

RECEIVED
OCT - 1 2012
S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
J. Derham Cole, Circuit Court Judge

TERRANCE GIST,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2011-204806

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

SUZANNE H. WHITE
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT	1
INDICTMENT AND SENTENCING SHEET	407
APPLICATION FOR POST-CONVICTION RELIEF 2009-CP-42-0386	410
RETURN	420
POST-CONVICTION RELIEF HEARING TRANSCRIPT	424
ORDER OF DISMISSAL	438
APPLICATION FOR POST-CONVICTION RELIEF 2010-CP-42-4425	444
RETURN	453
POST-CONVICTION RELIEF TRANSCRIPT	459
ORDER GRANTING <u>AUSTIN</u> BELATED APPEAL	468

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG

2005-GS-42-4263

THE STATE of SOUTH CAROLINA

-vs-

TERRENCE S. GIST,

Defendant.

TRANSCRIPT OF RECORD

March 13, 14, and 15, 2006
Spartanburg, South Carolina

Ordered: April 13, 2006

Delivered: July 5, 2006

B E F O R E:

THE HONORABLE A. DOYET EARLY, Presiding Judge.

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

MR. ROBERT COLER, Esquire
Assistant Solicitor for the State

MR. JAMES H. (CHIP) PRICE, Esquire
Appearing on behalf of the Defendant

MR. RYAN BEASLEY, Esquire
Appearing on behalf of the Defendant

Pamela Faucette
Circuit Court Reporter

I N D E X

Motions & Matters: Page:

Jackson v. Denno/Pre-Trial Motions:.....	6
Voir Dire:.....	22
Jury Selection:.....	42
Initial Instructions by the Court.....	54
Motion/Matters at end of State's Case.....	261

Opening Statements: Page:

Mr. Coler.....	62
Mr. Price.....	70

W I T N E S S E S

State's Witnesses: Page:

Officer Edgar Guthro (Jury Not Present)

Direct by Mr. Coler.....	7
Cross by Mr. Price.....	14

Officer George Brown

Direct by Mr. Coler.....	76
Cross by Mr. Price.....	86

Officer David Hogsed

Direct by Mr. Coler.....	89
Cross by Mr. Price.....	131

Officer Robert Talanges

Direct by Mr. Coler.....	133
Cross by Mr. Price.....	141
Redirect by Mr. Coler.....	144

Officer Edgar Guthro (Jury Present)

Direct by Mr. Coler.....	146
Cross by Mr. Price.....	160

THE STATE V. TERRENCE GIST

Page 3

State's Witnesses (Continued):

Page:

Ms. Erica James

Direct by Mr. Coler.....163
 Cross by Mr. Beasley.....176

Dr. David Wrenn

Direct by Mr. Coler.....178
 Cross by Mr. Price.....184

Ms. Tameka Hines

Direct by Mr. Coler.....186
 Cross by Mr. Beasley.....213
 Redirect by Mr. Coler.....223

Mr. David Reeves

Direct by Mr. Coler.....228
 Cross by Mr. Price.....230

Ms. Jennifer Stoner

Direct by Mr. Coler.....231
 Cross by Mr. Price.....242
 Redirect by Mr. Coler.....245

Mr. Frank DeFreese

Direct by Mr. Coler.....248
 Cross by Mr. Price.....257
 Redirect by Mr. Coler.....258
 Recross by Mr. Price.....259

Defendant's Witness:

Page:

Mr. Terrell Wellman

Direct by Mr. Price.....267
 Cross by Mr. Coler.....270
 Redirect by Mr. Price.....287

Defendant's Witness (Continued):

Page:

Mr. Robert Sweeney

Direct by Mr. Price.....289
 Cross by Mr. Coler.....295
 Redirect by Mr. Price.....308

E X H I B I T S

State's Exhibits:	Marked:	Received:
1 - (Pre-Interrogation Form)	6	14, 153
2 - (Mr. Gist's Statement)	6	14, 153
3 - (Video Tape)	6	14, 153
4 - (Crime Scene Diagram)	22	96
5 - (Close-Up Diagram)	22	96
6 - (Photo)	105	106
7 - (Packet of Photos)	105	106
8 - (Photos)	105	106
9 - (Photos)	105	106
10 - (Photos)	105	106
11 - (Photos)	105	106
12 - (Photos)	105	106
13 - (Photos)	116	121
14 - (Bullet in Evidence Bag)	131	140
15 - (Gunshot Residual Kit)	131	138
16 - (Hand drawn Diagram)	175	175
17 - (Photo)	183	183

THE STATE V. TERRENCE GIST

Page 5

Defendants' Exhibits:

(None)

Court's Exhibits:

1 - (Request for Voir Dire)	52	52
2 - (Note from Ms. Brown)	126	126
3 - (Jurors' questions)	378	378
4 - (Jurors' questions)	380	380
5 - (Portion of Jury Charge)	382	382

Closing Arguments:

Page:

Mr. Beasley.....	327
Mr. Coler.....	339

Jury Charge.....	361
Verdict.....	383
Post-Trial Motions.....	388
Victim's Family's and Representatives' Comments.....	392
Defendant's Family's Comments.....	398
Sentencing.....	405

Court Reporter's Certification.....	406

Reporter's Note: This transcript contains quoted material. Such material is reproduced as read or quoted by the speaker.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 March 13, 2006

11:47 A.M.

2 (Other matters were heard before the pre-trial motions
3 commenced.)

4 (State's Exhibit Numbers 1 through 3 were marked for
5 identification prior to the proceeding commencing.)

6 THE COURT: All right. Mr. Coler, you got a case to
7 call?

8 MR. COLER: Yes, sir. Your Honor, this is The State v.
9 Terrence Gist charging him with murder. It's indictment number
10 2005-GS-42-4263.

11 THE COURT: G-i-s-t?

12 MR. COLER: Yes, sir. I'll hand up the indictment, Your
13 Honor.

14 THE COURT: Thank you.

15 (Document handed up to the Court.)

16 THE COURT: All right. Let the record reflect the
17 defendant is present with his counsel, Mr. Price and Mr.
18 Beasley. And I understand we're going to do a Jackson v.
19 Denno; is that correct?

20 MR. COLER: Yes, sir, Your Honor, and the State is
21 prepared to proceed with that.

22 THE COURT: Are you ready, Mr. Price?

23 MR. PRICE: Yes, sir.

24 THE COURT: You may call your first witness.

25 MR. COLER: Thank you, Your Honor. The State calls Ed

MR. ED GUTHRO -- DIRECT by MR. COLER

Page 7

1 Guthro.

2 (Off-the-Record Comments)

3 (Whereupon,

4 EDWARD GUTHRO

5 having been duly sworn, testified as follows:)

6 (Brief Pause)

7 THE COURT: Mr. Coler?

8 MR. COLER: Thank you, Your Honor.

9 DIRECT EXAMINATION by MR. COLER:

11:48 A.M.

10 Q. State your name for the record.

11 A. Edgar Victor Guthro (phonetic).

12 Q. And tell us where you're presently employed?

13 A. The Spartanburg Department of Public Safety.

14 Q. How long have you been with the Department of Public
15 Safety?

16 A. A little over seventeen (17) years.

17 Q. What is your present assignment or title?

18 A. I work in our forensics unit.

19 Q. Prior to going to work in the forensic department, were
20 you a detective with the City Police Department?

21 A. Yes, sir.

22 Q. Approximately how long were you a detective?

23 A. Just shy of eight (8) years.

24 Q. Let me ask you about your participation in this case,
25 Investigator. Did you have an occasion to take a statement

1 from the Defendant Terrence Gist?

2 A. I did.

3 Q. Do you recall on what date you took that statement?

4 A. Ten, three, zero four (10/3/04).

5 Q. All right. And do you recall where you were when you
6 took that statement?

7 A. City Hall.

8 Q. Do you remember if there was any -- anybody else present
9 with you, in the room, when you took a statement from Mr.
10 Gist?

11 A. Investigator Brewster was also present.

12 Q. Did she participate in the interrogation or did she
13 essentially witness the interrogation?

14 A. Witnessed it.

15 Q. I'm going to hand you a couple of documents,
16 Investigator.

17 (Exhibit handed to witness.)

18 Q. I first hand you what's been pre-marked as State's
19 Exhibit Number 1 for ID purposes.

20 (Brief pause while witness reviews document.)

21 Q. Do you recognize this document?

22 A. Yes, sir. It's a pre-interrogation waiver form that we
23 use.

24 Q. What's a -- what is a pre-interrogation waiver form and
25 what is it used for by the City Police Department?

MR. ED GUTHRO - DIRECT by MR. COLER

Page 9

1 A. We use it -- that's what we read their Miranda rights off
2 of.

3 Q. Okay. And do you use it, in preparation for taking a
4 statement, from a defendant or suspect or a witness in a case?

5 A. Yes, sir.

6 Q. All right. Prior to taking any statement from Mr. Gist,
7 did you advise him of his Miranda warnings?

8 A. I did.

9 Q. What exactly did you advise him his Miranda warnings
10 were?

11 A. They're actually printed on this form. I read them out
12 loud to him, and they are as follows: "You have a right to
13 remain silent. Anything you say can and will be used against
14 you in a court of law.

15 "You have a right to talk to an lawyer and to have a
16 lawyer present with you while you're being questioned. If you
17 cannot afford to hire a lawyer, a lawyer will be appointed,
18 free of any cost, to represent you before any questioning
19 begins. You have a right to stop answering questions at any
20 time." And I check each one of those off to ensure that I did
21 them as I read them.

22 Q. All right. Did it appear to you that he understood those
23 warnings as you were reading them to him?

24 A. Yes, sir, he did.

25 Q. All right. Does that document have a place for him to

1 sign indicating he's been advised of those rights by you?

2 A. Yes, sir.

3 Q. Did you offer him an opportunity to sign the document,
4 and did he sign it?

5 A. I did. And yes, sir, he signed it.

6 Q. All right. After going through his Miranda warnings with
7 him, did you ask him if he wished to waive those Miranda
8 warnings and speak to you about the incident you were talking
9 to him about?

10 A. Yes, sir, I did. And that's actually another portion of
11 this same form.

12 Q. All right. And, if you will, tell the Court what that
13 other portion says?

14 A. It reads, "Fully understanding my rights, as they've been
15 explained to me, I was to waive, which means to give up, my
16 rights and talk to Officer..." And I have myself and
17 Detective Brewster listed, "...in reference to the homicide of
18 Robert Tennant."

19 And then, it goes on to say, "I've waived my rights
20 freely and voluntarily without being threatened or coerced and
21 without being promised any leniency or reward." And he also
22 signed that.

23 Q. All right. When he signed -- did you ask him to sign
24 indicating that he wished to waive his rights and speak to you
25 about the case?

MR. ED GUTHRO - DIRECT by MR. COLER

Page 11

1 A. Yes, sir.

2 Q. At any time -- well, while you were with Mr. Gist, did he
3 appear to you to be of clear mind and thinking logically,
4 thinking clearly?

5 A. Yes, sir, he did.

6 MR. PRICE: Your Honor, I object to the --

7 THE COURT: Sustained.

8 MR. PRICE: -- leading questions.

9 THE COURT: Sustained.

10 Q. (By Mr. Coler) Did it appear to you that he understood
11 what he was doing?

12 A. Yes, sir.

13 Q. Did he appear to you to be intoxicated or under the
14 influence of any drugs or alcohol?

15 A. No, he did not.

16 Q. Did he ever ask you for a lawyer or ask you to stop
17 questioning him?

18 A. No, sir, he did not.

19 Q. Did you make any promises to him in exchange for his
20 statement?

21 A. No, sir.

22 Q. Did you ever threaten him or coerce him in an attempt to
23 give -- to him to give you a statement?

24 A. No, sir.

25 Q. Was his statement given to you freely and voluntarily?

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 A. Yes, sir, it was.

2 Q. Did you video tape the statement -- the interrogation,
3 the pre-interrogation waiver form, the Miranda rights and his
4 statement?

5 A. Yes, sir, I did.

6 Q. After going through his pre-interrogation waiver rights,
7 and that form you filled out, did he, in fact, give you a
8 written statement?

9 A. Yes, sir, he did.

10 Q. I'm going to show you what's been pre-marked as Exhibit
11 Number 2.

12 (Exhibit handed to witness.)

13 Q. Is that the statement that he gave you after you advised
14 him of his Miranda rights?

15 (Witness reviews document.)

16 A. Yes, sir.

17 Q. Describe for the Court how that statement is prepared.
18 Did he write it or did you write it for him?

19 A. I wrote the statement for him. It's in my handwriting.
20 During the interview, I listened to -- to what he tells me
21 happened, and I write it down on paper and ask him questions
22 as I do it.

23 Q. All right. And also, Investigator, I'm going to show you
24 what's been pre-marked as Exhibit Number 3, and this is a
25 video tape.

MR. ED GUTHRO - DIRECT by MR. COLER

Page 13

1 (Exhibit handed to the witness.)

2 Q. Do you recognize that video tape?

3 A. Yes, sir, I do.

4 Q. And what's that a video tape of?

5 A. Of this interview.

6 Q. All right. Have you had an opportunity, prior to today
7 -- to today's hearing, to review that tape and ensure its
8 accuracy?

9 A. Yes, sir, I have.

10 Q. Does it accurately portray the interview of Mr. Gist on
11 October 3rd of two thousand, four (2004)?

12 A. It does.

13 MR. COLER: Your Honor, at this point, for the purposes
14 of this hearing, we'd offer, to the Court, State's Exhibit
15 Number, the pre-interrogation waiver form; State's Exhibit
16 Number 2, the statement; and State's Exhibit Number 3, the
17 video tape of the interrogation and offer to publish that
18 video tape to the Court now.

19 THE COURT: Mr. Price?

20 MR. PRICE: Your Honor, these will be subject to our
21 underlying investigation concerning the burden proof upon the
22 State and, of course, subject to cross examination.

23 THE COURT: Absolutely.

24 MR. COLER: And, Your Honor, I'll hand up the -

25 THE COURT: All right.

1 MR. COLER: — Exhibits 1 and 2 and play it.

2 (Whereupon, State's Exhibit Numbers 1, 2, and 3 were
3 admitted into evidence for the purpose of the Jackson v. Denno
4 hearing.)

5 (A portion of State's Exhibit Number 3 played for
6 purposes of the Jackson v. Denno hearing.)

7 (Video began playing at 11:52 a.m.)

8 MR. COLER: With the Court's information -- permission,
9 Judge, I'll fast forward it to the --

10 THE COURT: Please, do.

11 (Brief pause while video is fast forwarded.)

12 THE COURT: Mr. Price, do we need to show it for the
13 Jackson v. Denno?

14 MR. PRICE: I think we would need to show the first part
15 of it, Your Honor.

16 (Portion of videoed taped interview of Mr. Gist played.)

17 (Video concluded at 12:01 p.m.)

18 MR. COLER: All right. Thank you, Investigator.

19 Please, answer any questions that Mr. Price has.

20 CROSS EXAMINATION by MR. PRICE: 12:02 P.M.

21 Q. Mr. Guthro, how long did you say that you have been a
22 police officer?

23 A. I'd say a little over seventeen (17) years, two months.

24 Q. And how long have you been down here in Spartanburg?

25 A. All of that.

MR. GUTHRO - CROSS by MR. PRICE

Page 15

1 Q. Okay. Now, when you took this statement, or first met
2 Mr. Gist, this was the day after the shooting of Mr. Tennant,
3 was it not?

4 A. Actually, the same date, just later in the afternoon.

5 Q. Well, let's just assume that the shooting occurred at
6 midnight, between the second and the third, and this was the
7 following afternoon?

8 A. Actually, it would be the same date from when I was
9 notified, so, it could have been very close to a minute or
10 two. I'm not -- I'm not sure.

11 Q. And, isn't it true, that Mr. Gist self surrendered or
12 voluntarily turned himself in earlier that afternoon?

13 MR. COLER: Object to relevance, Your Honor.

14 THE COURT: Overruled.

15 MR. COLER: Thank you, Your Honor.

16 A. We had went, to his residence where he was staying,
17 looking for him. He was not there at the time. He and
18 another individual came walking through the back yard while we
19 were searching his house for him. And he was taken into
20 custody at that time.

21 Q. At that time, he told you that he had heard that you all
22 were looking for him and he wanted to turn himself in.

23 A. He may have; I don't recall.

24 Q. All right. Now, you were at his house when this
25 happened?

1 A. I was where?

2 Q. At his house when he surrendered?

3 A. Yes.

4 Q. Now, was his mother there?

5 A. I don't recall that either.

6 Q. Well, right at the get go, you knew that this man was
7 only sixteen (16) years old?

8 A. I don't know that I knew he was sixteen (16). I think I
9 was aware that he was fairly young.

10 Q. Well, the point is, you first -- when, in your
11 estimation, Mr. Guthro, did you find out that he was sixteen
12 (16) years old?

13 A. Well, I guess I would have known when I wrote his date of
14 birth on that statement.

15 Q. Now, how long did he stay in custody, in your building,
16 before you went in there and took the handcuffs off and
17 started talking to him?

18 A. I'm not sure.

19 Q. Can you give me an estimate?

20 A. I would be guessing, but probably -- probably -

21 MR. COLER: Objection, Your Honor. I'd ask the witness
22 not to speculate.

23 THE COURT: Overruled.

24 MR. COLER: Thank you.

25 A. I -- I really don't recall, but probably not very long.

MR. GUTHRO - CROSS by MR. PRICE

Page 17

1 Q. Did you transport Mr. Gist from his home to the
2 Spartanburg City Hall?

3 A. I don't recall that either, but I don't think so.

4 Q. Okay. Now, at any point, did you tell his mother, or
5 notify this young man's mother, this juvenile's mother, that
6 you had her son in custody?

7 A. I did not. If somebody else did, I don't know.

8 Q. At any point, did you notify his mother that you were
9 going to take a statement from him?

10 A. I didn't.

11 Q. At the time you interrogated him, you and Detective
12 Brewster, you knew right then that his birth date was February
13 of '88 and that he was only sixteen (16) years old?

14 A. I knew what his date of birth was; I don't know if I did
15 the calculation in my head to see how old he was.

16 Q. Were you capable, with your cerebral powers, to determine
17 that he was sixteen years old ---

18 A. I'm sure I could have had I ---

19 Q. -- when you took that statement?

20 A. --- had I had attempted.

21 THE COURT: All right. Hold on a second. Hold on. Let
22 Mr. Price ask his question before you answer. And I won't let
23 him ask you a question when you're answering.

24 A. Yes, sir.

25 Q. (By Mr. Price) I will rephrase. As of February -- excuse

1 me -- as of October 3rd of two thousand, four (2004), did you
2 have the cerebral capacity to determine that this young man
3 was sixteen (16) years old based upon his birth date of
4 February of 1988?

5 A. Yes, sir.

6 Q. All right, sir. So, when you took that statement from
7 the get go and asked him his birth date, you knew he was a
8 juvenile?

9 A. I would assume that I did. I don't specifically recall
10 knowing it, but I'm sure I probably did.

11 Q. And you did not know his family -- notify his family that
12 you intended to take a statement, or interrogate him,
13 concerning the murder within the last 24 hours?

14 A. I personally did not.

15 Q. All right, sir. Now, Mr. Gist had been handcuffed until
16 the point you started taking that statement?

17 A. It would appear so. They were taken off of him when we
18 -- we entered the interview room.

19 Q. And Mr. Gist wanted to ask you some questions, but you
20 told him no, that you were going to be one that was going to
21 ask the questions and not him?

22 A. That is correct, sir.

23 Q. And you did not allow him to ask you any questions about
24 procedure or anything else?

25 A. I explained the procedure to him and I ---

MR. GUTHRO - CROSS by MR. PRICE

Page 19

1 Q. I understand, and I thank you for doing that.

2 A. But he was asking me questions about -

3 THE COURT: Now, Mr. Price, let him finish his answer.

4 MR. PRICE: Go ahead, sir.

5 A. The question he was asking me was about the crime. I
6 didn't want to discuss the crime with him prior to his Miranda
7 warnings being read.

8 Q. Okay. And my question to you, sir, did he want to ask
9 you some questions and you said, "No. I..." --
10 meaning you ---

11 A. He asked me -- I'm sorry.

12 THE COURT: Sir.

13 A. I'm sorry.

14 Q. At one point, on that tape, isn't it true that Mr. Gist
15 wanted to ask you a question or questions?

16 A. Yes, sir.

17 Q. And you told him, "No. I..." -- meaning you -- "...am
18 going to be the one asking questions here"?

19 A. That is correct.

20 Q. Okay. And you made no effort to contact his mother or
21 guardian?

22 MR. COLER: Objection, Your Honor, he's asked it a few
23 times already.

24 THE COURT: Sustained.

25 MR. PRICE: That's all I would have, Your Honor.

1 THE COURT: Redirect?

2 MR. COLER: That's all, Your Honor.

3 THE COURT: You may step down.

4 (The witness stepped down from the witness stand at 12:06
5 p.m.)

6 THE COURT: Next witness?

7 MR. COLER: That's the State's showing, Your Honor.

8 THE COURT: Mr. Price?

9 MR. PRICE: We have nothing to present, Your Honor.

10 THE COURT: All right. Any argument you all want to
11 make, or do you want me to just...

12 MR. PRICE: Your Honor, obviously, the detective
13 complied with Miranda. Our only argument is this young man
14 was sixteen (16) years old and he was juvenile and he's
15 afforded, by our law, more protection than individuals over
16 the age of seventeen (17).

17 I would love to be able to hand you a South Carolina case
18 that is directly on point, in my client's favor, but I do wish
19 to preserve this objection and we make it earnestly.

20 THE COURT: Well, obviously, my job, at this point in
21 time, to make an initial determination as to the voluntariness
22 of the statement based on the preponderance of the evidence.
23 And I so find and obviously, will allow it to be introduced
24 into the trial of this case. And then, the jury makes the
25 determination as to whether or not it was voluntary beyond a

VOIR DIRE

Page 21

1 reasonable doubt.

2 And I will instruct them on their duties and their
3 burden, and that the burden of proof is the State's burden,
4 not the jury's burden of proof, but what the burden of proof
5 is the State must meet and any other Jackson v. Denno hearing
6 I will allow. Anything else, Gentlemen?

7 MR. COLER: No, sir, Your Honor. Thank you.

8 MR. PRICE: No, sir, Your Honor.

9 THE COURT: All right. We will -- as I understand, the
10 jury will be back at 2:30, and so, we'll get started with the
11 selection of a jury at 2:30. Anything else on behalf of the
12 State?

13 MR. COLER: No, sir, Your Honor. Thank you.

14 MR. PRICE: No, sir.

15 THE COURT: Mr. Coler?

16 MR. COLER: Yes, sir?

17 (Off-the-Record Discussion)

18 THE COURT: We'll stand at ease.

19 MR. COLER: Thank you, Your Honor.

20 (At ease at 12:08 p.m.)

21 (Other matters were heard before the lunch recess was
22 taken.)

23 (Lunch recess was taken from 12:08 p.m. till 1:00 p.m.)

24 (Other matters were heard until the jury panel returned
25 at 2:30 p.m.)

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

VOIR DIRE

Page 22

1 (State's Exhibit Numbers 4 and 5 were marked for
2 identification before the proceeding commenced.)

3 (Other matters heard before the trial resumed.)

4 (The jury panel entered the courtroom at 2:35 p.m.)

5 THE BAILIFF: All rise and come to order.

6 THE COURT: Thank you. Please, be seated. Mr. Coler,
7 you may call your case.

8 MR. COLER: Thank you, Your Honor. May it please the
9 Court. Your Honor, this is -- this is The State v. Terrence
10 Gist, charged, again, with murder on 05-GS-42-4263. May I
11 approach?

12 THE COURT: Yes, sir.

13 (Document handed up to the Court.)

14 THE COURT: Mr. Price, Mr. Beasley, are you all ready to
15 proceed?

16 MR. BEASLEY: Yes, Your Honor.

17 MR. PRICE: Yes, sir, we are.

18 VOIR DIRE

19 THE COURT: Ladies and gentlemen of the jury, well, I am
20 Jack Early. I am the resident judge in the Second Circuit,
21 which is Bamberg, Barnwell, and Aiken Counties. I've been
22 assigned to hold General Sessions Court here in Spartanburg
23 this week and will be trying this case that has just been
24 called.

25 Judge Cole qualified you earlier this morning to make

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

VOIR DIRE

Page 23

1 sure you were qualified to serve on a jury; what we will do
2 now is qualify you for this particular case.

3 The jury selection process will probably take us anywhere
4 from a half an hour -

5 (Juror enters the courtroom.)

6 THE COURT: Come on in, ma'am, and sit wherever you --
7 there's one opening on the front row there, ma'am. Right
8 there on the front row. I understand parking is not real good
9 outside.

10 POTENTIAL JUROR: No, sir.

11 THE COURT: I'll have to get the solicitor's office to
12 get more parking spaces for tomorrow.

13 MR. COLER: Yes, sir, I'll take care of that.

14 THE COURT: You'll take care of that Mr. Coler?

15 (Laughter)

16 THE COURT: Now, he's lying to the judge. That's not
17 good.

18 (Laughter)

19 THE COURT: Not a good start, Mr. Coler. The jury
20 selection process probably will take us 30 to 45 minutes. And
21 once we select you, then, the balance of you, who are not
22 selected, will be free to go for the balance of the afternoon.
23 And we will have a call-back system where you will call back
24 on the number they gave you later on this afternoon.

25 And I'll find exactly what time to call back in, but I

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

VOIR DIRE

Page 24

1 know we've got another trial going with Judge Cole, and this
2 trial will be starting up, so, it may be that you won't have
3 to report until sometime in the middle of tomorrow, but we'll
4 just have to see how we're going.

5 We try to utilize everybody's time, but to try -- keeping
6 a tab on your imposition for being up here. I know it's not
7 convenient for you to be away from work.

8 So, without saying a whole lot further, we're going to
9 move right into the trial of this case, so, we won't hold
10 anyone else.

11 I will ask certain questions. If they apply to you, I
12 would ask that you, please, stand and give me your name, and
13 if you remember your juror number, give us that. And, if not,
14 give us just a chance to look that up.

15 I further remind you that you are still under oath from
16 this morning, so, when you answer my questions, you are under
17 oath, so, please, bear that in mind.

18 And first of all I would ask the Defendant, Mr. Terrence
19 Gist, G-i-s-t, if you would, please, stand Mr. Gist and face
20 the jury panel?

21 (Mr. Gist stands as requested.)

22 THE COURT: Thank you. You may be seated.

23 (Mr. Gists sits down as requested.)

24 THE COURT: Does any member of the jury panel ever been
25 related, by blood or marriage, to Terrence Gist, G-i-s-t? If

VOIR DIRE

Page 25

1 so, please, stand?

2 (No Response)

3 THE COURT: Has any member of the jury panel ever had a
4 close personal or social relationship with Terrence Gist? If
5 so, please, stand.

6 (No Response)

7 THE COURT: The victim's in this case name is Robert Lee
8 Tennant, T-e-n-n-a-n-t. Is anybody on the jury panel related,
9 by blood or marriage, to Robert Lee Tennant? If so, please,
10 stand.

11 (No Response)

12 THE COURT: Any member of the jury panel ever had a
13 close personal or social relationship with Robert Lee Tennant?
14 If so, please, stand.

15 (No Response)

16 THE COURT: Have you got a witness list?

17 MR. COLER: Yes, sir. May I approach?

18 (Document handed up to the Court.)

19 THE COURT: And, please, don't get scared when I start
20 reading this list. These are potential witnesses in the trial
21 of the case. And I'm going to read this list, and when I'm
22 finished, I'm going to ask you the same question, i.e., have
23 you had a close personal or social relationship or have you
24 ever been related by blood or marriage.

25 So, listen to each of these names. And I'll go through

VOIR DIRE

Page 26

1 all the names, and at the end, I'll ask those questions. The
2 potential witnesses are: George Brown, Spartanburg Public
3 Safety Department; J. Bradley, Spartanburg Public Safety
4 Department; S. Tillotson, T-i-l-l-o-t-s-o-n, Spartanburg
5 Police -- Spartanburg -- what is SP? Is it Spartanburg
6 Police?

7 MR. COLER: Spartanburg Public Safety Department, Your
8 Honor.

9 THE COURT: All right.

10 MR. COLER: The city police department.

11 THE COURT: The city police department. J. Coe, C-o-e,
12 city police. Has Norton got a first name?

13 MR. COLER: Christie, Your Honor, "C."

14 THE COURT: Christie Norton, city police. Does Byer
15 have a first name?

16 MR. COLER: Ricky.

17 THE COURT: Ricky Byer, city police; T. Horton,
18 H-o-r-t-o-n, city police; N. Cantrell; R. Norwick; R. Russell;
19 Ed Guthro -- and ladies and gentlemen, all of these are with
20 the police department, the city police department -- Paula
21 Brewster; David Buser; Chris Taylor; David Hurst; Toby
22 Bradley; Russell Porter; Steve Lambe; T. Heyde, H-e-y-d-e, and
23 Lou Mathis. And all of those I've just listed are with the
24 city police department.

25 The next ones are with the sheriff's office: David

VOIR DIRE

Page 27

1 Hogsed, H-o-g-s-e-d; Robert Talanges, T-a-l-a-n-g-e-s; Dr.
2 David Wrenn, with Spartanburg Pathology; Dan DeFreese with
3 SLED, State Law Enforcement; Jennifer Stoner with SLED;
4 Crystal Sarr, S-a-r-r, with the solicitor's office.

5 And the following are more than likely lay witnesses:
6 Jonathan Lee Petty, Antonio McKinney, Marcell Foster, Tameka
7 Hines, Maria Hines, Rhonda Marie Foster, Erika James, Eric
8 Hines, Shameka Sims, Sierra Valentine, Natasha Olsbee, Tameka
9 Olsbee, Rosetta McKinny, Kimberly Ann Nesbitt, Darlene
10 Woolen, Marvine Copeland, April Wilson. Mr. Price, are all of
11 these on yours?

12 MR. PRICE: Some of them.

13 THE COURT: Some of these may be redundant. Let's me
14 just go through them.

15 (Mr. Price approaches the bench.)

16 MR. PRICE: I can scratch out ones that are.

17 (Brief Pause)

18 THE COURT: George Jackson, Ronald Porter, Anita Gist,
19 G-i-s-t, Terrell Wellman, Cedric Williams, Robert Sweeney,
20 Chris Crawford, and Cory Gist, G-i-s-t. Any member of the
21 jury panel related by -- have ever been related, by blood or
22 marriage, to any of these people whose names I just called?
23 If so, please, stand?

24 (No Response)

25 THE COURT: Any member of the jury panel ever had a

VOIR DIRE

Page 28

1 close personal or social relationship with any of these
2 witnesses I've just called? If so, please, stand.

3 (Potential juror stands in response.)

4 THE COURT: Yes, ma'am, your name?

5 POTENTIAL JUROR: Anita Porter, number 54... I know Paula.

6 THE COURT: Paula. Who is Paula?

7 MR. COLER: Investigator Brewster?

8 THE COURT: And she is with whom?

9 MR. COLER: She is -- she's with the city police
10 department, Your Honor.

11 THE COURT: Stand up for me, ma'am. And how do you
12 know --

13 POTENTIAL JUROR: She's an associate.

14 THE COURT: Well, associate, just --

15 POTENTIAL JUROR: (Nods affirmatively).

16 THE COURT: all right. The fact that you know her or
17 just an associate, in your words, would that, in any way,
18 ma'am, preclude or keep you from being ----

19 POTENTIAL JUROR: No, sir.

20 THE COURT: --- a fair and impartial juror in the trial
21 of this case?

22 POTENTIAL JUROR: No, sir.

23 THE COURT: Thank you. You may be seated. Yes, ma'am,
24 in the Georgia State University jersey. Your name?

25 POTENTIAL JUROR: Tonya ---

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

VOIR DIRE

Page 29

1 THE COURT: What's your name?

2 POTENTIAL JUROR: Tonya Jackson.

3 THE COURT: Ms. Jett?

4 POTENTIAL JUROR: Jackson.

5 THE COURT: Ms. Jackson? Do you know your number?

6 POTENTIAL JUROR: One fifty-nine (159). I know Anita
7 Gist.

8 THE COURT: All right. The fact that you know Ms. Gist,
9 Anita Gist -- how do you know her?

10 POTENTIAL JUROR: We're associates.

11 THE COURT: Associates just like this last lady?

12 POTENTIAL JUROR: (Nods affirmatively)

13 THE COURT: The fact that you are associated with her,
14 ma'am, with the lady who is a potential witness, would that,
15 in any way, keep you from being fair and impartial and being
16 able to try this case solely based on the facts that you hear
17 from the witness stand?

18 POTENTIAL JUROR: (Shakes head negatively)

19 THE COURT: That's a "no"?

20 POTENTIAL JUROR: (Nods affirmatively)

21 THE COURT: Thank you, ma'am. You may be seated. Yes,
22 sir?

23 POTENTIAL JUROR: Juror number 7, Robert Andrews. I go
24 to church with Steve Lambe's parents.

25 THE COURT: And he's a potential witness in this case?

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

VOIR DIRE

Page 30

1 POTENTIAL JUROR: Yes, sir.

2 THE COURT: And the fact that you go to church with his
3 parents, would that, in any way, preclude or keep you from
4 being a fair and impartial juror in the trial of the case?

5 POTENTIAL JUROR: No, sir.

6 THE COURT: Thank you. Yes, sir?

7 POTENTIAL JUROR: Mark Holden, 73. I know most of the
8 city police officers and some of the county police officers.
9 I worked with them some eight years ago.

10 THE COURT: How did you work with them?

11 POTENTIAL JUROR: I was a police officer in Spartanburg
12 County.

13 THE COURT: In which department?

14 POTENTIAL JUROR: Spartanburg City.

15 THE COURT: And you've been gone for eight years?

16 POTENTIAL JUROR: Yes, sir.

17 THE COURT: What I normally do, in a situation like
18 this, if you've worked with these people and had a close
19 personal relation -- not a personal relationship -- a working
20 relationship, I don't think it's fair for both the State or
21 the Defendant. I'm going to excuse you from the trial of this
22 case. Your name is what?

23 POTENTIAL JUROR: It's Mark Holden.

24 THE COURT: Thank you, Mr. Holden. And what was your
25 number?

VOIR DIRE

Page 31

1 POTENTIAL JUROR: Seventy-three (73).

2 THE COURT: Okay. Thank you.

3 (Whereupon, Juror number 73 was excused.)

4 (Off-the-record comments regarding temperature of the
5 courtroom.)

6 THE COURT: Ladies and gentlemen, in this case, The
7 State of South Carolina is represented by the solicitor's
8 office. Mr. Coler, would you introduce yourself and anyone
9 else that will be helping you?

10 MR. COLER: Yes, sir.

11 (Mr. Coler stands and faces jury panel.)

12 MR. COLER: My name is Bob Coler and I'm one of the
13 assistant solicitors here in Spartanburg, and I'll be
14 prosecuting this case. Assisting me will be my paralegal,
15 Christie Bell (phonetic).

16 (Mr. Coler sits.)

17 THE COURT: Thank you. The Defendant is represented by
18 Mr. Price and Mr. Beasley. Mr. Price, would you introduce
19 yourself and Mr. Beasley and other members of your firm?

20 (Mr. Price and Mr. Beasley stand and face the jury
21 panel.)

22 MR. PRICE: Good afternoon, ladies and gentlemen. My
23 name is Chip Price. I'm an attorney mainly in Greenville, but
24 I am over here regularly. And this is Ryan Beasley, who
25 graduated from Wofford College and has been working with me

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

VOIR DIRE

Page 32

1 for three years now.

2 THE COURT: And other members of your firm, but I don't
3 need to know where they go to college, Mr. Price.

4 MR. PRICE: Yes, sir.

5 THE COURT: Who else is in your firm?

6 MR. PRICE: Peggy Ashmore (phonetic) and Pat Pascal
7 (phonetic).

8 THE COURT: Thank you.

9 MR. PRICE: Peg Ashmore went to the -

10 THE COURT: I don't need to know.

11 (Laughter)

12 THE COURT: You know, you ask a lawyer a simple
13 question, and they have to give you a life history. I'm just
14 picking on these guys. I know them.

15 And ladies and gentlemen, what we're doing here is
16 absolutely the most serious thing that you do in the judicial
17 system. And every now and then we have to have a little
18 levity, so, don't -- if I cut up a little bit, please, forgive
19 me. I have to keep it a little light because if not, we would
20 all go -- it would be a very difficult job.

21 Has any member of the jury panel ever been represented by
22 any of the lawyers involved in the case or by their law firms?
23 If so, please, stand.

24 (No Response)

25 THE COURT: And these Wofford graduates are high

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

VOIR DIRE

Page 33

1 maintenance too. They have to have -

2 (Laughter)

3 THE COURT: Has any member of the jury panel ever been
4 related, by blood or marriage, or do you have a close or have
5 ever had a close personal relationship with any of the lawyers
6 involved in the case? If so, please, stand.

7 (No Response)

8 THE COURT: Ladies and gentlemen, let me just tell you a
9 little bit about this case. And, when I say a little bit, I
10 have to ask you enough, so, when I ask you the question, if
11 you know anything about it, you know what I'm talking about.

12 But, in this case, the defendant has been indicted by
13 this indictment (indicating), which is a charging document; it
14 is not, in any sense, evidence in the case. And he's pled not
15 guilty to the charges alleged in the indictment, and that's
16 put the burden of proof on The State of South Carolina to
17 prove each and every element of the indictment beyond a
18 reasonable doubt.

19 So, what I'm talking now, these are simply allegations;
20 it is not evidence. But he is charged, or it is alleged, that
21 he did, here in Spartanburg County, on or about October 3, two
22 thousand, four (2004) -- he's charged with the murder of one
23 Robert Lee Tennant, which occurred here in Spartanburg.

24 And it's alleged he -- he shot him with a gun and he died
25 of the result thereof. But, as I said, those are simply

VOIR DIRE

Page 34

1 allegations; that is not evidence in the case, and he has pled
2 not guilty to that.

3 But, does any member of the jury panel know anything at
4 all about the facts in this case, or has anybody formed or
5 expressed any opinion about any issue or fact or matter
6 involved in this case or know anything at all? If so, please,
7 stand?

8 (No Response)

9 THE COURT: Is any member of the jury panel aware of any
10 bias or prejudice towards either the State of South Carolina
11 or the Defendant in this case? If so, please, stand.

12 (No Response)

13 THE COURT: Any member of the jury panel a member of the
14 Spartanburg County grand jury in September of '05 which
15 returned a true bill in this case? If so, please, stand.

16 (No Response)

17 THE COURT: Any member of the jury panel who is a member
18 of, or a contributor to, any group which has, as its primary
19 concern, the pro -- the promotion of law enforcement or
20 victims' rights -- or victims' rights?

21 This would include such organizations as MADD, Mothers
22 Against Drunk Driving; SADD, Students Against Drunk Driving;
23 or CAVC (phonetic), Citizens Against Violent Crime. Is
24 anybody a member of those organizations or similar
25 organizations or contribute to those? If so, please, stand.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

VOIR DIRE

Page 35

1 (Potential juror stands in response)

2 THE COURT: Yes, ma'am, your name?

3 POTENTIAL JUROR: Barbara Mathis. -- Barbara Mathis.

4 THE COURT: Number?

5 POTENTIAL JUROR: Number 174.

6 THE COURT: and you contribute or a member of some of
7 those organizations?

8 POTENTIAL JUROR: I contribute to Mothers Against Drunk
9 Driving.

10 THE COURT: And the fact that you are a contributor to
11 that organization, ma'am, would that, in any way, preclude or
12 keep you from being a fair and impartial juror in the trial of
13 this case?

14 POTENTIAL JUROR: No, sir.

15 THE COURT: Thank you, ma'am. Is any member of the jury
16 panel work with or employed with any of the witnesses or the
17 defendant or the defendant's family in this case? If so,
18 please, stand.

19 (Off-the-Record Comments)

20 (No Response)

21 THE COURT: That's what you get for trying two cases at
22 once. I grabbed the one for tomorrow. Any member of the jury
23 panel, or their immediate families, an employee of any law
24 enforcement agency? If so, please, stand.

25 (Potential jurors stand in response)

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

VOIR DIRE

Page 36

1 THE COURT: Yes, ma'am, in the aqua. Your name?

2 POTENTIAL JUROR: Jennifer Adkins, juror number 2. My
3 husband is a former --

4 (Laughter)

5 POTENTIAL JUROR: I don't even know what color ---

6 THE COURT: Ma'am, do you know the difference between
7 aqua and red? You probably went to Wofford like Mr. Beasley.

8 (Laughter)

9 THE COURT: Let me try it this way: Ma'am in the red
10 shade, your name?

11 POTENTIAL JUROR: Jennifer Adkins (phonetic), juror
12 number 2. My husband is a former detention officer for
13 Spartanburg and Greenville County and his entire family is
14 secret service and FBI.

15 THE COURT: And the fact that your family is and has
16 been involved in law enforcement over the years, would that in
17 any way, ma'am, preclude or keep you from being a fair and
18 impartial juror in the trial of this case?

19 POTENTIAL JUROR: No, sir.

20 THE COURT: Thank you. Now, ma'am, in the aqua?

21 POTENTIAL JUROR: Number 37, Crystal Taylor (phonetic).
22 My husband is a Spartanburg County Deputy.

23 THE COURT: Okay. A Spartanburg County deputy?

24 POTENTIAL JUROR: For the sheriff's department, office.
25 I'm not sure.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

VOIR DIRE

Page 37

1 THE COURT: Have we got the sheriff's department
2 involved in this?

3 MR. COLER: There's two witnesses that now work for
4 them, but did not at the time of this incident.

5 THE COURT: Well, the fact that -- I'm going to excuse
6 you from the trial of the case since your husband works for
7 the department that employs some of the witnesses.

8 POTENTIAL JUROR: Thank you.

9 THE COURT: But stick around, okay?

10 POTENTIAL JUROR: All right.

11 (Whereupon, Juror Number 37 was excused.)

12 THE COURT: Anyone else?

13 (No Response)

14 THE COURT: Any member of the jury panel ever been a
15 victim of a violent crime? If so, please, stand.

16 (Potential jurors stand in response)

17 THE COURT: Yes, ma'am, in the black?

18 POTENTIAL JUROR: It is black.

19 THE COURT: It is.

20 POTENTIAL JUROR: I was not the victim. I'm just the
21 daughter. My father was murdered in 1989.

22 THE COURT: And your name, please?

23 POTENTIAL JUROR: Cherrie Seman, I'm 153.

24 THE COURT: And I'm sorry about that, ma'am. Would the
25 fact that you have been involved in that situation, would

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

VOIR DIRE

Page 38

1 that -

2 (Potential juror starts to exit courtroom.)

3 THE COURT: Where are you going, ma'am?

4 POTENTIAL JUROR: I'm going over to the restroom.

5 (Potential juror exits the courtroom.)

6 THE COURT: Okay. Let's hang tight a second. Just have
7 a seat, and we'll start back up in a minute. Anybody else
8 have an urgent need?

9 (Brief pause while potential juror is out of the
10 courtroom.)

11 (Off-the-Record Comments)

12 THE COURT: Mr. Bailiff, just let her back in, but we're
13 not going to put her on the jury.

14 (Juror who exited did not return to the courtroom.)

15 THE COURT: Would those, please, stand back up. And I
16 think I was asking -- is she out in the hall?

17 THE BAILIFF: No, sir.

18 THE COURT: All right. Those who have been families or
19 victims of violent crimes, stand back up, please.

20 And ma'am, your number again?

21 POTENTIAL JUROR: One fifty-three (153).

22 THE COURT: And your father...?

23 POTENTIAL JUROR: My father.

24 THE COURT: And the fact that your father was a victim
25 of a violent -- of a violent crime, would that, in any way,

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

VOIR DIRE

Page 39

1 preclude or keep you from being a fair and impartial juror in
2 the trial of this case?

3 POTENTIAL JUROR: I don't think so, but I've not been in
4 that position. It certainly was a traumatic experience.

5 THE COURT: I can understand that. And, since this is a
6 murder trial, I'm going to set you aside in the trial of this
7 case. Thank you for your candor, Ms.

8 (Whereupon, Juror Number 153 was excused.)

9 THE COURT: Yes, ma'am, in the pink and black and white.

10 POTENTIAL JUROR: My number is 81, and my name is Nancy
11 Johnson (phonetic). My sister was murdered in '95.

12 THE COURT: And would the fact that your sister was
13 murdered, in 1995, I ask you the same question, ma'am, can you
14 set that aside and be a fair and impartial juror in the trial
15 of this case, simply deciding this case based on the facts
16 that come from the witness stand and not in connection with
17 anything that's happened in the past?

18 POTENTIAL JUROR: Yes, sir.

19 THE COURT: Thank you. You may be seated. Yes, ma'am,
20 in the blue?

21 POTENTIAL JUROR: My -- I'm Angela Brown, number 15.

22 THE COURT: Number what?

23 POTENTIAL JUROR: Fifteen (15). My home was burglarized
24 probably four years ago.

25 THE COURT: And would the fact that you experienced that

VOIR DIRE

Page 40

1 situation with your home, ma'am, can you set that aside and be
2 a fair and impartial juror in the trial of this case, deciding
3 the case solely on the facts as presented?

4 POTENTIAL JUROR: Yes, sir.

5 THE COURT: Thank you, ma'am. You can be seated. Yes,
6 ma'am, in the orange and black?

7 POTENTIAL JUROR: Melissa Jackson, number 157. I was a
8 victim of criminal domestic violence for years, some of which
9 involved a gun.

10 THE COURT: And the fact that you've gone through that
11 experience, ma'am, can you set that aside and be a fair and
12 impartial juror in the trial of this case?

13 POTENTIAL JUROR: I believe so.

14 THE COURT: Well, I need to know definitely.

15 POTENTIAL JUROR: I've never been in that situation,
16 like this lady, I can't say.

17 THE COURT: Would you feel uncomfortable in doing that?

18 POTENTIAL JUROR: Yes, sir.

19 THE COURT: All right. I will set you aside in the
20 trial of this case.

21 (Whereupon, Juror Number 157 was excused.)

22 (Brief Pause)

23 THE COURT: Does any member of the jury panel know of
24 any reason, whether it be a personal belief or any reason
25 whatsoever, why he or she should not serve as a juror in this

VOIR DIRE

Page 41

1 case, with particular emphasis being placed on your ability to
2 be fair and impartial to both The State of South Carolina and
3 to the Defendant and to accept the law as I give it to you,
4 when I charge you the law, and apply that law to the facts as
5 you find them from the witness stand in this case? Can anyone
6 not do that? If so, please, stand.

7 (No Response)

8 THE COURT: Mr. Coler, any additional witnesses [sic]?

9 MR. COLER: No, sir, Your Honor.

10 THE COURT: Mr. Price, you can take exception to six,
11 seven, and eight, and I'll note those, but I think I covered
12 it generally, but I will not charge those.

13 MR. PRICE: All right. Thank you, sir.

14 THE COURT: And if you'll just make that a part of the
15 record at the conclusion, and you'll be protected on those
16 three.

17 MR. PRICE: Thank you.

18 THE COURT: You'll have already been through one jury
19 selection, have you not, with Judge Cole, so, you know what
20 the procedure is?

21 (Potential jurors nod affirmatively.)

22 THE COURT: And what we're going to do now is just
23 called the names, and as your name is called, if you would,
24 please, come forward and we will select a jury. and go through
25 the strikes and come up with our twelve (12) jurors, and I'll

JURY SELECTION

Page 42

1 probably go with two alternates.

2 So, as your name is called, if you would, please, come
3 forward and come and stand right up here by this bailiff and
4 turn around and face the lawyers.

5 MADAM CLERK: Judge, how many strikes do they get?

6 THE COURT: Five and ten.

7 JURY SELECTION

8 MADAM CLERK: Number 75, Bennie Hood (phonetic).

9 (Potential juror steps forward.)

10 MADAM CLERK: What says the State?

11 MR. COLER: Please, present the juror.

12 MADAM CLERK: What says the Defense?

13 MR. BEASLEY: Please, seat the juror.

14 MADAM CLERK: Number 59, Bryon Garrison.

15 (Potential juror steps forward.)

16 MADAM CLERK: What say the State?

17 MR. COLER: Please, present the juror.

18 MADAM CLERK: What say the Defense?

19 MR. BEASLEY: Please, strike Mr. Garrison.

20 THE COURT: You may have a seat.

21 MADAM CLERK: Number 2, Jennifer Adkins.

22 (Potential juror steps forward.)

23 MADAM CLERK: What say the State?

24 MR. COLER: Please, present the juror.

25 MADAM CLERK: What say the Defense?

JURY SELECTION

Page 43

1 MR. BEASLEY: Please, excuse Ms. Adkins in this case.

2 MADAM CLERK: Number 89, Dianne Lanford.

3 (Potential juror steps forward.)

4 MADAM CLERK: What say the State?

5 MR. COLER: Please, present the juror.

6 MADAM CLERK: What say the Defense?

7 MR. BEASLEY: Please, seat this juror.

8 MADAM CLERK: Number 151, Dorothy Hughes (phonetic).

9 (Potential juror steps forward.)

10 MADAM CLERK: What say the State?

11 MR. COLER: Please, excuse Ms. Hughes.

12 MADAM CLERK: Number 164, Norvell Stark.

13 (Potential juror steps forward.)

14 MADAM CLERK: What say the State?

15 MR. COLER: Please, excuse Mr. Stark.

16 THE COURT: Hold on one second.

17 (Brief Pause)

18 THE COURT: Okay.

19 MADAM CLERK: Number 76, Mary Hostel.

20 POTENTIAL JUROR: Hostetler (phonetic).

21 MADAM CLERK: Hostetler.

22 (Potential juror steps forward.)

23 MADAM CLERK: What say the State?

24 MR. COLER: Please, excuse the juror.

25 MADAM CLERK: Number 176, Brett Lancaster.

JURY SELECTION

Page 44

1 (Potential juror steps forward.)
2 MADAM CLERK: What say the State?
3 MR. COLER: Please, excuse the juror.
4 MADAM CLERK: Number 174, Barbara Mathis.
5 (Potential juror steps forward.)
6 MADAM CLERK: What say the State?
7 MR. COLER: Please, present the juror.
8 MADAM CLERK: What say the Defense?
9 MR. BEASLEY: Please, excuse Ms. Mathis in this case.
10 MADAM CLERK: Number 59, Jody Gentry (phonetic).
11 (Potential juror steps forward.)
12 MADAM CLERK: What say the State?
13 MR. COLER: Please, excuse the juror.
14 MADAM CLERK: Number 83, Sandra Johnson.
15 (Potential juror steps forward.)
16 MADAM CLERK: What say the State?
17 MR. COLER: Please, present the juror.
18 MADAM CLERK: What say the Defense?
19 MR. BEASLEY: Please, excuse Ms. Johnson.
20 MADAM CLERK: Number 115, Bobby Rainwater (phonetic).
21 (Potential juror steps forward.)
22 MADAM CLERK: What say the State?
23 MR. COLER: Please, present the juror.
24 MADAM CLERK: What say the Defense?
25 MR. BEASLEY: Please, seat Mr. Rainwater.

JURY SELECTION

Page 45

1 MADAM CLERK: Number 175, Jeffrey Moot (phonetic).
2 POTENTIAL JUROR: Murff.
3 MADAM CLERK: Murff.
4 (Potential juror steps forward.)
5 MADAM CLERK: What say the State?
6 MR. COLER: Please, present the juror.
7 MADAM CLERK: And what say the Defense?
8 MR. BEASLEY: Please, excuse Mr. Murff.
9 MADAM CLERK: Number 73, Mark Holden.
10 MR. BEASLEY: That juror was excused in this case.
11 MADAM CLERK: Oh, I'm sorry. Number 52, Sandra Fine.
12 (Potential juror steps forward.)
13 MADAM CLERK: What say the State?
14 MR. COLER: Please, present the juror.
15 MADAM CLERK: What say the Defense?
16 MR. BEASLEY: Please, seat Ms. Fine.
17 MADAM CLERK: Number 15, Angela Brown.
18 (Potential juror steps forward.)
19 MADAM CLERK: What say the State?
20 MR. COLER: Please, present the juror.
21 MADAM CLERK: And what say the Defense?
22 MR. BEASLEY: Please, seat Ms. Brown in the case.
23 MADAM CLERK: Number 7, Robert Andrews.
24 (Potential juror steps forward.)
25 MADAM CLERK: What say the State?

JURY SELECTION

Page 46

1 MR. COLER: Please, present the juror.
2 MADAM CLERK: And what say the Defense?
3 MR. BEASLEY: Please, excuse the juror.
4 MADAM CLERK: Number 95, Serena Mathis (phonetic).
5 (Potential juror steps forward.)
6 MADAM CLERK: What say the State?
7 MR. COLER: Please, present the juror.
8 MADAM CLERK: What say the Defense?
9 MR. BEASLEY: Please, seat Ms. Mathis.
10 MADAM CLERK: Number 24, Tanya Cagle.
11 (Potential juror steps forward.)
12 MADAM CLERK: What say the State?
13 MR. COLER: Please, present the juror.
14 MADAM CLERK: What say the Defense?
15 MR. BEASLEY: Please, seat Ms. Cagle.
16 MADAM CLERK: Number 94, Wendy Lynn.
17 (Potential juror steps forward.)
18 MADAM CLERK: What say the State?
19 MR. COLER: Please, present the juror.
20 MADAM CLERK: What say the Defense?
21 MR. BEASLEY: Please, seat Ms. Lynn.
22 MADAM CLERK: Number 80, Nancy Johnson.
23 (Potential juror steps forward.)
24 MADAM CLERK: What say the State?
25 MR. COLER: Please, present the juror.

JURY SELECTION

Page 47

1 MADAM CLERK: What say the Defense?

2 MR. BEASLEY: Please, excuse Ms. Johnson from the case.

3 MADAM CLERK: Number 85, Ida Keller.

4 (Potential juror steps forward.)

5 MADAM CLERK: What say the State?

6 MR. COLER: Please, present the juror.

7 MADAM CLERK: And what say the Defense?

8 MR. BEASLEY: Please, seat Ms. Keller.

9 MADAM CLERK: Number one — 54 [sic], Linda Fortner.

10 (Potential juror steps forward.)

11 MADAM CLERK: What say the State?

12 MR. COLER: Please, present the juror.

13 MADAM CLERK: What say the Defense?

14 (Brief Pause)

15 MR. BEASLEY: What was the number?

16 MADAM CLERK: Fifty-four (54).

17 MR. BEASLEY: Fifty-four?

18 (Brief Pause)

19 MR. BEASLEY: Please, excuse Ms. Fortner from the case.

20 MADAM CLERK: Number 167, Jenny Toney.

21 (Potential juror steps forward.)

22 MADAM CLERK: What say the State?

23 MR. COLER: Please, present the juror.

24 MADAM CLERK: What say the Defense?

25 MR. BEASLEY: Please, seat the juror.

JURY SELECTION

Page 48

1 MADAM CLERK: Number 99, Debra Sherbert.

2 (Potential juror steps forward.)

3 MADAM CLERK: What say the State?

4 MR. COLER: Please, present the juror.

5 MADAM CLERK: What say the Defense?

6 MR. BEASLEY: Please, seat Ms. McCarley.

7 MADAM CLERK: It's Sherbert.

8 MR. BEASLEY: Or Sherbert. Sorry.

9 THE COURT: How do you spell it, S-a-g-r-e-n?

10 POTENTIAL JUROR: S-h-e-r-b-e-r-t.

11 THE COURT: Well, I -- well, it's got McCarley on
12 the --

13 POTENTIAL JUROR: Yes, sir. They changed it this
14 morning.

15 THE COURT: Well, we weren't in there, so, that's why.

16 POTENTIAL JUROR: Yeah. I'm sorry.

17 THE COURT: Well, no, no. I will address it and cross
18 this out.

19 MADAM CLERK: Number 142, Aaron Wilkie.

20 (Potential juror steps forward.)

