

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY

R. Knox McMahon, Circuit Court Judge

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THE STATE,

SC Court of Appeals
RESPONDENT,

V.

WHITNEY SPAN,

APPELLANT

APPELLATE CASE NO. 2012-212578

RECORD ON APPEAL

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State of South Carolina)
) Court of General Sessions
County of Greenwood) 2011-GS-24-0140, 0141

State of South Carolina)
) Transcript of Record
)
Whitney D. Span)
)
 DEFENDANT)

July 9, 2012
Greenwood, South Carolina

B E F O R E:

Honorable R. Knox McMahon, Judge.

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

Matt Swilley, Assistant Solicitor
Attorney for the State

Lance Sheek, Esquire
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

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1 THE COURT: Solicitor, call your case.

2 MR. SWILLEY: The State calls indictment
3 2012-GS-24-0140, the State versus Whitney Desmond Span for
4 attempted murder. Indictment 2012-GS-24-0141, the State
5 versus Whitney Desmond Span for possession of a weapon
6 during the commission of a crime.

7 MR. SHEEK: Your Honor, may we approach?

8 THE COURT: Yes, sir.

9 (Whereupon, a bench conference was held in the
10 presence of the jury panel bit out of the hearing of
11 the jury panel.)

12 THE COURT: All right, Whitney Desmond Span is
13 present along with his attorney, Mr. Lance Sheek, is that
14 correct, Mr. Sheek?

15 MR. SHEEK: That is correct, sir.

16 THE COURT: Ladies and gentlemen of the jury, if you
17 would please give me your complete and undivided
18 attention. We are going to begin and go through a
19 procedure whereby we select a jury for the first case that
20 has been called for trial by the State. The case is
21 entitled the State versus Whitney Desmond Span, S-P-A-N.
22 Did I pronounce that correctly, sir?

23 MR. SPAN: Yes, sir.

24 THE COURT: I am going to read or publish to you the
25 indictments in this case. The reason I do this is because

1 I will ask you a series of questions. My purpose in going
2 through this procedure is to select a fair and impartial
3 jury panel to hear and try this case and render a verdict
4 based on the evidence presented and the law as I tell you
5 the law is. So I am going to read these indictments to
6 you because of the questions I must ask you. I advise
7 you, ladies and gentlemen, the indictments are not
8 evidence. The indictments are the formal charging
9 documents by which an individual is placed on notice of
10 the charges that have been brought against him or her.
11 Indictments contain mere allegations and they are in no
12 way evidence of the allegations that are contained
13 therein. The first indictment is indictment number
14 12-GS-24-140. And it reads that Whitney Desmond Span did
15 in Greenwood County on or about the 22nd day of October of
16 2011 willfully and unlawfully with the intent to kill and
17 with malice aforethought attempted to kill Travis Boyd,
18 B-O-Y-D in violation of section 16-3-29 of the South
19 Carolina Code of Laws of 1976 as amended against the peace
20 and dignity of the State in contrary to the statute in
21 such cases made and provided. The statute cited 16-3-29
22 is a code section in our code of laws entitled attempted
23 murder. A person who with intent to kill attempts to kill
24 another person with malice aforethought either expressed
25 or implied commits the offense of attempted murder.

1 The next indictment, 2012-GS-24-141 reads that
2 Whitney Desmond Span did in Greenwood County on or about
3 that same date, 22nd of October, 2011 possess a firearm or
4 visibly displayed what appeared to be a firearm or visibly
5 displayed a knife during the commission of a violent
6 offense to wit, during the commission of attempted murder
7 or any lessor included violent offense in violation of
8 section 16-23-490 of the South Carolina Code of Laws.

9 The State is represented by Assistant Solicitors
10 Swilley and Taylor. If you will please stand and
11 introduce yourselves to the jury panel.

12 MR. SWILLEY: My name is Matt Swilley, I am the
13 Assistant Solicitor here in Greenwood in the Eighth
14 Circuit Solicitors Office. And this is Aaron Taylor, he
15 is also an Assistant Solicitor with the Eighth Circuit
16 Solicitors Office.

17 THE COURT: Thank you. I thank you very much. The
18 defendant is represented by Mr. Lance Sheek and introduce
19 yourself and your client to the jury panel, Mr. Sheek.

20 MR. SHEEK: Good morning, ladies and gentlemen, my
21 name is Lance Sheek and I am an attorney here with Geoly
22 and Sheek here in Greenwood, South Carolina. And today I
23 have the privilege to represent Whitney Desmond Span who
24 is standing right here beside me.

25 THE COURT: Thank you very much, Mr. Sheek. Thank

1 you, Mr. Span. Is any member of the jury panel related by
2 blood or marriage, close personal friends, have any
3 social, business or professional relationship with either
4 Assistant Solicitor Swilley, or Taylor or Mr. Sheek. If
5 so please stand. All right, your number and name, please.

6 JUROR: 51, Charles Graves.

7 THE COURT: All right. And tell me your
8 relationship, Mr. Graves.

9 JUROR: A former student, Mr. Taylor is one of my
10 former students.

11 THE COURT: Mr. Taylor?

12 JUROR: Yes, sir.

13 THE COURT: You won't hold that against him, will
14 you?

15 JUROR: No, sir.

16 THE COURT: The fact that he was your former student
17 can you still be a fair and impartial juror to both the
18 State and the defendant?

19 JUROR: I will.

20 THE COURT: Thank you very much, you may be seated.
21 Any others? Now, ladies and gentlemen, has any member of
22 the jury panel or any member of your immediate family ever
23 been represented by or prosecuted by any of the attorneys
24 involved in this matter. That will be either Mr. Swilley,
25 Mr. Taylor or Mr. Sheek. If so please stand.

1 (No response.)

2 Have you ever been party to a lawsuit in which one of
3 the attorneys was representing or prosecuting the opposing
4 party. If so please stand.

5 (No response.)

6 THE COURT: Is there any member of the jury panel
7 related by blood or marriage or close personal friends or
8 have any business or professional relationship with
9 Whitney Desmond Span. If so please stand.

10 (No response.)

11 THE COURT: The allegation in the indictment alleges
12 an incident that occurred 22nd of October of '11 involving
13 allegedly Mr. Span and one Travis Boyd. Is Mr. Boyd
14 present?

15 MR. SWILLEY: He is, Your Honor.

16 THE COURT: Can you stand for me, please, Mr. Boyd.
17 Thank you very much, Mr. Boyd. Is there any member of the
18 jury panel related by blood or marriage or close personal
19 friends, have any business or professional relationship
20 with Mr. Travis Boyd. If so please stand.

21 (No response.)

22 THE COURT: Is there any member of the jury panel
23 have any knowledge about the facts of the case. If so
24 please stand.

25 (No response.)

1 THE COURT: Have you heard, it is a case alleging
2 attempted murder and possession of a weapon during the
3 commission of a violent crime. Has any member of the jury
4 panel have any biased or prejudiced towards the parties.
5 That being either the State or Mr. Span or the subject
6 matter involved in the case. If so please stand.

7 (No response.)

8 THE COURT: Is there any member of the jury panel
9 heard or know anything about the case from any source
10 whatsoever. If so please stand.

11 (No response.)

12 THE COURT: I am going to call a list of names,
13 ladies and gentlemen, of potential witnesses in the trial
14 of this case. If any of the individuals whose names I
15 call are present at the time their name is called please
16 stand and face the jury panel. I would advise the jury
17 panel that potential witnesses do not have to be present
18 during this proceeding therefore you may hear names called
19 and no one stands. The question of course is, is there
20 any member of the jury panel related by blood or marriage
21 or close personal friends or have any business or
22 professional relationship with any of these individuals
23 whose names I call and or who stand before you. If so
24 please stand. The first name again is Mr. Travis Boyd and
25 he had previously stood before you. Thank you again, Mr.

1 Boyd. Harry Parker, Adrian Gaston, G-A-S-T-O-N; Tavaris
2 Keewon Lester, Demetrius Andrews. After those five names
3 is there any member of the jury panel related by blood or
4 marriage, close personal friends, have any social or
5 business relationship with any of those individuals, if so
6 please stand.

7 (No response.)

8 THE COURT: The next five names, Kelvin Goode,
9 G-O-O-D-E or perhaps, Goode, depending how close you live
10 to Fairfield County, Kelvin Goode. The next four it looks
11 like, ladies and gentlemen, are all employees of the
12 Greenwood Police Department. Terry Greenfield, Benjamin
13 Baker, Nicholas Futch, Kenya Griffin. Is there any member
14 of the jury panel related by blood or marriage, close
15 personal friends, have any social or professional
16 relationship with any of those individuals whose names I
17 just called. If so please stand.

18 (No response.)

19 THE COURT: The next four names are employees of
20 Greenwood Police Department, the fifth name is an employee
21 of Ninety Six Police Department. Phillip Nichols, this is
22 Detective Nichols to my front. Thank you very much.
23 Jeffrey Crisp, Ray Pope, Andrew Holland, Patrick Cravin
24 again with the Ninety-Six Police Department. Any member
25 of the jury panel related by blood or marriage, close

1 personal friends, have any business or professional
2 relationship with any of those individuals whose names I
3 just called, if so please stand.

4 (No response.)

5 THE COURT: The next five names, Cheryle Haupfear
6 with Self Regional Medical Center, Travis Lathren,
7 L-A-T-H-R-E-N with Greenwood Fire Department. Wayman
8 Coleman, Greenwood Fire Department. Chris James with
9 Greenwood Fire Department and Robert Ware with Greenwood
10 Fire Department. Is any member of the jury panel related
11 by blood or marriage or close personal friends, have any
12 business or professional relationship with any of those
13 individuals whose names I have just called. If so please
14 stand.

15 (No response.)

16 THE COURT: The last name, Michael Hawksclaw,
17 Greenwood Detention Center. Any member of the jury panel
18 related by blood or marriage, close personal friends, have
19 any business or professional relationship with Mr.
20 Hawksclaw if so please stand.

21 (No response.)

22 THE COURT: Any additional request in voir dire from
23 the State?

24 MR. SWILLEY: There is not, Your Honor.

25 THE COURT: From the defense?

1 MR. SHEEK: No, sir.

2 THE COURT: And finally, ladies and gentlemen, again
3 as I announced at the beginning of this proceeding our
4 purpose to select a fair and impartial juror at the trial
5 of this case because the State and the defense, each of
6 you knows yourself best. Is there any member of the jury
7 panel know any reason whatsoever why you feel like you
8 could not be a fair and impartial juror during the trial
9 of this case for both Mr. Span and the State. If so
10 please stand.

11 (No response.)

12 THE COURT: Thank you very much. I find that our
13 panel is qualified. The strikes are, Solicitor?

14 MR. SWILLEY: I believe they are five and five, Your
15 Honor.

16 THE COURT: Mr. Sheek?

17 MR. SHEEK: I concur, Your Honor.

18 THE COURT: All right, strikes are five for the State
19 and five for the defense. All right, Madam Clerk.

20 CLERK OF COURT: When I call your name if you will
21 come up here and stand with our bailiff and bring your
22 belongings with you. Number 33, Amanda Dixon. What says
23 the State?

24 MR. SWILLEY: Please present Ms. Dixon.

25 CLERK OF COURT: What says the defense?

1 MR. SHEEK: Please excuse the juror from the trial of
2 this case.

3 CLERK OF COURT: Number 10, Crystal Barnett. What
4 says the State?

5 MR. SWILLEY: Please excuse Ms. Barnett.

6 CLERK OF COURT: Number 90, Victoria Mlinar. What
7 says the State?

8 MR. SWILLEY: Please present Ms. Mlinar.

9 CLERK OF COURT: What says the defense?

10 MR. SHEEK: Please excuse Ms. Mlinar.

11 CLERK OF COURT: Number 144, Nora Wolfe. What says
12 the State.

13 MR. SWILLEY: Please present Ms. Wolfe.

14 THE COURT: What says the defense.

15 MR. SHEEK: Seat the juror.

16 CLERK OF COURT: Number 6, Jerrell Argo. What says
17 the State.

18 MR. SWILLEY: Please present Mr. Argo.

19 THE COURT: What says the defense.

20 MR. SHEEK: Please swear Mr. Argo.

21 CLERK OF COURT: Number 94, Susan Nickles. What says
22 the State.

23 MR. SWILLEY: Please present Ms. Nickles.

24 CLERK OF COURT: What says the defense.

25 MR. SHEEK: Present swear the juror.

1 CLERK OF COURT: 135, Marcie Turner. What says the
2 State.

3 MR. SWILLEY: Please present Ms. Turner.

4 CLERK OF COURT: What says the defense.

5 MR. SHEEK: Please swear the juror.

6 CLERK OF COURT: 126, Carrie Slater. What says the
7 State.

8 MR. SWILLEY: Please present Ms. Slater.

9 CLERK OF COURT: What says the defense.

10 MR. SHEEK: Please swear Ms. Slater.

11 CLERK OF COURT: 70, Raymond King. What says the
12 State.

13 MR. SWILLEY: Please excuse Mr. King.

14 CLERK OF COURT: 7, Jennifer Ashley. What says the
15 State.

16 MR. SWILLEY: Please present Ms. Ashley.

17 MR. SHEEK: Your Honor, may we approach?

18 THE COURT: Yes.

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

22 THE COURT: Ms. Ashley, you can stand right there.
23 You had told me earlier that you, your brother is a jail
24 administrator?

25 JUROR: Yes, sir.

1 THE COURT: And your son is a Laurens Police Officer.

2 JUROR: He is an officer for Laurens City.

3 THE COURT: All right. Given those facts could you
4 still be a fair and impartial juror for both the State and
5 Mr. Span?

6 JUROR: I feel like if they had been arrested the
7 officers have just cause.

8 THE COURT: I am going to set you aside on the trial
9 of this case. Thank you.

10 CLERK OF COURT: 132, Suzanne Tinsley. What says the
11 State.

12 MR. SWILLEY: Please present Ms. Tinsley.

13 CLERK OF COURT: What says the defense.

14 MR. SHEEK: Please swear Ms. Tinsley.

15 CLERK OF COURT: Number 20, Ernestine Brooks. What
16 says the State.

17 MR. SWILLEY: Please excuse Ms. Brooks from the trial
18 of this case.

19 CLERK OF COURT: 22, Jason Burch. What says the
20 State.

21 MR. SWILLEY: Please present Mr. Burch.

22 CLERK OF COURT: What says the defense.

23 MR. SHEEK: Please swear Mr. Burch.

24 CLERK OF COURT: 115, Rochelle Rush. What says the
25 State.

1 MR. SWILLEY: Please present Ms. Rush.

2 CLERK OF COURT: What says the defense.

3 MR. SHEEK: Please swear Ms. Rush.

4 CLERK OF COURT: 92, Cheryl Moore. What says the
5 State.

6 MR. SWILLEY: Please present Ms. Moore.

7 CLERK OF COURT: What says the defense.

8 MR. SHEEK: Please swear Ms. Moore.

9 CLERK OF COURT: 145, Jason Wykle. What says the
10 State.

11 MR. SWILLEY: Please present Mr. Wykle.

12 CLERK OF COURT: What says the defense.

13 MR. SHEEK: Please swear Mr. Wykle.

14 CLERK OF COURT: 60, Lisa Hollingsworth. What says
15 the State.

16 MR. SWILLEY: Please excuse Ms. Hollingsworth from
17 the trial of this case.

18 CLERK OF COURT: 64, Christopher Jay. What says the
19 State.

20 MR. SWILLEY: Please present Mr. Jay.

21 CLERK OF COURT: What says the defense.

22 MR. SHEEK: Please swear Mr. Jay.

23 CLERK OF COURT: 37, Patricia Dyke. What says the
24 State.

25 MR. SWILLEY: Please present Ms. Dyke.

1 CLERK OF COURT: What says the defense.

2 MR. SHEEK: Please excuse the juror from the trial of
3 this case.

4 CLERK OF COURT: 96, Kristi Owen. What says the
5 State.

6 MR. SWILLEY: Please present Ms. Owen.

7 CLERK OF COURT: What says the defense.

8 MR. SHEEK: Please excuse the juror from the trial of
9 this case.

10 CLERK OF COURT: 93, Marcilla Murray. What says the
11 State.

12 MR. SWILLEY: Please present Ms. Murray.

13 CLERK OF COURT: What says the defense.

14 MR. SHEEK: Please swear the juror.

15 THE COURT: Will one alternate be sufficient?

16 MR. SWILLEY: Yes, sir.

17 MR. SHEEK: Yes, sir.

18 CLERK OF COURT: 26, Jennifer Clary. What says the
19 State.

20 MR. SWILLEY: Please present Ms. Clary.

21 CLERK OF COURT: What says the defense.

22 MR. SHEEK: Please swear Ms. Clary.

23 THE COURT: Any motions regarding the jury selection
24 process, from the State?

25 MR. SWILLEY: There is not, Your Honor.

1 THE COURT: From the defense?

2 MR. SHEEK: No, sir.

3 THE COURT: Ladies and gentlemen of the jury panel
4 just selected for the trial of this case, momentarily I am
5 going to have you go to your temporary home, your jury
6 room with your bailiff. I will have you back out here in
7 just a few moments. I need to give your colleagues some
8 further instructions concerning their jury service for the
9 remainder of this week. During this brief recess, ladies
10 and gentlemen, I am to ask that if you would please select
11 one among your number to be the foreperson of the jury
12 panel. The foreperson can be any one of you except juror
13 number 26, Ms. Clary. I am sure Ms. Clary would make a
14 fine jury foreperson however right now she is in the
15 status of an alternate juror and would not be authorized
16 to serve as the foreperson of the jury panel. It can be
17 any one of the number of the primary twelve members of the
18 jury panel. You can make the selection based on prior
19 jury service or whatever criteria you as a jury choose.
20 Once you have made that selection as the foreperson who
21 would be the jury spokesperson here in the courtroom, once
22 you have made that selection if you would write that
23 number and name down, knock on your jury room door, give
24 that name and number to your bailiff for him to advise me
25 and I will have you right back out in the courtroom. With

1 that being said if you will now go with your bailiff to
2 your jury room.

3 (Whereupon, the jury was excused from open court for
4 a break.)

5 THE COURT: Ladies and gentlemen of the jury panel
6 that were not fortunate enough to be selected for the
7 trial of this case please do not give up hope. The week
8 is young, it is only Monday, we have plenty of other cases
9 to try, plenty more opportunity for you to be selected as
10 a juror in the trial of a case. Momentarily I am going to
11 release you from your jury service for the remainder of
12 the day. I would ask you to please call back your jury
13 information number after 6:00 o'clock tonight, after 6:00
14 p.m., if you would call that number back, you would be
15 known as the balance of the panel. There will be
16 information on there that will prompt you and give you
17 instructions concerning your jury service for the
18 remainder of the week. Are there any questions. All
19 right it has been my privilege and pleasure to be with you
20 this morning, if I do not see you any time later in the
21 week. You are now excused, please remember to call back
22 after 6:00 tonight. And juror number 10, Ms. Barnett, I
23 would like to see you for a moment before you leave. The
24 remainder, y'all are now excused. Thank you very much.

25 (Whereupon, the jury panel was excused from open

1 court at approximately 12:30 p.m.)

2 THE COURT: The jury has selected number 6, Mr. Argo
3 is the foreperson. Anything before we bring in our jury
4 panel from the State?

5 MR. SWILLEY: There is not, Your Honor.

6 THE COURT: From the defense?

7 MR. SHEEK: Your Honor, we would just have one
8 pretrial motion that doesn't have to be heard before we
9 bring the jury out.

10 THE COURT: I was intending to give them my brief
11 opening and y'all doing opening statements before lunch.

12 MR. SHEEK: Your Honor, my motion is simply to
13 sequester any witnesses. I understand the victim and
14 chief investigating officer but anybody else I ask to be
15 sequestered.

16 THE COURT: Any objection to that, Solicitor?

17 MR. SHEEK: No opposition to that, Your Honor.

18 THE COURT: Many times I will allow the evidence
19 custodian, if there is a lot of evidence to deal with
20 because it is just procedurally so much trouble to shuffle
21 it in and out of the courtroom. I don't know the facts of
22 the case at all. Your motion is granted. We will bring
23 them out and swear them in, we will do the openings and go
24 to lunch. How long do y'all usually take for lunch. What
25 do they do in this county.

1 MR. SWILLEY: Usually an hour to an hour and a half.

2 THE COURT: Do y'all have plenty of lunch time
3 traffic.

4 MR. SWILLEY: It varies.

5 THE COURT: They do in Lexington, I give them an
6 extra fifteen minutes so they can just sit in the
7 Lexington lunch time traffic in the heat and enjoy what
8 their taxpayers, their tax dollars have paid for. Bring
9 us our jury, please.

10 (Whereupon, the jury came into open court at
11 approximately 12:33 p.m.)

12 THE COURT: Madam Clerk, please swear our jury.

13 (WHEREUPON, the jury was sworn at 12:34 p.m.)

14 THE COURT: Welcome back, ladies and gentlemen of the
15 jury panel, and thank you very much, Mr. Argo, number 6
16 for serving as our jury foreperson. Ladies and gentlemen
17 of the jury panel, the case that we are about to try as
18 you have heard is the case of the State versus Whitney
19 Desmond Span. Mr. Span, of course, is seated to my front
20 left next to his attorney, Mr. Sheek. What I now say is
21 intended to serve as an introduction to the trial of the
22 case. These remarks are not a charge or instruction on
23 the law. I will instruct on the full and complete law
24 that applies to this case at the end of the trial before
25 you retire to consider your verdicts. This is merely an

1 explanation of the procedures that we will follow so that
2 you may better understand what may be happening. As you
3 have heard Mr. Span, the defendant, is charged by
4 indictments filed with this court with the crimes of
5 attempted murder and possession of a weapon during the
6 commission of a violent crime. The elements of which will
7 be fully explained to you later. Again, ladies and
8 gentlemen, these indictments, they are simply the charges
9 by which the case is brought into court. And they are not
10 in any sense evidence of any of the allegations that they
11 contain. Mr. Span has plead not guilty to these
12 indictments. The State therefore has the burden of
13 proving each of the elements of each indictment beyond a
14 reasonable doubt. And it will be your duty, ladies and
15 gentlemen, to decide whether the State has met its burden.
16 Your purpose as jurors is to find and determine the facts.
17 You are the sole judges of the facts. If at any time I
18 make any comment regarding the facts you must disregard
19 it. You are to determine the facts from the testimony
20 that you hear and the other evidence introduced in this
21 courtroom. It is up to you to determine the inferences
22 which you feel may properly be drawn from the evidence.
23 It is especially important that you perform your duties of
24 determining the facts diligently, conscientiously because
25 ordinarily there is no way to correct an erroneous

1 determination of the facts by a jury. Now on the other
2 hand and with equal emphasis the same law that makes you,
3 the jury, the judges of the facts make me the Judge of the
4 law. The law that is given by the Court is the only law
5 that you may consider. You must accept and follow it even
6 though you may disagree with it. I cannot tell you what
7 the facts are and you cannot disagree with me about what
8 the law is or should be. Your job is to take the law as I
9 give it to you and apply it to the facts as you find them
10 from the testimony of the witnesses under oath from this
11 witness stand and any other evidence that is introduced.
12 After doing that you will render your verdicts, true and
13 just verdicts under the solemn oath that you have just
14 taken. During the trial, ladies and gentlemen, do not
15 read, listen to or watch any news reports about this case
16 should there be any. That includes anything that may be
17 in the newspapers, on the internet, radio or television.
18 You must not consider anything you may have read or heard
19 about the case outside of this courtroom whether before or
20 during the trial. It is important that you keep an open
21 mind and not decide any issue in the case until all of the
22 evidence has been presented before you and the parties
23 have made their closing arguments and I have instructed
24 you on the law in this case. It is your solemn
25 responsibility to determine the guilt or innocence of the

1 defendant and your verdict must be based solely on the
2 evidence as it is presented to you in this trial and on
3 the law that I instruct you during and at the close of the
4 trial. Now, in just a moment, ladies and gentlemen, the
5 Solicitor will make what is called an opening statement in
6 which the Solicitor will explain to you the issues in this
7 case or at least what the Solicitor thinks the issues are
8 in the case. Mr. Sheek, the attorney for the defendant,
9 may also make an opening statement although he is not
10 required to do so. The State always has the burden of
11 proof beyond a reasonable doubt. A defendant in South
12 Carolina is always presumed to be innocent of the charges
13 unless and until the State meets its burden of proof
14 beyond a reasonable doubt. Now, ladies and gentlemen,
15 what the attorneys tell you during their opening
16 statements, during their closing arguments is not evidence
17 in the case. It is only their contention as to what the
18 issues are. Additionally, ladies and gentlemen, their
19 questions are not evidence. Their questions to the
20 witnesses are the framework by which the evidence is
21 extracted from the witnesses. The testimony of the
22 witnesses testifying under oath from their lips before
23 you, that is the evidence in the case and any other
24 documentary evidence or the like that may be introduced or
25 produced. From time to time during the trial you may hear

1 one of the attorneys say something like, Your Honor, I
2 believe we have a question of law or a matter of law to
3 discuss with you or Your Honor, may we approach the bench.
4 Or sometimes I, myself, might find it necessary to excuse
5 you from the courtroom for a short while so the attorneys
6 and I can discuss a matter of law. The reason for this is
7 not to hide anything from you but because you are the
8 judges of the facts in this case and sometimes when I am
9 discussing matters of law with the attorneys it may be
10 necessary for me to make some comment as to the facts in
11 connection in ruling whether or not a particular law
12 applies. I am not suppose to tell you what I think the
13 facts are. Therefore I will excuse you from the courtroom
14 while these discussions take place so that in no way will
15 you be influenced by anything that I might say or do in
16 connection with the facts. In determining what the true
17 facts are in this case against the backdrop of your good
18 judgment and common sense you must decide whether or not
19 the testimony of the witnesses is believable. It will be
20 my responsibility to rule as a matter of law whether
21 certain testimony is admissible at all or not. But once
22 the testimony is admitted, whether or not you believe it
23 is solely for you to determine. In deciding whether to
24 believe a witness you have the right to consider the
25 interest of any witness, the biased of any witness, the

1 prejudice of any witness, the opportunity for the witness
2 to have seen the matters, and things about which the
3 witness may testify and the way the witness acts on the
4 witness stand. You have a right to consider anything that
5 is in the record that will help you evaluate the testimony
6 of the witnesses. That means that it will be your duty to
7 pay close attention to these witnesses, to observe them,
8 to listen to them, to pay close attention to the attorneys
9 and to the Court. Don't let your thoughts wonder but give
10 strict attention to the testimony in this case so that at
11 the end of all of the testimony, after the closing
12 arguments of the attorneys and the instruction on the law
13 by the Court you will then be in a position to determine
14 what the true facts are and to apply the law to those
15 facts and thus render a true and just verdict. Your duty
16 really comes down to the search for the truth, the finding
17 of the truth from where ever that truth may be found. It
18 will be your added duty, Mr. Foreperson, to preside in the
19 jury room and to be the jury spokesperson in the
20 courtroom. It will also be your duty to write the
21 verdicts but I will give you further instructions about
22 that at the conclusion of the trial. A couple of
23 administrative matters, ladies and gentlemen, if you
24 cannot hear a witness it is very difficult to determine
25 what the true facts are. Those that are further away from

1 the witness stand, if you cannot hear a particular witness
2 please raise your hand and we will have them speak up. I
3 may not be loud but at least I can be heard I think. But
4 if you have problems with that just raise your hand and we
5 will certainly have them speak up. From time to time
6 during the course of a trial there could be diagrams,
7 photographs, exhibits, various items of evidence
8 introduced. Many times they may be handed to the
9 foreperson while you are here in the jury box and passed
10 among the jury panel. You may look at those items all you
11 wish while you are in this courtroom. Keep in mind, if I
12 allow an item into evidence you will also have that item
13 with you in your jury room at the time of your
14 deliberations. Again, look at that item all you wish out
15 here in the courtroom, remember however that will not be
16 the only opportunity, the last opportunity you will have
17 to view that item. Also, ladies and gentlemen, from time
18 to time you may see me on the computer, on my computer. I
19 don't check email, I don't tweet, peet or anything like
20 that or instant IM. You have fine lawyers in this case, I
21 anticipate perhaps a legal issue coming around the curve I
22 foresee. So I am generally doing some type of legal
23 research. What I am really in charge of, ladies and
24 gentlemen, I am in charge of taking breaks and I have a
25 real simple rule. When I want to take a break we take a

1 break, works out perfect every time. Please remember,
2 ladies and gentlemen, this is not some type of judicial
3 marathon. If you sit out here too long and your thoughts
4 start to wonder, you are not focused, please raise your
5 hand, y'all will take y'all's break and we will take our
6 break. Any time any of you need a break please just get
7 my attention, let me know. Everyone will have adequate
8 time, as I say, it is not some type of judicial marathon.
9 So I guess ultimately you are in charge of breaks so to
10 speak. Finally I have tried to study jury's over the
11 years, I haven't kept very good records. I find many
12 jurors are very territorial. They want to sit in the same
13 spot every time. They want to view the evidence from the
14 same point of view every time. And that is fine, I have
15 no problem with that whatsoever. I tell them if you do
16 that many times I may learn your name before the end of
17 the trial because you are always sitting in the same
18 place. I do need our foreperson to always maintain this
19 seat and I need our alternate to always maintain her seat.
20 Those others of you, you may sit anywhere you like within
21 the jury box. However you do not have to maintain the
22 same seat unless you want to. With that being said any
23 objection from the State to anything I have told the jury.
24 Solicitor?

25 MR. SWILLEY: It is not, Your Honor.

1 THE COURT: Mr. Sheek?

2 MR. SHEEK: No, Your Honor.

3 THE COURT: Thank you very much. Solicitor, you may
4 address the jury.

5 MR. SWILLEY: Thank you, Your Honor. Your Honor, if
6 it please the Court. Three holes, three holes. That is
7 what Travis Leon Boyd got when he was somewhere where the
8 defendant in this case, Mr. Whitney Span, didn't want him
9 to be on October the 22nd of 2011. See, ladies and
10 gentlemen, that afternoon about 3:00 o'clock Mr. Boyd and
11 three of his friends were going to a clothing store on
12 Milwee Avenue here in Greenwood to buy some clothes and to
13 go out that night and have a good time. On the way out
14 some of his friends running down the road, they wanted to
15 pick a fight with them. They didn't like them being over
16 there and they weren't going to stand for it and they
17 decided they were going to fight. And Mr. Span decided he
18 wanted to fight but not just a fist fight, he went out for
19 a gun fight. Okay. A fight transpired, fists were
20 thrown, objects were thrown. Mr. Span pulled a pistol out
21 of his waistband, pointed it at Travis and his friends,
22 pointed at Travis and shot him three times. One time on
23 the right leg, two times on the left leg and he was
24 getting into a car trying to shield himself. Now, ladies
25 and gentlemen, Mr. Span here is charged with attempted

1 murder, possession of a weapon in the commission of a
2 violent crime. Attempted murder means an attempt to kill
3 and attempted to intent to kill with malice aforethought.
4 Malice is ill-will, bad intentions. And he is charged
5 with possession of a weapon during the commission of a
6 violent crime meaning that he used a gun or knife or
7 displayed what appeared to be a gun or knife during the
8 commission of that felony. Now, ladies and gentlemen,
9 your job in this case is to, you are the finders of the
10 facts. Whatever the facts are is what you say they are,
11 that is your job. Judge McMahon here is the Judge of the
12 law, whatever the law is, what he tells you. You take
13 that and you decide the facts. My job and our job over
14 here as the State is to prove Mr. Span guilty beyond a
15 reasonable doubt of these two crimes. And that is a high
16 burden but that is a burden that we are going to meet
17 because, ladies and gentlemen, he is guilty of these two
18 crimes. And during the course of this trial I ask you to
19 use your undivided attention and listen to the testimony
20 and look at the evidence. I know it may not be a place
21 you want to be today but let me tell you something, this
22 is a very important matter. Not just for the defendant
23 but for society at large, for us in Greenwood County. And
24 now when you look at the evidence or hear the testimony
25 and look at the evidence I want you to keep something in

1 mind, okay. Unless y'all get elevated to some kind of
2 public office, which you may, this is probably the most
3 power you are ever going to have. I ask you to use that
4 wisely throughout the course of this trial. Ladies and
5 gentlemen, if you do those things you will come to the
6 conclusion in this trial that Mr. Span is guilty of
7 attempted murder and possession of a weapon during the
8 commission of a violent crime. Thank you very much.

9 THE COURT: Thank you. Mr. Sheek.

10 MR. SHEEK: Mr. Foreman and ladies and gentlemen,
11 again my name is Lance Sheek. I live and practice law
12 here in Greenwood. And I have been practicing now for
13 twenty years. This is my twentieth year, when I graduated
14 law school I came here, worked with this Solicitor's
15 office because I believed coming out of law school what I
16 wanted to do is to fight for justice. And the first place
17 I thought of doing that was at the Solicitor's office as a
18 prosecutor. See I was raised up right up on 25. My
19 mother and father still live up there where I was raised.
20 And the greatest living man that I have ever met is my
21 father who led by example, taught me by example. I didn't
22 have to worry about what my father taught me to do, I
23 learned from what I saw my father do. And visited him
24 recently the other weekend and came back I was thinking to
25 myself I hear your words but I believe your attitude

1 because of conversations I have had with him. Why does
2 that matter in this case here. I went into law school
3 thinking that life was about right and wrong. And that
4 you lived your life so you can do right and try and not do
5 wrong. And when you have done wrong you try to make
6 amends for that and move on. That is what I was taught
7 and that is what I still believe and there are certainly
8 times I haven't done what I truly believe in. But when I
9 got into law school, in teaching you there they were doing
10 an interesting thing and they were trying to teach you to
11 learn to think on both sides of the equation, to represent
12 each side of the case. They would have situations in law
13 school where they actually give you a fake case, a
14 hypothetical scenario. And they would make you stand up
15 and then they have you argue for the State and they would
16 argue why the defendant was guilty, bla, bla and then they
17 would stop you and then they would say, now argue for the
18 defendant. And you would immediately change and start
19 arguing for the other side and it quickly got away from
20 what was right and what was wrong and it got to winning.
21 That is what we were about, was we were about winning.
22 And you lost sight about the fact that our justice system
23 isn't about winning and losing, our justice system is
24 about justice. And it was interesting, as I listened to
25 the Solicitor's opening statements and as he came over

1 here and shook his finger at Mr. Span and he said, our
2 job, referring to him and his co-assistant Solicitor here,
3 is to prove him guilty. That is what he just told you.
4 Ladies and gentlemen, it is not. Our law says and his
5 oath says that his job is to seek justice. Right now as
6 the Judge has told you Mr. Span is presumed to be
7 innocent, not thought to be innocent or could be innocent,
8 you don't come in here even with a clean slate one way or
9 the other and wait to see what happens. You come in here
10 as a jury charged with a duty to presume he didn't do it.
11 He didn't do the things that they just told you he did and
12 unless they can prove to you that what they just said is
13 true and prove to you beyond a reasonable doubt then that
14 presumption stays with Mr. Span. And then we come to the
15 issue of what we call reasonable doubt. Now why do the
16 defense lawyers talk about that. When I first went to the
17 Solicitor's office I will tell you, I saw defense lawyers
18 talk about it as a way to try to get people off. But the
19 reason I now sit on that side of the table and the reason
20 I have set over here for more than fifteen years is I
21 still want to fight for justice but I found out that that
22 is where I do more fighting for justice. Now why do I say
23 that. Mr. Span does not have a job making a lot of money.
24 Mr. Span did not grow up in a large house and a fancy
25 neighborhood. His family is here with him. They don't

1 have a lot of money, they work and live from paycheck to
2 paycheck. Mr. Span didn't have money to come hire me.
3 Mr. Span didn't have enough money, his family didn't have
4 enough money to pay the fees that my firm charges to
5 represent somebody on this kind of charge. I am appointed
6 to Mr. Span and I am not ashamed to tell you that. I am
7 proud to do the job because I believe in justice whether I
8 am appointed to somebody or whether they have come in and
9 wrote me a check. It doesn't change the fact that we are
10 here about justice. And it shouldn't change anything
11 about this case but it does. I don't know when we decided
12 as society that right and wrong no longer really mattered
13 but you can see it, for example political, look at the ads
14 that are starting to run now on the TV. How many of them
15 are about the positive aspects of this candidate who says
16 I should have whatever office because I can do this, I can
17 do this, I can do this as opposed to don't vote for the
18 other guy, look how bad he is. And half of the time it is
19 lies anyway. And when they get up there they are more
20 interested in republicans fighting democrats and democrats
21 fighting the republicans and neither one of them care
22 about doing what is right for the country. And when we
23 come into this courtroom, now it is about my job is to
24 prove him guilty. We are here for one person, we are all
25 gathered here in this courtroom for one person. We are

1 all gathered here for Mr. Span because this whole system
2 of justice was set in place so that defendants have a
3 choice to come in before an unbiased panel to hear the
4 evidence. Let me tell you how our system works a little
5 bit and I don't want to take too long, I know y'all want
6 to get to lunch but this is important. They just told you
7 that this man is accused of attempted murder. Our system
8 of justice comes and the police do their investigation,
9 whatever they choose to do, however much, however little
10 they choose to do and they go to a Magistrate or a City
11 Court Judge, what we call the Summary Court Judge and they
12 seek a warrant. They sign an affidavit on an arrest
13 warrant and then that Judge issues the warrant. Mr. Span
14 is not brought in to have a hearing where he can call
15 witnesses, have an attorney to represent him or have any
16 type of hearing before that warrant is issued. Then Mr.
17 Span is allowed to ask for and have a preliminary hearing.
18 Now a preliminary hearing goes again before that same
19 Summary Court Judge where the State has to show probable
20 cause, not proof beyond a reasonable doubt but just
21 probable cause that the case should go up to trial. The
22 State gets to call witnesses, the State gets to present
23 any evidence they choose, Mr. Span can cross-examine their
24 witnesses but he cannot call his own witnesses, he cannot
25 present his own evidence, he doesn't get to participate

1 like that. If it goes past preliminary hearing and they
2 all do then it goes to the Grand Jury and the Grand Jury
3 meets back in the back, it is a session in secret. In
4 other words, the outside doesn't get to participate or
5 even know what goes on there. Law enforcement goes in and
6 presents whatever evidence they want to present, however
7 much or however little they want to and they can tell them
8 everything, they can hold stuff out, they can do whatever
9 they want to. Mr. Span doesn't get to know what is going
10 on there, have an attorney to go in there, call witnesses
11 or anything else. And the Grand Jury either true bills or
12 no bills. The first time Mr. Span has gotten to
13 participate in this process, this criminal justice process
14 is today. The very first time he has gotten to have
15 somebody stand up there on his behalf and say, now wait a
16 second. When do we get to look at the evidence is today.
17 Mr. Span's resources are limited. He does not have at his
18 disposal the Greenwood City Police Department. If you go
19 outside the court house and look at the parking lot you
20 can see the cars parked there, the trucks or the evidence
21 technicians, if they would let you you could go in and see
22 the crime scene processing unit, the scientific equipment
23 that they have. It is all there to investigate crimes.
24 What bothers me, the reasons that I sit on this side of
25 the table now and what bothers me in this case and I

1 submit to you it will bother you in this case is Mr. Span
2 doesn't have to come in here and prove himself not guilty,
3 he never will. It is easy for me to say somebody did this
4 or did that. And if I swear under oath that somebody did
5 this or did that is how they prove they didn't do it.
6 Well luckily in a criminal process the State has to prove
7 he did do it. And the resources are at their table
8 because the burden is on them and the burden is not just
9 to prove he is guilty. The burden rest on the State from
10 the time the allegations are made, from the time the
11 incident occurred because nobody is going to come into
12 this courtroom and say this man wasn't on the scene
13 sitting right back here or that he wasn't shot. The
14 police does the investigation, they have the resources.
15 Now here is the question I want you to ask yourselves.
16 When you listen to this evidence and you listen to this
17 investigation is the investigation that we have been
18 presented, is the evidence that has been brought to us
19 because it is their job, the the same for Mr. Span as it
20 would have been if this was a defendant who has three
21 hundred dollars in the bank or was living somewhere else
22 in a big house. And my gosh, we saw that debacle when
23 President Clinton was in office and he was accused of
24 whether he did or did not have relations with a staffer in
25 the hundreds upon hundreds of thousands of dollars spent

1 on whether or not that occurred. But I have got a man
2 sitting over here accused of attempted murder and I have
3 got to ask myself does he not deserve that same kind of
4 investigation. Because he doesn't have the resources to
5 do this and to do that, he doesn't. But they do. And the
6 burden lies with them. Now when you come into court you
7 are equipped with several things but the most important
8 piece of equipment you have is your common sense. As you
9 listen to the evidence presented from this witness stand
10 and that is where all of the evidence is going to come
11 from but right now he is presumed completely innocent,
12 presumed he didn't do it. People in this chair has got to
13 prove to you he did. I want you to listen carefully to
14 the evidence that is presented. We are going to talk
15 about the evidence that is not presented. We are going to
16 talk about the investigation that was done and we are
17 going to talk about the investigation that wasn't done.
18 We are going to talk about what evidence was pursued and
19 why other evidence wasn't even pursued. Because Mr. Span
20 didn't have the opportunity to go in there and say, wait a
21 second, I want my attorney there in this investigation and
22 let's make sure everything is done. Trust me, I never
23 received that phone call and the investigation was done
24 before I ever got involved. They are going to come to you
25 today and they are going to ask at the end of this case to

1 convict this man, find him guilty. And to do that they
2 have to bring you the tools and to apply those tools. A
3 case is kind of like putting together a puzzle, they bring
4 to you each piece of evidence, it is like a piece of a
5 jigsaw puzzle, one piece fits with the next piece and the
6 next piece. One piece alone may not make a picture but
7 when the case is done it does and when it is a clear
8 picture that is proof beyond a reasonable doubt. But when
9 the State brings you half the pieces and ignore what is
10 not there you have a problem. So listen carefully today
11 or however long we present this evidence. I know you have
12 got things to do and you have places you want to be, but
13 other than service in our military this is the most
14 important civic service you are going to be because Mr.
15 Span is asking for a fair shake. That is all he is asking
16 for. And until you people got picked to sit in those
17 chairs it hasn't. So I am going to ask you to give it to
18 him now. The bible tells us, he who tells the story first
19 seems right until another comes along to question it, that
20 is found in Proverbs. The State goes first to tell their
21 story. When people talk to you you start to picture the
22 story in your mind. Nobody presumes somebody is sitting
23 there lying to us but don't form that opinion until
24 someone has come along and questioned you. Please give us
25 your attention and be patient with us to the end of the

1 case. Thank you.

2 THE COURT: Thank you very much, Mr. Sheek. Mr.
3 Foreman, ladies and gentlemen of the jury, I believe now
4 would be the appropriate time for us to take our luncheon
5 recess. I must give you some instructions concerning your
6 jury service both during, throughout your jury service.
7 First you may not discuss this case with others, that
8 includes your fellow jurors, family, friends, lunch mates
9 or anyone else. You may not read or listen to any news
10 reports about the case. You may not use a computer,
11 cellular phone or any other electronic device with
12 communication capabilities while in attendance at trial or
13 during deliberations. You may use these devices during
14 luncheon breaks but may not use them to obtain or disclose
15 prohibited information. Prohibited information includes
16 but it is not limited to the following, information about
17 a party, witness, attorney or court officer, news accounts
18 of the case, information collected through juror research
19 on any topic raised or testimony offered by any witness or
20 information collected through juror search on any other
21 topic that the juror might think would be helpful in
22 deciding the case. Well what does all that mean. That
23 means in the age of technology you can't get on your
24 computer and do research on the law of the term of
25 attempted murder, malice aforethought, presumption of

1 innocence or you can't do research on any court officer,
2 individual witness or anyone involved. You decide the
3 case based on the evidence and testimony you hear from the
4 witnesses testifying under oath and any physical items of
5 evidence introduced. Don't do any independent
6 investigation on your own, don't do any investigation on
7 the internet. I know you will be true to the oath that
8 you all have previously taken. We will now take our
9 luncheon recess. I would ask you to please be back at
10 2:30, that is an hour and twenty five minutes by my watch.
11 You are now excused for your luncheon recess. I hope
12 y'all have a pleasant lunch.

13 (Whereupon, the jury was excused from open court for
14 a lunch break.)

15 THE COURT: Anything from the State before we take
16 our recess, Solicitor?

17 MR. SWILLEY: There is not, Your Honor.

18 THE COURT: Mr. Sheek?

19 MR. SHEEK: Nothing, Your Honor.

20 THE COURT: We will be in recess until 2:30.

21 (Whereupon, a lunch break was taken.)

22 THE COURT: Anything from the Solicitor before we
23 bring the jury out?

24 MR. SWILLEY: There is not, Your Honor.

25 THE COURT: From the defense?

1 MR. SHEEK: No, sir.

2 THE COURT: Let's bring the jury out, please.

3 (Whereupon, the jury came into open court at
4 approximately 2:38 p.m.)

5 THE COURT: Welcome back, ladies and gentlemen, I
6 hope y'all had a pleasant lunch. We are beginning the
7 presentation of evidence and testimony by the State in its
8 case-in-chief. Please give the parties your complete and
9 undivided attention. With that being said, Solicitor, you
10 may call your first witness.

11 MR. SWILLEY: Thank you, Your Honor, the State calls
12 Travis Boyd.

13 THE COURT: Ladies and gentlemen, as the witness is
14 entering the courtroom I will advise you I have ordered
15 the sequestration of a number of the witnesses. I allow
16 the chief officers to remain and others. If they call a
17 witnesses name and they have to come from outside, they
18 are not being disrespectful to you in any manner or to the
19 Court. They are just following my orders and my
20 instructions. If you will come around, please, and be
21 sworn.

