

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Charleston County

Roger M. Young, Circuit Court Judge

S.C. Supreme Court

D'EL GRANT,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO 2013-000135

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT	1
INDICTMENTS	572
APPLICATION FOR POST-CONVICTION RELIEF	576
RETURN	589
POST-CONVICTION RELIEF HEARING TRANSCRIPT	594
ORDER OF DISMISSAL	681

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON) INDICTMENT #06-GS-10-11480
#06-GS-10-11481

THE STATE OF SOUTH CAROLINA,)
)
PLAINTIFF,)
)
-VS-)
)
DEL J VON GRANT,)
)
DEFENDANT.)

TRANSCRIPT OF RECORD
PORTION OF TRIAL

November 5, 2007
Charleston, S. C.

B E F O R E:

HONORABLE HOWARD P. KING, JUDGE AND A JURY

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

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And
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LINDA W. MCCALL
OFFICIAL REPORTER

INDEXTRIALMONDAY, NOVEMBER 5, 2007

1	REMARKS OF THE COURT	5
2	<u>VOIR DIRE</u>	7
3	JURY SELECTION	17
4	JURY SWORN	29
5	REMARKS OF THE COURT	29
6	OPENING STATEMENTS	
7	BY MR. MCKOY	37
8	BY MS. FANNING	41
9	THE COURT ADDRESSES THE AUDIENCE	45
10	<u>STATE'S WITNESSES</u>	
11	(SW) <u>OFFICER JEFFREY WAYNE MELLOTT</u>	
12	DIRECT EXAMINATION BY MR. MCKOY	48
13	CROSS EXAMINATION BY MS. FANNING	52
14	MOTION AND RULING OF THE COURT - PROFFER AGREEMENTS	53
15	(SW) <u>DESHAWN GATHERS</u>	
16	DIRECT EXAMINATION BY MR. WETMORE	65
17	CROSS EXAMINATION BY MS. FANNING	90
18	REDIRECT EXAMINATION BY MR. WETMORE	107
19	(SW) <u>DEVANT PORCHER</u>	
20	DIRECT EXAMINATION BY MR. WETMORE	119
21	CROSS EXAMINATION BY MS. FANNING	146
22	REDIRECT EXAMINATION BY MR. WETMORE	161

1	REMARKS OF THE COURT	166
2	MOTION FOR FEES AND RULING OF THE COURT	172
3	JURY SELECTION FORM	175
4	CERTIFICATE OF THE COURT REPORTER	177

EXHIBITSSTATE' S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
1	REPORT FROM DISPATCH	51	
2	PROFFER AGREEMENT - D. GATHERS	57	
3	PROFFER AGREEMENT - D. PORCHER	57	
4	PROFFER AGREEMENT - C. PORCHER	57	
5	PHOTOGRAPH - SCENE		60
6	PHOTOGRAPH - SCENE		60
7	PHOTOGRAPH - SCENE		60
8	PHOTOGRAPH - SCENE		60
9	PHOTOGRAPH - SCENE		60
10	PHOTOGRAPH - SCENE		60
11	PHOTOGRAPH - SCENE		60
12	PHOTOGRAPH - SCENE		60
13	PHOTOGRAPH - SCENE		60
14	PHOTOGRAPH - SCENE		60
15	PHOTOGRAPH - SCENE		60
16	PHOTOGRAPH - SCENE		60
17	PHOTOGRAPH - SCENE		60
18	PHOTOGRAPH - SCENE		60
19	PHOTOGRAPH	64	
20	PHOTOGRAPH	64	

REMARKS OF THE COURT

5

TRIALMONDAY, NOVEMBER 5, 2007

REMARKS OF THE COURT

THE COURT: Thank you.

Please be seated.

Alright.

Good morning, ladies and gentlemen of the jury panel.

As the Bailiff has indicated, my name is Howard King, and I am from Sumter.

This morning you met Judge Dennis who went through the qualification process with you, and I'm sure he told you a lot of administrative things but just a couple of things that I would tell you.

There are - - the State of South Carolina is divided into sixteen judicial circuits. Charleston is in the Ninth Judicial Circuit. My home circuit is the Third Judicial Circuit, and it's composed of Sumter, Lee, Clarendon and Williamsburg Counties.

There are forty-six active circuit court judges in this state. Of the forty-six circuit court judges, thirty-three of them are resident judges. That means they have to be elected from the circuit that they represent.

The other thirteen are at-large judges which means that they can come or be elected from anywhere within the state.

I was formerly one of the resident judges of the Third Circuit, that is until July 1st of '06 at which time I surrendered

REMARKS OF THE COURT

6

1 my residency, and it is actually somebody else has been - - Judge
2 James has been elected to fill that position but I am continuing to
3 serve in a retired/active capacity, ah, as asked by the Chief
4 Justice.

5 There are about four or five judges in this state, one of
6 which is here in Charleston, Judge Hughston, who have actually
7 retired from their, ah, residencies and are serving in an
8 active/retired capacity, and that's what I have been doing for the
9 last year and a half.

10 We are called circuit court judges because we ride the
11 circuits. We go where ever the Chief Justice tells us to go to
12 hold court.

13 In the twelve - - about twelve years that I have been in this
14 position, I have been in about thirty-nine or forty of the counties
15 in this state. There are about six counties that I haven't been
16 to, and I would like to visit all six counties before I quit
17 altogether.

18 This rotation system is unique to the State of South Carolina.
19 I don't know of any other state that follows the rotation system of
20 judges as we do, and I - - I like the system. I think it is an
21 excellent system of rotating the judges to the various counties in
22 the state.

23 I say elected judges. In South Carolina the judges are
24 elected by the General Assembly, that is by a joint vote of both
25 the House of Representatives and the Senate of the state. It is

VOIR DIRE

1 not a popular election system. It is not a gubernatorial
2 appointment system but elected by the General Assembly of South
3 Carolina.

4 There are only two states that select judges that way: South
5 Carolina and Virginia. Most of the states use either an appointed
6 system or a popular election system or some combination of both but
7 South Carolina and Virginia are the only ones, ah, that - - where
8 the General Assembly elects the judges.

9 Again, I think it is an excellent system. I think it
10 eliminates the problems that you have with the popular election
11 system of having to, ah, build a campaign war chest, spend money
12 and be concerned about votes when you're making decisions.

13 Yet, at the same time there is some accountability, and that
14 is, of course, our terms are six years with the General Assembly,
15 and if we don't, ah, if we don't do our jobs, then the General
16 Assembly just would not replace us to our seats.

17 So, I do like the system we use in South Carolina.

18 But all of that leads up to the fact that I have been assigned
19 by Chief Justice to hold court in Charleston County this week, and
20 I do look forward to serving with you this week.

21 With that, Mr. Solicitor, what's the first order of business?

22 MR. MCKOY: Judge, the State calls South Carolina vs. Del
23 Grant, Docket No. 2002-GS-10-11480 and 11481, two counts of murder.

24 VOIR DIRE

25 THE COURT: Alright.

VOIR DIRE

8

1 Alright, ladies and gentlemen, you have heard the Solicitor
2 announce that the State has called the case of The State of South
3 Carolina vs. Del Jvon Grant, and what I'm going to tell you, now,
4 is just a brief summary of the allegations in the indictment but I
5 will tell you that the indictment is not evidence of anything. I
6 tell you this and tell you what the allegations are so that you can
7 determine if you have any conflict or know anything about the case
8 that would prevent you from serving as a juror.

9 But in these two indictments, the State of South Carolina
10 through Charleston County charges that Mr. Grant did in Charleston
11 County on or about February 24th of 2005 with malice aforethought
12 killed and murdered Sadiris Nelson by means of shooting and that
13 Sadiris or Sadiris Nelson did die in Charleston County as a
14 proximate result on February 24, 2005, and that is an indictment
15 for murder.

16 The other indictment charges that Mr. Grant did in Charleston
17 County on or about February 24, 2005, with malice aforethought kill
18 and murder Robert Bryant by means of shooting and that Robert
19 Bryant did die in Charleston County as a result thereof on February
20 24, 2005, and that is a second count of murder against Mr. Grant.

21 Now, the defendant in this case, Mr. Grant, is represented by
22 Ms. Fanning.

23 Ms. Fanning, would you stand and introduce yourself to the
24 jury? Have your client stand and introduce him to the jury as
25 well.

VOIR DIRE

9

1 MS. FANNING: I will, Your Honor.

2 Ladies and gentlemen, my name is Meg or Margaret Fanning. I
3 practice law in James Island at Folly Road with the firm of Wilson
4 and Heyward.

5 MS. FANNING: Would you introduce yourself, Mr. Grant?

6 MR. GRANT: My name is Del Grant.

7 MS. FANNING: Speak loudly.

8 MR. GRANT: My name is Del Grant.

9 THE COURT: Okay.

10 Thank you. You may be seated.

11 The State of South Carolina is represented in this case by
12 Assistant Solicitor Burns Wetmore. Mr. Wetmore, would you stand
13 and introduce yourself and give the names of any lawyers with whom
14 you'll be working?

15 MR. WETMORE: Thank you, Judge.

16 Burns Wetmore, Assistant Solicitor to Scarlet Wilson. With me
17 is Peter McKoy.

18 THE COURT: Thank you.

19 Alright, now, ladies and gentlemen, ah, before we select a
20 jury I need to ask you some questions to determine your
21 qualification to serve on the jury. Please give your attention to
22 these questions, and if any of them apply to you, then respond
23 accordingly.

24 Is any member of the jury panel related by blood or connected
25 by marriage to the defendant, Del Jvon Grant? Is so, please

VOIR DIRE

10

1 stand.

2 The following individuals may appear as witnesses in this
3 case, and I would ask if any of the witnesses are present in the
4 courtroom now if they would stand when their name is called.

5 Jeff Mellott of the North Charleston Police Department,
6 Deshawn Gathers, Devant Porcher, spelled P-o-r-c-h-e-r, Cordero
7 Porcher, P-o-r-c-h-e-r, Jerry Jellico, J-e-l-l-i-c-o, of the North
8 Charleston Police Department, John Reynolds of the North Charleston
9 Police Department, Kelly Spears of the North Charleston Police
10 Department, Dr. Cynthia Schandl of MUSC, Shawn Patrick of the North
11 Charleston Police Department and Rashima Whitfield.

12 Also, Barbara Ann Scott, Gary Lafette - - Lafayette Grant.

13 They have already given you the name of Cordero Porcher and
14 Devant Porcher. Deshawn Gathers.

15 Detective Elmore of the - - no, I'm sorry, don't need it.
16 Don't need him, I believe, Shawn Patrick we've talked about and
17 Jeff Mellott.

18 Alright. I believe that is all.

19 Have I left anybody off from the State's list?

20 MR. WETMORE: None from the State, Your Honor.

21 THE COURT: From the defense?

22 MS. FANNING: None, Your Honor.

23 THE COURT: Alright.

24 Is any member of the jury panel related by blood or connected
25 by marriage to any of the proposed witnesses? If so, please

VOIR DIRE

11

1 stand.

2 If any member of the jury panel close personal friends of any
3 of their lawyers, the - - any of the witnesses or any of the
4 parties whom I have read off to you? If so, please stand.

5 Does any member of the jury panel know anything about the
6 facts of this case as I have briefly recited them to you? If so,
7 please stand.

8 Has any member of the jury panel ever been prosecuted by or
9 represented by anyone in the Charleston County Solicitor's Office?
10 If so, please stand.

11 Is any member of the jury panel represented now or been
12 represented in the last ten years by counsel for the defendant, Ms.
13 Margaret Fanning? If so, please stand.

14 Alright. Now, ladies and gentlemen, I want to ask these four
15 questions, and I know it will be a lot for you to take in but what
16 I'm going to do is ask them as a whole because it's not my
17 intention to embarrass anyone but this is information that we need
18 know.

19 And I'm going to ask that you just keep these questions in
20 mind, each one of them, and if any one of them applies to you, I'm
21 going to ask you to come forward in just a few minutes.

22 First of all, does any member of the jury panel have criminal
23 - - have criminal charges pending against them in any jurisdiction?
24 If so, I'll ask you to come forward in just a few minutes.

25 Secondly, has any member of the jury panel had experience with

VOIR DIRE

12

1 law enforcement, the legal system or the penal system that would
2 render the juror incapable of being fair and impartial?

3 Third, does any member of the jury panel believe in the
4 legalization or decriminalization of any currently illegal drug or
5 substance?

6 Next, does any member of the jury panel hold any social,
7 ethnic or racial views that would render the juror incapable of
8 fair and impartial judgment in this case involving a defendant who
9 is from a certain social, ethnic or racial background?

10 And, finally, does any member of the jury panel hold moral or
11 religious views that would render that juror incapable of
12 determining guilt or passing judgment on another individual?

13 If any one of those questions applies to you or you would like
14 to discuss those matters with me that I have just been over, would
15 you stand at this time, and I'll have you come forward.

16 Thank you.

17 I think I've asked this but I may want to just cover it. I
18 asked if you were related. Is there any member of the jury panel
19 who has a business, social or personal relationship with any of the
20 attorneys in this case? If so, please stand.

21 Alright:

22 Is there any member of the jury who is related to Sadiris,
23 spelled S-a-d-i-r-i-s Nelson or who is related to persons in
24 Charleston County with the last names of Nelson or Whitfield or is
25 aware of anyone in their immediate family being related to Sadiris

VOIR DIRE

13

1 Nelson or his family? If so, please stand.

2 Is there any member of the jury panel who is related to Robert
3 Reshawn, spelled R-e-s-h-a-w-n, Bryant or Loretta Moultrie or who
4 is related to persons in Charleston County with the last names of
5 Bryant or is aware of anyone in their immediate family being
6 related to Sadiris Nelson or his family? If so, please stand.

7 Thank you.

8 Alright, again, the next two questions I am going to ask
9 together and if either of these questions applies to you, I would
10 ask that you come forward and discuss it with me.

11 Is there any member of the jury panel who is the subject of
12 any bias or prejudice with respect to individuals who have been
13 charged with a crime or is there any individual on the jury panel
14 who has been on a jury in a criminal matter in which the defendant
15 was convicted as charged?

16 If either of those questions applies to you, please stand at
17 this time.

18 Is there any member of the jury panel who has ever worked in
19 the court system of this state or of any state? If so, please
20 stand.

21 Alright. Yes, sir, tell us, sir.

22 MR. GAILLARD: I'm a lawyer, and I work in the courtroom all
23 the time.

24 THE COURT: Alright, sir. Your name, please, sir?

25 MR. GAILLARD: Foster Gaillard.

VOIR DIRE

14

1 THE COURT: Alright, Mr. Gaillard, would that fact prevent
2 you from giving to both the State and the defendant a fair and
3 impartial trial based on the evidence?

4 MR. GAILLARD: No, sir.

5 THE COURT: Would you be able to put that aside and decide
6 the evidence, ah, decide this case based on the evidence you hear
7 in this courtroom?

8 MR. GAILLARD: Yes, sir.

9 THE COURT: Thank you, sir.

10 What's your number, Mr. Gaillard? Do you recall?

11 MR. GAILLARD: 85.

12 THE COURT: 85.

13 Thank you, sir.

14 Is there any member of the jury panel who is a member of the
15 South Carolina State Troopers Association or any law enforcement,
16 sheriff or police departments professional association? If so,
17 please stand.

18 If there is any member of the jury panel who belongs to a
19 victim's rights group such as MADD, SADD, ah, CAVE or any other
20 similar organization whose primary purpose is the advocate - - the
21 - - the, ah, promotion of victim's rights or strict law
22 enforcement? If so, please stand.

23 Has any member of the jury panel formed or expressed an
24 opinion as to the guilt or innocence of the defendant, ah, Mr.
25 Grant? If so, please stand.

VOIR DIRE

15

1 Is any member of the jury panel aware of any bias or prejudice
2 for or against the defendant or for or against any of the parties
3 in this action? If so, please stand.

4 Is any member of the jury panel aware of any bias or prejudice
5 in favor of or against law enforcement? If so, please stand.

6 Can each member of the jury panel give the State and the
7 defendant, Mr. Grant, a fair and impartial trial? If not, please
8 stand.

9 Does any member of the jury panel know of any reason
10 whatsoever why he or she should not serve as a juror in this case?
11 If so, please stand.

12 Are there additional questions on behalf of the State?

13 MR. WETMORE: No, sir.

14 THE COURT: On behalf of the defendant?

15 MS. FANNING: No, Your Honor.

16 THE COURT: Alright.

17 Mr. Clerk, if you would give us a jury.

18 Now, ladies and gentlemen, let me tell you the process for
19 selecting jurors in the criminal court. Some of you may have
20 served as jurors in a civil case in the past but the process is a
21 little bit different than it is in the civil court.

22 The Clerk puts the names of all of the qualified jurors in
23 this rotating drum, and as you can see, he is rotating it mixing it
24 up. Your names will be called out individually.

25 When your name is called, please come to the front right up

VOIR DIRE

16

1 here and turn around. Face the back of the courtroom where you'll
2 be facing the lawyers in this case.

3 If you are acceptable to the State, the State will indicate,
4 "Present the juror."

5 And then if you're acceptable to the defendant, the defendant
6 will state, "Seat the juror."

7 And then you would have a seat in the jury box to my right.

8 If you would come right like the bailiff just did in that spot
9 right there and turn around and face the back of the courtroom.

10 If you are acceptable to both sides, then you would have a
11 seat in the jury box to my right.

12 If either side excuses you, you would have a seat back out
13 with the remainder of the jury panel.

14 I will tell you that the lawyers have a certain number of what
15 are called preemptory strikes. That means that they can strike a
16 juror without giving a reason.

17 Do not be offended if you are stricken by one side or the
18 other. Ah, lawyers strike, and I've said this to jurors many
19 times, lawyers often strike jurors for good reason, a bad reason or
20 no reason at all. So, that same lawyer may take you on another
21 case when they - - when it comes up at another time.

22 But you will be called individually, and we will go through
23 that process until we have selected our jurors.

24 Alright, Mr. Clerk.

25 CLERK OF COURT: Yes, Your Honor.

JURY SELECTION

17

1 JURY SELECTION

2 Alright, ladies and gentlemen, if I do call your jury number,
3 please keep together your personal belongings and bring them as
4 well with you.

5 Juror #183, Kelly Needham.

6 What say you for the State?

7 MR. WETMORE: Please present the juror.

8 CLERK OF COURT: What say you for the defendant?

9 MS. FANNING: Present the juror.

10 CLERK OF COURT: Ma'am, you've been selected for the trial
11 of this case. Please if you would be seated in the jury box.

12 Juror #145, Mark Kowalski.

13 What say you for the State?

14 MR. WETMORE: Please excuse the juror.

15 CLERK OF COURT: Sir, you've been excused from the trial of
16 this case. If you would, please have a seat back in the audience.

17 Juror #118, Shawn Hill.

18 What say you for the State?

19 MR. WETMORE: Please present the juror.

20 CLERK OF COURT: What say you for the defendant?

21 MS. FANNING: Please excuse the juror.

22 CLERK OF COURT: Sir, You've been excused from the trial of
23 this case. Please have a seat back in the audience.

24 Juror #138, Kimberly Keller.

25 What say you for the State?

JURY SELECTION

18

1 MR. WETMORE: Please present the juror.

2 CLERK OF COURT: What say you for the defendant?

3 MS. FANNING: Present the juror.

4 CLERK OF COURT: Ma'am, you've been selected for the trial
5 of this case. If you would, please have a seat in the jury box.

6 Juror # 49, Robert Coker, Jr.

7 What say you for the State?

8 MR. WETMORE: Please present the juror.

9 CLERK OF COURT: What say you for the defendant?

10 MS. FANNING: Please excuse the juror.

11 CLERK OF COURT: Sir, you've been excused from the trial of
12 this case. Please have a seat back in the audience.

13 Juror #206, Elizabeth Puckette.

14 What say you for the State?

15 MR. WETMORE: Present the juror.

16 CLERK OF COURT: What say you for the defendant?

17 MS. FANNING: Please excuse the juror.

18 CLERK OF COURT: Ma'am, you've ben excused from the trial
19 of this case. Please have a seat back in the audience.

20 Juror #112, Debora Haseldon.

21 What say you for the State?

22 MR., WETMORE: Please present the juror.

23 CLERK OF COURT: What say you for the defendant?

24 MS. FANNING: Please excuse the juror.

25 CLERK OF COURT: Ma'am, you've been excused from the trial

JURY SELECTION

19

1 of this case. Please have a seat back in the audience.

2 CLERK OF COURT: Juror #249, Kenneth Smith.

3 What say you for the State?

4 MR. WETMORE: Please present the juror.

5 CLERK OF COURT: What say you for the defendant?

6 MS. FANNING: This is Number 249.

7 CLERK OF COURT: Yes.

8 MS. FANNING: Present the juror.

9 CLERK OF COURT: Sir, you've been chosen for selection in
10 this trial. Please have a seat in the jury box.

11 Juror #54, Etta Connolly.

12 What say you for the State?

13 MR. WETMORE: Please present the juror.

14 CLERK OF COURT: What say you for the defendant?

15 MS. FANNING: What number did you call, Mr. Clerk?

16 CLERK OF COURT: Juror #54.

17 MS. FANNING: 54, thank you.

18 Excuse the juror.

19 CLERK OF COURT: Ma'am, you've been excused from the trial
20 of this case. Please have a seat back in the audience.

21 Juror #274, Marilia Valentine.

22 What say you for the State?

23 MR. WETMORE: Please present the juror.

24 CLERK OF COURT: What say you for the defendant?

25 MS. FANNING: Please excuse the juror.

JURY SELECTION

20

1 CLERK OF COURT: Ma'am, you've been excused from the trial
2 of this case. Please have a seat back in the audience.

3 Juror #85, Foster Gaillard.

4 What say you for the State?

5 MR. WETMORE: Please excuse the juror.

6 THE COURT: Sir, you've been excused from the trial of this
7 case. Please have a seat back in the audience.

8 Juror #325, Jess Park.

9 What say you for the State?

10 MR. WETMORE: Please excuse the juror.

11 CLERK OF COURT: Sir, you've been excused from the trial of
12 this case. Please have a seat back in the audience.

13 MS. FANNING: Can we have an update on the strikes?

14 CLERK OF COURT: The defendant has used six strikes. The
15 State has used three strikes.

16 MS. FANNING: Thank you.

17 CLERK OF COURT: You're welcome.

18 Juror #324, Linda Meyer.

19 What say you for the State?

20 MR. WETMORE: Please present the juror.

21 CLERK OF COURT: What say you for the defendant?

22 MS. FANNING: Present the juror.

23 CLERK OF COURT: Ma'am, you've been selected for the trial
24 of this case. Please have a seat in the jury box.

25 Juror #272, Patricia Tykal.

JURY SELECTION

21

1 What say you for the State?

2 MR. WETMORE: Please present the juror.

3 CLERK OF COURT: What say you for the defendant?

4 MS. FANNING: Please excuse the juror.

5 CLERK OF COURT: Ma'am, you've been excused from the trial
6 of this case. Please have a seat back in the audience.

7 Juror #282, Sharon White.

8 What say you for the State?

9 MR. WETMORE: Please excuse the juror.

10 CLERK OF COURT: Ma'am, you've been excused from the trial
11 of this case. Please have a seat back in the audience.

12 The State has one strike remaining.

13 Juror #131, William Jindracek.

14 What say you for the State?

15 MR. WETMORE: Please present the juror.

16 CLERK OF COURT: What say you for the defendant?

17 MS. FANNING: Please excuse the juror.

18 CLERK OF COURT: Sir, you've been excused from the trial of
19 this case. Please have a seat back in the audience.

20 Juror #192, Frankie Owens.

21 What say you for the State?

22 MR. WETMORE: Please present the juror.

23 CLERK OF COURT: What say you for the defendant?

24 MS. FANNING: Present the juror.

25 CLERK OF COURT: Ma'am, you've been selected for the trial

JURY SELECTION

22

1 of this case. Please have a seat in the jury box.

2 Juror #205, Donald Proulx.

3 What say you for the State?

4 MR. WETMORE: Please present the juror.

5 CLERK OF COURT: What say you for the defendant?

6 MS. FANNING: Present the juror.

7 CLERK OF COURT: Sir, you've been selected for the trial of
8 this case. Please have a seat in the jury box.

9 Juror #156, Dana Love, Jr.

10 What say you for the State?

11 MR. WETMORE: Please present the juror.

12 CLERK OF COURT: What say you for the defendant?

13 MS. FANNING: Please excuse the juror.

14 CLERK OF COURT: Sir, you've been excused from the trial of
15 this case. Please have a seat back in the audience.

16 The defendant has one strike remaining.

17 Juror #152, Robert Litaker.

18 What say you for the State?

19 MR. WETMORE: Please present the juror.

20 CLERK OF COURT: What say you for the defendant?

21 MS. FANNING: Present the juror.

22 CLERK OF COURT: Sir, you've been selected for the trial of
23 this case. Please have a seat in the jury box.

24 Juror #199, Lester Phillips.

25 What say you for the State?

JURY SELECTION

23

1 MR. WETMORE: Please present the juror.

2 CLERK OF COURT: What say you for the defendant?

3 MS. FANNING: Present the juror.

4 CLERK OF COURT: Sir, you've been selected for the trial of
5 this case. Please have a seat in the jury box.

6 Juror #14, Rodney Beard.

7 What say you for the State?

8 MR. WETMORE: Please present the juror.

9 CLERK OF COURT: What say you for the defendant?

10 MS. FANNING: Present the juror.

11 CLERK OF COURT: Sir, you've been selected for the trial of
12 this case. Please have a seat in the jury box.

13 Juror #245, Willie Smalls.

14 What say you for the State?

15 MR. WETMORE: Please present the juror.

16 CLERK OF COURT: What say you for the defendant?

17 MS. FANNING: Present the juror.

18 CLERK OF COURT: Ma'am, you've been selected for the trial
19 of this case. Please have a seat in the jury box.

20 Juror #305, Joseph Carson.

21 What say you for the State?

22 MR. WETMORE: Please present the juror.

23 CLERK OF COURT: What say you for the defendant?

24 MS. FANNING: Present the juror.

25 CLERK OF COURT: Sir, you've been selected for the trial of

JURY SELECTION

24

1 this case. Please have a seat in the jury box.

2 Juror #291, Lindsey Winslow.

3 What say you for the State?

4 MR. WETMORE: Please present the juror.

5 CLERK OF COURT: What say you for the defendant?

6 MS. FANNING: Present the juror.

7 CLERK OF COURT: You've been selected for the trial of this
8 case, ma'am. Please have a seat in the jury box.

9 Your Honor, these are our twelve jurors.

10 THE COURT: Alright.

11 Counsel, we'll have two alternates, ah, two for the State and
12 four for the defendant.

13 CLERK OF COURT: Yes, sir, Your Honor.

14 Juror #5, Margaret Cotton.

15 What say you for the State?

16 MR. WETMORE: Please present the juror.

17 CLERK OF COURT: What say you for the defendant?

18 MS. FANNING: Present the juror.

19 CLERK OF COURT: Ma'am, you've been selected for the trial
20 of this case. Please have a seat in the jury box.

21 Juror #317, Michael Giglio.

22 What say you for the State?

23 MR. WETMORE: Please present the juror.

24 CLERK OF COURT: What say you for the defendant?

25 MS. FANNING: Excuse the juror.

JURY SELECTION

25

1 CLERK OF COURT: Sir, you've been excused from the trial of
2 this case. Please have a seat back in the audience.

3 Juror #190, Jason Oates.

4 What say you for the State?

5 MR. WETMORE: Present the juror.

6 MS. FANNING: Please excuse the juror.

7 CLERK OF COURT: Sir, you've been excused from the trial of
8 this case. Please have a seat back in the audience.

9 Juror #25, Ebony Stanfield.

10 What say you for the State?

11 MR. WETMORE: Please present the juror.

12 CLERK OF COURT: What say you for the defendant?

13 MS. FANNING: Excuse the juror.

14 CLERK OF COURT: Ma'am, you've been excused from the trial
15 of this case. Please have a seat back in the audience.

16 The defendant has exhausted his strikes.

17 Juror #288, David Williams.

18 What say you for the State?

19 MR. WETMORE: Please excuse the juror.

20 CLERK OF COURT: Sir, you've been excused from the trial of
21 this case. Please have a seat back in the audience.

22 Juror #166, Myra Marshall.

23 Any challenge from the State?

24 MR. WETMORE: No, sir.

25 CLERK OF COURT: Any challenge from the defendant?

JURY SELECTION

26

1 MS. FANNING: None.

2 CLERK OF COURT: Ma'am, you've been selected for the trial
3 of this case. If you would, please have a seat in the jury box.

4 Your Honor, the jury has been selected.

5 THE COURT: Alright.

6 Any challenges regarding the selection of the jury on behalf
7 of the State, Mr. Solicitor?

8 MR. MCKOY: None from the State, Your Honor.

9 THE COURT: From the defense, Ms. Fanning?

10 MS. FANNING: I don't have anything, Your Honor.

11 THE COURT: Alright.

12 Alright. Mr. Clerk, do you want the remaining panel members
13 to return to the jury pool? Is that what you want them to do?

14 CLERK OF COURT: Just have them - - until we find out
15 what's going on and let them know, yes, sir. If they'll just go
16 downstairs to the jury room.

17 THE COURT: Alright.

18 Well, before we excuse them, let me tell you.

19 Ladies and gentlemen of the jury selected in the trial of this
20 case, there are a couple of matters that I need to take up with the
21 lawyers before we begin. So, I'm going to ask you if you'll go
22 with the bailiff to your jury room, and we'll send for you very
23 shortly, and the remaining members of the jury panel, if you'll go
24 with the bailiff back to the jury assembly room, and we'll be ready
25 to go forward in a few minutes.

JURY SELECTION

27

1 Thank you.

2 (The jury retires to the jury room at 12:08 p.m. and the
3 remaining members of the jury room are released to return to the
4 jury pool room.)

5 THE COURT: Alright.

6 Counsel, I think probably every judge in the State has a
7 different policy on this but just as a matter of personal
8 preference for me, I normally prefer that the lawyers and the
9 parties do not stand when the jury comes and leaves the courtroom.
10 That's just a matter of personal preference with me. So, I - - -

11 MS. FANNING: Your Honor, we weren't sure.

12 THE COURT: So, you may keep your seats when - - when the
13 jury comes and leaves the courtroom.

14 Are there any matters that we need to take up before we begin
15 with the jury, ah, I was just looking. It's about ten minutes
16 after twelve. Perhaps the best thing to do would be to go ahead
17 and let me give my initial, ah, remarks to the jury and let you
18 make opening statements, and then before we actually start with any
19 calling any witnesses, ah, let's recess for lunch and then we'll
20 come back and begin with the first witness after lunch.

21 Does that suit you?

22 MR. WETMORE: Yes, sir.

23 THE COURT: Is that alright with you, Ms. Fanning?

24 MS. FANNING: Yes, Your Honor.

25 THE COURT: Okay.

JURY SELECTION

28

1 You have a preference otherwise?

2 MS. FANNING: I would prefer to just break for lunch and work
3 through the afternoon.

4 So - - -

5 THE COURT: Well, I've got to bring them back in here
6 because I need to tell them some things anyhow.

7 MS. FANNING: Yes, sir.

8 THE COURT: So, I think it's a good idea to go ahead and
9 let's go ahead and get the opening statements out of the way.

10 MS. FANNING: Alright, Your Honor.

11 MR. WETMORE: Thank you.

12 Just for your information Mr. McKoy, I don't believe you've
13 met him yet. He's going to be doing the opening statement.

14 THE COURT: Alright. That will be fine.

15 Thank you.

16 Alright. Anything before the jury is brought in and sworn?

17 MR. WETMORE: Nothing from the State, Your Honor.

18 THE COURT: Anything before the jury is brought in and
19 sworn, Ms. Fanning?

20 MS. FANNING: No, Your Honor. Thank you.

21 THE COURT: Alright.

22 Bring the jury in.

23 (The jury returns to the courtroom at 12:13 p.m.)

24 THE COURT: Alright.

25 Thank you, ladies and gentlemen, and we are now ready to begin

JURY SWORN/REMARKS OF THE COURT

29

1 with the trial of this case.

2 Mr. Clerk, you may swear the jury.

JURY SWORN

3
4 CLERK OF COURT: Yes, sir, Your Honor.

5 (The Clerk of Court swears the jury.)

6 CLERK OF COURT: Thank you. Please be seated.

REMARKS OF THE COURT

7
8 THE COURT: Alright, ladies and gentlemen, before we begin
9 the actual trial of this case, I thought it might be helpful if I
10 explained to you basically how a trial proceeds.

11 I know all of you have seen trials on television but I think
12 that you will find that they are a great deal different in real
13 life.

14 First of all, the State will make an opening statement. An
15 opening statement is not evidence. It is simply an outline to help
16 you understand what the State expects the evidence will show.

17 The defendant may, if he wishes to, present an opening
18 statement but he doesn't have to for reasons that I will explain to
19 you later.

20 Following the opening statements you will hear the testimony
21 and evidence in this case. This will consist of testimony by the
22 State's witnesses as well as any physical evidence that will be
23 introduced or may be introduced into evidence.

24 And let me tell you right now that if there are any exhibits
25 that are introduced into evidence, the attorneys may ask you or may

REMARKS OF THE COURT

30

1 ask me for permission to publish those exhibits. Publish is
2 simply a legalistic word meaning show those exhibits to the jury,
3 and I will grant them that permission, and they will have the right
4 to pass the around to you while you are seated there.

5 Do not be concerned if you do not have as long to look at the
6 exhibits as you would like to while you are sitting there - -
7 seated there in the jury box. Anything that is introduced into
8 evidence will go with you to the jury room when you retire to reach
9 a verdict in this case.

10 Following the completion of the testimony, the attorneys will
11 again have the opportunity to make what is called a closing
12 statement or summation to you. This is an opportunity for the
13 attorneys to summarize the case from their respective points of
14 view. Again, these arguments are not evidence.

15 Following the closing statements by the attorneys, I will
16 instruct you on the law of South Carolina as it pertains to the
17 issues that have arisen in this case.

18 When I have completed my instructions to you, you will be
19 permitted to begin your deliberations in order to reach a verdict.

20 Now, ladies and gentlemen, you are now the jury in this case,
21 and I want to take a few minutes to tell you something about your
22 duty as jurors and to give you some preliminary instructions.

23 Later on or at the end of this trial I will give you more
24 detailed instructions, and those instructions will control your
25 deliberations.

REMARKS OF THE COURT

31

1 It will be your duty to decide from the evidence what the
2 facts are. You and you alone are the judges of the facts. You
3 will hear the evidence, decide what the facts are and then apply
4 those facts to the law which I give to you. That is how you reach
5 a verdict.

6 In doing so you must follow the law whether you agree with it
7 or not. The evidence will consist of testimony of the witnesses,
8 documents and other things received into evidence as exhibits and
9 any facts on which the lawyers agree or which I may instruct you to
10 accept.

11 Now, you should not take anything that I may say or do during
12 this trial as indicating that I have any opinion as to what the
13 evidence is or what the evidence should be or what I think if the
14 evidence or what your verdict should be. I do not. The law does
15 not allow me to have an opinion regarding the evidence or the
16 facts.

17 The same law that makes you the judges of the facts makes me
18 the judge of the law. You must take the law as I give it to you
19 regardless of what you think the law is or what the law ought to
20 be. If I'm wrong on the law, there's another time and place for
21 that error to be corrected but for this case you must accept the
22 law as I instruct it to you.

23 Now, this is a criminal case brought by the State of South
24 Carolina. The State charges the defendant with two counts of
25 murder. The charges against the defendant are contained in these

REMARKS OF THE COURT

32

1 two indictments.

2 The indictments are not evidence of anything. They are simply
3 a description of the charges made by the State against the
4 defendant.

5 The defendant has pled not guilty to these charges and is
6 presumed innocent unless and until proven guilty beyond a
7 reasonable doubt. A reasonable doubt is the kind of doubt that
8 would cause a reasonable person to hesitate to act.

9 A defendant has the right not to testify and never has to
10 prove innocence or present any evidence. The burden of proof is
11 always on the State of South Carolina.

12 Now, there are certain things that are not evidence, and you
13 must not consider them as evidence in deciding the facts of this
14 case.

15 Statements and arguments of the attorneys are not evidence.
16 Questions and objections of the attorneys are not evidence, and
17 testimony that I instruct you to disregard is not evidence.

18 Evidence may be direct or circumstantial. Direct evidence is
19 testimony by a witness about what that witness personally saw or
20 heard or did. Circumstantial evidence is indirect evidence. The
21 law permits you to give equal weight to both but it is for you to
22 decide how much weight to give to any of the evidence.

23 There are rules of evidence which control what can be received
24 into court. When a lawyer asks a question or offers an exhibit
25 into evidence and the lawyer on the other side thinks that it is

REMARKS OF THE COURT

33

1 not permitted by the rules, that lawyer may object. If I overrule
2 the objection, the question may be answered or the exhibit may be
3 received. If I sustain an objection, the question cannot be
4 answered or the exhibit cannot be received.

5 Whenever I sustain an objection to a question or deny a motion
6 to admit an exhibit into evidence, you must ignore the question or
7 the existence of the exhibit and you must not guess what the - -
8 what the answer would have been or what the exhibit would have
9 shown.

10 Sometimes it may be necessary for me to request that you leave
11 the courtroom while I discuss with the attorneys legal questions
12 that come up during the trial.

13 If this occurs, you should not speculate about our discussions
14 or the reasons that you were asked to leave the room. This is
15 imply a procedure that the law requires when certain legal issues
16 arise.

17 There also may be occasions when I ask the attorneys to
18 approach the Bench so that I can discuss a legal issue with them in
19 private. I will do this as often as possible so that you will not
20 be required to leave the courtroom more than is absolutely
21 necessary.

22 Again, if I ask the attorneys to step up to the Bench or if I
23 ask you to leave the courtroom, please don't think that anybody is
24 trying to hide anything from you or keep any evidence from you.
25 This is simply a procedure used by all lawyers and all courts to

REMARKS OF THE COURT

34

1 determine and decide legal questions.

2 Now, in deciding the facts of this case, you may have to
3 decide which witnesses to believe and which witnesses not to
4 believe. This is called credibility.

5 You may believe everything a witness says or only part of it
6 or none of it. In deciding what to believe you may consider a
7 number of factors including the witness' ability to see or hear or
8 know the things the witness testified to, the quality of the
9 witness' memory, the witness' manner or demeanor while testifying,
10 whether the witness has any interest in the outcome of the case or
11 any motive, bias or prejudice, whether the witness was contradicted
12 by anything the witness said or wrote before the trial or by any
13 other evidence, and how reasonable was the witness' testimony when
14 considered in the light of other evidence which you do believe.

15 Now, just a few words to you about your conduct as jurors.

16 First of all, do not talk to each other about this case until
17 the end of the case when you go to your jury room to decide on your
18 verdict.

19 Do not talk with anyone else about the case until the trial
20 has ended following your verdict and you have been discharged as
21 jurors. This means do not discuss the case with members of your
22 family, with friends or with anyone else.

23 The reason for this is pretty apparent. You've got to decide
24 this case based upon what you hear in this courtroom and not on the
25 basis of what anyone else might say.

REMARKS OF THE COURT

35

1 You may tell them that you are a juror but don't tell them
2 anything about the case until you have been discharged by me.

3 Do not let anyone talk to you about the case. If anyone
4 should try to talk with you get their name and their description,
5 report it to the bailiffs and they will report it to me, and I will
6 deal with them.

7 Do not read any news stories or articles or listen to any
8 radio or television reports about the case. With all due respect
9 to my friends in the media, the things that are reported in the
10 media are not always the exact, accurate representation of what
11 happened in the courtroom.

12 So, you've got to decide this case based on what you hear in
13 this courtroom and not on the basis of any news stories or any
14 articles or any radio or television reports about the case, and if
15 they should be any, simply put those newspapers aside and do not
16 read those articles or if there is something on the broadcast
17 media, simply turn it off and do not listen to those matters on the
18 broadcast media.

19 You are not to consider as evidence anything that you may see
20 or hear when court is not in session even if what you see or hear
21 is done or said by one of the parties in this case.

22 Do not do any research such as consulting dictionaries or
23 other reference materials including the internet or computer
24 research and do not make any investigation about the case on your
25 own.

REMARKS OF THE COURT

36

1 If you need to communicate with me, simply give a signed note
2 to the bailiff. He will give it to me, and I will try to resolve
3 your problem.

4 And, finally, and probably most important, do not make up your
5 mind about what your verdict should be until you have heard all of
6 the testimony and the evidence in this case and the instructions on
7 the law by the Court.

8 You will be instructed when to begin your deliberations by
9 either me or the bailiff.

10 Now, just a few housekeeping matters.

11 First of all, later on in this case I will appoint one of the
12 twelve members of the principal jury as the Foreperson of this
13 jury. When I appoint that person as the Foreperson of this jury,
14 that individual should sit in the first seat here on the front row.

15 The two alternates should sit in the last two seats on the top
16 row up there.

17 The rest of the seats in the jury box are not reserved, and it
18 does not matter what order you come and go from the courtroom. I
19 would simply ask that you go all the way down so it wouldn't be a
20 situation of crawling over one another but you may sit any seats in
21 the jury box reserving the first seat on the front row for the
22 Foreperson when I name and that Foreperson and the two seats on the
23 second row back there for the alternates but other than that, you
24 can sit in any of the seats that you would like to sit in.

25 Are there any objections to my opening remarks to the jury on

OPENING STATEMENT OF MR. MCKOY

37

1 behalf of the State, Mr. Solicitor?

2 MR. MCKOY: No, sir, Judge.

3 THE COURT: Ms. Fanning?

4 MS. FANNING: No, Your Honor.

5 THE COURT: Alright.

6 The first order of business, ladies and gentlemen, is the
7 opening statements of counsel, and I - - for that purpose I will
8 recognize the State, and I believe Mr. McKoy is going to open for
9 the State?

10 MR. WETMORE: Correct, Your Honor.

11 THE COURT: Alright. Yes, sir.

12 MR. MCKOY: Thank you, Judge. May it please the Court?

13 THE COURT: Yes, sir.

14 MR. MCKOY: Ms. Fanning.

OPENING STATEMENT BY MR. MCKOY

15
16 MR. MCKOY: February 24, 2005, twenty year old Robert
17 Bryant lost his life. On that same day 4:30 in the afternoon
18 eighteen year old Sadiris Nelson also lost his life. They lost
19 their lives at the hand of the defendant, Del Grant.

20 Robert Bryant was shot three times, once in the neck and once
21 in the chest and once in the hand. Sadiris Nelson was shot one
22 time. He was shot once in the neck.

23 This was not a random killing. This was not a killing that
24 happened out of nowhere. This was a bit of a feud that had been
25 building for weeks and a few days as well.

OPENING STATEMENT OF MR. MCKOY

38

1 Earlier in the afternoon on Woodlawn Avenue there was a
2 shooting that happened. A man named Michael Mitchell, often known
3 as Project on the street, rode by. He rode by a house where
4 Cordero Porcher, Devant Porcher and Gary Grant were outside of this
5 house. He shot out the window of the car and actually hit Gary
6 Grant and grazed him on the side of the head.

7 The feud also started. It was a man named Deshawn Gathers.
8 He ended up riding his bicycle down Woodlawn Avenue right before
9 this shooting happened.

10 He had a problem with Cordero Porcher. Cordero Porcher
11 thought that Deshawn Gathers was saying things about him on the
12 street. They got into a bit of a fistfight, and Deshawn Gathers
13 rode off on his bicycle.

14 While he was riding away, he got on his cell phone. Cordero
15 Porcher saw him on his cell phone. Minutes later was when
16 Mitchell came, Project came and shot at the house.

17 This did not sit well with Cordero Porcher, Devant Porcher and
18 Gary Grant, especially with Gary Grant since he was hit. He was
19 grazed by a bullet.

20 They went to go find Deshawn Gathers. Deshawn Gathers lives
21 in Ashley Shores in North Charleston. They went to go see him,
22 and they got up with somebody else before they went. Del went
23 with them as well when they went to Ashley Shores.

24 Once they got there, things became heated. There was
25 arguments going on. There was pushing. There was shoving.

OPENING STATEMENT OF MR. MCKOY

39

1 There was a little bit of name calling.

2 At that unfortunate time, at that unfortunate time Sadiris
3 Nelson and Robert Bryant pulled up in their car. They were all
4 outside as well.

5 Now, there was a lot going on at the scene. There were a lot
6 of people at the scene, and you're going to hear from a lot of
7 people who were there but what you will hear from every witness
8 that we will call was that Del Grant came out from the house where
9 Deshawn Gathers lived, came out the front door. Shot Robert Bryant
10 once in the neck. He fell to the ground. He shot - - he shot
11 the other guy that was there, Sadiris Nelson, shot him in the neck.
12 He went straight to the ground.

13 People starting to scatter, people starting to run. Del
14 Grant is not finished. He fires two more times at Robert Bryant
15 while he is on the ground.

16 Sadiris Nelson and Robert Bryant knew they had pulled up into
17 some kind of trouble. They knew that tensions were high at Ashley
18 Shores that day.

19 One other person on the scene Rashima Whitfield, Sadiris
20 Nelson's fifteen year old sister. Sadiris Nelson turned to his
21 sister before things went down and said, "Go into the house. Lock
22 the door. Go inside. Lock the door."

23 Looking out for his sister.

24 Now, there have been a number of people that have been charged
25 with this murder. Deshawn Gathers has been charged with this

OPENING STATEMENT OF MR. MCKOY

40

1 murder. Cordero Porcher has been charged with these murders.
2 Devant Porcher has been charged with these murders. Del Grant has
3 been charged with these murders. Gary Grant has been charged with
4 these murders.

5 You are going to hear testimony from us. You are going to
6 hear from Devant Porcher, Cordero Porcher and Deshawn Gathers,
7 three people who were there, three people who will point at Del
8 Grant as the shooter and who shot the two victims.

9 You're going to hear from Rashima Whitfield who was fifteen
10 years old at the time who watched her brother get murdered.

11 Now, it's important to pay attention to each and every
12 officer, each and every witness that is called. Pay attention to
13 what the witnesses say the defendants were wearing, what Del Grant
14 is wearing, what Gary Grant is wearing, the clothing they are
15 wearing that day. Pay attention to what they say they are doing
16 on the scene, the roles they are playing.

17 After the shooting happened, people scattered, and as quickly
18 as Del Grant came out of the apartment and shot Robert Bryant and
19 shot Sadiris Nelson, as quickly as he came out, he was gone just as
20 quickly as well.

21 And this event happened on February 24, 2005. Del Grant was
22 not found until seventeen months later. The police searched for
23 him for seventeen months. He was found in Illinois. He's been
24 brought back here to stand trial for the murders of Robert Bryant
25 and Sadiris Nelson.

OPENING STATEMENT OF MS. FANNING

41

1 I am firmly convinced that after you hear all of the evidence

2 - - -

3 MS. FANNING: Objection. Your Honor, I object to that.

4 THE COURT: Sustained.

5 MR. MCKOY: I ask you to pay attention to what the
6 witnesses are going to say and come back with a guilty verdict for
7 murder times two.

8 Thank you.

9 THE COURT: Alright.

10 Ms. Fanning, does the defendant care to make an opening
11 statement?

12 MS. FANNING: I do, Your Honor.

13 THE COURT: Alright. Go ahead.

14 MS. FANNING: On behalf of my client.

15 OPENING STATEMENT BY MS. FANNING

16 MS. FANNING: I think it is afternoon now. So good
17 afternoon, ladies and gentlemen.

18 My name is Meg Fanning, and I represent Del Grant who is
19 sitting over there with Ms. Childs who has been assisting me with
20 this case, and he's sitting there and he's an innocent man.

21 Take a look at him because he's an innocent man under our
22 Constitution, and I know Mr. McKoy did his best to get everybody
23 inflamed and get you all into a conviction fervor but your job in
24 this case and I know you are going to do it because I agreed to put
25 you on this jury you can only do it. I know you're going to

OPENING STATEMENT OF MS. FANNING

42

1 fulfill your oath and well and truly try this case and find a
2 verdict that speaks the truth, and to do that you are going to have
3 to listen to the evidence and render a verdict, not listen to what
4 the attorneys say.

5 And it is to sway you. His job is to sway you but your job is
6 to look at the evidence and render a verdict, and at the end of the
7 day what you're going to have is a bunch of people who testify,
8 basically, that Del Grant came out of nowhere.

9 All those names you've heard bandied about, Cordero Porcher,
10 Devant Porcher, Deshawn Gathers, Gary Grant, my client's brother
11 who got grazed in the head, they were all involved in the planning
12 and the events that led up to this shooting, and I believe not
13 having been permitted to interview them but having read the
14 statements they gave the police right after the event, I believe
15 that none of them had a clue where my client came from but they all
16 put him there as the shooter largely out of self-interest.

17 I would submit to you and you're going to have to decide that
18 but they are all charged with murder just like he is, everyone of
19 them is charged with murder.

20 The only witness, and this is the only - - there's basically
21 one witness that the State is hanging their hat on, and that's Miss
22 Rashima Whitfield who was a very young girl at the time of this
23 event, and her brother was involved in this murder.

24 You're going to have to decide whether or not the efforts of
25 law enforcement to solve this crime are satisfactory to you,

OPENING STATEMENT OF MS. FANNING

43

1 whether or not you believe they did the best job they could have
2 done given the facts and circumstances because you're going to hear
3 that what they did was round up a bunch of people, take statements
4 and call it a day. That's it.

5 And you're not going to hear a lot of CSI type testimony
6 because there's no physical evidence that ties my client to the
7 scene. The only thing tying my client to the scene are eyewitness
8 testimony, and all of the eyewitnesses that you're going to hear
9 from but one are charged with this murder, these murders, everyone
10 of them. Everyone of them has a reason to distance themselves
11 from these murders. It's called self-interest.

12 I'm going to ask you to pay close attention to the facts. The
13 State has the entire burden of proof. Mr. Grant as he sits there
14 an innocent man doesn't have to prove anything to you. He's been
15 indicated and brought to court, and he has to stand trial. He
16 doesn't have a choice but the State has the burden of proving the
17 case against him, and I'm going to ask you to hold the State to
18 that burden. It's a very high threshold. The standard is beyond
19 a reasonable doubt.

20 At the end of the day or at the end of the trial I should say
21 because it's not going to be over today, at the end of the trial
22 you're going to hear from me again. We'll discuss the evidence or
23 I'll discuss the evidence more in depth, and I'm going to ask you
24 to find a verdict that speaks the truth. I'm going to ask you to
25 acquit Del Grant.

OPENING STATEMENT OF MS. FANNING

44

1 Thank you for your rapt attention.

2 THE COURT: Alright, ladies and gentlemen of the jury, it
3 is now about 12:35 and I think that before we actually get into the
4 testimony of this case and start getting into the witnesses that it
5 would be appropriate that we take our lunch break at this time, and
6 we are going to do that.

7 And I'm going to allow you to go and get your lunch and ask
8 that you be back in the courtroom, please, or, actually, in your
9 jury room, not in the courtroom. Do not come to the courtroom.
10 Do not come to the jury assembly room but come to your jury room,
11 and the bailiffs, of course, you've already been there. The
12 bailiffs will show you again how to get in and out of the building
13 and get back to that room but please be back in there at 2:00.
14 That's about an hour and twenty minutes, and that should give
15 everyone sufficient time to get lunch.

16 But I want to tell you again that over the afternoon recess or
17 over the lunch recess do not allow anyone to talk with you about
18 this case. Do not talk with anyone about this case. If anyone
19 should try to talk with you get their name or their description.
20 Report it to the bailiffs, and they will report it to me.

21 Also, when you are reconvening there in the jury room, I know
22 you haven't heard any of the evidence in this case but you have
23 heard the opening statements of counsel, and it would be
24 inappropriate for you to discuss this matter among yourselves in
25 any manner whatsoever until I tell you it is appropriate to do so.

THE COURT ADDRESSES THE AUDIENCE

45

1 So while you are reassembling there in the jury room or at any
2 time, do not discuss among - - this case among yourselves until the
3 end of the case and you have heard the arguments of counsel and the
4 instructions on the law by the Court, and you will be instructed
5 when to begin your deliberations by either me or the bailiff.

6 So, when you're in there in the jury room you can talk about
7 anything you want to talk about - sports, weather, children,
8 grandchildren, anything at all but don't talk about this case until
9 I tell you it is appropriate to do so.

10 With that, then, I'm going to allow you to go with the
11 bailiffs. Let them show you how to get in and out of the building
12 and ask you to please be back in your jury room at 2:00.

13 Thank you. The jury is excused, the jury only.

14 (The jury is released for lunch to return to the jury room at
15 2:00 p.m.)

16 THE COURT: Any objections to my instructions to the jury
17 on behalf of the State, Mr. McKoy or Mr. Wetmore?

18 MR. WETMORE: No, sir, Your Honor.

19 THE COURT: Ms. Fanning?

20 MS. FANNING: No, Your Honor.

THE COURT ADDRESSES THE AUDIENCE

22 THE COURT: Alright.

23 Let me talk with the spectators and folks in the courtroom
24 just a minute.

25 I know that this is a highly emotional and highly charged

THE COURT ADDRESSES THE AUDIENCE

46

1 matter with each and every one of you, ah, and I can certainly
2 appreciate that but I am going to tell you that this is a court of
3 lawyer, and I am going to have to insist that order and decorum be
4 maintained in the courtroom.

5 First of all, I am going to tell you that I believe very
6 strongly in an open courtroom which means that I do, ah, keep the
7 doors of the courtroom open because I think people should be able
8 to come and go but I am not going to permit a parade of people in
9 and out of the courtroom and disturbing the proceedings while we
10 are in the process of trying this case.

11 You can leave if you can leave quietly and come back in one or
12 two at the time without making any noise or any disturbance but
13 having eight, six or eight, ten, twelve people parading in and out
14 of the courtroom just will not be permitted because it disturbs the
15 proceedings but I do believe in an open courtroom, and I believe
16 that people do have a right to come and go from the courtroom.

17 Secondly, as I say, I know that it is a highly emotional
18 matter between the members of the victim's family as well as
19 members of the defendant's family but I'm going to have to require
20 that you sit quietly, that you listen to the matters that are said
21 in the courtroom and accept those matters without any visible
22 displays of emotion, ah, anyway whatsoever or any outbursts or
23 exclamations or anything at all.

24 If you feel you cannot sit quietly and listen to the testimony
25 and the things that go on in the courtroom, then I'm going to ask

THE COURT ADDRESSES THE AUDIENCE

47

1 that you not be in the courtroom, ah, because we've got to maintain
2 the decorum and order in the courtroom.

3 So, if you feel you cannot sit quietly and listen to the
4 testimony which may be graphic at times, ah, then you should not be
5 here.

6 So, with those matters I am going to ask that you cooperate
7 with me in maintaining the order and decorum in the courtroom but
8 if you don't cooperate with me, I'm going to hold you to that
9 standard, and I am going to require that order and decorum be
10 maintained.

11 And so if you don't want to incur my wrath, then you better,
12 ah, better sit quietly and maintain order here in the courtroom.

13 With that, then, we will be in recess until 2:00.

14 Thank you.

15 (The Court recesses the trial of this case for lunch and
16 thereafter resumes the trial of this case at 2:09 p.m.)

17 THE COURT: Thank you. Please be seated.

18 Alright.

19 Ready to go forward, Mr. Wetmore?

20 MR. WETMORE: Yes, sir, Your Honor.

21 THE COURT: Ms. Fanning?

22 MS. FANNING: Yes, Your Honor.

23 THE COURT: Alright.

24 Bring the jury in, please.

25 (The jury returns to the courtroom at 2:11 p.m.)

OFFICER MELLOTT - DIRECT EXAMINATION BY MR. MCKOY

48

1 THE COURT: Alright.

2 We need to have the alternate, ah, there's two alternates.

3 Yeah. Okay. Good. Thank you.

4 Alright.

5 Alright. Thank you very much, ladies and gentlemen. We are
6 now ready to go forward.

7 Mr. Wetmore, you may call your first witness.

8 MR. MCKOY: The State calls Officer Jeff Mellott.

9 THE COURT: Alright, Mr. McKoy.

10 THE COURT: Come on up, please, sir.

11 Alright, Mr. McKoy.

12 (The witness takes the witness stand.)

13 OFFICER JEFFREY WAYNE MELLOTT, being duly
14 sworn, testifies as follows:

15 CLERK OF COURT: Sir, if you would, please state your full
16 name for the Court and spell your last.

17 OFFICER MELLOTT: Jeffrey Wayne Mellott, last name, M-e-l-l-
18 o-t-t.

19 DIRECT EXAMINATION BY MR. MCKOY:

20 Q. Good afternoon, Officer Mellott.

21 Where are you currently employed?

22 A. City of North Charleston Police Department.

23 Q. And how long have you been with North Charleston Police
24 Department?

25 A. Five years.

OFFICER MELLOTT - DIRECT EXAMINATION BY MR. MCKOY

49

1 Q. And over those five years, what has been your duties with the
2 North Charleston Police Department?

3 A. I've been assigned to the Patrol Division in the South Bureau
4 of our jurisdiction.

5 Q. What type of training have you received during these five
6 years?

7 A. Ah, attended training at the Police Academy to get my
8 certification.

9 Q. Alright.

10 Were you employed by North Charleston Police Department as a
11 patrolman on - - on February 24th of 2005?

12 A. Yes, sir.

13 Q. And what were your duties on that day?

14 A. I was assigned to the patrol - - to patrol the south area of
15 our jurisdiction.

16 Q. And where is the south area?

17 A. It lies between Durant going south towards the City of
18 Charleston and, um, 526 on Dorchester Road all the way down and
19 then in between the two rivers.

20 Q. Do you recall an incident on that day that brings you to court
21 today?

22 A. Yes, sir.

23 Q. And what was that incident?

24 A. A double homicide in Ashley Shores.

25 Q. Previous to the double homicide was there another incident

OFFICER MELLOTT - DIRECT EXAMINATION BY MR. MCKOY

50

1 that drew you out?

2 A. Yes, sir. It was a call of shots being fired on Woodlawn
3 Avenue.

4 Q. And the Woodlawn Avenue, is that different from the Ashley
5 Shores homicide?

6 A. Yes.

7 Q. So you responded to Woodlawn Avenue for what reason?

8 A. A call was dispatched. A caller had called our dispatcher and
9 reported shots being fired on Woodlawn Avenue.

10 Q. How long did it take you to respond to Woodlawn Avenue?

11 A. Five to seven minutes.

12 Q. And what did you do once you got there?

13 A. Tried to locate some sort of crime scene or a victim, any type
14 of evidence that might have been anywhere near in that area.

15 Q. When you respond to a call for a shooting, what's your primary
16 objective once you arrive at a scene?

17 A. To locate a victim and get him or her medical attention.

18 Q. And when you arrived at that scene, did you locate a victim?

19 A. No, I didn't.

20 Q. Was there anybody on the scene when you arrived there?

21 A. There was nobody in the area where the shots were reported
22 being fired, no.

23 Q. Was there anybody hanging outside or around any of the houses
24 in that location?

25 A. Yes. Several houses down, there were some people sitting on

OFFICER MELLOTT - DIRECT EXAMINATION BY MR. MCKOY

51

1 the porch.

2 Q. Did you attempt to talk to them?

3 A. Yes, I did.

4 Q. And did they give you any feedback regarding the shooting?

5 A. No, they didn't give me any information.

6 Q. Can you describe the typical atmosphere of the people when you
7 were there responding to a shooting?

8 A. Um, I don't understand your question.

9 Q. How receptive are people on the scene to you asking these
10 questions?

11 A. Um, most are not very receptive at all.

12 MR. MCKOY: Your Honor, may I approach the witness?

13 THE COURT: Yes, sir.

14 Q. Officer Mellott, I want to show you what's been marked for
15 I.D. purposes as State's Exhibit #1. Do you recognize that item?

16 A. Yes, it's a report for our dispatcher computer.

17 Q. Is that your report of the incident that happened on Woodlawn?

18 A. No, sir. This is just a report of radio transmissions and
19 the call.

20 Q. Okay.

21 Now, I'm going to refer you to the last page of that and the
22 very last sentence. Can you read what that says?

23 MS. FANNING: Your Honor, I'm going to object to him reading
24 off - - -

25 THE COURT: Sustained. Not in evidence.

OFFICER MELLOTT - CROSS EXAMINATION BY MS. FANNING

52

1 MR. MCKOY: Thank you, Your Honor.

2 Q. You don't need to answer that question, Officer Mellott.

3 Is it common or is it safe to say that it's is typical for
4 people to not be very receptive to you once you respond to the
5 scene in that area?

6 A. Yes.

7 Q. And just to be clear. The incident that happened on Woodlawn
8 is not the incident that happened at Ashley Shores?

9 A. Correct, sir.

10 Q. And when you arrived at the scene, you did not find a victim?

11 A. No, I didn't.

12 Q. Please answer any questions Ms. Fanning may have for you.

13 THE COURT: Cross examination, Ms. Fanning.

14 CROSS EXAMINATION BY MS. FANNING:

15 Q. Did you interview anybody in connection with this event at
16 Woodlawn?

17 A. No, ma'am, I didn't.

18 Q. Thank you.

19 I don't have any further questions.

20 THE COURT: Redirect?

21 MR. MCKOY: No further questions.

22 THE COURT: Alright.

23 Thank you, sir. You may step down.

24 Leave the Court Reporter the exhibit.

25 (The witness leaves the witness stand.)

MOTION AND RULING OF THE COURT - PROFFER AGREEMENTS

53

1 THE COURT: Now, is the witness excused?

2 MR. MCKOY: Yes, sir, Judge.

3 THE COURT: Any objection, Ms. Fanning?

4 MS. FANNING: Without objection, Your Honor.

5 THE COURT: Alright.

6 The witness is excused.

7 Thank you for coming, Officer.

8 OFFICER MELLOTT: Thank you, Your Honor.

9 MR. WETMORE: Judge, may we approach before I call the next
10 witness?

11 THE COURT: Yes, sir.

12 (Bench conference is held off the record and in the presence
13 of the jury but outside the hearing of the jury.)

14 THE COURT: Ladies and gentlemen, it appears that we've got
15 some legal issues that we're going to have to address, and I need
16 to do these on the record and outside of your presence. So, I'm
17 going to ask if you would go to the jury room for just a few
18 minutes while we take care of these matters. We'll send for you
19 very shortly.

20 Do not discuss the case among yourselves while you're in the
21 jury room.

22 (The jury retires to the jury room at 2:21 p.m.)

23 MOTION AND RULING OF THE COURT - PROFFER AGREEMENTS

24 THE COURT: Alright.

25 For the record, first of all, one of the concerns that was

MOTION AND RULING OF THE COURT - PROFFER AGREEMENTS

54

1 expressed to the Court had to do with the openness of the
2 courtroom, and all I can say is the witnesses that are called are
3 expected to testify truthfully regardless of whether or not there
4 is or not news media present, and I would expect them to do so.

5 I need for you to tell them that, Mr. Wetmore. They will be
6 expected to testify regardless of the presence of non-presence of
7 any news media.

8 Now, I also understand that you want to make a proffer of
9 certain testimony, ah, of certain evidence, and I'll be glad to
10 hear from you.

11 MR. WETMORE: Judge, the State has entered into a Proffer
12 Agreement with three individuals also charged: Deshawn Gathers,
13 Devant Porcher and Cordero Porcher, and that agreement has been
14 reduced to writing for each individual to proffer, and I would like
15 to admit that through each witness as a physical representation of
16 our agreement.

17 It lays out very clearly what the deal is, the fact that there
18 are no threats, no promises. There's the fact that they're
19 mandated to tell the truth, and I would like to redact the portion
20 that involves the polygraph. My reading of the case indicates
21 that that is inadmissible in course and, of course, not proper to
22 be before the jury, and so we're going to redact that and would ask
23 to admit the agreements with each witness.

24 THE COURT: Alright, Ms. Fanning, I'll be glad to hear from
25 you.

MOTION AND RULING OF THE COURT - PROFFER AGREEMENTS

55

1 MS. FANNING: Your Honor, as a document going back to the
2 jury during the deliberations, I just submit that it is improper.
3 It's not probative of any issue in the case that's going to be
4 decided by the jury. What it does is, um, it tends to document
5 through a document, bolster the testimony of these witnesses.

6 Of course, they would testify, and I fully expect them to
7 testify about the existence of the Proffer Agreement and their
8 understanding of the parameters but I don't believe it's proper to
9 have the document in front of the jury.

10 THE COURT: Well, do you plan to challenge or cross examine
11 them regarding whether or not this is, in fact, their agreement
12 with the State?

