

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Stephanie P. McDonald, Circuit Court Judge

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S.C. Supreme Court

LORD BYRON SLATER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-212846

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF
GENERAL SESSIONS
01-GS-10-3221
01-GS-10-3226

The State of)
South Carolina)
vs.)
Lord Byron Barclay)
Slater,)
Defendant)

TRANSCRIPT OF RECORD
November 13-15, 2001
Charleston, S.C.
Volume I

B E F O R E:

THE HONORABLE JUDGE EDWARD B. COTTINGHAM

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1 (The following was reported on November
2 13, 2001.)

3 THE COURT: Thank you, ladies and gentlemen;
4 please be seated.

5 MR. PENNINGTON: Judge, may we approach?

6 THE COURT: Yes, sir.

7 (WHEREUPON, a bench conference was held off
8 the record, in the presence of the jury panel, but
9 out of the hearing of the jury panel.)

10 THE COURT: All right. Gentlemen, we'll have
11 the arraignment at this time.

12 THE CLERK: Case numbers 2001-GS-10-3221 and
13 2001-3226, State of South Carolina versus Lord
14 Byron Slater, indictments for murder and
15 possession of a firearm during the commission of a
16 violent crime.

17 If you answer to that name, please raise your
18 right hand. You may put it down.

19 You stand indicted by the name Lord Byron
20 Slater.

21 As to 2001-3221, at a Court of General
22 Sessions convened on May first, 2001, the grand
23 jurors of Charleston County present upon their
24 oath that Lord Byron Slater did in Charleston
25 County on or about February third, 2001,

1 feloniously, willfully and malice aforethought
2 kill and murder one Sharone Willis Middleton by
3 shooting him, and Sharone Willis Middleton did die
4 in Charleston County as a proximate result on or
5 about February third, 2001, in violation of
6 subsection 16-3-10 of The South Carolina Code of
7 laws, 1976 as amended.

8 As to 2001-GS-10-3226, indictment for
9 possession of a firearm during the commission of a
10 violent crime, at a Court of General Sessions
11 convened on May first, 2001, the grand jurors of
12 Charleston County present upon their oath that
13 Lord Byron Slater did in Charleston County on or
14 about February third, 2001, possess or visibly
15 display a handgun during the commission of a
16 violent crime, to wit, murder.

17 This is in violation of subsection 16-23-490
18 of The South Carolina Code of Laws, 1976 as
19 amended.

20 How say you, are you guilty or not guilty?

21 (Defendant conferring with counsel.)

22 THE DEFENDANT: Not guilty.

23 THE COURT: Okay. How will you be tried?

24 THE DEFENDANT: By jury.

25 THE COURT: May they send you a true

1 deliverance. Are you ready for trial?

2 THE DEFENDANT: Yes.

3 THE CLERK: Okay. Thank you.

4 MR. PENNINGTON: Thank you, Your Honor.

5 THE COURT: All right, sir.

6 Solicitor, call your case.

7 MR. DUTREMBLE: Thank you, Your Honor. May
8 it please the Court.

9 Your Honor, this is the State versus Lord
10 Byron Slater, indictment 2001-GS-10-3221,
11 indictment for murder.

12 Indictment 2001-GS-10-3226, indictment for
13 possession of a firearm during the commission of a
14 violent crime.

15 The State is ready for trial, Your Honor.

16 THE COURT: Mr. Pennington, is the defendant
17 ready for trial?

18 MR. PENNINGTON: Yes, sir, we are.

19 THE COURT: All right, sir.

20 Ladies and gentlemen of the jury panel, I'm
21 about to ask of you certain questions under your
22 oath concerning the case of Lord Byron Slater, who
23 is charged with the offense of murder and the
24 offense of possession of a firearm during the
25 commission of a violent crime, to which offenses

1 he has pled specifically not guilty.

2 There are no wrong answers for you to give
3 under this procedure. We are simply trying to
4 determine whether you have knowledge concerning
5 the facts and circumstances of this case, or if
6 you have formed or expressed an opinion concerning
7 the facts and circumstances of this case.

8 I tell you from the outset that there is
9 nothing wrong with you having viewed, listened to
10 or read anything concerning the case, nor is there
11 anything wrong with you having discussed the case.

12 We are simply trying to determine what each
13 of you have been exposed to and the result that it
14 may have had upon you.

15 The State of South Carolina and the defendant
16 seek from your number 12 jurors with no friends to
17 reward, no enemies to punish.

18 12 jurors who can say upon your oath, Judge
19 Cottingham, I have no biases or prejudices in this
20 case. I have made no predetermination of the
21 facts in this case.

22 If I am selected as a juror in this case, I
23 will base my verdict on the law and the evidence
24 heard in this courtroom and upon this trial and
25 from no other sources.

1 I ask now that you respond to the following
2 voir dire under your oath previously given at the
3 beginning of these proceedings.

4 First I would ask that the defendant please
5 stand and face the jury panel.

6 Is there anyone among you related by blood or
7 connected by marriage with this defendant, Lord
8 Byron Slater, who stands to my left?

9 Do any of you have any close personal
10 connections with the defendant Slater or his
11 family in any way such as employees, neighbors,
12 church members?

13 (There was no response.)

14 THE COURT: Do any of this jury panel know
15 this defendant, Lord Byron Slater, in any capacity
16 whatsoever? If so please stand.

17 (There was no response.)

18 THE COURT: Defendant Slater, you may be
19 seated.

20 This indictment that I hold in my hand is
21 upon this indictment. To this indictment this
22 defendant has pled not guilty.

23 Now, this indictment and the allegations it
24 contains is in no sense evidence, it is merely the
25 allegations, the evidence, if any, to come from

1 this witness stand under oath.

2 Lord Byron Slater, the defendant, is charged
3 with the felonious, willful killing with malice
4 aforethought on February the third, 2001, of one
5 Sharone Willis Middleton.

6 It being alleged that as a result of his
7 shooting him, that Sharone Willis Middleton did
8 die in Charleston County on or about February the
9 third.

10 Are any of you -- were any of you related by
11 blood or connected by marriage with the deceased,
12 Sharone Willis Middleton?

13 Did any of you have any close connections
14 with this deceased or his family, such as
15 neighbors, church members, employees?

16 Come forward. Come forward.

17 And as they come forward, anyone who knew
18 Sharone Willis Middleton in any capacity
19 whatsoever, come forward.

20 You stay right there. I need you on the
21 record, please. Your name?

22 (The following was reported out of the
23 presence of the potential jury panel.)

24 POTENTIAL JUROR: Mae Belle Youngblood.

25 THE COURT: And what is your jury number,

1 please?

2 MS. YOUNGBLOOD: 199.

3 THE COURT: And what was your response to my
4 inquiry?

5 MS. YOUNGBLOOD: My response is that I know
6 the family and church members.

7 THE COURT: You know the family of the--

8 MS. YOUNGBLOOD: Of the deceased.

9 THE COURT: Sharone Willis Middleton?

10 MS. YOUNGBLOOD Uh-huh. (Answer in the
11 affirmative.)

12 THE COURT: Are you close personal friends
13 with them or you just know them?

14 MS. YOUNGBLOOD: I know some of them. It's a
15 family connection with the father of the child.

16 THE COURT: Okay. Do you feel that that
17 close connection with the family of the deceased
18 would impact on your ability to be unbiased as a
19 juror?

20 MS. YOUNGBLOOD: It could be.

21 THE COURT: It would be?

22 MS. YOUNGBLOOD: It could be.

23 THE COURT: I thank you for your candor; I
24 will excuse you. Thank you.

25 Next.

1 If anybody raises any objection, please state
2 it for the record.

3 Your name, sir?

4 POTENTIAL JUROR: Lloyd Heyward.

5 THE COURT: And your number?

6 MR. HEYWARD: 76.

7 THE COURT: And what was your response,
8 please?

9 MR. HEYWARD: I know the family of Sharone.
10 Neighbors. Friends.

11 THE COURT: You're close friends?

12 MR. HEYWARD: Yes.

13 THE COURT: I would ask you the same question
14 I asked the previous juror, would your close
15 relationship with the family of the deceased,
16 would that impact on your ability to be an
17 unbiased juror?

18 (There was no response.)

19 THE COURT: Can you be fair to the defendant
20 with your close relationship with the deceased
21 family?

22 MR. HEYWARD: Yes, I can.

23 THE COURT: You think that regardless of that
24 connection now, that you would base your verdict
25 on the law, the evidence in this courtroom and

1 exclude from your deliberation your connection
2 with the deceased family?

3 MR. HEYWARD: Yes.

4 THE COURT: You think that you can. All
5 right, sir. You're under oath. If you think
6 that, I certainly accept it. Fine. Go ahead.
7 You are qualified if selected.

8 Next.

9 Good morning.

10 POTENTIAL JUROR: Good morning.

11 THE COURT: Your name, please?

12 POTENTIAL JUROR: Carolyn Macon.

13 THE COURT: And your juror number?

14 MS. MACON: 110.

15 THE COURT: What is your response, please,
16 ma'am?

17 MS. MACON: I know the family.

18 THE COURT: Are you close friends with the
19 family?

20 MS. MACON: Yes. Somewhat.

21 THE COURT: Talk a little louder so she can
22 hear you.

23 MS. MACON: Yes.

24 THE COURT: Okay. I'll ask you the same
25 question I asked the last jurors. Would your

1 close connection with the family of the deceased
2 impact on your ability to be fair to the defendant
3 in this case; or do you feel that it might bias or
4 prejudice you in some way?

5 MS. MACON: I can be fair.

6 THE COURT: Can your verdict be based on the
7 law and the evidence heard in this courtroom and
8 can you put aside your feelings for the family,
9 for the family of the deceased? If there is any
10 question if your mind about it, I will excuse you.

11 MS. MACON: I can be fair.

12 THE COURT: You can be fair?

13 MS. MACON: Yes.

14 THE COURT: Can your verdict be based on the
15 law and the evidence heard in this courtroom and
16 can you exclude from that verdict your feelings
17 for the family?

18 MS. MACON: Yes.

19 THE COURT: I will accept you if selected.
20 Thank you.

21 Next.

22 Your name, sir?

23 POTENTIAL JUROR: Eugene Hollington the
24 third.

25 THE COURT: And what was your response,

1 please?

2 MR. HOLLINGTON: Well, there is a lady who
3 used to go to church -- I used to go to church
4 with, I don't know if she is a family member,
5 but--

6 THE COURT: Are you a close member of the
7 family or just knew them?

8 MR. HOLLINGTON: Close with her.

9 THE COURT: Sir?

10 MR. HOLLINGTON: Close.

11 THE COURT: Do you feel that that would
12 impact on your ability to be fair in this case?

13 MR. HOLLINGTON: No, sir.

14 THE COURT: I want to make sure now. Even
15 though you were -- you knew this deceased, that
16 you will base--

17 MR. HOLLINGTON: Well--

18 THE COURT: Sir?

19 MR. HOLLINGTON: Well, I didn't know the
20 deceased, but I know there's, you know, a lady in
21 the room that -- I don't know if she is the family
22 or not.

23 THE COURT: You knew the family?

24 MR. HOLLINGTON: Family member.

25 THE COURT: Okay. Can you put aside your

1 friendship, if any, with the family?

2 MR. HOLLINGTON: Yes, sir.

3 THE COURT: And base your verdict on the law
4 and evidence in this courtroom?

5 MR. HOLLINGTON: Yes, sir.

6 THE COURT: You are saying to me that even
7 though you know the family of the deceased, that
8 you feel that you would not be biased or
9 prejudiced?

10 MR. HOLLINGTON: No, sir.

11 THE COURT: And will base your verdict on the
12 law and the evidence in this courtroom?

13 MR. HOLLINGTON: Yes, sir.

14 THE COURT: And you are responding under your
15 oath, as you understand?

16 MR. HOLLINGTON: Yes, sir.

17 THE COURT: Yes, sir, you're qualified if
18 selected. Thank you.

19 MR. DUTREMBLE: May I approach a moment, Your
20 Honor?

21 THE COURT: Yes, sir.

22 (WHEREUPON, a bench conference was held on
23 the record, in the presence of the potential jury
24 panel, but out of the hearing of the potential
25 jury panel.)

1 MR. DUTREMBLE: It's Sharone.

2 THE COURT: What'd I say, Sharon?

3 MR. DUTREMBLE: Yes, sir.

4 THE COURT: Okay. Sharone Willis Middleton
5 not Sharon.

6 MR. DUTREMBLE: Yes, sir.

7 THE COURT: All right.

8 MR. PENNINGTON: Judge, before you move
9 forward, I would have a motion with regard to
10 juror 110, who was the last lady that you
11 approved, Carolyn Macon.

12 Her hesitancy and the way that she--

13 THE COURT: Let's do that--

14 MR. PENNINGTON: All right, sir.

15 THE COURT: Go ahead. Tell me--

16 MR. PENNINGTON: I was going to say that her
17 hesitancy, the way that she paused and shut her
18 eyes and seemed to be in pain when you asked the
19 question, can you be fair--

20 THE COURT: I asked her three different ways;
21 she said she could. I'll let you do this on the
22 record afterward, but I would not change my view
23 there.

24 I mean, she clearly said that -- I went back
25 another way, to make sure.

1 Do you have any -- what do you say about
2 that?

3 MR. DUTREMBLE: No, sir, I think she answered
4 the questions directly and was unequivocal in her
5 answers.

6 THE COURT: I think so.

7 MR. PENNINGTON: I'll also have the same
8 motion with regard to Mr. Lloyd Heyward in that I
9 think that he hesitated before answering the
10 question the first time, and I took from his
11 response that he doesn't want to say he's an
12 unfair individual in any context, but both of
13 these jurors, because of what they describe as a
14 close friendship, I think, are put in an immensely
15 awkward situation, and we have many other jurors
16 who are not.

17 THE COURT: As to one of the jurors, I
18 specifically asked him if that would put him in an
19 awkward position to try this case, and she said
20 no.

21 I conclude, that based on their responses,
22 having asked them bias or prejudices in several
23 different ways, they answered unequivocally they
24 could be fair, that they are qualified if
25 selected.

1 MR. DUTREMBLE: Thank you, Your Honor.

2 (The following was reported in the presence
3 and hearing of the potential jury panel.)

4 THE COURT: Now, ladies and gentlemen, are
5 there anyone among you who has formed or expressed
6 an opinion as to the guilt or innocence of this
7 defendant? If so please stand.

8 (There was no response.)

9 THE COURT: Is there anyone among you who is
10 aware or conscious of any bias or prejudice,
11 either for or against this defendant?

12 (There was no response.)

13 THE COURT: Is there anyone among you, who
14 for any reason, cannot give both the State of
15 South Carolina and this defendant a fair and
16 impartial trial if selected?

17 (There was no response.)

18 THE COURT: I have some other questions that
19 I would ask of you at this time and if they
20 pertain to your particular circumstance or
21 situation, I respectfully request that you stand,
22 give me your name and juror number.

23 Are you or any member of your family now or a
24 former member of a law enforcement agency or
25 department of corrections in any capacity

1 whatsoever?

2 If any immediate member of your family is so
3 employed by a law enforcement agency or department
4 of corrections, please stand.

5 Come forward, please.

6 (The following was reported out of the
7 hearing of the potential jury panel.)

8 THE COURT: Yes, sir, your name?

9 POTENTIAL JUROR: Eric Bennett. My
10 brother-in-law is a captain at a correctional--

11 THE COURT: Your brother-in-law is a captain
12 at correction where?

13 MR. BENNETT: On Leeds Avenue.

14 THE COURT: Where?

15 MR. BENNETT: On Leeds Avenue. The county
16 jail.

17 MR. PENNINGTON: That would be the jail.

18 THE COURT: Is that a county jail?

19 MR. PENNINGTON: Yes, sir.

20 THE COURT: And this is a county case?

21 MR. DUTREMBLE: North Charleston, Your Honor.

22 THE COURT: North Charleston.

23 I can accept that as information.

24 MR. BENNETT: Okay.

25 THE COURT: That's your brother-in-law?

1 MR. BENNETT: Yes, sir.

2 THE COURT: Okay.

3 Next.

4 I thank you for coming forward.

5 Are you or any members of your immediate
6 family affiliated with victims rights
7 organizations or organizations which promote law
8 enforcement, such as Citizens Against Violent
9 Crime, C.A.V.E., People Against Rape, P.A.R., or
10 any other like organization? If so please stand.

11 (There was no response.)

12 THE COURT: Have you or any member of your
13 immediate family been a victim of violent crime?
14 If so please stand.

15 (There was no response.)

16 THE COURT: You or any member of your family.

17 (There was no response.)

18 THE COURT: This case involves the fatal
19 shooting of 19-year-old Sharone Middleton, a
20 Trident Tech student, in a parking lot near
21 Charleston -- North Charleston High School, on
22 Saturday night after a step dance; this incident
23 having occurred on February the third, 2001.

24 Have any of you read anything about this
25 case, talked about it, heard about it or seen it

1 on TV? If so please stand.

2 How many of you know anything at all about
3 this case? Anything?

4 Come forward.

5 (The following was reported out of the
6 hearing of the potential jury panel.)

7 THE COURT: Yes, sir. Your name?

8 POTENTIAL JUROR: Phillip Stiles, juror
9 number 213.

10 THE COURT: Juror number 213. What was your
11 response?

12 MR. STILES: I seen the case on television
13 and read about it in the paper.

14 THE COURT: You saw it on TV and read about
15 it in the paper. My question to you is, have you
16 made any judgements as to who might have been
17 guilty or not guilty in this case?

18 MR. STILES: None.

19 THE COURT: And even though you have read
20 something about it, sometimes publicity is not the
21 true facts.

22 You need -- as a juror, can you put that
23 aside and base your verdict on the law and
24 evidence in this courtroom?

25 MR. STILES: I can.

1 THE COURT: I think that you can too.
2 He's qualified.

3 MR. PENNINGTON: Your Honor--

4 THE COURT: Any further--
5 Please stay with me.

6 Yes, sir?

7 MR. PENNINGTON: Could we ask the juror what
8 he remembers hearing?

9 THE COURT: What do you remember?

10 MR. STILES: Other than there had been a
11 shooting after a dance, two young blacks.

12 MR. PENNINGTON: That's fine.

13 THE COURT: Thank you so much.

14 Dale, if you have any questions, I'll--

15 MR. DUTREMBLE: I'm fine. Thank you, Judge.

16 THE COURT: We'll handle this informally.

17 MR. DUTREMBLE: Thank you.

18 THE COURT: Good morning. Your name, sir?

19 POTENTIAL JUROR: Lloyd Heyward.

20 THE COURT: And your juror number?

21 MR. HEYWARD: 76.

22 THE COURT: And what is your response,
23 please?

24 MR. HEYWARD: I read about it, and as I
25 stated, I know the family. Neighbors. And I'm

1 familiar -- I'm not fully familiar, but I have had
2 discussions.

3 THE COURT: What do you remember about what
4 you might have read?

5 MR. HEYWARD: Well, that Sharone went to a
6 dance and they were in a car and then they were
7 assaulted. He was shot. And later on he died.

8 THE COURT: Did you remember who was
9 allegedly the shooter in the case?

10 MR. HEYWARD: No.

11 THE COURT: Have you formed or expressed any
12 opinion as to the guilt or innocence of anybody at
13 this time?

14 MR. HEYWARD: No, because I don't--

15 THE COURT: Sir?

16 MR. HEYWARD: No, I have not formed an
17 opinion, because you're innocent until proven
18 guilty.

19 THE COURT: All right, sir. I ask you--

20 Do you have any further questions?

21 MR. PENNINGTON: No, sir.

22 THE COURT: Thank you very much.

23 I appreciate that. Thank you. You're
24 qualified if selected.

25 Good morning.

1 POTENTIAL JUROR: Morning.

2 THE COURT: Your name, please?

3 POTENTIAL JUROR: Edith Reeves. My number is
4 143.

5 THE COURT: Thank you.

6 MS. REEVES: My children go to North
7 Charleston High School, and my son, he's graduated
8 from North Charleston now, but he was there that
9 night.

10 But I don't know all the details. I haven't
11 read about it, so I don't know. I just--

12 THE COURT: You don't know who was involved
13 other than the thing happened?

14 MS. REEVES: Right.

15 THE COURT: That's all I need to you. Thank
16 you.

17 Ashley, if you have any further questions,
18 I'll be glad to permit it.

19 MR. DUTREMBLE: Thank you, Your Honor.

20 THE COURT: Hello. Your name, please?

21 POTENTIAL JUROR: My name is Deede Squires.

22 THE COURT: Your juror number, Ms. Squires?

23 MS. SQUIRES: 165.

24 THE COURT: Okay.

25 MS. SQUIRES: I know absolutely nothing about

1 this case. However, I'm against capital
2 punishment. I can't--

3 THE COURT: This is not a capital murder
4 case.

5 MS. SQUIRES: It's not?

6 THE COURT: This is a murder case, but the
7 penalty would not be a capital.

8 MS. SQUIRES: Okay. That's all I needed to
9 know.

10 THE COURT: Do you have any other questions?

11 MR. PENNINGTON: No, sir.

12 MS. SQUIRES: I also know Ashley Pennington.

13 THE COURT: I know him too, but that's okay.

14 (The following was reported out of the
15 hearing of the potential jury panel.)

16 MR. PENNINGTON: Judge, there was one juror
17 -- the one we're talking about, there was one
18 juror who approached the clerk, she was concerned
19 because she works or manages the apartment complex
20 where my investigator lives; and I just bring that
21 to your attention, I don't know if you want to
22 voir dire them about relationships with either
23 office, but as far as I'm concerned, it was not
24 really an issue.

25 THE COURT: I don't need to do that.

1 Do you want me to voir dire with relationship
2 with either office?

3 MR. DUTREMBLE: No, sir.

4 THE COURT: I don't think so.

5 MR. PENNINGTON: Okay.

6 (The following was reported in the presence
7 and hearing of the potential jury.)

8 THE COURT: Now, ladies and gentlemen, I'm
9 going to call a series of names involving
10 potential witnesses who may testify or may not for
11 one side or the other.

12 And in that connection I'm going to ask if
13 any of you know these folks or have any close
14 personal relationships with any of them.

15 First, Cathy Stanley of The North Charleston
16 Police Department. Charles Harden of The North
17 Charleston Police Department.

18 Now, if any of you have any close
19 relationships with any of these folks or are kin
20 to them, please let me know.

21 Isla N. Simmons of SLED. Melvin Cumbie of
22 North Charleston Police Department. Joseph Powell
23 of SLED. Deshawn Brown. Any of you know Deshawn
24 Brown?

25 (There was no response.)

1 THE COURT: Kenyon Nichols. Ellis Judon.

2 Is that the way you pronounce it, Judon?

3 MR. DUTREMBLE: Yes, sir.

4 MR. PENNINGTON: Yes, sir.

5 THE COURT: Mark Nelson. Tommy Mullins.

6 Officer Stephanie Gower.

7 And some of these names may be duplicated,

8 but I'll ask some of them again. Terell Bryant.

9 Doug Hester. Tonya Mellette. Barbara Middleton.

10 Demetrius Nelson. Kenyon Nelson. Doctor Douglas

11 Norcross.

12 Any of you patients of Doctor Norcross?

13 (There was no response.)

14 THE COURT: Stephanie Rice. Cathy Stanley.

15 Ken Whitler. Chris Widmer.

16 (There was no response.)

17 THE COURT: Now, ladies and gentlemen, in our

18 lifetimes, based on experiences that we have had,

19 we all acquire certain biases and prejudices from

20 time to time.

21 Some months ago in another county in this

22 State, I was preparing to try an individual for

23 driving under the influence, felony, where the

24 State alleged that as a result of drunk driving he

25 had killed somebody. That has nothing to do with

1 this case.

2 I asked the jury panel if there is any reason
3 whatsoever why any of you could not be fair to
4 this defendant or to the State.

5 A lady got up in that panel and said, Judge,
6 I can't be fair in the facts in this case, because
7 my daughter was killed last year by a drunk
8 driver.

9 Obviously, I excused her.

10 In that same panel a gentlemen got up and
11 said, Judge, I can't be fair to the State of South
12 Carolina, they tried my son three times for the
13 same offense until he was finally acquitted. I
14 can't be fair to the State.

15 I use this as an example to indicate that
16 sometimes we just acquire biases and prejudices,
17 based on experience.

18 My inquiry is this: Is there any reason
19 whatsoever why any of this jury panel feel that
20 they cannot give both the State of South Carolina
21 and this defendant a fair and impartial trial and
22 promise to me under their oath that their verdict
23 will be based on the law and the evidence heard in
24 this courtroom and from no other source?

25 If you can't answer yes to that question, let

1 me know and I'll excuse you.

2 (There was no response.)

3 THE COURT: All right, sir. For the
4 Solicitor, any further inquiry?

5 MR. DUTREMBLE: Nothing from the State, Your
6 Honor. Thank you.

7 THE COURT: For the defense, any further
8 inquiry?

9 MR. PENNINGTON: Nothing further, Your Honor.

10 THE COURT: Give us the jury. Appropriate
11 strikes. We will select one alternate. I think
12 that will be -- but, of course, let's select two
13 alternates.

14 MR. DUTREMBLE: Yes, sir.

15 THE COURT: Strikes are five and ten. One
16 and two as to alternates.

17 MR. DUTREMBLE: Thank you, Your Honor.

18 (WHEREUPON, during the jury selection
19 process, the jurors were called forward and
20 peremptory strikes were exercised as reflected by
21 the attached voir dire sheet made a part of the
22 record at the end of the transcript.)

23 (During the jury selection process, the
24 following colloquy transpired concerning juror
25 number 110, Carolyn S. Macon.)

1 MR. PENNINGTON: Your Honor, I renew my
2 original request.

3 THE COURT: Yes, sir. My ruling still
4 stands.

5 MR. PENNINGTON: Your Honor, please excuse
6 Ms. Macon for the trial of this case.

7 (WHEREUPON, 12 jurors and two alternates were
8 selected and seated in the jury box.)

9 THE COURT: Ladies and gentlemen, I'm going
10 to let you go to the jury room for just a second.

11 When you return, Mrs. Morgan, I'm going to
12 designate you, ma'am, as the foreperson of this
13 jury.

14 Your job will be to preside during the
15 deliberations in the jury room and to be the jury
16 spokesman in the courtroom.

17 And when you return during the trial of this
18 case, I ask that you occupy the foreperson's
19 chair, and the bailiff will give you that chair.

20 The two alternates will occupy those seats at
21 all times.

22 The rest will sit as you choose.

23 Please at this time follow the bailiff to the
24 jury room and I'll be calling you back very
25 shortly.

1 (The following was reported out of the
2 presence of the jury.)

3 THE COURT: First for the State, any motions
4 regarding the composition of the jury?

5 MR. DUTREMBLE: Nothing from the State, Your
6 Honor.

7 THE COURT: From the defense?

8 MR. PENNINGTON: May we approach, Your Honor?

9 THE COURT: Yes, sir.

10 (The following was reported on the record,
11 in the presence of the jury venire, but out of the
12 hearing of the jury venire.)

13 THE COURT: Yes, sir.

14 MR. PENNINGTON: If Your Honor please, we
15 would have an objection to the exercise of the
16 peremptory strike by the Solicitor as to juror
17 121, a black female.

18 THE COURT: One what?

19 MR. PENNINGTON: 121.

20 THE COURT: Okay.

21 MR. PENNINGTON: And as to 130.

22 121's name is--

23 THE COURT: You're making a Batson
24 objection?

25 MR. PENNINGTON: Yes, sir.

1 THE COURT: Okay.

2 MR. PENNINGTON: Laquetta Miller and Wanda
3 Nelson, both black females. We could not perceive
4 any kind of race neutral grounds.

5 THE COURT: Well, let me hear what he says as
6 to 121, please.

7 MR. DUTREMBLE: Can I go get my
8 documentation?

9 THE COURT: Yes, sir.

10 MR. DUTREMBLE: Thank you.

11 Judge, I understand this had to be done
12 contemporaneously with the striking of the jury,
13 but--

14 THE COURT: Yes, sir.

15 MR. DUTREMBLE: --but of those strikes, the
16 reasons would basically be the same in that they
17 were both young, somewhat around the defendant's
18 age, they work at fast food restaurants, their
19 jobs.

20 They did not appear to be focused, overly
21 ambitious, go-getters like the young black woman I
22 put on who had two jobs and obviously was trying
23 to do something over and above.

24 THE COURT: All right. Did you put on any
25 whites who exhibited the same characteristics?

1 MR. DUTREMBLE: Not to my knowledge.

2 THE COURT: So you're saying that you struck
3 them because, one, they were generally the same
4 age of the defendant?

5 MR. DUTREMBLE: Yes, sir.

6 THE COURT: Both of them had jobs. What kind
7 of jobs?

8 MR. DUTREMBLE: One worked at Kentucky Fried
9 Chicken, one worked at Burger King. And they're
10 both single.

11 THE COURT: Did you put on any other whites
12 who were so employed?

13 MR. DUTREMBLE: No, sir.

14 THE COURT: Okay.

15 MR. PENNINGTON: Your Honor, my response
16 would be, Your Honor, that my client at the time
17 of this incident was 19 years old, black.

18 And as the Solicitor eludes to, similar to
19 these two jurors. The mere fact that someone
20 works at a fast food, it's more probable that they
21 are from a minority background, low income
22 background, and that we don't feel that that
23 sufficiently rebuts the inference.

24 It strikes me that that's -- those are low
25 paying, low wage jobs that are commonly held by

1 minorities in this community.

2 THE COURT: No, I think it's race neutral on
3 the basis that -- that could be a basis for it,
4 but both were of the same young age as this
5 defendant.

6 And I would suspect that the Solicitor's
7 Office would think that they might be partial to
8 someone that same age.

9 I would suggest under the recent positions,
10 that that is a race neutral objection and I would
11 overrule your objection under Batson. I find that
12 it's race neutral.

13 MR. DUTREMBLE: Your Honor please, I would
14 note for the record that I believe the first six
15 strikes by defense were of white folks only, and I
16 was about to stand up, but I did not.

17 THE COURT: I note that too, but he didn't
18 make a -- you didn't make a motion as to that so I
19 don't take that into consideration.

20 But I would think that it would be race
21 neutral to strike two folks of the approximate
22 same age of the defendant.

23 So I would overrule that, Mr. Pennington.

24 MR. PENNINGTON: Yes, sir. Thank you.

25 THE COURT: All right. Gentlemen, what I'm

1 going to do is let this jury go and come back at
2 2:30. So we'll hear these motions now; is that
3 correct?

4 MR. DUTREMBLE: Yes, sir.

5 THE COURT: All right. Bring the jury back,
6 please.

7 (The following was reported in the presence
8 of the jury panel.)

9 THE COURT: Ladies and gentlemen, for those
10 of you who were not selected, please call in after
11 six o'clock tonight for further instructions as to
12 this Court or as to one of the other Judges.

13 Now, it is imperative that you call in after
14 six o'clock tonight. This case probably will be
15 moving on to tomorrow, but some of the other
16 Judges here, and there are several, may need a
17 jury.

18 Now, before you go, if anybody has any
19 questions about the call-in procedure, please come
20 forward and let Ms. Becky discuss it with you.

21 Otherwise, you are now excused to call in
22 after six o'clock tonight. And you may leave at
23 this time and thank you so much.

24 (WHEREUPON, the jurors not selected in the
25 trial of this case were excused.)

1 THE COURT: Do they have any questions
2 regarding the procedure?

3 THE BAILIFF: Yes, sir, Your Honor, she has a
4 call-in in question about the voice calls.

5 THE COURT: Ms. Buchanan, would you talk to
6 them, please?

7 THE CLERK: Sure.

8 THE COURT: Ladies and gentlemen of the jury,
9 we will start the actual trial of this case at
10 2:30 this afternoon.

11 And when you return, do not return to the
12 courtroom, return to your jury room.

13 Now, please be here promptly at 2:30. You
14 would not necessarily inconvenience me, but you
15 would inconvenience your fellow jurors if you're
16 late; and I know you would not wish to do that.

17 From this moment on I tell you as a matter of
18 law that you 12 are the sole and only finders of
19 the facts in this case.

20 I will tell you what the law is and you find
21 the facts and judge the credibility and the
22 believability of the witnesses; and I'll discuss
23 that with you at the appropriate time.

24 But do not, during your lunch hour or any
25 other time tonight or whatever, discuss this case

1 with anyone, let no one discuss it with you.

2 When you are on the courthouse grounds or in
3 the courthouse, please wear your jury badge at all
4 times.

5 You know, everybody likes to talk around the
6 courtroom and the courthouse. And by identifying
7 yourself as jurors with that badge, folks know not
8 to talk about any case this week, including this
9 case in your presence, because you are a potential
10 juror.

11 Also, it is important that you not discuss
12 the case with anyone, let no one discuss it with
13 you, make no independent inquiry, but you must not
14 even discuss the case among yourselves until I
15 have given you the case for your deliberation at
16 the conclusion of the testimony and the
17 instructions.

18 Sometimes when jurors break for lunch or for
19 the evening, two or three of them tend to gather
20 together and want to discuss some issue in the
21 case.

22 That is improper for the following reasons,
23 ultimately whatever your decision is must be the
24 unanimous decision of all 12 of you.

25 Consequently, if you are discussing some

1 element of the case with a fellow juror, you are
2 depriving the rest of the jury of your thought
3 process; and they are entitled to that.

4 So you must not discuss the case, even among
5 yourselves, except in that jury room and only when
6 I have given you the case for your deliberations.

7 So madam foreman, another job for you is to
8 make sure that there is no discussion of any issue
9 in this case until at the end of the case I have
10 given you the indictments and say, you may now
11 begin your deliberations.

12 Please have a nice lunch, be back, please, at
13 2:30. You are now excused. Thank you.

14 Everybody else please remain seated while
15 this jury retires.

16 (Jury dismissed for lunch at 12:20 p.m.)

17 THE COURT: All right. Mr. Pennington, I
18 have before me your various motions here. I have
19 first complied with number one considering the
20 voir dire.

21 I now have before me number two, your Brady
22 material request, and I'll be glad to hear from
23 you.

24 MR. PENNINGTON: Thank you, Your Honor. If I
25 could just have a moment to get my papers in

1 order.

2 THE COURT: First let me ask the Solicitor,
3 have you complied with the Brady Rule?

4 MR. DUTREMBLE: Yes, sir, I have to the
5 extent that I received additional requests
6 yesterday afternoon. There may be other items
7 that the Court orders me to turn over, which I'm
8 happy to do, depending on the Court's ruling.

9 THE COURT: All right, sir.

10 Anything specifically, Mr. Pennington?

11 MR. PENNINGTON: Your Honor, I have received
12 discovery from the Solicitor and made requests for
13 and received some indications of prior criminal
14 history of some witnesses.

15 I'm renewing as to paragraph one a request
16 for any and all prior criminal record of
17 prosecution witnesses.

18 THE COURT: Can you respond to that,
19 counsel?

20 MR. DUTREMBLE: If Your Honor please, this
21 morning I had one of the secretaries run rap
22 sheets on the individuals Mr. Pennington was
23 asking about. I have two such rap sheets, which I
24 am now going to hand him, one for Deshawn Brown,
25 one for Kenyon Nichols.

1 THE COURT: All right, sir. Does that take
2 care of that request, Mr. Pennington?

3 MR. PENNINGTON: If there are no other
4 witnesses that have records, yes, sir, that does.

5 THE COURT: All right, sir. Now, with
6 regards to number two, the disclosure of drugs by
7 prosecution witnesses, if any.

8 How about that, counsel?

9 MR. DUTREMBLE: I have absolutely no idea,
10 Judge. He's had access to the same witnesses; I
11 don't know whether he's asked them or not. I have
12 no indication in my file of any drug use at the
13 time in question.

14 He's welcome to ask them that question. I do
15 not know.

16 THE COURT: Does that respond appropriately
17 for you, Mr. Pennington?

18 MR. PENNINGTON: Yes, sir.

19 THE COURT: All right, sir.

20 How about number three, Solicitor?

21 MR. DUTREMBLE: I checked the computer system
22 yesterday afternoon, Your Honor, I see no pending
23 charges for any of the witnesses that I'm aware
24 of.

25 THE COURT: Does that answer that request,

1 Mr. Pennington?

2 MR. PENNINGTON: Yes, sir. It appears to,
3 yes, sir.

4 Number four is with regard to compensation in
5 this case that would have been paid in any manner
6 to a witness.

7 MR. DUTREMBLE: I have no earthly idea,
8 Judge. I haven't had a chance to talk with the
9 police officers yet. I'll ask them at the break
10 what the answer to that question is.

11 THE COURT: Make them available to them at
12 the break too.

13 MR. DUTREMBLE: Yes, sir.

14 THE COURT: Does that satisfy you, Mr.
15 Pennington?

16 MR. PENNINGTON: Yes, sir.

17 THE COURT: Number five.

18 MR. DUTREMBLE: I know of no paid informants,
19 but again, he's welcome to ask the law enforcement
20 officers.

21 THE COURT: Does that answer that, Mr.
22 Pennington?

23 MR. PENNINGTON: I'll attempt to do that,
24 Your Honor. I do think that there would be a
25 burden for the State to inquire as well, since

1 they may be more forthcoming with the Solicitor.

2 MR. DUTREMBLE: I'll ask--

3 THE COURT: Yes, sir, I'll ask that he
4 specifically ask the question, but I'll invite you
5 to do so too, Mr. Pennington.

6 MR. PENNINGTON: Yes, sir.

7 THE COURT: All right. Motion to sequester
8 witnesses.

9 Any objection on behalf of the State?

10 MR. DUTREMBLE: No, Your Honor.

11 THE COURT: I think that appropriate. We
12 will sequester the witnesses this afternoon.
13 Obviously the investigating -- your investigating
14 officer will remain in the courtroom.

15 MR. DUTREMBLE: Thank you, Your Honor.

16 THE COURT: Okay.

17 MR. PENNINGTON: Your Honor--

18 THE COURT: Is any member or immediate member
19 of the family a witness?

20 MR. DUTREMBLE: One may be, Your Honor. Mrs.
21 Middleton may be a witness.

22 THE COURT: I would let her stay in the
23 courtroom.

24 MR. DUTREMBLE: Thank you, Judge.

25 THE COURT: Yes, sir.

1 MR. PENNINGTON: That's fine, Your Honor, we
2 don't really object to that.

3 THE COURT: All right.

4 MR. PENNINGTON: Should we exclude the
5 witnesses now in anticipation of the testimony?

6 THE COURT: I think--

7 Any objection to that?

8 MR. DUTREMBLE: None, Your Honor.

9 THE COURT: All right. Make arrangements for
10 the witnesses, please, Mr. Bailiff, to be
11 sequestered separately at this time. And I can
12 release them until 2:30 too; can we not?

13 MR. DUTREMBLE: Some of them, Your Honor.
14 The law enforcement witnesses, no.

15 THE COURT: Okay. Let's go ahead and
16 sequester all witnesses. How do you want to
17 handle it?

18 MR. PENNINGTON: Could we just have a moment,
19 Your Honor?

20 THE COURT: All right. Both sides now, I
21 believe the responsibility is yours to make sure
22 your witnesses are not in the courtroom.

23 Put them in separate rooms, please.

24 Your law enforcement officer may remain in
25 for the purpose of these other motions.

1 MS. SUMNER: All law enforcement officers or
2 just--

3 THE COURT: No, you'd better sequester them
4 and we call them in one at a time, since he's
5 asked for that. Just have them available; I don't
6 want them to leave.

7 (Brief pause.)

8 THE COURT: Everybody sequestered their
9 witnesses?

10 MR. DUTREMBLE: I believe so, Your Honor.

11 THE COURT: All right, sir.

12 Mr. Pennington, your next motion is with
13 regards to introduction of photographs of the body
14 of the deceased.

15 What you say about that, Solicitor?

16 MR. DUTREMBLE: I have but one, Your Honor.
17 I would offer it up to the Court for--

18 THE COURT: For what purpose is it offered?

19 MR. DUTREMBLE: To identify Sharone Middleton
20 as being the deceased.

21 THE COURT: Is that necessary to identify him
22 as being the deceased by this photograph?

23 MR. DUTREMBLE: Well, I think it is, Your
24 Honor, unless it's going to be a stipulation.

25 MR. PENNINGTON: Well, we'll certainly

1 stipulate that Sharone Middleton was killed. I
2 think we have a stipulation that says that.

3 THE COURT: I wouldn't -- I would not do
4 that--

5 MR. DUTREMBLE: That's fine, Your Honor.

6 THE COURT: Not necessary.

7 MR. DUTREMBLE: Thank you.

8 THE COURT: Let the record reflect -- it's
9 outside the presence of the jury. Let the record
10 reflect that there is a stipulation as to the
11 identity of the deceased.

12 Consequently, there is no necessity for the
13 introduction of that photograph.

14 MR. DUTREMBLE: Thank you, Your Honor.

15 THE COURT: All right. Let me see it again.
16 Okay.

17 All right. Does that take care of that, Mr.
18 Pennington?

19 MR. PENNINGTON: Yes, it does, Your Honor.

20 THE COURT: All right, sir. Number five.

21 MR. PENNINGTON: Number five relates to my
22 client's prior record. I'm not aware of any prior
23 impeachment for the purposes of Rule 609 from
24 prior convictions, and I just ask for a ruling now
25 on that issue.

1 THE COURT: How about it?

2 MR. DUTREMBLE: There are none.

3 THE COURT: That takes care of that. All
4 right, sir.

5 MR. PENNINGTON: The last two are Jackson
6 versus Denno, and this motion to suppress the
7 fruits of the warrantless arrest at the suspect's
8 home where there were no exigent circumstances.

9 At the appropriate time, Your Honor, I will
10 pass up some case law for the Court's
11 consideration on the search issue.

12 And I would also -- I don't see the clerks
13 here -- well, here's Becky. I have copies of my
14 motion also, to make sure they make it into the
15 record.

16 THE COURT: What evidence do you say was
17 seized as a result of the warrantless arrest?

18 MR. PENNINGTON: Your Honor, I think--

19 THE COURT: Let's deal with that issue first,
20 if we can.

21 MR. PENNINGTON: All right, sir. Then I'll
22 pass up the case law that I have with particular
23 attention to a case called--

24 THE COURT: Is it your position that they
25 should not have arrested him, or as a result of

1 the warrantless arrest they received certain
2 evidence?

3 MR. PENNINGTON: That they seized certain
4 evidence, Your Honor.

5 THE COURT: All right, sir. Will it be
6 necessary to put up any testimony or just let me
7 hear the position of the Solicitor?

8 Let me hear you.

9 MR. DUTREMBLE: Thank you, Your Honor. May
10 it please the Court.

11 THE COURT: Do you concur that it was a
12 warrantless arrest?

13 MR. DUTREMBLE: Yes, sir, it was a
14 warrantless arrest.

15 THE COURT: All right. What are the facts
16 that you suggest--

17 MR. DUTREMBLE: If Your Honor please, the
18 testimony that will be elicited by the State will
19 be that the shooting took place around ten o'clock
20 at The North Charleston High School. The North
21 Charleston Police Department--

22 THE COURT: At night?

23 MR. DUTREMBLE: At night, Your Honor.

24 They then began an investigation, which led
25 over into the early morning hours of Sunday.

1 At about five o'clock in the morning, the
2 officers had certain information indicating that
3 the defendant was in fact involved and was in fact
4 the shooter.

5 They went to his house. They corroborated
6 the fact that a white Monte Carlo was parked in
7 the yard, which was the car they were looking for.

8 They then went and knocked on the door. The
9 defendant answered the door dressed in a short
10 sleeve blue shirt, dark pants, fuzzy slippers.

11 He came outside the house onto the porch. He
12 was identified by one of the officers who knew him
13 by sight as being Lord Byron Slater.

14 He was placed under arrest, handcuffed, read
15 his Miranda rights by Detective Chris Widmer from
16 The North Charleston Police Department.

17 He was then transported to The North
18 Charleston Police Department where he was later on
19 interviewed by Sergeant Doug Hester.

20 THE COURT: Were any inducements given to get
21 him to step out of the house, or he voluntarily
22 stepped out?

23 MR. DUTREMBLE: They knocked on the door,
24 Judge, and he voluntarily stepped out. There were
25 no guns--

1 THE COURT: What do you allege were the
2 exigents of the situation that required the
3 warrantless arrest?

4 MR. DUTREMBLE: If Your Honor please, the
5 investigation began late Saturday, spilled over
6 into early Sunday.

7 Of course, being Sunday, there was nobody on
8 duty. There were no on duty magistrates in the
9 Charleston County area.

10 They determined, based upon their
11 investigation, that they had the shooter. They
12 knocked on the door, when he came to the door and
13 stepped out, the porch light was on, they were
14 able to identify him by face and by sight.

15 And rather than give him the opportunity to
16 flee back into the house where he might be armed
17 and dangerous, they immediately took him into
18 custody.

19 THE COURT: And his own car, the car that he
20 was in, was there, would have provided for him a
21 means to escape?

22 MR. DUTREMBLE: That's correct, he had two
23 cars in the yard parked side by side.

24 THE COURT: All right, sir.

25 What you say, Mr. Pennington?

1 MR. PENNINGTON: Your Honor please. Payton
2 versus New York, United States versus McCraw,
3 which you have before you, explicitly provide that
4 in the United States the Constitution prohibits an
5 arrest at home without exigent circumstances,
6 without a warrant.

7 In this situation, this case is very similar
8 to the McCraw case, where you have a situation
9 where police had set up a surveillance on a
10 household.

11 They may well have had probable cause. They
12 could have, I suppose, gone to Magistrate Guedalia
13 or another magistrate that was on call for the
14 purposes of getting an arrest warrant; but they
15 chose not to.

16 They were -- my client was -- there is no
17 indication in the record that my client was aware
18 that he was under surveillance.

19 The only exception to the warrant requirement
20 under the Constitution -- the only exception is a
21 hot pursuit destruction of evidence exception.

22 And what I mean by that is that the cases --
23 case law in Payton, in Segura, which I have also
24 passed up, and McCraw, all explicitly say that
25 this is an illegal arrest.

1 Unless you have a scenario where you have a
2 suspect who is somehow being pursued and there is
3 indications of that, such that there would be an
4 awareness and a likelihood of destruction of
5 evidence.

6 In this case, it was actually like the McCraw
7 situation where this suspect, there is no
8 indication that the suspect would have been aware
9 that the police were outside.

10 There was no reason to think that he would
11 have been inside destroying evidence.

12 Instead, what they chose to do was to, at
13 5:15 in the morning, knock on the door and make an
14 immediate arrest.

15 At that point, it's clear from the
16 circumstances that the Solicitor has elicited and
17 which I think the evidence would support when we
18 present these witnesses, is that there was no
19 discussion prior to arrest. He was immediately
20 placed under arrest.

21 The fruit of the poisonous tree from that,
22 Your Honor, is the immediate questioning that went
23 on there at that scene.

24 While there are cases, and I have passed up a
25 case, Harris versus New York, which approves and

1 finds that the taint of an illegal arrest like
2 this is attenuated once a defendant is transported
3 to the police station, some period of time passes,
4 the person is Mirandized and questioned, that you
5 can have an attenuation of the taint of this
6 initial illegality.

7 But in the case that I cite to you, the
8 McCraw case, you have a scenario where the person
9 gives a verbal consent to a search right there on
10 the scene; and that is rejected by the Court.

11 That consent -- those words were found to be
12 so impermissibly tainted by this seizure.

13 Now, we don't have the testimony of the exact
14 sequence of the Marandizing or what client -- what
15 statements my client made.

16 But I believe that it will be elicited and we
17 will hear from the witnesses shortly, that they
18 elicited from him, because one of the officers
19 knew him from his tenure as a North Charleston
20 High School student, and he asked him, do you have
21 any guns in the house, and he said, yes, I have
22 two.

23 Whether that was pre or post Miranda remains
24 to be shown. But whether it is or it isn't
25 doesn't affect what we consider it to be, which is

1 a statement at the scene immediately upon an
2 illegal arrest at his home, which would be fruit
3 of the poisonous tree, and there is no time for
4 the taint to attenuate, Your Honor.

5 THE COURT: Mr. Pennington, if they had
6 waited two or three days to arrest him, I might
7 could agree with you.

8 But as I understand it, this terrible
9 incident, whoever did it, occurred around ten
10 o'clock at night.

11 This was an ongoing investigation
12 immediately. He was identified, apparently from
13 what I'm hearing here, as the perpetrator, left
14 the scene of the accident in his own car, which is
15 a Monte Carlo.

16 I can't believe that you are suggesting to me
17 that having that knowledge of a perpetrator who
18 left the scene, they couldn't arrest him within
19 five hours when they put their eyes on him.

20 I don't think your cases say that they can't
21 do that. That's not my understanding of those
22 cases; and I've read most of them.

23 MR. PENNINGTON: Well, Judge, I'll cite you
24 the -- I would ask you to refer to the McCraw
25 case, because there you have a scenario where the

1 police actually have a motel room in Virginia
2 under surveillance.

3 And they have a large African-American male
4 who had registered there before and all kinds of
5 information that he previously supplied cocaine in
6 that vicinity.

7 They had an individual who showed up at that
8 door they were in, the police were anticipating a
9 drug delivery, they saw a suitcase being taken
10 away from that, they stopped that individual in
11 the garage parking area of the hotel where they
12 seized cocaine. A substantial quantity of
13 cocaine.

14 Then the police said, okay, we've got the
15 goods, they went, they knocked on the door, they
16 make an immediate--

17 And that is struck down, the case is reversed
18 in the Fourth Circuit--

19 THE COURT: If you can't arrest an identified
20 individual as the perpetrator of the crime within
21 five hours without having to find some magistrate
22 at five o'clock in the morning on Sunday morning,
23 we're in bad shape in this world. I just
24 respectfully disagree with you.

25 MR. PENNINGTON: Well, Judge, the distinction

1 that the Courts are making is whether you're at
2 home, because of this expectation of privacy that
3 goes into where you reside.

4 It does not apply if they had found my client
5 at a bar, on the street, driving the car. There a
6 warrantless arrest would have been permissible.

7 THE COURT: I understand your position.

8 What do you want to say to that, Solicitor?

9 MR. DUTREMBLE: Judge, he keeps citing this
10 McCraw case out of the Fourth Circuit, which is
11 totally distinguishable. In that case the Fourth
12 Circuit cites the trial testimony.

13 "After he opened the door, what happened?"

14 "We forced our way in and placed him under
15 arrest."

16 THE COURT: I've read that case.

17 MR. DUTREMBLE: That has nothing to do with
18 this case.

19 THE COURT: I've ruled on this. I conclude
20 that the arrest was appropriate under the
21 circumstances existing at that time and at that
22 place.

23 I respectfully deny your motion.

24 All right. Now, you have a motion with
25 regards to the statement that was given, whether

1 or not he was Marandized; is that your next
2 motion?

3 MR. PENNINGTON: Yes, sir.

4 THE COURT: All right. Are we going to take
5 some testimony on that issue?

6 MR. DUTREMBLE: Yes, sir, we'd call Chris
7 Widmer to the stand; and he's outside.

8 THE COURT: I had scheduled another motion at
9 12:30 in another case.

10 I'll hear that as soon as we conclude here.

11 Go ahead. Call your witness.

12 MR. DUTREMBLE: He's sequestered, Your Honor.
13 We're getting him.

14 (Brief pause.)

15 MR. PENNINGTON: Your Honor, just to flesh
16 out the record, I understand the Court has ruled,
17 I'm not arguing with the Court's ruling, but I
18 want to put on the record that I believe the
19 testimony would show that this was not a situation
20 in which my client voluntarily stepped out of his
21 house, as being represented to the Court.

22 I believe that if we took testimony, the
23 testimony would be that it was an immediate
24 arrest, and I would ask permission to be able to
25 elicit that from that officer when he takes the

1 witness stand.

2 THE COURT: You may do so.

3 CHRIS WIDMER,

4 Being first duly sworn, testified as follows:

5 MR. DUTREMBLE: May I proceed, Your Honor?

6 THE COURT: Sure.

7 MR. DUTREMBLE: Thank you.

8 IN CAMERA DIRECT EXAMINATION

9 BY MR. DUTREMBLE:

10 Q Detective Widmer, you are employed by The North
11 Charleston Police Department; is that correct?

12 A Yes, I am.

13 Q And you are with the Detective Division?

14 A Yes, I am.

15 Q How long have you been with North Charleston, sir?

16 A 1989.

17 Q And how long have you been with the Detective
18 Division?

19 A Since 1994.

20 Q Did you have occasion in the early morning hours
21 of February fourth to become involved in the
22 investigation of Lord Byron Slater in regard to
23 the shooting at North Charleston High School?

24 A Yes, sir, I was called out on a shooting.

25 Q Were you at home when you were called?

1 A Yes, I was.

2 Q About what time did you get the call?

3 A I want to say between the hours of maybe two and
4 three.

5 Q Between two and three o'clock in the morning?

6 A Yeah. I knew it was early morning. I was asleep.

7 Q All right. And what, if anything, did you do in
8 response to this call in the early morning hours?

9 A Responded to the station at North Charleston
10 Police Department. Was briefed on the situation
11 at hand. I went along with two other detectives
12 to the home of Mr. Slater.

13 Q At the time that you went to the home of Mr.
14 Slater, were you aware that he had been developed
15 as a suspect in the shooting?

16 A I was aware that he had been developed as a
17 suspect.

18 Q And who did you take with you?

19 A I took Corporal Terrell Palmer, and I believe at
20 the time Narcotics Officer, Fletcher King. And
21 those -- they road with me in my car.

22 Q Did you go to Mr. Slater's residence?

23 A Yes.

24 Q Were there any automobiles in the yard?

25 A There were automobiles in the yard. If I'm not

1 mistaken, I think there were two automobiles in
2 the yard.

3 Q And were there any lights on at the house?

4 A I believe the front porch light was on.

5 Q And what action did you take in response to your
6 arrival at the scene, observing the porch light
7 on, and two automobiles in the yard?

8 A I'm sorry, sir, I couldn't--

9 Q What did you do when you got there?

10 A I'm sorry. We went to the front door. Myself,
11 Corporal Palmer and Fletcher King. I believe
12 another detective or two was standing out in the
13 yard. We knocked on the front door.

14 Q How were you dressed?

15 A I believe I had blue jeans on, a T-shirt or a
16 shirt, and a windbreaker, the police windbreaker
17 that we use.

18 Q All right. Did the police windbreaker have a
19 badge and the words police on it?

20 A I know it had police on the back of it.

21 Q Okay. When you knocked on the door of the Slater
22 residence, did you have weapons on you?

23 A Yes.

24 Q Were they drawn or were they holstered?

25 A I believe mine was holstered. I believe they were

1 holstered.

2 Q All right. When you knocked on the door did
3 anybody answer that knock or not?

4 A Yes.

5 Q And who answered the door?

6 A Mr. Slater.

7 Q And how was he dressed; do you recall?

8 A Dark clothing and dark pants. Dark shirt. And
9 slippers, like house slippers. Some type of
10 slippers were on his feet.

11 Q All right. And what took place when he opened the
12 door?

13 A He stepped outside. Corporal Palmer, one of the
14 reasons he was with us, is because he knows Mr.
15 Slater, I guess, because, you know, school. He
16 knew Mr. Slater.

17 Mr. Slater stepped out on the porch. We told
18 Mr. Slater who we were, why we were there, and he
19 was told about the situation at hand.

20 He was placed under arrest where at that
21 point he was handcuffed, I believe, by Corporal
22 Palmer or Detective King. One of those two put
23 the handcuffs on him while I advised him of his
24 rights.

25 Q Did you make any threats or entice him in any way

1 to come through the door and step out onto the
2 porch?

3 A He stepped out on -- he stepped out onto the front
4 porch, and I remember clearly he was asking, is
5 there a problem, officers.

6 Q All right. Was there anybody with him or anybody
7 in the background? Did you see anybody inside the
8 residence?

9 A I didn't see anybody in the background. I
10 believe, if I'm not mistaken, when he stepped out
11 onto the porch, he pulled the door so it closed
12 behind him.

13 Q Okay. After you placed him under arrest and one
14 of your partners put him in handcuffs, what, if
15 anything, did you do with advising him of his
16 constitutional rights?

17 A I keep a yellow card in my police badge wallet
18 that I use when I read people their rights when I
19 don't have our signature form in front of us, and
20 I advised him of his rights at the time about the
21 shooting incident.

22 Q Do you have that card with you today?

23 A I hope so. I believe so. Yes, I do.

24 Q And what rights are on that card? I should ask
25 what rights did you read him from that card?

1 A I'm going to take it out of my wallet so I can --
2 I read him everything on the front side. It's --
3 would you like me to read it?

4 Q Yes, please.

5 A Okay. It's a card. And it says, before we ask
6 you any questions you must understand you have the
7 right to remain silent, anything you say can be
8 used against you in Court.

9 You have the right to talk to a lawyer for
10 advice before we ask you questions and have a
11 lawyer present while you're being requested.

12 If you cannot afford a lawyer, one will be
13 appointed for you before any questions -- before
14 any questioning, if you wish. And do you
15 understand?