22 TRAVIS BOYD, being
23 first duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 By Mr. Swilley:

1 Q Mr. Boyd, state your name for the record.

2 A Travis Boyd.

3 Q Travis, where do you live at?

4 A Abbeville, South Carolina.

5 Q And, Travis, on October the 22nd of 2011 where were
6 you?

7 A On Milwee at Demetrius' shop.

8 Q And what does Demetrius sell?

9 A Clothes.

10 Q What is Demetrius' full name?

11 A I don't know, I don't really know.

12 Q Okay. For what purpose were you there?

13 A To buy clothes.

14 Q Do you remember about what time you arrived?

15 A Like 2:30, 2:45.

16 Q Okay. And tell me what happened when you left
17 Demetrius' store?

18 A We had went in and bought clothes and shoes and came
19 out. And Whitney and his friends had ran down the street.
20 I guess somebody told them that we were down there and we
21 were buying shoes and clothes and they ran down there. I
22 had told Mr. Lester to watch out because they were running
23 up behind him. And everybody spreaded out because they
24 had came trying to fight then everybody started to gather
25 around. That is when he pulled out a gun, he pulled out

1 his gun just to show us I guess then he put it back in.

2 Q Stand up and show me how he showed his gun.

3 A He pulled it out like this, he just showed it to us
4 and then he put it back in.

5 Q Keep going.

6 A And Mr. Whitney and Tavaris started to fight, when he
7 put it back, I guess he wanted to scare us with the gun.
8 And he put it back up and him and Tavaris started to fight
9 then, when they started to fight he like, like he was
10 coming at me to hit me. And I guarded myself and then him
11 and Keewon kept fighting. And the boys said, who are you
12 with. They tried to come at me. Me, Adrian Gaston and
13 Harry Parker, they tried to come at us. And that is when
14 we had went in the shop and came back out and all of us
15 started to fight. The one who owned the shop named
16 Demetrius, he came out of the shop with a bat.

17 Q A bat you said?

18 A Yes, sir.

19 Q What kind of bat?

20 A Like a baseball bat.

21 Q Okay, keep going.

22 A And that is when Mr. Whitney, they went in the road,
23 this was after all the fighting was over with. And he
24 threw a brick and tried to hit me with it and everybody
25 was around the car and I had gotten the bat from Mr.

1 Demetrius who owned the shop and I had to slug it trying
2 to, I didn't hit nobody but I was trying to because they
3 came over there trying to fight us. And we just came over
4 there to get shoes and clothes. And when they were
5 leaving I seen where Mr. Whitney had pulled a gun out of
6 his pants and started shooting at me. I had ran to the
7 car that we had came in and I had jumped on the drivers
8 seat of the car and I jumped in head first and that is how
9 I got shot three times.

10 Q Can you come out of that box right there and show the
11 jury where, the places in which you were struck by
12 bullets?

13 A It went in on this side and came out. And shot here
14 and here.

15 Q You said that third one was at your thigh?

16 A Yes, sir.

17 Q You can get back in the box, please. Can you tell
18 me, when Mr. Span shot approximately how far away were you
19 from him?

20 A Like from me to the detective right here in the white
21 shirt.

22 Q Did you get a good look at the gun?

23 A No, sir. I wasn't really worrying about the gun, I
24 was just worrying about me being shot which I did.

25 Q Do you recall what color the gun was?

1 A No, sir.

2 Q And, Mr. Boyd, what do you recall happened after you
3 were shot?

4 A I didn't really know I was shot until the window had
5 busted and Harry Parker had started yelling I was shot.
6 And he had came and ripped my shirt off of me and tied it
7 around my leg, I was bleeding heavy. And that is when Mr.
8 Demetrius had called the police.

9 Q Do you recall when the police arrived?

10 A Yes sir, I was sitting in Keewon Lester's car because
11 he was fixing to take me to the hospital but the ambulance
12 had pulled up and the ambulance had put me in the back of
13 the ambulance. They ran up the street after they stopped
14 shooting, after he had stopped shooting.

15 Q Mr. Boyd, do you see the man that shot you in this
16 courtroom?

17 A Yes, sir.

18 Q Can you point him out for me?

19 A Right there, Whitney Span.

20 MR. SWILLEY: Your Honor, please let the record
21 reflect the witness has identified the defendant.

22 THE COURT: So reflected.

23 MR. SWILLEY: Thank you.

24 Q Travis, what do you recall happened when you got to
25 the hospital?

1 A I didn't know I was hurt real bad. I really didn't
2 know I was shot but I was hurting real bad and they told
3 me not to move, they had put me to sleep and I had surgery
4 on my left foot, my left ankle and they had took the
5 bullet out. The other two bullets had went straight
6 through but I had to have surgery on my foot to take it
7 out.

8 Q Travis, do you know what Mr. Span was angry about and
9 the reason why he instigated this fight?

10 A No, sir.

11 Q Had you had any prior altercations with him in years
12 past?

13 A Like, it was like when we were younger, like five or
14 six years ago we had got into it, we had got into a fight
15 but after that, I mean we had shook hands and everything
16 after that. When I seen him at the detention center where
17 he is at he had told me, please, don't testify on me. And
18 I just looked over at him then because I felt like he shot
19 me three times, he tell me he didn't mean to but he shot
20 me three times and it could have killed me so I feel like
21 he deserves everything he gets.

22 Q Travis, do you recall some of the things that were
23 shouted at you by Mr. Span before you were shot?

24 A No, sir. Really, I mean him and Mr. Lester were
25 going at it and I guess they were fixing to fight, they

1 were fighting. And he just started shooting. When
2 Demetrius came out of the shop with the bat that is when
3 they ran back up the street and start shooting. I slung
4 the bat at them and they started, he ran back up the
5 street and started shooting and he busted the back window
6 out. And I jumped in the car and he shot me three times.

7 Q Okay. Do you recall any of the other people who ran
8 down the street or come out of the store?

9 A No, sir.

10 Q You had never seen any of these other people before?

11 A I had seen them before but I really don't know their
12 names.

13 Q Can you tell me, where is Milwee Avenue?

14 A Do you know where the packing plant, Carolina Pride?

15 Q Can you tell me what county it is in?

16 A Greenwood.

17 Q Okay. Please answer any questions Mr. Sheek has.

18 CROSS-EXAMINATION

19 By Mr. Sheek:

20 Q Mr. Boyd, how long had you been in the store prior to
21 coming out and being confronted by my client and his
22 friends?

23 A Ten or fifteen minutes.

24 Q When you walked out of the front door what did you do
25 immediately?

- 1 A We were going back to the car and that is when--
- 2 Q You had gone back to your car?
- 3 A Yes, sir.
- 4 Q Had you sat down in it?
- 5 A No, sir.
- 6 Q Did you purchase anything when you were in the store?
- 7 A Yes, sir.
- 8 Q Did you have those purchases, were they in a bag?
- 9 A Yes sir, I had already put them in the car.
- 10 Q So you had put them in the car--
- 11 A And I was getting in the car.
- 12 Q So you were getting in the car, and you were getting
- 13 in which door, the drivers door, passenger door?
- 14 A Passenger door.
- 15 Q Passenger door. And what car was this?
- 16 A It is my girlfriend's car.
- 17 Q And describe it, what kind of car is it?
- 18 A A silver Grand Am.
- 19 Q So you are standing at the passenger door, was the
- 20 passenger door open or closed?
- 21 A Closed.
- 22 Q So you had not opened the door?
- 23 A No, sir.
- 24 Q When is the first time did you see anyone approaching
- 25 you other than the people that you were shouting at?

1 A When I had closed the door, when I put my clothes in
2 the car and I closed the back door and I seen him running
3 down the street.

4 Q How far away from you did you see them run towards
5 you?

6 A Like from here to the man at the door.

7 Q Did you stand there and wait on them or did you go
8 ahead and get in the car?

9 A I was going to the car but they was running behind
10 Mr. Lester so I yelled to Mr. Lester, I said, y'all watch
11 out because, we call him Des. Watch out because Des is
12 behind you. And they turned around and that is when
13 everything escalated.

14 Q You just testified to the jury that you and Des had
15 had a history before where y'all had talked?

16 A Yes, sir.

17 Q But you thought all of that was taken care of?

18 A Yes, sir.

19 Q Y'all made up and shook hands and everything was
20 fine?

21 A Yes, sir.

22 Q Was that your understanding?

23 A Yes, sir.

24 Q And at the time you come out of the store you didn't
25 think there was any bad blood between you and Des, did

1 you?

2 A No, sir.

3 Q So my question is, why would you yell for a friend to
4 look out, Des is behind you?

5 A Because I know Des and Mr. Lester done had it in
6 before and I know they had gotten fighting before. And I
7 seen how he was running up behind and I know he was like,
8 like he was wanting to hit him.

9 Q What was he doing to make you think he wanted to hit
10 him?

11 A Running and bouncing, running and bouncing like he
12 wanted to hit him.

13 Q Now what kind of bouncing was he doing to make you
14 think he wanted to hit him. Describe to the jury.

15 A Like running down the street and like doing like,
16 y'all know how, like this, running down the street like
17 this. And I say, Keewon, watch out, watch out. And that
18 is when he turned around and Des was like, they were
19 fixing to fight. He pulled out the gun, I guess he pulled
20 out the gun so he could think that Keewon was scared to
21 fight him.

22 Q Was Mr. Lester in a different car then you were?

23 A Yes, sir.

24 Q How far away from your car was it parked?

25 A Like from me to you.

- 1 Q And was Mr. Lester standing at his car?
- 2 A They was standing behind the car, yes sir.
- 3 Q And so you were this close to Mr. Lester when you
- 4 said, look out, Des is coming up behind you?
- 5 A Yes, sir.
- 6 Q How close did Des get to Mr. Lester?
- 7 A Like from you to the one right here in the purple
- 8 shirt.
- 9 Q Okay. So within four or five feet?
- 10 A Yes, sir.
- 11 Q And did you have a clear view of who you were
- 12 referring to as Des being Mr. Span?
- 13 A Yes, sir.
- 14 Q Anything obstructed your view of him?
- 15 A Nothing.
- 16 Q So when you say, look out, Des is coming up behind
- 17 you what happened immediately after that?
- 18 A When Keewon turned around, it was like, pussy boy,
- 19 pussy boy. I heard you want to fight me, this is like,
- 20 you know how it is. You want to fight me. That is what
- 21 you want. He pulled out the gun and I guess he thought
- 22 Keewon was scared.
- 23 Q Did he pull it out with his right or left hand?
- 24 A His right hand.
- 25 Q Did he hold it up?

1 A No, he did like this. I guess he tried to show it to
2 us and let them know he had a gun.

3 Q Okay. And if you are as close as were are standing
4 did you see the gun?

5 A Yes, sir. I see he had something in his hand and I
6 know it was a gun.

7 Q How did you know it was a gun?

8 A Because I just, if somebody pulled a gun out like
9 this, I mean pulled something out of their pants like this
10 you would think it was a gun and I knew it was a gun.

11 Q If you knew it was a gun and I know you may not know
12 what caliber but describe its shape or color.

13 A I can't say.

14 Q You can't describe?

15 A No, sir.

16 Q Was he across from the car up from you or on the same
17 side of the car you were standing on. You said you were
18 on the passenger side, was he on the passenger side of
19 your car?

20 A He was.

21 Q He being Mr. Span?

22 A They were behind Mr. Lester's car.

23 Q Well now, you said there was a fist fight for an
24 amount of time before the shooting started, correct?

25 A Yes, sir.

- 1 Q How long did the fist fight start?
- 2 A A couple of minutes.
- 3 Q Not ten or fifteen?
- 4 A No, sir.
- 5 Q So if somebody there had said it was a ten or fifteen
- 6 minute fight that would be incorrect?
- 7 A Yes, sir.
- 8 Q After the fist fight did y'all go back into the store
- 9 where Mr. Andrews was?
- 10 A Yes, sir. I guess his last name is Mr. Andrews,
- 11 Demetrius.
- 12 Q Okay, Demetrius. So you went back into the store, so
- 13 nobody was shot, right?
- 14 A No, sir.
- 15 Q So y'all fight for a while and you go back into the
- 16 store, correct?
- 17 A Yes, sir.
- 18 Q Is that when Mr. Demetrius told them to leave?
- 19 A Yes, sir. When we had came back out, we were fixing
- 20 to leave because we thought they were gone. We had came
- 21 back out of his door and Demetrius came outside with the
- 22 bat and told them, Mr. Whitney Span to leave my shop,
- 23 leave my shop. He told us to come on outside and he told
- 24 us to leave because we thought they were gone.
- 25 Q Did you leave your package in the car when you went

- 1 back in the store?
- 2 A Yes, sir.
- 3 Q So when you came back out you didn't have a package?
- 4 A No, sir.
- 5 Q Did you go back to the passenger side of the Pontiac?
- 6 A Yes sir, we were fixing to leave.
- 7 Q Well, where was Mr. Span at that point?
- 8 A Standing in the road.
- 9 Q How far away from you was he then?
- 10 A Like from, the car I was in, the road was like from
- 11 the same distance, like from me to the woman in the green
- 12 shirt.
- 13 Q And were there words exchanged?
- 14 A He had picked a brick up off the sidewalk.
- 15 Q That being Mr. Span?
- 16 A Yes, sir. And threw it, and threw it where we were
- 17 coming out the shop at the door. And then I had snatched
- 18 it--
- 19 Q What did the brick look like?
- 20 A It was a brown brick, it was broken but it was a
- 21 brick.
- 22 Q How far from you did it go?
- 23 A It didn't hit me, it hit the door.
- 24 Q Hit the door of your car?
- 25 A No, the door to the building.

1 Q So it would have been laying there at the building at
2 that time?

3 A Yes, sir.

4 Q Go ahead. And then what happened?

5 A Then when we came back out of the shop, they were
6 still standing, he threw the brick and that is when I
7 snatched, I took the bat from Mr. Demetrius and I slung it
8 at Mr. Whitney Span.

9 Q You are talking about a baseball bat?

10 A Yes, sir.

11 Q You took a bat from Mr. Andrews?

12 A Yes, sir.

13 Q Did he hand it to you or did you just snatch it from
14 his hand?

15 A I just got it out of his hand and slung it.

16 Q Did he hold it out there?

17 A Yes, sir.

18 Q So he was basically saying this boy threw a brick at
19 you, here take this baseball bat, right?

20 A No, he wasn't saying but I just, I know me and I just
21 took it, I just took the bat from him and slung it.

22 Q That is my question. How was Mr. Andrews holding the
23 bat before the brick got thrown?

24 A He just had it in his hand slinging it, pointing at,
25 telling them to get out of his yard, off of his property.

1 Q So after the brick is thrown does he point the bat in
2 your direction for you to get it?

3 A I was on the side so I just took the bat from him and
4 I slung at them.

5 Q How far away was Mr. Span when you threw the baseball
6 bat at him?

7 A It hit the telephone pole and the telephone pole was
8 like three or four inches from him.

9 Q So you are telling me you threw a baseball bat and
10 you knew they had a gun?

11 A Yes, sir.

12 Q What made you do that?

13 A I was angry at the time and all of the fighting, the
14 fight escalated and he had hit me in the fight so I was
15 angry and we had came back out of the shop they were still
16 out there. So then Meat just kept telling them to leave
17 the shop so we tried to leave and I guess they didn't want
18 it to end.

19 Q Okay. Well when you went into the shop after this
20 man had shown you a gun and gotten into a fist fight with
21 him did you call the police?

22 A Demetrius and Mr. Goode did.

23 Q They called the police?

24 A Demetrius and Mr. Goode.

25 Q So the police were called before shots were fired?

- 1 A Yes, sir.
- 2 Q So you come back out, you get confronted again, you
- 3 sling the baseball bat at Whitney Span. Did he pull a gun
- 4 back out?
- 5 A He pulled it out, I see when he pulled it out of his
- 6 pants and he starts firing.
- 7 Q Is that when you go into the passenger side?
- 8 A Yes, sir. I started running to the car, I was like
- 9 behind the car, when I started running to the car when I
- 10 seen him pulling it out of his pants. And when he pulled
- 11 it out of his pants I jumped in the car and it shot the
- 12 back window out of the car first then I got hit three
- 13 times.
- 14 Q So your back was turned at this time when you get
- 15 shot?
- 16 A Yes, sir.
- 17 Q And would you agree that more than one person was
- 18 shooting?
- 19 A I really don't know, sir.
- 20 Q Was there a possibility that there was more than one
- 21 person shooting.
- 22 MR. SWILLEY: Objection, Your Honor.
- 23 THE COURT: I sustain the objection.
- 24 Q When you heard the shots did you hear what appeared
- 25 to be different sounds?

- 1 A Excuse me.
- 2 Q When you heard the shots, how many shots did you
3 hear?
- 4 A Like five or six shots.
- 5 Q These five or six, did they all sound the same or did
6 some shots sound like they were louder than others?
- 7 A They sounded the same.
- 8 Q From what you heard it would appear there had been
9 one gun fired?
- 10 A Yes, sir.
- 11 Q Since this happened, who else was with you?
- 12 A Adrian Gaston, Keewon Lester and Harry Parker.
- 13 Q And those are friends of yours?
- 14 A Yes, sir.
- 15 Q Basically live around this area?
- 16 A Yes, sir.
- 17 Q When is the last time you saw them?
- 18 A Today is the first time I seen Keewon and he is the
19 only one, Demetrius and Mr. Goode. This is the first day
20 I seen them.
- 21 Q What about the friends that were with you, I am not
22 talking about Mr. Goode and Demetrius Andrews.
- 23 A Yes, sir. I seen Adrian.
- 24 Q When was the last time you saw him?
- 25 A Like a couple of weeks ago..

- 1 Q What about Mr. Lester?
- 2 A Today was my first day to see him again. They came
3 to the hospital to see me but today was my first day to
4 see them.
- 5 Q Okay. So you saw Mr. Lester today, you seen Mr.
6 Goode, right?
- 7 A Yes, sir.
- 8 Q What about Mr. Parker?
- 9 A I haven't seen him.
- 10 Q What about Mr. Gaston?
- 11 A Yes, that is Adrian. I seen him a couple of weeks
12 ago.
- 13 Q So the only ones that you haven't seen lately is Mr.
14 Parker?
- 15 A Yes, sir.
- 16 Q Spoke to him on the phone or anything like that?
- 17 A No, sir.
- 18 Q Where did the police first speak with you?
- 19 A Speak with me?
- 20 Q Did they talk to you on the same day, did they come
21 check on you when you were sitting in the car?
- 22 A Yes, sir. They came and cut my pants off of me.
- 23 Q The police did?
- 24 A Yes, sir.
- 25 Q Did they ask you what had happened?

- 1 A Yes, sir.
- 2 Q What did you tell them?
- 3 A Well, when I got to the hospital, after everything
- 4 was done with and the police had came in the room and I
- 5 had talked to them then.
- 6 Q And did you ever give them a recorded statement, did
- 7 they ever take down a recorded statement and tell us what
- 8 happened?
- 9 A Did they tell me, ask me what happened? Yes sir, yes
- 10 sir.
- 11 Q Did they ever record a statement?
- 12 A I don't think so.
- 13 Q Did they ever ask you to come down to the police
- 14 department so they could get a recorded statement?
- 15 A Yes, sir.
- 16 Q And they did ask you to do that?
- 17 A Yes, sir.
- 18 Q Did you do that?
- 19 A Yes, sir.
- 20 Q So you did go to the police department to give a
- 21 recorded statement?
- 22 A Yes, sir.
- 23 Q Did you ever give a written statement?
- 24 A A written statement? No, sir.
- 25 Q A recorded statement is the only one you remember

- 1 giving?
- 2 A I told you I don't remember, I don't know if they
- 3 recorded it or not. I didn't see it recorded.
- 4 Q How long after the shooting did you go to the police
- 5 department?
- 6 A Like two days because I was still in the hospital.
- 7 Q When you were at the hospital did the police come and
- 8 talk to you then, right?
- 9 A Yes, sir.
- 10 Q Did they ever do any testing on your hands for
- 11 gunshot residue or anything like that?
- 12 A No, sir.
- 13 Q Never asked you if you had a weapon?
- 14 A No, sir. Oh yeah, they asked me did I have a weapon,
- 15 yes sir. Yes sir, I am sorry, yes sir.
- 16 Q What did you tell them?
- 17 A I told them I didn't.
- 18 Q Did they ask you if any of your friends had a weapon?
- 19 A Yes sir, anybody who I was with had a weapon and I
- 20 told them no.
- 21 Q Did they ever ask you if anybody else that was with
- 22 Mr. Span other than Mr. Span had a weapon?
- 23 A Yes, sir.
- 24 Q They asked you if anybody else shot?
- 25 A Yes, sir.

1 Q What did you tell them?

2 A I told them he the only one I seen with a gun.

3 Q Did they ever ask you any followup questions to that
4 or did they ask you about other people shooting?

5 A They asked, that is all they asked me.

6 Q They didn't ask you any specifics about anybody else?

7 A They asked me about everybody who was there. I told
8 them that he was the only one that I seen with a gun. And
9 nobody who I was with had a weapon.

10 Q And when you were hit your back was turned?

11 A Yes, sir. When I seen him pull a gun I was looking
12 dead at him then but when I see him pull it out I started
13 running, that is how my back was turned because I started
14 running back to the car.

15 Q You heard five or six shots?

16 A Yes, sir.

17 Q Don't know if it was a revolver or an automatic?

18 A I don't know.

19 Q That is all.

20 THE COURT: Redirect, Solicitor?

21 REDIRECT EXAMINATION

22 By Mr. Swilley:

23 Q Mr. Boyd, you said, just to clarify, you said you
24 went down to the police station and you gave a statement
25 to law enforcement?

1 A I talked to the police.

2 Q You talked to them?

3 A Yes, sir.

4 Q Okay. And you don't recall if it was recorded?

5 A No, sir.

6 Q Just to clarify. Nothing further, Your Honor.

7 (Whereupon, a bench conference was held in the

8 presence of the jury but out of the hearing of the

9 jury.)

10 THE COURT: All right, Mr. Boyd, you may step down.

11 Thank you very much. Call your next witness, Solicitor.

12 MR. SWILLEY: The State calls Demetrius Andrews.

13 DEMETRIUS ANDREWS, being

14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 By Mr. Swilley:

17 Q State your name for the record, please.

18 A Demetrius A. Andrews.

19 Q Mr. Andrews, where do you reside?

20 A .

21 Q What is your occupation?

22 A I own a retail store.

23 Q What do you sell in your store?

24 A Clothing.

25 Q Clothing. Mr. Andrews, were you at the store on

1 October the 22nd of 2011?

2 A Yes.

3 Q On that afternoon?

4 A Yes.

5 Q Do you recall what occurred at your place of business
6 that afternoon?

7 A Yes.

8 Q Can you tell what happened?

9 A Yes. A few guys had came down to buy some clothing
10 and they had bought what they wanted to buy. We walked
11 outside because I was talking to them. And four guys come
12 running down the road and they got into an altercation.

13 Q Do you recall what the gentlemen that ran down the
14 road, do you recall what they were claiming as they ran
15 down the road?

16 A I caught you, I caught you over here then they got to
17 fighting and a young man pulled a gun out but he put it
18 back in his pocket. I was asking him to leave but he
19 wouldn't. Then they got into it some more and then they
20 finally parted ways and the young man turned around and
21 pulled a pistol out and just started shooting.

22 Q And you were outside of your store at this time?

23 A Yes, I was right there at the door.

24 Q Did you retrieve any kind of object when you were in
25 your store?

- 1 A No, there is bullet holes all in the wall.
- 2 Q Did you have anything in your hand, a bat or anything
3 like that?
- 4 A Yes, at first because I wanted them to leave, yes.
- 5 Q And you recall about how many young men were outside
6 your store?
- 7 A It was four with Travis, no it was three with Travis
8 and it was three with the young man over here.
- 9 Q Mr. Andrews, your perception of what happened, can
10 you tell what the argument or the fighting was about?
- 11 A No. Right to today I don't even know why they was
12 fighting.
- 13 Q Did you witness Mr. Boyd get shot?
- 14 A Yes, I was standing right behind him.
- 15 Q Do you see the person who shot him in this courtroom?
- 16 A Yes, the young man right over here.
- 17 Q Are you talking about the gentleman in the plaid
18 shirt?
- 19 A Yes, sir.
- 20 Q Mr. Andrews, did you hear anything from the defense
21 about yelling out at Mr. Boyd or any other boys?
- 22 A No, it was so much going on, I was just trying to get
23 them off of the property. And I was trying to get them to
24 leave.
- 25 Q Okay.

1 A You know, it was a lot going on.

2 Q Okay. Did you call 911?

3 A Yes, I did. I called 911 myself.

4 Q Do you remember approximately what time you called
5 911?

6 A It was right around 3:00 o'clock, somewhere right in
7 there, 3:15.

8 Q I was talking about what point did the altercation,
9 what time did you call 911?

10 A After he shot him.

11 Q After the shots were fired?

12 A Yes.

13 Q Through your recollection of events were any of the
14 people with Mr. Boyd, did they have any weapons or show
15 any weapons?

16 A Not at the time that I, I didn't see any weapon. The
17 only weapon that I saw was with the young man I had and I
18 thought the young guy was with him had a gun but I wasn't
19 for sure. That is what I told the police.

20 Q But did you see Mr. Span's gun?

21 A Yes.

22 Q Can you describe to me what that gun looked like?

23 A I think it was probably a .32 if I am not mistaken, a
24 .25.

25 Q A revolver or automatic?

1 A I think it was a revolver.

2 Q And can you stand up and show to the jury where Mr.
3 Span had that gun on him?

4 A I think he had it about right in here if I am not
5 mistaken.

6 Q And he pulled it out the first time--

7 A Yes, he pulled it out and then he put it back in and
8 they started, then he put it back in and then they started
9 fighting again.

10 Q After Mr. Boyd was shot, after you called 911 what
11 did you do after that?

12 A I pretty much panicked because I never seen anything
13 like that. And I was trying to help him get out of the
14 car because he had got in the car. I told him the
15 ambulance was on the way.

16 Q You just stayed on the scene?

17 A Yes, the whole time.

18 Q Was there anybody else at the scene besides law
19 enforcement.

20 A Me and Kevin Goode and the other three guys with the
21 young man there. And the guys with him had ran back up
22 the road, back up Milwee.

23 Q Can you tell me how far you were from Travis when he
24 was struck?

25 A No more than to the gentleman with the white shirt

1 on.

2 Q You were about that far from Travis?

3 A Yes. Travis was standing beside the car and I was
4 right at the door, give or take a foot or two.

5 Q Excuse me?

6 A Give or take a foot or two, wasn't too far out.

7 Q And do you recall how far away Mr. Span was to Travis
8 when he was shooting?

9 A I would say no farther than the lady with the lime on
10 in the back because he was standing right at the parking
11 lot driveway. I thought he was going to go ahead and
12 leave but he turned around and pulled a gun out and
13 started shooting.

14 Q Okay. Now is your store, is that in more of a
15 commercial area or residential area?

16 A It is residential area but commercial property.

17 Q Okay, okay. Just to be clear, Mr. Andrews, what
18 county is your store in?

19 A Greenwood County.

20 Q Okay. And, Mr. Andrews, do you recall approximately
21 how long until the ambulance got there?

22 A Say ten minutes.

23 Q Okay. And did you go with Mr. Boyd to the hospital?

24 A No.

25 Q You stayed at the scene?

1 A Yes.

2 Q I have nothing further. Please answer any questions
3 Mr. Sheek has.

4 THE COURT: Thank you very much, Solicitor. Mr.
5 Sheek.

6 CROSS-EXAMINATION

7 By Mr. Sheek:

8 Q Mr. Andrews, Mr. Boyd here and his friends had come
9 in your store and made some purchases that day, is that
10 correct?

11 A Yes.

12 Q And they had already left your store and taken their
13 purchases to their cars?

14 A No, they was walking to the car. Because I had came
15 outside to smoke a cigarette and I know Travis, we were
16 joking around and all of a sudden a young man and three
17 other guys come running down the road.

18 Q Well, there was a fist fight that lasted for several
19 minutes, correct?

20 A Yes.

21 Q And then Mr. Boyd came back in your store?

22 A Well they was fighting, I was trying to get them out
23 of the store. Yes, they did come, well somebody ran back
24 in the store and they wanted to fight in there but I got
25 them back out because I had grabbed my bat.

1 Q Let me ask you this. Did the fight stop and Mr. Boyd
2 and his friends come back into the store for some time
3 while Mr. Span and his friends were outside?

4 A No, his friends and him had started into the store
5 but I was looking out for my best interest then. I wanted
6 them out and I kind of pushed them back, on back out the
7 door.

8 Q Okay. So if anybody said we fought for a few minutes
9 but then I went back into the store and the police were
10 called before the shooting happened. That would be
11 clearly incorrect?

12 A Yes. The police wasn't called--

13 THE COURT: Let me stop you a minute, no pitting of
14 the witnesses. Look at the State versus Battle and
15 others. But you may continue, Mr. Sheek.

16 Q Okay. So the police were called after the shooting?

17 A Yes.

18 Q And there was no time after the initial fist fight
19 and Mr. Boyd and his friends were back in your store
20 alone?

21 A No.

22 Q Waiting for Mr. Span and his friends to leave?

23 A No.

24 Q So you went out of the store after the initial
25 purchases there was a confrontation, right?

- 1 A When I came out of the store with Travis and them?
- 2 Q Yes.
- 3 A Yes. When I came back out of the store with Travis I
- 4 lit up a cigarette, we were talking and joking and the
- 5 young man and his friends came running down the road.
- 6 Q And did you hear Mr. Boyd yelling anything when they
- 7 came running down the road?
- 8 A I don't think they was actually after him, it was the
- 9 other guy they were after but Travis was with him.
- 10 Q Did you hear Travis say anything?
- 11 A It was a lot of stuff going on, you know, between
- 12 them. I wasn't trying to get into it because they was
- 13 really in to each other.
- 14 Q If you were standing right there behind Travis at the
- 15 time he got shot, from that point you would have seen a
- 16 brick got thrown at him and hit the front door of your
- 17 business, wouldn't you?
- 18 A Yes, I would have seen the brick. Yeah, I would have
- 19 seen it.
- 20 Q Do you recall that ever happening?
- 21 A No, no. I have got a glass door, it would have hit
- 22 the glass door if he had of throwed a brick.
- 23 Q Do you recall ever handing your baseball bat to Mr.
- 24 Boyd?
- 25 A No, I did not.

1 Q Did he ever reach out and take the baseball bat away
2 from you?

3 A Not that I can remember exactly, it was so much--

4 Q I am sorry, I don't mean to cut you off. Go ahead.

5 A Not that I can remember.

6 Q Do you recall Mr. Boyd throwing the baseball bat at
7 Mr. Span, your baseball bat?

8 A Not that I can remember.

9 Q Now, in the courtroom today you said this is the
10 gentleman that did the shooting, right?

11 A Yes.

12 Q And how do you know that?

13 A I saw him pull a gun out.

14 Q Is it because you recognize him from seeing him that
15 day?

16 A I don't know him, but I know him, you know, from
17 around the way.

18 Q Well, did the police ever come show you a photo
19 lineup?

20 A Yes.

21 Q And did you from that photo lineup identify any of
22 the individuals in that lineup as being the one that did
23 the shooting that day?

24 A I thought three of the guys in there including him
25 look alike.

1 Q My question was, did you identify any of them, did
2 you tell the police that is the one that did the shooting?

3 A Are you talking about him?

4 Q Did you say any of them in that photo lineup did the
5 shooting?

6 A I picked the wrong one.

7 Q You picked the wrong one?

8 A Yes.

9 Q That is even though you knew him from before this
10 incident, didn't you?

11 A I just said it was three guys in there that looked
12 just alike. You know, they resemble each other.

13 Q So when the police show you a photo lineup and one of
14 those photos being of Mr. Span you actually picked someone
15 else out as the shooter?

16 A I said it was three people that looked alike.

17 Q The reason you point him out today is because the
18 prosecution has told you he is the defendant?

19 A I saw him shooting.

20 Q But the other person you pointed out in that photo
21 lineup, do you see him too?

22 A No.

23 Q Did you see more than one person shooting?

24 A No.

25 Q Did you hear more than one gun going off?

1 A No.

2 Q Sounds of gunfire that was different, one louder than
3 the other?

4 A One gun.

5 Q That is all I have.

6 THE COURT: Redirect?

7 REDIRECT EXAMINATION

8 By Mr. Swilley:

9 Q Mr. Andrews, how old did you say you were?

10 A 39.

11 Q Do you wear glasses?

12 A No.

13 Q Do you see Mr. Span right there?

14 A Yes.

15 Q Are you sure that is him, that was the guy that had
16 the gun?

17 A Yes.

18 Q Okay. Let me ask you, you said, just to be sure.
19 You said a policeman showed you a photo lineup?

20 A Yes.

21 Q You recall exactly what happened, did you pick the
22 wrong person or were you unable to identify?

23 A I picked the wrong person because it was three guys
24 and they looked just alike. I picked, I said it could be
25 him or him or him and I picked the wrong one but he told

1 me it was that one, it was the young man right there.

2 Q From your recollection?

3 A Yes.

4 Q Okay. And what neighborhood do you live him?

5 A Country Homes.

6 Q Country Homes. Okay. And how far is that from your
7 store?

8 A It usually takes me seven or eight minutes, ten
9 minutes tops to get to work.

10 Q And have you ever seen Mr. Span around your store?

11 A No, I don't know him. I know him from around the way
12 because everybody know each other but I don't know him
13 personally.

14 Q Had you seen him before that day?

15 A Not that day.

16 Q I mean had you seen him in days prior?

17 A No.

18 Q Okay, okay. Nothing further, Your Honor.

19 THE COURT: Recross?

20 MR. SHEEK: No recross, Your Honor.

21 THE COURT: Thank you and you may step down.

22 MR. SWILLEY: Your Honor, I request that Mr. Andrews
23 be excused.

24 THE COURT: Any objections?

25 MR. SHEEK: No objections.

1 THE COURT: Thank you for being with us, Mr. Andrews,
2 you may be excused. All right, Solicitor, you may call
3 your next witness.

4 MR. SWILLEY: Your Honor, the State calls Kelvin
5 Goode.

6 KELVIN GOODE, being
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 By Mr. Swilley:

10 Q State your name, please.

11 A Kelvin Goode.

12 Q Last name Goode?

13 A Goode.

14 Q Mr. Goode, where do you live?

15 A Greenwood, South Carolina.

16 Q Mr. Goode, do you work anywhere?

17 A Yes, sir.

18 Q Where do you work?

19 A Tshirt and Accessory.

20 Q Where is that located?

21 A 704 Milwee.

22 Q Mr. Goode, were you working on the afternoon of
23 October 22nd, 2011?

24 A Yes, sir.

25 Q And were you working that afternoon?

1 A Yes, sir.

2 Q Tell me what you observed that afternoon about 3:00
3 o'clock?

4 A It was about 3:00, I had come out of the store off of
5 Milwee talking to--

6 Q Get closer to that microphone.

7 A I just had waited on some customers and I was talking
8 to a man, Travis and there was two other guys with him.
9 And I was talking to them and about good times. I think
10 three or four fellows come down the street and across the
11 parking lot.

12 Q Were they running?

13 A Yes, sir. They run down the street.

14 Q Did they yell anything?

15 A They was saying something about, I told you if I
16 catch you over here or something. That is the only thing
17 I remember said.

18 Q They said what now?

19 A I told you if I catch you over here or something, I
20 guess they must have been into it sometime or later, you
21 know, before this happened.

22 Q Now, Mr. Goode, when you arrived at the store what
23 did you observe after that?

24 A One of the fellows pulled out a gun.

25 Q Do you see that individual in this courtroom today?

- 1 A Yes.
- 2 Q Can you point him out for me?
- 3 A Yes, sir.
- 4 Q Go ahead and do that.
- 5 A Yes, sir. (Witness points.)
- 6 Q Are you pointing at the man with the plaid shirt
- 7 here?
- 8 A Yes.
- 9 Q Okay. Go ahead, keep going.
- 10 A And they had been arguing, you know, back and forth.
- 11 And me and Demetrius, that is the owner of the store, we
- 12 asked them to leave, you know. Take that somewhere else
- 13 because this is a place of business. So about that time
- 14 one of the guys that was with him was chasing one of the
- 15 other fellows around a car or something. And about that
- 16 time one of them, somebody, a bat or something I saw
- 17 throw, you know, out in the parking lot at one of the
- 18 fellows.
- 19 Q You said you saw something?
- 20 A A bat, a baseball bat.
- 21 Q A baseball bat?
- 22 A Yes.
- 23 Q Did you see who threw it?
- 24 A I didn't see who, I just saw it on the ground, you
- 25 know, because I was trying to keep an eye on the kids that

1 was out there playing, you know, and stuff and the parking
2 lot because people stay in apartments behind the store.

3 Q Do you recall anything else, any other objects
4 getting thrown?

5 A No. They was arguing like they were fixing to fight
6 so we were trying to, you know, get them, you know, away
7 from there.

8 Q And tell me what happened after that, Mr. Goode.

9 A The only thing I know, the next thing I seen, a guy
10 pulled out a gun and started shooting.

11 Q What guy is that?

12 A The same guy right there.

13 Q Okay. Who was he shooting at?

14 A Travis, he was standing up beside the door, we come
15 out the door and there was bullet holes in the wall and
16 everything right there where he was standing. And I am
17 the one that called the police, called 911 and told them
18 there was a shooting out here on 704 Milwee. And the
19 first thing they asked me was anybody hit.

20 Q Now, you said you called the police?

21 A Right.

22 Q And you called them from your cell phone?

23 A Yes, sir.

24 Q And tell me what happened after the bat got thrown
25 and you saw Mr. Span right?

1 A He started shooting, yes. Shooting and a bunch of
2 them took off running, you know, across the street behind
3 a house.

4 Q Did you see Travis get shot?

5 A Well I didn't know he was shot, you know, because
6 they asked me, the dispatcher asked me on the phone, you
7 know, was anybody hit. And I told her I didn't know for
8 sure but I know it had been a shooting down there because
9 I work there. And so when I went up the street after they
10 had run I walked back down the street after I saw the
11 police come down there. And that is when they told me he
12 was shot. But I saw the back glass of the car where he
13 was driving, it was all shot out too.

14 Q So that windshield was shot out?

15 A Yes.

16 Q Do you recall where Travis was after Mr. Span and his
17 friends ran off?

18 A He was standing up right there beside Demetrius and
19 the other guy was with him, he was checking to see if he
20 was all right. I guess he was fixing to take him to the
21 hospital or something. He put him in the car before the
22 police drove up and they blocked the car in, you know, I
23 guess to question them what was going on.

24 Q Mr. Goode, about how far away from Travis and Mr.
25 Span were you, do you remember about how far away you

1 were?

2 A I would say from about here to the lady with the
3 black, green on right there, about that far.

4 Q Okay. Can you describe the gun that was in Mr.
5 Span's hand?

6 A I don't know what kind of gun it was, I know it was a
7 handgun.

8 Q Okay. Do you recall what color it was?

9 A No, I can't remember.

10 Q Do you recall approximately how many shots you heard
11 fired from Mr. Span's gun?

12 A Seven or eight, there ain't no telling. Probably
13 more than that, you know. Like I said, a gun was shot, I
14 was trying to get out of the way, you know what I am
15 saying because I have had friends getting killed by
16 innocent bullet.

17 Q And did you, you were there when the ambulance came
18 and got Mr. Boyd?

19 A Yes, sir.

20 Q Mr. Goode, do you recall seeing anybody else
21 shooting?

22 A No sir, I didn't see anybody else.

23 Q Just Mr. Span?

24 A Yes, that was the only one I saw. He was at the
25 front, you know, doing all the arguing and the talking.

1 Q You said he was in the front?

2 A You know, with the three guys, like the others were
3 behind him, you know.

4 Q So he was out in front of the other two, the other?

5 A Yes, like in front of them a little bit.

6 Q Thank you, Mr. Goode, please answer any questions Mr.
7 Sheek has.

8 CROSS-EXAMINATION

9 By Mr. Sheek:

10 Q Mr. Goode, just a second ago when the Solicitor asked
11 you, let me ask you this. Who called you to come here to
12 court?

13 A It was the Solicitor.

14 Q He called you?

15 A Today?

16 Q Yes.

17 A Yes, sir.

18 Q And did he call you on your cell phone?

19 A Yes, sir.

20 Q How did he get your cell phone number?

21 A I had left it with the officer from day one out there
22 at the shooting.

23 Q Okay. And how many times have you talked with the
24 Solicitor before coming up here today?

25 A One time, I think it was a Friday, Thursday or Friday

- 1 he come out and talked.
- 2 Q The police, how many times have you talked with them?
- 3 A Nothing, since that day one time.
- 4 Q So you talked to the Solicitor one time that being
- 5 Friday?
- 6 A Or Thursday, it was Thursday.
- 7 Q Thursday.
- 8 A He came back the next day to see the dude who I work
- 9 with at the store and talk to him because he wasn't there.
- 10 But he didn't have to talk to me Friday.
- 11 Q And between the time you talked to the police right
- 12 after the shooting and the time you talked to the
- 13 Solicitor you had no contact with law enforcement,
- 14 correct?
- 15 A No, sir.
- 16 Q At the time you talked to the police you actually
- 17 went to the police department and you gave them a recorded
- 18 statement, didn't you?
- 19 A Yes.
- 20 Q And they told you it was being recorded, read the
- 21 time and date and you say your name and birthdate?
- 22 A Yes, sir.
- 23 Q And you told them, did you not, that you had a really
- 24 good view of what happened that day?
- 25 A Yes.

- 1 Q Those were your words, I had a really good view?
- 2 A Right.
- 3 Q Now when the shooting started where was Mr. Boyd
- 4 standing?
- 5 A He was standing right where you exit the store at.
- 6 Q And how far away from that was his car, the silver
- 7 Pontiac he had come in?
- 8 A Parked right in front of the store.
- 9 Q Was he right beside the door to the Pontiac?
- 10 A He was on the other side of the door. He was on the
- 11 other side of the door by the store, he wasn't up by the
- 12 car. The car sits back in the parking lot and he walked
- 13 down to the store, yeah.
- 14 Q So he was not by the car?
- 15 A Not then, no. He was right by the building where you
- 16 go into the store at.
- 17 Q Your testimony to the Solicitor you said something
- 18 about him being chased around the car, is that correct?
- 19 A One of the other buys, not him now, it was whoever,
- 20 one of the other guys was with him. They was arguing.
- 21 Q Were they fighting, was there actual fist fighting
- 22 when that occurred?
- 23 A Well, he couldn't get to him. I just say he was like
- 24 trying to hit him or something. He was, you know, moving
- 25 away.

- 1 Q So you never saw an actual fist fight go on?
- 2 A No, I didn't see no fist fighting.
- 3 Q So you had a really good view of the whole incident,
- 4 correct?
- 5 A Sure.
- 6 Q Never saw any fist fight occur?
- 7 A No, I never did see no fist fight.
- 8 Q Never saw Mr. Boyd and his friends go back into the
- 9 store after any altercation?
- 10 A No, they had went in the store first. They were
- 11 fixing to leave, that is the only thing that I saw.
- 12 Q You never saw Mr. Boyd take a baseball bat from Mr.
- 13 Andrews, did you?
- 14 A No. I told you I saw the baseball bat throwing, I
- 15 don't know who threw the bat or what. I told you that
- 16 earlier.
- 17 Q Well, was Mr. Andrews standing outside talking to Mr.
- 18 Boyd?
- 19 A He was trying to run those fellows away, yes sir.
- 20 Q And was he talking to him when the fellows
- 21 approached?
- 22 A Yes. Like I say, he was telling them they need to
- 23 get away from that.
- 24 Q Mr. Andrews, when he came out and was talking to Mr.
- 25 Boyd prior to Mr. Span and his friends approaching.

1 A They approached me?

2 Q Did Mr. Boyd, upon initially leaving the store after
3 making his purchases, did Mr. Andrews come outside with
4 him?

5 A Yes, I saw him, I saw them standing outside talking,
6 yes.

7 Q That was before Mr. Span or anybody else approached,
8 right?

9 A Right, before they got there.

10 Q So there wasn't any trouble going on at that point?

11 A No.

12 Q Did Mr. Andrews have a baseball bat in his hand at
13 that point?

14 A I don't know what he had. Like I said, when I come
15 from around the corner I saw him and I heard him tell them
16 to leave so I don't know if he had a bat or what. Like I
17 say, I saw it hit on the ground in the parking lot.

18 Q Now you told the police you saw four guys approach
19 the group and the group you are referring to would be Mr.
20 Boyd and his friends, right?

21 A Right.

22 Q So you saw the incident from the time Mr. Span first
23 got there, correct?

24 A I saw them when they first got there, right.

25 Q Well, did you leave at some point or go away at some

1 point?

2 A Yes, I walked around to the trashcan and put
3 something in the trash.

4 Q So you saw the entire incident is my point.

5 A I had to miss something if I went to the trashcan, I
6 couldn't see everything.

7 Q Okay. Well how long were you gone to the trashcan?

8 A Long enough to dump the trash and I was talking to
9 one of the attendants living in the apartment.

10 Q Were you gone ten or fifteen minutes?

11 A No, it wasn't that long.

12 Q One or two minutes?

13 A Probably about two minutes at the most.

14 Q If it had been a ten or fifteen minute brawl you
15 would have known?

16 A Yes.

17 Q Okay. Now you said that Mr. Span was there with
18 other guys, correct?

19 A Yes, right.

20 Q You told the police that the other guys also pulled
21 out guns and started shooting, didn't you?

22 A I didn't say they was shooting. I told them that I
23 saw the other, a guy there with a gun. I don't know that
24 the others had a gun or not but I know there was some
25 shooting, a lot of shooting. That is what I told them.

1 Q Okay.

2 MR. SHEEK: Judge, may we approach a moment.

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

6 THE COURT: Step out a minute, ladies and gentlemen,
7 take about a fifteen minute recess. Do not discuss the
8 case during this brief recess. Thank you very much.

9 (Whereupon, the jury was excused from open court.)

