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S.C. Supreme Court

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Honorable Alexander S. Macaulay, Trial Judge
The Honorable Clifton Newman, Post-Conviction Relief Judge

Appellate Case No. 2013-000018

Juan Tyree Smith a/k/a Jwan Tyree Smith, ...Respondent,

v.

State of South Carolina, ...Petitioner.

APPENDIX

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON)

STATE OF SOUTH CAROLINA,)
PLAINTIFF,)
vs.) TRANSCRIPT OF RECORD
) 2006-GS-04-1746
JWAN SMITH,)
DEFENDANT)

MAY 7, 2007
ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ALEXANDER S. MACAULAY, JUDGE.

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

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Attorney for the Defendant

Donna Brady
Official Court Reporter

May 7, 1007

(Whereupon, Court convened with all parties present, when the following proceedings were had:)

THE COURT: Ladies and gentlemen of the jury, this is a term of general sessions court, sometimes known as criminal court. For the purposes of resolving questions of alleged criminal conduct between the state and the defendant, which assures justice under the law.

The trial of the case begins with the selection of the jury. Both the state and defendant are entitled to impartial jurors, as free as humanly possible from any bias or prejudice, free of preconceived ideas from the facts or laws on the case. Therefore, certain questions will be asked of you, the prospective juror panel.

The questions asked are designed to be sure each side has a fair and impartial jury. I might note that if any person should talk with you or attempt to talk with you about any case that might be scheduled this term of court or the Court of Common pleas that judge Williams will be trying, it's your duty to immediately report the matter to the Court.

You're now the sworn jurors for court of common pleas and general sessions for the Tenth Judicial Circuit and no one is to interfere with that duty as jurors.

Now, Madam Solicitor, Mr. Solicitor, if you would

please call your first case.

MR. CAMPBELL: Your Honor, the state's ready in indictment 2006-GS-04-1746, State versus Jwan Tyree Smith for Count 1, murder; for Count 2, possession of a firearm during the commission of a violent crime. It's going to be a trial.

THE COURT: Ladies and gentlemen of the jury, if you would, please, give me your attention. We are about to begin the case of the State versus Jwan Tyree Smith, 2006-GS-04-1746, charged in the indictment Count 1, murder; Count 2, possession of a firearm during the commission of a violent crime. The state will be represented by Mr. Campbell.

Mr. Campbell, if you would please stand and introduce yourself and introduce anyone who will be assisting you in the trial of the case.

MR. CAMPBELL: My name is Rame Campbell. I'm the assistant solicitor, I will be representing the state. I work for your Solicitor, Chrissy Adams.

THE COURT: The defendant, Jwan Tyree Smith, is represented by Mr. Gamble. Mr. Gamble, if you would please stand and introduce yourself and your client.

MR. GAMBLE: I'm Robert Gamble. I'm representing Jwan Tyree Smith today. Thank you.

THE COURT: Thank you very much.

Now, is any member of the jury related by blood or marriage, close personal friends or business associate of the defendant, Mr. Jwan Tyree Smith? If so, please stand. Is any member of the jury panel related by blood or marriage, close personal friend or business associate of the decedent, Sammy Martin? If so, please stand.

(No response elicited.)

Any member of the jury panel who is related by blood or marriage, close personal friend or business associate of the decedent, Sammy Martin, if you would please stand.

Yes, sir, your name?

PROSPECTIVE JUROR: David Ables.

THE COURT: Yes, sir?

PROSPECTIVE JUROR: I played football with Paul Senn.

THE COURT: Would that in any way interfere with your ability to give both the state or defendant a fair and impartial trial?

PROSPECTIVE JUROR: It might.

THE COURT: All right, very good. Thank you. You'll be excused for the trial of this case. But please remain with us. Thank you, sir.

Ladies and gentlemen, I ask that question for two reasons. Not only are the parties entitled to a fair and impartial jury; but also I understand that you, of course, did not ask to be here today or this week for trial in any

case. Therefore, I want to be sure that in doing your duties as jurors you do not have any reservations about your service as a juror in a particular case. So it's not so much that you would not be impartial. But I wanted to be sure that the particular case does not create any inconvenience or concern for you. That's the reason I ask the questions about whether or not you could be fair and impartial, because if you have any concern whatsoever, please let me know.

Now, was any member of the jury panel a member of the grand jury that would have found and returned the indictment in this case, indictment 2006-GS-04-1746? If so, please stand.

Now, I'm going to be calling out a list of potential witnesses in this case. Potential witnesses, is a witness who may be called, but does not have to be called during the trial of the case. And if the witnesses happen to be in the courtroom as their names are called, if they'd please stand and look upon the jury. The reason I ask for that to be done, of course, is that in these days and times we might not recognize the name but we might recognize the face.

Steve's Reeves, Anderson County Sheriff's Office. Mark Coyle, Anderson County Sheriff's Office. John Carpenter, Anderson County Sheriff's Office. Dr. Michael

Ward, a pathologist. Ken Blakely, Anderson County Sheriff's Office. Todd Caron, Anderson County Sheriff's Office. Rob Gebing, G-E-B-I-N-G, Rob Gebing, Anderson County Sheriff's Office. Tommy Clamp, Anderson County Sheriff's Office. Dr. Wendy Bell, South Carolina Law Enforcement Division. Miss Angela Lee Brownlee. Mr. Fred Chiles. Mr. Alphonso Hailey. Mr. Basson Hailey. Mr. Anthony Massey. Miss Kizzy Bushay Mattress. Latorrey Nishaun Pearson. James Montoya Pickens. Mr. Michael Vance. Miss Karen Michelle Leblanc. Kenneth Whitler, South Carolina Law Enforcement Division. Ila Simmons, South Carolina Law Enforcement Division. And Janice Morris.

Is any member of the jury related by blood or marriage, now employed, a close personal friend or business associate of any of the potential witnesses in this case? Steve Reeves, Mark Coyle, John Carpenter, Dr. Michael Ward. Ken Blakely, Todd Caron. Rob Gebing, Tommy Clamp, Dr. Wendy Bell, Angela Lee Brownlee. Fred Chiles, Alphonso Hailey. Bassen Hailey. Anthony Massey, Kizzy Bushay Mattress, Latorrey Nishaun Pearson. James Montoya Pickens, Michael Vance, Karen Michelle Leblanc. Kenneth Whitler, Ila Simmons, or Janice Morris?

If you are related by blood or marriage, close personal friend or business associate with any of the

potential witnesses I've just called out, please stand at this time.

Yes, ma'am, your name? No, no, only the juror. Yes, ma'am, your name please?

PROSPECTIVE JUROR: Gloria Evers. Tommy Clamp grew up next door to me. I knew him since he was a boy.

THE COURT: Would that in any way interfere with your ability to give both the state and the defendant a fair and impartial trial in this case?

PROSPECTIVE JUROR: I don't think so.

THE COURT: Again, I want to be sure. Would it or do you have any reluctance?

PROSPECTIVE JUROR: No.

THE COURT: It would not interfere? Would not interfere with your ability to give both the state and defendant a fair and impartial trial? Very good, thank you.

Oh, yes, ma'am? I'm sorry. Excuse me.

PROSPECTIVE JUROR: Sylvia Glover. I work with Dr. Ward.

THE COURT: All right. And if Dr. Ward should be a witness in this case, would that interfere with your ability to give both the state and defendant a fair and impartial trial?

PROSPECTIVE JUROR: It might.

THE COURT: Very good. Thank you. I would excuse you in the trial of this case. Thank you very much, ma'am. Anyone else?

Has any member of the jury formed or expressed an opinion about any of the matters that might be involved in this case? If so, please stand.

Is any member of the panel aware of any interest, bias, or prejudice towards either the defendant or the State of South Carolina? If so, please stand. Does any member of the panel know of any reason why he or she could not give both the State of South Carolina and the defendant a fair and impartial trial? If so, please stand.

(No response elicited.)

Any additional questions from the state?

MR. CAMPBELL: None from the state.

THE COURT: From the defense?

MR. GAMBLE: None from the defendant.

THE COURT: Very good.

Ladies and gentlemen of the jury. The way, since we have also common pleas court, there will be a different method in each court as to how a jury is drawn. In general sessions court, as you'll note, the jury -- the clerk has a drum in front of her. In that drum are capsules which contain a slip of paper that has each of

your names on it. One name, of course, is in each capsule. And from those capsules names are drawn.

As your name is drawn, if you would come to the front of the courtroom where the bailiff is showing you. Come through the gate and stand where the bailiff is standing at the front of the court and look back toward the back of the courtroom. If you have anything with you, at that time bring it forward with you as you come forward.

The state gets five and ten. Is that correct? From the defense?

MR. GAMBLE: Yes, sir.

THE COURT: Five and ten?

MR. GAMBLE: Yes, sir.

THE COURT: Madam Clerk, if you would, please, give us a jury.

THE CLERK: Ladies and gentlemen, as I call your name, if you'd please come forward and present yourself to the two tables. Juror number 66, Deborah Evans. Number 66.

(Prospective juror 66, a white female, steps forward.)

What say you for the state?

MR. CAMPBELL: Present the juror.

THE CLERK: Say you for the defendant?

MR. GAMBLE: Swear the juror.

THE CLERK: Have a seat, please, Ms. Evans, in the jury box.

Transfer No. 1, Jennifer Beattie, Transfer number 1.

(Prospective juror T-1, a white female, steps forward.)

THE CLERK: Say you for the state?

MR. CAMPBELL: Swear the juror.

THE CLERK: Say you for the defendant?

MR. GAMBLE: Excuse the lady, please.

THE CLERK: You may return to your seat, thank you.

Number 145, Jacqueline Richards, 145.

(Prospective juror 145, a black female, steps forward.)

THE CLERK: What say you for the state?

MR. CAMPBELL: Present the juror.

THE CLERK: Say you for the defendant?

MR. GAMBLE: Swear the lady, please.

THE CLERK: Have a seat, please, Ms. Richards, in the jury box.

Number 152, Deborah S. Sanders, juror number 152.

(Prospective juror 152, a white female steps forward.)

THE CLERK: What say you for the state?

MR. CAMPBELL: Present the juror.

THE CLERK: Say you for the defendant?

MR. GAMBLE: Swear the lady.

THE CLERK: Thank you. Have a seat, please, Ms. Sanders, in the jury box.

Number 171, Jeanne Thompson, 171.

(Prospective juror 171, a white female, steps forward.)

THE CLERK: Say you for the state?

MR. CAMPBELL: Swear the juror.

THE CLERK: Say you for the defendant?

MR. GAMBLE: Excuse the lady.

THE CLERK: You may return to your seat, thank you.

Juror 105, Whitney Justus, 105.

(Prospective juror 105, a white male, steps forward.)

THE CLERK: Say you for the state?

MR. CAMPBELL: Swear the juror.

THE CLERK: Say you for the defendant?

MR. GAMBLE: Excuse the lady, please.

THE CLERK: You may return to your seat, thank you.

Seventy-seven, Sheila M. Goodwin, juror number 77.

(Prospective juror 77, a white female, steps forward.)

THE CLERK: What say you for the state?

MR. CAMPBELL: Present the juror.

THE CLERK: Say you for the defendant?

MR. GAMBLE: Swear the lady.

THE CLERK: Thank you. Have a seat, please, Ms. Goodwin, in the jury box.

Number 143, David Reid, 143.

(Prospective juror 143, a white male, steps forward.)

THE CLERK: What say you for the state?

MR. CAMPBELL: Present Mr. Reid.

THE CLERK: Say you for the defendant?

MR. GAMBLE: Swear the gentleman, please.

THE CLERK: Thank you. Have a seat, please, Mr. Reid in the jury box.

Sixty-two, Janet A. Driver, 62.

(Prospective juror 62, a white female, steps forward.)

THE CLERK: Say you for the state?

MR. CAMPBELL: Swear the juror.

THE CLERK: Say you for the defendant?

MR. GAMBLE: Excuse the lady.

THE CLERK: You may return to your seat, thank you.

Number 22, David L. Brown, 22.

(Prospective juror 22, a black male, steps forward.)

THE CLERK: What say you for the state?

MR. CAMPBELL: Present the juror.

THE CLERK: Say you for the defendant?

MR. GAMBLE: Swear the gentleman.

THE CLERK: Thank you. Have a seat, please, Mr.

Brown, in the jury box.

Number 85, Carolyn B. Hammond. Eighty-five.

(Prospective juror 85, a white female, steps forward.)

THE CLERK: What say you for the state?

MR. CAMPBELL: Present the juror.

THE CLERK: Say you for the defendant?

MR. GAMBLE: Swear the juror.

THE CLERK: Thank you. Have a seat, please, Mrs. Hammond, in the jury box.

Number 180, Carl Vermillion, 180.

(Prospective juror 180, a white male, steps forward.)

THE CLERK: Say you for the state?

MR. CAMPBELL: Swear the juror.

THE CLERK: Say you for the defendant?

MR. GAMBLE: Excuse the gentleman, please.

THE CLERK: You may return to your seat, thank you.

Number 109, Robert Lehmann, 109.

(Prospective juror 109, a white male, steps forward.)

THE CLERK: Say you for the state?

MR. CAMPBELL: Swear the juror.

THE CLERK: Say you for the defendant?

MR. GAMBLE: Excuse the gentleman.

THE CLERK: You may return to your seat, thank you.

One-ninety-three, Dorothy Whitworth. Juror 193.

(Prospective juror 193, a white female, steps forward.)

THE CLERK: Say you for the state?

MR. CAMPBELL: Swear the juror.

THE CLERK: Say you for the defendant?

MR. GAMBLE: Excuse the lady.

THE CLERK: You may return to your seat, thank you.

Number 139, Ricky J. Prater, 139.

(Prospective juror 139, a white male, steps forward.)

THE CLERK: What say you for the state?

MR. CAMPBELL: Present the juror.

THE CLERK: Say you for the defendant?

MR. GAMBLE: Swear the juror.

THE CLERK: Thank you. Have a seat, please, Mr. Prater, in the jury box.

Thirteen, Edith Benjamin, number 13.

(Prospective juror 13, a black female, steps forward.)

THE CLERK: What say you for the state?

MR. CAMPBELL: Please excuse the lady.

THE CLERK: You may return to your seat, Ms. Benjamin.

One-eighteen, Nancy A. Maxwell, 118.

(Prospective juror 118, a white female, steps forward.)

THE CLERK: What say you for the state?
MR. CAMPBELL: Present the juror.
THE CLERK: Say you for the defendant?
MR. GAMBLE: Swear the juror.
THE CLERK: Thank you. Have a seat, please, Ms. Maxwell, in the jury box.
Juror number 192, David Whitten, number 192.
(Prospective juror 192, a white male, steps forward.)
THE CLERK: Say you for the state?
MR. CAMPBELL: Swear the juror.
THE CLERK: Say you for the defendant?
MR. GAMBLE: Excuse the gentleman.
THE CLERK: You may return to your seat, thank you.
Number 149, Richard Rogers, 149.
(Prospective juror 149, a white male, steps forward.)
THE CLERK: Say you for the state?
MR. CAMPBELL: Swear the juror.
THE CLERK: Say you for the defendant?
MR. GAMBLE: Excuse the lady.
THE CLERK: You may return to your seat, thank you.
Juror number 37, Elizabeth S. Cartlidge, 37.
(Prospective juror 37, a white female, steps forward.)
THE CLERK: What say you for the state?
MR. CAMPBELL: Present the juror.

THE CLERK: Say you for the defendant?
MR. GAMBLE: Swear the juror.
THE CLERK: Thank you. Have a seat, please, Ms. Cartlidge, in the jury box.
One-nineteen, Reggy McAdams, 119.
(Prospective juror 119, a white male, steps forward.)
THE CLERK: Say you for the state?
MR. CAMPBELL: Excuse the juror, please.
THE CLERK: You may return to your seat, thank you.
Number 91, Alisha M. Hewlett.
(Prospective juror 91, a white female, steps forward.)
THE CLERK: What say you for the state?
MR. CAMPBELL: Present the juror.
THE CLERK: Say you for the defendant?
MR. GAMBLE: Swear the juror.
THE CLERK: Thank you. Have a seat, please, Ms. Hewlett, in the jury box.
Transfer 4, Brian Gregory, transfer number 4.
(Prospective juror T-4, a white male, steps forward.)
THE CLERK: Say you for the state?
MR. CAMPBELL: Swear the juror.
THE CLERK: Say you for the defendant?
MR. GAMBLE: Excuse the gentleman.
THE CLERK: You may return to your seat, thank you.

Number 148, Brenda C. Rogers, 148.

(Prospective juror 148, a white female, steps forward.)

THE CLERK: What say you for the state?

MR. CAMPBELL: Present the juror.

THE CLERK: Say you for the defendant?

MR. GAMBLE: Swear the lady, please.

THE CLERK: Thank you. Have a seat, please, Ms. Rogers, in the jury box.

Number 15, Joan Bigos, 15.

(Prospective juror 15, a white female, steps forward.)

THE CLERK: Say you for the state?

MR. CAMPBELL: Swear the juror.

THE CLERK: Say you for the defendant?

MR. GAMBLE: Excuse the lady.

THE CLERK: You may return to your seat, thank you.

Number 179, Linda Vaughn, 179.

(Prospective juror 179, a white female, steps forward.)

THE CLERK: Say you for the state?

MR. CAMPBELL: Swear the juror.

THE CLERK: Say you for the defendant?

MR. GAMBLE: Excuse the lady.

THE CLERK: You may return to your seat, thank you,

Ms. Vaughn.

Number 175, Derek C. Tucker, 175.)

(prospective juror 175, a white male, steps forward.)

THE CLERK: What say you for the state?

MR. CAMPBELL: Present the juror.

THE CLERK: Say you for the defendant?

MR. GAMBLE: Swear the gentleman.

THE CLERK: Thank you. Have a seat, Mr. Tucker, you'll be our first alternate.

Juror 49, Tracy G. Crosby, 49.

(Prospective juror 49, a black female, steps forward.)

THE CLERK: What say you for the state?

MR. CAMPBELL: Present the juror.

THE CLERK: Say you for the defendant?

MR. GAMBLE: Swear the lady.

THE CLERK: Thank you. Have a seat, please, Ms. Crosby, on the end seat in the second row. You'll be our second alternate.

THE COURT: All right. Is there any reason the jury cannot be sworn for the trial of this case? From the state?

MR. CAMPBELL: Nothing from the state.

THE COURT: Defendant?

MR. GAMBLE: Nothing from the defendant.

THE COURT: Mrs. Maxwell, I'm going to ask you to serve as foreman of this jury. So when we come back to the courtroom from the jury room, we'll be using the courtroom on the third floor for the trial of this case. You will take the first seat on the end. It's two rows in the jury box, but it will be the first seat on the front row.

And the alternates, each of you will be sitting -- let's see, they're on the right side; is that right, downstairs?

One is right behind, the other is all the way on the other end. The first alternate will sit on the right side, on that seat. And the other alternate will sit on the other end of the row. Each you of you will take those same seats each time. Mr. Tucker, you'll be in the front row on the right end. And, Miss Crosby, you'll be in last seat on the second row.

Now, I'm going to ask you to go with the bailiff. He will show you the jury room we'll be using throughout the trial of this case.

My instructions throughout the trial, of course, is that no one is to discuss the case, even among yourselves, until after you have received the entire case. You never know what's going to be the most important part of the trial. It could be opening statements or the first

witness, the last witness, closing arguments or the law. So you need to keep an open mind throughout the trial of the case. Therefore, you're not even to undertake any discussion, personalities or anything else about this case, until it's complete and for your consideration.

So, with that, I'm going to ask you to retire with the bailiff and he'll take you down to the jury room that you'll be using.

Everyone else remain seated while the jury retires from the courtroom.

(The following proceedings were had outside the presence of the jury:)

THE COURT: All right. The jurors who were not drawn on this jury, I'm going to ask you to remain here. Judge Williams is coming back to the courtroom to draw the jury on the second case, which as I understand will be a civil case. I'll ask the attorneys and the parties to join me in the third floor courtroom. But you may stand at ease of course. Thank you, very much.

* * * * *END OF REQUESTED PORTION OF TRANSCRIPT* * * * *

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

I, Donna M. Brady, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Anderson County, South Carolina, on the 7th day of May, 2007.

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

September 8, 2007

Donna Brady

Donna Brady, Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON	)	INDICTMENT NO: 2006-GS-04-1746
STATE OF SOUTH CAROLINA PLAINTIFF, -VS- JWAN SMITH, DEFENDANT.	)	TRANSCRIPT OF RECORD TRIAL -- VOLUME I OF III (AFTER MORNING JURY SELECTION AND MOTIONS) PAGES 22 THROUGH 147

MAY 7, 2007
ANDERSON, SOUTH CAROLINA

B E F O R E:

HONORABLE ALEXANDER S. MACAULAY, JUDGE; AND A JURY.

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

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***** START OF REQUESTED TRANSCRIPT *****

(WHEREUPON, THE AFTERNOON PROCEEDINGS OF THE CASE OF *THE STATE OF SOUTH CAROLINA VERSUS JWAN SMITH* RESUMED ON THE 7TH DAY OF MAY, 2007, AT APPROXIMATELY 12:25 P.M., AS FOLLOWS:)

THE COURT: ALL RIGHT. IS THE STATE READY TO GO ON RECORD?

MR. CAMPBELL: YES, YOUR HONOR.

THE COURT: IS THE DEFENDANT?

MR. GAMBLE: THE DEFENSE IS READY, YOUR HONOR.

THE COURT: THIS IS *THE STATE OF SOUTH CAROLINA VERSUS JWAN TYREE SMITH*, 2006-GS-04-1746. WE HAVE DRAWN A JURY, BUT THEY HAVEN'T BEEN SWORN, IN THE FOURTH FLOOR COURTROOM, AND NOW WE ARE IN THE THIRD FLOOR COURTROOM WHERE WE WILL TRY THE CASE.

BY PERMISSION OF COUNSEL I RELEASED THE JURY UNTIL 2:00 -- IT'S APPROXIMATELY 12:25 NOW -- FOR LUNCH, AND THEY'LL COME BACK TO THE JURY ROOM AND THEN WE'LL START THE TRIAL OF THE CASE.

IS THERE ANYTHING ABOUT WHAT'S OCCURRED SO FAR, ANY OBJECTIONS TO THAT FROM THE STATE?

MR. CAMPBELL: NONE, YOUR HONOR.

THE COURT: ALL RIGHT. FROM THE DEFENSE?

MR. GAMBLE: NO OBJECTION.

THE COURT: ALL RIGHT. IS THERE ANYTHING YOU NEED TO BRING TO THE COURT'S ATTENTION BEFORE WE RECEDE FOR LUNCH?

MR. CAMPBELL: YOUR HONOR, JUST FOR THE RECORD, I'VE GIVEN MR. GAMBLE A COPY OF THE RAP SHEETS OF ALL OF THE PEOPLE WE POSSIBLY MAY CALL IN THIS CASE -- THE STATE MAY CALL. FURTHERMORE, MR. GAMBLE AND I HAVE BEEN WORKING ON THIS CASE A LOT LAST WEEK. WE REVIEWED PHOTOGRAPHS. I GAVE THEM A COPY OF THE WITNESS LIST LAST WEEK. HE HAS ALL MY DISCOVERY.

THE COURT: ALL RIGHT. IS THERE ANYTHING ELSE THAT THE COURT NEEDS TO BE MADE AWARE OF? ANY EVIDENTIARY QUESTIONS, SUCH AS *JACKSON V. DENNO* STATEMENTS AGAINST THE DEFENDANT?

MR. CAMPBELL: NO, YOUR HONOR, HE DIDN'T MAKE A STATEMENT.

MR. GAMBLE: NO, YOUR HONOR. THERE WERE NO STATEMENTS FROM THE DEFENDANT.

THE COURT: ALL RIGHT. ANY SEARCH OR SEIZURE QUESTIONS?

MR. GAMBLE: NO SEARCH OR SEIZURE QUESTION. WE HAVE RESOLVED QUESTIONS OF SOME S.L.E.D. EXPERTS. THEY WILL BE STIPULATED AND THEIR REPORTS SUBMITTED AS EVIDENCE.

MR. CAMPBELL: THAT'S CORRECT.

THE COURT: ALL RIGHT. I WOULD SUGGEST THAT YOU GET WITH THE COURT REPORTER ON ANY EXHIBITS YOU NEED TO BE MARKED. IF YOU CAN AGREE TO THEM PRIOR TO OPENINGS, THEY CAN BE USED IN YOUR OPENING STATEMENTS. IF NOT, JUST HAVE THEM MARKED FOR IDENTIFICATION AND THEN MOVE THEM IN IF YOU WANT TO OR TO OBJECT TO THEM. BUT DO WHAT YOU CAN TO HAVE MARKED BEFORE 2:00, I WOULD APPRECIATE IT.

MR. CAMPBELL: YES, SIR.

THE COURT: VERY GOOD. ANYTHING ELSE FROM THE STATE BEFORE WE RECEDE FOR LUNCH?

MR. CAMPBELL: NOTHING FROM THE STATE, YOUR HONOR.

THE COURT: FROM THE DEFENDANT?

MR. GAMBLE: NOTHING FROM THE DEFENDANT.

THE COURT: VERY GOOD. WE'LL SEE YOU AT 2:00. WE'LL GO OFF THE RECORD.

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AFTERNOON PROCEEDINGS

(STATE'S EX. # 1, COLOR COPY OF PHOTO, WAS MARKED FOR IDENTIFICATION.)

(STATE'S EX. # 2, COLOR COPY OF PHOTO, WAS MARKED FOR IDENTIFICATION.)

(STATE'S EX. # 3, COLOR COPY OF PHOTO, WAS MARKED FOR IDENTIFICATION.)

(STATE'S EX. # 4, COLOR COPY OF PHOTO, WAS MARKED FOR IDENTIFICATION.)

(STATE'S EX. # 5, COLOR COPY OF PHOTO, WAS MARKED FOR IDENTIFICATION.)

(STATE'S EX. # 6, COLOR COPY OF PHOTO, WAS MARKED FOR IDENTIFICATION.)

(STATE'S EX. # 7, COLOR COPY OF PHOTO, WAS MARKED FOR IDENTIFICATION.)

(STATE'S EX. # 8, COLOR COPY OF PHOTO, WAS MARKED FOR IDENTIFICATION.)

(STATE'S EX. # 9, COLOR COPY OF PHOTO, WAS MARKED FOR IDENTIFICATION.)

(STATE'S EX. # 10, S.L.E.D. TOXICOLOGY REPORT, WAS MARKED FOR IDENTIFICATION AND RECEIVED IN EVIDENCE BY STIPULATION OF COUNSEL.)

(STATE'S EX. # 11, S.L.E.D. FIREARMS REPORT, WAS MARKED FOR IDENTIFICATION AND RECEIVED IN

EVIDENCE BY STIPULATION OF COUNSEL.)

(STATE'S EX. # 12, S.L.E.D. TRACE EVIDENCE REPORT DATED 4-13-07, WAS MARKED FOR IDENTIFICATION AND RECEIVED IN EVIDENCE BY STIPULATION OF COUNSEL.)

(STATE'S EX. # 13, S.L.E.D. TRACE EVIDENCE REPORT DATED 4-30-07, WAS MARKED FOR IDENTIFICATION AND RECEIVED IN EVIDENCE BY STIPULATION OF COUNSEL.)

(COURT'S EX. # 1, NOTE FROM JUROR, WAS MARKED FOR IDENTIFICATION.)

(THE TRIAL RESUMED AT 2:04 P.M.)

THE COURT: COULD I SEE THE ATTORNEYS, PLEASE?

(WHEREUPON, COUNSEL APPROACHED THE BENCH AND CONFERRED WITH THE COURT OUT OF THE PRESENCE OF THE COURT REPORTER.)

(STATE'S EX. # 14, PHOTO OF VICTIM, WAS MARKED FOR IDENTIFICATION.)

(STATE'S EX. # 15, PHOTO OF VICTIM, WAS MARKED FOR IDENTIFICATION.)

(SEVERAL PEOPLE LEFT COURTROOM.)

THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, LET'S COME BACK TO ORDER. WE ARE ON THE CASE OF *THE STATE VERSUS JWAN TYREE SMITH*.

LET'S SEE. MR. GAMBLE, IS HE NOT BACK YET?

MR. CAMPBELL: I'LL GET HIM.

(MR. CAMPBELL LEFT THE COURTROOM AND RETURNED WITH MR. GAMBLE.)

THE COURT: ALL RIGHT. WE ARE BACK ON THE RECORD IN THE CASE OF *THE STATE VERSUS JWAN TYREE SMITH.*

DURING THE LUNCH BREAK THE COURT WAS PROVIDED WITH A MESSAGE FROM THE JURY THAT HAS THREE QUESTIONS OR THREE STATEMENTS ON IT (READING):

ONE: SMOKE BREAKS, QUESTION MARK.

TWO: MR. MARTIN BROWN WOULD LIKE TO SPEAK WITH THE JUDGE.

THREE: BREAK BEFORE 4:00, QUESTION MARK, CHILDREN IN DAY CARE, CLOSES AT 5:30.

I'LL EXPLAIN IT TO THE JURY THAT THE COURT DOES PERMIT SMOKE BREAKS, BUT THE JURORS HAVE TO GO TOGETHER WITH THE BAILIFF SO NO ONE CAN CONTACT THEM WHILE THEY ARE OUT THERE SMOKING.

I'LL SKIP TO THREE: BREAK BY 4:00, CHILDREN IN DAY CARE, CLOSES AT 5:30. OF COURSE WE'LL TAKE A BREAK IN THE AFTERNOON, AND IF JURORS NEED TO MAKE A PHONE CALL, THEY WILL BE PERMITTED TO DO SO.

BUT I THINK THE ATTORNEYS KNOW THAT MY

JUROR BROWN: I DON'T WANT TO BE A HYPOCRITE. IT WOULD MAKE ME HYPOCRITICAL, YOU KNOW, SO I WOULD RATHER HAVE JUSTICE SERVED THAN ME MAKING AN OPINION BECAUSE OF MY PERSONAL PREJUDICE.

THE COURT: AND DO YOU MIND TELLING THE COURT WHAT THAT MIGHT BE?

JUROR BROWN: (NO RESPONSE.)

THE COURT: I MEAN, YOU DON'T HAVE TO.

JUROR BROWN: I REALLY -- IT'S PERSONAL.

THE COURT: IT'S PERSONAL AS TO THE PERSONALITIES INVOLVED OR THE ISSUES INVOLVED?

JUROR BROWN: IT'S JUST HOW I LOOK AT LIFE.

THE COURT: OKAY, I UNDERSTAND. VERY GOOD. AND AGAIN, I DO WANT TO THANK YOU FOR YOUR SERVICE AND ALSO FOR BRINGING IT TO THE COURT'S ATTENTION. YOU DID EXACTLY RIGHT. IN OTHER WORDS, IT WOULDN'T HAVE BEEN FAIR TO YOU OR TO THE PARTIES INVOLVED.

JUROR BROWN: THAT WAS MY CONCERN, TOO, YOU KNOW, IS I CAN'T BE A HYPOCRITE WHERE I MAKE THE GUILTY GO FREE AND THE INNOCENTS OR THE VICTIMS NOT GET THEIR JUSTICE.

THE COURT: I UNDERSTAND. I DO WANT TO THANK YOU.

MADAM CLERK?

THE CLERK: YES, YOUR HONOR.

THE COURT: MR. MARTIN BROWN WILL BE EXCUSED, AND FOR HIS CANDOR I'M GOING TO EXCUSE HIM FOR THE WEEK.

THE CLERK: ALL RIGHT, SIR. THANK YOU VERY MUCH.

THE COURT: MR. MARTIN BROWN, THANK YOU VERY MUCH.

JUROR BROWN: THANK YOU, SIR.

THE COURT: AND I THINK ON ANY OTHER CASE YOU WOULD HAVE BEEN AN EXCELLENT JUROR.

JUROR BROWN: THANK YOU, SIR.

THE COURT: THANK YOU, SIR.

(JUROR BROWN LEFT THE COURTROOM AND WAS EXCUSED FOR THE REMAINDER OF THE WEEK.)

THE COURT: ALL RIGHT. ANYTHING FROM THE STATE?

MR. CAMPBELL: NO, YOUR HONOR.

THE COURT: ANYTHING FROM THE DEFENSE?

MR. GAMBLE: NO, YOUR HONOR.

THE COURT: ALL RIGHT, VERY GOOD. AND UNLESS THERE IS SOMETHING MORE FROM THE STATE OR THE DEFENSE, I'LL ASK THE JURY TO JOIN US, AND WE'LL SWEAR THE JURY, MADAM CLERK ---

THE CLERK: YES, YOUR HONOR.

THE COURT: --- AND START THE TRIAL.

SCHEDULE USUALLY IS TO QUIT AT 5:00, AND I'LL EITHER QUIT BEFORE 5:00 OR MAYBE GO A LITTLE BIT BEYOND 5:00 SO THAT WE DON'T SPLIT WITNESSES. I WON'T TAKE A LONG WITNESS SHORTLY BEFORE 5:00 AND CARRY OVER 5:00, AND THE ONLY TIME I WILL GO BEYOND 5:00 IS TO COMPLETE A WITNESS'S TESTIMONY IF IT CAN BE DONE REASONABLY. THOSE I WILL EXPLAIN TO THE JURY.

AS FAR AS THE SECOND QUESTION, MR. MARTIN BROWN WOULD LIKE TO SPEAK WITH THE JUDGE, IT IS MY UNDERSTANDING MR. MARTIN BROWN HAS ADVISED ONE OF THE BAILIFFS THAT HE DID NOT THINK HE COULD BE FAIR. I HAVEN'T TALKED TO HIM AS YET, BUT I WOULD LIKE TO VOIR DIRE THE JUROR TO FIND OUT WHAT HIS SENTIMENTS ARE OR FEELINGS ABOUT THIS PARTICULAR CASE. IF HE CANNOT BE FAIR, OF COURSE, I WILL EXCUSE HIM, BUT I WANT TO BE SURE THERE IS NO PROBLEM WITH IT.

ALL RIGHT. IS THERE ANYTHING FROM THE STATE BEFORE I BRING IN MR. MARTIN BROWN?

MR. CAMPBELL: NO, YOUR HONOR.

THE COURT: ALL RIGHT. ANYTHING FROM THE DEFENSE?

MR. GAMBLE: NO, YOUR HONOR.

THE COURT: ALL RIGHT. ASK MR. MARTIN BROWN, ALONE, JUST MR. MARTIN BROWN, PLEASE, TO JOIN US.

(JUROR BROWN ENTERS COURTROOM AT 2:12 P.M.)

THE COURT: MR. MARTIN BROWN?

JUROR BROWN: YES, SIR.

THE COURT: I UNDERSTAND THAT YOU SPOKE TO THE BAILIFF ABOUT A PROBLEM YOU MIGHT HAVE WITH THIS CASE?

JUROR BROWN: YES.

THE COURT: WE HAVE EXCUSED ALL THE PEOPLE WHO HAVE BEEN HERE EXCEPT FOR THE ACTUAL PARTIES. DO YOU UNDERSTAND, OF COURSE, YOU ARE STILL UNDER OATH AS YOU WERE THIS MORNING?

JUROR BROWN: YES, SIR.

THE COURT: AND WHAT IS YOUR CONCERN, SIR?

JUROR BROWN: MY PARTIALITY, SIR.

THE COURT: YOU JUST DO NOT FEEL THAT YOU COULD BE FAIR AND IMPARTIAL TO BOTH THE STATE AND THE DEFENDANT?

JUROR BROWN: NO, SIR.

THE COURT: I'M GOING TO EXCUSE YOU ON THE TRIAL OF THIS CASE. I WANT TO THANK YOU FOR BRINGING IT TO THE COURT'S ATTENTION. FORTUNATELY, WE DO HAVE TWO ALTERNATES. BUT, AS I TOLD THE JURORS THIS MORNING, THAT NOT ONLY IT'S IMPORTANT THAT BOTH SIDES HAVE AN IMPARTIAL JUROR, BUT I DON'T WANT YOU TO BE UNCOMFORTABLE IN WHAT YOU ARE DOING.

(OFF-THE-RECORD DISCUSSION.)

THE COURT: LET'S OPEN THE COURTROOM FIRST BEFORE WE BRING THE JURY BACK.

MR. CAMPBELL: AND WE'RE SEQUESTERING THE WITNESSES.

SO, CHIEF, TELL THEM EVERYBODY CAN COME IN THAT ISN'T A WITNESS IN THE CASE.

MR. GAMBLE: I GOT A PROBLEM.

THE COURT: YES, SIR. ALL RIGHT.

MR. CAMPBELL: GO AHEAD AND TELL THEM TO JUST HOLD ON FOR A SECOND, PLEASE.

MR. GAMBLE: MY -- I WANT TO PUT THIS ON THE RECORD BECAUSE MY CLIENT HAS INFORMED MR. THOMPSON AND I LAST WEEK THAT HE HAD A WITNESS THAT WOULD PROVIDE AN ALIBI. HER NAME IS PIG, THAT'S ALL HE KNOWS, AND SHE LIVES IN LAKE COUNTY, FLORIDA, WE THINK. NOBODY HAS BEEN ABLE TO CONTACT ANYONE NAMED PIG, AND WE CAN'T CONTACT A WITNESS NAMED PIG WITHOUT KNOWING HER ADDRESS AND REAL NAME. SO HE'S BEEN VERY NERVOUS ABOUT THAT UP HERE AND THAT'S WHAT THE OFFICER WAS TALKING TO ME ABOUT JUST THEN. SO WITH THAT SAID, THERE'S NOTHING I CAN DO ABOUT GETTING THE PERSON NAMED PIG UP HERE UNLESS ---

THE COURT: THAT IS P-I-G?

MR. GAMBLE: PIG, AS IN SWINE. THAT'S EVIDENTLY A NICKNAME.

THE COURT: WELL, HAS THE DEFENDANT BEEN ABLE TO GIVE YOU AN ADDRESS?

MR. GAMBLE: NO, SIR, NO ADDRESS. IT WAS SOMEWHERE IN LAKE COUNTY, FLORIDA, HE THINKS. BUT PIG IS -- HE SUPPOSEDLY WAS WITH HER FROM MARCH UNTIL HE WAS ARRESTED LATER, BUT HE STILL DOESN'T KNOW HER NAME OR KNOW WHERE SHE LIVES, SO WE'VE HAD DIFFICULTY IN THAT REGARD.

WE KNOW FROM FEBRUARY 25TH OR THEREABOUT, THE FIRST WE KNEW OF THIS PIG WAS JUNE OF LAST YEAR. THERE WOULD HAVE BEEN NO WAY WE COULD EVER PRACTICALLY FIND THE PERSON NAMED PIG. I JUST WANTED TO BRING THAT TO THE COURT'S ATTENTION.

THE COURT: ALL RIGHT. ANYTHING FROM YOU, SOLICITOR?

MR. CAMPBELL: NO, YOUR HONOR. MR. GAMBLE BROUGHT IT TO MY ATTENTION EARLIER AND INDICATED THAT HE WANTED TO HAVE AN ALIBI WITNESS. AND I AGREE WITH MR. GAMBLE: IT'S KIND OF HARD TO FIND A PERSON IN THE STATE OF FLORIDA, THAT BIG, WITH JUST A NICKNAME.

THE COURT: COUNSEL APPROACH, PLEASE.

(WHEREUPON, COUNSEL APPROACHED THE BENCH AND CONFERRED WITH THE COURT OUT OF THE PRESENCE OF THE COURT REPORTER.)

THE COURT: ALL RIGHT. JUST A MOMENT AND

WE'LL HAVE THE JURY COME OUT, BUT THEY'LL HAVE TO WAIT IN THERE FOR JUST A SECOND.

WE CAN DURING THE TIME, THOUGH, IF Y'ALL HAVE BEEN ABLE TO AGREE ON CERTAIN EXHIBITS, WE CAN PUT THAT ON THE RECORD.

MR. CAMPBELL: OKAY, YOUR HONOR. WE HAVE AGREED ON EXHIBITS 1 THROUGH 13, WHICH IS NINE PICTURES AND FOUR S.L.E.D. REPORTS INVOLVED IN THE CASE.

WE ARE NOT CALLING WITNESSES, WE'RE JUST GONNA STIPULATE TO THE FACTS. THIS IS NOT A FORENSIC CIRCUMSTANTIAL EVIDENCE CASE.

THE COURT: ALL RIGHT. AS I UNDERSTAND IT, STATE'S EXHIBITS ONE, TWO, THREE, FOUR, FIVE, SIX, SEVEN, EIGHT, NINE, TEN, 11, 12 -- AND 13?

MR. CAMPBELL: YES, SIR.

THE COURT: -- ARE ADMITTED WITHOUT OBJECTION; IS THAT CORRECT, MR. GAMBLE?

MR. GAMBLE: THAT'S CORRECT, YOUR HONOR. 14 AND 15 I OBJECT TO.

THE COURT: ALL RIGHT.

MR. GAMBLE: THOSE ARE PHOTOGRAPHS OF THE DECEASED, AND THEY DON'T SHOW ANY BLOOD, I ACKNOWLEDGE THAT, BUT THEY DO TEND TO BRING SYMPATHY TO THE STATE'S SIDE.

THE COURT: WELL, THE THING IS I'LL RESERVE

JUDGMENT ON THOSE UNTIL THE CASE IS DEVELOPED. THEY ARE MARKED FOR IDENTIFICATION, STATE'S EXHIBITS 14 AND 15 FOR IDENTIFICATION, NOT IN EVIDENCE.

(STATE'S EXHIBITS #'S 1 THROUGH 13 WERE RECEIVED IN EVIDENCE.)

MR. CAMPBELL: YES, SIR.

THE COURT: ALL RIGHT. ARE WE READY TO PROCEED, FROM THE STATE?

MR. CAMPBELL: YES, SIR.

THE COURT: FROM THE DEFENSE?

MR. GAMBLE: YES, SIR.

(OFF-THE-RECORD DISCUSSION.)

(PEOPLE ENTERED COURTROOM.)

THE COURT: ALL RIGHT. IF YOU WOULD, PLEASE, ASK THE JURY TO JOIN US.

(WHEREUPON, THE JURY ENTERED THE COURTROOM AT 2:23 P.M.)

THE COURT: MR. TUCKER, I'M GOING TO ASK YOU TO STEP DOWN AND TAKE THE EMPTY SEAT ON THE FRONT ROW; AND MS. CROSLEY (PHONETIC), I'M GOING TO ASK YOU TO TAKE HIS SEAT OVER AT THE END OF THE SECOND ROW.

MADAM CLERK, SWEAR THE JURY, IF YOU WOULD, PLEASE.

THE CLERK: THANK YOU, YOUR HONOR.

MADAM FORELADY, LADIES AND GENTLEMEN, IF YOU

WILL PLEASE STAND AND RAISE YOUR RIGHT HAND AND TAKE THE JURY OATH.

(WHEREUPON, THE JURY WAS SWORN.)

THE CLERK: BE SEATED, PLEASE.

THE COURT: MADAM FORELADY, LADIES AND GENTLEMEN OF THE JURY, I'VE RECEIVED A MESSAGE FROM YOUR FORELADY. FIRST, THERE IS A QUESTION ABOUT SMOKE BREAKS. YES, YOU WILL BE PERMITTED TO HAVE A SMOKE BREAK, BUT WHAT HAPPENS IS ONCE YOU ARE SWORN AND YOU ARE TOGETHER, IN OTHER WORDS EITHER DURING ANY BREAK, THOSE THAT WANT TO SMOKE THEY WILL HAVE TO GO TOGETHER WITH THE BAILIFF JUST TO BE SURE THAT NO ONE TALKS TO YOU DURING THE TIME AWAY FROM THE OTHER JURORS.

AS FAR AS THE SECOND MATTER, MADAM FORELADY, I'VE TAKEN CARE OF THAT. MR. MARTIN BROWN HAS BEEN EXCUSED AND SO NOW WE HAVE ONE ALTERNATE. MS. CROSLEY, YOU WILL SIT IN THAT SEAT THERE AND, MADAM FORELADY, YOU WILL ALWAYS SIT IN THE SAME SEAT.

AS FAR AS A BREAK, WE WILL TAKE BREAKS. WE USUALLY HAVE ONE BREAK IN THE AFTERNOON BEFORE 5:00. AND MY POLICY IS THAT WE USUALLY BREAK ABOUT 5:00. IN OTHER WORDS, I'VE FOUND IN MY EXPERIENCE THAT WE HAVE TWO WORLDS, ONE BEGINS EARLY IN THE MORNING AND GOES TO 5:00 AND THEN ANOTHER ONE STARTS ABOUT 5:00, SO THEREFORE I USUALLY TRY TO BREAK ABOUT 5:00.

NOW, ON OCCASION I MIGHT GO A LITTLE BIT BEYOND 5:00 BUT NOT AS LONG AS 5:30. THE REASON FOR THAT WOULD BE, IF WE ARE IN THE MIDDLE OF A WITNESS'S TESTIMONY AND RATHER THAN BREAK THE WITNESS'S TESTIMONY IN THE MIDDLE OR COME BACK LATER, OVERNIGHT OR IN THE MORNING TO CONTINUE THE TESTIMONY, I'LL USUALLY LET HIM OR HER COMPLETE THAT TESTIMONY.

BUT ON THE OTHER HAND, IF I ANTICIPATE THE TESTIMONY IS GOING BEYOND 5:00, I'LL BREAK BEFORE 5:00, IN OTHER WORDS, IT'S USUALLY SOMEWHERE BETWEEN 4:30 AND 5:15 THAT YOU CAN COUNT ON THAT WE WILL BREAK FOR THE DAY. BUT IF YOU DO NEED TO MAKE CALLS AND CHECK ON FAMILY OR ANYTHING LIKE THAT, YOU WILL BE PERMITTED TO DO THAT AT ANY TIME THAT YOU HAVE A CONCERN, JUST RAISE YOUR HAND OR TELL THE FORELADY THAT YOU DO HAVE A NEED TO MAKE A CALL OR SOMETHING LIKE THAT AND WE'LL TAKE CARE OF IT.

NOW, MADAM FORELADY, I TRUST THAT ANSWERS YOUR QUESTIONS, THE JURY'S QUESTIONS?

THE FORELADY: YES, SIR.

PRELIMINARY INSTRUCTIONS BY THE COURT TO THE JURY:

THE COURT: NOW, I'M SURE THAT EACH OF YOU NOW FULLY APPRECIATES THAT THIS COURT OF GENERAL SESSIONS FOR ANDERSON COUNTY EXISTS FOR THE PURPOSE OF RESOLVING QUESTIONS OF ALLEGED CRIMINAL CONDUCT ARISING

BETWEEN THE STATE OF SOUTH CAROLINA AND THE DEFENDANT.

IT IS A GUARANTEED RIGHT OF EVERY CITIZEN THAT A CHARGE OF CRIMINAL CONDUCT BE PRESENTED IN OPEN COURT ACCORDING TO CERTAIN RULES OF PROCEDURE. THE STATE HAS NOT ONLY AN EQUAL RIGHT BUT THE DUTY TO PRESENT A CHARGE OF CRIMINAL CONDUCT IN OPEN COURT ACCORDING TO THE SAME RULES OF PROCEDURE.

EACH OF THE PARTIES, THEREFORE, BOTH THE STATE AND THE DEFENDANT, THEN HAVE AN EQUAL RIGHT AND OPPORTUNITY TO HAVE THIS JUDICIAL PROCEEDING AND TO HAVE YOU AS THE JURY SELECTED AND NOW SWORN FOR THE TRIAL OF THIS CASE.

ONE OF THE MOST IMPORTANT ASPECTS OF YOUR DUTY AS A JURY LIES ESSENTIALLY IN THE OATH THAT YOU HAVE NOW TAKEN, TO WELL AND TRULY TRY AND DETERMINE THE FACTS IN THIS CASE. YOUR OATH IN A VERY ESSENTIAL WAY SAYS THAT YOU ARE THE SOLE JUDGES OF THE FACTS IN THIS CASE. OBVIOUSLY, ANY CASE TRIED IN COURT WILL INVOLVE A QUESTION ABOUT WHAT HAPPENED OR HOW SOMETHING CAME TO HAPPEN, OR WHOM, IF ANYONE, DID ANYTHING IN A PARTICULAR OCCURRENCE OR CIRCUMSTANCE.

FROM THIS POINT ON, THEN, NO ONE NOT CONCERNED WITH THIS TRIAL HAS THE RIGHT TO DECIDE ANY QUESTION OF FACT IN THIS TRIAL OR THE TRUTH OF IT, EXCEPT YOU, THE JURY.

(A WOMAN ENTERED THE COURTROOM.)

THE COURT: LET'S CLOSE THE DOOR DURING THE INSTRUCTIONS AND WE'LL OPEN IT AFTER I FINISH.

THE FACTS, THEN, ARE FOR YOUR RESOLUTION AND YOUR DECISION AND YOURS ALONE.

AND AFTER YOU HEAR ALL THE EVIDENCE IN THIS CASE, THEN IT WILL BE YOUR DUTY BY YOUR MUTUAL AND JOINT DISCUSSIONS TO DETERMINE THE TRUTH OF THE CASE BY DECIDING THE WEIGHT AND THE BELIEVABILITY OF EACH PART OF THE EVIDENCE AND BY APPLYING THE LAW OF THE CASE THERETO.

AS TRIAL JUDGE I AM THE JUDGE OF THE LAW IN THIS CASE. IT IS ALSO MY RESPONSIBILITY, AMONG OTHER THINGS, TO PRESIDE OVER THIS TRIAL, TO RULE ON THE ADMISSIBILITY OF EVIDENCE OFFERED DURING THE PROGRESS OF THE TRIAL, AND TO STATE TO YOU, THE JURY, THE LAW APPLICABLE IN THIS CASE. THE CONSTITUTION OF SOUTH CAROLINA MANDATES THAT I, AS THE TRIAL JUDGE, CANNOT DIRECTLY OR INDIRECTLY COMMENT ABOUT THE FACTS IN THE CASE.

THE PROCESS OF A VERDICT, THEN, IS SIMPLY THAT YOU, THE JURY, FIRST DETERMINE WHAT THE TRUTH OF THE FACTS ARE AND THEN APPLY THAT TRUE STATE OF THE FACTS TO THAT PRINCIPLE OF LAW APPLICABLE, AND BY THAT PROCESS DETERMINE AND REPORT TO THIS COURT YOUR FINAL

VERDICT. THAT VERDICT IN THE CASE SHOULD SPEAK THE TRUTH AS YOU DETERMINE IT.

THE COURT WILL MORE FULLY AND COMPLETELY STATE TO YOU THE PRINCIPLES OF LAW APPLICABLE TO THE ISSUES IN THE CASE BEFORE IT IS SUBMITTED TO YOU FOR YOUR DECISION. HOWEVER, THERE ARE CERTAIN PRINCIPLES OF LAW THAT ARE APPLICABLE TO THE FRAMEWORK OF EVERY CASE IN GENERAL SESSIONS COURT.

FIRST, THE DEFENDANT HAS ENTERED A PLEA OF NOT GUILTY TO THE CHARGES CONTAINED IN THE INDICTMENT. THE INDICTMENT IN THE CASE IS NOT EVIDENCE, IT IS SIMPLY THE WRITTEN DOCUMENT OR INSTRUMENT THAT CONTAINS THE CHARGE OR CHARGES AGAINST THE DEFENDANT, AND IT SERVES AS THE FORMAL DOCUMENT FOR WHICH THIS CASE IS PROCESSED INTO COURT. THE PLEA OF NOT GUILTY PLACES UPON THE STATE THE BURDEN OF PROOF IN THIS CASE.

AS FOR WHAT IS MEANT BY THE TERM BURDEN OF PROOF, THE DEFENDANT IS PRESUMED IN LAW INNOCENT OF ALL CHARGES CONTAINED IN THE INDICTMENT. THE BURDEN OF PROOF REQUIRES THE STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT AND, THEREFORE, CONSISTENT WITH THAT BURDEN THE DEFENDANT OR THE ACCUSED PARTY SHALL BE PRESUMED INNOCENT AND THAT PRESUMPTION OF INNOCENCE IS SUFFICIENT TO COMPEL A VERDICT OF NOT GUILTY OR A VERDICT OF ACQUITTAL UNLESS YOU, THE JURY, CONCLUDED

THAT THE STATE HAS SATISFIED ITS OBLIGATION TO PROVE THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. THE TERM REASONABLE DOUBT MEANS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT.

NOW, THIS CASE WILL BE OPENED BY THE SOLICITOR, AFTER WHICH THE SAME OPPORTUNITY WILL BE AFFORDED THE DEFENDANT TO MAKE AN OPENING STATEMENT. WHEN ALL OF THE EVIDENCE HAS BEEN RECEIVED BY THE COURT, COUNSEL FOR THE STATE AND COUNSEL FOR THE DEFENDANT WILL STATE TO THE JURY THEIR RESPECTIVE POSITIONS, AFTER WHICH THE COURT WILL FULLY STATE THE APPLICABLE LAW IN THIS CASE.

OBVIOUSLY, ALL PARTS OF THE CASE ARE IMPORTANT. YOU DO NOT KNOW WHICH WITNESS IN THE CASE WILL MOST IMPRESS YOU, WHETHER THE FIRST WITNESS OR THE LAST. IN REACHING YOUR FINAL CONCLUSION YOU WILL NEED THE GUIDANCE AND THE JUDGMENT OF THE OTHER JURORS, YOU WILL NEED THE GUIDANCE OF THE PRINCIPLES OF LAW THAT WILL BE STATED TO YOU BY THE COURT.

FOR ALL THESE REASONS, IF WE HAVE ANY RECESS PERIOD WHEN YOU RETIRE TO THE JURY ROOM, OR DURING OVERNIGHT OR MEAL RECESS, I INSTRUCT YOU THAT YOU MUST NOT UNDERTAKE TO DISCUSS THIS CASE AMONG YOURSELVES UNTIL IT IS FINALLY GIVEN TO YOU FOR YOUR DELIBERATION, NOR ARE YOU TO DISCUSS THIS CASE WITH ANYONE OR PERMIT

ANYONE ELSE TO DISCUSS THE CASE WITH YOU. IF ANYONE SHOULD ATTEMPT TO DO SO, REPORT THEM, AND I WILL TAKE THE APPROPRIATE ACTION BECAUSE NO ONE IS TO INTERFERE WITH YOUR PROPER EXERCISE OF YOUR DUTY IN THIS CASE.

I MIGHT NOTE THAT THE VERDICT IN THE CASE MUST BE A UNANIMOUS VERDICT OF ALL 12 MEMBERS OF THE JURY.

THERE ARE A FEW OTHER THINGS I NEED TO MENTION BEFORE WE START. AS I SAID EARLIER, ALTHOUGH I AM THE ONLY PERSON WHO CAN TELL YOU WHAT THE LAW IS, YOU AND YOU ALONE ARE THE ONLY ONES THAT CAN DETERMINE THE FACTS. I DO NOT HAVE A RIGHT TO INDICATE HOW I MAY FEEL ABOUT THE EVIDENCE PRESENTED, AND THROUGHOUT THE TRIAL MY INTENTION WILL BE TO ACT IMPARTIALLY TOWARDS EACH PARTY.

SECOND, FROM TIME TO TIME AN ATTORNEY MAY OBJECT TO SOME BIT OF TESTIMONY OR EVIDENCE THE OTHER SIDE IS SEEKING TO PRESENT. AS IN SPORTS OR BUSINESS OR ANY OTHER STRUCTURED ACTIVITY, THERE ARE CERTAIN RULES THAT BOTH SIDES MUST FOLLOW IN ORDER TO PRESENT EVIDENCE. THESE RULES HAVE A DEFINITE PURPOSE. THEY ENSURE THAT THE INFORMATION YOU RECEIVE IS THE MOST TRUSTWORTHY AND RELIABLE EVIDENCE AVAILABLE.

AN OBJECTION IS A PROCEDURE WE USE FOR AN ATTORNEY TO CALL A POSSIBLE VIOLATION OF THE RULES TO

THE JUDGE'S ATTENTION. AND FOR THIS REASON YOU SHOULD NOT HOLD AN ATTORNEY'S OBJECTION AGAINST HIS CLIENT, NOR SHOULD YOU CONCLUDE FROM MY RULING ON THAT OBJECTION THAT I FAVOR ONE SIDE OR THE OTHER.

FINALLY, I WOULD ASK THAT YOU PAY THE CLOSEST ATTENTION POSSIBLE TO THE EVIDENCE PRESENTED TO YOU.

I ALSO ASK THAT YOU NOT TAKE NOTES, BECAUSE IF A NOTE TAKER MAKES AN ERROR, THOSE NOTES ARE MORE DETRIMENTAL THAN HELPFUL DURING YOUR DELIBERATIONS. THE TIME-TESTED SYSTEM, OF COURSE, IS THAT YOU WILL LISTEN CAREFULLY, AND I AM CONFIDENT THAT YOU WILL DO THAT.

NOW, THE REASON I SAY NOT TO TAKE NOTES, WE HAVE A TENDENCY WHEN WE TAKE A NOTE TO CONCENTRATE ON THE NOTE RATHER THAN WHAT'S OCCURRING OR HAPPENING AT THE TIME; IN OTHER WORDS, BE SURE WHAT YOU WRITE DOWN IS WHAT YOU THINK YOU HEARD AS WELL AS THE SPELLING OR SEMANTICS OR WHATEVER ELSE YOU MIGHT HAVE IN THE PROCESS OF TAKING YOUR NOTE.

HOWEVER, THE SOURCE OF THE INFORMATION THAT YOU NEED TO USE DURING YOUR DELIBERATIONS IN THE TRIAL OF THIS CASE IS GOING TO BE THE TESTIMONY OF THE WITNESS FROM THE WITNESS STAND HERE AND OTHER EXHIBITS AND EVIDENCE THAT IS INTRODUCED IN THIS COURTROOM. THEREFORE, IT'S CRITICAL THAT YOU PAY CLOSE AND CAREFUL

ATTENTION TO WHAT IS BEING SAID AND WHAT IS BEING INTRODUCED IN THE COURTROOM BECAUSE THAT'S GOING TO BE THE SOURCE OF YOUR INFORMATION IN MAKING YOUR DELIBERATIONS AND DETERMINATION IN THIS CASE.

I MIGHT ALSO NOTE, VERY SIMPLY, THAT IF YOU SHOULD MAKE A MISTAKE IN YOUR NOTE, THAT IT COULD BE NOT ONLY DETRIMENTAL BUT DEVASTATING. FOR EXAMPLE, YOU DROPPED ONE WORD, I USE THE WORD "NO" OR "NOT," AND THAT CHANGES THE ENTIRE EMPHASIS OF THE NOTE. AND ONCE SOMETHING IS WRITTEN DOWN AND IT GOES BACK INTO THE JURY ROOM, AND THEN SOMEONE SAYS, WELL, I'VE GOT IT IN WRITING, BUT OBVIOUSLY THE WRITING HAS TO BE CORRECT TO BE OF ANY USE TO YOU, SO THAT'S THE REASON I SAY DO NOT TAKE NOTES.

NOW, HAVING SAID THAT, I DO TAKE NOTES. PLEASE UNDERSTAND, WE HAVE ENTIRELY DIFFERENT PURPOSES AND FUNCTIONS IN THIS COURTROOM. I AM NOT CONCERNED ABOUT THE WEIGHT OR THE VALUE OF THE TESTIMONY OR OTHER EVIDENCE. I AM ONLY CONCERNED ABOUT WHAT THINGS HAVE TO BE DONE OR CERTAIN THINGS THAT HAVE TO BE ACCOMPLISHED IN ORDER FOR THE CONDUCT OF A TRIAL, SO I AM NOT PUTTING DOWN ANYTHING ABOUT THE VALUE OF WHAT IS SAID AND DONE, BUT I AM JUST RECORDING WHAT IS SAID AND DONE TO BE SURE THAT WHAT NEEDS TO BE DONE IS DONE. SO, THEREFORE, PLEASE UNDERSTAND THAT I'M NOT IN ANY WAY INVADING YOUR

PROVINCE OF RULING ON THE EVIDENCE, I'M JUST KEEPING A RECORD OF WHAT IS OCCURRING.

ALL RIGHT. WITH THAT, THE TRIAL WILL NOW BEGIN, AND I WILL RECOGNIZE THE SOLICITOR FOR HIS OPENING STATEMENT.

MR. CAMPBELL: MAY IT PLEASE THE COURT, MR. GAMBLE, LADIES AND GENTLEMEN OF THE JURY.

OPENING STATEMENT ON BEHALF OF THE STATE:

MR. CAMPBELL: ON SATURDAY, FEBRUARY 25TH, 2006, SAMUEL MARTIN, HE GOES BY SAMMY, WENT DOWN TO THE OLD SCHOOL LOUNGE ABOUT 11:30 HERE ON WEST MARKET STREET HERE IN ANDERSON. LITTLE DID HE KNOW HE WOULDN'T LIVE TO SEE SUNDAY MORNING. SEE, SAMMY WENT DOWN THERE LOOKING FOR HIS GIRLFRIEND, ANGELA BROWNLEE. AND IT'S A LITTLE CLUB, IT'S A LITTLE DRINKING ESTABLISHMENT.

HE WALKS IN AND SEES HIS GIRLFRIEND SITTING DOWN WITH ANOTHER MAN, A MAN BY THE NAME OF MICHAEL VANCE, HE GOES BY THE NICKNAME OF "SHOES."

WELL, SAMMY DIDN'T HANDLE IT TOO WELL. HE STARTED HOLLERING AT HER, CUSSING AT HER, GRABBED HER, TRYING TO GET HER TO GO, PUSHING ON HER. WASN'T CARRYING ON LIKE HE SHOULD. THE FACT THAT HE SAW HIS GIRLFRIEND WITH ANOTHER MAN, COMBINED WITH THE FACT THAT HE HAD BEEN DRINKING, YOU'RE GONNA SEE THE REPORTS, HE WAS ONE AND A HALF, TWO TIMES THE LEGAL LIMIT, HAD A

LITTLE BIT OF COCAINE IN HIS SYSTEM. COMBINE THAT ALL TOGETHER, AND HE WASN'T ACTING LIKE HE'S SUPPOSED TO.

AND HE PULLS HER ON OUT, AND THEY GO OUTSIDE IN THE LOUNGE AND GET INTO THE PARKING LOT, AND HE'S STILL FUSSING AND HOLLERING AT HER AND PUSHING ON HER TO GET HER TO LEAVE. WELL, SHE GOES AND GETS IN HER CAR. IT WON'T START. AND HE'S STILL FUSSING. SO HE GETS HIS CAR AND PULLS UP RIGHT WHERE HER CAR IS, GETS OUT. AND WHILE HE'S STANDING OUTSIDE, A YOUNG BLACK MAN APPROACHES HIM, AIMS A PISTOL AT HIM AND FIRES OFF THREE SHOTS, HITTING HIM TWICE. HE HIT THE CHEST AND RIGHT IN THE NECK HERE (INDICATING). MR. MARTIN DIED RIGHT THERE.

A 911 CALL CAME IN AROUND MIDNIGHT, IT WAS ACTUALLY AT MIDNIGHT. ANDERSON COUNTY DEPUTIES, THE SHERIFF'S DEPARTMENT RESPONDED, DETECTIVE REEVES RESPONDED AS LEAD INVESTIGATOR IN THIS CASE, AND THEY STARTED THE TASK OF TRYING TO DETERMINE THE IDENTITY AND TRYING TO FIND THE SHOOTER.

WELL, HE WASN'T FOUND THAT NIGHT. WHEN DETECTIVE REEVES LEFT, THE NAME THAT HE HAD WAS A NICKNAME BY THE NAME OF BUSTER.

A COUPLE OF DAYS LATER THINGS IN THE CASE STARTED HAPPENING. AN INDIVIDUAL THAT HAD BEEN WANTED, THE SHERIFF'S DEPARTMENT WANTED TO TALK TO, AND JAMES

PICKENS IN REGARDS TO THIS CASE VOLUNTARILY TURNED HIMSELF IN TO THE SHERIFF'S DEPARTMENT.

AT THAT POINT THEY STARTED TALKING TO HIM, AND SEVERAL OTHER ARRESTS WERE MADE IN REGARD TO THIS, AND THESE INDIVIDUALS WERE CHARGED WITH ACCESSORY OR MISPRISION OF A FELONY, AND THEY IDENTIFIED WHO THE SHOOTER WAS: THE MAN THAT'S BEEN CHARGED TODAY, JWAN SMITH.

IT TOOK THEM SEVERAL WEEKS, BUT EVENTUALLY MR. SMITH WAS APPREHENDED RIGHT OR AROUND NEAR OCALA, FLORIDA, AND HE WAS BROUGHT BACK TO SOUTH CAROLINA TO STAND TRIAL WHERE WE ARE TODAY.

HE'S BEEN CHARGED WITH TWO COUNTS. THE FIRST COUNT IS MURDER; THAT HE DID, IN FACT, MURDER SAMUEL MARTIN ON FEBRUARY 25TH, 2006, AND THAT HE POSSESSED A GUN. THE SECOND CHARGE IS POSSESSION OF FIREARM IN COMMISSION OF VIOLENT CRIME, THAT VIOLENT CRIME BEING MURDER.

NOW, MURDER IS THE KILLING OF ANOTHER PERSON WITH MALICE AFORETHOUGHT, MEANING THEY HAD EVIL INTENT WHEN THEY WENT TO DO IT. THERE IS NO TIME FRAME SET IN ON THAT. IT'S NOT LIKE A STOPWATCH, YOU'VE GOT TO HAVE THIS AMOUNT OF TIME BEFORE YOU GO DO IT, IT'S JUST THE FACT THAT YOU HAD IT BEFORE YOU DO IT.

ONE WORD YOU ARE NOT GONNA HEAR WHEN THE

JUDGE CHARGES YOU WITH THE LAW OF MURDER IS MOTIVE. THE STATE DOES NOT HAVE TO PROVE THE MOTIVE. WE DON'T HAVE TO PROVE WHY HE DID IT, JUST THAT HE DID IT.

THE TYPE OF EVIDENCE YOU'RE GONNA HEAR IN THIS CASE, USUALLY IN A TRIAL YOU HAVE TWO TYPES OF EVIDENCE: CIRCUMSTANTIAL EVIDENCE, WHICH IS THE PERSON IS NOT THERE, BUT YOU CAN LINK THAT PERSON TO THE CRIME SCENE THROUGH SUCH STUFF AS Y'ALL HAVE SEEN ON *CSI*, THE D.N.A., FINGERPRINTS, GUNSHOT POWDER, TRACE, HAIR, FIBER, THAT TYPE OF STUFF IS CIRCUMSTANTIAL EVIDENCE. HE MIGHT NOT HAVE BEEN SEEN THERE, BUT YOU CAN PUT HIM THERE THROUGH SCIENTIFIC EVIDENCE.

THE TYPE OF EVIDENCE WE'RE GONNA DEAL WITH IN THIS CASE IS ACTUAL EVIDENCE, EYEWITNESS ACCOUNTS. YOU'RE GONNA HEAR FROM SEVERAL PEOPLE IN THIS CASE AND THEY'RE GONNA TELL YOU THE PERSON THAT DID THE SHOOTING.

NOW, THESE PEOPLE YOU'RE GONNA HEAR FROM, SOME OF THEM YOU MAY NOT LIKE. MOST OF THEM HAVE A PAST HISTORY WITH LAW ENFORCEMENT, SOME OF THEM HAVE DONE TIME, SOME OF THEM ARE CURRENTLY ON PROBATION FOR SOME REALLY BAD STUFF. BUT THE STATE HAS TO TAKE THE WITNESSES AS THEY FIND THEM. YOU WILL GET THE OPPORTUNITY TO HEAR AND JUDGE FOR YOURSELF, AND WE DON'T CHOOSE.

IN THE COMBINATION OF THAT, BETWEEN

EYEWITNESS TESTIMONY AT THE CONCLUSION OF THIS CASE AND THE REPORTS YOU'RE GONNA SEE THAT WE HAVE STIPULATED ARE COMING INTO EVIDENCE, I THINK YOU WILL HAVE A CLEARER PICTURE AND UNDERSTANDING OF WHAT HAPPENED THAT NIGHT, AND THAT THE SHOOTER WHO GUNNED DOWN SAMMY MARTIN ON FEBRUARY 25TH, 2006, IS THE MAN SITTING RIGHT THERE IN THE BLUE SHIRT AND TIE, JWAN TYREE SMITH. AND I'M GONNA ASK YOU TO RETURN A VERDICT AT THE END OF THIS CASE THAT THE TRUTH DICTATES AND JUSTICE DEMANDS. AND I THANK YOU ALL FOR YOUR TIME.

THE COURT: MR. GAMBLE?

MR. GAMBLE: THANK YOU, YOUR HONOR, MAY IT PLEASE THE COURT.

OPENING STATEMENT ON BEHALF OF THE DEFENDANT:

MR. GAMBLE: I'LL BE VERY BRIEF. IN ORDER FOR YOU TO CONVICT YOU'VE GOT TO BELIEVE TWO GUYS THAT ARE COUSINS AND THEIR BEST FRIEND, WHO SAY NOW THAT BUSTER DID THE SHOOTING. BUT I WANT YOU TO EXAMINE CLOSELY, VERY CLOSELY, THE MINUTE, MINOR, SOMETIMES MAJOR DIFEERENCES IN EACH OF THEIR STATEMENTS, AND WHEN I SAY EACH OF THEIR STATEMENTS, YOU'RE GONNA HEAR THAT THEY GAVE TWO OR THREE TO THE COPS, EACH ONE OF THEM. SO THEY DIDN'T EXACTLY JUST COME FORWARD CLEAN.

AND THEY MAY BE, MAY BE GUARDING EACH OTHER: WATCH MY BACK I'LL WATCH YOURS. LET'S BLAME IT ON

BUSTER.

WE'LL SEE. AT THE END I'LL TRY TO BRING IT TOGETHER FOR YOU. THANK YOU.

THE COURT: YOU MAY CALL YOUR FIRST WITNESS.

MR. CAMPBELL: THANK YOU, YOUR HONOR. YOUR HONOR, THE STATE CALLS ANGELA BROWNLEE.

(WHEREUPON, THE WITNESS WAS SWORN BY THE CLERK.)

THE CLERK: PLEASE GO OVER THERE AND HAVE A SEAT IN THE WITNESS CHAIR, MS. BROWNLEE.

PLEASE STATE YOUR FULL NAME AND SPELL YOUR LAST NAME FOR THE RECORD.

THE WITNESS: STATE MY FULL NAME?

THE CLERK: YES, MA'AM.

THE WITNESS: ANGELA LEE BROWNLEE, B-R-O-W-N-L-E-E.

WHEREUPON,

ANGELA BROWNLEE,

AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. CAMPBELL:

Q. MS. BROWNLEE, DO YOU LIVE HERE IN ANDERSON?

A. YES, I DO.

Q. AND HOW LONG HAVE YOU LIVED IN ANDERSON?

A. ABOUT 20-SOME YEARS.

Q. AND DO PEOPLE CALL YOU ANGELA OR DO THEY CALL YOU BY ANOTHER NAME, OR DO THEY KNOW YOU BY ANOTHER NAME?
A. PEOPLE CALL ME BY ANOTHER NAME.
Q. WHAT'S THAT?
A. SALLY.
Q. AND ARE YOU CURRENTLY EMPLOYED?
A. YEAH.
Q. WHERE DO YOU WORK?
A. SANTEEN.
Q. AND HOW LONG HAVE YOU BEEN THERE?
A. 11 YEARS.
Q. AND IN THIS CASE YOU KNOW THE VICTIM, SAMMY MARTIN; IS THAT CORRECT?
A. YEAH.
Q. AND HOW DID YOU KNOW HIM?
A. ME AND HIM WERE DATING AT THE TIME.
Q. AND PRIOR TO FEBRUARY 25TH, 2006, HOW LONG HAD Y'ALL DATED?
A. FOR ABOUT 11 MONTHS.
Q. DID HE LIVE WITH YOU?
A. YEAH.
Q. AND I WANT TO TALK TO YOU ABOUT FEBRUARY 25TH, 2006. DO YOU RECALL THAT DATE?
A. YEAH.
Q. AND DID YOU WORK THAT DAY?

A. NO.

Q. WERE YOU OFF?

A. I WAS OFF.

Q. HOW ABOUT MR. MARTIN, WAS HE WORKING THAT DAY?

A. HE WAS SUPPOSED TO WORK THAT DAY, BUT THEY HAD CALLED HIM AND TOLD HIM HE DIDN'T HAVE TO WORK THAT DAY.

Q. AND SINCE NEITHER OF Y'ALL HAD TO WORK, WHAT DID YOU ALL DO?

A. THAT WHOLE DAY WE JUST STAYED AROUND THE HOUSE, ATE, FROM HIS HOUSE TO MY HOUSE, AND THEN WE DECIDED WE WAS -- THEN LATER ON I WENT DOWN TO TUCKER'S FOR A WHILE. HE CAME DOWN THERE FOR A WHILE AND WE LEFT AND CAME BACK. AND HE SAID, WELL, WE'RE OFF, AND DID I WANT TO GO OUT TO DO SOMETHING, LIKE GO TO THE OLD SCHOOL. AND I TOLD HIM, I SAID, YEAH, WE CAN GO DOWN THERE FOR A WHILE.

SO WHEN WE GOT DOWN THERE, HE CHANGED HIS MIND, HE DIDN'T WANT TO STAY. HE SAID THAT -- YOU KNOW, HE BROUGHT ME BACK AND TOLD ME THAT I COULD GO DOWN THERE. SO HE WENT HOME AND I WENT DOWN THERE.

Q. LET'S STOP RIGHT THERE. WHEN YOU SAY HIS PLACE, WAS HE STILL LIVING WITH YOU AT THE TIME?

A. YEAH. HE WAS JUST -- YEAH. BUT HE HAD GOT HIS OWN PLACE.

Q. SO HE WAS MOVING TO A NEW PLACE AT THAT POINT IN

TIME?

A. YEAH.

Q. AND SO THAT DAY YOU SAID Y'ALL WERE EATING. DID Y'ALL DRINK ANYTHING? DID HE HAVE ANYTHING TO DRINK THAT DAY, ALCOHOL?

A. HE HAD A COUPLE BEERS.

Q. AND Y'ALL WENT DOWN -- DID Y'ALL EVENTUALLY GO DOWN TO OLD SCHOOL LOUNGE?

A. YEAH, WE WENT -- ME AND HIM WENT DOWN THERE TOGETHER, BUT HE DIDN'T WANT TO STAY.

Q. AND WHOSE VEHICLE DID YOU ALL DRIVE?

A. WE DROVE HIS.

Q. WHAT KIND OF VEHICLE WAS THAT? DO YOU REMEMBER WHAT KIND OF CAR IT WAS?

A. IT'S A FORD -- IT'S A -- I FORGET WHAT KIND OF CAR.

Q. AND SO YOU AND HIM WENT DOWN THERE TO BEGIN WITH?

A. YEAH.

Q. AND THEN Y'ALL LEFT?

A. YEAH, ME AND HIM LEFT.

Q. AND WHY IS THAT?

A. BECAUSE HE SAID HE DIDN'T FEEL LIKE STAYING DOWN THERE.

Q. AND DID YOU GO BACK DOWN THERE BY YOURSELF?

A. YEAH, I WENT BACK DOWN THERE BY MYSELF.

Q. AND DID YOU DRIVE YOUR CAR?
A. YES.
Q. WHAT KIND OF CAR DO YOU HAVE?
A. I DROVE A CHEVROLET.
Q. WHAT COLOR?
A. WHAT COLOR?
Q. YES, MA'AM.
A. BROWN.
Q. AND SO YOU WENT DOWN THERE BY YOURSELF; IS THAT RIGHT?
A. YEAH.
Q. AND WHAT TIME DID YOU GET THERE?
A. I WOULD SAY AROUND ABOUT 10:00 OR 10:30, SOMETHING LIKE THAT. IT MIGHT HAVE BEEN A LITTLE BIT LATER.
Q. AND THE OLD SCHOOL LOUNGE, WHAT STREET IS THAT ON, DO YOU KNOW?
A. ON WHITNER STREET.
Q. HERE IN ANDERSON?
A. YES, SIR.
Q. WHEN YOU GOT THERE, DID YOU GO INSIDE?
A. YES.
Q. DID YOU TALK TO ANYBODY THERE?
A. NO. I WENT INSIDE AND I ORDERED ME A BEER AND I SAT DOWN. AND SHOES WAS SITTING AT THE TABLE AND I SAT

AT THE TABLE WITH HIM.

Q. WHEN YOU SAY SHOES, YOU ARE TALKING ABOUT OR REFERRING TO MICHAEL VANCE?

A. YES.

Q. AND HOW LONG HAVE YOU BEEN KNOWING HIM?

A. EVER SINCE HE WAS A LITTLE CHILD.

Q. LATER ON DID YOU HAVE OCCASION TO SEE MR. MARTIN?

A. I HAD BEEN DOWN THERE FOR A LITTLE WHILE AND HE CAME IN.

Q. AND HOW WAS HE ACTING WHEN HE CAME IN?

A. WELL, HE PROBABLY WAS UPSET BECAUSE I WAS SITTING AT THE TABLE WITH SHOES, AND HE JUST GRABBED ME BY THE NECK, MY NECKLACE. HE AIN'T HIT ME OR NOTHING. HE JUST GRABBED ME BY THE NECKLACE, AND WHEN IT FELL OFF, HE JUST PICKED THEM UP FOR ME AND WENT OUT. HE WENT TO HIS CAR AND I WENT TO MINE, BUT I COULDN'T GET MINE TO CRANK.

Q. AND WHEN IT WOULDN'T CRANK, WHAT DID HE DO?

A. WHO?

Q. MR. MARTIN, DID HE TRY TO HELP YOU?

A. HE COULDN'T -- HE COULDN'T -- BY THE TIME -- WELL, I DIDN'T SEE HIM, BUT I WAS DOWN UNDER MY HOOD OF MY CAR, AND I HEARD THESE SHOTS, AND WHEN I RAISED UP, WHEN I RAISED UP I LOOKED AND I SAW FEET, AND THEN I TURNED AROUND AND LOOKED AND SAW THAT SAM WAS LAYING ON

THE GROUND.

I GOT UP AND I WENT AROUND AND TRIED TO HELP HIM GET UP. I GRABBED HIS HAND AND ASKED HIM COULD HE GET UP. BUT I KNOW HE COULDN'T GET UP BECAUSE HE -- YOU KNOW? AND THEN I WENT AROUND AND ASKED EVERY -- ASKED A COUPLE PEOPLE, BUT MOST EVERYBODY AROUND THAT WAS OUT THERE, I WOULD ASK THEM TO HELP ME PUT HIM IN THE CAR AND TAKE HIM TO THE HOSPITAL, BUT WOULDN'T NOBODY HELP ME.

Q. AND MR. MARTIN, WHEN HE FELL, DID HE FALL IN FRONT OF YOUR CAR OR NEAR HIS CAR?

A. YEAH. RIGHT BESIDE HIS CAR. WELL, REALLY, I, I PROBABLY WOULD HAVE GOT -- YOU KNOW, I DON'T KNOW -- BUT I WAS OVER IN THE CAR AND HE WAS RIGHT BEHIND -- HE MUST HAVE BEEN COMING UP TO HELP ME BECAUSE HE FELL, AND WHEN I RAISED UP AND LOOKED, HE WAS LAYING RIGHT BEHIND ME.

Q. AND DID YOU SEE THE PERSON WHO HAD DONE THE SHOOTING?

A. NO, I DION'T.

Q. AND EVENTUALLY SOMEONE DID HELP YOU; IS THAT RIGHT?

A. YEAH, THIS MAN HELPED ME. I WENT AND ASKED TO THE -- AND ASKED THIS MAN AND HE HELPED ME. HE SAID, "MA'AM, I'LL HELP YOU."

AND I SAID, "WOULD YOU TAKE ME TO GET SOMEBODY TO

COME BACK AND HELP GET HIM AND PUT HIM IN THE CAR AND TAKE HIM TO THE HOSPITAL?"

Q. AND WHERE DID YOU ALL GO?

A. I STAYED AT WHERE HIS SISTER STAYED AT.

Q. WHAT'S HER NAME?

A. DOT.

Q. DOT? AND AFTER THAT YOU ALL WENT TO THE HOSPITAL; IS THAT RIGHT?

A. NO. DOT WENT DOWN TO THE PLACE; I WENT TO THE HOSPITAL.

Q. NOW, THAT NIGHT -- I WANT TO STEP BACK TO THE TIME OF THE SHOOTING -- DID MR. MARTIN OR ANYBODY ELSE GET INTO AN ARGUMENT OR A FIGHT?

A. MR. MARTIN DIDN'T SAY NOTHING TO NOBODY. THE ONLY PERSON HE SAID SOMETHING TO IS ME, AND HE JUST GRABBED ME AND HE TOLD ME TO COME OUT. HE DIDN'T SAY NOTHING TO NOBODY. THE ONLY THING HE -- AFTER HE LEFT OUT THE PLACE, HE WENT STRAIGHT TO HIS CAR AND I WENT STRAIGHT TO MINE. HE AIN'T SAID NOTHING TO NOBODY.

Q. DID HE EVER GET INTO AN ARGUMENT WITH MICHAEL VANCE OR SHOES?

A. NO, HE DIDN'T. HE DIDN'T SAY NOTHING TO HIM.

Q. AND HE DIDN'T TALK TO ANYBODY ELSE?

A. HE DIDN'T TALK TO NOBODY ELSE. THE ONLY PERSON HE TALKED TO WAS ME.

Q. AND WHEN YOU SAW HIM WHEN HE FELL, DID HE HAVE ANY TYPE OF WEAPON OR GUN OR ANYTHING IN HIS HAND?

A. MR. MARTIN?

Q. YES, MA'AM.

A. I DIDN'T SEE HIM WITH NOTHING. HE HAD NOTHING.

Q. AND DO YOU KNOW ABOUT HOW OLD MR. MARTIN WAS?

A. HE WAS 50 AT THE TIME.

Q. DID ANYBODY DURING THE TIME THAT HE WAS FUSSING WITH YOU, HOLLERING AT YOU, DID THEY STEP IN BETWEEN YOU AND HIM AND TELL HIM TO LEAVE THIS WOMAN ALONE?

A. NO, THEY DIDN'T.

Q. SO HE HAD NO -- HE TALKED TO NO ONE BUT YOU?

A. NO ONE BUT ME.

MR. CAMPBELL: MS. BROWNLEE, I HAVE NO OTHER QUESTIONS. PLEASE ANSWER ANY QUESTIONS MR. GAMBLE MAY HAVE.

THE WITNESS: ALL RIGHT.

CROSS-EXAMINATION BY MR. GAMBLE:

Q. YOU SAID THAT WHEN YOU FIRST GOT DOWN TO THE OLD SCHOOL LOUNGE, THAT SAMMY MARTIN SAID HE DIDN'T FEEL LIKE GOING IN?

A. YES, SIR.

Q. DO YOU REMEMBER TALKING TO OFFICER REEVES ON THIS CASE? HAD HE WROTE OUT A STATEMENT FOR YOU AND YOU SIGNED IT, DO YOU REMEMBER THAT?

A. YES. YES, I REMEMBER THAT.

Q. DO YOU REMEMBER TELLING HIM THAT SAMMY DIDN'T WANT TO GO IN BECAUSE HE THOUGHT HE WAS TOO DRUNK TO GO IN?

A. I TOLD HIM ON MY STATEMENT, WHAT I SAID, I SAID SAMMY DIDN'T WANT TO GO IN BECAUSE HE SAID HE HAD HAD TOO MANY TO DRINK. THAT WAS ON MY STATEMENT.

Q. WELL, I THOUGHT YOU SAID HE ONLY HAD TWO BEERS.

A. WHO, THAT DAY?

Q. YEAH.

A. I SAID WE DRUNK A COUPLE BEERS THAT DAY.

Q. A COUPLE?

A. BEERS THAT DAY.

Q. ALL RIGHT. AND YOUR CAR IS A RUST-COLORED KIND OF BROWNISH CAPRICE?

A. YEAH.

Q. AND YOU SAY SAMMY, WHEN YOU HEARD TWO POPS IS WHAT YOU TOLD THE OFFICERS; IS THAT CORRECT?

A. YES.

Q. DIDN'T YOU IMMEDIATELY LOOK AROUND TO SEE WHAT IT WAS?

A. WHEN I WAS DOWN UP IN MY CAR, I HAD MESSED WITH MY BATTERY CABLE. I WAS DOWN IN, DOWN IN MY CAR AND I WAS TRYING TO GET DOWN TO THE STARTER, AND I BENT DOWN. WHEN I HEARD SOMETHING SAY POP, POP, LIKE THAT, I RAISED

UP AND I LOOKED AND SAW FEET, AND THEN I TURNED AROUND AND THERE WAS MR. MARTIN LAYING BEHIND ME, HE WAS SHOT.

Q. YOU DIDN'T SEE ANYBODY WITH A GUN?

A. I DIDN'T SEE ANYBODY. I DIDN'T SEE NOBODY.

Q. ANY WORDS SAID THAT YOU HEARD?

A. I DIDN'T; NO, I DIDN'T.

Q. ALL RIGHT. DID YOU IDENTIFY ANYBODY ELSE THAT WAS IN THAT PARKING LOT THAT NIGHT?

A. IT WAS A BUNCH OF PEOPLE. I DON'T REALLY KNOW WHO ALL WAS IN THERE. THERE WAS JUST A BUNCH OF PEOPLE IN THE PARKING LOT THAT NIGHT.

Q. YOU KNOW TURK AND TORREY AND -- WELL, YOU KNEW SHOES?

A. I KNEW SHOES.

Q. MICHAEL VANCE. WHAT ABOUT LATORREY PEARSON?

A. I DON'T KNOW HIM.

Q. ALL RIGHT. BUT THERE WAS A BUNCH OF PEOPLE IN THE PARKING LOT?

A. IT WAS A BUNCH OF PEOPLES IN THE -- YES.

Q. YOU AND SAMMY WERE FUSSING AT EACH OTHER AND FEUDING?

A. NO.

Q. HUH?

A. ME AND MR. MARTIN WEREN'T FUSSING.

Q. YOU WEREN'T FUSSING? EVEN WHEN HE GRABBED YOU BY

THE NECK AND TRIED TO PULL YOU OUT OF THE CLUB?

A. HE DIDN'T TRY TO -- WHEN MR. MARTIN WALKED IN, MR. MARTIN WALKED IN AND DID LIKE THIS RIGHT HERE (DEMONSTRATING) AND TOLD ME TO COME ON, AND MY NECKLACE FELL OFF AND HE REACHED DOWN THERE AND HE PICKED IT UP AND I GOT UP AND WENT BEHIND HIM OUT THE DOOR; HE WENT ONE WAY AND I WENT THE OTHER WAY.

Q. BUT YOUR NECKLACE DIDN'T FALL OFF WHEN YOU DID THAT?

A. I HAD MORE NECKLACE ON THAN THIS ONE RIGHT HERE.

Q. OH, OKAY. SO THERE WAS NO ARGUMENT BETWEEN YOU AND SAMMY MARTIN IN THE PARKING LOT; IS THAT ---

A. NO, THERE WASN'T NO ARGUMENT. HE DIDN'T HAVE TIME TO ARGUE WITH ME IN THE PARKING LOT BECAUSE WHEN HE GOT ON -- I GUESS WHEN HE GOT ON -- THE ONLY TIME I SEEN MR. MARTIN WAS WHEN HE WAS LAYING THERE BEHIND ME DEAD. HE DIDN'T SAY ANYTHING. HE DIDN'T HAVE TIME TO TALK TO ME.

MR. GAMBLE: ALL RIGHT. THANK YOU, MA'AM.

MR. CAMPBELL: I HAVE NO FURTHER QUESTIONS. MS. BROWNLEE. YOU MAY STEP DOWN.

THE COURT: YOU MAY STEP DOWN. THANK YOU, MA'AM.

(WITNESS LEAVES STAND AND COURTROOM.)

MR. CAMPBELL: CALL MY NEXT WITNESS, YOUR

HONOR?

THE COURT: PLEASE.

MR. CAMPBELL: I CALL MICHAEL VANCE.

(WHEREUPON, THE WITNESS WAS SWORN BY THE CLERK.)

THE CLERK: PLEASE STATE YOUR FULL NAME AND SPELL YOUR LAST NAME FOR THE RECORD.

THE WITNESS: MICHAEL VANCE, V-A-N-C-E.

WHEREUPON,

MICHAEL VANCE,

AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. CAMPBELL:

Q. MR. VANCE, YOU HAVE A -- YOU'RE KNOWN BY A NICKNAME; YOU HAVE A NICKNAME, DON'T YOU?

A. YES, SIR.

Q. AND WHAT IS THAT?

A. SHOES.

Q. AND I WANT TO TALK TO YOU ABOUT THE EVENTS THAT TOOK PLACE ON FEBRUARY 25TH, 2006, AT THE OLD SCHOOL LOUNGE. DO YOU RECALL THAT DAY?

A. YES, SIR.

Q. AND WERE YOU DOWN AT THE OLD SCHOOL LOUNGE THAT NIGHT?

A. YES, I WAS.

Q. AND WHAT STREET IS THAT ON, DO YOU RECALL?
A. MARKET, IF I'M NOT MISTAKEN.
Q. IS THAT HERE IN ANDERSON?
A. YES, SIR.
Q. AND WHEN YOU WENT DOWN, DID YOU GO BY YOURSELF?
A. SURE DID.
Q. AND WHILE YOU WERE THERE, DID YOU SEE ANYBODY YOU KNEW, TALK TO ANYBODY?
A. TALKED TO MY COUSIN SALLY.
Q. SALLY?
A. COUSIN SALLY.
Q. AND SALLY, IS THAT MS. BROWNLEE?
A. YES.
Q. AND WHERE DID YOU TALK TO HER AT?
A. INSIDE THE LOUNGE.
Q. AND WHILE Y'ALL WERE TALKING TOGETHER, DID ANYTHING HAPPEN?
A. WELL, HER, AND I THINK SAMMY COME IN AND HAD A LITTLE ALTERCATION WITH HER.
Q. WHEN YOU SAY SAMMY, YOU'RE REFERRING TO SAMMY MARTIN?
A. YES.
Q. DO YOU KNOW HIM?
A. YES, I DID.
Q. HOW LONG?

A. BEEN KNOWING HIM FOR QUITE SOME TIME.
Q. MORE THAN A FEW YEARS?
A. MORE THAN A FEW YEARS, YEAH.
Q. AND WHEN HE CAME IN, DID HE TALK TO MS. BROWNLEE?
A. YES, HE DID.
Q. AND DID YOU HEAR WHAT WAS SAID?
A. NO, SIR, I DIDN'T.
Q. HOW WAS HIS -- COULD YOU UNDERSTAND HIS TONE OR GESTURES?
A. HE WAS CARRYING ON.
Q. WAS HE UPSET?
A. PRETTY MUCH, I THINK SO.
Q. AND DID HE SAY ANYTHING TO YOU AT THAT POINT IN TIME?
A. AT THE MOMENT, NO.
Q. HE WAS JUST TALKING TO SALLY OR ANGELA BROWNLEE?
A. YES, SIR, SURE DID.
Q. WHAT DID THEY DO: DID THEY STAY THERE OR DID THEY FLEE?
A. THEY LEFT OUT OF THE PLACE. THEY LEFT.
Q. DID YOU GO WITH THEM AT THAT TIME?
A. NO, I DIDN'T.
Q. WHAT DID YOU DO?
A. I STAY REMAINING WHERE I WAS AT, INSIDE THE LOUNGE.

Q. AND DID YOU EVENTUALLY GO OUTSIDE?
A. I DID.
Q. AND WHEN YOU WENT OUTSIDE, DID YOU STILL SEE THEM?
A. UH-HUH, YES, I DID.
Q. AND HOW WERE THEY ACTING, WHAT WAS GOING ON BETWEEN THEM TWO?
A. THEY STILL WAS CARRYING ON, FUSSING.
Q. AND CAN YOU DESCRIBE, AT THAT POINT IN TIME, WHERE WERE YOU STANDING WHEN YOU WERE OUTSIDE?
A. I WAS STANDING ON THE NEAR SIDE OF THE BUILDING.
Q. WHERE THE DOOR IS?
A. ON THE FAR SIDE. NOT WHERE THE DOOR IS AT BUT ON THE SIDE OF THE LOUNGE.
Q. OKAY. AND AT ANY POINT DID YOU OBSERVE THEM TRYING TO LEAVE?
A. NO, SIR, I DIDN'T.
Q. AND WHILE YOU WERE OUTSIDE, WHAT, IF ANYTHING, DID YOU SEE? DID ANYTHING HAPPEN?
A. AT THAT MOMENT I JUST SEEN, THERE WAS SOMEONE COME UP AROUND THE BUILDING.
Q. WHEN YOU SAY COME AROUND THE BUILDING, WHICH SIDE WERE THEY COMING FROM?
A. I GUESS IT WOULD BE THE RIGHT.
Q. THE FRONT SIDE OR THE BACK SIDE OF THE BUILDING?

A. THE BACK SIDE.

Q. AND DID YOU GET A GOOD LOOK AT THIS PERSON?

A. NO, I DID NOT.

Q. AND WHAT DID THIS PERSON DO?

A. WELL, WHAT I OBSERVED WHEN I COME AROUND, I HAD MY BACK TURNED, AND I HEARD TWO SHOTS AND THE SAME INDIVIDUAL TOOK BACK OFF THE SAME WAY HE CAME.

Q. AND DID HE GO -- DID HE LEAVE THE FRONT OF THE BUILDING OR THROUGH THE BACK SIDE OF THE BUILDING?

A. THE BACK SIDE.

Q. AND THIS PERSON THAT YOU SAW, WAS IT A MALE OR FEMALE?

A. IT WAS A MALE.

Q. OKAY. BLACK MALE, WHITE MALE, HISPANIC?

A. BLACK.

Q. HOW TALL WAS THE PERSON?

A. FROM WHAT I OBSERVED, I THOUGHT IT WAS A SHORT, SHORT FELLA.

Q. AND HOW TALL ARE YOU?

A. 6'2".

Q. A LOT SHORTER THAN YOU?

A. PRETTY MUCH.

Q. AND AT SOME POINT DID YOU GET A LOOK AT THE WEAPON THAT WAS USED IN THIS CASE, THE WEAPON THAT WAS USED IN THE SHOOTING?

A. JUST A GLANCE; NOT SPECIFICALLY A GOOD LOOK, JUST A GLANCE.

Q. DO YOU RECALL WHAT COLOR IT WAS?

A. ALL I COULD SEE IT WAS JUST A -- I WOULD SAY IT WAS SILVER.

Q. BIG GUN, SMALL GUN?

A. HMM. I CAN'T SPECIFICALLY SAY IF IT WAS BIG OR SMALL.

Q. AND HOW MANY SHOTS DID YOU HEAR?

A. ABOUT THREE.

Q. AND DID YOU SEE WHAT HAPPENED TO MR. MARTIN?

A. NO MORE THAN I SEEN HIM STANDING AND COLLAPSE AT THE MOMENT.

Q. WHEN YOU WALKED OUTSIDE, DID YOU AND MR. MARTIN HAVE ANY TYPE OF WORDS?

A. WELL, WE DIDN'T HAVE NO WORDS. THERE WAS -- I MEAN, HE RATTLED OFF, BUT THERE WASN'T NO ALTERCATION CAME BETWEEN US.

Q. NOTHING HAPPENED BETWEEN YOU AND HIM WHILE YOU WERE OUTSIDE?

A. NO, NOT NOTHING.

Q. NOTHING HAPPENED BETWEEN Y'ALL TWO WHILE YOU WERE IN THE INSIDE?

A. HE PROBABLY MOUTHED OFF A LITTLE BIT, BUT I DIDN'T PICK UP ON IT.

Q. AND WHILE YOU OBSERVED THIS HAPPENING OUTSIDE, DID YOU EVER SEE MR. MARTIN WITH ANY TYPE OF WEAPON IN HIS HANDS?

A. NO, I DID NOT.

Q. WHEN HE CAME INSIDE, DID YOU SEE ANY TYPE OF WEAPON IN HIS HANDS?

A. NO, I DID NOT.

Q. NOW, THIS PERSON YOU SAW, WAS IT AN OLDER PERSON OR A YOUNGER PERSON?

A. HE APPEARED TO BE YOUNG.

Q. AND WHEN YOU HEARD THE POPS, BEFORE THAT DID YOU HEAR ANYBODY HAVE ANY TYPE OF WORDS WITH SAMMY?

A. NO, I DID NOT.

Q. DID THE SHOOTER SAY ANYTHING TO MR. MARTIN THAT YOU COULD TELL?

A. NO, I COULD NOT TELL.

Q. AND DO YOU RECALL APPROXIMATELY HOW CLOSE THE SHOOTER GOT TO MR. MARTIN?

A. I THINK IT WAS A CLOSE DISTANCE. FROM WHERE I WAS STANDING, I GUESS IT WAS A CLOSE DISTANCE FROM MY BACK, STANDING THERE AND TALKING TO MY COUSIN, IT WAS PROBABLY A CLOSE DISTANCE.

Q. HOW FAR -- JUST STOP ME. TELL ME HOW CLOSE I NEED TO GET.

A. IT WASN'T THAT CLOSE.

Q. HOW FAR -- I'LL STEP BACK.
A. I GUESS IT WAS SOMEWHERE RIGHT AROUND THERE.
Q. SOMEWHERE RIGHT AROUND HERE THE SHOOTER GOT WITHIN DISTANCE OF MR. MARTIN WHEN THE SHOOTING OCCURRED?
A. I GUESS SO, YEAH.
Q. I'M GONNA SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBITS ONE, TWO, THREE, FOUR, AND FIVE. CAN YOU PLEASE IDENTIFY THESE, SIR?
A. UH-HUH.
Q. OKAY. AND WHAT ARE THESE PICTURES OF?
A. THEY'RE PICTURES OF THE LOUNGE.
Q. AND THAT'S WHERE EVERYTHING HAPPENED THAT NIGHT?
A. YES, SIR (HANDING).
Q. AND...

MR. CAMPBELL: YOUR HONOR, MAY I HAVE THE WITNESS STEP OFF THE STAND, PLEASE?

THE COURT: CERTAINLY.

(WITNESS LEAVES STAND.)

BY MR. CAMPBELL:

Q. MR. VANCE, IF YOU WILL STAND RIGHT THERE. THESE ARE PICTURES OF STATE'S ONE THROUGH FIVE. CAN YOU PLEASE IDENTIFY TO THE LADIES AND GENTLEMEN OF THE JURY -- I'LL LET YOU HOLD THIS -- WHERE YOU WERE WHEN THE SHOOTING OCCURRED?

A. I WAS BACK ON THE BACK SIDE.

THE COURT: LET'S SEE. MR. CAMPBELL, LET'S SEE IF WE CAN SET THE EXHIBIT UP AND BE SURE THE WITNESS IS TESTIFYING TOWARDS THE -- IT WOULD PROBABLY BE BETTER IF YOU STAND ON THE OTHER SIDE.

MR. CAMPBELL: MR. VANCE, IF YOU WOULD JUST STEP OVER HERE.

THE COURT: LET'S SEE. ALL RIGHT. THAT'S GOOD. STAY THERE. WHAT WE WANT YOU TO BE ABLE TO DO IS TO TALK TOWARDS THE COURT REPORTER SO SHE CAN SEE YOUR MOUTH, YOUR LIPS MOVING, AS WELL AS TO THE JURY.

BY MR. CAMPBELL:

Q. NOW, MR. VANCE, WHERE WERE YOU STANDING IN THESE PICTURES, WHEN WE SHOWED YOU STATE'S ONE THROUGH FIVE, WHERE EXACTLY WERE YOU STANDING WHEN THE SHOOTING OCCURRED?

A. SOMEWHERE IN THAT AREA THERE (INDICATING).

Q. AND WHERE DID THE SHOOTING TAKE PLACE IN THE PARKING LOT AREA?

A. I GUESS SOMEWHERE BACK IN THERE (INDICATING).

THE COURT: YOU NEED TO SPEAK UP SO EVERYONE CAN HEAR YOU.

THE WITNESS: BACK IN HERE.

THE COURT: YES, SIR.

//

BY MR. CAMPBELL:

Q. ARE YOU REFERRING TO THE RIGHT SIDE OF THE BUILDING AS YOU ARE FACING IT?

A. FROM THE RIGHT.

Q. WHICH WAY DID THE SHOOTER COME FROM, DO YOU RECALL?

A. FROM THE BACK SIDE.

Q. SO HE CAME FROM BACK AROUND HERE (INDICATING)?

A. YEAH.

Q. IS THAT THE WAY HE LEFT, ALSO?

A. YEAH, RIGHT.

MR. CAMPBELL: IF YOU WILL PLEASE TAKE THE STAND.

(WITNESS RESUMES STAND.)

MR. CAMPBELL: COURT'S INDULGENCE, PLEASE.

(THERE WAS A PAUSE IN THE PROCEEDINGS.)

MR. CAMPBELL: MR. VANCE, THAT'S ALL THE QUESTIONS I HAVE. PLEASE ANSWER ANY QUESTIONS MR. GAMBLE MAY HAVE.

CROSS-EXAMINATION BY MR. GAMBLE:

Q. WHY DO THEY CALL YOU SHOES?

A. WELL, I WEAR A LOT OF SHOES.

Q. LIKE THOSE SNAKE SKINS YOU GOT ON TODAY?

A. THEM AND OTHERS.

Q. ALL RIGHT. YOU STOPPED MR. CAMPBELL WHEN HE WAS

RIGHT ABOUT HERE (INDICATING)?

A. YES, SIR.

Q. WOULD YOU JUDGE THAT TO BE ROUGHLY EIGHT FEET? IF YOU TOOK AN EIGHT-FOOT SHEET OF PLYWOOD AND LAID IT HERE BETWEEN YOU AND I, WOULD WE BE ABOUT EIGHT FEET APART?

A. THAT'S SOMEWHAT ACCURATE, I GUESS I WOULD SAY.

Q. NOW, YOU GAVE A STATEMENT TO THE POLICE OFFICERS, DIDN'T YOU? OFFICER REEVES?

A. UH-HUH. YES, SIR.

Q. OKAY. AND YOU SAID THAT YOU SAW, IN THAT STATEMENT, A LONG SILVER PISTOL. I CAN GIVE YOU A COPY OF IT IF YOU WANT TO REFRESH YOUR MEMORY.