16 Q And did he indicate that he understood the rights
17 that you read to him?

18 A He indicated that he understood his rights.

19 Q And after placing him under arrest, putting
20 handcuffs on him and reading him his Miranda
21 warnings, where did you take him?

22 A I believe we got tennis shoes for him. We got a
23 pair of shoes and put him in my car and we went
24 back to the station, back to The North Charleston
25 Police Department.

1 Q All right. When you got back to The North
2 Charleston Police Department, did you overhear any
3 radio transmissions from the officers who were
4 still at the scene at Mr. Slater's residence?

5 A I recall hearing a radio transmission about
6 finding bullet casings in the front yard.

7 Q Bullet casings in the front yard of the Slater
8 residence?

9 A Yes, sir.

10 Q At that time did you ask Mr. Slater any questions
11 concerning those bullet casings?

12 A I asked him about if he had owned any guns. And
13 we were sitting at the big table, such as this
14 that we have at the detective division, and he
15 told me that he had a nine millimeter, and I
16 believe he had another caliber gun that he keeps
17 for his own protection against people that try to
18 rob him.

19 I think he termed it, because I put it in my
20 notes, which I don't have with me, but he put the
21 term jack boys, you know, or people that try and
22 rob other people, that's why he has a gun.

23 Q Did you ask him whether or not he had in fact been
24 to the dance at The North Charleston High School
25 on February the third?

1 A He said he had been to the dance.

2 Q Did you ask him any other questions at that point
3 in time?

4 A Briefly I think we asked him about the guns, if he
5 had a reason to have a gun, asked him if he had
6 been at the dance.

7 He told me that the police had already
8 stopped him twice on his way home from the dance.

9 He had known about the incident, I guess the
10 shooting incident, but said he wasn't part of it.

11 At that time, sir, I began typing myself a
12 search warrant for the residence, and he was left
13 in the custody of the other detectives that were
14 up there, who began questioning him and what have
15 you. I was formulating the search warrant.

16 Q At any time after you read Mr. Slater his Miranda
17 warnings, did you make him any promises or did you
18 threaten him in any way to get him to talk to you?

19 A No.

20 Q Did he ever indicate to you, sir, while he was in
21 your custody, that he wanted an attorney present
22 before he spoke with you?

23 A Not to me, no, sir.

24 Q During those brief questions that you've described
25 to the Court that you asked him, did he ever

1 indicate to you that he wanted to stop talking and
2 not answer any further questions?

3 A No, sir, not to me.

4 Q At any time did he indicate to you that he wanted
5 to call his mother, his sister, his brother,
6 anybody of that nature before he answered any of
7 your questions?

8 A I recall him telling us that his mother was out at
9 work, but he never said he wanted to call his mom,
10 no.

11 Q At any point in time did you ever threaten him or
12 coerce him in any manner in order to get him to
13 answer any of your questions?

14 A No, sir.

15 Q And other than those brief questions that you
16 asked him concerning the gun, whether he'd been to
17 the dance or not, were there any other questions
18 asked of him that you can recall at this point in
19 time?

20 A Not that I can recall that I asked him, no, sir.

21 Q And while you were asking him these questions at
22 The North Charleston Police Department, did you
23 also have other detectives back at the scene at
24 the Slater residence?

25 A There were detectives at the scene, I believe,

1 standing by, as I was typing the search warrant
2 up.

3 Q And after you typed the search warrant up, did you
4 have occasion to take that search warrant to Judge
5 David Coker's office or home, I guess?

6 A Yes.

7 Q About seven o'clock that morning?

8 A Yes, sir, if not a few minutes early, yeah. It
9 was starting to get sun up.

10 Q And was that search warrant subsequently executed
11 at the Slater residence?

12 A Yes.

13 Q And you participated in that search warrant?

14 A Yes.

15 MR. DUTREMBLE: Thank you, Officer Widmer.
16 If you would, please, sir, answer Mr. Pennington's
17 questions.

18 THE WITNESS: Yes, sir.

19 THE COURT: Mr. Pennington.

20 IN CAMERA CROSS-EXAMINATION

21 BY MR. PENNINGTON:

22 Q Officer Widmer, you're not sure if whether the
23 guns were holstered or out in your hand when you
24 knocked on the door?

25 A At the residence I do not think I had my gun out

1 of my holster.

2 Q But you're not sure?

3 A I'm not sure.

4 Q And you're not sure about Officer King's gun?

5 A No, I'm not.

6 Q And you're not sure of Officer Palmer's gun?

7 A No, I'm not.

8 Q Your purpose in going there was if you found Byron
9 Slater, you were going to arrest him?

10 A Yes, sir.

11 Q That was clear before you knocked on the door?

12 A Yes, sir.

13 Q And when he answered the door, he was advised that
14 he was under arrest for murder?

15 A Yes, sir.

16 Q And he cooperated with you?

17 A Yes, he did.

18 Q Now, as you were transporting him back to the
19 station, you asked him if he had been to the
20 dance, and he said he had?

21 A Yes.

22 Q And you're indicating that it was at the station
23 that you first heard a conversation about him
24 owning a nine millimeter pistol?

25 A It was at the station that I asked him about that.

- 1 Q Did you hear Sergeant -- or excuse me, Officer
2 Palmer, when he -- after he'd been cuffed, ask him
3 if he had a gun, and him respond that he had a
4 nine and a .25?
- 5 A I believe that took place at the station, sir.
- 6 Q But you're not certain?
- 7 A I'm not certain.
- 8 Q Okay. You knew that Officer Palmer went there
9 because he had a prior relationship with my
10 client?
- 11 A I believe Officer Palmer used to be a school
12 resource officer and I believe he knew your
13 client, because he attended high school there,
14 yeah.
- 15 Q Right. So you're not saying one way or the other
16 whether or not Officer Palmer asked him if he had
17 a gun or whether he responded? At the house?
- 18 A At the house, I cannot remember that, sir, no.
- 19 Q Okay. Now, you indicate that you read from your
20 card. Did you have him sign anything at that
21 time?
- 22 A No, sir.
- 23 Q And that happened -- you had him re-Marandized at
24 the station; did you not? Or was that Detective
25 Sergeant Hester?

1 A Sir, I don't know. I was the one that did the --
2 I don't think I had him sign the Miranda. I
3 believe I just did the card.

4 Q Okay. You indicate that there was you, Officer
5 Palmer and Officer King at the door; am I right
6 about that?

7 A On the front porch, at the front door, yes, sir.

8 Q And that there were other officers with you?

9 A I believe another car, another police car, that
10 came to the house. I could--

11 Q All right. Would that be one or more officers?

12 A I would want to say more, sir, but I cannot tell
13 you their names. I believe Detective Paul
14 Hernandez might have been one of the officers.

15 Q Now, with regard to Officer King's appearance, was
16 he in uniform?

17 A Sir, I can't remember.

18 Q How about Officer Palmer? Officer Palmer is a
19 Corporal?

20 A Yes, sir. Again, sir, I can't recall if they were
21 in uniform or not.

22 Q Okay. But you were wearing your windbreaker that
23 says police in yellow letters on the back?

24 A I have -- it's -- I had it in the trunk of my
25 car. I don't want to say it has a gold-looking

1 badge on the front, I can't remember that, but I
2 do believe it says police on the back.

3 Q Okay.

4 A But we identified ourselves as police officers
5 after he opened the door.

6 Q Okay. That was immediate?

7 A Yes.

8 Q Okay. There was no question that he might have
9 thought it was someone, just some stranger?

10 A When he opened the door he said -- I mean, I'm not
11 going to give quotes, but it was like, is there
12 something I can do for you officers.

13 MR. PENNINGTON: Okay. All right. Thank
14 you.

15 Thank you, Your Honor.

16 THE COURT: You may come down.

17 THE WITNESS: Thank you, sir.

18 THE COURT: Thank you.

19 MR. DUTREMBLE: We call Doug Hester, Your
20 Honor.

21 DOUG HESTER,

22 Being first duly sworn, testified as follows:

23 IN CAMERA DIRECT EXAMINATION

24 BY MR. DUTREMBLE:

25 Q Sergeant Hester, you are employed by The North

1 Charleston Police Department?

2 A That's correct.

3 Q And in what capacity, sir?

4 A I'm a Detective Sergeant employed by the Detective
5 Division.

6 Q Do you supervise any detectives in your division?

7 A I supervise a squad of detectives in The North
8 Charleston Police Department.

9 Q And in your capacity as a detective and a
10 supervisor with North Charleston, did you have
11 occasion to become involved in the investigation
12 of Lord Byron Slater?

13 A Yes, I did.

14 Q And did you have occasion in that capacity, sir,
15 to interview him at approximately six o'clock in
16 the morning on February the fourth, which was a
17 Sunday?

18 A That's correct, I interviewed the defendant.

19 Q And prior to interviewing the defendant, did you
20 have occasion, sir, to read him what we commonly
21 refer to as his Miranda warnings?

22 A Yes, I did.

23 Q And let me hand you these documents, sir, and
24 although it's a copy, let me ask you if you can
25 identify this.

- 1 A This is a copy of the Miranda warning that I
2 issued to him at approximately six in the morning
3 on February the fourth.
- 4 Q All right, sir. And do you have the original of
5 that document with you?
- 6 A Yes, I do.
- 7 Q Is it contained in here?
- 8 A Yes, it is. No, it's underneath your table.
9 I have the original right here.
- 10 Q All right. Can you take that out for me, please,
11 sir? Sergeant Hester, does your original document
12 bear the Miranda warnings that we're all familiar
13 with now?
- 14 A Yes.
- 15 Q And does your document bear your signature?
- 16 A Yes, it does.
- 17 Q Does it bear the defendant's signature?
- 18 A I observed the defendant sign his name, Byron
19 Slater, to the document.
- 20 Q And beside each and every one of the Miranda
21 warnings, does it have the defendant initial those
22 warnings?
- 23 A Stating that he clearly stated (sic) each and
24 every one of them.
- 25 Q That he clearly understood each and every one of

1 them?

2 A That's correct.

3 Q And after reading him his Miranda warnings, having
4 him initial those warnings and sign the actual
5 Miranda warnings sheet, did you proceed to
6 interview him?

7 A That's correct.

8 MR. DUTREMBLE: If Your Honor please. At
9 this point in time, for purposes of this hearing,
10 we would offer the advice of rights form.

11 THE COURT: It is admitted.

12 MR. PENNINGTON: No objection, Your Honor.
13 How is that marked, if I may ask?

14 THE COURT: You're going to be marking it
15 again in the trial?

16 MR. DUTREMBLE: Yes, sir, in the trial.

17 THE COURT: Let's just mark it for
18 identification so it won't be confusing when we
19 admit it during the trial.

20 Is that suitable to you, Mr. Pennington?

21 MR. PENNINGTON: Yes, sir.

22 THE COURT: All right, sir.

23 Let the record reflect that the document is
24 marked for identification.

25 (State's Exhibit Number 1, advice of

1 constitutional rights form, marked for
2 identification.)

3 BY MR. DUTREMBLE:

4 Q Sergeant Hester, with reference to State's Exhibit
5 1 for identification purposes only, can you tell
6 the Court what constitutional rights you advised
7 the defendant of?

8 A Would you like me to read them?

9 Q Just read those rights.

10 A I reads it in third party, as if I'm in him, and I
11 read it to him just as it states.

12 I have the absolute right to remain silent
13 and I do not have to answer any questions or give
14 a statement and this fact cannot be used against
15 me.

16 And I have him sign it.

17 Then I read number two. If I do answer
18 questions or give a statement, anything I say can
19 and will be used against me in a court of law.

20 And then I have him initial it.

21 And then I go to number three. I have a
22 right to consult with a lawyer of my choice before
23 I answer questions or give a statement or have him
24 present while being questioned.

25 He signed it L.B.

1 If I wish to talk to a lawyer and have him
2 present but am unable to afford to hire a lawyer,
3 one will be appointed to represent me free of
4 charge.

5 He signed it L.B.; number four.

6 Number five. If I decide to answer questions
7 or give a statement without having a lawyer
8 present representing me, I have the absolute right
9 during this interview to stop answering questions
10 and to remain silent.

11 Underneath that it says, I fully understand
12 these rights as explained to me. He signed it
13 Byron Slater.

14 Q And what date was this taken?

15 A February the fourth at 0555 in the morning.

16 Q Five minutes before six o'clock in the morning?

17 A That's correct.

18 Q Did you also sign it?

19 A I signed it.

20 Q Now, below that there's another paragraph. Can
21 you tell the Court what that paragraph says?

22 A After reading him his rights I asked him, having
23 your rights in mind, do you wish to waive your
24 rights and answer questions concerning the charge
25 of murder and armed robbery?

1 Understanding there's been no threats, force
2 or promises of any kind have been made to you to
3 cause you to waive these rights or to answer
4 questions.

5 He indicated that he wished to talk to me, to
6 be interviewed. I signed it. He signed it, same
7 date and time.

8 Q Same date and time.

9 At any point in time that you were talking to
10 Mr. Slater, did he indicate to you that he wanted
11 a lawyer present?

12 A Not at any time.

13 Q Did he indicate to you that he did not wish to
14 answer any further questions and wanted to go back
15 to his cell?

16 A He was very cooperative, talked to us freely.

17 Q Did you ever threaten him or coerce him in any
18 fashion, make him any promises to get him to talk
19 to you?

20 A No, I did not.

21 Q What did he tell you when you were talking with
22 him?

23 A Basically he told me that he had gone to the
24 school dance that evening, that he had -- he gave
25 me the names of three young fellows that he was

1 with, that he had left the school with.

2 He told us about observing an altercation at
3 the school and getting blocked in for a period of
4 time behind a car and that he was in a white Monte
5 Carlo.

6 That he was immediately stopped by The North
7 Charleston Police Department, by a black female
8 officer, who searched his car.

9 And that he eventually was also stopped again
10 -- later that morning on Montague Avenue again he
11 was stopped, but he wasn't searched. He was
12 interviewed or identified and let to leave.

13 I mean, I have the statement, counselor.

14 Q Yes, sir. Did you ask him whether or not he had a
15 gun in the car? That would be on page two.

16 A (There was no response.)

17 Q The question is--

18 A I asked him, did you have a gun in your car at any
19 time; and he said, no.

20 Q Did you ask him whether or not he participated in
21 the crime that evening?

22 A I asked him that question and he said, no, sir.

23 Q Did you ask him whether or not he shot a gun that
24 evening?

25 A He said, no, sir.

1 Q Okay. Did you ask him whether or not he went home
2 after the shooting?

3 A He told me he did not.

4 Q All right. And after taking the statement and
5 getting him to sign for it, did you give him a
6 copy of the statement?

7 A Yes, I did.

8 Q All right. And did you ask him any further
9 questions?

10 A I don't recall asking any more questions after
11 this statement was taken.

12 Q At any point in time when he was in your custody
13 or in your presence, were any promises, threats or
14 coercion of any kind made to induce him to give
15 you any kind of statement at all, sir?

16 A No, it was not.

17 Q At any point in time when he was in your custody
18 or your presence, did he request the assistance of
19 counsel before he answered any questions or
20 indicated that he no longer wanted to answer your
21 questions?

22 A He never did that.

23 MR. DUTREMBLE: Thank you, sir. Please
24 answer any questions Mr. Pennington has for you.

25 IN CAMERA CROSS-EXAMINATION

1 BY MR. PENNINGTON:

2 Q Sergeant Hester, you were not present when the
3 arrest was made?

4 A No, I was not.

5 Q And you were not present as he was transported by
6 Detective Widmer and the other officers?

7 A No, I was not.

8 Q So you pick up on the case -- it was your
9 understanding that he was arrested about five, and
10 you take his rights form, filled that out about
11 5:55 or about 50 minutes after the arrest?

12 A That's correct, Mr. Pennington.

13 Q And that's at The North Charleston Police Station?

14 A That's correct.

15 Q And was the rights form filled out before or after
16 the statement was written out?

17 A The rights statement was filled out prior to
18 taking the written statement from him.

19 Q And you were the author of the rights form? In
20 other words -- excuse me. Strike that.

21 Is the statement that's signed by my client,
22 was that written by my client?

23 A I wrote the statement myself. He suggested I
24 write it.

25 Q Okay. And then he signed it?

1 A And then he signed it after he read it.

2 Q Okay. And in that statement it describes that the
3 police found some dope at his house?

4 A In his statement he indicates that there was some
5 drugs found at his house.

6 Q And that they threatened him and his family if he
7 didn't tell them what happened, that they were
8 going to lock us up because of the dope?

9 A That's what he said in his statement.

10 Q Okay. And that's actually a part of this
11 statement that you have testified from?

12 A That's correct. He asked me to write that at the
13 end of the statement and I did so.

14 Q Okay. So he asked you to put down that he said
15 that he was threatened by police?

16 A That's what he wanted--

17 Q About the dope?

18 A That's what he wanted me to put in the statement,
19 Mr. Pennington, and that's what I wrote in the
20 statement.

21 Q Okay. Now, -- and there is no question that he
22 understood that he was under arrest for murder?

23 A On the form itself I advised him that he was under
24 arrest for murder and armed robbery.

25 Q Okay.

1 A And that I wanted to question him about the
2 circumstances.

3 MR. PENNINGTON: Okay.

4 Court's indulgence one moment.

5 Thank you, detective, I appreciate it.

6 That's all I have.

7 THE COURT: You may come down. Thank you.

8 MR. DUTREMBLE: We would next call Officer
9 Terell Palmer, Your Honor.

10 TERELL PALMER,

11 Being first duly sworn, testified as follows:

12 IN CAMERA DIRECT EXAMINATION

13 BY MR. DUTREMBLE:

14 Q Officer Palmer, how long have you been with The
15 North Charleston Police Department?

16 A Going into my tenth year. Approximately nine and
17 a half years.

18 Q And what do you do for them?

19 A Victims' advocate now.

20 Q And back on February the third of this year, what
21 were you doing for North Charleston?

22 A I was assigned to the uniform division.

23 Q Did you have occasion on the third or the fourth
24 of February of this year to get involved in the
25 investigation concerning Lord Byron Slater?

1 A Yes, sir.

2 Q Do you know Lord Byron Slater?

3 A Yes, sir.

4 Q How do you know him?

5 A I was the school resource officer at North
6 Charleston for about five years and dealt with
7 Byron during that time period.

8 Q Was he a student at North Charleston High during
9 that time period?

10 A Yes, sir.

11 Q How did you happen to become involved in this
12 particular investigation, sir?

13 A Well, during the course of the investigation there
14 was a question as to the identity of the possible
15 suspect, and also one of the witnesses.

16 Lieutenant Burgess called me at home and
17 asked me if I would come in to insist in the
18 investigation because the shooting occurred at
19 North Charleston and we believed that the suspect
20 and one of the witnesses were students.

21 So they called me in to see if I could
22 assist.

23 Q All right. And after you came in to the police
24 station, were you advised that Byron Slater had
25 been developed as a witness? I mean as a possible

1 suspect?

2 A Yes, basically picked up a possible witness who
3 identified Mr. Slater as the suspect. And I was
4 actually the only one there at the time that knew
5 exactly how he looked, and that's basically how I
6 got involved in it.

7 Q Did you have occasion to travel with Detective
8 Widmer and Detective King to Mr. Palmer's -- I
9 mean to Mr. Slater's residence?

10 A Yes, sir.

11 Q And how were you dressed that night, sir; do you
12 recall?

13 A I was dressed in civilian clothes. I did have a
14 badge around my neck, a gold badge that sat
15 outside of the uniform to identify myself as a
16 police officer.

17 Q And what, if anything, did you observe when you
18 drove up to Mr. Slater's residence?

19 A As we drove up there was a white vehicle parked in
20 the yard. It was early in the morning. It was
21 rather quiet. There was lighting, very little
22 lighting on in the house, and that's about it.

23 Q And did y'all knock on the door?

24 A Yes, I knocked on the door.

25 Q And what took place after you knocked on the door,

1 sir?

2 A I knocked on the door, Mr. Slater answered the
3 door, and asked us nicely -- well, actually said,
4 good morning, can I help you officers?

5 He recognized me. And I said, Byron, we need
6 to speak to you for a second. So he stepped out
7 of the door, closed it behind him and came onto
8 the front porch.

9 Q All right. At that point in time was there any
10 doubt in your mind that the person you were
11 speaking with was Byron Slater?

12 A No.

13 Q And what, if anything, did you tell Byron Slater
14 when he came out onto the porch?

15 A I advised him as to why we were there and then I
16 turned it over to Detective Widmer. I was
17 basically just there for identification purposes.

18 Q And when you went to the door and knocked on it,
19 did you have a weapon in your hand?

20 A No.

21 Q Did any of the officers there -- did Widmer or
22 King have a weapon in their hands?

23 A No, sir.

24 Q Was there any need for a weapon at that point in
25 time?

1 A No, not that we thought. We all took precautions.
2 And this is standard, we were all wearing our
3 vests, but that's just normal. But there were no
4 weapons drawn. No need to draw any weapons.

5 Q When Byron Slater opened the door, did you
6 threaten him in any way or grab him in any way and
7 jerk him through the open doorway?

8 A Oh, no, he stepped out on his own and pulled the
9 door behind him. He was -- like I said, his
10 demeanor was very cordial. Very cooperative. He
11 came out on the porch.

12 Q Were any threats made to him by any of the police
13 officers?

14 A None.

15 Q Were you present when Detective Widmer read him
16 his Miranda warnings?

17 A Yes, sir.

18 Q And did you ask him any questions at that point in
19 time?

20 A No, sir.

21 Q Were you present at The North Charleston Police
22 Department when he was taken down and asked the
23 question about whether or not he owned a weapon?

24 A Yes, sir.

25 Q And can you relate to the Court how that came

1 about?

2 A Very vaguely. He mentioned he -- paraphrasing,
3 that he owned a weapon because of the jacksters,
4 which is a commonly used term for people who are
5 going around robbing other folks. So he did say
6 he had it for his own protection.

7 Q And did that take place at The North Charleston
8 Police Department?

9 A Yes, sir.

10 Q At any time that you were on the porch of Mr.
11 Slater's residence, did he indicate to you that he
12 owned a nine millimeter or a .25 caliber pistol?

13 A Not at that time.

14 Q It was later on when you got him back down to the
15 station?

16 A There was very little questioning on the front
17 porch at that time.

18 MR. DUTREMBLE: Thank you very much, Officer
19 Palmer. If you would, answer Mr. Pennington's
20 questions.

21 MR. PENNINGTON: Court's indulgence.

22 IN CAMERA CROSS-EXAMINATION

23 BY MR. PENNINGTON:

24 Q Corporal Palmer, you remember going to the house
25 and knocking on the door along with the other

1 officers; right?

2 A Yes, sir.

3 Q And Byron answered the door?

4 A Yes, sir.

5 Q Do you recall that immediately after he was placed
6 under arrest that there was some issue about
7 putting him in some different flip-flops or shoes?

8 A Yes, sir.

9 Q You all went back into the house?

10 A We escorted him back into the home.

11 Q Right. And do you remember immediately after that
12 asking him if he had any weapons?

13 A That was asked of him on the front porch.

14 Q Okay.

15 A And that was when he was being placed under
16 arrest, we informed him that he was being patted
17 down for weapons for officer safety as well as his
18 own.

19 Q And he was asked if he had a weapon; right?

20 A On his person.

21 Q And he told you that he had a pistol in the house?

22 A No, sir, not at that time.

23 Q Not at that time?

24 A No, sir.

25 Q Are you certain about that?

1 A No, sir, he--

2 MR. PENNINGTON: That's all I have.

3 THE COURT: All right.

4 You may come down. Thank you.

5 MR. DUTREMBLE: If Your Honor please, that
6 would be the State's showing. Officer King is in
7 state training and is not within the city limits
8 and so that would be all I have on this particular
9 issue.

10 THE COURT: All right, sir.

11 Do you have any witness on this issue?

12 MR. PENNINGTON: Yes, sir, we call Mr.
13 Slater.

14 THE COURT: All right.

15 LORD BYRON BARCLAY SLATER,
16 Being first duly sworn, testified as follows:

17 MR. PENNINGTON: If Your Honor please.

18 IN CAMERA DIRECT EXAMINATION

19 BY MR. PENNINGTON:

20 Q Mr. Slater, how old are you?

21 A Twenty now.

22 Q How old were you back in February when this all
23 happened?

24 A Nineteen.

25 Q Okay. You were at home when the police arrived?

1 A Yes, sir.

2 Q Tell the Judge what happened when the police
3 knocked on the door.

4 A When they knocked on the door, as soon as I walked
5 out I recognized Officer Palmer, and he told me --
6 I walked -- well, I walked out towards them and
7 shut the door behind me and he told me that I was
8 arrested -- like basically being arrested for
9 armed robbery and murder. And after that--

10 Q What did they do at that point?

11 A Well, he grabbed my hand like he was placing me in
12 some handcuffs. And I told him, can I go get some
13 shoes?

14 So they walked me back to my room to get some
15 flip-flops.

16 Then -- well, before that they asked me if I
17 had any weapons. And I told them I had a nine and
18 a .25.

19 Then they escorted me back in the house to
20 get some flip-flops. And that's when I was took
21 into the police station.

22 Q Did they pat you down?

23 A I don't -- I don't recall them patting me down.

24 Q Okay. How were you dressed?

25 A I had some green Wal-Mart pants, a Navy blue shirt

1 and a black skull cap.

2 Q Okay. And that's like a woolen hat?

3 A Yes, sir.

4 Q Did you have any pockets on that outfit that you
5 were wearing?

6 A Yes, sir.

7 Q Okay. Was there anything in the pockets?

8 A No, sir.

9 Q Okay. And when was it that they read you your
10 Miranda warnings the first time?

11 A After I was in the handcuffs he tell me I was
12 arrested for armed robbery and murder, then he
13 read -- one of the officers read me that thing off
14 a paper, the Miranda paper.

15 Q Was that before or after the questioning about the
16 pistol?

17 A I think that was after.

18 Q All right. So he first read you your rights and
19 then asked you about a pistol?

20 A Yes. Officer Palmer asked me about a pistol,
21 asked me if I had any weapons. I told him I had a
22 .25 and a nine.

23 Q Okay. Did they go get it?

24 A I aint -- I wouldn't know, because they took me to
25 the police station, so I wouldn't know.

1 Q Okay. All right. Did--

2 MR. PENNINGTON: Court's indulgence.

3 Please answer any questions that Mr.

4 DuTremble might have.

5 MR. DUTREMBLE: I have no questions, Your

6 Honor.

7 THE COURT: You may come down. Thank you.

8 MR. PENNINGTON: That's all I have as far as

9 witnesses, Your Honor.

10 THE COURT: All right, sir.

11 Let the record then reflect that I have held
12 an evidentiary hearing in the matter and I am
13 convinced beyond a reasonable doubt and so find
14 that this statement obtained from the defendant
15 was freely and voluntarily given and that the same
16 was given without duress, without coercion,
17 without undue influence, and without any threats,
18 inducements, hope or reward.

19 I further find that the defendant, in
20 compliance with Miranda versus Arizona, was
21 advised of his constitutional rights, among those
22 being the right to have an attorney present with
23 him during the interview and interrogation, that
24 the Court would appoint an attorney for him if he
25 was without funds to employ one without cost to

1 him, that he had the right to remain silent, that
2 he had the right to terminate the interrogation at
3 any time and not to answer any questions, and that
4 anything the defendant said could be used as
5 evidence against him.

6 I further find that the defendant understood
7 and knowingly and intelligently waived such rights
8 under the fifth and sixth Amendment to remain
9 silent and to have counsel present with him at the
10 interview interrogation.

11 I find that the decision to make the
12 statement was a product of the defendant's own
13 imperative will, finding further that he had the
14 capacity to understand the meaning and the affect
15 of the warnings with regards to his constitutional
16 right.

17 The statements will be admitted into evidence
18 for such weight as the jury determines they should
19 receive under proper instructions by the Court.

20 All right, sir.

21 MR. PENNINGTON: Your Honor, to finish out
22 the record, I have no further argument on the
23 position on the Miranda issue.

24 I failed to put in evidence the affidavit of
25 the search warrant that relates to this issue of

1 the exploitation of the warrantless arrest.

2 And I would ask that it be marked as an
3 exhibit for the Court's consideration.

4 The Court asked me, and I don't know that it
5 was made clear when I made my presentation, you
6 asked what were the fruits of this warrantless
7 arrest and how was it exploited.

8 And our contention, Your Honor, is that when
9 you look at the search warrant, it describes the
10 crime itself, and then indicates that on February
11 fourth they went to his house, he opened the door
12 wearing such described clothing as the witness
13 described, so that the clothing that was seen
14 would have been a direct result.

15 That went into the probable cause of this
16 search warrant.

17 Further, outside the house, on the ground,
18 there were several shell casings. We don't
19 contend that that's improper; they found those.

20 They could have been outside conducting
21 surveillance, so I don't object to that.

22 But then the defendant was advised of his
23 Miranda warnings by Detective Chris Widmer. The
24 defendant did state to Detective Chris Widmer, in
25 the presence of Detective Fletcher King and

1 Corporal T. Palmer, that he does have a nine
2 millimeter pistol and a .25 caliber pistol for his
3 own protection.

4 Further, the defendant stated that he was at
5 the dance on the night of February third.

6 We contend that you have the interrogation
7 that occurred at the police station after 5:55
8 a.m., was separate from what Detective Widmer, who
9 is the affiant in the search warrant, and that in
10 effect, the search warrant becomes itself a fruit
11 of this illegal warrantless without exigent
12 circumstances.

13 So, Your Honor, I want, just for the record,
14 that this affidavit -- it was signed by Detective
15 Christopher Widmer, it was presented to Magistrate
16 David Coker, and the time is noted as seven a.m.
17 on February the fourth.

18 We contend that the law could not be more
19 clear that they jumped the gun and that by doing
20 so they exploited it not only in terms of gaining
21 that information, but that that same information
22 becomes the core of the probable cause for the
23 search warrant.

24 And so that the fruits of the search warrant
25 would be subject to suppression. And those

1 include, just to be clear, the handgun utilized in
2 this case, which has been matched to the
3 projectiles, the bullets and the shell casings at
4 the scene.

5 THE COURT: I've already, of course, ruled
6 that the arrest under the circumstances then
7 presented was appropriate.

8 But I'll be glad to hear from you for the
9 record, Solicitor.

10 MR. DUTREMBLE: For the record, Your Honor,
11 it is clear from the testimony of the arresting
12 officers that when he came through the door he was
13 advised that he was placed under arrest for
14 specific crimes, and Miranda warnings were given
15 to him.

16 The testimony of both the officers present at
17 the scene, and they've both been sequestered, they
18 both come in here and told Your Honor the same
19 thing; we took him down to North Charleston, while
20 we were at North Charleston we asked him whether
21 or not he had weapons, he said he had a .25 and a
22 nine.

23 That information, after being Mirandized, was
24 included in the search warrant that was obtained
25 at seven o'clock in the morning. But there is

1 nothing wrong with that.

2 They did exactly what they were supposed to
3 do. They read him his Miranda warnings. They
4 asked him specific questions.

5 After being Mirandized he freely and
6 voluntarily agreed to answer those questions and
7 gave them information.

8 There is absolutely nothing in the world
9 wrong with the police officers who have lawfully
10 done their job, taking such information as they
11 have discovered, and presenting it to a neutral
12 and detached magistrate to determine whether or
13 not the warrant's at issue.

14 THE COURT: I conclude that the arrest
15 warrant was properly issued and that the
16 information upon which that arrest warrant was
17 issued was proper under all the circumstances in
18 the case.

19 MR. DUTREMBLE: Thank you, Your Honor.

20 THE COURT: Yes, sir.

21 MR. PENNINGTON: Thank you, Your Honor.

22 THE COURT: All right, sir.

23 MR. PENNINGTON: Your Honor, there is one
24 more matter, and that is I had previously
25 informally dealt with Mr. DuTremble on a issue of

1 404(b) Lyle.

2 In this case, when they executed a search
3 warrant, they found what amounts to 32 grams of
4 crack cocaine and about 23 hundred dollars in
5 cash.

6 It's my understanding that the State does not
7 contend that that is admissible in their case in
8 chief.

9 THE COURT: No, sir, I would not let that in
10 to start with. Let's leave that out. Let's make
11 sure that whoever is testifying doesn't testify as
12 to those two issues.

13 MR. DUTREMBLE: Yes, sir.

14 THE COURT: Instruct them specifically that
15 that would be totally detrimental and highly
16 prejudicial to the defendant.

17 MR. DUTREMBLE: If Your Honor please, and as
18 a matter of safekeeping, the officers that
19 discovered the dope are not even called in this
20 case.

21 THE COURT: That's fine. That will take care
22 of that issue, Mr. Pennington.

23 MR. PENNINGTON: Yes, sir, it will. Thank
24 you.

25 THE COURT: All right, sir. Anything

1 further?

2 MR. DUTREMBLE: No, sir. But if he takes the
3 stand, I reserve the right to explore that issue,
4 Your Honor.

5 MR. PENNINGTON: We'll have to visit it that
6 at that time, Your Honor.

7 THE COURT: I will. If he takes the stand,
8 I'll deal with it at that time.

9 MR. DUTREMBLE: Thank you, sir.

10 THE COURT: All right. Let's adjourn this
11 until 2:30.

12 Mr. Pritchard, come around, we'll hear your
13 issue very quickly.

14 See you at 2:30. Be sure and tell the
15 witnesses who are sequestered to come back to
16 those same places.

17 (Lunch recess.)

18 (The following was reported out of the
19 presence of the jury.)

20 (Court's Exhibit Number 1, affidavit of Chris
21 Widmer, marked for identification.)

22 THE COURT: All right. Solicitor, are you
23 ready to begin?

24 MR. DUTREMBLE: We are, Your Honor.

25 MS. SUMNER: Yes, we are, Your Honor.

1 THE COURT: Defendant?

2 MR. PENNINGTON: Yes, sir..

3 THE COURT: All right, sir.

4 MR. PENNINGTON: We have substituted a
5 document from the prior hearing, it was the
6 Court's document number one, I believe, the rights
7 form, and it contained mention of the fact that
8 when this investigation began he was charged with
9 murder and armed robbery.

10 THE COURT: We whited that out, as I
11 understand.

12 MR. DUTREMBLE: Yes, sir, we have whited it
13 out. I have the original, Your Honor, I didn't
14 know if we should include that with the rest of it
15 or just go with what we had.

16 THE COURT: Let's go with what we've got.

17 MR. DUTREMBLE: Thank you.

18 THE COURT: Okay. Bring in the jury for me,
19 please.

20 (Jury in at 2:43 p.m.)

21 THE COURT: Swear the jury for me, please.

22 THE CLERK: Ladies and gentlemen of the jury,
23 please stand and raise your right hands to be
24 sworn.

25 (WHEREUPON, the members of the jury were duly

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1 sworn by the Clerk.)

2 THE COURT: Ladies and gentlemen, prior to
3 beginning, let me make some preliminary remarks to
4 you and some charges on the law, which, of course,
5 will not substitute for the more detailed
6 explanations of the law that I will give you at
7 the conclusion of the testimony.

8 Let me say at the outset that from this
9 moment on there is nobody in this wide world that
10 can tell you 12 what the facts are.

11 You are the sole and only finders of the
12 facts. You are the sole and only judges of the
13 credibility, meaning the believability of all the
14 witnesses who testify under oath.

15 You, in your discretion and judgment, may
16 believe all of what a witness says, or none. You
17 may believe a small portion and disregard the
18 larger, or the other way around.

19 Within your discretion you are entitled to
20 believe one witness against that of many or the
21 other way around.

22 Your job in examining the truthfulness and
23 the believability of the witnesses is one thing,
24 that's simply to seek the truth.

25 Now, telling you that you are the finders of

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1 the facts, I also say to you that I am the judge
2 of the law, made so by the Constitution of this
3 State.

4 Under your oath now, you are required to
5 accept the law as I shall charge it to you. Even
6 though you, or I for that matter, might disagree
7 with what the law is or ought to be.

8 Remembering that as finders of the facts, you
9 take those facts as you find them and derive them
10 from the testimony in this case, in these cases,
11 and apply that to the law as I charge it to you.

12 Now, as I have indicated to you, I am not
13 entitled to a factual opinion about any issue, and
14 I have none. If any word, ruling, or mannerism of
15 mine might tend to indicate to any of you how I
16 feel about any factual situation, you disregard
17 that; I am not entitled to a factual situation and
18 I have none.

19 You 12 are my judges of the facts in this
20 case.

21 Recognizing that for most of you this is a
22 first opportunity that you have sat in a jury
23 case, this defendant upon this indictment stands
24 indicted of the charge of murder and of the use of
25 a deadly weapon during the commission of an

1 alleged crime.

2 To these charges he specifically pleads not
3 guilty. This defendant and any defendant in this
4 State doesn't have to prove a thing.

5 The State of South Carolina has to prove him
6 guilt to your satisfaction beyond a reasonable
7 doubt.

8 This defendant is presumed innocent. And
9 that innocence remains with him from the moment of
10 his arraignment throughout the trial and until
11 you, the jury, have found him guilty, if you do,
12 to your satisfaction unanimously beyond a
13 reasonable doubt.

14 Now, this case will open with the Solicitor
15 giving you an overview of what he says his case is
16 about. This is to help you follow the
17 presentation of evidence.

18 Defense counsel, who is representing the
19 defendant, who is represented by Mr. Ashley
20 Pennington, will give you a statement.

21 And following those two opening statements we
22 will take testimony of the various witnesses in
23 the case.

24 At the conclusion of all the testimony,
25 attorneys for both sides will make a closing

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1 statement to you.

2 Now, what the lawyers tell you now and at the
3 closing is not evidence, it's their view of the
4 evidence, but it is not evidence. Evidence comes
5 from this witness stand under oath.

6 After the testimony and after closing, I will
7 give you the instructions in the law and ask that
8 you take the facts as you find them to be in your
9 deliberations, apply those facts to the law of the
10 case, and thereafter reach a verdict.

11 Verdict comes from the Latin word veredicto,
12 meaning to speak the truth.

13 Opening statement.

14 MS. SUMNER: May it please the Court, Your
15 Honor.

16 Madam Foreperson, ladies and gentlemen of the
17 jury, the Judge has told you that this is a case
18 about murder and use of a deadly weapon, a
19 firearm, during the commission of a violent crime.

20 What this case is is a case about the
21 senseless and unjustified slaying of an innocent
22 19-year-old boy.

23 I'm Elizabeth Sumner. Along with Deputy
24 Assistant Solicitor Dale DuTremble, we represent
25 the people of the State of South Carolina. And as

1 such, it is our duty to prove to you every element
2 of the crimes to which Byron Slater, the
3 defendant, has been charged.

4 That means we must prove to you that Byron
5 Slater did in fact kill another person, Sharone
6 Middleton, with malice aforethought.

7 The Judge will later describe to you exactly
8 what malice aforethought is.

9 In addition, we have to prove to you that
10 during the commission of that murder, that he had
11 a firearm.

12 Now, what happens is that on February the
13 third of this year, 2001, Sharone Middleton, 19
14 years old, drops his cousin off, Mark Nelson, at a
15 high school dance up at North Charleston High
16 School. It's a Saturday night, he drops him off
17 for the high school dance.

18 Sharone and Mark's brother are going to come
19 back and pick Mark up when the dance is over; and
20 that's exactly what they do.

21 Sharone's driving the car, they get back to
22 the high school, they park in a church parking lot
23 across the street, and they wait for Mark.

24 They see Mark coming towards the car and then
25 they see Mark running towards the car. Mark

1 rushes to try to get into the car as people are
2 pulling the door open.

3 They're able to pull the door open from
4 Mark. His brother, Demetrius, is sitting in the
5 front seat, they pull his door open, and others go
6 around to the drivers side to where Sharone is
7 sitting and they pull that door open.

8 Demetrius and Mark are robbed of a nominal
9 amount of money. But what do they do to Sharone?
10 Sharone is pulled out of the car, kicked, beaten.
11 They take his tennis shoes from him.

12 But Byron Slater decides that that is not
13 enough. Because Byron Slater has a gun. And at
14 that point, Byron Slater decides that Sharone
15 Middleton, a guy who he has never met, deserves to
16 die, and shoots him twice in the chest.

17 Byron Slater runs back to the car, there are
18 three other people in the car with him, they speed
19 off.

20 Byron Slater shoots the gun out the window
21 towards the crowd that has gathered. And what
22 does he do? She speeds off as Sharone Middleton
23 is lying there dying and he goes home to hide the
24 gun then returns to the scene of the crime where
25 he is pulled over by the police.

1 But by this time, there is no gun. And they
2 let him go.

3 Now, as Sharone Middleton is lying there
4 dying, Byron Slater decides that he's hungry and
5 he thinks that he'll go to Sonic for a burger.
6 And that's what happened that night.

7 To prove all of this to you, we will be
8 calling several witnesses. I told you that there
9 were three other people in the car with Byron
10 Slater that night; and you will hear from the
11 people in that car.

12 And they will tell you that, yes, Byron
13 Slater did in fact have a gun that night. They
14 saw him shooting that gun.

15 You will also hear from Terell Bryant, who
16 knows Mr. Slater. He was not in the car with him,
17 but happened to see him that night at the high
18 school, and saw Byron waiving the gun around and
19 told him, Byron, don't shoot.

20 You will also hear from a ballistics expert
21 who will tell you that the gun that was found in
22 Byron Slater's closet hidden on the top shelf in a
23 shoe box is the gun -- the bullets that killed
24 Sharone Middleton were fired by the gun found in
25 the top closet, hidden, in Byron Slater's closet.

OPENING STATEMENT BY MR. PENNINGTON

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1 After you have heard all of the testimony and
2 the evidence in this trial, we ask that you render
3 the only just and fair verdict and find Byron
4 Slater guilty of murdering Sharone Middleton and
5 guilty of using a firearm during the commission of
6 a violent crime. Thank you.

7 MR. PENNINGTON: May it please the Court.

8 THE COURT: Yes, sir.

9 MR. PENNINGTON: Madam Forelady and ladies
10 and gentlemen of the jury, my name is Ashley
11 Pennington.

12 I don't imagine when you woke up this morning
13 that you realized that before the end of the day
14 you would be nominated as judges, or be named as
15 judges, but that's exactly what you now are.

16 The State has brought the most serious crime
17 in the entire arsenal of statutes and offenses in
18 our law against my client, Byron; and that's the
19 charge of murder.

20 And one of the essential elements, in fact,
21 the essential element that separates murder from
22 other lesser forms of homicide, is an element
23 called malice aforethought.

24 Now, I'm sure that when the Judge charges you
25 at the end of the case and he tells you what you

1 must look for, he's going to talk a lot about
2 malice aforethought.

3 But I think it's important that you hear that
4 term and get familiar with that term now, because
5 it's what you have to be searching for now as
6 you're listening to the evidence.

7 Now, the Judge may define it any number of
8 ways, but the terms that you most commonly hear
9 associated with a malice aforethought-type killing
10 is someone who acts with hatred, an abandoned
11 heart. A malignant or malicious heart. Someone
12 who is fatally bent on mischief. In other words,
13 fatally focused on killing someone.

14 There is not going to be a question at the
15 end of the case that, yes, Byron shot and killed
16 Sharone; there is no doubt about that. We're not
17 here to dispute that or debate that question.
18 That's a given.

19 But the real question is did he arrive at
20 that moment when he is firing the weapon with
21 malice towards Sharone Middleton, a person that he
22 had never met and didn't know.

23 What you're going to hear, ladies and
24 gentlemen, is a pretty confused set of facts from
25 people that were out there.

OPENING STATEMENT BY MR. PENNINGTON

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1 This was a step concert or a step competition
2 at The North Charleston High School on a Saturday
3 night.

4 Now, who knows -- who among you doesn't know
5 that when there is a fight outside a high school,
6 that that draws a crowd?

7 And the evidence is going to show that this
8 was a large crowd, and that sometime afterwards,
9 when the group was breaking up, there was a group
10 of fellows that were going around and they were
11 looking for something.

12 You're going to hear that from some of the
13 witnesses that are going to testify in this case.

14 It's not clear who those fellows were or what
15 they were looking for, but they began to create a
16 commotion.

17 And then they ran into the parking lot where
18 Sharone and his two cousins, Mark and Demetrius
19 Nelson -- well, it was actually just Demetrius and
20 Sharone that were parked there; they were waiting
21 for Mark to come from where the crowd was.

22 This group of guys, whoever they are, because
23 they're not going to be named, unfortunately we
24 don't know who they are, and they're not
25 associated with Byron, charge over and literally

1 start attacking Mark Nelson, demanding money.

2 But nowhere in this case are you going to
3 hear any evidence at all that Slater, my client,
4 Byron, was there demanding money or a part of that
5 initial group.

6 What you're going to hear instead is that he
7 got in his car, they road over there, and as
8 teenagers want to do, he got his gun and then
9 walked into the middle of the crowd.

10 Now, unfortunately in this day and age, a
11 high school and a fight, sometimes in this world
12 there are guns too.

13 And there are certain facts that you need to
14 know to help round out this picture. For example,
15 the State's witnesses will tell you that there
16 were other people out there around that car armed.

17 Not my client. People other than my client,
18 who were armed.

19 And you're going to hear a witness who's
20 going to say that he heard more than just one type
21 of gun being fired in all this confusion and all
22 this fighting.

23 You're also going to know beyond any doubt
24 that my client fired his weapon nine times.
25 Shooting all over the place, and did strike

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1 Sharone twice in the chest as he was running
2 away. And he got into his car and continued to
3 shoot.

4 Now, it's a large crowd out there, no one
5 else was hit, thank God.

6 But he then drives off and takes his gun and
7 puts it on the top shelf of his closet of his
8 bedroom and then cruises back by to see what
9 happened.

10 Because you have remember, this is Saturday
11 night. The time is about ten p.m. It is dark.

12 Evidence will show that there is a -- kind of
13 a street light in this church parking lot right
14 next to North Charleston High School, but it is
15 not like daytime where everything is entirely
16 clear.

17 Now, those are some of the facts that I think
18 you're going to have to really ask yourself, what
19 was it like to really be out there that time of
20 night and in the midst of all this confusion.

21 And there is another fact that the Solicitor
22 has not yet told you about, it's kind of important
23 in this case.

24 You know, none of us was out there, we're
25 going to have a few witnesses that were, out of

1 the hundreds that were, but police investigators
2 try to gather all the pertinent evidence that they
3 think they can find.

4 And after -- as they were taking Sharone to
5 the hospital, they put bags, paper bags, over his
6 hand; it's a standard procedure.

7 Because the hope is to figure out, well, did
8 he have a gun?

9 And after he passed away, the medical
10 examiner allowed the North Charleston police to
11 swab his hands.

12 And what they found was gunshot residue on
13 his right hand. Not his left hand. His right
14 hand.

15 And the evidence is going to show you beyond
16 any doubt, through stipulation, that he was
17 right-handed.

18 Now, it's not going to be entirely clear what
19 took place out there. It is not going to be
20 entirely clear.

21 You know, the police didn't wait until they
22 found a gun on the ground next to Sharone to test
23 his hands.

24 Sometimes evidence has a habit of
25 disappearing. But they thought that that was

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1 important and they did it and they will come here
2 and testify about that before you.

3 What does all this mean? Well, clearly this
4 is a crime. Clearly this is a homicide. But you
5 have to decide whether it's a murder, whether
6 there is malice aforethought.

7 I submit that what you're going to find,
8 ladies and gentlemen, is that this was sudden,
9 spontaneous, stupid, but no malice. That this was
10 an unplanned and chance encounter.

11 Instead of malice I think you're going to
12 find fear, confusion, stupidity.

13 Now, you may ask yourself, well, how do I
14 sort out this mess, what guidelines can I go by to
15 know exactly what the truth is, because my
16 responsibility, when it comes right down to it, is
17 to make an individual decision on whether or not
18 this is murder or not.

19 The Court has already given you some
20 guidance. And I'm going to touch on that just
21 briefly.

22 You know, a trial is a little bit like an
23 obstacle course. You see, the State, when they
24 bring a charge like this, this is the only trial
25 that's ever occurred in this case.

1 There was mention of a grand jury. A grand
2 jury never sat down and heard any evidence like
3 this, ladies and gentlemen.

4 This is the first one and only trial, and you
5 are the only judges of the facts that will ever
6 hear this case.

7 But a trial is like a test. It's a test to
8 see whether or not malice aforethought exists
9 beyond a reasonable doubt.

10 And so what are the guidelines, the reference
11 points that you can use when the evidence isn't
12 there?

13 Well, the first one the Judge already told
14 you about, he told you in the beginning and he
15 told you about just now, that you and everyone in
16 this country is presumed innocent.

17 So your initial starting point is very
18 simple, and that is that he is innocent until
19 proven guilty.

20 You have heard that a million times, but you
21 have to let it sink in a little bit to understand
22 what it means here.

23 It simply means that if you don't find the
24 malice aforethought to have been proven to you,
25 then he is not guilty of the specific charge of

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1 murder.

2 The second guideline that you have is this
3 proof beyond every and all reasonable doubt. That
4 just simply is like a common sense rule that you
5 must be firmly convinced of guilt.

6 It's got to remove the other reasonable
7 interpretations, the other reasonable ways of
8 interpreting what happened here.

9 If it doesn't, the evidence fails.

10 What's the third tool that you have? Well,
11 they're sitting right there next to you. We have
12 a dozen judges. Not one, not five, a dozen
13 judges, all of whom must independently weigh and
14 discern whether or not this is really malice
15 aforethought.

16 The law won't allow a verdict to stand
17 without each one coming to that conclusion on
18 their own.

19 You're required to listen to one another, to
20 discuss the evidence, but the law requires that
21 there must be an individual decision of malice
22 aforethought by each and every one of you.

23 If you don't find that, then there cannot be
24 an unanimous verdict.

25 So those are the safeguards that exist in our

1 law. We don't need to dwell on that too much,
2 because I think what you're going to really see,
3 when you go back to deliberate, is that this was
4 confusion. A confusing situation, that was
5 sudden.

6 And as far as we can tell from the people
7 that were with Byron Slater, who you're going to
8 hear from, that this thing came as a complete
9 surprise to them, that there was no pre-planned
10 malice against Sharone Middleton, or for that
11 matter, anyone else out there that night.

12 And that you'll only have one verdict in this
13 case that will speak the truth on the charge of
14 murder, that there was no -- there is not evidence
15 of malice aforethought, and that can only lead to
16 a verdict of not guilty as to murder. Thank you.

17 MR. DUTREMBLE: If Your Honor please. We
18 call Demetrius Nelson to the stand.

19 DEMETRIUS NELSON,

20 Being first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. DUTREMBLE:

23 Q Mr. Nelson, I'm going to ask you to speak up,
24 because all these folks here in the jury box have
25 got to hear what you have to say. Try to keep

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1 your voice up.

2 How old are you, Mr. Nelson?

3 A Fifteen.

4 Q And where do you go to school?

5 A St. Johns High.

6 Q And where is St. Johns High School located?

7 A On Johns Island.

8 Q And where do you live?

9 A On Johns Island.

10 Q On Johns Island. And who do you live with?

11 A My mother and father and brother.

12 Q And are they in the courtroom today?

13 A Uh-huh. (Answer in the affirmative.)

14 Q Did she bring you down here?

15 A Uh-huh. (Answer in the affirmative.)

16 Q And do you have a brother?

17 A Yes, sir.

18 Q What's your brother's name?

19 A Mark.

20 Q How old is Mark?

21 A Eighteen.

22 Q Do you have a cousin named Sharone Middleton?

23 A Yes, sir.

24 Q And tell us a little bit about Sharone. How old
25 was he?

1 A He was 20 years old.

2 Q Twenty years old. Okay. And did you have
3 situation to go with your brother, Mark, and your
4 cousin, Sharone, to North Charleston High School
5 on February third of this year?

6 A Yes, sir.

7 Q And why did you all go to North Charleston High
8 School?

9 A To go to a step show.

10 Q And tell the members of the jury what a step show
11 is.

12 A It's like a different -- it's like a dance with
13 different schools and all that participate.

14 Q How many other schools were participating there at
15 North Charleston High School?

16 A I can't remember. Maybe like -- over six or
17 something like that.

18 Q Six schools?

19 A Uh-huh. (Answer in the affirmative.)

20 Q Including St. Johns High School?

21 A Uh-huh. (Answer in the affirmative.)

22 Q Now, why did you go with your cousin, Sharone, and
23 your brother, Mark?

24 A Just to watch it.

25 Q And how did you get there?

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- 1 A My cousin, Sharone, had drive.
- 2 Q Sharone drove?
- 3 A Uh-huh. (Answer in the affirmative.)
- 4 Q What kind of car did he drive?
- 5 A A Mazda 626.
- 6 Q And was that his car?
- 7 A It was his mother's.
- 8 Q His mother's car?
- 9 A Uh-huh. (Answer in the affirmative.)
- 10 Q Now, did you and your brother attend North
- 11 Charleston High School?
- 12 A No, sir.
- 13 Q How about Sharone, did he attend North Charleston
- 14 High School?
- 15 A No, sir.
- 16 Q Was he a student?
- 17 A Yes.
- 18 Q Where was he going to school?
- 19 A Trident Tech.
- 20 Q Trident Tech?
- 21 A Uh-huh. (Answer in the affirmative.)
- 22 Q And could you tell the members of the jury about
- 23 what time you got over at the North Charleston
- 24 High School to go to the dance?
- 25 A About 8:30.

1 Q And did all of you go to the dance?

2 A No, sir.

3 Q Who went to the dance?

4 A Just Mark.

5 Q Just Mark, your brother?

6 A Uh-huh. (Answer in the affirmative.)

7 Q And where did you and Sharone go?

8 A We went and got some gas from Hess Gas Station on

9 Rivers and then we went driving around Rivers

10 Avenue.

11 Q All right. How was Mark going to get home if

12 y'all weren't there to pick him up?

13 A Call somebody or catch a ride with a friend.

14 Q Okay. Did y'all go riding around for awhile?

15 A Uh-huh. (Answer in the affirmative.)

16 Q And where did you go after you rode around?

17 A We came back to the parking lot across the street

18 from the school.

19 Q All right. When you say we came back to the

20 parking lot, who is we?

21 A Me and Sharone.

22 Q You and Sharone?

23 A Uh-huh. (Answer in the affirmative.)

24 Q And where did you park?

25 A Like in the back of the parking lot by the church.

1 Q And how far away from the high school is the
2 church parking lot?

3 A About 50, 60, -- 50, 60 yards, something like
4 that.

5 Q And were y'all waiting on Mark?

6 A Uh-huh. Yes, sir.

7 Q And how long did you wait in the car there in the
8 church parking lot for your brother Mark?

9 A For about 25 to 30 minutes.

10 Q And what were you all doing in the car for about
11 25, 30 minutes?

12 A Listening to music and just talking.

13 Q Okay. Didn't go into the high school at all?

14 A No, sir.

15 Q While you were there in the parking lot, did you
16 ever have occasion to see your brother, Mark, come
17 out of The North Charleston High School?

18 A Yeah, like around ten o'clock we had saw him.

19 Q About ten o'clock?

20 A Uh-huh. (Answer in the affirmative.)

21 Q And where was he?

22 A He was standing like across the street at the
23 crossway. I guess he was like looking for us or
24 whatever.

25 Q Did he find you?

1 A Uh-huh. (Answer in the affirmative.)

2 Q And did he come to the car?

3 A Yes, sir.

4 Q And tell the members of the jury what happened
5 when he found the car and started walking toward
6 it.

7 A All right. When he find the car, we saw Mark like
8 start walking at first and then he started to run,
9 because some guys was following him. Maybe about
10 six to eight guys following him.

11 Then when he came to the car he was like
12 running and then he jumped in the car and he tell
13 Sharone, you know, just drive off. Go.

14 And he was holding his door and he told us to
15 lock the door, because some guys was trying to
16 come in and we didn't even know them.

17 And before Sharone got a chance to -- before
18 Sharone got a chance to leave, the guy was opening
19 the door, and then they started asking Mark for
20 his money.

21 And then Mark told them that he didn't have
22 any money and then they started hitting him and
23 stuff like that, several times, whatever.

24 And then Mark -- until Mark finally give him
25 his money.

1 Then they open my door and they asked me for
2 my money. And one dude had like a little handgun
3 or whatever. He came to the side and tell me,
4 Give me my money. And I told him I didn't have
5 any.

6 And then he had hit me like two times in my
7 side.

8 And then they pull my cousin Sharone out of
9 the driver's side of the car and they started like
10 kicking him and stomping him or whatever.

11 Q Now, where was your brother Mark sitting in the
12 car?

13 A Behind me on the passenger side.

14 Q So he was in the back seat?

15 A Uh-huh. (Answer in the affirmative.)

16 Q Was this a four-door car?

17 A Uh-huh. (Answer in the affirmative.)

18 Q When they opened the back-door where your brother
19 was sitting, did you recognize any of those
20 fellows that were out there?

21 A No, sir.

22 Q And when they opened your door and tried to rob
23 you, did you recognize any of those fellows that
24 were out there?