21 MADAM CLERK: What say the State?

22 MR. COLER: Please, present the juror.

23 MADAM CLERK: What say the Defense?

24 MR. BEASLEY: Please, excuse Mr. Wilkie.

25 MADAM CLERK: Number 9, Bobby Arthur.

JURY SELECTION

Page 49

1 (Potential juror steps forward.)
2 MADAM CLERK: What say the State?
3 MR. COLER: Please, present the juror.
4 MADAM CLERK: What say the Defense?
5 MR. BEASLEY: Please, seat the juror.
6 THE COURT: All right. Let me have -- is that twelve?
7 MADAM CLERK: Yes, it is.
8 THE COURT: Two alternates, two and one.
9 MADAM CLERK: Number 44, Melissa Edwards.
10 (Potential juror steps forward.)
11 MADAM CLERK: What say the State?
12 MR. COLER: Please, present the juror.
13 MADAM CLERK: And what say the Defense?
14 MR. BEASLEY: Please, seat the juror.
15 THE COURT: Two and one again.
16 MADAM CLERK: Number 152, Elizabeth Nickle.
17 (Potential juror steps forward.)
18 MADAM CLERK: What say the State?
19 MR. COLER: Please, present the juror.
20 MADAM CLERK: And what say the Defense?
21 MR. BEASLEY: Please, excuse Ms. Nickle.
22 MADAM CLERK: Number 150, Shawn Wright.
23 (Potential juror steps forward.)
24 MADAM CLERK: What say the State?
25 MR. COLER: Please, excuse the juror.

JURY SELECTION

Page 50

1 MADAM CLERK: Number 90, Alston Laye.

2 (Potential juror steps forward.)

3 MADAM CLERK: What say the State?

4 MR. COLER: Please, present the juror.

5 MADAM CLERK: And what say the Defense?

6 MR. BEASLEY: Please, excuse Ms. Laye.

7 MADAM CLERK: Number 147, Brian Wilson.

8 (Potential juror steps forward.)

9 MADAM CLERK: What say the State?

10 MR. COLER: Please, present the juror.

11 MADAM CLERK: And what say the Defense?

12 MR. BEASLEY: Please, seat the juror.

13 THE COURT: All right, Gentlemen, may I see you at the
14 bench, please?

15 (Whereupon, a bench conference was had with Mr. Coler,
16 Mr. Beasley, and Mr. Price.)

17 (Jury Selection concluded at 3:22 p.m.)

18 THE COURT: Mr. Bailiff, why don't you show this jury
19 panel to the jury room. Everybody else, please, remain
20 seated.

21 (The jury exited the courtroom at 3:23 p.m.)

22 THE COURT: Okay. Ladies and gentlemen, those of you
23 who were not drawn, I'm going to excuse you at the present
24 time. I'm going to ask that you call back after 6:00 tonight
25 on the answering machine and for further -- further

MOTIONS & MATTERS

Page 51

1 instructions. I will talk to Judge Cole and we'll decide
2 where we are with these cases. I don't want you having to
3 come up here and just sit and waste your time.

4 I suspect it's going to be probably Wednesday morning,
5 but don't -- you know, as soon as I say that, something will
6 come up and it won't be. So, call back after 6:00 this
7 afternoon for instructions. I thank you. Everyone else,
8 please, remain seated. You all are free to go at this time.

9 (Off-the-Record Comments)

10 (Jury panel exited at 3:24 p.m.)

11 THE COURT: All right. Let the record reflect that, at
12 the conclusion of the drawing of the jury -- Gentlemen, you
13 all want to sit, please.

14 (All attorneys sat as requested.)

15 THE COURT: I have inquired of both the State and
16 Defense counsel if they had any motions concerning the jury,
17 i.e., Batson or others, and I was advised, by both the State
18 and Defense counsel, that they did not. Is that correct, Mr.
19 Coler?

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

21 THE COURT: Mr. Price?

22 MR. PRICE: Yes, sir.

23 THE COURT: All right. If you please -- do we have any
24 court exhibits so far?

25 COURT REPORTER: No.

MOTIONS & MATTERS

Page 52

1 THE COURT: All right, I'll mark Court Exhibit 1 Request
2 for Voir Dire, so, Mr. Price and Mr. Beasley can be protected
3 on questions 6, 7, and 8.

4 (Whereupon, Court's Exhibit Number 1 was marked for
5 identification and admitted into evidence.)

6 THE COURT: Okay. Do you all need a few minutes to get
7 organized?

8 MR. PRICE: No, we're ready to go.

9 MR. COLER: We're ready, as fast as we can move some of
10 our family and friends to the next row.

11 THE COURT: All right. We'll take a five-minute break
12 and we'll start no later than 3:30.

13 (Whereupon, a recess was taken at 3:25 p.m. till 3:30
14 p.m.)

15 THE COURT: Anything for the record on behalf of the
16 State before we start?

17 MR. COLER: No, sir, Your Honor.

18 THE COURT: Mr. Price?

19 MR. PRICE: Yes, sir. Prior to starting, Mr. Coler and
20 I agreed to mutual sequestration of the fact witnesses.

21 THE COURT: All right. You gentlemen take care of it.

22 MR. COLER: Yes, sir.

23 (Off-the-Record Comments)

24 THE COURT: Well, Gentlemen, don't let them get far
25 because I don't know when we'll need them.

MOTIONS & MATTERS

Page 53

1 MR. COLER: Yes, sir.

2 (Off-the-Record Discussion)

3 MR. COLER: We've got the officers here that worked the
4 scene. I mean, I don't think --

5 MR. PRICE: I -- I don't have a problem with the police
6 officers. They're pretty -- they're pretty well nailed down.

7 There's one other matter, Your Honor. I anticipate Mr.
8 Guthro being the first witness, from my conversation with
9 Solicitor Coler, and I just think that the tape and the
10 statement will be offered into evidence again.

11 As far as the tape recording is concerned, there is a
12 portion of the tape, in which my client initially denies being
13 part of the shooting, and he later recants, and gives a
14 statement. We feel that that initial part, in which he denies
15 being a part of it, should not be played for the jury; that it
16 is unduly prejudicial and that the prejudice outweighs the
17 probative value. So, we would ask that that part be stricken.

18 MR. COLER: Judge, it's my understanding that that --
19 that initial denial was after the Miranda warnings, and --

20 THE COURT: Well, he's --he's not objecting on Miranda
21 or Jackson v. Denno or voluntariness, he's objecting under
22 403.

23 MR. COLER: We would simply offer it as a complete
24 rendition of his interrogation. It goes to his state of mind,
25 his willingness to confess. Just because he didn't do it

MOTIONS & MATTERS

Page 54

1 immediately, I think the jury is entitled to hear what he said
2 immediately after being properly Mirandized and then, after
3 interrogation techniques, what he said after that. And I
4 think it goes to his -- his state of mind, and it also goes to
5 the entire credibility of his statement.

6 And striking it, Your Honor, the State contends that
7 there are portions of his statement that are credible and
8 there are portions that are not credible. And we're going to
9 argue those at the -- at the appropriate time in the trial.
10 And that's just one of the -- one more factor that the jury
11 can consider as far as credibility.

12 THE COURT: All right. Mr. Price, I'm going to
13 overruled your objection on that. And you're protected on the
14 record. Anything else, Gentlemen?

15 MR. PRICE: Nothing from Mr. Gist, Your Honor.

16 THE COURT: All right. Bring the jury panel in.

17 (The jury entered the courtroom at 3:35 p.m.)

18 INITIAL INSTRUCTIONS

19 THE COURT: All right. Thank you. Madam Clerk, would
20 you, please, have the jury stand and swear? I have to swear
21 you all for the particular case. So, if you'll stand and,
22 please, raise your right hand.

23 (Whereupon, the jury was impaneled at 3:36 p.m.)

24 THE COURT: Juror Number 15, Ms. Brown? Where is Ms.
25 Brown?

MOTIONS & MATTERS

Page 55

1 (Ms. Brown raises her hand.)

2 THE COURT: Would you, please, serve as my foreperson?
3 And I would ask, if you would, switch with this gentlemen on
4 the end here (indicating).

5 (Jurors exchange seats as requested.)

6 THE COURT: Ms. Brown, the duties of the foreperson is
7 very easy. You act as the spokesman for the jury and, at the
8 end, you'll also be in charge of deliberations, but I'll
9 explain to you all that. It's not that difficult a task, but
10 we need someone to sort of head up the deliberations and also,
11 if you all have any concerns.

12 It's 3:30 now. What we'll probably do, we'll go for an
13 hour or so. Well, let me just ask you now, and maybe just go
14 straight through. Does anybody have a problem with around
15 5:00 or 5:15 or 5:30? Is that too late for anybody?

16 (Jurors shake heads negatively.)

17 THE COURT: I'm going to probably stop around 5:00-ish
18 or a little after. And, obviously, we're not going to be
19 anywhere close to be finishing this afternoon. And that gives
20 you a chance to get home to your families.

21 And, tomorrow morning, is 9:30 too early, or would you
22 rather start at 10:00? Is 9:30 an imposition for anyone?

23 (Jurors shake heads negatively.)

24 THE COURT: Has anybody got any personal matters they
25 need to attend to? The quicker we get started, obviously, the

MOTIONS & MATTERS

Page 56

1 quicker we can move along at a deliberate pace. Let's do
2 that, let's start at 9:30 in the morning -- well, let's see,
3 let's start at quarter to 10:00. But you all be here about
4 9:30 and I'll have coffee and doughnuts and some other
5 refreshments down in the jury room for you, if you want them.
6 Some of you may not want them, and some of you may want more.
7 But, anyway, we'll have plenty to eat, and you all do that.

8 Now, also, Mr. Edwards? Which one is Mr. Edwards?

9 MADAM CLERK: There's a Ms. Edwards.

10 THE COURT: Ms. Edwards. I'm sorry. Ms. Edwards? Ms.
11 Edwards, you're my first alternate?

12 MS. EDWARDS: Yes, sir.

13 THE COURT: And Mr. Wilson. Ms. Edwards, if you and Mr.
14 Wilson would always take those two seats right there at the
15 end, since you're my alternates, and the rest of you can sit
16 wherever you would like except for Ms. Brown. If you can, sit
17 there for me, please. It's pretty simple, isn't it?

18 Now, let me just do this. Let me give you a few remarks,
19 opening remarks, and sort of explain to you what procedure
20 we'll follow and what's going on.

21 First of all, as I told you, when we drew the jury, in
22 this case, the Defendant has been charged -- has been charged
23 in this indictment (indicating) -- with the crime of murder.
24 And I will explain to you what the elements of murder are when
25 I charge or instruct you on the law at the conclusion of the

MOTIONS & MATTERS

Page 57

1 case.

2 Now, as I told you earlier, the indictment is simply the
3 charge by which the case is brought into court, and it is not,
4 in any sense, evidence of any of the allegations that it
5 contains.

6 The defendant in this case has pled not guilty to the
7 indictment, and that puts the burden, on the State of South
8 Carolina, to prove each and every element of the indictment,
9 beyond a reasonable doubt, to you, the jury.

10 And it will be your duty, ladies and gentlemen, to
11 determine whether or not the State has met that burden at the
12 conclusion of the case.

13 Now, my function in the case, I'm the judge of the law,
14 not me, but my position. So, I have a couple of duties. I
15 charge you the law. I charge you the law at the conclusion of
16 the case, and you have just taken an oath that you say you
17 will accept the law as I give it to you.

18 So, if you have some idea that the law is something
19 different than what I tell it is, or you have some
20 preconceived notion about what the law ought to be, and it
21 doesn't agree with what I tell you, you have to set that aside
22 and accept the law as I charge it to you at the conclusion of
23 the case.

24 That's my main responsibility. The other responsibility
25 is I preside over the admissibility of evidence. And the

MOTIONS & MATTERS

Page 58

1 evidence will come from that witness stand, from live
2 testimony, and/or through exhibits which may be relevant to
3 the case.

4 And you'll find that about ninety-nine percent (99%) of
5 the testimony will be admitted into evidence. These are good
6 lawyers and they play within the rules. But, every now and
7 then, I may have to rule on an objection and rule to you the
8 line or particular piece of testimony is not permitted or not
9 admissible, and I'll tell you that and you will strike that
10 from your consideration.

11 But, I rule on the admissibility of evidence. And, as I
12 said, most of it will be admitted. That's where your roles
13 come in. The twelve of you collectively are the fact finders.
14 You are the judges of the facts in the case.

15 So, once I allow the evidence to be admitted, that means
16 it is in the record. Then, it's up to you to decide whether
17 or not you believe it, who you believe or what you believe.

18 So, you find the facts; that's your duty. I have nothing
19 to do with the facts. It's up to you to decide what you
20 believe once it has been admitted.

21 I charge you what the law is, I tell you what the law is,
22 and I rule on the admissibility. That's my job. And your job
23 is to determine, from those -- from that testimony and
24 evidence that's introduced, what you believe. And you just
25 determine the credibility and the believability of the

MOTIONS & MATTERS

Page 59

1 witnesses.

2 Now, a few other sort of general rules, is each time we
3 break, I will tell you, please, do not start your
4 deliberations. It's not fair for anybody to start trying to
5 decide anything in this case until all of the evidence has
6 been presented to you, and I've had an opportunity to charge
7 and instruct you on the law.

8 So, when you go back to your jury room, you can talk
9 about anything you want to, introduce yourselves to each
10 other, your jobs, whatever, families, anything, except for the
11 case. And I'll ask that you don't even discuss anything about
12 the case until I tell you to do so.

13 And each time we take a break, I'll tell you not to start
14 any deliberations. Madam Forelady, that is one of your
15 duties. In the event somebody forgets that instruction, or
16 that charge, you remind them that we are not supposed to talk
17 about the case until everything is in and the judge tells us
18 to do so.

19 Obviously, we will not finish today. Tomorrow morning
20 there may be some reports of this case in the newspaper, and
21 it may be on t.v. tonight; I don't know. I mean, it's not
22 going to generate any national publicity, but it may generate
23 some -- some local publicity. I ask that you, please, do not
24 read anything about it in the newspaper and don't look at
25 anything on t.v. about it.

MOTIONS & MATTERS

Page 60

1 So, what you have sworn to do, and what I want you to do,
2 is decide this case based solely on what you hear in this
3 courtroom and not be influenced by anything outside. So,
4 don't listen to any newscast or read anything about it in the
5 newspaper.

6 And, please, don't discuss it with anyone; family,
7 friends, or whatever. Just tell them that you're on the jury
8 and until it's over, you're not allowed to discuss it. And
9 that way, the State will be given a fair trial, as well as the
10 Defendant.

11 In just a few moments, the State, the solicitor, will
12 make an opening statement. Bear in mind that an opening
13 statement is not evidence. It's simply what the solicitor
14 contends he will prove in the case.

15 And that will be followed by an opening statement by the
16 Defense. That too is not evidence in the case. That is
17 simply their road map to what they contend will be.

18 The only evidence that you can consider will be what
19 comes from the witness stand after I have admitted it into the
20 evidence. And then, it is up to you to determine whether or
21 not you believe it, who you believe, and what credibility you
22 give to each of the witnesses.

23 In deciding whether or not you believe certain testimony,
24 and who you believe, you have the right to consider the
25 interest of any witness, the bias of any witness, the

MOTIONS & MATTERS

Page 61

1 prejudice of any witness, and the opportunity for the witness
2 to have seen the matters and things about which the witness
3 may testify about.

4 You have also -- have also the right to consider how the
5 witness acts on the witness stand while he or she testifies.
6 You have a right to consider anything that is in the record
7 that will help you evaluate testimony and the believability of
8 the witness.

9 So, I ask that you pay close attention to all the
10 testimony, to the lawyers, and to me, so, at the end you'll be
11 in a position to determine what the true facts are in the case
12 and to apply those facts and apply the law as I give it to you
13 to those facts, and then, be in a position to render a true
14 and just verdict. And if you do that, obviously, nobody will
15 have any complaints about your serving as jurors in this case.

16 Any objection to my opening on behalf of the State?

17 MR. COLER: No, sir, Your Honor.

18 THE COURT: Mr. Price?

19 MR. PRICE: No, sir.

20 THE COURT: Okay. At this time, Madam Forelady, ladies
21 and gentlemen, Mr. Coler will make an opening statement on
22 behalf of the State. And he'll be followed by the Defendant.
23 If you would, give them your attention, please.

24 MR. COLER: Thank you, Your Honor. May it please the
25 Court.

OPENING STATEMENTS - MR. COLER

Page 62

1 THE COURT: Yes, sir.

2 (Mr. Coler's opening statement began at 3:45 p.m.)

3 THE COURT: There's an old saying that says, "No good
4 deed goes unpunished." It's kind of a tongue in cheek saying,
5 "No good deed goes unpunished." Robert Tennant, for the good
6 deed he did on October 2nd, two thousand and four (2004), his
7 punishment was murder.

8 You'll hear in this trial that his good deed was to offer
9 to and give a ride, in his Ford Explorer, to five young men.
10 That good deed, and that offer, to give these guys a ride,
11 started a chain of events that led to his murder.

12 What happened back on October 2nd of two thousand, four
13 (2004), during the evening hours, Robert Tennant, who was a
14 34-year old trucker from Greenwood, working up here in
15 Spartanburg, went over to Hub City Court Apartments. It's a
16 housing complex here in Spartanburg in the city.

17 And he was hanging out and people hang out in Hub City,
18 sit in their vehicles and visit and socialize and talk to
19 people. But sometime that evening, at some point during that
20 evening, he met up with three young women.

21 And he knew these women because he had dated an older
22 cousin of theirs. And they were Tameka Hines, Maria Hines,
23 and Rhonda Foster. And they were teenagers; they were about
24 15 years old.

25 And he offered to give them a ride and let them ride

OPENING STATEMENTS - MR. COLER

Page 63

1 around with him in his blue Ford Explorer. And they went
2 riding around and they went to -- to the mini mart to get some
3 chicken and to get some beer and ride around Spartanburg.

4 As they're riding around, one of the young women calls a
5 cousin of hers. And this cousin says, "Hey, we're stuck over
6 at Pierpont Avenue (phonetic), and we don't have a ride back
7 to Hub City. Why don't you ask the guy, that's giving you all
8 a ride, if he'd come over and pick us up and he can give us a
9 lift back to Hub City Court Apartments."

10 And Robert Tennant was that kind of guy. He -- he would
11 do things. He would help people out. He would do that. So,
12 when these girls asked him to come -- to drive over at
13 Pierpont to pick up their cousin and -- and these other young
14 men and friends -- he agreed to do it. To him it was no big
15 deal.

16 He got over to Pierpont and he ended up picking up five
17 young men. So, in the -- the Ford Explorer were the five men
18 he picked up from Pierpont Avenue and the three women that
19 were riding with him, Tameka, Maria, and Rhonda, and -- and
20 himself driving. And they were cramped into that Ford
21 Explorer, as you can imagine, there were people in the front
22 seat, the middle seat, and all the way to the -- the cargo
23 area.

24 Well, at some point during the ride, back to Hub City
25 Court Apartments, one of the young men, a young guy, kind of

OPENING STATEMENTS - MR. COLER

Page 64

1 brash, kind of bold, starts running his mouth. And he starts
2 getting into it with Robert. And Robert is probably thinking,
3 "I've given these guys a ride, and the last thing I need is
4 them to be bad mouthing me."

5 And that verbal argument even escalated even to the point
6 where Robert pulled his truck off to the side of the road and
7 got out and said, "You got a problem, if you got something to
8 say, let's -- let's just settle it."

9 Well, everybody in the Ford Explorer was saying, "Settle
10 down, cool down, chill out, relax." And they did do that;
11 they decided to do that because it made more sense. And
12 Robert got back in his truck, and Jon Petty, the young
13 nineteen year old that he got into an argument with, got back
14 in to the back of the truck, and Robert continued to agree to
15 give them a ride over to Hub City.

16 They get over to Hub City, and everybody gets out of the
17 truck and kind of goes their own way. And the young men go
18 visit their friends, the women that were in the truck with
19 Robert, they go and they're socializing and this and that.

20 And it's evening at Hub City Apartments. This is October
21 and the weather is sort of warm, so, people are outside
22 socializing.

23 Well, apparently, the young man that got into an argument
24 with Robert, Jon Petty, wasn't going to let it go or wasn't
25 willing to let -- let go of this confrontation he had with

OPENING STATEMENTS - MR. COLER

Page 65

1 Robert.

2 So, at some point, apparently that evening, he goes over
3 and tells his friend, Terrence Gist, the Defendant, about this
4 problem, about this trouble that he's having with the driver.

5 And it appears he's exaggerated it, saying that Robert
6 was going to kill him, was going to kidnap him, was going to
7 harm him. And he's pretty riled up about it, as you can
8 imagine, and it appears he gets Terrence Gist pretty riled up
9 about it.

10 Well, Robert is sitting there eating some chicken he got
11 from the mini mart and drinking some beer that -- that he
12 picked up at the mini mart, on the tailgate of his truck. And
13 people in the neighborhood can see that trouble is kind of
14 brewing; these young guys are getting riled up and there's
15 trouble brewing.

16 You'll hear testimony that one man comes up to Robert and
17 says, "Hey, maybe it's time for you go on, just leave, it's
18 not worth it." So, Robert goes to get in his vehicle, and
19 he's sitting in his Ford Explorer, sitting down in the car,
20 with the door shut and the window open.

21 And he's approached by Terrence Gist. He's also
22 approached by some other individuals, some of the other young
23 men, and you'll hear testimony about that. Well, what
24 Terrence Gist does is, is takes a swing, or a poke, or a smack
25 at Robert.

OPENING STATEMENTS - MR. COLER

Page 66

1 And one of the other young men's you'll hear testimony,
2 also takes a smack out or a poke at him. And he's trying to
3 get out. He's in his vehicle. The ignition is on, and he's
4 trying to leave.

5 But he's getting assaulted, and he's getting hit, so, he
6 tries to get out of his Explorer, as anybody might do, to
7 defend himself and stop this assault.

8 As he's getting out, Terrence Gist, the Defendant in this
9 case, has an answer, has a response for him. Terrence is
10 carrying a loaded 357-caliber magnum Smith & Wesson pistol.
11 He's sixteen years, eight months old, and he's carrying a 357
12 Magnum on his side.

13 He takes that gun out and produces it and he fires at
14 Robert Lee Tennant. One of the bullets, from Terrence Gist's
15 gun, the Defendant's gun, goes into the chest of Robert Lee
16 Tennant.

17 And you'll hear the doctor testify it went slightly
18 downward angle into the chest and goes in and hits vital
19 organs and kills Robert Lee Tennant. And Terrence Gist flees
20 the scene. He runs. He takes off. He's nowhere to be found.

21 And you'll hear testimony, during the trial, about
22 Terrence Gist was apprehended the next day and gave a
23 statement to the police, a confession.

24 I submit to you, ladies and gentlemen, he did exactly
25 what most people do when they're caught. He admitted to what

OPENING STATEMENTS - MR. COLER

Page 67

1 you did when the police had him. And he admitted -- and
2 you'll see -- I believe you'll see his video taped confession,
3 and he will admit, and does admit it on that tape, that he
4 shot Robert Lee Tennant in the chest.

5 And that's important because Robert Lee Tennant was hit
6 by one, and only one, bullet. And that bullet was fatal to
7 Robert Lee Tennant.

8 You'll also -- Mr. Gist, the Defendant in this case,
9 you'll see the video tape, he goes on to try to explain and
10 justify or excuse shooting Robert Lee Tennant and essentially
11 claims self defense. He says, "I had to shoot him. I had no
12 other choice but to shoot him. He was assaulting me. He had
13 a gun; I had no other choice."

14 During this trial, you'll see evidence that shows to you,
15 the jury, that that claim of self defense simply is not
16 feasible.

17 You, I believe, will hear witnesses who tell -- who will
18 tell you Robert Lee Tennant wasn't doing anything. He was
19 sitting in his truck when he was attacked by this young man.
20 Robert Lee Tennant didn't have a gun and wasn't threatening
21 anybody with a gun. The only -- the person with the gun was
22 Terrence Lee Gist [sic], who shot Robert.

23 So, I would ask you to pay attention closely to each and
24 every witness that comes up here and tells you what they have
25 to tell you about the case.

OPENING STATEMENTS - MR. COLER

Page 68

1 You're also going to hear evidence that there was another
2 gun fired at Mr. Tennant's Explorer. And there'll be a -- an
3 officer from the State Law Enforcement Division who will come
4 up and tell you that those bullets or slugs were most
5 consistent with a 32-caliber pistol, not a 357 Smith & Wesson
6 Magnum hand gun.

7 And he'll tell you that the bullet in Robert Tennant's
8 chest did not come from the same gun as the other shots that
9 were fired at and hit Robert Lee Tennant's vehicle.

10 So, yes, there was another shooter. But, in this trial,
11 the man on trial for murdering Robert Lee Tennant is Terrence
12 Gist, and the evidence will show that he fired the one and
13 only 357 Smith & Wesson that -- that hit Robert in the chest
14 and killed him.

15 And for that act, for shooting Mr. Tennant, the
16 Defendant, Mr. Gist, is charged with murder. And as Judge
17 Early told you, at the end of the trial, he's going to tell
18 you what murder is and he'll instruct you what the elements
19 are.

20 He will most likely tell you that murder is the unlawful
21 killing of another person with malice aforethought. And the
22 State will present -- present evidence that this was an
23 unlawful, unjustified, unnecessary killing.

24 And we'll present evidence that this was a person, a
25 human being, that was killed. And each and every one of these

OPENING STATEMENTS - MR. COLER

Page 69

1 people in this gallery (indicating) are family and friends of
2 Robert Lee Tennant will tell you, if they could, that he was a
3 person, a human being.

4 And you're going to hear evidence that it was done, the
5 shooting was done, was malice aforethought. And you might ask
6 yourself, "Well, what is malice? And what is malice
7 aforethought mean?"

8 Judge Early will tell you, at the end of the trial, in
9 great detail, what malice is. But I tell you now it simply
10 boils down to an evil heart, a heart that's fatally bent on
11 doing mischief.

12 And having that malice aforethought, sometime prior to
13 the shooting, simply means the malice existed in your heart at
14 any time prior to striking the fatal blow. It doesn't have to
15 be planned a week, a day, an hour, a minute, a second before
16 it. It could be formed even at the split second that the gun
17 was being fired; you can have that prerequisite malice in your
18 heart and be charged with murder.

19 So, at this point, all I'd really like to do is thank
20 you, thank each and every one of you for your -- for your
21 attention to me and the attention you'll pay the witnesses and
22 the attention you'll pay to Mr. Price and Mr. Beasley and tell
23 you we look forward to presenting our case and anxious to see
24 -- anxiously wait for a verdict. Thank you.

25 (Mr. Coler's opening statement ended at 3:54 p.m.)

OPENING STATEMENTS - MR. PRICE

Page 70

1 THE COURT: Mr. Price?

2 MR. PRICE: May it please the Court, Your Honor, Mr.
3 Coler?

4 THE COURT: Yes, sir.

5 (Mr. Price's opening statement began at 3:55 p.m.)

6 MR. PRICE: Ladies and gentlemen, how are you doing this
7 afternoon? I've been practicing law, criminal law, for almost
8 thirty (30) years now. And the wonderful thing about being a
9 defense attorney now is that the old days of trial by ambush,
10 meaning that the State gets to hold back its evidence and
11 then, spring it on you at the last minute, they're gone now.

12 We have rules in which, if I file a motion and the State,
13 being Mr. Coler, files a reciprocal motion, they have to show
14 us what they have, and we have to show them what we have,
15 within certain parameters. But the bottom line is, it makes
16 for a fair trial, it makes for a speedier trial, and it makes
17 for a lot less abuse.

18 Now, in this particular case, I want to commend Mr. Coler
19 for the degree of discovery that he provided for us. And we
20 know, basically, what's coming. And both sides know that this
21 incident that we're in court for right now happened on October
22 2nd, of two thousand, four (2004). And, if I'm not mistaken,
23 that was a Saturday night.

24 And we know that, at that time, the deceased in this
25 case, Mr. Robert Tennant, was thirty-four (34) years old. We

OPENING STATEMENTS - MR. PRICE

Page 71

1 know that the person accused of his killing, Mr. Terrence
2 Gist, my client, was sixteen (16) years old.

3 We know that this happened in a place called Hub City.
4 For those of you who don't know anything about Hub City, Hub
5 City is a housing project. It is a housing project for people
6 who don't have enough money to subsidize housing.

7 It is a violent place. There are s lot of shootings in
8 Hub City. There are s lot of threats in Hub City. There are
9 fights in Hub City all the time. And all of that will come
10 out during the course of this trial, ladies and gentlemen.

11 Now, the solicitor referred to Mr. Robert Tennant. We
12 did not know Mr. Tennant prior to October 2nd, and we don't
13 know anything about his life prior to that. And I'm sure he
14 was a good man. But we do know what Mr. Tennant did earlier
15 in the evening of October the 2nd.

16 As I told you; Mr. Tennant was thirty-four (34) years
17 old. And, for some reason, he picks up three young women,
18 ages fifteen and sixteen. I would not call them women, I
19 would call them girls.

20 And he takes them around and he buys a 12-pack of Bud
21 Light. And these young girls call some of their friends, who
22 are at another location, and Mr. Tennant goes and picks them
23 up.

24 And these young friends are fifteen and sixteen and
25 seventeen years old. And they're all crowded in the car and

OPENING STATEMENTS - MR. PRICE

Page 72

1 driving around and drinking beer.

2 And there are words. There are words between some of the
3 passengers with Mr. Tennant. And what does Mr. Tennant do?
4 Ladies and gentlemen, the evidence will show you that he pulls
5 over, on a dead end road, in a driveway, and gets out of the
6 car and pulls up the tailgate, and threatens to beat up one of
7 these kids.

8 And, during the course of this thing, Mr. Tennant also
9 threatens to kill some of these people. He says, "I could
10 kill you and nobody would ever know about it." And Mr.
11 Tennant also talks to someone about selling a gun to him. And
12 why this gentleman does this, with teenagers girls and
13 drinking beer, I don't know.

14 And I don't know exactly why Mr. Tennant decided to take
15 this whole crowd, fueled by alcohol, back to Hub City on a
16 Saturday night and hang around there. But, that's what he
17 did.

18 And then, trouble started pretty soon, right quick. And
19 there were words. And there were threats, and there was
20 confusion. And Mr. Tennant did get hit by several people.

21 And, as a result of all of this stuff, Mr. Tennant was
22 shot, ladies and gentlemen, but Mr. Tennant was not shot until
23 he got in his car and was reaching for something.

24 And, ladies and gentlemen, in Hub City, on October 2nd of
25 two thousand, four (2004), when you got into a car and reached

OPENING STATEMENTS - MR. PRICE

Page 73

1 for something, you were reaching for a gun. You were reaching
2 for a gun; that's what it meant in Hub City on October the 2nd,
3 two thousand, four (2004).

4 Now, there was a fuselage of gunshots; not just one or
5 two or three or four. And Mr. Tennant wasn't the only one
6 that got shot. One of the State's witnesses here, Jonathan
7 Petty, also got shot.

8 And you will hear the testimony about the numbers of
9 bullets and the numbers of bullet holes and all that stuff.
10 And I'm not going to go into all of that.

11 But all of that happened after they returned to Hub City,
12 on a Saturday night, after drinking and Mr. Tennant reached in
13 his car.

14 Now, I'm going to be as honest and as straight up with
15 you as I know how to be. And you're going to have a lot of
16 evidence in front of you that will show you that Terrence Gist
17 had a gun and shot it that night.

18 And you will have evidence that will probably make you
19 concluded that Terrence Gist could have or did fire -- fire
20 the fatal shot. I'm not trying to tell you anything different
21 to you.

22 But simply because Terrence Gist, if you conclude in your
23 mind, that he did fire the fatal shot, that does not make it
24 murder because it can be some evidence of some other things,
25 and that's going to be your tough decision that you're going

OPENING STATEMENTS - MR. PRICE

Page 74

1 to have to make.

2 And I'm asking you, as an attorney, just to keep your
3 mind open and don't make up your mind early because you've got
4 a lot of conflicting evidence to hear and you've got a lot of
5 different things to interpret.

6 Mr. Coler, my friend, mentioned murder. I'm not going to
7 go into the elements of that again, but it's commonly called
8 the felonious killing of another with -- with malice, with an
9 evil heart. But there is another form of unlawful killing
10 that the judge, I think, based on the evidence that's going to
11 come out, will have you consider, and that is voluntary
12 manslaughter, or manslaughter.

13 Manslaughter is the unlawful killing of a human being but
14 it's without malice, without the heat -- without the evil
15 heart. It's commonly called a felonious killing, of another
16 human being, in sudden heat of passion; losing control, sudden
17 heat of passion, based upon sufficient legal provocation,
18 meaning there was enough provocation to get the person
19 inflamed, to get them excited to do whatever.

20 And, ladies and gentlemen, there is also what our law
21 calls one of the strongest tenants of our legal system, which
22 is the right of self defense. And every human being, be it
23 here in Spartanburg or Greenville, be it on Magnolia Street or
24 being in Hub City, has got the right to defend himself or
25 herself against the use of deadly force or against an assault,

OPENING STATEMENTS - MR. PRICE

Page 75

1 whatever you determine is the reason for the belief that
2 somebody can go -- it's what we call a reasonable man, and
3 that's up to you -- but nobody has to sit there and be shot.
4 And nobody has got to sit there and be assaulted.

5 One has to act reasonably. The law of self preservation
6 is the strongest law in nature, and the strongest law in our
7 courts.

8 In connection with the law of self defense, there is what
9 we call the law of appearances, which simply means, if a
10 reasonable person is sitting there, and someone, under
11 reasonable circumstances reaches for a gun, that you think has
12 a gun, and you have a reason to believe that he has a gun, you
13 do not have to wait for that person to get the drop on you.
14 You can act on appearances.

15 And that's what Terrence Gist did that evening. Ladies
16 and gentlemen, we ask you, keep an open mind. And look at
17 this thing for what it is, and I think that, at the very, very
18 worst, your verdict should be manslaughter, but you should
19 also seriously consider self defense. Thank you.

20 (Mr. Price's opening statement concluded at 4:00 p.m.)

21 THE COURT: Mr. Coler, let me see you up here, please.

22 MR. COLER: Yes, sir.

23 THE COURT: Mr. Beasley, Mr. Price?

24 (Whereupon, a bench conference was had with all counsel.)

25 THE COURT: Call your first witness.

MR. GEORGE BROWN - DIRECT by MR. COLER

Page 76

1 MR. COLER: The State calls George Brown.

2 (Mr. Brown is summoned.)

3 (Whereupon,

4 GEORGE BROWN

5 having been duly sworn, testified as follows:)

6 DIRECT EXAMINATION by MR. COLER:

4:08 P.M.

7 Q. Please, state your full name for the record, officer?

8 A. George Collins Brown.

9 Q. And tell us where you work.

10 A. The Spartanburg Public Safety Department.

11 Q. How long have you been with the public safety department?

12 A. A little over seventeen (17) years.

13 Q. And what is your present assignment or position in the
14 police department?

15 A. I work third shift patrol.

16 Q. Is one of the general duties of a patrolman on third
17 shift to respond to calls like this shooting at Hub City?

18 A. We're the initial responders, yes, sir.

19 Q. And what is your primary function or duties as an initial
20 responder, as a patrolman, when you get a call from -- such as
21 this, as a shooting at the Hub City Court Apartments?

22 A. This type of call, the -- the first responsibility is to
23 secure the scene, you know, if there are any armed suspects,
24 that sort of thing, immediately render assistance to any
25 victims, and then, secure the area until EMS and crime scene

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MR. GEORGE BROWN - DIRECT by MR. COLER

Page 77

1 technicians arrive.

2 Q. Okay. Do you, as a responding officer, concern yourself
3 with the collection of evidence, the preservation of evidence?

4 A. Normally, no, unless it's an emergency -- you know, there
5 are emergent circumstances, evidence that could be destroyed
6 or lost.

7 Q. All right. Do you have a copy of your incident report
8 with you?

9 A. No, I do not.

10 (Brief pause while Mr. Coler retrieves document.)

11 Q. I'm going to hand you a report and ask -- and I'll ask
12 you, is that a copy of your incident report?

13 (Document handed to witness.)

14 (Brief pause while witness reviews document.)

15 A. It is.

16 Q. All right. Were you, in fact, dispatched to the scene of
17 this crime?

18 A. I was.

19 Q. All right. What -- what time did you arrive on the
20 scene?

21 A. At three minutes after midnight.

22 Q. Okay. And, when you're dispatched to a -- an incident
23 like this, what is your response time or what is -- what is
24 your attempt to get there as quickly as you can?

25 A. It would be an emergency response, lights and sirens. I

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 documented in my report that I was responding from Daniel
2 Morgan Avenue and North Church Street, is where I was when I
3 received the call. Less than -- probably a three to four
4 minute response time at the most.

5 Q. And are you going there as quickly as you can?

6 A. Yes.

7 Q. All right. Specifically described where you were
8 dispatched to, just kind of orient us, describe that for the
9 jury if you can.

10 A. Initially, I was -- I was dispatched to apartment number
11 65, at Hub City Courts, which is -- I'm familiar with Hub City
12 due to I worked complex for a few years. There's one drive, a
13 one-way drive, through the complex. And a little over halfway
14 down there is a dead end little section, part of the complex,
15 and that's where apartment 65 is, and that's where I responded
16 to.

17 Q. All right. Let me get you to back up a little bit. Just
18 orient us where that housing complex is ---

19 A. It's ---

20 Q. -- in Spartanburg.

21 A. It's on Vanderbilt -- it's 700 Vanderbilt is the actual
22 street address for the apartment complex. It's on -- the
23 intersection of Vanderbilt, Wofford Street, and Baltimore
24 Street (phonetic).

25 Q. Okay. All right. And, for the record, is that here in

MR. GEORGE BROWN - DIRECT by MR. COLER

Page 79

1 Spartanburg County?

2 A. It is, in Spartanburg City.

3 Q. All right. When you arrived, were you the first officer
4 on the scene?

5 A. I was.

6 Q. What do you do regarding emergency -- emergency medical
7 service providers when you get to the scene? Are they allowed
8 to go on the scene before you?

9 A. No. They're -- they're not -- they stand by until we give
10 them the -- the clearance to come in, that it is safe, there
11 are no -- there's no danger to them.

12 Q. All right. So, you're the very first authority figure to
13 arrive at the scene?

14 A. Yes.

15 Q. And, at some point, did you allow the EMS to come onto
16 the scene and try to treat Mr. Tennant?

17 A. At -- at some point, yes. It -- it was a little bit
18 later on, after we had secured the -- the area.

19 Q. As quickly as you could, though?

20 A. Right, as quickly as -- as possible.

21 Q. Just walk us through, then, what you encountered. And
22 you can refresh your memory by -- by referring to your report.
23 Walk us through what you saw and what you did and what you
24 encountered when you got to Hub City Court.

25 A. As I was turning into -- coming through the -- into the

MR. GEORGE BROWN - DIRECT by MR. COLER

Page 80

1 little dead end part of the parking lot, where apartment 65
2 is, right at the entrance to that section there, are garbage
3 dumpsters. And I saw two black females escorting a black male
4 past those dumpsters and between buildings 22 and 23, which
5 sit right there on that corner.

6 Q. Okay.

7 A. Immediately, they turned and -- and brought him back in
8 my direction. He was bleeding from the arm. They advised me
9 that there was another victim that was -- that was injured
10 worse. So, I told them to just sit him down, at the curb
11 there, and I proceeded on down to the lower part of the
12 parking lot.

13 Q. All right. At this point, did you know -- or do you know
14 the identity of those individuals you encountered?

15 A. Actually, no. I never encountered them again, because
16 once I proceeded on down, other officers were responding also.

17 Q. Okay.

18 A. And, when I got to the lower part of the parking lot, I
19 found Mr. Tennant.

20 Q. All right. Just back up. The two young -- the two
21 females you encountered that were helping the male, what race
22 -- do you know what race they were?

23 A. They were black females.

24 Q. Okay. And approximate age?

25 A. I'd say fifteen to seventeen, somewhere in there.

MR. GEORGE BROWN - DIRECT by MR. COLER

Page 81

1 Q. Okay. And the individual who was injured, you described
2 what kind of wound?

3 A. He had what appeared to be gunshot wound to the arm, the
4 lower part of his arm.

5 Q. Was it bleeding profusely?

6 A. Yes.

7 Q. All right. And what race was he?

8 A. A black male. He was probably I'd say mid to late teens
9 also.

10 Q. Okay. All right. You had -- after you got them to sit
11 him down, you proceeded on to where?

12 A. To the -- to the end of the parking lot, where there was
13 a blue Ford Explorer. As I rounded to the driver's side, the
14 driver's door was standing open, and I saw the victim, who
15 ended up being identified as Mr. Tennant, lying on his back in
16 the parking lot just outside the driver's door and one foot
17 still up in the -- in the vehicle.

18 Q. Okay. Describe the driver's door, opened or closed?

19 A. It was open.

20 Q. And do you recall if any of the other doors were opened
21 or closed?

22 A. All the rest of the doors were closed.

23 Q. Okay. What, if anything, did you notice about Mr.
24 Tennant's physical condition?

25 A. He appeared to have a -- a single gunshot wound to the --

1 to the chest. There were no signs -- immediate signs of life.
2 I checked for -- for a pulse, and notified communications to
3 -- to pass the information on to EMS and to the supervisors so
4 that they could notify the investigators and so forth.

5 Q. When you got to the scene, when you got to Mr. Tennant,
6 was -- were there any other individuals standing there or near
7 Mr. Tennant or his vehicle?

8 A. No. There was -- there was no one else around.

9 Q. Did you ever see the defendant, Mr. Gist, anywhere near
10 that vehicle when you arrived?

11 A. No.

12 Q. Did you ever see a gun in Mr. Tennant's position [sic]
13 when -- when you encountered him?

14 A. No.

15 Q. Did you have an opportunity to look around where Mr.
16 Tennant was and observe or ever see a gun around him?

17 A. I looked around, and I did not want to disturb anything,
18 but no, I did not see a -- a weapon of any kind.

19 Q. But that would be one of your duties is to find any
20 weapons laying around? You would look for them, would you
21 not?

22 A. Right.

23 Q. Did you have an occasion -- did you take the opportunity,
24 or did you have the opportunity, to look in the vehicle or did
25 you leave that for the investigators?

MR. GEORGE BROWN - DIRECT by MR. COLER

Page 83

1 A. I -- I just did a -- a visual -- a visual inspection from
2 the outside. I did not -- did not want to get into the
3 vehicle and disturb any evidence.

4 Q. Did you ever see a gun anywhere near Mr. Tennant or his
5 vehicle?

6 A. No, I did not.

7 Q. Okay. And then, you -- after you detected no pulse, did
8 you secure the area around Mr. Tennant?

9 A. I did.

10 Q. All right. From the point you secured it on, did you
11 allow other people -- lay persons to enter the scene?

12 A. No. No one -- no one entered the scene until -- the EMS
13 sent one representative down to -- to check Mr. Tennant, and
14 then, other than that, until crime scene investigators arrived
15 and took over, no one entered that scene.

16 Q. Was he deceased there at the scene?

17 A. He was.

18 Q. What, if anything, did you notice about Mr. Tennant's
19 vehicle, aside from the door being open and his -- him being
20 near it with a foot in it?

21 A. I noticed a -- a couple of what appeared to be gunshot
22 holes in the -- in the vehicle. There was -- there was one
23 that was inside of the vehicle that I could still see the
24 slug.

25 Q. All right.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 A. And there -- the -- the rear driver's side window was
2 shattered and there was what appeared to be a -- a -- a
3 gunshot -- a gun hole, a hole from a gunshot, in the back
4 seat.

5 Q. Okay. And so, in the -- or on -- on the driver's side,
6 describe how many bullets -- what appeared to be bullet holes
7 did you see on the vehicle? And you can refer to your report
8 is you need to refresh your memory.

9 (Brief pause while witness reviews document.)

10 A. I found two holes in the driver's side. And, like I
11 said, one still contained a slug. I also saw the -- the rear
12 driver's side window was shot out and a hole in the rear seat.

13 Q. Okay. And, when you say the driver's side, do you --
14 from your memory or from your report, can you be any more
15 specific where on the driver's side? Or, if you don't
16 remember, I don't want you to speculate.

17 A. The best I can recall, it was -- it was just -- it was
18 behind the driver's door, but I don't remember if it was in
19 the -- in the back door or if it was actually in the -- the
20 area between the windows.

21 Q. Okay. And, if you don't recall, that's fine.

22 A. I -- I can't say for sure.

23 Q. One of the bullet holes, in the driver's side door,
24 though, describe for us. You said you saw something in it?

25 A. Yes. I could see what appeared to be a --

MR. GEORGE BROWN - DIRECT by MR. COLER

Page 85

1 MR. PRICE: Asked and answered, Your Honor. Objection.

2 THE COURT: Overruled. Move -- move along.

3 Q. (By Mr. Coler) What -- what did you appear to --- what
4 did it appear to be?

5 A. It appeared to be a slug in the -- in the hole.

6 Q. Okay. Anything else about the vehicle from your report?
7 Any other items on the vehicle or near the vehicle or near Mr.
8 Tennant?

9 A. I saw a -- a beer can sitting on top of the vehicle and
10 one underneath the vehicle.

11 Q. Okay.. Do you remember, or can you describe, how full or
12 how empty, whether they were opened, whether they were closed?

13 A. The one on the -- on the top of the vehicle I believe was
14 roughly I'd say about half full. The one underneath, I'm --
15 I'm not sure if it was -- if it was knocked over or laying on
16 its side or if it was still -- I -- I believe that it was
17 knocked over.

18 Q. All right. And then, just describe for me, again, so,
19 I'm clear, the condition of the rear driver's window of the
20 Explorer?

21 A. It was shattered. The shattered glass was -- was laying
22 there.

23 Q. Did you look inside the vehicle, or did you leave that
24 for the investigators -- the ID investigators?

25 A. I just -- from the outside, I looked at it, but other

MR. GEORGE BROWN - CROSS by MR. PRICE

Page 86

1 than that, no.

2 Q. What did you see when you looked in? Do you recall?

3 A. I could -- I could see a hole in the -- in the rear seat.

4 Q. All right. Aside from arriving and securing the scene,
5 securing public safety and rendering any aid you could to Mr.
6 Tennant, did you have any other participation in the
7 investigation of the case?

8 A. No, I did not.

9 MR. COLER: All right. Thank you for being here,
10 officer. Please, answer any questions Mr. Price or Mr.
11 Beasley may have for you.

12 CROSS EXAMINATION by MR. PRICE:

4:21 P.M.

13 Q. Sergeant Brown, good afternoon, sir.

14 A. It's officer, not sergeant.

15 Q. Oh, I thought you were a sergeant. I'm sorry.

16 A. No, sir.

17 Q. I just have a couple of questions for you. Now, this was
18 on October the 2nd, was it not?

19 A. Well, when I arrived, it was actually October the 3rd, the
20 morning, just after midnight.

21 Q. Okay. But the call came in on October 2nd. Well, there's
22 no sense in -- was this a Saturday night?

23 A. That I could not tell you. I can just tell you it was
24 the night of October 2nd, morning of October 3rd, right at
25 midnight.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MR. GEORGE BROWN - CROSS by MR. PRICE

Page 87

1 Q. All right. And this was around midnight?

2 A. Yes, sir.

3 Q. Give or take?

4 A. Right.

5 Q. And how long have you been a police officer for the City
6 of Spartanburg?

7 A. A little over seventeen years.

8 Q. Okay. And you know Hub City?

9 A. Yes, sir.

10 Q. You were out there regularly?

11 A. Any more? No, sir, not that much. But when I was --
12 when I was -- I was on the complex team for -- for several
13 works, and I worked the complexes, Hub City being one of them.

14 Q. It would be safe to say that you would refer to Hub City
15 as a high crime area?

16 A. No, actually, at one time, in the past, it -- it would
17 have been, but no, it's -- it's -- I would not say it's one of
18 our high crime areas.

19 Q. I believe one of the State's witnesses, Ms. Cecilia, was
20 shot there in Hub City ---

21 MR. COLER: Objection.

22 Q. --- approximately one week for this?

23 THE COURT: Hold on. What's yr objection?

24 MR. COLER: Relevance and personal knowledge about this
25 witness.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 THE COURT: Well, do you know that?

2 A. I -- I don't know which -- I don't know what case he's
3 talking about.

4 MR. PRICE: I'll withdraw the question, Your Honor.

5 Q. (By Mr. Price) All right. You've already described the
6 car. And you got two bullet holes in the left door?

7 A. Yes, sir.

8 Q. And a shattered rear window?

9 A. Yes, sir.

10 Q. You didn't say anything, but the driver's window was
11 open, was it not?

12 A. I believe it was.

13 Q. Okay. A beer can on top of the car and a beer can
14 underneath the Explorer near Mr. Tennant's hand?

15 A. Near his side I believe.

16 Q. Okay. And you found no 357 Magnum around the scene?

17 A. No, sir.

18 Q. And you found no 38-special around the scene?

19 A. No, sir.

20 Q. And you found no 32-caliber pistol?

21 A. No, sir.

22 Q. And you found no 30-caliber pistol?

23 A. No, sir.

24 Q. You didn't find any pistols anywhere?

25 A. No, sir.

MR. DAVID HOGSED - DIRECT by MR. COLER

Page 89

1 Q. And you didn't find anybody anywhere?

2 A. No, sir.

3 MR. PRICE: Thank you.

4 THE COURT: Redirect?

5 MR. COLER: No redirect, Your Honor.

6 THE COURT: You may step down. Call your next witness.

7 (The witness stepped down from the witness stand at 4:24
8 p.m.)

9 MR. COLER: The State calls David Hogsed.

10 (Mr. Hogsed is summoned.)

11 MR. COLER: Your Honor, if there's no objection, we'd
12 ask if Officer Brown be excused.

13 THE COURT: Mr. Price?

14 MR. PRICE: No objection.

15 THE COURT: All right.

16 (Whereupon, Officer Brown was excused.)

17 (Whereupon,

18 DAVID HOGSED

19 having been duly sworn, testified as follows:)

20 DIRECT EXAMINATION by MR. COLER:

4:25 P.M.

21 Q. Please, tell us your name.

22 A. David Hogsed.

23 Q. And tell us who you presently work for.

24 A. The Spartanburg County Sheriff's Office.

25 Q. What is your title or position with the sheriff's

1 department?

2 A. I'm assigned to the forensic unit.

3 Q. Okay. How long have you been with the sheriff's
4 department?

5 A. A little over seven months.

6 Q. All right. Who did you work for prior to going to work
7 in the sheriff's department?

8 A. The Spartanburg Public Safety Department.

9 Q. How long were you with Public Safety?

10 A. Right at sixteen (16) years.

11 Q. What was your last title or position when you left the
12 Public Safety Department?

13 A. I was assigned to the forensics division.

14 Q. Okay. Do you essentially do the same thing for the
15 sheriff's office you did for the city police?

16 A. Yes, I do.

17 Q. Describe for us briefly what an officer with the
18 forensics department in the sheriff's office does.

19 A. Respond to and process. It could be any type of crime
20 scene. Processing a crime scene can be anything from just
21 taking photographs to fingerprinting and/or collecting of
22 what's called trace evidence.

23 Q. Is it fair to characterize your job as a crime scene
24 investigator?

25 A. Yes.

MR. DAVID HOGSED - DIRECT by MR. COLER

Page 91

1 Q. Were you dispatched to work, or process this scene, at
2 Hub City Court Apartments back on October the 3rd of two
3 thousand, four?

4 A. Yes. I was actually leaving work for the evening and
5 heard it dispatched and responded to it.

6 Q. Okay. Do you recall approximately what time you would
7 have arrived at the scene?

8 A. Probably between 12:15 and 12:20.

9 Q. Okay. Is it unusual for an officer, with the forensics
10 department, to arrive after initial responding officers?

11 A. Yes, it is.

12 Q. Is it unusual or usual?

13 A. It's -- it's actually -- we usually respond afterwards
14 because we're called after the incident has taken place. With
15 this one, I was actually in my vehicle, on my way home, when I
16 heard the call and I turned around and went to the -- the
17 scene.

18 Q. So, it's unusual for you to be there as early as you were
19 in this case?

20 A. Oh, yes, it is unusual for me to be there.

21 MR. PRICE: Objection.

22 THE COURT: What's your objection.

23 MR. PRICE: Asked and answered.

24 THE COURT: Move along, Mr. Coler.

25 MR. COLER: Yes, sir.

1 Q. (By Mr. Coler) When you got there, what was your primary
2 purpose at this scene at Hub City Court Apartments? What was
3 your duties -- or what were your duties?

4 A. To process the crime scene, document the crime scene, and
5 collect evidence related to the crime.

6 Q. Describe for us what you did at this scene.

7 A. When I first arrived, the parking lot had been roped off,
8 taped off with crime scene tape. I spoke with Patrol Officer
9 George Brown, who briefed me real quickly on what had occurred
10 and what they had observed.

11 There was a gentleman. I got his name, by the name of
12 Jonathan Petty, being put into an ambulance that was actually
13 sitting outside the crime scene.

14 I took the camera out of my vehicle and first
15 photographed him while he was sitting in the back of the --
16 well, he was actually on a gurney, in the back of the
17 ambulance, when I photographed him.

18 Q. All right. What can you describe for us about his
19 condition?

20 A. The left arm had been bandaged up by EMS, blood on his
21 arm, his shirt, the front of his pants.

22 Q. After taking his photograph, what's the next thing you
23 did?

24 A. I, then, actually moved into the crime scene, and went to
25 the location where the deceased was lying on the ground.

MR. DAVID HOGSED - DIRECT by MR. COLER

Page 93

1 Q. Describe for us what you found when you got to the
2 deceased, Mr. -- you're referring to Mr. Tennant?

3 A. Yes. It was identified as Mr. Tennant. Mr. Tennant was
4 lying on the driver's side of a dark blue colored Ford
5 Explorer, SUV. The driver's door was open. He was lying
6 somewhat on his back, the left side of his back, and his arms
7 were extended outward.

8 His left foot was underneath the front of the vehicle by
9 the left tire, and his left -- his right foot was still up on
10 like a running board in the apex of the door because the --
11 the driver's door was open..

12 There appeared to be a gunshot wound to the left side of
13 the chest. Blood was visible on his shirt. A couple of beer
14 cans were around the vehicle. The ignition switch to the
15 vehicle was in the on position, with the control lights of the
16 vehicle on, but the vehicle was not running.

17 The left rear window to the vehicle had been busted out.
18 There was glass visible on the ground beside Mr. Tennant and
19 also in the back seat of the car.

20 There were two bullet holes to the left rear -- the left
21 rear door. One was up near the handle, and one was below the
22 hand -- below that one, near the bottom of the door.

23 There was actually a projectile visible in that hole.
24 And there appeared to be two bullet holes to the back rest
25 part of the back seat.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 Q. Okay. What -- what kind of vehicle was it?

2 A. It was a blue Ford Explorer SUV, and the South Carolina
3 tag was 714, "D" as in David, "E" as in echo, "N" as in
4 November.

5 (Off-the-Record Comments concerning air conditioning.)

6 THE COURT: All right. Go ahead.

7 Q. (By Mr. Coler) Do you, investigator, do you, then -- did
8 you, then, photograph the scene as you -- as you found it as
9 it first existed before you did anything?

