 A. I went to my mother's house.
- 15 Q. Who drove?
- 16 A. I did.
- 17 Q. Whose car were you in?
- 18 A. My cousin's car.
- 19 Q. What street is your mother's house on?
- 20 A. Glass Street.
- 21 Q. Y'all go to Dre Battle father's house?
- 22 A. No.
- 23 Q. Did y'all go to the Waffle House together?
- 24 A. No.
- 25 Q. Did you go anyplace else besides Glass Street?

State versus Julian Battle

1 A. No.

2 Q. When you got to Glass Street -- when you were in
3 the car going to Glass Street, did your cousin make any
4 statements to you about the shooting?

5 A. He was telling me to calm down, just calm down.

6 Q. What language? Use the exact words he used.

7 A. He kept telling me to calm down and he was
8 saying, I fucked up, we ain't did nothing wrong. He said
9 it twice, I fucked up just calm down?

10 Q. During the trip from where the shooting occurred
11 to your mother's house, did he make any mention about the
12 victim pulling out a gun?

13 A. Not at this time, no.

14 Q. Did he make any mention of a robbery or anything
15 at this time?

16 A. Not at this time, no.

17 Q. Did he make any mention of being in fear of
18 Rafael Dodd on this night?

19 A. Not at this time.

20 Q. When you got to Glass Street, what did you do?

21 A. Got out of the car.

22 Q. Did you go inside your mother's house?

23 A. Yes, I did.

24 Q. Where did Dre Battle go?

25 A. He waited outside and then he came in.

State versus Julian Battle

1 Q. Did he ever leave again?

2 A. Yeah.

3 Q. Where did he go?

4 A. I don't know.

5 Q. You have no idea where he went after that?

6 A. No. My cousin told me just calm down, it will be
7 alright, the law enforcement people going to come for you
8 and they going to talk to you and question you or whatever
9 and just tell them the truth.

10 Q. In June of 2010, did you speak with Dre Battle
11 once you were released from jail?

12 A. Yes.

13 Q. Where were you?

14 A. At my uncle's house, his father's house.

15 Q. Did you talk about the shooting?

16 A. Yes, we did.

17 Q. What did he say?

18 A. He said the man came out and the man pulled a gun
19 and he acted like he was going to show me so he reacted
20 and he grabbed it and he went off.

21 Q. Whose gun did he say was pointed at him?

22 A. His.

23 Q. Whose gun did he say involved in the shooting?

24 A. His.

25 Q. When you say his, are you talking about Mr. Dodd?

State versus Julian Battle

1 A. Mr. Dodd.

2 Q. You're saying that your cousin, Dre Battle, told
3 you Rafael Dodd pulled out a gun?

4 A. Yes, sir.

5 Q. And that Rafael Dodd pointed it at him?

6 A. I guess him and me. He pulled a gun out and my
7 cousin reacted.

8 Q. And when your cousin demonstrated for you, how he
9 pointed it?

10 A. He grabbed on the back of it.

11 Q. He grabbed on the back of it?

12 A. Yeah. I can't say because it was long ago and so
13 quick.

14 Q. Did you do demonstrations for anybody in law
15 enforcement?

16 A. Yeah, I done before trial and last trial.

17 MR. ELLER: Your Honor, may we approach?

18 THE COURT: Yeah.

19 (Off the record discussion).

20 Ladies and gentlemen, we're going to recess
21 at this time. I understand lunch is here so enjoy your
22 lunch and we're going to start back as soon as you finish.

23 Take the jury out.

24 (Jury exits courtroom.)

25 Okay. Mr. Owens, you can step down. Don't

State versus Julian Battle

1 discuss your testimony with anybody.

2 Mr. Eller.

3 MR. ELLER: Your Honor, at this time I would
4 move that there be declared a mistrial due to
5 Mr. Steinberg's attempt to solicit testimony from
6 Mr. Owens referencing the prior trial. Mr. Owens has just
7 testified about giving a demonstration during the prior
8 trial of this case. We had an agreement not to say the
9 word trial and say testimony or hearing. I think
10 reference to the trial is prejudicial to let the jury know
11 that Mr. Battle has indeed been tried once on this charge
12 already.

13 THE COURT: I deny that motion. If you want
14 me to give instruction to the jury that they're not
15 concerned with that and to disregard that reference, I'll
16 be happy to do that. If you want me to do it, let me
17 know.

18 MR. ELLER: You don't want to think about it
19 over lunch?

20 THE COURT: No.

21 MR. ELLER: Thank you, Judge.

22 THE COURT: The jury is going to have lunch
23 and I'm hoping to get started back in about 30 or 35
24 minutes.

25 (Whereupon, there was a lunch break.)

State versus Julian Battle

1 THE BAILIFF: All rise. Court is now in
2 session. The Honorable C. Victor Pyle presiding.

3 THE COURT: Be seated.

4 MR. ELLER: Your Honor, may we approach just
5 for one second?

6 THE COURT: Sure.

7 (Whereupon, there was a bench conference.)

8 Come on back around. You're still under
9 oath.

10 Do you want me to give the jury any
11 instruction as to the prior trial?

12 MR. ELLER: Your Honor, we're going to just
13 let that go. I think that will just draw their attention
14 to it again.

15 THE COURT: I agree with that.

16 BY MR. STEINBERG:

17 Q. Just so there's no dispute, if you make any
18 references to the prior trial, please refer to it as a
19 hearing.

20 THE COURT: Do you understand that?

21 THE WITNESS: Yes, sir.

22 THE COURT: Bring them on.

23 (Jury re-enters the courtroom).

24 You may continue.

25 MR. STEINBERG: Thank you, Your Honor.

State versus Julian Battle

1 BY MR. STEINBERG:

2 Q. Bringing you to this incident that happened in
3 June of 2010, you said your cousin did a demonstration for
4 you?

5 A. Yeah.

6 Q. Did you re-enact that demonstration at the Law
7 Enforcement Center after that?

8 A. No, it was at my house.

9 Q. Did you demonstrate how Mr. Battle did this while
10 at the Law Enforcement Center about half mile down the
11 road?

12 A. With you?

13 Q. Yes, in my office.

14 A. Yes.

15 Q. Did you point towards the chest of the victim.

16 A. I may have. Like I said, I don't remember.

17 Q. At a prior hearing, did you also demonstrate
18 pointing towards the chest, that Mr. Battle pointed
19 towards Mr. Dodd's chest in a prior hearing not two months
20 ago?

21 MR. ELLER: Objection. There is no
22 identification that Mr. Battle shot towards his chest. He
23 was just asking about a demonstration.

24 THE COURT: The question is alright. Go
25 ahead.

State versus Julian Battle.

1 BY MR. STEINBERG:

2 Q. Did you do a demonstration in a courtroom just
3 like this about two months ago?

4 A. Yes, sir.

5 Q. What part of the body did you show Mr. Battle
6 shot Mr Dodd?

7 A. He just said backwards, that's it. I don't know.

8 Q. Did he say backwards?

9 A. He turned it backwards like away from him.

10 Q. Whose pistol did he say he shot him with?

11 A. It was his.

12 Q. His being Mr. Dodd's?

13 A. Mr. Dodd's.

14 Q. At the incident over at Mr. Battle's father's
15 house, did he tell you anything at that point about this
16 being a jewelry robbery?

17 A. No, sir.

18 Q. Did he say why the victim pulled out a pistol?

19 A. He pulled a gun out and he wanted to shoot him so
20 he turned it around and that was it.

21 Q. Do you recall an incident in 2010 at DJ's
22 Barbershop?

23 A. Yeah.

24 Q. What was the reason for going over to that
25 barbershop?

State versus Julian Battle

- 1 A. To pick up my cousin Jamya.
- 2 Q. What was driving the car?
- 3 A. My cousin.
- 4 Q. Mr. Battle?
- 5 A. Yes.
- 6 Q. And did you ever get out of the car?
- 7 A. Yes.
- 8 Q. And where did you go?
- 9 A. Inside to get Jamya.
- 10 Q. What did Mr. Battle do?
- 11 A. Wait in the car.
- 12 Q. He was in the car the whole time?
- 13 A. When we came out they was arguing and then soon
- 14 or later he had got out and they was face to face.
- 15 Q. How close to the car did this argument occur?
- 16 A. In the front. It started from Dre was in the
- 17 car.
- 18 Q. To the best of your knowledge?
- 19 A. Yes, sir.
- 20 Q. And did you get your knowledge from Mr. Battle?
- 21 A. No, sir.
- 22 Q. Did you actually see what caused Mr. Battle to
- 23 come out of the car?
- 24 A. No. He started saying something back and forth
- 25 to them and they started going back and forth and he was

State versus Julian Battle

1 approaching him or whatever so he came out.

2 Q. Are you saying that Mr. Stewart approached
3 Mr. Battle when Mr. Battle was in the car?

4 A. That's what was said.

5 Q. Did you see that?

6 A. No, I didn't see it. It was inside.

7 Q. Please tell us as close as you can remember what
8 Mr. Battle said to Mr. Stewart at that location?

9 A. When I came out the argument was based on the
10 2009 incident what happened and Jamaal was like, man, I
11 sat there and watched you shoot my cousin in the face --
12 in my face or whatever and my cousin was like, why you
13 lying on me, you up here giving false statements to the
14 police snitching or whatever, you dry snitching and up
15 here lying on me. And that was it.

16 Q. For the jury, what does the term dry snitching
17 mean?

18 A. Basically baring false witness, starting
19 something for nothing.

20 Q. Mr. Battle gave other statements to Mr. Stewart?

21 A. No, they was just going back and forth and I told
22 him to shut up and my cousin -- I got my cousin in the car
23 and I told Jamaal to shut up and leave this alone.

24 Q. Did Mr. Stewart appear to be upset?

25 A. Yes.

State versus Julian Battle

1 Q. Did Mr. Battle appear to be upset?

2 A. Yeah.

3 Q. Did Dre Battle, your cousin, ever tell you he was
4 not allowed to have contact with Mr. Stewart as part of
5 his bond conditions?

6 MR. ELLER: Objection, Your Honor, relevance.

7 THE COURT: Go ahead.

8 BY MR. STEINBERG:

9 Q. Was Mr. Battle allowed to be around Mr. Stewart
10 per your understanding of bond conditions?

11 A. No, sir, neither one of us was.

12 Q. Thank you, Mr. Battle.

13 THE COURT: Okay.

14 THE WITNESS: My name is Owens.

15 MR. STEINBERG: I apologize, Mr. Owens.

16 MR. ELLER: I will just need to pull that
17 screen down, please. While that's warming up, Judge, I'm
18 going to go ahead and start.

19 CROSS-EXAMINATION

20 BY MR. ELLER:

21 Q. Mr. Owens, good afternoon, how are you?

22 A. Good.

23 Q. Let's back up just a little bit. Do you remember
24 giving a statement, a written statement, to Investigator
25 Laura Jones in this case?

State versus Julian Battle

1 A. Yes, sir.

2 Q. And you gave that statement on December 25, 2009,
3 right?

4 A. Yes, sir.

5 Q. And you met with Laura Jones for approximately a
6 little more than two hours when you gave her that
7 statement?

8 A. Yes, sir.

9 Q. And isn't it true that she asked you more than
10 just write down what happened, right?

11 A. Yes, sir.

12 Q. She asked you to write down all the details that
13 you're aware of about this incident, didn't she?

14 A. Yes, sir.

15 Q. Now, at the time of the statement, isn't it true
16 that you had been dating Mikeya Shumate?

17 A. Yes, sir.

18 Q. For about a year?

19 A. Yes, sir.

20 Q. And isn't it true that if you ever wanted to see
21 Mikeya Shumate because you didn't have a car you actually
22 had to get a ride or had her come pick you up, right?

23 A. Yes, sir.

24 Q. And she doesn't have a phone either, does she, or
25 at the time she didn't have a phone?

State versus Julian Battle

1 A. No, sir.

2 Q. So she relied on the use of her mother's phone,
3 right?

4 A. Yes, sir.

5 Q. And then on December 24th isn't it true that
6 Mikeya Shumate invited you and Mr. Battle to go meet up
7 with her at Shameka Wells's apartment?

8 A. Yes, sir.

9 Q. And you agree and you told her that you would
10 wait for her to call, right?

11 A. Yes, sir.

12 Q. And she didn't call you back immediately, did
13 she?

14 A. No, sir.

15 Q. And when you got ready to leave you had to call
16 her mother's house again?

17 A. Yes, sir.

18 Q. And she wasn't home. She was over her Aunt
19 Niece's house, right?

20 A. Yes, sir.

21 Q. Aunt Niece, that's Jamaal Stewart's mother,
22 correct?

23 A. Yes, sir.

24 Q. You call again later and this time when you
25 called back, Ms. Shumate actually answered the phone,

State versus Julian Battle

1 didn't she?

2 A. Yes, sir.

3 Q. And y'all agree that y'all had still planned to
4 meet up with Shameka Wells's apartment the four of you,
5 right?

6 A. Yes, sir.

7 Q. And at that point you and Mr. Battle left to go
8 to Shameka Wells's apartment, correct?

9 A. Yes, sir.

10 Q. And when you got there, Ms. Shumate was not
11 there, was she?

12 A. No, sir.

13 Q. It was just Shameka Wells?

14 A. Yes, sir.

15 Q. And Shameka Wells was actually in her night
16 clothes where she was actually getting ready for bed,
17 right?

18 A. Yes, sir.

19 Q. And you told her that you were there to meet
20 Mikeya Shumate, play cards and drink some liquor, didn't
21 you?

22 A. Yes, sir.

23 Q. And Ms. Shumate did arrive shortly thereafter,
24 right?

25 A. Yes, sir.

State versus Julian Battle

1 Q. And you asked her where she had been because you
2 couldn't understand how you and Mr. Battle had beaten her
3 to Ms. Wells's apartment, right?

4 A. Right.

5 Q. And then Mikeya decided that she wanted to go and
6 meet up with her Aunt Niece, right, over at that
7 apartment?

8 A. Yes, sir.

9 Q. She wanted to go meet up and play cards with her
10 cousin Jamaal and Rafael, right?

11 A. Yes, sir.

12 Q. And you told her that you had not planned on
13 doing that, correct?

14 A. Correct.

15 Q. And at some point then Ms. Wells mentioned about
16 getting or wanted to obtain some marijuana, right?

17 A. Yes, sir.

18 Q. And Ms. Shumate stated that she could get
19 marijuana from her cousin Rafael at the apartment, right?

20 A. Yes, sir.

21 Q. Y'all argued about going over there or y'all went
22 back and forth about going over there because you didn't
23 want to go, did you?

24 A. Yes, sir.

25 Q. And this is all over at Ms. Wells's apartment,

State versus Julian Battle

1 right?

2 A. Yes, sir.

3 Q. Then y'all finally did agree to go to get the
4 marijuana and come back, right?

5 A. Yes.

6 Q. That was the plan, wasn't it?

7 A. Yes, sir.

8 Q. And all four of y'all, you, Ms. Shumate,
9 Ms. Wells and Mr. Battle, the four of y'all left together
10 in the same vehicle, right?

11 A. Yes, sir.

12 Q. When y'all arrived over at the other apartment
13 complex, Mr. Stewart and Mr. Dodd was not there yet,
14 right?

15 A. No, sir.

16 Q. They showed up later. When they arrived, isn't
17 it true that Mikeya Shumate went and got in the car with
18 the other two gentlemen, Mr. Dodd and Mr. Stewart?

19 A. Yes, sir.

20 Q. And y'all stayed away separately by yourself,
21 right?

22 A. Yes, sir.

23 Q. And isn't it true that after a while you became
24 agitated and aggravated at your girlfriend because y'all
25 were delaying leaving there?

State versus Julian Battle

1 A. Yes, sir.

2 Q. And isn't it true at some point, you urged
3 Ms. Wells to go and get or go and retrieve Ms. Shumate so
4 y'all can go ahead and leave, right?

5 A. Right.

6 Q. Now, the four of y'all then, y'all did ultimately
7 leave, right?

8 A. Yes, sir.

9 Q. And the four of y'all left in one vehicle,
10 Ms. Shumate came over and joined y'all and y'all went over
11 to Ms. Wells's apartment, correct?

12 A. Yes.

13 Q. And when y'all arrived back, isn't it true that
14 Mr. Stewart and Mr. Dodd was there in a separate vehicle?

15 A. Yes, sir.

16 Q. And when they showed up -- when they were there
17 and y'all showed up, isn't it true that you then began
18 arguing with Ms. Shumate again?

19 A. No, I started arguing with her when I went in to
20 get the alcohol so me and my cousin could go ahead and
21 when I came back out ---

22 Q. Let me back up. I know y'all had an argument
23 there, but in time, just to explain to the jury, when
24 y'all first go back to Shameka Wells's apartment the four
25 of y'all were in one vehicle and y'all saw Mr. Dodd and

State versus Julian Battle

1 Mr. Stewart were already there, right.

2 A. Right.

3 Q. And at that point, isn't it true that y'all
4 started another argument with Mr. Shumate about the
5 presence of these two individuals at Shameka Wells's
6 apartment?

7 A. Right.

8 Q. Now, you didn't know that Mr. Stewart and
9 Mr. Dodd had planned to come over there to Shameka Wells's
10 apartment, did you?

11 A. No, sir.

12 Q. When they showed up over there and you started
13 arguing, isn't it true that Shameka Wells then took
14 Mr. Stewart and Mr. Dodd upstairs into Shameka Wells's
15 apartment?

16 A. Yes, sir.

17 Q. You stayed outside and you argued with
18 Ms. Shumate, correct?

19 A. Yes, sir.

20 Q. You were arguing about the fact that they were
21 over there and that wasn't part of the plan, right?

22 A. Right.

23 Q. And you were aggravated about that, weren't you?

24 A. Yes, sir.

25 Q. Now, you went inside at some point because

State versus Julian Battle

1 Mr. Battle was urging you to get the liquor to leave,
2 isn't that right?

3 A. That's right.

4 Q. So you went into the apartment and you left
5 Mr. Battle and Ms. Shumate outside.

6 A. Right.

7 Q. And you went to get the alcohol and you came back
8 out?

9 A. Yes, sir.

10 Q. And the reason why you were doing that is
11 Mr. Battle was urging you to leave the scene, wasn't it?

12 A. Yes, sir.

13 Q. When you came back outside, didn't you resume
14 arguing with Ms. Shumate?

15 A. Yes, sir.

16 Q. And at some point while you were resuming that
17 argument with Ms. Shumate, isn't it true that Mr. Stewart
18 then came outside?

19 A. Yes, sir.

20 Q. And isn't it true that when Mr. Stewart came
21 outside, the argument got even louder and escalated?

22 A. Yes, sir.

23 Q. And at some point Mr. Stewart got in your face
24 and y'all started exchanging words, right?

25 A. Right.

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1 Q. And isn't it true that you kept telling Jamaal to
2 mind his own business, right?

3 A. Yes, sir.

4 Q. And isn't it true that then Mr. Dodd exited the
5 apartment, he came outside?

6 A. Yes, sir.

7 Q. And isn't it true that Mr. Dodd was hostile and
8 kept arguing?

9 A. Yes, sir.

10 Q. And isn't it true that you heard Mr. Dodd say
11 that he wasn't from around here, right?

12 A. Yes, sir.

13 Q. And isn't it true that you told Laura Jones that
14 Mr. Dodd was the loudest one outside?

15 A. Yes, sir.

16 Q. And he started pushing people around?

17 A. Yes, sir.

18 Q. That's what you told Investigator Jones, right?

19 A. Yes, sir.

20 Q. Now, isn't it true also that you told
21 Investigator Jones that Mr. Battle kept trying to calm
22 everyone down, that he wanted people to chill out?

23 A. Yes, sir.

24 Q. And isn't it true that you continued to argue
25 with Mr. Stewart when y'all were face to face with one

State versus Julian Battle

1 another?

2 A. Yes, sir.

3 Q. And you were on the near step during with your
4 right side to the door of the apartment, right?

5 A. Yes, sir..

6 Q. And Mr. Battle and Mr. Dodd, they were behind
7 you?

8 A. Yes, sir.

9 Q. And isn't it true that when Mr. Dodd came out of
10 that apartment, he came straight to you?

11 A. Yes, sir.

12 Q. And then at some point you heard a gunshot?

13 A. Yes, sir.

14 Q. You didn't see a gun?

15 A. No, sir.

16 Q. You didn't see a shot or anybody pull the
17 trigger?

18 A. No, sir.

19 Q. You just heard a gunshot, right?

20 A. Yes, sir.

21 Q. That's because it was right behind you, right?

22 A. Yes, sir.

23 Q. Now, when you turned around, isn't it true that
24 Mr. Dodd was on the ground on the other side of the
25 railing?

State versus Julian Battle

1 A. Yes, sir.

2 Q. And then isn't it true that after that, you got
3 scared and you ran to the car?

4 A. Yes, sir.

5 Q. And isn't it true that Mr. Battle also ran to the
6 car?

7 A. Yes, sir.

8 Q. Now, you told Investigator Laura Jones a second
9 time in your statement that you never saw a gun, isn't
10 that right?

11 A. Yes, sir.

12 Q. So not once but twice you told Investigator Jones
13 in your statement that I never saw a gun?

14 A. Yes, sir.

15 Q. Now, you also told Laura Jones that you had never
16 seen Mr. Battle with a pistol, isn't that right?

17 A. Yes, sir.

18 Q. And that wasn't just on that night, you just
19 hadn't seen him with a pistol, right?

20 A. Yes, sir.

21 Q. You don't know him to carry a pistol, do you?

22 A. No, sir.

23 Q. Now, let me fast forward a little bit, after that
24 incident, December 24, 2009, you told the solicitor that
25 you were actually charged with the crime of murder as well

State versus Julian Battle

1 as a result of this incident, right?

2 A. Yes, sir.

3 Q. And is it your understanding that if you testify
4 today truthfully that your charges will be dropped?

5 A. I thought that was the same thing the last
6 hearing that we had.

7 Q. But it's your understanding, though, that if you
8 tell the truth at the time you're sworn in, if you tell
9 the truth about what you know to happen and what you saw
10 and perceived, the charge of murder for this incident will
11 be dropped compared to you?

12 A. Yes, sir.

13 Q. Now, February 8, 2010, right, because you had a
14 charge against you. You had an attorney?

15 A. Yes, sir.

16 Q. And isn't it true that on February 2010 you wrote
17 a letter yourself to the solicitor in your case which is
18 also Mr. Steinberg, right?

19 A. Yes, sir.

20 Q. And in that letter you told Solicitor Steinberg
21 that you had told the truth in statement that you gave to
22 Investigator Laura Jones?

23 A. Yes, sir.

24 Q. And you also told the solicitor that you and your
25 girlfriend, Mikeya Shumate, that y'all had gotten into an

State versus Julian Battle

1 argument outside of Shameka Wells's apartment that night?

2 A. That's right.

3 Q. Consistent with the same statement you gave to
4 Laura Jones, you told the solicitor in that letter that
5 Jamaal came outside of the apartment, joined into the
6 argument with you and Ms. Shumate, right?

7 A. Right.

8 Q. And consistent with the statement that you gave
9 to Laura Jones, you told the solicitor in that letter that
10 Rafael Dodd came outside and went straight towards your
11 cousin, Mr. Battle?

12 A. Right.

13 Q. And so isn't it true then that Mr. Dodd did not
14 come out there and join in your argument, he went straight
15 to Mr. Battle?

16 A. Right.

17 Q. And that's what you told the solicitor and that's
18 what you told Laura Jones?

19 A. Yes, sir.

20 Q. Now, isn't it true that also in that letter you
21 told the solicitor that your back was turned when the
22 gunshot went off and you panicked with fear and ran?

23 A. Yes, sir.

24 Q. Consistent with what you told Laura Jones, right?

25 A. Yes, sir.

State versus Julian Battle

1 Q. And isn't it true that you also told the
2 solicitor that your cousin ran, too, Mr. Battle?

3 A. Yes, sir.

4 Q. And that's also consistent with the statement you
5 gave to Laura Jones, isn't it?

6 A. Yes, sir.

7 Q. Now, you wrote another letter about a month
8 later, March 4, 2010 to Mr. Battle's mother, right?

9 A. Yes, sir.

10 Q. And isn't it true that in that letter that you
11 wrote to your aunt that you knew that Mr. Battle did not
12 have a pistol or gun that night?

13 A. Yes, sir.

14 Q. And isn't it true that you told your aunt in that
15 letter that Mr. Dodd came outside and went straight
16 towards Mr. Battle?

17 A. Yes, sir.

18 Q. And that's consistent with what you told Laura
19 Jones and consistent with the letter you sent to the
20 solicitor, correct?

21 A. Yes, sir.

22 Q. Now, on June 8, 2010 you wrote a letter to
23 Mr. Battle, didn't you?

24 A. Yes, sir.

25 Q. And isn't it true that in that letter that you

State versus Julian Battle

1 wrote to Mr. Battle you told Mr. Battle in that letter
2 that Mr. Stewart was lying about everything?

3 A. Yes, sir.

4 Q. And isn't it true that you also told Mr. Battle
5 that it was your belief that Mr. Battle had saved your
6 life?

7 A. Yes, sir.

8 Q. Do you still hold that same feeling today?

9 A. Without a shadow of a doubt.

10 Q. Now, when you were being asked some questions by
11 Mr. Steinberg this afternoon, you talked about this
12 demonstration that you gave a prior hearing in this case;
13 is that right?

14 A. Yes, sir.

15 Q. Do you remember your testimony from that prior
16 hearing, exactly what you testified about the
17 demonstration?

18 A. Not completely.

19 Q. I'm now going to ask you to start reading here
20 and tell me if this refreshes your recollection about the
21 testimony you gave at a prior hearing in this matter
22 concerning the demonstration. You start here and read
23 through those three pages and I'll ask you some questions.

24 MR. STEINBERG: Mr. Eller, if you would tell
25 me those pages.

State versus Julian Battle

1 MR. ELLER: Pages 43 to 45 and then on Page
2 53.

3 MR. STEINBERG: Thank you, sir.

4 BY MR. ELLER:

5 Q. Mr. Owens, I know it's four pages but have you
6 had the opportunity to review those four pages?

7 A. Yes, sir.

8 Q. Does that refresh your recollection about what
9 your testimony was concerning how this demonstration took
10 place June of 2010 with Mr. Battle?

11 A. Yes, sir.

12 Q. Now, isn't it true that when you were discussing
13 this demonstration and previously testified that this
14 demonstration was extremely quick?

15 A. Yes, sir.

16 Q. And isn't it true that you said that you did not
17 know whether the gun was pointed in any direction, right?

18 A. Right.

19 Q. And isn't it true that Mr. Battle did not tell
20 you at the time that he gave you the demonstration where
21 the gun was pointed, did he?

22 A. No, sir.

23 Q. And isn't it true that everything, it all
24 happened in a quick incident, and that's what Mr. Battle
25 told you?

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1 A. Yes, sir.

2 Q. And, also, when he gave you the demonstration he
3 showed you a very quick demonstration, didn't he?

4 A. Yes, sir.

5 Q. And, that was consistent with the demonstration
6 that you talked about with Mr. Steinberg this afternoon,
7 right?

8 A. Yes, sir.

9 Q. So the truth of the matter is the demonstration
10 that you witnessed, it happened extremely quickly, right?

11 A. Yes, sir.

12 Q. Mr. Battle did not tell you where the gun was
13 pointed, did he?

14 A. No, sir.

15 Q. He never said it was pointed at Mr. Dodd's chest,
16 did he?

17 A. No, sir.

18 Q. And it's your testimony that it all happened
19 extremely fast and you don't know where that gun was
20 pointing, do you?

21 A. No, sir.

22 Q. Now, Mr. Owens, when you were being questioned by
23 Mr. Steinberg, he talked to you about a statement you
24 heard I think it was back in 2010 when you were talking
25 with Mr. Battle and he said the phrase, forgive me for my

State versus Julian Battle

1 english, I'm going to say, just f'd up. Do you know what
2 I'm talking about?

3 A. Yes, sir.

4 Q. When you heard Mr. Battle say, I f'd up, it
5 wasn't your understanding that he was talking about
6 wrestling to get that gun, was it?

7 A. No, sir.

8 Q. He was talking about -- well --

9 MR. STEINBERG: Objection as to what
10 Mr. Battle thinks.

11 THE COURT: Rephrase.

12 MR. ELLER: Sure, I'll rephrase it.

13 BY MR. ELLER:

14 Q. You didn't think Mr. Battle was talking about the
15 actual wrestling or altercation between Mr. Dodd and
16 Mr. Battle, right?

17 THE COURT: That's a ---

18 MR. ELLER: He already asked and answered.
19 I'm just asking the same question I already asked.

20 THE COURT: Sir, listen to me.

21 MR. ELLER: I'm sorry, Judge.

22 THE COURT: Ask him a question, don't tell
23 him, okay. Ask him the question.

24 BY MR. ELLER:

25 Q. What did you think he was referring to,

State versus Julian Battle

1 Mr. Owens, when he said that statement, I f'd up?

2 MR. STEINBERG: Your Honor, I still have to
3 object to this particular question.

4 MR. ELLER: I'm asking for his ---

5 THE COURT: I sustain the objection to that
6 question.

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

8 THE COURT: Any redirect?

9 MR. STEINBERG: Very briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. STEINBERG:

12 Q. Mr. Owens, I'm going to make sure the jury
13 understands observation versus hearing. I believe you
14 said you believe your cousin to the day you die; is that
15 correct?

16 A. Yes, sir.

17 MR. ELLER: Objection, outside the scope of
18 cross, Your Honor.

19 THE COURT: Go ahead.

20 BY MR. STEINBERG:

21 Q. You've already testified that Mr. Battle was
22 behind you and Mr. Dodd ran past you, correct?

23 A. Yes.

24 Q. Did you see Mr. Dodd getting into Mr. Battle's
25 face?

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1 A. It was behind, I ain't see nothing.

2 Q. So you don't really know how this happened, do
3 you?

4 A. (No response).

5 Q. I have the pictures and the jury will see the
6 pictures, but if they were behind you, do you know how
7 Mr. Dodd got to where he wound up being in the fatal
8 position?

9 A. I hadn't seen no pictures.

10 Q. You seen the pictures of the ---

11 A. That's the only picture I seen.

12 Q. You said that you are convinced that you cousin
13 did not have a weapon on the night in question; is that
14 right?

15 A. Yes.

16 Q. Did you pat him down, did you know?

17 A. I didn't pat him down.

18 Q. It's a silly question, but you did not pat him
19 down?

20 A. No.

21 Q. He was wearing big clothes, it was Christmas
22 even?

23 A. We was dressed for the weather, I mean, regular
24 clothes.

25 Q. So you don't know if he had a weapon or not, do

State versus Julian Battle

1 you?

2 A. If he had a gun, I would have seen it.

3 Q. Why would you have seen it? If it was tucked in
4 here, pointing towards my waist ---

5 MR. ELLER: Objection, Your Honor,
6 hypothetical speculation.

7 THE COURT: No. That's okay, go ahead.

8 BY MR. STEINBERG:

9 Q. How do you know. You don't believe he had a
10 weapon because ---

11 A. I don't believe he had a weapon because he told
12 me he didn't have a weapon so I know he didn't have none?

13 Q. These letters that went back and forth, did your
14 aunt write you a letter?

15 A. Yes, she did.

16 Q. Did you write back to her?

17 A. Yes, I did.

18 Q. In this letter did you make any reference to
19 Mr. Dodd asking for money or demanding money?

20 A. I didn't ask him for nothing.

21 Q. Not you, do you remember if Mr. Dodd had demanded
22 money when you talk about Mr. Dodd started this? Do you
23 remember anything about jewelry or money?

24 A. No, sir.

25 Q. Do you believe you said to the day you die that

State versus Julian Battle

1 Mr. Battle saved your life?

2 A. Yes, I do.

3 Q. Do you believe that because your cousin told you
4 that?

5 A. Yes, sir.

6 MR. STEINBERG: Nothing further.

7 THE COURT: Step down.

8 MR. STEINBERG: The State would like to
9 briefly call Mikeya Shumate.

10 THE COURT: You're still under oath. Come
11 back around.

12 (WITNESS RECALLED - REDIRECT)

13 BY MR. STEINBERG.

14 Q. Before this December of 2009, approximately how
15 long had you know Dre Battle?

16 A. I've know Pri about a year or so, probably about
17 the same time.

18 Q. Had you ever seen Dre Battle with a pistol?

19 A. Yeah.

20 Q. Do you remember approximately when or where you
21 saw it?

22 A. He was in my house at the time I seen it.

23 Q. Where on his body did you see the pistol?

24 A. It's in his waist. Sometimes he got a holster,
25 something it isn't.

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1 Q. Did he ever tell you why he carries a pistol?

2 MR. ELLER: Objection, Your Honor.

3 MR. STEINBERG: Same question I asked last
4 time.

5 THE WITNESS: He said ---

6 THE COURT: Hold on. What's your question?

7 MR. STEINBERG: My question was did he ever
8 state why he carries a firearm.

9 THE COURT: Go on.

10 THE WITNESS: He said he got to carry one
11 because he don't trust nobody.

12 BY MR. STEINBERG:

13 Q. Did he say why he doesn't trust people?

14 A. Of what's going on in the world he don't trust
15 nobody.

16 Q. Thank you.

17 THE COURT: Any questions, Mr. Eller?

18 MR. ELLER: Briefly, Your Honor.

19 RECROSS-EXAMINATION

20 BY MR. STEINBERG:

21 Q. Ms. Shumate, isn't it true that you did not see a
22 gun on Mr. Battle on December 24, 2009?

23 A. I didn't see it that night, but I done seen one.

24 Q. But on that night ---

25 A. Not on that night.

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1 MR. ELLER: No further questions.

2 THE COURT: Thank you. You can step down.

3 MR. STEINBERG: Your Honor, the State's next
4 witness is Navada Dodd.

5 THE CLERK: Ms. Dodd, would you please come
6 forward to be sworn in. Place your left hand on the Bible
7 and raise your right hand.

8 NAVADA DODD, having been duly sworn,
9 testified as follows:

10 Thank you. You may be seated. State your
11 full name for the record.

12 THE WITNESS: Navada Dodd.

13 THE CLERK: Thank you.

14 DIRECT EXAMINATION

15 BY MR. STEINBERG:

16 Q. Where do you live?

17 A. Memphis, Tennessee.

18 Q. What is your relationship to the deceased, Rafael
19 Dodd?

20 A. He's my son.

21 Q. I'm just going to ask you some very brief
22 questions about your son. What was his education level?

23 A. He had a Master's Degree in Business.

24 Q. What was his occupation?

25 A. He worked for First Tennessee Bank as an account

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1 portfolio.

2 Q. How approximately long did he work there?

3 A. Since he got from getting his Master's Degree, I
4 guess about for five months afterwards.

5 Q. Approximately how old was your son when he passed
6 away?

7 A. Twenty-nine. He just had a birthday prior to him.
8 getting killed.

9 Q. Did your son have any particular money problems
10 at that time?

11 A. No, my son never been in trouble as a juvenile.

12 Q. I'm sorry, money troubles?

13 A. No, never trouble. He was trying to buy a house
14 in January. He was bidding on houses and stuff.

15 Q. Thank you, Ms. Dodd, I appreciate it.

16 MR. ELLER: I got no questions for this
17 witness.

18 THE COURT: Thank you. You can step down.

19 MR. STEINBERG: The State's next witness is
20 Lieutenant Chris Taylor.

21 THE CLERK: Please come forward. Place your
22 left hand on the Bible and raise your right.

23 CHRIS TAYLOR, having been duly sworn,
24 testified as follows:

25 Thank you. State your name for the record.

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1 MR. ELLER: Your Honor, may we approach just
2 real briefly.

3 THE COURT: Sure.

4 (Whereupon, there was a bench conference.)

5 THE CLERK: State your name for the record.

6 THE WITNESS: Christopher Michael Taylor.

7 DIRECT EXAMINATION

8 BY MR. STEINBERG:

9 Q. Sergeant Taylor, how are you today?

10 A. Good. Thank you.

11 Q. Obviously, you're in law enforcement. What is
12 your current rank.

13 A. I'm a lieutenant in the uniformed patrol
14 division.

15 Q. What was your current rank and title at the time
16 of this incident December 25, 2009?

17 A. I was a sergeant at the time Charlie Platoon
18 Uniformed Patrol Division.

19 Q. What was your involvement, if any, in this case?

20 A. I was informed by the investigator that they had
21 active warrants on two individuals and asked us to look
22 for, for an incident that occurred the night before.

23 Q. Did you look for Julian Deandre Battle?

24 A. I did.

25 Q. Where did you go look for him?

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1 A. I stopped the first time at his father's
2 residence and spoke to his father there. After which I
3 responded to his mother's residence and then again over to
4 █ Glass Street where his vehicle was found.

5 Q. Let's talk about at his mother's house, did you
6 ever speak to this Mr. Battle?

7 A. I did.

8 Q. Please tell us about that conversation?

9 A. I asked his mother to get him on the phone and
10 advise he had a warrant for his arrest. She made contact
11 with Mr. Battle and he spoke to me over the phone.

12 Q. What did you tell him and how did he respond?

13 A. I advised him that he had an active warrant for
14 his arrest and asked him to turn himself in and he made a
15 comment about the incident itself.

16 Q. What did he say about it?

17 A. He said that the incident didn't take place the
18 way we thought it did.

19 Q. At this point did you tell them how it took
20 place?

21 A. No, I didn't tell him how the incident took
22 place.

23 Q. What did you tell him after that?

24 A. I told him I had the warrant for the murder and I
25 told him he had to turn himself in and to come to his

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1 mother's residence.

2 Q. What did he say?

3 A. He pretty much said at that point that he was a
4 little bit scared about coming over and he didn't want to
5 turn himself in. And then later on he said he would come
6 to his mother's residence.

7 Q. Did he come to the mother's residence?

8 A. He did not.

9 Q. How long did you wait?

10 A. Roughly an hour.

11 Q. And did you try to contact him again?

12 A. We did.

13 Q. What happened?

14 A. No response.

15 Q. Did you later on arrest Mr. Clintonian Dupri
16 Owens?

17 A. I was present when he was arrested, yes.

18 MR. STEINBERG: That's all the questions I
19 have.

20 MR. ELLER: Briefly, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. ELLER:

23 Q. I just want to make sure I understand the timing
24 of your conversation with Mr. Battle so I'll be brief.

25 A. Sure.

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1 Q. I believe you just testified that you informed
2 him that you had a warrant for his arrest.

3 A. I did.

4 Q. And after you informed him there was a warrant
5 for his arrest, did you inform him it was a warrant for
6 murder?

7 A. He had stated to me -- the comment he made to me
8 about it not taking the place the way it did, I told him I
9 didn't have any details for that and advised him it was
10 for murder.

11 Q. Before he said he said to you this crime didn't
12 happen the way you think it did, you told him it was an
13 active warrant out for him?

14 A. Correct, I told him I had an active warrant out
15 for his arrest.

16 Q. And then you informed him of it being for murder
17 after the statement?

18 A. That's correct.

19 MR. ELLER: No further questions.

20 THE COURT: Step down.

21 THE WITNESS: Thank you, sir.

22 MR. STEINBERG: The State's next witness is
23 Lieutenant Leslie McDonald.

24 THE CLERK: Please come around to be sworn.
25 Place your left hand on the Bible and raise your right

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1 hand.

2 LESLIE MCDONALD, having been duly sworn,
3 testified as follows:

4 Thank you. You may be seated. Please state
5 your name for the record.

6 THE WITNESS: Leslie Susan McDonald.

7 DIRECT EXAMINATION

8 BY MR. STEINBERG:

9 Q. Lieutenant McDonald, you're obviously in uniform.
10 What law enforcement agency do you work for?

11 A. The City of Spartanburg.

12 Q. How long have you been involved in law
13 enforcement?

14 A. Twenty-four years.

15 Q. What, if any, involvement do you have in this
16 case?

17 A. On the day in question I was contacted by then
18 Sergeant Taylor in reference to trying to find a car at a
19 location in the City of Spartanburg and that the person
20 that was driving the car was a suspect in a murder here in
21 Greenville. My shift responded. I sent an officer over
22 there to see if they could find the car that they
23 described. The car was located and my shift and a couple
24 of people from the ongoing shift went over there and
25 approached the house and ultimately found the suspect in

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1 the house.

2 Q. And what did you have to do to get this defendant
3 from the house?

4 A. Ultimately, the officers approached the house. I
5 was on a perimeter location and several subjects inside
6 the house came to the door and he was brought outside.

7 Q. Did you or anybody in your agency conduct a
8 search of that location?

9 A. At the time a very quick cursory search for any
10 other suspects was done inside the residence and later we
11 exited an a search warrant was later executed at that
12 house for other reasons.

13 Q. If any evidence related to this crime have been
14 located, would you have contacted law enforcement in
15 Greenville?