10 MR. SHEEK: Your Honor, can I have a couple of
11 minutes so my client can use the restroom?

12 MR. SWILLEY: Your Honor, I don't have any problem
13 with Mr. Sheek showing that in front of the jury.

14 THE COURT: It is going to be offered into evidence?

15 MR. SWILLEY: Yes, sir.

16 THE COURT: Without objection?

17 MR. SWILLEY: That is correct.

18 THE COURT: We will take about fifteen minutes along
19 with the jury. You can step down and don't talk about
20 your testimony.

21 (Whereupon, a short break was taken.)

22 MR. SHEEK: Your Honor, we are ready and if the Court
23 is fine we will play it from there. The jury can hear it
24 as well as the witness.

25 THE COURT: Bring our jury in.

1 (Whereupon, the jury came into open court at
2 approximately 3:50 p.m.)

3 THE COURT: Welcome back, ladies and gentlemen, we
4 will continue on cross-examination. Mr. Sheek.

5 MR. SHEEK: Thank you, Your Honor. And for the
6 record, Your Honor, we have offered the recorded statement
7 into evidence, I believe without objection on the part of
8 the State.

9 MR. SWILLEY: That is correct.

10 THE COURT: All right, this will be defense exhibit
11 1.

12 (Whereupon, Defendant's Exhibit 1 was admitted into
13 evidence.)

14 MR. SHEEK: That is correct, Your Honor.

15 THE COURT: All right. What is this item, Mr. Sheek?

16 MR. SHEEK: This is a recorded statement taken at the
17 Greenwood City Police Department of this gentleman here,
18 Kelvin Goode.

19 THE COURT: Thank you very much. You can play the
20 recorded statement for the jury.

21 CONTINUE CROSS-EXAMINATION

22 By Mr. Sheek:

23 Q Mr. Goode, I am going to play this statement for you.
24 I want you to listen to it carefully, sir, and at the end
25 of it I want you to tell me if this is in fact the

1 recorded statement you gave the police department. Okay.

2 Ready.

3 (Whereupon, a recording was played for the jury

4 starting at 3:51 p.m.)

5 Q Stop it there one second. Mr. Goode, did you just
6 say that I told them to take it someplace else?

7 A We both told them.

8 Q Okay, that being you and Mr. Andrews?

9 A Right. He told them first and I walked out there
10 toward the car and told them they needed to leave.

11 Q So you were close enough to be talking to them?

12 A Yes, talking, yes.

13 Q Go ahead.

14 (Whereupon, recording continued to be played.)

15 Q And there you said you just saw one of them hit
16 somebody else?

17 A Right, he was running and swinging at him. I don't
18 know that he hit him or not. I told you he was running
19 around the car at him.

20 Q But on this statement you said he hit him?

21 A It might, I don't know exactly if he hit him or not.
22 I know he was swinging at him.

23 (Whereupon, recording continued to play and ended at
24 4:03 p.m.)

25 Q So, Mr. Goode, when you gave your recorded statement

1 you were positive that two other boys pulled guns and were
2 shooting?

3 A Well, I heard two other different shots, I can tell
4 you that. I can tell a difference in it too.

5 Q My question to you is real simple. On that recorded
6 statement that you gave on the date of the incident you
7 told that police officer you are positive that those other
8 two boys pulled out guns and started shooting?

9 A Yes, I am pretty sure they had.

10 Q Were you being honest and truthful to the police?

11 A Yes.

12 Q So that statement is the truth, isn't it?

13 A That statement is the truth, yes.

14 Q So then we agree that including--

15 A -- I don't know what kind of guns it was but yes,
16 they all had guns. I will put it that way, yes.

17 Q So according to your statement that there were three
18 people shooting?

19 A Well, it might have been all four of them. Like I
20 said, it was so many different shots and holes in the
21 wall. But I know I saw two or three of them with a gun.

22 Q And I believe you said, you described to the police
23 that they were backing up shooting?

24 A Yeap, backing up toward the road.

25 Q And you described they went two houses up the road

1 still shooting, right?

2 A They went behind, when they got behind the lady's
3 house, yes, one, two went behind the house.

4 Q And they were still shooting that far away?

5 A Shots there across the road.

6 Q How many shots do you think you heard?

7 A Probably seven, eight, nine. There ain't no telling,
8 there was a lot of them. I think it was more than seven.

9 Q And you also described on the written statement how
10 there was a verbal altercation?

11 A Right.

12 Q And then there was, you said Tavaris Lester got hit?

13 A Who?

14 Q Tavaris Lester, Mr. Lester got hit?

15 A Him, that is the one the other dude was trying to
16 fight. It looked like he hit him, I don't know for sure
17 that he hit him or not. But I know like he was running
18 from him, you know, like with his fist up.

19 Q Did you call 911 before or after the shooting
20 started?

21 A Right after the shooting started.

22 Q Now, when the police interviewed you, as you said to
23 me, you had a real good view of it all, right?

24 A Right.

25 Q And you clearly saw Mr. Span pull a gun out?

1 A Right.

2 Q And you sat here in the courtroom and said that is
3 the man that did it, right?

4 A Right.

5 Q Is that because you recognize him from that day?

6 A Yes.

7 Q Any trouble recognizing him from that day?

8 A No sir, I never had no trouble.

9 Q But the police showed you a photo lineup on the 22nd
10 of October while you were at the police department, didn't
11 they?

12 A Yes, sir.

13 Q And in that photo lineup is a picture of Whitney
14 Span, isn't it?

15 A Yes.

16 Q But you couldn't identify him, could you?

17 A No sir, I couldn't identify him on that picture, that
18 is the truth.

19 Q Would you like to tell the jury why you couldn't
20 identify him on the day that you watched the incident
21 happen but you can identify him now going on over a year
22 later?

23 A Because I was so upset about the shooting. You know,
24 like I say.

25 Q It doesn't have anything to do with the fact that you

1 come to court for the prosecution who has told you this is
2 the defendant?

3 A No, nothing to do with that. No, it doesn't have
4 anything to do with that.

5 Q But when shown a picture on the 22nd you couldn't
6 identify him?

7 A No, I couldn't. I was all upset and crying and stuff
8 when I went to the police that day because they come down
9 there to get me from the store.

10 Q Sir, I want to hand you this document and ask you,
11 does that look like a copy of the photo lineup that the
12 police department showed you?

13 A No sir, it don't look like. It is the same that I
14 identified the picture, right. It don't look like him to
15 me on here.

16 Q That doesn't look like the one they showed you?

17 A No.

18 Q Okay. That is fine. I have no other questions of
19 this witness.

20 THE COURT: Solicitor, redirect?

21 MR. SWILLEY: Briefly.

22 REDIRECT EXAMINATION

23 By Mr. Swilley:

24 Q Mr. Goode, has anybody asked you to change your
25 testimony or tell something else than what you saw today?

- 1 A No, sir.
- 2 Q I didn't ask you to do that, did I?
- 3 A No, sir.
- 4 Q Did Detective Nichols ask you to do that?
- 5 A No, sir.
- 6 Q Okay. How many times have you and I met?
- 7 A One time. It was Thursday. I mean you came in and
- 8 gave me a paper to come to the thing. That was the first
- 9 time I ever saw you.
- 10 Q What was the weather like that day?
- 11 A Thursday?
- 12 Q Yeah.
- 13 A It was nice, pretty.
- 14 Q Was it hot?
- 15 A Yes. I was standing there talking to you and you
- 16 said you weren't keep me out here long and you were
- 17 talking to me Thursday out there in the parking lot.
- 18 Q Okay. How long did we speak for?
- 19 A I don't know, maybe ten minutes.
- 20 Q Okay.
- 21 A You asked me a few questions and got my phone number
- 22 and stuff and then you told me if you needed me you would
- 23 get back in touch with me and left me a card.
- 24 Q Yes. Okay. Mr. Goode, just to clarify. In your
- 25 recording, you said that little dude, he came for trouble?

1 A Right.

2 Q Who was that little dude?

3 A I haven't seen him no more since.

4 Q Is the same person, is he in this courtroom right
5 now, the little dude that came for trouble?

6 A No. Like I said, one of the other guys was with him
7 that, but he came down and showed his gun, pulled his
8 shirt up about his gun.

9 Q So Mr. Span was the one that showed the gun before
10 anything ever happened?

11 A Yes.

12 Q And you said that one of the kids that was with
13 Travis you said, he said, I don't want to fight you?

14 A Yes. That is Lester.

15 Q Lester. So he was the one that said I thought this
16 was done. I don't want to fight you?

17 A He was the one that said that.

18 Q Did you see Mr. Boyd that day with a gun?

19 A No, sir.

20 Q Did you see Mr. Lester that day with a gun?

21 A No, sir. He didn't have no gun neither.

22 Q Did you see the other two boys that were with him
23 with guns?

24 A They didn't have no gun, no sir, I know they didn't
25 have no gun.

1 Q Nothing further.

2 THE COURT: You may step down. Solicitor.

3 MR. SWILLEY: Your Honor, the State calls Tavaris
4 Keewon Lester.

5 TAVARIS LESTER, being
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 By Mr. Swilley:

9 Q State your name for the record, please.

10 A Tavaris Lester.

11 Q Tavaris, how old are you?

12 A 20.

13 Q Tavaris, where do you live?

14 A , (phonetic).

15 Q Tavaris, do you recall where you were on October the
16 22nd of 2011?

17 A Yes, sir.

18 Q Where were you that day, that afternoon?

19 A I was buying some shoes at Demetrius' shop.

20 Q Demetrius' shop?

21 A Yes, sir.

22 Q Where is that?

23 A On Milwee.

24 Q And who was with you?

25 A Me, Travis, Adrian and Harry.

1 Q Travis?

2 A Boyd.

3 Q Harry?

4 A Harry Parker.

5 Q And Adrian who?

6 A Gaston.

7 Q And who did you encounter when you came out of the
8 store that day?

9 A Who was on the counter?

10 Q Who came down the street?

11 A I seen four guys. And when I came out of the store,
12 I was the last one come out of the store.

13 Q And you saw four guys running down the road?

14 A Yes, sir.

15 Q Who were they?

16 A One of them was Des and one of them was Jade and one
17 of them.

18 Q Who was Des?

19 A I just know they go by Des.

20 Q Is he in this courtroom today?

21 A Yes, sir.

22 Q Point him out for me.

23 A Right there.

24 MR. SWILLEY: Your Honor, please let the record
25 reflect that the witness has identified the defendant.

1 Q When the boys came up what were they doing?

2 A First we were arguing and doing out and doing all of
3 this and that. I seen Des, up under his belt he pulled up
4 his shirt and he said he had a gun. And then from that
5 point--

6 Q Can you stand up and show me where Des had a gun?

7 A He had it right there, he pulled his shirt up and he
8 said, that right there.

9 Q Point to me where it was.

10 A Right here.

11 Q Okay, you can sit back down. And then what happened
12 after that?

13 A After that I told the boys, I was like man, you need
14 to chill out because I seen a gun. You know what I am
15 saying, I was like chill out, let them go about their
16 business. Let them do whatever so we won't get shot. So
17 then after that it kept going on. It got a little dizzy,
18 I don't know what made him shoot. It got a little dizzy
19 and he started shooting. But before that there was an
20 altercation and they got to arguing and got to fighting.
21 One of his guys hit me and that was what started and
22 stuff. And me and Travis fighting back and I was really
23 fighting back. But I told them, I was like when I seen
24 that gun before we got to fighting I was like chill out.
25 But he hit me first.

1 Q Do you recall what Mr. Span said to you when he came
2 up on you?

3 A Mr. Span?

4 Q Yes.

5 A You say what did he say?

6 Q Yes.

7 A He was calling all kind of names and stuff.

8 Q Be specific. Tell me what he said.

9 A He was wanting to fight. He said, what's up. You
10 want to do it now, you want to do it now. But when he
11 pulled up his shirt, I was ready to do it. When he pulled
12 up his shirt and I seen the gun I was, no, I wasn't trying
13 to get shot or nothing.

14 Q Did you have a gun on you?

15 A No, sir.

16 Q Did Travis have a gun on him?

17 A No, sir.

18 Q Did Harry?

19 A No, sir.

20 Q Or Adrian?

21 A No, sir.

22 Q Tell me what happened after that.

23 A After he pulled a gun out?

24 Q No, after y'all started fighting tell me what
25 happened after that.

- 1 A As we got into a fight, we were fighting a little bit
2 but they had advantage on us. Demetrius was telling
3 everybody to chill out. Before then, we had just seen the
4 gun, we know the gun is there somewhere. That is the only
5 thing he kept saying about some shooting or stuff or
6 something. So Demetrius told us to get back. After we
7 got back and stuff we got a little dizzy. I don't know
8 what, they started arguing again and he just started
9 letting off shots. He was dizzy from the beer.
- 10 Q Okay. Do you know why Mr. Span and his friends
11 wanted to pick a fight with y'all, do y'all know why?
- 12 A I mean I done got into it with Span before. I done
13 got into it with him before.
- 14 Q So y'all had a history of arguments?
- 15 A Yes, sir.
- 16 Q Okay. And did he approach you first?
- 17 A Yes, sir.
- 18 Q Okay. And that is when you and Travis and he and
19 another fellow got to fighting?
- 20 A Yes, sir.
- 21 Q Do you recall a baseball bat or a brick being
22 throwed?
- 23 A No, sir.
- 24 Q Do you recall seeing a bat?
- 25 A I seen a bat but I ain't seen nobody throw no bat.

1 Q Okay. What happened after that?

2 A I mean I ain't seen no bat get throwed. I seen the
3 bat on the ground.

4 Q You saw it on the ground. What time did Mr. Span
5 pull his gun out again?

6 A He didn't pull it out the first time. Like I say, he
7 showed it to me on his side, showed me he had it. That
8 was before the fight broke out.

9 Q And after the second time he pulled it out tell me
10 what happened.

11 A He was dizzy, it was like him--

12 MR. SHEEK: Objection to the form of the question.
13 The witness just testified he didn't pull it out before
14 and the question was, when did he pull it out the second
15 time.

16 THE COURT: Rephrase the question, Solicitor.

17 Q When the gun was revealed or when you got to see the
18 gun the second time go from there.

19 A I seen the gun the second time the only thing I seen
20 was a fire come out of it like, I seen the first two shots
21 I was ducking to hide. I seen a man with a gun.

22 Q You saw fire, shots come out of the gun?

23 A Yes, sir.

24 Q And who was holding that gun?

25 A Des.

- 1 Q Mr. Span?
- 2 A Yes, sir.
- 3 Q Where approximately was Travis Boyd?
- 4 A He was standing by the car, by the door. Just
- 5 standing there.
- 6 Q How close are you to Travis?
- 7 A I was probably in front. I was in front of the car,
- 8 probably like that desk right there. Say this is the car,
- 9 I was in front of the car on the ground.
- 10 Q And, Tavaris, did you want to fight that day?
- 11 A He ran up on me talking like that. I mean, I am
- 12 going to defend myself any way. He ran up on me and
- 13 telling me he wants to fight me and stuff. And then it
- 14 broke out to all of this and that and all of that.
- 15 Q Okay. Now, you said, approximately when did Mr. Span
- 16 and his people leave?
- 17 A When did they leave after the shots?
- 18 Q How many shots did you hear?
- 19 A At least three to four.
- 20 Q You say at least three to four. Did you see anybody
- 21 else with a gun besides Mr. Span?
- 22 A No, sir.
- 23 Q Do you feel like you heard any other shots or could
- 24 you--
- 25 A I couldn't really tell. I know I heard one gun. I

1 heard a shot, I heard three to four shots.

2 Q Did it sound like it came from the same source?

3 A Yes, sir.

4 Q Could you tell what kind of gun Mr. Span had?

5 A It was a revolver, that was the only thing I could
6 tell.

7 Q What color was it?

8 A Silver, shiny.

9 Q So they ran off after the shots were fired?

10 A Yes.

11 Q Were you there when the ambulance came?

12 A Yes, sir.

13 Q Who all was present when the ambulance came?

14 A Me, Harry, Travis and Adrian Gaston.

15 Q Where was Demetrius?

16 A He was still there.

17 Q And do you recall if Mr. Goode was there?

18 A Yes, sir.

19 Q Okay. Mr. Lester, please answer any questions that
20 Mr. Sheek may have.

21 THE COURT: Mr. Sheek.

22 CROSS-EXAMINATION

23 By Mr. Sheek:

24 Q Y'all had been shopping in this store, correct?

25 A Huh?

- 1 Q Y'all had been shopping in this store before this
2 altercation?
- 3 A No, I just shopped there that day.
- 4 Q Well that is what I meant. Before this altercation
5 occurred you had been in the store shopping, right?
- 6 A Yes, sir.
- 7 Q And you made some purchases?
- 8 A I had, yes sir.
- 9 Q Did Mr. Boyd make some purchases?
- 10 A No, sir.
- 11 Q He hadn't bought anything?
- 12 A No, sir.
- 13 Q You are sure about that?
- 14 A Yes, sir.
- 15 Q Are you sure about that as you are the rest of the
16 testimony you have given us here today?
- 17 A Yes, sir.
- 18 Q So when you left the store, after you made the
19 purchases what did Mr. Boyd do, where did he go?
- 20 A What do you mean by that.
- 21 Q Well I mean, when he went out of the store tell us
22 from that point where he went and what happened from there
23 on?
- 24 A I was the last person out of the store, sir.
- 25 Q Did you see Mr. Boyd get out of the store?

1 A He was in the store one time because I remember we
2 all came in looking at stuff. I was the only one
3 purchased something.

4 Q When you walked out of the store was Mr. Span already
5 there?

6 A Yes, sir. He was coming up.

7 Q And did somebody yell out a warning, hey, Des is
8 running up behind you?

9 A Somebody said, look out man, look out, there is
10 somebody right there, you know what I am saying. I turned
11 my back. I seen a bunch of boys walking.

12 Q And who called out that warning?

13 A Travis.

14 Q So when you come out the door Travis was already
15 standing somewhere wasn't he?

16 A He was standing somewhere.

17 Q Where was he standing?

18 A He was standing at his car. But, you know what I am
19 saying, I ain't really paying attention where he parked
20 the car or what. We parked in a different spot.

21 Q Mr. Span was not on the scene when you walked out of
22 the store, was he?

23 A I mean, like I said, when I got in my car he was
24 pulling back, he was on my back. Like for instance, five
25 or six foot.

1 Q So he was five or six feet away when somebody called
2 out a warning. Did you turn around and face Mr. Span?

3 A Yes, sir.

4 Q At some point did he show you that he had a gun?

5 A Not right then.

6 Q At which point did you see the gun for the first
7 time?

8 A When he ran up on me. Like when I was getting ready
9 to get in my car and looked back and it was four guys. I
10 was by myself and my other homeboy was on the other side
11 of the car. And Travis was in his car. And like I said,
12 Travis yelled, look behind you. So when I looked behind
13 me I see four guys walking up. So that immediately, when
14 they did that, me, I walked over by Travis Boyd. All of
15 us walked over by each other and so I mean, they were
16 trying to surround us. Then right then, I am about ready
17 to fight or do whatever and that is when he, like, I have
18 got a gun, this and that. He started yelling he got a
19 gun, this and that. But he ain't pulled it out yet.

20 Q He did not pull it out?

21 A He ain't pulled it out yet.

22 Q He didn't pull it out and show it to you and then put
23 it back?

24 A No, sir.

25 Q If he had of done that would you have clearly seen

1 it?

2 A I seen it, I know I seen chrome, I seen a gun.

3 Q Okay. So you are sure he never pulled it out of his
4 waistband until he pulled it out and started shooting?

5 A Yes, sir.

6 Q You are positive about that?

7 A Yes, sir.

8 Q So when he pulls up his shirt and shows it to you
9 then what happened?

10 A He pulled it out of his shirt and showed it to me I
11 backed out and telling the boys, man, chill out, he has
12 got a gun, let's chill out, let's chill out. So I was
13 telling them to chill out, you know what I am saying.
14 They still, I tell them to chill out they hit me, boom,
15 somebody hit me. So then I am trying to find out who hit
16 me, I swung back. I don't know who I swung at, so when I
17 swung it was just a little altercation, we got in a fight.
18 Boom, boom. Demetrius say, y'all boys chill out, y'all
19 can't be doing this at my shop. It wasn't even five or
20 ten minutes, it was like three minutes when they started
21 acting like they were walking around and they got about
22 the edge of the road he started letting out shots.

23 Q Did Adrian at some point, was he the first one to get
24 hit?

25 A I don't know. I wasn't paying attention.

1 Q Well was there some time and then y'all went back in
2 the store?

3 A No.

4 Q Okay.

5 A The only time we went back in the store, that is when
6 Demetrius was like, when they were shooting he was like
7 y'all get in the building. You know what I am saying.

8 Q So y'all didn't go back in the store prior to the
9 shooting?

10 A After he shot me we went back in the building.

11 Q Prior to the shooting did you go back in the store?

12 A No, sir.

13 Q Did you see a brick get thrown at somebody?

14 A No, sir.

15 Q Did you see a bat or a stick get thrown at somebody?

16 A No, sir.

17 Q How many shots did you hear?

18 A I heard three to four.

19 MR. SHEEK: Your Honor, if I may I would also like to
20 play a recorded statement of this witness given to the
21 police department on October the 22nd.

22 THE COURT: Any objections, Solicitor?

23 MR. SWILLEY: Your Honor, I am going to object due to
24 the fact that I think under the rules he had denied making
25 the statement and thus it shouldn't be proper for the

1 jury. I think he can cross-examine him about it.

2 MR. SHEEK: Okay. I will be happy to lay that
3 foundation.

4 Q Did you tell the police that Des picked up a big
5 brick and threw it at Mr. Boyd?

6 A I think so, sir. I mean, you know, it was a little
7 minute from that day.

8 Q Did you tell them that Travis threw a stick at Des?

9 A Yes, sir.

10 Q Well a minute ago you just told me that you didn't
11 tell them that.

12 A I didn't know who threw it.

13 Q Well did you say Travis threw it?

14 A I think so that day.

15 Q Why did you tell the police that day if you are
16 saying now you don't know who did it?

17 A I don't know, sir.

18 Q Did you tell them that after the stick was thrown
19 that Des pulled a gun. Did you tell them that?

20 A Yes, sir.

21 Q And did you tell them about five minutes after that
22 you heard a gun go off?

23 A Yes, sir.

24 Q So there was five minutes between the time he pulled
25 the gun and you heard the first shot?

1 THE COURT: Is that what you told them?

2 A You said five minutes. What did you say?

3 Q Did you tell the police that there was about five
4 minutes between the time he pulled the gun and the shots
5 went off?

6 A He pulled the gun, like five, yes sir.

7 Q Five minutes. So what did he do for those five
8 minutes after he pulled the gun before the shooting
9 started?

10 A When he pulled the gun?

11 Q Yes he pulled.

12 A He was aiming.

13 Q So for five minutes he was--

14 A Like I said, I mean, I can do time, I am just saying
15 five minutes. You know that.

16 Q That is what I am saying, you told the police five
17 minutes?

18 A Yes, sir.

19 Q Before those five minutes he was aiming at Mr. Boyd?

20 A He was aiming at all of us. He was aiming and he let
21 off shots.

22 Q And you told the police--

23 A He was aiming and then all I heard was shots, three
24 to four shots and I ducked.

25 Q And what was Mr. Boyd doing?

1 A He was just standing up by the car, he turned his
2 back toward them.

3 Q So when Mr. Span pulled the gun and five minutes Mr.
4 Boyd just turns his back?

5 A Yes, sir.

6 Q He just stood there for five minutes?

7 A Yes, sir.

8 Q And you told the police that you heard eight to seven
9 shots, right?

10 A Yes, sir.

11 Q Well now your testimony just now you said three or
12 four?

13 A I only heard one gun, I can't really, you know what I
14 am saying. You can't really tell when two guns are
15 shooting or what. I just know I know he was shooting.

16 Q My question though is for this jury. You set up here
17 and you swore to tell the truth, right?

18 A Yes, sir.

19 Q The whole truth, right?

20 A Yes, sir.

21 Q And nothing but the truth?

22 A Yes, sir.

23 Q When this Solicitor was questioning you you told this
24 jury you heard three to four shots. You said that several
25 times, didn't you?

- 1 A What are you saying?
- 2 Q You told this jury you heard three to four shots.
- 3 Isn't that what you told them?
- 4 A Yeah, I heard three to four shots, three to four or
- 5 more, I don't know.
- 6 Q But on October the 22nd you said eight shots?
- 7 A Eight shots.
- 8 Q Is that right?
- 9 A Yes, sir.
- 10 Q So my question is--
- 11 A --I don't know, man, it has been a year or almost or
- 12 something.
- 13 Q So you say you just don't remember real clearly what
- 14 happened?
- 15 A I know what happened. I don't really remember the
- 16 detail, the real exactly.
- 17 Q Would you think your memory of what happened be more
- 18 clear on October the 22nd of 2011?
- 19 A You said would my memory be more clear?
- 20 Q Yes, on the day it happened. Say 4:00 o'clock that
- 21 afternoon do you think your memory would have been more
- 22 clear?
- 23 A That day?
- 24 Q Yes.
- 25 A At 4:00 o'clock after?

1 Q Yes.

2 A Yes, sir.

3 Q Would you like to hear the recorded statement you
4 gave the police?

5 A I mean it doesn't matter, it doesn't matter.

6 MR. SHEEK: Your Honor, I would love to offer it and
7 let him hear it and see if it is accurate.

8 THE COURT: He hasn't denied any of it. He has
9 admitted everything that you have asked him that is on the
10 statement.

11 Q You told this jury the gun was silver, right?

12 A I said something shining.

13 Q But you told the police it was black, didn't you?

14 A Black handle.

15 Q No. You said you told the police it was a black
16 handle?

17 A Did I tell the police what?

18 Q Did you tell the police it had a black handle?

19 A I mean, sir, I don't know.

20 Q You told the police it had a brown handle, didn't
21 you?

22 A I don't understand that question.

23 Q Did you tell the police that the handgun had a brown
24 handle and was black in color?

25 A Did I tell the police what?

1 Q On October the 22nd of 2001 and when you were giving
2 your recorded statement did you tell the police that the
3 gun was black with a brown handle?

4 A I think so, sir.

5 Q Then why are you today telling the jury it was
6 silver?

7 A I seen some chrome, I seen something shining.

8 Q So basically what you are telling this jury is your
9 memory today is fairly fuzzy on details like how long
10 things took, where the fight happened, how many shots were
11 fired, where someone was standing, what type of gun he
12 had, those things.

13 A Don't know what type of gun he had, don't know, I
14 just know he was shooting and like I said before, before
15 the altercation took out before we got to fighting. He
16 pulled up his shirt, he said I have got a gun, this and
17 that. And Demetrius noticed, we all noticed he had a gun.

18 Q One thing you are sure of, he didn't pull that gun
19 out before he started shooting, did he?

20 A No, sir. Not right then.

21 Q Nothing further.

22 THE COURT: Redirect?

23 MR. SWILLEY: I have nothing further, Your Honor.

24 THE COURT: Thank you very much, Mr. Lester. Call
25 your next witness.

1 MR. SWILLEY: Your Honor, the State calls Terry
2 Greenfield.

3 TERRY GREENFIELD, being
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 By Mr. Swilley:

7 Q State your name for the record.

8 A Lieutenant Terry Greenfield of the Greenwood City
9 Police Department.

10 Q Lieutenant Greenfield, were you working for the City
11 Police Department on October 22nd of 2011?

12 A I was, still am.

13 Q Can you tell me the location that you were dispatched
14 to on that afternoon at about 3:00 o'clock?

15 A Got dispatched to Milwee Avenue, final location of
16 704 Milwee Avenue, the old barber shop.

17 Q And upon your arrival, Lieutenant, what did you
18 observe?

19 A When I first got there I saw Travis Boyd, the
20 gentleman there in the black and white shirt in a car
21 along with Mr. Lester, Mr. Gaston and excuse me one
22 second, Mr. Parker was in the front passenger seat, Mr.
23 Lester was in a driver's seat and Mr. Gaston was in the
24 backseat with Mr. Boyd. Mr. Boyd was sitting behind the
25 driver's seat and he was bleeding in a car, golden colored

1 car.

2 Q And what was Mr. Boyd bleeding from?

3 A Gunshot wounds.

4 Q You were, when you arrived did you, what did you do
5 when you got there?

6 A Initially, you know, I was checking on Travis and
7 then I got the other three gentlemen out of the car, had
8 my other officers finally arrived and I got everybody
9 separated. I got the other three gentlemen, I kept Travis
10 there because he was bleeding, he was upset, he was
11 crying, said he had been shot, felt like he was dieing.
12 So we got EMS rolling and I got the other three subjects
13 separated, victims separated with my other officers and I
14 stayed with Travis.

15 Q And did you stay with Mr. Boyd until the ambulance
16 came?

17 A Yes, I did.

18 Q Okay. Lieutenant Greenfield, what did you do after
19 that that day?

20 A After that I tried, I had Officer Pope, Officer
21 Cravin, Officer Baker, started setting off the crime
22 scene, getting it roped off. When EMS, firefighters got
23 there and saw Mr. Boyd they took him to the hospital. And
24 I sent Officer Baker with them to stay with Mr. Boyd. And
25 then I begin calling out detectives and forensics people.

1 Q Can you describe the emotional state that the three
2 other individuals with Mr. Boyd were in?

3 A They were all kind of in shock, stunned. When we got
4 to finding out what was going on, it was initially a
5 fight, a fist fight. And then it turned to gunshots and I
6 think they were kind of taken back by all of that and
7 Travis was scared. He had never been shot before I am
8 sure. He was very upset.

9 Q Lieutenant Greenfield, later that week on October the
10 26th about 4:00 o'clock can you tell me, were you working
11 that day?

12 MR. SHEEK: Your Honor, I have an objection if we can
13 take a matter outside the presence of the jury I would
14 appreciate it.

15 THE COURT: Take up a matter outside the presence of
16 the jury?

17 MR. SHEEK: Outside the presence of the jury, yes
18 sir.

19 THE COURT: Mr. Foreman and ladies and gentlemen, if
20 you will step to your jury room and do not discuss the
21 case during this brief recess.

22 (Whereupon, the jury was excused from open court.)

23 THE COURT: All right, Mr. Sheek.

24 MR. SHEEK: Thank you, Your Honor. It may be
25 premature but I think the State is trying to get into an

1 incident to where Mr. Span was arrested on October the
2 26th. There is an issue where he alleged that he run, I
3 believe they want to use that to show flight or an
4 indication of guilt. And my objection would be this.
5 There is an incident report prepared on October the 26th
6 of 2011 and was not provided to me until Friday of last
7 week. I was out of town so I got it Sunday evening when I
8 got back in town which obviously gives me a day to have
9 prepared for that and follow-up on it. I would ask that
10 that evidence, having not being turned over prior to,
11 literally one business day before we begin the trial, be
12 suppressed.

13 THE COURT: Solicitor.

14 MR. SWILLEY: Your Honor, Detective Nichols came to
15 my office and the reason I did not have the incident
16 report before that day either because it is under a
17 different case number, name with the City Police
18 Department. I have asked them, they sent me everything on
19 the current case file which is the attempted murder but
20 due to being days later and they have apprehended Mr. Span
21 here I have not seen a copy of that incident report
22 either. As soon as I got it, I got it from Detective
23 Nichols I went and copied it and drove down the road at
24 Mr. Sheek's office and handed it to him there. Your
25 Honor, I did everything I could to get it to him as soon

1 as possible. I guess realistically I guess the fault of
2 the delay falls upon myself. It is a loose end I should
3 have covered but however the State feels that the
4 defendant hasn't been prejudiced since he has been
5 proffered this proceeding to trial.

6 THE COURT: Yes sir, Mr. Sheek.

7 MR. SHEEK: And I want to make clear on the record
8 that I am not accusing by any means the Solicitor of
9 hiding or attempting to hide it. But I believe it
10 happened just like he said. But however it happened he
11 was in possession of the State, it wasn't turned over and
12 to ask me to go respond to those kind of allegations on a
13 day's notice I believe is unreasonable considering the
14 lack of probative value because I believe, law enforcement
15 said he ran and if he ran then he must have been guilty.
16 Being that what is the issue in this case and the fact it
17 was just turned over to me I ask that he simply not go
18 into that area.

19 THE COURT: Show me the incident report on the 26th
20 and show me the incident report on the 22nd.

21 MR. SWILLEY: Your Honor, you want to see this
22 incident report and the other one?

23 THE COURT: I want to see the one from the 22nd and
24 the one from the 26th.

25 MR. SWILLEY: Okay. Here is the one from the 22nd

1 and here is the one from the 26th.

2 THE COURT: Okay. Anything further, Mr. Sheek, or
3 Solicitor?

4 MR. SHEEK: Nothing further, Your Honor.

5 MR. SWILLEY: No, Your Honor.

6 THE COURT: Well it does appear, the incident report
7 of 10/22/11, case number 11026931. The suspect's name is
8 listed in the area is subject number one. That being
9 Whitney Desmond Span. The incident report of 10/26/2011
10 is 11027253. So there is different case numbers. As you
11 both know and well know there are certain duties upon the
12 prosecutor of disclosure of evidence. And under Rule
13 5(a)(1)(c) I would take it that would be entitled to this
14 incident report within the possession, custody or control
15 of the prosecution which are material to the preparation
16 of the defense or are intended for use by the prosecution
17 as evidence in chief at trial or were obtained from or
18 belonged to the defendant. So it appears that that
19 document would be discoverable. And then going to Rule
20 5(d), regulation of discovery, (d)(2), failure to comply
21 with a request or Rule 4, failure to disclose. If either
22 party fails to comply with the requirements of the Rule
23 the Court may exclude the testimony of any undisclosed
24 witness offered by either party. The officer is certainly
25 not undisclosed. I take it he was listed as a witness

1 prior to the location of the incident report of October
2 the 22nd of '11 since he was on the scene, the date the
3 incident occurred. Further it says that the Court could
4 grant a continuance or prohibit the party from introducing
5 evidence not disclosed or it may enter such other order as
6 it deems just under the circumstances. This is certainly
7 very different from State versus Quattlebaum where there
8 was a tape that was turned over to the prosecutor
9 allegedly within days of when the incident occurred which
10 was, I would just guesstimate it was May 31st, 1995 given
11 the fact that it was Memorial Day of 1995. Further,
12 flight testimony is evidence, consciousness of guilt under
13 State versus Beckham, State versus Pagan, that line of
14 questioning. Mr. Sheek, I certainly will allow you to
15 cross-examine this officer in-camera if you would like
16 about what the testimony is going to be. If you would
17 like to do that I will give you overnight if you want to
18 interview this officer any further or do any other further
19 investigation. The hour is not necessary late but the
20 stakes are high. If you want that additional amount, of
21 time either this afternoon, this evening, come back in the
22 morning and question the officer in-camera I will be glad
23 to accommodate you in that regard. But I am not going to,
24 I am going to deny your motion to suppress any discovery
25 evidence.

1 MR. SHEEK: Your Honor, if I could ask that the
2 State, because they are the ones that are going to be the
3 ones that have to do it, to give me a copy of dispatch
4 from this incident, whatever dispatch logs they have.

5 THE COURT: You are talking about dispatch, the CAD
6 report?

7 MR. SHEEK: Yes, the CAD report and if they have
8 copies of any of the actual recordings where he may have
9 called in that the subject was running or anything of that
10 nature I would love to review those.

11 THE COURT: All right. I would also love for the
12 Solicitor to review those, Mr. Sheek. Can you do that and
13 we will, if you could accomplish that, Solicitor, that
14 will give Mr. Sheek time to digest those matters. Do we
15 need to press on or do you have other motions in the
16 morning.

17 MR. SWILLEY: Just to clarify, Your Honor, you want
18 me to produce the CAD reports and if possible the audio
19 recordings from 911 on those two dates?

20 THE COURT: If they exist. What hour is this 26th
21 report? I didn't necessarily read it as a 911. The case
22 was advised by, Mr. Span on Milwee Avenue so I don't know
23 what may or may not exist in that regard. I don't know.
24 I don't know about the CAD report.

25 MR. SHEEK: I don't know the correct terminology.

1 They should have a log of the calls that came in. I think
2 it is a CAD report and then if they have the audio
3 recordings that would be great. If they don't have them
4 then I would like to even research that issue and maybe,
5 just make my record complete on my objection in the
6 morning and we can move on.

7 MR. SWILLEY: Your Honor, I believe Mr. Greenfield
8 has informed me, I don't think there was any calls in. I
9 think it was just through the radio. So I will get
10 whatever it is that pertains to that.

11 THE COURT: You can view any indication from the
12 officer that is fine.

13 MR. SWILLEY: Yes, sir.

14 THE COURT: What if you get to Mr. Sheek, 0800 hours?

15 MR. SWILLEY: Yes, sir.

16 THE COURT: You know what that is?

17 MR. SWILLEY: Yes, it is 8:00 o'clock in the morning,
18 Your Honor.

19 MR. SHEEK: Sounds good.

20 THE COURT: Let the jury in, please.

21 MR. SHEEK: All right. Officer, you may step down.
22 You cannot discuss your testimony with anyone here.

23 MR. SWILLEY: Your Honor, do you care if I get those
24 reports back? Thank you.

25 THE COURT: Let's bring the jury back.

1 (Whereupon, the jury came into open court at
2 approximately 4:45 p.m.)

3 THE COURT: Welcome back, ladies and gentlemen, I
4 have had one matter I have had to take outside of your
5 presence that will take me a little bit to research so
6 rather than hold y'all captive any further I am going to
7 excuse you from your jury service on this trial for the
8 remainder of this afternoon and evening. During this
9 recess, ladies and gentlemen, please remember my
10 instructions to you, you may not discuss this case with
11 anyone that includes other jurors, family, friends or
12 anyone else. You may not read, listen to or watch any
13 news reports about the case should there be any. You may
14 not use your computer, cellular phone or any other
15 electronic device with communication capabilities or any
16 other method to obtain or disclose any information that is
17 prohibited. Information that is prohibited includes but
18 is not limited to the following, information about a
19 party, a witness, an attorney or a court officer, news
20 accounts of the case, information collected through juror
21 research on any topics raised or testimony offered by any
22 witness or information collected through juror research on
23 any other topic that the juror might think would be
24 helpful in deciding the case. Do not do any independent
25 investigation or any investigation on the internet.

1 Remember to keep an open mind. Do not begin your
2 deliberations until you have heard all the evidence, all
3 the testimony, closing arguments by the attorneys,
4 instructions on the law by the Court and then directed by
5 the Court to begin your deliberations with your fellow
6 jurors in your jury room. With that being said you are
7 now excused for the remainder of the day. If you would be
8 back promptly at 9:30 in the morning. Have a pleasant
9 evening. Thank you very much.

10 (Whereupon, the jurors were excused for the day.)

11 THE COURT: Anything further from the State,
12 Solicitor?

13 MR. SWILLEY: Not at this time, Your Honor.

14 THE COURT: The defense?

15 MR. SHEEK: No, sir.

16 THE COURT: All right. If we have an in-camera
17 matter we will start that at 9:15. Thank you very much
18 and have a pleasant evening.

19 (Whereupon, the trial will resume the next morning at
20 9:15 a.m.)

21 THE COURT: All right, Mr. Sheek, anything further on
22 your motion?

23 MR. SHEEK: Judge, for the record, the State did
24 bring to me yesterday fairly quickly a copy of the CAD
25 incident detail, dropped it off at my office. So I

1 actually had this yesterday evening. I don't have any
2 additional arguments to present to you. I understand you
3 have already ruled on our motion to suppress. And it is
4 also further my understanding that the audiotapes were
5 destroyed after 60 days so they were not maintained and
6 that I may argue for instruction on failure to maintain or
7 preserve evidence at the end of the case. But that will
8 be for later.

9 THE COURT: Anything further from the State?

10 MR. SWILLEY: No, Your Honor. I got in touch with
11 dispatch and got everything I could and brought it to Mr.
12 Sheek's office last night.

13 MR. SHEEK: The Court Reporter just reminded me, we
14 also need to clarify for the record, we put one audiotape
15 into evidence, audio statement of Kelvin Goode. But it
16 was played electronically off of a computer. So what I
17 have done, we have marked for State's, I am sorry,
18 Defendant's exhibit number 1 a CD. However this CD
19 contains the audio statements of everybody that the police
20 interviewed on audiotape. So the only portion of this
21 that actually would be into evidence is the statement of
22 Kevin Goode, G-O-O-D-E. The other statements on this CD
23 are not at this point in evidence.

24 MR. SWILLEY: And, Your Honor, I can have Mr. Miller
25 over here burn perhaps a copy of just Mr. Goode's

1 statement onto a CD disc.

2 THE COURT: We will leave this item that is presently
3 marked with the Court Reporter and if you get one with
4 just Mr. Goode's we will substitute and clarify that on
5 the record at that time. Thank you. So their documents
6 are CAD incident details for both the October 22nd
7 incident, two separate calls in that regard.

8 MR. SWILLEY: That is correct, Your Honor. One from
9 the shooting incident and one from the incident in which
10 Mr. Span was apprehended four days later.

11 THE COURT: It looks like three. It looks like there
12 is two from 10/22/11.

13 MR. SWILLEY: That was the shooting incident, yes,
14 Your Honor.

15 THE COURT: Two separate CAD reports.

16 MR. SWILLEY: I think more than one person had called
17 911.

18 THE COURT: 10/22/11 and there is one from 10/26/11
19 that is ultimately, leads to the arrest of Mr. Span.

20 MR. SWILLEY: That is correct, Your Honor.

21 THE COURT: Thank you very much. Anything from the
22 State before we bring in our jury, Solicitor?

23 MR. SWILLEY: There is not from the State, Your
24 Honor.

25 THE COURT: Mr. Sheek, anything from the defense?

1 MR. SHEEK: No, sir.

2 THE COURT: Bring our jury please. And is our
3 Officer present?

4 MR. SWILLEY: Yes, Your Honor.

5 (Whereupon, the jury came into open court at
6 approximately 9:30 a.m.)

7 THE COURT: Good morning, ladies and gentlemen, hope
8 y'all had a pleasant evening. Officer, if you would come
9 back around. You are still under oath.

10 (Whereupon, the witness took the witness stand.)

11 THE COURT: All right, ladies and gentlemen, if you
12 recall we were in the trial of the case with the direct
13 testimony of Lieutenant Greenfield by the State in its
14 case-in-chief. We will continue with that point. At this
15 time, Solicitor, you may proceed.

16 CONTINUE DIRECT EXAMINATION

17 By Mr. Swilley:

18 Q Officer Greenfield, on October the 26th at
19 approximately 4:00 p.m. were you on duty that day?

20 A Yes, I was.

21 Q Can you tell me where were you dispatched to?

22 A Really I wasn't dispatched anywhere. One of the
23 officers in the warrants unit was around Milwee, Taggart
24 area. When he called out he saw Whitney Span walking down
25 the street and we all knew he had warrants on him for

1 attempted murder. So I started heading that way.

2 Q Who were the other officers?

3 A I want, Ray Pope went, I think eventually Andrew
4 Holland and then there were a couple of other members of
5 my team that were around in the area.

6 Q And when you arrived on the scene or in the area can
7 you tell me what happened?

8 A Basically what I heard, I heard Officer Pope call out
9 that he saw Whitney around Taggart and he was running.
10 And I came up Greene Street, took a right onto Taggart and
11 when I came around what is known as Taggart Apartments I
12 saw a black male running towards Taggart Apartments. I
13 saw Ray Pope giving chase so I pulled into Taggart
14 Apartments, exited the vehicle, the black male which
15 turned out to be Whitney Span was cutting in front of my
16 car. I got out, told him to stop, he jumped a fence, I
17 jumped a fence, followed him, pursued him. As I was
18 chasing him on foot, kept telling him to stop, stop; he
19 did not. I called out on the radio because he got some
20 distance ahead of me. He was running towards Milwee at
21 Palmetto Court Apartments. Eventually he stopped and
22 Andrew Hollard arrested him.

23 Q Did you see him stop?

24 A No. He had gotten a pretty good lead on me after we
25 jumped the fence. I thought he ran behind a house, I was

1 just double checking. And I continued pursuit. I saw him
2 running but he was so far ahead of me. From what Andrew
3 told me he fell and Andrew made the arrest.

4 Q Okay. Mr. Greenfield, just to clarify, how many days
5 after the original shooting was this?

6 A This was on the 26th, that was four days later.

7 Q Okay. Four days later. The person you saw running
8 that day, is he sitting in this courtroom?

9 A Yes sir, he is right there in the yellow shirt.

10 Q Okay. You said you got a report that Mr. Span was in
11 the area. What officer was that that originally gave
12 this?

13 A William Kay got on the radio and he broadcasted it on
14 the radio. He was asking for a unit that was close by
15 because he saw Whitney.

16 Q Thank you, Mr. Greenfield, please answer any
17 questions Mr. Sheek has.

18 THE COURT: Thank you, Solicitor. Mr. Sheek.

19 CROSS-EXAMINATION

20 By Mr. Sheek:

21 Q Officer Greenfield, you said Officer Kay got on the
22 radio and called for another unit?

23 A Yes, sir.

24 Q Did you respond?

25 A Yes, sir.

1 Q And you said when you got to the area you saw Mr.
2 Span and Mr. Span ran?

3 A When I got to the area I heard Ray Pope call out that
4 he was on Taggart in foot pursuit.

5 Q Did you hear him call that out audibly or did you
6 hear that over the radio?

7 A Just over the radio.

8 Q Okay. So when did you see Mr. Span?

9 A I saw him when he was on Taggart going into Taggart
10 Street Apartments. We call them Taggart Street Apartments
11 there at the corner Marshall Street and Taggart.

12 Q And I noticed today you have got your radio clipped
13 there to your shoulder, is that the way it was on that
14 day?

15 A Yes, sir.

16 Q Did you call on the radio that you saw Mr. Span?

17 A No, when I saw Ray chasing what turned out to be Mr.
18 Span I turned in real quick and I bailed out and then I
19 took off after Mr. Span.