10 A. Yes. I first photographed it using a flash on my camera.
11 The way this took place, at Hub City Court Apartments, it's
12 not unusual for all the street lights in the apartment complex
13 to be knocked out or shot out. So, it's very dark in some of
14 the areas, so, I photographed it as it was, using a flash,
15 which usually gives you a range of about 20 to 30 feet, using
16 the flash.

17 We, then, stopped, and I have some portable lights you
18 set up, and then, we called our fire department to bring out
19 also more lighting.

20 Q. All right. When you got more lighting out there, did
21 you, then, begin marking items of evidentiary value or things
22 you noticed?

23 A. Yes. We'll photograph it again with more lighting, and
24 then, we'll start marking items of evidence.

25 Q. Did you, in this case, re-photograph the scene when you

MR. DAVID HOGSED - DIRECT by MR. COLER

Page 95

1 marked the items?

2 A. Yes, I did.

3 Q. Did you, as part of the processing of the scene, collect
4 items of evidence that you encountered at the scene?

5 A. Yes, there were several items of evidence collected.

6 Q. And we'll talk about those in a second. As part of your
7 job, do you create a crime scene sketch?

8 A. Yes. On the scene, we actually do what we refer to as a
9 rough draft and we'll hand draw it. And then, we use -- using
10 the rough draft, we'll go back and use a computer program and
11 draw a -- a computer diagram of the scene.

12 Q. Okay. I want to show you what's been pre-marked as
13 State's Exhibit Number 4. If you could, take a look at that
14 exhibit and tell me, do you recognize it? Tell me if you
15 recognize it.

16 (Exhibit shown to Mr. Price.)

17 (Off-the-Record Comments)

18 MR. PRICE: Without objection, Your Honor.

19 (Exhibit handed to witness.)

20 A. Yes, I do.

21 Q. Is that the crime scene sketch you created for this
22 scene?

23 A. One of them, yes.

24 Q. Okay. And you say one of them, describe what else --
25 what else you created.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 A. This is the overall of all the buildings around the
2 parking lot where the -- Mr. Tennant and the vehicle was
3 found, and the vehicles around him. And, then, I also did one
4 of just the vehicle, a -- a closer up of just the vehicle and
5 the items around Mr. Tennant.

6 MR. COLER: Standing by one moment.

7 (Brief pause while projector is turned on.)

8 Q. (By Mr. Coler) I'm also handing you what's been
9 pre-marked as ID number 5, State's Exhibit 5.

10 (Exhibit handed to witness.)

11 Q. Is that the close up you're talking about?

12 A. Yes, sir, it is.

13 Q. Okay. Does that crime scene sketch appear to accurately
14 portray the location and -- and distance of -- of items that
15 you encountered on October 3rd of two thousand, four (2004)?

16 A. Yes, sir, they do.

17 MR. COLER: Your Honor, at this point, we would move
18 that into -- offer to move into evidence Numbers 4 and 5 and
19 I'd like to publish to the jury.

20 MR. PRICE: No objection, Your Honor.

21 THE COURT: Without objection, 4 and 5.

22 (Whereupon, State's Exhibit Numbers 4 and 5 were admitted
23 into evidence without objection.)

24 Q. (By Mr. Coler) I'm going to ask you just to point out a
25 couple of things on the crime scene sketch, if you would.

MR. DAVID HOGSED - DIRECT by MR. COLER

Page 97

1 THE COURT: Can my last juror see that? Ma'am, can you
2 see it?

3 FEMALE JUROR: Yes, sir.

4 THE COURT: It's not a real good angle, but that's the
5 best they can do up here.

6 Q. (By Mr. Coler) All right. I'm going to give you a
7 pointer.

8 (Witness handed laser pointer.)

9 (State's Number 4 shown on overhead.)

10 A. Can I step down?

11 Q. What's that? Yeah, if you need to step down, feel free
12 to. Just make sure to speak up, so, the reporter can hear
13 you.

14 (Witness steps down from the witness stand.)

15 Q. All right. Just describe for us a couple of things on
16 your crime scene sketch. Show us where the vehicle --
17 starting with where the vehicle, where Mr. Tennant was found,
18 was and -- and describe that area and point -- point to it.

19 A. This would be (indicating) the vehicle. This one is not,
20 of course, an SUV, but by the computer program this would be
21 Mr. Tennant's vehicle, just as like I said, a blue Ford SUV.
22 Explorer.

23 Q. All right. And show us where his body was.

24 A. Mr. Tennant was lying here (indicating) on the ground,
25 and the actual driver's door to his vehicle was open.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 Q. There are some numbers that -- that appear to point to or
2 are correlated with the vehicle? Do you need to step around
3 and see those? And describe for us what those are, numbers 8
4 and 9 at the vehicle.

5 (Witness changes location as suggested.)

6 A. When we started marking items of evidence, Mr. Tennant
7 was labeled as item number 1. And there were several other
8 items around him. And number 8 would be the bullet hole to
9 the upper portion of the left rear door (indicating), and
10 number 9 would be the bullet hole to the lower portion of the
11 left rear door (indicating).

12 And number 42 is the actual projectile fragment that was
13 found on the ground after the vehicle was moved, once we moved
14 it, to -- to our storage facility. It was not there
15 initially, and it probably fell out when we moved the vehicle.

16 Q. Okay. I'm sorry, did you mention number 2 and 3?

17 A. Two and three are beer cans. And two was on -- is a
18 crushed open beer can on by his right -- Mr. Tennant's right
19 arm, and number three was an open can sitting on top of the
20 vehicle, over the left rear door.

21 Q. All right. And you say that number 1 indicated or
22 indicates what?

23 A. Mr. Tennant.

24 Q. Okay. I'll also ask you I noticed -- okay. There are
25 several other numbers on the crime scene sketch. And appear

MR. DAVID HOGSED - DIRECT by MR. COLER

Page 99

1 to go basically from number 10 up through number 41. What are
2 those, and why were they -- why are they marked on the crime
3 scene sketch?

4 A. Number 10 through 41 (indicating) those are blood trails
5 that we actually found that went around this building, back
6 behind the building, because this is all wooded area back in
7 this area (indicating).

8 And we found the blood trails went around this building,
9 all away across, and they actually went out into a field
10 that's part of this apartment complex and then, came back up
11 to the sidewalk of this building.

12 Q. And you collected those -- each of those you marked ---

13 A. Each of those were blood droppings that was found
14 indicating the path taken.

15 Q. Okay. Now, with your crime scene sketch, the one you
16 looked at, stapled to it is a sheet with a lot of numbers on
17 it.

18 THE COURT: Well, what exhibit are we on now?

19 MR. COLER: We're still on Exhibit Number 4, Your Honor,

20 THE COURT: Okay.

21 MR. COLER: Page 2 and page 3 of number 4.

22 (Page 2 of State's Number 4 shown on overhead.)

23 Q. (By Mr. Coler) Just tell the jury, if you would, what
24 those are, so, when they look at them, they can understand
25 them.

MR. DAVID HOGSED - DIRECT by MR. COLER

Page 100.

1 A. This is basically a legend of the diagram that you just
2 saw. Each -- each item, like number 1, was Mr. Tennant; 2, 3.
3 These numbers correspond to the numbers of evidence on the
4 crime scene diagram, listing what they are.

5 (Page number 3 of State's Number 4 shown on overhead.)

6 Q. Okay. And page 3 of Exhibit 4, another sheet with a lot
7 of measurements on it. And what are those?

8 A. Those are measurements where we actually what we call
9 triangulate the crime scene. We'll take two reference points,
10 and here we used two corners of one of the buildings. And we
11 will measure, using those two reference points, to certain
12 areas of the crime scene, and those are measured from
13 reference point 1.

14 I'd have to look at the crime diagram again, but that --
15 it'll be on that diagram, which corner it is. And those were
16 made from that corner to that specific location.

17 Q. Well, just so I understand, and that -- that third sheet
18 is a -- it's a measurement sheet?

19 A. It is.

20 Q. Okay.

21 A. It's a triangulization measurement sheet.

22 Q. Does that crime scene sketch indicate every piece of
23 evidence that you recovered at the scene on the date of this
24 incident?

25 A. Yes, it does.

MR. DAVID HOGSED - DIRECT by MR. COLER

Page 101

1 Q. Okay. And I'm going to show you State's Exhibit Number
2 5. I'll put that on the overhead.

3 (State's Number 5 shown on overhead.)

4 Q. Is that, so, I'm clear, is just a close up of -

5 THE COURT: Hold on one second, please.

6 (The Court stepped out of the courtroom at 4:39 p.m. for
7 a brief moment.)

8 THE COURT: Go ahead.

9 Q. (By Mr. Coler) DO I understand correctly, is that simply
10 a close up of State's Exhibit Number 4 diagram?

11 A. It is. That just shows the area around Mr. Tennant's
12 location, the vehicles, the two -- two of the buildings he was
13 closest to, the vehicle in his location, and the three
14 vehicles that was in the area of his vehicle.

15 Q. All right. If you'll retake your seat, Investigator, I'd
16 appreciate it.

17 (Witness returned to the witness stand.)

18 Q. All right. At some point, while you were on the scene,
19 was the body of Mr. Tennant removed by EMS personnel?

20 A. Yes, it was.

21 Q. Prior to them removing it, did you do anything to his
22 body?

23 A. Yes. I placed brown paper bags over the hands of Mr.
24 Tennant and taped them around his hands.

25 Q. Why would you -- why did you place brown paper bags

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 around Mr. Tennant's hands?

2 A. We use paper because paper basically breathes, allows air
3 in and out, where plastic does not. But it was to protect his
4 hands so that a gunshot residual kit could be performed prior
5 to the autopsy beginning.

6 Q. So, the purpose of the bags to preserve whatever is on
7 the hands? I -- am I understanding correctly?

8 A. Yes. It's to preserve any evidence on -- that's on his
9 hands and also, to keep other evidence from being transferred
10 to his hand.

11 Q. I got you. At some point, did you or your department,
12 remove the vehicle from the scene?

13 A. Yes. We called for the towing service that pulls for the
14 Public Safety Department, who responded and did -- and towed
15 the vehicle to the city storage lot.

16 Q. Okay. Prior to removing it, did you take, into your
17 custody, do you recall, any of the bullets or slugs from the
18 vehicle there at the scene before you got it to the storage
19 department?

20 A. The bullet hole to the bottom -- or to the bottom portion
21 of the left rear door, where the projectile was actually
22 visible, we did remove it prior to the vehicle being moved.

23 Q. And what was the purpose and what the thinking of taking
24 that bullet or projectile at that point?

25 A. To keep -- to keep from losing it being loaded on the

MR. DAVID HOGSED - DIRECT by MR. COLER

Page 103

1 wrecker or off -- off the wrecker.

2 Q. I see. When you got back to the storage yard, of the
3 City Police Department, did you process the vehicle? Or did
4 you perform an investigation on the vehicle?

5 A. Yes. I actually processed the vehicle.

6 Q. All right.

7 A. And it was actually inside of the city storage building.

8 Q. While you were processing it, did you recover any more
9 bullets or bullet fragments from the vehicle?

10 A. Yes. The two projectile holes that were -- one was in
11 the center back rest portion and one was on the right side of
12 the back rest portion, those were labeled 43 and 44. And they
13 were photographed, and then, the seats were cut looking for
14 the projectiles.

15 The bullet hole -- 43 was the upper center area. That
16 projectile entered the back rest and actually stuck -- struck
17 the metal framing, the top portion of the metal framing of the
18 seat, exited out of the top of the seat, and a lead projectile
19 -- a lead fragment projectile was found in the very back cargo
20 area of the vehicle. .

21 And when I cut open the hole for number 44, I actually
22 found a copper jacketed projectile imbedded in the cushioning
23 of the seat.

24 Q. All right. Let me back up, so, I understand. You said
25 the back rest and back seat of the vehicle. Which seats are

1 we talking about, the front seats of the vehicle or the back
2 seats or the cargo area?

3 A. It's actually the second row of back seat.

4 Q. Okay.

5 A. This was not a third -- third seat vehicle, so, it would
6 be the back seat or the back doors. The back rest portion, of
7 course, is the section where your back rests against it when
8 you're sitting.

9 Q. And how many bullet holes did you find in that back rest
10 portion of the Explorer?

11 A. Two.

12 Q. Okay. And you found a slug in one of those holes?

13 A. That's correct.

14 Q. And did you find another slug that was associated with
15 the other hole?

16 A. Yes. It exited out of the top of the seat and was
17 actually found in the very back area, the cargo area, of the
18 SUV.

19 Q. Okay. Did you ever find a slug that was associated with
20 the other hole in the driver's side rear door of the Explorer?

21 A. No, I did not.

22 Q. Okay. Do you have any idea or do you -- could you tell
23 where that bullet or projectile went?

24 (Brief pause while witness reviews document.)

25 Q. What I'm referring to, just so you're -- to clarify ---

MR. DAVID HOGSED - DIRECT by MR. COLER

Page 105

1 A. Well, that was number 8. It left a cut in the metal of
2 the door frame, and struck the door frame, but where it
3 ricocheted to, I could not locate.

4 (Off-the-Record Discussion)

5 (Whereupon, State's Exhibit Numbers 6 through 12 were
6 marked for identification.)

7 (Exhibits shown to Mr. Price.)

8 MR. COLER: Your Honor, may we approach briefly?

9 THE COURT: (Nods affirmatively)

10 (Whereupon, a bench conference was had with Mr. Coler and
11 Mr Price.)

12 (Off-the-Record Comments)

13 Q. (By Mr. Coler) Investigator, I'm going to ask you to take
14 a look at some photographs.

15 MR. COLER: And, for the record, Your Honor, I'm handing
16 him seven packets of photographs. They are pre-marked State's
17 Exhibit Numbers 6, 7, 8, 9, 10, 11, and 12 for identification
18 purposes.

19 (Exhibits handed to witness.)

20 Q. (By Mr. Coler) Just take a look at those photographs and
21 tell me if you recognize them first.

22 (Brief pause while witness reviews documents.)

23 A. Yes, sir, I do.

24 Q. Do they appear to accurately portray the crime scene and
25 the processing of the vehicle as it existed at the time of

1 this incident?

2 A. Yes, they do, sir.

3 MR. COLER: Your Honor, at this point, we'd offer
4 State's Exhibit Numbers 6, 7, 8, 9, 10, 11, and 12 into
5 evidence and also publish to the jury.

6 THE COURT: Subject to the objection made by Defense
7 counsel which I overruled, that I will hear at a later date.

8 MR. COLER: Thank you.

9 (Whereupon, State's Exhibit Numbers 6, 7, 8, 9, 10, 11,
10 and 12 were admitted over objection.)

11 Q. (By Mr. Coler) And, Investigator, I'm going to put some
12 photographs up on the overhead and ask you, if you can, to
13 describe what the photograph is and the purpose for making it.

14 MR. COLER: I'm showing you the witness first State's
15 Exhibit Number 12, Your Honor.

16 (Photograph from State's Number 12 shown on overhead.)

17 (Witness stepped down from the witness stand.)

18 Q. (By Mr. Coler) What's that a photograph of?

19 A. That's a photograph of Mr. Petty while he was in the
20 ambulance. It's one of the first -

21 THE COURT: What's his name?

22 A. It's Mr. Petty.

23 THE COURT: Petty, P-e-t-t-y?

24 A. T-t-y.

25 Q. Next, I'm going to show you what's been admitted as

MR. DAVID HOGSED - DIRECT by MR. COLER

Page 107

1 State's Exhibit 7, a packet of photographs. What is that a
2 picture of, Investigator, and what was the purpose of taking
3 that?

4 (Photo from State's Number 7 shown on overhead.)

5 A. That's a photograph of how we -- how I observed the
6 vehicle when I arrived. Of course, taking the photograph, I
7 was actually standing at the left rear corner, taking a
8 photograph that shows how I observed that side of the vehicle
9 and Mr. Tennant's loc -- the positioning of his body when I
10 arrived.

11 Q. Is that exactly how you found him when you arrived?

12 A. Yes, that's correct.

13 Q. Just briefly, some other pictures from packet -- from
14 State's Number 7 packet. What is that a photograph of and
15 what was the purpose of that?

16 (Photo from State's Number 7 shown on overhead.)

17 A. To show the vehicle's location in relationship to some of
18 the buildings and the vehicle beside his building [sic]. And
19 the yellow markers are where evidence were marked.

20 Q. Okay. Another photograph from State's Number 7.

21 THE COURT: Well, wait a minute. What's going on over
22 there?

23 MR. COLER: We're trying to eliminate the glare if we
24 can.

25 (Off-the-Record Comments)

1 Q. (By Mr. Coler) What's that -- what's that a photograph
2 of and what was the purpose of that?

3 (Photo from State's Number 7 shown on overhead)

4 A. It's a photograph showing the items of evidence that we
5 marked around the vehicle. And this is, of course, after Mr.
6 Tennant was removed from the crime scene.

7 Q. I see two stickies on the back driver's side door. Can
8 you point to those and tell me what those are?

9 A. Number 8, evidence item number 8, is the bullet hole that
10 we marked, and we use a sticker on the vehicle to show the
11 yellow placard. And as for number 9, which is the -- where we
12 actually observed the projectile inside of the hole of the
13 vehicle.

14 Q. All right. And it shows a window. Can you point to it
15 and describe the condition of the window for the jury?

16 A. This is the window that was -- had been busted out and
17 the glass was on the ground, inside and outside of the
18 vehicle.

19 (Photo from State's Number 7 shown on overhead.)

20 Q. Another photograph from State's Exhibit Number 7 packet.
21 What that a picture of and what was the purpose of that?

22 A. This would be the right side of Mr. Tennant's vehicle,
23 4, 5, and 6. This photograph will show you the relationship
24 to what we collected as far as item numbers 4, 5, and 6 in
25 relationship the tail end of Mr. Tennant's vehicle.

MR. DAVID HOGSED - DIRECT by MR. COLER

Page 109

1 Q. And that's just a close up, I assume, of the bullet
2 holes?

3 A. Yes, sir, it is.

4 (Photo from State's Number 7 shown on overhead.)

5 Q. What is this a picture of and what was the purpose of
6 taking that?

7 A. This photograph was taken because, when we looked inside
8 the vehicle, the ignition switch is in the on position, and
9 the dashboard lights were on. But the actual vehicle was not
10 running, but the ignition switch had been switched over into
11 the on position.

12 (Photo from State's Number 7 shown on overhead.)

13 Q. I'm showing you the last photograph from State's Number
14 7. And, again, what is that of?

15 A. Reducing the flash on the camera to show how the lighting
16 instruments on the dashboard are actually lit up.

17 (Photograph from State's Number 11 shown on overhead.)

18 Q. I'm showing you State's Exhibit Number 11. What is this
19 a photograph of and where was that taken?

20 A. This is actually at the city impound lot. And this is
21 the driver's side of the vehicle. Usually, what we'll do is
22 we'll take 360s of the vehicle -- 360 degree pictures of the
23 vehicle prior to doing anything else to it.

24 Q. And that shows us the locations of the two bullet holes
25 in the vehicle?

1 A. The location of two bullet holes and also the broken
2 glass in the left rear door.

3 (Photo from State's Number 11 shown on overhead.)

4 Q. This is page -- or the second photograph in State's
5 Number 11. And what is that?

6 A. Another photograph of the left rear door and two bullet
7 holes, broken glass, and there's the metal rods that I had
8 placed inside the back seat to get a possible projectory angle
9 of the projectiles.

10 Q. And what does this photograph show and what was the
11 purpose of it?

12 (Photo from State's Number 11 shown on overhead.)

13 A. This is actually the inside of the door frame showing
14 where the projectile that struck the outside of the left rear
15 door, the damage caused to the inside of the door.

16 Q. Are there actual damage marks on the inside of that door,
17 were those numbers 8 and 9 were?

18 A. Yes, sir. This is actually where this metal is torn
19 (indicating).

20 Q. Okay.

21 A. And there is a dent in this area where that one struck
22 (indicating), was the one where we actually removed the
23 projectile, it did leave a dent on the inside of the door
24 frame.

25 (Photo from State's Number 11 shown on overhead.)

1 Q. And again, this is the ---

2 A. Tear in the metal and dent in the metal of the vehicle,
3 an actual close up of the number 8, the projectile hole in the
4 vehicle by itself. And this one was actually taken at the
5 crime scene.

6 (Photo from State's Number 11 shown on overhead.)

7 Q. Okay.

8 A. An actual close up of number 9 by itself, with the
9 projectile visible inside the hole.

10 Q. Is that a projectile that you collected there at the
11 crime scene at Hub City?

12 A. Yes, sir, it is.

13 Q. Next, I'm going to show you a packet of photographs
14 admitted as State's Number 6.

15 (Photo from State's Number 6 shown on overhead.)

16 Q. What is that a picture of and what was the purpose of
17 making that?

18 A. Where I ran the two metal rods of the actual projectile
19 holes in the seat. I ran the rods to show possible projectory
20 angle of the projectiles when they entered the seat.

21 (Photo from State's Number 6 shown on overhead.)

22 Q. Okay. The second picture in State's Number 6, what is
23 that?

24 A. It's a photograph taken through the broken glass of the
25 window showing the direction of the rods.

1 Q. And those rods you added yourself. They weren't part of
2 the picture?

3 A. Yes, I added those.

4 Q. And the purpose, so, I understand, was to show the
5 possible path of the bullet?

6 A. The possible path of the bullet, yes.

7 (Photo from State's Number 6 shown on overhead.)

8 Q. And the third picture in State's Number 6, what -- what
9 is that picture and when was that taken?

10 A. This was taken at the -- when we processed the vehicle at
11 the city lot, the bullet hole for number 43 in the seat and
12 number 44 in the seat.

13 (Photo from State's Number 6 shown on overhead.)

14 Q. And what is that a picture of, the fourth photograph in
15 State's Number 6?

16 A. Number 44, once we started cutting into the seat, that's
17 a picture of the projectile embedded in the cushioning of the
18 seat.

19 Q. Point to the projectile if you will?

20 (Witness indicates with pointer.)

21 Q. And when you say "projectile," do you mean a bullet from
22 a gun basically?

23 A. Right, a bullet that has been fired from a weapon.

24 (Photo from State's Number 6 shown on overhead.)

25 Q. The fifth photograph, in State's Number 6, that's just a

MR. DAVID HOGSED - DIRECT by MR. COLER

Page 113

1 close up of -

2 A. Just a close up, it is.

3 (Photo from State's Number 6 shown on overhead.)

4 Q. And the last photograph of State's Number 6, and describe
5 what you can about marker number 43.

6 A. Forty-three (43) is where the bull -- the projectile went
7 in, and you'll see an arrow here (indicating).

8 Q. Uh-huh (affirmative).

9 A. That shows where the projectile exited the top of the
10 seat.

11 Q. Okay. Did you find a projectile that might be associated
12 with that hole?

13 A. Yes, I did. It was actually in the very back, the cargo
14 area, actually back in that -- the left rear corner, near the
15 tail gate door.

16 Q. Is that in the photograph?

17 A. Right there (indicating).

18 (Photo from State's Number 10 shown on overhead.)

19 Q. A couple of more, investigator. State's Number 10 I'm
20 showing you, what's that a picture of?

21 A. The front interior of the vehicle.

22 Q. All right. Is that the way you all found the vehicle?

23 A. Yes, with the exception of the keys were removed by us.

24 Q. Okay. Was that ---

25 A. Or by me.

1 Q. Was that Bud Light case and can, was that there when you
2 all encountered the vehicle?

3 A. Yes, they were.

4 (Photo from State's Number 10 shown on overhead.)

5 Q. Again, the second photograph, is that just a close up of
6 the interior compartment of the vehicle?

7 A. Yes, sir.

8 (Photo from State's Number 10 shown on overhead.)

9 Q. Okay. And what part of the car is that?

10 A. That's the -- to be honest with you, I'm not sure. It
11 looks like the center console area.

12 Q. Okay.

13 A. It is. It's the center console area.

14 Q. Is that the exactly how you found the center console
15 area?

16 A. Yes.

17 Q. Were those bag of peanuts there?

18 A. Uh-huh (affirmative).

19 Q. And beers to the right of it?

20 A. Yes. There was actually nothing removed from the inside
21 of the vehicle when we towed the vehicle. And we actually had
22 an investigator follow that vehicle from the crime scene to
23 where it was stored to secure it, to make -- to keep security
24 on it.

25 (Photo from State's Number 10 shown on overhead.)

MR. DAVID HOGSED - DIRECT by MR. COLER

Page 115

1 Q. All right. Can you tell, from that close up, what that
2 is a photograph of?

3 A. That would be the center console compartment opened up.

4 Q. Okay. Those are State's Number 10; a couple of more for
5 you. State's number 9, what is that a picture of and what was
6 that -- what was the purpose of that?

7 (Photo from State's Number 9 shown on overhead.)

8 A. That's number placard 43 to correspond with what I marked
9 on the scene as 43 with the stickers to show the location of
10 the projectile fragment that was found in the back cargo area.

11 (Photo from State's Number 9 shown on overhead.)

12 Q. The second photograph in that packet, is that just a
13 close up of number 43?

14 A. Yes, this is closer up.

15 (Photo from State's Number 9 shown on overhead.)

16 Q. And the final one?

17 A. Then, the final is a close-up shot.

18 Q. And that is the bullet fragment and projectile that you
19 found.

20 (Photo from State's Number 8 shown on overhead.)

21 Q. And finally, State's Number 8, what is that a picture of
22 and when was that made and for what purpose?

23 A. This was made the morning of the -- while we were outside
24 working the crime scene. It had already gotten light, and on
25 us daylight had came in, and that's where we found the

1 projectile on -- on the ground after the vehicle had been
2 moved and all the other evidence had been collected.

3 Q. Okay. Is that what you all found?

4 (Photo from State's Exhibit 8 shown on overhead.)

5 A. Yes, sir, the copper jacketed fragment.

6 Q. Point to it, if you would, for the jury.

7 (Witness indicates with pointer.)

8 Q. Did you collect that?

9 A. Yes, I did.,

10 Q. And that was after the vehicle was removed ---

11 A. Yes, sir.

12 Q. --- from the scene? And just a couple of more questions,
13 investigator.

14 (Brief pause)

15 (Whereupon, State's Exhibit Number 13 was marked for
16 identification.)

17 Q. (By Mr. Coler) Investigator, I'm going -- Investigator,
18 I'm going to hand you what's been pre-marked for ID purposes
19 as State's Exhibit Number 13. And ask you to open that and
20 tell me if you recognize the contents of that envelope. And,
21 if you need to open the smaller envelope, you can do so.

22 (Brief pause while witness opens envelopes as requested.)

23 A. Yes, I recognize it.

24 Q. And what are the -- what are the contents of the four
25 smaller envelopes inside of State's Exhibit Number 13?

MR. DAVID HOGSED - DIRECT by MR. COLER

Page 117

1 A. Each one contains either a copper jacketed projectile or
2 a copper jacketed fragment of the actual copper jacketed
3 projectile or a lead fragment from the projectile.

4 Q. Let's take them one at a time. Did -- first off, did
5 you recover that projectile and from where did you recover it?

6 A. Each one was put in its own separate envelope and it's
7 also marked with the item number of the evidence. And this
8 one is marked with the item number 9. We also put the case
9 number that it is assigned to, and it's assigned to the
10 incident.

11 We'll also -- we'll write where we recovered it from. On
12 this one, number 9, projectile from left side rear door near
13 bottom, put the date it was collected, 10/3/04 and at 3:23
14 a.m. is the time it was actually collected.

15 Q. Okay. Show us just briefly, on this photograph I'm
16 showing the jury, State's Number 11, where that projectile was
17 recovered from.

18 (Photo from State's Number 11 shown on overhead.)

19 A. Here (indicating).

20 Q. And then, does that projectile appear to be in the same,
21 or substantially the same, condition today as when you
22 recovered it back in October of two thousand, four (2004)?

23 A. Yes.

24 Q. So, after you recovered it, what did you do with it?

25 A. All these were -- once they're in their own evidence --

1 their own envelope, the envelopes are sealed with evidence
2 tape. I sign the evidence tape and put the date when it's
3 sealed.

4 They're, then, put -- all four are put into a larger
5 evidence envelope as completed, in here, and I put it into the
6 evidence drop box, which is a drop box at the -- that's at
7 city hall and date it and time it.

8 Q. Is there -- is the purpose of putting that in the drop
9 box, in the city evidence department, so, it can be further
10 analyzed by another agency?

11 A. Yes. We requested that it be further analyzed. We do
12 the paperwork and the evidence technician for the city would
13 take it to SLED, the State Law Enforcement Division, for any
14 analysis we request.

15 Q. Where is their laboratory; do you know?

16 A. Where?

17 Q. Yeah.

18 A. In Columbia, South Carolina.

19 Q. All right. Moving to the next envelope that was in
20 State's Exhibit Number 13. Where was that -- do you recognize
21 that item?

22 A. Yes. This is the copper projectile fragment, number 42,
23 that was found in the parking lot after the vehicle was moved
24 and daylight set in.

25 MR. COLER: Your Honor, I'm showing the jury State's

MR. DAVID HOGSED - DIRECT by MR. COLER

Page 119

1 Exhibit Number 8.

2 (Photo from State's Number 8 was shown on overhead.)

3 Q. (By Mr. Coler) Is that -- is that where you recovered
4 that projectile?

5 A. Yes.

6 Q. Does that appear, to be in the same or substantially same
7 condition, today as when you recovered it back in October of
8 two thousand, four (2004)?

9 A. Yes, sir.

10 Q. Did you seal it in that envelope like the other one?

11 A. I did.

12 Q. All right. The next one if you will.

13 A. Which is item number 43, which is a lead projectile from
14 the rear area or the cargo area of the blue Ford Explorer.

15 MR. COLER: Your Honor, I'm showing the jury State's
16 Exhibit Number 9.

17 (Photo from State's Number 9 shown on overhead.)

18 Q. Is that where you recovered that projectile from?

19 A. Yes, sir, right here (indicating).

20 Q. And what did you do with it after you recovered it?

21 A. It was placed in an envelope and sealed. And that
22 envelope is sealed and then, it's placed into a bigger
23 envelope.

24 Q. Does it appear, to be in the same or substantially the
25 same condition, today as when you recovered it back in October

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MR. DAVID HOGSED - CROSS by MR. PRICE

Page 120

1 of two thousand, four (2004)?

2 A. Yes, sir.

3 Q. Move to the last envelope, if you would.

4 A. This is item 44, which is the copper jacketed projectile,
5 from the right side rear seat, back rest cushion of the Ford
6 Explorer.

7 MR. COLER: Your Honor, I'm showing the jury State's
8 Exhibit Number 6.

9 (Photo from State's Number 6 shown on overhead.)

10 Q. (By Mr. Coler) Is that where that projectile came from?

11 A. Yes, sir, from the seat cushion.

12 Q. And what did you do with it after you collected it?

13 A. Like the others, put it in an envelope and mark with all
14 the information and it's sealed and then, placed into an
15 evidence envelope and submitted into evidence.

16 Q. All right. And does it appear, in the same or
17 substantially the same condition, today as when you recovered
18 it?

19 A. Yes.

20 MR. COLER: And, Your Honor, at this time, we would move
21 the contents of State's Exhibit Number 13, the four envelopes
22 containing four projectiles, into evidence.

23 MR. PRICE: I have two questions, Your Honor.

24 EXAMINATION by MR. PRICE:

5:06 P.M.

25 Q. Mr. Hogsed, several times you've used the pronoun "we."

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MR. DAVID HOGSED - DIRECT by MR. COLER

Page 121

1 Did you recover each one of those projectiles, the bullets?

2 A. Yes, I recovered them.

3 Q. You yourself personally?

4 A. Yes.

5 Q. And you yourself personally put each one in one of these
6 manilla envelopes?

7 A. I myself signed each envelope ----

8 Q. That's fine.

9 A. --- and sealed each envelope.

10 MR. PRICE: No objection, Your Honor.

11 THE COURT: Thank you, thirteen. Are all the jurors
12 okay? I know it's hot in here. And we're going to stop in
13 just a minute. Just hang with us.

14 (Whereupon, State's Exhibit Number 13 was admitted into
15 evidence without objection.)

16 Q. Just a few more questions, Investigator. At any time,
17 when you were processing the scene at Hub City Court
18 Apartments, did you ever recover any guns whatsoever?

19 A. No, sir, I did not.

20 Q. Did you look for guns?

21 A. There was an area of search done by myself and several
22 other investigators, but there was none recovered at that
23 time.

24 Q. Okay. At any time, when you were processing the vehicle,
25 that belonged to Mr. Tennant, did you find any guns inside

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MR. DAVID HOGSED - DIRECT by MR. COLER

Page 122

1 that vehicle, in the console or under a seat, or anywhere in
2 the car?

3 A. No, sir, I did not.

4 Q. Did you look thoroughly throughout that vehicle?

5 A. Yes, I did.

6 MR. COLER: Investigator, that's all the questions I
7 have for you. Thank you for being here. And, please, answer
8 any that Mr. Price has.

9 THE COURT: Mr. Price, how long do you think you'll be
10 on your cross?

11 MR. PRICE: A few minutes, Your Honor, but I can cut it
12 a lot shorter, if I was able to look at some evidence, and let
13 the jury go on and start in the morning. But I can cut it in
14 half.

15 THE COURT: All right, we'll get some rest. All right.
16 Madam Forelady, ladies and gentlemen of the jury, we're going
17 to break for the evening. I told you about 5:00, and it's
18 about five after 5:00. Please, report back in the morning at
19 9:30, and we'll start at a quarter to 10:00 and there'll be
20 some refreshments for you.

21 A couple of things: Number one, don't discuss the case
22 among yourselves, do not talk about it at all. And number
23 two, please, don't -- don't look at anything on t.v. tonight
24 -- I don't there will be -- or read anything in the newspaper,
25 which you may or may not be. I want you to decide it based

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MOTIONS & MATTERS

Page 123

1 solely on what you hear in here.

2 Don't let anybody discuss the case with you. If they try
3 to, tell them you're on the jury politely. And if they
4 persist on talking with you about it, get their name, and I'll
5 deal with that. So, I'm going to ask that you leave now and
6 have a very pleasant evening.

7 MS. BROWN: Do we report back at the same place?

8 THE COURT: No, ma'am. They'll show you where to
9 report, and that will be in the jury room. And the bailiffs
10 will show you where to do for your refreshments. And we'll
11 start up right at a quarter to 10:00. Everybody else, please,
12 remain seated and my jurors can go to the jury room and then,
13 you'll be free to leave. Thank you.

14 (The jury exited at 5:09 p.m.)

15 THE COURT: All right. Mr. Price, if you would, please,
16 put your objection on the record concerning -- you have a
17 number of ones, but the ones dealing with the body?

18 MR. PRICE: Your Honor, I believe it was State's Exhibit
19 Number 7. It was the top photograph in that exhibit and it
20 showed a picture of the body of the deceased, Robert Tennant.

21 In light of the testimony that has already come in, and
22 I'm sure will come in, I think it is unnecessarily prejudicial
23 and it's inflammatory and we would object on that ground.

24 THE COURT: Thank you. And let the record reflect that,
25 before those photographs were shown to the witness, Mr. Price

MOTIONS & MATTERS

Page 124

1 came to the bench, along with the State, the Solicitor, Mr.
2 Coler, and told me he was going to object to the photograph,
3 and in my discretion I was going to let it in. And he was
4 kind enough to withhold his objection, so, we did out of
5 order. I overrule your objection, and you're protected on the
6 record.

7 MR. PRICE: Thank you, sir.

8 THE COURT: Now, anything, Mr. Coler, for the record
9 before we break for the evening?

10 MR. COLER: No, sir, just take up with the Court the
11 bond situation with Mr. Gist. I believe he's still -

12 THE COURT: Well, his bond is now extinguished. He'll
13 be in custody. Anything else?

14 MR. COLER: No, sir, Your Honor.

15 THE COURT: Mr. Price, anything for the record?

16 MR. PRICE: Nothing for us, Your Honor.

17 THE COURT: All right. Let me see you all up here
18 quickly. Mr. Hogsed, you are released. You can leave, but
19 you are in the middle of your testimony and I'd ask that you
20 not discuss it with anyone, any side, and be back in the
21 morning ready to go.

22 THE WITNESS: Yes, sir.

23 (The witness stepped down from the witness stand at 5:10
24 p.m.)

25 (Whereupon, a bench conference was had with all counsel

MOTIONS & MATTERS

Page 125

1 present.)

2 (Off-the-Record Comments)

3 THE COURT: All right. Now, let me address the
4 audience. I know this is difficult, on behalf of both
5 families, and I commend you, with few exceptions today. You
6 all have behaved well, and I ask that you continue to behave
7 and -- but, please, no facial expressions, no shaking heads.
8 If you're going to do that, I'll ask you to leave tomorrow.

9 So, let the Defendant go out. And everybody, please,
10 remain seated for one second.

11 (Off-the-Record Comments)

12 (Mr. Gist taken out of courtroom.)

13 THE COURT: I'm going to ask that the victim's side, you
14 all can go ahead and leave now, please. Everybody else remain
15 seated.

16 (The victim's family and friends exited the courtroom.)

17 (Off-the-Record Comments)

18 THE COURT: All right, Gentlemen, just hang on a second.
19 Gentlemen, make sure -- Mr. Coler, I want your exhibits
20 marked, so, we won't be slowed down on that tomorrow.

21 MR. COLER: Yes, sir.

22 THE COURT: Let's pre-mark them, and if there's any
23 problem, then, we'll deal with it. But get them all marked.
24 And, Mr. Beasley, I want some jury charges in the morning, the
25 first thing. I assume you all are talking about self defense

MOTIONS & MATTERS

Page 126

1 and voluntary and appearances. I need to know what you want.
2 on that. Mr. Coler, please -- and you all look at the
3 exhibits here tonight, so, there won't be any questions
4 tomorrow.

5 MR. COLER: Yes, sir. I'll do that right now, Your
6 Honor.

7 THE COURT: Also, Mr. Beasley and Mr. Coler, I will need
8 verdict forms. Okay. The Defendant's family may leave.

9 (Mr. Gist's family and friends exit the courtroom.)

10 THE COURT: Mr. Beasley, my clerk has got some done, so,
11 look at them and see what...

12 (Counsel review documents.)

13 (Off-the-Record Comments)

14 (The Gist trial adjourned at 5:15 p.m.)

15 (Court reconvened at 9:30 a.m. on Tuesday, March 14,
16 2006.)

17 BAILIFF: Court come to order.

18 THE COURT: Thank you. Have a seat. Good morning.
19 Please, be seated.

20 (Courtroom audience sat as requested.)

21 (Off-the-Record Comments)

22 (Whereupon, Court's Exhibit Number 2 was marked for
23 identification and admitted into evidence.)

24 THE COURT: All right. Gentleman, let me have your
25 attention.

MOTIONS & MATTERS

Page 127

1 MR. COLER: Yes, sir.

2 THE COURT: I've marked, as Court's Exhibit 2, a letter
3 or a note from juror number 15, Angela Brown, who I believe is
4 also the foreperson.

5 "I found out by accident that Mr. Tennant was employed by
6 one of Mr. Duncan's -- was employed by one of Mr. Duncan's,
7 parentheses, my boss, parenthesis, clients. This is all I
8 know, and I am not prejudiced by this fact. However, I do not
9 want either side to feel prejudiced by this fact. I would
10 like to continue my service on this jury panel. Please,
11 advise. Sincerely, Angela Brown." And you all look at this
12 and tell me your positions, please.

13 MR. COLER: Well, Judge, I could probably shed a little
14 bit more light on that. I think she's a legal secretary -

15 THE COURT: Hold on a second. I said look at it and
16 then, tell me.

17 (Brief pause while all counsel review document.)

18 (Off-the-Record Comments)

19 THE COURT: All right. Mr. Coler, what is your position
20 on this?

21 MR. COLER: Judge, we have no -- no problem with the
22 juror continuing her service as -

23 THE COURT: All right. You also said you had something
24 to shed light on it. What were you talking about?

25 MR. COLER: Well, I just -- from her background

MOTIONS & MATTERS

Page 128

1 information, she says she's a legal secretary for Mr. Duncan,
2 and he's an attorney here in Spartanburg, and that's according
3 to -

4 THE COURT: Well, apparently, he was employed by one of
5 her boss' clients, so, that's really well removed. Anyway,
6 Mr. Price?

7 MR. PRICE: Your Honor, I'm concerned about how she
8 found out. She says, "by accident," and I have a concern that
9 she was discussing the case after you instructed them not to
10 discuss the case.

11 THE COURT: That inference certainly can be drawn.

12 MR. PRICE: So, I -- I would ask the Court to question
13 her as to how she found out and under what circumstances.

14 THE COURT: All right. Do you want me to do it in
15 camera or do you want to do it out here?

16 MR. PRICE: In camera or whatever would be the less --
17 or least intrusive thing ---

18 THE COURT: All right. How about asking her to meet me
19 in the hall, and I'm just going to talk to her a second and
20 I'll put it back on the record as to what -- or how told, what
21 she says. Any objection, Mr. Coler?

22 MR. COLER: No, sir, Your Honor.

23 THE COURT: Mr. Price?

24 MR. PRICE: No, sir.

25 THE COURT: All right. How about Mr. Beasley, does he

MOTIONS & MATTERS

Page 129

1 have an objection?

2 MR. PRICE: Mr. Beasley does not object.

3 (Whereupon, the Court stepped out of the courtroom to
4 converse with juror at 9:35 a.m.)

5 (Court returned to the courtroom at 9:42 a.m.)

6 (Off-the-Record Comments)

7 THE COURT: All right. Here is what she said: She is a
8 -- works for a lawyer here in Spartanburg, Mr. Duncan. She
9 went, in either late last night or early this morning, and a
10 client had left a message for her to call on an unrelated
11 matter.

12 And she didn't get back with the client, and the client
13 called this morning and she apologized to the client because
14 she told the client that she was on jury duty and was tied up.

15 And the client says, "Well, that's coincidental, I've got
16 to be over there today. We're involved in something; one of
17 our employees was killed," and that's all that was said.

18 So, she didn't make any call or inquire. Mr. Duncan, he
19 insinuated that that was his client. So, from -- from what
20 she told me, she has not been out there talking about the
21 case; it was totally out of the blue.

22 It just happened that the lady called her, and she
23 apologized for not calling her back because she was on jury
24 duty. And the lady said, "Well, I've got to be over there
25 today too. We had -- we had an employee who was killed." Mr.

MOTIONS & MATTERS

Page 130

1 Price?

2 MR. PRICE: Yeah -

3 THE COURT: And I don't think she -- from my
4 conversation with her, she's certainly not violated my order
5 to not discuss the case or anything else. She simply told
6 somebody the reason she didn't call them back was she was on
7 jury duty.

8 MR. PRICE: I have no objection to her staying on the
9 jury either.

10 THE COURT: Thank you. All right. Anything else for
11 the record before we start?

12 MR. COLER: No, sir, Your Honor, not from the State.

13 MR. PRICE: Nothing from Defense, Your Honor.

14 THE COURT: All right. Did you all bring me some jury
15 charges?

16 MR. BEASLEY: Yes, sir.

17 THE COURT: Mr. Beasley, did you all discuss them with
18 your client?

19 MR. BEASLEY: Yes, sir, we did.

20 (Documents handed up to the Court.)

21 (Off-the-Record Comments)

22 THE COURT: They're ready?

23 BAILIFF: They're ready, Your Honor.

24 THE COURT: All right. Hold up one second.

25 (Whereupon, State's Exhibit Numbers 14 and 15 were marked

MR. DAVID HOGSED - CROSS by MR. PRICE

Page 131

1 for identification.)

2 (Off-the-Record Comments)

3 THE COURT: Bring the jury in, please.

4 (The jury entered the courtroom at 9:45 a.m.)

5 (Off-the-Record Comments)

6 THE COURT: I hope everyone had a pleasant evening.

7 (Off-the-Record Comments)

8 THE COURT: Well, I hope all of you had a very pleasant
9 evening, and I told you we would start right at quarter of
10 10:00, and it's a quarter to 10:00 and we're going to get
11 started. So, Officer Hogsed, if you would, please, come to
12 the witness stand, and I'll remind you that you're still under
13 oath.

14 (Officer Hogsed returned to the witness stand as
15 requested.)

16 THE COURT: Mr. Price?

17 MR. PRICE: Thank you, sir.

18 CROSS EXAMINATION by MR. PRICE:

9:51 A.M.

19 Q. Good morning, Mr. Hogsed.

20 A. Morning.

21 Q. I just have a couple of questions for you. You arrived
22 at the scene in Hub City about 12:20 according to your report,
23 correct?

24 A. Yes, approximately 12:20.

25 Q. And that was about twenty (20) minutes after the call

MR. DAVID HOGSED - CROSS by MR. PRICE

Page 132

1 went out?

2 A. That's correct.

3 Q. Okay. And as you stated, that's quick, in the usual
4 scheme of things, for an forensic officer to get on the scene?

5 A. That's correct.

6 Q. Now, you mentioned, in your report and in your testimony,
7 that the dash lights or the lights on the whatever you want to
8 call it were on?

9 A. Yes, on the dashboard, the console lights.

10 Q. But there was noting in your report about the dome light
11 of the car being on?

12 A. I don't recall it being on.

13 Q. If you had noticed it, you would have put it that in your
14 report, wouldn't you?

15 A. Yes, if I had noticed it.

16 MR. PRICE: Thank you, sir. Nothing further.

17 THE COURT: Redirect?

18 MR. COLER: No redirect, Your Honor.

19 THE COURT: You may step down.

20 (The witness stepped down from the witness stand at 9:51
21 a.m.)

22 THE COURT: Call your next witness.

23 MR. COLER: The State calls Robert Talanges.

24 (Mr. Talanges summoned.)

25 MR. COLER: And, Your Honor, we'd ask that Investigator

MR. ROBERT TALANGES - DIRECT by MR. COLER

Page 133

1 Hogsed be excused.

2 THE COURT: Mr. Price, any objection to him being
3 excused?

4 MR. PRICE: We have none.

5 THE COURT: He's excused.

6 (Whereupon, Officer Hogsed was excused.)

7 (Whereupon,

8 ROBERT TALANGES

9 having been duly sworn, testified as follows:)

10 DIRECT EXAMINATION by MR. COLER:

9:52 A.M.

11 Q. Officer, please, state your full name for the record.

12 A. Robert Charles Talanges.

13 Q. Okay. And tell us who you work for?

14 A. At the present time, Spartanburg County Sheriff's Office.

15 Q. And how long have you been with the sheriff's department?

16 A. Just a little over five months.

17 Q. All right. What do you do for the sheriff's department?

18 A. We do the crime scene or basically we're ID
19 investigators.

20 Q. So, essentially, the same job as Investigator Hogsed
21 does?

22 A. That's correct.

23 Q. And who did you work for before you went to work at the
24 sheriff's office?

25 A. Spartanburg Public Safety.

MR. ROBERT TALANGES - DIRECT by MR. COLER

Page 134.

1 Q. How long were you with Public Safety?

2 A. Fifteen (15) years, two (2) months and twenty-one (21)
3 days.

4 Q. All right. What was your last assignment or position
5 with Public Safety?

6 A. We were assigned -- well, I was assigned to
7 investigations in the ID section of forensics.

8 Q. Essentially the same job that you do -- you now do, for
9 the sheriff's department, you did for the city police
10 department?

11 A. That is correct.

12 Q. Were you, in fact, dispatched to the scene of this crime?

13 A. Yes, I was.

14 Q. Do you have a copy of your -- your report with you?

15 A. I -- I don't.

16 Q. I'm going to hand you a copy of your report to refresh
17 your memory. Is that your report?

18 (Document handed to witness.)

19 (Brief pause while witness reviews document.)

20 A. Yes, it is.

21 Q. Okay. I just have a couple of brief -- brief questions
22 for you, Investigator. And one, did you assist Investigator
23 Hogsed in processing the crime scene at Hub City Court
24 Apartments?

25 A. Yes, I did.

MR. ROBERT TALANGES - DIRECT by MR. COLER

Page 135

1 Q. At some point during the investigation, were you sent or
2 dispatched to the morgue for the autopsy of the victim?

3 A. Yes, I was. I think it was like 8:20 the following
4 morning or that -- that morning.

5 Q. On the 3rd, October 3rd?

6 A. Yes, sir.

7 Q. All right. Did you perform a gunshot residual kit on the
8 victim?

9 A. That's standard procedure. We do that on all of our --
10 our victims.

11 Q. Just describe what a gunshot residual kit is and what you
12 did to the victim to collect a sample from him.

13 A. Okay. A gunshot residual kit is basically a little
14 package. It -- it consists -- it contains a little type
15 blotter or sticky tape blotters for both right and left hand,
16 palm side, as well as the back side and also swabs.

17 The first thing that you do is, the left hand, you would
18 actually blotter the left hand palm or back side, depending on
19 where you start at, and then, after you finish using the
20 blotter, you would use Q-Tip swabs that are contained in the
21 kit. And once you finish both hands, you seal the kit up, put
22 all the information and seal it.

23 Q. So, essentially, is this kit for the purpose of
24 collecting any possible gunshot residual on the victim's
25 hands?

1 A. Yes, it is.

2 Q. Okay. Do you yourself perform the analysis on the
3 samples you -- you collect?

4 A. No. We -- we submit it to SLED for analysis.

5 Q. Do you know where SLED's laboratory is that analyzes it?

6 A. Down in Columbia.

7 Q. Okay. When you got to the victim at the morgue, can you
8 describe the condition of his hands when you found them?

9 A. Yeah. The -- prior to them being transported to the
10 hospital morgue, every victim we have, if deceased, we bag
11 their hands, basically take a paper bag and we fix it with
12 tape, so, they can't be tampered with.

13 Q. Were the bags still on his hands when you got to the hosp
14 -- to the autopsy room, to the morgue?

15 A. Yes, they were..

16 Q. Is the purpose of those bags to preserve any evidence on
17 his hands or prevent anything from contaminating his hands?

18 A. That is correct.

19 Q. What did you do, with the gunshot residual kit sample,
20 that you collected from Mr. Tennant's hands?

21 A. After you -- after you collect it, basically, you seal
22 it, you fill out the forms inside and seal it. Then, it's
23 submitted to our evidence and then, submitted to SLED. The
24 paperwork is filled out and submitted to SLED.

25 Q. Is it sealed to prevent anybody else from tampering with

MR. ROBERT TALANGES - DIRECT by MR. COLER

Page 137

1 it until it gets to the SLED laboratory?

2 A. That's correct.

3 Q. I'm going to hand you what's been pre-marked as State's
4 Exhibit Number 15 and ask you if you recognize that exhibit?

5 (Exhibit handed to witness.)

6 (Brief pause while witness reviews exhibit.)

7 A. Yes, I do.

8 Q. Is that the gunshot residual kit that you performed on
9 Mr. Tennant's hands at the morgue?

10 A. Yes, it is. It has my name and date and time.

11 Q. And did you seal it?

12 A. Yeah.

13 Q. Can you show the jury how you sealed it.

14 A. Sealing it there is basically the envelope flap is a
15 glued side. And you -- you wet the glue side. You seal that
16 way, and then, you have evidence tape which goes over and you
17 just sign it and initial that evidence tape.

18 Q. And what did you do with it after you collected the
19 sample from Mr. Tennant's hands and you sealed the contents in
20 that envelope?

21 A. Well, basically, at that time, I take it and I put it
22 with my belongings, where my camera is, and it stays with my
23 camera while the autopsy is continuing and I photograph the
24 entire autopsy. Then, I take it back to City Hall and submit
25 to the evidence room or evidence locker.

MR. ROBERT TALANGES - DIRECT by MR. COLER

Page 138

1 Q. Did you submit it to a secure location in the evidence
2 locker at city hall or the police department?

3 A. Yes, I did.

4 MR. COLER: Your Honor, at this point, subject to the
5 analyst's report, we would move all of this into evidence.

6 MR. PRICE: No objection, Your Honor.

7 THE COURT: Without objection, 15.

8 (Whereupon, State's Exhibit Number 15 was admitted into
9 evidence without objection.)

10 Q. (By Mr. Coler) While you were present during the autopsy,
11 did you observe a bullet or a slug being removed from the
12 victim, Robert Tennant?

13 A. Yes.

14 Q. I'm going to hand you what's been pre-marked as State's
15 Exhibit Number 14 and ask you to take the contents of that
16 envelope.

17 (Exhibit handed to witness.)

18 (Witness complied with request and reviewed the
19 contents.)

20 A. The marking on the envelope is "Case Evidence found was
21 recovered from the body of Robert Lee Tennant."

22 Q. All right. Take a look at the contents, sir.

23 A. Yeah, I did. It's a bullet.

24 Q. Is that the bullet that you observed being removed from
25 the body of Mr. Tennant and handed to you by someone?

MR. ROBERT TALANGES - DIRECT by MR. COLER

Page 139

1 A. That's going to be if it's marked on the bottom by the
2 pathologist.

3 Q. All right. Is that -- and the pathologist, Dr. Wrenn,
4 did he hand that bullet to you?

5 A. Yes, sir.

6 Q. You took possession of it from him?

7 A. That is correct.

8 Q. What did you do with it after you took possession of it?

9 A. I take possession of it. I fill out an evidence form
10 like this (indicating). As a matter of fact, this is one I
11 filled out, and submit it to the evidence custodian. And the
12 paperwork is filled out to be submitted to SLED for -- we do
13 it for IDIS (phonetic) testing.

14 Q. All right. What is IDIS testing?

15 A. That's -- it's a ballistic test is what it is.

16 Q. Okay. Is it also submitted to SLED to make
17 determinations about the caliber, type of gun, those kinds of
18 things?

19 A. They -- they do it. It's general rifle characteristics
20 or a GSR -- how do they put that -- GCR, I think it is. But,
21 they'll do caliber size, right or left twist for rifling and
22 they weigh the bullet ----

23 Q. All right. And you don't -- Officer, you're the officer
24 that collects the evidence. You don't do those -- those
25 processing ---

MR. ROBERT TALANGES - DIRECT by MR. COLER

Page 140

1 A. No. I talk to SLED enough and they've told me exactly
2 what ---

3 Q. Okay.

4 A. Tests we need to perform on bullets that are submitted.

5 Q. Does that bullet appear to be in the same or
6 substantially the same condition today as when you recovered
7 it from Dr. Wrenn, who took it out of the body of the victim
8 at the morgue on October 3rd of two thousand, four?

9 A. It appears to be, yes.

10 MR. COLER: Your Honor, at this point, we would also
11 offer State's Exhibit Number 14 into evidence.

12 MR. PRICE: No objection subject to confirmation, Your
13 Honor.

14 THE COURT: All right. Without objection.

15 (Whereupon, State's Exhibit Number 14 was admitted into
16 evidence without objection.)

17 Q. (By Mr. Coler) Let me ask you one more thing about
18 gunshot residual kits. As an officer who's trained to collect
19 those, take the samples, do you have guidelines about the time
20 frame in which you can collect a sample from -- from any
21 individual, living or dead?

22 A. A living individual, you have up to four hours.

23 Q. Okay.

24 A. A deceased individual, they're basically -- per SLED
25 protocol, there's no time limit on it because it's -- they're

MR. ROBERT TALANGES - CROSS by MR. PRICE

Page 141

1 going straight to the morgue. Once the hands are bagged, they
2 can't be tampered with.

3 Q. Okay. If you encounter a suspect after the four-hour
4 time frame, four hours after the shooting incident, will you,
5 as an officer, collect a sample? Are you instructed to
6 collect a sample by -- by SLED or by your captain?