16 A. Yes, I would have.

17 Q. Did you speak with the defendant, Mr. Battle?

18 A. Briefly at the car before he was transported by a
19 Greenville officer.

20 Q. Did you advise him of his rights?

21 A. Yes, sir, I did.

22 Q. Did you read that off of your card?

23 A. Yes, I did. I carry it in my uniform pocket.
24 It's this car, suspect Miranda warning card.

25 Q. Please read it just as you read it to Dre Battle.

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1 A. There several points on it. The first one, "You
2 have a right to remain silent." The second, "Anything you
3 say can and will be held against you in a court of law."
4 Three, "You have the right to talk to an attorney and have
5 him or her present with you while you are being
6 questioned." Four, "If you can not afford to hire an
7 attorney, one will be appointed to represent you before
8 any questioning if you want." Five, "If you decide at any
9 time to exercise your right to answer any question or make
10 statements," and six, "Do you understand these rights as I
11 have read them to you?"

12 Number 7, I did not read which is, "Having
13 these rights in mind, do you wish to talk to us now?"

14 Q. What was your reason for not asking the seventh
15 question?

16 A. We were not going to question him.

17 Q. What were you intending to do with Mr. Battle?

18 A. We were going to transport him to a Greenville
19 deputy somewhere around the county line and I read the
20 Miranda Warnings in case anything was said in route. I
21 had a field training officer and a new officer in the car
22 with her and in case any comments were made or any
23 questions were asked, it would be covered.

24 Q. Did the defendant acknowledge his rights?

25 A. Yes, he did.

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1 Q. Did he make any statements?

2 A. No, sir.

3 Q. What did he did at that point?

4 A. Officer Norket transported him to meet a
5 Greenville County deputy and that was the end of my
6 involvement other than releasing the scene.

7 Q. Thank you. Please answer any of opposing
8 counsel's question.

9 MR. ELLER: Just a briefly.

10 CROSS-EXAMINATION.

11 BY MR. ELLER:

12 Q. Mr. Steinberg asked you if you had found any
13 evidence in Spartanburg, you would have contacted
14 Greenville authorities immediately, right?

15 A. We were in contact. I talked to the sergeant and
16 then I believe I talked to the investigator sometime
17 during that scene before I left the scene.

18 Q. And when you searched the scene or the other
19 officers searched the scene, you didn't find any evidence
20 concerning this alleged crime?

21 A. Not that I'm aware of.

22 MR. ELLER: No further questions.

23 THE COURT: Thank you. You can step down.

24 MR. STEINBERG: Your Honor, we would ask that
25 this officer be excused.

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1 Q. What is your rank and current title?

2 A. Forensic officer.

3 Q. What is your highest level of education?

4 A. I have a Bachelor's Degree in Criminal Justice.

5 Q. And how long have you been involved in law
6 enforcement?

7 A. Seven years.

8 Q. Do you have any specialized training?

9 A. I have outside training in crime scene
10 reconstruction, (inaudible) investigation, and fingerprint
11 analysis.

12 Q. What were you asked to do at approximately 2:00
13 in the morning on December 9, 2009?

14 A. Repeat the date.

15 Q. What was your first involvement in this case?

16 A. My first involvement was to document a vehicle
17 involved in this case on Glass Street.

18 Q. And approximately what time did you do that?

19 A. In the afternoon around 2:00.

20 Q. You ever go over to the shooting location?

21 A. Yes, sir.

22 Q. What date and what was your reason for going
23 there?

24 A. That was the 26th to do a follow-up investigation
25 to look for possible projectiles or cartridge cases.

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1 Q. How do you look for these cartridge cases? What
2 do you do?

3 A. The approximate area where the victim was
4 discovered, I searched the area to the right and left
5 using a metal detector, the landscaping.

6 Q. Is a metal detector something you normally use
7 during the course of your duties?

8 A. No, sir.

9 Q. Why did you do it in this case?

10 A. To help due to the sized area I was looking for,
11 I used a metal detector to smaller items, projectiles and
12 cartridges.

13 Q. In addition to metal detector, did you also
14 search any other way?

15 A. Visual search. That's always done prior to
16 actual metal detector.

17 Q. I'm going to show you State's Exhibit Nos 2,3 and
18 4. Could you identify those?

19 A. Exhibit 4 would be the front of the apartment
20 standing to your right. Exhibit 3 is going to be kind of
21 back view or down staring at the front of the apartment,
22 and Exhibit 2 is a close up actually of the area where the
23 victim was discovered.

24 Q. Were you asked to take these photographs?

25 A. Yes, sir.

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1 Q. What's portrayed in these photographs, did you
2 search that particular area?

3 A. Yes, sir.

4 MR. STEINBERG: I beg the Court's indulgence.

5 BY MR. STEINBERG:

6 Q. Officer Derby, I'm going to show you some items
7 and ask you to identify them.

8 MR. STEINBERG: For the Court's reference it
9 would be State's Exhibit No. 24, 23, 25 and 26.

10 THE WITNESS: No. 23 is Item JD7 I collected
11 at autopsy. It is a tee shirt. 24 it Item J8 also
12 collected at autopsy. It's a short sleeved button down
13 shirt. No. 25 is Item JD9, black jacket, brand name Rocca
14 Wear from the autopsy, and 26 is item JD4, blue Levy jeans
15 also collected at autopsy.

16 THE COURT: Counsel, approach for a minute.

17 (Whereupon, there was a bench conference.)

18 BY MR. STEINBERG:

19 Q. Officer Derby, are these the items that you
20 collected as part of your investigation?

21 A. Yes.

22 Q. And who did you collect them from?

23 A. The victim.

24 Q. And where was this located?

25 A. At Greenville Memorial

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1 Hospital.

2 Q. Did you handle the evidence pursuant to your
3 departmental policy?

4 A. That's correct.

5 Q. Did you alter them in any way?

6 A. No, sir.

7 MR. STEINBERG: That's all the questions I
8 have at this time.

9 CROSS-EXAMINATION

10 BY MR. ELLER:

11 Q. Officer Derby, just a few questions. You went to
12 the morgue, what day was it?

13 A. The 26th.

14 Q. Not the 25th but the 26th?

15 A. It was the day after.

16 Q. Are you aware that this incident occurred the
17 early morning hours of Christmas day, December 2009?

18 A. Yes, sir.

19 Q. And just so we're clear, you didn't go out on
20 Christmas day, you went that following day, right?

21 A. I believe so. It might have been the same day.

22 Q. If your report indicates it was the 26th, you'd
23 agree with that day, right?

24 A. If it is on that report, yes, sir.

25 Q. Officer Derby, when you went to the morgue with

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1 THE WITNESS: Iona, Ooten.

2 DIRECT EXAMINATION

3 BY MR. STEINBERG:

4 Q. Good afternoon, Officer Ooten.

5 A. Good afternoon.

6 Q. Could you tell us where you are from originally.

7 A. West Virginia.

8 Q. What is your highest level of education?

9 A. I have an Associates Degree.

10 Q. And is your degree in?

11 A. Crime scene technology.

12 Q. What is your current occupation?

13 A. I'm a forensic officer with the Greenville County
14 Forensic Division.

15 Q. Is your title officer?

16 A. Yes.

17 Q. Did you have any officers with you on the day in
18 question, December 25th?

19 A. Yes, I did. I had one officer with me.

20 Q. What was his name and is he currently present?

21 A. He name was Jeremy Days and he is currently not
22 with our division.

23 Q. Where is he located now?

24 A. He is now working with DSS down in Columbia.

25 Q. What was his roll and what was your roll in

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1 comparison to that?

2 A. I was the supervising officer on scene and
3 Officer Days at the time basically took a video recording
4 of the scene as well as making a documentation, a diagram,
5 of the scene.

6 Q. He handle any of the evidence in this case?

7 A. No, he did not.

8 Q. Did you see the victim in this case, Rafael Dodd?

9 A. I did.

10 Q. Did you see a firearm in this case?

11 A. I did.

12 Q. Was it an automatic or revolver?

13 A. It was an automatic.

14 Q. Being that it was an automatic, did you look for
15 anything at the time?

16 A. I did. I looked for any signs of a casing or a
17 projectile.

18 Q. In case the jury is unfamiliar, what does the
19 term casing mean?

20 A. Casing is a part of the bullet that is left
21 behind that the bullet is shot out from. It would be the
22 part that came out from the firearm.

23 Q. End of the barrel?

24 A. Comes out from the side.

25 Q. Did you find any casing?

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1 A. I did not.

2 Q. Did you find any bullets or bullet fragments?

3 A. I did not.

4 Q. I'd like to show you a couple of photographs and
5 drawings. To speed things up, I'll do them all at one
6 time. What is State's Exhibit No. 16?

7 A. That would be the diagram that was designed by
8 Officer Days.

9 Q. And what is State's Exhibit No. 12?

10 A. It would be the photograph that I took on scene
11 of the victim, primarily of the holster that was attached
12 to the side of his pants.

13 Q. What's State's Exhibit No. 13?

14 A. That would be another photograph I took on scene
15 of the victim and the firearm along with his wallet.

16 Q. State's Exhibit No. 14?

17 A. It would be a photograph on scene of the scene.

18 Q. State's Exhibit No. 15?

19 A. Photograph I took on scene of the firearm itself.

20 Q. And these two photographs taken at a different
21 time and location State's Exhibit No. 17 and 18, what are
22 these?

23 A. No. 17 is the magazine or cartridges or bullets
24 that I collected from the magazine.

25 Q. State's Exhibit No. 18?

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1 A. 18 is a photo of the firearm along with the
2 cartridge or bullet that I pulled out from the chamber of
3 the firearm as well as the magazine that is still loaded
4 at the time.

5 MR. STEINBERG: Your Honor, the State would
6 move these photographs and the drawing into evidence.

7 THE COURT: Any objection?

8 MR. ELLER: No objection, Your Honor.

9 (Photographs and drawing previously marked as
10 State's Exhibit Nos. 12 to 18 for identification was
11 admitted into evidence.)

12 BY MR. STEINBERG:

13 Q. We had some problems with the lamp on this but
14 we'll try to get it to work in this case. This exhibit
15 which I'm putting on the projector, State's Exhibit No.
16 16, does this accurately reflect how the incident looked
17 on the night in question?

18 A. Yes, it does.

19 Q. Where the red dot is in the middle, what is that
20 location, right there?

21 A. That is the entrance into the apartment building.

22 Q. Let me show you the rest of the photographs.
23 State's Exhibit No. 12, this photographs underneath where
24 the glare is, what does that picture show?

25 A. That photograph is of the holster that was on the

State versus Julian Battle

1 victim.

2 Q. Is that what you are referring to right there?

3 A. That is.

4 Q. It was in this condition where you found the
5 victim?

6 A. Yes, it was.

7 Q. I'm going to show you another photograph, does
8 that also reflect this scene?

9 A. Yes, it does.

10 Q. I'm going to show you this photograph, what is
11 that?

12 A. That's the area where the victim was found and
13 being secured by a deputy on the scene.

14 Q. I'm going to show you State's Exhibit No. 15,
15 what is this?

16 A. That's the photograph of the firearm that was
17 lying next to the victim.

18 Q. What is this right here?

19 A. That's a photograph of the victim's wallet.

20 Q. I'm going to show you State's Exhibit No. 18,
21 what is this a photograph of?

22 A. That is a photograph of the magazine that I took
23 out of the firearm collected on scene and the cartridges
24 or bullets that I took out of that magazine.

25 Q. How many cartridges did you take out of that

State versus Julian Battle

1 magazine?

2 A. I took six out.

3 Q. I'm going to show you State's Exhibit No. 17,
4 what is this?

5 A. That is a photograph of the firearm that I took
6 at the crime scene office where I have unloaded the
7 cartridge that was in the chamber and then I have taken
8 the magazine out of the firearm. I have not unloaded it
9 at this time.

10 Q. This item right here, which one is that?

11 A. That is the cartridge that was removed from the
12 chamber.

13 Q. Did you seize the weapon in this case?

14 A. I did.

15 Q. And where did you physically take it from?

16 A. After I took it from the scene, I took it to the
17 crime scene office and placed it in my locker.

18 Q. What is your policy for how you transport a
19 weapon as evidence in a case?

20 A. When it's transported it from the scene, we are
21 to secure it which basically means we are to unload any
22 firearm, any cartridges or bullets that are currently in
23 the chamber or the revolver. So basically we make sure we
24 have it unloaded and we place it in a box or bag and then
25 transport it to our office.

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1 Q. Was this weapon loaded?

2 A. This weapon was loaded.

3 Q. What did you do to make it safe basically?

4 A. I removed it the magazine from it, placed it in
5 the bag and then I removed the cartridge or bullet from
6 the chamber and then placed it as well in the bag.

7 Q. What's the process for which you remove the
8 ammunition from the chamber in case people don't
9 understand an automatic weapon?

10 A. Well, the fact we would pull the chamber back and
11 allow the bullet to eject out from the side.

12 Q. Do you unload the magazine at the crime scene?

13 A. Yes.

14 Q. I'm going to show you some items that have
15 previously been marked for identification. I'm going to
16 show you what's been marked as State's Exhibit 21, 20, 22.

17 MR. STEINBERG: Pursuant to the Supreme
18 Court's Order, this weapon is fully disabled, Your Honor.

19 THE COURT: Okay.

20 BY MR. STEINBERG:

21 Q. I'm going to show you the property and evidence
22 sheet, does this sheet mesh up with the firearm that you
23 took into custody?

24 A. Yes, it does.

25 Q. Did you handle this pursuant to the forensic

State versus Julian Battle

1 office's policy concerning evidence handling?

2 A. Yes, I did.

3 Q. This item right here, where was this taken from?

4 A. The holster was collected from the victim's front
5 right side of his pants.

6 MR. STEINBERG: Your Honor, the State would
7 move these items into evidence.

8 (State's Exhibit Nos. 20, 21 & 22 previously
9 marked for identification was admitted into evidence.)

10 BY MR. STEINBERG:

11 Q. What is this firearm?

12 A. It's a .45 caliber.

13 Q. And who is the manufacturer?

14 A. Carr.

15 Q. Was the magazine fully loaded?

16 A. I took six cartridges from this magazine. I did
17 not reload it to see its maximum capacity.

18 Q. So you have six rounds in the magazine?

19 A. Correct.

20 Q. Where was the other ammunition located? The
21 other bullet?

22 A. The other bullet was in the chamber of the
23 magazine ready to fire.

24 Q. Did you check this weapon that we just looked at,
25 did you check it for fingerprints?

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1 A. I did.

2 Q. Did you locate any fingerprints?

3 A. I did not.

4 Q. Is it unusual not to find fingerprints on a
5 firearm?

6 A. No, it's not unusual.

7 Q. What was your reason for seizing the holster?

8 A. I seized the holster because it was part of the
9 firearm which would collect everything dealing with that.
10 I did something interesting on it. It appeared to be
11 possible blood on the front side of the holster and I
12 marked it as such on the package.

13 Q. We're going to open up the evidence, very
14 briefly, the ammunition. This magazine here, is that what
15 you took?

16 A. That's what I took, yes.

17 Q. This round right here, are they all the same
18 brand that you put in your report?

19 A. They are. All seven are Winchester .45 auto.

20 Q. Are these hollow points or full metal jackets or
21 what?

22 A. These would be hollow points.

23 Q. Did you examine the holster for any safety
24 straps?

25 A. I did and there was not.

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1 Q. Could you please tell the jury what a safety
2 strap is?

3 A. A safety strap would be the strap that flips over
4 the holster, over the firearm -- excuse me -- and they
5 come in different levels, but basically it's just the
6 security strap that would detail how difficult it is to
7 get the firearm out of that holster.

8 MR. STEINBERG: That's all the questions I
9 have.

10 THE COURT: Mr. Eller.

11 MR. ELLER: May we have a brief break,
12 please?

13 THE COURT: Sure. Take the jury out.

14 (Jury exits the courtroom.)

15 About five minutes.

16 (Jury re-enters the courtroom.)

17 You may continue.

18 CROSS-EXAMINATION

19 BY MR. ELLER:

20 Q. Good afternoon, how are you?

21 A. I'm fine.

22 Q. When you reported to this apartment complex on
23 the early morning hours December 25, 2009, would you
24 describe to the jury what the weather was like?

25 A. It was extreme windy. We had rain coming in

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1 after we had arrived on scene. It was very very windy.

2 Q. So it was lots of rain and lots of wind, right?

3 A. Yes.

4 Q. And would you agree that an umbrella wouldn't do
5 you much good?

6 A. Absolutely. Our umbrellas was just flipping up
7 and we had to do away with them.

8 Q. And sometimes you hear people refer to it was
9 raining sideways when it's windy like that. Is that an
10 accurate description of the weather?

11 A. That would be good for it, yes.

12 Q. And you got a lot of rain when you were out there
13 those early morning hours?

14 A. Yes.

15 Q. And when you arrived at the scene it had been
16 raining on and off that day or that evening?

17 A. Correct.

18 Q. But by the time you got to the scene it was
19 raining pretty strong?

20 A. Yes.

21 Q. Okay. Now, when you got to the scene, isn't it
22 true that you received a report from Sergeant Matheny?

23 A. Yes, I did.

24 Q. And did you speak with Investigator Jones as well
25 as the scene?

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1 A. I did.

2 Q. And you were instructed to obtain gunshot residue
3 kits or GSR kits, right?

4 A. I did, yes.

5 Q. And did you, in fact, obtain GSR kits from Mikeya
6 Shumate, Shameka Wells and Jamaal Stewart?

7 A. I did.

8 Q. And when you were taking these GSR kits -- is it
9 alright if I call it GSR?

10 A. Yes.

11 Q. When you were taking these GSR kits from these
12 three individuals, you were taking with these folks,
13 right?

14 A. I was.

15 Q. Now, as a result of your investigation that early
16 morning, isn't it true that you also true that you
17 prepared a report?

18 A. I did.

19 Q. And isn't it true that you documented in that
20 report the findings that you made yourself and also the
21 statements you received from these folks while you
22 obtained the GSR kits?

23 A. I did. That's standard procedure.

24 Q. Now, in your report, isn't it true that you
25 document where Mr. Dodd was standing in relation to the

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1 door?

2 A. I did, yes, where he was laying.

3 Q. Where he was laying, excuse me. And you also
4 document in your report where Mr. Stewart was standing in
5 relationship to Mr. Dodd where he was laying?

6 A. Yes.

7 Q. Now, isn't it true that Mr. Stewart told you that
8 he didn't know what the weapon was ---

9 THE COURT: Hold on.

10 MR. STEINBERG: Objection as to what
11 Mr. Stewart told somebody. Mr. Stewart is a witness in
12 this case.

13 MR. ELLER: Your Honor, it's a presence sense
14 impression that this happened immediately afterwards.

15 MR. STEINBERG: We had Mr. Stewart on the
16 stand.

17 MR. ELLER: He testified that he told her
18 what he perceived. Under Rule 803 ---

19 THE COURT: What he perceived, no, I'm not
20 going to allow that.

21 MR. ELLER: Not what he perceived, what he
22 saw and what he witnessed, 803-1 presence sense
23 impression.

24 THE COURT: Go ahead.

25 MR. ELLER: Thank you.

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1 BY MR. ELLER:

2 Q. Isn't it true, Ms. Ooten, you document in your
3 report Mr. Stewart told you he didn't know what the weapon
4 was or who even had it?

5 A. Correct.

6 Q. And isn't it true that he told you that only one
7 shot was fired?

8 A. Correct.

9 Q. And isn't it true that Mr. Stewart he did not
10 tell you the method in which the gun was fired, right?

11 A. Correct.

12 Q. And he told you that Mr. Dodd immediately fell to
13 the ground, isn't that right?

14 A. That's right.

15 Q. And you put all that into your report?

16 A. Right, I did.

17 Q. As far as Ms. Wells, when you were taking the
18 gunshot residue kit from her, isn't it true that Ms. Wells
19 told you that it was Mikeya Shumate's idea for the four of
20 them to go to her cousin's house?

21 MR. STEINBERG: Your Honor, I object. That's
22 not a presence sense or anything.

23 THE COURT: I sustain the objection to that
24 question.

25 THE WITNESS: I'm sorry. Could you repeat

State versus Julian Battle

1 that.

2 MR. ELLER: Sure.

3 BY MR. ELLER:

4 Q. Isn't it true that Ms. Wells reported to you that
5 the argument between Ms. Shumate and Mr. Owens could be
6 heard from Ms. Wells upstairs apartment?

7 A. Yes.

8 Q. And isn't it true that Ms. Wells reported to you
9 that when she went outside after the gunshot she saw
10 Mr. Dodd lying on the ground on the other side of the
11 railing?

12 A. Correct.

13 Q. Now, let's back up to your investigation. When
14 you went out there that night, I believe you testified as
15 part of your job and duties to take photographs and search
16 for evidence, correct?

17 A. Correct. It is.

18 Q. And you did take some photographs and we've seen
19 some of those, correct?

20 A. Correct.

21 Q. Now, when you were searching for the evidence, in
22 your opinion, was that searching for the casing?

23 A. We were searching for either casing or
24 projectile.

25 Q. Is there anything else you were searching for?

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1 A. We looked for any additional firearms, anything
2 that could relate to a firearm incident.

3 Q. And you found one firearm, right?

4 A. We found one firearm.

5 Q. Did you find a projectile?

6 A. No, we did not.

7 Q. And you didn't find casing either, did you?

8 A. No, we did not.

9 Q. Now, you didn't find them and you left the scene
10 at some point in the early morning hours of December 25th,
11 didn't you?

12 A. Correct.

13 Q. And you left before the sun came up, right?

14 A. Correct.

15 Q. And you didn't go back on Christmas day, the day
16 of December 25th?

17 A. No, I did not. I was off duty at that time.

18 Q. And you didn't go back on December 26, did you?

19 A. No.

20 Q. You didn't go back on the 27th, did you?

21 A. No.

22 Q. You didn't go back on the 28th, did you?

23 A. No.

24 Q. But you went back on the 29th?

25 A. Yes.

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1 Q. So if my math serves me right, it's about four-
2 and-a-half days?

3 A. Correct. That fell on my weekend off and I was
4 off duty until the 28th.

5 Q. When you went back on the 29th, isn't it true
6 that Officer Derby, one of your colleagues had already
7 been back out there on the 26th to search for projectile
8 and or casing, right?

9 A. That's right.

10 Q. But you still went back out there on the 29th?

11 A. That's right.

12 Q. At that time you went out there with a metal
13 detector?

14 A. Correct.

15 Q. And isn't it true at that time when you went out
16 with a metal detector, you still didn't find a projectile?

17 A. That's correct.

18 Q. And you didn't find the casing either?

19 A. That's correct.

20 Q. Now, let me ask you this, would you agree with me
21 that the parking lot has a slope?

22 A. There was a slight slope. I didn't take a
23 measurement of it but there appeared to be a slope due to
24 the drain pipe.

25 Q. And when you say drain pipe, that's for water to

State versus Julian Battle

1 flow out?

2 A. Yes.

3 Q. Now, I believe you testified that you tested that
4 weapon for fingerprints; is that right?

5 A. Correct.

6 Q. Can you show the jury and show me -- this is
7 State's Exhibit No. 22 -- if you can show me and show the
8 jury what part of this weapon that you actually tested for
9 fingerprints?

10 A. The area that was tested was the trigger area and
11 slide up on the top. The rib area was too textured for
12 fingerprints so it's more than atomic areas.

13 Q. So that the jury understands, this black handle,
14 this textured portion, you didn't test that for
15 fingerprints, right?

16 A. Right.

17 Q. And that's because and I think it's your
18 testimony that you don't normally find a fingerprint on
19 there due to the texture of material?

20 A. Yes.

21 Q. So you tested the slide and the trigger?

22 A. Yes.

23 Q. And you didn't find any fingerprints on that, did
24 you?

25 A. No, sir.

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1 Q. Did you test the magazine for fingerprints?

2 A. Yes, when we tested, we tested that as well.

3 Q. And you didn't find any fingerprints on the
4 magazine?

5 A. No.

6 Q. When you arrived on that scene, you described how
7 you secured the weapon.

8 A. Right.

9 Q. You weren't the first officer on the scene,
10 right?

11 A. No, I was not?

12 Q. So you're not prepared to testify that you were
13 the first person to pick up that gun after it fell to the
14 ground, are you?

15 A. No, I was not.

16 Q. You would agree with me that there's a
17 possibility that someone else could have touched that
18 weapon before you got to it?

19 A. There is a possibility.

20 Q. When you got there it wasn't in a nice sealed
21 box, was it?

22 A. It was not.

23 Q. Officer Ooten, I'm going to show you a report.
24 Could you show me where in that report you got the results
25 for the fingerprint testing.

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1 A. On the third page where it says, "On 01/02/10,
2 obtain additional photographs of item IRO-4, process item
3 IRO-4 for latent prints and obtain results."

4 Q. So when you say IRO-4, you're talking about that
5 gun?

6 A. Yes, that entire item.

7 Q. Does that also include the magazine and the
8 bullets?

9 A. Yes.

10 Q. And you tested the bullets, too?

11 A. Yes.

12 Q. So the bullets didn't have fingerprints?

13 A. Right.

14 Q. The magazine didn't have fingerprints?

15 A. Right.

16 Q. And the gun didn't have fingerprints?

17 A. That's correct.

18 Q. You didn't find Mr. Dodd's fingerprints on any of
19 these items?

20 A. That's correct.

21 Q. You didn't find Mr. Battle's fingerprints on any
22 of these items?

23 A. There were no fingerprints.

24 Q. Now, is the fingerprint test, is that a field
25 test or is that done at a subsequent time?

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1 A. That was done at a subsequent time. The firearm
2 was wet when I got there and collected it so I put it in
3 my locker and then I placed in the tubing chamber where
4 the super glue adheres to the prints that might be there
5 that you could then process with black fingerprint powder
6 that would allow the print to become visible.

7 Q. Okay. Now, you also testified about the holster.
8 There's is only one holster, correct?

9 A. Correct.

10 Q. You testified there was no safety strap on it, is
11 that right?

12 A. That's correct.

13 Q. Can you open up this holster for me, Officer
14 Ooten?

15 A. (Witness complies.)

16 Q. Now, what is this metal object, just so I can
17 show the jury, back here.

18 A. That is what attaches to the belt or the pants
19 where you would clamp the holster to your body.

20 Q. It's not a safety strap, is it?

21 A. No, sir.

22 Q. There is some Velcro here on the side of this
23 holster, is that what that is?

24 A. Yes, it is.

25 Q. On both sides here?

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1 A. Yes, it is.

2 Q. Do you have an opinion if that's where the safety
3 strap belongs or can you tell if this holster ever came
4 with a safety strap?

5 A. I really can't say.

6 Q. And when you prepared your report in this case --
7 we covered a lot of things you put in your report -- is it
8 your opinion that your report accurately reflects all the
9 information that you gathered at the scene that night and
10 in the subsequent days?

11 A. Yes, it does.

12 Q. It also reflects accurately the statements that
13 were given to you or said in your presence?

14 A. Yes, it does.

15 Q. Now, do you recall what your impression was as to
16 how Mr. Dodd exited the building on the night of this
17 incident?

18 MR. STEINBERG: Objection, Your Honor.

19 THE COURT: I sustain the objection.

20 MR. ELLER: Your Honor, may we approach?

21 (Whereupon, there was a bench conference.)

22 Just one second, Judge.

23 Your Honor, we have a brief matter of law.

24 THE COURT: Take the jury out.

25 (Jury exits the courtroom.)

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1 Alright.

2 MR. ELLER: Your Honor, I would just like to
3 make a proper for the record regarding the statement that
4 was made to Officer Ooten by her supervising officer,
5 Sergeant Matheny, when she first reported to the scene.

6 THE COURT: Go ahead.

7 BY MR. ELLER:

8 Q. Officer Ooten, you testified that when you first
9 got to the scene you received a report from Sergeant
10 Matheny; is that right?

11 A. That's correct.

12 Q. You also received instructions from Investigator
13 Jones about what kind of evidence you needed to obtain and
14 process; is that right?

15 A. She instructed me she wanted the GSRs collected.

16 Q. I'm going to show you the first page of your
17 report and ask you to take a look at that first paragraph
18 and I'm going to ask you what information you were
19 instructed or what information you obtained from Sergeant
20 Matheny. Does that refresh your recollection as to what
21 Sergeant Matheny told you once you reported to the scene?

22 A. Yes.

23 Q. What is it Sergeant Matheny told you when you
24 first got to the scene?

25 A. When I arrived on the scene, Sergeant Matheny

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1 stated that they didn't have a lot of information at the
2 time. The witnesses had already been divided up into
3 patrol cars, however, he did advise that at this time it
4 appeared that the three witnesses were at the victim's
5 apartment and that people were trying to get into the
6 apartments and the victim then approached the door with
7 his firearm and that he had a CPW and that the incident
8 happened from there.

9 Q. When you approached the door with his firearm,
10 was that firearm displayed?

11 A. I don't know that part. That is strictly what
12 Sergeant said and preferenced it with very little know at
13 this time but that was gathered or whatever term he used
14 at that point.

15 Q. Did you actually put in your report that Sergeant
16 Matheny advised that he walked outside, he being Mr. Dodd,
17 with a concealed weapon in hand to see who was trying to
18 enter the residence?

19 A. That's what we were told.

20 Q. That was your perception as to how this event
21 occurred?

22 A. That was what I was told by him at that time.

23 Q. Did that statement direct your investigation that
24 evening?

25 A. No. I then contacted my sergeant on call, my

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1 A. The GSR?

2 Q. Who did you turn your reports over to.

3 A. I turned my reports over to my sergeant.

4 Q. And were you present when the other witnesses
5 were questioned at the Law Enforcement Center?

6 A. No, I was not.

7 MR. STEINBERG: That's all the questions I
8 have.

9 THE COURT: Thank you. Step down.

10 MR. STEINBERG: Your Honor, the State's next
11 witness will be Investigator Laura Jones.

12 THE CLERK: Step around to be sworn. Place
13 your left hand on the Bible and raise your right.

14 LAURA JONES, having been duly sworn,
15 testified as follows:

16 Thank you. You may be seated. State your
17 full name for the record, please.

18 THE WITNESS: Laura Jones.

19 THE CLERK: Thank you.

20 DIRECT EXAMINATION

21 BY MR. STEINBERG:

22 Q. Good afternoon, Investigator Jones. How are you?

23 A. I'm fine.

24 Q. Would you please tell the Court and the jury
25 where you are from originally?

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1 A. I was born in the Spartanburg area but I grew up
2 in Greenville.

3 Q. And what is your highest level of education?

4 A. I have a Bachelor's Science in Psychology.

5 Q. And where you are currently employed?

6 A. Greenville County Sheriff's Office.

7 Q. And how long have you been involved in Law
8 Enforcement?

9 A. Been in law enforcement 11 years.

10 Q. Back in December of 2009, what was your title and
11 primary role?

12 A. Back then I was a homicide investigator.

13 Q. What is your current role?

14 A. Now, I'm in the internal affairs unit.

15 Q. What was your task in this particular case?

16 A. At that time I was the lead investigator on-call
17 at the time that this incident happened.

18 Q. Any other investigators assist you in this case?

19 A. Yes, sir. Whenever one unit is on call there are
20 several backup investigators. Investigator King assisted
21 me on this one.

22 Q. He was the on sight investigator?

23 A. No, he was an armed robbery investigator.

24 Q. What was his role and what did he do with this
25 investigation?

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1 A. I responded to the scene when I was at home and
2 first notified of it. I responded to the scene and
3 Investigator King responded. I asked him to go to the Law
4 Enforcement Center and I advised him that once I got to
5 the scene I would separate all the witnesses and send them
6 to the Law Enforcement Center to him so he could get
7 started with their statements.

8 Q. Tell us about the condition when you first went
9 out there. What did the scene look like when you first
10 arrived on scene?

11 A. There were numerous marked patrol vehicles on
12 scene. It's always roped off with crime scene tape
13 obviously because when something like that happens. So we
14 rope off a large area to ensure the crime scene and kept
15 it secure.

16 Q. Did you see a firearm?

17 A. Yes, sir.

18 Q. In light of that, were you looking for any
19 particular types of evidence?

20 A. Yes, sir. At the time, obviously we know that
21 there was some sort of shooting. We automatically look
22 for shell casings, projectiles. We look to see if any
23 windows or buildings or anything that may have been struck
24 by projectiles as well.

25 Q. Did you or any of the other officers find any

State versus Julian Battle

1 bullet holes?

2 A. No, sir, we didn't find anything.

3 Q. You locate any shell casing?

4 A. No, sir.

5 Q. Did you or other officers under your direction
6 canvas the neighborhood for any possible witnesses?

7 A. Yes, sir, we did.

8 Q. Did you find any witnesses?

9 A. Other than the ones we've mentioned today, no,
10 sir.

11 Q. Did you view the body at the scene?

12 A. Yes, sir.

13 Q. Were you present when the victim's wallet was
14 opened?

15 A. Yes, sir, I was.

16 Q. Did you notice anything about his pants, about
17 the condition of his pants?

18 A. He had on baggy clothes were you could see the
19 shorts underneath his pants.

20 Q. Were you present when the wallet of the victim
21 was opened?

22 A. Yes, sir, I was.

23 Q. What did you find in the wallet?

24 A. First of all I don't move anything until
25 everything is photographed by the forensic division that

State versus Julian Battle

1 just spoke. I did not pick up the wallet. The coroner's
2 office was there with me as well. They pick up the wallet
3 first because they need identification immediately so they
4 can go identify the family. So the coroner's office, Tom
5 Selphrige(ph) was the coroner on scene. He picked up the
6 wallet in order to get the driver's license and concealed
7 weapon's permit out of the wallet.

8 Q. With that in mind, do you have that concealed
9 weapon's permit?

10 A. Yes, sir.

11 Q. I'd like you to please produce it.

12 MR. STEINBERG: Madam Court Reporter, this is
13 State's Exhibit No. 19.

14 (Concealed weapon's permit marked as State's
15 Exhibit No. 19 for identification.)

16 BY MR. STEINBERG:

17 Q. Looking at this document, what is the document,
18 State's Exhibit No. 19?

19 A. Yes, sir. Tennessee Handgun Carry Permit is the
20 exact wording on it for Rafael Rameraz Dodd.

21 Q. And is his photograph on it?

22 A. Yes.

23 Q. And does this photograph match up with the
24 driver's license that was on there?

25 A. Yes, sir, and a visual ID of the victim as well.

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1 Q. And when does it expire?

2 A. The expiration date is 6/15/2013 so it would have
3 been valid at the time of this incident.

4 MR. STEINBERG: The State would move this
5 concealed weapon's permit into evidence.

6 THE COURT: Any objection?

7 MR. ELLER: No objection.

8 (Weapon permit marked as State's Exhibit No.
9 19 was admitted into evidence.)

10 BY MR. STEINBERG:

11 Q. I asked earlier whether there were any witnesses
12 in the area. Did you actually look for any security or
13 clothes circuit tv cameras or things of this sort?

14 A. Yes, sir.

15 Q. Is that standard protocol?

16 A. Yes, sir.

17 Q. Did you locate any?

18 A. Unfortunately, sir, we did not.

19 Q. Did you speak with any of the witnesses in this
20 case?

21 A. Yes.

22 Q. Following your interviews with them, did you
23 obtain any arrest warrants?

24 A. I did.

25 Q. What was the arrest warrant charged for and who

State versus Julian Battle

1 were the suspects.

2 A. Can I clarify first?

3 Q. Yes.

4 A. Initially like I said Investigator Tracy King was
5 going to take the statements from the witnesses.
6 Initially when I get on scene so I can get a brief
7 overview of what happened, I briefly spoke to them in the
8 back seat of the patrol vehicle due to the weather. I sat
9 down in the back of the car with the witnesses who were
10 separated at the time. So that was not taking a statement
11 from them. I spoke to them just briefly just to get a
12 statement in my head as to what's going on and then I sent
13 them to the Law Enforcement Center to speak with
14 Investigator King to get a more detailed statement on
15 paper from him while I did my job at the scene.

16 Once all that was completed at scene and I
17 got back with Tracy King, we discussed it. I made a phone
18 call to a judge and the charges were filed, signed
19 warrants on both the defendant and Clintonian Owens for
20 murder and additional charge on the defendant for
21 possession of a weapon during the commission of a violent
22 crime.

23 Q. Why did you arrest Mr. Owens or have Mr. Owens
24 arrested?

25 A. At the time what I knew is that they both arrived

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1 at the scene together, a shooting occurred. They both
2 fled the scene together. There was some what of a
3 question as to who the shooter was at the time, but when
4 they fled it was the idea at the time when I spoke to the
5 judge on the phone about it that it was kind of the hand
6 of one hand of all kind of thing. He fled. He did not
7 choose to call 911 or give the victim any assistance that
8 type thing. That's why Mr. Owens was charged initially
9 with murder as well.

10 Q. Who were the first of the two individuals that
11 were arrested, Dupri Owens or Dre Battle?

12 A. Mr. Owens was arrested first.

13 Q. Do you know where he was arrested and where he
14 was brought to?

15 A. He was arrested at his mother's house on Glass
16 Street.

17 Q. Did you have an opportunity to interview him that
18 day?

19 A. I did.

20 Q. How did he appear?

21 A. He was appeared scared, very different than he
22 appeared today.

23 Q. Did he cooperate with you?

24 A. Yes, sir.

25 Q. Did you advise him of his rights?

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1 A. Yes, sir, I did.

2 Q. Did you have him sign a waiver form?

3 A. Yes, sir I did.

4 Q. Did he give a statement?

5 A. He did.

6 Q. Mr. Dupri Owens would have stayed and not left
7 the scene, would you have arrested him?

8 A. No, sir.

9 Q. What did you did in your attempt to locate Julian
10 Deandre Battle?

11 A. When we initially, as well as Mr. Owens, once
12 these warrants are signed due to the severity of these
13 type warrants are signed obviously we think they people
14 are a potential danger to the community so its put on a
15 system called NCIC, which is the National Crime
16 Information Center which sends this information out to
17 different counties, adjoining states and such in case
18 people try to flee our county.

19 As an example if someone were to be pulled
20 over on a traffic stop in North Carolina, when the pull
21 them over and run their name they'll find them and they'll
22 see that they have warrants in South Carolina for murder
23 so I entered them on that system.

24 I notified all of my uniformed patrol
25 supervisors, Lieutenant Taylor who you saw today who was a

State versus Julian Battle

1 sergeant at the time, I notified him and made them all
2 aware of any addresses that we were aware of, any
3 potential locations where these people might be found.

4 Q. Did you specifically speak to Spartanburg
5 authorities?

6 A. Yes. I was made aware that Mr. Battle might be
7 in ---

8 MR. ELLER: Objection as to Spartanburg
9 authorities.

10 THE COURT: I'll sustain that.

11 BY MR. ELLER:

12 Q. Don't repeat what Spartanburg people said to you.
13 What was your reason for speaking to Spartanburg?

14 A. During my research of trying to locate these
15 suspects or the defendant, I was notified and I found in
16 my research that Mr. Battle had somewhat of a connection
17 to Spartanburg. In my interviews with these witnesses --
18 while speaking with these witnesses, we got somewhat of a
19 description of a house in Spartanburg and the type of cars
20 that would be outside of this house.

21 MR. ELLER: Objection as to what or who said
22 what.

23 THE COURT: As a result, what did you do?

24 BY MR. STEINBERG:

25 Q. Following your research, what did you do with the

State versus Julian Battle

1 information you got?

2 A. I notified Spartanburg.

3 Q. And did you speak with Spartanburg authorities?

4 A. Yes, I did.

5 Q. And did they, in fact, Mr. Battle?

6 A. Yes, they did.

7 Q. Did you ask Spartanburg authorities to do
8 anything upon your request at that location?

9 A. Yes. I gave them a brief overview of what we
10 had, what the situation was. I asked them during their
11 search of the residence where he was found. The car, that
12 was there. If they were to find any firearms or anything
13 that may be related to my case, if they would notify me so
14 I could respond to Spartanburg to collect that evidence if
15 they did find it.

16 Q. If anything had been located, would you have gone
17 to Spartanburg to pick it up?

18 A. Yes, sir.

19 Q. Was Mr. Dre Battle brought to your location in
20 Greenville?

21 A. Yes, sir.

22 Q. Who brought him to you?

23 A. Sergeant Gladson.

24 Q. How did he appear?

25 A. He was very calm.

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1 Q. How did he appear, say, in comparison to Dupri
2 Owens?

3 A. Like I said before Dupri was very scared kind of
4 freaked out by the whole thing, his charges, and what just
5 happened. I'd say Mr. Battle was very nonchalant about
6 the whole thing.

7 Q. How much time had passed between the time of the
8 shooting and the time Mr. Battle had been brought to your
9 location?

10 A. It was close to six, six-and-a-half hours.

11 Q. What time did the shooting happen?

12 A. The shooting happened about 12:30 at night or
13 early in the morning.

14 Q. And what time did Sergeant Gladson bring
15 Mr. Battle to you?

16 A. I'm sorry, I can't recall without looking at the
17 times on my report.

18 Q. I'm going to show you ---

19 A. I'm sorry. 6:00 or something like that in the
20 afternoon?

21 Q. I'm going to show you your report. This is
22 marked as State's Exhibit No. 10, does this refresh your
23 memory as to what time?