13 MS. FANNING: It's a three page document.

14 THE COURT: Right.

15 MS. FANNING: It's very long.

16 THE COURT: I'm not talking about that but I mean if -- my
17 point is if you're going to cross examine them on whether or
18 whether not they do or do not have a deal with the State, it is
19 probative of an issue in this case, and that is what that agreement
20 is, and if you're going to cross examine the witnesses regarding
21 any deal that they may have made with the State, then I think that
22 it is probative.

23 MS. FANNING: I suppose I won't know exactly the way I'm
24 going to handle that until I hear what their testimony -- their
25 direct testimony is.

MOTION AND RULING OF THE COURT - PROFFER AGREEMENTS

56

1 I, of course, would ask them questions about the parameters of
2 their agreement but, again, I don't know why that document prepared
3 by the Solicitor's Office needs to go to the jury.

4 Of course, they can testify about its existence and its
5 content but as an independent exhibit to go back to the jury, I
6 just don't think it's proper, and I think it serves to improperly
7 bolster their testimony.

8 That's my objection to the document being admitted as an
9 exhibit going back as evidence in the case.

10 THE COURT: Alright.

11 The ruling of the Court is that I'm going to go ahead and
12 allow the State to go ahead and have it marked as an exhibit and
13 admit it into evidence without publication to the jury at this
14 time. In other words, don't hand it around to the jury at this
15 time.

16 If the - - there is any challenge of what the actual agreement
17 was between the State and the defendant, then it would go to the
18 jury at that time. If she stays away from it completely, then just
19 the agreement as published can - - I mean, as what the verbal
20 testimony of the agreement will stand unless it's challenged by the
21 defense. If the defense challenges it as to what they say that
22 there is no agreement, then it's coming in. That's what it really
23 amounts to.

24 Alright.

25 MR. MCKOY: May I go ahead, Judge - -

MOTION AND RULING OF THE COURT - PROFFER AGREEMENTS

57

1 THE COURT: Yeah. Go ahead and mark them.

2 MR. McKOY: -- may I go ahead and redact them and pre-mark
3 them? Is that okay with you?

4 THE COURT: Yes, sir. Go ahead and redact them and pre-
5 mark them.

6 You don't object to the redacting if it were to come in. You
7 just object to the entire thing.

8 MS. FANNING: I don't object to the redacting about the
9 polygraph. I would ask for a copy of the redacted exhibit.

10 THE COURT: Alright.

11 Redact it as to any reference to the polygraph because under
12 our rules of evidence, any reference to polygraph is not
13 admissible. It will be admitted as State's #2, #3 and #4 for
14 identification purposes.

15 And what you can do, Ms. Fanning, is you can ask them if they
16 made an agreement with the State, was that agreement reduced to
17 writing. What was the agreement? And let them testify verbally to
18 it. If there is any challenge as to what was or was not the
19 authentic agreement between the State, then the jury will get to
20 look at the agreement between the State and the defendants.

21 MR. McKOY: So, Your Honor, would Your Honor permit me to
22 pass this to the witness and let them review that it was their
23 document?

24 THE COURT: Yes.

25 MR. McKOY: Is that appropriate, Your Honor?

MOTION AND RULING OF THE COURT - PROFFER AGREEMENTS

58

1 THE COURT: Yes. That falls under a different category.
2 That falls under the witness' memory being refreshed.

3 Do you have any objection to that?

4 MS. FANNING: No, Your Honor.

5 THE COURT: Alright. That would be fine.

6 mfs: And, Your Honor, we would - - -

7 THE COURT: You don't have to read it to the jury but they
8 can refresh their and memory and testify, "This is what my
9 agreement was."

10 MR. McKOY: Yes, sir.

11 MS. FANNING: With regard to that other matter that I asked
12 about is it okay if I excuse myself?

13 THE COURT: Okay.

14 Ah, and we will take about two minutes before we - - we before
15 - - the defense counsel goes ahead and marks these exhibits.

16 MR. McKOY: Thank you, Judge.

17 THE COURT: The State's counsel, excuse me.

18 (The Court Reporter marks exhibits for the State as State's
19 Exhibit #2, #3 and #4 for identification only.)

20 THE COURT: State's #2 for I.D. is which one, Mr. Wetmore?

21 MR. WETMORE: The State's #2 for identification is the
22 Proffer of Deshawn Gathers.

23 THE COURT: Alright.

24 MR. WETMORE: State's #3 is the Proffer of Devant Porcher.

25 State's #4 is the Proffer of Cordero Porcher, each of these

MOTION AND RULING OF THE COURT - PROFFER AGREEMENTS

59

1 having been redacted as we spoke of.

2 THE COURT: Alright.

3 And while we're waiting on Ms. Fanning to come back, would you
4 have somebody make copies of those so you can give her a copy of
5 them?

6 Make about - - make the Court Reporter one and make me one as
7 well, and then make one for Ms. Fanning.

8 Alright. For the record the four or the three Proffers, three
9 plea agreements have been made exhibits State's #2 for
10 identification the agreement of Deshawn Gathers, State's #3 for
11 identification, Devant Porcher, and State's #4 for I.D. is Cordero
12 Porcher.

13 The Solicitor's Office is having copies made for the defense
14 counsel and the Court. At this time they are marked for
15 identification only. The witnesses can refer them to refresh
16 their recollection but they cannot be published to the jury or
17 given to the jury at this time.

18 Ms. Fanning, you want to wait until we get those copies before
19 you go forward or can we go ahead?

20 MS. FANNING: We can go ahead, Your Honor.

21 THE COURT: Alright.

22 MR. WETMORE: With your permission I need to go back.

23 THE COURT: Alright.

24 We'll wait a minute.

25 MR. MCKOY: Judge, may I approach?

MOTION AND RULING OF THE COURT - PROFFER AGREEMENTS

60

1 THE COURT: Yes, sir.

2 (Bench conference is held off the record and outside the
3 presence of the jury.)

4 THE COURT: So, we got some that are in evidence, and those
5 are what numbers, please?

6 COURT REPORTER: The ones in evidence, Your Honor, are 5
7 through 15.

8 THE COURT: 5 through 15?

9 COURT REPORTER: Yes, Your Honor.

10 And the two that are marked for I.D. are #16 and #17.

11 THE COURT: Okay. Thank you.

12 Alright.

13 Alright, it's my understanding that by agreement, and make
14 sure that these do conform with what you understand, Ms. Fanning,
15 the State's #5 through #15 are all photographs of the scene without
16 the individuals in them and that there's no objection to those.

17 MS. FANNING: That's correct, Your Honor. 5 through 15 are
18 without objection.

19 THE COURT: Alright.

20 MS. FANNING: 16 and 17 are not.

21 THE COURT: State's 5 through 15 are admitted without
22 objection and without further authentication.

23 (The Court Reporter accepts State's Exhibits #5 through #15
24 into evidence.)

25 THE COURT: And I understand that State's 16 and 17 have

MOTION AND RULING OF THE COURT - PROFFER AGREEMENTS

61

1 been marked for identification purposes, and you do object to
2 those. Is that correct?

3 MS. FANNING: That's correct, Your Honor.

4 THE COURT: Alright. Mr. Wetmore, would you hand those up
5 and let me look at those, please?

6 MR. WETMORE: Judge, you just want 16 and 17, correct?

7 THE COURT: Right. That's correct.

8 MR. WETMORE: The two that are at issue?

9 THE COURT: The two that are in issue.

10 MR. WETMORE: Here's those exhibits and here for you copies
11 of the Proffers.

12 THE COURT: Alright.

13 MR. WETMORE: The copies for Ms. Fanning as well, Your Honor.

14 THE COURT: Alright.

15 Now, the State has offered and has had marked as State's
16 Exhibits #16 and #17 for identification. That is two photographs
17 showing the two - - the two deceased, I assume, ah, black males.
18 I would assume they are the victims in this case. Is that correct?

19 MR. WETMORE: Yes, sir. Yes.

20 THE COURT: I'll be glad to hear from you as to why you
21 feel that they are admissible and what they are probative of, Mr.
22 Wetmore.

23 MR. WETMORE: Thank you, Judge.

24 Through the Crime Scene Investigator who took those
25 photographs, the State is seeking to introduce these pictures to

MOTION AND RULING OF THE COURT - PROFFER AGREEMENTS

62

1 represent to the jury the scene they encountered when they first
2 arrived, um, showing who the victims are, showing their placement
3 side by side.

4 That helps them to explain and also wish to explain the fact
5 that they will testify to. We have made every effort to select
6 photographs that are not inflammatory, and we believe they are
7 appropriate. They don't show violence or anything of any offensive
8 nature. We'd ask that they be admitted.

9 THE COURT: Alright.

10 Ms. Fanning, I'll hear from you.

11 MS. FANNING: Your Honor, the testimony of the crime scene
12 officers and witnesses would be more than enough to establish for
13 the jury the positioning of the defendant and the facts that they
14 were on the ground behind this apartment building.

15 Um, without more information of exactly what the State, um,
16 expects these photographs to prove except for just that there was
17 two dead young men at the scene, I don't know how the Court would -
18 - let me rephrase that.

19 I'm not sure how the Court can rule on their probativeness
20 given what Mr. Wetmore has said. All he has said is that he
21 expects them to show the positioning which is going to be testified
22 to at length by the witnesses.

23 Clearly, they're inflammatory. Clearly, the color one shows
24 a great quantity of blood on and around these victims, um, and I
25 would submit that they are being sought to be admitted is to

MOTION AND RULING OF THE COURT - PROFFER AGREEMENTS

63

1 inflame and arouse the prejudice and the passion of the jury, and
2 I would ask the Court to exclude them for that reason.

3 There will be ample testimony about the existence of the
4 bodies, and I don't believe that photograph proves anything that
5 can't be gotten through testimony.

6 THE COURT: So, at this point, Mr. Wetmore, I agree with
7 the defense counsel without knowing more about what probative fact
8 that they are to intended to - - to prove.

9 Under State vs. Nance, the relevancy, materiality and
10 admissibility of photographs as evidence are matters left to the
11 sound discretion of the trial court, um, and, of course, they are
12 admissible if they serve to corroborate the testimony but I'm not
13 sure exactly at this stage what they would corroborate because I
14 don't know what the testimony would be, and it's kind of difficult
15 for the Court to use - - to engage in an 403 analysis of the
16 probative value versus the prejudicial effect without knowing what
17 that is.

18 Ah, but rather than to get in a situation of, um, prejudicing
19 this matter before the jury, I think that, perhaps, the testimony
20 of the appropriate officer that you were going to use on these
21 photographs is appropriate in camera for me to determine at this
22 time whether or not there is a probative value to the photographs.

23 So, ah, I'll keep the jury out a few more minutes if you want
24 to call the witness that you were going to use to introduce these
25 photographs through.

MOTION AND RULING OF THE COURT - PROFFER AGREEMENTS

64

1 MR. WETMORE: Judge, he is - - he is testifying a little
2 later. We're just trying to take this matter up as a housekeeping
3 matter.

4 THE COURT: Alright.

5 Well, we'll just - - they're out for now but they're not - -
6 they're not - - a final ruling hasn't been made but before you
7 offer these, ah, let me know and we'll excuse the jury and take the
8 matter up with the witness at that time.

9 MR. WETMORE: Yes, sir.

10 Before he takes the stand, we will do that.

11 THE COURT: Alright. We'll take care of it that way.

12 (The Court Reporter marks State's Exhibits #16 and #17 for
13 identification only at this time.)

14 THE COURT: Alright, and I think I have already indicated
15 how I am going to handle the Proffer Agreement as State's Exhibits
16 #2, #3 and #4.

17 Alright. Looks like we're ready to go forward, then.

18 Anything before we bring the jury back in at this time, Mr.

19 Wetmore?

20 MR. WETMORE: Nothing, Judge.

21 THE COURT: Ms. Fanning?

22 MS. FANNING: Nothing, Judge.

23 THE COURT: Alright.

24 Bring the jury in, please.

25 (The jury returns to the courtroom at 2:45 p.m.)

MR. GATHERS - DIRECT EXAMINATION BY MR. WETMORE

65

1 THE COURT: Alright.

2 Thank you very much, ladies and gentlemen, and I apologize for
3 making you stay out a little longer than I had thought but we did
4 take care of some of the matters that we needed to take care of,
5 and we are now ready to go forward.

6 And, Mr. Wetmore, you may call your first or your next
7 witness.

8 MR. WETMORE: Thank you, Judge.

9 The State calls Deshawn Gathers.

10 THE COURT: Alright.

11 Alright, Mr. Gathers, come around, please.

12 (The witness takes the witness stand.)

13 DESHAWN GATHERS, being duly sworn, testifies as
14 follows:

15 CLERK OF COURT: Please be seated.

16 Please state your name for the Court and spell your last name.

17 MR. GATHERS: Deshawn Gathers. My last name, G-a-t-h-e-r-s.

18 DIRECT EXAMINATION BY MR. WETMORE:

19 Q. Mr. Gathers, I like the way you spoke right into that
20 microphone. I want you to do that every time I ask a question so
21 they can hear you.

22 Tell us a little bit about yourself. How old are you?

23 A. I'm twenty.

24 Q. Where did you grow up?

25 A. I was raised up a little while on Ashley Shores and my first

MR. GATHERS - DIRECT EXAMINATION BY MR. WETMORE

66

1 younger years I was West Ashley.

2 Q. So, you spent most of your life in the Charleston area?

3 A. Yes.

4 Q. Is that where you live now?

5 A. Yes, sir.

6 Q. And you still live in that area?

7 A. My mom stays West Ashley now.

8 Q. Are you married? Do you have any children?

9 A. No.

10 Q. Um, are you in school?

11 A. I was looking forward on going back to school but I got locked
12 up.

13 Q. So, before you were locked up your intentions were headed to
14 which school?

15 A. I was about to head to Title I Start.

16 Q. Tell me that again.

17 A. I was about to enroll in Title I Start.

18 Q. Okay. What kind of program is that?

19 A. It's a little like for people who don't go to school during
20 the daytime, you know. It's a little program to help you get your
21 GED and stuff.

22 Q. Okay.

23 Did you have a job before you were locked up?

24 A. No, sir.

25 Q. Just attending school. Is that right?

MR. GATHERS - DIRECT EXAMINATION BY MR. WETMORE

67

1 Now, let's talk for a minute about your past in the criminal
2 system. Have you ever been convicted of a crime?

3 A. No, sir.

4 Q. Do you have some charges that are pending?

5 A. I have a couple of them.

6 Q. What do you have pending?

7 A. I have, like, two drug charges pending.

8 Q. That's it?

9 A. Yes, and this right here.

10 Q. Well, don't - - don't forget this one.

11 What are you charged with here?

12 A. They got me charged with murder.

13 Q. Okay.

14 In relation to that double murder on Ashley Shores in
15 February, 2005. Is that right?

16 A. Yes, sir.

17 Q. So, you - - you have some information about that - - those
18 murders. Is that correct?

19 A. Yes, sir.

20 Q. Did you know the victim, Robert Bryant?

21 A. Yes, sir.

22 Q. How long had you known him?

23 A. For about - - about four years, three or four years.

24 Q. And did you live near him - - or - - or - -

25 A. Well, like, we stayed across the highway but we use to be back

MR. GATHERS - DIRECT EXAMINATION BY MR. WETMORE

68

1 and forth each other house and stuff.

2 Q. So you were friendly with Mr. Bryant, the victim?

3 A. Yes, sir.

4 Q. For four years.

5 Ah, did you have any family ties? Were your families friends
6 at all or just you two?

7 A. No. Just us two. I had known his mom, though.

8 Q. Did you guys go to school together, work together, anything
9 like that?

10 A. No. It all - - we all raised up in the neighborhood.

11 Q. And do you know if Mr. Bryant had a nickname or kind of a
12 street name that he might have been referred to out there?

13 A. Yes, sir.

14 Q. What was that nickname?

15 A. They call him Evil.

16 Q. Evil.

17 Do you have any information about that?

18 A. No.

19 Q. That's just something that you might have called him or
20 somebody else might have called him on the street. Is that right?

21 A. Yeah.

22 Q. Did you shoot Mr. Bryant?

23 A. No, sir.

24 Q. Did you murder him?

25 A. No, sir.

MR. GATHERS - DIRECT EXAMINATION BY MR. WETMORE

69

1 Q. Do you know who did?

2 A. Yes, sir.

3 Q. Who is that?

4 A. D. L. Jvon Grant.

5 Q. Any doubt in your mind about that?

6 A. No doubts.

7 Q. Tell me about the victim, Sadiris Nelson. How long had you
8 known him?

9 A. Around the same amount of time. Since I came around here a
10 little three or four years.

11 Q. Did you guys live together or have any family friends?

12 A. Stayed next door to me.

13 Q. He lived right next door to you. Were your families friends
14 at all or just the two of you guys?

15 A. No, just us two.

16 Q. Well, living very close to each other, did you go to the same
17 school or same jobs or anything?

18 A. No.

19 Q. Tell us if Sadiris Nelson, the other victim, did he have any
20 kind of nickname or street name?

21 A. They called him Little D.

22 Q. Little D?

23 Did you shoot Little D? Did you shoot Sadiris Nelson?

24 A. No, sir.

25 Q. Did you murder him?

MR. GATHERS - DIRECT EXAMINATION BY MR. WETMORE

70

1 A. No, sir.

2 Q. Do you know who did?

3 A. Yes, sir.

4 Q. Who did it?

5 A. D. L. Jvon Grant.

6 Q. You sure about that?

7 A. Yes, sir.

8 Q. So, you've indicated that the defendant was the one who shot
9 and murdered these folks but you say North Charleston Police
10 Department charged you for your involvement.

11 Ah, did you talk to them back in February of 2005 about that?

12 A. Yes, sir.

13 Q. Did you give them any kind of statement? Did you give them
14 any kind of version of your side of the story?

15 A. Yes, sir.

16 Q. Now, have you and I talked about this case?

17 A. Nothing major. You just came to see me. Let me know about
18 the date and everything.

19 Q. Okay.

20 How many times if you remember have you and I talked?

21 A. Twice.

22 Q. Okay.

23 Tell the jury where we spoke.

24 A. At the Charleston County Detention Center.

25 Q. That's where you stay. Isn't that right? That's where you

MR. GATHERS - DIRECT EXAMINATION BY MR. WETMORE

71

1 have to stay, right?

2 A. Yes, sir.

3 Q. Ah, now, do you have any attorney that's helping you out in
4 this matter?

5 A. Yes, sir.

6 Q. What's that attorney's name?

7 A. Joseph Cabaniss.

8 Q. Both times that we've met, was your attorney, Joseph Cabaniss,
9 with you, present?

10 A. Yes, sir.

11 Q. Um, do you see him here today? Is your attorney present
12 today? Has he talked to you at all today?

13 A. Yes, sir.

14 Q. Do you see him here in this courtroom here today?

15 A. Yes, sir.

16 Q. Now, have you and your attorney ever seen a signed agreement
17 with me, the State Prosecutor, have you signed an agreement with
18 us, a Proffer?

19 A. Yes, sir.

20 MR. WETMORE: If I may approach the witness, Your Honor?

21 THE COURT: Yes, sir.

22 Q. Mr. Gathers, I'm going to show you what's been marked as
23 State's #2 and ask if you can identify it.

24 Can you identify State's #2?

25 A. Yes.

MR. GATHERS - DIRECT EXAMINATION BY MR. WETMORE

72

1 Q. Is that the written agreement that we made, that you signed
2 and I signed?

3 A. Yes, sir.

4 MR. WETMORE: Judge, I'd like to admit State's #2 for
5 identification.

6 THE COURT: It is admitted for identification purposes
7 only.

8 (The Court Reporter accepts State's Exhibit #2 for
9 identification only.)

10 Q. Mr. Gathers, are you aware that this agreement that's before
11 you, um, doesn't make you any promises whatsoever about your
12 pending charges?

13 A. Yes, sir.

14 Q. Are you aware of that?

15 A. Yes, sir.

16 Q. Um, are you aware that that agreement there before you doesn't
17 make you any threats of any fashion?

18 A. I'm aware of everything.

19 Q. Are you aware that that agreement calls for you to tell the
20 truth to this jury?

21 A. Yes, sir.

22 Q. Have you and your lawyer talked about all those things?

23 A. Yes, sir.

24 Q. Have you talked to me about all those things?

25 A. Yes, sir.

MR. GATHERS - DIRECT EXAMINATION BY MR. WETMORE

73

1 Q. Now, did you get a subpoena to come to court today that
2 compelled you to come to court today?

3 A. Yes, sir.

4 Q. Okay.

5 Have you got any kind of threats, any sort of people talking
6 to you and threatening you about this case?

7 A. No, sir.

8 Q. Will you tell the judge and the jury today the truth about
9 what happened out there on February of 2005 at Ashley Shores?

10 MS. FANNING: Objection, Your Honor. Bolstering.

11 THE COURT: Overruled.

12 Q. Are you prepared to tell the truth today?

13 A. Yes, sir.

14 Q. Let me tell you - - let me take you back to that day, February
15 24, 2005, about noon time, the middle of the day. Tell me what
16 you were doing.

17 A. I was headed out Woodlawn going to Amoco.

18 Q. Were you driving a car? Were you walking?

19 A. No. I was on my bike.

20 Q. Tell me what happened.

21 A. I bumped heads with Cordero Porcher and Gary Grant.

22 Q. What does that mean "bumped heads" with them?

23 A. Alright.

24 Q. I think I might know but tell the jury.

25 A. We met up, and they was standing on the side of the street as

MR. GATHERS - DIRECT EXAMINATION BY MR. WETMORE

74

1 I was coming up the street, and we got in a little - - it wasn't no
2 big confrontation at first. They was asking me questions about if
3 I told anybody break inside somebody's house - - Michael Mitchell's
4 house.

5 Q. Okay.

6 So, they were asking you if you had been running your mouth
7 about some other incident. Is that right?

8 A. Yes, sir.

9 Q. So, what did you tell them?

10 A. I tell them no.

11 Q. Did you - - you got into an argument about it?

12 A. Yeah, we got into a little argument, a little fistfight.

13 Q. You guys got into a fistfight.

14 Now - - now, who were you fist fighting?

15 A. Me and Cordero.

16 Q. Cordero Porcher?

17 A. Yes, sir.

18 Q. Anybody have a gun?

19 A. No, sir.

20 Q. Anybody shot a gun?

21 A. No, sir.

22 Q. Just a good old fashion fistfight, you and Cordero?

23 A. Yes, sir.

24 Q. Now, how did that end?

25 A. We - - Gary Grant broke up the fight. We went our own way.

MR. GATHERS - DIRECT EXAMINATION BY MR. WETMORE

75

1 I kept going to the store. I went and got me a little phone card
2 for my phone, and they - - they stayed on Woodlawn I guess.

3 Q. But you say Gary Grant broke up the fistfight?

4 A. Yes, sir.

5 Q. And when you left, who was still at that house on Woodlawn?

6 A. Gary Grant and Cordero Porcher.

7 Q. Anybody else out there at that house?

8 A. I didn't see nobody else out there at the time.

9 Q. When you left, did you leave once again by a bike?

10 A. Yes, sir.

11 Q. Tell me what - - tell me what happened next? What happened
12 after that?

13 A. I called Project on my cell phone, Michael Mitchell, and asked
14 him if he was telling people about me telling him about people
15 broke in his house. He told me no. So after I hung up and went
16 home, I was headed back down. I left from the gas station. He was
17 going up Woodlawn.

18 That's when they got - - he got out the car and shot at Gary
19 Grant.

20 Q. Tell me again why you called Michael Mitchell, this guy you
21 know as Project.

22 A. To ask him if he was telling people about me - - about
23 telling other people about them breaking inside his house.

24 Q. Are these the same rumors you were talking about that started
25 that fight with you and Cordero?

MR. GATHERS - DIRECT EXAMINATION BY MR. WETMORE

76

1 A. Yes, sir.

2 Q. So, what did Michael Mitchell do after you had that
3 conversation?

4 A. He told me no he didn't say it and hung up the phone but then
5 when I saw him again, he was headed out Woodlawn, and that's when
6 they - - he shot over there.

7 Q. So Michael Mitchell shot over at Woodlawn?

8 A. Yes, sir.

9 Q. Was he at that same house where you had been earlier?

10 A. Yes, sir.

11 Q. That shooting on Woodlawn, that's not the same thing as this
12 murder at Ashley Shores, is it?

13 A. No, sir.

14 Q. Let's start moving past the shooting on Woodlawn. When did
15 you go back to Ashley Shores?

16 A. I left straight after - - I left from - - when I left from the
17 store, I went straight to Ashley Shores.

18 Q. Well, why did you go there?

19 A. Because that's where I stayed.

20 Q. You live at Ashley Shores?

21 A. Yes, sir.

22 Q. You went home.

23 What did you do when you got home?

24 A. I went home. I put a little ice pack on my face from when we
25 was fighting, and then I got a knock at the door. It was D. L.

MR. GATHERS - DIRECT EXAMINATION BY MR. WETMORE

77

1 Jvon Grant.

2 Q. Who was with D. L. when he showed up at your house?

3 A. He came there, Cordero Porcher, Devant Porcher, Gary Grant.

4 Q. Those guys, you mentioned four names. They all came to your
5 house?

6 A. Yes, sir.

7 Q. In Ashley Shores.

8 Did you let them in your house?

9 A. Yes, sir.

10 Q. What happened when they got in your house?

11 A. They was asking me about my cousin Project and about the
12 rumors or whatever that was going on. I told them I didn't know
13 anything about it. So I didn't - - I got on the phone again and
14 tried to call Project, Michael Mitchell, so that he could talk to
15 them but he didn't answer the phone.

16 Q. So, y'all were discussing these same rumors, these same
17 situations that y'all were fighting about before?

18 A. Yes, sir.

19 Q. Um, now, when they were at your house, was this is after that
20 shooting on Woodland?

21 A. Yes, sir.

22 Q. Was anybody talking about that?

23 A. No. They talked about it a couple of times. It wasn't
24 really no big issue but they was talking about it.

25 Q. Could you tell that things were starting to get kind of heated

MR. GATHERS - DIRECT EXAMINATION BY MR. WETMORE

78

1 up?

2 A. In a little way.

3 Q. Were you concerned that people were - - were getting violent,
4 getting mad at each other?

5 A. No because nobody had said that they was going to kill
6 anybody.

7 Q. Okay.

8 And you guys, all who you mentioned, you guys all pretty - -
9 pretty close?

10 A. All us friends. All us be around in the same neighborhood.

11 Q. What was - - what was D. L. - - what was the defendant doing
12 in your house?

13 A. He was standing there just talking on the phone, and he got
14 off the phone, and he was talking to his brother.

15 Q. And his - - his brother is who?

16 A. Gary Grant.

17 Q. What did the defendant - - what was D. L. saying when he was
18 in your house?

19 A. Gary Grant told him what happened and what all took place. He
20 just told his brother he was going to handle it.

21 Q. The defendant, D. L. Grant, told his brother he was going to
22 handle it?

23 MS. FANNING: Objection, Your Honor. Asked and answered.

24 Q. Is that correct?

25 A. Yes, sir.

MR. GATHERS - DIRECT EXAMINATION BY MR. WETMORE

79

1 THE COURT: Overruled.

2 Q. Was the defendant - - was D. L. upset?

3 A. A little something but it wasn't nothing like major, like,
4 where he was trying to approach them about anything. It wasn't
5 nothing major.

6 Q. So, you didn't choose to approach him?

7 A. No, sir.

8 Q. Even though he was in your house.

9 Did the defendant, D. L., have a gun?

10 A. Yes, sir.

11 Q. Tell me about the gun.

12 A. It was a little black 9 mm.

13 Q. So, it was a handgun, a pistol?

14 A. Yes, sir.

15 Q. Did you see anybody else with a handgun or a pistol?

16 A. No, sir.

17 Q. The only gun you saw - - the only handgun you saw was in the
18 defendant's hand. Is that correct?

19 A. Yes, sir.

20 Q. So, tell me how - - how this went down. They were all in
21 your house. What happened next?

22 A. Everybody, all of us was sitting around talking and stuff but,
23 like, I could really know what was the full conversation but after
24 a while I told everybody we had to go outside and - - -

25 Q. Why did you tell them they had to go outside?

MR. GATHERS - DIRECT EXAMINATION BY MR. WETMORE

80

1 A. Because my mom was coming home.

2 And then Miss Neese came. That's, um, Devant Porcher mother.
3 She came to the house looking for them. She came looking for
4 Cordero Porcher and Devant Porcher.

5 Q. So, your mom was coming home?

6 A. Yes.

7 Q. And there was another adult present but you - - at that point
8 you told them they had to get out of your house. Is that right?

9 A. Yes, sir.

10 Q. Did they leave?

11 A. Yes, sir.

12 Q. Did the defendant leave?

13 A. Yes, sir.

14 Q. Right away or did he stick around?

15 A. He went outside, too.

16 Q. Did he still have that gun?

17 A. Yes, sir.

18 Q. Tell me - - tell me the first time it was that you saw the two
19 victims in this case, Robert Bryant and Sadiris Nelson.

20 A. When all of us was standing outside, they pulled up in a
21 little green Eighty-eight Oldsmobile.

22 Q. Green car?

23 A. Yes, sir.

24 Q. Okay.

25 A. They pulled up. Sadiris, he got out. He started arguing

MR. GATHERS - DIRECT EXAMINATION BY MR. WETMORE

81

1 with Gary Grant and Cordero Porcher and Devant Porcher.

2 Q. Okay.

3 A. They got in a little argument.

4 Q. What were they arguing about?

5 A. About the incident because he was with Project earlier.

6 Q. So, somebody - - someone believed that the victims were
7 involved in an earlier incident?

8 A. Yes, sir.

9 Q. Did you think that or did you know anything about that?

10 A. No, sir. I didn't remember seeing the car until - - until
11 that time right there.

12 Q. But for some reason there was an argument thinking they might
13 have been involved. Is that right?

14 A. Yes, sir.

15 Q. At this point was it an argument? Was it another fistfight?

16 A. No, it wasn't no fistfight.

17 Q. What was going on?

18 A. They got in a little argument, and after a couple of words was
19 exchanged, D. L. Jvon Grant came up from behind and shot Sadiris
20 Nelson.

21 Q. Okay.

22 So before D. L. Jvon came out, was anybody pulling a gun on
23 anybody?

24 A. No, sir.

25 Q. Tell me exactly how the defendant ended that argument out in

MR. GATHERS - DIRECT EXAMINATION BY MR. WETMORE

82

1 front of your house.

2 A. He walked behind Sadiris Nelson. Shot him. Robert Bryant
3 came around the car. He shot him, too, and he walked back and shot
4 both of them again.

5 Q. So, the first time he shot, he shot Nelson. Is that what
6 you're said?

7 A. Yes, sir.

8 Q. Where did he shoot him?

9 A. In the neck.

10 Q. Did he approach from one side or the other side?

11 A. He came - - from my eyesight, I saw him came up from behind.

12 Q. Okay.

13 A. It was like a blind shot.

14 Q. Okay.

15 The first person he shot was Nelson?

16 A. Yes, sir.

17 Q. And from the best you could tell, where did he shoot him?

18 A. In his neck.

19 Q. And who did he shoot next?

20 A. Mr. Bryant.

21 Q. Tell us what you can remember about that.

22 A. He shot Bryant, and Bryant fell. Then he shot Nelson again,
23 and then he shot Bryant again. I think he shot Bryant, like, two
24 more times after that one.

25 Q. So, after he shot the first time, did they fall down on the

MR. GATHERS - DIRECT EXAMINATION BY MR. WETMORE

83

1 ground?

2 A. Yes, sir.

3 Q. Alright.

4 Describe to me these other shots that the defendant took.

5 A. Like, you couldn't really see Bryant's shots too much because
6 he was already on the ground and I was beside of the car but the
7 Nelson shots was clear. You could have seen.

8 Q. After they both fell down, did the defendant shoot them again?

9 A. Yes, sir.

10 Q. You know how many times?

11 A. Bryant two and Nelson one if I'm not mistaken.

12 Q. That was after they already hit the ground?

13 A. Yes, sir.

14 Q. Okay.

15 If you would please, turn around, Mr. Gathers. Let me show
16 you the photograph backward. Can you - - can you tell what that is
17 in - - the quality isn't great. Is that - - what does that
18 represent to you?

19 A. That's Ashley Shores.

20 Q. So that was the apartment complex where this happened?

21 A. Yes, sir.

22 Q. Okay.

23 Ah, if you would stand up and point out to where your building
24 is, the building in question.

25 A. Right.

MR. GATHERS - DIRECT EXAMINATION BY MR. WETMORE

84

1 Q. All the way down on the end. Is that right?

2 A. Yes, sir.

3 Q. What's that big major road there in front of it?

4 A. That's Azalea.

5 Q. Azalea Drive?

6 A. Yes, sir.

7 Q. And where this took place, is that on the Azalea side of your
8 house or on the back side of your house away from Azalea?

9 A. On the back side away from Azalea.

10 Q. That's where you saw the defendant shoot both these guys
11 multiple times. Is that right?

12 A. Yes, sir.

13 Q. Tell me where the defendant went after he shot these boys.

14 A. From what I saw he ran off across Azalea.

15 Q. He ran across that major road there. Is that right?

16 A. Yes, sir.

17 Q. When he was running and taking off, did he still have the gun
18 in his hand?

19 A. Yes, sir.

20 Q. You can turn it back around.

21 Thank you.

22 Ah - - so you were close with these two victims, right?

23 A. Yes, sir.

24 Q. I'm sorry for your loss. How has it made you feel?

25 MS. FANNING: Your Honor, I object. Relevance.

MR. GATHERS - DIRECT EXAMINATION BY MR. WETMORE

85

1 THE COURT: I don't believe it's relevant, Mr. Wetmore.

2 MR. WETMORE: Your Honor, I would argue it's relevant. It's
3 an image that's probably stuck in his head. It goes to his memory
4 of this incident.

5 THE COURT: Alright. Objection sustained.

6 Q. Now, do you know the defendant, D. L. Grant?

7 A. Yes, sir.

8 Q. Have you known him for a while?

9 A. Yes, sir.

10 Q. Has he lived in the same area as you?

11 A. He wasn't living around there but he use to be coming through.

12 Q. Did you guys go to school together, work together, anything
13 like that?

14 A. Nah. I met him in the neighborhood.

15 Q. Just like these other boys.

16 A. Yes, sir.

17 Q. Now, did he have any nickname or street names we should know
18 about?

19 A. We call him D. L.

20 Q. D. L.? Just like the letters D L?

21 A. Yeah.

22 Q. Now, what about the defendant, D. L.'s big brother, Gary
23 Grant? Did you know him?

24 A. Yes, sir.

25 Q. How long had you known him?

MR. GATHERS - DIRECT EXAMINATION BY MR. WETMORE

86

1 A. About the same time off and on. He was coming home off and
2 on.

3 Q. And did you know him in the same way just from being around
4 the neighborhood?

5 A. Yes, sir.

6 Q. Do you know these two brothers well enough to recognize them?

7 A. Yes, sir.

8 Q. Do you know them well enough to tell them apart?

9 A. Yes, sir.

10 Q. Back that day when it happened, February 24, 2005, tell me
11 what the big brother, Gary Grant, not the defendant, Gary Grant,
12 tell me what he was wearing.

13 A. An all-in-one black jumper.

14 Q. Like a one piece suit.

15 A. Yeah.

16 Q. And at the moments just before the defendant shot the victims,
17 what was the big brother Gary Grant doing?

18 A. Standing there, standing on the side.

19 Q. Standing - - -

20 A. Once the shots - - once the shots got fired and everybody
21 started scattering but he was standing there before it took place.

22 Q. Was he saying anything or doing anything of any interest?

23 A. They was arguing.

24 Q. Big brother Gary Grant was arguing as well as with the crowd?

25 A. Yes.

MR. GATHERS - DIRECT EXAMINATION BY MR. WETMORE

87

1 Q. And at the time of the shooting what did big brother Gary
2 Grant do?

3 A. He took off running with everybody else.

4 Q. Did you see the big brother Gary Grant with a pistol?

5 A. No, sir.

6 Q. Okay.

7 Now, let's talk about the defendant, D. L. Grant. On that
8 day what was he wearing?

9 A. All I can remember right now is a white tee-shirt. I can't
10 really remember. I knew he had on a pair of jeans. I can't - - I
11 don't know the color for sure.

12 Q. Okay.

13 So, a white tee-shirt and jeans. Two separate pieces of
14 clothing?

15 A. Yes, sir.

16 Q. And just before the victims were shot, what was the defendant
17 D. L. Grant doing?

18 A. He was standing up to the back of the crowd. Like, everybody
19 was to the front. He was standing behind my car.

20 Q. So, the defendant was standing off from the crowd a little
21 bit?

22 A. Yes, sir.

23 Q. Just before the shooting?

24 A. Yes, sir.

25 Q. And tell me exactly what happened at the time of the shooting

MR. GATHERS - DIRECT EXAMINATION BY MR. WETMORE

88

1 what this defendant did.

2 A. He walk out behind them and shot them, and he took off
3 running.

4 Q. Now, your observations of this event that you testified today,
5 you described today, how close were you to this shooting distance-
6 wise? Were you as close as you and I are? Were you farther away
7 or closer?

8 A. It was about like where that table was. Right there.

9 Q. You were about this far from the shooting?

10 A. Yes, sir.

11 Q. Was there anything blocking your view?

12 A. No, sir.

13 Q. Any physical problems? You said you had gotten into a
14 fistfight. Any physical problems that kept you from seeing what
15 was happening?

16 A. No, sir.

17 Q. Were you drinking or smoking or doing anything that would
18 cloud your memory?

19 A. No, sir.

20 Q. And you - - and you told us the truth today. Is that correct?

21 A. Yes, sir.

22 Q. Any doubt in your mind this defendant was the shooter?

23 A. No doubt.

24 MR. WETMORE: Court's indulgence.

25 Q. Just one final point I want to make sure we - - we're clear

MR. GATHERS - DIRECT EXAMINATION BY MR. WETMORE

89

1 on.

2 You indicated that you saw the defendant shoot Nelson first.

3 Is that what you said, the victim?

4 A. Yes, sir.

5 Q. Nelson first, Sadiris Nelson?

6 A. Yes, sir.

7 Q. And then what happened? What happened to the victim, Sadiris
8 Nelson?

9 A. He fell to the ground.

10 Q. Okay.

11 And then after that Robert Bryant, the victim, Robert Bryant,
12 was he the next one that was shot?

13 A. Yes, sir.

14 Q. And then what happened to him?

15 A. He fell to the ground.

16 Q. Okay, and you're still watching. Tell me what you see after
17 these guys have both fallen to the ground.

18 A. He shot them again.

19 Q. Can you tell me how many times? I know it was stressful but
20 do you know exactly how many times he fired again while they were
21 on the ground?

22 A. He shot Sadiris one more time, and he shot Bryant two.

23 Q. So you believe there were - - there were three more shots
24 after the victims had fallen?

25 A. Yes, sir.

MR. GATHERS - CROSS EXAMINATION BY MS FANNING

90

1 Q. And could you tell from your viewpoint where they were shot
2 that second time when they were still on the ground?

3 A. I couldn't tell for sure. I couldn't tell for sure.

4 Q. Where were you standing during all of this? Were you still
5 back at your house?

6 A. I was standing on the little back step.

7 Q. Okay.

8 But you were outside of your house, right?

9 A. Yes, sir.

10 Q. But you were right next to your house.

11 Deshawn, I don't have any further questions for you. If you
12 would, answer any, please, from this defendant.

13 THE COURT: Cross examination, Ms. Fanning.

14 MS. FANNING: Thank you, Your Honor.

15 CROSS EXAMINATION BY MS. FANNING:

16 Q. Mr. Gathers, I know we've already established - - first of
17 all, let me introduce myself.

18 My name is Meg Fanning, and I represent D. L. Grant.

19 And I know we have already established through your direct
20 testimony that the State put forth that you're charged with two
21 counts of murder.

22 A. Yes.

23 Q. Is that correct?

24 A. Yes, ma'am.

25 Q. You are charged with participating in the murder of Sadiris

MR. GATHERS - CROSS EXAMINATION BY MS FANNING

91

1 Nelson and Robert Bryant. Isn't that correct?

2 A. Yes, ma'am.

3 Q. And, um, the State has had you testify about the Proffer
4 Agreement that you entered into. It was an agreement to give
5 testimony in this case. Isn't that correct?

6 A. Yes, ma'am.

7 Q. Can you tell me in your own words why you entered into that
8 agreement?

9 A. I'm here to tell the truth.

10 Q. Okay.

11 I know the State or the Prosecutor said repeatedly no promises
12 have been made to you but do you hope to personally benefit from
13 testifying from Mr. Grant?

14 A. Yes, ma'am.

15 Q. And you hope to do that when it comes time for them to make a
16 decision about any sentencing or any plea arrangement that you're
17 going to enter into with regard to the two counts of murder that
18 are facing you. Correct?

19 A. I didn't really understand you just now.

20 Q. You said you hope to personally gain or personally benefit
21 from giving this testimony today. Correct?

22 A. I - - it really wouldn't matter. I'm just here to tell the
23 truth, ma'am. That's all and clear everything up.

24 Q. Beyond just telling the truth and, um, matters like that, you
25 hope that when it's time for a decisions to be made about your fate

MR. GATHERS - CROSS EXAMINATION BY MS. FANNING

92

1 that you can benefit from giving this testimony today, don't you?

2 A. Yes.

3 Q. Is that a yes?

4 A. Yes.

5 Q. Thank you.

6 Now, Mr. Gathers, you lived at 3747-B Ashley Shores?

7 A. Yes.

8 Q. And that was the unit behind the homicides took place,
9 correct?

10 A. Yes.

11 Q. I believe you testified already that you just happened to be
12 driving or riding your bike down Woodlawn when you came upon Gary
13 Grant and Cordero Porcher and you and Cordero got into as Mr.
14 Wetmore termed it a good old fashioned fistfight about your
15 involvement in ratting out Gary and Cordero in terms of their
16 breaking into your cousin's house. Isn't that correct?

17 A. Yes.

18 Q. And at that time you denied to Gary and Cordero that you had
19 anything to do with Project or Michael Mitchell finding out that
20 they had broken into his house. Isn't that correct?

21 A. Yes.

22 Q. And after you and Cordero got into that good old fashioned
23 fistfight, isn't it true that you got on your cell phone and you
24 called Project and told him that you had had a confrontation with
25 those fellows about the burglary? Isn't that correct?

MR. GATHERS - CROSS EXAMINATION BY MS FANNING

93

1 A. Yes.

2 Q. And Project came up to where you told him those boys were, and
3 he shot Gary Grant in the head. Isn't that correct?

4 A. No.

5 Q. What's not correct?

6 A. I did not tell them that they were there. I just asked him
7 simply why did he call my name in that.

8 Q. Okay.

9 So Project just guessed that Gary Grant and Cordero who you
10 had just had a fight with were standing in front of the house on
11 Woodlawn, and he came to that exact location minutes after you and
12 Cordero had that fight and shot Gary in the head?

13 A. Yes.

14 Q. Your testimony today is that's just mere coincidence?

15 A. Is it a coincidence?

16 Q. You tell me.

17 A. No.

18 Q. It's not a coincidence, is it?

19 A. No.

20 Q. You did tell Project, didn't you, where Cordero and Gary could
21 be found on the street?

22 A. No.

23 Q. Project is your cousin, right?

24 A. Yes.

25 Q. His name is Michael Mitchell?

MR. GATHERS - CROSS EXAMINATION BY MS FANNING

94

1 A. Yes.

2 Q. You testified under oath today when you swore to tell the
3 truth - - you did swear several times that you were going to tell
4 the truth today, didn't you?

5 A. Yes.

6 Q. Did you tell the truth when you told Mr. Wetmore and this jury
7 that the first time you saw Cordero and Mr. Bryant was when they
8 came to Ashley Shores in the green Oldsmobile?

9 A. Yes.

10 Q. Do you remember giving a statement to law enforcement on the
11 same day of these shootings?

12 A. Yes.

13 Q. And do you remember telling them that in the vehicle following
14 Project in his white Lexus you saw L. D. which is who?

15 A. Who?

16 Q. L. D.?

17 A. You talking about Little D?

18 Q. Little D?

19 A. Yes.

20 Q. And that's Sadiris, right?

21 A. Yes.

22 Q. And, um, Evil who you've already testified is Robert Bryant,
23 right?

24 A. Yes.

25 Q. And you saw them driving L. D.'s green car at the shooting at

MR. GATHERS - CROSS EXAMINATION BY MS FANNING

95

1 Woodlawn.

2 A. I can't say for sure they was in the car because the car had
3 tinted windows.

4 Q. Okay.

5 I'm going to give you a copy of the statement that you wrote
6 and signed - -

7 A. Yes.

8 Q. - - the date of the homicide and ask you to look at page - - -

9 MS. FANNING: Permission to approach the witness, Your Honor?

10 THE COURT: Yes, ma'am.

11 Q. That's your name on the top, isn't it?

12 A. Yes.

13 Q. Deshawn Lamar Gathers?

14 A. Yes.

15 Q. And that's your signature at the bottom of the page, isn't it?

16 A. Yes.

17 Q. Deshawn Gathers.

18 And even though you came here today and you swore to tell the
19 truth and testify in accordance with the State's case against Mr.
20 Grant that he did the shooting, you testified today you hadn't seen
21 Sadiris and Robert Bryant at all until the shooting at Ashley
22 Shores. Isn't that what you testified to under oath - -

23 A. Yes.

24 Q. - - in this courtroom - -

25 A. Yes.

MR. GATHERS - CROSS EXAMINATION BY MS FANNING

96

1 Q. - - today?

2 A. Yes.

3 Q. Now, you told law enforcement, however, look on page 1 of the
4 statement you gave law enforcement.

5 See the sentence where you're talking about, "Little Black hit
6 me in my right eye. I left on my bicycle traveling towards Azalea
7 Drive."

8 Do you see that halfway down the page?

9 A. Yes.

10 Q. Is that a yes, you see it?

11 Okay. Are we oriented? You see the sentence where you talk
12 about, "I left on my bicycle traveling towards Azalea Drive."

13 A. Yes.

14 Q. And then you wrote and told law enforcement that the day of
15 the shooting that, "I saw Project driving his Lexus and L. D.
16 driving his green car. Evil was in the passenger seat. They went
17 to Neese house on Woodlawn, and Project shot Gary in the head."

18 A. Yes.

19 Q. So, you did see Evil and Sadiris earlier than you testified
20 today. Correct?

21 A. Yes.

22 Q. And this is accurate, right, because you wrote it right after
23 the murders occurred. Correct?

24 A. Yes.

25 Q. Okay.

MR. GATHERS - CROSS EXAMINATION BY MS FANNING

97

1 You did not see D. L. Grant at the house on Woodlawn when
2 Project, your cousin, came and shot at Gary Grant, did you?

3 A. No. Del Jvon Grant wasn't there.

4 Q. You just saw Cordero and Gary?

5 A. And Gary Grant.

6 Q. And you don't know where D. L. had been prior to the murder -
7 - prior to coming to your house prior to the murder. Right?

8 A. Right.

9 Q. Do you remember testifying or telling law enforcement that
10 other people on the scene had guns? For example, you told law
11 enforcement that L. Mack, and who is L. Mack?

12 A. Little Mack.

13 Q. Little Mack?

14 A. Cordero Porcher.

15 Q. So that's Cordero?

16 And he said he had a strap. What does that mean when someone
17 says, "I've got my strap."?

18 A. That's - - that's another saying for a gun.

19 Q. Okay.

20 So, Cordero told you he had a gun at the scene. Correct?

21 A. He never told me he had a gun.

22 Q. Okay.

23 Again, turn to page 2 of your statement. You're talking here
24 about things that occur in your kitchen.

25 And you're talking about you went home and put ice on your

MR. GATHERS - CROSS EXAMINATION BY MS FANNING

98

1 eye. Ten minutes later - - four people came in, and you refer to
2 them by nicknames but I'm not hundred percent sure who they are.

3 So, Little Mack, who is that?

4 A. Cordero Porcher.

5 Q. Okay, and Sap Boy?

6 A. Devant Porcher.

7 Q. And Rattler - - Cattler - - Cordero?

8 A. That's Cordero.

9 Q. Okay. So Cordero and Little Mack are the same person?

10 A. Yeah, they the same people.

11 Q. And Gary?

12 A. Yes.

13 Q. All came to your house, and you gave Gary a rag.

14 A. Yes.

15 Q. What did that rag look like?

16 A. It was a blue terry cloth that they found in the backyard.

17 Q. Okay.

18 And, um, you said, "While Gary was sitting at the kitchen he
19 said that Project shot me in the head."

20 A. Yes.

21 Q. You ever heard him say that?

22 A. Yes.

23 Q. And you ever heard Little Mack and Cordero - - which is the
24 same person actually said they had their strap meaning they had a
25 gun.

MR. GATHERS - CROSS EXAMINATION BY MS FANNING

99

1 MR. WETMORE: Objection.

2 THE COURT: What's your objection.

3 MR. WETMORE: Your Honor, she's getting into hearsay. What
4 he heard other people say.

5 THE COURT: Well, I will tell the jury that you're not to
6 believe or take it for the truth what the statement says. She's
7 using it for impeachment purposes as to whether that was what he
8 told police, and for that purpose and for that purpose only the
9 jury can consider it but not the truth of the statement being made.

10 You may proceed.

11 MR. WETMORE: Thank you, Your Honor.

12 Q. So, when you testified under oath - - -

13 MS. FANNING: Thank you, Your Honor.

14 Q. When you testified under oath today that only D. L. had a gun
15 at the house and at the scene, that wasn't true either, was it?

16 A. In plain eye view, he was the only one that had a gun.

17 Q. But you were told by other people there that they had gun as
18 well, correct?

19 A. They never told me. It was in the air they talking saying it
20 but nobody ever had a gun - - -

21 THE COURT: That's what - - that's the objection I'm
22 sustaining is that he can't say as to what they told him.

23 Now, if it's in his statement, he can be - - he can question
24 them on whether that's what he told the police or not.

25 Q. Well, yes. That's what I told the police.

MR. GATHERS - CROSS EXAMINATION BY MS FANNING

100

1 A. Okay.

2 Q. But in plain eye view, he was the only one with a gun.

3 Q. Okay.

4 You never - - did you see Gary Grant with a gun?

5 A. No, sir. No, ma'am.

6 MS. FANNING: Beg the Court's indulgence.

7 Q. You testified that D. L. had a gun, and it was all black, and
8 it was a solid black handgun?

9 A. Yes.

10 MS. FANNING: Thank you.

11 Court's indulgence. I had a photograph. I obviously
12 misplaced it.

13 Q. I hand you a photograph. Does that reflect the gun that you
14 saw D. L. with?

15 A. It looks like it.

16 Q. And it's an all black hand gun?

17 A. Yes.

18 Q. How about this. Here's another view. Does that look like
19 the gun - -

20 A. It looks like it.

21 Q. - - that D. L. had at the scene?

22 A. It looks like it but it's not.

23 Q. Oh, it's not. How do you know it's not?

24 A. Because that's the gun Gary Grant and Cordero Porcher got
25 locked up with.

MR. GATHERS - CROSS EXAMINATION BY MS FANNING

101

1 Q. Well, did you see this gun at the scene?

2 A. It looks like it but that's not it.

3 Q. Okay.

4 How do you know that's not it?

5 A. Because it says it in my motion.

6 Q. So, D. L. had a gun that looked like that but that's not it?

7 A. Yes.

8 Q. Okay.

9 You said - - you testified that you saw - - after the
10 shootings you saw D. L. run from the scene.

11 A. Yes.

12 Q. Where were you standing at the time of the shootings?

13 A. By my back door area.

14 Q. And is the kitchen window of your, um, townhouse or the
15 apartment that you lived in, that's located on the back side of the
16 unit. Correct?

17 A. Yes.

18 Q. And it has curtains over it?

19 A. It has a blind but the blind was open.

20 Q. And it has a - - does it have blue and white curtains over it?

21 A. Yes.

22 Q. And a blind?

23 A. Yes.

24 Q. So the blind was open?

25 A. Yes.

MR. GATHERS - CROSS EXAMINATION BY MS FANNING

102

1 Q. Is it a Venetian blind like that comes down from the top of
2 the window?

3 A. Yes.

4 Q. Is that a picture of the back door of your townhouse?

5 A. Yes.

6 Q. And that's Number C meaning C for Unit C?

7 A. Yes.

8 Q. And this is the kitchen window?

9 A. Yes.

10 Q. And didn't you tell the police you were watching the shooting
11 from your kitchen window?

12 A. No, I watched after the shooting out my kitchen window.

13 Q. And your kitchen window faces the - -

14 A. The backyard.

15 Q. - - the backyard. Right, with the sort of an alley way and
16 some parking back there where people park their cars - -

17 A. Yes.

18 Q. - - and you can drive and turn around?

19 So when you told law enforcement, "I was watching from my
20 kitchen window", when - - what were you watching from your kitchen
21 window and when was that?

22 A. When the police and the ambulance and everybody came on the
23 scene and was photographing things I looked out my window - -
24 looking out my window.

25 Q. Okay.

MR. GATHERS - CROSS EXAMINATION BY MS FANNING

103

1 Let's reorient ourselves to what you told the police right
2 after the shootings.

3 Go to page 3 of your statement, please, Mr. Gathers.

4 You talk about D. L. having the black gun in his hand.

5 A. Yes.

6 Q. Right?

7 And then you talk about, "he", meaning D. L. Grant, "walks up
8 beside L. D. and put the gun to the side of his neck and pulled
9 the trigger. L. D. fell to the ground. He then took the gun
10 toward Evil and shot him. Evil fell to the ground. He then walked
11 over them and shot both of them again. He then ran from the
12 scene."

13 You would agree with me that what you were telling law
14 enforcement then is the sequence of events, um, that occurred when
15 the murders occurred. Right?

16 A. Yes, ma'am.

17 Q. And your next sentence is, "I was watching from my kitchen
18 window."

19 Isn't what you meant there, "I was watching these events occur
20 from my kitchen window."?

21 A. No.

22 Q. Well, why didn't you put, "I was watching from my back stoop,"
23 like you testified today?

24 A. I don't know.

25 Q. Why did you put, "I was watching from my kitchen window", if

MR. GATHERS - CROSS EXAMINATION BY MS FANNING

104

1 you weren't watching from your kitchen window?

2 A. I was watching the police on the scene at the time because
3 when they came I was in the house.

4 Q. Is that what you wrote?

5 A. No.

6 Q. Okay.

7 What you did write - - -

8 A. They told me to write what happened at the time, and that's
9 what I wrote.

10 Q. Okay.

11 So you told law enforcement right after these events occurred
12 that you saw all of these things occur from your kitchen window?

13 A. No, I did not tell them that.

14 Q. You would agree with me, Mr. Gathers, and I think we just
15 covered this but you would agree with me that you told the police
16 blow by blow or event by event what happened with regards to the
17 shootings.

18 You said D. L. came from around your car.

19 A. After he shot them and everybody left and started running, I
20 went inside my house. After he shot them and ran off, I went
21 inside my house.

22 Q. So, what were you watching from your kitchen window?

23 A. When the police and the ambulance and everybody came on the
24 scene.

25 Q. That's not what you wrote, is it?

MR. GATHERS - CROSS EXAMINATION BY MS FANNING

105

1 You told the police what happened in terms of the murders, how
2 the shootings occurred, and you told the police, "I was watching
3 this, all this from my kitchen window", didn't you?

4 A. No.

5 Q. And then you go on to say, after you watched the murders from
6 your kitchen window what did you tell the police you did then?

7 A. I called 911.

8 Q. Okay.

9 You ran upstairs. You got your cell phone and you called 911.

10 A. Yes.

11 Q. And then you got your cold pack and you laid down.

12 A. Yes.

13 Q. And about thirty minutes later the police came to your house
14 and said they were taking you in for questioning.

15 A. Yes.

16 Q. Was anyone else in the house with you?

17 A. No.

18 Q. The police retrieved firearms from your home, didn't they?

19 A. Yes.

20 Q. They had - - you had two long rifles in your house?

21 A. Yes.

22 Q. Whose guns were those?

23 A. Those were mine.

24 Q. And they found them in your bedroom, didn't they?

25 A. Yes.

MR. GATHERS - CROSS EXAMINATION BY MS FANNING

106

1 Q. Azalea Boulevard or Azalea Drive, my bad, runs in the front of
2 the town homes that you guys live in, correct?

3 A. Yes.

4 Q. So, whether you're standing on the back stoop or whether
5 you're at the kitchen window, there's no way you saw D. L. run
6 across Azalea, did you?

7 A. He ran in that direction towards Azalea.

8 Q. Okay.

9 Did you see him cross Azalea like you previously testified?

10 A. I didn't see him run across Azalea but he ran towards Azalea.
11 So - - so which way could he go if he ran that way? You answer
12 that question.

13 Q. I don't know.

14 THE COURT: Alright. Alright. You answer the questions.

15 MR. GATHERS: Alright.

16 Q. What I'm asking you to acknowledge is that you did not see Mr.
17 Grant, D. L. Grant, run across Azalea the way you testified
18 earlier, did you?

19 A. I did not plainly see him run across Azalea but that's the
20 direction he went.

21 Q. After the shootings, you went inside your house and closed the
22 door?

23 A. Yes.

24 Q. And went upstairs.

25 Do you know why the police charged you with murder?

MR. GATHERS - REDIRECT EXAMINATION BY MR. WETMORE

107

1 A. No.

2 Q. And you would agree with me that it's in your best interest to
3 testify about facts that put you as far away from these homicides
4 as possible, correct?

5 A. Say that again?

6 Q. It's in your best interest to testify in a manner that puts
7 you as far away from the homicides as possible, correct?

8 A. I'm just plainly telling the truth - -

9 Q. Okay.

10 A. - - and I know what happened.

11 Q. And, again, you hope to personally benefit from your testimony
12 today?

13 A. If it works my way, then it does. If it don't, it don't.

14 MS. FANNING: Beg the Court's indulgence.

15 THE COURT: Yes, ma'am.

16 MS. FANNING: I'll look through these documents.

17 Thank you, Your Honor.

18 I don't have anything else by way of cross examination.

19 THE COURT: Redirect.

20 MR. WETMORE: Thank you, Judge.

21 REDIRECT EXAMINATION BY MR. WETMORE:

22 Q. Mr. Gathers, you have been honest that you certainly do hope
23 to benefit from your testimony today. Isn't that correct?

24 A. Yes.

25 Q. Have I promised you anything at all?

MR. GATHERS - REDIRECT EXAMINATION BY MR. WETMORE

108

1 A. No.

2 Q. Have I threatened you in anyway at all?

3 A. No, sir.

4 Q. Anybody from law enforcement or my office?

5 A. No, sir.

6 Q. Have we, in fact, told you that it's important to tell the
7 truth to the judge and the jury?

8 A. Yes, sir.

9 Q. Have you and your lawyer talked about that?

10 A. Yes.

11 Q. Is that what you've done today?

12 A. Yes, sir.

13 Q. Now, Ms. Fanning, the defendant's lawyer, asked you some
14 questions about the first time, the very first time you saw those
15 victims, Robert Bryant and Sadiris Nelson. She brought up a
16 discrepancy in your statement.

17 A. Yes, sir.

18 Q. Is it possible that maybe you did see them earlier?

19 A. Yes.

20 I - - I saw the car. I can't say for sure they was in the
21 car. I saw the car. I can't say for sure they was in the car but
22 the car - - when the car came on Ashley Shores, they was in the
23 car. So, I guess they could have been in the car at that time,
24 too.

25 Q. But when you saw the car pull up to Ashley Shores, did you see

MR. GATHERS - REDIRECT EXAMINATION BY MR. WETMORE

109

1 the victims get out?

2 A. Yes.

3 Q. Shortly after that is when you saw the defendant shoot the
4 victims?

5 A. Yes.

6 Q. There's some, I guess, some question about when you saw them
7 first but there's no question that that was them in that green car
8 when they got shot.

9 A. There was no doubt when they got shot. There was some doubt
10 when the car rode past.

11 Q. There was no doubt it was them getting out of that car? No
12 doubt it was them getting shot?

13 Ms. Fanning, the defendant's lawyer, asked you some questions
14 about who had a gun out there that day. Besides the defendant, D.
15 L., did you see anybody else with a gun?

16 A. No.

17 Q. You may have heard about who had a gun. You might be afraid
18 of who had gun but the gun you saw was in the defendant's hand. Is
19 that correct?

20 A. Yes, sir.

21 Q. And Ms. Fanning showed you a picture of a hand gun, and you
22 looked at it a little bit, and you testified. Was that the gun
23 that D. L., the defendant, had?

24 A. No, sir.

25 Q. It was not the gun the defendant had? That was not the gun

MR. GATHERS - REDIRECT EXAMINATION BY MR. WETMORE

110

1 that he used to kill those victims?

2 A. No, sir.

3 Q. Ms. Fanning also questioned - - asked you some questions about
4 your viewpoint. Ah, regardless of the wording in your statement,
5 just tell the jury. Where were you when you watched this?

6 A. I was standing at my back door.

7 Q. Were you inside or outside?

8 A. I was outside my back door.

9 Q. And were you - - is there a stoop or a sidewalk or anything?

10 A. Yeah. It's like a little, little upper level in the ground.

11 Q. So, from that viewpoint outside, was there anything that
12 blocked your view of the defendant shooting these two victims?

13 A. I saw the first. I saw the shots in plain view because they
14 was standing up.

15 Q. Okay.

16 A. I couldn't see the other shots on Bryant when he was on the
17 ground because he was on the other side of the car.

18 Q. So, when he fell to the ground it was difficult to see.

19 A. Yes.

20 Q. Could you tell if this man was shooting them again?

21 A. Yes.

22 Q. Was there any - - anything blocking your view of those first
23 shots?

24 A. No, sir.

25 Q. Ms. Fanning also asked you some questions about your

MR. GATHERS - REDIRECT EXAMINATION BY MR. WETMORE

111

1 recollection and your view of the defendant's flight as he takes
2 off. Did you see him stick around in that area and pick up a
3 phone and call 911, call the police?

4 A. No. He shot and he left.

5 Q. Did you see him calling EMS or anybody?

6 A. No.

7 Q. Did you see him take off?

8 A. Yes.

9 Q. Tell me exactly which way he was going.

10 A. Towards Azalea.

11 Q. And once he got out of your eyesight, obviously, you couldn't
12 see where he went. Obviously, that was his direction.

13 A. Yes.

14 Q. And this happened in February of 2005. It was quite a while
15 ago. Um - - you gave this statement to North Charleston that long
16 ago. Is that correct?

17 A. Yes.

18 Q. Back in February of 2005? Were you writing it down? Were
19 you putting pen to paper writing it down?

20 A. No. They was writing it. They was writing it as I was
21 saying it.

22 Q. So, you were talking to the police officers, and they were
23 writing down what you were saying?

24 A. Yes.

25 Q. And all this happened February of 2005.

MR. GATHERS - REDIRECT EXAMINATION BY MR. WETMORE

112

1 Mr. Gathers, Ms. Fanning asked you some questions about the
2 details of your statement. I appreciate your answering her. Um,
3 she's raised some, perhaps, some questions about your details.
4 Um, the most critical detail, of course, is who shot those boys,
5 and what's your answer to that question?

6 MS. FANNING: Your Honor, I'm going to object to that.

7 THE COURT: Alright. Objection sustained. You can't
8 argue - - you can't argue your case. Just ask questions, please,
9 Solicitor.

10 MR. WETMORE: Thank you, Your Honor.

11 THE COURT: Recross.

12 MS. FANNING: No, sir. I don't have anything else.

13 THE COURT: Alright.

14 Alright. Thank you, sir. You may step down.

15 (The witness leaves the witness stand.)

16 THE COURT: Alright.

17 Ladies and gentlemen, ah, I did make a ruling during the
18 course of this - - of this witness' testimony, and I want to
19 clarify that ruling to make sure that you understand it.

20 Testimony regarding whether this witness was told that others
21 had a gun is not to be considered by you regarding the truthfulness
22 of whether others did or did not have a gun but only whether the
23 witness told the police something inconsistent with what he
24 testified on direct.

25 Therefore, you disregard the testimony as probative of the

MR. GATHERS - REDIRECT EXAMINATION BY MR. WETMORE

113

1 fact of the presence or lack of presence of another gun at the
2 scene.

3 Alright.

4 Ladies and gentlemen, you've been in the courtroom, and we've
5 been in for longer than that but you've been in the courtroom for
6 well over an hour, and I think it's appropriate that we take our
7 afternoon break at this time, and I'm going to do that.

8 So, I'm going to ask you to go to your jury room for about ten
9 minutes, ah, and we'll be ready to convene again in a few minutes.

10 Again, it would be improper for you to discuss this case among
11 yourselves. You can talk about anything you want to talk about
12 but don't talk about this case. You, of course, have just begun to
13 hear the testimony, and any discussion among yourselves would be
14 premature.

15 But with that, I'm going to allow you to go to your jury room
16 and take a little break, and we'll start back shortly.