7 MR. PRICE: Objection to the leading.

8 THE COURT: Overruled. Answer the question.

9 A. Per SLED guidelines, I would not collect it after that --
10 that period of time.

11 MR. COLER: Okay. That's all the questions I have,
12 Investigator. Please, answer any that --

13 THE COURT: Cross?

14 CROSS EXAMINATION by MR. PRICE: 10:01 a.m.

15 Q. Good morning, Mr. Talanges. I just have a couple of
16 questions. The GSR exam that you did on Mr. Tennant, what
17 time in the morning did you take that sample?

18 A. There should be a form with the paperwork. He started
19 the autopsy --

20 (Brief pause while witness reviews document.)

21 A. I'd say some time between -- about eight o'clock (8:00)
22 a.m.

23 Q. Sometime after eight o'clock (8:00)?

24 A. Sometime between 8:00 and 8:30 I would say.

25 Q. You're just not -- you're not sure exactly, but within

MR. ROBERT TALANGES -- CROSS by MR. PRICE

Page 142

1 that 30-minute time frame?

2 A. That's correct. There's a form that's filled out and it
3 has the specific time on it. And -- and I don't see it in
4 this package.

5 Q. Well, that's close enough. Now, the purpose of the GSR
6 kit is to determine whether there are trace metals on the skin
7 from -- coming from a gunshot or gun powder, correct?

8 A. Correct.

9 Q. And the gun powder, when it explodes, the bullet goes out
10 and it send out minute particles?

11 A. That is also correct.

12 Q. And the theory is that some of those particles are going
13 to be on the hand of someone who actually fired a shot?

14 A. Correct.

15 Q. And these particles may be washed off by liquids, can't
16 they?

17 A. Yes, they can.

18 Q. And you are aware that a partially -- or a knocked over
19 can of beer was found beside the hand of Mr. Tennant?

20 A. No, I wasn't ---

21 Q. I understand. All right, sir. Now, simply because there
22 is no gunshot residual, that does not mean that a person did
23 not hold a gun?

24 A. That's true.

25 Q. All right. If you hold a gun and don't fire it, you're

MR. ROBERT TALANGES - REDIRECT by MR. COLER

Page 143

1 not going to get any residual?

2 MR. COLER: Your Honor, I'm -- I'm going to object to
3 that question. He's not been qualified as an expert in
4 analysis of gunshot residual.

5 THE COURT: If you know.

6 A. I would say if -- if a gun has been fired, it's a
7 possibility you could have trace amounts on your hand.

8 Q. And what if the gun has not been fired?

9 A. If -- if it had been fired recently, it could have it
10 possibly.

11 Q. And if it had not been fired recently? Do you know?

12 A. I could not say.

13 Q. All right. That's fine. That's a fair answer. Now, as
14 far as the two things of evidence that you have there, the GSR
15 kit you said you put into the evidence locker?

16 A. That's correct, the evidence locker or ---

17 Q. Now, the other one, the projectile, you say you gave to
18 an evidence technician?

19 A. It shows going into the property locker at -- at the
20 secure area.

21 Q. So, rather than give it to a person, you put it into the
22 locker or did you give it to an individual?

23 A. It went into the locker.

24 Q. Okay.

25 A. As a matter of fact, they both did.

MR. ROBERT TALANGES - REDIRECT by MR. COLER

Page 144

1 MR. PRICE: Thank you very much. I don't have anything
2 further.

3 THE COURT: Redirect?

4 MR. COLER: Just briefly.

5 REDIRECT EXAMINATION by MR. COLER:

10:05 a.m.

6 Q. Mr. Price asked you about, if a person's handling in --
7 in relationship to a gun that's fired and possibly getting
8 gunshot residual on it. Do you know, in your experience, if a
9 person's hand is near a gun when it's fired, will there be
10 gunshot residual on that person's hand?

11 (Brief Pause)

12 A. The gun powder is going to be expelled out of the barrel.

13 Q. Okay.

14 A. And there's a good possibility, if the hand is close
15 enough, you would have minute powder on it.

16 Q. Okay. If you were shooting at me, and you fired a gun,
17 and I had my hand raised up with a gun pointed at you, and we
18 were in close proximity, would you expect your gunshot
19 residual from your gun to possibly get on my hand?

20 A. I would expect it to be on your hand and also your --
21 your upper torso area as well.

22 Q. If it wasn't on my hands, where would you expect -- what
23 would your expectation be about the location of my hands when
24 you fired your gun at me?

25 A. That they were nowhere near the weapon.

MR. ROBERT TALANGES - REDIRECT by MR. COLER

Page 145

1 MR. PRICE: Your Honor, I object. This is not a
2 question. It's speculative. There's nothing in the record
3 concerning -

4 THE COURT: Sustained. I think that's a plausible
5 opinion. Disregard those last two questions about this. That
6 is not in evidence.

7 MR. COLER: That's all the questions I have, Your Honor.

8 MR. PRICE: Nothing in reply, Your Honor.

9 THE COURT: You may step down. May he be excused, or do
10 you want him to ---

11 (The witness stepped down from the witness stand at 10:06
12 a.m.)

13 MR. COLER: If there's no objection, we'd ask he be
14 excused.

15 THE COURT: Thank you, sir, Officer.

16 (Whereupon, Officer Talanges was excused.)

17 THE WITNESS: Thank you.

18 MR. COLER: Thank you.

19 THE COURT: Okay. Next witness?

20 MR. COLER: See if Dr. Wrenn is here.

21 BAILIFF: Yes, sir.

22 (Dr. Wrenn is summoned.)

23 THE COURT: Who?

24 MR. COLER: Dr. David Wrenn. May we approach briefly,
25 Your Honor?

MR. ED GUTHRO - DIRECT by MR. COLER

Page 146

1 THE COURT: You may.

2 (Whereupon, a bench conference was had with all counsel
3 present.)

4 (Off-the-Record Comments)

5 (Brief Pause)

6 THE COURT: Mr. Bailiff, call Dr. Wrenn one more time
7 for me.

8 BAILIFF: Yes, sir.

9 (Dr. Wrenn summoned once again.)

10 (Brief Pause)

11 MR. COLER: We'll just move on to the next witness. The
12 State calls Ed Guthro.

13 (Whereupon,

14 EDGAR V. GUTHRO

15 having been duly sworn, testified as follows:)

16 DIRECT EXAMINATION by MR. COLER:

10:08 A.M.

17 Q. Officer, please, state your full name for the record.

18 A. Edgar Victor Guthro.

19 Q. And tell us who you work for?

20 A. The Spartanburg Public Safety Department.

21 Q. How long have you been with the Spartanburg Public Safety
22 Department?

23 A. A little over seventeen (17) years.

24 Q. And what is your present assignment or duty with the --
25 with the department?

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MR. ED GUTHRO - DIRECT by MR. COLER

Page 147

1 A. I now work in our forensics unit.

2 Q. How long have you been in forensics?

3 A. Just a few months.

4 Q. Okay. Where -- what department or unit did you work in
5 prior to going into forensics?

6 A. In our criminal investigative division.

7 Q. You were an investigator?

8 A. Yes, sir.

9 Q. All right. Approximately how long were you in that
10 department?

11 A. Just shy of eight (8) years.

12 Q. Okay. And back, in October of two thousand, four (2004),
13 were you still in the investigation unit -- investigation
14 department with the city police?

15 A. Yes, sir, I was.

16 Q. As part of the investigation of this case, were you asked
17 to interview the defendant, Terrence Gist?

18 A. Yes, sir.

19 Q. All right. Do you recall where you interviewed him?

20 A. At Spartanburg City Hall.

21 Q. Okay.

22 A. Interview Room Number 1.

23 Q. All right. Prior to asking him any questions, or
24 interview at all, did you advise him of his Miranda warnings?

25 A. Yes, I did.

MR. ED GUTHRO - DIRECT by MR. COLER

Page 148

1 Q. I'm going to show you what's been pre-marked as State's
2 Exhibit Number 1. Do you recognize that document?

3 (Brief pause while witness reviews document.)

4 A. Yes, sir. This is a pre-interrogation waiver form that
5 we use at the city, which lists a person's Miranda rights.
6 And we read them and check them off as we read them.

7 Q. Is that a form you used before you take statements from
8 people such as Mr. Gist, defendants and suspects in cases?

9 A. Yes, sir.

10 Q. All right. Would you tell the jury exactly what you
11 advised Mr. Gist his Miranda rights were?

12 A. I read the rights off of this form, and they read as
13 follows: It says, "You have the right to remain silent.
14 Anything you say can and will be used against you in a court
15 of law.

16 "You have a right to talk to a lawyer and have a lawyer
17 present with you while you're being questioned. If you cannot
18 afford to hire a lawyer, a lawyer will be appointed free of
19 any cost to represent you before any questioning begins. And
20 you have a right to stop answering questions at any time."

21 Q. After reading his rights to him, did you ask him if he
22 understood them?

23 A. I did.

24 Q. All right. Is there a portion of that document where you
25 have him sign indicating you've read his rights to him?

MR. ED GUTHRO - DIRECT by MR. COLER

Page 149

1 A. Yes, sir.

2 Q. All right. Did he, in fact, sign that?

3 A. Yes, sir.

4 Q. After going through his Miranda rights with him, did you
5 ask him if he wished to waive those rights and speak to you
6 about the incident?

7 A. I did. There's a -- the other section of this form deals
8 with that. And after they sign, indicating that they
9 understand their rights, this next section is read to them.
10 And it reads as follows: "Fully understanding my rights, as
11 they've been explained to me, I wish to waive, which means to
12 give up my rights, and talk to officer..." and I have my name
13 and Investigator Brewster -- excuse me -- Brewster's name
14 listed there.

15 And then, it says, "In reference to a -- the homicide of
16 Robert Lee Tennant. I have -- I have rights freely and
17 voluntarily, without being threatened or coerced, and without
18 being promised any leniency or reward."

19 Q. After reading that to him, or advising him that that's
20 what that said, did you ask him to sign that document
21 indicating he -- asked him about waiving his right and
22 speaking to you?

23 A. Yes. I advised him, if he wished to talk to us, he could
24 -- that he would need to sign this form indicating that he was
25 waiving his rights.

MR. ED GUTHRO - DIRECT by MR. COLER

Page 150

1 Q. Did he, in fact, sign that form indicating that to you?

2 A. Yes, sir.

3 Q. While you were with Mr. Gist, did he appear to be of a
4 clear mind?

5 A. Yes, sir, he did.

6 Q. Did he appear to you to answer your questions logically
7 and thoughtfully and in a logical and understandable manner?

8 A. Yes, sir.

9 Q. Did he appear to you to be under the influence of any
10 alcohol or drugs?

11 A. No, sir.

12 Q. Did he ever ask you, while you were speaking with him,
13 for a lawyer?

14 A. No, sir, he did not.

15 Q. Did he ever ask you to stop the questioning or stop the
16 interview?

17 A. No, sir.

18 Q. Did you ever make any threats or promises to him to get
19 him to give you a statement?

20 A. No, sir, I did not.

21 Q. Did you ever coerce him or attempt to coerce him in
22 exchange for getting a statement from him?

23 A. No, sir.

24 Q. And, from your perception, was his statement that he gave
25 to you given freely and voluntarily?

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MR. ED GUTHRO - DIRECT by MR. COLER

Page 151

1 A. Yes, sir, it was.

2 Q. After going through his Miranda rights, and having him
3 sign the pre-interrogation waiver form, did you, in fact, take
4 a written statement from Mr. Gist?

5 A. I did.

6 Q. I'm going to show you what's been pre-marked as State's
7 Exhibit Number 2.

8 (Exhibit handed to witness.)

9 Q. Do you recognize that document?

10 A. Yes, sir. This is a voluntary statement form that the
11 city uses to take written statements on. It's in my
12 handwriting and it's the statement of Mr. Gist.

13 Q. Okay. While you were taking this statement, did you have
14 him write a statement or did you write it out as he was
15 telling you what happened?

16 A. I wrote his statement. And ---

17 Q. And ---

18 A. --- I write what he tells me.

19 Q. After you were done writing down what he told you, about
20 it, did you give him an opportunity to review his statement?

21 A. Yes. He would have read it, yes, sir.

22 Q. Okay. And, after you write the statement down for him
23 and he's reviewed it, do you ask him to sign that written
24 statement that you had taken from him?

25 A. Yes, sir.

MR. ED GUTHRO - DIRECT by MR. COLER

Page 152

1 Q. Did he, in fact, sign that?

2 A. He did.

3 Q. While you were taking the statement from Mr. Gist, did
4 you video tape and audio tape the process?

5 A. Yes, sir, it is.

6 Q. Prior to this trial, have you had an opportunity to
7 review the video tape?

8 A. Yes, sir.

9 Q. I'm going to hand you what's been pre-marked for ID as
10 State's Exhibit Number 3.

11 (Exhibit handed to witness.)

12 Q. And do you recognize that tape?

13 A. Yes, sir, I do.

14 Q. Is that a video tape and audio tape recording of the
15 interview that you took that you had with the Defendant, Mr.
16 Gist, related to this incident?

17 A. Yes, sir, it is.

18 Q. Have you had an opportunity prior to this trial to review
19 that tape and verify its accuracy?

20 A. Yes, sir.

21 Q. Does it accurately portray the interview of Mr. Gist?

22 A. It does.

23 MR. COLER: Your Honor, at this point, we'd offer
24 State's Exhibit Number 1, 2, and 3 into evidence and offer to
25 publish to the jury.

MR. ED GUTHRO - DIRECT by MR. COLER

Page 153

1 MR. PRICE: And we would object on the same grounds that
2 we previously argued, Your Honor.

3 THE COURT: You're protected on the objection.
4 Objection overruled.

5 (Whereupon, State's Exhibit Numbers 1, 2, and 3 were
6 admitted into evidence over objection.)

7 MR. COLER: Thank you, Your Honor.

8 Q. What I would ask you to do first, Detective, is read or
9 publish for us the written statement you took from Mr. Gist,
10 and then, I'm going to ask you to publish the video tape.

11 A. It starts out reading -- there's a header that we put up
12 there indicating where the statement was taken and who it was
13 taken from and who it was taken by.

14 Q. Okay.

15 A. "The statement of Terrence Shermon (phonetic) Gist, date
16 of..." -- "...DOB [redacted] social security number [redacted]
17 taken by Detective E. B. Guthro, interview room, Spartanburg
18 City Hall." And the statement reads as follows:

19 "On 10/2/04, sometime around midnight --

20 THE COURT: Back off of that microphone a little.

21 A. Sorry.

22 THE COURT: It's not anything, it's just -- it's acting
23 like the parking lot. It's not working right.

24 A. I understand. "On 10/2/04, sometime around midnight to
25 1:00 a.m., my girlfriend, Antonette Foster (phonetic), dropped

MR. ED GUTHRO - DIRECT by MR. COLER

Page 154

1 me off at Hub City Apartments. I was going to congratulate
2 Terrell Wellman (phonetic) because his girlfriend was
3 pregnant.

4 "Terrell was supposed to be standing out around Apartment
5 54 or 55. When I got there, Terrell had already left. I saw
6 Jon, Marcel Foster, they were yelling..." -- there's a word
7 here that --

8 THE COURT: Read the statement as it's ---

9 A. Yes, sir.

10 MR. COLER: I know it's offensive -- I know it's
11 offensive, but go ahead.

12 A. "When I got there, Terrell..." -- I'm sorry, I lost my
13 spot. "When I got there, Terrell had already left. I saw
14 Jon, Marcell Foster, they were yelling, 'That nigger had just
15 tried to kidnap us.' Then, they started arguing with a dude
16 in a green or blue Explorer.

17 "He was saying, 'So what if I did try to kidnap you?
18 What are you going to do about it?' He was sitting on the
19 tailgate of his Explorer with two young girls.

20 "And, then, he got up and walked around and closed his
21 passenger side door. Then, he shut the hatchback. Then, he
22 went to the driver's side. He yelled at them again, saying,
23 'So what, so what? So, what you all going to do about it?'

24 "Antonio was standing close by the guy. I had already
25 went in and got my 357 Smith & Wesson Magnum with a black

MR. ED GUTHRO - DIRECT by MR. COLER

Page 155

1 handle. I was keeping it at -- at Antonio's apartments --
2 apartment, which I think is number 54.

3 "I bought the gun a couple of years ago from a dude off
4 the street. I keep the gun because I have been run off the
5 road and shot at plenty of times before. The dude with the
6 Explorer said, 'I got something for you all,' and started
7 reaching under his seat.

8 "That's when Antonia, a.k.a. 'Butter' hit him. Antonio
9 hit the dud in the jaw with his fist, then, the dude pulled a
10 gun out from under his seat and started waving it around.

11 "He started saying, 'What now?' 'What now?' Then, he got
12 back in his vehicle. And he had just got one foot in his
13 vehicle, his left foot was still outside. He had his left arm
14 sticking through the window, with the gun still in it.

15 "I had my gun stuck in my pants, so I -- pants on my
16 right side. I pulled my gun and fired one quick shot. I saw
17 the bullet hit him, and he grabbed his left arm with his right
18 hand.

19 "I dropped my gun and took off. My homeboy, Peach, was
20 walking with me, and Big Bird, who is a girl, had been walking
21 with us. But she got way ahead..."

22 THE COURT: Back off a little bit, please..

23 A. "But she got way ahead. After I had walked off, I heard
24 five more shots, then, two more after that. Me and Peach
25 passed a about fifteen (15) police cars that were going to the

MR. ED GUTHRO - DIRECT by MR. COLER

Page 156

1 scene.

2 "Peach kept saying, 'Man, I hope he didn't -- he ain't
3 dead.' Me and Peach walked to my house at 522 Raleigh Street.
4 We spent the night at my house. We both went to sleep. At
5 first I couldn't get to sleep because it was on my conscience.

6 "People kept calling all night and the next day telling
7 me he was dead. This morning someone called my mother..." or
8 told my -- excuse me -- "...told my mother that I had killed
9 the dude.

10 "My mother asked me, and I told her I didn't do it.
11 Then, I heard the police were at my house looking for me at
12 about 3:30. So, I went home and turned myself in. End of
13 statement."

14 Q. And he signed that statement?

15 A. Yes, sir.

16 MR. COLER: Your Honor, at this point, we would offer to
17 publish the video tape of the interview process. It's about
18 an hour and twenty minutes long.

19 THE COURT: This whole process is an hour and twenty
20 minutes long?

21 MR. COLER: This video tape is about an hour and twenty
22 minutes, Your Honor.

23 THE COURT: Does anybody need a break before we listen
24 to an hour and twenty minute video? Are you okay?

25 (Jurors nod affirmatively.)

MR. ED GUTHRO - DIRECT by MR. COLER

Page 157

1 THE COURT: If, at any time, you get uncomfortable,
2 raise your hand, and we'll take a break, okay? Or, if you
3 need to stand up and stretch during the video, feel free to
4 stand up and stretch.

5 (Off-the-record comments about juror moving to see the
6 video.)

7 (Brief Pause while video equipment set up.)

8 (The video began at 10:22 a.m.)

9 (The video concluded at 11:28 a.m.)

10 MR. COLER: And, Your Honor, there's just a little bit
11 left on that. It's just him signing the paper, and since it's
12 in, I don't want to waste the Court's time.

13 THE COURT: All right. Let's -- how much more have you
14 got for this witness?

15 MR. COLER: Two questions.

16 THE COURT: Well, ask them.

17 Q. (By Mr. Coler) From your memory, or from your report,
18 were you with the police officers when they apprehended the
19 defendant over on Raleigh Street that afternoon?

20 A. I was at that residence. I was inside the residence.

21 Q. Do you need to look at a copy of your report?

22 (Witness retrieves document.)

23 A. I saw the defendant and another gentleman walking through
24 the back yard approaching the residence. By the time that I
25 had got back out of the residence, he had already been placed

MR. ED GUTHRO - DIRECT by MR. COLER

Page 158

1 in custody.

2 Q. From your report, what time was that?

3 A. Roughly four o'clock (4:00) I believe.

4 Q. And that was four o'clock (4:00) in the afternoon?

5 A. Yes, sir.

6 Q. More than four hours after the shooting?

7 A. Yes.

8 Q. All right. And, then, one other question I have for you:

9 During this interview process, there were times when the

10 Defendant wanted to ask you questions. Is that an effective

11 interrogation technique to allow him to ask questions of you

12 or why did you not let him ask you questions and answer them?

13 A. Initially, he had a question and his question was how did

14 we put his name in it. And the next one, as I recall, was --

15 well, I can't even think of what it was now. But they were

16 both dealing with the crime, and he had not yet been

17 Mirandized.

18 And also, I don't want to supply him with information

19 during this interview because I'd want to be able to confirm

20 things from the -- from the facts, evidence at the scene or

21 whatever that would indicate that he was telling me the truth.

22 MR. COLER: I understand. Thank you. That's all the

23 questions I have. Please, answer Mr. Price's --

24 THE COURT: All right. We're going to take a break .

25 before we cross. Madam Forelady, ladies and gentlemen, you

MR. ED GUTHRO - DIRECT by MR. COLER

Page 159

1 all want to go to the jury room and stretch your legs a little
2 bit. Do not discuss the case among yourselves for ten or
3 fifteen minutes, okay? Does anybody smoke? Any smokers?

4 (Jurors raise hands.)

5 THE COURT: All right, sir. Mr. Bailiff, let my smokers
6 go downstairs and take a cigarette break if they want to. But
7 don't discuss the case while you're killing yourself -- while
8 you're smoking.

9 (Laughter)

10 (The jury exited the courtroom at 11:28 a.m.)

11 THE COURT: All right, we'll break. It's -- we'll break
12 until about twenty till, or twenty-five till, somewhere in
13 that neighborhood. The Defendant is in custody.

14 MR. COLER: Thank you, Your Honor.

15 (Whereupon, a recess was taken from 11:28 a.m. till 11:43
16 a.m.)

17 BAILIFF: Rise and come to order.

18 THE COURT: Thank you. Please, be seated. Anything for
19 the record, Mr. Coler?

20 MR. COLER: No, sir, Your Honor.

21 THE COURT: Mr. Price?

22 MR. PRICE: No, sir.

23 (Off-the-Record Discussion)

24 THE COURT: Mr. Watson?

25 BAILIFF: Yes, sir?

MR. ED GUTHRO - CROSS by MR. PRICE

Page 160

1 THE COURT: Tell him I'm ready.

2 (The jury entered the courtroom at 11:45 a.m.)

3 THE COURT: All right. Mr. Guthro, come on up.

4 (Mr. Guthro returns to the witness stand.)

5 THE COURT: Okay. Mr. Beasley or Mr. Price, which one?

6 MR. PRICE: I will do this one, Your Honor.

7 THE COURT: All right.

8 CROSS EXAMINATION by MR. PRICE:

11:46 A.M.

9 Q. Mr. Guthro, how are you doing this morning?

10 A. Good, sir, how are you?

11 Q. I'm fine. Thank you. I only have a few questions for
12 you, sir. When you took this statement back on October the 3rd
13 of '04, Mr. Gist was sixteen years old at that time, was he
14 not?

15 A. Yes, sir.

16 Q. And, at that time, he was in the tenth grade?

17 A. Yes, sir.

18 Q. And, at that time, I believe either -- well, it wasn't
19 you; it was some member of your city police department had
20 taken Mr. Gist straight from his house, where he turned
21 himself in, to the City Hall, for your interrogation or your
22 questioning?

23 A. Yes, sir.

24 Q. All right. And, at that time, obviously, his mother was
25 not there with him?

MR. ED GUTHRO - CROSS by MR. PRICE

Page 161

1 A. That's correct.

2 Q. Nor was an attorney?

3 A. That's correct.

4 Q. And, as you stated, on the beginning of the tape, you
5 were not there to answer his questions, were you?

6 A. In reference to the crime, no, sir.

7 Q. Right. But, because of your interrogation technique, or
8 whatever your style is, you did not provide him with any
9 details of the shooting or what your officers found when they
10 investigated this case?

11 A. Extremely little if any. I'd have to watch it again, but
12 that's -- I make a point of that, yes.

13 Q. All right. I understand. Now, you did not tell him that
14 Mr. Tennant had only been shot one time?

15 A. No, sir, I did not.

16 Q. And you did not tell him that Mr. Tennant had been found
17 with his right foot inside the door ---

18 A. No, sir.

19 Q. --- when the officers got there?

20 A. No, sir.

21 Q. And you did not tell him that there had been multiple
22 shots into Mr. Tennant's vehicle?

23 A. No, sir.

24 Q. You did not give him any details, of any of the other
25 witnesses' statements, that had been taken by you or other

MR. ED GUTHRO - CROSS by MR. PRICE

Page 162

1 members of your department?

2 A. That's correct.

3 Q. And you did not provide him with any photos or anything
4 that had been taken by Mr. Brown or Mr. Hogsed or any other
5 members of your department?

6 A. That's correct.

7 MR. PRICE: All right, sir. Thank you very much.

8 MR. COLER: No -- no redirect, Your Honor.

9 THE COURT: All right. You may step down. May he be
10 excused?

11 MR. COLER: If there's no objection, Your Honor.

12 MR. PRICE: We have no objection.

13 THE COURT: All right. You may be excused. Next
14 witness?

15 (The witness stepped down from the witness stand and was
16 excused at 11:47 a.m.)

17 MR. COLER: Dr. Wrenn?

18 (Dr. Wrenn is summoned.)

19 BAILIFF: Your Honor, he's in the next courtroom
20 testifying.

21 THE COURT: Next witness?

22 MR. COLER: Erika James.

23 (Ms. James is summoned.)

24 THE COURT: Come around, Ms. James, please, right up
25 here.

MS. ERIKA JAMES - DIRECT by MR. COLER

Page 163

1 (Whereupon,

2 ERIKA JAMES

3 having been duly sworn, testified as follows:)

4 DIRECT EXAMINATION by MR. COLER:

11:48 A.M.

5 Q. Ma'am, would you, please, state your full name for the
6 record?

7 A. Erika Shakia James (phonetic).

8 Q. All right. And back, on the date of this incident,
9 October 4th of two -- October 4th -- 3rd of two thousand, four
10 (2004), were you living in Hub City Court Apartments?

11 A. Yes, sir.

12 Q. What apartment number?

13 A. Fifty-one (51).

14 Q. Okay. Do you remember what happened that night?

15 A. Yes, sir.

16 Q. Related to this incident?

17 A. Yes, sir.

18 Q. I want you to tell me, from your memory, what happened
19 starting with you. I think you stepped outside of your
20 apartment and getting some fresh air and cool off?

21 A. Yes, sir.

22 Q. Okay. And I need you to speak up, as best you can, so,
23 everybody over here can hear you.

24 A. Okay.

25 Q. Okay. Go ahead and tell us what happened.

MS. ERIKA JAMES - DIRECT by MR. COLER

Page 164

1 A. I stepped outside, and when I stepped outside, there was
2 a large -

3 THE COURT: Ma'am, speak up, please.

4 A. Okay. I stepped outside, and when I stepped outside,
5 there was a large group of people to my right, but directly in
6 front of me it was two gentlemen standing in the middle of the
7 parking lot.

8 And one of the gentlemen was speaking to the victim
9 telling him it was best for him to go ahead and leave. And he
10 was telling him that he wasn't scared. He said that, and he
11 said he didn't want him to be, but the best thing for him to
12 do would be is to leave.

13 And he said okay. And he had some trash in his hand, and
14 he said he wanted to throw it away. And ---

15 Q. Okay. Let me back up. Using that pointer -- the
16 pointer I gave you ---

17 A. Uh-huh (affirmative).

18 Q. Start with where your -- your apartment is -- was, if you
19 can find it on this diagram.

20 (Diagram shown on overhead.)

21 A. You want me to sit here?

22 Q. If you need to step down, feel free to, but -

23 THE COURT: Hold on one second, please. Put me another
24 chair in the jury box and let my last juror come around here,
25 please.

MS. ERIKA JAMES - DIRECT by MR. COLER

Page 165

1 (Chair provided for juror.)

2 THE COURT: Thank you, ma'am. Everybody else can see?

3 Ma'am? Ma'am?

4 (Jurors nod affirmatively.)

5 Q. (By Mr. Coler) Okay, Ms. James, start with where your
6 apartment was, where you lived.

7 A. Okay. I'm not sure exactly how you got -- have
8 everything turned on there.

9 Q. What number were you?

10 A. Fifty-one (51).

11 Q. Okay. Do you see -- can you see this over-head
12 projection, can you see 51 on there?

13 (Brief Pause)

14 A. Yes.

15 Q. And point to it.

16 (Witness pointing.)

17 Q. And use that little laser pointer if you would.

18 A. Is this it (indicating)?

19 Q. Okay.

20 THE COURT: It's got a little light on it. Can you see
21 it? There you go. Okay.

22 A. There (indicating).

23 Q. Okay. Is that the apartment you stepped out of to get
24 some fresh air?

25 A. Yes, sir.

MS. ERIKA JAMES - DIRECT by MR. COLER

Page 166

1 Q. All right. And you said you saw the man that got shot
2 and you saw another man in the parking lot?.

3 A. Correct.

4 Q. Where did you see them?

5 A. They were standing directly front of me, here
6 (indicating).

7 Q. Speak up.

8 A. Directly in front of me here (indicating).

9 Q. Go ahead and point to it.

10 A. About right there (indicating).

11 Q. All right. What was occurring between those two
12 individuals?

13 A. He was talking to him, telling him to leave.

14 Q. All right. And, when you say, "he," you mean the man
15 that got shot or another man ---

16 A. No, another gentleman.

17 Q. Was telling the man that got shot to leave?

18 A. Right.

19 Q. Okay. And what happened next?

20 A. The victim told him that he wanted to throw away --- he
21 had a white bag in his hand and he told him that he wanted to
22 throw something away.

23 Q. Okay.

24 A. And the gentleman took it from him and he said, "I'll
25 take care of it," and he just threw it behind him.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MS. ERIKA JAMES - DIRECT by MR. COLER

Page 167

1 Q. Threw it on the ground?

2 A. Yeah.

3 Q. Okay. Did the man say anything when he threw it on the
4 ground?

5 A. He said, "Now, you can leave."

6 Q. Okay. The -- the man that got shot, Mr. Tennant, what
7 did he do?

8 A. He walked over to his truck and he sat in it.

9 Q. All right. Show me where he walked over to.

10 A. (Witness indicating with pointer.)

11 Q. All right. Did he get in his truck?

12 A. Yes, he did.

13 Q. All right. What happened next?

14 A. He sat there with his door open. He was bent over as if
15 he was -- he was fiddling with something in his truck. I
16 don't know what.

17 Q. Okay. Were there any other people around his truck?

18 A. Not at the time, no.

19 Q. Okay. What happened next?

20 A. A female was instructing someone, some people, to -- that
21 they need to kick his ass.

22 Q. Okay. That female, do you know who she was?

23 A. No.

24 Q. Do you know who she was talking to?

25 A. No.

MS. ERIKA JAMES - DIRECT by MR. COLER

Page 168

1 Q. Okay. Where was that female and where were the people
2 she was talking to?

3 A. Standing like in the grass here (indicating).

4 Q. Okay. Do you know who she was referring to, whose butts
5 that they were -- she was referring to get kicked?

6 A. Not at the time, no.

7 Q. Okay. What happened next?

8 A. Three gentlemen approached the victim's truck.

9 Q. Okay. Where was the victim when they approached his
10 truck?

11 A. He was still sitting in it.

12 Q. Okay. What, if anything, did those three individuals do,
13 or did the victim do, when they -- when the three individuals
14 approached his truck?

15 A. He still had his door open and one was standing on the
16 inside of his door, and the other two were on the outside of
17 his door.

18 And he said something to the victim about ---

19 Q. Hold on a second. I'm going to ask you to describe
20 something for me.

21 A. Okay.

22 Q. If this is a simple diagram of his truck, okay?

23 (Mr. Coler draws on piece of paper.)

24 (Hand drawn diagram by Mr. Coler shown on overhead.)

25 A. Okay.

MS. ERIKA JAMES - DIRECT by MR. COLER

Page 169

1 Q. And this is the front of it. How was the -- describe for
2 me how the door was. Was it opened or closed?

3 A. It was open.

4 Q. Is that a fair depiction of the door?

5 A. Yes.

6 Q. Okay. Can you point to where Mr. Tennant, the victim,
7 was?

8 A. He was sitting on the inside there (indicating).

9 Q. Okay. Can you show me where the individuals who
10 approached his vehicle were?

11 A. One was on the inside of his door, and the other two were
12 on the outside.

13 Q. Right about here (indicating)?

14 A. A little -- he wasn't that close to him.

15 Q. Back here a little bit (indicating)?

16 A. About right where you did the first time, but a little
17 bit more over to the door.

18 Q. This way (indicating)?

19 A. Not that far.

20 Q. (Indicating).

21 A. Yes.

22 Q. Okay. All right. Where were the other two?

23 A. Standing on the outside.

24 Q. How close to the door?

25 A. Touching it, like body wise.

MS. ERIKA JAMES - DIRECT by MR. COLER

Page 170

1 Q. Approximately like that (indicating)?

2 A. Yeah.

3 Q. Okay. Got you. And Mr. -- and the victim was in his
4 vehicle?

5 A. Yes.

6 Q. Okay. What, if anything, did you see happen -- see
7 happen next or hear happen next?

8 A. One of them said something about kidnapping them or
9 something to that effect. And ---

10 Q. Okay. Do you who said that?

11 A. No, I do not.

12 Q. Do you know who he said it to?

13 A. I know he -- I assumed that he was talking to the victim.

14 Q. Okay. And you mentioned something about kid -- you heard
15 something about kidnapping you say?

16 A. Yes, sir.

17 Q. Okay. What did the victim do in response or what
18 happened next?

19 A. He was looking up towards the gentlemen standing there,
20 and they just started jumping on him.

21 Q. Who started jumping on him?

22 A. The one that was standing on the inside of the door ---

23 Q. Uh-uh (affirmative).

24 A. --- hit him first, then, the other two followed.

25 Q. Okay. All right. Do you know, or do you recall, how

MS. ERIKA JAMES - DIRECT by MR. COLER

Page 171

1 many times they hit him or where they hit him?

2 A. No, I do not.

3 Q. Okay.

4 A. As they were hitting him, he was leaned over in his
5 truck.

6 Q. Okay.

7 A. I don't know if he was reaching for something or what.
8 He just -- he might have been leaned over from them hitting
9 him. I don't know.

10 Q. Okay.

11 A. And ---

12 Q. Go ahead.

13 A. --- I heard a loud clap.

14 THE COURT: A what?

15 A. A loud clap.

16 Q. Okay. When you say "clap," are you talking about a
17 gunshot, at this point, or something else?

18 A. No. It was more like -- I -- I can't really say if it
19 was a hit or what. I don't know.

20 Q. All right. A hit like a slap?

21 A. Maybe, possibly.

22 Q. Okay. Some type of loud noise ---

23 A. Yes.

24 Q. --- a clap? All right. After you heard that loud clap
25 -- well, do you know who caused the loud clap?

MS. ERIKA JAMES - DIRECT by MR. COLER

Page 172

1 A. No, I do not.

2 Q. All right. After you heard it, what happened?

3 A. I saw fire.

4 Q. You saw fire? What do you -- what do you mean by fire,
5 gunshot fire?

6 A. Yes, and that's when I heard the shots.

7 Q. Okay. What did you do when you heard the shots?

8 A. I got up and turned around and went in my door.

9 Q. You went where?

10 A. Inside -- inside my door, back in my apartment.

11 Q. And why did you do that?

12 A. Gunshots.

13 Q. Okay. Could you tell who was shooting at whom ---

14 A. No, I could not.

15 Q. --- from where you were standing? Okay. Before the --
16 and what, if anything, can you describe for us about the men
17 that approached the victim's vehicle? Do you know what race
18 they were?

19 A. African-American.

20 Q. Okay. Do you know approximately how old they were, or
21 could you tell?

22 A. No, I could not.

23 Q. Okay. Prior to them approaching the vehicle, did you
24 ever see the victim, the man that got shot, standing outside
25 of his -- of his truck with a gun?

MS. ERIKA JAMES - DIRECT by MR. COLER

Page 173

1 A. No, I did not.

2 Q. Okay. Did you ever see him wave a gun -- wave a gun
3 around or anything, an object that looked like a gun, wave it
4 around standing outside his vehicle?

5 A. From me coming out of my apartment, no, I did not.

6 Q. Okay. When he was in his vehicle, did you ever see a
7 -- him produce or point a gun at any of these three young men
8 that were -- these three individuals that approached his
9 vehicle?

10 A. No.

11 Q. Okay. After you heard the gunshot and went into your
12 apartment, did you have an occasion to look back out where the
13 truck was?

14 A. Yes, I did.

15 Q. Okay. About how long -- how much time went by, from the
16 gunshots and you looking back out of your apartment?

17 A. I can't say exactly, a few minutes, a few seconds.

18 Q. Well, do you think it was a few seconds or a few minutes?

19 A. Probably a few seconds.

20 Q. A few seconds? Okay. When you looked back out, did you
21 see any of the three men that were standing at the vehicle
22 that had approached the Explorer?

23 A. I just saw some people started running.

24 Q. Was anybody at the vehicle?

25 A. Not at the time, no.

MS. ERIKA JAMES - DIRECT by MR. COLER

Page 174

- 1 Q. Okay. From where you were standing at your apartment ---
- 2 A. Uh-huh (affirmative).
- 3 Q. --- would you have been able to see a gun on the ground
- 4 or near the vehicle?
- 5 A. No.
- 6 Q. You could not or you did not see one?
- 7 A. I did not, no.
- 8 Q. Okay. Would you have been able to if there was one on
- 9 the ground? Would that have been something you could have
- 10 seen?
- 11 A. Well, I walked over there afterwards.
- 12 Q. Okay. How much afterward?
- 13 A. A few seconds after I looked out my door and I saw the
- 14 victim collapse out of his truck.
- 15 Q. Okay. When you saw him, was he still breathing or alive
- 16 or could you tell?
- 17 A. I walked over to him and asked him was he okay, but -
- 18 Q. And no response?
- 19 A. --- he appeared to me to be lifeless then.
- 20 Q. He appeared to be lifeless?
- 21 A. Then, uh-huh (affirmative).
- 22 Q. Okay. Did you look around his body?
- 23 A. No, I did not.
- 24 Q. Did you look on the ground near his truck?
- 25 A. Just to see blood. That was all I saw.

MS. ERIKA JAMES - DIRECT by MR. COLER

Page 175

1 Q. When you looked down, did you see a gun anywhere?

2 A. I -- I don't recall seeing one.

3 Q. Okay.

4 A. I wasn't really looking for one. I just ---

5 Q. If you had seen a gun, would that have been something you
6 would recall?

7 A. Yeah, if I had seen one, yeah.

8 Q. Okay. All right.

9 MR. COLER: Beg the Court's patience one moment, Your
10 Honor.

11 (Brief Pause)

12 THE COURT: Mr. Coler, to make the record complete,
13 let's mark that diagram that you drew as an exhibit, please.

14 MR. COLER: Yes, sir.

15 THE COURT: And number what?

16 COURT REPORTER: Sixteen (16).

17 THE COURT: Any objection, Mr. Price, to 16, which is
18 just that rough field diagram that Mr. Coler --

19 MR. BEASLEY: No objection, Your Honor.

20 (Whereupon, State's Exhibit Number 16 was marked for
21 identification and admitted into evidence without objection.)

22 Q. (By Mr. Coler) From where you were, in your apartment
23 when you saw this incident, did you ever see the guy that got
24 shot do anything to provoke anybody --

25 MR. BEASLEY: Objection, Your Honor. He's leading --

MS. ERIKA JAMES - CROSS by MR. BEASLEY

Page 176

1 THE COURT: Hold on.

2 Q. Did you ever see ---

3 THE COURT: Hold - hold on. Rephrase the question.

4 Q. (By Mr. Coler) Did you see him do anything to start a
5 fight with anybody?

6 A. From the time I came outside, no, but I don't know what
7 happened beforehand.

8 Q. I understand. Okay.

9 MR. COLER: That's all the questions I have, Ms. James.

10 THE COURT: All right. Cross?

11 MR. BEASLEY: May it please the Court, Your Honor.

12 CROSS EXAMINATION by MR. BEASLEY: 12:02

13 Q. Ms. James, good morning. I'm Ryan Beasley, and I
14 represent Mr. Gist in this case. You mentioned earlier, and I
15 know you kind of hesitated when you said it, about there was a
16 girl wanting to kick somebody -- saying, "Kick his ass. Kick
17 his ass"?

18 A. Correct.

19 Q. Did the girl say anything else?

20 A. No. She just kept repeating that.

21 Q. Well, do you remember you gave a statement to the police
22 regarding this incident?

23 A. Yes, I do.

24 Q. All right. And I know some of the language might be a
25 little vulgar and you wouldn't say it in Court ---

MS. ERIKA JAMES - CROSS by MR. BEASLEY

Page 177

1 A. Right.

2 Q. --- but what exactly did the girl you heard on this night
3 saying?

4 A. That's what I can recall her saying.

5 Q. Okay. Let me show you your statement.

6 (Document handed to the witness.)

7 Q. (By Mr. Beasley) Do you recall giving this statement?

8 A. Yes. Officer Porter wrote it.

9 Q. Officer Porter wrote it?

10 A. Yes, sir.

11 Q. All right. Let me point to you the second page of your
12 statement. Do you remember telling Officer Porter that
13 statement?

14 A. Yes, I do, but I was talking about another female that
15 was with the victim.

16 Q. Okay. Well, tell me -- tell the jury what the female
17 said.

18 A. She was standing, at the back of his truck, saying that
19 nobody was going to fuck with her cousin.

20 Q. Nobody was going to fuck with her cousin?

21 A. Yes.

22 Q. Okay. And how many females did you see out there?

23 A. It was a large group of people, like I said, but when
24 they were talking, that's when I looked.

25 Q. Did the -- did the females hang around?

DR. DAVID WRENN - DIRECT BY MR. COLER

Page 178

1 A. The female that I was talking about, at the back of his
2 truck, I saw her because she was with the victim.

3 Q. Did the females hang around when the police arrived?

4 A. Not that I can remember because everybody scattered like
5 I said.

6 MR. BEASLEY: Okay. No further questions, Your Honor.

7 THE COURT: Redirect?

8 MR. COLER: No redirect, Your Honor.

9 THE COURT: You may step down, Ms. James.

10 (The witness stepped down from the witness stand at 12:03
11 p.m.)

12 THE COURT: All right. Call Dr. Wrenn again.

13 (Dr. Wrenn was summoned once again.)

14 MR. COLER: Your Honor, if there's no objection, can Ms.
15 James be excused?

16 THE COURT: Mr. Beasley?

17 MR. BEASLEY: No objection, Your Honor.

18 THE COURT: You can go, ma'am. Good morning, Dr. Wrenn.

19 (Whereupon,

20 DR. DAVID WRENN

21 having been duly sworn, testified as follows:)

22 DIRECT EXAMINATION by MR. COLER: 12:04 P.M.

23 Q. Doctor, please, state your full name for the record?

24 A. John David Wrenn.

25 Q. And what is your occupation?

DR. DAVID WRENN - DIRECT BY MR. COLER

Page 179

1 A. I'm a medical doctor with a speciality in pathology.

2 Q. What is your -- just briefly, if you'll describe your
3 background, training, education and experience that has
4 enabled you to perform your duties as a pathologist.

5 A. I have a bachelor's degree, a masters' degree and a
6 Doctorate of Philosophy degree from the Med -- Clemson
7 University. I have an M.D. degree from the Medical University
8 of South Carolina.

9 I did my combined anatomic and clinical pathology
10 residency at the University of -- the Medical University of
11 South Carolina, finishing the five-year requirement in three
12 years and ten months because I got credit for research I did
13 when I was a medical student. While I was there, I also was
14 assistant medical examiner of Charleston County.

15 MR. PRICE: Your Honor, we will stipulate to his
16 qualifications as an expert in the field of pathology.

17 MR. COLER: We'll accept that stipulation.

18 Q. (By Mr. Coler) Have you testified in Court before,
19 Doctor?

20 A. Yes.

21 Q. As an expert in the field of pathology?

22 A. Yes, and forensic pathology.

23 Q. All right. About how many autopsies do you perform a
24 year?

25 A. I do between a hundred and sixty (160) and a hundred

DR. DAVID WRENN - DIRECT BY MR. COLER

Page 180

1 eighty (180) a year. The majority of them are coroner's
2 cases, but I do hospital cases also and private autopsies.

3 MR. COLER: Your Honor, having no objection, or hearing
4 no objection, we'd offer him as an expert in the field of
5 forensic pathology.

6 THE COURT: All right. Ms. Foreman and ladies and
7 gentlemen of the jury, normally, a witness cannot give an
8 opinion. They have to testify about what they see or hear or
9 smell; what they've observed.

10 However, the law does allow someone who has education,
11 experience, and so forth, to render opinions in certain
12 fields. So, Dr. Wrenn will be qualified as an expert in the
13 field of pathology and be allowed to render an opinion. And
14 I'll tell you about that when I charge you on the law about
15 experts and their opinions.

16 MR. COLER: Thank you, Your Honor.

17 Q. (By Mr. Coler) Doctor, did you have -- did you, in fact,
18 have an occasion to perform the autopsy on Robert Lee Tennant
19 back on October 3rd of two thousand, four (2004)?

20 A. Yes. I began that autopsy at approximately 8:45 a.m. in
21 the Spartanburg Regional Medical center autopsy room.

22 Q. As a result of that autopsy, within the bounds of medical
23 -- reasonable medical certainty, did you or can you make a
24 determination as to the cause of death of Mr. Tennant?

25 A. I attributed the cause of death, in this individual, to

DR. DAVID WRENN - DIRECT BY MR. COLER

Page 181

1 exsanguination, meaning that he bled to death due -- secondary
2 to internal hemorrhage, secondary to a gunshot wound to the
3 chest.

4 Q. Okay. If you would, describe for us, Doctor, that
5 gunshot wound, its location, and the best you can about the
6 path of the -- of the bullet.

7 A. Well, he had a single gunshot wound that appeared to be
8 distant. It was medium caliber. It was in the left upper
9 medial chest near the clavicle, which is the collar bone.

10 It was thirteen (13) inches from the top of his head and
11 two and a half -- two and a quarter inches to the left of the
12 midline of the body.

13 This wound was oval in shape. And it -- it measured
14 forty-one hundredths by thirty-one hundredths in overall
15 dimensions, had an abrasion border from 12:30 to three o'clock
16 (3:00) if you looked at the wound on the body and visualized a
17 clock from 12:30 position to the three o'clock (3:00)
18 position.

19 So, it was an abrasion border, meaning that the bullet
20 actually grazed the skin as it entered the body at that
21 position first. And that border was ten one hundredths of an
22 inch in maximum width.

23 This bullet passed downward at approximately forty-five
24 degrees from the horizontal. It went from front to back at
25 approximately thirty degrees, and it went left to right.

DR. DAVID WRENN - DIRECT BY MR. COLER

Page 182

1 It passed through the left upper lobe of the lung, the
2 left atrium of the heart, the base of the pulmonary artery as
3 it came out of the heart, through -- through the right lower
4 lobe of the lung twice and it exited from the right posterior
5 chest cavity at the top of the ninth rib.

6 And it came to rest in the soft tissues of the body. So,
7 the bullet was going essentially in the -- somewhat in that
8 manner.

9 Q. Okay. Thank you. And you recovered a bullet, or
10 projectile, from the body of Mr. Tennant during your autopsy?

11 A. Yes. I recovered a copper jacketed lead bullet that had
12 visible lands and grooves on it and measured thirty-eight inch
13 -- thirty-eight one hundredths of an inch in diameter at the
14 base, and it was about fifty-five one hundredths of an inch in
15 length. And it was a hollow point type nose, but it was
16 flattened.

17 Q. I'm going to show you, Doctor, what's been pre-marked --
18 well, it's been admitted now as evidence -- it's a piece of
19 evidence that's been admitted as State's Number 14. I show
20 you the contents of that envelope.

21 (Exhibit shown to witness.)

22 Q. If you'll take a look at that and tell us, is that, in
23 fact -- in fact, the bullet you recovered from Mr. Tennant's
24 chest?

25 A. Well, this container is labeled by me, this is my

DR. DAVID WRENN - DIRECT BY MR. COLER

Page 183

1 writing, "AF04231, Robert Lee Tennant." It has my initials,
2 the date, 10/3/4, and "right back," meaning that it came from
3 the back.

4 I didn't put it in his case, but this is -- I labeled the
5 bullet one in a delta (phonetic), and this one is labeled,
6 "one in delta," on the face. So, it is the bullet that I
7 removed.

8 Q. Thank you, Doctor.

9 (Whereupon, State's Exhibit Number 17 was marked for
10 identification.)

11 Q. Doctor, I'm going to hand you what's been pre-marked for
12 identification purposes as State's Exhibit Number 17, a
13 photograph. Tell us, does that a photograph accurately
14 portray the path of the bullet in Mr. Tennant's chest?

15 A. Yes.

16 MR. COLER: Your Honor, at this point, we would offer
17 State's Exhibit Number 17 into evidence.

18 THE COURT: Subject to the objection, Mr. Price?

19 MR. PRICE: Yes, Your Honor.

20 (Whereupon, State's Exhibit Number 17 was admitted into
21 evidence over objection.)

22 Q. (By Mr. Coler) I'm just going to put that on the
23 overhead, Doctor, and just have you briefly re-explain the
24 path of the bullet for the jury.

25 A. Well, this body is lying -- supine, and you can take a

DR. WRENN - CROSS by MR. PRICE

Page 184

1 metal rod like this (indicating) and there are often tissues
2 planes in which the bullet will progress.

3 Now, the lung is sort of soft and fragile, so, this is
4 pretty much the direction it went, but it might not be exact,
5 but you can see that it was coming downward, entered the body,
6 and then, it went on down like this (demonstrates) and
7 approximately right along in here (indicating), posteriorly is
8 where I removed it.

9 Q. Thank you, Doctor. During your autopsy, from your memory
10 or from your report, did you discover or detect any other
11 gunshot wounds or wounds to the body of Mr. Tennant?

12 A. No, I just found an old scar on the -- it was stretched
13 on the dorsal medial surface of his left foot.

14 Q. And one final question: From your report, what was Mr.
15 Tennant's size, approximate height and approximate weight?

16 A. He was -- he measured seventy (70) inches in length and
17 his measured weight was a hundred and eighty (180) pounds.

18 MR. COLER: Thank you, Doctor. That's all the questions
19 I have for you. Please, answer any that Mr. Price has.

20 THE COURT: Cross?

21 CROSS EXAMINATION by MR. PRICE:

12:10 P.M.

22 Q. Dr. Wrenn, I just have a couple of questions for you.
23 You, as you always do, prepared an report in connection with
24 your autopsy findings, did you not?

25 A. Yes.

DR. WRENN - CROSS by MR. PRICE

Page 185

1 Q. And, in your report, you stated that the shirt that Mr,
2 Tennant was wearing revealed an apparent defect, and that be a
3 hole?

4 A. Yes.

5 Q. And the hole was lower on the shirt than corresponded to
6 the hole in his left chest?

7 A. It looked like it, yes.

8 Q. And wouldn't that not be consistent of a shirt having
9 ridden up at the time of the shooting?

10 A. Yes.

11 Q. And wouldn't that -- would not that also be consistent of
12 someone leaning over to the right and reaching for something,
13 and the shirt riding up?

14 MR. COLER: Objection, Your Honor. That calls for
15 speculation.

16 THE COURT: Overruled.

17 MR. COLER: Thank you.

18 A. Well, yes, it could have, if -- if it was -- I didn't say
19 how tight it was or anything, but it could have if -- if it
20 moved down enough, 'yes.

21 MR. PRICE: Thank you. Nothing further.

22 MR. COLER: No redirect, Your Honor.

23 THE COURT: You may step down. Can the doctor be
24 excused?

25 MR. PRICE: (Nods affirmatively).

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 186

1 MR. COLER: Yes, sir.

2 (The witness stepped down and was excused at 12:12 p.m.)

3 MR. COLER: Tameka Hines.

4 (Off-the-Record Comments)

5 (Ms. Hines is summoned.)

6 (Whereupon,

7 TAMEKA HINES

8 having been duly sworn, testified as follows:)

9 THE COURT: Pull up, please, and talk into the
10 microphone. Mr. Coler, how about State's Exhibit 13, you want
11 to put it back -

12 MR. COLER: Yes, sir.

13 (Exhibit is retrieved.)

14 DIRECT EXAMINATION by MR. COLER:

12:13 P.M.

15 Q. State your full name for the record, if you would.

16 A. Tameka ---

17 Q. Okay. Ms. Hines, I'll need you to speak up, so,
18 everybody can hear you.

19 A. Tameka Hines.

20 Q. Okay. Do you live here in Spartanburg?

21 A. Yes, sir.

22 Q. How old are you?

23 A. Fifteen (15).

24 Q. How long have you lived in Spartanburg?

25 A. My whole life.

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 187

1 Q. Okay. Are you in school now?

2 A. No.

3 Q. How long -- how long have you been -- when was the last
4 time you went to school?

5 A. Like last year.

6 Q. When?

7 A. Last year.

8 Q. Last year? Okay. And you have since dropped out?

9 A. What?

10 Q. Have you dropped out of school, or you haven't gone to
11 school?

12 A. Yeah, I went back after I had my baby.

13 Q. Okay. Did you know the man that got shot, the victim,
14 Robert Tennant?

15 A. Yes, sir.

16 Q. How did you know him?

17 A. He was going with my cousin, Kia (phonetic).

18 Q. Okay. Before he got shot, about how long before that did
19 you meet him?

20 A. Like -- well, do you mean that day?

21 Q. No, like ---

22 A. Like ---

23 Q. --- forever or the very first time you met?

24 A. --- three years.

25 Q. How much?

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 188

1 A. About like three years.

2 Q. Okay. How often would you see Robert?

3 A. Like twice a month.

4 Q. Okay. And where in Spartanburg would you see him or
5 visit with him or...?

6 A. He used to come over my house when I stay in Drayton Line
7 (phonetic).

8 Q. Okay. And who was staying there at Drayton Line?

9 A. Me and my mother and my sister and my brother.

10 Q. Okay. And who would he visit with at your house?

11 A. He visited the whole family.

12 Q. Okay. I'm going to ask you, do you remember the night of
13 this incident?

14 A. Yes.

15 Q. Okay. Did you go over to Hub City Court Apartments that
16 night?

17 A. Yes, sir.

18 Q. Okay. How did you get over there?

19 A. My mamma and her friend let me.

20 Q. All right. Did they drive you over?

21 A. Uh-huh (affirmative).

22 Q. All right. Who else went over to Hub City with you?

23 A. My sister and my friend, Rhanda — Rhonda.

24 Q. All right. I need you to speak up. What is your
25 sister's name?

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 189

1 A. Maria Hines.

2 Q. Okay. And what's your friend Rhonda's name?

3 A. Rhonda Foster.

4 Q. Okay. When you got to Hub City Court Apartments, did
5 your mom and her friend drop you off?

6 A. Yes.

7 Q. All right. What did you all do when you got dropped off?

8 A. Walked up -- well, we walked to somebody's house, but
9 they wasn't at home.

10 Q. Whose house did you go to?

11 A. We went to Sierra's house.

12 Q. Why were you going to visit Sierra?

13 A. Just to go.

14 Q. Okay. Was she at home?

15 A. Huh-uh (negative).

16 Q. All right. What did you do after trying to visit with
17 Sierra?

18 A. We walked to the top of the street.

19 Q. Okay. Is that where you met up with Robert?

20 A. Uh-huh (affirmative).

21 Q. Okay.

22 THE COURT: Ma'am, you have to say, "yes," or "no,"
23 please, for me.

24 A. Yes.

25 THE COURT: Thank you.

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 190

1 Q. (By Mr. Coler) What was Robert driving? Do you
2 remember?

3 A. I think it was a black Explorer.

4 Q. Well, I'm going to show you a picture, a picture that has
5 been marked as Exhibit Number 11.

6 (Exhibit shown to witness.)