25 A No, sir.

1 Q When the fellow pulled out the gun that you saw,
2 can you tell us what color that gun was that you
3 saw?

4 A It was like a little silver handgun.

5 Q A little silver handgun?

6 A Uh-huh. (Answer in the affirmative.)

7 Q Did he threaten you with it?

8 A He was like, give me the money or I'm going to
9 shoot you.

10 Q Did you have any money to give him?

11 A No, sir.

12 Q When you didn't give him any money, what did he do
13 to you?

14 A He hit me on my side and that was it.

15 Q Now, Sharone was in the driver's seat; correct?

16 A Yes, sir.

17 Q Were those same fellows that were opening your
18 door opening his door?

19 A No, it was some different guys on the other side.

20 Q Other guys on the other side?

21 A Uh-huh. (Answer in the affirmative.)

22 Q Were they able to get his door open?

23 A Yes, sir.

24 Q Were they able to get him out of the car?

25 A Yes, sir.

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- 1 Q What happened when they got him out of the car?
- 2 A They started boxing his -- like boxing and kicking
- 3 him.
- 4 Q And what was he doing?
- 5 A He was like covering up like his body or whatever
- 6 so he wouldn't get hit.
- 7 Q And how was he covering up?
- 8 A Like balling up like this on the ground.
- 9 (Demonstrating.)
- 10 Q Was he on the ground?
- 11 A Uh-huh. (Answer in the affirmative.)
- 12 Q Were they over him?
- 13 A Uh-huh. (Answer in the affirmative.)
- 14 Q Approximately how many guys were over him?
- 15 A Maybe three or four guys.
- 16 Q Three or four guys. And what happened while your
- 17 cousin was on the ground trying to protect
- 18 himself, as you described to the jury?
- 19 A Well, when I looked over, I saw like somebody shot
- 20 him or whatever.
- 21 Q Somebody shot him?
- 22 A Uh-huh. (Answer in the affirmative.)
- 23 Q Did you see who shot him?
- 24 A No, sir.
- 25 Q How many shots did you hear?

1 A Two.

2 Q Two shots. What happened after you heard the two
3 shots?

4 A The guys, they had ran off. And as they were
5 running off, they were still shooting at the car
6 or whatever and they jumped off in some car.

7 Q All right. And you say they were still shooting
8 at the car that y'all were in; is that correct?

9 A Yes, sir.

10 Q How many shots did they fire as they were running
11 off?

12 A Maybe like six or seven.

13 Q Six or seven shots. Were you struck?

14 A No, sir.

15 Q How about your brother, Mark?

16 A No, sir.

17 Q How about the car that you were in, was it struck?

18 A Yes, sir.

19 Q The bullets actually hit the car?

20 A Uh-huh. (Answer in the affirmative.)

21 Q Did you see what kind of car they drove off in,
22 the guys that were shooting?

23 A No, sir.

24 Q Did you see which direction they went in?

25 A No, sir.

1 Q And what did you do after the guys drove off in
2 the car?

3 A I got out of the car and went running to Sharone
4 to see if he was all right.

5 Q All right. And what did you find when you got to
6 Sharone?

7 A He was shot and he was like bleeding.

8 Q He was shot and he was bleeding. What did you do
9 when you saw that your cousin was lying on the
10 ground and bleeding?

11 A I started screaming for help.

12 Q Did anybody come?

13 A Uh-huh. (Answer in the affirmative.)

14 Q And did you recognize anybody who came to help?

15 A No, sir.

16 Q Were you able to call anybody from the scene?

17 A Yes, sir.

18 Q And who did you call?

19 A My parents.

20 Q How did you call them?

21 A A officer -- a lady officer had came and she gave
22 us her phone, let us use her cell phone.

23 Q And you were able to call your parents?

24 A Uh-huh. (Answer in the affirmative.)

25 Q Now, when you were in the car with your cousin,

1 Sharone, and when you were riding around on
2 Rivers, before you came back, did you and Sharone
3 ever stop and get a gun anywhere?

4 A No, sir.

5 Q Did you have a gun at any point in time while you
6 were at North Charleston High School?

7 MR. PENNINGTON: Objection. Leading, Your
8 Honor.

9 THE COURT: Just follow the rules.

10 MR. DUTREMBLE: Yes, sir.

11 BY MR. DUTREMBLE:

12 Q Did you have a gun?

13 A No, sir.

14 Q Did Sharone have a gun?

15 A No, sir.

16 Q When Sharone was on the ground did you ever see a
17 gun in his hand?

18 A No, sir.

19 Q After everybody scattered and ran off, did you
20 ever see a gun laying on the ground?

21 A No, sir.

22 Q When the lady police officer came over, did you
23 see her find a gun or pick a gun up off the
24 ground?

25 A No, sir.

DEMETRIUS NELSON-DIRECT EXAMINATION BY MR. DUTREMBLE

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1 Q Do you even own a gun, Demetrius?

2 A No, sir.

3 Q To your knowledge, did your cousin, Sharone, even
4 own a gun?

5 MR. PENNINGTON: Objection, Your Honor.

6 Unless he can answer that -- he's got to lay a
7 foundation--

8 THE COURT: He asked him to his knowledge.

9 He can say to his knowledge. Yes, sir. He
10 qualified it by saying to his knowledge.

11 Proceed.

12 BY MR. DUTREMBLE:

13 Q To your knowledge, did your cousin, Sharone, ever
14 own a gun?

15 A No, sir.

16 Q Now, Demetrius, let me show you this map, which we
17 have already agreed upon as accurate.

18 MR. DUTREMBLE: We're going to offer this at
19 this time, Your Honor.

20 THE COURT: All right, sir.

21 You've seen the map and agree that it is
22 accurate, Mr. Pennington?

23 MR. PENNINGTON: Yes, sir, I have. Thank
24 you.

25 THE COURT: All right, sir. Fine.

1 Can you recite for the record the general
2 area that this map represents?

3 MR. DUTREMBLE: Yes, sir. For the record,
4 this map represents the area of North Charleston
5 High School and Cooper River Baptist Church and
6 the parking lot in which the crime was committed.

7 THE COURT: All right, sir.

8 (State's Exhibit Number 2, blowup map, marked
9 for identification and received in evidence.)

10 BY MR. DUTREMBLE:

11 Q Now, Demetrius, I'm going to ask you to come down.
12 Let me set this up first.

13 MR. PENNINGTON: What number?

14 MR. DUTREMBLE: It's going to be State's 2.

15 BY MR. DUTREMBLE:

16 Q With reference to State's 2, this being North
17 Charleston High School, and this being the church,
18 can you point out to the members of the jury --
19 and stand back a little bit so everybody can see.

20 Can you show the members of the jury where
21 the parking lot was where y'all were parked?

22 A Right here. (Indicating.)

23 Q All right. Now we've got this working. Push on
24 this little button and a little red dot will
25 appear.

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1 So if you can, show the jury where y'all were
2 parked.

3 A Right here. (Demonstrating.)

4 Q Where it says two point one acres; that's the
5 parking lot?

6 A Yes.

7 Q Is that a paved parking lot or a dirt parking lot?

8 A Dirt.

9 Q And North Charleston High School, can you show the
10 members of the jury where you went to the step
11 competition?

12 A Right here. (Demonstrating.)

13 Q Okay. And when you saw your brother Mark
14 approaching the car that was parked over here at
15 the two point one acres, which direction was he
16 coming from?

17 A Right here.

18 Q All right. So he was coming across what's
19 denominated as Jenkins Avenue?

20 A Uh-huh. (Answer in the affirmative.)

21 Q And where did you first see the six or seven guys
22 who were following him?

23 A When they got to probably right here.

24 (Indicating.)

25 Q All right. Just as you got into the parking lot?

1 A Uh-huh. (Answer in the affirmative.)

2 Q And did they begin to chase him?

3 A (Witness nodding in the affirmative).

4 Q And where was your car actually parked?

5 A Like at the back.

6 Q You were parked at the back?

7 A Uh-huh. (Answer in the affirmative.)

8 Q And where was your cousin, Sharone, shot?

9 A Like right around this area here. (Indicating.)

10 Q Right in that area there. In the dirt parking
11 lot?

12 A Uh-huh. (Answer in the affirmative.)

13 Q Thank you. You can resume your seat.

14 Demetrius, at any time that you were in the
15 area of North Charleston High School, did you
16 recognize anybody that was out there?

17 A No, sir.

18 Q You don't know any of those folks that were out
19 there in that parking lot at that time of night
20 either?

21 A No, sir.

22 Q So you can't identify anybody in this case?

23 A No, sir.

24 MR. DUTREMBLE: Thank you very much. If you
25 would, please answer any questions that Mr.

DEMETRIUS NELSON-CROSS-EXAMINATION BY MR. PENNINGTON

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1 Pennington has for you.

2 MR. PENNINGTON: If Your Honor, please.

3 CROSS-EXAMINATION

4 BY MR. PENNINGTON:

5 Q Mr. Nelson, is it fair to say that there were
6 hundreds of people coming out of that steps
7 concert while you sitting there listening to
8 music?

9 A Yes, sir.

10 Q And that's because there were lots of schools
11 represented at that competition?

12 A Yes, sir.

13 Q And at some point along the way you observed Mark,
14 your brother, who was standing on the -- not in
15 the dirt parking lot, but over there in the school
16 parking lot; is that right?

17 A Yes, sir.

18 Q And if I could make reference to State's 2, I'll
19 just hold it up right here. So that we can get
20 everybody completely oriented, this would be like
21 Montague Avenue; would it not?

22 A (Witness nodding in the affirmative.)

23 Q And this would represent the campus of The North
24 Charleston High School?

25 A (Witness nodding in the affirmative.)

1 Q And when you nod, of course the Court Reporter
2 doesn't know, so she's going to ask you to answer
3 yes or no.

4 A Yes, sir. Yes, sir.

5 Q Thank you, sir. I appreciate it.

6 Okay. Now, you mentioned the Baptist
7 Church. And you were in a church parking lot?

8 A Yes, sir.

9 Q Okay. And that's clearly marked here as the
10 Cooper River Baptist Church right here?

11 A Yes, sir.

12 Q Okay. And that would be on what's called Crawford
13 Street; would you agree?

14 A Yes, sir.

15 Q In-between The North Charleston High School campus
16 and the church is the parking lot that you were
17 making reference to with the Solicitor?

18 A Yes, sir.

19 Q And that circle right there, it may be a little
20 far for the jury, that circle right there, that you
21 pointed to a minute ago, would be roughly where
22 your car -- or I should say Sharone's mother's car
23 was parked?

24 A Yes, sir.

25 Q Okay. And you were in the front passenger seat?

1 A Yes, sir.

2 Q Okay. And you observed Mark come out of the
3 concert and mill around talking to people in this
4 particular area?

5 A Yes, sir.

6 Q But y'all weren't in any particular hurry to leave
7 at that particular time; right?

8 A No, sir.

9 Q Okay. At some point then you noticed that Mark
10 started kind of hustling over and then literally
11 running to Sharone's car?

12 A Yes, sir.

13 Q And that was because he was being pursued by a
14 group of guys?

15 A Yes, sir.

16 Q Okay. Now, so that we could be as clear as
17 possible about the parking lot, there were other
18 cars in that parking lot; weren't there?

19 A Yes, sir.

20 Q And there were maybe two rows of cars right in the
21 center of the parking lot?

22 A Yes, sir.

23 Q Okay. And the light that was available was behind
24 you, a street light, roughly up against the
25 church?

1 A Yes, sir.

2 Q Okay. You really didn't know what was going on;
3 did you?

4 A No. Like when I saw them coming that closer to
5 the car, when they came like real close --

6 Q I don't know if the jury can hear. You might want
7 to speak up just a bit.

8 A I say not until they came close to the car. To
9 the vehicle.

10 Q Okay. You had no idea why they were chasing Mark?

11 A No, sir.

12 Q You don't know what happened or what led up to
13 that or what they were thinking obviously; right?

14 A Yes, sir.

15 Q And you describe that on your side of the car
16 first you see one fellow who is beating up and
17 pulling Mark out of the seat behind you, which
18 would be the passenger -- rear passenger seat?

19 A Yes, sir.

20 Q And meanwhile then another fellow comes along and
21 he has a silver gun and puts it in your face?

22 A Yes, sir.

23 Q All right. Now, have you seen the dark gun that
24 Byron Slater had? Have they asked you whether or
25 not that that's the same gun?

DEMETRIUS NELSON-CROSS-EXAMINATION BY MR. PENNINGTON

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1 A Yes, sir.

2 Q They have?

3 A (Witness nodding in the affirmative.)

4 Q And it wasn't the same gun; was it?

5 A No, sir.

6 Q So we know that there were at least two people out
7 there that had guns that night at least; right?

8 A Yes, sir.

9 Q Okay. Did you see another guy, a different
10 fellow, with a white puffy coat that had a gun?

11 A Yes, sir.

12 Q Okay. And that was a third person that had a gun?

13 A Yes, sir.

14 Q Am I right?

15 A (Witness nodding in the affirmative.)

16 Q So we have at least three people out there with
17 handguns?

18 A Yes, sir.

19 Q Okay. Now, on your side of the car -- you had
20 never seen these guys before?

21 A No, sir.

22 Q And you then, after the shooting, saw them run off
23 and get into a Lincoln Town Car?

24 A No, sir.

25 Q Did you describe -- do you know an Officer

1 Stephanee Gower?

2 A What?

3 Q Officer Gower?

4 A Maybe if I see her.

5 Q Okay.

6 A I don't know about the name.

7 Q A female North Charleston Officer working security
8 that night there at the school?

9 A Yes, sir, I know who you're talking about now.

10 Q You know who I'm talking about?

11 A Uh-huh. (Answer in the affirmative.)

12 Q Okay. Did you tell Officer Gower -- bear with me
13 just a second.

14 Did you state to her that the subjects were
15 occupying a white in color Lincoln Town Car,
16 possibly a 1997 model?

17 A No, sir.

18 Q That didn't happen?

19 A I think you got my brother's statement.

20 Q Okay. You think that was what Mark said?

21 A Uh-huh. Yes, sir.

22 Q Okay. All right.

23 All right. Is it safe to say that this was a
24 pretty confusing situation to you?

25 A Yes, sir.

DEMETRIUS NELSON-CROSS-EXAMINATION BY MR. PENNINGTON
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1 Q That you didn't know why this was happening?

2 A Yes, sir.

3 MR. PENNINGTON: May I have the Court's
4 indulgence, Your Honor?

5 THE COURT: Yes, sir.

6 BY MR. PENNINGTON:

7 Q Mr. Nelson, you've described that these fellows
8 were attacking you and at the same time there was
9 this attack going on with Sharone; am I right?

10 A Yes, sir..

11 Q This was not your car, this was Sharone's Momma's
12 car?

13 A Yes, sir.

14 Q And so part of the time your attention is going to
15 be focused with the people that are messing with
16 you?

17 A Yes, sir.

18 Q So it wouldn't have been -- it would have been
19 impossible for you to have your attention all the
20 time on what was going on over there next to
21 Sharone?

22 A Yes, sir.

23 MR. PENNINGTON: Thank you, Mr. Nelson.

24 That's all the questions I have.

25 THE COURT: Anything further?

1 MR. DUTREMBLE: No redirect, Your Honor.

2 THE COURT: You may come down.

3 MS. SUMNER: The State calls Mark Nelson.

4 THE COURT: Any objection to these
5 sequestered witnesses remaining in the courtroom
6 after they testify?

7 MR. PENNINGTON: No, sir, I have no
8 objection.

9 THE COURT: All right.

10 MARK NELSON,

11 Being first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. SUMNER:

14 Q Good afternoon, Mark. How old are you?

15 A Eighteen years old.

16 Q And do you have any brothers or sisters?

17 A Yes, ma'am.

18 Q Who are they?

19 A Demetrius Nelson.

20 THE COURT: You're going to have to talk a
21 little louder. I want all these folks to be able
22 to hear you now, and I can't hardly hear you.

23 THE WITNESS: Demetrius Nelson.

24 BY MS. SUMNER:

25 Q How old is he?

MARK NELSON-DIRECT EXAMINATION BY MS. SUMNER

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- 1 A Fifteen.
- 2 Q And you had a cousin, Sharone Middleton?
- 3 A Yes, ma'am.
- 4 Q I want to turn your attention back to February the
5 third of this year. Did you and your brother and
6 Sharone -- were y'all together that evening?
- 7 A Yes, ma'am.
- 8 Q What did you do?
- 9 A We went to the step show.
- 10 Q And where was that?
- 11 A At North Charleston High School.
- 12 Q Do you go to North Charleston High School?
- 13 A No, ma'am.
- 14 Q Why were y'all going to North Charleston?
- 15 A To see the step show they had there.
- 16 Q Was the school -- the school that your brother
17 attends, were they a part of the step show that
18 night?
- 19 A Yes, ma'am.
- 20 Q And what high school is that?
- 21 A St. John's High School.
- 22 Q Do you recall about what time you got to North
23 Charleston High School?
- 24 A About 7:55.
- 25 Q So around eight o'clock?

1 A Yes, ma'am.

2 Q Who all went inside to the step show?

3 A Just me.

4 Q Do you know what Sharone and your brother,
5 Demetrius, did after that?

6 A No, ma'am.

7 Q But they told you they would come back and pick
8 you up later though?

9 A Yes, ma'am.

10 Q When the step show was over, what happened?

11 A Well, after the step show was over I went outside,
12 and it was me and two other of my friends, we were
13 standing outside of the gate.

14 And then we were talking and then the next
15 thing you know, we saw this white land Rover ride
16 past us.

17 And then about, I'd say about a minute, two
18 minutes later, we see a bunch of group of fellows
19 running after, to try to stop it, and it was a lot
20 of traffic, so they caught up with the car.

21 Q Did you know any of the people that were
22 surrounding that Land Rover?

23 A No, ma'am.

24 Q So you said they caught up with the car?

25 A Yes, ma'am.

1 Q What happened then?

2 A I couldn't really tell, because there was too much
3 people out there and there was too much traffic,
4 so we continued talking, not paying any much
5 attention to it.

6 And then the next thing we know, we saw all
7 them coming back and then we saw one dude with a
8 gun and then he was waiving it. And when we saw
9 that, everybody just started running.

10 Q You said you saw somebody with a gun and everybody
11 started running. What did you do specifically?

12 A I ran straight towards the dirt parking lot where
13 my cousin and then them was at.

14 Q So you could see your cousin's car over in the
15 dirt parking lot at that time?

16 A Yes, ma'am.

17 Q As you walked over there, what happened?

18 A I ran over there to the car, to get in the car so
19 we can leave. And when I got to the car and I
20 jumped in the back seat, by the time I closed the
21 door, there was another dude on my back trying to
22 get me out of the car.

23 Q Did you know him?

24 A No, ma'am.

25 Q Had you ever seen him before?

1 A No, ma'am.

2 Q What did they do when they were trying to get you
3 out of the car?

4 A Trying to take my money and trying to snatch us
5 out the car, but I wouldn't let them.

6 Q What else was going on at that time?

7 A Well, at the time they were trying to get me and
8 my brother out of the car, approximately -- I
9 couldn't say -- we was trying to fight them off,
10 but they had already got my cousin out of the car
11 on the other side on the ground, beating him and
12 trying to get his money.

13 Q Could you see your cousin, Sharone, at that point?

14 A No, ma'am, because we were still tussling with the
15 other fellows on our side.

16 Q But you know that he had been taken out of the
17 car?

18 A Yes, ma'am.

19 Q What's the next thing that you remember happening?

20 A Well, another fellow came up to us with a gun and
21 said, if you don't give us -- give them the money,
22 they will shoot us. So I went in my pocket and
23 gave them the money.

24 Q How much money did you have?

25 A Twenty.

1 Q What happened after that?

2 A Then he directed his attention to my brother and
3 asked him for his money. And when my brother said
4 he didn't have any money -- we couldn't figure out
5 why they didn't shoot us, but my brother said he
6 didn't have any money.

7 So after that they left, went around to the
8 car, the other side of the car where my cousin was
9 at, and then next thing we know we heard shots.
10 They shot him.

11 Q How many shots did you hear?

12 A Two.

13 Q Could you see the shots? It was dark; is that
14 right?

15 A Yes, ma'am.

16 Q Could you see any muzzle flashes or were you able
17 to see anything?

18 A I saw fire.

19 Q You did. Could you tell if the person was
20 standing still or running away when the shots were
21 fired?

22 A When he shot him they was surrounding around him.
23 And we saw the shots, but we couldn't see who did
24 it.

25 Q After Sharone was shot, what happened?

1 A We tried -- I already -- I went out the car to try
2 and go and grab him, and my brother was trying to
3 get out the car.

4 And when they ran off, after they shot him,
5 they was shooting again. They started shooting at
6 us. And so I dive behind the car. My brother
7 dived back inside the car. And then he jumped in
8 the car, went around, and then they kept on
9 shooting at us.

10 Q How many shots did you hear after they started
11 running?

12 A About six or seven.

13 Q And how many shots did you hear before they
14 started running?

15 A About four or five.

16 Q Did you see them leave?

17 A Yeah, we saw them when they ran straight to the
18 car and then we saw them when they turned the
19 corner after they was shooting again and they
20 left. We didn't see after that.

21 Q Could you tell what kind of car it was?

22 A About a white or gray Crown Vic.

23 Q Did you recognize any of the people you saw there
24 that night?

25 A Only thing I could see is the dude with the white

MARK NELSON-DIRECT EXAMINATION BY MS. SUMNER
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1 First Down jacket on. But we didn't really get
2 too good a look at their faces.

3 MS. SUMNER: Court's indulgence, please.

4 BY MS. SUMNER:

5 Q You said that the guy that robbed you had a gun;
6 is that right?

7 A Yes, ma'am.

8 Q Is that the same guy that shot your cousin?

9 A No, ma'am.

10 Q And then you said there was a guy with a white
11 puffy jacket that had a gun?

12 A Yes, ma'am.

13 Q Was that the guy that shot your cousin?

14 A No, ma'am.

15 Q Did you have a gun that evening?

16 A No, ma'am.

17 Q Did you see Sharone with a gun?

18 A No, ma'am.

19 Q To your knowledge does Sharone own a gun?

20 A No, ma'am.

21 Q Have you ever seen Sharone with a gun?

22 A No, ma'am.

23 Q Did your brother have a gun?

24 A No, ma'am.

25 Q Have you ever seen your brother with a gun?

1 A No, ma'am.

2 MS. SUMNER: I have nothing further, Your
3 Honor.

4 MR. PENNINGTON: If Your Honor please.

5 CROSS-EXAMINATION

6 BY MR. PENNINGTON:

7 Q Mr. Nelson, I've got a few questions for you. I'm
8 Ashley Pennington. I've just got a few questions
9 for you, if you don't mind.

10 I'm going to show you a diagram and just
11 study it for a moment. It's been marked
12 previously as State's Exhibit 2. Have you seen
13 this before by chance?

14 A Yes, sir.

15 Q You have seen it?

16 A Yes, sir.

17 Q Okay. One of the things I'm going to ask that you
18 do is keep your voice up so that all the members
19 of the jury can hear what you and I are saying up
20 here.

21 A Yes, sir.

22 Q All right. You would agree that this is sort of
23 like a street layout of the area near North
24 Charleston High School?

25 A Yes, sir.

1 Q And do you recognize where the campus of the high
2 school is?

3 A Right here. (Indicating.)

4 Q It would be this area right here?

5 A Yes, sir.

6 Q Okay. And this would be Montague Avenue?

7 A Yes, sir.

8 Q And there would be a street between the school and
9 the parking lot where Sharone parked?

10 A Yes, sir.

11 Q And this would be Jenkins Avenue; wouldn't it?

12 A Yes, sir.

13 Q And then there's Crawford Avenue that runs in
14 front of this church; right?

15 A Yes, sir.

16 Q Okay. Now we're oriented. Now, you described
17 that there was a group of guys, maybe eight or 10
18 guys that were stopping a Land Rover. That took
19 place somewhere here on Jenkins Avenue; didn't it?

20 A Yes, sir.

21 Q Okay. And you didn't know who those guys were?

22 A No, sir.

23 Q But there was enough commotion that it drew your
24 attention?

25 A Yes, sir.

1 Q And did they like make the people that were in the
2 car get out of the car, out of the Land Rover?

3 A You couldn't really see that.

4 Q You couldn't see that. But you didn't know what
5 that was all about but you stood there as it was
6 going on and then you noticed that there was some
7 of those people starting to come your way?

8 A Yes, sir.

9 Q Okay. So that's when you turned and started
10 heading to your cousin's car?

11 A Yes, sir.

12 Q Okay. And you noticed that some of those people
13 sped up, they started coming faster?

14 A No, I just -- I didn't look back. I didn't really
15 know they was behind me.

16 Q Oh, you didn't?

17 A No, sir.

18 Q You didn't run to the car?

19 A I ran straight to the car not looking back.

20 Q Okay. And you ran because you were feeling a
21 little uneasy about these people?

22 A Yes, sir, when I saw the dude with the gun.

23 Q You also saw a dude with a gun?

24 A Yes, sir.

25 Q Okay. And that was the dude who eventually came

1 over to your car with that gun; right?

2 A Yes, sir.

3 Q And that dude is not the fellow on the other side
4 who shot Sharone. That's someone -- we're talking
5 about somebody different?

6 A Yes, sir.

7 Q Is this the six foot dude with the large like
8 fluffy down jacket? Is that who we're talking
9 about that you saw with a gun?

10 A The dude who was six foot with blue jeans and corn
11 rows who came on the other side of us.

12 Q Okay. There was a fellow with blue jeans and corn
13 rows who tried to pull you out of the car; right?

14 A Yeah.

15 Q But he's not the fellow with the pistol?

16 A No, sir.

17 Q The fellow with the pistol, he had a white puffy
18 jacket?

19 A Yes, sir.

20 Q And that's the fellow that you saw over there on
21 Jenkins Avenue?

22 A Yes, sir.

23 Q And he ended up over there on your side of the car
24 when the shooting occurred; right?

25 A Yes, sir.

1 Q But he is not the shooter?

2 A No, sir.

3 Q Okay. And so you and your brother, Demetrius, are
4 basically trying to fight off these people that
5 are trying to rob you?

6 A Yes, sir.

7 Q And meanwhile the same thing is happening on the
8 other side of the car with Sharone?

9 A Yes, sir.

10 Q Okay. But obviously your attention is trying to
11 deal with the people who are in front of you who
12 are armed with a weapon?

13 A Yes, sir.

14 Q You don't know these guys; do you?

15 A No, sir.

16 Q You didn't have any kind of a history with them?

17 A No, sir.

18 Q You didn't have any bad blood with any of these
19 particular individuals?

20 A No, sir.

21 Q You didn't know why they were coming after you;
22 did you?

23 A No, sir.

24 Q Had there been any problem with someone accusing
25 you of going in someone's car?

MARK NELSON-CROSS-EXAMINATION BY MR. PENNINGTON

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1 A No, sir.

2 Q Or stealing something out of someone's car?

3 A No, sir.

4 Q During the time that you were there at the
5 concert?

6 A No, sir.

7 Q Anybody ever claim, you better give us our stuff
8 back?

9 A No, sir.

10 Q Did you hear that?

11 A No, sir.

12 Q Now, you described that you didn't see who shot
13 Sharone.

14 A Yes, sir.

15 Q But you -- in the corner of your eye you saw some
16 muzzle flashes?

17 A Yes, sir.

18 Q And then you saw more muzzle flashes?

19 A Yes, sir.

20 Q And some of those muzzle flashes were as they were
21 moving away from you; right?

22 A Yes, sir.

23 Q Now, I'll use this diagram again, States's Exhibit
24 2. Would you agree that this circle right here
25 that's marked as 175 is roughly where Sharone's

1 car was parked?

2 A Yes, sir.

3 Q Okay. Can I get you to come down just for a
4 moment? We're going to stand over here before the
5 jury.

6 Could you stand right here?

7 I can just hold it. I'll move this thing out
8 of the way.

9 Okay. Some of these jurors are not going to
10 be able to see, so why don't you move just little
11 bit to the side here.

12 Okay. Let's look at this together. If 175
13 is roughly where Sharone's car is parked, was the
14 front of that car pointing toward the school or
15 away from the school?

16 A Toward.

17 Q Toward the school?

18 A Yes, sir.

19 Q Okay. And so the passenger side of your cousin's
20 vehicle would be on this side, on Crawford Street;
21 right?

22 A Yes, sir.

23 Q And so when the people ran up on you, you were on
24 this side, and Sharone would have been on this
25 other side, on the side closest to this building?

1 A Yes, sir.

2 Q Or that fence line. You would agree?

3 A Yes, sir.

4 Q Okay. Now, you mentioned that you saw muzzle
5 flashes and then you saw basically people running
6 and running in a direction. Is it fair to say
7 that they ran in the direction of Crawford Street?

8 A No, sir.

9 Q Which way did they run?

10 A Jenkins.

11 Q Ran toward Jenkins?

12 A Yes, sir.

13 Q Okay. And is that when you lost sight of them?

14 A They jumped in the car at Jenkins. And then they
15 were shooting at us while they were running to the
16 car. And when they jump in the car, they turned
17 on Crawford and they were shooting at us. We
18 could see the car right here. (Indicating.) And
19 then after that we didn't know where they went.

20 Q Okay. So describe this layout a little bit. If
21 you want to get into this church parking lot, you
22 can enter right here, on the side, on Crawford
23 Street; right?

24 A Yes, sir.

25 Q But you couldn't do that where it says 108 on this

1 side; right?

2 A No, sir.

3 Q Now, why is that?

4 A Because there was like a hill and a tree was right
5 here.

6 Q Right. There is like a hill here and a row of
7 trees; right?

8 A Not a row, but a tree was right here.

9 Q Okay. Are you saying that some of the people that
10 were shooting were -- ran and got into a car over
11 here on Jenkins?

12 A Yes, sir.

13 Q Okay. You're sure about that?

14 A Yes, sir.

15 Q Okay. And then did you see people get into a car
16 over here and drive up Crawford?

17 A No, sir.

18 Q The car that you were paying attention to was a --
19 what did you say it was?

20 A A white or gray Crown Vic.

21 Q A white or gray Crown Victoria?

22 A Yes, sir.

23 Q That's a Ford?

24 A Yes, sir.

25 Q A big four-door sedan-type car?

MARK NELSON-CROSS-EXAMINATION BY MR. PENNINGTON

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1 A Yes, sir.

2 Q Okay. You can take the witness stand again, if
3 you would, please, sir?

4 I know what I needed to ask you. As you
5 described the vehicle parked in that direction,
6 once things settled down, did you get a look at
7 the Mazda 626 that Sharone was driving to see
8 where the bullet holes were?

9 A No, sir.

10 Q You never did?

11 A Huh-uh. (Answer in the negative.)

12 Q So you don't know if the bullet holes were on the
13 front or your side or whether they were on the
14 other side where Sharone was? You just don't
15 know?

16 A I wasn't paying attention.

17 Q Okay. All right. It was pretty scary out there;
18 wasn't it?

19 A Yes, sir.

20 Q And as they were going, you were worried yourself
21 about being hit; weren't you?

22 A Yes, sir.

23 Q People were running?

24 A The only person I seen running is the fellows that
25 was shooting at us. And after that we just been

1 ducking.

2 Q Were people screaming too when this shooting was
3 going on?

4 A Couldn't tell.

5 Q Okay.

6 MR. PENNINGTON: Court's indulgence just a
7 moment.

8 Thank you, Mr. Nelson.

9 THE COURT: Does that conclude your
10 examination, Mr. Pennington?

11 MR. PENNINGTON: Yes, sir.

12 THE COURT: Anything further?

13 MS. SUMNER: Briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MS. SUMNER:

16 Q How many people were actually shooting that night?

17 A I only saw two people with guns that night.

18 Q How many people did you see actually fire their
19 weapon?

20 A About two or three.

21 Q When the person who shot your cousin ran back to
22 the car, was that the end of the shooting or what
23 happened?

24 A No, ma'am.

25 Q How many times did they continue to shoot?

STEPHANEE RICE-DIRECT EXAMINATION BY MR. DUTREMBLE

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1 A He continued to shoot when they ran to the car and
2 when they got in the car and turned on to Crawford
3 Street.

4 Q So they shot from Crawford Street as well?

5 A Yes, ma'am.

6 MS. SUMNER: I have nothing further, Your
7 Honor.

8 THE COURT: All right. You may come down.

9 MR. DUTREMBLE: We would call Stephanie Rice
10 to the stand.

11 STEPHANEE RICE,

12 Being first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. DUTREMBLE:

15 Q Officer Rice, by whom are you employed?

16 A North Charleston Police.

17 Q In what capacity?

18 A I'm a patrol officer.

19 Q And how long have you been an officer with The
20 North Charleston Police Department?

21 A It will be five years in March.

22 Q On February the third of this year did you have
23 occasion to be at The North Charleston High
24 School?

25 A Yes, sir.

1 Q And can you explain to the members of the jury
2 what your duties were on that evening?

3 A At the time I was the school resource officer at
4 North Charleston High School and we had a school
5 step show.

6 Q And can you explain to the members of the jury
7 what a step show is?

8 A It's like a dance-type thing. It's competition is
9 what it was. It's a form of dance.

10 Q Was there more than one school participating?

11 A Yes, sir.

12 Q How many schools were participating; do you
13 recall?

14 A I don't recall.

15 Q Approximately what time was the dance scheduled to
16 begin?

17 A Approximately six o'clock, I believe.

18 Q And what time did you arrive at the school?

19 A Around six o'clock.

20 Q Were you on an off-duty or on-duty capacity?

21 A I was working off-duty capacity.

22 Q Were you wearing a uniform or civilian clothes?

23 A I wore civilian clothes.

24 Q Now, did you attend the entire dance?

25 A Yes, sir.

STEPHANEE RICE-DIRECT EXAMINATION BY MR. DUTREMBLE

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1 Q About what time did the dance break out? Or what
2 time was it over, I guess I should ask.

3 A Somewhere between nine and 9:30, I believe.

4 Q Is North Charleston within the city limits of the
5 City of North Charleston?

6 A Yes, sir.

7 Q And did anything out of the ordinary take place
8 after the dance ended?

9 A Yes, sir, that's when we had the shooting
10 incident.

11 Q All right. Can you explain to the members of the
12 jury how you found out about the shooting
13 incident?

14 A There was a young lady and her daughter that ran
15 into the gym where I was standing and they were
16 crying saying that someone was shooting outside.

17 Q And when you got that information, what did you
18 do?

19 A I went outside.

20 Q Were you alone?

21 A No, sir.

22 Q Who else was you?

23 A There was Mr. Eddy, who was a basketball coach,
24 who was one of the sponsors of the event. Also
25 there was Mr. Brown, who was a school

1 administrator, who was also a sponsor of the
2 event.

3 Q And when you got outside, what did you find?

4 A I saw the victim laying on the ground. Also saw
5 what appeared to be smoke around him. And the
6 area, that particular area, smelled like a firearm
7 had been discharged.

8 Q Are you familiar with such a smell?

9 A Yes, sir.

10 Q You have in fact fired weapons as a North
11 Charleston Police Officer?

12 A Yes, sir.

13 Q Is that the same kind of smell that you would
14 smell?

15 A Yes, sir.

16 Q When you saw the victim laying on the ground, what
17 action, if any, did you take?

18 A At that point I asked some of the kids who were
19 standing around if anyone knew him. I asked what
20 was his name. One gentlemen said, that's my
21 cousin, and so I then asked him, well, what
22 happened, what did you see, can you give me a
23 description of the person that did this.

24 Q And while you were asking these questions, did you
25 have occasion to call 911?

STEPHANEE RICE-DIRECT EXAMINATION BY MR. DUTREMBLE

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1 A No, sir, I didn't call 911. I got on my police
2 radio and requested assistance.

3 Q Okay. And can you explain to the members of the
4 jury how your police radio differs from 911?

5 A Well, with the police radio we're talking directly
6 to the dispatcher just over our walkies. At that
7 point I advised the dispatcher that we had a
8 shooting and that there was a victim and that I
9 needed assistance.

10 Q And you have a badge number; don't you?

11 A Yes, sir.

12 Q And what is your badge number?

13 A At the time it was 177.

14 Q 177. Did you go over and render assistance to the
15 victim, Sharone Middleton?

16 A Yes, sir.

17 Q And explain to the members of the jury what you
18 tried to do for him.

19 A I tried to get him to talk if he could. He
20 couldn't. And at that point there really wasn't a
21 whole lot more I could do, other than just make
22 sure that people gave him room so that EMS could
23 come in and do what they needed to do.

24 Q Could you tell how he was injured?

25 A I could tell that he had been shot by lifting up

1 his shirt and seeing the wound.

2 Q And where was he shot?

3 A I observed one wound on his side, approximately
4 around this area. (Indicating.) And that was the
5 only one that I had saw at that point.

6 Q Did anybody else try to render assistance to
7 Sharone?

8 A Yes, sir. There was a woman who said that she was
9 a nurse and that she knew what to do and that she
10 wanted to help.

11 Q And was she able to do anything?

12 A No, sir.

13 Q Did EMS arrive?

14 A Yes, sir.

15 Q Do you know a fellow by the name of Terell Bryant?

16 A Yes, sir.

17 Q Was Terell Bryant out there at the scene that
18 night?

19 A Yes, sir.

20 Q Did you speak with Terell?

21 A I did not speak with Terell at that point, no,
22 sir.

23 Q But he was there at the scene?

24 A Yes, sir.

25 Q Did you have a chance later on in the evening as

STEPHANEE RICE-DIRECT EXAMINATION BY MR. DUTREMBLE
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1 the investigation progressed to contact Terell
2 Bryant?

3 A No, sir, I didn't contact Terell.

4 Q And let me ask you, if you can, ma'am, to come
5 down from the stand briefly.

6 And with reference to State's Exhibit Number
7 2, I'm going to ask you to take this orange magic
8 marker, this being North Charleston High School,
9 and this being the church, if you can, just draw
10 an orange band around the parking lot where the
11 incident took place, which we have all referred to
12 as the circle there.

13 A Okay.

14 Q Just make an outline in orange so the jury can
15 see.

16 A Okay.

17 Q And approximately where did you find Sharone
18 Middleton laying on the ground?

19 A Around here. (Indicating.)

20 Q Okay. Right around where that circle is?

21 A Yes.

22 Q And this over here is North Charleston High
23 School?

24 A Yes, sir.

25 Q That will just make it easier for the jury to see.

1 Thank you. You can resume your seat.

2 Officer Rice, after EMS arrived and
3 transported Sharone to the hospital, did you have
4 any other involvement in this particular case?

5 A Yes, sir. I went back to the police station and
6 wrote down a list of names, of students who I saw
7 in the area to give over to the detectives.

8 Q And you turned that over to the detective in the
9 case?

10 A Yes, sir.

11 Q Did you have anything else to do with the case
12 after that?

13 A I believe I took one witness statement and that
14 was it.

15 MR. DUTREMBLE: Thank you very much. Please
16 answer any questions Mr. Pennington might have for
17 you.

18 MR. PENNINGTON: If Your Honor please.

19 CROSS-EXAMINATION

20 BY MR. PENNINGTON:

21 Q Officer Rice, you said that you smelled what
22 smelled like a gun had been discharged in the
23 vicinity when you ran over there?

24 A Yes, sir.

25 Q You couldn't tell how many guns had been

STEPHANEE RICE-CROSS-EXAMINATION BY MR. PENNINGTON

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1 discharged or how many times they had been
2 discharged; could you?

3 A No, sir.

4 Q Could have been one gun, could have been more than
5 one gun?

6 A That's correct.

7 Q Now, with regard to your training, you carry a
8 firearm when you're on duty; don't you?

9 A Yes, sir..

10 Q And you know from your experience and knowledge of
11 firearms that not all firearms, when they fire,
12 discharge a shell casing and leave it behind; am I
13 right?

14 A Repeat that, please.

15 Q Are you familiar with revolvers?

16 A No, sir, I've never fired a revolver.

17 Q Do you know what a revolver is?

18 A Yes, sir.

19 Q You've seen revolvers?

20 A Yes, sir.

21 Q They used to be standard police issue?

22 A Not since I have been a police officer.

23 Q In the last five years?

24 A No, sir, they haven't.

25 Q So you've been a police officer for the last five

1 years?

2 A Yes, sir.

3 Q All right. Revolvers can have five or six shells
4 in a cylinder that turns or spins?

5 A Yes, sir.

6 Q Okay. And when they are fired they do not eject
7 or throw out a shell; do they?

8 A I don't know, sir.

9 Q You think they might?

10 THE COURT: She said she just doesn't know.
11 She's not qualified in that regard.

12 MR. PENNINGTON: Okay. All right.

13 BY MR. PENNINGTON:

14 Q Let me ask you a different question. You took
15 down the names of statements -- or rather you took
16 down the names of students that were in the area?

17 A Yes, sir.

18 MR. PENNINGTON: Court's indulgence.

19 Thank you that's all I have.

20 MR. DUTREMBLE: Just briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. DUTREMBLE:

23 Q Officer Rice, when you got to the scene did you
24 find a revolver on the ground?

25 A No, sir.

1 Q Did you find any weapons on the ground?

2 A No, sir.

3 MR. DUTREMBLE: Thank you.

4 That's all.

5 THE COURT: You may come down.

6 Ladies and gentlemen, you've been out for
7 about an hour and a half, let's take a short
8 break. Does anybody need to go outside to smoke?
9 We got a smoker? All right.. Let's take a short
10 break and we'll call you right back in about ten
11 minutes.

12 All right. We're in recess.

13 MR. DUTREMBLE: Thank you, Your Honor.

14 (Afternoon recess.)

15 THE COURT: All right. Bring the jury.

16 (Jury in at 4:12 p.m.)

17 THE COURT: All right. Be seated.

18 Call your next witness.

19 MS. SUMNER: The State calls Terell Bryant.

20 TEREELL BRYANT,

21 Being first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. SUMNER:

24 Q Terell, state your full name for the Court,
25 please?

1 A Terell Kinyata (ph) Bryant.

2 Q How old are you?

3 A Nineteen.

4 Q And are you in school?

5 A Yes, ma'am.

6 Q Where do you go to school?

7 A Trident Technical College.

8 Q And do you know Deshawn Middleton -- I mean do you
9 know Sharone Middleton?

10 A No, ma'am.

11 Q Okay. Do you know Lord Byron Slater?

12 A I know of him.

13 Q Have you met him before?

14 A Yes, ma'am.

15 Q Do you know him by cite, recognize him if you saw
16 him on the street?

17 A Yes, ma'am.

18 Q Do you see him in the courtroom today?

19 A Yes, ma'am.

20 Q Let the record -- can you point him out?

21 A (Witness complying.)

22 Q Can you tell us what he is wearing?

23 A Gray sweater. Looks like a grayish blue colored
24 shirt. Green slacks and a black pair of shoes.

25 MS. SUMNER: Let the record reflect that the

TERELL BRYANT-DIRECT EXAMINATION BY MS. SUMNER

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1 witness has identified the defendant as Byron
2 Slater.

3 BY MS. SUMNER:

4 Q I want to turn your attention to the night of
5 February third of this year. Do you recall that
6 evening?

7 A Yes, ma'am.

8 Q Where were you?

9 A At The North Charleston High School dance step
10 show.

11 Q And after the step show was over, what did you do?

12 A Left out the gym.

13 Q Did you see Mr. Slater there that evening?

14 A Yes, ma'am.

15 Q How did you run into him?

16 A Well, after -- after some school had performed, I
17 saw him walk in the gym.

18 Q Did you speak to him?

19 A No, ma'am.

20 Q Did you see him after the show as well?

21 A Yes, ma'am.

22 Q At which point did you see him after the show?

23 What was he doing?

24 A In the parking lot. No, the bus parking lot. The
25 bus parking lot.

1 Q Did you speak to him at that point?

2 A No, ma'am.

3 Q What was he doing when you saw him?

4 A When I walked out there was some commotion inside
5 the bus parking lot and I was by the car that I
6 was riding in and I saw Lord Byron walking towards
7 me with a gun in his hand.

8 Q What -- do you know which hand he had it in?

9 A I can't recall.

10 Q Can you describe what he was doing with the gun?

11 Can you show us what he was doing?

12 A Holding the gun like that. (Indicating.) Just
13 walking with it freely.

14 Q What did he do after you saw him? Where did he
15 go?

16 A He entered the car and drove off.

17 Q What kind of car was that?

18 A I'm not too familiar. I can describe it. Long--

19 Q Just describe it.

20 A Two-door long car with red streaks on it.

21 Q What was the main color of it?

22 A White.

23 Q White. Was anybody else in that car with him?

24 A Yes, ma'am.

25 Q How many people did you see?

1 A I have no idea.

2 Q What's the next thing you remember seeing?

3 A Them exiting out the bus parking lot, driving off
4 and entering the -- I think that's either the
5 district school parking lot or the church parking
6 lot.

7 Q Okay. When you saw Byron with the gun, did you
8 say anything to him?

9 A Well, when I saw him I was like -- well, when I
10 saw him walking freely, I told a friend of mine,
11 I'm like, run, they're about to shoot. And I'm
12 like, no, don't shoot. But that's all I said to
13 him.

14 Q Then you said you saw them drive over to the
15 parking lot--

16 A Yes, ma'am.

17 Q --at the church?

18 A Yes, ma'am.

19 Q Did you see what they drove up to? Was there
20 anybody over there? What did you see?

21 A I know it was a car over there. I could see the
22 car, but I didn't know who was over there.

23 Q Did you see Byron Slater get out of the car?

24 A No, ma'am.

25 Q What's the next thing you saw or heard?

- 1 A I saw the car door open.
- 2 Q The car that Byron was in?
- 3 A Yeah. And I heard the gunshots.
- 4 Q Did you see which car Byron got in?
- 5 A The passenger.
- 6 Q And when you say you saw the car door open, which
- 7 door--
- 8 A The passenger.
- 9 Q And then what happened?
- 10 A Gunshots. That's all I heard, gunshots.
- 11 Q Do you know how many? Can you just estimate for
- 12 us?
- 13 A If I estimate it might be a wrong number, so I
- 14 can't even recall how much.
- 15 Q More than one?
- 16 A Yes, ma'am.
- 17 Q Was there a pause between any of them or--
- 18 A Consistent.
- 19 Q What did you do after you heard the gunshots?
- 20 A Fell to the ground.
- 21 Q And did you see -- you said you saw -- what
- 22 happened -- did you ever see anybody run back to
- 23 that car, to the white car?
- 24 A No, ma'am.
- 25 Q Did you see that car leave?

TERELL BRYANT-DIRECT EXAMINATION BY MS. SUMNER

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1 A Yes, ma'am, I saw it leave.

2 Q Describe what you saw.

3 A After I heard the gunshots, the car was backing
4 up, going to leave. That's when I ran across the
5 street and I heard someone screaming, call the
6 police. So I dialed the police, 911, on my cell
7 phone and was talking to the dispatcher.

8 And when they drive off I heard two more --
9 two or three more shots.

10 Q Could you see -- did you see the victim, the
11 person that was shot?

12 A Yes, ma'am.

13 Q What could you tell about him?

14 A Young man laying there. Laying there, down, blood
15 all over his chest.

16 MS. SUMNER: Court's indulgence, please.

17 BY MS. SUMNER:

18 Q Can you describe the gun that you saw Byron Slater
19 with that evening?

20 A When I did describe it I told the officers it was
21 one of those guns that they carry, the black gun.

22 Q A black gun?

23 A Yeah, I'm not--

24 Q Can you describe anything else about it? Do you
25 remember anything else? Was it big or small?

1 Long? Short?

2 A Like that. (Indicating.) I'm not too familiar
3 with guns; I don't carry them.

4 MS. SUMNER: I have nothing further, Your
5 Honor, at this time.

6 MR. PENNINGTON: If Your Honor please.

7 CROSS-EXAMINATION

8 BY MR. PENNINGTON:

9 Q Mr. Bryant, let's go back to the beginning of this
10 evening when you came out of the step competition
11 concert and you stepped outside.

12 You indicated that you saw a large number --
13 there were a large number of people at the
14 concert; right?

15 A Yes, sir.

16 Q And some people were leaving and some people were
17 milling around and talking?

18 A Yes, sir.

19 Q And at some point before all this shooting and
20 seeing Byron, didn't you see a crowd of what you
21 described as black males, about 18 or 19, and run
22 past you and into the gym like they were looking
23 for something?

24 A Yes, sir.

25 Q And they stayed in there for awhile and then they

1 came back out again?

2 A Yes, sir.

3 Q And they didn't stay for long, like maybe 30
4 seconds, 20 seconds, something like that?

5 A Yes, sir.

6 Q And then they came back out into the street again?

7 A Uh-huh. (Answer in the affirmative.)

8 Q Is that correct?

9 A Yes, sir.

10 Q And at some point then you observed that there was
11 a -- like a sports utility vehicle or a Range
12 Rover or some sort of truck?

13 A Yes, sir.

14 Q That was going up Jenkins Avenue?

15 A I just saw--

16 Q You saw it stopped?

17 A Yeah, I saw it stopped.

18 Q And a crowd of guys was around that vehicle?

19 A Yes, sir.

20 Q And then at some point along the way you see Byron
21 Slater with a black gun in his hand; is that
22 right?

23 A Yes, sir.

24 Q And he gets into the passenger side of a white
25 vehicle and drives from the parking lot next to

1 the school across Jenkins onto Crawford and into
2 one of the parking lots there?

3 A Yes, sir.

4 Q Okay. You don't see who gets out?

5 A No, sir.

6 Q But after a period you hear some gunshots?

7 A Yes, sir.

8 Q Don't know how many?

9 A No, sir.

10 Q When there was shooting, you hit the deck. You
11 hit the floor -- I mean the ground?

12 A Yes, sir.

13 Q Were people running and yelling, screaming?

14 A Oh, yes, sir.

15 Q Everybody wanted to get out of there?

16 A Yes.

17 Q And sort of mass confusion at that point?

18 A Yes, sir.

19 Q And at some point you felt comfortable to get up
20 off the ground and you saw that vehicle pulling
21 off?

22 A Yes, sir.

23 Q And you heard some more shots?

24 A Yes.

25 MR. PENNINGTON: Court's indulgence a moment.

TERELL BRYANT-REDIRECT EXAMINATION BY MS. SUMNER

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1 Thank you, Mr. Bryant.

2 That's all the questions I have.

3 THE COURT: Any redirect?

4 REDIRECT EXAMINATION

5 BY MS. SUMNER:

6 Q Mr. Bryant, was Byron Slater one of the guys
7 surrounding the truck?

8 A I can't recall, but that's -- I saw him walk from
9 there, because I was like by the car, and the
10 truck was like at the end around the curb by the
11 gym and he was walking from the car.

12 Q So he was walking from that group of boys that was
13 around the truck and he had a gun at that point as
14 well?

15 A Yes, ma'am.

16 MS. SUMNER: I have nothing further, Your
17 Honor.

18 MR. PENNINGTON: As brief follow up to that,
19 Your Honor.

20 THE COURT: Yes, sir.

21 RECROSS-EXAMINATION

22 BY MR. PENNINGTON:

23 Q You didn't see Byron run past you into the gym
24 earlier; right?

25 A No, sir, I didn't.

1 Q So at that point you didn't see Byron or see Byron
2 with a gun?

3 A No, I didn't see anybody with a gun running past
4 me.

5 Q Okay. It was when you saw a crowd near this
6 vehicle that there was, what, eight, 10 guys?

7 A I can't say. A group of males.

8 Q All right. There were a lot of people out there
9 that night?

10 A Yes.

11 Q And at some point over there near that vehicle you
12 saw him with a gun?

13 A Yeah, walking--

14 Q Walking. I'm sorry. Go ahead. Walking--

15 A Towards me.

16 Q Towards you?

17 A Yes, sir.

18 Q And then gets in his vehicle?

19 A Yes, sir.

20 Q All right. And you were concerned about a
21 shooting, and you said -- did you speak directly
22 to him or did you speak to a friend?

23 A I was -- I told my friend to run, but I was like,
24 don't shoot.

25 Q Okay.

1 A So he was the only one with a gun so--

2 Q Okay. How far was he from you? From me to you or
3 further than that?

4 A No, further than that from me to you.

5 MR. PENNINGTON: Okay. Thank you.

6 That's all the questions I have.

7 THE COURT: You may come down. Thank you.

8 MR. DUTREMBLE: If Your Honor please at this
9 point we would have a stipulation that's been
10 entered into between the State and the defense.

11 THE COURT: All right.

12 A stipulation, ladies and gentlemen, is
13 simply each side agrees that this is the fact.

14 Is that correct?

15 MR. DUTREMBLE: That's correct.

16 THE COURT: All right, sir.

17 MR. DUTREMBLE: And we would offer this so I
18 can read it, Your Honor.

19 THE COURT: Please read the stipulation made
20 a part of the record.

21 MR. DUTREMBLE: Thank you. Ladies and
22 gentlemen, the State of South Carolina by and
23 through its undersigned attorney, and the
24 defendant by and through his undersigned attorney
25 hereby stipulate and agree one, that if Tonya

1 Mellette was called to testify, she would testify
2 that she is a communications supervisor for the
3 City of North Charleston, which includes the 911
4 emergency system.

5 Two, that all 911 calls are automatically
6 recorded on a digital master tape at The City of
7 North Charleston.

8 Three, that from the digital master tape she
9 was able to locate and record onto a cassette a
10 copy of the 911 calls that were received on
11 February the third, 2001, regarding the shooting
12 of Sharone Middleton.

13 Four, that she has listened to the tape and
14 can identify the voices of Terell Bryant, who she
15 knows personally, and Officer Stephanie Rice of
16 The North Charleston Police Department, who is
17 identified by the call sign 177.

18 Five, that the cassette recording is an
19 accurate and verbatim recording of the 911 calls
20 relating to the shooting of Sharone Middleton
21 contained on the digital master tape.

22 It is so stipulated this 13th day of
23 November, 2001, and signed by myself and Mr.
24 Pennington.

25 THE COURT: All right, sir. The stipulation

1 is accepted by the Court and made a part of the
2 record and published to the jury.

3 MR. DUTREMBLE: Thank you, Your Honor.

4 MS. SUMNER: Your Honor, may Terell Bryant be
5 excused?

6 MR. PENNINGTON: I have no objection to that,
7 Your Honor.

8 THE COURT: He may be.

9 MS. SUMNER: Thank you, Your Honor.

10 MR. DUTREMBLE: Your Honor please, at this
11 point in time, in relation to the stipulation, we
12 would offer the 911 tape recording.

13 THE COURT: All right, sir. Are you prepared
14 to play it at this time?

15 MR. DUTREMBLE: We are, Your Honor.

16 THE COURT: All right.

17 Ladies and gentlemen, let me say at this time
18 that from time to time various things will be
19 introduced into the trial of this case.

20 These things that are introduced into
21 evidence will be with you in the jury room during
22 your deliberations.

23 We are playing a tape at this time, and if in
24 your deliberations you need it replayed, we'll be
25 glad to do that for you.

1 Proceed.

2 MR. DUTREMBLE: Thank you, Your Honor.

3 THE COURT: This is the tape referenced the
4 stipulation previously made?

5 MR. DUTREMBLE: That's correct.

6 THE COURT: You agree with that?

7 MR. PENNINGTON: Yes, sir, it is.

8 THE COURT: All right. So ordered.

9 (State's Exhibit Number 3, stipulation, and
10 State's Exhibit Number 4, 911 tape, marked for
11 identification and received in evidence.)

12 MR. DUTREMBLE: If Your Honor please, with
13 reference to State's Exhibit 4 now in evidence,
14 we're going to play the 911 tape.

15 THE COURT: All right.

16 MR. DUTREMBLE: We're going to try to play
17 the tape.

18 THE COURT: This tape has previously been
19 presented to you, Mr. Pennington?

20 MR. PENNINGTON: Yes, sir, it has.

21 THE COURT: All right, sir.

22 (WHEREUPON, State's Exhibit Number 4, a 911
23 audiotape, was played for the members of the
24 jury.)

25 MR. DUTREMBLE: We're ready to call our next

DESHAWN BROWN-DIRECT EXAMINATION BY MS. SUMNER

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1 witness, Your Honor.

2 THE COURT: All right, sir. Please do.

3 MS. SUMNER: State calls Deshawn Brown.

4 DESHAWN BROWN,

5 Being first duly sworn, testified as follows:

6 THE COURT: Mr. Brown, I can tell now that
7 you're not talking loud enough. I want you to
8 talk loud so all these folks can hear you. Can
9 you do that for me, please?

10 THE WITNESS: All right.

11 THE COURT: Thank you.

12 DIRECT EXAMINATION

13 BY MS. SUMNER:

14 Q Mr. Brown, how old are you?

15 A Twenty-two.

16 Q And where do you live?

17 A 147 Darlington Avenue.

18 Q Is that in North Charleston?

19 A Downtown.

20 Q Downtown?

21 A (Witness nodding in the affirmative.)

22 Q Do you know Byron Slater?

23 A In a way, yes.

24 Q Does he have a nickname that he goes by?

25 A I don't know.

1 Q Do you call him anything other than Byron?

2 A No.

3 Q Okay. I want to turn your attention to the night
4 of February the third of this year. Did you have
5 an opportunity to see Byron Slater that night?