17 (The jury retires to the jury room at 3:48 p.m.)

18 THE COURT: Alright.

19 What we're going to do in this matter is I have, I know, as
20 again, the emotions are running high in this matter. We are going
21 to take a little short break. What I'm going to do is first
22 excuse the members of the victims family if they would like to walk
23 outside or move out of the way, all of the others stay in place for
24 a moment, please.

25 (The members of the audience associated with the victims in

MR. GATHERS - REDIRECT EXAMINATION BY MR. WETMORE

114

1 this case depart the courtroom.)

2 THE COURT: Alright. I will excuse the members of the
3 defendant's family but I will tell you that you are not to approach
4 or have any contact whatsoever with any of the spectators who are
5 associated with the victims' family in this matter, and any
6 conversations with them or attempt to have conversations with them
7 in the halls or outside the courtroom will be considered contempt,
8 ah, of court in the presence of this Court, and the Court will deal
9 with it accordingly.

10 Alright. We'll take a ten minute recess.

11 (The Court recesses this case for a short break and thereafter
12 reconvenes the trial of this case.)

13 THE COURT: Thank you. Please be seated.

14 Alright.

15 Before we get started, let's have the bailiffs have everybody
16 that's coming in come in. I don't want to get the jury in and
17 start testimony and have a bunch of people walking into the
18 courtroom.

19 MS. FANNING: Your Honor, I have a brief housekeeping matter.

20 THE COURT: Alright. Wait just one minute.

21 Alright. Back on the record with regard to the matter of The
22 State vs. Grant.

23 The defendant is present with his counsel, and the State is
24 also represented by counsel and present.

25 Alright, Ms. Fanning, yes, ma'am.

MR. GATHERS - REDIRECT EXAMINATION BY MR. WETMORE

115

1 MS. FANNING: Your Honor, just briefly, just a housekeeping
2 matter.

3 There is a witness downstairs that is in detention that I have
4 been unable to talk to because of problems of getting hold of his
5 attorney in the Public Defender's Office.

6 Also, he's been moving around the Department of Corrections
7 for several months, and I haven't really known where he was until
8 last week. I found out he was at Liber but was unable to
9 coordinate a visit up there with his attorney.

10 He's here now, and I've been informed by his attorney that he
11 will speak with me. He's a material witness, an eyewitness in
12 this matter, and I would like the leave of the Court to talk to him
13 or interview him today if possible. Um, so, for purposes of
14 scheduling this afternoon, if it pleases the Court to recess a
15 little bit earlier than maybe normally so I can go downstairs and
16 talk to this witness, I would appreciate it.

17 THE COURT: He's brought over here by the Department of
18 Corrections?

19 MS. FANNING: He's brought to the courthouse because of the
20 Transfer Order that Judge Markley Dennis signed, our Administrative
21 Criminal Judge.

22 THE COURT: Right.

23 MS. FANNING: And he instructed the Department of Corrections
24 to bring him here to the courthouse.

25 I'm not a hundred percent sure. I don't see anybody from the

MR. GATHERS - REDIRECT EXAMINATION BY MR. WETMORE

116

1 Department of Corrections. I don't know if they just left him here
2 or if they intend to carry him back to Liber.

3 THE COURT: They can just leave him here. I'm sure that
4 they - - if they need to make arrangements to - - they need to make
5 arrangements that the Charleston Detention Center take custody of
6 him until such time as the trial is over or either there waiting to
7 determine about whether to take him back.

8 Let me ask you. Who is the witness?

9 MS. FANNING: Gary Grant, the other - - -

10 THE COURT: Alright.

11 Do you intend to call him next or is he down the line
12 somewhere?

13 MR. WETMORE: Judge, he is not a witness for the State.

14 THE COURT: Okay.

15 MR. WETMORE: He is being transported by the defendant.

16 THE COURT: Alright. Okay.

17 MR. WETMORE: He is the brother of the defendant.

18 THE COURT: What is - - does anybody know his status as far
19 as whether he was - - or if the Department of Corrections wants to
20 take him back?

21 MS. FANNING: Gary Grant.

22 OFFICER: We'll find out right now, sir.

23 THE COURT: Alright. Find out for me and find out what
24 the status of it.

25 MS. FANNING: Thank you, Your Honor.

MR. GATHERS - REDIRECT EXAMINATION BY MR. WETMORE

117

1 THE COURT: Alright.

2 Who is he represented by, Ms. Fanning?

3 MS. FANNING: Rodney Davis of the Public Defender's Office.

4 Who, by the way, Your Honor, told me if the Court wanted to
5 speak with him, he's available. He's in his office which is right
6 here.

7 THE COURT: Okay. Thank you.

8 MS. FANNING: Your Honor, is it the instruction of the Court
9 that the Department of Corrections turn him over to Charleston
10 County to be held or do you not have a preference?

11 THE COURT: I don't know. What did they tell you?

12 OFFICER: Judge, he - - he's basically downstairs now with the
13 SCDC Guards waiting to take him back to Liber. I told them they
14 may have to leave him here.

15 They'll have to book him in to stay overnight in the jail.

16 THE COURT: I know that.

17 And, ah, where is Liber?

18 OFFICER: About forty minutes up the road.

19 THE COURT: That's what I was thinking.

20 I'm not going to require that, ah, I don't believe I'm going
21 to require at this point for Charleston County to take jurisdiction
22 of him because he is SCDC's responsibility.

23 I'll give them their choice. They can wait a little while
24 this afternoon. We'll probably run until about - - about another
25 forty-five minutes after which I will allow, ah, Ms. Fanning to

MR. GATHERS - REDIRECT EXAMINATION BY MR. WETMORE

118

1 talk to him, and they can wait or they can have him back here in
2 the morning at 9:00, and she can talk to him at that time - - and
3 we'll start at 9:30 or so after that to give you about thirty
4 minutes to talk with him.

5 So, ask the Department of Corrections folks which one they
6 prefer. They want to wait this afternoon and not have to bring him
7 back?

8 There's always a possibility they may not have to bring him
9 back at all if they talk to Ms. Fanning. I don't know, but they
10 can either wait this afternoon and let her talk to him this
11 afternoon or they can be back at 9:00 in the morning to give her a
12 chance to talk with him then.

13 MS. FANNING: I prefer to talk to him, I guess, this
14 afternoon.

15 THE COURT: Tell them to stick around.

16 Alright.

17 Anything before I bring the jury in?

18 MR. WETMORE: No, sir, Your Honor.

19 THE COURT: Alright.

20 Ms. Fanning, anything before I bring the jury in?

21 MS. FANNING: No, Your Honor.

22 THE COURT: Alright.

23 Bring the jury in, please.

24 (The jury returns to the courtroom at 4:14 p.m.)

25 THE COURT: Alright.

MR. PORCHER - DIRECT EXAMINATION BY MR. WETMORE

119

1 Thank you very much, ladies and gentlemen, and we are now
2 ready to resume.

3 Mr. - - Solicitor, you may call your next case, ah, next
4 witness.

5 MR. WETMORE: Thank you, Judge.

6 The State calls Devant Porcher.

7 THE COURT: Alright, Devant Porcher.

8 Come on up, please, sir.

9 (The witness takes the witness stand.)

10 DEVANT PORCHER, being duly sworn,
11 testifies as follows:

12 CLERK OF COURT: Please be seated.

13 Please state your full name to the Court and spell your last.

14 MR. PORCHER: Good evening. My names is Devant Porcher. My
15 last name is spelled P-o-r-c-h-e-r. I'm here to testify today on
16 Del Jvon Grant.

17 CLERK OF COURT: Yes, sir.

18 DIRECT EXAMINATION BY MR. WETMORE:

19 Q. Mr. Porcher, how old are you?

20 A. Twenty-two years old.

21 Q. Okay.

22 Did you grow up in this area?

23 A. Yes, sir.

24 Q. Where did you grow up?

25 A. Downtown Charleston.

MR. PORCHER - DIRECT EXAMINATION BY MR. WETMORE

120

1 Q. Where do you live now?

2 A. 4976 Foxway, North Charleston.

3 Q. You live in North Charleston?

4 A. Yes, sir.

5 Q. Your parents live in the area?

6 A. I live with my parents.

7 Q. You live with them?

8 A. Yes, sir.

9 Q. Do you have family of your own - wife, kids, anything like
10 that?

11 A. I have a girlfriend.

12 Q. A girlfriend?

13 A. And I have one, a one year old.

14 Q. You have a one year old child?

15 A. Yes, sir.

16 Q. You support that child?

17 A. Yes, sir.

18 Q. Are you in school or are you working?

19 A. I work.

20 Q. Where do you work?

21 A. American Roofing.

22 Q. Okay.

23 What do you do for American Roofing?

24 A. Ah, take off roofs; put on new roofs.

25 Q. You work in this area or do you work - - -

MR. PORCHER - DIRECT EXAMINATION BY MR. WETMORE

121

1 A. I work all over.

2 Q. All over the state or all over the country?

3 A. All over the country, the state. I work all over.

4 Q. Do you have a nickname, a little street name that people might
5 call you?

6 A. I go buy Fat Boy.

7 Q. People call you Fat Boy?

8 A. Yeah.

9 Q. Now, tell me about criminal history. Do you have any sort of
10 criminal convictions?

11 A. I have a possession of crack cocaine.

12 Q. Is that a conviction or is that pending or what?

13 A. Pending.

14 Q. So, you have that pending. Do you have anything else
15 pending?

16 A. No, sir.

17 Q. Any other pending charges?

18 A. Ah, the double homicide where I'm charged with this right
19 here.

20 Q. So, you're charged - -

21 A. Double homicide.

22 Q. - - with this - - this double homicide. You're charged with
23 a crack charge.

24 Do you have any convictions? Have you ever been convicted
25 of a crime?

MR. PORCHER - DIRECT EXAMINATION BY MR. WETMORE

122

1 A. No, sir.

2 Q. But you do have these two pending?

3 A. Yes, sir.

4 Q. So you have some knowledge as we'll show today about the
5 double homicide at Ashley Shores in February of 2005?

6 A. Yes, sir.

7 Q. Okay.

8 Did you know the victim, Robert Bryant?

9 A. Yes, sir.

10 Q. Good.

11 Tell me about your relationship. How long did you know him?

12 A. Since, like, middle school.

13 Q. So, how many years would that be?

14 A. Probably like eight - - eight years.

15 Q. Eight years? Did you guys live nearby each other?

16 A. When the incident happened?

17 Q. Uh-huh.

18 A. Ah, his momma lived around the corner.

19 Q. Okay.

20 Did you guys see each other around the area in the
21 neighborhood?

22 A. Yes, sir.

23 Q. Did you guys go to school together, work together, anything
24 like that?

25 A. I went to school with him.

MR. PORCHER - DIRECT EXAMINATION BY MR. WETMORE

123

1 Q. I'm going to ask you the same nickname or street name question
2 for Robert Bryant. Did he have a name people called him?

3 A. Evil.

4 Q. Evil.

5 Are you the one who shot Robert Bryant, Evil?

6 A. Did I shot Robert Bryant?

7 Q. Did you shoot him?

8 A. No, sir.

9 Q. Do you know who did?

10 A. I didn't see who shot, ah, I didn't see the person who shot
11 Robert Bryant but I did saw someone - - I did saw the person who
12 shot, um, but I did saw Del Jvon Grant shot a person, Sadiris
13 Nelson.

14 Q. So, you didn't see anybody shoot Robert Bryant but you did saw
15 Del Grant shoot Sadiris Nelson.

16 A. Yes, sir.

17 Q. Let's talk about Sadiris Nelson. Did you know him for a
18 while, too.

19 A. I knowed him, you could say I knowed him. I knowed him. I
20 knowed his family, and I had knowed him, too.

21 Q. How long did you know his family?

22 A. Ah, since I was younger.

23 Q. Any idea how long, a couple of years or more than that, less
24 than that?

25 A. I'd say about - - I was a young kid.

MR. PORCHER - DIRECT EXAMINATION BY MR. WETMORE

124

1 Q. Sadiris Nelson, tell me any kind of nickname, street name he
2 had.

3 A. Little D.

4 Q. Little D.

5 Did you shoot and murder Little D?

6 A. No, sir.

7 Q Didn't shoot Nelson?

8 A. No, sir.

9 Q. Did you see who shot Nelson?

10 A. Yes, sir.

11 Q. Who was it?

12 A. Del Jvon Grant.

13 Q. The defendant, Del Grant?

14 A. Yes, sir.

15 Q. Any doubt about that?

16 A. That's the truth.

17 Q. So, it's the truth that the defendant shot but somehow you got
18 charged by North Charleston for your involvement.

19 Did you talk to them back then when it happened, the police,
20 did you talk to them?

21 A. When?

22 Q. Back when this shooting happened in February of 2005? Did you
23 talk to the police?

24 A. When they came and got me from my house. When they arrest at
25 the house I was telling them I had didn't did it.

MR. PORCHER - DIRECT EXAMINATION BY MR. WETMORE

125

1 Q. So, you talked to them back then when this happened in 2005?

2 A. Ah, yes, sir.

3 Q. Okay.

4 Did you give them a statement?

5 A. Yes, sir.

6 Q. And since then have you and I talked?

7 A. Yes, sir.

8 Q. Okay.

9 Do you remember how many times?

10 A. I talked with you twice.

11 Q. Twice, and do you remember where we talked?

12 A. Ah, in the Solicitor Office.

13 Q. In my office, the Solicitor's Office?

14 A. Yes, sir.

15 Q. Now, did you have an attorney that you have representing you
16 in this case?

17 A. Yes, sir.

18 Q. Okay.

19 Who is that lawyer?

20 A. Terry Vincent.

21 Q. Okay.

22 Was your lawyer, Ms. Vincent, present at those meetings with
23 me?

24 A. Yes, sir.

25 Q. Has she talked to you about your case today?

MR. PORCHER - DIRECT EXAMINATION BY MR. WETMORE

126

1 A. Yes, sir.

2 Q. Okay.

3 Is she here today in the courtroom?

4 A. Yes, sir.

5 Q. Do you see her here in the courtroom today? Is she here
6 today?

7 A. Yes, sir.

8 Q. You and your attorney, have you entered into any kind of
9 written agreement with me, the Prosecutor for the State?

10 A. Ah, no, sir.

11 Q. Any kind of agreement that we called a Proffer Statement that
12 you - -

13 A. Ah - - -

14 Q. - - that you read and your lawyer signed?

15 A. Oh, yes, sir.

16 MR. WETMORE: If I may approach the witness, Your Honor?

17 THE COURT: Yes, sir.

18 Q. Let me show you what's been marked as State's #3. If you
19 would take a look at that and look through the pages if you don't
20 mind.

21 Is that the written agreement that I'm asking you about?

22 A. Ah, yes, sir.

23 Q. Okay.

24 That's the, ah, the Proffer Agreement that I signed and you
25 signed and your lawyer signed?

MR. PORCHER - DIRECT EXAMINATION BY MR. WETMORE

127

1 A. Yes, sir.

2 Q. Um, are you aware that this agreement that we have makes you
3 no promises of any kind?

4 A. Yes, sir.

5 Q. Are you aware of that?

6 A. Yes, sir.

7 Q. Are you aware that in that agreement that there's no threats
8 toward you whatsoever?

9 A. Yes, sir. No threats.

10 Q. Ah, are you aware that that agreement that you're testifying
11 under today calls for you to tell the truth?

12 A. Yes, sir.

13 Q. Have you and your lawyer talked about that?

14 A. About the case?

15 Q. About you testifying truthfully?

16 A. Yes, sir.

17 (The Court Reporter accepts State's Exhibit #3 for
18 identification only.)

19 Q. Now, did - - did you and your attorney get a subpoena to come
20 to court that tells you to come to court?

21 A. Ah, I came and they got papers, and my lawyer said I have to
22 come to court.

23 Q. Papers in your lawyer's hands that order you to come to court.

24 A. Yeah, I got a paper subpoena.

25 Q. And have you discussed this case with anybody outside of me

MR. PORCHER - DIRECT EXAMINATION BY MR. WETMORE

128

1 and your lawyer?

2 A. Ah, just my mom.

3 Q. Has anybody threatened you at all about this case?

4 A. No, sir.

5 Q. You going to tell us the truth today about what happened?

6 A. Yes, sir.

7 Q. Let's go right to it. Let's go to that date, February 24,
8 2005.

9 Tell me, ah, tell me what you were doing about lunch time,
10 about noon.

11 A. Ah, ah, I was riding my bicycle up to my house, and - - and,
12 ah, it was me, my cousin Cordero, ah, Gary Grant and, ah, my - - my
13 brothers who were sitting in the yard.

14 Q. So, that house on Woodlawn, that's your house. That's where
15 you live.

16 A. I don't live there anymore.

17 Q. That's where you did live. I'm sorry.

18 A. Yes, sir. Yes, sir. Yes, sir.

19 Q. So, you were coming home?

20 A. Yes, sir.

21 Q. Tell me again who was there at your house.

22 A. Me, my cousin Cordero Porcher, Gary Grant and my brother
23 Taquious West, ah, Kevin West and Joshua Porcher.

24 Q. Okay.

25 While you were at your house did you have an occasion to see

MR. PORCHER - DIRECT EXAMINATION BY MR. WETMORE

129

1 Deshawn Gathers?

2 A. Ah, he rode up on a bike right past the house and on account
3 of Cordero Porcher, they come and got into an altercation. So they
4 got into a fight, and, like, after the fight Mr. Gathers rode off
5 on his bike, like, twenty, thirty minutes later a green Lexus came
6 down the street probably like three houses down from the house.

7 I saw Michael Mitchell jumped out of the car. I guess he gave
8 me time to get back inside and went to go to the house and shots
9 went off.

10 So, a police officer came and said, "What was going on?"

11 No one never said nothing.

12 She said, "We will be back later."

13 Right then at that time, I got on my bicycle. I told - - I
14 asked Gary Grant. Gary Grant got hurt in the head, and I asked
15 him, "Do you want me to call the EMS?"

16 He said, "No, I have warrants."

17 And so I rode down the street on my bicycle near Sadiris
18 Nelson own house, and I was talking to them about the situation
19 telling them what happened, and Sadiris sister came and said,
20 "Where is Gary Grant?"

21 "Gary Grant", I told her, "Gary Grant walked off."

22 And when he walked, that's when I get on my bicycle and rode
23 my bicycle about to go to Ashley Shores.

24 My aunt pulled up in a red Suburban, Dejaris Porcher. Me,
25 Cordero, my aunt Dejaris Porcher and Todd, we got in the Suburban.

MR. PORCHER - DIRECT EXAMINATION BY MR. WETMORE

130

1 My grandmother live on Ashley Shores.

2 We went on Ashley Shores to my grandmother's house. Me and
3 Cordero walked up front. I went to *** (unintelligible) house
4 to ask him to call Michael Mitchell so I could talk to him about
5 the situation.

6 I said - - then we got inside the house. It was me, Cordero
7 Porcher, Deshawn Gathers, Gary Grant and Del Jvon Grant.

8 Del Jvon Grant was in the living room. He never said
9 anything.

10 And I got Mr. Gathers to call Michael Mitchell but he didn't
11 answer the phone.

12 So probably like ten, fifteen minutes later my mom came.
13 Knocked on the door and asked what was going on. So I was, like,
14 I told her, and Gary Grant was, like, it's not like that, Ms.
15 Neese.

16 And, like, about five, ten minutes later, Sadiris Nelson and
17 Robert Bryant came, pulled up. Jumped out of the car. I asked
18 Robert Bryant why did he done that to me.

19 He said, "I don't have anything to do with it."

20 Sadiris Nelson jumped out and, "I bring those guys by your
21 house. Do you want to see me?"

22 I didn't say anything. I backed off, and when I backed off,
23 I turned my back. Del Jvon Grant came running out the house and
24 shot Mr. Nelson in the neck.

25 I didn't saw him shot Mr. Bryant. I ran. I ran in the front,

MR. PORCHER - DIRECT EXAMINATION BY MR. WETMORE

131

me, Cordero and Gary Grant.

Gary was telling me to get my mother's car. I got my mother's car and drove in the back of Ashley Shores to my grandmother's house, and I went home after the situation.

Q. That's a good, I guess, a good summary of your story. I'm going to ask you a couple of particulars if you don't backtracking just a little bit so that I understand and the jury understands.

Ah, the first instance, I guess of violence you called it was between Cordero Porcher and Deshawn Gathers.

A. Right.

Q. Is that right?

A. Yes, sir.

Q. And that was a fistfight?

A. Yes, sir.

Q. And that took place at your house. Is that right?

Shortly after that I believe is when you described a shooting taking place at that house. Is that right?

A. Yes, sir.

Q. Okay.

That was still at your house. You were still home.

A. Yes, sir.

Q. Tell me exactly what you saw at this shooting at your house.

A. I saw a green Lexus pull up like three houses down from my home. I saw Michael Mitchell jumped out the passenger seat, aimed a pistol at the crowd. I ran.

MR. PORCHER - DIRECT EXAMINATION BY MR. WETMORE

132

1 Q. Uh-huh.

2 A. Gary Grant didn't ran, ran in the house. Then the shots went
3 off, like, three shots went off.

4 Gary Grant, "I got hurt."

5 He said he got hurt.

6 Q. Gary Grant got hit?

7 A. Yes, sir.

8 Q. This was at your house?

9 A. Yes, sir.

10 Q. Did you see the victims? Did you see Robert Bryant and
11 Sadiris Nelson?

12 A. No. I heard people saying they was around. They was with
13 Michael Mitchell.

14 Q. But you didn't - - you can't tell for sure if they were there
15 or not?

16 A. No, sir.

17 Q. At your house?

18 A. No, sir.

19 Q. At this first shooting?

20 A. Yes, sir.

21 Q. Okay.

22 So tell me then what brought you - - why did you go to Ashley
23 Shores from your house after this first shooting?

24 A. I had wanted to talk to Michael Mitchell because like I said,
25 three days before all this happened this guy come talking to me

MR. PORCHER - DIRECT EXAMINATION BY MR. WETMORE

133

1 telling me some people broke inside of his house.

2 Q. You hoped to find Michael Mitchell who shot at your house.

3 A. To talk to him.

4 Q. To talk to him?

5 A. Yes, sir.

6 Q. Ah, why did you go to Ashley Shores to find him?

7 A. I just I wanted to find out why they shot up by my house.

8 Q. I know but why did you specifically go to Ashley Shores
9 Complex to find him?

10 Did you think he'd be there?

11 A. I mean, like I say. Everybody use to be together.

12 Q. So, you thought he might be there.

13 A. I wanted Deshawn Gathers to call him. That's why I went
14 around there.

15 Q. So, did you go to Deshawn Gathers' house?

16 A. Yes, sir.

17 Q. And did you find this Michael Mitchell guy there who had just
18 shot your - - at your house?

19 A. Ah, no, sir.

20 I got Deshawn Gathers to call him but he didn't pick up the
21 phone.

22 Q. Okay.

23 So, did you go inside of Deshawn Gathers' house?

24 A. Yes, sir.

25 Q. Tell me who was inside Deshawn Gathers' house at Ashley

MR. PORCHER - DIRECT EXAMINATION BY MR. WETMORE

134

1 Shores.

2 A. Ah, Del Jvon Grant, me, Cordero Porcher, Mr. Gathers and Gary
3 Grant.

4 Q. Okay.

5 Tell me what the defendant, D. L. Grant, was doing in the
6 apartment.

7 A. He was sitting in the living room not saying anything. He
8 never showed a gun, nothing.

9 Q. Uh-huh.

10 A. He wasn't saying anything.

11 Q. Okay.

12 A. I went inside. I asked Mr. Gathers to call Michael Mitchell
13 so I could talk to him about the situation. He didn't answer. So
14 we just started talking about the whole situation.

15 Q. You were talking about what had happened earlier at your
16 house?

17 A. Yes, sir.

18 Q. The defendant, D. L. Grant, wasn't saying anything, was he?

19 A. He wasn't saying anything.

20 Q. Could you tell if he was upset or mad, anything like that?

21 A. I never went and say nothing to him.

22 Q. Tell me about what happened when the victims, Sadiris Nelson
23 and Robert Bryant, pulled up.

24 A. Ah, Mr. Nelson was the driver, and Mr. Bryant was in the
25 passenger seat.

MR. PORCHER - DIRECT EXAMINATION BY MR. WETMORE

135

1 My mom came first. She walk in and ask what was going on.

2 So, I was talking to my mom about the situation and - - -

3 Q. And when you say, "about the situation", you talking about the
4 shooting at your house, her house?

5 A. Yes, sir.

6 Q. Your mom's asking - -

7 A. What's going on?

8 Q. - - about somebody shooting at her house.

9 Ah, so did you have an argument with the victims?

10 A. I went and asked Mr. Bryant, "Why did you - - how could you do
11 something like that?"

12 And he say - - -

13 Q. What did he say?

14 A. - - "I don't have anything to do with this."

15 Q. At anytime did you get into an argument with the victims,
16 Robert Bryant and Sadiris Nelson?

17 A. That's all I said to Mr. Bryant. "How could you do this to
18 me?"

19 And then Mr. Nelson just jumped out and said, "Here why I
20 bring him by your house. You want to see him."

21 Q. So, why did you think they had done something to you? What
22 did you think they had done to you?

23 A. Because I mean - - I mean - - we had people saying they was
24 with Michael Mitchell. That's why I wanted to know what was going
25 on. I just was asking questions.

MR. PORCHER - DIRECT EXAMINATION BY MR. WETMORE

136

1 I never - - -

2 Q. So you believed that they may be involved in the shooting at
3 your house?

4 A. Yes, sir.

5 Q. But you can't tell for sure, can you?

6 A. Yes, sir.

7 Q. You can tell or you can't tell?

8 A. I can't tell. That's why I went around there just to ask
9 questions. What was going on?

10 Q. So you were asking questions of these victims. Were you - -
11 but you weren't arguing with them you say?

12 A. I wasn't arguing. I just asked a couple of questions.

13 I never said nothing to Sadiris Nelson, never said anything to
14 the guy.

15 Q. Okay.

16 Um, was anybody out there arguing with them?

17 A. Ah - - -

18 Q. Anybody else talking to them?

19 A. Ah, my cousin Cordero was, like, "Don't worry about it. So
20 something happens."

21 And Gary Grant broke - - came in front of me and pushing me
22 back and then, like, something said, "Turn my head."

23 So, Del Jvon Grant came running out of Mr. Gathers' house.

24 Q. So, to the best of your memory, it was Gary Grant trying to
25 break up the discussion?

MR. PORCHER - DIRECT EXAMINATION BY MR. WETMORE

137

1 A. Yes, sir.

2 Q. And your cousin, Cordero Porcher, what was he doing?

3 A. He was saying, "You don't need to be for that until something
4 happens."

5 Q. So, he was also trying to break it up?

6 A. Yes, sir.

7 Q. Tell me what happened when the defendant, D. L. Grant, came
8 running out of the apartment.

9 A. Ah, when I turned my back back around from breaking up the
10 discussion, I saw Del Jvon Grant come running out the house.

11 Q. Did he come from behind you or beside you?

12 A. He came from behind Mr. Nelson.

13 Q. Okay.

14 A. And - - -

15 Q. So, was he behind you or could you see him straight on.

16 A. I could see him like he was standing in front of me.

17 Q. Okay.

18 So what did you see the defendant, D. L., do when he ran out
19 of the house.

20 A. Shot one Sadiris Nelson.

21 Q. And when - - -

22 A. And then - - -

23 Q. You say he shot Nelson. What did you see?

24 A. Ah, I saw Del Jvon Grant come running out Mr. Gathers' house.
25 Shot Mr. Nelson in the neck. After the first shot went off, I ran

MR. PORCHER - DIRECT EXAMINATION BY MR. WETMORE

138

1 to the front of the apartment, and I heard, like, four or five more
2 shots afterwards, and I saw Gary Grant told Dell Jvon Grant, "Run."

3 Q. So, did you see - - did you see D. L. with the handgun - -
4 with the gun in his hand?

5 A. Yes, sir.

6 Q. Okay.

7 Um, and you saw that in his hand when he came running out of
8 the apartment?

9 A. Yes, sir.

10 Q. Okay.

11 Do you have any recollection or any memory of what that gun
12 looked like?

13 A. I know it was black.

14 Q. Now, I know it's been a while.

15 The first shot you saw him take was - -

16 A. Sadiris.

17 Q. - - was Sadiris?

18 A. It was Sadiris. After the first shot I ran to the front of
19 the apartments, and my mom - -

20 Q. Where was - - -

21 A. - - my mom ran to the front of the apartments, too. Everyone
22 just scattered, and I went to the front. I heard, like, five or
23 four more shots. Then I saw Gary Grant told Dell Jvon Grant,
24 "Come on. Run."

25 And I saw Del Jvon Grant run across the highway, Azalea Drive,

MR. PORCHER - DIRECT EXAMINATION BY MR. WETMORE

139

1 with the pistol in his hand.

2 Q. The only shot, then, that you saw with your own eyes was D. L.
3 shooting Sadiris Nelson?

4 A. Yes, sir.

5 Q. And where did he shoot on his body did he shoot him?

6 A. I think in the neck.

7 Q. Once you saw that, you took off?

8 A. Yes, sir.

9 Q. You heard more shots but you didn't see them. Is that right?

10 A. Yes, sir.

11 Q. The last time you saw D. L. that day, what was he doing?

12 A. Ah, running across Azalea Drive.

13 Q. When you saw him running across Azalea Drive, did he still
14 have the gun in his hand?

15 A. Yes, sir.

16 Q. Come down, Devant, if you don't mind and look at a picture.

17 So, can you tell me what that picture represents to you? Can
18 you see it well enough?

19 A. That's Ashley Shores Apartments. That's Ashley Shores
20 Apartments, right?

21 Q. And that's the apartment complex we're talking about?

22 A. Yes, sir.

23 Q. Okay.

24 Do you remember which building we're talking about? Can you
25 stand up and point it out to us?

MR. PORCHER - DIRECT EXAMINATION BY MR. WETMORE

140

1 A. Right there.

2 Q. All the way on the end. Is that right?

3 A. Yes, sir. Yes, sir.

4 Q. Show me where you saw the defendant shoot the two victims.

5 A. Here.

6 Q. Was it the front of the apartments, the back of the
7 apartments.

8 A. Right here in this - - this dusty road right here.

9 Q. Okay. So this is kind of behind the apartments, right?

10 A. Yes, sir.

11 Q. Okay.

12 After he shot, tell me where you saw the defendant run.

13 A. Straight across Azalea Road to the woods.

14 Q. He ran across that street. That's Azalea Drive right there?

15 A. Yes, sir.

16 Q. Alright.

17 THE COURT: Alright. You're away from the microphone. So
18 you've got to keep your voice up. I've got to hear you, and all
19 these members of the jury have got to hear your answers as well.
20 So be sure and speak clearly.

21 Q. Alright. You can have a seat.

22 Where - - where were you standing when you saw the defendant,
23 D. L., run across Azalea?

24 A. Ah, it was in front of the apartment.

25 Q. So, you - - you're in the front now?

MR. PORCHER - DIRECT EXAMINATION BY MR. WETMORE

141

1 A. Yes.

2 Q. And you saw him taking the gun from the scene with him?

3 A. Yes, sir.

4 Q. How long had you known the defendant, D. L. Grant?

5 A. Since school.

6 Q. How many years.

7 A. Since middle school. That's about eight years.

8 Q. So, you had known him as long as you had known those other
9 boys, the victims?

10 A. Yes, sir.

11 Q. What about his big brother, Gary Grant? You mentioned his
12 name. How long have you known him?

13 A. Ah, like, the same - - the same amount of time.

14 Q. So, you know or you knew the defendant, D. L. Grant, and you
15 knew his big brother, Gary Grant?

16 A. Yes, sir.

17 Q. For several years?

18 A. Yes, sir.

19 Q. Ah, did you know them well enough to tell them apart?

20 A. Ah, yes, sir.

21 Q. You hesitated there. Are you sure you knew - -

22 A. Yes, sir.

23 Q. - - you know what one looks like and what the other one looks
24 like.

25 A. Yes, sir.

MR. PORCHER - DIRECT EXAMINATION BY MR. WETMORE

142

1 Q. Is that right?

2 A. Yes, sir.

3 Q. You can tell them apart?

4 A. Yes, sir.

5 Q. The big brother, Gary Grant, who was out there, do you
6 remember what he was wearing that day?

7 A. Ah, an all-in-one jumpsuit.

8 Q. A one piece?

9 A. All-in-one jumpsuit.

10 Q. And just before the victims were shot, what was big brother,
11 Gary Grant, doing?

12 A. He just was like - - he wasn't saying anything. He just was,
13 like, he got shot in the head. He wasn't saying anything.

14 Q. So, he had been shot. Was he taking part at all in the
15 argument?

16 A. Ah, he never - - no, sir. He never said anything. All he
17 was doing was break it up. He was, like, "You ain't need to go for
18 that."

19 He never said anything.

20 Q. So, it's your testimony he tried to break up the argument?

21 A. Yes, sir.

22 Q. And at the very moment when the defendant shot the victims,
23 what did big brother Gary do?

24 A. Ah, he was in the front of the apartments, too.

25 Q. Okay.

MR. PORCHER - DIRECT EXAMINATION BY MR. WETMORE

143

1 What did he do? Did he stay there? Did he take off?

2 A. Ah, him and Cordero Porcher left after Del Jvon Grant left
3 across Azalea Road. Him and Cordero Porcher left.

4 I got in mom's truck and went in the back to my grandmother's
5 house at Ashley Shores.

6 Ah, they had the road blocked and no one could go home. So -
7 - they finally let us went home, and when I went home, the cops was
8 surrounding my house and - - -

9 Q. So, that - - that's what happened to you after the shooting?
10 Tell me what it was you saw big brother, Gary Grant, do.

11 A. Ah, I see Gary Grant left.

12 Q. He left the scene?

13 A. As soon as Del Jvon went across Azalea, Gary Grant left.

14 Q. Okay.

15 And who was big brother Gary with?

16 A. Cordero Porcher.

17 Q. Who was your cousin. Is that right?

18 A. Yes, sir.

19 Q. Alright. Now, let's talk about the defendant, D. L. Grant.
20 That day, do you remember what it was that he was wearing?

21 A. Ah, a white tee-shirt with some blue jeans with some red and
22 white and powder blue Nike's.

23 Q. He wasn't wearing a one piece suit or anything like that?

24 A. No, sir.

25 Q. Ah, right before these victims were shot, tell me what it was

MR. PORCHER - DIRECT EXAMINATION BY MR. WETMORE

144

1 the defendant, D. L., was doing?

2 A. He was sitting in the house. He wasn't saying anything to
3 anyone.

4 Q. He was being quiet?

5 A. Yes, sir.

6 Q. Was he standing with everybody else or was he standing off by
7 himself?

8 A. He was in the living room.

9 Q. Is that where everybody else was?

10 A. No. Everybody else was in the kitchen.

11 Q. So, he was staying off by himself?

12 A. Yes, sir.

13 Q. At the very moment of the shooting tell me exactly what you
14 saw with respect to the defendant, D. L.

15 A. Say that again.

16 Q. At the very moment of the shooting, tell me exactly what you
17 saw with respect to the defendant, D. L. Grant. What exactly did
18 he do?

19 A. He came. I saw. The guy came running out of the house and
20 shot Mr. Nelson.

21 Q. That guy who did the shooting, who is that?

22 A. Del Jvon Grant.

23 Q. How close were you to this shooting? Were you a few feet
24 away or were you as far away as you and I or closer?

25 A. Closer.

MR. PORCHER - DIRECT EXAMINATION BY MR. WETMORE

145

1 Q. You were closer. Were you about this close?

2 A. Yes. Yes, sir.

3 Q. You were about this close when the shooting happened?

4 THE COURT: Is that a cell phone?

5 MR. WETMORE: No, sir. I don't know what that is.

6 THE COURT: Okay. Go ahead.

7 Q. You were pretty close when you saw this happen. Did anybody -
8 - was anything blocking your view?

9 A. Nah. I saw Del Jvon Grant come running out of the house.

10 Q. So you saw Del Jvon Grant? No question about it? Nothing
11 was blocking your view?

12 Ah, anything at all clouding your memory of this?

13 A. I say all I know because I saw Del Jvon Grant shot Sadiris
14 Nelson, and I didn't saw him shot Mr. Bryant but I heard a couple
15 of shots after Mr. Nelson got shot.

16 Q. And you took off?

17 A. Yes, sir.

18 Q. And you told us the truth today, right?

19 A. Yes, sir.

20 Q. I don't have anything further, Mr. Porcher. If you would,
21 answer any questions from the defense, please.

22 A. Thank you.

23 THE COURT: Cross examination, Ms. Fanning.

24 MS. FANNING: Thank you, Your Honor.

MR. PORCHER - CROSS EXAMINATION BY MS. FANNING

146

1 CROSS EXAMINATION BY MS. FANNING:

2 Q. Mr. Porcher, as you sit here and testify today you have four
3 criminal charges pending in the Charleston County Solicitor's
4 Office. Isn't that correct.

5 A. I have double homicide and possession of crack cocaine.

6 Q. And the possession of the crack cocaine was also accompanying
7 by a charge of PWID crack within the proximity of a school.

8 A. Ah, I never went to court for it.

9 Q. You haven't been to court for the possession either?

10 A. I only have one crack charge.

11 Q. Okay.

12 You haven't been to court for the crack charge either?

13 A. No, no, ma'am.

14 Q. So, at the time you testify today under this Proffer Agreement
15 you have a crack charge and two counts of murder pending in the
16 Charleston County Solicitor's Office. Isn't that correct?

17 A. Yes, ma'am.

18 Q. Okay.

19 And you hope to personally gain by giving testimony against
20 Mr. Grant, don't you?

21 A. Ah, as I said. The Solicitor didn't promise me anything, and

22 - - -

23 Q. I understand that but that wasn't my question. My question
24 was not has he promised you anything but you believe it's in your
25 best interest to give testimony against D. L. Grant - -

MR. PORCHER - CROSS EXAMINATION BY MS. FANNING

147

1 A. Yes, ma'am.

2 Q. - - today? Yes. Okay.

3 Now, you testified that at your house sometime before the
4 shootings at Ashley Shores, you saw your cousin, Cordero, yourself,
5 obviously, you would see yourself, and Gary. Was it just the
6 three of you present when Project came by and shot up at your
7 house?

8 A. No. It was my family. My brothers were there, too.

9 Q. How old were your brothers?

10 A. Ah, twelve and fourteen.

11 Q. So, they were kids?

12 A. Yes.

13 Q. Okay.

14 And they were young enough that when you guys left Woodlawn,
15 left your house at Woodlawn and went to Ashley Shores to have this
16 confrontation, um, with Project and those other fellows that you
17 didn't take them with you, did you?

18 A. Nah. No, ma'am.

19 Q. Did you have a gun on your person?

20 A. No, ma'am.

21 Q. How about Cordero? Cordero did have a gun, didn't he?

22 A. Yes, ma'am.

23 Q. And was that a gun that Cordero carried around with him a lot?

24 A. Ah, I saw, I mean, like I said. So, when we got inside, when
25 I went by Sadiris, Cordero was already in the jeep with my Aunt

MR. PORCHER - CROSS EXAMINATION BY MS. FANNING

148

1 Dejaris. They had a gun but he never at the scene of the incident
2 he never whipped out a gun.

3 Q. Okay.

4 You didn't see D. L. with a gun either, did you?

5 A. I saw when Del Jvon Grant came running out the house and shot
6 Sadiris Nelson in the neck.

7 Q. I understand. Let me clarify my question.

8 Prior to the shootings you didn't see D. L. with a gun?

9 A. Which shooting?

10 Q. Prior to the shooting? In the house you said he did not show
11 a gun.

12 A. Yes, ma'am.

13 Q. That's correct?

14 A. Yes, ma'am.

15 Q. Okay.

16 So, you did not see him in possession of a gun before the
17 shootings?

18 A. Yes, ma'am. I didn't saw a gun.

19 Q. Okay. Thank you.

20 And you, um, did you see Gary with a gun?

21 A. Ah, no, ma'am.

22 Q. Now, um, you testified that your Aunt Dejaris who is a grown
23 woman?

24 A. Yes, ma'am.

25 Q. She was at the scene of the shootings as well?

MR. PORCHER - CROSS EXAMINATION BY MS. FANNING

149

1 A. Yes, ma'am.

2 Q. Okay.

3 She picked you and Cordero and Ty.. Who's Ty?

4 A. That's my aunt's friend.

5 Q. Okay. Is that a woman or a man?

6 A. It's a woman.

7 Q. Okay, a woman.

8 And all those folks were present at the time of the shooting?

9 A. At the shooting on Ashley Shores?

10 Q. Yes.

11 A. Yes, ma'am.

12 Q. I'm sorry. Thank you for helping me clarify which shooting
13 I'm talking about.

14 In addition to those folks being present, you also mentioned
15 a Barbara as being present?

16 A. Yeah, Barbara Scott. That's my mom's friend.

17 Q. Your momma?

18 A. Ezra West.

19 Q. Your momma is Ezra West?

20 A. Yes.

21 Q. Kenneth.

22 A. That's my cousin.

23 Q. He was there?

24 And Kill Him West. Who's Kill Him West?

25 A. Killim West, that's my brother.

MR. PORCHER - CROSS EXAMINATION BY MS. FANNING

150

1 Q. Killim West. Okay. How old is he?

2 A. Right now?

3 Q. Uh-huh.

4 A. He's like eighteen or seventeen.

5 Q. So, he was the fifteen year old you were talking about?

6 A. Yes, ma'am.

7 Q. So, that one did go to the scene with you?

8 A. Ah, to the scene on Ashley Shores?

9 Q. Uh-huh.

10 A. I mean, yes, ma'am.

11 Q. How did he get over there?

12 A. Ah.

13 Q. Did he ride with your Aunt Dejaris?

14 A. No, ma'am.

15 Q. Did he ride with your momma?

16 A. Ah, no, ma'am.

17 Q. Did he go over there with you?

18 A. Ah, no, ma'am.

19 Q. Okay.

20 You also note in your -- I'm reading from your statement that
21 you gave law enforcement right after the shooting.

22 "And so more people were out there."

23 A. Yes, ma'am.

24 Q. Were those people standing in a crowd?

25 A. Where? On Ashley Shores?

MR. PORCHER - CROSS EXAMINATION BY MS. FANNING

151

1 Q. Uh-huh.

2 A. Ah, like I said, it was, ah, all kind of people out.

3 Q. Okay.

4 About how many people were out there?

5 A. I'd say about up at - - up at - - I'd say it was everybody who
6 lived around there.

7 Q. Everybody who lived around there was out there?

8 So, about how many people?

9 A. I'd say about - - -

10 Q. Twenty people?

11 A. I'd say a little more than that.

12 Q. More than twenty people?

13 So, there were twenty-plus people gathered behind the
14 apartment complex or the row of townhouses where the shooting
15 occurred?

16 A. Ah, I mean, they wasn't by the shooting. They was out in the
17 area.

18 Q. Okay.

19 And when you say in the area, do you mean behind that building
20 sort of in that alley?

21 A. Ah, it's like where the dirt road - - -

22 Q. Right. The dirt road that runs behind the building - - where
23 the gentlemen were shot were.

24 A. These guys, everyone who got arrested for the charge was in
25 the dirt, like, people in the back - - back of there.

MR. PORCHER - CROSS EXAMINATION BY MS. FANNING

152

1 Q. Okay.

2 So there were some people around behind the building and some
3 sort of in between the two buildings.

4 A. Ah, in the back of the building.

5 Q. Okay.

6 Where did your Aunt Dejaris park her red suburban?

7 A. Right behind my mom's white Mazda.

8 Q. And where was that?

9 A. Ah, right on the side where the - - the dirt road was at.

10 Q. Okay, and you're referring to the side of the building?

11 A. No, right - - in front of the dirt road.

12 Q. Blocking the dirt road where it dead-ends back there into that
13 ditch?

14 A. No. It's - - when you can turn in Ashley Shores like the
15 first apartment?

16 Q. Uh-huh.

17 A. Instead of - - she came the other way, the second right, and
18 she came up, and she parked right behind my mom.

19 Q. Okay.

20 And was that in front of the building that Wayne had lived or
21 right at the side of the building?

22 A. It's on the side right - - on the angle it's, like - - it's
23 right where the guys got murdered.

24 Q. Okay.

25 So, right by the side of the shooting.

MR. PORCHER - CROSS EXAMINATION BY MS. FANNING

153

1 A. Yes.

2 Q. That's where her red suburban was located, and your mom's
3 white Mazda was right there as well.

4 A. Yes, ma'am.

5 Q. Um, were there other vehicles parked in the vicinity?

6 A. Ah, there was the green Oldsmobile Mr. Nelson was driving.

7 Q. Okay.

8 So, three vehicles total right there in that small area?

9 A. Ah, yes, ma'am.

10 Q. And twenty or so people - - all in that area?

11 A. Yes, ma'am.

12 Q. Okay.

13 And the purpose of you guys going over to Ashley Shores was to
14 have a confrontation with Project?

15 A. No. I just went around there to talk about the situation
16 because I just talked to him, like, three days before the whole
17 situation went down.

18 Q. Okay.

19 Now, you were aware that Project was angry because he thought
20 your cousin - -

21 A. Cordero.

22 Q. - - had burglarized his house?

23 A. Yes, ma'am.

24 Q. And was that the night before or a couple of days before?

25 A. It was, like, three days before before this had happened.

MR. PORCHER - CROSS EXAMINATION BY MS. FANNING

154

1 Like I said, I was talking to Mr. Mitchell at a store right
2 around the corner from my house about the situation, and I said
3 like three days later the incident happened.

4 Like I say, I just wanted to know what was going on.

5 Q. Project came, and he shot into a crowd of people in front of
6 your home - -

7 A. Yes, ma'am.

8 Q. - - some of whom were your young brothers?

9 A. Yes, ma'am.

10 Q. Right.

11 A. Yes, ma'am.

12 Q. And is it your testimony today that you were not angry about
13 that?

14 A. I mean, I just - - like I said. I talked to the guy three
15 days before all this happened. All I wanted to do was talk to him
16 and ask him why.

17 Q. Were you angry?

18 A. I mean, I was angry at the time but all I said I just wanted
19 to know what was going on.

20 "Why did you done this?"

21 Q. Well, you - - you knew why he did it, right, because Cordero
22 had burglarized his house, and he was, apparently, on the warpath
23 because he was angry about that? I mean, you knew that, right?

24 A. I mean, yes, ma'am.

25 Q. Okay.

MR. PORCHER - CROSS EXAMINATION BY MS. FANNING

155

1 So, were you angry that Project had come and shot bullets into
2 a group of people, some of whom -- in front of your home, some of
3 whom were your young brothers?

4 A. I mean, I had -- I was angry but I never had intentions on my
5 mind to hurt anybody.

6 Q. Okay.

7 And you told Cordero that them boys played me. Do you
8 remember telling Cordero that? You put that in your statement.

9 A. I told Cordero those guys played me and, like I said, I just
10 wanted to know, ask the question what was going on.

11 Q. When you say that they played you, that's not a nice thing?
12 You didn't mean that in a nice way? You were angry that they had
13 come by and shot up at your house. Right?

14 A. Yes, ma'am.

15 Q. And Cordero told you he had a gun?

16 A. Ah - - - -

17 Q. And you guys, armed, went over to Ashley Shores?

18 A. Ah, Cordero never say -- I mean, Cordero had a gun.

19 Q. How did you know Cordero had a gun?

20 A. Because when I got inside the Suburban.

21 Q. You saw it?

22 A. Yes, ma'am.

23 Q. Okay.

24 So, you knew Cordero had a gun, and you guys drove to Ashley
25 Shores.

MR. PORCHER - CROSS EXAMINATION BY MS. FANNING

156

1 A. To my grandmother's house.

2 Q. To have a confrontation.

3 A. No. We went to my grandmother's house.

4 Q. Right.

5 And you also were going to talk to this Wayne Head kid which
6 is Mr. Gathers - -

7 A. Yes, ma'am.

8 Q. - - and get him to get Project over to Ashley Shores so you
9 could have this confrontation. Right?

10 A. So, I could ask him what's going on.

11 Q. And D. L. Grant was not involved in any of those preliminary
12 events, was he?

13 A. Ah, the situation what happened at my house?

14 Q. Right. He wasn't there?

15 A. No, ma'am.

16 Q. Didn't see it. You didn't talk to him over at your house?

17 A. Del Jvon?

18 Q. Right.

19 A. No.

20 Q. You saw him brother, Gary?

21 A. Gary, yes.

22 Q. And Gary was the person who was actually injured at your
23 house, right?

24 A. Yes, ma'am.

25 Q. And he was the only person who was injured, right?

MR. PORCHER - CROSS EXAMINATION BY MS. FANNING

157

1 A. Yes, ma'am.

2 Q. Okay.

3 You remember seeing Sadiris and Robert Leshawn Bryant at your
4 house - -

5 A. No.

6 Q. - - in the green Eighty-eight?

7 A. I didn't see them. I - - I - - like I said. They had people
8 saying they was - - was with Mr. Mitchell but I never saw it.

9 Q. Okay.

10 One of them did acknowledge to you at this - -

11 A. Ashley Shores.

12 Q. - - at Ashley Shores that he had driven the car that was
13 involved in the drive-by at your house, right?

14 A. Yes, ma'am

15 Q. And that was Sadiris?

16 A. Yes, ma'am.

17 Q. Okay.

18 And, um, at that moment your testimony today was D. L. came
19 from inside - -

20 A. Mr. Gathers' house.

21 Q. - - Mr. Gathers' house and came down into the street and shot
22 Sadiris Nelson.

23 A. He came out the back door, and Sadiris Nelson was - - was
24 saying, "Now, what? I didn't bring those guys by your house. You
25 wanted to see me?"

MR. PORCHER - CROSS EXAMINATION BY MS. FANNING

158

1 And I say I didn't say anything to the guy.

2 And then Del Jvon Grant came out and shot - - shot one time,
3 and I ran, and I ran to the front and I heard, like, four or five
4 more shots.

5 Came back. When I came back to get my mom's car, there was
6 the guys laying on the ground.

7 I got in the car and went on back to my grandma's house.

8 Q. And your testimony is that you had nothing to do with, um, any
9 planning or organization or any intention to get into a - - a fight
10 or an armed conflict with Sadiris Nelson?

11 A. No, I never said anything to the guy.

12 Q. But in spite of - - in spite of what you told law enforcement
13 and what you've testified to today, you were charged with murder?

14 A. Double homicide.

15 Q. And that's for participating in the murders of Sadiris Nelson
16 and Robert Bryant?

17 A. They said the hand of one is the hands of all.

18 But I was charged with accessory to murder before, and at the
19 bond hearing, they charged me with double homicide.

20 Q. Who was speaking with Sadiris Nelson and Robert Bryant? Were
21 the two young men who were shot standing close together?

22 A. Ah, one, like I said. When they got out the car I walked and
23 asked Mr. Bryant, "Why did you play me that day?"

24 He said, "I didn't have anything to do with it."

25 Mr. Nelson, just, like, got on, "Now, what? You wanted to see

MR. PORCHER - CROSS EXAMINATION BY MS. FANNING

159

1 me?"

2 Q. Mr. Nelson was confrontational?

3 A. Yeah. I never said - - he was coming at me but I never said
4 anything to him.

5 Q. Okay.

6 What did you do?

7 A. I - - like I said. Gary Grant broke everything up. My
8 cousin, Cordero Porcher, was like, "You do not need to go to that."

9 When I turned my back, came back, Del Jvon Grant came out.

10 Q. And you turned your back on the two victims?

11 A. Yes.

12 Q. Which direction were you heading?

13 A. Like, I turned around in a circle, like breaking it up, and
14 when I turned back around, I saw Del Jvon Grant.

15 Q. And where did Mr. Grant come from?

16 A. Out of Mr. Gathers' house.

17 Q. He had not walked out with everybody else?

18 A. Ah, no, ma'am.

19 Q. Okay.

20 So, you did not see Del Jvon Grant from the time you said he
21 was sitting quietly in the living room - -

22 A. In the living room.

23 Q. - - not speaking to anybody until the confrontation occurred
24 outside.

25 A. Ah, yes, ma'am.

MR. PORCHER - CROSS EXAMINATION BY MS. FANNING

160

1 Q. Okay.

2 And you don't know where he got a gun from?

3 A. Del Jvon Grant?

4 Q. Uh-huh.

5 A. No, ma'am.

6 Q. And, again, you don't know if Gary had a gun or not?

7 A. Huh?

8 Q. You don't know if Gary Grant had a gun or not?

9 A. Ah, like I say. Gary Grant didn't have a gun.

10 Q. After the shootings occurred, you moved your mother's car to
11 your grandmother's house?

12 A. Yes.

13 Q. And then you left?

14 A. No. I moved the car to my grandmother's house, and I stayed
15 to my grandmother's house.

16 Q. Okay.

17 You didn't go back to the scene.

18 A. Ah, I went out to try to go see what my mom was going to do.
19 I went back by the scene.

20 Q. Okay.

21 A. I go back to my grandmother's house. Like I said. They had
22 the road blocked off. So we couldn't go home. So they finally let
23 everybody through, and I see all the cop cars going towards my
24 house, and I went in the house and asked them what was going on.
25 Told the guy my name. He arrested me for accessory to murder.

MR. PORCHER - REDIRECT EXAMINATION BY MR. WETMORE

161

1 Q. You said Gary and Cordero left the scene together?

2 A. Yes, ma'am.

3 Q. And you testified that D. L. went across Azalea - -

4 A. Azalea Drive.

5 Q. - - on foot?

6 A. Yes, ma'am.

7 Q. And you testified he was still holding the gun?

8 A. Yes, ma'am.

9 Q. You said Gary was wearing a black all-in-one jumper?

10 A. Yes, ma'am.

11 Q. Um, it's true, isn't it that the top of the jumper was down,
12 and he was wearing a white tee-shirt on top of that?

13 A. Yes, ma'am.

14 MS. FANNING: Beg the Court's indulgence.

15 THE COURT: Yes, ma'am.

16 MS. FANNING: Thank you. I don't have anything else by way
17 of cross examination.

18 THE COURT: Redirect?

19 MR. WETMORE: Thank you, Judge.

20 REDIRECT EXAMINATION BY MR. WETMORE:

21 Q. Mr. Porcher, Ms. Fanning, the attorney for the defendant,
22 asked you about pending charges. Ah, how old are you?

23 A. Twenty-two.

24 Q. And in that twenty-two years have you ever been convicted of
25 anything?

MR. PORCHER - REDIRECT EXAMINATION BY MR. WETMORE

162

1 A. Ah - - -

2 Q. Any convictions for any crimes?

3 A. When I was younger, I had first or second degree lynching.

4 Q. Okay.

5 Um, do you have any convictions as an adult?

6 A. No, no, sir.

7 Q. You have pending charged but no convictions as an adult. Is
8 that right?

9 A. Yes, sir.

10 Q. And you were honest, and you indicated you had some hope to
11 benefit from what you're doing today. Are you aware that there is
12 no promises of that?

13 A. Yes, sir.

14 Q. Are you aware that there's - - there's no threats to make you
15 testify?

16 A. Yes, sir.

17 Q. Ah, have I, in fact, told you to tell the truth?

18 A. Ah, could you say that again?

19 Q. Have I, in fact, told you to tell the truth?

20 A. Did you told me the truth? Ah, yes.

21 Q. And that's what you're doing here today?

22 A. Telling the truth.

23 Q. Now, Ms. Fanning asked you about all the people out in the
24 area. Ah, did you spend a lot of time in Ashley Shores in that
25 complex?

MR. PORCHER - REDIRECT EXAMINATION BY MR. WETMORE

163

1 A. Ah, like I say. My grandma lived in there.

2 Q. So, did you spend some time around that complex?

3 A. I usually go see my Granny. That's about it.

4 Q. Okay.

5 A. Back and forth.

6 Q. Whenever you went to Ashley Shores or whenever you got o
7 Ashley Shores today, um, is it pretty common to see a bunch of
8 people standing around?

9 A. Ah, like I say, a lot of people live around there. You might
10 and might not.

11 Q. Ah, the day of the shooting, February 24, 2005, tell me again
12 who was in just the very immediate area where Robert Bryant and
13 Sadiris Nelson were shot, just the very closest area, immediate
14 area.

15 A. Ah, me, my cousin Cordero, Gary Grant, my mother, Barbara
16 Scott, my Aunt Dejaris, and my brothers.

17 Q. Now, Ms. Fanning also asked you about people having guns. You
18 indicated that you did not have a gun. Is that right?

19 A. Yes, sir.

20 Q. Um, is there anybody that produced a gun?

21 A. Ah, like I said. I saw Del Jvon Grant shot Mr. Nelson, and my
22 cousin Cordero.

23 Q. Besides the defendant, besides D. L., did anybody pull a gun,
24 whip out a gun?

25 A. Ah, just Del Jvon.

MR. PORCHER - REDIRECT EXAMINATION BY MR. WETMORE

164

1 Q. Okay.

2 I think you admitted, too, that you had some belief, I guess,
3 or some possibility that the victims that were shot were involved
4 with the shooting - -

5 A. I had an idea.

6 Q. - - at your house.

7 A. And Michael Mitchell.

8 Q. You believed the victims may have somehow been involved in
9 that or may have been in the area during that.

10 A. And they had people saying Mr. Nelson had a gun, too.

11 Q. Okay.

12 A. But I didn't see. Like I said. They was breaking it up, and
13 I had people saying about it.

14 Q. So when you - - when you went over to Ashley Shores, did you
15 have any intention to harm the victims?

16 A. Harm any victims?

17 Q. Harm the victims, Robert Bryant and Sadiris Nelson?

18 A. No, sir.

19 Q. Ah, you mentioned that Sadiris Nelson started arguing with
20 you.

21 A. Yeah. He came out for me.

22 Q. Was he the first one that was shot?

23 A. Um, yes, sir.

24 Q. And after that you - -

25 A. I ran off.

MR. PORCHER - REDIRECT EXAMINATION BY MR. WETMORE

165

1 Q. - - ran off.

2 Now, the defendant's big brother, Gary Grant, did you see him
3 with a gun?

4 A. Ah, no, sir.

5 Q. Was he trying to break up the argument?

6 A. Ah, like, yes, yes, sir.

7 Q. And did you see anybody other than the defendant harm the
8 victims, Robert Bryant and Sadiris Nelson?

9 A. The only person I saw harm the victims was Del Jvon Grant.

10 MR. WETMORE: Nothing further.

11 THE COURT: Redirect.

12 MS. FANNING: I don't have any redirect of this witness, Your
13 Honor.

14 Thank you.

15 THE COURT: Alright.

16 Thank you, sir. You are excused.

17 Would you like to have this witness excused?

18 MR. WETMORE: Yes, sir. Thank you.

19 THE COURT: Any objection?

20 MS. FANNING: No objection.

21 THE COURT: Alright.

22 You are excused. Thank you for coming.

23 (The witness leaves the witness stand.)

24 THE COURT: You're excused.

REMARKS OF THE COURT

166

1 REMARKS OF THE COURT

2 THE COURT: Alright, ladies and gentlemen of the jury, we
3 have reached the hour of about 5:10 which I think is an appropriate
4 time for us to stop.

5 Sometimes I, ah, do - - I do not generally work beyond this as
6 far as jurors are concerned because I know that you have lives
7 outside of this courtroom and have things that you need to attend
8 to. So, we are going to recess for today.

9 I want to remind you of the admonitions that I had given to
10 you earlier.

11 Do not do any research about this matter on your own either,
12 ah, on the internet or any other kind of research. Do not make any
13 investigation about this matter on your own, and do not read any
14 news stories or listen to any broadcast media.

15 If there should be any and there could be, I would ask that
16 you turn those off and do not listen to the news stories or the
17 broadcast media or read any news stories about this matter because
18 you've got to decide this case based on what you hear in the
19 courtroom and not on the basis of what may be printed or broadcast.

20 Also, do not talk with anyone about the case. Do not discuss
21 it with your friends or family over the evening recess because you,
22 again, have got to decide this case based upon what you hear in the
23 courtroom and not on the basis of what anyone else may say.

24 And don't allow anyone to talk to you about the case. If
25 anyone should approach you or try to talk with you about the

REMARKS OF THE COURT

167

1 matter, get their name or their description and report it to me in
2 the morning.

3 And, finally, of course, do not discuss the case among
4 yourselves. You certainly have not heard all the testimony in this
5 case, and it would be premature for you to begin your discussion
6 about this case. So, when you're reassembling in the jury room,
7 do not discuss the case among yourselves.

8 So, in a nutshell, what I'm really telling you to do is,
9 basically, just forget about this case over the evening recess.
10 Don't talk with anyone or allow anyone to talk with you or just
11 forget about it and then come back tomorrow morning rested and
12 refreshed, and please be in your jury room at 9:30, and, if you
13 could, be as prompt as you possibly can. I will also try to
14 respect your time and start promptly. So, if you could be here at
15 9:30, I know for those of who live - - of course, all of you do
16 live in this area and know what the traffic problems are.

17 I, unfortunately, did not appreciate them, and I left Sumter
18 this morning I thought in plenty of time at 7:00 to get here by
19 9:00 and ran into a problem out on the interstate that delayed me
20 for about an hour before I got into town. So, give yourself plenty
21 of time so that you can be here by 9:30 in the morning, and we'll
22 try to start promptly at that time.

23 The other thing is that, ah, Mr. Phillips, I'm going to ask
24 that you serve as Foreman of this jury for me. So if you'll take
25 the Foreman's seat in the morning.

REMARKS OF THE COURT

168

1 And, then, as I told you, ladies and gentlemen, the rest of
2 you can sit in any of the seats in the jury box. Allow the Foreman
3 to sit in the front seat here and the two alternates to sit back
4 there.

5 With that, then, I will dismiss you, and you are free to go
6 for the evening.

7 Thank you. I'll see you tomorrow.

8 (The jury is released for the day and departs the courtroom
9 with instructions to return Tuesday morning at 9:30.)

10 Alright. I'm going to ask everyone else to keep your seats.
11 I want to give the jury a couple of minutes to clear the building
12 so that there would not be any inadvertent contact with the jury as
13 they are leaving the building. I'm sure that there would be no
14 deliberate contact but I want to make sure that there is no
15 inadvertent contact as well.

16 In the meantime, what I would like to do as possible, could
17 you have your witness at 9:15 in the morning that we need for
18 considering the issue of Exhibits #16 and #17, and maybe we could
19 do that fifteen minutes before the jury gets here. Will he be
20 here in the morning or what's your schedule with him, Solicitor?

21 MR. WETMORE: Judge, we can make sure he's here if that's
22 when you'd like to have him.

23 THE COURT: Well, I mean, if you're not going to need him,
24 we could do it at lunch recess. I just think about I don't - -
25 when I prefer to do it is not do it when we have to interrupt the

REMARKS OF THE COURT

169

1 jury to get that done.

2 MR. WETMORE: Your Honor, I think it's probably best to have
3 him here in the morning.

4 THE COURT: Alright.

5 MR. WETMORE: But I can't predict how quickly things will
6 go.

7 THE COURT: Yeah.

8 MR. WETMORE: So, I think it's best to have him here in the
9 morning - -

10 THE COURT: Alright.

11 MR. WETMORE: So we can try to address this thing.

12 THE COURT: Let's do that. Let's try to have him here at
13 9:15 in the morning and let you go ahead and present whatever
14 testimony you feel is necessary to establish the admissibility of
15 these or for me to rule on the admissibility of these, and we'll
16 take that up and then be ready to start with the jury at 9:30. So,
17 I would ask court personnel to be ready to start at 9:15.

18 Alright. The next thing is I am going to at this time, ah,
19 excuse the defendant's family and allow you to go about your
20 business, and I'm going to ask the victims' family to remain seated
21 but I will tell the defendant's family and those that are here
22 supporting the defendant to please leave the building. Do not hang
23 around and do not chat in the halls.

24 If you've got discussion or anything that you want to do, take
25 those conversations elsewhere and off the premises of the

REMARKS OF THE COURT

170

1 courtroom, and if that, then, I will excuse the defendant's family,
2 and you can leave at this time.

3 THE COURT: It doesn't have to be the family. I'm talking
4 about anybody that's supporting the defendants - - the defendant.

5 (Family and friends of defendant depart courtroom.)

6 MS. FANNING: May I be excused, Your Honor? I need to speak
7 with her.

8 THE COURT: Alright.

9 Let me ask these folks on the front row that are spectators.
10 What's your purpose here for being here?

11 I'm asking you what your purpose in being here, these folks on
12 the front row.

13 GENTLEMAN ON FRONT ROW: Oh, um - - -

14 THE COURT: Stand up, please.

15 GENTLEMAN ON FRONT ROW: I'm cousin of Deshawn.

16 THE COURT: Your cousin is - -

17 GENTLEMAN ON FRONT ROW: Deshawn Gathers.

18 THE COURT: - - Deshawn Gathers.

19 Alright.

20 Well, I'm going to ask that you be excused as well. I'm going
21 to ask all of y'all if you'd please be excused at this time.