24 A. Yes, sir.

25 Q. Okay. What time did you interview Mr. Battle?

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1 A. It was almost 6:30 at night.

2 Q. So, again, approximately how many hours had
3 passed?

4 A. Several.

5 Q. Over 12 hours. Did you ask for a gunshot residue
6 swab?

7 A. No, sir.

8 Q. What is your reason for not asking for a gunshot
9 residue swabbing at that point?

10 A. Because after six hours of time, the gunshot
11 residue test is invalid. So we won't test it after that
12 amount of time has passed.

13 Q. Where was this interview located at? Where did
14 you conduct the interview?

15 A. At our violent crimes office at the Law
16 Enforcement Center.

17 Q. Did you advise Mr. Battle of any rights he might
18 have?

19 A. Yes, I did. I read his Miranda as I did with
20 Mr. Owens.

21 Q. I'm going to show you this document, State's
22 Exhibit No. 10. Is this the document you presented to
23 Mr. Battle?

24 A. Yes, sir, it is.

25 Q. Please tell the jury the procedure for which you

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1 advised him of his rights?

2 A. When he first comes in, I explain this to him
3 because nothing can happen until he's been read his
4 rights. I go over this form that has the case number at
5 the top. I explain this word by word to him and once I
6 read it, I get him to initial each line of it to make sure
7 there is no misunderstanding of this at all, and then have
8 him sign it if they chose to sign it and I witness it as
9 well.

10 Q. Please read into the record what the rights are
11 that you advised Mr. Battle..

12 A. Like I said it has the case number, date and the
13 time that I began to read it. It says, "Before I ask you
14 any questions, you must understand your rights. You have
15 the right to remain silent. Anything you say can be used
16 against you in court. You have the right to talk to a
17 lawyer for advise before we ask you any questions and to
18 have him with you during questioning. If you have no
19 money to pay a lawyer's fee, the court will appoint one to
20 represent you without cost, if you wish. If you decide to
21 answer questions now without a lawyer present, you'll
22 still have the right to stop answering at any time. You
23 also have the right to stop answering at any time until
24 you talk to a lawyer."

25 And then it skips down and has a paragraph at

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1 the bottom and it says, "I have read this statement of my
2 rights and I understand what my rights are. I am willing
3 to make a statement and answer questions. I do not want a
4 lawyer at this time. I understand and know what I'm
5 doing. No promises or threats have been made to me and no
6 pressure or coercion of any kind has been used against
7 me."

8 I always -- we do these the same before we
9 speak to anybody. I always circle the word coercion and
10 explain that to make sure they understand what the word
11 coercion means and that's done on this form as well.

12 Q. What time did you do this?

13 A. At 1800 hours -- I began at 6:28.

14 Q. 1800 hours is 6:00 p.m.

15 A. Yes, sir.

16 Q. What, if anything, did the defendant have to say
17 at this point when you advised him of his Miranda rights?

18 A. He was talking when he came in, kind of
19 chitchatting with Sergeant Gladson. Like I said very calm
20 and I told him to have a seat. As been talked about in
21 here already, I moved his handcuffs to the front to make
22 him more comfortable obviously because I knew he was going
23 to be using a pen and would have to right.

24 He said I want to tell you my side of the
25 story and I said that's fine but I've got to read you this

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1 form first. So I'm reading him this form and I write down
2 the times. I'm very particular because in murder we know
3 things get picked. So I put down the times and go through
4 it. He says he doesn't want to sign anything. He says I
5 just want to talk to you, I just want to tell you my side
6 of the story but I don't want to sign anything.

7 Q. Is it unusual for a defendant to say to you I
8 don't want to sign anything, I just want to talk?

9 A. Not to unusual, no.

10 MR. ELLER: Your Honor, may we approach.

11 THE COURT: Sure.

12 (Whereupon, there was a bench conference.

13 (Whereupon, objection was made during bench
14 conference. MR. ELLER: Your Honor, our objection is
15 these statements made by Mr. Battle to Investigator Laura
16 Jones on the basis that there was not a voluntary waiver
17 and it was not knowingly made pursuant to Miranda.)

18 BY MR. STEINBERG:

19 Q. Did he have an opportunity to write a statement?

20 A. Yes, sir.

21 Q. Did he have a pen and paper available for him to
22 write a statement?

23 A. Yes, sir.

24 Q. Would you type a statement if you prefer it to be
25 typed?

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1 A. Yes, sir.

2 Q. Was he willing at any point to write down a
3 statement?

4 A. No, sir.

5 Q. How long was your interview with him?

6 A. It was approximately about an hour-and-a-half
7 that I spoke with him.

8 MR. STEINBERG: I would like to introduce
9 State's Exhibit No. 10.

10 MR. ELLER: No objection.

11 THE COURT: Alright.

12 (Waiver of Rights form marked as State's
13 Exhibit No 10 for identification was admitted into
14 evidence.)

15 BY MR. STEINBERG:

16 Q. At the time of this interview, did you know where
17 the bullet holes in Rafael Dodd's body was located.

18 A. Yes, sir, I did.

19 Q. Did you know whether Rafael Dodd's gun had been
20 fired?

21 A. I knew that it had not been fired because it was
22 still fully loaded when we found it.

23 Q. Did you tell Julian Battle what you knew about
24 the case prior to the interview?

25 A. No, sir.

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1 Q. Is that a technique you use?

2 A. Yes, sir.

3 Q. Did you tell Julian Battle who had cooperated
4 thus far?

5 A. No, sir.

6 Q. Did you tell Julian Battle whether Clintonian
7 Dupri Owens had given a statement thus far?

8 A. No, sir.

9 Q. Did you take notes in this case?

10 A. Yes, sir.

11 Q. How accurate are your notes for this interview?

12 A. My interview with Mr. Battle, they're word for
13 word.

14 Q. Was Mr. Battle close to you? Did he actually see
15 you taking notes?

16 A. Yes, sir. I have a chair that whomever I'm
17 speaking to I'm in a cubicle and there's a chair right
18 next to me and I think I was actually facing him with my
19 legs crossed and I had a notepad in my lap.

20 Q. Do you have a copy of those notes here with you
21 today?

22 A. Yes, sir, I do.

23 Q. And you provided a copy to the defense attorney?

24 A. Yes, sir.

25 Q. Recognizing that physical notes are not

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1 admissible, I'm going to ask you to read them word for
2 word, do not vary from them at all. I would like you to
3 start with the time at the very front of your first page
4 of notes.

5 MR. ELLER: Same objection, Your Honor.

6 THE COURT: Subject to objection.

7 THE WITNESS: Again, this is his story that
8 he wanted to tell me. I wrote down 18:43 hours and
9 6:43 p.m., and I apologize there is some language in here.

10 It says, "Went to the apartment and Meka was
11 the only one there. I had some Hinessee Nuvo, wanted to
12 relax with some friends and chill. I gave her, Meka, some
13 money because they wanted some weed. Said they had to go
14 to her mother's house. I stayed outside because I don't
15 like being around people. I like jewelry. I am
16 particular about the quality of my jewelry. I noticed him
17 looking at me and my jewelry. We're in the car with Meka.
18 Mikeya is in the car with her cousins, Pri kept asking why
19 she was over there. She finally came and got in the car.
20 She said why the fuck you bothering me, I haven't seen my
21 cousins in a while. We go back to Meka's house. We were
22 going up the steps and Meka was lagging behind. I turned
23 to see what she was doing and I saw them pull up. They
24 kept asking me to buy some more weed. Rafael was still
25 just looking at me. Pri got upset and wanted it just to

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1 be us four so he told me for us to just go. I asked him
2 to go get my CC from the apartment. Keya was still
3 outside. She said, why you fucking being like that.
4 Argument started. Jamaal said what the fuck are you
5 talking about. While we were trying to leave, Jamaal
6 said, y'all ain't going nowhere. Rafael said, what the
7 fuck's wrong with y'all. I kept saying we were just
8 trying to leave. Rafael kept asking where my money was.
9 Rafael then pulled out a pistol and pointed it me and Pri.
10 Meka and Keya were having money problems. They acted like
11 they didn't know what they were doing. He put the gun in
12 my face. I'll be honest with you I can't explain what
13 is," and then there's a pause, "I grabbed it and turned it
14 back towards him. He pushed me with his right hand. We
15 struggled and I don't know if I pulled the trigger or not.
16 It went off and I dropped the gun. I ran off and I told
17 Pri to call the police. I had a flat tire on my car. I
18 couldn't use my cousin's phone because it was a touch
19 screen. We went to my father's house and he knew
20 something was wrong with me. Pri said do you think that
21 boy got shot. I said, no, I thought he just fell trying
22 to duck after it went off. I had to leave my car at Pri's
23 mom's house because the tire was flat, didn't want to tell
24 father because he just got off crack. We went to the
25 Waffle House and Pri kept asking if the boy got shot.

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1 After that we just sat outside. I asked him to take me to
2 my mom's to get a spare tire. I got the wrong spare and
3 it won't go forward. Back to Pri's momma's to try to put
4 the tire on. I asked him to take me to Spartanburg to my
5 baby's momma's house. We are engaged and she was the
6 mother of my youngest son. I went in the house and laid
7 down, I don't remember the time. And then my father
8 called and told me that the police came to his house and
9 said that I had murdered somebody. He wanted me to turn
10 myself in so I called them. I told them I was a few miles
11 away because I didn't want my mother to worry. I don't
12 celebrate Christmas. I believe in Jesus but not that this
13 is his birthday. I was raised as a Jehova's Witness. My
14 momma called me and said that the police were looking for
15 me and then I called and talked to Mr. Taylor on the
16 phone. I sat at my fiance's mother's house and I was
17 holding my son. I didn't want them involved so I left. I
18 told them I would be back. I went to Louis Roger's house
19 and waited for him to come. I was going to get him to
20 take me back to Greenville. I asked him if I could rest a
21 couple of minutes. I rested on his couch. I tried to get
22 him to take me to Greenville and then I must have drifted
23 off. I saw on the cameras, on the tv's in the house, that
24 Spartanburg was there. I stood up and put my hands behind
25 my back and went with them."

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1 BY MR. STEINBERG:

2 Q. If you look at the first page, you said the
3 words, "I went to relax with some friends."

4 A. I'm sorry, females.

5 Q. Please read that statement again towards the very
6 beginning so the jury understands what I'm talking about.

7 A. "Went to the apartment, Meka was the only on
8 there and I had some Hinessee and Nuvo, wanted to relax
9 with some females and chill."

10 Q. And there is some mention of Hinessee, Nuvo and
11 CC, do you know what those are?

12 A. Types of alcohol, liquor.

13 Q. You said in here that that defendant said he did
14 not like being around other people. Did he say why he did
15 not like being around other people?

16 A. Honestly, I don't recall why he did not like
17 being around other people. He just said he didn't like
18 being around other people that he didn't know. I'm sorry
19 he said he was non sociable or something to that effect.

20 Q. Did he do a demonstration for you?

21 A. He did.

22 Q. Would you please tell us what occurred there?

23 A. While he's talking to me, he wanted to show me
24 what happened, to give me a demonstration. Like I said I
25 had moved his handcuffs, myself and Sergeant Gladson,

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1 moved his handcuffs to the front so he would be more
2 comfortable. He asked me if I could stand up and he could
3 show me what happened so I agreed and he asked permission
4 if it was okay for him to grab my hand to show me what
5 happened. So I went along with him and let him show me
6 the demonstration.

7 Q. Please demonstrate as he did. Just stand up and
8 show the jury what happened.

9 A. With you or with ---

10 Q. With me, if you wish, certainly. Assuming that I
11 am Rafael Dodd and the weapon is on my right side, what
12 did he do next?

13 A. Me being the defendant, he was handcuffed to the
14 front so his hands are here, he said -- he could still
15 raise his hands up but they were together. He said, hold
16 your hand out in front of you like a gun. So he held it
17 out and I said, like this, and he said, yes. I knew
18 interviewing him this was a critical part of him telling
19 me this. So he held his hand out like this or I held my
20 hand out like this and he grabbed it. Like I said he's
21 still cuffed but he grabbed it and he turned it towards me
22 just like this and when he turned it towards me and he
23 said that's when the gun went off.

24 When he did that, it made my hand point
25 towards my chest. I said, so, if you're demonstrating it

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1 this way so you're pointing towards my chest, therefore,
2 the victim would have been shot in the chest area and he
3 said, yes, and I knew this not to be true because I knew
4 where the victim had been shot and it was not in the chest
5 area.

6 Q. Thank you. Please take your seat again.

7 Are you familiar with the layout of
8 Greenville, the general roads?

9 A. Generally, yes, sir.

10 Q. Did you used to be a uniformed patrol officer?

11 A. Yes, sir.

12 Q. And in this general area, the defendant said he
13 had gone to what locations? I believe it's probably on
14 the second page.

15 MR. ELLER: Objection. She's already read it
16 into evidence.

17 MR. STEINBERG: I'm just asking her the
18 particular locations.

19 THE COURT: Go ahead.

20 THE WITNESS: To the Waffle House.

21 BY MR. STEINBERG:

22 Q. Is there a gas station nearby?

23 A. Yes, sir. There's one very close to the
24 apartment complex.

25 Q. Are you familiar with Glass Street?

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1 A. Yes.

2 Q. Between the locations of Park West Apartments and
3 Glass Street are there places that somebody could have
4 pulled over and called 911?

5 A. There was numerous places.

6 Q. After Mr. Battle gave his statement, his version,
7 did you confront him with any of the evidence that you had
8 or the information that you knew?

9 A. Did I confront Mr. Battle with what I knew? No,
10 sir, I did not.

11 Q. During your investigation did you uncover any
12 information of either monetary or jewelry robbery or
13 anything of this nature?

14 A. No, sir, I did not.

15 Q. What are defensive wounds and did you look for
16 those?

17 A. Defensive wounds are normally if somebody would
18 say is attacking me, you would normally put your hands up
19 to protect your face initially. Everybody wants to
20 protect their face and they throw their hands up and
21 they'll be scratches on the backsides of their arms, any
22 type of things on your arms or where you've turned or
23 anything to where you've tried to defend yourself.

24 We checked Mr. Battle for any kind of
25 defensive wounds, any scratches, or anything. The

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1 forensic division does that when they collect his
2 clothing.

3 Q. Did Mr. Battle make any final statement before he
4 left about how the incident occurred?

5 A. I need to check my report. I can't remember. I
6 need to glance at my report.

7 Q. While you check for that we'll continue on to
8 save some time. After this interview and after everything
9 you knew about this case, did you feel it was necessary to
10 send any gunshot residue tests to SLED.

11 A. No, sir, given the fact that all of them were in
12 that tight vicinity on that porch. It's highly likely
13 that everybody could have gunshot residue on them because
14 it's not necessarily the one who fired it. Everybody in
15 that tight area may have had some on them so it wouldn't
16 have done anything to have them all tested.

17 Q. The firearm in this case, you have it up on the
18 stand with you, what caliber and what type of weapon is
19 that?

20 A. This is a Carr .45.

21 Q. Where you present when that was unloaded?

22 A. Yes, on the scene.

23 Q. How many rounds does that firearm hold?

24 A. The magazine holds six. It's called a six plus
25 one. It holds six in the magazine and one in the chamber

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1 so it holds seven total.

2 Q. Will it hold more than seven?

3 A. No, sir.

4 MR. STEINBERG: I beg the Court's indulgence.

5 BY MR. STEINBERG:

6 Q. Would your notes help you prepare to testify?

7 A. Yes.

8 MR. ELLER: About which subject, Your Honor.

9 He can't just read from a hearsay report.

10 BY MR. STEINBERG:

11 Q. I asked you earlier if you remember what the
12 defendant said to you as he left at the close of the
13 interview.

14 A. I know he had said something but I can't recall
15 and I don't want to misspeak without checking my notes.

16 Q. I'm going to hand you your notes, then.

17 MR. ELLER: Your Honor, may we approach?

18 THE COURT: Sure.

19 (Whereupon, there was a bench conference.)

20 BY MR. STEINBERG:

21 Q. Just read over the part where you were pretty
22 much through. That paragraph right there.

23 A. Are you referring to the comment about Jesus?

24 Q. That comment and primarily the comment after
25 that.

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1 A. Okay.

2 Q. I actually don't care too much about that comment,
3 just the comment after that.

4 A. After I took that statement, we stood him up and
5 order to transfer him to the Detention Center, I had to
6 move his handcuffs back around to the back. That's policy
7 and he asked me if I believed in Jesus and he said because
8 this is a self-defense case.

9 Q. Did he ever say that the weapon went off
10 accidentally?

11 A. No.

12 Q. You talked about the ammunition there, how many
13 rounds in the magazine?

14 A. Magazine holds a total of six at one time.

15 Q. And how many rounds fits inside of a chamber?

16 A. It would hold six and one in the chamber so a
17 total of seven total.

18 Q. And how many rounds do you have in there in
19 total?

20 A. There are seven total in it so its fully loaded.

21 Q. And did you know that information the night of
22 the crime?

23 A. I did and that's how I knew this was not the
24 murder weapon.

25 Q. I'm going to have you take a look at this weapon.

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1 This weapon State's Exhibit No. 22, is this the weapon you
2 were involved with?

3 A. Yes.

4 MR. STEINBERG: Beg the Court's indulgence.

5 Your Honor, the State is going to remove the
6 lock and the weapon from the box. It is cleared by the
7 courtroom deputies and myself and it has a locked chamber
8 at this point.

9 THE COURT: Go ahead.

10 BY MR. STEINBERG:

11 Q. This weapon I'm holding here, when did you first
12 see it?

13 A. When I arrived on scene it was on the ground next
14 to the victim.

15 Q. It's fully unloaded and the ammunition is at your
16 table?

17 A. Yes, sir.

18 Q. I'm going to take this firearm and I'd like you
19 to put it in the holster. Does it fit in there without
20 any hesitation?

21 A. Yes.

22 Q. What happens if you turn that holster upside
23 down.

24 A. (Witness demonstrates.)

25 Q. Is there a safety strap on this holster?

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1 A. Yes.

2 Q. Have you attempted in the past to put additional
3 rounds into the magazine in question?

4 A. Yes, sir.

5 Q. How many times and who were you with when you
6 tried to do this?

7 A. I tried a couple of times. Both times I think
8 you were with me in the property and evidence room at the
9 Law Enforcement Center. We had additional rounds and it's
10 physically impossible unless you break the spring inside
11 the magazine to add another round into that magazine.

12 Q. As the jury can see you're obviously physically
13 athletic person, you're an athletic. Were you able and
14 strong enough to get another round in there?

15 A. No, sir, without breaking the spring and it
16 wouldn't work properly if it was broken.

17 Q. Were you present when I tried to do it?

18 A. Yes, sir.

19 Q. As big as I am, could I get it in there?

20 A. No, sir.

21 Q. With that in mind, what did you conclude about
22 the firearm?

23 A. I concluded that it was fully loaded. It was not
24 possible to have put another round in there. All of the
25 rounds -- the bullets that were in the gun were the same

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1 brand name therefore it's not possible for this to have
2 been used to kill Rafael Dodd.

3 MR. ELLER: Objection, Your Honor. She's not
4 an expert in guns.

5 THE COURT: I'll allow that.

6 BY MR. STEINBERG:

7 Q. Do not repeat what anybody else said to you, but
8 did you speak with James Armstrong in this case?

9 A. I did.

10 Q. Who is Mr. Armstrong?

11 A. James Armstrong is our firearms expert at the Law
12 Enforcement Center.

13 Q. Did you ask Mr. Armstrong to take a look at this
14 weapon in your presence?

15 A. I did.

16 Q. What, if anything, did he do in your presence?

17 A. He looked at it as well and then checked the
18 magazine as well.

19 Q. And following your discussing with him and your
20 understanding of the case, did you feel it necessary to
21 send for any additional testing?

22 A. No, there was no reason to send it for any
23 additional testing.

24 Q. Had a fired round been found in the body or had a
25 shell casing been located, what would you have done?

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1 A. Even though we knew this one was fully loaded,
2 for these type purposes, we would have sent this -- like
3 if there would have been a projectile found in the body of
4 the victim, we would have sent the projectile or the
5 remaining part of the bullet that's in the body, sent that
6 and this weapon to SLED in Columbia and they would have
7 compared it to rule out that weapon to make sure that
8 wasn't fired from that weapon.

9 Q. Was Mr. Julian Battle ever released on bond in
10 this case?

11 A. Yes, he was.

12 Q. What were the conditions of his bond as it
13 relates to the witnesses and the victim's family in this
14 case?

15 A. He was placed on house arrest and he was not
16 supposed to have any contact with any of the witnesses in
17 this case.

18 Q. Is there a South Carolina or nationwide database
19 of gun ownership, that is people who have a gun in their
20 possession?

21 A. No, sir there's not.

22 MR. STEINBERG: Your Honor, the State would
23 introduce as marked as Court's Exhibit 1 the stipulation
24 dealing with concealed weapon's permits. I'd like to
25 publish it to the jury at this time.

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1 (Weapon's permit marked as Court's Exhibit
2 No. 1 for identification.)

3 The two parties agree that South Carolina and
4 Tennessee have reciprocal concealed weapon's permits. I'd
5 like that introduced as a Court's Exhibit.

6 (Weapon's permit marked as Court's Exhibit
7 No. 1 was admitted into evidence.)

8 BY MR. STEINBERG:

9 Q. Was Rafael Dodd possessing a valid concealed
10 weapons permit?

11 A. Yes, he was.

12 Q. Did Julian Deandre Battle have a concealed
13 weapon's permit?

14 A. No, he did not.

15 MR. STEINBERG: That's all the questions I
16 have.

17 THE COURT: Mr. Eller.

18 CROSS-EXAMINATION

19 BY MR. ELLER:

20 Q. Good afternoon, Officer Jones. Office Jones,
21 there was some testimony -- well, you were the chief
22 investigator for this particular incident, right?

23 A. Yes, sir.

24 Q. And you're the one that makes the decisions about
25 whether or not to send off GSR kits for testing?

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1 A. Yes, sir, that's correct.

2 Q. And isn't it true that you made the decision not
3 to send off the GSR kits in this case?

4 A. That's correct.

5 Q. So all the testimony we heard earlier about
6 testing Ms. Wells, Ms. Shumate, Mr. Stewart, did you test
7 Mr. Owens or have Mr. Owens tested?

8 A. Yes, sir, we did. It was still within the
9 time frame when he was found.

10 Q. But y'all didn't send off any of those GSR
11 testing?

12 A. No, sir.

13 Q. And y'all didn't send off the GRIS test of
14 Mr. Dodd either, correct?

15 A. That's correct, we did not.

16 Q. Are you also the one that makes the ultimate
17 decision about whether or not to send off the firearm to
18 be tested to SLED in Columbia?

19 A. That's correct.

20 Q. There was also discussion this afternoon about
21 Mr. Battle when he came to the Law Enforcement Center
22 being handcuffed. Do you recall that testimony?

23 A. Yes, sir.

24 Q. Isn't it true that when individuals normally come
25 in, not just Mr. Battle but any other normal individual,

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1 isn't it true that they come in from the Detention Center
2 wearing a leather belt with a hoop in the front of it?

3 A. No, sir, when they come from the Detention Center
4 I'm normally the one who goes and gets them if I need to
5 interview them. In other words if somebody has already
6 been arrested a few days prior and I have to go get them,
7 I go get them personally out of jail. I take my leather
8 belt with me. We each have our own assigned to us and it
9 has a loop on the front of it that their handcuffs are
10 attached to so they are not able to pull their cuffs up.

11 Q. When you say everybody, are you talking about
12 Sergeant Gladson? Were you here when he testified
13 earlier?

14 A. Yes.

15 Q. Does he have his own leather belt too with a hoop
16 in the front?

17 A. No. I'm sorry. Investigators when we got to get
18 people out of jail because we need their hands in front of
19 them because they're with us longer since we're
20 interviewing them in order for them to be more comfortable
21 but for safety reasons. So they can't lift their hands up
22 and get around somebody or somebody's neck or something
23 like that they're hands are around that belt so they can't
24 lift their hands up for safety purposes.

25 Q. And the chain link between your handcuffs that

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1 you were issued is only a couple of inches, right, between
2 the two cuffs themselves?

3 A. Standard handcuffs?

4 Q. Yes.

5 A. Yes, sir.

6 Q. So we're not talking about a very long chain in
7 between the two cuffs, right.

8 A. No. But he had on cuffs, he didn't have on a
9 belt.

10 Q. So when he came to you, you had his cuffs moved
11 around the front, though, right?

12 A. That's correct.

13 Q. And I believe Sergeant Gladson testified you were
14 present for that and y'all swapped out handcuffs and he
15 started wearing your cuffs?

16 A. I know we moved them around to the front.
17 Honestly I don't recall if he had on mine or Sergeant
18 Gladson's. I don't recall.

19 Q. Now, during the demonstration that you talked
20 about and you actually stood down here and you
21 demonstrated on Mr. Steinberg the demonstration you
22 contend Mr. Battle gave, he was wearing handcuffs during
23 that, correct?

24 A. He was.

25 Q. Now, you testified that you knew that that gun

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1 was not fired that night; is that right?

2 A. Yes, sir.

3 Q. Isn't it true that that's really just an
4 assumption that you made based on the fact that the gun
5 was fully loaded?

6 A. I knew that the gun from the time I left the
7 scene and forensics had already collected it, yes, I knew
8 the gun was fully loaded. Therefore, I knew that in the
9 very slim chance that somebody could have gone and found
10 the same ammunition that was in the gun and reloading it
11 after this shooting occurred, very slim chance of that
12 happening that this gun had not been fired and it was not
13 the one used, yes.

14 Q. Well, you gave me a lot of explanation. Let's
15 break it down for the jury and myself, the only thing that
16 you're relying on to conclude that that gun was not fired
17 that night is the fact that it was fully loaded; is that
18 right?

19 A. At that time, correct.

20 Q. Now, you were present this morning when Officer
21 Ooten testified, weren't you?

22 A. Yes.

23 Q. And when you got to the scene there were already
24 law enforcement officials there; is that right?

25 A. Uniformed patrol officers were there, yes.

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1 Q. And when you arrived was that individual that was
2 depicted in one of the photographs holding an umbrella
3 holding the body, was that individual still present?

4 A. I don't know if it was the same one in the
5 picture. We were trying everything we could, holding up
6 sheets and everything, to try to keep the victim covered
7 to preserve evidence.

8 Q. Again, the weather there raining sideways, windy?

9 A. Cold, yes.

10 Q. Nasty night?

11 A. Yes.

12 Q. It's Christmas morning, right?

13 A. Yes.

14 Q. And y'all left before the sun came up, right?

15 A. When I left the scene it was before the sun came
16 up, yes, and then I went to the Law Enforcement Center
17 from there.

18 Q. You would agree with me, though, there was a gap
19 between the time that 911 was ultimately called and the
20 time that an officer actually arrived on the scene,
21 correct?

22 A. Well, certainly because there was not an officer
23 on the scene when it happened. It's document and it's
24 probably in my report but I don't know the exact time or
25 what the response time was for uniformed patrol.

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1 Q. But it sounds like you were saying that you would
2 have to necessarily conclude that there was a time between
3 911 was called or the time this incident actually occurred
4 and the time a uniformed officer arrived at the complex,
5 correct?

6 A. Yes, I just don't know what that time is, two
7 minutes or five minutes.

8 Q. You say it should be in your report?

9 A. It should be in the front. If it's not, it's in
10 the other initial report.

11 Q. Can you take a look at your initial report there
12 and tell me if you see that time?

13 A. It's in my binder over there. The call was
14 received at 00:30 hours, 12:30. It's in my binder over
15 there.

16 Q. Is it your report? I can bring it to you. What
17 is it that you need to look at to refresh your
18 recollection?

19 A. It would be in the CAD report from dispatch. It
20 may be in the initial -- I don't know if Deputy Bayne
21 wrote the initial report that was on the scene or ---

22 Q. We'll hear from Deputy Bayne after while, but you
23 weren't the first one there so you don't know, right?

24 A. Oh, no, uniformed patrol gets there and once they
25 determine there's a death, they call me.

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1 Q. Fair enough. Let me ask you a couple more
2 questions about this gun. You didn't do anything to
3 verify that that gun had not been fired on the early
4 morning hours of December 25, 2009; is that right?

5 A. That's correct.

6 Q. You didn't do anything to verify it so you would
7 agree with me then that it's just your opinion that it was
8 not fired; is that right?

9 A. I didn't have that weapon tested to see if it had
10 been physically fired other than knowing its fully loaded
11 because that weapon may have been dirtied because Rafael
12 Dodd went to the range two or three days before the
13 incident happened. The gun would have still been dirty,
14 so it would have gunshot residue and everything else.

15 Q. Would it have had fingerprints on it if it was
16 dirty?

17 A. It probably would have had fingerprints on it but
18 it was raining so hard that night, I would imagine that's
19 probably why nothing was on it.

20 Q. But isn't it true that that magazine when it was
21 found was inside the handle of that gun, the magazine to
22 the gun?

23 A. Yes, it was, but we took it out while we were on
24 the scene and it was still raining.

25 Q. Did you take it out yourself?

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1 A. No, forensics does that.

2 Q. So the people that are used to handling evidence
3 and taking care of it and preserving it, they removed the
4 magazine in the field?

5 A. Yes, they have to make it safe they can't
6 transport a live weapon.

7 Q. And I believe Officer you testified that she
8 removed the case, the bullet from the chamber, to make it
9 safe?

10 A. That's right.

11 Q. Isn't it true there's no fingerprints on the
12 magazine or any of the bullets?

13 A. That's what her test revealed, yes.

14 Q. And a decision was by you ultimately to not send
15 the gun off for additional testing, is that right?

16 A. That's correct.

17 Q. This scene, would you agree with me this parking
18 lot has a slope?

19 A. It's got a slight slope once you go down from
20 where the cars are parked, yes.

21 Q. And you were hear when Officer Ooten testified
22 and you heard her say it was sloped for drainage of water?

23 A. Yes, the drain is actually on the other side of
24 the parking lot, but, yes.

25 Q. Now, tell me about your reporting obligations.

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1 What's the time line that you have to submit your initial
2 report from the time you report to a crime scene to the
3 time you first have to submit a report?

4 A. By our policy within 10 days of me working. We
5 have to get some sort of a report turned in within 10
6 days.

7 Q. So you got 10 days?

8 A. To turn something in, yes, sir.

9 Q. When you were at the scene that night, isn't it
10 true that you talked to Ms. Wells, Ms. Shumate,
11 Mr. Stewart?

12 A. On the scene I very briefly talked to them, yes,
13 in the back of the patrol car.

14 Q. But you did talk to all three of those
15 individuals, right?

16 A. Yes, sir.

17 Q. When you turned in that first report of yours,
18 your initial report you said you had 10 days to do it,
19 right?

20 A. Yes, sir.

21 Q. Isn't it true that you turned that initial report
22 in on January 4, 2010?

23 A. If that's what it says on the report, yes, sir.

24 Q. Officer Jones, I'm now show you a three-page
25 report, your initial report, on the bottom right hand

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1 corner, does that refresh your recollection of when you
2 turned that report in?

3 A. Yes, sir, that's correct.

4 Q. I'll ask you just to review this real quickly and
5 tell me -- I'm going to ask you some questions about it is
6 you would kind of review it for just a moment. Have you
7 had a chance to look over it?

8 A. Yes.

9 Q. This three-page report you made you turned in
10 January 4, 2010, isn't it true that in this report you
11 detailed the conversations you had with Mikeya Shumate?

12 A. Yes, sir.

13 Q. At the scene in the back of the patrol car?

14 A. Yes, sir.

15 Q. And isn't it true that you also document in here
16 conversations you had with Shameka Wells on the same night
17 in the back of the patrol car?

18 A. Yes, sir.

19 Q. And isn't it true that you also detail in here a
20 conversation you had with Jamaal Stewart?

21 A. Yes, sir.

22 Q. But in this report dated January 4, 2010, you
23 didn't put anything in there? There's no summary about
24 your conversation with Mr. Owens is there?

25 A. Probably didn't get to that point because I do it

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1 by the process in which I do my investigation.

2 Q. Now, you took Mr. Owens statement on December 5,
3 2009, right?

4 A. But I do it how I do my investigation. I write
5 in the report that I responded to the scene and everything
6 I did so those first three pages are up to the point of
7 speaking with them. So I didn't get to the point where I
8 spoke with Mr. Owens. I had to just hurry up and get
9 something turned in within those 10 days so I didn't get
10 to that point.

11 Q. But you would agree with me on December 25, 2009
12 you had in your possession a typed statement that you,
13 yourself typed, from Mr. Owens, correct?

14 A. Oh, yes, I had already spoken to him by the time
15 I had written the report but I just didn't have time to
16 complete my entire report because it was several more
17 pages than that. I just didn't get to the point of typing
18 it all yet.

19 Q. Nine days later when you turned in your initial
20 report, you didn't mention any type of summary that you
21 learned from Mr. Owens; is that right?

22 A. No, sir, not on that initial report.

23 Q. And isn't it true that you also as you testified
24 interviewed Mr. Battle on December 25, 2009, right?

25 A. Yes.

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1 Q. I believe that you testified that you interviewed
2 him for roughly an hour-and-a-half then you wrote down on
3 your pad all the notes that you read into the record?

4 A. Yes, sir.

5 Q. And isn't it true this January 4, 2010 report
6 doesn't contain any summary of anything that you learned
7 from Mr. Battle on December 25, 2009?

8 A. Correct. Again, it's because of the time line
9 that I write my reports. I do it as I do the
10 investigation and in that report I wasn't to the point
11 where I interviewed them. It's very detailed so I was to
12 that point on December 25, I had done so much that day, I
13 was just to the first three pages so I hadn't even gotten
14 to the point to Mr. Owens when I stopped that report.
15 It's in the additional supplements that I wrote on the
16 next one.

17 Q. Now, did you turn in a supplemental report to
18 your supervisor?

19 A. That's considered a supplement as well, but, yes,
20 sir. To complete the report, yes.

21 Q. Where is that document?

22 A. It's in the record system. I don't know if it's
23 in my binders.

24 Q. If I show you this five-page document and ask you
25 a couple of quick questions about the supplemental and I

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1 draw your attention to the bottom end corner. Isn't it
2 true that you when you did a draft of your supplemental
3 report that that report disappeared from the system?

4 A. That's correct.

5 Q. We don't have that report, do we?

6 A. I had to rewrite it based on my notes.

7 Q. And you rewrote this report that I just showed
8 you, what day did you rewrite that report?

9 A. I rewrote it on February 2011.

10 Q. 28th, 2011?

11 A. Yes.

12 Q. And you would agree with me that February 28,
13 2011 is roughly 14 months after this incident occurred?

14 A. Yes, sir, and the reason for that is I didn't
15 know it was missing until Mr. Steinberg made me aware of
16 that. I thought it was still in the system until he was
17 preparing for trial and he couldn't find my supplement so
18 that's why it took so long for it to be rewritten.

19 Q. When you did your supplemental report in February
20 of 2011, you included some summary from your interview
21 with Mr. Battle, right?

22 A. Oh, yeah, I still had all my original notes from
23 the first day I did the investigation so I went by my
24 notes to write the supplemental.

25 Q. Now, do you have a copy of our initial

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1 supplemental, January 4, 2010 in front of you?

2 A. Yes.

3 Q. If you'll refer to that, please, ma'am. I'm
4 going to draw your attention to the first -- it's actually
5 page 2 of 3 of that January 4, 2010 report. You've
6 already testified that this report contains statements you
7 received from Ms. Wells at the scene of this incident,
8 right?

9 A. Yes, sir.

10 Q. Now, while forensics was processing these
11 photographs, that's when you spoke with Mikeya Shumate the
12 first time, is that right?

13 A. Yes, I spoke with her briefly in the car.

14 Q. And isn't it true that in your report you
15 documented that Ms. Shumate was extremely vague?

16 A. She was, initially, yes.

17 Q. And isn't it true that she referred to who you
18 now know as Mr. Owens as an individual named Beast?

19 A. She did and that's another nickname because he's
20 got it tattooed on him.

21 Q. And isn't it true that she reacted to during this
22 time that she did not know who Mr. Owens was?

23 A. She did. She was very vague because it was her
24 boyfriend at the time and she didn't want to tell on him.

25 Q. And you documented that she wasn't forthcoming

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1 with any information?

2 A. That's correct, she was not.

3 Q. Then you moved on and started talking with
4 Shameka Wells, right?

5 A. Yes, sir.

6 Q. And isn't it true when you spoke to Ms. Shameka
7 Wells that you positive that Ms. Shumate actually knew who
8 Mr. Owens was?

9 A. I'm sorry. Could you repeat that?

10 Q. That you were advised that Ms. Shumate did know
11 who Mr. Owens was?

12 A. Yes, sir, that's correct.

13 Q. And that's when you learned they were boyfriend
14 and girlfriend?

15 A. That's correct.

16 Q. And isn't it true that you also learned from
17 Ms. Wells at that time that Ms. Shumate was trying to set
18 up Mr. Battle and Ms. Wells?

19 A. That's correct.

20 Q. And what do you mean by set up in your report
21 there?

22 A. Apparently, Ms. Shumate was trying to set up
23 Mr. Battle and Ms. Wells, in other words, trying to hook
24 them up together and see if they wanted to date, see each
25 other, have a relationship.

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1 Q. So set up you mean some sort of a romantic
2 relationship?

3 A. I assume that's what she meant by that. That's
4 the way I took it, yes.

5 Q. Now, after you spoke to these individuals, isn't
6 it true that you expanded your search area of the alleged
7 crime scene?

8 A. I don't know what you mean by expanded.

9 Q. If you look at Page 3 there, I'll draw your
10 attention halfway through maybe it will refresh your
11 recollection.

12 A. Yes, sir.

13 Q. Does that refresh your recollection?

14 A. Yes, sir.

15 Q. So when you expanded your search there, what did
16 you do?

17 A. I expanded it because I documented in my report
18 the initial accounts of what happened we didn't know
19 exactly where the incident occurred. We know the shooting
20 happened right there on that concrete slab that everybody
21 is talking about but we didn't know if the argument
22 originated inside the apartment upstairs or what. We
23 hadn't really got all the details of that so we expanded
24 the search. In other words, we went on up to her
25 apartment. She signed a consent to search and let us

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1 search the apartment. Obviously we were looking for a
2 weapon or any other evidence to this crime so we went and
3 searched her apartment and expanded as well in the parking
4 lot to look for any signs of a struggle, casing,
5 projectiles or anything like that.

6 Q. And when you spoke with Mr. Battle on December
7 25, 2009, isn't it true that Mr. Battle told you that
8 Mr. Battle had a gun pointed in his face?

9 A. Mr. Battle stated that, yes.

10 Q. And you jotted that down in his notes?

11 A. That was his account of it, yes.

12 Q. And you took his full account that you read
13 already; is that right?

14 A. I wrote it down what his story was, yes.

15 Q. And he told you that the gun was in his face and
16 that it was self-defense; is that right?

17 A. That was his account of it, yes.

18 MR. ELLER: No further questions for this
19 witness.

20 THE COURT: Any redirect?

21 MR. STEINBERG: Very briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. STEINBERG:

24 Q. I want to make sure the jury understand. Were
25 your notes ever lost in this case?

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1 A. No, my handwritten notes were never lost. I
2 still got them and that's what I was reading from.

3 Q. Were the original statements taken from
4 witnesses, were they ever lost?

5 A. No, not at all.

6 Q. Was your first supplemental lost?

7 A. No, sir.

8 Q. Your second supplemental lost what happened to
9 that?

10 A. In our computer systems we switched over. The
11 type of system we use we went from, I'm not educated in
12 the computer area so I apologize but it's some sort of
13 scanning system and we turned to digital. Once they did
14 that several reports were lost. Apparently one of mine
15 was lost as well as several others from other cases.
16 During the same time I didn't know it was lost until
17 Mr. Steinberg brought it to my attention when this case
18 was coming up to trial or I would have rewritten it
19 sooner.

20 During that time I have a laptop that I use
21 for work. During that time, it got a virus or something.
22 Like I said I don't know anything about them and so I
23 received another laptop. I could not just go back to my
24 saved reports and pull it back up and reprint it. It was
25 lost. It was no where. We had IT come and try to pull it

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1 back up from the hard drives so I ended up having to
2 rewrite it. Luckily I had my handwritten notes to go on
3 since it had been a year and a half since I worked the
4 case.

5 Q. Mr. Eller asked you some questions concerning
6 Mikeya Shumate and how forthcoming she was about at that
7 time the co-defendant, Mr. Owens. Was Ms. Shumate more or
8 less forthcoming when she came back to the Law Enforcement
9 Center than she was in the parking lot where the murder
10 occurred?