A. IT MIGHT HAVE BEEN.

Q. AND YOU SAID THAT WHOEVER DID THIS WAS 5'6" TO 5'7" TALL?

A. WELL, I SAID WE WERE TALKING ABOUT SHORT. IT WOULD BE FOR MY HEIGHT, I GUESS.

Q. YES, BUT YOU INDICATED 5'6", 5'7". HERE. PUT YOUR READING GLASSES BACK ON.

IS THAT THE STATEMENT YOU MADE?

A. OKAY. CORRECT.

Q. IS THAT THE STATEMENT YOU GAVE THE OFFICER?

A. THAT'S CORRECT.

Q. AND IT SAYS 5'6" OR 5'7"?

A. THAT'S CORRECT.
Q. ALL RIGHT. AND WEARING THE RED JACKET?
A. A HOOD, I THINK IT WAS A JACKET, YEAH.
Q. A RED JACKET?
A. YEAH.
Q. HOW FAR WERE YOU FROM HIM WHEN YOU DID THIS IDENTIFICATION?
A. I WASN'T CLOSE. LIKE I SAY, I HAD MY BACK TURNED SO I JUST SEEN HIM COME UP AROUND THE BUILDING AND JUST CAUGHT THE COLOR JACKET HE HAD ON -- SAW THE COLOR OF THE JACKET HE HAD ON.
Q. YOU SAID YOU WERE WITH YOUR COUSIN?
A. I BEG YOUR PARDON?
Q. DID YOU SAY AT FIRST THAT YOU WERE STANDING WITH YOUR COUSIN?
A. WITH MY COUSIN, TALKING TO HIM, YEAH.
Q. WHAT IS YOUR COUSIN'S NAME?
A. LATHAN VANCE.
Q. WOULD HE BE THE SAME AS JAMES LATHAN CLINKSCALES?
A. NO, SIR.
Q. DO YOU KNOW JAMES LATHAN CLINKSCALES?
A. DO I KNOW -- I'VE HEARD OF HIM.
Q. OKAY. NOW, YOU WERE DRIVING A WHITE CADILLAC?
A. YES, SIR.
Q. AND YOU WERE WEARING A WHITE DERBY?

A. YES, SIR.
Q. AND A CAMEL COAT, CAMEL-COLORED COAT?
A. UH-HUH.
Q. ALL RIGHT. HOW MANY SHOTS DID YOU HEAR?
A. THREE.
Q. AND JUST BEFORE THESE SHOTS, WHAT WERE SAMMY MARTIN AND MS. BROWNLEE DOING?
A. THEY WERE FUSSING.
Q. FUSSING?
A. YEAH.
Q. AND COULD YOU SEE MS. BROWNLEE?
A. YES. I WAS SITTING WITH HER AT THE TABLE, AS A MATTER OF FACT.
Q. I KNOW THAT, BUT I'M TALKING ABOUT OUTSIDE.
A. AT THE MOMENT, YEAH.
Q. THEY WERE STANDING SIDE BY SIDE?
A. YEAH.
Q. SHE WASN'T DOWN IN HER CAR?
A. I DIDN'T SEE HER AT THE CAR.
Q. YOU DIDN'T SEE HER IN THE HOOD?
A. IN THE HOOD OF IT, HUH-UH.
Q. NO, YOU DIDN'T SEE THAT?
A. NO, I DIDN'T.
Q. BUT THEY WERE STILL FUSSING WHEN THESE POP-POP-POPS CAME?

A. YEAH.
Q. AND WAS IT A HEATED DISCUSSION?
A. I CAN'T REALLY SAY.
Q. SIR?
A. I CAN'T REALLY SAY.
Q. BUT YOU COULD HEAR IT FROM WHERE YOU WERE?
A. NO, I COULD NOT. I COULDN'T HEAR THE FUSSING ARGUMENT; NO, I COULDN'T.
Q. BUT YOU COULD SEE WHAT THEY WERE DOING?
A. YEAH, I COULD.
Q. AND FROM WHAT YOU SAW, YOU GATHERED THEY WERE FUSSING STILL?
A. RIGHT.
Q. ALL RIGHT. THANK YOU.

MR. GAMBLE: EXCUSE ME JUST A MINUTE, YOUR HONOR.

I MAY BE THROUGH, MR. VANCE, BUT WAIT JUST A MINUTE.

THE WITNESS: OKAY.

(COUNSEL CONFER.)

MR. GAMBLE: I HAVE NOTHING FURTHER.

MR. CAMPBELL: JUST A COUPLE.

REDIRECT EXAMINATION BY MR. CAMPBELL:

Q. MR. VANCE, WHEN YOU WALKED OUTSIDE, WERE YOU PAYING CLOSE ATTENTION TO WHAT WAS GOING ON BETWEEN

MS. BROWNLEE, SALLY; AND MR. MARTIN?

A. NO, I WAS NOT.

Q. AND HOW LONG TIME WISE DID YOU GET A CHANCE -- DID YOU GET A LOOK AT THE SHOOTER IN THIS CASE?

A. I DIDN'T GET A CHANCE TO LOOK AT HIM.

Q. I DIDN'T UNDERSTAND YOU.

A. I DID NOT GET A CHANCE TO LOOK AT HIM.

Q. YOU JUST GOT A GLANCE AT HIM?

A. JUST FROM THE VIEW OF PASSING BACK THROUGH, JUST...

Q. JUST A SPLIT SECOND?

A. PRETTY MUCH.

MR. CAMPBELL: I HAVE NO FURTHER QUESTIONS.

MR. GAMBLE: NOTHING FURTHER.

THE COURT: YOU MAY STEP DOWN, SIR.

THE WITNESS: THANK YOU, SIR.

(WITNESS LEAVES STAND AND LEAVES COURTROOM.)

THE COURT: CALL YOUR NEXT WITNESS.

MR. CAMPBELL: I CALL FRED CHILES.

(WHEREUPON, THE WITNESS WAS SWORN BY THE CLERK.)

THE CLERK: PLEASE STATE YOUR FULL NAME AND SPELL YOUR LAST NAME FOR THE RECORD.

THE WITNESS: FRED CHILES, C-H-I-L-E-S.

THE CLERK: AND YOUR FIRST NAME?

THE WITNESS: FRED.

THE CLERK: THANK YOU.

WHEREUPON,

FRED CHILES,

AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. CAMPBELL:

Q. HOW OLD ARE YOU, MR. CHILES?

A. 36.

Q. AND YOU LIVE HERE IN ANDERSON?

A. GREENVILLE.

Q. GREENVILLE. AND YOU'RE FROM ANDERSON?

A. YEAH.

Q. ARE YOU CURRENTLY EMPLOYED?

A. YES.

Q. AND WHERE DO YOU WORK AT?

A. K AND S COMMUNICATIONS.

Q. OUT OF GREENVILLE?

A. YES.

THE COURT REPORTER: I'M SORRY, I DIDN'T CATCH THAT.

THE WITNESS: K AND S COMMUNICATIONS.

THE COURT REPORTER: THANK YOU.

MR. CAMPBELL: YOU HAVE TO SPEAK UP SO THE LADIES AND GENTLEMEN OF THE JURY CAN HEAR YOU, OKAY?

THE WITNESS: ALL RIGHT.

BY MR. CAMPBELL:

Q. NOW, MR. CHILES, I WANT TO GO AHEAD AND GET IT OUT OF THE WAY. THIS ISN'T THE FIRST TIME YOU HAVE BEEN IN A COURTROOM, IS IT?

A. NO, SIR.

Q. AND, IN FACT, YOU HAVE DONE PRISON TIME; IS THAT RIGHT?

A. YES.

Q. OKAY. AND WHAT DID YOU DO TIME FOR?

A. NUMEROUS THINGS. ASSAULT.

Q. NOW, YOU'VE BEEN CONVICTED OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE; IS THAT CORRECT?

A. YES.

Q. YOU DID TIME ON THAT; IS THAT RIGHT?

A. YES.

Q. SOME SHOPLIFTINGS, BURGLARY; IS THAT RIGHT?

A. YEAH.

Q. GRAND LARCENY?

A. YES.

Q. RECEIVING STOLEN GOODS?

A. YES.

Q. AND HOW OLD WERE YOU WHEN ALL THAT TOOK PLACE?

A. EARLY TEENS.

Q. SO YOU WERE A PERSON WHO HAD WILD TEENAGE YEARS,

IS THAT SAFE TO SAY? IS THAT RIGHT?

A. YEAH.

Q. AND YOU WENT DOWN THE ROAD. YOU WENT TO THE DEPARTMENT OF CORRECTIONS; IS THAT RIGHT?

A. YES.

Q. AND WHEN DID YOU GET OUT?

A. IN '99.

Q. AND THEN YOU CAME BACK TO ANDERSON; IS THAT RIGHT?

A. YES.

Q. NOW, YOU SAY YOU ARE FROM ANDERSON. I WANT TO TALK TO YOU ABOUT, YOU WERE HERE IN ANDERSON ON FEBRUARY 25TH, 2006; IS THAT RIGHT?

A. YES.

Q. DO YOU RECALL THAT DAY?

A. YES.

Q. AND WHY DO YOU RECALL THAT DAY?

A. SOMEBODY GOT KILLED.

Q. AND DID YOU SEE IT HAPPEN?

A. YES.

Q. AND APPROXIMATELY -- DO YOU REMEMBER WHERE IT HAPPENED AT?

A. BOLDEN'S OLD SCHOOL.

Q. BOLDEN'S OLD SCHOOL LOUNGE?

A. YES.

Q. WHAT STREET IS THAT ON?
A. MARKET.
Q. AND THAT'S HERE IN ANDERSON; IS THAT RIGHT?
A. YES.
Q. AND WHAT TIME DID YOU GET DOWN THERE?
A. APPROXIMATELY ABOUT 10:30, 11:00.
Q. AND DID YOU GO BY YOURSELF?
A. WELL, AT THE TIME I WAS WITH A FRIEND OF MINE.
Q. AND DID YOUR FRIEND STICK AROUND OR DID HE LEAVE?
A. HE GOT INTOXICATED AND I TOOK HIM HOME AND CAME BACK.
Q. AND YOU CAME BACK, AND WAS THERE A PRETTY GOOD CROWD UP THERE THAT NIGHT?
A. YEAH.
Q. NOW, WHEN YOU GOT UP THERE, WHAT COLOR JEEP WERE YOU IN?
A. A BLACK S.U.V.
Q. DID YOU EVER AT ANY POINT GO INSIDE THE CLUB THERE?
A. NO, SIR, I WAS JUST SITTING OUTSIDE THERE IN THE PARKING LOT.
Q. AND WHERE WERE YOU PARKED AT?
A. THE FRONT ENTRANCE.
Q. YOU WERE FACING THE BUILDING ON THE LEFT SIDE OR RIGHT SIDE?

A. IT WOULD BE THE RIGHT SIDE.
Q. BACK TOWARDS THE CREEK SIDE?
A. YES.
Q. AND WHILE YOU WERE THERE, DID YOU SEE -- DID YOU KNOW SAMMY MARTIN?
A. YES.
Q. AND DID YOU SEE HIM ARRIVE AT THE CLUB?
A. YES.
Q. DO YOU KNOW APPROXIMATELY WHAT TIME YOU SAW HIM?
A. HE HAD CAME EARLIER, AND THEN HE LEFT AND CAME BACK.
Q. AND YOU SAW HIM COME BACK?
A. YES.
Q. AND WAS HE BY HIMSELF WHEN HE CAME BACK?
A. YEAH.
Q. WHAT KIND OF COLOR VEHICLE OR TYPE OF VEHICLE WAS HE DRIVING, DO YOU RECALL?
A. ALL I REMEMBER, IT WAS A BUICK.
Q. DO YOU RECALL WHAT COLOR IT WAS?
A. KIND OF GRAY-LOOKING.
Q. AND WHEN YOU GOT THERE, DID YOU SEE HIM -- WHAT DID YOU SEE HIM DO?
A. HE HAD WENT IN THE CLUB AND THEN CAME BACK OUT. HE WAS JUST HOLLERING WHEN HE CAME BACK OUT.
Q. WAS ANYBODY WITH HIM WHEN HE CAME OUT?

A. NO.
Q. AND AT ANY POINT DID YOU SEE MS. BROWNLEE?
A. YEAH, SHE WAS ALREADY AT THE CLUB.
Q. SO SHE CAME OUT FIRST; IS THAT RIGHT?
A. YEAH.
Q. DO YOU KNOW HER AS ANGELA BROWNLEE?
A. I JUST KNOW HER AS ANGIE.
Q. DO YOU KNOW HER BY ANY OTHER NAMES?
A. NO.
Q. AND WHEN YOU SAW HER COME OUT, WHERE WAS MR. MARTIN?
A. OVER BY HIS CAR, HE WAS JUST WALKING TO HIS CAR.
Q. HE CAME OUT AFTER HER?
A. YES.
Q. AND HOW WAS HE ACTING TOWARDS HER?
A. HE JUST KEPT MAKING STATEMENTS: I TOLD YOU I'D CATCH YOU.
Q. I COULDN'T HEAR YOU.
A. HE JUST KEPT MAKING STATEMENTS: I TOLD YOU I'D CATCH YOU. BUT HE WASN'T PHYSICALLY FIGHTING HER OR NOTHING.
Q. BUT HE WAS FUSSING; IS THAT RIGHT?
A. YES.
Q. AND IMPLIED TO YOU HE THOUGHT HE MAY HAVE CAUGHT HER CHEATING ON HIM?

A. YEAH, I MEAN, THAT SHE WAS STEPPING OUT ON HIM.
Q. AND AT THAT POINT DID SHE ARGUE BACK WITH HIM OR ANYTHING?
A. NO.
Q. AND WHERE DID SHE GO?
A. SHE WENT OVER TO HER CAR.
Q. AND WHERE WAS THAT PARKED IN RELATIONSHIP TO YOUR CAR?
A. APPROXIMATELY SIX FEET FROM MY CAR, SIX TO EIGHT FEET FROM MY CAR.
Q. AND WAS SHE ABLE TO DRIVE OFF?
A. NO, SIR. HER CAR WOULDN'T START.
Q. SIR?
A. HER CAR WOULDN'T START.
Q. IT WOULDN'T START?
A. NO.
Q. AND WHAT DID HE DO, MR. MARTIN?
A. HE WENT OVER TO HER CAR. WE HAD PUT THE HOOD UP ON HER CAR BECAUSE SHE HAD ASKED ME FOR SOME BOOSTER CABLES WHILE I WAS SITTING THERE, AND I GOT OUT AND ASKED HER WHAT THE PROBLEM WAS, AND SHE SAID: I NEED SOME BOOSTER CABLES.
Q. DID YOU HAVE ANY?
A. NO. WE WERE JUST STANDING THERE TALKING.
Q. AND DID MR. MARTIN PULL HIS CAR AROUND?

A. NO, NO. IT WAS JUST STILL PULLED TO THE SIDE RIGHT THERE.

Q. BUT HE PULLED HIS CAR AROUND TO HERS?

A. EVENTUALLY HE DID. I MEAN, NOT RIGHT THEN, BUT EVENTUALLY HE DID.

Q. NOT RIGHT THEN? AT SOME POINT HE PULLED HIS CAR NEXT TO HERS?

A. YEAH.

Q. AND HOW WAS HE ACTING TOWARDS HER AT THIS POINT IN TIME?

A. JUST TRYING TO GET HER CAR STARTED.

Q. AND TRYING TO LEAVE; IS THAT RIGHT?

A. YEAH.

Q. AND WHILE YOU WERE WITNESSING THIS, WHAT, IF ANYTHING, DID YOU SEE?

A. WHILE WE WAS TRYING TO -- TALKING ABOUT BOOSTER CABLES?

Q. YES, SIR.

A. I MEAN, WE WERE STANDING LIKE -- IT WAS ME AND JANICE -- NO -- ME AND SAMMY AND JANICE, AND THE NEXT THING I HEARD, I HEARD, PSSST, PSSST, BOOM, BOOM, BOOM. I LOOKED AROUND, I SEEN BUSTER WITH HIS COAT LIKE THAT RIGHT OVER HIS FACE.

Q. I'M GONNA STEP BACK. HOW CLOSE TO MR. MARTIN WERE YOU WHEN HE WAS SHOT AND KILLED?

A. THREE TO FOUR FEET. HE ALMOST FELL ON ME.
Q. SO HE WAS AS CLOSE TO ME -- TELL ME WHEN TO STOP.
A. COME FURTHER. RIGHT THERE.
Q. ABOUT THIS CLOSE TO YOU WHEN HE WAS SHOT?
A. YEAH.
Q. AND DID YOU SEE ANY TYPE OF WEAPONS OR GUNS OR ANYTHING OR KNIVES IN HIS HANDS?
A. WELL, WHEN I HEARD HIM SAY, PSSST, PSSST, PSSST, I JUST LOOKED UP AND SEEN A BIG SILVER PISTOL, BLACK LOOKING SILVER.
Q. AND WHEN YOU ARE TALKING ABOUT THE LITTLE WHISTLE SOUND, WHO WAS DOING THAT?
A. BUSTER.
Q. YOU SAY "BUSTER" AND YOU'RE POINTING WITH YOUR EYES. WHO ARE YOU REFERRING TO?
A. THE DEFENDANT.
Q. THE MAN RIGHT HERE?
A. YEAH.
Q. WHAT WAS BUSTER WEARING THAT NIGHT?
A. I THINK HE HAD A BLACK SWEATBAND AROUND HIS HEAD.
Q. WHAT KIND OF JACKET -- DID HE HAVE A JACKET ON?
A. LIKE A BLACK JACKET.
Q. DID IT HAVE A HOOD OR NO HOOD?
A. IT DIDN'T LOOK LIKE HE HAD A HOOD ON IT.
Q. I'M SORRY, I COULDN'T HEAR YOU.

A. IT DIDN'T LOOK LIKE HE HAD A HOOD ON IT.
Q. HE HAD SOMETHING OVER HIS HEAD?
A. I JUST SEEN HIM PUT HIS COAT UP OVER HIS FACE AFTER HE DONE IT.
Q. AND YOU SAW THE GUN; IS THAT RIGHT?
A. YES.
Q. AND DO YOU KNOW WHAT TYPE OF GUN IT WAS?
A. LIKE A .357. IT WAS A BIG GUN.
Q. IT WAS A BIG GUN? DID IT HAVE A SHORT BARREL, LONG BARREL?
A. LONG BARREL.
Q. AND I THINK YOU JUST SAID IT WAS -- DID YOU SAY SILVER WITH BLACK ON IT?
A. IT SEEMED LIKE IT WAS SILVER AND BLACK.
Q. AND WAS IT A REVOLVER TYPE OR A SEMIAUTOMATIC, DO YOU KNOW?
A. IT WAS A REVOLVER.
Q. NOW, HOW MANY SHOTS DID YOU HEAR?
A. THREE.
Q. AND DID YOU ACTUALLY SEE THE SHOOTING?
A. YEAH.
Q. AT ANY POINT WAS THERE ANY WORDS BETWEEN THIS MAN, BUSTER SMITH, JWAN SMITH, AND MR. MARTIN?
A. NO. HE JUST GOT HIS ATTENTION BY PSSST, PSSST, PSSST.

Q. AND AT ANY POINT WHILE YOU WERE AT THE CLUB DID YOU OBSERVE MR. MARTIN -- DID MR. MARTIN HAVE ANY ALTERCATION OR FIGHT BETWEEN HIMSELF AND JWAN SMITH?

A. NO.

Q. NOW, AFTER THE SHOOTING TOOK PLACE, WHICH WAY DID MR. SMITH GO?

A. BEHIND THE CLUB.

Q. TO THE BACK, TOWARDS THE BACK SIDE?

A. YEAH.

Q. OKAY. AND DID YOU SEE HIM LEAVE?

A. IN A CAR OR JUST WALKING?

Q. EITHER WAY.

A. I JUST SEEN HIM GO AROUND THE CLUB.

MR. GAMBLE: I DION'T HEAR THE ANSWER.

MR. CAMPBELL: HE SAID HE JUST SAW HIM GO AROUND THE CLUB.

MR. GAMBLE: OKAY.

BY MR. CAMPBELL:

Q. NOW, AFTER THE SHOOTING TOOK PLACE, CAN YOU DESCRIBE WHAT THE PEOPLE IN THE AREA WERE DOING? WHAT WERE THEY DOING?

A. EVERYBODY WAS TRYING TO GET HIM, GET HIM TO THE HOSPITAL.

Q. WAS EVERYBODY STAYING PUT OR WERE PEOPLE LEAVING?

A. I THINK MOST WERE LEAVING, BUT SOME PEOPLE WAS

TRYING TO HELP HIM.

Q. AND TO YOUR KNOWLEDGE DID AN AMBULANCE ARRIVE?

A. ABOUT 30 MINUTES LATER.

Q. OKAY. NOW, WHILE YOU WERE OUTSIDE AND YOU OBSERVED ALL OF THIS, DID YOU HELP MS. BROWNLEE, SALLY?

A. YEAH, I TOOK HER UP TO SAMMY'S HOUSE, SAM'S SISTER'S HOUSE.

Q. WHAT'S HER NAME?

A. DOT.

Q. AND YOU TOOK HER UP THERE, AND WHAT DID YOU DO AT THAT POINT IN TIME?

A. SHE WENT TO THE DOOR AND KNOCKED ON THE DOOR AND TOLD HER HER BROTHER HAD BEEN SHOT. I BROUGHT BOTH OF THEM BACK DOWN TO THE CLUB.

Q. AND YOU WENT YOURSELF BACK DOWN TO THE CLUB?

A. YEAH.

Q. AND WHEN YOU GOT DOWN THERE, DID YOU TALK TO LAW ENFORCEMENT?

A. THEY DIDN'T WANT ANYBODY TO LEAVE UNTIL EVERYBODY TALKED TO THEM, SO I ENDED UP TALKING TO STEVE.

Q. AND NOBODY FORCED YOU TO GO BACK DOWN THERE; IS THAT RIGHT?

A. NO.

Q. AND DID YOU FIGURE YOU WOULD BE TALKED TO ONCE YOU GOT DOWN THERE?

A. YEAH, BECAUSE THEY DIDN'T WANT NOBODY TO LEAVE.
Q. AND DID YOU TALK TO DETECTIVE REEVES AT THAT POINT IN TIME?
A. YEAH.
Q. AND WHAT NAME DID YOU TELL HIM THAT YOU SAW HAD DONE THE SHOOTING?
A. I SAID FROM THE STREET NAME, I CALL HIM BUSTER.
Q. AND HOW LONG HAVE YOU KNOWN HIM?
A. I HAD HEARD OF HIM, SO, AROUND TOWN.
Q. DID YOU SEE HIM AROUND TOWN?
A. YEAH, I HAVE SEEN HIM.
Q. WHEN YOU PASSED HIM, DID YOU CALL OUT TO HIM?
A. PROBABLY NOT TO ME, BUT I HEARD OF HIM, HIM AND HIS BROTHER.
Q. AND HOW WOULD YOU DESCRIBE MR. SMITH?
A. I MEAN, I KNOW HIM, KNOW HIM TO BE A TROUBLEMAKER.
Q. DO YOU KNOW HOW OLD HE IS?
A. NO.
Q. AND HOW WAS HE WEARING HIS HAIR THAT NIGHT, DO YOU RECALL?
A. TWISTED.
Q. A LONG TWIST, SHORT TWIST?
A. SHORT TWIST.
Q. LITTLE SHORT HAIR?

A. YEAH.
Q. AND HE'S NOT TALL, IS HE?
A. NO.
Q. DO YOU KNOW HOW TALL HE IS?
A. I'D SAY PROBABLY 5'9".
Q. HOW TALL?
A. I WOULD SAY APPROXIMATELY 5'9", JUST THE LOOKS OF HIM.
Q. AT ANY POINT WHEN SALLY AND SAMMY WERE FIGHTING OR FUSSING OUTSIDE, DID ANYBODY AT ANY POINT STEP IN BETWEEN THE TWO TO BREAK IT UP?
A. THEY WEREN'T FIGHTING SAMMY; THEY WEREN'T FIGHTING.
Q. OR FUSSING AT ONE ANOTHER?
A. NO, NOBODY JUMPED IN.
Q. NOBODY JUMPED IN BETWEEN THEM?
A. HUH-UH (SHOOK HEAD).
Q. DO YOU KNOW WHERE MR. SMITH LIVES?
A. NO.
Q. AND AT ANY POINT THAT NIGHT DID YOU SEE MR. SMITH AND MR. MARTIN HAVE ANY FIGHT OR ARGUMENT?
A. NO.
Q. DO YOU KNOW MR. SMITH'S MOTHER?
A. I HEARD HER, SEEN HER IN NIGHTCLUBS.
Q. DID YOU SEE MR. MARTIN GET INTO A FIGHT OR

ALTERCATION OR A CONFRONTATION WITH ANYBODY ELSE BESIDES SALLY?

A. HUH-UH.

Q. THAT'S "NO"?

A. NO, I DIDN'T SEE HIM.

MR. CAMPBELL: COURT'S INDULGENCE.

(THERE WAS A PAUSE IN THE PROCEEDINGS.)

BY MR. CAMPBELL:

Q. NOW, YOU SAID YOU WERE CLOSE TO -- MR. MARTIN FELL RIGHT WHERE YOU WERE STANDING. WHEN THE GUN WAS FIRED, DID YOU SEE ANY FIRE COME OUT OF THE GUN?

A. YEAH.

Q. SO YOU WERE REAL CLOSE TO SEE THE MUZZLE FLASH?

A. YEAH.

Q. AND WHAT WAS MS. BROWNLEE DOING AT THAT TIME; DID YOU SEE WHAT SHE -- OBSERVE WHAT SHE WAS DOING?

A. SHE WAS JUST AS SHOCKED AS I WAS IT HAPPENED.

Q. WAS SHE PAYING ATTENTION TO WHAT WAS GOING ON OR WAS SHE MESSING WITH HER CAR?

A. WELL, IT HAPPENED SO FAST, I MEAN IT JUST -- SHE WAS SHOCKED JUST LIKE I WAS.

Q. AND NOTHING WAS SAID BETWEEN THE SHOOTER, MR. SMITH, AND MR. MARTIN WHEN IT HAPPENED?

A. NO MORE THAN WHAT HE SAID TO GET HIS ATTENTION.

MR. CAMPBELL: MR. CHILES, PLEASE ANSWER ANY

QUESTIONS MR. GAMBLE MAY HAVE.

CROSS-EXAMINATION BY MR. GAMBLE:

Q. MR. CHILES, YOU GAVE A STATEMENT TO OFFICER REEVES THAT VERY MORNING, DIDN'T YOU?

A. MORNING OR NIGHT. I THINK I TALKED TO HIM THAT NIGHT.

Q. THAT NIGHT? FEBRUARY 26TH? IS THAT RIGHT?

A. YES.

Q. ALL RIGHT. AND AT THAT TIME, ON PAGE TWO OF THIS STATEMENT THAT YOU MADE, YOU INDICATED THE COLOR OF THAT REVOLVER AS BEING A BLACK-COLORED REVOLVER, DIDN'T YOU? I SHOW YOU THAT TO REFRESH YOUR MEMORY.

A. YEAH. BUT I ALSO TALKED TO HIM AGAIN.

Q. BUT YOU IDENTIFIED IT THAT NIGHT AS A BLACK-COLORED REVOLVER, RIGHT?

A. YES.

Q. YES OR NO?

A. YES.

Q. OKAY. NOW, YOU LATER WENT TO THE POLICE DEPARTMENT, DIDN'T YOU, ON 2-26 AT 6:15 THAT NIGHT?

A. I DIDN'T GO TO THE POLICE DEPARTMENT.

Q. DID THEY COME TO YOU?

A. YEAH, CAME TO MY HOUSE.

Q. DID THEY GIVE YOU A LINE-UP THAT LOOKS LIKE THIS?

A. YEAH.

Q. AND DID YOU IDENTIFY A PERSON ON THAT LINE-UP AS BEING THE SHOOTER AT THAT NIGHT AT THE OLD SCHOOL LOUNGE?

A. THAT AIN'T THE LINE-UP HE GAVE ME.

Q. HUH?

A. THAT AIN'T THE ONE HE GAVE ME.

Q. IS THAT YOUR INITIALS ON THAT PICTURE?

A. THAT AIN'T THE ONE HE GAVE ME.

Q. SIR?

A. THAT AIN'T THE ONE HE GAVE ME.

Q. ARE YOU FRED CHILES?

A. YEAH.

Q. IS THIS YOUR SIGNATURE?

A. YEAH. BUT THAT AIN'T THE ONE HE GAVE ME.

Q. IS THIS YOUR INITIAL RIGHT HERE?

A. YEAH. HE GAVE ME THAT LINE-UP TO IDENTIFY THE GUY WHO WAS DRIVING BECAUSE I KNEW THE GUY WHO WAS DRIVING. THAT'S WHAT THAT LINE-UP IS FOR.

Q. WELL ---

THE COURT: IF YOU WOULD, MR. GAMBLE, IDENTIFY THE DOCUMENT. IS IT AN EXHIBIT?

MR. GAMBLE: IT'S GONNA BE MARKED FOR IDENTIFICATION.

THE COURT: WELL, THAT'S JUST IT, SO THE RECORD WILL REFLECT WHAT YOU ARE REFERRING TO.

MR. GAMBLE: YES, SIR.

(DEFENDANT'S EX. # 1, PHOTO I.D. AFFIDAVIT, WAS MARKED FOR IDENTIFICATION.)

BY MR. GAMBLE:

Q. ALL RIGHT. YOU SAY YOU WERE IDENTIFYING TURK?

A. RIGHT.

Q. ALL RIGHT. AND YOU SAID IN YOUR STATEMENT THAT TURK WAS DRIVING A BLACK JEEP CHEROKEE; IS THAT CORRECT?

A. YEAH.

Q. AND WHOEVER FIRED THIS SHOT INTO SAMMY MARTIN GOT IN THE PASSENGER'S SIDE OF THAT BLACK JEEP CHEROKEE?

A. YEAH.

Q. AND THAT'S STILL WHAT YOU SAW?

A. NO. LATER ON I'LL TELL YOU WHAT HAPPENED, THOUGH. HE DIDN'T GET IN THAT CAR.

Q. WAIT A MINUTE NOW. YOU MEAN YOU LIED TO THE POLICE OFFICER?

A. NO, I DIDN'T LIE TO THE POLICE.

Q. YOU SAID IT DIDN'T HAPPEN THAT WAY.

A. THAT'S ALL THE INVESTIGATION ---

Q. BUT YOU WERE THERE.

A. I WAS -- I'M TELLING WHAT I SEEN.

Q. YOU SAW JWAN SMITH, BUSTER AS YOU CALL HIM, GET IN A BLACK JEEP CHEROKEE IN THE PASSENGER'S SIDE, IS THAT WHAT YOU ARE SAYING?

A. YES.
Q. AND DID THAT HAPPEN?
A. YEAH.
Q. OKAY. SO HE LEFT WITH TURK.
A. YES.
Q. DO YOU KNOW TURK'S REAL NAME?
A. NO, I DON'T KNOW HIS REAL NAME.
Q. HUH?
A. NO, I DON'T KNOW HIS REAL NAME.
Q. ALL RIGHT. HE LEFT WITH A GUY NAMED TURK AND GOT IN THE PASSENGER'S SIDE OF TURK'S JEEP?
A. YEAH.
Q. OKAY. WERE YOU IN YOUR CAR?
A. AT WHAT TIME?
Q. WHEN THIS HAPPENED.
A. WHEN WHAT HAPPENED? AT WHAT TIME WHAT HAPPENED?
Q. WHEN THE SHOOTING OCCURRED, YOU WERE EITHER IN YOUR CAR OR OUTSIDE YOUR CAR.
A. OKAY. I WAS OUTSIDE MY CAR WHEN THE SHOOTING HAPPENED.
Q. NO, I MEAN AT THE TIME THE SHOTS WERE FIRED.
A. I WAS OUTSIDE MY CAR.
Q. OUTSIDE YOUR CAR?
A. YES.
Q. HOW CLOSE WAS YOUR CAR TO THE CAPRICE CHEVROLET

WITH THE RUST COLOR?

A. ABOUT SIX TO EIGHT FEET.

Q. HUH?

A. SIX TO EIGHT FEET.

Q. ALL RIGHT. AND YOU SAY YOU WERE ABOUT TWO FEET FROM SAMMY MARTIN WHEN HE GOT SHOT?

A. RIGHT. IN FACT, HE FELL ON ME. HE ALMOST FELL ON ME.

Q. SO YOU WERE STANDING TO THE BACK, TO THE BACK SIDE, BACK PASSENGER'S SIDE OF THIS CAPRICE?

A. NO.

Q. WELL, WHERE WERE YOU?

A. THAT'S WHAT I WAS TELLING YOU. I WAS STANDING AT THE FRONT SIDE WHERE THE BATTERY IS AT IN THE CAR.

Q. SO YOU HAD A CLEAR VIEW OF LOOKING AT THE BATTERY IN THAT CAR?

A. I HAD A CLEAR VIEW OF EVERYTHING THAT HAPPENED.

Q. AND WAS MS. BROWNLEE DOWN UNDER THE HOOD OF THE CAR WORKING ON IT WHEN THE SHOT WAS FIRED?

A. YES.

Q. SHE WAS?

A. HER HEAD WAS BENT OVER UP UNDER THE HOOD.

Q. OKAY.

MR. GAMBLE: I DON'T HAVE ANYTHING FURTHER.

THE COURT: RE-EXAM?

REDIRECT EXAMINATION BY MR. CAMPBELL:

Q. MR. CHILES, YOU TALKED TO DETECTIVE REEVES THE NEXT DAY, ON FEBRUARY THE 26TH; IS THAT RIGHT?

A. YEAH.

Q. ALL RIGHT. AND ON THAT DAY HE ASKED YOU TO -- ON THAT DAY YOU IDENTIFIED WHO POSSIBLY MR. SMITH DROVE OFF WITH, RODE OFF WITH?

A. YES.

Q. AND THAT'S WHAT HE SHOWED YOU RIGHT THERE ---

A. RIGHT.

Q. --- IN DEFENDANT'S EXHIBIT ONE; IS THAT CORRECT?

A. YEAH.

Q. AND YOU IDENTIFIED TURK OR JAMES PICKENS IN THAT CASE; IS THAT RIGHT?

A. YEAH.

Q. OF COURSE, YOU WERE VOLUNTARILY COOPERATING IN THIS, WEREN'T YOU?

A. YEAH.

Q. YOU TALKED TO MR. REEVES, YOU SAID THAT WASN'T THE ONE HE SHOWED YOU. BUT HE SHOWED YOU ANOTHER LINE-UP AT SOME POINT IN TIME; ISN'T THAT RIGHT?

A. YEAH.

MR. CAMPBELL: I WILL MARK THIS AS STATE'S EXHIBIT 16.

(STATE'S EX. # 16, PHOTO IDENTIFICATION,

4-17, WAS MARKED FOR IDENTIFICATION.)

BY MR. CAMPBELL:

Q. MR. CHILES, I WANT TO SHOW YOU WHAT'S BEEN MARKED FOR EXHIBIT -- FOR IDENTIFICATION AS STATE'S EXHIBIT 16. DO YOU KNOW WHAT THAT IS, SIR?

A. THAT'S THE PHOTO IDENTIFICATION.

Q. OKAY. AND WHAT DATE WAS THIS TAKEN ON?

A. THE 17TH.

Q. AND WHAT MONTH?

A. IT SAYS "4."

Q. SO APRIL 17TH IS WHEN YOU SAW -- YOU TALKED TO DETECTIVE REEVES AGAIN; IS THAT RIGHT?

A. (NODDED HEAD.)

Q. OKAY. AND ON THAT DAY HE SHOWED YOU A PHOTO LINE-UP OF A POSSIBLE SUSPECT IN THE SHOOTING; IS THAT RIGHT?

A. YES.

Q. AND DID YOU HAVE A CHANCE TO OBSERVE OR LOOK AT THIS PHOTO LINE-UP?

A. YES.

Q. AND WERE YOU ABLE TO PICK OUT THE PERSON THAT YOU WITNESSED SHOOT SAMMY MARTIN?

A. YES.

Q. AND WHAT NUMBER DID YOU PICK OUT?

A. TWO.

Q. AND WHO IS THAT?
A. BUSTER.
Q. AND THAT'S THE MAN SITTING RIGHT THERE IN THE BLUE SHIRT; IS THAT RIGHT?
A. THAT'S WHO I SEEN.
Q. AND THIS IS ABOUT SIX WEEKS AFTER THE SHOOTING OCCURRED; IS THAT RIGHT?
A. YES.
Q. AND YOU STILL REMEMBERED WHAT HAD HAPPENED?
A. YES, SIR.
Q. DURING THAT TIME DID YOU HAVE AN OPPORTUNITY TO THINK ABOUT THE EVENTS THAT TOOK PLACE AND WHAT HAD HAPPENED?
A. I DIDN'T HAVE NO SECOND THOUGHTS ON IT.
Q. OKAY. AND IN THAT STATEMENT DID YOU IDENTIFY WHAT COLOR GUN YOU SAW?
A. YES.
Q. AND WHAT COLOR DID YOU PUT DOWN?
A. SILVER WITH BLACK IN IT.
Q. YOU SAID SILVER AND WHAT?
A. SILVER AND BLACK.
Q. ALL RIGHT. WAS THE HANDLE BLACK, THE BARREL BLACK?
A. I SEEN A LONG SILVER BARREL.
Q. AND IS THE PERSON YOU IDENTIFIED ON FEBRUARY 26,

THIS NUMBER TWO, IS THAT THE PERSON THAT DID THE SHOOTING?

A. NO.

Q. THE PERSON YOU TALKED TO ON THIS, ON STATE'S EXHIBIT 16 IS THE INDIVIDUAL THAT DID THE SHOOTING; IS THAT CORRECT?

A. YES.

MR. CAMPBELL: YOUR HONOR, AT THIS TIME WE MOVE IN THE EXHIBIT, STATE'S EXHIBIT NUMBER 16.

MR. GAMBLE: NO OBJECTION.

THE COURT: WITHOUT OBJECTION, STATE'S EXHIBIT 16 IS ADMITTED.

(STATE'S EXHIBIT # 16 WAS RECEIVED IN EVIDENCE.)

BY MR. CAMPBELL:

Q. MR. CHILES, DID YOU HAVE ANY -- DID YOU EVER HAVE ANY PROBLEMS OR ANYTHING, A BEEF OR ANY FIGHT WITH MR. SMITH?

A. NO, SIR. THAT'S THE FIRST TIME I SEEN HIM IS WHEN I LOOKED AROUND AND SEEN HIM THAT NIGHT.

Q. YOU JUST KNEW OF HIM IN THE COMMUNITY; IS THAT RIGHT?

A. YES, THAT'S RIGHT.

Q. AND YOU VOLUNTARILY WENT BACK DOWN TO TALK TO THE POLICE; IS THAT RIGHT?

A. YEAH. THEY WOULDN'T LET US GO NOWHERE UNTIL WE TALKED TO THEM.

THE COURT REPORTER: I'M SORRY, I COULDN'T HEAR YOU.

THE WITNESS: THEY WOULDN'T LET US GO NOWHERE UNTIL WE TALKED TO THEM.

THE COURT REPORTER: THANK YOU.

MR. CAMPBELL: MR. CHILES, I HAVE NO FURTHER QUESTIONS.

RECROSS-EXAMINATION BY MR. GAMBLE:

Q. IT WAS A -- YOU TOLD THE POLICE OFFICER IT WAS A SILVER REVOLVER WITH BLACK ON IT (HANDING)? IS THAT YOUR STATEMENT?

A. YEAH.

Q. SIR?

A. YEAH.

Q. THAT'S THE STATEMENT YOU GAVE ON FEBRUARY 26TH AT 6:15 AT NIGHT; IS THAT CORRECT?

A. YEAH.

Q. READ ME WHAT IT SAYS THE COLOR OF THE GUN WAS.

A. IT SAYS A BLACK REVOLVER.

Q. SIR?

A. A BLACK REVOLVER.

Q. A BLACK REVOLVER. YOU DIDN'T MENTION SILVER THEN, DID YOU?

A. SILVER, BLACK, WHAT'S THE DIFFERENCE?

Q. ALL RIGHT, THANK YOU. AND YOU KNEW OF BUSTER SMITH FROM THE AREA?

A. JUST HEARING HIS NAME AROUND, I MEAN...

Q. YOU KNEW WHAT HE LOOKED LIKE, DIDN'T YOU?

A. THAT NIGHT WHEN I LOOKED AROUND AND SEEN HIM, I KNOW WHAT HE LOOKED LIKE.

Q. I MEAN BEFORE THAT NIGHT.

A. NO, I'D NEVER SEEN HIM BEFORE THAT NIGHT.

Q. WELL, HOW DID YOU KNOW OF HIM FROM AROUND THAT AREA?

A. JUST HEAR ABOUT HIM, JUST LIKE I HEARD YOUR NAME.

Q. WHAT?

A. JUST LIKE I HEARD YOUR NAME.

Q. BUT YOU HAD JUST HEARD BUSTER SMITH'S NAME.

A. NOT THAT NIGHT. I'D HEARD OF BUSTER.

Q. DID YOU KNOW WHAT HE LOOKED LIKE BEFORE THAT NIGHT?

A. NO.

Q. SO HOW DO YOU KNOW IT WAS BUSTER SMITH?

A. BECAUSE I LOOKED PRACTICALLY IN HIS FACE WHEN HE DONE IT.

Q. ALL RIGHT. AND YOU WERE TWO FEET AWAY?

A. APPROXIMATELY TWO FEET, YEAH.

Q. AND THERE WASN'T ANY ARGUMENT BETWEEN ---

A. NO.
Q. --- SAMMY AND BROWNLEE?
A. NO.
Q. DID YOU KNOW TURK BEFORE YOU IDENTIFIED HIM?
A. YES.
Q. SIR?
A. YEAH, I KNOW TURK.
Q. DO YOU KNOW HIM AS TURK OR BY HIS REAL NAME?
A. JUST TURK.
Q. JUST TURK?
A. YEAH.

MR. GAMBLE: OKAY. I DON'T HAVE ANYTHING FURTHER.

MR. CAMPBELL: NOTHING FURTHER, YOUR HONOR.

THE COURT: ALL RIGHT. YOU MAY STEP DOWN. THANK YOU, SIR.

(WITNESS LEAVES STAND AND LEAVES COURTROOM.)

THE COURT: WOULD COUNSEL APPROACH?

(WHEREUPON, COUNSEL APPROACHED THE BENCH AND CONFERRED WITH THE COURT OUT OF THE PRESENCE OF THE COURT REPORTER AND THE JURY.)

THE COURT: MADAM FORELADY, LADIES AND GENTLEMEN OF THE JURY, I'M GOING TO SUGGEST THAT YOU TAKE A BREAK AT THIS TIME. IF ANYBODY NEEDS TO MAKE A PHONE CALL, PLEASE LET US KNOW AND WE'LL MAKE

ARRANGEMENTS. BUT WE SHOULD BE OUT EVEN A LITTLE BIT PRIOR TO 5:00 TODAY. SO DO TAKE A BREAK. AND IN ABOUT TEN MINUTES OR WHENEVER YOU ARE READY TO COME BACK, WHEN YOU ARE READY TO COME BACK, KNOCK ON THE DOOR AND AT THAT TIME WE WILL CONTINUE THE TRIAL.

EVERYONE ELSE REMAIN SEATED WHILE THE JURY RETIRES FROM THE COURTROOM.

VERY GOOD. THANK YOU VERY MUCH.

(WHEREUPON, THE JURY LEFT THE COURTROOM AT 3:44 P.M.)

THE COURT: LADIES AND GENTLEMEN, IT'S IMPORTANT THAT WHATEVER I TELL THE JURY, THAT THEY HEAR IT. SO THAT'S WHY I ASKED YOU TO STAY SEATED UNTIL THE JURY IS DISMISSED AND OUT OF THE COURTROOM. SO WHEN WE GET TO A POINT WHERE I'M GOING TO RELEASE THE JURY OR LET THEM BE EXCUSED, I WILL ASK THAT YOU NOT MOVE. YOU CAN COME AND GO AS LONG AS YOU DON'T DISRUPT THE PROCEEDINGS. BUT THE MAIN THING IS DON'T GET UP AND LEAVE RIGHT AT THE TIME THERE IS TALKING AND THE JURY IS GETTING READY TO LEAVE AND IS LEAVING. I THANK YOU FOR YOUR COOPERATION.

ALL RIGHT. WE'LL STAND IN RECESS FOR A FEW MINUTES.

(WHEREUPON, A RECESS WAS TAKEN.)

THE COURT: IS THE JURY READY?

THE BAILIFF: READY.

THE COURT: ANYTHING FROM THE STATE BEFORE I BRING THE JURY BACK?

MR. CAMPBELL: NO, YOUR HONOR.

THE COURT: ANYTHING FROM THE DEFENSE?

MR. GAMBLE: NO, YOUR HONOR.

THE COURT: ALL RIGHT. ASK THE JURY TO JOIN US, PLEASE.

(WHEREUPON, THE JURY ENTERED THE COURTROOM AT 4:04 P.M.)

THE COURT: LET THE RECORD SHOW THAT THE JURY AND ALTERNATE ARE IN THE JURY-BOX.

MADAM FORELADY, LADIES AND GENTLEMEN OF THE JURY, WE'LL CONTINUE.

YOU MAY PROCEED.

MR. CAMPBELL: THANK YOU, YOUR HONOR. THE STATE CALLS BASSEN HAILEY.

(WHEREUPON, THE WITNESS WAS SWORN BY THE CLERK.)

THE CLERK: PLEASE STATE YOUR FULL NAME AND SPELL YOUR LAST NAME FOR THE RECORD.

THE WITNESS: BASSEN HAILEY, LAST NAME HAILEY, H-A-I-L-E-Y.

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WHEREUPON,

BASSEN HAILEY,

AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. CAMPBELL:

Q. YOU ARE KNOWN BY A NICKNAME; IS THAT RIGHT?

A. YES, SIR.

Q. AND WHAT DO THEY CALL YOU?

A. SWEET.

Q. SWEET OR SWEET THING?

A. (NODDED HEAD.)

Q. AND YOU LIVE HERE IN ANDERSON; IS THAT RIGHT?

A. YES, SIR.

Q. AND WE'LL GO AHEAD AND GET IT OUT OF THE WAY. YOU HAVE BEEN IN COURT BEFORE. YOU'VE GOT SOME PRIOR CONVICTIONS; IS THAT RIGHT?

A. NOT SIMILAR TO THIS, BUT YES, SIR.

Q. AND YOU WERE CONVICTED OF CARRYING A PISTOL AND POSSESSION OF CRACK BACK IN '03; IS THAT RIGHT?

A. YES, SIR.

Q. AND YOU WERE ALSO CONVICTED OF POSSESSION OF CRACK IN 2006; IS THAT RIGHT?

A. YES, SIR.

Q. NOW, YOU RECALL THE EVENTS THAT TOOK PLACE ON FEBRUARY 25TH, 2006?

A. YES, SIR.
Q. AND DO YOU KNOW WHERE THE OLD SCHOOL LOUNGE IS LOCATED?
A. YES, SIR.
Q. WHERE IS IT?
A. WEST MARKET.
Q. ON MARKET STREET?
A. WEST MARKET.
Q. WEST MARKET STREET HERE IN ANDERSON?
A. YES, SIR.
Q. AND YOU HAVE BEEN DOWN THERE BEFORE?
A. SIR?
Q. YOU HAVE BEEN DOWN TO THAT CLUB BEFORE, HAVEN'T YOU?
A. YES, SIR.
(PEOPLE ENTER COURTROOM.)
BY MR. CAMPBELL:
Q. AND WHAT KIND OF CLUB IS IT?
A. IT'S JUST A CLUB TO ME.
Q. DO THEY SELL ALCOHOL THERE?
A. YES, SIR.
Q. DO THEY SELL FOOD?
A. NOT THAT I KNOW OF.
Q. JUST A DRINKING PLACE?
A. (NODDED HEAD.)

Q. NOW, THAT DAY YOU WERE HANGING OUT WITH SOME OF YOUR FRIENDS AND RELATIVES; IS THAT RIGHT?

A. YES, SIR.

Q. AND WHERE WERE YOU?

A. AT THE OLD SCHOOL LOUNGE.

Q. OKAY. PRIOR TO THAT, BEFORE YOU WENT DOWN TO THE OLD SCHOOL LOUNGE, WHERE WERE YOU?

A. BROWN STREET.

Q. AND WHO WERE YOU WITH?

A. MY BROTHER, ALPHONSO HAILEY; AND MY COUSIN, LATORREY PEARSON.

Q. ANYBODY ELSE?

A. ANOTHER FRIEND. I DON'T KNOW HIS REAL NAME. HIS NICKNAME IS CATFISH.

Q. HIS NICKNAME IS CATFISH?

A. (NODDED HEAD.)

Q. AND YOU WERE DOWN ON BROWN STREET. AND AT SOME POINT DID YOU DECIDE TO GO DOWN TO BOLDEN'S OLD SCHOOL LOUNGE?

A. YES, SIR.

Q. DO YOU RECALL APPROXIMATELY WHAT TIME THAT WAS?

A. NOT EXACTLY.

Q. WAS IT AT NIGHTTIME?

A. YEAH, IT WAS ABOUT MIDNIGHT.

Q. IT WAS LATE?

A. (NODDED HEAD.)
Q. AND THE FOUR OF Y'ALL, DID YOU DRIVE DOWN THERE OR WALK DOWN THERE?
A. WALKED DOWN THERE.
Q. NOW, WHEN YOU WENT DOWN THERE, DID ANY OF Y'ALL CARRY ANY TYPE OF GUNS OR WEAPONS WITH YOU?
A. YES, I HAD A 9 MILLIMETER ON ME.
Q. AND WHAT COLOR WAS IT?
A. ALL BLACK.
Q. AND DID ANYBODY ELSE HAVE A GUN ON THEM?
A. NOT THAT I KNOW OF.
Q. NOW, WHEN YOU GOT TO THE CLUB, DID YOU -- DO YOU KNOW BUSTER SMITH?
A. YES, SIR.
Q. HOW LONG HAVE YOU KNOWN HIM?
A. IT'S BEEN SOME YEARS.
Q. COME AGAIN?
A. IT'S BEEN SOME YEARS.
Q. A LONG TIME?
A. YES, SIR.
Q. IS HE IN THE COURTROOM TODAY?
A. YES, SIR.
Q. WHERE IS HE?
A. RIGHT OVER THERE.
Q. IN THE BLUE SHIRT?

A. YES, SIR.
Q. NOW, WHEN YOU GOT DOWN THERE, DID YOU SEE MR. SMITH?
A. YEAH, I HAD SEEN HIM.
Q. AND WHAT WAS HE DOING?
A. WALKING.
Q. YOU SAID WALKING OR TALKING? I COULDN'T UNDERSTAND YOU.
A. WALKING.
Q. WALKING. AND WAS HE COMING OR GOING?
A. OH, HE WAS COMING.
Q. HE WAS COMING TO THE CLUB?
A. YEAH, YOU CAN SAY THAT. HE WAS RIGHT THERE IN THE PARKING LOT.
Q. AND DID HE TALK TO YOU?
A. YEAH, HE TALKED TO ME.
Q. AND WHAT DID Y'ALL TALK ABOUT?
A. REAL SIMPLE THINGS. HE ASKED ME DID I HAVE ANY MARIJUANA, AND I WAS LIKE, NOPE. THEN HE HAD LEFT.
Q. AND DO YOU KNOW WHERE HE WENT TO?
A. NO.
Q. AND DO YOU KNOW WHERE HE LIVES?
A. YEAH, I KNOW WHERE HE STAYS.
Q. WHERE DOES HE STAY AT?
A. REED COURT, I THINK.

Q. WHAT COLOR IS THE HOUSE?
A. I DON'T KNOW.
Q. DO YOU KNOW WHO HIS MAMA IS?
A. YES, SIR.
Q. WHO'S THAT?
A. JANICE SMITH.
Q. IS SHE IN THE COURTROOM TODAY?
A. YES, SHE'S BACK OVER BEHIND.
Q. BEHIND THE DEPUTY?
A. YES, SIR.
Q. AND WHEN YOU WERE THERE, DID YOU SEE MS. SMITH DOWN THERE?
A. NO, I DIDN'T SEE HER.
Q. NOW, WHILE YOU WERE THERE, AFTER HE CAME UP AND ASKED YOU FOR SOME MARIJUANA, DID HE STAY THERE AND TALK TO YOU ALL?
A. NOT REALLY. HE WALKED OFF.
Q. DID YOU GIVE HIM ANY MARIJUANA?
A. I DIDN'T HAVE ANY.
Q. AND AT THAT POINT WHAT DID YOU DO, OR WHAT WAS GOING ON?
A. THERE WASN'T NOTHING GOING ON. ME AND HIM WAS JUST SITTING THERE. WE WAS JUST STANDING AROUND.
Q. JUST HANGING AROUND AND TALKING?
A. YEAH, JUST HANGING OUT.

Q. DO YOU KNOW SAMMY MARTIN?
A. NO, SIR.
Q. DO YOU KNOW ANGELA BROWNLEE?
A. NO, SIR.
Q. AT SOME POINT DID YOU WITNESS ANY TYPE OF ARGUMENT GOING ON AT THE OLD SCHOOL LOUNGE?
A. I DON'T KNOW IF YOU CAN CALL IT AN ARGUMENT. I SEEN A LITTLE COMMOTION.
Q. OKAY. AND DO YOU KNOW WHO IT WAS BETWEEN?
A. NOT REALLY.
Q. OKAY. BETWEEN A GUY AND A GIRL?
A. A FEMALE AND A MALE.
Q. AND HOW WOULD YOU DESCRIBE THE WOMAN?
A. I COULDN'T DESCRIBE HER, I DIDN'T SEE HER CLOSE UP.
Q. YOU WERE A PRETTY GOOD DISTANCE AWAY FROM HER?
A. YEAH, I WAS A GOOD DISTANCE.
Q. AND WHAT, WHAT WERE THEY DOING; WERE THEY IN THE PARKING LOT OR INSIDE?
A. IN THE PARKING LOT.
Q. OKAY. AND WHAT WERE THEY DOING?
A. I DON'T KNOW. IT LOOKED LIKE THEY WAS HAVING A FEW WORDS. I CAN'T SAY THEY WERE ARGUING BECAUSE I COULDN'T HEAR WHAT WAS SAID FROM WHERE I WAS AT.
Q. WAS THERE MUSIC GOING ON IN THE CLUB?

A. YEAH.
Q. AND WAS IT LOUD?
A. IT WAS LOUD ENOUGH THAT I COULDN'T HEAR THEM.
Q. YOU COULD HEAR IT OUTSIDE WHERE YOU WERE STANDING?
A. YEAH.
Q. NOW, THE MALE THAT WAS, THE GUY THAT WAS ARGUING WITH HER, WAS HE A TALL GUY, SKINNY GUY, HEAVYSET?
A. HE WASN'T HEAVYSET.
Q. WAS HE SKINNY?
A. YEAH, HE WAS SKINNY.
Q. AND WHAT DID THEY DO WHILE THEY WERE SITTING THERE FUSSING OR ARGUING WITH ONE ANOTHER?
A. I DIDN'T SEE WHAT THEY WAS DOING, I JUST KNOW THEY WERE HAVING A LITTLE COMMOTION OVER THERE.
Q. NOW, AT SOME POINT IN TIME DID YOU SEE MR. SMITH AGAIN?
A. YES, SIR.
Q. OKAY. AND WHAT DID HE DO?
A. HE CAME AND ASKED ME FOR, ASKED ME DID I HAVE A GUN ON ME AND I TOLD HIM NO.
Q. AND WHY DID YOU TELL HIM THAT?
A. BECAUSE I DIDN'T HAVE IT ON ME AT THE TIME.
Q. WHAT HAPPENED TO THE GUN THAT YOU WERE CARRYING?
A. I GAVE IT TO THE GUY, CATFISH, WHEN I GOT DOWN

THERE, BECAUSE I KNEW I COULDN'T HAVE IT ON ME AT THE TIME SO I JUST GAVE TO HIM.

Q. AND WHY COULDN'T YOU HAVE A GUN ON YOU?

A. BECAUSE I WAS ON PROBATION.

Q. AND YOU WEREN'T SUPPOSED TO BE AROUND WEAPONS OR FIREARMS; IS THAT RIGHT?

A. YES, SIR.

Q. NOW, WHEN HE CAME UP AND ASKED YOU THIS, WAS ANYBODY ELSE STANDING WITH YOU?

A. YES, SIR.

Q. WHO WAS THAT?

A. LATORREY PEARSON AND...

Q. ANYBODY ELSE?

A. I THINK CATFISH, IF I'M NOT MISTAKEN. I CAN'T REMEMBER IF MY BROTHER WAS OUT THERE WITH ME OR NOT.

Q. NOW, ARE YOU KIN TO LATORREY?

A. MY FIRST COUSIN.

Q. AND LATORREY HEARD BUSTER; IS THAT RIGHT?

A. SIR?

Q. LATORREY HEARD BUSTER ASK YOU FOR A GUN, MR. SMITH?

A. I MEAN, I DON'T KNOW IF HE HEARD IT OR NOT. I DON'T KNOW.

Q. WELL, AT SOME POINT DID MR. SMITH GET A GUN? DID HE?

A. YEAH.
Q. OKAY. AND HOW DID HE GET THE GUN? WHERE DID IT COME FROM?
A. I THINK IT CAME FROM LATORREY.
Q. AND DID YOU SEE THE GUN?
A. I JUST SEEN CHROME.
Q. AND WHAT TYPE OF GUN WAS IT?
A. I DON'T KNOW.
Q. AND HAD YOU SEEN THIS GUN BEFORE?
A. YEAH, I MIGHT HAVE SEEN IT ONE TIME BEFORE I SEEN IT THAT NIGHT.
Q. IN FACT, IT WAS YOUR GUN, WASN'T IT?
A. NO, IT NEVER WAS MY GUN. IT WAS GAVE TO ME AS A PRESENT BUT I NEVER TOOK IT.
Q. AND DID YOU GIVE IT TO LATORREY?
A. NO, SIR.
Q. BUT SOMEHOW HE GOT IT, RIGHT?
A. YES, SIR.
Q. WHAT COLOR WAS THIS GUN?
A. CHROME, SILVER.
Q. CHROME OR SILVER? DO YOU KNOW WHAT COLOR THE HANDLES WERE?
A. BLACK.
Q. BLACK, BROWN, GRAY?
A. BLACK.

Q. AND WOULD YOU DESCRIBE THE BARREL AS SHORT OR LONG?

A. I WOULD SAY LONG.

Q. AND WAS IT A REVOLVER OR A SEMIAUTOMATIC WEAPON?

A. REVOLVER.

Q. THE KIND WHERE THE BULLETS STAY IN THE CYLINDER?

A. (NODDED HEAD.)

Q. IT DIDN'T HAVE A CLIP TO IT, DID IT?

A. NO.

Q. SO LATORREY GAVE MR. SMITH THIS LONG-BARRELLED SILVER GUN; IS THAT RIGHT?

A. YES, SIR.

Q. WHAT WAS MR. SMITH WEARING THAT NIGHT? HOW WAS HE DRESSED?

A. I'D SAY A BLACK COAT AND SOME BLUE JEANS.

Q. AND YOU SAY BLACK CLOTHING. DID HE HAVE A BLACK SHIRT ON OR WHAT?

A. I COULDN'T SEE, SIR. I THINK IT WAS JUST THE BLACK COAT THAT I SEEN.

Q. BLACK JACKET?

A. BLACK JACKET.

Q. AND DID IT HAVE A HOOD OR NO HOOD?

A. IT HAD A HOODIE ON IT.

Q. AND HOW WAS HE KEEPING HIS HAIR AT THAT POINT IN TIME: WAS IT LONG OR SHORT?

A. IT WAS PLATTED UP WHEN I TALKED TO HIM.
Q. OKAY. WHEN YOU SAY PLATTED UP, WHAT ARE YOU REFERRING TO, SO THE JURY WILL UNDERSTAND?
A. SHORT WITH TWISTS IN IT.
Q. AND HOW LONG WERE THEY?
A. ABOUT AN INCH.
Q. SO IN SHORT LITTLE TWISTS; IS THAT RIGHT?
A. (NODDED HEAD.)
Q. AFTER LATORREY GAVE HIM THE GUN, DID BUSTER SAY ANYTHING AT THAT POINT IN TIME WHY HE WANTED THE GUN?
A. NO, SIR.
Q. AND WHAT DID YOU SEE HIM DO AND WHERE DID HE GO?
A. I SEEN HIM GO AROUND THE SIDE OF THE BUILDING.
Q. AROUND THE BACK SIDE?
A. YEAH, AND HE DISAPPEARED.
Q. AND THEN WHAT DID YOU WITNESS?
A. I WITNESSED LIKE, UM -- I SEEN -- WELL, BUSTER COME UP THE SIDE WITH THE BLACK JACKET ON. THEN ALL OF A SUDDEN, I DIDN'T SEE THE FACE THEN, I JUST SEEN THE JACKET AND THE HOODIE.
Q. THE HOODIE WAS UP?
A. YEAH, THE HOODIE WAS OVER HIS FACE.
Q. OVER HIS FACE?
A. YEAH.
Q. AND THEN WHAT DID YOU WITNESS?

A. THE SAME GUY IN THE JACKET WALKED UP AND, WALKED UP TO THE PEOPLE THAT WAS ARGUING, AND SHOT.

Q. SHOT WHO, THE MAN?

A. YEAH.

Q. AND THIS PERSON IN THIS BLACK JACKET AND THE HOODIE OVER HIS HEAD, DID YOU SEE THE GUN THAT HE USED?

A. I WAS A DISTANCE BACK, BUT I SEEN FIRE COME OUT THE GUN.

Q. HOW MANY SHOTS DID YOU HEAR?

A. THREE.

Q. AND PRIOR TO THE SHOOTING HAPPENING, DID YOU SEE, WAS THERE ANY WORDS BETWEEN THIS INDIVIDUAL AND MR. MARTIN?

A. NO, SIR.

Q. NONE?

A. (SHOOK HEAD.)

Q. SO THIS INDIVIDUAL JUST WALKED STRAIGHT UP AND SHOT HIM?

A. I DON'T KNOW IF HE WALKED STRAIGHT UP OR NOT. I WAS -- I JUST SEEN HIM WALK UP.

Q. HOW CLOSE WAS THIS PERSON TO MR. MARTIN?

A. I DON'T REMEMBER. ABOUT SIX FEET, SEVEN.

Q. TELL ME WHEN TO STOP. HOW CLOSE WAS HE?

A. RIGHT THERE.

Q. ABOUT FROM ME TO YOU, WHEN THE SHOTS WERE FIRED?

A. YEAH.

Q. DID YOU OBSERVE OR SEE ANY TYPE OF WEAPON OR ANYTHING IN THIS MAN'S HAND, THE ONE THAT GOT SHOT?

A. I COULDN'T SEE THAT FAR. THERE WAS CARS IN BETWEEN US.

Q. AFTER THIS INDIVIDUAL SHOT MR. MARTIN, WHAT DID HE DO?

A. HE WENT BACK BEHIND THE BUILDING.

Q. IS THAT THE WAY HE CAME FROM INITIALLY?

A. (NODDED HEAD.)

Q. AND DID YOU SEE HIM COME BACK AROUND?

A. NO.

Q. AND AT SOME POINT DID HE PASS YOU OR DID YOU SEE HIM LEAVE?

A. YEAH, I SEEN A CAR PULL OUT IN THE BACK.

Q. AND AT THAT POINT DID YOU RECOGNIZE WHO THE SHOOTER WAS?

A. I CAN'T REALLY BE EXACT THAT I RECOGNIZE HIM, BUT I SEEN THE SAME JACKET AND THE HOODIE WAS OVER HIS -- KIND OF OVER HIS FACE THEN, THE SAME DESCRIPTION THAT THE SHOOTER WAS, INSIDE THE CAR ON THE PASSENGER'S SIDE.

Q. AND DID YOU GET A LOOK AT HIS FACE AS YOU SAW HIM AFTER THE SHOOTING?

A. NOT REALLY.

Q. OKAY. DID YOU SEE ANYBODY ELSE THERE THAT NIGHT

DRESSED IN THE SAME MANNER AND WAY AS MR. SMITH WAS?

A. NOT AT THE FRONT OF THE BUILDING. BUT IT'S -- THE WHOLE BUILDING, IT WOULD BE A LOT OF HANGING OUT AROUND THE WHOLE BUILDING, CARS PARKED ALL IN THE BACK, YOU KNOW, BUT I DIDN'T SEE NO OTHER JACKET AT THE TIME IN THE FRONT.

Q. NOBODY ELSE HAD A BLACK JACKET ON LIKE MR. SMITH HAD ON WHEN HE TALKED TO YOU?

A. NOT THAT I SEEN.

Q. AND AFTER THE SHOOTING HAPPENED, WHAT DID YOU DO?

A. I GOT IN THE JEEP WITH, I THINK IT WAS TURK PICKENS, THE DRIVER, I GOT IN THE JEEP WITH HIM AND HE DROVE US UP TO BROWN STREET AND DROPPED US OFF.

Q. WHO ELSE WAS WITH YOU?

A. ME AND LATORREY.

Q. DID YOU SEE MR. SMITH LEAVE?

A. YEAH, I SEEN HIM IN A BROWN -- I THINK IT WAS A BROWN TAURUS.

Q. HE DIDN'T LEAVE Y'ALL THERE, DID HE?

A. NO, SIR.

Q. AND AFTER THE SHOOTING TOOK PLACE, WHERE DID YOU ALL GO?

A. BROWN STREET.

Q. BACK WHERE YOU INITIALLY STARTED FROM?

A. (NODDED HEAD.)

MR. CAMPBELL: COURT'S INDULGENCE, PLEASE.

(PAUSE.)

BY MR. CAMPBELL:

Q. NOW, YOU TALKED TO LAW ENFORCEMENT, LIKE YOU TALKED TO DETECTIVE REEVES; IS THAT RIGHT?

A. YES, SIR.

Q. MARCH 1ST, 2006?

A. YES, SIR.

Q. AND YOU GAVE A STATEMENT ON THAT DAY; IS THAT RIGHT? DO YOU RECALL THAT?

A. WHAT DATE WAS THAT?

Q. MARCH 1ST. DID YOU?

A. I CAN'T REMEMBER REALLY WHAT THE DATE WAS.

Q. IN FACT, YOU HAD GIVEN TWO STATEMENTS, HAVEN'T YOU?

A. YES, SIR. THAT'S WHY I'M KIND OF MIXED UP RIGHT NOW.

Q. I'M GONNA SHOW YOU THIS. HOLD ON A SECOND.

(COUNSEL CONFER.)

BY MR. CAMPBELL:

Q. PLEASE LOOK AT THIS. IS THAT A STATEMENT YOU GAVE?

FIRST LOOK TO THE BACK AND SEE. IS THAT YOUR SIGNATURE ON THE BACK?

A. YES, SIR.

Q. OKAY. THAT'S YOUR HANDWRITING, RIGHT?
A. YES.
Q. AND THIS IS A STATEMENT YOU GAVE DETECTIVE REEVES ON MARCH 1ST; IS THAT CORRECT?
A. YES, SIR.
Q. AND WHAT TIME WAS THAT THAT YOU GAVE IT TO HIM?
A. I DON'T REMEMBER.
Q. WHAT TIME DOES IT SAY ON THE STATEMENT?
A. I DON'T SEE NOTHING BY THE DATE.
OKAY. 12:30.
Q. 12:30 IN THE MORNING, RIGHT?
A. YES, SIR.
Q. OKAY. NOW, LATER ON THAT DAY YOU GAVE ANOTHER STATEMENT, IS THAT RIGHT?
A. YES, SIR.
Q. LET ME SHOW YOU WHAT THIS IS. IS THAT YOUR SIGNATURE ON THE BACK?
A. YES, SIR.
Q. IT IS? THAT'S ALSO MARCH 1ST, ISN'T THAT CORRECT, 2006?
A. YES, SIR.
Q. NOW, IS IT 1730 P.M., 5:30?
A. (NODDED HEAD.)
Q. AND WHAT WAS THE OCCASION OR WHY DID YOU GIVE TWO STATEMENTS? DID YOU NEED TO CLARIFY ANYTHING?

A. I WAS SCARED AT THE MOMENT.
Q. WHAT DID YOU LEAVE OUT OF THE FIRST STATEMENT THAT YOU ADDED IN THE SECOND STATEMENT?
A. (NO RESPONSE.)
Q. DID YOU FORGET TO TELL SOMETHING?
A. YEAH.
Q. WHAT DID YOU FORGET TO TELL MR. REEVES, OR DIDN'T WANT TO TELL HIM?
A. THAT I DIDN'T WANT TO MENTION ANYTHING ABOUT THE GUN BECAUSE LATORREY WAS MY COUSIN, AND I DIDN'T WANT TO GET HIM INVOLVED IN THE TROUBLE THAT WE WAS ALREADY IN.
Q. AND DID YOU THINK POSSIBLY THAT GUN COULD BE LINKED BACK TO YOU?
A. YES, SIR.
Q. YOU SAY YOU WERE SCARED. IS THERE ANY OTHER REASON WHY YOU WERE SCARED?
A. NO, SIR.
Q. AND YOU WERE CURRENTLY ON PROBATION AT THAT TIME; IS THAT RIGHT?
A. YES, SIR.
Q. AS PART OF YOUR PROBATION ARE YOU SUPPOSED TO BE ALLOWED TO GO AROUND FIREARMS?
A. NO, SIR.
Q. IN FACT, YOU WERE ALSO CHARGED IN THIS CASE; IS THAT RIGHT?

A. YES, SIR.

Q. CHARGED AS AN ACCESSORY?

A. (NO RESPONSE.)

MR. CAMPBELL: COURT'S INDULGENCE, PLEASE.

(OFF-THE-RECORD DISCUSSION.)

MR. CAMPBELL: YOUR HONOR, MAY THE WITNESS STEP OFF THE STAND, PLEASE?

THE COURT: CERTAINLY.

BY MR. CAMPBELL:

Q. MR. HAILEY, IF YOU WILL STEP OFF THE STAND PLEASE, SIR.

(WITNESS LEAVES STAND.)

BY MR. CAMPBELL:

Q. IF YOU WILL STEP OVER HERE.

THE COURT: LET'S SEE IF WE CAN DO IT THE SAME WAY AS WE DID IT BEFORE. HAVE HIM STAND AT THE END SO THAT THE COURT REPORTER -- YOU MIGHT HAVE TO BRING IT FORWARD TO THE JURY A LITTLE BIT.

MR. CAMPBELL: MR. HAILEY, IF YOU WILL STAND RIGHT HERE.

THE COURT: MR. HAILEY, YOU NEED TO LOOK SO WHEN YOU ARE TALKING, YOU ARE TALKING IN A DIRECTION THAT THIS COURT REPORTER CAN SEE YOUR LIPS AS WELL AS THE JURY, DO YOU UNDERSTAND?

THE WITNESS: YES, SIR.

THE COURT: CAN YOU SEE THE COURT REPORTER?

THE WITNESS: YES, SIR.

THE COURT: CAN YOU SEE THE COURT REPORTER SITTING DOWN HERE?

I WOULD THINK -- YOU MIGHT WANT TO PUSH IT FURTHER SO HE'S STANDING A LITTLE BIT BEHIND IT. THERE YOU GO.

BY MR. CAMPBELL:

Q. THESE FIVE PICTURES RIGHT HERE, WOULD YOU PLEASE IDENTIFY WHAT THESE FIVE PICTURES ARE RIGHT HERE?

A. THESE ARE PICTURES OF THE OLD SCHOOL LOUNGE.

Q. OLD SCHOOL LOUNGE, WHERE YOU WERE AT ON FEBRUARY 25TH, 2006, THAT NIGHT?

A. YES, SIR.

Q. AND WHERE DID YOU SEE THE SHOOTER COME AROUND, MR. SMITH? FIRST OF ALL, WHERE WAS MR. MARTIN AND MS. BROWNLEE?

(OFF-THE-RECORD DISCUSSION.)

BY MR. CAMPBELL:

Q. YOU WERE STANDING OVER HERE, IS THAT WHERE YOU ARE POINTING TO?

A. YES, SIR.

Q. WAS THAT ON THE CREEK SIDE OR WAS THAT THE SIDE WITH THE TRANSMISSION SHOP, WHEN YOU'RE LOOKING DIRECTLY AT IT?

A. CREEK SIDE.

Q. AND TUCKER'S RESTAURANT WAS ACROSS THE STREET; IS THAT RIGHT?

A. UH-HUH.

Q. NOW, WHERE DID MR. SMITH, WHEN YOU FIRST SAW HIM AND YOU GOT THE GUN FROM MR. PEARSON, WHERE WERE YOU ALL STANDING?

A. IN THE BACK OVER IN THERE.

Q. IN WHICH DIRECTION DID HE GO AROUND PRIOR TO THE SHOOTING?

A. (POINTS.)

Q. HE WENT BEHIND THE BUILDING, IS THAT WHERE YOU ARE POINTING TO?

A. YES, SIR.

Q. SO HE CAME BACK AROUND THIS SIDE; IS THAT RIGHT?

A. UH-HUH.

Q. AND AFTER THE SHOOTING, WHICH WAY DID MR. SMITH LEAVE? DID HE GO BACK DOWN THE STREET, MARKET STREET, OR DID HE GO BACK AROUND?

A. HE WENT AROUND THAT WAY.

Q. HE WENT BACK AROUND THE BACK SIDE OF THE CLUB?

A. (NODDED HEAD.)

Q. AND THAT'S WHERE YOU SAW HIM GET IN THE CAR AND LEAVE; IS THAT RIGHT?

A. I DIDN'T SEE HIM GET IN THE CAR; I SEEN THE CAR

LEAVE.

Q. AND HE WAS IN THE PASSENGER'S SEAT, RIGHT?

A. YES, SIR.

MR. CAMPBELL: GO AHEAD AND HAVE A SEAT, PLEASE, SIR.

(WITNESS RESUMES STAND.)

MR. CAMPBELL: MR. HAILEY, PLEASE ANSWER ANY QUESTIONS MR. GAMBLE HAS.

CROSS-EXAMINATION BY MR. GAMBLE:

Q. YOU WERE ON THE LEFT SIDE OF THE LOUNGE WHEN THE TRANSACTION WITH THE GUN TOOK PLACE?

A. NO, SIR, I WAS ON THE RIGHT SIDE OF THE CLUB THE WHOLE NIGHT.

Q. ALL THE TIME?

A. YES, SIR.

Q. WAS LATORREY WITH YOU?

A. YES, SIR.

Q. ALL THE TIME? HUH?

A. I'M NOT GONNA SAY ALL THE TIME. IF HE LEFT, IT WAS PROBABLY THREE MINUTES OR FOUR MINUTES APART TO COME BACK.

Q. WERE YOU NEXT TO TURK'S BLACK CHEROKEE?

A. IT WAS BEHIND US.

Q. IT WAS BEHIND YOU?

A. YES, SIR.

Q. YOU SAY YOUR SECOND STATEMENT IS A TRUE STATEMENT OF THE TWO THAT YOU GAVE TO INVESTIGATOR REEVES?

A. YES, SIR.

Q. ALL RIGHT. IS THAT YOUR STATEMENT (HANDING)?

A. YES, SIR.

Q. IN THE FIRST OPENING PARAGRAPH UP THERE, ISN'T IT TRUE THAT YOU SAY YOU WERE ON THE LEFT SIDE OF THE LOUNGE?

A. YES, SIR.

Q. WHY DID YOU TELL THEM YOU WERE ON THE LEFT SIDE WHEN YOU TELL ME NOW YOU WERE ON THE RIGHT SIDE? WHICH SIDE WERE YOU ON?

A. I WAS ON THE RIGHT SIDE.

Q. BUT YOU SAID THERE YOU WERE ON THE LEFT SIDE.

A. I MUST HAVE HAD THE ANGLES MISTAKEN.

Q. HOW FAR DID YOU GO IN SCHOOL?

A. THROUGH THE 12TH GRADE.

Q. DO YOU KNOW RIGHT FROM LEFT?

A. YES, SIR.

Q. ALL RIGHT. NOW, YOU INDICATED THAT YOU NEVER HAD THIS GUN THAT LATORREY GAVE. READ IN YOUR STATEMENT ABOUT THAT TO REFRESH YOUR MEMORY. DOWN TOWARD THE BOTTOM.

DIDN'T YOU SAY YOU HAD THE GUN, IT WAS GIVEN TO YOU ABOUT FOUR MONTHS BEFORE?

A. YES, SIR.
Q. HUH?
A. YES, SIR.
Q. AND IT WAS A .38?
A. I THINK IT WAS A .38. I NEVER PICKED IT UP AND LOOKED AT IT.
Q. YOU GAVE IT TO LATORREY?
A. NO, SIR.
Q. HOW DID LATORREY GET IT?
A. I DON'T KNOW HOW HE GOT IT. THE GUN WAS KEPT AT SOMEONE ELSE'S HOUSE, IT WAS NOT AT MY HOUSE. IT WAS A GIFT GIVEN ME THAT I DID NOT TAKE. I LOOKED AT IT BUT DIDN'T TAKE IT BECAUSE I WAS ON PROBATION.
Q. YEAH. LET'S SEE. REFRESH YOUR MEMORY HERE A LITTLE BIT HERE. LET ME BORROW THIS STATEMENT.
A. (HANDING.)
Q. YOU DID NOT SEE WHO ACTUALLY SHOT MR. MARTIN, DID YOU, NOT IN THE FACE?
A. NO, SIR.
Q. ALL RIGHT. IT'S IN YOUR OTHER STATEMENT (HANDING). BOTTOM OF THAT PAGE. REFRESH YOUR MEMORY. YOU SAID YOU HAD BEEN GIVEN A .38 REVOLVER ABOUT FOUR MONTHS AGO.

IS THAT CORRECT? DID YOU SAY THAT OR NOT?

A. YES, SIR.

Q. HUH?
A. YES, SIR.
Q. AND THAT YOU GAVE IT TO LATORREY?
A. NO, THAT DON'T SAY NOWHERE ON THE STATEMENT THAT I SAID THAT.
Q. DOWN AT THE BOTTOM?
A. NO, SIR.
Q. HUH?
A. NO, SIR.
Q. ALL RIGHT. ARE YOU TIGHT WITH TURK AND LATORREY? LATORREY IS YOUR COUSIN. YOU'RE TIGHT WITH HIM, RIGHT?
A. WE WAS.
Q. BUT YOU'RE NOT NOW?
A. NO, SIR. WE WAS KIND OF CLOSE AT THE TIME BEFORE ALL THIS HAPPENED. WHEN THIS HAPPENED, WE ALL KIND OF GOT SEPARATED.
Q. WELL, WHEN IT HAPPENED, LATORREY JUMPED IN TURK'S JEEP, RIGHT?
A. YES, SIR.
Q. YOU GOT IN THE BACK SEAT, RIGHT?
A. YES, SIR.
Q. TURK CARRIED Y'ALL TO BROWN STREET TO A GIRL'S HOUSE. BROWN STREET IS RIGHT ACROSS FROM WHERE THIS IS?
A. YES, SIR.
Q. ALL RIGHT. YOU REALIZED YOU HAD TO GET OUT OF

THERE, DIDN'T YOU?

A. YES, SIR.

Q. WHY?

A. BECAUSE SOMETHING HAPPENED THAT WE DIDN'T HAVE NOTHING TO DO WITH, SO I THOUGHT IT WAS BEST WE GET ON OUT OF THE WAY.

Q. ALL RIGHT. ONE OF Y'ALL, WHO KNOWS WHO, FURNISHED A GUN TO SOMEBODY, DIDN'T YOU?

A. I MEAN, I DIDN'T DO IT.

Q. YOU CLAIM LATORREY GAVE IT TO BUSTER SMITH IN ONE OF YOUR STATEMENTS.

A. YES, SIR.

Q. AND THEN YOU SAY YOU WANTED TO PROTECT LATORREY AFTER THAT, SO YOU CHANGED THE STATEMENT, RIGHT?

A. YES, SIR.

Q. ALL RIGHT. WELL, DID YOU TRY TO PROTECT TURK, TOO?

A. I HAD NO REASON TO. HE JUST DROPPED US OFF ON BROWN STREET, THAT WAS IT.

Q. ALL RIGHT. ALSO IN THIS YOU SAID THAT BUSTER CAME RIDING UP IN A FAIRLY NEW BROWN LOOKING CAR?

A. I SAID HE LEFT THE SCENE IN A BROWN CAR.

Q. HUH?

A. HE LEFT THE SCENE IN A BROWN CAR.

Q. OKAY. (READING):

THE CAR PULLED ON AROUND THE LOUNGE BUILDING. I DID NOT SEE WHO WAS DRIVING AND I'D NEVER SEEN IT BEFORE. BUSTER ASKED IF WE HAD ANY WEED.

A. YES, SIR.

Q. IS THAT RIGHT? SO HE WAS IN THAT BROWN CAR WHEN IT CAME INTO THE ---

A. NO. WHEN HE ASKED ME, HE WALKED UP TO ME.

Q. OKAY. NOW, THE BLACK FEMALE AND MALE THAT YOU SAW IN THE BACK, OR AT THE RIGHT SIDE, WHAT WERE THEY DOING?

A. A LITTLE COMMOTION. I COULDN'T -- I'M NOT SURE IF THEY WAS ARGUING OR NOT, BUT THERE WAS A LOT OF MOVEMENT LIKE THEY WAS ARGUING.

Q. (READING):

I WATCHED THEM AND SAW THE BLACK MALE SCUFFLING WITH THE BLACK FEMALE.

Q. IS THAT TRUE?

A. YES, SIR.

Q. SO THEY WEREN'T JUST ARGUING, THEY WERE FIGHTING?

A. NO, IT WASN'T FIGHTING. IT WAS JUST ---

Q. DO YOU KNOW WHAT SCUFFLING MEANS?

A. I THOUGHT I KNEW WHAT IT MEANT.

Q. WHAT DOES IT MEAN?

A. SIR?

Q. WHAT DOES IT MEAN?
A. I THOUGHT IT WAS JUST A LITTLE TOUCHING AROUND. THAT'S ALL HE DID WAS GRABBED HER ARM.
Q. ALL RIGHT. (READING):
THEN SHE SAT DOWN IN THE CAR AND HE WAS LEANING INSIDE MESSING WITH HER.
Q. WHAT DOES MESSING WITH HER MEAN?
A. TALKING, ARGUING, WHATEVER HE WAS DOING WITH HER.
Q. HE HAD HIS HANDS INSIDE THE CAR?
A. I COULDN'T SEE IF IT WAS INSIDE THE CAR, I JUST SEEN HIM BENT OVER.
Q. BENT OVER WHERE?
A. INSIDE THE CAR TALKING TO HER, OR HOLLERING AT HER OR WHATEVER HE WAS DOING. WITH THE MUSIC PLAYING I COULDN'T HEAR WHAT WAS SAID.
Q. SHE WAS SITTING ON THE PASSENGER'S SIDE?
A. NO, IT WAS THE DRIVER'S SIDE.
Q. DRIVER'S SIDE? AND YOU NEVER SAW HER UP UNDER THE HOOD OF THE CAR WORKING ON ANYTHING, DID YOU?
A. NO, I NEVER SEEN HER UNDER THE HOOD.
Q. BUT YOU WERE NEXT TO TURK'S CHEROKEE, RIGHT? SIR?
A. YES, SIR.
Q. AND YOU SAID IN HERE (READING):
TURK'S CHEROKEE WAS PARKED ON THE

LEFT SIDE OF THE BUILDING.

Q. RIGHT?

A. NO, IT WAS PARKED ON THE RIGHT SIDE RIGHT BEHIND US.

Q. READ YOUR STATEMENT. HAVE YOU GOT IT UP THERE?

A. YES, SIR, I GOT IT UP HERE.

Q. WHAT DOES IT SAY? IT'S UNDERLINED.

A. YEAH, IT SAID LEFT THERE.

Q. ALL RIGHT. SO IT WAS ON THE LEFT SIDE IS WHAT YOU SAID FIRST, AND THEN THE SECOND TIME YOU SAID THE LEFT SIDE, DIDN'T YOU? DO YOU WANT TO READ IT AGAIN (HANDING)? READ THAT OUT LOUD.

A. (READING):

TURK'S BLACK CHEROKEE PARKED ON LEFT SIDE OF THE LOUNGE.

Q. YOU SAID IT TWICE, IN BOTH YOUR STATEMENTS YOU SAID THE SAME THING: CHEROKEE WAS PARKED ON THE LEFT SIDE OF THE LOUNGE. RIGHT?

A. YES, SIR.

Q. OKAY. AND ALL THIS EVENT WAS SUPPOSED TO HAPPEN ON THE RIGHT SIDE OF THE LOUNGE.

A. YES, SIR, I UNDERSTAND IT WAS ON THE RIGHT SIDE.

Q. SO WHAT HAPPENED WAS ON THE RIGHT SIDE AND Y'ALL WERE ON THE LEFT SIDE.

A. NO, WE WAS ON THE RIGHT SIDE, WHAT HAPPENED WAS

ON THE LEFT SIDE.

Q. TWICE. WHAT HAPPENED WAS ON THE LEFT SIDE?

A. NO, SIR.

Q. BUT TWICE YOU HAVE WRITTEN DOWN THAT IT WAS ON THE LEFT SIDE.

A. IT WAS ON THE RIGHT SIDE -- I MEAN THE LEFT SIDE. THE ACCIDENT HAPPENED ON THE LEFT SIDE. WE WAS ON THE RIGHT SIDE OF THE BUILDING.

Q. OKAY. THE ACCIDENT. THE SHOOTING HAPPENED ---

A. THE SHOOTING, YEAH.

Q. --- IN YOUR OPINION WHAT YOU SAW WAS ON THE LEFT SIDE OF THE LOUNGE?

A. ON THE LEFT SIDE.

Q. AND Y'ALL WERE ON THE RIGHT SIDE?

A. YES, SIR.

Q. OKAY. IS THAT THE FINAL?

A. YES, SIR.

Q. OKAY.

A. (HANDING.)

Q. DID Y'ALL EVER GO IN THE LOUNGE?

A. I DIDN'T.

Q. YOU DID?

A. I DID NOT.

Q. DID NOT? WHAT'S BECOME OF THE CHARGE AGAINST YOU FOR ACCESSORY?

A. I DON'T KNOW. IT'S STILL ONGOING OR PENDING.
Q. HUH?
A. IT'S STILL PENDING.
Q. HAVE YOU TALKED WITH THE SOLICITOR ABOUT IT?
A. NO, SIR.
Q. HAS HE TALKED TO YOU ABOUT IT?
A. NO, SIR. I'VE BEEN INCARCERATED, AND I JUST GOT OUT OF STATE LAST WEDNESDAY AND I HAVEN'T HAD TIME TO REALLY TALK TO NOBODY ABOUT REALLY NOTHING, WHAT'S GOING ON HERE OR ANYTHING.
Q. I BELIEVE YOU HAD A PROBATION REVOCATION; ISN'T THAT CORRECT?
A. YES, SIR.
Q. WAS IT -- DID IT SPRING OUT OF THIS?
A. SIR?
Q. WERE YOU REVOKED BECAUSE OF THIS INCIDENT?
A. NO, SIR, I WAS REVOKED BECAUSE I HAD A MARIJUANA HABIT.
Q. OKAY. JUST IMMEDIATELY AFTER THESE SHOTS WERE FIRED, Y'ALL JUMPED INTO TURK'S CHEROKEE, YOU AND LATORREY AND TURK, AND Y'ALL GOT OUT OF THERE, ISN'T THAT CORRECT?
A. YES, SIR.
MR. GAMBLE: I DON'T HAVE ANYTHING FURTHER.
THE COURT: RE-EXAM?

REDIRECT EXAMINATION BY MR. CAMPBELL:

Q. MR. HAILEY, WE HAVE ALREADY TALKED ABOUT, MR. GAMBLE WENT OVER THE FACT THAT YOU GAVE THEM TWO STATEMENTS; ISN'T THAT RIGHT?

A. YES, SIR.

Q. NOW, WHAT IS THE ONLY THING YOU CHANGED BETWEEN THE STATEMENTS, OR ADDED?

A. I ADDED BUSTER IN IT.

Q. YOU ADDED YOUR COUSIN?

A. WELL, YES; LATORREY, TOO.

Q. BUT EVERYTHING ELSE YOU SAID, WERE TOLD WERE THE SAME, RIGHT?

A. YES, SIR.

Q. MR. GAMBLE WENT AT LENGTH TO TRY TO GET YOU TO STATE THAT YOU GAVE LATORREY THE GUN, DIDN'T HE? DIDN'T HE?

A. YES, SIR.

Q. I SHOW YOU YOUR STATEMENT FROM MARCH 1ST AT 12:30 A.M. THAT'S YOUR SIGNATURE; ISN'T THAT RIGHT?

A. YES, SIR.

Q. HE WAS REFERRING TO THIS. GO AHEAD AND READ WHAT YOU WROTE DOWN STARTING RIGHT THERE FROM BUSTER. READ IT OUT LOUD.

A. (READING):

BUSTER ASKED ME IF I HAD A GUN

AND I TOLD HIM NO. BUSTER ASKED LATORREY IF HE HAD A GUN, AND LATORREY PULLED OUT A SILVER COLORED .38 THAT I HAD BEEN GIVEN ABOUT FOUR MONTHS AGO WITH BLACK RUBBER GRIPS AND A LONG BARREL.

Q. CONTINUE.

A. (READING):

LATORREY GOT IT OUT OF THE HOUSE ON BROWN STREET. BUSTER WRAPPED THE GUN UP IN HIS JACKET AND WALKED OFF TOWARD THE REAR OF THE LOUNGE.

Q. NOW, AT ANY POINT DID YOU TELL OR STATE THAT YOU GAVE LATORREY THE GUN?

A. NO, SIR.

Q. OKAY. DID LATORREY DO THE SHOOTING ON THIS NIGHT?

A. NO, SIR.

Q. DID YOU DO THE SHOOTING?

A. NO, SIR.

Q. NOW, YOU SEEM TO BE GETTING CONFUSED ON YOUR LEFT SIDE AND YOUR RIGHT SIDE. WHEN YOU ARE FACING THE FRONT OF THE BUILDING, WHICH SIDE ARE YOU REFERRING TO WHERE YOU ARE AND WHERE MR. MARTIN AND MS. BROWNLEE WERE?

A. IF THE BUILDING -- IF I'M FACING THE BUILDING, IT WAS ON MY RIGHT SIDE.

Q. IS THAT WHERE THE SHOOTING TOOK PLACE, ON YOUR RIGHT SIDE?

A. YEAH. IF I'M FACING THE BUILDING, ON MY RIGHT SIDE.

Q. IF YOU'RE LOOKING ACROSS DIRECTLY AT IT, WHICH SIDE WERE MR. MARTIN AND MS. BROWNLEE ON?

A. THE RIGHT SIDE.

Q. OVER HERE?

A. YEAH, THE RIGHT SIDE.

Q. IF I'M FACING THE DOOR HERE, IT'S OVER HERE?

A. (NODDED HEAD.)

Q. AND Y'ALL WERE STANDING ON YOUR LEFT SIDE; IS THAT RIGHT?

A. YES, SIR.

Q. WERE YOU STANDING NEAR THE DOOR WHEN THE SHOOTING TOOK PLACE?

A. RIGHT BY THE CORNER OF THE WALL. THE BUILDING, CORNER OF THE BUILDING. I WASN'T EXACTLY AT THE DOOR.

Q. BUT YOU HAD AN ANGLE SHOT WHERE YOU COULD SEE WHAT WAS GOING ON IN THE PARKING LOT?

MR. GAMBLE: OBJECT TO THE LEADING, YOUR HONOR.

THE COURT: SUSTAINED.

BY THE WAY, MADAM FORELADY, LADIES AND GENTLEMEN OF THE JURY, A LEADING QUESTION IS A QUESTION

THAT SUGGESTS AN ANSWER. IN EFFECT WHAT YOU HAVE IS THE ATTORNEY TESTIFYING AND ASKING THE WITNESS TO AGREE OR DISAGREE, SO IT'S ACTUALLY THE TESTIMONY OF THE ATTORNEY.

NOW, YOU CANNOT LEAD YOUR OWN WITNESS, BUT YOU CAN LEAD THE OPPONENT'S WITNESS, IN OTHER WORDS, ADVERSE WITNESSES. THEREFORE, INASMUCH AS WE WANT TO HEAR WHAT THE WITNESS HAS TO SAY AND NOT THE ATTORNEY, WE DO NOT PERMIT LEADING QUESTIONS. OF COURSE, THESE RULES APPLY TO BOTH THE STATE AND TO THE DEFENDANT.

ALL RIGHT. YOU MAY PROCEED.

MR. CAMPBELL: THANK YOU, YOUR HONOR.

BY MR. CAMPBELL:

Q. MR. GAMBLE ASKED YOU IN HIS CROSS-EXAMINATION THAT YOU DIDN'T ACTUALLY SEE THE FACE OF THE SHOOTER; IS THAT RIGHT?

A. YES, SIR.

Q. HOW LONG WAS IT BETWEEN THE TIME THAT LATORREY GAVE BUSTER THE GUN THAT YOU SAW THE SHOOTING OCCUR?

A. ABOUT FOUR OR FIVE MINUTES.

Q. IT DIDN'T TAKE LONG?

A. NO.

Q. YOU STATED YOU JUST GOT OUT OF JAIL LAST WEDNESDAY; IS THAT RIGHT?

A. YES, SIR.

Q. AND HAVE ANY PROMISES BEEN MADE TO YOU FROM THE STATE TO GIVE YOUR TESTIMONY?

A. NO, SIR.

Q. HAVE WE HELD ANYTHING OUT TO YOU IN ORDER TO GET YOU TO TESTIFY?

A. NO, SIR.

MR. CAMPBELL: I HAVE NO FURTHER QUESTIONS.

THE COURT: ANY RECROSS?

MR. GAMBLE: NO, YOUR HONOR.

THE COURT: ALL RIGHT. YOU MAY STEP DOWN. THANK YOU, SIR.

(WHEREUPON, THE WITNESS WAS EXCUSED.)

MR. CAMPBELL: YOUR HONOR, MAY WE APPROACH?

THE COURT: CERTAINLY.

(WHEREUPON, COUNSEL APPROACHED THE BENCH AND CONFERRED WITH THE COURT OUT OF THE PRESENCE OF THE COURT REPORTER AND THE JURY.)

THE COURT: LADIES AND GENTLEMEN, THIS WILL BE THE CLOSE OF THE TESTIMONY TODAY.

I'M COMING FROM OCONEE AND I USUALLY HAVE TO RUN BY MY OFFICE BEFORE I GET HERE. I WOULD SUGGEST THAT WE START TOMORROW MORNING EITHER 9:30 OR 10:00, BUT I'LL LET YOU MAKE THE CHOICE BETWEEN 9:30 AND 10:00 BECAUSE YOU KNOW WHAT YOU HAVE TO DO BEFORE YOU COME.

SO MADAM FORELADY, THIS IS YOUR FIRST DUTY

AND RESPONSIBILITY. IT'S NOT UNANIMOUS, IT'S JUST A CONSENSUS. WHAT TIME WOULD YOU LIKE TO START: 9:30 OR 10:00? JUST CHECK WITH THE JURORS IN THE BOX THERE. 9:30 OR 10:00?

(JURY CONFERRED.)

THE FORELADY: 9:30.

THE COURT: 9:30 IS GOOD. THANK YOU. THAT GIVES ME ENOUGH TIME TO DO WHAT I NEED TO DO.

ALL RIGHT. WITH THAT WE WILL RETIRE FOR THE EVENING. NOW, MADAM FORELADY, LADIES AND GENTLEMEN OF THE JURY, I TELL JURORS THAT THIS IS PERHAPS THE MOST DIFFICULT PART OF THE ENTIRE TRIAL. BECAUSE YOU WILL GO HOME, AND AS SOON AS YOU GET THERE OR SOMEONE COMES ALONG, THEY WILL ASK YOU, "WHAT ARE YOU DOING?"

YOU'LL SAY, "WELL, I'VE BEEN DRAWN ON A JURY."

AND THEY'LL SAY, "WHAT IS IT ABOUT?"

AND YOU WILL SAY, "WELL, I CAN'T DISCUSS IT WITH YOU."

AND THEY WILL SAY, "WHY NOT?"

AND YOU WILL TELL THEM, "BECAUSE THE JUDGE SAYS SO."

AND THEY'LL PROBABLY SAY SOMETHING LIKE, "THAT'S RIDICULOUS."

WELL, THE THING IS I THINK THAT YOU

UNDERSTAND THAT THIS CASE IS IMPORTANT TO EVERYONE INVOLVED, AND IT NEEDS TO BE RESOLVED IN THE PROPER FASHION, AND YOU NEVER KNOW WHAT'S GOING TO BE THE MOST IMPORTANT PART OF THE CASE. BUT I CAN ASSURE YOU THAT NO ONE WHO HAS NOT SAT IN THAT JURY-BOX WITH YOU AND DOES NOT SIT WITH YOU IN THE JURY ROOM WHEN THE CASE IS FINALLY GIVEN TO YOU FOR YOUR DELIBERATIONS CAN HELP YOU; THEY CAN ONLY INTERFERE WITH THE PROPER RESOLUTION OF THE MATTER. SO, THEREFORE, I INSTRUCT YOU NOT TO DISCUSS THE CASE AMONG YOURSELVES, AS I HAVE SAID, BUT ALSO DO NOT PERMIT ANYBODY TO DISCUSS IT WITH YOU.

NOW, IF THEY INSIST ON DISCUSSING IT WITH YOU, I'LL PROBABLY BE HERE A LITTLE BIT BEFORE 9:30 AND I'LL BE GLAD TO EXPLAIN IF THEY DON'T UNDERSTAND. BUT I DO ASK YOU TO BE SURE THAT NOTHING INTERFERES WITH THE PROPER RESOLUTION OF THE MATTER, AS I SAID.

ALL RIGHT. WITH THAT I'LL SEE YOU IN THE MORNING AT 9:30. NOW, COME BACK TO THE JURY ROOM WHERE YOU WERE TODAY.

EVERYONE ELSE REMAIN SEATED WHILE THE JURY RETIRES FROM THE COURTROOM.

(WHEREUPON, THE JURY LEFT THE COURTROOM AT 4:51 P.M.)

THE COURT: ALL RIGHT. ANYTHING FROM THE STATE?

MR. CAMPBELL: NOTHING FROM THE STATE, YOUR HONOR.

THE COURT: FROM THE DEFENDANT?

MR. GAMBLE: NOTHING, YOUR HONOR.

THE COURT: ALL RIGHT. I'LL SEE YOU TOMORROW MORNING AT 9:30.

THE SHERIFF'S DEPUTY: EVERYBODY SIT DOWN.

(COURT ADJOURNED AT 5:00 P.M. ON MAY 7TH, 2007, TO RESUME ON MAY 8TH, 2007, AT APPROXIMATELY 9:30 A.M.)

***** END OF REQUESTED TRANSCRIPT *****

CERTIFICATE OF COURT REPORTER

I, THE UNDERSIGNED, ROBIN SUE HILD, FCRR, RPR, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND THE EVIDENCE INTRODUCED IN THE AFTERNOON PROCEEDINGS OF THE TRIAL OF THE CAPTIONED CASE, ON MONDAY, MAY 7, 2007, PAGES 22 THROUGH 147, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR ANDERSON COUNTY, SOUTH CAROLINA, ON THE 7TH DAY, 8TH DAY, AND 9TH DAY OF MAY, 2007

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

NOVEMBER 24, 2007

Robin Sue Hild

ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER

ORIGINAL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON	)	INDICTMENT NO: 2006-GS-04-1746
STATE OF SOUTH CAROLINA PLAINTIFF, -VS- JWAN SMITH, DEFENDANT.	)	TRANSCRIPT OF RECORD TRIAL -- VOLUME II OF II PAGES 149 THROUGH 342

MAY 8, 2007
ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ALEXANDER S. MACAULAY, JUDGE; AND A JURY.

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

RAME CAMPBELL, ESQ.
ASSISTANT 10TH CIRCUIT SOLICITOR
ATTORNEY FOR THE STATE

ROBERT GAMBLE, ESQ.
ANDERSON COUNTY PUBLIC DEFENDER
ATTORNEY FOR THE DEFENDANT

ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER
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WALHALLA, SC 29691

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***** START OF REQUESTED TRANSCRIPT *****

(WHEREUPON, THE TRIAL OF *THE STATE OF SOUTH CAROLINA VERSUS JWAN TYREE SMITH*, 2006-GS-04-1746, RESUMED ON TUESDAY, MAY 8, 2007.)

THE COURT: ALL RIGHT. YOU MAY TAKE YOUR SEATS, PLEASE.

ALL RIGHT. IS THE STATE READY TO PROCEED?

MR. CAMPBELL: THE STATE IS READY, YOUR HONOR.

THE COURT: IS THE DEFENSE READY?

MR. GAMBLE: THE DEFENSE IS READY, YOUR HONOR.

THE COURT: ALL RIGHT, MADAM BAILIFF, IF YOU WOULD PLEASE ASK THE JURY TO JOIN US, PLEASE.

(WHEREUPON, THE JURY ENTERED THE COURTROOM AT 9:39 A.M.)

THE COURT: ALL RIGHT. THE COURT HAS BEEN PROVIDED A LIST OF THINGS THAT THE JURY IS CONCERNED ABOUT, SO LISTEN CAREFULLY TO THE FIRST ONE (READING):

> PLEASE ASK WITNESSES, JUDGE, AND LAWYERS TO SPEAK CLEARLY AND LOUDLY -- OR LOUDER. THEY WROTE DOWN THERE "LOUDLY."

ANY QUESTIONS FROM THE STATE?

MR. CAMPBELL: NONE FROM THE STATE.

THE COURT: FROM THE DEFENSE?

MR. GAMBLE: NO, SIR.