20 Q So we know Officer Kay is on the radio, we know the
21 other officer is on the radio, right?

22 A Right.

23 Q And these radio communications are recorded at the
24 communications center here at law enforcement, right?

25 A Supposedly.

1 Q And do we have those recordings today?

2 A I can't answer that. I don't know.

3 Q But they would be a recording of what you are telling
4 us happened at some point, right?

5 A Well everything is recorded on radio. Now, if I got
6 on the radio I can't remember. I don't know if I got on
7 initially or not. I know I got on when I was chasing him.

8 Q Yesterday you talked you provided some CAD reports.
9 Did you check to see if there was still recordings of any
10 of these conversations?

11 A No, sir.

12 Q You didn't talk to anybody about that?

13 A Talked to anybody, who?

14 Q Did anybody talk to you from the Solicitor's office
15 about whether or not there are recordings of radio
16 communications?

17 A No, sir.

18 Q Nobody has ever asked you about that?

19 A No, sir.

20 Q All right. Officer Greenfield, were you also the
21 officer that responded on the 22nd to the shooting
22 location?

23 A Yes sir, I was one of the initial officers on the
24 scene.

25 Q And when you go to a scene of an incident like this

1 do you make an incident report?

2 A Yes.

3 Q And what kind of things do you put in the incident
4 report?

5 A Basically on an incident you put what you have been
6 told at the scene. Whether you talked to victims,
7 witnesses, others, what you see, what you observed. So it
8 can be a, you know, multitude of factors in an incident
9 report at any time.

10 Q When you were on the scene that day did you speak to
11 Mr. Andrews who owned this store?

12 A Briefly, yes.

13 Q Do you recall where Mr. Andrews told you he was when
14 the fight was going on.

15 MR. SWILLEY: Objection, Your Honor, hearsay.

16 THE COURT: I sustain the objection.

17 MR. SHEEK: Your Honor, may I address that objection?

18 THE COURT: Step up.

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

22 THE COURT: Thank you very much. You may continue.

23 Q Who was in charge of the crime scene at that
24 location?

25 A I was.

1 Q And was the crime scene secure?

2 A Yes, it was. I had officers put up crime scene tape.

3 Q Were there any pictures taken?

4 A Yes.

5 Q Now, of course, through the process there has been
6 provided pictures of Mr. Boyd. Were there pictures taken
7 of the crime scene?

8 A To my knowledge I believe Sergeant Griffin took
9 pictures.

10 Q Sergeant who?

11 A Griffin, Kenya Griffin.

12 Q Okay.

13 MR. SHEEK: I beg the Court's indulgence.

14 THE COURT: Sure.

15 MR. SHEEK: Your Honor, may we approach one second?

16 THE COURT: Certainly.

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

20 THE COURT: Step out momentarily, please, ladies and
21 gentlemen. This should take about ten minutes.

22 (Whereupon, the jury was excused from open court.)

23 THE COURT: The Court will be at ease for about five
24 minutes. Thank you. You can step down if you would like
25 to, Officer.

1 (Whereupon, a short break was taken.)

2 THE COURT: Have you had enough time to review those
3 photographs, Mr. Sheek?

4 MR. SHEEK: I certainly have, Your Honor, and we are
5 ready to proceed.

6 THE COURT: Anything further, Solicitor?

7 MR. SWILLEY: Your Honor, I just want to put on the
8 record that those were on the disk that I included with
9 Mr. Sheek.

10 MR. SHEEK: They were on the disk, I just wasn't
11 savey enough to figure that out.

12 THE COURT: Bring the jury, please.

13 (Whereupon, the jury came into open court at
14 approximately 9:52 a.m.)

15 THE COURT: Mr. Sheek, you may continue.

16 CONTINUE CROSS-EXAMINATION

17 By Mr. Sheek:

18 Q Now, Officer, I have been provided a number of
19 photographs depicting the crime scene on October the 22nd.
20 I want to hand you this first one and ask you, does that
21 show the silver in color Pontiac where it was sitting when
22 you arrived on the scene?

23 A Yes, sir. The Pontiac sitting in front of the store.

24 Q Okay.

25 MR. SHEEK: And, Your Honor, I would move to have

1 this marked and entered into evidence.

2 MR. SWILLEY: No objection.

3 THE COURT: Defense 2, correct?

4 COURT REPORTER: Yes, sir.

5 THE COURT: It is in evidence without objection.

6 (Whereupon, Defendant's Exhibit 2 was admitted into
7 evidence.)

8 Q Now, in that silver colored Pontiac there was blood
9 stains, is that correct?

10 A Yes sir, there was a little bit of blood.

11 Q Was there blood on the driver's side and the
12 passenger's side?

13 A Let me double check. I believe there was blood just
14 outside the driver's side door and around the passenger
15 side was a larger pool of blood.

16 Q Let me hand you what has been marked, has not been
17 marked, I hand you that photograph. Is that a photograph
18 of the interior of the Pontiac?

19 A To the best of my knowledge, yes.

20 Q Okay. Does that appear to be the driver's side
21 floorboard?

22 A Yes.

23 Q Does that show blood in that floorboard area?

24 A On this picture I would say, yes, it is blood.

25 Q Okay. And when you were on the scene did you have a

1 chance to observe it?

2 MR. SHEEK: Your Honor, I would move to have that
3 marked as Defendant's 3.

4 MR. SWILLEY: No objection.

5 THE COURT: 3 is in evidence without objection.

6 (Whereupon, Defendant's Exhibit 3 was admitted into
7 evidence.)

8 Q Did you observe that there was in fact blood in the
9 driver's side of the floorboard of the Pontiac?

10 A Yes, sir.

11 Q I hand you another picture. Is that a picture of the
12 lower side of the dash handle of the driver's side of that
13 Pontiac?

14 A Yes, sir.

15 Q Does it have what appears to be a bullet hole in it?

16 A It has a hole. And I would say that is a bullet hole
17 that I saw that day.

18 Q You didn't take any of these pictures?

19 A No, sir.

20 Q I should reserve these questions then for someone
21 else. Other than secure the scene then did you do any of
22 the gathering of evidence, that type of thing?

23 A No, sir.

24 Q Okay. Well then I will simply save a little time and
25 I will ask these question of, do you know who did do that?

1 A Officer, Sergeant Kenya Griffin.

2 Q Sergeant Griffin?

3 A Yes sir, she is forensics.

4 Q Forensics was called to the scene?

5 A Forensics was called, yes.

6 Q That is all I have. Thank you.

7 THE COURT: Redirect, Solicitor?

8 MR. SWILLEY: I don't have any redirect.

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

10 Solicitor, you may call your next witness.

11 MR. SWILLEY: The State calls Benjamin Baker. And

12 can Mr. Greenfield be excused?

13 THE COURT: Any objection?

14 MR. SHEEK: None at all.

15 THE COURT: You may be excused.

16 BENJAMIN BAKER, being

17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 By Mr. Swilley:

20 Q State your name for the record, please, sir.

21 A Officer Benjamin Baker with the Greenwood City Police
22 Department.

23 Q Officer Baker, how long have you been working with
24 the City Police Department?

25 A September will be two years.

1 Q And were you employed on October the 22nd of 2011?

2 A Yes, sir.

3 Q And what is your job title at the police department?

4 A Patrolman.

5 Q Shift?

6 A Yes, sir.

7 Q Where were you dispatched to that afternoon on
8 October the 22nd?

9 A We received the original call to Milwee in reference
10 to shots fired and then someone had been shot and it ended
11 up being the Tshirt Shop there on Milwee.

12 Q And do you remember what time you arrived on the
13 scene?

14 A It was approximately 3:12 p.m. in the afternoon.

15 Q Okay. And, Officer Baker, when you arrived on the
16 scene what did you observe?

17 A There was a gold Crown Victoria that was attempting
18 to back out. At that time I stopped my car and got out.

19 Q What did you do when you got out?

20 A We stopped and there were four individuals in the
21 car. One had got out, the victim, he just said he had
22 been shot, he had been shot. At that time I began placing
23 crime scene tape up.

24 Q What emotional state was Mr. Boyd in?

25 A I would say he was hysterical.

1 Q What other officers were on the scene to your
2 recollection?

3 A Lieutenant Greenfield arrived at the same time I did.

4 Q And by securing the scene, can you be more specific
5 as to what you did to secure the scene?

6 A What I did is I went to my car and got the yellow
7 crime scene tape and began placing a perimeter on the
8 outside and at that time the other officers began talking
9 to witnesses and victims. And I began the crime scene
10 security.

11 Q What do you mean by security, like what, what does
12 that entail?

13 A Just keeping people coming from the outside of the
14 crime scene tape onto the inside of the crime scene.

15 Q And for purposes that does what?

16 A To preserve evidence.

17 Q Officer Baker, approximately how long were you on the
18 scene when you arrived there?

19 A Probably no more than ten to fifteen minutes.
20 Because once the victim left to go to the hospital, at
21 that time I left and followed the ambulance to the
22 hospital which I stood by with the victim there.

23 Q And when you arrived on the scene were any of the
24 suspects in the area?

25 A From what I could tell, no. We had been advised that

1 they had fled on foot.

2 Q Tell me who was on the scene as far as other--

3 A As far as officers?

4 Q No, who were the lay people that were on the scene?

5 A The EMS personnel.

6 Q Besides the EMS personnel, what regular citizens were
7 there?

8 A I don't recall any names. Like I said, I didn't
9 speak with many people, I just began crime scene security.

10 Q Okay. That's fine. Officer Baker, do you recognize
11 this photograph?

12 A I do.

13 Q Can you tell me what it is?

14 A It is a vehicle parked in front of the Tshirt Shop.

15 Q What else does it depict?

16 A It has got a back windshield that is busted out,
17 appeared from gunshots.

18 Q Get a little closer to the microphone. Say that
19 again.

20 A It is a silver in color Pontiac Grand Am, the back
21 windshield is busted out.

22 MR. SWILLEY: Your Honor, at this time I move to have
23 this entered as State's exhibit 1.

24 MR. SHEEK: Without objection, Your Honor.

25 THE COURT: State's 1 is in evidence without

1 objection.

2 (Whereupon, State's Exhibit 1 was admitted into
3 evidence.)

4 MR. SWILLEY: Your Honor, I ask that this be
5 published to the jury via the electronic device over here.

6 THE COURT: All right.

7 Q Officer Baker, you said you were on the scene until
8 the victim was dispatched to the hospital?

9 A Yes, sir.

10 Q I am sorry, not dispatched but transported. Is that
11 correct?

12 A Yes, sir.

13 Q Was there anything else that you didn't include that
14 you did on the scene as far as your duty?

15 A Just crime scene security, that's all I did.

16 Q And Officer Baker, let me ask you, do you recall the
17 afternoon of October the 26th of 2011?

18 A I am sorry?

19 Q Do you recall the afternoon of October the 26th of
20 2011?

21 A Yes.

22 Q And what, were you dispatched at approximately 2:00
23 o'clock, were you on duty that day?

24 A I don't recall.

25 Q Would you like, would the incident report refresh

1 your memory?

2 A Yes.

3 Q Okay.

4 A Yes sir, I was on duty this day.

5 Q Tell me, what area were you dispatched?

6 A At this time I was actually working a traffic
7 accident and it occurred in front of Walmart. I was in
8 the Walmart parking lot during the entire duration of this
9 incident.

10 Q So you were not dispatched to that incident?

11 A No, sir. I was on the opposite end of town.

12 Q Officer Baker, you say that after the victim was
13 transported to the hospital where were you sent after
14 that?

15 A I followed the ambulance to the hospital. As he was
16 receiving treatment I was standing outside of his room
17 until one of the detectives arrived.

18 Q You were in the hospital room with the victim?

19 A Just outside of his room, yes sir.

20 Q Outside of his room, okay. What purpose were you
21 sent?

22 A Just to stand by with the victim until, like I said,
23 one of the detectives arrived.

24 Q Officer Baker, do you recognize this photograph?

25 A Yes sir, that is the victim.

1 Q And what location?

2 A He is in the treatment room in the ER.

3 MR. SWILLEY: Your Honor, at this time I would move
4 this photograph into evidence as State's exhibit 2.

5 THE COURT: Mr. Sheek.

6 MR. SHEEK: I have no objection to that, Your Honor.

7 THE COURT: State's 2 is in evidence without
8 objection.

9 (Whereupon, State's Exhibit 2 was admitted into
10 evidence.)

11 Q Officer Baker, do you recognize this photograph?

12 A That is a photograph of the victim's injury.

13 MR. SWILLEY: Your Honor, at this time I would enter
14 this into evidence as State's exhibit 3.

15 THE COURT: It is a photograph of what?

16 A His injury.

17 THE COURT: Mr. Sheek?

18 MR. SHEEK: Your Honor, I have no objection.

19 THE COURT: State's 3 is in evidence without
20 objection.

21 (Whereupon, State's Exhibit 3 was admitted into
22 evidence.)

23 Q Officer, I am going to hand you four other
24 photographs. Can you tell me what each of these depict if
25 you recognize them, what each of these depict.

1 A That one appears to be the gunshot wound to his upper
2 thigh. This one was the gunshot wound to his heel. This
3 is also another one of his thigh. And this is the one to
4 his calf.

5 MR. SWILLEY: Your Honor, at this time I would ask
6 the Court for these to be entered into as State's exhibits
7 4, 5, 6 and 7.

8 MR. SHEEK: No objection.

9 THE COURT: Without objection and tell me as you mark
10 them, Madam Court Reporter, what the photographs are of
11 again. I don't know what order he is going to mark them.
12 I want his answer. Is that the bullet wound on his thigh
13 or the calf or what?

14 (Whereupon, State's Exhibit No's 4, 5, 6 and 7 were
15 admitted into evidence.)

16 MR. SWILLEY: Sir?

17 THE COURT: Number 4 now that she has marked. Is
18 that the calf or the thigh?

19 MR. SWILLEY: Okay.

20 Q Officer Baker, I am going to ask you. I am going to
21 hand you what has been marked as State's exhibit 4. Can
22 you tell me what type of wound this depicts?

23 A This was a gunshot wound to his right lower calf.

24 MR. SWILLEY: Your Honor, I would like to publish
25 this to the jury.

1 THE COURT: State's 4 is in evidence without
2 objection. You may publish it.

3 Q Officer Baker, I am going to hand you what has been
4 marked as State's exhibit 5. Can you tell me what injury
5 that depicts?

6 A This is his upper left thigh.

7 Q Okay.

8 MR. SWILLEY: Your Honor, I would move to publish
9 this to the jury as well.

10 THE COURT: You may publish.

11 Q Officer Baker, I am going to hand you what has been
12 marked as State's exhibit 6. Can you tell me what this
13 depicts exactly?

14 A It is a gunshot wound to his lower heel.

15 MR. SWILLEY: Your Honor, I would move to publish
16 this to the jury at this time.

17 THE COURT: Yes, sir.

18 Q Officer Baker, finally I am going to hand you what
19 has been marked as State's exhibit 7. Can you tell me
20 what injury that depicts?

21 A That is also another gunshot wound to his left thigh.

22 Q Please answer any questions that Mr. Sheek has.

23 CROSS-EXAMINATION

24 By Mr. Sheek:

25 Q Officer, this is the crime scene and you found it

1 that day, is that correct?

2 A Yes, sir.

3 Q Is the car parked directly in front of the door to
4 the establishment?

5 A Yes, sir.

6 Q Did you have a chance to interview any of the
7 witnesses?

8 A No sir, I did not.

9 Q It appears that if you go back to this, this parking
10 lot slopes downwards like this, is that correct?

11 A Yes, sir.

12 Q And where is the Ford Crown Victoria that was on the
13 scene at this point?

14 A As if you were taking the picture facing that vehicle
15 it would be directly behind you.

16 Q All right. So the back window that was busted out
17 would indicate that shots were fired from behind the car?

18 A From behind the Grand Am, yes sir.

19 Q Now I notice that this picture, all the doors of the
20 Grand Am were closed. Is that correct?

21 A Yes, sir.

22 Q Is that the way you found it when you got there?

23 A Yes, sir.

24 Q Any bullet holes in any of the doors?

25 A I did not check out the vehicle, I cannot tell you.

1 Q So that would have been forensics that would have
2 done that?

3 A Yes, sir.

4 Q Okay. I have got no further questions.

5 THE COURT: Redirect?

6 MR. SWILLEY: There is none, Your Honor.

7 THE COURT: Thank you very much, Officer. You can
8 step down. Call your next witness, Solicitor.

9 MR. SWILLEY: The State calls Sergeant Ray Pope.

10 RAY POPE, being
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 By Mr. Swilley:

14 Q State your name, please.

15 A Patrolman First Class Ray Pope with the Greenwood
16 City Police Department.

17 Q Officer Pope, how long have you been with the
18 Greenwood City Police Department?

19 A Approximately two and a half years.

20 Q Okay. Were you on duty on October the 22nd of 2011?

21 A Yes, sir.

22 Q And that afternoon at approximately 3:00 o'clock what
23 location were you dispatched?

24 A Initially we were dispatched to a shots fired call on
25 Milwee Avenue. At the time we didn't know exactly where

1 it was. Later on, maybe about two or three minutes after
2 that we were dispatched to what they call the Tshirt Shop
3 at the end of the Milwee.

4 Q And primarily what kind of area is this, commercial
5 or residential?

6 A It is residential primarily.

7 Q Okay. And you were dispatched at the Tshirt Shop?

8 A Yes, sir.

9 Q Approximately when did you arrive on the scene?

10 A It was approximately 3:15.

11 Q And once you got on the scene tell me what you
12 observed.

13 A We observed a vehicle starting to back out of the
14 parking lot. Inside the vehicle we located Mr. Boyd, Mr.
15 Gaston, we observed blood dripping. There was blood
16 around the door handle of the driver's side. There was
17 also a big pool of blood there outside the back door.
18 Spoke to subjects on scene, Mr. Boyd was screaming that he
19 had been shot, he had been shot. Spoke to several more
20 subjects. They advised that a fight occurred and shots
21 were fired. Mr. Boyd stood up while the shots were being
22 fired and was hit by a bullet in the leg and then they
23 were trying to get him to the hospital.

24 Q Officer Pope, let me ask you, what was your primary
25 duty when you arrived on the scene, I mean what were you

1 instructed to do?

2 A I was instructed to speak to witnesses on the scene
3 to kind of figure out what transpired before we arrived.

4 Q Did you encounter Whitney Span on the scene?

5 A No, sir.

6 Q Did you encounter, I am sorry. So your duty was just
7 to collect information?

8 A Yes, sir.

9 Q From each individual. Can you tell me what
10 individuals who were not law enforcement were on the
11 scene?

12 A Mr. Andrews was on the scene.

13 Q What is his first name?

14 A Demetrius.

15 Q And who else?

16 A Mr. Adrian Gaston, Mr. Tavaris Lester.

17 Q Do you need an incident report to refresh your
18 memory?

19 A Yes.

20 Q Okay.

21 A And Mr. Harry Parker was also on the scene along with
22 Mr. Boyd.

23 Q You can hold onto that. Sergeant Pope, approximately
24 how long did you stay on the scene at the incident, 704
25 Milwee?

1 A I was there approximately, about an hour.

2 Q Okay. And besides interviewing eyewitnesses, what
3 else did you do that day?

4 A Basically we just kind of, we talked to witnesses and
5 we talked to the victim on that day.

6 Q Can you tell me, from your recollection, other
7 officers that were on the scene?

8 A Yes, sir. Officer Baker was on the scene, Lieutenant
9 Greenfield was on the scene. Detectives were dispatched,
10 Lieutenant Jeff Crisp was dispatched and Detective Phillip
11 Nichols also came out and evidence technician, Sergeant
12 Griffin.

13 Q Okay. On October the 26th at about 3:00 o'clock were
14 you working that day?

15 A Yes sir, I was.

16 Q Tell me where you were dispatched to that day?

17 A That day Officer Kay came across the radio and
18 advised everyone that he had seen Mr. Span walking around
19 the Taggart Street area. He advised officers who he was,
20 that he was, what the warrant was for and advised officers
21 to get in the area. At that time I was fairly close
22 coming on Phoenix Street, turning onto Taggart Avenue. As
23 I turned, as I got on Taggart towards Marshall Street I
24 noticed a black male subject that, he looked like Mr.
25 Span. As I got out of the car the subject took off

1 running from me. He ran through a house there at the
2 corner of Marshall Street and Taggart, jumped over a back
3 fence. I came around to Taggart Street and tried to cut
4 him off there at Taggart and Marshall. Once again at that
5 time he ran across Taggart Avenue, back towards Taggart
6 Street Apartments and jumped one fence. At which time
7 Lieutenant Greenfield joined in with that foot chase and
8 Lieutenant jumped over that fence. I lost sight of him
9 after that.

10 Q When is the next time you saw Mr. Span?

11 A The next time I saw Mr. Span after that he was under
12 arrest in the area. He had been placed into handcuffs by,
13 I think, Officer Holland at Milwee Avenue.

14 Q And approximately how close did you get to Mr. Span
15 when you were chasing him?

16 A Fairly close. I would say no more than two or three
17 feet because when we crossed I was almost in reaching
18 distance of him.

19 Q Do you see Mr. Span here in this courtroom?

20 A Yes, sir.

21 Q Can you point him out for me?

22 A He is right there in that yellow shirt.

23 Q Okay. When you were chasing Mr. Span did you
24 instruct him to stop?

25 A Yes sir, several times.

1 Q Thank you, Officer. Please answer any questions Mr.
2 Sheek has for you.

3 THE COURT: Mr. Sheek.

4 CROSS-EXAMINATION

5 By Mr. Sheek:

6 Q Officer, is this the report you used to refresh your
7 memory?

8 A Yes, sir.

9 Q The incident report you used to refresh your memory
10 is the incident report of Terry Greenfield?

11 A Yes, sir.

12 Q You didn't write this incident report?

13 A No sir, I did not.

14 Q Where can I get a copy of your incident report from
15 that day?

16 A I did not write an incident report that day, sir.

17 Q Okay. Well, were you the first officer on the scene
18 to speak to the witnesses?

19 A Me and Lieutenant Greenfield arrived around the same
20 time.

21 Q Who spoke to the witnesses then, you or Lieutenant
22 Greenfield?

23 A I spoke to the witnesses.

24 Q Okay. Then can you show us copies of the notes from
25 those interviews?

1 A I did not keep the notes from those interviews.

2 Q Can you provide us with a copy of the tapes of those
3 interviews?

4 A It possibly could be on one of my tapes within, on
5 the city system but I don't have it right now.

6 Q So there may be a tape out there from the initial
7 statements, is that correct?

8 A Yes sir, it possibly could be.

9 Q And when you got dispatched, the dispatch would have
10 told you shots were fired and give you whatever
11 information they have, correct?

12 A Yes, sir.

13 Q And who has copies of those dispatch tapes?

14 A I am not sure.

15 Q You know if anybody ever gathered them up and
16 preserved them for this case so that we can know what
17 information was conveyed to y'all?

18 A Not to my knowledge, sir.

19 Q So if I get this straight. you are the first officer
20 to interview the eyewitnesses for the shooting, correct?

21 A Yes, sir.

22 Q And you made no notes?

23 A Yes, sir. I made notes on a notepad but it was more
24 or less notes to pass along to Lieutenant Greenfield to do
25 his initial incident report.

1 Q Where are those notes?

2 A I am not sure at this point, sir.

3 Q Well, you would agree with me though that based on
4 the information you got from dispatch and from the
5 eyewitnesses you were looking for more than one shooter,
6 weren't you?

7 A Yes, sir.

8 Q Because the information you had been given was there
9 were at least two shooters?

10 A Yes, sir.

11 Q That is all the questions I have.

12 THE COURT: Redirect?

13 MR. SWILLEY: Yes, sir.

14 REDIRECT EXAMINATION

15 By Mr. Swilley:

16 Q Officer Pope, when you arrived, just to be sure, when
17 you arrived on the scene initially you said you arrived
18 about fifteen minutes after 3:00 that day?

19 A Yes, sir.

20 Q When you got to the area were there any handguns or
21 weapons that were found in the area?

22 A No, sir.

23 Q Any found on any of the remaining individuals?

24 A No, sir.

25 Q I have nothing further.

1 RECROSS-EXAMINATION

2 By Mr. Sheek:

3 Q The Solicitor just asked you about what was found in
4 the area?

5 A Yes, sir.

6 Q Are we talking about shell casings and those type of
7 things?

8 A He asked handguns.

9 Q No, what about shell casings. Did we find any of
10 those?

11 A No, sir.

12 Q And were you there the whole time the scene was
13 processed?

14 A Yes, sir.

15 Q And part of your job was to obviously assist in the
16 investigation, correct?

17 A Yes, sir.

18 Q A man has been shot?

19 A Yes, sir.

20 Q So it would be extremely important to note things
21 like shell casings and stuff of that nature, right?

22 A Yes, sir.

23 Q If that had of been there, Sergeant, you would have
24 known about it, wouldn't you?

25 A Yes, sir.

1 Q Possibly be included in your notes?

2 A Yes, sir.

3 Q I have nothing further.

4 THE COURT: Thank you. You may step down.

5 Solicitor, call your next witness.

6 MR. SWILLEY: Your Honor, the State calls Andrew
7 Holland, Officer Andrew Holland.

8 ANDREW HOLLAND, being

9 first duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 By Mr. Swilley:

12 Q State your name for the record.

13 A PSC Andrew Holland of the Greenwood City Police
14 Department.

15 Q Officer Holland, what is your job with the Police
16 Department?

17 A Right now I am currently assigned to the warrant
18 division with the Police Department.

19 Q And how long have you been with the warrant division?

20 A I have been in warrants for the past year.

21 Q Were you in the warrant division on October the 22nd
22 of 2011?

23 A Yes, I was.

24 Q And October the 26th as well?

25 A Yes, sir.

1 Q Officer Holland, as a member of the warrant division
2 what is your job entail specifically?

3 A Tracking down people that are wanted on arrest
4 warrants, courtesy summons, bench warrants and also serve
5 a subpoena or other legal documents for court.

6 Q Okay. And on October 26th tell me where did you go,
7 where were you dispatched?

8 A That afternoon I was on patrol over in the area of
9 Milwee when Officer Pope got on the radio and advised that
10 he had seen Mr. Span that we were currently looking for on
11 arrest warrants on Taggart. As I was turning onto Milwee
12 off of Phoenix he stated that he had started running and
13 he was running behind apartments at the corner of Taggart
14 and Marshall Street. At that point I continued down
15 Milwee knowing certain paths that most people like to take
16 to see if he might would come out on those paths. At that
17 time Lieutenant Greenfield advised as I was passing
18 Palmetto Court apartments that the subject was running
19 towards Milwee. At that time I put my vehicle in park,
20 exited. As I saw Mr. Span coming he fell down in the
21 middle of Milwee, at that time I advised him to stay on
22 the ground, went up and placed him in handcuffs and
23 advised him he was under arrest for the warrants.

24 Q You say he tripped on his own--

25 A Yes, he tripped on his own as he was coming out of

1 the grass and hit the road, he basically slipped.

2 Q How, about how close were you to him from you?

3 A I was probably fifteen or twenty yards, I was exiting
4 my car when I observed him slip.

5 Q And he complied with your order?

6 A Yes. He stayed on the ground and I was able to put
7 him in handcuffs and advise him that he was under the
8 arrest for the warrants we had out for him.

9 Q And who did you tell was chasing him?

10 A Lieutenant Greenfield was probably ten seconds behind
11 him as I was putting handcuffs on him.

12 Q And was Lieutenant Greenfield explaining anything as
13 you were chasing him?

14 A He was telling him to stop, police, stop, police. I
15 am not sure how many times but it was several times and
16 Mr. Span continued running until he slipped and he was
17 told to stay on the ground.

18 Q Okay. Thank you. Please answer any questions Mr.
19 Sheek may have.

20 THE COURT: Thank you, Solicitor. Mr. Sheek.

21 MR. SWILLEY: No questions, Your Honor.

22 THE COURT: Thank you and you may step down.

23 Solicitor, you may call your next witness.

24 MR. SWILLEY: Would Your Honor like to take a break.

25 THE COURT: Sure. You need to take a break.

1 MR. SWILLEY: Yes, Your Honor.

2 THE COURT: Ladies and gentlemen, we will take about
3 a fifteen minute recess. Do not discuss the case during
4 this brief recess. Thank you very much.

5 (Whereupon, the jury was excused from open court for
6 a break.)

7 THE COURT: When do you think you will be finished.

8 MR. SWILLEY: I believe we will be through before
9 lunch time.

10 MR. SHEEK: Your Honor, I have a motion that I will
11 take up whenever you want to.

12 THE COURT: I can do it now.

13 MR. SHEEK: If you want to do it now or I can wait.

14 THE COURT: Sure. I will be glad to hear your
15 motion. Is that okay with you, Solicitor?

16 MR. SWILLEY: That is fine.

17 MR. SHEEK: I want to move for a dismissal of these
18 charges based on violation of Rule 5. And I am going to
19 tell the Court why. Obviously this man is charged with
20 short of killing somebody--

21 COURT REPORTER: I can't hear you, please speak up.

22 MR. SHEEK: Mr. Span is charged with a serious
23 offense as you can get in short of actually killing
24 somebody. Defending him is most important, it is the
25 ability to prepare a defense is paramount for our system

1 of justice. I have just learned for the first time that
2 the first witness that interviewed these alleged
3 eyewitnesses took notes of those interviews but has not
4 turned them over. As you can see throughout my case,
5 showing discrepancies in the eyewitnesses' statements have
6 been a major part of our case because credibility is going
7 to be a major issue. I have never seen these notes of the
8 initial interview or possible tape of them. He says may
9 be but he doesn't know and he hasn't checked. I don't
10 know how eyes of a defense lawyer can ignore that or get
11 around it. Is it prejudicial, I don't know, I have never
12 seen them. But notes of an initial interview of an
13 eyewitness on a shooting scene are critical. And I have
14 never been provided those.

15 THE COURT: Thank you, Mr. Sheek. Solicitor.

16 MR. SWILLEY: Your Honor, I didn't know anything
17 about any kind of notes that were taken. I think in this
18 case the way they were described by Officer Pope is they
19 fall under the category of work product. I mean I haven't
20 used them, haven't been used in the prosecution of Mr.
21 Span. I don't think that Officer Pope even testified he
22 remembered much of what was even written on them. If it
23 is a Rule 5 violation I don't believe that the defendant
24 is prejudice but I would assert that that is just not a
25 violation of Rule 5.

1 THE COURT: Anything further, Mr. Sheek?

2 MR. SHEEK: Your Honor, I would just simply say
3 clearly that would fall under work product. I mean you
4 are taking notes of a witness statement, no different from
5 taking a written statement or a recorded statement. You
6 can't claim because I am doing it for the prosecution it
7 is protected. If you are doing it for the prosecution
8 that exactly makes it applicable under Rule 5.

9 THE COURT: All right. I will take it under
10 advisement. Thank you, Solicitor. We will be in recess.

11 (Whereupon, a short break was taken.)

12 THE COURT: All right. Anything before we bring in
13 our jury, Mr. Sheek?

14 MR. SHEEK: Nothing from the defendant, Your Honor.

15 MR. SWILLEY: None from the State, Your Honor.

16 THE COURT: I still have that matter under
17 advisement. I sent a case that I want to read to the
18 Clerk to print out. So I have the discovery issue under
19 advisement. Bring us our jury, please.

20 (Whereupon, the jury came into open court at
21 approximately 10:46 a.m.)

22 THE COURT: Welcome back, ladies and gentlemen, we
23 will continue the trial of the case by the presentation of
24 testimony by the State. Solicitor, you may call your next
25 witness.

1 MR. SWILLEY: The State calls Harry Parker.

2 DIRECT EXAMINATION

3 By Mr. Swilley:

4 Q State your name for the record.

5 A Harry Parker.

6 Q Mr. Parker, where do you live?

7 A

8 Q Tell me, on October the 22nd of 2011, that afternoon,
9 where did you go?

10 A After?

11 Q The afternoon, 3:00 o'clock on October the 22nd of
12 2011?

13 A To Milwee, a shop on Milwee.

14 Q What kind of shop is it?

15 A I would say shoes, clothing, stuff like that.

16 Q Now, who did you go there with?

17 A Me, Tavaris, that is who I was riding with, me and
18 Tavaris.

19 Q You and Tavaris?

20 A Yes.

21 Q And who met y'all there?

22 A Nobody met us there.

23 Q Who else came to the store?

24 A Me, Travis and Adrian.

25 Q And did y'all go there to buy some clothes?

- 1 A Shoes.
- 2 Q Harry, when you came out of the store, y'all were
- 3 leaving, fixing to leaving who did you encounter?
- 4 A I seen Desmond.
- 5 Q And by Des, Desmond, what is Desmond's last name?
- 6 A Span.
- 7 Q Is he in this courtroom?
- 8 A Yes, sir.
- 9 Q Can you point him out to me?
- 10 A (Witness points to defendant.)
- 11 Q Mr. Parker, please continue. You seen Desmond and
- 12 who else?
- 13 A I seen him and what is his name is, I know one dude's
- 14 name is Jay. I forgot the other little dude's name. And
- 15 is who I seen though.
- 16 Q Okay. And you said you saw them coming towards you?
- 17 A Yes.
- 18 Q Tell me what happened next?
- 19 A Got into a little argument, arguing for a minute and
- 20 then it got into a fight. And then after that, you know,
- 21 everybody leaves and that is when the shooting started.
- 22 Q When Mr. Span approached you with the other folks did
- 23 he reveal anything to you or did you see anything?
- 24 A Yeah, I had seen him pull out a gun, yeah.
- 25 Q Tell me that again.

- 1 A I had seen him pull out a gun.
- 2 Q When you say pull it out, initially what do you mean?
- 3 A Like showed a gun.
- 4 Q Like, can you stand up in that chair and show me
- 5 exactly what he did?
- 6 A Like that.
- 7 Q Sit back down. Okay, good. And then after that that
- 8 is when they approached you, you say, and argued?
- 9 A Yes.
- 10 Q A fight started?
- 11 A Yes.
- 12 Q Tell me what happened during the course of that
- 13 fight?
- 14 A I mean we just, just fighting around for a little
- 15 while that is all.
- 16 Q What was the fight about. Why were the two sides--
- 17 A I don't even though. It was just--
- 18 Q What was Mr. Span explaining when he came up on the
- 19 store?
- 20 A He wasn't saying nothing, he was just like, let's
- 21 fight, you know. Wanted to fight.
- 22 Q Okay. And you said the fight happened and then Mr.
- 23 Span pointed a gun?
- 24 A Yes.
- 25 Q Tell me what happened right before he pulled the gun

- 1 out and shot?
- 2 A They was leaving, they was leaving and he pulled a
- 3 gun and started shooting.
- 4 Q Did you see him shoot?
- 5 A Yes.
- 6 Q And who was the gun pointed towards?
- 7 A Everybody.
- 8 Q When he started shooting what exactly did you do?
- 9 A I got down.
- 10 Q Say that again?
- 11 A I got down.
- 12 Q You got on the ground?
- 13 A Yes, sir.
- 14 Q Did you see anybody else with a gun?
- 15 A No, sir.
- 16 Q About how many gunshots did you hear?
- 17 A I think about seven, six or seven.
- 18 Q Six or seven?
- 19 A Yes.
- 20 Q Did they seem like they were coming, all the shots
- 21 were coming from the same gun?
- 22 A Yes.
- 23 Q That is what you recall?
- 24 A Yes, sir.
- 25 Q But were you, when the shots went off were you

- 1 looking towards--
- 2 A No sir, I was on the ground.
- 3 Q With your head down?
- 4 A Yes, sir.
- 5 Q And tell me what happened immediately after Mr. Span
- 6 and his friends left?
- 7 A I seen my friend was shot and the police came.
- 8 Q Who was your fiend that was shot?
- 9 A Travis.
- 10 Q Where was he shot?
- 11 A In like, his lower leg and side I think.
- 12 Q Where was Mr. Boyd when you went over and noticed he
- 13 was shot, approximately where abouts in the area?
- 14 A He was in the car.
- 15 Q He was laying in the car?
- 16 A Yes.
- 17 Q And so the police came after that?
- 18 A Yes, sir.
- 19 Q Okay. How long did you stay there after that?
- 20 A We had stayed there until the police left.
- 21 Q Say that again?
- 22 A We had to stay there until the police left.
- 23 Q Okay. Until the police left you say?
- 24 A Yes.
- 25 Q Mr. Parker, do you remember what the gun Mr. Span

1 had, what it looked like, can you describe it to me?

2 A It looked black to me, black, like long.

3 Q About how close were you to him when he had the gun
4 out and he was showing the gun off?

5 A I am right here and he was about where you are at.

6 Q You were fairly close?

7 A Yes.

8 Q Mr. Parker, do you recall any kind of objects being
9 thrown or before the gunshots rang out?

10 A Yes, he threw a rock, he threw a rock and Travis
11 threw a bat.

12 Q And that is when the gunshots started?

13 A Yes.

14 Q Okay. And initially you don't know the reason they
15 came there and what the argument was about?

16 A No, sir.

17 Q Okay. And do you live in that area?

18 A No, sir.

19 Q Is there any other reason you came down there besides
20 going shopping?

21 A No, sir.

22 Q About how far away do you live from there?

23 A About five miles, five or six miles.

24 Q Mr. Parker, had you ever seen Mr. Span before that
25 day or did you know who he was?

1 A When we were younger.

2 Q So you have known him for a while?

3 A Yes.

4 Q And do you where glasses?

5 A No.

6 Q Okay. How old are you?

7 A 20.

8 Q That is all I have. Please answer any questions Mr.
9 Sheek has.

10 THE COURT: Mr. Sheek.

11 CROSS-EXAMINATION

12 By Mr. Sheek:

13 Q Mr. Parker, you said you knew Mr. Span before this
14 day, didn't you?

15 A Yes, sir.

16 Q Do you know the history of the ill feelings between
17 you and your group of friends and him and his group of
18 friends, right?

19 A I mean, I ain't, ill feelings, what do you mean by
20 that type.

21 Q Are you telling this jury that the four of them came
22 just running down Milwee and wanting to fight and there
23 was no history of bad blood between y'all?

24 A I don't know what they had going on. I mean before
25 then, I don't know.

1 Q When was the last time you had talked to Mr. Span
2 before this day?

3 A I hadn't talked to him, I knew him when we were
4 younger like elementary school.

5 Q Okay. Now, I want you to tell us, you had gone in
6 the store shopping, is that correct?

7 A Yes, sir.

8 Q Did you purchase anything?

9 A No, sir.

10 Q Did Mr. Boyd purchase anything?

11 A I think he got a shirt or some shoes or something,
12 something like that.

13 Q Then you left the store, right?

14 A Yes, sir.

15 Q Exited through the front door?

16 A Yes, sir.

17 Q Did you go in the gold Crown Victoria or the silver
18 Pontiac?

19 A Gold Crown Victoria.

20 Q Who was riding with you in that Crown Victoria?

21 A Tavaris and, me, Tavaris and somebody else was there.

22 Q So there were three in the Crown Victoria?

23 A Yes.

24 Q And two in the silver Pontiac?

25 A Yes.

1 Q So there were five of y'all?

2 A Yes.

3 Q Okay. When you come out did Mr. Boyd exit the store
4 in front of you or behind you?

5 A I don't really know when he came up but we all ended
6 up outside at the same time.

7 Q So you don't remember if he walked out in front of
8 you or behind you?

9 A No, sir.

10 Q When you saw the other boys approaching with Mr. Span
11 where were you standing?

12 A About by a black car, right there beside the black
13 car, the other car.

14 Q The black car?

15 A Yes.

16 Q Which black car is that?

17 A The Grand Am.

18 Q You are talking about the silver?

19 A The silver car, yes.

20 Q So you are standing on the driver's side or the
21 passenger side?

22 A Like the passenger side.

23 Q Where was Mr. Boyd standing?

24 A Like either beside me or behind me, somewhere like
25 that.

- 1 Q He was also on the passenger side, wasn't he?
- 2 A Yes.
- 3 Q Had he placed his purchases in the backseat of the
- 4 Grand Am on the passenger side?
- 5 A I believe.
- 6 Q And had he arrived in the Grand Am?
- 7 A Yes, sir.
- 8 Q Was he driving or riding?
- 9 A He was driving.
- 10 Q So he is standing on the passenger side with you when
- 11 you see these guys approaching?
- 12 A Yes.
- 13 Q Do you hear somebody yell something, anything?
- 14 A Yes, something like, I mean like, about the fight. I
- 15 know that.
- 16 Q Did you hear anybody with your group of friends, Mr.
- 17 Boyd or someone else say anything about the people that
- 18 were approaching?
- 19 A No, sir.
- 20 Q Did you hear anybody yell something to the effect of
- 21 look out, somebody is running up behind you, something
- 22 like that?
- 23 A No, sir.
- 24 Q But you were close enough in proximity if that would
- 25 have happened you would have heard it?

1 A Yes, sir.

2 Q So when they approached, that being Mr. Span and the
3 people that were with him. What is the next thing that
4 happened?

5 A They approached us and then we got into a little
6 fight with them.

7 Q Let's start at the fight. Were there any more words
8 exchanged before the fight started?

9 A No, sir. There really were no words, there was no
10 talking really.

11 Q So somebody simply just walked up apparently and
12 threw a punch and the fight started?

13 A Yes, sir.

14 Q Who threw the first punch?

15 A It really wasn't somebody threw the first punch.
16 Everybody was fighting at the same time.

17 Q So you can't recall somebody starting this fight?

18 A I mean, you might as well say Desmond started it and
19 you know--

20 Q What do you mean might as well say, you are
21 testifying in a court of law in a criminal trial. So I am
22 not worried about what we might as well say. I want you
23 to say what the truth is.

24 A Okay, Desmond started it.

25 Q Okay. You told this jury there were no more words

1 exchanged, right?

2 A Yes, sir.

3 Q And you told them you couldn't remember who threw the
4 first punch, right?

5 A Yes, sir.

6 Q And now you are saying Desmond started the fight.
7 So, if you don't know who threw the first punch why are
8 you saying Desmond started the fight?

9 A I mean, he did.

10 Q Okay, what did he do to start it if you don't know
11 who threw the first punch?

12 A He came up towards us trying to fight.

13 Q That was enough to start the fight, coming towards
14 you?

15 A Yes, sir.

16 Q At which point did he show this gun?

17 A Like when he came up trying to fight us we are trying
18 to fight and then he flashed the gun.

19 Q Okay. So he flashed the gun after the fight started?

20 A Yes. Right before it started.

21 Q Right before it started?

22 A Yes.

23 Q Okay. Who was fighting Desmond?

24 A Tavaris.

25 Q So this man shows a gun and then they start the

1 fight?

2 A Yes.

3 Q And your friend, Tavaris, went ahead and fought a man
4 that has a gun?

5 A I mean, it was kind of a fight. Everybody is doing
6 something at one time.

7 Q Describe what you mean then by kind of a fight. Was
8 it kind of a fight where people were taking fists at each
9 other, that kind of a fight?

10 A And then somebody run over here or run over there,
11 you know.

12 Q And you say this happened for how long, this fight
13 was actually how long?

14 A About seven or eight minutes.

15 Q Okay. And then after that what happened?

16 A After the fight?

17 Q Yes. Immediately after the fight what happened?

18 A After the fight, like they are leaving then he
19 threw a rock at the car and then Travis threw the bat
20 and then that is when he started shooting.

21 Q Well, between the time the fight stopped and they
22 started leaving and threw a rock where did you go?

23 A I was standing right there.

24 Q Did you ever leave to go back in the store or do
25 anything like that?

1 A Yes, when they started shooting we ran in the store.

2 Q Okay. On October 22nd of 2011 you gave a recorded
3 statement to the Greenwood City Police Department, didn't
4 you?

5 A Yes.

6 Q You gave it at approximately 4:59 p.m., is that
7 correct?

8 A Yes, sir.

9 Q You gave it to a detective named Jeremy?

10 A Yes, sir.

11 Q Right here at the Greenwood City Police Department,
12 correct?

13 A Yes, sir.

14 Q And in that segment isn't it true that you said you
15 saw them coming, referring to Desmond and his friends and
16 y'all jumped out of the car. That is what you said, isn't
17 it?

18 A Yes, we were getting ready to leave.

19 Q You were already in the car?

20 A Yes, sir.

21 Q So when you saw them coming why didn't y'all just
22 drive off?

23 A Probably would have shot at the car.

24 Q Well he hadn't shown you a gun at that point, had he?

25 A No, sir.

1 Q You didn't know he had a gun, did you?

2 A No, sir.

3 Q Nobody had said anything, had they?

4 A No, sir.

5 Q So you see somebody coming down the street and you
6 are thinking I shouldn't drive off, they might shoot at
7 the car. That is what you are telling this jury?

8 A I mean, no sir.

9 Q Well, you are admitting though you told the police
10 department on your recorded statement on the day that the
11 incident that you were in the car and then jumped out,
12 right?

13 A My door wasn't closed.

14 Q I didn't ask that.

15 A I was getting in the car and then I looked back and I
16 see them.

17 Q But you said you jumped out of the car, correct?

18 A You want me to show you how I did it?

19 Q Were you driving or were you a passenger?

20 A I was a passenger.

21 Q So you were in the Crown Vic?

22 A Yes, sir.

23 Q And just a minute ago you told this jury you were
24 standing with Mr. Boyd at the passenger side of the silver
25 Pontiac.

1 A That was during like after we had gotten out of the
2 car like when we first go there, coming out of the store.

3 Q Okay.

4 A This was when we were leaving when I was in the Crown
5 Vic.

6 Q So you come out of the store standing at the
7 passenger side and then you go over and get into the Crown
8 Vic?

9 A Yes, like we are about to leave.

10 Q Before you ever see Des and his friends coming?

11 A Yes.

12 Q Well, that, why didn't you tell them that to begin
13 with?

14 A You didn't ask me that.

15 Q He didn't ask you that?

16 A You didn't.

17 Q Well, no sir, I ask you to tell me exactly what
18 happened when you come out of the store and you said you
19 walked to the silver Pontiac, didn't you?

20 A Yes, sir.

21 Q And you said that is where you were standing when you
22 saw these boys approaching?

23 A Yes, sir. I mean it has been so long ago and then
24 like as soon as we were standing right there by that car
25 we walked over to get into the Crown Vic like we were

1 about to leave. And then that is when I seen them coming
2 up.