11 A. She was much more cooperative at the Law
12 Enforcement Center than she was on scene with me. As you
13 saw today due to her illness she wanted her medication and
14 type of thing on the scene and she was crying
15 uncontrollably and to me they were all still in shock as
16 to what happened. They lost their cousin and ---

17 MR. ELLER: Objection as to what they might
18 have been feeling.

19 THE COURT: Go ahead.

20 THE WITNESS: It appeared to me they were in
21 shock. They were crying. She was not forthcoming. Later
22 as I found out that's her boyfriend and that's why I
23 assumed she was not forthcoming. She didn't want to tell
24 on him and get him into trouble, but she was more
25 forthcoming later on when she spoke to Investigator King,

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1 yes.

2 MR. STEINBERG: No further questions.

3 THE COURT: Step down.

4 MR. STEINBERG: Your Honor, the last witness
5 we're going to have for today will be our firearm's
6 examiner.

7 THE COURT: Take the jury out for a short
8 recess.

9 (Jury exits the courtroom.)

10 MR. ELLER: We might have one matter we need
11 to discuss before the jury gets back in here. For the
12 record, I'd like to object to the testimony of James
13 Armstrong. We've learned -- this witness did not testify
14 at the last trial in this case. The witness was placed on
15 the potential witness list. Mr. Tom Berges informed me
16 that he is the firearm expert and so I anticipate he's
17 going to provide some type of opinion, expert testimony
18 and we're not prepared. We don't know what his opinions
19 are, we don't know the information that he's going to base
20 his opinions on so we're going to object to Mr. Armstrong
21 being able to testify as an expert in this case.

22 MR. STEINBERG: Opposing counsel does know
23 Mr. Armstrong. It's in the report. His rank and roll in
24 contained in Officer Jones's report. I'm not sure how to
25 handle this to be honest with you. I never tried it.

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1 Mr. Armstrong is going to testify as a firearm's expert.

2 THE COURT: He's going to testify as he
3 normally does.

4 MR. ELLER: But does he normally supply a
5 report or prepare a report before he testifies because we
6 don't have it?

7 THE COURT: It's subject to cross-
8 examination.

9 Okay. Bring in the jury if they're ready.

10 (Jury re-enters the courtroom.)

11 Solicitor.

12 MR. STEINBERG: Thank you, Your Honor.

13 The State calls James Armstrong.

14 THE CLERK: Come forward to be sworn in,
15 please. Please place your left hand on the Bible and
16 raise your right.

17 JAMES ARMSTRONG, having been duly sworn,
18 testified as follows:

19 Thank you. You may be seated. State your
20 full name for the record, please.

21 THE WITNESS: James William Armstrong.

22 DIRECT EXAMINATION

23 BY MR. STEINBERG:

24 Q. Mr. Armstrong, what is your current title?

25 A. I'm a criminalist for the Greenville County

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1 Department of Public Safety (inaudible) Crime Division.

2 Q. What is your highest level of education?

3 A. I have a Bachelor's of Science Degree in
4 Chemistry.

5 Q. And how long have you been in your current job?

6 A. Over fifteen-and-a-half years.

7 Q. How long have you been involved in law
8 enforcement?

9 A. Almost 18 years.

10 Q. Do you have any specialized training in your
11 field?

12 A. Yes, I do. I am certified as a forensic drug
13 chemist and a firearm examiner.

14 Q. Have you taken any courses or classes in
15 ballistics and firearm?

16 A. Yes, I have.

17 Q. Approximately how many?

18 A. In my training to become a fire examiner, I
19 trained as an apprenticeship type thing for about two
20 years under the expertise of a retired firearm examiner
21 from the Philadelphia PD. I have toured 13 firearm
22 facilities where I observed the manufacturing process of
23 firearms from raw materials to finished products. I've
24 toured four ammunition manufacturing to assembly plants
25 where I watched the production of ammunition from raw

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1 material to finished product. I have attended numerous
2 other gunshot residue type courses sponsored by ATF and a
3 couple of classes down in Florida.

4 I also testified as an expert in the field of
5 firearms and tool mark examination at least 25 times in
6 Federal and State court.

7 Q. Does your training include ballistic penetration
8 or things of that nature?

9 A. That is part of the nature where we actually
10 study what we call wound ballistic workshops where they do
11 testing of projectiles into different medias.

12 Q. And approximately how many firearms have you
13 examined during this period?

14 A. Thousands.

15 MR. STEINBERG: Your Honor, I move to qualify
16 Mr. Armstrong as an expert in firearms.

17 THE COURT: Any voir dire concerning his
18 expertise in that area?

19 MR. ELLER: In the area of just a firearm's
20 expert?

21 MR. STEINBERG: Firearms and ballistics.

22 MR. ELLER: Just briefly, Your Honor.

23 VOIR DIRE

24 BY MR. ELLER:

25 Q. Mr. Armstrong, I believe you just testified

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1 you're a certified firearm examiner?

2 A. Yes.

3 Q. Who certified you to be a firearm examiner?

4 A. I am certified in Federal and State courts.

5 Q. When you say certified that just means you've
6 been allowed to testify as a firearms examiner, isn't that
7 right?

8 A. Qualified as an expert to testify.

9 Q. Qualified is different from certified, is that
10 right, Officer?

11 A. Yes.

12 Q. You don't have any type of certificate in your
13 hand or hanging up on your wall in your office that says
14 I'm a certified firearm examiner?

15 A. A piece of paper, no.

16 Q. You said that you took some wound ballistic
17 workshops?

18 A. Yes.

19 Q. What's that?

20 A. That's where you look at different various types
21 of ammunition, compare the penetration along with the
22 expansion weight retention of those projectiles into the
23 different medias such as ballistic gelatin, shooting it
24 heavy clothing, light clothing, glass, wood and retaining
25 those facts and making a report of those findings.

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1 MR. ELLER: Your Honor, at this time, I don't
2 have any additional questions for him regarding his
3 qualifications. We would object to him being qualified as
4 an expert as a field of firearm examination and
5 ballistics.

6 THE COURT: He's qualified. He can testify.

7 BY MR. STEINBERG:

8 Q. Have you discussed this case with Investigator
9 Jones?

10 A. Briefly.

11 Q. And have you and I discussed this case in the
12 past?

13 A. Yes, we have.

14 Q. Did you meet with Investigator Jones and look at
15 the firearm in this matter?

16 A. I did go down to the Property and Evidence room
17 and reviewed the firearm.

18 Q. I'm going to show you the items that have been
19 admitted into evidence already from this case. I'm going
20 to show you a firearm that's in a locked position. It's
21 not loaded. The magazine and bullets are separate. What
22 type of weapon is this?

23 A. It's the Carr CW .45 semi-automatic pistol.

24 Q. When Investigator Jones had you look at it, what
25 did you do at that time?

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1 A. At that time I identified the magazine capacity.

2 Q. And what did you determine the magazine capacity
3 was?

4 A. I would have to check it out myself.

5 Q. I would ask you to open up State's Exhibit No.
6 21. While you're doing that, please tell the jury what
7 those items are in there?

8 A. Exhibit 21 is a magazine, there's one cartridge,
9 Winchester, hollow point projectile. And inside the
10 magazine there are additional live cartridges. There is
11 six live cartridges inside the magazine all baring the
12 stamp of being marketed by Winchester, brass casings with
13 hollow point designed projectiles.

14 Q. And have you and I discussed the magazine in this
15 case already?

16 A. Yes, we have.

17 Q. How many rounds does that magazine hold?

18 A. Just a second. Six rounds is the maximum
19 capacity of the magazine.

20 Q. How many rounds can ever be held in a chamber at
21 one time?

22 A. One.

23 Q. What was the maximum capacity of this weapon?

24 A. The maximum capacity of this weapon with this
25 magazine would be seven.

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1 Q. The ammunition that you looked at, what is the
2 brand name and what is the type of ammunition?

3 A. It's marketed by Winchester which has a brass
4 case hollow point projectile.

5 Q. What is hollow point and how is it different from
6 say full metal jacket?

7 A. Full metal jacket is a projectile which has metal
8 that is covering the nose and basically the entire
9 projectile that you see. There is no, what you call,
10 hollow point cavity. Hollow point is actually what is
11 says. It has a hollow center that is actually designed to
12 eliminate over penetration. Full metal jacket projectiles
13 are mainly designed for target practicing and just general
14 (inaudible.)

15 Q. What is hollow points designed to do with the
16 human body?

17 A. Hollow points are mainly designed to eliminate
18 over penetration and it's marketed a lot for personal
19 protection.

20 Q. What is a full metal jacket designed to do on a
21 human body?

22 A. Full metal jacket is usually designed to punch
23 holes like on paper it punches a hole.

24 Q. But on the human body, what is the effect of a
25 full metal back?

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1 A. Full metal jacket does not strike bone, it just
2 punches a hole in and go out.

3 Q. Thank you. Please answer any of opposing
4 counsel's questions.

CROSS-EXAMINATION

6 BY MR. ELLER:

7 Q. Mr. Armstrong, when you went down to the Property
8 and Evidence room, isn't it true that the only thing you
9 did was test the magazine capacity?

10 A. That is correct.

11 Q. Which is essentially the same thing you just
12 performed in front of the jury?

13 A. That's correct.

14 Q. That's a real technical test, wasn't it?
15 Mr. Armstrong, you didn't do any other tests on it, right?
16 You didn't test it for fingerprints or anything like that?

17 A. No, sir, I did not.

18 Q. You didn't suggest sending it off to Columbia to
19 be tested for fingerprints or anything else like that?

20 A. That's completely out of my area.

21 Q. So the only testing you did was to determine the
22 magazine round capacity?

23 A. That's correct.

24 Q. No other tests were asked by you to perform
25 anything else, correct?

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1 A. That's correct.

2 Q. Now, we talked a little bit about full metal
3 jacket versus hollow point. I believe your testimony was
4 a full metal jacket was designed to just pop a hole in and
5 pop a hole out.

6 A. That's pretty much what it's designed for, yes?

7 Q. Isn't it true that it's also possible for a
8 hollow point bullet to go in and out as well?

9 A. Yes, it is.

10 Q. Thank you, Mr. Armstrong, no further questions.

11 REDIRECT EXAMINATION

12 BY MR. STEINBERG:

13 Q. What is a hollow point designed for?

14 A. In its main design is actually go in and stop.
15 It is to eliminate what we call over penetration or go
16 through the entire target.

17 Q. How does it do that?

18 A. With a hollow point design if you look at the
19 projectile you can actually see the little small -- the
20 jacket is actually perforated so to speak. As it hits the
21 hollow point cavity as a whole it kind of opens up as it
22 hits tissue or any other material may open that up which
23 it expands the jacket around and exposes the lead. It
24 slows the projectile down as it transfers the energy to
25 the target.

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1 Q. Question about hollow point versus full metal
2 jacket, full metal jacket ammunition typically cheaper or
3 more expensive than hollow point?

4 MR. ELLER: Objection, outside the scope of
5 cross-examination and relevancy.

6 THE COURT: Go ahead.

7 BY MR. STEINBERG:

8 Q. Is full metal jacket typically cheaper than
9 hollow point?

10 A. It's typically cheaper.

11 Q. And is it always used for targets or people use
12 it for other things.

13 A. People use it for a variety of things.

14 Q. Thank you. That's all the questions I have.

15 THE COURT: Thank you. You may step down.

16 May we excuse Mr. Armstrong?

17 MR. STEINBERG: Yes, sir.

18 THE COURT: Ladies and gentlemen, we've gone
19 today as far as we can go and we'll pick back up tomorrow
20 morning with the State's final witness. And then we'll
21 get into the defense. I anticipate that we'll have this
22 case to the jury sometime tomorrow.

23 What I'm going to do is I'm going to ask that
24 you be back 8:30, 8:30 in the morning promptly. I've made
25 arrangements for you to be expedited in through security

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1 and in to the jury room. An officer will be there to let
2 you in promptly at 8:30. Please remember when you leave,
3 do not talk about this case among yourself or anybody
4 else. If anybody contacts you and tries to talk to you
5 about this case, get their names and addresses and report
6 that to me. Please keep your badges on and have them on
7 when you report back in the morning.

8 Please be back 8:30 in the morning. Thank
9 you.

10 (Jury exits the courtroom.)

11 Alright, please back at 8:30 in the morning.

12 MR. STEINBERG: Yes, sir, Judge.

13 MR. ELLER: Yes, sir.

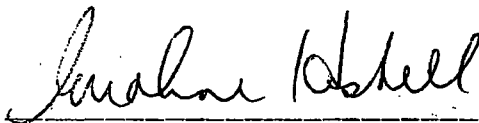
14 ---END OF DAY 2 OF TRANSCRIPT RECORD---

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State versus Julian Battle

1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal, in
7 the Court of General Sessions, South Carolina on the 18th
8 day of November, 2011.

9 I do further certify that I am neither of
10 kin, counsel, nor interest to any party hereto.

11
12 
13

14 Caroline Hiskell,
15 Thirteen Circuit Court Reporter
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State versus Julian Battle

1 STATE OF SOUTH CAROLINA) FAMILY COURT SESSION
2 COUNTY OF GREENVILLE) 2010-GS-23-4603
3)
4 State of South Carolina) TRANSCRIPT OF RECORD
5)
6 -vs-)
7 Julian Deandre Battle)

8 November 19, 2011 - Day 3
9 Greenville, South Carolina

10 B E F O R E:

11 THE HONORABLE C. VICTOR PYLE, Judge.

12 A P P E A R A N C E S

13 Howard Steinberg, Esquire
14 Attorney for the State

15 Dan Eller, Esquire
16 Attorney for the Defendant

17 CAROLINE HISKELL
18 Thirteenth Circuit Court Reporter
19
20
21
22
23
24
25

State versus Julian Battle

I N D E X

WITNESSES

DR CR RED REC

State's
Eugene Ward

326 335

Defendant's
James Bayne
Julian Battle

346 355

357 376

E X H I B I T S

State's

6-8 Photographs

332 332

9 Dr. Ward's report

332 332

P R O C E E D I N G S

THE BAILIFF: All rise, the Honorable C.

Victor Pyle presiding.

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1 THE COURT: Thank you. Be seated.

2 THE COURT: Alright, solicitor, you may proceed.

3 MR. STEINBERG: The State calls Dr. Michael Ward.

4 THE CLERK: Dr. Ward, if you would come forward
5 to be sworn in, please. Place your left hand on the Bible
6 and raise your right hand.

7 MICHAEL WARD, having been duly sworn, testified
8 as follows:

9 State your name for the record.

10 THE WITNESS: Michael Eugene Ward.

11 DIRECT EXAMINATION

12 BY MR. STEINBERG:

13 Q. Good morning, Dr. Ward. Could you tell us what
14 your title is? What do you do for a living?

15 A. I'm a forensic pathologist and I am the chief
16 medical examiner for Greenville County.

17 Q. Could you tell the jury about your medical
18 training?

19 A. I received my Bachelor's Degree in Biology from
20 the University of Alabama. I have a Master's Degree in
21 Forensic Science from the University of Alabama in
22 Birmingham. I received my medical degree from the
23 University of South Alabama which is in Mobile. I did a
24 four-year anatomic pathology residency at the Medical
25 University of South Carolina in Charleston and a one-year

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1 Fellowship in forensic pathology at the University of New
2 Mexico.

3 I am Board Certified by the American Board of
4 Pathology in both anatomic and forensic pathology.

5 Q. Please tell the jury what forensic pathology
6 means?

7 A. Well, pathology is the study of disease, disease
8 processes and how they affect man. Forensic pathology
9 takes that one step further incorporating disease,
10 injuries, trauma if you will, to determine cause and
11 manner of death and in the presentation of that
12 information in the judicial process.

13 Q. Have you been qualified as an expert witness in
14 the field of pathology?

15 A. Yes, I have.

16 Q. Approximate how many autopsies have you performed
17 in your career?

18 A. 2500 and 3000 medical and legal autopsies.

19 MR. STEINBERG: Your Honor, the State would
20 move to qualify Dr. Ward as an expert in the field of
21 pathology.

22 MR. ELLER: No voir dire, Your Honor.

23 THE COURT: He's qualified.

24 BY MR. STEINBERG:

25 Q. Did you conduct an autopsy of the victim Rafael

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1 Dodd in this case?

2 A. Yes, I did.

3 Q. Would you please tell the jury what his age and
4 approximate weight was?

5 A. Mr. Dodd weighed 225 pounds, was 67 inches in
6 length and appeared compatible with his age of 29 years.

7 Q. Did you examine the clothes in this case?

8 A. Yes, I did.

9 Q. Is that part of your normal duties?

10 A. It is.

11 Q. What were you looking for when you were looking
12 at his clothes? What type of evidence were you looking
13 for?

14 A. At the initial portion of the autopsy, we knew
15 that Mr. Dodd was a victim of a gunshot wound so I'm
16 looking at the clothing for changes that help us determine
17 range of fire or the distance from the muzzle of the gun
18 to the target, Mr. Dodd, in this case. There was a defect
19 in the region of the right upper shoulder and another
20 defect in the left upper back. Examination of these
21 portions of this garment looking for gunshot residue was
22 negative. I could not identify any gunshot residue.

23 Q. Would you find gunshot residue at close range?

24 A. You expect to. The outer garment was black and
25 gunshot residue is black so the fact that it was wet,

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1 black, and I didn't see any gunshot residue didn't really
2 disturb me that much.

3 Q. I'm going to show you a demonstration. If
4 someone was holding a firearm in this matter pointing a
5 gun back at you, would you normally find -- the person who
6 is holding it is shot holding the pistol, would you
7 normally find gunshot residue in the chest region of that
8 area?

9 A. Yes, you would.

10 Q. Could you tell the jury what a contact wound is?

11 A. A contact wound is where the muzzle of the gun is
12 placed against the skin of the victim where the weapon is
13 discharged such that all of the components of this
14 discharge go from the barrel of the gun into the victim.
15 So not only does the bullet enter the victim, there is hot
16 gas, burned gun powder and the presence of soot and then
17 unburned gun powder. So a contact gunshot wound just does
18 escape into the air or into the environment but enters
19 into the body of the victim.

20 Q. Given the clothes and the body, does this appear
21 to be a contact wound?

22 A. It did not.

23 Q. Did you examine the toxicology reports of
24 Mr. Dodd?

25 A. Yes, I did.

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1 Q. What was his blood alcohol concentration?

2 A. Mr. Dodd had a blood alcohol level of .07
3 percent.

4 Q. And what affect does that amount of alcohol have
5 on an adult male?

6 A. It's very likely that the average person looking
7 or interacting with Mr. Dodd may not even realize that he
8 had been drinking.

9 Q. Did he have any illegal drugs in his system.

10 A. He did.

11 Q. What drug and what was the amount?

12 A. There was marijuana -- the active component of
13 marijuana at .001 milligrams per liter.

14 Q. What would .001 milligrams have on a human being?

15 A. In my opinion, likely, none.

16 Q. You said you examined the corpse. Were you able
17 to look at the gunshot wounds themselves, the actual
18 injuries, the bullet holes?

19 A. Yes, I was.

20 Q. What would you determine was the location?

21 A. There was a gunshot wound of entry to the right
22 upper shoulder basically at the junction where the right
23 arm joins the right shoulder just above this V of your
24 underarm. So the entrance wound is to the right should
25 and it passed from his right to his left, through the

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1 right subclavian artery, through the esophagus which is
2 the tube that carries food from our mouths to our stomach,
3 passing to his left and backward through the muscles of
4 the left upper back to exit the left upper back roughly
5 just below the top of the shoulder.

6 During its course while it did not enter into
7 the lung cavity so it did not actually physically touch
8 the lungs, the shock wave, if you will, of the missile
9 passing close to the lungs caused hemorrhage around the
10 lungs and caused bruising of the upper portions of the
11 lungs. So there was trauma to the right subclavian artery
12 which resulted in his death. He bled out from trauma to
13 that artery.

14 You had bruising of the lobes on both of his
15 lungs, trauma to the esophagus, and an exit wound in the
16 left upper back.

17 Q. I'm going to show you some photographs. I'm
18 going to have you look at a couple of documents. I'm
19 going to have you look at State's Exhibit Nos. 8, 7, 6 and
20 then 9.

21 A. State's Exhibit No. 7 is a photograph taken at
22 the time of autopsy demonstrating the gunshot wound of
23 injury to Mr. Dodd's right upper shoulder. It has
24 incorporated in the photograph Mr. Dodd's unique autopsy
25 number.

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1 State's Exhibit No. 8 is a photograph showing
2 the gunshot wound of the exit to Mr. Dodd's left upper
3 back. Again incorporated is the unique autopsy number..
4 State's No. 6 is a photograph of chest x-rays which were
5 taken at the initial portion of the autopsy of Mr. Dodd.
6 No. 9 is an copy of my autopsy report of Rafael Dodd.

7 MR. STEINBERG: Your Honor, the State would
8 move items 6,7,8 and 9 into evidence.

9 THE COURT: Any objection?

10 MR. ELLER: If I could see them real quick.

11 BY MR. STEINBERG:

12 Q. I would ask Dr. Ward there is a hand colored
13 line, do you know what that is?

14 A. It's the lights reflecting from above.

15 Q. Okay.

16 MR. ELLER: No objection, Your Honor.

17 THE COURT: Without objection.

18 (Photographs marked State's Exhibit Nos. 6, 7
19 and 8 for identification was admitted into evidence.)

20 (Dr. Ward's report marked State's Exhibit No.
21 9 for identification was admitted into evidence.)

22 BY MR. STEINBERG:

23 Q. Can you determine the angle?

24 A. Yes, the direction through Mr. Dodd was from his
25 right to his left, from his front to his back and slightly

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1 upwards so it exits higher than it entered.

2 Q. Are you able to determine the type of caliber or
3 the range of caliber that was used in this shooting?

4 A. It was a medium caliber wound. It was not able
5 to determine the caliber.

6 Q. To the extent that you can tell, how was the
7 victim's body positioned in relation to the shooter?

8 A. Mr. Dodd, with the muzzle of the gun, is going to
9 be to Mr. Dodd's right, so the shooter would have to be to
10 Mr. Dodd's right with the bullet passing from his right to
11 his left to exit this way. So the easiest way if I'm
12 facing the shooter I have turned to my right to make
13 myself a smaller target and it enters here and exits here,
14 or if I'm not facing the shooter then he is too my right.
15 The shooter is to my right.

16 Q. You examined the body for bullet fragments?

17 A. Yes, I did.

18 Q. Were you able to locate any?

19 A. No. After examination of Mr. Dodd's chest as
20 well as autopsy examination revealed no metallic fragments
21 left along the wound track.

22 Q. Dr. Ward, is this the X-ray?

23 A. Yes, it is.

24 Q. And are there any bullet fragments in there?

25 A. There are none.

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1 Q. What is this reflected in the upper right hand
2 corner?

3 A. This is a wide area. A wide area on an x-ray is
4 something that did not allow the x-rays to penetrate to
5 the film. So basically you can see bone and the outline
6 of the ribs. At this very wide area there is a piece of
7 metal that was on Mr. Dodd's jacket. It confused us for a
8 short period of time until we looked at Mr. Dodd's jacket.
9 He had a design on his jacket very similar to what you can
10 see on the x-ray.

11 Q. I'm going to pass this along to the jury. Is it
12 unusual to not find a projectile inside of a body.

13 A. No, it's not. They frequently exit.

14 Q. A full metal jacket type round, would that
15 typically go through the body?

16 A. Full metal jacket is a round that has copper
17 sheeting if you will over the lead which is harder than
18 the lead and is designed to not fragment and so therefore
19 much more frequently exits the body than a round which is
20 designed to expand fragment and make itself larger and
21 therefore expel all of its energy within the body.

22 Q. What type of round is that called?

23 A. Generally a jacketed or a hollow point.

24 Q. Were you able to determine within the bounds of
25 reasonable medical certainty the cause of death of Rafael

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1 Dodd?

2 A. Yes, sir.

3 Q. What was that?

4 A. Mr. Dodd died as a result of a gunshot wound to
5 the chest.

6 Q. And what was his manner of death?

7 A. His manner of death was homicide.

8 Q. Thank you very much, sir.

9 CROSS-EXAMINATION

10 BY MR. ELLER:

11 Q. Good morning, Dr. Ward. Just a few things to
12 clear up. I believe and I want to make sure I understand
13 your testimony, it's your opinion that you were unable to
14 determine the caliber bullet that calls the entry wound
15 and the exit wound in Mr. Dodd?

16 A. That's correct.

17 Q. And you didn't find any bullets or bullet x-rays
18 on State's Exhibit No. 6?

19 A. That is correct.

20 Q. There was a little bit of discussion about what a
21 full metal jacket round does and what a hollow point round
22 does. Isn't it true, Dr. Ward, it's entirely possible for
23 a hollow point round to travel through the human body
24 without leaving any fragments behind?

25 A. It's certainly possible. Unusual, but certainly

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1 possible.

2 Q. And I believe your testimony also was that
3 there's a, and I want to make sure I'm right about this,
4 not a full metal jacket but a hollow point round -- what
5 was your term that you used when it enters the body?
6 What's a hollow point round, what is it designed to do
7 when it enters the body?

8 A. A hollow point round is basically what its
9 described as. It's a round that is a lead core which has
10 a hollow cut at the tip and a jacket material that comes
11 up to the side but not covering up over the top. When
12 this enters the body, liquids from the body if you will,
13 blood and other fluid as well as tissues, are designed to
14 enter inside that cup causing it to open up and the jacket
15 peels back from the front portion of the missile to
16 mushroom. So if you look at it, you have an intact base
17 with a mushroom typed front portion or a nose portion.

18 Very often these pieces of jacket that peel
19 back as well as the exposed pieces of lead will break away
20 and deposit themselves along the wound tract. It's
21 designed so that all of the energy that this bullet
22 encompasses from the floating gun powder is deposited in
23 the body so it does not exit. That's the design of the
24 hollow point.

25 Q. I understand that's the design, but I believe

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1 your testimony was that is possible for it to go through
2 without staying in the body, right?

3 A. It is possible, yes.

4 Q. Specifically at close range?

5 A. The range would have no difference.

6 Q. And you're unable to determine the range in this
7 case?

8 A. Except that it is my opinion that it was not a
9 contact gunshot wound.

10 Q. So you ruled out contact wound but you can't say
11 within a reasonable degree of medical certainty the
12 distance between the muzzle of the gun and the body; is
13 that right?

14 A. Correct.

15 Q. So anything from not being pressed flush up
16 against the skin to a 100 yards away is a possibly; is
17 that right?

18 A. I would say anything from a few inches to 100
19 yards away would be the same, yes, in this instance.

20 Q. Because there is no evidence of that contact
21 wound that you described, right?

22 A. Yes.

23 Q. Dr. Ward, you testified a little bit about
24 Mr. Dodd's blood alcohol level and I believe you said his
25 blood alcohol level was .07; is that right?

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1 A. That is correct.

2 Q. In your practice of doing autopsies, don't you
3 normally look for a specific blood alcohol level when
4 you're looking at bodies involving alcohol?

5 A. I don't understand.

6 Q. Does the number .08, does that have any legal
7 significance to you when you're examining a body from an
8 alcohol standpoint?

9 A. Not from the autopsy standpoint. It does from
10 the legal standpoint in driving.

11 Q. So in your opinion .08 that's the legal limit for
12 driving impaired in South Carolina?

13 A. That's correct.

14 Q. And he was .07?

15 A. That's correct.

16 Q. Dr. Ward, in your report, isn't it true that you
17 didn't indicate or you didn't find any bony fragments or
18 any injuries to the bone in Mr. Dodd's body?

19 A. That is correct.

20 Q. Can you conclude then within a reasonable degree
21 of medical certainty whatever this projectile was did not
22 interact with or strike Mr. Dodd's bones?

23 A. That is correct.

24 Q. Mr. Steinberg asked you some questions about
25 gunshot residue. I believe your testimony was due to the

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1 fact that his outer clothing was back and it was wet, you
2 were unable to determine whether or not there was gunshot
3 residue present?

4 A. That's correct.

5 Q. Then Mr. Steinberg showed you a demonstration, if
6 you will, where the gun was pointed towards the chest and
7 he asked you if you would expect to find gunshot residue
8 and your testimony was, yes. Would you also expect to
9 find gunshot residue if it was from the right or from the
10 back or anywhere near -- if the gun went off from anywhere
11 near Mr. Dodd's body?

12 A. I would expect gunshot residue to be present.
13 Whether we would have been able to visually see it on a
14 black jacket that had been exposed to the rain, I do not
15 know, but I would expect it to have been present.

16 Q. And so just to make sure that we're clear, the
17 actually pulling of the gun has no impact as to whether or
18 not you would expect that gunshot residue to be present;
19 is that right, the angle of the gun?

20 A. If I could rephrase, where it's pointed would
21 make not difference. The only difference is the range of
22 fire. So regardless pointed to the front the side or the
23 back, if it's within a muzzle to target distance where
24 this gunshot residue would strike the clothing, I would
25 expect it to be present. Whether we could see it on black

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1 shiny material that had been in the rain, I don't know.

2 Q. So you're not reaching any type of conclusion on
3 the angle of the gun other than the bullet traveled from
4 the right to the left?

5 A. Through Mr. Dodd, that's correct.

6 Q. So when Mr. Steinberg asked you a question about
7 the angle of the gun, you testified you had to make
8 yourself a smaller target by turning this way, that's just
9 your opinion of how that could represent itself, right?

10 A. That's one scenario.

11 Q. That's not a medical conclusion that you reached
12 in your result of this investigation in this autopsy,
13 correct?

14 A. Yes.

15 Q. And I believe you also testified that the shooter
16 could have been to the right and the bullet travelled from
17 right to left, that also is not a conclusion that you
18 reached in your report; is that right?

19 A. That's correct.

20 Q. And, in fact, you don't have any opinion
21 whatsoever about the positioning of Mr. Dodd or the
22 positioning of anyone else when this firearm went off; is
23 that correct?

24 A. I think I have some opinions as to what would not
25 be possible.

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1 Q. Surely you can rule out being shot from the back
2 since the travel was from right to left, is that what
3 you're referring to?

4 A. And he's not to Mr. Dodd's left.

5 Q. But other than that there are a couple of
6 possibilities of the positioning and you're not able to
7 actually reach a conclusion as to what those possibilities
8 really are; is that correct?

9 A. That's correct.

10 Q. Dr. Ward, I think I'm almost finished.

11 MR. ELLER: No further questions.

12 MR. STEINBERG: I would ask that Dr. Ward be
13 excused. And with that, the State rests.

14 THE COURT: Any objections?

15 MR. ELLER: No objection.

16 THE COURT: You're excused. Take the jury
17 out, please.

18 (Jury exits the courtroom.)

19 Any motions?

20 MR. ELLER: Yes, sir. First, Your Honor, we
21 would move for a directed verdict on the charge of
22 possession of a firearm or knife during the commission or
23 attempted commission of a violent crime. As you're aware,
24 Your Honor, the elements of this crime include that the
25 defendant at the time of the violent crime was in

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1 possession of a firearm or visibly displayed what appeared
2 to be a firearm or knife, knife not at issue in this case.
3 There's been absolutely no testimony from any of the
4 State's witnesses that anyone saw him visibly display a
5 gun. There's also been no evidence from any of the
6 State's witnesses that Mr. Battle was in possession of a
7 gun that night. Ms. Shumate specifically said she did not
8 see him in possession of a gun that night and all of the
9 witnesses said they did not see him with a possession of a
10 gun.

11 For that reason, we ask you to grant us a
12 directed verdict on that particular charge.

13 THE COURT: And I deny your motion.

14 MR. ELLER: We also move for directed verdict
15 on the murder charge and that the State has failed to
16 present any evidence of malice aforethought.

17 THE COURT: I deny your motion.

18 MR. ELLER: No further motions.

19 THE COURT: Now, you say you have some
20 testimony.

21 MR. ELLER: Yes.

22 THE COURT: Is your client going to testify?

23 MR. ELLER: Yes, he is, Your Honor.

24 THE COURT: Do I need to examine him before
25 he testifies?

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1 MR. ELLER: If you want to go ahead and do
2 that now just to save time.

3 THE COURT: Put him under oath.

4 THE CLERK: Would you stand and raise your
5 right hand.

6 JULIAN DEANDRE BATTLE, having been duly
7 sworn, testified as follows:

8 Thank you. You may be seated.

9 THE COURT: Mr. Battle, we're at a place in
10 your trial where you will soon make your decision whether
11 to take the stand and testify in your own defense. You
12 understand that.

13 DEFENDANT BATTLE: Yes, sir.

14 THE COURT: I tell you that you do not have
15 to take the stand to testify because that's your
16 Constitutional right. The burden is on the State in this
17 case to prove you guilty beyond a reasonable doubt. Do
18 you understand that?

19 DEFENDANT BATTLE: Yes, sir, I do.

20 THE COURT: You have the perfect right to
21 take the stand and testify and tell the jury your side of
22 the story. Do you understand that?

23 DEFENDANT BATTLE: Yes, sir.

24 THE COURT: If you take the stand, you become
25 like any other witness in the case subject to cross-

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1 examination by the State. Do you understand that?

2 DEFENDANT BATTLE: Yes, sir.

3 THE COURT: Now, I don't know whether you
4 have any prior criminal record for which you can be
5 impeached but if you do then the State can impeach you on
6 that record. Do you understand that?

7 DEFENDANT BATTLE: Yes, sir.

8 THE COURT: Have you made a decision as to
9 whether you will or will not testify?

10 DEFENDANT BATTLE: Yes, sir.

11 THE COURT: And what is that decision?

12 DEFENDANT BATTLE: I'm going to testify.

13 THE COURT: And is a decision that you,
14 yourself, have made?

15 DEFENDANT BATTLE: Yes, sir.

16 THE COURT: Mr. Eller has not put any
17 pressure on you to take the stand and testify?

18 DEFENDANT BATTLE: That's correct.

19 THE COURT: Are you under the influence of
20 any alcohol, drug or any other substance right at this
21 moment?

22 DEFENDANT BATTLE: No, sir.

23 THE COURT: You sober?

24 DEFENDANT BATTLE: Yes, sir.

25 THE COURT: You know what you're doing?

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1 DEFENDANT BATTLE: Yes, sir.

2 THE COURT: And you have freely and
3 voluntarily made the decision to testify?

4 DEFENDANT BATTLE: Yes, sir.

5 THE COURT: Alright, Mr. Eller, are you
6 ready?

7 MR. ELLER: Yes, Your Honor, we're going to
8 call Deputy Bayne to the stand.

9 THE COURT: Bring the jury.

10 MR. ELLER: Judge, I don't anticipate Deputy
11 Bayne's testimony would take long, but my client would
12 like to take a break before we begin.

13 THE COURT: Let's take a break.

14 (Whereupon, there was a brief break.)

15 Bring the jury.

16 (Jury re-enters the courtroom.)

17 MR. ELLER: The defendant would now call
18 Deputy Bayne to be sworn.

19 THE CLERK: Come around to be sworn. Place
20 your left hand on the Bible and raise your right.

21 RANDY BAYNE, having been duly sworn,
22 testified as follows:

23 Thank you. You may be seated. Please state
24 your full name for the record.

25 THE WITNESS: Randy Bayne.

State versus Julian Battle

1 DIRECT EXAMINATION

2 BY MR. ELLER:

3 Q. Good morning, Deputy Bayne, how are you?

4 A. Good.

5 Q. Could you please tell the jury what your current
6 position is.7 A. I am currently employed with the Greenville
8 County Sheriff's Office. I am currently assigned to the
9 direct patrol unit at the Sheriff's Office.10 Q. What was your position on or about December 24,
11 2009?12 A. I was assigned to the Uniformed Patrol Division
13 with the Sheriff's Office.14 Q. Did you have the opportunity to report to 357
15 Hillendale Road on the early morning hours of December 25,
16 2009?

17 A. I did.

18 Q. Tell me how did you come about going to back
19 place?20 A. It was the end of my night and I was sitting
21 doing some paperwork and I received a call from our
22 dispatch stating that there was a disturbance at that
23 location and I responded.24 Q. Do you know what time that you actually arrived
25 at the scene?

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1 A. Not off hand. I'm not sure exactly at the time
2 but it was the end of my shift somewhere between 12:00 and
3 2:00 a.m.

4 Q. And your shift ends at 2:00?

5 A. Yes.

6 Q. Deputy Bayne, I'm now going to show you a
7 document and ask you to take a peek at that and ask you to
8 identify that document.

9 A. This looks like a printout of a time line from my
10 dispatch.

11 Q. Looking at that document, are you able to
12 determine when you called in to report when you actually
13 arrived at [REDACTED] Hillendale Road, the apartment complex?
14 First I'll ask if you can determine when you were
15 dispatched and then I'll ask if you can determine when you
16 arrived?

17 A. It says I arrived at the scene at 00:37 which
18 would be 12:37 a.m., and I was in route at 12:35.

19 Q. So you go there within two minutes of leaving
20 dispatch?

21 A. Yes.

22 Q. When you arrived on the scene, were there any
23 other officers present?

24 A. No.

25 Q. So is it safe to say that you were the first

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1 officer to arrive at the scene?

2 A. I was.

3 Q. Would you please tell the jury what you did when
4 you first arrived?

5 A. When I arrived on the scene I was approached by
6 one of the witnesses who was visibly up and she was
7 crying. She stated that somebody had been shot and I then
8 went to the area where the victim was laying.

9 Q. Can you describe for the jury what the weather
10 was like when you arrived at 12:37 a.m.?

11 A. It was a cold rain that developed into a freezing
12 rain?

13 Q. Was it a heavy rain?

14 A. Not really a heavy rain. If I remember correctly
15 it was more of a heavy drizzle.

16 Q. At what point did you leave the scene? Did you
17 stay until the end of your shift?

18 A. I believe I stayed a little bit past the end of
19 my shift because of the situation.

20 Q. Once you arrived on the scene, you just testified
21 one of the witnesses approached you. Do you know who that
22 witness was?

23 A. I have in my report ---

24 Q. If it will refresh your recollection, please
25 refer to your report.

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1 A. It was Witness No. 1 which would be Shameka
2 Wells.

3 Q. So the individual that you described informed you
4 that somebody had been shot and was upset and that was
5 Ms. Wells?

6 A. Yes.

7 Q. What did you do after you spoke to Ms. Wells?

8 A. I asked her where the victim was. I asked her
9 where the suspects were. She said the suspects had left.
10 I asked her where the victim was. She pointed me to the
11 victim. I went to where the victim was he was laying
12 sideways to the apartment complex.

13 Q. What was the next action that you took?

14 A. It was a white female there that was performing
15 CPR. At that time I requested EMS to respond.

16 Q. When you say that you requested EMS, was that a
17 call that you made ---

18 A. Through dispatch.

19 Q. Who was the individual that was performing CPR?

20 A. I recognized her as an employee of the Greenville
21 County Detention Center because I had so much dealings
22 with the Detention Center. I can not remember her name
23 but I recognized her as a detention guard.

24 Q. She was an employee?

25 A. Yes, sir.

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1 Q. But she wasn't dispatched to go out to this
2 location?

3 A. No, she wasn't. She lived at the apartment
4 complex or did at the time.

5 Q. After you called EMS and had the conversation
6 about the suspects, what did you do next?

7 A. Secured the scene and tried to get all the people
8 pushed away so it doesn't complicated matters. I also
9 noticed there was a gun visibly there and I didn't want
10 anybody to get to that gun.

11 Q. Can you describe for the jury what you mean when
12 you secure the scene?

13 A. Basically at that time I tried to push people
14 back to get back away from the initial scene as far as I
15 can. At that point there was a gun there so I couldn't
16 exactly push them as far back as I wanted because I was
17 alone but I got them as far back away as possible.

18 Q. Could you describe a little more what you mean
19 because there was a gun there you couldn't push them back
20 as far as you wanted?

21 A. I can't leave that weapon unattended.

22 Q. Was it just verbal instructions that you gave?

23 A. It was.

24 Q. When you arrived, where in relationship to the
25 body to the witnesses?

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1 A. They were all around. Some of them were standing
2 right there with them. They were all visibly upset and
3 they were watching the white female perform CPR.

4 Q. Did you eventually put out some crime scene tape?

5 A. We did. Once another officer arrived that I
6 could put on the weapon, we did start to put up crime
7 scene tape and push people further back.

8 Q. Did this other officer assist you in putting out
9 the crime scene tape?

10 A. He assisted me by watching the weapon.

11 Q. Did you ever touch the weapon?

12 A. No, I did not.

13 Q. Did the other officer that was assisting you with
14 the tape, did he touch the weapon?

15 A. Not to my knowledge.

16 Q. What did you do next?

17 A. At that point we began to segregate the
18 witnesses, put them in separate cars. Because of the
19 weather, we didn't want them to stand out in the cold
20 weather so we put them into separate patrol vehicles to
21 keep them out of the rain.

22 Q. Now, at this time when you wear segregating the
23 witnesses it was you and from your report Deputy Brewer,
24 does that ring a bell?

25 A. Yes.

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1 Q. Two of you there?