6 A Yes.

7 Q Where were you?

8 A At a step show.

9 Q And when did you see Byron?

10 A At the step show.

11 Q And how long have you known him?

12 A Probably about three or four years.

13 Q How do you know him?

14 A Because of my brother.

15 Q Through your brother?

16 A Yeah.

17 Q Did you talk to Byron that night?

18 A Yes.

19 Q And how did that come about?

20 A Well, it was like a group of people there.

21 Q Were you riding with Byron? Were you there with
22 him?

23 A I didn't come there with him, but I left with him,
24 yes.

25 Q Why were you leaving with him?

- 1 A Because I didn't have a ride home.
- 2 Q And you asked him for a ride home?
- 3 A Yes.
- 4 Q And he said he would give you a ride home?
- 5 A Yes.
- 6 Q Before y'all went home, something happened though;
- 7 is that right?
- 8 A Yes.
- 9 Q Tell me what happened.
- 10 A Someone got shot.
- 11 Q Can you tell me what led up to that shooting?
- 12 A No.
- 13 Q Did you go over -- was there a commotion? How did
- 14 you end up where the victim who was shot? How did
- 15 you end up over where he was?
- 16 A Because we drove across there.
- 17 Q Who was with you?
- 18 A Me, Byron, and two other fellows.
- 19 Q Did you know the two other fellows?
- 20 A No. I know one in a way, but no.
- 21 Q You were just getting a ride home?
- 22 A Yes.
- 23 Q Why did you go over there?
- 24 A I was already in the car.
- 25 Q When you got over there, what happened?

- 1 A It was like crowd of people.
- 2 Q Did you get out of the car?
- 3 A No, not at first.
- 4 Q Did Byron get out of the car?
- 5 A Yes.
- 6 Q Could you tell if he had a gun in his hand?
- 7 A No.
- 8 Q You couldn't tell?
- 9 A No.
- 10 Q What happened after Byron got out of the car?
- 11 A He went across there.
- 12 Q He went where?
- 13 A Across there in the crowd.
- 14 Q To where the person got shot?
- 15 A Yeah.
- 16 Q And did you hear gunshots?
- 17 A Yeah, I heard gunshots. Yes.
- 18 Q Did you see any muzzle flashes?
- 19 A No.
- 20 Q After you heard gunshots -- when you heard
- 21 gunshots, where was Byron Slater?
- 22 A In the crowd.
- 23 Q After you heard gunshots, what did Byron Slater
- 24 do?
- 25 A Everybody started running.

- 1 Q Did he run back to the car?
- 2 A Yes.
- 3 Q When he got back in the car did he have a gun?
- 4 A No, I didn't see a gun right then, no.
- 5 Q When did you see him with a gun?
- 6 A When we was driving off.
- 7 Q What did he do with that gun?
- 8 A Shoot in the air.
- 9 Q Where was he shooting towards?
- 10 A In the air.
- 11 Q Were you going back by where the crowd of people
- 12 were?
- 13 A No.
- 14 Q You were driving off?
- 15 A Yes.
- 16 Q When you left from there, where did you go?
- 17 A To a little neighborhood.
- 18 Q Who was driving?
- 19 A The fellow, L.
- 20 Q L?
- 21 A Yes.
- 22 Q And, I'm sorry, where did you go? Where did you
- 23 drive off to?
- 24 A To a little neighborhood.
- 25 Q Do you know which neighborhood that is?

- 1 A I think that's his house, I think.
- 2 Q Whose house?
- 3 A Byron's.
- 4 Q When you got to Byron's house, what did he do?
- 5 A Got out the car.
- 6 Q Did he have the gun then?
- 7 A Yes.
- 8 Q Where did he go?
- 9 A In the house.
- 10 Q How long was he in there?
- 11 A Probably about three to five minutes.
- 12 Q When he came out, what did he have then?
- 13 A Nothing.
- 14 Q When he got back in the car, did y'all go
- 15 somewhere else?
- 16 A No.
- 17 Q You just stayed at his house?
- 18 A No, we went back by the school.
- 19 Q For what reason, do you know?
- 20 A No.
- 21 Q But y'all went back by where the shooting had
- 22 taken place?
- 23 A Yes.
- 24 Q At that point what were you doing?
- 25 A I was in the car.

DESHAWN BROWN-DIRECT EXAMINATION BY MS. SUMNER
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1 Q Did you -- when you got back to the school you
2 were still in the car with him?

3 A Yes, I already had called for another ride.

4 Q Who did you call?

5 A My brother.

6 Q Did your brother come get you?

7 A Yes.

8 Q What point was that?

9 A After the policeman already had us.

10 Q The police. So the police had pulled you over?

11 A Yes.

12 Q Was this before or after Byron went home and went
13 into his house?

14 A After.

15 Q Okay. So there was no gun in the car at that
16 point?

17 A No.

18 Q After that did your brother pick you up?

19 A Yes.

20 Q Okay. You said that you saw Byron with a gun?

21 A Right.

22 Q Can you describe that gun?

23 A A black -- like a black -- black nine.

24 Q And you previously stated that he was shooting the
25 gun out the window as you drove off?

1 A Yes, in the air.

2 Q How many times did you see him shoot that gun?

3 A I'm not too sure.

4 Q I'm sorry?

5 A I'm not really too sure.

6 Q More than once?

7 A Yes.

8 Q More than twice?

9 A (Witness shrugging shoulders).

10 Q You don't know.

11 When y'all were driving off, was he saying
12 anything? What was his demeanor as y'all were
13 driving away?

14 A Nothing really.

15 Q You didn't hear him say anything?

16 A He said he think they all got hit. That's it.

17 THE COURT: You're going to have to talk a
18 little louder, please. These folks over here have
19 got to hear you and you're not talking loud
20 enough. Please talk loud for me so they can hear
21 you.

22 BY MS. SUMNER:

23 Q I'm sorry, can you repeat what he said as y'all
24 were driving away?

25 A He think dog get hit.

DESHAWN BROWN-DIRECT EXAMINATION BY MS. SUMNER

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1 Q Do you know what that means? Who was dog? Is
2 that a general term or is that a term for somebody
3 in particular?

4 A That's just how people talk.

5 Q Does that just mean a guy or--

6 A A person.

7 Q Just a person?

8 A Yeah.

9 Q Did you know that Byron Slater had a gun that
10 night?

11 A No.

12 Q When was the first time you saw him with a gun?

13 A When he was shooting in the air.

14 Q But before that happened you heard gunshots?

15 A I heard it, yes.

16 Q And where was Byron Slater when those gunshots
17 were fired?

18 A He was already by his car. He was standing by his
19 car.

20 MS. SUMNER: I have nothing further, Your
21 Honor.

22 MR. PENNINGTON: If Your Honor please.

23 CROSS-EXAMINATION

24 BY MR. PENNINGTON:

25 Q Mr. Brown, just a few questions. How did you get

1 to the step show?

2 A My brother dropped me off.

3 Q Okay. You knew that -- you knew Byron from in the
4 past?

5 A Yes, sir, in the past, yes.

6 Q Were y'all close friends?

7 A We was all right, yes.

8 Q Like friendly on the street?

9 A Yes.

10 Q Okay. Did y'all hang out together all the time?

11 A No.

12 Q Now, you didn't have any kind of transportation
13 home?

14 A No.

15 Q So you were hoping to get a lift?

16 A Yes.

17 Q And you knew that Byron had his Chevrolet Monte
18 Carlo?

19 A Yes.

20 Q So you asked him if he could give you a ride and
21 he said okay?

22 A Yes.

23 Q And so you got into the back seat; right?

24 A Yes.

25 Q And Byron was in the front passenger seat?

1 A Yes.

2 Q And the car was being driven by L?

3 A Yes.

4 Q Is that Ellis Judon, the guy that you now know as
5 Ellis Judon?

6 A I don't know his whole name.

7 Q You just knew him as L?

8 A Yes.

9 Q Okay. And then there was another fellow in the
10 back seat next to you, but you don't know his
11 name?

12 A No, I don't know him period.

13 Q Okay. All right. You never heard any talk, did
14 you, about, let's rob somebody or jack somebody?

15 A No.

16 Q In fact, when you were first out there, you were
17 just talking to some girls?

18 A Yes.

19 Q And some of these same guys we're talking about,
20 Byron and L and those guys, were talking about
21 girls?

22 A Yes.

23 Q Is that correct?

24 A Yes, they was out there.

25 Q Okay. And did you know when you asked for a ride

1 that there was going to be this shooting that took
2 place?

3 A No.

4 Q Have any idea?

5 A No.

6 Q So y'all got into the car and road around over
7 into the parking lot next to the church?

8 A Right.

9 Q And L was the one that was doing the driving?

10 A Right.

11 Q And you know that Byron got out of the car and
12 walked over to where the crowd was?

13 A Right.

14 Q Could you see the crowd beating up on somebody?

15 A Yes.

16 Q Okay. So before Byron ever gets out of the car,
17 could you see people over there essentially
18 fighting?

19 A People was -- yes.

20 Q Okay. So he went over there to see -- well, I
21 don't want to put words in your -- he went over
22 there, where the fight was going on?

23 A Right.

24 Q Is that correct?

25 A Correct.

DESHAWN BROWN-CROSS-EXAMINATION BY MR. PENNINGTON

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1 Q Now, you heard more than one gunshot that night;
2 didn't you?

3 A Yes, I heard it when we was standing by the school
4 by the gym.

5 Q Okay. So even before you pulled up you heard some
6 gunshots or heard a gunshot?

7 A Yes.

8 Q Okay. But that was not from Byron, because Byron
9 was near you; is that right?

10 A Yes, he was by his car, yes.

11 Q Okay. So that couldn't have been Byron's gun?

12 A No.

13 Q And not only that, that gun sounded different than
14 the gun that you heard Byron fire when he was
15 driving -- when y'all were pulling off; right?

16 A Yes.

17 Q You couldn't say what kind of caliber that gun is,
18 but you can say it's different?

19 A Yes.

20 Q Are you aware that there are handguns that are
21 made in the world called revolvers? Are you
22 familiar with what a revolver is?

23 A Yes.

24 Q Okay. A revolver is a kind of gun where it has a
25 cylinder where you can put bullets in and as you

1 fire it the cylinder turns?

2 A Uh-huh. (Answer in the affirmative.)

3 Q That's correct?

4 A Yes.

5 THE COURT: Ma'am?

6 MS. SUMNER: I'm going to object to his
7 knowledge about handguns. There's been no
8 foundation.

9 THE COURT: Revolver's common knowledge. If
10 he knows that I'll let him testify to that.

11 MR. PENNINGTON: Thank you, Your Honor.

12 BY MR. PENNINGTON:

13 Q In terms of your knowledge, answer just if you
14 know, when you fire a revolver, if you've seen it
15 on TV or wherever you know that information, it
16 does not throw a cartridge -- the spent shell
17 casings out, they stay in the gun; don't they?

18 A Yes.

19 Q Okay. Now, there are other guns that do throw out
20 cartridges, like for example, a .45 semiautomatic
21 pistol or a nine millimeter semiautomatic pistol?

22 A Correct.

23 Q So when you shoot those, those kick out?

24 A Correct.

25 Q Okay. Now, when Byron went over to this crowd of

1 people where the fight was, could you see Byron
2 where you were sitting or where you were standing?

3 A No.

4 Q You did get out of the vehicle; right?

5 A Right.

6 Q Stood beside the car?

7 A Right.

8 Q How far away from the car toward the fight did you
9 walk?

10 A I can't remember.

11 Q Pardon?

12 A I just stood on the side of the car.

13 Q You were close to the car?

14 A Yes.

15 Q All right. So you couldn't see Byron?

16 A (Witness nodding in the negative.)

17 Q Now, when he came back to the car and got back in,
18 you left in a hurry; didn't you? Did L take off
19 in a hurry?

20 A Yes.

21 Q Okay. But you did not hear any talk about jacking
22 someone or robbing someone; did you?

23 A No.

24 Q And you never saw any property that belonged to
25 anybody else; did you?

1 A No.

2 Q No?

3 A No.

4 Q You didn't see any money?

5 A No.

6 Q Or tennis shoes or regular shoes or any kind of
7 shoes?

8 A No.

9 Q And you said that Byron said, I think dog get hit,
10 or words to that effect?

11 A Yes.

12 Q And the translation of that is, I think the guy
13 got shot?

14 A Right.

15 Q Is that right?

16 A Uh-huh. (Answer in the affirmative.)

17 Q Now, you went from there to Byron's house, which
18 was a short distance away; right?

19 A Right.

20 Q You stayed in the car and then he came back out of
21 the house and y'all went back by the school?

22 A Right.

23 Q Right?.

24 A Correct.

25 Q Okay. Did you hear some discussion about trying

DESHAWN BROWN-REDIRECT EXAMINATION BY MS. SUMNER

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1 to find L's cell phone, his missing cell phone?

2 A I don't remember that.

3 Q Okay.

4 MR. PENNINGTON: Court's indulgence, Your
5 Honor.

6 Thank you, Mr. Brown, that's all the
7 questions I have.

8 THE COURT: Any redirect, ma'am?

9 MS. SUMNER: Please, Your Honor.

10 REDIRECT EXAMINATION

11 BY MS. SUMNER:

12 Q Did you see a revolver that night?

13 A No.

14 Q Did you see anybody with a revolver that night?

15 A No.

16 Q What does a revolver sound like?

17 A All depends on what kind it is.

18 Q What does a nine millimeter sound like?

19 A Loud.

20 Q Now, you said that you heard gunshots while you
21 were in the student parking lot?

22 A Standing beside the gym.

23 Q Do you remember giving a statement to detectives
24 with the North Charleston Police Department?

25 A No.

1 Q You don't remember ever giving a statement to
2 them?

3 A Oh, yeah, I did.

4 Q Did you tell them that you heard gunshots that
5 night?

6 A No.

7 Q Okay. That would have been important to tell them.
8 if you had heard that; wouldn't it?

9 A But they didn't ask me.

10 Q But you actually gave them a statement; is that
11 correct?

12 A Yes.

13 THE COURT: Show him the statement, please,
14 and when and where it was taken.

15 MS. SUMNER: May I approach?

16 BY MS. SUMNER:

17 Q Mr. Brown, I'm showing you -- do you recognize
18 that?

19 A Yes.

20 Q Is that your statement?

21 A Yeah.

22 Q And in that statement it's not question and
23 answer; is it?

24 A No.

25 Q That's just what you saw that night and what you

1 heard?

2 A Right.

3 Q And you didn't tell the police that you heard
4 gunshots in the -- while you were in the student
5 parking lot?

6 A No.

7 Q When was the first time you told anybody about
8 hearing these gunshots while you were in the
9 parking lot?

10 A When was the first time what?

11 Q When did you tell anybody about these gunshots in
12 the parking lot?

13 A When the lawyer asked me about it.

14 Q Who asked you about it?

15 A The lawyer. (Indicating.)

16 Q What lawyer, Mr. Pennington?

17 A Right there, yeah. (Indicating.)

18 Q And you never told anybody else about these
19 gunshots that you heard?

20 A No.

21 MS. SUMNER: I have nothing further, Your
22 Honor.

23 MR. PENNINGTON: Follow up, Your Honor.

24 RECROSS-EXAMINATION

25 BY MR. PENNINGTON:

1 Q Who was the first person to ever ask you if you
2 heard more than one gun?

3 A You.

4 Q Me?

5 A Yeah.

6 Q When the police sat you down and they had you
7 write a statement, did you write this statement?
8 Did you write all the words that are on those
9 pages?

10 A No, he wrote it.

11 Q The police officer wrote the statement?

12 A Yes.

13 Q Did the police officer who questioned you, did he
14 stop and ask you, did you hear more than one gun?

15 A No.

16 Q When you were interviewed by the Solicitor's
17 investigators, did they stop and ask you, did you
18 hear more than one gun?

19 A No.

20 Q When was the first time that someone asked you
21 that question and where were you at when you were
22 asked that?

23 A I was at my girlfriend's house.

24 Q And when was that, roughly? Approximately?

25 A Probably about two weeks -- a few weeks ago.

1 Q And where is your girlfriend's house?

2 A On the project.

3 Q North Park Village?

4 A Yes.

5 Q Right up the hill here?

6 A Right.

7 Q Okay. Any doubt in your mind that you heard more
8 than one gun that night?

9 A I heard it.

10 Q Okay. Did someone ask you to say that?

11 A No..

12 Q Did someone say, that'd be real important if you
13 could come to court and say that?

14 A No..

15 Q Are you telling us the truth about that or not?

16 A Yes.

17 MR. PENNINGTON: Thank you.

18 That's all the questions I've got.

19 MS. SUMNER: Brief.

20 REDIRECT FURTHER

21 BY MS. SUMNER:

22 Q The cops did ask you about a nine millimeter that
23 night, if you saw a nine millimeter?

24 A No, they asked me what kind of gun that I saw him
25 with.

1 Q They asked you what kind of gun that you saw Byron
2 with?

3 A Yes.

4 Q And no one with the police department, when they
5 were questioning you about a murder, asked you if
6 you heard any other gunshots or saw any other
7 guns?

8 A No.

9 Q Didn't someone from the Solicitor's Office ask you
10 if there was anything else that you hadn't told
11 the police about this incident? Do you remember
12 being asked that, if there was anything else--

13 A That was after I told him that I heard a shot.

14 Q You don't remember anybody from the Solicitor's
15 Office asking you prior to that if there was
16 anything else important that happened that night
17 that we should know?

18 MR. PENNINGTON: Your Honor, I'm going to
19 object to this question. It's sort of a trap.
20 It's a generic question designed to -- it's not a
21 proper--

22 THE COURT: Yes, I'll sustain that.

23 You'll have to be a little more specific.

24 MS. SUMNER: I have nothing further, Your
25 Honor.

KENYON NICHOLS-DIRECT EXAMINATION BY MS. SUMNER

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1 THE COURT: You may come down. Thank you.
2 Call your next witness.
3 MS. SUMNER: The State calls Kenyon Nichols.
4 KENYON NICHOLS,
5 Being first duly sworn, testified as follows:
6 DIRECT EXAMINATION
7 BY MS. SUMNER:
8 Q Mr. Nichols, how old are you?
9 A Twenty.
10 Q And are you in school?
11 A Yes, ma'am.
12 Q Where do you go to school?
13 A High school.
14 Q Which school is that?
15 A In Berkeley.
16 Q And do you work?
17 A Yes, ma'am.
18 Q Where do you work?
19 A McDonalds.
20 Q Part time?
21 A Full-time.
22 Q You work full-time and go to school?
23 A Yes, ma'am.
24 Q I want to turn your attention to the night of
25 February the third of this year.

1 A Yes, ma'am.

2 Q Do you recall that evening?

3 A Yes, ma'am.

4 Q Do you remember seeing Byron Slater that evening?

5 A Yes, ma'am.

6 Q Where were you?

7 A At the step show.

8 Q Is that at North Charleston High School?

9 A Yes, ma'am.

10 Q How did you run into Byron Slater that evening?

11 A I called Ellis Judon and he told me they was
12 already there, so I got my father to bring me up
13 there.

14 Q How long have you known Byron?

15 A Middle school.

16 Q Since middle school. And how long have you known
17 Ellis Judon?

18 A Like around seventh grade.

19 Q So you sort of met up with them at the show?

20 A Yes, ma'am.

21 Q What did you do after the show?

22 A Well, I caught a ride with them.

23 Q You were planning for them to give you a ride
24 home?

25 A Yes, ma'am.

1 Q What happened when you left -- when you went out
2 to the parking lot after the show?

3 A There was this truck, a Jeep, full of people, and
4 everybody like ran over to see who all was in it,
5 and I ran over there.

6 And there wasn't really nobody that I knew in
7 there, so I came back. I was talking to some
8 friends of mine, and they was like -- we were
9 about to leave, so I left with them.

10 Q Okay. When you got in the car who all was in the
11 car?

12 A Me, Ellis Judon, Byron, some guy named Erkel.

13 Q Would that be Deshawn Brown?

14 A Yes, ma'am.

15 Q You don't know him particularly?

16 A No, ma'am.

17 Q So y'all got in the car. And where did you go?

18 A He sped around and then he got into like a little
19 yard by a church.

20 Q Who was driving?

21 A Ellis.

22 Q And where was Byron Slater?

23 A Passenger seat.

24 Q In the front passenger seat?

25 A Yes, ma'am.

- 1 Q And where were you?
- 2 A Behind the driver.
- 3 Q And then Deshawn would be behind Byron?
- 4 A Yes, ma'am.
- 5 Q So y'all drove over to the church parking lot?
- 6 A Yes, ma'am.
- 7 Q Did anybody get out of the car?
- 8 A Yes, ma'am. Byron got out first.
- 9 Q Where did he go?
- 10 A Toward this crowd.
- 11 Q What was going on; could you see?
- 12 A Not really too good. It looked like a crowd of
- 13 boys in a crowd, like a gang or something like
- 14 that.
- 15 Q And Byron went over there?
- 16 A (Witness nodding in the affirmative).
- 17 Q What did the rest of the people in the car, do?
- 18 A Proceed to get out.
- 19 Q What happened?
- 20 A He got out and--
- 21 Q When you say he, who--
- 22 A Byron got out.
- 23 Q Okay.
- 24 A We were trying to get out too. The car was
- 25 parked.

KENYON NICHOLS-DIRECT EXAMINATION BY MS. SUMNER

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- 1 Q Was it a two door or four door?
- 2 A Two door. And I was trying to get out. And when
- 3 I got out, it seemed like I took five or six
- 4 steps, gunshots came, and I ran back in the car.
- 5 Q Who got in after you? You got in the back seat?
- 6 A Yes, ma'am.
- 7 Q And who got in after you?
- 8 A Deshawn.
- 9 Q And where was Ellis Judon?
- 10 A He was driving.
- 11 Q Had he ever made it over there to the crowd?
- 12 A No, ma'am.
- 13 Q And when did Byron Slater get back to the car?
- 14 A When Deshawn got in.
- 15 Q Was he the last one back in?
- 16 A Yes, ma'am.
- 17 Q What happened after everybody got back into the
- 18 car?
- 19 A We sped off and went to Byron's house.
- 20 Q What did Byron do as y'all drove off?
- 21 A He drove off. He was -- he got down the road and
- 22 he start shooting at the crowd.
- 23 Q Had you seen the gun before?
- 24 A No, ma'am.
- 25 Q Can you describe what this gun looked like?

- 1 A Black. Like a nine millimeter.
- 2 Q How many times did you see him shoot that gun?
- 3 A Six -- six or nine times.
- 4 Q And where was he shooting at?
- 5 A Inside of the crowd.
- 6 Q Back towards the crowd that y'all were pulling
- 7 away from?
- 8 A Yes, ma'am.
- 9 Q Did you hear him say anything?
- 10 A Yeah, I think I shot him.
- 11 Q And he continued to shoot out the car door -- or
- 12 the window?
- 13 A Yes, ma'am.
- 14 Q When y'all left from that parking lot -- you said
- 15 y'all sped off. Where did you go?
- 16 A Byron's house.
- 17 Q What happened there?
- 18 A We all got out. He went to his house.
- 19 Q Did he have the gun with him?
- 20 A I didn't see him.
- 21 Q You couldn't tell?
- 22 A No, ma'am.
- 23 Q You said he went into the house?
- 24 A Yes, ma'am.
- 25 Q How long did he stay in there?

1 A Like one minute. He just came in and came back
2 out.

3 Q What happened after that?

4 A We went back to the high school because Ellis
5 couldn't find his cell phone.

6 Q Were you stopped by the police some time that
7 night?

8 A Yes, ma'am, in the parking lot.

9 Q Was that before or after y'all had stopped off at
10 Byron's house?

11 A After.

12 Q And what happened when the police stopped you?

13 A He asked for ID and he checked the car.

14 Q Did they find anything?

15 A No, ma'am.

16 Q They just let you go?

17 A Yes.

18 Q What happened after that?

19 A We went to Sonic to get something to eat.

20 Q So after all this y'all just went to Sonic?

21 A Yes.

22 Q And when did you go home?

23 A Like after that.

24 Q Okay.

25 MS. SUMNER: Court's indulgence.

1 BY MS. SUMNER:

2 Q What kind of car was it that y'all were riding in
3 that night?

4 A Monte Carlo.

5 Q And whose car is that?

6 A Byron.

7 Q Byron Slater's?

8 A Yes.

9 MS. SUMNER: I have nothing further at this
10 time.

11 CROSS-EXAMINATION

12 BY MR. PENNINGTON:

13 Q Mr. Nichols, you didn't have a ride home?

14 A No, sir.

15 Q Okay. And so you were going to go get a lift with
16 Byron in his car?

17 A Yes, sir.

18 Q But Ellis Judon was driving the car?

19 A Yes, sir.

20 Q When you linked up with them, were y'all just
21 talking to girls or what were you doing?

22 A Talking to girls and having fun.

23 Q Having fun?

24 A Yes, ma'am. Yes, sir.

25 Q There was no criminal activity going on at that

- 1 point?
- 2 A No, sir.
- 3 Q That you were aware of at least?
- 4 A No, sir.
- 5 Q And at some point there was a commotion, you said,
- 6 around a truck?
- 7 A Yes, sir.
- 8 Q And did you have any part of that?
- 9 A No, sir.
- 10 Q Okay. And y'all got ready to leave and got in the
- 11 car; is that right?
- 12 A Yes, sir.
- 13 Q And at that point or any time up to that point did
- 14 you hear anybody talk about, let's rob somebody or
- 15 let's jack somebody?
- 16 A No, sir.
- 17 Q Did you know that there was a gun in the car?
- 18 A No, sir.
- 19 Q Did there -- was there ever any discussion of, we
- 20 need to get some money or anything from anybody?
- 21 A No, sir.
- 22 Q Now, L pulls into the parking lot that's across
- 23 from the school; right?
- 24 A Yes, sir.
- 25 Q And you can see what looks like some sort of

- 1 fight?
- 2 A Yes, sir.
- 3 Q And Byron gets out of his vehicle, you get out,
- 4 Deshawn gets out; right? And L gets out.
- 5 Everybody gets out; right?
- 6 A Yes.
- 7 Q And Byron walks into the crowd?
- 8 A Yes, sir.
- 9 Q Did you see where he went in the crowd?
- 10 A No, sir.
- 11 Q And you said that you started hearing gunshots?
- 12 A Yes, sir.
- 13 Q Did you think somebody was shooting at you?
- 14 A Yes, sir.
- 15 Q Did it frighten you?
- 16 A That's why I ran back to the car.
- 17 Q You ran back to the car immediately?
- 18 A (Witness nodding in the affirmative.)
- 19 Q Did you know what was going on?
- 20 A No, sir.
- 21 Q Okay. So you pile in the back seat; right?
- 22 A Yes.
- 23 Q And did you do it in a hurry?
- 24 A Yes, sir.
- 25 Q Was it kind of confusing?

1 A Yes, sir.

2 Q And in terms of piling in, were y'all stepping on
3 each other and falling on each other?

4 A Yes, sir.

5 Q Because you were anxious to get out of the parking
6 area?

7 A Yes, sir.

8 Q And when Byron gets into the passenger side and
9 y'all were pulling off, you hear him fire his
10 weapon?

11 A Yes, sir.

12 Q Was he shooting it up into the air?

13 A Toward the crowd.

14 Q Toward the crowd?

15 A Yes, sir.

16 Q Did you see if it hit anybody?

17 A No, sir.

18 Q Okay. And y'all drove off from that point on?

19 A Yes, sir.

20 Q And that's when you went around the corner and
21 down to where he lived?

22 A Yes, sir.

23 Q All right. You heard Byron say something along
24 the lines of, I think I shot him?

25 A Yes, sir.

- 1 Q But you weren't sure that somebody was shot; were
2 you?
- 3 A No, sir.
- 4 Q And, in fact, when y'all swung back around and
5 came up by the school, y'all could see that there
6 were police there at the scene; right?
- 7 A Yes, sir.
- 8 Q And EMS?
- 9 A Yes, sir.
- 10 Q But did you know that somebody had been shot?
11 Could you tell that somebody had been shot?
- 12 A Not until the police told me.
- 13 Q Okay. You weren't sure until the police told you?
- 14 A Yes, sir.
- 15 Q Is that why you didn't call the police yourself?
- 16 A I was scared.
- 17 Q Okay. You were scared because you had been
18 involved with that?
- 19 A Yeah.
- 20 Q Were you involved in any kind of robbery?
- 21 A No, sir.
- 22 Q Were you involved in any kind of attempt to steal
23 anything from anybody?
- 24 A No, sir.
- 25 Q Did you see any property in my client's hands when

1 he came back, other than the gun?

2 A No, sir.

3 Q Did you see any tennis shoes or regular shoes?

4 A No, sir.

5 Q Any money?

6 A No, sir.

7 MR. PENNINGTON: Court's indulgence, Your
8 Honor.

9 Thank you, Mr. Nichols.

10 That's all I have.

11 THE COURT: Anything further?

12 MS. SUMNER: Nothing, Your Honor.

13 THE COURT: You may come down. Thank you.

14 MR. DUTREMBLE: We would call Ellis Judon to
15 the stand, Your Honor.

16 ELLIS JUDON,

17 Being first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. DUTREMBLE:

20 Q Mr. Judon, I'm going to ask you to speak up,
21 because all the members of the jury have to hear
22 what you have to say today.

23 A All right.

24 Q How old are you, sir?

25 A Twenty-three.

- 1 Q And you are currently in The Department of
2 Corrections; right?
- 3 A Yes, sir.
- 4 Q And where are you incarcerated, sir?
- 5 A Broad River.
- 6 Q And what are you locked up for?
- 7 A Failure to stop for a blue light.
- 8 Q Failure to stop for a blue light. Anything else?
- 9 A Habitual offender.
- 10 Q Habitual offender?
- 11 A Yes, sir.
- 12 Q Can't drive very well; right?
- 13 A Yeah, I can drive, I just--
- 14 Q How much time are you doing?
- 15 A Five years.
- 16 Q Five years. All right. You know Byron Slater?
- 17 A Yes, sir.
- 18 Q How long have you known Byron Slater?
- 19 A Since he been little. I used to call -- we used
20 to call ourselves family.
- 21 Q Y'all are pretty close?
- 22 A Yeah, very close.
- 23 Q You see him in the courtroom today?
- 24 A Yes, sir.
- 25 Q Could you point him out for me?

1 A Right there in the middle. (Indicating.)

2 Q The fellow in the gray sweater?

3 A Yes, sir.

4 Q Have you known him basically all your life?

5 A Yes, sir.

6 Q Did you have occasion to get up with your friend,

7 Byron Slater, on February third of this year at

8 The North Charleston High School?

9 A Yes, sir.

10 Q Okay. Tell the members of the jury how y'all got
11 together that night.

12 A Well, I was sitting at my house, sitting on my
13 car, and he asked me if I want to go to the step
14 show. And I say, yeah, come on. I was waiting on
15 my uncle, but he came first.

16 So we ride around for a little while. He
17 came, we ride around. Visit a couple of friends.
18 Then we went to his house.

19 And then I said, let me hold the car to go
20 change, man. He said, go ahead.

21 So I went back to my house, came back,
22 somebody came to visit him, and after that we went
23 to the step show--

24 Q Let me ask you one thing before we get to the step
25 show. You were driving Byron's car; right?

1 A Yes, sir.

2 Q What kind of car was that?

3 A A Monte Carlo. I can't figure out what year it
4 was.

5 Q All right. What color was it?

6 A A white one.

7 Q A white Monte Carlo?

8 A Yes, sir.

9 Q And after y'all came back to Byron's, y'all went
10 over to North Charleston High School?

11 A Yes, sir.

12 Q And went to the show?

13 A Yes, sir.

14 Q Okay. Tell the jury what happened when you got to
15 North Charleston High School and went to the
16 show.

17 A We went to the show. It been about ten -- no, no,
18 about five of us first. And then a bunch of
19 people add up in there.

20 Then Keon, he called me on the cell phone, he
21 said, where was I at. I said to the step show. I
22 said, well, come on, man, and we'll just take you
23 home. You ride with us.

24 Q Is that Kenyon Nichols?

25 A Yeah, Keon Nichols. Yeah. I call him Snub.

1 He said all right. So we meet up there at
2 the step show, we dance around for a little while.

3 Step over, so me, Erkel, Deshawn, I can't
4 remember his last name, was in the courtyard
5 talking to some girls and about--

6 Well, before that, Keon Nichols came to the
7 step show and to Erkel ride with, they left, and
8 Byron Slater said, you can ride with us, man, so
9 he said all right.

10 So that's how Keon -- I mean Deshawn was
11 riding with us.

12 So we -- all us in the courtyard. We sitting
13 there chilling for a little while, talking to some
14 girls, then approximately about five guys came
15 over to the courtyard like they were looking for
16 something.

17 So in my mind--

18 Q Did you know those five guys?

19 A Sir?

20 Q Did you know those five guys?

21 A No, I couldn't picture them because it was dark.

22 Q Okay. What were they doing?

23 A They was in the courtyard like they was about to
24 do something. So first thing that come to my
25 mind, they about to start shooting.

1 So I start kind of walking back out toward
2 the courtyard. Me and I think it was Keon by me.
3 So after that a new Explorer Ford truck came
4 riding by slow.

5 And one of the guys said, see, right there,
6 see right there? So they run the truck down. A
7 couple of guys ran the truck down.

8 And they ran a distant and they stop the
9 truck. Then me and LB and--

10 Q Who's L.B.?

11 A Byron Slater.

12 Q That's Lord Byron?

13 A Yeah, Yeah.

14 Q So you and L.B.--

15 A Me and L.B. -- I think Keon been behind me.

16 Somebody else, I think it was Deshawn, because
17 when I throw the key to L.B., the passenger door
18 was locked, so he throw it back to me and I open
19 it. And then he went in the glove compartment and
20 he got the gun.

21 Q Who got the gun?

22 A L.B.

23 Q Where did he get the gun from?

24 A Out the glove compartment.

25 Q Did you know he had a gun in the glove

1 compartment?

2 A No, I never know that.

3 Q What kind of gun was it?

4 A It was a black -- a black nine. From my sight it
5 looked like a black nine.

6 Q A black nine millimeter?

7 A Yeah, it looked like a black nine.

8 Q What did he do with that gun?

9 A I don't know. Well, he grabbed it out of the
10 glove compartment and he ran to the truck. And
11 then I was like half way -- oh, I was out the car,
12 but I was looking over the roof part.

13 Q Now, when he ran to the truck, you're talking
14 about that Ford Explorer truck?

15 A Yeah, the Ford Explorer truck. They stopped the
16 Ford Explorer truck. And they been checking the
17 Ford Explorer truck.

18 Q So he runs from his car to the Ford Explorer
19 truck?

20 A Yeah.

21 Q With a gun?

22 A Yeah, with the gun. No, he aint really ran, he
23 just jogged. He aint ran like fast fast.

24 Q But he went from his car to the Ford Explorer with
25 a gun?

1 A Yeah. Yeah.

2 Q And what did he do when he got to the Ford
3 Explorer?

4 A So he aint really did nothing. He just sit
5 there. He aint did nothing. He aint did nothing.

6 So after a few seconds, they let the truck
7 go. And then that's when the victim who got
8 killed, he was running towards the dirt road
9 towards his car.

10 I suppose he ran to the car, and then one of
11 the guys points, said, I see one.

12 You know, and L.B. -- well, at the time he
13 said L.B. was walking back to the car with the gun
14 once they let the truck off, and L.B. ran back to
15 the car and then--

16 Q He ran back to which car?

17 A To his car.

18 Q So he ran back to the white Monte Carlo?

19 A Yeah.

20 Q Still had the gun in his hand?

21 A Yeah.

22 Q And where did he go?

23 A And then he said, go over there. So I ride over
24 there--

25 Q Wait a minute. Wait a minute. Wait a minute.

1 Who said, go over there?

2 A L.B. L.B. said, go over there.

3 Q And when he said, go over there, where was he
4 pointing?

5 A Over to the little dirt thing.

6 Q The little dirt parking lot?

7 A Yeah, yeah, yeah.

8 Q Did he have any business in that dirt parking lot?

9 A No, not of my concern, no.

10 Q Anything going on over there that concerned L.B.?

11 A No, not of my concern, no.

12 Q So how did you get from the car to the dirt
13 parking lot?

14 A He said go. I drive over there.

15 Q So you drove?

16 A Yeah, I drive over there.

17 Q Who was in the car with you?

18 A Me, Keon and slim.

19 Q Slim?

20 A Well, Slim is Keon, with Erkel.

21 Q All right.

22 A Yeah.

23 Q What about L.B.?

24 A L.B. been in the car too.

25 Q Where was he seated?

1 A He was in the passenger side.

2 Q Where was the gun?

3 A I guess he still had it. After that I didn't
4 really pay no attention to him. I didn't pay no
5 attention to him after that.

6 I think Keon -- I mean not Keon, I think
7 Erkel been kind of behind, because L.B. -- before
8 L.B. kind of get in the car, he said, hold up,
9 man, wait on Erkel; because I don't think Erkel
10 was in the -- I think Erkel get behind me. I
11 think he behind.

12 So when I ride over there I put the bright
13 light -- I ride up over there and I put the bright
14 light on dog, and he been stomping on my man,
15 stomping and kicking him.

16 Q Who was stomping and kicking him?

17 A The five guys.

18 Q The same guys that stopped the Ford Explorer
19 truck?

20 A Yeah, because all of them run over there.
21 Probably more of them boys, because the cars
22 surround them and all that.

23 Q So they had him surrounded on the ground?

24 A Yeah.

25 Q Stomping and kicking him?

1 A Yeah, stomping and kicking him.

2 When they been stomping and kicking him, I
3 seen one of his leg was up -- kind of up, and they
4 was pulling his shoe off.

5 Q Who was pulling his shoe off?

6 A I don't even know, because I'm like a little
7 distance. I didn't even get out of the car.

8 Well, when I road up there and put the bright
9 light on them, I let slim -- not slim, Erkel, in
10 the back.

11 Q Deshawn?

12 A Yeah, I let him up. But it happened so quick,
13 man, as soon as he like -- as soon as they get out
14 of the car, they been running back in the car.

15 Q Who got out of the car?

16 A L.B. got out. Keon and slim. All them got out.

17 Q All right. Where did L.B. go?

18 A I don't know. I seen him jump out, but after that
19 I didn't pay no attention.

20 Q Where did the others go?

21 A I didn't pay no attention either.

22 Q Well--

23 A When they get up, they -- when they get up they
24 came running back so fast, because after that they
25 start shooting.

1 So the way it was, man, when they -- when
2 they been stomping him, he -- it seemed like the
3 crowd leave, then when gunshots hit, I seen him
4 flip over. Then--

5 Q How many shots?

6 A About three or four.

7 Then one of the dudes said, oh, like that
8 there, like -- (indicating.)

9 So then when L.B. ran back in the car--

10 Q L.B. ran back to the car?

11 A Yeah, L.B. ran back to the car. Keon already been
12 in the car. Because they -- they get out and come
13 back in. That's how quick it happened.

14 So when L.B. and everybody get back in the
15 car, I been backing up.

16 Q You were still driving the car?

17 A Yeah, I been still driving.

18 Q Where was L.B.?

19 A L.B. was already in the car by then.

20 Q And where was he?

21 A In the passenger seat.

22 Q The passenger seat?

23 A Yeah.

24 Q And what did he do when you were backing that car
25 up?

ELLIS JUDON-DIRECT EXAMINATION BY MR. DUTREMBLE

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1 A When I was backing up I was hearing gunshots. I
2 said, oh, man, them boys shooting at us.

3 So I realizing it L.B., but I didn't see it
4 now. I know because the gunshot been in my ear
5 right there.

6 So we ran back -- I drive back the little
7 dirt road, drive back--

8 Q The gunshots were in your ear?

9 A Yeah.

10 Q L.B. was firing out the window of the car?

11 A Yeah. Yeah.

12 Q Where did you go when you left the parking lot?

13 A We went back to L.B. house.

14 Q Went back to L.B.'s house?

15 A Yeah. Yeah.

16 Q And what did you do at L.B.'s house?

17 A Well, L.B. the only one that went in the house.
18 The rest of us, we stand outside. L.B. probably
19 been in the house about five minutes.

20 Q He was in there for five minutes?

21 A Probably about five minutes, yeah.

22 Q Did he take the gun inside the house with him?

23 A He probably -- I guess. I didn't pay no
24 attention. I didn't see -- he probably hide it
25 or something.

1 Q Did you see him put it back in the glove
2 compartment of the car?

3 A No, I didn't see him put it back in the glove
4 compartment.

5 Q But y'all left his house; didn't you?

6 A Yeah, we left.

7 Q And you got stopped by the cops; right?

8 A Yeah.

9 Q And there wasn't no gun in the car when they
10 stopped you; was there?

11 A No, aint been no gun in the car.

12 Q Well, what did you do after you got stopped by the
13 cops?

14 A Well, we ride up a little bit -- probably from
15 here to outside, and we drop Erkel off, because
16 Erkel -- we drop him off, and then we went down
17 the road. I stopped again. I told the police, we
18 already got checked, we already got checked. And
19 he said all right. And we gone.

20 Then another police was in the distance, and
21 I said, man, just take me home, man, just take me
22 home. We went to Sonic's and then we go on home.

23 Q You went to Sonic's?

24 A Yeah.

25 Q What'd you do at Sonic?

1 A Get something to eat.

2 Q Got something to eat?

3 A Yeah.

4 Q L.B. get something to eat too?

5 A Yeah, all us -- yeah, L.B. got something to eat
6 too.

7 Q Did y'all talk about what happened out there at
8 North Charleston High School?

9 A No, not really.

10 Q Not really. Did you tell the police, when they
11 stopped you, what happened out at North Charleston
12 High School?

13 A Yeah -- no, all I said, we just got stopped. I
14 guess they already know, because they been looking
15 for a white car. So many white cars been riding
16 around.

17 Q You didn't tell the police that this man over here
18 had been firing a nine millimeter gun?

19 A No, I didn't tell the police that.

20 Q Didn't tell them that?

21 A No.

22 Q You ever seen him with that nine millimeter
23 before?

24 A One or twice, that's it.

25 Q Once or twice?

1 A Yeah.

2 Q It's his gun; isn't it?

3 A Yeah, he had it.

4 MR. DUTREMBLE: Thank you, sir. Answer any
5 questions that this gentlemen has for you.

6 CROSS-EXAMINATION

7 BY MR. PENNINGTON:

8 Q Mr. Judon, you went to the step concert to have
9 fun?

10 A Yes, sir.

11 Q You all went and did some dancing?

12 A Well, we look at the dance. Look at the dance.

13 Q All right. Talk to girls?

14 A Yeah.

15 Q Okay. When this evening started out, did you have
16 any idea that this was going to happen?

17 A No.

18 Q When you got in to go over there, did you know
19 that there was a gun in the car?

20 A No, I didn't know that the gun probably been in
21 the car, I probably would have gone home.

22 Q All right. So you didn't know the gun was there?

23 A No, I didn't know the gun was there. No.

24 Q So when you were first at the school, y'all were
25 essentially chilling?

- 1 A Yeah, we were chilling, yeah.
- 2 Q Meaning that you were sitting there talking to
- 3 friends, talking to girls?
- 4 A Yeah.
- 5 Q And that's when you saw these guys run by?
- 6 A After the show?
- 7 Q After the show.
- 8 A Yeah, yeah, yeah, yeah, yeah.
- 9 Q Right. Five guys, like they were looking for
- 10 something or someone?
- 11 A Yeah, like something happened, you know.
- 12 Q They looked like they were kind of hyped up? Like
- 13 there could be some trouble?
- 14 A Yeah, yeah, yeah, looked like they ready to did
- 15 something. So the first thing that come to my
- 16 mind is they about to shoot.
- 17 Q You thought there could be some trouble?
- 18 A Yeah, yeah.
- 19 Q All right. So that's when you guys decided to get
- 20 in the car?
- 21 A No -- yeah -- not really. We aint really get in
- 22 the car. We just like kind of walk away. Towards
- 23 a little bit.
- 24 Q Walk away from where those five guys were?
- 25 A Yeah, out the crowd.

1 Q And then those guys, they ended up stopping that
2 truck?

3 A Yeah, they end up stopping the truck.

4 Q Y'all went over to Byron's car; right?

5 A Yeah, we went into Byron's car.

6 Q And that's when Byron got the gun out?

7 A Yeah.

8 Q And went over there by the truck?

9 A Yeah.

10 Q But he didn't do anything?

11 A No, he aint did nothing.

12 Q All right. Then he comes back in the direction of
13 his car to get back in the car; right?

14 A Yeah.

15 Q And then you hear some guys, some of these same
16 guys, pointing at somebody, running away?

17 A Yeah.

18 Q And that's when--

19 A Matter of fact I seen him. I see him.

20 Q You saw the fellow running?

21 A Yeah, I saw a fellow running too. And then one of
22 the other fellows of the five guys say, I see one.

23 Q Okay. And that's when they took offer after him
24 across Jenkins Avenue and into that parking lot?

25 A Yeah.

ELLIS JUDON-CROSS-EXAMINATION BY MR. PENNINGTON

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1 Q Okay. Did L.B., with his gun, start running
2 across Jenkins Avenue and into that parking lot?

3 A L.B. aint run over there; we drive over there.

4 Q No. Y'all got into the vehicle and you drove
5 around and pulled into the parking area and threw
6 on your bright lights?

7 A Yeah, I threw on my bright lights, yeah.

8 Q Okay. And at that point, with the bright lights,
9 you could see that a fight was going on and a man
10 was getting beat up?

11 A Yeah.

12 Q Right?

13 A Yeah.

14 Q Did you know why?

15 A No.

16 Q Did you have any idea why?

17 A Huh-uh. (Answer in the negative.)

18 Q You just knew that there was a fight going on?

19 A Yeah.

20 Q Did you know whether or not these guys were trying
21 to rob somebody? Could you tell that?

22 A No, I can't tell that, no.

23 Q Did you know that these guys -- whether these guys
24 had any kind of history or any kind of prior
25 problems that might have led to this ganging?

1 A No.

2 Q Could you tell what was going on?

3 A No, not really, not that I could see. I probably
4 thought, you know, because my home boy just had
5 got shot, I probably thought, you know, that
6 probably -- because he been running.

7 But when I see dog, I say no, that couldn't
8 been why, because he -- man look innocent man.
9 Man look like he been running from the crowd too.
10 Look like he been running from the scene too.

11 Q Okay.

12 A So I guess he saw the five guys too, because after
13 they -- because it seems after they left the
14 truck, the dude went running back to his car.

15 Q Okay.

16 A Yeah.

17 Q So Byron gets out of the vehicle, his Monte Carlo,
18 and walks over with the gun to the crowd; right?

19 A Yeah, he got out of the car. I don't know if he
20 walk over there, because I don't pay no attention
21 after that.

22 Q So you don't see exactly where he goes?

23 A No, because my mind was focusing on -- when I cut
24 bright light on, my mind just focus on him. Just
25 focus on the dude on the ground.

1 Q The dude on the ground?

2 A Yeah.

3 Q Okay. And then you get out too; don't you?

4 A No, I step one foot in, one foot out.

5 Q And the guys in the back seat get out?

6 A Yeah.

7 Q Okay. And in a relatively short period of time,
8 you start hearing gunshots?

9 A Yeah.

10 Q And then everybody starts running and screaming;
11 right?

12 A Well, with the crowd disappear -- seem like the
13 crowd disappear first before the gunshots, though.
14 Because there aint no way could have come -- if
15 they would have shoot them, they would have shoot
16 the people been around 'em too.

17 Seeing the crowd scatter like that like in a
18 little circle, they scatter then the gunshots
19 fired then--

20 Q What you're basing that on is that only one person
21 got shot?

22 A Yeah, Yeah. Then when the dude flip over and been
23 on the ground.

24 Q Okay.

25 A He flip over and then the other dude said, no.

1 Q All right.

2 A And then--

3 Q So then y'all get back in the vehicle and there
4 are more shots; right?

5 A Yeah.

6 Q But you don't know where the gun was aimed?

7 A No. I know he been shot, but I just ducking down
8 like that. (Indicating.) Backing up. I thought
9 I was going to hit something.

10 Q Right.

11 A Then when I ride back on the road -- L.B. stick
12 the gun out the window and start firing--

13 Q All right, sir.

14 When y'all were standing out there chilling,
15 before all this trouble started, was there any
16 talk about Byron, let's go jack somebody?

17 A No, he aint like that.

18 Q There was never any talk at all about y'all going
19 and getting into trouble that night; was there?

20 A No.

21 Q There was no indication at all -- when he came
22 back, he can't say, man, I just got some money;
23 did he?

24 A When he came back?

25 Q When he came back after the shooting did he say,

1 oh, man, look at this, I got some money?

2 A No, he didn't say nothing.

3 Q He didn't say anything?

4 A I didn't hear him say nothing.

5 Q Well, he didn't say anything either; did he?

6 A He probably did. I didn't hear him say nothing.

7 Q Okay. You didn't get any charges as a result of
8 this; did you?

9 A No.

10 Q And as far as you know, the only person that was
11 charged with this incident is Byron Slater?

12 A Yeah.

13 MR. PENNINGTON: Court's indulgence a moment.

14 That's all I have, Mr. Judon.

15 THE COURT: Anything further from the State?

16 MR. DUTREMBLE: Just one question.

17 REDIRECT EXAMINATION

18 BY MR. DUTREMBLE:

19 Q Mr. Judon, did I hear you correctly when you were
20 answering Mr. Pennington's questions? Did you say
21 that the man on the ground that was being stomped
22 looked innocent?

23 A Yeah.

24 MR. DUTREMBLE: Thank you, sir.

25 THE WITNESS: Can I say something?

1 MR. DUTREMBLE: Sure.

2 THE WITNESS: I would like to say to the
3 families that I'm sorry what happened and God
4 bless--

5 BY MR. DUTREMBLE:

6 Q But you didn't shoot him; did you?

7 A Huh?

8 Q You didn't shoot him; did you?

9 A No, no, no, no.

10 Q He was just an innocent man on the ground that got
11 shot?

12 MR. PENNINGTON: Objection, Your Honor,
13 that's improper.

14 THE COURT: Have you concluded your testimony
15 now?

16 MR. DUTREMBLE: That's correct, Your Honor.

17 THE COURT: All right. You can come down.
18 Thank you.

19 All right. It's 5:30. Is there any other
20 witnesses you need to call tonight? Anybody who
21 can't be here tomorrow?

22 MR. DUTREMBLE: No, sir.

23 THE COURT: Okay. The jury's been here very
24 patiently since 9:30 and it's 5:30 now, so I think
25 it's an appropriate time that we recess for the

1 evening.

2 Madam foreman, ladies and gentlemen of the
3 jury, we are going to take a break for the
4 evening. I would ask respectfully that you return
5 and be here promptly in your jury room 9:30 in the
6 morning.

7 Please remember my admonitions, which are
8 continuing. Do not discuss the case with anyone,
9 make no independent inquiry. Let no one discuss
10 it with you. Under no circumstances, even discuss
11 it among yourselves.

12 I want to thank you. I've noticed that all
13 of you been very intently listening to the
14 testimony today, and that's simply just a sign of
15 a good jury intent on doing their duty; and I
16 deeply appreciate that. See you in the morning at
17 9:30.

18 Everyone else remain seated now while this
19 jury retires.

20 (Jury dismissed at 5:33 p.m.)

21 THE COURT: All right. Gentlemen, we'll be
22 in recess until 9:30 in the morning.

23 MR. DUTREMBLE: Thank you, Judge.

24 THE COURT: Thank you. See you in the
25 morning.

1 (The following was reported on November 14,
2 2001, out of the presence of the jury.)

3 (Court's Exhibit Number 2, Defendant's
4 requested voir dire, marked for identification,
5 and Court's Exhibit Number 3, Defendant's
6 requested jury charges, marked for
7 identification.)

8 THE COURT: Good morning, ladies and
9 gentlemen. Please be seated.

10 All right. Solicitor, you ready with your
11 first witness?

12 MR. DUTREMBLE: We are, Your Honor.

13 THE COURT: All right, sir. Is he in the
14 courtroom?

15 MR. DUTREMBLE: He's coming in right now,
16 Judge.

17 THE COURT: All right, sir.

18 MR. DUTREMBLE: We're going to call Cathy
19 Stanley, Judge.

20 THE COURT: Bring the jury in, please.

21 MR. PENNINGTON: Your Honor, before you--

22 THE COURT: Wait a minute. Hold it one
23 minute.

24 MR. PENNINGTON: Your Honor, I would just
25 like to put on the record that there was some

1 publicity on our case last night on the newspaper.

2 There was nothing in the newspaper that I
3 found particularly objectionable or surprising.

4 There was -- I'm told by my investigator,
5 that also on channel four there was a report that
6 my client was charged--

7 THE COURT: Let's talk about the newspaper
8 first. I read that article too. What did you
9 find objectionable there? Ms. Beachum usually is
10 pretty accurate about what she puts in the paper.

11 MR. PENNINGTON: I didn't see anything
12 objectionable to it.

13 THE COURT: All right, sir. So your remarks
14 are directed to what occurred on four?

15 MR. PENNINGTON: Yes, sir.

16 THE COURT: And what is that, please?

17 MR. PENNINGTON: My investigator -- I didn't
18 see it, but my investigator tells me that it
19 involved a claim that my client did a robbery or
20 was charged with a robbery, which, of course, is
21 not part of this case at this time.

22 So I point that out to the Court just in case
23 some of our jurors could have seen that and been
24 influenced by it.

25 THE COURT: Well, they know, by my directions

1 and my subsequent charge, that he's only charged
2 with two things, murder and the use of a deadly
3 weapon in the commission of a crime.

4 How then could that impact on your
5 defendant's case?

6 MR. PENNINGTON: I'm concerned that the jury
7 may infer that there's some sort of evidence
8 that's not been presented--

9 THE COURT: How would you have me handle that
10 question?

11 MR. PENNINGTON: I would ask that you go
12 ahead and voir dire, just in case if any of them
13 saw it and could been influenced by it.

14 THE COURT: What do you say, Solicitor?

15 MR. DUTREMBLE: I have no problem with that,
16 Your Honor. I did not see it so I don't know. I
17 mean, we do know that.

18 THE COURT: Okay. Here's what I'll do. I'll
19 ask them if any of them saw that particular one,
20 and if they did, then we'll deal with it in
21 chambers with the jury with you two present; is
22 that suitable?

23 MR. PENNINGTON: Yes, sir, that's great.

24 THE COURT: All right. Bring the jury in.
25 You have no concerns about the newspaper

1 article?

2 MR. PENNINGTON: No, sir.

3 THE COURT: All right.

4 Bring the jury in, please.

5 MR. PENNINGTON: Your Honor, may we approach
6 as the jury comes in? I have a matter of law.

7 THE COURT: Yes, sir. Sure.

8 (WHEREUPON, a bench conference was held off
9 the record, in the presence of the jury, but out
10 of the hearing of the jury.)

11 (Jury in at 9:42 a.m.)

12 THE COURT: Goods morning, Madam Foreman,
13 ladies and gentlemen. As I indicated to you, I
14 want your findings of fact, of course, to be based
15 on the law and evidence heard in this courtroom
16 and from no other place.

17 Last evening channel TV four had some
18 comments to make on this particular trial. Did
19 any of you happen to view channel four last night
20 with reference to any issues in this case? If so
21 please so signify.

22 (One juror responds.)

23 THE COURT: All right. That's fine. So I'm
24 going to send you to the jury room and I will ask
25 the bailiff to bring this witness (sic) to my

1 chambers. Thank you so much.

2 And meet me in my chambers at this time.

3 MR. PENNINGTON: Yes, sir.

4 (Jury out at 9:43 a.m.)

5 (WHEREUPON, there was an in chambers
6 conference held off the record.)

7 THE COURT: Thank you. Bring the jury out,
8 please.

9 (Jury in at 9:46 a.m.)

10 THE COURT: Be seated.

11 And call your next witness, please.

12 MR. DUTREMBLE: Thank you, Your Honor. We
13 would called Cathy Stanley to the stand.

14 CATHY STANLEY,

15 Being first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. DUTREMBLE:

18 Q Officer Stanley, by whom are you employed, ma'am?

19 A City of North Charleston Police Department.

20 Q And in what capacity are you employed?

21 A I'm a Forensic Investigator for the Police
22 Department.

23 Q And how long have you been a forensic
24 investigator?

25 A Two years.

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1 Q Did you have occasion, ma'am, to become involved
2 in the investigation of the shooting near North
3 Charleston High School on February the third of
4 this year?

5 A Yes, I did.

6 Q And can you tell the members of the jury what you
7 did in response to receiving a call in this
8 matter?

9 A I responded to scene about 10:30 p.m. that night.
10 Upon my arrival I observed the crime scene had
11 been secured by the responding officers.