THE COURT: IF YOU WOULD PLEASE ADVISE YOUR WITNESSES, AND I WILL TRY TO LIVE UP TO MY RESPONSIBILITY, AS WELL. (READING):

CAN WE HAVE A BREAK BETWEEN 4:00 AND 4:15 AGAIN FOR THOSE OF US WITH CHILDREN WE NEED TO CONTACT?

YES, MA'AM, WE WILL HAVE THAT BREAK. WERE YOU ABLE TO GET HOME IN TIME YESTERDAY WHEN WE BROKE A LITTLE BEFORE 5:00, OR DO YOU STILL NEED TO MAKE ARRANGEMENTS?

A JUROR: IT WAS FINE.

THE COURT: MA'AM?

A JUROR: IT WAS FINE.

THE COURT: I MEAN, AGAIN, WE CAN BREAK BEFORE 5:00 TODAY. ALL RIGHT. (READING):

IS THERE A PHONE NUMBER WHERE MESSAGES CAN BE LEFT FOR US IF THERE IS AN EMERGENCY?

MADAM CLERK?

THE CLERK: ON THE LITTLE CARD THAT I GAVE THEM YESTERDAY, IT'S GOT THE CLERK'S OFFICE PHONE NUMBER ON THE BACK.

THE COURT: ALL RIGHT. DO YOU STILL HAVE

THAT NUMBER?

THE FORELADY: YES.

THE COURT: ALL RIGHT. THAT WILL BE THE NUMBER TO USE. AND, OF COURSE, IF YOU NEED TO MAKE THAT -- TELL SOMEBODY THIS MORNING, WE WILL MAKE THAT AVAILABLE, TOO. (READING):

> IS THERE A NUMBER WHERE WE CAN CALL YOU, THE COURT, IF WE HAVE AN EMERGENCY?

AGAIN, THAT WOULD BE THE NUMBER THAT YOU WOULD CALL. THE CLERK WOULD BE THE PERSON, AND SHE WOULD CONTACT ME BEFORE 8:00 A.M.

LET'S SEE. IS THAT THE SAME NUMBER?

THE CLERK: IT IS.

THE COURT: IF THEY DO HAVE AN EMERGENCY, WOULD THEY CALL THAT NUMBER OR NOT?

THE CLERK: IF IT'S BEFORE 8:00 A.M., WE HAVE A JURY LINE NUMBER AND THEY CAN CALL AND LEAVE A MESSAGE.

THE COURT: OKAY, GOOD, THANK YOU, MA'AM.

NOW, THE CHILD THAT -- OBVIOUSLY IT WAS YESTERDAY THAT THE CHILD HAD A FEVER; IS THAT RIGHT? IS THE CHILD ALL RIGHT?

A JUROR: YES.

THE COURT: OKAY. THERE AGAIN, IF SOMETHING

LIKE THAT HAPPENS, DON'T HESITATE TO LET THE COURT KNOW AND WE WILL DO EVERYTHING THAT WE CAN, EVEN TO EXCUSE. (READING):

WHAT HAPPENS TO THE NO-SHOWS FROM THE JURY POOL?

WE SEND THE SHERIFF OUT TO INVITE THEM, TO GIVE THEM A SPECIAL RIDE TO THE COURT AND THEN I'LL TALK TO THEM. IT DEPENDS. SOMETIMES THEY OVERSLEEP, OR THEY MAY FORGET THE DATE THEY ARE SUPPOSED TO BE HERE, THEY'RE CONFUSED OR SOMETHING LIKE THAT. IN THAT CASE I JUST MAKE SURE THEY KNOW WHEN THE NEXT TERM OF COURT IS AND TO BE HERE.

ON OCCASION, IF IT'S PROPER, THEY CAN BE SENTENCED FOR CONTEMPT BECAUSE THE REST OF THE JURY WAS HERE, AND BECAUSE SOMETHING IS NOT CONVENIENT IS NOT THE REASON WE DON'T HAVE TO MEET OUR RESPONSIBILITIES. AND SO IT CAN BE ANYTHING FROM JUST RESCHEDULING THEIR SERVICE TO MAYBE GIVING THEM A REASON TO REMEMBER THE NEXT TIME.

ALL RIGHT. ANYTHING ELSE, MADAM FORELADY?

THE FORELADY: NO, SIR.

THE COURT: VERY GOOD. I WANT TO THANK YOU ALL FOR TAKING THE INTEREST THAT YOU HAVE.

AND, MADAM CLERK, BE SURE WE GET THEM THE INFORMATION THEY NEED.

THE CLERK: YES, YOUR HONOR.

THE COURT: THANK YOU VERY MUCH. ALL RIGHT. WE WILL NOW PROCEED WITH THE STATE'S CASE.

MR. CAMPBELL?

MR. CAMPBELL: THANK YOU, YOUR HONOR.

THE STATE CALLS LATORREY PEARSON.

(WHEREUPON, THE WITNESS WAS SWORN BY THE CLERK.)

THE CLERK: PLEASE STATE YOUR FULL NAME AND SPELL YOUR LAST NAME FOR THE RECORD.

THE WITNESS: LATORREY PEARSON, P-E-A-R-S-O-N.

WHEREUPON,

LATORREY PEARSON,

AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. CAMPBELL:

Q. NOW, MR. PEARSON, I NEED YOU TO SPEAK UP SO THE LADIES AND GENTLEMEN CAN HEAR YOU, OKAY?

A. OKAY.

Q. NOW, MR. PEARSON, DO YOU HAVE A NAME OR A NICKNAME THAT EVERYBODY CALLS YOU BY?

A. TORREY.

Q. TORREY? YOU HAVE A CRIMINAL RECORD, DON'T YOU?

A. YES, SIR.

Q. ASSAULT WITH INTENT TO KILL?
A. YES, SIR.
Q. BACK IN 2003?
A. YES, SIR.
Q. YOU ARE ON PROBATION FOR THAT RIGHT NOW, AREN'T YOU?
A. YES, SIR.
Q. I WANT TO TALK TO YOU ABOUT WHAT HAPPENED ON FEBRUARY 25TH, 2006. DO YOU RECALL THAT DAY?
A. YES, SIR.
Q. WHY DO YOU RECALL THAT DAY?
A. I WAS DOWN AT THE OLD SCHOOL LOUNGE.
Q. AND THAT DAY DID YOU SEE ANYTHING THAT HAPPENED?
MR. GAMBLE: YOUR HONOR, I'M UNABLE TO HEAR THIS WITNESS.
THE COURT: CAN YOU SPEAK UP, SIR?
THE WITNESS: YEAH, SURE.
THE COURT: TRY AGAIN, PLEASE.
BY MR. CAMPBELL:
Q. YOU WENT DOWN TO THE OLD SCHOOL LOUNGE ON FEBRUARY 25TH, 2006?
A. YES, SIR.
THE COURT: VERY GOOD. THANK YOU, SIR.
MR. CAMPBELL: ALL RIGHT. SPEAK UP SO THEY CAN ALL HEAR YOU, OKAY? AND MR. GAMBLE.

BY MR. CAMPBELL:

Q. NOW I'M GONNA RUN THROUGH THAT DAY'S EVENTS THAT TOOK PLACE. NOW, PRIOR TO YOU GOING DOWN TO THE OLD SCHOOL LOUNGE, WHO WERE YOU WITH?

A. IT WAS ME, BASSEN, ALPHONSO, AND I DON'T KNOW -- I DON'T KNOW HIS -- I JUST KNOW HIS STREET NAME.

Q. WHAT'S HIS STREET NAME?

A. CATFISH.

Q. AND ALPHONSO AND BASSEN ARE BROTHERS, RIGHT?

A. YES, SIR.

Q. WHAT IS THEIR LAST NAME?

A. HAILEY.

Q. ARE YOU KIN TO THESE PEOPLE?

A. YES, SIR.

Q. HOW ARE YOU KIN?

A. THEY'RE MY COUSINS.

Q. AND WHAT TIME -- Y'ALL WERE DOWN AT BROWN STREET; IS THAT RIGHT?

A. YES, SIR.

Q. AND ABOUT WHAT TIME DO YOU RECALL DID YOU ALL GO DOWN TO THE OLD SCHOOL LOUNGE?

A. I WOULD SAY ABOUT 10:00.

Q. AND IT WAS GETTING LATE, WASN'T IT?

A. YES, SIR.

Q. DID YOU ALL DRIVE OR DID YOU WALK DOWN THERE?

A. WE WALKED.

Q. NOW, DID ANY OF Y'ALL CARRY GUNS WHEN YOU WENT DOWN THERE?

A. YES, SIR.

Q. WHO WAS CARRYING GUNS?

A. I HAD ONE AND SWEET, BASSEN HAD ONE.

Q. AND WHAT DID BASSEN HAVE, DO YOU KNOW?

A. A BLACK, ALL BLACK NINE.

Q. NINE MILLIMETER?

A. YES, SIR.

Q. AND WHAT WERE YOU CARRYING?

A. A .357.

Q. AND WHAT COLOR WAS IT?

A. CHROME.

Q. WHAT COLOR WERE THE HANDLES?

A. RUBBER CUT.

Q. DO YOU REMEMBER WHAT COLOR THEY WERE?

A. BLACK RUBBER CUT.

Q. WOULD YOU DESCRIBE THE BARREL AS A SHORT-BARREL OR A LONG-BARREL REVOLVER?

A. LONG BARREL.

Q. IT WAS A REVOLVER, RIGHT?

A. YES, SIR.

Q. AND WHERE DID YOU GET THE GUN FROM?

A. ON BROWN STREET.

Q. DID ANYBODY GIVE IT TO YOU?
A. NO, SIR.
Q. AND, BUT YOU WERE ON PROBATION AT THAT TIME; IS THAT RIGHT?
A. YES, SIR.
Q. ON PROBATION ARE YOU ALLOWED TO BE AROUND WEAPONS?
A. NO, SIR.
Q. SO THE FOUR OF Y'ALL WALKED DOWN TO THE OLD SCHOOL LOUNGE?
A. YES, SIR.
Q. HOW FAR IS THAT FROM BROWN STREET?
A. FIVE MINUTES.
Q. AND WHEN YOU GOT THERE, WHAT DID YOU ALL DO?
A. WE STOOD AROUND ON THE SIDE OF THE BUILDING.
Q. NOW, IF YOU ARE FACING LOOKING AT THE BUILDING -- DO YOU KNOW WHERE TUCKER'S RESTAURANT IS?
A. YES, SIR.
Q. WHERE IS IT?
A. RIGHT ACROSS THE STREET.
Q. AND DO YOU KNOW WHAT STREET THE OLD SCHOOL LOUNGE IS LOCATED ON?
A. MARKET.
Q. THAT'S HERE IN ANDERSON, RIGHT?
A. YES, SIR.

Q. IF YOU ARE LOOKING DIRECTLY AT THE OLD SCHOOL LOUNGE, WHERE WERE YOU ALL: ON THE LEFT SIDE OR THE RIGHT SIDE?

A. TURNING IN?

Q. YES, SIR. IF YOU ARE LOOKING DIRECTLY ACROSS FROM TUCKER'S?

A. WE WOULD BE ON THE LEFT SIDE.

Q. IF YOU ARE LOOKING AT IT, IT WOULD BE ON THIS SIDE, RIGHT?

A. IF WE WERE ACROSS THE STREET AT TUCKER'S, YEAH, WE WOULD BE ON THE LEFT SIDE.

Q. DO YOU KNOW JWAN SMITH?

A. YES, SIR.

Q. HOW DO YOU KNOW HIM?

A. A FRIEND.

Q. HOW LONG HAVE YOU KNOWN HIM?

A. ABOUT A YEAR, A YEAR OR TWO.

Q. DO YOU CALL HIM JWAN?

A. NO, SIR.

Q. WHAT DO YOU CALL HIM?

A. BUSTER.

Q. AND IS HE IN THE COURTROOM TODAY?

A. YES, SIR.

Q. CAN YOU POINT HIM OUT TO US?

A. (POINTS.)

Q. BLUE SHIRT AND TIE?
A. YES, SIR.
Q. NOW, WHILE YOU WERE THERE -- DO YOU KNOW SAMMY MARTIN?
A. NO, SIR.
Q. HOW ABOUT ANGELA SALLY BROWNLEE?
A. NO, SIR.
Q. NOW, WHILE YOU WERE OUTSIDE, DID YOU SEE JWAN SMITH?
A. YES, SIR.
Q. WHERE DID YOU SEE HIM?
A. ON THE SIDE WHERE WE WAS AT.
Q. AND WHAT WAS HE WEARING THAT NIGHT?
A. I WANT TO SAY A BLACK COAT.
Q. HOW ABOUT HIS PANTS, DO YOU RECALL HIS PANTS?
A. NO, SIR.
Q. BUT YOU RECALL A BLACK COAT?
A. YES, SIR.
Q. DID IT HAVE A HOOD OR NO HOOD ON IT?
A. I WOULD SAY A BLACK HOODIE.
Q. WHAT ARE YOU REFERRING TO WHEN YOU SAY A HOODIE?
A. WITH A HOOD ON IT.
Q. I MEAN, ONE YOU PULL UP OVER YOUR HEAD?
A. YES, SIR.
Q. NOW, DID YOU TALK TO MR. SMITH WHILE YOU WERE

OUTSIDE?

A. YES, SIR.

Q. WHAT DID YOU ALL TALK ABOUT?

A. I SOLD HIM SOME WEED.

Q. WHAT DO YOU REFER TO WHEN YOU SAY WEED?

A. MARIJUANA.

Q. DID HE COME TO ASK YOU ABOUT IT OR DID YOU TALK TO HIM ABOUT IT?

A. HE ASKED ME ABOUT IT.

Q. WHAT DID HE WANT?

A. JUST SOME WEED -- I MEAN SOME MARIJUANA, YES, SIR.

Q. AND DID YOU GIVE HIM ANY?

A. YES, SIR.

Q. DID YOU GIVE IT TO HIM OR SELL IT TO HIM?

A. SELL IT TO HIM.

Q. HOW MUCH?

A. ABOUT A DIME BAG.

Q. AND WHAT ARE YOU REFERRING TO, FOR THE LADIES AND GENTLEMEN OF THE JURY, WHAT DO YOU MEAN BY A DIME BAG?

A. $10.00 WORTH.

Q. AND HOW BIG IS THAT?

A. VERY SMALL.

Q. IS IT ENOUGH FOR A JOINT?

A. YES, SIR.

Q. NOW, DID HE SAY ANYTHING ELSE TO YOU WHILE YOU WERE STANDING AROUND?

A. NO, SIR.

Q. AND WHILE YOU WERE THERE, DID YOU WITNESS ANYTHING ELSE GOING ON AT THE OLD SCHOOL LOUNGE?

A. YES, SIR.

Q. WHAT DID YOU SEE?

A. A MAN AND A WOMAN FIGHTING ON THE RIGHT SIDE OF THE BUILDING.

Q. WAS THAT ON THE CREEK SIDE OR WAS THAT ON THE SIDE WHERE THE BODY SHOP IS?

A. CREEK SIDE.

Q. AND THE WOMAN YOU SAW, CAN YOU DESCRIBE HER?

A. NO, SIR.

Q. WAS SHE BIG OR LITTLE?

A. WELL, YEAH, SHE WAS BIG.

Q. HEAVYSET?

A. YEAH, HEAVYSET.

Q. HOW ABOUT THE MAN, WAS HE BIG OR LITTLE OR SKINNY?

A. SKINNY, BUT KIND OF TALL, I THINK.

Q. AND COULD YOU UNDERSTAND WHAT THEY WERE SAYING?

A. NO, SIR.

Q. AND FROM WHERE YOU WERE STANDING, WHAT DID YOU SEE GOING ON BETWEEN THEM TWO?

A. IT LOOKED LIKE THEY WERE ARGUING.

Q. DID MR. SMITH OBSERVE THIS, SEE IT?

MR. GAMBLE: OBJECTION, YOUR HONOR. THAT WOULD CALL FOR AN OPINION FROM THIS WITNESS.

THE COURT: SUSTAINED.

BY MR. CAMPBELL:

Q. NOW, AS THIS COMMOTION WAS GOING ON BETWEEN THESE TWO INDIVIDUALS, WHAT DID YOU OBSERVE THE TWO PEOPLE DO?

A. THE TWO PEOPLE THAT WAS FIGHTING?

Q. YES, SIR.

A. THEY WERE JUST ARGUING THERE. ONE GOT IN THE CAR AND THEN GOT OUT OF THE CAR.

Q. NOW, AS THIS WAS GOING ON, DID MR. SMITH ASK YOU FOR ANYTHING ELSE?

A. YES, SIR, WHEN HE CAME RUNNING BACK UP.

Q. SO HE HAD LEFT YOU FROM WHERE YOU WERE INITIALLY STANDING AFTER HE BOUGHT THE MARIJUANA?

A. YES, SIR.

Q. WHEN HE CAME UP THE SECOND TIME TO YOU, WHAT WAS HE LOOKING FOR OR ASKING YOU FOR?

A. A GUN.

Q. AND THIS GUN THAT YOU HAD ON YOU AT THIS TIME, DO YOU REMEMBER WHAT BRAND IT WAS?

A. I WANT TO SAY A ROSSI.

Q. A ROSSI?

A. YEAH.
Q. AND DID HE TELL YOU WHY HE WANTED THIS GUN?
A. NO, SIR.
Q. DID YOU GIVE IT TO HIM?
A. YES, SIR.
Q. DID YOU KNOW WHAT HE WAS GONNA DO WITH THE GUN?
A. NO, SIR.
Q. AFTER YOU HANDED HIM THE GUN, WHAT DID MR. SMITH DO?
A. HE WALKED AWAY WITH IT.
Q. WHICH WAY DID HE WALK?
A. THROUGH THE BACK.
Q. AROUND THE BACK SIDE OF THE BUILDING OR THE FRONT SIDE?
A. THE BACK SIDE OF THE BUILDING.
Q. AND THEN WHEN WAS THE NEXT TIME YOU SAW HIM?
A. I WANT TO SAY I SEEN HIM RIDING OFF.
Q. I DIDN'T UNDERSTAND WHAT YOU SAID.
A. THE NEXT TIME I SEEN HIM, I WANT TO SAY I SEEN HIM RIDING OFF IN A CAR.
Q. NOW, AFTER HE WALKED AROUND, COULD YOU STILL SEE THE TWO PEOPLE ARGUING OR FUSSING OUT THERE IN THE PARKING LOT?
A. YES, SIR.
Q. WHAT DID YOU SEE HAPPEN TO THEM?

A. THEM? ALL I DID -- AFTER THAT ALL I HEARD WAS SHOTS.

Q. DID YOU SEE THE SHOOTING?

A. NO, SIR.

Q. DID YOU SEE THE INDIVIDUAL THAT DID THE SHOOTING?

A. NO, SIR.

Q. HOW MANY SHOTS DID YOU HEAR?

A. THREE.

Q. AND HOW LONG AFTER YOU GAVE MR. SMITH THE PISTOL DID THE SHOTS OCCUR?

A. I WOULD SAY LESS THAN FIVE MINUTES.

Q. AND DID YOU SEE WHAT HAPPENED TO MR. MARTIN, OR THE MAN THAT WAS OUT THERE FIGHTING?

A. ALL -- HE WAS LAYING DOWN.

Q. YOU SAW HIM FALL?

A. YES, SIR.

Q. HOW CLOSE -- HOW FAR AWAY FROM HIM WERE YOU, DO YOU RECALL?

A. I WAS ON THE OTHER SIDE OF THE BUILDING, SO I WOULD SAY ABOUT TEN FEET, 12.

Q. NOW I WANT YOU TO THINK BACK. ON THAT NIGHT DID YOU SEE MR. SMITH SHOOT MR. MARTIN?

A. NO, SIR.

Q. DO YOU RECALL GIVING A STATEMENT ON APRIL THE 25TH, 2006?

A. YES, SIR.
Q. IN FACT, YOU HAVE GIVEN THREE STATEMENTS IN THIS CASE, IN THE INVESTIGATION OF THIS CASE, HAVEN'T YOU?
A. YES, SIR.
Q. YOU GAVE A STATEMENT BACK ON MARCH THE 1ST, 2006; IS THAT RIGHT?
A. YES, SIR.
Q. APRIL THE 5TH, 2006?
A. YES, SIR.
Q. AND THEN APRIL 25TH, 2006?
A. YES, SIR.
(COUNSEL CONFER.)
BY MR. CAMPBELL:
Q. I'M GOING TO SHOW YOU THESE STATEMENTS AND I WANT YOU TO TAKE A LOOK AT THEM. TAKE A LOOK AT THESE STATEMENTS. JUST TAKE A CHANCE AND TAKE A LOOK AT THEM, PLEASE, SIR.
A. (COMPLIES.)
Q. HAVE YOU HAD AN OPPORTUNITY TO TAKE A LOOK OVER ALL THREE STATEMENTS?
A. YES, SIR.
Q. DID YOU READ YOUR LAST STATEMENT? THE LAST ONE. HERE.
A. THIS IS THE LAST ONE?
Q. DID YOU READ THIS LAST ONE?

A. (READS STATEMENT.) DO YOU WANT ME TO READ IT OUT LOUD?

Q. NO, SIR. HAVE YOU HAD A CHANCE TO REVIEW IT?

THE COURT: HAVE THE STATEMENTS BEEN IDENTIFIED?

MR. CAMPBELL: I'M FIXING TO GET THERE.

BY MR. CAMPBELL:

Q. HAVE YOU HAD AN OPPORTUNITY TO READ THEM?

A. YES, SIR.

Q. ON EACH OF THOSE STATEMENTS IS THAT YOUR SIGNATURE AT THE BOTTOM OF THOSE STATEMENTS?

A. YES, SIR.

Q. AND THAT'S THE STATEMENTS YOU GAVE THE OFFICERS WHEN THEY CAME AND ASKED YOU ABOUT THIS CASE?

A. YES, SIR.

Q. NOW, REFERRING BACK TO THE APRIL 25TH, 2006 STATEMENT, YOUR LAST STATEMENT, TOWARDS THE BOTTOM, IN THAT YOU IDENTIFIED WHO THE SHOOTER WAS, DIDN'T YOU?

A. (NO RESPONSE.)

Q. YOU IDENTIFIED WHO THE SHOOTER WAS?

A. YES, SIR.

Q. AND WHO DID YOU SAY WAS THE SHOOTER IN THIS CASE?

A. BUSTER.

Q. SO YOU DID, IN FACT, SEE HIM PULL THE TRIGGER?

A. ONE SHOT.

Q. SIR?
A. ONE SHOT. AFTER THE FIRST SHOT WENT OFF, I RAN, STARTED TO TAKE COVER.
Q. REPEAT THAT. I DON'T UNDERSTAND YOU.
A. I SAID, AFTER THE FIRST SHOT, I RAN AND TOOK COVER.
Q. SO YOU WERE WATCHING WHAT HAPPENED WHEN THE FIRST SHOT WENT OFF?
A. I WAS WATCHING A MAN AND A WOMAN FIGHT.
Q. OKAY.
A. THEN THE SHOT WENT OFF AND I RAN AROUND AND TOOK COVER.
Q. AND YOU SAW WHO FIRED THIS SHOT?
A. YES, SIR.
Q. AND WHO WAS THAT?
A. BUSTER.
Q. AND DID YOU SEE THE GUN HE WAS USING?
A. THE GUN THAT I GAVE HIM.
Q. THE ONE YOU HAD JUST GIVEN HIM?
A. YES, SIR.
Q. AND AFTER THAT FIRST SHOT, WHAT DID YOU DO?
A. DUCK, WENT ON THE CORNER ON THE SIDE OF THE BUILDING.
Q. YOU WERE GETTING OUT OF THE WAY?
A. YES, SIR.

Q. AND DID YOU SEE MR. SMITH DO ANYTHING AFTER THAT?
A. I THINK HE CAME BACK AROUND THE BUILDING AND GOT IN A CAR AND LEFT.
Q. AND DID YOU SEE HIM LEAVE?
A. UM, NO, I THINK WE LEFT BEFORE HE DID.
Q. WAS HE WITH Y'ALL WHEN HE LEFT?
A. NO, SIR.
Q. DID YOU ALL GIVE HIM A RIDE OUT OF THERE?
A. NO, SIR.
Q. AND WHY WERE YOU TRYING TO GET OUT OF THERE SO QUICK?
A. BECAUSE THE MAN WAS LAYING DOWN.
Q. BUT YOU DIDN'T SHOOT HIM, DID YOU?
A. NO, SIR.
Q. SO WHY DID YOU ALL WANT TO LEAVE SO FAST?
A. I GUESS JUST SCARED.
Q. WERE YOU ALL SUPPOSED TO BE DOWN THERE?
A. NO, SIR.
Q. NOW, PRIOR TO THE SHOOTING, DID YOU SEE -- DID MR. SMITH AND THAT TALL MAN HAVE ANY WORDS BETWEEN THEM?
A. NO, SIR. NOT TO MY MEMORY, NO, SIR.
Q. DID YOU SEE, FROM WHERE YOU WERE STANDING, DID THAT MAN HAVE ANY TYPE OF WEAPONS OR ANYTHING IN HIS HANDS?
A. NO, SIR.

Q. WHERE WAS MR. SMITH LIVING AT THE TIME, DO YOU RECALL?
A. ON REED COURT.
Q. DO YOU KNOW HIS MOTHER?
A. YES, SIR.
Q. WHAT'S HER NAME?
A. JANICE.
Q. DID YOU SEE HER DOWN THERE THAT NIGHT?
A. NO, SIR.
Q. NOW, YOU GAVE THREE STATEMENTS, DID YOU NOT?
A. YES, SIR.
Q. WHY DID YOU GIVE THREE STATEMENTS?
A. I WAS SCARED.
Q. WHAT WERE YOU SCARED OF?
A. ONE, I WAS ON PROBATION; TWO, FAMILY REASONS. JUST, I DON'T KNOW.
Q. SO ON THE FIRST STATEMENT YOU LEFT OUT A FEW LITTLE PIECES OF INFORMATION, DIDN'T YOU?
A. YES, SIR.
Q. WHAT DID YOU LEAVE OUT?
A. WHAT REALLY WENT ON, WHAT I SAW.
Q. DID YOU LEAVE OUT WHO YOU WALKED DOWN THERE WITH?
A. YES, SIR.
Q. YOU LEFT THE PART OUT ABOUT THE GUN, DIDN'T YOU?
A. YES, SIR.

Q. AND WHEN YOU MADE YOUR APRIL 5TH, 2006 STATEMENT, YOU TOLD A LITTLE BIT MORE, DIDN'T YOU?

A. YES, SIR.

Q. THEN YOU TOLD WHO YOU WALKED DOWN THERE WITH?

A. YES, SIR.

Q. THEN YOU WROTE A THIRD STATEMENT; IS THAT RIGHT?

A. YES, SIR.

Q. AND THAT WAS ON APRIL 25TH, 2006. DID YOU COME CLEAN ON THAT APRIL 25TH, 2006 STATEMENT?

A. YES, SIR.

Q. AND TOLD THEM WHAT YOU SAW?

A. YES, SIR.

Q. IT JUST TOOK THREE TRIES TO GET IT OUT OF YOU, DIDN'T IT?

A. YES, SIR.

Q. WHEN YOU WITNESSED THE FIRST SHOT GO OFF, WHAT WAS THE DISTANCE BETWEEN -- HOW FAR APART WAS MR. SMITH AND THAT MAN IN THE PARKING LOT?

A. PROBABLY ABOUT A FEET [SIC] OR TWO.

Q. TELL ME WHEN TO STOP. HOW CLOSE?

A. RIGHT THERE.

Q. ABOUT RIGHT HERE?

A. NO, NOT -- TAKE A COUPLE STEPS BACK. RIGHT THERE.

Q. ABOUT RIGHT HERE BETWEEN -- ABOUT THIS DISTANCE?

A. YES, SIR.
Q. ABOUT SIX FEET OR SO?
A. YES, SIR.
Q. AND HOW WAS HE WEARING HIS HAIR THAT NIGHT?
A. I WANT TO SAY IN PLATS.
Q. WHEN YOU'RE REFERRING TO PLATS, WHAT ARE YOU TALKING ABOUT?
A. BRAIDS, PLATS.
Q. LITTLE SMALL TWISTS?
A. YES.
Q. WERE THEY LONG OR SHORT?
A. I CAN'T REMEMBER. SHORT, I THINK.
(COUNSEL CONFER.)
BY MR. CAMPBELL:
Q. I'M GONNA SHOW YOU, MR. PEARSON -- LET ME TAKE THESE BACK -- CAN YOU PLEASE LOOK AT THESE AND TELL ME WHAT THOSE ARE?
A. IT'S THE FRONT OF THE OLD SCHOOL LOUNGE.
THE COURT: MR. CAMPBELL, IF YOU WOULD, EACH PICTURE THAT HE REFERS TO, IF YOU WOULD IDENTIFY IT BY EXHIBIT NUMBER.
MR. CAMPBELL: YES, SIR.
BY MR. CAMPBELL:
Q. HAVE YOU HAD AN OPPORTUNITY TO LOOK AT THESE PICTURES?

A. YES, SIR.

Q. AND EXHIBIT ONE THROUGH FIVE, WHAT ARE THOSE PICTURES OF?

A. THE FRONT OF THE OLD SCHOOL.

Q. AND ARE THESE PICTURES FROM DIFFERENT ANGLES TAKEN OF THE OLD SCHOOL LOUNGE?

A. YES, SIR.

MR. CAMPBELL: JUST HANG TIGHT.

(OFF-THE-RECORD DISCUSSION.)

MR. CAMPBELL: CAN YOU ALL SEE THAT FROM WHERE IT IS OR IS THAT TOO FAR DOWN FOR YOU?

A JUROR: THAT'S FINE.

(OFF-THE-RECORD DISCUSSION.)

MR. CAMPBELL: YOUR HONOR, MAY I ASK THE JURY IF THEY CAN SEE THIS?

THE COURT: CERTAINLY.

CAN YOU ALL SEE IT?

JURORS: YES.

MR. CAMPBELL: YOUR HONOR, MAY THE WITNESS STEP OFF THE STAND, PLEASE?

THE COURT: CERTAINLY.

(WITNESS LEAVES STAND.)

MR. CAMPBELL: I WANT YOU TO STAND RIGHT HERE. THE COURT REPORTER NEEDS TO SEE YOU. COME ON OVER HERE.

THE COURT: ALL RIGHT. NOW, MR. PEARSON, THIS LADY IS TAKING DOWN EVERYTHING THAT WE SAY, SO SHE NEEDS TO SEE YOUR FACE WHEN YOU SPEAK, SO SORT OF TALK TO THE JURY BUT TOWARDS HER AS WELL. DO YOU UNDERSTAND?

THE WITNESS: (NODDED HEAD.)

THE COURT: YOU NEED TO SPEAK UP.

THE WITNESS: YES, SIR.

THE COURT: THANK YOU, SIR.

MR. CAMPBELL: HERE, HOLD THIS. ALL RIGHT.

BY MR. CAMPBELL:

Q. LOOK AT THESE PICTURES RIGHT HERE. THESE ARE THE PICTURES I JUST SHOWED YOU; IS THAT RIGHT?

A. YES, SIR.

Q. FACE THIS WAY SO PEOPLE WILL UNDERSTAND WHAT YOU'RE SAYING.

AND THAT'S STATE'S EXHIBITS ONE THROUGH FIVE ON THE PHOTOS; IS THAT RIGHT?

A. YES, SIR.

Q. CAN YOU PLEASE TELL THE LADIES AND GENTLEMEN OF THE JURY BASICALLY, FIRST, WHAT ARE THESE ANGLES OF, WHICH DIRECTION ARE YOU LOOKING FROM?

A. THAT'S THE FRONT OF THE OLD SCHOOL.

Q. SO THIS RIGHT HERE WOULD BE THE FRONT OF THE BUILDING?

A. YES, SIR.

Q. AND WHICH SIDE, WHEN WE'RE TALKING ABOUT THE CREEK SIDE, IS THE CREEK ON?

A. THE RIGHT SIDE.

Q. SO, IF YOU ARE LOOKING DIRECTLY AT IT, YOU ARE REFERRING TO THE RIGHT SIDE?

A. YES, SIR.

Q. AND WHERE WERE YOU ALL STANDING WHEN EVERYTHING TOOK PLACE, WHEN THE SHOOTING HAPPENED?

A. ON THE LEFT SIDE.

Q. ON THE LEFT SIDE OF THE BUILDING?

A. UH-HUH.

Q. AND WHERE DID THE SHOOTING TAKE PLACE?

A. ON THE RIGHT SIDE.

Q. DO YOU KNOW ABOUT WHERE IN THE PARKING LOT IT OCCURRED?

A. RIGHT AROUND HERE ON THE CORNER.

Q. AND WERE YOU ABLE TO SEE -- THAT'S WHERE YOU WERE ABLE TO SEE WHAT HAPPENED, FROM THERE?

A. YES, SIR.

Q. AND THIS IS MARKET STREET?

A. YES, SIR.

MR. CAMPBELL: OKAY. GO AHEAD AND HAVE A SEAT, PLEASE, SIR.

(WITNESS RESUMES STAND.)

BY MR. CAMPBELL:

Q. MR. PEARSON, THAT NIGHT DID YOU SEE HOW -- THAT MAN AND WOMAN THAT WERE ARGUING, DID YOU SEE HOW THEY GOT TO THE CLUB?

A. I KNEW THEY WAS IN SEPARATE CARS.

Q. DO YOU KNOW WHAT KIND OF CAR THE MAN WAS DRIVING?

A. I DON'T KNOW WHAT KIND, I THINK IT WAS BLACK.

Q. YOU DON'T REMEMBER WHAT KIND IT WAS?

A. NO.

MR. CAMPBELL: MR. PEARSON, I HAVE NO FURTHER QUESTIONS. WOULD YOU PLEASE ANSWER ANY QUESTIONS MR. GAMBLE MAY HAVE.

CROSS-EXAMINATION BY MR. GAMBLE:

Q. I'M HANDING YOU STATE'S EXHIBIT SIX. WHAT IS IT?

A. A GREEN TAURUS CAR.

Q. DID YOU SEE IT THAT NIGHT, THE 25TH OR 26TH?

A. I CAN'T RECALL.

Q. SO YOU DON'T KNOW WHAT MR. MARTIN CAME UP IN, DO YOU?

A. NO.

Q. OKAY. YOUR FIRST STATEMENT, WHICH YOU SAID WAS NOT TRUE -- IN OTHER WORDS, A LIE -- WAS MARCH THE 1ST OF '06; IS THAT CORRECT?

A. YES, SIR.

Q. AND YOU SAID YOU SAW SWEET, THAT'S BASSEN HAILEY, WITH A GUN, A CHROME-COLORED REVOLVER, IT WAS A .38. IS

THAT WHAT YOU SAID?

A. YES, AND IT WAS A LIE.

Q. THAT WAS A LIE. BASSEN HAILEY HAD A .357, DIDN'T HE?

A. NO.

Q. BASSEN HAILEY HAD A GUN, DIDN'T HE?

A. YES.

Q. DID HE GIVE THAT GUN TO YOU?

A. NO.

Q. DID YOU TAKE IT FROM HIM?

A. NO.

Q. WHERE DID YOU GET THE .357?

A. ON BROWN STREET.

Q. FROM BARBARA CLINKSCALES' HOUSE?

A. YES.

Q. OKAY. NOW, IF YOU SOLD BUSTER, AS YOU SAY, WEED FOR $10.00, HOW MUCH MONEY DID YOU GET FOR THE .357 REVOLVER?

A. HE DIDN'T BUY THE .357 REVOLVER FROM ME. I DID NOT SELL IT.

Q. YOU JUST GAVE HIM A GUN?

A. YES, SIR.

Q. WHERE IS IT?

A. I DON'T KNOW.

Q. DID YOU SEE IT ANYMORE?

A. NO.
Q. YOU ACTUALLY GAVE SOMEBODY YOU HARDLY KNEW A GUN?
A. OH, YEAH, I KNOW HIM.
Q. HUH?
A. I SAID I KNOW HIM.
Q. YOU KNOW HIM BUT YOU -- YOU SOLD HIM MARIJUANA, RIGHT?
A. YES.
Q. BUT YOU GAVE HIM A GUN?
A. YES.
Q. WHAT'S THE SENSE IN THAT, I ASK YOU?
A. THERE AIN'T NO SENSE FOR THAT.
Q. THAT'S RIGHT. NOW, YOU, TURK -- WHO IS PICKENS, RIGHT?
A. YES.
Q. -- IMMEDIATELY GOT IN A CAR AND DROVE OFF, BUT Y'ALL HADN'T DONE ANYTHING OTHER THAN SELL MARIJUANA, HAD YOU?
A. YES, SIR.
Q. WHAT?
A. NO, THAT WAS ALL WE DID.
Q. THAT'S ALL YOU DID WAS SELL MARIJUANA. HUH?
A. YES, SIR.
Q. WERE YOU ON PROBATION AT THIS TIME?
A. YES, SIR.

Q. AND YOU HAD A GUN?
A. YES, SIR.
Q. AND YOU WERE SELLING MARIJUANA?
A. YES, SIR.
Q. AND YOU ARE AT A CLUB THAT SELLS LIQUOR?
A. YES, SIR.
Q. OKAY. NOW, TO START WITH, YOU SAY YOU WERE ON THE LEFT SIDE OF THE CLUB?
A. YES, SIR.
Q. AND THIS TOOK PLACE ON THE RIGHT SIDE OF THE CLUB?
A. YES, SIR.
Q. BUT YOU SAW A MAN AND WOMAN FIGHTING IN THE PARKING LOT?
A. YES, SIR.
Q. ACTUALLY BLOWS?
A. NO. AN ALTERCATION.
Q. WHAT'S AN ALTERCATION?
A. THEY WAS FUSSING.
Q. THEY WERE JUST FUSSING. IN YOUR THIRD TRUE STATEMENT, DATED APRIL 25 (READING):

> I SAW THE BLACK MAN HIT THE BLACK WOMAN A COUPLE OF TIMES.

Q. IS THAT THE TRUTH OR A LIE?
A. I DIDN'T SEE THAT.

Q. YOU DIDN'T SEE THAT?
A. I DIDN'T SEE HIM SWINGING AT HER.
Q. LET'S TAKE A LOOK. I'M PUTTING AN ARROW. YOU READ YOUR THIRD TRUE STATEMENT, OUT LOUD, WHERE I PUT THE ARROW. READ IT.
A. ALOUD?
Q. SIR?
A. YOU WANT ME TO READ IT OUT LOUD?
Q. YEAH.
A. DO YOU WANT ME TO READ IT OUT LOUD?
Q. THE THIRD TRUE STATEMENT.
A. (READING):
I SAW THE -- I SAW THE BLACK MAN HIT THE BLACK WOMAN A COUPLE TIMES.
Q. NOW YOU JUST TESTIFIED THAT NOBODY HIT ANYBODY. WHICH IS THE TRUTH NOW, MISTER?
A. (NO RESPONSE.)
Q. DO YOU KNOW THE TRUTH?
A. YEAH, I KNOW THE TRUTH.
Q. TELL ME THE TRUTH. TELL THESE PEOPLE THE TRUTH. WHAT IS THE TRUTH?
A. HE MIGHT HAVE SWUNG AT HER A COUPLE TIMES.
Q. HE MIGHT HAVE HIT HER. YOU WERE LOOKING AT THEM. YOU SAID HE HIT HER. THEN YOU SAID HE DIDN'T HIT HER, THEY WERE JUST ARGUING. WHICH IS IT?

A. IT WAS DARK, SIR.

Q. SIR?

A. I SAID IT WAS DARK OUT THERE.

Q. THAT BRINGS UP ANOTHER QUESTION. WHAT WAS THE LIGHT OUTSIDE THIS CLUB?

A. IN FRONT OF THE DOOR IT WAS LIGHT, IT WAS LIT UP.

Q. IN FRONT OF THE DOOR WAS THE LIGHT?

A. YES, SIR.

Q. HOW BIG A LIGHT?

A. IT WOULD LIGHT UP THE WHOLE FRONT RIGHT THERE.

Q. WHAT DO YOU MEAN THE WHOLE FRONT? HOW FAR DID THE LIGHT CARRY?

A. OVER SOME, FROM THE FRONT OVER.

Q. BUT THIS WAS OFF TO THE RIGHT AND YOU SAID IT WAS DARK OVER THERE.

A. IT WASN'T THAT FAR OFF TO THE RIGHT. IT WAS IN FRONT OF SOME CARS, THERE WAS CARS OUT THERE WITH LIGHTS ON.

Q. YOU MEAN THIS FIGHT DIDN'T TAKE PLACE ON THE RIGHT SIDE OF THE CLUB, IT TOOK PLACE IN FRONT OF THE CLUB? WHICH IS IT, MISTER?

MR. CAMPBELL: OBJECTION, YOUR HONOR.

THE WITNESS: IT WAS THE RIGHT SIDE.

THE COURT: MR. GAMBLE, JUST STATE A QUESTION, CALMLY.

MR. GAMBLE: I HAVE DIFFICULTY BEING CALM, YOUR HONOR, SOMETIMES. I'M SORRY.

THE COURT: I UNDERSTAND. YOU CAN SAVE IT FOR ARGUMENT.

BY MR. GAMBLE:

Q. ALL RIGHT. ON YOUR FIRST STATEMENT OF MARCH THE 1ST, THE FIRST TRUE STATEMENT, YOU TOLD THE OFFICER AT THAT TIME, WHICH WAS RIGHT AFTER THIS INCIDENT OCCURRED (READING):

> I COULDN'T SEE ANYTHING BECAUSE THERE WERE PEOPLE IN THE WAY, SO I DIDN'T SEE WHO WAS SHOOTING OR THE GUN.

Q. IS THAT WHAT YOU SAID?

A. YES, SIR.

Q. AND THAT WAS IMMEDIATELY AFTER THIS HAPPENED.

A. YES, SIR.

Q. AND THEN Y'ALL, THREE OF YOU, DROVE OFF IMMEDIATELY. ALTHOUGH YOU HADN'T COMMITTED A CRIME, YOU HADN'T DONE ANYTHING BUT SELL MARIJUANA, YOU LEFT, RIGHT?

A. YES, SIR.

Q. OKAY. THEN YOU SAID ABOUT A WEEK EARLIER YOU SAW SWEET, BASSEN HAILEY, WITH A GUN?

A. YES, SIR.

Q. YOU ARE BASSEN HAILEY'S COUSIN, AREN'T YOU?

A. YES, SIR.
Q. ARE YOU ALL RELATED TO TURK OR PICKENS IN ANY WAY?
A. NO, SIR.
Q. HOW DID YOU HAPPEN TO GET WITH PICKENS?
A. HE WAS DOWN THERE THAT NIGHT TOO, SIR.
Q. HUH?
A. HE WAS DOWN THERE AT THE OLD SCHOOL LOUNGE THAT NIGHT.
Q. EVIDENTLY Y'ALL WERE FRIENDS BEFORE YOU WENT DOWN THERE; IS THAT CORRECT?
A. YES, SIR, I KNOW HIM.
Q. THE THREE OF Y'ALL HUNG TOGETHER A GOOD BIT, DIDN'T YOU?
A. NO, SIR.
Q. WHY WERE YOU WITH TURK THAT NIGHT?
A. ALL TURK DID WAS GAVE US A RIDE. WE RODE WITH HIM.
Q. GAVE YOU A RIDE WHERE?
A. UP THE STREET FROM THE OLD SCHOOL.
Q. FROM THE OLD SCHOOL. HOW DID YOU GET DOWN TO THE OLD SCHOOL?
A. WALKED.
Q. YOU AND WHO?
A. ME, BASSEN, ALPHONSO, CATFISH.

Q. ALL RIGHT. DID YOU GO INSIDE?
A. NO, SIR.
Q. WHEN THESE PEOPLE WERE FIGHTING OR ARGUING OR HAVING A DISCUSSION OR WHATEVER THEY WERE DOING, THE MAN AND THE WOMAN, DID YOU SEE THAT?
A. YES, SIR.
Q. DID YOU SEE THE HOOD OF A BROWN CHEVROLET CAPRICE?
A. YES, I THINK IT WAS UP.
Q. WAS ANYBODY DOWN IN THE CAR?
A. I CAN'T RECALL.
Q. YOU DIDN'T SEE ANYBODY LOOKING INTO THE HOOD OF THE CAR?
A. I CAN'T RECALL.
Q. YOU DIDN'T SEE THE WOMAN LOOKING INTO THE HOOD OF THE CAR?
A. NOT AT THAT TIME, NO.
Q. ALL YOU SAW WAS SHE AND THIS MAN FIGHTING?
A. STANDING IN FRONT OF IT.
Q. HUH?
A. STANDING IN FRONT OF THE CAR.
Q. STANDING IN FRONT OF THE CAR FIGHTING, RIGHT?
A. FUSSING, YEAH.
Q. WELL, YOU SAID FIGHTING. WAS IT FIGHTING OR FUSSING?

A. BOTH.
Q. THEY WERE FIGHTING AND FUSSING, RIGHT?
A. YES, SIR.
Q. OKAY. WHEN DID YOU NEXT SEE SMITH LEAVE? WHEN DID YOU SEE HIM LEAVE THE OLD SCHOOL?
A. I DIDN'T SEE HIM LEAVE, I SEEN WHAT CAR HE GOT IN.
Q. HUH?
A. I DIDN'T SEE HIM LEAVE. I DIDN'T SEE HIM LEAVE, I SEEN WHAT KIND OF CAR HE GOT IN WHEN HE WENT AROUND THE BUILDING.
Q. WHAT KIND OF CAR?
A. I WANT TO SAY IT WAS A GRAY CAR.
Q. AFTER THIS, AFTER THE SHOTS HAD BEEN FIRED?
A. YES, SIR.
Q. I THOUGHT YOU LEFT AFTER THE FIRST SHOT WAS FIRED.
A. NO. I SAY I MOVED.
Q. OH, OKAY. IN YOUR FINAL TRUE STATEMENT, DATED APRIL THE 25TH, YOU SAID (READING):

I NEVER SAW BUSTER ONCE THE SHOTS WERE FIRED.

Q. WHICH IS GONNA BE YOUR TRUE STATEMENT NOW: THAT YOU SAW HIM GET IN A CAR OR YOU NEVER SAW HIM ONCE THE SHOT WAS FIRED?

A. (NO RESPONSE.)
Q. IF YOU NEED TO REFRESH YOUR MEMORY (HANDING). WHAT DOES THE STATEMENT SAY ABOUT WHEN THE SHOT WAS FIRED? DID YOU SEE BUSTER OR NOT SEE BUSTER?
A. I WROTE, I SAID I HAVEN'T SEEN HIM.
Q. SIR?
A. I SAID I HAVEN'T SEEN HIM.
Q. YOU HAD NOT SEEN HIM. AND THEN YOU TOLD THESE PEOPLE YOU SAW HIM GET IN THE CAR. WHICH IS IT?
A. I SAW HIM GET IN THE CAR.
Q. BUT YOU SAID ON THAT YOU NEVER SAW HIM.
A. YES, SIR.
(COUNSEL CONFER.)
BY MR. GAMBLE:
Q. NOW, BACK ON YOUR FIRST -- SECOND TRUE STATEMENT OF APRIL THE 5TH, ISN'T IT TRUE YOU SAID YOU SAW NO ONE WITH A GUN?
A. YES, SIR.
Q. OKAY. BUT ON YOUR STATEMENT OF MARCH THE 1ST YOU SAW -- SAID THAT SWEET HAD A GUN, A .38?
A. YES, SIR.
Q. AND THEN YOU SAID YOU HAD A .357. ALL OF THOSE ARE TRUE, I GUESS?
A. NO, SIR.
Q. WHICH IS A LIE?

A. EVERYTHING THAT YOU JUST ASKED, EVERYTHING EXCEPT THE .357 THAT I HAD.

Q. I DIDN'T UNDERSTAND YOU. EVERYTHING IS A LIE EXCEPT WHAT?

A. THE .357 THAT I HAD.

Q. I'M SORRY, I STILL DON'T UNDERSTAND.

A. DIDN'T YOU ASK ME -- WHAT YOU DIDN'T ASK ME? YOU SAY ---

THE COURT: RESTATE YOUR QUESTION, MR. GAMBLE.

MR. GAMBLE: I'LL REPHRASE IT ANOTHER WAY IF IT PLEASE THE COURT.

BY MR. GAMBLE:

Q. ON APRIL THE 5TH YOU GAVE A STATEMENT THAT SAID NOBODY HAD A GUN; IS THAT CORRECT?

A. YES, SIR.

Q. IS THAT THE TRUTH OR A LIE?

A. THAT'S THE LIE.

Q. OKAY. ON MARCH THE 1ST YOU GAVE A STATEMENT THAT SAID SWEET HAD A .38 REVOLVER. IS THAT THE TRUTH OR A LIE?

A. THAT'S A LIE.

Q. A LIE? SIR?

A. A LIE.

Q. OKAY. ON APRIL THE 25TH YOU GAVE A STATEMENT

THAT YOU GAVE MR. SMITH A .357 REVOLVER?

A. THAT'S TRUE.

Q. THAT'S THE TRUTH? SO YOU LIED TWICE AND YOU EXPECT US TO BELIEVE YOU THE THIRD TIME. IS THAT TRUE?

A. YES, SIR.

Q. OKAY. BACK ON YOUR MARCH 1ST STATEMENT YOU SAID YOU COULDN'T SEE ANYTHING THAT HAPPENED BECAUSE THERE WERE PEOPLE IN THE WAY.

IS THAT THE TRUTH?

A. THAT'S A LIE.

Q. I DIDN'T SEE BUSTER AGAIN THAT NIGHT.

IS THAT THE TRUTH?

A. THAT NIGHT, AS IN DOWN THERE OR AS IN WHEN WE LEFT FROM DOWN THERE?

Q. I DON'T KNOW. YOU SAID: I DIDN'T SEE BUSTER AGAIN THAT NIGHT.

WAS THAT THE TRUTH OR A LIE?

A. WHAT YOU ASKING? AT THAT NIGHT AT THE OLD SCHOOL OR WHEN WE LEFT THE OLD SCHOOL?

Q. RIGHT. WHEN YOU WERE AT OLD SCHOOL.

A. AFTER THE SHOTS OR WHAT?

Q. I DON'T KNOW. YOU SAID IT: I DIDN'T SEE BUSTER AGAIN THAT NIGHT. I DIDN'T SEE WHO WAS SHOOTING OR THE GUN.

YOU SAID THAT?

A. YES, SIR.
Q. IS THAT THE TRUTH OR A LIE?
A. THAT'S A LIE.
Q. WAS BARBARA CLINKSCALES AT HOME WHEN YOU ALL GOT BACK TO BROWN STREET?
A. NO, SIR.
Q. WHY WOULD YOU GO TO BARBARA CLINKSCALES' HOUSE ON BROWN STREET IF SHE WASN'T AT HOME?
A. THAT'S WHERE WE LEFT FROM. HER SON WAS THERE.
Q. WHO WAS HER SON?
A. CALVIN CLINKSCALES WAS LIVING THERE.
Q. CALVIN CLINKSCALES?
A. YES, SIR.
Q. WHERE IS HE NOW?
A. IN JAIL.
Q. HERE?
A. SIR?
Q. HERE IN ANDERSON?
A. PROBABLY, YES, YES, SIR.

MR. GAMBLE: ALL RIGHT, SIR. GIVE ME A MINUTE.

(COUNSEL CONFER.)

MR. GAMBLE: I HAVE NOTHING FURTHER OF THIS WITNESS.

THE COURT: RE-EXAM?

MR. CAMPBELL: THANK YOU, YOUR HONOR.

REDIRECT EXAMINATION BY MR. CAMPBELL:

Q. MR. PEARSON, YOU WROTE THREE STATEMENTS OUT; IS THAT RIGHT?

A. YES, SIR.

Q. AND YOU ADMIT TO THAT. WHY DID IT TAKE YOU THREE STATEMENTS TO COME OUT WITH THE TRUTH?

A. I WAS SCARED, SIR.

Q. WHAT WERE YOU SCARED OF?

A. I GUESS FAMILY. I WAS HAVING FAMILY PROBLEMS AND PROBATION, AND I WAS JUST SCARED.

Q. YOU WEREN'T SUPPOSED TO BE AROUND GUNS AND YOU WERE ON PROBATION; IS THAT RIGHT?

A. NO, SIR.

Q. YOU WERE AFRAID THE GUN WOULD GET LINKED BACK TO YOU?

A. YES, SIR.

Q. WHEN YOU SAY FAMILY PROBLEMS, WHAT ARE YOU REFERRING TO?

A. AS IN MY COUSIN.

Q. YOU DIDN'T WANT TO TELL ON YOUR COUSIN, IS THAT WHAT IT IS?

A. YES, SIR.

Q. AND YOU TALKED TO DETECTIVE REEVES ON APRIL 25TH, 2006; IS THAT RIGHT?

A. YES, SIR.

Q. AND WHEN YOU WERE DOWN THERE ON APRIL 25TH, YOU WROTE THE STATEMENT OUT FOR HIM; IS THAT RIGHT?

A. YES, SIR.

Q. AND YOU CLARIFIED WHAT YOU DIDN'T SAY IN THE FIRST TWO STATEMENTS?

A. YES, SIR.

Q. IS IT SAFE TO SAY YOU JUST DIDN'T WANT TO GET INVOLVED IN THIS CASE, ISN'T IT?

A. YES, SIR.

Q. AND YOU REALLY DIDN'T WANT TO TELL THAT YOU WERE THE ONE THAT GAVE BUSTER THE GUN?

MR. GAMBLE: THAT'S A LEADING QUESTION, YOUR HONOR.

THE COURT: LET'S RESTATE YOUR QUESTION. FIND OUT WHY HE DID WHAT HE DID.

MR. CAMPBELL: YES, SIR.

THE COURT: IN OTHER WORDS, I SUSTAIN HIS OBJECTION.

MR. CAMPBELL: YES, SIR.

THE COURT: OR AT LEAST YOU CAN ASK, IF YOU WOULD LIKE, WHY HE DID WHAT HE DID, BUT JUST DON'T TESTIFY WHY HE DID WHAT HE DID.

MR. CAMPBELL: ALL RIGHT.

BY MR. CAMPBELL:

Q. NOW, MR. PEARSON, THAT NIGHT DID YOU SEE ANYBODY ELSE SHOOT A GUN?

A. NO, SIR.

Q. WHO WAS THE ONLY PERSON YOU SAW SHOOT A GUN?

A. BUSTER.

Q. DID YOU SHOOT ---

A. NO, SIR.

Q. --- MR. MARTIN?

A. NO, SIR.

Q. DID BASSEN, SWEET THING, YOUR COUSIN, SHOOT ---

A. NO, SIR.

Q. --- MR. MARTIN?

AND WHEN MR. MARTIN WAS SHOT, WHERE WAS HE? WAS HE IN FRONT OF THE CARS OR NEAR THE CARS?

A. IN FRONT OF THE CARS.

Q. AFTER YOU GAVE MR. SMITH THE GUN, DID HE TELL YOU WHAT HE WAS GONNA DO WITH IT?

A. NO, SIR.

Q. DID YOU KNOW WHAT HE WAS GONNA DO WITH IT?

A. NO, SIR.

Q. AFTER THE SHOOTING TOOK PLACE, DID YOU SEE MR. SMITH BACK OUT ON THE STREETS OR ANYWHERE IN THE COMMUNITY?

A. NO, SIR.

Q. PRIOR TO THAT HAD YOU SEEN HIM ON NUMEROUS

OCCASIONS?

A. YOU'RE TALKING ABOUT BEFORE THAT?

Q. YES, SIR.

A. YES, SIR.

MR. CAMPBELL: NO FURTHER QUESTIONS.

THE COURT: ANY RE-RECROSS-EXAMINATION?

MR. GAMBLE: I THINK SO, YOUR HONOR.

(COUNSEL CONFER.)

MR. GAMBLE: NO FURTHER CROSS, YOUR HONOR.

THE COURT: YOU MAY STEP DOWN. THANK YOU.

(WITNESS LEAVES STAND AND COURTROOM.)

THE COURT: MADAM FORELADY, LADIES AND GENTLEMEN OF THE JURY, WE NEED TO BREAK AT THIS TIME. WE NEED TO TAKE UP SOME MATTERS WITH THE ATTORNEYS. AGAIN, DO NOT UNDERTAKE DISCUSSION OF THE CASE AMONG YOURSELVES IN ANY WAY. THANK YOU VERY MUCH. YOU MAY RETIRE TO THE JURY ROOM.

(WHEREUPON, THE JURY LEFT THE COURTROOM AT 10:33 A.M.)

THE COURT: ALL RIGHT. MAY I SEE THE ATTORNEYS, PLEASE?

(WHEREUPON, COUNSEL APPROACHED THE BENCH AND CONFERRED WITH THE COURT OUT OF THE PRESENCE OF THE COURT REPORTER.)

THE COURT: ALL RIGHT. WE'RE GOING TO TAKE

A BREAK AT THIS TIME, PLEASE.

(WHEREUPON, A RECESS WAS TAKEN.)

THE COURT: COME TO ORDER. KEEP YOUR SEATS.

THE BAILIFF: COURT COME TO ORDER, PLEASE.

THE COURT: ALL RIGHT. IS THERE ANYTHING FROM THE STATE BEFORE WE BRING THE JURY BACK?

MR. CAMPBELL: NO, YOUR HONOR.

THE COURT: FROM THE DEFENSE?

MR. GAMBLE: NO, YOUR HONOR.

THE COURT: ALL RIGHT. ASK THE JURY TO JOIN US, PLEASE.

(WHEREUPON, THE JURY ENTERED THE COURTROOM AT 11:01 A.M.)

THE COURT: ALL RIGHT. LET THE RECORD REFLECT THE JURY AND ALTERNATE ARE IN THE JURY-BOX. WE'LL NOW PROCEED WITH THE STATE'S CASE.

MR. CAMPBELL: THANK YOU, YOUR HONOR.

THE STATE CALLS JAMES PICKENS.

(WHEREUPON, THE WITNESS WAS SWORN BY THE CLERK.)

THE CLERK: PLEASE STATE YOUR FULL NAME AND SPELL YOUR LAST NAME FOR THE RECORD.

THE WITNESS: JAMES MONTOYA PICKENS, P-I-C-K-E-N-S.

//

WHEREUPON,

JAMES PICKENS,

AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. CAMPBELL:

Q. MR. PICKENS, DO YOU LIVE HERE IN ANDERSON?

A. YES, SIR.

Q. HOW LONG HAVE YOU LIVED IN ANDERSON?

A. ALL MY LIFE.

Q. ARE YOU CURRENTLY EMPLOYED?

A. YEAH.

Q. WHERE ARE YOU WORKING AT?

A. SONICS.

Q. NOW, DO YOU HAVE A NAME THAT PEOPLE KNOW YOU BY OR CALL YOU BY?

A. TURK.

Q. TURK, T-U-R-K?

A. YES, SIR.

Q. ALSO, WHEN YOU ANSWER, SPEAK IN THE MICROPHONE SO THE LADIES AND GENTLEMEN OF THE JURY CAN HEAR YOU, OKAY?

A. (NODDED HEAD.)

Q. DO YOU KNOW WHERE THE OLD SCHOOL LOUNGE IS LOCATED?

A. YES, SIR.

Q. WHERE IS IT?

A. IT'S ON MARKET STREET.
Q. HERE IN ANDERSON?
A. YES, SIR.
Q. AND HAVE YOU BEEN THERE BEFORE?
A. YES, SIR.
Q. YOU WERE THERE ON FEBRUARY 25TH, 2006, THAT SATURDAY NIGHT, WEREN'T YOU?
A. YES, SIR.
Q. I WANT TO TALK TO YOU ABOUT THAT DATE. ABOUT WHAT TIME DID YOU GET DOWN THERE?
A. ABOUT 10:00, 10:30.
Q. WERE YOU BY YOURSELF?
A. YES, SIR.
Q. DID YOU DRIVE YOURSELF OR DID YOU WALK?
A. YES, SIR. I DROVE.
Q. WHAT KIND OF CAR DO YOU HAVE?
A. A BLACK CHEROKEE.
Q. DO YOU KNOW JWAN SMITH?
A. YES, SIR.
Q. WHAT DO YOU KNOW HIM AS?
A. BUSTER.
Q. IS HE IN THE COURTROOM TODAY?
A. YES, SIR.
Q. CAN YOU IDENTIFY HIM?
A. (POINTS.)

Q. IN THE BLUE SHIRT?
A. YES, SIR.
Q. AND DID YOU SEE HIM ON THAT NIGHT THERE AT THE OLD SCHOOL LOUNGE?
A. YES, SIR.
Q. NOW, DID YOU KNOW SAMMY MARTIN?
A. I KNEW OF HIM, I DIDN'T KNOW HIM.
Q. IF YOU SAW HIM ON THE STREET, DID YOU KNOW HIM TO RECOGNIZE HIM?
A. YES, SIR.
Q. AND DID YOU KNOW HIS GIRLFRIEND?
A. I DIDN'T KNOW -- I DIDN'T KNOW I KNEW HER. I DIDN'T KNOW HER NAME.
Q. NOW, DID YOU SEE SAMMY COME TO THE CLUB THAT NIGHT?
A. YES, SIR.
Q. WAS HE BY HIMSELF WHEN HE CAME?
A. YES, SIR.
Q. DO YOU KNOW WHAT KIND OF CAR HE WAS DRIVING?
A. A GREEN TAURUS.
(COUNSEL CONFER.)
BY MR. CAMPBELL:
Q. I'M GONNA SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT SIX. CAN YOU PLEASE IDENTIFY WHAT THIS IS, SIR?
A. THAT'S HIS CAR RIGHT THERE.

Q. SPEAK INTO THE MICROPHONE, SIR.
A. THAT'S HIS CAR RIGHT THERE.
Q. AND THAT'S THE CAR HE WAS DRIVING THAT NIGHT?
A. YES, SIR.
Q. WHEN MR. MARTIN GOT THERE, DID YOU SEE HIM DO ANYTHING?
A. HIM AND HIS GIRLFRIEND HAD A LITTLE, LITTLE FIGHT OR SOMETHING.
Q. WHERE WERE YOU WHEN THIS WAS GOING ON?
A. OUTSIDE.
Q. IF YOU ARE STANDING -- DO YOU KNOW WHERE TUCKER'S RESTAURANT IS LOCATED?
A. YES, SIR.
Q. WHERE IS IT LOCATED?
A. RIGHT -- IT'S ON THE OTHER SIDE OF THE ROAD.
Q. ON THE OTHER SIDE OF THE ROAD?
A. YEAH.
Q. AND IF YOU ARE LOOKING FROM TUCKER'S RESTAURANT DIRECTLY TO THE OLD SCHOOL LOUNGE, WHAT SIDE OF THE LOUNGE WERE YOU ON?
A. ON THE LEFT-HAND SIDE.
Q. FACING OVER HERE, THE FRONT DOOR IS TO THE LEFT SIDE?
A. YES, SIR, THE LEFT-HAND SIDE.
Q. AND DID YOU GO INSIDE THE OLD SCHOOL LOUNGE?

A. HUH-UH. NO, SIR.
Q. NO?
A. NO, SIR.
Q. YOU JUST STAYED ON THE OUTSIDE?
A. YES, SIR.
Q. AND WHILE YOU WERE ON THE OUTSIDE, YOU SAW MR. MARTIN PULL UP?
A. YES, SIR.
Q. WHAT DID MR. MARTIN DO AFTER YOU SAW HIM PULL UP?
A. HE GOT OUT THE CAR AND WENT INSIDE THE OLD SCHOOL LOUNGE.
Q. AND YOU DON'T KNOW WHAT WENT ON INSIDE, DO YOU?
A. NO, I DIDN'T GO INSIDE.
Q. DID YOU EVENTUALLY SEE MR. MARTIN COME OUTSIDE THE LOUNGE?
A. YES, SIR.
Q. AND HOW ABOUT HIS GIRLFRIEND?
A. YEAH. YES, SIR.
Q. AND AFTER THEY GOT OUTSIDE OF THE LOUNGE, WHAT WERE THEY DOING?
A. THEY GOT INTO IT, A FIGHT.
Q. WAS HE HITTING ON HER, SLAPPING HER? HOW WOULD YOU DESCRIBE IT?
A. HE HIT HER. HE HIT HER.
Q. AND WHAT DID THEY DO AFTER THAT?

A. THEY WENT TO HER CAR AND THEY GOT IN AN ARGUMENT OVER THERE.

Q. AND DID THEY LEAVE?

A. NO. BECAUSE IT WOULDN'T START UP. HER CAR WOULDN'T START UP.

Q. REPEAT YOURSELF. I COULDN'T UNDERSTAND WHAT YOU SAID.

A. SHE GOT IN THE CAR, BUT IT WOULDN'T START.

Q. DO YOU KNOW WHAT KIND OF CAR SHE WAS GETTING INTO?

A. NO.

Q. DO YOU REMEMBER WHAT COLOR IT WAS?

A. I THINK IT WAS BROWN.

Q. AND YOU SAW HER GET INSIDE HER CAR?

A. YEAH.

Q. DID YOU HEAR OR SEE THE CAR START UP?

A. HUH-UH.

Q. WHAT DID MR. MARTIN DO?

A. THEY GOT -- HE WAS STILL TRYING TO FIGHT HER AND STUFF. HE WAS STILL, YOU KNOW WHAT I'M SAYING, ARGUING AND FIGHTING.

Q. DID IT APPEAR TO YOU THAT HE WAS ANGRY?

A. YES, SIR.

Q. DID YOU EVER SEE ANY WEAPONS OR GUNS OR ANY KNIVES IN HIS HANDS?

A. NO.
Q. AFTER HER CAR WOULDN'T START, WHAT HAPPENED NEXT?
A. I SEEN SOMEBODY CAME FROM OUT OF THE BACK AND SHOT THREE TIMES.
Q. NOW, BEFORE THE SHOOTING TOOK PLACE, YOU HAD TALKED TO JWAN SMITH; IS THAT RIGHT?
A. YES, SIR.
Q. WHAT DID YOU ALL TALK ABOUT?
A. JUST, JUST STUFF, JUST TALKING. IT WASN'T NOTHING SPECIAL. JUST TALKING.
Q. AND WHILE YOU WERE TALKING TO HIM, DID HE EVER ASK YOU ABOUT THE COMMOTION THAT WAS GOING ON?
A. NO, SIR.
Q. AT ANY POINT DID YOU EVER MENTION TO HIM WHO WAS IN THE FIGHT?
A. I SAID TO SOMEBODY HE WAS FIGHTING WITH HIS GIRLFRIEND. THAT'S ALL I SAID.
Q. AND YOU TOLD THAT ---
A. IT WAS ME, TORREY AND JWAN SMITH AND SWEET THING. I SAID HE'S FIGHTING WITH HIS GIRLFRIEND.
Q. WHEN YOU'RE REFERRING TO SWEET THING, WHO ARE YOU TALKING ABOUT?
A. HAILEY.
Q. BASSEN HAILEY?
A. YEAH.

Q. AND TORREY, WHO IS THAT?
A. THE ONE THAT COME UP HERE A FEW MINUTES AGO.
Q. LATORREY PEARSON?
A. UH-HUH.
Q. ARE YOU KIN TO THEM?
A. HUH-UH.
Q. HOW ABOUT MR. SMITH, ARE YOU RELATED TO HIM IN ANY WAY?
A. HUH-UH.
Q. SO WHAT DID YOU TELL THEM IN THE GROUP WHAT WAS GOING ON, WHAT DID YOU TELL THEM?
A. I SAID THAT THEY WERE OVER THERE FIGHTING IS ALL I SAID.
Q. AND YOU IDENTIFIED WHO WAS FIGHTING?
A. YEAH.
Q. WAS MR. SMITH STANDING RIGHT THERE?
A. YES, SIR.
Q. HOW CLOSE TO YOU WAS HE WHEN YOU SAID THIS?
A. HE WASN'T THAT FAR FROM US.
Q. HOW FAR, ARM'S LENGTH?
A. YEAH, ABOUT AN ARM'S LENGTH.
Q. AND WHAT DID HE DO -- HOW WAS HE DRESSED THAT NIGHT?
A. ALL I KNOW, HE HAD ON A COAT.
Q. DO YOU REMEMBER WHAT COLOR IT WAS?

A. BLACK COAT.
Q. DID IT HAVE A HOOD OR NO HOOD ON IT?
A. I CAN'T REMEMBER.
Q. AND WHAT DID HE DO AT THAT POINT IN TIME?
A. WELL, I HAD, I HAD STOOPED DOWN AND GOTTEN ME A BILL, BECAUSE THERE WAS A WINDOW THERE, GOT ME A BILL, AND THEN I TURNED AROUND AND HE WAS GONE.
Q. AT ANY POINT DID YOU SEE MR. SMITH WITH A GUN?
A. HUH-UH.
Q. DO YOU KNOW AN INDIVIDUAL BY THE NAME OF SHOES?
A. YES, SIR.
Q. HOW WAS HE DRESSED THAT NIGHT?
A. HE WAS CLEAN.
Q. DID HE HAVE A HAT ON?
A. YEAH, HE WAS CLEAN. I DON'T KNOW IF HE HAD A HAT ON. I CAN'T REMEMBER.
Q. AND DO YOU KNOW MICHAEL VANCE?
A. HUH?
Q. HOW DO YOU KNOW HIM? DO YOU KNOW HIS REAL NAME?
A. ALL I KNOW HIM AS SHOES.
Q. AND DID HE AND MR. MARTIN, DID YOU SEE THESE TWO INDIVIDUALS EVER GET INTO A FIGHT?
A. NO. THEY DION'T GET INTO A FIGHT.
Q. WHERE DOES MR. SMITH LIVE?
A. ON REED COURT.

Q. REED COURT? DO YOU KNOW HIS MOTHER?
A. YES, SIR.
Q. WHAT'S HER NAME?
A. JANICE.
Q. DID YOU SEE HER THERE THAT NIGHT?
A. I CAN'T RECALL.
Q. NOW, AFTER THE SHOOTING TOOK PLACE -- DID YOU WITNESS THE SHOOTING?
A. I DIDN'T REALLY WITNESS IT.
Q. DID YOU SEE IT HAPPEN?
A. YEAH, I SEEN THEM FIGHT AND THE GUN.
Q. YOU SAW THE GUN GO OFF?
A. YEAH, I SAW THE FIRE COME FROM THE GUN.
Q. SAW THE WHAT?
A. THE FIRE.
Q. THE FIRE COMING OUT OF THE BARREL?
A. YEAH.
Q. AND HOW CLOSE TO THIS WERE YOU?
A. ABOUT FROM HERE TO THE WALL RIGHT THERE -- NO ABOUT FROM HERE TO HER. RIGHT ABOUT THERE.
Q. AND DID YOU SEE WHO WAS DOING THE SHOOTING?
A. REALLY, I COULDN'T SEE, REALLY; IT WAS DARK A LITTLE BIT.
Q. DID YOU SEE THE GUN?
A. I SEEN -- I'M SAYING IT WASN'T THAT MUCH LIGHT,

IT WAS A LITTLE LIGHT.

Q. WHAT COLOR WAS THE GUN?

A. TO ME IT LOOKED SILVER.

Q. AND WAS IT A BIG GUN OR A SMALL GUN?

A. I GUESS IT HAD TO HAVE BEEN BIG, THE WAY IT SOUNDED.

Q. NOW, AFTER THE SHOOTING, DID YOU SEE THE PERSON THAT DID THE SHOOTING LEAVE?

A. NO. I SEEN SOMEBODY GET IN A CAR.

Q. AND WHAT WAS THIS PERSON WEARING THAT WAS GETTING IN THE CAR?

A. A BLACK COAT.

Q. IS THAT THE SAME COAT YOU SAW MR. SMITH WEARING?

A. I GUESS.

Q. DID YOU SEE ANYBODY ELSE WEARING THAT COAT?

A. THERE WAS PEOPLE DOWN THERE THAT HAD ON COATS, THE SAME COLOR COATS.

Q. BUT THE COAT YOU SAW ON MR. SMITH, THAT WAS THE SAME COAT AS THE PERSON GETTING INTO THE CAR?

A. I THINK SO. I'M NOT SURE.

Q. WHAT DID YOU DO AFTER THAT POINT IN TIME?

A. I GOT IN MY CAR AND LEFT.

Q. AND DID ANYBODY GO WITH YOU?

A. ME, BASSEN HAILEY, AND PEARSON LEFT INTO MY JEEP.

Q. SO BASSEN HAILEY AND LATORREY PEARSON GOT IN YOUR

CAR. WHERE DID YOU GO?

A. I'M SAYING HE WENT TO BROWN STREET AND I WENT HOME.

Q. YOU TOOK THEM TO BROWN STREET?

A. YES, SIR.

Q. WAS MR. SMITH IN YOUR CAR AT ANY POINT?

A. NO, SIR.

Q. DID YOU GIVE HIM A RIDE?

A. NO, SIR.

Q. NOW, YOU GOT CHARGED IN THIS CASE; IS THAT RIGHT?

A. YES, SIR.

Q. AND HOW DID YOU KNOW LAW ENFORCEMENT WAS LOOKING FOR YOU?

A. BECAUSE I ASKED -- I WAS ON THE NEWS.

Q. YOU SAW IT ON THE 6:00 NEWS?

A. I DIDN'T SEE IT. I HAD A FRIEND WHO CALLED ME ON MY CELL PHONE AND TOLD ME THAT I WAS ON THE NEWS, AND I DIDN'T KNOW WHY I WAS ON THE NEWS.

Q. AND AS A RESULT -- WHEN DID YOU HEAR THIS INFORMATION? WHEN DID YOUR FRIEND CALL YOU: THE NEXT DAY, THE DAY AFTER?

A. NO, THE SAME NIGHT -- I MEAN, NO, I THINK THE DAY AFTER.

Q. AND AS A RESULT OF YOU GETTING THAT PHONE CALL, WHAT DID YOU DO?

A. I TURNED MYSELF IN.
Q. YOU WENT DOWN ---
A. YEAH.
Q. --- TO THE SHERIFF'S DEPARTMENT AND TURNED YOURSELF IN?
A. YES, SIR.
Q. AND THAT WOULD HAVE BEEN ON FEBRUARY 27TH, 2006?
A. YES, SIR.
Q. DO YOU RECALL TALKING TO DETECTIVE REEVES THEN?
A. YES, SIR.
Q. AND YOU GAVE A STATEMENT; IS THAT RIGHT?
A. YES, SIR.
Q. IN FACT, YOU HAD GIVEN THREE STATEMENTS?
A. UH-HUH.
Q. DID LAW ENFORCEMENT HAVE TO COME LOOKING FOR YOU?
A. HUH-UH.
Q. I'M GONNA SHOW YOU THESE. IF YOU WILL PLEASE FIRST LOOK TO SEE -- IS THAT YOUR SIGNATURE ON THIS ONE?
A. YES, SIR.
Q. AND THE DATE ON THAT IS FEBRUARY 27TH, 2006?
A. YES, SIR.
Q. IS THAT YOUR SIGNATURE ON THIS STATEMENT?
A. RIGHT HERE?
Q. YES, SIR.
A. YES, SIR.

Q. AND THAT'S MARCH THE 1ST AT 8:20 A.M.; IS THAT CORRECT?
A. YES, SIR.
Q. IS THAT YOUR SIGNATURE ON THIS ONE?
A. YES, SIR.
Q. YOU HAVE TO SPEAK INTO THE MIC.
A. YES, SIR.
Q. AND THAT'S ON MARCH 1ST AT 10:30; IS THAT CORRECT?
A. YES, SIR.
Q. TAKE A LOOK BRIEFLY AND READ OVER THOSE FOR A SECOND.
A. (COMPLIES.) OKAY.
Q. HAVE YOU HAD AN OPPORTUNITY TO READ ALL OF THEM?
A. YES, SIR.
Q. SIR?
A. YES, SIR.
Q. AND THOSE ARE STATEMENTS YOU GAVE DETECTIVE REEVES?
A. YES, SIR.
Q. AND THAT'S YOUR SIGNATURE ON THE BOTTOM OF EACH OF THEM; IS THAT CORRECT?
A. YES, SIR.
Q. TO HELP REFRESH YOUR MEMORY REGARDING EVENTS THAT TOOK PLACE ON FEBRUARY 25TH, 2006?

A. YES, SIR.

Q. NOW, ON YOUR MARCH 1ST STATEMENT -- EXCUSE ME -- FEBRUARY 27TH STATEMENT YOU IDENTIFIED THAT YOU SAW THE SHOOTER; IS THAT RIGHT?

A. YES, SIR.

Q. OKAY. AND WHAT DID THE SHOOTER HAVE ON?

A. A BLACK JACKET AND DARK PANTS.

Q. AND DID YOU SEE THE PERSON AS HE RAN AROUND THE BACK?

A. REALLY, ALL I'M SAYING IT COULD HAVE BEEN HIM, IT COULD NOT HAVE BEEN HIM.

Q. TAKE A LOOK AT YOUR STATEMENT.

A. YEAH, I SEEN THE STATEMENT.

Q. OKAY. (HANDING). START FROM RIGHT THERE AND READ WHAT THAT SAYS.

A. START RIGHT HERE?

Q. START RIGHT THERE.

A. READ IT OUT LOUD?

Q. YES, SIR, READ IT INTO THE MICROPHONE.

A. (READING):

HE HAD ON THE SAME BLACK JACKET, AND HIS HOOD FELL OFF AND HE CAME AROUND THE BUILDING. I LOOKED RIGHT AT HIM AND SAW IT WAS A GUY I KNEW IT WAS BUSTER WAS HIS STREET NAME. HIS MOTHER WAS

JANICE ---

THE COURT REPORTER: I'M SORRY, I CAN'T HEAR YOU.

THE COURT: YOU NEED TO SPEAK UP.

--- (READING): IN A YELLOW HOUSE AT THE END OF REED COURT.

BY MR. CAMPBELL:

Q. SO THE PERSON YOU SAW WAS BUSTER; IS THAT RIGHT?

A. YES, SIR.

Q. SITTING RIGHT THERE?

A. YES, SIR.

Q. THIS IS WHAT YOU TOLD LAW ENFORCEMENT AFTER YOU VOLUNTARILY TURNED YOURSELF IN?

A. YES, SIR.

Q. NOW, YOU DID LEAVE OUT A COUPLE PIECES OF INFORMATION, DIDN'T YOU?

A. YES, SIR.

Q. YOU DIDN'T TELL ALL THAT YOU KNEW?

A. NO, SIR.

Q. AND YOU GAVE A SECOND STATEMENT ON MARCH 1ST; IS THAT RIGHT?

A. YES, SIR.

Q. AND WHAT DID YOU FORGET TO LEAVE OUT?

A. THAT I GAVE SOMEONE A RIDE.

Q. AND WHO DID YOU GIVE A RIDE TO?

A. ME, BASSEN HAILEY, AND PEARSON.
Q. AND WHY DIDN'T YOU ADD THAT OR PUT THAT IN THE FIRST STATEMENT?
A. SCARED, NERVOUS.
Q. IS THAT THE ONLY THING YOU CHANGED FROM YOUR FIRST STATEMENT?
A. YES, SIR.
Q. AND YOU GAVE A THIRD STATEMENT; IS THAT RIGHT?
A. YES, SIR.
Q. OKAY. IN THE THIRD STATEMENT BASICALLY YOU WERE REWRITING THE FIRST TWO; IS THAT RIGHT?
A. YES, SIR.
Q. AND THIS WAS AT 10:30 ON MARCH 1ST, 2006?
A. UH-HUH.
Q. WHILE Y'ALL WERE STANDING IN A GROUP, DID BUSTER ASK ANYBODY FOR A GUN?
A. I CAN'T REMEMBER. I REALLY DON'T KNOW.
Q. THIS IS YOUR STATEMENT FROM MARCH 1ST AT 10:30, RIGHT?
A. I TOLD YOU ALL THAT I DIDN'T EVEN KNOW THE SHOOTER.
Q. TAKE A LOOK AT THIS AND READ THIS.
A. READ WHAT?
Q. START FROM THERE AND READ THAT.
A. BUSTER ASKED US ---

Q. READ INTO THE MICROPHONE SO THE LADIES AND GENTLEMEN OF THE JURY CAN HEAR YOU AND MS. HILD CAN HEAR YOU.

A. (READING):

BUSTER ASKED WHO WAS FIGHTING AND ARGUING IN THE PARKING LOT. I TOLD HIM IT WAS SAM AND HIS GIRLFRIEND. BUSTER ASKED SWEET THING, LET ME SEE YOUR GUN. SWEET THING REACHED INTO HIS WAISTBAND FOR A SILVER-COLORED REVOLVER. IT HAD LONG, A LONGER THAN NORMAL BARREL. HE HANDED IT TO BUSTER, AND BUSTER TOOK IT INTO HIS WAIST OF HIS PANTS AND WALKED AROUND THE LEFT SIDE OF THE LOUNGE BUILDING.

HE WEIGHED ABOUT 130 -- ABOUT 130 POUNDS, 135 POUNDS. BUSTER'S HAIR WAS SHORT AND CURLY DREADLOCKS. THEY WERE ONLY ABOUT TWO AND A HALF INCHES LONG. DID NOT HAVE THE HOOD ON HIM WHEN HE WENT AROUND THE BUILDING WITH THE SILVER REVOLVER ---

MR. GAMBLE: I OBJECT TO THE NEXT STATEMENT, YOUR HONOR; IT CALLS FOR A CONCLUSION ON THE PART OF THIS WITNESS THAT'S NOT BASED ON FACT.

THE COURT: LET ME SEE IT.

THAT WOULD BE THE LAST SENTENCE?

MR. GAMBLE: YES, SIR.

THE COURT: AS FAR AS WHAT HE KNOWS OF HIS OWN KNOWLEDGE, THAT DOESN'T REFLECT ANYTHING. I'M GONNA SUSTAIN THE OBJECTION.

MR. GAMBLE: FOR THE RECORD, YOUR HONOR, I'LL READ IT INTO THE RECORD.

THE COURT: AT THE APPROPRIATE TIME. I'LL TELL YOU WHAT. BRING IT TO ME, IF YOU WOULD, PLEASE. MR. GAMBLE?

MR. GAMBLE: SIR? (HANDING).

THE COURT: I'M HIGHLIGHTING THE STATEMENT THAT IS EXCLUDED. ALL RIGHT.

YOU MAY PROCEED.

MR. CAMPBELL: THANK YOU, YOUR HONOR.

BY MR. CAMPBELL:

Q. AND AFTER MR. SMITH, KNOWN AS BUSTER, GOT THE GUN AND WALKED AROUND, WHEN'S THE NEXT TIME YOU SAW HIM?

A. I DIDN'T SEE HIM NO MORE.

Q. DID YOU EVER SEE HIM APPROACH MR. MARTIN?

A. REALLY, THE ONLY TIME I SEEN HIM WAS WHERE THE BARREL OF THE GUN WAS AT.

Q. AND HOW CLOSE BETWEEN WHEN YOU SAW THIS GUN WAS MR. MARTIN AND THE GUN?

A. I SEEN, I SEEN AN ARM AND I SEEN A BARREL. YOU KNOW WHAT I'M SAYING?

Q. AND WHERE WAS MR. MARTIN STANDING?

A. RIGHT BY HIS CAR SOMEWHERE, I THINK.

Q. WHERE WAS MS. BROWNLEE?

A. SHE WAS BESIDE HIM.

Q. WAS SHE WORKING ON HER CAR?

A. I CAN'T REMEMBER.

Q. HOW MANY SHOTS DID YOU HEAR?

A. I HEARD THREE SHOTS.

Q. DO YOU RECALL SEEING BUSTER SHOOTING MR. MARTIN?

A. I SEEN HIS ARM AND THE BARREL.

THE COURT REPORTER: I'M SORRY, I DIDN'T HEAR THAT.

THE WITNESS: I SAID I SEEN THE ARM -- HIS ARM AND THE BARREL OF A GUN.

BY MR. CAMPBELL:

Q. TAKE A LOOK AGAIN AT YOUR STATEMENT, 10:30. START RIGHT THERE AND READ YOUR STATEMENT.

A. WHERE AT?

Q. "WHEN I HEARD".

A. (READING):

> WHEN I HEARD THREE VERY LOUD GUNSHOTS FROM AROUND SOMEWHERE, THE SHOTS WERE VERY CLOSE. THE SAME JACKET WITH

THE HOOD PULLED UP AND PANTS, DARK SHOES, WAS STANDING AND FACING THE DIRECTION WHERE SAMMY WAS STANDING A MOMENT EARLIER ---

THE COURT: JUST A MOMENT. YOU'RE GOING TO HAVE TO SPEAK UP, IF YOU CAN, REAL LOUD, PLEASE, SIR.

THE WITNESS: (READING):

THE SAME JACKET WITH THE HOOD PULLED UP AND PANTS AND DARK SHOES STANDING AND FACING THE DIRECTION OF WHERE SAMMY WAS STANDING A MOMENT EARLIER. I DID NOT SEE SAMMY ANYMORE. BUSTER RAN BEHIND THE RIGHT SIDE OF LOUNGE. I DID NOT SEE THE GUN AT THE POINT.

BY MR. CAMPBELL:

Q. AND THIS STATEMENT WAS WRITTEN CLOSER IN TIME IT HAPPENED THAN TODAY, WASN'T IT?

A. YES, SIR.

Q. AND, IN FACT, YOU MENTIONED THERE YOU SAW BUSTER DO IT.

A. I REALLY -- I REALLY CAN'T SAY HE DID IT.

Q. WHAT DID THAT SAY?

A. I KNOW. BUT I WASN'T -- I WAS NERVOUS, MAN. Y'ALL HAD ME STRESSED OUT.

Q. STRESSED OUT? AND YOU VOLUNTARILY TURNED YOURSELF IN?

A. YEAH, BECAUSE I DID NOTHING. THAT'S WHY I TURNED MYSELF IN, BECAUSE I DIDN'T DO NOTHING.

Q. AND IT IS FAIR TO SAY YOU SAW BUSTER THAT NIGHT WITH A GUN AT SOME POINT IN TIME?

A. I MEAN ---.

Q. YES OR NO?

A. NO.

Q. SO YOU ARE GOING BACK ON YOUR STATEMENTS THAT YOU WROTE?

A. NO, I MEAN, I'M NERVOUS NOW, MAN.

MR. GAMBLE: YOUR HONOR, HE'S ATTEMPTING TO CROSS-EXAMINE HIS OWN WITNESS AT THIS POINT IN TIME. I OBJECT TO THAT. HE'S ASKING LEADING QUESTIONS. HE'S GOING INTO CROSS-EXAMINATION. HE HASN'T DECLARED HIM HOSTILE.

THE COURT: YOU DON'T HAVE TO DECLARE HIM HOSTILE AS LONG AS HE'S NOT FRIENDLY, UNDER THE NEW RULES.

MR. GAMBLE: I UNDERSTAND.

THE COURT: I'M GOING TO PERMIT A LIMITED CROSS-EXAMINATION IF THE WITNESS IS RELUCTANT TO ANSWER.

BY MR. CAMPBELL:

Q. MR. PICKENS, YOU'VE READ OVER ALL YOUR

STATEMENTS?

A. YES, SIR.

Q. AND YOU SIGNED THESE STATEMENTS?

A. YES, SIR.

Q. AND WHAT YOU PUT DOWN THERE IS WHAT YOU PUT DOWN BACK LAST YEAR?

A. YES, SIR.

Q. THIS IS WHAT YOU TOLD LAW ENFORCEMENT?

A. YES, SIR.

Q. AND THAT'S THE PARTS YOU JUST READ OUT TO THE JURY?

A. YES, SIR.

Q. WHEN ALL THIS WAS GOING ON, WHEN YOU SAW THE SHOTS, WHERE WAS BASSEN AND TORREY?

A. THEY WAS, THEY WAS STILL STANDING IN THE FRONT OF THE OLD SCHOOL.

Q. THEY WERE WITH YOU?

A. YES, SIR.

Q. AND THEY WEREN'T INVOLVED IN THE FIGHT BETWEEN SAMMY AND HIS GIRLFRIEND OR BUSTER?

A. NO, NO. HE WASN'T FIGHTING, PERIOD.

Q. SO HE HAD NOTHING TO DO WITH WHAT MR. MARTIN AND MS. BROWNLEE WERE DOING?

A. NO, SIR.

Q. HE DIDN'T JUMP IN TO HELP MS. BROWNLEE OR

ANYTHING?

A. NO.

MR. CAMPBELL: I HAVE NO FURTHER QUESTIONS.

THE COURT: CROSS-EXAMINATION?

CROSS-EXAMINATION BY MR. GAMBLE:

Q. IN STATEMENT NUMBER C, WHICH WAS MARCH THE 1ST, 2006, AT 10:30 IN THE MORNING, YOU TOLD THE INVESTIGATOR IN YOUR STATEMENT THAT A PERSON NAMED BUSTER CAME UP TO SWEET THING; IS THAT CORRECT?

A. UH-HUH.

Q. SWEET THING IS BASSEN HAILEY, ISN'T HE?

A. UH-HUH.

Q. YOU HAVE TO SAY YES OR NO.

A. YES, SIR.

Q. OKAY. AND YOU SAID THAT BASSEN HAILEY GAVE BUSTER A .357 GUN?

A. YES, SIR.

Q. IT WASN'T TORREY, ANTONIO [SIC] HAILEY, THAT GAVE HIM THE GUN, WAS IT?

A. IT HAPPENED SO FAST, SIR.

Q. WHAT?

A. I SAID IT HAPPENED SO FAST.

Q. DO YOU KNOW WHO GAVE WHO WHAT?

A. LIKE I TOLD THE DETECTIVE, REALLY I DIDN'T KNOW.

Q. YOU DON'T KNOW?

A. YES, SIR, AND I TOLD THE DETECTIVE THAT.
Q. AND THAT'S WHAT YOU ARE TELLING TODAY: YOU DON'T KNOW WHAT HAPPENED?
A. YEAH.
Q. SIR?
A. YES, SIR.
Q. REGARDLESS OF WHAT YOU SAID, YOU ARE SAYING UNDER OATH TODAY THAT YOU DON'T KNOW WHAT HAPPENED.
A. IT'S THE TRUTH.
Q. ALL RIGHT, SIR.
A. BUT REALLY, BUT REALLY I SHOULDN'T BE UP HERE ANYWAY BECAUSE I DIDN'T DO NOTHING WRONG.
Q. I'M SORRY?
A. I SHOULDN'T BE UP HERE ANYWAY BECAUSE I DIDN'T DO NOTHING WRONG.
Q. ALL RIGHT. ALL YOU SAW -- YOU PARKED YOUR JEEP CHEROKEE ON THE LEFT SIDE OF THE OLD SCHOOL LOUNGE, DIDN'T YOU?
A. YES, SIR.
Q. AND ALL THIS IS TAKING PLACE ON THE RIGHT SIDE?
A. YES, SIR.
Q. THEN IF YOU WERE ON THE LEFT SIDE, HOW COULD YOU SEE WHAT WAS HAPPENING ON THE RIGHT SIDE?
A. BECAUSE SOMEBODY -- YOU KNOW WHAT I'M SAYING -- I DON'T REALLY KNOW.

Q. YOU DON'T KNOW WHAT HAPPENED, DO YOU?
A. EVENTUALLY, I MEAN, REALLY, NO, TO TELL YOU THE TRUTH.
Q. I'M ASKING YOU FOR THE TRUTH. THAT'S ALL I WANT.
A. I'M TELLING YOU THE TRUTH.
Q. GOOD. SO YOU PARKED ON THE LEFT SIDE?
A. YES, SIR.
Q. HOW FAR DOWN ON THE LEFT SIDE WERE YOU PARKED?
A. TO MY ---
Q. OR WERE YOU BESIDE THE BUILDING?
A. NO. I WAS LIKE ON THE LEFT-HAND SIDE, I WAS POINTING TOWARDS THE BUILDING.
Q. ON THE LEFT-HAND SIDE?
A. YES, SIR.
Q. HOW MUCH LIGHT IS OUT THERE AT NIGHT?
A. THERE AIN'T MUCH LIGHT.
Q. KIND OF GIVE ME A HINT. WHAT'S NOT MUCH LIGHT?
A. A LITTLE DIM, WHATEVER.
Q. LIKE A LITTLE PORCH LIGHT?
A. I DON'T THINK -- YEAH, IT WAS LIKE A PORCH LIGHT.
Q. LIKE A PORCH LIGHT?
A. YEAH.
Q. HOW FAR AWAY ON THE LEFT SIDE WERE YOU FROM THE RIGHT SIDE WHERE THIS TOOK PLACE?
A. I WAS STANDING ON -- THERE'S A BLOCK RIGHT THERE

YOU STAND ON RIGHT WHEN YOU COME ON THE STEPS. I WAS STANDING LIKE RIGHT THERE.

Q. ON THE STEPS?

A. YEAH.

Q. THAT'S IN THE FRONT?

A. YES, SIR.

Q. SO YOU WERE ON THE LEFT FRONT?

A. YES, SIR.

Q. AND THIS WAS TAKING PLACE ON THE RIGHT IN THE PARKING LOT?

A. YES, SIR.

Q. YOU HEARD THE FIGHT BETWEEN THE MAN AND THE WOMAN, DIDN'T YOU?

A. YES, SIR.

Q. YOU HEARD THREE GUNSHOTS?

A. YES, SIR.

Q. THEN WHY DID YOU GET IN YOUR JEEP WITH TORREY AND SWEET, BASSEN; ANTONIO [SIC], AND LEAVE?

A. I HEARD A SHOT, SO I'M GONNA LEAVE.

Q. WHY DID YOU TAKE TORREY AND BASSEN TO BROWN STREET?

A. I WAS BEING A FRIEND.

Q. HUH?

A. I WAS BEING A FRIEND.

Q. THEY WERE FRIENDS OF YOURS?

A. YEAH.

Q. OKAY. THEN WHY IN STATEMENT NUMBER EIGHT ON FEBRUARY 27TH DID YOU SAY TO THE OFFICER, I WENT STRAIGHT HOME, TAKING MARKET INTO TOWN, TURNING ON MURRAY AND DOWN CALHOUN?

YOU OMITTED THE PART ABOUT BROWN, DIDN'T YOU?

A. MAN, SO MUCH HAPPENED, I CAN'T -- YOU KNOW WHAT I'M SAYING?

Q. WERE YOU COVERING FOR TORREY AND ---

A. I AIN'T COVERING FOR NOBODY.

Q. BUT YOU DIDN'T SAY YOU TOOK THEM TO BROWN STREET.

A. I KNOW. I FORGOT.

Q. OH. TWO DAYS LATER YOU FORGOT WHAT YOU DID?

A. YEAH.

Q. OKAY. SO ALL OF THIS STATEMENT WHERE YOU ARE TALKING ABOUT BUSTER DID THIS AND BUSTER DID THAT, YOU NOW SAY YOU DIDN'T KNOW WHAT HE DID.

A. I MEAN, THAT'S HOW THE BALL BOUNCES. THAT'S HOW THE BALL BOUNCES SOMETIMES.

Q. I STILL DIDN'T UNDERSTAND YOU.

A. THAT'S HOW THE BALL BOUNCES. I MEAN, YOU SAY STUFF AND YOU DON'T MEAN IT.

Q. SO YOU DIDN'T MEAN THIS WHEN YOU GAVE THIS STATEMENT?

A. I MEAN, I MEAN -- I'M SAYING I'M TRYING TO NOT TO

GET INVOLVED WITH THIS.

Q. I UNDERSTAND.

A. I'M SAYING I DON'T WANT TO GET INVOLVED WITH THIS, PERIOD.

Q. I UNDERSTAND.

A. BUT PEOPLE ARE OUT HERE SAYING STUFF AND DIDN'T KNOW WHAT WAS GOING ON, AND NOW I'M INVOLVED IN ALL THIS.

Q. SO WHAT YOU WERE TELLING THE OFFICER IS WHAT YOU HAD HEARD WENT ON.

A. YEAH, TO TELL YOU THE TRUTH, YEAH.

Q. YOU DIDN'T SEE IT YOURSELF.

A. NO, NOT REALLY.

Q. SO YOU HEARD IT FROM PEOPLE AROUND ---

A. YOU HEAR PEOPLE TALKING.

Q. --- AT THE OLD SCHOOL?

A. YEAH.

Q. AND SO YOU JUST TOOK WHAT YOU HEARD AND TOLD THE OFFICER 'CAUSE YOU THOUGHT THAT'S WHAT HE WANTED TO HEAR.

A. YEAH.

Q. ISN'T THAT RIGHT?

A. BECAUSE WHEN I SEEN MYSELF ON THE NEWS, I TURNED MYSELF IN. I DIDN'T WANT TO GET INVOLVED BECAUSE I DIDN'T KNOW WHAT WAS GOING ON.

Q. ALL RIGHT. SO AS SOON AS YOU HEARD THE SHOT, YOU DIDN'T LOOK TOWARD IT, YOU JUST GOT OUT OF THERE, DIDN'T YOU?

A. I JUST GOT IN MY CAR AND LEFT.

Q. GOT IN THE CHEROKEE AND LOADED UP TORREY AND SWEET AND LEFT?

A. THAT'S RIGHT.

Q. WELL, LET ME ASK YOU THIS: DID YOU ACTUALLY SEE SWEET, BASSEN HAILEY, GIVE ANYBODY A GUN?

A. NO, SIR.

Q. ALL RIGHT. DID YOU SEE TORREY GIVE ANYBODY A GUN?

A. HE TOLD ME HIMSELF. HE TOLD ME HIMSELF. I DIDN'T HAVE TO SAY NOTHING. HE TOLD ON HIMSELF. I DIDN'T HAVE TO SAY NOTHING.

Q. HE TOLD THAT HIMSELF?

A. YEAH.

Q. HOW DO YOU KNOW THAT?

A. I MEAN, I MEAN, ON HIS STATEMENT HE SAY HE GAVE HIM THE GUN.

Q. WHY DID YOU READ TORREY'S STATEMENT?

A. I DIDN'T READ IT, HE TOLD ME.

Q. HE TOLD YOU?

A. YEAH.

Q. SO YOU'RE GATHERING INFORMATION FROM EVERYBODY

ELSE.

A. HE TOLD ME THE STORY. I AIN'T DONE NOTHING.

Q. OKAY. YOU LEFT AND WENT OVER TO CALHOUN ARMS APARTMENTS ---

A. YES, SIR.

Q. --- TO YOUR GIRLFRIEND'S PLACE?

A. YEAH.

Q. WHAT TIME DID YOU GET THERE?

A. ABOUT 45 MINUTES AFTER IT HAPPENED, I GUESS, ABOUT 30 MINUTES AFTER IT HAPPENED.

Q. IT TOOK YOU THAT LONG TO DRIVE FROM MARKET TO CALHOUN?

A. I MEAN, MAN, I CAN'T TELL YOU HOW LONG IT TOOK ME TO GET SOMEWHERE.

Q. I UNDERSTAND. YOU DON'T WEAR A WATCH, DO YOU?

A. HUH?

Q. YOU DON'T WEAR A WATCH, DO YOU?

A. NO.

Q. SO YOU WEREN'T KEEPING TIME?

A. NO.

Q. OKAY.

MR. GAMBLE: EXCUSE ME JUST A MINUTE.

(COUNSEL CONFER.)

MR. GAMBLE: THAT'S ALL I HAVE, YOUR HONOR.

THE COURT: RE-EXAM?

MR. CAMPBELL: THANK YOU, YOUR HONOR.

REDIRECT EXAMINATION BY MR. CAMPBELL:

Q. MR. PICKENS, ON CROSS-EXAMINATION YOU TOLD MR. GAMBLE YOU DON'T WANT TO BE INVOLVED, DO YOU?

A. I'M NOT INVOLVED, BUT NOW I AM.

Q. AND YOU DON'T WANT TO BE HERE.

A. THAT'S RIGHT.

Q. IN YOUR WAY OF NOT BEING INVOLVED, YOU ARE JUST DENYING EVERYTHING NOW; IS THAT RIGHT?

A. I JUST DON'T WANT TO BE INVOLVED IN THIS, PERIOD, MAN. YOU KNOW WHAT I'M SAYING? PERIOD. I DIDN'T DO NOTHING WRONG. I DIDN'T GIVE NO SUSPECT NO RIDE. I DON'T WANT TO BE IN THIS, PERIOD.

Q. BUT YOU ARE A WITNESS TO THE CASE?

A. I'M SAYING THAT I DIDN'T WANT TO BE A WITNESS. I JUST TURNED MYSELF IN. I THOUGHT I WAS GOING HOME. I STAYED IN JAIL.

Q. LET ME ASK YOU THIS: YOU TALKED TO DETECTIVE REEVES ON THREE DIFFERENT OCCASIONS?

A. UH-HUH.

Q. TWICE ON MARCH THE 1ST AND ONCE ON FEBRUARY 27TH; IS THAT RIGHT?

A. YES, SIR.

Q. AND YOU SIGNED THREE STATEMENTS?

A. YES, SIR, I DID THAT.

Q. SIX PAGES WORTH?
A. I DID THAT.
Q. AND NOWHERE IN YOUR STATEMENTS DID YOU DENY THAT YOU SAW WHAT HAPPENED THAT NIGHT?
A. I TOLD REEVES THAT REALLY IT WAS TWO PEOPLE BACK THERE IN THE BACK. I TOLD HIM THAT.
Q. LET ME ASK YOU THIS: WAS MR. REEVES THERE THAT NIGHT?
A. SAY WHAT?
Q. WAS MR. REEVES DOWN AT THE OLD SCHOOL LOUNGE THAT NIGHT? DID YOU SEE HIM DOWN THERE?
A. OH, I HAD LEFT BEFORE THE COPS CAME.
Q. DID YOU EVER SEE HIM DOWN THERE THAT NIGHT? DID YOU SEE THIS MAN AT OLD SCHOOL LOUNGE ON FEBRUARY 27TH?
A. NOT AT OLD SCHOOL, HUH-UH.
Q. OKAY.
A. HUH-UH.
Q. AND SO THE STUFF THAT WAS WRITTEN DOWN THAT YOU WITNESSED, THE ONLY WAY HE COULD GET THIS INFORMATION IS FOR SOMEBODY WHO WAS THERE AND SAW WHAT HAPPENED; IS THAT RIGHT?
A. YEAH.
Q. AND THESE STATEMENTS WERE DONE AFTER YOU TOLD HIM WHAT YOU SAW THAT NIGHT?
A. YEAH.