2 A. Yes.

3 Q. Each have your own vehicle?

4 A. Yes.

5 Q. Now, there were three witnesses. Did somebody
6 not get in the car or two in one?

7 A. Other officers were arriving at the same time.
8 I'm not sure what cars the other two witnesses were in at
9 that time.

10 Q. Did you ultimately speak to any of these
11 witnesses in the vehicles?

12 A. I spoke to Julian Jamaal Stewart.

13 Q. What did Mr. Stewart tell you in your vehicle?

14 MR. STEINBERG: Your Honor, I'm going to
15 object unless he's going to ask Mr. Stewart these exact
16 same questions.

17 MR. ELLER: Presence sense and impression.

18 THE COURT: Go ahead.

19 BY MR. STEINBERG:

20 Q. Please tell Mr. Stewart what Mr. Stewart told you
21 in your vehicle?

22 A. From my report it states that Witness No. 2
23 stated that he and the victim were cousins and they had
24 came to the incident location to have some drinks with
25 Witness No. 1 and that Witness No. 3 had arrived at the

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1 incident location in the suspect vehicle.

2 Q. Just so everybody clear, who is Witness No. 2?

3 A. Julian Jamaal Stewart.

4 Q. That was the individual who was in your vehicle?

5 A. Yes.

6 Q. Who is No. 3?

7 A. No. 3 is Mikeya Shumate.

8 Q. Go ahead. I just want to make that clear.

9 A. Witness No. 2 stated that an argument began
10 between Witness No. 3 and suspect No. 2 outside the
11 breezeway of the apartment. Witness No. 2 stated that he
12 and the victim went outside to attempt to break up the
13 argument and that an argument then began between the
14 victim, Witness No. 2 and No. 2 suspect?

15 Q. At that time did you know who the suspects were,
16 their names?

17 A. I did not.

18 Q. Did you have descriptions?

19 A. Descriptions, yes, but no names.

20 Q. Any time you're referring to suspects, you did
21 not know who these individuals were?

22 A. I did not know who they were.

23 Q. Please carry on.

24 A. Witness No. 2 stated that suspect No. 1 jerked
25 the phone away from him and stated, who are you, the

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1 police. Witness No. 2 stated that he witnessed suspect
2 No. 1 pull a gun and fire at the victim. Witness No. 2
3 stated that he did not know he had a gun and did not know
4 who pulled their weapon first. Witness No. 2 stated that
5 after the victim fell to the ground, suspect No. 1 stated
6 he'll be alright, he ain't going to die. Witness No. 2
7 stated that the two suspects got into the suspects vehicle
8 and headed towards the main entrance to the apartment
9 complex?

10 Q. When in time did Mr. Stewart tell you that the
11 phone was taken before or after the gunshot?

12 A. It would have been before the gunshot.

13 Q. Did Mr. Stewart tell you whether or not he knew
14 the knew the victim had a gun on him?

15 A. He stated he did not know the victim had a weapon
16 on him.

17 Q. Tell me about the statement. Did you question
18 him further about the statement that he didn't know who
19 drew their weapon first?

20 A. I did not.

21 Q. That was Mr. Stewart's statement to you?

22 A. It was.

23 Q. This conversation, I know you put in your report,
24 it was also video taped?

25 A. It was. The video -- it could possibly be audio.

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1 Q. Is it standard procedure for you to follow
2 whenever you have a witness in your vehicle to question
3 them either audio or video record them in some way shape
4 or form?

5 A. It is..

6 Q. So when you say this morning that it could have
7 either been video or audio, you're not sure which one it
8 is but you know it's the standard procedure?

9 A. I know that the video was not pointed at me so he
10 would not have been on the video.

11 Q. Who wouldn't have been on the video?

12 A. It would have been pointing away from the video.

13 Q. Just one second.

14 MR. ELLER: No further questions, Your Honor.

15 MR. STEINBERG: Very briefly.

16 CROSS-EXAMINATION

17 BY MR. STEINBERG:

18 Q. Did you decide to keep this video?

19 A. I did not.

20 Q. If you decided this video had any evidentiary
21 value, would you have kept it?

22 MR. ELLER: Objection as to his opinion on
23 evidentiary value.

24 THE COURT: Overruled.

25 BY MR. STEINBERG:

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1 Q. If you had kept it, what would you have done with
2 it?

3 A. It would have been placed in property and
4 evidence.

5 Q. Who was this witness, Mr. Stewart, turned over
6 to?

7 A. I believe Investigator Jones had taken over and
8 spoken to this witness.

9 MR. STEINBERG: Thank you.

10 REDIRECT EXAMINATION

11 BY MR. ELLER:

12 Q. Mr. Steinberg asked about keeping the video but
13 you did prepare a report, right?

14 A. Yes.

15 Q. And you kept that report?

16 A. I did.

17 MR. ELLER: No further questions.

18 THE COURT: Step down. This officer is
19 excused.

20 MR. ELLER: Your Honor, at this time we would
21 call Julian Jamaal Battle to the stand.

22 THE CLERK: Come around to be sworn in.
23 Please place your left hand on the Bible and raise your
24 right.

25 JULIAN DEANDRE BATTLE, having been duly

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1 sworn, testified as follows:

2 Thank you. You may be seated. Would you
3 state your full name for the record.

4 THE WITNESS: Julian Deandre Battle.

5 THE CLERK: Thank you.

6 DIRECT EXAMINATION

7 BY MR. ELLER:

8 Q. Mr. Battle, I'm going to stand over here. Since
9 there's a little bit of distance between up you're going
10 to have to speak up so the jury can hear you.

11 A. Yes, sir.

12 Q. Please tell the jury how old are you?

13 A. I'm 28 years old.

14 Q. And where are you from?

15 A. I'm from Greenville, South Carolina.

16 Q. Before December 24, 2009, where did you stay
17 primarily?

18 A. In Spartanburg.

19 Q. And why is that?

20 A. Because I was staying with my fiance and my
21 child.

22 Q. Let me take you back in time to December 24,
23 2009, okay. What were your plans for that evening?

24 A. Just to be with my cousin and go and hang out
25 with two females. They asked me to come hang out which

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1 was Shameka Wells and Mikeya Shumate.

2 Q. And your cousin, is that Mr. Owens?

3 A. Yes.

4 Q. Tell me what happened that night. Did you
5 eventually go out with Mr. Owens?

6 A. Yes, I did.

7 Q. And what did y'all do?

8 A. Well, we went over to Shameka Wells's apartment.
9 We went over to her apartment supposedly meeting up with
10 Meka and Mikeya to hang out with them and to drink and
11 play cards, just us four.

12 Q. When you got to Ms. Wells's apartment, who all
13 was there?

14 A. Just Ms. Wells.

15 Q. Did Ms. Shumate eventually arrive?

16 A. Yes, she did.

17 Q. What did y'all do after you got there?

18 A. After she got there, she came into the apartment.
19 We sat down for awhile. We had a couple of drinks, all of
20 us, except for my cousin Dupri and once we had a couple of
21 drinks we realized there wasn't no DVDs or anything in the
22 house and they said that they wanted some marijuana.

23 Q. When you say they, who are you referring?

24 A. Shameka Wells and Mikeya Shumate.

25 Q. What did y'all do next?

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1 A. We got into the car because she said she could
2 get some from her cousin Rafael and Jamaal Stewart. She
3 said she could get some from them and we went over to her
4 mother's apartment.

5 Q. And when you're saying she said?

6 A. Mikeya.

7 Q. Ms. Shumate?

8 A. Yes.

9 Q. Did y'all eventually leave Ms. Wells's apartment
10 and go over to this other apartment?

11 A. Yes, we did.

12 Q. And how did y'all leave that apartment?

13 A. We left in my car.

14 Q. All four of y'all together?

15 A. Yes, all four of us together.

16 Q. And where did you go?

17 A. First we went to her aunt's apartment which is in
18 Terra Apartments which is also Julian Jamaal Stewart, his
19 mother, and then he and his cousin wasn't there so she
20 said that we had to wait over to her mother's house until
21 they get there.

22 Q. Is that the same apartment complex?

23 A. Yes, it is.

24 Q. And did they eventually show up?

25 A. Yes, they did.

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1 Q. Mr. Stewart and Mr. Dodd?

2 A. Yes.

3 Q. What happened next?

4 A. They got out of the car -- well, one of them
5 Jamaal did, he got out of the car. He went into the
6 apartment with Mikeya. He went to the apartment with her.
7 He came by and had spoke to me and Mr. Owens and then, I
8 guess, they gave each other the marijuana. He never
9 placed anything to my hands. I only met him one time
10 before then. I didn't really know him.

11 Q. Who was it that you only met one time?

12 A. Jamaal.

13 Q. Mr. Stewart?

14 A. Yes, Jamaal Stewart.

15 Q. Before that night, did you know Mr. Rafael Dodd?

16 A. No, I never met him.

17 Q. What happened next?

18 A. After they did that, Mikeya ended up coming out
19 and Jamaal they went and got into the car, had
20 conversations and then we went to the car waiting, me,
21 Shameka and Dupri went into the car waiting on Mikeya to
22 come to the car because she was having a conversation with
23 her cousin.

24 My cousin then got aggravated, you know,
25 waiting for her to come and asked Ms. Wells to come and

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1 get her.

2 Q. Hold on a second, let me make sure I understand.

3 Was Ms. Shumate in your car or where is Ms. Shumate?

4 A. She was in the car with Jamaal Stewart and Rafael
5 Dodd.

6 Q. Were you or Mr. Owens or Ms. Wells in that
7 vehicle?

8 A. No.

9 Q. So y'all were off on one vehicle and there's a
10 second vehicle?

11 A. We were in my vehicle and they were in Jamaal's
12 and Rafael's vehicle.

13 Q. I think you were about to tell us that Mr. Owens
14 was getting agitated. Tell me what he was getting
15 agitated about?

16 A. He got aggravated by the point that she was
17 taking too long to him to get coming from that car to our
18 car. He was ready to go.

19 Q. What happened next?

20 A. I started talking to him telling him to calm down
21 and if he was going to act like that that night, you know,
22 to take me home and he could hang out with them by his
23 self.

24 Q. After you had that conversation with Mr. Owens,
25 then what happened?

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1 A. He calmed down and Ms. Wells went and got her
2 cousin and then she came and then she got into the car and
3 he asked her what was taking her so long. They got into
4 another little conversation and I told both of them to
5 calm down. And then we turned the music back on and we
6 eventually left.

7 Q. And when you say y'all eventually left, please
8 tell the jury who that is?

9 A. Me, my cousin Dupri Owens, Shameka Wells, and
10 Mikeya Shumate.

11 Q. Anyone else in the car with y'all?

12 A. No.

13 Q. When you left where did you go?

14 A. We went by a convenience store, stopped by there
15 to get some cigars and to get some other refreshments.

16 Q. And then where did you go?

17 A. We went over to Dupri's mother's house.

18 Q. How long did you stay there?

19 A. We only stayed there approximately like a minute,
20 two minutes at the most.

21 Q. And then where did you go?

22 A. We went back over to Shameka's apartment which is
23 called the Polo Club at the time but I'm not sure what the
24 name of it is now.

25 Q. That's Shameka Wells's apartment?

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1 A. Yes, sir.

2 Q. When you arrived at Shameka Wells's apartment,
3 what happened next?

4 A. We got there and pulled up, they got out of the
5 car, Shameka Wells and Mikeya Shumate and Shameka Wells
6 went right up to her apartment and Mikeya went over to the
7 car which Jamaal and Rafael was in the car at the time and
8 she was having a conversation with them. And then they
9 eventually, the two guys, went up to the apartment to
10 Ms. Wells.

11 Q. So when you arrived, was the car with Mr. Stewart
12 and Mr. Dodd was that already present at Shameka's
13 apartment?

14 A. I didn't notice it. I know as soon as we got
15 there, the two of them got out of the car like they were
16 expecting them to be there.

17 Q. Were you expecting Mr. Stewart and Mr. Dodd to be
18 there?

19 A. I had no idea. The conversation that we had
20 before was it was going to be us four hanging there in the
21 house alone. They had asked me and my cousin earlier did
22 we want to go by a party that they were having at
23 Shameka's aunt and we told them no. I told her that I
24 didn't know her family or anything like that and I didn't
25 want to be around any of them.

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1 Q. After y'all left the Terra Apartments, did the
2 plans change?

3 A. After we left -- no, the plans hadn't changed.

4 Q. So as far as you know you weren't planning on
5 seeing these individuals again that night?

6 A. No.

7 Q. Tell me what happened after you saw them go into
8 the apartment with Ms. Wells?

9 A. Well, my cousin then he got upset because they
10 had came over there and he was wondering why they had came
11 over there, and then they got into an argument him and
12 Mikeya Shumate.

13 Q. So Mr. Owens and Ms. Shumate are arguing?

14 A. Yes.

15 Q. What are you doing during this time?

16 A. Trying to calm down my cousin. I told him if
17 they was going to start arguing and doing that that I
18 wanted to go home, I wanted to leave.

19 Q. Did you ask them to leave?

20 A. Yes.

21 Q. What happened after the two of them were arguing?
22 What happened next?

23 A. Then Jamaal came down cussing out my cousin
24 asking him what the hell and what the fuck was wrong with
25 him. They started arguing and fussing with each other.

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1 Q. Mr. Battle, let me stop you for two seconds. The
2 use of profanity were those words were actually said to
3 you by Mr. Stewart or in your presence?

4 A. Yes.

5 Q. So those aren't words you're just adding in?

6 A. No, there's no words that I'm adding in.

7 Q. Please make sure that you don't offend the jury
8 or the Court or anyone, Mr. Steinberg, and use the words
9 that you heard, okay.

10 A. Yes, that's all I'm going to do.

11 Q. So, now, Mr. Stewart has exited the apartment,
12 he's arguing with your cousin and what happened next?

13 A. It got kind of very intense to where I thought
14 they was about the fight. So I went up to go and get my
15 cousin and tell him to come on let's go, let's go, I don't
16 want to be here no more. At the time he had the keys to
17 my car and that's when Mr. Dodd came down. Mr. Dodd came
18 down straight to my face as though he thought that me and
19 my cousin was trying to jump his cousin.

20 Q. Let me ask you this, before you -- you just told
21 us that you told your cousin to leave twice, right?

22 A. Yes.

23 Q. After you told him to leave the first time, did
24 Mr. Owens do anything?

25 A. He attempted to leave.

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1 Q. When you say he attempted to leave, what did he
2 do?

3 A. He turned towards me as though he was coming.

4 Q. Did you ever ask him to go retrieve anything from
5 the apartment?

6 A. Yes, I asked him to go retrieve the alcohol.

7 Q. Did he actually go into the apartment to get some
8 alcohol?

9 A. Yes, he went up there. He went up to get the
10 alcohol actually before the conversation between him and
11 Mr. Stewart happened.

12 Q. So just in time line, you asked him to go get the
13 alcohol in the apartment, was that before or after
14 Mr. Stewart had come outside?

15 A. That was before.

16 Q. And then you've already testified about how
17 Mr. Stewart came out.

18 A. Yes.

19 Q. That all occurred after Mr. Owens left the
20 apartment with the alcohol?

21 A. Yes.

22 Q. Now, you've testified that Mr. Dodd exited the
23 building or exited the apartment.

24 A. Yeah. He came down it was no more than a couple
25 of seconds after Jamaal did. It hadn't been no more than

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1 a couple of seconds or a minutes after he did while I was
2 trying to get my cousin to come on and leave?

3 Q. When he exited the building, what did he go?

4 A. He came directly to me.

5 Q. So did you go over and argue Mr. Stewart and your
6 cousin and Ms. Shumate?

7 A. No.

8 Q. Before we go on with Mr. Dodd, can you describe
9 for the jury the tenure of the argument between
10 Mr. Stewart, Mr. Owens and Ms. Shumate. How would you
11 describe that?

12 A. Loud, very loud.

13 Q. Were there more expletives than the two that
14 you've stated in the courtroom that was stated between
15 those two individuals?

16 A. Yes, there was a lot said.

17 Q. Other than loud, were there any other descriptive
18 terms you would use?

19 A. As far as?

20 Q. As far as that argument between those three.

21 A. No. Other than loud and hostile, very hostile, I
22 thought they were actually about the fight.

23 Q. So when Mr. Dodd exited the building, you
24 testified he came straight to you and he made some
25 statements. What did he say?

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1 A. He asked me who the hell was I, you know, where
2 are we from and who are we supposed to be. He was telling
3 me he was from Tennessee and he could kill me and my
4 cousin and get away with it.

5 Q. How did you perceive Mr. Dodd when he exited the
6 building and came straight to you?

7 A. Very hostile, upset, mad.

8 Q. Now, did you perceive Mr. Dodd as a threat?

9 A. Yes, I did.

10 Q. Did you feel threatened by Mr. Dodd?

11 A. I felt very threatened by Mr. Dodd. He tell me
12 he would kill me and get away with it.

13 Q. Was there anything else about Mr. Dodd's
14 character or actions that made you feel threatened?

15 A. Yes.

16 Q. And what was that?

17 A. It was the way he was acting. He was acting very
18 boldly and there was another statement he had said to me.
19 He had said who are you supposed to be -- oh, you must be
20 the man with all the money, and that really bothered me.

21 Q. And why did that really bother you?

22 A. Because I started automatically thinking what
23 does that mean, what do you mean by that.

24 Q. Was there anything other than wondering what he
25 meant, did you perceive anything else by those statements

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1 Mr. Dodd said to you about the money?

2 A. Yes.

3 Q. And what was that?

4 A. That he had intentions on trying to rob me.

5 Q. Did you feel threatened he was going to try to
6 rob you?

7 A. Yes, I did.

8 Q. While you were feeling threatened, what happened
9 next?

10 A. While he was up in my face, you know, really he
11 was taller than I was and it was like he was talking down.
12 It was like he was talking down to me and he started
13 putting his hands on me and I told him to keep his hands
14 off of me and he started pushing me, brushing up against
15 me, and he pushed me.

16 Q. After he pushed you, what happened next?

17 A. That's when he pulled out his gun.

18 Q. When Mr. Dodd pulled out the gun, what did you
19 do?

20 A. I grabbed his right hand and I twisted his other
21 hand.

22 Q. Why did you grab his right hand?

23 A. Because that's the hand that he had his gun in.

24 Q. Why were you trying to grab the gun?

25 A. I was trying to get it away from me. I was

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1 trying to get it away from his face and it was pointed
2 towards me and my cousin.

3 Q. What happened after you tried to grab the gun?

4 A. I twisted and the gun went off.

5 Q. Did you intend to pull the trigger to that gun?

6 A. No, I did.

7 Q. Did you intend for that gun to go off?

8 A. No, I didn't.

9 Q. Did you intend to shoot Mr. Dodd?

10 A. No, I didn't.

11 Q. After the gun went off, what happened next?

12 A. I would like to go to before the gun actually
13 went off. When I twisted the gun, Mr. Dodd was pulling
14 back trying to take the gun back. He was trying to pull
15 his arm back and that's when the gun actually went off so
16 I wasn't sure if his hand or my hand or his finger or my
17 finger actually pulled the trigger. I know I did not
18 intend to do it.

19 Q. Were you' all wrestling over this gun?

20 A. Yes, we was.

21 Q. After the gun goes off, tell me what happened
22 next?

23 A. Then his body it went and it popped over the
24 rail.

25 Q. Did it hang over the rail or go over to the

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1 ground or what?

2 A. No, it didn't hang. He just went directly over
3 and fell to the ground.

4 Q. When you were struggling for the weapon with
5 Mr. Dodd, did you ever gain control of the weapon?

6 A. Never. The gun fell with him. It fell and
7 landed right beside him.

8 Q. After the gun fell and after Mr. Dodd was lying
9 on the ground, what did you do next?

10 A. Then immediately I turned around and looked at
11 Jamaal. I seen Jamaal because he was standing behind me
12 and getting closer to me. Jamaal did reach for something
13 in which I thought it was a gun and I knocked it out of
14 his hand. I never grabbed or took his phone. I knocked
15 it out of his hand because I thought he was reaching for a
16 gun.

17 Q. Let me ask you to something, this item that you
18 just described, was it, in fact, his phone?

19 A. I think it was. I'm really not quite sure.

20 Q. When did you knock something out of his hand
21 before or after the gunshot?

22 A. After.

23 Q. What else did Mr. Stewart do after the gunshot?

24 A. After the gunshot, he ran directly over towards
25 his cousin and reached for his gun to my knowledge.

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1 Q. Now, when you say to your knowledge, did you see
2 anything?

3 A. Yes.

4 Q. What did you see?

5 A. I seen Jamaal going direct towards his cousin's
6 gun.

7 Q. What did you do at that point?

8 A. I ran and left.

9 Q. What did Mr. Owens do?

10 A. He ran and left with me and got in the car and
11 drove.

12 Q. On the night of December 24, 2009, were you
13 carrying a gun?

14 A. No, I wasn't.

15 Q. Mr. Battle, where did you and Mr. Owens go after
16 you ran to the car?

17 A. After I ran to the car, we had had a flat tire in
18 my car. It was flattened while we were there at Shameka's
19 apartment. We went to Dupri's mother's house.

20 Q. What did you do when you got to Dupri's mother's
21 house?

22 A. We went in and I asked her could I get her car so
23 I could go home.

24 Q. When I say home, where are you referring to?

25 A. Spartanburg.

State versus Julian Battle

1 Q. Did you ultimately go to Spartanburg that night?

2 A. Yes, I did.

3 Q. After you were arrested, did you speak with Laura
4 Jones?

5 A. Yes, I did.

6 Q. Where did you speak to Laura Jones?

7 A. It was back in the detective's room.

8 Q. Were you handcuffed at that time?

9 A. Yes, I was.

10 Q. Did Investigator Jones read you your Miranda
11 rights?

12 A. Yes, she did, but I don't quitely remember he
13 reading them fully to me but she kind of explained it to
14 me and wanted me to sign a piece of paper.

15 Q. Mr. Battle, I'm now going to show you a document,
16 State's Exhibit No. 10, do you know what that document is?

17 A. Yes, I do now.

18 Q. Do you recognize that document?

19 A. At the time when she tried to present it to me?

20 Q. Yes.

21 A. Yes, I recognized it.

22 Q. Did she asked you to sign that document?

23 A. Yes. She wanted me to sign over my rights after
24 she and I had a conversation.

25 Q. Now, you were here present and you heard

State versus Julian Battle

1 Investigator Jones testify that she took some notes from
2 you. When in time was this presented to you? Before or
3 after the note taking conversation?

4 A. After the note taking conversation because I
5 asked for an attorney as soon as I got there. I asked her
6 to get me an attorney.

7 Q. You asked Laura Jones to get you an attorney?

8 A. Yes. I told her I didn't want to talk to her.

9 Q. Now, when you spoke to Officer Jones, did you
10 tell her the same story or essentially the same story
11 about the fact that you just told the jury?

12 A. Yes, I did. I told her the same thing. The
13 thing that she typed and wrote down herself, she got me to
14 look at it and told her to go on ahead and sign it. I
15 told her that wasn't the story that I told her that's why
16 I didn't sign this piece of paper stating what she had
17 written down. That wasn't the same story what I told her.

18 Q. Now, I'm going to take you back in time. There's
19 been some testimony about an event at DJ's Barbershop
20 September 2010, do you remember that day?

21 A. Yes, sir, I do.

22 Q. Tell me what happened on that day?

23 A. I was working that day. I was at the Donaldson
24 Center doing a job and I fix small parts for like
25 microwaves and dishwashers, small appliances, and I was

State versus Julian Battle

1 actually on a call. And my mother, Janie Battle, called
2 me and asked me could I pick up my brother Jamya Battle
3 from the barbershop on my way back and I told her that I
4 would.

5 Q. Did you go to the barbershop to pick up your
6 brother?

7 A. Yes, I did. Me and my cousin Dupri was both
8 together.

9 Q. And why was he with you?

10 A. He was assisting me at work because at the time I
11 was fixing washers and dryers and I need him to help me
12 and he told me that he needed some money so I was getting
13 him to assist me.

14 Q. Did you know before you went there whether or not
15 Mr. Stewart would be at that barbershop?

16 A. I had no idea. I only stay right up the street
17 from there in the Belmeade Community. I had no idea that
18 Mr. Stewart would be around that area.

19 Q. Was Mr. Stewart there that day?

20 A. Yes, he was.

21 Q. Did you ever threaten Mr. Stewart with physical
22 violence if he were to testify in this trial?

23 A. I never threatened Mr. Stewart. When I pulled up
24 at the barbershop, I was sitting in my car. Mr. Stewart
25 -- one thing I want to the jury to know that they're

State versus Julian Battle

1 trying to keep from y'all and I don't understand why.
2 Mr. Stewart even admitted to Laura Jones that he came and
3 approached me because I looked at him.

4 Q. Let me ask you this, did you leave that
5 barbershop after talking with Mr. Stewart?

6 A. Yes, I did.

7 Q. And what did you do when you left the barbershop?

8 A. I called the police and told them what he had
9 done which was threaten me.

10 Q. Now, just one second, Mr. Battle. Mr. Battle,
11 one brief question before I turn you over to
12 Mr. Steinberg. During this struggle that you described
13 over this weapon with Mr. Dodd that was pointed at you, do
14 you know where that gun was pointed when the gun was
15 actually fired?

16 A. No, it happened so quick. It happened so quick I
17 had no idea where the gun was pointed. I just know that I
18 was turning it away from me and my cousin because I didn't
19 want either one of us to get shot.

20 MR. ELLER: No further questions.

21 THE COURT: Solicitor.

22 MR. STEINBERG: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. STEINBERG:

25 Q. Mr. Battle, how are you today?

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1 A. I'm doing fine, sir. How are you?

2 Q. Please tell the jury the closeness of your
3 relationship with Clintonian Dupri Owens referred to as
4 Pri during this trial?

5 A. That's my first cousin.

6 Q. You also had no relationship whatsoever with the
7 victim, Rafael Dodd?

8 A. I had no relationship with none of them.

9 Q. Did you have prior hostilities with him?

10 A. No.

11 Q. So you're telling me it went to zero to a fatal
12 shooting without any prior hostilities or anything?

13 A. Yes, I never knew him.

14 Q. About Shameka Wells, were you interested in
15 Shameka Wells?

16 A. Only as a friend.

17 Q. Is that why you wanted to meet females that night
18 only as friends?

19 A. What you mean meet females. I had already knew
20 her. I wasn't going there to meet her. I was going with
21 my cousin because he asked me to go with him. He said
22 that he hadn't seen his girl in a while which was Mikeya
23 and I was going there to sit and chill with them.

24 Q. I'm going to get back to Rafael Dodd for a
25 second. You said Mr. Dodd was larger than you and that

State versus Julian Battle

1 caused you concern?

2 A. I said he was taller than me.

3 Q. You did say taller. Would you agree with me that
4 you weighed more 225 pounds on the night of this incident?

5 A. Yes.

6 Q. Were you bigger than him at least weight wise?

7 A. As far as weight, yes.

8 Q. Did you own a pistol at that time?

9 A. No, I didn't.

10 Q. Did you carry a pistol with you on your waist at
11 this time?

12 A. No, I didn't.

13 Q. When I say at this time, I don't necessarily mean
14 this night but in this general time period.

15 A. No, I didn't?

16 Q. Did you ever tell Mikeya Shumate that you carried
17 a pistol in waist because you had concerns?

18 A. I've never told Mikeya that. All of that was
19 lies.

20 Q. Let's talk about the crime scene. Do you
21 remember what you wearing?

22 A. I was wearing a black jacket, pants and a shirt.

23 Q. What kind of shirt? Were you wearing a hooded
24 shirt?

25 A. No, tee shirt. The actually jacket that I had

State versus Julian Battle

1 had a hood on it.

2 Q. This jacket have pockets in it?

3 A. Well, not really pockets but it had a sleeve more
4 or less.

5 Q. I don't understand what you mean by sleeve.

6 A. A sleeve that goes on the front of the fact that
7 have actual pockets.

8 Q. So it's like a runt hole sleeve in the front or
9 holes in the side?

10 A. It's like holes from the side like just one going
11 across it.

12 Q. Had you been drinking that night?

13 A. Yes, I did.

14 Q. Were you drinking CC?

15 A. No, I hadn't drunk that. The bottle hadn't even
16 been opened.

17 Q. How about Nuvo?

18 A. No, I hadn't drunk that. Mikeya and Shameka had
19 that.

20 Q. How about Hinessee?

21 A. Yes, I had some of that.

22 Q. Were you drunk?

23 A. No, I wasn't.

24 Q. Would you agree that your cousin Dupri had to
25 drive your car because you were not able to drive?

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1 A. It wasn't because I wasn't able to drive, I just
2 don't drink and drive. I don't care if I have a sip of
3 it, I don't drink and drive.

4 Q. Does alcohol affect your memory?

5 A. No, it doesn't.

6 Q. Is there some reason why alcohol doesn't affect
7 your memory?

8 A. What you mean it does affect.

9 Q. Well, alcohol has been known to affect people's
10 memories, why doesn't it not affect your memory?

11 A. I hadn't had a lot of alcohol that night.

12 Q. Would you agree that alcohol, if taken enough,
13 would affect your memory?

14 A. Yes.

15 Q. Does it affect your decision making?

16 A. Enough of it, yes, it would.

17 Q. Had you been smoking marijuana that night?

18 A. No, I hadn't.

19 Q. Had you purchased a small amount of marijuana
20 from Jamaal earlier that night?

21 A. I honestly didn't purchase anything from Jamaal
22 or his cousin. Mikeya and Shameka were the ones that
23 purchased the marijuana.

24 Q. Would you agree that you were a bit antisocial on
25 this night?

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1 A. No, I wasn't.

2 Q. Do you remember telling Mr. Eller during direct
3 examination that you did not want to be around people? Is
4 that a fair statement?

5 A. She asked me if I wanted to go and be around her
6 family and I told her no because that wasn't in our plan.
7 I didn't want to be around them. I hadn't planned on
8 being around anybody but them that night.

9 Q. Did that upset you?

10 A. No, it didn't. I wasn't bothered by it at all.

11 Q. You weren't bothered by the fact that Jamaal and
12 Rafael were also present?

13 A. No, I wasn't bothered at all.

14 Q. You wanted to hang out with him as well?

15 A. I wouldn't have mind. The only one that got
16 upset about the situation was my cousin and I was trying
17 to calm him down the whole time. I wasn't upset by them
18 even coming in and being a part of that.

19 Q. On the statement that you made to Investigator
20 Jones, did you tell her that you didn't want to around
21 people that night?

22 A. I was talking about around he family when she
23 asked me. Laura Jones took a lot of things that I said
24 out of context and I was talking as far as when after the
25 fact looking back on what happened when I talked to Laura

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1 Jones.

2 Q. When this incident happened, the argument between
3 Mikeya Shumate and Dupri Owens, where were you standing?

4 A. I was right there by the patio.

5 Q. You weren't in the parking lot?

6 A. No, I wasn't in the parking lot.

7 Q. Where you near your car?

8 A. No, I wasn't.

9 Q. How far back was your car parked?

10 A. My car was parked back at least three to four car
11 lengths.

12 Q. Mr. Owens ever give you a bottle of liquor to put
13 in your car?

14 A. No, he didn't.

15 Q. Did he go inside to get your liquor?

16 A. Yes, he did.

17 Q. What did he do with it?

18 A. He held it in his hand and he went to the car.

19 Q. You never put that in the car yourself?

20 A. No, I didn't. He never handed it to me.

21 Q. Did you ever hear Jamaal come downstairs and make
22 any statements about less go inside, it's Christmas or
23 words to that effect?

24 A. He never said that. I heard him mention
25 something about Christmas but the way that was after the

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1 fact of him cussing and cussing at my cousin.

2 Q. Did you ever hear Rafael Dodd, the deceased, make
3 a similar statement?

4 A. No, he never made a statement of anything like
5 that. He came down more hostile than Jamaal.

6 Q. Did Mr. Dodd make any statements when he first
7 came out?

8 A. Yes, he did.

9 Q. What did he say to you?

10 A. He asked me who was I supposed to be, who the
11 fuck was I. Excuse my language but who the fuck was I.
12 He said that them was his cousins, starting telling me
13 exactly he was from. He was from Tennessee and that's
14 when he made the statement that I could kill both of y'all
15 and get away with it.

16 Q. Are those his exact words, he said, I can kill
17 both of y'all and get away with it?

18 A. Those are his exact words.

19 Q. You're saying you stood right next to the patio
20 area?

21 A. At which point are you talking about?

22 Q. During this altercation between you and Mr. Dodd?

23 A. No, I was actually on the porch at that
24 altercation. I was off of the patio area at the time and
25 that where my cousin and Jamaal were arguing. I walked up

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1 on the patio to get my cousin to try to leave.

2 Q. I want to make sure the jury understands. I want
3 you to talk over here for just on second. I use a
4 different term than you use and I want to make sure the
5 jury understands. This area I refer to it as the patio.
6 Is that where you're talking about right here?

7 A. Yeah.

8 Q. Is that from the door up to the brick wall here?

9 A. Yes.

10 Q. And that's probably a one foot step down, if
11 that?

12 A. Yes.

13 Q. Thank you. Please have a seat. For the Court's
14 clarification I'm referring to State's Exhibit No. 3.

15 So you got up on that porch and Mr. Dodd was
16 on that porch?

17 A. I was already up on the porch when Mr. Dodd came
18 down.

19 Q. Not a very big porch. Who else was on this
20 porch?

21 A. Mikeya and Dupri and Jamaal.

22 Q. So the three of them were on this porch, you were
23 already on this porch. You did not come from the car.
24 You were already on the porch when Mr. Dodd came out?

25 A. Yes. I didn't come from the porch. I was right

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1 below it when my cousin and Jamaal was arguing. I came to
2 get my cousin when they was arguing and telling him to
3 leave and that's when Mr. Dodd came down out of the
4 apartment. Jamaal and my cousin was off to the left by
5 the rail which would be my left facing the apartment.

6 Q. Did Mr. Dodd ever leave this porch during this
7 altercation?

8 A. No, he didn't.

9 Q. So all five of you were on this porch; is that
10 correct?

11 A. Yes.

12 Q. Did he get in your face or did you get in his
13 face for lack of better words?

14 A. He got in my face. As soon as he came down he
15 walked directly to me.

16 Q. You didn't approach him in any way?

17 A. No, I didn't. Like you just said the porch area
18 is very small so as soon as he came down he was directly
19 in front of me standing over me. I had my side more or
20 less turned grabbing my cousin telling my cousin to come
21 on and let's leave. As soon as he came out of the door,
22 as soon as I turned around, he was directly into my face.

23 Q. What side are you turning to?

24 A. It would be to my right.

25 Q. Approximately how close were you to Mr. Dodd

State versus Julian Battle

1 during this altercation?

2 A. We were face to face.

3 Q. Were you belly to belly?

4 A. I wouldn't say belly to belly.

5 Q. What would you say?

6 A. He was more or less chest to chest. He was
7 directly in front of my face. Probably about this far
8 away from me.

9 Q. What was your tone of voice during this
10 altercation?

11 A. Calm.

12 Q. You've got a very calm and measured voice right
13 now, was your voice this calm and measured at 12:30 at
14 night on Christmas even during this entire altercation?

15 MR. ELLER: Objection to the time being
16 12:30.

17 THE COURT: Overruled.

18 THE WITNESS: I can't specify the time of
19 when these things actually took place. I can tell you
20 around what time but I can't specify the time. But I'm
21 not a hostile person. I don't get loud to arguments.

22 BY MR. STEINBERG:

23 Q. You don't get into hostile arguments?

24 A. I said I don't get loud into hostile arguments.

25 Q. I think we already asked this question but you

State versus Julian Battle

1 agree that Mr. Dodd never stepped off the porch area
2 during this incident?

3 A. Not until he flipped over the rail.

4 Q. Well, how did he flip over the rail?

5 A. From the gunshot.

6 Q. Did you push him over at all?

7 A. No.

8 Q. Did you ever touch him, put your body physically
9 on his body and push it over?

10 A. No.

11 Q. Did you ever touch him by the collar or by the
12 shoulder or anything?

13 A. I never grabbed his collar or anything. Those
14 are all lies.

15 Q. Is everybody lying?

16 A. It's the long lie. Look at the transcript from
17 before in the last trial.

18 Q. If we may, your attorney has done that, hasn't
19 he?

20 A. Yes, he has.

21 Q. And you spoke at a prior hearing, also, haven't
22 you?

23 A. They've told three different stories from the
24 first to the second on to now.

25 Q. Well, you're on the stand now. We're going to

State versus Julian Battle

1 ask you some questions about that as well.

2 A. Why would y'all keep that from the jury?

3 Q. If I've kept something from the jury, the Judge
4 will decide that, how about that.

5 Mr. Dodd, how loud was he?

6 A. He was very loud.

7 Q. He was the loudest one there?

8 A. Yes, he was. He was louder than his cousin
9 Jamaal.

10 Q. So you're saying somebody at that patio would
11 have no problem hearing the words, "I could kill you and
12 get away with it."

13 A. Jamaal and my cousin and Shameka were all yelling
14 at the same time. They were arguing while Mr. Dodd had
15 came down?

16 Q. You're denying that Mr. Dodd came downstairs and
17 said Mikeya, let's go upstairs, you have Lupus or
18 something along those lines?

19 A. He never said that.

20 Q. You agree Ms. Shumate does have a medical
21 condition affected by the rain?

22 A. Yes.

23 Q. You deny pulling out a firearm?

24 A. Yes, I do.

25 Q. You deny firing it into Mr. Dodd's body?

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1 A. Yes, I do.

2 Q. You said the bullet went into the chest.

3 A. I never said that.

4 Q. Did you demonstrate that for Investigator Jones?

5 A. No, I didn't.

6 Q. Did you ever hold that pistol in your hands?

7 A. No, I didn't.

8 Q. Did you mishandle that weapon in any way?

9 A. What do you mean mishandle it? I never actually
10 grabbed the gun. I grabbed his hand and twisted it
11 towards him. It had been very quick. That was the same
12 thing I told Laura Jones?

13 Q. We're going to talk about Laura Jones. You deny
14 your hands were actually on his gun and you were simply
15 turning his body down or parts of his body around?

16 A. I grabbed his hand and his arm and I twisted it
17 and the gun turned towards him. I'm not saying that my
18 fingers or anything never touched it. I felt as though it
19 may have. That's why I told Laura Jones to check the guns
20 for both of our fingerprints.

21 Q. Did you ever touch the trigger?

22 A. I can't say that I did and I can't say that I
23 didn't because at the time I honestly didn't know my
24 finger was the one that pulled the trigger.

25 Q. Isn't it true that you did not see Mr. Dodd with

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1 a gun until after he he had been shot?

2 A. What you mean?

3 MR. ELLER: Objection, Your Honor. He is
4 mischaracterizing his testimony.

5 THE COURT: He's on cross-examination. Go
6 ahead.

7 THE WITNESS: Explain to me what you mean.

8 BY MR. STEINBERG:

9 Q. Yes, sir, Mr. Battle. Isn't it true that you did
10 not see that Mr. Dodd had a gun until after you had
11 already shot him with your pistol?

12 A. No, that's not true.

13 Q. You said today that you saw that Jamaal Stewart
14 who is present in the courtroom and you thought it was a
15 present.

16 A. Yes.

17 Q. Was it a pistol?

18 A. No, it was his phone.

19 Q. In the last hearing two months ago did you
20 mention anything about hitting anything out of his hand or
21 messing with anything he had in his hand?

22 A. He never asked me. You asked me did I take his
23 phone and I told you know and you left it at that.

24 Q. Don't you think that would have been good time
25 for you say this?

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1 MR. ELLER: Objection as to what he thinks
2 would be a good time to say anything.

3 THE COURT: Overruled.

4 BY MR. STEINBERG:

5 Q. You were asked a lot of questions, is that
6 correct?

7 A. I was answering the questions that you asked me.

8 Q. And during all the conversations that we had
9 about the phone and about you leaving, you never once
10 mentioned about taking something from his hand?

11 A. I told Laura Jones that.

12 Q. You told Laura Jones that?

13 A. At the time you asked me the questions and I
14 answered your questions. At the time when I explained all
15 of these things when she was supposed to be taking her
16 notes, I told her that.

17 Q. So you deny taking Mr. Stewart's phone, correct?

18 A. I never took his phone.

19 Q. You're saying you just knocked it and it went on
20 the ground someplace?

21 A. Yes.

22 Q. Do you remember telling him or warning him he was
23 not the police.

24 A. I never said anything to him about anything like
25 that.

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1 Q. Did you want him to call the police?

2 A. I didn't tell him not to and I didn't tell him to
3 call the police.

4 Q. Did you want him to call the police?

5 A. Yes, I wanted him to call the police.

6 Q. You wanted Mr. Stewart to call the police?

7 A. I wanted anybody at that time to call the police.
8 I was scared. I was scared for my life at that time.

9 Q. Mr. Battle, if you wanted somebody to call the
10 police, why didn't you call the police?

11 A. Call the police from where, I didn't have a
12 phone.

13 Q. You saw a phone on the ground?

14 A. I didn't go for it. I ran -- I seen Mr. Stewart
15 going towards his cousin after the gun.

16 Q. In the first hearing just two months ago, did you
17 say anything about that? Would that be ---

18 MR. ELLER: Objection, Your Honor. May we
19 approach.

20 THE COURT: Sure.

21 (Whereupon, there was a bench conference.)