12 At that time I began to process the crime
13 scene, which entailed searching the crime scene,
14 collecting any kind of evidence and photographing
15 any kind of evidence.

16 Q And where was the crime scene?

17 A The crime scene was located in a parking lot
18 across from North Charleston High School. The
19 corner of Jenkins and Crawford Street.

20 Q And by the time you got there, there were already
21 officers at the scene; is that correct?

22 A Yes, there were.

23 Q Did you have occasion, ma'am -- strike that.

24 In reference to the crime scene at Crawford
25 and Jenkins, let me hand you these three

1 photographs and ask you if you can identify these,
2 ma'am.

3 THE COURT: May I see them, please?

4 MR. DUTREMBLE: Yes, sir.

5 THE COURT: Mr. Pennington, have you seen
6 these photographs?

7 MR. PENNINGTON: I have now, Your Honor.

8 THE COURT: Proceed.

9 MR. DUTREMBLE: Thank you, Your Honor.

10 BY MR. DUTREMBLE:

11 Q Can you identify those, ma'am?

12 A Yes, that is the parking lot where the crime scene
13 was.

14 MR. DUTREMBLE: If Your Honor please, we'd
15 offer these three photographs into evidence.

16 THE COURT: All right, sir.

17 As I indicated yesterday, these matters that
18 are in evidence will be with you in the jury room
19 during your deliberations.

20 And you, of course, may publish them if you
21 care to.

22 MR. DUTREMBLE: Thank you, Your Honor.

23 (State's Exhibit Numbers 5, 6 and 7, all
24 blowup photos, marked for identification and
25 received in evidence.)

1 MR. DUTREMBLE: If Your Honor please, we're
2 going to project the photographs onto the screen
3 so that the jury can see them, of course, with
4 your permission.

5 THE COURT: That's certainly permissible.

6 MR. DUTREMBLE: Thank you.

7 BY MR. DUTREMBLE:

8 Q Officer Stanley, with respect to what's been
9 marked State's Exhibit Number 7, can you tell the
10 members of the jury what they're looking at here?

11 A This is a view from right about the corner of
12 Crawford and Jenkins Street into the parking lot
13 where the incident occurred.

14 Q And with reference to State's Exhibit Number 6,
15 can you tell us what we're looking at here, ma'am?

16 A This is the same parking lot, just from an angle a
17 little bit closer to Crawford Street looking into
18 the parking lot.

19 Q Okay. And with the laser pointer there, can you
20 point out to the members of the jury approximately
21 where Sharone Middleton's car was parked when you
22 arrived?

23 A Right in this general area. (Indicating.)

24 Q All right.

25 A In the corner.

- 1 Q And with reference to State's Exhibit Number 5,
2 which has been marked into evidence, can you tell
3 us what we're looking at here, ma'am?
- 4 A This is the opposite angle from where the victim's
5 vehicle was parked looking towards the high
6 school. And as you can see, this would be Jenkins
7 Street and this would be Crawford Street.
- 8 Q All right. And where would the victim's vehicle
9 have been parked?
- 10 A It would have been parked right in this general
11 area right here.
- 12 Q All right. I'm going to substitute pointers, I
13 think we're losing our batteries. If you can just
14 press this here.
- 15 A Okay.
- 16 Q Now, when you arrived at the crime scene and you
17 began your investigation, did you have occasion,
18 ma'am, to observe the vehicle that was driven by
19 the victim, Sharone Middleton?
- 20 A Yes, I did.
- 21 Q And with reference to that vehicle, ma'am, let me
22 hand you two photographs and ask you if you can
23 identify these.
- 24 A Yes.
- 25 Q Can you identify these?

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1 A Yes, I can.

2 Q Do these photographs fairly and accurately depict
3 the scene as you saw that night?

4 A Yes.

5 MR. DUTREMBLE: If Your Honor please, we'd
6 offer these next two photographs into evidence.

7 MR. PENNINGTON: No objection, Your Honor.

8 THE COURT: All right.

9 (State's Exhibit Numbers 8 and 9, blowup
10 photos, marked for identification and received in
11 evidence.)

12 BY MR. DUTREMBLE:

13 Q Officer Stanley, with respect to State's Exhibit
14 Number 9, which is now in evidence, can you tell
15 us what we're looking at there, ma'am?

16 A This is a photo that was taken. This right here
17 is the victim's vehicle as I found it.

18 These are markers that I had put out upon
19 arrival at the scene.

20 This is if you were looking from Jenkins
21 Street towards -- this is a church right here.
22 This is the general area of the crime scene.

23 Q Okay. And the cones and the yellow markers that
24 we see depicted in the photographs, what does that
25 represent, ma'am?

1 A This first one right here, which is labeled number
2 one, was a pair of glasses. Number two right here
3 would be the victim's clothing. Number three was
4 a Winchester nine millimeter shell casing.

5 Also number five, in the center, is a nine
6 millimeter Winchester shell casing. And number
7 four was a projectile located at the scene.

8 Q Okay. Thank you. And with reference to State's
9 Exhibit Number 8, can you tell us what we're
10 looking at here, ma'am?

11 A That's the passenger side of the vehicle with --
12 with reference to the picture, the previous
13 picture, the church is behind the vehicle. This
14 is looking from the Crawford Street side of the
15 vehicle.

16 And on the other side, of course, is the
17 driver's side where the cones were marked.

18 Q Okay. And do we see the cones depicted in this
19 photograph?

20 A Yes, you can see the cones. Not the yellow
21 markers; they weren't put down prior to this
22 picture.

23 Q And when you found the two nine millimeter shell
24 casings, the projectile that you described, and
25 the pair of glasses, what did you do with those

CATHY STANLEY-DIRECT EXAMINATION BY MR. DUTREMBLE

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1 items, ma'am?

2 A After they were marked and photographed they were
3 collected as evidence.

4 Q And you took them into your custody?

5 A Yes, I did.

6 Q And you turned them into evidence?

7 A Yes, I did.

8 Q Now, with reference to the glasses that you
9 described, I'm going to hand you two additional
10 photographs and ask you if you can identify these.

11 A Yes, these are the glasses that were found at the
12 scene.

13 MR. DUTREMBLE: If Your Honor please, we
14 would offer the photographs of the glasses.

15 MR. PENNINGTON: No objection, Your Honor.

16 (State's Exhibit Numbers 10 and 11, both
17 blowup photos, marked for identification and
18 received in evidence.)

19 BY MR. DUTREMBLE:

20 Q Officer Stanley, with reference to State's Exhibit
21 Number 11, which is now in evidence, can you tell
22 us what we're looking at here, ma'am?

23 A This, again, is the driver's side of the vehicle.
24 And the glasses that were found were found on the
25 ground in that position. A pair of eye glasses.

1 Q And with reference to State's Exhibit Number 10,
2 are those the glasses that you found?

3 A Yes, those are the same eye glasses.

4 Q And they were found in the parking lot of the
5 church; is that correct?

6 A Yes, they were.

7 Q Now, you indicated that you took all those items
8 and you -- before I get to that let me ask you
9 something else.

10 Did you find any additional shell casings at
11 the scene that night?

12 A Yes, I found an additional five Winchester nine
13 millimeter shell casings in one area, and two
14 additional shell casings in another area of the
15 parking lot.

16 Q With reference to the five additional Winchester
17 shell casings, let me hand you this photograph and
18 ask you if you can identify this, ma'am.

19 A Yes, this is where the five Winchester shell
20 casings were found before I found the other two.

21 MR. DUTREMBLE: If Your Honor please, we'd
22 offer the photograph of the five -- location of
23 the five Winchester shell casings.

24 THE COURT: All right, sir.

25 MR. PENNINGTON: No objection.

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1 (State's Exhibit Number 12, blowup photo,
2 marked for identification and received in
3 evidence.)

4 BY MR. DUTREMBLE:

5 Q Officer Stanley, with reference to State's Exhibit
6 Number 12, which is now in evidence, can you tell
7 the members of the jury what those yellow markers
8 depict of the photographs that we have offered
9 into evidence?

10 A These are just number placards. They're labeled
11 number six, seven, eight, nine. And one to the
12 side here is ten. It's not facing the camera, but
13 it's sideways of the camera.

14 These indicate the location of the shell
15 casings that were found there.

16 Q And you collected those shell casings and took
17 them back and placed them into evidence at The
18 North Charleston Police Department?

19 A Yes, I did.

20 Q Now, you also found two additional shell casings;
21 is that correct?

22 A That's correct.

23 Q And where did you find those?

24 A Those were found in the dirt area closer to
25 Crawford Street. Just in this general area of the

1 dirt parking lot.

2 Q And you marked those as well?

3 A Those were marked as well, yes.

4 Q And did you collect those as well?

5 A Yes, I did collect them.

6 Q And I don't have a good photograph to show you, so
7 we'll use this one.

8 Now, ma'am, did you have occasion to examine
9 the automobile that was driven by Sharone
10 Middleton?

11 A Yes, I did.

12 Q And did you have occasion to photograph that
13 vehicle?

14 A Yes, I did.

15 Q And did you find -- what, if anything, did you
16 find that drew your attention to that vehicle?

17 A When I arrived the driver's front door was open
18 and there were two dents on the driver's front
19 door near the handle and one hole towards the
20 bottom of the driver's door, driver's front door.

21 Q Did you take a photograph of that damage?

22 A Yes, I did.

23 Q Let me hand you these two photographs and see if
24 you can identify these, ma'am.

25 A Yes, that's the damage that was caused to the

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1 driver's side door.

2 MR. DUTREMBLE: If Your Honor please, we
3 would offer the two photographs of the damage to
4 the door.

5 (State's Exhibit Numbers 13 and 14, both
6 blowup photos, marked for identification and
7 received in evidence.)

8 BY MR. DUTREMBLE:

9 Q Officer Stanley, with reference to State's Exhibit
10 Number 14, which is now in evidence, can you
11 explain to the members of the jury what we're
12 looking at in this photograph, ma'am?

13 A Right here you can see two dents by the driver's
14 door handle, which appeared to have been caused by
15 a projectile striking the door handle.

16 Q And with reference to State's Exhibit 13, which is
17 now in evidence, can you tell us what we're
18 looking at here, ma'am?

19 A That would be the hole towards the bottom of the
20 door panel, which also appeared like a projectile
21 had struck it.

22 Q Now, you indicated that you had recovered a
23 projectile from the scene; is that correct?

24 A That's correct.

25 Q And where did you find that projectile?

1 A That was located in-between the two shell casings,
2 just several feet away from the vehicle.

3 Q And we had already seen that in State's Exhibit
4 Number -- that would be State's Exhibit Number 9
5 with traffic cones; is that correct?

6 A That's correct.

7 Q Let me hand you this photograph and ask you if you
8 can identify that, ma'am.

9 A Yes, I can. That's a projectile that I recovered
10 from the scene.

11 MR. DUTREMBLE: Your Honor, we would offer
12 the photograph of the projectiles.

13 (State's Exhibit Number 15, blowup photo,
14 marked for identification and received in
15 evidence.)

16 BY MR. DUTREMBLE:

17 Q Officer Stanley, with reference to State's Exhibit
18 Number 15, which is now in evidence, can you tell
19 me, ma'am, what we're looking at?

20 A That's the projectile that was recovered from the
21 scene near the vehicle, and is basically in the
22 same condition that it was in when I found it.

23 Q And you found that in the dirt parking lot; is
24 that correct?

25 A That's correct.

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1 Q And you took that projectile into your custody and
2 turned it in as evidence?

3 A Yes, I did.

4 Q After securing the evidence at the crime scene,
5 ma'am, did you have occasion to attend the autopsy
6 of Sharone Middleton?

7 A Yes, I did.

8 Q And on what date did you do that; do you recall?

9 A That was on February the fourth, which was the
10 next day.

11 Q And where was the autopsy held?

12 A It was being held at Charleston County Memorial
13 Hospital.

14 Q And at the autopsy did you recover any additional
15 evidence, ma'am?

16 A Yes, I did.

17 Q And what did you recover there?

18 A I recovered an additional projectile that was
19 removed from the victim's body.

20 I also collected a gunshot residue kit off of
21 the victim -- from the victim's hands.

22 Q And did you have occasion to get from MUSC Public
23 Safety a second projectile?

24 A Yes, I did. I receive that on the fifth of
25 February.

1 Q And did you take those projectiles into your
2 custody and turn them into evidence?

3 A Yes, I did.

4 Q Let me hand you those four photographs, ma'am, and
5 ask you if you can identify these.

6 A The first one is the projectile removed from the
7 victim's clothing that I received from public
8 safety on the fifth.

9 And then there is a projectile removed from
10 the victim's -- well, it's the same, it's a
11 different shot of the same projectile.

12 Then there's a projectile that was removed
13 from the victim of the autopsy, a side view of it,
14 and a view from the top of the same projectile we
15 removed from the victim at the autopsy.

16 Q And these are the same projectiles that you took
17 into your custody and maintained until trial
18 today?

19 A Yes, they are.

20 MR. DUTREMBLE: If Your Honor please, we
21 would offer these four photographs into evidence.

22 THE COURT: All right, sir.

23 MR. PENNINGTON: No objection.

24 (State's Exhibit Numbers 16, 17, 18 and 19,
25 all blowup photos, marked for identification and

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1 received in evidence.)

2 BY MR. DUTREMBLE:

3 Q Officer Stanley, with reference to -- excuse me
4 one second.

5 With reference to State's Exhibit Number 19,
6 which is now in evidence, can you tell us, ma'am,
7 what this is?

8 A This is the projectile that I received from public
9 safety that was received by them from EMS, which
10 was removed from the victim's clothing in the EMS
11 wagon.

12 Q And with reference to State's 18, which is now in
13 evidence, is this another photograph of the same
14 projectile?

15 A Yes, this is the same projectile just from a
16 different angle.

17 Q And a projectile is nothing more than a fired
18 bullet; is that correct?

19 A That's correct.

20 Q And looking at State's Exhibit Number 17, can you
21 tell us what that is, ma'am?

22 A This is the projectile that I recovered from the
23 autopsy from the victim's body.

24 Q And with reference to State's Exhibit Number 16,
25 is this another shot of that same projectile

1 removed from Sharone Middleton?

2 A Yes, this is that same projectile, just a
3 different angle, top of the projectile.

4 Q Thank you, ma'am. Now, early in the morning of
5 the fourth of February, did you have occasion,
6 Officer Stanley, to respond to Byron Slater's
7 residence pursuant to the execution of a search
8 warrant?

9 A Yes, I did.

10 MR. PENNINGTON: If Your Honor, please. I
11 would just like to remind the Court of my
12 continuing objection to the fruits of any search
13 warrant.

14 THE COURT: That objection is in the record
15 as is my ruling thereupon.

16 MR. PENNINGTON: Thank you very much, Your
17 Honor. We would ask for a continuing objection
18 from this point forward.

19 THE COURT: I will accept that.

20 MR. PENNINGTON: Thank you, sir.

21 BY MR. DUTREMBLE:

22 Q Officer Stanley, before you went in to the
23 residence of Byron Slater, did you have occasion
24 to locate and seize any evidence from the yard of
25 his house?

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1 A Yes, I did. Outside the front steps of the
2 residence, I was advised by Corporal Hernandez
3 that he had located eight Winchester nine
4 millimeter shell casings from the ground next to
5 the stairway.

6 Q Did you seize those eight millimeter shell casings
7 to take into evidence?

8 A Yes, I did.

9 Q Did you have occasion to go into the residence
10 itself, ma'am?

11 A Yes, I did.

12 Q And inside that residence did you have occasion,
13 ma'am, to locate a cardboard box?

14 A Yes, I did.

15 Q And what was contained inside that cardboard box,
16 ma'am?

17 A Inside the cardboard box was a Browning Arms make
18 nine millimeter handgun with a serial number of
19 245NY53116.

20 There was one nine millimeter magazine inside
21 the gun containing 13 Winchester Silver Hollow
22 Point bullets.

23 Also in the box there was one box of
24 Winchester nine millimeter ammunition, which
25 within the box itself contained nine additional

1 Winchester Silver Hollow Point bullets.

2 Q Did you photograph all those items you just
3 mentioned?

4 A Yes, I did.

5 Q Let me hand you these two photographs and ask you
6 if you can identify these, ma'am.

7 A Yes, this is the box that was located in the
8 bedroom closet containing the nine millimeter gun
9 and ammunition and an additional box of .25
10 caliber ammunition.

11 Q And do these photographs fairly and accurately
12 depict the gun and the contents of the box as you
13 found them?

14 A Yes, it does.

15 MR. DUTREMBLE: If Your Honor please, we'd
16 offer the two photographs into evidence.

17 THE COURT: All right, sir.

18 MR. PENNINGTON: No objection.

19 (State's Exhibit Numbers 20 and 21, blowup
20 photos, marked for identification and received in
21 evidence.)

22 BY MR. DUTREMBLE:

23 Q Officer Stanley, with reference to State's Exhibit
24 Number 21, can you tell the members of the jury
25 what that photograph depicts?

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1 A This photograph is a picture of the box that
2 contained the nine millimeter handgun, which was
3 located on the top shelf of a bedroom closet.

4 Q Was that Byron Slater's bedroom?

5 A As far as I know, yes.

6 Q With reference to State's Exhibit Number 20, can
7 you tell us what we're looking at there, ma'am?

8 A This is the contents of the box on that same
9 shelf. It has been moved from the shelf in order
10 to take the photograph.

11 And that is the nine millimeter Browning Arms
12 handgun.

13 Underneath it is the box of nine millimeter
14 ammunition. And the yellow box is .25 caliber
15 ammunition.

16 Q Now, you indicated you found that -- well, I'm
17 sorry, strike that. Let me rephrase that
18 question.

19 Did you find any additional items of evidence
20 in Byron Slater's residence that you seized that
21 day, ma'am?

22 A Yes, I also seized a Armi-Galesi-Brescia-Brevetto,
23 six point 35 caliber handgun, the serial number
24 345566, which also had a .25 caliber magazine with
25 six RP brand .25 caliber bullets.

1 And I also seized a black mesh holster and
2 the box of the .25 caliber ammunition that was
3 located in that same box. And also one Federal
4 .22 caliber bullet.

5 Q And for the benefit of the Court Reporter, could
6 you spell that gun, because I know she couldn't
7 get that.

8 A It's A-R-M-I dash G-A-L-E-S-I dash B-R-E-S-C-I-A
9 dash B-R-E-V-E-T-T-O.

10 Q Let me hand you these two photographs, ma'am, and
11 ask you if you can identify these.

12 MR. PENNINGTON: Your Honor, before she does
13 that, may we approach?

14 THE COURT: Yes, sir.

15 (WHEREUPON, a bench conference was held off
16 the record, in the presence of the jury, but out
17 of the hearing of the jury.)

18 MR. PENNINGTON: Were you getting that down?

19 THE COURT REPORTER: No, I wasn't.

20 MR. PENNINGTON: I'll just add that
21 afterwards.

22 THE COURT: Okay.

23 BY MR. DUTREMBLE:

24 Q Can you identify this photograph, ma'am?

25 A Yes, I can. This was a picture taken of the 25 --

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1 of the six point 35 caliber handgun, the
2 Armi-Galesi-Brescia-Brevetto handgun that was
3 recovered in a dresser drawer, along with a
4 magazine with ammunition in it, and the black mesh
5 holster that I mentioned.

6 MR. DUTREMBLE: If Your Honor please, we
7 would offer the two photographs at this time,
8 subject to Mr. Pennington's objection.

9 THE COURT: All right, sir.

10 (State's Exhibit Numbers 22 and 23, both
11 blowup photos, marked for identification and
12 received in evidence.)

13 BY MR. DUTREMBLE:

14 Q Officer Stanley, with reference to State's Exhibit
15 Number 23, which is now in evidence, can you tell
16 the members of the jury what they're looking at on
17 the screen?

18 A On the bottom is the black mesh holster that I
19 referred to. And this is the magazine that
20 contained the six RP brand .25 caliber bullets.

21 Q And with reference to State's number 22, can you
22 tell the members of the jury what they're looking
23 at on the screen?

24 A This is the handgun I referred to, the six point
25 35 caliber handgun with a serial number of 345566

1 that was located in that drawer.

2 Q All these items were located in the same bedroom
3 that you recovered the other items that you
4 described?

5 A Yes, they were.

6 Q Now, lastly, did you have occasion on February
7 fifth to go back to the scene of the crime there
8 at the corner of Jenkins and Crawford to do any
9 additional investigation?

10 A Yes, I did. I responded back at nine o'clock that
11 morning.

12 Q And what was the purpose of your return to the
13 scene of the crime?

14 A I was advised by Corporal Palmer that a teacher
15 who had been in that parking--

16 MR. PENNINGTON: Objection to the hearsay,
17 Your Honor.

18 THE COURT: I sustain that.

19 BY MR. DUTREMBLE:

20 Q Let me ask this question. When you got to the
21 scene of the crime, was there another automobile
22 parked there?

23 A Yes, there was.

24 Q Was that a--

25 A Well, the initial scene of the crime, no. On

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1 February the fifth, yes.

2 Q On February fifth?

3 A Yes.

4 Q When you responded on the fifth, was there a
5 vehicle parked there?

6 A On February fifth there was a vehicle parked in
7 the parking lot.

8 Q It was a different vehicle than Sharone
9 Middleton's vehicle?

10 A Yes, it was.

11 Q And what, if anything, did you notice about that
12 particular vehicle, ma'am?

13 A There was damage to the vehicle, the driver's side
14 vehicle. There was a hole in the driver's
15 side-door where it appeared that it had been
16 struck by a projectile.

17 Q And did you make any efforts to try to recover
18 that projectile?

19 A I did. We took it to Low Country Paint and Body
20 Shop on Rivers Avenue where they attempted to
21 remove the door panel to retrieve the projectile
22 from the vehicle.

23 Q And were you able to recover anything?

24 A We recovered a small fragment of a projectile from
25 the interior portion of the door.

1 MR. PENNINGTON: Your Honor, I do have an
2 objection. Would you like me to go ahead and
3 state it?

4 THE COURT: Do you want it state it in the
5 presence of the jury or outside the presence?

6 MR. PENNINGTON: Your Honor, from what I
7 understand, this is a picture of a vehicle on the
8 day following in daylight hours after the scene
9 has changed.

10 There is not testimony that this was
11 contemporaneous with the initial investigation.
12 And I don't believe a foundation has been laid
13 that this is in the same or similar circumstances
14 or the source of those--

15 THE COURT: Can you lay the foundation?

16 MR. DUTREMBLE: It will be linked through a
17 later witness, Your Honor.

18 The testimony is she returned the following
19 day--

20 MR. PENNINGTON: Your Honor, I do object to a
21 summarization of a witness who is not present--

22 THE COURT: I'm going to admit it at this
23 time. He's an officer of the Court. He said the
24 foundation will be laid, so I'm going to accept
25 it.

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1 Go ahead.

2 MR. DUTREMBLE: Thank you, Your Honor. Can
3 we approach on that?

4 THE COURT: The objection is duly noted, Mr.
5 Pennington.

6 MR. DUTREMBLE: Can we approach?

7 THE COURT: Yes, sir.

8 (WHEREUPON, a bench conference was held off
9 the record, in the presence of the jury, but out
10 of the hearing of the jury.)

11 BY MR. DUTREMBLE:

12 Q Officer Stanley, can you identify these two
13 photographs?

14 A Yes. This is the vehicle that I responded out to
15 on the fifth, and this is the fragment of the
16 projectile that was removed from the door of that
17 vehicle.

18 MR. DUTREMBLE: If Your Honor please, subject
19 to his objection, we would offer them into
20 evidence.

21 THE COURT: Yes, sir.

22 I have concluded -- let the record reflect
23 that that matter goes not to the admissibility,
24 but to the weight of it, and the jury may consider
25 what weight, if any, they decide to give to it.

1 MR. DUTREMBLE: Thank you, Your Honor.

2 THE COURT: All right. Go ahead.

3 (State's Exhibit Numbers 24 and 25, both
4 photos, marked for identification and received in
5 evidence.)

6 BY MR. DUTREMBLE:

7 Q Officer Stanley, with reference to State's Exhibit
8 Number 25, which is the automobile, can you tell
9 us, ma'am, what we're looking at here?

10 A This is a Nissan that I responded to. And in this
11 area right here you can see a hole that was caused
12 by the projectile, which is what I was responded
13 out to that scene to photograph.

14 Q And with reference to State's Number 24, ma'am,
15 can you tell us what we're looking at here?

16 A This is the fragment of the projectile that was
17 removed from the vehicle's door at the body shop.

18 Q And was that taken into your custody and entered
19 into evidence?

20 A Yes, it was.

21 Q Thank you. Officer Stanley, you testified
22 concerning the taking into custody of certain
23 items of evidence. Let me hand you these items,
24 ma'am, and can ask you if you can identify these?

25 A Yes, this is the box of Winchester nine millimeter

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1 bullets recovered at the suspect's residence. And
2 these are the nine Winchester Hollow Point bullets
3 that were recovered from the inside of the box.

4 Q So the box had nine bullets in it?

5 A Yes.

6 MR. DUTREMBLE: If Your Honor please, we
7 would offer the Winchester box and the nine
8 bullets.

9 THE COURT: All right, sir.

10 MR. PENNINGTON: Your Honor, just to make
11 sure that the record is clear, these are all
12 subject to the continuing objection.

13 THE COURT: Yes, sir. And, again, the record
14 will reflect that I have ruled on that.

15 (State's Exhibit Number 26, a box of
16 Winchester ammunition and nine bullets, marked for
17 identification and received in evidence).

18 MR. DUTREMBLE: May I publish this to the
19 jury, Your Honor?

20 THE COURT: Yes.

21 BY MR. DUTREMBLE:

22 Q Officer Stanley, you also indicated that you had
23 recovered certain projectiles from the victim's
24 body at the autopsy, as well as at the scene.

25 Let me hand you this packet and ask you if

1 you can identify the contents of this packet,
2 ma'am?

3 A This package contains, in a plastic container, the
4 projectile that was removed from the victim's body
5 at the autopsy.

6 It also contains a tin containing the
7 projectile recovered from public safety that was
8 collected from the victim's clothing.

9 Also another tin containing a fragment of the
10 projectile removed from the door of the Nissan
11 that I recovered on the fifth of that month.

12 And another tin containing the projectile
13 that was located at the scene.

14 MR. DUTREMBLE: If Your Honor please, we'd
15 offer these items into evidence at this time.

16 MR. PENNINGTON: No objection, Your Honor.

17 THE COURT: All right, sir.

18 (State's Exhibit Number 27, fired
19 projectiles, marked for identification and
20 received in evidence.)

21 MR. DUTREMBLE: If Your Honor please, may I
22 publish these?

23 THE COURT: Yes, sir.

24 MR. DUTREMBLE: Thank you.

25 BY MR. DUTREMBLE:

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1 Q Officer Stanley, you also indicated that you had
2 recovered eight nine millimeter shell casings from
3 the yard of the defendant's residence. Let me
4 hand you this item and ask you if you can identify
5 this, ma'am.

6 A These are the eight Winchester nine millimeter
7 shell casings that were located from the suspect's
8 residence.

9 MR. DUTREMBLE: If Your Honor please, we
10 would offer them into evidence at this time.

11 THE COURT: All right, sir.

12 (State's Exhibit number 28, eight nine
13 millimeter shell casings, marked for
14 identification and received in evidence.)

15 MR. DUTREMBLE: Your Honor, may I publish
16 these at this time?

17 THE COURT: Yes, sir.

18 BY MR. DUTREMBLE:

19 Q Officer Stanley, I believe you testified you
20 recovered nine fired nine millimeter shell casings
21 at the scene of the crime. Let me hand you this
22 packet and ask you if you can identify these,
23 ma'am.

24 A Yes, these are nine Winchester nine millimeter
25 shell casings that were located from the initial

1 crime scene near the high school.

2 MR. DUTREMBLE: We'd offer the fired shell
3 casings at this time, Your Honor.

4 THE COURT: All right.

5 MR. PENNINGTON: No objection.

6 (State's Exhibit Number 29, nine millimeter
7 shell casings marked for identification and
8 received in evidence.)

9 BY MR. DUTREMBLE:

10 Q Officer Stanley, with reference to State's Exhibit
11 29, are these the shell casings that were found at
12 the scene of the crime on the dirt road near the
13 church?

14 A Yes, they are.

15 MR. DUTREMBLE: May I publish these, Your
16 Honor?

17 THE COURT: Yes.

18 BY MR. DUTREMBLE:

19 Q Ms. Stanley, you indicated that you had found a
20 nine millimeter in a box at the defendant's
21 residence. Let me hand you this box and see if
22 you can identify this.

23 A Yes, this is the box that was located in the
24 bedroom closet on the top shelf that contained the
25 nine millimeter.

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1 MR. DUTREMBLE: Your Honor, we'd offer the
2 box at this time.

3 MR. PENNINGTON: That's no problem.

4 THE COURT: All right, sir.

5 (State's Exhibit 30, cardboard box, marked
6 for identification and received in evidence.)

7 BY MR. DUTREMBLE:

8 Q I believe you testified, Officer Stanley, that you
9 also recovered a black mesh holster. Let me hand
10 you this packet and see if you can identify this.

11 A Yes, this is the black mesh holster that was
12 located in a dresser drawer at the suspect's
13 residence.

14 MR. DUTREMBLE: If Your Honor please, we'd
15 offer the holster at this time.

16 MR. PENNINGTON: No objection.

17 (State's Exhibit Number 31, black mesh
18 holster, marked for identification and received in
19 evidence.)

20 MR. DUTREMBLE: Your Honor, may I publish
21 State's 31?

22 THE COURT: Yes, sir.

23 MR. DUTREMBLE: Thank you.

24 BY MR. DUTREMBLE:

25 Q I believe you also testified, Officer Stanley,

1 that you had recovered 13 nine millimeter hollow
2 point bullets from the defendant's residence. Let
3 me hand you this and ask you if you can identify
4 these.

5 A Yes, these are the 13 Winchester nine millimeter
6 hollow point bullets that were recovered from the
7 magazine of the nine millimeter located in the
8 closet.

9 Q And where was that magazine?

10 A It was inserted into the handgun.

11 Q So the gun was loaded?

12 A The gun was loaded with the magazine. However,
13 there was not a round in the chamber.

14 MR. DUTREMBLE: If Your Honor please, we'd
15 offer the 13 bullets into evidence.

16 THE COURT: All right.

17 (State's Exhibit Number 32, 13 bullets,
18 marked for identification and received in
19 evidence.)

20 MR. DUTREMBLE: May I publish, Your Honor?

21 THE COURT: Yes.

22 BY MR. DUTREMBLE:

23 Q Officer Stanley, I believe you testified that you
24 seized a nine millimeter gun and a magazine from
25 the defendant's residence. Let me hand you these

1 two items now and ask you if you can identify
2 these.

3 A Yes, this is the Browning Arms nine millimeter
4 handgun that was located in the bedroom closet.
5 And this is the nine millimeter magazine that was
6 located -- inserted into the same weapon.

7 Q Is this the same magazine that contained 13
8 un-fired bullets?

9 A Yes, it is.

10 MR. DUTREMBLE: If Your Honor please, we'd
11 offer the weapon and the magazine at this time.

12 MR. PENNINGTON: No objection, Your Honor.

13 THE COURT: Yes, sir.

14 MR. PENNINGTON: Your Honor, while he's
15 marking that exhibit -- well, I'll let her finish.

16 (State's exhibit Number 33, nine millimeter
17 handgun, and State's Exhibit 34, nine millimeter
18 magazine, marked for identification and received
19 in evidence.)

20 MR. PENNINGTON: Mr. Young reminds me to
21 remind the Court on the record that these are
22 still subject to that continuing objection. I
23 have no further objection when I respond to the
24 Court's inquiry.

25 THE COURT: The record will reflect your

1 continuing objection and my ruling thereupon.

2 MR. PENNINGTON: Yes, sir. Thank you.

3 MR. DUTREMBLE: May I publish them?

4 THE COURT: Yes, sir.

5 BY MR. DUTREMBLE:

6 Q Officer Stanley, we have in evidence now certain
7 projectiles and certain shell casings that you
8 have identified. Can you explain to the members
9 of the jury the difference between a shell casing
10 and a projectile?

11 A A projectile is the actual fired bullet. The
12 shell casing is the casing that surrounds the
13 bullet prior to it being fired.

14 So if you look at an un-fired bullet, as you
15 saw earlier, as you can see, on the base of the
16 bullet, there is a shell casing.

17 And when the gun is fired, it shoots out the
18 projectile and ejects the shell casing.

19 Q So the projectile is the bullet?

20 A Yes, the projectile is the actual bullet.

21 Q And the shell casing is what's left over after the
22 gun has been fired?

23 A That's correct.

24 MR. DUTREMBLE: Thank you, ma'am. I don't
25 think I have any further questions for you.

1 MR. PENNINGTON: May it please the Court,
2 Your Honor?

3 CROSS-EXAMINATION

4 BY MR. PENNINGTON:

5 Q Officer Stanley, let's pick up right there. In
6 your training as a crime scene officer, you're
7 familiar that there are other kinds of guns other
8 than the kind of gun that we have in evidence,
9 which is a semiautomatic pistol. You're familiar
10 with revolvers as well; aren't you?

11 A Familiar, yes.

12 Q And those are the kind of weapons that don't throw
13 out a shell casing when they fire?

14 A That's correct.

15 Q Turning to the -- let me just look at these
16 exhibits. Let me touch on the eight nine
17 millimeter spent shell casings that were found on
18 Crawford Street. Not on Crawford. This is on

19 [REDACTED]

20 A Yes.

21 Q [REDACTED] is about a half mile away from the
22 high school?

23 A I've never measured it, but it's in a general area
24 close to the high school.

25 Q Well, there is a neighborhood -- the high school

1 is located in a neighborhood; is it not?

2 A Yes.

3 Q And in order to get to Glenshaw, what you have to
4 do is to drive probably about eight blocks, nine
5 blocks?

6 A Roughly. I haven't counted the blocks to know
7 exactly eight or nine, but it's--

8 (brief pause.)

9 BY MR. PENNINGTON:

10 Q Okay. I think I'm ready.

11 I want to refer you to what's been previously
12 marked as State's Exhibit Number 2, which is a --
13 it's actually an enlarged overhead street layout.

14 I just ask you to take a minute and see if
15 you can orient yourself in any way. Take your
16 time.

17 A Okay.

18 Q All right. Holding State's Exhibit 2 from the
19 top, and pointing right here, that is a
20 representation of a high school campus; is it not?

21 A Yes, it is.

22 Q And we know that the shooting scene was located
23 here, near the intersection of Crawford and
24 Jenkins Avenue?

25 A That's correct.

1 Q All right. Now, if you were going to get to the
2 Glenshaw residence were you obtained the shell
3 casings, that is not depicted on this diagram at
4 all; is it?

5 A Not that I can see.

6 Q It would actually be on the other side of this
7 marshy creek area, somewhere essentially in this
8 direction?

9 A It would be traveling that way.

10 Q Okay. So there is no question that those spent
11 shell casings were not fired in connection with
12 this shooting incident that we're talking about
13 today?

14 A The one's located at 

15 Q That's right.

16 A Right. Those were the ones that I found at the
17 scene -- at the residence. And they were separate
18 from the ones located at the scene.

19 Q Okay. All right. So the jury wouldn't be
20 confused, it doesn't appear that those --- there's
21 no indication that those were fired
22 contemporaneously with this incident that we're
23 talking about then?

24 A That's correct.

25 Q Now, you mentioned that you observed what appeared

1 to be bullet holes located in Mr. Middleton's
2 families vehicle on the open driver's door; is
3 that correct?

4 A That's correct.

5 Q And that's consistent with what's previously been
6 published to the jury as State's Exhibit 14?

7 A Correct.

8 Q Okay. The orientation -- Officer Stanley, if I
9 could ask you to come down just for a moment off
10 the witness stand? Right over here, please.

11 I'm going to show you what has been
12 previously marked as State's Exhibit 9. This
13 would be a view from the Jenkins Street side of
14 the parking lot looking toward the church; would
15 it not?

16 A That's correct.

17 Q And if we wanted to orient the jury, Jenkins
18 Avenue would be behind us, and Crawford Avenue
19 would be in this direction?

20 A That's correct.

21 Q All right. And Mr. Middleton was found -- or
22 actually his clothing and items were found here,
23 and this would be the driver's side door were you
24 noticed the gunshot holes?

25 A Correct.

1 Q All right. You did not find gunshot holes on the
2 other side of this vehicle?

3 A No.

4 Q All right. And on the other side of this vehicle
5 -- I'm showing you what's been marked as State's
6 Exhibit 8. This would have been the side that
7 would have been facing Crawford?

8 A Yes, it would.

9 Q Okay. And again, no bullet holes?

10 A That's correct.

11 Q Okay. Thank you.

12 Now, the car that the Middleton family has is
13 a Mazda. I'm now going to turn your attention to
14 the Nissan that you made reference to over my
15 objection with the Solicitor. And I'm referring
16 you to State's Exhibit Number 25.

17 Now, that is a daylight photograph of a
18 vehicle that appears to have a hole in the side of
19 the driver's side door?

20 A Yes, it is.

21 Q Okay. That photograph was taken -- if this was a
22 Saturday night when the shooting occurred, this
23 photograph was taken some time on Sunday, the next
24 day?

25 A It was taken on the 5th, which would have been a

- 1 Monday morning, at nine o'clock.
- 2 Q Monday at nine o'clock. All right. So roughly a
- 3 day, day and a half later?
- 4 A Roughly, yes.
- 5 Q All right. That's all I have on that.
- 6 With regard to -- after you went to the
- 7 scene, you were also called to Medical University
- 8 Hospital to attend this autopsy?
- 9 A Yes.
- 10 Q And at that time you observed that law enforcement
- 11 had bagged the hands of Mr. Middleton?
- 12 A That's correct.
- 13 Q And that is a standard procedure in a homicide
- 14 investigation?
- 15 A Yes, it is.
- 16 Q That is what is -- it's a procedure that is to
- 17 look for gunshot residue on the hands of the
- 18 person that you're bagging?
- 19 A That's correct.
- 20 Q Now, gunshot residue can be obtained from living
- 21 people?
- 22 A Yes, it can be obtained from living or deceased
- 23 people.
- 24 Q Or deceased people?
- 25 A Uh-huh. (Answer in the affirmative.)

1 Q All right. Now, we know that Mr. Middleton
2 received EMS care there at the scene?

3 A Uh-huh. (Answer in the affirmative.)

4 Q Is that correct?

5 A I was not there when he received the care, but I
6 was advised that EMS did tend to him at the scene.

7 Q And it appeared that he also received some further
8 care at the Medical University Hospital?

9 A It appeared so.

10 Q And then subsequent to that, when he was
11 pronounced dead at some time later, you were still
12 around and attended the autopsy?

13 A He was pronounced dead, but I was still at the
14 actual crime scene. Another -- I believe it was
15 Lieutenant Cumbie, who actually bagged the
16 victim's hands into the paper bags.

17 Q And that was after he was pronounced dead?

18 A I don't know exactly when he bagged his hands. I
19 was just advised that his hands had been bagged by
20 Lieutenant Cumbie.

21 Q And your instructions were to do the gunshot
22 residue testing kit?

23 A Right, at the autopsy.

24 Q And there are two steps that are involved in that;
25 aren't there?

1 A Yes, there are.

2 Q Could you describe those to the jury?

3 A The first step requires -- using what they call --
4 refer to as sticky tabs. And basically it's just
5 a cap that has a sticky surface on the inside of
6 it and you dab the hand separately and you dab the
7 back of the hand separately and you put those in a
8 container.

9 Then you use a solution of nitric acid that's
10 provided in the gunshot residue kit on a sterile
11 cotton swab, and you swab the front of the hand
12 separately and the back of the hand separately and
13 you package them into a plastic vial that is
14 provided with the gunshot residue kit.

15 Q All right. The purpose of looking for gunshot
16 residue is to see whether or not this person has
17 handled or fired a weapon?

18 A That's generally what it was used for.

19 Q Okay. And in this case, there was no hint or
20 suggestion that Mr. Middleton had committed
21 suicide?

22 A It's just a standard practice that we do that.

23 Q Okay. A standard practice to see if this victim
24 had some time within a six hour time frame had
25 handled a firearm?

1 A Had handled or shot a firearm, that's correct.

2 Q Okay. The six hour window is significant because
3 that's the time frame that you go by because
4 you're interested in finding out if the handling
5 had been recent; right?

6 A The six hour guideline was handed down by the
7 state lab, that's what they require that we do for
8 a living person.

9 A deceased person, it can be done after six
10 hours because of different factors.

11 Q Because at that point their metabolism has
12 stopped?

13 A That's correct.

14 Q So the assumption is is that a living person, some
15 of the materials might disappear or be absorbed or
16 in some way be gone?

17 A That's correct.

18 Q After six hours?

19 A Yes, that's correct.

20 Q Okay. So you don't wait until you find a firearm
21 to look for whether or not this person handled a
22 weapon; do you?

23 You don't wait until there is a gun in
24 proximity to the person being suspected of
25 handling a gun. You go ahead and test; right?

1 A If it's a shooting-related incident then we would
2 do a gunshot residue kit on them.

3 Q Okay.

4 MR. PENNINGTON: Court's indulgence, Your
5 Honor.

6 THE COURT: Yes, sir.

7 BY MR. PENNINGTON:

8 Q Officer Stanley, I'm going to ask you to refer
9 again to your knowledge of the scene itself and
10 also to State's Exhibit 5 and State's Exhibit 6 in
11 answering my questions.

12 In this parking lot there are -- well, I'm
13 going to use State's 2 to make my point. Looking
14 at State's 2 you can recognize the high school and
15 the parking area where Mr. Middleton was killed?

16 A Yes.

17 Q And you see a circle roughly where Mr. Middleton's
18 car was?

19 A Roughly, yes.

20 Q All right. And between -- this is a dirt parking
21 lot?

22 A It's dirt and grass.

23 Q This is Jenkins Avenue here?

24 A Yes.

25 Q And there are a row of oak trees or some kind of

1 trees that essentially run along this line of the
2 parking lot?

3 A Yes, there are.

4 Q And, in fact, it's not depicted very clearly in
5 State's 5, but as you move along this line, this
6 is a little bit of a hill. The dirt slopes down
7 to the street; does it not?

8 A Yes, it does.

9 Q Okay.

10 MR. PENNINGTON: I think that's all the
11 questions I have, Your Honor.

12 THE COURT: All right, sir.

13 Any redirect?

14 MR. DUTREMBLE: I just have one question.

15 REDIRECT EXAMINATION

16 BY MR. DUTREMBLE:

17 Q Officer Stanley, there's been reference to [REDACTED]

18 [REDACTED] What is [REDACTED]

19 A [REDACTED] would be the residence of Mr.
20 Slater.

21 Q That's his house?

22 A Yes, sir.

23 MR. DUTREMBLE: Thank you, Your Honor.

24 THE COURT: All right. You may come down,
25 ma'am. Thank you.

1 We'll take one more witness prior to the
2 morning break.

3 MR. DUTREMBLE: Prior to the witness being
4 called, Your Honor, I have a stipulation that's
5 been entered into.

6 THE COURT: All right, sir.

7 MR. DUTREMBLE: If I could have it marked,
8 I'll read it, Your Honor.

9 (State's Exhibit Number 35, stipulation,
10 marked for identification and received in
11 evidence.)

12 MR. DUTREMBLE: Thank you. May I publish,
13 Your Honor?

14 THE COURT: Yes, sir.

15 MR. DUTREMBLE: Ladies and gentlemen, the
16 State of South Carolina by and through its
17 undersigned attorney, and the defendant, by and
18 through his undersigned attorney, hereby stipulate
19 and agree, one, if Doctor Kim Collins were called
20 to testify, she would testify that she is a
21 Forensic Pathologist at The Medical University of
22 South Carolina in Charleston, South Carolina.

23 Two, that on February 4th, 2001, she was
24 called upon to perform an autopsy on the body of
25 Sharone Middleton who died on February 3rd, 2001.

1 Three, that on February 4th, 2001, she
2 performed the autopsy on Sharone Middleton to
3 determine the cause of his death.

4 Four, that after examining the body of
5 Sharone Middleton, she determined that he suffered
6 two indeterminate range penetrating and
7 perforating gunshot wounds to the chest.

8 Five, that she would testify in her expert
9 medical opinion to a reasonable degree of medical
10 certainty Sharone Middleton died as a result of
11 the two gunshot wounds to the chest.

12 And it is stipulated the 13th day of
13 November, 2001, signed by myself and by Mr.
14 Pennington.

15 THE COURT: That stipulation is specifically
16 made a part of the record.

17 MR. DUTREMBLE: Thank you, Your Honor.

18 If Your Honor please, we would next call
19 Detective Widmer to the stand.

20 THE COURT: All right, sir. Is this a
21 lengthy witness?

22 MR. DUTREMBLE: He's not very lengthy, Your
23 Honor.

24 MR. PENNINGTON: Your Honor, we may need to
25 take up that matter I discussed in chambers.

1 THE COURT: Would you care to take it up now?

2 MR. PENNINGTON: Yes, sir.

3 THE COURT: All right. Well, let's just go
4 ahead and take the morning break at this time.

5 And Mr. Bailiff, get my jury such
6 refreshments as they require.

7 We'll be back in about 15 minutes, madam
8 foreman.

9 (The following was reported out of the
10 presence of the jury.)

11 THE COURT: Yes, sir, Mr. Pennington.

12 MR. PENNINGTON: I expect that Detective
13 Widmer will get into the statements that my client
14 allegedly made to him during the arrest
15 processing. We renew our objection with regard to
16 those as being fruit of this illegal arrest.

17 Furthermore, we would have an additional
18 ground to move to have it suppressed.

19 So I'll first move to let the Court rule on
20 that and then I'm going to ask Mr. Young to argue
21 the other ground.

22 THE COURT: You're asking me to rule on what
23 that I haven't ruled on?

24 MR. PENNINGTON: Nothing. You've essentially
25 provided us a ruling earlier, I'm just simply

1 renewing that ruling as to the statement.

2 THE COURT: Yes, sir. My ruling will stand
3 with regards to that.

4 MR. YOUNG: In addition to the previous
5 objection to the statement, we would also argue
6 that the statement, which is not inculpatory in
7 nature, is, A, not relevant, and B, is an attack
8 on the defendant's character without him having
9 first put his character at issue.

10 THE COURT: Where in is the statement
11 attacked on his character?

12 MR. YOUNG: The statement would be admitted
13 by the State for the purpose of showing that he
14 lied to the police.

15 THE COURT: Well, in what regard, that he--

16 MR. YOUNG: He said he didn't do it.

17 THE COURT: Well, aren't they entitled now to
18 test his credibility? Your colleague specifically
19 admitted in his opening argument that this
20 defendant shot the deceased.

21 If this statement says he didn't, doesn't
22 that go to credibility?

23 MR. YOUNG: Your Honor, the defense has to
24 put his credibility at issue prior to the State
25 being able--

1 THE COURT: Didn't Mr. Pennington put it in
2 issue when he specifically told the jury it's not
3 a question that this defendant shot the deceased?

4 MR. YOUNG: No, Your Honor, opening
5 statement's not evidence.

6 THE COURT: Well, what you want to say about
7 that?

8 MR. DUTREMBLE: If Your Honor please, you
9 can't just have an opening statement and not
10 expect the State to be able to reply in some
11 fashion to what has already presented to the
12 jury.

13 While it's clearly not evidence, it's an
14 affirmative statement on the part of the defense
15 that this is our defense, we shot him, but you
16 can't prove malice.

17 Well, now what I have is not one statement,
18 but two statements, both of which are
19 inconsistent, which I am entitled and allowed by
20 the rules to put into evidence.

21 THE COURT: Beyond that issue, what else is
22 it in the statement that you need?

23 MR. DUTREMBLE: Basically they asked him --
24 it's hard to explain, Judge. The first statement
25 by Officer Widmer will be, do you have a gun?

1 Yes, I do.

2 We've shown the jury that he did have the gun
3 that he said he did.

4 Then he tells the detective, I didn't shoot
5 him, but I was there and I ran to the scene and I
6 heard the gunshots.

7 Then he's interviewed by Sergeant Hester, and
8 he says, Huh-uh, I was blocked in by a car, I
9 never got to the scene. We didn't have anything
10 to do with that.

11 Totally inconsistent, both of them, which
12 believe I'm entitled to show to the jury.
13 Especially after he's read his Miranda warnings
14 and waived them.

15 THE COURT: Clearly on that issue he's
16 entitled to bring in what--

17 MR. YOUNG: The traditional reason to allow
18 a, quote, confession in evidence is because it's
19 admissable hearsay because it's a statement
20 against interest.

21 This is not offered to prove the truth of the
22 matter asserted. It's not hearsay. Therefore, it
23 doesn't qualify under any of the exceptions.

24 And the only reason they're offering it is to
25 attack or impeach the defendant's character, which

1 he has to first put into issue before they can
2 attack--

3 THE COURT: How is that attacking his
4 character?

5 MR. YOUNG: They're calling him a liar.

6 THE COURT: That goes to his credibility.

7 MR. YOUNG: That's his character.

8 THE COURT: Well, sir, I'm going to let it
9 in. I understand your position. You're protected
10 for the record, but I conclude that I've already
11 made a finding outside the presence of the jury
12 that it's appropriate based on the fact that I
13 find it was freely and voluntarily made in the
14 official finding and that he was given his Miranda
15 warnings. I've already determined that as an
16 issue for the jury.

17 MR. YOUNG: I understand the issue that it
18 was voluntary and it was a waiver -- or Your Honor
19 has ruled that it was a waiver of his Miranda
20 warnings.

21 It's still an out-of-court statement. And it
22 still doesn't qualify under any of the rules of
23 admissibility of evidence.

24 THE COURT: Well, sir, I understand your
25 position and respectfully disagree.

1 MR. YOUNG: Thank you, Your Honor.

2 THE COURT: All right.

3 MR. YOUNG: I think Mr. Pennington has
4 another issue.

5 THE COURT: Yes, sir.

6 MR. PENNINGTON: I would only add in reply to
7 the Court's observation of the Solicitor's
8 suggestion that somehow opened the door to my
9 client's character in the opening statement--

10 THE COURT: No, sir, I'm not ruling in any
11 way that you have opened the door to his
12 character.

13 Let this record clearly say that. I haven't
14 ruled that you have done that at all.

15 I'm just saying that based on your opening
16 statements that he candidly admits that he shot
17 the deceased, they're entitled to show his
18 statement where he said he didn't do it. That's
19 all I'm ruling on now. Let there be no question.

20 You're not attempting to get into his
21 character in any way.

22 MR. DUTREMBLE: No, sir, not at all.

23 THE COURT: No, sir. Character is not an
24 issue at this point. If it becomes an issue I'll
25 rule on it.

1 MR. PENNINGTON: Judge, let me--

2 THE COURT: Wait a minute now. Let me make
3 this clear. I have said preliminarily that I have
4 found that the statement made was freely and
5 voluntarily made without any threat, hope of
6 reward or duress.

7 I have further found as a preliminary matter
8 that he was given his Miranda warnings and waived
9 his constitutional rights. That's all I'm saying.

10 MR. PENNINGTON: I understand, Your Honor.

11 THE COURT: Now, let that be clear. And I'm
12 going to charge again -- the moment that statement
13 comes in, I'm going to give them an additional
14 charge on these issues.

15 I am not saying that I am letting his
16 character come in.

17 I'm letting his statement come in. I do
18 conclude that this statement may go to his
19 credibility based on your opening statement that
20 he candidly admitted that he did it.

21 But that's another -- regardless of that
22 issue, this is a statement made on the night of
23 this event, or the next morning, and I conclude
24 that it's proper under those circumstances, all
25 right, sir?

1 MR. PENNINGTON: Only with regard to the very
2 end of your findings, Your Honor, I would take
3 exception to this limited extent--

4 THE COURT: Which end are you talking about?

5 MR. PENNINGTON: The end that relates to my
6 opening statement. I think that the record will
7 show that in opening statement I never made
8 reference at all to my client said he did it.

9 What I said is is that the evidence in this
10 case would show that Byron Slater shot the man;
11 and that is not in dispute.

12 THE COURT: Let me say this to you.
13 Regardless of that statement made, I still find it
14 admissible regardless of that. That was
15 incidental.

16 But regardless of that, Mr. Pennington, that
17 statement made on that occasion, that soon after
18 this event, is admissible for the jury's
19 consideration under proper instructions, which I
20 intend to give them at the moment it's introduced
21 in the trial of this case.

22 But I am not admitting it simply because
23 there was an assertion by you in opening
24 statement, but I conclude under all the other
25 circumstances in the case it is admissible for

1 whatever weight the jury wishes to give.

2 MR. PENNINGTON: Yes, sir.

3 THE COURT: Are we clear on that?

4 MR. PENNINGTON: Yes, sir.

5 THE COURT: Anything further from the State?

6 MR. DUTREMBLE: Not at this time, Your Honor.

7 Thank you.

8 THE COURT: All right, sir.

9 MR. PENNINGTON: Your Honor, I believe
10 they're going to redact the statement prior to its
11 admission when we get to that point with Detective
12 Hester.

13 THE COURT: Yes, sir, and I agree with you on
14 that. Now that would go perhaps to his character
15 and I am requiring a redaction.

16 You understand that though.

17 MR. YOUNG: Yes, sir.

18 MR. DUTREMBLE: Yes, sir, I'll go downstairs
19 right now and take care of that.

20 THE COURT: Sir?

21 MR. DUTREMBLE: I will go downstairs right
22 now and take care of that.

23 THE COURT: All right. Let it be abundantly
24 clear now, that part of his situation should not
25 and will not be a part of this statement.

1 MR. DUTREMBLE: That's correct, Your Honor.

2 THE COURT: All right, sir. So you'll need
3 to go take care of that now?

4 MR. DUTREMBLE: Yes, sir. If I could have
5 five minutes I'll be able to do that.

6 THE COURT: Yes, sir, I'll be delighted to do
7 that.

8 Let's take a recess.

9 MR. DUTREMBLE: Thank you, Your Honor.

10 (Morning recess.)

11 THE COURT: Are we ready now to proceed?

12 MR. DUTREMBLE: We are, Your Honor.

13 THE COURT: Have you shown Mr. Pennington
14 that portion of the statement that you have
15 redacted?

16 And counsel, since it's your argument, you'd
17 better take a look at it too.

18 MR. YOUNG: I've got it, Your Honor.

19 THE COURT: All right, sir.

20 Now, does the officer that's going to testify
21 know we don't want to bring that up?

22 MR. DUTREMBLE: Yes, sir.

23 THE COURT: That very possibly could cause a
24 mistrial, and I don't want that to occur here.

25 MR. DUTREMBLE: I understand that. I've

1 instructed the officer and--

2 THE COURT: All right, sir.

3 Now, Mr. Pennington?

4 MR. PENNINGTON: Yes, sir.

5 THE COURT: Do you have anything else for the
6 record on that?

7 MR. PENNINGTON: No, sir.

8 THE COURT: Bring the jury in.

9 At the time that statement comes in I'm going
10 to stop and make a preliminary charge to the jury
11 on that issue.

12 MR. DUTREMBLE: Yes, sir.

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16 (Please see Volume II.)

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1 STATE OF SOUTH CAROLINA

IN THE COURT OF
GENERAL SESSIONS

2 COUNTY OF CHARLESTON

01-GS-10-3221

01-GS-10-3226

3
4 The State of)
South Carolina)
5 vs.)
Lord Byron Barclay)
6 Slater,)
Defendant)

TRANSCRIPT OF RECORD
November 13-15, 2001
Charleston, S.C.
Volume II

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10 THE HONORABLE JUDGE EDWARD B. COTTINGHAM

11
12 A P P E A R A N C E S:

13 Mr. Dale DuTremble, Assistant Solicitor
14 Attorney representing the State

15 Ms. Elizabeth Sumner, Esquire
16 Attorney representing the State

17 Mr. Ashley Pennington, Esquire
Attorney representing the Defendant

18 Mr. S. Boyd Young, Esquire
19 Attorney representing the Defendant

20
21
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24
25 MICHELE R. DARLING
Circuit Court Reporter

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1 (The following was reported in the presence
2 of the jury.)

3 THE COURT: All right, sir, call your next
4 witness.

5 MR. DUTREMBLE: Thank you, Your Honor. We
6 call Chris Widmer to the stand.

7 Chris Widmer,

8 Being first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. DUTREMBLE:

11 Q Detective Widmer, by whom are you employed, sir?

12 A I'm employed with The City of North Charleston
13 Police Department.

14 Q And in what capacity, sir?

15 A I'm a detective with that agency.

16 Q And how long have you been a detective with The
17 North Charleston Police Department?

18 A I've been a detective with them since 1994.

19 Q Were you acting in that capacity on February the
20 4th of this year, sir?

21 A Yes, I was.

22 Q Did you have occasion to become involved in the
23 investigation of the shooting of Sharone Middleton
24 on that date?