7 Q. Does that look like his car?

8 A. Yes.

9 Q. Okay. Did you get in the vehicle, get in with Robert?

10 A. Yes.

11 Q. All right. Who else was with you when you got in the
12 vehicle with Robert?

13 A. Rhonda.

14 Q. Rhonda Foster?

15 A. Yes.

16 Q. All right. What did you and Rhonda and Robert -- where
17 did you -- you and Robert and Rhonda go when you got in the
18 car with him?

19 A. We went around the corner to a stop sign and dropped some
20 woman home -- well, he put her out.

21 Q. All right. Back up and say that again.

22 A. We went to drop a woman I said home, but he put her out
23 at the stop sign.

24 Q. So, there was a woman in Robert's car with him when you
25 got ---

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 191

1 A. Yes.

2 Q. -- you got in? And she got out after you all got in?

3 A. Yes.

4 Q. Do you know where she went?

5 A. No, sir.

6 Q. Do you know if she lived at Hub City?

7 A. No.

8 Q. She just walked down the street?

9 A. Yes. She like just walked across the street and went --

10 I guess she went home.

11 Q. Okay. What did you and Robert and Rhonda, where did you
12 all go next?

13 A. We went back around to Hub City to pick up my sister.

14 Q. Was that your sister Maria?

15 A. Yes.

16 Q. All right. How much longer -- how much time passed
17 before you picked up Maria?

18 A. Not -- like five minutes.

19 Q. Okay. What happened when you got to where Maria was?

20 A. We went and picked up somebody else.

21 Q. Now, back up.

22 A. She used his phone.

23 Q. Hang on. Hang on. When you picked up Maria, where was
24 she?

25 A. She was like -- she was in Hub City.

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 192

1 Q. Okay.

2 A. And we ---

3 Q. In the horse shoe parking lot, the driveway?

4 A. Yes.

5 Q. Okay. Did anybody else get in the car with Maria?

6 A. No.

7 Q. Okay. So, at this point, it was -- am I correct, it was
8 you, Maria, Rhonda, and Robert in his truck?

9 A. Yes.

10 Q. All right. Did you all ride around?

11 A. We went and picked up my cousin, Jon Petty, and Marcell
12 and Antonio.

13 Q. All right. Before you went to pick up Jon and Marcell
14 and Antonio, did you stop anywhere?

15 A. At the mini mart.

16 Q. At the mini mart?

17 A. (Nods affirmatively).

18 Q. And what happened? Why did -- did somebody get something
19 at the mini mart?

20 A. Robert got some beer ---

21 Q. Uh-huh (affirmative).

22 A. --- some chicken, and potatoes.

23 Q. Got some beer, some chicken, and potatoes? Who was that
24 stuff for?

25 A. Him.

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 193

1 Q. Okay. After you all stopped at the mini mart, you said
2 you went to pick up your cousin?

3 A. He was at Pierpont.

4 Q. All right. Describe how that came about.

5 A. They was just -- they was over there. They had got into
6 it because they was talking about robbing him and taking his
7 jeep.

8 Q. All right. And let's back up. How did you and Robert
9 and Maria and Rhonda know or decide to go over to Pierpont
10 Avenue?

11 A. My sister called him.

12 Q. Who did, your sister Maria?

13 A. Uh-huh (affirmative).

14 Q. Who did she call?

15 A. She called this boy named George.

16 Q. Is George a friend of hers or a relative of hers?

17 A. Her friend.

18 Q. Okay. And whose phone did she use to call George?

19 A. Robert's.

20 Q. Okay. After she spoke to George on the phone, what did
21 you all do?

22 A. We went and picked him up.

23 Q. Where did you go pick him up?

24 A. At Pierpont.

25 Q. Was George one of the guys you picked up?

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 194

1 A. Yes.

2 Q. All right. Do you know how many boys or young men you
3 picked up at Pierpont Avenue?

4 A. Five -- five (5).

5 Q. Okay. Did you all stop anywhere between the mini mart
6 and Pierpont Avenue?

7 A. After?

8 Q. No, before you picked them up?

9 A. No.

10 Q. After you got beer and chicken and potatoes, at the mini
11 mart, did you go directly to Pierpont Avenue?

12 A. Yes.

13 Q. Okay. When you got to Pierpont Avenue, it was you three
14 girls and Robert in the vehicle, right?

15 A. Uh-huh (affirmative), yes.

16 Q. Did Jon Petty get in the car with you all?

17 A. Yes.

18 Q. Did Marcell Foster get in the car with you?

19 A. Yes.

20 Q. Did Antonio McKinney get in the car with you?

21 A. Yes.

22 Q. Did George get in the car with you?

23 A. Yes.

24 Q. Do you know what George's last name?

25 A. No.

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 195

1 Q. And did another young man get in the car?

2 A. Yes.

3 Q. Do you know what his name was?

4 A. I didn't know.

5 Q. Do you know what his nickname was?

6 A. Jake -- Jack -- no, I can't pronounce it.

7 Q. Okay. That's all right. All right. Do you know why the

8 -- the young men you picked up wanted to leave Pierpont

9 Avenue?

10 A. I think they was stuck over there drunk and they didn't

11 have no ride home.

12 Q. They were stuck what?

13 A. They were stuck and drunk and didn't have a ride home.

14 Q. Okay.

15 THE COURT: Well, say that again. I can't understand.

16 A. They were stranded and they was drunk and they didn't

17 have a ride home.

18 THE COURT: They were stranded and drunk and didn't have

19 a ride home?

20 A. Yes.

21 THE COURT: Back off a little bit, just a little bit.

22 That thing is blurring up. Okay?

23 A. Yes.

24 THE COURT: There you go.

25 Q. (By Mr. Color) I'm going to show you what's been marked

1 as State's Exhibit Number 12.

2 (Exhibit shown to witness.)

3 Q. Is that your cousin, Jon Petty?

4 A. Yes.

5 Q. That's not how he looked when you all picked him up, is
6 it?

7 A. No.

8 Q. When the five young men got in the car, with you three
9 and Robert, was there any trouble or problems in the car?

10 A. My cousin and Robert started arguing.

11 Q. When you say your cousin, who do you mean?

12 A. Jon Petty.

13 Q. Okay. Do you know what they were arguing about?

14 A. No.

15 Q. Okay. What kind of an argument was it? Did they have
16 words or fists or what?

17 A. They was like -- they was -- it was words at first.

18 Q. Okay. And you haven't -- do you have any idea what
19 started it?

20 A. Huh-uh (negative).

21 Q. Okay. What did the other four young men, that were with
22 Jon, do when he started arguing with Robert?

23 A. They was talking about robbing him and taking his car.

24 Q. The young men were talking about robbing and taking whose
25 car?

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 197

1 A. Robert's.

2 Q. Okay. And what did Robert do when he got -- when he was
3 arguing with Jon?

4 A. He got out of the car.

5 Q. Okay. Hang on. Back up. We'll get to that in a second.
6 Where was Jon sitting in the Ford Explorer?

7 A. I think he was ---

8 Q. If you remember. If you don't, don't guess.

9 A. I think he was in the back seat.

10 Q. When you say the back, you mean the -- the second row of
11 seats, or do you mean in the cargo area all the way in the
12 back?

13 A. The second row of seats.

14 Q. Okay. Are you sure about that?

15 A. Uh-huh (affirmative).

16 Q. Do you remember telling the police that, when you gave a
17 statement in October of two thousand, four (2004) that he was
18 somewhere else?

19 A. No.

20 Q. Okay. If I showed you a picture you drew for them, would
21 that refresh your memory?

22 A. Probably.

23 Q. Well, we'll get to that in a second. But, anyway, Jon
24 was in the -- in the Ford Explorer somewhere, right?

25 A. Yes.

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 198

1 Q. And Robert was -- which seat -- what seat was he in?

2 A. The front seat, the driver's seat.

3 Q. Okay. And they had words; they had an argument? There
4 were words?

5 A. Yes.

6 Q. Did it escalate beyond that?

7 A. Not at that time.

8 Q. Okay. What -- tell -- tell me what happened at some
9 point when Robert pulled his vehicle off to the side of the
10 road.

11 A. He took us to a dead end.

12 Q. Okay.

13 A. And he and my -- and him and Jon Petty got out of the car
14 about to fight.

15 Q. Okay.

16 A. They was doing whatever they was doing, and then,
17 everybody got back in the car.

18 Q. All right. Did they actually fight? Did anybody throw
19 any punches?

20 A. No.

21 Q. What stopped or broke up that fight?

22 A. I don't know.

23 Q. What were the people in the car saying or doing when they
24 got out to ---

25 A. Nothing. Mostly just sat there.

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 199

1 Q. Okay. But they didn't -- they never did have a fist
2 fight?

3 A. No.

4 Q. When they got back in the car, what was their mood or
5 their demeanor like? Do you remember?

6 A. Well, everybody was quiet.

7 Q. Okay. What was Jon's demeanor?

8 A. He was quiet too.

9 Q. What about Robert?

10 A. He was quiet.

11 Q. Were there any other problems, between anybody in the
12 car, on the rest of the ride over to Hub City?

13 A. No.

14 Q. Okay. Did it appear to you that the problem, whatever it
15 was between John and Robert, had been resolved?

16 A. Yes.

17 Q. Okay. Where did you all go next?

18 A. We went back to Hub City.

19 Q. Okay. What happened when you got to Hub City?

20 A. They -- he let up the back of his jeep, and they sat down
21 and started drinking.

22 Q. Who started -- who sat down and started drinking?

23 A. Robert and Jon.

24 Q. Okay. They were drinking together?

25 A. Uh-huh (affirmative).

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 200

1 Q. Do you know what they were drinking?

2 A. Bud Light.

3 Q. Okay. Whose beer were they drinking?

4 A. Robert's.

5 Q. Do you know how Jon got some of Robert's beer?

6 A. Robert gave him one -- gave it to him.

7 Q. All right. So, apparently, the problems between them had
8 -- were over?

9 MR. BEASLEY: Objection, Your Honor.

10 Q. (By Mr. Coler) Well, were there any problems between them
11 when they --

12 THE COURT: Hold on. Hold on.

13 MR. COLER: I'll rephrase, Your Honor.

14 THE COURT: Go ahead.

15 MR. COLER: Thank you.

16 Q. (By Mr. Coler) Were there any problems between the two of
17 them when they were sitting drinking beer at Hub City?

18 A. Jon asked him why he tried to kidnap us.

19 Q. Okay.

20 A. And he was like, "I didn't."

21 Q. All right.

22 A. So, they was just drinking and talking.

23 Q. What was Jon's demeanor or mood when he asked him about
24 that?

25 A. Like he was laughing.

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 201

1 Q. Laughing?

2 A. Yes.

3 Q. Like it was a joke?

4 A. Uh-huh (affirmative).

5 Q. Okay. And what was Robert's response or what was his
6 demeanor?

7 A.. He was just saying, "I didn't," like he was serious.

8 Q. All right. While you were in the car, did anybody try to
9 kidnap anybody?

10 A. I don't -- I don't he did. I just think they just
11 misunderstood.

12 Q. Okay.

13 A. But I do think he was trying to scare him.

14 Q. You think Robert was trying to scare somebody?

15 A. Yes.

16 Q. Okay. After they were sitting there drinking beer, what
17 happened next?

18 A. Well, Marcell and Antonio, they went to a group of boys
19 at the bottom of the apartments.

20 Q. Okay.

21 A. And everybody was talking.

22 Q. What were they -- what was that group talking about?

23 A. I don't know. I wasn't down there.

24 Q. Okay. What happened after Marcell and Antonio went to
25 talk to that group of boys?

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 202

1 A. Then, all of them came back to the jeep.

2 Q. Okay. And where were you standing at that point?

3 A. Right in front of the jeep.

4 Q. If -- if this -- if is this is Robert's vehicle (document
5 shown on overhead), can you point with that little pointer to
6 where you were?

7 A. Like I was right there (indicating).

8 Q. Where were you?

9 A. Right there (indicating).

10 MR. COLER: And for the record, Your Honor, we are
11 referring to State's Exhibit Number 4.

12 Q. (By Mr. Coler) All right. Where was Robert?

13 A. He was ---

14 Q. Speak up.

15 A. Well, at the time, he was like right there in his truck
16 (indicating).

17 Q. Okay. Where did the group of boys that Marcell and
18 Antonio went to get, where did they come from?

19 A. Right there (indicating).

20 Q. Ms. Hines, make sure you speak up.

21 A. Right here (indicating).

22 Q. Right where?

23 A. Right there (indicating).

24 Q. Do you know if the defendant, Terrence Gist, was part of
25 that group of boys that came back up with Antonio and Marcell?

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 203

1 A. Yes.

2 Q. He was?

3 A. Uh-huh (affirmative).

4 Q. Okay. What happened next? What happened when that group
5 of boys approached?

6 A. Well, they --

7 THE COURT: Speak into the microphone, please.

8 A. They was fighting.

9 Q. Who was fighting?

10 A. All four of the boys.

11 Q. All which --

12 A. Antonio, Marcell, T-Mack (phonetic), and Robert -- well,
13 they was -- he was in the car, but they was fighting.

14 Q. All right. Let me back up. Antonio, Marcell, and you
15 said "T-Mack." Who is T-Mack?

16 A. Terrence Gist.

17 Q. The Defendant?

18 A. Yes, sir.

19 Q. Okay. And the fourth person you said was Robert?

20 A. Yes.

21 Q. All right. When you say fighting, what do you mean?

22 A. They was ---

23 Q. Physically or arguing?

24 A. They was physical.

25 Q. Okay. Do you know who started that fight?

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 204

1 A. Marcell and Antonio started it.

2 Q. How did they start it?

3 A. They went and told -- and told some lies and stuff. They
4 started the whole thing and they had -- and they came up
5 there. And then ---

6 Q. Describe -- I'm sorry. Describe for me how they
7 physically started or picked the fight.

8 A. Well, they reached in his car and hit him.

9 Q. Okay. So, where was he when they reached in?

10 A. He was sitting on the driver's side.

11 Q. Okay. Did he do anything to start with them? Did he
12 throw a punch at them first?

13 A. No..

14 Q. All right. Who specifically reached in his car and hit
15 him?

16 A. T-Mack.

17 Q. Well, didn't you just tell me that Antonio reached in?

18 A. No, I just said that all of them came to the thing ---

19 Q. Okay.

20 A. --- and I think they was the ones that started it.

21 Q. All right. And when you say, "they," you mean Antonio
22 and Marcell?

23 A. Yes.

24 Q. Okay. And I asked you how it -- how it physically
25 started, and what's your answer?

MS. TAMERA HINES - DIRECT by MR. COLER

Page 205

1 A. Well, they started it with words.

2 Q. Okay. All right. And then, what's -- what's next? What
3 happened after they started it with words?

4 A. And then, that's when they came to the car.

5 Q. When you say they ---

6 A. --- when they actually ---

7 Q. When you say, "they," who do you mean?

8 A. Antonio, Marcell, and Terrence.

9 Q. Okay. And what did they do?

10 A. They -- well, they -- actually, "T" hit him first, but
11 then, they jumped him.

12 Q. Who hit him first?

13 A. Terrence, but Marcell and Antonio, they jumped him.

14 Q. Okay. After Terrence hit him and then, Marcell and
15 Antonio jumped him, and you mean -- when you say, "him,"
16 Robert?

17 A. Yes.

18 Q. And what happened next?

19 A. Then, everybody is like assaulting him and then, the
20 shooting just started.

21 Q. I'm sorry, say that again?

22 A. The shooting started.

23 Q. Okay. Who was shooting?

24 A. It was a blast. Like there was boy right -- like right
25 here (indicating). And ---

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 206

1 Q. A boy right where?

2 A. About right there (indicating).

3 Q. All right. Who was he shooting at?

4 A. I don't know.

5 Q. Who was he?

6 A. I don't know.

7 Q. Okay. Who else was shooting?

8 A. And Terrence.

9 Q. Okay. Where was Terrence when he shot?

10 A. He was about right there (indicating).

11 Q. Okay. Who was he shooting at?

12 A. I -- they was shooting like towards him.

13 Q. Towards Mr. Tennant?

14 A. Towards Robert, yes.

15 Q. Okay. This is a picture --

16 MR. COLER: I'm showing the witness State's Number 6.

17 (State's Number 6 shown on overhead.)

18 Q. If this is a picture of Robert's truck, can you show me
19 approximately where Terrence Gist was when he -- when he shot
20 at Robert?

21 A. Like right there (indicating).

22 Q. Okay. All right. What happened after the shots were
23 fired?

24 A. I ran.

25 Q. Where did you run to?

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 207

1 A. Back to Sierra's Valentine's apartment.

2 Q. All right. Before -- well, at any time that night, did
3 you ever see Robert Tennant with a gun?

4 A. I wasn't really paying attention, so, no.

5 Q. Okay. I'm not asking did he have one or not, I'm asking
6 did you ever see him with a gun?

7 A. No.

8 Q. Okay. When those three boys approached his truck, did
9 you ever see him wave a gun around at anybody?

10 A. No.

11 Q. Did you ever see him point a gun at anybody?

12 A. No.

13 Q. Did he get out of the car and point with any object that
14 might look like a gun and wave it around at somebody and
15 pointing at them?

16 A. No.

17 Q. Okay. You ran into Sierra's Valentine's apartment after
18 the shots started?

19 A. Yes.

20 Q. All right. What happened next?

21 A. Somebody came to the apartment and told me that my cousin
22 had got shot.

23 Q. All right. And, when they said your cousin, who is that?

24 A. Jon Petty.

25 Q. All right. And what did you do?

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 208

1 A. I went to look for him.

2 Q. Did you find him?

3 A. Yes.

4 Q. What was his condition when you found him?

5 A. He had got shot in the arm.

6 Q. Okay. Do you know where -- can you show us where, in
7 this diagram, State's Number 4, you found your cousin, Jon?

8 A. Right -- right -- right there (indicating).

9 Q. Right there?

10 A. Uh-uh (affirmative).

11 Q. Okay. Who else was with you when you all found him?

12 A. My sister.

13 Q. Maria?

14 A. Yes.

15 Q. What did you and Maria do with Jon?

16 A. We helped him around to the trash can, right -- that was
17 right there (indicating).

18 Q. All right. Show me the path, if you remember, that you
19 took with Jon when you helped him around. Do you remember
20 which way you took him?

21 A. No.

22 Q. Okay. But you ended up -- show me where you ended up.

23 A. Right there (indicating).

24 Q. Okay. When you got around to the trash can, what
25 happened?

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 209

- 1 A. The police was surrounding us.
- 2 Q. They were surrounding you?
- 3 A. Uh-huh (affirmative).
- 4 Q. All right. And what happened next?
- 5 A. We was trying to get away from them, but they caught us
- 6 anyway.
- 7 Q. Okay. Why were you trying to get away?
- 8 A. Because we didn't want nothing to do with it.
- 9 Q. Okay. Did the police tell you to do anything when they
- 10 encountered -- when you encountered them by the trash can?
- 11 A. I think they told us to get away from Jon.
- 12 Q. Okay. What did you all do with John?
- 13 A. Left him right there.
- 14 Q. You left him?
- 15 A. Uh-huh (affirmative).
- 16 Q. And where did you go?
- 17 A. We was trying to leave like Hub City, but they wouldn't
- 18 let us.
- 19 Q. Okay. Did you stay and talk to the police?
- 20 A. No. They put us in the car.
- 21 Q. All right. And what did they do with you, then, when
- 22 they put you in the car?
- 23 A. They took us to -- I forgot that place where they took us
- 24 to be questioned.
- 25 Q. They took you to a place to be questioned?

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 210

1 A. Uh-huh (affirmative).

2 Q. Do you know if it was City Hall?

3 A. Yes.

4 Q. To the police department?

5 A. Yes.

6 Q. Okay. And you met with an investigator -- did you meet
7 with an investigator there?

8 A. Yes.

9 Q. Okay. And you gave him a statement; is that correct?

10 A. Yes.

11 Q. Now, that first statement, was that a complete and total
12 truthful -- truthful rendition of what happened?

13 A. No.

14 Q. Why not?

15 A. Because I didn't want nothing to do with it.

16 Q. Okay. And the police came back, again, and asked you
17 more questions, didn't they?

18 A. Uh-huh (affirmative).

19 Q. Do you remember Mr. Guthro asking you questions?

20 A. Yes.

21 Q. And that second -- did you give a second statement?

22 A. Yes.

23 Q. Were you more truthful with the police that time?

24 A. Yes.

25 Q. Did you tell them the truth?

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 211

1 A. Yes.

2 Q. The whole truth?

3 A. Yes.

4 Q. Okay. And, as a matter of fact, the police met with you,
5 again, a third time; is that correct?

6 MR. BEASLEY: Objection, Your Honor, he's leading the
7 witness.

8 THE COURT: Overruled. Go ahead.

9 Q. (By Mr. Coler) Did you meet with the police a third
10 time?

11 A. I don't remember.

12 Q. Do you remember talking to Ms. Brewster?

13 A. Yes.

14 Q. Okay. And was that before or after you met with Mr.
15 Guthro?

16 A. I don't remember.

17 Q. Okay. Do you remember giving Ms. Brewster a statement?

18 A. Yes, I think.

19 Q. Did you tell -- did you tell her the truth?

20 A. Yes.

21 MR. COLER: Okay. Beg the Court's patience just one
22 moment, Your Honor.

23 (Brief Pause)

24 (Off-the-Record Discussion)

25 Q. (By Mr. Coler) Oh, Ms. Hines, do you remember hearing the

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 212

1 defendant say anything, when he approached Robert and hit him
2 or struck him, at the vehicle?

3 A. I think he said -- it was either him -- I don't remember
4 who said it, but ---

5 Q. Well, what did you hear?

6 A. I just heard somebody say, "fuck that..." ---

7 Q. Okay.

8 A. --- and, "just leave."

9 Q. And was the person who said that Mr. Gist or one of the
10 people with Mr. Gist?

11 A. I don't remember.

12 Q. Okay. You don't remember or you don't know?

13 A. I don't know.

14 Q. You gave a statement to the police, and in that statement
15 you said you told them the truth?

16 A. Yes.

17 Q. If I showed you the statement, would that refresh your
18 memory?

19 A. Yeah.

20 (Document handed to witness.)

21 Q. Tell me what that sentence says.

22 A. It says, "Terrence said..." ---

23 THE COURT: Speak up, ma'am. I can't hear you.

24 A. It says, "Terrence said, "Fuck that."

25 Q. And what?

MS. TAMEKA HINES - CROSS by MR. BEASLEY

Page 213

1 A. And he smacked -- and smacked Robert."

2 Q. Okay. What did you say right -- what did you say Robert
3 did after Terrence did that?

4 A. I said Robert got out of his car.

5 Q. Okay. So, Robert -- if I understand you correctly,
6 Robert was in his car when Terrence approached him and smacked
7 him and said ---

8 A. Yeah.

9 Q. --- the cuss words; is that correct?

10 A. Yes.

11 MR. COLER: That's all the questions I have for you, Ms.
12 Hines. Please, answer any that Mr. Price or ---

13 THE COURT: Cross?

14 MR. COLER: -- Mr. Beasley may have.

15 CROSS EXAMINATION by MR. BEASLEY:

12:49 P.M.

16 Q. Hey, Tameka.

17 A. Hey.

18 Q. I'm Ryan Beasley. How are you doing?

19 A. I'm going okay.

20 Q. I want to start at the beginning of the night, all right?

21 A. Okay.

22 Q. You were fourteen at the time; is that right?

23 A. Yes.

24 Q. And your mother dropped you off over at Hub City?

25 A. Yes.

MS. TAMEKA HINES - CROSS by MR. BEASLEY

Page 214

1 Q. And what time was that?

2 A. I think it was like 8:00 or 9:00.

3 Q. Eight (8:00) or nine o'clock (9:00)?

4 A. Yes.

5 Q. And you were going to see your friend Sierra?

6 A. Uh-huh (affirmative).

7 Q. And why were you going to see Sierra?

8 A. Just to be going.

9 Q. You weren't going to see her because she was shot the
10 week before?

11 A. No, because I didn't even know nothing about that.

12 Q. But she's your friend and you didn't know she was shot?

13 A. Huh-uh (negative).

14 MR. COLER: Object to relevance, Your Honor.

15 THE COURT: Overruled.

16 Q. (By Mr. Beasley) Well, Tameka, after you went to Sierra's
17 house, you said she wasn't there?

18 A. No.

19 Q. So, you walked around?

20 A. Uh-huh (affirmative).

21 Q. And your friend Robert gave you and your sister -- or
22 your friend Rhonda?

23 A. Yes.

24 Q. And Maria just walked somewhere else, and you got in the
25 car with Robert?

MS. TAMEKA HINES - CROSS by MR. BEASLEY

Page 215

1 A. Yes.

2 Q. And he had another girl in the vehicle with him?

3 A. Yeah, a woman.

4 Q. He had a woman?

5 A. Yes.

6 Q. And he just dropped her off on the street after a little
7 while?

8 A. Like we went around to the stop sign, and then, he told
9 her to get out.

10 Q. Well, did he give you any indication that she was a
11 prostitute?

12 MR. COLER: Objection, Your Honor, no relevance.

13 THE COURT: Overruled.

14 A. No.

15 Q. So, you didn't tell your cousin, Erik Hines, that she was
16 a hooker?

17 A. Well, he wasn't even there. We didn't talk to him none.

18 Q. You never spoke with Erik Hines?

19 A. No.

20 Q. Okay. All right. What -- and you got in the car with
21 Robert and your friend, Rhonda, and you ran into your friend --
22 your sister, Maria, and then, you got a -- you called your
23 cousin Jon?

24 A. No, I didn't call him. My sister called.

25 Q. And Maria called him. Is John one of your favorite

MS. TAMEKA HINES - CROSS by MR. BEASLEY

Page 216

1 cousins?

2 A. Yes.

3 Q. He is?

4 A. Uh-huh (affirmative).

5 Q. And you're close to Jon?

6 A. Yes. Well, we're close, but not that close.

7 Q. Okay. So, did you ask Robert if it was okay to go pick
8 up ---

9 A. No, my sister asked Robert that.

10 Q. Well, what did Robert -- what was Robert's response?

11 A. Yes.

12 Q. He didn't make any other comments?

13 A. He said, "If they like the -- I'm going to say what he
14 said, "If they like pussy."

15 Q. If they like pussy?

16 A. Yes.

17 Q. "I'll give them a ride?

18 A. Yeah, that's what he said.

19 Q. Okay. And did your cousin say yes?

20 A. Yes to what?

21 Q. Did he say he liked pussy? Is that why he got a ride?

22 A. I don't know if he said yes, but he did get a ride.

23 Q. Okay. And once you picked up your cousin and his
24 friends, you don't -- you didn't hear anything that would have
25 caused an argument?

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MS. TAMEKA HINES - CROSS by MR. BEASLEY

Page 217

1 A. From my cousin and -- or Robert.

2 Q. And You said earlier you didn't know what they were
3 arguing about; is that right?

4 A. I didn't hear anything that he would have said or
5 somebody would have said. I heard what Antonio and Marcell
6 said, but he wasn't arguing with them.

7 Q. Okay. Well, Robert decided to take you guys to a dead
8 end road, right?

9 A. Yes.

10 Q. What time of night was that?

11 A. It was like -- I think it was like 10:00, 10:00 or 11:00.

12 Q. Did Robert say, "I'm going to kick your ass. Get the
13 hell out of the back"?

14 A. He told my cousin that?

15 Q. He did say that?

16 A. I don't remember, but is that what you're referring to?

17 Q. That's what I'm referring to.

18 A. I think they was going to fight, but I don't remember if
19 he said that or not.

20 Q. All right. So, they did fight?

21 A. No.

22 Q. And Robert got back in the car?

23 A. Yes.

24 Q. And started driving you guys to Hub City?

25 A. Yes.

MS. TAMEKA HINES - CROSS by MR. BEASLEY

Page 218

1 Q. At that time, did Robert say, "I'm going to charge you
2 guys five dollars each now to get a ride to Hub City"?

3 A. No.

4 Q. He never said that?

5 A. No.

6 Q. Okay. Did Mar -- did he -- did Robert say, "If I wanted
7 to kick your ass -- or, "I could shoot your ass and nobody
8 would find you." Did he ever say that?

9 A. I don't know.

10 Q. You don't -- you didn't -- you don't remember?

11 A. No, I wouldn't paying no attention.

12 Q. Okay. But did you hear Marcell say, "You're not going to
13 kill me, I'll flip on you"?

14 MR. COLER: Objection.

15 A. No.

16 THE COURT: Overruled.

17 Q. (By Mr. Beasley) All right. Did -- so, once you got
18 back to Hub City, you stated that every -- that your cousin,
19 Jon, sat on the back of the ---

20 A. Yes.

21 Q. --- hatch and they were just there drinking beer ---

22 A. Yes.

23 Q. --- with Robert? And you stated that you told the truth
24 on which statement, the third?

25 A. The second one and third.

MS. TAMEKA HINES - CROSS by MR. BEASLEY

Page 219

1 Q. The second and third one?

2 A. (Nods affirmatively).

3 Q. You had to give three statements?

4 A. Uh-huh (affirmative).

5 Q. And one was shortly after this incident, correct?

6 A. Yes.

7 Q. And the other one was later on the next day?

8 A. Yes.

9 Q. And the other one -- and the third one was like thirty
10 (30) days later?

11 A. I don't know how long it was, but I think that's the
12 right time.

13 Q. So, the investigator had to keep coming to you and
14 saying, "You're not telling me the truth. You're going to be
15 in trouble if you don't..."

16 A. No. What I think they were coming to me for is to see if
17 I was going to change my story.

18 Q. And you changed it, didn't you, every time ---

19 A. No, not much.

20 Q. Well, that's why you gave three statements because you
21 had to change your story three times, didn't you?

22 A. Okay.

23 Q. And you don't remember talking about this incident at all
24 with your cousin, Erik Hines?

25 A. No.

1 Q. You never did?

2 A. No.

3 Q. Well, if there was a video recording of that, would you
4 disagree with it?

5 A. No.

6 Q. You wouldn't disagree with it?

7 A. No.

8 Q. And if there's a recording, and you were talking to your
9 cousin Erik, and talking about this incident, that would be a
10 -- that would be true?

11 A. No, because I know I ain't talked to him.

12 Q. Okay. Well, after the shooting, you told investigators
13 that there was a grey hooded individual, with black pants,
14 leaning over the body and going through the body?

15 A. Yes.

16 Q. You did say that, right?

17 A. Yes, I did say that.

18 Q. And you didn't know who that was?

19 A. No.

20 Q. You also told an investigator that there was somebody
21 threatening you and you were worried about telling the truth
22 about the story, didn't you?

23 A. Yes.

24 Q. And why were you worried about that?

25 A. Because I thought something was going happen to me.

MS. TAMEKA HINES - CROSS by MR. BEASLEY

Page 221

1 Q. Because there were some other shooters out there, wasn't
2 there?

3 A. Yeah, there was.

4 Q. And you were scared to tell the truth about who the real
5 shooters were, weren't you?

6 A. No, because I didn't know their names, so, I didn't have
7 to say no name.

8 Q. Okay. But didn't you actually change your story on the
9 -- on the third statement that Jon was actually the first
10 person to approach Robert ---

11 A. No.

12 Q. You didn't change ---

13 A. Because I had said that he was the first -- he didn't
14 never approach Robert because he was already there.

15 THE COURT: He was what?

16 A. He was already there at the jeep.

17 (Brief Pause)

18 Q. (By Mr. Beasley) Okay. Here's your statement on thirty
19 days (30) later; it's the third one you gave.

20 A. Okay.

21 Q. And do you remember telling the officer right here --

22 (Document handed to witness.)

23 Q. Read that. And that's -- there's your statement right
24 there. Read that to me.

25 A. Which one?

MS. TAMEKA HINES - CROSS by MR. BEASLEY

Page 222

1 Q. The one that says he got -- that Robert got out of the
2 car.

3 A. That's when Robert took us which ---

4 THE COURT: Point out to her, sir, please.

5 MR. BEASLEY: Yes, sir.

6 Q. (By Mr. Beasley) Right here (indicating).

7 A. Oh, okay. "He got out of the car, opened the back and
8 him and Jon continued arguing.

9 Q. Okay. So, they weren't just having a friendly beer and
10 the problem was over. They were actually still arguing about
11 it ---

12 A. This was while we was at the dead end.

13 Q. He was -- he was still pissed off about getting kidnaped,
14 wasn't --

15 THE COURT: Hold on. Whoa, whoa, whoa, Mr. Beasley,
16 now.

17 MR. BEASLEY: Okay.

18 THE COURT: Conduct yourself as a gentleman.

19 MR. BEASLEY: Yes, Your Honor. Sorry.

20 Q. (By Mr. Beasley) He was still very upset about getting
21 kidnaped, wasn't he?

22 A. I think he was in a way.

23 Q. So, he -- the problem was not over at that point, was it?

24 A. Not when we were at that dead end, no.

25 Q. All right. And you said you -- there was a shot fired;

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 223

1 is that correct, one shot, and you took off?

2 A. Yes.

3 Q. So, you took off after the first shot?

4 A. Uh-huh (affirmative).

5 Q. Okay. And there was a second shot fired, correct?

6 A. There was many shots fired.

7 Q. But the many shots came after the ---

8 A. The first one.

9 Q. There was a delay, correct?

10 A. Yes.

11 Q. Okay.

12 (Brief Pause)

13 MR. BEASLEY: No further questions, Your Honor.

14 MR. COLER: Just briefly, Your Honor.

15 REDIRECT EXAMINATION by MR. COLER:

12:45 P.M.

16 Q. Let me clarify one thing, Tamika. Mr. Beasley asked you
17 a minute ago about the continuation of an argument between
18 Robert and Jon Petty.

19 A. Yes.

20 Q. And his question was, was that at Hub City?

21 A. No.

22 Q. And he pointed out a -- a sentence to you to look at in
23 your statement, and he had you read this statement right here
24 (indicating), did he not?

25 A. Yes -- yes.

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 224

1 Q. What did you read for him?

2 A. I read, "That's -- that's when Robert took us to a dead
3 end. He got out of the car, opened the back and he and Jon
4 continued arguing."

5 Q. Okay. So, the continuation of any argument was back
6 after the car was stopped?

7 A. It is.

8 Q. When you all arrived at Hub City, what was the
9 relationship, or what was the -- the situation between Jon
10 Petty and Robert Tennant?

11 A. They was acting like buddies.

12 Q. Okay. And is it fair to characterize Jon Petty as being
13 upset? Or Mr. Beasley asked you if he was upset, and you said
14 -- you agreed with him, you said yes.

15 A. I would say that I would be upset too if somebody took me
16 to a dead end. But I don't -- I think he was still upset, but
17 I don't think after we went to Hub City he was.

18 Q. In your experience, Ms. Hines, and where you live and
19 where you've grown up, have you seen people under the
20 influence or intoxicated?

21 A. Yes.

22 Q. Was Jon Petty intoxicated?

23 A. Yes.

24 Q. Was he excited or was he calm and relaxed that night?

25 A. He was excited.

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 225

1 Q. Okay. And did he -- did anybody try to kidnap him or
2 -- or take him away or take him against his will anywhere?

3 A. I don't think so.

4 Q. Okay. Well, as a matter of fact, Robert Tennant picked
5 him up at a party, correct?

6 A. Yes.

7 Q. And he gave him a free ride to Hub City?

8 A. Yes.

9 Q. Is any of that part to you kidnapping?

10 A. No.

11 MR. COLER: That's all I have, Your Honor. Thank you.

12 THE COURT: All right. You may step down.

13 (The witness stepped down from the witness stand at 12:50
14 p.m.)

15 THE COURT: All right. Let me see you all, please.

16 MR. COLER: May Ms. Hines be excused if there's no
17 objection?

18 (Whereupon, Ms. Hines was excused.)

19 (Whereupon, a bench conference was had with all counsel
20 present.)

21 THE COURT: Okay. Ms. Foreman and ladies and gentlemen,
22 we're going to break for lunch. Is an hour and a half long
23 enough, or do you need a little longer? It's a quarter to --
24 ten minutes to 1:00, I was thinking about 2:00 -- 2:15 or
25 2:30, which one suits you? About 2:30, would that be better?

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 226

1 MS. BROWN: Two fifteen (2:15).

2 THE COURT: Two fifteen? All right. We'll start at
3 2:15. Now, don't discuss the case among yourselves or let
4 anybody discuss it with you. You all have a very pleasant
5 lunch. Everybody else, please, remain seated.

6 (The jury exited the courtroom at 12:51 p.m.)

7 THE COURT: All right. Mr. Coler, anything for the
8 record before we break for lunch?

9 MR. COLER: Just briefly, Your Honor, and I talked to
10 Mr. Price about this. If I rest this afternoon, I plan to
11 release any of my remaining witnesses from subpoena. If you
12 all -- it sounds like they may want some of them, and if they
13 let me know, I'll be glad to keep them, but I just need to
14 know...

15 THE COURT: Well, you deal with Mr. Price over lunch and
16 you all -- you all discuss that ---

17 MR. COLER: Yes, sir. And I'll check with him. But I
18 think that's all that I can think of.

19 THE COURT: Anything for the record other than ---

20 MR. COLER: No, sir.

21 THE COURT: Mr. Price?

22 MR. PRICE: We need to get on the record about the ---

23 THE COURT: We do. I apologize. Let the record reflect
24 that, during Dr. Wrenn's testimony, the State introduced
25 Exhibit Number 17, which were also -- which were autopsy

MS. TAMEKA HINES - DIRECT by MR. COLER

Page 227

1 photos. And I think there were five in number ---

2 MR. COLER: Four.

3 MR. PRICE: Four.

4 THE COURT: Four in number, Defense Counsel made an
5 objection as to them being prejudicial and inflammatory, et
6 cetera -- and I don't want to put any words in your mouth, but
7 I'm sure I made that objection many times when I was a lawyer,
8 so, make it -

9 MR. PRICE: You're doing outstandingly, Your Honor.

10 THE COURT: And I told the State that they could only
11 use one, and I thought the others were cumulative, but I
12 overruled Mr. Price's objection. So, Mr. Price, if there
13 anything else you need to protect the record, please, put it
14 on now.

15 MR. PRICE: I do not believe I do, Your Honor.

16 THE COURT: All right. And thank you for reminding me
17 of that. Now, we'll stand at ease until 2:15. Make sure he
18 gets some lunch, all right?

19 (Off-the-Record Comments)

20 (Whereupon, a lunch recess was taken from 12:57 p.m. till
21 2:15 p.m.)

22 (Off-the-Record Comments)

23 BAILIFF: Come to order.

24 THE COURT: Thank you. Please, be seated.

25 (Court audience sits as requested.)

MR. DAVID REEVES - DIRECT by MR. COLER

Page 228

1 THE COURT: Mr. Coler, anything for the record before we
2 get started?

3 MR. COLER: No, sir, Your Honor.

4 THE COURT: Mr. Price?

5 MR. PRICE: No, sir.

6 THE COURT: All right. Mr. Coler, go ahead and call
7 your witness, and we'll be ready to go as soon as he gets
8 here.

9 MR. COLER: This next one is very short, David Reese.

10 (Mr. Reeves is summoned.)

11 (The jury entered the courtroom at 2:15 p.m.)

12 (Off-the-Record Comments)

13 MR. COLER: Mr. Coler, call your next case -- next
14 witness.

15 MR. COLER: David Reeves.

16 (Whereupon,

17 DAVID REEVES

18 having been duly sworn, testified as follows:)

19 DIRECT EXAMINATION by MR. COLER: 2:19 P.M.

20 Q. State your full name for the record, if you would.

21 A. My full name is George David Reeves.

22 Q. Tell us where you work.

23 A. I work property and evidence for the City of
24 Spartanburg's Public Safety Department.

25 Q. As the property and evidence technician at the city

MR. DAVID REEVES - DIRECT by MR. COLER

Page 229

1 police department, is it your -- is it still your duty to take
2 possession of and keep secure pieces of evidence turned into
3 you by officers?

4 A. Yes, it is.

5 Q. Is it also one of your duties to carry pieces of evidence
6 down to the SLED laboratories in Columbia for analysis?

7 A. Yes, it is.

8 Q. I'm going to hand you three items, starting with State's
9 Exhibit Number 13. It's been identified as four projectiles
10 recovered by Investigator Hogsed from an Explorer in this
11 case. Did you take possession of that and carry that down to
12 SLED?

13 (Exhibit handed to witness.)

14 A. Yes, I did.

15 Q. Did you change or alter or affect the condition of the
16 evidence at any time while it was in your possession?

17 A. I did not.

18 Q. I'm handing you State's Exhibit Number 14.

19 (Exhibit handed to witness.)

20 Q. That's been identified and moved into evidence as the
21 bullet recovered from the body of Robert Tennant by
22 Investigator Talanges. Did you take possession of that?

23 A. Yes, I did.

24 Q. Did you carry it down to SLED for further analysis?

25 A. Yes, I did.

MR. DAVID REEVES - CROSS by MR. PRICE

Page 230

1 Q. Did you change or alter or affect its condition in any
2 way?

3 A. I did not.

4 Q. And finally, I'm handing you what's been admitted as
5 State's Number 15 and identified as a GSR kit recovered from
6 the victim's body at the morgue by Investigator Talanges. Did
7 you take possession of that item and carry it to SLED?

8 (Exhibit handed to witness.)

9 A. Yes, I did. And I carried it to SLED.

10 Q. Did you change or alter or affect that GSR kit in any
11 way, shape, or form while it was in your possession?

12 A. I did not.

13 Q. Okay. Did you drop all those items off at SLED?

14 A. I did.

15 MR. COLER: All right. Your Honor, at this -- that's
16 all the questions I have. Answer any Mr. Price may have.

17 THE COURT: Cross?

18 CROSS EXAMINATION by MR. PRICE:

2:21 P.M.

19 Q. Mr. Reese, your signature is on those envelopes?

20 A. Yes, sir, it is.

21 MR. PRICE: No questions, Your Honor.

22 THE COURT: Thank you. You may step down and be
23 excused. What is your last name?

24 THE WITNESS: Reeves, R-e-e-v-e-s.

25 (The witness stepped down from the witness stand and was

MS. JENNIFER STONER - DIRECT by MR. COLER

Page 231

1 excused at 2:24 p.m.)

2 THE COURT: The next witness?

3 MR. COLER: Jennifer Stoner.

4 (Ms. Stoner is summoned.)

5 (Off-the-Record Comments)

6 (Whereupon,

7 JENNIFER STONER

8 having been duly sworn, testified as follows:)

9 DIRECT EXAMINATION by MR. COLER:

2:22 P.M.

10 Q. Ma'am, would you, please, state your full name for the
11 record?

12 A. Jennifer M. Stoner.

13 Q. Tell the jury where you work.

14 A. I'm employed by the South Carolina Law Enforcement
15 Division in the trace evidence section of the forensics
16 department.

17 Q. What is your title or position with SLED in the trace
18 evidence department?

19 A. I'm considered a forensic scientist.

20 Q. Okay. How long have you been doing that?

21 A. I've been employed at SLED for almost nine years, and
22 eight of those years have been in the trace evidence
23 department.

24 Q. Is one of your duties, in the trace evidence department,
25 to analysis gunshot residual kits that are submitted to you by

MS. JENNIFER STONER - DIRECT by MR. COLER

Page 232

1 police agencies?

2 A. That is one of my duties, yes.

3 Q. Okay. Briefly describe for the Court your background,
4 training, experience, education that you have that enables you
5 to perform those duties for SLED.

6 A. I have a Bachelor of Science degree in chemistry, which I
7 obtained from California University of Pennsylvania, a small
8 state school in Pennsylvania.

9 Upon completion of my degree, I did an internship at
10 SLED, in the trace evidence department, to find out if that's
11 what I wanted to do with my career. Upon completion of the
12 internship, I was hired in the drug analysis department, where
13 I completed the criminal justice academy and the drug analysis
14 training.

15 I worked there for a year analyzing controlled
16 substances, and then, I transferred to the trace evidence
17 department. Once I was in the trace evidence department, I
18 began a three-year training program where I trained directly
19 under the lieutenant of the department and under other senior
20 analysts in the department.

21 I did basic training, on the different analysis that we
22 perform, the instrumentation that we use, how to process
23 evidence, chain of custody, just the whole training program.

24 I also took numerous courses and classes given by the
25 makers of the instruments that we use, and by different

MS. JENNIFER STONER - DIRECT by MR. COLER

Page 233

1 colleges and universities just to -- so, I could keep up on
2 the current trends in forensic analysis, how to analyze the
3 -- how to use the instruments for my analysis, how to do
4 trouble shooting on the instruments to maintain the
5 instruments and just techniques in forensic science.

6 Q. Have you testified in General Sessions on previous
7 occasions?

8 A. Yes, I have.

9 Q. Been qualified as an expert in the area of gunshot
10 residual analysis on previous occasions?

11 A. Yes, I have.

12 MR. COLER: Your Honor, at this point, we would offer
13 Agent Stoner as an expert in the field of gunshot residual
14 analysis.

15 MR. PRICE: No objection, Your Honor.

16 THE COURT: Okay. She'll be admitted as an expert in
17 that area and will be allowed to give an opinion as I stated
18 earlier.

19 MR. COLER: Thank you, Your Honor.

20 Q. (By Mr. Coler) Agent Stoner, would you first describe for
21 the jury what gunshot residual is?

22 A. Gunshot residual is a term that we use to describe a
23 cloud that forms around a weapon upon its discharge. This
24 cloud contains metallic residual, from the firing composition
25 in the cartridge, from the bullet, and from the barrel of the

MS. JENNIFER STONER - DIRECT by MR. COLER

Page 234

1 gun from prior shootings.

2 Q. How is gunshot residual deposited on items such as a
3 person's hands or clothing?

4 A. When a gun is fired, actually a small explosion takes
5 place. You have a primer composition in the bullet. It's the
6 basis of the cartridge in the bullet. This primer composition
7 contains three elements that we look for in gunshot residual.

8 The heat and pressure generated, during the discharge of
9 a firearm, causes these metallic particles to vaporize. When
10 they exit the weapon, they, then, form a cloud and they
11 condense into small particular matter.

12 You can't see this cloud, but it will deposit on anything
13 that's in the vicinity of the weapon. If you're holding a
14 weapon, and you fire it, that cloud is going to come out of
15 that gun; it's going to come out of the barrel of the gun.

16 If it's a revolver, it's going to come out of the cham
17 -- the cylinder, the cylinder gas, the trigger. If it's an
18 automatic, it will come out of the slot and it's rocked
19 forward and back.

20 Anything that comes in contact with that cloud, that
21 cloud will deposit gunshot residual on it. That will include
22 my arm if I fire a gun. You can deposit residual here
23 (indicating) on your hand. On a victim of a shooting, if
24 they're close to the weapon, that gunshot residual can deposit
25 on the victim.

MS. JENNIFER STONER - DIRECT by MR. COLER

Page 235

1 It will also deposit on someone that's in the close
2 vicinity of that gun being fired. If I fire a weapon right
3 here, you can have gunshot residual deposited on his hands
4 from just being in close proximity to that gun.

5 Q. Okay. How long does gunshot residual stay on someone's
6 hands, and how does the life or death of that individual
7 affect that?

8 A. Gunshot residual can stay on your hands for up to six
9 hours. It's very fragile evidence. It's kind of like if
10 you're -- if you bake a cake, and you have flour on your
11 hands. If you brush it off, you're going to remove it.

12 You can remove gunshot residual by washing your hands, by
13 sweating, just any activity that you do, anything that comes
14 into contact with your hands, will remove that residual.

15 So, if you're a living individual, if you fire a weapon,
16 I don't expect to see anything on your hands after six hours.
17 If you're a deceased individual, once you die, all body
18 functions cease.

19 So, there's no way that you can wash your hands or put
20 your hands in your pocket or do anything with your hands, so,
21 at the moment you die, anything that's on your hands will stay
22 there until it's removed by an outside force.

23 So, if you're a living suspect, or subject, we don't
24 expect to see it after six hours. On a deceased individual,
25 if you're shot and you stay in an apartment or a house or

MS. JENNIFER STONER - DIRECT by MR. COLER

Page 236

1 whatever, and twelve (12) hours later you're found, you can
2 find gunshot residual on your hands because everything has
3 stopped and nothing will remove it.

4 Q. Is it possible, aside from having your hand near the
5 cloud of GSR that's created when a gun is fired, is it
6 possible to get gunshot residual on your hand by touching
7 something that has gunshot residual on it like a gun?

8 A. Yes. If you touch a gun that's been fired that hasn't
9 been cleaned, you will pick up residual normally on the palm
10 of your hand.

11 We found different people that have loaded a weapon, that
12 have touched the ammunition, we have found gunshot residual
13 from that. And if you touch -- like I said, if you touch the
14 handle of the weapon, you can get it on your hands.

15 Q. Okay. And describe for us the process of collecting
16 gunshot residual from either a living person or a deceased
17 individual.

18 A. Can I use the demo kit?

19 Q. Absolutely.

20 (Item handed to witness.)

21 A. We provide gunshot residual kits to the law enforcement
22 departments in the state, and it's called a combination kit.
23 And it contains two different parts of sampling tools.

24 (Witness retrieves items out of kit.)

25 A. Basically, when I told you that gunshot residual is

MS. JENNIFER STONER - DIRECT by MR. COLER

Page 237

1 formed from a cloud, and we look for metallic particles on the
2 hands, the first part of the kit will pick up these metallic
3 particles.

4 They're called particle lifts. There's one for the right
5 palm, the right back, the left palm and the left back. And
6 the officer or coroner, or whoever collects the kit, will take
7 each area that's marked and just go over that area of the
8 hand.

9 It has a sticky substance on it kind of like a bandaide,
10 and it picks up any particles that are present on that
11 person's hands. They do this for each area of the hand.

12 Upon completion of the first part of the kit, they take
13 swabs that are provided. They just basically look like Q-Tips
14 that don't have but one end on them. And they saturate these
15 with nitric acid, then, they swab each area of the hand that
16 they've already gone over with this (indicating), and this
17 picks up any remaining residual that's on the hands.

18 And this will just tell me if there is metal present, and
19 with these I can see what the particles look like. And after
20 -- upon completion of the kit, they seal it and submit it to
21 our department for analysis.

22 Q. Okay. Did you, in fact, analyze a gunshot residual kit
23 submitted to you by Investigator Talanges of the city police
24 department for this case? And I'll hand you what's been
25 pre-marked State's Exhibit Number 15.

MS. JENNIFER STONER - DIRECT by MR. COLER

Page 238

1 (Exhibit handed to witness.)

2 THE COURT: What number, 15?

3 MR. COLER: Number 15, Your Honor.

4 A. This is one of the kits that I analyzed for this case.

5 And basically, I -- I initial and date, when I open these kits
6 up and prep them, and those are my initials and the date that
7 I did that.

8 Q. Okay. What -- I'm sorry. I made a mistake. Was the kit
9 sealed properly when you received it and you took possession
10 of it?

11 A. Yes. All the -- we have a note sheet that we keep track
12 of, and it's called a blue sheet for our case file. If there
13 is anything that's odd with the kit, whenever we receive it,
14 if it's not sealed, if it's broken open, if the samples aren't
15 sealed correctly, we'll notate it on the sheet. And I do not
16 have any notation that the kit was not sealed.

17 Q. Okay. And after analyzing it, did you create a report
18 summarizing your findings?

19 A. I did.

20 Q. And what was the result of your analysis of the gunshot
21 residual kit performed on Robert Lee Tennant's hands?

22 A. In the samples that were submitted, from the hands of
23 Robert Lee Tennant, the quantities of metal detected did not
24 indicate the presence of gunshot residual.

25 This means that I analyzed the swabs that were collected

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MS. JENNIFER STONER - DIRECT by MR. COLER

Page 239

1 and submitted to us, and I did not find any elevated levels of
2 metals that can be associated with gunshot residual.

3 Q. What did that indicate to you about whether or not Robert
4 Lee Tennant fired a weapon at or near the time of his death?

5 A. It -- and I don't feel that he fired a weapon at or any
6 time of his death because he's a deceased individual. If he
7 had fired a weapon, and died on the scene, there should have
8 been something on his hands; it would have been left on his
9 hands unless it was removed from an outside source, which can
10 be rain or whatnot.

11 But, since he was deceased, and there was nothing on his
12 hands, I don't feel that he did fire a weapon prior to his
13 death.

14 Q. Okay. What can you conclude or summarize about whether --
15 whether he handled a weapon at or near the time of his death?

16 A. I did not have any evidence, on the palms of his hands,
17 to show that he had handled a weapon. So, I don't -- I cannot
18 say if he handled a weapon either because I have no evidence
19 to support that.

20 Q. No gunshot residual supporting the fact that he did
21 handle a weapon?

22 A. I have nothing on his hands, on his palms or the backs of
23 his hands, to support that he handled or fired a weapon.

24 Q. Okay. What, if anything, can you tell us your conclusion
25 would be about whether his hand was in close proximity to a

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MS. JENNIFER STONER - DIRECT by MR. COLER

Page 240

1 weapon that was fired at him and striking him?

2 A. When a person is fired upon, the end of the barrel was
3 facing towards that person. That's where the majority of
4 gunshot residual exits that gun. In cases where we've had
5 people that have their hands up in front of the gun that were
6 shot, we have extremely high levels of metal on the hands, I
7 mean, like tens of thousands of count.

8 In this case, I have nothing even close to that. I had
9 numbers that didn't even reach our threshold for a positive.
10 So, I do not feel that his hands were near a weapon when it
11 was fired.

12 Q. Okay. And I understand. Obviously, if a weapon was a
13 significant distance away from him, is it true he would not
14 have -- you would not expect to find gunshot residual on his
15 hands?

16 A. Right. If the weapon is far away from him, when he's
17 shot, I don't expect to find it, or if the weapon -- if the
18 bullet passed through another object before it hit him, I
19 would not expect to find it.

20 Q. Okay. Let's suppose, for analysis sake, he was pointing
21 a gun at the person who shot him. And they were in relatively
22 close proximity. What, if anything, would you expect to find
23 about the hand he was pointing holding the gun at, pointing at
24 the person who shot him?

25 A. Well, first of all, if he's holding a weapon, I would

MS. JENNIFER STONER - DIRECT by MR. COLER

Page 241

1 expect to find something on his palm, unless that gun was
2 totally clean prior to the last time it was shot, or after the
3 last time it was shot.

4 You're obviously going to have residual on the gun, so, I
5 would have expected to find something on his palms had he held
6 the weapon.

7 Also, if he's in close proximity to the shooter, who is
8 shooting him, and his hands are out, I would expect to find
9 something on the back of his hand which was towards the gun
10 that was shooting him.

11 Q. From the shooter's gun?

12 A. From the shooter's gun.

13 Q. Got you.

14 (Brief Pause)

15 Q. And describe for us the time frame in which you instruct
16 officers with police agencies to collect gunshot residual from
17 -- from people, from suspects, anybody.

18 A. We instruct the officers -- we actually have a training
19 program where investigators from different departments can
20 come through and spend three weeks at SLED doing the training
21 program on how to collect evidence, what evidence we can look
22 at. And we also talk to a lot of the officers if we see
23 problems with their kits. We'll call them and instruct them
24 how to collect.

25 And basically, we will not analyze a gunshot residual kit

MS. JENNIFER STONER - CROSS by MR. PRICE

Page 242

1 if it's collected more than six hours after the time of the
2 shooting. And that's because we don't expect to find any
3 residual after six hours that we can link to that shooting.