3 Q Okay. And so when you see them coming up where was
4 Mr. Boyd now, now that we have established that where was
5 Mr. Boyd standing when you saw him coming up?

6 A By the driver's side of his car.

7 Q Okay. So he wasn't on the passenger side of the
8 silver Pontiac?

9 A No sir, he was at one point then we were about to
10 leave.

11 Q Okay. Did he have his driver's door opened?

12 A Yes, sir.

13 Q When these boys approached what did he do, did he
14 stay where he was or did he come back to the passenger's
15 side?

16 A We all got together, like in between two cars because
17 we knew we were about to fight.

18 Q You got out the car, they got out of their car, y'all
19 faced off with these boys to fight, correct?

20 A Yes, sir.

21 Q All right. Now, I want you to explain to the jury
22 because I am just not understanding. If there is no prior
23 history of bad blood, you are in your car to leave, you
24 see these guys approaching, they don't show a weapon and
25 you don't hear them say anything why would you get out of

1 your car and fight?

2 A I mean, people are crazy.. They could have hit the
3 window and bust the window, did anything.

4 Q Okay. So if you are driving down the road and you
5 pull up at a stoplight, you see someone pulling up beside
6 you do you jump out to fight them because--

7 MR. SWILLEY: Objection, Your Honor.

8 THE COURT: I sustain the objection. You may ask
9 your next question, Mr. Sheek.

10 Q On October 22nd when you gave your recorded statement
11 to the police department did you tell them you actually
12 fought for ten or fifteen minutes?

13 A That is what it seemed like, ten or fifteen minutes.

14 Q Well I am asking you, did you tell them you fought
15 for ten or fifteen minutes?

16 A I think I told them like, we were about there for
17 like ten minutes.

18 Q Do you deny that you said ten or fifteen minutes?

19 A I deny fifteen. I know I said ten minutes.

20 Q And do you deny that you also told them that after
21 the fight y'all ran back in the store?

22 A Yes, sir.

23 Q You deny that?

24 A After the fight we ran back in the store. While it
25 was going on we ran, like we ran in the store and then

1 came back out. They were still there.

2 Q Now a minute ago you told this jury you ran back in
3 the store after the shooting started.

4 A After the shooting?

5 Q That is what you told this jury just a few minutes
6 ago.

7 THE COURT: Excuse me a minute. Ladies and
8 gentlemen, step to your jury room momentarily.

9 (Whereupon, the jury was excused from open court.)

10 THE COURT: Sheriff, take that gentleman in the
11 orange shirt into custody, please.

12 (Whereupon, an individual in the courtroom was taken
13 into custody.)

14 THE COURT: Thank you very much, you may bring our
15 jury back.

16 (Whereupon, the jury came into open court at
17 approximately 11:10 a.m.)

18 THE COURT: Thank you very much. Mr. Sheek, you may
19 continue.

20 CONTINUE CROSS-EXAMINATION

21 By Mr. Sheek:

22 Q Sir, you told the police that you ran into the store
23 prior to the shooting, right, after the fight. That is
24 what you told them?

25 A Yes, sir.

1 Q And then you came back out and that is when Desmond
2 threw a brick at the car?

3 A I mean, it has been a while ago. I can't remember
4 exactly how it went down, sir.

5 Q Well if you can't remember how it when down how is it
6 that you are here to testify to us today?

7 A How am I here?

8 Q Yes, sir.

9 A I was called and I had to be here.

10 Q So you are telling this jury that you are testifying
11 but you are not sure of what you are testifying about.

12 You are not sure that you are correct?

13 A I am testifying about a shooting, my friend got shot.

14 Q Did you not tell the police on October the 22nd on
15 your recorded statement that they started shooting?

16 A Yes, they started shooting.

17 Q They, who was they?

18 A The guy, him and the guys he was with. I mean Des
19 and them, he was with them so I said, they.

20 Q Well, did you not also say that Des was shooting and
21 either Zay or Jay?

22 A Zay, that is his name. They could have been
23 shooting, I didn't see them. I just saw Des shooting.

24 Q Do you deny saying that either Zay or Jay was also
25 shooting?

1 A I said that.

2 Q You did say it?

3 A Yes, sir.

4 Q Well, did it happen?

5 A I mean, I couldn't see, I was on the ground.

6 Q Wait a second. You told the police that someone else
7 was also shooting the gun. You just told us that, right?

8 A No, I told the police.

9 Q Why would you tell the police on October the 22nd if
10 you are now saying you don't know that happened. Did you
11 lie to the police?

12 A No, I ain't lied to them. I mean, I don't know, I
13 don't know who was shooting. I know Des was shooting
14 because I seen him with a gun. But when we got down on
15 the ground and I heard the gunshot they could have been
16 shooting too. I don't know.

17 Q But you would agree with me that you didn't say to
18 the police, I don't know, they might have been. What you
19 said was, Des was shooting and either Zay or Jay, one of
20 them was shooting.

21 A The same thing, either one of them.

22 Q That is what you said?

23 A Yes, sir.

24 Q You didn't say that might have been or could have
25 been. You said they were?

- 1 A Either one of them were shooting.
- 2 Q Because you told the police you heard two distinctly
- 3 different gunshots, didn't you?
- 4 A I ain't said that.
- 5 Q Okay. And you told the police you heard seven or
- 6 eight shots?
- 7 A Yes, sir.
- 8 Q And that Mr. Span had a black revolver?
- 9 A Yes, sir.
- 10 Q Not shiny, not chrome or anything like that, right?
- 11 A Yes, sir.
- 12 Q Are you sure it was a revolver?
- 13 A Yes, sir.
- 14 Q Did it look like a normal six shot revolver?
- 15 A Yes, sir.
- 16 Q If you, when you were talking to the police, didn't
- 17 actually see Zay or Jay shooting and only guessing why
- 18 didn't you tell them that?
- 19 A I mean, I don't know. I don't know why I didn't tell
- 20 them that.
- 21 Q Is it because now you know when you come to this
- 22 courtroom your job is to say, he and he alone was
- 23 shooting.
- 24 A Yes, sir.
- 25 Q No further questions.

1 THE COURT: Redirect, Solicitor.

2 REDIRECT EXAMINATION

3 By Mr. Swilley:

4 Q Mr. Parker, were you scared that day?

5 A Was I scared?

6 Q Were you scared that day?

7 A Yes sir, I was scared for my life. I have got a
8 little girl, I was scared for my life.

9 Q Scared for your life?

10 A Yes, sir.

11 Q Okay. You saw Mr. Span with the gun, correct?

12 A Yes, sir.

13 Q And Mr. Span, and Mr. Parker, has anybody told you
14 what to say today?

15 A No, sir.

16 Q Has anybody tried to change your testimony at all?

17 A No, sir.

18 Q Okay. You said you were scared that day, right?

19 A Yes, sir.

20 Q And obviously, you don't remember the minutia
21 details?

22 A Yes, sir.

23 Q Okay. Tell me, Milwee Avenue, what kind of area is
24 that, would you say it is dangerous, safe.

25 MR. SHEEK: Objection, speculation, Your Honor.

1 THE COURT: Unless you can lay some type of
2 foundation that he had reviewed certain incident reports,
3 files, statistics, danger. You can rephrase the question,
4 Solicitor.

5 Q From your experience growing up here in the Greenwood
6 area tell me what kind of area in your experience, what
7 kind of area is Milwee, in your opinion is it dangerous?

8 A I mean, I can't really say dangerous but, you know,
9 things do happen.

10 Q Nothing further.

11 THE COURT: It is not dangerous but it is not too
12 happy?

13 A Things do happen.

14 THE COURT: Things do happen. Thank you, I just
15 didn't quite understand. Recross, Mr. Sheek.

16 RECROSS-EXAMINATION

17 By Mr. Sheek:

18 Q You said you have trouble remembering because you
19 were so scared for your life?

20 A Yes, sir.

21 Q That was because there was a gun involved?

22 A Yes.

23 Q But you saw that gun and then decided to fight for
24 ten or fifteen minutes?

25 A I mean, I saw the gun. I told you we were fighting

1 but at the same time everybody moving around at one time
2 and so much going on.

3 Q Well in that ten or fifteen minutes of moving around
4 and all of that stuff did you think of moving to the
5 driver's seat of your car and driving off?

6 A I wasn't driving.

7 Q Well did you think of getting anybody else to drive
8 you off.

9 MR. SWILLEY: Objection, Your Honor.

10 A How can I get somebody else to drive me off it it is
11 their car and not mine.

12 THE COURT: Hold on a minute, let me rule on the
13 objection which I will overrule the objection. Missed the
14 entire flow of the question and the answer in that regard.

15 Q Did you think of just leaving?

16 A No, sir.

17 Q And the reason you didn't leave is because you
18 weren't scared, right?

19 A No, if I had of left walking they probably would have
20 all came and jumped on me.

21 Q To your friends too?

22 A Sir?

23 Q Your friends too?

24 A I mean, they are not going to walk off, they got cars
25 right there.

1 Q I have nothing further.

2 THE COURT: Thank you very much, Mr. Parker. You may
3 step down. Solicitor, you may call your next witness.

4 MR. SWILLEY: The State calls William Kay.

5 THE COURT: That is Officer Kay, is that right?

6 MR. SWILLEY: Yes, it is. Your Honor, I did not put
7 Officer Kay on my witness list. I will admit that to the
8 Court.

9 THE COURT: All right, Mr. Sheek.

10 MR. SHEEK: As long as no one on the jury has a
11 personal or family relationship with this gentleman then I
12 don't object.

13 THE COURT: Mr. Foreman and ladies and gentlemen, you
14 have just heard the Solicitor indicate that Mr. Kay,
15 Officer Kay was not placed on the witness list and I am
16 sure you recall those various questions I asked you
17 concerning potential witnesses for the trial of this case.
18 The question, of course, is any member of the jury panel
19 related by blood or marriage or close personal friends or
20 have any business or professional relationship with
21 Officer Kay. If so please stand.

22 (No response.)

23 THE COURT: There is no response in that regard so
24 you may call the witness, Solicitor.

25 OFFICER WILLIAM KAY, being

1 first duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 By Mr. Swilley:

4 Q Please state your name for the record.

5 A William Kay of the Greenwood Police Department.

6 Q Officer Kay, what capacity do you work for the police
7 department?

8 A I work in the warrant office, I serve warrants.

9 Q Okay. And did you work in the warrant office on
10 October the 26th of 2011?

11 A Yes sir, I was.

12 Q And, Office Kay, at approximately 2:20 can you tell
13 me where you were?

14 A I was on patrol in the area of Gray and Milwee.

15 Q You were on patrol and who did you encounter?

16 A Whitney Span.

17 Q And continue.

18 A I knew previously that Mr. Span had arrest warrants
19 for attempted murder. When I observed Mr. Span I gave a
20 description to other city units because he has a prior
21 history of running from the police. So as I circled the
22 block to come back he had already left the area and at
23 that time I gave out a description of him to the other
24 city units to try to get other people in the area before I
25 got out to speak with him. When he seen me he had

1 evidently had taken off and several seconds later another
2 officer got out with him in the area and begin a foot
3 pursuit.

4 Q Okay. What street was that?

5 A He was on Gray Street approaching Milwee.

6 Q Okay. He was on foot?

7 A Yes sir, he was.

8 Q That is all I have.

9 THE COURT: Cross-examination, Mr. Sheek.

10 CROSS-EXAMINATION

11 By Mr. Sheek:

12 Q Officer Kay, did you have anything to do with the
13 investigation on October the 22nd?

14 A No sir, I did not.

15 Q Were you ever at the scene at this alleged incident?

16 A No, sir.

17 Q I have nothing further.

18 THE COURT: Thank you very much, Officer Kay. You
19 may step down. Solicitor, you may call your next witness.

20 MR. SWILLEY: The State calls Detective Phillip
21 Nichols.

22 DETECTIVE PHILLIP NICHOLS, being
23 first duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 By Mr. Swilley:

1 Q Please state your name for the record.

2 A Master Patrolman Phillip Nichols of the Greenwood
3 City Police Department.

4 Q Officer, what capacity do you work at the Greenwood
5 City Police Department?

6 A Currently I am assigned to the Detective's division.

7 Q Okay. And Detective Nichols, at what point did you
8 get involved in this case?

9 A On that day I was contacted by Lieutenant Crisp and
10 advised on the incident and asked to report for further
11 investigation into this matter.

12 Q And, Detective Nichols, in a situation such as this
13 is, tell me how is a detective assigned?

14 A My supervisor, my Lieutenant and Captain will
15 normally call one to two investigators out on a case like
16 this. Certainly for bigger cases we may call more but
17 often times we will choose one investigator to take the
18 lead on the case under our supervisors. And in that case
19 that lead investigator on this one was me.

20 Q You were in charge of this investigation?

21 A Yes sir, that is correct.

22 Q Detective Nichols, let's go back to this case. What
23 did you first do when you got involved in this case?

24 A Upon arrival at the scene I spoke with Officer Pope
25 briefly, spoke with Lieutenant Greenfield briefly and just

1 gathered the basic facts of the case, took a look at the
2 scene and began to assemble or formulate a plan to
3 continue the investigation on this.

4 Q Okay. Officer Nichols, I am going to ask you, do you
5 recognize this photograph?

6 A I do.

7 Q Can you tell me what it depicts?

8 A This is the store on Milwee where the incident
9 occurred.

10 Q And on what date was that?

11 A October 22nd of 2011.

12 Q Thank you.

13 MR. SWILLEY: Your Honor, at this time I would offer
14 that this be admitted as State's exhibit number 8.

15 THE COURT: Any objection.

16 MR. SHEEK: Without objection.

17 THE COURT: State's 8 in evidence without objection.

18 (Whereupon, State's Exhibit 8 was admitted into
19 evidence.)

20 Q And, Officer, you said when you formulate a plan, can
21 you tell me what you did specifically right after that?

22 A Yes sir, if you will give me just a second to review
23 this report I will be able to tell you exactly.

24 Q Sure.

25 A Upon arrival after speaking with several of the

1 witnesses and victims, the victim, Mr. Boyd individually.
2 It is common practice of course for us to separate those
3 victims and witnesses. I asked each of them to report to
4 the City's Detective's office and provide a statement.

5 Upon arrival at the Detective's office I spoke first with
6 Adrian Gaston and then Kelvin Goode, both provided their
7 statement. Detective Adams spoke with Tavaris Lester
8 which already had been covered and also Mr. Harry Parker
9 who also provided a statement for this incident.

10 Q Okay. After you spoke with these gentlemen tell me
11 what you did after that at the scene?

12 A After speaking with the gentlemen at the Detective's
13 office I reported to the hospital. There I met with the
14 victim, Travis Boyd.

15 Q And without saying what anybody said what did you
16 observe about Mr. Boyd?

17 A Mr. Boyd was, he was laid in the hospital bed, in the
18 treatment room. It was obvious that he had been shot, did
19 observe several wounds to his legs that were consistent,
20 in my experience in this job, with a gunshot wound. And
21 he was a bit upset.

22 Q Tell me, after you left Mr. Boyd, what did you do
23 next in the investigation?

24 A At this time I consulted with Lieutenant Crisp and
25 took care of our basic paperwork for that day. The

1 investigation was then continued on Monday, 10/24.

2 Q Monday, what did you do in this case?

3 A Monday I retrieved the bullet that was taken from
4 Travis Boyd's foot at Self Regional Hospital.

5 Q And when you retrieved the bullet what did you do
6 after that?

7 A The bullet was weighed.

8 Q By whom?

9 A Sergeant Griffin and I, if I remember correctly.

10 Q And what did the bullet weigh in at?

11 A The bullet that was taken out of Travis Boyd's foot
12 was found to be 91.0509 grains.

13 Q Okay. And what is significant about that?

14 A There is a couple of significant things about that.

15 Q Well, in particular, what type of bullet is that.
16 What kind of bullet?

17 A Quite frequently and I present this information to
18 the ladies and gentlemen of the jury knowing that this is
19 general fact, general knowledge that can be obtained
20 through any book or other research source. It does not
21 require any expert training, specialized military or
22 police training. This is information that each of you
23 could find at home. That bullet weight, bullets often
24 have a general consensus, so to speak, of weights. When
25 you talk about a .9 millimeter bullet, it would generally,

1 there are always exceptions to every rule but it would
2 generally be found to be between 115 to 124 grains. That
3 is the weight of the bullet alone, not the shell, not the
4 casing as a whole, the bullet by itself. When we retrieve
5 rounds in shooting incidents we can weigh them and it
6 cannot always be exact, it cannot always be a perfect
7 identification but what it will do is lead us to a
8 classification of rounds that will get us in the general
9 area and we can say this could possibly be this type of
10 bullet, this could possibly be this type of round. And
11 that bullet, like I said, just a little over 91 grains.
12 That is consistent with what many of you might know to be
13 a small .38 caliber round. There were no conclusions made
14 in my report. As a matter of fact, I will read the
15 excerpt to further solidify this information.

16 The round was weighed and found to be 91.0509 grains.
17 This was compared to the weight of the round taken from
18 the silver Pontiac which was collected by Sergeant Griffin
19 which is 89.5077 grains. Both bullets are the same
20 general dimension and size and the round was turned over
21 to Sergeant Griffin to be placed into evidence.

22 Q Okay. Investigator, tell me, what type of bullet was
23 pulled from Travis Boyd's leg, that bullet fragment that
24 was taken out at the hospital. Is that consistent with a
25 bullet that can be shot out of a small revolver?

- 1 A It is.
- 2 Q Okay. Investigator, I want to show you a couple of
- 3 pictures. Do you recognize this photograph?
- 4 A I do, sir.
- 5 Q Can you tell me what it is?
- 6 A That appears to be a bullet fragment that was located
- 7 on the scene.
- 8 Q And approximately where on the scene was that bullet
- 9 fragment located?
- 10 A I can't tell from here because there is nothing else
- 11 in the picture. From my recollection because Sergeant
- 12 Griffin would have collected this and not me, but from my
- 13 recollection it was most likely close to one of the
- 14 vehicles.
- 15 Q Okay.
- 16 MR. SWILLEY: Your Honor, at this time I would move
- 17 this into evidence as State's exhibit 9.
- 18 THE COURT: Mr. Sheek?
- 19 MR. SHEEK: No objection.
- 20 THE COURT: State's 9 is in evidence without
- 21 objection.
- 22 (Whereupon, State's Exhibit 9 was admitted into
- 23 evidence.)
- 24 Q Officer Nichols, let me show you this photograph. Do
- 25 you recognize what this photograph is?

1 A Yes sir, that is the front passenger side of the
2 silver Pontiac Grand Am in question on the scene or at the
3 scene that day and that is blood from Mr. Travis Boyd, our
4 victim.

5 Q Okay.

6 MR. SWILLEY: Your Honor, at this I would ask to move
7 this into evidence as State's exhibit 10.

8 THE COURT: Mr. Sheek?

9 MR. SHEEK: No objection.

10 THE COURT: In evidence without objection, State's
11 10.

12 (Whereupon, State's Exhibit 10 was admitted into
13 evidence.)

14 MR. SWILLEY: And, Your Honor, I would also ask to
15 publish this photograph to the jury.

16 THE COURT: That is this photograph being State's 10?

17 MR. SWILLEY: That's correct, Your Honor.

18 THE COURT: All right. You may publish.

19 Q Investigator Nichols, can you tell me what this
20 photograph depicts?

21 A Those are two bullet impacts on the driver's side of
22 the Pontiac Grand Am.

23 Q And were you able to extract the bullets?

24 A Sergeant Griffin did extract one bullet from the
25 vehicle. I can review her supplement if you would like to

1 know where from.

2 Q Just to your knowledge what was significant about
3 that bullet?

4 A Weighed nearly exactly the same as the one I
5 recovered from Travis Boyd at the hospital. That bullet's
6 weight which was taken from the silver Pontiac was 89.5077
7 grains which is consistent in cases like this with the
8 bullet taken from Travis Boyd.

9 Q And is that bullet, from your observation, consistent
10 with a bullet that can be shot out of a revolver?

11 A Yes, it is.

12 Q Okay.

13 MR. SWILLEY: Your Honor, I would ask that this
14 photograph be admitted into evidence as State's exhibit
15 11.

16 THE COURT: In evidence without objection, Mr. Sheek?

17 MR. SHEEK: Without objection, Your Honor.

18 (Whereupon, State's Exhibit 11 was admitted into
19 evidence.)

20 Q Do you recognize this photograph?

21 A Yes sir, I do. That is the rear windshield of the
22 Pontiac Grand Am.

23 Q And from your observation what caused the shattering
24 of that glass?

25 A Most likely, bullet.

1 Q Okay.

2 MR. SWILLEY: Your Honor, I would like to offer this
3 as State's exhibit 12.

4 THE COURT: Mr. Sheek?

5 MR. SHEEK: No objection, Your Honor.

6 THE COURT: State's 12 is in evidence without
7 objection.

8 (Whereupon, State's Exhibit 12 was admitted into
9 evidence.)

10 Q Officer Nichols, do you recognize this photograph?

11 A Yes sir, I do. That is the building, the wall of the
12 building at the incident location of 704 Milwee Avenue.

13 Q And what does the wall have on it?

14 A Those appear to be bullet impacts.

15 Q All right. Now are those holes consistent with the
16 size as the holes the bullets would cause?

17 A Yes, sir.

18 Q Okay.

19 A That would be quite consistent with any small bullet.

20 Q Okay.

21 MR. SWILLEY: I would move this in as State's exhibit
22 13.

23 THE COURT: State's 13 is in evidence, without
24 objection, Mr. Sheek?

25 MR. SHEEK: No objection, Your Honor.

1 (Whereupon, State's Exhibit 13 was admitted into
2 evidence.)

3 Q And, Officer Nichols, do you recognize this
4 photograph?

5 A I do, that is the blood from Travis Boyd's leg when
6 he was initially sitting in the passenger seat of the
7 vehicle.

8 Q And say again, what side of the vehicle was that?

9 A The passenger side of the vehicle. Mr. Boyd, after
10 exiting the store or after he was shot I should say,
11 initially sat in the passenger side of the vehicle when
12 his friends were trying to assist him. They were trying
13 to take him to the hospital which is when they then
14 transferred him to the rear passenger seat of the vehicle.

15 MR. SWILLEY: Your Honor, I move to have this
16 admitted as State's exhibit 14.

17 THE COURT: Mr. Sheek?

18 MR. SHEEK: No objection, Your Honor.

19 THE COURT: State's 14 is in evidence without
20 objection.

21 (Whereupon, State's Exhibit 14 was admitted into
22 evidence.)

23 MR. SWILLEY: And, Your Honor, I would also move to
24 publish this photograph to the jury.

25 THE COURT: You may publish.

1 Q Investigator Nichols, do you recognize this
2 photograph?

3 A I do. That is the front dash of the Pontiac Grand
4 Am.

5 Q And what is significant about that front dash?

6 A There appears to be a bullet defect where a bullet
7 entered the dash there along with what appears to be blood
8 and flesh that was taken with it.

9 Q Okay.

10 MR. SWILLEY: Your Honor, I would like to move this
11 into evidence as State's exhibit 15.

12 MR. SHEEK: Without objection.

13 THE COURT: State's 15 is in evidence without
14 objection.

15 (Whereupon, State's Exhibit 15 was admitted into
16 evidence.)

17 Q And, Investigator, let me ask you, let's go back to
18 the gun. You have types of handguns, revolver are
19 automatic, right?

20 A That's correct.

21 Q What is significant about when a revolver discharges?

22 A When revolvers fire they do not eject a spent casing.
23 If you like I can even demonstrate.

24 Q What happens to the spent casing?

25 A The spent casing stays inside the cylinder of the

1 revolver until all rounds are fired at which time you must
2 manually open the revolver and eject the spent casings
3 with a rod, a spring loaded rod.

4 Q And would you like to demonstrate?

5 A Sure.

6 THE COURT: What are you going to demonstrate with,
7 Solicitor?

8 MR. SWILLEY: I believe Investigator Nichols has a
9 revolver that is not, I believe it has been made safe.

10 A That's correct.

11 THE COURT: Of course, there is a firearm policy put
12 out by the South Carolina Supreme Court. Any time a
13 firearm is used and either introduced into evidence or
14 used for demonstrative purposes in court and you are
15 familiar with our policy, Solicitor?

16 MR. SWILLEY: In all candor, Your Honor, not exactly
17 what it states.

18 THE COURT: Are you familiar with that policy, Mr.
19 Sheek?

20 MR. SHEEK: Yes, sir.

21 THE COURT: And it requires me to review that policy
22 with both the State and the defense and with the jury. I
23 have to be advised that the, whatever weapon is used is
24 made safe, that it either has a trigger lock or a lock
25 through the barrel. If there is ammunition that the

1 ammunition and the firearms are maintained separately.
2 That it is not pointed at any person, it is not pointed at
3 any member of the jury panel, it is not pointed at any
4 member of the court staff or it is not pointed at any
5 member of the public that may be present in the courtroom.
6 I didn't print out that written policy, I normally print
7 it out and give it to both parties if I know that a
8 firearm is going to be introduced into evidence. I did
9 not anticipate that. So with those admonitions and
10 advising the jury of that, the weapon is made safe, there
11 is either a trigger lock or something and it is just being
12 used for demonstrative purposes I have no objections to be
13 used but I do have the responsibility to review that with
14 you.

15 MR. SWILLEY: Your Honor, I apologize, I should have
16 properly gone over that.

17 THE COURT: You don't owe me an apology, Solicitor, I
18 just want to make sure I advise the jury of that and
19 advise y'all of that before it is used for demonstrative
20 purposes. Also is the weapon that you are going to use
21 made safe?

22 A Yes sir, it is currently unloaded.

23 THE COURT: And is there any ammunition even in the
24 bag that the weapon is in?

25 A Yes sir, there is currently.

1 THE COURT: All right. Well make sure it is
2 separate, it is never loaded at any time and that you
3 don't point it at any individual.

4 A Your Honor, do I understand that that would be
5 entered into evidence in the Court's possession?

6 THE COURT: No, you are using it for demonstrative
7 purposes. Is that correct?

8 MR. SWILLEY: That's correct.

9 THE COURT: Mr. Sheek?

10 MR. SHEEK: Your Honor, does the policy require it to
11 be made safe beyond merely unloaded? I don't have a
12 personal objection to it but I thought the policy required
13 some type of lock.

14 THE COURT: I think it does if it goes into evidence.
15 I do not think, actually I do not think he would be able
16 to demonstrate it if it were locked.

17 MR. SHEEK: I have got no objection as long as it is,
18 sure it is not loaded and not pointed at anyone.

19 THE COURT: And you understand what I am saying,
20 Officer?

21 A Yes sir, absolutely.

22 THE COURT: Thank you very much. You may continue,
23 Solicitor.

24 MR. SWILLEY: Thank you, Your Honor.

25 Q As you were discussing, Investigator, could you

1 demonstrate what you meant keeping in mind what His Honor
2 instructed.

3 A Your Honor, the gun is unloaded safe.

4 THE COURT: Yes, the gun is unloaded, it is safe.

5 A Ladies and gentlemen of the jury, I will try my best
6 to speak up a little bit since I am not in front of the
7 microphone as I might should be. I believe Your Honor
8 shared with us a couple of stories. This was my
9 Grandfather's Colt he carried when he was on duty when he
10 was employed by the State as a law enforcement officer
11 which has now become into my possession. Do we have a
12 board and some markers?

13 MR. SWILLEY: I beg the Court's indulgence to
14 retrieve a easel pad.

15 THE COURT: Sure.

16 A There has been some contention apparently on the side
17 of the defense as to whether or not it was a revolver used
18 by the suspect in this case. To some degree I can
19 understand Mr. Sheek's position on that.

20 MR. SHEEK: Your Honor, may I object to that.

21 THE COURT: I would sustain that objection. Strike
22 that from the record. Do not consider that, ladies and
23 gentlemen, the ultimate determination of the facts is for
24 the jury to determine. And that would not be responsive
25 to the demonstration. You may continue, Detective.

1 A Ladies and gentlemen, to demonstrate here, as you can
2 see, the cylinder is open on this revolver. When a round
3 is fired in a revolver the casing stays in this cylinder
4 after it is fired. In order to unload this revolver and
5 reload more rounds into this gun you turn this gun upside
6 down, slightly sideways, you press this spring loaded bar.
7 You will see a small star shaped pattern at the end of
8 that bar that grabs the rim of the case and then unloads
9 this. A gun like this was possibly used in this case. We
10 do not have a gun.

11 Q Investigator Nichols, can you explain how, the
12 difference between that and how an automatic weapon fires?

13 A Yes. An automatic weapon which is what you see
14 currently on my right hip here uses a magazine system and
15 not a cylinder. As the gun is fired a round is pushed up
16 by the spring of the magazine, stripped off into the
17 chamber of the weapon. Once that round is fired the slide
18 which is what you see covering the weapon where the barrel
19 is recoils, grabs the rim of this case and ejects the
20 case. In this case we did not locate any shell casings,
21 we located bullets inside Mr. Boyd, inside the car where
22 he was standing when he was shot. If you will bear with
23 me.

24 MR. SHEEK: Your Honor, I have a matter for the Court
25 if we could take up outside the presence of the jury.

1 THE COURT: All right, Mr. Foreman and ladies and
2 gentlemen, if you will step to your jury room.

3 (Whereupon, the jury was excused from open court.)

4 THE COURT: All right, Mr. Sheek.

5 MR. SHEEK: It appears from the drawing that the
6 Officer is now making it present to the jury that we are
7 going into some type of various expert testimony. If that
8 is where we are going then I would like to go ahead and
9 have him qualified as an expert before going there. And
10 if we are going into ballistics then I would like to know
11 from the State if we are going to have the forensics here
12 from SLED or if not we can simply stipulate to allow the
13 use of the SLED report which is part of this
14 investigation.

15 MR. SWILLEY: Your Honor, all I wanted for
16 Investigator Nichols to do is just explain to the jury how
17 a shell casing is ejected from an automatic weapon where
18 as it stays in the actual gun to further promulgate the
19 State's theory pursuant to the testimony that there was a
20 revolver that was used. That is really all I was trying
21 to get in. I am not trying to go into any kind of
22 ballistics expertise.

23 MR. SHEEK: You can see the drawing that they have,
24 Your Honor, it has nothing to do with ejection.

25 THE COURT: Explain what you are going to do.

1 A I was using this to answer any questions that may
2 come up. This is not, this is not expert information,
3 Your Honor. This can be found in any reloading manual
4 that is available to every person that is in this
5 courtroom today. This is not testimony concerning
6 ballistics, internal ballistics or otherwise. It has
7 nothing to do with any of that. There has been some
8 question as to whether or not a revolver was used and we
9 can use this to illustrate that a revolver may have been
10 used. We do not have a gun in this case, that is known,
11 that is a fact of the case. Mr. Sheek knows that.

12 MR. SHEEK: Then, Your Honor, I would ask the State
13 if they would like to go ahead and stipulate to the use of
14 a SLED report.

15 MR. SWILLEY: I don't--

16 THE COURT: Here is what I think of the Officer's
17 testimony is that you have got your revolver, you have got
18 your automatic. Your revolvers, five shots, six shot
19 revolvers, unless you unload them on the scene you are not
20 going to find shell casings because they are going to
21 leave with the weapon. Automatics, you unload them on the
22 scene, unless you pick them all up you are going to find
23 shell casings. I don't think you need expert testimony
24 for that. And, of course, you haven't objected to that.

25 MR. SHEEK: And I haven't, I just noticed he was

1 writing down grain weights and that is fine. Like I say,
2 if we can just stipulate, they have got a report from
3 SLED, we won't even have to call the forensics scientist
4 up here. We can stipulate to use that report and then we
5 can go on as we are going right now.

6 THE COURT: And you know, it is circumstantial
7 evidence that there was a revolver because you don't find
8 any shell casings and there is no testimony that anybody
9 is leasing up the area, so to speak, of the shell casings
10 that may have been left by an automatic. Show me the SLED
11 report, I haven't seen that.

12 MR. SHEEK: I will give you a copy of it right here.
13 A two-age SLED report from the projectile submitted by the
14 Greenwood City Police Department to the State Law
15 Enforcement Division Forensics. That would save time then
16 to call the forensics scientist up here to read that, I
17 will be happy to stipulate to it to save the Court and the
18 jury some time. Otherwise I don't need to get him up
19 here.

20 THE COURT: And of course .380 auto caliber, that
21 just refers to not whether or not it is an automatic or
22 revolver, correct?

23 MR. SHEEK: No sir, the .380 auto is different from a
24 .380 revolver.

25 THE COURT: Under State versus Myers and the State

1 Goode and State versus White, Douglas, once you lay
2 foundation for the Officer, I mean if he is reading
3 reloading books you don't have to work for SLED to be an
4 expert.

5 MR. SWILLEY: I understand, Your Honor.

6 MR. SHEEK: And I am asking the State if we can
7 stipulate to the SLED report.

8 THE COURT: Well, he may qualify as an expert. I
9 don't have any objection, I don't care what y'all
10 stipulate to as long as it is not illegal and not immoral,
11 I don't care what you stipulate to. Y'all know that,
12 y'all are trying your own case but that is up to y'all.
13 If y'all want to stipulate to the report and to the
14 Officer's, and let the Officer testify also that is fine.
15 But he may have enough knowledge, whether it is self
16 taught or not, I mean I've qualified experts in grading,
17 hound dogs, there is a lot of people that know a lot about
18 things that they don't learn necessarily as forensic
19 experts at SLED or FBI or anywhere. He may have
20 knowledge, I don't know that his full and complete
21 knowledge is to qualify as an expert in the field of
22 identification and the workings of revolvers and
23 automatics. I don't know, I don't know the answer to that
24 question because I haven't heard the foundation.

25 MR. SWILLEY: Your Honor, all I was trying to get in

1 is the fact what he observed to show that it was, what he
2 observed was consistent with a revolver being shot rather
3 than an automatic pistol. That is really all I was trying
4 to get in.

5 THE COURT: And I don't think he has got to be an
6 expert to do that.

7 MR. SWILLEY: Okay.

8 MR. SHEEK: I just ask over time y'all stipulate to
9 that.

10 MR. SWILLEY: That's fine.

11 THE COURT: So we all get what we want.

12 MR. SHEEK: We all get what we want, yes sir.

13 THE COURT: Bring the jury back in, is that correct,
14 are you ready for the jury?

15 MR. SWILLEY: That's correct, Your Honor.

16 THE COURT: Bring them on, Mr. Bailiff. Thank you
17 very much. There is a great case about hound dogs and
18 experts out of Calhoun County, y'all ought to read it one
19 time. Ott versus, I can't remember the last name. Mr.
20 Ott, the legislature, he has champion Koon dogs, very
21 valuable. Great case.

22 (Whereupon, the jury came into open court at
23 approximately 11:56 a.m.)

24 THE COURT: Welcome back, ladies and gentlemen, we
25 are continuing the trial of the case by the presentation

1 and evidence of testimony by the State. Solicitor, you
2 may continue.

3 MR. SWILLEY: Thank you, Your Honor.

4 THE COURT: You may turn that board back towards the
5 juror.

6 CONTINUE DIRECT EXAMINATION

7 By Mr. Swilley:

8 Q Investigator Nichols, you were explaining how an
9 automatic, excuse me, how a revolver and a bullet, a .38
10 or a .380 could work. Go ahead.

11 A That's correct. There is several things that can be
12 addressed. We retrieved the bullet from the car, we
13 retrieved the bullet from our victim, Mr. Boyd, you can
14 see blood on the picture. We don't have the gun. The gun
15 was never recovered. The investigation, there was never
16 any evidence to support where that gun might be, where it
17 went. In looking at these four numbers, 355, 356, 7 and
18 8, .355, .356 and so on. These are common diameters of
19 what many of us consider to be a .38 caliber bullet. For
20 example, this is a .40 caliber bullet. If it was a .45
21 caliber bullet it would be .451, .452, .455, those are
22 pretty much common diameters of a bullet. Based on the
23 bullet, you folks will see I have a .9 millimeter, .38 and
24 a .380, there is an English and a metric system in the
25 bullet world. If you hear 7.62 millimeter that indicates

1 a .30 caliber round, that is the diameter of the bullet.
2 If you hear .9 millimeter that is also a .30 caliber round
3 because it is nominally 357 and 358 in diameter. A .38
4 caliber is nominally 356 and 357. You are probably
5 familiar with a .357 Magnum. A .357 Magnum and a .38
6 caliber round on steroids, it just has more powder behind,
7 only difference. The case is a little longer, a little
8 bit more power. That is it. A bullet that we recovered
9 from Travis Boyd and the bullet that we recovered from the
10 vehicle fell in between 85 and 95 grains. A little over
11 89 grains, I believe it was and a little bit over 95
12 grains or 92 grains, 91 grains and 89 grains. A couple of
13 ways this can be accomplished. The .380 was developed as
14 an automatic pistol cartridge in the early 1900's, 1908 if
15 my memory is correct. What you see here--

16 MR. SHEEK: Objection again, Your Honor, he is
17 showing something to the jury I've never seen.

18 A This can be entered into evidence.

19 MR. SHEEK: I would love to see it first.

20 A Absolutely.

21 Q Investigator Nichols, I think you were discussing how
22 the bullet that was taken from Travis Boyd's leg, can you
23 explain how that is, can be shot with a revolver.

24 A That is right. Using what I am fixing the jury right
25 there that Mr. Sheek is looking at.

1 MR. SHEEK: Your Honor, I am going to object to this.
2 I mean we still have got Rule 5 and Brady. We are
3 two-thirds into the trial. The State is wanting to
4 introduce in their case-in-chief something that I have
5 never seen.

6 MR. SWILLEY: Your Honor, I think he can explain
7 verbally, we don't have to introduce that.

8 THE COURT: All right. So you are withdrawing that?

9 MR. SWILLEY: Yes, that is correct.

10 THE COURT: All right, thank you. Solicitor, you may
11 continue.

12 A You folks saw the revolver. An automatic cartridge
13 is what you call a rimless case, it does not have a rim
14 that extends outside the diameter of the case. As to a
15 .38 and .357 as well. This is rimmed revolver case. All
16 the State is trying to say to you that it is possible that
17 there was a .380 bullet that shot Travis Boyd. We are not
18 making any conclusions that it was a .380, we are not
19 making any conclusions that it was a revolver, I never
20 said that in my report.

21 MR. SHEEK: Your Honor, I am going to have to point
22 another objection here. If he is responsive to the
23 questions that is fine. But closing arguments is not
24 proper at this time.

25 THE COURT: I will give him a little lead way. If

1 you can move along.

2 Q Investigator Nichols, if you could, you said you
3 could, as far as conclusions go you said you couldn't make
4 any type of conclusions. Could you specify about that?

5 A It was possible that the round that was pulled from
6 Travis Boyd is a .380. This is called a moon clip. A
7 moon clip is used to secure five to six automatic
8 cartridges. Cartridges that is designed to fire this type
9 of gun into a ring. That ring is then dropped into the
10 cylinder of a revolver. Those cartridges can be fired in
11 a revolver. And there is some background, there is some
12 background that is necessary to understand some of these
13 things because not everybody is aware. I want the jury to
14 understand the information. So this is a little metal
15 ring, this cartridge is placed into that ring, that ring
16 is then dropped into the same cylinder that I showed you
17 earlier. An automatic cartridge like the .380 ACP can be
18 fired in a .38 caliber revolver because all of these will
19 fit down the same barrel.

20 Q Investigator Nichols, is there anything else you did
21 in your investigation subsequent to this?

22 A Yes, sir. The victims and witnesses, a few lineups
23 of suspects and picked them out.

24 Q Okay. Thank you, Investigator Nichols, please answer
25 any questions that Mr. Sheek has for you.

1 CROSS-EXAMINATION

2 By Mr. Sheek:

3 Q Did Demetrius Andrews pick him out of a lineup?

4 A Demetrius Andrews was not able to identify the
5 suspect, Mr. Sheek.

6 Q Did Kelvin Goode pick him out of a lineup?

7 A Kelvin Goode was not able to.

8 Q The only ones that picked him out of the lineup were
9 these four that knew him and had some issue with him
10 previously, correct?

11 A They knew him previously, I am not sure of any
12 previous issues.

13 Q You heard the testimony, did you not, you have been
14 here for the whole trial?

15 A Yes, sir.

16 THE COURT: Wait a minute. Now he shouldn't, he is
17 an Officer that was excluded to this.

18 MR. SHEEK: Yes, sir.

19 Q These boys came up and the other boys got out to
20 fight, you were here for that, right?

21 A Yes, sir.

22 Q And based on your experience in law enforcement,
23 Officer, did that indicate that there was something past
24 history or bad blood between them?

25 A It would normally but I can't prove any of that.

1 Q Okay. Let's talk about what we can prove. You sit
2 up here and you talk about using the moon clip which are,
3 you would agree, are uncommon, right?

4 A I would agree with that.

5 Q How many times in your career have you dealt with a
6 case where somebody has taken a moon clip in order to use
7 380 ACP ammunition to fire through a .38 caliber revolver?

8 A Thus far none that I can remember.

9 MR. SWILLEY: Objection, Your Honor, I don't think
10 pass instances are really relevant.

11 THE COURT: Overrule the objection.

12 Q The rounds you passed around to the jury that I
13 provided you is a .38 caliber round, correct?

14 A Yes, sir.

15 Q It is not an expensive round, is it?

16 A No.

17 Q As a matter of fact, it is less expensive than the
18 .380 automatic round, isn't it?

19 A Is that an issue?

20 Q Are you asking me the question or I am asking you the
21 question?

22 A I am not sure where you are going, sir.

23 Q Well, you testified to your vast knowledge that
24 anybody could find out the reloading magazines and things
25 like this. My question is, based on your experience and

1 knowledge, is the .380 caliber automatic ammunition not
2 more expensive than a .38?

3 A That would likely depend on what kind of bullets,
4 powder loading and primers were involved in the cartridge,
5 sir.

6 Q Well, let's talk about the projectiles you found on
7 the scene. Were they full metal jacket or hollow points?

8 A The projectile that were removed from the vehicle and
9 from Mr. Boyd were full metal jackets.

10 Q Okay. Is that an expensive type of ammunition?

11 A Normally it is not.

12 Q It is normally what we call a target round, right?

13 A Normally, yes sir.

14 Q For self-defense most people would use the more
15 expensive hollow point ammunition, right?

16 A In my experience there is no telling what we will
17 find on cases. Occasionally we do find hollow points and
18 occasionally we find full metal jackets.

19 Q Well, let me ask you this. When the police use their
20 weapon for self-defense what have you got loaded in those
21 magazines on your hip?

22 A Certainly hollow points.

23 Q There are hollow points. Hollow points are more
24 expensive, aren't they?

25 A They are.

1 Q And you gathered up these projectiles and you sent
2 them to the State Law Enforcement Division to test them,
3 did you not?

4 A Sergeant Griffin handled that, I believe, sir.

5 Q Well, somebody at your department sent them to SLED,
6 didn't they?

7 A That's correct, Sergeant Griffin.

8 Q You are the lead investigator on this case, right?

9 A That's correct as well.

10 Q Ultimately all the information comes back to you?

11 A That's right.

12 Q You received that report, didn't you?

13 A I did.

14 Q And that report run by the SLED Forensic Scientist
15 indicated that the projectiles you provided to him, that
16 being the projectile found on the ground and one taken
17 from Mr. Boyd's leg, were most likely fired from a .380
18 automatic ammunition, right?

19 A Said they were most consistent with bullet loaded
20 into some .380 auto caliber cartridges, not that they were
21 fired.

22 Q And that is the reason you have come up with this
23 moon clip theory that you presented to the jury?

24 A It is simply a possibility to illustrate what could
25 have been.

1 Q Well, we are not dealing with possibilities, we are
2 dealing with truth beyond a reasonable doubt, aren't we?

3 MR. SWILLEY: Objection, Your Honor.

4 THE COURT: You can rephrase the question.

5 Q Let's talk about the cartridges that you found. Now
6 you made one interesting statement to the Solicitor. You
7 said that the reason it being a revolver was important
8 because there was no cartridges found on the scene. Is
9 that what you testified to?

10 A That's correct.

11 Q Okay. The .9 millimeter cartridge that y'all
12 submitted to SLED that is referenced in that report, where
13 was it found?

14 A It was found up the street, sir.

15 Q Was that towards the direction of Mr. Goode indicated
16 that people were firing?

17 A No, sir.

18 Q It was found on a different direction?

19 A If I read what Sergeant Griffin advised. While
20 processing the scene Master Patrolman Trotter advised via
21 radio that he had located a shell casing in the roadway
22 west of the incident location. At this time I responded
23 to Trotter's location where he pointed out the shell
24 casing. I did photograph the shell casing in place and
25 collected it where I found it, it was a .9 millimeter

1 shell casing.

2 Q Did you see the part where it was wrote that it
3 appeared to be recently fired?

4 A That is mine and I am going to read that for you as
5 well. During the initial investigation, and ladies and
6 gentlemen of the jury, this is from me. Officer Trotter
7 located a shell casing which was also collected by
8 Sergeant Griffin. The casing is marked FC for Federal
9 Cartridge, .9 millimeter Parabellum. The casing appeared
10 to have been received fired. Though at this time it is
11 unclear if it is connected to this incident. The bullet
12 weights previously mentioned are not consistent with a .9
13 millimeter bullet which is generally of slightly heavier
14 weight and larger dimension overall.

15 Q Did you also read the part where you said, however it
16 may be fired by the second suspect?

17 A That's right. According to the victims and witnesses,
18 statements the round may have come from a second suspect.
19 They are not sure who.

20 Q So the victims and witnesses indicated to you that
21 there was more than one shooter?

22 MR. SWILLEY: Objection, Your Honor, hearsay.

23 THE COURT: I overrule that objection.

24 Q You can go ahead and answer that question.

25 A They did, sir, but there is no evidence at this time

1 nor was there any at that time to support an arrest of a
2 second suspect, Mr. Sheek.