25 A Yes, I did.

1 Q And can you relate to the members of the jury how
2 you became involved in the investigation?

3 A I was called at home to respond to the city hall,
4 to our Police Department, in reference to a
5 shooting.

6 Q Okay. Chris, I know you've got a cold and you're
7 not feeling well--

8 A I apologize. I've also got a cough lozenge in.

9 Q You've got to speak up if you can.

10 When you responded to city hall, did you have
11 occasion to determine what the facts of the case
12 were as they were then known by The North
13 Charleston Police Department?

14 A I was told some facts of the matter at hand, yes,
15 I was.

16 Q And in response to receiving that information from
17 other members of the Police Department, what
18 action, if any, did you take?

19 A I responded with two other detectives to an
20 address on -- if I can refer to my notes -- on
21 Glenshaw Street in order to arrest the suspect.

22 Q All right. And who was the suspect and what was
23 the address on [REDACTED]?

24 A It was [REDACTED] And I was sent out to
25 arrest Lord Byron Slater.

1 Q All right. What happened when you got to 1079
2 Glenshaw? Did you notice anything in the yard?

3 A There was a white Monte Carlo vehicle, which had
4 been told to me by the other detectives in the
5 case that was--

6 MR. PENNINGTON: Objection, Your Honor.

7 THE COURT: I will let that statement stand.

8 Go ahead.

9 BY MR. DUTREMBLE:

10 Q Were there any lights on in the house?

11 A There was a porch light on on the front porch.

12 Q And who else was with you at this time?

13 A Directly with me was a Corporal Terrell Palmer and
14 Fletcher King.

15 Q They're both North Charleston Police Department
16 employees?

17 A Yes.

18 Q What did you do when you got up there to Mr.
19 Slater's house?

20 A Knocked on the door.

21 Q About what time of day was this?

22 A About five a.m. or so. A little after five.

23 Q And what happened when you knocked on the door?

24 A Mr. Slater opened the door and came outside.

25 Q How was he dressed?

CHRIS WIDMER-DIRECT EXAMINATION BY MR. DUTREMBLE

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1 A He was dressed in dark -- I want to say dark sweat
2 shirt, dark pants and house slippers.

3 Q Now, when he opened the door, were y'all standing
4 there with guns drawn?

5 A No, sir.

6 Q And you say he came outside?

7 A Yes, sir.

8 Q And what did he do when he came outside?

9 A He stepped out from inside his house onto the
10 porch, pulled the door closed behind him and asked
11 if he could help us. We identified ourselves and
12 he asked if he could help us officers.

13 Q All right. Did you tell him why you were there?

14 A Yes, we did.

15 Q And did you tell him you were there because he was
16 a suspect in a murder case?

17 A Yes, we did.

18 Q Did you place him under arrest?

19 A Yes, we did.

20 Q And after placing him under arrest, what action,
21 if any, did you take?

22 A I advised him of his Miranda rights.

23 Q And how did you do that?

24 A I can take it out and show. I have a card I keep
25 in my badge wallet that I use to read people their

1 rights whenever they're not with me at the station
2 that I can go by a piece of paper that we have.
3 And I read him his rights by the card.

4 Q All right. Do you have that paper with you?

5 A Yes, I do.

6 Q Is that the card that you used to read the
7 defendant his Miranda warnings with?

8 A Yes, sir.

9 Q And can you read the warnings that you gave him to
10 the jury, please?

11 A I read it from the card: Before we ask you any
12 questions you must understand you have the right
13 to remain silent. Anything you say cannot be used
14 against you in Court. You have the right to talk
15 to a lawyer for advice before we ask you any
16 questions and have a lawyer with you during
17 questions.

18 If you cannot afford a lawyer, one will be
19 appointed for you before any questioning if you
20 wish.

21 And then we always ask, do you understand,
22 and then are you willing to answer some questions.

23 Q Did he indicate that he understood?

24 A Yes. Well, I asked him did he understand his
25 rights, and he said he did.

CHRIS WIDMER-DIRECT EXAMINATION BY MR. DUTREMBLE

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1 Q Did he say he would be willing to answer
2 questions?

3 A We didn't go into that part of it there, no.

4 Q So you didn't ask him any questions at that time?

5 A No pertaining -- I just advised him of his rights,
6 do you understand your rights. And he told us
7 that we were mistaken.

8 Q Okay. Now, before I get into something else, let
9 me ask you, sir, is [REDACTED] Street within
10 the city limits of North Charleston?

11 A Yes, sir.

12 Q In the State of South Carolina?

13 A Yes, sir.

14 Q After reading him his Miranda warnings, him being
15 Byron Slater, did you have occasion to transport
16 him to the North Charleston Police Department?

17 A Yes, sir.

18 Q And what, if anything, took place at the North
19 Charleston Police Department?

20 A When we got back to the station, we have a table
21 in our, what we call our detective bay area, such
22 as this, a pretty big table that we sit with
23 people and talk with them. He sat down with us.

24 At that point in time, as Mr. Slater was
25 there with us at the table, our police radio that

1 we have in our detective division alerted us how
2 they had found some bullet casings in front of the
3 house.

4 Q And when you heard that transmission concerning
5 bullet casings in front of his house, did you have
6 occasion to ask him any questions?

7 A Yes, sir, I did.

8 Q What did you ask him?

9 A I asked him if he owned any guns. If he owned a
10 nine millimeter. And he told me that he did.

11 Q Okay. Did he own any other handgun?

12 A That as well as a .25 caliber.

13 Q Now, based upon the information that you had from
14 others in the North Charleston Police Department
15 and information that Mr. Slater had provided you,
16 did you have occasion to prepare a search warrant
17 for his residence?

18 A Yes, sir, after that statement was made, my duty
19 was then to prepare the typing, you know, writing
20 it out, the search warrant.

21 I prepared that and then later that morning
22 took that to a Judge to get signed.

23 Q Okay. And which Judge did you take that search
24 warrant to?

25 A I took the search warrant to Judge David Coker.

1 Q At about seven o'clock in the morning?

2 A Yes, sir.

3 Q And this would have been Sunday morning; is that
4 correct?

5 A This would have been Sunday morning, yeah.

6 Q And did you have occasion to take that search
7 warrant to Byron Slater's house?

8 A Yes, sir. After leaving Judge Coker's house, a
9 ten minute ride from there to Glenshaw Street,

10 [REDACTED] where this search warrant was
11 executed.

12 Q And was there anybody home at the time the search
13 warrant was executed?

14 A By that time -- I want to say Mr. Slater's mother
15 was home, his sister and his brother were there at
16 the house.

17 Q Let me hand you what's been marked already as a
18 State's exhibit and ask if you can identify this,
19 sir.

20 MR. DUTREMBLE: And I'm speaking of State's
21 Exhibit Number 20, for the record.

22 BY MR. DUTREMBLE:

23 Q Can you identify that, sir?

24 A Yes, sir, that looks like the nine millimeter gun
25 that we found in a box in the closet of his

1 bedroom.

2 Q Okay. Does State's Exhibit Number 33 appear to be
3 the same weapon you see depicted in a box in the
4 photograph?

5 A Looks of it are to be the same, yes.

6 Q And this was seized pursuant to search warrant?

7 A Yes.

8 Q As well as the contents of the box?

9 A Yes, sir.

10 Q Did it include ammunition?

11 A Yes, sir, the bullets in the box.

12 Q And was Officer Cathy Lynch present when the
13 search warrant was executed at Mr. Slater's
14 residence?

15 A Cathy Lynch was at the scene. After we were done
16 with the search warrant, that item was turned over
17 to her for her processing.

18 Q Okay. And later on, about ten o'clock in the
19 morning, did you have occasion to return back to
20 the North Charleston Police Department after the
21 search warrant had been executed?

22 A Yes, sir.

23 Q Did you have occasion to speak with Mr. Slater?

24 A Yes, sir.

25 Q Did you ask him any questions about whether or not

1 he had been at the scene of the crime?

2 A He told me that he had been at the dance that
3 night at the North Charleston High School. They
4 had a dance the night -- well, I spoke to him at
5 ten o'clock that morning, but the prior evening
6 there had been a high school dance.

7 He said, yes, he had, he had heard the
8 shooting and that he ran to the area to see what
9 happened. But he also said that he didn't shoot
10 anybody.

11 Q And after going to the scene, executing the search
12 warrant, speaking with Mr. Slater, did you have
13 any further contact with this particular case?

14 A No, sir. After that part of my duty was done,
15 Sergeant Hester released me from any further
16 activities in this case.

17 MR. DUTREMBLE: Thank you very much, Officer
18 Widmer. Please answer any questions of Mr.
19 Pennington.

20 THE COURT: One moment, please.

21 Ladies and gentlemen of the jury. There has
22 been admitted into the record of this case an
23 alleged statement said to have been made by the
24 defendant.

25 Before you may consider this statement as

1 evidence for any purpose, you must determine four
2 questions.

3 First, did the defendant make the statement.
4 Secondly, was the defendant warned of his
5 constitutional rights. Thirdly, did the defendant
6 knowingly and intelligently waive his
7 constitutional rights. And fourth, was the
8 statement given voluntarily.

9 The fact that this Court has admitted this
10 statement into evidence should not be considered
11 by you as any evidence whatsoever that the
12 defendant made such a statement or that the
13 required constitutional safeguards were, in fact,
14 provided and waived by the defendant or that the
15 statement was voluntarily given, because these
16 issues are for you, the jury, to determine.

17 The State must prove beyond a reasonable
18 doubt each of the four requirements that I have
19 just stated to you before you may consider the
20 statement as evidence for any purpose whatsoever.

21 Now, as to the first requirement, did the
22 defendant make the statements, if you conclude
23 that the defendant did not make that statement,
24 you must completely and totally disregard the
25 statement.

1 If you find that this defendant made the
2 statement, you must next consider the second
3 requirement, was the defendant warned of his
4 constitutional rights.

5 When an individual is taken into custody, or
6 otherwise deprived of his freedom of action in any
7 significant way by police or a law enforcement
8 officer, he must be warned of his constitutional
9 rights prior to and before any custodial
10 interrogation or a custodial question.

11 These rights are as follows: One, that he
12 has a right to remain silent. Secondly, that any
13 statement that he does make can and will be used
14 against him in a Court of law.

15 Thirdly, that he has the right to select the
16 lawyer of his choice. But if he does not have the
17 money or resources to employ a lawyer, the Court
18 will appoint and provide a lawyer to represent him
19 without any cost or expense to him.

20 And fourth, that he had the right to consult
21 a lawyer before answering any questions or to make
22 any statements.

23 That then that he has a right to have his
24 lawyer present with him at all times during the
25 interview and interrogation.

1 If you find that the defendant made the
2 statement, and if you conclude these
3 constitutional warnings were in fact given to this
4 defendant and that the defendant was afforded an
5 opportunity to exercise these constitutional
6 rights, you must then consider the third
7 requirement, did the defendant knowingly and
8 intelligently waive his constitutional rights.

9 If you find that the defendant, after being
10 given his constitutional warnings, knowingly and
11 intelligently waived his constitutional rights and
12 agreed to answer questions and make a statement,
13 you then may consider the fourth requirement, was
14 the statement given voluntarily.

15 A statement is not voluntary and may not be
16 used against a defendant unless it is the product
17 of an essentially free and unconstrained choice by
18 the maker.

19 If the statement is voluntary, if the
20 defendant has will to make a statement, it may be
21 used against him.

22 The true test to be applied is whether the
23 statement is freely, voluntarily and
24 understandingly made without compulsion or
25 inducement.

1 In determining whether or not the alleged
2 statement of the defendant was voluntary, you may
3 consider all of the facts and circumstances
4 surrounding the taking or the making of the
5 statement.

6 You may consider all of the evidence in the
7 case in reaching an ultimate conclusion as to the
8 voluntary of the statement.

9 With regard to the alleged statement of the
10 defendant, the State must prove by evidence each
11 and every requirement about which I have
12 instructed you beyond a reasonable doubt before
13 you may consider the statement as evidence in this
14 case.

15 Absent any one of the requirements about
16 which I have instructed you, the alleged statement
17 must be disregarded completely. And in that event
18 you will accord no evidentiary weight to it or to
19 any part of it.

20 On the other hand, if you find beyond a
21 reasonable doubt that the defendant made the
22 statement, that the defendant was given the
23 required constitutional warnings before an
24 interrogation, that the defendant intelligently
25 waived his constitutional rights and thereafter

1 gave a voluntary statement, this statement may be
2 considered by you, together with all the other
3 evidence in the case, and given such weight and
4 such value and such effect to which you conclude
5 as finders of the facts it is entitled.

6 You may proceed.

7 MR. DUTREMBLE: Thank you, Judge.

8 BY MR. DUTREMBLE:

9 Q Officer Widmer, I've just got a few more
10 questions.

11 A Yes, sir.

12 Q At any time that Byron Slater was in your presence
13 or in your custody, did he ever indicate to you,
14 sir, that he did not want to talk to you?

15 A No, sir.

16 Q Did he ever indicate to you that he wanted a
17 lawyer present?

18 A Not in front of me, no, sir.

19 Q Did he ever indicate to you that he wanted you to
20 stop questioning him and he didn't want to answer
21 any more questions?

22 A No, sir.

23 Q In speaking with Mr. Slater, did you make him any
24 promises or give him any hope of reward?

25 A No, sir.

1 Q Did you threaten him or induce him in any way to
2 talk with you?

3 A No, sir.

4 Q And the statements that he gave you that you gave
5 to the jury, were all obtained after you read him
6 his Miranda warnings; is that correct?

7 A Yes, sir.

8 MR. DUTREMBLE: Thank you, sir. Please
9 answer any questions Mr. Pennington might have for
10 you.

11 THE WITNESS: Yes, sir.

12 MR. PENNINGTON: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. PENNINGTON:

15 Q May I see the card?

16 A Yes, sir.

17 Q These were the oral warnings that you read
18 verbatim to Mr. Slater?

19 A Yes, sir.

20 Q And they tell him that he has a right to remain
21 silent and that anything he says can be used
22 against him in court; right?

23 A Yes, sir.

24 Q And that he has a right to talk to a lawyer, and
25 if he can't afford one, one will be appointed for

1 him; right?

2 A As it is on the card, yes, sir.

3 Q Nowhere in there does it say that if he starts
4 talking to you that he can stop at any time.

5 That's not contained in your warnings; is it?

6 A No, sir, not in this card, no, sir.

7 Q Thank you. And so you didn't say that to him at
8 any point?

9 A No, sir, I read it straight from the card.

10 Q Straight from the card. Thank you.

11 MR. PENNINGTON: That's all I have.

12 MR. DUTREMBLE: Nothing further, Your Honor.

13 THE COURT: All right. You may come down.

14 THE WITNESS: Thank you, Judge.

15 MR. DUTREMBLE: If Your Honor please, we'd
16 call Terell Palmer to the stand.

17 May this witness be excused, Your Honor?

18 MR. PENNINGTON: Without objection, Your
19 Honor.

20 THE COURT: Thank you, sir.

21 THE WITNESS: Thank you.

22 MR. DUTREMBLE: Judge, I'll call another
23 witness out of order with Your Honor's permission.

24 THE COURT: All right, sir.

25 MR. DUTREMBLE: We'll call Doug Hester to the

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1 stand, Your Honor.

2 DOUG HESTER,

3 Being first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. DUTREMBLE:

6 Q Sergeant Hester, can you tell us by whom you're
7 employed, sir?

8 A I'm employed by The City of North Charleston
9 Police Department.

10 Q And in what capacity are you so employed?

11 A I'm a supervisor in the detective division.

12 Q And how long have you been with The North
13 Charleston Police Department?

14 A Twenty-one years.

15 Q Were you acting as a supervisor in the detective
16 division on February the 3rd of this year, sir?

17 A That's correct.

18 Q And did you have occasion, sir, on that date to
19 become involved in the investigation of the
20 shooting of Sharone Middleton?

21 A Yes, I did.

22 Q Can you explain to the members of the jury how you
23 became involved in this case, sir?

24 A We were just leaving an event, we were providing
25 security at the North Charleston Coliseum when we

1 learned that a shooting had just occurred at North
2 Charleston High School and I advised the
3 dispatcher that I would be controlling the crime
4 scene and that I was in route to the crime scene.

5 Q And how long did it take you to get from the
6 Coliseum to the high school approximately?

7 A Just a couple of minutes.

8 Q And when you arrived to the crime scene, can you
9 describe to the jury what you found?

10 A We went to a dirt lot where we were advised by
11 several officers on the scene, to include Officer
12 Stephanie Gower, that a shooting had just
13 occurred.

14 She showed us basically where the shooting
15 had occurred at, exactly where the car was that
16 belonged to the victim, and she had contained some
17 witnesses. And I began to coordinate a team of
18 detectives and other agents that we would need to
19 investigate this incident.

20 Q Were those other police officers and other
21 detectives under your direct supervision, sir?

22 A That's correct.

23 Q And can you explain to the members of the jury
24 what direction you gave those other officers in
25 regard to this particular investigation?

1 A At the crime scene I instructed Crime Scene
2 Officer Cathy Stanley to conduct her portion of
3 the investigation, her forensic side of this
4 investigation.

5 She pretty much knows her job and she goes
6 about her business and she does it and I don't
7 recall actually directly supervising her except
8 for what she had done, and it was correct as to
9 what she had done.

10 Also there was several police officers on the
11 scene, uniformed police officers, and I
12 coordinated a grid search of the entire area to
13 include yards, areas completely around the area,
14 searching for shell casings and any weapons or
15 anything that would be connected with this crime
16 scene.

17 Q Okay. What is a grid search?

18 A That is when you get so many officers so many feet
19 apart and you walk an area and that you stay in a
20 certain area and you walk in a line together and
21 you stay together so you make sure all the areas
22 are observed, that everybody has -- you have an
23 idea that the entire crime scene has been observed
24 by the sight from the police officers.

25 Q Did you do a grid search of the dirt parking lot

1 there of the church?

2 A Yes, we did. We, did an entire grid search of
3 that scene.

4 Q And did you also do a grid search of other areas
5 surrounding the dirt parking lot?

6 A There was several houses in the area. The
7 roadway. We got in people's back yards, we went
8 around houses, we did a complete area search for
9 any kind of weapons that may have been discarded
10 at that scene.

11 Q Did you find any other discarded weapons?

12 A No, we did not.

13 Q Did you find any other discarded shell casings?

14 A Some shell casings were located as to the
15 proximity of the area. Crime Scene Officer Lynch
16 labeled the areas where we found these shell
17 casings, which was the ones near the car and some
18 in proximity to the vehicle.

19 Q And all those were located in the dirt parking
20 lot; correct?

21 A That's correct.

22 Q How about outside the dirt parking area, in the
23 roadways and the houses and the yards that you
24 described? Did you find any expended shell
25 casings out there?

1 A I don't recall finding any shell casings or
2 anything connected with the weapon or to include a
3 weapon in any area outside that immediate area.

4 Q No expended projectiles, no fired bullets, nothing
5 like that?

6 A No.

7 Q Did you then have occasion to become involved with
8 the other witnesses who Officer Gower had located
9 for you?

10 A Yes, I did.

11 Q And can you explain to the members of the jury how
12 you interacted with those witnesses?

13 A At the scene I briefly spoke with Mark and
14 Demetrius Nelson. I told them that I would want
15 to speak with them in depth and that I was having
16 them transported to The North Charleston Police
17 Department where I would speak to them more in
18 depth about what had occurred in this parking lot.

19 Q Where there any other witnesses identified at that
20 time?

21 A I believe there was people who had seen cars and
22 we had coordinated -- to their names, I don't have
23 my notes in front of me or the cases file, but
24 there was people who had seen description of cars
25 leaving and I had investigators run those people

1 down and have them brought to the station also.

2 Q So those additional witnesses met you at the North
3 Charleston Police Department itself?

4 A All of the interviews that I had done that evening
5 took place at the North Charleston Police
6 Department.

7 Q Did you have occasion, sir, to be involved in the
8 speaking with Mr. Nichols, Kenyon Nichols?

9 A Yes, I did.

10 Q How about Deshawn Brown?

11 A Yes, I did.

12 Q How about Ellis Judon?

13 A Ellis Judon, yes, I did.

14 Q Okay. And what were you talking to them about?

15 A During a preliminary interviewing with the
16 defendant, Mr. Slater, he advised us that those
17 gentlemen were with him at the step dance.

18 And we at that time began to bring those guys
19 to the North Charleston Police Department also.

20 Q Okay. So you brought them to the North Charleston
21 Police Department. What did you talk about when
22 you got them there?

23 A I talked to them about--

24 MR. PENNINGTON: Objection, Your Honor,
25 they've already testified. This is just going to

1 be hearsay recitation. I object.

2 MR. DUTREMBLE: Just in general, Your Honor.

3 All right. I'll ask a specific question.

4 THE COURT: Let's get specific, because the
5 recent rule does not permit that even though they
6 have testified previously.

7 MR. DUTREMBLE: Yes, sir.

8 BY MR. DUTREMBLE:

9 Q Did you ask them about Byron Slater shooting at
10 the scene of the crime?

11 A Yes, I did.

12 Q Did you ask them about guns at the scene of the
13 crime?

14 A Yes, I did.

15 Q Did you ask them about anybody else shooting at
16 the scene of the crime?

17 A Yes, I did.

18 Q Well, when you were interviewing Deshawn Brown,
19 did he ever tell you that he heard anybody else
20 shooting out there?

21 MR. PENNINGTON: Objection, Your Honor,
22 that's not proper.

23 THE COURT: No, sir, I will -- no, sir, I'll
24 permit that question.

25 Go ahead.

1 BY MR. DUTREMBLE:

2 Q Did he ever tell you that?

3 A I interviewed Deshawn Brown. He never once told
4 us about anybody else shooting at the scene.

5 MR. PENNINGTON: Your Honor, that's not
6 proper impeachment. He doesn't say he asked him
7 that question, Your Honor.

8 The question -- the impeachment is, you asked
9 the question, he said no. That's impeachment.

10 This is impeachment by omission, Your Honor,
11 and that's not proper.

12 THE COURT: I will permit that limited
13 inquiry.

14 MR. DUTREMBLE: Thank you, Your Honor.

15 THE COURT: Your position is noted for the
16 record.

17 BY MR. DUTREMBLE:

18 Q Did you have occasion at about six o'clock in the
19 morning to sit down with Mr. Slater there?

20 A Mr. Slater was brought to the station roughly
21 around six a.m.

22 I introduced myself to Mr. Slater. I told
23 him what he was being charged with. I issued him
24 his Miranda warnings on a written form and I began
25 to speak with him briefly about what had taken

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1 place at the school.

2 Q Okay. Let me hand you this document, sir, which
3 has already been marked as State's Exhibit 1, and
4 ask you if you recognize this, sir.

5 THE COURT: May I see that document?

6 MR. DUTREMBLE: Yes, sir.

7 THE COURT: Have you seen this document to
8 which he refers?

9 MR. PENNINGTON: I believe we have, Your
10 Honor.

11 BY MR. DUTREMBLE:

12 Q Sergeant Hester, with reference to State's 1, can
13 you identify that document, sir?

14 A This document is labeled North Charleston Police
15 Department Advice of Constitutional Rights. This
16 is a document that's standard that we use prior to
17 interviewing anybody who's suspected of a crime.

18 Prior to taking any statements or interviews
19 we issue this document to them where we read them
20 their rights aloud, they read it and they sign it
21 indicating that they understand their rights.

22 Q Did you read that document to Byron Slater?

23 A Yes, I did.

24 Q Did he sign it?

25 A He signed it and he also initialed all sentences

1 or all advisements that I gave him.

2 Q All right. Did you also sign and date it?

3 A Yes, I did.

4 Q Can you read to the members of the jury what
5 rights you advised him of from document?

6 A The way I instruct anybody, when I bring them in
7 to interview, is I explain to them this is third
8 party, I'm speaking on behalf of them, and that I
9 read it to them as if they're reading it
10 themselves and they can read it along with me.

11 I say, number one, that you have been -- you
12 have the absolute right to remain silent. You do
13 not have to answer any questions or give a
14 statement and this fact cannot be used against
15 you.

16 And then I ask him to -- if he understands
17 that, to put his initials.

18 On statement number one he wrote the initials
19 L.B.

20 In the second statement I said, if I do
21 answer questions or give a statement, anything I
22 say can and will be used against me in a Court of
23 law. He put his initials L.B. by number two.

24 On number three I advised him that I have the
25 right to consult with a lawyer of my choice before

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1 I answer questions or give a statement and also
2 have him present while I am being questioned. He
3 initialed three indicating that he understood that
4 right.

5 Q How did he indicate that?

6 A L.B.

7 And number four I said, if I wish to talk to
8 a lawyer or have him present but am unable to
9 afford to hire a lawyer, one will be appointed to
10 represent me free of charge.

11 He labeled it, on number four, L.B.

12 On number five I said, if I decide to answer
13 questions or give a statement without having a
14 lawyer present representing me, I have the
15 absolute right during this interview to stop
16 answering questions and to remain silent. He
17 labeled it L.B. on number five.

18 And then the last statement prior to signing
19 his signature it says, I fully understand each of
20 these rights as explained to me. I witnessed it.
21 He signed it and we dated it and put the time on
22 which I dated and timed this document.

23 Q And what time was that document executed?

24 A At 0555, which was five minutes to six in the
25 morning.

1 Q All right. And then below that is an additional
2 line. Can you read that line, please, sir?

3 A I asked him, having his rights in mind did he wish
4 to waive his rights and answer questions
5 concerning the charge of murder, understanding
6 that I have not threatened him, forced him or
7 promised him -- made any kind of promises to him,
8 it says -- this is what it says. Having these
9 rights in mind, I wish to waive these rights and
10 answer questions concerning the charge of murder.

11 No threats, force or promises of any kind
12 have been made to me by anyone to cause me to
13 waive these rights and or answer questions.

14 He signed it. We dated it and timed it and I
15 signed it witnessing his signature.

16 Q So you gave him his Miranda warnings at five
17 minutes to six in the morning. Can you explain to
18 the members of the jury what you were doing at
19 that time?

20 A I was coordinating every interview that was going
21 on in the building. I had several detectives who
22 had gone out, and like I said, the preliminary
23 part of my interview with Mr. Slater was, who was
24 he with on the evening of February the third.

25 When he indicated who he was with, I began

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1 coordinating officers going out and finding these
2 gentlemen and bringing them to the North
3 Charleston Police Department for questioning.

4 Q And did you question those people?

5 A I was involved in all the interviews of every one
6 of those subjects.

7 Q Okay. And about how long did it take to round
8 everybody up and bring them in and talk to them?

9 A Several hours. It took us a long time to get them
10 in, to get them to talk about what had occurred,
11 because obviously they were afraid. And they
12 eventually began speaking to us about what had
13 taken place at North Charleston High School.

14 Q And after speaking with all these witnesses that
15 you described to the jury that Mr. Slater had
16 indicated were with him, did you later on in the
17 afternoon of February the 4th have occasion to sit
18 down and actually talk with him about the entire
19 case scenario?

20 A It was one o'clock in the afternoon when I finally
21 sat down with Mr. Slater and said--

22 THE COURT: At this time let me inform the
23 jury.

24 I have previously advised you with regards of
25 the law and the making of an alleged statement.

1 And let me say this to you again. Before you
2 may consider any alleged statement as evidence for
3 any purpose, you must first determine the four
4 questions that we discussed earlier and I referred
5 to.

6 Did the defendant make the statement? Two,
7 was the defendant warned of his constitutional
8 rights? Third, did the defendant knowingly waive
9 his constitutional rights? And fourth, was the
10 statement given voluntarily?

11 The State of South Carolina must prove these
12 four things to your satisfaction beyond a
13 reasonable doubt.

14 You may continue.

15 MR. DUTREMBLE: Thank you, Your Honor.

16 BY MR. DUTREMBLE:

17 Q Later on in the afternoon, about one o'clock, you
18 testified you actually sat down and began to talk
19 to him. Did he give you a statement?

20 A Yes, he did.

21 THE COURT: Yes, sir.

22 MR. PENNINGTON: Your Honor, at this point I
23 just renew my objection for the record.

24 THE COURT: All right, sir.

25 BY MR. DUTREMBLE:

1 Q And let me hand you this document, sir, and ask
2 you if you can identify this.

3 THE COURT: The objection is overruled, Mr.
4 Pennington, but noted for the record.

5 Go ahead.

6 THE WITNESS: This document says North
7 Charleston Police Department defendant statement.
8 It's the statement of Lord Byron Slater, and I'm
9 the one that took this statement from Mr. Slater.

10 BY MR. DUTREMBLE:

11 Q And approximately what time did you take the
12 statement?

13 A At 1:45 p.m.

14 Q On what date?

15 A On February the 4th.

16 MR. DUTREMBLE: If Your Honor please, at this
17 time we'd offer -- yes, we'd offer the statement.

18 THE COURT: May I see the statement?

19 MR. DUTREMBLE: You may, Your Honor.

20 THE COURT: Mr. Pennington, have you seen the
21 statement?

22 MR. PENNINGTON: Yes, sir.

23 THE COURT: All right, sir. It is admitted.

24 MR. DUTREMBLE: Thank you, Your Honor.

25 MR. PENNINGTON: Subject to my original

1 objection, Your Honor.

2 THE COURT: Yes, sir.

3 (State's Exhibit Number 36, Defendant's
4 statement, marked for identification and received
5 in evidence.)

6 BY MR. DUTREMBLE:

7 Q Sergeant Hester, with reference to State's 36,
8 that is the statement that Mr. Slater gave you?

9 A That's correct.

10 Q At 1:45 on the afternoon of February fourth?

11 A That's correct.

12 Q If you could, please, sir, could you read that
13 statement to the jury?

14 A "Me and my friends went to the step show at North
15 Charleston High School. We went got there around
16 seven o'clock p.m. It was me, Ellis Backmon,
17 Shawn and Keon. Shawn was already there, and me,
18 Ellis and Keon drove up together.

19 After the step show we went into the parking
20 lot. The show had been over for a few minutes.
21 As we were trying to leave, someone had us blocked
22 in in the front and the back.

23 We saw people running towards the church
24 parking lot. Then we heard gunshots. Then the
25 people who had us blocked in drove away so we

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1 followed them on to the road. It was a white
2 Buick.

3 Then we got stopped by a black female police
4 officer. She let us know the scoop and that the
5 police was looking for a white car.

6 I was driving a white Monte Carlo. She
7 searched us and our car. Then she let us go.

8 Then we went across the street and to a phone
9 booth and we dropped Shawn off. Some dude in a
10 white Buick picked him up.

11 Then we were headed up Montague and got
12 stopped again in Liberty Hill. This officer said
13 the police was looking for a white car too. We
14 told him that we had just got searched, so he let
15 us go.

16 Then we went to Sonic's and got something to
17 eat. After that I dropped Keon off and I dropped
18 Ellis off and then I went on home. That's it."

19 I asked him, who was driving your car when
20 you and your friends left North Charleston High
21 School?

22 His answer was, me.

23 Do you have a gun in your car -- did you have
24 a gun in your car at any time that evening?

25 He said, no, sir.

1 In any way did you participate in a crime at
2 North Charleston High School?

3 He said, no, sir.

4 Did you shoot a gun at any time this evening?

5 He said, no, sir.

6 I asked him, did you go to your house after
7 the incident at the school and before the police
8 stopped you?

9 The police stopped me as soon as we left the
10 school, was his answer.

11 And then the last statement he said, I was
12 told by Sergeant Hester that the two people that
13 said they were getting robbed said that I was not
14 the one who shot the fellow.

15 That's the end of his statement.

16 Q All right. Now, that last statement, indicating
17 that you had told him certain information, can you
18 explain that to us, sir?

19 A I had questioned Mark and Demetrius Nelson as to
20 what had taken place. When we had developed Mr.
21 Slater as a suspect I configured a photographic
22 lineup of which he was unable to pick the shooter
23 out of the photographs.

24 Q Who was unable to pick the shooter out?

25 A I believe that would be Mark and Demetrius. I

1 believe neither one of them was unable to pick him
2 out from the lineup, if I'm correct.

3 There was no identification made by either
4 Mark or Demetrius by way of a photographic lineup.

5 Q Is that information you gave to Mr. Slater?

6 A That's the information that I gave to Mr. Slater.

7 Q That neither one of them could pick him out?

8 A That's right.

9 Q Did you ever tell him that they said he didn't
10 shoot him?

11 A Never told him that.

12 Q Now, in his statement on page one, I believe you
13 read that he indicated that he got blocked in
14 front and back as he was trying to leave the
15 parking lot; is that correct?

16 A That's correct.

17 Q Did he ever tell you that when he heard gunshots
18 he took off running up to the parking lot on foot?

19 A No, he told -- he left the parking lot -- he left
20 the area of the school in a vehicle, never drove
21 to the parking lot or anything like that.

22 Q He never told you in any way, shape or form that
23 he was present at that parking lot?

24 A No, he told--

25 Q The dirt parking lot I'm speaking of.

1 A He was confronted with the statements made by his
2 three friends. In giving that information, he
3 still claimed that he never made it to that
4 parking lot, that he drove away in his own
5 vehicle.

6 Q Okay. How was he confronted with the statement
7 from the three friends?

8 A Because I interviewed all three friends before I
9 even -- when I had him there at the station -- he
10 was there prior to them.

11 I began interviewing Deshawn, Keon and the
12 other gentlemen that was in the car, Nichols.

13 And I interviewed all three of them, and each
14 time I interviewed them, I confronted Mr. Slater
15 with the information that they were providing to
16 us in this investigation.

17 Q And despite giving him that information, he still
18 indicated he was not present at the church parking
19 lot?

20 A He said he never went to the church parking lot,
21 never fired a weapon, gave no indication he was
22 involved in this incident in any way, shape or
23 form.

24 Q Now, at any time when you were speaking with Mr.
25 Slater on February fourth, did he indicate to you

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1 that he didn't want to talk to you?

2 A No, he spoke with us freely.

3 Q Did he ever indicate to you that he wanted a
4 lawyer present?

5 A Never once indicated that he ever wanted a lawyer
6 to speak with before -- prior to talking to him.

7 Q Did he ever indicate at any time during your
8 conversation that he wanted to stop talking with
9 you?

10 A No, he did not.

11 Q Did he ever indicate to you -- let me ask you this
12 question, sir. At any time when you were speaking
13 with him, did you make him any promises or give
14 him any hope of reward if he would talk with you?

15 A No, I did not.

16 Q Did you threaten him or coerce him in any way to
17 get him to speak with you?

18 A No, I did not.

19 Q In all the statements that he gave to you were
20 given to you after you gave him his Miranda
21 warnings, he initialed them and signed indicating
22 that he understood them; is that correct?

23 A That's correct.

24 MR. DUTREMBLE: Thank you, Sergeant Hester.

25 If you would, answer Mr. Pennington's questions.

1 CROSS-EXAMINATION

2 BY MR. PENNINGTON:

3 Q Sergeant Hester, you asked him how far he went in
4 school on the advice of rights?

5 A That's correct.

6 Q And he went through the ninth grade?

7 A He said he had completed the ninth grade.

8 Q Nineteen years old at the time?

9 A That's correct.

10 Q As far as the interview with Deshawn Brown, you
11 didn't write out that statement that Mr. Brown
12 gave that day; did you?13 A No, I interviewed him and questioned him about the
14 events that occurred that evening. And then
15 another investigator took a handwritten statement
16 from him.

17 Q That was Detectives King and Palmer?

18 A If -- it's on the bottom of the form, counselor.
19 If that's what it says, that's who took the
20 statement from him.

21 Q Okay.

22 MR. PENNINGTON: That's all the questions I
23 have.

24 MR. DUTREMBLE: Nothing further, Your Honor.

25 THE COURT: You may come down. Thank you.

1 MS. SUMNER: The state calls Jahnique Aiken.

2 MR. PENNINGTON: Your Honor, may we approach?

3 THE COURT: Yes, sir.

4 (The following was reported on the record,
5 in the presence of the jury, but out of the
6 hearing of the jury.)

7 THE COURT: Yes, sir.

8 MR. PENNINGTON: This witness is not on the
9 witness list.

10 MR. DUTREMBLE: These are the witnesses that
11 he insisted I bring.

12 THE COURT: Sir?

13 MR. DUTREMBLE: These are the witnesses that
14 he insisted I bring, the teacher. He told me--

15 THE COURT: Didn't you tell him to bring
16 them?

17 MR. PENNINGTON: No.

18 MR. DUTREMBLE: Yes, you did. You stood
19 right up here and said you wanted that witness and
20 I went and got--

21 MR. PENNINGTON: Your Honor, if he's going to
22 yell at me in front of the jury, I'd like the jury
23 excused.

24 THE COURT: I'll let you go to the jury room
25 just a minute.

1 (The following was reported out of the
2 presence of the jury.)

3 THE COURT: All right. Do you want to get on
4 the record on the matter?

5 MR. PENNINGTON: Yes, sir, I would.

6 THE COURT: Yes, sir.

7 MR. PENNINGTON: With regard to this --
8 apparently there is a calling of a witness that is
9 not on the State's witness that has not been
10 covered in voir dire by the State or by the Court
11 with this jury panel.

12 I object. The State has attempted to elicit
13 hearsay testimony with regard to a car that was
14 photographed a day and a half after this incident
15 and they're now going to attempt to bring in new
16 evidence from a witness that has not been
17 disclosed previously as a potential witness in
18 this case to present to this jury with regard to
19 where that car was or -- that's what I'm
20 speculating.

21 THE COURT: Yes, sir.

22 MR. DUTREMBLE: If Your Honor pleases. In
23 discovery he has the SLED report concerning the
24 shell fragment. In discovery he had pictures of
25 the car, which we've introduced into evidence.

1 And he stood right up there in front of Your
2 Honor at that bench and told me, I want this
3 witness, because this is a potential life without
4 parole case. And because he made me go do it, I
5 did it. And now he's objecting to what he made me
6 do.

7 THE COURT: This is a foundation witness?

8 MR. DUTREMBLE: Yes, sir.

9 THE COURT: Yes, sir.

10 Mr. Pennington, I would have to state that
11 that is my total recollection of your statement.
12 You said, this is a life without parole case
13 possibly, I've got to object, I must insist that
14 he go get the witness.

15 Now, I cannot deny him to put the witness on
16 the stand when you insisted that he go get him.

17 MR. PENNINGTON: My understanding, Judge, is
18 that witnesses are not to be called if they're not
19 disclosed to the jury in advance through voir
20 dire.

21 THE COURT: Ordinarily that would be true,
22 but you're the one who insisted on it so I'm going
23 to let him testify--

24 MR. PENNINGTON: In other words--

25 THE COURT: This is a foundation witness

1 anyway.

2 MR. DUTREMBLE: Yes, sir. If Your Honor
3 pleases, it's two witness, the daughter who drove
4 there the night of the step dance and the Momma
5 who discovered the bullet hole the next day.

6 THE COURT: There's no prejudice in this in
7 any event to you.

8 MR. PENNINGTON: Well, the barrel I'm being
9 put over, Judge, is I'm being made to look like
10 the bad guy for objecting to hearsay.

11 Now, I have no reason to think that they were
12 going to--

13 THE COURT: No, sir, nobody's making you look
14 like the bad guy. He's just calling these two
15 witnesses, foundation witnesses, and it's just not
16 prejudicial to the defense. I understand that.

17 No, sir, you're not looking like a bad guy,
18 you're doing a good job, you're the chief public
19 defender here and you do an excellent job, and
20 this is in accordance with your response which you
21 elicited at the bench. And I understand that.

22 MR. PENNINGTON: Your Honor--

23 THE COURT: But you said, go get him; and
24 he's done it.

25 MR. PENNINGTON: The concern that I have is

1 we don't know whether or not these jurors have a
2 relationship with either of these witnesses.

3 THE COURT: Well, this witness is not that
4 important to the defense or the State so I'm going
5 to let him do it.

6 Bring the jury in.

7 (The following was reported in the presence
8 of the jury.)

9 THE COURT: Be seated.

10 Can your next witness.

11 MR. DUTREMBLE: Thank you, Your Honor.

12 MS. SUMNER: The State calls Jahnique Aiken.

13 JAHNIQUE AIKEN,

14 Being first duly sworn, testified as follows:

15 BY MS. SUMNER:

16 Q Ms. Aiken, how old are you?

17 A Seventeen.

18 Q And are you in school?

19 A Yes, ma'am.

20 Q And where do you go to school?

21 A At James Island High.

22 Q Are you a senior there?

23 A Yes, ma'am.

24 Q Were you at school earlier today?

25 A No, ma'am.

1 Q You were out sick today?

2 A Yes, ma'am.

3 Q I apologize for bringing you to court when you're
4 sick--

5 MR. PENNINGTON: Objection, Your Honor.

6 THE COURT: What's the objection to her
7 apologizing--

8 MR. PENNINGTON: Her comment about her
9 apologizing for bringing her to Court.

10 THE COURT: No, that's appropriate. The
11 child was sick and had to come to Court. What's
12 wrong with that?

13 Go ahead.

14 BY MS. SUMNER:

15 Q Ms. Aiken, do you remember the night of February
16 the third of this year?

17 A Yes, ma'am.

18 Q And where were you?

19 A I was at the step show at North Charleston High.

20 Q And that's in Charleston County?

21 A Yes, ma'am.

22 Q What time did you leave?

23 A At about 11.

24 Q How did you get there?

25 A I drove.

1 Q Was it your car?

2 A My mother's car.

3 Q What kind of car is that?

4 THE COURT: Please talk louder so the jury
5 can hear you.

6 THE WITNESS: A Nissan Sentra.

7 MS. SUMNER: Court's indulgence while I
8 locate--

9 THE COURT: All right.

10 BY MS. SUMNER:

11 Q Ms. Aiken, I'm going to show you what's been
12 entered as State's Exhibit Number 25. Do you
13 recognize that?

14 A Yes, ma'am, that's the car I was driving.

15 Q Okay. And can you tell us what that is right
16 there?

17 A A bullet hole.

18 Q Okay. Did you notice that bullet hole the night
19 when you left from the step show?

20 A No, ma'am. I didn't notice it until the next
21 morning when I was going to church.

22 Q And what did you do at that point?

23 A I told my mother.

24 Q That night when you went to the step show, where
25 did you park the car?

1 A I guess it's considered a church parking lot right
2 next to the big tree directly in front of the
3 church. Not directly in front, but from the tree
4 -- right behind the tree facing the church.

5 Q I'm going to show you two pictures, what's been
6 entered as State's Exhibit Number 7 and State's
7 Exhibit Number 6. Can you see this?

8 A Yes, ma'am.

9 Q In this picture, this is State's Number 7, can you
10 -- is where you parked the car in this picture?

11 A It was probably right here. (Indicating.)

12 Q And in regards to this one, is it located in here
13 as well?

14 A Yes, like right here.

15 Q Okay. When you left the step show that night, or
16 when you left the school, were you able to leave
17 immediately?

18 A Not immediately because police and EMS were coming
19 through.

20 Q And was your car over near where the shooting had
21 taken place?

22 A Yes, ma'am.

23 Q About what time was it when you finally got to
24 leave?

25 A About 11:15.

JAHNIQUE AIKEN-CROSS-EXAMINATION BY MR. PENNINGTON
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1 Q Okay.

2 MS. SUMNER: I have nothing further from this
3 witness, Your Honor.

4 THE COURT: Mr. Pennington.

5 CROSS-EXAMINATION

6 BY MR. PENNINGTON:

7 Q Ms. Aiken, what time did you go to church?

8 A About 10:30, quarter to 11 in the morning.

9 Q And that would have been the next morning?

10 A Yes, sir.

11 MR. PENNINGTON: Thank you.

12 That's all the questions I have.

13 MS. SUMNER: We have nothing further, Your
14 Honor.

15 THE COURT: You may come down. Thank you. I
16 hope you get to feeling better.

17 THE WITNESS: Thank you.

18 MS. SUMNER: The State calls Mary Aiken.

19 MR. PENNINGTON: I renew my objection, Your
20 Honor.

21 THE COURT: Yes, sir. Overruled.

22 MARY AIKEN,

23 Being first duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. SUMNER:

1 Q Ms. Aiken, what do you do for a living?

2 A I'm a teacher at North Charleston High School.

3 Q I want to turn your attention to February the
4 third of this year. Did you allow your daughter
5 to take your car that evening?

6 A Yes, I did.

7 Q Do you know where she went?

8 A Yes.

9 Q Where was that?

10 A She went to a step show at the North Charleston
11 High School gymnasium.

12 Q And she drove your car there?

13 A She did.

14 Q What time did she get home; do you recall?

15 A Between 11, 11:15.

16 Q The next morning the two of you got up to go to
17 church together; is that right?

18 A Yes.

19 Q What did you notice, if anything, when you got up
20 to go -- when you went to the car?

21 A I noticed that there was a bullet hole on the
22 driver's side of the car.

23 Q Did you tell anybody -- or what did you do at that
24 point?

25 A Actually I got up and I said, oh, there's a bullet

MARY AIKEN-DIRECT EXAMINATION BY MS. SUMNER

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1 hole. And I said -- I went to school the next day
2 and I notified one of the officers there, and I
3 said, there wasn't a bullet hole in my car, I
4 assume that this happened at the scene last night,
5 because my daughter drove the car there.

6 Q Had there been a bullet hole in your car before--

7 A No.

8 Q --the night of February the third?

9 A No.

10 Q And what kind of car was that that you drive?

11 A Nissan Sentra.

12 Q I'm going to show you what's been marked as
13 State's Exhibit Number 25 and entered into
14 evidence. Can you identify that?

15 A That's my car.

16 Q Okay. And what do you notice on it?

17 A There is a bullet hole.

18 Q Where is that bullet hole?

19 A On the driver's side.

20 MS. SUMNER: I have nothing further, Your
21 Honor.

22 MR. PENNINGTON: No questions, Your Honor.

23 THE COURT: You may come down. Thank you.

24 I will excuse these witnesses.

25 MR. DUTREMBLE: Thank you, Your Honor.

1 MS. SUMNER: Thank you, Your Honor.

2 MR. DUTREMBLE: We next call Ken Whitler,
3 Your Honor.

4 THE COURT: All right, sir.

5 MR. DUTREMBLE: Will somebody go get him?
6 Ken Whitler.

7 KENNETH WHITLER,

8 Being first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. DUTREMBLE:

11 Q Agent Whitler, can you tell us by whom you're
12 employed, sir?

13 A I'm employed by The South Carolina Law Enforcement
14 Division. It's also known as SLED.

15 Q In what capacity are you employed there, sir?

16 A I'm in the firearms department of the laboratory.

17 Q And how long have you been in the firearms
18 department there at SLED?

19 A Since 1997.

20 Q And what does the firearms department do for SLED,
21 sir?

22 A We examine bullets, cartridge cases, firearms.
23 Also do tool mark examinations for the purpose of
24 determining if a particular firearm fired a
25 particular bullet or cartridge case.

1 Q And can you gives the benefit of your educational
2 background, please?

3 A I have undergraduate and graduate degrees from The
4 University of South Carolina and a masters degree
5 also.

6 Q And do you have any specialized training in
7 firearms identification?

8 A Yes, sir. I was trained when I was employed by
9 the FBI, at their laboratory. I was qualified as
10 a firearms tool mark examiner with the bureau.

11 And when I retired in 1997, I came to work at
12 SLED in basically the same job.

13 Q And are you a member of any professional
14 associations concerning the firearms
15 identification?

16 A Yes, sir, I belong to the Association of Firearms
17 and Tool Marks Examiners.

18 Q And have you previously testified as an expert in
19 firearms examination?

20 A Yes, sir, I have testified at various State,
21 local, federal and other territorial courts.

22 Q And can you give us an estimate of how many times
23 you've testified, sir?

24 A A little over a hundred.

25 MR. DUTREMBLE: If Your Honor please, at this

1 time we would offer Agent Whitler as an expert.

2 THE COURT: Would you care to cross-examine
3 him on his expertise?

4 MR. PENNINGTON: No, sir, I don't.

5 THE COURT: I qualify him as an expert in
6 this area.

7 MR. DUTREMBLE: Thank you, Your Honor.

8 BY MR. DUTREMBLE:

9 Q Can you tell us please, sir, what makes it
10 possible for you to be able to examine a firearm
11 to determine if that firearm actually fired a
12 particular projectile?

13 A The way we're able to do it is we do a microscopic
14 inner comparison of the suspect bullet or
15 cartridge case, compare it to test fired bullets
16 or cartridge cases from a particular firearm.

17 The marks that we're looking for are those
18 that are placed on the firearm during the
19 manufacturing processes of that firearm.

20 There are certain stages when the firearm is
21 being put together that marks are created in the
22 barrel and on certain other areas of the firearm.

23 And when those areas come in contact with
24 bullets or cartridge cases, they tend to leave
25 those marks or can leave those marks.

KENNETH WHITLER-DIRECT EXAMINATION BY MR. DUTREMBLE
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1 It's not a hundred percent successful.

2 Sometimes those marks don't carry over and we're
3 unable to identify a bullet or a cartridge case to
4 a particular gun. But in many cases we are able
5 to.

6 Q And have you had occasion, sir, to examine this
7 particular weapon, which is State's Exhibit Number
8 33, before?

9 A Yes, I have.

10 Q And how did you come into contact with that
11 particular weapon, sir?

12 A It was submitted for examination.

13 Q Was that by the North Charleston Police
14 Department?

15 A I believe it was, yes, sir.

16 Q And with reference to what's been marked into
17 evidence as State's 27, sir, which is the fired
18 projectiles, have you had occasion to examine
19 those as well?

20 A Yes, I have.

21 Q And with reference to what's been marked into
22 evidence as State's number 28, which are fired
23 shell casings, have you had occasion to examine
24 those as well, sir?

25 A Yes, I have.

1 Q And with regard to State's Exhibits 29 and 34, 29
2 being the expended shell casings, and 34 being a
3 magazine to a nine millimeter weapon, have you
4 examined those items before, sir?

5 A Yes, I have.

6 Q And lastly, Agent Whitler, with regard to State's
7 26, which is a box of Winchester ammunition, and
8 State's 32, which are 13 un-fired bullets, have
9 you had occasion to examine both of those, sir?

10 A Yes, I have.

11 Q And did all of those items come into your
12 possession through the North Charleston Police
13 Department?

14 A Yes, sir.

15 Q Did you have occasion to examine each and every
16 one of those items there?

17 A Yes, I did.

18 Q And can you describe to the jury your examinations
19 and any conclusions you reached as a result of
20 those examinations?

21 A My examinations of this item, there were three
22 fired bullets submitted, which I was able to
23 identify as being fired by the submitted pistol.

24 There were a total of 17 cartridge case --
25 fired cartridge cases, which I was also able to

1 identify as being fired by this pistol.

2 There was one bullet jacket fragment that had
3 similar characteristics and could have been fired
4 by this pistol, but due to the damage and the
5 insufficient marks remaining on that fragment, I
6 was unable to determine if it was fired by that
7 pistol.

8 It may have been fired by the pistol, or it
9 could have been fired by another pistol with
10 similar rifling characteristics.

11 The cartridges are in the box, the cartridge
12 box that was submitted. They were consistent with
13 a type of cartridges that would be loaded in that
14 box. And those cartridges are the correct caliber
15 for use in this pistol.

16 Q What kind of cartridges are those, sir?

17 A Those are nine millimeter Luger caliber
18 cartridges.

19 Q And do they have a particular name, a brand name,
20 sir?

21 A They're manufactured by Winchester, and they're
22 loaded with a nickel-platted jacketed hollow point
23 bullet.

24 Q And what is a hollow point bullet?

25 A It's a bullet that has an exposed cavity in the

1 nose of the bullet. It's designed to make it
2 expand -- make it expand uniformly.

3 Q And are those also known as silver tipped bullets?

4 A Yes, sir, they are.

5 Q Now, the un-fired bullets are hollow point silver
6 tips. How about the casings, are they also from
7 hollow point silver tip bullets?

8 A You can't tell. The cartridge casings are
9 consistent with the type of -- with the cartridge
10 cases of the un-fired cartridges.

11 But Winchester will use the same cartridge
12 case for another -- in another cartridge that has
13 a different bullet loaded into it.

14 Q Okay. Now, the fragment that you found that you
15 can't say that gun fired, is that also a silver
16 tipped hollow point bullet?

17 A It could have come from a silver tip hollow point.
18 Or a silver tip bullet. It's too damaged to be
19 able to say for certain.

20 Or, yes, it was part of hollow point bullet.
21 There was a little bit of the nose area left on
22 it.

23 Q All right. And based upon your examination of the
24 nose area, what were you able to determine about
25 that particular fragment?

1 A Just that it was part of -- what could be part of
2 a silver tip bullet. The nose area is generally
3 away from where the rifling impressions are put on
4 the bullet, which is what I need to be able to say
5 that a bullet was fired from a specific firearm.

6 In this case it just was -- there was some
7 rifling left, but due to the damage, there just
8 weren't enough marks to enable me to say with no
9 doubt this pistol fired that particular fragment.

10 Q Thank you, sir.

11 Is it your testimony, Agent Whitler, that
12 State's Exhibit 33 fired -- is it your testimony,
13 Agent Whitler, that State's 33 fired the three
14 fired projectiles found in State's Exhibit Number
15 27?

16 A Yes, sir.

17 Q Is it your testimony that State's Exhibit 33 fired
18 the shell casings found in State's Exhibit 28?

19 A Yes, sir.

20 Q Is it your testimony that State's Exhibit 33, the
21 weapon, fired the shell casings found in State's
22 Exhibit 29?

23 A Yes.

24 Q Is State's Exhibit 39, which is the magazine, the
25 correct magazine for State's Exhibit 33, the

1 pistol?

2 A Yes, it is.

3 Q When you test fired this pistol, did it operate
4 properly?

5 A Yes, it did.

6 Q And were you able to operate it successfully?

7 A Yes.

8 Q And lastly, sir, are these 13 Winchester Silver
9 Tip Hollow Point bullets the same type of bullets
10 contained in State's Exhibit Number 26, which is
11 the Winchester box, and nine additional bullets?

12 A Yes, they are.

13 MR. DUTREMBLE: Thank you very much, Agent
14 Whitler. Please answer any questions Mr.
15 Pennington might have for you.

16 MR. PENNINGTON: No questions, Your Honor.

17 THE COURT: You may come down.

18 May this witness now be released?

19 MR. PENNINGTON: Yes, sir.

20 THE COURT: You are released. And thank you
21 so much.

22 THE WITNESS: Thank you.

23 MR. DUTREMBLE: I need to check to see if one
24 other witness has arrived, Your Honor.

25 THE COURT: Would you like to take a short

TERELL PALMER-DIRECT EXAMINATION BY MR. DUTREMBLE

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1 break?

2 MR. DUTREMBLE: Yes, sir, it would only take
3 a couple of minutes.

4 THE COURT: Would anybody need a short break?

5 MR. DUTREMBLE: We would call Terell Palmer
6 to the stand.

7 TERELL PALMER,

8 Being first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. DUTREMBLE:

11 Q Officer Palmer, you're, of course, employed by the
12 North Charleston Police Department. Can you tell
13 us what you do for them, sir?

14 A At this time, victim's advocate.

15 Q And were you employed with the North Charleston
16 Police Department back on February fourth of this
17 year, sir?

18 A Yes, sir.

19 Q Okay. What were you doing for the Police
20 Department at that time, sir?

21 A Assigned to the uniform division, day shift.

22 Q Did you have occasion on February the 4th, sir, to
23 get a call in response to a shooting at North
24 Charleston High School?

25 A Yes, sir.

1 Q And can you explain to the members of the jury
2 what you did after you got the call?

3 A Lieutenant Burgess contacted me to see if I could
4 ascertain some information from a possible witness
5 who was somewhat afraid to speak with anyone else;
6 he had just witnessed a shooting at North
7 Charleston High School.

8 He knew I was familiar with the witness due
9 to being assigned to the school for about five
10 years as a school resource officer there.

11 I picked the witness up, transported him to
12 North Charleston Police Department, where he
13 issued a statement regarding the shooting
14 incident.

15 Q And who was that witness?

16 A Terell. Bryant, I believe, is his last name.

17 Q Okay. And after getting the information from Mr.
18 Bryant, did you have occasion to accompany
19 Detective Chris Widmer over to Byron Slater's
20 house?

21 A Yes, sir.

22 Q And do you know Byron Slater?

23 A Quite well.

24 Q And how do you know him, sir?

25 A He was a student at North Charleston High School

TERELL PALMER-DIRECT EXAMINATION BY MR. DUTREMBLE

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1 when I was assigned there.

2 Q Okay. When you arrived at the house did you
3 notice anything in the yard?

4 A Initially just the white vehicle, I believe a
5 Monte Carlo. After -- later on, after -- during a
6 little more looking around on the outside, after
7 actually placing Mr. Slater under arrest, there
8 were some shell casings in the yard.

9 Q Were those turned over to Cathy Lynch?

10 A Yes, sir.

11 Q Now, when you got there and you saw the white
12 Monte Carlo in the yard, what did y'all do?

13 A There were several officers, myself, Detective
14 Widmer, Detective Fletcher King. We went up on
15 the front porch.