22 We're going to wait just a couple of more minutes and give the
23 people a chance to leave and clear the building but, Ms. Fanning,
24 if you would like to go ahead and excuse yourself to talk with that
25 witness that you wanted to talk with.

REMARKS OF THE COURT

171

1 MS. FANNING: I was not able to get Mr. Davis to attend now
2 because he had do something. He left. So, I'm going to have to
3 do it tomorrow.

4 BAILIFF: You'll just have to make arrangements with the
5 Solicitor to have him transported back here.

6 MS. FANNING: Okay.

7 BAILIFF: Unless you want them to leave him.

8 MS. FANNING: The Department of Corrections?

9 (Bailiff and Ms. Fanning discuss arrangements for witness off
10 record.)

11 THE COURT: What's the problem?

12 MS. FANNING: I don't know the ins and outs of who - - who
13 has who in custody.

14 He's saying that they were going to take him to jail, our
15 jail, the County Jail.

16 Then, that's no problem.

17 Thank you.

18 Okay, Judge.

19 THE COURT: Okay. So, he'll be at the Detention Center?

20 MS. FANNING: He'll be at the jail.

21 THE COURT: Okay.

22 MS. FANNING: But I don't know if I'll talk with him tonight.
23 I'll probably - - -

24 THE COURT: Alright. Anything before we recess for the
25 afternoon, Solicitor?

MOTION FOR FEES AND RULING OF THE COURT

172

1 MR. WETMORE: No, Your Honor.

2 THE COURT: Alright.

3 Ms. Fanning?

4 MS. FANNING: No, Your Honor.

5 Ah, I do have one brief thing.

6 You want to - - -

7 THE COURT: Yes, ma'am.

8 MOTION FOR FEES AND RULING OF THE COURT

9 MS. FANNING: This is another housekeeping matter.

10 The Office of Indigent Defense has payment guidelines, and
11 have submitted a Voucher or whatever. Anyway, there's a cap as
12 you're familiar with on reimbursement, and as we get into this
13 trial and all the preparation I've had to do, it appears that my
14 client is going to grossly exceed the cap but it's not - - I can
15 ask you if you will sign a supplemental order for expenses.
16 They'll reimburse me but I have to make a motion in open court
17 before the judge to sign an order just permitting them to go over
18 the cap.

19 THE COURT: Well, you are - - you have made that matter on
20 the record at this point but I'll - - and I'll consider it but make
21 your motion when we conclude this matter and let's see how much
22 over the cap we talking about or what we're talking about in
23 connection, and I can consider it.

24 I know you won't have all your time and everything.

25 MS. FANNING: I won't. I will have most of it - - most of it

MOTION FOR FEES AND RULING OF THE COURT

173

1 including the last two weeks.

2 THE COURT: Okay.

3 MS. FANNING: And, of course, there's this week. So.

4 THE COURT: Well, I'm not real familiar with all of the
5 changes in the rules but I do know that the rules changed to where
6 the vouchers would be submitted directly without having to have
7 court approval as long as they were within the cap but I think if
8 it's over the cap, that's when I have to take a look at it.

9 MS. FANNING: Right.

10 It's not ex parte. It has to be made in open court which what
11 the - - that's just the - - what the guidelines say.

12 THE COURT: Alright. We'll take care of at some point in
13 time.

14 MS. FANNING: Okay.

15 THE COURT: Perhaps when the jury is out might be a good
16 time to take care of that if it gets that far.

17 MS. FANNING: Okay.

18 THE COURT: Alright.

19 MS. FANNING: Thank you.

20 THE COURT: Alright.

21 Now, I will allow the victims' family to leave.

22 (Victims' family and friends depart courtroom.)

23 THE COURT: Alright. Mr. - - the Proffer Agreement,
24 Exhibit #4, which is the Proffer Agreement of - -

25 MR. WETMORE: Cordero Porcher, Judge.

MOTION FOR FEES AND RULING OF THE COURT

174

1 THE COURT: She does not have it. She doesn't have the
2 original of that. The Reporter doesn't have that.

3 She just needs to retain that because she has to account for
4 it.

5 MR. WETMORE: I see.

6 We didn't reach that agreement. So, I never presented it.

7 THE COURT: That's right. Just let her have it so she's
8 got all of them accounted for.

9 MR. WETMORE: Yes, sir.

10 THE COURT: Alright.

11 Thank you, counsel. We'll be in recess until 9:15 tomorrow
12 morning.

13 (The Court recesses the trial of this case for the day to
14 convene the trial of this case at 9:15 a.m. on Tuesday.)

15 - - - END OF TRANSCRIPT - - -

16 (This trial continued during the week but another Court
17 Reporter took the remainder of this trial.)

JURY SELECTION SHEET

175

175

Case: 06-GS-10-11480+11481 Judge: Howard P King
State v Del IVON GRANT

Pl. Atty: Burns Whatmou AS

Def. Atty: Meg Fanning

Court Reporter: Linda W McCall

DATE: Nov. 5, 2007

Strikes

Juror #	Name	Sex	Lat	St.	Def.	Accept
183	Kelly Needham	F	C			✓
145	Mark Kowalski	M	C	X		
118	Shawn Hill	M	C		X	
138	Kimberly Keller	F	C			✓
49	Robert Coker Jr	M	C		X	
206	Elizabeth Puckette	F	C		X	
112	Debora Haselden	F	C		X	
240	Kenneth Smith	M	C			✓
54	Etta Connolly	F	C		X	
274	Marilia Valentine	F	C		X	
85	Foster Gilliard	M	C	X		
325	Jess Park	M	C	X		
324	Linda Meyer	F	C			✓
272	Patricia Tykal	F	C		X	
282	Sharon White	F	A	X		
131	William Jindracek	M	C		X	
192	Frankie Owens	F	C			✓
205	Donald Proulx	M	C			✓
156	Dana Love Jr	M	C		X	
152	Robert Litaker	M	C			✓
199	Lester Phillips	M	C			✓
14	Rodney Beard	M	C			✓
245	Willie Smalls	F	A			✓
305	Joseph Carson	M	A			✓
291	Lindsey Winslow	F	C			✓
OKS						
55	Margaret Cotton	F	C			✓

Jury Selection Sheet

176

Case: 06-6510-11480 + 11481 Judge Howard P King
 St. v Del IVON GRANT Pl. Atty Burns W. Moore AS
 Def. Atty Margaret Fanning AS
 DATE: Nov 5, 2007 Court Reporter Linda W McCall
 Strikes

Jury #	NAME	CL.	State	Def	Accept
317	Michael Giglio	MC		X	
190	Jason Oates	MC	~~---~~	~~---~~ X	
255	Ebony Stanfield	FAA		X	
288	David Williams	MC	X		
166	Myra Marshall	FC			✓

CERTIFICATE OF COURT REPORTER

177

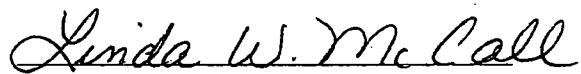
1 STATE OF SOUTH CAROLINA)

2 COUNTY OF HORRY)

3
4 I, the undersigned Linda W. McCall, Official Court
5 Reporter for South Carolina Court Administration, do hereby
6 certify that the foregoing is a true, accurate and complete
7 Transcript of Record of all the proceedings had and evidence
8 introduced on the date specified in the trial of the captioned
9 case, relative to appeal, in the Court of General Sessions of
10 Charleston County, South Carolina.

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

13 September 11, 2008

14
15 

16 Linda W. McCall

17 Official Reporter
18
19

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	2006-GS-10-11480
	)	2006-GS-10-11481
	)	
	)	
State of South Carolina	)	)
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
D'el Jvon Grant	)	)
DEFENDANT	)	

November 6-7, 2007
Charleston, South Carolina

B E F O R E:

THE HONORABLE HOWARD P. KING.

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

BURNS WETMORE, ASSISTANT SOLICITOR
PETER MCKOY, ASSISTANT SOLICITOR
Attorney for the State

MARGARET FANNING, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

KESHIA REED
Circuit Court Reporter

	<u>I N D E X</u>				
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2					
3	John Reynolds In-Camera				
4	Mr. McKoy	7			
5	Ms. Fanning		12		
6					
7	Cordero Porcher				
8	Mr. Wetmore	23		69	
9	Ms. Fanning		56		
10					
11	Jerry Jellico				
12	Mr. McKoy	74		82	
13	Ms. Fanning		80		83
14					
15	Kelly Spears				
16	Mr. Wetmore	89		107	
17	Ms. Fanning		103		110
18					
19	John Reynolds				
20	Mr. McKoy	112		136	
21	Ms. Fanning		125		
22					
23	Dr. Cynthia Schandl				
24	Mr. McKoy	138		154	
25	Ms. Fanning		152		

	<u>I N D E X</u>				
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1	Shaun Patrick In-Camera				
2	Mr. McKoy	166			
3	Ms. Fanning		174		
4					
5	Rasheema Whitfield In-Camera				
6	Mr. Wetmore	178		185	
7	Ms. Fanning		182		
8					
9	Shaun Patrick				
10	Mr. McKoy	197			
11	Ms. Fanning		204		
12					
13	Rasheema Whitfield				
14	Mr. Wetmore	206			
15	Ms. Fanning		221		
16					
17	Barbara A. Scott				
18	Ms. Fanning	235			
19	Mr. McKoy		243		
20					
21	Gary Grant				
22	Ms. Fanning	258		297	
23	Mr. Wetmore		267		297
24					
25					

1		<u>I N D E X</u>			
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Closing Arguments				
4	Mr. Wetmore	318			
5	Ms. Fanning	321			
6	Mr. Wetmore	336			
7					
8	Charge of the Court	353			
9	Verdict of the Jury	381			
10	Sentence of the Court	392			
11	Certificate of Reporter	394			
12					
13					
14					
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25					

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
S-16	Photograph		21
S-18	Photograph	170	195
S-19	Photograph	170	
S-20	Statement	202	
D-1	Photograph	64	130
D-2	Photograph	64	
D-3	Photograph	134	134
C-1	Gary Grant's Statment 2-25-07		301
C-2	Gary Grant's Statement 3-18-07		301
C-3	Hand of one Hand of all Charge		312
C-4	Reasonable Doubt Charge		312
C-5	Note from Jury		374
C-6	Note from Jury		375

1 (REPORTER'S NOTE: A different court reporter took
2 the first day of the proceedings on November 5, 2007
3 and accepted State's Exhibits 1-17.)

4 THE COURT: All right. We're back on the record with
5 regard to the matter of The State vs. D'el Jvon Grant
6 cases number 11480 and 11481. Mr. Grant is present with
7 his counsel. The State is also present. Yesterday,
8 counsel and I indicate that I would consider any testimony
9 or anything that the State wanted to present with regard
10 to the admissibility of State's Exhibits Number 16 and 17
11 for ID purposes at this time. So, Mr. Wetmore, if you
12 would like to proceed, I'll be glad to hear whatever ---

13 MR. WETMORE: Judge, I'm going to grab Officer John
14 Reynolds from the hallway.

15 THE COURT: All right.

16 MR. WETMORE: Mr. McKoy is going to question him.

17 THE COURT: All right.

18 THE CLERK: If you would place your left hand on the
19 Bible and raise your right hand. Do you swear to tell the
20 truth, the whole truth, and nothing but the truth so help
21 you God?

22 MR. REYNOLDS: I do.

23 THE CLERK: Be seated.

24 THE COURT: Would you like these two exhibits?

25 MR. MCKOY: Yes, sir, Your Honor. Thank you.

1 THE CLERK: For the Court please state your full name
2 and spell your last?

3 MR. REYNOLDS: John Reynolds. R-E-Y-N-O-L-D-S.
4 WHEREUPON,

5 John Reynolds,
6 after first having been duly sworn, testified as follows:

7 DIRECT EXAMINATION IN-CAMERA

8 BY MR. MCKOY:

9 Q Good morning, Officer Reynolds.

10 A Good morning.

11 Q Tell me where you're currently employed?

12 A I am currently by the City of North Charleston police
13 department.

14 Q And what are your duties with North Charleston?

15 A I'm currently a sergeant assigned as a supervisor of
16 the property crimes unit.

17 Q What were your duties on 2-24-05?

18 A I was assign to the crime scene investigations unit
19 as a forensic investigator.

20 Q And what does it mean assign to a crime scene
21 investigative unit mean?

22 A We respond to crime scenes. We document the crime
23 scenes through the use of photography, written reports.
24 We examine the scene for items of evidence or evidentiary
25 value. We collect items and we preserve items for further

1 investigation.

2 Q And what's the importance of preserving items for
3 investigations?

4 A To link a suspect to a crime scene, victims to a
5 crime scene, witnesses so on and so forth.

6 Q Does it help refresh your memory if a case is two
7 years old to see photos that you have taken of the crime
8 scene?

9 A Yes, it does.

10 Q I'm going to show you what has already been placed
11 into evidence as State's Exhibit Number 5. Do you
12 recognize this photo?

13 A Yes, I do.

14 Q What is this a photo of?

15 A It's a photograph of the crime scene at 3749 Ashley
16 Shores Drive that I responded to on February 24th of 2005.

17 Q And what are those different signs that are on the
18 ground?

19 A Those are ABFO placards that are used to mark items
20 of evidence.

21 Q When you came to the scene, was the crime scene
22 already roped off?

23 A Yes, it was.

24 Q And was the crime scene already secured?

25 A Yes, it was.

1 Q What does that mean?

2 A Officers that secure the perimeter of the crime scene
3 and also posted yellow barrier tape to keep people out.

4 Q When you arrived on the crime scene, did you notice
5 the victims in the case?

6 A Yes, I did.

7 Q And where were they?

8 A They were lying on the ground behind the apartment
9 building.

10 Q And the picture of State's Exhibit Number 5 is this
11 the crime scene?

12 A Yes, it is part of it.

13 Q In relation to what you see in State's Exhibit Number
14 5 where were the bodies located?

15 A They would be to the right of the photograph.

16 Q I'm going to show you what's already into evidence as
17 State's Exhibit Number 14. Can you explain to us what
18 this is?

19 A That's the EMS and fire department personnel tending
20 to the victims.

21 Q Where is this in relation to what you saw from
22 State's Exhibit Number 5?

23 A Be to the right of the first photograph still behind
24 the apartment building.

25 Q Did you collect evidence around the victims in this

1 case?

2 A Yes, I did.

3 Q And what did you collect?

4 A We collected four cartridge casings and also
5 projectile that was in the ground and some other items
6 that were located by the apartment building.

7 Q Did you use placards to identify evidence that were
8 around you?

9 A Yes, we did.

10 Q I'm going to show you yourself what's been marked for
11 ID purposes State's Exhibit 15 -- or 16 and 17. Do you
12 recognize those photos?

13 A Yes, I do.

14 Q And what are those photos of?

15 A These are copies of the original photos that I had
16 taken and they depict the victims lying on the ground as I
17 found them.

18 Q Does viewing these photos help you refresh your
19 memory of what you observed that day that was almost two
20 years ago -- over two years ago?

21 A Yes, it does.

22 MR. MCKOY: Court's indulgence, Your Honor.

23 (WHEREUPON, a pause in the proceedings.)

24 Q Sergeant Reynolds, in viewing State's identification
25 16 and 17 how were the bodies lying in comparison to the

1 house -- the apartment building?

2 A To my recollection they were lying perpendicular to
3 the apartment building.

4 Q Were they lying side by side?

5 A Yes, they were.

6 Q Are the heads away from the apartment complex?

7 A To my recollection, they were. I have to look at a
8 different photograph to make sure though.

9 Q Are the placards that are in photos 16 and 17 that
10 disapply evidence that was also collected by you at the
11 scene?

12 A Yes, it does.

13 Q What type of evidence was that could you see? Can
14 you see from these?

15 A Really can't tell a letter of the placard would
16 probably be a projectile though.

17 Q And projectiles were collected in close proximity to
18 these bodies?

19 A Yes, they were.

20 Q How far away would you say is a close estimate when
21 we look at State's Exhibit 14 and look at State's Exhibit
22 5, how far away would you say 16 and 17 are away from the
23 actual apartment complex?

24 A I would say about 20 feet.

25 Q And are they within the secured crime scene area?

1 A Yes, they are.

2 Q Sergeant Reynolds, when you look at these photos, do
3 they help you with the representation of remembering what
4 happened that day?

5 A Yes, they do.

6 Q Do they help you preserve in your mind the
7 positioning of placards, positioning of the victims in
8 relation to the actual crime scene?

9 A Yes, they do.

10 MR. MCKOY: Please answer any questions that
11 Ms. Fanning may have for you.

12 THE COURT: All right. Ms. Fanning, be glad for you
13 to ask any questions keeping in mind that the only issue
14 now is the admissibility on a relevance issue.

15 MS. FANNING: I understand.

16 CROSS-EXAMINATION IN-CAMERA

17 BY MR. FANNING:

18 Q I'm sorry they call you Officer or detective?

19 A Detective is fine.

20 Q Okay, we'll go with detective then. Detective, the
21 reason that you placed the markers on the ground next to
22 the pieces or the items that you believe have evidentiary
23 value is so you can identify them through that marker?

24 A That's correct.

25 Q So regardless of where the bodies are located, you

1 have alphabetical markers on the ground that you can use
2 to reference projectiles like in photograph number six and
3 photograph number seven both of those show shell casings
4 on what looks like the ground; correct?

5 A That is correct.

6 Q And you put the markers next to them so you can
7 reference shell casing located at B and shell casing
8 located at C; is that correct?

9 A On these two photographs here, these were closeup
10 photographs taken photo with projectiles before they were
11 collected. They don't reference relationship between the
12 items of evidence in relation to the victims on the
13 ground.

14 Q Do you have a document or report in which you
15 actually measured distances between the decedents and the
16 shell casings that you marked?

17 A We did not measure, no.

18 Q Okay. So you could testify about seeing the bodies
19 on ground; correct?

20 A From -- I would need visualization to relate to
21 relationship between items of evidence to the victims.

22 Q You need a visualization to tell that you saw two
23 bodies lying on the ground?

24 A No.

25 Q Okay. And you would need a visualization to testify

1 from your own knowledge that you place these markers that
2 the markers were in close proximity -- the shell casings
3 and the markers you placed were in close proximity to the
4 decedents?

5 A Yes.

6 Q And can't you do that with photograph -- I'm sorry
7 photograph 14 was taken before the markers were placed.
8 State's Exhibit 17 that the State is seeking to introduce
9 photographs of the dead bodies are the decedents shows one
10 marker; doesn't it?

11 A That's correct.

12 Q What number is that?

13 A Appears to be O, but I'm not positive with this
14 photograph.

15 Q You can't even tell looking at that photograph that
16 the State is seeking to introduce what marker you're
17 asked to testify about proximity?

18 A Not from this item.

19 Q And none of the other shell casing markers are in
20 that photograph?

21 A No, they're not.

22 Q So this photograph does not assist you in testifying
23 about the proximity of the shell casings to the bodies,
24 does it?

25 A No.

1 MS. FANNING: Thank you, I don't have anything else.
2 That's all, Your Honor.

3 THE COURT: All right. If the -- Detective, if would
4 hand the exhibits back to the court reporter.

5 MS. FANNING: Your Honor, I've got them.

6 THE COURT: You have them. Give her all the ones
7 that are in evidence and she has and give me 16 and 17 for
8 ID purposes.

9 MS. FANNING: Yes, Your Honor.

10 THE COURT: And thank you, Detective, you may step
11 down.

12 Anything else, Mr. McKoy, for this witness?

13 MR. MCKOY: Nothing else for this witness, Your
14 Honor.

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

16 (WHEREUPON, the witness leaves the witness stand.)

17 THE COURT: All right. Mr. McKoy, I will be glad to
18 hear from you with regard to the -- I think -- yeah,
19 Mr. McKoy, I'll hear from you with regard to the relevance
20 of the photographs that you're offering and why you feel
21 they're admissible. Then I'll hear from Ms. Fanning as to
22 what her objections are.

23 MR. MCKOY: Thank you, Your Honor. May it please the
24 Court, we have offered the evidence of crime scene
25 investigation of John Reynolds to testify to the scene, to

1 what he observed, the photos that he has taken while he
2 was there. This event occurred almost two years ago. And
3 I would argue the probative value of the photos that we're
4 arguing photo get in helps show and assist the officer in
5 what he observed when he arrived on the scene.

6 THE COURT: Well, can't he refer to something without
7 having to have it admitted into evidence. In other words,
8 if your sole purpose of offering it is to refresh his
9 recollection, it's not necessary that it come into
10 evidence, is it, because you can offer any document for a
11 statement or anything else for a witness to refresh their
12 recollection, that doesn't make it admissible.

13 MR. MCKOY: Well, Your Honor, I wasn't necessarily
14 arguing it just to refresh his recollection of the actual
15 scene. I'm also arguing the point that in taking all of
16 the evidence and all the pictures that we already have up
17 there five through 15 as going to help show the entire
18 crime scene, Your Honor. The probative value of showing
19 where the bodies lie in relation to the apartment building
20 and showing where the placards lie, the evidence help
21 collected in relation to the apartment building. The way
22 the bodies are situated in lying together, Your Honor, in
23 relation to the apartment building. Basically, showing
24 the importance of where all of the evidence that was
25 collected from the scene. Placards can be seen in State's

1 16 and 17, Your Honor. And I'd also argue that the State
2 is taken -- we have taken a great stride, Your Honor, in
3 trying to reduce the prejudicial effect of the photos in
4 this case. We've even offered a black and white photo,
5 Your Honor, to try to reduce prejudicial effect. The
6 State would just argue the probative value that these
7 photos display far outweigh the prejudicial value to the
8 defendant, Your Honor.

9 THE COURT: All right. Ms. Fanning.

10 MS. FANNING: Your Honor, under oath Detective
11 Reynolds testified that the markers that is -- first he
12 said I need this photographs to testify the correlation of
13 the markers on the ground in relation to the body. When
14 you look at photograph, there's one marker visible, one,
15 out of all the markers on the ground. There's one marker
16 visible in the photograph closeup of the decedents and you
17 can't even tell which one it is.

18 There's no probative value in terms of that picture
19 and in terms of establishing where the shell casings were
20 right on the ground near the bodies, none. And Detective
21 Reynolds acknowledges that based on that picture he cannot
22 testify where the shell casings were located in relation
23 to the body. The apartment building similarly is not in
24 that photograph. It does not assist the detective in
25 testifying how the bodies were situated in relation to the

1 ---

2 THE COURT: It's not the question is not whether it
3 will assist the detective. The question is whether or not
4 it's relevant to the issues that are in the case and will
5 assist the jury.

6 MS. FANNING: Right. The first -- what I understood
7 the reason that they were proffering it is to see if it
8 correlated or corroborated the detective's testimony. And
9 he said that looking at that photograph the photographs
10 that are seeking to enter, he can't testifying anything
11 about the layout of the bodies, the array of the evidence
12 around the bodies. The relationship between the bodies
13 and the building. There's nothing about that photograph
14 that assist him in explaining his investigation to the
15 jury. What he did was identify pieces of evidence on the
16 ground and mark them. And none of those pieces of
17 evidence, but one that he can't even tell from the marker
18 which one it is is in the photograph. So the photograph
19 has in and of itself no probative value except to show
20 that there were two decedents on the ground, that's it.
21 And he can testify on the independent of any photograph as
22 he testified under oath.

23 Furthermore, and I prosecuted a lot of murder cases
24 in my day and I know that once that photograph comes in
25 evidence, I submit to you it's going to be used in closing

1 and they're going say this is D'el Grant's handywork. Thi
2 is what D'el did and that is exactly the reason that
3 photograph should stay out because it's going to be used
4 in closing to inflame the passions of the jury by showing
5 them two dead young men and that's not what this case is
6 about. This case is about the evidence not the gore and
7 not the dead folks on the ground. And that's the only
8 reason they're seeking put that closeup photograph of
9 these two young men in. There is no in evidence that
10 photograph that this crime scene detective is going to
11 testify to.

12 THE COURT: I understand. Thank you. And I
13 respectfully disagree with you, Ms. Fanning, with regard
14 to what this case is about. It definitely is about two
15 dead young men. The question is who committed the acts
16 that brought about their death and under what
17 circumstances. So the case definitely is about two dead
18 young man and that's what the jury is going to have to
19 decide are those two issues that I just mentioned.

20 Under State vs. Nancy relevancy, materiality and
21 admissibility of photographs as evidence are matters left
22 to the sound discretion of the trial court and they are
23 admissible if they serve to corroborate testimony. It's
24 not an abuse of discretion if the Court does admit that
25 the photographs if they -- if they do corroborate the

1 testimony provide the Court conducts 403 analysis to
2 determine whether the probative value of the evidence
3 outweighs its prejudicial effect.

4 I have listen to the officer's testimony about the
5 other exhibits that are into evidence and also what he can
6 testify about this matter. I think that they are
7 corroborative of the officer's testimony. They show the
8 location of the bodies. And he describes that as being in
9 relation to the apartment complex as being behind the
10 apartment complex. It shows a relation of the bodies in
11 relation to each other, that they were evidently very
12 close together at the time of the shooting. And I think
13 there is testimony of that already in the record. And so
14 I think it does serve to corroborate that testimony. It
15 also does show a shell casing in relation to the bodies.
16 And as I said corroborates the officer's testimony and the
17 testimony of the witnesses who testified yesterday as to
18 the location of these two individuals at the time that the
19 homicides occurred. I do think that they are relevant. I
20 do think that the probative value outweighs the
21 prejudicial effect from the standpoint of the black and
22 white photograph only. I think that there is nothing
23 gained by the State by the admission of the color
24 photograph.

25 The black and white photograph shows the same things

1 that would corroborate that testimony without the color
2 photographs being introduced. So the State is going to
3 exclude -- I mean, the Court is going to exclude State's
4 Exhibit Number 17 and let that remain as State's Exhibit
5 Number 17 for identification. The State -- the Court will
6 admit State's Exhibit Number 16 and I'll have the court
7 reporter take the ID marking off of that. But after
8 reviewing the photos in question and hearing the testimony
9 the Court does find that the probative value of the
10 evidence outweighs its prejudicial effect. Photos are
11 admitted -- the photo number 16 is admitted and photograph
12 number 17 is excluded.

13 (WHEREUPON, State's Exhibit No. 16 was admitted into
14 evidence.)

15 MR. MCKOY: Thank you, Your Honor.

16 THE COURT: All right, I assume we have all the
17 jurors?

18 BAILIFF: Yes, sir.

19 THE COURT: Anything before we bring the jury in,
20 Mr. Wetmore?

21 MR. WETMORE: No, sir. Judge, our next witness is
22 Cordero Porcher.

23 THE COURT: All right. Ms. Fanning, anything before
24 we bring the jury in?

25 MS. FANNING: No, Your Honor. Thank you.

1 THE COURT: Okay. All right. Bring the jury in
2 please.

3 (WHEREUPON, a pause in the proceedings.)

4 THE COURT: Let me put this on the record before the
5 jury comes in as an additional reason for admitting that
6 photograph. One of the elements that the State has to
7 prove is malice. And I think that there are the question
8 is probative of the issue of malice.

9 (WHEREUPON, the jury returned to the courtroom.)

10 THE COURT: All right. Thank you very much. And
11 good morning, ladies and gentlemen. I hope everyone had a
12 restful night. We are ready to proceed. I do apologize
13 for keeping you waiting for about ten minutes, but we had
14 been in the courtroom working since 9:15 as we had some
15 matters that we had to attend to. So I don't want you to
16 think it's just a situation where we been sitting in the
17 back room drinking coffee. We have been working since
18 9:15. All right. We are ready to proceed at this time.
19 Mr. Solicitor, you may call your next witness.

20 MR. WETMORE: Thank you, Judge. Cordero Porcher.

21 THE COURT: Come right around here please, sir.

22 THE CLERK: Come forward, sir. Sir, if you would
23 please place your left hand on the Bible and raise your
24 right hand. Do you swear or affirm to tell the truth, the
25 whole truth, and nothing but the truth so help you God?

1 MR. PORCHER: I do.

2 THE CLERK: Please be seated. Please state your full
3 name to the Court and spell your last name and scoot
4 forward?

5 MR. PORCHER: Cordero Porcher.

6 MR. WETMORE: Your Honor, if I may approach the
7 witness?

8 THE COURT: Yes, sir.

9 WHEREUPON,

10 Cordero Porcher,
11 after first having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. WETMORE:

14 Q Mr. Porcher, I need you to lean up and talk in this
15 microphone, okay, clear as you can be so the Judge can
16 hear you and the jury can hear you. The quicker this will
17 go, okay. Want you tell the jury a little bit about
18 yourself. How old are you?

19 A Twenty.

20 Q Where did you grow up?

21 A Downtown.

22 Q Downtown Charleston?

23 THE COURT: Excuse me. You can't give a yes or no --
24 you got to give a verbal response. She's got to take down
25 everything that you got to say. And then -- and she can't

1 take down nods and shakes of the head, so be sure and give
2 a verbal response. All right, go ahead.

3 Q Where do you live now? You still live downtown?

4 A No.

5 Q Where do you live now?

6 A On Dorchester Road.

7 Q Okay. You live with your family?

8 A Yes, sir.

9 Q Do you have any family of your own? You have wife,
10 kids anything like that?

11 A I got a little girl.

12 Q How old is your little girl?

13 A One years old.

14 Q What's her name?

15 A Mariah.

16 Q Tell me about what you do? You go to school? Do you
17 work?

18 A I use to go attend a youth build program.

19 Q Before this incident, you were attending a youth
20 build program tell us about that?

21 A Concentrate on my GED.

22 Q You planning or were you planning on taking up the
23 construction career?

24 A I was gone get a trade, but I wasn't planning on
25 taking it up.

1 Q Did you have a job before this incident?

2 A No.

3 Q Just in school?

4 THE COURT: Yes.

5 A Yes.

6 Q Cordero, I need you to be honest with the Court now.

7 Have you ever been convicted of a crime?

8 A No.

9 Q You don't have any convictions. Do you have any
10 pending cases that are pending right now?

11 A Yes, sir.

12 Q Be honest with the jury tell them what you have
13 pending?

14 A Two first degree murders, second degree lynching,
15 trafficking and possession of crack.

16 Q So you have two drug cases; is that right?

17 A Yes, sir.

18 Q And then you have two charges of murder. Are they
19 related to this incident here we're talking about at
20 Ashley Shores?

21 A Yes, sir.

22 Q So you were charge in that case too?

23 A Yes, sir.

24 Q Then you have a lynching. What's -- what's the deal
25 with that? Where did that take place?

1 A Charleston county jail.

2 Q So there was a fight in the jail?

3 A Yes, sir.

4 Q So you have some knowledge of this double homicide,
5 this double murder that happened in February of 2005 at
6 Ashley Shores?

7 A Yes, sir.

8 Q Did you know the victim Robert Bryant?

9 A Yes, sir.

10 Q How long did you know Robert Bryant?

11 A For a couple years.

12 Q You guys live nearby?

13 A Not nearby, but in the area.

14 Q Did you guys go to school together? Work together
15 anything like that?

16 A No.

17 Q So how did you see Robert Bryant?

18 A I see him through some of my other friends.

19 Q Were you guys close? Were you guys friends at all?

20 A Yeah, we were cool.

21 Q You were cool?

22 A Yeah.

23 Q Did Robert Bryant have any kind of nickname or street
24 name that you know of?

25 A Evil.

1 Q You called him Evil. Are you that one that shot
2 Robert Bryant?

3 A No.

4 Q You know who did?

5 A Yeah.

6 Q Who did?

7 A D'el

8 Q D'el What's his last name?

9 A Grant.

10 Q Any doubt about that?

11 A Huh.

12 Q Any doubt about that?

13 A No.

14 Q Let's talk about the other victim, Cederious Nelson.
15 Were you close with him?

16 A Yeah, something like that.

17 Q You tell me how -- I mean, were you guys friends or
18 were you guys just acquaintances?

19 A Yeah, you can say he was my friend.

20 Q Were you guys cool?

21 A Yeah.

22 Q How long had you known him?

23 A I had know him for a long time.

24 Q How long a year, two years, three years?

25 A Almost all my life.

- 1 Q So you have known Cederious Nelson all your life?
- 2 A Yeah.
- 3 Q You grew up downtown; is that right?
- 4 A Yes, sir.
- 5 Q Is that where you came into contact with Cederious
- 6 Nelson?
- 7 A Yes, sir.
- 8 Q Did you guys go to school together?
- 9 A Sanders Clark (sic).
- 10 Q Now, that is an elementary school; is that right?
- 11 A Yes, sir.
- 12 Q So you guys knew each other then from the first grade
- 13 on; is that right?
- 14 A I wouldn't say first grade since elementary school.
- 15 Q Were you guy close from then?
- 16 A Really, we just cool.
- 17 Q You were cool. Tell me about any nicknames or street
- 18 names Cederious Nelson had that you know of?
- 19 A Little D.
- 20 Q Little D. All right. Grow up with him, went to
- 21 school with him, did you murder him?
- 22 A No.
- 23 Q You weren't the one that shot him?
- 24 A No.
- 25 Q Who was?

1 A D'el

2 Q Any doubt about that?

3 A Uh-uh.

4 Q So you've already testified that this man, the
5 defendant, was the one that murdered Robert Bryant and
6 Cederious Nelson. Yet, somehow North Charleston police
7 department charged you for your involvement; is that
8 correct?

9 A Yes, sir.

10 Q Did you talk to them back in February of 2005 about
11 this?

12 A Yes, sir.

13 Q Did you give them any kind of statement?

14 A Yes, sir.

15 Q Tell them your side of the story?

16 A Yes, sir.

17 MR. WETMORE: If I may approach the witness, Your
18 Honor?

19 THE COURT: Yes, sir.

20 MR. WETMORE: Madam court reporter, there's an
21 exhibit that's previously marked I believe number four or
22 number five for the State. It's a proffer agreement.

23 THE COURT: Number four.

24 MR. WETMORE: Number four?

25 THE COURT: Uh-huh.

1 BY MR. WETMORE

2 Q I'm going to show you State's Number 4, Mr. Porcher,
3 take a look at it especially the last page. And have you
4 and I talked about this case?

5 A Yes, sir.

6 Q How many times have we talked about the case?

7 A Couple of times.

8 Q You remember where we talked?

9 A Yeah, at the Charleston county jail.

10 Q That's where you staying; correct?

11 A Yes, sir.

12 Q Do you have a lawyer that's helping you get through
13 these charges?

14 A Yes, sir.

15 Q What's that persons name?

16 A Ms. Lofton.

17 Q Was she present every time I spoke with you?

18 A Yes, sir.

19 Q Have you talk to her day today?

20 A Yes, sir.

21 Q Is she here in the courtroom with you today?

22 A Yes, sir.

23 Q Is she here in the courtroom?

24 A Yes, sir.

25 Q Do you have through your attorney you and your

1 attorney do you have written agreement with me, the State.
2 prosecutor? A written agreement called a proffer
3 agreement?

4 A Yes, sir.

5 Q Is that what's there before you?

6 A Yes, sir.

7 Q You see my signature there?

8 A Yes, sir.

9 Q Did you sign it?

10 A Yes, sir.

11 Q And did your lawyer sign it?

12 A Yes, sir.

13 Q Are you completely aware now that this agreement
14 makes you no promises whatsoever about your pending
15 charge?

16 A Yes, sir.

17 Q Are you aware that it makes you no threats
18 whatsoever?

19 A Yes, sir.

20 Q Does it in fact call for you to tell the truth about
21 this case?

22 A Yes, sir.

23 Q You understand all that?

24 A Yes, sir.

25 Q You and your lawyer talked about all that?

1 A Yes, sir.

2 Q Another document that you might have received was a
3 subpoena did you receive a subpoena to come to court?

4 A Yes, sir.

5 Q And does that compel you to come to court and
6 testify?

7 A Yes, sir.

8 Q Did any time before today have you been threatened at
9 all in relation to your testimony?

10 A No, sir.

11 Q Anything happened in the jail?

12 A No, sir.

13 Q Anything happened here in the courthouse in lockup?

14 A No, sir.

15 Q But you here today to tell us the truth about this
16 murder that happened in February of 2005?

17 A Yes, sir.

18 Q Going back to that day around lunchtime were you on
19 Woodlawn?

20 A Yes, sir.

21 Q What were you doing on Woodlawn?

22 A At my aunt house.

23 Q Okay. It's your aunt house?

24 A Yes, sir.

25 Q Do you live there or were you just hanging out?

- 1 A I live there at the time.
- 2 Q You live there at the time?
- 3 A Yes, sir.
- 4 Q So you were at your house where you stay?
- 5 A Yes, sir.
- 6 Q Did you have any contact with Deshawn Gathers?
- 7 A I see him riding bicycle down the street and I stop
- 8 him.
- 9 Q Okay. So when you stopped him what happened?
- 10 A I asked him about the rumors he been spreading about
- 11 me breaking in somebody house.
- 12 Q So you felt that he was spreading rumors about you?
- 13 A Yes, sir.
- 14 Q Did you ask him about those rumors?
- 15 A Yes, sir.
- 16 Q Did you guys have an argument?
- 17 A Yes, sir.
- 18 Q Did you guys get into any kind of fight?
- 19 A Yes, sir.
- 20 Q Tell me what happened with the fight?
- 21 A He looked at me like he had want to fight so we start
- 22 fighting.
- 23 Q Did you punch him? Did he punch you?
- 24 A I punch him.
- 25 Q Anybody have a gun? Anybody pull out a gun in this

1 fight?

2 A Uh-uh, no, sir.

3 Q So how did this fight end?

4 A We just stop because cars been coming we blocking up
5 traffic.

6 Q So you guys were in the road; is that right?

7 A Yes, sir.

8 Q Just a practical matter there was a car so you had to
9 stop?

10 A Yes, sir.

11 Q What did Deshawn Gathers do after the fight was over?

12 A Get on his bike and call somebody on the cell phone.

13 Q And did he leave the area of the house on Woodlawn?

14 A Yes, sir.

15 Q So where did you go after that, did you stick around
16 the house?

17 A Yes, sir.

18 Q Anything interesting happened after that?

19 A Yeah, some people roll out and start shooting.

20 Q So tell me exactly what you saw when you say people
21 were rolled up?

22 A Two cars.

23 Q What kind of cars were they?

24 A A white car and a green car.

25 Q Okay. Do you know any of the people that were in the

1 cars?

2 A Just one of them.

3 Q Who do you know that was in one of those cars?

4 A Project.

5 Q Okay. Is his name Michael Mitchell?

6 A Yes, sir, I think so.

7 Q Which car was he in?

8 A The white car.

9 Q You know what kind of car it was?

10 A Lexus.

11 Q And was that white Lexus front of or behind the other
12 car the green car?

13 A In front.

14 Q It is in front of the green car?

15 A Yes, sir.

16 Q You know anything about the green car? Anything
17 about who was in it?

18 A No, sir.

19 Q The white Lexus is in front. You say Michael
20 Mitchell, Project, got out of that car. Did he get out
21 the driver side or passenger side?

22 A I ain't too sure.

23 Q What did he do when he got out?

24 A Start shooting.

25 Q He started shooting at who?

1 A At the house. I ain't know who he was shooting at,
2 but he just start shooting at the house.

3 Q Okay. Where were you standing when shots were fired?

4 A Bushes on the side of the house.

5 Q You were outside. Who else was outside with you?

6 A Gary Grant, my little brother, and my little cousin.

7 Q Who's your little brother?

8 A Kenneth Green.

9 Q And who's your cousin?

10 A Will West (sic).

11 Q And did also say Gary Grant was out there?

12 A Yes, sir.

13 Q How many shots do you think were fired?

14 A I don't know like -- I ain't really count like four
15 or five or something like that.

16 Q Did you get hit it at all?

17 A No, sir.

18 Q What did you do when the shots were fired?

19 A Took off.

20 Q Where did you run to?

21 A In the backyard.

22 Q You know if Gary Grant, not the defendant, but Gary
23 Grant got hit?

24 A He bled.

25 Q So he got wounded. He got hit, but he was okay?

1 A Yeah.

2 Q You guys called the police?

3 A I think my grandma called EMS.

4 Q Nobody called the police though?

5 A I ain't too sure.

6 Q You didn't call the police?

7 A No, I ain't call the police.

8 Q So where did you go or what did you do after that

9 shooting?

10 A Walk-down the street.

11 Q Where did you go when you walk down the street?

12 A Friend of mine house.

13 Q Still on Woodlawn?

14 A Yeah, Woodlawn.

15 Q Okay. What happened there?

16 A My aunt came and got me in a red Suburban and we went

17 on Ashley Shores.

18 Q So your aunt came and got you in her red Suburban

19 picked you up; is that right?

20 A Yes, sir.

21 Q Would she drive you anywhere?

22 A To Ashley Shores to my grandmama house.

23 Q She drove you to Ashley Shores to your grandmother's

24 house. Mr. Porcher, I'm going to show you -- turn around

25 and look behind you if you don't mind. Can you tell what

1 this photo represents?

2 A No, sir.

3 Q Can't tell what that is?

4 A No, sir.

5 Q Does it look like Ashley Shores?

6 A Not to me it don't.

7 Q It's tough to tell what it is?

8 A Yes, sir.

9 Q But you went to Ashley Shores with your aunt; is that
10 right?

11 A Yes, sir.

12 Q Now, you said your grandmother lives there too?

13 A Yes, sir.

14 Q And you went to your grandmother's house; is that
15 right?

16 A Yes, sir.

17 Q Does she live in the front part of Ashley Shores up
18 by the road or does she live towards the back of Ashely
19 Shores?

20 A Towards the back.

21 Q So when you got to Ashley Shores what happened?

22 A Me and my cousin walked back to the front of Ashley
23 Shores.

24 Q So you and your cousin walked cousin back up to the
25 front of Ashley Shores?

- 1 A Yes, sir.
- 2 Q Who's your cousin you're talking about?
- 3 A Devant Porcher.
- 4 Q Devant Porcher and you walked up towards the front is
5 that near Azalae Drive.
- 6 A Deshawn Gather's house.
- 7 Q It's up near where Deshawn Gathers' lives.
- 8 A Yes, sir.
- 9 Q Why were you going up that direction?
- 10 A I been going to confront Deshawn Gathers ---
- 11 THE COURT: Excuse me. Sir, move up to the
12 microphone and face the jury so they'll be able to hear
13 you.
- 14 Q Just lean in whenever you answer, okay. You went to
15 go to Deshawn Gather's house for what reason?
- 16 A To confront him because I thought he called the car
17 to shoot at us.
- 18 Q So you believe he might have called those guys to
19 come shoot at your house -- at your aunt's house?
- 20 A Yes, sir.
- 21 Q When you got there to Deshawn Gather's house was he
22 there?
- 23 A Yes, sir.
- 24 Q Is there anybody else there?
- 25 A Yes, sir.

1 Q Tell me who was inside of Deshawn Gather's house at
2 Ashley Shores?

3 A Gary Grant, D'el, and Deshawn Gather's brother.

4 Q What was going on in the house? What was everybody
5 doing?

6 A I just peep my head in and just see everybody
7 standing around. Gary went looking at his head.

8 Q So everybody standing around looking at Gary who had
9 just got grazed as you said by a shot?

10 A Yes, sir.

11 Q Did you guys have any kind of argument, any kind of
12 fighting words?

13 A Who?

14 Q You or anybody else in there?

15 A No, sir.

16 Q Tell me what the defendant, D'el Grant, was doing?

17 A He was sitting at the table.

18 Q Where is the table? Is it in the kitchen, in the
19 den, where is it?

20 A In the kitchen.

21 Q Was everybody kind of standing around in the kitchen?

22 A Yeah. I ain't have my head in there for only about a
23 couple of seconds.

24 Q So you said just in there for a few seconds?

25 A I ain't been in there. I said I peep my head through

1 the door.

2 Q So did you actually go inside there?

3 A No, sir.

4 Q Okay. And did you just look inside?

5 A Yes, sir.

6 Q Okay. When you looked inside you saw D'el at the
7 table?

8 A Yes, sir.

9 Q At any time while you were at that apartment on
10 Ashley Shores at any time did the victims in this case
11 Robert Ryan and your friend Cederious Nelson, did they
12 pull up to the apartment?

13 A Yes, sir.

14 Q What were they driving?

15 A Green car.

16 Q The green car the same green car that you had seen
17 out on Woodlawn earlier?

18 A Yes, sir.

19 Q Did you talk to either of the two victims Robert
20 Bryant, Cederious Nelson?

21 A No, sir. I talk my aunt at the time.

22 Q You were talking to your aunt. You didn't say
23 anything at all to the victims; is that right?

24 A No, sir.

25 Q What were they doing?

1 A Who?

2 Q Robert Ryan and Cederious Nelson what were they
3 doing? Were they talking in the crowd or?

4 A Little D get out the car and ask his sisters they
5 been all right. And go back in the house and then like my
6 cousin had start asking questions.

7 Q So little D that's Cederious Nelson that's the guy
8 you grew up with. He got out of the car first; is that
9 right?

10 A Yes, sir.

11 Q Okay. And he spoke to his sister and she went back
12 in the house; is that right?

13 A Yes, sir.

14 Q Now, at that time, was Robert Bryant in the car or
15 out of the car?

16 A He had already had get out the car by that time.

17 Q So both of those guys were out of the car at that
18 time?

19 A Yes, sir.

20 Q Did anybody approach and argue with them or ask them
21 questions about anything?

22 A My cousin just been talking to them.

23 Q Your cousin, Devant Porcher; is that right?

24 A Yes, sir.

25 Q And he was asking them questions. He was talking to

1 them; is that right?

2 A Yes, sir.

3 Q Was he asking about that earlier shooting on
4 Woodlawn?

5 A I don't know what he been asking them because I been
6 explaining to my aunt what happened at her house.

7 Q But you could see that the victims were talking to
8 your cousin?

9 A Yes, sir.

10 Q Is there anybody else out there talking to the
11 victims?

12 A All once like they start arguing and then Gary Grant
13 slipped in and tell them to fall back and then I tell them
14 to calm down, too.

15 Q All right. So who slipped in once the argument
16 started?

17 A Gary Grant.

18 Q So Gary slipped in once the argument started and what
19 did he do?

20 A Got in between them and like tell them like trying to
21 break the argument up.

22 Q So it's your observation that Gary Grant tried to
23 break argument up?

24 A Yes, sir.

25 Q Did you try to break the argument up?

- 1 A I just tell them to chill.
- 2 Q You told them to chill. You guys all knew each
3 other; right?
- 4 A Yes, sir.
- 5 Q Tell me what the defendant -- tell me what DD'el did?
- 6 A Ran up behind them and then shoot them.
- 7 Q Where did the defendant, D'el Grant, run from?
- 8 A Deshawn Gather's house.
- 9 Q When you were standing there, did he come from behind
10 you or from the side beside you or?
- 11 A From behind me.
- 12 Q Who did he shoot first?
- 13 A Little D.
- 14 Q That was the guy you had known?
- 15 A Yes, sir.
- 16 Q Did you see D'el Grant with a handgun in his hand, a
17 pistol?
- 18 A Yes, sir.
- 19 Q What did it look to the best of your memory?
- 20 A A black gun.
- 21 Q A black gun. You say he shoot Cederious Nelson
22 first; is that right?
- 23 A Yes, sir.
- 24 Q Can you tell -- could you tell where it was he shot?
- 25 A In the back of his head or his leg one of the two.

1 Q So the defendant approached from kind of behind him
2 to the side of him?

3 A Yes, sir.

4 Q Did he -- he didn't come out from the front of him,
5 did he?

6 A No, sir.

7 Q So he came from the back from the side and shot
8 Nelson first and you believe he was hit in the side of
9 head or neck?

10 A Yes, sir.

11 Q What happened to Cederious Nelson after he got shot?

12 A He fall on the ground.

13 Q Tell me about Robert Bryant how did he get shot?

14 A D'el shoot him too.

15 Q D'el shot him too. Where did he shoot him could you
16 tell?

17 A In his chest.

18 Q In his chest?

19 A Yes, sir.

20 THE COURT: Counsel, excuse me just a minute. Let me
21 ask counsel to approach side bar for just a minute.

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

25 THE COURT: All right. Ladies and gentlemen of the

1 jury, what I was discussing with counsel and course it's
2 certainly nothing wrong with this because I had not told
3 you anything about it. And we did not discuss it before
4 we got into the testimony of this case. But I do notice
5 that there had been some note taking on the jury. I would
6 have to tell you that you would not be or not allowed to
7 take notes concerning the testimony of the witness. And
8 for this reason, I would ask that you pay close attention
9 to what the witnesses testify to so that you will be able
10 to accurately discuss the facts during your deliberations.
11 But the reasons normally that note taking is not allowed
12 is because if one or two or three or four jurors are
13 taking notes and the other jurors are not taking notes,
14 those that were not taking notes, those that were not
15 taking notes may rely more heavily on the recollection of
16 the testimony by those who did take notes than those who
17 did not. And that should not be -- everybody should have
18 an equal voice in the jury room. So I would ask that you
19 just please give close attention to the testimony and not
20 take notes during the course of this case. Thank you.
21 All right. You may resume.

22 MR. WETMORE: Thank you, Judge.

23 DIRECT EXAMINATION CONTINUED

24 BY MR. WETMORE:

25 Q All right. Mr. Porcher, you described you saw

1 Mr. Nelson get shot. Tell me -- take up where you left
2 off you saw Robert Bryant get shot; is that right?

3 A Yes, sir.

4 Q Who did you see shoot him?

5 A D'el

6 Q And where did D'el shoot Robert Bryant?

7 A In his chest.

8 Q And when he was shot, did he also fall down?

9 A Yes, sir.

10 Q So both were laying on the ground. What did you do?

11 A Take off running.

12 Q Did you see any more shots fired by the defendant?

13 A Yeah, he shoot them two times a piece.

14 Q Did you see him shoot them again?

15 A No.

16 Q You didn't see him?

17 A No, sir.

18 Q Did you hear any more shoots fired after they had
19 both hit the ground?

20 A No, sir.

21 Q Why do you think then he two shot them two times a
22 piece?

23 A I wouldn't know.

24 Q I didn't hear. What did you say?

25 A I wouldn't know.

- 1 Q There's no doubt you saw him shot Cederious Nelson at
2 least once?
- 3 A Yes, sir.
- 4 Q You saw him shoot Robert Bryant at lest once?
- 5 A Yes, sir.
- 6 Q But you believe he may have shot more than once?
- 7 A Yes, sir.
- 8 Q So you took off running. Where did you go?
- 9 A Back towards Woodlawn.
- 10 Q Did you go back and stay at the place where you were
11 staying on Woodlawn?
- 12 A I want to get inside a cab.
- 13 Q You got inside a cab?
- 14 A Yes, sir.
- 15 Q Where did you get inside the cab?
- 16 A On Xavier.
- 17 Q Where did you tell the cab driver to go?
- 18 A To Charleston.
- 19 Q You tell him to go towards Charleston?
- 20 A Yes, sir.
- 21 Q Did you come in contact with Gary Grant after the
22 shooting?
- 23 A Yes, sir.
- 24 Q Where did you run into him?
- 25 A By the bridge?

- 1 Q By the bridge?
- 2 A Yes, sir.
- 3 Q Did you and the cab driver stop and pick him up?
- 4 A Yes, sir.
- 5 Q Where did you and Gary Grant go?
- 6 A Back to Green.
- 7 Q Back to where?
- 8 A Back to Green apartment.
- 9 Q Okay. Why did you go there?
- 10 A Gary's girlfriend house.
- 11 Q Gary's girlfriend's house?
- 12 A Yes, sir.
- 13 Q What did you do while you were at Gary's girlfriend's
- 14 house?
- 15 A He get some clothes and we went to the hotel room.
- 16 Q So you and Gary went to a hotel room?
- 17 A Yes, sir.
- 18 Q Where was the hotel?
- 19 A West Ashley.
- 20 Q You remember which hotel it was?
- 21 A It was green hotel.
- 22 Q Is that on 17 Savannah Highway?
- 23 A Yes, sir.
- 24 Q Kind of where near the big fire was?
- 25 A Yes, sir.

- 1 Q Did you guys have a gun with you at the hotel?
- 2 A I ain't had no gun.
- 3 Q Did Gary have a gun on him?
- 4 A Yes, sir.
- 5 Q Where did he get the gun if you know?
- 6 A I don't know where he get the gun from.
- 7 Q Okay. Was the gun that he had the same gun that was
- 8 used to shoot those two victims at Ashley Shores?
- 9 A No, sir.
- 10 Q Not the same gun?
- 11 A No, sir.
- 12 Q Do you have any idea what happened to the gun that
- 13 was used to kill those two victims in Ashley Shores?
- 14 A No, sir.
- 15 Q Last time you saw it where was it?
- 16 A D'el had it.
- 17 Q D'el had it in his hand?
- 18 A Yes, sir.
- 19 Q Did you see D'el take off from the scene? I know you
- 20 were taking off, but did you see D'el take off?
- 21 A No.
- 22 Q Didn't see which way he went?
- 23 A No, sir.
- 24 Q And did North Charleston police department come to
- 25 that motel where you were with Gary?

1 A Yes, sir.

2 Q Try to grab you there and talk to you about the case
3 and lock you up?

4 A Yes, sir.

5 Q We talked about the two victims. Let me ask you
6 about the defendant, D'el Grant. How long have you known
7 him?

8 A Knew him through his brother.

9 Q You're better friends with his big brother, Gary
10 Grant?

11 A Yes, sir.

12 Q How long have you known the younger brother the
13 defendant, D'el Grant?

14 A I knew of them for a couple years, but I ain't know
15 them like for like just a year or two.

16 Q Gary Grant, the big brother, that's the one you know
17 better?

18 A Yes, sir.

19 Q How long have you known him?

20 A About two years.

21 Q You guys live near each other?

22 A No, sir.

23 Q You know the two brothers Gary Grant and D'el Grant.
24 You know them well enough to tell them a part?

25 A Yes, sir.

1 Q Let's talk about the big brother Gary Grant. On the
2 date of this shooting, February 24th 2005, what was Gary
3 Grant wearing if you remember?

4 A Black.

5 Q Black. What kind of clothes?

6 A Like a all in one jump suit.

7 Q All one piece of clothing?

8 A Yes, sir.

9 Q Just before these two boys were shot, what was the
10 big brother, Gary Grant, doing?

11 A He been in the house.

12 Q He was inside the house?

13 A Yeah, with a towel on his head.

14 Q Because he just gotten shot; is that right?

15 A Yes, sir.

16 Q Just before the shots were fired, what was Gary Grant
17 doing?

18 A Trying to stop the argument between my cousin and
19 Little D.

20 Q Just before the shots Gary Grant was trying to stop
21 the argument?

22 A Yes, sir.

23 Q As soon as the shots ring out, what happened with
24 Gary. What did Gary do?

25 A Start running.

1 Q Was he running ahead of you or behind you?

2 A Ahead of me.

3 Q So he took off before you did?

4 A Yes, sir.

5 Q Now, let's talk about the defendant, D'el Grant, the
6 younger brother. Do you remember what he was wearing that
7 day February 24th?

8 A I ain't too sure. I think blue and white.

9 Q Blue and white. Was he wearing all in one piece type
10 jump suit like you were describing Gary had on?

11 A No, sir.

12 Q Just before he shot the victims, was he with the
13 crowd. Was he a part of the crowd or a part of the
14 argument or was he by himself?

15 A I ain't know where he been at.

16 Q You didn't see him?

17 A No, sir.

18 Q First time you saw him was when he came out of the
19 apartment; is that right?

20 A I never seen him come out the apartment when I went
21 in there and peep my head in. He been in there about
22 after my aunt came and ask me what happened at her house.
23 And I explain to her what happened at her house. The next
24 time I seen him when he shoot Little D.

25 Q First time you saw him was in the apartment. Second

1 time you saw him was when he was shooting?

2 A Yes, sir.

3 Q And he shoot both victims; is that right?

4 A Yes, sir.

5 Q Tell me how close you were to the shooting that day?

6 Were you as close as you and I are or further away?

7 A Yeah, something like that.

8 Q About this close?

9 A Yeah.

10 Q The shooting happened this close to you?

11 A Yes, sir.

12 Q Anything blocking your view, anything obstructing
13 your view?

14 A No, sir.

15 Q Anything at all drugs, alcohol, anything at all that
16 kept you from remembering and thinking clearly about what
17 you saw?

18 A No, sir.

19 Q Told us the truth today?

20 A Yes, sir.

21 Q No doubt this man right here is this shooter; is that
22 right?

23 A Yes, sir.

24 MR. WETMORE: Court's indulgence.

25 (WHEREUPON, a pause in the proceedings.)

1 BY MR. WETMORE:

2 Q Mr. Porcher, you mentioned that Gary Grant ended up
3 with a gun at the hotel where you guys were eventually
4 staying; is that right?

5 A Yes, sir.

6 Q Did you see him with a gun out at Ashley Shores?

7 A No, sir.

8 Q Did he pull a gun at all at Ashley Shores?

9 A No, sir.

10 Q Did you see anybody out there with a gun besides the
11 defendant, D'el Grant?

12 A No, sir.

13 Q Did you have a gun out there?

14 A No, sir.

15 Q Didn't have a gun at all?

16 A No, sir.

17 Q The only gun you saw at Ashley Shores was the
18 defendant?

19 A Yes, sir.

20 MR. WETMORE: I have no further questions. If you
21 would answer any questions from the defendant.

22 THE COURT: Cross-examination, Ms. Fanning.

23 MS. FANNING: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MS. FANNING:

1 Q Good morning, Mr. Porcher. I'm Meg Fanning. I
2 represent D'el Grant. Mr. Porcher, you're testifying
3 today because of a deal you made with the State; right?

4 A No.

5 Q Well, an agreement that you have with the State that
6 you'll testify and down the road you hope to personally
7 gain from this testimony; don't you?

8 A No.

9 Q You don't believe that testifying today is going to
10 benefit you in any way down the road?

11 A No.

12 Q You have two murder charges, one lynching charge, and
13 two drug cases pending in the Charleston County
14 Solicitor's office; don't you?

15 A Yes, ma'am.

16 Q Mr. Cordero, you were present at your aunt's house on
17 Woodlawn when the shooting occurred earlier or before the
18 homicides that we're hear to talk about today; right?

19 A Yeah.

20 Q And that was about how many minutes or hours before
21 the events that occurred at Ashley Shores?

22 A Like 30 to 45 minutes later.

23 Q So about 45 minutes before the homicides occurred,
24 you were on Woodlawn and you saw Project come and shoot at
25 a group of people in front of your aunt's house on

1 Woodlawn; right?

2 A Yes, sir.

3 Q And Project is Michael Mitchell?

4 A Yes, ma'am.

5 Q And he was driving a Lexus?

6 A Yes, ma'am.

7 Q Is that was Lexus gray or light in color?

8 A White.

9 Q White. It was companied by a green Oldsmobile;
10 right?

11 A Yes, ma'am.

12 Q Did you see who was in the Oldsmobile?

13 A No, ma'am.

14 Q Was Project shooting at you?

15 A I ain't know who be shooting at.

16 Q Was he shooting in your direction?

17 A He just shoot in the yard.

18 Q Okay. And it was your belief that Project was
19 shooting at -- in your direction at you and Gary Grant
20 because he believed y'all had broken into his house and
21 stolen a substantial sum of money; isn't that true?

22 A No.

23 Q So you don't think that Deshawn Gathers told Project
24 you broke into his house before the robberies -- I mean,
25 before the murders?

1 A I mean, we think, but he ain't been shooting at us
2 for that right there.

3 Q Oh, so he was just shooting at you for no reason at
4 all?

5 A All I know Deshawn call him.

6 Q Deshawn called him and your belief is Deshawn called
7 him and told him where you were. And Project came and
8 shot at you because Project thought you had broken into
9 his house?

10 A No, ma'am. Me and Deshawn -- me and Deshawn Gathers
11 had just get through fighting. He called Project and
12 Project come and shoot at us.

13 Q So Project came and shot at you because you had a
14 physical fight with his cousin?

15 A Yeah, they suppose to be related.

16 Q Okay. Now, your cousin, Devant Porcher, lived in the
17 house that you were in front of on Woodlawn; right?

18 A Yeah.

19 Q And he was there also; correct?

20 A Yeah.

21 Q And after Project shoot at you and grazed Gary Grant
22 in the head, all of you guys got some shells or some
23 bullets from inside Devant's house; didn't you?

24 A No.

25 Q And you had a gun on your person when you left the

1 house on Woodlawn and went to Ashley Shores; didn't you?

2 A No.

3 Q So you deny today that you had a gun on you at the
4 time of the shootings?

5 A Yeah.

6 Q So the gun that was retrieved from the Evergreen
7 hotel where you were arrested and charged with these
8 murders, that was not your gun?

9 A No.

10 Q Did you tell anybody at Ashley Shores or at Woodlawn
11 that you had a gun?

12 A No.

13 Q Did you show Devant a gun?

14 A No.

15 Q In the car?

16 A No.

17 Q Did you ride in the car with your aunt over to Ashley
18 Shores?

19 A Yeah.

20 Q Okay. And who was in car?

21 A My aunt, my little brother and my cousin.

22 Q And why were you all going to Ashley Shores?

23 A My grandmamma had live on Ashley Shores.

24 Q And you testified earlier that you went to Ashley
25 Shores to talk to Deshawn Gathers and confront Project if

1 could find him; right?

2 A Yeah, like too.

3 Q And you guys were basically looking for retribution
4 or to have sort of a showdown about Project coming and
5 shooting up your house?

6 A No.

7 Q You testified that you're better friends with Gary
8 Grant than D'el Grant; that's correct right?

9 A Yeah, I just know him better than his brother.

10 Q You and Gary fled the scene of the murders together;
11 didn't you?

12 A Yeah.

13 Q And y'all hold up in the hotel at the Evergreen hotel
14 on Highway 17; correct?

15 A Yeah.

16 MS. FANNING: Beg the Court's indulgence.

17 THE COURT: Yes, ma'am.

18 MS. FANNING: Thank you.

19 BY MS. FANNING:

20 Q Do you remember after you were arrested at the
21 Evergreen hotel you gave a statement to law enforcement
22 about the events that occurred at Ashley Shores?

23 A Yeah.

24 Q Do you remember telling the police that there were a
25 lot people in Deshawn's house over at Ashley Shores and

1 you did not go in?

2 A Yeah.

3 Q And do you remember telling them about two minutes
4 after you got there Evil and L.D., which is Cederious
5 Nelson pulled up in a green Oldsmobile Eighty Eight with
6 tinted windows. And they got out of the car and they
7 started arguing with everybody. They were arguing with
8 you, weren't they?

9 A No.

10 Q And they were arguing with Gary Grant; weren't they?

11 A No.

12 Q Gary Grant was angry about being shot in the head;
13 wasn't he?

14 A Yeah.

15 Q And you were angry about Project and his associates
16 coming and shooting in front of your aunt's house at your
17 relatives; weren't you?

18 A No.

19 Q That didn't bother you?

20 A No, cause I knew he wasn't shooting at me.

21 Q You testified earlier you didn't know who he was
22 shooting at?

23 A He wasn't shooting at me though.

24 Q Well, you're the one who assaulted his cousin; right?

25 A Yeah, but he ain't like Gary though.

1 Q He ended up hitting Gary that's true; isn't it?

2 A Yeah.

3 Q Because you ran; right?

4 A Yeah.

5 Q Do you remember telling the police when you wrote
6 your statement that first you saw Cederious Nelson get
7 shot in the neck or the head. And then you started
8 running and you turned around and you saw Evil fall to the
9 ground. And then you ran towards Woodlawn, got in a cab
10 and fled the scene of the murders; that's what happened?

11 A Yeah.

12 Q So if you testified today that you actually saw D'el
13 shoot Evil, that's not actually what you told the police
14 right the after murders; is it?

15 A Man he shoot them boys.

16 Q I think my question was about what you told law
17 enforcement immediately after the homicides. You told law
18 enforcement you saw D'el shoot L.D. or Cederious and you
19 saw -- you ran, fled. And then you turned around and you
20 saw Evil fall to the ground, that's the version of the
21 incident you gave right after law enforcement; isn't it?

22 A Yeah.

23 Q Okay. So you today deny burglarizing Project's
24 house?

25 A Yeah.

1 Q And you deny having a gun on you at the time of these
2 murders?

3 A Yeah.

4 Q You deny going to Ashley Shores to have a
5 confrontation with Project and his associates who had shot
6 up your aunt's house and shot at you and your relatives in
7 front of that house?

8 A Yeah.

9 Q You deny being angry about the fact that Project came
10 and shot at you?

11 A Yeah.

12 Q You deny that Gary was angry about the fact that he
13 got shot in the head?

14 A I ain't know how he was feeling.

15 Q At the Evergreen hotel, do you remember the police
16 processing it for evidence?

17 A What?

18 Q After when you guys were arrested, do you remember
19 the police processing the room that y'all were pulled out
20 of and arrested from?