4 So, if they collect a kit that's ten, seven, five hours
5 after the shooting, we don't even perform an examination on
6 that kit. This is for living suspects.

7 On deceased individuals, they can collect that kit
8 because there's no time limit on a deceased individual.

9 Q. Okay. If the police didn't come in -- come into contact
10 with Mr. Gist until approximately fourteen (14) hours after
11 the shooting, and then, did perform a gunshot residual kit on
12 his hands, would you have even tested it?

13 A. I would not have tested it, and we would have opened up,
14 looked at the time frame, put it on the sheet that they fill
15 out when they collect a kit. There's an incident time and a
16 collection time, if that's more than six hours, we don't even
17 perform an examination on the kit.

18 Q. Okay.

19 MR. COLER: That's all the questions I have for you,
20 Agent Stoner. Please, answer any that Defense would have.

21 THE COURT: Cross?

22 MR. PRICE: Thank you, Your Honor.

23 CROSS EXAMINATION by MR. PRICE:

2:35 P.M.

24 Q. Ms. Stoner, how are you this afternoon?

25 A. Well. How are you?

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MS. JENNIFER STONER - CROSS by MR. PRICE

Page 243

1 Q. I'm fine. Thank you. Mr. Coler has used the phrase,
2 "relatively close proximity," many times. What does that
3 mean?

4 A. Normally, we don't see gunshot residual on a victim who's
5 been shot upon beyond five feet.

6 Q. Okay. And every gun varies, does it not?

7 A. Correct. If you have a 22-caliber versus a 45, you're
8 going to see a big difference in what proximity you can see
9 that residual.

10 Q. All right. And I think you also mentioned that residual
11 is particularly fragile?

12 A. Very fragile.

13 Q. And you mentioned it can be washed off with water?

14 A. Yes.

15 Q. How about beer?

16 A. Beer will wash it off too.

17 Q. Okay. Now, you say that, in your opinion, Mr. Tennant
18 did not discharge a firearm?

19 A. I don't feel that he did due to the lack of evidence on
20 his hands and since he was a deceased individual. If he had
21 been a living individual, and he had no residual on his hands,
22 I couldn't say that.

23 Q. I understand. But you cannot -- you cannot say to a
24 moral certainty that Mr. Tennant neither did or did not simply
25 handle a firearm?

MS. JENNIFER STONER - CROSS by MR. PRICE

Page 244

1 A. I did not find any evidence that he handled one. If it
2 had been a clean weapon, and it wouldn't have picked up
3 anything, that's a possibility.

4 Q. Absolutely. All right.

5 A. But most weapons, any ammunition, will put something on
6 your hands if you handle it.

7 Q. But, if it was clean, it wouldn't show any
8 particularly ---

9 A. No.

10 Q. All right. Now, you also did a GSR kit on the defendant
11 in this thing by the name of Jonathan Petty, did you not?

12 A. I did.

13 Q. And you were given a sample only on Mr. Petty's right --
14 the back of his right hand; is that correct?

15 A. No, sir. That was the only result that I reported on.

16 Q. Uh-huh (affirmative).

17 A. If we have a negative result, along with another result,
18 we do not report on the negative. If I have a negative and a
19 positive, or a negative and an inconclusive, I only report on
20 the positive areas or the inconclusive areas.

21 Q. All right. So, you did -- you had how many different
22 samples of Jonathan ---

23 A. I had four samples from him.

24 Q. Okay. And you just reported on one?

25 A. That's correct.

MS. JENNIFER STONER - REDIRECT by MR. COLER

Page 245

1 MR. PRICE: All right. Thank you very much.

2 THE COURT: Redirect?

3 MR. COLER: Just to clarify.

4 REDIRECT EXAMINATION by MR. COLER:

2:38 P.M.

5 Q. The sample submitted to you for Jonathan Petty, you found
6 what could or could not possibly -- or could be -- tell me
7 what you found.

8 A. The -- the samples that I collected -- that were
9 collected from Jonathan Petty, I analyzed a small portion of
10 the kit, and there was an elevated level. Due to our
11 protocol, I have to look at these on the scan electron
12 (phonetic) microscope, that's an instrument that we use to
13 analyze these -- this part of the kit.

14 All I found was one ground up particle, which is a
15 component of gunshot residual. But, since I did not have a
16 positive, on the first part of the test, and all I found was
17 one particle, we reported it as an inconclusive, so, that
18 we're not stepping out there too far since there may have been
19 some transfer. So, that's why that one is an inconclusive.

20 Q. Which hand did you find the inconclusive results on Mr.
21 Petty? Is your report up there?

22 A. On the back of the right hand.

23 Q. Okay. If Mr. Petty was shot in his left arm, and was
24 treated for that gunshot wound, tell us how, if any, that
25 would affect the gunshot residual on his left hand.

MS. JENNIFER STONER - REDIRECT by MR. COLER

Page 246

1 A. He was shot in the left arm?

2 Q. That's what I'm asking, and I'm going to showing you a
3 picture. I'm showing you what's been marked as State's
4 Exhibit Number 12. If that's Mr. Petty's condition the night
5 of the incident, shot in the left arm, can you tell us
6 anything about what you might expect to find on his left hand
7 of the sample kit that was done on his left hand?

8 A. I didn't find anything on the left hand. A lot of times
9 blood, the particles that we look for, blood will dissolve
10 them. So, if you have a clog (phonetic), which is the first
11 part of the test that I looked at, and I found something on
12 that, this part I only found one particle.

13 And the particles were bloody. So, they could have been
14 dissolved and I didn't find them. And that's another reason
15 we reported it inconclusive.

16 Also, if he's injured, and his left hand is injured, if
17 he can do a transfer from his right hand if he touches that
18 wound track because some of that gunshot residual can travel
19 with the bullet possibly.

20 I'm not sure exactly what -- what question you're getting
21 at, but he can have gunshot residual on his hand from being
22 shot or from grabbing the wound track because the blood would
23 dissolve the particles, and I would not be able to find them
24 if they were there.

25 Q. Could he also have gunshot residual on either hands by

MS. JENNIFER STONER - REDIRECT by MR. COLER

Page 247

1 being in close proximity to the -- to a weapon that fired
2 shots?

3 A. That's correct. Like I said, if I'm right here by him
4 and I fire it, he can have gunshot residual on his hands from
5 that firing.

6 Q. Okay. And it's possible that, if it were on his left
7 hand and that would -- that wound was bleeding and treated by
8 EMS, that might eliminate or wipe out the gunshot residual on
9 his left hand?

10 MR. PRICE: Objection as to leading.

11 THE COURT: That's an improper question.

12 Q. How would a --

13 THE COURT: Sustained.

14 MR. COLER: Thank you, Your Honor.

15 Q. (By Mr. Coler) How would a gun -- how would a bullet
16 wound on his left arm affect samples of gunshot residual on
17 his left hand?

18 A. Anything EMS does to treat a person can remove residual.
19 If they perform CPR on you or if they touch your hand; if they
20 put an IV in, whatever they do, whatever your hands come into
21 contact with, will remove that residual.

22 So, if someone is treated by EMS, a lot of times that
23 residual is taken off by the EMS worker just in handling that
24 person.

25 MR. COLER: Okay. That's all the questions I have,

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

DAN DEFREESE - DIRECT by MR. COLER

Page 248

1 Agent. Thank you for being here.

2 THE COURT: Recross?

3 RECROSS EXAMINATION by MR. PRICE:

2:41 P.M.

4 Q. Ms. Stoner, it also means that he could have gotten that
5 particularly by handling a firearm, couldn't he?

6 A. That's correct.

7 MR. PRICE: Thank you.

8 THE COURT: You may step down. Can she be dismissed?

9 (The witness stepped down from the witness stand at 2:41
10 p.m.)

11 MR. COLER: No objection, no, sir.

12 THE COURT: Mr. Price?

13 MR. PRICE: We have none.

14 THE COURT: Thank you, ma'am.

15 THE WITNESS: Thank you.

16 (Whereupon, the witness was excused.)

17 MR. COLER: Dan Defreese.

18 (Mr. Defreese is summoned.)

19 THE COURT: Mr. Coler?

20 (Whereupon, a brief bench conference was had.)

21 (Whereupon,

22 DAN DEFREESE

23 having been duly sworn, testified as follows:)

24 DIRECT EXAMINATION by MR. COLER:

2:42 P.M.

25 Q. Would you, please, state your name for the record?

DAN DEFREESE - DIRECT by MR. COLER

Page 249

1 A. My name is Frank Dan Defreese.

2 Q. And tell us where you work.

3 A. I work for the South Carolina Law Enforcement Division in
4 the forensic services laboratory in Columbia.

5 Q. What is your title in the forensics laboratory in
6 Columbia or position?

7 A. I'm a senior agent.

8 Q. Okay. What are your general duties as a senior agent in
9 the forensic laboratory in the SLED office in Columbia?

10 A. Within the laboratory, I'm assigned to the work unit
11 where we do the analysis of firearm and tool mark evidence.

12 Q. Okay.

13 A. And that's principally what I do, is I examine items of
14 firearm and tool mark evidence and render my conclusions and
15 testify in court.

16 Q. Okay. In addition to firearms, do you analyze bullets,
17 projectiles, and things related to firearms?

18 A. Yes, sir. Firearms identification principally includes
19 the identification of bullets and cartridge cases with the
20 guns that fired them or with each other.

21 Q. Okay. If you would, briefly describe for the Court your
22 training, your education, your background, and your experience
23 that has prepared you and enabled you to perform your duties
24 for SLED?

25 A. Well, I'm a graduate of the University of South Carolina

DAN DEFREESE - DIRECT by MR. COLER

Page 250

1 in Columbia, and I was employed with SLED in January of 1967.
2 At that time, I began a course of study in the fields of
3 firearm and tool mark identification.

4 I studied with Lieutenant Miller Cate (phonetic) who
5 established the SLED laboratory when SLED itself was
6 established in 1947. After a period of approximately two and
7 half years, of studying under his direct supervision, I began
8 accepting cases on my own and testifying as to my results,
9 which I have been doing now since -- since 1969.

10 Q. Okay.

11 A. And I've testified in Courts throughout this state and in
12 other states and in federal court.

13 Q. Been qualified as an expert in General Sessions Court on
14 previous occasions?

15 A. Yes, sir.

16 MR. COLER: Your Honor, at this point, we'd offer Agent
17 Defreese as an expert in the area of firearms and tool marking
18 identification.

19 MR. PRICE: No objection, Your Honor.

20 THE COURT: Without objection.

21 Q. (By Mr. Coler) Agent Defreese, as part of your duties,
22 were you asked to examine several pieces of evidence submitted
23 to you by the city police department in this case?

24 A. Yes, sir, I was.

25 Q. I'm going to start by handing you some pieces of evidence

DAN DEFREESE - DIRECT by MR. COLER

Page 251

1 and ask you one, do you recognize them, and -- or did you
2 analyze them. And starting with State's Exhibit Number 14,
3 I'll ask you to examine the contents of that envelope, if you
4 would.

5 (Exhibit handed to witness.)

6 (Brief pause while witness examines exhibit.)

7 A. Yes, sir, I have previously examined this item.

8 Q. Okay.

9 MR. COLER: and, Your Honor, for the record, I've handed
10 the witness State's Exhibit ---

11 A. Fourteen (14).

12 MR. COLER: -- number 14, which was testified to as
13 being recovered from the body of Robert Lee Tennant by Dr.
14 Wrenn and Investigator Talanges.

15 Q. (By Mr. Coler) Agent Defreese, what, if anything -- well,
16 describe for us, if you would, your analysis of that item and
17 what -- and what, if anything, you can tell us about that
18 item?

19 A. I collect certain information about bullets and cartridge
20 casings and other items of evidence that are submitted. I
21 weigh them, I measure certain places on the bullet, in an
22 attempt, in this case, since no firearm was submitted, I -- I
23 was attempting to tell the investigator what kind of firearm
24 they might be looking for in this case.

25 So, I -- I weighed, measured, and determined the number

DAN DEFREESE - DIRECT by MR. COLER

Page 252

1 of lands and grooves that are present -- or land and groove
2 impressions that are present on this bullet. And from that
3 data, I gave the investigators a list of possible makes of
4 firearms that could have fired this bullet.

5 Q. Okay.

6 A. This bullet is most consistent with a 38-special or 357
7 magnum caliber bullet. It has five land and groove
8 impressions, and from that -- the dimensions of those, I
9 suggested a number of possible makes that may have fired this
10 -- this bullet.

11 Q. Okay. You talk -- you say it's most consistent with a
12 38-special or a 357. Is that ammunition very close in size,
13 diameter, and weight?

14 A. It is. There is a one-way interchangeability between the
15 two calibers. The 38-special caliber cartridge case is about
16 a tenth of an inch shorter than the 357 magnum caliber
17 cartridge case.

18 So, a person could safely shoot a 38-special caliber
19 cartridge in a 357 magnum caliber firearm. But what you could
20 not do is the reverse, the -- the 357 magnum cartridge is
21 somewhat longer and it's -- it normally can't be placed into
22 the chamber of a 38-special caliber firearm and that's because
23 357 magnum caliber ammunition is loaded to a higher pressure
24 and shoots its bullet at a higher velocity.

25 Q. Okay.

DAN DEFREESE - DIRECT by MR. COLER

Page 253

1 A. But the -- the physical size and weights of the bullets
2 are the same in both calibers.

3 Q. All right. Do you have a copy of your report with you,
4 Agent Defreese?

5 A. I do.

6 (Brief pause while witness retrieves document.)

7 A. Yes, sir.

8 Q. For that -- that item you just testified to, I believe
9 you referred to it as item number 5 in your report, but for
10 the record, it's State's Exhibit Number 14, the bullet removed
11 from the body of Robert Tennant.

12 A. That's correct, State's Exhibit 14 is the item I call
13 item number 5 in my report.

14 Q. Okay. Is one of the weapons that could have fired that a
15 357 magnum Smith & Wesson handgun?

16 A. Yes.

17 Q. Okay. That's one of the possibilities that you -- that
18 you determined?

19 A. Yes.

20 Q. Okay. Let me ask you, Agent Defreese, about the other
21 items that were submitted to you.

22 MR. COLER: And, Your Honor, I'm handing him State's
23 Exhibit Number 13, that has been identified and admitted as
24 the projectile coming from the vehicle and/or around the
25 vehicle of Mr. Tennant.

DAN DEFREESE - DIRECT by MR. COLER

Page 254

1 (Exhibit handed to witness.)

2 Q. (By Mr. Coler) And just take a look at the contents of
3 that -- that enveloped and the contents of the smaller
4 envelope and tell us if you recognize those items?

5 (Brief pause while witness reviews exhibit.)

6 A. Yes, sir.

7 Q. Okay. The four projectiles you have or the partial
8 projectiles you have, after performing your analysis on them,
9 what, if anything, can you tell us about the four items?

10 A. In this four envelopes are what I describe as my items 6,
11 7, 8, and 9, which are all collectively State's Exhibit 13.

12 Q. Okay.

13 A. The object that I called item 6 is a fired bullet. It's
14 a fired jacketed bullet that still has its lead core intact.
15 Item 7 is a fired bullet jacket fragment; that is, the copper
16 portion of it, or most of the copper portion, but the center
17 lead core is not in it.

18 What I refer to as item 8 is a piece of lead that is
19 consistent with being a lead bullet core. And item 9 is also
20 a fired copper alloy bullet jacket that has no core in it.

21 Now, in jacketed bullets, it's the outside copper alloy
22 jacket that actually comes into contact with the bore of the
23 gun in which it's fired. So, it's the only part -- part of
24 the bullet that's going to have markings on it left by the
25 gun. The core, the interior portion of this, would never have

DAN DEFREESE - DIRECT by MR. COLER

Page 255

1 been directly marked by the gun barrel.

2 So, for that reason, the lead core fragment, that I call
3 item 8 is not suitable for identification with any particular
4 gun. And it's not suitable for microscopic comparison with
5 any other specimen.

6 This could have been a portion, at a prior time, of the
7 jackets in either item 7 or item 9 or another bullet. But I
8 was able to take the two bullet jacket fragments and the fired
9 bullet and microscopically compare them with each other.

10 I found that they all had the same general rifling
11 characteristics; they were all rifled with six lands and
12 grooves with right-hand twists. And beyond that, they all
13 three of them had the same individual microscopic
14 characteristics from which I was able to conclude that these
15 three items were all fired by the same gun barrel.

16 Now, they were not fired by the gun barrel that fired
17 State's Exhibit 14. These bullets, and bullet jacket
18 fragments, were consistent with being either a 32-caliber or a
19 30-caliber, whereas the other was a 38- or 357-magnum caliber.
20 So, it's not possible that the gun that fired these three
21 fired the other bullet.

22 Q. Okay.

23 A. Or vice versa.

24 Q. But you can say for certain that there are two weapons
25 -- based on what you have, two different and distinct weapons

DAN DEFREESE - DIRECT by MR. COLER

Page 256

1 fired those items?

2 A. Two different weapons, two different caliber weapons.

3 Q. Okay. I know you couldn't take item number 8 and
4 determine a particular gun it was fired from; could you
5 determine, based on its weight, size, characteristics, what
6 caliber it is most likely consistent with?

7 A. It's closest to the 30- and 32-caliber in its overall
8 size and weight.

9 Q. Okay. All right.

10 MR. COLER: Beg the Court's patience one moment.

11 (Brief Pause)

12 Q. (By Mr. Coler) Investigator or Agent Defreese, let me
13 ask, in your opinion, in your expert opinion, if you were
14 presented with evidence that the -- that somebody indicated
15 they had fired a 357-caliber Smith & Wesson handgun, and
16 struck the victim in the chest, and you're presented with the
17 item number 14, that came out of the body, would you find that
18 statement to be feasible or plausible?

19 MR. PRICE: I'm going to object to the form of that
20 question, Your Honor.

21 MR. COLER: May I rephrase -

22 THE COURT: Well, I'm not sure, as far as this witness.
23 I'm going to sustain the objection. Move along. That's a
24 determination ---

25 MR. COLER: Okay. That's all the questions I have,
PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MR. DAN DEFREESE - CROSS by MR. PRICE

Page 257

1 Agent. Thank you for being here, and please, answer any that
2 Mr. Price has.

3 CROSS EXAMINATION by MR. PRICE:

2:55 P.M.

4 Q. Mr. Defreese, number 8 ---

5 A. Yes, sir.

6 Q. --- you said that's the lead fragment or lead projectile?

7 A. Yes, sir. It's a lead core fragment.

8 Q. A core fragment?

9 A. Yes, sir.

10 Q. Now, you say, in your opinion, it's closest to a 30 or a
11 32?

12 A. Correct.

13 Q. But it isn't also possible that it could be the remnants
14 of a higher caliber?

15 A. Yes, sir.

16 Q. Okay. It could be the remnants of a 38-special?

17 A. I can't say that it's not.

18 Q. Okay. And it could be the remnants of a 357?

19 A. It could be. Normally, item 8 -- what I call item 8, in
20 State's Exhibit 13, weighs sixty-one point two (61.2) grains.
21 The 32-caliber H&R Magnum (phonetic), which is really the
22 closest thing to these calibers come to, the bullets in here
23 come to, normally weighs about eighty-five (85) grains.

24 The 38 and 357 magnum caliber bullets normally weigh a
25 hundred and ten (110) to a hundred and fifty-eight (158)

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MR. FRANK DEFREESE - REDIRECT by MR. COLER

Page 258

1 grains. So, when I said State's Exhibit eight -- I mean,
2 excuse me, my item eight is the closest to the weight of a 32;
3 you know, it is closer to a 32, but you're correct, I can't
4 say that it wasn't something else.

5 Q. All right, sir, thank you very much. That's a fair
6 answer. Now, on direct you mentioned that item number 5,
7 which is State's Number 14 ---

8 A. Yes, sir.

9 Q. --- was either, in your opinion, a 357 or a 38?

10 A. That's -- yes, sir.

11 Q. Either/or, and your testimony also, I think, was that it
12 could have been an S&W, but in your report, you also mentioned
13 12 other firearms that could have fired that pistol in your --
14 that -- excuse me -- that bullet in your opinion?

15 A. Correct, sir. There are 12 other makes of firearms that
16 have land and groove class characteristics that are close
17 enough to this bullet that I couldn't say they didn't also
18 shoot it.

19 MR. PRICE: Thank you very much. It was a pleasure
20 seeing you.

21 A. Yes, sir, good to see you, Mr. Price.

22 THE COURT: Redirect?

23 MR. COLER: Just briefly.

24 REDIRECT EXAMINATION by MR. COLER:

2:57 P.M.

25 Q. Well, unequivocally, item number 14 -- State's Exhibit

MR. DAVID DEFREESE - RECROSS by MR. PRICE

Page 259

1 Number 14 -- I'm sorry ---

2 A. Yes, sir.

3 Q. --- the projectile from the body did not come from the
4 same gun that fired State's Exhibit Number 13, your item 6, 7,
5 8, and 9?

6 A. The bullet in item 14 could not have been fired by the
7 same gun that -- that was -- that fired the three identifiable
8 bullet or bullet jacket fragments in State's Exhibit 13.

9 Q. Thank you.

10 A. The -- the core fragment, because it has no markings left
11 on it by the gun in which it was fired, I can't say.

12 MR. COLER: I got you. Thank you.

13 THE COURT: Recross?

14 RECROSS EXAMINATION by MR. PRICE:

2:58 P.M.

15 Q. And that simply means that the pistol that fired number
16 5, the bullet from Mr. Tennant, could have fired number 8, the
17 remains in the core?

18 A. I can't say that it didn't.

19 Q. You can't say that it didn't?

20 A. I can't say that it did.

21 Q. I understand that's your answer.

22 A. Yes, sir.

23 MR. PRICE: Thank you.

24 THE COURT: You may step down.

25 THE WITNESS: Thank you.

MR. DAVID DEFREESE - RECROSS by MR. PRICE

Page 260

1 (Off-the-Record Comments)

2 (The witness stepped down from the witness stand at 2:58

3 p.m.)

4 MR. COLER: May we approach very briefly?

5 THE COURT: For as long as you need.

6 (Whereupon, a bench conference was had with all counsel.)

7 THE COURT: Next witness?

8 MR. COLER: Your Honor, that's the State's showing. The

9 State rests its case.

10 THE COURT: All right. What that means, Madam

11 Forelady, ladies and gentlemen, that's all the State's

12 witnesses and evidence that they're going to put in. I need

13 to spend a few minutes with the lawyers. There are certain

14 matters of law we have to discuss at the end of the State's

15 case. And then, there's other matters that I have to discuss

16 that will take about ten or fifteen minutes.

17 So, let's take a 15-minute break. According to this

18 clock out here, that'll be about ten after 3:00. And I think

19 that clock is a few minutes slow.

20 Anyway, if anyone needs to take a smoke break or

21 whatever, Mr. Bailiff, you all accommodate them. Do not

22 discuss the case, and I'll be back with you in just a few

23 minutes. Everybody, please, remain seated.

24 (The jury exited the courtroom at 2:59 p.m.)

25 THE COURT: All right. Mr. Coler, make an examination

MOTIONS & MATTERS

Page 261

1 of all the exhibits and make sure you've got everything in.

2 MR. COLER: Yes, sir.

3 (Mr. Coler collects the State's exhibits.)

4 THE COURT: Mr. Price, I need to know -- or I assume you
5 want to make some motions. Before you do that, we can break
6 for fifteen minutes.

7 MR. PRICE: Well, I'd rather --

8 THE COURT: What suits you?

9 MR. PRICE: I can make my motion now, Your Honor. I'd
10 just simply move for a directed verdict on the ground that, in
11 the totality of the evidence, in the light most favorable to
12 the State, does not indicate that this was number one, a -- a
13 case in which my client had either expressed or implied
14 malice.

15 And number two, I think the evidence indicates, to a
16 moral certainty, that he was either defending himself or
17 acting in sudden heat and passion.

18 THE COURT: Well, I'm going to respectfully deny your
19 motion. Obviously, there are a number of ways you can look at
20 the evidence, depending on what you believe and who you
21 believe and what verdict you believe. And I'm going to leave
22 that up to the jury to make that determination.

23 MR. PRICE: Thank you, sir.

24 THE COURT: I need to know whether or not number one, if
25 your guy is going to testify. Before we take a break, why

MOTIONS & MATTERS

Page 262

1 don't you just let me ask him some questions about testifying,
2 and then, you all can speak with him over the break and you
3 all can let me know ---

4 MR. PRICE: All right.

5 THE COURT: --- what you want to do at that time.

6 MR. PRICE: That's fine, sir.

7 THE COURT: All right. How about swearing him in for
8 me.

9 (Whereupon,

10 TERRENCE S. GIST

11 having been duly sworn, testified as follows:)

12 THE COURT: Mr. Gist, we're at the point in the trial
13 where you can present your own defense -- your defense, okay?
14 And I need to go over with you a little bit of law, so, let me
15 make sure that you and I are on the same page, all right?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: I'm going to go over with you. At any time,
18 I start talking about something you do not understand or you
19 do not understand my explanation, or anything, you stop me and
20 ask me to explain it for you or you can ask Mr. Beasley and
21 he'll explain it to you. Is that fair? Do you understand
22 that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. You have a right, at this time,
25 to claim the protections given to you by the Fifth Amendment

MOTIONS & MATTERS

Page 263

1 to the Constitution of the United States.

2 This amendment states, in part, quote, "No person shall
3 be compelled, in a criminal case, to be a witness against
4 himself." End of quote. This means that you cannot be
5 required to testify in your case; nobody can make you testify.
6 Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: However, you have a right to testify, on
9 your own behalf, if you choose to do so. Nobody can make you,
10 and nobody can say you can't. That's up to you. You have to
11 make that choice.

12 Now, does he have any record?

13 MR. COLER: No. He does not have any impeach able
14 offenses, Your Honor.

15 THE COURT: If you decide to testify, obviously, you'll
16 be subject to the same rules that govern other witnesses. And
17 you may be examined and cross examined on any relevant issue
18 in the case. Okay? Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You've seen how it works. If you decide to
21 testify, the decision to testify must be made freely,
22 voluntarily, and intelligently made, with the knowledge of the
23 protections given to you by the Fifth Amendment to the
24 Constitution of the United States and the consequences of your
25 decision to testify.

MOTIONS & MATTERS

Page 264

1 If you decide not to testify, then, I would tell the
2 jury, and I would instruct them and charge them, that they
3 can't hold the fact that you did not testify against you in
4 any manner whatsoever. And, in fact, I would further instruct
5 them that they couldn't even discuss the fact that you didn't
6 testify when they deliberated your guilt or innocence in the
7 jury room.

8 They couldn't even mention that fact that you didn't
9 testify. I wouldn't let them to that. I would tell them that
10 they couldn't even consider that, in any manner whatsoever,
11 and they couldn't prejudice you in any manner whatsoever by
12 the fact that you did not testify. So, do you understand
13 that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: So, it's left entirely up to you as to
16 whether or not you want to testify. And I'll give you an
17 opportunity to talk with Mr. Beasley and Mr. Price. You have
18 some family there with you; I don't know who that's behind
19 you, your mom?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Your mom and anybody else. But obviously,
22 the final decision will be yours. Is that fair?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, have you understood everything I've
25 said to you?

MOTIONS & MATTERS

Page 265

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. So, why don't we do this. We're
3 going to take about fifteen-minute break. Why don't, during
4 the break, you talk with Mr. Beasley and Mr. Price and
5 obviously, your mom, if you need to do so, and when we get
6 back, you can let me know what your decision is.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: But that decision has to be yours. Fair
9 enough?

10 THE DEFENDANT: Fair enough.

11 THE COURT: Thank you. All right. We'll stand at ease
12 for a few minutes.

13 (Whereupon, a recess was taken from 3:01 p.m. till 3:16
14 p.m.)

15 THE COURT: Please, be seated. And please find Mr.
16 Beasley and Mr. Price and -

17 (Brief pause while Mr. Price and Mr. Beasley were
18 summoned back into the Courtroom.)

19 (Off-the-Record Comments)

20 (Mr. Price and Mr. Beasley entered the courtroom at 3:19
21 p.m.)

22 THE COURT: All right. Mr. Price, what's your pleasure?

23 MR. PRICE: Well, Your Honor, we are going to present
24 two witnesses. I have been told by my client that he does not
25 intend to testify.

MOTIONS & MATTERS

Page 266

1 THE COURT: Well, let's do the two witnesses and then,
2 you can certainly talk with him again afterwards.

3 MR. PRICE: All right.

4 THE COURT: Are you all ready to proceed?

5 MR. PRICE: Yes, sir. Your Honor, our first witness is
6 Mr. Terrell Wellman.

7 THE COURT: Bring the jury in for me.

8 THE COURT: Have you got him ready, Mr. Price?

9 MR. PRICE: Yes, sir.

10 THE COURT: Have you got his witness ready?

11 MR. PRICE: Yes, sir.

12 THE COURT: Is he standing right outside?

13 MR. PRICE: He is.

14 THE COURT: Is the jury ready?

15 BAILIFF: We've got one in the restroom, Judge.

16 THE COURT: All right. That's fine.

17 MR. COLER: Judge, just to speed things up, can we get
18 his social and date of birth now?

19 THE COURT: Absolutely. What is it?

20 (Off-the-Record Discussion)

21 MR. COLER: Thank you, Your Honor.

22 (The jury entered the courtroom at 3:22 p.m.)

23 (Mr. Wellman is summoned.)

24 (Off-the-Record Comments)

25 (Whereupon,

MR. TERRELL WELLMAN - DIRECT by MR. PRICE

Page 267

1 TERRELL WELLMAN

2 having been duly sworn, testified as follows:)

3 THE COURT: How are you this afternoon?

4 THE WITNESS: Fine, sir.

5 THE COURT: Mr. Coler, how about moving all that
6 evidence.

7 MR. COLER: Yes, sir.

8 (Brief pause while Mr. Coler retrieves exhibits.)

9 THE COURT: Will you give us your full name, please?

10 THE WITNESS: Terrell Shane Wellman (phonetic).

11 THE COURT: Mr. Wellman?

12 THE WITNESS: Yes, sir.

13 THE COURT: W-e-l-l-m-a-n?

14 THE WITNESS: Yes, sir.

15 (Off-the-Record comments concerning talking into
16 microphone.)

17 THE COURT: Mr. Price?

18 DIRECT EXAMINATION by MR. PRICE:

3:22 P.M.

19 Q. Mr. Wellman, I need for you to speak up loudly and look
20 over here when you're talking, so, everyone in the jury can
21 understand you. All right, sir?

22 A. Yes, sir.

23 Q. Tell us your name again.

24 A. Terrell Shane Wellman.

25 Q. And, Mr. Wellman, how old are you?

MR. TERRELL WELLMAN - DIRECT by MR. PRICE

Page 268

- 1 A. Eighteen (18) years old.
- 2 Q. And where do you live?
- 3 A. 447 Greer Street (phonetic).
- 4 Q. And that's in Spartanburg?
- 5 A. Yes, sir.
- 6 Q. Do you know Terrence Gist?
- 7 A. Yes, sir.
- 8 Q. How long have you known him?
- 9 A. Since we were kids.
- 10 Q. All right. And you know that Terrence was charged and
- 11 brought before this Court as a result of something that
- 12 happened on October 3rd of two thousand, four (2004), in Hub
- 13 City?
- 14 A. Yes, sir.
- 15 Q. And were you there?
- 16 A. Yes, sir.
- 17 Q. What time did you get there?
- 18 A. I was there early. I don't remember what time.
- 19 Q. Were you living in Hub City at the time?
- 20 A. No, sir.
- 21 Q. What were you doing at Hub City?
- 22 A. At a friend's house.
- 23 Q. Which friend's were you at?
- 24 A. Tasha Crumbs' (phonetic).
- 25 Q. And do you remember what her apartment number was?

MR. TERRELL WELLMAN - DIRECT by MR. PRICE

Page 269

1 A. No, sir.

2 Q. All right. What did you see that evening concerning the
3 incident with Terrence Gist?

4 A. Okay. It was me, Rob Sweeney, and Christopher Cross
5 (phonetic) were -- and Tasha was playing spades. I had to go
6 use the bathroom. I went upstairs to use the bathroom, and
7 when I was in there using the bathroom, doing number two, I
8 heard a whole lot of commotion outside, arguing.

9 So, I finished and went downstairs and I didn't see
10 nobody in the house. So, I went outside and I seen a crowd of
11 people going to a truck. And then, the crowd started moving
12 back.

13 Q. You say going to the truck. Let me slow you down. What
14 truck are you talking about?

15 A. The truck where the man was.

16 Q. All right. What kind of truck was it?

17 A. It was -- I don't remember. I think it was an Explorer.

18 Q. Okay. What did you see happened then?

19 A. Then, I seen my man waving a gun and the whole crowd
20 start moving backwards. And then, I heard a gunshot fired.

21 Q. Well, stop right there.

22 A. Yes, sir.

23 Q. You say you seen your man or my man. Who is "my man"?

24 A. I seen -- I don't know his name, the person that was at
25 the car that they were going to, he pulled a gun.

MR. TERRELL WELLMAN - CROSS by MR. COLER

Page 270

1 Q. The person that was in the truck?

2 A. Yes, sir.

3 Q. All right. He had a gun?

4 A. Yes, sir.

5 Q. What was he doing with it?

6 A. Waving it around and telling them to get back.

7 Q. And did you see that?

8 A. Yes, sir.

9 Q. And what happened next?

10 A. I heard a gunshot fired, and I took off running and more
11 shots were fired after that and I ran on to the house, sir.

12 Q. How many shots did you hear fired that evening?

13 A. About fifteen (15).

14 Q. Are you absolutely positive that the guy in the Explorer
15 had a gun?

16 A. Yes, sir.

17 MR. PRICE: Answer any questions that the solicitor has.

18 THE COURT: Cross?

19 MR. COLER: Thank you, Your Honor.

20 CROSS EXAMINATION by MR. COLER:

3:26 P.M.

21 Q. You were obviously in a very good position to see
22 everything that happened, right?

23 A. No, sir. But I was right there them in the crowd and I
24 seen that the person had a gun, though, sir.

25 Q. Okay. And you were in a good position to see what

MR. TERRELL WELLMAN - CROSS by MR. COLER

Page 271

1 happened?

2 A. Yes, sir.

3 Q. And you just told this jury you are absolutely certain
4 that you saw a gun in the hands of the guy that got shot?

5 A. Yes, sir.

6 Q. And so, that means you were in a good position to see it
7 all?

8 A. Yes, sir.

9 Q. Okay. Tell me what you saw, when your friend, Terrence
10 Gist, fired a gun into the chest of the man with -- with the
11 gun.

12 A. I didn't see Terrence Gist fire a gun. I heard a shot
13 fired and I ran.

14 Q. Okay. You were -- you were in a position -- you got up
15 to a -- a window or door watching it?

16 A. I didn't get to a window. I got to the crowd.

17 Q. Okay. And you're telling me you saw the guy with the gun
18 and you ran?

19 A. When the shot was fired, I ran.

20 Q. Okay. And you're -- who do think fired a shot?

21 A. I didn't see nobody fire a shot.

22 Q. So, it's very possible -- and we know that Mr. Gist fired
23 shot, he's admitted to that, and it's very possible that it
24 was his shot you heard?

25 A. I don't know, sir.

MR. TERRELL WELLMAN - CROSS by MR. COLER

Page 272

1 Q. Well, is that possible?

2 A. Anybody could have shot. It was a whole crowd of people
3 out there, sir.

4 Q. When did your -- when did your friend Terrence Gist
5 produce his 357 Magnum?

6 A. I never seen him with a gun in my life.

7 Q. You never saw him with a gun?

8 A. No.

9 Q. But you don't deny that he had a gun that night?

10 A. I did not see him with a gun that night. I didn't see
11 him period.

12 Q. Was it your house where he kept his gun?

13 A. My house? I don't live in Hub City.

14 Q. Okay. Do you know whose house he kept his gun at?

15 A. No, sir. I had never seen him with a gun.

16 Q. You were friends with Robert -- I mean, with Terrence,
17 right?

18 A. Yes, sir.

19 Q. And good -- good friends all your life?

20 A. Yes, sir.

21 Q. So, you and -- you and he see each other every day?

22 A. Just about.

23 Q. And hang out?

24 A. Just about every day.

25 Q. And you know he carries a 357 Magnum?

MR. TERRELL WELLMAN - CROSS by MR. COLER

Page 273

1 A. He never showed me no 357 Magnum. Me and Terrence,
2 anything we've ever been involved with, we always fought it
3 out, sir.

4 Q. Just fought it out?

5 A. Yes, sir.

6 Q. Okay. You were never with Terrence when he got shot at
7 by other people and run off the road?

8 A. No, sir.

9 Q. Well, where were you when all that happened?

10 A. Wherever. I was -- I was right there when that happened,
11 but you're talking about something else now, about somebody
12 else shooting at him. I ain't seen nobody shooting at him. I
13 ran when I heard the first gunshot.

14 Q. You -- your testimony is that you've never seen him with
15 a gun?

16 A. Never seen him with a gun, sir.

17 Q. But you're not -- you don't have any way to deny that he
18 carries a 357?

19 A. I never knowed that he carried a 357.

20 Q. How long have you known him -- I'm sorry?

21 A. I never knowed that he carried a 357.

22 Q. Do you know it now?

23 A. No, sir.

24 Q. Do you know he -- he shot somebody in the chest with his
25 357?

MR. TERRELL WELLMAN - CROSS by MR. COLER

Page 274

1 A. No, sir. I never seen him with a 357, so, I don't know.

2 Q. You and he have never talked about him shooting somebody
3 with a 357 and him being on trial?

4 A. Me and him never talked about ---

5 Q. You have never ---

6 A. --- him shooting somebody with a 357, he never told me
7 that.

8 Q. How many times have you discussed with case with him?

9 A. How many times have I discussed this case with him? I've
10 never discussed the case. I told him I would help him out and
11 that's all we talked about.

12 Q. You told him you would help him out?

13 A. Because I was a witness there and I seen what I seen.
14 I'm just coming to tell you -- or tell the jury what I seen.

15 Q. How many times did you call the city police department
16 and tell them what you saw?

17 A. I didn't see nobody get shot, so, I didn't know what
18 happened, sir. I just ---

19 THE COURT: Sir, answer the question. And, then, you
20 can explain.

21 Q. How many times did you call the detective with the city
22 police and tell them what you saw?

23 A. I didn't call them no time, sir.

24 Q. Okay. How many times did the you call the solicitor's
25 office and tell them what you saw?

MR. TERRELL WELLMAN - CROSS by MR. COLER

Page 275

1 A. I didn't never call them.

2 Q. Okay. You knew this case was coming up?

3 A. Yes, sir.

4 Q. How did you know that?

5 A. Because I got a subpoenaed to here.

6 Q. Okay. How long ago did you get subpoenaed?

7 A. It was served -- I forget when it was served.

8 Q. You don't know?

9 A. I've forgot when the paper was served.

10 Q. A week ago, a month ago, a year ago?

11 A. It was like about a week or so ago.

12 Q. Okay. And you discussed the case with the people that
13 subpoenaed you?

14 A. I discussed the case with the lawyers, yes, sir.

15 Q. Okay. And you talked to them about it?

16 A. Yes, sir.

17 Q. And you talked to Terrence about it?

18 A. No, I talked to his lawyer about it.

19 Q. You never talked to Terrence about it?

20 A. Never talked to Terrence about this case.

21 Q. Never once have you and him discuss the facts ---

22 A. Never once.

23 Q. -- about what happened?

24 A. I discussed everything with his lawyer, sir.

25 Q. Oh, you just found his lawyers?

MR. TERRELL WELLMAN - CROSS by MR. COLER

Page 276

1 A. Yes, sir.

2 Q. And why not talk to him?

3 A. I didn't actually -- I tell them what I know, and I mean,
4 he's all right. You need talk to his lawyer, you ain't got to
5 come to him because it's what I know.

6 Q. Okay. Your plan was not to tell anybody what happened
7 until you came in here and told it?

8 A. Yes, sir. My plan was to tell the lawyer and everything
9 what I seen.

10 Q. Okay. But you known what you -- what you say you saw
11 happen since October of two thousand, four (2004)?

12 A. Can you repeat that, sir?

13 Q. You've known what you just testified to since October 3rd
14 of two thousand, four (2004)?

15 A. Yes, sir.

16 Q. And you've never come forward with it?

17 A. No, sir.

18 Q. Until today?

19 A. I ain't come forward -- well, I did come forward to it
20 with the lawyers.

21 Q. And that was after they subpoenaed you?

22 A. I didn't ever say after they subpoenaed me.

23 Q. Oh, you went to them with it?

24 A. No. The lawyer came to me before I was even subpoenaed.

25 Q. How did he know how to find you?

MR. TERRELL WELLMAN - CROSS by MR. COLER

Page 277

1 A. I don't know. I guess Terrence said something to him.

2 Q. Okay. How did Terrence know to tell them what you knew?

3 A. How did Terrence know to tell them what I know?

4 Q. Yeah.

5 A. I don't know what he told them. I told them what I know.

6 Q. Wait a minute. Terrence told his lawyers to come find
7 you because you had valuable information?

8 A. Yes.

9 Q. Okay. But you said you and Terrence have never talked
10 about this?

11 A. Well, we never talked about what went down about the 357
12 shooting, but I only told them what I saw, told them somebody
13 was standing there, and they told him ---

14 Q. So ---

15 A. --- and so, he could subpoena me because I was of good
16 value to him.

17 Q. Well, you're here helping out your buddy, aren't you?

18 A. No, that's not a buddy. He's like a brother to me ---

19 Q. A brother?

20 A. --- and I'm not trying to help anybody. I'm just trying
21 to help the innocent.

22 Q. Okay. And so, what you just said was a lie. You and
23 Terrence have talked about this case before he ---

24 A. I did not lie. I said I -

25 THE COURT: Hold on a minute. Hold it, hold it. You

1 let him finish his question, and then, you can answer fully.

2 Okay, Mr. Wellman?

3 A. Yes, sir.

4 Q. (By Mr. Coler) You and Terrence have talked about this
5 case, so, Terrence could go talk to his lawyers about it. And
6 his lawyers knew enough to come find you because you told
7 Terrence you had valuable information you wanted to share with
8 them and them alone?

9 A. I did not never talk to Terrence. Terrence was locked up
10 at the time. I never talked to him. I just talked to his
11 family.

12 THE COURT: Mr. Wellman, did you ever talk to the
13 Defendant about this case, a simple "yes," or "no"?

14 A. No, sir.

15 Q. Just a lucky guess that he told his lawyers to come find
16 you?

17 A. I just told you, I was talking to his family members
18 about what I seen. And, when they got the lawyer, they told
19 them to come see me what I seen.

20 Q. Oh, okay. You relayed information through his family,
21 and then, they relayed it to him of course?

22 A. Yes, sir.

23 Q. And so, you did talk about this case with other people
24 besides the lawyers?

25 A. Well, you asked me did I talk to Terrence about it.

MR. TERRELL WELLMAN - CROSS by MR. COLER

Page 279

1 Q. Okay.

2 A. And I told you not Terrence.

3 Q. Who in his family did you talk to?

4 A. I spoke to his mother.

5 Q. Okay. And did she -- you admit that, whenever you told
6 his mother, she told Terrence?

7 A. I don't know, sir.

8 MR. PRICE: Well, objection.

9 THE COURT: Hold on. Hold on. What's the objection?

10 MR. PRICE: It's -- it's a stretch. It's speculative.

11 He doesn't know what hi mother ---

12 THE COURT: Who did you talk to about the case? It's a
13 simple question.

14 A. His mother, sir.

15 THE COURT: Thank you.

16 (Brief pause while document is retrieved.)

17 THE COURT: All right. Share that with -- over here.

18 Mr. Coler?

19 MR. COLER: Yes -- yes, sir.

20 THE COURT: I assume that's what I think it is.

21 MR. COLER: Yes, it is.

22 (Brief pause while document is shown to Mr. Price and Mr.
23 Beasley.)

24 MR. COLER: Any objection?

25 MR. PRICE: The judge wants to see it.

MR. TERRELL WELLMAN - CROSS by MR. COLER

Page 280

1 (Whereupon, a brief bench conference was had.)

2 Q. (By Mr. Coler) You're Terrell Wellman and date of birth
3 is July 16th, 1986?

4 A. I was born in '87, sir.

5 Q. In 1987?

6 A. (Nods affirmatively).

7 Q. Okay. Is your social security 251-67-4565?

8 A. Two five oh six seven, four five, six five (250-67-4565).

9 Q. Okay. Are you the same Terrell -- Robert Terrell,
10 Reshone Wellman (phonetic) who has a drug conviction from
11 January 27th, of two thousand and five (2005)?

12 A. It was possession.

13 Q. You agree you have a conviction?

14 A. Yes.

15 Q. Okay. And the person you say you saw waving this gun
16 around, and you said you saw the entire crowd back up; is that
17 right?

18 A. (Witness nods affirmatively).

19 THE COURT: "Yes" or "no," please.

20 A. Yes, sir.

21 Q. Okay. How close to that -- to that man was the entire
22 crowd?

23 A. I don't know, sir.

24 Q. From me to you?

25 A. I don't know.

MR. TERRELL WELLMAN - CROSS by MR. COLER

Page 281

1 Q. Well, you just told us you were in a good position to see
2 all of this, and that's why you're here to tell us what
3 happened. I'm just trying ---

4 A. I don't remember how close they was, sir.

5 Q. Can you -- can you guess?

6 A. No, sir.

7 MR. PRICE: Objection.

8 A. I don't know.

9 THE COURT: If he knows, he knows; if he doesn't or he
10 doesn't remember.

11 Q. Were they this close to him (demonstrates)?

12 A. I don't know, sir.

13 Q. Were they this close to him (demonstrates)?

14 A. I don't remember, sir.

15 Q. Okay. But you say you specifically recall him waving a
16 gun?

17 A. Yes, sir.

18 Q. Can you describe the gun for us?

19 A. I didn't actually say -- see the gun, sir.

20 Q. Can you tell us what the person that you say was waving
21 the gun was wearing?

22 A. I don't remember, sir.

23 Q. Can you tell us the race of the person that you saw
24 waving the gun?

25 A. A black man, sir.

MR. TERRELL WELLMAN - CROSS by MR. COLER

Page 282

1 Q. Okay. Can you tell us his approximate age?

2 A. I don't know that, sir.

3 Q. So, you don't even know if it was Robert Tennant, the man
4 that got shot, that was waving this gun?

5 A. Can you repeat that, sir?

6 Q. Can you even tell us if it was the man who got shot that
7 was waving the gun?

8 A. I never knowed how the man looked, sir.

9 Q. Okay. It could have been possibly somebody else waving
10 that gun that you claim to have seen?

11 A. Repeat that.

12 Q. It could have been somebody besides the man that -- you
13 know somebody got shot that night? You're aware of that,
14 right?

15 A. I ain't never know the man was shot until the next
16 morning, yes, sir.

17 Q. Okay. Is that the man you saw waving the gun?

18 A. The man who got shot?

19 Q. Yes.

20 A. I don't know his face, sir.

21 Q. It's entirely possible, then, from your testimony from
22 your recollection, that you saw somebody other than Mr.
23 Tennant waving a gun?

24 A. Did I see some other man?

25 Q. Yes. The man you saw waving the gun could have been

MR. TERRELL WELLMAN - CROSS by MR. COLER

Page 283

1 somebody other than Robert Tennant?

2 A. Well, sir, the crowd was going up on him, so, I guess
3 that was the person.

4 Q. All right. Let me ask you about the crowd. When say
5 "going up on him," what do you mean?

6 A. Going towards him.

7 Q. Oh, the crowd was approaching him?

8 A. They was up near him, like moving towards him, seeing
9 what's going on. You know, like if a fight start, the crowd
10 starts moving towards the fight.

11 Q. So, from your perception, that crowd was attacking him?

12 A. The crowd -- no, I don't know was the crowd attacking
13 him. They was just going up on him.

14 Q. I'll rephrase it. That crowd was approaching him?

15 A. Yes, sir.

16 Q. And it was a large crowd?

17 A. It was a lot of people out there. It was a good, sunny
18 day.

19 Q. And you spent a lot of time at Hub City Court Apartment
20 around that time, back in October of '04?

21 A. I spent a lot of time, yeah.

22 Q. Okay. The -- the guy that got shot, Robert Tennant, did
23 you know him?

24 A. Never seen him.

25 Q. Did he spend a lot of time up at Hub City?

MR. TERRELL WELLMAN - CROSS by MR. COLER

Page 284

1 A. Never seen him.

2 Q. Did he have a lot of friends there?

3 A. Never seen him. I ---

4 Q. Did he have anybody to help him if -- back -- get his
5 back if the whole crowd was attacking him?

6 A. I don't know. I never seen him in my life, sir.

7 Q. Okay. So, all you can tell us, then, is that a large
8 crowd was attacking somebody -- you don't know who it was --
9 and that somebody was waving a gun and then, you heard shots?

10 A. Yes, sir, and ran.

11 Q. You've been -- you've been at Hub City a good bit, and
12 you appreciate or realize it can be a tough place?

13 A. It's never been dangerous to me, sir.

14 Q. It's not -- I'm not asking you because you've got friends
15 like Terrence Gist, don't you?

16 A. I got good friends.

17 Q. Who will get your back if there's a problem, won't they?

18 A. No. I handle my own problems, sir.

19 Q. How do you handle your own problems?

20 A. Anything that goes down there, sir, I'm a man and I
21 handle it in my way.

22 Q. What does that mean?

23 A. In any way that's a good way. Not no bad way, sir.

24 Q. Okay. And what does that mean?

25 A. I handle -- I solve my own problems. That's what that

MR. TERRELL WELLMAN - CROSS by MR. COLER

Page 285

1 means, sir.

2 THE COURT: Well, he's asking you how. Tell him how.

3 A. How in a good way, talk it out or whatever.

4 Q. You never fight?

5 A. Yes, sir, I have fought before.

6 Q. Okay. And you're saying that -- you said that Terrence
7 was your friend and he never resorted to using a gun; he
8 always fought it out with fists?

9 A. Me and Terrence, every time we got into, involved in
10 anything, we always fought it out, sir.

11 Q. Can you think of any reason, on this particular reason,
12 that Terrence would resort to a pistol and shoot somebody?

13 A. I never seen Terrence, in my whole life, with a pistol,
14 sir.

15 Q. How well did you really know him?

16 A. I've known Terrence since we were little kids playing in
17 the sandbox together, sir.

18 Q. Okay. And you've never seen him with a gun?

19 A. Never seen him with a gun, sir.

20 Q. It would surprise you if he owned a gun?

21 A. That would have surprised me, sir.

22 Q. Okay. Are you surprised now to hear that he owned a gun?

23 A. I was surprised when he was in the paper, sir.

24 Q. Okay. Would other things about him that you didn't know
25 surprise you?

MR. TERRELL WELLMAN - CROSS by MR. COLER

Page 286

1 A. What other things you mean, sir?

2 Q. Well, say if -- if you found out he was a violent
3 individual as opposed to a peace loving somebody who talks it
4 out and only uses his fists as a last resort. Are you telling
5 that that would absolutely shock you?

6 A. That would shock me, sir.

7 Q. Okay. So, you really don't know the Terrence Gist you're
8 testifying to -- about today?

9 A. Can you repeat that, sir?

10 Q. You really don't know ---

11 A. Yes, sir, I know Terrence Gist, sir.

12 Q. Okay. But you -- but you don't know that he carries a
13 gun and you don't anything about that?

14 A. He's never show me any pistol in my life, sir.

15 Q. And there's nothing else you can tell us about the
16 individual you claim was waving a gun?

17 A. Nothing else, sir.

18 Q. Nothing about the gun -- nothing at all that you can
19 describe for us about the gun?

20 A. Nothing else, sir.

21 Q. Could the gun have been a 32-caliber that was fired by
22 someone else at the scene?

23 A. I don't know, sir. It was other shots fired, so, I don't
24 know who was shooting and I don't know what was shot, sir..

25 MR. COLER: Okay. That's all the questions I have.

MR. TERRELL WELLMAN - REDIRECT by MR. PRICE

Page 287

1 Thank you, Mr. Wellman.

2 THE COURT: Redirect?

3 REDIRECT EXAMINATION by MR. PRICE:

3:46 P.M.

4 Q. Mr. Wellman ---

5 A. Yes, sir.

6 Q. --- Terrence Gist was in Spartanburg Detention Center for
7 a year after this incident before he was released, wasn't he.

8 A. Yes, sir.

9 Q. All right. So, did you talk with him during that year?

10 A. He would call my cousin's number, but I never was around
11 because I work all the time, sir.

12 Q. Did you talk to his mother?

13 A. Yes, sir.

14 Q. Now, at one point, during that year, he had a public
15 defender, did he not?

16 A. Yes, sir.

17 Q. Did you ever go down to the public defenders' office to
18 talk to them?

19 A. Yes, sir.

20 Q. Did they know who you were?

21 A. They never sent me anything, sir.

22 Q. Did you talk to someone in the public defenders' office?

23 A. Yes, sir.

24 Q. All right. And told them what you knew?

25 A. What I knew, sir.

MR. TERRELL WELLMAN - REDIRECT by MR. PRICE

Page 288

1 Q. All right. And you were not present in the courtroom
2 yesterday morning, when your name was announced out loud in
3 this courtroom, were you?

4 A. No, sir.

5 Q. Did anybody from the Spartanburg City Police Department
6 or the solicitor's office bother to talk to you while you've
7 been out in that hall all day yesterday?

8 A. No, sir.

9 Q. Or last night?

10 A. No, sir.

11 Q. Or today?

12 A. No, sir.

13 MR. COLER: Thank you, nothing further.

14 THE COURT: You may step down.

15 (The witness stepped down from the witness stand at 3:47
16 p.m.)

17 THE COURT: Next witness? All right. You're free to
18 go.

19 (The witness was excused.)

20 MR. PRICE: Robert Sweeney.

21 (Mr. Sweeney is summoned.)

22 MR. PRICE: Come around, please, Mr. Sweeney.

23 THE COURT: All right, gentlemen in the audience. If
24 you can't keep quiet and shaking your head, I'm going to ask
25 you to leave, please.

MR. ROBERT SWEENEY - DIRECT by MR. PRICE

Page 289

1 (Whereupon,

2 ROBERT SWEENEY

3 having been duly sworn, testified as follows:)

4 (Off-the-Record Comments)

5 THE COURT: What is your name?

6 THE WITNESS: Robert Jermaine Sweeney (phonetic)

7 THE COURT: And spell your last name?

8 THE WITNESS: S-w-e-e-n-e-y.

9 THE COURT: Thank you, Mr. Sweeney.

10 DIRECT EXAMINATION by MR. PRICE:

3:46 P.M.

11 Q. Mr. Sweeney, I need for you to move up and get a little
12 bit closer to that microphone. All right, sir?

13 (Witness does as requested.)

14 Q. And I need for you to talk as loudly, so, I can hear. If
15 I hear, everybody else hears. Now, tell me your name again?