16 The other officers stayed in the yard area to
17 make sure that no one ran out the back-door or
18 just basically for protection purposes.

19 Knocked on the front door. Mr. Slater
20 answered the door. Informed him as to why we were
21 there. He pulled the door closed behind him, came
22 out on the front porch to speak to was.

23 Q Was he cooperative at that time?

24 A Yes, sir, pretty much.

25 Q And did you explain to that you were investigating

1 a murder?

2 A Yes, sir.

3 Q And did you place him under arrest for murder?

4 A At that time Detective Widmer did so.

5 MR. PENNINGTON: Your Honor, I just renew my
6 objection earlier made.

7 THE COURT: All right. Overruled

8 BY MR. DUTREMBLE:

9 Q Did Detective Widmer read him his Miranda
10 warnings?

11 A Yes, sir.

12 Q And after arresting him and reading him his
13 warnings, where did y'all take him?

14 A Well, he had on his bedroom slippers, and
15 Detective Widmer told him that he would be
16 transported to the North Charleston Police
17 Department.

18 He asked if he could put on his sneakers, so
19 we escorted him in the house and allowed him to
20 get his sneakers.

21 Q Did you then take him to the North Charleston
22 Police Department?

23 A Yes, sir.

24 Q When you got to the police department, did he make
25 any statements to you?

TERELL PALMER-DIRECT EXAMINATION BY MR. DUTREMBLE

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1 A Basically to Detective Widmer, who was doing most
2 of the questioning. But he made a comment
3 regarding his reasoning for having a gun.

4 Q Did he admit he had a gun?

5 A Yes, sir.

6 Q What kind of gun did he say he had?

7 A I believe it was a nine millimeter.

8 Q Now, were you part and parcel of any search
9 warrant that was later executed?

10 A I was present.

11 Q And was a nine millimeter seized?

12 A Yes, sir.

13 Q And with reference to State's Exhibit Number --
14 excuse me for a second while I find it. We've got
15 a lot of photographs here.

16 I hand you to State's Exhibit Number 21. Was
17 the nine millimeter found in this box?

18 A Yes, I believe this was in his closet.

19 Q Okay. And does this appear to be the same nine
20 millimeter that was found in the box?

21 A Yes, sir.

22 MR. DUTREMBLE: Thank you, Officer Palmer.
23 If you would, please answer any questions that Mr.
24 Pennington might have for you.

25 MR. PENNINGTON: No questions, Your Honor.

1 THE COURT: You may come down. Thank you,
2 sir.

3 May this witness be excused?

4 MR. DUTREMBLE: Yes, sir.

5 MR. PENNINGTON: Yes, sir.

6 THE COURT: Thank you.

7 MR. DUTREMBLE: We would call Barbara
8 Middleton, Your Honor.

9 THE COURT: All right, sir.

10 BARBARA MIDDLETON,

11 Being first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. DUTREMBLE:

14 Q Mrs. Middleton, can you tell us where you're
15 employed, ma'am?

16 A Medical University of South Carolina. Department
17 of Biometry and Epidemiology.

18 Q And what do you do there, ma'am?

19 A I'm an administrative assistant to Doctor
20 Barbatelli (ph).

21 Q And how long have you been doing that kind of
22 work?

23 A Twenty-nine years.

24 Q And are you also the mother of Sharone Middleton?

25 A Yes, I am.

BARBARA MIDDLETON-DIRECT EXAMINATION BY MR. DUTREMBLE

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1 Q Can you tell us, please, ma'am, how old Sharone
2 was the night he died?

3 A Nineteen years old.

4 Q Was he a student at North Charleston High School?

5 A No, he was not.

6 Q Was he a student elsewhere?

7 A He was a student at Trident Technical College.

8 Q And did you and your husband have plans for his
9 continued education?

10 A He--

11 MR. PENNINGTON: Your Honor, may we
12 approach?

13 THE COURT: Yes, sir.

14 (WHEREUPON, a bench conference was held off
15 the record, in the presence of the jury, but out
16 of the hearing of the jury.)

17 BY MR. DUTREMBLE:

18 Q The vehicle in question that we have offered
19 photographs of, can you tell the members of the
20 jury whose car that was, ma'am?

21 A It's my car. It's listed in my name, but it's a
22 car that I gave to my son so he can drive to and
23 from college.

24 Q Did you know that he was going to the step dance
25 that night?

1 A No, I didn't.

2 Q Did your son own a gun, ma'am?

3 A No, he didn't.

4 Q Do you and your husband own a gun?

5 A No, I don't.

6 Q Did your son have any kind of prior criminal
7 record?

8 MR. PENNINGTON: Objection, Your Honor.
9 Irrelevant.

10 THE COURT: I will permit that question.
11 Go ahead. Overruled.

12 THE WITNESS: No.

13 BY MR. DUTREMBLE:

14 Q To your knowledge, did your son know the
15 defendant, Byron Slater?

16 A Not to my knowledge.

17 Q Did your son wear glasses, ma'am?

18 A Yes, he did.

19 Q And with reference to State's Exhibit Number 10,
20 can you identify the glasses laying on the ground
21 in this photograph, ma'am?

22 A I need my glasses, but those look close to it.

23 Q Those appear to be your son's eye glasses?

24 A Yes.

25 MR. DUTREMBLE: Thank you, Mrs. Middleton.

1 Please answer any questions Mr. Pennington has for
2 you.

3 MR. PENNINGTON: No questions, Your Honor.

4 THE COURT: You may come down. Thank you.

5 MR. DUTREMBLE: That would be the State's
6 case, Your Honor.

7 THE COURT: All right. I think perhaps this
8 is probably a good time to break for lunch.

9 MR. PENNINGTON: Yes, sir.

10 THE COURT: It's 20 til one, let's start
11 back, instead of 2:30, let's start back at two
12 o'clock. That will give the jury an hour and 20
13 minutes for lunch.

14 Madam Forelady, ladies and gentlemen, jury,
15 let's break for lunch. Please be back, not at
16 2:30 but at two, that will give you an hour and 20
17 minutes.

18 Don't discuss the case. Permit no one to
19 discuss it with you. Don't discuss it among
20 yourselves. Be back promptly, please, at two
21 o'clock. Thank you.

22 (The following was reported out of the
23 presence of the jury.)

24 THE COURT: All right, sir. Any motions at
25 this time?

1 MR. PENNINGTON: Yes, sir, several motions.

2 THE COURT: All right, sir. Be glad to hear
3 from you.

4 And -- go ahead. And then I want to get on
5 the record the defendant, whether he wishes to
6 take the stand or not, you understand.

7 MR. PENNINGTON: I don't know that he's made
8 that decision yet, Your Honor.

9 THE COURT: When would you like for me to
10 make--

11 MR. PENNINGTON: I would imagine when we
12 resume immediately after lunch.

13 THE COURT: That's fine then. Just make sure
14 that we get on the record his right to testify and
15 his right not to testify.

16 MR. PENNINGTON: Yes, sir, we'll certainly do
17 that.

18 THE COURT: All right, sir. What's your
19 motion?

20 MR. PENNINGTON: The first item is a
21 housekeeping matter, which was when Officer
22 Stanley, the Crime Scene Officer, testified and
23 the Court was -- I made an objection to the
24 introduction of the photograph of the .25 caliber
25 pistol and the ammunition related to it, which

1 would be State's 22 and 23.

2 The Court overruled my objection, however,
3 the objection was not on the record. My argument
4 to the Court at the time was that this was
5 unnecessary since it didn't relate to the facts of
6 this case, that it was prejudicial to my client to
7 be in possession of this weapon, and essentially
8 that this was piling on this evidence.

9 We had not objected earlier when it was
10 described verbally, but when it was presented as a
11 documented photograph, we felt that it was
12 excessively prejudicial.

13 THE COURT: Do you want to respond to that?

14 MR. DUTREMBLE: If Your Honor please. We
15 offered it because when the defendant gave a
16 statement, he indicated to police officers he was
17 in possession of a nine millimeter and a .25
18 caliber handgun.

19 At the time, Your Honor, Middleton had died.
20 We had shell casings, but we did not know which
21 gun killed him. We seized both guns. We offered
22 both guns.

23 THE COURT: I would overrule that objection.
24 I don't see where it's prejudicial. And it was a
25 fruit of the search at the time. So I

1 respectfully overrule that objection.

2 MR. PENNINGTON: Your Honor, with regard to
3 the last witness, Ms. Middleton, my objection with
4 regard to his lack of prior record is essentially
5 presenting the victim's character, which we do not
6 think is an issue in this case.

7 And furthermore, it would be irrelevant to
8 whether or not he was the aggressor, which was the
9 articulated reason offered by the State.

10 We would object preliminarily that if this is
11 going to be presented to the jury in argument and
12 closing argument, that the proof that he did not
13 have a gun or could not have been in any way in an
14 altercation with my client, because he had no
15 prior record, is improper, and we would object to
16 that preliminary.

17 THE COURT: What's your position?

18 MR. DUTREMBLE: If Your Honor please. His
19 own jury instructions (sic) deal with provocation.
20 He's indicated to the jury that Sharone Middleton
21 had gunshot residue on his person. He's injected
22 that very issue into this particular proceeding.

23 And the rule allows me to rebut that which he
24 has raised.

25 THE COURT: I don't see how her testimony is

1 prejudicial to the defendant in the case. And the
2 Solicitor well may have a position there that
3 there was an inference there in your opening
4 statement to the jury that perhaps the deceased
5 had a weapon. Isn't that true?

6 MR. PENNINGTON: Yes, sir, but we're not
7 saying that he was the aggressor. There's a
8 distinction there, Judge. We presented--

9 THE COURT: But he just simply asked, did he
10 have a gun; and his mother said no.

11 MR. PENNINGTON: We presented this as a very
12 confused situation where we've got witness
13 testifying at least two other individuals had
14 guns, and we have gunshot residue on the victim's
15 hand.

16 THE COURT: I don't see where--

17 MR. PENNINGTON: That is not to contend that
18 Mr. Middleton brought this on himself, that he
19 wanted this, that he was coming after him; but
20 just that this was a situation where there were
21 guns out there being waived around, Your Honor.

22 That doesn't make him the aggressor. I'm not
23 asserting that he is an aggressor.

24 THE COURT: What are you asserting, that that
25 testimony was highly prejudicial to the

1 defendant?

2 MR. PENNINGTON: Just that -- what we're
3 doing essentially, Your Honor, is proving up his
4 good character, which is totally irrelevant.
5 Whether he had good or bad character is not an
6 issue in this case.

7 THE COURT: Well, if it's not an issue, I
8 don't see how it's prejudicial to the defendant.
9 I see nothing wrong with the testimony by the
10 mother of this deceased. I respectfully overrule
11 that.

12 MR. PENNINGTON: Your Honor, I'll go on with
13 my motions then.

14 THE COURT: Okay. Yes, sir.

15 MR. PENNINGTON: At this time, Your Honor, we
16 would ask for a new trial based upon the arguments
17 that have previously been made with regard to the
18 illegal warrantless arrest without exigent
19 circumstances.

20 We feel that that was a meritorious claim and
21 that the Court has, over our objection, introduced
22 the statement and the fruits of the search
23 warrant, which were inadmissible as a consequence.

24 In addition to that, Your Honor, the -- we
25 contend that the admission of the statements is

1 inadmissible for separate grounds in that it is in
2 effect an impeaching character attack on the
3 defendant; because it was only offered not to add
4 new facts but to suggest that he lied to the
5 police officers at the time that he made his
6 initial statement.

7 THE COURT: Let me answer that real quick
8 like.

9 MR. PENNINGTON: Yes, sir.

10 THE COURT: If in the jury's opinion, and
11 that's if they conclude that the facts in this
12 case as adduced in this trial, if they conclude
13 that they point unerringly to the guilt of the
14 defendant, and I don't say did or did not, but if,
15 they then are entitled to know that this defendant
16 specifically denied the shooting of the deceased.

17 MR. PENNINGTON: I understand that was the
18 Court's ruling.

19 THE COURT: They're entitled to know that if
20 they conclude that otherwise the evidence points
21 to the direction of the defendant. They're
22 entitled to know what his position was in the
23 statement.

24 MR. PENNINGTON: Thank you, Your Honor.

25 With regard to the charge of murder, we would

1 ask for a directed verdict of not guilty based
2 upon an insufficiency of the evidence.

3 Putting the light of the evidence most
4 favorably for the State, we contend that this is
5 not a case in which a reasonable jury would find
6 malice.

7 Based on the testimony of Mark Nelson,
8 Demetrius Nelson, there was a description of
9 multiple people, a man in a white puffy coat,
10 another man with a silver handgun.

11 Mark Nelson testified that one of those
12 witnesses or one of those individuals fired his
13 weapon and then proceeded across the way into --
14 through the tree line and into a Crown Victoria
15 parked on Jenkins Avenue.

16 We have testimony, Your Honor, that this was
17 a confused situation, that my client was not
18 involved in any kind of robbery attempt.

19 We have a separate crime being committed by a
20 host of individuals who were not present, not
21 named, not charged, but who were observed by these
22 witnesses.

23 My client came up to that fracas where these
24 individuals were, had a gun in his hand, and
25 ultimately reacted to the situation that

1 confronted him.

2 We contend that there was no prior history of
3 problems between my client and the victim. There
4 was no motive on his part to do any harm or injury
5 to the victim.

6 That in effect this was a pure by-product of
7 this action involving other individuals who were
8 assaulting these people, waving guns around and
9 shooting those weapons. And my client reacted to
10 that scenario.

11 Your Honor, we contend that that does not
12 amount to malice aforethought. We'd ask the Court
13 for a directed verdict.

14 THE COURT: Do you care to respond?

15 MR. DUTREMBLE: May it please the Court.

16 This man, who was not involved in the disturbance
17 with the Ford Explorer automobile that was
18 testified to, who was not involved in the
19 disturbance in the parking lot of the school,
20 intentionally, willfully and deliberately went to
21 his car, which they had to unlock, went into his
22 glove compartment and pulled out a nine millimeter
23 pistol.

24 He then ran up the street to where the
25 Explorer automobile had been stopped by a group of

1 unknown black males and interjected himself into
2 that proceeding.

3 He then ran back to his car, which he had to
4 have cranked up by another party and driven from
5 where it was parked over to where Sharone
6 Middleton was being ganged in the dirt parking
7 lot.

8 He was the only man -- or he was one of the
9 people armed with a weapon. But he is the only
10 one that we have any testimony about it being
11 fired.

12 Mr. Pennington has a different understanding
13 of the facts than I do. I don't believe Mark
14 Nelson ever testified that the man in the white
15 puffy coat fired his gun. Or the man with the
16 silver gun ever fired.

17 The only testimony I recall from Mr. Nelson
18 was that another individual, neither one of those
19 two having a silver gun or a white puffy jacket,
20 fired his gun.

21 Be that as it may, even if there was somebody
22 else firing, we have no shell casings. We have no
23 weapon.

24 But what we do have are two bullets from his
25 gun in the body of Sharone Middleton.

1 If that is not malice aforethought, Judge, I
2 don't know what is.

3 THE COURT: Let me say this to you. There is
4 evidence in this case that the nine millimeter
5 owned and found in the defendant's premises was
6 the weapon that fired the bullets into the body of
7 this unfortunate victim.

8 Our Supreme Court for the last 200 years have
9 said that the use of a deadly weapon may give
10 inference to the rise of malice.

11 That inference, of course, may be accepted or
12 rejected by the jury.

13 But it's clear in this case, that if
14 believed, there is adequate evidence of malice
15 aforethought. Plenty of it. If believed.

16 It's a jury question. I respectfully deny
17 the motion on that basis.

18 MR. PENNINGTON: That's all we have, Your
19 Honor. Hold on just one--

20 THE COURT: All right. Let's--

21 MR. PENNINGTON: Your Honor, one second.

22 Thank you, Your Honor. That's all we have.

23 THE COURT: All right, sir.

24 See you back at two o'clock. Thank you.

25 MR. DUTREMBLE: Thank you, Judge.

1 (Lunch recess.)

2 THE COURT: All right. Mr. Pennington.

3 MR. PENNINGTON: Yes, sir, we're ready to go
4 forward.

5 THE COURT: All right, sir. Have the
6 defendant stand, please.

7 Mr. Defendant, we are at that stage in the
8 case now where you will have the opportunity of
9 presenting such witnesses as you desire to.

10 In addition to that, you have the absolute
11 constitutional right to get on this stand and to
12 testify under oath, and that, of course, would be
13 subject to cross-examination by the Solicitor
14 attorney. Do you understand that?

15 (There was no response.)

16 THE COURT: Sir?

17 THE DEFENDANT: Yes.

18 THE COURT: If in my statements to you, you
19 have any questions, please let me know.

20 Now, I'm telling you that you have the
21 absolute right to get on this stand and testify.
22 I also tell you that you have the absolute right
23 to remain silent. To say nothing.

24 If you would elect to do that, and that's
25 your decision, I would charge the jury that your

1 silence, that your failure to testify, cannot,
2 must not be used against you in any way.

3 I would charge the jury that your failure to
4 testify could not even enter into their
5 discussions in the jury room.

6 I have previously told the jury that you are
7 presumed innocent, that you don't have to prove
8 anything. I will tell them that again.

9 Now, whether you testify or not testify is
10 your decision and yours alone. Obviously you
11 would discuss it with your lawyer. But the
12 decision to testify or not to testify ultimately
13 rests with you.

14 Now, do you understand what I'm saying?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you have any questions about
17 what I have said to you? I'll be glad to answer
18 them for you.

19 THE DEFENDANT: No.

20 THE COURT: Mr. Pennington, is there any
21 additional inquiry that you would have me make?

22 MR. PENNINGTON: I don't believe so, Your
23 Honor.

24 THE COURT: Does he propose to testify or not
25 to testify?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you wish to testify or not to
3 testify?

4 THE DEFENDANT: To testify.

5 THE COURT: You desire to testify, that is
6 your decision?

7 THE DEFENDANT: Yes.

8 THE COURT: The Court will certainly honor
9 it. Okay.

10 MR. PENNINGTON: Yes, sir. Thank you, Your
11 Honor.

12 THE COURT: As I understand it, you're going
13 to have another witness before that?

14 MR. PENNINGTON: That's correct.

15 THE COURT: All right, sir.

16 For the State, is there any other inquiry you
17 would like to make on that issue of testifying?

18 MR. DUTREMBLE: No, sir.

19 THE COURT: All right, sir.

20 Bring the jury in, please.

21 (The following was reported in the presence
22 of the jury.)

23 THE COURT: The jury is present.

24 Proceed.

25 MR. PENNINGTON: Thank you, Your Honor. At

JOSEPH POWELL-DIRECT EXAMINATION BY MR. PENNINGTON

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1 this time the defense calls lieutenant Joe Powell
2 from SLED.

3 JOSEPH POWELL,

4 Being first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. PENNINGTON:

7 Q Mr. Powell, where do you work?

8 A I'm currently employed at The South Carolina law
9 Enforcement Division, commonly known as SLED, as a
10 supervisor in the Trace Evidence Section.

11 Q Okay. Do you have a rank?

12 A Yes, sir, my title is lieutenant.

13 Q Okay. And how long have you been with SLED?

14 A Going on 20 years.

15 Q All right. Have you always worked in the trace
16 department?

17 A I have been in the trace department as long as it
18 was created. Originally the trace department was
19 part of the drug evidence section, which I was --
20 when I came to work as SLED, that's where I
21 started at.

22 Q What did you do before working at SLED?

23 A I had finished with my college education. I had
24 been working some with my advance degree, my
25 Ph.D., but I had to stop due to family issues that

1 had to be taken care of.

2 After finishing that I obtained the job at
3 SLED.

4 Q Okay. Now, in the trace department -- what is the
5 purpose of a trace department in the SLED
6 laboratory?

7 A The trace department is involved with analysis of
8 many different types of evidence. We deal with
9 hairs, fibers, paints, explosive analysis, gunshot
10 residue and gunshot powder residue analysis, as
11 well as what is called other items, plastics,
12 metals and things that do not have a specific
13 forensic title, will come to our department for
14 comparison and or analysis.

15 Q How did you become qualified to do that kind of
16 work?

17 A Originally I received a bachelor of science degree
18 in chemistry from The University of Southern
19 Mississippi.

20 After receiving my degree I became employed
21 at SLED. And through the years I have attended
22 numerous schools around the country that
23 specifically deal with various aspects of trace
24 evidence.

25 Q All right. You -- are you ever certified or

1 received any kind of special qualifications in any
2 of this?

3 A I have been to many different types of symposiums
4 where I have spoke. I have also taken tests and
5 other types of evaluations to see if I can perform
6 my duties properly.

7 We have an evaluation for every year. I have
8 to perform a proficiency test in all aspects of
9 trace and show that I am proficient in those
10 aspects.

11 Q Okay. With regard to the specific area of gunshot
12 residue testing, that's part of this trace
13 analysis; isn't it?

14 A That is correct, sir.

15 Q And what have you done in terms of preparing to be
16 an examiner in that particular area?

17 A Originally when I came on at SLED, gunshot residue
18 analysis was really not being performed. When I
19 came on board I wanted to start this testing. It
20 was my idea to begin the process.

21 Other parts of the country were doing the
22 testing, the bureau was doing it, but South
23 Carolina was not.

24 Through testing and method development, the
25 procedure began 20 some odd years ago, and we have

1 slowly but surely evolved into what we have today.

2 The method itself is very simple. The idea
3 is that we capture any debris and material which
4 is left by the discharge of a weapon.

5 This material will come out of the weapon
6 like a small cloud of dust. We capture it with
7 either something called a particle lift, with is
8 nothing more than a flattened piece of aluminum
9 with a sticky adhesive on it, which is used to
10 just pick it up off the surface of the skin.

11 The second is to actually mop up any residue
12 by using a cotton swab, which has been wetted with
13 a weak acid solution.

14 These two samplings are put together in a
15 kit, sent to our laboratory, and then we do
16 examinations to see if we can find the residue on
17 the samples to make a determination.

18 Q All right. Now, you mentioned that other
19 laboratories in the country do this kind of work.
20 You mentioned specifically the bureau. Is that
21 the FBI?

22 A Yes, sir, that is correct.

23 Q All right. And other crime labs similar to SLED
24 throughout the United States?

25 A Yes, sir. It is -- this test is performed in most

1 states throughout the country.

2 For about ten years South Carolina was one of
3 a handful of states that performed the tests. But
4 in the last five years most states have now
5 reincorporated the test into their forensic
6 program.

7 Q All right.

8 MR. PENNINGTON: Your Honor, at this time I
9 would offer Lieutenant Powell as an expert in the
10 field of gunshot residue analysis.

11 MR. DUTREMBLE: No objection, Your Honor.
12 The lieutenant is clearly qualified.

13 THE COURT: Yes, I find that he is
14 qualified. He's testified as an expert in my
15 court on many times.

16 MR. PENNINGTON: Thank you, Your Honor.

17 BY MR. PENNINGTON:

18 Q Lieutenant Powell, in terms of the work in this
19 case, did you receive evidence from the North
20 Charleston Police Department in this case?

21 A Yes, sir, I did.

22 Q All right. Let me stop you right there. Are you
23 involved or is SLED involved in the training of
24 personnel so that this process of detection of
25 gunshot residue is done properly?

1 A Yes, sir. We go either to the agency, or if it
2 comes to us in an internal training program, we
3 take them through a process of teaching about the
4 kit, how it's performed, some of the things to
5 watch out for.

6 For example, like for someone who's alive, we
7 have a window of opportunity that we can collect
8 this material.

9 And we try to explain how this kit is
10 performed, what needs to be filled out and why,
11 and then we send them on to be able to use these
12 kits in crime scenes.

13 Q All right. So in this case you were not present
14 at North Charleston to actually gather the
15 evidence; that was done by someone else?

16 A That is correct.

17 Q And then it was submitted to you for the detection
18 of this residue?

19 A Yes, sir, that is correct.

20 Q How is that detection carried out?

21 A Well, the detection -- the first part of the
22 process is the evaluation kit itself. When the
23 kit is brought in, it is in a sealed container.

24 When I open up the -- what's called the drop
25 box, which is a big metal container which we use

1 to drop our evidence into, it will have this
2 package in here.

3 Once removed, I will examine it to see if
4 it's been tampered or altered in any way.

5 If it has been, I will stop my analysis
6 immediately and then at that point we will
7 ascertain what has happened and what is going on.

8 In this case the seal was intact, the test
9 proceeded on.

10 Inside is, as I described earlier, a kit.
11 The kit contained two components of parts. The
12 first part of it, the swabs, we ran on an
13 instrument to see if we could find these elements
14 we're looking for found from the discharge of a
15 weapon.

16 These elements are called antimony, barium
17 and lead.

18 In this case we did find on one area of the
19 hand sufficient levels and we reported out those
20 levels as consistent with gunshot residue.

21 At a later time, the request was made to do a
22 further confirmation test with the particle lifts,
23 which we did perform, and made a confirmation of
24 our findings.

25 Q All right. And this evidence was collected from

1 whom?

2 A The evidence was collected from Sharone Willis
3 Middleton.

4 Q All right. That was from a swab and a particle
5 lift that was taken from that individual by North
6 Charleston and sent to you?

7 A That is correct.

8 Q All right. Now, you mentioned a window of time
9 frame involved. Could you explain about the
10 window of time that you referred to?

11 A Yes, sir. When a weapon is discharged, this
12 material will come out of it as a cloud similar to
13 flour.

14 And as this material will coat your hands,
15 immediately the body begins the process of
16 removing it.

17 You can remove it either by wiping your
18 hands, by washing your hands, or just by activity
19 of sorts.

20 For someone who is alive, we have found that
21 after six hours of a discharge of a weapon, there
22 is no likelihood that you will find any of this
23 material on the hands.

24 So there is a window that this test must be
25 performed within for someone who is alive.

1 However, if someone is at a shooting, they
2 die at that point, this material is now stabilized
3 from the point of -- unless somebody else comes
4 along and physically washes it or wipes it off
5 their hands, it will remain on their hands for
6 many days.

7 Q All right. Lieutenant Powell, is it possible that
8 a suspect in a homicide kind of case could wash
9 their hands and therefore get rid of the evidence?

10 A Yes, sir. Washing your hands is one of the most
11 effective ways to remove this material.

12 We've had cases where someone -- we have
13 evidence that they discharged a weapon, yet this
14 test was negative, due to the fact that they
15 washed their hands.

16 Q And if an individual was being treated or moved
17 around and was being touched by medical personnel,
18 could that disrupt the powder that's on their
19 hands?

20 A Yes, sir. Any activity that's going on with
21 someone, especially in the area where this
22 material might be found at, will begin to
23 diminish, brush off or remove this material.

24 Q Okay. Now, you mentioned that first of all, the
25 first level of testing is that you take the swab

1 that was done. Is there one swab for both sides
2 of the hand or is it more than one swab on a hand?

3 A It's more than one swab. What you cover -- in
4 this case I'm describing the back of my left
5 hand. You would take a cotton swab and run it
6 over the area, place that swab into a plastic
7 tube.

8 You would then follow back up with a second
9 swab over the same area and place it into the same
10 tube.

11 That tube would be labeled back of left
12 hand.

13 The palm of the left hand would then be
14 treated with another swab where we go over -- and
15 in this case we would be using two swabs, going
16 over the areas, containerizing them into one tube,
17 and that tube would be labeled as the area of the
18 hand that it was taken from.

19 Q And the purpose of that is to try to isolate the
20 area on the person that has this gunshot residue?

21 A Yes, sir. The area where this material might be
22 found can give us indications as to what may have
23 happened.

24 There are many ways that someone can get this
25 material on their hands, and we're trying to

1 better clarify how they received this material and
2 what it may mean.

3 Q All right. In terms of your introduction of this
4 test to South Carolina and its subsequent
5 development throughout South Carolina's history,
6 as well as through all of the US, one of the chief
7 reasons to do this kind of testing is to see if
8 someone either handled or fired this weapon; is
9 that correct?

10 A Yes, sir, that is correct. The general purpose is
11 to ascertain if someone has come in contact or
12 discharged a weapon.

13 Q And more specifically, is it fair to say that
14 within that six hour window that we just talked
15 about?

16 A Absolutely. Anything outside that six hour window
17 we do not even analyze in our department for
18 someone who's alive.

19 Q Okay. Turning to this question of the swab test,
20 do you have certain kinds of threshold levels that
21 you look at that you think are somewhat diagnostic
22 of the presence of gunshot residue?

23 A Yes, sir, we do.

24 Q All right.

25 A Based upon many years of testing and sampling of

1 our own hands, we have come up with levels of
2 these materials that we're looking for.

3 If someone has these amounts or greater, then
4 we have indication that someone's been in contact
5 with gunshot residue.

6 Q All right. Now, as I understand it, gunpowder has
7 certain unique elements that you're looking for in
8 this testing; is that correct?

9 A Yes, sir, gunpowder or gun primer.

10 Q Well, you tell me.

11 A Gunpowder is actually the component that is found
12 behind the bullet, which is burned to be able to
13 propel it out of the cartridge case.

14 In this case we're looking for what's called
15 the gun primer in combination with bullet lead,
16 which we call gunshot residue.

17 So that's what we're taking to at this point.

18 Q So that unique combination?

19 A Yes, sir.

20 Q Okay. And some of these elements are not
21 particularly common in the rest of world; right?

22 A Yes, sir. Other elements that we're looking for,
23 principally the barium, the antimony and the lead,
24 each of them have a certain, if you will, where
25 they're found or how much they're found in the

1 world.

2 For example, in the case of barium, of these
3 three elements, barium is the most common. Every
4 one of us here have a potential of being
5 contaminated with it.

6 Certain sources would be makeup. If you have
7 any kind of glove, like a latex glove, the powder
8 inside has a barium compound.

9 So these are sources that you may run into
10 which could have barium in them.

11 In the case of lead, at one time lead was
12 very common. It was used in gasolines, in many
13 paints. However, over the years it has been
14 removed from these sources, so each year it's
15 becoming more and more rare.

16 You can still find it in places like quill
17 weights, fishing weights and things like that.

18 Antimony is the most rarest. It is used
19 only as a flame retardant on certain types of
20 leather goods, and that's it. So it is very
21 rare. You do not find it in the environment very
22 much at all.

23 Q And is it correct that what you are looking for is
24 not just one of these, but the combination of all
25 three in making your finding of gunshot residue?

1 A Yes, sir, that's correct. One by itself does not
2 tell us if someone has been in contact with a gun.
3 We must have all three in combination to make that
4 conclusion.

5 Q All right, sir. So you have mentioned three -- I
6 guess these are elements. Are these elements?

7 A Yes, sir, that's correct.

8 Q So we have barium?

9 A Yes, sir.

10 Q And then you mentioned lead?

11 A Yes, sir.

12 Q And you mentioned antimony?

13 A Yes, sir.

14 Q Is that A-N-T-I-M-O-N-Y?

15 A Yes, sir, that's correct.

16 Q Thank you. All right. What is the threshold
17 levels that you look for in your instrument to be
18 able to say that this appears to fit the profile
19 of gunshot residue?

20 A The minimum level that we look for would be -- for
21 antimony it would be ten parts per billion, which
22 is a very small amount, but it would be ten parts
23 per billion.

24 And for the case of lead, it would be 200.

25 And barium would be 200 hundred. All of these

1 would be in parts per billion.

2 Q Okay. So if I wrote by antimony, you would say
3 ten parts per billion?

4 A Yes, sir.

5 Q And I'm not going to write ten parts per billion,
6 I'm just going parts per B.

7 A Yes, sir, that is the correct way to do it.

8 Q Okay. I got lucky.

9 Then with regard to lead you said 200?

10 A Yes, sir.

11 Q All right. And then barium?

12 A That would also be the same, would be 200.

13 Q Two hundred. Okay. Now, these are not elements
14 that you can see with the naked eye; right?

15 A Not unless you have enough of it. I can bring in
16 a chunk of lead. I can bring in a barium bar or I
17 can bring in -- I've got a rod of antimony at the
18 laboratory. But normally you would not find these
19 unless you were in a chemistry lab and
20 specifically dealt with these chemicals.

21 Q So you are using some sort of mass spectrometer to
22 be able to test these swabs?

23 A Yes, sir. It is a very specific type of
24 instrument, and I won't go into all the science
25 behind it, but basically what it will do is it

1 takes a sample, applies enough energy to it so
2 that it actually breaks it up into nothing but
3 elements, and then counts all the atoms that are
4 there.

5 It can do every atom in the sample within 30
6 seconds and can have that information to be able
7 to go forward to make a conclusion.

8 Q Okay. Calling your attention to the swab from the
9 right palm of Mr. Sharone Middleton, what were the
10 results that you got from the spectrometer?

11 A The original results from the right palm were that
12 he had sufficient levels to indicate the presence
13 of gunshot residue.

14 Q Do you remember what those levels were?

15 A I can -- one moment. The levels were 18 for
16 antimony, 200 and 55 for lead, and 400 and 52 for
17 barium.

18 Q All right. And those were from the swab of Mr.
19 Middleton's hands?

20 A Yes, sir, that would be from the right palm region
21 of Mr. Middleton's hands.

22 Q And this over here would be the scale that you
23 used over to this side?

24 A Yes, sir, that's correct.

25 Q All right, sir. Now, in addition to the swabbing,

1 you have the ability to -- well, first of all,
2 let's deal with the swab with regard to the other
3 hands.

4 You tested the left hand as well; did you
5 not?

6 A Yes, sir, we tested all four regions of both
7 hands.

8 Q Right. And you did not detect gunshot residue on
9 the left hand; did you?

10 A There was no gunshot residue, either palm or back
11 of the left hand or on the back of the right hand.

12 Q Okay. With regard to the follow-up test, you
13 mentioned that there was a particle lift test. Is
14 this designed in any way to try to confirm the
15 accuracy and the reliability of the test that we
16 just talked about?

17 A Yes, sir. These tests are used independent of
18 each other, but their results should confirm each
19 other's findings. And they have.

20 Over the years we have ran this test on
21 approximately ten thousand samples and we are
22 getting almost perfect correlation between the
23 two.

24 The only time of some difference is because
25 of maybe some blood, which will dissolve the

1 particles, but we still have the materials and
2 things which can be attributed.

3 But, yes, this test is used to give us a
4 confirmation. It is also a test of higher value.
5 It allows us to physically see these particles.
6 The particles themselves are very tiny, invisible
7 to the naked eye.

8 But we can see them. We can take a
9 photograph of them. And then once we find them we
10 know that we no longer have an indication but we
11 have gunshot residue.

12 Q So you did this particle test. And what were the
13 results with regard to the right hand?

14 A The right palm has gunshot residue on it.

15 Q Okay. Now, as I understand it, there is no way
16 that you can determine what specific gun these
17 particles came from?

18 A With a few exceptions, that is absolutely correct.
19 Certain types of ammunition from certain
20 countries, such as Czechoslovakia, use mercury in
21 their gun -- in their ammunition.

22 And if I find mercury or other compounds, I
23 can contribute it to Czechoslovakian ammunition.

24 But for the ammunition produced in this
25 country, it is uniform, all of the suppliers tend

1 to buy from common sources and there is no
2 difference in that material.

3 Q All right. And in regard to other methods or
4 other possibilities, let's talk about these
5 particles. These particles can be in part either
6 blasted on the back of the hand or onto the hand
7 from the weapon or they could result from smoke;
8 right?

9 A Yes, sir. When a weapon is discharged, this
10 material will be -- most of it is forced out from
11 the front of the weapon.

12 So if you're standing in front of the weapon,
13 if you're close to it, you will get a coating of
14 this material, a tremendous number of particles,
15 very high levels of materials we've just
16 described.

17 If you're behind the weapon, you get a light
18 dusting of this material on your hands. So you
19 get levels similar to this or a little bit higher.

20 You can also just be near the weapon. If
21 you're around the cylinder gap or maybe the
22 ejector port, you can get this material to be
23 floated out to you also.

24 Q All right. So in this particular instance, you
25 cannot say whether or not Mr. Middleton fired a

1 weapon that night or not?

2 A I cannot say with certainty that he did not fire a
3 weapon.

4 However, the fact that this material is on
5 the palm of his hands and not the back of his
6 hands is more consistent with either a transfer,
7 meaning that he may have held an object or a
8 weapon with this material already on it, or that
9 he's been contaminated in being shot at, more than
10 discharging a weapon.

11 When you fire a weapon, your hand is holding
12 the weapon, and you will get the material on the
13 back of your hands. And we found nothing on the
14 back of the hands.

15 So that's why I'm saying although I have seen
16 this, where cases have been only on the palms, if
17 they did fire a weapon, it's unusual.

18 Q Okay. So it can't happen. And so that means that
19 you couldn't be sure with regard to the firing of
20 the weapon?

21 A I cannot rule out. I can say it's more consistent
22 with the other scenarios.

23 Q All right. You also couldn't say whether or not
24 it's just maybe the result of having handled a
25 weapon?

1 A Again, this would be consistent with the handling
2 of a weapon. If you handled a weapon, I would
3 expect to find these levels in which were found.

4 Q Now, with respect to this other possibility where
5 you were in close proximity to a gun being fired
6 at you, if that weapon -- if your hand is up close
7 to where the weapon is being fired, wouldn't these
8 levels that you talked about, the parts per
9 billions, just run off the scale?

10 A Absolutely. The typical number would be, for
11 antimony, would be ten thousand. I've seen it as
12 high as 100 thousand.

13 It gets to numbers where it's actually -- you
14 actually can physically see it. It actually coats
15 the hands with a dark gray material.

16 And if you're close enough, there will be
17 burning and singeing and the material will
18 actually be pushed into the skin.

19 Q All right. And so if this is then more consistent
20 with either having handled a weapon, possibly
21 firing a weapon, or this light dusting scenario
22 that you talked about with gunshot residue from
23 smoke?

24 A Yes, sir, those are the three most probable ways
25 that I can see where you would get this material.

1 Q But the unique thing about this dusting in this
2 case is that you didn't find that dusting on the
3 back of his hand on his right hand?

4 A No, sir.

5 Q Or on his left hand, front or back?

6 A That is correct.

7 MR. PENNINGTON: Court's indulgence, Your
8 Honor.

9 Please answer any questions the Solicitor may
10 have for you.

11 THE WITNESS: Yes, sir.

12 MR. DUTREMBLE: Thank you. May it please
13 the Court, Your Honor?

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. DUTREMBLE:

17 Q Good afternoon.

18 A Good afternoon, sir.

19 Q You were speaking with Mr. Pennington about a
20 window of opportunity, which you described as six
21 hours, and I believe that you testified that after
22 a passage of six hours on a living person, you
23 would not even attempt to analyze any kind of
24 swabs or tests; is that correct?

25 A Yes, sir, that is correct.

1 Q And if in a case such as this a weapon was
2 discharged at ten o'clock in the evening and the
3 suspect was not apprehended until six o'clock the
4 next morning, which would be eight hours, there
5 would be no need to swab his hands, because you
6 couldn't test them?

7 A That is correct. If after six hours someone is
8 sampled, the test is irrelevant due to the fact
9 that if it's a negative, it means nothing; the
10 hands could have been washed. It doesn't tell you
11 anything.

12 And if it's positive, it means that he would
13 have discharged a weapon after the one we're
14 looking at, so that's just false evidence.

15 So we do not analyze it in either scenario.
16 So it's irrelevant.

17 Q And it would be correct to say that in this case
18 there were no swabs submitted from the defendant
19 in this case, Mr. Byron Slater; is that correct?

20 A No, sir. The only samples that I received were
21 from Sharone Willis Middleton.

22 Q Right. Now, let me ask you this, sir. Do all
23 weapons give off the same amount of trace
24 elements?

25 A All weapons give off this residue, but not the

1 same amount.

2 Q Does a more powerful handgun give off more trace
3 elements?

4 A As a general rule, yes, sir. If you have a .45
5 caliber, it will give off a very large amount.

6 As a matter of fact, base levels, meaning
7 that the amount that you get from just discharging
8 a weapon, possibly twice what you're seeing here
9 on this.

10 Versus a .22 would be -- this level may be a
11 little bit higher.

12 So it depends upon the caliber. The size of
13 the weapon would dictate the amount that you put
14 on your hands at the very beginning.

15 Then begins the process of this material
16 falling off or being removed by activity.

17 Q Sure. And what do you expect to find when a nine
18 millimeter is involved in a shooting?

19 A Again, with a nine millimeter I would not be
20 surprised, if you took the samples right after the
21 discharge of a weapon, between 20 to 30 antimony,
22 200 to 400 lead. Same for the barium, somewhere
23 in that range.

24 Q Now, would that be for the shooter, someone who
25 fired the gun?

1 A That would be for the shooter.

2 Q Now, you mentioned something to Mr. Pennington
3 that I didn't quite understand. You mentioned
4 four regions of the hand.

5 A Yes, sir.

6 Q But you only described the front and the back of
7 the hand. Where are the other two regions?

8 A Maybe I mis-spoke. Two hands, each having two
9 regions, making up a total of four.

10 Q So what you're testing for is the front of the
11 hand and the back of the hand on each of the left
12 and right hand?

13 A Yes, sir, that's correct.

14 Q And in this particular case, Mr. Middleton had
15 nothing on the back of the hand?

16 A No, sir, there was nothing on the back of the hand
17 or on the left hand.

18 Q Okay. And when you test for a person suspected of
19 being a shooter of the gun, I believe your
20 testimony was that you would expect to find some
21 sort of residue on the back of his hand?

22 A Yes, sir. As the material comes out of this
23 weapon, it will envelope the weapon, and the first
24 point of contact is the back of the hand.

25 Usually the palm gets contaminated because of

1 the hole around the trigger gap or some of the
2 material being on the weapon itself.

3 Q Okay. And with respect to State's Exhibit Number
4 33, sir, can you explain to the members of the
5 jury with this particular weapon -- where you
6 would expect to find discharge of these various
7 elements that you mentioned once the gun was
8 fired?

9 A Once this weapon is discharged, and this weapon
10 does not have a round in it, once this weapon
11 is discharged--

12 THE COURT: Are you sure? That is pointing
13 at me.

14 MR. PENNINGTON: Actually he's pointing it at
15 Mr. Young, Your Honor.

16 THE COURT: I have one rule in Court. When
17 weapons are around, I want them pointed to the
18 defense lawyers or Solicitors.

19 All right. You may proceed.

20 MR. DUTREMBLE: I'll stand in the way, Judge.

21 THE COURT: Fine.

22 THE WITNESS: On this weapon here, once this
23 trigger has been pulled, we have three main areas
24 where you can get this residue to be deposited.

25 Number one would be this little ejector

1 port. This would be where it would open up and
2 the shell is ejected out.

3 The second is at the barrel itself. This is
4 where 95 to 99 percent of all of the material will
5 be blasted out, this huge cloud of debris, and the
6 remainder will be around the trigger itself.

7 Q All right. So 95 to 99 percent of the residue
8 comes out the barrel?

9 A Yes, sir, that is correct.

10 Q So you're only talking about a small amount coming
11 out of ejector port and the trigger port?

12 A Yes, sir, that's correct.

13 Q And basically what you're looking for, when a
14 person holds a weapon in his hand and pulls the
15 trigger, is you're looking from the small amount
16 that discharges from this part of the gun, the
17 ejector port, and where the trigger is. And when
18 you do that it's going to get on the front and the
19 back of your hands?

20 A Yes, sir, as well as the cloud itself, when it
21 will come out the end of that barrel, it will
22 envelope the weapon, so you will get a large
23 amount on your hands and on your garments.

24 Q And you found nothing on the back of Sharone
25 Middleton's hands?

1 A That's correct.

2 Q But you also mentioned something that I wrote down
3 and I want to make sure that I wrote it down
4 correctly. There are many ways to get gunshot
5 residue on your hands. I think you said
6 specifically there are many ways to come into
7 contact with it?

8 A Yes, sir.

9 Q What are some of those ways?

10 A You can come in contact with it from the point of
11 view of being around it. What I mean by that is,
12 say for example, someone shoots a weapon over the
13 top of you, you're laying on the ground, you've
14 been wounded. Someone shoots above you. That
15 material can shoot down and fall upon you.

16 If you're standing up and someone is shooting
17 at you, you can be able to get this material on
18 you.

19 If you pick up a weapon, you can get this
20 material. If you open the magazine of that
21 weapon, you can get this material on you.

22 That's what I mean, there is many ways you
23 can be able to pick this up, depending on what
24 you're doing.

25 Q In this particular case there is evidence that

1 Sharone Middleton was lying on ground when he was
2 shot.

3 A Yes, sir.

4 Q If the shooter was standing above him with a nine
5 millimeter gun and fired two shots from this
6 weapon into his chest, would you expect to find
7 gunshot residue on the body of Sharone Middleton?

8 A I would expect to find the material as it comes
9 out of this weapon would be pulled down, once it
10 stops from the air, to float on down, and if his
11 hand is anywhere in that cloud, he would be
12 contaminated.

13 Q There's also evidence in this case, sir, that as
14 Sharone Middleton was laying on the ground, he was
15 being attacked by a group of young men, that he
16 had his hands up trying to protect himself.

17 Based upon the firing of a nine millimeter
18 weapon twice as he was doing that, would you
19 expect to find gunshot residue?

20 A Yes, sir. If his hands came within that cloud.
21 If his hands were not near that weapon when it
22 discharged, then these levels would be much
23 higher.

24 But he could very well have gotten
25 contaminated, because as you're coming up, this

1 cloud -- you may only catch the edge of the cloud.

2 Q And there was also evidence in this case that he
3 was treated at the scene by EMS emergency
4 technicians. Would that have any impact on amount
5 of residue that could have been removed from his
6 hands?

7 A It would remove some of it. And unless they do a
8 complete hand wash, there would be spots where you
9 still would find material.

10 But again, everything that you do to your
11 hands, you are diminishing a little bit of the
12 material.

13 Q So in any event, in your analysis, the only place
14 you found any residue was simply on the palm of
15 his hand and not on the back?

16 A Yes, sir, that's correct.

17 Q And you cannot say to a reasonable degree of
18 scientific certainty that Sharone Middleton ever
19 fired a gun that evening; can you?

20 A I cannot say absolutely did not fire a weapon, but
21 I can tell you it's very unlikely with the facts
22 that I have before me.

23 MR. DUTREMBLE: Thank you very much, Joe, I
24 appreciate your coming.

25 MR. PENNINGTON: Your Honor please.

1 REDIRECT EXAMINATION

2 BY MR. PENNINGTON:

3 Q Lieutenant Powell, is it also possible to swab
4 objects? You talked about that you swabbed skin.
5 But you can detect this thing off of other
6 carriers; right?

7 A Yes, sir. Many times we have cases where a
8 discharge has been performed in an automobile and
9 we'll actually do this test on the automobile
10 itself to see if we can find this residue.

11 We also have a technique where on the
12 subject's clothing, if a kit was unable to be
13 performed and we're able to show that this
14 clothing was directly -- was being worn at the
15 time of the incident involved, we can go back and
16 test that to see if we can find this material.

17 Q All right. Did you receive any swatches of
18 clothing to detect whether or not there was
19 gunshot residue on clothing?

20 A No, sir.

21 Q How about in the car?

22 A No, sir, there was no -- the only evidence I
23 received is what I have testified about.

24 Q And that's all you can go on is just what was
25 collected and what was given to you?

1 A Yes, sir, that's correct.

2 Q All right. Now, you indicate this is level is
3 more consistent with someone who could have fired
4 or handled a .22 caliber?

5 A Again, the levels are low enough to be within a
6 .22 caliber range, but it could have been from a
7 larger caliber weapon and the material being
8 diminished because of activity, because of what's
9 happened with him.

10 The numbers, it's hard to draw a conclusion
11 as to exactly what type of weapon. We can draw
12 inferences, but that's the best we can do.

13 Q Now, you mentioned that -- the Solicitor asked a
14 number of times about firing of a weapon. But you
15 can get this material on your hands simply by
16 holding a weapon?

17 A Yes, sir.

18 Q The gun does not have to be discharged?

19 A It has to be discharged the first time to get the
20 material on the weapon. And then when you grab
21 the weapon you'll pick the material up.

22 Q But there is no specific interval of time it has
23 to -- in other words, you don't have to have just
24 fired the weapon to get material on you; is that
25 correct?

1 A No, sir. Once the weapon is discharged it will
2 remain on that weapon until someone cleans it,
3 which means it could be put into a gun container
4 for kept there for years. And if you pick it up,
5 you have this material on your hands.

6 Q Or in a pocket or a glove compartment of a car?

7 A Yes, sir, any place where it's protected and not
8 allowed to be weathered, it will maintain this
9 material.

10 Q With regard to EMS and other emergency care, you
11 would expect, in the process of this, that as the
12 suspect, or rather the victim, is treated and then
13 loaded on to a gurney and taken to a hospital and
14 treated, that there would be contact with his arms
15 and hands; wouldn't you?

16 A Yes, sir. Normally there is contact from the
17 point of view of swabbing, putting in maybe a
18 needle to be able to administer various types of
19 medicines and fluids.

20 There is contact. That does not necessarily
21 mean that it would eliminate all of the material,
22 but there is contact.

23 Q All right. And as the Solicitor demonstrated, if
24 it was in such a way that Mr. Middleton was on the
25 ground and this gun was held in such a manner that

1 you were standing over and shooting this person,
2 that would put the muzzle roughly, assuming that
3 there was a person on the same level of ground,
4 maybe two or three feet away from the muzzle of
5 the pistol; would it not?

6 A That is correct.

7 Q All right. And at that distance you mentioned
8 that his huge cloud would emit; is that not
9 correct?

10 A Yes, it will come out as a cone. And then as it
11 hits the air it slows down very rapidly and just
12 stops as just a fluffy cloud.

13 Q All right.

14 A And what it will do, if you're shooting straight,
15 it will actually fall down and fall in an arching
16 procedure.

17 And if you're shooting like you're
18 describing, it would just stop and just settle
19 down.

20 Q All right. And at that proximity -- and if I
21 could ask my colleague to come lay on the floor.

22 At that proximity, with hands up and shooting
23 (demonstrating), then this would be fairly a
24 likely similar scenario that you described, where
25 you would expect to levels to go up?

JOSEPH POWELL-REDIRECT EXAMINATION BY MR. PENNINGTON

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1 A You would be at the edge of the cloud as far as
2 the material that's being driven.

3 If you put your hands further up from where
4 that weapon is, then you get in the higher and
5 higher concentrations of material as you get
6 towards the barrel of the gun.

7 Q All right. And we know in this case--

8 Thank you, Boyd.

9 We know in this case that you didn't find
10 generalized particles settled on the left hand,
11 front or back; right?

12 A That is correct.

13 Q Or on the back of right hand?

14 A That is correct.

15 MR. PENNINGTON: Thank you, sir.

16 MR. DUTREMBLE: Nothing further.

17 THE COURT: You may come down. Thank you,
18 Lieutenant.

19 THE WITNESS: Thank you, sir.

20 MR. PENNINGTON: Your Honor, the defense at
21 this time calls Byron Slater.

22 THE COURT: All right.

23 LORD BYRON BARCLAY SLATER,

24 Being first duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. PENNINGTON:

2 Q Byron, how old are you?

3 A Twenty.

4 Q And how old were you when this event occurred in
5 February?

6 A Nineteen.

7 Q And you lived on the -- what's your address?

8 A [REDACTED].

9 Q Who did you live there with?

10 A My mom.

11 Q And who else?

12 A My sister and my brother.

13 Q Okay. What kind of vehicle did you have?

14 A A Monte Carlo.

15 Q Okay. Did you have occasion to go to the North
16 Charleston High School on February third?

17 A Can you repeat that question?

18 Q Sure. Did you go to the high school on February
19 third?

20 A Yes, sir.

21 Q Okay. How did you get there?

22 A I drive.

23 Q Okay. And when you got there did you see some
24 friends?

25 A I came there with one person and met up with some

1 other people.

2 Q Who did you go there with?

3 A Ellis Judon.

4 Q Okay. Who did you meet up with?

5 A I meet up with Keon and Erkel, Deshawn Brown.

6 Q Okay. Erkel is a nickname of Deshawn Brown?

7 A Yes, sir.

8 Q Okay. What did y'all do at the step concert?

9 A I was -- well, we was split up. I was watching my
10 female friend dance, perform at the step show.

11 Q Okay. Did you ever come back together?

12 A Yeah -- yes, sir, after the step show was over.

13 Q Okay. Was that inside the auditorium or outside?

14 A It was inside. Two of us been inside. It been
15 Keon and Ellis inside, when we walk outside, when
16 we meet up with Deshawn.

17 Q All right. When you were standing outside did you
18 leave immediately?

19 A No, sir.

20 Q What did you do?

21 A We was talking to some females and then -- I was
22 talking to some females. I wasn't too sure what
23 the rest of those fellows who been with me was
24 doing.

25 Q Okay. And did a commotion start?

- 1 A Something was going on by a truck.
- 2 Q Okay. Without relying on what other people told
- 3 you, just going on what you know of what you saw
- 4 out of your own two eyes, tell us what you saw.
- 5 A From where I been standing I could see a couple
- 6 fellows, I would say about three, maybe four, came
- 7 -- ran to the truck. It looked like they was
- 8 like yelling at some people.
- 9 Q Okay. Do you remember what kind of truck?
- 10 A No, sir.
- 11 Q Okay. And how did you react to that? What did
- 12 you think?
- 13 A I wasn't thinking too much. I wasn't too much
- 14 worried about that.
- 15 Q Okay. What did you decide to do?
- 16 A I walk back to my car and open up the door and I
- 17 grab the gun I had.
- 18 Q Is that the gun that's sitting right there on the
- 19 table?
- 20 A Yes, sir.
- 21 Q Okay. Why did you grab a gun?
- 22 A At first I was going to shoot in the air--
- 23 Q Why?
- 24 A That's just something that young people be doing
- 25 like after parties or clubs or whatever.

1 Q Okay. And when you say shoot in the air, are you
2 talking about shooting at someone?

3 A No, just shooting in the air. Like start a loud
4 commotion.

5 Q Okay. That would create a commotion?

6 A Yes, sir.

7 Q What would people do when that happens?

8 MR. DUTREMBLE: Objection, Your Honor, that's
9 totally speculative.

10 THE COURT: Yes, sir. I sustain that.

11 BY MR. PENNINGTON:

12 Q When you have seen it done in the past, what--

13 MR. DUTREMBLE: Objection; there's no
14 foundation that he's ever seen it done.

15 THE COURT: No, sir, I sustain that.

16 BY MR. PENNINGTON:

17 Q Have you seen it done?

18 A Yes, sir.

19 Q What happened when you saw it done?

20 THE COURT: No, sir, we're going to have to
21 limit to what happened on this occasion now.

22 What may or may not happen some other place
23 at some other time is not relevant to the issues
24 in this case. I sustain that.

25 MR. PENNINGTON: Your Honor, I believe it

1 goes to his state of mind in terms of what his
2 intent and purpose was.

3 THE COURT: You're going to have to confine
4 it to what occurred on this occasion, if anything,
5 not on some other proposition. No, sir.

6 BY MR. PENNINGTON:

7 Q Well, let's back up. Before you went and got your
8 gun, Byron, tell us, where are you in a good, bad
9 mood, what was your mood?

10 A Mood -- it was a okay mood. I wasn't thinking too
11 much about nothing.

12 Q Okay. So when this commotion started over near
13 the truck, you went and got your pistol; right?

14 A Yes, sir.

15 Q And you took it out and what did you do?

16 A I had it beside -- like pretty low by my leg. And
17 I was walking toward the area. I was going to
18 shoot in the air, but I didn't do it again.

19 Q Why didn't you do it?

20 A Change in thought.

21 Q What do you mean change of thought?

22 A About doing it.

23 Q You had doubts about it?

24 A Yes, sir.

25 Q Why?

1 A It was just something -- I didn't want to do it.

2 Q You didn't want to do it. All right. So what
3 happened at that point?

4 A So I was walking back to the car. I told Ellis --
5 Ellis came to me and we walk -- well, before the
6 commotion even been going on--

7 Q Now, let's be specific. We're talking about the
8 commotion at the truck?

9 A Yeah, before -- like before that, Deshawn asked
10 for a ride home, that's how he got in the car with
11 us. And Keon already needed a ride, so I was
12 taking -- was going to take them home.

13 Q Okay. Did y'all have any other plans that night
14 besides taking them home?

15 A No, sir.

16 Q All right. So you walk away from the truck after
17 that commotion without firing it and what
18 happened?

19 A I was walking back to my car. Ellis already had
20 the keys to my car. He was going to drive,
21 because I usually let him drive my car.

22 And I notice something was going on in the
23 parking lot. So that's when I start walking
24 toward the parking lot.

25 Q Okay. So did you -- tell us what happened.

1 A I was walking up. I was noticing a -- like
2 walking up it -- like it was pretty dark. But
3 walking up, it looked like a fight was going on.