22 BY MR. STEINBERG:

23 Q. Just to be fair, have you had an opportunity to
24 read the transcripts of your testimony?

25 A. No, I haven't.

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1 Q. Do you know if the State has provided your
2 attorney with the transcripts?

3 A. I know that they have them but I haven't read
4 them.

5 Q. I haven't hidden those from you, have I?

6 A. No.

7 Q. You deny tossing Jamaal Stewart's phone someplace
8 between Park West Apartments and Glass Street?

9 A. Yes, I do.

10 Q. You deny tossing it somewhere between Glass
11 Street and Spartanburg?

12 A. Yes, I do.

13 Q. I'm going to language in a second and I want to
14 make sure that it's accurate. Did you say as you left
15 about Mr. Dodd that he would be alright and it was only a
16 grazing wound or words to that affect?

17 A. I ain't never said that.

18 Q. You denied standing over or next to Rafael Dodd's
19 body and saying, and I apologize for the language, Niggas
20 got to be hard nowadays or words to that affect?

21 A. I never said. I don't use the work nigger.

22 Q. Are you saying you don't use that word, sir?

23 A. Yes, I am.

24 Q. Have you used the word in the last year?

25 A. What? Nigger?

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1 Q. Yes.

2 A. I don't never say the word nigger.

3 MR. STEINBERG: Your Honor, may I approach
4 with Mr. Eller. I apologize.

5 THE COURT: Take the jury out.

6 (Jury exits the courtroom.)

7 MR. STEINBERG: Your Honor, I am certainly
8 not one to delay this case at all but I have 100 maybe 200
9 examples of Mr. Battle using that language in jailhouse
10 phone calls and now he is saying he doesn't use it.

11 THE WITNESS: I don't use the word nigger.

12 MR. STEINBERG: What word do you use?

13 THE WITNESS: Nigga. N-I-G-G-A.

14 MR. STEINBERG: Your Honor, if that's the
15 case I won't use the jailhouse phone calls if that's the
16 issue.

17 THE WITNESS: But I didn't say that ---

18 THE COURT: Mr. Battle ---

19 MR. STEINBERG: If that is a mistake by
20 myself, Your Honor, then I will resolve this.

21 THE COURT: Alright, we'll take a brief
22 recess.

23 Don't speak to anybody about your testimony
24 including your lawyer.

25 (Whereupon, there was a brief recess.)

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1 BY MR. STEINBERG:

2 Q. In case there is any dispute, you said you do not
3 use the word and again it's an ugly word, nigger. You
4 don't use that word?

5 A. No, I don't.

6 Q. What word do you use?

7 A. I use the word nigga and it's a difference
8 between the two.

9 Q. Could you please explain the difference?

10 A. Nigger is derogatory to me and I've used to the
11 word nigga before referring to a friend or another black
12 person but not the word nigger. There's a difference.

13 Q. Did you use either of those two words to describe
14 or directed towards Rafael Dodd?

15 A. No, I did, and I never said that to Mikeya.

16 Q. You have to answer my questions right now.
17 You're lawyer will have an opportunity ask you additional
18 questions.

19 As you left the scene, did you walk or did
20 you run?

21 A. I ran.

22 Q. Were you at a full sprint or at a slower speed?

23 A. What you mean?

24 Q. Were you running as fast as you could or were you
25 taking it more casually?

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1 A. I was running as fast as I could. I was running
2 for my life.

3 Q. From who?

4 A. Rafael and Jamaal.

5 Q. But you agree you didn't say anything about
6 Jamaal reaching for a firearm at the prior hearing, did
7 you?

8 A. No. I answered the questions that you asked me.

9 Q. Did you answer the questions that your attorney
10 asked?

11 A. I answered the questions that you asked.

12 Q. When the State asked you did you take the phone,
13 how did you answer?

14 A. I told them no and I didn't take the phone.

15 Q. Did you at that time maybe venture to off that
16 maybe you saw an item and knocked it out of the hand or
17 you decided not to answer that?

18 MR. ELLER: Objection.

19 THE WITNESS: Like I say, I only answered the
20 questions that you asked me.

21 BY MR. STEINBERG:

22 Q. Isn't it true that you fled the crime scene?

23 A. Yes, I ran because I was scared.

24 Q. You were scared because you didn't want to be
25 searched by the police?

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1 A. No, it wasn't because I was worried I'd be
2 searched by the police. I ran because they just tried to
3 kill me and I felt Jamaal was going to grab that gun and
4 shot me.

5 Q. Isn't it true that you did not want to get
6 searched because you had a gun on your person?

7 A. No, that's not true.

8 Q. Was it a revolver?

9 A. I didn't have a gun.

10 Q. Did you have any full metal jacket rounds on you?

11 A. I didn't have a gun or any rounds.

12 Q. Who drove away from Park West Apartments?

13 A. My cousin, Dupri Owens.

14 Q. While in the car, did you tell your cousin two
15 times I fucked up?

16 A. I never said I fucked up. I said in the car to
17 my cousin that that was fucked up what they tried to do.
18 I never said the words I fucked up.

19 Q. You said all of that, they fucked up what they
20 tried to do?

21 A. I said they fucked up what they tried to do. I
22 said that to my cousin. I was speaking on what they tried
23 to do. I said to my cousin that that was fucked up.

24 Q. Did you want law enforcement to be called in this
25 incident?

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1 A. I was scared. I wasn't thinking about law
2 enforcement at the time.

3 Q. Did you say in the last hearing you wanted law
4 enforcement to be called?

5 A. Yes, I did.

6 Q. Did you do anything to call law enforcement?

7 A. No, I was scared.

8 Q. Did you go to any gas stations to call law
9 enforcement?

10 A. No, I did.

11 Q. Isn't there a gas station maybe one minute from
12 ere on 276

13 A. Yes, it is.

14 Q. Between 276 and the gas station where your aunt
15 lives, were there any gas stations you passed between
16 those two locations?

17 A. Yes, it was.

18 Q. About between Glass Street and Spartanburg?

19 A. Yes, it was.

20 Q. Why did you leave Mr. Owens's mother's house on
21 Glass Street?

22 A. I wanted to go home to my family.

23 Q. Do you know if she had a phone at her location
24 where she could have dialed 911?

25 A. I'm pretty sure that she did. I didn't ask her.

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1 Like I said I was scared.

2 Q. Did you speak to then Sergeant now Lieutenant
3 Chris Taylor on the phone?

4 A. Yes, I did.

5 Q. And did you tell him you would turn yourself in?

6 A. Yes, I did.

7 Q. And did you turn yourself in?

8 A. No, I didn't. I was on my way to turn myself in.

9 Q. How long had passed between the time you had
10 spoken to Sergeant Taylor the first time and the time you
11 were actually apprehended by law enforcement?

12 A. I'm not quite sure.

13 Q. Where did you go in Spartanburg?

14 A. I went to my fiance's house.

15 Q. You said lived near Belmeade area?

16 A. My father stays in Belmeade.

17 Q. Your testimony was you stay in Belmeade?

18 A. I stayed in Belmeade before with my father.

19 Q. Okay. How long did you stay at your finance's
20 house in Spartanburg?

21 A. I had got a call from my father and my father
22 told me they had came looking for me with a warrant for
23 murder.

24 Q. Where did you go after that?

25 A. I walked because the car that I had was my aunt's

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1 and my cousins and they came and got it.

2 Q. Who came and got this car?

3 A. My cousin and his mother.

4 Q. Before you were arrested?

5 A. Yes. This was in the wee hours in the morning
6 when I was asleep.

7 Q. I don't understand. You drove a different car.
8 Not the same car you drove from Park West to Glass Street
9 but a different car.

10 A. Mine had a flat tire and it was not drivable?

11 Q. And you drove a different car from Glass Street
12 to Spartanburg. Whose car was that?

13 A. That was my aunt's.

14 Q. Who came and physically picked it up from
15 Spartanburg?

16 A. My aunt and my cousin came and got it.

17 Q. Well, if you had access to that car, why didn't
18 you just go with him and turn yourself in to the
19 Spartanburg or Greenville?

20 A. Like I said they came while I was sleep and
21 retrieved the car.

22 Q. You had an arrest warrant for murder on the very
23 same day you said you were sleeping?

24 A. What you mean?

25 Q. Well, you said you were asleep.

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1 A. I went to sleep when I got to the house. I left
2 from Greenville and went to Spartanburg, I went inside of
3 the house and went to sleep.

4 Q. After you left your girlfriend's house, whose
5 house did you go to?

6 A. I went to (inaudible) Roger's house in order to
7 get a ride and turn myself in because I had talked to my
8 mother.

9 Q. You went from one house to another house and just
10 stayed there if you wanted to turn yourself in?

11 A. Yeah, I walked.

12 Q. What did you do to try to get you turned in? How
13 did you try to avail yourself to law enforcement?

14 A. I was going to get him to get me a ride and turn
15 myself him like I told Officer Taylor that I would.

16 Q. How many people were in Mr. Roger's house?

17 A. Approximately four.

18 Q. Any of them had a cell phone?

19 A. Yes.

20 Q. Why didn't you use their cell phone to dial 911
21 and say, hey, I want to turn myself in?

22 A. I had talked to Officer Taylor and told Officer
23 Taylor that I was coming to turn myself in.

24 Q. But you didn't do that, did you? You went to a
25 different person's house and you went to sleep, isn't that

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1 true?

2 A. Yes.

3 Q. What cause you to actually come into contact?

4 What made you realize the police were there?

5 A. What you mean? They had surrounded the house. I
6 wasn't trying to hide. I wanted out and turned myself in
7 to them.

8 Q. Isn't it true that you walked out and turned
9 yourself in because they surrounded the house?

10 A. Yes. I had planned on turning myself in to the
11 police anyhow.

12 Q. Lieutenant McDonald advised you of your rights?

13 A. Yes, she did.

14 Q. And later on you were interviewed by Laura Jones
15 in her office; is that correct?

16 A. Yes.

17 Q. This document listed as State's Exhibit No. 10,
18 Waiver of Rights form, had you seen this form?

19 A. Yes, I seen this form after the fact when she
20 questioned me.

21 Q. In the last hearing, did you say that you did not
22 see this form?

23 A. I said that I seen it after the fact. I denied
24 seen it before she had me the questions.

25 Q. Isn't it true that you said I don't remember

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1 seeing that?

2 A. I don't remember her showing it to me before she
3 asked me any questions. She showed it to me after.

4 Q. Are you adding the after part for this hearing?

5 A. Am I what?

6 Q. Adding this that she didn't show it to you until
7 after, you didn't say that at the first hearing, did you?

8 A. About her showing me after?

9 Q. Yes.

10 A. I answered the questions that you asked me. You
11 didn't ask me did she show me the paper after. You asked
12 me did she show me the paperwork before and I told you no.

13 Q. Did I say the word before?

14 A. You said did she show me the paperwork before she
15 asked me the question.

16 Q. I'll move on. Did you speak with Laura Jones at
17 her office.

18 A. I'm not sure if that was her office. It was her
19 area that was over by the Detention Center.

20 Q. You agree you were aware of your rights by this
21 time?

22 A. Yes, I was. That's why I asked her for an
23 attorney.

24 Q. Isn't it true that you told her that you wanted
25 to tell you side of the story?

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1 A. I told her I wanted to explain to her that it was
2 self-defense.

3 Q. You're convinced it was self-defense?

4 A. I know it was self-defense.

5 Q. It's not some kind of an accident or something?
6 You had to defend yourself?

7 MR. ELLER: Objection, Your Honor, it's
8 calling for a legal conclusion.

9 THE COURT: Overruled.

10 BY MR. STEINBERG:

11 Q. Is it your contention that the if you hadn't shot
12 Mr. Dodd that he would have killed you or your cousin?

13 A. I'm not saying that I actually shot Mr. Dodd
14 because I never took hold of that gun. I know he would
15 have killed me and probably my cousin too if I hadn't did
16 what I done.

17 Q. Now you said that you told Investigator Jones
18 that you wanted to have an attorney; is that correct?

19 A. Yes.

20 Q. But you still told Investigator Jones your side
21 of the story, isn't that true?

22 A. Because she continued to question me.

23 Q. Were you willing to write anything down?

24 A. I couldn't write anything down, she never offered
25 me a pen or a piece of paper or anything.

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1 Q. Did you ask for a pen and piece of paper?

2 A. No, I didn't.

3 Q. You agree she took notes?

4 A. Yeah, she took notes.

5 Q. And you agree she was interviewing you for
6 possibly an hour or so?

7 A. Yes, I guess.

8 Q. And you agree she did not tell you anything about
9 the firearm, the ammunition or the location of the
10 injuries?

11 A. She told me that there was a gun found at the
12 scene. She did tell me that. She told me a lot of other
13 things and asked me a lot of questions about a lot of
14 other things.

15 Q. Did she tell you the number of rounds in the
16 weapon?

17 A. She didn't.

18 Q. Did she tell you what Mr. Dodd did for a living
19 or anything about him?

20 A. No, she didn't.

21 Q. Let's get back to the shooting itself. Did you
22 tell Investigator Jones that Rafael Dodd was staring at
23 you over jewelry?

24 A. No, I told Investigator Jones my thought of what
25 possibly he could have been trying to do after the fact.

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1 I never told her that he came and tried to rob me.

2 Q. But is that your belief?

3 A. I feel like, yeah, he was after the fact. Those
4 are the comments that was made.

5 Q. The mention of the jewelry, did you make any
6 comments to Laura Jones about jewelry?

7 A. Did I make comments to her about ---

8 Q. Yes.

9 A. Yes, I was explaining to her because she asked me
10 what I had on and I told her exactly what I had on. I
11 told her the jewelry I had on. I told her the clothes I
12 had on and she was asking me what he could have been
13 possibly trying to rob me for and I told her.

14 Q. And did you tell Laura Jones that he was staring
15 at you and he said this thing about the money man and all
16 that?

17 A. Yes, I told her that.

18 Q. After the shooting occurred, did you go to your
19 father's house?

20 A. No, I didn't.

21 Q. Did you go to your mother's house?

22 A. No, I didn't.

23 Q. Did you go to the Waffle House with Pri?

24 A. No, I didn't.

25 Q. Did you tell Laura Jones that?

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1 A. No, I didn't.

2 Q. Did you demonstrate for her how this occurred?

3 A. I didn't demonstrate anything. I only explained
4 to her what I had done.

5 Q. Do you remember asking Investigator Jones can I
6 touch your hand and show you what happened?

7 A. I never did that. I had on a belt that had the
8 cuffs on it to my hands. After the officer, what's his
9 name, Gladson released me to her they put me in a belt
10 shackle with the cuffs that was from my waist. There was
11 no way possible for me to even lift up my hands.

12 Q. You didn't have regular handcuffs moved to your
13 front?

14 A. Yes.

15 Q. Did you tell her that he had put a gun in your
16 face?

17 A. Yes. I told he when he had pulled out the gun
18 that it was pointed towards my face and pointed towards my
19 cousin.

20 Q. Your face or your cousin's face?

21 A. My cousin was to the direct left behind me. It
22 was pointed towards both of us. I know if the gun would
23 have went off it would have possibly hit me or my cousin.

24 Q. Did you tell her that you shot him in the chest?

25 A. No, I didn't.

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1 Q. Did she ever ask you like this pointed towards
2 the chest?

3 A. No, she didn't.

4 Q. Did you have an opportunity to leave prior to
5 that shooting?

6 A. What you mean did I have an opportunity to leave?

7 Q. Exactly that. Did you have an opportunity to
8 depart that location?

9 A. At the time, no. I was trying to get my cousin
10 to come. He had my keys. If I would have had the keys
11 myself I would have got inside the car and told him just
12 to come on.

13 Q. And did you tell Investigator Jones that you
14 asked your cousin Pri to call the police, do you remember
15 saying that?

16 A. I never told her that.

17 Q. Do you remember telling her you couldn't call the
18 police because Pri had a touch screen and you couldn't use
19 that?

20 A. I never told her that. My cousin didn't have a
21 phone.

22 Q. Six months after this incident, were you at your
23 father's house and performed a demonstration of this same
24 shooting to your cousin, Dupri Owens?

25 A. I told me cousin what happened.

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1 Q. Did you do a demonstration?

2 A. Yes, I showed him.

3 Q. And you showed him about the hand being pointed
4 right back?

5 A. No, I showed him a quick demonstration of how I
6 twisted that man's wrist and how I grabbed his arm. I
7 never did anything pointing to the chest or where anything
8 hit because I had no idea.

9 Q. And you told your cousin Mr. Owens that Rafael
10 Dodd pulled a gun out on you?

11 A. Yes.

12 Q. And you also told Mr. Owens that Rafael Dodd was
13 shot with his own gun?

14 A. Yes. He knew he was shot with his own gun
15 because he knew I didn't have one.

16 Q. He knew you didn't have one because you told him
17 you didn't have one?

18 A. No, he knew that I didn't have one for the simple
19 fact that we was at the house together before we left. We
20 was at my father's house together before we left to go
21 over to see Shameka and Mikeya.

22 Q. You say Mikeya never sees you with a weapon?

23 A. She's never seen me with a gun or a weapon.

24 Q. During this conversation with your cousin, Pri
25 Owens, at that time did you tell him about this robbery or

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1 the jewelry or anything of this nature?

2 A. I told him how I felt like they were trying to
3 rob us.

4 Q. You say you told him that?

5 A. Yes.

6 Q. Did you tell him that you heard Rafael Dodd say i
7 could kill you and get away with it?

8 A. Yes.

9 Q. On September 10, 2010, did you call Jamaal
10 Stewart a snitch?

11 A. No, I didn't call him a snitch.

12 Q. What did you call him?

13 A. I called him a bitch. I did.

14 Q. Why did you get out of the car at DJ's
15 Barbershop?

16 A. Because I was trying to go into the barbershop to
17 get my brother because he was taking too long and I was
18 ready to leave because of what Mr. Stewart had did.

19 Q. What had Mr. Stewart done?

20 A. He approached me and threatened me. He told me
21 it wasn't over yet. Mr. Stewart went inside.

22 Q. Why did you get out of your car?

23 A. Because I just told you I was getting out of my
24 car to go and get my brother and my cousin regardless of
25 whether my brother was done at the barbershop or not I was

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1 just ready to go.

2 Q. You see Mr. Stewart who you said made some
3 allegations against you, how far away from your car was
4 he?

5 A. He was right in front of my car.

6 Q. Why did you get out of your car then, if this is
7 the case?

8 A. I got out of the car like I just told you to go
9 inside of the barbershop to get my brother and my cousin.

10 Q. Did you consider maybe honking the horn?

11 A. No, I didn't.

12 Q. Did you tell him or ask him why he wrote a
13 statement on you?

14 A. I asked him why he was lying on me.

15 Q. Would you agree that your bond said that you
16 could have no contact, zero contact, with the victim's
17 family?

18 A. I only said that after he had said the things
19 that he had said to me.

20 Q. Would you agree that on the night of December 24
21 onto December 25th you did not have a concealed weapon's
22 permit?

23 A. No, I did not have a concealed weapon's permit.

24 MR. STEINBERG: Your Honor, that's all the
25 questions I have.

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1 THE COURT: Any redirect?

2 MR. ELLER: Yes, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. ELLER:

5 Q. Mr. Battle, Mr. Steinberg asked you a lot of
6 questions about alcohol on that night and being alcohol
7 impaired and your memory and impairing your ability to
8 act. Let me clear that up. Please tell the jury what
9 your testimony is about the amount of alcohol you consumed
10 and whether or not it impaired you on the night of
11 December 24, 2009 early morning hours December 25, 2009?

12 A. I only had one cup of alcohol and I think that
13 was a cup inside the apartment with Shameka and them.

14 Q. Did it in any way affect your memory?

15 A. No.

16 Q. Affect your ability to testify today?

17 A. No.

18 Q. Did it affect your decision making on that night?

19 A. No, I didn't.

20 Q. Mr. Steinberg also asked you if the first time
21 you saw the gun was after the gunshot went off. Can you
22 please clarify to the ladies and gentlemen of the jury
23 when the first time you saw that gun?

24 A. Was that when he pulled it out on me.

25 Q. Was that before or after the gunshot?

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1 A. That was before the gunshot.

2 Q. Did you draw a gun that night?

3 A. No, I didn't have a gun. I was going to chill
4 with two females, I had no reason to have a gun on me.

5 THE COURT: Please just answer his questions.

6 THE WITNESS: Yes, sir.

7 BY MR. ELLER:

8 Q. Now, there was also some discussion about how the
9 gun went off. Do you remember Mr. Steinberg asking you if
10 it was an accident?

11 A. Yes.

12 Q. Let me ask you about that. How quickly did this
13 struggle -- how much time passed during this struggle?

14 A. During the time that it happened?

15 Q. Yes.

16 A. It was very quick, a matter of seconds, very
17 quick.

18 Q. Did you intend to pull the trigger?

19 A. No, I didn't.

20 Q. Do you know one way or the other whether you
21 actually in fact pull the trigger.

22 A. No, I don't.

23 Q. Did you intend to shoot Mr. Dodd?

24 A. No, that was never my intention.

25 Q. Did you ever intend for that gun to discharge?

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1 A. No.

2 Q. Was it an accidental discharge?

3 A. Yes, if it was done on my end. I was never
4 trying to actually pull the trigger and shoot anybody. I
5 was only trying to defend myself.

6 MR. ELLER: No further questions.

7 THE COURT: Thank you. You can step down.

8 MR. ELLER: At this time, the defense rests.

9 THE COURT: Anything in reply?

10 MR. STEINBERG: No, sir, Your Honor.

11 THE COURT: Take the jury out, please.

12 (Jury exits the courtroom.)

13 Any motions?

14 MR. ELLER: Yes, Your Honor, we would agree
15 renew our motions for directed verdict which we previously
16 made, motions for directed verdict on the charge of
17 possession of a firearm during the commission of a violent
18 crime and then also renew our motion to dismiss the murder
19 charge for no evidence of malice aforethought.

20 THE COURT: I'll have to deny the motion.

21 The request for charge, gentlemen.

22 MR. ELLER: Your Honor, I know the last time
23 we submitted them, I've got another copy here, we're going
24 to submit the same ones.

25 THE COURT: I don't have them.

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1 MR. ELLER: I'll bring them up.

2 THE COURT: What did I charge the last time?

3 MR. ELLER: Last time it was murder,
4 voluntary manslaughter. We did request an involuntary
5 manslaughter charge. We got some more argument on that.
6 You also charged self-defense, accident and you did give a
7 description of reasonable doubt.

8 MR. STEINBERG: Your Honor, I have a charge
9 for involuntary manslaughter. I don't think you should
10 charge and we can talk about that but I'll hand it up to
11 Your Honor if necessary.

12 THE COURT: Alright, what's your argument
13 with respect to involuntary?

14 MR. ELLER: Your Honor, if you'll give me
15 just one moment I'll read to you the citation for the
16 case. Okay. Hold on one second, Your Honor, I apologize.

17 Your Honor, the case is Casey versus State
18 and there is also the case of State versus Light which is
19 a 2005 decision. A charge of involuntary manslaughter
20 will be probative if there's evidence of weapon discharge
21 during a struggle between the victim and the defendant.
22 And as a result of that State versus light case, 363 SC
23 325, it's a citation, there's been evidence of a struggle
24 over the weapon between the victim and the defendant,
25 Mr. Battle is entitled to an involuntary manslaughter

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1 charge.

2 MR. STEINBERG: Your Honor, there is some
3 case law but the word struggle has a big meaning. The
4 last time we had a rather lengthy discussion. We brought
5 out the fact that was a case of pointing and presenting a
6 firearm. If a weapon is pointed back, even assuming this
7 story, then it's not a true struggle. He has pointed and
8 presented and that is a felony and the court's have ruled
9 throughout. Every decade we have cases where if you point
10 a pistol at somebody, you don't even get the involuntary
11 manslaughter charge. I'm afraid that this would simply
12 confuse the jury and lengthy the jury charge when there is
13 no evidence that a gun simply went off in a struggle.

14 This is not a case where a gun is on the
15 ground, as some of the cases have shown, and you were to
16 jump for a gun at the same time and the gun were to go
17 off, that's one case. But when you have this case
18 scenario where he pointed the gun back at him because I
19 thought that he was going to killed me, there's other
20 cases, but I don't have them in front of me, it was either
21 self-defense or murder or voluntary manslaughter.

22 MR. ELLER: Your Honor, self-defense is just
23 what it sounds like, it's a defense. Involuntary
24 manslaughter is an actual charge and there is ample
25 evidence that there was a struggle over the gun. None of

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1 the State's witnesses presented testimony that they saw
2 any gun period. The only gun that was produced is
3 actually in evidence. All the other testimony in evidence
4 is that there was a struggle over that weapon and it's
5 clear that there was a struggle and therefore he's
6 entitled to a charge on involuntary.

7 THE COURT: I disagree. I'm not going to
8 charge involuntary. I will charge murder, voluntary
9 manslaughter, self-defense and accident.

10 MR. STEINBERG: Yes, sir. Your Honor, the
11 last time I may have misheard it but I asked you to give a
12 pretty much standard charge of voluntary manslaughter that
13 the provocation must be sufficient provocation by the
14 victim. I actually didn't hear it last time and I decided
15 to make an issue about it, but does your charge include
16 that that the victim must be the one committing the
17 sufficient legal provocation?

18 THE COURT: I think that's certainly the law.

19 MR. STEINBERG: Yes, sir, it is the law. You
20 could have possibly said it and I didn't hear it.

21 MR. ELLER: Within that argument, Judge, that
22 was two months ago so go with what you got.

23 MR. STEINBERG: Have you had that in your
24 standard charge, Your Honor?

25 THE COURT: I'll make that clear. You're

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1 going to waive opening argument?

2 MR. STEINBERG: Yes, Your Honor.

3 THE COURT: We'll take a very short recess.

4 (Whereupon, there was a brief recess.)

5 Okay what is that for?

6 MR. ELLER: It's just to assist in my
7 presentation. I did it the last time.

8 I'm not introducing any evidence. All of
9 this is already in the record.

10 THE COURT: Okay. Bring the jury.

11 (Jury re-enters the courtroom.)

12 MR. ELLER: Good morning ladies and gentlemen
13 of the jury. I know you think the end is here and that
14 all of our jobs are done. I got a little bit of bad news
15 for you. You're job is only half over. The lawyers are
16 about completed, our jobs are done, the judge is going to
17 charge you on the law. He is the one you've got to listen
18 to regarding what the law in this case. Once you hear the
19 law, the other 50 percent of your job comes into play.

20 Consider the facts as you've heard them this
21 week, consider all the evidence that you're going to take
22 with you back there and listen to the testimony and at
23 that point you have to apply the facts of the case as you
24 find them to the law of the State of South Carolina.
25 Apply those two things together, that's your job. You are

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1 the fact finder, you're the ones that have to actually
2 make the decision in this case.

3 Now, my client is innocent until proven
4 guilty. Opinion do not convict people, facts do, that's
5 why you have to find facts and not opinions. We're going
6 to review all facts in this case and when you're back
7 there, I'm going to ask you to review the facts and not
8 opinion and apply the facts of this case to the law.

9 We believe that you will find once you review
10 all the facts of the case, there is reasonable doubt that
11 the State has not met their burden. The State is the only
12 one in this room that has a burden of proof. My client
13 didn't have to take the stand. He didn't have to cross-
14 examine the witnesses. He had no burden. The burden
15 rests entirely with the State and that burden is to prove
16 to y'all beyond a reasonable doubt that he committed
17 murder. The judge will tell you what those elements are
18 so I won't even talk about it, but the State must prove
19 beyond a reasonable doubt.

20 If you have reasonable doubt, it's like I
21 told you the first day, reasonable doubt is nothing more
22 than a hesitation to act. If you find there's reasonable
23 doubt, then you must acquit Mr. Battle.

24 Now, what the State presented to you to try
25 to convict Mr. Battle of murder. I submit to you that

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1 they submitted the testimony of eyewitnesses and they
2 submitted to you some physical evidence.

3 First let's consider this morning what the
4 eyewitnesses said. The eyewitnesses in this case who
5 testified were Shameka Wells, Mikeya Shumate, Julian
6 Jamaal Stewart, Clintonian Dupri Owens and Julian Deandre
7 Battle. Those are the only five eyewitnesses that
8 testified in this case. Everyone else is not an actual
9 eyewitness. They were not there when the incident
10 occurred. They arrived shortly thereafter but they were
11 not there when the actual incident occurred. So these are
12 the eyewitnesses that you heard from.

13 First consider Shameka Wells. You recall
14 Ms. Wells. She was the one who actually owned the
15 apartment they were at, all the individuals were at. She
16 was the god sister of Mikeya Shumate, a close family
17 friend of Mr. Dodd's family. She also testified that she
18 was upstairs. She was inside the entire time during when
19 the incident occurred outside. When the gun went off at
20 all times, Ms. Wells readily admitted I was inside, I did
21 not see anything. The only sense she used to perceive
22 what happened was her sense of hearing. She heard a
23 gunshot and that's it. She was inside.

24 She did not go outside until after the gun
25 went off. She also readily admits she could not hear

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1 exactly what was said before she went down there. She do
2 not recall exactly what was said between Owens, Shumate
3 and Stewart. If you'll remember there were two arguments
4 outside, the first argument was between Mr. Owens,
5 Ms. Shumate and Mr. Stewart. Upstairs Ms. Wells couldn't
6 hear what they were saying, she just heard argument.

7 However, she did recall precisely what she
8 heard Mr. Dodd say. When Mr. Dodd exited the apartment
9 complex, it was crystal clear what she said. Ms. Wells's
10 testimony said I heard him say what's going on, it's my
11 business because these are my cousins. She clearly heard
12 those statements that were made that were made outside of
13 the apartment while she was upstairs in her second story
14 apartment.

15 The only explanation as to why she could
16 clearly hear those statements and not everybody else's
17 argument because they were loud, which is completely
18 contrary to all the fact witnesses say Mr. Dodd's demeanor
19 was. Remember all three testified he was calm and
20 collect. Calm and collect is not saying statements that
21 are so loud that you could hear them from inside a second
22 story apartment.

23 Ms. Wells also readily admits she did not see
24 a gun, she didn't see a flash or anything else, she was
25 inside. She testified she told the investigator she saw

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1 Mr. Dodd hanging over the rail when she exited the
2 apartment, however, that was not in her statement. She
3 didn't change her statement, she just signed it and
4 confirmed that it was true and accurate.

5 She also testified that after the gunshot she
6 saw Mr. Dodd grab a weapon and point it at Mr. Owens.
7 That was Ms. Wells's testimony.

8 Ms. Wells also spoke to Office Ooten at the
9 scene and later gave a written statement so she had at
10 least three opportunities to talk to the law enforcement
11 officials within 24 hours after this incident occurred,
12 Officer Jones at the scene, Officer Ooten at the scene and
13 later when she gave her statement.

14 Although she had three opportunities to tell
15 what she saw or heard, she admitted that none of the
16 detailed testimony that she gave in the courtroom this
17 week, all those added facts, none of those were in those
18 statements, none of those were told to Laura Jones of Iona
19 Ooten at the scene.

20 Let's move on to Mikeya Shumate. Mikeya
21 Shumate as you may recall she was the girlfriend of
22 Mr. Owens. She was outside when the first argument
23 between the three individuals. She's Mr. Dodd's first
24 cousin and she admits that she was previously convicted of
25 giving false information to the police in 2010 after this

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1 incident occurred.

2 She also was previously convicted of breach
3 of trust with fraudulent intent. She remained outside the
4 apartment during the entire time of the incident. She
5 testified that Mr. Battle remained off to the side and was
6 not arguing with her and Mr. Owens.

7 Now, much like when she gave that false
8 information to police that she was convicted of in 2010,
9 you heard Ms. Shumate from the stand she also gave false
10 information to the police in this case the night of the
11 incident. As you may recall Ms. Shumate testified she did
12 not know who Mr. Owens was. She only knew him as Beast.
13 She later told Laura Jones that wasn't the case.

14 Ms. Shumate also admitted there were no prior
15 hostilities between Mr. Battle and Mr. Dodd and these two
16 individuals simply did not know each other until this very
17 night. This is the first time they had met. She also
18 testified that her and Owens were arguing about the
19 presence of Mr. Stewart and Mr. Dodd. That's an important
20 fact to remember. My client and Mr. Owens had no idea
21 that these two gentlemen were going to come to the party
22 at Shameka Wells's house. That wasn't part of the plan.
23 You heard both of them testify to that fact and you also
24 heard Ms. Shumate and Ms. Wells that they did not know
25 that Mr. Dodd and Mr. Shumate were coming.

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1 Ms. Shumate also testified that during the
2 argument outside, Mr. Battle actually tried to get
3 Mr. Owens to leave. It's consistent with Mr. Owens's
4 testimony that Mr. Battle told him to come on. It's
5 consistent with what Mr. Battle's testimony that he told
6 Mr. Owens to come on and go get my liquor from upstairs.
7 All the witnesses agree that Mr. Owens did go inside and
8 get the alcohol and come outside. That was at the
9 urging of my client to leave the scene.

10 Now, what else does Ms. Shumate also admit.
11 Just like Ms. Wells she readily admits she never saw a
12 gun. I believe she testified to that on at least three
13 different occasions. She did not see a gun during the
14 altercation. She did not see Mr. Battle possess a gun at
15 all on the night of December 24, 2009 in the early morning
16 hours December 25, 2009. She admits that she only heard a
17 gunshot. Like Ms. Wells, you heard Ms. Shumate agree with
18 me as well, a lot of the details like the statements she
19 made and Mr. Battle supposedly made that night, one of
20 those details were not in the statement that she provided
21 to law enforcement.

22 I believe you will actual have to take back
23 with you a copy of her statement. It was Defendant's
24 Exhibit 1, the only exhibit the defendant actually put
25 into evidence in this case. You'll have that to go back

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1 with you. You can actually recall with your memory from
2 what she testified to. You'll see that none of those
3 details are in there.

4 You also heard her say when talking to Laura
5 Jones she only knew him as Beast and you also heard Laura
6 Jones say Ms. Shumate was extremely vague that night at
7 the scene when she first spoke with her. She also told
8 Laura Jones that she had lied that she didn't know Owens
9 and, in fact, he was her boyfriend. She refused to give
10 Jones any information about Mr. Battle that night.

11 Investigator Jones later learned from
12 Ms. Wells that, in fact, did know Mr. Owens and they were
13 dating. She also knew Mr. Battle and finally Ms. Owens
14 also admitted that originally in her statement that
15 Mr. Owens and Mr. Battle ran from the scene. You heard
16 her testify she said that she walked away. It sounds
17 better if you say they walked away, but what did she say
18 the night that this happened, they both ran. Mr. Owens
19 and Mr. Battle were afraid and they ran.

20 Now, she stated she supposedly heard
21 Mr. Battle say that is not in that handwritten statement
22 nothing but a graze wound or flesh wound and none of that
23 is in her statement. She admits that she didn't tell the
24 investigators about that but here when she testified this
25 week she said, oh, yeah, he said these statements. None

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1 of that is in her statements that you have.

2 Also the actions of Mr. Battle after the
3 gunshot if you recall her testimony, they were holding up
4 Mr. Stewart on the wall. She was the only one who
5 testified about that. None of the other witness testified
6 they were holding Mr. Stewart on the wall. It was not in
7 her statement. Again, you'll have that statement with
8 you.

9 Now, the last eyewitness -- we've gone
10 through two eyewitnesses so far. I will submit to you
11 they hadn't seen anything. They admit to you that they
12 hadn't seen anything so we'll just call them witnesses.
13 They're not eyewitnesses.

14 The next witness is Mr. Stewart. Just like
15 the two other individuals, he has a very close
16 relationship to Mr. Dodd, a cousin of Mr. Dodd. He
17 admitted he was convicted of possession of marijuana with
18 intent to distribute near a school. When he first gave a
19 statement to the investigator, you heard him testify in
20 here he denied selling the marijuana on that night, but
21 when he testified this week during the trial he said,
22 nope, it was my personal marijuana and I did sell it that
23 night.

24 When asked about if he sold marijuana in his
25 statement, you heard him, no, I told the officer I did not

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1 sell that stuff but when in fact he admitted this week
2 that he had sold it.

3 Now, what else did Mr. Stewart tell you. He
4 claims that he was calm during the incident outside. He
5 was just trying to diffuse the situation; however,
6 considering all the other witnesses out there that night
7 said about Mr. Stewart's behavior. You heard Ms. Wells,
8 she said she could clearly identify Mr. Stewart's voice.
9 She could hear what he was saying or tell what he was
10 saying but he was arguing. She couldn't recall the words
11 but she could tell Mr. Stewart was, in fact, arguing. She
12 identified his voice even though he was upstairs and he
13 was downstairs. Ask yourself is that calm and collect?

14 You heard Ms. Shumate testify it became
15 escalated when Mr. Stewart came outside to begin arguing.
16 Ask yourself is that calm and collect? All three
17 testified that Mr. Stewart, including Mr. Owens he also
18 testified, Mr. Stewart was argumentative and that the
19 argument escalated as soon as Mr. Stewart joined in the
20 argument.

21 Mr. Stewart also testified that he saw
22 Mr. Battle and Mr. Dodd bumping stomachs. Do you remember
23 that testimony about them bumping stomachs? He also
24 admitted he didn't tell the investigator that. He didn't
25 tell the investigator that Mr. Battle and the victim were

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1 bumping stomachs. When he clarified and he was asked what
2 bucked up means, when he said that Mr. Battle had bucked
3 up to Mr. Dodd, he read his testimony and he said he saw
4 something in his eyes like he was about to do something.
5 No physical contact but he saw something with his eyes,
6 that's how he defined the term bucked up.

7 Now, Mr. Stewart also testified he saw a
8 flash but he did not see a gun. Now, when you go back
9 there and you look at this photograph, you guys have seen
10 this some many times you're probably tired of seeing this,
11 this little concrete pad -- it's a small concrete pad not
12 very big. You've heard the many dimensions of this pad
13 and everybody testified about how big it was, six people
14 on this concrete pad. None of the supposed eyewitnesses
15 saw the gun.

16 Mr. Stewart also claims that he saw
17 Mr. Battle grab Mr. Dodd's collar and pull him forward,
18 however he readily admitted that was not in his written
19 statement that he gave to the police officers that night.
20 He also claims that he saw Mr. Battle holding his cousin
21 over the railing, but of course, he told Officer Ooten
22 after the gunshot, Mr. Dodd immediately fell to the
23 ground. That's very inconsistent. You can't immediately
24 fall to the ground if someone is holding you up over the
25 railing.

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1 He also agreed that a lot of his testimony
2 during the week of this trial was not in the statement
3 that he gave to Investigator Ooten.

4 The next eyewitness is from Clintonian Dupri
5 Owens. Now, we've moved from one family group to another
6 family group. Mr. Owens is a cousin of Mr. Battle.
7 Mr. Owens I submit to you have all the reason in the world
8 to tell the truth in this case. He, himself, was charged
9 with this same crime. You heard him testify to that. He
10 also say that it's his understanding if he told the truth,
11 his charges would get dropped. So I'll submit to you when
12 you're weighing the credibility of these witnesses think
13 about the man that's going to have the charge of murder
14 dropped if he tells the truth when you're weighing and
15 assessing his credibility.

16 What did Mr. Owens say? He testified that
17 the investigator didn't just ask him what happened, Laura
18 Jones asked him questions for over two hours.

19 Now, you heard the other witnesses say well
20 they didn't ask me those questions and that's why those
21 details aren't in my statement. I would submit to you
22 that these investigators are trained to figure out exactly
23 what happened and they're going to ask detailed questions
24 when giving statements. And that's what happened to
25 Mr. Owens when he was testified for over two hours. He

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1 also admitted that he was very agitated that Mr. Stewart
2 and Dodd went back over the Shameka's apartment. He
3 admitted that he argued with Mikeya Shumate very loudly
4 and they were both yelling at each other.

5 Mr. Owens came back out of the apartment
6 after getting the alcohol, he admitted that Mikeya started
7 yelling at him again. He then testified that Jamaal
8 Stewart came outside and joined into the argument and that
9 Jamaal Stewart began cussing at each other and they got
10 face to face. Do you remember that? They got face to
11 face and arguing with one another. During this time that
12 they were face to face with Mr. Stewart, Mr. Owens
13 testified that Mr. Battle was off to the side and trying
14 to get Mr. Owens to leave.

15 Mr. Owens testified that Mr. Dodd the came
16 out of the apartment and went straight to Mr. Battle.
17 Mr. Owens testified that Mr. Dodd was the loudest of them
18 all which is exactly consistent with the testimony you
19 heard from Shameka Wells the only voice that she could
20 tell what the statements were actually said was the
21 statements of Mr. Dodd. Consistency, that's the key.