Q. AND THEN YOU SIGNED THEM?

A. YEAH. I WAS SCARED, MAN, NERVOUS, MAN. I DIDN'T EVEN WANT TO BE IN THIS.

Q. THAT DOESN'T CHANGE THE FACT THAT HE WOULDN'T HAVE KNOWN WHAT WAS GOING ON UNLESS YOU TOLD HIM; IS THAT RIGHT?

A. HE WOULDN'T KNOW NOTHING UNLESS FRED CHILES TOLD HIM SOMETHING. BECAUSE I WASN'T EVEN IN THIS WITH THAT. FRED CHILES, I DON'T KNOW HIM THAT WELL. SO HE HAD TO TELL ON ME.

Q. SO HE PUT DOWN SIX PAGES WORTH THAT YOU TOLD HIM FOR NO REASON?

A. I GUESS IT -- I GUESS IT'S -- I GUESS IT AIN'T TRUE.

Q. DID ANYBODY TALK TO YOU LAST NIGHT ---

A. NO.

Q. --- REGARDING THIS CASE?

A. NO. I'M NOT SCARED OF NOBODY, PERIOD.

MR. CAMPBELL: NO FURTHER QUESTIONS.

RECROSS-EXAMINATION BY MR. GAMBLE:

Q. YOU SAID FRED CHILES TOLD ON YOU, ON THIS?

A. HE MUST HAVE TOLD THE DETECTIVE ABOUT ME. HE MUST HAVE TOLD -- HE MUST HAVE TOLD THE DETECTIVE THAT THE SUSPECT GOT IN MY CAR.

Q. THE QUESTION IS: DID YOU TALK TO FRED CHILES?

A. WHEN?
Q. AFTER THIS WHATEVER HAPPENED HAPPENED.
A. I DIDN'T TALK TO HIM.
Q. YOU DIDN'T GO BACK AND HANG AROUND OLD SCHOOL LOUNGE ANY MORE?
A. NO. BUT I DIDN'T TALK TO HIM. BECAUSE I DIDN'T KNOW HE HAD TO DO THAT UNTIL I CAME TO COURT YESTERDAY.
Q. OH, YEAH?
A. I DIDN'T KNOW THAT. I DIDN'T KNOW WHO FRED CHILES WAS.

MR. GAMBLE: OKAY. THANK YOU.

MR. CAMPBELL: I HAVE NO FURTHER QUESTIONS.

THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

(WITNESS LEAVES STAND AND LEAVES COURTROOM.)

THE COURT: YOU MAY PROCEED.

MR. CAMPBELL: YOUR HONOR, THE STATE CALLS ALPHONSO HAILEY.

(WHEREUPON, THE WITNESS WAS SWORN BY THE CLERK.)

THE CLERK: PLEASE STATE YOUR FULL NAME AND SPELL YOUR LAST NAME FOR THE RECORD.

THE WITNESS: ALPHONSO HAILEY, A-L-P-H-O-N-S-O, H-A-I-L-E-Y.

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WHEREUPON,

ALPHONSO HAILEY,

AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. CAMPBELL:

Q. MR. HAILEY, YOU NEED TO SPEAK UP INTO THE MICROPHONE, OKAY, SO EVERYBODY CAN HEAR WHAT YOU'RE SAYING.

A. OKAY.

Q. MR. HAILEY, BASSEN HAILEY IS YOUR BROTHER?

A. YES, SIR.

Q. AND WHAT DO YOU ALL CALL HIM BY?

A. SWEET.

Q. AND YOU GO BY A NICKNAME, ALSO; IS THAT CORRECT?

A. YES, SIR.

Q. WHAT DO THEY CALL YOU?

A. SNOOP.

Q. NOW, YOUR PAST RECORD, YOU HAVE A FAILURE TO STOP FOR A BLUE LIGHT CONVICTION; IS THAT RIGHT?

A. YES, SIR.

Q. I WANT TO TALK TO YOU ABOUT THE EVENTS THAT TOOK PLACE -- FIRST LET ME STEP BACK. HOW OLD ARE YOU?

A. 25.

Q. DID YOU FINISH SCHOOL?

A. I GRADUATED.

Q. AND WHERE DID YOU GRADUATE FROM?
A. HANNA.
Q. COME AGAIN?
A. HANNA.
Q. AND YOU ARE CURRENTLY WORKING RIGHT NOW?
A. NO, SIR.
Q. AND WHY NOT?
A. I'M DISABLED.
Q. WHAT KIND OF DISABILITY DO YOU HAVE?
A. BRAIN DAMAGE.
Q. AND YOU KNOW WHERE THE OLD SCHOOL LOUNGE IS LOCATED?
A. YES, SIR.
Q. WHERE IS IT LOCATED?
A. ON MARKET STREET.
Q. HERE IN ANDERSON?
A. YES, SIR.
Q. AND DO YOU KNOW JWAN SMITH?
A. YES, SIR.
Q. WHAT DO YOU KNOW HIM AS?
A. BUSTER.
Q. BUSTER?
A. YES, SIR.
Q. IS HE IN THE COURTROOM TODAY?
A. YES, SIR.

Q. CAN YOU PLEASE IDENTIFY HIM.
A. RIGHT OVER THERE (POINTS).
Q. WITH THE BLUE SHIRT ON?
A. YES, SIR.
Q. AND HOW LONG HAVE YOU KNOWN BUSTER?
A. I'VE KNOWN OF HIM SINCE ABOUT -- I'VE KNOWN HIM SINCE ABOUT '95.
Q. OVER TEN YEARS?
A. YES, SIR.
Q. AND PRIOR TO FEBRUARY 25TH, 2006, HOW OFTEN WOULD YOU SEE MR. SMITH?
A. I'D SEE HIM EVERY OTHER DAY.
Q. YOU SAW HIM A LOT?
A. YES, SIR.
Q. NOW, YOU SAW HIM THAT NIGHT, ON FEBRUARY 26TH, AT THE OLD SCHOOL LOUNGE; IS THAT RIGHT?
A. YES, SIR.
Q. NOW, PRIOR TO SEEING HIM THERE, WHERE WERE YOU THAT AFTERNOON OF THAT DAY?
A. FIRST I WAS ON BROWN STREET.
Q. AND WHO WERE YOU WITH DOWN ON BROWN STREET?
A. SOMEBODY CALLED CATFISH.
Q. ANYBODY ELSE?
A. AND MY BROTHER, SWEET, TORREY.
Q. AND WHEN YOU SAY TORREY, YOU ARE REFERRING TO

TORREY PEARSON?

A. YES, SIR.

Q. DID YOU ALL GO DOWN TO THE OLD SCHOOL LOUNGE?

A. WE HAD WALKED.

Q. WALKED FROM BROWN STREET DOWN THERE?

A. YES, SIR.

Q. AND DO YOU KNOW ABOUT WHAT TIME THIS WAS?

A. ABOUT 11:00, 11:30.

Q. NOW, WHEN YOU WERE WALKING DOWN THERE, DID YOU SEE ANYBODY WITH ANY GUNS?

A. TORREY HAD SHOWED ME A REVOLVER; IT WAS A LONG SILVER WITH A BLACK GUN.

Q. AND THAT WAS TORREY THAT SHOWED YOU THAT?

A. YES, SIR.

Q. DID YOU SEE YOUR BROTHER WITH A GUN?

A. NO, SIR.

Q. HOW ABOUT CATFISH?

A. I DIDN'T SEE HIM WITH ONE.

Q. DID YOU HAVE A GUN?

A. NO, SIR.

Q. AND WHEN YOU GOT DOWN THERE, DID YOU SEE JAMES PICKENS?

A. ME, JAMES PICKENS, SWEET AND TORREY, WE WERE STANDING ON THE LEFT SIDE.

Q. AND YOU KNOW JAMES PICKENS AS WHAT? WHAT'S THE

NICKNAME YOU KNOW HIM AS?

A. TURK.

Q. THAT WAS THE GUY THAT JUST WALKED OUT THE DOOR, IS THAT RIGHT?

A. YES, SIR.

Q. AND WHILE YOU WERE THERE -- DO YOU KNOW WHAT KIND OF VEHICLE OR CAR THAT MR. PICKENS DRIVES?

A. A BLACK JEEP.

Q. COME AGAIN?

A. A BLACK JEEP.

Q. A BLACK JEEP. NOW, WHILE YOU WERE THERE, DID YOU SEE MR. SMITH COME UP AND TALK TO YOU?

A. YEAH, HE CAME UP AROUND, ALONGSIDE OF THE LEFT SIDE OF THE BUILDING.

Q. AND WHAT DID HE ASK YOU OR WHAT DID HE SAY TO YOU?

A. HE DIDN'T SPEAK TO ME, HE SPOKE TO TORREY.

Q. HE SPOKE TO TORREY?

A. YES, SIR.

Q. AND WHAT DID HE SAY TO TORREY?

A. HE ASKED HIM DID HE HAVE A GUN.

Q. DO YOU KNOW WHY HE ASKED HIM IF HE HAD A GUN?

A. NO, SIR.

Q. DID YOU ASK HIM WHY HE WANTED A GUN?

A. NO, SIR.

Q. AND WHAT DID TORREY DO?
A. TORREY GAVE HIM THE GUN.
Q. AND WHAT KIND OF GUN DID HE GIVE HIM?
A. IT WAS A LONG-BARRELLED REVOLVER, SILVER WITH A BLACK EMBLEM.
Q. ONE YOU HAD JUST SEEN PREVIOUS WHEN YOU ALL WERE WALKING DOWN?
A. YES, SIR.
Q. NOW, BEFORE HE WAS ASKING FOR THIS REVOLVER, DID YOU SEE ANYTHING ELSE HAPPEN AT THE OLD SCHOOL LOUNGE?
A. I SEEN THIS MAN AND WOMAN, THEY HAD GOT INTO AN ARGUMENT.
Q. WAS THAT INSIDE THE LOUNGE OR OUTSIDE THE LOUNGE?
A. IT WAS GOING ON WHEN THEY WERE WALKING OUT.
Q. YOU SAW THEM WALKING OUT?
A. YES, SIR.
Q. AND WHERE DID THEY TAKE THIS ARGUMENT TO IN THE PARKING LOT?
A. THEY WENT ON THE RIGHT-HAND SIDE.
Q. IS THAT THE CREEK SIDE?
A. YES, SIR.
Q. NOW, MR. SMITH, YOU TALKED TO HIM WHILE YOU WERE STILL ON THE OUTSIDE OF THE CLUB; IS THAT RIGHT?
A. I AIN'T GET TO TALK TO HIM.
Q. YOU JUST HEARD WHAT HE SAID TO TORREY; IS THAT

RIGHT?

A. YES, SIR.

Q. WHERE DOES MR. SMITH LIVE, WHERE WAS HE LIVING AT THE TIME?

A. ON REED CIRCLE.

Q. HERE IN ANDERSON?

A. YES, SIR.

Q. WITH HIS MOTHER?

A. YES, SIR.

Q. WHAT'S HER NAME?

A. JANICE SMITH.

Q. NOW, HOW WAS HE DRESSED THAT NIGHT?

A. IN ALL BLACK WITH A COLORFUL, IT WAS A COLORFUL HEADBAND.

Q. AND WHAT COLOR -- DID HE HAVE A COAT ON?

A. A BLACK HOODIE.

Q. HE HAD A COAT WITH A BLACK HOOD ON?

A. YES, SIR.

Q. AND YOU DIDN'T HAVE ANY CONVERSATION WITH MR. SMITH; IS THAT RIGHT?

A. NO, SIR.

Q. AT SOME POINT YOU WENT INSIDE THE LOUNGE?

A. YEAH, I WENT INSIDE THE LOUNGE AND BOUGHT TWO DRINKS.

Q. WERE BOTH OF THEM FOR YOU OR ONE FOR SOMEBODY

ELSE?

A. ONE FOR SOMEBODY ELSE.

Q. WHO WAS THAT?

A. CATFISH.

Q. NOW, WHEN YOU WALK INSIDE THE LOUNGE, WHERE DO THEY SERVE DRINKS AT, WHERE DO YOU PURCHASE THE DRINKS AT?

A. AS YOU FIRST WALK IN ON THE LEFT-HAND SIDE.

Q. RIGHT NEXT TO THE DOOR?

A. YES, SIR.

Q. NOW, WHILE YOU WERE STANDING THERE GETTING YOUR DRINK, WHAT DID YOU HEAR OR OBSERVE?

A. I JUST HEARD THREE SHOTS.

Q. WHEN YOU HEARD THE THREE SHOTS WHAT DID YOU DO?

A. STAYED IN THE CLUB. AND SOME YOUNG LADY, SHE HAD WALKED IN AND SAID ---

MR. GAMBLE: OBJECTION, HEARSAY.

BY MR. CAMPBELL:

Q. YOU CAN'T SAY WHAT SOMEBODY ELSE SAID, OKAY?

THE COURT: ALL RIGHT. SUSTAIN THE OBJECTION.

BY MR. CAMPBELL:

Q. NOW, WHERE YOU WERE STANDING WAS NEXT TO THE BAR. WAS THE DOOR OPEN OR CLOSED?

A. IT WAS KIND OF OPEN A LITTLE BIT.

Q. COULD YOU SEE OUTSIDE?
A. YES, SIR.
Q. COULD YOU SEE WHERE MR. MARTIN WAS?
A. YES, SIR.
Q. AND WHERE WAS HE STANDING?
A. HE WAS STANDING ON THE RIGHT-HAND SIDE.
Q. WAS HE NEAR ANY CARS OR ANYTHING?
A. HE WAS BESIDE OF THEM. THERE WAS AN OLD LIKE BLUE PLYMOUTH.
Q. I COULDN'T UNDERSTAND YOU, SIR.
A. IT WAS AN OLD CAR.
Q. OLD CAR?
A. IT WAS ABOUT A '64.
Q. DID IT HAVE A SQUARE FRONT END OR A ROUND FRONT END?
A. SQUARE.
Q. DO YOU RECALL THE COLOR?
A. BLUE.
Q. NOW, WHILE HE WAS STANDING THERE, WHAT DID YOU SEE HAPPEN?
A. HE GOT SHOT AND THAT'S WHEN I WALKED ON THE OUTSIDE AND I SEEN HE TURNED HIS HEAD TO THE RIGHT.
Q. I DIDN'T UNDERSTAND WHAT YOU SAID.
A. I SAID HE HAD GOT SHOT.
Q. THE MAN GOT SHOT?

A. YEAH. AND THEN THAT'S WHEN I HAD SEEN HIM TURN HIS HEAD TWICE, AND THE LAST TIME HE TURNED HIS HEAD, HE HAD DIED.

Q. WHO TURNED HIS HEAD?

A. THE MAN NAMED SAM.

Q. YOU SAW SAM TURN HIS HEAD?

A. YES, SIR.

Q. AND WHAT HAPPENED, WHAT DID HE DO THEN?

A. AFTER THAT HE HAD DIED.

Q. FELL RIGHT THERE?

A. HE WAS ALREADY ON THE GROUND.

Q. AND WHILE YOU WERE STANDING THERE, WERE YOU ABLE TO SEE WHO SHOT THIS MAN, MR. MARTIN?

A. NO, SIR.

Q. DID YOU SEE THE INDIVIDUAL, DID YOU SEE THE COLOR OF THE CLOTHING THE PERSON WAS WEARING?

A. ALL BLACK.

Q. AND DID YOU SEE THE GUN?

A. I DION'T SEE THE GUN AFTER THAT.

Q. DID YOU SEE THIS PERSON BEFORE OR AFTER MR. MARTIN WAS SHOT?

A. BEFORE.

Q. HOW CLOSE WAS THIS PERSON TO MR. MARTIN WHEN HE WAS SHOT?

A. WELL, THEY WERE KIND OF AT CLOSE RANGE.

Q. TELL ME WHEN TO STOP.
A. RIGHT THERE.
Q. ABOUT RIGHT HERE, FROM ME TO YOU?
A. YES, SIR.
Q. AND YOU WERE OBSERVING THIS THROUGH THE DOOR THAT WAS OPENED?
A. YES, SIR.
Q. OKAY. WERE YOU ABLE TO LOOK AT THE FACE OF THE INDIVIDUAL WHO DID THE SHOOTING?
A. THE ONLY WAY I FOUND OUT WAS WHEN THE HOODIE HAD CAME OFF.
Q. AT WHAT POINT DID THE HOODIE FALL OFF, COME OFF?
A. JUST WHEN HE RAN, THE HOOD FELL TO THE BACK.
Q. SO AFTER THE SHOOTING TOOK PLACE, WHICH WAY DID THE SHOOTER GO?
A. HE RAN AROUND TO THE RIGHT.
Q. TO THE FRONT OF THE BUILDING OR TO THE BACK OF THE BUILDING?
A. TO THE BACK.
Q. AND DID YOU SEE THE HOOD FALL OFF?
A. YES, SIR.
Q. AND WHO WAS DOING THE RUNNING?
A. BUSTER.
Q. THAT MAN RIGHT THERE?
A. YES, SIR.

Q. HOW MANY SHOTS DID YOU HEAR?
A. THREE.
Q. AND AFTER THE SHOOTING TOOK PLACE, WHAT DID YOU DO?
A. I WENT OUTSIDE AND LOOKED FOR MY BROTHER BECAUSE WE HAD WALKED DOWN THERE TOGETHER. AND THEY SAID MY BROTHER, HE HAD LEFT, SO I HAD LEFT TOO. I HAD TO WALK HOME.
Q. YOU HAD TO WALK HOME?
A. YES, SIR.
Q. THEY KIND OF LEFT YOU THERE, DIDN'T THEY?
A. YES, SIR.
Q. AND AFTER YOU GOT HOME, DID YOU SEE MR. SMITH ANYTIME AFTER THAT NIGHT?
A. I SAW HIM THE NEXT DAY.
Q. COME AGAIN?
A. I SAW HIM THE NEXT DAY.
Q. THE NEXT DAY?
A. YES, SIR.
Q. WHERE DID YOU SEE HIM AT?
A. ON SOUTH WOOD.
Q. WHAT WERE YOU DOING?
A. I GOT TO SHOOTING BALL.
Q. I COULDN'T HEAR YOU.
A. WE GOT TO PLAYING BASKETBALL.

Q. WAS HE PLAYING WITH YOU?

A. NO, SIR.

Q. SO WHERE DID YOU SEE HIM: WHILE YOU WERE THERE OR WHEN YOU WERE LEAVING OR COMING?

A. WHEN I WAS LEAVING.

Q. HOW WAS HE DRESSED THEN?

A. HE BASICALLY HAD ON THE SAME THING.

Q. AND DID YOU TALK TO HIM?

A. YES, SIR.

Q. WHAT DID YOU SAY TO HIM?

A. THAT ---

MR. GAMBLE: OBJECTION, YOUR HONOR. I HAVE A MATTER TO TAKE UP.

THE COURT: ALL RIGHT. I UNDERSTAND.

MADAM FORELADY, LADIES AND GENTLEMEN OF THE JURY, I ASK YOU TO RETIRE TO THE JURY ROOM. AGAIN, DO NOT UNDERTAKE DISCUSSION OF THE CASE AMONG YOURSELVES IN ANY WAY.

(WHEREUPON, THE JURY LEFT THE COURTROOM AT 11:56 A.M.)

THE COURT: MR. GAMBLE?

MR. GAMBLE: YOUR HONOR, THE STATEMENT FURNISHED TO ME SAYS THAT ON SUNDAY, MARCH THE 26TH -- THIS IS QUOTING FROM ALPHONSO HAILEY -- I WAS SHOOTING HOOPS AND SAW BUSTER.

I HAVE WITH ME A COPY OF A WAIVER OF EXTRADITION DATED MARCH 18TH OF '06 FROM MARION COUNTY, FLORIDA, WHEREIN JWAN SMITH WAS IN CUSTODY ON MARCH THE 18TH. THEREFORE, IT WOULD BE IMPOSSIBLE, AND I DON'T WANT MY FRIEND TO BE LED INTO A POSSIBILITY OF SUBORNING PERJURY, FOR THIS MAN TO HAVE SEEN MR. SMITH ON MARCH THE 26TH WHEN HE WAS IN CUSTODY MARCH THE 18TH FORWARD.

THE COURT: MARCH THE 26TH?

MR. CAMPBELL: IT'S A SCRIVENER'S ERROR, YOUR HONOR. THE STATEMENT WAS TAKEN IN MARCH, AND INSTEAD OF FEBRUARY 26TH BEING WRITTEN DOWN, THE STATEMENT WAS PUT DOWN AS MARCH THE 26TH.

MR. GAMBLE: WELL, THE DATE IS IN PEN. I DON'T KNOW WHEN THE STATEMENT WAS TAKEN. IT SAYS MARCH THE 26TH, I HAVE TO TAKE THAT AS TRUE.

MR. CAMPBELL: THE STATEMENT WAS TAKEN ON MARCH THE 7TH, '06.

THE COURT: LET ME SEE WHAT YOU HAVE.

ALL RIGHT. WE'RE OFF THE RECORD FOR A MOMENT.

(OFF-THE-RECORD DISCUSSION.)

THE COURT: ALL RIGHT. STEP BACK, PLEASE.

BACK ON THE RECORD.

AS I UNDERSTAND, MR. GAMBLE, YOUR CONCERN IS ABOUT DATES IN A STATEMENT APPARENTLY GIVEN MARCH THE

7TH, 2006 OF ONE ALPHONSO HAILEY. IT'S STATED THAT (READING):

ON SUNDAY, MARCH THE 26TH, I WAS AT WEST SIDE PARK SHOOTING HOOPS. I GOT DONE AND WAS WALKING BACK HOME ABOUT 2 P.M. WHEN I SAW BUSTER.

MR. GAMBLE: YES, SIR.

THE COURT: YOUR CONCERN IS THAT ON MARCH THE 18TH, 2006, A CERTIFICATE OF A JUDGE SAYS THAT HE SIGNED A WAIVER OF EXTRADITION FROM FLORIDA.

MR. GAMBLE: YES, SIR.

THE COURT: IT APPEARS THAT THERE WAS AN ERROR IN ONE OF THE DATES, MEANING ONE OF PAGE 2 OF ALPHONSO LEONO HAILEY'S STATEMENT BECAUSE HE SIGNED IT 3-7-06 AND REFERS TO A MARCH THE 26TH OCCURRENCE.

AND IT'S A TYPEWRITTEN STATEMENT. UNLESS MR. ALPHONSO IS EITHER CLAIRVOYANT OR TYPES, APPARENTLY SOMEBODY MADE A MISTAKE OTHER THAN MR. ALPHONSO SETTING DOWN THE DATE THAT SOMETHING OCCURRED AT WEST SIDE PARK.

MR. CAMPBELL: YOUR HONOR, HE JUST TESTIFIED THAT HE SAW HIM THE NEXT DAY, WHICH WOULD HAVE BEEN THE 26TH.

THE COURT: THE NEXT DAY AFTER, THAT WOULD BE THE NEXT DAY AFTER FEBRUARY THE 26TH, WOULD IT NOT?

MR. CAMPBELL: YES, YOUR HONOR.

THE COURT: RATHER THAN THE DAY BEING WRONG, IT'S THE MONTH.

MR. CAMPBELL: THE MONTH IS WRONG, NOT THE DAY.

THE COURT: IF ANYTHING, THERE'S AN INCONSISTENCY, I THINK, THAT CAN EITHER BE EXPLAINED FOR THE COURT -- I MEAN THE JURY -- TO DECIDE WHICH IS CORRECT, EITHER HE SIGNED A STATEMENT ON MARCH THE 7TH REFERRING TO AN EVENT THAT HAPPENED ON MARCH THE 26TH, OR WAS IN ERROR AND WHEN HE SAID THE NEXT DAY, IT SHOULD HAVE BEEN FEBRUARY THE 26 RATHER THAN MARCH 26TH.

I'M GOING TO NOTE YOUR MOTION TO EXCLUDE AND I'LL OVERRULE IT. THESE ARE NOT GOING TO BE INTRODUCED AS STATE'S EXHIBITS. I'M GOING TO ASK THE COURT REPORTER TO MARK THE -- DO YOU HAVE A CLEAN COPY?

MR. CAMPBELL: I'LL GET YOU ONE.

THE COURT: DO YOU HAVE ANYTHING, MR. GAMBLE, THAT ISN'T MARKED UP, THE WAIVER OF EXTRADITION?

MR. GAMBLE: I DON'T HAVE ANY OBJECTION JUST TO MARKING IT IN.

THE COURT: VERY GOOD, SIR. GIVE ME A CLEAN COPY OF THE STATEMENT. ALL RIGHT. WE'LL GO OFF THE RECORD UNTIL THE EXHIBITS ARE MARKED, COURT'S EXHIBITS 3 AND 4.

(COURT'S EX. # 3, STATEMENT OF ALPHONSO LEONO HAILEY, WAS MARKED FOR IDENTIFICATION.)

(COURT'S EX. # 4, WAIVER OF EXTRADITION, WAS MARKED FOR IDENTIFICATION.)

(OFF-THE-RECORD DISCUSSION.)

THE COURT: ASK THE JURY TO JOIN US, PLEASE.

MR. CAMPBELL: YOUR HONOR, MAY MR. GAMBLE AND I APPROACH?

THE COURT: YES, SIR.

(WHEREUPON, COUNSEL APPROACHED THE BENCH AND CONFERRED WITH THE COURT OUT OF THE PRESENCE OF THE COURT REPORTER.)

(WHEREUPON, THE JURY ENTERED THE COURTROOM AT 12:08 P.M.)

THE COURT: LET THE RECORD REFLECT THE JURY AND ALTERNATE ARE IN THE JURY-BOX.

YOU MAY NOW CONTINUE, MR. CAMPBELL.

MR. CAMPBELL: THANK YOU, YOUR HONOR.

BY MR. CAMPBELL:

Q. MR. HAILEY, WE WERE TALKING ABOUT, YOU MENTIONED YOU SAW MR. SMITH THE NEXT DAY; IS THAT RIGHT?

A. YES, SIR.

Q. AND WE WERE STILL IN FEBRUARY; IS THAT CORRECT?

A. YES, SIR.

Q. AND WHEN YOU TALKED, DID YOU SPEAK TO HIM THE

NEXT DAY?

A. YES, SIR.

Q. WHAT DID YOU ASK HIM, SAY TO HIM?

A. I ASKED HIM WHAT HE WAS THINKING.

Q. I DIDN'T UNDERSTAND.

A. I ASKED HIM WHAT HE WAS THINKING, WHAT HE WAS THINKING ABOUT.

Q. ALL RIGHT. AND WHAT DID HE TELL YOU?

A. HE SAID THAT -- HE SAID THAT SAM USED TO DO HIS MAMA THE SAME WAY. HE HAD FLASHBACKS.

Q. AND DID HE SAY HE DID IT?

A. YES, SIR.

Q. AFTER HE TOLD YOU THIS, WHAT DID YOU DO?

A. I JUST KEPT WALKING HOME.

Q. YOU GAVE A STATEMENT TO DETECTIVE REEVES; IS THAT RIGHT?

A. YES, SIR.

Q. IS THAT YOUR SIGNATURE ON THERE?

A. YES, SIR.

Q. AND WHAT DATE DID YOU SIGN THAT?

A. ON THE 7TH, 2006.

Q. WHAT MONTH?

A. MARCH.

Q. AND STARTING WITH THE PARAGRAPH YOU PUT ON SUNDAY, MARCH 26TH?

A. YES, SIR.
Q. NOW, IS THE MARCH CORRECT OR WRONG?
A. WRONG.
Q. WHAT MONTH WAS IT ACTUALLY?
A. FEBRUARY.
Q. IS THE DATE CORRECT, THE 26TH?
A. YES, SIR.
Q. SO THAT'S THE ONLY THING THAT GOT BACKWARDS WAS MARCH; IS THAT RIGHT?
A. YES, SIR.
Q. AFTER THAT DAY, THAT SUNDAY, FEBRUARY 26TH, DID YOU SEE MR. SMITH AROUND ANYMORE?
A. NO, SIR.
Q. SO YOU WENT FROM SEEING HIM EVERY OTHER DAY TO NOT SEEING HIM?
A. YES, SIR.
Q. WHEN YOU WERE WITNESSING WHAT WAS TAKING PLACE OUT IN THE PARKING LOT, DID YOU SEE THE MAN THAT GOT SHOT HAVE ANY TYPE OF WEAPONS IN HIS HANDS?
A. NO, SIR.
Q. DID YOU SEE ANYBODY TRY TO JUMP IN BETWEEN THE MAN THAT GOT SHOT AND HIS GIRLFRIEND TO BREAK IT UP?
A. NO, SIR.
Q. DO YOU RECALL HOW MR. SMITH HAD HIS HAIR THAT NIGHT?

A. SIR?
Q. HOW DID MR. SMITH HAVE HIS HAIR THAT NIGHT?
A. LIKE IN DREADS.
Q. LONG OR SHORT?
A. SHORT.
Q. WHEN YOU ARE SAYING DREADS, IS THAT CURLY, TWISTED?
A. YES, SIR.
Q. NOW, YOU DID GIVE A STATEMENT ON MARCH THE 1ST, 2006; IS THAT RIGHT?
A. YES, SIR.
Q. TAKE A LOOK AT THAT (HANDING). IS THAT YOUR SIGNATURE AT THE BOTTOM?
A. YES, SIR.
Q. AND WHAT DID YOU TELL LAW ENFORCEMENT REGARDING THIS CASE THAT TIME?
A. ABOUT THIS CASE?
Q. WHEN YOU FIRST GAVE THIS STATEMENT.
A. (READING):

ME AND MY BROTHER WERE WALKING OUT TO MY UNCLE'S DETAIL SHOP, AND THAT'S WHEN THIS GUY NAMED BOBBY HAD WALKED UP TO US AND SAID THAT POLICE ---

Q. YOU DON'T NEED TO SAY WHAT SOMEBODY ELSE SAID. BUT WHEN LAW ENFORCEMENT SPOKE TO YOU ON MARCH THE 1ST,

WHEN YOU GAVE THIS INITIAL STATEMENT, DID THEY SPECIFICALLY ASK YOU WERE YOU THERE AND WHAT YOU SAW?

A. YES, SIR.

Q. AND WERE THEY TALKING ABOUT OR WERE THEY LOOKING FOR YOUR BROTHER?

A. THEY SAY THEY WAS LOOKING FOR MY BROTHER.

Q. THEY WEREN'T LOOKING FOR YOU; IS THAT RIGHT?

A. NO, SIR.

Q. AND DID THEY WANT TO QUESTION YOU AT THAT TIME ABOUT WHAT HAD HAPPENED THAT NIGHT?

A. YES, SIR.

Q. WHEN YOU WROTE THE STATEMENT ON MARCH 1ST, THE ONLY THING THEY WERE ASKING YOU ABOUT WAS ABOUT WHERE BASSEN WAS?

A. YES, SIR.

MR. CAMPBELL: NO FURTHER QUESTIONS. ANSWER ANY QUESTIONS MR. GAMBLE MAY HAVE.

CROSS-EXAMINATION BY MR. GAMBLE:

Q. ALL RIGHT. YOU ARE BASSEN HAILEY'S BROTHER?

A. YES, SIR.

Q. TORREY PEARSON'S COUSIN?

A. YES, SIR.

Q. YOU KNEW THAT TORREY AND BASSEN WERE DOWN AT THE LOUNGE THAT NIGHT, DIDN'T YOU?

A. WE WALKED TOGETHER.

Q. HUH?
A. WE WALKED TOGETHER.
Q. ALL RIGHT. YOU WALKED WITH THEM?
A. YES, SIR.
Q. AND YOU WERE INSIDE THE LOUNGE GETTING A DRINK; IS THAT RIGHT?
A. THAT WAS AFTER TORREY GAVE BUSTER THE GUN ---
Q. MY QUESTION WAS: WERE YOU INSIDE THE LOUNGE GETTING A DRINK?
A. YES, SIR.
Q. AND IT'S FEBRUARY AND EVERYBODY HAS GOT ON COATS, RIGHT?
A. YES, SIR.
Q. BUT YOU HAD ON AN OVERCOAT. YOU KNOW SHOES, DON'T YOU?
A. I KNOW HIM, BUT I DIDN'T SEE SHOES.
Q. YOU DIDN'T SEE SHOES THAT NIGHT?
A. NOT IN AN OVERCOAT.
Q. YOU DIDN'T SEE HIM IN A CAMEL-COLORED COAT?
A. NO, SIR.
Q. WITH A WHITE DERBY HAT?
A. NO, SIR.
Q. WAS THERE ANY LIGHT INSIDE THE LOUNGE?
A. YES, SIR.
Q. DID YOU SEE -- DO YOU KNOW MS. BROWNLEE?

A. I HAD SEEN HER WALKING UP AS I WAS GOING IN.
Q. SHE WAS WALKING UP WHERE?
A. SHE WAS WALKING COMING OUT THE DOOR WHEN I WAS COMING IN.
Q. WHO WAS WITH HER?
A. THIS MAN NAMED SAM.
Q. SAM?
A. YES, SIR.
Q. AND YOU DIDN'T SEE ANYBODY IN A CAMEL-COLORED COAT AND A WHITE HAT WITH THEM, GO OUT BEHIND THEM?
A. NO, SIR.
Q. ALL RIGHT. AND YOU WENT TO THE BAR?
A. YES, SIR.
Q. THE NEXT THING YOU KNOW, YOU HEARD THREE SHOTS; IS THAT CORRECT?
A. YES, SIR.
Q. FROM THE BAR YOU CAN'T SEE TO THE LEFT OR THE RIGHT OF THAT BUILDING, CAN YOU?
A. I WAS STANDING AT THE BAR WITH THE DOOR; IT WAS ALREADY CRACKED AND YOU CAN SEE OUT.
Q. COULD YOU SEE TO THE RIGHT SIDE OF THE BUILDING OR THE LEFT SIDE OF THE BUILDING?
A. THE DIRECTION I WAS STANDING YOU COULD SEE ON BOTH SIDES.
Q. COULD YOU SEE YOUR BROTHER AND YOUR COUSIN?

A. YES, SIR.
Q. WHERE WERE THEY?
A. THEY WAS ON THE LEFT.
Q. ON THE LEFT. AND WHAT WAS ON THE RIGHT?
A. SIR?
Q. WHAT WAS ON THE RIGHT?
A. THAT'S WHEN I HAD SEEN SAM AND THE YOUNG LADY BACK THERE NOW, THEY WAS ON THE RIGHT, LEAVING.
Q. UH-HUH. AND YOU SAW THIS WHILE YOU WERE INSIDE THE BAR?
A. YES, SIR.
Q. YOU CLAIM IN YOUR STATEMENT THAT TORREY HAD A .45?
A. YES, SIR.
Q. DID YOU SEE THE .45?
A. HE SHOWED ME THE NIGHT WHEN WE WAS LEAVING OFF OF BROWN STREET.
Q. WHO ELSE HAD ANY GUNS?
A. TORREY WAS THE ONLY ONE THAT HAD A GUN ON HIM.
Q. DIDN'T CATFISH HAVE AN OOZY?
A. I DIDN'T SEE CAT WITH NO GUN.
Q. HUH? YOU DIDN'T SEE CATFISH?
A. NO, SIR.
Q. THEN WHY DID YOU TELL THE OFFICER THAT CATFISH HAD A BLACK-LOOKING, OOZY-TYPE GUN WITH HIM?

A. HE HAD IT THAT NIGHT WHEN WE WAS DOWN AT THE CLUB, AND THE SAME NIGHT WE WAS AT THE CLUB WAS THE ONLY TIME WHEN HE HAD THE GUN.

Q. WHAT'S A TRE-POUND?

A. MR. PEARSON, HE SAID THAT -- HE CALLED IT A FULL FIRE, A TRE-POUND.

Q. IS A .45 IS A TRE-POUND?

A. HE WAS GOING BY THE SOUND OF HOW THE GUN SHOT, WE CALLED IT A TRE-POUND.

THE COURT: JUST A MOMENT. MR. GAMBLE, WOULD YOU SPELL THE WORD OR READ THE WORD?

MR. GAMBLE: T-R-E, DASH, P-O-U-N-D.

THE COURT: T-R-E- --

MR. GAMBLE: -- -P-O-U-N-D.

THE COURT: VERY GOOD, THANK YOU.

MR. GAMBLE: TRE-POUND.

THE COURT: TRAY OR TRE?

TRE. VERY GOOD.

MR. GAMBLE: I DON'T KNOW, YOUR HONOR. I'VE NEVER USED THAT WORD BEFORE, SO I'VE PHONETICALLY SPELLED IT.

THE COURT: DO YOU KNOW THE MEANING OF THE WORD?

THE WITNESS: MR. PEARSON, HE GO BY HOW THE GUNSHOT SOUND. IT'S LOUD. HE CALLED IT A TRE-POUND

INSTEAD OF A .45.

THE COURT: VERY GOOD. THANK YOU.

BY MR. GAMBLE:

Q. SO THIS WAS A .45?

A. YES, SIR.

Q. NOT A .357?

A. NO, SIR. SIR?

Q. NOT A .357 CALIBER?

A. HE JUST SAID -- HE JUST SAID A .45 OR CALLED IT A TRE-POUND.

Q. A .45 OR A TRE-POUND?

A. YES, SIR.

Q. WHAT DID IT MEAN TO YOU THAT SOMETHING WAS GOING TO RIP TONIGHT?

A. THAT'S WHAT HE KEPT TALKING AND SAYING THAT NIGHT BEFORE HE PULLED A GUN OUT AND SHOWED US WHAT KIND OF GUN IT WAS.

Q. WHAT DOES GONNA RIP TONIGHT MEAN?

A. HE WAS TALKING ABOUT SHOOTING THE GUN.

Q. HE WAS GONNA SHOOT THE GUN?

A. HE WAS TALKING ABOUT THE GUN GETTING SHOT. HE SAID SOMETHING GONNA GO DOWN TONIGHT.

Q. TORREY PEARSON SAID THAT?

A. YES, SIR.

Q. "SOMETHING IS GONNA GO DOWN TONIGHT"?

A. YES, SIR.

Q. ARE YOU FRIENDS WITH TURK?

A. I JUST KNOW HIM OFF THE STREETS.

Q. WHY DID TORREY AND YOUR BROTHER JUMP IN TURK'S JEEP AND LEAVE YOU AT THE OLD SCHOOL LOUNGE AFTER THE SHOOTING?

A. I WAS STILL ON THE INSIDE.

Q. YOU DIDN'T KNOW THEY WERE OUTSIDE?

A. I KNEW THEY WAS ON THE OUTSIDE, BUT I WAS INSIDE AT THE TIME.

Q. BUT YOU DIDN'T SEE THEM GET IN THE JEEP AND DRIVE OFF?

A. THIS WOMAN HAD TOLD ME MY BROTHER HAD JUST LEFT WITH TURK, GOT IN THE JEEP AND LEFT.

Q. SAY THAT AGAIN?

A. THIS WOMAN HAD CAME IN. I ASKED HER WHERE MY BROTHER WAS. SHE SAID THAT HE HAD GOTTEN IN THE JEEP WITH TURK AND THEY HAD LEFT.

Q. SO YOU DIDN'T SEE THEM DRIVE OFF BECAUSE YOU WERE INSIDE THE LOUNGE; ISN'T THAT RIGHT?

A. YES, SIR.

Q. ALL RIGHT. A WHILE AGO YOU SAID YOU COULD SEE THEM OUT THERE BY THE CHEROKEE WHILE YOU WERE INSIDE THE LOUNGE. WHICH IS IT?

A. NO. BECAUSE THE DOOR WAS OPEN WHERE I COULD --

WHERE I WAS STANDING YOU COULD SEE ON BOTH SIDES.

Q. BUT THE DOOR WAS SHUT BECAUSE IT WAS FEBRUARY 25TH; IS THAT RIGHT?

A. NO, SIR.

Q. IT WASN'T COLD?

A. IT WASN'T THAT COLD.

Q. EVERYBODY WAS WEARING COATS, WEREN'T THEY?

A. SOME PEOPLE WAS.

Q. WHAT COLOR WAS THIS HEADBAND YOU CLAIM TO HAVE SEEN?

A. IT WAS WHITE WITH DIFFERENT COLORS IN IT.

Q. WHITE WITH DIFFERENT COLORS?

A. YES, SIR.

Q. BRIGHT COLORS?

A. YES, SIR.

Q. YOU SAW LATORREY LATER, MARCH THE 2ND. YOU WERE INFORMED THAT HE STILL HAD HIS GUNS. RIGHT?

A. YES, SIR.

Q. HE NEVER TOLD YOU HE GAVE A GUN TO ANYBODY, DID HE?

A. NO, SIR.

Q. AND YOU CLAIM HE WAS CARRYING A .45?

A. THE NIGHT WHEN WE WALKED TO THE CLUB AND I SEEN HIM WITH A GUN, THAT'S WHEN WE GOT DOWN TO THE LOUNGE, AND I SEEN BUSTER COME UP AND ASK FOR THE GUN, THAT'S

WHEN MR. PEARSON HAD GAVE IT TO HIM.

Q. MY QUESTION IS: YOU UNDERSTOOD THAT GUN TO BE A .45; IS THAT CORRECT?

A. THAT'S WHAT HE WOULD CALL IT.

Q. OKAY.

A. I DON'T KNOW WHAT KIND OF GUN IT WAS, BUT I KNOW IT WAS A LONG SILVER BARREL WITH A BLACK HANDLE.

Q. DON'T YOU THINK AN OWNER OF A GUN WOULD KNOW WHAT CALIBER THE GUN WAS?

A. I DON'T KNOW.

Q. ALL RIGHT. YOU SAY YOU SAW BUSTER JUMP IN THE PASSENGER SEAT OF WHAT KIND OF CAR?

A. IT WAS A GOLD CAR.

Q. WHAT MODEL?

A. I DON'T KNOW. I JUST SEEN A GOLD CAR. IT JUST HAPPENED SO FAST.

Q. AND YOU SAW THIS FROM INSIDE THE LOUNGE?

A. YES, SIR.

Q. DID YOU SEE HIM RUN TO THE BACK OF THE LOUNGE?

A. YES, SIR.

Q. HOW DID YOU SEE HIM RUN TO THE BACK OF THE LOUNGE WHILE YOU WERE INSIDE AT THE BAR?

A. I WAS STANDING AT THE DOOR. ON BOTH SIDES, THE PLACE WHERE I WAS STANDING AT, ON BOTH YOU CAN SEE, HE RAN TO THE RIGHT AND THAT'S WHERE THE CAR PULLED UP AND

HE JUMPED IN IT.

Q. WHERE DID THE CAR COME FROM?

A. IT CAME FROM THE -- IT LOOKED LIKE IT CAME FROM THE BACK.

Q. FROM THE BACK? HUH?

A. IT LOOKED LIKE IT WAS PULLING IN FROM THE BACK COMING TO THE FRONT.

Q. ALL RIGHT. SO THE CAR PULLED INTO THE BACK. BUSTER RAN TO THE BACK, ACCORDING TO YOU; IS THAT CORRECT?

A. HE HAD RAN ON THE RIGHT-HAND SIDE. THAT'S WHEN THE CAR HAD PULLED UP AND HE JUMPED IN AND LEFT.

Q. HE RAN TO THE RIGHT-HAND SIDE BUT TO THE BACK OF THE LOUNGE; IS THAT RIGHT?

A. NO, SIR.

Q. WHAT DID YOU SEE? THAT'S WHAT I'M ASKING. AND HOW DID YOU SEE IT?

A. WHEN I WAS STANDING AT THE DOOR, THAT'S WHAT I SEEN.

Q. YOU WERE STANDING AT THE DOOR, AT THE FRONT DOOR, AND YOU SAW SOMEONE RUN TO THE BACK OF THE BUILDING; IS THAT CORRECT?

A. ON THE SIDE.

Q. ON THE SIDE TO THE BACK OF THE BUILDING?

A. RUN OVER TO THE BACK.

Q. AND THEN THIS CAR COMES AROUND TO THE FRONT WHERE YOU CAN SEE IT; IS THAT CORRECT?

A. YES, SIR.

Q. AND NOW BUSTER GETS IN THE PASSENGER'S SEAT COMING ALL THE WAY AROUND THE BUILDING TO GET IN THIS CAR THAT WAS ALREADY BEHIND THE BUILDING; IS THAT CORRECT?

A. YES, SIR.

THE COURT: RE-EXAM?

MR. CAMPBELL: THANK YOU, YOUR HONOR.

REDIRECT EXAMINATION BY MR. CAMPBELL:

Q. MR. HAILEY, DO YOU KNOW A LOT ABOUT GUNS?

A. NO, SIR.

Q. AND YOU WERE JUST GOING BY WHAT THEY TOLD YOU WHEN THEY WERE TALKING ABOUT -- LATORREY WAS TALKING ABOUT THE CALIBER OF THE PISTOL; IS THAT RIGHT?

A. YES, SIR.

Q. WHEN WE TALKED ABOUT IT'S GONNA RIP TONIGHT, DO YOU THINK HE WAS BRAGGING?

A. YES, SIR.

Q. DID YOU KNOW IF TORREY OR BASSEN HAD ANY PROBLEMS WITH MR. SMITH?

A. NO, SIR.

Q. IN THE OLD SCHOOL LOUNGE, DO YOU CALL IT A BIG BUILDING OR A SMALL BUILDING?

A. SMALL.

Q. AND WHEN YOU SAW MR. SMITH LEAVE, HOW DID YOU KNOW IT WAS HIM THAT WAS LEAVING?

A. BECAUSE WHEN HE WAS RUNNING, THE HOOD FELL OFF.

Q. THE HOOD FELL OFF?

A. YES, SIR.

Q. AND THIS PERSON THAT WAS IN THE PASSENGER'S SEAT OF THAT GOLD-COLORED CAR, DID YOU SEE HIM?

A. YES, SIR.

Q. AND WAS IT MR. SMITH?

A. YES, SIR.

Q. WAS THE HOOD ON OR OFF?

A. IT WAS STILL OFF.

Q. STILL OFF?

A. YES, SIR.

Q. DID YOU SEE ANYBODY ELSE THAT NIGHT DO ANY SHOOTING?

A. NO, SIR.

MR. CAMPBELL: I HAVE NO FURTHER QUESTIONS.

THE COURT: ANY RECROSS?

MR. GAMBLE: NO, YOUR HONOR.

THE COURT: VERY GOOD. YOU MAY STEP DOWN, SIR.

(WITNESS LEAVES WITNESS STAND AND COURTROOM.)

THE COURT: YOU MAY CALL YOUR NEXT WITNESS.

MR. CAMPBELL: YOUR HONOR, THE STATE CALLS KIZZY MATTRESS.

(WHEREUPON, THE WITNESS WAS SWORN BY THE CLERK.)

THE CLERK: PLEASE STATE YOUR FULL NAME AND SPELL YOUR LAST NAME FOR THE RECORD.

THE WITNESS: MY NAME IS KIZZY MATTRESS, MY LAST NAME IS SPELLED M-A-T-T-R-E-S-S.

WHEREUPON,

KIZZY MATTRESS,

AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. CAMPBELL:

Q. MS. MATTRESS, WHAT WAS YOUR RELATIONSHIP TO SAMMY MARTIN?

A. HE WAS MY COUSIN THROUGH MY FATHER.

Q. AND YOU KNOW MR. SMITH; IS THAT RIGHT?

A. YEAH.

Q. HOW LONG HAVE YOU KNOWN MR. SMITH?

A. SINCE I WAS DATING HIS BROTHER.

Q. AND YOU CALL HIM JWAN?

A. UH-HUH.

Q. OR DID HE GO BY ANOTHER DIFFERENT NAME?

A. JWAN, BUSTER.

Q. AND YOU SAY YOU USED TO DATE HIS OLDER BROTHER;

IS THAT RIGHT?

A. YES.

Q. AND WHAT'S HIS NAME?

A. LARIQUUS SMITH.

Q. AND YOU HAVE TWO CHILDREN BY HIM; IS THAT RIGHT?

A. YES.

Q. AND YOU WERE NOT AT THE OLD SCHOOL LOUNGE ON FEBRUARY 25TH, 2006?

A. NO, SIR.

Q. NOW, LARIQUUS SMITH, WHO'S HIS FATHER?

A. LARRY HOLMES.

Q. LARRY WHO?

A. HOLMES.

Q. AND AT THE TIME MR. HOLMES WAS LIVING IN FLORIDA?

A. I THINK SO.

Q. AND LARIQUUS SMITH HAS A BROTHER, DOESN'T HE, ANOTHER BROTHER?

A. YES, SIR.

Q. AND WHAT'S HIS NAME?

A. SHAWN PITTMAN (PHONETIC).

Q. AND WHERE DOES HE LIVE?

A. I THINK HE STAYS HERE IN ANDERSON.

Q. AND BACK IN FEBRUARY OF LAST YEAR WAS HE IN FLORIDA?

A. I THINK HE WAS WORKING THERE.

Q. WORKING DOWN IN FLORIDA?
A. UH-HUH.
Q. DO YOU KNOW WHAT TYPE OF JOB HE WAS WORKING?
A. NO, SIR.
MR. CAMPBELL: COURT'S INDULGENCE, PLEASE.
(OFF-THE-RECORD DISCUSSION.)
BY MR. CAMPBELL:
Q. NOW, WHAT IS THE RELATIONSHIP BETWEEN LARIQUUS SMITH AND SHAWN PUTNAM? THEY ARE BROTHERS?
A. YES.
Q. AND THEY BOTH HAVE THE SAME FATHER?
A. YES.
Q. AND WHO IS THAT?
A. LARRY HOLMES.
Q. LARRY HOLMES?
A. YES.
Q. AND AT THAT TIME LAST YEAR BOTH OF THEM WERE BOTH LIVING IN FLORIDA, MR. HOLMES AND ---
A. I THINK SHAWN WAS WORKING DOWN THERE.
Q. HE WAS WORKING DOWN THERE IN FLORIDA?
A. I THINK SO.
MR. CAMPBELL: I HAVE NO FURTHER QUESTIONS.
CROSS-EXAMINATION BY MR. GAMBLE:
Q. YOU SAY YOU THINK SO. YOU DON'T KNOW THAT OF YOUR OWN KNOWLEDGE, DO YOU?

A. NO, SIR.

Q. ALL RIGHT. AND YOU DON'T KNOW WHERE THEY WERE LIVING AT THAT TIME, TO YOUR KNOWLEDGE?

A. NO, SIR.

Q. HUH?

A. NO, SIR.

MR. GAMBLE: THANK YOU, NO FURTHER QUESTIONS.

MR. CAMPBELL: NO FURTHER QUESTIONS.

THE COURT: ALL RIGHT. YOU MAY STEP DOWN. THANK YOU VERY MUCH.

(WITNESS LEAVES STAND AND LEAVES COURTROOM.)

THE COURT: COUNSEL APPROACH?

(WHEREUPON, COUNSEL APPROACHED THE BENCH AND CONFERRED WITH THE COURT OUT OF THE PRESENCE OF THE COURT REPORTER AND THE JURY.)

THE COURT: MADAM FORELADY, LADIES AND GENTLEMEN, I UNDERSTAND THAT WE HAVE A WITNESS WHO IS COMING FROM OUT OF TOWN AND WILL NOT BE HERE UNTIL 2:00, SO I'M GOING TO SUGGEST WE TAKE THE LUNCH BREAK AT THIS TIME AND COME BACK AT 2:00. AGAIN, DO NOT UNDERTAKE DISCUSSION OF THE CASE AMONG YOURSELVES OR PERMIT ANYBODY TO DISCUSS IT WITH YOU. THANK YOU VERY MUCH. YOU MAY RETIRE AND COME BACK AT 2:00 TO THE JURY ROOM.

(WHEREUPON, THE JURY LEFT THE COURTROOM AT

12:32 P.M.)

THE COURT: ANYTHING FROM THE STATE BEFORE WE RECEDE FOR LUNCH?

MR. CAMPBELL: NO, YOUR HONOR.

THE COURT: FROM THE DEFENSE?

MR. GAMBLE: NO, YOUR HONOR.

THE COURT: I'LL SEE YOU BACK AT 2:00. IF SOMETHING COMES UP, LET ME KNOW. I'LL BE BACK OBVIOUSLY BEFORE 2:00.

(A LUNCHEON RECESS OCCURRED.)

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AFTERNOON PROCEEDINGS

THE COURT: ALL RIGHT. IS THERE ANYTHING FROM THE STATE BEFORE WE BRING THE JURY BACK?

MR. CAMPBELL: NO, YOUR HONOR.

MR. GAMBLE: NOTHING FROM THE DEFENSE, YOUR HONOR.

THE COURT: FROM THE DEFENSE?

MR. GAMBLE: NO.

THE COURT: ASK THE JURY TO JOIN US, PLEASE.

(WHEREUPON, THE JURY ENTERED THE COURTROOM AT 2:10 P.M.)

THE COURT: ALL RIGHT. LET THE RECORD REFLECT THE JURY IS IN THE JURY-BOX. WE'LL NOW PROCEED WITH THE TRIAL OF THE CASE -- ALONG WITH THE ALTERNATE -- AND WE'LL PROCEED WITH THE STATE'S CASE.

MR. CAMPBELL: THANK YOU, YOUR HONOR.

THE STATE CALLS DR. MICHAEL WARD.

(WHEREUPON, THE WITNESS WAS SWORN BY THE CLERK.)

THE CLERK: PLEASE STATE YOUR FULL NAME AND SPELL YOUR LAST NAME FOR THE RECORD.

THE WITNESS: MICHAEL EUGENE WARD, W-A-R-D.

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WHEREUPON,

MICHAEL WARD,

AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. CAMPBELL:

Q. MR. WARD, YOU ARE A DOCTOR; IS THAT CORRECT?

A. YES.

Q. AND WHERE DO YOU CURRENTLY WORK?

A. I'M EMPLOYED BY PATHOLOGY ASSOCIATES OF GREENVILLE IN GREENVILLE, SOUTH CAROLINA, AND ALSO AS THE GREENVILLE COUNTY MEDICAL EXAMINER.

Q. AND GOING BACK TO WHAT YOU JUST SAID, YOU HAVE PERFORMED A NUMBER OF AUTOPSIES IN YOUR CAREER?

A. YES, I HAVE.

Q. APPROXIMATELY HOW MANY AUTOPSIES HAVE YOU PERFORMED?

A. OVER 3,000.

Q. AND OF THOSE 3,000 NUMBER, HAVE ANY OF THOSE BEEN BY GUNSHOT, THE BODIES THAT YOU HAD?

A. YEAH, A GREAT MANY OF THEM HAVE, YES.

Q. NOW, YOU ARE THE PATHOLOGIST, YOU DO THE AUTOPSIES FOR GREENVILLE COUNTY; IS THAT CORRECT?

A. THAT'S CORRECT.

Q. IN THIS CASE ARE YOU FILLING IN FOR DR. WOODARD FROM ANDERSON COUNTY?

A. YES. DR. WOODARD WAS ON VACATION AND WE WERE ASKED BY THE ANDERSON COUNTY CORONER'S OFFICE TO PROVIDE AUTOPSY SUPPORT FOR HIM WHILE HE WAS ABSENT.

Q. AND WHERE DID YOU GO TO SCHOOL?

A. I DID MY -- I HAVE A BACHELOR'S DEGREE IN BIOLOGY FROM THE UNIVERSITY OF ALABAMA. I RECEIVED MY MASTER'S DEGREE IN FORENSIC SCIENCE FROM THE UNIVERSITY OF ALABAMA IN BIRMINGHAM, I RECEIVED MY MEDICAL DEGREE FROM THE UNIVERSITY OF SOUTH ALABAMA IN MOBILE. I DID A FOUR-YEAR ANATOMIC PATHOLOGY RESIDENCY AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA IN CHARLESTON, AND A ONE-YEAR FELLOWSHIP IN FORENSIC PATHOLOGY AT THE UNIVERSITY OF NEW MEXICO IN ALBUQUERQUE.

Q. AND WHEN YOU REFER TO FORENSIC PATHOLOGY, CAN YOU EXPLAIN TO THE LADIES AND GENTLEMEN OF THE JURY WHAT ARE YOU TALKING ABOUT?

A. PATHOLOGY IS THE STUDY OF DISEASE AND HOW THAT DISEASE PROCESS AFFECTS MAN. FORENSIC PATHOLOGY TAKES THAT ONE STEP FURTHER, IT DEALS WITH NOT ONLY DISEASE BUT ALSO INJURY AND INJURY PATTERNS AND HOW THOSE PATTERNS LEAD TO DEATH, AND THE PRESENTATION OF THAT INFORMATION IN THE COURTROOM AS WE ARE TODAY.

Q. AND AS PART OF YOUR TRAINING IN FORENSIC PATHOLOGY, DID YOU TAKE ANY COURSES OR EXPERIENCE DEALING WITH GUNSHOT AND GUNSHOT POWDER AND RESIDUE THAT

CAN POSSIBLY BE LEFT ON A BODY?

A. YES, I HAVE.

Q. AND IN THESE AUTOPSIES YOU HAVE PERFORMED, OVER HOW MANY YEARS HAVE YOU BEEN LICENSED?

A. SINCE 1992.

Q. AND YOU HAVE TESTIFIED IN COURT BEFORE; IS THAT CORRECT?

A. YES, I HAVE.

Q. DO YOU KNOW HOW MANY TIMES YOU HAVE BEEN QUALIFIED AS AN EXPERT?

A. OVER A HUNDRED TIMES.

Q. IS THAT IN STATE AND FEDERAL COURT?

A. IT IS.

Q. AND YOU HAVE BEEN QUALIFIED AS A FORENSIC PATHOLOGIST?

A. AS AN ANATOMIC AND FORENSIC PATHOLOGIST, YES.

MR. CAMPBELL: YOUR HONOR, AT THIS TIME I MOVE DR. WARD AS AN EXPERT IN THE AREA OF FORENSIC PATHOLOGY.

THE COURT: ANY VOIR DIRE?

MR. GAMBLE: NO, YOUR HONOR.

THE COURT: ANY OBJECTION?

MR. GAMBLE: NO, YOUR HONOR.

THE COURT: MADAM FORELADY, LADIES AND GENTLEMEN OF THE JURY, AS YOU HAVE HEARD WITNESSES

NORMALLY ARE NOT PERMITTED TO GIVE TESTIMONY AS TO OTHER THAN TESTIMONY BASED ON THE EXERCISE OF THEIR OWN SENSES, WHAT THEY SEE AND KNOW BY REASON OF HEARING, TASTE, AND TOUCH, THINGS OF THAT NATURE.

HOWEVER, IF A WITNESS BY REASON OF BACKGROUND, TRAINING AND EXPERIENCE IS EXPERIENCED IN A PARTICULAR AREA, THEN THEY ARE PERMITTED TO GIVE THEIR OPINIONS BASED ON THAT KNOWLEDGE AND TRAINING, AND IN THIS PARTICULAR CASE THE WITNESS, DR. MICHAEL EUGENE WARD, IS QUALIFIED AS AN EXPERT IN ANATOMICAL FORENSIC PATHOLOGY --

IS THAT CORRECT, DOCTOR?

THE WITNESS: YES, SIR.

THE COURT: AND, OF COURSE, ALWAYS REMEMBER EVERY WITNESS'S TESTIMONY IS FOR YOUR EVALUATION.

YOU MAY PROCEED.

MR. CAMPBELL: THANK YOU, YOUR HONOR.

BY MR. CAMPBELL:

Q. DR. WARD, IN FEBRUARY OF LAST YEAR DID YOU HAVE THE OCCASION TO PERFORM OR CONDUCT AN AUTOPSY ON A SAMMY LEE MARTIN?

A. YES, I DID.

Q. AND WHAT DATE WAS THAT?

A. IT WAS ON FEBRUARY 27TH, 2006.

Q. AND WHERE WAS THIS AUTOPSY PERFORMED?

A. AT THE AUTOPSY FACILITY AT THE GREENVILLE MEMORIAL HOSPITAL IN GREENVILLE COUNTY.

Q. AND WHEN A PERSON COMES IN, WHEN YOU ARE PERFORMING AN AUTOPSY, A BODY COMES IN, DO YOU TRY TO DETERMINE HOW OLD A PERSON IS? DO YOU LEARN, GET FACTS TO DETERMINE THE AGE OF THE PERSON?

A. WE DO AN EXTERNAL EXAMINATION TO DETERMINE HEIGHT, WEIGHT, AND TO ESTIMATE THE AGE TO SEE IF HE'S CONSISTENT WITH THE AGE THAT WE HAD BEEN REPORTED, YES.

Q. AND WHAT AGE WERE YOU GIVEN IN THIS CASE?

A. THAT MR. MARTIN WAS 50 YEARS OLD.

Q. AND WHEN YOU ARE CONDUCTING AN AUTOPSY, FIRST, HOW DO YOU -- THE STEPS YOU GO BY IN PERFORMING ONE?

A. THE INITIAL STEP IS WHAT WE CALL AN EXTERNAL EXAMINATION WHEN WE LOOK AT THE BODY AS IT'S RECEIVED. IN THIS CASE THE BODY WAS RECEIVED CLOTHED, SO WE LOOKED AT THE CLOTHING OF THE BODY AS IT WAS ON THE BODY AND AS WE TOOK IT OFF, EXAMINING, LOOKING AT THE CLOTHING FOR ANY TRACE EVIDENCE THAT MAY BE PRESENT, ANY GUNSHOT RESIDUES SPECIFICALLY IN THIS CASE THAT MAY HAVE BEEN PRESENT.

AFTER REMOVAL OF THE CLOTHING, WE DO AN EXTERNAL EXAMINATION OF THE BODY, AGAIN LOOKING FOR ANY TRACE EVIDENCE, SPECIFICALLY GUNSHOT RESIDUE WHICH MAY HAVE BEEN PRESENT.

FOLLOWING THIS, THE BODY IS CLEANED, PHOTOGRAPHED, DIAGRAMMED, MEASUREMENTS MADE OF ANY WOUNDS THAT MAY HAVE BEEN PRESENT, AND THEN WE PROCEED WITH THE INTERNAL EXAMINATION OF THE AUTOPSY.

Q. AND WHEN YOU PERFORMED THIS INITIAL EXAM, DID YOU DETERMINE HOW MANY TIMES MR. MARTIN HAD BEEN SHOT?

A. YES, I DID.

Q. AND HOW MANY DID YOU FIND?

A. HE HAD BEEN SHOT TWICE.

Q. AND LET'S JUST START OFF WITH THE FIRST GUNSHOT WOUND. WHERE WAS THAT LOCATED, AND PLEASE DESCRIBE IT.

A. THERE WERE TWO GUNSHOT WOUNDS, AND THESE ARE ARBITRARILY NUMBERED IN THAT I START AT THE TOP OF THE HEAD AND MOVE TO THE FEET. SO THE FIRST ONE I COME TO IS LABELED AS NUMBER ONE, AND IT'S CERTAINLY NOT MEANT TO INDICATE THAT I THINK THAT GUNSHOT WOUND CAME FIRST, JUST THAT THAT'S THE FIRST ONE THAT I GOT TO IN MY ORDER OF PROGRESSION.

GUNSHOT WOUND NUMBER ONE WAS IN THE SIDE OF THE LEFT NECK. IT WAS ABOUT TEN INCHES FROM THE TOP OF THE HEAD. IT WENT INTO THE SKIN OF THE NECK AND WENT FORWARD AND DOWNWARD, PASSING BENEATH THE LEFT COLLARBONE, WHERE IT TRANSECTED THE LARGE ARTERY THAT TAKES BLOOD OUT TO THE LEFT ARM, THE LEFT SUBCLAVIAN ARTERY.

IT THEN WENT INTO THE LEFT CHEST. IT WENT THROUGH A PORTION OF THE LUNG, THE LEFT LUNG, INTO THE MIDDLE OF THE BODY THROUGH THE VERTEBRAL COLUMN, WHERE IT TRANSECTED THE SPINAL CORD AT THE THIRD THORACIC VERTEBRA, SO ABOUT TWO INCHES DOWN FROM THIS NOTCH RIGHT HERE, IT PASSED THE MIDLINE.

AND IT CUT THE SPINAL CORD AT THAT LEVEL, EXITED THE VERTEBRAL COLUMN, AND WAS RECOVERED LYING FREE IN THE RIGHT CHEST.

ASSOCIATED WITH THIS WOUND WERE 1,200 MILLILITERS OF BLOOD IN THE LEFT CHEST CAVITY AND 800 MILLILITERS OF BLOOD IN THE RIGHT CHEST CAVITY. SO THIS BULLET WENT FROM MR. MARTIN'S LEFT TO HIS RIGHT FROM ABOVE, DOWNWARD AND FORWARD.

Q. AND YOU RECOVERED THIS BULLET FROM THE BODY?

A. WE RECEIVED A MEDIUM CALIBER SEMI-JACKETED HOLLOW POINT LEAD MISSILE.

Q. WHICH YOU IN TURN GAVE TO THE POLICE OFFICERS?

A. THAT'S CORRECT.

Q. AND WHEN YOU EXAMINED THIS WOUND ON THE BODY, WERE YOU ABLE TO SEE ANY TYPE OF STIPPLING INVOLVED WITH A CLOSE GUNSHOT?

A. I DID NOT. THE EXAMINATION OF THE CLOTHING IMMEDIATELY ADJACENT TO THE WOUND AND THE SKIN SURROUNDING THIS WOUND, THERE WAS NO, THERE WAS NO

GUNSHOT RESIDUES PRESENT, EITHER GROSSLY WITH THE NAKED EYE OR ON EXAMINATION WITH THE UNDERLYING TISSUES.

Q. AND JUST FOR A CLARIFICATION FOR THE LADIES AND GENTLEMEN OF THE JURY, WHEN WE TALK ABOUT STIPPLING AND SOOT, IN RECOVERING THAT, IS THERE A RANGE IN WHICH THESE ITEMS OR THESE CHARACTERISTICS WILL APPEAR ON A BODY?

A. THERE IS.

Q. AND CAN YOU EXPLAIN THAT TO THE LADIES AND GENTLEMEN OF THE JURY?

A. WHEN A WEAPON IS FIRED, NOT ONLY DOES THE BULLET EXIT THE MUZZLE OF THE GUN, BUT OTHER SUBSTANCES DO, AS WELL. NOT ONLY DOES THE BULLET COME OUT, BUT INITIALLY THERE'S HOT GAS WHICH IS PRODUCED BY THE BURNING OF GUN POWDER. SO THIS HOT GAS EXPANDS, IT PUSHES THE BULLET OUT, BUT SOME OF THAT GAS EXPANDS OUT THE MUZZLE OF THE GUN, AS WELL.

IT WILL TRAVEL FOR A VERY SHORT DISTANCE, PROBABLY LESS THAN AN INCH OR TWO, AND IF THE SKIN IS CLOSE ENOUGH, THAT HOT GAS WILL DEPOSIT ITSELF AND SOMETIMES BURN OR CHAR THE SKIN IMMEDIATELY ADJACENT TO THE MUZZLE OF THE GUN.

ALSO COMING OUT WITH THIS HOT GAS IS BURNED GUN POWDER OR SOOT. THIS SOOT IS VERY LIGHT AND IT HAS -- WILL NOT HAVE A GREAT DEAL OF WIND RESISTANCE, SO IT

WON'T TRAVEL VERY FAR, FURTHER THAN THE GAS, BUT STILL ONLY ABOUT FOUR TO SIX INCHES. SO IF THE MUZZLE OF THE GUN IS WITHIN SAY FOUR TO SIX INCHES OF THE SKIN, THIS SOOT WILL DEPOSIT ITSELF ON THE SKIN SURROUNDING THIS ENTRANCE GUNSHOT WOUND.

THE LAST SUBSTANCE TO COME OUT WITH THE BULLET IS UNBURNED GUN POWDER, THAT IS THAT GUN POWDER THAT DID NOT IGNITE. IT'S TRAVELING AS A FLECK OR AS A TRUE PARTICLE. IT HAS MORE WEIGHT, SO IT'S GOING TO TRAVEL FURTHER THAN THE GAS OR THIS BURNED GUN POWDER OR SOOT, AND IT MAY TRAVEL FOR TWO TO THREE FEET AND DEPOSIT ITSELF ON THE CLOTHING OR THE SKIN AROUND THIS GUNSHOT WOUND.

EXAMINATION OF MR. MARTIN, SPECIFICALLY TO THIS GUNSHOT WOUND TO HIS NECK, THERE WAS NO EVIDENCE OF ANY GAS, SOOT, OR UNBURNED GUN POWDER PRESENT ON THE SKIN OR CLOTHING.

Q. SO WHAT YOU ARE SAYING IS THAT ANYTHING BEYOND TWO OR THREE FEET, YOU'RE NOT GONNA FIND THESE CHARACTERISTICS?

A. THAT'S CORRECT. ANYTHING GREATER THAN APPROXIMATELY TWO TO THREE FEET IS WHAT WE CALL A DISTANT-RANGE GUNSHOT WOUND IN THAT NO GUNSHOT RESIDUES WAS DEPOSITED.

Q. AND AFTER YOU EXAMINED THE FIRST GUNSHOT WOUND,

DID YOU FIND ANOTHER ONE?

A. YES, I DID.

Q. AND WHERE WAS THAT LOCATED? AND PLEASE EXPLAIN TO THE LADIES AND GENTLEMEN OF THE JURY WHAT YOU FOUND.

A. THERE WAS A SECOND GUNSHOT WOUND TO THE LEFT SIDE APPROXIMATELY 20 INCHES FROM THE TOP OF THE HEAD AND BASICALLY WITHIN THE MIDDLE OF THE LEFT SIDE ABOUT EIGHT INCHES THIS WAY. IT WAS AT THE LEVEL OF THE EIGHTH RIB, AND IT PASSED THROUGH THE LOWER LOBE OF THE LEFT LUNG, THROUGH THE DIAPHRAGM, OR THE MUSCLE THAT ENABLES US TO BREATHE, AND LODGED ITSELF INTO THE FIRST LUMBAR VERTEBRA. NOW, THE LUMBAR VERTEBRAE ARE THE VERTEBRAE THAT ARE IN THE REGION OF THE ABDOMEN.

AT THE TERMINATION OF THIS GUNSHOT WOUND TRACK, WE RECOVERED A MEDIUM-CALIBER, SEMI-JACKETED HOLLOW POINT LEAD MISSILE WITHIN THE REGION OF THE SPINAL CANAL. ACTUALLY, WHERE THE SPINAL CORD IS ALSO IS WHERE THE BULLET WAS, AND IT WAS RECOVERED AT THAT LEVEL OF THE FIRST THORACIC VERTEBRA.

Q. AND THIS BULLET YOU RECOVERED, WAS IT CONSISTENT IN WEIGHT, SHAPE AND FORM OF THE FIRST BULLET?

A. YES, IT WAS.

Q. AND YOU SAID THAT THE FIRST ONE WAS A MEDIUM-CALIBER ONE. WHAT ARE YOU REFERRING TO WHEN YOU ARE TALKING ABOUT THAT?

A. I GENERALLY LUMP MEDIUM CALIBERS INTO ANYTHING LARGER THAN ABOUT A .32. SO A .38, .357, 9 MILLIMETER, 10 MILLIMETER, 40 CALIBER, ALL OF THOSE ARE IN THE REGION OF THE MEDIUM-CALIBER GUNSHOT -- MEDIUM-CALIBER MISSILE.

Q. AND WHAT WOULD YOU CONSIDER A LARGE CALIBER?

A. A .45 OR GREATER.

Q. NOW, BOTH THESE WOUNDS THAT YOU OBSERVED, ARE BOTH OF THEM BY THEMSELVES FATAL?

A. GUNSHOT WOUND NUMBER ONE IS CERTAINLY A FATAL GUNSHOT WOUND. NOT ONLY DID IT TRANSECT A LARGE ARTERY FROM WHICH A GREAT DEAL OF BLOOD WOULD BE PRODUCED, BUT IT ALSO TRANSECTED THE SPINAL CORD AT A RELATIVELY HIGH LEVEL, POTENTIALLY CAUSING DIFFICULTY IN RESPIRATION.

THE SECOND GUNSHOT WOUND TO THE CHEST IS WHAT WE WOULD CALL A POTENTIALLY FATAL GUNSHOT WOUND. IT PERFORATED A LUNG, IT ALSO TRAUMATIZED THE CORD AT A LOWER LEVEL. SO WITH GUNSHOT WOUND NUMBER TWO, TAKEN IN AND OF ITSELF, IT IS POTENTIALLY SURVIVABLE, GIVEN THAT MR. MARTIN RECEIVES RELATIVELY QUICK MEDICAL TREATMENT; BUT GUNSHOT WOUND NUMBER ONE I WOULD CONSIDER TO BE A RAPIDLY FATAL GUNSHOT WOUND.

Q. AND BASED ON THIS PARTICULAR AUTOPSY AND WHAT YOU OBSERVED, HAVE YOU FORMED AN OPINION AS TO THE MANNER OF DEATH IN THIS CASE?

A. THE MANNER OF DEATH? YES.
Q. YES, SIR.
A. YES, I DID.
Q. AND WHAT IS THAT?
A. THE MANNER OF DEATH WOULD BE HOMICIDE.

MR. CAMPBELL: DOCTOR, I HAVE NO FURTHER QUESTIONS. PLEASE ANSWER ANY QUESTIONS MR. GAMBLE MAY HAVE.

CROSS-EXAMINATION BY MR. GAMBLE:

Q. THE WOUND TO THE NECK, AS I UNDERSTOOD YOU, WAS ON A DOWNWARD PATTERN AS SUCH TO THE LEFT NECK, THAT IT WENT IN RIGHT ABOUT THERE AND ENDED UP DOWN IN HERE (INDICATING)?

A. WELL, IT CROSSED THE MIDLINE RIGHT ABOUT HERE, SO IT GOES IN NOT QUITE SO DOWNWARD BUT DOWNWARD TOWARDS THIS WAY (INDICATING).

Q. ALL RIGHT. SO THAT MEANT THAT THE SHOOTER HAD THE GUN THIS WAY OR ABOVE OR EVEN WITH -- I'M LOSING MYSELF.

EITHER ONE OF TWO THINGS. EITHER THE SHOT WAS FROM ABOVE THE NECK, AT A DISTANCE OF GREATER THAN THREE FEET, OR MR. MARTIN WAS BENT OVER AND THE BULLET CAME IN THAT WAY (INDICATING). WOULD YOU AGREE WITH THAT?

A. EITHER OF THOSE SCENARIOS WOULD BE ACCURATE, YES.

Q. ALL RIGHT, SIR. AND THE SECOND ONE, THE EIGHTH

RIB AND DROPPED DOWN TO L1 -- L5 IS YOUR BELT, I BELIEVE, ISN'T IT?

A. ROUGHLY, YES, SIR.

Q. ROUGHLY. AND SO IT'S FOUR VERTEBRAE ABOVE THAT IS WHERE THIS ONE LANDED IN L1; IS THAT CORRECT?

A. THAT'S CORRECT. THE SECOND GUNSHOT WOUND HAS A SLIGHTLY DOWNWARD TRAJECTORY.

Q. SO THE SHOOTER APPEARS -- EITHER HELD THE GUN UP HIGH OR WAS TALLER THAN THE VICTIM?

A. WELL, FOR GUNSHOT WOUND NUMBER TWO, HE DOESN'T NECESSARILY HAVE TO BE EITHER. I MEAN, IT ENTERS RELATIVELY MID-BODY AND GOES SLIGHTLY DOWNWARD.

Q. ALL RIGHT, SIR. YOU CLASSIFY A .45 AS A LARGE CALIBER?

A. YES, SIR. I'M NOT -- THAT'S MY PERSONAL CLASSIFICATION.

Q. NOW, A .357 AND A .38, ONE IS INTERCHANGEABLE, THE OTHER IS NOT; IS THAT CORRECT?

A. A .357 HAS THE SAME BASE DIAMETER. A .38 CALIBER IS ACTUALLY .357 INCH IN DIAMETER, THUS THE .357. THE DIFFERENCE IS WEIGHT AND THE AMOUNT OF GUN POWDER PRESENT IN THE INTACT CARTRIDGE. GENERALLY .357'S HAVE MORE GUN POWDER IN THE CARTRIDGE, HAVE A LONGER CARTRIDGE, AND, THEREFORE, MAY NOT FIT INTO THE STANDARD .38 CHAMBER, WHEREAS A .38 WILL FIT INTO THE CHAMBER OF

A .357 BECAUSE IT'S SHORT.

Q. SO WITHOUT HAVING THE GUN THAT FIRED THIS SHOT, YOU COULDN'T TELL WHICH ONE IT WAS, COULD YOU?

A. PERSONALLY I CANNOT TELL, NO, SIR, FROM LOOKING AT THAT BULLET WHETHER IT WAS A .357 OR WHAT WOULD BE CALLED A .38 CALIBER.

Q. YES, SIR. AND YOU GAVE THAT TO THE POLICE OFFICER WHO WAS WATCHING THE AUTOPSY?

A. THAT'S CORRECT.

Q. AND HE TOOK IT TO S.L.E.D., I GUESS, AND WE EVEN STIPULATED TO THAT; AND S.L.E.D. ALSO INDICATES THAT IT WAS A .38 OR A .357?

A. YES, SIR.

MR. GAMBLE: THANK YOU, SIR.

I HAVE NOTHING FURTHER, YOUR HONOR.

MR. CAMPBELL: I HAVE NO FURTHER QUESTIONS.

THE COURT: ALL RIGHT, SIR, YOU MAY STEP DOWN.

MR. CAMPBELL: MAY HE BE EXCUSED?

MR. GAMBLE: HE MAY BE EXCUSED.

THE COURT: YOU MAY BE EXCUSED, DOCTOR. THANK YOU VERY MUCH.

(WHEREUPON, THE WITNESS WAS EXCUSED.)

THE COURT: YOU MAY CALL YOUR NEXT WITNESS.

MR. CAMPBELL: YOUR HONOR, THE STATE CALLS

DETECTIVE STEVE REEVES.

(WHEREUPON, THE WITNESS WAS SWORN BY THE CLERK.)

THE CLERK: PLEASE STATE YOUR FULL NAME AND SPELL YOUR LAST NAME FOR THE RECORD.

THE WITNESS: STEVEN JAMES REEVES, R-E-E-V-E-S.

WHEREUPON,

STEVE REEVES,

AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. CAMPBELL:

Q. DETECTIVE REEVES, YOU ARE CURRENTLY EMPLOYED BY THE ANDERSON COUNTY SHERIFF'S DEPARTMENT?

A. YES, SIR.

Q. AND YOU ARE EMPLOYED -- IN WHAT CAPACITY ARE YOU EMPLOYED AS A DETECTIVE IN THE SHERIFF'S DEPARTMENT?

A. TEN YEARS.

Q. AND HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

A. TWELVE YEARS.

Q. AND IN YOUR TEN YEARS OR 12 YEARS OF LAW ENFORCEMENT EXPERIENCE, HAVE YOU HAD THE OCCASION TO WORK HOMICIDES, MURDERS?

A. YES, SIR.

Q. DO YOU KNOW APPROXIMATELY HOW MANY YOU HAVE BEEN

INVOLVED WITH?

A. TWENTY OR MORE.

Q. AND WERE YOU THE DEPUTY ON CALL THE NIGHT OF FEBRUARY 25TH, 2006?

A. YES, SIR.

Q. AND WHEN YOU TALK ABOUT CALL, WHAT ARE YOU REFERRING TO?

A. WE HAVE A LIMITED NUMBER OF DETECTIVES AND THEY BREAK UP INTO GROUPS. RIGHT NOW WE'RE ON EVERY-SIX-WEEK ROTATION WHERE ANYTHING SECOND SHIFT, WHICH MEANS AFTER 2:00, WE GET CALLED BECAUSE FIRST SHIFT GOES HOME AT 4:00, SO ANYTHING BETWEEN 2:00 AND 6:00 THE NEXT MORNING THAT ROAD PATROL CAN'T HANDLE, WE GET CALLED.

Q. ON FEBRUARY 25TH, 2006 DID YOU HAVE AN OCCASION TO BE CALLED OUT TO THE OLD SCHOOL LOUNGE?

A. YES, WE DID.

Q. AND WHAT STREET THAT WAS ON?

A. IT'S ON WEST MARKET STREET.

Q. IS THAT HERE IN ANDERSON?

A. YES, SIR.

Q. AND APPROXIMATELY WHAT TIME DID YOU ARRIVE?

A. I ARRIVED AFTER MIDNIGHT. THE INCIDENT OCCURRED RIGHT BEFORE MIDNIGHT BECAUSE WE KNOW OUR 911 CALL WAS JUST A FEW -- OUR FIRST 911 CALL WAS A FEW SECONDS AFTER MIDNIGHT, SO IT WAS ACTUALLY THE 26TH.

Q. AND WERE YOU ABLE TO DETERMINE A SPECIFIC TIME OF DEATH IN THIS CASE?

A. ROUGHLY PRIOR TO MIDNIGHT, A FEW MINUTES PRIOR.

Q. IS THAT WHY WHEN YOU TOOK OUT THE WARRANT YOU USED THE DATE OF FEBRUARY 25TH, 2006 ---

A. YES, SIR.

Q. --- AS THE INCIDENT DATE?

A. YES, SIR.

Q. NOW, WHEN YOU FIRST ARRIVED, WHAT DID YOU OBSERVE?

A. WHEN I FIRST ARRIVED ON THE SCENE, OBVIOUSLY THERE WERE NUMEROUS MARKED UNITS WHICH WOULD MEAN UNIFORMED DEPUTIES ON SCENE. E.M.S. I THINK WAS ALREADY STAGING BECAUSE THEY WERE IN THE AREA. I MET WITH THE LIEUTENANT OR SERGEANT ACTUALLY FOR THAT SHIFT, WHICH WAS ACTUALLY SERGEANT MIKE ARELIN, AND HE BRIEFED ME AS TO WHAT THE SITUATION WAS AT THAT POINT.

Q. HAD THE CRIME SCENE BEEN SEALED OFF?

A. IT HAD BEEN.

Q. AND WHEN WE ARE TALKING ABOUT SEALED OFF, WHAT ARE YOU REFERRING TO?

A. SEALED OFF WITH CRIME SCENE TAPE. THEY ALSO HAD DEPUTIES AROUND THE PERIPHERY OF THAT CRIME SCENE TAPE, MAKING SURE WE HAD AN ACCOUNT OF WHO CAME AND WENT, AND MADE SURE THEY WERE ALL AUTHORIZED LAW ENFORCEMENT OR

OBVIOUSLY MEDICAL PROFESSIONALS.

Q. AND AT THIS POINT HAD YOU HAD AN OPPORTUNITY TO OBSERVE THE BODY?

A. I DID.

Q. AND WOULD YOU PLEASE DESCRIBE WHERE EXACTLY THE BODY WAS LOCATED?

A. THE BODY WAS APPROXIMATELY 20 FEET OFF THE SIDEWALK FROM MARKET TOWARDS THE FRONT OF THE CLUB AND 20 FEET AWAY FROM THE CREEK WHICH BORDERS THE CLUB ON THE RIGHT-HAND SIDE.

Q. WHEN YOU ARE REFERRING TO RIGHT-HAND SIDE, ARE YOU REFERRING TO AS YOU LOOK TOWARDS THE BUILDING ---

A. CORRECT.

Q. --- OR FACE THE BUILDING?

A. THERE IS A RESTAURANT ACROSS THE STREET FROM THE CLUB CALLED TUCKER'S. IF YOU ARE STANDING IN TUCKER'S LOOKING ACROSS AT THE CLUB, THE INCIDENT WITH THE BODY WAS LAYING ON THE RIGHT-HAND SIDE.

Q. AND WHERE WAS THE BODY FOUND, WAS IT FOUND NEAR ANYTHING?

A. IT WAS AT THE FRONT OF A LATE EIGHTIES-MODEL CAPRICE WHICH WAS OWNED BY AND DRIVEN BY ANGELA BROWNLEE.

Q. AND DID YOU HAVE -- DID YOU LOOK YOURSELF AT THE BODY?

A. YES, SIR, I DID.

Q. AND WERE YOU ABLE TO DETERMINE OR FIND ANY TYPE OF SHELL CASINGS AROUND THE BODY?

A. FORENSICS WAS ALREADY ON THE SCENE. THEY HAD ALREADY MARKED -- THEY HAD ALREADY FOUND ONE SHELL CASING THAT WAS A SHORT DISTANCE AWAY FROM THE BODY AND HAD COLLECTED IT.

Q. DO YOU RECALL WHAT TYPE THAT WAS?

A. IT WAS A 9 MILLIMETER, I BELIEVE.

Q. AND WERE YOU ABLE TO LINK THIS 9 MILLIMETER UP TO THE SHELL THAT WAS FOUND TO THIS HOMICIDE?

A. NO, SIR.

Q. NOW, THE NUMBER OF HOMICIDE CASES YOU WORK, DO YOU TYPICALLY FIND OTHER SHELL CASINGS IN THE AREA?

A. IT'S TYPICAL. IT'S OBVIOUSLY CLUBS OR GENERAL AREAS WHERE A LOT OF PEOPLE CONGREGATE OR PARKING LOTS OF THIS TYPE.

Q. AND WHAT TYPE OF GUNS WILL LEAVE A SHELL CASING?

A. TYPICALLY, OBVIOUSLY YOU'VE GOT TWO DIFFERENT TYPES OF FIREARMS, REVOLVERS, OR SEMIAUTOMATIC WEAPONS; REVOLVERS HAVING A CYLINDER WHERE YOU INSERT THE ROUNDS AND THEY ARE NOT EJECTED WHEN YOU FIRE A ROUND. SO IF YOU FIRE THE WHOLE CYLINDER DRY, WE COULD SAY, ALL YOUR SHELL CASINGS SHOULD BE IN THERE UNLESS YOU DUMP THEM, AND YOU HAVE TO MANUALLY DO THAT.

A SEMI-AUTOMATIC WEAPON HAS A MAGAZINE INSTEAD OF A CYLINDER. IT OPERATES DIFFERENTLY THAN A REVOLVER, WHERE THE SLIDE COMES BACK AND EJECTS THAT SHELL WHEN YOU FIRE A ROUND.

Q. SO NOW, WOULD IT BE SAFE TO SAY THAT YOU WON'T ALWAYS FIND SHELL CASINGS AT A MURDER SCENE, CRIME SCENE?

A. YES, SIR.

Q. NOW, WHAT IS YOUR PROTOCOL OR ROUTINE, AFTER YOU'VE ALREADY LOOKED AT THE BODY, WHAT NEXT DO YOU GO THROUGH, OR WHAT STEPS DO YOU PERFORM?

A. WELL, OBVIOUSLY, YOU TALK TO THE ROAD SUPERVISOR, IN THAT CASE IT WAS THE SERGEANT THAT WAS ON THE SCENE. I THINK OUR ON-CALL CAPTAIN HAD ALREADY ARRIVED ON THE SCENE, ALSO.

WE FOUND OUT WHO OUR WITNESSES WERE. OBVIOUSLY IN THAT CASE YOU HAD A CLUB WITH PATRONS THAT WERE INSIDE WHEN THIS INCIDENT OCCURRED. THE OWNER OF THE CLUB, LINUS BOLDEN, HAD SHUT THE DOORS. I THINK HE WAS ONE OF THE TWO 911 CALLS, AND ACTUALLY THEY ASKED HIM TO KEEP EVERYBODY INSIDE.

SO THE CRUX OF THE PEOPLE THAT WE ACTUALLY TOOK STATEMENTS FROM WERE PEOPLE INSIDE THE CLUB. WE ALSO HAD SEVERAL PEOPLE ON THE OUTSIDE OF THE CLUB INDICATE, IN ONE INSTANCE ONE PERSON WHO WAS OUTSIDE HAD WITNESSED

THE SHOOTING AND CAME BACK TO THE SCENE, AND WE INTERVIEWED HIM.

Q. AND DID YOU TALK TO HIM PERSONALLY?

A. I DID.

Q. WAS THAT MR. CHILES?

A. YES, SIR.

Q. AS A RESULT DID YOU TALK TO OTHER PEOPLE THAT NIGHT THERE THAT WERE PRESENT?

A. I DID.

Q. AND AS A RESULT OF YOUR CONVERSATIONS WITH THESE INDIVIDUALS, WERE YOU ABLE TO FORM THE IDENTITY OF A SUSPECT IN THIS CASE?

A. WE DID. TWO DISTINCT INDIVIDUALS BROUGHT UP THE NAME THEY HAD HEARD ON SCENE OF BUSTER. WE DIDN'T HAVE A LOT OF INFORMATION ON THAT NAME OTHER THAN THE STREET NAME BUSTER.

Q. WHO WAS THE OTHER INDIVIDUAL?

A. I DON'T RECALL. SHE'S ANOTHER STATEMENT THAT WAS TAKEN ON SCENE. SHE DIDN'T WITNESS ANYTHING, BUT SHE HEARD FROM ANOTHER FEMALE ON THE SCENE THAT NAME, AND AT THAT POINT THAT'S ALL WE REALLY HAD.

Q. AND AT THAT POINT IN TIME DID YOU HAVE A FACE TO PUT WITH THAT NAME?

A. NO, SIR, WE DID NOT.

Q. NOW, TYPICALLY, WHEN YOU INVESTIGATE A CASE, ARE

YOU NORMALLY GIVEN STREET NAMES IN THIS TYPE OF SCENARIO?

A. YES, SIR.

Q. AND DO -- A LOT OF TIMES DO YOU HAVE THE BIRTH NAMES TO GO BY?

A. NOT VERY OFTEN.

Q. SO MOST OF THE TIME YOU'RE DEALING WITH STREET NAMES, NICKNAMES?

A. MOST OF THE TIME THE AVERAGE PLAYERS IN A CASE LIKE THIS, WHETHER IT BE WITNESSES, DEFENDANTS, THEY KNOW EACH OTHER BY THEIR STREET NAMES RATHER THAN THEIR BIRTH NAMES.

Q. NOW, AFTER -- YOU LEFT THE CRIME SCENE SUNDAY MORNING; IS THAT RIGHT?

A. YES, SIR.

Q. AND YOU DIDN'T HAVE A SUSPECT IN CUSTODY AT THIS POINT IN TIME?

A. NO, SIR.

Q. WHAT WAS THE NEXT BREAK OR INVOLVEMENT IN THE CASE?

A. ONE OF THE WITNESSES THAT I PERSONALLY INTERVIEWED WAS FRED CHILES OBVIOUSLY FROM THE SCENE, AND, AS HE'S TESTIFIED, THAT HE CAME BACK TO THE SCENE AFTER TAKING MS. BROWNLEE TO THE VICTIM'S SISTER'S HOUSE BECAUSE SHE WAS CONCERNED ABOUT HIM.

I INTERVIEWED HIM, AND HE RECALLED SEEING AN INDIVIDUAL THAT HE DID KNOW THE STREET NAME OF AS TURK, WHICH WAS MR. PICKENS. WE WERE ABLE TO FOLLOW UP WITH TURK, AND HE TURNED HIMSELF IN APPROXIMATELY TWO DAYS AFTER, I THINK IT WAS MONDAY OR TUESDAY, AFTER THE SHOOTING AT THE SHERIFF'S OFFICE, CAME IN WITH SOME FAMILY MEMBERS AND WE WERE ABLE TO INTERVIEW HIM THERE.

Q. YOU DIDN'T HAVE TO GO LOOK FOR HIM?

A. NO, SIR.

Q. AND DID YOU INTERVIEW TURK?

A. I DID.

Q. AS A RESULT OF THIS INTERVIEW -- AND WHEN YOU'RE REFERRING TO TURK, WHAT'S HIS REAL NAME?

A. HIS NAME IS JAMES LATORREY PICKENS.

Q. HE TESTIFIED EARLIER TODAY?

A. YES, HE DID.

Q. AND BASED UPON YOUR CONVERSATION WITH HIM, WHAT, IF ANYTHING, DID YOU LEARN?

A. OVER THE NEXT SEVERAL DAYS HE GAVE SEVERAL, SEVERAL DIFFERENT STATEMENTS. INITIALLY IN HIS FIRST STATEMENT HE LEFT OUT SOME KEY INFORMATION THAT WE WERE ABLE TO FIND OUT AND THEN CAME BACK TO HIM, WHICH IS USUALLY THE CASE. RARELY DO WE EVER TALK TO ONE PERSON ONE TIME, POSSIBLY EVEN A WITNESS. WE MIGHT EVEN GO BACK TO THEM WITH SOME NEW INFORMATION AND SEE IF THEY

CAN CORROBORATE THAT. AND IT WAS THE SAME WAY WITH MR. PICKENS.

Q. AND AS A RESULT OF TALKING TO HIM, DID YOU DEVELOP OTHER SUSPECTS IN THE CASE?

A. WE WERE ABLE TO. IN HIS FINAL STATEMENT HE WAS ABLE TO GIVE US SOME STREET NAMES AND ACTUALLY LAST NAMES WHICH ACTUALLY HELPED US FIND THESE INDIVIDUALS OF BASSEN HAILEY AND ALSO LATORREY PEARSON.

Q. AND DID YOU EVENTUALLY CATCH UP WITH THESE INDIVIDUALS?

A. WE WERE ABLE TO LOCATE BASSEN HAILEY AND INTERVIEWED HIM AT THE SHERIFF'S OFFICE.

Q. AS A RESULT OF TALKING TO MR. HAILEY, BASSEN HAILEY, AS WELL AS JAMES PICKENS, WERE YOU ABLE TO I.D. OR DETERMINE WHO THE SHOOTER WAS IN THIS CASE?

A. WE WERE.

Q. AND WHO WAS THAT?

A. IT WAS THE DEFENDANT HERE TODAY.

Q. JWAN SMITH?

A. YES, SIR.

Q. AND AT THAT POINT IN TIME DID YOU TAKE OUT A WARRANT FOR HIS ARREST?

A. I DID.

Q. AND WHEN YOU TAKE OUT A WARRANT FOR SOMEONE'S ARREST, YOU HAVE TO SERVE THEM, IS THAT CORRECT?

A. CORRECT.

Q. SERVE IT UPON THE PERSON?

A. YES, SIR.

Q. AND WHAT IS THE PURPOSE OF THAT?

A. OBVIOUSLY, WE NEED TO, WHEN WE GET THE WARRANT ON SOMEONE, WE MIGHT HAVE AN IDEA OF WHERE THEY LIVE. AT THE TIME WE DID GET THE WARRANT WE COULDN'T FIND MR. SMITH ANYWHERE IN THE ANDERSON AREA. WE HAD CONVERSATIONS WITH HIS MOTHER AT HER HOME.

Q. AND WHERE WAS HER HOME LOCATED?

A. IT WAS ON [redacted].

Q. AND BECAUSE YOU COULDN'T LOCATE HIM THERE, DID YOU ENTER THIS WARRANT INTO THE COMPUTER SYSTEM?

A. WE DID. WE ENTERED IT INTO THE N.C.I.C. SYSTEM, WHICH IS NATIONWIDE SYSTEM, WHEREBY ANYONE'S BIRTH DATE, SOCIAL SECURITY NUMBER, ANY PARTICULAR INFORMATION IS RUN. THEY'LL GET WHAT THEY CALL A HIT BACK, SAYING THAT THIS PERSON IS WANTED IN ANDERSON COUNTY FOR WHATEVER THE CRIME MAY BE, AND IN THIS CASE IT'S MURDER.

Q. AND YOU TOOK OUT THE WARRANT ON MARCH 1ST ---

A. YES, SIR.

Q. --- 2006?

NOW, AFTER THE WARRANT WAS TAKEN OUT, DID YOU CONTINUE YOUR INVESTIGATION IN THIS CASE?

A. YES, SIR.

Q. AND HOW DID YOU GO ABOUT DOING IT, WHAT DID YOU DO?

A. WELL, IN THE CASE, AS I MENTIONED BEFORE, THAT MR. CHILES TURNED US ON TO MR. PICKENS. MR. PICKENS TURNED US ON TO MR. HAILEY, BASSEN. BASSEN ALSO TURNED US ON TO HIS BROTHER, ALPHONSO, WHICH YOU HEARD FROM TODAY. AND WE INTERVIEWED ALL THESE PEOPLE, GATHERING ADDITIONAL INFORMATION AND OBVIOUSLY ADDITIONAL STATEMENTS.

Q. AND YOU INTERVIEWED -- BESIDES YOURSELF AND OTHER OFFICERS, Y'ALL INTERVIEWED NUMEROUS INDIVIDUALS THAT NIGHT, FEBRUARY 25TH, 2006?

A. YES, SIR.

Q. APPROXIMATELY, DO YOU RECALL HOW MANY STATEMENTS YOU TOOK?

A. IT'S A WHOLE NOTEBOOK FULL. I WOULD SAY ANYWHERE BETWEEN 30 TO 45.

Q. IS THIS NOTEBOOK HERE ---

A. YES, SIR.

Q. --- WITH ALL THE STATEMENTS OF INDIVIDUALS THAT YOU-ALL'S DEPARTMENT TOOK STATEMENTS FROM?

A. YES, SIR.

Q. AND FROM THAT YOU WERE ABLE TO DETERMINE OR IDENTIFY A SUSPECT?

A. YES, SIR.

Q. NOW, WERE YOU ABLE TO GET A DESCRIPTION OF WHAT THE SHOOTER WAS WEARING THAT NIGHT?

A. YES, SIR.

Q. AND WHAT WAS THAT?

A. A CONSISTENT DESCRIPTION FROM THE WITNESSES WAS BLACK CLOTHING, IN PARTICULAR A BLACK JACKET, AND EVEN MORE IN PARTICULAR A BIG BLACK JACKET, PUFFY LOOKING.

Q. AND DID IT HAVE A HOOD OR NO HOOD ON IT?

A. IT HAD A HOOD.

Q. AND WHEN YOU WENT DOWN TO HIS MOM'S HOUSE AT 518 REED COURT, DID YOU OBTAIN A JACKET FROM THERE?

A. THE FOLLOWING DAYS I DID MAKE SEVERAL TRIPS DOWN TO HIS MOTHER'S RESIDENCE TO TALK TO HER TO SEE IF SHE HAD HEARD FROM HIM, BECAUSE ALL WE WANTED TO DO AT THAT POINT WAS TO TAKE HIM INTO CUSTODY AND MAKE SURE NO ONE ELSE GOT HURT, WHICH THAT'S FIRST AND FOREMOST IN ALL OF OUR MINDS.

SHE ALLOWED ME AND OTHER DETECTIVES ON MORE THAN ONE OCCASION I THINK TO MAKE A SEARCH OF THE HOUSE, JUST TO MAKE SURE HE WASN'T THERE, AND ON ONE OCCASION, WHICH I WAS THERE, I NOTED ON TOP OF A BED IN A BEDROOM WAS A BLACK JACKET WITH A HOOD.

Q. AND WERE YOU ABLE TO DETERMINE IF THIS WAS THE ACTUAL JACKET THAT WAS WORN ON THE NIGHT OF FEBRUARY 25TH, 2006?

A. NO, SIR.

Q. AND HOW MANY DAYS AFTER THE FACT DID YOU RECOVER THIS JACKET?

A. IT HAD BEEN PROBABLY FOUR TO FIVE DAYS.

Q. AND DID YOU TAKE THIS JACKET OUT OF PRECAUTION?

A. I DID. OBVIOUSLY, WE GOT A CONSENT TO SEARCH WITH HIS MOTHER AT HIS HOUSE. SHE ADVISED THAT WAS HIS ROOM, SHE WASN'T QUITE SURE IF THAT WAS HIS JACKET. I ASKED HER IF I COULD TAKE IT, AND SHE SIGNED OFF ON A CONSENT FORM, AND I DID PUT IT INTO EVIDENCE AT THE SHERIFF'S OFFICE.

Q. AND YOU HAD THIS JACKET TESTED FOR GUNSHOT POWDER; IS THAT CORRECT?

A. YES, SIR. HAD IT SENT TO S.L.E.D.

Q. AND WHAT DID IT COME BACK AS?

A. NEGATIVE.

Q. I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 13. DO YOU RECOGNIZE THAT?

A. YES.

Q. IS THAT THE REPORT YOU RECEIVED BACK FROM S.L.E.D. REGARDING THIS JACKET YOU HAD TESTED?

A. IT IS.

Q. AND WHAT WAS THE RESULTS THEY CAME BACK WITH?

A. IN THE SAMPLES COLLECTED FROM THE JACKET, NO GUNSHOT RESIDUE WAS FOUND.

Q. OKAY. BUT YOU DON'T KNOW IF HE WAS WEARING THAT ACTUAL JACKET THAT NIGHT?

A. NO, SIR.

Q. NOW, AS PART OF Y'ALL'S PROTOCOL WHEN YOU ARE ON A CRIME SCENE, DO YOU DO WHAT THEY CALL GUNSHOT RESIDUE KITS?

A. I DON'T. WE HAVE FORENSIC IDENTIFICATION INVESTIGATORS THAT ACTUALLY DO THAT ON THE SCENE FOR US.

Q. WAS THAT DONE IN THIS CASE?

A. IT WAS.

Q. WHAT WAS THE PURPOSE OF DOING THAT, TAKING IT FROM THE VICTIM?

A. TYPICALLY, OBVIOUSLY, WHEN YOU HAVE A GUNSHOT-TYPE INCIDENT, AS WE DO IN THIS CASE, NUMBER ONE WE LIKE TO DO THE VICTIM, WHETHER IT BE A HOMICIDE, SUICIDE, OR WHATEVER IT IS, THAT'S PRETTY MUCH PROTOCOL ON WHAT WE LIKE TO DO.

IF YOU HAVE ANYBODY WITHIN -- AT S.L.E.D. THEY GIVE ABOUT A SIX-HOUR WINDOW BETWEEN AN INCIDENT TIME, IF YOU KNOW IT, AND SIX HOURS OUT OF ANYBODY THAT YOU WOULD WANT TO TEST THAT MIGHT SHOW THAT THEY FIRED A FIREARM OR WERE IN CLOSE PROXIMITY TO ONE, YOU CAN DO THAT TEST.

Q. AND AS PART OF THIS YOU ARE TRYING TO DETERMINE WHETHER OR NOT THE VICTIM WAS ALSO -- OR MAYBE FIRED A

WEAPON?

A. RIGHT.

Q. AND WAS ONE DONE IN THIS CASE?

A. YES, IT WAS.

Q. I SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT 12. PLEASE LOOK AT THAT, SIR. IS THAT THE REPORT YOU RECEIVED BACK FROM S.L.E.D. REGARDING THESE TESTS?