3 Q Is an eyewitness telling you I saw Zay shooting a gun
4 not evidence?

5 A They cannot identify Zay positively.

6 Q Well did you put a name in your incident report who
7 Zay was?

8 A That's right, Zantavis Fuller.

9 Q So what does Mr. Fuller have to say to that?

10 A I have not spoken to Mr. Fuller in reference to this
11 case.

12 Q What efforts have you made to locate Mr. Fuller to
13 speak with him about this case?

14 MR. SWILLEY: Objection, Your Honor, irrelevant.

15 THE COURT: I would overrule that objection.

16 A Sir, at this time there is no evidence to support an
17 arrest for Mr. Fuller.

18 Q I didn't ask you about arresting him, sir. I asked
19 you, you got the name of a man given to you as being on
20 the scene, possessing a gun and firing. My question is,
21 what efforts have you made to locate him and question him
22 about this incident?

23 A I will tell you, you are correct, sir, none.

24 Q None?

25 A No, sir.

1 Q Okay. Now did you also talk to Adrian Gaston?

2 A That's correct.

3 Q And is his statement also consistent with the more
4 than one person firing a gun?

5 MR. SWILLEY: Objection, Your Honor, that is hearsay.

6 THE COURT: He hadn't testified?

7 MR. SWILLEY: He has not.

8 THE COURT: I think that would be hearsay, Mr. Sheek.

9 MR. SHEEK: May I lay a little groundwork then, Your
10 Honor.

11 THE COURT: Certainly, you may ask your next
12 question, sure.

13 Q Have you attempted to locate Mr. Gaston?

14 A Yes sir, as a matter of fact I have.

15 Q And have you been able to locate him in any manner?

16 A Yes, sir.

17 Q Then you consider him unavailable for this trial?

18 A Yes sir, as a matter of fact I do.

19 Q Okay. And you took a recorded statement from him?

20 A I believe so.

21 Q Okay.

22 MR. SHEEK: Your Honor, I would like to be able to
23 offer a recorded statement under the exception of the
24 witness unavailability. They have made every effort they
25 say to locate him and can't do so.

1 THE COURT: Just a minute, Mr. Sheek.

2 MR. SWILLEY: Your Honor, I don't think that I have
3 had a chance to cross-examine that statement.

4 THE COURT: When I look at 804(a), definitions of
5 availability, Mr. Sheek, I am not sure it fits in 1, 2, 3,
6 4 or 5. 5 would be the closest in my opinion and it
7 states, is absent from the hearing and the proponent of
8 the statement has been unable to procure the declarant's
9 attendance. That would be the closest and I don't think
10 that has been met. So I would renew my ruling, I think it
11 is hearsay.

12 MR. SHEEK: All right. Just to be clear then the
13 State objects to that statement?

14 MR. SWILLEY: Your Honor, the State's objects. I
15 believe it is hearsay and does not fall within Rule 804,
16 subsection (a)(5).

17 MR. SHEEK: Okay.

18 Q Then excluding Mr. Gaston's statement Mr. Goode
19 testified there was more than one shooter, correct?

20 A Mr. Sheek, I would probably have to listen to Mr.
21 Goode's statement again, to be honest with you, for
22 details.

23 Q You don't remember from the interview or from his
24 testimony in here yesterday whether or not if he says it
25 was more than one shooter?

1 A I would certainly like to listen to it to be more
2 positive of that.

3 Q You would agree that that would be a really big deal
4 in this trial, whether or not there was more than one
5 shooter, wouldn't you?

6 MR. SWILLEY: Objection, Your Honor, that calls for
7 speculation.

8 THE COURT: Rephrase the question. Big deal is a
9 relevant term, what is a big deal to one is a small deal
10 to another. So rephrase the question.

11 Q You agree that it would be a critical piece of
12 evidence of whether or not there was more than one shooter
13 on the scene?

14 A I think based on the evidence that is at the scene,
15 if you are asking about the .9 millimeter shell and
16 whether there was a second shooter, the bullet pulled from
17 Travis, our victim, and the bullet pulled from the vehicle
18 were much too small to be a .9 millimeter. If you would
19 like to indicate if there was a second shooter I sure
20 would love to know. I don't disagree with you there. If
21 you would like to indicate, if you are implying, I am not
22 sure if you are or not. If you are implying that there
23 was a second shooter who may have harmed Mr. Boyd, the
24 evidence doesn't support that, sir.

25 Q Let me ask you this then. Does the evidence support

1 and that being the witness statements because that is
2 really all we have got. We have got witness statements
3 and projectiles, right?

4 A Yes, sir.

5 Q There is nothing on that projectile that ties it to
6 Whitney Span, is there?

7 A No, sir.

8 Q So we have got projectiles, we have got a victim we
9 know is shot. The question is who did it, right?

10 MR. SWILLEY: Objection, Your Honor. Your Honor, I
11 think that is a matter of law, I don't think that is
12 within the purview of--

13 THE COURT: He is on cross-examination. Ultimately,
14 ladies and gentlemen, y'all determine the facts of the
15 case, y'all are the fact finders. So you understand that
16 and you recall back, I told you originally what the
17 lawyers say is not evidence. It is the responses of the
18 witness, their questions are the framework by which the
19 witness testifies before you. Thank you, Mr. Sheek, you
20 may ask your next question.

21 Q So the question is, who did it, that is what we are
22 here about, right?

23 A Yes, sir.

24 Q Okay. And so the testimony of your witnesses that
25 you interviewed and brought to court, Mr. Parker and Mr.

1 Goode is that there were other people on the scene with
2 guns firing, correct?

3 A I would like to listen to Mr. Goode's statement
4 again, but if that is what he said then that is what he
5 said.

6 Q And if that was the sworn testimony then the question
7 is, if the projectile was struck with the defendant was it
8 fired by Mr. Span assuming he was firing a gun?

9 A According to the witnesses it was indeed fired by Mr.
10 Span.

11 Q According to the witnesses it was?

12 A It was fired by Mr. Span.

13 Q Which witness?

14 A Mr. Parker, Mr. Goode.

15 Q Did Mr. Boyd have his back turned?

16 THE COURT: That is argumentative, he gives the
17 answer. Ask your next question.

18 Q I am going to hand you what has been marked as
19 State's exhibit number 9. Is that a picture of the
20 projectile that you previously talked about?

21 A That is a picture of a projectile.

22 Q Was that picture taken where the projectile was
23 located?

24 A Yes sir, the projectile was located there.

25 Q Okay. If we refer to what has been marked as State's

1 exhibit number 14 which is on the screen back here is that
2 the same projectile we see laying right here, right beside
3 that little leaf?

4 A It appears to be.

5 Q Okay. And that is on the passenger side of this
6 Pontiac Grand Am, right?

7 A It appears to be.

8 Q And that is where Mr. Boyd told you he was standing
9 when he got shot, right?

10 A Notwithstanding listening to Mr. Boyd's testimony or
11 his statement to me, again in order to recollect properly,
12 he was at one point and time during this case on both the
13 passenger and the driver's side of the vehicle.

14 Q Do you recall where he told you he was standing when
15 he dove into the vehicle when he got shot?

16 MR. SWILLEY: I am going to object, Your Honor, I
17 think that is hearsay as well.

18 THE COURT: I will allow him to answer the question.
19 The question is do you recall where. The answer is only
20 yes or no..

21 A Your Honor, I can't recall precisely.

22 Q Then I refer to you what has been marked State's
23 exhibit number 1 that is on the screen here. Was that
24 picture also taken by the police department?

25 A Yes, sir.

1 Q And is this to preserve the crime scene for evidence
2 purposes?

3 A Yes, sir.

4 Q And the importance is making sure everything is
5 preserved just as it is for presentation of court,
6 correct?

7 A That is the hope.

8 Q Who shut the door?

9 A I am unsure.

10 Q Well, do you have somebody from your department that
11 was in charge of things at the crime scene who could tell
12 us who shut the door?

13 MR. SWILLEY: Objection, Your Honor, calls for
14 speculation.

15 THE COURT: I will allow the question, this is the
16 Chief Officer.

17 A Mr. Sheek, Sergeant Griffin handles our crime scene
18 duties for the most part. It is not known to me who shut
19 that door or why they did it.

20 Q As lead investigator did you ever ask who shut it or
21 why they did it?

22 A No sir, I didn't.

23 Q Did you think it was important?

24 A After we collect evidence, after we policed the
25 scene, the scene is clear of any civilians, the scene is

1 kept clear of anybody else that is not involved in the
2 case. Shutting that door after pictures and evidence and
3 such as bullets are collected, at that time the scene will
4 be released. Shutting the door, in other words, didn't
5 destroy any evidence if that is what you are implying.

6 Q Well, we are going to talk about bullets and
7 projectory's in a second so it might be important. You
8 have got a bullet in the driver's side dash down on the
9 lower portion, isn't that correct?

10 A Yes sir, that is correct.

11 Q And you said it appeared to have flesh and blood on
12 it, right?

13 A It appeared that way in the photograph, yes sir.

14 Q So you would, assuming that you believe that that is
15 evidence, the bullet that entered that area of the dash
16 had passed through the victim?

17 A That is a possibility, yes.

18 Q Well do you know any other way it might have picked
19 up flesh and blood on it?

20 A No sir, that is why I said it was a possibility, sir.

21 Q And did you notice any bullet holes in the door or
22 the trunk or anywhere else?

23 A On the lower trim.

24 Q On the lower trim of the door?

25 A Yes, sir.

1 Q Okay. So did that indicate that if that bullet
2 entered the dash it came through the door?

3 A Possibly.

4 Q So that would mean the door was closed?

5 A The doors were open also in several other pictures.

6 Q Are you referring to what has been marked as State's
7 exhibit number 11, that one passes through the trim?

8 A At the bottom, yes sir.

9 Q Okay. And do you believe that the projectory of that
10 bullet would have taken into the dash of that car?

11 A No sir, I don't actually.

12 Q That was most likely be a different shot than the one
13 that entered the dash?

14 A It is possible, yes sir.

15 Q So by the evidence of a bullet hole being the dash of
16 that car the question was, would it appear that it struck
17 the victim on the driver's side and then it entered the
18 dash?

19 A It could appear that way, yes sir.

20 Q And it would also appear that the door would have
21 been opened because there are no bullet holes going
22 through the door or the windows, are they?

23 A No sir, there is not except for the back glass.

24 Q The back glass is busted out, right?

25 A That's right. And bullet fragments were found in the

- 1 seat where the back glass was busted.
- 2 Q So that would be a different shot?
- 3 A Yes, sir.
- 4 Q So we have got the three in the victim, right?
- 5 A That's correct, three hits.
- 6 Q We have got the one that hit the door on the lower
- 7 trim?
- 8 A That's right.
- 9 Q Number four. In the dash, right?
- 10 A That's right.
- 11 Q Okay. We have got one on the ground, right?
- 12 A It could have bounced from anywhere, yes sir.
- 13 Q We have also got bullet defects on the building,
- 14 right?
- 15 A That's right.
- 16 Q So how many shots were you able to determine were
- 17 fired out there?
- 18 A I am not able to determine that, I am not a crime
- 19 scene technician, sir.
- 20 Q Who was the crime scene technician?
- 21 A Sergeant Griffin.
- 22 Q Sergeant Griffin?
- 23 A Yes, sir.
- 24 Q And is he here to testify?
- 25 A She is not here.

1 Q So your crime scene technician tell this jury how
2 many bullet strikes we have is not here?

3 MR. SWILLEY: Objection, Your Honor.

4 THE COURT: It's overruled.

5 A She may be able to, that would be for her to decide.

6 Q But you are not able to tell us?

7 A I can't tell you how many bullets were fired but
8 based on the evidence at the scene no shell casings and
9 only one .9 millimeter shell casing that we are not
10 positive that is even connected to the scene were there.
11 Granted it is a mystery, there is many more bullet impacts
12 in there than there are shell casings.

13 Q That's right. And many more bullet impacts then
14 there are shell casings would indicate that maybe many
15 more bullets were fired?

16 A Not necessarily.

17 Q Is it your belief then that Mr. Span was firing a
18 revolver that somehow held nine or ten?

19 A It is quite possible, smaller cartridges.

20 Q Are you aware since you told us about your expertise
21 in the area, what .38 caliber handgun revolver has a
22 revolver that carries eight or ten shells?

23 A I haven't spoken on any expertise matters as a matter
24 of fact. And there have been revolvers that are chambered
25 for the .380 cartridge specifically as well as recently as

1 2010, sir.

2 Q You keep referring to the .380 as a smaller caliber.

3 Actually we are talking about a .380, we are talking about
4 diameter, aren't we?

5 A Yes sir, that is correct.

6 Q That is why the .380, the .9 millimeter and the .38
7 are all within a fracture of a hundredth of an inch--

8 A Thousandth of an inch, yes sir.

9 Q Okay. So when you keep saying, smaller bullet, it is
10 not a smaller bullet. It is just that the .380 auto
11 cartridge is a smaller cartridge than the .38 cartridge?

12 A The bullet is quite a bit lighter than any of the
13 other cartridges.

14 Q Weight depends on what kind of bullet it is, doesn't
15 it, whether it is a full metal jacket, hollow point?

16 A To an extent but there is also ranges which I
17 provided you earlier.

18 Q But when we are talking about the number of rounds in
19 a chamber diameter is what is going to matter, right?

20 A Not normally.

21 Q Not normally?

22 A That's right, not normally. We don't have a gun.

23 Q You don't have a gun. Were there any, you said the
24 .9 millimeter in the report appeared to be recently fired,
25 did you do any gunshot residue testing on it?

1 A No sir, at that time we did not to my knowledge.

2 Q Tell the jury why.

3 A Sergeant Griffin again handles that. If there was
4 GSR testing on that round and quite frankly, ladies and
5 gentlemen, if you fire a bullet and pick it up a week
6 later there is a good chance you will still find power.
7 GSR is gunshot residue test. It is a test we do on
8 people's hands to see if they fired a gun recently. It is
9 not normally performed on bullets for evidentiary
10 purposes. We can see that the bullet has been fired,
11 there is going to be gunshot residue inside there because
12 powder has ignited.

13 Q Recently fired bullet will also have gunshot residue
14 on the outside, won't it?

15 A Quite possibly.

16 Q But if that bullet is laid there in the rain that
17 washes off, doesn't it?

18 A Possibly.

19 Q Or if the bullet is laid in the road where this
20 bullet was found for some time it might get run over.

21 A That is possible as well, sir.

22 Q There was absolutely no indication that that bullet
23 had laid there for any length of time, it appeared to be
24 freshly fired, didn't it?

25 A It did.

1 Q Now what direction did Mr. Goode say people were
2 actually going while they were still shooting?

3 A I can't recall without listening to his statement
4 again.

5 Q And as lead investigator did you direct the forensic
6 technician on the scene to do any type of testing on that
7 .9 millimeter, fingerprint, gunshot residue, anything
8 else?

9 A No sir, I did not direct her to do any further
10 testing.

11 Q Now the SLED report that I handed you, do you still
12 have that?

13 A I do.

14 MR. SHEEK: Your Honor, I would like to go ahead and
15 have that marked and entered into evidence.

16 THE COURT: This is 4?

17 COURT REPORTER: Yes, sir.

18 THE COURT: Defendant's 4 is in evidence, without
19 objection, Solicitor?

20 MR. SWILLEY: That's correct, Your Honor.

21 (Whereupon, Defendant's Exhibit 4 was admitted into
22 evidence.)

23 Q Referring to the paragraph under item 3, what does it
24 say, read to the jury what it says about the
25 characteristics of that projectile to a specific firearms?

1 A Examination of items 2 and 3 reveal that they were
2 most consistent with bullets loaded into some .380 auto
3 caliber cartridge. Due to poor rifling engagement with
4 limited marks of value items 2 and 3 may or may not be
5 suitable for identification with a specific firearm or
6 firearms. The results of microscopic comparisons between
7 items 2 and 3 were inconclusive. It could not be
8 determined whether items 2 and 3 were fired by the same
9 firearm or by different firearms. Due to poor rifling
10 engagement the general rifling characteristics of items 2
11 and 3 could not be reliably determined. Therefore a list
12 of possible firearms that could have fired items 2 and 3
13 have not been provided.

14 Q So the SLED, the expert at the State Law Enforcement
15 Division told you that that projectile may or may not be
16 able to be matched to a specific firearm.

17 A That is correct, sir.

18 Q What followup did you do with him to see if it may
19 be--

20 A We don't do a followup when we get a report like
21 this. He said it is inconclusive and we do not have a gun
22 to test that bullet against. I cannot followup on that
23 report.

24 Q When it says may or may not to a specific type of
25 firearm. You are familiar with cases where they can tell

1 you it has got five grooves, right hand twist which is
2 consistent with a Ruger. You are familiar with this,
3 right?

4 A Yes, I am.

5 Q Did you ever call that scientist and ask him, when
6 you say may or may not be matched up to a specific type of
7 firearm what do you mean?

8 MR. SWILLEY: Objection, Your Honor. He didn't make
9 that report, I don't think he can tell exactly what it
10 means.

11 THE COURT: Rephrase the question.

12 Q My question was, Your Honor, for clarification. Did
13 you ever ask him and call him, did you ever call him and
14 ask him what it means. That is a yes or no.

15 A No sir and I will tell you why. Due to poor rifling
16 engagement, this is from the SLED expert, ladies and
17 gentlemen of the jury. The general rifling
18 characteristics of items 2 and 3 could not be reliably
19 determined. Therefore a list or lists of possible
20 firearms that could have fired items 2 and 3 has not been
21 provided. If the expert can't tell on his initial which
22 one, which type of firearm or what brand might have fired
23 it then, we don't have a gun to compare it to then there
24 is no followup. I am sorry.

25 Q That report doesn't say a list cannot be provided, it

1 says a list has not been provided, right?

2 A Yes, sir.

3 Q Okay. You said yourself you did not go interview or
4 attempt to interview Mr. Fuller or anybody else, right?

5 A It is not documented in my report, sir.

6 Q After taking up these recorded statements on October
7 22nd did you take any other statements from witnesses?

8 A No sir, not at that time.

9 Q Did you request any other statements?

10 A No sir, I didn't.

11 Q Did you request any other type of scientific testing
12 other than what we have talked about in the SLED report?

13 A No, sir.

14 Q Have you followed up with the forensic person on the
15 scene to determine how many bullet strikes they were able
16 to identify?

17 A No sir, I have not.

18 Q What have you done on this invest, well I am not
19 going to ask that. Let's just say then, what you are
20 telling this jury is you accepted the statements about Mr.
21 Span's shooting, discounted the statements about anyone
22 else shooting and just kind of went with that one theory?

23 A Did not discount, but did consider there is enough
24 evidence to pursue an arrest on another subject.

25 Q What was the evidence on Mr. Span, was it eyewitness

1 testimony?

2 A That is correct, sir.

3 Q Was there eyewitness testimony on Mr.--

4 MR. SWILLEY: Objection.

5 THE COURT: The jury would end up determining what
6 evidence does or does not exist as far as the facts are
7 concerned.

8 Q I will rephrase the question. So you didn't consider
9 the eyewitness testimony about the other shooter as
10 valuable as the eyewitness testimony about Mr. Span?

11 A I will tell you through my training I probably did as
12 a matter of fact.

13 Q I have got no more questions.

14 THE COURT: Redirect, Solicitor?

15 MR. SWILLEY: There is none, Your Honor.

16 THE COURT: Thank you very much. Any more windiness,
17 Solicitor?

18 MR. SWILLEY: The State rest at this time, Your
19 Honor.

20 THE COURT: Ladies and gentlemen of the jury, now
21 would be a perfect time for a recess. Remember my
22 instructions to you, do not discuss the case with anyone.
23 That includes your fellow jurors, family, friends or
24 anyone else. Do not begin your deliberations until you
25 have heard all the evidence, all of the testimony and

1 closing arguments by the attorneys and the charge on the
2 law and then instructed by the Court to begin your
3 deliberations. With that being said please be back at
4 2:15.

5 (Whereupon, the jury was excused from open court for
6 a lunch break.)

7 THE COURT: I want to hear motions upon our return.
8 I have still got the discovery violation, the motion on
9 the discovery violation under advisement and I will wait
10 on the motions also when we return.

11 (Whereupon, a lunch break was taken.)

12 THE COURT: Sheriff, will you bring me the young man
13 I had you take into custody.

14 OFFICER: Your Honor, he has been rode over to the
15 detention facility to be held there.

16 THE COURT: How long will it take to get him over
17 here?

18 OFFICER: Ten minutes.

19 THE COURT: I will wait on him. If you will bring
20 him over I will wait on him.

21 (Whereupon, a short break was taken while.)

22 THE COURT: Place your left hand on the bible and
23 raise you right.

24 CALVIN JONES, being
25 first duly sworn, testified as follows:

1 THE COURT: Mr. Jones, how old are you?

2 MR. JONES: 19.

3 THE COURT: How much education do you have?

4 MR. JONES: Ninth grade.

5 THE COURT: What type of work do you do?

6 MR. JONES: I don't do any work. I am looking for a
7 job.

8 THE COURT: Have you worked in the past?

9 MR. JONES: Yes, sir.

10 THE COURT: What type of work did you do in the past?

11 MR. JONES: Restaurant.

12 THE COURT: Do you know why I had you taken into
13 custody?

14 MR. JONES: Yes, sir.

15 THE COURT: Why is that?

16 MR. JONES: Talking in the courtroom.

17 THE COURT: Talking in the courtroom and being
18 disrespectful to the Court, to the parties and to the
19 defendant and the jury. It can be distracting to the
20 Court and it can be distracting to the jurors and you
21 never know how they might take that. Where you were
22 sitting I observed that twice and the first time I just
23 let it pass because I try to be tolerant. The second time
24 as you can see my tolerance had ended. They could hold
25 that against Mr. Span. You wouldn't want them to do that,

1 would you?

2 MR. JONES: No, sir.

3 THE COURT: Is he a friend of yours?

4 MR. JONES: Brother.

5 THE COURT: And it is important to be down here
6 supporting a family brother, is that correct?

7 MR. JONES: Yes, sir.

8 THE COURT: That is very important but at the same
9 time it doesn't do him any good and it certainly doesn't
10 do you any good to end up in the Greenwood County jail,
11 does it?

12 MR. JONES: No, sir.

13 THE COURT: I appreciate you being forthright with me
14 since I brought you back over here and telling me that you
15 understood why I had you taken into custody. What type of
16 punishment do you think I ought to impose. What do you
17 think I ought to do with you?

18 MR. JONES: I can't think.

19 THE COURT: Any thoughts in your mind about what type
20 of punishment?

21 MR. JONES: A fine.

22 THE COURT: That just takes money out of your pocket
23 that you probably don't have because you are not working.
24 Any other options?

25 MR. JONES: No, sir.

1 THE COURT: Well I find that your conduct was
2 contemptuous. I am sentencing you to three hours in jail,
3 you have got credit for time served. In other words, the
4 time you have already spent in jail I am going to let that
5 go towards your credit. I am going to release you from
6 the Greenwood County Detention Center. Can I trust you to
7 allow you to remain in the courtroom and can be respectful
8 to the Court and respectful to the parties and respectful
9 to the jury?

10 MR. JONES: Yes, sir.

11 THE COURT: If you can't do that the best thing you
12 do is leave now. If you can do that I am going to allow
13 you to stay. You know yourself best. If you don't think
14 you can control yourself and be respectful you need to
15 leave. If you can control yourself and be respectful you
16 are welcome to stay. Do you understand?

17 MR. JONES: Yes, sir.

18 THE COURT: What did you have for lunch?

19 MR. JONES: Nothing.

20 THE COURT: You didn't want that prime rib or
21 whatever they had over there at the jail for lunch? What
22 did they have?

23 MR. JONES: I don't know.

24 THE COURT: You ought to show better judgment and
25 behavior. Sheriff, he is released from the custody of the

1 Greenwood County Detention Center. I give him credit for
2 his time served. I find him in contempt. Mr. Jones, you
3 can go about your business. You can remain in court as
4 long as you are respectful.

5 How about Mr. Span. I believe the State had rested.
6 I have not yet ruled on the discovery issue, perhaps I
7 should do that before the motion. Rule 5 of the South
8 Carolina Rules of Criminal Procedure. Of course the Court
9 may rule that requires certain matters be discoverable.
10 Rule 5(a)(1)(c) requires upon request of the defendant the
11 prosecution shall permit the defendant to inspect and copy
12 books, papers, documents, photographs, tangible objects,
13 buildings or places or copies or portions thereof which
14 are within the possession, custody or control of the
15 prosecution which are material to the preparation of his
16 defense or are intended for use by the prosecution as
17 evidence in chief at trial or were obtained from or belong
18 to the defendant. As I understand the motion during the
19 testimony of Sergeant Ray Pope who was on the scene on
20 November, excuse me, October 22nd of '11, he indicates
21 that he did not prepare an incident report, that he took
22 certain notes and that they were possibly taped, you would
23 check with dispatch. He had no knowledge of the tapes, he
24 is not sure where his notes were. He further indicated to
25 the Court, his recollection was from the witnesses was

1 that there was at least two shooters. The defense
2 objected and moved for a motion to dismiss based on
3 discovery violation, as I understand it, of the absence of
4 Sergeant Pope's notes. Sergeant Pope further indicated
5 that he gave the information, not the notes, but the
6 information to Lieutenant Greenfield who prepared the
7 incident report. Although there was no review by the
8 Sergeant while testifying of Lieutenant Greenfield's
9 incident report, as I understand the Sergeant's testimony
10 is a reasonable inference that the substance of the
11 Sergeant's notes were incorporated into Lieutenant
12 Greenfield's incident report. I think the question
13 becomes, was the evidence within the actual possession of
14 the prosecution, it was not. However there was at one
15 time in the possession of another government agency being
16 the Greenwood Police Department and was it material for
17 purposes of Rule 5. And then thirdly whether or not it
18 was prejudiced suffered by the defendant if it was a
19 violation. I find it is not a violation, Rule 5, if it is
20 incorporated in Lieutenant Greenfield's incident report.
21 I would further find however, if some reviewing Court
22 would say, well, that was a discovery violation, that
23 there has been no prejudice whatsoever suffered by the
24 defendant in regards to that. He was also fully
25 cross-examined on those matters. Again to reiterate it

1 was incorporated in Lieutenant Greenfield's notes. I fail
2 to see any prejudice in that regard so the motion to
3 dismiss under a Rule 5 violation is denied. Mr. Sheek,
4 you have other motions now that the State has rested?

5 MR. SHEEK: I would for the record make a motion for
6 directed verdict in the charge of assault and battery with
7 intent to kill based upon the fact that there was
8 testimony in evidence taken in the light most favorable to
9 the State by their own witnesses is that there were at
10 least two shooters on the scene. They can present no
11 evidence as to which person actually may have shot a round
12 and struck the victim. And that while they don't have,
13 proven within scientific certainty, it has got to be more
14 than mere conjecture and at this point mere conjecture is
15 what they presented.

16 THE COURT: Thank you very much. I would
17 respectfully deny that motion. At the directed verdict
18 stage I am looking at the existence of the evidence,
19 either direct or substantial circumstantial evidence.
20 There is testimony, eyewitness account although the
21 eyewitnesses are moving targets, they were out there on
22 the street it seemed like some time. There is eyewitness
23 testimony that he showed the gun, he, Mr. Span showed the
24 gun once. At a later point he pulled the gun out, he
25 pointed it at all of them, he fired the gun. One witness

1 testified he saw fire actually coming out of the barrel of
2 the gun. The circumstantial evidence, of course, is the,
3 if there were five as you count, as the defense counts
4 minimum shots fired. There was only one .9 millimeter
5 shell found that may or may not have been related to the
6 incident. Circumstantial evidence would be it was a
7 revolver, there were no shell casings, the car was struck,
8 the interior of the car had a bullet embedded into it with
9 blood and human tissue. A human had a bullet embedded in
10 him that was removed, those were consistent, one with the
11 other. I think based on the standard now, taken in the
12 light most favorable to the State that there is ample
13 evidence. And you said assault and battery with intent to
14 kill but as to attempted murder.

15 MR. SHEEK: Yes, I am sorry.

16 THE COURT: That is all right, I am not use to that
17 terminology quite yet myself, Mr. Sheek. But I would
18 respectfully deny that motion.

19 Does the defendant intend to present any evidence in
20 testimony?

21 MR. SHEEK: He does, Your Honor. I have spoken with
22 the defendant and he feels like he wants to take the stand
23 and testify in his own defense. I would ask the Court to
24 go ahead for the record to make sure he understands his
25 Sixth Amendment rights.

1 THE COURT: Come around to the microphone. Madam
2 Clerk, place Mr. Span under oath, please.

3 WHITNEY SPAN, being
4 first duly sworn, testified as follows:

5 THE COURT: Tell me your full name.

6 MR. SPAN: Whitney Desmond Span.

7 THE COURT: How old are you?

8 MR. SPAN: 19.

9 THE COURT: How much education do you have?

10 MR. SPAN: Tenth grade.

11 THE COURT: We reached the stage where I have to go
12 over some matters with you. I do this with everyone who
13 is on trial and I require your answers to be under oath,
14 that is why I had you placed under oath. Do you
15 understand?

16 MR. SPAN: Yes, sir.

17 THE COURT: The stage of the trial where we are at is
18 the State has rested. Your side has also, has already
19 presented some evidence, I believe defense 1 through 4.
20 However, your side may present other evidence if you
21 choose to do so. Do you understand where we are at in the
22 trial?

23 MR. SPAN: Yes, sir.

24 THE COURT: In that regard, through your attorney,
25 your side may call witnesses to testify. And if you

1 choose to testify yourself you may do so. Do you
2 understand?

3 MR. SPAN: Yes, sir.

4 THE COURT: No one can force you to testify. You
5 have an absolute right to remain silent. And if you
6 choose not to testify I will tell this jury that they
7 cannot hold your silence against you in any way. I will
8 tell them that they cannot even consider that or discuss
9 that in their deliberations in reaching the verdict in
10 this case. Do you understand?

11 MR. SPAN: Yes, sir.

12 THE COURT: Mr. Sheek, Solicitor, does the defendant
13 have a prior criminal history that would subject him to
14 impeachment under 609?

15 MR. SWILLEY: He does not, Your Honor.

16 THE COURT: So that is not a concern. Mr. Span, the
17 decision about whether you testify or not is your decision
18 to make, not your lawyer, not your family, not your
19 friends. It is your decision, it is your call. You and
20 you alone. I expect that you have conferred with your
21 attorney and with others whose opinions you value on
22 important issues. But again it is your call to make, your
23 decision. Do you understand?

24 MR. SPAN: Yes, sir.

25 THE COURT: Has anyone exercised any undue influence

1 over you to get you to choose to testify or not to
2 testify?

3 MR. SPAN: No, sir.

4 THE COURT: Today are you under the influences of any
5 medication, alcohol or drugs or anything that negatively
6 affects your thinking ability?

7 MR. SPAN: No, sir.

8 THE COURT: Do you suffer from any physical or mental
9 problems that affect your thinking today?

10 MR. SPAN: No, sir.

11 THE COURT: Have you discussed your right to testify
12 or not to testify with your attorney?

13 MR. SPAN: Yes, sir.

14 THE COURT: Do you need any more time to talk with
15 your attorney?

16 MR. SPAN: No, sir.

17 THE COURT: Have you made your decision about whether
18 or not you are going to testify?

19 MR. SPAN: Yes, sir.

20 THE COURT: Do you have any questions you would like
21 to ask me about your right to testify or not to testify?

22 MR. SPAN: No, sir.

23 THE COURT: And what is your decision, Mr. Span?

24 MR. SPAN: I am going to testify.

25 THE COURT: You are going to testify?

1 MR. SPAN: Yes, sir.

2 THE COURT: All right. I find that the defendant has
3 had an opportunity to talk with Mr. Sheek. I make a
4 finding that the decision the defendant made to testify is
5 his own decision made freely, knowingly and voluntarily
6 and that he intelligently understands his right to testify
7 or not testify. Mr. Sheek, are there any other questions
8 you would like to ask Mr. Span for the record?

9 MR. SHEEK: No, sir.

10 THE COURT: Thank you very much, Mr. Span. You may
11 return to your seat. Can I ask, Mr. Sheek, it doesn't
12 mean you can't change your mind. But do you anticipate
13 other witnesses besides Mr. Span?

14 MR. SHEEK: I do not.

15 THE COURT: All right. And as I say, that doesn't
16 mean you can't change your mind. It is kind of like a
17 motion in limine from the Court, just for planning
18 purposes. Anything else from the defense before we bring
19 in our jury, Mr. Sheek?

20 MR. SHEEK: Nothing from the Defense.

21 THE COURT: From the State?

22 MR. SWILLEY: No, Your Honor.

23 THE COURT: Bring our jury, please.

24 (Whereupon, the jury came into open court at
25 approximately 2:35 p.m.)

1 THE COURT: Welcome back, ladies and gentlemen, I
2 hope you had a pleasant lunch. As you recall at the lunch
3 break the State rested. You have heard all the evidence
4 and all the testimony you are going to hear from the State
5 in it's case-in-chief. We will now turn to the defense.
6 The defendant in South Carolina is never required to
7 present any evidence or testimony. I think there are
8 already four items of evidence marked, defendant's 1, 2 3
9 and 4 that have been introduced. However a defendant is
10 never required to prove himself or herself innocent. A
11 criminal defendant in South Carolina is always presumed to
12 be innocent regardless of the seriousness of the charges.
13 The State of South Carolina always has the burden of
14 proving its case beyond a reasonable doubt. That burden
15 never shifts. However, a defendant may present evidence
16 and testimony if he or she chooses to do so. With that
17 being said we will turn our attention to Mr. Sheek and ask
18 Mr. Sheek, does the defendant intend to offer any
19 witnesses or testimony in its case-in-chief?

20 MR. SHEEK: He does, Your Honor. The defendant
21 intends to testify.

22 THE COURT: You may call your witness.

23 MR. SHEEK: We call Whitney Span to the stand.

24 WHITNEY SPAN, being
25 first duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 By Mr. Sheek:

3 Q State your name and spell it for this court reporter
4 sitting right here.

5 A Whitney Span, W-H-I-T-N-E-Y S-P-A-N.

6 Q Mr. Span, where are you from?

7 A Greenwood, South Carolina.

8 Q Lived here all of your life?

9 A On and off.

10 Q What part of Greenwood are you from?

11 A From Taggart Street and Milwee.

12 Q Area up there near--

13 A Around Taggart and Milwee area.

14 Q So the area where this incident happened, that is
15 where you grew up in?

16 A Yes, sir.

17 Q And how old are you now?

18 A 19.

19 Q And I believe you said, you went to the 10th grade?

20 A Yes, sir.

21 Q Since then have you gone back to complete your GED?

22 A Yes, sir.

23 Q Now, I want to go ahead and turn directly to the day
24 in question, October the 22nd of 2011. Do you remember
25 that day?

1 A Yes, sir.

2 Q Tell me that day did you go up to the store that
3 people have testified about, a store there on Milwee?

4 A Yes, sir.

5 Q Tell the jury what happened that day.

6 A Me, I was suppose to be meeting up with my homeboy on
7 Greene Street so we could walk to the store. We were
8 suppose to be going to the S&S that night because it was
9 really suppose to be having the close down party. You
10 know what I am saying. So we all walked to the store.
11 When me and Whezzy and Turk got to the store we seen Mr.
12 Lester, Mr. Boyd, Gaston and Parker. Me and Mr. Lester
13 had passed words earlier that day. So I was like, yeah,
14 what's up now, nigger. You know what I am saying, what's
15 up pussy boy. I was like, what is up now. You know what
16 I am saying. He was like, oh, oh, you know what I am
17 saying.

18 Q Slow down a little bit. The court reporter is trying
19 to keep up with what you are saying.

20 A When I ran up I would be like, yeah, what's up pussy
21 boy. What is up pussy boy. He was like, oh, oh, what's
22 up. You know what I am saying. I was like, yeah, talking
23 all of that gang shit earlier, what's up now. He was
24 like--

25 Q What, I am sorry.

1 A Talking all of that gang shit earlier, what's up now.
2 Q Gang?
3 A Gangsters. Like what's up now, you know what I am
4 saying. So you are bad, we squared up, you know what I am
5 saying. When we squaring up, he kept backing up so I
6 couldn't really get a good hit on him. You know what I am
7 saying. So I ain't never swing. When I got close enough
8 to his crowd, you know what I am saying, farther away from
9 my crowd Mr. Gaston look like he was fixing to hit me. So
10 I hit him, you know what I am saying. When I hit Mr.
11 Gaston all hell broke loose, you know what I am saying.
12 Everybody started fighting. Me, Wheezy and Turk were
13 fighting, you know what I am saying. The next thing I
14 know they ran in the shop. When they ran in the shop
15 Demetrius Andrews who owned the shop, he came out with a
16 bat. He was like, get the hell away from my shop, get the
17 hell away from my shop with that bullshit, you know what I
18 am saying. So we start walking up, we were like we are
19 leaving, pussy boy, you know what I am saying. When we
20 were leaving the shop they came back out. And Mr. Boyd
21 had snatched the bat from Mr. Andrews and was coming up,
22 like, get the fuck, what is that bullshit, you know what I
23 am saying. So I came out, like, what the fuck do you say,
24 pussy boy. I grabbed the brick, you know what I am
25 saying, when I grabbed the brick he still like coming up

1 at me, you know what I am saying. When he still came up
2 at me I swung, I threw the brick. He jumped out of the
3 way of it, you know what I am saying. When he jumped out
4 of the way, he was like, oh yeah, oh yeah. So we was
5 like, man, come on, let's go so I started skipping back.
6 I was like, man, fuck y'all, pussy boy. I turned around,
7 when I turned around he threw the bat, when he threw the
8 bat it bounced off the pole and it hit me on my shoulder.
9 So I turned around and I was like, what the fuck. I was
10 like to run back on him. Turk screamed my name, I looked,
11 Turk started busting. Turk started busting, Wheezy
12 started busting. The next thing you know I took off
13 running, we all took off running.

14 Q You said Turk started busting, what are you talking
15 about, what is he doing?

16 A He was shooting.

17 Q Let me ask you this question. Did you have a gun?

18 A No.

19 Q Did you ever pull it out and show somebody you had a
20 gun and then get in a fight?

21 A I ain't never had no gun.

22 Q Did you ever shoot at anybody?

23 A No.

24 Q Okay. You said Turk had a gun?

25 A Yes, sir.

- 1 Q And who else started busting?
- 2 A Wheezy.
- 3 Q What is his real name?
- 4 A I don't know the boy's real name. They just now
- 5 started coming to the hood when I got out of jail.
- 6 Q Okay. Now, when you took off running, where did you
- 7 go?
- 8 A We ran back to Gray Street. Well we ran to Greene
- 9 Street and then ran to Gray Street to chill out.
- 10 Q Let me get this straight. The story about y'all
- 11 passing words and getting ready to fight. That is all
- 12 true?
- 13 A Yes, sir.
- 14 Q The story about you throwing the brick, you did that?
- 15 A Yes, sir.
- 16 Q And him throwing the bat, he did that?
- 17 A Yes, sir.
- 18 Q Now, you know these guys from before?
- 19 A Yes, sir.
- 20 Q There has been a history of trouble with them between
- 21 you and them before?
- 22 A Yes, sir.
- 23 Q Okay. Now, and you threw the first punch to hit Mr.
- 24 Gaston, right?
- 25 A Yes, sir.

1 Q That is when you said, as you put it, all hell broke
2 loose?

3 A Yes, sir.

4 Q Somebody at one point testified that there was a
5 fight going on everywhere, is that pretty accurate?

6 A Yes sir, it was.

7 Q How long after that was it that you said you started
8 to walk off?

9 A It had been like a good five minutes.

10 Q And you say the first shot was fired after the bat
11 was thrown at you?

12 A Yes, sir.

13 Q But you didn't have a gun on you?

14 A No, sir.

15 Q Did you know them other fellows had a gun?

16 A No, I don't think they had no gun.

17 Q Mr. Goode described them actually going up the
18 street, backing up shooting, is that what they were doing?

19 A Well, Turk wasn't backing up. When Turk had seen,
20 when he seen the bat thrown he called my name. I looked
21 at him and he just started busting. He wasn't doing no
22 running back.

23 Q When he started busting what did you do?

24 A I just froze, I was like, I couldn't believe the
25 shit. You know what I am saying, I was like, what the

1 fuck, you know what I am saying. I froze up and then
2 Wheezy started busting. I was like what the hell, you
3 know what I am saying, because I ain't never know Wheezy
4 had no gun, you know what I am saying. And Wheezy started
5 busting, shit. I took off running, we all took off
6 running then.

7 Q Now there has also been an issue made of the 26th of
8 October when the police pulled up on you and yelled for
9 you to stop?

10 A Yeah, see they didn't yell for me to stop. See,
11 look, me and T., we were walking up the street, you know
12 what I am saying, we were coming from Gray Street, we were
13 fixing to walk to Taggart Street Apartments, you know what
14 I am saying. The police road there past us so I ain't
15 think nothing about it, you know what I am saying. When
16 we get to Taggart Street Apartments they whip on us real
17 fast. The police whip on us real fast, we run, you know
18 what I am saying. So we were all of that.

19 Q Let me ask this, by the 26th did you already know
20 that on the 22nd that those guys were shooting and Mr.
21 Boyd had been hit?

22 A Yeah, people be gossiping, I don't even listen what
23 the street say no more.

24 Q You knew he had been hit while you were there?

25 A Yes, sir. No, I didn't know he was hit while I was

1 there. I ain't know he was hit while I was there. I
2 heard about it the next day.

3 Q You heard about it the next day but by the 26th you
4 knew about it?

5 A By the 27th I knew about it.

6 Q So when the police come pulling up were you scared?

7 A Yeah. I had gotten my mama to call to the police
8 department and ask them did they have a warrant for my
9 arrest. She told me they said no. So I feel like I had
10 no reason to run but at the same time the police whip on
11 you fast in the hood, we ran, you know what I am saying.

12 Q That is where it is where you grew up?

13 A That is how it is.

14 Q That is what you did?

15 A Yeah.

16 Q Mr. Span, answer any questions the Solicitor may
17 have.

18 THE COURT: Thank you, Mr. Sheek. Solicitor.

19 CROSS-EXAMINATION

20 By Mr. Swilley:

21 Q Mr. Span, you told Mr. Sheek you grew up in the
22 Milwee, Taggart area, right?

23 A Yes, sir.

24 Q Okay. So I guess you didn't in particular care for
25 Mr. Boyd and his friends being in your area?

- 1 A No.
- 2 Q So you didn't want them there, correct?
- 3 A I ain't care about where they go, they can go
4 wherever they please, I go wherever I please.
- 5 Q Well, that day you were there with Wheezy and Turk?
- 6 A Yes, sir.
- 7 Q Those are nicknames?
- 8 A Yes, sir.
- 9 Q And you said you don't know the real names?
- 10 A No.
- 11 Q Not first names?
- 12 A No, I don't know their first names.
- 13 Q Or last names?
- 14 A Or last names.
- 15 Q Do you know where they live?
- 16 A I know Wheezy lives somewhere around the way.
- 17 Q They are friends of your, right?
- 18 A Yes.
- 19 Q And you spent time with them, correct?
- 20 A Yes. Not that much, they are from around the way but
21 they be around the way but I really don't know them like
22 that.
- 23 Q But you knew them well enough to be hanging out with
24 them, right?
- 25 A Yes.

1 Q Okay. You and Tavaris had passed words, correct?

2 A Yes, sir.

3 Q Y'all had just a general argument?

4 A At the scene?

5 Q Yes.

6 A Yes, sir.

7 Q I mean beforehand, y'all had some kind of argument?

8 A Yes, beforehand I had seen Mr. Boyd and Mr. Boyd

9 pulled up on me and talked to me about some shit that

10 happened Tuesday, you know what I am saying. We shook

11 hands and he asked me did I need a ride I was going and I

12 told him no. Two or three minutes later Mr. Lester pulled

13 up on me, him and Mr. Parker and I seen them, me and

14 Tavaris, we been beefing, you know what I am saying. We

15 were, we have been beefing out a year, you know what I am

16 saying. We have been fighting each other all year, you

17 know what I am saying. I done fought his little brother

18 three times and I fought him once, you know what I am

19 saying. So he pulled up on me and like yeah, pussy boy,

20 what. I got you sleeping here, da da da da da. So I

21 like, it don't matter, what's up, get out of the car and

22 we can fight, you know what I am saying. He didn't want

23 to fight, I told him you don't want to fight, I don't want

24 to talk. I kept on walking, you know what I am saying.

25 He bad up trying to get at me again. I was like, man,

- 1 pussy boy, go on ahead, you know what I am saying.
- 2 Q This is on the 22nd?
- 3 A Yeah, this is on the 22nd. But then before all it
- 4 is, excuse my language because see a few of y'all, I am
- 5 sorry, you know what I am saying.
- 6 Q Mr. Span, so you told us you had been arguing back
- 7 and forth with Tavaris that day before he got shot, right?
- 8 A Yes, sir.
- 9 Q Now, Whitney, do you own a gun?
- 10 A Do I own a gun?
- 11 Q Yes.
- 12 A No.
- 13 Q You don't own a gun?
- 14 A No, sir.
- 15 Q You don't carry a gun?
- 16 A No, sir.
- 17 Q Okay. But apparently Turk and Wheezy did?
- 18 A Turk do but I ain't never seen Wheezy with a gun
- 19 before that day.
- 20 Q You saw him with one that day?
- 21 A Yeah, he started shooting.
- 22 Q Okay. And Turk and Wheezy were shooting that day, at
- 23 Travis and his friends, right?
- 24 A Yes, sir.
- 25 Q You weren't shooting, right. But the last thing that

1 happened before the shooting was you got hit with a
2 baseball bat?

3 A Yes, sir.

4 Q So you were the last person that anything happened to
5 before the gun went off, right?

6 A Yes, sir.

7 Q Okay. So you got hit with a bat and y'all turned
8 around and just turned and Wheezy started shooting?

9 A Yes, sir.

10 Q So and you don't have any idea why that would make
11 them so angry that they felt like they needed to shoot,
12 start shooting?