22 Mr. Owens also testified that Mr. Dodd was
23 hostile, that he kept arguing. He also testified that
24 Mr. Dodd told Mr. Battle that he wasn't from around here.
25 Mr. Owens also testified that Mr. Dodd started pushing

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1 people around. That's consistent with the testimony you
2 heard from my client this morning when you heard my client
3 say that he was pushed by Mr. Dodd.

4 Mr. Owens also testified that throughout this
5 time period, Mr. Battle was telling everyone to chill out.
6 He also testified that Mr. Dodd and Mr. Battle were behind
7 him so guess what, he didn't see a gun either. Mr. Owens
8 didn't see a gun either. He heard a gunshot but he didn't
9 see the gun. He didn't see a bullet and he told Laura
10 Jones that he never seen Mr. Battle with a pistol.

11 After the gunshot, Mr. Owens testified that
12 he and Mr. Battle ran to Mr. Battle's car and left.
13 Mr. Owens admitted that he was scared. You heard Laura
14 Jones say Mr. Owens was scared when she investigated it.
15 What do scared people do? Run. Mr. Owens also testified
16 that he wrote a letter to the solicitor. In that letter
17 he told the solicitor that he was truthful in his
18 statement he had given to Laura Jones and he told Mr. Dodd
19 came outside and he went straight to Mr. Battle. Now
20 Mr. Owens has given a statement to Laura Jones, he's
21 written a letter to the solicitor and you heard his
22 testimony. All three times Mr. Owens said that Mr. Dodd
23 came out of that building and went straight to Mr. Battle,
24 all three times. His testimony never wavered.

25 Mr. Owens also told the solicitor that after

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1 the gunshot he panicked with fear and ran consistent with
2 the testimony. He also told the solicitor that Battle ran
3 behind him and he also admit that he wrote a letter to
4 Mr. Battle's mother where he admitted to Mr. Battle's
5 mother that Mr. Battle did not have a gun that night.
6 Consistent with what he told Laura Jones, consistent with
7 what he wrote, consistent with his trial testimony. All
8 three times, he said that Mr. Battle did not have a gun
9 that night.

10 Mr. Owens also told Ms. Battle in that letter
11 that when Mr. Dodd exited the apartment, guess what, for
12 the fourth time now Mr. Dodd exited that apartment and
13 went straight for Mr. Battle. On four separate occasions
14 Mr. Owens has said the same thing.

15 In Mr. Owens letter to Mr. Battle he said
16 Mr. Battle saved his life and Mr. Stewart was lying about
17 everything. You heard him also testify that he believed
18 that Mr. Battle was his hero and he saved his life on that
19 night. So consistent with his letter and consistent with
20 his testimony about Mr. Battle saving his life.

21 Now, Mr. Owens testified that he did give a
22 demonstration to the solicitor and Laura Jones June 2010.
23 But you heard Mr. Owens testimony he said that when he
24 discussed this demonstration with Mr. Battle and it was
25 all very quick. Mr. Owens also testified that he did not

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1 know how the gun was pointed or where it struck Mr. Dodd.
2 That was not information that he learned from Mr. Battle.
3 Mr. Battle also did not know where the gun was pointed or
4 where Mr. Dodd was shot when the gun went off.

5 Those are all the fact witnesses. I submit
6 to you no one saw a gun, they only heard a gunshot and
7 that's it. Let's look at the real evidence that the State
8 produced to convict Mr. Battle of murder. Primary
9 investigators in this case, let's start with Officer
10 Ooten. She was the forensic investigator that was called
11 to the scene that collected evidence. She obtained those
12 gunshot residue kits. She didn't submit the kit for
13 testing.

14 She took some photographs, searched the area
15 for casing and projectile. She also testified there were
16 six magazine in the round and one in the chamber. Now, she
17 searched that area for the casing and projectile, that
18 night she didn't find anything and it was raining
19 sideways. She didn't come back later that day on
20 Christmas, sent John Derby out there on December 26th. He
21 didn't find a projectile, searched the area. He also
22 brought out a metal detector and didn't find a casing or
23 projectile. She didn't go back 27th or 28th, went back
24 out on the 29th. That time she took a metal detector as
25 well and again did not find a casing or projectile.

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1 You also heard Officer Ooten testify it's a
2 sloped parking lot for water drainage. You heard her
3 testify that she had the gun tested for fingerprints and
4 guess what, no fingerprints were found; not Mr. Dodd's
5 fingerprints, not Mr. Battle's fingerprints, none. I'll
6 ask you to consider why there were no fingerprints on that
7 gun. Not just the gun and you heard her testify that she
8 also tested the magazine and every one of the bullets, all
9 of the individual bullets, not one fingerprint was found.

10 If there was no fingerprint was found, there
11 is no way the State could conclusive tell you who loaded
12 that weapon. You never heard from any State's witnesses
13 who loaded it because there is no fingerprints to
14 conclusively tell you who loaded the magazine and who
15 loaded the gun.

16 Officer Ooten also couldn't tell you who
17 handled the gun before she got there. Do you remember her
18 testimony? It was possible somebody else handled the gun.
19 You heard Deputy Bayne testify that when he arrived on the
20 scene at 12:37 -- I will submit to you that there have
21 been several people who have testified about the same time
22 or about the different time when the gun went off and when
23 that happened. You heard some people say it was around
24 midnight, you heard another person say it was about 12:30.
25 Bottom line is Deputy Bayne testified he received a call

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1 12:35 and 12:37 he was there. At the very minimum there
2 is a gap where there was no officer on the scene.

3 Who knows when 911 was called, you didn't
4 hear that testimony. You also didn't hear when he died.
5 You'll get the autopsy report. Don't get this confused
6 because the autopsy report says when he was pronounced
7 dead. That's not the same as when a gunshot went off. He
8 was pronounced dead about an hour later by the coroner,
9 but you'll remember that Officer Ooten was not prepared
10 the testify that she was the only one who handled that
11 weapon at the scene.

12 She also admitted there was a time in which
13 the gun could have been handled by someone who is not with
14 law enforcement. Officer Ooten also testified about the
15 projectiles. Officer Derby we also heard his testimony.
16 Same thing he didn't find anything either. He went out
17 there two days later, 36 hours later. He searched the
18 area with metal detectors and he didn't find anything. He
19 also testified about the sloped parking lot. Remember it
20 was raining sideways. If there was a casing, I would
21 submit to you it is highly likely that the water could
22 have washed away any type of casing but the projectile
23 wasn't found either. There is no explanation for that.

24 Now, Investigator Jones, she arrived at the
25 apartment that morning. She testified it was raining

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1 sideways. She also testified that she met with Mr. Battle
2 after his arrest on December 25th and that he was
3 handcuffed at the time that she met with him. I'll submit
4 to you that she testified that that chain link between her
5 cuffs was very short. Keep that in mind when you're
6 considering the demonstration, the distance between the
7 cuffs. Y'all have seen handcuffs before and you know
8 there is not a lot of space. Use your common sense.

9 She also testified that when she turned in
10 her first supplemental report on January 24, 2010.
11 Remember she's got 10 days to turn that report in. At the
12 time she turned that report in, who had she talked to.
13 She talked to both Mr. Owens and Mr. Battle December 25th,
14 2009. Why had she not summarized what she learned from
15 those two witnesses on the report she submitted on January
16 4, 2010 nine days later. She readily admits that it
17 wasn't in there. Here report that actually does contain
18 that, you heard Officer Jones testify that report was
19 lost. It disappeared in the system. Only when she was
20 asked by the solicitor where is that report did she go
21 back in February of 2011 did she go back and recreate the
22 supplemental report off of her handwritten notes from
23 conversations with Mr. Battle.

24 She also testified in that original report
25 that based on the initial accounts that she had heard that

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1 evening, it was unclear as to where the entire incident
2 took place. She had to expand her search area. She also
3 testified that she handled the interrogation of Mr. Owens.
4 Consistent with Mr. Owens testimony, she testified that it
5 took over two hours. She also testified that Mr. Owens
6 told her twice that he never saw a gun or anything.

7 She also testified that when she spoke to
8 Mr. Battle he told her that after they got back to
9 Shameka's apartment, Mr. Stewart and Mr. Dodd kept asking
10 him to buy marijuana. Remember she read her notes to see
11 during all this time that's what she was testifying to.
12 She testified that Mr. Battle told her that Dodd kept
13 looking at him and that Mr. Dodd asked Mr. Battle where
14 his money was. Investigator Jones testified that
15 Mr. Battle told her that Mr. Dodd put the gun in his face,
16 that Battle told her while they were struggling the gun
17 went off.

18 He also told her that he didn't know if he
19 pulled the trigger. He told her that after the gun went
20 off, it fell to the ground and he also told Investigator
21 Jones he was acting in self-defense. When he gave that
22 statement to her, she wrote down those notes December 25,
23 2009, you heard Mr. Battle's testimony today. What did
24 Mr. Battle testify to today, he also testified to those
25 same things, he was acting in self-defense. After the gun

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1 went off, it fell to the ground. He didn't know if it
2 actually control the gun, he doesn't know if he pulled the
3 trigger or not. He said he did not intend to shoot
4 Mr. Dodd. He said he did not intend to kill Mr. Dodd. He
5 said he did not intend for that gun to go off.

6 Investigator Jones also testified that she
7 was the one making the decision, it was her job, to
8 determine whether or not to submit the gun for additional
9 testing. She testified she did not submit that gun for
10 additional testing to determine whether or not it had been
11 fired. She also, if you remember, I asked her very
12 specific questions about how she knew that that gun had
13 not been fired. The only basis for her opinion that it
14 had not been fired is that it was still loaded. That was
15 it. She didn't send it down to SLED for any additional
16 testing. She assumed that since it was loaded that it had
17 not been fired. That's her opinion. I will submit to you
18 that opinions do not convict people. Facts do.

19 She also readily admit that she did nothing
20 to verify her opinion.

21 Now, Dr. Ward, you heard his testimony this
22 morning. Dr. Ward testified he could not determine the
23 exact projectile in this case and he said it was a medium
24 caliber. He concluded it was not a contact shot and not
25 pressed up against the clothing. He also concluded he had

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1 no opinion of the firing distance and could not conclude
2 the position of the shooter without knowing which gun was
3 in his hand. That's in his report.

4 Now, ladies and gentleman, I'll submit to you
5 that the State has not met their burden in this case. The
6 burden in this case is to prove Mr. Battle's guilt beyond
7 a reasonable doubt. The bottom line in this case is
8 they've presented to you no concrete evidence. No one saw
9 Mr. Battle shoot Mr. Dodd, not one witness testified to
10 that. The only witness that testified about what happened
11 was Mr. Battle. You heard him testify that it was an
12 accident and it happened so quickly when that gun went off
13 that he doesn't know how it happened. There was a
14 struggle and the gun went off.

15 Bottom line the State is asking you to
16 convict Mr. Battle of the most serious crime in the State
17 of South Carolina and that's murder without a single
18 eyewitness, without any physical evidence, no casing, no
19 projectile, no expert that has come in to testify exactly
20 how this occurred. You heard Dr. Ward say there is a
21 number of different possibilities. You can rule out being
22 shot from the back because the bullet traveled from right
23 to left but there was a number of possibilities in the
24 positioning. There is no real evidence, no expert
25 opinions, no fact witness testimony, that has been

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1 presented to you in this case that justified convicting
2 Mr. Battle of murder.

3 For those reason we ask that when you go back
4 and look at the facts in this case that you acquit him of
5 the murder charge.

6 The second part, and I've got to talk to you
7 about this, if you've already been convinced it's beyond a
8 reasonable doubt you can go ahead and stop listening to me
9 but if you think that the State has proven their burden
10 for any of the charges, murder or voluntary manslaughter,
11 you think the State has met its burden, you have another
12 analysis you have to go through. You're going to hear the
13 the judge charge you on the self-defense defense and the
14 accident defense.

15 The State must also prove beyond a reasonable
16 doubt that it was not self-defense or accident. You have
17 to consider the same facts for those defenses. If you
18 think it was murder or voluntary manslaughter, you must
19 consider the defenses. If you also have any doubt in your
20 reasonable doubt that it could have been an accident or
21 self-defense, you must acquit Mr. Battle. You can not
22 convict him of murder because either one of those defenses
23 would apply murder or manslaughter.

24 The judge will tell you exactly what to do
25 and what the law is and I would submit to you that you

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1 have a two-step analysis. First you must consider whether
2 or not the State has met its burden on the crime alleged,
3 second if you think the crimes alleged there is evidence
4 for that, you must consider whether the offenses apply,
5 the offense of self-defense or accident. If you have
6 reasonable doubt as to any of those, you must acquit
7 Mr. Battle.

8 Thank you for your time. I appreciate and I
9 look forward to hearing your verdict when you acquit
10 Mr. Battle of all charges. Thank you for your service.

11 THE COURT: Solicitor.

12 MR. STEINBERG: Good morning, ladies and
13 gentlemen. I'm going to explain the law to you and the
14 Judge is going to give you a bigger explanation of the
15 law.

16 We're here today obviously for murder.
17 Murder is the most serious crime our society has. What is
18 murder? Murder is the taking of a human life with malice
19 aforethought. Malice means wrongful, unlawful, illegal,
20 without good cause. You may have heard on television
21 shows or the news murder in the first degree, second
22 degree. We don't have that in South Carolina. We have a
23 very broad definition. If you take someone's life
24 unlawfully and you actually mean to do this act, that is
25 murder.

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1 You will not be determining sentencing in
2 this case. The only time a jury determines sentencing is
3 a death penalty case. This is not a death penalty case.
4 In this case, the judge will make the decision.

5 Aforethought does that mean premeditated. It
6 can mean premeditated. It means you intend your actions.
7 It does not mean you desire the result. It doesn't mean
8 that you later on regret the result. It means you intend
9 to stab somebody. It means you intend your physical
10 action to stab somebody. You intend to push somebody off
11 the cliff, you intend to pull the trigger.

12 Evidence of malice may occur afterwards.
13 Evidence that the defendant may have done or said
14 something immediately afterwards is certainly evidence
15 that you can use to see what his state of mind and whether
16 he intended to be malicious. In this case, you obviously
17 heard some very malicious statements.

18 The judge is going to instruct you on
19 voluntary manslaughter. It is not murder in the second
20 degree. It is simply a lesser charge. Voluntary
21 manslaughter requires one to be acting essentially
22 lawfully and having the other individual, the victim,
23 provoke you. The victim must be the provoking person. A
24 third party can not provoke the defendant, in this case,
25 Mr. Battle.

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1 The defendant, Mr. Battle, can not be self
2 provoked. He has to be provoked by something Mr. Dodd
3 did. Something Mr. Dodd did that was unlawful because if
4 you were exercising a legal right, for example, standing
5 on this patio here and talking and saying Mikeya come
6 inside, nothing about that would allow you for that to be
7 sufficient legal provocation. The judge will instruct you
8 that words alone no matter how offensive justifies the
9 taking of a human life.

10 In addition to adequate legal provocation by
11 the victim, you must also find this was done in the heat
12 of passion. This does not mean that all murders occurring
13 in the heat of passion are voluntary manslaughter. A
14 murder committed in the heat of passion by someone in a
15 rage -- you got drunken rage, antisocial rage -- that
16 stays as murder. It does not transfer down to voluntary
17 manslaughter.

18 The judge is going to instruct you about the
19 crime of possession of a weapon during the commission of a
20 violent crime. It means exactly that. It means you
21 possessed a weapon of some form during the commission of a
22 violent crime and the Judge will instruct you that
23 voluntary manslaughter and obviously murder are violent
24 crimes.

25 The final spot on the verdict form will be

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1 not guilty.. The Judge will instruct you on self-defense
2 and one of the elements in self-defense means that you
3 would have to be without fault. That means you must be
4 100 percent absolutely unequivocal without fault. If you
5 have any fault you are not allowed to raise self-defense.
6 You have also have to have had no way to avoid the
7 situation, to extricate, remove yourself from the
8 situation.

9 Accident is very similar. You must be acting
10 lawfully. That is 100 percent lawfully. You can not
11 cause an incident, exacerbate an incident, make it worse
12 and then say, whoops, a gun went off. You can't cause a
13 struggle, you get in someone's face, you can't buck up
14 against somebody and say whoops, the gun went off. The
15 judge will instruct you you must be acting lawfully. That
16 is the law.

17 Let's talk about some of the facts in this
18 case. Ms. Shumate has two charges, one as I understanding
19 is a false name during a traffic stop, the other is when
20 she was in 12th grade breach of trust. They made a big
21 deal about what she had to say. She said they were all
22 arguing. She didn't put down the words but she said they
23 were all arguing. She was simply giving more detailed
24 information to myself and to opposing counsel. We ask
25 different questions. We are trained to ask different

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1 questions. Opposing counsel and I are attorneys and we
2 don't ask the same questions police officers ask.

3 Officers ask who done it, tell me what
4 happened. We ask more detailed questions.

5 There's a big dispute about transcripts and
6 all that and what was said and statements made and things
7 of this nature. It would take all day if I revisit all
8 that, but let's just take one witness. Jamaal Stewart
9 probably had the biggest issue about that. Jamaal Stewart
10 said they went belly to belly. The actual statement he
11 wrote said he got into his face -- Mr. Battle got in
12 Mr. Dodd's face and he was, in his words, bucking. Again
13 this is a difference without meaning. I'm not going to
14 spend any more time with that. You actually have one of
15 the statements. You have Julian Jamaal Stewart's
16 statement. Normally statements don't go back, but this
17 case there was no objection to the defendant introducing
18 Mr. Stewart's statement. I would like for you to read it.
19 I would like for you to read where it says after he did
20 the shooting the defendant Mr. Battle said don't worry,
21 he'll be alright. Read all of that and see if we're
22 trying to keep anything away from your eyes with that
23 statement.

24 Let's also take about Dupri Owens. While
25 obviously not favorable to the State, we still called him.

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1 We think you have a right to hear what he has to say. He
2 wrote some letters to family members. You heard his
3 testimony he is 100 percent behind his cousin until the
4 day he dies. Was he writing a letter for his own purposes
5 or was he writing a statement for introduction at a trial
6 at a later date. Please consider that. While out on
7 bond, he was hanging out with his attorney. Let's see
8 what the statement says.

9 Mr. Owens says he didn't see any pushing by
10 Mr. Dodd. He said in the statement that Mr. Dodd pushed
11 Mr. Battle because he heard Mr. Battle talking about it.
12 What does he not hear? He does not hear despite everybody
13 being on this porch, he does not hear anything about the
14 jewelry, anything about the robbery. You have six people,
15 five of them are still alive and only one person, alone,
16 hears all of this story about whose the money man, the
17 jewelry. If submit that was utter hogwash and it was made
18 up after the fact.

19 Defense attorney also referred to police
20 mistakes. Laura Jones wrote one report that is still
21 here. She wrote a second report and it was lost when it
22 went from a scanning to a digital system, but what does
23 she have, her notes that were handwritten at the time
24 notes. You heard those. They are actually very close to
25 what the defendant testified to here today. There was an

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1 aspect of questioning involving testing which is known as
2 a CSI affect in a courtroom to believe that some scientist
3 is going to come in here and say I'm going to solve this
4 crime. That is fiction, that is Hollywood.

5 Gunshot residue can't be relevant. It can be
6 relevant if there is a dispute over distances involving a
7 greater area, but here all of our witness say this
8 shooting on this area on this little patio and Officer
9 Derby and Officer Ooten -- they are not investigators,
10 they are officers and there's a distinction -- they did
11 not interview people. They said gunshot residue is always
12 taken immediately because you don't know where people are
13 standing. That's after the crime scene. After the people
14 leave the crime scene they go to the Law Enforcement
15 Center and Investigator Jones hears their statement.

16 She hears Clintonian Dupri Owens statement,
17 Julian Jamaal Stewart's statement, Julian Battle's
18 statement, there is no dispute. Had this been a case
19 where one witness said Mr. Battle was across the parking
20 lot, then gunshot residue has a reason, but you don't send
21 things for irrelevant testing.

22 Projectile not being found, you heard
23 testimony that this was a revolver, there will be no shell
24 casing. The shell casing stays with the revolver until
25 somebody at a later time decides to remove it. Defense

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1 had a theory, kind of side line theory, that maybe
2 somebody else in the meantime between the time of the
3 shooting and the time Deputy Baynes showed up that maybe
4 somebody else had altered this weapon because it wasn't
5 secured. This would mean this theory that somebody would
6 have to know of Julian Battle's theory of this case ahead
7 of time, had to have a spare .45 caliber Winchester hollow
8 point on them and had to have the opportunity and the
9 desire to reload this weapon. That's obviously fiction.

10 More facts Rafael Dodd is a visitor to
11 Greenville. He's trying to calm down the situation
12 outside of a friend's apartment, trying to get Mikeya out
13 of the rain. She has Lupus. Dre walks up and confronts
14 Mr. Dodd, Mr. Dodd does not walk off that patio. You
15 heard the testimony that the patio was small with the
16 exception of Mr. Battle's testimony, other witnesses are
17 saying that Mr. Battle was farther off out in the parking
18 lot and came up towards the patio. He confronted somebody
19 and then claim self-defense or accident. That's not an
20 option.

21 He confronted Mr. Dodd. A shot was fired,
22 the victim falls or was pushed back over the guard rail.
23 We know Mr. Dodd never left that patio because that's
24 where his body was found. The defendant was drunk and he
25 says to Mikeya Shumate that he was f'd up that night and

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1 his cousin, Dupri, had to drive him because he was not
2 able to drive.

3 Mikeya says her version is we went to this
4 location to drink and be around friends, my cousins also
5 showed up. Apparently Mr. Owens was upset about this.
6 She says there was a possibility of setting Shameka Wells
7 up with Dre Battle. That sounds a whole lot more motive
8 for Mr. Battle than Mr. Dodd removing this jewelry
9 robbery. She said Rafael Dodd was a peacemaker and said
10 can't we all get along here or words to this affect.

11 The suspects then walks up and confronts and
12 gets belly to bell with Mr. Dodd on this patio, the
13 argument ensues, words alone are never enough to lower a
14 case for murder down to voluntary manslaughter. The
15 suspect then fires a round, she hears the gunshot and then
16 sees him shuffling his pants. You saw the demonstration.
17 She also hears a very malicious word, niggas got to be
18 hard. That is evidence of malice. After he said a second
19 or two after the shooting is evidence that he had malice
20 when he committed the crime.

21 He also states he'll be alright, it's only a
22 grazing wound. He then walks away as if nothing had
23 happened. Is this consistent with self-defense? Is this
24 consistent with accident or is the consistent with the
25 murder of an innocent peacemaker?

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1 Shameka does not see the actual shooting.
2 She does see the victim flipped over the guard rail. She
3 comes out immediately after that. You saw the holster on
4 the ground immediately after that. She actually saw the
5 holster. Laura Jones shows you that this weapon falls out
6 of its holster very easily because there is no safety
7 strap. She also said Mr. Battle walked away as if nothing
8 had happened.

9 Julian Jamaal Stewart says and we all know
10 this is an argument over nothing, nothing at all. Murder
11 is a killing of a human being for no good reason. He
12 showed a small demonstration of what he meant by being
13 belly to belly. I think he called it jenkins(ph) as you
14 pull close. The suspect approached for no reason and got
15 in his face, pulls down, the shot goes off and Mr. Dodd
16 dies a short time after.

17 Suspect Battle then says, who are you, the
18 police. Is that consistent with someone who just
19 committed a crime by accident or self-defense. He then
20 takes the phone as Jamaal Stewart tries to call 911 for
21 his dying cousin. He takes the phone. He never sees the
22 phone again. That is malicious. That is murder.

23 If you decide to actually convict him at this
24 point and we don't need to go any further. You say to
25 yourself I will not tolerate someone shooting another

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1 person trying to stop the cousin from dialing 911 and
2 taking the phone by force from him. That might be enough
3 for you to say this is murder.

4 Mr. Stewart also says he hear the suspect say
5 he'll be alright before he walks away. Mr. Battle does
6 not see Mr. Stewart again for another couple of months and
7 when he does, he gets out of his car and gets in an
8 altercation with Mr. Stewart which he is not allowed to do
9 and says he's a snitch for writing a statement. Would an
10 innocent person have said that? Mr. Battle could not
11 control his actions.

12 Perhaps the most interesting witness is
13 Mr. Owens. Mr. Owens puts himself in a bad position.
14 Mr. Owens has made some statements the night of this
15 crime. You've heard that from law enforcement. He can't
16 get out of it no matter how hard he tries. We still
17 called him even though he is very very much in the camp of
18 his cousin. He says this is an argument over nothing, no
19 good reason. He hears a gunshot, he sees Dre Battle take
20 the telephone -- steal the phone. His own cousin says
21 that. Mr. Battle still denies that.

22 He doesn't hear any of this money man talk.
23 The victim is also out there. The victim is deceased and
24 can't tell us anything or can he? He tells us through
25 other means that he has a concealed weapon's permit and

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1 its valid in South Carolina and Tennessee. These two
2 states say he is free and clear to have a weapon. We have
3 no problem.

4 He has been drinking but he is not drunk. He
5 is under the limit. He had a minuscule .001 I believe
6 marijuana level. He is a banker according to his mother
7 with a MBA and is getting ready to buy a house in January.
8 Is this consistent with the common jewelry mugger? Is
9 that what he was doing? Do you really think that Mr. Dodd
10 was out there to rob somebody of jewelry? He was out
11 there to get his cousin in from the rain. The only person
12 who stated otherwise is Dre Battle.

13 Mr. Battle admits to police and the old
14 saying is a guilty man runs when no man pursues him.
15 Mr. Battle is not innocent. He flees, he runs, he goes
16 and he hides yet he still says he's not guilty in this
17 case. He says to his own cousin I f'd up two times. In
18 deed he did. He took the life of a peacemaker. He took
19 the life of an innocent man for no good reason. He did it
20 because he was drunk, antisocial, and didn't want to be
21 around other police.

22 He doesn't want to be there when a police
23 officer comes up there. A police officer comes up there
24 and they're going to put other people down. He can't be
25 around because he has a firearm. This firearm was not the

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1 murder weapon. Mr. Battle runs to Glass Street. He tells
2 Laura Jones he runs to other place, the Waffle House and
3 then he goes to Spartanburg. He is a flight from justice.
4 I hope nobody in this room believes that he was really
5 wanting to turn himself in at these various places and he
6 just didn't get around to it. He was a flight from
7 justice, a flight from the consequences of his actions.

8 He is mirandized. He refuses to write a
9 statement even though he is given an opportunity. This is
10 what he tells Laura Jones or words to this effect, we
11 thought we were going to hang around some females, drink
12 Hinessee and Nuvo. He does not like being around people,
13 he likes jewelry, he's particular about his jewelry. He
14 says they kept asking me for more weed and Rafael was
15 still just looking at me. I don't know if you believe
16 this is actually a drug deal gone bad. This has nothing
17 to do with drugs other than the small drug transaction
18 over at Terra Apartments which has no connection to his
19 killing.

20 Mr. Battle also says Rafael kept asking me
21 where my money was. Rafael pulled out a pistol, pointed
22 it at me and Pri, Meka and Keya were having money
23 problems. I'm not sure where that came from. He put the
24 gun at my face. I grabbed it, I turned it back towards
25 him, he pushed me with his right hand. We struggled. I

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1 don't know if I pulled the trigger or not. That's like
2 the old politician saying mistakes were made. He killed
3 somebody and refused to admit that. It's a horrible thing
4 to say I took a human life. He simply can't utter that.

5 He then says I dropped the gun. The gun that
6 he says he never really possessed. I dropped the gun and
7 I ran to my car and I told Pri to call police. It
8 couldn't use my cousin's phone because it was a touch
9 screen. It's almost shameful to discuss such an obvious
10 falsehood. I'm not talking about where he fled to because
11 you heard his testimony.

12 Mr. Battle does a demonstration and does a
13 demonstration and points towards the chest. Laura Jones
14 realizing how crucial it was because she knew more about
15 the case than Mr. Battle, she said, towards the chest and
16 he said yes. Dre Battle can't let the truth come out in
17 this case.

18 Eventually he goes to jail and he gets out,
19 he tells his story a similar story. His cousin admitted
20 he pointed the gun back towards him but then says it
21 happened so fast I can't really remember. You can judge
22 Dupri Owens's loyalty and his credibility in this case.

23 The law in this case is murder. This means
24 that Rafael Dodd was killed unlawfully by a decision made
25 by Dre Battle. That means Mr. Dodd is not at fault. If

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1 you find that Mr. Dodd is not at fault, the defendant
2 Mr. Battle committed murder.

3 The other crime here and it's a little bit
4 more technical but not terrible technical is voluntary
5 manslaughter. It requires that Mr. Dodd and not Dre
6 Battle who has provoked himself and not Mikeya Shumate,
7 Mr. Stewart, Ms. Wells, Mr. Owens but Mr. Dodd caused his
8 problem. Dodd did something more than just talking. That
9 Dodd is responsible.

10 Which of these two is more likely, Mr. Battle
11 is responsible or Mr. Dodd is responsible? Consider what
12 you've heard. Consider the people involved, consider the
13 language, consider what Mr. Battle did immediately
14 afterwards.

15 Let's talk about this firearm. You're job
16 would be somewhat simple but this is a very serious case
17 and the most serious case you'll probably be involved in.
18 This weapon is not the murder weapon. We know this. The
19 only person who says it is Mr. Battle. We know that
20 Mr. Battle carries a pistol in his waistline. Ms. Shumate
21 has said that. He says I carry it because I don't trust
22 people. What else does he say? He says he had a jacket
23 on with a pouch right here. We know he had the
24 opportunity while wearing clothes on a wet Christmas eve
25 night, he had sufficient clothes to hide a pistol that

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1 size by a person who by his own admission weighed 225
2 pounds.. You can hide a pistol like that.

3 The look for shell casing, defense attorney
4 had raised a number of questions. There is a picture of
5 this slope. It's not much of a slope. The slope starts
6 with the driving area, itself, so you have no ground. We
7 looked and it's simply not there. It's not like we didn't
8 pay attention.

9 The wound, Dr. Ward testified there is no
10 bullet wound here. There is one here that exits here
11 which is not consistent with the defendant's story. The
12 rounds of this weapon are all from the same brand, hollow
13 point .45. Dr. Ward and the bullet's expert James
14 Armstrong both testified that a hollow point .45 is
15 designed to stay in the human body. That is how its
16 designed. That is what its meant to do. They use the
17 work mushroom or expand and they stay in the body. The
18 fragment, you heard the testimony about the x-rays, there
19 was no fragmentation. There is nothing in the body.

20 This round is designed to stay inside the
21 body. This round went in his right shoulder, exited far
22 away on the left side of his back. This weapon is
23 designed to stay in the human body. It's most assuredly
24 is designed to stay inside of the human body when fired
25 sideways through that body. This weapon, these rounds

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1 were not fired.

2 Most damaging of all is Laura Jones testimony
3 of a hollow .45 with a six round magazine and she
4 attempted on a number of occasions to put a 7th round in
5 and she could not do it. There is no magic 8th round.
6 For this story to be true and less than murder, it must be
7 a round fired out of this weapon. You have one round,
8 two, three, four, five, six rounds. Put too many any and
9 you'll have a malfunction of some sort. It will hold but
10 so many. Laura Jones said she could not put another round
11 in and Mr. Armstrong said he could not put another round
12 in and I physically can't put another round in. If I push
13 any harder I'll break it. This is evidence and this
14 belongs to you at this point.

15 There is no magic 8th round and if there is
16 no magic 8th round, Mr. Battle is guilty of this crime.

17 Consider Julian Battle killed Rafael Dodd for
18 no good reason. When he pulled the trigger, he made some
19 very malicious comments, he stole Mr. Stewart's phone,
20 fled the scene, told additional falsehoods. He wants to
21 have some kind of out. Well, he doesn't have an out. He
22 is responsible for what he did on Christmas day 2009.

23 This could not be self-defense because he was
24 obviously at fault because he was drinking, obnoxious,
25 loud, confrontational. He walked up on Mr. Dodd and he

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1 killed him and he denies the people ability to dial 911.
2 It can't be accident because again he was not acting
3 lawfully. He had a very rehearsed line about how he
4 handled the gun. He had time to consider how this
5 occurred and is trying his best to avoid the consequences
6 of his actions.

7 I'm going to wrap things up right now. When
8 you go back to the jury room, I'm going to ask you to take
9 a taste test. I'd like you to consider what the defendant
10 did, the weapon, and then I'd like you to stand up and
11 look at your fellow jurors, left and right, and make the
12 following statement. I truly believe that Rafael Dodd is
13 responsible for this. I think Rafael Dodd was trying to
14 commit a robbery of some sort and he put Dre Battle in
15 fear and that Rafael Dodd pulled out a weapon and
16 miraculously a round that can't even fit in this gun and a
17 round was fired and killed him, shot this way and came in
18 this way. And that Mr. Dodd died and then Mr. Battle then
19 fled and he really wanted law enforcement to be called and
20 did not steal Jamaal Stewart's form.

21 If you look at your fellow jurors and say
22 that, you might want to consider voluntary manslaughter.
23 If however saying that it sounds untruthful and it causes
24 you to wince, then you need to convict him of murder.

25 Now say this, Dre Battle was drinking, Dre

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1 Battle was acting maliciously. Dre Battle in an
2 unjustified rage killed Rafael Dodd for no good reason.
3 That is making up this story about a jewelry mugging and
4 then he made outrageous remarks immediately afterwards
5 both the victim that survived and to Mr. Dodd. And then
6 he stole Jamaal Stewart's cell phone so he couldn't call
7 911 and then he fled. Now that statement sounds truthful.
8 If you look at your fellow jurors and say I think that
9 what happened, I think Dre Battle is responsible for this
10 then you have convicted him of murder. And I ask that
11 that be your verdict. I thank you very much for your
12 time.

13 MR. ELLER: Your Honor, may I approach?

14 THE COURT: Sure.

15 (Whereupon, there was a bench conference.)

16 MR. ELLER: We've got an agreement. There
17 was a statement made by Mr. Steinberg and I'm not accusing
18 Mr. Steinberg of mischaracterizing any evidence for the
19 record, but he made a statement about Mr. Owens's attorney
20 and happened to be facing towards me. We have a
21 stipulation, an agreement, that I do not represent
22 Mr. Owens and I have not hung out with Mr. Owens while
23 Mr. Owens was out on bond.

24 MR. STEINBERG: I do not remember making that
25 statement but I agree.

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1 THE COURT: Thank you. No one in our out of
2 the courtroom during my charge so if you need to leave
3 now, this is the time to do it.

4 Ladies and gentlemen, as you know, the
5 defendant in this case is first indicted for murder..
6 Murder is a statutory offense and Section 16-3-10 of our
7 Code of Laws reads as follows: Murder is the killing of
8 any person with malice aforethought either expressed or
9 implied. So what then are the elements which the State
10 must prove beyond a reasonable doubt.

11 First of all, the State must have proven that
12 there was a killing of another. Secondly, the State must
13 prove that it was done with malice aforethought either
14 expressed or implied.

15 Now, with respect to the first element, that
16 being the killing of another, I charged you that any
17 killing of a human being is called homicide but all
18 homicides are not necessarily unlawful. For example, if
19 one kills another in self-defense then this is known as
20 excusable homicide or if a police officer shoots a fleeing
21 armed robbery this would be known as excusable homicide
22 and neither of these homicides are punishable by law.

23 As a necessary element of murder the homicide
24 must have been unlawful, that is without just cause or
25 excuse.

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1 is a statutory offense and Section 16-23-490 provides in
2 part as follows: If a person is in possession of a
3 firearm or visibly displays what appears to be a firearm
4 during the commission of a violent crime and is convicted
5 of committing or attempting to commit a violent crime as
6 defined in Section 16-1-60, he must suffer punishment.

7 I charge you that murder is a violent crime
8 defined in that statute.

9 So before the defendant in this case can be
10 convicted of possession of a weapon during the commission
11 of a violent crime, you the jury must have found him
12 guilty of murder or manslaughter. The State must prove
13 beyond a reasonable doubt that the defendant was in
14 possession of or that he displayed a firearm or what
15 appeared to be a firearm.

16 I charge you, ladies and gentlemen, that
17 voluntary flight of a person either there or soon after
18 the commission of a crime, is a circumstance not
19 sufficient in itself to establish guilt but is a
20 circumstance that you the jury may consider in connection
21 with all the other evidence in determining the guilt or
22 innocence of a person.

23 Now, the defendant, in this case, first
24 pleads as a defense in this case of self-defense. Self-
25 defense is a complete defense and if established you must

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1 Now, with respect to the second element that
2 being malice aforethought expressed or implied. Malice is
3 a legal term which implies a wickedness and excludes a
4 just cause or excuse. Malice means a condition of the
5 mind or heart which prompts one to take the life of
6 another without just cause or excuse.

7 Now, our Supreme Court has defined that as by
8 saying it springs from a heart devoid of substantive duty
9 or obligation and is one fatally and deliberately bent on
10 mischief.

11 Now, to prove malice it is not necessary for
12 the State to prove the defendant had a feeling of hatred
13 or ill will towards the person killed. The Statute says
14 that malice must be aforethought. Aforethought simply
15 means deliberate or planned. In other words, aforethought
16 must have been in the mind a sufficient time to produce
17 the act that caused the death but no long period of time
18 must have existed. If it was there long enough to bring
19 on the act to cause the death it would be a sufficient
20 point of time.

21 The statute says that the malice must be
22 expressed may be implied. In this connection I charge you
23 that expressed malice means there is some direct proof of
24 malice as for example whereby a person of word of mouth
25 states his hatred for another or where there is evidence

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1 of previous threats or lying in wait or making plans to
2 take human life, that would be expressed malice.

3 Implied malice, on the other hand, may be
4 shown from the facts and circumstances surrounding the
5 event or an incident. Implied malice exists where there
6 is no actual intent to kill any person but the death is
7 caused by conduct which the law regards as showing such an
8 abandoned state of mind as to be the equivalent of an
9 actual intent to kill. It may be manifested by
10 implication from the facts and circumstances actually
11 attending the transaction.

12 I further charge you, ladies and gentlemen,
13 that motive is not an essential element of the crime of
14 murder and the State is therefore not required to prove a
15 motive for murder.

16 Now, although not specifically set forth in
17 this indictment, I must charge you with respect to what we
18 call a lesser included offense and that being
19 manslaughter.

20 Manslaughter, ladies and gentlemen, is
21 defined as the killing of a human being without malice and
22 in a sudden heat of passion when the heat of passion is
23 caused or brought about by a sufficient legal provocation.
24 In other words I charge you that if one flies into a
25 sudden heat of passion upon a sufficient legal provocation

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1 only caused by the victim and that results in the death of
2 another, the law says that that having been done under
3 those circumstances, that is not murder, it is
4 manslaughter.

5 To illustrate, if I were to go up to one of
6 you and make an unwarranted attack on you and strike you
7 in the face, say with my fist, and you acting under the
8 heat of passion aroused by my act were to kill me, you
9 would not be guilty of murder but manslaughter because you
10 killed me in sudden heat of passion caused by my sudden
11 unwarranted attack.

12 However, ladies and gentlemen, I charge you
13 that no mere words however insulting or offensive will
14 justify a person taking the life of another and will not
15 suffice to mitigate a homicide from murder down to
16 manslaughter. Stated differently, ladies and gentlemen, I
17 charge you that words alone however offensive are not
18 sufficient to constitute a legal provocation. Rather when
19 death is caused by the use of a deadly weapon, the
20 offensive words must be accompanied by an appearance of an
21 assault by some overt threatening act which could have
22 produced the heat of passion.

23 Now, Count 2 in this indictment, ladies and
24 gentlemen, charges this defendant with the possession of a
25 weapon during the commission of a violent crime. This too

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1 caused by conduct which the law regards as showing such an
2 abandoned state of mind as to be the equivalent to an
3 actual intent to kill. It may be manifested by
4 implications from the facts and circumstances attending
5 the transaction.

6 Now, ladies and gentlemen, I charge you that
7 if facts are proved to raise the inference of malice as I
8 have defined that to you, then this inference conclusive
9 and it is always for the jury to determine from all the
10 evidence in the case if malice has been proved beyond a
11 reasonable doubt.

12 Although not specifically that's been set
13 forth in the indictment, there is a lesser included
14 offense which I much define and charge you on and that
15 this manslaughter -- voluntary manslaughter.

16 Manslaughter, ladies and gentlemen, is
17 defined as the killing of a human being without malice and
18 in sudden heat of passion when the heat of passion is
19 caused by or brought about by a sufficient legal
20 provocation. If one flies into a sudden heat of passion
21 upon a sufficient legal provocation and it results in the
22 death of another, the law says that that act having been
23 done under those circumstances it is not murder but
24 manslaughter.

25 To illustrate, if I were to go up to one of

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1 find the defendant not guilty.