A. YES, SIR.

Q. YOU ALSO SENT DOWN A BUNCH OF CLOTHES; IS THAT CORRECT?

A. YES, SIR.

Q. DID S.L.E.D. TEST THE CLOTHES?

A. THEY TESTED THE ONE JACKET AND THEY DID NOT PERFORM ANALYSIS ON ITEMS 13 THROUGH 57.

Q. HOW ABOUT, DID THEY PERFORM ANY TESTS ON THE GUNSHOT RESIDUE KITS THAT WERE PERFORMED, OR COLLECTED FROM MR. MARTIN?

A. THEY DID.

Q. AND WHAT WAS THAT -- WHAT ITEMS SHOWED OR WHAT DID IT DETERMINE?

A. THEY TAKE IT FROM FRONT AND BACK OF BOTH HANDS OF AN INDIVIDUAL. THE RIGHT PALM RESULTS WERE NO GUNSHOT RESIDUES WERE FOUND. THE RIGHT BACK, ROUND LEAD PARTICLES WERE FOUND. ROUND LEAD PARTICLES ARE ONE OF THE COMPONENTS OF GUNSHOT RESIDUES. LEFT PALM, THERE

WAS NO METALS DETECTED; AND LEFT BACK, NO METALS DETECTED.

Q. SO AT SOME POINT SOME GUNSHOT POWDER WAS DEPOSITED ON THE BACK OF HIS RIGHT HAND?

A. CORRECT.

Q. BUT NEITHER ONE OF THEM ON HIS PALMS?

A. NO, SIR.

Q. WOULD THIS INDICATE TO YOU WHETHER OR NOT HE FIRED A WEAPON?

A. IT'S A NEGATIVE THAT HE DIDN'T.

Q. NOW, PART OF WHAT Y'ALL DO WHEN YOU ALSO HAVE THE VICTIM, HELP PERFORM A TOXICOLOGY OR TAKE A BLOOD SAMPLE FROM THE VICTIM; IS THAT RIGHT?

A. YES, SIR.

Q. AND YOU DO THIS TO DETERMINE WHETHER OR NOT THIS INDIVIDUAL WAS UNDER THE INFLUENCE OF ANY TYPE OF SUBSTANCE; IS THAT CORRECT?

A. YES, SIR.

Q. AND WAS IT PERFORMED IN THIS CASE?

A. YES, IT WAS.

Q. I'M GONNA SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT 10.

A. (WITNESS READS DOCUMENT.)

Q. HAVE YOU HAD TIME TO REVIEW IT?

A. YES, SIR.

Q. WHAT DOES THAT -- WAS A TOXICOLOGY OR BLOOD SAMPLE TAKEN FROM MR. MARTIN?

A. YES, SIR.

Q. AND WHAT WAS IT TESTED FOR, BLOOD TESTED FOR?

A. ETHANOL, METHANOL, ACETONE, ISOPROPANOL, VARIOUS AMPHETAMINES.

Q. MAINLY ALCOHOL AND/OR ILLEGAL SUBSTANCES?

A. YES, SIR.

Q. AND DID THE TESTS COME BACK THAT MR. MARTIN HAD ALCOHOL IN HIS SYSTEM?

A. YES, IT DID.

Q. THEY DID A BLOOD TEST AND A URINE TEST; IS THAT CORRECT?

A. YES, SIR.

Q. THE BLOOD TEST WAS POINT 15 AND THE URINE TEST WAS POINT 21?

A. YES, IT WAS.

Q. SO IT'S SAFE TO SAY THAT MR. MARTIN WAS ONE AND A HALF TO TWO TIMES THE LEGAL LIMIT OF INTOXICATION REGARDING ALCOHOL?

A. YES, SIR.

Q. DID HE HAVE ANY OTHER TYPE OF ILLEGAL SUBSTANCES IN HIS SYSTEM?

A. HE TESTED POSITIVE FOR COCAINE, POINT 08; AND TESTED POSITIVE FOR A HYDROLYSIS PRODUCT, COCAETHYLENE,

POINT 09.

Q. BUT IT DID INDICATE HE HAD COCAINE IN HIS SYSTEM?

A. YES, SIR.

Q. OKAY. NOW, AS FAR AS INVESTIGATION, YOU SAW DR. WARD HERE, HE ALREADY TESTIFIED?

A. YES, SIR.

Q. WERE YOU PRESENT AT THE AUTOPSY?

A. I WAS.

Q. AND WERE YOU ONE OF THE INDIVIDUALS THAT, DEPUTIES THAT COLLECTED THE BULLETS THAT WERE RECOVERED?

A. I WAS THERE, I ASSISTED WITH THE AUTOPSY. DETECTIVE JOHN CARPENTER OF OUR FORENSIC UNIT ACTUALLY COLLECTED THE EVIDENCE.

Q. AND YOU HAD IT SENT OFF TO S.L.E.D. FOR ANALYSIS; IS THAT RIGHT?

A. YES, SIR.

Q. I WANT TO SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT 11, SIR. WOULD YOU PLEASE IDENTIFY WHAT THAT IS?

A. THESE ARE RESULTS FROM THE FIREARMS DEPARTMENT AT S.L.E.D. OF ITEMS FOUR AND FIVE AND ITEM 12 THAT WERE ENTERED AS EVIDENCE.

Q. AND FOUR AND FIVE, THESE ITEMS THAT YOU ARE REFERRING TO, THESE WERE THE PROJECTILES OR BULLETS THAT WERE RECOVERED DURING THE AUTOPSY; IS THAT RIGHT?

A. YES, SIR.

Q. AND BASED ON THE TEST THAT'S PERFORMED, DONE BY S.L.E.D., WERE THEY ABLE TO DETERMINE IF THESE, BOTH THESE ROUNDS, THESE BULLETS WERE FIRED FROM THE SAME WEAPON?

A. THEY WERE ABLE TO DETERMINE THAT THEY WERE BOTH FIRED FROM THE SAME WEAPON.

Q. AND WERE THEY ABLE TO DETERMINE WHAT TYPE OF WEAPON THEY WERE FIRED FROM?

A. THEY REMARKED THAT THE BULLETS, THAT THEY WERE CONSISTENT WITH BULLETS LOADED IN SOME .38 SPECIALS AND .357 MAGNUM CALIBER CARTRIDGES.

Q. IN YOUR EXPERIENCE IN LAW ENFORCEMENT DO YOU RUN ACROSS THESE TYPE OF CALIBER PISTOLS?

A. YES, SIR.

Q. WERE THEY NORMALLY A REVOLVER OR AN AUTOMATIC?

A. REVOLVERS.

Q. NOW, THE 9-MILLIMETER SHELL CASING THAT WAS FOUND AT THE SCENE, WERE THEY ABLE TO LINK THAT UP TO ANYTHING INVOLVING THIS CASE?

A. NO, SIR.

Q. AND DID THEY ALSO GIVE YOU A LIST OF POSSIBLE MAKES OF WEAPONS THAT POSSIBLY COULD HAVE FIRED THESE BULLETS?

A. IT DOES.

Q. AND A ROSSI IS INDICATED AS ONE TYPE OF MANUFACTURER THAT COULD HAVE PRODUCED THE WEAPON THAT WAS USED IN THIS CASE?

A. YES, SIR.

Q. NOW, BESIDES TALKING TO THESE INDIVIDUALS, WERE YOU ABLE TO DETERMINE HOW MR. SMITH, OR WHERE HE WAS LOCATED?

A. I WAS.

Q. AND WHAT DID YOU LEARN?

A. WE RECEIVED SOME INFORMATION THAT A SHAWN PUTMAN (PHONETIC), WHICH WE DISCUSSED EARLIER IN THE TRIAL, WHO IS MR. SMITH'S LITTLE BROTHER -- HE'S RELATED TO MR. SMITH'S LITTLE BROTHER, LARIQUUS, THEY ARE ACTUALLY BIOLOGICAL BROTHERS BY THE SAME FATHER, LARRY RICE.

Q. YOU HEARD THE NAME LARRY HOLMES USED. WERE YOU ABLE TO CONFIRM WHO LARRY HOLMES IS?

A. I HAVE NOT RUN ACROSS THAT NAME.

Q. AND WHERE WAS THIS MR. LARRY RICE LIVING AT THE TIME?

A. IN FOLLOWING UP ON THAT INFORMATION, I WAS ABLE TO DETERMINE THAT LARRY RICE HAD A FLORIDA DRIVER'S LICENSE LISTED TO A P.O. BOX. IT WAS ALSO DETERMINED THAT SHAWN PUTMAN HAD A FLORIDA DRIVER'S LICENSE RELATED TO A P.O. BOX. IN TALKING TO FLORIDA DEPARTMENT OF LAW ENFORCEMENT, THEY ADVISED ME IN THE STATE OF FLORIDA YOU

CAN DO THAT ON YOUR LICENSE, BUT YOU HAVE TO HAVE LISTED IN THEIR INFORMATION A PHYSICAL ADDRESS, WHATEVER THAT MAY BE, RELATIVE OR WHATEVER, AND GIVE WHO THEY ARE, TO BE ABLE TO PUT A P.O. BOX ON A DRIVER'S LICENSE. SO FROM THOSE TWO DRIVER'S LICENSES OF OBVIOUS RELATIVES, ASSOCIATES OF MR. SMITH, I WAS ABLE TO COME UP WITH A PHYSICAL ADDRESS IN LADY LAKE, FLORIDA.

Q. AND HAD YOU HAD A HUNCH THAT MR. SMITH HAD POSSIBLY LEFT THE STATE AT THIS POINT IN TIME?

A. YES, SIR.

Q. HE MAY HAVE BEEN DOWN THAT WAY?

A. YES, SIR.

Q. AND AS A RESULT, DID YOU NOTIFY FLORIDA LAW ENFORCEMENT OFFICIALS?

A. I DID.

Q. AND WHAT, IF ANYTHING, CAME OUT OF THAT?

A. I WAS ABLE TO CONTACT THE SUMTER COUNTY SHERIFF'S OFFICE, WHICH HIS ADDRESS WAS IN THEIR JURISDICTION, FAXED THEM THE APPROPRIATE INFORMATION REPORTS, COPIES OF THE WARRANTS, AND ADVISED THEM OF WHAT I WAS LOOKING TO DO. THEY WERE ACTUALLY ABLE TO PUT THIS RESIDENCE UNDER SURVEILLANCE FOR NO MORE THAN A HALF A DAY AND WERE ABLE TO TAKE MR. SMITH INTO CUSTODY. I BELIEVE THAT WAS ON THE 16TH OF MARCH.

Q. ABOUT TWO WEEKS AFTER THIS MURDER TOOK PLACE?

A. YES, SIR.

Q. AND AS A RESULT OF THAT WAS HE BROUGHT BACK TO SOUTH CAROLINA?

A. HE WAS.

Q. AND THEN THE WARRANT WAS SERVED ON HIM FOR THIS CASE RIGHT HERE?

A. IT WAS.

Q. NOW, PURSUANT TO YOUR INVESTIGATION AND TALKING TO THESE PEOPLE, AFTER HE WAS IN CUSTODY, DID YOU STILL CONTINUE TO WORK THIS CASE?

A. YES, SIR.

Q. AND WHAT IS THE POINT OF THAT ONCE THE PERSON IS ARRESTED?

A. WE NEVER REALLY QUIT WORKING THESE CASES. IT'S NOT LIKE -- AND I SAY TYPICAL PETIT LARCENY OR CRIMES THAT ARE SO PREVALENT. YOU NEVER QUIT WORKING THESE CASES, EVEN UP TILL TRIAL, BECAUSE THERE'S ALWAYS NEW INFORMATION. SOMETIMES YOU DON'T GO TO TRIAL FOR A YEAR. PEOPLE CHANGE ADDRESSES. TRYING TO FIND THEM TO MAKE SURE THEY ARE SUBPOENAED FOR COURT.

NEW INFORMATION COMES UP. YOU HAVE TO LOOK AT THAT INFORMATION BECAUSE IT COULD BE SOMETHING THAT COULD CHANGE THE WAY YOU WERE LOOKING AT THE WHOLE SCENE BEFORE.

Q. AND DID YOU CONTINUE TO INVESTIGATE THIS CASE

AFTER THE FACT?

A. I DID.

Q. DID YOU TRY TO DETERMINE HOW MR. SMITH GOT OUT OF TOWN?

A. I DID.

Q. WHAT STEPS DID YOU TAKE TO TRY TO FIGURE OUT HOW HE LEFT?

A. OBVIOUSLY, I HAD SOME PROBLEMS WITH HOW HE GOT FROM THE SCENE, I HAD SOME VARYING INFORMATION ON THAT. I GOT A STATEMENT FROM AN INDIVIDUAL THAT WAS ACTUALLY IN CUSTODY IN ANDERSON COUNTY, THAT MR. SMITH WAS AIDED BY KIZZY MATTRESS IN GETTING OUT OF TOWN, POSSIBLY AS FAR AS ATLANTA, ON HIS WAY TO FLORIDA.

Q. WERE YOU ABLE TO DETERMINE YES OR NO WHETHER OR NOT SHE WAS INVOLVED IN GETTING HIM OUT OF TOWN?

A. I WAS NOT ABLE TO DETERMINE THAT.

Q. AND AS PART OF THIS DID YOU CONTACT ANY TYPE OF BUS AGENCIES IN ATLANTA TO DETERMINE IF HE HAD LEFT ON A BUS?

A. I DID. I CONTACTED GREYHOUND AND GAVE THEM HIS, OBVIOUSLY BIRTH NAME AND DATE OF BIRTH TO SEE IF POSSIBLY HE DID BUY A TICKET, AND THE RESULTS CAME BACK THAT RESULTS NO ONE DURING THAT TIME FRAME BOUGHT A TICKET UNDER HIS NAME.

Q. TO YOUR KNOWLEDGE, DO YOU HAVE TO SHOW

IDENTIFICATION TO BUY A BUS TICKET?

A. NO, YOU DON'T.

Q. NOW, DURING YOUR INVESTIGATION, AND ALL THE WITNESSES YOU TALKED TO AND THE STATEMENTS YOU HAVE TAKEN, DID ANY OTHER NAME COME UP AS A POSSIBLE SUSPECT AS THE SHOOTER?

A. NO, SIR.

Q. WHAT IS THE NAME THAT ALWAYS KEPT COMING UP?

A. BUSTER.

Q. JWAN SMITH?

A. YES, SIR.

Q. NOW, THERE WAS SOME TESTIMONY REGARDING THE FACT THAT JAMES PICKENS, OR TURK, LEFT OR TOOK MR. SMITH FROM THE SCENE.

A. YES, SIR.

Q. DID YOU TRY TO DETERMINE YES OR NO WHETHER OR NOT THAT ACTUALLY HAPPENED?

A. I DID.

Q. AND WHAT STEPS OR PROCESSES DID YOU TAKE?

A. OBVIOUSLY INTERVIEWING EVERYBODY THAT WAS IN THE VEHICLE WITH MR. PICKENS, INCLUDING MR. PICKENS, AND I WAS ABLE TO DETERMINE THROUGH THEM THAT HE WAS NOT A PASSENGER IN THAT VEHICLE.

Q. AND DID YOU ALL CONDUCT OR PERFORM A SEARCH WARRANT UPON HIS VEHICLE?

A. WE DID.

Q. AND AS A RESULT OF THAT SEARCH WARRANT WAS ANYTHING TAKEN OR LIFTED?

A. NO, SIR. BASIC FINGERPRINTS. EVEN THOUGH WE KNOW WHO WAS IN POSSESSION AND CONTROL OF THE VEHICLE AT THAT TIME, WHICH WAS MR. PICKENS, MY POINT IN DOING THAT WAS OBVIOUSLY ANY WEAPONS, AMMUNITION, FINGERPRINTS AT ANY PLACE IN THE VEHICLE; SO IF I COULD PUT MR. SMITH'S FINGERPRINTS IN, OBVIOUSLY IN THAT VEHICLE INTERIOR OR WHATEVER, OBVIOUSLY I KNEW I WAS ON THE RIGHT TRACK.

Q. WERE YOU ABLE TO CONFIRM OR DETERMINE IF HIS FINGERPRINTS WERE ACTUALLY INSIDE THAT VEHICLE?

A. NO, SIR, THERE WERE NONE LIFTED.

Q. NOW, HOW WERE YOU ABLE TO CONFIRM THE IDENTITY OF MR. SMITH WITH HIS NICKNAME OF BUSTER?

A. THAT EVENING, WHEN I HAD THE NAME BUSTER, THAT WAS NOT FAMILIAR TO ME. I WAS ABLE TO CONTACT ANDERSON CITY POLICE DEPARTMENT, MIKE RACONE (PHONETIC) -- I THINK HE'S A LIEUTENANT AT THIS TIME -- ACTUALLY, WHEN IT CAME UP, IT WAS PROBABLY ABOUT 2:00 IN THE MORNING.

Q. DID HE CONFIRM THAT BUSTER WAS, IN FACT, JWAN SMITH?

A. HE DID.

Q. AND DID YOU SERVE THE WARRANT ON MR. SMITH?

A. I DID NOT.

Q. WERE YOU PRESENT WHEN HE WAS BROUGHT BACK FROM FLORIDA?

A. YES, SIR.

Q. I WANT TO SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBITS SEVEN, EIGHT AND NINE. WOULD YOU PLEASE TAKE A LOOK AT THESE, SIR?

A. UH-HUH.

Q. AND WHAT DO THESE PHOTOS REPRESENT, OR ARE OF?

A. THESE ARE MR. SMITH'S FOREARM, WHERE HE HAS SEVERAL LETTERS TATTOOED.

Q. AND IN YOUR OPINION WHAT DO THESE LETTERS SPELL OUT?

A. BUSTER.

Q. IN FACT, THERE IS A POSSIBLE MISSPELLING ON PART OF IT, ISN'T THERE?

A. YES, SIR.

Q. AND WHAT PART IS THAT?

A. THE B-U-S AND THEN THE T, AND THE R, AND IT'S ALMOST LIKE THEY TOOK THE T AND ADDED TWO MORE LITTLE ARMS TO IT MAKE IT LOOK LIKE AN E. BUT THAT DEFINITELY LOOKS LIKE THAT'S WHAT IT'S SUPPOSED TO MEAN.

Q. DO YOU REMEMBER WHICH ARM THIS WAS ON?

A. I THINK IT'S HIS RIGHT. I'D HAVE TO LOOK AT IT OVERALL. I THINK IT IS HIS RIGHT.

Q. AND WHEN HE WAS BROUGHT BACK, HOW WAS HIS HAIR:

WAS IT LONG, SHORT?

A. IN SHORT DREADS. I DON'T USE THE TERM PLATS. THAT'S THE TERM THAT'S BEEN USED BY A LOT OF MY WITNESSES. BECAUSE OBVIOUSLY I DON'T HAVE TO WORRY ABOUT PLATS OR DREADS OR ANYTHING. BUT I CALL THEM SHORT TWISTS, SHORT DREADS.

Q. AND THAT'S WHAT HIS HAIR WAS WHEN HE WAS BROUGHT BACK TO SOUTH CAROLINA?

A. YES, SIR.

Q. AND IS MR. SMITH A TALL PERSON?

A. EXCUSE ME?

Q. IS HE TALL, SHORT?

A. HE'S SHORT.

Q. DO YOU KNOW HOW TALL HE IS?

A. COMING FROM SOMEONE ABOUT THE SAME HEIGHT, I WOULD THINK ABOUT 5'5", 5'6".

Q. NOW, WERE YOU ABLE TO DETERMINE HOW MR. MARTIN GOT TO THE CRIME SCENE THAT NIGHT?

A. YES, SIR.

Q. AND WHAT WAS THAT, HOW WAS THAT?

A. OBVIOUSLY, IN TALKING WITH MS. BROWNLEE, SHE WAS A BIG HELP, THEY HAD COME DOWN TOGETHER, AND OBVIOUSLY HE HAD GONE -- THEY HAD BOTH GONE BACK AND THEN SHE CAME BACK TO THE CLUB IN HER OWN VEHICLE, THE CAPRICE. HE SHOWED UP LATER IN A GREEN FORD TAURUS.

Q. I SHOW YOU WHAT'S MARKED STATE'S EXHIBIT SIX. WHAT IS THAT A PICTURE OF, SIR?

A. IT'S A GREEN FORD TAURUS.

Q. AND WAS THAT AT THE SCENE THAT NIGHT WHEN YOU ARRIVED?

A. YES, SIR.

Q. AND WHERE WAS IT LOCATED?

A. IT WAS LOCATED -- FACING THE CLUB IT'S PULLING IN, ENGINE BLOCK HEADING LIKE YOU WERE GONNA RUN RIGHT THROUGH THE FRONT WALL OF THE CLUB. AND SALLY, OR MS. BROWNLEE'S VEHICLE WAS ON THE RIGHT SIDE, WHICH WOULD HAVE BEEN ON THE PASSENGER'S SIDE OF THE VEHICLE, FAIRLY CLOSE TO IT.

Q. AND WERE YOU ABLE TO DETERMINE IF THIS, IN FACT, WAS MR. MARTIN'S CAR?

A. IT WAS.

Q. WHICH YOU ALL TOOK FROM THE SCENE?

A. WE DID.

Q. NOW, EVEN AFTER MR. SMITH IS IN CUSTODY, AT THIS POINT DID YOU GO BACK AT SOME POINT AND REEXAMINE OR REINTERVIEW THESE WITNESSES?

A. YES, SIR.

Q. WHAT IS THE PURPOSE OF IT? YOU HEARD MR. GAMBLE TALK ABOUT IT AND MYSELF TALK ABOUT IT: THESE WITNESSES HAVE DONE TWO OR THREE STATEMENTS. WHAT IS ALL THAT

ABOUT?

A. YOU GET NEW INFORMATION. THE MAJORITY OF PEOPLE IN THIS CASE ARE ON PROBATION, THEY'VE GOT CRIMINAL HISTORIES. I THINK MR. CAMPBELL QUOTED BEFORE THEY'D DONE SOME BAD THINGS. AND A LOT OF THEM, ESPECIALLY THE ONES THAT ARE CURRENTLY ON PROBATION, BECAUSE I KNOW MY WIFE IS A PROBATION AGENT, YOU CAN'T BE AROUND OTHER PEOPLE THAT ARE ON PROBATION. YOU CAN GET REVOKED FOR THAT.

IN SOME CASES YOU CAN'T BE AROUND ALCOHOL. I MEAN, I'M NOT EVEN TALKING ABOUT INGESTING IT. YOU CAN'T BE AROUND IT.

FIREARMS ARE A NO-NO, ESPECIALLY IF YOU'VE GOT FELONIES ON YOUR CASE, BECAUSE IF YOU'RE ON PROBATION, YOU CAN'T BE AROUND THOSE OR AMMUNITION.

SO THEIR INITIAL STATEMENTS, THEY MIGHT GIVE YOU A LITTLE SMIDGEON OF SOMETHING. AND YOU GO BACK AND TALK TO SOME MORE PEOPLE AND GET SOME MORE INFORMATION, GO BACK TO TALK TO THEM AGAIN, AND THEN THEY COME OFF A LITTLE BIT MORE.

AND THEN HOPEFULLY AT ONE POINT YOU GET AS MUCH OF THE TRUTH OUT OF THEM AS POSSIBLE, BECAUSE YOU LET THEM KNOW: I KNOW WHAT WENT ON AND IT WASN'T WHAT YOU ARE TELLING ME, AND IT'S NOT MAKING SENSE, AND THAT'S USUALLY HOW THAT TRANSPIRES.

Q. AND THAT'S WHAT WAS DONE IN THIS CASE?
A. YES, SIR.
Q. AND THAT'S WHY THERE ARE SEVERAL STATEMENTS FOR INDIVIDUALS?
A. YES, SIR.
Q. AND AS PART OF THIS, DID YOU GO BACK AND SHOW A LINE-UP TO SOME OF THESE INDIVIDUALS WHO SAID THEY WITNESSED THE SHOOTING?
A. I DID.
Q. I SHOW YOU WHAT'S MARKED AS STATE'S EXHIBIT 16. PLEASE IDENTIFY WHAT THAT IS, SIR.
A. THIS IS AN ANDERSON COUNTY SHERIFF'S OFFICE PHOTO LINE-UP AND AFFIDAVIT OF PHOTO IDENTIFICATION.
Q. AND WHO DID YOU PRESENT THIS TO?
A. THIS INDIVIDUAL ONE WAS PRESENTED TO FRED CHILES ON MARCH 17TH, 2006.
Q. OKAY. AND WHAT WAS THE PURPOSE OF PRESENTING HIM THIS STATEMENT?
A. WELL, AT THIS POINT WE HAD MR. SMITH BACK, OBVIOUSLY IN CUSTODY, AND WE WERE ABLE TO TAKE A MUG SHOT OF HIM AT THE JAIL, A CURRENT MUG SHOT OF HIM, WHICH MAKES FOR THE BEST LINE-UP.
I WENT TO MR. CHILES AND THEN SHOWED HIM THIS LINE-UP TO SEE IF HE COULD IDENTIFY THE PERSON HE SAW AT THE CLUB THAT NIGHT THAT'S INVOLVED IN THE SHOOTING, AND

HE DID SELECT PICTURE NUMBER TWO, WHICH IS MR. SMITH.

Q. AND WAS IT MARCH OR APRIL 17TH?

A. I'M SORRY, APRIL. 4-17-06.

Q. SO HE PICKED MR. SMITH OUT APPROXIMATELY SIX WEEKS AFTER HE WITNESSED THE SHOOTING?

A. YES, SIR.

Q. AND DID THIS FURTHER CONFIRM TO YOU THAT YOU HAD THE RIGHT INDIVIDUAL?

A. YES, SIR.

Q. AND DID YOU GO BACK AND TALK TO OTHER INDIVIDUALS AND SHOW THEM THE LINE-UP?

A. I DID.

Q. AND WHAT DID YOU LEARN FROM THAT?

A. THEY WERE ABLE TO IDENTIFY MR. SMITH AT VARIOUS TIMES AT THE CLUB, EITHER COMING OR GOING WITH A GUN IN HIS HAND, BEING HANDED THE GUN BY AN INDIVIDUAL, WALKING BEHIND THE CLUB PRIOR TO THE SHOOTING, GOING BACK BEHIND THE CLUB AFTER THE SHOOTING. WE WERE ABLE TO SHOW THOSE LINE-UPS OBVIOUSLY AFTER WE HAD HIM IN CUSTODY.

Q. WHEN YOU APPROACHED -- WHEN YOU WERE AT THE SCENE, THE CRIME SCENE THAT NIGHT, WERE YOU ABLE TO DETERMINE OR DID YOU WITNESS OR SEE ANY TYPE OF WEAPONS AROUND MR. MARTIN?

A. NO, SIR.

Q. DID YOU FIND ANY KNIVES OR GUNS ON HIM?

A. NO, SIR.

Q. AND BASED UPON YOUR INTERVIEWS THAT YOU CONDUCTED PERSONALLY OR THAT OTHER DEPUTIES WITH THE SHERIFF'S DEPARTMENT, WERE YOU ABLE TO LEARN AT ANY POINT WHETHER OR NOT MR. SMITH AND MR. MARTIN HAD WORDS RIGHT BEFORE THE SHOOTING TOOK PLACE?

A. NO, SIR. NO ONE ATTESTED TO WITNESSING ANYTHING LIKE THAT.

Q. AND WAS A GUN RECOVERED IN THIS CASE?

A. NO, IT WAS NOT.

Q. IS THAT TYPICAL?

A. WE RARELY GET GUNS BACK.

Q. DETECTIVE REEVES, I'M GONNA SHOW YOU STATE'S EXHIBITS ONE THROUGH FIVE. LOOK AT THESE PICTURES AND IDENTIFY WHAT THEY ARE, SIR.

A. DIFFERENT ASPECT VIEWS OF OLD SCHOOL LOUNGE ON WEST MARKET STREET.

(COUNSEL CONFER.)

BY MR. CAMPBELL:

Q. DETECTIVE REEVES, I WANT TO SHOW YOU WHAT'S MARKED STATE FOR IDENTIFICATION 14 AND 15. IF YOU WOULD PLEASE LOOK AT THESE PHOTOS, SIR?

A. YES, SIR.

Q. WHAT DO THEY DEPICT?

A. THIS IS THE VICTIM, MR. MARTIN, DECEASED, ON THE

PAVEMENT OF OLD SCHOOL LOUNGE.

Q. AND WHERE WAS HE LOCATED?

A. DIRECTLY IN FRONT OF MS. BROWNLEE'S CAPRICE.

Q. AND THAT IS DEPICTED IN THE PICTURE?

A. YES, SIR.

Q. AS WELL AS HER CAR, IS HIS CAR SHOWN IN ONE OF THE PICTURES?

A. YES, SIR. YOU SEE THE FRONT RIGHT QUARTER PANEL.

Q. AND DOES THAT CONFIRM ALL THE WITNESSES SAYING HE WAS SHOT IN FRONT OF THE CAR?

A. YES, SIR.

MR. CAMPBELL: YOUR HONOR, AT THIS TIME I WOULD MOVE THESE INTO EVIDENCE.

MR. GAMBLE: OBJECTION, YOUR HONOR. AS PREVIOUSLY STATED, THE PROBATIVE VALUE DOES NOT OUTWEIGH THE PREJUDICIAL EFFECT, AND IT'S ALREADY DESCRIBED IN GREAT DETAIL AS TO WHERE HE WAS, AND ALL THAT'S BEEN DESCRIBED.

THE COURT: WELL, I'VE LOOKED AT THE PICTURES. I DON'T FEEL THAT THEY ARE ANYTHING OTHER THAN HOW THE VICTIM WAS FOUND. I DON'T THINK THAT IT CHANGES THE CIRCUMSTANCES, SO I'LL OVERRULE THE OBJECTION AND ADMIT THEM.

(STATE'S EXHIBIT # 14 WAS RECEIVED IN EVIDENCE.)

(STATE'S EXHIBIT # 15 WAS RECEIVED IN EVIDENCE.)

BY MR. CAMPBELL:

Q. NOW, YOU HAVE BEEN PRESENT IN THE COURTROOM DURING THIS ENTIRE TRIAL, HAVE YOU NOT?

A. YES, SIR.

Q. AND YOU HAVE HEARD TESTIMONY REGARDING WHETHER, WHAT SIDE THE SHOOTING TOOK PLACE ON THE LEFT SIDE OR THE RIGHT SIDE, RIGHT?

A. YES, SIR.

MR. CAMPBELL: YOUR HONOR, MAY I HAVE THE WITNESS COME OFF THE STAND?

THE COURT: CERTAINLY.

(WITNESS LEAVES STAND.)

BY MR. CAMPBELL:

Q. NOW, DETECTIVE REEVES, YOU HAVE LOOKED AT STATE'S EXHIBITS ONE THROUGH FIVE; IS THAT RIGHT?

A. YES, SIR.

Q. AND ARE THESE PICTURES INDICATED ON THIS DIAGRAM ON THIS BOARD?

A. YES, SIR, THEY ARE: HERE, HERE, HERE, AND HERE.

Q. WHAT DOES THIS SHOW RIGHT HERE?

A. THIS IS AN AERIAL VIEW OF THE CLUB AND ---

THE COURT REPORTER: I'M SORRY. I HAVE "AERIAL VIEW OF THE CLUB AND" --

THE WITNESS: -- AERIAL VIEW OF THE CLUB AND THE AREA AROUND IT, WITH WEST MARKET STREET, AND ACROSS THE STREET IS TUCKER'S RESTAURANT.

BY MR. CAMPBELL:

Q. AND WHICH WAY IS THE FRONT OF THE BUILDING?

A. THE FRONT OF THE BUILDING FACES WEST MARKET STREET.

Q. AND WHAT IS THIS SHOWN RIGHT HERE?

A. THIS SHOWS DOWN HERE JUST A STREET MAP OF THAT AREA OF ANDERSON.

Q. AND IS THE SHADED SECTION IN THE CITY OF ANDERSON JURISDICTION, THE ANDERSON POLICE DEPARTMENT?

A. IT IS.

Q. AND YOU ARE RIGHT ON THE LINE OF COUNTY JURISDICTION?

A. IT IS.

Q. NOW, BASED UPON WHAT YOU SAW AND OBSERVED, CAN YOU PLEASE -- IT MAY BE HELPFUL IF YOU WOULD WANT TO DRAW -- THIS IS THE LOUNGE. THIS IS SHOWING WEST MARKET STREET. THIS IS WHAT WE ARE TALKING ABOUT OVERHEAD VIEW, TUCKER'S RESTAURANT, WHICH YOU REFERRED TO IN THE OVERHEAD. THE CREEK IS ON THE RIGHT SIDE?

A. YES, SIR.

Q. OKAY. WHERE WAS -- WHERE DID -- IF YOU WILL MARK ON HERE AND SHOW ALSO ON THE BOARD WHERE THE BODY WAS

FOUND.

A. AS I SAID EARLIER, THE BODY WAS APPROXIMATELY 20 FEET OFF THE SIDEWALK OF WEST MARKET STREET IN THE PARKING LOT AND 20 FEET OFF FROM THE CREEK, NOT FROM THE CENTER OF THE CREEK BUT JUST FROM THE BANK.

THE COURT: I MIGHT SUGGEST IF YOU STOOD ON THE OTHER SIDE AND TALK ACROSS THE JURY-BOX. THE OTHER SIDE, SIR.

BY MR. CAMPBELL:

Q. IF YOU WOULD MARK WHERE YOU FOUND THE BODY, IF YOU WOULD JUST PUT AN X WHERE YOU FOUND THE BODY, WHERE THE BODY WAS LOCATED?

THE COURT: ALL RIGHT. NOW, WHEN YOU STAND BACK, STAND SO THE COURT REPORTER CAN SEE YOU.

BY MR. CAMPBELL:

Q. AND THIS X, THE BLUE X IS WHERE YOU DETERMINE THE BODY -- FOUND THE BODY WAS LOCATED?

A. THAT'S RIGHT. THAT'S THE AREA, YES.

Q. AND WHERE WAS MS. BROWNLEE'S CAR?

A. MS. BROWNLEE'S CAR WAS PARKED WITH THE FRONT END FACING OUT TO THE CREEK OR BACKED INTO THE CREEK.

Q. AND WHERE WAS MR. MARTIN'S CAR?

A. MR. MARTIN'S CAR WAS PARKED THAT WAY WITH THE FRONT END FACING ACROSS HERE.

Q. AND THAT'S WHAT'S DEPICTED IN STATE'S EXHIBITS 14

AND 15?

A. YES, SIR.

Q. AND WHERE DID YOU DETERMINE -- AFTER TALKING TO THESE WITNESSES -- WHERE WAS MR. CHILES LOCATED?

A. MR. CHILES WAS PARKED IN THE FRONT OF THE CLUB.

Q. AND WHERE WAS HE STANDING; WERE YOU ABLE TO DETERMINE?

A. HE WAS TO HIS CAR AND OVER TO BETWEEN HIS CAR AND THE VICTIM'S CAR.

Q. AND THE DOOR ON THE LOUNGE WAS ON THE LEFT SIDE OF THE BUILDING; IS THAT RIGHT?

A. YES.

Q. DO YOU KNOW WHICH WAY THE DOOR OPENS?

A. THE DOOR WAS -- IF YOU ARE AT TUCKER'S FACING ME, AND I'M COMING OUT OF THE CLUB, THAT DOOR SWINGS ALL THE WAY UP AGAINST THE SIDE, UP AGAINST THE BUILDING.

Q. AND WHERE IS THE BAR AREA LOCATED? DID YOU GO INSIDE THERE?

A. IT'S RIGHT INSIDE THE FRONT DOOR.

Q. AND WERE YOU ABLE TO DETERMINE WHERE BASSEN HAILEY, JAMES PICKENS, LATORREY PEARSON, ALPHONSO HAILEY, WHERE THEY WERE STANDING, LOCATED WHEN THIS CRIME OCCURRED?

A. MR. PICKENS WAS PARKED -- HE PARKED ON THIS SIDE, THERE'S A LARGE OAK TREE ON THIS SIDE OF THE CLUB, AND

BOLDEN'S GARAGE IS THE NEXT BUSINESS UP THE STREET. HIS VEHICLE WAS PARKED ON THIS SIDE, AND ACCORDING TO HIS STATEMENT AND REINTERVIEWING, WHEN TALKING TO THEM, THEY WERE ALL ON THIS CORNER.

Q. AND WHERE WAS MR. ALPHONSO HAILEY?

A. HE HAD GONE IN THE CLUB, AS HE TESTIFIED, TO GET A DRINK, AND HE WAS RIGHT INSIDE THE DOORWAY.

Q. IF YOU WILL JUST SHOW THAT, MR. REEVES, ON THIS MAP HERE WHERE WE'VE GOT THE COLOR PHOTOS.

A. I'LL USE THE SMALLER PICTURES HERE. HIS BODY -- MR. MARTIN'S BODY WAS HERE, THE VEHICLE WAS PARKED UP AGAINST THE CREEK, MR. MARTIN'S CAR -- MS. BROWNLEE'S CAR BACKED UP AGAINST THE CREEK AND MR. MARTIN'S CAR PARKED WITH THE ENGINE FACING THE CLUB, ALPHONSO IN THE DOORWAY; AND OUR OTHER WITNESS, MR. PICKENS, BASSEN HAILEY, AND LATORREY PEARSON WERE RIGHT IN THE CORNER ACTUALLY ON THE FRONT PORCH, WHICH IS JUST -- YOU CAN BARELY SEE IT IN THIS PICTURE, A FIVE-OR-SIX-INCH SLAB OF CONCRETE.

MR. CAMPBELL: IF YOU WILL PLEASE TAKE THE STAND.

(WITNESS RESUMES STAND.)

BY MR. CAMPBELL:

Q. NOW, DETECTIVE REEVES, YOU ALSO BROUGHT WITH YOU THE GUNSHOT RESIDUE KIT, THE 9 MILLIMETER, AND THE

BULLETS THAT WERE RECOVERED FROM MR. MARTIN?

A. YES, SIR.

Q. THAT'S ALL INDICATED IN THESE REPORTS RIGHT HERE; IS THAT RIGHT?

A. YES, SIR.

Q. YOU HEARD A LOT OF DISCREPANCIES ON WHO GAVE THE GUN AND ONE SAID A RED COAT, THE OTHERS SAY BLACK. WERE YOU ABLE TO DETERMINE -- HAVE YOU SIFTED THROUGH ALL THAT, AND WERE YOU ABLE TO DETERMINE WHO THE SHOOTER WAS?

A. THE SHOOTER IN THIS CASE WAS THE DEFENDANT, MR. SMITH.

Q. DID ANYBODY ELSE'S NAME POP UP AS BEING THE SHOOTER?

A. NO, SIR.

Q. AND THIS CASE HAPPENED 14 MONTHS AGO ---

A. YES, SIR.

Q. --- 15 MONTHS AGO?

AND HAVE YOU HAD ANY NEW INFORMATION OR LEADS POSSIBLY ABOUT ANOTHER SHOOTER OR SOMEONE ELSE OTHER THAN MR. SMITH?

A. NO, SIR.

Q. AS PART OF YOUR JOB, IN YOUR INVESTIGATION, DID YOU GO BACK AND TRY TO DETERMINE HAD THERE BEEN ANY PROBLEMS BETWEEN MR. SMITH AND MR. MARTIN?

A. YES, SIR.

Q. AND WERE YOU ABLE TO LEARN WHETHER OR NOT MR. MARTIN AND MR. SMITH HAD ANY PROBLEMS?

A. NOTHING THAT WAS DOCUMENTED.

MR. CAMPBELL: YOUR HONOR, I HAVE NO FURTHER QUESTIONS OF THIS WITNESS.

PLEASE ANSWER ANY QUESTIONS MR. GAMBLE MAY HAVE.

OR MAY WE APPROACH FOR A SECOND?

THE COURT: YES, PLEASE.

(WHEREUPON, COUNSEL APPROACHED THE BENCH AND CONFERRED WITH THE COURT OUT OF THE PRESENCE OF THE COURT REPORTER AND THE JURY.)

THE COURT: ALL RIGHT. VERY GOOD, THANK YOU.

MADAM FORELADY, LADIES AND GENTLEMEN OF THE JURY -- WAIT A MINUTE.

GENTLEMEN, IF YOU WOULD APPROACH.

(WHEREUPON, COUNSEL APPROACHED THE BENCH AND CONFERRED WITH THE COURT OUT OF THE PRESENCE OF THE COURT REPORTER AND THE JURY.)

THE COURT: I'M GOING TO SUGGEST WE TAKE OUR AFTERNOON BREAK AT THIS TIME. THIS WILL BE THE LAST WITNESS TODAY. THE CASE IS NOT OVER, BUT THERE ARE SOME THINGS I NEED TO DISCUSS WITH THE ATTORNEYS BEFORE WE

PROCEED, AND WE WILL NOT BE ABLE TO FINISH THE CASE TODAY REGARDLESS BECAUSE WE DO HAVE OTHER THINGS WE NEED TO DO IN THIS CASE. THIS IS JUST IN THE STATE'S CASE. BUT I'M GOING TO SUGGEST -- WE WILL BE OUT BEFORE 4:30, 4:00 OR 4:30, PROBABLY 4:30, IF THAT'S ALL RIGHT WITH YOU. IF YOU NEED TO MAKE A PHONE CALL, JUST TELL THE BAILIFF AND WE'LL PROVIDE YOU WITH A PHONE, BUT WE SHOULD BE OUT WITHIN AN HOUR. BUT WE'LL COME BACK IN THE MORNING, AND THEN CONCLUDE THE TRIAL OF THE CASE AT THAT TIME.

AGAIN, DO NOT UNDERTAKE DISCUSSION OF THE CASE AMONG YOURSELVES IN ANY WAY. YOU MAY BE EXCUSED. AND WHEN YOU ARE READY, MADAM FORELADY, YOU CAN JUST KNOCK ON THE DOOR AND COME BACK IN.

(WHEREUPON, THE JURY LEFT THE COURTROOM AT 3:21 P.M.)

THE COURT: ALL RIGHT. ANYTHING FROM THE STATE BEFORE WE TAKE A BREAK?

MR. CAMPBELL: NO, YOUR HONOR.

THE COURT: ANYTHING FROM DEFENSE?

MR. GAMBLE: NO, YOUR HONOR.

THE COURT: DETECTIVE, YOU UNDERSTAND YOU ARE UNDER OATH SO YOU CAN'T DISCUSS YOUR CASE WITH ANYONE?

THE WITNESS: YES, SIR.

THE COURT: ALL RIGHT. WE'LL STAND AT EASE.

(A RECESS WAS TAKEN.)

THE COURT: ANYTHING FROM THE STATE BEFORE WE BRING THE JURY BACK?

MR. CAMPBELL: NO, YOUR HONOR.

THE COURT: ANYTHING FROM THE DEFENSE?

MR. GAMBLE: NO, SIR, YOUR HONOR.

THE COURT: VERY GOOD. ASK THE JURY TO JOIN US, PLEASE.

DETECTIVE, YOU UNDERSTAND YOU ARE STILL UNDER OATH?

THE WITNESS: YES, SIR.

THE COURT: VERY GOOD.

(WHEREUPON, THE JURY ENTERED THE COURTROOM AT 3:35 P.M.)

THE COURT: ALL RIGHT. LET THE RECORD REFLECT THAT THE JURY AND ALTERNATE ARE IN THE JURY-BOX.

MADAM FORELADY, LADIES AND GENTLEMEN OF THE JURY, WE'LL NOW CONTINUE WITH THE CROSS-EXAMINATION OF THE WITNESS.

MR. GAMBLE: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION BY MR. GAMBLE:

Q. YOU SAID THAT YOU ENTERED THE WARRANT CHARGING MR. SMITH WITH MURDER IN THE N.C.I.C.?

A. YES, SIR.

Q. DID YOU ALSO ENTER BUSTER IN THE N.C.I.C.?
A. ENTERED THE WARRANT BY HIS NAME.
Q. JWAN?
A. YES, SIR.
Q. THE QUESTION IS: IN MY OFFICE I HAVE A WAY TO GET EVEN STREET NAMES. DID YOU ENTER A STREET NAME, BUSTER, UNDER THE JWAN SMITH?
A. NO, SIR.
Q. OKAY. BUT YOU DIDN'T GET ANY HITS ON THE N.C.I.C., DID YOU?
A. SIR?
Q. YOU DIDN'T GET ANY HITS, ANY KNOWN ARRESTS OR ANYTHING LIKE THAT?
A. WE USED HIS ADDRESS WITH HIS MOTHER ON REED COURT, YES, SIR.
Q. ALL RIGHT. NOW, THE JACKET THAT YOU GOT FROM HIS MOTHER'S HOUSE, DID YOU ASK HIS MOTHER IF HE HAD ANY OTHER JACKETS THAT YOU COULD TAKE?
A. I ASKED HER IF THAT WAS HIS ROOM BECAUSE I DIDN'T KNOW THE LAYOUT OF THE HOUSE.
SHE SAID IT'S HIS ROOM.
"DO YOU MIND IF I LOOK?"
WE WERE LOOKING FOR HIM OR ANYTHING ON THAT CONSENT AT THAT POINT. THERE WASN'T REALLY ANYTHING TO MY RECOLLECTION IN THERE. I REMEMBER SOME SOCKS AND

SOME SHOES, BUT AT THAT POINT THE ONLY THING I TOOK WAS THE JACKET.

Q. WITH REGARD TO GUNSHOT RESIDUE, ON CLOTHING IT STAYS PRETTY MUCH ON CLOTHING UNLESS IT'S WASHED, DRY-CLEANED OR OTHERWISE CLEANED, DOESN'T IT?

A. IT DEPENDS. I MEAN, OBVIOUSLY IF YOU DO THOSE THINGS TO IT, IT WOULD REMOVE IT. BUT IT WAS SEVERAL DAYS AFTER THE INCIDENT, WELL INTO A WEEK AFTER THE INCIDENT WHEN WE FOUND IT AT THE HOUSE.

Q. I UNDERSTAND THAT. BUT YOU DON'T KNOW WHEN THE COAT WAS TAKEN OFF AND PUT THERE.

A. NO. AND I DON'T EVEN KNOW IF THAT'S THE COAT HE HAD ON.

Q. THAT'S CORRECT. BUT THAT'S THE ONLY BLACK JACKET YOU FOUND IN HIS ROOM?

A. YES, SIR.

Q. YES?

A. YES, SIR.

Q. OKAY. AND IT DID NOT HAVE ANY GUNSHOT RESIDUE ON IT ---

A. NOT ON THE S.L.E.D. REPORT.

Q. --- FROM S.L.E.D.?

A. S.L.E.D.'S REPORT CAME BACK AND SAID THAT IT DID NOT.

Q. DID YOU ATTEMPT IN YOUR INVESTIGATION EVER TO

RECONSTRUCT WHERE THESE PEOPLE THAT WERE SUPPOSED TO BE SEEING THIS WERE, AND WHETHER OR NOT THEY COULD HAVE SEEN WHAT THEY SAID THEY SAW?

A. NO, SIR.

Q. YOU NEVER PARKED THE TAURUS WHERE IT WAS AND WENT TO THE CORNER OF THE BUILDING TO LOOK BACK AND SEE IF YOU COULD SEE WHAT WAS BEHIND THAT TAURUS, DID YOU?

A. I NEVER RECONSTRUCTED ANYTHING. THE NIGHT OF, I WALKED THROUGH THE GENERAL AREA OF WHERE HE WAS SHOT, NOT KNOWING, OBVIOUSLY, ALL OF OUR WITNESSES AT THAT POINT; WE DIDN'T FIND THEM FOR DAYS LATER.

Q. I UNDERSTAND. BUT YOU NEVER WENT BACK EVEN AFTER YOU LEARNED WHAT MIGHT HAVE BEEN THE TRUTH TO SEE IF IT COULD HAVE BEEN THE TRUTH?

A. NO, SIR, WE DID NOT.

Q. NOW, WITH REGARD TO MR. MARTIN, I BELIEVE YOU TESTIFIED THAT THE S.L.E.D. RESULTS SHOWED THERE WAS GUNSHOT RESIDUE ON THE BACK OF THE HAND?

A. YES, SIR.

Q. GENERALLY IN CASES OF MURDER YOU FIND GUNSHOT RESIDUE ON THE FOREARM OR PALM OF THE HANDS, DON'T YOU?

A. YES, SIR.

Q. IN A DEFENSIVE KIND OF MEASURE?

A. IT DEPENDS. I'VE FOUND IT IN VARIOUS DIFFERENT AREAS OF THE HANDS. SOMETIMES BOTH FRONT AND BACK.

Q. YES. BUT YOU HEARD THE DOCTOR TESTIFY THERE WOULDN'T BE ANY BEYOND THREE FEET, DIDN'T YOU?

A. YES, SIR.

Q. NO GUNSHOT RESIDUE?

A. YES, SIR.

Q. ALL RIGHT. SO ACCORDING TO WHAT THE DOCTOR SAID, THERE SHOULDN'T HAVE BEEN ANY GUNSHOT RESIDUE ON HIM.

A. I HEARD WHAT THE DOCTOR SAID. BUT THE WITNESSES ALSO SHOWED TODAY WHEN THEY SHOWED THE DISTANCE THAT THEY OBSERVED MR. SMITH AND MR. MARTIN WHEN MR. SMITH FIRED THE GUN, OR AT VARIOUS TIMES THEY SAW MR. SMITH WITH THE GUN POINTED AT HIM FIVE TO SIX FEET.

IF YOU HOLD OUT A LONG -- ANY TYPE OF REVOLVER, YOU'VE GOT THE DISTANCE OF YOUR HAND, YOU'VE JUST CLOSED THAT DISTANCE IN HALF OR AT LEAST A QUARTER. IN A LONG-BARRELLED REVOLVER YOU'VE CLOSED IT ALMOST ANYWHERE BETWEEN SIX TO EIGHT INCHES, SO YOU ARE WELL WITHIN THE TWO OR THREE FEET, POSSIBLY.

Q. YOU DIDN'T SEE ANY STIPPLING, DID YOU?

A. WELL, STIPPLING IS WITHIN INCHES.

Q. THE GASES?

A. THAT'S THE HOT GASES. THE ROUND PARTICLES THAT WE TEST FOR IN THE G.S.R., THOSE SHOTS WERE FARTHER, WHICH THE DOCTOR HAD MENTIONED.

Q. OKAY. WHEN DID YOU SEARCH PICKENS' JEEP?

A. WHEN DID I SEARCH IT?

Q. WHEN. GIVE ME AN APPROXIMATION.

A. WITHIN A COUPLE DAYS OF THE SHOOTING, MONDAY OR TUESDAY, I THINK, WE DID THAT AT THE APARTMENT COMPLEX ON CALHOUN STREET.

Q. TO YOUR KNOWLEDGE HAD IT BEEN WASHED OR CLEANED?

A. SIR?

Q. TO YOUR KNOWLEDGE HAD HIS JEEP BEEN WASHED OR CLEANED?

A. IT WAS NASTY.

Q. OKAY.

A. I ASKED HIM THAT QUESTION, AND HE SAID "I DON'T WASH IT MUCH," AND THE WAY IT LOOKED ON THE OUTSIDE AND INSIDE, I CAN VOUCH FOR THAT.

Q. SO YOU DIDN'T FIND ANYTHING OF EVIDENTIARY VALUE IN IT?

A. NO, SIR.

Q. PICKENS WAS SUPPOSEDLY ON THE BACK CORNER, BY THAT I MEAN HE WAS AROUND THE SIDE, TO THE SIDE OF THE OLD SCHOOL LOUNGE?

A. THAT'S WHERE HE PARKED HIS VEHICLE, YES, SIR.

Q. RIGHT. AND WAS HE -- HE WAS STANDING BY HIS VEHICLE HE TOLD YOU?

A. INITIALLY HIS STATEMENTS, HE ADVISED WHEN BASSEN AND ALPHONSO AND LATORREY WALKED DOWN THE STREET, SAW

HIM, MET UP WITH HIM, AND STARTED TALKING. THEY WERE IN HIS VEHICLE. SNOOP OBVIOUSLY WENT INSIDE, THERE WAS THE EXCHANGE OF THE GUN. AND IN MR. PICKENS' STATEMENT IN WHICH HE ADVISED THEY WERE ACTUALLY ON THE CORNER ON THAT CONCRETE PORCH, RIGHT ON THAT, AS YOU ARE FACING THE CLUB, ON THAT LEFT CORNER.

Q. OKAY. BETWEEN THEM AND WHERE THE BODY WAS FOUND, THERE WAS A TAURUS PARKED LONG WAYS?

A. YES, SIR.

Q. AND A CAPRICE BACKED UP TO THE CREEK?

A. YES, SIR.

Q. AHEAD OF THE TAURUS?

A. YES, SIR.

Q. WHEN YOU GOT TO OLD SCHOOL AFTER MIDNIGHT, JUST A FEW MINUTES AFTER MIDNIGHT, YOU ASCERTAINED THAT THE -- MR. MARTIN WAS DECEASED, DIDN'T YOU?

A. YES, SIR. THAT HAD ALREADY BEEN ASCERTAINED BEFORE I ARRIVED.

Q. E.R. -- I MEAN EMERGENCY PEOPLE ---

A. YES, SIR, THAT'S CORRECT.

Q. --- HAD BEEN THERE AND THE CORONER HAD BEEN CALLED IN?

A. YES, SIR.

Q. OKAY. YOU GOT NO HITS ON A NAME AT THE BUS STATIONS IN ATLANTA?

A. NO, SIR.
Q. DID YOU ASCERTAIN THAT TORREY PEARSON IS THE COUSIN OF BASSEN HAILEY?
A. DID I ASCERTAIN THAT THEY ARE?
Q. YES, SIR.
A. YES, SIR, THEY ARE, THEY ARE COUSINS.
Q. AND SO DOWN THERE YOU HAD TWO BROTHERS AND A COUSIN ---
A. YES, SIR.
Q. --- RIGHT?
A. YES, SIR.
Q. AND PICKENS?
A. YES, SIR.
Q. OKAY. AND THEY, OF COURSE, FROM WHAT'S BEEN STATED HERE, WERE YOUR MAIN WITNESSES IN THIS CASE?
A. THEY'RE THE CRUX OF THE MAIN WITNESSES.
Q. YES.
A. YES, SIR.
Q. THEY WERE THE HEART OF IT?
A. YES, SIR.
Q. THE CRUX, AS YOU SAY.
A. YES, SIR.
Q. OKAY.

MR. GAMBLE: EXCUSE ME A MINUTE, PLEASE.

(OFF-THE-RECORD DISCUSSION.)

BY MR. GAMBLE:

Q. DID YOU PROCESS THE PICKENS JEEP FOR PRINTS?

A. YES, SIR.

Q. SPECIFICALLY THE PASSENGER'S SIDE?

A. THE WHOLE VEHICLE, THE ENTIRE VEHICLE.

Q. THE ENTIRE VEHICLE?

A. INSIDE AND OUT.

Q. OKAY. DID YOU FIND PRINTS FOR MR. SMITH ANYWHERE IN THAT VEHICLE?

A. NO, SIR.

Q. DID YOU FIND PRINTS FOR TORREY PEARSON IN THAT VEHICLE?

A. NO, SIR.

Q. DID YOU FIND ANY PRINTS OTHER THAN PICKENS'?

A. I THINK THERE WERE SMUDGES, NOTHING IDENTIFIABLE, WHICH IS TYPICAL.

MR. GAMBLE: I HAVE NOTHING FURTHER, YOUR HONOR.

THE COURT: RE-EXAM?

MR. CAMPBELL: JUST A COUPLE.

REDIRECT EXAMINATION BY MR. CAMPBELL:

Q. DETECTIVE REEVES, YOU WERE PRESENT AT THE AUTOPSY DR. WARD PERFORMED?

A. YES, SIR.

Q. AND BEFORE THE BODY OF MR. MARTIN ARRIVED, YOUR

FORENSIC END HAD ALREADY TAKEN SAMPLES FOR G.S.R. OR GUNSHOT RESIDUE FROM HIS HAND; IS THAT CORRECT?

A. YES, SIR.

Q. AS YOU TOLD MR. GAMBLE, THE CRUX OF YOUR WITNESSES WAS BASSEN, ALPHONSO, AND LATORREY JAMES PICKENS?

A. YES.

Q. BUT YOU HAD OTHER WITNESSES THAT YOU IDENTIFIED THAT SAW WHAT HAPPENED, HADN'T YOU?

A. YES, SIR.

Q. AND THAT WOULD HAVE BEEN CHILES AND PICKENS?

A. YES, SIR.

THE COURT: RECROSS?

MR. GAMBLE: BRIEFLY.

RECROSS-EXAMINATION BY MR. GAMBLE:

Q. FROM THE AUTOPSY REPORT YOU ATTENDED -- AND I DON'T WANT TO BLIND-SIDE YOU ON THIS ONE -- (HANDING) HOW TALL WAS THE DECEASED?

A. 71 INCHES.

Q. THAT'S 5'11"?

A. ROUGHLY. THAT'S HIS NUMBERS.

MR. GAMBLE: THAT'S ALL I HAVE. THANK YOU.

MR. CAMPBELL: NOTHING FROM THE STATE, YOUR HONOR.

THE COURT: YOU MAY STEP DOWN. THANK YOU,

SIR.

(WHEREUPON, THE WITNESS WAS EXCUSED.)

THE COURT: ALL RIGHT. YOU MAY CALL YOUR NEXT WITNESS.

MR. CAMPBELL: YOUR HONOR, THAT'S THE STATE'S CASE.

THE COURT: ALL RIGHT. MADAM FORELADY, LADIES AND GENTLEMEN OF THE JURY, AS I SAID BEFORE THE LAST BREAK, WE STILL HAVE -- THIS IS JUST THE STATE'S CASE, SO THE CASE CAN'T BE COMPLETED TODAY.

I'M GOING TO SUGGEST THAT -- WELL, I NEED TO TAKE SOME MATTERS UP WITH THE ATTORNEYS, BUT WE'LL COME BACK AT WHAT TIME IN THE MORNING?

THE FORELADY: 9:30.

THE COURT: 9:30? VERY GOOD. ALL RIGHT. I'LL SEE YOU AT THAT TIME. AGAIN, PLEASE DO NOT UNDERTAKE DISCUSSION OF THE CASE AMONG YOURSELVES OR ALLOW ANYONE TO DISCUSS IT WITH YOU.

ALL RIGHT. WITH THAT I'LL EXCUSE YOU AND SEE YOU AT 9:30 IN THE MORNING. JUST COME BACK TO THE SAME JURY ROOM.

(WHEREUPON, THE JURY LEFT THE COURTROOM AT 3:48 P.M.)

THE COURT: ALL RIGHT. ANYTHING FURTHER FROM THE STATE?

MR. CAMPBELL: NO, YOUR HONOR.

THE COURT: FROM THE DEFENSE?

MR. GAMBLE: I HAVE -- I RECOGNIZE THE FACT THAT I DON'T HAVE GROUNDS FOR A DIRECTED VERDICT, YOUR HONOR, BUT I WOULD ---

THE COURT: YOU CAN GO AHEAD AND MOVE. WE NEVER KNOW.

MR. GAMBLE: WELL, I MOVE FOR A DIRECTED VERDICT.

THE COURT: DENIED. I'M NOT CONCERNED ABOUT THE WEIGHT OF THE EVIDENCE, ONLY WHETHER OR NOT THERE IS SOME EVIDENCE FROM WHICH THE JURY MIGHT REASONABLY FIND A VERDICT OF GUILTY, BUT THAT WOULD BE BASED, AGAIN, LOOKING AT THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE STATE; AND IN THIS PARTICULAR CASE, EVEN THOUGH THERE IS CONFLICT AND CONTRADICTION, THERE IS TESTIMONY IN THE RECORD THAT WOULD SUPPORT SUCH A FINDING, SO I WOULD HAVE TO DENY YOUR MOTION. BUT YOUR MOTION IS NOTED FOR THE RECORD.

MR. GAMBLE: THANK YOU, YOUR HONOR.

I HAVE DISCUSSED WITH JWAN SMITH THE POSSIBILITY OF HE TESTIFYING IN THIS CASE. I TOLD HIM IT WAS HIS DECISION AND HIS ALONE, THAT IT WAS NOT MY DECISION TO MAKE HIM GET ON THE STAND OR NOT GET ON THE STAND.

I INFORMED HIM, FURTHER, THAT HE BY PLEADING NOT GUILTY HAD INDICATED HE DIDN'T DO THIS ACT AND THAT WAS ALL HE CAN SAY ON THE STAND, BASICALLY, OTHER THAN TO SAY HE'S YOUNG AND WENT TO FLORIDA FOR SOME REASON, I DON'T KNOW.

BUT IN DISCUSSING IT WITH HE AND MR. THOMPSON AND I, I DON'T THINK IT'S OF ANY BENEFIT OF HIM TO TAKE THE STAND; HOWEVER, WITH THE CAVEAT THAT I TOLD HIM IT'S HIS DECISION, NOT MINE TO MAKE. SO IF THE COURT WOULD LIKE, I'LL BRING HIM FORWARD.

THE COURT: IF YOU WOULD.

MR. SMITH, IF YOU WOULD APPROACH.

MR. GAMBLE: COME HERE.

(WHEREUPON, THE DEFENDANT WAS SWORN BY THE CLERK.)

THE COURT: YOU CAN STAND RIGHT THERE.

COURT'S INSTRUCTIONS TO DEFENDANT RE TESTIFYING:

THE COURT: MR. JWAN TYREE SMITH, AT THIS TIME I'M GOING TO EXPLAIN TO YOU CERTAIN OF YOUR RIGHTS. IF YOU DO NOT UNDERSTAND ANYTHING I SAY, PLEASE LET ME KNOW. IF YOU WANT ME TO EXPLAIN ANYTHING IN MORE DETAIL, PLEASE LET ME KNOW. DO YOU UNDERSTAND THIS?

THE DEFENDANT: YES, SIR.

THE COURT: WE HAVE NOW REACHED THE STAGE OF THE TRIAL WHERE YOU MAY PRESENT YOUR DEFENSE. YOU HAVE

THE RIGHT TO CLAIM THE PROTECTIONS GIVEN TO YOU BY THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES. THIS AMENDMENT STATES, IN PART (READING):

> NO PERSON SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF.

THAT IS THE RIGHT TO SAY NOTHING AT ALL. YOU CANNOT BE COMPELLED TO TESTIFY AGAINST YOURSELF OR OFFER EVIDENCE AGAINST YOURSELF. DO YOU UNDERSTAND THIS?

THE DEFENDANT: YES, SIR.

THE COURT: AS I SAY, THIS MEANS YOU CANNOT BE REQUIRED TO TESTIFY IN THE CASE AND YOU HAVE THE RIGHT TO TESTIFY -- BUT YOU DO HAVE THE RIGHT TO TESTIFY ON YOUR OWN BEHALF. HOWEVER, NO ONE CAN MAKE YOU TESTIFY. THIS IS A PERSONAL RIGHT AND NO ONE CAN WAIVE THIS RIGHT EXCEPT YOU. DO YOU UNDERSTAND THIS?

THE DEFENDANT: YES, SIR.

THE COURT: IF YOU DO DECIDE TO TESTIFY, YOU WILL BE SUBJECT TO THE SAME RULES THAT GOVERN OTHER WITNESSES, AND YOU MAY BE EXAMINED AND CROSS-EXAMINED ON ANY RELEVANT ISSUE IN THE CASE.

IN ADDITION, IF YOU HAVE ANY CONVICTIONS INVOLVING DISHONESTY OR FALSE STATEMENT OR FOR CRIMES PUNISHABLE BY IMPRISONMENT FOR MORE THAN ONE YEAR, AND

THE COURT DETERMINES THAT THE PROBATIVE VALUE OF ADMITTING THIS EVIDENCE OUTWEIGHS THE PREJUDICIAL EFFECT TO YOU, THE SOLICITOR WILL BE ABLE TO INTRODUCE YOUR RECORD TO ATTACK YOUR CREDIBILITY. DO YOU UNDERSTAND THAT?

THE DEFENDANT: YES, SIR.

THE COURT: I HAVEN'T HEARD ANY EVIDENCE OF A RECORD OF CONVICTIONS.

ARE THERE ANY?

MR. GAMBLE: NO, SIR.

THE COURT: VERY WELL. EVEN THOUGH, YOU NEED TO UNDERSTAND, THAT IF SOMETHING SHOULD COME OUT AND YOU TESTIFY, THEY COULD USE IT, BUT IF YOU DO NOT HAVE A RECORD INVOLVING EITHER DISHONESTY OR CONVICTIONS OF A CRIME, THEN THAT WOULD NOT BE OF CONCERN TO YOU IN THIS MATTER. DO YOU UNDERSTAND?

THE DEFENDANT: YES, SIR.

THE COURT: YOU NEED TO SPEAK UP SO SHE CAN COPY DOWN WHAT WE SAY.

THE DEFENDANT: YES, SIR.

THE COURT: THANK YOU, SIR.

IF YOU DO DECIDE TO TESTIFY, THE DECISION ON YOUR PART MUST BE FREELY, VOLUNTARILY AND INTELLIGENTLY MADE, WITH THE KNOWLEDGE OF THE PROTECTIONS GIVEN TO YOU BY THE FIFTH AMENDMENT, AND THE CONSEQUENCES OF YOUR

DECISION. IF YOU DECIDE NOT TO TESTIFY, I WILL INSTRUCT THE JURORS THEY CANNOT GIVE THE FACT THAT YOU DID NOT TESTIFY ANY CONSIDERATION WHATSOEVER AND THAT THERE IS TO BE ABSOLUTELY NO PREJUDICE TO YOU BECAUSE YOU DID NOT TESTIFY.

YOU MAY TALK WITH YOUR ATTORNEY, YOUR FAMILY, YOUR FRIENDS OR ANYONE ELSE, BUT THE FINAL DECISION WILL BE LEFT ENTIRELY UP TO YOU.

DO YOU UNDERSTAND WHAT I'VE EXPLAINED TO YOU?

THE DEFENDANT: YES, SIR.

THE COURT: DO YOU HAVE ANY QUESTIONS ABOUT WHAT I'VE EXPLAINED TO YOU?

THE DEFENDANT: NO, SIR.

THE COURT: ALL RIGHT. I'M GOING TO LET YOU THINK ABOUT IT OVER THE EVENING AND WE'LL TALK ABOUT IT IN THE MORNING BECAUSE THIS IS THE TYPE OF DECISION YOU NEED TO MAKE AND YOU NEED TO MAKE IT AFTER DUE CONSIDERATION AND DELIBERATION. DO YOU UNDERSTAND?

THE DEFENDANT: YES, SIR.

THE COURT: SO I'LL ASK YOU IN THE MORNING AS TO WHAT YOUR DECISION IS.

THE DEFENDANT: THANK YOU.

THE COURT: THANK YOU VERY MUCH, SIR.

ALL RIGHT. ANYTHING ELSE FROM THE DEFENSE?

MR. GAMBLE: NO, YOUR HONOR.

THE COURT: VERY GOOD. WE'LL STAND IN RECESS UNTIL 9:30 IN THE MORNING.

MAY I SEE COUNSEL AT SIDE-BAR?

(WHEREUPON, COUNSEL APPROACHED THE BENCH AND CONFERRED WITH THE COURT OUT OF THE PRESENCE OF THE COURT REPORTER.)

(THE TRIAL OF *THE STATE OF SOUTH CAROLINA VERSUS JWAN SMITH* WAS ADJOURNED AT 3:55 P.M., TO RESUME AT APPROXIMATELY 9:30 A.M. ON WEDNESDAY, MAY 9TH, 2007.)

***** END OF REQUESTED TRANSCRIPT *****

CERTIFICATE OF COURT REPORTER

I, THE UNDERSIGNED, ROBIN SUE HILD, FCRR, RPR, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND THE EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, VOLUME II OF III, MAY 8TH, 2007, PAGES 149 THROUGH 342, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR ANDERSON COUNTY, SOUTH CAROLINA, ON THE 7TH DAY, 8TH DAY, AND 9TH DAY OF MAY, 2007.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

NOVEMBER 24, 2007

Robin Sue Hild

ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER

ORIGINAL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON	)	INDICTMENT NO: 2006-GS-04-1746

STATE OF SOUTH CAROLINA	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD TRIAL -- VOLUME III OF III PAGES 344 THROUGH 402
-VS-	)	
JWAN SMITH,	)	
DEFENDANT.	)	

MAY 9, 2007
ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ALEXANDER S. MACAULAY, JUDGE; AND A JURY.

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

RAME CAMPBELL, ESQ.
ASSISTANT 10TH CIRCUIT SOLICITOR
ATTORNEY FOR THE STATE

ROBERT GAMBLE, ESQ.
ANDERSON COUNTY PUBLIC DEFENDER
ATTORNEY FOR THE DEFENDANT

ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER
POST OFFICE BOX 9
WALHALLA, SC 29691

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***** START OF REQUESTED TRANSCRIPT *****

(WHEREUPON, THE TRIAL OF *THE STATE OF SOUTH CAROLINA VERSUS JWAN SMITH* RESUMED ON THE 9TH DAY OF MAY, 2007, COMMENCING AT APPROXIMATELY 9:36 A.M.)

THE COURT: WE ARE BACK ON THE RECORD IN *THE STATE VERSUS JWAN TYREE SMITH*, 2006-GS-04-1746.

IS THERE ANYTHING FROM THE STATE BEFORE WE BEGIN?

MR. CAMPBELL: NO, YOUR HONOR.

THE COURT: FROM THE DEFENSE?

MR. GAMBLE: NO, YOUR HONOR. I THINK WE ARE WAITING FOR MR. SMITH'S REQUEST, OR DECISION.

THE COURT: ALL RIGHT, MR. SMITH, IF YOU WOULD PLEASE STAND.

COURT'S FURTHER INSTRUCTIONS TO DEFENDANT RE TESTIFYING:

THE COURT: YOU RECALL YESTERDAY I PUT YOU UNDER OATH WHEN I WAS ASKING YOU ABOUT WHETHER OR NOT YOU WISHED TO TESTIFY IN THIS CASE. YOU ARE STILL UNDER OATH, DO YOU UNDERSTAND THAT?

THE DEFENDANT: YES, SIR.

THE COURT: AS I EXPLAINED YESTERDAY, THE FIFTH AMENDMENT TO OUR CONSTITUTION OF THE UNITED STATES PROVIDES THAT NO PERSON SHALL BE COMPELLED IN ANY

CRIMINAL CASE TO BE A WITNESS AGAINST THEMSELVES. IN OTHER WORDS, YOU HAVE THE RIGHT TO EITHER TESTIFY OR NOT TESTIFY. IN OTHER WORDS, YOU CANNOT BE COMPELLED TO OFFER EVIDENCE OR PRESENT EVEN WITNESSES OR TESTIMONY OR ANYTHING AT ALL. THE BURDEN OF PROOF IS UPON THE STATE ENTIRELY.

NOW, YOU DO ALSO HAVE THE RIGHT TO TESTIFY.

THE DEFENDANT: YES, SIR.

THE COURT: NOW, IF YOU DECIDE TO TESTIFY, THIS DECISION ON YOUR PART MUST BE FREELY, VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY MADE, WITH KNOWLEDGE OF THE PROTECTIONS GIVEN TO YOU BY THE FIFTH AMENDMENT AND THE CONSEQUENCES OF YOUR DECISION TO TESTIFY. IF YOU DECIDE TO TESTIFY, OF COURSE, YOU CAN BE CROSS-EXAMINED AS ALL THE OTHER WITNESSES HAVE BEEN CROSS-EXAMINED.

YOU DO UNDERSTAND THAT?

THE DEFENDANT: YES, SIR.

THE COURT: AND IF YOU DECIDE NOT TO TESTIFY, I WILL INSTRUCT THE JURORS THAT THEY CANNOT GIVE THE FACT THAT YOU DID NOT TESTIFY ANY CONSIDERATION WHATSOEVER AND THAT THERE IS TO BE ABSOLUTELY NO PREJUDICE TO YOU BECAUSE YOU DID NOT TESTIFY.

NOW, I'VE ASKED YOU AND SUGGESTED TO YOU THAT YOU TALK TO YOUR ATTORNEY, YOUR FAMILY, OR ANYONE ELSE THAT MIGHT HELP YOU, BUT THE FINAL DECISION WILL BE

LEFT ENTIRELY TO YOU.

DO YOU UNDERSTAND THAT?

THE DEFENDANT: YES, SIR.

THE COURT: DO YOU UNDERSTAND WHAT I'VE EXPLAINED TO YOU?

THE DEFENDANT: YES, SIR.

THE COURT: DO YOU HAVE ANY QUESTIONS ABOUT WHAT I'VE EXPLAINED TO YOU?

THE DEFENDANT: NO, SIR.

THE COURT: HAVE YOU DISCUSSED WITH YOUR LAWYER WHETHER YOU SHOULD OR SHOULD NOT TESTIFY?

THE DEFENDANT: YES, SIR.

THE COURT: DO YOU WISH TO TALK TO YOUR LAWYER ANY MORE AT THIS TIME?

THE DEFENDANT: NO, SIR.

THE COURT: ALL RIGHT. NOW, MR. SMITH, DO YOU WISH TO TESTIFY IN THIS CASE?

THE DEFENDANT: NO, SIR.

THE COURT: ALL RIGHT. SO YOU WAIVE YOUR RIGHT TO TESTIFY?

THE DEFENDANT: YES, SIR.

THE COURT: I'LL INSTRUCT, AS I SAY -- IN FACT, I'LL INSTRUCT THE JURY TWICE: FIRST I WILL TELL THEM AT THE TIME THAT THE DEFENSE CLOSES THAT THEY CANNOT CONSIDER THE FACT THAT YOU EXERCISED YOUR RIGHT

NOT TO TESTIFY, IT IS NOT TO BE HELD AGAINST YOU IN ANY WAY, AND I'LL INSTRUCT THEM MORE FULLY DURING THE CHARGE ON THE LAW IN THE CASE. ANY QUESTIONS?

THE DEFENDANT: NO, SIR.

THE COURT: VERY GOOD. THANK YOU, SIR, YOU MAY BE SEATED.

ANYTHING ELSE FROM THE DEFENSE?

MR. GAMBLE: NO, YOUR HONOR.

THE COURT: NOW, DOES THE DEFENSE -- WILL THE DEFENSE HAVE ANY CASE?

MR. GAMBLE: NO, YOUR HONOR, WE REST.

THE COURT: ALL RIGHT. AND THE REASON I ASKED, OF COURSE, THE STATE -- THE DEFENSE, HAVING NOT PRESENTED ANY TESTIMONY OR EVIDENCE, THE DEFENSE WILL HAVE THE RIGHT TO CLOSE.

MR. CAMPBELL: THAT'S MY UNDERSTANDING.

THE COURT: VERY GOOD. ALL RIGHT. SO WHAT I WILL DO IS TO BRING THE JURY OUT, I'LL CALL ON MR. GAMBLE, HE WILL ANNOUNCE THAT HIS DEFENSE RESTS, THEN I'LL EXPLAIN TO THE JURY ABOUT THE DEFENDANT'S RIGHT NOT TO TESTIFY, AND THEN WE WILL HAVE CLOSING ARGUMENTS.

IS THE STATE READY TO PROCEED?

MR. CAMPBELL: YES, YOUR HONOR.

THE COURT: IS THE DEFENSE READY?

MR. GAMBLE: READY, YOUR HONOR.

THE COURT: OH, LET'S SEE. JUST BRIEFLY, I HAVEN'T GOTTEN ANY REQUESTS FOR CHARGES, BUT LET ME GO OVER WHAT I PUT TOGETHER.

WE HAVE HAD EXPERT WITNESSES -- OR WITNESS.

I DON'T KNOW IF WE HAVE THE CAUSATION OF, MOST PROBABLE HERE AS FAR AS -- WELL, I'LL GO AHEAD AND CHARGE THAT AS FAR AS CAUSATION OF DEATH.

PRESUMPTION OF INNOCENCE.

DIRECT AND CIRCUMSTANTIAL EVIDENCE.

CRIMINAL INTENT.

THE FACT THAT NO PRESUMPTION OR INFERENCE OF GUILT MAY BE BASED ON THE FACT THAT HE WAS ARRESTED, CHARGED, AND INDICTED.

THE DEFINITION OF MURDER, AS WELL AS EXPRESSED OR INFERRED MALICE.

ALL RIGHT. AND, OF COURSE, THE STATE MUST PROVE THAT THE DEATH OF THE VICTIM WAS PROXIMATELY CAUSED BY THE MALICIOUS ACT OR ACTS OF THE DEFENDANT.

AND THEN PROXIMATE CAUSE IN THE DEATH OF THE DEFENDANT.

POSSESSION OF A FIREARM THROUGH THE COMMISSION OF A CRIME IS TO BE SECTION 16-23-490, AS WELL AS WHAT A FIREARM MEANS.

IDENTIFICATION. SINCE QUESTIONS HAVE BEEN

MADE AS TO IDENTIFICATION, A CHARGE ON WHAT'S NECESSARY TO, WHAT THEY SHOULD CONSIDER IN CONSIDERING TESTIMONY HAVING TO DO WITH IDENTIFICATION.

I'M ALSO GOING TO CHARGE MERE PRESENCE. ALTHOUGH THERE HAS BEEN TESTIMONY THAT THE DEFENDANT WAS THERE, NOT ALL THE WITNESSES COULD SAY THAT HE WAS THE ONE THAT ACTUALLY DID ANYTHING.

AND THAT'S ABOUT IT.

ANYTHING ELSE FROM THE STATE?

MR. CAMPBELL: NOTHING FROM THE STATE, YOUR HONOR.

THE COURT: ANYTHING FROM THE DEFENSE?

MR. GAMBLE: I CAN'T THINK OF ANYTHING ELSE, YOUR HONOR.

THE COURT: ALL RIGHT. WE DON'T HAVE ALIBI AND WE DON'T HAVE SELF-DEFENSE.

MR. GAMBLE: NO.

THE COURT: ALL RIGHT.

MR. GAMBLE: WHAT WE'RE DOING IS TOTAL DENIAL THAT HE WAS THE SHOOTER.

THE COURT: EXACTLY. IN OTHER WORDS, THE STATE HAS THE BURDEN OF PROOF AS TO ALL ELEMENTS OF THE OFFENSES; THE PRIMARY OR THE MOST CRITICAL ONE IS IF THERE WAS AN UNLAWFUL DEATH, THAT THE DEFENDANT IS THE ONE THAT CAUSED THAT DEATH, NOT SOMEONE ELSE OR ANYTHING

ELSE.

MR. GAMBLE: RIGHT.

THE COURT: ALL RIGHT. ANYTHING ELSE BEFORE WE BRING THE JURY IN, FROM THE STATE?

MR. CAMPBELL: NO, YOUR HONOR.

THE COURT: FROM THE DEFENSE?

MR. GAMBLE: NO, YOUR HONOR.

THE COURT: ASK THE JURY TO JOIN US, PLEASE.

(WHEREUPON, THE JURY ENTERED THE COURTROOM AT 9:44 A.M.)

THE COURT: LET THE RECORD REFLECT THAT THE JURY AND ALTERNATE ARE IN THE JURY-BOX.

MADAM FORELADY, LADIES AND GENTLEMEN OF THE JURY, AT THE CLOSE OF THE CASE YESTERDAY, THE STATE RESTED.

IS THAT CORRECT, MR. SOLICITOR?

MR. CAMPBELL: THAT'S CORRECT, YOUR HONOR.

THE COURT: VERY GOOD.

WE WILL NOW, MR. GAMBLE ---

MR. GAMBLE: THE DEFENSE RESTS, YOUR HONOR.

THE COURT: AND THE DEFENSE RESTS.

NOW, ONE THING I NEED TO EMPHASIZE AND MAKE SURE THAT YOU UNDERSTAND. THE LAW DOES NOT COMPEL A DEFENDANT IN A CRIMINAL CASE TO TAKE THE WITNESS STAND AND TESTIFY, AND NO PRESUMPTION OF GUILT MAY BE RAISED

AND NO INFERENCE OF ANY KIND MAY BE DRAWN FROM THE DEFENDANT'S DECISION NOT TO TESTIFY. THE LAW NEVER IMPOSES UPON A DEFENDANT IN A CRIMINAL CASE THE BURDEN OR DUTY OF CALLING ANY WITNESSES OR PRODUCING ANY EVIDENCE OR OF TESTIFYING. HE IS PRESUMED TO BE INNOCENT.

ALL RIGHT. WITH THAT, WE WILL NOW ENTER THE FINAL STAGES OF THE TRIAL, WHICH WILL BE FINAL ARGUMENT BY COUNSEL. THE STATE WILL GO FIRST, AND THEN THE DEFENSE WILL CLOSE, FOLLOWING THE ARGUMENT BY COUNSEL. THEN I WILL CHARGE YOU ON THE LAW APPLICABLE TO THIS CASE.

I RECOGNIZE MR. CAMPBELL FOR HIS FINAL ARGUMENT.

MR. CAMPBELL: THANK YOU, YOUR HONOR, LADIES AND GENTLEMEN OF THE JURY, MR. GAMBLE.

CLOSING ARGUMENT ON BEHALF OF THE STATE:

MR. CAMPBELL: LADIES AND GENTLEMEN OF THE JURY, THE TRUTH HAS A WAY OF SEEPING TO THE SURFACE. YOU CAN MUDDY THE ISSUES, CLOUD IT UP. BUT WHEN EVERYTHING CLEARS, WHAT YOU ARE LEFT WITH IS THE TRUTH.

IT'S KIND OF LIKE AN ANALOGY MY GRANDDADDY USED TO GIVE ME. IT'S LIKE PUTTING PERFUME ON A HOG OR A PIG. YOU CAN TRY TO DISGUISE IT, PUT THAT SMELL-GOOD COLOGNE ON THERE, BUT WHAT YOU ARE LEFT WITH IS STILL A

PIG. AND WHEN ALL THE SMOKE CLEARS, WHAT WE ARE STILL LEFT WITH IS THE TRUTH, THE TRUTH YOU HEARD FROM THE STAND.

AS I TOLD YOU AT THE BEGINNING OF THIS TRIAL, YOU WEREN'T GONNA HEAR FROM PILLARS OF THE COMMUNITY. THE STATE DOES NOT PICK WHO WE WANT TO PUT ON THAT STAND. IF THERE WAS, WE WOULD HAVE THE PREACHER ON THERE, THE BOY SCOUT LEADER, AND THE MAYOR, I WOULD HAVE THEM SITTING UP THERE AND TESTIFYING.

BUT THOSE TYPE OF PEOPLE DON'T GO DOWN TO BOLDEN'S OLD SCHOOL LOUNGE LATE ON A SATURDAY NIGHT. THE KIND OF PEOPLE THAT HANG OUT THERE ARE ONES WITH RECORDS. AND I TOLD YOU UP FRONT YOU WERE GONNA HEAR FROM THESE PEOPLE. YOU MAY NOT LIKE THEM. THEY ALL HAD PROBLEMS WITH THE LAW, THEY'VE BEEN ON PROBATION, DONE PRISON TIME.

LIKE I SAID, WE DON'T PICK WHO WE WANT, BUT WE PUT THEM UP THERE, GOOD, BAD OR INDIFFERENT, WHETHER THEY HURT US OR NOT, SO YOU AS THE FACT-FINDERS CAN DETERMINE FOR YOURSELF AND HEAR FOR YOURSELF AND DECIDE FOR YOURSELF WHAT THE TRUTH IS.

NOW, THINGS WE GET TO IN THIS CASE. MR. GAMBLE DID A GREAT JOB OF TRYING TO GET MY WITNESSES CONFUSED, GOT THEM SPUN AROUND, LEFT OR RIGHT. HIT ON THE ISSUES ON HOW DID THE GUN GET THERE, HOW MANY

STATEMENTS DID YOU GIVE. THAT'S ALL THAT PERFUME I'M TALKING ABOUT, THAT'S CLOUDING THE ISSUES RIGHT THERE.

BUT WHAT THEY CAN'T GET AROUND ARE THINGS THEY TRY TO COVER UP OR TRY TO DIVERT YOUR ATTENTION FROM IS THREE THINGS. ONE IS, FIVE TO SIX PEOPLE IDENTIFIED JWAN SMITH, THIS MAN RIGHT HERE, AS THE MAN WHO PULLED THE TRIGGER OF THE GUN THAT SHOT AND KILLED SAMMY MARTIN.

NO ONE ELSE -- AND DETECTIVE REEVES' INVESTIGATION OF 14 AND A HALF MONTHS, NO OTHER NAME HAS COME UP SINCE THAT TIME AS ANYBODY ELSE AS THE SHOOTER OTHER THAN JWAN SMITH, WHO IS KNOWN AS BUSTER.

WHAT ELSE CAN'T THEY GET AROUND? THAT JWAN SMITH TOLD ALPHONSO HAILEY THE NEXT DAY THAT HE DID IT. THIS AIN'T TALKING TO THE POLICE, THIS IS TALKING TO A FRIEND HE KNOWS, SOMEBODY HE SEES EVERY OTHER DAY, AS HE TESTIFIED ON THE STAND. HE ADMITTED IT.

WHAT DID HE SAY? HE SAID, HE USED TO DO MY MOM THAT WAY. THIS MAN MAY NOT HAVE BEEN A SAINT, AND HE MAY HAVE BEEN DRUNK THAT NIGHT AND HE WAS DOWN THERE FUSSING OR FIGHTING, WHATEVER THE DEFINITION THESE PEOPLE USED TO DETERMINE WHAT WAS GOING ON BETWEEN SAMMY AND ANGELA BROWNLEE, OR SALLY, BUT HE DIDN'T DESERVE TO DIE FOR THAT. THERE WAS OTHER WAYS THAT COULD HAVE BEEN HANDLED.

THE THIRD THING THEY CAN'T GET AROUND, YOU NOTICE THEY DIDN'T TRY TO BRING IT UP, WAS WHERE WAS MR. SMITH FOUND? HE WAS FOUND IN FLORIDA, TWO STATES AWAY. HE LEFT RIGHT AFTER THE FACT. WHY ALL OF A SUDDEN WOULD HE WANT TO LEAVE RIGHT THEN? WAS HE GOING DOWN TO DISNEY WORLD TO HAVE A LITTLE VACATION?

HE HAS CONNECTIONS DOWN THERE. HIS OLDEST BROTHER'S DAD LIVES DOWN THERE, HIS OLDEST'S BROTHER'S REAL BROTHER LIVES DOWN THERE. AND AS DETECTIVE REEVES TOLD YOU ON THE STAND, THAT'S HOW WE TRACKED HIM. WE PUT HIM IN THAT SYSTEM, THAT CRIMINAL DATABASE. THEY DID SURVEILLANCE DOWN THERE, AND SURE ENOUGH, THAT'S WHERE HE WAS.

NOW, WHEN WE PREPARE A CASE AS A PROSECUTOR, WE GO AND PRESENT THE EVIDENCE AND WE ALSO TRY TO THINK OF WHAT THE DEFENSE WOULD COME UP WITH TO TRY AND SAY THAT HE IS NOT GUILTY OF THIS CRIME. WE COULD ONLY THINK ABOUT FOUR OF THEM. ONE OF THEM WAS SELF-DEFENSE, WHICH WE KNOW THAT'S NOT THE CASE. ALL THE WITNESSES TESTIFIED THERE WAS NO CONFLICT BETWEEN MR. SMITH AND MR. MARTIN.

IN FACT, DETECTIVE REEVES, EVEN AFTER HE WAS ARRESTED, WENT BACK IN HIS INVESTIGATION AND SAID THERE'S NO DOCUMENTED REPORT OF ANY CONFLICT BETWEEN THESE TWO INDIVIDUALS.

WELL, IT'S NOT SELF-DEFENSE. WAS IT DEFENSE OF OTHERS? THERE IS TESTIMONY AT NO POINT NOBODY AT THAT PLACE JUMPED IN BETWEEN MS. BROWNLEE AND MR. MARTIN DURING THEIR FUSSING OR ARGUMENT. SO HE DIDN'T PLAY THE WHITE KNIGHT AND GO TO HER RESCUE.

THE THIRD THING THEY TRIED TO SHOW YOU IS THAT, WELL, I WASN'T THERE. WE KNOW THAT'S NOT THE CASE. FIVE OR SIX DIFFERENT PEOPLE, PEOPLE WHO ARE NOT RELATED TO ONE ANOTHER OR HAD ANY INVOLVEMENT, STATED HE WAS HERE, HE WAS THERE, HE DID THE SHOOTING.

WELL, THEN IT COMES DOWN TO ANOTHER DEFENSE: WELL, IT WASN'T ME; IT WAS SOME OTHER DUDE THAT DID IT. WELL, THE PROBLEM HE HAS WITH THAT, IS NO OTHER NAME HAS COME UP. IN THE 14 AND A HALF MONTHS THIS CASE HAS BEEN GOING ON, NO OTHER NAME BUT BUSTER, JWAN SMITH, HAS BEEN SHOWN TO BE THE SHOOTER IN THIS CASE.

WHAT DOES THAT LEAVE? HE DID IT. FOR WHATEVER REASON, OR WHY, THE ONLY PERSON WHO KNOWS WHY IS HIM. BUT HE DID IT.

NOW, WHEN MY WITNESSES TOOK THE STAND, WHEN WE PUT THEM UP THERE, MR. GAMBLE CROSS-EXAMINED THEM, HE DID QUITE WELL, I THOUGHT IT WAS QUITE HUMOROUS, SOME OF THE THEATRICS THAT WENT ON. BUT ONE OF THE THINGS THAT WAS CONSISTENT IN THE ENTIRE THING, IN WHAT THE PEOPLE SAID, WERE SEVERAL POINTS. IN FACT, I HAD TO LIST THEM

DOWN.

ONE IS, MR. SMITH ASKED FOR THE GUN AFTER HE WAS TOLD THAT MS. BROWNLEE AND MR. MARTIN WERE OUT THERE ARGUING AND FUSSING IN THE PARKING LOT. HE ASKED FOR THE GUN. ALL THE WITNESSES DESCRIBED THE SHOOTER AS A YOUNG, SHORT BLACK MALE WITH DREADS OR PLATS, WEARING A BLACK JACKET. THERE'S ONLY BEEN ONE PERSON, THERE'S ONLY BEEN ONE DISCREPANCY, SAID IT WAS RED.

EVERYBODY HAS SAID HE CAME AROUND FROM THE BACKSIDE OF THE BUILDING, ON THAT CREEK SIDE. NOW, HE WAS CLOSE TO THE SHOOTER WHEN IT HAPPENED. EVERYBODY SAID THERE WAS NO CONVERSATION BETWEEN THE TWO WHEN HE WALKED UP TO HIM AND SHOT HIM. THEY ALL STATED THERE WERE THREE SHOTS THAT WERE FIRED.

EVERYONE STATES THAT IT IS A SILVER REVOLVER WITH A LONG BARREL. THERE HAS BEEN TESTIMONY OF A .38 AND .357, WHICH, IN FACT, THE S.L.E.D. EVIDENCE CONFIRMS. YOU HEARD DR. WARD SAID IT WAS MEDIUM CALIBER BULLET THAT HE WOULD CLASSIFY AS A .38 OR .357, AND SURE ENOUGH, WHEN HE WENT DOWN TO S.L.E.D., IT WAS DETERMINED THAT THE SAME KIND OF WEAPON WAS USED: A .38 SPECIAL WITH A .357 MAGNUM-CALIBER CARTRIDGE. ONE OF THE WITNESSES IDENTIFIED, IT WAS TORREY PEARSON, IT WAS A ROSSI GUN, AND SURE ENOUGH, ROSSI IS THE ONE WHO MAKES THAT GUN.

HE SAID THERE WERE THREE SHOTS AND AFTER THAT HE LEFT THE SCENE. AND YOU HEARD THE TESTIMONY AND I'M SURE YOU CAN IMAGINE WHAT WAS GOING ON. PEOPLE WERE SCATTERING AROUND LIKE COCKROACHES WHEN YOU FLIP THE LIGHT ON IN A ROOM. THAT'S WHAT FRED CHILES SAW; HE SAW THEM RUNNING AROUND. WHEN HE SAW THAT BLACK JEEP LEAVE, HE ASSUMED THAT THE DEFENDANT GOT INTO THE CAR BECAUSE OF THE WAY EVERYBODY WAS SCATTERING.

THE POINT IS HE LEFT, AND HE TOOK OFF. HE WASN'T STICKING AROUND, NOBODY ELSE WAS STICKING AROUND. AND THE ONE NAME THAT SURFACED THAT NIGHT AND HAS ALWAYS SURFACED HAS BEEN BUSTER.

THE TWO SHOTS THAT KILLED MR. MARTIN, THEY ALL CAME FROM THE LEFT SIDE, THE LEFT SIDE GOING DOWNWARD. THAT'S CONSISTENT WITH MR. MARTIN HELPING MS. BROWNLEE IN HER CAR. THE FUSSING AND FIGHTING WERE OVER WITH. THEY WERE NOW TURNING THEIR ATTENTION TO TRYING TO GET HER CAR STARTED.

WHEN HE WAS SHOT, I WOULD CONTEND THE FIRST SHOT WAS IN THE CHEST. YOU HEARD MR. GAMBLE SAY, WELL, IF HE WAS UP THIS HIGH, HOW DID HE SHOOT DOWN AT THAT ANGLE? IT'S BECAUSE HE'S ALREADY STARTING TO FALL. THE SECOND ONE HITS HIM RIGHT HERE AND COMES OUT. THAT'S WHERE YOU GET THAT UPWARDS AND DOWNWARDS SHOT FROM. HE'S ALREADY FIXING TO HIT THE GROUND, DEAD AT THE

SCENE.

THE WITNESSES TESTIFIED HE HAS RELATIONSHIPS WITH FLORIDA. LET'S TAKE A CLOSER LOOK AT WHAT WE HAVE HERE. WHO IS IDENTIFYING WHAT IN THIS CASE? (DRAWS ON BOARD.)

JWAN SMITH, BUSTER.

THE TESTIMONY OF THE WITNESSES YOU HEARD. YOU HEARD FROM FRED CHILES. FRED HAD BEEN DOWN THE ROAD BEFORE. IF THERE'S ANYBODY WHO KNOWS WHAT'S GOING ON IN THE SYSTEM, IT WAS HIM. HE WAS PRETTY WILD IN HIS TEENS, AS HE TOLD YOU; HE HAD A SLEW OF A RECORD AND HE HAD DONE HIS PRISON TIME. AND IF YOU ASK YOURSELF, WELL, DOES THE SYSTEM ACTUALLY WORK? WELL, IN THIS CASE MAYBE IT DID.

MR. CHILES, WITH A RECORD AND ALL, WAS THE ONLY PERSON THAT HELPED MS. BROWNLEE THAT NIGHT. EVERYBODY ELSE WAS SCATTERED AND TRYING TO GET OUT OF THERE. HE WAS THE ONLY PERSON THAT CAME OVER THERE AND TRIED TO HELP HER. THAT SAYS A LITTLE BIT ABOUT HIS CHARACTER, DOESN'T IT? HE'S A MAN WITH A PAST, BUT YET HE'S STILL TRYING TO HELP?

WHAT ELSE DOES IT SAY ABOUT HIS CHARACTER? THIS MAN, WHO HAD A LOT OF PREVIOUS EXPERIENCE WITH LAW ENFORCEMENT, HE VOLUNTARILY COMES BACK TO THE SCENE AFTER HE HELPS MS. BROWNLEE. HE DIDN'T HAVE TO DO THAT.

HE COULD HAVE LEFT JUST LIKE EVERYBODY ELSE, BUT HE DIDN'T, HE CAME BACK.

AND THAT'S HOW HE FIRST GOT THE NAME BUSTER, DETECTIVE REEVES, WHEN HE SPOKE TO HIM THAT NIGHT. THAT SAYS A LOT ABOUT HIM. HE HAD DONE SOME BAD THINGS IN HIS PAST, BUT HE HAS A GOOD CHARACTER. HE DIDN'T HAVE TO DO THAT.

WE'VE GOT THE GUN ISSUE. A SILVER GUN. WHO STATES IT WAS A SILVER GUN? YOU'VE GOT MICHAEL VANCE, YOU HAVE FRED CHILES WHO SAYS HE SAW IT. AND FRED WAS RIGHT CLOSE TO HIM, RIGHT NEXT TO HIM WHEN HE SAW IT, SAID I WAS AS CLOSE FROM ME TO YOU, THAT "WHEN HE FELL, HE WAS HITTING ME," WHEN MR. MARTIN FELL. I GOT A LOOK AT HIM. HE MIGHT NOT HAVE KNOWN HIM PERSONALLY, KNEW WHO HE WAS, BUT HE PICKED HIM OUT, PICKED HIM OUT OF HERE, AND HE PICKED HIM OUT OF A LINE-UP ABOUT SIX WEEKS LATER.

DO YOU KNOW WHAT HE SAW? JUST TAKE A LOOK AT THAT. THAT'S WHO IT IS.

BASSEN HAILEY SAYS IT WAS A SILVER GUN. HE OWNED IT PREVIOUSLY. A LONG BARREL.

WHO ELSE SAW IT? JAMES PICKENS. THOUGH IT WAS PAINFUL FOR HIM TO TESTIFY, IT WAS PAINFUL FOR MOST OF THEM. MOST OF THEM WERE SCARED AND NERVOUS. AND THEY HAVE A RIGHT TO BE. THEY ARE IN A PLACE THEY'RE

NOT SUPPOSED TO BE; THEY'RE ON PROBATION, THEY MIGHT GET REVOKED. THEY HAVE THEIR KIN FOLKS, THEIR RELATIVES THAT WERE GETTING INVOLVED. THEY DON'T WANT TO BE KNOWN AS A SNITCH OR A TATTLETALE ON THE STREET. NONE OF THEM WANT TO BE INVOLVED.

YOU HAVE ALPHONSO HAILEY. ALL POINTING THAT JWAN SMITH HAD THE GUN.

YOU HAD HIM IN A BLACK JACKET. WHO STATED THAT? YOU HAVE FRED CHILES, BASSEN HAILEY, JAMES PICKENS, TORREY PEARSON, ALPHONSO HAILEY, ALL STATE THE DEFENDANT WAS WEARING A BLACK JACKET.

WHO SAID HE DID THE SHOOTING? YOU HAVE FRED CHILES WHO POINT BLANK SAW HIM, BASSEN HAILEY SAW HIM. EVEN FROM THIS DISTANCE, YOU SAW HOW TALL HE WAS. HE CAN SEE OVER THINGS. HE SAW WHAT IT WAS. THEY WERE ON THAT CONCRETE AREA.

JAMES PICKENS SAW IT, EVEN THOUGH HE DIDN'T WANT TO COME OUT AND SAY IT. SOMETHING MUST HAVE HAPPENED TO HIM. BECAUSE HE GAVE THREE STATEMENTS AND THEY WERE ALL INCONSISTENT. THEN ALL OF A SUDDEN HE GETS UP HERE: I WANT TO DENY EVERYTHING. DENY, DENY, DENY. IS THAT MY WAY OF TRYING TO CURL INTO MY SHELL AND HIDING FROM IT? HE WAS SCARED FOR SOME REASON.

WHO ELSE SAID HE DID THE SHOOTING? TORREY PEARSON. AND, YOU KNOW, HE WAS EMBARRASSED ABOUT THAT

BECAUSE HE WAS THE ONE THAT GAVE HIM THE GUN. AND HE TOLD YOU, HE SAID, YEAH, I SOLD HIM SOME WEED. MR. GAMBLE ASKED HIM, WELL, DOES IT MAKE SENSE YOU GAVE HIM THE PISTOL, THE GUN? HE WAS STRAIGHT WITH HIM. HE TOLD HIM NO, IT DIDN'T MAKE SENSE. AND IT DIDN'T.

ALPHONSO HAILEY INDICATED JWAN SMITH.

TALKED ABOUT WHO GAVE THE GUN TO BUSTER. TORREY PEARSON ADMITTED, YES, I WAS THE ONE WHO GAVE IT TO HIM. BASSEN HAILEY SAW HIM GIVE IT TO HIM. ALPHONSO HAILEY. THEY ALL SAW HIM GIVE IT TO HIM PRIOR TO THE SHOOTING.

AND THEN A PERSON THEY HAVE A PROBLEM TRYING TO GET AROUND IS MR. ALPHONSO HAILEY. MR. HAILEY, AS HE TOLD YOU, AND YOU HEARD HIS TESTIMONY, IS HANDICAPPED, DISABLED, HAD A BRAIN INJURY. AND YOU SAW HIM ON THE STAND. HE WAS KIND OF SLOW AND METHODICAL THE WAY HE WENT THROUGH IT. HE WASN'T TRYING TO THINK AHEAD AND TRYING TO OUT-TRICK MYSELF OR MR. GAMBLE IN HIS QUESTIONS, THROUGH HIS ANSWERS. HE JUST TOLD IT TO YOU LIKE IT WAS.

AND I THINK MR. GAMBLE KNOWS -- HE'S DONE BUNCHES OF THESE -- IS THE FACT THAT WHEN HE TOLD HIM WHAT MR. SMITH HAD SAID TO HIM, HE DID THE SHOOTING, YOU HEARD IT OVER HERE, CRUMPLING THE PAPERS, KICKING THE BOX. TRYING TO DRAW YOUR ATTENTION. THAT'S THAT

PERFUME I WAS TELLING YOU ABOUT, TRYING TO COVER IT UP, TRYING TO DRAW YOUR ATTENTION FROM THE FACT THAT HIS CLIENT ADMITTED IT. THE FACT THAT THERE ARE TWO BROTHERS AND A COUSIN DOESN'T MATTER. YOU STILL GOT OTHER WITNESSES THAT SAW WHAT HAPPENED. AND JUST BECAUSE THE FACT THAT THEY ARE RELATIVES OR RELATED TO ONE ANOTHER AND THEY HAVE RECORDS DOES NOT CHANGE THE FACT OF WHAT THEY SAW THAT NIGHT.

NOW, WHEN I OPENED UP THIS CASE, I BRIEFLY EXPLAINED TO YOU WHAT MURDER WAS. MURDER IS THE KILLING OF ANOTHER HUMAN BEING WITH MALICE AFORETHOUGHT. THE JUDGE IS GONNA CHARGE YOU ON WHAT THE LAW IS. YOU ARE THE FACT-FINDERS IN THE CASE. YOU ALL DECIDE THE GUILT OR INNOCENCE, THAT'S IT: DID HE OR DID HE NOT DO IT?