21 A I don't know.

22 Q Okay. Do you know if there was a white T-shirt on
23 the dresser at the Evergreen hotel covered in blood?

24 A I don't know.

25 MS. FANNING: Can I get this marked Defendant's 1

1 marked for identification.

2 (WHEREUPON, Defendant's Exhibit No. 1 was marked for
3 identification only.)

4 Q Mr. Porcher, I'm going to hand you what's been marked
5 for ID as Defendant's 1. This is a photograph taken by
6 crime scene at the Evergreen hotel where you and Gary was
7 arrested and charged with these murders. Does that look
8 like the table that was in the Evergreen?

9 A Yeah.

10 Q And was that your bloody T-shirt on the desk?

11 A No.

12 Q Is it Gary's?

13 A Yeah.

14 MS. FANNING: Can you marked this as Defendant's 2
15 for identification.

16 (WHEREUPON, Defendant's Exhibit No. 2 was marked for
17 identification only.)

18 BY MS. FANNING:

19 Q Mr. Porcher, this is Defendant's 2 for ID only. Does
20 that look like the back of a desk or dresser at the
21 Evergreen hotel?

22 A Yeah.

23 Q And is that the black gun that you or Gary had on
24 your person and attempted to hide or conceal behind that
25 piece of furniture?

1 A I ain't hide it.

2 Q Okay. It's not your gun?

3 A No.

4 Q Is that the gun that was hidden in the hotel room
5 that you and Gary Grant were taken out of?

6 A Yeah.

7 Q Is that a yes?

8 A Yeah.

9 Q Okay. Thank you.

10 THE COURT: The court reporter need those.

11 MS. FANNING: Oh, I'm sorry.

12 BY MS. FANNING:

13 Q D'el Grant was not at the house on Woodlawn; was he?

14 A No.

15 Q He was not part of the earlier events surrounding or
16 the caused you and Gary Grant to go to Ashley Shores
17 looking for Project and his associates, was he?

18 A No.

19 Q Do you know where he was?

20 A No.

21 Q And you never saw him leave the Deshawn Gathers
22 resident; did you?

23 A How you mean leave his residence?

24 Q You testified you didn't see them come out?

25 A I mean, he had to come out the house if he run from

1 behind me and shoot him in the back of his head.

2 Q Where were you?

3 A Standing right there with my back towards Deshawn
4 Gathers' house.

5 Q And you were standing right with the two victim's;
6 weren't you?

7 A No, I been talking to my aunt.

8 Q Isn't it true that you and Gary Grant and Cederious
9 Nelson and Robert Bryant was standing right in a tight
10 little circle arguing at the time that the shootings
11 occurred?

12 A No.

13 Q So you were -- your testimony today is that you were
14 what is this ten, 15 feet away?

15 A I don't know how many feet, but I ain't by him.

16 Q And you had your back to the victims talking to your
17 aunt.

18 A I ain't see the victims. I had my back toward
19 Deshawn Gathers' house.

20 Q Okay. Were you facing the victims or were you facing
21 the road that runs between the two apartment buildings?

22 A My body been pointing side ways to them explaining to
23 my aunt what happened at her house.

24 Q Okay. And where was the green Oldsmobile Eighty
25 Eight?

- 1 A Right there in the little parking lot.
- 2 Q Right there between you and the victims?
- 3 A No.
- 4 Q Where was the red Suburban?
- 5 A Right there.
- 6 Q Right there between you and the victims.
- 7 A No.
- 8 Q Where was the white Mazda?
- 9 A Right there by the red Suburban.
- 10 Q Okay. So between you and the victims was a green
- 11 Eighty Eight and a red Suburban and a white Mazda?
- 12 A No.
- 13 Q Okay. Where did the victims park their green
- 14 Oldsmobile?
- 15 A Pointed towards Deshawn Gathers' house.
- 16 Q Okay. And one got out on one side and one got out on
- 17 the other?
- 18 A Yeah.
- 19 Q And then they walked over towards what the further
- 20 side of the car more in the alley; correct?
- 21 A What you mean alley?
- 22 Q The sort of parking area behind the building between
- 23 the building and the ditch?
- 24 A He walk by sister house.
- 25 Q The bodies were located right outside his sister's

1 back door?

2 A Yeah.

3 Q Weren't they located several feet away one towards
4 the ditch in that little parking area?

5 A I don't know.

6 Q You don't remember where the bodies were located?

7 A No.

8 Q And you don't remember where the cars were located?

9 A I remember where the cars been located.

10 Q You came to court today to testify that D'el Grant
11 shoot these two men?

12 A Yeah.

13 Q In accordance with your deal with the State?

14 A No.

15 Q Okay. You have a deal with State?

16 A No.

17 Q You signed a proffer agreement. It's in evidence;
18 right?

19 A Yeah, I sign a proffer agreement.

20 Q And you have five charges, serious charges pending in
21 Charleston County Solicitor's office; right?

22 A Right.

23 MS. FANNING: I don't have anything else.

24 THE COURT: Redirect?

25 MR. WETMORE: Thank you, Judge.

REDIRECT EXAMINATION

1
2 BY MR. WETMORE:

3 Q Mr. Porcher, Ms. Fanning has asked you about several
4 pieces of evidence that were found at the Evergreen motel
5 where you and Gary Grant were found; right?

6 A Yeah.

7 Q First thing she asked you about was the gun. Is that
8 your gun?

9 A No, sir.

10 Q Is that gun Gary Grant's gun?

11 A Yes, sir.

12 Q Was that gun that was Gary Grant's is not the one
13 used in the murders at Ashley Shores?

14 A No, sir.

15 MS. FANNING: Objection, Your Honor, that's beyond
16 his knowledge.

17 A No, sir.

18 THE COURT: Wait just a moment. What's the
19 objection?

20 MS. FANNING: Well, he asked him for a conclusion if
21 that gun was or was not the gun used in the shooting. I
22 don't think he has the expertise or the ability to know
23 that.

24 THE COURT: All right. Rephrase the question and if
25 you can get the same answer, but you can rephrase the

1 question.

2 BY MR. WETMORE:

3 Q Did you see the gun that the defendant, D'el Grant,
4 had when he shoot the victims?

5 A Yes, sir.

6 Q Did you see the gun that Gary Grant had in the motel
7 with you?

8 A Yes, sir.

9 Q These two guns the same guns?

10 A No, sir.

11 Q Say yes or no?

12 A No, sir.

13 Q Because Gary Grant is not the one that shot those
14 victims; is it?

15 A No, sir.

16 Q Ms. Fanning also asked you about another piece of
17 evidence at the Evergreen hotel about a white T-shirt. Is
18 that Gary's white T-shirt?

19 A Yes, sir.

20 Q You remember if it had blood on it?

21 A Yes, sir.

22 Q Why did Gary Grant's T-shirt have blood on it?

23 MS. FANNING: Your Honor, I object ---

24 THE COURT: Wait wait.

25 MS. FANNING: He has no way of knowing why that shirt

1 had blood on it.

2 THE COURT: Rephrase it to see if he has any
3 background that would give him the personal knowledge that
4 he could testify to that fact.

5 MR. WETMORE: Yes, sir, Your Honor.

6 BY MR. WETMORE:

7 Q That white T-shirt that was found you say it was Gary
8 Grant's T-shirt; right?

9 A Yes, sir.

10 Q Do you have any idea why it had blood on it?

11 A Well, he had the shirt on his head cause his head was
12 bleeding and he was using the shirt to soak the blood up.

13 Q So his head was bleeding from the shooting over on
14 Woodlawn; is that what you're talking about?

15 A Yeah, he get grazed.

16 Q Gary Grant got grazed. Was he using his shirt to
17 stop the blood from his head?

18 A Yes, sir.

19 Q That's that white T-shirt that was found with you
20 guys?

21 A Yes, sir.

22 Q That's Gary's T-shirt?

23 A Yes, sir.

24 Q That he used to stop wound?

25 A Yes, sir.

1 Q You've already told us that you know Gary Grant, the
2 big brother. You've known him for a little bit longer
3 probably known a little better; is that right?

4 A Yes, sir.

5 Q Are you at all covering for Gary?

6 A No, sir.

7 Q Are you lying or covering for Gary?

8 A No, sir.

9 Q Ms. Fanning asked you also about vary incidents of
10 the shooting what you saw, and when you turned around, and
11 when you looked back. Did you see both victims shot?

12 A Yes, sir.

13 Q Were you able to see who shot them?

14 A Yes, sir.

15 Q Who was it?

16 A D'el

17 Q The defendant; is that right?

18 A Yes, sir.

19 Q Ms. Fanning asked you again about our agreement our
20 proffer agreement. You are aware that there's no promises
21 involved in that proffer agreement?

22 A Yes, sir.

23 Q You are aware that you have pending charges. You're
24 testifying today with no promises whatsoever?

25 A Yes, sir.

1 Q No threats whatsoever?

2 A No, sir.

3 Q You're here to tell the truth; is that right?

4 A Yes, sir.

5 Q Is that what you done?

6 A Yes, sir.

7 MR. WETMORE: Thank you.

8 THE COURT: Redirect, Ms. Fanning.

9 MS. FANNING: I don't have anything. Thank you, Your
10 Honor.

11 THE COURT: All right. Thank you, sir. You may step
12 down. You are excused.

13 (WHEREUPON, the witness leaves the witness stand.)

14 THE COURT: All right, sir.

15 MR. MCKOY: The State calls Jerry Jellico.

16 THE CLERK: Place your left hand on the Bible and
17 raise your right hand. You swear or affirm to tell the
18 truth, the whole truth, and nothing but the truth so help
19 you God?

20 MR. JELLICO: I do.

21 THE CLERK: Please be seated. If you would, sir,
22 please state your full name to the Court and spell your
23 last?

24 MR. JELLICO: Jerry Jellico. J-E-L-L-I-C-O.

25 WHEREUPON,

1 Jerry Jellico,
2 after first having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. MCKOY:

5 Q Where you currently employed?

6 A The North Charleston police department.

7 Q And how long have you been with North Charleston
8 police department?

9 A I been in law enforcement 21 years and with North
10 Charleston like 10 or 11.

11 Q Hard to remember?

12 A Yeah.

13 Q What are your current duties with North Charleston
14 police department?

15 A I'm a detective sergeant within the detective
16 bureau.

17 Q How long have been a detective sergeant with
18 detective bureau?

19 A This second time back a year and a half or so.

20 Q Were you employed as a detective with North
21 Charleston police department on 2-24-05?

22 A No, sir.

23 Q What were your duties that day?

24 A I was a supervisor with the southern end of the city
25 in uniform patrol.

1 Q You recall an incident on that date that brings you
2 to court today?

3 A Yes, I do.

4 Q And what was that incident?

5 A On the exact date, I was around the area of Cosgrove
6 and the north bridge. And when I heard an officer get
7 dispatch to a call with shots fired in Ashley Shore
8 subdivision. So since I was close I said I would drive to
9 the call. So I went to the call which is Ashley Shores
10 which is located in the City of North Charleston within
11 Charleston County.

12 Q And where were you again when this call went out?

13 A Right there at the north bridge at Cosgrove and
14 Azalea Drive.

15 Q And how long did it take you to respond to Ashley
16 Shores.

17 A A minute.

18 Q And what was your initial reason for responding to
19 Ashley Shores?

20 A Because of dispatch put out a call to shoots fired.

21 Q Did you know about a homicide at that time?

22 A No.

23 Q When you pulled up to Ashley Shores, what did you
24 observe?

25 A When I pulled up to the first set of buildings was

1 nearest to the grave yard, I pull between the building and
2 to my left there was two people laying on the ground look
3 like they were sunbathing right beside each other.

4 Q There were two bodies that were lying beside each
5 other?

6 A That's correct.

7 Q When you arrived on a scene and there is a shooting
8 and you see two people lying on the ground, what is your
9 initial thought?

10 A I got out to see if I needed to render aid or what I
11 needed to do.

12 Q Where you the first officer on the scene?

13 A I was the very first officer.

14 Q Were there other people around the area that were out
15 and about near the apartment complex?

16 A There could have been other people in the apartment
17 complex, but I didn't see anybody in the vicinity of the
18 bodies. I got out immediately went to the bodies and then
19 observed there was a large amount blood. One body his
20 head was moving and one body was obviously deceased.

21 Q At this point in time as the first officer on the
22 scene, what is your duty?

23 A What I did is another officer arrived at that time.
24 I said put a crime scene tape up and let's secure the
25 scene. So to protect it from any evidentiary value --

1 anything of evidentiary value could be within that area.
2 We stop anybody from coming into that area and have a
3 crime scene tape put up.

4 Q Could you explain to the jury what the importance of
5 establishing a crime scene is?

6 A What you do is you establish a perimeter around the
7 area of the crime so that anything that's in the crime
8 that's with -- that is of evidentiary value was preserved
9 to protect it. You keep it from being contaminated. You
10 do not want people walking through it. You want the scene
11 as if it's undisturbed until the forensic unit gets there.

12 Q Were you able to observe anything on the scene just
13 from your initial observations of any type of evidence?

14 A There were shell casings around the body.

15 Q I'm going to show you what's already been placed into
16 evidence as State's Exhibit Number 5? You recognize this
17 photo?

18 A Yes.

19 Q And what is that a photo of?

20 A Side of the apartment complex, that's my cruiser
21 right there to the left.

22 Q And what is this yellow tape that's around the
23 apartment complex?

24 A That's the crime scene tape that was placed around my
25 vehicle and all the way around.

1 Q Do you know what these signs would be that are on the
2 ground?

3 A Talking about the placards.

4 Q And what are placards used to do?

5 A Placards are used to identify pieces of items that
6 may be evidence in a crime.

7 Q I'm going to show you what has been marked and
8 already into evidence as State's Exhibit Number 15. Do
9 you recognize this picture?

10 A Yes.

11 Q And what is this a picture of?

12 A This is the area right where the yellow tarp looks
13 yellow from here where the bodies would have been and this
14 is behind the apartments.

15 Q And this is once all the officers had arrived?

16 A That's correct.

17 Q As the first officer on the scene, is it your
18 responsibility to call other officers or EMS technicians?

19 A That's correct.

20 Q And did you place those calls?

21 A Yes, I did.

22 Q And I'm going to show you what has been marked as and
23 already into evidence as State's Exhibit 14. And can you
24 tell me what this is a picture of?

25 A It's the same scene with the bodies and the firemen

1 and my car right here.

2 Q And where is the apartment complex in relation to
3 what we're seeing right now?

4 A To this left right where this car on this side right
5 here.

6 Q And where is Azalea in relation to where we are right
7 now?

8 A Right on the other side of that.

9 Q Other side of the apartment?

10 A Right. My car behind my car is Azalea.

11 Q In observing the victims once you arrived on the
12 scene, did you notice that they had wounds to them at all?

13 A I just noticed a large amount of blood.

14 Q You didn't get close enough to them to see exactly
15 what was going on?

16 A I was right there. And at the same time we were
17 putting tape up, people were starting to gather at the
18 scene. So my focus was then to keep anybody from entering
19 a scene.

20 Q And you placed a call to EMS?

21 A Well, the dispatch had already notified EMS. I just
22 said it was okay to come in. And I notified the detective
23 division had them respond and just made notifications in
24 general.

25 Q And how long did you stay on the scene?

1 A Probably an hour, hour and a half.

2 MR. MCKOY: Please answer any questions Ms. Fanning
3 may have for you.

4 THE COURT: Cross-examination, Ms. Fanning.

5 CROSS-EXAMINATION

6 MS. FANNING:

7 Q Detective Jellico, I'm Meg Fanning and I represent
8 D'el Grant. And you had quite a struggle on your hands
9 keeping all those folks at the crime scene; didn't you?

10 A The actual scene?

11 Q Uh-huh.

12 A At the beginning, yes.

13 Q And some people were arrested trying to get into the
14 crime scene; weren't they?

15 A That's correct.

16 Q At least one person. And people were pushing and
17 trying to get into the scene. Some people actual did;
18 didn't they?

19 A No, ma'am.

20 Q When you got to the scene, did you see a green
21 Oldsmobile Eighty Eight?

22 A You talking about the one that was in the picture?

23 Q Yes.

24 A Yes.

25 Q Where was it?

1 A Right where it was.

2 Q I'm sorry was that a blue Oldsmobile or a green one?

3 A I don't know. See you asking about the car that was
4 in the picture is what I'm asking.

5 THE COURT: The photographs the court reporter has
6 them.

7 Q Are those all the cars that were in the vicinity of
8 the decedents when you got there?

9 A As far as I can recall. I can only go by the
10 photographs.

11 Q Right. And this car you would agree with me is blue?

12 A I can't even see that. I can barely see the
13 photograph.

14 Q If I hand you the original, I agree the colors are
15 distorted. Appears to be ---

16 A Light blue. It appears to be light blue.

17 Q Okay. So not a green Oldsmobile?

18 A Right.

19 Q And there was no green Oldsmobile in the vicinity by
20 time you got there; right?

21 A Not that I'm aware of.

22 MS. FANNING: Thank you, Detective. I don't have
23 anything else.

24 THE COURT: Redirect, Mr. McKoy?

25 MR. MCKOY: Briefly, Your Honor.

REDIRECT EXAMINATION

1
2 BY MR. MCKOY:

3 Q Ms. Fanning just spoke to you about how there were
4 people that were arrested on the scene. Was the initial
5 crime scene tampered with at all to your knowledge?

6 A No. What happened was when we arrived, we initially
7 roped it up off. And the people started coming out of
8 buildings and all and I started calling for assistance.
9 So I got all of Charleston County, all of the evening
10 shift North Charleston police officers, the city of police
11 -- from downtown to come help us maintain the people in
12 the apartment complex, but nobody made into the actual
13 crime scene where the bodies were.

14 Q There were several officers and several agencies that
15 were called?

16 A There was probably close 100 policemen to control the
17 scene.

18 Q But you're saying the original crime scene that was
19 roped off was not tampered?

20 A Right, because we were lucky because there was a pond
21 to our left if you look at the pictures. And we were able
22 to push the people back into apartment complex. So nobody
23 got towards the scene. And on the other side, we shut
24 Azalea down on both sides, so there was numerous people
25 within that facility that you say arrested were tased,

1 drug out was, yes.

2 MR. MCKOY: Thank you, Your Honor. Thank you,
3 Detective. No further questions.

4 THE COURT: Recross.

5 CROSS-EXAMINATION

6 BY MS. FANNING:

7 Q Detective Jellico, for some period of time, the crime
8 was completely unattended while you were responding;
9 correct?

10 A I guess right when the shots were fired and the
11 person was -- the people were shoot. And when it was
12 dispatch from my time of being dispatched to my time of
13 arriving, nobody would have been there. But when I was
14 there, I stayed there the whole time until I was relieved.

15 Q And for a time you were the only person there until
16 all the 100 police officers arrived to assist you; right?

17 A It was pretty quick.

18 MS. FANNING: Thank you. I don't have anything else.

19 THE COURT: All right. Thank you, Officer. You may
20 step down.

21 (WHEREUPON, the witness leave the witness stand.)

22 THE COURT: All right, ladies and gentlemen you been
23 in the courtroom now for a little over an hour. We been
24 in the courtroom -- court personnel has been here for an
25 hour and a half or so. And I think it's appropriate that

1 we take our mid-morning break at this time. And we are
2 going to do that. I'm going to allow you to go to your
3 jury room relax for a few minutes. Do not discuss the
4 case among yourselves. Of course, it's still premature
5 for you to begin any discussion about the case. You can
6 talk about anything you want to, but don't talk about this
7 case. And we'll send for you in about 10 or 15 minutes
8 and we'll be ready to go forward. Thank you. You may go
9 with the bailiff.

10 (WHEREUPON, the jury retired to the jury room.)

11 THE COURT: All right. For the record, I want the
12 State that in addition to the rulings that I put on the
13 record earlier with regard -- now, wait just a minute.
14 I'm just clarifying the matter with regard to exhibit 16
15 and 17. And I want to make sure that the record reflects
16 what the actual situation is.

17 Exhibit number 17 is the color photograph and it has
18 been excluded. Exhibit number 16 is the black and white
19 photograph and it was the one that was admitted. So that
20 there be no question about it when referring to these
21 matters and so that the record will be complete. Also as
22 a conditional part of my ruling after hearing the
23 testimony of this witness, it appears that exhibit number
24 16 does corroborate the testimony of this witness who is
25 just testified regarding the finding of two bodies on the

1 ground next to each other and the shell casing around the
2 bodies and would be additional support for the admission
3 of the photograph to corroborate the officer's testimony.
4 All right. We'll take a recess now and be ready to start
5 back -- is there anything before we recess from the State?

6 MR. WETMORE: Nothing from the State, Your Honor.

7 THE COURT: Ms. Fanning.

8 MS. FANNING: Your Honor, I would. I forgot to ask
9 you this morning it didn't occur to me until after the
10 first witness came in. When the jury comes back, there
11 was coverage of this case on television last night, also
12 in the newspaper this morning. I have not seen the
13 newspaper article. I did catch a tiny bit of the TV this
14 morning. I know there was more last night. I'm just
15 asking the Court to inquire of this jury whether or not
16 they saw or ---

17 THE COURT: I meant to do that too and I'll do it
18 when they come back in. I fail to do that this morning.
19 I will ask them that even though they were warned about
20 that yesterday. But I meant to ask them that, but when
21 they came in even and I forgot to do so. But I will do so
22 when they come back in. All right. It's about five 'til.
23 Let's plan to be ready to start back at ten after. Thank
24 you.

25 (WHEREUPON, a break was taken.)

1 THE COURT: All right. Anything before we bring the
2 jury in, Mr. McKoy?

3 MR. MCKOY: No, sir, Your Honor.

4 THE COURT: All right, Ms. Fanning.

5 MS. FANNING: Other than that matter we discussed
6 before we broke, Your Honor, about the jury and the media.

7 THE COURT: Oh, yeah. Okay, sure.

8 MS. FANNING: I have nothing else.

9 THE COURT: All right. Bring the jury in please.

10 (WHEREUPON, the jury returned to the courtroom.)

11 THE COURT: All right. Thank you very much. Thank
12 you, ladies and gentlemen. And I do want to ask you
13 something this morning. I meant to ask you this before we
14 got started this morning and got busy with some other
15 things and neglected to do so. But I do need to ask you
16 that if over the evening recess if anyone had any contact
17 with any news media or had read any news stories or heard
18 any television broadcast about this case or had any
19 exposure to any media broadcast or written reports about
20 this case I would need to know about that now. And it
21 appears that -- all right. Come up please, ma'am.
22 Counsel.

23 JUROR: I told the foreman that last night that
24 channel 2 had cut in all night and for those not familiar
25 with what that means is that during the evening in the

1 middle of a show, they would cut in for five or ten
2 seconds and show the footage that was taken in here. And
3 that happened -- I didn't matter what you were watching,
4 you know, flipping channels anything else. I manage see
5 that so...

6 THE COURT: I appreciate that. Let me ask you was
7 there anything about any of that that you saw that would
8 in anyway influence what your decision would be in this
9 case?

10 JUROR: No, they were really just kind of announcing
11 that the trial was starting and showed his face. The same
12 footage that, you know, over and over again.

13 THE COURT: Did that have any influence on you
14 whatsoever?

15 JUROR: Not really, but I was just trying to be
16 straight about it.

17 THE COURT: Well, I want you to, that's why I want
18 you to tell us. And I appreciate you coming down. Okay.
19 Thank you very much.

20 JUROR: I'm 166. I'm Ms. Myra Marshall.

21 THE COURT: Okay. Thank you, Ms. Marshall.

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

25 THE COURT: Counsel, stay up here for just a moment.

1 That juror number 166 she is an alternate. I don't think
2 there's any reason that we would have to exclude her based
3 on that. Do you see any probable with it?

4 MS. FANNING: Considering she's an alternate, I have
5 no problem with her.

6 THE COURT: Even if she were to come on the jury,
7 what would be your position cause if someone were to get
8 sick the alternate drawn at random and would the one that
9 would be so she could become a juror.

10 MS. FANNING: Then I would ask that she be remove. I
11 don't want her to have an impression about his guilt based
12 on television footage. She said she really -- but she
13 wasn't real strong about it.

14 THE COURT: I disagree with that. She indicated it
15 would not have any influence. We'll discuss it later, but
16 I'm disagreeing with that. The other thing I am going to
17 do however is if the television station come back they
18 going to be limited to broadcast during the regular news
19 shows during the course of the evening broadcasts. I
20 didn't know they did that. And I didn't catch it either
21 that is one thing I will restrict them seeing television
22 news.

23 MS. FANNING: It is so hard for the jury to avoid.

24 (WHEREUPON, the end of the bench conference was held
25 in the presence of the jury, but out of the hearing

1 of the jury.)

2 THE COURT: All right, having taken care of that
3 matter, we are ready to go forward. All right, Solicitor
4 you may call your next witness.

5 MR. WETMORE: The State calls Detective Kelly Spears.

6 THE CLERK: If you would please place your left hand
7 on the Bible and raise your right hand. Do you swear or
8 affirm to tell the truth, the whole truth, and nothing but
9 the truth so help you God?

10 MS. SPEARS: I do.

11 THE CLERK: Please be seated. Please state your full
12 name to the court and spell your last?

13 MS. SPEARS: Kelly A. Spears. S-P-E-A-R-S.

14 WHEREUPON,

15 Kelly Spears,
16 after first having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. WETMORE:

19 Q Detective Spears, how long have you been with the
20 North Charleston police department?

21 A Approximately 14 years.

22 Q So over 14 years I'm sure you've received some
23 experiences and trainings that help you do your job?

24 A Yes, sir.

25 Q Can you describe briefly for the Court?

1 A I have gone to South Carolina criminal justice
2 academy. I've attended investigation classes, detective
3 level classes at the academy, interviews and
4 interrogations.

5 Q Presently, what are your duties, your
6 responsibilities with North Charleston police department?

7 A I'm a sergeant assign to special operations division.

8 Q Back in when this happened back in February of 2005,
9 what were your duties and responsibilities?

10 A I was assign to the persons crimes unit and detective
11 division of the North Charleston police department.

12 Q What is the persons crime unit do?

13 A We investigate crimes against persons armed
14 robberies, homicides.

15 Q Okay. And is part of doing your job February 24th of
16 2005, did you respond to Ashley Shores for this double
17 murder that we're here talking about?

18 A Yes, I did.

19 Q How did you draw that assignment?

20 A Being one of the detectives on scene, they rotate
21 assignments. And I was told by the supervisor that I
22 would be the lead detective on the case.

23 Q Were you on the scene very quickly after this
24 happened?

25 A Yes.

1 Q When you arrived was the actual crime scene where the
2 bodies were laying was that secured?

3 A Yes, crime scene was already established.

4 Q I know there might be other people in the area, but
5 where the two victims were laying is that area secure?

6 A Yes.

7 Q Now, when you got there and you were assigned this
8 case, at that point did you kind of takeover as the lead
9 detective as the case agent?

10 A Well, not immediately. We separating witnesses and
11 trying to determine exactly what was happening and the
12 that point that all of the investigators were there and
13 the supervisor assigned me as the lead detective.

14 Q At that point, you took over as case agent as we call
15 lead detective?

16 A Yes.

17 Q Now, did -- when you were there the rest of police
18 department was there, did you become aware that the
19 victim, Cederious Nelson, one of the victims, Cederious
20 Nelson had a 14 year old sister who witnessed these
21 murders?

22 A Yes, I did.

23 Q She witnessed her -- one of her big brothers get
24 shot?

25 A Yes.

1 Q Did you or the police department have any contact
2 with her?

3 A Yes, I did.

4 Q And you did?

5 A Yes.

6 Q Tell me exactly what your contact was?

7 A Being that the family members were there and they
8 were distraught, they were inside the first apartment.
9 And I was directed to go in and see if I could provide
10 some type of comfort. At that time being a female and
11 that there were females in the area. And that they were
12 upset and we were waiting for the chaplains to get on the
13 scene to console the family members, that's how I made
14 contact with her.

15 Q You made contact with this 14 year old?

16 A Yes.

17 Q Sister?

18 A Yes.

19 Q You recall what her name was?

20 A Resheema Witfield.

21 Q And after meeting with her and speaking to her and
22 consoling her whatever it is that you did, did you develop
23 the defendant, D'el Grant, as the primary suspect?

24 A She stated there in utterance and everything that it
25 was Gary Grant was there and that D'el was there, but we

1 weren't sure who D'el was at that time. We didn't know if
2 D'el was a street name or if it was D'el Jvon Grant.

3 Q Were you able to develop this defendant as a suspect?

4 A Yes.

5 Q Was he your primary suspect or secondary suspect?

6 A At the time, we had numerous suspects, that's why we
7 had charged additional.

8 Q After talking to her, he was one wanted?

9 A Yes.

10 Q Now, there's been some mention of a red truck, a
11 Suburban. Did you notice that type of vehicle present at
12 Ashley Shores?

13 A I was informed over the radio that the Suburban was
14 parked in the back part of Ashley Shores and they had been
15 seen earlier up near the area when the incident had
16 happened.

17 Q Did the police department at that time take a look at
18 where that vehicle was registered to, what address in
19 connection to that vehicle?

20 A Yes.

21 Q Was it connected to an address on Woodlawn?

22 A Yes, it was.

23 Q Was it the very same address on Woodlawn or your
24 agency weren't y'all had been called out for an earlier
25 shooting?

1 A Yes, it was.

2 Q At that point, did you start to think maybe that big
3 red Suburban was linked also to this earlier shooting on
4 Woodlawn?

5 A Yes.

6 MS. FANNING: Your Honor, I'm going to object to the
7 leading question.

8 THE COURT: All right. Let's don't lead her please,
9 Mr. Wetmore.

10 BY MR. WETMORE:

11 Q What conclusions did you draw from your investigation
12 of the vehicle and your knowledge of what North Charleston
13 was doing that day?

14 A Well, we had initial information that the red
15 Suburban was there in the area during the shootings. And
16 the red Suburban was parked at the backside of Ashley
17 Shores. So -- and that it came back to the address on
18 Woodlawn that the incidents were all tied together.

19 Q So did you believe there to be some connection to the
20 shooting on Woodlawn and the shooting at Ashley Shores?

21 A Yes.

22 Q Did you take a second look or did North Charleston
23 take a second look at the shooting at Ashely Shores at
24 that point?

25 A Yes.

1 Q And taking that second look, did you further develop
2 this defendant as a primary suspect?

3 A Yes, we did.

4 Q Now, right next door to where these murders took
5 place at Ashley Shores, who lived right there next door?

6 A Deshawn Gathers.

7 Q Okay. Did you investigate him at his apartment which
8 was right there next to scene?

9 A Yes, we did.

10 Q That investigation continued to point in the
11 direction of this defendant, D'el Grant?

12 A Yes, it did.

13 Q Did you make any effort to go to this defendant's
14 house, the defendant's family house -- mama's house trying
15 to find him?

16 A To his mother's house, yes, we did.

17 Q And did you talk to his mother, speak to his mother
18 at all?

19 A Yes, we did.

20 MS. FANNING: Your Honor, object to hearsay
21 testimony.

22 THE COURT: All right. So far there has not been any
23 hearsay, but I will take care of that if one comes. Go
24 ahead, Solicitor.

25

1 BY MR. WETMORE:

2 Q Did you investigate the case with D'el's mother?

3 A Yes.

4 Q Did you investigate your case using phone records
5 from that house?

6 A Yes, we did.

7 Q Using phone records were you able to track down Gary
8 Grant, the big brother?

9 MS. FANNING: Your Honor, I object to this on the
10 grounds of it lacks improper foundation.

11 THE COURT: All right. You're asking for a
12 conclusion. As her what she did as far as the phone
13 records are concerned.

14 BY MR. WETMORE:

15 Q Where did the phone records lead you to help you in
16 your investigation?

17 A We determined that there had been a telephone call
18 from the Evergreen hotel in West Ashley, so we then
19 proceeded to the Evergreen hotel.

20 Q Telephone call from the Evergreen hotel to where?

21 A To the mother's residence, Ms. Grant. I believe her
22 last name is still Grant.

23 Q This would be the mother of the defendant, D'el
24 Grant, and mother of big brother, Gary Grant?

25 A Yes.

1 Q So your attention was directed towards the Evergreen
2 hotel in West Ashley?

3 A Yes.

4 Q Who did you find there?

5 A We found Gary Grant, Cordero Porcher and Gary Grant's
6 girlfriend.

7 Q Did these individuals continue to point you in the
8 direction of D'el Grant as your primary suspect?

9 A Yes, they did.

10 Q Right after that sort of chain of investigation in
11 February of 2005, tell me who did you arrest in connection
12 with this double homicide?

13 A On that day or within the 24-hour period of time, we
14 arrested Deshawn Gathers, Cordero Porcher and Gary Grant.

15 Q Anybody else?

16 A And Devant Porcher.

17 Q So you arrested Deshawn Gathers, Devant Porcher,
18 Cordero Porcher, and Gary Grant?

19 A Yes.

20 Q Based on your investigation, did you believe those
21 individuals to be the shooters of the victims?

22 A No.

23 Q Based on your investigation and what you had done and
24 what your agency had done, who did you believe to be the
25 shooter?

1 MS. FANNING: Your Honor, I would object this calls
2 for a conclusion and invades the province of the jury.

3 THE COURT: All right. I'll be glad to hear from you
4 if you think that's admissible, Mr. Wetmore.

5 MR. WETMORE: Judge, she is offering her opinion
6 based on her investigation and her perception and ---

7 THE COURT: No, I'm not going to allow her to give
8 her opinion. She can give it as a result of what she did
9 as a result of her investigation, but not what her opinion
10 is.

11 MR. WETMORE: Yes, sir.

12 BY MR. WETMORE:

13 Q Was this defendant, D'el Grant, was he arrested back
14 in February of 2005?

15 A No, he was not.

16 Q On what date was this defendant arrested?

17 A 7-24-2006.

18 Q So this event the shooting this murder happened on
19 February 24th of 2005, and you're telling me that you
20 didn't arrest this man until sometime later?

21 A Correct.

22 Q You arrested him on -- tell me again the date?

23 A 7-24-2006.

24 Q July 24 of 2006, that's 17 months to the day?

25 A Yes.

1 Q Why did you delay so long in arresting this man who
2 you already said was primary suspect?

3 A We couldn't locate him at that time.

4 Q Okay. Were actively looking for him?

5 A Yes, we utilized every aspect that we had in law
6 enforcement, contacts of citizens, crime stoppers, phone
7 banks in an attempt to locate him.

8 Q Tell me now who was involved in this hunt for the
9 defendant?

10 A We had citizens who would call in tips. We use the
11 U.S. Marshalls. We use the sheriff's department, all
12 media aspects.

13 Q What's sorts of efforts did you make to actively find
14 this defendant to arrest him?

15 A We posted flyers, wanted posters. He was entered
16 into national crime network for the warrants. There were
17 many times three, four o'clock in the morning we would
18 respond out at tips that he had been seen or that he was
19 in flight on a foot pursuit from a vehicle on traffic
20 stops.

21 Q Did you use the media at all to try and locate him?

22 A Yes, we did. It's a crime stoppers media event where
23 they post the pictures on TV. They relay facts of the
24 case offer rewards going to any information lead to his
25 arrest. We did an active phone bank on the crime stoppers

1 where the police manned phones on the television set for
2 any incoming calls.

3 Q Tell me again if you don't mind which other law
4 enforcement agencies besides your own North Charleston
5 department were actively looking for?

6 A Besides the North Charleston police department, we
7 had the City of Charleston police department, Charleston
8 County sheriff's office. We utilize the U.S. Marshall
9 service. And, of course, any information that was
10 placed out by the Marshalls it came out across the United
11 States.

12 Q So these 17 months after this double murder, were you
13 actively seeking this defendant, D'el Grant?

14 A Yes, we were.

15 Q Don't sound like it was a local effort?

16 A No, it was a national effort it really was.

17 Q Where did you finally find this defendant?

18 MS. FANNING: Objection, Your Honor, calls for
19 hearsay. It's outside the scope of her personal
20 knowledge.

21 THE COURT: Overruled.

22 Q Where did you finally locate the defendant?

23 A He had been taken into custody in Illinois,
24 Springfield, Illinois.

25 Q Based on your investigation, where is this defendant,

1 D'el Grant, where is he from? Where does he live for?

2 A Born and raised from what I understood in North
3 Charleston.

4 Q And yet you found him in Illinois?

5 A Correct.

6 Q Tell me again the city where you found him?

7 A I believe it was Springfield, Illinois and I have to
8 go back and look at the records to be...

9 Q Now, when he was located Illinois what was the
10 situation?

11 MS. FANNING: Your Honor, object this calls for
12 hearsay and it's outside the scope of her personal
13 knowledge.

14 THE COURT: Sustained.

15 Q When he was discovered in Illinois was it immediately
16 clear that we had found or you had found this defendant
17 D'el Grant?

18 MS. FANNING: Your Honor, I object it calls for
19 hearsay and it's outside the scope of her personal
20 knowledge.

21 THE COURT: All right. I think that that has already
22 been answered that he was found in Illinois and I don't
23 believe this question is necessary. Objection is
24 sustained.

25 Q When you found the defendant when he was found in

1 Illinois, did he return willingly to South Carolina?

2 MS. FANNING: Your Honor, I object to this question.

3 This is outside the ---

4 THE COURT: All right. Come up counsel.

5 (WHEREUPON, a bench conference was held in the
6 presence of the jury, but out of the hearing of the
7 jury.)

8 THE COURT: All right. The objection is sustained.

9 BY MR. WETMORE:

10 Q After the defendant was located in Illinois, was he
11 brought back and charged with this homicide -- these two
12 homicides, these two murders?

13 A After we obtained a governor's warrant for
14 extradition.

15 Q So was he brought back to this area? Was he charged
16 with anything?

17 A Yes, he was charged with two counts of murder.

18 Q Why did you charge him with two counts of murder
19 based on your investigation?

20 MS. FANNING: Your Honor, I object that calls for a
21 conclusion in terms of the evidence -- I mean, if she's
22 just going to testify to probable cause fine, but if she's
23 going to go into her conclusions about ---

24 THE COURT: She cannot testify as to conclusions or
25 opinions, but she can testify as to the probable cause

1 arising from her investigation. Rephrase the question.

2 BY MR. WETMORE:

3 Q You heard the judge. What was your probable cause
4 for arresting the defendant, D'el Grant?

5 A Because of witnesses, co-defendants who had given
6 written statements stating that he was in fact the person
7 who had pulled the trigger and caused the fatal wounds of
8 Cederious Nelson and Robert Bryant.

9 Q And he was charged with two counts of murder why is
10 that?

11 A Because the information we had obtained from
12 witnesses and co-defendants stated that he was the one who
13 fatally shot and wounded Cederious Nelson and Robert
14 Bryant.

15 Q One charge for each victim; is that correct?

16 A Correct.

17 MR. WETMORE: One moment, Your Honor. I don't have
18 anything further at this point.

19 THE COURT: Cross-examination, Ms. Fanning.

20 CROSS-EXAMINATION

21 BY MS. FANNING:

22 Q Detective Spears, my name is Meg Fanning and I don't
23 believe we've met. I know you've seen me in the courtroom
24 as well. I represent D'el Grant. You are the lead
25 investigator on this case; correct?

1 A Yes, ma'am.

2 Q And it's your decision as the lead investigator to
3 analyze physical evidence that's gathered at the various
4 scenes that were involved in the investigation of these
5 crimes and decide whether or not forensic processing is
6 required; is that correct?

7 A No, I don't analyze the evidence.

8 Q I understand you don't perform the analysis yourself
9 as a scientist, but as the lead investigator, you would
10 agree with me that it's your decision what to do with the
11 physical evidence that's processed at the crime boxed up
12 and put into evidence; correct?

13 A No, the crime investigators do that, crime scene
14 investigators. I maintain the files and the documentation
15 of the evidence that's brought in. They analyze what's
16 relevant to be sent to SLED for analysis.

17 Q So you -- in spite of the fact that you came into
18 court today with boxes of evidence, you did not look at
19 the evidence logs. You didn't look at the physical
20 evidence and you made no decisions about whether or not
21 analysis of different pieces of physical evidence would
22 assist you in your investigation?

23 A Correct. I don't do that.

24 Q Okay. So all you did was marshall the eye witnesses
25 and get statements from people who would assist you in

1 this. Did you even tell your cohorts in the detective
2 division like Elmore who to interview?

3 A Well, we interviewed witnesses.

4 Q And you interviewed several witnesses. What's the
5 total number of witnesses that were interviewed?

6 A I have to go back and count.

7 Q Well, was it more than four?

8 A Yes.

9 Q Was it more than five?

10 A I have to go back and count.

11 Q Were there a lot of people that you talk to at the
12 scene that you didn't get written statements from?

13 A Not me personally, no.

14 Q Okay. So you didn't interview anybody and you didn't
15 take any written statements?

16 A Oh, I did take written statements. I personally did,
17 but I didn't interview every person that was in the area.
18 And I didn't take written statements from every person
19 that was in the area.

20 Q And again with regard to the evidence, the physical
21 evidence in the case, you had no role in the decision
22 making process about what evidence was collected or what
23 evidence was tested?

24 A Correct. I don't have a role in that. Our crime
25 scene investigators do that.

1 Q Okay. And they would be able to answer questions
2 then about what evidence was tested and what evidence was
3 not tested?

4 A Correct.

5 Q What was collected and what was not collected?

6 A Correct.

7 Q Have you reviewed the forensic reports that have been
8 rendered in this case?

9 A I did when they were turned over to us, yes.

10 Q And after reviewing that report to your understanding
11 that both victims in this case had gunshot residue on
12 their hands?

13 A I'd have to go back and look.

14 Q Would you? Or I can hand you my copy. I'm sorry to
15 make you go through the whole thing. Testing from SLED?

16 A Yes, this is a trace evidence report from South
17 Carolina law enforcement division's laboratory unit.

18 Q And that lab tested swabs taken from the hand of both
19 decedents, Mr. Bryant and Mr. Nelson; didn't it?

20 A Yes.

21 Q And it found that the swabs of both decedents
22 contained metal residue consistent with handling or firing
23 firearms; did they?

24 A It says that there were gunshot residue on the left
25 back hand and on the left palm.

1 Q Of which and which?

2 A Robert Bryant. And that there were gunshot residue
3 on the back left hand of Cederious Nelson and both palms
4 of his hands.

5 MS. FANNING: Thank you. Detective Spears, thank you
6 for answering my questions. I turn my back and talk at
7 the same time. I don't have anything further for this
8 witness.

9 THE COURT: Redirect.

10 REDIRECT EXAMINATION

11 BY MR. WETMORE:

12 Q Detective Spears, Ms. Fanning asked you about a test
13 for gunshot residue and I know you're not an expert in
14 that. She mentioned that gunshot residue was found on the
15 person and the hands of the victims; is that correct?

16 A Correct.

17 Q Is that what you learned?

18 A Yes.

19 Q Did you or anybody in your department find any guns
20 on these victims or around these victims?

21 A No, we did not.

22 Q Did you look pretty thoroughly around for that?

23 A Yes.

24 Q Did you find any gun, any handguns during the course
25 of this investigation?

1 A Yes, we did.

2 Q What did you find?

3 A We found a semiautomatic at the Evergreen hotel when
4 we had taken Cordero Porcher and Gary Grant into custody.

5 Q So you found a handgun at the location where Gary
6 Grant and Cordero Porcher were arrested?

7 A Yes.

8 Q Okay. Was your agency able to link that gun to the
9 shooting at Ashley Shores?

10 MS. FANNING: Your Honor, I object calls for hearsay.
11 The question lacks a proper foundation as well.

12 THE COURT: All right, maybe from a foundation
13 standpoint I think, but if she can establish what was done
14 within her agency, yes, sir.

15 BY MR. WETMORE:

16 Q As lead the detective when you -- your agency found
17 this pistol at the Evergreen motel where two of the
18 suspects were, did you take a pretty hard look at that
19 pistol?

20 A Yes, we did.

21 Q What sort of tests were done from your agency?

22 A We take the firearm and it's sent to Charleston
23 County sheriff's office where they do ---

24 MS. FANNING: Your Honor, I'm going to object then.
25 This is not done within her agency and she does ---

1 THE COURT: She hadn't given any results. She's just
2 saying where it was sent and what they would normally do.
3 And she knows what the agency what they have the ability
4 to do. Then she can testify to that. Don't testify as to
5 any results until I have ruled on that issue. Go ahead,
6 sir.

7 MR. WETMORE: Your Honor, the only point I would
8 make is that this witness just engaged in that same
9 activity as shown in the report from SLED. She was simply
10 able ---

11 THE COURT: Yes, sir, but you didn't object so... Go
12 ahead, sir.

13 Q Based on what you saw, what happened with that gun?

14 A It was taken ---

15 MS. FANNING: Your Honor, I object to that open ended
16 question. I'm also going to object to -- it's going to
17 elicit a conclusion that she has not been qualified as an
18 expert.

19 THE COURT: I have already excluded any conclusion.
20 I can say that she can testify as to what her agency did
21 with that weapon. And what agency has the ability to do
22 if she knows, but I've cautioned her against testifying to
23 any conclusions at this point.

24 BY MR. WETMORE:

25 Q What were you able to do with that gun found at the

1 Evergreen motel?

2 A It was requested to be firearm tested by the
3 Charleston County sheriff's department.

4 Q Was your agency or you personally able to tie that
5 gun ---

6 MS. FANNING: Objection, Your Honor, he's asking --
7 he's back dooring in the same conclusion that I've already
8 objected to and the Court's already ruling on that.

9 THE COURT: Sustained.

10 MR. WETMORE: I don't have any further questions.

11 THE COURT: All right, redirect (sic).

12 RECROSS-EXAMINATION

13 BY MS. FANNING:

14 Q Detective Spears, was the green Oldsmobile Eighty
15 eight located at the scene anywhere when you arrived?

16 A Not when I arrived, no.

17 Q Your information from all of these co-defendants
18 assisted that a green Oldsmobile Eighty Eight was parked
19 immediately proximate to where the victims were murdered;
20 correct?

21 A That they arrived and a green Eighty Eight Olds
22 parked behind the building where the incident occurred.

23 Q And was that car ever seen at the crime scene?

24 A Not by me.

25 Q Was it ever seen in any of the photographs that were

1 taken by Detective Reynolds?

2 A Not that I'm aware of. I don't have all the photos.

3 Q Did you while you're familiar with this case before
4 coming into court to testify; right?

5 A Yes, yes.

6 Q And that Oldsmobile Eighty Eight was not looked for
7 by your agency; was it?

8 A Yes, it was actually.

9 Q Okay. You didn't document that anywhere in your case
10 file?

11 A No.

12 Q Okay. So you did ever find it?

13 A No, we did not.

14 Q Wasn't at the scene?

15 A No.

16 Q So apparently, the decedents arrived in the car and
17 it was removed -- we can draw the conclusion that it was
18 removed by somebody before law enforcement got there;
19 can't we?

20 A If it wasn't present, so they arrived in and it was
21 gone, then somebody moved it.

22 MS. FANNING: I don't have anything else. Thank you.

23 THE COURT: All right. Thank you, ma'am. You may
24 step down.

25 (WHEREUPON, witness leaves the witness stand.)

1 THE COURT: All right. You may call your next
2 witness.

3 MR. MCKOY: Thank you, Your Honor. The State calls
4 John Reynolds.

5 THE CLERK: Sir, if you would place your left hand on
6 the Bible and raise your right hand. Do you swear or
7 affirm to tell the truth, the whole truth, and nothing but
8 the truth so help you God?

9 MR. REYNOLDS: I do.

10 THE CLERK: Please be seated. Please state your full
11 name to the court.

12 MR. REYNOLDS: John Reynolds. R-E-Y-N-O-L-D-S.

13 WHEREUPON,

14 John Reynolds,
15 after first having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. MCKOY:

18 Q Good morning, Officer Reynolds.

19 A Good morning.

20 Q Where are you currently employed?

21 A I'm currently employed by the City of North
22 Charleston police department.

23 Q And how long have you been employed by the North
24 Charleston police department?

25 A Twelve years.

1 Q What are your current duties with North Charleston?

2 A Currently hold the rank of sergeant. I'm the
3 supervisor of the property crimes unit.

4 Q During the time of February of 24th of 2005, what
5 were your duties then with North Charleston?

6 A I was assign to the crime scene investigation unit as
7 a forensic investigator.

8 Q Can you explain to the jury what a crime scene
9 investigator does and what your duties are?

10 A Job duties of a crime scene investigator to respond
11 to the crime scenes, document the crime scenes through the
12 use of photography, written reports, video. We examine
13 the crime scene for items of evidentiary value. We
14 collect those items and we preserve them for further
15 investigation.

16 Q And can you also explain to the jury how important
17 crime scene investigation is?

18 A Crime scene investigation is very important. It can
19 link people to a crime scene and eliminate or develop
20 suspects or also links the victim to crimes so on and so
21 forth.

22 Q How did you happen to respond to Ashley Shores that
23 afternoon?

24 A I was working that afternoon at approximately
25 4:45 p.m. I heard there was a shooting over there at

1 Ashley Shores.

2 Q Are there several crime scene investigators with
3 North Charleston?

4 A Yes, there is.

5 Q Why were you the one that happen to respond there?

6 A I was the one on duty at the time.

7 Q When you responded to Ashley Shores, what's the first
8 thing you do as a crime scene investigator.

9 A We respond there. We make sure the crime scene is
10 secured. This happens to be use of officers on the scene,
11 also barrier tape. We make sure the crime scene is
12 secured before we start photographing.

13 Q Can you explain to the jury what a secured crime
14 scene is?

15 A We secure crime scenes depending on the crime scene
16 whether or not it's inside a residence or a business or
17 outdoors depends on how we secure it. In this instance,
18 it was an outdoor crime scene secured by the yellow crime
19 scene barrier tape and also numerous officers on the
20 scene.

21 Q When you arrived at Ashley Shores, were there already
22 officers there?

23 A Yes, there was.

24 Q Were there already EMS technicians there?

25 A Yes, there was.

1 Q Was the crime scene already roped off?

2 A Yes, it was.

3 Q What did you begin to do once you arrived there?

4 A I got my 35 millimeter camera out of my vehicle and
5 began to photograph the crime scene as we found it.

6 Q And once you began to photograph the area, did you
7 observe the two victims that were there?

8 A Yes, I did.

9 Q And where were they?

10 A They were lying behind 3749 Ashley Shores Drive
11 apartment number D approximately 20 feet from the rear of
12 the building lying on the ground.

13 Q Were they lying side by side?

14 A Yes, they were.

15 Q Did you observe any other type of evidence that was
16 inside the roped off crime scene areas?

17 A Once we began to examine the crime scene, we did
18 observe four shell casings and a projectile or a bullet
19 lying within the vicinity of the bodies.

20 Q Can you explain the difference of a projectile and a
21 shell casing to the jury please?

22 A A projectile is actually part of the shell casing
23 originally. It's the whole bullet for putting to the gun.
24 Once the trigger is pulled, the firing pin strikes the
25 primer of the shell casing which is located on the rear of

1 the bullet which ignites the gun powder. And therefore
2 firing off the bullet.

3 Q And you observed these shell casings within the
4 vicinity of this roped off crime scene?

5 A Yes, I did.

6 Q Did you observe anything else while you're inside
7 this roped off crime scene?

8 A There was a rag with red stains on it which appeared
9 to be blood, also a beer can, and a paper bag that is
10 located on a air conditioning unit.

11 Q Once you find shell casings, once you find other bits
12 of evidence at a crime scene, how do you go about marking
13 these items?

14 A We mark them with forensic markers which hold either
15 numbers or letters and also a scale on them. We take the
16 marker and put it next to the piece of evidence to show,
17 so later on we can reference back what it was and
18 photograph it with marker in place, so we can collect it
19 and reference back to that marker later on.

20 Q Do you move the pieces of evidence at all?

21 A Only when we collect them.

22 MR. MCKOY: Your Honor, may I approach the witness?

23 THE COURT: Yes.

24 MR. MCKOY: Thank you.

25

1 BY MR. MCKOY:

2 Q Officer Reynolds, you just testified that your -- the
3 first thing you did was to photograph the scene. I'm
4 going to show you what has already been placed into
5 evidence as State's Exhibits five through 16. And they
6 are out of order so I apologize for take. Could you take
7 a second look at those photos. Do you recognize those
8 photos?

9 A Yes, I do.

10 Q Have you had enough time to look at those photos?

11 A Yes, I have.

12 Q And what are those photos of?

13 A These are photographs, copies of the photographs that
14 I have taken at the crime scene and later on in the motel
15 room and also photographs of the crime scene and the motel
16 room.

17 Q These are photographs that you have taken?

18 A Yes, sir.

19 MR. MCKOY: At this moment, Your Honor, we like to
20 move five through 16 into evidence.

21 THE COURT: They are already into evidence. They've
22 already been admitted.

23 MR. MCKOY: Thank you, Your Honor.

24 BY MR. MCKOY:

25 Q I'm going to show you a couple of these photos. I'm

1 going to show you what's already placed into evidence as
2 State's Exhibit Number 5. Can you see that okay?

3 A Yes, I can.

4 Q Can you recognize what that is?

5 A Yes, I do.

6 Q And what is that?

7 A That is the crime scene behind 3749 Ashley Shores
8 Drive apartment D.

9 Q And what is this right here?

10 A That's the apartment.

11 Q That's the apartment building at Ashley Shores?

12 A That's correct.

13 Q And what is this yellow tape that's right here?

14 A That is the yellow crime scene barrier tape.

15 Q What are these different letterings on the ground
16 here?

17 A Those are the forensic markers I previously described
18 marking items of evidence.

19 Q I'm going to show you what already been marked as
20 State's Exhibit 6 and placed into evidence as State's
21 Exhibit 6. Do you recognize this?

22 A Yes, I do.

23 Q What is that?

24 A That is the nine millimeter cartridge casing
25 recovered from the scene.

1 Q Is that the casing or is that a projectile?

2 A It is a casing.

3 Q I'm going to show you what's already been placed into
4 evidence as State's Exhibit 7. Do you recognize that?

5 A Yes, I do.

6 Q And what is that?

7 A This is also a nine millimeter cartridge casing.

8 Q And I'm going to show you what's already been placed
9 into evidence as State's Exhibit 16. Can you take a look
10 at that and tell me what that is?

11 A That is a black and white copy of the original
12 photograph that I have taken of the two male subjects
13 lying deceased on the ground.

14 Q Is this how the victims were when you arrived on the
15 scene?

16 A When I arrived, yes.

17 Q Can you tell me what that is right there? That
18 lettering that placard right there?

19 A It appears to be an O or an C. I can't really tell
20 from this angle of the photograph.

21 Q And from this photograph how close in proximity were
22 the different little placards that you layed down on the
23 ground?

24 A Within ten to 15 feet.

25 Q What is this tarp that's right there?

1 A We used that to cover the bodies to preserve them
2 from the public's view.

3 Q And what is that right there on one of the victim's
4 hands?

5 A That is a brown paper bag we placed on the hands to
6 later to do a gunshot residue kit.

7 Q And are they on both hands?

8 A Yes, they are.

9 Q And what's the significance of a placing a brown
10 paper bags on the victims' hands?

11 A Later on, we do what's called a gunshot residue kit
12 where the hand's are tested and sent off to analysis of
13 gunshot residue.

14 Q Also part of your duties there, do you assist EMS at
15 all?

16 A No.

17 Q You do not. I like to also ask you were there
18 vehicles on the scene when you arrived there?

19 A Yes.

20 Q Were vehicles that were part of the investigation at
21 all?

22 A Yes.

23 THE COURT: Are you finished with this exhibit,
24 Mr. McKoy?

25 MR. MCKOY: Yes, sir, I am.

1 THE COURT: All right. Take it up please.

2 MR. MCKOY: Yes, sir.

3 BY MR. MCKOY:

4 Q As a crime scene investigator, what type of
5 investigations do you do to vehicles that you think are
6 part of this crime, what do you do with those vehicles?

7 A We process them for fingerprints. We obtain a
8 consent to search or obtain search warrants to search the
9 vehicles and also look for items of evidentiary value
10 within those vehicle.

11 Q Did you find any tire impressions that were on the
12 scene that day?

13 A Yes, we did.

14 Q Can you explain to the jury what a shaken cast kit
15 is?

16 A A shaken cast generally speaking is a
17 cast (inaudible) which is mixed cast powder in the water
18 and you mix it up. We put a frame down in the tire track
19 that's in the dirt and ground. And we pour it in there
20 and it hardens on its own. And we pick it up and collect
21 it. And if need be, we send it off to comparison to
22 suspect tire.

23 Q What were your results of the shaken cast kit that
24 were done that day?

25 A To my knowledge, I don't know. I don't know if

1 anything is examined against it.

2 Q Okay. Did you happen to have a circumstance to
3 process or investigate a red in color SUV that was there
4 that day?

5 A Yes, sir, I did.

6 Q And where did you do that?

7 A 2870 Ashley Shores Drive. The investigators asked me
8 to process the vehicle through fingerprints. They advise
9 me that obtained consent to search the vehicle, so I
10 processed the vehicle for fingerprints and searched the
11 vehicle along with the investigators and found nothing of
12 evidentiary value inside.

13 Q So you found no fingerprints in the vehicle that were
14 of evidentiary value?

15 A That's correct.

16 Q And no other type of forensic evidence at all was
17 inside that vehicle?

18 A That's correct.

19 Q Where did your investigations lead you next?

20 A Approximately 8:30 p.m, I responded to 3747 Ashley
21 Shores Drive apartment C investigators had searched the
22 apartment there ---

23 THE COURT: All right. Hold up. All right. I want
24 that confiscated, turned over to law enforcement and I
25 want that young lady to leave the courtroom. She will not

1 be allowed in the courtroom please.. And I want her
2 brought back before me at sometime after when we take a
3 break.

4 BY MR. MCKOY:

5 Q Let me just refresh where we were, Officer Reynolds.

6 MR. MCKOY: Is it okay to proceed, Your Honor?

7 THE COURT: Yes, sir, proceed.

8 Q I believe we last left off around 8:30 you were
9 heading toward apartment C at Ashley Shores?

10 A That is correct. Investigators had searched his
11 apartment had located a 20-gauge West Point shotgun and a
12 .22 caliber Winchester riffle within that residence
13 responded there and photographed and collected those
14 firearms.

15 Q Did you take these firearms into evidence?

16 A Yes, sir.

17 Q Was the evidence that you found on the scene
18 different placards you laid out, the different shell
19 casings you identified, did they have anything to do with
20 those guns that you found right there?

21 A No.

22 Q Where did your investigations lead you next?

23 A Shortly after I recovered the guns from the
24 residence, I went to a residence on Woodlawn Drive
25 investigators had also searched that residence and located

1 a box of 9-millimeter Lugar cartridges in a rear bedroom.

2 Q Were you aware there was a shooting earlier that day
3 also on Woodlawn?

4 A No, I was not.

5 Q And lastly, Officer Reynolds, where did you respond?

6 A Then responded to the 1909 Savannah Highway, which is
7 the location of the Evergreen motel. Investigators were
8 there and located a 9-millimeter glock pistol behind a
9 dresser in that room which I photographed as found and
10 then collect that.

11 Q I'm going to show you what's already been placed into
12 evidence as State's Exhibit Number 10. It's tough to see
13 from your angle. Do you recognize that photo?

14 A Yes, I do.

15 Q And who took that photo?

16 A I did.

17 Q And can you tell what that is right there?

18 A That's a glock pistol.

19 Q Was that pistol recovered from the Evergreen
20 department or motel?

21 A Yes, it was.

22 Q What did you do with that pistol?

23 A I collected it. I brought it out to my vehicle
24 unloaded it for safety purposes and transport. I brought
25 it back to the police station.

1 Q Did you place it into evidence at the North
2 Charleston police department?

3 A Yes, I did.

4 MR. MCKOY: Court indulgence, Your Honor.

5 THE COURT: Yes, sir.

6 MR. MCKOY: Please answer any questions Ms. Fanning
7 may have for you.

8 THE COURT: Cross-examination, Ms. Fanning.

9 MS. FANNING: Yes, sir, Your Honor.

10 CROSS-EXAMINATION

11 BY MS. FANNING:

12 Q Detective Reynolds, my name is Meg Fanning and I
13 represent the defendant, D'el Grant. Detective Spears
14 testified earlier that you were the person in charge of
15 collecting the physical evidence at the various scenes
16 connected to these homicides; is that correct?

17 A That is correct.

18 Q And in addition to identifying items of interest,
19 photographing and taking them into evidence, it's your job
20 to decide whether or not any of those items are
21 subsequently sent down the road for forensic testing;
22 isn't that correct?

23 A That is correct depending also upon advisement from
24 investigators.

25 Q Okay. Well, she's already said that it was your job

1 in this case. So you would agree with me that any
2 forensic testing that was done was done based on your
3 decision?

4 A Yes.

5 Q There's attached to your report several pages worth
6 of evidence gathered at the scene. And the report was
7 actually I think generated by you, John Reynolds, I'm
8 sorry. At the top put tame assist you so didn't somebody
9 else sign it, but it looks like it was signed by you. And
10 there are several pages of evidence gathered at the
11 different scenes and placed into evidence. And I would
12 ask you if you would turn to page 3 of the report. Do you
13 have it?

14 A Yes, I do.

15 Q Okay. You have a whole category of evidence
16 collected at the scene. Would you agree with me?

17 A Yes.

18 Q If I could, I'll put this up.

19 THE COURT: No, ma'am.

20 MS. FANNING: No, ma'am.

21 THE COURT: No, ma'am, it's not in evidence can't be
22 shown to the jury.

23 MS. FANNING: My apologies to the Court.

24 BY MS. FANNING:

25 Q Item number four cast of impression A that was

1 something you took at the scene behind the Ashley Shores
2 apartments?

3 A That's correct.

4 Q That was placed into evidence?

5 A That's correct.

6 Q Was that tire cast ever compared to any known
7 vehicle?

8 A To my knowledge, no.

9 Q And if it had been compared that would have been
10 your job to ask that it be compared?

11 A That's correct. I was transferred at a crime scene
12 shortly after when I got promoted?

13 Q So nobody else took over this case?

14 A Somebody else would have followed up on it if needed
15 to do.

16 Q So nobody else -- you and nobody else thought that
17 that tire impression should be tested or compared to
18 another vehicle?

19 A Not at the time, no.

20 Q To try to determine where it came from or who's car
21 may have been at the scene?

22 A That is correct.

23 Q Number five brass color 9-millimeter Lugar, casing B
24 that was placed into evidence. Was that casing and casing
25 C and casing H and I and J were those casings collected in

1 such a way that would preserve any latent fingerprint
2 evidence?

3 A Yes, they were.

4 Q Okay. And was any fingerprint evaluation ever done
5 on any of those casings?

6 A Yes, they were.

7 Q Where is your documentation to that?

8 A There was negative results.

9 Q What kind of testing did you do?

10 A From my recollection, I filmed them with (inaudible)
11 filming.

12 Q And you didn't see fit to do any documentation of
13 that testing you just did it?

14 A It was negative results.

15 Q And you're relying again on your recollection since
16 you didn't document the file?

17 A That's correct.

18 Q How about number 14 on the red stain light blue terry
19 towel? That was placed into evidence?

20 A That is correct.

21 Q And when you identified it as evidentiary value, did
22 you believe those red stains were blood?

23 A I believe so, yes.

24 Q Did you do any serology or DNA testing to determine

25 ---

1 A To my knowledge, no. I'm assuming it was blood. I
2 don't know what kind of stain it was, what kind of stain
3 it looks like.

4 Q Detective, this is a photograph that has been marked
5 as Defendant's Exhibit 2 for ID. Can you identify that
6 photograph?

7 A Yes, I can.

8 Q Who took that photograph?

9 A Me.

10 Q Okay. Does that photograph fairly and accurately
11 represent the part of the scene at the Evergreen hotel as
12 you found it when you were conducting your crime scene
13 investigation there?

14 A Yes, it does.

15 Q And what does that photograph depict?

16 A It depicts a dresser pulled away from the wall, with
17 a lamp on it. I had an empty gun box to transport the
18 weapon. There's a beer can on there and looks like towels
19 on there.

20 Q Does that actually appear to be a red stain T-shirt,
21 a bloody T-shirt?

22 A I really can't tell. It appears to be red stain,
23 white something.

24 MS. FANNING: Your Honor, at this point, I move that
25 photograph into evidence based on his authentication of

1 it.

2 THE COURT: Any objection?

3 MR. MCKOY: No objection, Your Honor.

4 THE COURT: That's Defendant's Number 1; is that
5 correct?

6 MS. FANNING: Yes.

7 THE COURT: All right. Defendant's Exhibit Number 1
8 be admitted into evidence without objection. Let the
9 court reporter take the ID number off of it please.