2 Now, there are four element required by law
3 to establish self-defense in this case. First of all, the
4 defendant must have been without fault in bringing on the
5 difficulty. Second, the defendant must have actually
6 believed he was in eminent danger of losing his life or
7 sustaining serious body harm or that he actually was in
8 eminent danger. Third, if his defense is based on eminent
9 danger, then that of a reasonable prudent person of
10 ordinary firmness and courage would have entertained the
11 very same belief.

12 If the defendant actually was in eminent
13 danger, then that the circumstances would warrant a person
14 of ordinary prudence, firmness and courage to strike the
15 fatal blow in order to save himself from serious bodily
16 harm or from losing his own life.

17 And, lastly, the defendant had no other
18 probably means of losing his life or sustaining serious
19 body injury, then to act as he did in this particular
20 instance.

21 Now, if you have a reasonable doubt as to
22 this defendant's guilt after considering all of the
23 evidence including the evidence for self-defense, then you
24 must find him not guilty. On the other hand if you have
25 no reasonable doubt of the defendant's guilt after

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1 considering all of the evidence including self-defense,
2 then you must find him guilty.

3 I further charge you, ladies and gentlemen,
4 that the State has the burden of proving self-defense
5 beyond a reasonable doubt.

6 Now, ladies and gentlemen, the defendant next
7 pleads as a defense accident. Accident, ladies and
8 gentlemen, is excusable homicide. The defendant pleads as
9 a defense accident excusable homicides includes those in
10 which no one involved is criminally negligent or reckless.
11 Where the death of a human being is a result of accident
12 in the true meaning of that term, no criminal
13 responsibility attaches to the act of the slaying.

14 The defense of accident is not applicable
15 unless this defendant was acting lawfully, that the
16 killing was unintentional and that due care was exercised
17 in the handling of the weapon.

18 Now, the defense that the homicide was
19 accident, like self-defense, is not an affirmative defense
20 and the State must overcome it by proof beyond a
21 reasonable doubt.

22 Ladies and gentlemen, as jurors in this case,
23 you have a function or responsibility that is entirely
24 separate and distinct from my function as the trial judge.
25 The Constitution of our State does not allow me to charge

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1 you on the facts of this case or to discuss the facts with
2 you or in any way or manner let you know what my personal
3 feelings, if any, are about this case. Therefore, if
4 during the course of this trial or during the course of my
5 charge, you have a feeling or left with an impression that
6 I have a personal feeling about this case one way or
7 another, then you disregard that feeling or that
8 impression.

9 Now, it's your duty and your duty alone to
10 weigh the testimony and the evidence presented in this
11 case and to pass upon the credibility or the believability
12 of the witnesses you heard testify. In this connection
13 you have a right to believe all a witness has told you or
14 disbelieve all a witness told you. You can believe a part
15 of what a witness told you and disbelieve a part of what a
16 witness told you.

17 You believe one witnesses against several or
18 several as against one. You also have the right to take
19 into consideration any bias or prejudice or inference you
20 feel a witness in the case might have.

21 Now, ladies and gentlemen, I am the judge of
22 the law in this case and I am required you the law as it
23 applies to the facts of this case. It's not a question of
24 what you feel the law might be or what it should be. It
25 is not necessarily what the lawyers may have told you it

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1 is because under your oath, you are required to take the
2 law as I give it to you, apply that law to the facts as
3 you determine those facts to be and to write your verdict
4 accordingly.

5 It is also my duty to see that this trial is
6 conducted according to the rules of court and the rules of
7 evidence applicable to admissibility of testimony and
8 evidence as I understand those rules to be, and therefore,
9 you are not to consider in any way or manner testimony or
10 evidence that was ruled out by me as being not admissible.

11 Now, in this case, as in all criminal cases,
12 this defendant comes into this courtroom presumed to be
13 innocent and this presumption continues and carries
14 through the entire trial until and unless it is removed by
15 evidence that satisfies you of his guilt beyond a
16 reasonable doubt.

17 The burden is on the State in this case to
18 prove the defendant guilty and to prove each and every
19 element of the offenses for which he is charged beyond a
20 reasonable doubt. Some of you may have in the past served
21 as jurors in civil cases and if so you were most likely
22 told that it was only necessary to prove that a fact was
23 more likely true than not true, but in criminal cases, the
24 State's proof must be more powerful. As I told you, it
25 must be beyond a reasonable doubt.

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1 Now, proof beyond a reasonable doubt is proof
2 that leaves you firmly convinced that this defendant is
3 guilty. There are very few things in this world we know
4 with absolute certainty and in criminal cases, our law
5 does not require proof that overcomes every possible
6 doubt.

7 If, based on your consideration of the
8 testimony and evidence in this case you are firmly
9 convinced that this defendant is guilty, then you must
10 find him guilty. If, on the other hand, you think there
11 is a real possibility that he is not guilty, then you must
12 give him the benefit of that doubt and find him not
13 guilty.

14 Ladies and gentlemen under the oath you took
15 in this case, you swore to try this case based only and
16 solely on the testimony and evidence presented in this
17 courtroom. I charge you that it is your duty to lay aside
18 all outside opinions bias prejudice or sympathies you have
19 in reaching your verdict. The word verdict is taken from
20 the latin word veredicto which means to speak the truth.

21 You have no friends to reward in this case or
22 enemies to punish. I charge you to abide by your oath and
23 return verdicts that speak the truth.

24 Now, you'll have with you in the jury room
25 the indictment in this case. This indictment does not

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1 constitute evidence. It simply sets forth allegations by
2 the State. This indictment is a legal document that
3 brings it into the courtroom and presents it to you for
4 your determination.

5 Ladies and gentlemen, with respect to Count
6 1, murder, there are one of three possible verdicts and
7 Madam Foreman, I have written out them out. The first
8 possible verdict would be guilty, the second not guilty,
9 the third possibility would be guilty of manslaughter.
10 With respect to Count 2 possession of a weapon during the
11 commission of a violent crime, there are two possible
12 verdicts, guilty or not guilty.

13 Whatever your verdicts are, ladies and
14 gentlemen, they must be unanimous. That means all 12 of
15 you must agree.

16 Madam Foreman, you will find on the back of
17 the indictment where it says verdict, I have written out
18 Count 1 that's for murder and Count 2 for possession of a
19 weapon during the commission of a violent crime. Whatever
20 the verdict is, please write it out in the space provided,
21 sign your name on the line that says Fore person.

22 At this time, I am required to go over my
23 charge with the lawyers. I need you to go back into the
24 jury room but don't begin deliberating until I send word
25 in for you to do so. Thank you.

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1 (Jury exits the courtroom.)

2 Anything further from the State?

3 MR. STEINBERG: Yes, Your Honor. As for the
4 verdict form, are you going to use the words manslaughter
5 or voluntary manslaughter?

6 THE COURT: I put manslaughter.

7 MR. STEINBERG: I would ask that you put
8 voluntary manslaughter just to avoid any appellant issues
9 in the future.

10 THE COURT: What possible problems would
11 there be? I charged them manslaughter.

12 MR. STEINBERG: I agree with you, Your Honor.
13 Knowing appellant defense and how they are, they're going
14 to make an issue about that. I would ask for that and I
15 would also ask that you reinstruct the jury as to -- I
16 believe Your Honor's instructions are correct but the
17 Supreme Court said that there can't be any mention of
18 flight being evidence of guilt in a jury charge and I
19 would ask you to please say something along the lines of
20 any evidence of flight should be something that you can
21 consider if you feel necessary. I would not ask any other
22 charge outside of that.

23 MR. ELLER: Your Honor, first I would object
24 to the term voluntary. If you're only going to charge on
25 manslaughter, there's no reason to confuse the jury.

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1 Secondly, I believe your charge did say they're not
2 supposed to consider that as guilt but it is something
3 they can consider as far as flight evidence. And third,
4 Your Honor, I would just renew our prior objection request
5 to include involuntary manslaughter as a charge to the
6 jury.

7 THE COURT: I will decline any further
8 charges. I would put it guilty of voluntary manslaughter
9 to make it absolutely clear.

10 MR. STEINBERG: Thank you, Your Honor.

11 MR. ELLER: Your Honor, as a matter of
12 housekeeping, I did hand up the jury charge to you but I
13 would like to have it marked as ---

14 THE COURT: I'll make it part of the record.

15 MR. ELLER: Thank you, Your Honor.

16 THE COURT: Is the lunch here?

17 THE BAILIFF: Yes, Your Honor.

18 THE COURT: Okay. Tell them to deliberate
19 and enjoy their lunch. We'll bring all the exhibits in
20 when we have gathered them all together.

21 Stay close and don't leave the building.

22 MR. STEINBERG: Yes, sir.

23 MR. ELLER: Yes, sir.

24 (Whereupon, lunch and deliberations began.)

25 THE BAILIFF: Please come to order. Court is

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1 now in session.

2 THE COURT: Be seated. Alright, they want a
3 copy of the definitions of Murder, Murder 1, accidental
4 and voluntary manslaughter. I really can't do that
5 because my charges have handwritten notes on them. What
6 I'm going to do is give them pads and have them take notes
7 and instruct them if they disagree on what I have said,
8 let me know that and I'll recharge them again.

9 MR. STEINBERG: Are you going to do the same
10 charge as you did for murder, manslaughter and
11 accidental?

12 THE COURT: Murder 1 is I assume is Count 1
13 and I think they want a charge on voluntary manslaughter
14 and then they want a charge on accidental.

15 MR. STEINBERG: Are you going to do the same
16 charge as you did earlier?

17 THE COURT: Yes.

18 Give them each a pad and pencil and bring
19 them on.

20 (Whereupon, question marked as Court's
21 Exhibit No. 1 for identification.)

22 (Jury re-enters the courtroom.)

23 Madam Foreman, you said you want the
24 definitions of Murder 1, accidental and voluntary
25 manslaughter and I assume when you accidental, you mean

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1 the defense of accidental?

2 MADAM FOREMAN: Just in our discussion we
3 sort of forgot what the definition of murder and voluntary
4 manslaughter.

5 THE COURT: You need me to charge you again?

6 MADAM FOREMAN: Yes, to get a better
7 understanding. Accidental and self-defense too.

8 THE COURT: Okay.

9 I don't have a verbatim copy of what I told
10 you this morning so I can't send you in a verbatim copy of
11 what I charged you this morning. Sometimes during the
12 trial of a case a jury will ask if they could take notes
13 and I'll allow the jury to take notes, but I tell them
14 that even though taking those notes, they can't use them
15 as a transcript of the trial but they can use those notes
16 to refresh their memory of what I charge. So what I'm
17 going to ask you to do is I'm going to ask that for those
18 who want to take notes, you can take them now, and then
19 begin your deliberations again.

20 If you disagree on what I said then let me
21 know that then I'll recharge you again. So you take notes
22 and use them to create your recollection of what I'm
23 telling you now and if you disagree as to what I'm telling
24 you, let me know and I'll try to go over that again.

25 Now, you first wanted the definition of

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1 murder which is Count 1 in the indictment and I told you
2 that there were two elements of murder, first of all, the
3 killing of another person and that the killing was with
4 malice aforethought and that could be expressed or
5 implied. I defined the killing of another simply means
6 that a person was killed, died.

7 I explained malice to you, expressed malice
8 and implied malice as being a term of art which implies a
9 wickedness and it excludes a just cause and excuse.
10 Malice means a condition of the mind or heart which
11 prompts one to take the life of another without just cause
12 or excuse. I told you that malice must be aforethought
13 and that simply means that it must be deliberate or it
14 must have been planned only that it need to be in the mind
15 of the person sufficient time only to produce the act that
16 caused the death.

17 Now, expressed malice is direct proof of
18 malice and the examples I gave was where a person by word
19 of mouth expresses hatred or ill will to someone else or
20 for example where someone has made previous threats or is
21 lying in wait and then kills somebody. That is expressed
22 malice.

23 Now, we have the other kind of malice which
24 is implied malice. Implied malice is shown from the facts
25 and circumstances around the event and that is the killing

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1 of someone else and in implied malice, there is no actual
2 intent in killing any person but the death is caused by
3 conduct which our law regards in showing such an abandoned
4 state of mind as to be the equivalent to an actual intent
5 to kill somebody else.

6 Implied malice can be manifested by
7 implication from the facts and circumstances surrounding
8 the transaction. That's murder, Count 1 of the
9 indictment.

10 The lesser included offense, which is not
11 specifically set forth in the indictment is voluntary
12 manslaughter. That's the lesser included offense to
13 murder. It's defined as the killing of another person,
14 another human being, without the malice which is required
15 for murder but it is an act done in sudden heat of passion
16 when that passion is caused or brought about a sufficient
17 legal provocation caused by the victim.

18 The example I gave to you for voluntary
19 manslaughter is if I went up to one of you and struck you
20 in the face with my fist and as a result of that
21 provocation of hitting you, you were to hit me and kill
22 me, then that wouldn't be murder. That would be
23 manslaughter because you killed me in the sudden heat of
24 passion which was caused by my act me hitting you.

25 Now, I told you with manslaughter that mere

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1 words, however insulting or offensive, never give
2 justification to a person to take the life of another and
3 that won't suffice to litigate murder from manslaughter.

4 I also told you another example or stated
5 somewhat differently that words alone no matter how
6 offensive are never sufficient to constitute legal
7 provocation. I told you that when a death is caused by
8 the use of a deadly weapon, the offensive words must be
9 accompanied by the appearance of some overt act,
10 threatening act which could have produced the heat of
11 passion required for manslaughter.

12 Now, the defense of self-defense that is
13 plead by the defendant in this case, I told you that there
14 are four elements. Number 1, the defendant must have been
15 without fault in bringing on the difficulty. Two, he must
16 have actually believed that he was in eminent danger of
17 losing his life or suffering serious body harm or that he
18 actually was in imminent danger and that a reasonable
19 prudent person of ordinary firmness and courage would have
20 come to the same conclusion that is what have entertained
21 the same belief.

22 And, lastly, the defendant had probable means
23 of avoiding the danger of losing his own life or
24 sustaining serious body harm then to act as he did in this
25 particular instance, that is self-defense. Self-defense

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1 is not an affirmative defense. The State must prove that
2 there was no self-defense beyond a reasonable doubt.

3 The defense of accident as I told you earlier
4 is an excusable homicide and this includes those in which
5 no one involved is criminally negligent or reckless. This
6 is because where the death of a human being is result of
7 an accident in the true meaning of that term, there is no
8 criminal responsibility. The defense of accident is not
9 applicable unless the defendant was acting lawfully, that
10 the killing was unintentional and that due care was
11 exercised in the handling of the weapon. Again, accident
12 is not an affirmative defense and when its pled, the State
13 must overcome that by proof beyond a reasonable doubt.

14 Okay. I'll ask that you please retire and
15 continue with your deliberations. As I said if you
16 disagree with what I told you, let me know and I'll try to
17 clarify it further.

18 (Jury exits the courtroom.)

19 Anything further?

20 MR. ELLER: None from the defendant.

21 MR. STEINBERG: None from the State.

22 THE COURT: Be at ease.

23 (Deliberations continued.)

24 THE BAILIFF: Come to order. Court is now in
25 session.

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1 THE COURT: Be seated. Ladies and gentlemen,
2 I understand we got a verdict in this case. Of course, we
3 don't know what that verdict is. I want everyone in the
4 courtroom to understand that regardless of the verdict
5 that I will not allow any displays of emotion, no
6 laughing, no crying, no nothing like that. And should
7 there be any of that, it will constitute contempt of court
8 and I will punish accordingly. Does anyone in the
9 courtroom not understand what I just said?

10 (No response.)

11 Bring the jury.

12 (Jury re-enters the courtroom.)

13 Madam Foreman, if you've reached a verdict
14 would you hand it to the bailiff, please.

15 Okay. Publish the verdict.

16 THE CLERK: Yes, sir. Your Honor, this is
17 Case No. 2010-GS-23-4603, State versus Julian Deandre
18 Battle, indictment for murder and possession of a weapon
19 during the commission of a violent crime. Count 1,
20 guilty; Count 2, guilty, signed fore person of the pending
21 jury. Ladies and gentlemen, the verdict I just read was
22 the verdict you reached in the jury room, is that your
23 verdict then and is that your verdict now? If so, please
24 raising your right hand.

25 (Jury complies.)

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1 Thank you.

2 THE COURT: Anything further for the jury.

3 MR. STEINBERG: Your Honor, the State thanks
4 the verdict for their service.

5 MR. ELLER: Nothing from the defendant, Your
6 Honor.

7 THE COURT: Ladies and gentlemen, I thank you
8 for your service on this case and this week. So far as
9 you're concerned, this concludes your service for the
10 week. I thank you so much for coming and serving on this
11 case. Without your service, we simply could not get the
12 cases off the docket that we do. It is a very important
13 service you performed this week and I thank you very much
14 for this service. Now, if you follow the bailiff, she'll
15 take you downstairs and you'll get a voucher and you'll be
16 free to go for the rest of the week. Thank you very much.

17 (Jury exits the courtroom and dismissed.)

18 Any motions?

19 MR. ELLER: At this time, we'd like to make a
20 motion for JNOV and renew our motion for directed verdict
21 on the murder. The State didn't provide any evidence of
22 malice aforethought, also for directed verdict on the
23 second charge for possession of a deadly weapon for
24 possession of a violent crime the State didn't place into
25 the record any evidence of possession.

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1 THE COURT: I'd have to deny those motions.

2 MR. ELLER: I now move, Your Honor, for a new
3 trial. The first basis is on 13th jury some of the facts
4 don't support the verdict, second basis would be it was
5 not an involuntary manslaughter charge, the third basis is
6 for allowed statements made by Mr. Battle to Investigator
7 Jones on the basis that such statements was not voluntary.
8 It was not a knowingly intelligent waiver of his rights.

9 THE COURT: I'd have to deny those motions.
10 Thank you. Anything further before I impose sentence.

11 MR. ELLER: Yes, Your Honor. I would like to
12 call Mr. Battle's mother who would like to say a few words
13 in the sentencing portion.

14 THE COURT: Sure. Mr. Battle, come around,
15 please.

16 Yes, Ms. Battle.

17 MS. BATTLE: I would just like the Court to
18 know that Deandre is a very supportive man of his
19 children. He has two sons and a newborn baby. He has a
20 five year old son and a four year old son with
21 Ms. Tudesko(ph). They miss their father a lot in their
22 lives. My son has been a very hard working man. I
23 haven't had any problems with him and I'm just asking for
24 mercy on his sentencing so he would be able to raise his
25 children to be the man that God want him to be for his

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1 children. They need their father.

2 THE COURT: Ma'am, if he cares that much
3 about his children, he was out on Christmas even partying
4 with a child or a wife or girlfriend at home.

5 DEFENDANT BATTLE: She wasn't my girlfriend.

6 THE COURT: Thank you, ma'am.

7 Does he have a prior record?

8 MR. STEINBERG: Yes, sir, he does have a 2001
9 unlawful carrying of a pistol and a 2002 criminal domestic
10 violence. It says third offense but I think it's actually
11 his first offense because we can't find a first or second
12 so I presume it is a first offense. We are asking, Your
13 Honor, consider all the factors, how serious this crime
14 was, the flight, the statements that were made, the
15 falsehoods, the fact that he told different stories at the
16 first trial and at this trial, but the most important
17 factor, Your Honor, to consider is he killed a really good
18 person. There is no other way to say it, Rafael Dodd was
19 a good person. I don't want to say anything more about
20 it. At the proper time, his mother will speak, Your
21 Honor.

22 THE COURT: Anything further?

23 MR. ELLER: Yes, Your Honor. We would also
24 ask for leniency based on the fact that you did hear the
25 facts in this case. Without an actual eyewitness that saw

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1 the shooting, Your Honor, we would ask for leniency in
2 this matter.

3 THE COURT: Mr. Battle, anything you would
4 like to say before sentencing?

5 DEFENDANT BATTLE: I would just ask you to
6 have mercy, Your Honor.

7 THE COURT: Yes, ma'am. Your name for the
8 record.

9 MS. DODD: My name is Navada Dodd. Rafael
10 was a good guy. He also had a child that he loved very
11 very much. They wasn't together but he would go get her.
12 He also and in his obituary he had texted his daughter
13 around that time and his daughter's name is Tyra. He said
14 Tyra I love you and I don't know what I'm going to do
15 without you Christmas morning because he came down here.
16 I'm really sad that I won't be able to see you wake up and
17 open up your gifts. I still remember being there on your
18 first Christmas, you were running too fast for me. Always
19 remember where I am I will always be your daddy and I love
20 you.

21 MR. STEINBERG: Ms. Dodd, what was that?

22 MS. DODD: 12-23-2009.

23 MR. STEINBERG: Two days before the killing,
24 Your Honor.

25 THE COURT: Thank you.

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1 DEFENDANT BATTLE: I would like to say one
2 more thing. I apologize to the family for what happened.
3 Even though it was never my intention regardless the
4 things that happened I never intended and I swear to my
5 God I never intended for nothing to happen to your son. I
6 never intended the things that took place that night to
7 happen and I hope you find it in your heart to forgive me
8 whatever you think that I done. I truly apologize.

9 THE COURT: Anything else?

10 MR. STEINBERG: No, sir. Thank you.

11 THE COURT: Alright, Mr. Battle, on the
12 indictment for murder to which you've been found guilty,
13 the sentence of the Court is you be committed to the
14 Department of Corrections for life. And on the indictment
15 for possession of a weapon during the commission of a
16 violent crime, you be confined to the Department of
17 Correction for a period of five years.

18 MR. STEINBERG: Thank you.

19 ---END OF TRANSCRIPT RECORD---

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22

23

24

25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) COURT OF GENERAL SESSIONS
3) 2010-GS-23-4603
4)
4 State of South Carolina) TRANSCRIPT OF RECORD
5 vs)
6 Julian D. Battle) Day 1
7)

8 September 12 - 14, 2011
Greenville, South Carolina

9 B E F O R E:

10 THE HONORABLE C. VICTOR PYLE, Judge

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

12 HOWARD STEINBERG, Esquire
13 Assistant Solicitor
Attorney for the State

14 DANIEL ELLER, Esquire
15 Attorney for the Defendant

16
17 Caroline Hiskell
Circuit Court Reporter
18
19
20
21
22
23
24
25

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1 worse. That you were truly innocent without any
2 culpability. I'm not going to spend any more time on
3 this.

4 You have the evidence in front of you and you
5 can look at it, you can examine it. You can see the size
6 of that patio, listen to the testimony. The holster was
7 still inside; six plus one. I ask you to consider all
8 this evidence. If you find anything less than murder it's
9 because you have accepted part of Mr. Battle's story. I
10 urge you not to do that.

11 That means that you disbelieve Laura Jones's
12 statement that she did not actually write down those words
13 and she just made them up.

14 We know about his falsehoods both during this
15 time, during the interview and during his examination
16 today that he will say anything to avoid his consequences.

17 Please convict him based on the evidence and
18 I thank you for your time and the State of South Carolina
19 thanks you for your time.

20 Thank you, Your Honor.

21 THE COURT: Does anyone need a short recess
22 before I start the jury charge?

23 (No response).

24 Now, ladies and gentlemen, the defendant in
25 this case as you know is first indicted for murder. A

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1 murder is a Statutory offense and Section 16-10-3-10 of
2 our Code of Law reads as follows: "Murder is the killing
3 of any person with malice aforethought either expressed or
4 implied." So what then are the elements of this offense
5 that the State must prove beyond a reasonable doubt.

6 First of all, the State must prove the
7 killing of another. And secondly that it was done with
8 malice aforethought either expressed or implied.

9 Now, with respect to the first element and
10 that is the killing of another, I charge you that any
11 killing of a human being is called homicide. But all
12 homicides are not necessarily unlawful. For example,
13 where one kills another in self-defense, this is known as
14 an excusable homicide or where a police officer kills an
15 armed robber, this is known as justifiable homicide. And
16 neither of these is punishable by law.

17 As a necessary element of murder, the
18 homicide must have been unlawful, that is without a just
19 cause or excuse. With respect to the second element and
20 that is malice aforethought expressed or implied, I charge
21 you that malice is a legal term apart which implies
22 wickedness and excludes a just cause or excuse. Malice
23 means a condition of the mind or heart which prompts one
24 to take the life of another without just cause or excuse.

25 Now, our Supreme Court has defined malice by

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1 saying it springs from the heart deployed of social duty
2 or obligation and is done favorably and deliberately
3 (inaudible).

4 Now, to prove malice, it is not necessary for
5 the State to prove that the defendant had a feeling of
6 hatred or ill will towards the person who was killed. The
7 Statute says malice must be aforethought and aforethought
8 simply means deliberate or planned. In other words,
9 aforethought must have been in the mind a sufficient
10 length of time to have produced the act that caused the
11 death.

12 Now, no period of time must have existed. If
13 it was there long enough to bring on the act to cause the
14 death, then it would be efficient in point of time.

15 The Statute says that malice may be expressed
16 or it may be implied. Expressed malice means that there
17 is some direct proof of malice. For example, a person by
18 word of mouth states his hatred or ill will towards
19 another or where there is evidence of previous threats,
20 laying in wait, or making plans to take a human life.
21 That is expressed malice.

22 Implied malice, on the other hand, may be
23 shown from the facts and circumstances surrounding the
24 incident or event. Implied malice exists where there is
25 no actual intent to kill any person but that the death is

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1 caused by conduct which the law regards as showing such an
2 abandoned state of mind as to be the equivalent to an
3 actual intent to kill. It may be manifested by
4 implications from the facts and circumstances attending
5 the transaction.

6 Now, ladies and gentlemen, I charge you that
7 if facts are proved to raise the inference of malice as I
8 have defined that to you, then this inference conclusive
9 and it is always for the jury to determine from all the
10 evidence in the case if malice has been proved beyond a
11 reasonable doubt.

12 Although not specifically that's been set
13 forth in the indictment, there is a lesser included
14 offense which I much define and charge you on and that
15 this manslaughter -- voluntary manslaughter.

16 Manslaughter, ladies and gentlemen, is
17 defined as the killing of a human being without malice and
18 in sudden heat of passion when the heat of passion is
19 caused by or brought about by a sufficient legal
20 provocation. If one flies into a sudden heat of passion
21 upon a sufficient legal provocation and it results in the
22 death of another, the law says that that act having been
23 done under those circumstances it is not murder but
24 manslaughter.

25 To illustrate, if I were to go up to one of

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1 you and make an unwarranted attack on you, strike you in
2 your face with my fist, and you, acting under the heat of
3 that passion aroused by my act were to kill me, you would
4 not be guilty of murder but rather manslaughter because
5 you killed me in a sudden heat of passion caused by my
6 unwarranted attack.

7 Ladies and gentlemen, I charge you that
8 sudden heat of passion aroused by sufficient legal
9 provocation which may produce a felonious killing from
10 that of murder to that of manslaughter need not from
11 reason entirely or shut out knowledge or volition, but it
12 refers to an unlawful killing provoked by such
13 circumstances that would naturally disturb the sway of
14 reason in the mind of an ordinary reasonable and prudent
15 person that is capable of (inaudible) reflection.

16 Now, an order for a felonious killing can be
17 reduced from that of murder to that of manslaughter, it
18 must have occurred, as I told you, in the sudden heat of
19 passion aroused by sufficient legal provocation. The
20 killing of a human being even in the heat of passion is
21 murder if there was no sufficient legal provocation. That
22 is that the slayer had no reasonable cause for his anger.

23 The defendant in this case pleads as a
24 defense self-defense. Self-defense, ladies and gentlemen,
25 is a complete defense. If established, you must find the

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1 defendant not guilty. Now, there are four elements
2 required by law to establish self-defense in this case.

3 First of all, the defendant must be without
4 fault in bringing on the difficulty.

5 Second, the defendant must have actually
6 believed the was in eminent danger of losing his life or
7 sustaining serious bodily injury or that he actually was
8 in such eminent danger.

9 Next, if his defense is based upon his belief
10 of eminent danger, then that a reasonably prudent person
11 of ordinary firmness and courage would have entertained
12 the very same belief. If the defendant was in eminent
13 danger than the circumstances were such as would warrant
14 an ordinary prudent person of firmness and courage to
15 strike the fatal blow in order to save himself from
16 serious bodily harm or of losing his life:

17 And fourth, that the defendant had no other
18 probable means of avoiding the danger of losing his own
19 life or sustaining serious body injury or that as he did
20 in this particular instance.

21 Now, ladies and gentlemen, I charge you that
22 a defendant has the right to act on appearances. A
23 defendant must show that he believed he was in eminent
24 danger or that he was actually in such danger because he
25 had the right to act on appearances and under the

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1 circumstances as they appeared to him, he believed that he
2 was in such danger, and, next, that a reasonable man of
3 ordinary firmness and courage would have entertained the
4 same belief.

5 I charge you further that, ladies and
6 gentlemen, that words accompanied by hostile acts may,
7 depending on the circumstances, establish a plea of self-
8 defense.

9 Now, ladies and gentlemen, if you have a
10 reasonable doubt of the defendant's guilt after
11 considering all the evidence in the case including the
12 evidence of self-defense, then you must find him not
13 guilty. On the other hand if you have no reasonable doubt
14 of this defendant's guilt after considering all the
15 evidence including the evidence of self-defense, then you
16 must find him guilty.

17 The defendant additionally pleads as a
18 defense accident. Excusable homicide includes those which
19 no one involved in criminally negligent or reckless.
20 Where the death of a human being is a result of an
21 accident in the truth and meaning of that term, no
22 criminal responsibility attaches to the act of the
23 slaying. The defense of accident is not applicable unless
24 the defendant was acting lawful.

25 Now, the defense that the homicide was

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1 accidental is not an affirmative defense and when pled,
2 the State must overcome it beyond a reasonable doubt.

3 Count 2 of this indictment charges this
4 defendant with possession a firearm during the commission
5 of a violent crime. This too is a statutory offense and
6 Section 16-23-4-90 of our Code of Laws provides in part as
7 follows: "If a person is in possession of a firearm or
8 visibly displays what appears to be a firearm during the
9 commission of a violent crime and is convicted of
10 committing or attempting to commit a violent crime as
11 defined in Section 16-1-60, he must be imprisoned in
12 addition to the punishment provided for the principle
13 crime. I charge you that murder and manslaughter are
14 defined as violent crimes in that code section.

15 So before this defendant can be convicted of
16 this offense, possessing a firearm during the commission
17 of a violent crime, he must have been first found guilty
18 by you the jury of, in this instance, murder or
19 manslaughter. The State must have proved beyond a
20 reasonable doubt that this defendant was in possession of
21 or what appeared to be a firearm during the commission of
22 the crime of murder or manslaughter.

23 Now, ladies and gentlemen, as jurors in this
24 case you have a function or responsibility that is
25 entirely separate and distinct as my function as the trial

State versus Julian Battle

1 judge. The Constitution of our State does now allow me to
2 charge you on the facts on this case or to discuss the
3 facts with you or in any way or manner let you know what
4 my personal feelings, if any, are about this case. And
5 that's because you and you alone are the judges of the
6 facts; therefore, if during the course of this trial or
7 during the course of this trial you have a feeling or left
8 with the impression that I have a person feeling about
9 this case one way or another, then you disregard that
10 feeling or that impression.

11 Now, it's your duty and your duty alone to
12 weigh the testimony and evidence presented in this case
13 and to pass upon the credibility or the believability of
14 the witnesses you heard testify. In this connection you
15 have a right to believe all that a witness told you or you
16 can disbelieve all a witness told you. You can believe a
17 part of what a witness told you or disbelieve part of what
18 a witness told you. You can believe one witness against
19 several or you can believe several against one.

20 You also have the right to take into
21 consideration any bias or prejudice or sympathy you may
22 feel a witness might have in the case.

23 Now, ladies and gentlemen, I am the judge of
24 the law in this case and as the judge of the law, it is my
25 duty to charge you the law applicable to the issues of

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1 fact in the case. Now, it's not a question of what you
2 feel the law might be or what it should be. It's not
3 necessarily what the attorneys may have told you it is
4 because under your oath, you are required to take the law
5 as I give it to you, apply that law to the facts as you
6 determine those facts to be, and to write your verdict
7 accordingly.

8 It's also my duty to see that this trial is
9 conducted according to the rules of court and the rules of
10 evidence applicable to the facts in the case and I charge
11 you therefore that you are not to consider in any way or
12 manner testimony or evidence that was ruled out by me as
13 being not admissible.

14 Ladies and gentlemen, in this case as in all
15 criminal cases this defendant comes into this courtroom
16 presumed to be innocent and this presumption continues and
17 carries through the entire trial unless and until it is
18 removed by evidence that satisfies you of his guilty
19 beyond a reasonable doubt.

20 The burden is on the State in this case to
21 prove the defendant guilty and to prove each and every
22 element of the charges in the case beyond a reasonable
23 doubt. Now, some of you may have in the past served as
24 jurors on civil cases and if so you were more likely told
25 that it was only necessary to prove that a fact was more

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1 likely true than not true. But in criminal cases, the
2 State's proof must be more powerful. As I told you it
3 must be beyond a reasonable doubt.

4 Now, proof beyond a reasonable doubt is proof
5 that leaves you firmly convinced of this defendant's
6 guilt. There are very few things in this world we know
7 with absolute certainty and in criminal cases our law does
8 not require proof that overcomes every possible doubt.
9 If, based on your consideration of the testimony and
10 evidence in this case you are firmly convinced that this
11 defendant is guilty, then you must find him guilty.

12 If on the other hand you think there is a
13 real possibility that he is not guilty, then you must find
14 him not guilty.

15 Ladies and gentlemen, under the oath you took
16 in this case you swore to try this case based only and
17 solely on the testimony and evidence presented in this
18 courtroom. I'll tell you that it is your duty to lay
19 aside all outside opinions, bias or prejudice, or sympathy
20 you may have in reaching your verdict. The word verdict,
21 ladies and gentlemen, is taken from the latin word
22 veredicto. It means to speak the truth. You have no
23 friends to reward in this case or enemies to punish. I
24 charge you to abide by your oath and return verdicts that
25 speak the truth.

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1 Now, you'll have in the jury room with you
2 the indictment. This indictment does not constitute
3 evidence. It simply sets forth the allegations by the
4 State. This indictment is the legal document which brings
5 this case into the courtroom and presents it to you for
6 your determination.

7 Now, ladies and gentlemen, with respect to
8 Count 1, which is the count charging this defendant with
9 murder, there are one of three possible verdicts; guilty,
10 guilty of voluntary manslaughter, or not guilty. On Count
11 2 which is the count charging him with possession of a
12 firearm during the commission of a violent crime, there
13 are two possible verdicts; guilty or not guilty. Whatever
14 your verdicts are they must be unanimous which means all
15 12 of you must agree.

16 Now, madam foreman, you will find a place on
17 the back where it says verdict. Put in Count 1 and Count
18 2. Whatever the unanimous verdict of the jury is on each
19 count, Count 1 and Count 2, please write that out by
20 spelling it out, guilty or not guilty with respect to the
21 possessing of the pistol, and on Count 1, guilty, guilty
22 of voluntary manslaughter or not guilty and then please
23 sign your name on the line where it says foreperson of the
24 jury.

25 Ladies and gentlemen, at this time I'm

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1 required to go over my charge with the attorneys. I need
2 you to go back into your jury room but do not begin
3 deliberating until I send word in for you to do so. Your
4 lunch should be here shortly if it's not already here. My
5 preference is you deliberate and each your lunch at the
6 same time. If you can't, just take a little break, have
7 your lunch, and then pick back up with your deliberations,
8 but don't start until I tell you.

9 Take the jury out.

10 (Jury leaves the courtroom).

11 Anything from counsel?

12 MR. STEINBERG: Nothing from the State, Your
13 Honor.

14 THE COURT: Anything from the defense?

15 MR. ELLER: Your Honor, we'd like to renew of
16 request for a charge of involuntary manslaughter.

17 THE COURT: All right.

18 MR. ELLER: And for the record, we would also
19 request a charge on criminal intent, specific intent.

20 THE COURT: I'm going to leave the charge as
21 I charged. I am going to file for the record your request
22 for charge as they relate to the charges in this case.

23 (Jury charge marked as Court's Exhibit No. 2
24 for identification and admitted into evidence).

25 MR. ELLER: Thank you, Your Honor.

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1 MR. STEINBERG: Do you have a copy of my
2 charge?

3 THE COURT: Yes. Get all of the exhibits
4 together and send them back. Tell them to begin their
5 deliberations.

6 (Whereupon, the jury began deliberations at
7 12:35 p.m.)

8 (Jury question.)

9 (Jury question marked as Court's Exhibit No.
10 3 for identification and admitted into evidence).

11 The jury has a question about what happens if
12 they can't reach a verdict.

13 Bring them in.

14 (Jury re-enters the courtroom).

15 Madam Foreman, your question is, "If we don't
16 agree on a verdict, the defendant goes free."

17 Ladies and gentlemen, the answer to that
18 question is, no. It simply means that I will have to
19 declare a mistrial in the case which means nobody wins.
20 It simply means that at some future date and that I or one
21 of the other circuit judges will try this case. I assume
22 the same witnesses will come, testify probably to the same
23 thing they testified to today, and same lawyers will be
24 here to ask the questions on direct and cross-examination
25 and we'll go through the whole process again.

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1 Does that answer your question?

2 (Jury collectively nods affirmative).

3 Okay. Go back and resume your deliberations.

4 (Jury exits the courtroom to resume
5 deliberations).

6 Okay. Stay real close.

7 (Trial at ease during deliberations).

8 Anything before we bring the jury?

9 (Jury re-enters the courtroom).

10 Madam Foreman, you have sent in a note saying
11 that you can not come to a unanimous decision; is that
12 correct?

13 MADAM FOREMAN: Yes, it is.

14 THE COURT: Madam Foreman, I would ask you
15 with any further meaningful deliberation in this case, do
16 you believe that this jury can reach a unanimous verdict?

17 MADAM FOREMAN: No, sir.

18 THE COURT: All right, ladies and gentlemen,
19 I have no other alternative but to declare a mistrial in
20 this case. And, again, I tell you that doesn't mean
21 anybody wins. It simply means that at some future time
22 myself or possibly one of the other judges will retry this
23 case. With that your services are concluded on this case
24 so what I need you to do after 6:00 p.m. today, we'll let
25 you know when to report back for further jury duty.

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1 Thank you so much. You're free to go.

2 (Jury dismissed at 3:40 p.m.)

3 All right, thank you counsel. The defendant
4 is remanded back into custody.

5 (Jury question marked as Court's Exhibit No.
6 4 for identification and admitted into evidence.)

7 ---END OF TRANSCRIPT RECORD---

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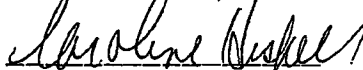
25

State versus Julian Battle

1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal, in
7 the Circuit Court of Greenville County, South Carolina on
8 the 12th day of September, 2011.

9 I do further certified that I am neither of
10 kin, counsel, nor interest to any party hereto.

11
12
13 November 11, 2011

14 

15 Caroline Hiskell
16
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23
24
25

WITNESSES

L Jones

Greenville County Sheriffs Office

12/25/2009

ARREST WARRANT NUMBER

M177608, M177610

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-23-

HLS

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2010

June

THE STATE

vs.

JULIAN DEANDRE BATTLE

Indictment for

0116, 0549

MURDER AND POSSESSION OF A WEAPON
DURING THE COMMISSION OF A VIOLENT
CRIME

VIOLATION § 16-03-0010 and § 16-23-0490

004603

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
 MURDER AND POSSESSION OF A WEAPON DURING THE
 COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on **JUN 22 2010** the Grand Jurors of Greenville
 County present upon their oath:

COUNT ONE

MURDER

That JULIAN DEANDRE BATTLE did in Greenville County, on or about the 25th day of December, 2009, unlawfully and with malice aforethought kill RAFAEL DODD by means of shooting him during an altercation, and that RAFAEL DODD died as a proximate result thereof. This is in violation of §16-03-0010 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That JULIAN DEANDRE BATTLE did in Greenville County, on or about the 25th day of December, 2009, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: Murder. This is in violation of §16-23-0490 of the South Carolina Code of Laws (1976) as amended.

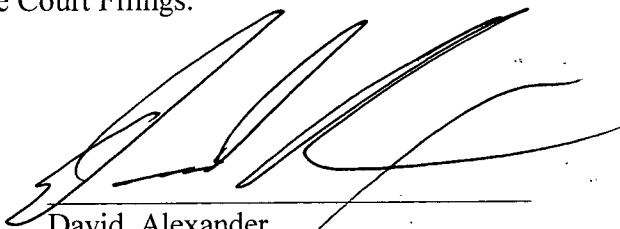
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 29th, 2013



David Alexander
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
JUL 29 2013
SC Court of Appeals

Appeal from Greenville County

C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JULIAN DEANDRE BATTLE,

APPELLANT

APPELLATE CASE NO. 2011-203746

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Alphonso Simon, Jr., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, on this 29th day of July, 2013.

Brandon Hall

Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 29th day of July, 2013.

Paula M. Key (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.