AS I TOLD YOU, MALICE, BASICALLY ILL WILL, EVIL HEART, EVIL INTENT, HATRED. THAT PERSON MEANT TO DO IT AT THE TIME OF THE ACT AND THE ACT WAS NOT JUSTIFIED; NOR WAS THERE ANY EXCUSE, WHICH IS IF SOMEBODY COMES INTO MY HOUSE AND ATTACKS ME, I HAVE A RIGHT TO DEFEND MYSELF. IT WASN'T THAT.

AND THEN THERE WAS NO TIME LIMIT ON THIS. IT HAD TO HAPPEN IN THE SPLIT SECOND. JUST WHEN THE ACT WAS COMMITTED, BEFORE OR DURING THE TIME THE ACT WAS COMMITTED, THAT'S ALL THAT'S NEEDED. IT CAN BE EXPRESSED OR IMPLIED. MALICE CAN BE EXPRESSED OR

IMPLIED. EXPRESSED: "I'M GOING TO KILL YOU." YOU SAY IT. IMPLIED: YOU POINT A GUN AT THE PERSON.

NOW, THE TWO GO HAND IN HAND. WHEN YOU LOOK AT YOUR INDICTMENTS WHEN YOU GO BACK THERE, THE FIRST COUNT YOU NEED TO DECIDE IS MURDER, BECAUSE POSSESSION OF FIREARM DURING COMMISSION OF VIOLENT CRIME GOES HAND IN HAND IN MURDER, SO IF YOU FIND HIM GUILTY OF MURDER, YOU MUST FIND HIM GUILTY OF POSSESSION OF A FIREARM BECAUSE THAT'S HOW IT WAS COMMITTED.

THERE IS NO DOUBT IN THIS CASE THAT HE WAS KILLED BY A WEAPON, A PISTOL. BULLETS WERE PULLED FROM HIS BODY. YOU HEARD THE TESTIMONY AND MEDICAL RECORDS. DR. WARD TESTIFIED TO THAT BECAUSE HE'S THE ONE THAT DID THE AUTOPSY. THAT'S THE MANNER OF DEATH THAT HE DIED, FROM A HOMICIDE. THE QUESTION THAT COMES DOWN TO YOU ALL IS: DID HE DO IT? THAT IS IT.

THE STATE HAS THE BURDEN OF PROOF IN THIS CASE. WE HAVE TO PROVE IT TO YOU BEYOND A REASONABLE DOUBT. THE JUDGE TOLD YOU WHAT A REASONABLE DOUBT WAS AT THE BEGINNING OF THE TRIAL. IT'S A DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT.

I STATE IT TO YOU LIKE THIS. IF YOU DO NOT HAVE A REASONABLE DOUBT AS TO THE GUILT OF JWAN SMITH, THEN CONVICT HIM; IF YOU DO HAVE A REASONABLE DOUBT, THEN ACQUIT HIM. THAT'S IT.

LADIES AND GENTLEMEN, I'M GONNA STOP, I'M NOT GONNA BELABOR ON WITH THIS. Y'ALL HAVE HEARD THE EACTS. MR. MARTIN DIDN'T DESERVE TO DIE THE WAY HE DID. NOBODY APPOINTED MR. SMITH AS JUDGE AND EXECUTIONER IN THIS CASE.

YOU HAVE HEARD THE FACTS. YOU WILL HAVE THE OPPORTUNITY TO SEE THE PICTURES THAT ARE INVOLVED IN THIS CASE, REVIEW THE S.L.E.D. EVIDENCE, SOME OF THE INVESTIGATION DETECTIVE REEVES HAS DONE. ALL POINTS, EVERYTHING POINTS IN ONE DIRECTION: THEY POINT RIGHT THERE, TO THE MAN IN THE BLUE SHIRT.

LADIES AND GENTLEMEN, I ASK YOU TO BRING BACK A VERDICT THAT THE TRUTH DICTATES AND JUSTICE PREVAILS, AND THAT IS THAT JWAN SMITH IS GUILTY FOR THE MURDER OF SAMMY MARTIN ON FEBRUARY 25TH, 2006.

THE COURT: MR. GAMBLE?

MR. GAMBLE: MAY IT PLEASE THE COURT.

CLOSING ARGUMENT ON BEHALF OF DEFENDANT:

MR. GAMBLE: I'M A GREAT BELIEVER IN FINDING OUT WHAT IS THE TRUTH, AND THAT'S WHY SOMETIMES WHEN I GET UPSET, IT IS BECAUSE I FOUND THAT SOMEBODY IS NOT TELLING ME THE TRUTH. WHEN A MAN SAYS THAT HE WAS ON THE LEFT SIDE OR THE RIGHT SIDE, BUT HE DOESN'T KNOW HIS RIGHT FROM HIS LEFT, THEN I GET UPSET BECAUSE HE KEEPS MOVING AROUND AND THAT'S WHAT HAPPENED IN THIS CASE.

ANGELA BROWNLEE, WHO WAS CLOSEST TO SAMMY MARTIN WHEN HE WAS KILLED, HAD A BROWN-COLORED CAPRICE CHEVROLET PARKED AGAINST THE CREEK WAY OVER HERE. YOU WILL HAVE THIS IN THE JURY ROOM WITH YOU, STATE'S EXHIBIT 15. IT SHOWS YOU A PARKING LIGHT OF ANOTHER CAR, WHICH IS A TAURUS THAT WAS HERE. HER CAR WAS PULLED IN THIS WAY. (INDICATING.)

NOW, ALL OF YOUR OTHER WITNESSES, ACCORDING TO THE STATE'S TESTIMONY, WERE WAY OVER HERE IN THE CORNER AT THE DOOR OF THE OLD SCHOOL LOUNGE. THEY HAD TO SEE THROUGH THIS TAURUS TO SEE WHAT WENT ON, BECAUSE THIS MAN DIED INSTANTLY, AND HIS FEET WERE TOWARD THE MIDDLE OF THE TAURUS. THAT'S SIX AND 15. THOSE WERE TAKEN THE NIGHT THAT THIS EVENT OCCURRED.

NOW, YOU'VE GOT ONE, ONE ONLY, INDEPENDENT, NON-BIASED WITNESS; POSSIBLY TWO. ANGELA BROWNLEE SAID SHE DIDN'T SEE WHO SHOT SAMMY MARTIN. SHE WAS RIGHT THERE.

MICHAEL "SHOES" VANCE SAID HE SAW THE PERSON THAT SHOT SAMMY MARTIN, BUT HE WAS WEARING A RED JACKET AND HAD A SILVER-COLORED GUN.

FRED CHILES PULLED IN AT THE FRONT DOOR, HE TESTIFIED, OF THIS LOUNGE, WHICH IS WHERE THESE OTHER PEOPLE WERE STANDING, WHICH I'VE ALREADY SHOWN YOU, WAY BACK HERE, AND HE SAID THAT THE SHOOTER CAME FROM THAT

LOCATION AROUND THE TAURUS, GOT IN THE PASSENGER'S SIDE OF THE JEEP CHEROKEE, AND THEY IMMEDIATELY DROVE OFF.

WHO DROVE THE JEEP CHEROKEE? TURK PICKENS, WHO SAID HE DIDN'T WANT TO GET INVOLVED IN THIS MESS. HE DIDN'T HAVE ANYTHING TO DO WITH IT. HE HAD GIVEN STATEMENTS, BUT HE DENIED THEM ON THE STAND. HE'S FINALLY COMING CLEAN. HE'S NOT HIDING ANYTHING. HE JUST SAYS, I DON'T WANT ANYTHING TO DO WITH IT.

THE CRUX -- I ASKED INVESTIGATOR REEVES, I SAID, THE CRUX OF YOUR CASE IS THE HAILEY BROTHERS AND TORREY PEARSON, THEIR COUSIN, ISN'T IT? HE SAID YES.

SO NOW WHAT HAVE WE GOT? WE'VE GOT THE HAILEY BROTHERS, ALPHONSO AND BASSEN, SWEET, AND I DON'T KNOW WHAT ALPHONSO'S NICKNAME IS. BUT HE SAYS THAT HE AND TORREY PEARSON AND BASSEN AND CATFISH, CATFISH HAS GOTTEN LOST, WALKED DOWN TO THE OLD SCHOOL LOUNGE.

BASSEN HAILEY SAYS BUSTER CAME UP TO HIM AND SAID, MAN, YOU GOT ANY WEED? AND HE TOLD HIM NO.

BUT TORREY PEARSON SAID, YEAH, I SOLD HIM THE WEED FOR $10.00 WHILE THEY WERE STANDING TOGETHER. ALSO GAVE HIM A GUN? YOU THINK FOR ONE MINUTE, IN A SITUATION THAT THEY WERE IN, OR THE TYPE PEOPLE THEY WERE, THAT HE'S GONNA GIVE A GUN TO SOMEBODY, A .357 OF SOME MAKE? BUT HE SAYS, NO, I WAS CARRYING A .45, TORREY SAYS ON THE STAND, NO, I WAS CARRYING A .45.

BASSEN HAILEY SAYS, SOMEBODY GAVE ME THAT GUN, BUT I DON'T TOUCH GUNS BECAUSE I'M ON PROBATION. RIGHT. SO WAS EVERYBODY ELSE DOWN THERE. THE TRUTH AIN'T IN THEM, I'M TELLING YOU, IT'S NOT IN THEM, AND IT UPSETS ME.

BASSEN, AFTER THE SHOOTING, SAYS TORREY GOT IN THE PASSENGER'S SEAT. FRED CHILES SAYS THE SHOOTER GOT IN THE PASSENGER'S SEAT. MICHAEL VANCE SAID THE SHOOTER HAD ON A RED JACKET.

ALPHONSO HAILEY. NOW, HE PUT TOGETHER HIS OWN VERSION OF THE TRUTH, I GUESS. HE SAYS HE BOUGHT A BEER AND WAS STANDING INSIDE BUT HE COULD SEE TO THE RIGHT SIDE AND THE LEFT SIDE OF THIS CLUB, WHEN THE ONLY WOMAN OUT THERE WHO REALLY TOLD THE TRUTH THAT I KNOW OF WAS ANGELA, WHO SAID IT WAS TOO DARK, I COULDN'T SEE THE SHOOTER.

BUT, NO, FROM WAY OVER YONDER, WITH NOT MUCH LIGHT OUT THERE -- LOOK AT THE PICTURE, YOU WILL SEE THERE'S NOT MUCH LIGHT -- THESE THREE PEOPLE MADE UP THEIR STORY AND STUCK WITH IT. BUT THEIR BUDDY, FRED -- I MEAN PICKENS, TURK, WOULDN'T GO ALONG WITH IT UP HERE BECAUSE HE'S UNDER OATH. HE DOESN'T WANT TO. AND I DON'T SAY HE'S A SUNDAY SCHOOL TEACHER, EITHER.

TORREY PEARSON FIRST SAID THAT PEOPLE BLOCKED HIS VIEW AND THAT -- BUT HE'S ALL -- SMITH

WALKED DOWN FROM BOLDEN'S GARAGE AND I SOLD HIM $10.00 WORTH OF WEED. BUT BASSEN ASKED ME TO GIVE SMITH THE .357 ROSSI. RIGHT.

IT IS NOT THE TRUTH, AND IN ORDER TO CONVICT, YOU MUST HAVE THE TRUTH. WE DON'T HAVE IT IN THIS CASE. WE ONLY HAVE IT FROM PEARSON, HAILEY AND HAILEY. THEY MADE UP THEIR STORY AND THEY'RE STICKING WITH IT. BECAUSE THEY KNOW -- FRED CHILES SAYS THE SHOOTER GOT IN THE PASSENGER'S SEAT OF THE JEEP CHEROKEE AND THEY DROVE OUT OF THERE FAST. WHY? IF HE HADN'T DONE ANYTHING, WHY DID HE LEAVE? WHY MAKE IT UP? WHY BLAME IT ON BUSTER?

ONE OF TWO THINGS THE AUTOPSY TELLS US. EITHER ONE, THE SHOT WENT IN HIS NECK IN A DOWNWARD WAY. ONE, THE SHOOTER WAS A TALL PERSON, WITH THE GUN LIKE THIS (DEMONSTRATING). TWO, HE WAS ALREADY LEANING FORWARD. BUT THAT'S NOT WHAT IS TESTIFIED TO. THERE WERE THREE QUICK SHOTS, ONE AFTER THE OTHER.

NOW, IN A DOUBLE ACTION REVOLVER, WHICH A ROSSI .357 WOULD BE A DOUBLE ACTION REVOLVER, YOU JUST PULL THE TRIGGER, YOU DON'T HAVE TO COCK IT EVERY TIME. THREE QUICK SHOTS. THIS MAN WAS NOT FALLING DOWN WHEN HE WAS SHOT. HE WAS STANDING UP. HE WAS SHOT DOWNWARD HERE AND HERE. WHO'S TALL ENOUGH TO DO THAT? SMITH? NO. NO. YOU CAN LOOK AT HIM AND SEE HE'S NOT TALL.

BUT, AGAIN, INVESTIGATOR REEVES, THE CRUX OF THE STATE'S CASE IS COUSIN TORREY PEARSON AND THE BROTHERS HAILEY, ALL KIN. BLOOD IS THICKER THAN WATER. WE'LL STICK TO IT.

IF YOU HAVE A DOUBT THAT YOU CAN RESOLVE IN YOUR OWN MIND, AND IT IS A REASONABLE DOUBT, IF YOU HAVE A REASONABLE DOUBT, THEN THE ANSWER IS NOT GUILTY. YOU ARE NOT PUNISHING ANYBODY, YOU'RE NOT DOING ANYTHING, YOU ARE JUST SAYING, STATE, GET A BETTER CASE NEXT TIME YOU COME HERE. GET SOME PEOPLE WHO TELL THE TRUTH AND KNOW THE TRUTH. GET SOME GOOD PEOPLE TO COME IN.

I DON'T CARE IF THEY'VE GOT RECORDS OR NOT, BUT WHEN THEY GET ON THAT STAND, THEY'D BETTER TELL THE TRUTH AND KNOW THE DIFFERENCE BETWEEN RIGHT AND LEFT.

ANOTHER SITUATION THAT INTERESTS ME IS THEY SAY JWAN SMITH CAME UP IN A BROWN CAR, ONE DID. ONE SAID HE WALKED FROM BOLDEN'S GARAGE DOWN THERE. ONE SAID THAT AFTER THE SHOT WAS FIRED, HE RAN BEHIND THE BUILDING -- AND THIS IS TORREY -- SAID THE BROWN CAR CAME FROM BACK OF THE BUILDING AND THAT JWAN SMITH GOT INTO IT IN FRONT OF THE BUILDING.

NOW, WHY, IF YOU ARE IN THE BACK OF THE BUILDING, DON'T YOU GET INTO THE BROWN CAR BACK THERE AND RIDE IT AROUND? IT DOESN'T MAKE SENSE. THEY DIDN'T GET THEIR FACTS STRAIGHT. THE LITTLE FACTS. AND LITTLE

FACTS IS WHAT YOU QUESTION ON, NOT THE GREAT BIG OVERALL FACT.

BUT IT WAS TOO DARK, ACCORDING TO ANGELA. HE WAS BEHIND THE TAURUS, SAM MARTIN WAS, IN FRONT OF THE CAPRICE. BY THE WAY, IT'S AN INTERESTING THING, TOO. MS. BROWNLEE SAID SHE HAD THE HOOD UP. DO YOU THINK AFTER SAMMY WAS KILLED SHE CLOSED THE HOOD? I DON'T. I THINK THE HOOD WAS NEVER UP.

ANY WHO, YOU DON'T HAVE ENOUGH TO CONVICT. YOU'VE GOT A REASONABLE DOUBT, YOU GOT TO ACQUIT. THANK YOU.

THE COURT: ALL RIGHT, EVERYONE, IF YOU CAN'T STAY FOR THE CHARGE, CLOSE THE DOORS.

THE COURT'S CHARGE TO THE JURY:

MADAM FORELADY, LADIES AND GENTLEMEN OF THE JURY, AS JURORS IN THIS CASE YOU HAVE CERTAIN FUNCTIONS AND RESPONSIBILITIES TO PERFORM WHICH ARE ENTIRELY SEPARATE AND DISTINCT FROM MINE AS THE TRIAL JUDGE. AS I HAVE MENTIONED, I AM PROHIBITED BY THE CONSTITUTION OF OUR STATE FROM CHARGING YOU ON THE FACTS OF THIS CASE. I'M ALSO PROHIBITED FROM DISCUSSING THE FACTS OF THE CASE WITH YOU OR IN ANY WAY INTIMATING WHAT MY FEELINGS, IF ANY, ARE ABOUT THE FACTS OF THIS CASE.

IT IS YOUR RESPONSIBILITY AND YOURS ALONE TO

PASS UPON ALL ISSUES OF FACT PRESENTED IN THE CASE. I WOULD, THEREFORE, CHARGE YOU THAT IF DURING THE COURSE OF THE TRIAL OR DURING MY CHARGE YOU HAVE BEEN GIVEN OR LEFT WITH THE IMPRESSION OR FEELING THAT I DO HAVE A PERSONAL FEELING ABOUT THE FACTS OF THE CASE, I WOULD SPECIFICALLY INSTRUCT YOU TO DISABUSE AND DISREGARD THAT FEELING OR IMPRESSION.

MOREOVER, YOU ARE THE SOLE JUDGES OF THE TESTIMONY, OF WHAT THE TESTIMONY WAS AND NOT THE ARGUMENT OF COUNSEL. IT IS ALSO YOUR DUTY AND YOUR DUTY ALONE TO WEIGH THE TESTIMONY AND EVIDENCE IN THE CASE AND TO PASS UPON THE CREDIBILITY OR BELIEVABILITY OF THE WITNESSES.

IN THIS CONNECTION YOU HAVE THE RIGHT TO BELIEVE ALL THAT A WITNESS TELLS YOU OR TO DISBELIEVE ALL THAT A WITNESS TELLS YOU. YOU HAVE THE RIGHT TO BELIEVE A PART OF WHAT A WITNESS TELLS YOU AND TO DISBELIEVE A PART OF WHAT A WITNESS TELLS YOU. YOU HAVE THE RIGHT TO TAKE INTO CONSIDERATION BIAS OR PREJUDICE OR INTEREST YOU FEEL A WITNESS MIGHT HAVE IN THE CASE.

I SAY THIS MERELY TO EMPHASIZE THAT THE WEIGHT YOU SEE FIT TO GIVE TO THE TESTIMONY, TO THE CREDIBILITY OF THE WITNESSES, AS WELL AS ALL ISSUES OF FACT ARE FOR YOUR SOLE DETERMINATION.

AS JUDGES OF THE FACTS YOU ARE THE SOLE

JUDGES OF THE CREDIBILITY, THAT IS, THE BELIEVABILITY OF THE WITNESSES WHO HAVE TESTIFIED IN THIS CASE. IN PASSING UPON THAT CREDIBILITY YOU MAY TAKE INTO CONSIDERATION MANY THINGS, SUCH AS THE APPEARANCE AND MANNER OF THE WITNESS ON THE STAND, SOMETIMES REFERRED TO AS THE DEMEANOR OF THE WITNESS. WAS THE WITNESS FORTHRIGHT OR HESITANT? WAS THE WITNESS'S TESTIMONY CONSISTENT OR DID IT CONTAIN DISCREPANCIES? WHAT WAS THE ABILITY OF THE WITNESS TO KNOW THE FACTS ABOUT WHICH HE OR SHE TESTIFIED?

DID THE WITNESS HAVE A CAUSE OR A REASON TO BE BIASED AND PREJUDICED IN FAVOR OF THE TESTIMONY HE OR SHE GAVE? WAS THE TESTIMONY OF THE WITNESS CORROBORATED OR MADE STRONGER BY OTHER TESTIMONY AND EVIDENCE OR WAS IT MADE WEAKER OR IMPEACHED BY SUCH OTHER TESTIMONY AND EVIDENCE.

AS JURORS YOU HAVE THE RIGHT TO BELIEVE A SMALL PORTION OF A WITNESS'S TESTIMONY AND DISREGARD THE LARGER, OR VICE VERSA. YOU MAY BELIEVE ALL OF A WITNESS'S TESTIMONY OR NONE.

THE RULES OF EVIDENCE ORDINARILY DO NOT PERMIT WITNESSES TO TESTIFY TO OPINIONS OR CONCLUSIONS. AN EXCEPTION TO THIS RULE EXISTS WITH A WITNESS WE CALL EXPERT WITNESSES. A WITNESS WHO BY EDUCATION AND EXPERIENCE HAS BECOME AN EXPERT IN SOME ART, SCIENCE OR

PROFESSION MAY GIVE AN OPINION AS TO THE SUBJECT WHICH THE WITNESS CLAIMS TO BE AN EXPERT IN, AND THEY MAY ALSO GIVE THE REASON FOR THAT OPINION.

YOU SHOULD CONSIDER ANY EXPERT OPINION GIVEN BY A WITNESS, AND LIKE ANY OTHER EVIDENCE, GIVE IT THE WEIGHT YOU THINK IT DESERVES. IF YOU DECIDE THAT AN EXPERT WITNESS'S OPINION IS NOT BASED ON SUFFICIENT EVIDENCE OR SUFFICIENT EDUCATION AND EXPERIENCE, OR IF YOU DECIDE THAT THE REASONS GIVEN TO SUPPORT THEIR OPINION ARE NOT SOUND, OR THAT THEIR OPINION IS OUTWEIGHED BY OTHER EVIDENCE, YOU MAY DISREGARD THEIR OPINION ENTIRELY.

AN EXPERT WITNESS'S TESTIMONY IS TO BE GIVEN NO GREATER WEIGHT THAN ANY OTHER WITNESS'S SIMPLY BECAUSE THE WITNESS IS AN EXPERT, AND YOU DO NOT HAVE TO ACCEPT AN EXPERT'S OPINION EVEN THOUGH IT WAS UNCONTRADICTED.

THROUGHOUT THIS ENTIRE PROCESS YOU HAVE ONE SINGLE OBJECTIVE AND THAT IS TO SEEK THE TRUTH.

NOW, BY THE SAME CONSTITUTION AND LAW WHICH MAKES YOU THE FINDERS OF THE FACTS AND EVIDENCE, AS I DISCUSSED WITH YOU, I AM AS THE JUDGE MADE THE SOLE AND ONLY INSTRUCTOR OF THE LAW. YOU MUST ACCEPT AS CORRECT THE LAW WHICH I CHARGE AND APPLY TO IT THE EVIDENCE AS YOU FIND IT AND REACH A VERDICT.

IF I SHOULD MAKE AN ERROR ON THE LAW AS I INSTRUCT IT TO YOU, THERE IS ANOTHER TIME AND PLACE THAT ERROR CAN BE CONSIDERED AND, IF NECESSARY, CORRECTED, BUT FOR THE PURPOSES OF THIS CASE TODAY YOU MUST ACCEPT THE LAW AS I CHARGE IT TO YOU TO BE THE CORRECT LAW.

AND FINALLY I CHARGE YOU IN THIS REGARD, YOU, NOR FOR THAT MATTER I, SHOULD NOT BE CONCERNED WHAT THE LAW OUGHT TO BE, BUT RATHER WHAT I CHARGE YOU THE LAW TO BE.

NOW, THE DEFENDANT HAS PLED NOT GUILTY TO THIS INDICTMENT, BOTH COUNTS IN THE INDICTMENT. THAT PLEA PUTS THE BURDEN ON THE STATE TO PROVE THE DEFENDANT GUILTY. A PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF INNOCENT. I CHARGE YOU THAT IT IS AN IMPORTANT RULE OF THE LAW THAT THE DEFENDANT IN A CRIMINAL TRIAL, NO MATTER WHAT THE SERIOUSNESS OF THE CHARGE MAY BE, WILL ALWAYS BE PRESUMED TO BE INNOCENT OF THE CRIME FOR WHICH THE INDICTMENT WAS ISSUED UNLESS GUILT HAS BEEN PROVEN BY THE STATE WITH EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

THIS PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU BEGIN YOUR DELIBERATIONS, BUT IT ACCOMPANIES THE DEFENDANT THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT OF GUILT BASED UPON THE EVIDENCE SATISFYING YOU

OF THAT GUILT BEYOND A REASONABLE DOUBT.

PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF RIGHTEOUSNESS PLACED UPON THE SHOULDERS OF THE DEFENDANT WHICH REMAINS WITH THE DEFENDANT UNTIL IT HAS BEEN STRIPPED FROM THE DEFENDANT BY EVIDENCE SATISFYING YOU OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

PRESUMPTION OF INNOCENCE IS NOT A MERE LEGAL THEORY, IT'S NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED UNLESS YOU, THE JURY, ARE SATISFIED FROM THE EVIDENCE OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT. A REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT.

NOW, THERE ARE TWO TYPES OF EVIDENCE GENERALLY PRESENTED IN A TRIAL: DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN FACT TO BE PROVEN.

CIRCUMSTANTIAL EVIDENCE IS THE PROOF OF A CHAIN OF FACTS OR CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES COLLATERAL FACTS FROM WHICH THE MAIN FACT MAY BE INFERRED. CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE

AND NOT ON PERSONAL KNOWLEDGE OR OBSERVATION. IT IS PROOF THAT DOES NOT ACTUALLY ESTABLISH THE FACT IN QUESTION, BUT THAT ASSERTS OR DESCRIBES SOMETHING ELSE FROM WHICH YOU MAY EITHER REASONABLY INFER THE TRUTH OF THE FACT OR AT LEAST REASONABLY INFER AN INCREASE IN THE PROBABILITY THAT THE FACT IS TRUE.

FOR CIRCUMSTANTIAL EVIDENCE TO BE SUFFICIENT TO WARRANT THE FINDING OF A FACT, CIRCUMSTANCES MUST LEAD TO THAT FACT WITH REASONABLE CERTAINTY. THE FACTS AND CIRCUMSTANCES SHOULD BE CONSIDERED IN LIGHT OF ORDINARY EXPERIENCE AND COMMON SENSE. THE EXISTENCE OF A FACT CANNOT BE BASED ON SPECULATION, SURMISE OR CONJECTURE.

THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE, NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE.

FOR EXAMPLE, CRIMINAL INTENT IS A STATE OF MIND THAT OPERATES JOINTLY WITH AN ACT OR OMISSION IN THE COMMISSION OF A CRIME. CRIMINAL INTENT IS A MENTAL STATE. CRIMINAL LIABILITY IS NORMALLY BASED UPON THE CONCURRENCE OF TWO FACTORS: AN EVIL MEANING MIND AND AN EVIL DOING HAND. PROOF OF INTENT NECESSARILY RESTS ON INFERENCES FROM CONDUCT.

IN INDICTMENT NUMBER 2006-GS-04-1746, COUNT ONE, THE DEFENDANT, JWAN TYREE SMITH, IS CHARGED WITH MURDER. IN COUNT TWO OF THE SAME INDICTMENT THE DEFENDANT IS ALSO CHARGED WITH POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME. I REMIND YOU THAT THE FACT THAT THE DEFENDANT WAS ARRESTED, CHARGED AND INDICTED IN THIS CASE IS NOT EVIDENCE IN THIS CASE AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF GUILT IN THIS CASE, NOR DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF GUILT. THE INDICTMENT IS SIMPLY THE FORMAL WRITTEN INSTRUMENT WHICH CONTAINS THE CHARGE MADE AGAINST THE DEFENDANT. IT IS THE FORMAL DOCUMENT BY WHICH THE CASE IS BROUGHT INTO THIS COURT.

NOW, I INSTRUCT YOU AND EMPHASIZE THAT WHETHER THE DEFENDANT EXERCISES HIS ABSOLUTE CONSTITUTIONAL RIGHT NOT TO TAKE THE WITNESS STAND AND TESTIFY IS NOT A FACTOR TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATIONS AND IN YOUR CONSIDERATION ON THE QUESTION OF WHETHER THE STATE HAS PROVEN THE DEFENDANT IS GUILTY OF THE CHARGES IN THE INDICTMENTS OR IS TO BE FOUND NOT GUILTY. IT MUST NOT BE CONSIDERED BY YOU IN ANY MANNER WHATSOEVER. THE DEFENDANT HAS THE ABSOLUTE CONSTITUTIONAL RIGHT TO REMAIN SILENT, AND THAT ASSERTION OF THIS RIGHT MUST NOT BE CONSIDERED BY YOU IN YOUR DELIBERATIONS.

I REPEAT: UNDER YOUR OATH YOU ARE TO DRAW NO CONCLUSION WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN THIS CASE EXERCISED HIS CONSTITUTIONAL RIGHT NOT TO TESTIFY. THE FACT THAT THE DEFENDANT EXERCISED THIS RIGHT SHOULD NOT EVEN BE DISCUSSED IN THE JURY ROOM. THE BURDEN OF PROOF, AS I HAVE STATED TO YOU, IS ON THE STATE. THE DEFENDANT IS NOT REQUIRED TO PROVE HIS INNOCENCE. THE BURDEN OF PROOF REMAINS ON THE STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT.

NOW, THE DEFENDANT, JWAN TYREE SMITH, IS CHARGED WITH MURDER. TO PROVE MURDER THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THE DEFENDANT KILLED ANOTHER PERSON WITH MALICE AFORETHOUGHT. MALICE IS HATRED, ILL WILL OR HOSTILITY TOWARDS ANOTHER PERSON. IT IS THE INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE OR EXCUSE WITH AN INTENT TO INFLICT AN INJURY OR UNDER CIRCUMSTANCES THAT THE LAW WOULD INFER AN EVIL INTENT.

MALICE AFORETHOUGHT DOES NOT REQUIRE THAT THE MALICE EXISTS FOR ANY PARTICULAR TIME BEFORE THE ACT IS COMMITTED, BUT MALICE MUST EXIST IN THE MIND OF THE DEFENDANT JUST BEFORE AND AT THE TIME THE ACT IS COMMITTED. THEREFORE, THERE MUST BE A COMBINATION OF THE PREVIOUS EVIL INTENT AND THE ACT.

MALICE AFORETHOUGHT MAY BE EXPRESSED OR

INFERRED. THESE TERMS, EXPRESSED AND INFERRED, DO NOT MEAN DIFFERENT KINDS OF MALICE, BUT MERELY THE MANNER IN WHICH MALICE IS TO BE SHOWN TO EXIST, THAT IS, EITHER BY DIRECT EVIDENCE OR BY INFERENCE FROM THE FACTS OR CIRCUMSTANCES WHICH ARE PROVED.

EXPRESSED MALICE IS SHOWN WHEN A PERSON SPEAKS WORDS WHICH EXPRESS HATRED OR ILL WILL FOR ANOTHER, OR WHEN THE PERSON PREPARES BEFOREHAND TO DO THE ACT WHICH WAS LATER ACCOMPLISHED. FOR EXAMPLE, LYING IN WAIT FOR A PERSON, OR ANY OTHER ACTS OF PREPARATION GOING TO SHOW THE DEED WAS IN THE DEFENDANT'S MIND WOULD BE EXPRESSED MALICE.

MALICE MAY BE INFERRED FROM CONDUCT SHOWING A TOTAL DISREGARD FOR HUMAN LIFE. INFERRED MALICE MAY ALSO ARISE WHEN THE DEED IS DONE WITH A DEADLY WEAPON. A DEADLY WEAPON IS ANY ARTICLE, INSTRUMENT OR SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH OR GREAT BODILY HARM. WHETHER AN INSTRUMENT IS BEING USED AS A DEADLY WEAPON DEPENDS ON THE FACTS AND CIRCUMSTANCES OF EACH CASE.

THE FOLLOWING ARE EXAMPLES OF INSTRUMENTS WHICH MAY BE USED AS A DEADLY WEAPON: A PISTOL, A SHOTGUN, A RIFLE, A DIRK, A DAGGER, A KNIFE, A SLING SHOT, METAL KNUCKLES, A RAZOR, GASOLINE, FIRE BOMB OR MOLOTOV COCKTAIL, LIGHTER FLUID. A GUN MAY BE A DEADLY WEAPON EVEN IF IT IS NOT OPERATING.

FINALLY, THE STATE MUST PROVE THAT THE DEATH OF THE VICTIM WAS PROXIMATELY CAUSED BY THE MALICIOUS ACT OR ACTS OF THE DEFENDANT. PROXIMATE CAUSE IS THE DIRECT CAUSE, IT IS THE IMMEDIATE CAUSE, IT IS THE EFFICIENT CAUSE, IT IS THE CAUSE WITHOUT WHICH THE DEATH OF THE VICTIM WOULD NOT HAVE RESULTED. AND THERE MUST BE A CHAIN OF CAUSATION FROM THE TIME THE INJURY WAS INFLICTED BY THE DEFENDANT UNTIL THE TIME OF THE VICTIM'S DEATH.

PROXIMATE CAUSE DOES NOT NECESSARILY MEAN THAT THE DEATH OCCURRED IMMEDIATELY AFTER OR PRIOR OR THAT THE DEATH OCCURRED IMMEDIATELY -- EXCUSE ME. PROXIMATE CAUSE DOES NOT NECESSARILY MEAN THAT THE ACT OCCURRED IMMEDIATELY PRIOR TO THE DEATH.

NOW, THE DEFENDANT, JWAN TYREE SMITH, IS ALSO CHARGED WITH POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THE DEFENDANT WAS IN POSSESSION OF A FIREARM DURING THE COMMISSION OF A CRIME -- A VIOLENT CRIME, EXCUSE ME. A FIREARM MEANS ANY MACHINE GUN, AUTOMATIC RIFLE, REVOLVER, PISTOL OR ANY WEAPON WHICH IS DESIGNED TO OR MAY BE READILY CONVERTED TO EXPEL A PROJECTILE.

HOWEVER, IN ORDER TO FIND THE DEFENDANT GUILTY OF POSSESSION OF A FIREARM OR A WEAPON DURING THE

COMMISSION OF A VIOLENT CRIME, YOU MUST FIRST FIND THE DEFENDANT GUILTY OF COMMITTING A VIOLENT CRIME, AND MURDER IS CLASSIFIED AS A VIOLENT CRIME UNDER OUR LAW.

AN ISSUE IN THIS CASE IS THE IDENTIFICATION OF THE DEFENDANT AS THE PERSON WHO COMMITTED THE CRIME CHARGED. THE STATE HAS THE BURDEN OF PROVING THE IDENTITY BEYOND A REASONABLE DOUBT. YOU MUST BE SATISFIED BEYOND A REASONABLE DOUBT OF THE ACCURACY OF THE IDENTIFICATION OF THE DEFENDANT BEFORE YOU MAY CONVICT THE DEFENDANT.

IDENTIFICATION TESTIMONY IS AN EXPRESSION OR A BELIEF OR IMPRESSION BY A WITNESS. YOU MUST DETERMINE THE ACCURACY OF THE IDENTIFICATION OF THE DEFENDANT. YOU MUST CONSIDER THE BELIEVABILITY OF EACH IDENTIFICATION WITNESS IN THE SAME WAY AS ANY OTHER WITNESS.

YOU MAY CONSIDER WHETHER THE WITNESS HAD AN ADEQUATE OPPORTUNITY TO OBSERVE THE OFFENDER AT THE TIME OF THE OFFENSE. THIS WILL BE AFFECTED BY THINGS LIKE HOW LONG OR HOW SHORT A TIME WAS AVAILABLE, HOW FAR OR CLOSE THE WITNESS WAS, THE LIGHTING CONDITIONS, WHETHER THE WITNESS HAD THE CHANCE TO SEE OR KNOW THE PERSON IN THE PAST.

ONCE AGAIN, I INSTRUCT YOU THE BURDEN OF PROOF IS ON THE STATE AND THAT EXTENDS TO EVERY ELEMENT

FOR THE CRIME CHARGED, AND THIS SPECIFICALLY INCLUDES THE BURDEN OF PROVING BEYOND A REASONABLE DOUBT THE IDENTITY OF THE DEFENDANT AS THE PERSON WHO COMMITTED THE CRIME. IF, AFTER EXAMINING THE TESTIMONY, YOU HAVE A REASONABLE DOUBT AS TO THE ACCURACY OF THE IDENTIFICATION, YOU MUST FIND THE DEFENDANT NOT GUILTY.

NOW, MERE PRESENCE AT THE SCENE IS NOT SUFFICIENT TO PROVE SOMEONE GUILTY OF A CRIME. THE DEFENDANT'S PRESENCE WHERE A CRIME IS BEING COMMITTED OR MERE ASSOCIATION WITH A PERSON WHO COMMITS A CRIME DOES NOT MAKE THE DEFENDANT AN ACCOMPLICE OR AN AIDER OR ABETTOR OF THE PERSON COMMITTING THE CRIME.

THE BURDEN IS ON THE STATE TO PROVE EVERY ELEMENT OF EACH CRIME CHARGED. IF YOU FIND AFTER REVIEWING ALL THE EVIDENCE THAT THE STATE HAS PROVED THAT THE DEFENDANT WAS ONLY PRESENT AT THE SCENE OF THE CRIME, AND IF THEY HAVE NOT PROVED BEYOND A REASONABLE DOUBT ANY OTHER PARTICIPATION IN ANY CRIME, THEN YOU MUST FIND THE DEFENDANT NOT GUILTY. THE LAW IS THAT MERE PROOF OF A PERSON BEING PRESENT AT THE SCENE OF THE CRIME IS NOT SUFFICIENT TO FIND SOMEONE GUILTY.

NOW, MADAM FORELADY, LADIES AND GENTLEMEN OF THE JURY, YOU HAVE BEEN SELECTED AS FAIR AND IMPARTIAL JURORS SWORN TO IMPARTIALLY DETERMINE THE FACTS OF THIS CASE, AND WHEN YOU COMPLY WITH YOUR OATH TO DO SO, THEN

NO ONE WILL HAVE THE RIGHT TO CRITICIZE YOUR VERDICT AND YOU WILL HAVE FULLY DISCHARGED YOUR DUTY AS JURORS.

YOU SHOULD NOT BE INFLUENCED BY OPINIONS OR EXPRESSIONS OF OPINIONS, IF ANY, WHICH YOU MAY HAVE HEARD ON THE OUTSIDE, BUT YOU ARE TO DECIDE THIS CASE ACCORDING TO THE TESTIMONY WHICH YOU HAVE HEARD FROM THE LIPS OF THE SWORN WITNESSES ALONG WITH OTHER EVIDENCE THAT MAY HAVE BEEN INTRODUCED.

AS I SAID EARLIER, YOU ARE THE JUDGES OF THE FACTS IN THIS CASE AND YOU ARE TO DETERMINE ONLY IF THIS DEFENDANT IS GUILTY OR NOT GUILTY BASED UPON THE TESTIMONY AND EVIDENCE PRESENTED IN THE TRIAL AND AFTER APPLYING THE LAW AS I HAVE GIVEN IT TO YOU. IF FROM THE EVIDENCE YOU HAVE A REASONABLE DOUBT AS TO WHETHER OR NOT THE DEFENDANT IS GUILTY, IT IS YOUR DUTY TO ACQUIT HIM AND WRITE THE WORDS "NOT GUILTY".

UNDER THE OATH YOU TOOK, YOU SWORE TO TRY THIS CASE BASED ONLY AND SOLELY ON THE TESTIMONY AND EVIDENCE AND THE LAW PRESENTED AND HEARD IN THIS COURTROOM. IT IS YOUR DUTY TO LAY ASIDE ALL BIAS, PREJUDICE OR SYMPATHY YOU MAY HAVE IN REACHING YOUR VERDICT. YOU HAVE NO FRIENDS TO REWARD OR ENEMIES TO PUNISH IN THIS CASE.

I MIGHT NOTE THAT THE WORD "VERDICT" COMES FROM THE LATIN TERM *VEREDICTO*, WHICH MEANS TO SPEAK THE

TRUTH. ABIDE BY YOUR OATH AND RETURN A VERDICT WHICH SPEAKS THE TRUTH.

NOW, MADAM FORELADY, I'VE PREPARED A VERDICT FORM FOR YOU TO USE IN YOUR DELIBERATIONS. REMEMBER, WHATEVER VERDICT THAT YOU REACH ON EACH OF THE COUNTS MUST BE UNANIMOUS. EACH ONE, EVERYONE MUST AGREE TO THAT VERDICT.

NOW, MADAM FORELADY, IF YOU WILL NOTICE, IT HAS INDICTMENT NUMBER 2006-GS-04-1746, COUNT ONE, MURDER. NOW, THERE ARE TWO POSSIBLE VERDICTS IN THIS CASE, AND AS I SAY, IT WOULD HAVE TO BE UNANIMOUS. WHATEVER THE VERDICT IS, IT COULD BE WE, THE JURY, UNANIMOUSLY FIND THAT THE DEFENDANT, JWAN TYREE SMITH, IS GUILTY OF MURDER OR NOT GUILTY. WHATEVER THE VERDICT, AS I SAY, THE UNANIMOUS VERDICT IS, ONCE IT'S REACHED BY THE JURY, THEN YOU WOULD CHECK THE APPROPRIATE BLOCK.

AND ON COUNT TWO, POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME, AGAIN, TWO POSSIBLE VERDICTS: WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT, JWAN TYREE SMITH, IS GUILTY OF POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME OR NOT GUILTY.

NOW, ONCE THE VERDICTS ARE REACHED IN BOTH COUNTS AND THEN IT'S BEEN INDICATED ON THE VERDICT FORM,

IF YOU WOULD PLEASE SIGN YOUR NAME ON THE LINE PROVIDED, KNOCK ON THE DOOR, AND WE WILL RETURN AND RECEIVE YOUR VERDICT AT THAT TIME.

NOW I NEED TO TAKE UP SOME MATTERS WITH THE ATTORNEYS BEFORE YOU WILL START YOUR DELIBERATIONS. MADAM BAILIFF, IF YOU WOULD PLEASE BRING THE VERDICT FORM BACK TO ME.

ALL RIGHT. AND AFTER I'VE DONE THAT -- AND IT WILL ONLY TAKE A FEW MINUTES. BUT AFTER THAT'S BEEN DONE, I'LL SEND THE VERDICT FORM, TOGETHER WITH ALL THE EXHIBITS USED DURING THE TRIAL OF THIS CASE IN TO YOU, AND WHEN YOU RECEIVE THE VERDICT FORM AND THE EXHIBITS, THEN YOU CAN BEGIN YOUR DELIBERATIONS, AND, LIKE I SAY, ONCE YOU HAVE REACHED A UNANIMOUS VERDICT ON BOTH COUNTS, THEN IF YOU WILL KNOCK ON THE DOOR AND YOU WILL RETURN TO THE COURT AND WE WILL RECEIVE YOUR VERDICT.

EVERYONE ELSE REMAIN SEATED WHILE THE JURY RETIRES FROM THE COURTROOM.

MADAM ALTERNATE, IF YOU WOULD STAY WITH US, PLEASE.

(WHEREUPON, THE JURY LEFT THE COURTROOM AT 10:37 A.M.)

THE COURT: ANY EXCEPTIONS OR REQUESTS FROM THE STATE?

MR. CAMPBELL: NONE, YOUR HONOR.

THE COURT: FROM THE DEFENSE?

MR. GAMBLE: NONE, YOUR HONOR.

THE COURT: VERY GOOD. LOOK OVER THE EXHIBITS, BE SURE THAT ALL THAT ARE SUPPOSED TO GO BACK DO GO BACK AND NONE THAT ARE NOT SUPPOSED TO GO BACK.

(OFF-THE-RECORD DISCUSSION.)

(OFF-THE-RECORD DISCUSSION BETWEEN COURT AND ALTERNATE JUROR, AFTER WHICH ALTERNATE JUROR WAS EXCUSED.)

(WHEREUPON, THE JURY STARTED THEIR DELIBERATIONS AT 10:40 A.M.)

THE COURT: I WANT TO THANK ALL THREE ATTORNEYS FOR YOUR PRESENTATION IN THIS CASE. YOU DID A VERY PROFESSIONAL REPRESENTATION OF YOUR POSITIONS, AND I THANK YOU FOR IT.

ALL RIGHT. IT'S IN THE JURY'S HANDS, WE'LL SEE WHAT THEY'RE GOING TO DO.

(WHEREUPON, THE JURY DELIBERATED UNTIL 11:08 A.M., WHEN A NOTE WAS SENT FROM THE JURY TO THE COURT.)

(COURT'S EX. # 5, JURY NOTE, WAS MARKED FOR IDENTIFICATION.).

THE COURT: BACK ON THE RECORD.

THE COURT HAS BEEN PROVIDED A MESSAGE FROM THE FORELADY (READING):

CAN WE STICK PHOTOS TO THE BLACKBOARD SO WE CAN ALL SEE THEM WHEN REFERRING TO THEM?

LIST OF WITNESSES' NAMES AND NICKNAMES IN ORDER OF APPEARANCE.

TRANSCRIPT FROM FRED CHILES FROM THE TRIAL.

I HAVE DISCUSSED THESE MATTERS WITH THE ATTORNEYS, AND IT'S MY UNDERSTANDING THAT AS FAR AS THE FIRST REQUEST, BEING ABLE TO PUT PHOTOS ON THE BLACKBOARD, AND WE'LL GIVE THEM SCOTCH TAPE TO DO THAT.

IS THAT CORRECT, MR. CAMPBELL?

MR. CAMPBELL: YES, YOUR HONOR.

THE COURT: MR. GAMBLE?

MR. GAMBLE: YES, SIR.

THE COURT: WE HAVE PREPARED A LIST, YOU MIGHT WANT TO LOOK AT IT TO BE SURE, OF THE WITNESSES IN ORDER OF APPEARANCE WITH THEIR NICKNAMES.

AND LASTLY -- IS THAT GOOD TO GO TO THE JURY, MR. CAMPBELL?

MR. CAMPBELL: YES, SIR.

MR. GAMBLE: YES, SIR.

THE COURT: AND FINALLY THE COURT REPORTER HAS GOTTEN THE TESTIMONY OF MR. CHILES AND WE'LL PLAY THAT BACK FOR THEM.

MR. GAMBLE: YES, SIR.

THE COURT: ALL RIGHT. ASK THE JURY TO JOIN US, PLEASE.

(WHEREUPON, THE JURY ENTERED THE COURTROOM AT 11:11 A.M.)

THE COURT: ALL RIGHT. MADAM FORELADY, I HAVE RECEIVED YOUR MESSAGE. FIRST (READING):

> CAN WE STICK PHOTOS TO THE BLACKBOARD SO WE CAN ALL SEE THEM, REFERRING TO THEM?

YES, MA'AM, WE CAN DO THAT. IF YOU DO IT, OF COURSE, TRY NOT TO TEAR THEM, JUST LEAVE THEM -- OR PEEL THEM OFF AND DO THE TAPE OVER THEM. BUT IF YOU HAVE A PROBLEM, JUST LEAVE THEM IN THERE AND WE'LL GET THEM.

AND THEN (READING):

> THE LIST OF WITNESSES' NAMES AND NICKNAMES IN ORDER OF APPEARANCE.

WE HAVE HAD THAT PREPARED FOR YOU, TOO.

AND NOW WE WILL HEAR THE TRANSCRIPT FROM THE WITNESS, FRED CHILES, THAT WOULD BE THE AUDIO PLAYED BACK OF THAT TESTIMONY.

ALL RIGHT, MADAM COURT REPORTER.

(WHEREUPON, THE TESTIMONY OF FRED CHILES WAS PLAYED BACK FOR THE JURY.)

THE COURT: ALL RIGHT. THAT CONCLUDES THE TESTIMONY.

MADAM FORELADY, I HAVE PREPARED TWO COPIES OF THE WITNESSES. I PUT ALL THE WITNESSES DOWN, AND IF THEY HAVE NICKNAMES, THE NICKNAMES ARE TO THE SIDE. AND THE SCOTCH TAPE, TOO, FOR PUTTING PHOTOGRAPHS ON THE BOARDS.

ALL RIGHT. IS THERE ANYTHING ELSE AT THIS TIME?

THE FORELADY: NO, SIR.

THE COURT: ALL RIGHT. IF YOU WOULD PLEASE RETIRE TO THE JURY ROOM AND CONTINUE WITH YOUR DELIBERATIONS.

(WHEREUPON, THE JURY LEFT THE COURTROOM AT 11:39 A.M.)

THE COURT: ALL RIGHT. ANYTHING FROM THE STATE?

MR. CAMPBELL: NO, YOUR HONOR.

THE COURT: FROM THE DEFENSE?

MR. GAMBLE: NO, YOUR HONOR.

THE COURT: VERY GOOD. I PREPARED A COPY OF THE WITNESSES FOR EACH OF YOU, AND, MADAM COURT REPORTER, A COPY FOR THE RECORD, TOO; IT WILL JUST BE THE NEXT COURT'S EXHIBIT. VERY GOOD.

ALL RIGHT. WE'LL STAND AT EASE AWAITING THE

VERDICT OF THE JURY.

(COURT'S EX. # 6, LIST OF WITNESSES IN ORDER OF APPEARANCE, WITH NICKNAMES, WAS MARKED FOR IDENTIFICATION.)

(WHEREUPON, THE JURY CONTINUED THEIR DELIBERATIONS AT 11:40 A.M. WHILE THE COURT CONSIDERED OTHER MATTERS.)

(WHEREUPON, THE JURY REACHED A VERDICT AT 2:30 P.M.)

THE COURT: IT'S MY UNDERSTANDING THE JURY HAS REACHED A VERDICT. IS THERE ANYTHING FROM THE STATE BEFORE WE BRING THE JURY BACK?

MR. CAMPBELL: NO, YOUR HONOR.

THE COURT: FROM THE DEFENDANT?

MR. GAMBLE: NO, YOUR HONOR.

THE COURT: WE NEED THE DEFENDANT.

MR. CAMPBELL: THEY WENT TO GET HIM.

THE COURT: ONE SMALL THING.

(OFF-THE-RECORD DISCUSSION.)

THE COURT: ALL RIGHT. IT IS MY UNDERSTANDING THE JURY HAS REACHED A VERDICT.

ANYTHING FROM THE STATE?

MR. CAMPBELL: NO, YOUR HONOR.

THE COURT: ANYTHING FROM THE DEFENDANT?

MR. GAMBLE: NO, YOUR HONOR.

THE COURT: LET'S HAVE ORDER IN THE COURTROOM. NOW, THERE WILL BE NO OUTBURSTS, SO IF ANYBODY FEELS LIKE THEY CANNOT CONTROL OR CONTAIN THEMSELVES, THEY WILL LEAVE RIGHT NOW. (NO RESPONSE.)

VERY GOOD. ASK THE JURY TO JOIN US.

MR. CAMPBELL: JUDGE, THE CROWD IS OUTSIDE.

THE COURT: WELL, GO AHEAD AND LET THEM IN. TELL THEM TO BRING THEM IN. HOLD THE JURY UNTIL WE ALLOW ALL THE SPECTATORS IN.

(WHEREUPON, A GROUP OF PEOPLE ENTERED THE COURTROOM.)

THE COURT: ALL RIGHT. LET'S JUST SHUT THE DOOR, AND IF SOMEBODY WANTS TO COME IN, WE'LL SEE IF IT'S APPROPRIATE AT THAT TIME.

ALL RIGHT. IF NOTHING ELSE, ASK THE JURY TO JOIN US, PLEASE.

OH, WAIT A MINUTE, JUST A MOMENT, DR. GRAHAM.

I MENTIONED TO THOSE WHO WERE IN THE COURTROOM BEFORE, WE WILL HAVE NO OUTBURSTS, REGARDLESS OF WHAT THE VERDICT IS, AND IF ANYBODY CANNOT CONTAIN THEMSELVES, THEY WILL LEAVE RIGHT NOW. (NO RESPONSE.)

VERY WELL. THANK YOU.

(WHEREUPON, THE JURY RETURNED TO THE COURTROOM AT 2:40 P.M.)

THE COURT: MADAM FORELADY, I UNDERSTAND THE JURY HAS REACHED A VERDICT?

THE FORELADY: YES, WE HAVE, YOUR HONOR.

THE COURT: IF YOU WOULD, PLEASE, HAND IT UP TO THE BAILIFF.

WILL THE DEFENDANT RISE?

LET'S SEE. MADAM FORELADY, IF YOU WOULD, RATHER THAN NEXT TO THE NUMBERS THAT YOU HAVE WRITTEN ON THE VERDICT, JUST CHECK IT FOR ME SO THAT IT WOULD SHOW THAT THAT WAS THE PURPOSE.

THE FORELADY: (COMPLIES.)

THE COURT: VERY GOOD, THANK YOU, MA'AM.

IF YOU WOULD PLEASE PUBLISH THE VERDICT, MADAM CLERK.

VERDICT OF THE JURY:

THE CLERK: THANK YOU, YOUR HONOR.

CASE 2006-GS-04-1746, *THE STATE VERSUS JWAN TYREE SMITH*, INDICTMENT, COUNT ONE, FOR MURDER. THE VERDICT: WE, THE JURY, UNANIMOUSLY FIND THAT THE DEFENDANT, JWAN TYREE SMITH, IS GUILTY OF MURDER.

AND AS TO COUNT TWO, POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME, THE VERDICT: WE, THE JURY, UNANIMOUSLY FIND THAT THE DEFENDANT, JWAN TYREE SMITH, IS GUILTY OF POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME. AND THAT'S SIGNED

NANCY A. MAXWELL, FOREPERSON.

MADAM FORELADY, LADIES AND GENTLEMEN OF THE JURY, IF THESE ARE YOUR VERDICTS, WOULD YOU PLEASE INDICATE BY RAISING YOUR RIGHT HAND.

(ALL MEMBERS OF THE JURY RAISED THEIR RIGHT HAND.)

THE CLERK: ALL HANDS RAISED, THE VERDICT OF THE JURY, YOUR HONOR.

THE COURT: VERY GOOD. IS THERE ANYTHING FROM THE STATE BEFORE I DISMISS THE JURY?

MR. CAMPBELL: NO, YOUR HONOR.

THE COURT: IS THERE ANYTHING FROM THE DEFENDANT?

MR. GAMBLE: NO, YOUR HONOR.

THE COURT: MADAM FORELADY -- YOU MAY SIT DOWN -- MADAM FORELADY, LADIES AND GENTLEMEN OF THE JURY, THE COURT IS NEVER INTERESTED IN A VERDICT, BUT ONLY HOW THAT VERDICT IS REACHED. AND I CAN ASSURE YOU THAT EVEN THOUGH IT SEEMS LIKE I'M DOING EVERYTHING ELSE BUT PAYING ATTENTION UP HERE, I'VE NOTICED THAT THROUGHOUT THIS TRIAL THAT ALL OF YOU, AND ALSO THE ALTERNATE EARLIER, PAID VERY CAREFUL AND CLOSE ATTENTION TO ALL OF THE TESTIMONY AND EVIDENCE IN THIS CASE.

MOREOVER, THIS WAS A DIFFICULT CASE IN THAT THERE WERE A LOT OF THINGS YOU HAD TO CONSIDER, AND I

NOTICE YOU PAID VERY CAREFUL ATTENTION TO THE ARGUMENT BY COUNSEL AS WELL AS THE CHARGE ON THE LAW.

ALSO, YOUR QUESTIONS REFLECTED YOUR CONCERN FOR REACHING A PROPER VERDICT IN THIS CASE. AND HAVING REACHED A VERDICT IN ACCORDANCE WITH YOUR CONSCIENCE, YOU HAVE SERVED YOUR COUNTY AND OUR STATE WELL IN REACHING THE VERDICT THAT IS YOUR CONSCIENCE, AS I SAY.

AND REMEMBER, IT IS A UNANIMOUS VERDICT OF ALL 12, SO IT IS NOT A VERDICT OF ANY ONE PERSON; THEREFORE, NO ONE HAS TO ANSWER FOR THAT VERDICT AND YOU DO NOT HAVE TO ANSWER TO ANYONE. AND IF YOU WISH TO DISCUSS YOUR VERDICT WITH SOMEBODY, YOU MAY DO SO, BUT NOBODY HAS THE RIGHT TO INTERFERE WITH WHAT YOU HAVE DONE.

NONE OF YOU ASKED TO BE HERE THIS WEEK, AS I MENTIONED EARLIER, PERHAPS, BUT YOU HAVE DONE YOUR SERVICE AS JURORS WELL. AND I THINK I MIGHT HAVE MENTIONED OR SOMEONE MIGHT HAVE MENTIONED THAT WINSTON CHURCHILL, THE LATE PRIME MINISTER OF GREAT BRITAIN, ONCE SAID THAT NO GREATER DUTY CAN A CITIZEN PERFORM IN PEACETIME THAN THAT AS A JUROR, BECAUSE OUR WHOLE SYSTEM OF JUSTICE DEPENDS UPON YOUR WILLINGNESS TO MAKE THE SACRIFICES TO BE HERE TO DO THAT, AND I THANK YOU FOR IT.

NOW, THIS WILL CONCLUDE YOUR SERVICE AT THIS

TERM OF COURT. I WISH I COULD OFFER YOU SOMETHING, BUT ABOUT THE ONLY THING I CAN TELL YOU IS, IF YOU WILL REMEMBER, ON MONDAY WHEN I QUALIFIED THE PANEL, I ASKED HOW MANY HAD SERVED IN THE LAST THREE YEARS, SO AT LEAST YOU WON'T HAVE TO SERVE FOR ANOTHER THREE YEARS.

BUT I HOPE IT HASN'T BEEN WITHOUT SOME BENEFIT TO YOU TO SEE HOW OUR SYSTEM WORKS, AND I DO THANK YOU FOR THAT. SO YOU WILL BE EXCUSED, AND I WISH YOU A VERY GOOD REMAINDER OF THE WEEK AND A GOOD WEEKEND. THANK YOU VERY MUCH.

MADAM FORELADY, I DO NEED TO SEE YOU, THOUGH, FOR A MOMENT TO CONFORM SOME PAPERS.

SO YOU ARE EXCUSED.

(WHEREUPON, THE JURY WAS EXCUSED AT 2:45 P.M.)

THE COURT: ALL RIGHT. ANYTHING FROM THE STATE BEFORE WE SENTENCE?

MR. CAMPBELL: NO, YOUR HONOR.

THE COURT: DEFENSE?

MR. GAMBLE: NO, YOUR HONOR.

THE COURT: VERY WELL.

MR. CAMPBELL: YOUR HONOR, I'LL HAND UP THE SENTENCING SHEETS.

THE COURT: COME AROUND.

MR. GAMBLE: COME AROUND.

THE COURT: ALL RIGHT. ANYTHING FROM THE STATE?

MR. CAMPBELL: NO, YOUR HONOR.

THE COURT: AS I UNDERSTAND, THE DEFENDANT HAS NO PRIOR RECORD?

MR. CAMPBELL: THAT'S MY UNDERSTANDING. I THINK HE HAD A TRAFFIC VIOLATION.

MR. GAMBLE: HE HAD A CITY TRAFFIC VIOLATION AND HE PAID THE $900.00 FINE. HE WAS AT THE TIME OF THIS INCIDENT 17 YEARS OLD. HIS DATE OF BIRTH IS 7-6-88. HE WAS ARRESTED IN FLORIDA ON MARCH THE 17TH, 2006, AND HAS BEEN IN THE JAIL SINCE HE WAS ARRESTED MARCH THE 17TH OF 2006.

HIS MOTHER, WHO IS ON THE FRONT ROW, HAS BEEN IN COURT WITH HIM EVERY DAY THIS WEEK AND I AM SURE YOU HAVE NOTICED HER THERE.

AND THAT'S BASICALLY THE STORY OF JWAN TYREE SMITH. HE WENT TO THE EIGHTH GRADE IN SCHOOL.

I'D ASK YOU TO CONSIDER THE 30-YEAR SENTENCE.

THE COURT: DOES ANYBODY ELSE HAVE ANYTHING TO SAY?

MR. CAMPBELL: I'LL CHECK WITH THE VICTIM'S FAMILIES.

(OFF-THE-RECORD DISCUSSION.)

MR. CAMPBELL: NO, SIR.

YOUR HONOR, ON THE SENTENCE SHEET HIS NAME IS SPELLED J-U-A-N. IF WE COULD JUST MAKE A CORRECTION TO J-W-A-N AS HIS FIRST NAME.

THE COURT: ALL RIGHT.

MR. SMITH, ANYTHING YOU WOULD LIKE TO SAY?

THE DEFENDANT: NO, SIR.

THE COURT: DO YOU HAVE ANY IDEA HOW MANY DAYS IT IS SINCE MARCH THE 16TH?

MR. GAMBLE: MARCH THE 16TH '06.

(OFF-THE-RECORD DISCUSSION.)

MR. GAMBLE: 39 PLUS, TO MARCH 17TH.

THE COURT: I'LL JUST PUT FROM MARCH THE 17TH?

MR. GAMBLE: YES, SIR.

THE CLERK: 418 DAYS.

MR. GAMBLE: 418 DAYS?

THE CLERK: 418.

THE COURT: 418 DAYS?

MR. GAMBLE: YES, SIR, 4-1-8.

THE COURT: MR. SMITH, IS YOUR BIRTHDAY JULY THE 6TH, 1988?

THE DEFENDANT: YES, SIR.

THE COURT: SO AT THIS TIME YOU WERE 17 YEARS OF AGE?

THE DEFENDANT: YES, SIR.

THE COURT: THIS IS A TERRIBLE WAY TO START A LIFE, BUT AT 17 YEARS OF AGE YOU HAD NO REASON TO BE IN A PLACE WHICH I UNDERSTAND DOESN'T EVEN SERVE FOOD, BUT SERVES ONLY ALCOHOLIC BEVERAGES OR OTHER BEVERAGES OF A LIKE NATURE.

ALL RIGHT. ANYTHING ELSE FROM THE STATE?

MR. CAMPBELL: NO, YOUR HONOR.

THE COURT: FROM THE DEFENSE?

MR. GAMBLE: NO, YOUR HONOR.

SENTENCE OF THE COURT:

THE COURT: INDICTMENT NUMBER 2006-GS-04-1746, COUNT TWO, THE SENTENCE OF THE COURT IS THE DEFENDANT BE COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A TERM OF FIVE YEARS.

INDICTMENT NUMBER 2006-GS-04-1746, THE SENTENCE OF THE COURT ON COUNT ONE IS THAT THE DEFENDANT BE COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A DETERMINANT TIME OF 30 YEARS. BOTH SENTENCES TO RUN CONCURRENT.

THE DEFENDANT TO BE GIVEN CREDIT FOR 418 DAYS TIME SERVED, AND TO OBTAIN HIS G.E.D. WHILE INCARCERATED.

MR. GAMBLE: THANK YOU, YOUR HONOR.

THE COURT: GOOD LUCK TO YOU, SIR.

ALL RIGHT. WE WILL TAKE A SHORT BREAK.

(WHEREUPON, THE TRIAL OF *THE STATE OF SOUTH CAROLINA VERSUS JWAN TYREE SMITH* WAS CONCLUDED ON MAY 9TH, 2007, AT 2:55 P.M.)

***** END OF REQUESTED TRANSCRIPT *****

CERTIFICATE OF COURT REPORTER

I, THE UNDERSIGNED, ROBIN SUE HILD, FCRR, RPR, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND THE EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, VOLUME III OF III, MAY 9TH, 2007, PAGES 344 THROUGH 401, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR ANDERSON COUNTY, SOUTH CAROLINA, ON THE 7TH DAY, 8TH DAY, AND 9TH DAY OF MAY, 2007.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

NOVEMBER 24, 2007

Robin Sue Hild

ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JWAN SMITH,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
Deputy Chief Appellate Defender for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to direct a verdict of acquittal on the murder charge since there was not any direct or substantial circumstantial evidence appellant shot and killed the decedent, particularly where two of the state's key witnesses disavowed their earlier statements, which they said were coerced by the police, and testified at trial that they did not see the shooting?

STATEMENT OF THE CASE

Appellant was indicted by the Anderson County grand jury for the offenses of murder and possession of a firearm during the commission of a violent crime. His case was called to trial on May 7, 2007 before the Honorable Alexander S. Macaulay and a jury. Robert Gamble represented appellant. Rame Campbell was the assistant solicitor. R. 1.

On May 9, 2007 the jury found appellant guilty on both counts. R. 394, ll. 17 – 25. Judge Macaulay sentenced appellant to thirty years imprisonment for murder, and five years imprisonment for possession of a firearm during the commission of a violent crime.

This appeal follows.

ARGUMENT

The court erred by refusing to direct a verdict of acquittal since there was no direct or substantial circumstantial evidence appellant shot and killed the decedent. That is particularly true where several of the state's witnesses disavowed their earlier statements to the police, which they said were coerced, and testified at trial they did not see who actually shot the decedent.

Relevant Facts

Angela Brownlee was dating the fifty-year-old decedent, Sammy Martin, on February 25, 2006. R. 54, ll. 4 – 21. Brownlee and the decedent went to the Old School Lounge that evening. Brownlee said the decedent "didn't feel like staying" so they went back home. Brownlee later went back to the club by herself. R. 56, ll. 3 – 25.

Brownlee said she was talking with her friend Michael Vance when the decedent returned to the club. Brownlee said the decedent was "upset because I was sitting at the table" with Vance, "and he just grabbed me by my neck, my necklace. He didn't hit me or nothing, he just grabbed me by the necklace . . ." R. 58, ll. 10 – 17. Other witnesses would testify that the decedent did hit Brownlee.

Brownlee said she went outside with the decedent, and that her car would not start when she tried to leave. She said while she was looking "under the hood of my car" that she heard gunshots, and she saw the decedent "laying right behind me." R. 58, l. 2- 59, l. 19. Brownlee did not see who shot her boyfriend. R. 59, ll. 17 – 19.

Michael Vance testified he was about eight feet away from the decedent and Brownlee at the time of the shooting. He described the shooter as five-foot-six or five-foot-

seven and wearing a red jacket. R. 75, l. 3 – 76, l. 5. Vance also said he could not identify the shooter: "I didn't get a chance to look at him." R. 79, ll. 3 – 5.

Fred Chiles had a substantial criminal record. He was the only state's witnesses to claim at trial that he could identify appellant as the shooter of the decedent in the Old School Lounge parking lot on the night of February 25, 2006. R. 81, l. 3 – 87, l. 23. Chiles recalled that the decedent returned to the club, and he was "just hollering when he came back out" after Brownlee. R. 84, ll. 21 – 24. Chiles said the decedent was hollering at Brownlee: "I told you I'd catch you." R. 85, l. 10 – 21.

Chiles testified while Brownlee was trying to borrow jumper cables for her car that he heard: "Boom, Boom, Boom. I looked around, I seen [saw] Buster [appellant] with his coat like that right over his face." R. 87, ll. 18 – 23. Chiles said appellant did not say anything to the decedent before he shot him. R. 89, ll. 22 – 25.

On cross-examination, Chiles denied that he lied to the police when they questioned him about the incident. R. 97, ll. 7 – 18. Chiles also said he correctly picked appellant out of a line-up as being the shooter about three weeks after the shooting. R. 101, l. 11 – 102, l. 2.

Bassen Hailey was also at the club that night. Hailey admitted he was on probation, and that he should not have been at the club or around firearms. Hailey claimed that Latorrey Pearson gave appellant a gun that evening. R. 116, l. 24 – 118, l. 14.

However, Hailey admitted that he did not see who actually shot the decedent. R. 132, ll. 17 – 19. Hailey acknowledged that he lied to the police, and that his charge for being an accessory was still pending against him. R. 137, l. 20 – 140, l. 17.

Latorrey Pearson also testified that he did not see who shot the decedent that evening. R. 167, ll. 5 – 8. Pearson said he was ten feet away from the shooting but that he only heard three shots and that he did not see the shooter. R. 167, ll. 7 – 23.

Pearson admitted that he told the police in a statement that appellant was the shooter. However, Pearson told the jurors that he was pressured by the police into naming appellant as the shooter. R. 169, l. 8 – 173, l. 15.

Similarly, James Pickens testified that he did not see who actually shot the decedent. Pickens also said he was pressured by the police into naming appellant as the shooter. Pickens stated he only told the police that appellant was the shooter because he "thought that's what he [the police officer] wanted to hear." R. 206, l. 7 – 225, l. 22.

Alphonso Hailey and Kizzy Mattress were also in the parking lot at the Old School Lounge at the time of the shooting. Both Hailey and Mattress testified they did not see who shot the decedent. R. 241, ll. 8 – 14. Hailey also said he remembered Latorrey Pearson stating that "something is gonna go down tonight," and Hailey said that Pearson was carrying a large handgun at the time. R. 257, l. 4 – 258, l.1

Defense counsel moved for a directed verdict. The judge denied the motion. R. 337, ll. 3 – 19. Appellant was seventeen-years-old at the time of the incident, and he had no prior criminal record. However, appellant did not testify.

Discussion

A defendant is entitled to a directed verdict when the state fails to produce any direct or substantial circumstantial evidence of the offense charged. State v. Rothschild, 351 S.C. 238, 569 S.E.2d 346 (2002); State v. Walker, 349 S.C. 49, 562 S.E.2d 313 (2002). Appellant understands that this court must view the evidence in the light most favorable to

the state. See State v. Al-Amin, 353 S.C. 405, 578 S.E.2d 32 (Ct . App. 2003); State v. Harris, 351 S.C. 643, 572 S.E.2d 267 (2002).

In State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000) the Court held that the trial judge should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. In Martin the Supreme Court held that the state failed to meet the "any circumstantial substantial evidence" standard because it failed to place Martin inside the apartment where the decedent was killed.

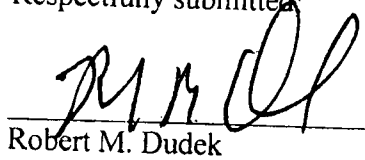
The state's case revealed that an automobile resembling the one Martin was driving was parked at the victim's apartment complex on the night of the murder. Inculpatory evidence was also found in a trash can near the business where Martin's girlfriend worked, and where Martin picked her up on the night of the murder.

Martin and the co-defendant also made highly suspicious statements that "some shit happened" that night, and that "somebody may have died tonight."

Nonetheless the Supreme Court, *citing* State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984), found this evidence insufficient to survive a directed verdict motion.

Here, the state called eight eyewitnesses to the shooting. Only one, Fred Chiles, would claim he could name appellant as the shooter. Two witnesses, as seen, complained that the police pressured them into naming appellant as the shooter, and disavowed their statements to the police. The record in this case only raised a suspicion of appellant's guilt, and Chiles was incredible as a witness. The judge erred by refusing to direct a verdict under these unusual circumstances. An order of acquittal should be issued by this Court.

Respectfully submitted,



Robert M. Dudek
Deputy Chief Appellate Defender for Capital Appeals

ATTORNEY FOR APPELLANT

August 25, 2008

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JWAN SMITH,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jwan Smith states:

1. He is Deputy Chief Appellate Defender for Capital Appeals for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge Alexander S. Macaulay, which was held on May 9, 2007, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Jwan Smith.

Respectfully submitted,

Robert M. Dudek

ATTORNEY FOR APPELLANT

August 25, 2008

This 30th day of June, 2008.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 22, 2008

Robert M. Dudek
Deputy Chief Appellate Defender for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JWAN SMITH,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, Assistant Deputy Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201; and the Final Anders Brief of Appellant and Record on Appeal have been served upon Jwan Smith, #321800 at Lee Correctional Institution, 990 Wisacky Hwy, Bishopville, SC 29010, this 25th day of August, 2008.

Robert M. Dudek
Deputy Chief Appellate Defender for Capital Appeal

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 25th day of August, 2008.

(L.S.)
Notary Public for South Carolina

My Commission Expires: November 16, 2008.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Jwan Smith, Appellant.

Appeal From Anderson County
Alexander S. Macaulay, Circuit Court Judge

Unpublished Opinion No. 2010-UP-009
Submitted January 4, 2010 – Filed January 21, 2010

APPEAL DISMISSED

Acting Chief Appellate Defender Robert M. Dudek, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, all of Columbia; and Christina T. Adams, of Anderson, for Respondent.

PER CURIAM: Jwan Smith appeals from his conviction for murder and possession of a firearm during the commission of a violent crime, arguing the trial court erred by not directing a verdict. After a thorough review of the record and both briefs pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss[1] Smith's appeal and grant counsel's motion to be relieved.

APPEAL DISMISSED.

HUFF, A.C.J., GEATHERS, J., and CURETON, A.J., concur.

---

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA)
)
County of Anderson)

In the Court of Common Pleas

Juan Tyree Smith 348860
Full name and prison number, if any, of applicant)

v.)

State, SC
Name of Respondent)

APPLICATION FOR

POST-CONVICTION RELIEF

2010-CP-04-01853

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Lee CI

2. Name and location of Court which imposed sentence Anderson, SC, General Sessions

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
   (a) 2006-GS-04-1746
   (b) _____
   (c) _____

4. The date upon which sentence was imposed and the terms of the sentence:
   (a) May 7, 2007
   (b) _____
   (c) _____

A TRUE COPY
MAY 21 2010
Cathy M. Phillips
CLERK OF COURT

FILED-CLERKS OFFICE
ANDERSON SC
2010 MAY 21 P 2:31

417

5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. SC court of appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. Jan 21 2010

ii. _____

iii. _____

(d) *if known, citations of any written opinion or orders entered pursuant to such results:*

i. 2010-UP-009

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) na

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistance of counsel

(b) _____

(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in . (9)

(a) Counsel failed to call a known alibi witness at trial

(b) Counsel failed to object to solicitor vouching for his star witness which led to jury asking to hear his recorded statem

(c) failed to object to prosecutor mis-conduct

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

no

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

no

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) no

(d) any other petitions, motions or applications in this or any other Court?

no

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. no

ii.

iii.

iv.

(b) the name and location of the Court in which each was filed:

i.

ii.

iii.

iv.

(c) the disposition thereof:

i.

ii.

iii.

iv.

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? no

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. na

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. na

ii. _____

iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) not availble for direct appeal

(b) _____

(c) _____

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

yes

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? no

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Robert Gamble 304 Canson Rd

ii. Robert Lucich divorced appellant P.O. 11359 Reno, NV 89511

iii. _____

(b) the proceedings at which each such attorney represented you:

i. 60, 62 days

ii. 60, days

iii. _____

18. State clearly the relief you seek in filing this application.

vacated sentence and conviction and remand for new trial

19. Are you now under sentence from any other court that you have not challenged?

no

STATE OF SOUTH CAROLINA)
) VERIFICATION
COUNTY OF Anderson)

I, Juan Tyree Smith 321800, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Juan Smith

Sworn to and subscribed before me
This 19 day of May, 2010.

L. Bruce Linn L.S.
Notary Public for South Carolina
My Commission Expires 5-16-17

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Juan Tyree Smith 321800, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Juan Smith
Applicant

Sworn to and subscribed before me
This 19 day of May, 2010

L. Bruce Linn L.S.
Notary Public for South Carolina
My Commission Expires: 5-16-17

A TRUE COPY
MAY 21 2010
Cathy M. Phillips
CLERK OF COURT

FILED-CLERK'S OFFICE
ANDERSON SC
2010 MAY 21 P 2:31
CLERK OF COURT
SESSIONS AND

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
	)	2010-CP-04-1853
	)	
Juan Tyree Smith, #321800,	)	
Applicant,	)	
	)	
v.	)	**RETURN**
	)	
State of South Carolina,	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed May 21, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. The Applicant was indicted at the May 2006 term of the Anderson County Grand Jury for Murder and Possession of a Firearm during the Commission of a Violent Crime (2006-GS-04-1746). He was represented by Robert Gamble, Esquire. On May 7, 2007, the Applicant underwent trial pursuant to which he was found guilty as charge. He was sentenced by the Honorable Alexander S. Macaulay to confinement for a period of thirty (30) years for the murder charge and a concurrent period of five (5) years for the weapon possession charge.

A timely notice of appeal was filed on the Applicant's behalf. The South Carolina Court of Appeals subsequently dismissed the Applicat's appeal by unpublished order dated January 21, 2010 (2010-UP-009).

Attached herewith and incorporated herein are the records of the Anderson County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend and/or supplement this Return upon receipt with any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
   a. "Counsel failed to call a known alibi witness at trial."
   b. "Counsel failed to object to solicitor vouching for his star witness which led to jury asking to hear his recorded statement."
   c. "Failed to object to prosecutor misconduct."

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. Nevertheless, the allegation of ineffective assistance of counsel probably raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

IV.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

A. WEST LEE
Assistant Attorney General

By:
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

August 19, 2010

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	2010-CP-04-1853
	)	
Jwan Tyree Smith,	)	
SCDC# 321800,	)	
Applicant,	)	AMENDED APPLICATION FOR
	)	POST-CONVICTION RELIEF
-vs-	)	
	)	
The State of South Carolina,	)	
Respondent.	)	
	)	

A TRUE COPY
SEP 2 6 2012
CLERK OF COURT

INSTRUCTIONS – READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the Applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the Applicant was convicted.

1. Place of detention: Lee Correctional Institution

2. Name and location of Court which imposed sentence: Court of General Sessions for the Tenth Judicial Circuit, Anderson County, South Carolina.

3. Name(s) of co-defendant(s), if any: None

4. The indictment number or numbers (if known) upon which, and the offenses for which sentence was imposed:
   (a) 2006-GS-04-1746
   Count One: murder
   Count Two: possession of firearm during the commission of a violent crime

5. The date upon which sentence was imposed, and the terms of the sentence:
   (a) May 9, 2007
   Count One: 30 years
   Count Two: 5 years concurrent

6. Check whether a finding of guilty was made:
   (a) after a plea of guilty ____
   (b) after a plea of not guilty X
   (c) after a plea of nolo contendere ____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
   Yes

8. If you answered "yes" to (7), list:
   (a) the name of each Court to which you appealed:
      i. The South Carolina Court of Appeals.
      ii. ____
      iii. ____
   (b) the result in each such Court to which you appealed:
      i. The appeal was dismissed.
      ii. ____
      iii. ____
   (c) the date of each such result:
      i. The opinion was filed on January 21, 2010.
      ii. ____
      iii. ____
   (d) if known, citations of any written opinions or orders entered pursuant to such results:
      i. Unpublished Opinion Number 2010-UP-009
      ii. ____
      iii. ____

9. If you answered "no" to (7), state your reasons for not so appealing:
   (a) N/A
   (b) ____
   (c) ____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Trial counsel did not provide Applicant with effective counsel and Applicant's conviction was obtained in violation of the Sixth Amendment's Confrontation Clause.

11. State concisely, and in the same order the facts which support each of the grounds set out in (10):

(a) Trial counsel did not provide Applicant with effective counsel due to the following:

i. He failed to communicate with Applicant and did not involve Applicant when making major decisions concerning Applicant's case during trial preparation and during the trial.

ii. He failed to sufficiently prepare for trial.

iii. He failed to investigate or interview any state witnesses or other potential defense witnesses to develop the theory of defense of others, and he and his staff combined spent approximately one hour with Applicant from the time Applicant was arrested until the day his case was called for trial.

iv. His failure to investigate or interview any state witness or potential defense witness, his failure to spend no more than twenty total minutes with Applicant during his representation of Applicant, and his failure to interview Applicant's mother, resulted in trial counsel's utter lack of preparation and inability to develop the theory of defense of others.

v. He failed to inform Applicant of a possible defense of others theory and instead unilaterally determined that identification was the best defense in this case when identification had been made by at least five different people at the scene.

vi. He failed to object to inadmissible testimonial hearsay.

vii. During the Solicitor's direct examination of witnesses, he failed to object to testimony concerning uncharged misconduct, then gratuitously opened the door to such testimony during his own cross-examination.

viii. During the Solicitor's direct examination of Steve Reeves, he failed to object to the hearsay testimony of people who did not testify at trial.

ix. During the Solicitor's direct examination of witnesses, he failed to object to opinion evidence.

x. During his cross-examination of witnesses, trial counsel gratuitously questioned them about unrelated uncharged misconduct.

xi. Without objection or challenge by trial counsel, the State failed to establish the chain or custody on any items tested, and then introduced those test results without ever laying said foundation.

xi. During the Solicitor's direct examination of Steve Reeves, he failed to object to his testimony concerning the officer's opinion of the identity of the shooter.

xiii. He failed to properly investigate or cross-examine witnesses to develop the defense of defense of others. The conviction was obtained in violation of the Sixth Amendment's Confrontation Clause.

xiv. He failed to object when the Solicitor offered personal opinions as to Applicant's guilt and the weight of the evidence in the State's closing argument.

xv. His failure to object prevented the claims from being considered for appellate review.

xvi. He failed to present a defense of defense of others, which would have required a lesser included jury charge.

12. Prior to this application, have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina law? No.

(b) any petition in State or Federal Courts for habeas corpus or post-conviction relief? Yes.

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.

(d) any other petitions, motions, or applications in this or any other Court? No.

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Petition for Post-Conviction Relief.

ii.

iii.

iv.

(b) the name and location of the Court in which each was filed:

i. The Court of Common Pleas in Anderson, South Carolina.

ii.

iii.

iv.

(c) the disposition thereof:

i. The petition is pending.

ii.

iii.

iv. _____

(d) the date of each such disposition:

i. n/a

ii. _____

iii. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No.

15. If you answered "yes" to (14) identify:

a) which grounds have been presented: n/a

b) the proceedings in which each ground was raised: n/a

16. If any ground set forth in (10) has not been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

a) Not Available on Direct Appeal

17. Were you represented by an attorney at any time during the course of:

a) your arraignment and plea? n/a

b) your trial, if any? Yes.

c) your sentencing? Yes.

d) your appeal, if any, from the judgment of conviction or the imposition of sentence? n/a

e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes.

18. If you answered "yes" to one or more parts of (17), list:,

a) the name and address of each attorney who represented you:

i. Public Defender Robert Gamble, 301 Camson Blvd., Anderson, SC

ii. Robert Dudek, 1330 Lady Street, Suite 401, Columbia, SC 29201

b) the proceedings at which each such attorney represented you:

i. Trial and sentencing.

ii. Appeal

19. State clearly the relief you seek in filing this application:

Vacated Conviction, Remand for New Trial.

20. Are you now under sentence from any other court that you have not challenged?
No.

Respectfully Submitted:

Sept 26, 2017

Druanne White
DRUANNE WHITE LAW FIRM
P.O. Box 1346
209 E. Calhoun St.
Anderson, SC 29622

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
	)	
JWAN TYREE SMITH, SCDC #321800,	)	
Applicant,	)	**AFFIDAVIT OF MAILING**
	)	
vs.	)	
	)	
The State of South Carolina,	)	
Respondent.	)	Case No.: 2010-CP-04-1853

Personally appeared Marie Cohen, Administrative Assistant for Druanne White of the Druanne White Law Firm, Attorney for the Applicant, who states that (s)he served Karen Ratigan, Assistant Attorney General of the South Carolina Attorney General Office, with a copy of the Amended Application for Post-Conviction Relief by mailing:

(Check one)

☒ First class mail

☐ Certified mail

- ☐ restricted delivery
- ☐ return receipt requested

in the United States Mail, with proper postage attached and receipt attached (if applicable), on September 27, 2012 (date) addressed as follows:

South Carolina Attorney General Office

Karen Ratigan, Assistant Attorney General

P.O. Box 11549

Columbia, SC 29211

Sworn to before me this
27 day of September, 2012

Notary Public of South Carolina

My Commission expires: 4-29-15

Marie Cohen

SCCA 406 (12/2009)

State of South Carolina

In the Court of Common Pleas

County of Anderson

Juan Tyree Smith,	)	
	)	
Applicant,	)	2010-CP-04-1853
	)	
-vs-	)	
	)	October 3, 2012
State of South Carolina,	)	
	)	
Respondent.	)	Transcript of Record
	)	
	)	

BEFORE:

The Honorable Clifton Newman, Judge

APPEARANCES:

Karen C. Ratigan, Esquire
Assistant Attorney General
Attorney the State

Druanne White, Esquire
Attorney for the Applicant

Renee H. Tollison
Circuit Court Reporter

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(WHEREUPON, court convened with all parties present and the following proceedings were had, commencing at approximately 11:28 A.M.)

THE COURT: Madam Attorney General?

OPENING STATEMENT

BY MS. RATIGAN:

Thank you, Your Honor. May it please the Court. This is the case of Jwan Tyree Smith versus the State of South Carolina. The docket number is 2010-CP-04-1853. Mr. Smith was indicted for murder and possession of a weapon during the commission of a violent crime. He was represented on these charges by Mr. Gamble.

The case was brought to trial in May of 2007 before Judge Macaulay. The jury found him guilty of the charges as indicted. The judge levied concurrent sentences of thirty years for murder and five years for the weapons charge.

An appeal was filed at the Court of Appeals in the nature of an *Anders* brief. The Court dismissed the appeal in January of 2010. And the State's ready to proceed.

THE COURT: All right. Very good.

And ---

MS. WHITE: Your Honor, I'm Druanne White.

THE COURT: Druanne White?

MS. WHITE: Yes, sir.

THE COURT: You're the defense attorney?

MS. WHITE: I am, Your Honor. Your Honor, I'm representing Mr. Smith in this P.C.R. And if you can tolerate a few opening remarks, because this is a little bit complex.

THE COURT: Sure.

MS. WHITE: And I can kind of outline what we plan on doing today.

THE COURT: Sure. Not a problem. Who else is there with you?

MS. WHITE: Your Honor, this is Kaitlyn Carter. She is actually a Clemson student who is in charge of handing me the documents. She has organized this mess up here, so ...

THE COURT: Okay. Very good.

MS. WHITE: And Trevor White is seated back here. He is a new lawyer in our office if he passes the bar this time. So we're waiting on those results.

THE COURT: Don't mention that subject.

MS. WHITE: Just a few more weeks.

OPEN STATEMENT

BY MS. WHITE:

Your Honor, in this case my client was seventeen years old. He was three inches shorter and fifteen

pounds lighter when this happened. Your Honor, the Plaintiff plans on -- there's primarily -- the primary thrust in this case is going to be that the wrong defense was used. Again, my client was seventeen.

Your Honor, we plan on presenting -- we're not retrying the case today or anything. I'm just going to put select witnesses up and introduce select statements that had a proper investigation been done -- Your Honor, we're alleging that my client was interviewed by the defense attorney for twenty minutes one time, a few more minutes another time, forty-five minutes by the investigator. That was everything. We're alleging that none of the witnesses were interviewed despite multiple statements.

Your Honor, we will be showing many statements. We will be introducing witnesses from the police investigation. All of these statements were police statements, not anybody else's. They were all provided in discovery.

Your Honor, the statements allege that -- the victim in this case is Sammy Martin. We're going to be presenting testimony that he lived with my client's mother when my client was a little bit younger. He was very abusive to her. There were police reports where he'd knocked her teeth out and bruised her. In fact,

he'd done this to many, many women. And my client knew about it at age seventeen.

Your Honor, the night that this occurred, they were at this lounge. There were several witnesses. There are numerous police statements where the people talk about Sammy Martin was slapping his girlfriend. He was hitting his girlfriend. He had a new girlfriend at this point. He had yanked jewelry off of her neck inside the lounge, gone outside, began assaulting her as well. Yanked more jewelry off of her neck.

And at the end of the whole thing, my client sees what's happening. He asks somebody for a gun. He goes up to Mr. Martin and says, leave her alone. Mr. Martin turns on him and he shoots.

Your Honor, despite numerous statements talking about the assaults, the slapping, the various things that occurred, they went with a I-didn't-do-it defense. My client had never heard of defense of others until I began discussing it with him. He had never heard of the concept.

Mr. Smith, Your Honor, at the age of seventeen, the ripe of seventeen, left the state. He fled to Florida after this. There were around five or six witnesses at the trial. They did not present a defense at all, the Defendant didn't. Your Honor, at the trial, these

witnesses again, about five or six, ID-ed him. They were within a few feet. Some had picked him out of a lineup. Some knew him. And so really the thrust of our argument today is, had these witnesses been interviewed, had there been a thorough investigation into this, he had a very viable defense which was never discussed with him and never discussed with any witnesses. So that's the thrust.

But we've got a few other issues, some hearsay and a few other things. But that's the basic.

THE COURT: All right.

Any opening statement?

MS. RATIGAN: We're just ready to proceed, Your Honor.

THE COURT: All right. First witness?

MS. WHITE: Your Honor, one other procedural matter. My client's mother, we were planning on having her testify about the prior abuse. We do have police reports and some witnesses, so we may not need her at all. She just had a stroke Sunday, is in I.C.U. and unable to talk at all. So I don't think we're going to need her, but I would like to ask the Court to give us the option, if we have to, if it looks like I don't cover her testimony by other people, to leave the record open. And apparently -- I mean, I don't even know that she's

ever going to be able to speak again. But if it looks like there's some ability to do so, I would ask at the end of the case that we be allowed to be heard on that.

THE COURT: All right. What says the State?

MS. RATIGAN: I've spoken to Ms. White about this. My position would be to go ahead and do the case, and if at the end Your Honor believes such testimony would be relevant to the disposition, we'd agree to hold the record open. But if Your Honor does not believe it would be relevant, then there would be no point in keeping the case open for an indefinite period of time.

MS. WHITE: And Your Honor, I don't want to. Believe me, I want a conclusion. This man has been in jail for a long time. So I am going to try everything I can not to even ask that.

THE COURT: Okay.

MS. WHITE: Your Honor, are you ready for us to call the first witness?

THE COURT: Yes.

MS. WHITE: Your Honor, we'd call Robert Gamble.

(WHEREUPON, the witness was duly sworn.)

THE COURT: Now, Ms. White, were you the Solicitor at one time?

MS. WHITE: I was, but not at this time. I

missed it by about a year, Your Honor.

THE COURT: All right.

MS. WHITE: That is the first thing I would be looking at. But, no, I've looked at this.

THE COURT: And Mr. Gamble was the Public Defender, I believe ---

MS. WHITE: Yes, sir.

THE COURT: --- the last time I was here.

How are you doing, sir?

THE WITNESS: Fine, sir.

THE COURT: All right. Good.

ROBERT GAMBLE,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. WHITE:

Q. Mr. Gamble, what's your full name?

A. Robert Aleara Gamble.

Q. And what was your occupation in the 2006 to 2007 time period?

A. Public Defender for the Anderson County Public Defender Board.

Q. And did you defend Jwan Smith?

A. I did.

Q. And he was charged with murder and possession of a firearm during the commission of a violent crime; is that

correct?

A. Correct. Yes.

Q. Now, the date that this occurred was February 25th, 2006; is that correct?

A. That's correct.

Q. And I believe the trial was May 9th of 2007?

A. That's correct.

Q. And the alleged victim in this was Sammy Martin?

A. Yes.

Q. And Jwan's date of birth is 7/6/88. He was basically seventeen at the time this happened, eighteen at the time of trial; is that correct?

A. That's correct.

Q. Now, Mr. Smith had a clean record going into this trial?

A. Yes, he did. Well, he was only seventeen, so ...

Q. Even juvenile though? I think ---

A. I didn't find ---

Q. --- he was arrested one time for like trespass or overnight or a ticket or something like that. But other than that, nothing even as a juvenile; is that correct?

A. That's correct.

Q. Now, let's go to the discovery that you received from the State. The State sent you witness statements, sent you lots and lots of witness statements; is that

correct?

A. Yes. And a lot of them were from inside the lounge, which I discount because that was neither here nor there with regard to the shooting. The next witness statements were outside the lounge, Bowen's Old School Lounge. And these I read and went over and went over the polygraphs that were done on these witnesses. And that was the extent of that at the time.

Q. All right. Now, there were several witnesses that picked my client or your client -- both of our clients, I guess -- out of photo lineups and/or knew him and identified him pre-trial and during trial as the shooter; is that correct?

A. That's correct.

Q. We had Fred Childs, Alphonso Haley, Latorrey Pearson, Bason Haley, James Pickens and others who put him there asking for the gun right before the shooting occurred?

A. I'm not so sure he was asking for the gun or it was given to him. At any rate, he acquired a gun.

Q. All right. And so there were multiple witnesses who knew him, some that did not know him but picked him out of the lineup and identified him as the shooter?

A. That's correct.

Q. Now, at trial, the Defense did not present a case at

all; is that correct?

A. That's correct.

Q. So basically, all of the witnesses who testified were witnesses pointing at him saying he's the one that did the shooting?

A. Yes.

Q. And in fact, Mr. Smith, after the shooting occurred, immediately fled to Florida where he was extradited?

A. That's correct.

Q. From Florida? I'm going to hand you -- and I think you have the original in your file. I'm going to hand you a letter and ask you if that's a letter that you received from Mr. Smith?

A. Yes, I'm familiar with this. I did receive it from Mr. Smith, and I don't recall the date that we got it.

Q. I don't think it's dated, is it? It just talks about the bond hearing that occurred six months before. *So that's about the only frame of reference.*

A. Right. And that was in August. So roughly December or January, I think, of '07.

MS. WHITE: Your Honor, I'd ask that the letter be admitted into evidence. Just one second. Let me give you a copy.

MS. RATIGAN: No objection.

THE COURT: Okay.

(WHEREUPON, Plaintiff's Exhibit Number 1 was marked and admitted into evidence.)

THE COURT: Okay. Give me some context again as to -- give me some context again as to what this is, Ms. White.

MS. WHITE: Yes, sir, I will. Your Honor, I'm going to have him publish it if that's all right.

THE COURT: Okay.

MS. WHITE: This is a letter, Your Honor, from Mr. Smith to Mr. Gamble before the trial.

THE COURT: All right.

Q. And will you please publish for the Judge what the letter said?

A. I beg your pardon?

Q. Will you please publish the letter for the Judge?

A. Oh.

"Dear Mr. Robert Gamble, I got a statement from Clyde Clemmons. I got it on regular paper. He wrote what he saw. He say that first statement he wrote he and the -- he had the names mixed up and just was the talk around the place until he saw who they had locked up. And at his own will, he wrote this statement. I had nothing to do with this, but he won't -- I think he means he want instead of won't --

the truth to be known. Write me back as soon as possible. P.S., he said, type it up and send it to him and he will sign it."

Q. Okay. And did you ever talk to that witness?

A. To Clyde Clemmons?

Q. Yes.

A. I don't recall if I did or did not.

Q. Okay. Would you have taken notes had you talked to any witnesses?

A. I generally do. At least my shorthand-type notes. I don't -- let me put it this way. I don't generally write out exactly what they say because I don't want it to be found sometime.

MS. WHITE: May I approach, Your Honor?

THE COURT: Yes.

Q. But you do -- you do take notes and you can look in your file to see if you have notes from talking to any witnesses?

A. I don't -- I haven't -- I looked through the file previous to this, and I don't have any notation of any statement form this gentleman.

Q. All right. And you met with Mr. Smith approximately twenty minutes one time and then a little bit -- a few more minutes to discuss a plea bargain; is that correct?

A. I don't recall our meetings or how many or the

length of time on them. I'll give you a frame. The only notation I have is my investigator spoke with him on June 30th of '06. We talked with him earlier than this, and he originally said he was hiring Bruce Byrholdt. And our policy is if they mention a private lawyer, we get out quick. So we got out quickly, and I didn't get back to him until June 30 with the investigator at which time he denied anything to do with this.

Q. All right.

A. And then I talked with him -- and I don't have the date noted. I've looked at my file. And I went to a preliminary on June 21. I would have talked with him ---

Q. Wait. Robert, I'm sorry. Will you tell us what year you're in?

A. June 21, '06 was the preliminary date. It was continued and went over to August 4 of '06. And I went by to see him on February 13th of '07 with a disk. I don't remember what that was about either.

Q. Would that have probably been the discovery?

A. Yes.

Q. And do you know how long you met with him that time?

A. No, I don't. I don't ever put down dates or -- I mean, times. I just met with him.

Q. Other than the preliminary hearing and that of meeting with him, do you have any notes of meeting him at

any other time?
A. I don't see any.
Q. All right. And I believe you received discovery from the State; is that correct?
A. I did.
MS. WHITE: May I approach the witness, Your Honor?
THE COURT: Yes.
Q. And you received the various witness statements and other documents. They were clocked-in in October of '06. Does that sound about right?
A. That's about right. October 11, '06, and I would have gotten it right after that.
Q. Okay. You can keep that up there if you want to refer to that.
Now, are you -- do you have any notes of meeting with any witnesses before this murder trial? I think you said you saw him at the prelim, you met with him one other time. Is there any -- would you -- do you have any notes of interviewing witnesses?
A. No, I do not.
Q. Does that mean that you did not interview the witnesses?
A. Not necessarily.
Q. But you said you normally do take notes though if

you talk to them?
A. I normally put down their name and where I talked with them. And I don't like to put down too much notation and especially if they're adverse to me.
Q. I'm going to hand you a copy of the transcript. And in the prosecutor's opening statement, he referred a little bit to the violence that Sandy Martin was inflicting on his girlfriend that night; is that correct? Do you recall?
A. From '06 to now and me seventy-one, no, I don't recall that.
Q. You've only tried about a hundred cases since then.
MS. WHITE: May I approach, Your Honor.
A. Probably around a hundred and seventy, hundred and eighty at that time.
Q. All right. Let's go -- I'm just going to ask you to read some of the solicitor's comments in opening. If you'll go to page 48, lines 19 to 49.
A. 19 through 49?
Q. I mean -- I'm sorry. 19 through page 40, line 13. I'm sorry. So starting on page ---
A. 19 through -- I got it. Okay. I'm there.
Q. Okay. If you'll start at page 48, line 19.
A. All right. This is Rame Campbell in opening statement, I presume. Yes, in opening statement to the

jury. Well, Sammy didn't handle it too well. He started hollering at her, cussing at her, grabbed her, trying to get her to go, pushing on her, wasn't carrying on like he should. The fact that he saw his girlfriend with another man combined with the fact that he had been drinking -- you're going to see the reports. He had one and a half, two times the legal limit, had a little bit of cocaine in his system. Combine that all together, and he wasn't acting like he was supposed to. And he pulls her out and they go outside in the lounge and get into the parking lot. And he's still fussing and hollering at her and pushing on her to get her to leave. Well, she goes and gets in her car and it won't start. And he's still fussing. So he gets in his car, and he pulls up right there where her car is, gets out. While he's standing outside, a young black man approaches him, aims a pistol at him, fires off three shots, hitting him twice. He hit in the chest and right in the neck here, indicating. And Mr. Martin died right there.

Q. Mr. Gamble, back up a little bit. What he was talking about that he saw his girlfriend with someone else. Basically, he walked in the lounge, the testimony showed his girlfriend -- Sally, is what they call her -- was just sitting at a table with another man; is that correct? That's all that we're talking about?

A. That's correct.
Q. All right. Go next to page 355, lines 5 through 8, please.
A. 55, 5 through 8?
Q. Yes, sir. And tell the Judge where we are. What is this? What part of the -- this is closing arguments, the prosecutor's closing argument; is that correct?
A. I guess.
Q. Okay.
A. Wait a minute.
Q. Line 5 to 8. I don't have a transcript in front of me, but from what I recall that's part of the prosecutor's ---
A. It's the closing argument on behalf of the State from Rame Campbell. And starting on ---
Q. Page 355, lines 5 to 8 and then 10 to 24.
A. Okay, 5 to 8. One is five to six people testified. Jwan Smith, this man right here, as the man who pulled the trigger of the gun that shot and killed Sammy Martin. Line what, now?
Q. Lines 10 to 24?
A. Investigation of fourteen and a half months, no other name has come up since that time as anybody else as the shooter other than Jwan Smith. He was known as Buster. What else can't they get around? Jwan Smith

told Alphonso Haley the next day that he did it. This ain't talking to the police. This is talking to a friend he knows, somebody he sees every other day. As he testified on the stand, he admitted it. What did he say? He said he used to do my mom that way. This man may not have been a saint and he may not -- he may have been drunk that night and he was down there fussing or fighting or whatever the definition these people use to determine what was going on between Sammy and Angela Brownlee or Sally, but he didn't deserve to die for that. There was other ways it could have been handled.

Q. Okay. If you will go to page 356, again, still in closing, lines 1 to 7?

A. The third thing they can't get around -- you notice they didn't try to bring it up -- was where was Mr. Smith found? He was found in Florida, two states away. He left right after the fact. Why, all of a sudden, would he want to leave right then? Was he going down to Disney World to have a little vacation?

Q. Okay. And Mr. Gamble, all of this stuff you did not object, so I'm assuming you agreed the testimony showed five to six witnesses identified him, he fled to Florida. He made an admission to someone who came in and testified that he had done the shooting. And all of this was provided in discovery; is that correct?

A. That's correct.
Q. All right. Keep going. We've got two more readings I want. Page 357, lines 8 to 10 and 14 to 16.
A. Five or six different people, people who are not related to one another or had any involvement, stated he was here, he was there, he did the shooting.
Q. And then 14 to 16?
A. In the fourteen and a half months this case has been going on, no other name but Buster, Jwan Smith, has been shown to be the shooter in this case.
Q. And then let's go finally to page 358, lines 2 to 4?
A. One is, Mr. Smith asked for the gun after he was told that Ms. Brownlee and Mr. Martin were out there arguing and fussing in the parking lot. He asked for the gun. All the witnesses described the shooter as a young, short, black male with dreds or plaits wearing a black jacket. There's only been one person. There's only been one discrepancy, said it was a red jacket. He didn't say jacket, but the testimony was a jacket.
Q. All right. And so let's talk about what was provided in discovery. We're going to start with that. Let's start with Landis Bolden. Do you have any notes showing you ever interviewed Landis Bolden?
A. I don't have any notes on Landis Bolden.
Q. Do you recall ever interviewing him?

A. No, I do not. I knew Landis. I had represented him before, but I don't recall interviewing him or talking with him.

Q. All right. Landis Bolden gave a written statement that was provided in discovery; is that correct?

A. Yes.

Q. Okay.

MS. WHITE: Your Honor, do you want me to ask to approach every time, or do you -- some judges ---

THE COURT: No, you don't have to ---

MS. WHITE: --- like it and some don't.

THE COURT: No, I don't like it.

MS. WHITE: Okay.

THE COURT: You do what you want to do.

MS. WHITE: Yes, sir. All right.

Q. And he gave a statement dated 2/26 of '06, which basically this happened at midnight. It would have been the morning after; is that correct?

A. That's correct.

Q. All right. And in here he says, Latham Clinkscales told me after the shooting he saw the man that was shot jerk something off of her neck. And that's when another black male approached and shot the man. Is that part of his statement?