13 A I don't know. Turk is trigger happy.

14 Q Turk is trigger happy?

15 A Yeah.

16 Q Okay. And what does that mean?

17 A He likes to shoot.

18 Q He likes to shoot his gun off?

19 A Yes.

20 Q Do you know him well enough to know that he likes to
21 shoot his gun off?

22 A There had been incidents at the S&S, we would have
23 been at the S&S together and people stated shooting and he
24 just started shooting, you know what I am saying.

25 Q And you don't know his real name?

1 A I don't really be with him like that, we might meet
2 up at the hood and party at the S or go to a little team
3 party together. But other than that, like if a party
4 ain't going on he don't even be in the hood like that. He
5 might come around there at night then but most of the time
6 when it is a party, you know what I am saying.

7 Q Okay. Well now you have been in here the whole time
8 and you heard Mr. Boyd and everybody else say that you
9 came up down towards the store, you pulled your shirt up
10 and showed off a gun. Did you pull your shirt up?

11 A No.

12 Q Did you show anything off?

13 A No.

14 Q No.

15 A Sir, honestly, if I were to have a gun before
16 anything I would had shot at Mr. Lester when him and Mr.
17 Parker pulled up to me. If I would have had a gun because
18 I would have felt threatened, two to one, that is all
19 normal.

20 Q If you would have had a gun you would have shot and
21 tried to kill both of them without--

22 A No, I would have just shot in the air or at the car
23 or something, I wouldn't try, I ain't no killer, I ain't
24 no killer. I ain't trying to do no 15, 25 years for no
25 bullshit that I know that I ain't about, you know what I

1 am saying.

2 Q So you are telling me, like you say, if you had a gun
3 you would have just shot it off in the air when they got
4 there?

5 A No, after. I am talking about when they pulled up on
6 me earlier that day.

7 Q Okay. And were you alone then?

8 A Yes, I was alone.

9 Q After I guess Turk and Wheezy started shooting, like
10 you said, y'all ran up Milwee, right?

11 A We ran up towards Gray Street, the fire department
12 and all of that towards South Main area.

13 Q What happened to the guns when y'all were running?

14 A I don't know. Shit, they still had them on, I guess.

15 Q You didn't see Turk and Wheezy get rid of them?

16 A No.

17 Q Did y'all stay together?

18 A Yes.

19 Q For how long did y'all stay together?

20 A We chilled in the hood together for a little bit.

21 Q So y'all chilled a little bit?

22 A Yes.

23 Q And what do you mean by specifically chilling, y'all
24 sat around?

25 A Sat around the hood, sat around somebody's house,

1 smoking, chilling, you know what I am saying, just
2 kicking.

3 Q Smoking cigarettes?

4 A Cigarettes, weed, just cigarettes and weed, yes.

5 Q So just to clarify, your friends were shooting at
6 people and then you continued to hang with them for a
7 period of time later after that?

8 A Yeah.

9 Q Can you tell me about how long you were with these
10 guys after the shooting?

11 A About an hour.

12 Q About an hour?

13 A It wasn't long.

14 Q Were you worried that--

15 A I was paranoid, I mean I was trying to find a way to
16 get on through.

17 Q Trying to find a way to get on through?

18 A Yes.

19 Q So you didn't try to go anywhere else or stay with
20 the same guys?

21 A No, I was waiting on somebody to come through so I
22 can get on through. Yeah, I chilled with the same buy,
23 shit, where else am I going. I ain't fixing to walk by
24 myself, waited on somebody to come through with a car or
25 something.

1 Q Do you remember how Wheezy and Turk were holding
2 their guns, who they were pointing at. I mean, do you
3 remember anything about that?

4 A No. I know I, all I know when I looked at Turk when
5 he called my name, he was just boom, boom, boom, boom, you
6 know what I am saying. I froze.

7 Q What kind of gun did they have?

8 A Turk had some kind of little automatic.

9 Q What kind did Wheezy have?

10 A Wheezy had a revolver.

11 Q Wheezy had a revolver, do you know what kind?

12 A Looked like a little .32, .25.

13 Q And back to where it started, where were y'all when
14 y'all first ran down and saw Travis and them?

15 A We ain't run down no where.

16 Q Y'all walked?

17 A Yes, we were walking up.

18 Q Fast walk, slow walk?

19 A We were just walking, like a regular little pace walk
20 and we seen them.

21 Q And y'all were hollering at them, pussy boys?

22 A No, we wasn't hollering, we were like, by the time we
23 seen them we were already up on the scene. You know what
24 I am saying, we was already walking in the parking lot and
25 all of that. I was like, yeah, what's up pussy boy, I

1 caught you sleeping now, you know what I am saying.

2 What's up, you know what I am saying.

3 Q Okay. So, Mr. Span, you are telling me that you were
4 encouraging them to fight, right?

5 A Yes, sir.

6 Q All four of them?

7 A No, just Mr. Lester.

8 Q Whitney, let's fast forward to the 26th of August
9 when you got arrested. You are telling Mr. Sheek you were
10 walking with whom?

11 A Me and T.

12 Q With who?

13 A T.

14 Q T. Who is T?

15 A Trakeman.

16 Q Trakeman?

17 A Yes.

18 Q Is that his real name, birth certificate name?

19 A No, I don't know his real name, that is what we call
20 him. Besides T. we call him Trakeman. You know what I am
21 saying.

22 Q And you were with Trakeman, had he done anything
23 wrong, was he anywhere near the scene of the shooting?

24 A No.

25 Q No. Okay. And when the cops pulled up y'all ran,

1 right?

2 A Yes, sir.

3 Q You are telling me you didn't really have any reason
4 to run?

5 A No.

6 Q Even though you didn't think you had, telling me you
7 didn't think there was, the police thought you had done
8 anything wrong do you just run anyway?

9 A Yeah. I ran just to run because I already know, you
10 know what I am saying. We don't do that, like the police
11 pull up on us, you know what I am saying, shit, they are
12 paranoid, you know what I am saying. They will lock you
13 up for anything.

14 Q And this was broad daylight, right?

15 A Yes.

16 Q And you didn't have any guns or anything, did you?

17 A No.

18 Q Any weed on you or drugs?

19 A I didn't.

20 Q You didn't?

21 A I didn't, no.

22 Q So there was really, admit that they just, it didn't
23 make a lot of sense to run from them if you didn't do
24 anything wrong, right?

25 A That is just how it is.

1 Q Okay.

2 A I am pretty sure anybody that grew up in a little
3 rough neighborhood or in the neighborhood like where I am
4 from they will do the same thing.

5 Q And Turk ran too, right, T. ran too, right?

6 A Yes, sir.

7 Q And y'all split up, right?

8 A Yes, sir.

9 Q Now you say, Officer Greenfield and the other officer
10 told you to stop?

11 A Yes, they told me to stop.

12 Q But you kept running?

13 A Yes, sir.

14 Q After the 22nd did you see Turk and Wheezy again?

15 A No.

16 Q No, okay. That's all I have.

17 THE COURT: Redirect?

18 MR. SHEEK: No redirect, Your Honor.

19 THE COURT: Thank you, Mr. Span, you may step down.

20 MR. SHEEK: Your Honor, the defense rest.

21 THE COURT: All right, the defense has now rested.

22 Motions renewed, Mr. Sheek?

23 MR. SHEEK: Yes, sir.

24 THE COURT: And I would renew my previous rulings in
25 that regard, unless you have a different issue on it I

1 need to hear outside the presence of the jury, Mr. Sheek?

2 MR. SHEEK: No, sir.

3 THE COURT: Does the State have any evidence or
4 testimony it intends to present in reply, Solicitor?

5 MR. SWILLEY: There is not, Your Honor.

6 THE COURT: All right. Thank you very much. Mr.
7 Foreman and ladies and gentlemen of the jury, you have now
8 heard all of the evidence and all of the testimony that
9 you are going to hear in the trial of this case from both
10 the State and the defense. I am going to ask you to step
11 to your jury room for about a fifteen minute recess. I am
12 going to talk with the attorneys and see where we are at
13 administratively as far as our timing for the remainder of
14 the afternoon. Please remember my instructions, do not
15 discuss this case during this brief recess. With that
16 being said you may now go with your bailiff.

17 (Whereupon, the jury was excused from open court.)

18 THE COURT: All right, Mr. Sheek?

19 MR. SHEEK: I didn't have anything to add. I was
20 just waiting for your questions, Judge.

21 THE COURT: Well, I am curious, do y'all want to
22 argue and charge today. The hour is not necessarily late
23 but if we get late, last year I left Lexington Court House
24 at 11:30 p.m., it is not my favorite thing to do on Friday
25 night. What do y'all want to do.

1 MR. SHEEK: My preference, Your Honor, for my client
2 would be to argue and charge in the morning because I
3 believe, if we argue, the Judge gives his charge, we are
4 going to be in the 4:30 range. And I hate for a jury to
5 be put late, wanting dinner and wanting to get home and
6 feel any kind, type of pressure to get a verdict quickly
7 and not take the time that I want them to take.

8 THE COURT: Solicitor, do you have any objection to
9 that?

10 MR. SWILLEY: Your Honor, I will leave it up to.

11 THE COURT: You don't care one way or the other?

12 MR. SWILLEY: That's correct.

13 THE COURT: Do y'all have any specific request to
14 charge?

15 MR. SHEEK: Judge, I am going to ask for a charge on
16 failure to maintain evidence.

17 THE COURT: I have never charged that in a civil
18 case. There is an older criminal case, I think it is
19 State versus Dominick about a failure to call a witness.
20 Take whatever the witness would have testified to had he
21 been present, would have been negative to the State. I
22 have always taken the position, unless you show me some
23 law otherwise that you can argue that just like the
24 Solicitor can argue flight. But I don't specifically
25 charge it. I have heard that charge, of course, in civil

1 cases and there is, seems to be a lot more arguments about
2 discovery in civil cases because there are more rules. If
3 you show me a case I will reconsider my position. I will
4 probably, will look also, I am just not familiar with one.
5 Any lessor included offenses? You want attempted murder
6 and possession of a firearm during the commission of a
7 violent crime?

8 MR. SHEEK: Yes, sir.

9 MR. SWILLEY: That's correct, Your Honor. And is it
10 correct that you don't charge flight as evidence of guilt?

11 THE COURT: No, sir.

12 MR. SWILLEY: Okay.

13 THE COURT: There is a case directly on point out of
14 Charleston County, not too far from where you went to
15 school where a fellow ran from a stolen car. You don't
16 charge flight if you can argue flight. And Pagen was a
17 flight case too and I don't know if they requested a
18 charge on that. But I don't charge it, you can argue it.
19 All right. You don't want any lessor included offenses?
20 Attempted murder and possession of a firearm during the
21 commission of a violent crime.

22 MR. SWILLEY: Your Honor, the evidence will show that
23 the defendant did wound the victim in the legs. I don't
24 know if that would classify as assault and battery of a
25 high and aggravated charge or not.

1 THE COURT: You are talking about assault and battery
2 of a high and aggravated nature common law?

3 MR. SWILLEY: No, Your Honor. I am talking under the
4 new, I think that it is a 20 year lessor included assault
5 and battery of a high and aggravated nature. I will try
6 to pull that up for you. Your Honor, the statute to which
7 I am referring is Title 16-3-600, subsection (b)(1). It
8 is a Class C felony, I think it was added in 2010.

9 THE COURT: 16-3-600(b), (b)(1).

10 MR. SWILLEY: That's correct, Your Honor.

11 THE COURT: Do you have a copy of that, Mr. Sheek. A
12 person commits the offense of assault and battery of a
13 high and aggravated nature, if a person unlawfully injures
14 another person and great bodily injury to another person
15 results or the act was accompanied by means likely to
16 produce death or great bodily injury. And it goes on to
17 say, assault and battery of a high and aggravated nature
18 is a lessor included offense of attempted murder. I will
19 charge that.

20 MR. SHEEK: The defense has no objection, Your Honor.

21 THE COURT: I will charge that.

22 MR. SWILLEY: Thank you, Your Honor.

23 THE COURT: So it will be attempted murder, assault
24 and battery of a high and aggravated nature under
25 16-3-600(b)(1)(a) and (b), (a) or (b).

1 MR. SWILLEY: Yes, sir.

2 THE COURT: All right, any others?

3 MR. SWILLEY: No, Your Honor.

4 MR. SHEEK: No, sir.

5 THE COURT: Let's have our jury, please.

6 (Whereupon, the jury came into open court at
7 approximately 3:06 p.m.)

8 THE COURT: Ladies and gentlemen of the jury panel,
9 momentarily I am going to release you from your jury
10 service for the remainder of the day. We are at the stage
11 of the closing arguments by the attorneys and then the
12 charge on the law by the Court. That would generally take
13 an hour and a half or so. Our Supreme Court frowns upon
14 trial courts submitting cases to jurors after 4:00 p.m. in
15 the afternoon. It is kind of a guideline, for, if not at
16 all but at least this trial Judge. So with that being
17 said I don't want to unduly delay for you the afternoon.
18 I am going to release you for the afternoon and the
19 evening and ask you to be back at 9:30 in the morning. Do
20 not discuss the case with anyone, do not do any
21 investigation personally or on the internet. Remember to
22 keep an open mind until you have heard the closing
23 arguments by the attorneys, instruction on the law by the
24 Court and then directed by the Court to begin your
25 deliberations with your fellow jurors in your jury room.

1 You are now released, be back at 9:30 in the morning.

2 (Whereupon, the jury was excused from open court for
3 the day.)

4 THE COURT: Solicitor.

5 MR. SWILLEY: Your Honor, during the course of this
6 trial Mr. Sheek entered into evidence a copy of a
7 statement that was given by Kelvin Goode by Investigator
8 Nichols. And the CD had all the prior witnesses, Your
9 Honor. My investigator has burned a copy of the CD, just
10 pertains to the statement of Kelvin Goode which is entered
11 into evidence. Your Honor, I request we will be able to
12 substitute that.

13 THE COURT: Mr. Sheek?

14 MR. SHEEK: Without objection, Your Honor.

15 THE COURT: All right, thank you very much. That
16 will now be marked Defendant's 1. All right.

17 (Whereupon, Defendant's Exhibit 1 was admitted into
18 evidence. Substitute CD for prior CD marked as
19 Defendant's exhibit 1.)

20 (Whereupon, the trial will resume the next morning at
21 9:30 a.m.)

22 July 11, 2012

23 THE COURT: Anything from the State before we have
24 our jury?

25 MR. SWILLEY: Yes, Your Honor. During my closing I

1 wanted to point out to you I would like a copy of the law.
2 I was going to put it on the Elmo.

3 THE COURT: Have you shown it to Mr. Sheek?

4 MR. SWILLEY: It is just a cut and paste version of
5 the statute. I can let the Court look at it.

6 MR. SHEEK: I have got no objection to that.

7 THE COURT: Anything further, Solicitor?

8 MR. SWILLEY: There is not, Your Honor.

9 THE COURT: Mr. Sheek?

10 MR. SHEEK: Nothing from the defense, Your Honor.

11 THE COURT: Do you intend to open on the law,
12 Solicitor?

13 MR. SWILLEY: Your Honor, I would like to waive
14 opening on the law and argue last if that is okay.

15 THE COURT: I often wondered why you waive opening
16 but certainly you may do so.

17 MR. SHEEK: I am fine with him waiving.

18 THE COURT: Let's get the jury in.

19 (Whereupon, the jury came into open court at
20 approximately 9:30 a.m.)

21 THE COURT: Good morning, ladies and gentlemen of the
22 jury panel. I hope y'all had a pleasant evening. As you
23 recall you have heard all of the evidence and all the
24 testimony you are going to hear from the parties in the
25 trial of this case. We are at the stage of the closing

1 arguments. The closing arguments are different opening
2 statements. They are true arguments. The attorneys may
3 comment on the law, on the inferences to be drawn from the
4 law, on the law and on the inferences to be drawn from the
5 facts of the case. In making their closing arguments to
6 you please recall you are the judges of the facts in the
7 case. You and you alone must determine what the facts
8 are, the inferences that may properly be drawn from the
9 facts and then apply those facts to the law as I will tell
10 you the law is after the closing arguments by the
11 attorneys. The procedure we follow in South Carolina is
12 that Mr. Sheek will present closing argument on behalf of
13 his client, Mr. Span, first. Thereafter followed by the
14 Solicitor who will present closing argument on behalf of
15 the State, the State being the party that bears the burden
16 of proving the case beyond a reasonable doubt. Please
17 also remember my instructions that what the attorneys say
18 is not evidence. Again the evidence is the testimony from
19 the witnesses testifying under oath from this witness
20 stand, any photographs, items, objects is also evidence
21 and any inferences that may be properly drawn from that
22 testimony. If you would please give the parties your
23 complete and undivided attention as you have done
24 throughout the trial of this case. Mr. Sheek.

25 MR. SHEEK: Your Honor, if it please the Court. Good

1 morning, ladies and gentlemen of the jury. Now comes the
2 hard part of the trial for y'all. You have to sit here
3 and listen to us talk then you have to go back to that
4 room you have gone back and forth into and you will have
5 to reach a verdict. Verdict comes from the word but
6 literally means to speak the truth. That is what I am
7 going to ask of you today. That is what we are going to
8 ask you to do. It is pretty simple but it is very
9 difficult. His Honor is the sole Judge of the law, in a
10 few minutes after I have talked to you and the prosecutor
11 has talked to you he is actually going to read to you from
12 the law of the State of South Carolina, the law that you
13 are to apply to the facts as you find them. That is his
14 job. The prosecutor over here sees himself as being an
15 object of proving someone guilty, his job is to present
16 evidence. But your job is to actually determine facts,
17 that is the hardest job there is. Don't think for a
18 second I think you have got the easy one, you don't. But
19 you are going to have to go in that room and you are going
20 to have to decide whether or not the State has proven
21 beyond a reasonable doubt that Whitney Span committed the
22 offense of attempted murder, whether he shot Travis Boyd
23 on October the 22nd of 2011. The only thing that you have
24 to rest that evidence on is the testimony and evidence, I
25 am sorry, the verdict, is the testimony and evidence given

1 to you from this stand. I told you at the beginning of
2 the case that there was going to be concerns raised in
3 this case. And I want you to go through it with me
4 briefly, the testimony and evidence that we have heard and
5 then I will sit down. The prosecutor is going to have a
6 chance to stand up and respond to anything that I say, I
7 don't need to get up and respond to him. And trust me, I
8 have been doing this now for 20 years and every single
9 time I do this I sit down and then think of something else
10 I should have said, something I meant to say. But this is
11 the last time somebody gets up here and gets to talk for
12 Mr. Span. So if I go too long please don't hold that
13 against him, hold it against me. But we are in here
14 charged with attempted murder. Justice is made in here
15 today between you twelve people. I told you in the
16 beginning of the case this is the first time we have an
17 unbiased panel of people involved in this case. And why
18 is unbiased important. Why do I emphasize that from the
19 beginning. Well it is interesting, our rules of Court in
20 South Carolina and the way our criminal justice works
21 because a lot of people get their sense of criminal
22 justice from what you see on TV whether it be a fictional
23 a show or whether it be something that you may watch on
24 True TV or what we used to call Court TV. And if you
25 watch like the Casey Anthony trial of some of these trials

1 in California you hear them talk about deposing witnesses,
2 doing depositions where you actually come in and go
3 through sworn testimony and stuff like that. South
4 Carolina we do not have that, it is not an option. So the
5 witnesses that the State has called to you I don't have
6 the option before trial to compel them to come and give
7 testimony. For me to question them or cross-examine them,
8 find out what they are going to say. I get to learn about
9 their testimony the same time you do. I get to hear it
10 the same time you hear it. Luckily in this case I had
11 recorded statements that were taken by the police back on
12 October 22nd and isn't it interesting how different the
13 testimony of these witnesses have on the stand was from
14 what they said on October 22nd. Now I am not unrealistic.
15 Like I said, I know it has been long time. I have started
16 out as a prosecutor, being doing it on this side for a
17 long time. And I realize that when four people see one
18 incident and then testify about it, it was October of 2011
19 so we are about ten months out of it, that there is going
20 to be little differences. That is just four different
21 people seeing the same thing and remembering little
22 differences difficult. But there is not going to be major
23 glaring differences. When you have a case where four
24 people come in and testify and they can all be consistent
25 on the main fact but completely inconsistent on every

1 other detail that tells you one thing, they have gotten
2 together on what they are going to testify but they
3 haven't gotten together on the details. That is the
4 reason I ask the details, well, who came out of the store
5 when, did he purchase anything, did he not purchase
6 anything, where was he standing, was he on the driver's
7 side, was he on the passenger side. Y'all may have
8 wondered when I was asking those things, what has that got
9 to do with whether or not Whitney Span shot at somebody.
10 What it has got to do with is that they, are they telling
11 you the truth or are they telling you the story that they
12 have gotten back there in that grand jury room with the
13 police and that they have gone over. Now they didn't stay
14 with the stories they gave this police on the recorded
15 statements. Now why was that, why was that. Well, you
16 heard from the police officer himself, he formed a theory,
17 he formed a theory early on that there was one person
18 shooting, it was Mr. Span and that is who he went after.
19 And he went after that because that is what the witnesses
20 told him. But it is interesting, when I pressed him, me,
21 not the prosecution, when I pressed and said, now wait a
22 second, you gave a recorded statement, didn't you and
23 isn't this what you told them, that you find out that Mr.
24 Goode as well as other eyewitnesses all say what. There
25 were other people out there shooting. And these witnesses

1 that got on the stand and said, he is the one who shot Mr.
2 Boyd, when they gave their recorded statements, they all
3 say, look, it was crazy, confusion, one is diving for
4 cover behind the car and Mr. Boyd has got his back turned
5 diving in the car. None of them, that is the interesting
6 point, none of them then say, Whitney Span shot Travis
7 Boyd. Don't you think for a second if the prosecution had
8 that, if they had a statement from somebody on October the
9 22nd of 2011 that says I saw Whitney Span shoot Travis
10 Boyd, don't you think that they would have brought that to
11 you, gave it to you. Of course they would, that would be
12 incredibly important. Why is that they bring it to you in
13 a form of a testimony that we all hear for the first time
14 ten months later but it is inconsistent with that they
15 said on October the 22nd. And I am not talking about real
16 little inconsistencies, think about it. One person says
17 they come out of the store, they were approached by these
18 four individuals. One of them yells something to another
19 one, hey, watch out, somebody is coming up behind you.
20 There is a brawl for ten or fifteen minutes. Now this is
21 after Mr. Span is showing the gun. You have got to
22 believe, if you are going to accept the prosecution's
23 theory you have got to believe that Mr. Span comes up and
24 the first thing he does is show them a gun. Now, half the
25 witnesses say he pulled it out, showed it to them, put it

1 back. Half of them say lifted up his waistband, put it
2 down. Either way, but he showed them a gun. And then
3 these guys decided to do what, after this guy has shown
4 them a gun. They decide they are going to fist fight.
5 Now who in their right mind fistfights somebody that just
6 showed you he has come to you and brought a gun to a
7 fight. But if you believe their statements, the recorded
8 statements they gave on October 22nd, they fought for ten
9 or fifteen minutes and then what, then the four of them go
10 back into the store. That is when Mr. Andrews comes out
11 and tells the other ones, get off of my property. He has
12 got his baseball bat. And then when they are leaving they
13 come back out the store, that is when Mr. Span and his
14 friends come back and shooting starts. That is one story.
15 But the second story you hear from a different witness and
16 let me tell you something. This is expressly important
17 what we are doing today because this man is facing
18 extremely serious charges. If you don't remember some of
19 the testimony and I know it got confusing, it is recorded.
20 And when you are deliberating if you want to tell the
21 Judge we want to rehear somebody's testimony, let us know,
22 let us know, it is that important. Because another says
23 they come out and there is about a ten or fifteen minute
24 brawl, there was a fight and then someone pulls out the
25 gun and starts shooting. We never went back in the store

1 or did anything like that did we. Why is that, I as the
2 defense lawyer lack the resource, this poor man has been
3 appointed, he didn't pick me, he just gets stuck with me,
4 why is it not as a defense lawyer and trying to pull out
5 evidence that the State has. They got the job to seek
6 justice. That is what I told you in the opening
7 statement, their job is not about the convicting. Rule
8 3.9 of the Rules of Professional Conduct in the State of
9 South Carolina, it is a set of rules that set the ethical
10 standards for all attorneys. Rule 3.9 deals specifically
11 with prosecutors. And our legislature in the comments,
12 were they explained what those rules mean, the first
13 sentence says, a prosecutor has the job not just as an
14 advocate, it says it has a job as a minister of justice
15 and not simply that of an advocate. That is what I told
16 you at the beginning. We will hear about justice, we hear
17 about winning. It is not the winning versus Mr. Span
18 winning, it is about the community and what justice is.
19 What do the police have that we know. Well we know they
20 sent these objects to SLED and they had a forensics
21 analysis done by a scientist that is employed by the State
22 Law Enforcement Division. And what did he tell you when
23 he got on the stand and testified. He didn't get on that
24 stand, did he. The police didn't bring him up here. It
25 is their employee, it is their officer, it is their

1 scientist, they didn't bring them. Now, of course, when I
2 start with the investigating officer and finally get him
3 to look at this report that he has had in his case file,
4 they knew about it, it is theirs, they gave it to me, and
5 said what does he say about that projectile. He says it
6 is most consistently fired by a .380 automatic. Well, it
7 is simple, we are not stupid, you don't call the witnesses
8 inconsistent with the theory that you formed on October
9 the 22nd and have them stuck with blinders on until today.
10 Because a revolver that everybody says Mr. Span was
11 shooting is not an automatic. Now, the officer says,
12 well, I have got a theory for that too. Now, ladies and
13 gentlemen, I can tell you I have been shooting since I was
14 old enough to hold a gun. I have competition shot,
15 competition pistol shooter. And then this officer gets up
16 here and starts talking to you about moon clips and a
17 revolver able to shoot automatic ammunition, I had to
18 Google that one. I had never heard of that, believe it or
19 not there is such a thing. But I had never heard of it.
20 So his theory is, this man possesses a .380 automatic
21 pistol revolver takes the trouble to go out and I guess
22 you get them off the internet because you can't find them
23 in a gun shop or at Walmart around here and orders a moon
24 clip that will have automatic ammunition so that he can
25 shoot automatic ammunition instead of the cheaper .380 or

1 .38 that he could go to any store around here and buy.
2 Or, of course, someone else was shooting which is
3 consistent with the other eyewitnesses, who of the
4 eyewitnesses probably has at the least of an ax to grind.
5 We know that Mr. Parker, the other one in this group of
6 boys had the prior bad history, they told you about that.
7 Now one of them says even when he saw him approach, we
8 jumped out of the car and got ready to fight. Did Whitney
9 say something to fight. No, he didn't. Well why would
10 you get out of the car and fight. Well, man, people are
11 crazy, you don't know what they are going to do. Did that
12 make sense to y'all. Do you jump out of the car every
13 time you see somebody walking towards you when you park at
14 Bilo and get ready to fight because people are crazy, you
15 don't know what they are going to do. When you go to
16 Walmart and somebody walks by do you jump out and get
17 ready to fight. No. We don't do that. You jump out and
18 get ready to fight if you think you have got a reason to
19 fight. And he didn't jump out alone, they all four jumped
20 out. Mr. Span, he testified and I am going to tell you
21 something, ladies and gentlemen, you have got to go back
22 into this room, you have got to decide the credibility of
23 the witnesses that talked to you, their believability and
24 that is who is told to tell us a different story and who
25 is coached to tell a story. One thing I always got

1 criticized on when I was prosecuting is you don't prepare
2 witnesses well enough. I have heard that I don't know how
3 many times what that meant was, I didn't sit down and go
4 over their story with them. Well, ladies and gentlemen,
5 if they are up there to tell you the truth I don't need to
6 go over that with them. I wasn't there on October 22nd,
7 all I tell them is get up there and tell the truth, tell
8 them what happened. If I had of I would have told Mr.
9 Span, don't use that language. Don't say those words, he
10 got up here and testified and he said words, y'all heard
11 them. But you know what, that is Mr. Span, that is the
12 way he talks, that is the way he is, it is natural for
13 him. It may not be for some folks but it is for him. And
14 I am going to tell you, if I was going to lay out a story
15 for Mr. Span and I am sorry for turning my back, that
16 makes it hard to hear, or Mr. Span was going to make up a
17 story for you he wouldn't have thrown the first punch and
18 hit Mr. Gaston, he wouldn't have gone down there mad and
19 ready to fight and call somebody the name he said he
20 called them. He wouldn't have picked up a brick and
21 thrown at Mr. Boyd, he told you he did all of those
22 things, didn't he. If he was up here lying just to get
23 out of something, man, I was down there at his shop, I
24 didn't have no trouble with these guys, they got in my
25 face, they started a fight and the next thing I know

1 somebody is over shooting and I am running. If I am going
2 to concoct the story that is a better one, I wouldn't have
3 said, yes, I was down there upset with them. Yes, I
4 called them a name, I threw a punch, I even threw the
5 brick. And, yes, he threw a bat back at me. Let's think
6 about that for a second. This is a man, according to Mr.
7 Boyd, had already pulled a gun, shown it to him, put it
8 back in his pants pocket, I got a gun, man. Put it back
9 in there. You are going to throw a baseball bat at a man
10 who just showed you a gun. Does that make any sense. I
11 did it because I was mad. Well, if that is what you did
12 that is not only mad, that is incredibly stupid unless, of
13 course, Mr. Span's story is what happened. Now the person
14 would probably, like I said, the least ax to grind was
15 Kevin Goode. I can't remember exactly where he said he
16 was standing but he was out there that day and he was an
17 older gentleman that testified. He is not friends with
18 Mr. Span and his buddies, he was just telling what
19 happened. Now the interesting thing again is, he comes
20 from the back back there where the prosecution keeps their
21 witnesses, he testified in court and what does he say.
22 That man right there, I saw him pull a revolver and start
23 shooting, points him out at the prosecutor's request and
24 doesn't say anything about anybody else shooting, does he.
25 Doesn't say anything about anybody else having a gun.

1 Even tries his best to get out of admitting the fact that
2 on his recorded statement and y'all heard it, he said the
3 other two boys pulled out guns and started shooting too.
4 Y'all heard the statement, it was put into evidence if you
5 want to listen to it again. Now why would he come into
6 court this week and say something completely different. I
7 don't mean a little bit different, I mean completely
8 different because he points him out, that is the man right
9 there. Well that is interesting because on October the
10 22nd at approximately 4:59, you will have to listen to the
11 tape somewhere around almost 5:00, an hour and a half or
12 so after the incident occurred can he pick him out of the
13 lineup. Nope, he can look at a picture of Mr. Span and
14 cannot pick him out. Doesn't say it might be this one, it
15 could be this one, this one looks familiar, he can't pick
16 him out, can't identify him. But can sit in court and say
17 that is the man. Now why do you think he can do that
18 after ten months later but couldn't do it on the day it
19 happened. Why do you think ten months later all he can
20 remember was Mr. Span shooting but couldn't remember the
21 other two. Now they sat up here and one of the witnesses
22 said, man, that has been ten months ago, I can't remember
23 the details. I think it was Mr. Parker because he was
24 really having trouble when I started going over his
25 recorded statement with him. Do you remember that. Man,

1 that is ten months ago, I can't remember. I thought about
2 that last night. I cannot remember a thing I did
3 September the 10th of 2001. September the 11th of 2001 I
4 can tell you exactly where I was standing and who I was
5 talking to when an officer with the sheriff's department
6 came in and said that a plane had just hit one of the
7 World Trade Centers. I could show you right now the
8 conference room I walked back to, flipped on the TV and
9 was watching when the second plane hit. I was in family
10 court that day across the hall. If it wasn't for
11 confidentiality I could tell the name of the case I was
12 trying and the verdict the Judge gave me. It was Judge
13 Billy Tunstall. I can remember every bit of those details
14 twelve years ago, eleven years ago because of what
15 happened on September the 11th. Do you now think getting
16 shot would be more traumatic than that. Yeah, y'all might
17 not be able to remember a particular day six months ago
18 but you think back to a day that something like that
19 happened. And that is not the only example. I can tell
20 you exactly where I was standing and what I was doing the
21 day I found out my father had fallen from a tree stand in
22 the lower part of the State and was being rushed to the
23 trauma center. The car I got into, the hospital I went
24 to, what time I got there. I can remember meeting the
25 guard out front and what he said to me, I can remember

1 every bit of it because that was traumatic. I told you at
2 the beginning there comes a time when it is about right
3 and wrong. And we got to get off of this winning and
4 losing, winning and losing. Why do y'all have a hard job,
5 because we in Greenwood, we don't want people shooting at
6 one another, we don't want people getting shot. Did
7 Travis Boyd deserve to get shot, of course not. Even if
8 he was involved in a fight, even if he threw a baseball
9 bat at somebody he didn't deserve to get shot. That is
10 wrong, that is a crime. And we want people to pay for
11 crimes, we want to go out of here feeling like justice has
12 been done and somebody has had to pay for a wrong that has
13 been committed. We want that, we want it as a community.
14 But what concerns me is that as a member of the community
15 here that chair that Mr. Span is sitting in can be just
16 easily be occupied by me. If somebody goes to a
17 Magistrate and swears something happened and gets a
18 warrant for my arrest. And then I am up there, I have got
19 to prove myself innocent. Well, I am not suppose to have
20 to, the State is suppose to prove I am guilty. I sat here
21 in this courtroom several months ago and I watched a man
22 by the name of Edward Lee Omar come in here and he did
23 what we call an Alford plea--

24 THE COURT: No sir, I want allow an argument about
25 what may have happened with another jury in another case.

1 MR. SHEEK: We have to take this job seriously
2 because while we want people to pay for crimes we don't
3 want innocent people to sit in jail. And when you are
4 thinking about is it proof beyond a reasonable doubt, the
5 prosecutor in a second is going to get a chance to get up
6 here and talk to you. And I want him to explain a couple
7 of things to you because I think as a minister of justice,
8 not simply an advocate, he owes you this explanation. Why
9 did this arresting, I am sorry, this investigating
10 officer, this chief investigating officer have the name of
11 the other shooter, the name of him, never even tried to
12 talk to him, never followed it up, never interview him,
13 attempted to interview or attempted to have anyone else
14 followup. Now he said he didn't know his name until I
15 made him read the report and there was the name in the
16 report. Now I understand that Terry Greenfield wrote that
17 report, he was the first officer who testified, he wasn't
18 the investigator. The investigator did not take the time
19 to read the report and get the name, did he literally come
20 to trial to testify to you, the jury, to ask you to
21 convict a man of attempted murder and didn't know he had
22 the name of the person that an eyewitness said had another
23 gun. Yes, he did, I had to show him in the report where
24 it was. What did he do to follow it up. What about Mr.
25 Gaston. He wasn't here, what about his recorded

1 statement. What about the forensics. They told you they
2 had the forensic technician come to the scene. That was
3 real interesting that they didn't want to bring him up
4 here because when you start counting bullet holes, you
5 start counting the times that Mr. Boyd got hit, bullet
6 holes inside of the car, the broken back window with the
7 projectile in it inside the car and a projectile laying in
8 the passenger side of the car and you clearly come up way
9 too many for a revolver. And how many was it when that
10 forensic technician was the one that went and did that.
11 He could have told you that. Why do you think they didn't
12 bring him. And instead of simply being a minister of
13 justice and laying it all out there for you they played
14 the role of an advocate and only brought you what fit
15 their theory. Because I asked the questions, well how
16 many bullet strikes were there. Why do you think I am
17 asking that and not them. Why am I the one trying to get
18 all of the evidence out for the jury and not them. When I
19 prosecuted I had a very simple theory and maybe that is
20 the reason I didn't stay a prosecutor very long. All my
21 cases, whether it was murder or anything else, was open
22 file policy for the defense lawyer. Come look at
23 everything because Rule 5 of our criminal practice says if
24 I am going to use it at trial I have got to give it to the
25 defense. Brady says if it is helpful to the defense I

1 have got to give it to them. And if it is neither one of
2 those two why do I care whether or not the defense has it
3 if it is neither harmful or helpful then they can have it.
4 That is why it should be in a trial. Give you all the
5 evidence, give you everything to a jury. You know what to
6 do with it, don't come and pick and choose. What
7 investigation did that officer do after October the 22nd
8 of 2011. What did he do, not a thing. He tells you in
9 his testimony there were no projectiles, no casings found
10 on that scene. But me on cross-examination, wait a
11 second. You sent to SLED the .9 millimeter Luger. Well,
12 we didn't consider that part of the scene. Why? Because
13 it was in the roadway. Isn't that where Kevin Goode told
14 you that the other two were shooting. Well, I don't
15 remember. What do you mean you don't remember, you are
16 the investigating officer, you are prosecuting your side,
17 you are going to ask the jury to convict beyond a
18 reasonable doubt and you don't remember. You don't take
19 the time to find out. You took the time to collect that
20 shell casing, you took the time to send it to SLED but you
21 don't remember where it was found. Bring me the guy that
22 collected it, bring me the crime scene technician. Now,
23 ladies and gentlemen, I know it is easy to sit here and
24 pick and peck at what the State has done. But in a case
25 like this, they don't bring you the evidence technician,

1 they don't bring you the person from SLED, they don't
2 bring you their own employees that aren't consistent with
3 the theory that they want to tell you today that they
4 formed by 5:00 o'clock on October the 22nd and followed to
5 the exclusion of everything else, there is a problem.
6 There is a big problem. Looking at the simple
7 projectories of these shots. You have got a projectile,
8 if you look at the picture laying outside the passenger
9 door, the passenger side of that gray Pontiac. You have
10 got one that is at the back window, you have got another
11 on the driver's side that has gone into the lower section
12 of the dash and there is a picture of it, it is in
13 evidence, you can look at it, it is down at the lower part
14 right there where the floorboard starts that the officer
15 says appeared to have flesh and blood on it. So
16 apparently that would be the one that would have hit Mr.
17 Boyd or one of them that hit Mr. Boyd. So you have got
18 one coming in this angle because there was no bullet hole
19 through the door or the window, it would have to come in
20 with that door open. You have got one coming through low
21 from that side, you have got one stopping on the passenger
22 side over here, you have got one that is at the back door
23 and you have got the strikes on the building. They want
24 to say this was all coming from the gun. What kind of gun
25 was it. Well, we are all consistent that it was a

1 revolver because we don't have shell casings. One witness
2 was sure it was silver, one was sure it was black or brown
3 handled, one was sure it was all black. Two say he pulled
4 it out and put it back, one said he didn't. Interestingly
5 one of them said there was five of them there as opposed
6 to four of them there. We don't even know who the fifth
7 person was. I can't come in on behalf of Mr. Span and
8 complete this investigation, I don't have the authority, I
9 can't tell the police to do a single thing. I don't have
10 the resources. But to come into court and you have had
11 the resources, you have done the forensics with your crime
12 scene technician, you have done the testing at SLED and to
13 withhold that to a jury and make a defense lawyer have to
14 pull it out like pulling teeth that is not a minister of
15 justice, that is an advocate. I told you from the
16 beginning my job is to convict this man and that is what
17 he has set out to do. Your job is not bad, your job is to
18 seek justice and there really should be three verdicts in
19 South Carolina. There should be guilty, there should be
20 not guilty and there should be not proven. Because this
21 isn't Perry Mason, nobody is going to jump up in the back
22 of the courtroom and admit, I did it. If you go back into
23 that jury room and you say to yourself after looking at
24 all of the evidence, I think Mr. Span probably had a gun
25 and probably shot a gun. If that is what y'all decide

1 then your verdict is simple, it is not guilty. It is like
2 a progression, you have got, the defense proved he didn't
3 do it. That is the very bottom, proved that he didn't do
4 it. Then you have got, well, it might have happened.
5 Then you have got, it is plausible, could have happened,
6 but we don't know. Then you have got, it probably
7 happened. And all of those are not guilty. It is not
8 until you get to that top level, proof beyond a reasonable
9 doubt that you come back with a verdict of guilty because
10 you are not here to reward the police, you are not here to
11 reward Mr. Span, you are here to seek justice. That is
12 why Lady Justice up there on the seal hanging behind the
13 Judge's is blindfold, she doesn't see age, race, sex,
14 social economic conditions or anything else. I told you
15 at the beginning of this case, this was not Whitney Span.
16 If this were Dr. Span, if this was Senator Span do you
17 think this investigation would have gone this way. Do you
18 think all the evidence would have been brought to you, do
19 you think every leaf would have been turned over. It
20 didn't matter. We will go out there and talk to a few
21 people, if they are inconsistent don't worry about it. We
22 will come to court, throw up there and see what happens.
23 But we are not a throw it up there and see what happens
24 county. I hope we are not. I seriously hope we are not.
25 The Judge is going to tell you about proof beyond a

1 reasonable doubt. He is going to tell you that and there
2 are several different definitions but one of them is the
3 kind of doubt that would cause a reasonable person to
4 hesitate to act. And I compare it to this. Let's say you
5 go to the doctor, I recently had to have surgery done.
6 You go to the doctor, he comes to you in the room, sits
7 down with you and says, we are going to need to do
8 surgery. Take you down and do surgery on you. It is a
9 pretty important decision and you say, why do I need
10 surgery. Well, he brings you a series of reasons like the
11 testimony that you got. He brings you a series of tapes.
12 Now what he tells you the test says today and what the
13 test said on October the 22nd are two different things.
14 And the test themselves contradict one another. And he
15 has got other scientific test that he doesn't bring to
16 you, that he holds out, don't worry about those. Are you
17 going to say, all right, doc, schedule it up, let's go.
18 Are you going to say, wait a second, I want to see those
19 other tests or I need a second opinion because if you do
20 you have got reasonable doubt. What I am going to ask you
21 to do now is listen carefully, the prosecutor really does
22 owe you an explanation as to why he didn't see the need to
23 bring you the evidence of the bullet strikes and the SLED
24 guy and all of those things. Mr. Span is on trial for his
25 life, why wouldn't you take the time because isn't it

1 interesting, they can parade five witnesses in here from
2 the police department that all tell you on the 26th Mr.
3 Span ran. They can get five of those up here to tell you
4 he ran on the 26th but can't get the crime scene
5 technician up here to tell you how many bullet holes are
6 in the building. They can get five witnesses up there to
7 tell you he ran four days later but not bring you a person
8 from SLED who is going to tell you that those bullets are
9 more consistent with a .380 automatic or going to tell you
10 that they may or may not be able to be matched to a
11 particular type of weapon, may or may not. The report is
12 in evidence, read it. Says a list of guns that may have
13 been fired is not presented, not can't be, but is not.
14 Where is their followup. Where is their call to them,
15 where is there letter to them saying, well, I know you
16 didn't present it but tell me what you can. It is not
17 there, ladies and gentlemen, didn't happen, didn't matter,
18 wasn't important. Go back and look at this evidence, look
19 at the evidence that you do have and look at the evidence
20 that you don't have. Look at the evidence that we know
21 they have that they want you to have. I shouldn't be the
22 one to have to pull it out. Ministers of justice should
23 lay it out there for you. I shouldn't have been the one
24 to impeach people with their recorded statements, they
25 could have simply played them to begin with. Isn't this,

1 sir, exactly what you told them. Take a transcript and
2 ask them, you said this and this and this. That is not
3 what we did, that is not the story we wanted told today.
4 None of us are going to get our of here sure one way or
5 the other, whether or not Mr. Span had a gun. But we can
6 go out of here sure of one thing. There is no proof
7 beyond a reasonable doubt. If that is all of us need to
8 go out of here with accusations that may be made and hopes
9 to god that any investigation are thoroughly done and
10 completely presented in court. Justice is not just a
11 victim, justice is not just acquitted, justice is holding
12 our beliefs and our government to a standard. I read an
13 appellate court case that started out with a sentence and
14 I thought it was amusing and it said, this case gives new
15 meaning to the words, you can trust us, we are from the
16 government. Then it went on to tell what had happened in
17 that particular case. Listen to the oath, look at the
18 evidence carefully, if you want to rehear it, rehear it.
19 Think about it, no witness was consistent with each other.
20 Demetrius Andrews who sat on the stand and pointed him
21 out, is that the man, couldn't do it on October the 22nd.
22 The only people that could were the ones with the prior
23 bad history but Demetrius Andrews came into today and said
24 he did. And he also said he comes out initially talking
25 to Travis Boyd with the baseball bat, didn't he. That is

1 not what the other witnesses said. Mr. Boyd says he
2 handed him the baseball bat as if, hey, use this on him.
3 But that is not what the other witnesses said. I could go
4 on and on, you heard it. That, ladies and gentlemen, is
5 not the bases of which we build proof beyond a reasonable
6 doubt. I told you it is like a jigsaw puzzle. These
7 pieces won't fit together. I remember my child as a
8 five-year-old. He would get two pieces together that
9 didn't go together, with enough force he would get them
10 together. It makes some odd looking pictures. That is
11 what we have got here, an odd looking picture. The police
12 is going to have to ask you, the State is going to ask
13 you, ignore the holes of the pieces we didn't even show
14 you, ignore the pieces that don't fit together nor the
15 inconsistencies and go ahead and convict him anyway. And
16 I am going to ask you, please don't do that. Thank you.