16 A. Robert Jermaine Sweeney.

17 Q. And, Mr. Sweeney, how old are you?

18 A. Twenty (20) years old.

19 Q. And where do you live?

20 A. I live in Summerhill (phonetic).

21 Q. Where is that in Spartanburg?

22 A. It's right off of Vanderbilt.

23 Q. Okay, sir. Are you in school?

24 A. Not at the time, sir.

25 Q. Are you working?

MR. ROBERT SWEENEY - DIRECT by MR. PRICE

Page 290

- 1 A. Yes, sir.
- 2 Q. Where do you work?
- 3 A. At Boiler Tube (phonetic).
- 4 Q. And how long have you worked there?
- 5 A. Two and a half years.
- 6 Q. What do you do for Boiler Tube?
- 7 A. I weld.
- 8 Q. Now, do you know Terrence Gist?
- 9 A. Yes, sir.
- 10 Q. How long have you known him?
- 11 A. Around about two and a half, three years.
- 12 Q. Okay. Do you know what Hub City is?
- 13 A. Yes, sir.
- 14 Q. What is Hub City?
- 15 A. It's a Housing Authority complex, apartment complex, up
- 16 the road from where I live.
- 17 Q. All right. Back in October the 2nd or October the 3rd, you
- 18 understand that Terrence Gist was charged with murder as the
- 19 result of a shooting there?
- 20 A. Yes, sir.
- 21 Q. Were you at Hub City that evening?
- 22 A. Yes, sir.
- 23 Q. What time did you get there?
- 24 A. I was in Hub City ---
- 25 THE COURT: Hold on one second.

MR. ROBERT SWEENEY - DIRECT by MR. PRICE

Page 291

1 (Off-the-Record Comments)

2 THE COURT: Repeat the question.

3 Q. (By Mr. Price) What time did you get there?

4 A. I was in Hub City before it got dark outside. I don't
5 know. I was there before about dark though. I was there a
6 good bit.

7 Q. And what were you doing there?

8 A. I was up there playing cards at a friend of mine's house.

9 Q. All right. Who was the friend?

10 A. A girl named Tasha.

11 Q. Okay. And did anything unusual happen around midnight
12 that night?

13 A. Yes, sir.

14 Q. What did you see and personally observe?

15 A. Where do you want me to start from?

16 Q. From the beginning.

17 A. Well, I'm -- we -- we were in Tash's house playing cards
18 or whatever, and then, we went outside because there was a
19 commotion going on outside. And there was an argument going
20 on, and then, it was probably ten people outside or whatever
21 or so. And there was an argument going on with -- there was a
22 man in a Explorer and there was -- and there was like four
23 guys maybe around him.

24 Q. And did you know any of these four guys?

25 A. Yes, sir.

MR. ROBERT SWEENEY - DIRECT by MR. PRICE

Page 292

1 Q. What were their names?

2 A. One of them's name was Antonio.

3 Q. What's his nickname?

4 A. Butter.

5 Q. How long have you known him?

6 A. Maybe a year and a half.

7 Q. Who else was there?

8 A. It was a guy named Jon and Marcell, me, Terrence, Dubie
9 (phonetic), and Goochie. It was about ten people outside,
10 thought. There was a good bit of people out there.

11 Q. And what happened?

12 A. Well, there was an argument going on and there were words
13 getting passed back and forth. I heard ---

14 Q. Who was the argument between?

15 A. I heard -- it was ---

16 THE COURT: Hold on a second. What's the problem?

17 BAILIFF: I gave this young lady a mint, sir.

18 THE COURT: Are you okay?

19 UNIDENTIFIED FEMALE JUROR: (Nods affirmatively)

20 THE COURT: All right. Thank you.

21 Q. (By Mr. Price) Who was the argument between?

22 A. When I came outside, it was -- it was Mr. Tennant and it
23 was -- I'm -- I'm not going to -- I don't really know who
24 exactly was arguing with him. I just heard voices because I
25 wasn't all close up on it like that. I just heard voices and

MR. ROBERT SWEENEY - DIRECT by MR. PRICE

Page 293

1 I heard words being passed back and forth.

2 Q. Did you know Mr. Tennant?

3 A. No, sir. I never seen him in my life.

4 Q. Okay. How do you know what his name was?

5 A. Because of the papers and everything.

6 Q. Okay. What else did you see after that?

7 A. I seen the argument last for not -- not too long, but
8 then, I seen licks. I seen like two licks get throwed.

9 Q. Who threw the first lick?

10 A. Antonio.

11 Q. And what -- who threw the second lick?

12 A. That's the only person I seen throw licks was -- was him.

13 Q. All right. And what happened -- now, where was this in
14 relation to Mr. Tennant and his car?

15 A. Like right there. I mean, his door was open and he wwa
16 between his door. He was standing and they was probably a few
17 feet away from him, not ---

18 Q. Okay. What else happened?

19 A. After the first licks got throwed, then, that's when Mr.
20 Tennant -- I don't know if he had a gun in his hand already,
21 or he reached for it, but I just know I seen the gun in his
22 hand. I don't know if it was already in his hand or not, but
23 I seen a gun waving and that's when the crowd -- everybody
24 backing up. And I heard him saying like, "Now -- now what you
25 all going to do?"

MR. ROBERT SWEENEY - DIRECT by MR. PRICE

Page 294

1 Q. Who was saying that?

2 A. Mr. Tennant.

3 Q. All right. And what happened then?

4 A. And then, that's when the first shot was fired. And
5 then, after that first shot, I turned to my left to -- to run,
6 and that's when I seen fire come towards me. And -- and the
7 fire I seen come towards me was from Mr. Tennant's gun.

8 Q. How many shots were fired that evening?

9 A. I heard lots of shots. I mean, I'm running home, and I
10 heard shots. I live three minutes away; I heard shots even
11 when I was getting on my front step.

12 Q. Where did the rest of the crowd do?

13 A. Everybody just every which a way. Everybody just ---

14 Q. Did you see Mr. Tennant with his gun before the first
15 shot or after the first shot?

16 A. I seen him with his gun after the licks got passed.

17 Q. Who fired the first shot?

18 A. It was -- it came out of the crowd. I -- and Terrence
19 was -- he was on my side. So, I don't -- I don't know if it
20 was Terrence or not, but I just know he was to my side and it
21 came from the crowd.

22 Q. Okay. All right. And what did you do after you ran
23 home?

24 A. After I ran home, I just stayed there for the rest of the
25 night or whatever.

MR. ROBERT SWEENEY - CROSS by MR. COLER

Page 295

1 MR. PRICE: Answer any questions that the prosecution
2 has.

3 THE COURT: Mr. Coler?

4 CROSS EXAMINATION by MR. COLER:

3:53 P.M.

5 Q. Mr. Sweeney, you didn't think it would be important to
6 stick around and tell the police what you saw?

7 A. Sir, I was so scared at the time, I didn't know what to
8 do. I just -- I just went home.

9 Q. Scared of what?

10 A. I mean, it's gunshots. People out here shooting bullets
11 don't got eyes.

12 Q. When the police -- when ten police cars got there and
13 sirens and lights and everything, certainly you didn't feel
14 scared then, did you?

15 A. I just stayed in my house. I didn't come back out that
16 night.

17 Q. You could have snuck back out and approached them and
18 said, "Hey. I saw what happened." Could you not have?

19 A. I could have.

20 Q. Okay. But you didn't?

21 A. No, sir.

22 Q. And you haven't told anybody your version until today?

23 A. Yes, sir.

24 Q. Never once did you call my office, the solicitor's
25 office, the prosecutor's office, or anything?

1 A. Yes, sir.

2 Q. Never once did you call the detectives who were working
3 this case, right?

4 A. No, sir.

5 Q. You just waited until today?

6 A. Until I was called upon.

7 Q. By Mr. Gist's lawyers?

8 A. Yes, sir.

9 Q. And how did they -- did they find you, or did you find
10 them?

11 A. Well, it was kind of like I guess we found each other I
12 guess.

13 Q. Well, which part -- I mean, did you approach them or did
14 they approach you?

15 A. I mean, I -- I went to visit Terrence a few times or
16 whatever.

17 Q. And talked about this?

18 A. Not really talked about this. He just said he need me as
19 his witness.

20 Q. He was in jail charged with murder, and you all didn't
21 talk about the incident?

22 A. Who is "you all," me and Terrence?

23 Q. You and Terrence.

24 A. While Terrence was in jail, I probably talked to him over
25 the phone once.

MR. ROBERT SWEENEY -- CROSS by MR. COLER

Page 297

1 Q. But you ---

2 A. Or maybe twice.

3 Q. When you went up to visit with him, you all had to talk
4 about what happened that night.

5 A. When I say visit, I'm saying when he got on house arrest.
6 I never seen Terrence while he was in jail.

7 Q. Okay. Since the incident and today, have you had a
8 chance to talk to Terrence?

9 A. Yes, sir.

10 Q. And you have talked to him?

11 A. Yes, sir.

12 Q. And you've talked to him about this case?

13 A. Somewhat.

14 Q. Well, what do you mean somewhat?

15 A. He just say he need me there because I seen what
16 happened. I mean, we never really said like much about the
17 case or whatever.

18 Q. All right. And he certainly would have told you that he
19 gave a statement, a confession, a statement to the police?

20 A. I never asked.

21 Q. Okay. You all didn't talk about what -- what evidence he
22 was being held on and stuff like that?

23 A. I mean, I already that you all had him for murder.

24 Q. Okay. All right.

25 A. I didn't have to ask him that.

MR. ROBERT SWEENEY - CROSS by MR. COLER

Page 298

1 Q. What did you -- what in the world would the two of you
2 talk about when you got together if it wasn't about this case?
3 I mean, that to me seems to be the most important thing ---

4 A. That's a friend of mine.

5 THE COURT: Hold on. Let him finish the question.

6 Q. Was that not the most pressing and important thing in his
7 life?

8 A. This case?

9 Q. Uh-huh (affirmative).

10 A. Yes, sir. But, at the same time, when I seen him, I
11 mean, I'm -- I'm -- I'm glad to see him. It's like a year
12 later. I mean, I ain't seen him or talked to him or none of
13 that.

14 Q. So, just small talk, the weather, sports, that kind of
15 stuff?

16 A. Yes, sir. And the way I work, I -- I barely get to see
17 him. I work seven days a week.

18 Q. All right. I understand you're busy. I know that. But
19 you're telling me you just never talked about this case with
20 him?

21 A. We never really went over it like this.

22 Q. Do you find that unusual?

23 A. Not really.

24 Q. All right. Okay. When the man -- what, if anything, can
25 you describe for me about the man who you saw with a gun?

MR. ROBERT SWEENEY - CROSS by MR. COLER

Page 299

1 A. Could you repeat that?

2 Q. Tell me what you can about the guy you saw with a gun.

3 A. Tell you what I can?

4 Q. Uh-huh (affirmative). What race was he?

5 A. He was African-American.

6 Q. Okay. Do you know what he was wearing?

7 A. I really don't remember.

8 Q. Okay. What, if anything, can you describe for me about
9 the gun?

10 A. It was so dark outside, I just seen fire come out of the
11 gun. I couldn't tell you what color it was.

12 Q. Now, your testimony was before that he got the gun out
13 and you saw it in his hands and waved it, and then, it was
14 after you turned to run you saw a gunshot coming from it. So,
15 I want you to tell me what you saw about the gun when you say
16 you first saw him waving it around.

17 A. I just seen him pointing it.

18 Q. Okay. Tell me about it.

19 A. There's not much to tell about it. I mean, it's dark
20 outside. He's pointing a gun. I'm backing up.

21 Q. Well, how -

22 MR. PRICE: Your Honor, he gets a chance to -

23 THE COURT: Hold on.

24 MR. COLER: I'm sorry.

25 MR. PRICE: ---- answer the question before being

1 interrupted.

2 THE COURT: Okay.

3 Q. (By Mr. Coler) How do you know it was a gun?

4 A. I know it was a gun because the three or four guys who
5 was up close up on him, they backing up off of him.

6 Q. Okay.

7 A. My eyesight ain't -- ain't that good, but I seen his hand
8 and his hand's like this (demonstrating).

9 Q. Okay. So, now, you're not a hundred percent certain that
10 he had a gun; you're just guessing or surmising he might have
11 had a gun because you saw four guys backing away from him, who
12 were up on top of him?

13 A. It was a gun.

14 Q. Well, tell me about it. Describe it.

15 A. I knew it was a gun when I seen the fire come out of it.

16 Q. But that didn't happen till later.

17 A. It all happened like (snaps fingers) this.

18 Q. Okay. After he got shot at, by somebody in the crowd,
19 then, you said you turned to run and then, that's when you saw
20 fire coming out of his hand?

21 A. Yes, sir.

22 Q. Okay. Tell me about that gun. You saw the fire. You
23 must have been looking at the gun.

24 A. When somebody is shooting at you, you're not really
25 trying to look at the gun. You're trying to get out.

MR. ROBERT SWEENEY - CROSS by MR. COLER

Page 301

1 Q. Estimate for me how many shots do you think he fired?

2 A. I don't know how many he fired. I seen fire come out of
3 gun once. After that, I'm gone through the woods.

4 Q. Okay.

5 A. I just hear more shots. I don't know who was shooting.

6 Q. All right. When you saw fire come out of the gun, and
7 you ran, did you ever look back to see what happened?

8 A. No, sir.

9 Q. Okay. Do you know where the shell casing is that would
10 have been ejected by that gun when Mr. -- when you claim Mr.
11 Tennant fired at somebody?

12 A. No, sir.

13 Q. You don't have any clue?

14 A. No, sir.

15 Q. Your conclusion must be that somebody went and picked up
16 his gun after he was lying and dying in the parking lot,
17 right?

18 A. I wasn't there to see anything.

19 Q. Okay. But, if he had a gun in his hand, and you say he
20 shot it, and the gun wasn't there anymore, it would be fair to
21 say your conclusion is somebody picked up his gun?

22 A. Like I say, I wasn't there. I can't say what happened.

23 Q. And I guess they must have gone around and picked up the
24 shell casing that would have been ejected by it?

25 A. I wasn't there. That's all.

MR. ROBERT SWEENEY - CROSS by MR. COLER

Page 302

1 Q. And your conclusion would have been that he must have his
2 hand cleaned by somebody to get the -- whatever gunshot
3 residual that was all over his hands from firing the gun? And
4 you didn't look back and see somebody cleaning up his hands,
5 picking up the shell casing and picking up his gun and leave,
6 did you?

7 A. I wasn't there. I ran. I didn't see none of that.

8 Q. You would admit to me, though, that, if none of those
9 things existed, it calls into question your testimony that he
10 fired a gun?

11 A. Could you say that again?

12 Q. You would admit to me that, if there was no gunshot
13 residual on his hands, no shell casing found, no gun found in
14 his hands, it would -- it would certainly question your
15 testimony that he fired a gun?

16 A. He fired a gun.

17 Q. Okay. But you don't have any explanation for all those
18 other things, do you?

19 A. No, sir.

20 Q. Okay. And how close was the crowd that was up on him?

21 A. The crowd that was up on him was close enough, swinging
22 distance.

23 Q. Okay.

24 A. An arm's -- arm's reach.

25 Q. And -- and Antonio took the first swing?

MR. ROBERT SWEENEY - CROSS by MR. COLER

Page 303

1 A. Yes, sir.

2 Q. And standing with Antonio was Marcell and - Marcell
3 Foster?

4 A. Yes, sir.

5 Q. And Jon Petty?

6 A. Yes, sir.

7 Q. And they were all in the manner or the mode of attacking
8 him or approaching him, right?

9 A. I guess so.

10 Q. And then, it would have been those three. Who was the
11 fourth one?

12 A. In all, it was -- there was around ten people outside. I
13 couldn't ---

14 Q. And all were attacking him?

15 A. No, no.

16 Q. How many were attacking him?

17 A. It was like three or four people up close on him.

18 Q. Okay.

19 A. Everybody else was back.

20 Q. Tell me who those three or four were.

21 A. Marcell.

22 Q. Okay.

23 A. Butter.

24 Q. Which is Antonio?

25 A. Yes.

MR. ROBERT SWEENEY - CROSS by MR. COLER

Page 304

1 Q. Okay.

2 A. And Jon.

3 Q. Jon Petty, who got shot in the arm that night?

4 A. Yes.

5 Q. Okay.

6 A. And I can't picture who the other person was, but I -- it
7 could have been those three or it could have been one more
8 person.

9 Q. Was it Terrence?

10 A. Terrence was back by me.

11 Q. Okay. So, there were absolutely no reason for Terrence
12 to be in danger or -- or at this stage he wasn't threatened
13 because you all were back behind that crowd attacking him,
14 right?

15 A. Yes, sir, yes, we was.

16 Q. Yes, you were behind them?

17 A. We were behind the crowd.

18 Q. Okay. And how far away -- you weren't within arm's
19 distance of -- of the victim?

20 A. No, sir.

21 Q. How far away were you?

22 A. Maybe from here to -- to the little (indicating) ---

23 Q. Back to the bar, the bar where it enters the courtroom?

24 A. That's as far as we could have been.

25 Q. (Mr. Coler steps back) Father than this?

MR. ROBERT SWEENEY - CROSS by MR. COLER

Page 305

1 A. That's the farthest it could have been, but no farther
2 than that.

3 Q. And there was nothing -- nothing at all that would
4 prevent you from turning and getting out of the way if, in
5 fact, he had a gun and was shooting at you?

6 A. (No Response)

7 Q.. You could have -- you could have retreated?

8 A. That's what I did.

9 Q. Okay. And that's -- but Terrence didn't?

10 A. Excuse me?

11 Q. What did Terrence do?

12 A. At the time of the gun? Nobody ran till the gunshots was
13 fired; that's when everybody ran.

14 Q. When did Terrence fire his shot?

15 A. I don't know. I don't know when he fired his. I just
16 know a shot came out of the crowd.

17 Q. Okay. But, he must have approached the victim when this
18 thing escalated the way it did?

19 A. Terrence never came no closer from here to that little
20 -- where I just showed you (indicating), to the victim.

21 Q. Okay.

22 A. Never. If he did, not much. I mean, he didn't get close
23 up on the man.

24 Q. Okay.. And his shot was directed after you swerved, or do
25 you know? Did you see that part?

MR. ROBERT SWEENEY - CROSS by MR. COLER

Page 306

1 A. Whose shot?

2 Q. Terrence's.

3 A. I never seen him shoot. I just seen a shot come from the
4 crowd.

5 Q. Well, what did he do?

6 A. What did who do?

7 Q. Oh, you're not -- are you denying that he shot, or I
8 don't understand. Tell us what Terrence did when you --
9 when all this happened.

10 A. We were all standing in the crowd. There was like three
11 or four people up here near him (demonstrates).

12 Q. Uh-huh (affirmative).

13 A. Back there where we was, there was maybe another five or
14 six people or maybe more than that.

15 Q. Okay. And what did Terrence do?

16 A. I just know, when the shot got fired, I -- I wasn't
17 paying attention to who was shooting the shot. I hear a
18 gunshot, I'm thinking, "Get out of here."

19 Q. All right. And that's what you did?

20 A. That's exactly what I did.

21 Q. And never looked back?

22 A. Never looked back.

23 Q. Then, how do you know that it was Mr. Tennant shooting?

24 A. Because on my way running this way (indicating) ---

25 Q. Okay.

MR. ROBERT SWEENEY - CROSS by MR. COLER

Page 307

1 A. --- I see fire coming.

2 Q. From who?

3 A. From his gun, the same gun that was waving.

4 Q. And -- but you can't describe that gun?

5 A. It was so dark outside, I ---

6 Q. Okay. So, when you did look back to see that, you're
7 still saying you didn't see Terrence anywhere in the picture?

8 A. He was on my right side. I ran to my left side. When I
9 ran to the left, I didn't see no more Terrence.

10 Q. Okay. And you've been to Hub City a good bit?

11 A. Yes, sir.

12 Q. Okay. Have you ever seen Mr. Tennant over there?

13 A. Never in my life.

14 Q. Do you know if he had any friends over there?

15 A. I couldn't tell you.

16 Q. But you were friends with the four guys that were -- were
17 approaching him?

18 A. Yes, sir.

19 Q. Were you friends with other people in the crowd?.

20 A. Yes, sir.

21 Q. Is it fair to say that, if he had a problem, with one of
22 those, he was going to have a problem with that whole crowd?

23 A. It's hard to say.

24 Q. Well, we -- yes, no? Was that crowd going to get each
25 other's back or not?

MR. ROBERT SWEENEY - REDIRECT by MR. PRICE

Page 308

1 A. We came out of the house with nothing to do with it. I
2 didn't know what was going on. When we walk out of the house,
3 there's an argument going on. I mean ---

4 Q. But it was clearly four on one, or maybe more than that
5 on one? No question about that?

6 A. But it wasn't never -- it was one person swung, and
7 nobody else swung a lick. I mean, so, I don't know if it was
8 going to be four on one or one on one. I mean...

9 Q. Well, but, if there's four people up on you ---

10 A. All arguing.

11 Q. --- you know you probably got trouble with the other
12 three, don't you?

13 A. You may.

14 Q. Okay. A good chance, yes?

15 A. It's possible.

16 MR. COLER: That's all.

17 THE COURT: Redirect?

18 REDIRECT EXAMINATION by MR. PRICE:

3:57 P.M.

19 Q. Mr. Sweeney, you've been sitting out in this lobby for
20 the last two days, have you not?

21 A. Yes, sir.

22 Q. All right, sir.

23 MR. PRICE: Nothing further, Your Honor.

24 THE COURT: You may step down.

25 MR. PRICE: And I'd ask that he be excused, so, he can

MOTIONS & MATTERS

Page 309

1 get back to work.

2 THE COURT: Go back to work.

3 (The witness stepped down from the witness stand and was
4 excused at 3:57 p.m.)

5 MR. PRICE: We rest, Your Honor.

6 THE COURT: All right. Anything in reply?

7 MR. COLER: No, sir.

8 THE COURT: Okay. All right. Madam Forelady, ladies
9 and gentlemen, the concludes all the testimony. And what we
10 have left is the lawyers' final arguments and then, my
11 instructions on the law. And I suspect all of that will take
12 in excess of an hour; in fact, I'm pretty much sure it will.

13 It's four o'clock (4:00). That means you wouldn't get
14 the case till five (5:00) or 5:30. So, we'll come back in the
15 morning and finish up?

16 (Continued Off-the-Record Discussion)

17 THE COURT: Let's start back in the morning. Now, will
18 9:30 be okay?

19 (Jurors nod affirmatively.)

20 THE COURT: All right. I'll have you some refreshments
21 starting at 9:00, coffee, doughnuts, whatever. So, we're
22 going to break for the evening, and once again, I ask that you
23 not discuss the case among yourselves. Don't let anybody
24 discuss it with you.

25 I think I saw a newspaper person in here earlier today,

MOTIONS & MATTERS

Page 310

1 so, if there's anything in the newspaper tomorrow, please,
2 don't read it. Let's decide the case with what we hear in
3 here and go with that.

4 So, with that, I'm going to excuse you till 9:30 in the
5 -- 9:30 in the morning, but the refreshments will be here
6 around 9:00. You all have a nice evening. Everybody else
7 remain seated, please.

8 (The jury exited the courtroom at 4:00 p.m.)

9 THE COURT: All right. Gentlemen, anything before we
10 break for the evening?

11 MR. COLER: No, sir, Your Honor.

12 MR. PRICE: No, sir.

13 THE COURT: All right. Let's talk about jury charges.
14 Do you all want to do that on the record, or do you want to do
15 it informally.

16 MR. PRICE: We'll do it informally.

17 THE COURT: All right. Everybody else is excused to go.
18 You're free to go.

19 (Whereupon, a discussion regarding the jury charges was
20 done informally off the record.)

21 (Off-the-Record Comments)

22 THE COURT: All right. Well, let's get it on the
23 record, so, you will all be protected. All right, Mr. Coler,
24 I intend to charge the lesser included offense of voluntary
25 manslaughter. What's the State's position?

MOTIONS & MATTERS

Page 311

1 MR. COLER: We -- we submit to the Court that there's no
2 evidence in the record from which the jury could find
3 sufficient legal provocation or a heat of passion killing.

4 The only thing in the record is that the defendant fired
5 shots in self defense, defending himself or defending others
6 against Mr. Tennant, who was waving a gun and/or pointing a
7 gun.

8 If you approach -- if a group of people approach someone
9 and attack them, and he leans over, you don't get to act on
10 appearance -- well, you may get to act on the appearance that
11 he's armed, in a self defense charge, but there's nothing in
12 the record to indicate that Mr. Gist was so inflamed or his
13 passions were so heated that he result -- that this killing
14 resulted.

15 I concede to the Court that there is a self defense
16 charge, and that would be appropriate. He may be able to act
17 on the appearance, while defending himself or defending
18 others, but there's no evidence of a -- of heat of passion.

19 His own two witnesses said he was standing back far
20 enough way and he wasn't even involved in this thing
21 whatsoever.

22 THE COURT: They did say that, so...

23 MR. COLER: I -- I submit to the Court it's murder and
24 self defense, Your Honor, not --

25 THE COURT: All right. Mr. Price, what is your position

MOTIONS & MATTERS

Page 312

1 on that?

2 MR. PRICE: I raise the sudden heat of passion. The
3 sudden heat of passion is that, according to the defendant's
4 statement, he was at the scene when the carload of people, the
5 three girls and the four or five boys, came back and they were
6 arguing then; there were threats of -- or allegations of
7 kidnapping, that things got inflamed to the point where he
8 felt he had to go get a pistol to defend himself;

9 That the deceased was waving a firearm; that the deceased
10 was saying, "Come on. What's you going to do about it now?"
11 There were threats made; there were overt threats. And I
12 believe all of that, taken out of the whole totality of the
13 circumstances, would be a sufficient legal provocation.

14 MR. COLER: And I totally agree with the -- the threats
15 that were made, if he -- if, in his state of mind, he felt
16 like he had to protect himself, he's absolutely entitled to do
17 that and self defense would cover that.

18 What it appears they're submitting is a third party
19 sufficient legal provocation saying Mr. Gist was so inflamed
20 by the -- by the allegations that his friend was going to get
21 kidnapped that he resorted to killing somebody.

22 Mr. Jon Petty, Antonio McKinney, Marcell Foster, the
23 people in the car, there may have been a heat of passion
24 between the victim and them, but that heat of passion doesn't
25 transfer to another person who is totally removed from that

MOTIONS & MATTERS

Page 313

1 situation; is cool, calm, and collected. Cool enough to go
2 get his own gun and come back out.

3 He's not saying -- they're arguing self defense, and I
4 agree that they're entitled to that, but -- but they can't
5 transfer the heat of passion that one person may experience
6 and -- and use it for his own purposes.

7 THE COURT: What you're telling me is there is
8 absolutely nothing in the record that shows the defendant
9 temporarily lost his cool so to speak?

10 MR. COLER: Yes, sir. In the heat of passion ---

11 THE COURT: So, there was no sudden heat of passion he
12 displayed -- he displayed?

13 MR. COLER: Yes, sir. That heat of passion has to be
14 contemporaneous with the shooting. Two hours before, if
15 there's a problem, and there's a cooling off period, heat of
16 passion is gone for anybody, for Jon Petty, who was in the
17 car; Antonio Foster, Marcell, all those guys.

18 That cooling off period is just -- they're not only
19 arguing to ignore that cooling off period, but they're also
20 saying, "Let's transfer that heat of passion from those guys,"
21 who may have problem with Robert, who may have experienced
22 threats, insults, allegations, trouble with -- with Robert,
23 they're asking to transfer that to him.

24 He's removed from it. He was cool, calm, and collected.
25 Nowhere in this --

MOTIONS & MATTERS

Page 314

1 THE COURT: All right. Mr. Price?

2 MR. PRICE: He was not removed from it, Your Honor. It
3 as a continuum. The problems between the people in the car
4 started out on a dirt road and they were brought to Hub City,
5 where they engulfed this young man here.

6 And you can't look at it in just a vacuum. It was all
7 one continuous type thing. The people that were in the car
8 got with him and they were all just one group that came out.
9 And, to some extent, there might have some type of transfer,
10 but he was in the middle of it all.

11 THE COURT: All right. Well, I'm going to ask if any of
12 you all can find a case that's similar -- factually similar to
13 what we got here tonight, please, give it to me the first
14 thing in the morning.

15 MR. PRICE: Okay.

16 THE COURT: All right. Self defense, I'm going to
17 charge the regular elements of self defense; without fault,
18 imminent danger, right to act on appearances under imminent
19 danger.

20 (Brief Pause)

21 THE COURT: And no other way to avoid the danger. And
22 degree of force -- what else, Gentlemen? Mr. Price?

23 MR. PRICE: We --

24 THE COURT: I've pretty much taken both of the jury
25 charges, even though you all gave them to me in the case of
PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MOTIONS & MATTERS

Page 315

1 the Dwight Fitzgerald Sullivan (phonetic), if you all want
2 to --

3 MR. PRICE: (Laughs) Well, we don't have a secretary
4 that comes in before we had to come over here because the
5 judge makes us get here early, we do as good as we ---

6 THE COURT: I know. It's always the judge.

7 MR. PRICE: What about the State v. King charge we
8 submitted, assuming that the Court would charge manslaughter,
9 a charge to the extent that if they have a doubt as to whether
10 it's murder or manslaughter, they would have to give the
11 benefit of the doubt to ---

12 THE COURT: I don't have any problem with that. Let's
13 go back to self defense though -- if I charge voluntary
14 manslaughter.

15 MR. PRICE: Yes. "Coming to the defense of another."

16 THE COURT: Let's see, you've got the exact same number
17 which is, "without fault, imminent danger, right to act on
18 appearances, no other way to avoid danger." That's what you
19 all have given me involving the charge.

20 MR. PRICE: Yes, sir, you have -- you've mentioned
21 everything we gave you.

22 THE COURT: Mr. Coler?

23 MR. COLER: As far as the defense of others, Judge, I'll
24 have some language in the morning that will essentially say
25 that, if you come to the defense of others, the person you're

MOTIONS & MATTERS

Page 316

1 defending must have no hand in creating the difficulty; stated
2 simply, step in the shoes of that you're asking to fill. And
3 I've got that language upstairs, and I'll have that, if Your
4 Honor can charge the defense of others. But, again, I'm not
5 sure that that's in the record either.

6 THE COURT: The defense of others, under the law of self
7 defense, "The Defendant may take another's life in the defense
8 of others or right to intervene if essentially the same..."
9 Bring that language --

10 MR. COLER: Yes, sir.

11 THE COURT: --- and I've got my own language, and I'll
12 look at it.

13 MR. COLER: Yes, sir.

14 THE COURT: So, it looks like the main thing is whether
15 or not to charge the lessor included offense. So, you all
16 want to get that tonight, and we'll visit that in the morning.

17 And the other things I'm going to charge, obviously,
18 there's also the elements of reasonable doubt usually and
19 telling the jury the credibility of witnesses, expert witness,
20 failure of the defendant to testify, statement of the
21 defendant, prior record of witnesses. Anything else?

22 MR. COLER: No, sir. I think that about covers it.

23 THE COURT: And I've got two verdict forms, guilty or
24 not guilty of murder or, if I do a lessor included. So,
25 having said all of that, let's reflect on it over the evening,

MOTIONS & MATTERS

Page 317

1 and you all be here a little bit before 9:30; about 9:00 --
2 about 8:15, and we'll go over those charges.

3 MR. COLER: Thank you, Judge.

4 MR. PRICE: Thank you kindly.

5 (Off-the-Record Comments)

6 (Court was adjourned at 4:15 p.m.)

7 (Court reconvened on Wednesday, March 15, 2006 at 9:21
8 a.m.)

9 THE COURT: Gentlemen, I've given this voluntary
10 manslaughter a lot of consideration, and I'm still struggling
11 with it. So, Mr. Price, tell me where the evidence shows that
12 there was actually heat of passion, where was that, and in his
13 position, legal provocation? Where are the facts -- where are
14 the facts that support that?

15 MR. PRICE: Your Honor, if you look at the defendant's
16 statement that was introduced by the State, on the second
17 page --

18 THE COURT: Can somebody hand me a copy of it?

19 MR. PRICE: I'll be glad to.

20 THE COURT: I think it's right here in evidence --

21 MR. PRICE: I got one.

22 (Document handed to the Court.)

23 THE COURT: Thank you.

24 MR. PRICE: If you look at the top of the second page,
25 "That's when Antonio, aka Butter, hit him. Antonio hit the

MOTIONS & MATTERS

Page 318

1 dude in the jaw with his fist, and he pulled the gun out from
2 under his seat and started waving it around.

3 "And he started saying, 'What now? What now?' And then,
4 he got back in his car with one foot in the vehicle, the left
5 arm sticking..." That's a sudden heat of passion, and that is
6 the legal provocation.

7 And, of course, there are numerous cases saying that,
8 when fists and words with actions -- coupled with action --
9 and I'll give the Court a couple of the cases; one is State v.
10 Lowery (phonetic) and the like. That is sufficient legal ---

11 THE COURT: Well, the boiler -- you know, the boiler
12 plate language in a voluntary manslaughter is ---

13 MR. PRICE: But those words ---

14 THE COURT: --- words accompanied by some overt
15 threatening act which could have produced the heat of passion.

16 MR. PRICE: Which were, "What now? What now? What
17 now?"

18 THE COURT: That coupled with him reaching down and
19 coupled with the belief the defendant having a gun in his hand
20 and coupled with the fact that they were all fighting out
21 there?

22 MR. PRICE: Yes, sir. And you also -- I think the
23 prosecutor was arguing yesterday that, you know, this is the
24 same thing that we were using to get a self defense charge.
25 But they are not -- just because the same facts are used for

MOTIONS & MATTERS

Page 319

1 self defense does not mean that they cannot be used for
2 voluntary manslaughter. I gave a highlighted case on page 2
3 of the ---

4 THE COURT: Of Lowery?

5 MR. PRICE: Yes, sir. Well, actually, the case -- I
6 highlighted page 2 of -- I believe it's Lowery, where they
7 cited State v. Gillian (phonetic), and I gave the Court a copy
8 of the case of State v. Gillian.

9 And the Supreme Court held, even though the jury was not
10 convinced Lowery acted in self defense, the jury could have
11 discerned consistent with the evidence that there was
12 sufficient legal provocation and heat of passion.

13 And this case says -- the other case says, "...you will,
14 though, it's not the quantity or the quality of the evidence,
15 it is the existence of evidence that is all that is needed to
16 support the charge." And we feel that there is consistent,
17 there is sufficient evidence to submit that charge to the
18 jury.

19 THE COURT: Well, the facts in Lowery was a bunch of
20 kids out in front of -- I guess kids -- a bunch of people out
21 in front of a grocery store were fighting and bumping chests
22 and carrying on, and then -- then, a fight broke out.

23 MR. PRICE: Well, and in Lowery, the decedent did not
24 even have a gun. And, in this case, the decedent, by the
25 existence of our client's statement, and which is in evidence

MOTIONS & MATTERS

Page 320

1 by the State, did have a gun.

2 THE COURT: In Lowery the trial judge instructed the
3 jury as to murder and self defense and declined to charge the
4 requested charge of voluntary manslaughter. And that case was
5 reversed, and said that there were -- "...if you believe the
6 testimony -- some of the testimony because allegedly the
7 decedent and the defendant were in a heated argument; that the
8 decedent was about to initiate a physical encounter when the
9 shooting occurred to warrant a Court eliminating the defense
10 of manslaughter should very clearly appear that there is no
11 evidence whatsoever tending to reduce the crime of murder to
12 manslaughter."

13 However, Mr. Coler, obviously there is some -- well, I
14 say obviously -- the defendant argues that there is some
15 evidence that would reduce the crime of murder to manslaughter
16 in this case and indicates -- and indicates where it is.
17 And if there is, I must charge it. What's your take on it?

18 MR. COLER: Your Honor, I would start my argument with
19 the proposition that, if this Court chooses to charge both
20 murder and voluntary manslaughter to this jury, and they
21 return a verdict of voluntary manslaughter, and the Court of
22 Appeals, at some time down the road, a year from now or two
23 years from now, finds that there is no evidence of sufficient
24 heat of -- heat of passion provocation in the record, they
25 will not only overturn that voluntary manslaughter conviction,

MOTIONS & MATTERS

Page 321

1 but the State will never be able to retry the case for either
2 murder or voluntary manslaughter.

3 THE COURT: Well, that's not a legal reason when you
4 have evidence in the record, is it?

5 MR. COLER: I'm just -- I'm just stating to the Court
6 that the consequences of possibly submitting to this jury a
7 voluntary manslaughter, where the State argues there no
8 evidence that rises to sufficient legal provocation could have
9 serious consequences down the road; not only would the
10 voluntary manslaughter charge be overturned, but as I said,
11 the State would be prohibited from re-trying voluntary
12 manslaughter ---

13 THE COURT: Well, when does that ---

14 MR. COLER: --- and re-trying murder.

15 THE COURT: If he was convicted of voluntary
16 manslaughter?

17 MR. COLER: Yes, sir.

18 THE COURT: Who is going to appeal the sentence? You're
19 not going to appeal it.

20 MR. COLER: Uh-huh (affirmative), that's correct.

21 THE COURT: And the Defendant going to raise the issue
22 there was not evidence in the record that would support
23 involuntary manslaughter [sic], if he is the one who asked for
24 it?

25 MR. COLER: Yes, sir.

MOTIONS & MATTERS

Page 322

1 THE COURT: He can't do that.

2 MR. COLER: I think -- I think he possibly can. And, if
3 he does ---

4 THE COURT: Well, I think Mr. Price would have a heck of
5 a time arguing for something that wasn't there when he stood
6 up in this Court and argued that there was as stringently as
7 he's arguing it.

8 MR. COLER: Well, it wouldn't -- it might not be Mr.
9 Price. It may be another attorney arguing either PCR ---

10 THE COURT: Well, show me a case that says I have to
11 make my decision based on what may happen on an appeal down
12 the road --

13 MR. COLER: Well, I would just point out State v. Cooley
14 (phonetic). That's exactly what happened in that -- in that
15 case.

16 THE COURT: What happened? But, is that reason for me
17 not to --

18 MR. COLER: No, sir. I'm -- I'm just -- I'm just trying
19 to convey to the Court the possible ramifications of
20 submitting a voluntary manslaughter to this jury where there
21 is no evidence of sufficient heat of ---

22 THE COURT: Well, Mr. Coler, I also think that even if I
23 go with murder or self defense, they may say, "Well, I think
24 it was voluntary manslaughter, and I don't have that choice.
25 So, we'll find him not guilty." And that's a possibility.

MOTIONS & MATTERS

Page 323

1 There's all kinds of possibilities, but I can't make my ruling
2 based on possibilities.

3 MR. COLER: Yes, sir. I -- I'm just pointing out to the
4 Court, if -- if you submit only murder, and that turns out to
5 be the improper thing to do, and the Court of Appeals second
6 guesses Your Honor, which I doubt would ever happen, but ---

7 THE COURT: Well, it already has.

8 MR. COLER: Well, he would be entitled to a new trial
9 and everybody would get a fair chance to redo it based on what
10 a Court of Appeals, looking at this record, might find, Your
11 Honor.

12 There's -- there's a very good possibility, I submit to
13 the Court, that they may look at this record and say there's
14 no sufficient legal provocation and there's no heat of
15 passion.

16 THE COURT: Well, I think when they look at your Exhibit
17 Number...

18 MR. PRICE: Number 2.

19 MR. COLER: Maybe number 2, Your Honor, but --

20 THE COURT: Which is the voluntary statement, I think
21 that, in and of itself, is sufficient amount of evidence under
22 Lowery to justify the fact that there is some evidence in the
23 record which would allow the charge of voluntary manslaughter.

24 MR. COLER: Well, in Lowery, the decedent had an actual
25 physical confrontation and actual words with the shooter, with

MOTIONS & MATTERS

Page 324

1 the defendant. There's no indication here that there was an
2 actual physical confrontation or any words directed at Mr.
3 Gist that would send him into a head spin that would cause him
4 to commit an uncontrollable and violent act that he could not
5 control.

6 THE COURT: Well, that's your take on the evidence. But
7 the jury may look at it differently. I'm going to find that
8 there is some evidence in the record to warrant me to charge
9 voluntary manslaughter based on the reasoning set forth in
10 Lowery and my reading of this voluntary manslaughter boiler
11 plate law. Anything else, gentlemen? And you're protected,
12 Mr. Coler.

13 MR. PRICE: Nothing from the Defense, Your Honor.

14 MR. COLER: That's all I have. Thank you, Your Honor.

15 (Off-the-Record Comments)

16 (Whereupon, a brief recess was taken from 9:30 a.m. until
17 9:35 a.m.)

18 THE COURT: Thank you, please, be seated. Mr. Coler,
19 are you all ready?

20 MR. COLER: Yes, we are.

21 THE COURT: Are you going to waive opening or do you
22 want to open on the law? What do you want to do?

23 MR. COLER: I'll waive that unless they require it, Your
24 Honor.

25 MR. BEASLEY: We'll waive, Your Honor.

MOTIONS & MATTERS

Page 325

1 THE COURT: All right.

2 (Off-the-Record Comments)

3 MR. COLER: Judge, I've got four over -- four overheads
4 I plan to use, and I don't know if Mr. Price has had an
5 opportunity to look at them. I'll give him a second to
6 stipulate to that.

7 THE COURT: Why didn't you all do that earlier?

8 MR. COLER: I'm sorry, judge.

9 THE COURT: Well, go ahead and look at them quickly.

10 (Brief pause while documents shown to Mr. Price and Mr.
11 Beasley.)

12 (Off-the-Record Comments)

13 MR. PRICE: No problem.

14 MR. COLER: Thank you.

15 (Off-the-Record Comments)

16 THE COURT: All right. Ladies and gentlemen in the
17 audience, there will be no talking during final arguments.
18 Please, no facial expressions. I'm sure some of the lawyer's
19 may say things that you disagree with it. They are
20 adversaries for their clients, so, that's their job.

21 If I see people back there shaking their heads and
22 nodding, making facial expressions, you will be removed from
23 the courtroom. You have all behaved admirably the last two
24 days. I would like for you to continue to today. If anybody
25 cannot do that, I'd ask you very pleasantly to leave now.

MOTIONS & MATTERS

Page 326

1 But you're certainly welcome to stay, and I understand.
2 It's a tough situation, on both sides of the aisles back
3 there, and I ask you to continue to conduct yourselves as you
4 have done yesterday and Monday, which has been admirable with
5 just very few exceptions of some facial expressions and I
6 understand that.

7 But I'm asking you very sternly, please, do not do that
8 during the arguments or during my charge. I'm not going to
9 let the jury be influenced by anything other than what they
10 may have heard from the witness stand and my charge on the
11 law.

12 (The jury entered the courtroom at 9:40 a.m.)

13 THE COURT: Good morning. I hope you all had a pleasant
14 evening.

15 (Off-the-Record comments concerning refreshments.)

16 THE COURT: What we have left are final arguments. The
17 State normally goes first, but they have waived their opening.
18 The Defendant will go first now, to be followed by Mr. Coler
19 on behalf of the State.

20 At the conclusion of that, I will charge or -- or
21 instruct you on the law. So, we'll start right now. Mr.
22 Price? And we'll get started and it will be your hands in a
23 couple of hours. Thank you.

24 MR. PRICE: Your Honor, Mr. Beasley will be making the
25 final argument.

CLOSING ARGUMENT - MR. BEASLEY

Page 327

1 MR. BEASLEY: May it please the Court, Your Honor?

2 THE COURT: Yes.

3 (Brief Pause)

4 (Mr. Beasley's closing argument began at 9:45 a.m.)

5 MR. BEASLEY: We have come to the final stage of the
6 trial, which is the closing argument. In the beginning, we
7 conceded one thing, it was your duty as jurors to find the
8 truth in this case.

9 And it's my duty to argue, as an officer of this Court,
10 to present the truth to you on behalf of our client, Mr. Gist.
11 And as Mr. Price, my boss over there, sitting over there, he
12 told you at the beginning, in the opening, that we would be
13 honest with you. We will tell you exactly, we would lay it
14 all out for you.

15 And Mr. Gist gave a statement. He shot Robert Tennant.
16 And certain things led -- led him to shoot the fatal shot; he
17 never denied that.

18 But, the truth did not start in this case until this
19 sixteen year old kid, in tenth grade, voluntarily -- voluntarily
20 surrendered himself to police, go to City Hall, go with
21 Investigator Guthro, and tell the whole story.

22 And granted Terrence, being a sixteen year old kid, you
23 know, is reluctant and he doesn't tell the truth, and he -- he
24 denies having any involvement in it. And, Guthro, being an
25 expert interrogator, just -- doesn't really lean on him, he

CLOSING ARGUMENT - MR. BEASLEY

Page 328

1 just goes, "Terrence, that's not really what happened, is it?"
2 "No, sir, no, sir, no, sir. This is what happened." And he
3 -- and he goes and tells the whole story.

4 Now, Terrence is sixteen years old, and he's in tenth
5 grade. And he has -- his parents aren't with him. His mother
6 is not with him. He has no lawyer, and he's sitting at the
7 City Hall, with an expert interrogator, asking him questions,
8 scared to death. And he just -- for an hour and a half he
9 just starts reeling off, reeling off, reeling off, telling him
10 step-by-step what happened.

11 And, you know, that's something he says, "Jonathan and
12 Marcell and Antonio came up to me. I was in the apartment,
13 and they're arguing and they said this guy, they didn't know
14 him, kidnaped them, threatening them." And Terrence didn't
15 know what was going on. He -- he knew they're -- he said,
16 "They might be trouble." That's what -- that's what he told
17 the investigator, "There might be trouble."

18 He said he had a gun. He stood out there, watching what
19 was going on. Some fighting goes on. An unnamed individual
20 goes to Mr. Tennant and says, "You need to leave. There's
21 going to be trouble, going to be trouble."

22 And Mr. Tennant says, "I'm not going anywhere. I'm not
23 going anywhere. I got something for you all. I got something
24 for you all." And goes to his car, and you know what
25 happened.

CLOSING ARGUMENT - MR. BEASLEY

Page 329

1 Gunshots fired, all over the place, and nobody really
2 knows who was shooting from where. No guns were found. And
3 Mr. Tennant is lying there, he was shot.

4 And the State, it's their burden of proving this case.
5 They have to prove, beyond a reasonable doubt, that Mr. Gist's
6 story is untrue. It was not self defense.

7 They have known since October 4th of two thousand and four
8 (2004) what his story was going to be. I mean, he -- he wrote
9 it all down, Guthro wrote it down, who did a great job of
10 investigating the case. I mean, he -- he wrote down
11 everything he could possibly could that Terrence said, but you
12 saw the video.

13 There were a few things that may have been left out, but
14 he got everything down he could, and it was -- he never once,
15 not once, during him writing down the story and getting the
16 story from Terrence, did he stop and say, "Terrence, this is
17 not true. This is not true. This is not what happened."

18 He not once did he hesitate at all with Terrence's story.
19 He wrote everything Terrence said, everything. Everything was
20 consistent with what Terrence said.

21 But back to the State, their burden. They've had all --
22 they had -- it's March 15th, two thousand and six (2006);
23 they've had all this time to interview witnesses, talk to more
24 officers, get these officers to go talk to these other
25 witnesses and disprove what Terrence said, to disprove it.

CLOSING ARGUMENT - MR. BEASLEY

Page 330

1 They have not done that. I mean, there's Marcell,
2 there's Antonio, there's Jon Petty, who was shot, and there's
3 Rhonda. There's Maria, who's Tameka's sister. They didn't
4 call any of these people, nobody.

5 And don't you think that, if the State could have
6 disproved Terrence's story, they would have called one of
7 those witnesses to the stand if they could have -- if their
8 story would have been any different than Terrence's? They
9 didn't.

10 They called a couple of witnesses at the scene, but their
11 stories are consistent with Terrence's story too. There's
12 nothing in the record -- nobody took the stand that's going to
13 disprove what Terrence Gist said in his statement... Nothing.

14 I mean, as a matter of fact, one of the witnesses,
15 Tameka, I mean, she gave three statements. Their one fact
16 witness had to give three statements over a month's time. I
17 mean, Investigator Guthro had to -- I mean, basically just use
18 other witnesses and work her over over a month to get the true
19 story out. Yes, that was it at that time.

20 One other thing you need to look at. How can you tell
21 Mr. Gist's statement is actually true? Look at the physical
22 evidence. Look at all the physical evidence. Look at the
23 projectiles and the gunshots.

24 There were four projectiles that are consistent with 30's
25 or 32's. And Terrence voluntarily said -- he told the truth,

CLOSING ARGUMENT - MR. BEASLEY

Page 331

1 "I had a 357." The ballistics expert said that those
2 projectiles are consistent with a 30 or 32, not a 357.

3 Somebody else was firing their gun at a rapid pace at Mr.
4 Tennant and they were closer than Terrence. He fired one
5 shot, and then, he got the heck out of there. I mean, there's
6 a guy waving a gun, and he fired once and got out of there.

7 He told -- he -- he even told Detective Guthro, "If I
8 didn't shoot, he would have killed one of us. He was going to
9 kill one of us. Those dudes were all drunk; there's no
10 telling what they're going to do. No telling what the dude
11 would do on alcohol."

12 There were four projectiles found. The State's witness,
13 Tameka, even said that there was another shooter. She didn't
14 know who it was. She was scared, "I -- I don't know who it
15 was, somebody." She felt threatened.

16 She said she lied to protect her cousin, Jon Petty, who
17 was shot. And the medical examiner, he testified that there
18 was one shot to the chest.

19 Terrence said, "Officer Guthro, I only shot him once.
20 And I hit him in the arm. I saw it hit him, and I took off."
21 Well, if -- if Mr. Tennant had been in his car, and has a gun,
22 and he -- it would -- it would appear that he hit him in the
23 arm. I mean, Terrence just mistakenly -- he didn't stay
24 around and look to see if it was actually in the chest, but he
25 hit him right above -- right beside his arm. So, it appeared

CLOSING ARGUMENT - MR. BEASLEY

Page 332

1 it did shoot him in the arm.

2 Everything is consistent with what Terrence is saying.
3 Everything. Everything Detective Guthro put down is
4 consistent. All the -- all the witnesses are consistent with
5 what Terrence says. All the physical evidence is consistent.

6 Think about what Terrence says, "Officer Guthro, when he
7 was at the car, he had one foot in it, and I shot and took
8 off, and I saw -- and I saw, you know, him reach down and I
9 took off."

10 Well, you heard Detective Hogsed and Guthro and Brown,
11 and they -- they testified that, when they found him, he had
12 one foot in the door. And he was laying on the ground.
13 Consistent. Truthful, consistent, just like Terrence said.

14 The State could have disproved any of this, at any time,
15 with all these witnesses, but they did not because he was
16 telling the truth. He was telling the truth.

17 I would like to also mention that the medical examiner
18 even explained that the gunshot was actually on the lower part
19 of his shirt, which is consistent with somebody reaching for
20 something in the car. The State's witness Tameka Hines said
21 Robert was reaching for something.

22 Terrence is charged with murder, which is an intentional
23 killing with malice aforethought. And the judge is going to
24 instruct you on all of those. Malice is an evil heart,
25 premeditated killing with no conscience.

CLOSING ARGUMENT - MR. BEASLEY

Page 333

1 There is no way a jury, or anyone else, could find that
2 Mr. Gist, at sixteen years old, in Hub City where Detective
3 Hog -- Detective Hogsd said they had to put up lights because
4 they shoot out the lights. It's a dangerous place.
5 It's in the middle of the night on Saturday, and there's all
6 these people out there arguing, and some guy he doesn't know
7 is waving a gun and his friends have already told him, "Man,
8 he tried -- he tried to kill us. He tried to kidnap us. Man,
9 what we -- you know, come out of here. What's going on?"

10 And he -- he -- poor sixteen year old Terrence Gist, he
11 was in the wrong place at the wrong time. And he had a gun.
12 Not uncommon in Hub City not to have a -- a gun.

13 And he fires and he tells Investigator Guthro, "I had to,
14 he was going to kill one of us. He had already threatened my
15 friends. He pulled this gun. I didn't know what he was going
16 to do. They were drinking; I had no idea." That is not
17 murder, ladies and gentlemen. That's not murder.

18 Another charge you'll hear from the judge is voluntary
19 manslaughter. And voluntary manslaughter is an intentional
20 killing, but it's done in the sudden heat of passion based on
21 legal provocation.

22 And Terrence Gist, being sixteen years old and sitting in
23 this bad crime area in the middle of the night, with a bunch
24 of kids arguing and threats -- and threats were flying around,
25 talking about kidnapping, and somebody waving a gun in his

CLOSING ARGUMENT - MR. BEASLEY

Page 334

1 face, if that's not heat -- in the sudden heat of passion,
2 what is?

3 The worst case scenario is not self defense; it is
4 voluntary manslaughter. Terrence didn't want this to happen.
5 He didn't even know Robert Tennant. All he knew was there a
6 guy out there waving a gun and threatening people, threatening
7 his friends, and threatening people he didn't know, and waving
8 it around recklessly, with just total disregard of what was
9 going on.

10 What you should find is that Terrence Gist was acting in
11 the self defense. And the judge is going to instruct you on
12 the elements of self defense. And Mr. Coler is going to touch
13 on the elements of self defense.

14 But Terrence Gist number one, must have been without
15 fault in bringing on this difficulty. He must have been
16 without fault. Terrence had no beef with this argument at the
17 beginning.

18 And as you heard from the testimony, Robert Tennant
19 picked up these young girls, and I figured he picked up these
20 young kids, other boys, all fifteen, sixteen years old, piled
21 them all in his Explorer, nine people. An argument over -- we
22 still don't know exactly what they were arguing about, but
23 pulled into a dead end -- he took them to a dead end street --
24 and this is a thirty-four year old man; thirty-four years old.

25 And he gets out of the car, opens the hatch, and says,

CLOSING ARGUMENT - MR. BEASLEY

Page 335

1 "I'm going to beat your rear end. I'm going to beat your rear
2 end. We're going to fight right here." And these are a bunch
3 of kids.

4 And they're like, "No, we're just joking. Nothing is
5 going on, gets back in the car, goes back to Hub City. And,
6 instead of dropping these kids off and avoiding all of this
7 danger, or any problem there could be, he decides to hang out
8 a little longer. He's going to hang out a little longer.

9 And Petty, Marcell, and Antonio continue arguing with
10 this guy about you know, "Man, you kidnaped us, threatened us,
11 you kidnapped us," and a bunch of commotion goes on around
12 these apartments.

13 And Terrence is there. He walks out, and these guys tell
14 Terrence, "Man, this guy threatened us. He's trying to kidnap
15 us." He's thirty-four years old, and these are a bunch of
16 kids.

17 He was not -- Terrence was without fault in bringing on
18 this difficulty. It came to him. The unnamed individual goes
19 to Mr. Tennant, goes, "Mr. Tennant, I think you need to leave.
20 There's going to be this, and you don't want any trouble
21 around here." And Mr. Tennant goes, "I'm not going anywhere.
22 I've got something for you all. I'll kidnap you'all. I'll
23 show you," and goes to his car.

24 There's a dispute in the testi -- little disputes on who
25 hit who. There's some hitting, but he gets the gun and waves

CLOSING ARGUMENT - MR. BEASLEY

Page 336

1 it around.

2 The number two element of self defense, imminent danger.
3 Terrence must have felt that he was in imminent danger.
4 Ladies and gentlemen, it speaks for itself. A gun waving
5 around as you -- and threatening killing, kidnapping, that's
6 imminent danger.

7 And whether Mr. Terrence Gist was mistaken that he was
8 actually in danger, it doesn't matter. If he believed he was
9 in actual danger, that's all you need.

10 And the judge is going to instruct you on reasonable
11 appearances. But, from the testimony, of the State's
12 witnesses, and from Mr. Gist's statement, it's consistent with
13 it appeared that Mr. Tennant was going for a gun, had a gun,
14 made threats. And that's all undisputed. Never disproved.

15 And keep in mind everything is consistent with what
16 Terrence Gist said, the truth. That's what we're trying to
17 find is the truth.