10 MS. FANNING: After she does that permission to
11 publish it to the jury?

12 THE COURT: Yes, ma'am.

13 (WHEREUPON, Defendant's Exhibit No. 1 was admitted
14 into evidence.)

15 BY MS. FANNING:

16 Q Detective, this is the photograph that you just
17 authenticated and just been moved into evidence. And it's
18 your job to take photographs of the crime scene as they
19 appear when you walk in the door; right?

20 A Correct.

21 Q And you would agree with me that that empty gun box
22 that you use to transport the handgun that you found is
23 not part of the crime scene when you walked in the door?

24 A I placed that there right before I took the
25 photograph.

1 Q So you would agree with me that that gun box was not
2 part of the crime scene as it appeared when you walked in
3 the door?

4 A That's correct.

5 Q Okay. The collection of fabric on the desk was in
6 the photograph or at the crime scene when you walked in
7 door however?

8 A That is correct.

9 Q And that appears to be a blood stained item of
10 clothing just based on the photograph would you agree with
11 me?

12 A It appears to be a white cloth material with red
13 stains on it.

14 Q Okay. And like the blue terry cloth towel that you
15 did collect at the scene with red stains that you thought
16 were blood, you apparently at the time you took this
17 photograph thought that garment was important enough to
18 photograph, did you not?

19 A I photograph the whole dresser, shown it's pulled
20 away from the wall to show the relationship with the
21 dresser and the gun behind the dresser.

22 Q Two suspects were pulled out of that -- or three
23 suspects I'm sorry were pulled out of that hotel room
24 before you processed the crime scene; right?

25 A I'm unaware of that.

1 Q You're not aware that Gary Grant and Cordero Porcher
2 were in this room?

3 A No.

4 Q Okay. So you had no idea why you were called to the
5 Evergreen hotel?

6 A I was called to recover a weapon.

7 Q Okay. Were you also called to identify -- isn't it
8 part of your job to identify other items that may be of
9 evidentiary value in the investigation of this serious
10 murder case?

11 A Yes.

12 Q And would you agree with me in theory that if that is
13 a blood stained article of clothing, that it may be of
14 evidentiary value in investigating this murder case?

15 A In theory, yes.

16 Q And you did not retrieve that possibly blood stained
17 article of clothing and placed it into evidence; did you?

18 A No.

19 Q When you went to the crime scene back at Ashley
20 Shores, did you see a green Oldsmobile at the scene?

21 A No, I did not.

22 Q Did you see a red Suburban at the scene immediately
23 proximate to the bodies?

24 A No.

25 Q Did you see a white Mazda at the scene immediately

1 proximate to the bodies?

2 A No.

3 Q You found a box of 9-millimeter casings at the home
4 on Woodlawn; did you not?

5 A That is correct.

6 Q And did you take those and place them into evidence?

7 A Yes, I did.

8 Q Did you take a long riffle that you found at Deshawn
9 Gathers' house and place them into evidence?

10 A Yes, I did.

11 Q Found a set of keys item number nine collected at the
12 scene?

13 A Yes, I did.

14 Q Those keys had a large number of grocery store tags
15 on them; didn't they?

16 A Not that I -- I don't recall.

17 MS. FANNING: Beg the Court's indulgence.

18 THE COURT: Yes, ma'am.

19 BY MS. FANNING:

20 Q Do you have the evidence with you?

21 A No, I did not.

22 Q You didn't bring those boxes of evidence?

23 A I don't have any evidence.

24 Q Did anybody bring the evidence in today?

25 A Yes.

1 Q If I can't look at picture of...

2 MS. FANNING: Can I have this marked Defendant's 2.

3 THE COURT: Defendant's number 3 for identification.

4 MS. FANNING: Three, thank you.

5 (WHEREUPON, Defendant's Exhibit No. 3 was marked for
6 identification only.)

7 Q Detective, been marked as Defendant's 3, do you
8 recognize that?

9 A Yes, I do.

10 Q Okay. And does that fairly and accurately represent
11 a of keys that you logged in on your evidence log as being
12 located at the scene?

13 A Yes, they do.

14 MS. FANNING: I like to move that photograph into
15 evidence as Defendant's 3?

16 THE COURT: Any objection, Mr. McKoy?

17 MR. MCKOY: No objection, Your Honor.

18 THE COURT: All right. Be admitted into evidence as
19 Defendant's 3 without objection. Detective, you give that
20 to be court reporter let her take the ID making off of it.

21 (WHEREUPON, Defendant's Exhibit No. 3 was admitted
22 into evidence.)

23 MS. FANNING: Permission to publish it to the jury?

24 THE COURT: Yes, ma'am.

25 BY MS. FANNING:

1 Q Detective, that's one of the markings that you placed
2 on the ground next to items that you believe have any
3 evidentiary value during your investigation?

4 A That is correct.

5 Q And that's set of keys with key chains and a hole. I
6 even count there's so many, but several of those scan tags
7 that folks use at the grocery stores and places like that;
8 correct?

9 A That is correct.

10 Q Did anybody with North Charleston police department
11 take those keys to any of those retail establishments and
12 swipe those to see who they belong to?

13 A I don't know.

14 Q Did you?

15 A No, I did not.

16 Q Did you ask anybody to?

17 A No.

18 Q To the best of your knowledge was that ever done?

19 A In this situation as a crime scene investigator, we
20 recover the evidence things like that will be handled by
21 the investigations detectives that would take them around
22 to stores to try to follow up on it.

23 Q So contrary to what Detective Spears told us that you
24 make all the decisions about what happens to the physical
25 evidence gathered at the scene. Your belief is that you

1 collect it and turn it in and then other people take it
2 from there; is that correct?

3 A That is correct.

4 MS. FANNING: Thank you, Detective. I don't have
5 anything else.

6 THE COURT: All right. Redirect, Mr. McKoy?

7 MR. MCKOY: Briefly, Your Honor.

8 REDIRECT EXAMINATION

9 MR. MCKOY:

10 Q Officer Reynolds, Ms. Fanning spoke to you about
11 items that were recovered at the scene as well as items
12 that were not recovered away from scene?

13 A That is correct.

14 Q The blue terry cloth that was mentioned that you did
15 take into evidence where was that located?

16 A It was located on the walkway in front of apartment
17 number C, which was next door to where the bodies were
18 located.

19 Q Was that at the crime scene?

20 A Yes, it was.

21 Q Was it important to you to gather that piece of
22 evidence?

23 A It was important to me at that time, yes.

24 Q At the Evergreen hotel, there's a shirt that was
25 there apparently that had some type of blood stain on it.

1 Was that at the scene of the homicide?

2 A No, it was not.

3 Q Did you recover that shirt?

4 A No, I did not.

5 Q Did you know who put that shirt there?

6 A No, I do not.

7 MR. MCKOY: No other questions. Thank you, Officer
8 Reynolds.

9 THE COURT: Recross, Ms. Fanning?

10 MS. FANNING: I don't have anything, Your Honor.
11 Thank you.

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

14 (WHEREUPON, the witness leaves the witness stand.

15 THE COURT: All right, Mr. Solicitor, you may call
16 your next witness.

17 MR. MCKOY: The State calls Dr. Cynthia Schandl.

18 MS. FANNING: Your Honor, can we approach?

19 THE COURT: Yes.

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

23 THE COURT: All right, you may proceed.

24 THE CLERK: If you would please place your left hand
25 on the Bible and raise your right hand. Do you swear or

1 affirm to tell the truth, the whole truth, and nothing but
2 the truth so help you God?

3 DR. SCHANDL: Yes, I do.

4 THE CLERK: Please be seated. Please state your full
5 name to the court and spell your last name?

6 DR. SCHANDL: Cynthia Ahnna Schandl. S-C-H-A-N-D-L.
7 WHEREUPON,

8 Dr. Cynthia Schandl,
9 after first having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. MCKOY:

12 Q How are you, Dr. Schandl?

13 A Fine. Thank you.

14 Q Dr. Schandl, what do you do for a living?

15 A I'm a forensic pathologist at the Medical University
16 of South Carolina.

17 Q Can you explain to the jury what a forensic
18 pathologist is?

19 A Yes, as a forensic pathologist, I'm a medical doctor
20 also trained in pathology and specifically forensic
21 pathology. And our task is to determine cause and manner
22 of death.

23 Q How long you been a forensic pathologist?

24 A I was employed in 2004 at the Medical University.

25 Q And this may be a long list, but I like for you to

1 explain to the jury where you received your education
2 starting with under graduate college.

3 A So in order to become a forensic pathologist, there's
4 quite a bit of education involved. First is a bachelor's
5 degree. I received a bachelor's degree from the
6 California State University of San Fernando. And then
7 medical school which I came here to the Medical University
8 of South Carolina and completed my medical school training
9 here. And then following medical school specialized
10 training in pathology, which is called a residency. I
11 completed four years of residency training here at the
12 Medical University of South Carolina. And after residency
13 training and then a year of forensic pathology fellowship
14 training which I also completed here at the Medical
15 University of South Carolina and following completion of
16 all that training, there's also national board
17 certification. And I am board certified in anatomic
18 pathology, clinical pathology, and forensic pathology by
19 the American Board of Pathology.

20 Q How do you receive these different types of
21 certifications are they classes or seminars?

22 A The board certification requires examination. So
23 there's examinations for each of those board
24 certifications and anatomic pathology, clinical pathology,
25 and forensic pathology.

1 Q In your four years at MUSC as a forensic pathologist,
2 how many estimated autopsies have you performed?

3 A In those four years since being faculty, I performed
4 approximately four or 500 cases.

5 Q Have you ever testified for the State as an expert
6 witness?

7 A Yes, I have.

8 Q About how many times?

9 A About 20 times.

10 MR. MCKOY: Your Honor, we move for Dr. Schandl to be
11 an expert witness in pathology.

12 THE COURT: Voir dire with regard to qualifications,
13 Ms. Fanning?

14 MS. FANNING: I don't have any voir dire at this
15 time. We would consent or not consent, but I have no
16 objection to her being qualified as an expert in
17 pathology.

18 THE COURT: All right. The Court will qualify the
19 doctor as an expert in the field of forensic psychology --
20 forensic pathology excuse me. Ladies and gentlemen of the
21 jury, let me tell you what that means. Normally, if a
22 witness is not testifying as an expert, the witness'
23 testimony is limited to those things which are rationally
24 based upon the perception of the witness are helpful to a
25 clear understanding of the witness' testimony or the

1 determination of a fact at issue and do not require
2 special knowledge, skill experience or training.

3 However, if scientific technical or other specialized
4 knowledge will assist the trier of fact and that's you in
5 this case to understand the evidence or to determine a
6 fact in issue, then a witness qualified as an expert by
7 knowledge, skill, experience, training or education may
8 testify in the form of an opinion. So basically, the
9 difference between an expert witness and a non-expert
10 witness is that an expert witness is allowed to give
11 opinion and normally a non-expert witness is not allowed
12 to give an opinion. I have qualified the doctor as an
13 expert in the of field forensic pathology. All right.
14 You may proceed.

15 MR. MCKOY: Thank you, Your Honor.

16 BY MR. MCKOY:

17 Q In your capacities as a forensic pathologist, did you
18 perform an autopsy on Cederious Nelson and Robert Bryant?

19 A Yes, sir, I did.

20 Q Can you explain to the jury the initial steps and how
21 things work when a victim is brought in for an autopsy?

22 How does that work? What's the process?

23 A Well, first we are contacted by the coroner's office
24 who informs us that there is a case that they're going to
25 bring to us. And then the body is transported to the

1 morgue at the Medical University of South Carolina. And
2 then transported from the morgue upstairs to the autopsy
3 suite as they were found at scene. So generally depending
4 upon any medical intervention, they are usually in their
5 clothing where they were found in. And then they are
6 placed on autopsy tables where we examine first with the
7 clothing on and take photographs at that stage. And then
8 remove the clothing and examine that if it's necessary in
9 the case, take photographs of the clothing. And then
10 examine the body's external examination, examine them
11 externally, take photographs at that stage for any
12 injuries or identifying marks. And then after we perform
13 the external examination, we perform the internal
14 examination where we look at the internal organs for any
15 irregularities in pathology or injuries or anything else
16 that's not normal. Also during the process of the autopsy
17 in forensic autopsies in particular we do take samples to
18 send for toxicology studies for any drugs that might be in
19 the system at the time of the death.

20 Q That's a lot. When you do an external examination is
21 that procedure photographed?

22 A Yes, we photograph through each stage of the autopsy.

23 Q What's the importance or significance of an external
24 examination?

25 A Well, the external examination can show us injuries

1 to the body. And those injuries might tell us
2 specifically what sort of a weapon was used if a weapon
3 was used and give us a general idea of what we are looking
4 for when we go into body and looking for injuries
5 internally.

6 Q And you also said there was an internal examination
7 that's performed. Is that whole process photographed as
8 well?

9 A It may be or it may not be depending upon the
10 findings.

11 Q And what is the significance or importance of the
12 internal examination?

13 A The internal examination again will document any
14 injuries or disease processes going on in any of the organ
15 systems.

16 Q And the last thing you mentioned was the toxicology
17 examination. What is the significance of doing
18 toxicology?

19 A Well, in some cases that we receive a drug overdose
20 might be involved. So those cases obviously toxicology
21 testing is paramount to our determining the cause and
22 manner of death. It is our practice at our office to do
23 toxicology studies on everybody that comes through.

24 Q Do all three of these examinations we just talked
25 about help you determine as a pathologist a cause of

1 death?

2 A Yes, they do in most cases.

3 Q Dr. Schandl, let's start first with Cederious Nelson.
4 You performed an autopsy on Cederious Nelson?

5 A Yes.

6 Q As a pathologist?

7 A Yes, sir.

8 Q Was anybody there assisting you?

9 A Yes, I had a trainee assisting me Dr. Carrie Payne.
10 And we also employ autopsy technicians who assist us with
11 the removal of clothing and with the -- when we're doing
12 our internal examination assist us with removing the
13 organs.

14 Q When we go to evidence of injury and you make reports
15 for all the things that you do to these people?

16 A Yes, reports are generated on each case.

17 Q When we go to evidence of injury, can you explain
18 what you noticed in the head and neck area of Cederious
19 Nelson?

20 A Yes, Mr. Nelson, Mr. Cederious Nelson had a gunshot
21 wounds that went through his neck all the way through
22 from the right side to the left side. Also noticed when
23 we're looking at him externally this -- the gunshot wound
24 at the right side of the neck was an entrance wound. And
25 the gunshot wound at the left side of the neck was the

1 exit wound. Also noted around the entrance wound at the
2 right side of the neck were abrasions or scrapes of the
3 skin surrounding the wound and we call that stippling.
4 Basically what that is are is particular matter as coming
5 out of the muzzle which is the end of the gun possibly
6 unburned gun powder and other pieces of material that are
7 actually scraping the skin. And that can give us an idea
8 of the range of fire, so basically how far away from the
9 muzzle was the -- was Mr. Nelson's, Cederious Nelson's
10 neck. And with stippling that tells us that he was in
11 close range of fire. And close range of fire is
12 determined by test firing a weapon to get that same
13 pattern of particular matter around perhaps a stationary
14 object. So if you take the weapon and you fire it at
15 different distances from perhaps a white piece of paper,
16 once you get to the distance where that configuration of
17 scrapes matches up with what we see on the body, that
18 gives you an idea of the range of fire. Now, we call
19 close range not having that information somewhere between
20 18 and closer than 18 to 24 inches from the body. So in
21 most cases if you're further than two feet from the
22 target, you will not see this stippling, so that would
23 be -- that's our range. It's probably less than two feet,
24 but certainly best determined by test firing the weapon.
25 Q And it's your testimony today that Cederious Nelson

1 did have evidence of stippling on his entrance gunshot
2 wound?

3 A That's correct.

4 Q How large was the stippling outside this wound on
5 Mr. Nelson?

6 A If I may refer to my notes?

7 Q Sure.

8 A So when we're looking at stippling these little
9 scraps around an entrance wound, we give it a vertical
10 dimension and a horizontal dimension.

11 Q Vertical and horizontal dimensions directions means
12 measurements; is that correct?

13 A That is correct. So you'll have a central defect
14 which is the gunshot wound itself. And then you'll
15 measure vertically how far there are scraps of skin and
16 horizontally. So vertically in this case we had 1.8
17 inches about that much and horizontally about 1.9 inches
18 so about the same.

19 Q Is it your opinion today, Doctor, that this gunshot
20 wound was at close range?

21 A Yes, it is.

22 Q And that's evidence from the stippling?

23 A Yes, sir.

24 Q Can you determine through your autopsy the direction,
25 the pathway of the bullet as well?

1 A Yes.

2 Q Can you explain the pathway once it did enter at
3 number -- at letter A where this bullet pass through
4 Mr. Nelson?

5 A Yes, so this gunshot wound which again started to the
6 right neck to below the ear here went into the -- through
7 the skin through the subcutaneous tissue, which is the
8 tissue right beneath the skin, the muscle of the neck, and
9 then the cervical vertebra, so the bones of the spine, the
10 first and second bones of the spine. And then through the
11 spinal cord at that level and then out the other side into
12 the muscles of the neck and then out the skin on the left
13 side of the neck. It went all the way through passing
14 through the spine on it's way through.

15 Q Can you also tell the direction of the bullet and
16 maybe the path that it took and the angle that happened on
17 the particular victim?

18 A Yes, it in order to determine the -- what we call
19 trajectory, which is the angle of the bullet as it's
20 going through tissue, we can pass a probe from the
21 entrance wound to the exit wound. And then looking at
22 that we can see if it went a little bit forward if it went
23 up or down and we do that with each case. And in this
24 case, the pathway was to the left, so from right to left
25 that makes sense because your entrance is on the right and

1 exit on the left. So it's going to be to the left.
2 15-degrees downward, so just a little bit down and
3 slightly forward, so a little bit forward.

4 Q And you mentioned in your testimony earlier the
5 significance of the vertebra in the C-1. I'm not sure how
6 many there are, but what's the significance of a shot
7 through a C-1 and a C-2 vertebra?

8 A Well, the higher up you are in the spinal cord or the
9 higher the injury, the more likely to have mortality or
10 death from that injury. And in this case, it's very high.
11 If it's C-1, C-2, C-1 is your very first vertebra and C-2
12 the second one. So this gunshot wound is very high up in
13 the vertebra and very likely to cause death. In addition
14 as this bullet went through and the forces were
15 transmitted, there is also bleeding into the head and into
16 the brain, so between the spinal cord injury and the
17 bleeding into the head and into the brain this injury was
18 fatal.

19 Q Was this the only gunshot wound that you observed on
20 Mr. Nelson?

21 A Yes, it was.

22 Q Did you perform toxicology reports on Mr. Nelson?

23 A Yes, we did send -- we don't perform toxicology
24 testing at our labs at the Medical University. We send
25 these samples to an outside laboratory and get a report

1 back and we did do that on this case.

2 Q You have the results of that toxicology report in
3 front of you at all?

4 A I do have it in my notes.

5 Q In conclusion and in your professional opinion as an
6 expert, what is the cause of death of Mr. Nelson?

7 A The cause of death is C-1, C-2 vertebral fractures
8 with associated cervical spinal cord disruption due to a
9 single close range perforating gunshot wound to the
10 lateral right neck.

11 Q And this was a gunshot wound that you observed from A
12 to B?

13 A That's correct.

14 Q Moving on to Robert Bryant. Did you have the
15 opportunity to perform an autopsy on Mr. Bryant?

16 A Yes, sir, I did.

17 Q And can you explain to the jury the evidence of
18 injury in your summary report in the head and neck area?

19 A Yes, Mr. Robert Bryant was also shot in the neck. In
20 this case, the wound was a little bit lower on the neck.
21 And this bullet entered again on the right side of the
22 neck, went through the skin, through the muscle and
23 entered -- actually entered the spinal canal at the level
24 of C-6, so a little bit lower in the neck. C-6 was the
25 last classification talked about C-1, C-2 and the bullet

1 then actually traveled within the spinal canal about maybe
2 two or three inches downward, so the bullet was actually
3 recovered within the spinal canal at T-1. So it goes C-6,
4 C-7, C-8, T-1, so that far down in the spinal canal
5 itself.

6 Q So there was no exit wound with this?

7 A That's correct. There is no exit wound associated
8 with this one since there's a bullet inside.

9 Q Was a bullet recovered from Mr. Bryant's body?

10 A Yes, the bullet was recovered from the body.

11 Q Was there any evidence of stippling or soot that was
12 found at the entrance wound?

13 A No, there was no evidence of stippling or soot found
14 at the entrance wound, so that gives us no indication of
15 distance from the shooter to the victim.

16 Q Is it your determination that this was not a close
17 range shot?

18 A That is correct. One cannot rule out the possibility
19 that there was an immediate target between the shooter and
20 the victim in which case evidence of range of fire would
21 be lost. And I wouldn't see it, but from what I can see I
22 cannot call this close range or a contact wound.

23 Q Doctor, moving on to your summary report of the
24 thorax and the abdomen. Can you explain that wound?

25 A Yes, Mr. Bryant was also shot in the back and there

1 was an entrance wound to the right back in the region of
2 the shoulder. And the bullet in this case traveled
3 through one of the ribs with fracture, through the upper
4 lobe of the right lung, the aorta, which is about a
5 garden-sized high pressure artery. The one that strike
6 the beating of the heart through the aorta through the
7 trachea area, which is the large windpipe through the
8 upper lobe with the left lung and then out the gunshot
9 wound of the left chest. So from the right back to the
10 left chest.

11 Q Doctor Schandl, what is the significance of a bullet
12 passing through the aorta?

13 A Well, it basically causes a great deal of bleeding.
14 This is a high pressure vessel. Again. it's a large
15 caliber about the size garden hose, so blood coming
16 through about that thick of a vessel, so if you put an
17 injury to it a hole in it the heart is pumping and blood
18 basically will come out at a fairly good clip. In this
19 case, what we actually observed in his body was 1900
20 milliliters, which is almost to the two liter bottle full
21 of blood in his chest cavities. So that's -- if you
22 consider that an adult male has about five liters of blood
23 all together and there may have been blood at the scene
24 I'm not aware of, but two liters of blood is a great deal
25 of blood. And we know for certain that's what we

1 recovered at autopsy was he he bled about that much.

2 Q And in your expert professional opinion was this
3 fatal wound of Mr. Bryant?

4 A This was certainly a fatal wound whether the neck
5 wound would have been fatal or not I cannot say with
6 certainty, but this was certainly a fatal wound.

7 Q And was one other wound that you examined on
8 Mr. Bryant?

9 A There was another gunshot wound to Mr. Bryant's
10 right hand. It was a through and through gunshot wound
11 that missed the bone and just went through skin and soft
12 tissues.

13 Q Did you perform toxicology reports on Mr. Bryant?

14 A Again, we do send specimens to an outside laboratory
15 and receive a report.

16 Q In your summary of conclusions, how did Mr. Bryant
17 deceased?

18 A Aortic perforation due to a single indeterminate
19 range perforating gunshot wound to the right posterior
20 shoulder.

21 MR. MCKOY: Court's indulgence, Your Honor. Please
22 answer any questions Ms. Fanning may have for you.

23 THE COURT: Cross-examination, Ms. Fanning.

24 CROSS-EXAMINATION

25 BY MS. FANNING:

1 Q The toxicology report that you referenced -- I'm
2 sorry my name is Meg Fanning and I represent the
3 defendant, D'el Grant. The toxicology reports that you
4 referenced are those reports the kind of testing that you
5 regularly rely on in forming your opinion as a forensic
6 pathologist or a pathologist?

7 A Yes, it is.

8 Q And they're a part of your file in this matter;
9 correct?

10 A Yes, in each case.

11 Q With regard to Mr. Nelson, what were the results of
12 the toxicology reports that were done at your request?

13 A If I may refer to my notes. Mr. Cederious Nelson his
14 toxicology was positive for delta nine
15 tetrahydrocannabinol which is for marijuana. At a level
16 of 6.8 milligrams per millimeter. It's also positive for
17 a metabolite of delta nine or THC or tetrahydrocannabinol
18 And positive for MDA which is methylenedioxyamphetamine so
19 an amphetamine at a low level. Let me see if there's
20 anything else positive. And also positive for an inactive
21 metabolite of cocaine which is benzoylecgonine at a low
22 level. And those are the only positive findings.

23 Q Dr. Schandl, all of your work was done at your
24 facility at the Medical University?

25 A Yes, it was.

1 Q You were not called to go to the scene?

2 A That's correct.

3 Q Have no other information beyond what was done in
4 your facility?

5 A That's correct.

6 MS. FANNING: Thank you, for answering for my
7 questions. I didn't have any more.

8 THE COURT: Redirect.

9 MR. MCKOY: Briefly, Your Honor.

10 THE COURT: Yes, sir.

11 REDIRECT EXAMINATION

12 BY MR. MCKOY:

13 Q Dr. Schandl, Ms. Fanning has brought to your
14 attention the results of the toxicology report?

15 A Yes, sir.

16 Q In your summary reports, what was the cause of death
17 for both Mr. Bryant and Mr. Nelson?

18 A Both individuals died as a result of gunshot wounds.

19 MR. MCKOY: Thank you. No further questions.

20 THE COURT: Anything further, Ms. Fanning? Any
21 recross?

22 MS. FANNING: Oh, no, Your Honor. I don't have
23 anything else.

24 THE COURT: All right, Doctor, thank you for coming.
25 You are excused.

1 MR. MCKOY: Your Honor, we ask that she be excused
2 from subpoena.

3 THE COURT: Any objection from the witness being
4 excused from her subpoena, Ms. Fanning?

5 MS. FANNING: Yes. No objection.

6 THE COURT: All right. Thank you. You're excused.
7 Thank you for coming.

8 (WHEREUPON, the witness leaves the witness stand.)

9 THE COURT: Counsel approach just a moment please to
10 talk about scheduling.

11 (WHEREUPON, a bench conference was held in the
12 presence of the jury, but out of the hearing of the
13 jury.)

14 THE COURT: All right. Ladies and gentlemen, it is
15 almost one o'clock and I am going to go ahead and break
16 for lunch. I've also been advised there's some matters of
17 law that we are also gone need to take up. So we're
18 going to also have to do those, but I don't want to keep
19 you waiting while we do those. So I am going to excuse
20 you now allow you to go and get your lunch. I believe
21 what I would like to do -- so that we want keep you
22 waiting in the jury room, I'm going to go ahead and let
23 the lunch break be a little bit longer for the jury. And
24 that would be to have you come back at 2:30. And we'll be
25 -- have all of the matters out of the way that we need to

1 do and we'll be ready to go forward at 2:30. So I will
2 allow you to get your lunch at this time. Again, I will
3 remind you that over the lunch recess do not discuss the
4 case with anyone. Do not allow anyone to discuss it with
5 you. If anyone should approach you or try to talk with
6 you about it, let the bailiffs know and I will deal with
7 them.. Also, do not read any news stories or listen to any
8 radio or television broadcast regarding this matter. You
9 got to decide this case based upon what you hear in the
10 courtroom and not based on what maybe in the media. And
11 do not discuss the case among yourselves when you
12 reassembling in the jury room. It's still premature for
13 you to begin any discussion of this matter. So with those
14 admonitions then, I'm going to excuse you now allow you to
15 go and get your lunch please be back at 2:30. The jury is
16 excused, only the jury.

17 (WHEREUPON, the was jury excused for lunch.)

18 THE COURT: All right, let's address a few matters
19 that have come up this morning and make sure that the
20 record is complete and accurate regarding those matters.
21 First of all, with regard to the question that was asked
22 of the jurors regarding publicity about this matter.
23 Juror number 166 Ms. Marshall is an alternate on this
24 jury. She did indicate that she was watching channel 2
25 last night not any news stories, but that they would cut

1 in during normal programming and had a few scenes from the
2 courtroom that were photographed yesterday. I ask her
3 about those matters and we'll get into them later but at
4 this time she is an alternate. I'm not going to address
5 whether she should continue -- I think she should continue
6 to sit based upon the discussions that we had at the
7 bench. And it may be that since she is an alternate a
8 decision on her will not be necessary. But is there any
9 objection on behalf of the State to the way that the
10 matter was handled regarding the alternate and her
11 disclosure at this time?

12 MR. WETMORE: No, sir, Judge. And I think it would
13 be a different story if she actually watched the news
14 segment. She just saw the advertisement for it. She did
15 indicate that she be impartial.

16 THE COURT: All right, Ms. Fanning. Without waiving
17 your right to object if it becomes necessary to substitute
18 an alternate.

19 MS. FANNING: Yes, sir, as to allowing her to sit for
20 now I don't have any objection.

21 THE COURT: All right. That's the way that will be
22 handled. I want the clerk and I want it noted that
23 channel 2 nor any TV station will not be allowed back in
24 the courtroom without meeting with me prior to their being
25 allowed back in the courtroom. The reason for that is

1 that when I signed the permission yesterday I thought it
2 was basis of covering it during the course of the news and
3 did not know that they would be interrupting programing.
4 I'm not going to allow that to be done because I can
5 caution the jurors or tell the jurors not to watch news
6 broadcast, but there's not a thing I can do if they're
7 watching an entertainment show and they interrupt that
8 show. So unless they're willing to refrain from doing
9 that, they will not be allowed in the courtroom. So
10 before any TV stations are allowed back in the courtroom,
11 they'll have to meet with me.

12 THE CLERK: Yes, sir, Your Honor.

13 THE COURT: All right. The next think is with regard
14 to Officer Spears the question came up regarding about --
15 regarding extradition. The first question that was asked
16 was where he was found and I over objection, but I did
17 allow where the defendant was found and the defendant
18 timely objected. But I allowed her to answer that he was
19 located in Illinois and arrested in Illinois. The next
20 question that was asked was whether he refused to waive
21 extradition to which objection was made and I sustained
22 that objection.

23 However, the -- I was going to allow the witness to
24 testify that he was returned to South Carolina, but not
25 anything with regard to extradition. Thereafter, the

1 witness answered and I think an unresponsive answer to the
2 question answered after applying to the governor for
3 extradition, he was brought back. As I say in my view,
4 that was not response. However, there was no objection on
5 it. If the defense request Ms. Fanning, I will ask the
6 jury to disregard that part about the application for
7 extradition, but in my view, it may very well have the
8 effect of over emphasizing it. And I don't think the jury
9 knows what is meant by apply to the governor for
10 extradition. She did not say refuse or fought
11 extradition. But I will leave that up to you as to
12 whether you request a -- an instruction on that.

13 MS. FANNING: Your Honor, I obviously heard what she
14 said. Did not want to draw any attention to it. I think
15 it was unresponsive. I don't want to bring any more
16 attention brought to that. I just want it to go away.

17 THE COURT: All right.

18 MS. FANNING: With the clarification that the
19 Solicitor not reference that in his closing argument, it
20 was clearly outside the scope of the Court's ruling. I
21 didn't object to it at the time because my thought was
22 that your ruling was already clear. She said it and I
23 didn't want any more bru ha ha about it, but I certainly
24 don't want the State to argue that he had to be extradited
25 from Illinois because that is in front of the jury.

1 THE COURT: I will agree that that should not be
2 argued and that you can say that he was found in Illinois
3 and brought back to South Carolina without reference to
4 the extradition process whatsoever in arguments to the
5 jury.

6 MR. WETMORE: Yes, sir.

7 THE COURT: Clear?

8 MR. WETMORE: Yes, sir.

9 THE COURT: All right. Next matter I want make that
10 we're clear on the exhibits Defendant's 1, 2 and 3 may I
11 see those. I'm trying to determine, Ms. Fanning, in my --
12 there's no question in my mind number three is admitted
13 into evidence without objection. Defendant's 1 and 2 were
14 originally marked for ID. And now Defendant's 1 as I have
15 it has been admitted, but three is still an ID only and
16 that's the one that shows the pistol.

17 MS. FANNING: Yes, sir. I believe three is a
18 duplicate of one of the State's exhibits so I didn't see
19 the reason to it put in.

20 THE COURT: So one and three are defendant's exhibits
21 are in evidence number two is still for ID only at this
22 point.

23 MS. FANNING: Number two is the pistol photograph.

24 THE COURT: Okay.

25 MS. FANNING: Thank you.

1 THE COURT: All right. And then also at the time
2 that the pathologist was called as a witness in this case,
3 the defendant offered to stipulate to the cause of death
4 as testified as the -- she expected the pathologist to
5 testify to. I did indicate that at a bench conference
6 that the defendant still -- I'm sorry the prosecution
7 still had the right to call the doctor and did not have to
8 accept the stipulation. And the State indicated they wish
9 to call the doctor as a witness and was not agreeable to
10 the stipulation, but I want the record to reflect,
11 Ms. Fanning, that you offered to stipulate to her
12 testimony.

13 (WHEREUPON, a pause in the proceedings.)

14 THE COURT: All right. What we'll do is be in recess
15 then for -- well, first of all let me allow any members of
16 the defendant's family to go ahead and leave the courtroom
17 please and clear the courtroom or any supporters of the
18 defendant to go ahead and leave at this time. And
19 actually be out of the building before I dismiss the rest
20 of the them. Are there any members of the defendant's
21 family that are here that wish to leave at this time? All
22 right. Then what we'll do is recess at this time and
23 return at 2:15 to go on the record to address the matters
24 -- wait just a minute I haven't said we're in recess. I'm
25 still on the record sit down. We will recess at this time

1 to reconvene at 2:15 to go back on the record with regard
2 to the matters involving the proposed amendment to the
3 witness list that the prosecution wishes to make so that
4 we can have those matters ready and be ready to proceed on
5 the record with the jury at 2:30. At this time, we are in
6 recess.

7 (WHEREUPON, a lunch break was taken.)

8 THE COURT: All right. We're back on the record with
9 regard to the matter of The State vs. D'el Jvon Grant.
10 The two indictments are 11480 and 11481. Mr. Grant is
11 present with his counsel. The State is also present in
12 the person of Mr. Wetmore and Mr. McKoy. Mr. Wetmore, you
13 had indicated before we broke for lunch that you would
14 have a motion or did have a motion to amend the witness
15 list to call additional witnesses.

16 MR. WETMORE: Judge, I thought I did, but I do not.
17 I'm sticking with the original list. I'm sorry for the
18 confusion.

19 THE COURT: All right, no problem. What do you
20 anticipate as far as what else you have to do?

21 MR. WETMORE: Judge, before we rest, I know we're
22 going to call one very brief law enforcement witness
23 Mr. Shaun Patrick who conducted photo lineups with the
24 victim's sister who is an eye witness. Then the testimony
25 of the victim's sister who is an eye witness. So those

1 two witnesses would remain on our witness list.

2 THE COURT: All right. This is a good time I think
3 Ms. Fanning for me to go ahead and discuss with the
4 defendant his Fifth Amendment Rights, so that at the
5 appropriate time he can make that decision. I want
6 require him to make that decision at this time.

7 Mr. Grant, I'd ask you to stand. You can just stand
8 right there in place please, sir. Mr. Grant, you may be
9 called as a witness to testify in your own behalf. I now
10 advise you that you have a right to invoke the protections
11 given to you by the Fifth Amendment to the Constitution of
12 the United States. And a similar counterpart provision of
13 the Constitution of the State of South Carolina... The
14 Fifth Amendment to the Constitution to the United States
15 provides in part that no person shall be compelled in any
16 criminal case to be a witness against himself. This
17 provision of constitutional law means that you cannot be
18 compelled or required to testify in this case. This is a
19 right and a privilege which the law extends to you. It is
20 a personal privilege and no one can waive this right
21 except you.

22 You have the right not to testify, but you also have
23 the right to testify. The Court will grant you the right
24 to consult with your lawyer before you make a decision.
25 If you elect not to testify, your failure to testify

1 cannot be used by the State as an inference of guilt and
2 your failure to testify cannot be considered by the jury
3 in its deliberations. If you elect to testify and waive
4 the privileges extended to you by the Constitution, I
5 advise you now that you would then assume the role of a
6 witness in this case and you would waive or give up your
7 constitutional privileges against self-incrimination.
8 This means that if you voluntarily testify in this case,
9 you will then subject yourself to the same rules that
10 govern other witnesses and you may be examined and
11 cross-examined on any relevant issues in this case. And
12 you may be impeached to the same extent as any other
13 witness all of which is subject to the rules of law and
14 the rules of evidence. I would further advise you that if
15 you elect to take the witness stand and testify, that this
16 decision in your part must be made freely, voluntarily,
17 intelligently and with knowledge of the protections given
18 to you by the Constitution and with knowledge of the
19 consequences of your election to testify. Have you -- do
20 you understand what I've explained to you?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. And I will give you an opportunity
23 to consult with your lawyer before you make a decision.
24 Do you have any questions about what I have advised you
25 of?

1 THE DEFENDANT: No, sir.

2 THE COURT: All right. I will not require that you
3 make a decision at this time, but will give you an
4 opportunity to talk with your lawyer. But later on in
5 this trial you will have to advise whether you do or do
6 not wish to testify in this case. You understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. You may be seated.

9 MS. FANNING: Your Honor, on to the witnesses that
10 are coming from the State, if you recall I had mentioned
11 an objection to the use of the photo lineup, to the
12 introduction of the photo lineup. And we discussed in
13 chambers yesterday the possibility of having an in-camera
14 hearing where that testimony is proffered, so you can
15 make a ruling on whether or not the photo lineup in the
16 identifications were utterly suggested. And I guess now
17 would be the time to do that since those witnesses are
18 here.

19 THE COURT: It probably would be. I appreciate you
20 bringing that to my attention. Who is the witness that is
21 involved with that lineup, Mr. Wetmore?

22 MS. FANNING: It will be Mr. Shaun Patrick.

23 MR. WETMORE: That's correct.

24 THE COURT: All right. Let's go ahead and call him
25 and proffer that while we're waiting on the remainder of

1 the jurors to get back. And let me make a decision
2 regarding the photo lineup.

3 THE CLERK: Please walk around and be sworn. If you
4 would please place your left hand on the Bible and raise
5 your right hand. You swear to tell the truth, the whole
6 truth, and nothing but truth so help you God?

7 MR. PATRICK: I do.

8 THE CLERK: Please be seated.

9 THE COURT: All right. Let the record reflect the
10 jury is not present and this is a hearing to determine the
11 admissibility of the identification by photo lineup.
12 Mr. McKoy, you may proceed.

13 THE CLERK: Sir, can you state your full name to the
14 Court and spell your last?

15 MR. PATRICK: Shaun Timothy Patrick. P-A-T-R-I-C-K.

16 WHEREUPON,

17 Shaun Patrick,

18 after first having been duly sworn, testified as follows:

19 DIRECT EXAMINATION IN-CAMERA

20 BY MR. MCKOY:

21 Q Good afternoon, Detective Patrick.

22 A Good afternoon.

23 Q Where are you currently employed?

24 A North Charleston police department.

25 Q How long you been with North Charleston?

1 A Approximately seven years.

2 Q What are your duties at North Charleston?

3 A I'm currently a detective with person's crimes.

4 Q Were you a detective with North Charleston on 2-24 of
5 2005?

6 A Yes.

7 Q And you recall an incident that happened on that date
8 that brings you to court today?

9 A Yes.

10 Q And what was that incident?

11 A It's in reference to a homicide took place at Ashley
12 Shores.

13 Q What was your assignment and what were your duties as
14 a detective assign to this homicide.

15 A Currently responded to the scene. Upon arrival
16 there, located any witnesses whatsoever secure the...

17 Q Did you actually go to the scene?

18 A Yes, briefly.

19 Q Where is that scene?

20 A That's at Ashley Shores. I'm not sure the address
21 exactly, Ashley Shores.

22 Q Off Azalea Drive?

23 A Yes, off Azalea.

24 Q In Charleston County?

25 A Yes.

1 Q Did you have a chance to talk to anybody when you
2 were at the scene?

3 A The lineup?

4 Q Did you talk to any witnesses who were there?

5 A I don't recall speaking to anybody there.

6 Q Did you have an instance to talk to Ms. Resheema
7 Whitfield?

8 A Yes.

9 Q And when did you talk to her?

10 A I have refresh memory with the date.

11 MR. MCKOY: Your Honor, may I approach the witness?

12 THE COURT: Yes.

13 MR. MCKOY: Thank you.

14 A February 24th of '05.

15 Q February 24th of 2005. Is that the same day the
16 homicides occurred?

17 A Yes.

18 Q What was your purpose for talking Miss Witfield?

19 A In reference to presenting photographic lineups.

20 Q Did she give you information that led you to believe
21 that she knew something about the shootings?

22 A After presenting lineups, she provided a statement in
23 reference to identifying defendants involved.

24 Q When you are showing somebody a photo lineup or
25 getting ready to show somebody a photo lineup, who else is

1 around? Is it just you and her or there other people
2 around?

3 A Usually just myself and whoever I'm speaking with.

4 Q And how do you go about preparing a photo lineup?

5 A Normally, on a normal basis, I call Charleston County
6 detention center and they -- you provide them with the
7 information -- individuals information and they arrange
8 the photographic lineup and send it to you. It comes in a
9 Charleston County document with six photos.

10 Q Are there typically six photos in a lineup?

11 A Yes.

12 Q Is there anything special that you try to do with
13 these photos when they're putting a photo lineup together?

14 A The only thing I do is I cut the names off the top
15 and Charleston County, their date of births, inmate
16 number, that's removed from lineup prior to presentation.

17 Q Do you yourself arrange the photos in any particular
18 order?

19 A No, I don't.

20 Q And do the photos have names attached to these
21 photos?

22 A Yes, at the top of photograph, but not under the
23 pictures nothing associated with each individual picture..

24 Q Now, you testified that you cut the names away?

25 A Yes.

1 Q Do you try to or when there's a photo line-up is
2 there, do you try to have people that look similar to one
3 another?

4 A Yes.

5 Q What type of similar traits do you try to have in a
6 photo lineup?

7 A Facial hair, hair styles, physical facial features.

8 THE COURT: All right, thank you, sir. Advised the
9 jury that we are still doing an in-chambers -- I mean, an
10 in-camera matter. We'll be with them in a few minutes.

11 MR. MCKOY: Your Honor, may I approach the witness
12 again?

13 THE COURT: Yes.

14 MR. MCKOY: Thank you. Mark this as State's ID 17 or
15 18 I'm sorry.

16 THE COURT: What's the number?

17 MR. MCKOY: Number 18, Your Honor. Number 18 and 19.

18 THE COURT: For ID?

19 MR. MCKOY: For ID correct, Your Honor?

20 (WHEREUPON, State's Exhibit Nos. 18 and 19 was marked
21 for identification only.)

22 BY MR. MCKOY:

23 Q I'm going to show you what's been marked for ID
24 purposes as State's 18. Do you recognize that?

25 A Yes.

- 1 Q And what is that?
- 2 A That's the photo lineup that I presented.
- 3 Q And who did you present that photo lineup to?
- 4 A To Resheema Witfield.
- 5 Q When you present a photo line-up to anybody including
- 6 Ms. Witfield, do you place it in front of them?
- 7 A Yes.
- 8 Q Do you point to anybody on that photo lineup?
- 9 A No.
- 10 Q What are you ask her to do?
- 11 A To view all the photos and prior to answering before
- 12 you answer, let me know if you positively see the person
- 13 on the photo or in the lineup the defendant whoever
- 14 committed the crime. Did you see that person in the
- 15 lineup.
- 16 Q And in this instance, I've showed you State's ID 18
- 17 and who were trying or who was -- who did she pick out in
- 18 State's 18?
- 19 A Mr. Grant, D'el Jvon Grant.
- 20 Q And did she pick that without any hesitation?
- 21 A No.
- 22 Q There was no hesitation?
- 23 A No.
- 24 Q Did you tell her who to pick out?
- 25 A No, I did not.

1 Q Did you point to Mr. Grant?

2 A No, I did not.

3 Q Did she point at Mr. Grant on her own accord?

4 A Yes.

5 Q I'm going to show you also what's been marked as
6 State's Exhibit 19. Do you recognize that?

7 A Yes.

8 Q And what is that?

9 A That's also lineup containing Mr. Grant.

10 THE COURT: I'm sorry that's what?

11 A That's also a lineup -- well, also a lineup
12 containing Mr. Grant.

13 Q Is that containing Mr. Gary Grant?

14 A Gary Grant, yes.

15 Q And when you show her this second lineup, are you
16 asking her to identify Mr. Gary Grant?

17 A Yes.

18 Q And does she point him without hesitation?

19 A Yes.

20 Q Did you tell her who to point out?

21 A No.

22 Q Are there names on either one of these photo lineups
23 that you presented?

24 A No.

25 Q And are each one of these 18 and 19 random assortment

1 of pictures?

2 A Yes, to my knowledge from the Charleston County jail
3 that's the way they put them together.

4 MR. MCKOY: Court's indulgence, Your Honor.

5 THE COURT: All right.

6 BY MR. MCKOY:

7 Q When you spoke to Miss Witfield about lineups one and
8 two which are State's ID 17 -- or 18 and 19 excuse me, did
9 you tell Miss Witfield that the person in question was
10 even in the photo lineups?

11 A No.

12 Q So you don't even tell her that the suspect would be
13 included in the lineup?

14 A Correct.

15 Q You just have her say did you recognize somebody to
16 point it out?

17 A Correct.

18 Q And did you do that with both lineups?

19 A Correct.

20 Q And again, do you have anything to do with the
21 placements of these photos in photo lineup?

22 A No, I do not.

23 Q Is it a random placement of photos in a photo
24 lineups?

25 A Yes.

1 MR. MCKOY: Your Honor, I have no further questions.

2 THE COURT: All right. Cross-examination,

3 Ms. Fanning.

4 CROSS-EXAMINATION IN-CAMERA

5 BY MS. FANNING:

6 Q At the time that -- good afternoon, Detective. I'm
7 Meg Fanning. I represent D'el Grant. At the time that
8 you were called upon to give Miss Resheema Witfield or
9 show Miss Resheema Witfield these two photo lineups, y'all
10 had already taken one statement from her; correct?

11 A I'm unaware. The only statement I'm aware of that I
12 took was the presentation. I'm not sure.

13. Q You weren't told by Detective Elmore or somebody else
14 with the North Charleston police department that she had
15 already identified someone as -- or two people as being
16 involved in shooting her brother?

17 A I don't recall that, no.

18 Q Well, how did you know specifically to get a
19 photograph of D'el Grant?

20 A I do not know that either. I don't remember.

21 Q I'm sorry. You don't know how you became aware or
22 were told specifically to put Gary Grant in a lineup?

23 A Correct.

24 Q And you didn't prepare these lineups in terms of the
25 or array or the order in which they appeared?

- 1 A No.
- 2 Q And you don't know who did?
- 3 A No.
- 4 Q You would agree with me that as to photograph lineup
5 one and photograph lineup two both the Grant brothers
6 appeared in the same exact location in both lineups?
- 7 A Do I agree, yes.
- 8 Q And they are both in the bottom left-hand corner
9 position?
- 10 A Uh-huh.
- 11 Q And if you had been asked prepare these photo
12 lineups, would you agree with me that it would be
13 preferable to have them in different positions if you
14 wanted to get sort of the best and most accurate response
15 from the witness with the least suggestibility?
- 16 A No, I think -- I mean, they are a bunch of different
17 photos that contain two different people 12 people total.
- 18 Q And so Miss Witfield knew who she was looking for;
19 right?
- 20 A I don't know.
- 21 Q Well, did you know who she was looking for?
- 22 A I don't know. I don't recall that. I don't recall
23 being told that it was two specific people. I don't
24 recall that. I don't have it in writing. I don't know.
- 25 Q Who requested the photo lineup?

1 A I do not know that either.

2 Q And why?

3 A Why did I not know that?

4 Q No, why was it requested?

5 A Obviously, the suspects were named out at the scene.

6 I couldn't tell you. I wasn't involved in that aspect of
7 it. I was solely involved in showing these lineups.

8 Q So you don't know what Miss Witfield knew coming into
9 this lineup and what she did not know?

10 A No.

11 Q You don't know what she had been told by another
12 investigating officer to go in and identify D'el and
13 identify Gary Grant?

14 A I don't recall knowing at the time, no.

15 Q And she had already identified both of them as
16 acquaintances of hers correct or people she knew?

17 A Yes, I suppose so. I'm assuming so because that's
18 how the names come up and that's why the photo lineups
19 were requested.

20 Q 2028 military time would be 8:28. I'm sorry
21 8:28 p.m.?

22 A Yes.

23 Q And that's after five o'clock p.m.?

24 A Yes.

25 Q But she gave her first statement to Detective Elmore

1 at five p.m. You didn't see her until three and a half
2 hours later. Clearly, she knew at that point who she was
3 being asked to who she was being asked to identify?

4 A I'd have to read Detective Elmore's statement and
5 whatever details. I don't know exactly what he spoke to
6 her about.

7 Q I'll hand it to you. Clearly, you're not familiar
8 with the whole course of events that afternoon and
9 evening.

10 A Okay. According to Detective Elmore's statement,
11 you're correct in saying and that she was aware of who
12 this was.

13 Q Hand my copy back. Thank you.

14 MS. FANNING: Thank you, I don't have anything else.

15 THE COURT: Redirect?

16 MR. MCKOY: No redirect, Your Honor.

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

19 (WHEREUPON, the witness leaves the witness stand)

20 THE COURT: All right. Mr. McKoy, you may call what
21 other witnesses you want to or any other evidence you wish
22 to present regarding the photographic lineup.

23 MR. WETMORE: Judge, the State calls
24 Resheema Witfield.

25 THE COURT: All right, Ms. Witfield, come around

1 please.

2 THE CLERK: If you would please place your left hand
3 on the Bible and raise your right hand. Do you swear or
4 affirm to tell the truth, the whole truth, and nothing but
5 the truth so help you God?

6 MS. WITFIELD: Yes, sir.

7 THE CLERK: Please be seated. Please state your full
8 name to the Court and spell your last?

9 MS. WITFIELD: Resheema Witfield -- I mean Resheema
10 Shenetta Witfield. W-I-T-F-I-E-L-D.

11 WHEREUPON,

12 Resheema Witfield,
13 after first having been duly sworn, testified as follows:

14 DIRECT EXAMINATION IN-CAMERA

15 BY MR. WETMORE:

16 Q Miss Witfield, we're just here now to talk about the
17 process of looking at the photographs, not here to talk
18 about the whole case. You remember talking to North
19 Charleston police department on the day of the shooting?

20 A Yes, sir.

21 Q You remember talking to a Detective Elmore a big old
22 guy him writing a statement for you?

23 A I think so.

24 MR. WETMORE: May I approach the witness, Your Honor?

25 THE COURT: Yes, sir.

1 Q Miss Witfield, I'm looking at that document does it
2 refresh your memory?

3 A Yes, sir.

4 Q Okay. Now, do you remember giving a statement to
5 Detective Elmore that day of the shooting?

6 A Yes, sir.

7 Q About five o'clock. After that -- I'm sorry. In
8 that statement when you first talk to North Charleston,
9 did you advise them, did you tell them that you saw D'el
10 Grant and you saw Gary Grant? Did you tell them that you
11 saw both of those guys?

12 A When?

13 Q When you talk to North Charleston the first time that
14 day, did you tell them those names that you had seen those
15 people?

16 A You mean that day?

17 Q Did you identify them to North Charleston?

18 A Yes, sir.

19 Q So you gave them those two names D'el Grant and Gary
20 Grant; is that correct?

21 A Yes, sir.

22 Q After your first statement that's there before you,
23 did you look at some photographs with the Detective
24 Patrick who was just in the courtroom testifying?

25 A Yes, sir.

1 MR. WETMORE: If I may approach again, Your Honor.

2 Q First let me show you what's been marked as State's
3 Exhibit 18, did North Charleston police department present
4 that group of photographs to you?

5 A Yes, sir.

6 Q Okay. Did they tell you the guy we're looking for is
7 on that page somewhere? Did they tell you that somebody
8 they're looking for was on that page?

9 A No.

10 Q Okay. Did they tell you which one to pick? Did they
11 tell you which person to pick?

12 A No, sir.

13 Q Okay. Did they suggest anything to you at all?

14 A They say which one been the shooter.

15 Q So they asked you to identify the shooter. Which one
16 did you point to?

17 A D'el

18 Q You pointed to D'el. Which photograph is that is it
19 at the bottom or the top?

20 A The bottom.

21 Q It's in the left or the right?

22 A The left.

23 Q That's the person you indicated was the shooter the
24 one shot your brother?

25 A Yes, sir.

1 Q Did you tell the detective that that was the person
2 that you saw?

3 A Yes, sir.

4 Q Okay. Did you have any trouble picking him out?

5 A No, sir.

6 Q I'm going to show you next what's been marked State's
7 Number 19. Did they show you that group of pictures?

8 A Yes, sir.

9 Q Okay. Same questions. Did they tell you that the
10 person they were looking for was somewhere on that page?

11 A No.

12 Q Okay. Did they kind of help you cheat and tell you
13 which one to pick?

14 A No.

15 Q Okay. Did they ask you to identify the person that
16 was also present?

17 THE COURT: What they ask her not...

18 MR. WETMORE: I'm sorry.

19 BY MR. WETMORE:

20 Q If you can remember what did they ask?

21 A I think they ask me were they brothers or something.
22 I ain't too sure.

23 Q It's been a while. Did they ask you did you
24 recognize anybody from the incident?

25 A No, I don't think it was that.

1 Q Did they ask you to pick photo out of that lineup?

2 A I think they ask me which one been Gary.

3 Q So they ask you which one was Gary. You had given
4 them the name Gary earlier; is that correct?

5 A Yeah.

6 Q You mentioned him?

7 A Uh-huh.

8 Q And so they ask you to verify his picture; is that
9 correct?

10 A Yes, sir.

11 Q Which one did you pick?

12 A The bottom one on the left side.

13 Q Did you do the same thing when you circled it?

14 A Yes, sir.

15 Q Okay. That was the person that you knew as Gary; is
16 that right?

17 A Yes.

18 Q Once again was it hard or any kind of difficulty in
19 picking it out or you knew the person right away?

20 A I knew them right away.

21 MR. WETMORE: I have no further questions.

22 THE COURT: Ms. Fanning.

23 CROSS-EXAMINATION IN-CAMERA

24 BY MS. FANNING:

25 Q Miss Witfield, I'm Meg Fanning and I represent D'el

1 Grant. And just briefly when you were brought into look
2 at the pictures, the sets of pictures that the detective
3 wanted you to look at that evening, you had already given
4 your first written statement; right?

5 A Yes, ma'am.

6 Q Okay. And this second statement only concern the
7 pictures that you were shown; right?

8 A Yes.

9 Q Did you see any other sets of photographs besides
10 just the two different that we talked about already?

11 A No.

12 Q Did -- they didn't show you any sets photographs that
13 didn't have anybody in it that you recognized for any
14 picture or any sets of lineups that had say Mr. Cordero
15 Porcher in them or Mr. Devant Porcher?

16 A Not, that I remember.

17 Q Okay. You were only asked to identify two sets of
18 photo lineups that had the Grant brothers in them?

19 A No, no. I think it was like three of them.

20 Q Three or more defendant's involved?

21 A No, three more lineups.

22 Q Who was in those?

23 A I don't know.

24 Q You don't know. Okay. When you looked at the
25 photograph of lineup that had D'el. in it, is that the

1 first one or the second one that you saw?

2 A I ain't too sure.

3 Q Okay. When you were asked to identify D'el, did you
4 have all the -- did you have all the lineups in front of
5 you or just one?

6 A Just one.

7 Q And that was the one with six pictures in it one of
8 which you identified as D'el Grant?

9 A Uh-huh.

10 Q Okay. And the detective who handled the photographic
11 lineup asked you to tell them which one of the people in
12 picture was the shooter?

13 A Yes, ma'am.

14 Q Okay. And when you saw the other lineup one you
15 identified as containing Gary Grant, you were asked to
16 tell them which one of these men is Gary Grant?

17 A Yes, ma'am.

18 Q And that's who you identified the picture on the
19 bottom left as well?

20 A Yes, ma'am.

21 Q Okay. You know Gary Grant independently of any photo
22 lineup by sight?

23 A Say that again?

24 Q Isn't Gary Grant your niece's father?

25 A Yes.

1 Q And did you recognize D'el Grant at the scene?

2 A What happened?

3 Q Did recognize D'el Grant at the scene of the
4 shooting?

5 A Yes, ma'am.

6 Q Okay. From being around the neighborhood?

7 A Yes.

8 MS. FANNING: I don't have anything else. Thank you,
9 Miss Witfield.

10 THE COURT: Redirect?

11 DIRECT EXAMINATION IN-CAMERA

12 BY MR. WETMORE:

13 Q Miss Witfield, just trying to be as clear as
14 possible. When they showed you the first lineup you
15 picked out D'el, can you remember what it was that they
16 asked you how they asked you to pick the photo?

17 A Which one been the shooter.

18 Q Which one was the shooter that shoot your brother.
19 And then they presented the second lineup to you one that
20 contained Gary. Do you remember what they asked?

21 A Which one was Gary.

22 THE COURT: I'm sorry what was the answer?

23 A Which one was Gary.

24 THE COURT: Still not sure I understood what she
25 said.

1 MR. WETMORE: She said which one was Gary.

2 THE COURT: That's what I thought, okay.

3 BY MR. WETMORE:

4 Q Is that what you said, Miss Witfield?

5 A Yes, sir.

6 Q You got to lean forward and you got to talk into the
7 microphone so the judge can hear you?

8 THE COURT: Go ahead I understand.

9 MR. WETMORE: If I may approach the witness, Your
10 Honor.

11 THE COURT: Yes, sir.

12 BY MR. WETMORE:

13 Q This is a second statement that North Charleston took
14 for you that describes the process of the photo lineups.
15 You remember making that statement at the same time as you
16 did the photo lineups?

17 A Yes.

18 Q Do you remember making that statement kind of at the
19 same time as you were given the photo lineup; is that
20 correct?

21 A They didn't ---

22 Q Come again what did you say?

23 A Afterwards, we had did the lineup.

24 Q So you did the lineup first, then that statement; is
25 that right?

1 A Yes.

2 Q In that statement, you indicate for the second line
3 up you were asked to pick who was with D'el; is that what
4 North Charleston asked you?

5 A Yes, sir.

6 Q Because before you remember it as which one is Gary,
7 but do you think now upon reviewing that that they asked
8 you who was with D'el?

9 A Yes, sir.

10 MR. WETMORE: I don't have any further questions.

11 THE COURT: Ms. Fanning.

12 MS. FANNING: I have nothing else, Your Honor. Thank
13 you.

14 THE COURT: Clarify one point for me, Mr. Wetmore,
15 that statement that you gave her that did I understand her
16 to say that the lineup was first and then statement was
17 second?

18 MR. WETMORE: That's my understanding of her
19 testimony, Judge. They conduct the photos. Then they
20 memorialize the process and the statement.

21 THE COURT: Okay, thank you. All right. Thank you.
22 You may step down.

23 (WHEREUPON, the witness leaves the witness stand.

24 THE COURT: All right. Ms. Fanning, anything else on
25 the issue of the from the standpoint testimony or evidence

1 on the issue of the photographic lineups on behalf of the
2 State?

3 MR. WETMORE: None from the State, Judge, I obviously
4 want make to some comments after.

5 THE COURT: She's moving to suppress so I will hear
6 from her first.

7 MS. FANNING: I am moving to suppress the photo
8 lineup and identification based on the photo lineup ---

9 THE COURT: Address them separately please, ma'am.

10 MS. FANNING: The photo lineup, Your Honor, is unduly
11 suggestive. It was prepared by some person who's not here
12 to testimony about any randomness or how they picked the
13 pictures. It was given to a detective who knew nothing
14 about anything except when he was handed photo lineups and
15 told to conduct an identification based on them. And the
16 worse thing about these two photo lineups is it contains
17 photographs of brothers who are already known to the
18 witness as of the time of the photo lineup. She'd already
19 identified two brothers as being involved in the murder,
20 so they put them in the exact same spot of the photo
21 lineup. It should have been in different spots to make it
22 less suggestive. All she had to do was look at one spot
23 on each photo lineup initially and she's done. And I
24 think ---

25 THE COURT: Well, that might apply as far as the

1 second one is concerned, but it wouldn't apply as far as
2 the first one is concerned; would it?

3 MS. FANNING: Well, I would submit that it applies to
4 both of them.

5 THE COURT: Why? Why would the location make any
6 difference in the first one because that -- she hadn't
7 seen the second one, so she didn't have any idea so why
8 would the location make any deference. I don't understand
9 that argument.

10 MS. FANNING: Okay. I agree with you that as to the
11 first one, but they should both be suppressed because the
12 manner in which it appears from the witness that the photo
13 lineup is conducted. Apparently, she was shown a set of
14 pictures and instead of just being asked the way you're
15 suppose to do it very sanitized do any of these
16 photographs mean anything to you or do you recognize any
17 of these people. She was told to identify the shooter.

18 THE COURT: That's the first one. That's why I want
19 you to address them separately. I think there's a
20 difference in my view of what I have heard from the
21 testimony. I think there is a different standard -- not
22 standard. The standard is the same, but a different
23 factual scenario with regard to the second one as oppose
24 to the first one.

25 MS. FANNING: Well, that was as to the first one,

1 that was the one with my client in it. The first one
2 where, yes, he's in the bottom left-hand corner the same
3 as the second one, but she was shown that lineup and told
4 to identify the shooter. Those are her only options for
5 those six people and so she picked one. She picked my
6 client D'el Grant. Then when she was given a second one.
7 She was told identify Gary, which is kind of leading and
8 prompting that you're not suppose to do.

9 THE COURT: Well, that's why I want you to address
10 them separately. I have some real serious problems with
11 the second one because of the question that was asked
12 about identifying an individual by name. I really do have
13 there.

14 MS. FANNING: Well, and as to the first one, I like
15 to get them both suppressed.

16 THE COURT: I understand that.

17 MS. FANNING: My problem with the first one is
18 because it contains my client. And she was shown six
19 photographs and told to identify the shooter not are any
20 of these photographs, do you recognize any of these people
21 and why. She was told to pick from those six people
22 identify the shooter which is not the way you conduct a
23 photo lineup. It's infamously suggestive and it should be
24 excluded.

25 THE COURT: Okay.

1 MS. FANNING: They should both be excluded, Your
2 Honor, because of the manner in which the witnesses
3 testify the photo lineups were conducted. You exclude one
4 you should exclude them both for the same reasons.

5 THE COURT: All right. I understand. Thank you.
6 Madam reporter, would you give me those two. All right.
7 Mr. Solicitor, I'll be glad to hear from you.

8 MR. WETMORE: Thank you, Judge. Detective Patrick
9 said there's no suggestion to the witness that the suspect
10 was at all present. There was no indication to, hey, the
11 shooter is on this page now you find him. It was do you
12 see the shooter. Who is the shooter. He indicated that
13 he didn't suggest her in any direction. He indicated that
14 placement was sent over from the jail and I think the six
15 photographs is typically fair amount of photographs. They
16 do all look very similar. And I think it's good lineup as
17 to the first one. We ask, Judge, that you allow the
18 testimony about her selecting D'el as a part of this photo
19 lineup. Would you like me to talk about the second one
20 too?

21 THE COURT: Yes, sir, go ahead and hear from you on
22 the second one.

23 MR. WETMORE: The second one is kind of -- when she
24 looked at her statement to refresh her memory, she said,
25 well, I don't think they ask me where's Gary or who's

1 Gary. They said who was with D'el

2 THE COURT: She said that after you led her into it,
3 Mr. Wetmore.

4 MR. WETMORE: Judge, I gave her her statement and I
5 hoped I refresh her memory. I wasn't trying to suggest
6 anything to her, but this is what she obviously took down
7 that happened. So I would hope that it be refresh on her
8 mind this long period of time afterwards. So I would
9 argue that what they presented to her is do you see the
10 person that he was with D'el because at first she had said
11 they said find the shooter. And she said this is D'el and
12 then they said you see anybody that was with D'el, so that
13 was how she was shown the second one. So, Judge, I would
14 certainly argue that part of this damages her
15 identification in court because she knows these people and
16 she witnessed the event. She knows these people from the
17 area and one of them has family ties to her. So under
18 those circumstances, I would argue that this process
19 compromise her testimony today.

20 THE COURT: Okay. All right. Thank you. All right.
21 It is pretty clear that under our law the test to be a
22 applied in determining a whether photo lineup should be
23 admissible is whether it is unnecessarily suggestive so as
24 to give rise to substantial likelihood of irreparable
25 misidentification. That, of course, is whole State vs.