17 THE COURT: Thank you, Mr. Sheek. Solicitor.

18 MR. SWILLEY: Thank you, Your Honor, if it please the
19 Court. Ladies and gentlemen, Mr. Sheek just said and
20 actually over and over again that my job and the job of
21 the State is to seek justice. And you know what, he is
22 absolutely right. I should have brought that up during my
23 opening but I didn't really elaborate on it. My job is to
24 seek justice, ladies and gentlemen, and that is what I am
25 doing in this case. And this case, seeking justice and

1 trying to convict Whitney Span is the same thing because
2 that is justice, that would be justice. He did have a gun
3 that day, he did shoot at Travis Boyd, he did hit Travis
4 Boyd and he tried to kill Travis Boyd. I am using these
5 notes right here because I can't remember everything, I am
6 not the smartest guy in the world. You will see me
7 walking around looking at them and trying to make certain
8 points. But to seek justice is to seek being right, seek
9 fairness. Okay. And you have to decide what is fair.
10 See your job in this case, when you go in there, is to
11 seek justice as well. Y'all decide what is right, not
12 just me, my job is to seek justice, your job is to seek
13 justice too. And how do you do that. Well, take
14 everything you heard and use what you brought with you
15 between your ears, collective common sense. What makes
16 sense, what doesn't make sense, what do I believe and what
17 do I not believe. And whatever you believe to be the
18 facts are the facts. You have to decide if Mr. Span has
19 been proven guilty beyond a reasonable doubt. Ladies and
20 gentlemen, he has, everything has been put forward. The
21 great thing about American justice and it is not perfect.
22 The court system is not perfect, it would be impossible to
23 create a perfect system. But the great thing about this
24 system is that everybody by the book gets the same rights
25 and privileges. Every single human being that is ever on

1 trial has to be proven guilty beyond a reasonable doubt.
2 Like Mr. Sheek said, no matter rich or poor, black, white,
3 Asian, Hispanic, smart, dumb, fat, skinny, it doesn't
4 matter. Everybody has to be proven guilty beyond a
5 reasonable doubt. Everybody has the presumption of
6 innocence, the State has the burden of proving every
7 single time. Mr. Sheek made an issue about Mr. Span being
8 of modest means and not being able to complete high school
9 and didn't have a father, but I hate that, I really do, I
10 really do. That is not fair. You know what is fair, that
11 he be judged by the same standard that everybody else is,
12 the same standard that I would be judged, anybody in here
13 to be judged, proof beyond a reasonable doubt. All right.
14 You have got an impartial jury, you have got a trial, you
15 have got a great lawyer, been practicing since I was eight
16 years old. Mr. Sheek made the remark that he lacks the
17 resources to do this investigation well. He has been at
18 it for twenty years, he knows what is going on. The
19 presumption of innocence, ladies and gentlemen, is
20 something I would like to talk about very briefly. To
21 give you kind of an idea, when the defendant shows up and
22 it sits upon like a robe of righteousness and it is up to
23 the State to take it off of him, metaphorically speaking
24 through evidence and testimony of his guilt. Okay.
25 Throughout the trial that is what happened, that robe was

1 taken off of Whitney Span and it now lies on the floor, he
2 is exposed for what he is, a man that tried to kill Travis
3 Boyd. Some of the points that Mr. Sheek brought up are
4 pretty much attempts to muddy the waters, to confuse you,
5 to make you not to see what is plain as day right in front
6 of you, minor inconsistencies in the stories. The fact is
7 that the police got there, Travis Boyd was almost bleeding
8 to death, everybody is freaking out. How much opportunity
9 do you think these kids and that is what they are, these
10 kids have to fabricate some story that Whitney Span is the
11 shooter, definitely sure he is the shooter and that is it.
12 How much time, do you really think that they came up with
13 that, they just concocted that from the time Travis was
14 shot to the time the police got there. Let me tell you
15 something, if they didn't see Whitney Span shooting, they
16 didn't see him shooting at Travis Boyd, they wouldn't have
17 been here, they wouldn't have been brought in here, they
18 would have been worthless to me. Ladies and gentlemen,
19 Mr. Sheek tried to bring the fact that there may have been
20 another shooter and guess what, they may have been, there
21 may have been two other shooters besides Mr. Span, it
22 doesn't matter. Mr. Span is the one on trial here, not
23 anybody else. The crime of attempted murder is an
24 emotional or attempted intentional killing with malice
25 aforethought, not shooting somebody, not shooting somebody

1 and have somebody else shooting at him. Whitney Span was
2 trying to kill Travis Boyd with malice aforethought,
3 ill-will, with bad intentions, he is guilty, ladies and
4 gentlemen. I want to show you something very briefly.
5 Ladies and gentlemen, attempted murder is the person with
6 the intent to kill attempts to kill another person with
7 malice aforethought either expressed or implied. A person
8 who violates this section is guilty. Ladies and
9 gentlemen, you don't have to wound anybody, you don't have
10 to harm anybody, you just have to attempt to kill
11 somebody. The fact that there may have been another
12 shooter up the road, somebody that shot a .9 millimeter
13 off one time, that can only serve to confuse you. All
14 right. What I am concerned with and what you should be
15 concerned with is whether or not Whitney Span tried to
16 kill Travis Boyd by shooting at him. You heard Travis get
17 up there and give his testimony. You heard Harry get up
18 there and give his testimony. You heard Tavaris get up
19 there and give his testimony. Right. These might not be
20 the smartest kids in the world, they might not have been
21 honors. Let me tell you something, they understand that
22 when you sit up there you have to tell the truth, you have
23 to. Okay. Nobody put them up there to lie, okay. What
24 good is that. Why would I want to convict somebody that
25 is not guilty, why would anybody want to do that. What

1 purpose does that serve, what sense does that make. It
2 doesn't make any sense. And you know, Mr. Sheek likes to
3 bring back that he used to be a prosecutor and I have only
4 been a lawyer for three years but I used to be a defense
5 attorney too. All right. I know how this works. I know
6 what my role is, what my job is. Okay. Mr. Sheek also
7 brought up the fact that why didn't I put in the
8 statements they gave. Well, ladies and gentlemen, that is
9 hearsay. I am obligated not to violate the rules of
10 evidence, you need to hear it straight from the horses
11 mouth. All right. That is why that happened. Secondly,
12 again let me emphasize, you have got to go over who you
13 believe. Who really has a dog in this fight, does Travis
14 Boyd or any of these other guys, are they going to be in
15 any better position to lie about Whitney Span. Do they
16 really have a dog in this fight. What good would it do to
17 them to get up there and lie about Whitney Span.
18 Absolutely nothing, is there anything they can derive from
19 that. Would that serve them any purpose, and it wouldn't.
20 You heard Mr. Span get up here. All the details from
21 their stories but the only thing that was really different
22 was the fact that he said he didn't shoot. Well the last
23 thing he said, turns around and two guys were shooting.
24 Does that make sense. Is that something that your
25 collective common sense would lead you to believe. Now I

1 am not really concerned as to whether there is a fight and
2 they went into the store and they came out the store,
3 whether the gun was silver, whether the gun was black,
4 whether Whitney Span threw a brick or a rock, I don't
5 care, that doesn't matter, it has no issue in this case.
6 What matters is the fact that he pulled that gun out of
7 his waistband, that revolver, he was furious and he shot
8 Travis Boyd three times. Ladies and gentlemen, he has to
9 have the intent to kill, guilty of attempted murder but
10 what other attempt do you have when you shot a man three
11 times. May have pulled the trigger more, we know he shot
12 him three times. Two of those bullets went through his
13 legs, one got stuck in his ankle. Whatever intent could
14 you have. You know, when Mr. Sheek gave his opening, he
15 talked about his father was the most influential person in
16 his life. Automatically I thought of the scene of this
17 movie, one of my favorite movies. The movie is Friday,
18 (phonetic), and you may or may not have seen this movie
19 but it was about a young man who lives in this area, a lot
20 like, he don't have a lot of money, gets into a fight or
21 an argument with, he was a tough guy. And he is getting a
22 gun that he has out of his sock. His father catches him
23 and he says, what is that for. He says, protection.
24 Protection from what. You know how it is now. His father
25 says, no, son, that is not how it is. You win some and

1 you lose some. But you will find another way. Put this
2 up, now are you a man. And if somebody had of told
3 Whitney Span that, if somebody had given him that speech
4 he wouldn't be sitting in that chair right now. He made a
5 bad decision. Ladies and gentlemen, Mr. Sheek made an
6 issue about Investigator Nichols and the way he did his
7 investigation. He said the State should probably have to
8 explain why he had a name of somebody else who was with
9 him and didn't go interview him. Okay. Now, Mr. Span
10 didn't know the name of any of the people that were with
11 him. It was Turk and Wheezy and couldn't really provide
12 anything more than that. Okay. But Investigator Nichols,
13 although young like myself, he has been around the block a
14 couple of times, how much information do you think you are
15 going to get from somebody who is alleged to maybe have
16 shot at somebody else. How much, if you really shot at
17 somebody how much information do you think he is going to
18 give you. Oh, yeah, I am going to go ahead and tell you
19 exactly what happened. My buddy over here shot this guy,
20 I shot my .9 millimeter and that is what happened. Who
21 would do that. What a waste, assuming he did that, what a
22 waste of time that would be. It doesn't matter if there
23 is another shooter. Again, Whitney Span is the shooter
24 and every single person at that scene testified he came,
25 showed the gun off, pulled it out or kept it in his pants

1 or showed it off and after that he pulled it out and
2 started shooting. Okay. It is not a coincidence that
3 each and every one of them saw him with the gun and saw
4 him shooting. It is not a coincidence that Travis Boyd
5 got hit three times in the leg. I don't care whether the
6 bullet is in the wall of the store, I don't care where the
7 other bullets came from. All that matters is that Whitney
8 Span tried to kill Travis Boyd, he had a gun. That is the
9 facts of the case. Ladies and gentlemen, I am about, I
10 have probably worn out your patience a lot. You are
11 probably ready to go back and get this case resolved. I
12 am glad you are here. There is a quote from Thomas
13 Jefferson that I would like for you to hear and I think is
14 just very applicable. Said nobody is above the law and
15 nobody is below the law. And we don't ask anybody's
16 permission to hold other's accountable to break the law.
17 And I ask you to follow that when you go in that jury
18 room. Now, you may have heard a lot of things during the
19 course of the trial that I offended you, if Investigator
20 Nichols did anything to offend you. If that happened let
21 me go ahead and apologize now for anybody, don't let that
22 affect the way you judge the facts in this case. This
23 matter is too important, too important to Mr. Span, it is
24 too important to society, too important to our justice
25 system. And Investigator Nichols, did it look to you like

1 he didn't put a lot of effort in this case, and I ask you
2 to follow that when you and it may have been confusing
3 when he got off of the stand and showed you all the things
4 about, you know, bullets and how revolvers don't fire out,
5 shells, the reason why he thought it came from a revolver,
6 how that matched the story of Whitney Span having a
7 revolver in his belt. You think Investigator Nichols
8 really didn't put a lot of thought and effort in to this.
9 Did it look like he didn't put a lot of thought and effort
10 in this when he got up on the stand. Do you think he
11 didn't take his job seriously. You think he hadn't done
12 enough work on this case. Because I think he did and he
13 did. Ladies and gentlemen, finding somebody guilty at
14 trial is a serious thing. But in this case it shouldn't
15 be difficult because all I ask for is the truth. Truth is
16 that Whitney Span tried to kill Travis Boyd on October the
17 22nd of 2011. It is proof beyond a reasonable doubt.

18 THE COURT: Thank you very much, Solicitor. If
19 anyone wants to leave the courtroom before I begin my
20 charge to the jury I would advise you to do so now. And
21 then, Mr. Bailiffs, if y'all would please lock the doors.
22 For those of you in the courtroom if you would please not
23 move about during my instructions to the jury.

24 Mr. Foreman and ladies and gentlemen of the jury, I
25 would ask you to please give me your complete and

1 undivided attention. I am going to charge you or instruct
2 you on the law that you are to apply to the facts in this
3 case as you find the facts to be. Your verdict should be
4 a confluence, perfect confluence of the law, the standard
5 by which we all are held to and the facts and the
6 inferences from the facts as you find them to be. The way
7 I do this procedure is I tell you the general law that
8 applies to all criminal cases in South Carolina. I would
9 generally give you the caption of the particular subject I
10 am fixing to cover. When I go from one subject to the
11 next I will again alert you to that next subject or title.
12 After I cover the general law I will then charge you the
13 law that applies to the specific indictments, specific
14 charges in this case being attempted murder, a lesser
15 included offense of assault and battery of a high and
16 aggravated nature and then the separate offense of
17 possession of a weapon, a firearm during the commission of
18 a violent crime. After I cover that I will then cover the
19 form of the verdict.

20 Ladies and gentlemen, again I will remind you what
21 the attorneys have said in their openings, in their
22 questioning and in their closings is not evidence. I am
23 sure y'all can repeat that back to me by this stage of the
24 trial. The evidence is that which came from the lips of
25 the witnesses testifying under oath before you. As I

1 recall, by my count, there were about a dozen witnesses
2 that testified and also any photographs, exhibits that
3 were introduced into evidence. I believe there was
4 State's 1 through 15, primarily photographs. And defense
5 1 through 4, a taped statement and photographs and perhaps
6 a SLED report. I have forgotten exactly how the evidence
7 was numbered. But again if you would please give me your
8 complete and undivided attention.

9 Charge, arrest, indictment is not evidence. The
10 indictments charge the defendant with attempted murder and
11 possession of a weapon during the commission of a violent
12 crime. I remind you that the fact that Mr. Span was
13 arrested, charged and indicted in these cases is not
14 evidence and cannot be considered by you as evidence of
15 guilt in this case nor does it create any presumption or
16 inference of guilt. These documents, these indictments
17 are simply the formal written instruments which contains
18 the charges made against the defendant, they are the
19 formal documents by which the case is brought into court.

20 Presumption of innocence. The defendant has plead
21 not guilty to these indictments and that plea puts the
22 burden on the State to prove the defendant guilty. A
23 person charged with committing a criminal offense in South
24 Carolina is never required to prove himself innocent. I
25 charge you that it is an important rule of the law that a

1 defendant in a criminal trial, no matter what the
2 seriousness of the charge may be will always be presumed
3 to be innocent of the crime for which the indictment was
4 issued unless guilt has been proven by evidence satisfying
5 you, the jury, of that guilt beyond a reasonable doubt.
6 This presumption of innocence, ladies and gentlemen, does
7 not end when you begin your deliberations but it
8 accompanies the defendant throughout the trial until you
9 reach a verdict of guilt based on that evidence satisfying
10 you of that guilt beyond a reasonable doubt. The
11 presumption of innocence has been said to be like a robe
12 of righteousness placed about the shoulders of a defendant
13 which remains with the defendant until it has been
14 stripped from the defendant by evidence satisfying you of
15 the defendant's guilt beyond a reasonable doubt. The
16 presumption of innocence is not a mere legal theory. It
17 is not just a legal phrase, it is a substantial right to
18 which every defendant is entitled until you and unless
19 you, the jury, are satisfied from the evidence of the
20 defendant's guilt beyond a reasonable doubt. What is a
21 reasonable doubt. A reasonable doubt in the law is the
22 kind of doubt that would cause a reasonable person to
23 hesitate to act. The State has the burden of proving the
24 defendant guilty beyond a reasonable doubt. Some of you
25 may have served as jurors in the past in civil cases where

1 you were told that it is only necessary to prove that a
2 fact is more likely true than not true which is known as
3 the greater weight or the preponderance of the evidence.
4 In criminal cases the State's proof must be more powerful
5 than that. It must be proof beyond a reasonable doubt.
6 Proof beyond a reasonable doubt is proof that leaves you
7 firmly convinced of the defendant's guilt. Now, ladies
8 and gentlemen, we know that there are very few things in
9 this world that we know with absolute certainty. And in
10 criminal cases the law does not require proof that
11 overcomes every possible doubt. If based on your
12 consideration of the evidence you are firmly convinced
13 that the defendant is guilty of the crime charged you must
14 find the defendant guilty. If on the other hand you think
15 there is a real possibility that the defendant is not
16 guilty you must give the defendant the benefit of that
17 doubt, that reasonable doubt and find him not guilty.

18 Let's talk about your duties as the trial jury and my
19 duties as the trial Judge. And really, I should rephrase
20 it, rather than let's talk about, let me talk to you about
21 your duties as the trial jury and my duties as the trial
22 Judge. I remind you that during this trial you and I have
23 certain duties to perform. As the trial Judge it is my
24 responsibility to preside over the trial of this case. I
25 also have the additional duty to rule on the admissibility

1 of the evidence offered during the trial. You are to
2 consider only the competent evidence before you. If there
3 was any testimony ordered stricken from the record during
4 this case you must disregard that testimony. You are to
5 consider only the testimony which has been presented from
6 the witness stand and any exhibits which have been made a
7 part of the record in this case. I have the additional
8 duty to charge you the law that applies to this case. As
9 the presiding Judge I am the sole Judge of the law of this
10 case and it is your duty under your oath as jurors to
11 accept and apply the law as I now state it to you. If you
12 already have any ideas to what the law is or what the law
13 ought to be and it does not agree with what I now tell you
14 the law is you must abandon your idea because you are
15 sworn to accept the law and apply the law exactly as I
16 state it to you. In every case tried in this court before
17 a jury the jury becomes the sole and exclusive judge of
18 the facts in a case. A trial Judge cannot intimate,
19 state, comment on or make any statement to a trial jury
20 about the facts in a case. Since you, the jury, are the
21 sole judge of the facts in this case you are not to infer
22 from what I have said during the progress of this trial in
23 ruling upon the admissibility of evidence or otherwise or
24 anything that I say now during the course of these
25 instructions to you that I have any opinion about the

1 facts in this case. The law does not allow me to have an
2 opinion about the facts in this case. That is a matter
3 solely for you, the jury, to determine. As jurors it is
4 your duty to determine the effect, the value, the weight
5 and the truth of the evidence presented during the trial.

6 Direct and circumstantial evidence. There are
7 generally two types of evidence presented during a trial.
8 Direct evidence and circumstantial evidence. Direct
9 evidence is the testimony of a person who claims to have
10 actual knowledge of a fact such as an eyewitness or an ear
11 witness. It is evidence which immediately establishes the
12 main fact to be proved. I saw something, I heard
13 something. It is something that we perceive through one
14 of our human senses, I smelled something, direct
15 testimony, direct evidence. Circumstantial evidence is
16 proof of a chain of facts and circumstances indicating the
17 existence of a fact. It is evidence which immediately
18 establishes a collateral fact from which the main fact may
19 be inferred. Circumstantial evidence is based on
20 inference and not on personal knowledge or observation.
21 In the past it was common for attorneys and judges to give
22 examples of circumstantial evidence where you were in your
23 home at night, it was hot and dry when you went in the
24 house that evening and you fell asleep, slept throughout
25 the night, got up the next morning and looked out and it

1 was limbs in your backyard and puddles of water about and
2 puddles of water on the side. Well, you didn't see the
3 rain, you didn't hear the rain, you didn't turn your
4 sprinklers on so you infer, you didn't have personal
5 knowledge, I saw it rain. But it's an inference that may
6 properly be drawn from that evidence. They used to use
7 that example with snow. I never thought that worked too
8 much around Columbia because we never had any snow. But
9 those are examples of circumstantial evidence. Now the
10 law, our law makes absolutely no distinction between the
11 weight or the value to be given to either direct or
12 circumstantial evidence nor is there a greater degree of
13 certainty required of circumstantial evidence than of
14 direct evidence. You should weigh all of the evidence in
15 the case. After weighing all of the evidence, if you are
16 not convinced of the guilt of the defendant beyond a
17 reasonable doubt you must find the defendant not guilty.
18 If after weighing all of the evidence you are convinced of
19 the guilt of the defendant beyond a reasonable doubt you
20 must find the defendant guilty.

21 The crux of the jurors responsibility, credibility of
22 the witnesses. Necessarily you must determine the
23 credibility of the witnesses who have testified in this
24 case. Credibility as you all know simply means
25 believability. It becomes your duty as jurors to analyze

1 and to evaluate the testimony, the evidence and determine
2 which evidence, which testimony convinces you of its
3 truth. In determining the believability of witnesses who
4 have testified in this case you may believe one witness
5 over several witnesses or several witnesses over one.
6 Obviously you do not find the truth by counting the number
7 of witnesses for one side or the other. You may believe a
8 part, a part of the testimony of a witness and reject the
9 remaining part of the testimony of that same witness. You
10 may believe the testimony of a witness in its entirety or
11 reject the testimony of a witness in its entirety provided
12 you have a good reason within the record for doing so.
13 You may consider whether any witness has exhibited to you
14 any interest, any biased, any prejudiced or other motive
15 in this case. You may also consider the demeanor of the
16 witness on the stand. Demeanor in the law means the
17 appearance and the manner of the witness while on the
18 witness stand. And you use this, ladies and gentlemen, in
19 determining the credibility of witnesses and the
20 believability with all of your individual and collective
21 common sense, good judgment, life experiences, educational
22 levels, work histories and all. You certainly don't leave
23 your common sense and your good judgment outside the
24 courtroom, outside the jury box or outside the jury room
25 during your deliberations.

1 Ladies and gentlemen, that covers the general law. I
2 now am going to cover the specific charges in the
3 indictments in this case. If you would please continue to
4 give me your complete and undivided attention. There are
5 two indictments in this case. The first I will cover is
6 indictment 12 which is the year; GS which is general
7 sessions; 24 is your county number of Greenwood and 140 is
8 the specific number as to this indictment as to attempted
9 murder. The charge of attempted murder also includes a
10 lessor included charge of assault and battery of a high
11 and aggravated nature. I will explain both of those
12 charges to you.

13 The defendant is charged with attempted murder.
14 Attempted murder occurs when a person who with intent to
15 kill attempts to kill another person with malice
16 aforethought, either expressed or implied. Now, there may
17 be some terms in there that you would not commonly be
18 discussing over the breakfast table in the morning, malice
19 aforethought, expressed or implied. I will explain those
20 terms to you.

21 Malice is hatred, ill-will, or hostility towards
22 another person. Malice is the intentional doing of a
23 wrongful act without just cause or excuse and with an
24 intent to inflict an injury or under circumstances that
25 the law will infer an evil intent. Malice aforethought

1 does not require that malice existed for any particular
2 period of time before the act is committed, but malice,
3 that hatred, that ill-will, that hostility, that acting
4 without just cause or excuse, that malice must exist in
5 the mind of the defendant just before and at the time that
6 the act is committed. Therefore, there must be a
7 combination of the previous evil intent and the act.

8 Malice aforethought may be expressed or implied. Now
9 these terms, expressed or implied do not mean different
10 kinds of malice but merely the manner in which malice may
11 be shown to exist. That is either by direct evidence or
12 by inference from the facts and circumstances which are
13 proved.

14 Expressed malice. Expressed malice is shown when a
15 person speaks words which express hatred or ill-will for
16 another person or when the person prepared beforehand to
17 do an act which was later accomplished. For example, a
18 person lying in wait for another person or any other acts
19 or preparation going to show that the deed was within the
20 defendant's mind would be expressed malice. Malice may be
21 inferred from conduct showing a total disregard for human
22 life. That would be based on the totality of all the
23 surrounding facts and circumstances as to a particular
24 event as to whether there was malice expressed or implied.

25 Now an attempt, what is an attempt. An attempt is an

1 effort to accomplish a crime which does not succeed. An
2 attempt includes a specific intent to do a particular
3 criminal act along with an act falling short of the act
4 that was intended. The State must show more than mere
5 preparation and intent. There must be some overt act
6 committed in the effort to commit the crime.

7 Intent means intending the result which actually
8 occurred, not accidentally or involuntarily. Intent may
9 be shown by all the acts and conduct of the defendant and
10 other circumstances from which you may naturally and
11 reasonably infer intent.

12 Once again, ladies and gentlemen, to prove attempted
13 murder the State must prove beyond a reasonable doubt that
14 the defendant attempted to kill another person with malice
15 aforethought.

16 Now, ladies and gentlemen, if you find that the State
17 has failed to prove beyond a reasonable doubt that the
18 defendant committed attempted murder, you must then
19 determine whether the State has proven beyond a reasonable
20 doubt that the defendant committed the lesser included
21 offense of assault and battery of a high and aggravated
22 nature. Attempted murder includes the lesser offense of
23 assault and battery of a high and aggravated nature. To
24 define that I must define both assault and battery for
25 you. An assault occurs when a person unlawfully attempts

1 or offers to commit a violent injury upon another person
2 and had the present ability to complete the attempted
3 injury. An assault is the intentional creation of a
4 reasonable fear of immediate bodily harm. It is not
5 necessary that the attempted injury or harm actually take
6 place. For example, if I walk up to you and when we are
7 within arm's reach I draw back to hit you, that is an
8 assault. A battery is the unlawful touching of another
9 person by a person who has committed the assault. An
10 unlawful touching can be caused by a part of the accused
11 body or by any object the accused puts in motion. A
12 battery is the completion of the assault by using or
13 applying force to another person however slight in a rude,
14 angry or resentful manner without legal justification for
15 doing so. Using my other example, if when I have walked
16 up to you within arm's length and reached back to hit you
17 that is the assault. By hitting you that is the battery.
18 To prove assault and battery of a high and aggravated
19 nature the State must first prove beyond a reasonable
20 doubt that the defendant unlawfully injured another
21 person. Next, the State must prove beyond a reasonable
22 doubt that either great bodily injury resulted or that the
23 act was accomplished by means likely to produce death or
24 great bodily injury. Great bodily injury is also defined
25 in our code of laws. It means bodily injury which causes

1 a substantial risk of death or which causes serious,
2 permanent disfigurement or protracted loss or impairment
3 of the function of a bodily member or organ. Ladies and
4 gentlemen, that is the charge on attempted murder and
5 assault and battery of a high and aggravated nature.

6 The next indictment, 2012-GS-24-144 is the charge of
7 possession of a weapon during the commission of a violent
8 crime. It is unlawful for a person in possession of a
9 firearm or visibly displaying what appears to be a
10 firearm, to have such a instrument during the commission
11 of a violent or attempting to commit a violent crime as
12 described and defined under 16-1-60. A firearm is defined
13 as a machine gun, automatic rifle, revolver, pistol or any
14 weapon which will or is designed to or may readily be
15 converted to expel a projectile. I would further advise
16 you that under our code attempted murder, 16-3-29 is a
17 violent crime under 16-1-60. I would further advise you
18 that 16-3-600(b), assault and battery of a high and
19 aggravated nature is a violent crime under 16-1-60.

20 Ladies and gentlemen, that would conclude the charge
21 on both the indictments. Now we are going to talk just
22 for a few moments, I assure you the end is in sight,
23 concerning the form of verdict and the jury verdict
24 itself. There are, as to the charge of attempted murder
25 there are three possible verdicts which you may find in

1 this case. As to the charge of possession of a weapon
2 during the commission of a violent crime there are two
3 possible verdicts you may find in this case. There is
4 absolutely no significance in the manner in which I state
5 these to you. Further, Mr. Foreman and ladies and
6 gentlemen, you will have a verdict form in the room with
7 you showing the possible verdicts in these matters. As to
8 the charge of attempted murder, Mr. Foreman, and the form
9 is very simple, very easy to follow. It has as to the
10 charge of attempted murder, the indictment number, we find
11 the defendant, the defendant's name, guilty or guilty of
12 assault and battery of a high and aggravated nature or not
13 guilty. That is the three possible verdicts. If after
14 your consideration of the evidence as to the charge of
15 attempted murder you find the State has met its burden of
16 proof beyond a reasonable doubt I would ask you then to
17 check to the left of the word, guilty, circle both the
18 checkmark and the word, guilty. If you find the State has
19 failed to prove beyond a reasonable doubt the defendant
20 guilty of attempted murder you would then consider assault
21 and battery of a high and aggravated nature. If you find
22 the State has met its burden of proof beyond a reasonable
23 doubt as to the charge of assault and battery of a high
24 and aggravated nature I would ask you to please check to
25 the left of that, circle both the checkmark and entirely

1 the wording, guilty of assault and battery of a high and
2 aggravated nature. If you find the State has failed to
3 prove beyond a reasonable doubt the defendant guilty of
4 either attempted murder or assault and battery of a high
5 and aggravated nature your verdict would then be not
6 guilty. I would ask you to check to the left of that,
7 circle both the checkmark and those two words, not guilty.
8 As to the possession of a weapon during the commission of
9 a violent crime first you have to find him guilty of one
10 or the other of the violent crimes. In other words, if he
11 is found not guilty on both attempted murder and assault
12 and battery of a high and aggravated nature you may not
13 find him guilty of possession of a firearm during the
14 commission of a violent crime. If you find, after your
15 consideration of the evidence that the State has met its
16 burden of proof beyond a reasonable doubt as to possession
17 of a weapon during the commission of a violent crime you
18 would check to the left of the word, guilty, circle the
19 checkmark and the word, guilty. If you find the State has
20 failed to meet its burden you would check to the left of
21 the words, not guilty, circle both your checkmark and the
22 words, not guilty. It is a signature line for you, Mr.
23 Foreperson, and the date, 7/11, July 11th of 2012. Now,
24 ladies and gentlemen, your verdicts must be unanimous.
25 All twelve of you must agree. Your verdict may not be

1 based on passion, prejudice, any interest, any biased or
2 any other motive not in the record in this case. You have
3 no friends to reward nor enemies to punish. You were
4 selected as fair and impartial jurors in the trial of this
5 case by both the State and the defense. You each took an
6 oath to well and truly try this case and true deliverance
7 make between the State of South Carolina and the prisoner
8 at bar, Whitney Desmond Span and to render verdicts
9 according to the law and the evidence so help you God.
10 Your purpose, your focus is to seek the truth from
11 wherever that truth may come and to return verdicts that
12 speak the truth. That, ladies and gentlemen, is your job.
13 That is when justice is done. After you have reached
14 those verdicts, those unanimous verdicts, you sign and
15 date it, knock on the jury room door and inform the
16 bailiff, we will receive you back into the courtroom at
17 that time. I am going to ask you momentarily to go to
18 your jury room. Do not begin your deliberations until you
19 are told to do so by the clerk or the bailiff. What I
20 will do is I have by law to meet one final time with the
21 attorneys outside of your presence. If I do not have to
22 bring you back for any further instructions, everybody
23 looks great today which then means our alternate will come
24 out of the jury room, the evidence will be presented to
25 you along with this verdict form and you will be notified

1 to begin your deliberations. If you have any questions,
2 if you need anything during the course of deliberations,
3 Mr. Foreman, please write me out a note, knock on the jury
4 room door and I will certainly respond. Thank you very
5 much, you may now go with your bailiff.

6 (Whereupon, the jury was excused from open court.)

7 THE COURT: Any exceptions or additions, Solicitor?

8 MR. SWILLEY: There is not from the State, Your
9 Honor.

10 THE COURT: Mr. Sheek?

11 MR. SHEEK: None from the defense, Your Honor.

12 THE COURT: All right. Y'all may want to look at the
13 form of the verdict. I don't send the indictments
14 generally. And check the exhibits, please, I think it is
15 State's 1 through 15 and defense, 1 through 4.

16 (Whereupon, the attorneys looked at the verdict form
17 and the attorneys and court reporter went over the
18 exhibits.)

19 THE COURT: We appreciate you being with us. Thank
20 you very much, you don't have to call back. You are
21 excused. Appreciate your service.

22 (Whereupon, the alternate was excused from the trial
23 of the case.)

24 (Whereupon, the jury started deliberations at
25 approximately 11:04 a.m.)

1 (Whereupon, the jury came into open court at
2 approximately 12:07 p.m.)

3 THE COURT: Welcome back, Mr. Foreman and ladies and
4 gentlemen, I am sorry for the delay. It took a few
5 minutes and our court reporter got some other speakers so
6 that you would be able to hear this testimony perhaps a
7 little better on the system that was originally set up. I
8 have two notes. First I have a note indicates Mr. Goode's
9 testimony and then a line and under that, listen to the
10 CD. Do you want both the testimony and the CD?

11 MR. FOREMAN: Yes, sir.

12 THE COURT: All right. And then I have Mr. Lester's
13 testimony. First we will have Mr. Goode's testimony. All
14 right. Thank you very much.

15 (Whereupon, the testimony of Kelvin Goode, Tavaris
16 Lester and the CD was played for the jury starting at
17 12:10 p.m. and ended at 1:00 p.m.)

18 THE COURT: All right, thank you very much. Mr.
19 Foreman, that concludes that testimony. If you have any
20 more questions please let me know. Also, when you get
21 back in the jury room, you may want to talk to your fellow
22 jurors and let me know if y'all want to take a luncheon
23 recess I will accommodate you in that regard and I will
24 give you a time like I usually do to be back. Of course,
25 you cannot deliberate during that luncheon recess. Just

1 let me know, we will be standing by. Thank you very much,
2 you may now go with your bailiff.

3 (Whereupon, the jury continued deliberations at
4 approximately 1:01 p.m.)

5 THE COURT: If court will come to order please, I am
6 going to bring the jury out.

7 (Whereupon, the jury came into open court at
8 approximately 1:50 p.m.)

9 THE COURT: I apologize for the delay in getting you
10 back out here, Mr. Foreman and ladies and gentlemen, we
11 were working. As I understand it, y'all want to go to
12 lunch. If I say come back at 3:00. Whenever you all get
13 back, when all twelve of you return, if it is any earlier
14 than 3:00 you can start your deliberations. You don't
15 have to wait until 3:00 but please be back no later than
16 3:00 o'clock. Do not discuss the case with anyone during
17 this luncheon recess, family friends or lunch mates or
18 what have you. If anyone tries to talk with you let me
19 know immediately. No deliberations during the luncheon
20 recess. Thank you very much. Wait, something about the
21 law, did you want something on the law?

22 MR. FOREMAN: The question that we are coming down to
23 is, we are still trying to really define attempted murder.
24 That is where we are stuck at right now.

25 THE COURT: I will work on that for you.

1 MR. FOREMAN: Thank you.

2 (Whereupon, the jury was excused from open court for
3 a lunch break.)

4 THE COURT: Solicitor, let me see you and Mr. Sheek.
5 They want to see the law defining attempted murder. I
6 have about a three-page document on that. I x'd some
7 stuff out that I didn't charge. I didn't charge deadly
8 weapon, you know, things like that. And then I have got
9 attached to it assault and battery of a high and
10 aggravated nature. If y'all don't object I will send that
11 in with them when they get back.

12 MR. SWILLEY: That is fine.

13 MR. SHEEK: That's fine.

14 THE COURT: If you don't object I am going to give
15 them, my law clerk when we get back, can cut and paste the
16 stuff that I didn't charge and had the wording, inferred
17 in here, and I changed everything to implied.

18 MR. SHEEK: That is fine with me.

19 MR. SWILLEY: That sounds fine.

20 THE COURT: Thank you very much.

21 (Whereupon, a lunch break was taken.)

22 (Whereupon, the jury came back from lunch and
23 continued deliberations at approximately 3:00 p.m.)

24 THE COURT: It is my understanding that they have a
25 verdict?

1 MR. BAILIFF: Yes, sir.

2 THE COURT: Bring our jury out, please.

3 (Whereupon, the jury came into open court with a
4 verdict at approximately 3:15 p.m.)

5 THE COURT: Madam Clerk.

6 CLERK OF COURT: Mr. Foreman, have you and the ladies
7 and gentlemen of the jury reached a verdict?

8 MR. FOREMAN: Yes, Ma'am.

9 CLERK OF COURT: Would you please hand the verdict to
10 the bailiff.

11 (Whereupon, the Foreman hands the verdict to the
12 bailiff.)

13 THE COURT: The verdict appears to be in the proper
14 form signed by the Foreperson and dated today's date.
15 Madam Clerk, if you will publish the verdict, please.

16 CLERK OF COURT: The State of South Carolina, the
17 County of Greenwood, the State of South Carolina versus
18 Whitney Desmond Span. We the jury in the above case
19 unanimously make the following determination. As to the
20 charge of attempted murder, indictment 2012-GS-24-140, we
21 find the defendant, Whitney Desmond Span guilty of assault
22 and battery of a high and aggravated nature. As to the
23 charge of possession of a weapons during the commission of
24 a violent crime, indictment 2012-141. We find the
25 defendant, Whitney Desmond Span guilty. Signed

1 Foreperson, Jerrell Argo. Ladies and gentlemen of the
2 jury, if this is still your verdict would you please raise
3 your right hand.

4 (Whereupon, all jurors raised their hand.)

5 CLERK OF COURT: All jurors have raised their right
6 hand. Thank you.

7 THE COURT: Thank you very much, Madam Clerk.
8 Anything additional for the jury from the State,
9 Solicitor?

10 MR. SWILLEY: There is not, Your Honor.

11 THE COURT: From the defense?

12 MR. SHEEK: No, sir.

13 THE COURT: Mr. Foreman, ladies and gentlemen of the
14 jury, thank you very much for your service this week and
15 on this case specifically. Momentarily I am going to
16 release you from your jury service for the remainder of
17 the week. Y'all have seemed like you have become old
18 friends, we have been together it seems like longer than
19 three days or two and a half. It has been my pleasure and
20 privilege to be with y'all this week in Greenwood County.
21 I never criticize nor commend a jury for its verdict.
22 However I will say that if you ever find yourself part of
23 the system in the future, whether civil or criminal by way
24 of a witness or otherwise I hope the jury that is selected
25 for the trial of that case is attentive, is hardworking

1 and is patient as you twelve have been throughout the
2 trial of this case. It is really the core of our judicial
3 system is the jury system itself. Without your
4 participation we would not be able to be about the very
5 important business of administering your civil and
6 criminal justice system. I know, I am sure each of you
7 had more important things to do, other things to do. And
8 I am sure we could have scoured Greenwood County and we
9 could have found twelve individuals that didn't have
10 anything better to do and come down here and serve on jury
11 service. And that is really not what we want. You want
12 people that are engaged in life, engaged in their
13 occupations, engaged with their families, engaged in their
14 community. They come down here and listen to the
15 evidence, listen to the law and return those true and just
16 verdicts. Again, it is my thanks, it has been my pleasure
17 and privilege, you are now excused, you do not have to
18 call back, you do not have to come back. Thank you very
19 much.

20 (Whereupon, the jury was excused from open court for
21 the day at 3:20 p.m.)

22 THE COURT: All right, Mr. Sheek, any motions?

23 MR. SHEEK: Not at this time, Your Honor.

24 THE COURT: Any reason sentence should not be imposed
25 at this time?

1 MR. SHEEK: No, sir.

2 THE COURT: Solicitor, anything additional from the
3 State?

4 MR. SWILLEY: Your Honor, yes sir. If the Court
5 would allow I think the victim, Mr. Travis Boyd may want
6 to be heard briefly. Also, Your Honor, I would like to
7 address the Court.

8 THE COURT: All right. Mr. Boyd, I will be glad to
9 hear from you.

10 MR. BOYD: I just want to say I thank you for all
11 coming to the conclusion and coming to justice. I just
12 thank y'all, that's all.

13 THE COURT: Anything else you would like to say?

14 MR. BOYD: No sir, that is all.

15 THE COURT: Thank you very much, sir. Solicitor.

16 MR. SWILLEY: Thank you, Your Honor. Judge, I
17 understand this is a case where the jury was very
18 consciousness but I would like for the Court to know, in
19 this Solicitor's opinion, this is the kind of stuff is
20 coming all too common in Greenwood. Mr. Span is only 19,
21 he doesn't have a record but he has been in the detention
22 center since October. He has picked up a charge at the
23 detention center of assault by mob, third degree which is
24 a one year charge which him and another inmate were
25 allegedly involved in, were allegedly involved in the

1 assault of another inmate. Your Honor, the State just
2 request that you render, impose a sentence that is
3 appropriate for the facts of this case.

4 THE COURT: All right. Thank you, Solicitor.
5 Assault and battery of a high and aggravated nature, what
6 is the maximum punishment?

7 MR. SWILLEY: Twenty years, Your Honor.

8 THE COURT: And that is a violent offense.

9 MR. SWILLEY: That's correct. Your Honor, it is also
10 a strike and a serious category.

11 THE COURT: Serious offense. Thank you very much.

12 MR. SWILLEY: Your Honor, I would like to hand up the
13 sentencing sheets.

14 THE COURT: Yes, sir. All right, Mr. Sheek.

15 MR. SHEEK: Thank you, Your Honor. If it please the
16 Court. You know, obviously the facts of the case, I am
17 not sure whether this was a situation where anybody knew
18 everything that went on. I think even from the State's
19 witnesses position that they jumped out of the car when
20 they saw people coming up. There was some history here
21 that none of us have been told about. It doesn't by any
22 means justify fighting much less any guns being pulled. I
23 think it is fair from the evidence that there was more
24 than one gun being fired since even from the State's own
25 eyewitnesses, three of the five say that other people were

1 shooting. Had we gotten into the crime scene specialist
2 we would have seen there were many more gun strikes than
3 would have been held by any revolver. That being said we
4 have got what this young man has been convicted of. He is
5 19 years old, he has never been in trouble up here or in
6 Magistrate Court until today. I understand they have told
7 you about a charge he has picked up in jail. I have seen
8 the warrant on that, I know nothing of the facts on that,
9 whether they have got evidence on there, whether they have
10 got no evidence on him. I know nothing about it and would
11 ask the Court not to consider this charge. I really don't
12 know, don't even know the facts and allegations. On this
13 charge here, Judge, I know you have got to fashion a
14 sentence that addresses what Mr. Span is being convicted
15 of and I understand the fact that the jury has convicted
16 him. Obviously they did not feel like there was
17 sufficient evidence to indicate that he attempted to kill
18 this young man in any way but that he did inflict serious
19 bodily injury. I want to ask the Court to take into
20 consideration that his lack of criminal record whatsoever,
21 what I would hope the Court would consider is fashion some
22 type of sentence that addresses the actions but also gives
23 this young man a chance to come out in the future and show
24 that he can be an asset to this community.

25 THE COURT: Thank you very much. Mr. Span, anything

1 you want to say?

2 MR. SPAN: I don't even know what to say. I don't
3 know.

4 THE COURT: Anything else you want to say?

5 MR. SPAN: No, sir.

6 THE COURT: All right. As an initial matter I would
7 not consider a pending charge as far as the sentencing in
8 this matter. Taking into account all of the facts and
9 circumstances that were presented during the trial, the
10 jury having found the defendant guilty of assault and
11 battery of a high and aggravated nature and possession of
12 a firearm, a weapon during the commission of a violent
13 crime. As to indictment 12-GS-24-140, assault and battery
14 of a high and aggravated nature, the defendant, William
15 Desmond Span is committed to the State Department of
16 Corrections for a determinate term of 12 years. As to
17 12-GS-24-0141, possession of weapon during the commission
18 of a violent crime, the defendant is committed to the
19 State Department of Corrections for a determinate term of
20 5 years. Those are to run concurrent. He gets credit for
21 all time served. No contact with the victim. Good luck
22 to you, Mr. Span.

23 (Whereupon, Court's Exhibit 1 and 2 were marked for
24 identification only.)

25 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

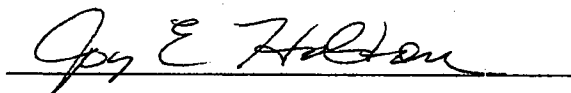
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CERTIFICATE OF REPORTER

State of South Carolina)
County of Newberry)

I, Joy E. Holston, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the County of Greenwood on the 9th day of July, 2012.

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

January 16, 2013



Joy E. Holston, Court Reporter

My Commission expires: March 13, 2016

WITNESSES

Jeffrey Crisp
Greenwood Police Department

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

January Term, 2011

Indictment # 12GS24-144

WARRANT NUMBER

M890096

THE STATE

vs.

Whitney Desmond Span

True Bill

PFL

Foreman of the Grand Jury

Date: 1/17/12

VERDICT

Guilty

**INDICTMENT FOR
POSSESSION OF A WEAPON
DURING THE COMMISSION OF A CRIME
16-23-490**

Foreman

ATTEST A TRUE COPY

Angela Woodhurst
ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S.C.

THE STATE OF SOUTH CAROLINA

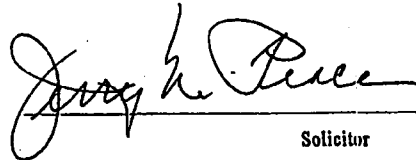
COUNTY OF GREENWOOD

**INDICTMENT FOR
POSSESSION OF A WEAPON
DURING THE COMMISSION OF A CRIME
16-23-490**

At a Court of General Sessions, convened on the 17th day of January, 2012 the Grand Jurors of Greenwood County present upon their oath:

That Whitney Desmond Span, did in Greenwood County, state aforesaid, on or about the 22nd day of October, 2011 possess a firearm or visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent offense, to wit: Attempted Murder, or any lesser included violent offense, in violation of Section 16-23-490 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

WITNESSES

Jeffrey Crisp
Greenwood Police Department

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

WARRANT NUMBER

M890095

COURT OF GENERAL SESSIONS

January Term, 2012

Indictment # 12GS24-140

THE STATE

VS.

Whitney Desmond Spain

True Bill

Foreman of the Grand Jury

Date: 1/17/12

VERDICT

GUILTY of Abhor

Foreman

INDICTMENT FOR

ATTEMPTED MURDER

16-03-0029

ATTEST A TRUE COPY

Angela Woodhurst
CLERK
ANGELA WOODHURST
CLERK
GREENWOOD COUNTY
S.C.

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

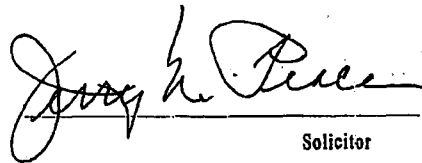
INDICTMENT FOR

ATTEMPTED MURDER
16-03-0029

At a Court of General Sessions, convened on the 17th day of January, 2012 the Grand Jurors of Greenwood County present upon their oath:

That Whitney Desmond Span, did in Greenwood County, state aforesaid, on or about the 22nd day of October, 2011 willfully and unlawfully, with the intent to kill and with malice aforethought, attempted to kill Travis Boyd, in violation of Section 16-3-29 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



Solicitor

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 23, 2013


Benjamin John Tripp
Appellate Defender

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

ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenwood County

R. Knox McMahon, Circuit Court Judge

RECEIVED
AUG 23 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

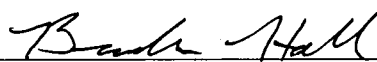
WHITNEY SPAN,

APPELLANT

APPELLATE CASE NO. 2012-212578

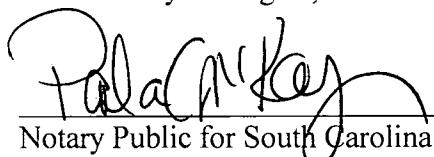
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 23rd day of August, 2013.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 23rd day of August, 2013.



(L.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 202.