A. Yes.

Q. Okay. And he was the owner of the lounge?
A. Landis ran the Old School Lounge. He also had Bolden's which was around the corner from here when I represented him.
Q. Okay. Now, let's talk about Angela Brownlee. This is the girlfriend of Sammy who goes by Sally, but her real name is Angela Brownlee; is that correct?
A. Right.
Q. And did you ever interview her?
A. No. I say no, but not that I recall.
Q. And was she called as a witness by the State?
A. I don't recall. I don't think she was, as a matter of fact.
Q. All right. She gave a statement dated 2/26 of '06; is that correct? And I'll hand you a copy of the statement.
A. Evidently.
THE COURT: And this is his mother?
MS. WHITE: Your Honor, this is the girlfriend of Sammy who he was accused of assaulting.
THE COURT: Okay.
MS. WHITE: She goes by Sally, but her real name is Angela Brownlee.
THE COURT: Okay.
Q. Mr. Gamble, let me -- if you don't mind, let me see

that statement, and I'm going to give you another copy. I've highlighted parts on it.

A. I may have it.

Q. I've got a copy for you.

A. Okay.

Q. All right. If you'd look at her statement. She -- if you go down -- if you want me to point, it might be easier. If you go down partway, she talks about how Sam -- they went to Old School. Sam said he felt like he was too drunk to go in; is that correct? So he leaves and then comes back later?

A. Right.

Q. And then if you go on down to about the middle, does she put -- and these are -- all the statements to which I'm referring are all police statements; is that correct?

A. Yes. It's on police, Anderson County stationery.

Q. All right. And she says, I was down at the Old School Lounge for about an hour when Sammy came in the front door. He walked over to me and tried to grab me up by my collar. He said, come on, several times. Then as you go on down -- I'm going to skip the parts that are not relevant to the assault. I was up under the hood, and Sammy either pulled his Taurus around the lounge building or simply backed up. Now he had placed his Taurus in front of my Caprice. And that's when the

shooting occurred, is that correct, when they were outside? She says he was going to try to jump her off.

A. Jump her car off.

Q. Uh-huh (affirmative).

A. Uh-huh (affirmative).

Q. And she says, he came around the front of his Taurus, and I heard two pops.

A. Right.

Q. Is that right?

A. That's correct.

Q. Now, she testified -- do you recall her testimony at all?

A. No, I do not.

Q. All right. Do you have -- how long have you been an attorney?

A. Good, Lord. I was sworn in April 17th of 1966. My number is 2322.

Q. Do you find it common or uncommon in criminal law -- you've been in criminal law for decades, right?

A. I started with the Public Defender's Office in November of 1969 and worked with the Public Defender and became Public Defender until 1974. I went back into private practice from '74 to '77, took the Public Defender's job apropos April 1st, 1984, April Fools Day and was Public Defender continuously until relieved by

the Office of Indigent Defense on August 22, 1911 -- 2011.

Q. And in your experience in dealing with domestic violence, is it common or uncommon for alleged victims of domestic violence to deny the violence later and take the perpetrator's side?

A. Oh, I've had them sitting at my table during a preliminary hearing with practically blood running out of them.

Q. And in fact ---

A. But they go back to the boyfriend.

Q. All right. And they deny abuse and take up for him; is that correct?

A. Right.

Q. So that would not be surprising if that occurs in a domestic violence case?

A. No. I've had many cases of domestic violence, one where the woman's jaw was broken when he pulled her from a car and broke her jaw. And then she's sitting with him at the trial. And you prosecuted that case.

Q. One of many we had. All right. Now, you got some SLED results in this case; is that correct?

A. Yes. Not very much, but I had some.

Q. All right. And the blood taken in the autopsy by Sam Martin showed that he had a point one five four

alcohol, and that he was positive for cocaine metabolites; is that correct?

A. Yes.

Q. Crack cocaine?

A. Yes.

Q. Those were all crack cocaine?

A. Right.

Q. Crack cocaine; is that right?

A. Right.

Q. The long and short of it is, he had almost twice the limit of alcohol and he had cocaine in his system?

A. Right. It showed point fifteen. It would have been higher than that, but he bled out some and it was taken quite a while after.

Q. And that was taken from the autopsy. In other words, what would have been in his system at his date of death?

A. It would have been higher actually at the date of death.

Q. Did you get a statement from Janis Cherry, a police statement dated 2/26/06?

A. From whom?

Q. Janis Cherry?

A. Cherry?

Q. Was that provided to you in discovery by the State?

A. Yes. It was number 82 on the discovery index.
Q. All right. And I want you to turn to that. First of all, do you have any notes of interviewing her, or to your knowledge, did you ever interview her?
A. I don't recall any of that. And I don't have any notes from my investigator indicating that she did.
Q. All right. If you'll go to -- and when I asked you did you interview, I want to know if any of your staff did too. That goes without saying.
A. Right.
Q. Do you have any notes from your staff on any of these people interviewed -- being interviewed either?
A. No.
Q. All right. Let's go to the statement. Again, given 2/26/2006 at four thirty-three A.M. That would have been about four and a half hours after the shooting; is that correct?
A. That's correct.
Q. All right. And she says -- if you'll go to the second line -- tonight I was at Old School Club on West Market Street. I was inside working cleaning tables. The woman that goes with the deceased was inside with another dude. The deceased had come in to tell her, let's go. They came outside and was arguing against her car. He grabbed her by the shirt to ask her why she was

with another dude, and he broke her necklace. I'd come back in then. This was about twelve midnight, before or a little after. Somebody came in and told Landis -- that's the owner -- to call the police. That's when y'all came. Is that correct?

A. Right.

Q. Now, she was not called as a witness at all; is that correct?

A. I don't think so, no.

Q. All right. Let's next go to Fred Childs. Do you have any notes where he was interviewed by anybody in your office or you?

A. Fred Childs, I don't remember.

Q. He testified though in the case and identified Mr. Smith as the perpetrator; is that correct?

A. Right.

Q. I'm handing you a statement from Fred Childs dated 2/26/06. Again, is that a police statement that was provided in discovery?

A. It is. And it was ---

Q. If you'll go to about the fifth line on that. Does it read, between eleven thirty P.M. and midnight I saw Sammy Martin drive in a green-looking Ford Taurus and pull up beside the wall of the building. Sammy walked into the lounge, and not two minutes later a black female

wearing a grey sweat suit, heavyset walked out with Sammy right behind her. I heard Sammy say to her, I told you I would catch you cheating. She told Sammy to just get in the car and go to the house. They walked over to the rust-colored older car. Sammy pushed on her a little. Sammy asked her, what are you doing? What are you doing? They quit arguing and started to try to get Brownlee's -- in other words, the girlfriend -- color car started. And then if you go down a few more lines, it says, Sammy kept saying, I told you I'd catch you, to Brownlee. When Sammy and Brownlee came out of the club, they were followed by a black man wearing a white derby-style hat and a black trench coat and something-colored boots. He hung around a cream colored Cadillac two-door. I heard him say, you shouldn't treat a woman like that. He never approached Sammy though. Brownlee got into the green Taurus and had backed it up to her rust car -- got into the green Taurus and backed it up to the rust-colored car. Then if you go to the next page, about four lines down, he, the shooter, said something to Sammy and pulled out what appeared to be a black colored revolver. And then it goes on to say he shot Sammy two to three times. Was that statement also provided?

A. I'm sure it was. I've read it before, but I don't see it listed. That's what I'm looking for right now.

Q. Okay. Would it help if you look at the cross-examination of him where you're talking about, you gave a statement to Officer Reeves that morning, didn't you? Maybe that would be faster. Let me just show you the transcript. Page 95, cross-examination by Mr. Gamble on Mr. Childs. Mr. Childs, you gave a statement to Officer Reeves that very morning, didn't you?

A. I agree that I asked him because the transcript says -- I got it. I have it. It was number six under the statements outside the lounge. And I do have a copy of that statement in my file.

Q. And let's go next to Patricia Clinkscales. Now, she was never called as a witness; is that correct?

A. She was never called?

Q. As a witness.

A. No.

Q. Patricia Clinkscales?

A. Not to my knowledge.

Q. All right. And again, she gave a statement to the police that same morning, 2/26 of '06; is that right?

A. Right.

Q. And did you interview her or anyone on your staff interview her to your knowledge?

A. Not that I recall.

Q. And in her written statement, she basically says --

just one minute. Okay. She says that -- basically she said -- and you've got it in front of you; is that correct?

A. Yeah.

Q. Okay. She basically says that Sally or Ms. Brownlee -- goes by the same name -- was sitting with Sammy, the guy that was shot. They were in the lounge drinking beer, laughing and talking; is that right? I'm not saying -- I mean, the man that she was sitting with, Vance.

A. Right. She and somebody other than Sammy.

Q. Okay. And then go to the middle of the statement. Sammy Lee Martin, Sally Brownlee's boyfriend, came in the club and started fussing in the club; is that correct?

A. Right.

Q. And then go on down where it says, Sammy grabbed a gold necklace off of Sally's neck; is that right?

A. Right.

Q. Okay. And then basically she says they go outside, and about fifteen minutes later people came inside and said someone got shot?

A. Right.

Q. Okay. She says she went outside at some point and saw Sally standing by Sammy pulling on his arm and asking somebody to help her put him in the car. That was after

Sammy was shot?
A. I don't know when it was.
Q. According to her statement, I'm talking about?
A. According to her statement. But I think that's contrary to the truth because as I recall, when he was shot he went down immediately.
Q. Okay. Let's go next to Cammy Dennis. Did you or any of your staff interview her?
A. Who?
Q. Cammy Dennis. I'll hand you a copy of the statement.
A. Not that I know of or have any notes of.
Q. Now, I handed you a copy of the statement. That was provided in discovery as well; is that correct?
A. Yes, that's correct.
Q. Okay. And again, she was not called as a witness; is that correct?
A. No.
Q. All right. And if you look at her statement given the morning that this occurred to the police, it says, when I got outside of the lounge, I saw a man run up to a woman wearing a grey sweat suit standing in a car. The man smacked the woman in the face and jerked her chain off of her neck. The man that jerked it off was looking on the ground for it. I went back in and told the owner,

Landis Bolden, that a man was outside trying to beat up some woman. Landis went outside and told the man to leave her alone and get off his property. Is that correct?

A. That's what it says. But nobody else said anything like that.

Q. And Steven Glenn gave a statement too; is that correct?

A. Steven Glenn?

Q. Uh-huh (affirmative).

A. Steven Glenn. You got it?

Q. Okay. We're going to have to share this one because I don't think I have a copy of it.

A. I've got a Steven Cowan.

Q. Steven Glenn, taken the morning that this occurred.

A. Was he inside or outside?

Q. He's inside.

A. Inside? Hang on a minute. I did not and was not, it appears, furnished Steven Glenn. Now, let me cross-check that.

Q. Let me give you a copy of the statement.

A. Okay. I've read it.

Q. Okay. And in this one he says he's in the lounge, the black male that came in was yelling at the heavyset female. He said, bitch, come on. And he snatched her up

by her shirt and they went out together. Mr. Bolden told him never to come back. And that's the owner of the place?

A. That's right.

Q. Is that correct?

A. That's right.

Q. All right. So basically he'd gotten bounced from the place because of this behavior?

A. Right.

Q. And again, did you interview him at all or any of your staff interview him?

A. No, we did not.

Q. All right. Let's go next to Alphonso Haley. Did you ever interview him?

A. I don't have any notes on it if we did. I have his statement.

Q. And that was provided in discovery?

A. Yes.

Q. All right. If you'll go -- it's actually an undated statement, but when you look at the other material, I think it's from March of 2006. Go to that statement, the one that starts with a statement of one Alphonso Leon Haley. And again, all of these statements are police statements; is that right? During the police investigation they were collected?

A. I have one, Ms. White, that I can't read. And it's ---

Q. Let me give you one that's an original.

A. --- on voluntary statement. And it's so whited out ---

Q. Here, this is a better copy. I'm sorry.

A. --- I don't know what it says. Oh, I didn't have that, I don't think.

Q. Okay.

A. Okay.

Q. And in this statement, Alphonso Haley says, on about the fourth line, it was between eleven and eleven-thirty when we went out walking and got to the lounge. Go on down to about the middle. We hung out at the club a little. I opened the door for a young black female who was leaving the lounge. And Sammy Martin, the guy that got shot, came outside with his girlfriend, Sally. Sammy was bad-mouthing her. He called her a hoe and yelled at her and slapped her several times as they walked off the porch toward the right side of the parking lot. I looked over to where Bason, Latorrey and Turk were standing, and I saw Buster Smith standing with them. And then he goes on to say that Latorrey -- Buster asked for a gun and Latorrey hands the gun to Buster. Then he says, I went back inside the lounge, and a few seconds later I heard

three shots. Is that right?

A. That's right.

Q. And again, this is one of the witnesses who testified and identified Buster, i.e. Mr. Smith, as the shooter?

A. Right. Well, no, um ...

Q. Okay. Let's go next to Bason Haley. Again, is there any indication he was ever interviewed?

A. Not that I have any notes on it, no.

Q. And again, he gave a written statement as well; is that correct?

A. Yes. And I do ---

Q. Actually, he gave a couple?

A. Right.

Q. All right. I'm going to hand you one dated 3/1 of '06 at twelve thirty A.M.

A. Uh-huh (affirmative).

Q. If you'll just take a look at that. And in that one, starting on about the third -- well, let me just -- well, no, that's not relevant. Let me go down to -- go to about the middle of the first page. And it says, there was a black male and black female in the parking lot fighting and fussing. I watched them and saw the black male scuffling with the black female. And then go on down a line or two. The female sat in the car on the

right side, and he was leaning inside messing with her. She seemed to get her car cranked, turned the lights on. He got in the green Taurus, pulled around to the back of the lounge. Eventually he pulled out onto Market Street. He drove a little ways and then pulled back into the lot in front of her vehicle. Is that correct?

A. That's what he said.

Q. Okay. And then go on down to about four lines up from the bottom. The black male got out of his green Taurus, walked around the front of his car, started arguing again with the heavy, fat female he'd been fussing with. Buster asked me if I had a gun. I told him no. Buster asked Torrey if he had a gun, and Torrey pulled out a silver-colored thirty-eight. And then he goes on to say that Torrey -- I mean, that Buster went within five or six feet of the black male and ended up shooting him. Is that correct?

A. That's correct.

Q. Now, Bason Haley gave another statement as well that same day only later; is that correct? That he gave to the police.

A. Yes.

Q. All right. Let's go to that one. And again, this one is at five thirty P.M. or as they have on this statement, seventeen thirty?

A. Five hours later.
Q. Uh-huh (affirmative). A few hours later. All right. Let's go down again to sort of toward the bottom of the statement, the last paragraph. A few minutes before Buster got there, a black male and a black female started arguing on the right side of the lounge parking lot. I watched them and saw the black male scuffling with the black female. She sat down in her car, and he was leaning inside messing with her. The car she was in was a big squared-off Chevy. She seemed to get her car cranked and turned on the lights. He got in the green Taurus. He pulled around the back of the lounge and pulled out onto Market. He drove a little and then pulled back into the lounge parking lot, pulled in front of the female's big Chevy. He got out and went around the front of his car and started arguing again with the female. I saw a figure walking toward the black male. He had -- and then he goes on to describe him and basically says that Buster or Mr. Smith shot.
A. Right.
Q. And I can't remember if I've asked you this. Forgive me if I have. But did you interview him or anyone on your staff?
A. Not that I know of, no. I don't have any notes on it.

Q. All right. Let's go on to Mary Ann Hall. Did she give a statement that was provided in discovery on 2/26 of '06?

A. Yes.

Q. Okay. And do you have a copy of that, or do you need a copy? I'll give you one. Here. It's faster. And did you or your staff interview her at all?

A. Not that I know of.

Q. And does she put in her statement, while I was inside the Old School Lounge, I had just gotten through dancing and the guy that got killed came inside and told the girl, his girlfriend, a black dude and a heavyset woman, she was drinking a beer. As soon as he came in the door, he told her that she was supposed to be at home. She went to take a drink out of her beer. He reached up and grabbed a necklace she was wearing and snatched it off. They both walked outside. And then that's all she knows. Is that correct?

A. That's correct.

Q. And did you recall getting a statement from Samika Hall, again from 2/26 of '06, approximately two hours after the shooting?

A. No, I do not recall any of that. I have the copy from ---

Q. You've got a copy of that? Were you provided that

in discovery?

A. Yeah, I got it in discovery.

Q. All right. And do you have any indication that you or anyone from your staff interviewed her?

A. No, I do not.

Q. And do you recall that she wrote that she was at Old School Lounge with her sister and was inside. And when we first got here, the man that's dead was arguing with a girl. Do you recall that?

A. Yes.

Q. And she was never called as a witness?

A. No.

Q. And the one we talked about before that, Mary Ann Hall was never called as a witness either?

A. No.

Q. All right. Let's go to Anthony Massey. Do you have any indication that you ever interviewed him or that anyone from your staff interviewed him?

A. No.

Q. Did he give a written statement?

A. Yes. And he ---

Q. And was that provided in discovery?

A. Yes.

Q. Do you have that in front of you, or do you need a copy? It looks like all I've got is one copy, but I can

certainly read from it while you ---

A. I have it.

Q. Okay. And you said that you all did not interview him to your knowledge?

A. To my knowledge, I don't recall that.

Q. Okay. And he was called as a witness?

A. No.

Q. All right. Let's go to his statement. Basically, he's saying he was at the club. And let's go down to the part that's relevant. Go to the middle. He's talking about Sammy. He said, hey, Sam. And he said, yeah, and kept going. He had a shitty look on his face. He walked to the table next to mine where his old lady was sitting with another dude. I don't know her name, but I think she and Sam are married. And then on down a couple of lines, Sam asked his old lady, what are you doing here? And I don't know if that says punched on her arm. Is that what that says? I can't read that.

A. Pushed or punched. I don't -- I can't read it either.

Q. Okay. She just grinned at him, at Sam, and that pissed him off. They started arguing, and I got up and went outside to Latham, the bouncer, and told him to get inside.

A. That's what it says.

Q. Okay. And then go to the next page where they're outside now. Sam and his old lady were arguing. Some other girl -- I don't know who -- was with him. I heard but didn't see a slap. The other dude was walking around, and I heard him say, that punk mother-fucker won't fight a man if he'll hit a woman like that.

A. It says ---

Q. And then he goes on to say that Sam got in his car, left and came back; is that right?

A. Right.

Q. Okay. And then go on down. And he says, Sam pulled around and saw that she hadn't moved. He went back over there. He pulled her out, and they argued again. While Sam and his old lady were talking, a short, healthy-sized dude came up from behind the building with a gun, and that's when the shot occurred. Is that right?

A. Right.

Q. All right. Let's go to Janis Morris. Now, this is my client's mother; is that right?

A. I assume, yes.

Q. Okay. And she gave a statement to police on 2/27 of '06; is that correct?

A. Norris or Morris?

Q. Morris. I'm sorry. M-O-R-R-I-S. I've got a copy if you need it.

A. I've got it. Red door, number twelve.
Q. I've got a -- do you need a copy?
A. It'd be quicker if you did because I've got about forty statements here.
Q. Here you go. Anytime you need it, I've got the copies right in my hands.
A. Okay.
Q. Okay. Go to the middle of her statement. And again, this is given to the police on 2/27 of '06; is that right?
A. Right.
Q. It says, then me and William went and stayed at the Super 8 Motel -- this is after she found out that Jwan may have done this -- because we were scared to go back to the house. Sam's family is a little crazy, and we were worried they might do something. Is that right?
A. Right.
Q. And then on down toward the end, Sam Martin -- that's the alleged victim -- and me dated several years ago. And then the last line, he used to be abusive. Did you ever talk to her about that or pull any police reports on that?
A. No, I did not.
Q. Are you aware that Janis Morris, Mr. Smith's mother, had been beaten up frequently by Sammy Martin?

A. Yes, I knew of that.
Q. And are you aware that there is an incident report dated 7/27 of '01 where his mother had to call the police? He was actually arrested for pushing his way in. Subject struck the victim with fist causing a bloody nose, busted lips and loose tooth. Did you ever look at that incident report or pull that incident report?
A. No, I did not.
Q. Are you aware that there were other incident reports of him beating up other girlfriends as well?
A. No.
Q. Now, let's go to Tim Mule (phonic). Did you receive a witness state -- a statement from him from the police dated 2/26 of '06?
A. Who?
Q. Tim Mule. And I have a copy right here if you need it.
A. Inside or outside?
Q. Inside.
A. Yes, I have a -- I received a copy in the discovery.
Q. All right. And did you all ever interview him to your knowledge or anybody ---
A. Don't recall.
Q. And he was not called as a witness; is that right?
A. No, he was not.

Q. Okay. And he says, I was at Old School Lounge. Go to the middle of the statement. A man came inside wearing a ball cap. He was saying something to a woman like he was mad about something. He shuffled a necklace that she was wearing with his hand and then left and went outside. Is that right?

A. Yes. I don't know what shuffled a necklace means, but ...

Q. Yeah. I'm not sure what that is either, but ... All right. Did you receive a statement from Carl Oglesby?

A. Yes.

Q. And did you get that in discovery?

A. Yes. No, I don't recall interviewing him or seeing him.

Q. Okay. Just gratuitously add that if you want to because that will be my question to you. All right. Let's start at the top of this. He gave a statement to the police dated 2/26 of '06; is that right?

A. Right.

Q. And it says, I got to Old School Lounge about eleven thirty. He goes on down to say he bought two beers. The guy that got shot walked into the lounge, grabbed up this black female sitting at a table. I was in the middle of the club and saw this altercation. The female and the

guy that got shot argued some, and then they stepped outside. Is that what he said?

A. Right.

Q. Was he called as a witness?

A. Shoes. Oh, no, he was not. He was not called as a witness.

Q. Now, Latorrey Pearson was called as a witness; is that right?

A. Yes.

Q. And let's talk about the statement that he gave on 3/1 of '06. Did anyone from your staff interview him ahead of trial?

A. Not that I'm aware of.

Q. I'm going to hand you a copy of the statement.

A. Okay.

Q. And did you receive the statement he gave to the police on March 1st, '06, in your discovery?

A. Yes.

Q. Okay. And go to about the fourth line. A few minutes later, a guy and girl came outside arguing, and the owner came out and told them to leave. The guy got in his car, started backing up. The owner went inside. The guy got back out of his car. They started arguing again. A few minutes after that, Buster came walking up and talked to Sweet or Turk for a minute. He walked away

and went somewhere for a minute. He came back and stopped near the corner again. Then he shot off around the building. At the most, maybe forty-five seconds later, I heard three shots. Is that the statement he gave that day?

A. Right.

Q. And let's go to the statement he gave on April 25th, 2006. I hand you a copy of that statement. And he did testify; is that right?

A. Yes.

Q. Okay. Let's go down to about ten lines down. And he says in his statement to the police, I saw a man and a woman, both black, fighting in the parking lot. The man and woman that were fighting moved over to the right-hand side of the parking lot near the tree. On down a line or two, I saw the black man hit the black woman a couple of times. I saw the black female get into a big older model Caprice and was backed into the creek. The black man got into a dark colored car and pulled in near her Caprice. I'd seen Landis Bolden who owns the club tell the black man to leave.

And then if you go on down, about three quarters down he says that he gave the gun to Buster. Buster asked for a gun. Is that right?

A. Yeah.

Q. And then he says, Buster walked around the building and walked toward the black man that was fight -- had been fighting with the black female. Buster pulled out the revolver and pointed it at the black man. The black man, I think, turned around, and I heard three shots.

And then on down to the last two lines. The next day Sweet Thing told me that Buster had said something to him about Sammy Martin, the guy that was shot, beating up on his, Buster's mother, in the past. I don't know if Buster thought that was his mother in the parking lot that night or not. Is that right?

A. That's right. That's what it says.

Q. And he actually testified and identified Buster as the shooter; is that right?

A. (No verbal response)

Q. Or could you recall that?

A. He says so in his statement that he gave Buster a three fifty-seven Rossi and that he pulled out the silver Rossi and pointed it at the black man and shot him. I turned around and I heard three shots, and I saw the black man fall. But he doesn't say he saw him, Buster, shoot the man.

Q. Okay.

A. Assuming that he did shoot him.

Q. Okay. Let's go to Denise Peterson. Did you receive

a statement given to the police from her dated 2/26/06 at approximately two hours after the shooting occurred?

A. Latorrey?

Q. No. This is Denise Peterson.

A. Peterson? Peterson? I was furnished this, but it ...

Q. Okay. And to your knowledge, did anybody interview this person?

A. Don't know.

Q. Okay. Do you have any indication that this person was interviewed?

A. No, I don't.

Q. Okay. And this person says she was at Old School Club with a friend, was inside. I saw the guy that was shot come in and grabbed this lady's shirt, a black female, tall, big-boned, brown-skinned. He jerked her twice and she got up. Do you recall that?

A. Yes.

Q. This club was, it turned out, quite crowded that night; is that right?

A. Yes. It was packed inside and out.

Q. And you would agree that to get all these peoples' attention in a crowded club, this had to be something fairly significant to go get a bouncer?

A. I don't know. I've never been down there. I don't

know the layout on that club.

Q. Okay. All right. Let's go to James Pickens, otherwise known as Turk. To your knowledge, do you have any indication that anyone ever interviewed him?

A. No, I don't. I don't know either way. I have the statement that he gave.

Q. All right. Now, he gave a couple of statements; is that right?

A. Three.

Q. All right. Let's talk about the one on 2/27 of '06. Do you have that in front of you?

A. No, I don't have any of his statements in front of me.

Q. I'm sorry.

A. I have a notation that I received them, but they're not in front of me.

Q. Hold on a minute. I'm sorry.

A. Well, I ---

Q. I think I have a whole bunch of statements in front of me. Let me see where I am on this. All right. I think we've got the right folder now. Let's go to James Pickens. All right. Let's talk about his -- some of his statements. We'll start with the one 2/27 of '06. And again, I think you -- correct me if I'm mistaken. Did you say that you all had not interviewed him or no

indication that he'd been ---
A. No indication that we did or did not.
Q. And you received a statement, I think you said, dated 2/27 of '06. And I think it was nine oh nine P.M; is that right?
A. Right. And there were three statements, I believe, given.
Q. And we'll go through those. All right. Let's start with that one. Basically, at the beginning of the statement he's saying he's at Bolden's Lounge. He was in and out of the lounge most of the night; is that right?
A. Right.
Q. Okay. Go to sort of the third line from the bottom of the first paragraph. Around midnight I was standing on the concrete porch of the building and saw the man that was shot, Sammy Martin, drive up into the parking lot. He parked a green Ford Taurus on the right side of the building. He was alone. He went inside the lounge and was back out just a few minutes later with a black female that I know to be his girlfriend.
On down to the next paragraph. They were arguing. She said, I was not with that other man. Sammy started hitting on her, slapping her and grabbing her by the shirt. They made their way over to the right side of the parking lot. Sammy's girlfriend got into a brown colored

Chevy. It was boxy looking. It was backed in. She got in her Chevy and he tried hitting on her some more. There was another black female with Sammy and the girlfriend. I noticed that Sammy quit hitting on his girlfriend. She was having trouble starting the Chevy. Sammy was still running his mouth. His girlfriend got out, popped the hood of her Chevy. She was messing under the engine compartment. I guess she was trying to get it started. Sammy's green Taurus was parked in front of her Chevy the whole time.

Go on down where it says, the girl that was with them was telling Sammy to leave his girlfriend alone while she tried to fix the car. Do you see that?

A. Yeah.

Q. And then on down, she talks about the shooter being about five to ten feet away from Sammy. And she heard three loud pops. And she identifies that person -- not she -- he, I'm sorry, identifies the person as Buster?

A. Right.

Q. All right. Let's go on to -- apparently, he was given a polygraph; is that right?

A. He was.

Q. And ---

A. And I had the results of that.

Q. Were you also given the notice from the polygraph?

I believe we got these from your file. Let me show you what they look like.

A. Oh, yes, I was given those. Bason Haley, Alphonso Haley, and James Pickens were all given polygraphs. And I have the results from those.

Q. Okay. And in the notes the polygraph examiner took dated 3/1 of '06, he says Buster -- and this is still James Pickens who was taking the polygraph. He says, Buster asked Sweet for a gun because Sammy beat his mama. Buster got into the car with Sam Cowan. That's how he left. I know Buster pulled the trigger. Go on down and he said, Buster asked, what's going on. I said, he's fighting with his girl, Sammy is. Buster said, give me the gun, to Sweet. Is that what the polygraph notes say that were provided?

A. Right.

Q. Now, let's go to the last statement dated 3/1 of '06. Again, we're still on James Pickens. Do you have that statement in front of you, or do you need it?

A. I need it.

Q. That may be easier said than done. I think we're going to have to look at this one together.

A. Hang on. No, that's 'A'.

Q. We can just look at it together.

A. Have you got a 'C'?

Q. This is dated 3/1 of '06. James Pickens' statement to the police.
A. Nope. I've got 2/27/06. This is 'A'. You're talking about 'C'.
Q. Okay. Let's just take a look at this. And basically, it says that he was -- I've got to look at this too because it's my only one. Let me see. On this one, he pretty much says he's at the lounge. He says he arrived about ten or eleven. Is that right?
A. Right.
Q. And let's see. I was looking for a specific part. Okay. I don't think this had anything relevant to it. You know what? I'm looking at the wrong one. I'm supposed to be looking at the ten thirty-one. I'm sorry. He gave two that statements that day.
A. You're looking for statement 'C'.
Q. Yeah. Here it is. I've got it. Let's look at this one. And he basically says he got to the lounge about ten thirty. He says, about midnight, I saw the man that was shot, Sammy Martin, drive up in the parking lot. He parked a green Ford Taurus on the right side of the building. He was alone. He went inside the lounge, was back in just a few minutes later with a black female I know to be his girlfriend. They were arguing. She said, I was not with that other man. Sammy started hitting on

her, slapping her and grabbing her by the shirt. They made their way over to the right side of the parking lot. Sammy's girlfriend got in a brown Chevy and then she described it. She was having trouble starting it. Sammy was running his mouth. His girlfriend got out. Where are we, Robert? I just lost that.

A. Right here. Popped the hood on her Chevy.

Q. Okay. She was messing inside the compartment. I guess she was trying to get it started. Sammy's green Taurus was parked in front of her Chevy the whole time. He never moved it. The other female that came out was brown skinned and wearing jeans. The girl was telling Sammy to leave his girlfriend alone while she tried to work on the car. Then Buster Smith, which is his street name, walked from Bolden's shop, walked up to the three of us and looked over to where Sammy and his girlfriend were fussing. And then he goes on to say, Buster asked us who was fighting and arguing in the parking lot. I told him it was Sam and his girlfriend. Buster asked Sweet, let me see your gun, man. And then they go on to say that he shot the -- Sammy; is that right?

A. Right.

Q. Now, Steve Reeves testified; he was the investigator?

A. Yes.

Q. And let's look at the transcript again if you don't mind.
A. Got it.
Q. If you'll go to page 285, line 25, 21 to 25. Now, please read that.
A. I'm there.
Q. Okay. Page 285, line 21 to 25, go ahead and publish, please.
A. Question, at approximately what time did you arrive? This is direct by Mr. Campbell of Steve Reeves who is the detective on the case. I arrived after midnight. The incident occurred right before midnight because we know our 9-1-1 call was just a few -- our first 9-1-1 call was a few seconds after midnight. So it was actually the 26th.
Q. Okay. At page 286, line 18 and 19.
A. Had the crime scene been sealed off? It had been.
Q. And this was before the pictures were taken; is that correct?
A. Yes.
Q. All right. Go to page 301, line 9 to 302, line 3.
A. Line 9, and did the test come back that Mr. Martin had alcohol in his system? Yes, it did. Did they do a blood test and urine test? Is that correct? Yes, sir. Blood test was point fifteen; the urine test was point

twenty-one? Yes, it was. So it's safe to say Mr. Martin had one and a half to two times the legal limit of intoxication regarding alcohol? Yes, sir. Did he have any other type of illegal substance in his system? He tested positive for cocaine, point oh eight. Tested positive for hydrolysis product, coke ethylene, point zero nine or point zero nine.

Q. Okay. That's fine. You agree that he definitely was intoxicated by drugs and alcohol?

A. He had both in his system.

Q. Okay. And finally 335, line 4 to 12.

A. 335?

Q. Uh-huh (affirmative).

THE COURT: Let's stand for a moment and stretch for a moment.

(Pause)

MS. WHITE: Your Honor, if it's any consolation, this is my longest witness.

THE WITNESS: I'm not but six-one.

(Pause)

THE COURT: Okay.

Q. Okay. I think the last thing that we were going to have you read was page 335, 4 to 12. That's the last part of the transcript. We're still on Steve Reeves, the investigator's testimony.

A. All right. 335, line 4, question by Mr. Rame Campbell, Solicitor. As you told Mr. Gamble, the crux of your witnesses was Bason, Alphonso, Latorrey, and James Pickens? Yes. But you had other witnesses you identified that saw what happened, hadn't you? Yes, sir. And that would have been Childs and Pickens? Yes, sir. The Court -- now where did you want me to go?

Q. That's it. That's just going over who all had identified. All right. And did you get a statement from Michael Vance in your discovery?

A. Michael?

Q. Vance. Shoes. His street name is Shoes.

A. Michael Wardlaw, yes. He was outside.

Q. And inside?

A. Yeah.

Q. And he actually testified; is that right?

A. Yes.

Q. Okay. And he gave a written statement to the police on February 27th of '06?

A. Right.

Q. And let's take a look at that. Was that provided to you and your staff?

A. Yes.

Q. And did you all interview him?

A. Don't know.

Q. Do you have any indication that you interviewed him?
A. No.
Q. All right. Let's go to that statement. He says, I left my residence at eleven P.M., got to Old School Lounge shortly after eleven P.M. This is the guy that was sitting with Sally at the table; is that right?
A. (No verbal response)
Q. I was inside with Sally at a table ---
A. Right. Right.
Q. --- and a while later, Sam came in and started arguing with her. He goes on to say he's known Sam for a long time. I guess he was arguing with Sally because she was sitting with me. He was cussing her out and telling her to go home. They went inside and I sat where I was. About five or ten minutes later I went to leave. When I got outside, Sam and Sally were still arguing. Sam was shoving her and pushing her around, trying to get her inside a car. I was talking to my cousin when this kid came running up from the side of the building. He ran up to Sam within about five feet. I think they had words. My back was mostly turned and I heard three shots. Is that what he said in his statement?
A. That's what he said.
Q. Now, there was a pathologist that performed an autopsy; is that right?

A. Yes.
Q. Believe it or not, I think we are to our last witness statement.
A. I have that.
Q. You do have that?
A. I have the autopsy.
Q. And the long and short of it is this Sam Martin was much taller than Mr. Smith; is that right? If you go to page two, a hundred and fifty-five pounds and seventy-one inches in length?
A. Right.
Q. Mr. Smith at the time was about a hundred and thirty-five pounds and about five-five?
A. Five-five, five-seven, between those two.
Q. All right. And if you go to the first page of the autopsy, Mr. Martin had a entry wound in his neck and in his -- sort of right in here? Sort of the front side type area, and they were downward in direction; is that right?
A. (No verbal response)
Q. If you go to the third page ---
A. I'm on the third ---
Q. --- gunshot number one, the direction of this wound is from decedent's front to back, downward and left to the right?

A. Right.
Q. And then gunshot number two, the direction of this wound is from decedent's left to right, downward, slightly downward and slightly backward; is that right?
A. That's right.
Q. All right. And there's no question that Sammy Martin was taller than Mr. Smith?
A. That's correct.
Q. Did you talk to any witnesses about Mr. Martin's reputation for violence or their opinion of whether he had a reputation for violence, especially in particular with women?
A. He had a reputation for violence toward women, according to the statement from Mr. Smith about his mother and Mr. Martin having a rough time.
Q. All right. And did you get the CAD reports from the Sheriff's department?
A. The what report?
Q. The CAD reports. I'm sorry. C-A-D from the Sheriff's department on the 9-1-1 calls?
A. Now, you got me messed up now. Here it is. What report did you say?
Q. Here. The 9-1-1 CAD report. I'm sorry. I call it CAD report, 9-1-1 report, whatever.
A. Oh, yeah.

Q. This one.
A. I got the tape from 9-1-1.
Q. All right. Let's look at the second caller on 9-1-1. It gives her cell phone number. And it says, she states that the man that was shot on West Market Street, that he and his girlfriend and him were arguing and he slapped her in the face. She stated that then the woman's son came from around the building, got a gun from Sweet and shot the man three times. She stated her name was Jennifer. She would talk to an investigator. Did you ever interview her or call that number, or did anybody else ever interview her?
A. Not that I recall.
Q. Now, did you get the incident report regarding this event?
A. Yes.
Q. All right. If you'll pull that for a minute, please? Dated 2/26 of '06.
A. What am I looking for, incident report?
Q. The incident report from this incident. I've got it. You can look on with me. But you were provided that in discovery; is that correct?
A. I was provided it, yes.
Q. All right. Let's just look at page five of it. They processed the green Ford Taurus. You agree that

would have been Sammy's vehicle?

A. Yes.

Q. And it says, collected from the vehicle one gold colored charm found in the front passenger seat. And did you look at the pictures from the scene to see the charm underneath his -- right there beside his car, like a woman's charm?

A. I did see that.

Q. Okay. And then on page ten of the incident report, the police talk about Mr. Vance giving a statement. That was the one who was talking to Sally inside the club at the table, right?

A. Correct.

Q. And says, he stated they were sitting at the table inside when Sam Martin approached Sally and began an argument with her. He said Sam was cussing at her, telling her to go home. He said they, Sam and Sally, got up and walked out while he stayed at the table. He said he ends up going out five or ten minutes later. He said when he got outside he saw that Sam and Sally were still arguing. He said that Sam was pushing and shoving Sally, trying to get her in a car. And then he hears three shots; is that what he told the police that night?

A. That's what he told them that night.

Q. Okay. And then again on the green Ford Taurus, that

it was still running. This is the forensic I.D., Investigator Coyles report; is that right?

A. Right.

Q. In the incident report?

A. Uh-huh (affirmative).

Q. And he says, I also noticed what appeared to be a necklace in the front passenger seat -- this is Mr. Martin's -- and a charm from a necklace just under the car at the same passenger door?

A. Right.

Q. Now, are you aware that there were other incident reports where Mr. Martin had beaten up other girlfriends?

A. Yes. I have -- his complete criminal record was supplied to me by the State.

Q. Okay. And his criminal record shows quite a bit of violence; is that right?

A. A lot of violence and possession of guns and ---

Q. And another girlfriend, Earline Lee, from 2001 reported to the police he was beating on the door. He struck her in the face with his fist. That was another police report; is that right?

A. Right.

Q. So there's no question that he was violent?

A. No.

Q. Was there any evidence or testimony presented before

the jury that he had a reputation for violence?
A. No.
Q. I'm just going to show you a few of the photos from the scene. And these were photos supplied by the Sheriff's department; is that right?
A. Yes.
Q. If you'll take a look at those three and see if you can identify those?
A. Those were the same ones I saw back in '07, '06/'07.
Q. And the first two are of the lounge, and the last one is of the actual scene with Mr. Martin's car, Sally's car and Mr. Martin on the ground; is that right?
A. Right.
Q. Have those been changed or altered in any manner? Are those the police photographs that were supplied to you?
A. They were the same, except I think the ones supplied to me were black and white.
MS. WHITE: Your Honor, I'd ask that these be marked as exhibits.
MS. RATIGAN: I have no objection, Your Honor.
THE COURT: Okay. They are marked.
(WHEREUPON, Plaintiff's Exhibit 2 was marked for identification only.)
Q. All right. Let's go to the third one on the list

that shows Mr. Martin on the ground. If you look, there's a green Ford Taurus; is that right?

A. Right.

Q. And Ms. Brownlee's car is right behind, kind of like a 'T' with it; is that right?

A. It's a 'T', t-boned to it.

Q. And you would agree certainly if Mr. Martin was trying to jump off Ms. Brownlee's car, there's no way they would be positioned like that?

A. That's correct. And also, her headlights are on. And if she has a dead battery, there would be no headlights.

Q. Okay.

MS. WHITE: Your Honor, may I approach?

THE COURT: Yes.

Q. Now, did you ever interview Sheila Lomax or Janis Morris?

A. No, not that I know of.

MS. WHITE: Your Honor, I don't know how you want me to proceed. I was going to cite some things out of the transcript. I'm done with the defense of others. My next issue is going to be hearsay and then bad character. And I can either give you the cites, or I can have Robert read these things. I don't know which way you prefer to do it.

THE COURT: I have no preference. But we're going to break in five minutes, so you can ---

MS. WHITE: May I have a minute, Your Honor?

THE COURT: Sure.

MS. WHITE: Your Honor, I talked with the prosecutor on the case. And I will go back to my office -- I've got it, but it's part of my questions of him. I'll print out just a page with all those cites with whatever the issue is on it for time's sake if that meets with your approval.

THE COURT: Okay.

MS. WHITE: And I don't believe I have any other questions. Just one minute. No further questions, Your Honor.

THE COURT: By the State?

MS. RATIGAN: You want me to start now, Judge, if you're going to break in five?

THE COURT: Yeah, you can start.

MS. RATIGAN: Okay.

CROSS-EXAMINATION

BY MS. RATIGAN:

Q. So Mr. Gamble, I assume you filed discovery motions in this case?

A. Yes.

Q. And to the best of your knowledge, you received full

discovery from the State?
A. Yes.
Q. And did you go to review those materials with Mr. Smith?
A. I usually do. I don't recall if I did or not.
Q. But your common practice would have been to take those materials to your client and review them with the client?
A. Actually, we would have copied them and sent them down to him at the jail.
Q. Did Mr. Smith ever tell you his version of what had happened at the club that night?
A. He denied shooting Mr. Martin.
Q. So he never told you that he shot the victim in order to protect Sally?
A. No.
Q. And there was no physical evidence linking the gun to your client?
A. The gun was never found.
Q. So there was no physical evidence?
A. Nothing.
Q. Would it be fair to characterize this case from the State's perspective as being an identification case?
A. Yeah, it could be. You had a difference of a black hoodie and a red hoodie. And you had the difference in

size and shape. And the difference in a three fifty-seven, a thirty-eight and a nine. All three were identified as the gun. The gun was never found.

Q. And part of your practice would have been to review the discrepancies in these identifications with your client?

A. Yes. That was the general practice. But again, he denied any involvement, so I was left with nothing else.

Q. So your strategy at trial was just to prove he was innocent?

A. Yes.

Q. And did you attempt to impeach and discredit the State's witnesses?

A. I tried.

Q. And your notes reflect you had at least two meetings with Mr. Smith?

A. Yes, as afar as the notes go. I don't know -- I don't recall if we did more or less. I know we did two, but I don't recall how many more it might have been.

Q. Did Mr. Smith give you any names of witnesses he wanted you to contact prior to trial?

A. No.

Q. At the beginning of the trial transcript, you noted for the Court that you had been able to locate an alibi witness. Do you remember that would be a potential

defense at some point?
A. Yes.
Q. When were you made aware of this potential alibi witness from your client?
A. I don't recall, but it was right before the trial, immediately before. And to use it, I would have lost last argument if I'd put up any testimony at all. Which some lawyers think is a vantage -- an advantage and some don't. So I don't know.
Q. But you were never able to actually locate any kind of alibi witness?
A. No, I was not.
Q. Would it be fair to say that most of the witnesses that testified for the State had given several statements to police?
A. Yes. And two of them had proven on polygraph to not be telling the truth. I used the word proven. That's wrong. Shown, I think, would be better because it's not admissible.
Q. And you attempted to impeach these witnesses both with the inconsistent statements and then with their later inconsistent testimony? Would that be fair to say?
A. That's right.
Q. Okay. Would it also be fair to say that a lot of the State's witnesses had been charged in connection with

this case, either with violation of probation or some other type of charge?

A. They, I think, all had some sort of criminal charges.

Q. Would that have affected your ability to speak with them before the trial?

A. Some were in the Department of Corrections.

Q. But if some of these individuals had a probation violation charge or another charge associated with this case hanging over their head, they would have been represented by counsel?

A. Probably by our office.

Q. And that would have impeded your ability to talk to them?

A. I don't recall if it would or would not. I don't -- his denial gave me very little ground to go on.

Q. And there was no dispute by either side that the victim and his girlfriend had been fussing, pushing on each other, things of that nature, both inside and outside the club?

A. Yes. There was no dispute that Martin helped her, got her started or attempted to get her car started. And the notes speak that it did get the car started.

Q. And were there ever any weapons found on or near the victim?

A. No weapons were found period.
Q. And while you were aware of the history between the victim and the Defendant's mother, was that several years before this happened? Was it ---
A. It was too remote to be used, I think. Again, if I put up any testimony, I lose last argument.
Q. Notwithstanding your client's statement to you that he was innocent, based on the facts that you have, the evidence you have from the State, was there any viable defense of others argument to be made?
A. Any viable?
Q. Defense of others argument to be made?
A. I didn't see it. And since he denied shooting, then you have no defense.
Q. Based on the evidence that you received from the State, in your opinion, could you have proven that Sally was in imminent danger of death or great bodily harm?
A. No, I don't think so. He pulled her shirt and a necklace at best.
Q. Is there any way, based on the evidence that you have, the statements you have before you, that you could have proven that Sally had no way to avoid the confrontation with the victim and could not have retreated?
A. Not that I saw. I mean, it's just a fight between

two people at a beer joint.

Q. And I believe you testified there were lots of people, both inside and outside the club?

A. That's what I was told. And there were a lot of people. And I don't know how that many people could get in that little bitty building. And to be seated down because I think they could get thirty in there standing up, but not -- not on a seat.

Q. And do you recall whether, during your direct examination of James Pickens -- that was Turk -- you got him to admit that all three of his statements were false, that he never actually saw anything?

A. If it's in the transcript, then that speaks for itself, I think. I don't recall it. I don't deny it.

Q. Obviously, this is kind of a Monday morning quarterback type of question. But looking back on it now, is there anything you wish you had done to prepare for trial that you did not?

A. Not that I recall. When you're given a -- when your client denies that this actually happened, that's what you've got to run with. And you've got nothing else to play with. If he'd said, yeah, I shot him and he needed shooting, then you've got something to play with, to defend with. But when you say I didn't do it and I don't know why these people are saying that I did, then you're

left with his statement as a defense.
Q. Did Mr. Smith's mother ever contact you to talk about her history with the victim?
A. Not that I recall anything at all about his mother.
MS. RATIGAN: I beg the Court's indulgence. That's all I have, Your Honor.
MS. WHITE: Your Honor, I have just a few brief questions, just a few. Do you want me to wait?
THE COURT: We'll break until two thirty.
(WHEREUPON, court stood at recess for a lunch break.)
THE COURT: Ms. White?
MS. WHITE: Yes, sir.

REDIRECT EXAMINATION

BY MS. WHITE:
Q. Mr. Gamble, you were saying that you discussed a defense of he was not there; is that correct?
A. He didn't do it.
Q. Okay. And you would agree that as a defense attorney, you need to talk to the client about potential defenses and investigate the case and discuss each defense with the client for a somewhat lengthy time?
A. Sometimes that's true; sometimes it's not. If a client specifically denied it, just flat denied it ...
Q. Yeah.

A. ... I don't bother to go into it. I use the flat denial. If they have potential defenses, then I go into those. Or if they have -- in this case, if there had been, if he admitted shooting him but -- then I would have gone into it deeper. But he did not admit shooting him.

Q. Okay. But you understand he was a seventeen-year-old that had never had any prior involvement with law enforcement and would not even be aware that defense of others would be a potential defense?

A. Possibly, that's true. He was also on the street a lot, so he had street smarts.

Q. Now, you said there were some polygraphs on a couple of these witnesses. Those were purely polygraphs -- the prosecutor asked you did people take polygraphs, did they give conflicting statements, were they on probation. The polygraphs and the conflicting statements were about whether or not they had a gun in their possession that night; is that correct?

A. Right. That was one of the questions.

Q. So these people said that Mr. Smith did it. But the conflict came into whether or not they had a gun or gave him a gun. And that's what we were talking about about the polygraphs. They finally 'fessed up that they had a gun and they gave him the gun?

A. Yeah.
Q. All right. But the witnesses, the five or six witnesses, who testified that this was him gave fairly consistent statements when it came to whether or not Mr. Smith did the shooting?
A. With one or two exceptions of the black coat, the red coat, the shinny gun, the black gun, a three fifty-seven, nine or thirty-eight. And how you tell the difference in the dark, I don't know.
Q. I think some of them had some different descriptions of the color of his jacket or the gun?
A. Yeah.
Q. But the point is that they all the way through said that he did it?
A. Right.
Q. But the polygraphs and the conflicting statements were whether or not they had a gun when they were on probation?
A. Right.
Q. Okay. Now, you had said that there were witness statements that Sammy was helping his girlfriend start her car. I don't recall seeing any of those. Did you mean to say that, or did you just say there were witness statements coming saying that she's parked like this and he parks behind her?

A. No. He parked in front of her.
Q. Well, she was backed in.
A. Yeah. She backed in and her ---
Q. Well, what I mean is the sidewalk ---
A. Her car wouldn't start, and there was one witness statement who said he was going to help her crank it, jump start it.
Q. Okay. Did you ever talk to the other witnesses there who might have indicted that he had, in fact, blocked her in?
A. No.
Q. Did you ever talk to any of the witnesses -- now, these witness statements that we heard about, these were police statements, right?
A. Police-taken statements.
Q. So the police certainly had no incentive to talk to these witnesses, ask the questions. Did you feel she was threatened? Did you feel she could get away? Did you feel -- they didn't ask any of those things because they were the police, right? There's no indication in the statements that that was ever asked?
A. No, they weren't after her or anything about her.
Q. So would you agree if there's a good potential defense, it's the defense attorney's job to go out and talk to them and not rely on what the police ask and

flesh these things out and ask?
A. Generally it is.
Q. What do you know?
A. Generally did.
Q. Now, you said that you thought the prior violence was too remote to be able to introduce in this trial. But certainly a person's opinion of violence or reputation of violence would be admissible?
A. Yeah.
Q. So to your knowledge, nobody ever asked these witnesses, when you were watching this, did you think that Sally was in danger? When you were watching this, was he walking to her in a menacing manner?
A. No. I don't think that was ever asked.
MS. WHITE: Just one moment, please. No further questions.
THE COURT: Anything further?
MS. RATIGAN: I have no recross, Your Honor.
THE COURT: All right. Thank you, Mr. Gamble.
MR. GAMBLE: Thank you, sir.
MS. WHITE: Your Honor, may Mr. Gamble be excused? I have his phone number if we happen to need him back. And I can certainly, with his permission, share it with the Prosecutor if she needs it.
MS. RATIGAN: That's fine, Your Honor.

THE COURT: Once the witness steps down, the witness is excused.

MS. WHITE: Thank you, Your Honor.

Okay. Your Honor, the Plaintiff calls Mr. Vance.

THE COURT: Mr. Vance.

MS. WHITE: He was there.

THE BAILIFF: What name?

MS. WHITE: Vance.

Your Honor, these were all witnesses here this morning. Let me make sure they're back.

(Pause)

MS. WHITE: Your Honor, all of these witnesses were here until lunch and ...

THE COURT: You want to take a moment and go look for them?

MS. WHITE: We've got some phone numbers, Your Honor. We actually had about four witnesses stacked up at two o'clock or one o'clock when we broke. So let me just make some phone calls and see ---

THE COURT: All right. We'll take two minutes and give her a chance to figure that out.

MS. WHITE: Thank you, Your Honor.

(WHEREUPON, court stood at recess for a short break.)

THE COURT: All right. Thank you all. Be

seated.

Did you find your people?

MS. WHITE: Your Honor, they apparently thought we weren't going to be done with Mr. Gamble this soon. They're all on their way back. One is apparently about thirty seconds away, but they're all -- they all live in the city within two miles, Judge.

THE COURT: Okay.

MS. WHITE: I apologize, Your Honor. I didn't realize that ---

THE COURT: No problem.

MS. RATIGAN: Well, I'll just suggest now just to be on the safe side. I know that Ms. White plans on calling at least one, if not multiple, people who testified at the trial. I just want to be sure that they're advised that since they testified at trial, if they do not -- if they testify differently today, they could be facing charges. So I want to make sure we don't create a problem for ourselves.

MS. WHITE: Your Honor, that's nothing but a chilling effect. I absolutely disagree. I think that that would absolutely hurt our case. I'm not asking them the same things. I'm asking them the questions that were never asked at the time that this happened. Did you feel she was threatened? Was she boxed in? Could she leave?

These are the things that were never asked by the police and never asked in court primarily.

MS. RATIGAN: I'm not saying she shouldn't call these witnesses. I just want to make sure we protect their rights. And I don't know if they would need to speak to a P.D. or what. I just want to make sure we don't cause trouble for ourselves later. I'm in no way saying they shouldn't be asked the questions. I just want to make sure they don't get themselves into trouble.

MS. WHITE: And I think that violates my client's rights, has a chilling effect, to tell his witnesses, oh, we're going to have an attorney standing by for you. There's been no indication that that is necessary.

MS. RATIGAN: I just -- again, that was just a preemptive just to get it out of the way. I'm not saying it will be; I'm just saying it may be.

THE COURT: Well, I think when a witness takes the oath and swear to tell the truth, the whole truth, and nothing but the truth, so help me, God, if they testify falsely, then the remedy is the same whether they're advised in advance or not. You may call your next witness.

MS. WHITE: Your Honor, we would call James Pickens.

THE COURT: Mr. Pickens, come forward.

JAMES PICKENS,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. WHITE:

Q. Mr. Pickens, you testified in the trial of this case; is that correct?

A. Yes.

Q. And you gave some statements in this as well?

A. Yes, ma'am.

Q. All right. Let's talk a minute about that. First of all, do you know Jwan Smith?

A. Yes, ma'am.

Q. How do you know him?

A. I've been knowing him since we were little.

Q. Okay. And did you know Sammy Martin?

A. I knew of him. I didn't really know him.

Q. Okay. How did you know him?

A. Through the streets.

Q. Okay. Are you familiar with -- has he ever dated anybody in your family?

A. No, ma'am.

Q. Okay. Are you familiar with his reputation for violence against women?

A. Yes, ma'am.

Q. And what was that reputation at the time of his death?

A. Fighting.

Q. All right. At any point did you see Sammy Martin beating up Mr. Smith's mother?

A. Yes, ma'am.

Q. And please tell the Judge what you remember about that.

A. It's been a long time ago.

Q. Okay. I think you said about five years before this shooting; is that correct?

A. Yeah. Yeah.

Q. And what did you see?

A. He'd just smack on her.

Q. He what?

A. He just -- he just punched her sometimes and smack her around.

Q. Okay. Did you live in the same apartment complex?

A. Uh-uh, uh-uh (negative).

Q. Did you see that in an apartment complex, or where did you see it?

A. It was on the outside.

Q. On the outside?

A. Yes, ma'am.

Q. Okay. Now, where were you on February 25th, 2006?

A. At the Old School.
Q. And do you recall about what time you got up there?
A. Between ten and ten-thirty.
Q. All right. And I believe you gave a statement to the police; is that correct?
A. Yes, ma'am.
Q. And did you ever talk to anybody from the defense attorney's office, either the defense attorney or any of his investigators?
A. No, ma'am.
Q. Do you recall the police talking to you on February 27th, 2006 ---
A. Yes, ma'am.
Q. --- a day after this occurred?
A. Yes, ma'am.
Q. And do you recall telling them about Sammy hitting, slapping and grabbing his girlfriend in the parking lot?
A. Yes, ma'am.
Q. Where were you when these shots were fired?
A. I was standing in front of the Old School.
Q. And about how far away were you from this incident where Sammy and his girlfriend were having this dispute?
A. About -- I don't -- I don't even remember.
Q. You don't even remember?
A. They were the over there further, a little further.

Q. Okay. Now, when you saw this dispute -- has anybody ever asked you any questions regarding what, if any, threat Sammy appeared to be to his girlfriend?

A. No, ma'am.

Q. Okay. Tell us a little bit about that. Just tell the Judge what your impression of this thing was that you were watching.

A. I mean, he could have been -- I mean, he shouldn't have did it. Sammy shouldn't be out there fighting a woman, period.

Q. All right. Did you say anything to anybody about that?

A. No, ma'am.

Q. Did anybody say anything to you about it?

A. No, ma'am.

Q. All right. Now, you said that you knew Buster Smith or Jwan; is that correct?

A. Say what, now?

Q. You know -- I'm sorry. I turned my back on you. You know Jwan Smith; is that correct?

A. Yes, ma'am.

Q. All right. When Sammy and his girlfriend, Sally, were at the cars ...

A. Uh-huh (affirmative).

Q. ... do you recall seeing that?

A. Yes, ma'am.
Q. What, if anything, did Sam do when they were at the cars?
A. He was calling her names, and he was pulling on her sweater.
Q. How was he acting?
A. Very violent.
Q. And do you -- when he got out of his car -- do you remember when he came back and got out of his car when he parked in front of her car?
A. I can't -- I can't remember.
Q. Okay. There at the end, right before the shots were fired ...
A. Uh-huh (affirmative).
Q. ... the last thing you saw of Sammy and his girlfriend, how was he acting toward her?
A. He was very violent towards her.
Q. All right. What kind of things was he saying to her, or could you hear?
A. I really couldn't hear.
Q. And did you hear the part where the friend told him to stop it and let her fix her car?
A. Yeah. No, no, I didn't hear that part.
Q. Okay. When you saw this in the parking lot ...
A. Uh-huh (affirmative).

Q. ... was it your impression that when Jwan came up to him and intervened in this, from what you had seen -- I know you didn't see all of it. But from the part that you saw ...

A. Uh-huh (affirmative).

Q. ... did you fear for Sally?

A. Yeah.

Q. And do you think that that was reasonable to fear for Sally?

A. Yes, ma'am.

Q. Have you ever been asked about Sam's demeanor or the way he acted towards Sally?

A. No, ma'am.

Q. Did you see the way the cars were parked when Sammy -- did you see Sammy on the ground after this or not?

A. Uh-uh (negative).

Q. You didn't? Okay. Did you see the way the cars were parked at all at the very end or not?

A. I can't remember.

Q. Okay. Now, I believe that you were interviewed by the police?

A. Uh-huh (affirmative).

Q. And I think we've already heard the parts of your statement that you gave. But if you will just -- I'm going to hand you your statement that you gave to the

police on 3/1 of '06. And if you'll just read that portion of your statement.

A. Which one?

Q. Right here.

A. They were arguing. She said, I was not with that other man. Sammy started hitting on her and slapping her and grabbing her by her shirt.

Q. Okay. And then you say, they made their way over to the right hand of the parking lot. Sammy's girlfriend got in her brown light-colored Chevy. It was boxy looking. It was backed up with the hood facing toward town. She got in her Chevy, and he tried hitting on her some more. Is that right?

A. Yes, ma'am.

Q. Okay. And do you recall in your statement saying his Taurus was parked in front of the Chevy the whole time? He never moved it. Does that ring a bell now?

A. Yeah, yeah, yeah, yeah.

Q. Okay. So would you say then after looking at your statement that he had her blocked in?

A. Yeah.

MS. WHITE: No further questions, Your Honor.

THE COURT: By the State?

CROSS-EXAMINATION

BY MS. RATIGAN:

Q. Mr. Pickens, you gave three statements to the police; is that correct?
A. Yes, ma'am.
Q. And in these statements you noted that you saw Sammy hit the female?
A. Yes, ma'am.
Q. But then you testified at trial that you didn't see anything that happened?
A. I had been drinking.
Q. Okay. But I'm just saying at the trial, you told the Court -- you told Mr. Gamble you didn't really see what happened?
A. Yeah, I told him that.
Q. Is that not correct?
A. That's correct.
Q. So you didn't see anything that happened, but today you can testify about things that you saw?
A. But I was nervous and scared.
Q. Okay. Okay. And you testified that the victim had a reputation for fighting? Was that fighting with women or fighting in general?
A. With girls, with women.
Q. Was that more than just Jwan's mom? Was there other women or just Jwan's mom?
A. Well, I just know of her and the lady at the Old

School.
Q. You testified that Sammy was acting violent towards his girlfriend in the parking lot. What do you mean when you say he was acting violent?
A. He was pulling on her.
Q. Like pulling on her clothes, pulling on her jewelry, pulling on her purse, on her arms?
A. On her clothes.
Q. And you knew that Jwan had been charged with murder in this case?
A. Yes, ma'am.
Q. Did you ever contact his lawyer to try to explain what you had seen that night?
A. Uh-uh (negative).

MS. RATIGAN: That's all I have, Your Honor.

REDIRECT EXAMINATION

BY MS. WHITE:

Q. And you had already given statements to the police, right? You had all of this in there?
A. Yes, ma'am.
Q. So did anyone contact you before the trial and prepare you for your testimony, let you look at your statements and get your view of what ---
A. No, ma'am.

MS. RATIGAN: I'm going to object, Your Honor.

Outside the scope of redirect.

MS. WHITE: Your Honor, that's not. She asked about why his trial testimony ---

THE COURT: Is this a voluntary argument?

MS. WHITE: I'm sorry, Your Honor.

THE COURT: Y'all don't need me if that's the case. Objection's overruled.

Q. Did anyone contact you before the case and talk to you about this, how it looked, and how it appeared and whether the Defendant was reasonable in stepping in? Did anybody discuss this with you before the trial?

A. No, ma'am.

Q. Did you have any idea that that was even important?

A. No, ma'am.

Q. Did you at any time talk to the defense attorney or his defense team?

A. No, ma'am.

MS. WHITE: No further questions.

Q. But you did talk to the police and told them what you just read?

A. Yeah.

THE COURT: By the State?

MS. RATIGAN: Nothing, Your Honor.

THE COURT: You may step down.

MS. WHITE: Your Honor, may the witness be

excused?

THE COURT: Now, all witnesses are excused when they step down ...

MS. WHITE: Thank you, Your Honor.

THE COURT: ... unless there's an objection to them being excused.

MS. WHITE: Latorrey Pearson, Your Honor.

(WHEREUPON, the witness was duly sworn.)

MS. WHITE: Your Honor, before we go any further, I totally forgot about this. I sat a document up on your desk and on the Prosecutor's desk over the break, and that's the one that I was telling you I'm not going to have Robert read all the way through. Our objection on the one is let in hearsay, and the other is bad character. And I just cited those portions of the transcript.

THE COURT: All right.

MS. WHITE: Your Honor, I guess I should enter one into the record as well maybe. I'll do that in a minute.

LATORREY PEARSON,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. WHITE:

Q. All right. I'm sorry. What's your full name?

A. Latorrey Dashaun Pearson.
Q. And Latorrey, do you know Mr. Smith?
A. Yes.
Q. And how do you know him?
A. He's a friend.
Q. And do you know Sammy Martin?
A. No.
Q. Had you ever met him before that night or seen him before that night?
A. No.
Q. All right. Now, the night that Sammy was killed at the lounge, were you there?
A. Yes.
Q. And do you recall seeing anything in the parking lot that evening?
A. Yes.
Q. Tell me about that.
A. A man and woman on the left side of the building was in an altercation.
Q. Okay. And from what you viewed of the altercation -- well, did you talk to the police? Did you give a statement to the police?
A. Yes.
Q. Okay. And do you recall -- and this is dated, I think, 4/25 of '06. Did you have an attorney there, your

own attorney there?
A. No.
Q. Okay. So you were talking to the police?
A. Yeah.
Q. All right. And I'm going to ask you, did you put, I saw a man -- okay. I saw a man and a woman, both black, fighting in the parking lot. The man and woman that were fighting moved to the right-hand of the parking lot near the creek. I saw the black man hit the black woman a couple of times. The black man got into a car. Landis Bolden told him to leave. And then you say he comes back. Just a minute or two later, Buster came out the right side. And then you talk a little bit later about the shooting. Is that correct?
A. Correct.
Q. And you actually testified in the last case; is that right?
A. Correct.
Q. Now, did you ever talk to a defense attorney ---
A. No.
Q. --- or talk to anyone on his staff?
A. No.
Q. Were you ever interviewed before trial by anybody before -- besides the police?
A. No.

Q. So when you came to trial, had anybody talked to you about what's called defense of others?
A. No.
Q. Did you have any idea that that was even important in this case?
A. No.
Q. All right. Let's go back to the evening that you were at the parking lot. Have you ever -- do you -- are you familiar with Sammy Martin's reputation for violence?
A. Then?
Q. Are you now? No. Are you now?
A. Oh, now, yeah.
Q. Okay. And what is his reputation for violence?
A. Fighting.
Q. And are you familiar with his reputation for violence toward women?
A. Yes.
Q. And what is that?
A. He liked to beat on them.
Q. All right. Now, the night that this occurred when you were at the lounge, have you ever been asked -- did you actually see the shooting or right before the shooting? Were you actually viewing what was happening right around the time of the shooting?
A. Yes. I was standing looking that way.

Q. Okay. When you saw this altercation between the man and the woman, what, if any, threat did you think that posed to the woman?
A. He was jumping on her.
Q. Okay. And did you have any concern for her safety?
A. Yes.
Q. Do you think it was reasonable to be concerned for her safety?
A. Yes.
Q. And are you familiar with how the cars were parked, her car and his car?
A. No.
Q. You are not?
A. I can't remember.
Q. You can't remember any of that?
A. I can't even recall the cars.
Q. Okay. All right. And do you think it would have been reasonable at the time that this occurred for someone to step in and defend this woman?
A. Yes.
Q. Okay. Why is that?
A. I guess because he a man and she a woman.
Q. All right. And have you ever been asked how he was acting toward her? Not what he did to her, but how he was acting toward her?

A. When, that night?
Q. Yes.
A. Can I refer you to that, what you're asking?
Q. How was he acting that night? Not what he did, but how was he acting? Was he happy? Was he mad? Was he -- how was he acting?
A. I'd say he was mad.
Q. All right. And what kind of manner did he -- how did he act when he was approaching her?
A. I guess aggressive.
Q. I'm sorry?
A. Aggressive.
Q. From what you saw, do you think it was reasonable for Mr. Smith to step in and to do what he did to defend her?
A. Yes.
Q. Did she appear to have done anything to aggravate Mr. Martin into doing this to her?
A. Not to my knowledge, no.
Q. Okay. What was she doing?
A. She was standing there.
Q. All right.

MS. WHITE: Just one minute, please.

Q. Now, when you testified in this case, you had charges against you; is that correct?

A. That is correct.
Q. All right. And those charges were dropped right after you testified?
A. I don't recall.
Q. Okay. Well, they're not pending anymore. I mean ---
A. Oh, oh, okay.
Q. I mean, I'm not telling you what date.
A. Oh.
Q. Would you agree they're not pending anymore?
A. I don't even know.
Q. When this altercation was going on in the parking lot, did you see Mr. Smith ask for anything or did you hear him ask for anything?
A. Yes.
Q. What did he ask for?
A. He asked for a weapon.
Q. Okay. And what did he do with it to your knowledge?
A. He had shot Sammy.
Q. How big was Mr. Smith at that time?
A. Little.
Q. Was he bigger or the same or smaller than he is today?
A. Smaller.
Q. Did you actually see the shooting?

A. I can't recall.
Q. Okay. Tell me what -- did you -- do you remember seeing Mr. Smith go up to Mr. Martin or not? If you don't, you don't.
A. No, I mean ---
Q. I know it's been several years.
A. Yeah. Yeah, I can't.
Q. All right.

MS. WHITE: No further questions.

THE COURT: By the State?

CROSS-EXAMINATION

BY MS. RATIGAN:
Q. Mr. Pearson, you gave three different statements to the police; is that correct?
A. Yes, ma'am.
Q. And then you ended up testifying at the trial?
A. Yes, ma'am.
Q. And in your statements you said that you saw the victim hit the female? Do you recall?
A. I can't recall.
Q. Did you testify at trial that you saw the victim hit the female?
A. I can't recall.
Q. Did you testify at trial that you saw Mr. Smith shoot the gun?

A. I can't recall.
Q. Who did Mr. Smith ask the gun -- who did he ask to borrow the gun from?
A. I think it was from me.
Q. And you were a friend of Mr. Smith's?
A. Yes.
Q. You testified that you saw this man and woman in an altercation. What do you mean by altercation? Was it words? Were they hitting on each other? Were they pulling on each other?
A. I would say they were fussing or whatever, but I can't really say.
Q. But fussing, does that just mean they're shouting at each other or did he actually touch her? Did she touch him? Do you remember?
A. I can't recall.
Q. And you testified that you've learned since the victim had a reputation, but you didn't know anything about that at the time?
A. No, I didn't know it.
Q. Did you hear Mr. Smith have words with the victim before the shooting?
A. I can't recall.
Q. Did you hear him have words with the victim's girlfriend before the shooting?

A. I can't recall, no.
Q. And you knew that Mr. Smith had been charged with murder in this case; is that correct?
A. Yes.
Q. Did you ever contact his lawyer and offer to talk about what you had seen that night?
A. No.
Q. Okay.

MS. RATIGAN: That's all I have, Your Honor.

MS. WHITE: Just one more, Your Honor.

REDIRECT EXAMINATION

BY MS. WHITE:

Q. So was your memory better on March 1st, 2006, when you talked to the police about what happened, or is it better six years later?
A. March the 1st.
Q. All right.

MS. WHITE: No further questions.

MS. RATIGAN: I've got nothing else, Your Honor.

THE COURT: You may step down.

MS. WHITE: Mr. Vance. We call Mr. Vance, Your Honor.

MICHAEL VANCE,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. WHITE:

Q. Mr. Vance, did you testify at the trial?

A. Yes, I did.

Q. And did you also, the day after this incident, give a written statement to the police?

A. I did.

Q. Now, did you have an attorney present or was Mr. Smith's attorney present or was this purely you talking to the police?

A. No. Just talking to the police.

Q. All right. I'm going to hand you a copy of your statement dated 2/27 of '06. And do you put in your statement that Sam came in and started arguing with Sally. He was arguing because she was sitting with me. He was cussing her out and telling her to go home. They went outside. I stayed where I was. About five or ten minutes later I went to leave. When I got outside, Sam and Sally were still arguing. Sam was shoving her and pushing her around, trying to get her inside a car. I was talking to my cousin when this kid came running out. He got within five feet of Sam. I think they had words. And then you heard the shots?

A. That's true.

Q. Now, was this fresh on your mind when you talked to

the police on February 27th, 2006?

A. It was.

Q. When Sam originally came in and you were seated at the table with Sally, what happened?

A. In speaking of what?

Q. I'm sorry?

A. In speaking of what terms you're talking about?

Q. The night that this happened at the lounge ...

A. Uh-huh (affirmative).

Q. ... when you were seated at the table with Sally ...

A. Uh-huh (affirmative).

Q ... and Sammy first came in, tell us what happened.

A. No more than -- well, I was just sitting at the table. He come in. They had words. And that's about it. They had words. And I remained where I was at when he went outside and she went outside.

Q. Okay. Stop there for one minute. When they started having words, what did you do?

A. I remained right there.

Q. You walked out? You walked out, you said?

A. No. I remained where I was at at the time.

Q. Okay. And when you went outside, you said that you saw him, I believe -- they were still arguing. He was shoving her and pushing her around.

A. Uh-huh (affirmative).

Q. Now, you stayed inside for a little while before you came out though?
A. I did.
Q. When you saw him doing this to Sally outside, what was your impression as to how he was acting toward her? Not what he was doing, but how was he acting toward her?
A. He was acting violent.
Q. He was acting what?
A. He was acting violent toward her.
Q. Okay. And are you familiar with his reputation of violence toward women?
A. Pretty much.
Q. And how do you know his reputation?
A. Well, he used to date my sister as well.
Q. And was he violent toward her?
A. Yes, he was.
Q. All right. And do you have an opinion, knowing him, as to whether or not he is violent toward women?
A. Yes.
Q. And you said that he was out there pushing and shoving on her?
A. Uh-huh (affirmative).
Q. What was your impression as to why he was trying to push her or to shove her? What was he trying to do? Where was he trying to get her to go?

A. He was trying to get her to get into a vehicle, I believe it was.
Q. He was trying to what?
A. Get her to go into her car.
Q. Into the car?
A. Uh-huh (affirmative).
Q. Okay. And did she appear to be resisting him?
A. I would say yes.
Q. Now, you said that Jwan ran up, in your police statement, and you said that it looked like they had words. Do you know what kind of words those were?
A. I can't say.
Q. Did hear it?
A. No, ma'am.
Q. You couldn't hear?
A. No, ma'am, I couldn't.
Q. All right. Did it appear to you that Sammy, Mr. Martin, was acting in a threatening manner toward her when this occurred?
A. He was.
Q. And what, if any, violence was he showing toward her not just in his actions, but in his demeanor toward her, how he acted toward her?
A. He was aggressive. He was pretty aggressive with her.

Q. Do you think that it was reasonable from what you saw that night for someone to step in and try to take action against him doing this to his girlfriend?
A. I do.
Q. I may have already asked you this, so forgive me for it. But did you ever talk to the defense attorney?
A. No, I did not.
Q. Anybody from his staff?
A. No, ma'am.
Q. When you came and testified at the trial, did you have any idea that any of this that you just talked about was important to the case?
A. Pretty much.
Q. Had anybody briefed you about it or talked to you about it or explained the defense of others to you?
A. Have not.
Q. Okay.

MS. WHITE: No further questions.

CROSS-EXAMINATION

BY MS. RATIGAN:

Q. And I believe the transcript indicates that Ms. Brownlee is your cousin; is that right?
A. Well, she's a close friend to the family.
Q. Okay. So you knew the victim and you knew Sammy before this night?

A. Yes, ma'am.
Q. You testified that they had words inside the bar, Sally and the victim. What do you mean by had words?
A. Arguing.
Q. Just yelling at each other?
A. Pretty much.
Q. But you didn't actually see the shooting?
A. No, ma'am.
Q. And you testified that Sammy was acting violent outside. What do you mean by acting violent?
A. Pushing and shoving.
Q. Okay. Were they still yelling at each other?
A. Yes, ma'am.
Q. And you didn't contact Mr. Smith's lawyer to tell him what you had seen that night?
A. Come again?
Q. You didn't contact Mr. Smith's lawyer to say that you had seen Sally get pushed on that night?
A. No, ma'am.
Q. Okay.

MS. RATIGAN: That's all I have, Your Honor.

THE COURT: Anything further?

MS. WHITE: No further questions, Your Honor.

THE COURT: Next witness?

MS. WHITE: Your Honor, we're looking to see

who else has come. I grossly misjudged the length of time these people would be on the witness stand, but my last witness I told to come at four. But we've got several that should be out here in the hall. Your Honor, we have two witnesses on the elevator coming up.

THE COURT: Okay.

MS. WHITE: Your Honor, may I get the list from you? And I'll go ahead and mark that while we're waiting for the witnesses. Thank you. Your Honor, I'd like to mark the list. This is the list of sections for hearsay and for bad character.

(WHEREUPON, Plaintiff's Exhibit 3 was marked for identification only.)

MS. WHITE: Your Honor, I'd ask that Plaintiff's Exhibit 3 be admitted. If I have not already asked for 1 and 2, I would ask those as well.

MS. RATIGAN: I don't have an objection, Your Honor. It's what we agreed to earlier.

THE COURT: Admitted without objection.

(WHEREUPON, Plaintiff's Exhibit Numbers 2 and 3 were admitted into evidence.)

MS. WHITE: Alphonso Haley.

ALPHONSO HALEY,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. WHITE:

Q. All right. Mr. Haley, you testified as well as Mr. Vance, as well as the other witnesses -- well, let me just ask about you. You testified in the trial; is that correct?

A. Yes, ma'am.

Q. Now, you gave a statement to the police. And it's not dated. But I believe it was around March of '06 from looking at the other stuff. Does that sound familiar when you talked to the police?

A. Yes, ma'am.

Q. And did you have an attorney present, or did Mr. Smith have an attorney present, or were you just talking to the police yourself?

A. I was just talking to them myself.

Q. I'm going to hand you a copy of that statement and ask if you said that you went to the club. We hung around the club a little. I opened the door for a young, black female who was leaving the lounge, and Sammy Martin, the guy that got shot, came outside with this girlfriend, Sally. Sammy was bad mouthing her. He called her a hoe and yelled at her and slapped her several times as they walked off the porch toward the right side of the parking lot. I looked over to where Bason, Latorrey and Turk were standing, and I saw Buster

Smith standing there. And then you go on to say that he got a revolver and then the shooting occurred after that within a few seconds. Is that correct?

A. Yes, ma'am.

Q. And is that what happened?

A. That's what happened.

Q. Now, I noticed in the court hearing you weren't asked anything about that by Mr. Smith's attorney or by the prosecutor. Do you know why?

A. No, ma'am.

Q. Did the defense attorney, his attorney in the first trial -- not me, but his attorney in the first trial -- did his attorney or anyone from his staff come and interview you?

A. No, ma'am.

Q. Did you talk to them at all?

A. I ain't talk to nobody.

Q. Did anybody ask you questions about exactly what happened in that parking lot when it came to the assault of Sammy on his girlfriend?

A. Yes, ma'am.

Q. Okay. But I'm -- I don't mean just -- I'm talking about besides the police.

A. Oh.

Q. Did anybody else? Did any of the defense team ask

you that?

A. No, ma'am.

Q. Now, from what you viewed in the parking lot that night, how was Mr. Martin acting towards Sally?

A. It was really on an equal balance with both of them.

Q. I'm sorry. I don't ---

A. I said he was battling with Ms. Sally.

Q. He was?

A. Yes, ma'am.

Q. Okay. And from what you saw, did it appear reasonable for Mr. Smith to step in and try to defend her?

A. You talking about Ms. Smith?

Q. Did it appear reasonable for Mr. Smith to come defend her from him?

A. Yes, ma'am.

Q. All right. Did she do anything -- and by she I mean Sally or Ms. Brownlee, whichever one you want to call her. Did she do anything to justify being slapped or hit or anything like that, that you saw?

A. No, ma'am.

Q. Are you familiar with Mr. Martin's reputation for violence against women?

A. I just know what I had seen that night.

Q. Okay. You just know what you saw that night?

A. Yes, ma'am.
Q. Okay. Do you remember how the cars were parked that night, his car and hers, when the shooting occurred?
A. I just know that one was on the left and one was on the right. And it was like a -- it was an older model car that was parked in front.
Q. Okay. Older model car. Do you remember if it was brown?
A. Yeah. It was like tan looking.
Q. All right. Now, did you -- do you remember talking to the police again? And did you tell them that -- did you tell Landis Bolden anything? The owner of the bar. Did you tell him anything about what was happening or not?
A. No, ma'am.
Q. Okay. You never went inside after that?
A. In the inside?
Q. Uh-huh (affirmative). In the inside of the lounge. Were you outside?
A. I was standing at the door.
Q. Okay. Now, you were called as a State's witness, weren't you?
A. Yes, ma'am.
Q. In other words, you came in and you were a witness against Mr. Smith?

A. Yes, ma'am.
Q. All right.
MS. WHITE: No further questions.
Q. And by that, I just mean you identified him as being the one who did this?
A. Yes, ma'am.
MS. WHITE: No further questions.
THE COURT: Cross exam?

CROSS-EXAMINATION

BY MS. RATIGAN:
Q. And Mr. Haley, you had known Mr. Smith prior to this night, right?
A. Say that again?
Q. You knew Mr. Smith before this night? You knew who he was?
A. Yes, ma'am.
Q. And you testified at trial that you heard him ask Torrey for a gun. Do you remember that?
A. Yes, ma'am.
Q. Did he say why he wanted a gun?
A. He just said that he had got into it with someone.
Q. And you saw the victim and his girlfriend fighting outside?
A. Yes, ma'am. First, it had started from one club and led into another club.

Q. Okay.
A. And then that's when Mr. Sam, he had left and came back and started back up.
Q. Okay. Well, when he came back and they started back up, when they were fighting, were they yelling at each other? Were they pushing on each other? Were they hitting on each other. What do you mean when you say they were fighting outside?
A. Really, he was calling her all kind of names and that led to him putting his hands on her.
Q. Okay. And he slapped her at some point?
A. Yes, ma'am.
Q. Okay. But mostly it seemed like he was just shouting at her?
A. Repeat that?
Q. It mostly just seemed like he was yelling at her?
A. Yes, ma'am.
Q. Okay. Did you hear Mr. Smith have any words with the victim before the shooting?
A. I don't remember none of that.
Q. Did you hear Mr. Smith have any words with the female, with the girlfriend, at the parking lot before the shooting?
A. No, ma'am.
MS. RATIGAN: That's all I have, Your Honor.

MS. WHITE: Nothing further, Your Honor.

THE COURT: You may step down.

MS. WHITE: The Plaintiff calls Bason Haley.

BASON HALEY,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. WHITE:

Q. Mr. Haley, did you testify for the State in the trial of this case?

A. Yes, ma'am.

Q. Okay. So you were a prosecution witness?

A. Yes, ma'am.

Q. And did you identify Mr. Smith as the shooter in this case?

A. Yes, ma'am.

Q. Had you ever talked to Mr. Smith's attorney or to anyone from his office before you testified that day?

A. No.

Q. So is it fair to say the only people you had talked to up until the trial was the police officers?

A. Yes, the detectives.

Q. Do you know Mr. Smith?

A. Yes, ma'am.

Q. Do you know Mr. Martin?

A. No, ma'am.

Q. Did you ever -- did you know him that night even or had you ---
A. No.
Q. No, you had never met him?
A. No, ma'am.
Q. Now, do you recall talking to the police after this, after the shooting?
A. Yes.
Q. I'm going to show you a copy of your statement dated 3/1 of '06 at twelve thirty A.M. And in this statement, did you say there was a black male and female in the parking lot fighting and fussing? Now, this is the statement you gave to the police, right?
A. Yes, ma'am.
Q. And you did not have an attorney there?
A. No.
Q. Mr. Smith's attorney wasn't there?
A. No, ma'am.
Q. This is the police questioning you?
A. Yes.
Q. All right. I watched them and saw the black male scuffling with the black female. The female sat down in the car, and he was leaning inside messing with her. She seemed to get her car cranked and turn on the lights. And then you talk about how he pulled around with his

green Taurus and then came back and parked right in front of her big Chevy. Did it appear to you that he was helping her fix her car, or was he blocking her in? What did it look like from what you saw?

A. More like blocking in.

Q. All right. And were you able to see his demeanor or the way he was acting toward her when he came back?

A. Yes.

Q. And how was he acting toward her?

A. You could tell he was intoxicated and more aggressive.

Q. All right. Now, you testified for the State in saying that Mr. Smith did the shooting, right?

A. Yes, ma'am.

Q. Did anybody talk to you about the importance of what you saw in the parking lot regarding Sammy Martin and his girlfriend before the trial?

A. No, ma'am.

Q. Did you -- had you ever heard of a defense of defense of others? Had anybody ever used that term with you, defense of others?

A. No, ma'am.

Q. So were you prepared at all to answer any questions about that? Did you understand the importance of that?

A. No.

Q. Now, from what you witnessed in that parking lot when Mr. Smith -- you said at that point Mr. Smith asked for a gun, I think got the gun and went, and the shooting occurred; is that correct?
A. Yes, ma'am.
Q. That's the way that it happened, the order?
A. (Nodded head up and down in the affirmative)
Q. From what you saw when Mr. Martin -- I mean -- I'm sorry -- Mr. Smith got the gun and stepped in and went to confront Mr. Martin, did that appear reasonable to you, to do that to defend the girlfriend?
A. I'm not going to say reasonable. But you know, like I said, his intentions -- I don't think his intention was to go and use the firearm. It was to stop the argument. That's all I can verify. He didn't say, I'm going to shoot him, kill him or nothing like that. It was, let me get a gun. I just told him I didn't have one. And you know, he asked someone else. But his intention was to stop the argument.
Q. All right. And do you think that that was reasonable, in his shoes, to go use a gun to say, stop it?
A. (No verbal response)
Q. In other words, did it look like he was defending the girlfriend ---

A. Yes.
Q. --- is what I'm asking you?
A. Yes. Yes, ma'am.
Q. All right. You go on. Let's go back to your statement on 3/1 of '06. And you go on to say, the black man got out of his green Taurus, walked around, started arguing again with the heavyset female. Buster asked me if I had a gun. And at that point you talk about how he got the gun. Now, again, when this happened -- I'm talking about back at the car when he got out of the car and came toward the female. How was he acting at that point, Mr. Martin, toward the girlfriend?
A. To me it was very violent, you know.
Q. Did he appear to be calm and cool and ---
A. No, it wasn't no calm about it.
Q. Okay. Are you aware that he had already been told to leave by the bar owner?
A. I don't know. I wasn't ---
Q. You didn't know that?
A. No. I wasn't on the inside.
Q. Were you aware that the bouncer had already been called to try to intervene?
A. No.
Q. Now, you gave another statement to the police later that day; is that correct?

A. Yes, ma'am.
Q. All right. I'm going to show you this one. And in this one, again, did you have an attorney present?
A. No, ma'am.
Q. Had you ever been talked to about defense of others?
A. No, ma'am.
Q. Was Mr. Smith's attorney there?
A. No, ma'am.
Q. So you're being questioned by police; is that correct?
A. Yes, ma'am.
Q. All right. And in this one you say, a minute before Buster got there, the black female and male began arguing at the right. I saw them and saw the black male scuffling with the female. Do you recall saying that in that statement?
A. Yes, ma'am.
Q. And then you go on to say pretty much the same thing about him pulling around and parking in front and the shooting occurring; is that correct?
A. Yes, ma'am.
Q. So from what you saw in this man's actions toward his girlfriend, Mr. Martin's, and his demeanor, the way he acted toward her, just the way -- his face and all, did it appear reasonable for Mr. Smith to go try to

defend her?

A. Yes, ma'am. At the time, yes, ma'am.

MS. WHITE: No further questions.

THE COURT: By the State?

CROSS-EXAMINATION

BY THE STATE:

Q. You stated when you saw the victim and his girlfriend outside that the victim was acting violent towards her; is that correct?

A. Yes, ma'am.

Q. Now, when you say acting violent, what do you mean?

A. A little more than just an argument. You know, using hands and in the face.

Q. Now, when you say using hands, are you talking like gesturing at her or striking her or slapping her or pushing her? Be a little bit more specific.

A. I once seen him shove her. I didn't actually seen him slap her because I wasn't directly at the car.

Q. Okay.

A. But you could tell it was, you know, hands movement as in hitting her. I didn't know exactly where about, but his hand was striking from up to down.

Q. So he was shoving her?

A. Shoving.

Q. And you're saying in addition to shoving her, he was

also striking her?
A. Yes. But I do not know where he was striking her at.
Q. Okay. And they were yelling?
A. It was yelling, but I couldn't understand what they were saying because I wasn't that close to them.
Q. Okay. And at some point Mr. Smith asked you for a gun?
A. Yes, ma'am.
Q. Did he tell you why he wanted it?
A. No, he didn't exactly say why.
Q. Well, you said, he didn't exactly say why. What do you mean by that?
A. Well, he didn't say why. I just said exactly as in us being grownups and, you know, someone sitting around and seeing a female, you know, basically getting slapped around. My thoughts was, that's what it was for.
Q. So you just assumed that that's why he was asking for a gun?
A. Yes.
Q. And you testified that you think he was just trying to stop the fight. That, again, is something you're assuming?
A. Yes, ma'am.
Q. Did you hear Mr. Smith have any words with the

victim before the shooting?
A. No, ma'am.
Q. Did you see him have any words with the victim's girlfriend before the shooting?
A. No, ma'am.
Q. Why didn't you contact Mr. Smith's lawyer and say, you know, I think he was just trying to defend the girlfriend? Why didn't you contact him about that?
A. I was thinking that I was going to get -- you know, they was going to contact me. I come into a meeting in the office or something like that. I didn't get none of that. They didn't offer me to come to no meeting. I sat in the county for months of the same charge. They had me on the same case for accessory.
Q. So you thought that they would contact you. That's why you didn't contact them?
A. Yes, ma'am.
Q. And you were charged as an accessory, I think you said?
A. Yes, ma'am. They had me charged with accessory before.
Q. And you got an attorney on that charge?
A. No, ma'am.
Q. Okay.
MS. RATIGAN: That's all I have, Your Honor.

REDIRECT EXAMINATION

BY MS. WHITE:

Q. Was the charge dropped after this, after you testified?

A. I assume because they haven't said anything about it.

Q. Okay. And it's been six years?

A. Yes, ma'am.

MS. WHITE: No further questions.

MS. RATIGAN: I have nothing further, Your Honor.

THE COURT: All right. You may step down.

MS. WHITE: Your Honor, let me see which other witnesses are here. We'd call Cammy Dennis, Your Honor.

CAMMY DENNIS,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. WHITE:

Q. Ms. Dennis, you did not testify in the trial; is that correct?

A. No, ma'am.

Q. All right. Did you give a statement to the police, however, what, a couple of hours after this happened, the shooting happened?

A. Yes, ma'am.

Q. So you were at the lounge that night?
A. Yes, ma'am.
Q. And do you know Jwan Smith? Have you ever met him?
A. No, ma'am.
Q. Okay. Do you know Sammy Martin?
A. No, ma'am.
Q. Did you know him before that night?
A. No, ma'am.
Q. Okay. And about what time did you get to the lounge?
A. Around nine o'clock.
Q. And did you see the guy that was shot?
A. Yes, I did.
Q. Tell us about that, where you were and what you saw happen?
A. I was basically standing outside. I had came outside to get some air. And I basically just saw them arguing. That's all I really saw.
Q. All right. And did you talk with the police? You said you gave a statement that night; is that correct?
A. Yes, ma'am.
Q. All right. I'm going to hand you a copy of that statement. And did you say that you went to Bolden's Old School Lounge? When I got outside, I saw a man run up on a woman wearing a grey sweat suit standing at the car.

The man smacked the woman in the face and jerked her chain off her neck. The man that jerked it off was looking on the ground for it. I went back in and told the owner, Landis Bolden, that a man was outside trying to beat up some woman. Landis went outside and told the man to leave her alone and get off his property.

A. Yes, ma'am.

Q. And that's the statement you gave to the police?

A. Yes, ma'am.

Q. Again, are you friends with Mr. Smith? Have you ever even met him?

A. No, ma'am.

Q. Did you have an attorney there or anybody there, or was it just the police when you gave this statement?

A. Just the police.

Q. And you got a subpoena to come today; is that correct?

A. Yes, ma'am.

Q. Now, back in his first trial -- and you may not even know that there was a trial about six years ago. But back in that trial, did you ever talk to his attorney or anybody from his attorney's staff before that trial a few years ago?

A. No, ma'am.

Q. Has anybody -- besides the police, has anybody

contacted you at all until my office contacted you?

A. No, ma'am.

Q. In your statement, you talk about the things that you saw. But I think when I interviewed you, you talked about some of the things you heard him saying to her. Tell me a little bit about what you heard him saying to her.

A. He called her other names.

Q. He called her names? I know we're in a courtroom, but it's okay. Go ahead and say the names.

A. He called her a bitch.

Q. Okay. And again, I know you talked about some things he did to her, but talk to us a little bit about how he was acting. You know, happy, mad, describe him.

A. He was pissed-off.

Q. Okay. From what you saw -- I believe you went inside and you told the owner of the bar, there's a man out there beating up a woman?

A. Yes, ma'am.

Q. Why did you use the words, there's a man out there beating up a woman?

A. Because I saw him hit her and he pushed the chain off her neck.

Q. Okay. So from what you saw, just watching it, you thought a man was beating up a woman?

A. Yes, ma'am.
Q. And that's what you told the owner of the bar?
A. Yes, ma'am.
Q. And again, until you came into court today and until my office contacted you, had anybody contacted you, interviewed you or had you testify until within the last few weeks?
A. No, ma'am.
Q. I believe you told me that you went in to tell the owner that the man was beating up a woman out there. If you count one-one thousand, two-one thousand, three-one thousand, those are seconds. Can you give the Judge an approximate time as to from the time you went in to tell the owner, there's a man out there beating up a woman, about how many minutes would have passed? And you can look at the little second hand up on that clock and get an idea about how long had passed. And if you can't do it, that's fine. But if you can?
A. No, but about ten minutes at least.
Q. Okay. Did you say ten minutes or less; is that what you just said.
A. At least ten minutes.
Q. At least ten minutes, okay. All right. Thank you.

MS. WHITE: No further questions.

MS. RATIGAN: Just a few quick questions.

CROSS-EXAMINATION

BY MS. RATIGAN:

Q. So you didn't actually see the shooting?

A. No, ma'am.

Q. You just saw a man and a woman out in the parking lot arguing?

A. Yes, ma'am.

Q. And he was screaming at her?

A. Yes, ma'am.

Q. Did you see -- and you saw him jerk the chain off of her neck?

A. Yes, ma'am, I did.

Q. And your statement is that you saw him smack her. Are we talking open-fist, closed-fist? Do you remember?

A. No, ma'am. I mean, I wasn't that close.

Q. You could just see that he struck her?

A. Yes, ma'am.

Q. Was it a repeated strike or he just ...

A. Just that one time and jerked the chain off.

Q. Did you hear anyone having words -- other than his girlfriend, did you hear anyone having words with the victim?

A. No, ma'am.

Q. Did you hear anyone outside having words with the girlfriend?

A. No, ma'am, not besides him.
Q. And you knew that someone had been charged with murder as a result of this shooting at the club?
A. No, ma'am.
Q. You didn't know anyone had been charged with murder?
A. No, ma'am.

MS. RATIGAN: That's all I have, Your Honor.

THE COURT: You may step down.

Unless y'all have any questions?

MS. WHITE: No, sir, I don't. Your Honor, may I just let the witnesses know ...

If anybody has already testified you can stay and you're welcome to. But if you don't want to, you can certainly go if you've already testified.

Plaintiff calls Sheila Lomax.

SHEILA LOMAX,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. WHITE:
Q. Ms. Lomax, did you testify in the original trial?
A. No, ma'am.
Q. In fact, have you ever talked to the police at all?
A. No, ma'am.
Q. There were several statements in this case that talked about Sally. And they said, a black female who

was beside her telling him to leave her alone. Who is that black female?

A. That was me.

Q. All right. So did any defense attorney ever talk to you before -- let me back up. Did you know there had been a trial a few years ago in this case or not?

A. No, ma'am.

Q. You didn't. Okay. Did any defense attorney -- until I and my office contacted you, had any defense attorney called you or tried to interview you?

A. No, ma'am.

Q. Had you received a subpoena from anybody?

A. No, ma'am.

Q. And do you know Jwan Smith?

A. No, ma'am.

Q. Have you ever met him?

A. No, ma'am.

Q. Are you related to Ms. Brownlee, who we call Sally in this trial?

A. Yes, ma'am.

Q. How are you related to Ms. Brownlee or Sally?

A. That's my cousin.

Q. That's your cousin. Now, the night that this occurred at the lounge, did you know Sammy Martin?

A. I just knew he was Sally's boyfriend.

Q. Okay. And were you familiar with his reputation for violence?
A. No. I had heard.
Q. You had heard?
A. Uh-huh (affirmative).
Q. Okay. And were you familiar with whether or not he had ever been violent with Sally before?
A. No. I have heard them talk about it in the past.
Q. You had heard them talk about that? So if Sally had indicated that he had not been violent, that's not what you understood; is that correct?
A. That's correct.
Q. Yes?
A. Yes.
Q. Okay. Now, let's talk a minute about what happened that evening in the lounge. We have heard testimony -- you were here, I think, a little bit this morning. We heard testimony about how Sally was sitting at a table with Mr. Vance, also called Shoes. Do you recall that?
A. Yes, ma'am.
Q. Were you also sitting either at the adjoining table or kind of with them a little bit?
A. Yes, ma'am.
Q. And will you please tell me, shortly before midnight, did you see Sammy Martin?

A. Before or after?
Q. Before the shooting. When you were inside sitting at the table?
A. Yes, I did.
Q. Okay.
A. He had came in and he came over there and start cussing at her and grabbing -- he grabbed her neck and broke her jewelry and stuff.
Q. Okay. Now, let's back up and talk about this grabbing the neck because you described that to me when I interviewed you.
A. Well, he grabbed her somewhere right in here.
Q. Okay. And I believe you told me you thought he was grabbing her neck, to grab her and take her out and the necklace just broke; is that right.
A. Yes, ma'am.
Q. So your impression being right there at the table was that he was grabbing her necklace or he was grabbing her by the neck?
A. He might have been grabbing her blouse.
Q. Okay. Do you remember when I interviewed you and you thought -- you thought though that he was grabbing ---
A. Yeah. I thought he was grabbing her neck.
Q. Okay. And is that sort of what your first

impression was?

A. Yes, ma'am.

Q. And will you please tell the Judge what he was saying to her when he grabbed her?

A. He was saying, bitch, let's go. I say, let's go now, bitch, and stuff like that.

Q. Okay. What was your reaction to this?

A. Mine?

Q. Yes.

A. It shocked me.

Q. It shocked you?

A. Uh-huh (affirmative).

Q. Had she done anything to deserve this?

A. No, ma'am.

Q. Was she kissing Mr. Vance? Was she taking her shirt off? I mean, was there anything she was doing besides sitting at this table?

A. No. They was just sitting there talking because she's a good friend with his sister. And they been knowing each other.

Q. Okay. Now, you told us a little bit about what he did, and you told us a little bit about what he said. Please tell the Judge how he acted.

A. He was real aggressive.

Q. And at some point -- did he go outside at some

point, did Sally go outside, and at some point did you go outside?

A. Yes, because Sally had said she was getting ready to go, so I walked out behind her.

Q. All right. And when y'all got outside, how did he act once you all got outside? And by he, I mean Mr. Martin toward your cousin.

A. He was still acting aggressive and still grabbing on her and demanding her to go home.

Q. And doing what?

A. He was demanding her to go home, to leave and go home.

Q. And was Sally doing anything, again, to provoke this?

A. No. She was just saying, well, I'm getting ready to go.

Q. All right. So she wasn't doing anything to fight him or ---

A. No, she wasn't trying to fight him or nothing.

Q. Now, at some point did Sally have trouble with her car?

A. Yeah. She said her battery was ---

Q. And at that point, what did -- had Mr. Martin already been told to leave?

A. I think so.

Q. Okay. Did he come back?
A. Yes. He had left and he came back less than -- it wasn't even ten minutes, about ten minutes.
Q. Okay. And when he came back, where did he park?
A. Like in front of her car. Like across.
Q. Okay. And did you get the impression that he was helping with the car or he was blocking her in?
A. Blocking her in.
Q. And did he get out of his car?
A. Yes.
Q. And when he got out of the car, who did he walk toward?
A. He was coming towards her ---
Q. Okay. How was ---
A. --- because I was in the car -- you know, I was in the car after she had lift the hood up and asked me, you know, try to crank it right when she moved her little battery cable or something. So I didn't get to see everything.
Q. Okay. From what you saw, how was he acting toward her when he got out of the car, blocked her in and came toward her?
A. He was cussing. I couldn't see nothing.
Q. So if you had to characterize what his -- how he acted, would you say he was calm, he was violent, he was

angry, he was happy, what?

A. He was angry about it.

Q. Now, did you see when Mr. Smith came and pointed the gun at Mr. Martin?

A. No, I didn't.

Q. You did not see that. Was the hood up?

A. Uh-huh (affirmative).

Q. So is that about all that you remember?

A. That's all.

Q. Let's back up one minute. If Mr. Smith did get a gun and came to the front of Mr. Martin and tell him to stop, from what you saw, would that have been reasonable for a male to do given what he was witnessing? To point a gun at him and tell him to stop?

A. It would have been reasonable to try to help, you know.

Q. All right. And did you feel she was in some kind of danger?

A. From the way it looked, yes.

Q. And again, have you ever met Mr. Smith at all?

A. No.

Q. All right. And would you agree that the only way that we found you was because people talked about you in their statements, another black female being there? Or do you know?

A. Maybe because of my cousin.
Q. All right. All right.
MS. WHITE: No further questions.
CROSS-EXAMINATION
BY MS. RATIGAN:
Q. Ms. Lomax, so inside the bar you saw Sammy grab at her neck or her blouse or somewhere in this area and that's how her necklace broke?
A. Yes.
Q. Okay. And he was cussing at her inside?
A. Yes.
Q. Did he actually strike her, or did he just grab at her?
A. He was just grabbing at her.
Q. And once they went outside, he still continued to yell and cuss?
A. Yes.
Q. And once they were outside, did he grab at her again?
A. Yes.
Q. And did you see him strike her or hit her in any way?
A. No. He was just grabbing.
Q. Just grabbing at her?
A. Yeah.

Q. While y'all were outside, did you see anyone aside from your cousin having words with the victim, Sammy?
A. No. It was so much going on, I can't remember.
THE COURT: Ma'am, you're going to have to keep your voice up.
THE WITNESS: It was so much going on, I couldn't remember.
Q. Okay. And you don't remember anyone else having words with your cousin once y'all were outside?
A. No.
Q. And they were mostly just kind of focused on each other?
A. Uh-huh (affirmative).
Q. And were there a lot of people outside in the parking lot, would you say?
A. Yes.
Q. How far away from the door of the bar would you say Sally was during this fight outside?
A. She was right on the sidewalk, like right -- when you come out the door and you take a left, she was like right there on the side of ---
Q. So just a couple of feet from the door of the bar?
A. Right.
Q. Okay.
MS. RATIGAN: That's all I have, Your Honor.

MS. WHITE: No further questions, Your Honor.

THE COURT: Thank you.

THE WITNESS: You're welcome.

MS. WHITE: Your Honor, our next witness and our last witness is going to be the Defendant. I don't know if you want me to proceed or not.

THE COURT: Well, do you need a break?

MS. WHITE: I don't need one, Your Honor. I'm just letting you know it may be a lengthy witness. That's all.

THE COURT: Oh, all right. Let's press on.

MS. WHITE: You're ready? Your Honor, I would call Jwan Smith.