1 Washington in 315 South Carolina 108 432 SE Second 448
2 1992 case. Reaffirmed in State vs. Lewis 354 South
3 Carolina 227 a 2003 case. And also contained in the
4 language of Judge Anderson's decent in State vs. Lewis
5 where he reviewed the Biggers' factors. The controlling
6 Supreme Court case with regard to identification is Neil
7 vs. Biggers 409 US 188 93 Supreme Court 375. And there
8 the Supreme Court held that the factors to be considered
9 in evaluating likelihood of misidentification because of
10 suggestiveness of confrontation procedures for the purpose
11 of determining admissibility of testimony concerning out
12 of court identification include the opportunity of the
13 witness to view the criminal at the time of the crime, the
14 witness' degree of attention, the accuracy of the witness'
15 prior description of the criminal. The level of certainty
16 demonstrated by the witness at the confrontation and the
17 amount of time between the crime and the confrontation.

18 From a standpoint of proof some of these factors are
19 lacking, there is nothing in the evidence to indicate what
20 the witnesses opportunity for viewing the criminal at the
21 time of the crime. There's no testimony regarding that.
22 There's no testimony regarding the witnesses degree of
23 attention or the accuracy of -- well, I would have to say
24 the accuracy of the witnesses prior description of the
25 criminal may be there because of statements that were

1 made.

2 There is testimony from the officer concerning the
3 level of certainty demonstrated by the witness of the
4 confrontation and there is apparently about three hours or
5 three and a half hours between the time of the crime and
6 the confrontation. So there is definitely two evidence in
7 the record of two of the Biggers factors. And it's also
8 clear to me that because these people all know each other,
9 there's a great deal of difference between somebody that's
10 picking somebody out of a photo lineup that they have
11 never seen before. And that overcomes the witness' degree
12 of attention and the accuracy of the witnesses prior
13 description of the criminal.

14 I think that she was given unless talk about it
15 differently. She was given State's Exhibit Number 18
16 first and was simply told to identify the shooter. And I
17 having reviewed this photo lineup, it does appear to be
18 comprised of all African-American males of approximately
19 the same age and similar looking. Some of them have
20 slight facial hair but not much. Some of them are clean
21 shaven, but their all look very very similar. And she did
22 -- was asked to identify the shooter by her testimony and
23 that is in the record.

24 In my view, the witness' testimony and the other
25 testimony in the record does meet the requirements of

1 Biggers, Washington and Lewis with regard to the first
2 photo identification. I find that it is not unduly
3 suggestive, so as to give rise to substantial likelihood
4 of irreparable identification that's what the -- it would
5 have to be before it would be inadmissible. And I don't
6 think that that is present with the lineup of the
7 defendant in State's Exhibit Number 18 and that will be
8 admitted.

9 A different question arises with regard to State's
10 Exhibit 19. There she was asked to identify a person by
11 name and I think that does make it unduly suggestive. And
12 I would therefore exclude State's Exhibit Number 19 for
13 identification. There is substantial likelihood of
14 misidentification and therefore -- not misidentification
15 it's just hardly be any misidentification because she has
16 given the name of the person she was suppose to look at.
17 And I think that that makes it very definite unduly
18 suggestive. And the Court would exclude State's Exhibit
19 19. So the ruling of the Court is State's Exhibit Number
20 18 is admissible. State's Exhibit Number 19 is not
21 admissible.

22 (WHEREUPON, State's Exhibit No. 18 was admitted into
23 evidence.)

24 THE COURT: All right. Let's proceed with the jury
25 please.

1 (WHEREUPON, the jury returned to the courtroom.)

2 THE COURT: Ladies and gentlemen, thank you for your
3 promptness in being back here and I apologize to you for
4 keeping you waiting in the jury room. I try my best not
5 to make juries wait in the jury room and try to start on
6 time, but we did have a very important legal matter that
7 we had to take care of. And we started on that at 2:15
8 and it took a little longer than I had anticipated, but it
9 has been resolved. And we are now ready to go forward.

10 I do need to ask you now if anyone over the lunch
11 recess has had any contact with anybody about this. If
12 anyone has tried to talk with you about this case in any
13 manner whatsoever, I would need to know about that now.
14 No -- all negative responses or no response, so I'll take
15 that as a no and that is good. I would also ask you if
16 anyone over the lunch recess has seen any news reports
17 either in the printed media or on broadcast media
18 concerning this matter other than what has already been
19 disclosed to me earlier, any other viewing of any
20 television or radio reports or newspaper reports I would
21 also need to know about that now? Also, again, no
22 response and I will take that as a no and that's good. We
23 are now ready to go forward. All right.

24 Mr. Solicitor, you may call your next witness.

25 MR. MCKOY: Thank you, Your Honor. The State calls

1 Detective Shaun Patrick.

2 THE CLERK: Sir, if you would please place your left
3 hand on the Bible and raise your right hand. Do you swear
4 or affirm to tell the truth, the whole truth, and nothing
5 but the truth so help you God?

6 MR. PATRICK: I do.

7 THE CLERK: Please be seated. Sir, if you would,
8 please state your full to the court and spell your last?

9 MR. PATRICK: Shaun Timothy Patrick. P-A-T-R-I-C-K.
10 WHEREUPON,

11 Shaun Patrick,
12 after first having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MCKOY:

15 Q Good afternoon.

16 A Good evening.

17 Q Will you tell the jury where you're employed,
18 Detective Patrick?

19 A North Charleston police department.

20 Q How long you been with North Charleston?

21 A Approximately seven years.

22 Q What are your current duties with North Charleston?

23 A I'm currently persons crime detective with the City
24 of North Charleston.

25 Q What were your duties with North Charleston on

1 2-24-2005?

2 A Still a persons crime detective.

3 MS. FANNING: Your Honor, I'm sorry something
4 occurred to me. Can we approach briefly.

5 THE COURT: Yes.

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

9 BY MR. MCKOY:

10 Q Detective Patrick, are you employed as a detective
11 with the persons unit on 2-24-05?

12 A Correct.

13 Q Do you recall an incident on that date that brings
14 you to court today?

15 A Yes, a homicide at the Ashley Shores off Azalea
16 Avenue North Charleston.

17 Q Did you have a chance to respond to the scene at
18 Ashley Shores?

19 A Yes, I did briefly.

20 Q What were your duties that day as a detective?

21 A To secure the witnesses found located in my view or
22 at the station.

23 Q Did you have a chance to talk to witnesses on the
24 scene?

25 A No, I do not.

1 Q Did you have a chance that day to talk to a
2 Miss Resheema Witfield?

3 A Yes, I did.

4 Q And do you know when you talk to her?

5 A Later on after the homicide took place at North
6 Charleston police department.

7 Q And why did you talk to Miss Witfield?

8 A In reference to presenting a photographic lineup.

9 Q Did she give reason to believe that she knew or could
10 help in assist with your detection in this crime?

11 A I'm sorry say that one more time.

12 Q Did she give you reason to believe that she knew some
13 information that could help you with this crime?

14 A Yes.

15 Q When you had a chance to speak with Miss Witfield was
16 anybody else around?

17 A Not that I recall.

18 Q And when you spoke to Miss Witfield ---

19 MR. MCKOY: Your Honor, may I approach?

20 THE COURT: Yes.

21 Q When you spoke to Miss Witfield, did you ---

22 MS. FANNING: I'm sorry. I thought you meant
23 approach the bench.

24 MR. MCKOY: I'm sorry approach the witness, Your
25 Honor.

1 THE COURT: Yes.

2 MR. MCKOY: I'm sorry for the confusion.

3 THE COURT: That's okay.

4 BY MS. MCKOY:

5 Q When you had a chance to speak to Miss Witfield, did
6 you have an opportunity to show her a photo lineup?

7 A Yes.

8 Q And can you explain to the jury what a photo lineup
9 is?

10 A It's array of six photographs contained on one piece
11 of paper presented to a witness to a crime.

12 Q Now, are these random photographs?

13 A Yes.

14 Q Do you yourself put them in a lineup together?

15 A No, I do not.

16 Q And where did you get this in lineup?

17 A File photos.

18 MS. FANNING: Objection, Your Honor.

19 THE COURT: Okay.

20 MS. FANNING: I'll withdraw.

21 THE COURT: Okay.

22 BY MR. MCKOY:

23 Q And where did you get this lineup?

24 A File photos.

25 Q Do these lineups contain names?

1 A No.

2 Q Do they contain height and weight?

3 A No.

4 Q Do they contain date of births?

5 A No, not usually even at the top photographic lineup
6 there's some information, but that's usually taken away
7 from the six photographs are left plain on a plain piece
8 of paper. The rest of it's taken away from that.

9 Q Is it your testimony here today that everything else
10 is cut away but the photos when you present a photo
11 lineup?

12 A That's correct.

13 Q I'm going to show you what's been marked for
14 identification purposes as State's Exhibit Number 18. Do
15 you recognize that?

16 A Yes, I do.

17 Q And what is that?

18 A That was the photo lineup presented to Miss Witfield.

19 Q Are the six photos that are in there are all the
20 photographs African American?

21 A Yes, they are.

22 Q Are they all men?

23 A Yes, they are.

24 Q Are they all roughly the same facial textures and
25 details?

1 A I would say so, yes, sir.

2 Q And did you have an opportunity to show Miss Witfield
3 this photo lineup?

4 A Yes, I did.

5 Q What did you ask her to identify when you showed her
6 that photo lineup?

7 A Anyone that may have been involved in the incident
8 that we were speaking about.

9 Q And who did she indicate?

10 A D'el Grant.

11 Q And what photo is that on that lineup?

12 A It's the bottom left photo.

13 Q Did you suggest to her who to point out?

14 A No, I did not.

15 Q Did anybody else in the area suggest to her who to
16 point out?

17 A No.

18 Q Did she point that out on her own will?

19 A Yes.

20 Q Did she point that out without hesitation?

21 A Yes.

22 (WHEREUPON, State's Exhibit No. 20 was marked for
23 identification only.)

24 Q Did she indicate to you who D'el was?

25 A I don't believe at the time she didn't. I got the

1 information I believe from Detective Elmore.

2 Q If I were to show you a copy of the statement, would
3 that refresh your memory?

4 A Yes. As it reads here ---

5 MS. FANNING: Your Honor, I'm sorry is this his
6 statement?

7 THE COURT: I'm not sure what it is either. I'm not
8 sure what he's using it to refresh his memory for.
9 Identify -- tell me what it is, Mr. McKoy?

10 MR. MCKOY: Your Honor, this is a statement that
11 Detective Patrick wrote from what Miss Witfield has told
12 him.

13 THE COURT: All right. Then he can use it to refresh
14 his memory, but he can't read from the statement.

15 MR. MCKOY: Sure. Your Honor, I just want to show it
16 to him, Your Honor. Thank you.

17 BY MR. MCKOY:

18 Q What question did you ask her when you showed her the
19 photo lineup?

20 A Asked her to look at all the photographs. And prior
21 to saying anything, she saw the person or persons involved
22 please point them out to me.

23 Q Did you ask her who was the shooter? To identify the
24 shooter?

25 A I don't recall saying identify the shooter. I may

1 have.

2 Q Did she point out D'el Grant on that sheet?

3 A Yes.

4 Q Did she say that he was the shooter?

5 A Yes..

6 MS. FANNING: Objection. Object to hearsay.

7 THE COURT: All right. That would be hearsay as to
8 what she said. And I would sustain that objection and ask
9 that the jury disregard that answer.

10 MR. MCKOY: Thank you, Your Honor. Court's
11 indulgence.

12 (WHEREUPON, a pause in the proceedings.)

13 MR. MCKOY: Please answer any questions Ms. Fanning
14 may have for you. Thank you.

15 THE COURT: Cross-examination, Ms. Fanning.

16 MS. FANNING: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. FANNING:

19 Q Detective Patrick, my name is Meg Fanning and I
20 represent the defendant, D'el Grant. And other than
21 conducting this photo line-up with Miss Resheema Witfield,
22 did you have any other involvement in the investigation of
23 this case?

24 A Not that I recall, no.

25 Q Did you interview any other suspect ---

1 A No.

2 Q --- or any other witnesses rather?

3 A Not that I recall.

4 Q Did you go to the scene?

5 A Briefly, yes.

6 Q And what did you do there?

7 A Again looked for witnesses to secure and also speak
8 with supervisors in reference to what they needed to
9 assist.

10 Q Okay. That's all you did?

11 A Yes.

12 Q And what you told us today that's all you had to do
13 with this case?

14 A As far as I recall, yes.

15 MS. FANNING: Thank you. I don't have anything else.

16 THE COURT: Anything further, Mr. McKoy?

17 MR. MCKOY: Nothing further, Your Honor.

18 THE COURT: All right. Detective Patrick, you can
19 step down. Thank you very much.

20 (WHEREUPON, the witness leaves the witness stand.)

21 MR. WETMORE: Detective Patrick asked to be released
22 from his subpoena?

23 THE COURT: Any objection to his being relieved of
24 his subpoena?

25 MS. FANNING: Without objection.

1 THE COURT: All right. You are excused. Thank you
2 very much.

3 All right. Mr. Solicitor, you may call your next
4 witness.

5 MR. WETMORE: Thank you, judge. Resheema Witfield.

6 THE CLERK: Ma'am, if you would please place your
7 left hand on the Bible and raise your right hand. Do you
8 swear or affirm to tell the truth, the whole truth, and
9 nothing but the truth so help you God?

10 MS. WITFIELD: Yes, sir.

11 THE CLERK: Please be seated. Please state your full
12 name to the court and speak loud and clear?

13 MS. WITFIELD: Resheema Shenetta Witfield.

14 W-I-T-F-I-E-L-D.

15 WHEREUPON,

16 Resheema Witfield,
17 after first having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. WETMORE:

20 Q Miss Witfield, tell the jury a little bit about
21 yourself. How old are you?

22 A Sixteen.

23 Q Sixteen now. Back in February of 2005, how old were
24 you?

25 A Fourteen.

- 1 Q And did grow up in this area?
- 2 A Yes, sir.
- 3 Q You lived here in this area all your life?
- 4 A Not all my life. I live in North Charleston now.
- 5 Q You live in North Charleston now?
- 6 A Yes, sir.
- 7 Q Back in February of 2005, where did you live?
- 8 A In North Charleston.
- 9 Q Who do you live with now you live with your parents?
- 10 A My mother.
- 11 Q What's her name?
- 12 A Shenetta Darlene Witfield.
- 13 Q Now, if you're 16, you're still in school; is that
- 14 right?
- 15 A Yes, sir.
- 16 Q Okay. Where do you go to school?
- 17 A Star high school.
- 18 Q Star high school. What kind of subjects do you study
- 19 that you like?
- 20 A Math.
- 21 Q You like math. Do you have a job outside of school?
- 22 A No.
- 23 Q Miss Witfield, have you and I met before?
- 24 A Yes, sir.
- 25 Q Okay. Do you remember how many times you and I have

1 talked?

2 A Two times.

3 Q Two times. Do you remember where we had these
4 meetings?

5 A In your office.

6 Q At the Solicitor's office?

7 A Yeah.

8 Q Is that right. And each time did you have your
9 parents or your guardian with you?

10 A Yes, sir.

11 Q And do you have a parent or guardian here today with
12 you in the courtroom?

13 A Yes.

14 Q Now, did you get a subpoena to come to court, made
15 you come to court today?

16 A Yes.

17 Q And we are here today to address the shooting back in
18 February of 2005 at Ashely Shores. You have any
19 information about that?

20 A Yes, sir.

21 THE COURT: Excuse me, Mr. Wetmore. Ms. Fanning,
22 will the two of you approach the bench for just a minute.

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

1 THE COURT: All right, Mr. Wetmore, you may proceed.

2 MR. WETMORE: Thank you, Judge.

3 BY MR. WETMORE:

4 Q Did your big brother, Cederious Nelson, get killed at
5 Ashely Shores in February?

6 A Yes, sir.

7 Q Very sorry about that. Were you unlucky enough to
8 see that happen?

9 A Yes, sir.

10 Q Is it tough for you to be on that stand right here
11 today talking about this?

12 A Yes.

13 MS. FANNING: Your Honor, I object to this relevance
14 of this line of questioning.

15 THE COURT: I overrule.

16 BY MR. WETMORE:

17 Q I'm sure it must make you sad to be on that stand
18 talking about this; is that correct?

19 A Yes.

20 Q Are you at all scared to be in this courtroom?

21 A Yes.

22 Q I like to talk to you about is the events of that day
23 as you remember them. Did you live over on Ashley Shores?

24 A My sister did.

25 Q Did you come over there that day to stay?

1 A I just had came home from school like 30 minutes
2 after all it had happen.

3 Q Did you come by just to visit or did you normally
4 stay there after school?

5 A I come to her house after school.

6 Q I didn't hear what you said I'm sorry.

7 A I come to her house after school.

8 Q Okay. So you usually come by there after school; is
9 that right?

10 A Yes, sir.

11 Q And that day when you were there, did your brother
12 come over?

13 A Yes.

14 Q Okay. Did know he was coming?

15 A Yes, he had call.

16 Q He called ahead to let you know he was coming; is
17 that right?

18 A Yes.

19 Q Did you open the door up for him?

20 A Yes.

21 Q Why did you do that?

22 A Because he called and say open the door.

23 Q You were doing what you were asked to do; is that
24 right?

25 A Yes.

1 Q Tell me about what you saw when your brother pulled
2 up? Who was -- let's -- first of all, what was he -- what
3 kind of car was he in?

4 A His green car.

5 Q Okay. So your brother was driving that green car?

6 A Yes.

7 Q Was there anybody with him in that green car?

8 A Yes.

9 Q Did you know who it was?

10 A Robert Bryant.

11 Q Now, when your brother and Robert Bryant pulled up,
12 did they have any contact with you?

13 A How you mean?

14 Q Did they talk to you? Did they do anything with you?

15 A No, sir.

16 Q When they pulled up, what did they do after they got
17 out of the car what did they do?

18 A I open the back door. He came in. Him and Evil
19 been in the kitchen and I went upstairs. And the time I
20 get upstairs, that when they had went back out the back
21 door. And when I go to the back door, Evil and my brother
22 and Gary was fussing.

23 Q I'm sorry. I don't mean to interrupt you. When this
24 fussing was going on, it was your brother and who else?

25 A Evil and Gary.

- 1 Q So Evil is who?
- 2 A Robert Bryant.
- 3 Q So it was your brother, Cederious Nelson, Robert
- 4 Bryant and who was the third person out there?
- 5 A Gary.
- 6 Q Is that Gary Grant?
- 7 A Yes.
- 8 Q They're arguing; is that right?
- 9 A Yes, sir.
- 10 Q Do you have any idea what they were arguing about?
- 11 A No, sir.
- 12 Q Now, did you stay with the door open or did you go
- 13 back inside?
- 14 A No, everybody tell me to go on back in the house.
- 15 Q Your brother told you to go back in the house; is
- 16 that right?
- 17 A Yes, sir.
- 18 Q And did you do what he ask you to do?
- 19 A Yes, sir.
- 20 Q And were you able to still see what was going on
- 21 after you went back in the house? Take a second if you
- 22 need to.
- 23 A Yes, sir, I went to the window.
- 24 Q So you went to the window. And where was that window
- 25 located?

1 A Right there by the door.

2 Q Was the window part of the door or was it beside the
3 door? Take your time, Miss Witfield. Do you want some
4 water or anything to drink?

5 THE COURT: Give her a cup of water.

6 Q I know this is tough. Drink some water take your
7 time. As soon as you are ready, we're going to talk about
8 this as quickly as we can and let you get down from there.
9 The window where you were watching this was it part of the
10 door or was it beside the door?

11 A Beside the door.

12 Q From that window, did you have a clear view out
13 behind the apartment?

14 A Yes, sir.

15 Q Through that window you had a clear view of your
16 brother and Robert Bryant you said fussing with Gary
17 Grant; is that right?

18 A Yes, sir.

19 Q Did you see anybody else out there right then when
20 they were initially fighting and fussing?

21 A No, sir.

22 Q Tell me when you saw the defendant, D'el Grant?

23 A I saw him run out of Wayne Head and shoot my brother.

24 Q So you saw the defendant run out of where?

25 A Wayne Head house.

1 Q Do you know -- will you tel the jury who Wayne Head
2 is? You know his real name?

3 A I think Deshawn.

4 Q Deshawn. And is that where D'el came from?

5 A Yes, sir.

6 Q When he came out of that house, did you see him with
7 a gun in his hand?

8 A Yes, sir.

9 Q Do you remember what it look like?

10 A A black little gun look like it had silver on it.

11 Q Did you say -- what color did you say it was?

12 A I know it was all black, but it look like it had
13 silver on it.

14 Q Silver is that what you said?

15 A (No response.)

16 Q And he ran from the apartment with a gun in his hand.
17 What did you see him do?

18 A Shoot my brother.

19 Q And I know it's tough to think about. Could you tell
20 where he shot him or how he shot him?

21 A The way my brother -- the way he was standing and the
22 way D'el ran right. He shot him straight through the
23 head.

24 Q Did the defendant come to the front of him or from
25 the back of him?

1 A He run towards the side of him. They way he ran --
2 the way my sister window was I could see how he ran to the
3 side and just shoot.

4 Q So he approached your brother from the side; is that
5 correct?

6 A Yes, sir.

7 Q And shot him from side; is that correct?

8 A Yes.

9 Q Did you see how many times he shoot?

10 A I heard two gunshots and I ran back upstairs grab my
11 house phone and ran back downstairs and look back out the
12 window. When I look out the window, I saw my brother and
13 Evil was laying next to each other. And I see when D'el
14 and Gary ran toward the other side dropping that gun, ran
15 outside.

16 Q So after you see D'el shoot, you said you went where?

17 A Upstairs.

18 Q You went upstairs. What did you do upstairs? Did
19 you just run and just to get away? What did you do?

20 A I went upstairs to get the house phone.

21 Q Get the house phone. Did you call anybody?

22 A No, I ran back downstairs.

23 Q You got the phone, but then you came right back
24 downstairs; is that right?

25 A Yes, sir.

1 Q Did you go to the same spot beside the door where you
2 could see out?

3 A I went back to the window.

4 Q I'm sorry you went to the window where you could see
5 out; is that right?

6 A Yes.

7 Q Tell me what you saw when you came back down to that
8 window? What was the situation with your brother and
9 Robert Bryant?

10 A They were lying next to each other.

11 Q And that was out behind the apartment; is that right?

12 A Yes.

13 Q Did you see the defendant, D'el Grant?

14 A Yes.

15 Q Was he still back behind the apartment where your
16 brother and Robert Bryant were laying?

17 A No, him and his brother were running towards the
18 (inaudible).

19 Q You saw them running is that what you said?

20 A Yes.

21 Q Were they doing anything? Were they just running?

22 A They jumping up and down, like running jumping up and
23 down.

24 Q They were running and they were jumping and down. Is
25 that right? Is that what you saw?

1 A Yes.

2 Q Now, you have some or you know who D'el is right,
3 D'el Grant?

4 A Yes.

5 Q How did you come to know D'el Grant?

6 A By his brother.

7 Q How long did you know who D'el was?

8 A For a couple of years.

9 Q And you said you know his big brother Gary Grant; is
10 that correct?

11 A Yes.

12 Q How long had you known the big brother Gary Grant?

13 A When he came to our family.

14 Q I'm sorry I didn't hear what you say.

15 A Well, he came to the family, that my sister baby
16 daddy, so I know him for that long.

17 Q Is there some family connection between your family
18 and Gary Grant?

19 A Yes.

20 Q What is that relationship?

21 A My sister Gary baby mama.

22 Q Your sister is Gary's baby mama?

23 A Yes.

24 Q So it's fair to say that you knew big brother Gary
25 through him you got to know the defendant D'el; is that

1 right?

2 A Yes.

3 Q Now, you know these two brothers for a couple years;
4 is that what you said?

5 A Yes.

6 Q And you know them both well enough to tell them a
7 part one from the other?

8 A Yes.

9 Q That day at the shooting the big brother, Gary Grant,
10 you remember what he was wearing?

11 A An all black jump suit.

12 Q And what was Gary Grant, the big brother, Gary Grant,
13 what was he doing just before your brother and Robert
14 Bryant got shot?

15 A He was just standing there.

16 Q He was just standing there. Was he talking or
17 arguing with your brother and Robert Bryant?

18 A Yes.

19 Q Now, let's talk about talk about the defendant,
20 D'elD'el Grant. Do you remember what he was wearing that
21 day?

22 A A white T-shirt with some blue jeans and red and
23 white blue shoes.

24 Q He was wearing a white T-shirt and blue jeans, tennis
25 shoes; is that right?

1 A (No response.)

2 Q And the first time you saw him is when you saw him
3 run out of the apartment; is that right?

4 A Yeah, it is.

5 Q That's the first time you saw the defendant, D'el
6 Grant; is that right?

7 A Yes.

8 Q And you fortunately watched while he shot your
9 brother; is that correct?

10 A Yes.

11 Q Did you see see him shoot Robert Bryant?

12 A No, sir.

13 Q After you saw him shoot your brother, what did you
14 do?

15 A Ran upstairs.

16 Q Now, from your window when you were watching how
17 close were you? Were you about as close as you and I are
18 now or were you further away or closer?

19 A No, about right there.

20 Q That's about right. Is there anything in the way of
21 blocking your view of what you saw?

22 A No.

23 MR. WETMORE: If I approach may, Your Honor.

24 Q Let me show you what's been marked as State's Exhibit
25 Number 18. After the police got there, did you tell North

1 Charleston police department what you saw?

2 A Yes, sir.

3 Q Did you tell them that D'el was the one you saw shoot
4 your brother?

5 A Yes.

6 Q Did you give them a statement about what you saw?

7 A Yes, sir.

8 Q After that did, North Charleston police department
9 give you some pictures to look at, a group of pictures to
10 look at?

11 A Yes.

12 Q Okay. Is that what you see there before you State's
13 Number 18?

14 A Yes.

15 Q Now, when they showed you that group of pictures, did
16 they tell you who you should pick?

17 A No, sir.

18 Q Did they ask you to identify the person who shoot
19 your brother?

20 A Yes, sir.

21 Q And were you able to see his picture on there?

22 A Yes, sir.

23 Q Did you mark the picture that you picked?

24 A Did I?

25 Q Did you mark it back then?

1 A How you mean mark it like initial it?

2 Q Did you initial it or circle it?

3 A Yes, sir.

4 Q What did you do to mark if that was the one that you
5 recognized?

6 A You say what did I do?

7 Q Like what did you do on the piece of paper, did you
8 circle it or did you put a check on it?

9 A I initial it.

10 Q You initialed the one. Did you circle it at all?

11 A Yes, sir.

12 Q So that was the person that you identified as shoot
13 your brother?

14 A Yes, sir.

15 Q Who is that person on that photograph that you
16 identified?

17 A D'el.

18 MR. WETMORE: At this time, I like to admit State's
19 Number 18.

20 THE COURT: It's already admitted subject to the
21 matters previously put on the record.

22 MR. WETMORE: Thank you, Your Honor. Judge, I don't
23 think I want to ask her anything else. Thank you.

24 THE COURT: Cross-examination, Ms. Fanning.

25 CROSS-EXAMINATION

1 BY MS. FANNING:

2 Q Miss Witfield, I'm Meg Fanning and I represent D'el
3 Grant that's here today standing trial. I just have a few
4 questions for you. You testified earlier that you known
5 Gary Grant since he came into the family; is that what you
6 said? I'm sorry the podium was ---

7 A Yes.

8 Q And when you say when he came into the family, you
9 mean when he fathered a baby with your sister; right?

10 A Yes, ma'am.

11 Q That's Contessa?

12 A Yes..

13 Q Is that who's house you were at that afternoon?

14 A Yes.

15 Q What's that's baby's name?

16 A Quateesha.

17 Q And how old is she?

18 A Six now.

19 Q Six now. Does she live there with your sister?

20 A Does she live with my sister?

21 Q Well, at the time?

22 A Yes.

23 Q You testified that Gary was wearing all black jump
24 suit the afternoon that these events happened. Isn't it
25 true though that he had the top of the jump suit down and

1 a white T-shirt on with it? Do you remember that?

2 A Not when I see him.

3 Q You testified today under oath that you first saw
4 D'el Grant when he came running out of Wayne Head or
5 Deshawn Gathers' house which is a townhome right next your
6 sisters; right?

7 A Yes.

8 Q And you said he's holding up a gun in his hand that
9 you described as black and silver?

10 A Yes.

11 Q And you also indicated that you gave some written
12 statements to the North Charleston police department
13 concerning these matters?

14 A Yes.

15 Q Do you remember giving a statement at five o'clock in
16 the afternoon of the day of the shootings?

17 A Down to the station, yes.

18 Q Yeah, down at the station. Detective Elmore wrote it
19 for you and you signed it. You remember that?

20 A Yes.

21 Q If I give you a copy of that, would you look it over
22 for me and tell me if that appears to be the statement.
23 It's two pages, Miss Witfield if you just want to look at
24 those. Does that appear to be the statement that you
25 gave? It's got your signature at the bottom of each page.

1 Does that appear to be the statement that you gave the
2 fact that it had your signature on it?

3 A Yes.

4 Q And this was just a few hours after everything
5 happened at Ashley Shores; right?

6 A Yes.

7 Q And that afternoon do you remember telling law
8 enforcement that you were standing out the back door
9 looking at your brother, Cederious Nelson, Evil who you
10 call Shawn in this, Gary and D'el talking?

11 A I never tell them that.

12 Q You would agree with me, Miss Witfield, that that is
13 in the statement given the actions that afternoon of the
14 ---

15 A That's in my statement, but I never told whoever the
16 guy was.

17 Q Okay. You also indicated today and you put it in
18 your statement as well that after the shootings Gary and
19 D'el ran out towards the pond area and isn't that out back
20 of the townhomes?

21 A Yes, ma'am.

22 Q So you saw them run -- and you were inside the window
23 at this point; correct?

24 A Yes.

25 Q You saw them?

1 A No, I was outside -- yeah, I saw out the window.

2 Q You were in the window?

3 A Yes.

4 Q You also put -- this is an area of some confusion for
5 me that you were outside standing at the back door looking
6 at your brother. Cederious tells you to go inside the
7 house and lock the door, which you did. You went inside
8 and closed the door. And then you put I came back out the
9 back door, that's when D. L. came out of 3747C Ashley
10 Shores with a small black and silver handgun.

11 A He ask me that, but I said back window.

12 Q So if the detective wrote that your words you came
13 out the back door so you were standing outside when the
14 shootings occurred, that was his mistake?

15 A Must be.

16 Q And your testimony today is that you were inside the
17 house looking out the back window?

18 A (No response.)

19 Q Did you see several vehicles parked in the area where
20 the shootings occurred?

21 A When?

22 Q Right out back of your sister's townhouse where the
23 shootings happened?

24 A No, ma'am.

25 Q Do you remember seeing your brother's green car in

1 the backyard?

2 A Yes.

3 Q And do you remember seeing a red Suburban in the
4 backyard?

5 A No, ma'am.

6 Q Do you remember seeing a white car in the backyard?

7 A No, ma'am.

8 Q Miss Witfield, if you would turn to page 2 of your
9 statement. And that's where you were asked some -- it
10 appears that you were asked questions by law enforcement
11 not many but a few. They asked you how you knew D'el and
12 you put he's always walking around the area. And they
13 asked you how you know Gary and you said he's my sister's
14 baby daddy. They asked you how many shoots did you hear.
15 And you said two or three. Is all this accurate,
16 Miss Witfield, is what you're saying on the paper?

17 A Yes.

18 Q They asked you what D'el looked like. And you said
19 he has gold teeth. He's about six feet tall, dark
20 skinned, medium build and he was wearing a white T-shirt
21 and jeans, blue and red and white shoes. And then you
22 were asked if you saw any cars in the backyard. And you
23 answered, yes, there was a white car with no one in it, a
24 red Suburban with four to five people in it some more
25 girls and guys. My brother's green car was back there.

1 He and Evil got out his car and no one else was in the car
2 when they pulled up. You would agree with me that's what
3 you told law enforcement ---

4 A Yes.

5 Q --- right after the murders -- I'm sorry I didn't
6 mean to walk on your answer. But right after the murders
7 happened you recall seeing several vehicles parked back
8 there in the backyard around where the murders occurred;
9 correct?

10 A Yes.

11 Q Then you were asked did you see anyone leave in your
12 brother's car and your answer was no. Do you have any
13 information how the green Oldsmobile was taken away from
14 murder scene before law enforcement got there?

15 A No, ma'am.

16 Q Do you remember seeing Cordero Porcher right in the
17 vicinity of your brother, Mr. Nelson, and Mr. Bryant the
18 other victim?

19 A Which one is Cordero?

20 Q Cordero Porcher. He testified today. He was wearing
21 a white and gold shirt with the braids?

22 A Oh, no. No, ma'am.

23 Q Lil Mack I think is his street name?

24 A No, ma'am.

25 Q How about any of the Porcher women Azrez (sic) or

1 Dejeris (sic)? Did you see them? Do you know them?

2 A Yes. I ain't see them.

3 Q How about Devant Porcher did you see him?

4 A No, ma'am.

5 Q Okay. So the only people you saw at the scene then
6 were Gary, and D'el, Evil and your brother?

7 A Yes, ma'am.

8 Q And you don't remember seeing any of the other people
9 that were out there around the murder scene?

10 A If they was out there, I would see them because the
11 only direction I was looking at I couldn't see them.

12 MS. FANNING: Thank you, Miss Witfield. I don't have
13 anything else.

14 MR. WETMORE: Nothing further, Judge.

15 THE COURT: All right. Thank you. You may step
16 down.

17 (WHEREUPON, the witness leaves the witness stand.

18 MR. WETMORE: Judge, with permission of counsel, if
19 she chooses to remain that's certainly her business, but I
20 ask you to release her from her subpoena.

21 THE COURT: Any objection, Ms. Fanning?

22 MS. FANNING: I don't have any objection.

23 THE COURT: You're free to go if you would like to,
24 but you are welcome to stay.

25 All right. Mr. Wetmore.

1 MR. WETMORE: At this point, the State rest.

2 THE COURT: All right. Ladies and gentlemen, you
3 have heard the State announce that they have rested their
4 case, that means that you have heard all the testimony
5 that you will hear from State at this time. And there are
6 certain matters of law which I now need to take up with
7 the attorneys involved in this case. It will take me a
8 few minutes to take care of these matters of law. And
9 it's also probably appropriate that we take our afternoon
10 break at this time. So I am going to allow you to go to
11 your jury room and relax for a little bit while we take up
12 these matters of law. And then the court personal will
13 take a short break and we'll be ready to resume. I will
14 tell you now as I have done all throughout this case that
15 it's still premature for you to discuss this case among
16 yourselves. You still certainly have not heard everything
17 that you will hear in connection with this matter. And
18 you should not discuss the matter among yourselves. Talk
19 about anything that you want to talk, but don't talk about
20 this case. And we'll send for you as soon as we can take
21 care of these matters of law and take a brief recess for
22 court personnel. Thank you. If you will go with the
23 bailiff to your jury room.

24 (WHEREUPON, the jury retired to the jury room.)

25 THE COURT: All right. Ms. Fanning, be glad hear by

1 way of any motions on behalf of the defendant.

2 MS. FANNING: Your Honor, I would move for a directed
3 verdict on behalf of my client as to the two indictments
4 for murder. The grounds that I don't recall independently
5 any law enforcement officer testifying that their agency
6 of jurisdiction of these matters and that they occurred in
7 Charleston County.

8 THE COURT: Oh, yeah, there's testimony. I did write
9 that down.

10 MS. FANNING: I was looking for it and I didn't hear
11 it, but I may have missed one.

12 THE COURT: I will tell you who it is. Officer Jerry
13 Jellico got a report shots fired at Ashley Shores in
14 Charleston County, yeah. Shots fired at Ashley Shores in
15 Charleston County.

16 MS. FANNING: I'm at a little disadvantage seeing,
17 Your Honor, I really can't some of the witnesses.

18 THE COURT: I do recall there was testimony this
19 occurred in Charleston County. So I think that I would
20 have to respectfully deny that motion.

21 MS. FANNING: And also an additional grounds would be
22 that the evidence in the State's case does not rise to the
23 level of certainty required to give the case to the jury
24 on the charge of murder as much as there's no physical
25 tying Mr. Grant to the scene. All eye witness testimony,

1 all co-defendant testimony would be an example with
2 exception of one witness. I ask the Court to give
3 Mr. Grant a directed verdict.

4 THE COURT: All right. I would respectfully deny
5 that motion. Rule 19 of the South Carolina rules of
6 criminal procedure provides in part that a court directed
7 verdict in a defendant's favor after the evidence on
8 either side has closed. If there's a failure of
9 competent evidence tending to prove the charge in the
10 indictment as used in the rule competent means admissible
11 not the weight to be given to the evidence. In ruling on
12 the motion, the trial judge should consider only the
13 existence or nonexistence of the evidence and not its
14 weight. There is evidence in the record that the
15 defendant in this case did pull the trigger or was the
16 actual shooter of the two defendants in this case or the
17 two victims in this case. And, of course, that is
18 evidence for the jury to consider and make that factual
19 determination, so I would respectfully deny the motion.
20 All right. Ms. Fanning, is your client in position at
21 this time or ready or do you want to do it after the break
22 with regard to the election under his Fifth Amendment
23 Rights?

24 MS. FANNING: He's telling me he's ready to decide
25 right now.

1 THE COURT: All right. Let me ask him to stand
2 then. Mr. Grant, earlier today I went over with you your
3 rights under the Fifth Amendment to the Constitution of
4 the United States, that is your right to remain silent,
5 your privilege against self-incrimination. You recall
6 that discussion that I had with you?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And you also had a chance to talk with
9 your attorney about your Fifth Amendment rights?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And have you understood your discussions
12 with your lawyer regarding these rights?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And you understood your discussions with
15 me regarding these rights?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you have any questions that you want
18 to ask either your attorney or me regarding your right to
19 remain silent or your right to testify or not testify in
20 this matter?

21 THE DEFENDANT: No, sir.

22 THE COURT: You understand what she has explain to
23 you and what I have explain to you; is that correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Have you made a decision as to whether

1 you do or do not wish to testify in this matter?

2 THE DEFENDANT: I don't wish to.

3 THE COURT: So you have made a decision?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And that decision is that you do not wish
6 to testify?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Is that decision on your part freely and
9 voluntarily made?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right, sir. Thank you very much.

12 All right. The Court will find then that the defendant
13 after having been explained his Constitutional Rights
14 under the Fifth Amendment to the Constitution of the
15 United States and a similar counterpart provision of the
16 Constitution of the State of South Carolina has made a
17 free, voluntary, knowing and intelligent decision
18 regarding his rights of against -- and his privilege
19 against self-incrimination and has elected to exercise
20 that privilege and does not wish to testify in this case
21 and the Court will honor that decision.

22 All right. Ms. Fanning, that being the case, do you
23 anticipate any other evidence or testimony in this matter?

24 MS. FANNING: I do, Your Honor. I would ask the
25 Court's indulgence during the recess. I have one witness

1 outside that I need to speak with.

2 THE COURT: We'll take how about 15 minutes 'til
3 about ten after if you'll let me. You need any more time
4 than that?

5 MS. FANNING: There's one in lockup downstairs. Can
6 I see him back there? When he gets up, can I speak to him
7 as well may be 20 minutes.

8 THE COURT: Let me know as soon as possible so that
9 we can go forward with as much as we can this afternoon.
10 I will tell you, counsel, that what I would like to do
11 would be to finish the testimony this afternoon and argue
12 and charge tomorrow.

13 MS. FANNING: I don't see any problem with that.

14 THE COURT: But I tell you that so that each of you
15 will know that I will not expect you to be prepared for
16 arguments this this afternoon. All right. We'll take a
17 recess of about 15 minutes. Let me know, Ms. Fanning, as
18 soon you are ready.

19 MS. FANNING: Thank you. I will.

20 (WHEREUPON, a break was taken.)

21 THE COURT: All right. Ms. Fanning, you ready to go
22 forward?

23 MR. WETMORE: Yes, sir.

24 MS. FANNING: Yes, sir.

25 THE COURT: All right. Anything before we bring the

1 jury in?

2 MS. FANNING: Let me just check.

3 THE COURT: Okay.

4 (WHEREUPON, a pause in the proceedings.)

5 THE COURT: Ms. Fanning, you ready to go?

6 MS. FANNING: Yes, Your Honor, I am.

7 THE COURT: All right. Bring the jury in please.

8 (WHEREUPON, the jury returned to the courtroom.)

9 THE COURT: And, ladies and gentlemen of the jury, we
10 ready to proceed. You will recall that before we took the
11 recess that the State announced that they had rested their
12 case. The defense now has a right to present any evidence
13 or any testimony that he wishes to present. And for that
14 purpose, I will recognize defense counsel, Ms. Fanning.

15 MS. FANNING: Thank you, Your Honor. I'm going to
16 call Barbara Ann Scott.

17 THE CLERK: If you would please place your left hand
18 on the Bible and raise your right hand. Do you swear or
19 affirm to tell the truth, the whole truth, and nothing but
20 the truth so help you God?

21 MS. SCOTT: I do.

22 THE CLERK: Please be seated. Ma'am, please state
23 your full name to the court and spell your last?

24 MS. SCOTT: My name is Barbara Ann Scott. S-C-O-T-T.

25 WHEREUPON,

1 Barbara Ann Scott,
2 after first having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. FANNING:

5 Q Ms. Scott, my name is Meg Fanning and I represent
6 D'el Grant in this matter concerning two homicides that
7 occurred up at Ashley Shores February 24th of 2005, and I
8 believe that you were identified by law enforcement as a
9 witness. And you gave a statement and were interviewed by
10 law enforcement on February 24th of 2005. Did you
11 remember that?

12 A Yes.

13 Q Ms. Scott, do you live up in the area of Ashley
14 Shores?

15 A No, ma'am.

16 Q Where do you live?

17 A I live off Dorchester Road and Seratoga.

18 Q And that's 2708 Seratoga that's where you still live?

19 A Yes, ma'am.

20 Q Okay. And that's where you lived in February of
21 2005?

22 A Yes, ma'am.

23 Q Okay. And do you know -- who's West or Neece?

24 A Azerous West.

25 Q Azerous West. Is she a friend of yours?

- 1 A Yes, ma'am.
- 2 Q And does have son name Devant Porcher?
- 3 A We call him Fat Boy?
- 4 Q Fat Boy?
- 5 A Yes, ma'am.
- 6 Q But his last name is Porcher?
- 7 A Yes, ma'am.
- 8 Q And does she have another relative Cordero Porcher is
- 9 that her nephew?
- 10 A Nephew.
- 11 Q Okay. Do you recall being with Azerous West the
- 12 afternoon of February 24th of 2005?
- 13 A Yes, ma'am.
- 14 Q What had y'all done?
- 15 A Azerous West had carry me to pay my water bill and
- 16 she had get a call. What the call been for I don't know.
- 17 Q Okay. Where did y'all go after you paid the water
- 18 bill?
- 19 A Ma'am.
- 20 Q Where did you go with Azerous after you paid the
- 21 water bill?
- 22 A I went to her house on Woodlawn. During that time,
- 23 she been living on Woodlawn.
- 24 Q Okay. At that time, she been living on Woodlawn?
- 25 A Yes, ma'am.

1 Q Okay. And who all was at the house on Woodlawn when
2 you got there with Azerous?

3 A I can't remember who all been there, but I know a lot
4 of people were out on the porch.

5 Q There were people on the porch?

6 A Yes, ma'am.

7 Q Were there some several young men there?

8 A Yes, ma'am.

9 Q Okay. At some point, do you remember leaving with
10 Azerous to go somewhere else?

11 A On Ashley Shore.

12 Q Okay. You and Azerous went to Ashley Shores?

13 A Yes, ma'am. She said she had to go over there talk
14 to her son the one called Fat Boy.

15 Q Talk to the boy?

16 A Talk to her son, Fat Boy.

17 Q Talk to her son, Fat boy?

18 A Yes, ma'am.

19 Q So she's looking for Fat Boy?

20 A Yes, ma'am.

21 Q And did anybody ride in the car with you and Azerous
22 over to Ashley Shores?

23 A I think two young boys ride along with us.

24 Q Okay. Do you remember what they look like?

25 A No, ma'am, I don't remember what they look like.

1 Q They were young. Do you remember if they were 15 or
2 so?

3 A I know one of them been about 15 during that time.

4 Q And do you remember if one of them was Fat Boy or
5 not?

6 A No, Fat Boy was the reason we went over there.

7 Q Did you see Fat Boy or any of his friends over at
8 Ashley Shores?

9 A No, ma'am.

10 Q Okay. When you got to Ashley Shores, did you get out
11 of Ms. West's car or did you stay inside of it?

12 A I got out the car and I stand up next to the door.

13 Q What kind of car was it that you rode in over to
14 Ashley Shores?

15 A I can't remember what kind of car it was.

16 Q Do you remember what color it was?

17 A I think it been a white car.

18 Q Was it a white sedan?

19 A Yes, ma'am.

20 Q Okay. Not like an SUV?

21 A No, ma'am.

22 Q And you got out and stood by the side of the car?

23 A I open the door and I stand inside the doorway.

24 Q Okay. And where did Ms. West park the car, did she
25 park it kind of up behind the building where the shootings

1 occurred?

2 A I think she went behind the building.

3 Q Okay. By the side and towards the back of it?

4 A Yes, ma'am.

5 Q And were you able to see the whole row or the little
6 parking area behind the building?

7 A No, ma'am.

8 Q Did you see any other young men at the scene?

9 A No, ma'am.

10 Q Okay. Do you recall telling law enforcement in
11 statement you gave the night of the shootings that a black
12 male with dark skin and an all-in-one jumper came to door?

13 A Yes, ma'am.

14 Q You remember that?

15 A Yes, ma'am. I remember seeing his face. He been a
16 tall fellow all in one just like you say.

17 Q He was wearing all-in-one black or dark-colored
18 clothing?

19 A Yes, ma'am.

20 Q Okay. And you saw him knock on the door you said?

21 A I think he knocked on the door or he been coming out
22 the door one or the two, but I know I see a fellow with
23 all in one. But I can't see his face.

24 Q Okay. And do you remember telling law enforcement
25 that there was then a lot of commotion and the boy with

1 the jumper came out with a gun and started shooting?

2 A I ain't remembering that part.

3 Q Okay. You don't remember that part?

4 A No, ma'am.

5 Q If that's what you told law enforcement the night of
6 the shootings, would that help you remember what you saw
7 and what you recall now?

8 A Yes, ma'am.

9 Q It would. So if that's what your statement says is
10 that what happened?

11 A Probably that's what happened if that what the
12 statement saying.

13 Q Okay. And so what you told police just a few hours
14 after the shootings was that a boy in a jumper came out
15 with a gun and started shooting?

16 A He start shooting and I start running.

17 Q And that's the dark skinned boy that you saw a few
18 minutes earlier wearing all dark clothing?

19 A Yes, ma'am. I didn't see no face or nothing. So I
20 don't know how the fellow look.

21 Q And then you said you ran and you started screaming?

22 A Yes, ma'am.

23 Q And what happened after that?

24 A I had started running and I screaming. And that's
25 when Azerous West came and get me because I was down to

1 the road.

2 Q Okay. And then you and Azerous got back in her car?

3 A Yes, ma'am, we going down the street she mama house
4 because we couldn't get back out because they had the road
5 blocked.

6 Q Law enforcement had the road blocked?

7 A I don't who had the road blocked. I know law
8 enforcement been out there.

9 Q So you were unable to leave Ashely Shores?

10 A No, ma'am, we couldn't leave right then.

11 Q Okay. And did you identify or did law enforcement
12 that night identify you as a witness?

13 A Yes, ma'am.

14 Q They take a statement from you?

15 A Yes, ma'am.

16 Q I'm going to just show you the statement that I been
17 referring to. And, Ms. Scott, you can't read very well?

18 A No, I can't read too well.

19 Q And that's why we discussed my reading to you?

20 A Yes.

21 Q Is that your signature, Ms. Scott?

22 A Yes, ma'am.

23 Q Your name is Barbara Ann Scott?

24 A Yes, ma'am.

25 Q And is that signature on page 2?

1 A Yes, ma'am.

2 Q And is that signature on page 3?

3 A Yes, ma'am.

4 MS. FANNING: Ms. Scott, thank you for answering my
5 questions. Mr. Wetmore with the Solicitor's office may
6 have questions for you as well. Thank you.

7 THE COURT: Cross-examination.

8 MR. MCKOY: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. MCKOY:

11 Q Ms. Scott, how are you today?

12 A I'm doing a little bit better.

13 Q My name is Peter McKoy and I work for the Solicitor's
14 office. And we've never spoken about this before, have
15 we?

16 A No.

17 Q Just to go through a couple of factors Ms. Fanning
18 touched on, you were going to pay your water bill; is that
19 correct?

20 A Yes, sir.

21 Q And who were you with?

22 A I with Azerous West.

23 Q Azerous West?

24 A Yes.

25 Q And her son is Devant Porcher and her nephew is

1 Cordero Porcher?

2 A Yes.

3 Q Would you know them if you saw them?

4 A Yeah, I would know them.

5 Q You do know them if you see them around you know who
6 they were?

7 A Yeah, if I see them in the street and stuff like that
8 I would know them.

9 Q Okay. You just know them for being around?

10 A Yeah.

11 Q Okay. After you left and went to go pay the water
12 bill, you went to Woodlawn; is that correct?

13 A Yes.

14 Q And what did you do at Woodlawn?

15 A We stand out there and start talking and stuff. She
16 said she had to go cross Ashely Shores to get her son
17 cause she want to know what was going on.

18 Q She wanted to find out what was going on?

19 A Yeah, because she house on Woodlawn at that time.

20 Q She was looking for Fat Boy?

21 A Yes.

22 Q And Fat Boy wasn't in the car with you?

23 A No.

24 Q Okay. So you went in a white car?

25 A Yes.

1 Q With Azerous?

2 A Yes.

3 Q And with two other young boys; is that correct?

4 A Yes.

5 Q Is that correct?

6 A Yes, sir.

7 Q And y'all arrived at Ashley Shores?

8 A Yes, sir.

9 MR. MCKOY: Your Honor, may I approach the witness?

10 THE COURT: Yes.

11 BY MR. MCKOY:

12 Q Now, Ms. Scott, just so I can better understand and
13 the judge and the jury can better understand, I'm going to
14 show you a couple of pictures; is that okay?

15 A All right.

16 Q Ms. Scott, you tell me if you can't see this clearly
17 or if you need to step down, just let me know. Don't be
18 afraid to let me know. Now, Ms. Scott, do you recognize
19 this building right here that I'm pointing to with a red
20 marker. Do you know what that is?

21 A That's Ashley Shore.

22 Q That's an apartment on Ashley Shores?

23 A Yes, sir.

24 Q Is this the apartment where you came in the white
25 car? Can you tell from this picture or not really?

- 1 A Not really.
- 2 Q It's kind of confusing. I'm sorry I might have a
3 better picture for you. Do you recall or can you show me
4 from this picture where y'all parked the white car?
- 5 A You see where that fellow standing right there in the
6 back?
- 7 Q Which one now? I'm going to put the red dot on all
8 of them and you tell me which one? We have this one.
- 9 A Right there.
- 10 Q That's where the white car was parked?
- 11 A I think it been a little further back.
- 12 Q Maybe, a little further back?
- 13 A Yes, sir.
- 14 Q Can you tell if this is the front or the back of this
15 apartment?
- 16 A I think that's the back.
- 17 Q That's the back. And would this way be out here
18 towards Azelea?
- 19 A Sir?
- 20 Q Would this way -- see where I'm pointing with the red
21 dot?
- 22 A Yeah, that going back out.
- 23 Q Azalea is that way?
- 24 A Yeah.
- 25 Q Okay. So you're saying that y'all parked the white

1 car may be where this guy is or may be a little further
2 back?

3 A May be a little bit further back.

4 Q You think maybe a little bit closer towards Azalea?

5 A I don't sure.

6 Q Is that what you mean or do you mean closer inside
7 the apartment complex?

8 A Inside.

9 Q Inside?

10 A Yeah.

11 Q Okay. Now, once you parked the car it's your
12 testimony that you just got out and stood by the door; is
13 that correct?

14 A Yes, sir.

15 Q And would say you were standing kind of on the side
16 right here, just right here with -- were you standing like
17 maybe where this man was?

18 A No, I been standing inside the car door.

19 Q Inside the car door?

20 A Yes, sir.

21 Q Did you open it and come on out?

22 A I stand inside the car door.

23 Q Okay. So you're saying you not this close. You may
24 be where this guy is?

25 A Yeah.

- 1 Q And that's where you were standing?
- 2 A Right.
- 3 Q Right where the cars were parked?
- 4 A Yeah.
- 5 Q Okay. Did you see anybody that you recognized that
- 6 you knew at the scene?
- 7 A Only the person I could recognize is Fat Boy.
- 8 Q You saw Fat Boy?
- 9 A Yes, sir, Azerous West was talking to Fat Boy.
- 10 Q Azerous was talking to Fat Boy. And Fat Boy is her
- 11 son or nephew?
- 12 A That's her son.
- 13 Q And that's Devant Porcher?
- 14 A Uh-huh.
- 15 Q Okay. Did she come -- where did she come? Do you
- 16 know where Azerous went?
- 17 A No.
- 18 Q Okay. But you stood by the car?
- 19 A Yeah.
- 20 Q Okay. And it's your testimony today that you saw
- 21 somebody knock on the door and you saw a man in a black
- 22 jumper?
- 23 A Yes.
- 24 Q Now, do you recognize the man in the black jumper?
- 25 A No, sir.

1 Q Do you know him at all?

2 A No, sir.

3 Q Would you know him ---

4 A No, sir.

5 Q --- if you were to see him on the street at all?

6 A No, sir.

7 Q Okay. And were there other people starting to gather

8 around the area or were there very few people?

9 A It been a lot of people out there.

10 Q There been a lot of people out there?

11 A Yeah.

12 Q Lots of commotion?

13 A Uh-huh.

14 Q Lots going on?

15 A Yeah.

16 Q Could you tell at all from where you were standing

17 that tensions were starting to get high at all?

18 A No, I couldn't tell.

19 Q Okay. But you could tell there were a lot of people

20 and a lot going on?

21 A Yes.

22 Q And the only person that you really knew from memory

23 that you know there is Azerous and Fat Boy?

24 A Yeah.

25 Q Everybody else you don't know?

1 A Everybody else I don't know.

2 Q You just not from that area?

3 A No, I'm not from that area.

4 Q Okay. And it's your testimony today that the man in
5 black jumper started shooting?

6 A Start shooting and I start running.

7 Q Did you see him shoot anybody?

8 A No, I don't know who he shoot, but I didn't see it.
9 When I hear the gun shoot, I start running.

10 Q But you don't know who the man in the black jumper
11 is?

12 A No.

13 Q Okay.

14 MR. MCKOY: Court's indulgence, Your Honor.

15 THE COURT: Yes, sir.

16 (WHEREUPON, a pause in the proceedings.)

17 BY MR. MCKOY:

18 Q Ms. Scott, just a couple more questions. Did you see
19 where -- if I pointed on this picture right here, did you
20 see where the man in the black jumper started shooting.
21 Could you see -- did you see over here or where was it?

22 A I don't know where he was started shooting at. Like
23 I say when I hear the gun shoot, I start running. From
24 where he was shooting at, I don't know.

25 Q Were you scared?

1 A I was scared.

2 Q Once the gunshots went off, was there a lot of
3 commotion?

4 A Sir.

5 Q Once the gunshots went off, was there a lot of
6 commotion people moving and scattering?

7 A I don't know because like I said again when I hear
8 the gun shoot, I start running.

9 Q Okay. Did you hear the gunshot or did you see the
10 gunshot?

11 A I hear the gun shoot.

12 Q You hear the gun shoot?

13 A Yeah, and I start running.

14 Q Okay.

15 MR. MCKOY: I have no further questions, Your Honor.

16 THE COURT: Redirect?

17 MS. FANNING: I don't have anything, Your Honor.

18 THE COURT: All right. Thank you. You may step
19 down.

20 MS. FANNING: She be release from her subpoena, Your
21 Honor?

22 THE COURT: Any objection, Mr. McKoy?

23 MR. MCKOY: No, Your Honor.

24 THE COURT: All right, yes, you are released. You
25 are free to go.

1 (WHEREUPON, the witness leaves the witness stand.)

2 THE COURT: All right. Ms. Fanning, you may call
3 your next witness.

4 MS. FANNING: I call Gary Grant.

5 THE COURT: All right. You guys approach a moment
6 after you swear him.

7 MS. FANNING: Your Honor, Rodney Davis is also
8 present is Mr. Grant's attorney.

9 THE COURT: That's I want y'all to come up.

10 THE CLERK: Sir, if you would please place your left
11 hand on the Bible and raise your right. Do you swear or
12 affirm to tell the truth, the whole truth and nothing but
13 the truth so help you God?

14 MR. GRANT: I do.

15 THE CLERK: Be seated. Sir, if you would please
16 state your full name to the court and spell your last?

17 MR. GRANT: Gary Grant. G-R-A-N-T.

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

21 THE COURT: Ladies and gentlemen, I do have a short
22 matter that I need to take up on the record. And I have
23 to do it outside of your presence, so if you would go to
24 the jury room for just a very few minutes. This will not
25 take but a minute. If you would go to your jury room for

1 just a few minutes. Thank you.

2 (WHEREUPON, the jury retired to the jury room.)

3 THE COURT: All right. Mr. Solicitor, Mr. Grant has
4 also -- has he been indicted in connection with these
5 matters as well?

6 MR. WETMORE: He has, Judge, 2005-4847 and 4848, two
7 counts of murder in the same case charge Mr. Gary Grant.

8 THE COURT: All right.

9 MR. WETMORE: And he's represent by Mr. Rodney Davis
10 of the public defender's office.

11 THE COURT: Mr. Davis is present in court with
12 Mr. Grant. And I had a bench conference, but I thought it
13 was necessary to go ahead and put on the record the rights
14 of the defendant in this case to exercise his privileges
15 and to take the Fifth Amendment and not to testify. And I
16 understand Mr. Davis that you also advised him of these
17 matters?

18 MR. DAVIS: Judge, I've spoken with him obviously
19 several times in preparation of his defense. Now, the
20 State is just going forward just on his brother.
21 Yesterday and today, I spoken with him about whether he
22 choose testify. Judge, just for the record, I'm not sure
23 is he's under subpoena, Ms. Fanning?

24 MS. FANNING: You can't really subpoena somebody
25 who's in custody of the department of corrections. He's

1 here pursuant to a transport order signed by Judge Dennis.

2 MR. DAVIS: But I did discuss -- so I wasn't sure how
3 he was compelled here. I knew it was transported down
4 yesterday. I spoke with him about all of his rights.
5 Without going into detail, Judge, of our conversations of
6 a substitutive matter, he indicated he wanted to speak
7 with Ms. Fanning. He indicated he wanted to testify. For
8 the record, I advised against that. But as to his wishes,
9 he tells me he wishes to testify.

10 THE COURT: All right. Mr. Grant, you have heard
11 what your attorney has advised me. And I will tell you
12 now that if you testify in this matter, you waive your
13 privileges against self-incrimination. And anything that
14 you say in this courtroom can and probably would be used
15 against you in your trial. Do you understand that?

16 GARY GRANT: Yes, sir.

17 THE COURT: And do you understand that you have the
18 right to exercise -- you have Constitutional Rights under
19 the Fifth Amendment and also you have a right not to
20 provide any testimony in a matter that will incriminate
21 you. You understand that?

22 GARY GRANT: Yes, sir.

23 THE COURT: And you can exercise that Fifth Amendment
24 privilege against self-incrimination if you choose to do
25 so, but if you waive that privilege against

1 self-incrimination, you going to be required to answer the
2 questions that are put to you by both Ms. Fanning and by
3 the attorneys for the State. And you're going to be
4 required to answer them truthfully. You understand that?

5 GARY GRANT: Yes, sir.

6 THE COURT: You understand that once you have waive
7 this privilege you will not be able to exercise privilege.
8 And if you then refuse to answer the questions, that I
9 would be able to hold you in contempt of court?

10 GARY GRANT: Yes, sir.

11 THE COURT: Do you have any questions about your
12 rights to your exercise your privileges against self-
13 incrimination or to take the Fifth Amendment in this case?

14 GARY GRANT: No, sir.

15 THE COURT: Do you plan to take the Fifth Amendment
16 in this case or do you plan to testify?

17 GARY GRANT: Testify.

18 THE COURT: You plan to waive your rights you have
19 under the Constitution and not exercise your privileges
20 against self-incrimination; is that correct?

21 GARY GRANT: Yes, sir.

22 THE COURT: All right. And is that decision on your
23 part made freely and voluntarily?

24 GARY GRANT: Yes, sir.

25 THE COURT: Now, you've heard your counsel tell me

1 that he has advised against that. Do you understand that?

2 GARY GRANT: Yes, sir.

3 THE COURT: And you wish to go against the wishes of
4 your lawyer; is that correct?

5 GARY GRANT: Yes, sir.

6 THE COURT: All right. Do you understand that if you
7 -- as I say once you have given up that right, you will
8 have to answer the questions and your refusal to the
9 answer could result in your being found in contempt of
10 court. You understand?

11 GARY GRANT: Yes, sir.

12 THE COURT: You have any questions you want to ask me
13 about this matter?

14 GARY GRANT: No, sir.

15 THE COURT: All right. You have any questions you
16 like to ask him?

17 MR. DAVIS: Gary, do you need to talk to me about
18 anything?

19 THE COURT: You need to talk with your lawyer any
20 more?

21 GARY GRANT: No.

22 THE COURT: Is that a no?

23 GARY GRANT: Yes, sir.

24 THE COURT: All right, you got to answer out. We got
25 to have a verbal response.

1 GARY GRANT: No, sir.

2 THE COURT: All right. All right. I think we can go
3 forward.

4 MR. DAVIS: Judge, one other matter I need to bring
5 to the Court's attention. Certainly part of our
6 conversation and we talked about this was not privileged.
7 It was made available to the State and defense counsel
8 part our conversations concerning this matter concerning
9 his testimony. Out of abundance of precaution, I've not
10 notified either side that I would deal with this, but I
11 need the Court to know that I have indicated to both lead
12 counsel one of the jurors juror number 138 -- I'm trying
13 to get the affiliation. I was best man in a wedding that
14 gentleman is friends with her. I've not seen her probably
15 in three years, but I recognize her. She recognized me
16 smiled just a moment ago. I need to make everyone aware
17 of that in case there's any kind of problem.

18 THE COURT: Do you see that as any kind of a problem,
19 Mr. McKoy and Mr. Wetmore?

20 MR. WETMORE: Judge, I don't see a problem. I think
21 Mr. Davis will be in court for this exercise I anticipate
22 that. I don't think it would prejudice the jury.

23 THE COURT: All right. Ms. Fanning, you see any
24 problem?

25 MS. FANNING: I also don't see any problem with that

1 affiliation.

2 THE COURT: Thank you for your disclosure, Mr. Davis,
3 that will be fine. The Court will then find that the
4 defendant has freely, voluntary and knowingly waived his
5 right to take the Fifth Amendment and not testify in this
6 case. And does want to testify and has agreed to testify
7 and will be required to testify and answer the questions
8 that are presented to him by either side. All right.
9 Bring the jury in please.

10 (WHEREUPON, the jury returned to the courtroom.)

11 THE COURT: All right. Thank you very much. And we
12 are ready to proceed. Ms. Fanning.

13 WHEREUPON,

14 Gary Grant,
15 after first having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. FANNING:

18 Q You Gary Grant?

19 A Yes, ma'am.

20 Q I'm Meg Fanning we spoke briefly this morning and
21 this afternoon. As you know, I represent your brother,
22 D'el Grant, on these serious charges that he's facing
23 today in court. And I have some questions for you.
24 Mr. Grant, you're wearing department of corrections
25 clothing; correct?

1 A Yes, ma'am.

2 Q And it's true isn't it that you're serving a life
3 sentence right now for murder?

4 A Yes, ma'am.

5 Q And that is a murder that you committed in Berkeley
6 County?

7 A Yes, ma'am.

8 Q And was that victim the first person that you ever
9 murdered?

10 A No, ma'am.

11 Q Can you answer loudly please?

12 A No, ma'am.

13 Q Who were the other people that you have murdered?

14 A Cederious and Shaun.

15 Q Those are the two victims named in the indictments
16 that your brother is standing trial for today?

17 A Yes, ma'am.

18 Q And where did those murders take place?

19 A On Ashley Shore.

20 Q Do you remember the date?

21 A February 24th 2005.

22 Q Let's go back in time a little bit. Earlier that
23 day, what had had happened that lead up to your committing
24 the homicide the afternoon of February 24th 2005?