4 Q Okay. Why go over there?

5 A I just wanted to see what was going on.

6 Q Now, did you still have the gun?

7 A Yeah. I never went back to the car to put it
8 back.

9 Q All right. So you walked over to where -- well,
10 tell me what happened when you entered the dirt
11 parking lot.

12 A I walked on the dirt parking lot. I see -- looked
13 like two fellows. Looked like their back. They
14 was like -- they was on one the fellow.

15 And I notice another dude was -- I think he
16 was on the ground. He was on the other side. I
17 think he was on the other side of the car.

18 Walking up -- the fellows who been already in
19 the parking lot, I was walking up. And I can't
20 really -- they had some man or some other fellow
21 -- it was two people over there.

22 One of them had like -- I think like -- I
23 think they was pulling and tugging while the other
24 one was walking up.

25 Q All right. Now, let's try to be as clear as we

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1 can be about this. You said one guy was on the
2 ground?

3 A Yeah. That was by the car.

4 Q By the car. And did you see some other tussling
5 or tugging going on somewhere else?

6 A Yes. It was a different area.

7 Q Where was that?

8 A It was probably to the right -- to the right -- to
9 the right side of the church parking lot.

10 Q Okay. Now, let me stop you and ask you, did you
11 know who these people were in that parking lot?

12 A No, sir.

13 Q Had you seen them before?

14 A No, sir.

15 Q Do you know the names of these people?

16 A No, sir.

17 Q So you walked up and you saw these two separate
18 fights going on?

19 A Well, it was really -- I'd say three.

20 Q All right. Well, tell us about that.

21 A On one side of the car it was two on one and one.
22 On the other side it was another two on one, but
23 they had a fellow on the ground.

24 Q Okay. And so how close did you get?

25 A I wasn't by the car. I was more closer to the --

1 coming on to the parking lot to the one -- the
2 closest one before you must get to the car.

3 Q Where were your friends? In your car?

4 A They was -- they aint came over to the area yet,
5 but they was coming.

6 Q Okay. You got there first?

7 A Yes, sir.

8 Q All right. Tell us what happened as you
9 approached.

10 A When I walked up a man -- the man who wasn't the
11 other dude, because one -- the man -- one dude had
12 -- was grabbing one dude, another dude was
13 walking up.

14 And when I walked up on him, I guess I
15 surprised him and he turned to me and he had a gun
16 in his hand. And I see his gun and I started
17 running. And I heard a gunshot. And I start
18 shooting my gun.

19 Q How many times did you shoot your gun?

20 A I'm not too sure how much times I shot it, but I
21 shot it though.

22 Q Pardon me?

23 A I'm not too sure.

24 Q All right. Now, you say that you surprised the
25 man?

1 A Yeah, when I walked up on him like here, like he
2 turned to me, like had the gun pointed at me like
3 he surprised, like he don't -- like he don't
4 recognize me and I don't recognize him.

5 Q Where was your gun at that point?

6 A It was by my side. Like on the side of my -- it
7 was in my right hand.

8 Q Okay. So what did you do as soon as the two of
9 you saw each other?

10 A It was a quick reaction. When he turned to me, I
11 turned and run. And then--

12 Q And what was the expression on his face?

13 A I didn't really too much see his expression. I
14 see the gun.

15 Q Where was the gun?

16 A Like pointed -- like when I walked up on him, he
17 turned around quick to me and the gun, he
18 probably--

19 Q You can step down and demonstrate it if you would
20 like. Show us what he did.

21 A Him and another dude, probably right about at that
22 table, and he was walking toward -- what them two
23 been doing, like grabbing each other.

24 Q Over here fighting?

25 A Yes.

1 Q All right.

2 A And he had his back turned like this. And when I
3 walk up -- I was walking up. And he turned to me
4 quick.

5 Q He turned like this?

6 A Yeah.

7 Q How were his hands? Show me how his hands were.

8 A He had the gun in his left hand and he turn -- he
9 turned to me like that, and that's when I ran and
10 I heard a gunshot. And I shot back like that.

11 (Demonstrating.)

12 Q All right. Where was his gun pointed?

13 A I didn't know, I didn't look back.

14 Q Okay. But when he turned and you were still
15 looking at him, where is his gun?

16 A It was a quick -- it was a quick reaction. Like
17 when I walk up to see what was going on, he turned
18 quick. I aint really looking at the face of this
19 person.

20 He been about your -- probably about your
21 height.

22 And when he turn quick, I see the gun in his
23 hand like that. But then I ran back to the
24 street, to the side street.

25 Q And as you ran, you were doing what?

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1 A After I heard the gunshot, the first gunshot,
2 that's when I shot the gun I had.

3 Q All right. You can take the stand again. Before
4 this night did you know Sharone Middleton?

5 A No, sir.

6 Q Had you ever met him?

7 A No, sir.

8 Q Had you ever had any bad feelings toward him at
9 all?

10 A No, sir.

11 Q Now, when you jumped in the car, what did you do?

12 A When I jump in the car -- I think either Deshawn
13 Brown or Keon, one of the two, they was already
14 out the car. Like I guess they was about to walk
15 over there too, but when they heard the shots too
16 they get back in there and I was the last one to
17 get back in the car.

18 Q Okay. And what did you do when you got in?

19 A Like everybody was scared. So Ellis drive. And
20 then we start hearing some more gunshots. So
21 riding off, I duck down and I took the gun out and
22 start shooting in the air.

23 Q Okay. Did you know where your bullets went when
24 you fired them?

25 A No, sir.

1 Q Did you know that you had shot someone?

2 A No, sir.

3 Q When you got in the car, what did you say to your
4 friends?

5 A I said them boys -- I think them boys get
6 somebody.

7 Q All right. Did you -- why did you come back to
8 that scene later on?

9 A Just to make sure like -- I aint been too sure
10 what happened. Just to make sure everything went
11 all right.

12 Q But when you got there, what did you see?

13 A I'm not too sure. I remember getting pulled over.

14 Q All right. What did you see in the dirt lot?

15 A Looked like cars.

16 Q Okay. Now, you heard Terell Bryant testify, I
17 believe, yesterday. Do you know Terell Bryant?

18 A I mean, I used to go to North Charleston. I don't
19 know him personally.

20 Q Okay. All right. Did you see Terell Bryant that
21 night?

22 A No, sir.

23 Q All right. Do you know if Terell Bryant said
24 something in your direction or to you or did you
25 hear anything?

1 A No, sir.

2 Q From Terrell Bryant?

3 A No, sir.

4 Q Now, after this and after you had been stopped
5 twice, y'all went and got something to eat?

6 A Well, we dropped Deshawn off to the parking lot.
7 Then I can't remember who actually came up with
8 the idea to get something to eat, but we went to
9 Sonic's.

10 Q Okay. And then after you went to Sonic, where did
11 you go after that?

12 A I drop Keon off and then I drop Ellis off.

13 Q Okay. And where did you go?

14 A I went home.

15 Q Okay. Do you remember the police showing up at
16 five o'clock in the morning?

17 A Yes, sir.

18 Q Okay. And what did they do?

19 A They knock on the door and I came outside. It
20 been Palmer, because I recognize Palmer from North
21 Charleston.

22 It been some other -- I think there was
23 either one more. I think some people outside. I
24 can't really remember. I remember Palmer telling
25 me I'm arrested for armed robbery and murder.

- 1 Q Uh-huh. And what did you say?
- 2 A I'm in shock. I say, y'all got the wrong person.
- 3 Q Okay. Did they ask you about a weapon?
- 4 A Yeah, Officer Palmer asked me if I had any
- 5 weapons. And I told him, yeah, a .25 and a nine.
- 6 Q Okay. Now, you went down to the North Charleston
- 7 Police Department with these officers?
- 8 A Uh-huh. (Answer in the affirmative.)
- 9 Q Where they arrested and took you?
- 10 A Somebody drive me down to the North Charleston
- 11 Police Department.
- 12 Q And you got there. You talked to them verbally
- 13 and gave a statement; right?
- 14 A I gave a statement.
- 15 Q Did you tell them the truth?
- 16 A No, sir.
- 17 Q What did you tell them about going to the dance?
- 18 A I just told them I been out there and I heard
- 19 gunshots.
- 20 Q Okay. Did you tell them that you went into the
- 21 park -- or the parking lot with the gun?
- 22 A No, sir.
- 23 Q Why not?
- 24 A Because I'm scared. I aint never been in a
- 25 situation like that before.

1 Q Why were you scared?

2 A Because when they come to my house and say I'm
3 charged with those things, that's something that
4 just -- but it just scared me.

5 Q Okay. All right. So you didn't tell them that
6 you had been in the parking lot with a gun or that
7 you had seen other people with guns?

8 A No, sir.

9 Q Okay. When y'all left the parking area next to
10 the church, did y'all leave slowly or fast?

11 A We leave pretty fast.

12 Q Why were y'all going fast?

13 A Because hearing gunshots. And like I didn't -- we
14 just want to leave fast.

15 MR. PENNINGTON: May I have the Court's
16 indulgence, a moment, Your Honor?

17 BY MR. PENNINGTON:

18 Q Now, you saw the Solicitor demonstrate that as if
19 you were standing over someone shooting them while
20 they were on the ground. Did you do that?

21 A No, sir.

22 Q Well, it's perfectly clear now that the evidence
23 shows that it was your handgun that shot Sharone
24 twice in the chest. How do you feel about that?

25 A When I realize that that's the gun that I had did

1 it, it hurt me.

2 MR. PENNINGTON: Please answer any questions
3 the Solicitor has.

4 CROSS-EXAMINATION

5 BY MR. DUTREMBLE:

6 Q Mr. Slater, you drive a white Monte Carlo. Do you
7 normally drive that car with a nine millimeter in
8 the glove box?

9 A No, sir.

10 Q No, sir? You mean you put that nine millimeter in
11 there specially just for this high school dance?

12 A I wasn't intentionally going to the high school
13 dance. Someone brought it to my attention.

14 Q Well, when did you put that nine millimeter in the
15 car?

16 A I put it in there some time earlier that --
17 earlier that day.

18 Q Earlier that day. How old are you?

19 A Nineteen. Well, I was 19 when it happened, sir.

20 Q You were 19. You couldn't even legally own a gun;
21 could you?

22 A No, sir.

23 Q Couldn't go out and buy a gun; could you?

24 A No, sir.

25 Q Where did you get that gun?

- 1 A I bought it from a dude around the corner.
- 2 Q You bought it from a dude on the corner. Where
- 3 did you get the other gun?
- 4 A I get it -- another fellow.
- 5 Q Another dude. Where did you get the ammunition?
- 6 A Ammunition came with the gun.
- 7 Q Comes with the gun. What does a gun like a nine
- 8 millimeter cost on the street these days?
- 9 A I paid 250 for that.
- 10 Q Two hundred and 50 dollars for a gun you put in
- 11 your car and took to a high school dance; is that
- 12 correct?
- 13 A Yes, sir.
- 14 Q And you went to the high school dance with Ellis
- 15 Judon, the fellow who sat in that witness stand
- 16 and testified; correct?
- 17 A Yes, sir.
- 18 Q And everything Ellis Judon said from that witness
- 19 stand was true; wasn't it?
- 20 A No, sir.
- 21 Q No, sir? What was not true?
- 22 A About the door being looked.
- 23 Q About the car door being locked. That's the only
- 24 thing that wasn't true, the door was unlocked?
- 25 A And he said I got in the car. But I walk -- I was

1 the first one in the parking lot.

2 Q Everything else was true. And we heard you met up
3 with Keon, that's Kenyon Nichols; right?

4 A Yes, sir.

5 Q And you met up with Deshawn Brown; right?

6 A Yes, sir.

7 Q Those are the two fellows that testified that
8 said, I think dog got hit, and I think I hit him;
9 right?

10 A No, sir.

11 Q That's what they testified to; isn't it?

12 MR. PENNINGTON: Your Honor, this is just
13 pitting one witness. He can ask him what he
14 said--

15 THE COURT: No, sir, this is not pitting one
16 witness against another. This is appropriate
17 cross-examination of this defendant.

18 BY MR. DUTREMBLE:

19 Q And when you went and you got this gun out of your
20 house and you put it in your white Monte Carlo,
21 you made sure it was loaded; didn't you?

22 A It already was loaded.

23 Q It stays loaded; doesn't it?

24 A No, it wasn't loaded. -- See, I was -- no, it
25 wasn't -- I loaded it.

- 1 Q When did you load it?
- 2 A Earlier that day.
- 3 Q Earlier that day before you went to the dance.
- 4 How many rounds did you put in that magazine?
- 5 A I don't remember.
- 6 Q All that it would hold; right?
- 7 A I don't remember.
- 8 Q How many rounds did you have in the chamber of the
- 9 gun?
- 10 A (There was no response.)
- 11 Q One; right? You put the magazine in, you cock it
- 12 back and you're loaded and ready for bear; right?
- 13 A No.
- 14 Q No.
- 15 A It wasn't cocked when it was in my--
- 16 Q It wasn't cocked when you had it in your hand?
- 17 A In my yard earlier that day.
- 18 Q When did you cock it?
- 19 A I cocked it probably around about -- I can't
- 20 remember.
- 21 Q When did you cock it, sir?
- 22 A I don't remember.
- 23 Q You don't remember. You cocked it when you went
- 24 up there to confront those guys who were up there
- 25 with that Ford; right? As you're walking up the

1 street you cock it, you're ready for action;

2 aren't you?

3 A No, sir.

4 Q When did you cock it?

5 A It was cocked before I got--

6 Q Before that?

7 A --came to the dance.

8 Q Okay. Before you came to the dance. So you

9 cocked it so this gun would be ready for action no

10 matter where you went; isn't that true?

11 A No, sir.

12 Q Then why did you cock it and load a round into the

13 chamber?

14 A (There was no response.)

15 Q Because you were going to use it, isn't that

16 right, sir?

17 A (There was no response.)

18 Q Isn't that right, sir?

19 A Yes, sir.

20 Q Yes, sir. And you did use it; didn't you?

21 A (There was no response.)

22 Q Didn't you?

23 A I shot the gun, sir, yes, sir.

24 Q You shot the gun. You shot every single bullet

25 this gun would hold. And then you went home and

1 reloaded; didn't you?

2 A Yes, I went home.

3 Q And you reloaded; didn't you?

4 A Yes, sir.

5 Q Because when the cops came and they grabbed this
6 gun, there were 13 rounds in the magazine; weren't
7 there?

8 A I'm not too sure.

9 Q Well, the cops are sure, because we've got the
10 bullets in evidence; don't we? We got your 13
11 bullets right here. Do you want to count them?

12 A No, sir.

13 Q You take my word for it there's 13 of them in
14 here?

15 You put them in that gun; didn't you?

16 A I loaded the gun sir.

17 Q You shot that fellow and then you went home and
18 reloaded the load gun so it would be ready for
19 action again for the next guy to get in your way;
20 right?

21 A No, sir.

22 Q No, sir. Why did you reload that gun?

23 A For my own protection.

24 Q For your own protection. Well, let me ask you
25 this, Mr. Slater. What was the fellow, Sharone

1 Middleton, who was lying on the ground being
2 stomped, doing to you that you needed protection
3 from him?

4 A I didn't even know the man, sir.

5 Q Didn't even know the man. And he wasn't doing
6 anything to you; was he?

7 A No, sir.

8 Q No, sir. As a matter of fact, you had a gun, you
9 could have done something to get those fellows off
10 of him, but you didn't; did you?

11 A I went over there to see what was going on. And
12 when I see the other fellow with the gun, and he
13 turned, it shocked me. And when I was running, I
14 hear a gunshot, and that's when I start shooting.

15 Q Well, the guy with the gun, how close was he to
16 you?

17 A Probably--

18 Q About this close?

19 A He was turned -- yeah, about that close.

20 Q About this close, about 10, 15 feet. If that
21 fellow wanted to shoot you, he could have shot you
22 dead on the spot; couldn't he?

23 A I don't know, sir.

24 Q Well, he was close enough, wasn't he? He could
25 have shot you dead on the spot; couldn't he?

1 A Yes, sir.

2 Q But he didn't; did he?

3 A No, sir. I ran. I didn't stay there.

4 Q You ran. And as you ran you fired your gun. And
5 you fired your gun until it wouldn't fire any
6 more; didn't you?

7 A After I heard that first gunshot, that's when I
8 shot the gun I had.

9 Q Well, it's pretty clear, isn't it, sir, that even
10 if there was a first gunshot, the poor fellow
11 laying on the ground that was being stomped didn't
12 fire that shot; did he?

13 A No, sir.

14 Q No, he didn't. Because that poor fellow laying on
15 the ground didn't even have a gun that you saw;
16 did he?

17 A I didn't see that far, sir.

18 Q You testified that he was on the ground. You told
19 your lawyer that.

20 A I was talking about--

21 Q So you saw him; didn't you?

22 A I was talking about the two fellows at the back.

23 Q Yes, sir, you talked about two fellows at the
24 back, but you also told your lawyer that the
25 fellow was laying on the ground too.

1 A One fellow was laying on the ground.

2 Q That's right. And you didn't see a gun in that
3 fellow laying on the ground's hands; did you?

4 A That's the fellow that got shot, sir.

5 Q That's the fellow that got shot, sir.

6 Now, Mr. Slater, when you were at the high
7 school dance and you were talking to your female
8 friends, there was nothing going on at North
9 Charleston High School that concerned you; was
10 there?

11 A No, sir.

12 Q And when those fellows, whoever they were, went
13 out and stopped that Ford truck, whatever they
14 were doing, that didn't concern you either; did
15 it?

16 A No, sir.

17 Q But even despite that fact that nothing going on
18 concerned you, you took it upon yourself to walk
19 over to your car and get this gun out of the glove
20 box; right?

21 A I already had the gun out, sir.

22 Q You had the gun, but you had to go to the car to
23 get it; didn't you?

24 A When I stop -- and the truck -- I was going to
25 shoot in the air.

1 Q I know that. But you had to get the gun before
2 you could shoot it in the air; didn't you?

3 A When I get the gun I didn't much notice anything
4 going on with the truck until I was walking --
5 like walking back.

6 Q But you were walking back with the gun; weren't
7 you?

8 A Yes, sir.

9 Q Which you got out of your car; right?

10 A Yes, sir.

11 Q And despite the fact that the truck hasn't got a
12 thing to do with Byron Slater, you get this out of
13 your Monte Carlo and you go walking up to that
14 truck with your gun; right?

15 A No, sir.

16 Q No, sir? Isn't that what you told your lawyer?

17 A I was walking, but not to get involved with the
18 truck. I was going to shoot in the air.

19 Q You were going to shoot it in the air--

20 MR. PENNINGTON: Would you -- he has to let
21 him answer the question, Your Honor.

22 THE COURT: He's answering.

23 Go ahead.

24 MR. PENNINGTON: No, Your Honor, he's--

25 THE COURT: No, sir. Wait a minute. I'll

1 handle this Court. He's handling it
2 appropriately.

3 Go ahead.

4 BY MR. DUTREMBLE:

5 Q Anything else you want to say?

6 A I said I was going to shoot in the air but I
7 didn't.

8 Q You told your lawyer you were going to shoot in
9 the air, that you were going to go over to the
10 truck and shoot in the air?

11 A No, I was going to shoot before I even get to the
12 truck.

13 Q You were going to shoot before you got to the
14 truck because that's the kind of thing young
15 people do; right?

16 MR. PENNINGTON: Now, Your Honor, he can ask
17 the question when I couldn't ask the question?

18 THE COURT: Now, wait a minute now. I
19 permitted you wide latitude in your
20 cross-examination; he's entitled to the same
21 latitude and you know that.

22 Go ahead.

23 BY MR. DUTREMBLE:.

24 Q That's the kind of thing that young people do,
25 right, they shoot guns in the air?

1 A Yes, sir.

2 Q Is that the kind of thing that you do at your
3 house, Mr. Slater, shoot guns in the air?

4 A I shot the gun in the air before.

5 Q That's why we found eight cartridges from this gun
6 laying in the yard at your house; isn't it?

7 A I can't recall shooting it, shooting it in my yard
8 then.

9 Q You don't dispute the fact that we found eight
10 fired cartridges in your front yard; do you?

11 A No, sir.

12 Q Okay. So you go out in your yard and you shoot
13 this gun in the air; don't you?

14 A When I buy the gun I tested the gun.

15 Q Where did you test it?

16 A In my front yard.

17 Q What did you shoot at?

18 A In the air.

19 Q In the air. Well, Mr. Slater, when you fire a gun
20 in the air, a bullet comes out of it; doesn't it?

21 A Certain guns, yes, sir.

22 Q Especially a nine millimeter. Where do the
23 bullets go?

24 A What you mean bullets?

25 Q Where do the bullets that you shoot into the air

1 go?

2 A In the air.

3 Q Yeah, but they got to come down; don't they?

4 A Yes, sir.

5 Q Where did they come down, Mr. Slater?

6 A I don't know, sir.

7 Q You don't know. You don't know. There could be
8 some kid out in the yard and a bullet comes down;
9 right, from your gun? But you're the kind of guy
10 that just shoots this gun in the air; aren't you?

11 A No, sir.

12 Q No, sir. Mr. Slater, when you decide not to shoot
13 in the air, you then take it upon yourself to go
14 over to the church parking lot where the other
15 disturbance is taking place; right?

16 A Yes, sir.

17 Q Y'all get in your white Monte Carlo and you drive
18 over there; right?

19 A No, sir, I was already heading over there, sir.

20 Q You were already heading over there. In any
21 event, you're the first one there; aren't you?

22 A No. Whoever been in the parking lot before I came
23 was the first ones over there.

24 Q Mr. Slater, of the four of you that were in that
25 white Monte Carlo, you're the first one there;

1 aren't you?

2 A Oh, yes, sir.

3 Q And could you explain to the members of the jury
4 what that disturbance in the church parking lot
5 had do with you?

6 A It had nothing to do with me.

7 Q It had nothing to do with you. But in any event,
8 you decided to go over there. You didn't bother
9 to put this gun back in the car where it would be
10 safe; did you?

11 A No, sir.

12 Q You took that with you; didn't you?

13 A Yes, sir.

14 Q It was cocked and it was loaded; right?

15 A Yes, sir.

16 Q Ready to be used?

17 A Yes, sir.

18 Q Now, you testified about the various and sundry
19 disturbances that you saw. You also told your
20 lawyer, when Mr. Young was laying on the ground,
21 that there was a fellow with a gun that you saw
22 about as far from me to you; right?

23 A No, sir, I was saying the fellow with the gun was
24 by anybody on the ground. The fellow with the gun
25 was -- it was two of them over there before I

1 came. And one of them was grabbing another
2 person.

3 Q Okay. Are you telling this jury that the fellow
4 on the ground was not near the fellow with the
5 gun?

6 A No, that was a different person.

7 Q Different person. How far away was the fellow on
8 the ground from the fellow with the gun?

9 A When I was walking up they was like to the back.

10 Q To the back. How far away to the back?

11 A I can't be exact, sir.

12 Q Can't be exact. In any event, are you telling
13 this jury now for the first time that you turned
14 and ran, heard a gunshot, and as you were running
15 you were shooting back toward the fellow with the
16 gun; right?

17 A Not exactly, sir. When it happened it happened so
18 fast I just -- I just was scared.

19 Q Well, Mr. Slater, I want you to explain to this
20 jury how, if you were running, shooting this gun
21 because there was another fellow with a gun, how
22 the fellow laying on the ground in the back with
23 no gun took two rounds from your gun in his chest?

24 A The fellow who been at the back, he wasn't the one
25 that got shot.

1 Q Mr. Slater, the fellow who was on the ground took
2 two rounds from your gun in his chest. I want you
3 to explain to the jury how that happened.

4 A When I walk over there to see what been going on,
5 my man turned to me, the fellow who was over there
6 turned to me, like he was surprised that I been
7 over there, and turned to me with the gun. And I
8 started running. And I heard a gunshot and I
9 start shooting.

10 But the fellow who was on the ground wasn't
11 the one that got shot.

12 Q Mr. Slater, the fellow on the ground, the evidence
13 in this case is, took two shots in the chest from
14 your nine millimeter. Do you have any explanation
15 as to how a man laying on the ground could have
16 been shot in the chest from this gun?

17 A The person who got shot was the man who was
18 standing up with the person who was grabbing him.

19 The other dude who was on the ground was
20 getting, I guess, robbed and kicked. He wasn't
21 the one that got shot.

22 Q Mr. Slater, you have been here for two days; have
23 you not, sir?

24 A Yes, sir.

25 Q You have heard all the testimony in the case; have

1 you not, sir?

2 A Yes, sir.

3 Q The testimony is that the fellow on the ground
4 being robbed and kicked was shot twice in the
5 chest with this gun. How did that happen?

6 MR. PENNINGTON: Your Honor, this is the
7 third time this question has been asked and
8 answered.

9 MR. DUTREMBLE: He has not answered it.

10 MR. PENNINGTON: Not to the Solicitor's
11 satisfaction. He's given an answer.

12 THE COURT: No, sir, this is proper
13 cross-examination, Mr. Pennington.

14 Go ahead.

15 BY MR. DUTREMBLE:

16 Q Let me put it to you this way, Mr. Slater. The
17 truth of the matter is that you stood over the
18 body of Sharone, who was being stomped and robbed,
19 and you fired twice into his chest with this gun,
20 and that's how we dug those slugs out of his
21 chest; isn't that right?

22 A No, sir.

23 Q No, sir. But you have no explanation to give to
24 this jury how your bullets got in that man who was
25 laying on the ground; do you?

1 A When I shot the gun the bullets -- bullets don't
2 lie, they hit that young man.

3 Q They hit that young man and killed him; didn't
4 they?

5 A Yes, sir.

6 Q And you had ample opportunity, after you were
7 arrested and read your Miranda warnings, taken
8 down to North Charleston Police Department, to
9 tell the police exactly what happened; didn't you?

10 A When they came to my house I was scared. I aint
11 never had nobody tell me that before in my life.

12 Q Well, let me ask you this, sir. Were you so
13 scared when you told your buddies that dog got
14 hit, that you didn't have the presence of mind to
15 go over to the school and seek help from some of
16 the hundreds of people who were still there for
17 that poor guy?

18 A I never said that.

19 Q I'm asking you the question, sir. Were you so
20 scared when you told your buddies that dog got hit
21 or I think I hit him, that you didn't have the
22 presence of mind to go across the street, 50
23 yards, and get help for the fellow?

24 A It all happened so fast.

25 Q It all happened so fast. Well, what about the

1 fellow who's laying on the ground bleeding to
2 death? How fast was it happening for him, sir?

3 A (There was no response.)

4 Q Mr. Slater, the truth of the matter is that you
5 didn't care; did you?

6 A That's not true, sir.

7 Q Well, Mr. Slater, explain to the jury what you did
8 to help the fellow who got hit.

9 A For one thing, I didn't even know he got shot.

10 Q Well, you told your buddies you think he got shot
11 and you testified--

12 A I said I think--

13 THE COURT: Wait a minute now. Let him
14 answer.

15 BY MR. DUTREMBLE:

16 Q And you testified--

17 THE COURT: Wait a minute. He wasn't through
18 answering.

19 Were you through answering, Mr. Slater?

20 THE WITNESS: No, sir.

21 THE COURT: Go ahead and finish your answer.

22 THE WITNESS: I said I think them boys get
23 one.

24 BY MR. DUTREMBLE:

25 Q You think them boys get one; that's what you told

1 your lawyer, right?

2 A I said I think them boys get that boy..

3 Q All right. So you knew--

4 A No, I didn't--

5 Q --in your own mind that somebody had been got?

6 A I was taking about robbery-wise.

7 Q Robbery-wise. Did you go over to the North
8 Charleston High School and tell somebody, hey,
9 somebody over there is being ganged and robbed?

10 A No, sir.

11 Q No, sir. Were you too scared to do that?

12 A No, sir. I aint much -- what happened was a
13 mistake.

14 Q Yes, sir, it certainly was.

15 Mr. Slater, the reason you didn't go and get
16 help for that poor young man at North Charleston
17 High School was because you had to get back in
18 your car and get rid of this gun; isn't that
19 right?

20 A No, sir.

21 Q As a matter of fact, the first thing that you did
22 was to jump back into that car with your buddies
23 and race home and put this gun back in the box up
24 in your closet where nobody even knew you had it;
25 isn't that right?

1 A No, sir.

2 Q And after you went home and put this gun back in
3 this box, you were stopped by the police; weren't
4 you?

5 A When I came back out, sir.

6 Q Yeah, when you came back out you were stopped by
7 the cops and this gun wasn't in your car then; was
8 it?

9 A No, sir.

10 Q Because you had gone home first to get rid of it;
11 right?

12 A Yes, sir.

13 Q Did you reload it when you got home or did you
14 wait until later?

15 A When I put the gun in the box I came straight back
16 out.

17 Q You came straight back out. And the cops stopped
18 you and you still didn't tell the uniformed
19 officer that stopped you what happened; did you?

20 A I didn't fully know what happened.

21 Q You didn't fully know what happened. Did you tell
22 her that you had fired your weapon nine times?

23 A No, sir.

24 Q Did you tell her you owned a nine millimeter?

25 A No, sir.

1 Q Did you tell her you thought somebody up there got
2 robbed?

3 A No, sir.

4 Q So what you did was you drove back to the high
5 school to see what the results of your handy work
6 were; didn't you?

7 A No, sir.

8 Q You went back to see how that fellow who had been
9 got was doing; didn't you?

10 A No, sir.

11 Q And when you got there, there were blue lights
12 everywhere; weren't there?

13 A I won't say blue lights everywhere. I think I
14 remember seeing two in the parking lot.

15 Q Two blue lights in the parking lot. And you had
16 EMS with the red lights going; right?

17 A I don't recall seeing EMS, sir.

18 Q No EMS. But you saw blue lights. Did you walk up
19 to the police officer--

20 A No, sir.

21 Q --and say, let me tell you what happened?

22 A No, sir.

23 Q Because you were scared; right?

24 A Yes, sir.

25 Q You were scared. But you weren't too scared to

1 get back in your car with your buddy and go eat a
2 hamburger; were you?

3 A Being scared aint got nothing to do with being
4 hungry.

5 Q How did that hamburger taste after you murdered
6 Sharone Middleton, sir?

7 A I don't remember whatever I had taste.

8 Q Remember when this fellow right here read you your
9 Miranda warnings and talked to you off and on for
10 over six hours?

11 A I remember being asked a lot of questions.

12 Q Asked a lot of questions. One of the questions
13 was, did you have a gun in your car. You told him
14 no; didn't you?

15 A Yes, sir.

16 Q That was a lie; wasn't it?

17 A Yes, sir.

18 Q He asked you, did you ever shoot a gun that night,
19 and you told him no; didn't you?

20 A Yes, sir.

21 Q That was a lie; wasn't it?

22 A Yes, sir.

23 Q You've had nine months to make up the lies we've
24 heard today; haven't you?

25 A No, sir.

1 Q And what you have told the jury is what you have
2 been pondering on for the last nine months to try
3 to avoid responsibility for the murder of Sharone
4 Middleton; isn't that correct?

5 A No, sir.

6 MR. DUTREMBLE: Excuse me a moment, Your
7 Honor.

8 BY MR. DUTREMBLE:

9 Q And there is no doubt in your mind, Mr. Slater,
10 that your gun fired the bullets that killed that
11 young boy?

12 A I received -- I got the bullet results back and it
13 clarified that.

14 Q And that's what happened; didn't it? You shot
15 him; didn't you?

16 A Yes, sir.

17 Q You killed him; didn't you?

18 A Yes, sir.

19 Q You murdered him; didn't you?

20 A Yes, sir.

21 MR. DUTREMBLE: No further questions.

22 THE COURT: Any redirect, Mr. Pennington?

23 MR. PENNINGTON: Yes, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. PENNINGTON:

1 Q Solicitor asked you numerous times about how you
2 felt about what happened here. Are you proud
3 about what happened in this case?

4 A No, sir.

5 Q How do you feel about what happened to Sharone
6 Middleton that night?

7 A I feel very sad and confused.

8 Q Sad and confused?

9 A Yes, sir.

10 Q Are you trying to avoid responsibility by taking
11 the witness stand and telling this jury what you
12 told them today?

13 A No, sir, I just taking responsibility for what
14 happened.

15 Q The Solicitor asked you if you were proud of your
16 handy work so that you went back to see your handy
17 work. Why did you go back over there to North
18 Charleston High School?

19 A I ride -- I make sure -- I--

20 Q You have to speak up now; they can't hear what
21 you're saying?

22 A I went back there just to make sure aint nothing
23 serious like happened.

24 Q You were concerned about seeing what happened?

25 A Make sure aint nothing like serious happened.

1 Q And when you saw the blue lights, how did you feel
2 or what did you think?

3 A I didn't fully know like what happened -- like
4 what happened. I saw the blue lights, I got
5 pulled over, they asked me questions about a
6 shooting. And I denied everything.

7 Q Why did you deny everything?

8 A I was scared.

9 Q Did you know you had done something wrong?

10 A No, sir.

11 Q Well, you knew it was wrong to have a gun out
12 there; didn't you?

13 A Yes, sir.

14 Q And you knew that it was wrong to be out there
15 shooting a gun, and you had no business doing
16 that; did you?

17 A Yes, sir.

18 Q Did you tell the police you were out there
19 shooting a gun?

20 A No, sir.

21 Q Why not?

22 A How everything happened, I wasn't even supposed to
23 be involved -- I just made a mistake.

24 Q How do you feel about it now?

25 A I ruined two people's lives.

1 MR. PENNINGTON: That's all I have, Your
2 Honor.

3 MR. DUTREMBLE: Nothing, Your Honor. Thank
4 you.

5 THE COURT: You may come down. Thank you.

6 MR. PENNINGTON: The defense rests, Your
7 Honor.

8 THE COURT: All right, sir.

9 Anything in reply?

10 MR. DUTREMBLE: No, Your Honor.

11 THE COURT: All right. I'll let you go to
12 the jury room. We'll take an afternoon break at
13 this time. I'll be calling you back in 10 or 15
14 minutes. Anybody want to smoke?

15 Please make arrangements for them to smoke.

16 (The following was reported out of the
17 presence of the jury.)

18 THE COURT: Gentlemen, let's take a short
19 break and then I'll discuss with you the request
20 to charge.

21 MR. PENNINGTON: Yes, sir, that would be
22 nice.

23 THE COURT: Okay. We'll do it in my chambers
24 and then we'll get on the record about it. Just
25 let me know when you're ready.

1 MR. DUTREMBLE: Yes, sir.

2 THE COURT: All right, sir. Dale, you and
3 Ashley come back here just a minute.

4 MR. DUTREMBLE: Yes, sir.

5 (afternoon recess.)

6 THE COURT: All right. Thank you. Be
7 seated, please.

8 Bring the jury in, please.

9 MR. PENNINGTON: Your Honor, before you do
10 that, we realized that there were stipulations
11 that we had entered into that we have -- one that
12 we haven't presented to the jury about Mr.
13 Middleton being right handed. And I think we've
14 dealt with that.

15 We've dealt with that.

16 This is the only stipulation that's left. I
17 would ask the Court's permission to be able to
18 read the last stipulation before we proceed.

19 THE COURT: Yes, sir, that's appropriate.

20 MR. PENNINGTON: Your Honor, we would also
21 renew our earlier stated--

22 THE COURT: Let me ask you this. I excluded
23 a picture of the deceased based on the State's
24 statement that the only reason was the identity.
25 We don't have that stipulation in the record,

1 but--

2 MR. PENNINGTON: From what I understand, the
3 Court ruled that you were not going to allow that.
4 There was no stipulation about that photograph.

5 But we certainly do stipulate as to the cause
6 of death and we did do that stipulation before the
7 jury, I believe.

8 THE COURT: That's a non issue in my view
9 now, anyway, but I wanted to clarify it.

10 MR. PENNINGTON: Yes, sir. Thank you.

11 THE COURT: Now, what stipulation are you
12 proposing to read?

13 MR. PENNINGTON: This is the stipulation that
14 the victim was right handed.

15 THE COURT: All right, sir. I'll permit that
16 and then we'll move on.

17 MR. PENNINGTON: Your Honor, in addition--

18 THE COURT: Have you made your post-trial
19 motions yet?

20 MR. PENNINGTON: I was going to make those
21 and then address the charge.

22 THE COURT: Okay. Go ahead.

23 MR. PENNINGTON: We would simply renew by
24 reference all the arguments that we presented
25 previously to the Court with regard to motion for

1 directed verdict of not guilty based on the
2 evidence as well as our earlier exceptions, Your
3 Honor.

4 THE COURT: Those motions are respectfully
5 denied, Mr. Pennington, and the record will so
6 reflect my basis for those denials.

7 MR. PENNINGTON: With regard to the charge,
8 Your Honor, the Court has conducted a charge
9 conference; we've been over many of the charges.

10 I had submitted and supplied to the clerk a
11 copy of 17 proposed charges. The ones that I
12 would particularly call to the Court's attention
13 that we would request, in light of Mr. Slater's
14 testimony, is the charges that relate to
15 self-defense.

16 There are several charges that do relate to
17 self-defense in here, which begin with charge 11
18 and run through charge 15.

19 And the basis for the request would be that
20 under The State versus Noten (ph) case of South
21 Carolina Supreme Court, we believe that there is
22 some evidence, putting the light most favorable to
23 the defendant, that Mr. Slater approached this
24 scene with a gun in his hand, saw a man who was
25 startled and turned with a weapon in his hand,

1 which he took as threatening gesture.

2 He reacted fearfully and ran away, shooting,
3 which precipitated the death of our victim in this
4 case.

5 We contend that a reasonable person under the
6 circumstances could have reacted in that way.

7 The Court expressed in chambers that the
8 defendant was at fault in bringing on the
9 difficulty.

10 While it is true that he was certainly at
11 fault in being a minor in possession of a weapon
12 at the wrong place, in a public place, we don't
13 believe that the cases that relate to that degree
14 of fault, that is bringing on the difficulty,
15 relates to a generic crime like that, but really
16 relates to having somehow produced the altercation
17 that leads to the necessity for self-defense.

18 And in this case, the testimony -- the clear
19 testimony, I think that everyone agrees to, is
20 that this fight was well under way before my
21 client ever became involved in it whatsoever.

22 And as such, he would not have been at fault
23 in bringing on that difficulty when, whoever this
24 unknown gunman was, turned and frightened him into
25 shooting. That's the argument.

1 THE COURT: How about when he said he
2 voluntarily shot in the air because that's what
3 young folks do, then takes his loaded nine
4 millimeter to an argument going on across the way
5 which he had no involvement. Isn't that bringing
6 on the difficulty?

7 MR. PENNINGTON: I think if he had fired the
8 gun in the air, Your Honor, at that point, yes,
9 that would have been very provocative.

10 THE COURT: Well, he said he did.

11 MR. PENNINGTON: Actually, he didn't -- he
12 indicated that he only fired after he heard
13 someone else fire. And that was after this man
14 had presented this weapon.

15 THE COURT: No, sir, as I understand it, he
16 said -- and I'll have to let the State address it,
17 he said when he first heard some gunfire, he fired
18 his in the air because that's what folks do.
19 Later on he saw this difficulty and so he took his
20 gun and went over there.

21 But let me hear your response.

22 MR. DUTREMBLE: No, sir, he said he changed
23 his mind and he did not fire in the air. He
24 didn't fire until he went up to the church parking
25 lot.

1 THE COURT: Okay. I'm sorry. Let's hear
2 your response to his request for self-defense.

3 MR. DUTREMBLE: Judge, there's absolutely no
4 elements of self-defense.

5 You can't arm yourself for a gunfight, inject
6 yourself into a dispute, and then claim
7 self-defense.

8 His whole testimony is that he armed himself
9 in anticipation of some sort of difficulty. He
10 cocked the gun before he went there. He loaded
11 the gun before he went there. When he went there
12 he was ready for bear.

13 He went to two disputes, not just one, with
14 the gun.

15 Granted, he changed his mind, he didn't fire
16 into the air, but when he went to the other
17 difficulty, he didn't put his gun away; he packed
18 his piece with him intending to use it.

19 And he testified from the stand he was ready
20 to use it.

21 There is no doubt about it. Self-defense, if
22 he and the other guy that he said had a gun had
23 engaged in gunfire, he might have something to
24 talk about.

25 But his own testimony is that the guy with

1 the gun wasn't anywhere near the guy on the ground
2 who was in the back. The fellow who ultimately
3 got shot. That's not self-defense.

4 THE COURT: I'm convinced in my mind that
5 self-defense is not an issue in the case. And I
6 note that you request it, and I specifically
7 decline to do so. I just don't see the elements
8 of self-defense in this case in the light most
9 favorable to the defense. It's just not there, in
10 my view.

11 They may consider a case like this,
12 self-defense, in McCall, South Carolina, but not
13 in Charleston.

14 Mr. Defendant's attorney, I am going to
15 charge manslaughter in the case.

16 MR. PENNINGTON: Yes, sir. Thank you.

17 THE COURT: Though it is a close, close
18 question. And I only do that in view of the
19 recent Supreme Court decision suggesting that in
20 the capital case there in Columbia, the Court
21 should have charged it, necessitating a retrial of
22 that case.

23 So I'm going to charge manslaughter. I do--

24 MR. PENNINGTON: Your Honor, that's fine. I
25 understand and respect the Court's ruling on that.

1 I don't mean to cut the Court off.

2 THE COURT: No, sir, you didn't cut me off.

3 MR. PENNINGTON: I still have some concern
4 about the time question, and would ask that the
5 Court advise the jury that since we're going to
6 argue and charge this evening, just to make sure
7 that they have plenty of opportunity to make
8 whatever arrangements that they have.

9 THE COURT: Yes, I'll do that.

10 Bring the jury in.

11 I want you to make that final stipulation
12 first.

13 MR. PENNINGTON: Yes, sir. Thank you.

14 (The following was reported in the presence
15 of the jury.)

16 THE COURT: We have concluded all of the
17 testimony. As I understand it, there is one final
18 stipulation.

19 And you may publish that stipulation.

20 MR. PENNINGTON: Thank you very much. If it
21 please the Court.

22 Ladies and gentlemen of the jury, there has
23 been a stipulation regarding Mr. Sharone
24 Middleton. The State of South Carolina by and
25 through the undersigned attorney, and the

1 defendant, by and through his undersigned
2 attorney, hereby stipulate and agree Sharone
3 Middleton was right handed. And it is so
4 stipulated the 13th day of November, signed by Mr.
5 DuTremble and myself.

6 THE COURT: Madam foreman, ladies and
7 gentlemen, you have heard all of the testimony in
8 the trial of this case and we're at that time now
9 where we are going to have the charge on the jury
10 and final summation, and I'll give you the case
11 for your deliberation.

12 It's about 4:15, and I would anticipate that
13 you can have this case for your deliberation
14 certainly by six o'clock this afternoon.

15 I do that for this reason, this is the last
16 case that will require the services of a jury this
17 week.

18 And thus, when this case is finished, you
19 will not have to return tomorrow.

20 Now, I want it clearly understood that as we
21 begin, I'll certainly give you time and
22 opportunity to call and tell them you're here in
23 this case, and if the procedures last too long
24 this evening, we'll just quit and come back in the
25 morning.

1 I mean, I would not wish anybody to rush
2 anything in their judgment in their deliberations;
3 you understand that?

4 But we will go forward at this time and we'll
5 try to conclude the case in its entirety.

6 If the time frame does not permit and we get
7 into that situation, we'll just recess and I'll
8 bring you back in the morning at 9:30.

9 I hope all of that is satisfactory to
10 everybody.

11 Now, ladies and gentlemen, for many years,
12 and the statute so requires, that we charge the
13 law of the case after summation by distinguished
14 counsel for the State and for the defense.

15 Jurors in the past years have said to me,
16 Judge Cottingham, I wish you would have explained
17 the law to me before we heard counsel's final
18 arguments; I believe I could have followed their
19 positions better.

20 So it is that in the past few years that I
21 have taken to do that, as I propose to do today.
22 I'm going to charge you the law even before they
23 argue.

24 With this caveat, I'll be back with some
25 concluding remarks after summations. And even

1 then I will ask that you be excused so that I can
2 discuss with counsel any exceptions or additions
3 to the charges that they may want to make.

4 Even then, madam foreman, you will have
5 pencil and paper in the jury room, and if you or
6 any member of your jury desires further
7 instructions on any aspect of the law, all you
8 have to do is write that question down, knock on
9 the door, and I'll be delighted to bring you back
10 and discuss any additional request for the law
11 that you or your jury feel that you need.

12 Having said that, remembering now, that there
13 is nobody in this wide world that can tell you 12
14 what the facts are.

15 You will take the facts as you find them to
16 be, apply those facts to the law of this case, and
17 thereafter reach your verdict.

18 Now, madam foreman, and ladies and gentlemen
19 of the jury, as you are well aware, the State of
20 South Carolina charges this defendant with the
21 offense of murder and with the offense of
22 possession of a firearm during the commission of a
23 violent crime.

24 These indictments have been read to you, have
25 been explained to you, and you will have these

1 indictments with you in the jury room.

2 Now, these indictments allege two separate
3 offenses. You will consider the evidence as to
4 each offense separately.

5 Your verdict as to both offenses may be
6 guilty. Your verdict as to both offenses may be
7 not guilty. Your verdict as to defenses may be
8 guilty of one and not guilty of the other, based
9 on your findings of the facts in the case.

10 So I say to you that there are two
11 indictments, and you will consider the evidence
12 separately during your deliberations.

13 Now, to these indictments this defendant has
14 plead not guilty, which places upon the State of
15 South Carolina the burden of proving the defendant
16 guilty beyond a reasonable doubt.

17 A person charged with committing a criminal
18 offense in South Carolina is never, ever required
19 to prove himself innocent.

20 The State has the burden of proving him
21 guilty beyond a reasonable doubt.

22 I charge you, therefore, that it is a vital,
23 important rule of law of evidence that the
24 defendant in a criminal case, no matter how great
25 or serious may be the offense with which he is

1 charged, must always be presumed innocent until
2 his guilt has been proven beyond a reasonable
3 doubt.

4 This presumption of innocence remains with
5 this defendant at all times. From the moment of
6 his arraignment, throughout the trial, and until
7 you, the jury, have upon the testimony and
8 evidence presented in this courtroom, reached a
9 verdict of guilty beyond a reasonable doubt.

10 For it is the solemn duty of the jury, if not
11 clearly convinced of his guilt beyond every
12 reasonable doubt to the contrary, to acquit the
13 defendant.

14 And so it is the burden of proof is upon the
15 State to establish by evidence to your
16 satisfaction the guilt beyond a reasonable doubt
17 of this defendant here on trial for the offense of
18 murder and for the possession of a firearm during
19 the commission of a violent crime.

20 I have used the word reasonable doubt. A
21 reasonable doubt is the kind of doubt that would
22 cause a reasonable person to hesitate to act.

23 A reasonable doubt may arise from evidence
24 which is in this case, or from the absence or lack
25 of evidence in this case.

1 Ladies and gentlemen, you alone must make the
2 determination of whether or not reasonable doubt
3 exists as to the guilt of this defendant.

4 Now, ladies and gentlemen of the jury, under
5 the constitution and laws of South Carolina, as I
6 continue to emphasize to you, you and you 12 alone
7 are the sole and only finders of the facts in this
8 case.

9 As I indicated when we started, I do not have
10 the right to pass upon the facts or even to
11 express any opinion which I may have to them.

12 Nor may I intimate in any way what I may
13 think about the guilt or innocence of this
14 defendant.

15 So I say to you again, if any word, ruling or
16 mannerism of mine might tend to indicate to any of
17 you 12 about how I feel about any factual
18 situation, please disregard that.

19 I am not entitled to a factual opinion; and I
20 have none.

21 You are also the judges, and the sole judges,
22 of the credibility, meaning the believability of
23 the witnesses who have testified in this case.

24 In passing upon their credibility, you may,
25 if you choose, take into consideration many

1 things, such as you are entitled to consider the
2 appearance and demeanor of the various witnesses
3 who testified; sometimes referred to as the
4 demeanor.

5 You may consider, if you choose, was the
6 witness forthright or hesitant?

7 You are entitled to consider was a witnesses
8 testimony consistent or did it contain
9 discrepancies.

10 What was the ability of a particular witness
11 to know about the facts which he or she may have
12 testified to?

13 Obviously, you would always consider whether
14 or not a particular witness had a cause or reason
15 to be biased or prejudiced in favor of the
16 testimony that he or she gave.

17 You are entitled to consider whether or not
18 the testimony of a witness was corroborated or
19 made stronger by other testimony in evidence, or
20 was it made weaker or impeached by such other
21 testimony and evidence?

22 Ladies and gentlemen, as jurors you have a
23 right to believe a small portion of a witnesses
24 testimony and disregard the larger, or the other
25 way around.

1 You may, if you choose, believe the testimony
2 of a single witness against that of many, or the
3 other way around.

4 Most certainly, you do not determine the
5 truth or credibility or believability by counting
6 up the number of witnesses who may have testified
7 on behalf of one side or the other.

8 In judging the credibility and believability
9 of any of the witnesses who have testified,
10 throughout this entire process, as to their
11 credibility, you have but one single objective;
12 and that is to seek the truth. To seek the truth
13 in judging a witnesses credibility and
14 believability.

15 All of these things, ladies and gentlemen,
16 you will consider, bearing in mind that you must
17 give the defendant the benefit of every reasonable
18 doubt.

19 Now, the same constitution that makes unto
20 you the sole and exclusive finders of the facts,
21 that document also makes unto me the sole
22 instructor in the law.

23 And under your oath as jurors now, you are
24 required to accept the law as I charge it to you,
25 even though you, or I for that matter, might

1 disagree with what the law is.

2 Please, for the purposes of this trial,
3 accept the law as I give it to you as being the
4 correct law, remembering that as finders of the
5 facts, you take the facts as you find them to be
6 and apply those facts to the law of this case, and
7 thereafter reach that verdict. That verdict
8 meaning veredicto; to speak the truth.

9 Now, as I have indicated to you, and you are
10 well aware, the State of South Carolina has
11 charged in its indictment that this defendant is
12 guilty of the crime of murder.

13 So it becomes necessary for me to instruct
14 you as to that law of that crime in South
15 Carolina.

16 Now, under the principles recognized in South
17 Carolina that a greater crime includes a lesser,
18 this indictment includes not only the charge of
19 murder, but also the charge of manslaughter.

20 So I must also charge you as to that crime as
21 well. Let me now define murder for you. What is
22 murder by definition?

23 Murder may be defined as the willful,
24 felonious killing of a human being by a human
25 being with malice aforethought.

1 Thus, in order to convict of murder, the
2 State must not only prove the killing of the
3 deceased by the defendant, but that it was done
4 with malice aforethought. And such proof must be
5 beyond a reasonable doubt.

6 I have told you that an indictment for murder
7 may include this lesser-included charge of
8 manslaughter. What is manslaughter?

9 Manslaughter by definition: Manslaughter may
10 be defined as the felonious killing of a human
11 being by a human being without malice and sudden
12 heat and passion upon a sufficient legal
13 provocation.

14 So that as you see, the difference between
15 murder and manslaughter, is in the presence or the
16 absence of malice.

17 Malice being present in murder, but not
18 present in manslaughter.

19 Let me define malice for you. Madam foreman,
20 ladies and gentlemen, malice is a word suggesting
21 wickedness, hatred, and a determination to do what
22 one knows to be wrong, without just cause or
23 excuse or legal provocation.

24 Malice need not be in the mind of the one
25 doing the killing any particular length of time

1 before the act of killing to render the killing
2 murder.

3 If it is present in the mind of the one doing
4 the killing any length of time before the act,
5 then its presence would be sufficient to render
6 the killing murder.

7 Murder is said to be expressed when there is
8 manifested a violent, deliberate intention
9 unlawfully to take away the life of another human
10 being.

11 Malice may be implied where one intentionally
12 and deliberately does an unlawful act which he or
13 she then knows to be wrong and in violation of his
14 duty to another.

15 Malice may be implied when no excuse or legal
16 provocation for the killing appears. And when the
17 circumstances intending to kill show an abandoned
18 heart, a malignant heart fatally bent upon
19 mischief.

20 Such implications or inferences are not
21 conclusive, and the jury, depending on their view
22 of the evidence, may accept or reject the same.

23 The law says that if one intentionally kills
24 another with a deadly weapon, the implication of
25 malice may arise.

1 If facts are proven beyond a reasonable doubt
2 sufficient to raise an inference of malice to your
3 satisfaction, this inference would simply be an
4 evidentiary fact to be taken into consideration by
5 you, the jury, along with the other evidence in
6 the case, and you the jury may give it such weight
7 as you determine it should receive.

8 In other words, the inference of malice from
9 the use of a deadly weapon is simply an
10 evidentiary fact to be taken into consideration by
11 you, along with other evidence in the case, and to
12 be given such weight as you determine it should
13 receive.

14 The inference of malice may be drawn from
15 proof of the use of a deadly weapon if the jury
16 concludes such is proper after considering all the
17 facts and circumstances in evidence.

18 Now, ladies and gentlemen, let me now define
19 manslaughter for you. Manslaughter is, as I have
20 already indicated, the unlawful or felonious
21 killing of a human being without malice in sudden
22 heat and passion upon sufficient legal
23 provocation.

24 A legal provocation is some act, which either
25 alone or in connection with words or

1 circumstances, is calculated to throw one into a
2 passion.

3 Now, the sudden heat and passion upon
4 sufficient legal provocation which mitigates or
5 reduces down a felonious killing from murder to
6 manslaughter, while it need not dethrone or
7 eliminate reason entirely, it must be such as
8 would to naturally disturb or sway the reason of
9 an ordinary person and render his mind incapable
10 of cool reflection and to produce, what according
11 to human experiences, may be called an
12 uncontrollable impulse to do violence.

13 Now, in connection with what I have
14 instructed you about manslaughter, that is as to
15 whether or not reasonable time for cooling has
16 elapsed, you should take into consideration the
17 whole circumstances surrounding the difficulty, if
18 any.

19 You should consider the nature of the
20 provocation, the defendant's physical and mental
21 constitution, his condition in life and particular
22 circumstances at the time of the affair, his
23 education and habits, his conduct, manner and
24 conversation throughout the transaction.

25 In a word, all pertinent circumstances may be

1 considered. And the time in which an ordinary man
2 in like circumstances would have cooled, that is
3 the reasonable time.

4 Now, madam foreman, ladies and gentlemen, if
5 you should find that the defendant is guilty and
6 there is a reasonable doubt as to whether he is
7 guilty of murder or guilty of manslaughter, you
8 should give him the benefit of that doubt and find
9 him guilty of the lesser offense of manslaughter.

10 But, of course, madam foreman and members of
11 the jury, you could not convict him either of
12 murder or manslaughter, unless his guilt has been
13 established beyond a reasonable doubt.

14 Now, ladies and gentlemen, with regards to
15 the other charge of possession of a firearm during
16 the commission of a violent crime, section
17 20-16-23-490 provides for an additional punishment
18 for the possession of a firearm or knife during
19 the commission of or attempt to commit a violent
20 crime.

21 The State must prove that there was a violent
22 crime committed beyond a reasonable doubt. The
23 State must prove that there was a firearm or a
24 knife used during the commission of that crime
25 beyond a reasonable doubt.

CHARGE OF THE COURT

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1 And the State must prove that this defendant
2 did that act beyond a reasonable doubt in order to
3 convict him of the charge of possession of a
4 firearm during the commission of a violent crime.

5 Now, ladies and gentlemen, there are two
6 types of evidence which are generally presented
7 during a trial, direct evidence and circumstantial
8 evidence.

9 Direct evidence is the testimony of a person
10 who asserts or claims to have actual knowledge of
11 a fact, such as an eye witness.

12 Circumstantial evidence is proof of a chain
13 of facts and circumstances indicating the
14 existence of a fact.

15 The law makes absolutely no distinction
16 between the weight or value to be given to either
17 direct or circumstantial evidence.

18 Nor is a greater degree of certainty required
19 of circumstantial evidence than of direct
20 evidence.

21 You should weigh all of the evidence in this
22 case. After weighing all of the evidence, if you
23 are not convinced of the guilt beyond a reasonable
24 doubt, you must find the defendant not guilty.

25 To the extent that the State relies on

1 circumstantial evidence, it must prove all the
2 circumstances relied on beyond a reasonable doubt.

3 The circumstances must be wholly and in every
4 particular consistent with one another. And the
5 circumstances must point conclusively to the guilt
6 of the accused to the exclusion of every other
7 logical or reasonable conclusion.

8 That is the circumstances must be absolutely
9 inconsistent with any reasonable explanation other
10 than the guilt of the accused.

11 In the consideration of circumstantial
12 evidence, the jury must seek some rational or
13 logical explanation other than the guilt of the
14 accused.

15 If such logical or rational explanation can
16 be found, you cannot convict him on such
17 circumstantial evidence.

18 I charge you further that the mere fact that
19 the circumstances are strongly suspicious and the
20 guilt of the defendant is probable, it is not
21 sufficient to sustain a conviction.

22 Because the proof offered by the State must
23 exclude as to circumstantial evidence every
24 reasonable or rational or logical conclusion
25 except that of guilt. .