JWAN TYREE SMITH,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. WHITE:

Q. What's your full name?

A. Jwan Tyree Smith.

Q. And Jwan, what is your date of birth?

A. 7/6/88.

Q. So at the time that this shooting occurred, how old were you?

A. Seventeen.

Q. And when the trial came, how old were you?

A. Eighteen.
Q. And I think you told me before that you had, at one point, been arrested or given a ticket or something for trespass or something like that?
A. For trespassing.
Q. And that was the extent. You've never, as a juvenile or an adult, been arrested or anything like that; is that correct?
A. Yes, ma'am.
Q. All right. So at the time that you were preparing for this trial then, had you had extensive contact with law enforcement or anything like that?
A. No, ma'am.
Q. Now, your attorney was Robert Gamble; is that correct?
A. Yes, ma'am.
Q. Will you please tell the Judge how many times you met with Mr. Gamble and how much time you met with him each time?
A. Maybe two times for twenty minutes in all.
Q. And please tell the Judge whether or not Mr. Gamble ever went over these statements with you, these witness statements that we've heard about today.
A. No, sir. He never ---
Q. Up until the time that I called you and talked to

you about defense of others, had you ever heard that term in your life?

A. Never knew it existed.

Q. In fact, did you write me after that and say, oh, my gosh, you're right, there is something called defense of others?

A. Yes, ma'am.

Q. And so at the time of your trial, had your attorney ever informed you that this was a possible defense?

A. No, ma'am.

Q. Had you ever discussed that at all with him?

A. No, ma'am.

Q. Did you know that you could use as a defense if you were stepping in to defend someone else?

A. I did not know.

Q. Now, you said that you met with your attorney a couple of times, about twenty minutes. Are you aware of whether or not he discussed anything with any witnesses, or did he discuss with you interviewing anybody?

A. No, ma'am.

Q. To your knowledge, he met with you about twenty minutes or so, and then I think another time you told me to talk to you about a plea bargain?

A. Yes, ma'am.

Q. So you said you discussed the case with him for

twenty minutes. The next time you talked to him and the last time you talked to him, that was to discuss a plea offer?

A. Yes, ma'am.

Q. And again, that time, did he ever discuss defense of others or explain that defense to you?

A. No, ma'am.

Q. So let me get this straight. You went to trial facing life without parole and you met with your attorney two times, once for twenty minutes and once for just a few minutes to discuss a plea bargain, and he had never interviewed any witnesses?

A. Yes, ma'am.

Q. And you were seventeen?

A. Yes, ma'am.

Q. All right. Well, let's back up a little bit and lay a little bit of foundation on this. Do you know Sammy Martin?

A. Yes, ma'am. I lived with him for three years.

Q. All right. Let me ask something before I forget. How big were you when this occurred?

A. About five-five, a hundred and thirty pounds.

Q. And Mr. Martin, I think we heard, was about six feet, six-one, something like that?

A. About a hundred and fifty-five, a hundred sixty

pounds.

Q. Now, you lived with your -- you said Sammy Martin lived with you and your mom, what, up and to just a few years before this shooting occurred?

A. Yeah. He had just got out of jail because my mama had pressed charges upon him.

Q. Okay. Don't go to that yet. That's when they broke up. Go back to when he was living with you.

A. Oh, okay.

Q. When he was living with you and your mother, please tell the Judge what you would witness between Sammy and your mom.

A. Beatings. He would come high and drunk, accuse her of cheating and just beat on her for no reason.

Q. Okay. And you said that he would beat her. Describe for the Judge what you would see.

A. He would hit her in the face, smush her head against the wall. He'd just beat on her for no reason.

Q. Okay. At any point were there any weapons used?

A. He pulled a knife on her one time.

Q. And how old were you at this point?

A. About thirteen or twelve.

Q. And what did you do when he pulled a knife on your mom?

A. I had went and got a knife and tried to defend her.

Q. And was he arrested shortly after that for some kind of domestic violence against your mother and put in jail?
A. Yes. She finally called the police on him.
Q. And at that point, did they end up breaking up when he was in jail?
A. Yes, ma'am.
Q. So in your opinion, from knowing him and living with him, did he have a reputation for violence against women?
A. Yes, ma'am.
Q. Were you aware at the time of this shooting whether or not he had been violent toward other women, other girlfriends in particular?
A. Yes, ma'am.
Q. And what were you aware of?
A. That he had been violent to my mother first and then plenty of other women, what I heard my mother talk about.
Q. You've heard your mother talk about the other women he'd been violent against?
A. Yes, ma'am.
Q. And are you -- do you have an opinion as to whether he was violent against women?
A. Yes, ma'am.
Q. And what was your opinion?
A. He was very violent. He was aggressive and violent towards women. That's my opinion.

Q. All right. Now, are you aware from your dealings with him whether or not he habitually carried a gun or knife or any kind of weapon?
A. Yeah. He always kept a weapon. When I used to live with him, he always kept a gun. He always carried a knife with him or a gun.
Q. All right. Now, let's move to the day that this occurred. And this kind of occurred February 25th, 26th because I think it was right at midnight in-between. So if I say 25th, I mean 26th -- 26th, 25th, I'm talking about this incident, okay?
A. Yes, ma'am.
Q. All right. How did you get down to Bolden's Lounge?
A. Walked.
Q. And about what time did you get down to the lounge?
A. At about eleven-thirty. Eleven-thirty.
Q. And this was, I think, a Saturday night; is that right?
A. Yes, ma'am.
Q. Was Bolden's Lounge crowded?
A. They were pretty packed.
Q. And when you got there, did you go inside or did you stay outside?
A. I stayed outside.
Q. While you were out there, what, if anything, did you

see Sammy doing to his girlfriend?
A. When I had first walked up, I had seen Turk, Latorrey and them. I ain't witnessed a fight at that point. I think I asked them for some weed or something because I had smelled weed. And as I had walked up to them, a commotion had been going on in the front side of the club because everyone turned their head and was looking. So I had asked who was fighting. And somebody say Sammy jumped on his girlfriend. So I went and looked. And I witnessed him -- looked like he was striking her a couple of times, pulling her by the collar.
Q. How was he acting toward her? Not what he was doing, but how was he acting toward her?
A. Hostile.
Q. Hostile? Had you seen this kind of demeanor or the way he acted, had you seen that on other occasions?
A. Plenty of them.
Q. Okay. And was this the same way that he would act on those prior occasions when you had seen him be violent?
A. Yes, ma'am.
Q. So when you were watching this, what happened? What was he saying? Did you hear what he was saying?
A. Not really because the music was pretty loud. But

it was -- it was just a hostile situation. It was a fight. I know that much.

Q. Okay. You could tell he was saying something; you just couldn't hear what he was saying?

A. Yes, ma'am.

Q. Was he like talking sweetly and softly, or was he yelling and cussing?

A. No. He was acting real hostile.

Q. So what did you decide to do at that point?

A. At that point, he had -- I think he had left for something. And I'm thinking it's been all over with.

Q. Okay.

A. And then he came back like about five or six minutes later. I think he had blocked her car in and continued assaulting her again from my ---

Q. Okay. Stop there a minute. We've got to break this down. When he came back, you said he blocked her in.

A. Yes, ma'am.

Q. Explain what you mean to the Judge.

A. He like -- he pulled up on her car so that she couldn't pull off like a blocking in.

Q. Okay. And did he stay in the car or did he get out?

A. He jumped out and continued his assault.

Q. Okay. Well, how was he acting when he got out?

A. The same way, hostile.

Q. And to whom did he walk? Did he go toward anybody?
A. The female.
Q. Okay. Who? I mean, which female?
A. Sally.
Q. The girlfriend?
A. Yes, ma'am.
Q. All right. And what did you decide to do?
A. Well, I decided to get a weapon because I know what type of dude he is. I can't approach him without a weapon because he already bigger than me. I know he carry a weapon, so it would be crazy for me just to approach him by myself.
Q. Okay. Were you at all concerned for Sally?
A. Yes, ma'am.
Q. And what did you think would happen to Sally?
A. He could have put her in the car, took her to his house and continued his assault.
Q. Okay. And so what did you decide to do?
A. I decided to try to break it up.
Q. And so what did you do? What did you get?
A. I went and got a firearm.
Q. And once you got the firearm, where did you go with it?
A. I had put it in my pants, and I walked around the back side of the club because the front was packed.

Q. Okay. And when you came out, what happened?
A. I witnessed the assault like he was trying to force her to get in a car. I saw him mushing (phonic) her head, trying to put her in a car or something.
Q. And we've heard some witnesses talk about pushing and pulling and things like that. Is that the impression you got that he was trying to do?
A. Yeah, like he was trying to force her against her will to go somewhere or something like that.
Q. From what you had seen in the past of what he would do to a girlfriend if he got her alone, did you think that would be a good thing or a bad thing?
A. That would be a very bad thing.
Q. Did he appear to be under the influence of anything when you saw this?
A. By the look in his eyes when I seen him, he was hostile.
Q. All right. And so you said that you got the gun. Now, let me ask you something. Did you go hunting Sammy Martin? Did you know he was going to be there that night?
A. No, ma'am. I done seen him plenty of times.
Q. Did you have a gun on you where you were waiting to shoot somebody?
A. No, ma'am, I didn't have no gun on me.

Q. Do you think this ever would have happened if you had not seen him doing this to his girlfriend?
A. It would have never happened.
Q. So you came around the building. You came out and you said he came out and you thought was pushing, pulling, doing something and cussing and angry and under the influence. What did you do at that point?
A. I had the gun tucked. The gun was not showing. And I walked up to him and I was like, leave the female alone. I got within ---
Q Whoa, wait. You can't go this fast because the Judge has got to understand everything you say.
A. Okay.
Q. And remember, you've got to -- do you know what enunciate means?
A. Enunciate?
Q. That means speak clearly.
A. Yes, ma'am.
Q. Okay? You're a little bit soft spoken. We have to hear this. So you walked up to him and you said, leave the woman alone?
A. Yes, ma'am.
Q. Okay. And when you said, leave the woman alone, what did Sammy do?
A. It was like he stopped in his tracks and he turned

around to me. At that point, I didn't have the gun drawn. So he like took like a step towards me as if to -- as if -- the look on his face was like he wasn't going to retreat or he wasn't going to do nothing.

Q. Did he appear to be at all afraid of this gun?

A. No, ma'am.

Q. Did he appear at all to back up?

A. No, ma'am.

Q. Now, we've heard from the autopsy that you're quite short compared to him ---

A. Yes, ma'am.

Q. --- and that the bullets were downward on him. Was he upright like this, or was he crouched down when you shot him?

A. It was like he was trying to come forward.

Q. So let's talk a minute about the number of shots. We've heard that he was shot two times.

A. Yes, ma'am.

Q. But we've heard witnesses say you shot three times. Tell the Judge about the first shot that you fired.

A. I fired it at his legs and it ricocheted off the ground. I seen the spark off the ground.

Q. Why did you fire at his legs the first time?

A. To get him to stop.

Q. And did that make him stop?

A. No, ma'am.
Q. So were the next two shots the two that we heard about?
A. Yes, ma'am.
Q. After this occurred, did you -- well, let me back up. Did you expect to shoot him when you got that gun?
A. No, ma'am.
Q. Did you think you were going to shoot him when you got that gun?
A. No.
Q. And again, how old were you when this happened?
A. Seventeen.
Q. After the shooting occurred, were you scared?
A. Yes, ma'am. I struck out running.
Q. All right. And did you end up in Florida with a relative?
A. Yes, ma'am.
Q. Were you extradited back here?
A. Yes, ma'am.
Q. Now, let's talk about the police investigation against you. We've heard that, I think, five or six witnesses, including some of your friends, came forward to the police and said, he did it; is that right?
A. Yes, ma'am.
Q. And so going into the trial, you all knew that they

had evidence that five or six people had identified you, some that didn't know you at the time. You knew that they had evidence you'd fled to Florida; is that right?

A. Yes, ma'am.

Q. Did your attorney ever discuss in detail -- the questions I've asked you today, were those ever asked of you?

A. No, ma'am.

Q. Did you ever discuss those things with your attorney?

A. No, ma'am.

Q. And again, did you rely on your attorney to have the knowledge to talk to you about these things?

A. Yes, ma'am.

Q. Until I asked you these questions, had you ever been asked by your attorney those questions?

A. No, ma'am.

MS. WHITE: Your Honor, may I just have one minute? I believe that's all.

Q. Did you write your attorney while you were in jail?

A. A couple of times.

Q. Actually, several times; is that right?

A. Yes, ma'am.

Q. Did you get responses?

A. No.

Q. And I actually introduced a letter earlier that wasn't the right letter. So that was another one of your letters; is that right?
A. Yes, ma'am.
Q. Did you also write this letter to your attorney, if you don't mind looking at it? That's the one I meant to introduce.
A. Yes, ma'am.
Q. And did you receive a response from him?
A. Nope. No, ma'am.
MS. WHITE: Your Honor, I'd ask that the letter be marked as an exhibit.
Q. Has that been changed or altered in any respect other than apparently your attorney put a yellow sticky on it?
A. No, ma'am.
THE COURT: Any objection?
MS. RATIGAN: I'd like to see it first.
(WHEREUPON, Ms. Ratigan reviewed document.)
MS. RATIGAN: The only objection we would have, Your Honor, is that there's no date on this letter. We don't know if this is something that he allegedly sent Mr. Gamble during the pendency of the trial or something subsequent. That's our only objection.
THE COURT: You can question the witness about

that.

MS. WHITE: I'm sorry, Your Honor. Question him?

THE COURT: Yes.

Q. In your letter you say, you was going to bring the discovery to me and that's been six months ago. So was this written then while you were awaiting trial, before your trial?

A. I think that was before my bond.

Q. Okay.

A. Awaiting trial.

Q. But it was before trial; is that correct?

A. Yes, ma'am. Yes, ma'am.

Q. All right.

MS. WHITE: Your Honor, I'd ask that it be marked as an exhibit.

THE COURT: It's admitted.

(WHEREUPON, Plaintiff's Exhibit Number 4 was marked and admitted into evidence.)

Q. Okay. I'm handing you Plaintiff's Exhibit 4. If you'll just follow along, I'm going to read it. And tell me if -- I'm sorry. You don't have use of your arms. And I'm going to read it and you tell me if this is accurate.

Mr. Robert Gamble, how are you doing?

Hope you're doing well. Can you please get my motion of discovery to me? Please, sir, because you said at the bond hearing you was going to bring that to me. That's been six months ago, and my mom -- mother has been calling to your office trying to speak to you because it's been six months since my bond hearing. And I would really like it if you could get me in for a bond reduction. Please, that would be a blessing. I know you've got a lot of cases and you're really busy. Can you please do this for me? Thank you for your time.

A. Yes, ma'am.

MS. WHITE: Your Honor, that's our case.

THE COURT: By the State?

MS. RATIGAN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. RATIGAN:

Q. So you testified you met with Mr. Gamble twice; is that correct, Mr. Smith?

A. Yes, ma'am.

Q. And that you wrote him several letters, but he never wrote back to you?

A. Yes, ma'am.

Q. Did you ever attempt to call him from the detention center?
A. You can't.
Q. Did you tell Mr. Gamble that you were innocent of the shooting?
A. I told him I ain't murdered Mr. Sammy Martin.
Q. So you told him you didn't murder the victim?
A. Yes, ma'am.
Q. Did you tell him that you shot the victim because you were defending Sally?
A. No, ma'am.
Q. Why didn't you tell him that?
A. Because I only seen him like -- he seen me one time, and I told him that I was going to have a paid lawyer. The second time he came to see me, he acted like he was agitated like -- he was like, they fixing to come at you with a plea for thirty years. I was like, is they going any lower? And he was like, no.

So the next time he came, he was like, either you take the thirty years or you can go to trial and get a life sentence. So at that point, I felt I didn't have no representation.

Q. All right. Let me ask it to you this way. Was it during your first meeting that you told Mr. Gamble that you didn't murder Sammy?

A. Yes, ma'am.
Q. And you said, I didn't murder Sammy, but you didn't at that point say, because I was defending Sally?
A. Ma'am? Say that again?
Q. You told him, I didn't murder Sammy because I was defending Sally. You just said, I didn't murder Sammy?
A. Yes, ma'am.
Q. And you at no point wrote him a letter and explained why you had shot the victim that night?
A. Yes, ma'am. He never wrote. He never tried to assume any type of talking about my case period.
Q. Okay. Well, that's not what I asked you. Did you write him a letter telling him ---
A. Yes, ma'am.
Q. --- I only shot the victim because I was defending Sally?
A. No, ma'am. No, ma'am.
Q. And you did not write these letters to him because you thought he wasn't going to answer you or he wasn't answering you?
A. I was hoping he was going to answer me.
Q. So all Mr. Gamble knew at the time is you said you didn't murder the victim?
A. Yes, ma'am.
Q. And you saw only what happened in the parking lot

between Sammy and Sally?
A. I saw only what happened in the parking lot?
Q. In the parking lot? You didn't see inside. Just at the parking lot?
A. Yes, ma'am.
Q. Okay. And there were lots of people outside in the parking lot that night?
A. Yes, ma'am.
Q. And when you say that he was acting hostile and aggressive towards Sally, what specifically was Sammy doing? Was he shouting at her?
A. No. He was hitting.
Q. He was hitting her with a closed fist?
A. That's what it looked like.
Q. Was he also yelling at her and cussing at her?
A. Yes, ma'am.
Q. Was he grabbing at her in any way?
A. Yes, ma'am.
Q. Did you hear Sally ask anyone for any kind of help?
A. No. But I heard everybody else telling somebody to help her.
Q. And how far away from the front door was Sally when she was messing with her car?
A. I can't recall. Oh, the car?
Q. When she was messing with her car and fighting with

Sammy, how far away from the door was she?
A. Had to be at least about ten feet because they was like on the left front side of the club. I mean, on the right front side of the club.
Q. So while she was messing with her car, he just continued yelling at her?
A. You talking about when he came back?
Q. Right.
A. He continued his assault, yeah. The yelling, yeah.
Q. Okay. Yeah, you testified that he came back, jumped out of his car and continued his assault.
A. Yes, ma'am.
Q. And by that you mean continued hitting on her, yelling at her, grabbing at her?
A. Yes, ma'am.
Q. That was right after he jumped out of the car. While he was walking over there, he was yelling at her?
A. While he was walking over there?
Q. You said he jumped out of his car, so he had to jump out of his car and walk over to where she was standing?
A. Yeah, he approached her.
Q. Did you ever tell Mr. Gamble about -- either by conversation or by letter about Sammy's history with your mom?
A. No, ma'am.

Q. Did you ever ask your mom to contact Mr. Gamble and explain what happened when they were dating?
A. My mama tried to contact him, but I didn't. I couldn't.
Q. Okay. But what I asked you is did you ask your mom to contact Mr. Gamble?
A. No, ma'am.
Q. Why not?
A. I really can't answer that.
Q. Okay.
A. I was ignorant to the fact.
Q. Okay. And so your intention was just to try and break up the fight in the parking lot?
A. Yes, ma'am.
Q. Okay. And you testified that you approached Sammy and you had words with him first?
A. Yes, ma'am.
Q. And after you were having words with him is when you shot him?
A. No.
Q. Well, you had words with him, and then you testified that he walked toward you and then you shot at him; is that correct?
A. No, ma'am.
Q. Okay. Well, explain it to me then.

A. I had told him to stop messing with the female.
Q. Uh-huh (affirmative).
A. At that point, he had turned around and faced me in an aggressive manner.
Q. Uh-huh (affirmative).
A. And that's when I shot at his leg to stop him from approaching me. That's when he like lunged at me.
Q. Oh, so now he lunged at you. He lunged at you after the first shot?
A. Like he crouched down. Like he was trying to ---
Q. And there were lots of people in the parking lot that night who would have witnessed this?
A. Ma'am?
Q. There were lots of people in the parking lot that night that would have witnessed this?
A. Yes, ma'am. But this happened in like three seconds. It really wasn't -- it wasn't in slow motion. It happened -- you wouldn't really know what happened unless you was standing in front of us.
Q. So you walked up to Sammy, you had words with him, he turned around and you kind of shot towards his feet, he lunged at you and you shot a couple of more times. Does that sound about right?
A. Something like that.
Q. Okay. Did you ever speak to Sally that night?

A. No, ma'am.
Q. Well, if you thought she was in trouble, why didn't you speak to her?
A. I can't speak to her while they fighting.
Q. You can't speak to her, but you can -- strike that. Why didn't you feel like you could speak -- you could not speak to her?
A. What can I say to her?
Q. Well, you walked up to Mr. Martin while they were fighting, and you spoke to him. Why didn't you do the same for Sally?
A. What am I going to say to her? It ain't really nothing I can say to her. Run.
Q. Well, then how were you going to break up the fight if you didn't intend to try and talk to them about it, and you just went over there with a gun to break up the fight?
A. Yes, ma'am.
Q. Okay. And when you spoke to Sammy, about how close -- when you first started speaking to him, how close were you to him?
A. Maybe about two yards, probably about eight feet.
Q. And you were there that night with several of your friends?
A. No. By myself.

Q. You weren't there -- you didn't meet up with Torrey or Turk or anybody else?
A. I seen them. I had smelled weed smoking. They were smoking weed, so I went over there and asked them did they have some weed for sale.
Q. So you saw them there, but you weren't there with them?
A. Yes, ma'am.
Q. Okay. Do you know if they saw you having words with the victim? Were they close enough to have seen that, do you think?
A. Could have been.
MS. RATIGAN: Beg the Court's indulgence. That's all I have, Your Honor.
MS. WHITE: Nothing.
THE COURT: Nothing further?
MS. WHITE: We have nothing further, Your Honor.
THE COURT: All right. You may step down.
MS. WHITE: Your Honor, before I rest, may I just talk to him about his mother. I don't think we're going to need her, but I want to -- may I get him to agree to waive that?
THE COURT: All right.
MS. WHITE: It'll just take a second.

(Off record discussion)

MS. WHITE: Your Honor, we are not going to request that the record remain open.

THE COURT: All right. Any further witnesses in this case?

MS. RATIGAN: If Mr. Smith has rested, the State would rest as well.

THE COURT: All right. I'm going to take about three or four minutes and then I'll hear your final comments.

(WHEREUPON, court stood at recess for a short break.)

THE COURT: These exhibits, if I can get a photocopy of. Some of it goes in the file, and so I need to get two copies of it. Two copies of each one of those.

We'll wait for Ms. Pruitt to come in with those copies.

(Pause)

THE COURT: All right. Ms. White?

MS. WHITE: Yes, sir.

CLOSING STATEMENT

BY MS. WHITE:

Your Honor, I'm going to tell you, if I made any mistakes, I apologize. I'm on the criminal appointment

list, not the P.C.R. one. So this is probably my second P.C.R. in my entire life. But Your Honor, I did some research, looked at the standards. And Your Honor, I agreed to take this because another attorney on the list thought there was merit to it and didn't feel well-versed enough in murder to do it.

And Your Honor, I started looking through this file, and it's stunning. It is stunning how any attorney can look at this file, look at these police statements -- and I emphasize these weren't statements made to some defense attorney somewhere. These were statements made to police within minutes after the shooting, many of them just plain witnesses who were there.

And so what is the relevance of what happened inside? You say, well, he didn't even see that. Well, when Jwan comes into court and says, look, he was hostile, he was under the influence, I felt like he was threatening her -- I mean, I think these other statements are also very relevant because these were people -- like Cammy Dennis, she doesn't know him. She's never met him. What did she say? She saw what was happening and went in to the owner and said, there's a guy out there beating up his girlfriend.

So I mean, I don't think -- you know, one of the standards is certainly are you without fault in bringing

about the difficulty. Well, obviously, there was nothing showing the girlfriend brought about the difficulty at all. Did you fear serious bodily injury or death? Every person who testified today said he had a history of violence against women, that he had a reputation for violence, that their opinion was that he was violent. Certainly, my client had witnessed that.

And the next question is, is it reasonable? Well, you have witnesses who came up. Cammy Dennis, what does she say? I don't know him. There's a guy out there beating up his girlfriend. Other people who came in and said, you know, he's -- we need the bouncer. We need to get the bouncer in here to get him out. This is from the time he walked into the club that he started doing things. And I know it was packed. I know everybody's seen little bits and pieces; nobody's watching the entire thing like a movie. That's unreasonable to expect that because nobody knew this was going to happen.

However, Your Honor, if you look at a P.C.R., certainly, if the defense attorney has a reasonable strategic reason for doing something, absolutely, I understand. You have the possibility of defenses. But for God's sake, when you have a seventeen-year-old client who has never been in trouble with the law before, you're not going to sit down when you get this package of

statements from the police, and say, okay, let me explain to you some of these defenses. Now, we're going to sit here and talk more than twenty minutes. Not twenty minutes. How on earth can you even go over these statements in twenty minutes with your client? Of course, you're going to discuss this.

And you know, an attorney does owe the client reasonable investigation. I mean, you know, it's funny how we say to others, oh, well, that's reasonable. Never talked to one witness. You're facing life without parole, talk to you twenty minutes. That's reasonable. If it were us or our loved ones, we'd be appalled. You cannot flesh out a defense in that amount of time without going over this.

And the reason why I asked the attorney about all of these statements, Your Honor, is because that's the defense. It was the defense from an hour after the shooting. The police saw that it was the defense. I mean, they set it up in their statements. And Mr. Smith had never heard of the defense. He didn't even know it was a defense. He was seventeen.

Your Honor, how is it a reasonable strategic decision when you have five or six witnesses, some of whom are his friends, some of whom don't know him, who have been within feet of him, pointing him out, saying

he's the shooter -- and he fled to Florida. How on earth is that a reasonable defense when you've got all this evidence in your file? And of course, to say I'm going to rely on the police statements, if you rely on the police statements, you still have a defense. But to say, I'm going to rely on the police to interview my witnesses? That's what your attorney's for. They're the ones that ask, did you think there was a threat. Was he free to go? Was he helping her with the car or blocking her? The police aren't going to ask that. It's not reasonable for an attorney to rely on the police to make the defense case.

Your Honor, let's talk about preparation because I want to go to that. The question is -- of course, we have the burden. I understand that. Did the defense attorney's representation fall below objective standards of reasonableness? You heard the statements in this case. You heard him say, my client was facing life imprisonment, murder and was seventeen and I never talked to a witness and I spent twenty minutes plus a few minutes talking about a plea bargain. How on earth can that ever be reasonable, especially when you are given a gift of all of these statements, setting up a defense and you never mention it to your client or interview any of these witnesses?

Second of all, Your Honor, the second standard is but for the attorney's errors, there's a reasonable probability that the result at trial would have been different. And they define that as a probability sufficient to undermine the confidence in the outcome of this trial. Had Mr. Smith been able to afford -- had he not been dirt poor, raised in a house where a guy beats up his mom, loosens her tooth, punches her in the face, et cetera, had he not been seventeen, had he had a great job, had he had some money, in other words, and been able to afford someone who would go to talk to these witnesses, hunt down these witnesses, say, wait a minute, there was another female there. Whoever found her? Who is she?

I don't know how any of us can say there was not a reasonable probability that he would not have spent the last six years in jail. Six? Yeah, six years in jail. The standard is not for us to prove beyond a reasonable doubt that that would have happened, but a reasonable probability.

Without fault in bringing about the difficulty. Fear of serious bodily injury or death. The defense attorney didn't put one witness up to talk about the reputation for violence or the character of violence. And couldn't portray that she was blocked in. He was

trying to drag her into the car. My client knew exactly what would happen if he got her in that car with the way he was acting.

Your Honor, I really request that this conviction -- I don't know how to say it in a P.C.R. -- be reversed, however you say it in P.C.R. terms. I don't know what that term is. And I tell you -- I don't say this very often. But I will try his case for free in a retrial because this man did not get a fair shake. He just didn't get it. Nobody goes into a murder trial with five or six eyewitnesses saying that's a viable choice when they have not investigated the other potential defense. He didn't get a fair shake, and it's because he's poor.

THE COURT: Ms. Ratigan?

MS. RATIGAN: Thank you, Your Honor. I won't be as eloquent as Ms. White. I'll just make a couple of brief points.

CLOSING STATEMENT

BY MS. RATIGAN:

Mr. Gamble said that Mr. Smith told him he was innocent. Mr. Smith says today, I told Mr. Gamble I didn't murder the victim. Mr. Smith says today, he admits he never told Mr. Gamble I didn't murder the victim because I was defending this woman who was getting beat. Mr. Gamble stated on cross that, in his opinion,

the evidence did not support a charge -- pardon me -- defense of defense of others. I believe that's been borne out by the testimony today.

You can't meet the elements under these facts, especially the fear of imminent death or great bodily injury. When you look at both the statements and the testimony today from these individuals who witnessed the events, they state there was cussing, there was yelling, there was pushing, there was slapping, there was grabbing, there was a snapping of the necklace. They didn't say he was beating the tar out of her. She was bleeding. She was injured. She was crying for help. It was the two of them scrapping in the parking lot. I don't think that rises to her being in fear of imminent death or great bodily harm.

Again, you also can't prove, based on the evidence -- she could have retreated. Her own cousin, the other female who was in the parking lot said, Sally was two feet from the door. The bouncer had already been alerted that there was this issue. She was right outside the bar. She was right outside the bouncer. She had -- she could have left the situation.

Therefore -- and since defense of others is the -- Mr. Smith stepping into the shoes, so to speak, of Sally, I don't think you can meet under these facts and this

evidence the defense of others standard.

Let's see. Even though it's undisputed the parking lot was full of people, the Defendant today said he was eight feet away from the victim when he went and had words with him. No one testified today -- and I specifically asked them, did you see anyone having words with the victim other than Sally? No. Did you see the Defendant having words with the victim? No. The only person who is telling the story is the Defendant, and that is completely a self-serving statement to make today.

If you read through the trial transcript, Mr. Gamble did a great job of impeaching the witnesses and going forward with the strategy that Mr. Smith didn't do it. Each of these witnesses gave multiple statements. The statements were contradictory to each other and then contradictory to the trial testimony.

Mr. Gamble had one of the witnesses, Mr. Pickens, admit on cross-examination, I lied in all of my statements. I didn't see anything. I don't know why I'm here. I'm only telling the Court what I heard other people say. So Mr. Gamble did a great job at trial of going forward with the defense given to him by his own client, that he was innocent.

Let's see. And I would take umbrage with Ms.

White's statement that he did not speak to any of the witnesses. As was pointed out in long detail today, he did not recall whether he spoke to these witnesses. He did not categorically say I did not speak to them. He just said, I don't have any notes to reflect it. I have no independent recollection of whether I talked to these witnesses.

The State would argue there's no evidence today that if given more time to prepare that it would have changed the outcome of the case. Mr. Gamble, as we all know, is a very experienced criminal defense attorney. He was ready for trial. And in order to meet his burden of proving that he is entitled to a new trial on these charges, Mr. Smith would have had to have shown, I believe, that the defense of others would have been a viable defense at trial. And as I've just stated, I don't think he can meet those elements. It wasn't a viable defense. And we'd argue that he hasn't met his burden.

THE COURT: What constitutes a viable defense?

MS. RATIGAN: What do you mean?

THE COURT: Well, you used the term. I'm asking you what constitutes a viable defense?

MS. RATIGAN: I think -- I mean, I don't want to use -- I don't want to say it has to pass the smell

test. But I don't think that it's a practical defense to use in these circumstances. And again, primarily because of the reasonable fear of imminent danger of death or great bodily harm. And then there has to be no other way to avoid it. And all the testimony from the witnesses today was no one had words with the victim. It was just the victim and Sally scrapping in the parking lot. And then all of a sudden, the victim gets shot.

If Sally was the shooter, I don't think there would be any doubt that she would have had another way to avoid that shooting because she was, in fact, so close to the club, so close to the bouncer. She could have removed herself from the situation if she so chose. Therefore, I don't think that that would have been a good, practical defense you could have pursued at trial.

THE COURT: All right.

Ms. White?

CLOSING STATEMENT

BY MS. WHITE:

Really? Then what's the motive? What's the motive if it's not to defend her, Judge. He didn't go down there hunting him. There's no evidence of that. He didn't bring a gun down there. The witnesses said when he saw this guy doing this to the girlfriend, that's when he said, let me get a gun and go up. And to be honest

with you, it's self-defense at that point, too, not even defense of others. There is no way the angle on this shot would have been downward if he were not in a crouched position. It's impossible. With his size, impossible. And that is physical evidence that supports what he says.

Your Honor ---

THE COURT: You ---

MS. WHITE: Go ahead.

THE COURT: You say he was in a crouched defense -- a crouched position?

MS. WHITE: There is no way that the victim couldn't have been like this -- the alleged victim -- couldn't have been like this because otherwise, how would you have downward shots. My client is much shorter than this guy. And so when Mr. Smith said, he turned to me, I shot him in the knee and he crouched down, like going toward me, that's exactly what happened. That's the only way you get that angle. There's no other way to get that angle unless he was up on a roof. You can't get that angle.

I don't understand how anybody can look at this and say this was a reasonable choice to make in the way of the defense.

THE COURT: Is that the -- a reasonable choice,

is that the test?

MS. WHITE: Yes, sir, I think it is because if you look at the case law, they say, you do need to investigate. And yes, you give grave deference to a defense attorney's choice if it's a reasonable, strategic choice. But you can't just say up here, yeah, well, it was my strategic choice not to talk to any witnesses, not to interview my client about these, not to tell my client about defense of others, not to do anything other than walk in at a murder trial where my client is facing life and begin working on my case. That is not reasonable.

THE COURT: Did you interpret from Mr. Gamble's testimony that when a defendant denies the crime, there's nothing else to do?

MS. WHITE: Yes, sir, which is mind boggling. Everybody denies it. Of course, they deny it. It's your job to say, these are the defenses, let's talk about this a minute, let's talk about these statements, let me explain these defenses to you.

Now, don't get me wrong, Judge. I understand the law, and I did read a lot of P.C.R. law. I reiterate, I am no expert on P.C.R.s. But I did read a lot of cases. And I understand there is some deference given to what your client tells you. But if you have a client who is seventeen and you have all this evidence, these police

statements, and he's not had any contact with law enforcement before, to say that it is reasonably competent?

THE COURT: Or contact with a lawyer.

MS. WHITE: Or contact with a lawyer to discuss it? How do you discuss it in twenty minutes? It took us longer than twenty minutes to talk to him on the stand today. I mean, that just isn't competent, Judge. There's no stretch of the imagination any of us would feel we were being represented under those circumstances. The poor guy's writing letters to his attorney. He's a teenager. He's sitting jail facing life. No response.

THE COURT: Well, Ms. Ratigan says that she had means of escape.

MS. WHITE: She's blocked in on the car and he's going toward -- her own cousin says basically you can't believe her. She says he's not abusive. Yes, he was. Her own cousin was there. That wasn't his friend. That wasn't his buddy. That was her cousin who we hunted down. And what did she say? She said, you know, that he was talking -- remember how she said he had gotten her by the neck before? We have at his car the broken charm. We have at his car that broken -- remember, the charm was right there beside the car. We have the necklace inside his vehicle. He had been told -- he had been told by the

owner, leave my premises. He had been evicted from the premises. And instead of leaving, he comes back and blocks her in. How on earth can we interpret that as anything else?

THE COURT: Is he trespassing at that point?

MS. WHITE: He is. He certainly is at that point. Because he'd been told to leave, and that's all it takes under trespass law. You tell somebody to get off your premises. They have to go and they're trespassing.

THE COURT: And she got in the car, it wouldn't start. Is that it?

MS. WHITE: That's certainly the testimony is that she couldn't get it started. That she couldn't leave because she couldn't get it going. And if you look at the crime scene picture, Judge, there ain't any way he was going up there to jump her off or anything like that. Look at the angle of the car. There's no way you would pull up there. He is blocking her in. And the interesting thing is, the witnesses that were not associated with my client said, no, he was blocking her in. He was still acting in a menacing manner toward her.

THE COURT: This photograph number ---

MS. WHITE: It's all one number, Your Honor. That was the third one. I'm sorry. If you want me to

mark them separately ---

THE COURT: Regardless of whether -- this car is -- is this the ---

MS. WHITE: That's another -- that's just in the daylight, Judge. I'm talking about the third photo that has the actual body there. That was the one taken that night. You see his vehicle right there, the tip of it. And you see her vehicle, and he's in between.

THE COURT: All right. So these other two photographs, they're just pictures of the store or the club or ---

MS. WHITE: They're just showing you the club and the layout. I think those were taken by law enforcement maybe a day or two or even later. That's just showing you the club, as far as I know.

CLOSING STATEMENT

BY MS. RATIGAN:

And I would just very quickly say, Your Honor, her cousin, Sheila Lomax said that Sally was a couple of feet from the door of the bar. No one testified today that Sally was acting scared, afraid, asked for help. And again, it has to be that you reasonably believe you're in imminent danger of death or great bodily harm. But there's been no testimony that Sally acted in any way that showed she was reasonably afraid that she was going

to die or be injured.

No one testified -- again, she didn't cry out for help. She didn't scream. She wasn't -- she wasn't acting, quite frankly, as if this was any different from any other fight she ever had with him. I mean, she didn't ask for help. She didn't go inside. I don't think you can prove -- as I asked Mr. Gamble, all the facts and evidence that you had, could you have proven, do you think, defense of others? And he said no.

CLOSING STATEMENT

BY MS. WHITE:

That's why, Your Honor, you have to rely on these other witnesses who say, there's a man beating up his girlfriend out there, putting him on trespass notice, telling him to go. Everybody else being concerned about this thing. That's why you've got to look at that. And that's where, if you introduce evidence of reputation and opinion -- this isn't Joe Blow doing this, Judge. This isn't Joe Blow doing it. This is somebody who has a reputation for beating women, who, in the opinion of every witness, beats women.

THE COURT: When this issue is raised during a trial, we instruct the jury something like this. We tell them that under the law of self-defense, the defendant may take another's life in the defense of others. The

right to intervene to protect another person is subject to the same rights and limitations as the right to self-defense. The defendant may take the life of a person who assaults a friend, relative or bystander if that friend, relative or bystander would have had the right of self-defense. To show that the person being defended had the right of self-defense, it must be shown that the person being defended and the defendant were both without fault in bringing on the difficulty. If the conduct of the person defending or the defendant was the type which was reasonably calculated to and did provoke a deadly assault, a person would be at fault in bringing on the difficulty and would not have the right to self-defense. Therefore, the defendant would not have the right to use a deadly weapon in defending that person. The defense of another is excusable if defendant had a reasonable grounds to believe and in good faith did believe that the person being defended was in imminent danger of death or serious bodily harm from the victim.

In deciding whether the person defended actually was or that the defendant actually believed the person was in imminent danger of death or serious bodily injury, you should consider all the facts and circumstances surrounding the crime, including the physical condition and characteristics of the parties. And further, the

defendant does not have to show that the person the defendant defended was actually in danger. It is enough if the defendant believed the person was in imminent danger.

The defendant has the right to act on appearances, even though the defendant's belief may have been mistaken. The defendant would show that under the circumstances, as they appear to the defendant, the defendant believed the person defended was in danger and that a reasonably prudent person of ordinary firmness and courage would have had the same relief under the same circumstances.

Evidence of prior difficulties between the person defended and the victim may be considered. The reputation of the victim as a violent person may be considered in deciding whether there is a need for force, whether the defendant had reason to believe there was a need for force and whether deadly force was reasonably necessary. Prior instances of violence by the victim may be considered in deciding whether the victim [sic] actually believed the person defended was in imminent danger of death or serious bodily injury or was actually in imminent danger.

Intoxication of the victim may be considered in deciding whether the defendant's fear of death or bodily

injury to the person defended were reasonable. In order to be entitled to defend another person, defendant must have had no other probable way to avoid the danger of death or serious bodily injury than to act as the defendant did in this particular instance. And whether the person being defended had no duty to retreat, the defendant, likewise, would have no duty to retreat.

What does that add to the mix, Ms. White?

MS. WHITE: Well, Your Honor, I may not have ever done P.C.R.'s, but I've done a whole bunch of murder trials. And that's why I tried to put in all of that evidence, Your Honor, because I think all of that does play in, every bit of that. The intoxication, the character witness, the reputation. And that's what a defense ...

Your Honor, please let me defend him in trial. That's what a defense attorney should have done. This man has no money, but he deserves a defense attorney who will come in and say, look, his only motive was to defend this woman.

And don't forget too, Judge -- one thing we're forgetting is, he didn't go over there to kill this guy. That's not what he did. He told him to stop. And then he turned around, even -- everybody -- he fired a warning shot. He did not go to kill the man. He acted

reasonably.

THE COURT: All right.

Ms. Ratigan?

CLOSING STATEMENT

BY MS. RATIGAN:

Mr. Smith says he just wanted to break up the fight. He told the victim to stop. No one can corroborate this. I specifically asked them, did you see him have words with the victim, and they all said no. He went over there. He says he had words first. No one else saw it. He just started shooting. Everyone says that they saw the man and the woman fighting, and then they saw shooting or heard shooting.

I don't think in this case deadly force was reasonably necessary. It was a male and a female fighting in a parking lot, surrounded by people who, if it was all that serious, could have intervened. She was close to the door. She was close to the bouncer. She did have a duty to retreat. I don't think a reasonably prudent person would have seen someone slapping and grabbing at someone and come to the realization that you need to use deadly force to stop this scenario. There were other probable ways to avoid using deadly force.

THE COURT: Such as?

MS. RATIGAN: Pardon?

THE COURT: Such as?

MS. RATIGAN: She could have left.

THE COURT: How?

MS. RATIGAN: He could have called the cops. He could have talked to the bouncer. If he was all concerned about her safety, he could have gone over there and gotten into a fist fight with the man instead of shooting -- instead of going over there and opening fire on him. Again, he could have called the cops. He could have dragged away Sally. He could have gone inside and said to the owner, that guy that -- that guy's out there beating on his girlfriend in the parking lot. There are any number of ways. I have ---

MS. WHITE: None.

MS. RATIGAN: Excuse me.

MS. WHITE: I'm sorry. I'm sorry.

MS. RATIGAN: I have been in situations where I've seen someone beating the crap out of their girlfriend in a bar, and I do not immediately go over there and start trying to raise Cain about it. I've called police. I've called a bouncer. I've called friends of mine to intervene. The thing is, I don't believe that he has shown, based on the evidence, that his only option was to go over there and kill Mr. Martin. And deadly force ---

THE COURT: Do you think his personal history with the victim is a relevant consideration?

MS. RATIGAN: I think he went over there because he saw the man who used to beat on his mama beating on another woman. And I think he about testified to that today. He also told one of these witnesses the day afterwards, I did it because he used to do my mama like that. And yes, that does go into the past interplay between the Defendant and the victim. But I don't think he has proven today -- I mean, I don't know how many other ways I can say it. I don't think he has proven, based on the evidence in this case and the testimony that we heard, that defense of others would have been a legitimate argument to make at the time, that deadly force was the only way to stop someone cussing, yelling, slapping, and grabbing at somebody in a parking lot full of people.

THE COURT: But the question of P.C.R., as I understand it, is whether the -- though you have a position, Ms. White has a position, the question is whether the jury should have had the opportunity to weigh that. Whether the -- it's incumbent upon a lawyer to investigate and advise the client as to options and the meaning of certain things.

MS. RATIGAN: And Mr. Gamble testified that

based on this evidence, he did not think that was a legitimate defense to make.

THE COURT: All right.

MS. RATIGAN: And again, I can answer any questions Your Honor has, but I think I've made the State's position pretty abundantly clear at this point.

THE COURT: All right.

You get the final word, Ms. White. You're the petitioner here.

MS. WHITE: Your Honor, the second ---

THE COURT: I think in P.C.R.'s you get the closing arguments? Is that right? Who gets the closing argument?

MS. WHITE: I do, because I've got the burden, Your Honor.

THE COURT: Okay.

CLOSING STATEMENT

BY MS. WHITE:

Your Honor, again, did the representation fall below an objective standard? Okay. Let's ask everybody in this room if they want to stand murder with an attorney who's talked to him twenty minutes and never interviewed a witness. Let's do that first and see if anybody thinks that's an objectionably reasonable standard.

Second of all, but for the errors, there is a

reasonable probability that the result -- we don't have to prove beyond a reasonable doubt that -- what the jury would do. The point is he had a right for the jury ---

THE COURT: Is that a subjective call the lawyer can make? Mr. Gamble said, I didn't think that that was a good idea.

MS. WHITE: Based on what? If a police officer gives me something and I talk to somebody for a few minutes, that's a reasonable decision? I understand that there -- we have discretion on things, but after you've looked into it, after you've weighed the possibilities, after you've done some looking into this case. How could you read the discovery and think that was reasonable? There's no way to read the discovery and think that's reasonable, Judge.

And again, it's a reasonable probability -- Judge, all I want -- if the jury says it's not there, it's not there. But Your Honor, all I want is for this man to be sitting here, for me to be talking to this jury and to give him a chance. That's all I want.

THE COURT: All right. Well, you all have certainly given me some things about as I depart Anderson County. I'll need to have more of an opportunity to review and digest the transcript and what has been presented today and refer to the trial transcript and

think about it all in light of the prevailing case law and all.

Now, how do you all wish to proceed from here? Do you want me to make a decision and have you all submit proposed orders? Do you want to submit proposed orders with the thought that it might influence my decision? How would y'all like to proceed? Ms. White?

MS. WHITE: Your Honor, I'm a criminal attorney so I'm not good at writing things, but I do have a nice young lawyer in my officer who hopefully will pass the Bar and I can get you that order if you want me to. I'll get him to draft it.

THE COURT: Now, what's his name again?

MS. WHITE: Trevor.

THE COURT: Trevor.

MS. WHITE: Trevor White.

THE COURT: Trevor White?

MS. WHITE: My son.

THE COURT: Oh, okay.

MS. WHITE: It'll be good experience for him.

THE COURT: You would have to grade his paper, wouldn't you? If he writes it, you'd have to grade it first, wouldn't you?

MS. WHITE: I will take -- listen, I am a hands-on kind of lawyer. I will grade it more than he

wants me to grade it, but I will not be originally drafting.

THE COURT: All right. Ms. Ratigan what do you think?

MS. RATIGAN: I'm already writing what looks like six orders for the Court. Writing seven won't be that big of a deal.

THE COURT: Okay. Well, let me add another one from Mr. Mattison this morning.

MS. RATIGAN: Okay.

THE COURT: His P.C.R. will be denied. If you can do a proposed order on that.

Okay. So that means that you all will be submitting competing proposed orders. When would you want to do that?

MS. WHITE: Your Honor, we have a murder trial next week and then another one in about a month that is like a two-week one. So how soon are you wanting these orders?

THE COURT: I don't push lawyers too hard when it comes to preparing orders. Of course ---

MS. WHITE: Could we have thirty days.

THE COURT: --- with the Defendant, you've been arguing about him being in six years.

MS. WHITE: I know.

THE COURT: Maybe another year or two won't matter. I don't know.

MS. WHITE: Oh, no, sir. I'm not talking about -- I mean, could we have thirty days? Would that be possible to have thirty days to do it?

THE COURT: Sure. Thirty days.

MS. WHITE: Thank you.

THE COURT: Is that?

What do you think, Ms. Ratigan?

MS. RATIGAN: I'm probably just going to do it next week. So that's fine, Your Honor.

THE COURT: All right. Thirty days. All right. Well, we'll take the matter under consideration, and I will await you all's submission. If you'll submit them by email, cnewmanj@sccourts.org with a copy to cnewmanlc@sccourts.org. That will be to my law clerk.

MS. WHITE: Thank you, Your Honor.

MS. RATIGAN: Thank you.

THE COURT: All right. Thank you all.

(WHEREUPON, the hearing ended at approximately 5:15 P.M.)

*** END OF REQUESTED TRANSCRIPT OF RECORD ***

CERTIFICATE OF REPORTER

I, the undersigned Renee H. Tollison, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Anderson County, South Carolina, on the 3rd day of October 2012.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

April 5, 2013

Renee H. Tollison

Circuit Court Reporter

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	2010-CP-04-1853
)	
Juan Tyree Smith, #321800,)	
Applicant,)	
)	ORDER GRANTING
)	POST-CONVICTION RELIEF
v.)	
)	
State of South Carolina,)	
Respondent.)	
)	

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Honorable Clifton Newman, Presiding Judge

This matter came before this Court by way of an Application for Post-Conviction Relief filed May 21, 2010, and a subsequent Amended Application for Post-Conviction Relief filed September 26, 2012. An evidentiary hearing into the matter was convened on October 3, 2012, at the Anderson County Courthouse. The Applicant was present and represented by Druanne White, Esquire. The Respondent was represented by Karen Ratigan of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. The Court also heard testimony from Applicant's Trial Counsel, Robert Gamble. Applicant also called witnesses James Pickens, Latorrey Pearson, Bassen Hailey, Alphonso Hailey, Michael Vance, Camie Dennis, and Sheila Lomax. This Court also had before it a copy of the transcript of the proceedings against the Applicant and the records of the Anderson County Clerk of Court. The Respondent did not present any testimony.

The records before this Court indicate that the Applicant is presently confined in the Lee Correctional Institution of the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Anderson County. The Applicant was indicted at the May

2006 term of the Court of General Sessions for Anderson County for murder and possession of a firearm during the commission of a violent crime. On May 9, 2007, Applicant was convicted of both charges by a jury. The Honorable Alexander Macaulay, presiding judge, sentenced the Applicant to thirty years on the murder charge and five years on the possession of a firearm during the commission of a violent crime to be served concurrently.

For the following reasons, this Court grants Applicant's Application for Post-Conviction Relief.

I. APPLICANT'S ALLEGATIONS

A. Ineffective Assistance of Counsel based upon the following facts:

a. Trial Counsel failed to communicate with Applicant and failed to involve Applicant when making major decisions concerning Applicant's case during trial preparation and during the trial;

b. Trial Counsel failed to sufficiently prepare for trial;

c. Trial Counsel failed to investigate or interview any state witnesses or other potential defense witnesses to develop the theory of defense of others, and Trial Counsel and his staff only spent approximately one to two hours total with Applicant from the time Applicant was arrested until the day his case was called for trial;

d. Trial Counsel failed to investigate or interview any state witness or potential defense witness, and his failure to spend no more than approximately twenty total minutes with Applicant discussing the facts of this case during his representation of Applicant, and his failure to interview Applicant's mother, resulted in trial

counsel's utter lack of preparation and inability to develop the theory of defense of others;

e. Trial Counsel failed to inform Applicant of a possible defense of others theory, instead unilaterally determining that improper identification of Appellant was the best defense in this case, despite the fact that identification of the Applicant had been made by at least five different people at the scene;

f. Trial Counsel failed to object to inadmissible testimonial hearsay;

g. Trial Counsel failed to object to testimony concerning uncharged misconduct during the Solicitor's direct examination of witnesses, and then gratuitously opened the door to such testimony during his own cross-examination;

h. Trial Counsel failed to object to the hearsay testimony of people who did not testify at trial during the Solicitor's direct examination of State's witness, Steve Reeves;

i. During Trial Counsel's cross-examination of witnesses, he gratuitously questioned them about unrelated uncharged misconduct;

j. Trial Counsel failed to properly investigate or cross-examine witnesses to develop the defense of defense of others; and,

k. Trial Counsel failed to present a defense of defense of others, which would have required a lesser included jury charge.

II. BACKGROUND OF CASE

On February 25, 2006, the Applicant, seventeen year old Juan Tyree Smith, walked to the Old School Lounge (the Lounge) in Anderson, SC. Upon his arrival, Mr. Smith observed Sammy Martin assaulting his girlfriend, Angela (Sally) Brownlee. Mr. Martin began assaulting

Ms. Brownlee inside the Lounge and continued the assault as they exited into the parking lot. Witnesses testified that Mr. Martin was assaulting Ms. Brownlee verbally and physically. The assault was violent enough to warrant the owner of the Lounge, Landis Bolden, to walk to the parking lot and ask Mr. Martin to leave his property.

Mr. Martin did drive off the premises at some point after the warning by Mr. Bolden. Ms. Brownlee attempted to leave the Lounge, but had trouble getting her car started. As Ms. Brownlee tried to get her car started, Mr. Martin drove his car back into the parking lot, blocking in Ms. Brownlee's car. Mr. Martin resumed his assault on Ms. Brownlee.

Mr. Martin and the Applicant's mother dated when the Applicant was younger. The Applicant witnessed Mr. Martin physically assault his mother on multiple occasions. The Applicant testified that he knew Mr. Martin was violent toward his mother and to other girlfriends and that Mr. Martin usually carried a weapon on his person. The police had been called on at least one occasion when Mr. Martin violently beat Applicant's mother.

After Applicant witnessed Mr. Martin assaulting Ms. Brownlee, the Applicant asked a friend for a firearm and ran around the Lounge to where Mr. Martin was assaulting Ms. Brownlee. Applicant testified that he was going to approach Mr. Martin with the firearm to get him to stop the assault. The Applicant testified that he could tell from Mr. Martin's demeanor and actions that the girlfriend was in danger. The Applicant testified that when he arrived at the scene of the assault, he told Mr. Martin to stop assaulting Ms. Brownlee. The Applicant testified that Mr. Martin then motioned toward the Applicant in a menacing manner, at which point, the Applicant fired a warning shot at the ground near Mr. Martin. Mr. Martin continued advancing toward the Applicant. It is important to note that the Applicant was around 5'5" tall and 130 pounds at the time of the shooting, while Mr. Martin was 5'9" tall and 155 pounds. Toxicology

test results showed that Mr. Martin had a blood alcohol level of 0.154 (blood test) and 0.218 (urine test). Mr. Martin had also ingested cocaine. The Applicant fired the firearm twice, striking Mr. Martin. Mr. Martin died as a result of the gunshot wounds.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

A. DEFICIENCY OF TRIAL COUNSEL

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1 (e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Strickland*, 466 U.S. at 686; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland*, 466 U.S. at 686; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. The Applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

The courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. *Id.* at 117, 386 S.E.2d at 625. First, the Applicant must prove that counsel's performance was deficient. *Id.* at 117, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its "reasonableness under professional norms." *Id.* at 117, 386 S.E.2d at 625 (citing *Strickland*, 466 U.S. at 687). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-118, 386 S.E.2d at 625.

Mr. Gamble, the Applicant's trial counsel, only met with the Applicant on two brief occasions before the Applicant's murder trial. Each meeting lasted approximately twenty minutes. During the second meeting Mr. Gamble only discussed the plea offer with the Applicant. Mr. Gamble testified that he could not remember any other meetings with the Applicant besides a possible meeting between the Applicant and one of Mr. Gamble's investigators a couple of days before trial.

Two letters from the Applicant addressed to Mr. Gamble were introduced into evidence. In one of the letters, Applicant stated that he had not heard anything for months from Mr. Gamble and that he was waiting to review the discovery that Mr. Gamble received from the State. The letter further stated that the Applicant's mother had been trying to contact Mr. Gamble's office, but that she was unable to get a return call. The Applicant testified that he was not able to call Mr. Gamble and that the letters were his only way of communication.

Mr. Gamble failed to interview any witnesses in this case. During Mr. Gamble's testimony he indicated it was his common practice to take notes of any interviews he conducted and to place the notes in his file. After examining his file, Mr. Gamble could produce no

interview notes. Mr. Gamble testified that he could not remember conducting any interviews with any witnesses in this case. James Pickens, Latorrey Pearson, Bassen Hailey, Alphonso Hailey, Michael Vance, Camie Dennis, and Sheila Lomax, all testified that they had never spoken with Mr. Gamble or a member of his staff about the Applicant's case.

Mr. Gamble also testified that he did not discuss any other defenses with the Applicant. Mr. Gamble testified that he defended the Applicant by trying to convince the jury that Applicant was not the shooter. In the police statements provided in the State's discovery to Mr. Gamble, the Applicant was identified by several witnesses, some of whom were good friends with the Applicant. Numerous police statements that were provided in the State's discovery to Mr. Gamble referred to Mr. Martin's assault on Ms. Brownlee and his violent behavior. The Applicant testified that he had never been advised by Mr. Gamble that defense of others was a legal defense and had only learned of that from his PCR attorney.

Mr. Gamble also failed to object to inadmissible testimony during the trial. Hearsay is an out-of-court statement offered into evidence to prove the truth of the matter asserted. *Jolly v. State*, 314 S.C. 17, 443 S.E.2d 566 (1994). Hearsay is prohibited unless an exception to the rule applies. In the present case, Mr. Gamble failed to object to several hearsay statements which occurred during the testimony of Steve Reeves, Detective for the Anderson County Sheriff's Office. These statements included:

1. The prosecutor asked Mr. Reeves if he had spoken to any witnesses and he indicated that he had spoken with a few witnesses. The prosecutor asked, "...[a]s a result of your conversations with these individuals, were you able to form the identity of a suspect in this case?" Trial Transcript Page 290, Lines 10-12. Mr. Reeves answered, "We did. Two distinct individuals brought up the name they had heard on scene of Buster. We

didn't have a lot of information on that name other than the street name Buster." Trial Transcript Page 290, Lines 13-16. The prosecutor then asked for one of the witness's name. Mr. Reeves answered, "I don't recall. She's another statement that was taken on the scene. She didn't witness anything, but she heard from another female on the scene that name, and at that point that's all we really had." Trial Transcript Page 290, Lines 18-21. Applicant's nickname was Buster.

2. The prosecutor asked Mr. Reeves, "As a result of talking to Mr. Hailey, Bassen Hailey, as well as James Pickens, were you able to I.D. or determine who the shooter was in this case?" Trial Transcript Page 293, Lines 13-15. Mr. Reeves answered that he identified the Applicant and issued an arrest warrant. Trial Transcript Page 293, Lines 16-23.
3. The prosecution asked Mr. Reeves, "And you interviewed - - besides yourself and other officers, you'll interviewed numerous individuals that night, February 25th, 2006?" Trial Transcript Page 295, Lines 10-12. Mr. Reeves answered affirmatively and indicated that he received statements from approximately thirty to forty-five people. Trial Transcript Page 295, Lines 13-17. The prosecution later asked Mr. Reeves, "And from that (the statements) you were able to determine or identify a suspect?" Mr. Reeves answered affirmatively and indicated that he gathered a description of what the shooter was wearing from the statements. Trial Transcript Pages 295, Lines 23 to Page 296, Line 9.
4. The prosecution asked Mr. Reeves about a jacket he retrieved from the Applicant's house. The prosecution asked, "And you had this jacket tested for gunshot powder; is that correct?" Trial Transcript Page 297, Lines 12-13. Mr. Reeves then answered that the jacket was sent to S.L.E.D. and that the results from the jacket were negative. Trial Transcript Page 297, Lines 14-16. The prosecution later asked Mr. Reeves about gunshot

residue tests performed on other items in evidence and Mr. Reeves described the results of a gunshot residue test performed on Mr. Martin. Trial Transcript Page 299, Line 5 to Page 300, Line 10.

5. The prosecution asked Mr. Reeves about blood and urine tests run on Mr. Martin at the time of his autopsy. Mr. Reeves answered questions asked by the prosecution about the results of these tests. Trial Transcript Page 301, Line 9 to Page 302, Line 3.

6. The prosecution asked Mr. Reeves if he was one of the detectives who collected the bullets that were recovered during the autopsy. Trial Transcript Page 302, Lines 9-10. Mr. Reeves testified that he did not personally collect the bullets recovered, but he did have the bullets sent to S.L.E.D. for analysis. Trial Transcript Page 302, Lines 11-16. Mr. Reeves then testified as to the results of the tests performed on the bullets by S.L.E.D.. Trial Transcript Page 302, Line 17 to Page 303, Line 12.

7. The prosecution asked Mr. Reeves about the steps he took to try to figure out how Mr. Smith got out of town. Trial Transcript Page 307, Lines 3-7. Mr. Reeves testified that he received a statement from an individual. That indicated that Kizzy Mattress aided the Applicant in getting out of town. Trial Transcript Page 307, Lines 8-13.

8. The prosecution asked Mr. Reeves whether or not any other names, besides the Applicant's, came up in the investigation based on the witnesses' statements. Mr. Reeves testified that the Applicant's name was the only name that was continually indicated as the shooter. Trial Transcript Page 308, Lines 3-11.

9. The prosecution asked Mr. Reeves how he was able to confirm the identity of the Applicant with only his nickname. Trial Transcript Page 309, Lines 14-15. Mr. Reeves testified that he contacted Mike Bracone from the Anderson City Police Department, who

confirmed that the nickname matched the Applicant's nickname. Trial Transcript Page 309, Lines 16-23.

10. The prosecution asked Mr. Reeves if he went back to talk to witnesses after the Applicant was arrested and if he showed the witnesses line-ups. Trial Transcript Page 315, Lines 10-11. Mr. Reeves answered that he did and testified that "they (the witnesses) were able to identify Mr. Smith at various times at the club, either coming or going with a gun in his hand, being handed the gun by an individual, walking behind the club prior to the shooting, going back behind the club after the shooting. We were able to show these line-ups obviously after we had him in custody." Trial Transcript Page 315, Lines 12-19.

11. The prosecution asked Mr. Reeves whether or not anybody interviewed by him or the Sheriff's Department learned whether or not the Applicant and Mr. Martin exchanged words before the shooting took place. Trial Transcript Page 316, Lines 2-6. Mr. Reeves testified that he had not had any witnesses attest to any such exchange of words. Trial Transcript Page 316, Lines 7-8.

12. The prosecution asked Mr. Reeves if based upon the witnesses' statements, he was able to determine where Fred Chiles, a witness, was located at the time of the shooting. Trial Transcript Page 321, Lines 3-4. Mr. Reeves testified that Mr. Chiles was located at his vehicle near the Mr. Martin's car. Trial Transcript Page 321, Lines 5-9. Mr. Reeves was later asked if he was able to determine where other witnesses were located based upon the witnesses' statements. Trial Transcript Page 321, Lines 20-23. Mr. Reeves testified to the location of several witnesses at the time of the shooting. Trial Transcript Page 321, Line 20 to Page 322, Line 19.

13. The prosecution asked Mr. Reeves if after his investigation he was able to determine the identity of the shooter. Trial Transcript Page 323, Lines 6-10. Mr. Reeves testified it was the Applicant and went on to testify that no other names had come up and no new information or leads about another possible shooter had surfaced. Trial Transcript Page 323, Lines 11-22. The prosecution then asked Mr. Reeves if he had determined if there had been any problems between the Applicant and Mr. Martin. Cite 323 23-25. Mr. Reeves testified that he had not found any evidence of past problems between the Applicant and Mr. Martin. Trial Transcript Page 323, Line 23 to Page 324, Line 4.

Mr. Gamble failed to object to any of the above testimony. The statements made by Mr. Reeves were offered for the truth of the matter asserted. None of the exceptions to hearsay applied. Therefore they were inadmissible and Mr. Gamble should have objected to each of the above statements.

Mr. Gamble failed to object to evidence proffered by the prosecution as to the bad character of the Applicant. Bad character evidence is allowed only under limited circumstances. Generally, character evidence is not admissible to prove the accused possesses a criminal character or has a propensity to commit the crime with which he is charged. Rule 404(a), SCRE. Specifically, in order to be admissible, evidence of drug use or drug dealing must be "essential to a full presentation of the State's case," or "so intimately connected with the crimes charged that its introduction was appropriate to complete the story of the crime." *State v. Broaddus*, 361 S.C. 534, 605 S.E.2d 579 (2004); quoting *State v. Bolden*, 303 S.C. 41, 398 S.E.2d 494 (1990).

The prosecution offered the following bad character evidence to which Mr. Gamble failed to object:

1. The prosecution asked Fred Chiles to describe the Applicant. Trial Transcript Page 92, Line 15. Mr. Chiles testified that the Applicant was a troublemaker. Trial Transcript Page 92, Lines 16-17.

2. The prosecution asked Bassen Hailey what he and the Applicant talked about in the parking lot where the shooting occurred. Trial Transcript Page 113, Line 17. Mr. Hailey testified that the Applicant asked him if he had any marijuana. Trial Transcript Page 113, Lines 18-19. The prosecution asked Mr. Hailey if he talked with the Applicant "after he came up and asked you for some marijuana." Trial Transcript Page 114, Lines 14-16. Mr. Hailey testified that they didn't really talk after that and the Applicant walked off. Trial Transcript Page 114, Line 17. The prosecution then asked Mr. Hailey, "Did you give him (the Applicant) any marijuana?" Trial Transcript Page 114, Line 18. Mr. Hailey testified that he did not because he did not have any. Trial Transcript Page 114, Line 19. The prosecution asked Mr. Hailey if he provided a statement to law enforcement which in relevant part stated, "I did not see who was driving and I'd never seen it before. Buster asked if we had any weed." Trial Transcript Page 135, Lines 2-4. Mr. Hailey answered affirmatively. Trial Transcript Page 135, Line 5.

3. The prosecution asked Latorrey Pearson if he talked to the Applicant outside in the parking lot. Trial Transcript Page 162, Line 25 to Page 163, Line 1. Mr. Pearson testified that the Applicant asked him for some marijuana and he sold $10.00 worth of marijuana to the Applicant. Trial Transcript Page 163, Lines 2-25. The prosecution later asked Mr. Pearson if the Applicant had departed from his original position "after he bought the marijuana." Trial Transcript Page 165, Lines 16-17. Mr. Pearson

testified that he had left the area. Trial Transcript Page 165, Line 18. The prosecution also asked Mr. Pearson "... if you sold Buster, as you say, weed for $10.00, how much money did you get for the .357 revolver." Trial Transcript Page 179, Lines 16-18.

4. The prosecution later confirmed with Mr. Pearson that he had sold the Applicant marijuana, but had done nothing else while he was in the parking lot. Trial Transcript Page 180, Lines 6-23. The prosecution confirms with Mr. Pearson that he (Mr. Pearson) is on probation, that he (Mr. Pearson) had a gun at the time of the shooting, and that he (Mr. Pearson) was selling marijuana the night of the shooting. Trial Transcript Page 180, Line 24 to Page 181, Line 4. The prosecution later asked Mr. Pearson if they left after the shooting even though he hadn't committed a crime, and had done nothing "but sell marijuana." Trial Transcript Page 184, Lines 17-20.

Mr. Gamble did not object to any of the above inadmissible bad character evidence. The testimony above was used to prove the accused possessed a criminal character or had a propensity to commit the crime with which he was charged. The testimony about drugs was not "essential to a full presentation of the State's case," or "so intimately connected with the crimes charged that its introduction was appropriate to complete the story of the crime." Therefore, the testimony was inadmissible and Mr. Gamble should have objected to its presentation.

The Applicant, a seventeen year old facing life in prison, relied on the legal expertise of Mr. Gamble. Mr. Gamble failed to put in the effort and work required to provide competent legal advice to the Applicant. Mr. Gamble failed to meet with the Applicant for an adequate amount of time, failed to properly advise Appellant of a viable defense, failed to interview a single witness, failed to investigate the case, and failed during trial to object to inadmissible

testimony, rendering his performance deficient. A reasonably competent attorney adhering to the norms of the legal profession would have discussed the law and facts with the Applicant and would have at least discussed with the Applicant defense of others. A reasonably competent attorney would not have ignored the numerous witness statements that were provided in discovery that indicated that the Applicant had acted to defend another. Using the wrong defense was not a trial strategy employed by Mr. Gamble; it was the result of abysmal effort at best by Applicant's trial attorney to investigate and try the case, resulting in uneducated legal judgments. A reasonable attorney would have investigated this case and interviewed the witnesses. A reasonable attorney would have known just from reading the discovery provided by the State that the Applicant's only viable defenses were defense of others and self-defense. In fact, the police statements lend themselves perfectly to these two defenses.

B. COUNSEL'S DEFICIENCY PREJUDICED APPLICANT

Once the Applicant demonstrates trial counsel's deficiency, he must show that counsel's deficient performance prejudiced him such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-118. Applicant argues that he was prejudiced by trial counsel's deficient performance such that there is a reasonable probability that, but for counsel's unprofessional errors stated above, the result of the proceeding would have been different. Reasonable probability is defined as a probability sufficient to undermine confidence in the outcome of the trial. *Strickland*, 466 U.S. at 694.

Applicant argues that if trial counsel would have raised the defense of others and self-defense, there is a reasonable probability the outcome at trial would have been different. Under the theory of defense of others, one is not guilty of taking the life of an assailant who assaults a

friend, relative, or bystander if that friend, relative, or bystander would likewise have the right to take the life of the assailant in self-defense. *State v. Long*, 325 S.C. 59, 480 S.E.2d 62 (1997). "[I]n order for the trial court to give a defense of others charge, there must be some evidence adduced at trial that the defendant was indeed lawfully defending others." *Douglas v. State*, 332 S.C. 67, 504 S.E.2d 307 (1998).

The Applicant presented evidence at the Post-Conviction Relief hearing establishing that Ms. Brownlee would have had a right to self-defense had she been the one who took the life of Mr. Martin. To establish self-defense in South Carolina, four elements must be present: (1) the defendant was without fault in bringing on the difficulty; (2) the defendant actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) a reasonable, prudent person of ordinary fitness and courage would have entertained the same belief; and (4) the defendant had no other probable means of avoiding the danger of losing his life or sustaining serious bodily injury other than to act as he did. *Jackson v. State*, 355 S.C. 568, 570-71, 586 S.E.2d 562, 562 (2003); *State v. Day*, 341 S.C. 410, 416, 535 S.E.2d 431, 434 (2000).

Sheila Lomax, Ms. Brownlee's cousin, testified that she was inside the Lounge with Ms. Brownlee before Mr. Martin arrived. Ms. Lomax stated that Mr. Martin walked inside the Lounge and started shouting at Ms. Brownlee and grabbing her by the neck. Ms. Lomax testified that as Mr. Martin was attempting to grab Ms. Brownlee by the neck, her necklace was ripped off. Ms. Lomax testified that Mr. Martin was yelling, "Come on bitch!" Ms. Lomax testified that Mr. Martin was being very aggressive towards Ms. Brownlee and that the aggressiveness continued as Ms. Brownlee and Mr. Martin exited to the parking lot. Ms. Lomax testified that once Mr. Martin and Ms. Brownlee left the Lounge, Mr. Martin was still trying to grab Ms. Brownlee by her neck. Ms. Lomax testified that Mr. Martin then left the Lounge parking lot in

his car, but came back and blocked in Ms. Brownlee's car. Ms. Lomax stated that Mr. Martin got out of his car and began again to walk towards Ms. Brownlee. Ms. Lomax testified that as Mr. Martin was walking towards Ms. Brownlee, he was cussing at Ms. Brownlee and acting very violent. Ms. Lomax concluded that it was reasonable for the Applicant to shoot Mr. Martin under these circumstances.

James Pickens testified that he was standing in front of the Lounge at the time of the shooting. Mr. Pickens testified that Mr. Martin was being very violent towards Ms. Brownlee as they walked from the club into the parking lot. Mr. Pickens testified that although he could not hear the words Mr. Martin was shouting at Ms. Brownlee, he knew Mr. Martin should not have been treating a woman the way he was treating Ms. Brownlee. Mr. Pickens testified that he believed Mr. Martin was physically assaulting Ms. Brownlee at the time the shooting took place. Mr. Pickens also testified that he was aware of Mr. Martin's reputation of being violent towards women. Mr. Pickens concluded that he feared for Ms. Brownlee's safety because of Mr. Martin's reputation for violence and his violent demeanor the night of the shooting.

Latorrey Pearson testified that he was in the parking lot of the Lounge on the night of the shooting. Mr. Pearson testified that he could not hear what was being said between Mr. Martin and Ms. Brownlee in the parking lot, but he saw Mr. Martin assaulting Ms. Brownlee. Mr. Pearson testified that he believed it was reasonable for the Applicant to shoot Mr. Martin because of the violent demeanor of Mr. Martin.

Michael Vance testified that he was sitting at the table in the Lounge talking to Ms. Brownlee on the night of the shooting. Mr. Vance testified that Mr. Martin came in and began shouting at Ms. Brownlee. Mr. Vance testified that he walked away from the table and eventually Ms. Brownlee and Mr. Martin exited to the parking lot. Mr. Vance testified that he

walked out of the Lounge a couple of minutes later and saw Mr. Martin acting violently toward Ms. Brownlee. Mr. Vance testified that he was aware of Mr. Martin's reputation for being violent towards women. Mr. Vance testified that Mr. Martin dated his sister at one point in time and that Mr. Martin was violent toward his sister. Mr. Vance concluded that it was reasonable for the Applicant to use deadly force because of the violence used by Mr. Martin against Ms. Brownlee.

Alphonso Hailey testified that he was standing at the front door of the Lounge when the shooting took place. Mr. Hailey testified that he was standing there as Ms. Brownlee and Mr. Martin exited the Lounge into the parking lot. Mr. Hailey stated that Mr. Martin was shouting at Ms. Brownlee and assaulting her physically. Mr. Hailey testified that it was reasonable for the Applicant to step in and use deadly force against Mr. Martin.

Bassen Hailey testified that he was standing in the parking lot of the Lounge at the time of the shooting. Mr. Hailey testified that he could tell Mr. Martin had been drinking heavily as he watched Mr. Martin assault Ms. Brownlee. Mr. Hailey stated that he did not believe it was the Applicant's intention to shoot Mr. Martin, but instead the Applicant intended to end the assault. Mr. Hailey concluded that it was reasonable for the Applicant to defend Ms. Brownlee because of Mr. Martin's demeanor and what he had witnessed before the shooting.

Camie Dennis, who had never met the Applicant or Mr. Martin, testified that she walked out the front door of the Lounge on the night of the shooting and witnessed Mr. Martin beating Ms. Brownlee. Ms. Dennis testified that she saw Mr. Martin punch Ms. Brownlee once and Mr. Martin was ripping off Ms. Brownlee's necklace. Ms. Dennis testified that she went back into the Lounge and told the owner, Landis Bolden, about the assault. Ms. Dennis stated that Mr. Bolden went outside and told Mr. Martin to leave the premises. Ms. Dennis never went back

outside. Ms. Dennis testified that about ten minutes elapsed between the time when Mr. Bolden went outside and told Mr. Martin to leave and when the shots were fired.

The Applicant testified that Mr. Martin lived with the Applicant and the Applicant's mother when the Applicant was younger. The Applicant testified that Mr. Martin used to beat his mother and on several occasions the police were called to his home. The Applicant testified that on one occasion, Mr. Martin pulled a knife on the Applicant's mother, and the Applicant intervened to defend his mother. The Applicant's opinion of Mr. Martin was that Mr. Martin was violent towards women. The Applicant testified that Mr. Martin usually had a weapon and that most of the time Mr. Martin carried a gun.

The Applicant testified that he arrived at the Lounge on the night of shooting by himself. The Applicant testified that only a few minutes after he arrived, he noticed a commotion in the parking lot. The Applicant testified that he asked who was fighting and somebody said Mr. Martin was beating on his girlfriend. The Applicant testified that he then saw Mr. Martin striking Ms. Brownlee and acting hostile towards Ms. Brownlee. The Applicant testified that Mr. Martin stopped the assault and left the parking lot, but came back about five minutes later and blocked in Ms. Brownlee's car. Mr. Martin exited his vehicle and approached Ms. Brownlee to resume the assault. The Applicant testified that he asked for a firearm and ran around the back of the Lounge to stop the assault. The Applicant testified that as he reached Mr. Martin and Ms. Brownlee, he told Mr. Martin to leave Ms. Brownlee alone. The Applicant testified that Mr. Martin turned towards him and started toward him. The Applicant testified that he fired one shot at the ground near Mr. Martin's legs to try to get him to stop advancing toward him, but Mr. Martin continued. The Applicant testified that he then shot Mr. Martin twice.

A jury could reasonably determine that Ms. Brownlee had the right to use deadly force in self-defense at the time of the shooting. The testimony taken suggested that Ms. Brownlee had no fault in bringing on the difficulty. In fact, Ms. Lomax testified that Mr. Martin came into the Lounge unprovoked and began assaulting Ms. Brownlee. Mr. Vance testified that Ms. Brownlee was simply talking when Mr. Martin came in and started shouting at Ms. Brownlee. Mr. Vance stated that Ms. Brownlee did not provoke Mr. Martin in any way. Ms. Brownlee likewise had no fault in bringing on the difficulty outside of the Lounge. Mr. Martin was told to leave the Lounge by the owner and decided to come back to the parking lot to continue his assault on Ms. Brownlee. There is no evidence suggesting Ms. Brownlee provoked Mr. Martin.

The Applicant's belief that Ms. Brownlee was in imminent danger of losing her life or sustaining serious bodily injury was reasonable under the circumstances. Since the Applicant stepped into the shoes of Ms. Brownlee, he was afforded the right to act on appearances. A defendant must show that he believed he was in imminent danger, not that he was actually in such danger, because he had the right to act on appearances, and under the circumstances as they appeared to him, he believed he was in such danger and a reasonable prudent man of ordinary firmness and courage would have entertained the same belief. *State v. Fuller*, 297 S.C. 440, 377 S.E.2d 328 (1989); *see also State v. Gandy*, 113 S.C. 147, 101 S.E. 644 (1919).

As described above, many witnesses testified that the Applicant's use of deadly force was reasonable under the circumstances. The Applicant used deadly force to prevent Mr. Martin from continuing his assault on Ms. Brownlee. Ms. Brownlee was in imminent danger at the time the shots were fired. Mr. Martin came back to assault Ms. Brownlee even after the owner ejected him from the premises. Multiple witnesses testified that Mr. Martin blocked in Ms. Brownlee's car and began assaulting her as he pulled back into the parking lot. As noted above, the

Applicant testified that he witnessed his mother being beaten by Mr. Martin and evidence was presented that the Applicant witnessed Mr. Martin pull a knife on his mother. The Applicant testified that he knew of Mr. Martin's violence against women and feared that Ms. Brownlee could be killed or seriously injured by Mr. Martin. Given the actions of Mr. Martin the night of the shooting and the Applicant's past experience with Mr. Martin's violent propensities towards women, his belief of imminent danger for Ms. Brownlee was reasonable.

Testimony from several witnesses established that the Applicant's belief was the same belief that a reasonable, prudent person of ordinary fitness and courage would have entertained. Testimony established that Ms. Brownlee was being assaulted by Mr. Martin. Multiple witnesses testified that the Applicant was reasonable in shooting Mr. Martin to stop the assault. Bassen Hailey testified that he believed the Applicant's only intention was to confront Mr. Martin in order to stop his assault of Ms. Brownlee. Ms. Dennis testified that the assault was such that it warranted telling the owner, who in turn asked Mr. Martin to leave the premises. The Applicant saw that all of the alternatives to stopping the assault had been exhausted and realized that Ms. Brownlee was in danger of serious bodily injury or death.

A jury could reasonably infer that Ms. Brownlee had no other probable means of avoiding the danger of losing her life or sustaining serious bodily injury. The Attorney General argued that there were other probable means of stopping the assault other than using deadly force. The Attorney General argued that the Applicant should have told the bouncer or used his fist instead of a firearm. The evidence suggests that the owner of the Lounge had already told Mr. Martin to leave the premises and further that Mr. Martin drove back after leaving the Lounge and blocked in Ms. Brownlee's car. The testimony presented indicated that the Applicant's only means of stopping the assault may have been to use deadly force. As was described above, the

Applicant was much smaller than Mr. Martin and he knew that Mr. Martin regularly carried a weapon.

Moreover, a jury could find that Ms. Brownlee did not have the ability to retreat from the assault. Evidence that Ms. Brownlee's car would not start was presented to the Court. Even if Ms. Brownlee could have started her car, Mr. Martin was assaulting her and had blocked in her car. Ms. Brownlee did not have the ability to get away from the assault. The Applicant was therefore reasonable in using deadly force on Mr. Martin.

Reasonable probability is defined as a probability sufficient to undermine confidence in the outcome of the trial. *Strickland*, 466 U.S. at 694. The Applicant has met his burden of establishing that there was a reasonable probability that there would have been a different outcome at trial had there not been deficient performance by trial counsel. The facts of this case and the witnesses' testimony demonstrate a valid defense of defense of others. The confidence in the outcome of the trial is undermined by the testimony heard at the Post-Conviction Relief hearing.

CONCLUSION

Based on all of the foregoing, this Court finds and concludes that the Applicant has established grounds for post-conviction relief based upon ineffective assistance of trial counsel which require this Court to grant Applicant's application. Therefore, this application for post-conviction relief must be granted and Applicant's convictions for murder and possession of a firearm during the commission of a violent crime must be reversed and the cause remanded for a new trial.

IT IS THEREFORE ORDERED:

1. That the Applicant's Application for Post-Conviction Relief and Amended Application for Post-Conviction Relief be granted, and
2. That the Applicant's convictions for murder and possession of a firearm during the commission of a violent crime be reversed and remanded for a new trial.

AND IT IS SO ORDERED this 5th day of December, 2012.

Clifton Newman,
Presiding Judge, Tenth Judicial Circuit
Anderson, South Carolina

2012 DEC 10 P 12:05
COMMON PLEAS AND GENERAL SESSIONS
CLERK'S OFFICE
ANDERSON SC

WITNESSES
ACSO, S. REEVES

ARREST WARRANT NO.
I-857983
I-857982

~~ACTION OF GRAND JURY~~
TRUE BILL

MAY 2 3 2006
Foreman of ~~Grand Jury~~ Foreperson

VERDICT
Count 1 guilty
Count 2 guilty

652

D. Maynard 5/9/07
Foreman of Petit Jury Date

DOCKET NO. 2006-GS-04-1746

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS

MAY 2 3 2006 TERM

THE STATE

RAM vs.

~~JWAN TYREE SMITH~~

Indictment for

Count One - MURDER
16-3-0010/16-3-0020 [0116]

Count Two - POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME
16-23-0490 [0549]

COMMITMENT
5/9/07- Cmp

A TRUE COPY
MAY 21 2010
Cathy M. Phillips
CLERK OF COURT

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

INDICTMENT FOR
Ct. One – Murder
Ct. Two – Possession of a Firearm During The Commission of a Violent Crime

At a Court of General Sessions, convened on MAY 2 3 2006,

the Grand Jurors of ANDERSON County present upon their oath:

COUNT ONE

MURDER

That Jwan Tyree Smith did in Anderson County, South Carolina, on or about February 25, 2006, feloniously, wilfully and with malice aforethought, kill one Sammy Martin by means of shooting him with a firearm and the said victim died as a proximate result thereof.

COUNT TWO

POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

That Jwan Tyree Smith did in Anderson County, South Carolina, on or about February 25, 2006, possess a firearm during the commission of a violent crime, to wit: Murder. All in violation of Section 16-23-490, Code of Laws of South Carolina, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Ramel L. Campbell
Asst. SOLICITOR

A TRUE COPY
MAY 2 1 2010
CLERK OF COURT

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON) INDICTMENT/CASE #
STATE v JUAN TYREE SMITH)
AKA:) 2006 GS-04- 1746
Race/Sex: B M Age: 17) A/W#: 1857983
) Date of Offense: 02/25/06
DOB: 07/06/88 [redacted]) S.C Code: 16-03-0010 CDR Code #: 0116
Address: [redacted]) CASE RESTORED ☐
City, State, Zip [redacted])
DL# SID:) SENTENCE ☐ PLEA ☒ TRIAL

ENTERED

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO:

Murder

in violation of 16-3-10 of the S.C. Code of Laws, bearing CDR Code #: 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

Charge is: ☒ As Indicted, ☐ Lesser Included Offense; ☐ Defendant Waives Presentment to Grand Jury.
Plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST: Pamela L Campbell

Pamela L. Campbell — Solicitor | Defendant | Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☑ State Department of Corrections, ~~☐ County Detention Center~~, for a determinate term of THIRTY (30) ~~days/months~~/years or ~~☐ under the Youthful Offender Act not to exceed _____ years and/or pay a fine of $ _____ provided that upon the service of _____ days/months/years and/or payment of $ _____~~ plus costs and assessments as applicable*, ~~the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Pardon & Parole Services standard conditions of probation, which are incorporated by reference~~.

☑ CONCURRENT or ☐ CONSECUTIVE to sentences on: _____
☑ The Defendant is given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied by the State Department of Corrections from March 17, 2006 (418 days)

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered
Total: $ _____ plus 20% fee $ _____
Payment Terms:
☐ set by SCDPPPS _____
Recipient: _____

PTUP _____ time served pursuant to S.C. Code 24-13-40 for _____ days/hours Public Service Employment
Obtain GED ✓
Attend Voc Rehab, or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be paid in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other:

*Fine		$
14-1-206 - Assessments (107.5%)		$
14-1-211 (A)(1) Conv. Surcharge	$100	$ 100.00
14-1-211 (A)(2) DUI Surcharge	$100	$
56-5-2995 (DUI Assessment)	$12	$
35.13 (Public Def/Prob)	$500	$
73.3, 1B TP (Law Enforce. Funding)	$25	$ 25.00
33.7, 1B TP (Drug Court Surcharge)	$100	$
50-21-114 (BUI Breath Test Fee)	$50	$
56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% County(if paid in installments)		$
TOTAL		$ 125.00

☐ Appointed PD or other counsel, 35.13 TP Requires $500 be paid to Clerk during probation.

Presiding Judge _____ Judge Code: 1613

Sentence Date 5-9-07
Court Reporter Robin Hild Code #: 111

Cathy M. Phillips
Clerk of Court/Deputy Clerk
SCCA/217(7/2003)

A TRUE COPY
MAY 21 2010
Clerk of Court
Anderson County, S.C.

ENTERED

654

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON) INDICTMENT/CASE #
STATE v JUAN TYREE SMITH)
AKA:) 20 06 GS-04- 1746
Race/Sex: B M Age: 17) A/W#: 1857982
) Date of Offense: 02/25/06
DOB: 07/06/88 [redacted]) S.C Code: 16-23-0490 CDR Code #: 0549
Address: [redacted]) CASE RESTORED ☐
City, State, Zip [redacted])
DL#: SID:) SENTENCE ☐ PLEA ☒ TRIAL

ENTERED Clerk

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO:

Possession of Firearm during the commision of a violent crime (5yrs)

in violation of 16-23-490 of the S.C. Code of Laws, bearing CDR Code #: 015191

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

Charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
Plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Pamela Campbell

Pamela L. Campbell — Solicitor | Defendant | Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ~~☐ County Detention Center~~ for a determinate term of 5 (five) ~~days/months~~/years ~~or ☐ under the Youthful Offender Act not to exceed _____ years and/or pay a fine of $_____ provided that upon the service of _____ days/months/years and/or payment of $_____~~ plus costs and assessments as applicable*; ~~the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Pardon & Parole Services standard conditions of probation, which are incorporated by reference.~~

☒ CONCURRENT or ☐ CONSECUTIVE to sentences on: _____
☒ The Defendant is given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied by the State Department of Corrections June 14, 2006 (418 Days)

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered
Total: $_____ plus 20% fee $_____
Payment Terms: _____
☐ set by SCDPPPS _____
Recipient: _____

PTUP _____ time served pursuant to S.C. Code 24-13-40
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab, or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be paid in equal, consecutive weekly/monthly pmts. of $_____ beginning _____
$_____ paid to Public Defender Fund.
Other: _____

*Fine		$
14-1-208 - Assessments (107.5%)		$
14-1-211 (A)(1) Conv. Surcharge	$100	$
14-1-211 (A)(2) DUI Surcharge	$100	$
56-5-2995 (DUI Assessment)	$12	$
35.13 (Public Def/Prob)	$500	$
73.3, 1B TP (Law Enforce. Funding)	$25	$
33.7, 1B TP (Drug Court Surcharge)	$100	$
50-21-114 (BUI Breath Test Fee)	$50	$
56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% County(if paid in installments)		$
TOTAL		$

☐ Appointed PD or other counsel, 35.13 TP Requires $500 be paid to Clerk during probation.

Presiding Judge — Judge Code: 1-16-3

Sentence Date 5-9-07
Court Reporter Robin Hild Code #: 111

Cathy M. Phillips
Clerk of Court/Deputy Clerk
SCCA/217(7/2003)

A TRUE COPY
MAY 21 2010
Cathy M. Phillips
CLERK OF COURT

655

ARREST WARRANT

I-857983

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of ANDERSON

THE STATE
against

SMITH, JWAN T

Address: [redacted]

Phone: _____ SSN: [redacted]

Sex: M Race: B Height: 5 6 Weight: 145

Date: DL#:

DOB: 7/06/1988 Agency ORI#: 0400

Prosecuting Agency: SHERIFF DEPT.

Prosecuting Officer: REEVES, S J

Offense: MURDER

Offense Code: 0116

Code/Ordinance Sec. 16-3-10

This warrant is **CERTIFIED FOR SERVICE** in the

☐ County/ ☐ Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant SMITH, JWAN T

on _____

_____
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

959

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of ANDERSON

AFFIDAVIT

Form Approved by S.C. Attorney General July 26, 1990 SCCA 518

Personally appeared before me the affiant S.J.REEVES/ACSO who being duty sworn deposes and says that defendant SMITH, JWAN T did within this county and state on 2/25/2006 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____) in the following particulars:

DESCRIPTION OF OFFENSE: MURDER

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT JWAN TYREE SMITH, DID WITH MALICE AFORETHOUGHT CAUSE THE DEATH OF THE VICTIM, SAMMY MARTIN, BY SHOOTING THE VICTIM MULTIPLE TIMES WITH A FIREARM CAUSING INJURIES THAT LED TO HIS DEATH. THIS INCIDENT OCCURRED AT BOLDEN'S OLD SCHOOL LOUNGE LOCATED AT 1504 WEST MARKET ST. THIS INCIDENT OCCURRED ON OR ABOUT 2/25/06 IN ANDERSON COUNTY.

Sworn to and subscribed before me on 3/01/2006

(L.S.)
Signature of Issuing Judge

Signature of Affiant

Affiant's Address [redacted]

Affiant's telephone [redacted]

TRUE COPY
MAY 2 2006
CLERK OF COURT

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of ANDERSON

** CASE NUMBER 2006-06197 **

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 2/25/2006 defendant SMITH, JWAN T did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____) as set forth below:

DESCRIPTION OF OFFENSE: MURDER

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

(L.S.)
Signature of Issuing Judge
Judge Code: 737

Judge's Address POB 8002, 107 S. MAIN ST.
ANDERSON SC 29622-0000
Judge's Telephone 260-4156
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

3-1-06

ARREST WARRANT

I-857982

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of ANDERSON

THE STATE

against

SMITH, JWAN T

Address: [redacted]

Phone: _____ SSN: [redacted]

Sex: M Race: B Height: 5 6 Weight: 145

DL State: _____ DL#: _____

DOB: 7/06/1988 Agency ORI#: 0400

Prosecuting Agency: SHERIFF DEPT.

Prosecuting Officer: REEVES, S J

Offense: POSSESSION OF FIREARM DUR ING THE COMMISS Offense Code: 326

Code/Ordinance Sec: 16-23-490

This warrant is **CERTIFIED FOR SERVICE** in the ☐ County/ ☐ Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to defendant SMITH, JWAN T

on _____

7/24/06

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

657

32-06

STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of) **AFFIDAVIT**
ANDERSON)

Form Approved by S.C. Attorney General July 26, 1990 SCCA 518

Personally appeared before me the affiant S.J.REEVES/ACSO who being duly sworn deposes and says that defendant SMITH, JWAN T did within this county and state on 2/25/2006 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____) in the following particulars:

DESCRIPTION OF OFFENSE: POSSESSION OF FIREARM DURING THE COMMISS ION OF A VIOLENT CRIME

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT JWAN TYREE SMITH, DID WITH MALICE AFORETHOUGHT CAUSE THE DEATH OF THE VICTIM, SAMMY MARTIN, BY SHOOTING THE VICTIM MULTIPLE TIMES WITH A FIREARM CAUSING INJURIES THAT LED TO HIS DEATH. THIS INCIDENT OCCURRED AT BOLDEN'S OLD SCHOOL LOUNGE LOCATED AT 1504 WEST MARKET ST. THIS INCIDENT OCCURRED ON OR ABOUT 2/25/06 IN ANDERSON COUNTY.

ATRUE COPY MAY 20 2010 Fifth Judicial Circuit Clerk of Court

Sworn to and subscribed before me on 3/01/2006 (L.S.)

Signature of Issuing Judge

Signature of Affiant SEG

Affiant's Address 305 Comson Rd. Anderson, SC 29626

Affiant's telephone [redacted]

STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of) ** CASE NUMBER 2006-06197
ANDERSON)

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 2/25/2006 defendant SMITH, JWAN T did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____) as set forth below:

DESCRIPTION OF OFFENSE: POSSESSION OF FIREARM DURING THE COMMISS ION OF A VIOLENT CRIME

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

(L.S.)

Signature of Issuing Judge

Judge Code: 733

Judge's Address POB 8002, 107 S.-MAIN ST. ANDERSON SC 29622-0000

Judge's Telephone 260-4156

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

```
CMTI330D                SCDC OFFENDER MANAGEMENT SYSTEM                 05/27/10
OMCOMITA                      RELEASE DATE SCREEN                       C040481
SCDC# >  321800                                          LOC: LEE
SMITH, JUAN TYREE                          SCDC CLASSIFICATION..: VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE  SEXUAL REGISTRY..: N
                                           SEXUAL PREDATOR..: NOT APP
                                           DNA STATUS.......: COMPLETED
                                           GPS REQUIREMENT..: N
                                           PREA DECISION....:
CURRENT SENTENCE: 030-00-000       CONSECUTIVE SENTENCE ..: N
                  030-00-000       CURRENT SENT START DATE: 03/17/2006
PROJECTED COMPLETION DATES
  MAXOUT DATE .....: 03/09/2036    CURRENT EWC ..: 3 F S
  YOA SIX YEAR DATE:   /  /        CURRENT EEC ..: NOT CURRENTLY EARNING EEC
INITIAL PAROLE DATE: 00/00/0000    NEXT PAROLE HEARING DATE: 00/00/0000


TOTAL GT DAYS EARNED .......: 000000     LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ...: 000359     LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS ....: 000000      CATEGORY 4 OR 5 OFFENSE
TOTAL EXTRA EARNED CREDITS .: 000
TOTAL SERVICE TIME EARNED ..: 001510

PFKEYS:       5:HISTORY OF DATE CHANGES
4-©              1 Sess-1    167.7.50.33              SCDC1107          3/11
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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
RECORD SUMMARY REPORT DATED 05/27/10 C0404

SMITH,JUAN TYREE FBI # 677265LC7 SID# SC01689549 SCDC # 321800
OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE
INSTITUTION ..: LEE CORR INST DORM.....: RIA0160B
SECURITY/CUST.: 3 MINIMUM IN RACE....:B SEX...:M
CURR INCARC SENT...: 30 YRS 0 MOS 0 DYS PROJ MAXOUT DATE: 03/09/2036
CENTRAL MONITORING.: YES PROJ PAROLE DATE: 00/00/0000
SOCIAL SECURITY #...: [redacted] EWC JOB..: MATERIAL HANDLING EQ
EDUC PGM.: NO CURR EDUC PROGRAM
CURRENT PROGRAM..: NO CURRENT PROGRAM EWC LEVEL: 3F5 EEC LEVEL:
AGE...: 21 DATE OF BIRTH..: 7/ 6/88 ASSIGNMENT..: PRISON INDUSTR

PREVIOUS NUMBERS:
** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE YRS	MOS	DYS	COUNTY	SENTENCE START	V/NV	CATEGORY
MURDER	30	0	0	ANDERSON	3/17/20	V	5
FIREARMS PROVISION	5	0	0	ANDERSON	3/17/20	N	3

PRIOR COMMITMENTS OVER 90 DAYS:
INMATE HAS NO PRIORS
DETAINERS (HOLD,WANTED,NOTIFY):
NO DETAINERS
NO DETAINERS
ESCAPES:
NO ESCAPE HISTORY
CRIMINAL CHARGES:
NO CRIMINAL CHARGES WHILE IN CUSTODY
NO CRIMINAL CHARGES HISTORY
ASSAULTIVE DISCIPLINARIES:
NO ASSAULTIVE DISCIPLINARY HISTORY
NON-ASSAULTIVE DISCIPLINARIES:

2/28/10	OUT OF PLACE	CONVICTED	ADMIN
6/10/ 9	POSSESSION OF CONTRABAND	CONVICTED	ADMIN
4/18/ 8	POSSESSION OF CONTRABAND	DROPPED	CHARG
4/18/ 8	POSSESSION OF CONTRABAND	CONVICTED	ADMIN
1/18/ 8	POSS. OR/ATTEMPT TO POSS	CONVICTED	MAJOR

HISTORY OF MOVEMENTS:

6/18/ 7	LEE	INCARCERATED	ADMINISTRATIVE
5/15/ 7	KIRKLAND	INCARCERATED	R&E PROCESSING
5/15/ 7	PERRY	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
MATERIAL HANDLING EQ	10/29/09	0/ 0/ 0		3F5
MACHINE OPERATOR	01/13/09	10/28/ 9	PROMOTION	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
LVL 3 - FULL TIME(NO EWC)	06/19/07	11/25/ 8	COMPLETED EDUC PROGRAM

********* END OF REPORT *********

STATE OF SOUTH CAROLIN
COUNTY OF ANDERSON
STATE v JUAN TYREE SMITH
AKA: _____
Race/Sex: B M Age: 17

DOB: 07/06/88 [redacted]
Address: [redacted]
City, State, Zip [redacted]
DL# SID:

IN THE COURT C GENERAL SESSIONS
INDICTMENT/CASE #

20 06 -GS-04- 1742
AW#: I857983
Date of Offense: 02/25/06
S.C Code: 16-03-0010 CDR Code #: 0116
CASE RESTORED ☐

SENTENCE ☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO:

Murder

in violation of 16-3-10 of the S.C. Code of Laws, bearing CDR Code #: 0,1,1,6,

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

Charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
Plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Rame L Campbell

Rame L. Campbell
Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☑ State Department of Corrections, ~~☐ County Detention Center~~ for a determinate term of THIRTY (30) ~~days/month/years or~~ ~~☐ under the Youthful Offender Act not to exceed _____ years and/or pay a fine of $ _____ provided that upon the service of _____ days/months/years and/or payment of $ _____~~ plus costs and assessments as applicable*, ~~the balance is suspended with probation~~ for _____ ~~months/years and subject of South Carolina Department of Probation. Pardon & Parole Services standard conditions of probation, which are incorporated by reference.~~

☑ CONCURRENT or ☐ CONSECUTIVE to sentences on: _____
☑ The Defendant is given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied by the State Department of Corrections (Thru March 17, 2006 (418 days)

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered
Total: $_____ plus 20% fee $_____
Payment Terms:
☐ set by SCOPPPS _____
Recipient: _____

PTUP _____ time served pursuant to S.C. Code 24-13-40 to
_____ days/hours Public Service Employment
Obtain GED ✓
Attend Voc Rehab, or Job Corps
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be paid in equal, consecutive weekly/monthly pmts. of $_____ beginning
$_____ paid to Public Defender
Other:

A TRUE COPY
MAY - 9 2007
Cathy M. Phillips
CLERK OF COURT

*Fine		$
14-1-208 - Assessments (107.5%)		$
14-1-211 (A)(1) Conv. Surcharge	$100	$ 100.00
14-1-211 (A)(2) DUI Surcharge	$100	$
56-5-2995 (DUI Assessment)	$12	$
35.13 (Public Def/Prob)	$500	$
73.3, 18 TP (Law Enforce. Funding)	$25	$ 25.00
33.7, 18 TP (Drug Court Surcharge)	$100	$
50-21-114 (BUI Breath Test Fee)	$50	$
56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% County(if paid in installments)		$
TOTAL		$ 125.00

☐ Appointed PD or other counsel, 35.13 TP Requires $500 be paid to Clerk during probation.

Presiding Judge Judge Code: 1613

Sentence Date 5-9-07

Court Reporter Robin Hild Code #: 111

Cathy M. Phillips
Clerk of Court/Deputy Clerk
SCCA/217(7/2003)

660

STATE OF SOUTH CAROLIN) IN THE COURT (GENERAL SESSIONS
COUNTY OF ANDERSON) INDICTMENT/CASE #
STATE v JUAN TYREE SMITH)
AKA: _____) 20 06 -GS-04- 1746
Race/Sex: B M Age: 17) A/W#: I857982
) Date of Offense: 02/25/06
DOB: 07/06/88 SSN: [redacted]) S.C Code: 16-23-0490 CDR Code #: 0549
Address: [redacted]) CASE RESTORED ☐
City, State, Zip [redacted])
DL# _____ SID: _____) SENTENCE ☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO:

Possession of Firearm during the commision of a violent crime (5yrs)

in violation of 16-23-490 of the S.C. Code of Laws, bearing CDR Code #: 015191

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

Charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
Plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Rame L Campbell

Rame L. Campbell _____ _____
Solicitor Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ~~☐ County Detention Center~~, for a determinate term of 5 (five) ~~days/month~~/years ~~or ☐ under the Youthful Offender Act not to exceed _____ years and/or pay a fine of $_____ provided that upon the service of _____ days/months/years and/or payment of $_____~~ plus costs and assessments as applicable*, ~~the balance is suspended with probation for _____ months/years and subject of South Carolina Department of Probation, Pardon & Parole Services standard conditions of probation, which are incorporated by reference.~~

☒ CONCURRENT or ☐ CONSECUTIVE to sentences on: _____

☒ The Defendant is given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied by the State Department of Corrections from March 14, 2006 (418 days)

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived; ☐ Ordered
Total: $_____ plus 20% fee $_____
Payment Terms: _____
☐ set by SCDPPPS _____
_____
Recipient: _____
_____
_____

*Fine.....		$_____
14-1-206 - Assessments (107.5%)		$_____
14-1-211 (A)(1) Conv. Surcharge	$100	$_____
14-1-211 (A)(2) DUI Surcharge	$100	$_____
56-5-2995 (DUI Assessment)	$12	$_____
35.13 (Public Def/Prob)	$500	$_____
73.3, 1B TP (Law Enforce. Funding)	$25	$_____
33.7, 1B TP (Drug Court Surcharge)	$100	$_____
50-21-114 (BUI Breath Test Fee)	$50	$_____
56-5-2942(J) (Vehicle Assessment)	$40/ea	$_____
3% County(if paid in installments)		$_____
TOTAL		$_____

Cathy M. Phillips
Clerk of Court/Deputy Clerk
SCCA/217(7/2003)

PTUP _____ time served pursuant to S.C. Code 24-13-40 t
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab, or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be paid in equal, consecutive weekly/monthly _____
pmts. of $_____ beginning _____
$_____ paid to Public Defender Fund
Other: _____

A TRUE COPY
MAY 9 2007
Cathy M. Phillips
CLERK OF COURT

☐ Appointed PD or other counsel, 35.13 TP
Requires $500 be paid to Clerk during probation.

_____
Presiding Judge Judge Code: 1613

Sentence Date 5-9-07
Court Reporter Robin Hild Code #: 111

661