25 A Cordero Porcher called me and say Cederious, Shawn

1 and Project looking for us because they say we take 17
2 grand out they house -- out of Project house, so I came
3 out there. When I get out there, we talk and then I ask
4 him who tell him. He been like ---

5 Q Can I interject something real quick. You said you
6 got up there. Where are you talking about?

7 A On Woodlawn at Cordero aunt house. When I get there,
8 he been telling me what been going on. He been like Shaun
9 Gathers tell Project me and him break in his house
10 whatever. So I call Project and I was like you looking
11 for me. He been like, yeah, he looking for me. So I
12 tell him I been there. So I been waiting on him to come.
13 He ride past. He ain't stop. Then like five minutes
14 later on when Cederious and Shaun come and he jumped out
15 the car with a gun first. And all the little dudes stand
16 up there whatever and he start shooting then.

17 Q Can I interject again. When you say he jumped out
18 first and started shooting, are you referring to Project
19 or Michael Mitchell?

20 A Yes, ma'am.

21 Q Just for clarification. It's hard to keep track of
22 all the people involved?

23 A Then Shaun and Cederious jumped out started shooting
24 too, you know. So when I turn and walk off, that's when I
25 get shoot or whatever.

1 Q Where did you get shot?

2 A In my head.

3 Q Where show the jury?

4 A Right here.

5 Q And did that cause you to bleed?

6 A Yes, ma'am.

7 Q Please continue?

8 A So I been walking towards Cordero aunt house and fall
9 out. I get back up and they been like you need to call an
10 ambulance. I tell them no. So I go into Cordero aunt
11 backyard and get my gun. And I leave and I go into this
12 girl backyard and gone on the next street like walking
13 going to Ashley Shores. When I get there, everybody been
14 out there whatever, you know. This little dude he help
15 me. He get a rag and some alcohol out Deshawn Gathers'
16 house and he help me with my head. And this dude name
17 Ernie I talk to him and he call Derious and Evil around
18 there and I shoot them.

19 Q Back up a little bit. You said you got a gun from
20 where?

21 A Out -- Porcher them aunt backyard. I bring my gun
22 with me.

23 Q Okay. And you stashed it somewhere there at the
24 house?

25 A Yeah, yeah.

1 Q And where were you carrying the gun on your person?

2 A I had a jumper on and it been in my pocket. And my
3 pants under the jumper.

4 Q And what were you wearing that day?

5 A An all black jumper with a white T-shirt.

6 Q If the -- okay. Moving forward in time at Ashley
7 Shores, you had a gun on you when you were talking with
8 Cederious and Shaun?

9 A I ain't talking to them at first. Devant Porcher and
10 Cordero Porcher been talking to them first. They been
11 arguing asking them why they shoot they mom and they aunt
12 house or whatever. And Devant turned around and walked
13 off. Cordero right there walk up -- and I think shoot
14 Cederious first, but I shoot both of them. And I make
15 Cordero come with me. And I tell him if he tell, I'll
16 kill him too.

17 Q And you Cordero ended up?

18 A At a hotel.

19 Q What hotel?

20 A Evergreen hotel.

21 Q And what happened with the weapon that you used to
22 shoot and kill Cederious Nelson and Robert Bryant?

23 A I take it a part and get rid of it. I get one of my
24 homeboys to get rid of it.

25 Q Did you drop it off at some point between Ashley

1 Shores and going to your girlfriend's house and getting
2 her and going to the Evergreen?

3 A No, I call him and he come get it from me.

4 Q Came and got it from you at what point?

5 A Downtown.

6 Q Okay. And that's your girlfriend's house where you
7 were staying?

8 A Yeah.

9 Q And what was your girlfriend's name?

10 A Keisha.

11 Q Keisha. Was she also charged in connection with
12 these murders?

13 A Yes, ma'am.

14 Q Do you know if Cordero had a gun?

15 A Yeah.

16 Q Did you see it?

17 A Yeah.

18 Q What did it look like?

19 A He had the same kind of gun like I had, but it was a
20 different caliber. He had a glock .45 and I had a glock
21 nine.

22 Q And is that the gun that the police retrieved out of
23 the Evergreen hotel room?

24 A Yes, ma'am.

25 Q Okay. You testified you believe you shot Cederious

1 Nelson first?

2 A I think so.

3 Q And then you shot Robert Bryant second?

4 A Yes, ma'am.

5 Q Do you remember what part of the body you shot
6 Cederious Nelson in?

7 A No, ma'am.

8 Q Was it in the upper part of his body?

9 A Yeah, cause I shoot him -- as soon as I shoot him, he
10 fall. And then I shoot Shaun. He fall down on top of
11 him. He still moving and I stand over him and keep
12 shooting.

13 Q About how many times did you fire your firearm?

14 A I think like five times.

15 Q And then what did you do?

16 A Leave and made Cordero come with me. We leaving and
17 I tell him hold up. I want to make sure they dead and I
18 go on back and I see this dude taking the guns off them
19 and I leave.

20 Q Did you see guns on the victims?

21 A Yeah.

22 Q Okay. Where did Cederious Nelson have his gun?

23 A In his pocket. When he walked up to me, his gun was
24 pointing at me.

25 Q And how about Robert Bryant did he have a gun?

1 A Yeah, is in his pocket.

2 Q Did you see somebody moving the green Oldsmobile ---

3 A Yes, ma'am.

4 Q --- that they arrived in?

5 A Yes, ma'am.

6 Q I'm sort of jumping ahead here. A lot of witnesses
7 have testified about a green Oldsmobile coming to the
8 scene. Did you see them arrive in a green Oldsmobile?

9 A Yes, ma'am.

10 Q Is that the same Oldsmobile they had been driving
11 over on Woodlawn when they and Project shot at you and the
12 Porcher boys?

13 A Yes, ma'am.

14 Q And you testified today that you saw somebody moving
15 the car and taking the guns from take guns off the
16 victims?

17 A Yes, ma'am.

18 Q After you shot and killed these two gentlemen, you
19 told Cordero Porcher to go with you?

20 A I make him come with me.

21 Q You made him go with you. And how did y'all leave
22 Ashley Shores or that area of town?

23 A We go to the back of Ashley Shores and this crack
24 head I pay him to take us downtown.

25 Q Okay. Did you take a cab downtown or was it a green

1 car?

2 A It ain't been no cab.

3 Q And when you got downtown, you got clothes from your
4 girlfriend's house. And y'all went hold up Evergreen
5 hotel?

6 A After we leave downtown?

7 Q Uh-huh.

8 A Yes, ma'am.

9 Q I mean, after you left Ashley Shores went downtown?

10 A Stay to the hotel.

11 Q Now, your brother, D'el, was he at Woodlawn?

12 A No, ma'am.

13 Q Did you see him Woodlawn when all this commotion that
14 took place earlier occurred?

15 A No, ma'am.

16 Q Did you see him up at Ashley Shores?

17 A No, ma'am.

18 Q Did you go into Deshawn Gathers' house at any time?

19 A I'm standing by the air conditioner on the backside
20 of the house the whole time.

21 Q Okay. Is that where you got the rag and you were
22 attending to the blood from your ---

23 A Yes, ma'am.

24 Q --- gunshot wound?

25 A Yes, ma'am.

1 Q Is it your testimony today that you and Cordero and
2 Devant were involved in an alternation with two armed men
3 the victims?

4 A Yes, ma'am.

5 MS. FANNING: Thank you, Mr. Grant. I don't have any
6 other questions -- well, beg the Court's indulgence for
7 just a moment.

8 (WHEREUPON, a pause in the proceedings.)

9 Q You remember telling law enforcement that you saw
10 D'el after the murders running with his hands in front of
11 his pants?

12 A I never tell them that.

13 MS. FANNING: Thank you, Mr. Grant. The Solicitor
14 may have questions for you.

15 THE COURT: Cross-examination, Mr. Wetmore?

16 MR. WETMORE: Thank you, Judge.

17 CROSS-EXAMINATION

18 BY MR. WETMORE:

19 Q Mr. Grant, you are the defendant, D'el's, big
20 brother; is that right?

21 A Yes, sir.

22 Q How much older are you than him?

23 A He 23. I 25 -- I be 25 next month.

24 Q So two years older than your little brother?

25 A Yeah.

1 Q I'm going to ask you a couple questions about ---

2 THE COURT: Was there an answer to that? I didn't
3 hear it? Ask the question again.

4 MR. WETMORE: I just asked him how much older he was
5 than his ---

6 THE COURT: And I didn't hear his answer. How much
7 older than you are to him?

8 GARY GRANT: A year and some change or something like
9 that. He 23. I 24. I be 25 next month.

10 THE COURT: All right.

11 BY MR. WETMORE:

12 Q Okay. Do you remember when this event happened
13 talking to North Charleston police department and they
14 took down a statement from you. You remember that?

15 A Yes, sir.

16 Q The first thing you talked about is about what
17 happened over on Woodlawn. Tell me again about what
18 happened when you're on Woodlawn and Deshawn Gathers came
19 by?

20 A He come. I ask him who he tell break in the house.
21 He been like he ain't tell nobody that so they start
22 fighting whatever.

23 Q Who is they?

24 A Cordero fight him and some other little dude Cordero
25 had around there. I don't know them. It been a bunch of

1 them, but I don't know them.

2 Q There's a bunch of people fighting?

3 A Yeah, Deshawn about the little dudes who Cordero had
4 with him. I don't know them.

5 Q How many people were involved in the fight?

6 A Probably like ten of them.

7 Q Ten people were involved in the fight?

8 A Yeah.

9 Q And that was at Woodlawn before Ashley Shores?

10 A Yes.

11 Q Probably about ten people in this fight?

12 A Yeah.

13 Q Where was it taken place wait was ---

14 A Right in front of Cordero's them aunt house in the
15 street.

16 Q In the street?

17 A Yes, sir.

18 Q Okay. But you don't know any of these people's
19 names; right?

20 A Not the other little fellows.

21 Q Just a bunch of little fellows, ten little fellows
22 fighting?

23 A Yes, sir.

24 Q Then after that incident happened, tell me what
25 happened next? Did you stay at the house on Woodlawn?

1 A No.

2 Q Where did you go?

3 A I take my gun out the backyard going across the
4 street jump the fence. A bunch of blood hounds and
5 policemen riding around, so I went walking down
6 (inaudible) going on Ashley Shores. You know, I go stand
7 by the back door. This little fellow he help me with me
8 head. He get some alcohol out of Deshawn Gathers' house.
9 He help me with my head. And this dude call -- this dude
10 Ernie call Cederious and Shaun. And first, Devant and
11 Cordero been arguing with them. Devant turned around and
12 walked off. I came out and I shoot them.

13 Q Okay. Well, I need slow progress. What I was
14 talking about first was the fight on Woodlawn. The
15 fistfight that was as you testified ten people a lot of
16 them little people. You didn't know anything about them.

17 A Yeah, I don't know none of them.

18 Q After that, did you stick around Woodlawn or did you
19 leave?

20 A I leave.

21 Q You left?

22 A Yeah.

23 Q So after the fight ---

24 A No, I ain't leave after that fight.

25 Q Which is it? Did you leave or did you stay?

1 A No, no, I leave after I get shoot.

2 Q You leave after you get shoot?

3 A Yeah.

4 Q Okay. What did you do after the fight with all the
5 little people?

6 A They been out there. Deshawn he call, I guess, he
7 call Project, you know. I talk to Project and I tell him
8 I been there. After I talk to Project, that's when I see
9 Deshawn coming down the street or whatever. I ask him did
10 he tell Project that he said no. So Cordero fight him or
11 whatever and the little dudes. And then we was standing
12 up there. And as we was standing up there, Project come
13 riding by or whatever. He ain't stop -- I mean try to
14 stop. He ain't stop. He going on Ashley Shores and we
15 was standing out there like ten minutes later they come
16 back, that's when everything going down like that right
17 there.

18 Q When did you get shot?

19 A When they come back on Woodlawn.

20 Q This happened after the fight?

21 A Yes, sir.

22 Q Tell me what happened when you got shot?

23 A They come Project, Cederious and Shaun they come back
24 on Woodlawn. Project start shooting at me first.
25 Cederious and Shaun they get out the car and start

1 shooting too or whatever boom. And I tell Project I been
2 like you better kill me. I walk off that when I get
3 shoot. I fall out and I get up. And this little dude
4 been like they calling the ambulance. I been like don't
5 call no police or nothing. I go in the backyard and get
6 my gun.

7 Q Let me stop you there ask you this, you say that
8 Michael Mitchell, Project, he start shooting at you first?

9 A Yeah.

10 Q What did you do?

11 A I ain't do nothing.

12 Q You just stood there?

13 A Yeah, the crowd running. I stay right there.

14 Q Okay. Then you said that the two victims in this
15 case, Cederious Nelson and Robert Bryant that they both
16 start shooting?

17 A Yeah.

18 Q What did you do then?

19 A I ain't do nothing.

20 Q You just stood right there?

21 A Yeah. And I turn and walk off, that's when they get
22 shoot.

23 Q So you were lucky enough not to get hit with
24 according to you three people shooting at you?

25 A Yes, sir.

1 Q Okay. So how was it then tell me about when you got
2 hit?

3 A Like I say, like I say, I fall out on the stair
4 whatever with this little dude. He was like they about
5 the call the ambulance. I tell them don't call no police
6 or nothing. I go in the backyard and I get my gun, you
7 know. I walk up the street going through this girl yard.
8 I walk down ---

9 Q So were you shot during all this?

10 A Yeah.

11 Q Okay. Tell me about when you got shot? Tell me what
12 happened?

13 A I tell you now.

14 Q Tell me what happened? Tell me exactly -- you said
15 that Michael Mitchell shot at you must have missed you.
16 You said that Cederious Nelson ---

17 A I mean, it ain't like they been shooting me
18 separately. They been shooting together.

19 Q They all were shooting at you and they missed you?

20 A Yeah.

21 Q Okay.

22 A They been shooting at my head.

23 Q When did you get hit in your head?

24 A I mean, they can't caught no bullets I get hurt, neck
25 to neck.

1 Q So in all that shooting, you didn't get hit?

2 A Yeah, I get shoot in my head.

3 Q You got hit?

4 A Yeah.

5 Q Do you remember when you got hit?

6 A Yeah, I get shoot and I walked off. And I been going
7 towards the step and I fall, that's all I remember. I get
8 back up and I leave. And I go in the backyard and get my
9 gun going cross the street. Before I leave, I tell
10 Cordero I been going to kill them.

11 Q Kill who?

12 A Everybody who been right there.

13 Q Everybody?

14 A Yeah.

15 Q So from there from Woodlawn tell me where you went?

16 A On Ashley Shores.

17 Q Okay. Where did you go on Ashley Shores?

18 A To the front by Deshawn Gathers' house, the backyard
19 the back part.

20 Q Where did you go when you first went there?

21 A I been standing up there first and I see my little
22 girl auntie and she been like everybody all right. I was
23 like I'm gone kill them nigga's like that and I walked
24 off. And dude had the alcohol and the rag. He help me
25 with my head or whatever. Then dude, Ernie, call me

1 around there. And they come up ---

2 Q When you say they, who do you mean?

3 A Cederious and Shaun.

4 Q Okay. What happened when they got to Ashley Shores?

5 A When they get there, Devant and Cordero been arguing
6 with them first then Devant walked out. I walked up and I
7 start shooting them.

8 Q Okay. Do you remember giving a statement to North
9 Charleston police department?

10 A Yeah.

11 Q Do you remember in your statement telling them that's
12 when we heard the gunshots. I ran just like everybody
13 else?

14 A No, just like I ain't tell them Project shoot me. I
15 ain't been the one to tell them that.

16 Q So you didn't North Charleston police department that
17 they just made that up?

18 A I guess so.

19 Q Tell me -- tell me who did you shoot first?

20 A I can't to much remember, but I'm thinking Cederious
21 because he been the first one fall.

22 Q How long have you known these guys? A couple years,
23 three years, four years? How many years?

24 A About four years something like that. I know Shaun
25 longer though.

1 Q And so because of whatever was going on you decide
2 you were going to shoot these two guys?

3 A He been with them. If he had come to, he would have
4 get it too.

5 Q Did you decide you were going to shoot these guys who
6 been your friends?

7 A Yeah, they shoot at me.

8 Q You made this decision to shoot two of your friends
9 who you've two known for a while and you don't remember
10 which one you shot first?

11 A I mean -- which one them shoot first?

12 Q You made this decision to shoot two people that
13 you've know for a while and you don't remember which one
14 you shot first?

15 A I just start shooting.

16 Q You remember how many times you shot?

17 A Like I think like five times.

18 Q You made this important decision to shoot these
19 people who you've known. You don't remember who you shot
20 first or how many times you shot?

21 A No.

22 Q Now, I didn't understand may be that just never been
23 involve in it. You talked about getting rid of the gun
24 that you used. What -- how did you get rid of the gun?

25 A Call one of my homeboys. He get kill like -- he get

1 kill like after I been locked up like four months, but I
2 call him and I give him the gun.

3 Q You just gave it away?

4 A Yeah, I tell him what happened.

5 Q Okay. So moving on from the shooting. You remember
6 telling North Charleston that you ran just like everybody
7 else?

8 A No.

9 Q You didn't tell them that?

10 A No. I ain't really answer no questions for them
11 because after the -- when we get up out the hotel, I was
12 under the influence anyway and whoever need to take -- she
13 find the stuff in the room. And the sergeant over that
14 shift that night he been like you going around killing
15 people in my city. And then gone come smoke weed and
16 drink liquor or something like that he said.

17 Q Okay. Well, so you deny saying anything. You deny
18 every single bit of this. You didn't say anything?

19 A No, I say some of the stuff, but some of that stuff I
20 ain't say to him.

21 Q So some of the stuff in here is true and some of it
22 is not true?

23 A Yeah.

24 Q So the part about you being at Ashley Shores, that's
25 true?

- 1 A Yeah.
- 2 Q Part about that's when we heard the gunshots I ran
3 just like everybody else, that's not true?
- 4 A I ain't never tell them that.
- 5 Q That's not true?
- 6 A No. He keep asking me who shoot the dudes at Ashley
7 Shores. I been like I don't know. And the sergeant dude
8 he been like you lying.
- 9 Q Okay. Next thing says in your statement is I ran few
10 a yards down, then me and Little Mack came back to the
11 scene saw Derious and Evil lying on the ground. Is that
12 true or not true?
- 13 A I ain't tell them that, but that's what's I did
14 though. And some of those things in that statement in
15 other people statement.
- 16 Q Is that sentence I just read to you true or not?
- 17 A No, no, I ain't tell the police.
- 18 Q Is it true or is not?
- 19 A No, sir.
- 20 Q It is not true? They just wrote it down for whatever
21 reason?
- 22 A I guess so.
- 23 Q My brother was running across the field?
- 24 A I ain't never tell them that either.
- 25 Q Is that true or not?

1 A Not true.

2 Q Did you tell that to North Charleston?

3 A No, sir.

4 Q They just wrote it down for whatever reason?

5 A I guess so.

6 Q It's your testimony that your baby brother the

7 defendant, D'el Grant, was never even there?

8 A I ain't see him.

9 Q You didn't see him?

10 A The whole time the whole thing me and Cordero been

11 together because he the one who call me. He know what

12 been going on.

13 Q Well, when you were at Ashley Shores, did you see

14 your little brother?

15 A No, no, sir.

16 Q Didn't see him. He wasn't even there?

17 A No, sir, I ain't see him.

18 Q If he was there, you would have seen him; right?

19 A Yeah.

20 Q He's your little brother you wouldn't have missed

21 him; would you?

22 A Yeah, I would have seen him.

23 Q You would have seen him. So it's your testimony he

24 wasn't even there?

25 A I ain't see him.

1 Q And North Charleston puts down my brother was running
2 across the field, that's not true?

3 A No, sir.

4 Q Moving on in the statement. They indicated that you
5 told them or told Little Mack, so let's go. You run to
6 back of Ashley Shores and jumped in a hot taxi. Taxi took
7 back the Greens something like that took us to back to
8 Green?

9 A I tell them.

10 Q Is that true or not true?

11 A Yes, sir.

12 Q Okay. I thought you just testified you didn't take a
13 taxi?

14 A We didn't. And then I tell them we get in a hot
15 taxi, but that's a junkie or whatever a junkie, a crack
16 head.

17 Q Okay. When you say we jumped in a hot taxi, that
18 doesn't mean a taxi?

19 A No.

20 Q What does that mean?

21 A That mean like someone who would give you a ride to
22 pay them.

23 Q Say hot taxi mean ---

24 A Yes, sir.

25 Q And you write the taxi took us to back Green?

1 A Yeah.

2 Q But you're not talking about a taxi cab, a regular
3 taxi cab?

4 A No, sir.

5 Q All right. Let's talk about your girlfriend going to
6 her house the statement that they were in assistance.
7 They indicated that you told them that your girlfriend
8 told me we couldn't stay there. So we took a cab over to
9 the Evergreen. Did you take a cab then?

10 A Yes, sir, from back to Green.

11 Q I thought you told us you didn't take a cab?

12 A From back to Green.

13 Q From back to Green to where?

14 A To the hotel.

15 Q Okay. You did take a cab?

16 A From back to green to the hotel.

17 Q Now, you're making this trip to the hotel with
18 Cordero Porcher; right?

19 A Right?

20 Q I thought that Cordero Porcher and you were close?

21 A I mean, yeah.

22 Q I mean, did you guys grew up together?

23 A No.

24 Q How long have you known Cordero Porcher?

25 A I mean, I know him, but I mean we ain't use to be

1 together. I been lock up and this dude we use to be with
2 before I come home tell me to look out for him. So when I
3 come home, he start being with me. When I came home in
4 2004, he start being with me.

5 Q So you were in a sense looking after Cordero Porcher?

6 A Well ---

7 Q He wasn't related to you, but you were close looking
8 out for him?

9 A Yeah, we were all right.

10 Q He was all right?

11 A Yes, sir.

12 Q You never had any problems with him?

13 A No, sir.

14 Q So he was somebody you had a relationship like you
15 describe why would you threaten to kill him and force him
16 ---

17 A So he wouldn't tell.

18 Q --- to go to West Ashley like you just talked about?

19 A So he wouldn't tell.

20 Q So this person is close with you and your testimony
21 is that you threaten him. And you told him go with you or
22 you'll kill him?

23 A Yes, sir.

24 Q That's your testimony?

25 A Yes, sir.

1 Q Have you had any more talks with Cordero Porcher
2 after this? Have you threatened him at all?

3 A Since, we been locked up?

4 Q Yeah.

5 A I ain't say nothing to him.

6 Q Have you threatened him in this courthouse?

7 A No.

8 Q Not down in the lock up down here?

9 A No. When I first get here, he call me a bitch as
10 nigga, that's what he call me.

11 Q So you guys did have an interaction?

12 A He say something to me. I ain't say nothing to him.

13 Q Didn't say anything to him?

14 A No.

15 Q Did you threaten him downstairs?

16 A (No response).

17 THE COURT: Go ahead.. What was the answer to that
18 question?

19 GARY GRANT: Did I threaten him?

20 THE COURT: That was the question. What was the
21 answer?

22 GARY GRANT: No, sir.

23 THE COURT: Go ahead.

24 BY MR. WETMORE:

25 Q So it's your testimony, Mr. Grant, that your little

1 brother, D. L. Grant, wasn't even at Ashley Shores?

2 A No, sir.

3 Q You already told me he was two years younger than
4 you; is that right? Is that right yes or no?

5 A Yes, sir.

6 Q Now, did you guys grow up together in the same house?

7 A Yes, sir.

8 Q Spent a lot of time together that close in age?

9 A No.

10 Q You didn't spend a lot of time with your younger
11 brother?

12 A No, I mean, he got his friends. I got mine. We hang
13 out together. We hang out together.

14 Q Did you guys grow up in the same house when you were
15 little babies?

16 A Yes, sir.

17 Q Little baby boys?

18 A Yes, sir.

19 Q You guys lived in the same house; is that right?

20 A Yes, sir.

21 Q And you were his older brother?

22 A Yes, sir.

23 Q Did you ever have to look after him?

24 A He can handle his own. But if you get down to it,
25 yeah.

1 Q If it gets down to it, you will look after your
2 little brother; right?

3 A Yes, sir.

4 Q Well, let's talk about February of 2005 when this
5 happened. You said that you had some conversation with
6 North Charleston police department. You don't admit
7 everything that they say you said. You admit some
8 conversation; is that right?

9 A Yes, sir.

10 Q Did you give them a written statement?

11 A I mean, I talk to them. I ain't write nothing. I
12 ain't talk to them.

13 Q So you talk to them and they were writing stuff down
14 while you were talking?

15 A No, at first they ain't been writing down nothing
16 when I first get there. He just been talking to me. He
17 said call my brother and tell him to turn himself in and
18 he bring a phone in the room. And I been like I don't
19 know no number he got, you know. And then he been like so
20 who kill them. I been like I don't know. I don't know
21 who you talking about, you know. He been like who shoot
22 you. I'm like I ain't know. He been like, well, we got
23 some people saying that a guy name Project shoot you or
24 whatever. You know, he ain't never say no name. And then
25 after a while, he been like people who been on Woodlawn

1 say they see Project. He say they see a Lexus and a green
2 Eighty Eight and people who were shooting at you. And
3 then he was like some other people saying Project shoot at
4 you.

5 Q Okay. So you had some conversation with North
6 Charleston police department right when this happened; is
7 that right?

8 A I (inaudible).

9 Q Back in February of 2005 when this all went down, did
10 you have some conversations with North Charleston police?

11 A Yes, sir.

12 Q Why didn't you tell them that you shot those two
13 victims then?

14 A They had to find that out on their own. I ain't gone
15 to tell them.

16 Q So you didn't tell them back then in February 2005.
17 You didn't tell them you shoot them?

18 A No, because my whole plan been I know they ain't had
19 nothing against me, get a bond and get out and go get
20 Project.

21 Q I'm looking at this statement here that North
22 Charleston took down for you. They ask you a question who
23 kill them boys on Ashley Shores and they indicate your
24 answer was I don't know. They saying my brother, D'el,
25 did it?

1 A I tell them I don't know.

2 Q Did you tell them you heard, D'el, did it?

3 A No, I said I don't know. I don't know nothing.

4 Q Okay. When this all happened, you knew that you were
5 shoot these guys according to you, but you didn't tell
6 them?

7 A Why, that's they job.

8 Q So you did not tell North Charleston when this first
9 happened?

10 A No.

11 Q All right. Back then shortly after this happened in
12 February of 2005, several other people were arrested in
13 connection with these murders. That was Deshawn Gathers,
14 Cordero Porcher, Devant Porcher, and you. All these
15 people are getting locked up. Did you admit what you had
16 done then yes or no?

17 A No, sir.

18 Q So you didn't admit what you had done then?

19 A No, sir.

20 Q But you're here today to admit it now?

21 A Yes, sir.

22 Q So you let all these other folks get locked up and
23 you didn't come clean with North Charleston then, did you?

24 A No, sir.

25 Q So was your little brother arrested back then with

1 everybody else?

2 A No, sir.

3 Q Why not?

4 A Because we couldn't find him.

5 Q Because what?

6 A They couldn't find him.

7 Q They couldn't find your little brother?

8 A No, sir.

9 Q Where was he?

10 A I don't know.

11 Q You don't know where your little brother was?

12 A No.

13 Q Was he in the area? Was he in the Charleston area,
14 North Charleston area?

15 A I don't know. I ain't talk to him. I don't know.

16 Q No idea where he was?

17 A No.

18 Q Didn't have any contact with him?

19 A No, sir.

20 Q Are you aware that he was arrested ---

21 MS. FANNING: Objection, Your Honor, he already
22 testified he wasn't aware.

23 THE COURT: Overrule cross-examination.

24 BY MR. WETMORE:

25 Q Are you aware that your little brother was arrested

1 in Illinois?

2 A No, sir. I been in jail.

3 Q You didn't have any idea about that?

4 A I been in jail.

5 Q Why would your little brother run all the way to
6 Illinois if you had done this?

7 A I don't know.

8 Q You don't have any idea?

9 A He probably ain't want to get locked up. He probably
10 find out they been looking for him too. He ain't want to
11 get locked up, but I don't know.

12 Q These are all just guesses from you?

13 A Yeah.

14 Q Your little brother was arrested on July 24th of
15 2006, 17 months after this happened. Why didn't you admit
16 this to anybody then?

17 A Because I want to get out of jail.

18 Q Because what?

19 A I been about to get out of jail.

20 Q You're about to get out of jail?

21 A I'm about to, yeah.

22 Q So you let your little brother get locked up in July
23 of 2006?

24 A I ain't even know he been lock up. I ain't find out
25 he been locked up until I get out.

1 Q But you had no idea he was locked up?

2 A No, sir.

3 Q But you still hadn't confessed like you're doing
4 today?

5 A If I had confess, I wouldn't get out of jail.

6 Q But you still hadn't confessed like you are today,
7 yes or know no?

8 A No, sir.

9 Q So this event happened February 24, 2005, this double
10 murder?

11 A Yes, sir.

12 Q Why have you waited until today November the 6, in
13 the very middle of your little brother's trial, why did
14 you wait until today to admit this?

15 A I been write a statement like in May or something. I
16 gave it to my lawyer.

17 Q You been write a statement?

18 A Yeah, I been tell him I'm going to write it, but I
19 just ain't write it yet.

20 Q Did you contact North Charleston police department
21 say, hey, I'm the guy you're looking for?

22 A No, I tell my lawyer. I got a lawyer I can tell him.

23 Q Did you contact the prosecutor's office and say, hey,
24 I'm giving myself up. I did it?

25 A No.

1 Q You didn't do that all along until today; is that
2 right?

3 A Yes, sir.

4 Q Now, you are according to you're admitting that you
5 did all this, all you?

6 A Yes, sir.

7 Q Have you come in and admitted to the Court come in
8 pled guilty?

9 A On these charges? No, sir. This my first time
10 coming to court for this.

11 Q So happen to come in and admitted this to the Court
12 pled guilty at all?

13 A Not yet.

14 Q You're just saying in the middle of your little
15 brother's trial that you did this?

16 A Yeah, like I said I write a statement.

17 Q You haven't taken any responsibility for it
18 officially in court, have you?

19 A Sir.

20 Q You haven't taken any responsibility for this in
21 court?

22 A No, sir.

23 Q Other than today?

24 A Yes, sir.

25 Q So today is the first time that you're mentioning

1 this?

2 A Yes, sir.

3 Q Have you ever been convicted of a crime, Mr. Grant?

4 A Yes, sir.

5 Q When was the first time, you were convicted of a
6 crime?

7 A Like when I was a juvenile.

8 Q Tell me what you were convicted of?

9 A I can't remember.

10 Q Don't have any idea what you were convicted of?

11 A Not my first charge.

12 Q Were you convicted of failure to stop for a blue
13 light?

14 A That's on my adult record.

15 Q In 2001, you were convicted of that?

16 A Yes, sir.

17 Q In 2001, were you convicted of possession of crack
18 cocaine?

19 A Two of them.

20 Q Two counts of that?

21 A Yes, sir.

22 Q Both the same year?

23 A Yes, sir.

24 Q 2001. In 2002, were you convicted of common law
25 robbery or strong armed robbery?

1 A I been in prison.

2 Q Say what?

3 A I been in prison in 2002.

4 Q Well ---

5 A I went to prison in 2001.

6 Q On January 11th 2002, you convicted of common law
7 strong, armed robbery?

8 A No, sir.

9 Q Were you ever convicted of common law and strong
10 armed robbery?

11 A No, sir.

12 Q Never been convicted of that. You ever been
13 convicted of possession of a stolen motor vehicle?

14 A As a juvenile.

15 Q But you were convicted of that; is that right?

16 A Yes, sir.

17 Q So you admit that conviction. You been convicted of
18 breaking into an auto? Yes or no?

19 A No, sir.

20 Q Never been convicted of that. Now, let's get to this
21 is important right here. About two months ago in totally
22 different case, in a different county in Berkeley County,
23 did you go to trial?

24 A Yes, sir.

25 Q Were you convicted at trial of charges?

- 1 A Yes, sir.
- 2 Q Were you convicted of first degree burglary, the most
3 serious kind of burglary, two counts of that?
- 4 A I been convicted of every charge they charge with me.
- 5 Q Were you convicted of two counts burglary first?
- 6 A Yes, sir. Yes, sir.
- 7 Q What was your sentence in that conviction?
- 8 A Life.
- 9 Q Life in prison?
- 10 A Yes, sir.
- 11 Q Were you convicted of kidnapping four counts of that?
- 12 A Yes, sir.
- 13 Q What was your sentence in that?
- 14 A Life. Life.
- 15 Q Life. Were you convicted of armed robbery with
16 regard to that incident?
- 17 A Yes, sir.
- 18 Q What was your sentence for that conviction?
- 19 A Life.
- 20 Q Were you convicted of murder in that situation?
- 21 A Yes, sir.
- 22 Q And once again what was your sentence?
- 23 A Life.
- 24 Q I think life is what you got for the murder. You
25 might have gotten 30 years on everything else. The fact

1 of the matter is you are serving a life sentence; is that
2 correct?

3 A Yes, sir.

4 Q What does mean to you? What do you understand that
5 to mean?

6 A You have life in prison.

7 Q So you understand you're going to spend rest of your
8 life in prison?

9 A Yes, sir.

10 Q It's a done deal?

11 A Yes, sir.

12 Q Because of the earlier conviction in Berkeley County?

13 A Yes, sir.

14 Q So you are aware of the fact that you're going to
15 spend the rest of your life in prison?

16 A Yes, sir.

17 Q Is there anyway in the situation possibly get any
18 worse?

19 A No, sir.

20 Q No way it could get any worse than life in prison;
21 right?

22 A I mean, yeah, if I get convicted of this, then I get
23 death penalty or something.

24 Q But as it stands now you're serving life?

25 A Yes, sir.

1 Q You pick this day to admit your guilt in this
2 incident too?

3 A Yes, sir.

4 Q And this happened way back in February of 2005 today
5 is the first day you come to court admitting this?

6 A Yes, sir.

7 Q Just after you picked up a life sentence; is that
8 right?

9 A Yes, sir.

10 Q And were you transported from the prison system here
11 today?

12 A I been here since yesterday.

13 Q Been here since yesterday?

14 A Yes, sir.

15 Q Were you transported by the defense side?

16 A No, sir.

17 Q Have we talked this at all?

18 A No, sir.

19 Q Did I ask you to come testify for me?

20 A No, sir.

21 Q So you must be testifying for them?

22 A Yes, sir, but...

23 Q Tell me this what do you hope will happen to your
24 little brother, baby brother, D'el Grant, because of what
25 you're saying here today? What do you hope will happen?

1 MS. FANNING: Object, Your Honor, invades the
2 province of the jury.

3 THE COURT: Yes, sir, I sustain that. Headed towards
4 argument.

5 MR. WETMORE: Court's indulgence.

6 (WHEREUPON, a pause in the proceedings.)

7 MR. WETMORE: I don't need to hear anything else.

8 THE COURT: Redirect, Ms. Fanning?

9 REDIRECT EXAMINATION

10 BY MS. FANNING:

11 Q Do you recall writing a statement March of this year?

12 A May. I done it in May.

13 Q You wrote a statement in March of this year which you
14 have accepted responsibility for these murders? You
15 recall that?

16 A Yes, ma'am.

17 Q You gave it to your lawyer?

18 A Yes, ma'am.

19 Q Provided a copy to the Solicitor?

20 A Yes, ma'am.

21 Q And to me?

22 A Yes, ma'am.

23 MS. FANNING: Thank you. I don't have any more
24 questions.

25 THE COURT: Recross.

RECROSS-EXAMINATION

BY MR. WETMORE:

Q Mr. Grant, you indicated you made some statement?

A Yes, sir.

Q Did you ever provide that statement to the North Charleston police department?

A No, sir.

Q Did you ever provide it to the prosecutor's office?

A I think.

Q You did.

A Who is the prosecutor you; right?

Q The prosecutor.

A Oh, yes, sir.

Q You didn't never provide it to the solicitor's office, prosecutor's office?

A Yes, sir. I give it to my lawyer and make sure y'all get it.

Q But you didn't never come clean to the police department about this?

A No.

Q This is the first time that you come into court and said all that?

A Yes, sir.

MR. WETMORE: I have no further questions.

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

1 down.

2 (WHEREUPON, the witness leaves the witness stand.)

3 THE COURT: Counsel approach.

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

7 THE COURT: All right. Ms. Davis, you may call your
8 next witness. I mean, Ms. Fanning, I'm sorry. I'm
9 looking at Mr. Davis.

10 MS. FANNING: Your Honor, at this point, the defense
11 rest.

12 THE COURT: All right. Anything in reply?

13 MR. WETMORE: No, sir, Your Honor.

14 THE COURT: All right. Ladies and gentlemen, you
15 have heard the defense announce they have rested and the
16 State has indicated that they have no reply testimony.
17 And that means that you have heard all of the testimony in
18 connection with this matter. And there only two things
19 that remain to be done. Those are the arguments of
20 counsel and the instructions on the law by the Court.
21 After those two matters have been accomplished, you will
22 be allowed to go to your jury room to deliberate your
23 verdict in this matter.

24 However, it is 5:35 and getting into the evening.
25 And obviously, we're not going to do those today. So I'm.

1 Going to excuse you for the evening. Allow you to go to
2 homes and families and ask you to be back in your juror
3 room tomorrow morning please at 9:30. At that time, we
4 will go into the arguments of counsel and the instructions
5 on the law and after I have completed those matters then
6 you will be allowed deliberate your verdict in this case.

7 I will tell you tonight as I did last night that you
8 are not to talk with anybody about this case. Don't talk
9 with your family or your friends about it. You got to
10 decide this case based upon what you hear in this
11 courtroom and not on the basis of what anyone else might
12 say. Do not allow anyone to talk to you about the matter.
13 If anyone should attempt to talk to you, get their name or
14 their description and report it to the bailiff and I will
15 deal with them. And also again and I can't over emphasize
16 this do not read any news stories or listen to any radio
17 or television broadcast about this matter. Obviously, you
18 can't do anything if there's an interruption of a show
19 that you happen to be watching that is an entertainment
20 show, but do not watch any news stories or anything of
21 that nature if there is anything on the broadcast about
22 this matter. Other than that, just forget about the case
23 and tonight have a restful evening and come back tomorrow
24 morning prepared to go back to work at 9:30. And I'll see
25 you tomorrow. Thank you. Have a good day.

1 (WHEREUPON, the jury was excused for the day.)

2 THE COURT: All right. Before while I'm thinking
3 about it Mr. Solicitor, I like for you to introduce a
4 court's exhibit the statement that this last witness used.
5 It will be a court's exhibit and obviously will not go to
6 the jury. But the Court wants to review it in light of
7 his testimony to see whether there would be any
8 recommendation to this Solicitor's office to take any
9 action against the defendant in view of -- I mean, against
10 the witness in view of what his statement said. So I want
11 to be able to review the statement in detail and I like
12 for it to be marked as Court's Exhibit Number 1.

13 MR. WETMORE: Yes, sir, may I approach.

14 THE COURT: Yes, sir. And, Mr. Davis, you can tell
15 your client that I'm looking at it from that standpoint.

16 MR. DAVIS: Yes, Your Honor.

17 MR. WETMORE: Your Honor, may I supplement that with
18 the statement that was referenced in May?

19 THE COURT: Yes, sir, that can be Court's Exhibit
20 Number 2.

21 MR. WETMORE: Thank you, Your Honor.

22 (WHEREUPON, Court's Exhibit No. 1, and 2 was marked
23 for the record.)

24 THE COURT: I don't need it tonight. If you can give
25 it to the reporter tomorrow as Court's Exhibit Number 2 or

1 if you have a copy of it.

2 MS. FANNING: I do. I be happy to provide that.

3 THE COURT: Either one of you just furnish it and
4 give it to the reporter as Court's Exhibit Number 2 that
5 will be fine and I'll review it.

6 MS. FANNING: I don't mine since I asked about it.
7 Give it up to madam court reporter.

8 THE COURT: All right. Motions on behalf of the
9 defendant, Ms. Fanning?

10 MS. FANNING: No, Your Honor.

11 THE COURT: All right.

12 MS. FANNING: Well, let me reserve for the morning.
13 I'm exhausted, beat, so I don't know...

14 THE COURT: Well, I mean, reserve what for in the
15 morning motions?

16 MS. FANNING: Motions, yes.

17 THE COURT: Well, I kind of like to know where we
18 stand myself.

19 MS. FANNING: I think we're done. I just need to
20 double check the rules and make sure there's nothing I
21 have to make. I'm exhausted. I'm sorry.

22 THE COURT: All right. If you have any -- yeah, we
23 will allow motions to be made in the morning. What about
24 request for charge? Any special request to charge from
25 the State?

1 MR. WETMORE: Yes, sir, Judge, I have two. One is a
2 hand of one hand of all charge. And the other is
3 conversion ---

4 THE COURT: Okay, why is the hand of one and hand of
5 all. You got one defendant who's identified as being the
6 shooter where is accomplice liability here?

7 MR. WETMORE: Judge, we certainly -- there's no
8 question this defendant was the shooter. However, in the
9 alternative they did believe that he was part of the
10 assault, part of the group assault I believe that charge
11 is appropriate. I would expect you certainly accompany
12 with a mere presence, Your Honor. I'm certainly going to
13 proceed under the theory that he is the trigger man. He
14 is shooter. He is the one that is guilty of the murder.
15 However, in light of what his big brother just did if any
16 of the jurors are mislead ---

17 THE COURT: Well, how could there be an accomplice
18 liability on the part of his big brother when the big
19 brother's testimony is that he wasn't there at all.

20 MR. WETMORE: There were several others that said
21 both of them were there. And just in the abundance of
22 precaution, I was going to also argue even if you do
23 belief that he was trigger man he was certainly involved
24 in it. Of course, our primary position is that he was the
25 shooter.

1 THE COURT: All right. Ms. Fanning, what's your
2 position with regard to the accomplice liability request?

3 MS. FANNING: My position is I don't believe a charge
4 on accomplice liability in this case proceeded against
5 this case as he's the trigger man would be appropriate
6 either they believe that he was or they believe that he
7 was not. I'm not ---

8 THE COURT: All right. What's your other request?

9 MR. WETMORE: Judge, the other one is just a
10 reasonable doubt charge.

11 THE COURT: Well, I've got -- I can tell you I'm
12 going to charge general felony charge. My general felony
13 charge contains reasonable doubt and it's a little deeper
14 and more detailed charge than the simple hesitate to act
15 that is recognized by some. Basically, it tell you
16 exactly what it says. Reasonable doubt is not an
17 imaginary or fanciful doubt or a weak doubt. It is a
18 substantial doubt. It is a doubt for which the words
19 imply. A doubt for which you could give or assign a
20 reason based on the testimony and evidence in the case. A
21 reasonable doubt is not any sort of doubt. You and I know
22 from every day life experiences that you may have a sort
23 of a doubt about any matter that arises no matter how
24 trivial or how serious it may be. A reasonable doubt is a
25 doubt which makes an honest, sincere, conscientious juror

1 in search of the truth hesitate to act. Proof beyond a
2 reasonable doubt is proof which leaves you firmly
3 convinced of the defendant's guilt. And then it goes on a
4 little bit further, but that's basically what my
5 reasonable doubt charge is and that's under the felony
6 charge. I'll also charge the presumption of innocence
7 credibility, and, of course, the general murder charge.
8 And for Ms. Fanning which I'm sure will have a request of
9 the defendant's not testifying and I will charge that as
10 well. So I need to know if there any special charges
11 other than those. You said accomplice liability and
12 that's something I will consider. You said something
13 about mere presence.

14 MR. WETMORE: Well, Judge, I just said that I would
15 respect if you did give that the other mere presence
16 charge. Wherever you think is appropriate. I'll pass up
17 my suggestions to you.

18 THE COURT: Pass them up and give the defense counsel
19 a copy.

20 MR. WETMORE: We can talk about this in the morning.

21 THE COURT: Yeah, we will. What about from defense
22 standpoint, Ms. Fanning, do you have any special request
23 that you are aware of at this time.

24 MS. FANNING: I don't have anything in particular. I
25 can't think of any lesser-included offenses that I need to

1 charge on. I don't know that mere presence is supported
2 by the evidence.

3 THE COURT: We'll discuss that in the morning.

4 MS. FANNING: It may be necessary, maybe preferable.

5 THE COURT: All right. We'll talk about those in the
6 morning. And I'll give you a chance if you got a special
7 request to hand them up to me in the morning.

8 Ms. Fanning, you require the State to open on the law?

9 MS. FANNING: I do, Your Honor.

10 THE COURT: All right. Considering opening and
11 closing, Mr. Solicitor, you gone have one -- one of you
12 gone do both of them or you gone split the arguments or
13 what's your intentions?

14 MR. WETMORE: At this point, I'll probably just do
15 both. And if that change, I will certainly let you know.

16 THE COURT: How much time do you think you need. I'm
17 gone ask both of this. And I'll tell you both to start
18 with that I'm not going be overbearing about that, but
19 that when I first went on the bench I failed to ask
20 lawyers in a little routine automobile accident how long
21 they needed to argue. I thought it was a case to be
22 argued in about 10 or 15 minutes and 55 minutes later one
23 lawyer was still going strong. And so I do need some
24 estimate of the time that you think that you gone need for
25 both.

1 MR. WETMORE: Judge, I would estimate about 30
2 minutes.

3 THE COURT: Ms. Fanning.

4 MS. FANNING: Certainly, no more like 35 probably
5 more like 30.

6 THE COURT: All right. All right. Anything then
7 before we -- oh, the other thing, of course, and just to
8 make sure so I'll have time to correct this. Verdict
9 forms it appears to me that it's a simple verdict form on
10 each indictment of either guilty or not guilty. I don't
11 think there are any lessor-included offenses that should
12 be incurred. You concur?

13 MR. WETMORE: Yes, sir.

14 THE COURT: You agree?

15 MS. FANNING: Yes, sir.

16 THE COURT: All right. Thank you. Then we will be
17 in recess until let's be here about 9:15 in the morning,
18 counsel, so that we can address the matters with regard to
19 charges. And get those out of the way so that we can
20 start with the jury as close to 9:30 as we can. So
21 counsel please be here at 9:15 in the morning. We'll be
22 ready to go forward. All right, be in recess until 9:15
23 tomorrow morning.

24 (WHEREUPON, the proceedings were concluded for the
25 day to be reconvened on November 6, 2007.)

1 MS. FANNING: Good morning.

2 MR. WETMORE: Good morning.

3 THE COURT: All right. Back on the record with
4 regard to the matter of the The State vs. D'el Jvon Grant
5 in indictment numbers 2006-GS-10-11480 and 11481. The
6 defendant is present with his counsel. The State is also
7 present through the assistant solicitor Mr. Burns Wetmore.
8 Ms. Fanning, after the evening recess, are there any
9 motions that you wish to make on behalf of the defendant.

10 MS. FANNING: Your Honor, yeah, I would like renew my
11 motion for a directed or a dismissal of the indictments
12 against Mr. Grant. The Court has heard all the evidence
13 in the case both from the State and the defendant. It is
14 clearly evidence in the record that supports my dismissing
15 the indictments. An accomplice or a co-defendant has
16 testified that he was was in fact the murderer of the two
17 victims and that Mr. Grant was not present at the scene.
18 And I would ask the Court given all the evidence in the
19 record to dismiss the indictments against my client.

20 THE COURT: All right. Thank you, ma'am. I would
21 respectfully deny that motion. Again, under Rule 19, the
22 Court shall consider the evidence in the record. And if
23 there is any evidence in the record that would support the
24 conviction or the guilt of the defendant and the matter
25 must be submitted to the jury. The Court considers only

1 the existence or nonexistence of the evidence and not it's
2 weight. And I therefore would be -- have to under the law
3 deny the motion for a directed verdict. All right.

4 Mr. Wetmore, I have from you two request for charge. I
5 assume you given copies to Ms. Fanning?

6 MR. WETMORE: Yes, sir.

7 THE COURT: One is the accomplice liability charge
8 and hand of one hand of all. And the other is a one
9 reasonable doubt charge. I have reviewed your reasonable
10 doubt charge. I will make it a part of the record as
11 Court's Exhibit I guess in this case number three. I'm
12 going to use my reasonable doubt charge. I think it's
13 very similar, but I'll use my own reasonable doubt charge.

14 Ms. Fanning, what say you with regard to the
15 accomplice liability charge?

16 MS. FANNING: Your Honor, would it be possible for
17 the Court to tell me what your reasonable charge is? Is
18 it Irvin's?

19 THE COURT: I read it yesterday.

20 MS. FANNING: Oh, did you?

21 THE COURT: Yes. What is a reasonable doubt? It's
22 not an imaginary or fanciful doubt or a weak doubt. It is
23 a substantial doubt. It is a doubt that the words imply.
24 A doubt for which you can give or assign a reason based on
25 the testimony and the evidence in the case. A reasonable

1 doubt is not any sort of doubt. You and I know from every
2 day life experiences that you may have a sort of a doubt
3 about any matter that arises no matter how trivial it may
4 be or serious it may be. A reasonable doubt is a doubt
5 which makes an honest, sincere, conscientious juror in
6 search of the truth hesitate to act. Proof beyond a
7 reasonable doubt is proof which leaves you firmly
8 convinced of the defendant's guilt. If you have a doubt
9 for which you can give or assign a reason as to the guilt
10 of the defendant, then he is entitled to a verdict of not
11 guilty. Reasonable doubt may arise from evidence which is
12 in the case or from the lack or absence of evidence in the
13 case. You, the jury, must make the determination of
14 whether or not reasonable doubt exist as to the guilt of
15 the defendant. The very fact however that a jury engages
16 in a full and free discussion of the issue of guilt or
17 nonguilt in this case with the normal conversational ev
18 and flow on these issues does not automatically mean that
19 reasonable doubt exist in this case or in any other case.

20 MS. FANNING: I think that charge is satisfactory,
21 Your Honor. I'm sorry I didn't remember everything you
22 read.

23 THE COURT: Okay. What about the accomplice
24 liability charge, Ms. Fanning?

25 MS. FANNING: I don't believe there's evidence in the

1 record that would support accomplice liability in this
2 matter. There's testimony from the State that he was
3 there and he was the person who pulled the trigger. Then
4 there's evidence from the defendant that he was not there.
5 So I don't see a way for the jury to glean anything from
6 the record in front of them that he was present, but not
7 the trigger man. So I would object to a charge of
8 accomplice liability because it's not supported by facts
9 in the record.

10 THE COURT: All right. Mr. Wetmore, I'll be glad to
11 hear from you.

12 MR. WETMORE: Thank you, Judge. Certainly, I
13 wouldn't anticipate the jury would take that approach and
14 I would argue that they didn't, but I think it's entirely
15 possible that they could believe some of my what witnesses
16 say and defendant present some of what their witnesses say
17 and he was not shooter. And in that case being present
18 and acting with others in the furtherance of violence I
19 would think it was appropriate if they could at least
20 consider that as a way find him guilty under that.

21 THE COURT: All right. Counsel, I thought about this
22 matter over the evening recess because I knew it was going
23 to come up today and I have done a little bit of research
24 on it. My view is that the accomplice liability is not
25 the State's theory in this case. No State's witness

1 indicated anyone other than the defendant was the shooter.
2 And, of course, none of them also indicated that Mr. Gary
3 Grant was the shooter. Only the defendant's witness
4 Mr. Grant himself said he was the shooter. And he also
5 testified that the defendant, D'el., was not even there.
6 It seems to me that the facts are inconsistent with the
7 theory of accomplice liability in this case and
8 inconsistent with the theory of the State's case. I do
9 not believe it's an appropriate charge and I'm going to
10 decline to charge the accomplice liability. This will be
11 given to the court reporter and marked as Court's Exhibit
12 Number 4. Here are those two court's exhibits three and
13 four to make part of the record.

14 (WHEREUPON, Court's Exhibit Nos. 3 and 4 was admitted
15 into evidence.)

16 THE COURT: All right. Anything else on behalf of
17 the State before we go forward, Mr. Wetmore?

18 MR. WETMORE: Judge, there is. I'm sorry you asked
19 us about this yesterday. After thinking about it more
20 last night, I would argue to the Court that a voluntary
21 manslaughter charge might be appropriate. The reason I'm
22 saying that is that what all the witnesses described is a
23 rise and tide of violence among these people throughout
24 the course of several days and certainly that day. They
25 may take from that testimony that this defendant didn't

1 have sufficient provocation, but was certainly acting in
2 the heat of the moment, heat of passion because of this
3 argument because of the fact that his brother had been
4 shot. And they may see this as a more of a voluntary
5 situation rather than a premeditated murder. So I ask you
6 to charge that as a lesser-included present that.

7 THE COURT: Ms. Fanning.

8 MS. FANNING: Your Honor, I need moment to confer
9 with my client if possible.

10 THE COURT: All right.

11 MS. FANNING: Can we go somewhere out of the
12 courtroom to talk?

13 THE COURT: Yeah, this is a new theory. I know
14 nobody's considered it including the Court because it
15 wasn't brought to the Court's attention before now.

16 MR. WETMORE: I'm sorry, Judge.

17 THE COURT: I hate to keep the jury waiting, but this
18 is a new matter that's come up that I'm going to have to
19 give a little bit of thought to myself a little bit of
20 research on it. So we'll take until 15 till about another
21 seven or eight minutes and see where we stand.

22 (WHEREUPON, a break was taken.)

23 THE COURT: All right. Back on the record with
24 regard to the matter of The State vs. D'el Grant. The
25 State is present with Mr. Wetmore. The defense is present

1 with the defendant, Mr. Grant. Ms. Fanning, what is your
2 position on the State's request to charge and give the
3 jury the option of a voluntary manslaughter verdict?

4 MS. FANNING: Your Honor, I discuss this with my
5 client and initially he did not want it in. As I just
6 told you in chambers, we had an in-camera hearing on this
7 matter. He has since thought about it and has now
8 informed he would like the jury to have the option of
9 convicting him of the lesser offense of voluntary
10 manslaughter. We discussed possible implications in terms
11 of conviction and sentencing.

12 THE COURT: So I understand now your client's
13 position was different from what it was when we discussed
14 it in chambers?

15 MS. FANNING: In a minute and a half that I been
16 sitting here with him here he has decided -- he's thought
17 about it a little bit. Your Honor, this just came up out
18 of nowhere. We've had no options.

19 THE COURT: Well, I know.

20 MS. FANNING: So I haven't had a whole lot of time.
21 He's had very little reaction time. I think you
22 appreciate that because we've all had little reaction
23 time. I discussed with him you know, out of the
24 courtroom, you know, told him what had come up, explain to
25 him why it may be coming up. And he initially just said I

1 don't want to do it. I want them to have two options.
2 He's thought about it evidently during the time we were
3 meeting and has decided that it may be in his best
4 interest for the jury to have the option convicting him if
5 they're inclined on a -- for a charge which carries a
6 lower sentence than murder. It's his decision in terms of
7 whether he wants to object or not. We've discussed the
8 implications. And I apologise.

9 (WHEREUPON, a pause in the proceedings.)

10 THE COURT: I'm telling you, counsel, both of you.
11 It's awful hard for the Court to hit a moving target.

12 MR. WETMORE: Sorry, Judge, apologise.

13 MS. FANNING: Yes, sir, I apologise as well, Your
14 Honor.

15 THE COURT: All right. Rule 20 of the South Carolina
16 rules of criminal procedure provide Rule 20(a) that all
17 request for legal instructions to the jury shall be
18 submitted at the close of the evidence or such earlier
19 time as the trial judge reasonably direct. All request
20 must include accurate citation to authorities relied upon,
21 that rule has not been complied in this case.

22 Yesterday, I requested the request for instructions
23 and had an indication that the parties wish the charge on
24 accomplice liability, hands of one hand of all. Even this
25 morning when I came in, there were written request on my

1 desk from the State for that charge as well a written
2 request for a reasonable doubt charge which I studied and
3 indicated that I would use my own reasonable doubt charge
4 and denied the request for the accomplice liability or
5 hand of one is the hands and of all. Fully believe that
6 we had everything that the Court was suppose to have or
7 needed to have from all the parties only to be hit with
8 this request outside of the rules and not inconformity
9 with the rules.

10 Thereafter, the Court was advised by defense counsel
11 that they objected to it and I was prepared to exclude the
12 voluntary manslaughter charge based upon the defendant's
13 objection and the failure to comply with Rule 20.
14 However, since the parties have agreed that this should go
15 to the jury now, some 45 minutes after this is supposed to
16 have been all resolved and everything. The Court will
17 charge and allow a voluntary manslaughter option with the
18 jury and I'm having the clerk prepare a jury form to
19 reflect that and I will charge voluntary manslaughter.
20 Anything before we bring the jury in?

21 MR. WETMORE: No, sir, Your Honor.

22 MS. FANNING: No, Your Honor.

23 THE COURT: All right. Bring the jury in please.

24 (WHEREUPON, the jury return to the courtroom.)

25 THE COURT: Good morning, ladies and gentlemen, thank

1 you for your promptness in being back here. I certainly
2 do apologise to you for keeping you waiting in the jury
3 room. I had the lawyers report at 9:15 this morning. I
4 thought we would be able to resolve everything that needed
5 to be resolved and we could go forward with you promptly
6 at 9:30. But I didn't work out that way. And I do
7 apologise to you for that.

8 As I told you yesterday -- well, first of all before
9 I go into that, let me ask if any member of the jury panel
10 has read any news stories or any printed media about this
11 case over the evening recess I would need to know about
12 that now? All right. Anybody has seen anything on
13 television or heard any radio broadcast concerning this
14 matter over the evening recess. I would also need to know
15 about that now. Both of those questions resulted in
16 negative responses and that's good. Also if anyone has
17 attempted to talk with you or consult with you in anyway
18 make any approach to you about this case over the evening
19 recess. I would also need to know about that now. Again,
20 negative responses and that's good. So we are prepared to
21 go forward.

22 As I told yesterday, ladies and gentlemen, you have
23 now heard all of the testimony in this case and all of the
24 evidence in this case. And there only only two things
25 that are remaining to be done. Those are the arguments of

1 counsel and the instructions on the law by the Court. I
2 will tell you now as I did at the beginning of this case
3 that the arguments of the lawyers are not evidence in this
4 case. They are simply the lawyers views of what they
5 think the evidence shows. You will decide this case based
6 upon the evidence that you have heard from this witness
7 stand and from any exhibits that have been introduced into
8 evidence. But the lawyers do have the right and not only
9 the right but the duty on behalf of their clients to
10 address you now and to give you their closing arguments or
11 summations. When they have concluded that, I will then
12 give you the instructions on the law of South Carolina and
13 you will then take that law and apply it to the facts as
14 you find those facts to be and arrive at a verdict in this
15 case. By way of closing arguments, you will hear first
16 from Mr. Wetmore on behalf of the State and then from
17 Ms. Fanning on behalf of the defendant. And then
18 Ms. Wetmore will have the right to make a closing argument
19 to you. Mr. Wetmore.

20 MR. WETMORE: Your Honor, may it please the Court?

21 THE COURT: Yes, sir.

22 MR. WETMORE: Ms. Fanning. I want to thank you guys
23 for your service. I know we kept you from your lives,
24 your family, your work all that. And I appreciate and I
25 know it's been tough subject matter to deal with sometimes

1 and appreciate you sticking with us. Luckily, at least
2 I'm going to argue to you that the law in this case is
3 pretty simple subject matter may be tough. The law is
4 simple. This man right here, D'el Jvon Grant, charged
5 with murder two counts the exact same charge. Murder of
6 the victim Robert Bryant. Murder of the victim, Cederious
7 Nelson. We all have some ideas of what murder means and
8 what murder is. But the law says that it's a killing of a
9 person with malice aforethought, killing of a person with
10 malice aforethought. And obviously, everybody knows what
11 killing means.

12 The only words I want to talk to you about is malice
13 aforethought first. Malice is doing a wrongful act
14 intentionally without just cause or excuse. Malice is
15 doing a wrongful act intentionally without just cause or
16 excuse. The aforethought part of that is just an element
17 of timing. The intent was to pursue the act. So murder
18 is killing of a person with this malice aforethought.

19 I would argue to you that the defendant is guilty of
20 two counts of murder. However, however, if from the
21 testimony you believe that there's not any sort of
22 premeditation on the defendant's part, if you think that
23 he really acted in the heat of the moment, you can find
24 him guilty of a lesser charge two counts of voluntary
25 manslaughter. But I'm going to argue to you that that's

1 not appropriate. This is an argument among friends, among
2 people who are close. There's even discussion of a
3 physical fight, a fistfight proceeded this shooting.

4 This man right here he took the violence to next
5 level. He took it to the ultimate level. And he armed
6 himself with a pistol and he waited in this apartment and
7 he watched while an argument took place and he waited and
8 very deliberately he ran out into argument while armed
9 with a pistol, shoot both the victims. He shoot them once
10 each two shoots. Then after they fell down. He shot them
11 again and again and again, three shots. This is not a --
12 this is not any sort of casual act. This is a planned
13 malicious act. There's testimony that the defendant said
14 I'm going to take care of those boys. Ultimate testimony,
15 plenty of testimony that he armed himself with a weapon.
16 Why else would you harm yourself if you didn't plan to use
17 that. He shoot and killed both these victims. I want you
18 to find him guilty of two counts of murder.

19 The only important law I want to mention to you right
20 now is the concept called reasonable doubt and the judge
21 talked to you about that a little bit at the beginning. I
22 have to prove my case -- the State has to prove it's case
23 beyond a reasonable doubt. And that doesn't mean beyond
24 all doubt. There's very few things in this life that I
25 can be completely sure of and I know you're probably the

1 same way. And you do not not have to be absolutely
2 certain about this. You do not, that's not what
3 reasonable doubt means. If you are firmly convinced that
4 this man shot and killed both those victims, I have done
5 my job. I have presented to you my case. I borne my
6 burden. And it's your duty to find him guilty. One count
7 of murder for Robert Bryant. One count of murder for
8 Cederious Nelson. Thank you.

9 THE COURT: Ms. Fanning.

10 MS. FANNING: Thank you, Your Honor. Good morning.
11 Like I told you or asked you -- like I asked you at the
12 beginning of the trial to keep an open mind and listen to
13 the evidence. You now heard it all and it's up to you to
14 make a very difficult decision whether or not you are
15 going to convict that 23 year old man that's been sitting
16 with me the last couple of days of two counts of murder or
17 not. The last minute today the State's thrown in
18 voluntary manslaughter option, but I submit to you that as
19 to both charges the State has failed to meet their burden
20 of proof, failed to establish this case to you or prove it
21 to you, that's their job.

22 When they bring a citizen up on indictments for
23 murder, they have a burden of establishing to you to your
24 satisfaction beyond a reasonable doubt that the accused is
25 guilty as charged, guilty of murder. The State presented

1 three co-defendants who testified under deals with two
2 State that D'el Grant murdered Cederious Nelson and Robert
3 Bryant.. And every one of those defendants told you that
4 they hoped to personally gain from their testimony. The
5 co-defendant that they did not call that I called because
6 he wasn't presented in the State's evidence because he
7 didn't testify in line with the other co-defendants that
8 D'elD'el shot Cederious Nelson and Robert Bryant. Gary
9 Grant who testified late yesterday I'm sure you all
10 remember his testimony. And I'm sure you all will discuss
11 his testimony when you deliberate.

12 The three co-defendants who did testify first was
13 Deshawn Gathers. Deshawn Gathers is the young man who set
14 the tragic events of February 24, 2005, in motion with a
15 phone call. Gary Grant gave some interesting facts that
16 the other co-defendants didn't provide because Gary Grant
17 is serving a life sentence for murder. He doesn't care if
18 he tells you that he and Cordero Porcher burglarized or
19 robbed this Project fellow who's nowhere in this trial by
20 the way and took \$17,000 from him and that's why all this
21 got started. Project was looking for Gary and Cordero.
22 Mr. Gathers knew that. Mr. Gathers called Project and his
23 crownies and told them where Gary Grant and Cordero could
24 be found on Woodlawn and started the events that
25 ultimately led to the shooting death of the two victims in

1 this case.

2 Every co-defendant that testified is clear on one
3 thing D'el Grant was nowhere around when the initial
4 drive-by shooting occurred on Woodlawn. He was not there.
5 After that, that one meeting of the minds, they all
6 varied. They're all over the map about where D'el came
7 from, where he was. He was at Deshawn's house. He was
8 outside Deshawn's house. Deshawn Gathers says he saw him
9 with a gun standing there. He's the only one who said
10 that D'el will hand it. Said D. L. said I'm going to
11 handle those boys.

12 The other two fellows said that they didn't see a
13 gun. One had him in the living room. One had him in
14 kitchen. D'el is moving all around when you listen to
15 variances of testimony of these three co-defendants who
16 clearly have not had a chance to get their story straight
17 in terms of what they're going to say where D'el was. At
18 the time, they were all arrested they blamed a guy who
19 wasn't around, wasn't with them. They decide we're going
20 to say D'el did it and that's what they said. But they
21 don't have a from where he was and what he was doing.
22 They have them come from different directions and
23 shootings these boys.

24 Now, all of them testified that they hoped to
25 personally gain. And when you consider their testimony,