18 The last element of self defense is there no way to avoid
19 the danger. And Terrence Gist is, in the middle of a crowd
20 with a guy waving a gun at him. It's a split second decision
21 (snaps fingers), a split second. You heard Mr. Robert Sweeney
22 (snaps fingers). It happened just like this (snaps fingers
23 numerous times). He snapped like several times, just like
24 that (snaps fingers), a split second decision.

25 If somebody is waving a gun and threatening you, granted,

CLOSING ARGUMENT - MR. BEASLEY

Page 337

1 you can take off and run, but you got a gun and you're in Hub
2 City, your first reaction would be to shoot and then, run,
3 which is what Terrence did.

4 And the testimony is consistent with that. Tameka Hines
5 stated that there was one shot and then, there was a pause.
6 Which is consistent with what Terrence said. He said he shot,
7 he took off, got to the top of the street, and he heard, boom,
8 boom, boom, boom, and heard all of these shots.

9 He told Detective Guthro, "Man, whoever was doing all the
10 shooting, they were trying to kill that dude. They were
11 trying to kill that dude. I -- I didn't mean to shoot him. I
12 was just trying to get out of there. I don't want to see him
13 dead." He was just trying to get out of there.

14 Everything is consistent with what Detective Guthro wrote
15 down and with what Terrence said. The State has not produced
16 any witness to disprove self defense. They have not brought
17 one iota of evidence to disprove self defense.

18 The State, in their opening, had a perception of Robert
19 Tennant as he was giving some of these girls a ride, a nice
20 guy. And we discredited that. You know, on the behalf of my
21 client, Mr. Gist, I mean, we're -- we're very sorry for the
22 Tennant family. It's a bad thing, it's a terrible loss. And,
23 you know, we're sorry for them.

24 But that was not the perception and the -- and the facts
25 do not bring out that Robert was that type of guy. He was a

CLOSING ARGUMENT - MR. BEASLEY

Page 338

1 thirty-four year old man had a beer, picked up young girls,
2 picked up young guys, took them to Hub City, they're out there
3 drinking, fights are going on. I mean, it was -- it was a bad
4 scene.

5 And, ladies and gentlemen, Terrence was a sixteen year
6 old boy. And he acted justly. Under the circumstances, he
7 had a right to do what he did. With all the commotion that
8 was going on, he was -- you can imagine what everybody's
9 emotions were at this point.

10 We ask you that come back with a verdict of, at the
11 worst, which is the only -- the only -- the only thing the --
12 that the worst thing that you can possibly find would be
13 voluntary manslaughter, but we ask that you come back with a
14 verdict of self defense under these circumstances.

15 The State did not disprove Terrence's version.
16 Everything Terrence said was the truth. Everything Detective
17 Guthro wrote down was the truth. All the physical evidence
18 backed up Terrence story. It's consistent with Terrence's
19 story; it's the truth.

20 All the witnesses that were put up backs up Terrence's
21 story as the truth. It's the truth. It's the truth. It's
22 the truth.

23 So, please, come back with a verdict of not guilty and
24 save the Gist family from losing their boy. And I understand
25 the Tennant family has already lost a -- a family member, but

CLOSING ARGUMENT - MR. COLER

Page 339

1 please, don't let the Gist family lose theirs. Thank you.

2 (Mr. Beasley's closing argument ended at 9:58 a.m.)

3 THE COURT: Mr. Coler?

4 MR. COLER: Thank you, Your Honor. May it please the
5 Court.

6 (Mr. Coler's closing argument began at 9:58 a.m.)

7 MR. COLER: Ladies and gentlemen, the first thing I want
8 to do is thank you again. You've given me three days of your
9 life, and our time is important and I know your time is
10 important. So, I thank you for that and I thank you for the
11 attention you've given me and thank you for the next few
12 minutes you're going to give to me.

13 Excuse me if I become a little more animated than Mr.
14 Beasley was. And, if I do, I'm sure
15 Early will rein me in, but Robert Tennant is dead.

16 Robert Tennant is not coming back. His family will never
17 see him again. And that's because Terrence Gist put a
18 357-magnum bullet in Robert Tennant's chest.

19 Telling the truth or a half truth or what you're trying
20 to get the police to believe is the truth is not an excuse,
21 does not justify murder.

22 Terrence Gist told -- well, at first he denied it, and
23 then, he told what he knew he had to tell because he knew the
24 police had him. But he didn't, in his statement, tell the
25 whole truth. And we've pointed out to you -- we've given you

CLOSING ARGUMENT - MR. COLER

Page 340

1 his entire statement and we've given you everything else that
2 you can use to evaluate what was truthful and what was not
3 truthful.

4 One thing Mr. Beasley just told you is murder requires
5 malice. And Judge Early is going to tell you what malice is,
6 and he will just tell you that it's somebody who has got an
7 evil heart or someone who is fatally bent on committing
8 mischief.

9 But another thing I think he is going to tell you is that
10 it's somebody who has a heart that is totally devoid of social
11 responsibility, who acts with reckless disregard for human
12 life.

13 And that's exactly what this eighteen year old young man
14 did on the night of October 2nd and into the early morning
15 hours of October 3rd of two thousand, four (2004). He
16 committed a calm, cool, and calculated act.

17 He told you in his statement he went to get the gun when
18 he saw trouble started brewing. And that's not an act in --
19 in heat of passion. That's not a sudden response to some
20 violent attack on him; that's a cool, calculated, and
21 premeditated act.

22 He went in, and he said, "I went and I got my 357 that I
23 own that I carry on a regular basis because I've got problems.
24 People are always bothering me," and that's exactly what he
25 did.

CLOSING ARGUMENT - MR. COLER

Page 341

1 I'm going to not only touch on self defense, as Mr.
2 Beasley told you, we're going to talk about it for a few
3 minutes because when I discuss it, and when I show you what
4 the elements of self defense are, and I'm going to show you
5 what four elements must exist, you'll see that all four did
6 not exist.

7 And, if any one of the four does not exist, self defense
8 is simply not available to Terrence Gist as a defense. And
9 we'll talk about it a few minutes.

10 And one of the things we'll talk about is that Mr.
11 Beasley told you, "Well, Terrence Gist must be without fault
12 in bringing on the difficulty." That's sort of true. The
13 whole truth is, not only must Terrence Gist be without fault,
14 but the person he's stepping in and claiming to have saved,
15 the person he's claiming to defend, they also must be without
16 fault in bringing on the difficulty that occurred.

17 And how in the world can you claim that they were without
18 difficulty when they approached Robert Tennant in his truck
19 and slapped him, punched him, poked at him, prodded at him?
20 How do you say, "I was without difficulty in that situation"?
21 You can't.

22 Mr. Beasley talked about his -- his job as an officer of
23 the Court to present the truth. Both sides must present to
24 you what happened, and we presented the evidence, the
25 witnesses who came in and told you what happened and told you

CLOSING ARGUMENT - MR. COLER

Page 342

1 what they said in their statement, told you what's said in the
2 reports, told you what's said in their police incident
3 reports.

4 The defense presented two witnesses, Mr. Sweeney and Mr.
5 Wellman. And apparently, that's their version of the truth.
6 But I submit to you, after the judge tells you what you can do
7 to evaluate their credibility, you can examine their demeanor,
8 their mood, their response to my questions, and evaluate
9 whether you think that they were telling the truth. And I
10 submit to you they simply were not, as you saw how they
11 responded on cross examination to my questions.

12 Mr. Beasley told you that his client never denied doing
13 this. Well, that's not true. The very first two or three
14 minutes of that video tape, Terrence Gist tried to say, "I
15 didn't do this. It wasn't me."

16 He knew, when Investigator Guthro presented him with some
17 information, "you're caught, you're caught red handed," then,
18 and only then, did he start admitting what happened. But,
19 again, I submit to you he gave you some of the truth, but not
20 all of it.

21 He minimized his participation. And that's what -- I
22 think you would expect someone who lies about doing it first,
23 and then, is caught and then, starts to admit a little bit, a
24 little bit, a little bit. It's kind of a parade of lies.
25 It's a big lie, and then, it's a little lie, and littler lie,

CLOSING ARGUMENT - MR. COLER

Page 343

1 right down the line.

2 Yes, Mr. Gist was sixteen years and eight months old when
3 the police interviewed him. I don't know -- and yes, his
4 parents were not with him. I don't know if he was scared or
5 not. But his parents weren't out there the night at Hub City
6 when he was carrying his 357-magnum going around presenting
7 that thing and shooting people.

8 I mean, he was -- if this guy is such a timid individual,
9 was he scared then? I submit to you he was not. And, when he
10 talked to the investigators, yes, Terrence went there, but I
11 think he can handle himself.

12 They told you that -- in the closing statement, that he
13 just happened to have his gun. Totally not true. He went and
14 got his gun. He made a decision, a rationale, cool,
15 calculated premeditated decision to go get the gun.

16 They told you that there were shots from all over the
17 place. Well, every single piece of evidence you've seen, from
18 the witness stand and the exhibits, indicate that the shots,
19 all of them that were fired, were directed at, were going at
20 or shooting at Robert Tennant.

21 The bullet holes in the car, the bullet holes in the back
22 seat, the angle of where it was coming, in relation to where
23 the witnesses told you where the people were standing and the
24 bullet hole in his chest, the way it went downward from left
25 to right, entirely consistent with somebody sitting in their

CLOSING ARGUMENT - MR. COLER

Page 344

1 vehicle and getting shot, not standing up and facing a crowd
2 of people and getting shot because, then, you would expect, of
3 course, would have the bullet would be like that
4 (demonstrating), unless, of course, the shooter is twenty (20)
5 feet tall.

6 Yes, Investigator Guthro, as Mr. Beasley pointed out,
7 just simply listened and wrote down what Terrence Gist said.
8 And that's what a good investigator does. His job is to
9 collect the facts. And his job is to collect each and every
10 fact that he can, and then, bring the facts to you, and you
11 decide what's true and what's not. It's not his job -- it
12 would not have been his job, during that interview, to point
13 out what he -- what he personally believed was true.

14 He was doing his job. He was collecting the facts. He
15 was listening to Mr. Gist and giving him an opportunity to
16 explain what happened. And then, he knew that those facts,
17 that information, would be compared to other information,
18 other physical information, other forensic information, other
19 witnesses. And you will get all that, and you, then, get to
20 decide what you find true or not true.

21 Mr. Beasley pointed out that -- I think he said to you,
22 and if I misquote him, excuse me, and go with what you
23 remember he said. All the shell casings were 32-caliber or
24 30-caliber. Well, Agent Defreese did tell you that four --
25 not shell casings, projectiles -- four of the bullet fragments

CLOSING ARGUMENT - MR. COLER

Page 345

1 or pieces were 30- or 32-caliber; he couldn't say exactly
2 which.

3 What Mr. Beasley did not mention to you was that the one
4 in the chest was absolutely either a 357 or a 38. Agent
5 Defeese said they are so close that they are inter --
6 practically interchangeable. But one of the particular guns
7 that shoots and that would shoot that bullet was a 357 Smith &
8 Wesson. Mr. Gist wrote in his statement, and said on the
9 tape, "I carry a 357 Smith & Wesson."

10 I -- I could probably go on all morning, and I don't want
11 to waste your time by talking to you about what -- what Mr.
12 Beasley just talked to you about, but I want to take just a
13 few more minutes of your time to talk to you about what I -- I
14 am prepared to talk to you about.

15 And one of the things I want to do is ---

16 (Brief pause while Mr. Color prepares projector.)

17 MR. COLER: Well, I'm going to show you an overhead, but
18 while we're trying to get that to work, I just want to talk to
19 you. The judge is going to tell you, of course, as you now
20 know that your job is the finders of the facts.

21 And nobody else in this courtroom, nobody else in this
22 world and nobody else in the courthouse can tell you what the
23 facts are. You get to go back in your deliberation room and
24 decide what you find the facts to be.

25 That being said, I want to point out a couple of things

CLOSING ARGUMENT - MR. COLER

Page 346

1 that I think are very important. There is -- there is
2 absolutely no question that Terrence Gist shot Robert Lee
3 Tennant.

4 (Document shown on overhead.)

5 Starting from the right hand corner, first of all
6 remember, he's admitting that to you. He admits it. There is
7 no question; do not be swayed, do not get confused by the fact
8 that -- there's no question; he even admits it.

9 And he said, "I used -- I shot -- I shot him with my 357
10 Smith & Wesson. I only hit him one time," and certainly
11 because there was only one gunshot wound to Mr. Tennant. And
12 Dr. Wrenn examined the whole body and looked for it. There
13 was no shot in the arm. The fatal killing, the fatal shot,
14 was here in the chest (indicating).

15 Then, the bullet that Dr. Wrenn took out of Mr. Lee --
16 Mr. Tennant's chest, was State's Exhibit Number 14, that's the
17 bullet that Dan Defreese, the SLED agent, said was a 357 or a
18 38, an interchangeable bullet.

19 Don't get confused, whoever was shooting that 32 -- that
20 30-caliber did not kill Mr. Tennant. That person is
21 responsible and is culpable in some way, but he is not the
22 murderer. The murderer is sitting in this courtroom next to
23 his attorneys over there. He's moving around.

24 And aside from all of that, Erika James -- and Mr. Gist
25 told you that he had to do it. He had to shoot. He had to

CLOSING ARGUMENT - MR. COLER

Page 347

1 kill this guy; this guy was a menace. He was -- he was going
2 to hurt Mr. Gist or his friends. Well, Erika James, who lives
3 in that apartment complex, has no loyalty to either side,
4 doesn't really know the Gists, does not know the Tennants, has
5 no reason to lie, and she told you what she saw.

6 Mr. Tennant didn't have a gun in his hand. He wasn't out
7 there waving a gun around, wasn't threatening anybody. He
8 simply tried to leave, when the boys approached him, and this
9 thing escalated from a physical fist fight, assault, to a
10 killing.

11 Furthermore, there's absolutely no gunshot residual on
12 Mr. Tennant's hands. The -- the two witnesses that the
13 Defense put up yesterday, Mr. Wellman first and then, Mr.
14 Sweeney, Mr. Sweeney simply went too far with his version of
15 the facts.

16 I mean, he -- "He stood up and he waved the gun around,
17 and then, he went further, "Oh, he was shooting a gun too."
18 Well, that flies in the face of the fact that there's no
19 gunshot residual on Mr. Tennant's hands.

20 So, I submit to you, in an attempt to help his friend, to
21 help his buddy out, he was telling a story. The problem is,
22 the story is not consistent with what even the Defendant told
23 the officer in his statement, but he went too far. He said,
24 "Yeah, he shot."

25 I don't know if he didn't know or didn't realize or

CLOSING ARGUMENT - MR. COLER

Page 348

1 wasn't -- didn't understand that there's no gunshot residual
2 on Mr. Tennant's hands. So, I submit to you, you can
3 eliminate Mr. Sweeney's testimony completely.

4 The other witness they put up, Mr. Wellman, before that,
5 he didn't quite go as far as Mr. Sweeney. He -- he never
6 would say that, "I saw Robert Tennant shooting a gun," but his
7 version is also just as not believable, just is not credible,
8 because he said he was up, he was waving a gun around, and he
9 was threatening everybody.

10 Again, how does the bullet hole -- how did the path of
11 the bullet go this way (indicating)? And, again, you've got
12 pictures and you'll have a look at those. How does that go
13 from here, (demonstrates) up from an upward to a downward,
14 from left to right?

15 If you're standing up -- if you're sitting in a car, and
16 somebody approaches your window and shoots you, that's exactly
17 how a bullet passes; you know, that's how you would expect it
18 to go.

19 And, of course, look how Mr. Tennant was found. If he
20 was out of the car, waving a gun around and threatening people
21 and he got shot and it's like somebody defending themselves or
22 other people, wouldn't he have just fallen where he got shot?
23 Why would his foot be half in the car, half out of the car and
24 his body?

25 Isn't more consistent with him getting shot in the car

CLOSING ARGUMENT - MR. COLER

Page 349

1 and then, slumping or sliding out of the car and maybe trying
2 to gasp for air and maybe trying to get help? It just --
3 their version just doesn't make any sense at all. And it
4 flies in the face of other witnesses, who don't have a reason
5 to lie, and most importantly, the physical evidence doesn't
6 lie.

7 Mr. Gist, of course, has given a statement and it's on
8 video tape. I suggest to you that you watch the video tape
9 and read the statement carefully because I think everything
10 you need to know is in there about what's truthful and what's
11 not truthful.

12 And let's think about that a minute. If this is a
13 justified killing, if this is him doing what he had to do to
14 save his life, why wouldn't he just say that from the
15 beginning? And why would he first deny it, and then, go on
16 and let Officer Talanges [sic] kind of pull it out of him or
17 drag it out of him? Why wouldn't he say, "That guy had a gun,
18 and I had to kill him"? He didn't.

19 Furthermore, and come to think of it, why not stay there?
20 If he just shot somebody, and that person had a gun, I would
21 think he would stick around and when the -- because you know
22 the police are coming, and when they get there say, "See,
23 there's him. There's the gun, and he was threatening me. I
24 had to do it."

25 Why run? Why -- why take one quick shot and run? Again,

CLOSING ARGUMENT - MR. COLER

Page 350

1 that doesn't suggest to me someone who is just trying to
2 defend himself or others. That suggests to me a guilty
3 conscience, someone who did something and knew he did - did
4 wrong and tried to distort it. And, when the police went
5 looking for him and found him, he tried to lie about it. And
6 then, finally, trying to excuse it by telling them, "I had
7 to."

8 Again, talking about Mr. -- Mr. Tennant, he wasn't out of
9 his vehicle. He was in his vehicle when he got shot. And you
10 know that because of the path of the bullet. And you know it
11 because Erika James said it. She's got no reason to lie.

12 And she told you that she came out. It was hot in her
13 apartment, and she heard some people over in the corner
14 talking. And they were just talking about plotting to or
15 planning to harm this man.

16 And then, she said -- she told you what happened. They
17 approached him. He was in his car, and they started a -- an
18 assault, a physical assault on him, and it escalated to a
19 gunshot wound to his chest by Mr. Gist.

20 Tameka Hines also told you that he was in his car. She
21 has no reason to lie to you. She has no allegiance to Mr.
22 Tennant, his family. She has no reason to tell you anything
23 but what she saw.

24 And that's what I think -- a fifteen year old, when she
25 answered my questions straight forward, and answered honestly

CLOSING ARGUMENT - MR. COLER

Page 351

1 the Defendant's questions. I mean, she -- she was straight
2 forward. She told you what she saw.

3 Most importantly, again, he wasn't out of the car
4 handling a gun. There's no gunshot residual on his hands. He
5 didn't handle a gun, and if he was out of the car, and he had
6 been pointing a gun at somebody, remember Agent Stoner from
7 SLED told you, "Well, I would expect or I think it's possible
8 that he would have gunshot residual from the shooter's gun on
9 his hand if he was out doing this (indicating)."

10 If he's in the car, with his hands down, and not
11 assaulting anybody, not offending anybody, not approaching
12 anybody, you wouldn't expect to find gunshot residual, and
13 they didn't -- they didn't find any gunshot residual.

14 And, again, the only way he's out of the car, with the
15 path of the bullet to be the way it was, was for the shooter
16 to be very, very, very tall or up in a tree or on top of a
17 building or something like that.

18 And Terrence Gist never said that. He was on the ground,
19 at ground level, and the only way for that bullet to take that
20 path logically is if he's -- if the victim, Mr. Tennant, is
21 sitting down in his car when he gets shot.

22 Take your time and read over Mr. Gist's statement. I
23 think you'll see some very interesting things in there. Mr.
24 Gist, in his own words, told the police Robert Tennant was
25 shutting his hatchback, was shutting his door and sitting in

CLOSING ARGUMENT - MR. COLER

Page 352

1 his car. Robert Tennant was getting ready to leave.

2 He wasn't looking for trouble. He was looking to get out
3 of there. He was getting ready to leave. They weren't going
4 to let him leave. That's -- that's what the problem was.

5 In his statement, Mr. Gist says, "Yeah, I went and got my
6 357 Magnum. Does that sound like somebody whose -- whose
7 blood is boiling, who's angered and outraged, that's so
8 uncontrollable that he can't control his violent act?

9 No, that sounds like somebody who is pretty calm, pretty
10 cool, to go off and get a gun and bring it back out because he
11 knows he's got the gun and he can use it in a calm, calculated
12 manner if he wants to.

13 In the heat of passion killing and the manslaughter has
14 got to be something that Robert Tennant did to Terrence Gist
15 to make his blood boil, to make him so angry. It could be --
16 and the classic example is a racial slur. It's an allegation
17 against your family.

18 Did Robert Tennant do any of that? Did Robert Tennant
19 ever say or do anything to Terrence Gist to make Terrence's
20 blood boil? No, there's no evidence of that.

21 That -- that's manslaughter, and this is a cold blooded
22 murder. Mr. Tennant -- I mean, Mr. Gist, told you in his
23 statement he got it. "Yeah, I -- I -- I carry a 357-Magnum.
24 I've gotten shot at plenty of times, been run off the road."
25 Is that just bad luck? Does Mr. Gist just have bad luck, or

CLOSING ARGUMENT - MR. COLER

Page 353

1 is he the type of person that goes looking for trouble?

2 I mean, how -- you know, how many times do you get shot
3 at and -- and get run off the road before you realize, well,
4 that's just not bad luck. That's -- that's somebody who's --
5 who's usually looking for trouble.

6 And that's what Gist was doing in this -- in this case.
7 He was looking for trouble. He got a gun, and he watched his
8 friends, his -- his boys, his buddies, approach the car, and
9 he's looking for trouble.

10 Then, I like this in his statement, he says, "Mr. Tennant
11 got in his vehicle and said, 'I got something for you,' and
12 started reaching under his seat." That's when Antonio strikes
13 him.

14 I mean, he's in his car, and he's still getting struck by
15 this crowd. He's not -- he's not looking to bother them. If
16 he was going to bother them, wouldn't he have done it while he
17 was still out of the car or when he got out of the car?

18 I think, Mr. Gist, if you read this statement, which is
19 ridiculous, he got in his car, got something, got out of the
20 car, was waving the gun around, and was getting back in his
21 car. Well, if he's such a dangerous individual, Mr. Tennant,
22 as Mr. Gist would have you believe, wouldn't he have taken the
23 gun -- wouldn't he have used it, then, when he's out of his
24 car? Why was he back in the car?

25 He didn't have a gun. But, I mean, for the sake of

CLOSING ARGUMENT - MR. COLER

Page 354

1 argument, let's suppose he did. He's in no man's land. He's
2 all by himself and he doesn't know anybody. And he's being
3 attacked by a group of people. It wouldn't be totally
4 inconceivable to -- to use some weapon to get that crowd back
5 and say, "I'm getting out of here." He didn't have a gun, but
6 even if he did, the defense just doesn't make any sense.

7 And, then, of course, he said in his statement, "I
8 dropped my gun off -- I dropped my gun and just took off."
9 That's not somebody acting in self defense. That's a --
10 that's a guilty conscience.

11 And he continues still further in his statement reads,
12 and you'll see, "I just couldn't sleep that night. I went
13 home and I just couldn't sleep. It was -- it was on my
14 conscience."

15 But, if you do something to protect other people or
16 yourself, it's not a guilty conscience. You might call the
17 police and say, "Hey, I had to do this." But, if I had a
18 conscience and I do something wrong, and you can't get to
19 sleep that night, it's he knew he took a cheap shot.

20 He took a quick shot to the chest, with disregard for Mr.
21 Tennant's life, and he felt bad about it. So, he told that in
22 his own statement.

23 And I think the best part about it is, the next morning
24 he says his mother asked him about it. She said, "Did you --
25 did you do this?" "No." The man lied to his own mother about

CLOSING ARGUMENT - MR. COLER

Page 355

1 it, and then, told the police about it like it was no big
2 deal. He -- he lied about it to his mother. So, I submit to
3 you that portions of his statement are also lies.

4 I could -- I mean, I could go on all morning talking
5 about it, but it's not my job. You, the jurors, now get to
6 take the -- the case back into the deliberation room and
7 decide the facts. But there's a couple of more things I want
8 to talk about briefly, and they are the law.

9 One of the things that Judge Early is going to charge you
10 or instruct you about is self defense, or in this case, the
11 defense of others. And he's going to tell you that all four
12 of these elements must be present; these must be true. If any
13 one of these is not true, is not present, self defense is not
14 available to Terrence Gist.

15 And the very first thing he's going to tell you, the
16 person must be without fault in bringing on the difficulty.
17 That's Terrence Gist must be without fault, or the person
18 whose shoes Terrence Gist is stepping into.

19 So, if I came up to you and took a poke at you, took a
20 swing at you and hit you, and you defend or fight me, come
21 back and respond and start to hit me back, Ms. Bell (phonetic)
22 can't step in and shoot you and say, "Well, I was just
23 protecting Mr. Coler because you were going to hurt him."

24
25 Well, I wasn't without fault. I brought on the

CLOSING ARGUMENT - MR. COLER

Page 356

1 difficulty; I started it. I -- I started the trouble. And
2 that makes logical sense if you think about it, and that's
3 what the law says. You can't start trouble, and then, defend
4 yourself. Or you can't start trouble and expect someone else
5 to defend you. The law simply doesn't allow it.

6 Mr. Gist had to believe he was in imminent danger of
7 losing his life. He was apparently back in the crowd a good
8 ways, wasn't any -- according to him, wasn't anywhere near it.
9 According to others, he was right on top of it, but nobody
10 else -- he wasn't in danger of losing his life.

11 He may have been in danger of getting his butt whipped by
12 Mr. Tennant. I mean, Mr. Tennant might have been able to take
13 on all four of those guys; I don't know. But being afraid of
14 getting your tail whipped is not being believing you're in
15 imminent danger of losing your life such that the law allows
16 you to take another human life or another human life.

17 There's got to be a reasonable -- a reasonable -- it's
18 not just what's going on in his mind. If he's a really timid
19 guy, you know, it's not that. It's what an average,
20 reasonable person would believe.

21 And you all are -- are reasonable people. And you all
22 would admit and agree with me, I'm sure, that if your friends
23 go off and start a fist fight, you can't say, "Well, I was in
24 reasonable belief that I was going to lose my life, so, I had
25 to shoot the guy that he started a fist fight with." And

CLOSING ARGUMENT - MR. COLER

Page 357

1 that's what Mr. Gist is asking you to believe. It's simply
2 not true.

3 And the last thing is called the duty to retreat, number
4 four. The law says sometimes, in very limited circumstances,
5 you can kill a person. You can do it in self defense when you
6 have absolutely no other alternative. And the law will allow
7 that, will excuse that. But, if you can get away, you've got
8 a duty to do that. How do you say, "I didn't have a duty to
9 retreat," when they approached the car?

10 They were the ones who were looking for trouble. Was Mr.
11 Tennant coming at them? Was he approaching them? Was he
12 approaching them? Was he chasing them down? Did he corner
13 them in a -- in a corner of a building somewhere? Absolutely
14 not.

15 So, I submit to you, none of these elements are true.
16 But if any one of them fails, the judge will tell you, self
17 defense is simply not available to Mr. Gist.

18 And, if you think about it, it makes logical sense. You
19 can't go out and start a fight and, then, when the guy you
20 start a fight with, kill him because you think he's going to
21 whip your tail. It just makes logic sense. That's all.

22 And the judge is going to tell you about the two possible
23 verdicts, murder or manslaughter. And the Defense would have
24 you believe that at worst it's manslaughter. And manslaughter
25 is essentially a hot-blooded, in the heat of passion killing.

CLOSING ARGUMENT - MR. COLER

Page 358

1 A classic example is you come home and find your spouse
2 with somebody else. That makes your blood boil. That makes
3 you so angry you cannot -- you might not be able to control
4 your emotions. You might not be able to control your actions.

5 If you kill somebody in that situation, your spouse or
6 the other person, you -- the law says you would be guilty of
7 manslaughter. If your blood is boiling because something was
8 done to you, that made you just lose your mind.

9 There was absolutely nothing like that in this case.
10 There's not a single piece of evidence in this case that
11 suggests that Robert Tennant did anything to Terrence Gist to
12 make his blood boil.

13 And, like I said, a classic example is if Mr. Tennant had
14 -- had said something about the Gist family. He insulted his
15 mother or his sister, made a racial slur; you know, something
16 like that that just -- that just makes you snap.

17 And then, Mr. Gist pulled out a gun and shot him, maybe
18 that's manslaughter. But this was calm, cool, and collected.
19 And this was, by his own confession, by his own words, one
20 quick shot. No big deal. "I dropped the gun and ran."

21 And there wasn't, "I just -- this guy made me crazy and I
22 had to kill him." That's manslaughter. This is not. This is
23 murder. This is just a calculated act.

24 And so, this is it. This is what the State has to prove
25 for murder. I told you these three elements at the start of

CLOSING ARGUMENT - MR. COLER

Page 359

1 the trial, and Judge Early will tell you that again. The
2 State must prove to you that there was an unlawful killing, an
3 unjustified killing.

4 There is no question, according to Dr. Wrenn, and
5 according to every piece of evidence, that Robert Lee Tennant
6 was killed by a 357 slug or a 30 or a slug to his chest. No
7 question.

8 Was it lawful or was it unlawful? The only lawful
9 justification is self defense, if it's available, but there's
10 -- none of those elements are found, but if any one of the
11 four elements fails, it's simply not a lawful killing. It's
12 an unlawful killing.

13 Remember, I told you we'd have to prove to you that it
14 was another person who was killed. Robert Lee Tennant, as I
15 told you, and his family would tell you, and his friends that
16 are here and have been here, would tell you he was a human
17 being, a living, breathing, working, caring human being.

18 And what he did, who he gave rides to, where he hung out,
19 has absolutely no effect on element number two. It doesn't
20 say another killing of a doctor or a lawyer or a teacher or a
21 pastor. It says a person. And that's what Robert Lee Tennant
22 was. And there's no question about that.

23 And finally, it's done with malice aforethought, either
24 expressed or implied. And Judge Early is going to talk about
25 this, and I've already talked about it numerous times.

CLOSING ARGUMENT - MR. COLER

Page 360

1 "Malice" is a failed heart. It's an evil heart that is
2 totally devoid of social responsibility. It's a heart that
3 just doesn't care. It's a young, sixteen year old, eight
4 month old young man who just doesn't really care about human
5 life.

6 And it's -- it's a heart that's -- that acts with
7 reckless disregard. It can be either expressed or implied.
8 And expressed means that when the shooter fired the shots, he
9 said, "I want you dead, I want to kill you." Implied simply
10 means you can look at the facts and circumstances surrounding
11 the incident and make a determination about malice in his
12 heart.

13 And we can't cut Terrence Gist open and look inside his
14 brain. We have to give you the facts that surround it. But,
15 going into an apartment to get your 357 -- loaded 357 Smith &
16 Wesson gun, and coming out and watching your friends attack a
17 man who is -- who has no friends, no back up, no acquaintances
18 in the area, and as they do, approaching that vehicle and
19 firing a shot into his body, with total disregard for what
20 happens, and running and leaving that man, in his car, to
21 slide out and slump to die in a dark parking lot, alone with
22 no friends, is text book malice.

23 That's what Terrence Gist had in his heart when he shot
24 and killed Robert Tennant. And that's why he's guilty of
25 murder. Thank you.

JURY CHARGE

Page 361

(Mr. Coler's closing argument concluded at 10:31 a.m.)

JURY CHARGE

THE COURT: Madam Forelady, ladies and gentlemen of the jury, my charge will probably last twenty -- twenty minutes I'm guessing, twenty, twenty-five minutes. Do you all need a break before I do it? Anybody need a bathroom break? Is everybody comfortable?

(Jurors nod affirmatively.)

THE COURT: What I want to do now is what we call charge you or give you the instructions on the law. And the first part of the instructions will be general principles of law that I charge in every criminal case. And then, once I do that, we'll talk about the specifics in this case, i.e., murder and voluntary manslaughter and the defense of self defense, as I told you all when we started and drew the jury.

And I remind you, again, the fact that the defendant was arrested, charged, and indicted in this case, is not evidence in the case and cannot be considered as evidence by you when determining the guilt of the defendant.

Nor does it create any presumption or inference of guilt. The indictment is simply the charging or the formal written statement bringing the charges against the defendant; it is the formal document by which this case is brought into the courtroom.

And, in this case, the defendant has pled not guilty to

JURY CHARGE

Page 362

1 the indictment. And that plea of not guilty puts the burden
2 on the State of South Carolina to prove him guilty beyond a
3 reasonable doubt.

4 A person charged with committing a criminal offense is
5 never, ever required to prove himself innocent. I charge and
6 instruct you that it is a most important rule of the law that
7 a defendant, in a criminal trial, no matter what the charges
8 are, will always be presumed to be innocent of the crime for
9 which the indictment was issued unless guilt has been proven
10 by evidence satisfying you of that guilt beyond a reasonable
11 doubt.

12 And this presumption of innocence does not end when you
13 begin your deliberations, but it stays with the defendant
14 throughout the trial until you reach a verdict of guilt, based
15 on evidence satisfying you of that guilt beyond a reasonable
16 doubt.

17 This presumption of innocence is not a mere legal theory.
18 It is not just a legal phrase. It is a substantial right
19 which every defendant is entitled unless you, the jury, are
20 satisfied, from the evidence, of the defendant's guilt beyond
21 a reasonable doubt.

22 What is a reasonable doubt in the law? It's very simple.
23 A reasonable doubt is the kind of doubt that would cause a
24 reasonable person to hesitate to act. A reasonable doubt is
25 the kind of doubt that would cause a reasonable person to

JURY CHARGE

Page 363

1 hesitate to act.

2 I remind you, once again, that during the trial you and I
3 have had certain duties to perform. And, as my duties, I've
4 had to preside over the trial of the case and to rule on the
5 admissibility of the evidence offered during the trial.

6 So, you are to consider only the competent evidence that
7 is before you. And I don't know that I struck any, maybe just
8 a little bit, but everything other than what I've struck, you
9 can use to consider; that is, the sworn testimony from the
10 witness stand and the exhibits which have been made a part of
11 the record in the case.

12 I also further remind you, as presiding judge, I am the
13 sole judge of the law in the case. And it is your duty as
14 jurors to accept the law as I now charge it to you.

15 So, if you already have any preconceived ideas as to what
16 the law is or what the law ought to be, and it does not agree
17 with what I now tell you, I ask that you abandon those
18 preconceived ideas and accept the law as I give it to you
19 because you've sworn to do that and to take the law exactly as
20 I charge it to you now.

21 I have no right to have any opinion about the facts in
22 the case. So, during the trial of this case, if I have -- I
23 don't think I have, but I've made any comment or made any
24 facial expressions or did anything, please, disregard that. I
25 have no right to have any say so on the facts of the case.

JURY CHARGE

Page 364

1 That is entirely up to the twelve you collectively to
2 determine what the true facts are in the case. You are to
3 determine the true facts from the evidence and to give it
4 whatever value, weight, and truth that you deem necessary.

5 Now, to do that, and to find the facts in the case, you
6 have to determine the credibility of the witnesses who have
7 testified in the case. Credibility simply means
8 believeability. So, it becomes your duty as jurors to analyze
9 and to evaluate the evidence and determine which evidence
10 convinces you of its truth.

11 In other words, once the evidence is admitted into the
12 trial, then, it comes up to the twelve of you collectively to
13 decide what and who you believe and what the truth is.

14 In determining the credibility or believability of
15 witnesses, who have testified in this case, you have the right
16 to believe one witness over several witnesses, or several
17 witnesses over one witness. You may believe a part of the
18 testimony of a witness and reject the remaining part of the
19 testimony of that same witness.

20 You may believe the testimony of a witness in its
21 entirety, or you can reject the testimony of a witness in its
22 entirety. You may consider whether any witness has exhibited
23 to you any interest, bias, prejudice, or other motive in the
24 case. You may also consider the appearance and manner of a
25 witness while on the witness stand.

JURY CHARGE

Page 365

1 Are you okay back there?

2 (Juror nods affirmatively.)

3 THE COURT: We've had several people in this case
4 testify where I qualified them as expert witnesses. Normally,
5 the rules of evidence do not permit a witness to testify to
6 opinions or conclusions. An exception to this rule exists for
7 witnesses we call expert witnesses.

8 A witness, who by education and experience has become an
9 expert in some art, science, or profession or calling, may
10 state an opinion as to relevant and material matter in which
11 the witness claims to be an expert and may also state the
12 reasons for that opinion.

13 I charge you that you should consider any expert opinion
14 received in evidence, and like any other evidence, give it the
15 weight you think it deserves. If you decide that the opinion
16 of an expert witness is not based on sufficient education and
17 experience, or you conclude that the reasons given in support
18 of the opinion are not sound, or that the opinion is
19 outweighed by other evidence, you may disregard that opinion.

20 An expert witness' testimony is to be given no greater
21 weight than that of any other witness simply because he is an
22 expert. Further, you're not required to accept an expert's
23 opinion even though it is not contradicted.

24 Now, let me further emphasize this: I charge you and
25 emphasize that the fact the defendant did not testify in this

JURY CHARGE

Page 366

1 case is not a factor to be considered by you, in any way, in
2 your deliberations and in your consideration on the question
3 of the guilt or innocence of the defendant.

4 It must not be considered by you in any manner
5 whatsoever. A defendant has the constitutional right to
6 remain silent and the assertion of this constitutional right
7 must not be considered by you in your deliberations.

8 I repeat, under your oath, you're to draw no conclusion
9 whatsoever from the fact that the defendant in this case did
10 not testify. The fact that the defendant did not testify
11 should not even be discussed in the jury room.

12 The burden of proof, as I have stated to you, is on the
13 State of South Carolina. The defendant is not required to
14 prove his innocence. The burden of proof remains on the State
15 to prove guilt beyond a reasonable doubt.

16 So, I charge you, do not discuss the fact that he did not
17 testify, at all in the jury room, and Madam Forelady, that is
18 your responsibility. It's not to be discussed.

19 Let me give you the general law on statements given by
20 the defendant. A statement alleged to have been made by the
21 defendant has been admitted into evidence in this case. The
22 Court has determined that the state -- the Court has
23 determined that the statement is admissible. I instruct you
24 that you make the ultimate decision of whether or not the
25 defendant made the statement.

JURY CHARGE

Page 367

1 If the Defendant made the statement, you must, then,
2 determine whether the statement was made by the defendant
3 voluntarily and of his own free will.

4 This means that the statement was not caused by pressure,
5 force, fear, threats, coercion, or intimidation or by hope or
6 a promise of leniency or a -- or a reward of any kind.

7 In determining whether the statement was voluntary, you
8 should consider both the characteristics of the defendant and
9 the details of the questioning. Some of the factors you must
10 consider are one, the age of the defendant; the defendant's
11 education or lack thereof; the defendant's mental ability or
12 capacity; the defendant's intelligence;

13 The defendant's background and environment; the place and
14 length of detention; the nature of the questioning, and the
15 advice -- the advice or lack thereof to the defendant of his
16 constitutional right, including but not limited to his right
17 to remain silent, that any statement could be used against him
18 in a court of law; the right to have a lawyer present; that,
19 if he could not afford a lawyer, one would be appointed to
20 represent him without any cost; and that he could stop making
21 a statement at any time.

22 You must carefully consider all of the surrounding
23 circumstances before you give any weight to an alleged
24 statement.

25 The State has the burden of proving, beyond a reasonable

JURY CHARGE

Page 368

1 doubt, that the statement was voluntary. If you determine it
2 wsa, you may give the statement any further consideration that
3 you deem proper.

4 You must decide what weight, if any, should be given to
5 the statement. If you determine the statement was not the
6 free and voluntary statement of the defendant, you cannot use
7 that evidence to decide — or you should not consider that
8 statement at all.

9 One of the witnesses in the case had a prior record. A
10 person who has a past criminal record is competent to testify
11 during a trial. A past record does not affect the ability of
12 that witness to testify. The past record may only be
13 considered by you, if at all, in determining the witness'
14 credibility or believability.

15 Please, remember you are the sole judges of the facts in
16 the case and the believability of any and all witnesses is
17 your decision and your duty.

18 Now, that's some general law that I charge just about in
19 every criminal case we try because it applies to every
20 criminal case. Let's now turn our attention to the charges in
21 this case.

22 I will charge you and instruct you what murder — how
23 murder is defined by our codes and by our courts. In this
24 case, the defendant is charged with murder. The State must
25 prove, beyond a reasonable doubt, that the defendant killed

JURY CHARGE

Page 369

1 another person with malice aforethought.

2 Malice by law is defined as hatred, ill will, or
3 hostility towards another person. It is the intentional doing
4 of a wrongful act without just cause or excuse, and with an
5 intent to inflict an injury or, under the circumstances that
6 the law would infer, an evil intent.

7 Malice aforethought does not require that malice exists
8 for any particular time before the act is committed, but that
9 malice must exist in the mind of the defendant just before and
10 at the time of -- at the time the act is committed.

11 Therefore, there must be a combination of a previous evil
12 intent and the act.

13 Malice aforethought may be expressed or inferred. The
14 terms "expressed," and "inferred," do not mean different kinds
15 of malice, but merely the manner in which malice may be shown
16 to exists; that is, either by direct evidence or by inference
17 from the facts and circumstances which are proved.

18 Expressed malice is shown when a person speaks words
19 which express hatred or ill will for another, or when the
20 person prepared beforehand to do the act which was later
21 accomplished.

22 For example, lying in wait for a person or any other acts
23 of preparation going to show that the deed was within the
24 defendant's mind would be expressed malice.

25 "Inferred malice," malice made be inferred from conduct

JURY CHARGE

Page 370

1 showing a total disregard for human life. Inferred malice may
2 also arise when the deed is done with a deadly weapon. A
3 deadly weapon is any article which is likely to cause death or
4 great bodily harm.

5 Whether an instrument has been used as a deadly weapon
6 obviously depends on the facts and circumstances of each
7 cases. And our courts have given examples of deadly weapons,
8 which includes a pistol.

9 Now, ladies and gentlemen of the jury, if you find that
10 the State has failed to prove, beyond a reasonable doubt, that
11 the defendant committed murder, you may consider whether the
12 State has proved, beyond a reasonable doubt, that the
13 defendant committed voluntary manslaughter.

14 To prove voluntary manslaughter, the State must prove,
15 beyond a reasonable doubt, that the defendant took the life of
16 another person, in the sudden heat of passion, based on
17 sufficient legal provocation.

18 Both heat of passion and sufficient legal provocation
19 must be present at the time of the killing to constitute
20 voluntary manslaughter.

21 Sudden heat of passion may, for a time, affect a person's
22 self control, temporarily disturb a person's reason. The
23 sudden heat of passion must be the type that would make an
24 ordinary person unable to coolly reflect on his actions and
25 would produce an uncontrollable impulse to do violence.

JURY CHARGE

Page 371

1 Sufficient legal provocation must be the type that would
2 make a person, of ordinary reason and caution, to become
3 enraged and to lose control temporarily.

4 The provocation needed for voluntary manslaughter must
5 come from some act of or related to the victim. Words alone,
6 however vulgar or insulting, are not enough to be legal
7 provocation.

8 Where death is caused, by the use of a deadly weapon, the
9 words must be accompanied by some overt threatening act which
10 could have produced the heat of passion. Exercising a legal
11 right, no matter how offensive is it to another, is never
12 sufficient legal provocation for voluntary manslaughter.

13 If the heat of passion had cooled, or if there was enough
14 time between the provocation, if any, and the killing for the
15 passion of a reasonable person to cool, the killing would not
16 be voluntary manslaughter.

17 In deciding whether a reasonable person would have had
18 enough time to cool off, you should consider all of the
19 circumstances surrounding the killing. You may consider the
20 nature of the provocation, if any, the defendant's mental and
21 physical estate -- state, and the circumstances and
22 relationships between the parties.

23 If you have a reasonable doubt as to whether the
24 defendant is guilty of murder or manslaughter, it is your duty
25 to resolve that doubt, in the defendant's favor, and find him

JURY CHARGE

Page 372

1 guilty of the lessor offense, i.e., manslaughter, voluntary
2 manslaughter.

3 The defendant has raised the defense of self defense.
4 Now, self defense is a complete defense and, if it is
5 established, you must find the defendant not guilty.

6 The State has the burden of disproving self defense by
7 proof beyond a reasonable doubt. If you have a reasonable
8 doubt of the defendant's guilt, after considering all of the
9 evidence, including the evidence of self defense, then, you
10 must find the defendant not guilty.

11 On the other hand, if you have no reasonable doubt, of
12 the defendant's guilt, after considering all of the evidence,
13 including the evidence of self defense, then, you obviously
14 must find the defendant guilty.

15 The following elements are required to establish self
16 defense: First, the defendant must be without fault in
17 bringing on the difficulty. If the defendant's conduct was
18 the type which was reasonably calculated to and did provoke a
19 deadly assault, the defendant would be at fault in bringing on
20 the difficulty and would not be entitled to an acquittal or
21 not guilty based on self defense.

22 The second element of self defense is that the defendant
23 was actually in imminent danger of death or serious bodily
24 injury, or that the defendant actually believed he was in
25 imminent danger of death or serious bodily injury.

JURY CHARGE

Page 373

1 If the defendant was actually in imminent danger, it must
2 be shown that the circumstances would have warranted a person,
3 of ordinary firmness and courage, to strike the fatal blow to
4 prevent death or serious bodily harm.

5 If the defendant believed he was in imminent danger of
6 death, or serious bodily injury, it must be shown that a
7 reasonably prudent person, of ordinary firmness and courage,
8 would have had the same belief.

9 In deciding whether the defendant actually was, or
10 believed he was in imminent danger of death or serious bodily
11 injury, you should consider all the facts and circumstances
12 surrounding the crime, including the physical condition and
13 characteristics of the defendant and the victim.

14 The defendant does not have to show that he actually was
15 in danger. It is enough that the defendant believed he was in
16 imminent danger and a reasonably prudent person, of ordinary
17 firmness and courage, would have had the same belief.

18 The Defendant has the right to act on appearances even
19 though the Defendant's beliefs may have been mistaken. It is
20 for you to decide whether the defendant's fear or -- of
21 immediate danger or of death or serious bodily injury was
22 reasonable and would have been felt by a ordinary person in
23 the same situation.

24 Threats made by the victim may be considered in
25 determining whether the defendant actually was or believed he

JURY CHARGE

Page 374

1 was in imminent danger. And finally, the defendant must show,
2 or it must be shown, that he had no other probable way to
3 avoid the danger or death or serious bodily injury than to act
4 as he did in this particular case.

5 There has been some evidence about defense of others.
6 Let me tell you what the law is on that regarding self
7 defense.

8 Under the law of self defense, the defendant may take on
9 another's right in the defense of others. The right to
10 intervene to protect another person is subject to the same
11 rights and limitations as the right of self defense.

12 The defendant may take the life of another person who
13 assaults a friend, relative, or bystander if that friend,
14 relative, or bystander would have had the right of self
15 defense.

16 In other words, to show that the person being defended
17 had the right of self defense, it must be first shown that the
18 person being defended and the defendant were without fault in
19 bringing on the difficulty.

20 If the conduct of the person defending or the defendant
21 was the type which was reasonably calculate to and did provoke
22 a deadly assault, the person would be at fault in bringing on
23 the difficulty and would not have the right of self defense.
24 Therefore, the defendant would not have the right to use
25 deadly force in defending that person.

JURY CHARGE

Page 375

1 The defense of another person is excusable if the
2 defendant had reasonable grounds to believe, and in good faith
3 did believe, that the person being defended was in imminent
4 danger of death or serious bodily harm from the victim.

5 In deciding whether the person defending actually was, or
6 that the defendant actually believed the person was in
7 imminent danger of death or serious bodily injury, you're to
8 consider all the facts and circumstances surrounding the
9 crime, including the right -- including the characteristics of
10 the parties.

11 Now, ladies and gentlemen, you will have a verdict form
12 in the jury room. First of all, your verdict must be
13 unanimous. All twelve of you must agree on the verdict.

14 Madam Forelady, it's your responsibility to sort of
15 facilitate the deliberations. And, once you all have reached
16 a decision, then, you sign the verdict form.

17 And here's how you do it: The verdict form is as such,
18 you, first of all, consider the -- whether or not the State
19 has proven, beyond a reasonable doubt, all of the elements of
20 the crime of murder.

21 If you decide that they have not, then, you would --
22 then, you would consider the lesser included offense of
23 voluntary manslaughter and go down to number two. If you
24 decide that the State has proved him guilty, beyond a
25 reasonable doubt, of murder, then, you would check guilty of

JURY CHARGE

Page 376

1 murder and stop.

2 If you decide they have not proved that, then, you would
3 go down and decide whether or not they've proven voluntary
4 manslaughter, and you check either guilty or not guilty.

5 Now, if you find that the defendant acted in self
6 defense, as I've described it to you, then, obviously, your
7 guilty -- your verdict would be not guilty as to both.

8 So, you have to consider those three things; murder, and
9 if you decide that they did not prove murder, beyond a
10 reasonable doubt, then, you would go down to the lessor
11 included offense of voluntary manslaughter.

12 And, then, as to each of those offenses, you would also
13 have to include in that whether or not self defense is
14 applicable in this case. And if it is, then, it would be not
15 guilty on both.

16 Now, I'm going to ask you now to retire to your jury
17 room. Do not, do not, do not start deliberations. I have to
18 make I've included everything and ask the lawyers if I need to
19 give you any further explanation. And that shouldn't take but
20 just a few minutes.

21 After we do that, we have to gather up all of the
22 evidence, and we have to make sure we have all the evidence
23 that's been introduced in the trial. And, once we do that
24 task, we will send it back to the jury room, along with the
25 verdict form, and you can start your deliberations.

MOTIONS & MATTERS

Page 377

1 So, don't start any deliberations until I send everything
2 back and it'll be just a few minutes. So, at this time,
3 please, retire to your jury room, all of you. And, when I
4 send the evidence back, I'll ask my two alternates -- you all
5 put them back in another jury room back there, okay? \fair?
6 Understand? Everybody remain seated. Jury?

7 (The jury exited the courtroom at 11:15 a.m.)

8 THE COURT: All right. Mr. Coler, any exceptions or
9 requests or additions to my charge?

10 MR. COLER: No, Your Honor.

11 THE COURT: Mr. Price?

12 MR. PRICE: We have none, Your Honor.

13 THE COURT: All right. You all look at this verdict
14 form. And I think I've explained it carefully, but I want you
15 all look at it beforehand.

16 (Brief pause while counsel reviews verdict form.)

17 (Off-the-Record Comments)

18 THE COURT: You all get the evidence together. And once
19 you do that, we'll give it to the bailiff.

20 (Off-the-Record Comments)

21 THE COURT: All right. For those folks who would like
22 to leave at this time, feel free to do so, please. Let one
23 side go, and then, the other side. Anybody on the right side
24 -- my right hand side want to leave, you may leave now.

25 (Members of the audience exited the courtroom.)

MOTIONS & MATTERS

Page 378

1 THE COURT: All right. The rest of you may leave if you
2 so choose.

3 (Members of the audience exited the courtroom.)

4 THE COURT: Gentlemen, they will announce the verdict,
5 and I will give everybody time to come back into the
6 courtroom.

7 MR. BEASLEY: Thank you, Your Honor.

8 (Off-the-Record Comments)

9 THE COURT: All right.. Let the record reflect that both
10 counsel have reviewed the verdict forms and approved of them.
11 And I assume you all have reviewed the evidence and everything
12 is good?

13 MR. COLER: Yes, sir.

14 MR. PRICE: Yes, sir.

15 THE COURT: All right. Go back and tell them. And the
16 alternates need to go into a separate room and tell the jury
17 foreman they can commence deliberations.

18 (The jury began deliberating at 11:06 a.m.)

19 (Off-the-Record Comments)

20 (Another trial began while the Gist jury was
21 deliberating.)

22 (The Gist jury had questions.)

23 (All parties were summoned back into the courtroom for
24 the jury's questions.)

25 (Whereupon, Court's Exhibit Number 3 was marked and

MOTIONS & MATTERS

Page 379

1 admitted into evidence without objection.)

2 THE COURT: All right. I have questions from the jury
3 marked as Court's Exhibit 3. Question one, "Is Mr. Gist being
4 tried as an adult; question two, how tall is Terrence Gist?
5 Question three, can we review Erika -- Erika James' written
6 statement? Question four, can we review Tamika Hines' written
7 statement?"

8 Let's go in reverse. As I understand, the statements for
9 Ms. Hines and Ms. James are not in evidence; is that correct?

10 MR. COLER: Correct.

11 MR. PRICE: Correct.

12 THE COURT: And the answer to those are no, they're not
13 in evidence. "Is Mr. Gist being tried as an adult?" I think
14 I can say yes to that. "How tall is Terrence Gist," that
15 is --

16 MR. COLER: That's not -- not in evidence.

17 THE COURT: His height is not -- was obviously not put
18 in evidence.

19 MR. COLER: Not -- not by us, Your Honor.

20 MR. PRICE: It wasn't by us either.

21 THE COURT: You all sit -- sit tight and I let me meet
22 with the jury right quick.

23 (The Court stepped out of the courtroom to address the
24 questions posed by the jury.)

25 THE COURT: All right, Gentlemen, look at my written

MOTIONS & MATTERS

Page 380

1 responses to make sure you all agree.

2 (Brief pause while counsel review Court's responses to
3 the jury's questions.)

4 MR. PRICE: Uh-huh (affirmative).

5 THE COURT: And let the record reflect they both looked
6 at Exhibit -- Court's Exhibit 3 and are in agreement with my
7 responses and hand that back to the jury.

8 (Bailiff retrieves document and takes back to jurors.)

9 THE COURT: You all don't get too far from here, please.

10 MR. COLER: Yes, sir.

11 MR. PRICE: Yes, sir.

12 (The other trial commenced once again with the opening
13 statement by the State being completed.)

14 THE COURT: Mr. Clayton, hold on one second. Let me --
15 I'm trying to do two things at one time.

16 (Brief Pause)

17 THE COURT: Mr. Bailiff, how about asking Mr. Coler and
18 Mr. Price or Mr. Beasley to look here, please.

19 BAILIFF: Yes, sir.

20 (Brief pause while counsel is summoned.)

21 (The Defense in the other trial makes its opening
22 statement.)

23 (Off-the-Record Comments)

24 THE COURT: Gentlemen, let me see you all briefly.

25 (Whereupon, Court's Exhibit Number 4 was marked and

MOTIONS & MATTERS

Page 381

1 admitted into evidence without objection.)

2 (Whereupon, a bench conference was had with all attorneys
3 and court reporter present.)

4 THE COURT: We've got another question from the jury,
5 which I've marked as Court's Exhibit Number 4, simply saying,
6 "Can we have a list of the law criteria outlining and defining
7 murder and manslaughter as read to us by the judge?"

8 What I intend to do is just send them back my charge on
9 murder and manslaughter. Does anybody have any objection to
10 that?

11 MR. COLER: No, sir.

12 MR. PRICE: Would you send them back the State v. King
13 charge too?

14 MR. COLER: They didn't ask for it, Judge.

15 THE COURT: They didn't ask for it.

16 MR. COLER: I object to that.

17 THE COURT: State v. King and State v. Jackson?

18 MR. PRICE: State v. Jackson -- yes, the State v.
19 Jackson charge from State v. King.

20 MR. COLER: Well, Judge, they just asked for the
21 elements, and I think it's ---

22 THE COURT: I'm going to send the elements, and put on
23 the record your objection to that.

24 MR. PRICE: I'm requesting that the Court send back its
25 charge pursuant to State v. King and State v. Jackson, which

MOTIONS & MATTERS

Page 382

1 basically states that, if they have a doubt, between murder
2 and manslaughter, the they owe a duty to vote for the -- in
3 favor of the lessor of manslaughter.

4 THE COURT: Thank you. And what I would like to do,
5 while you're up here, is as soon as she gets it printed, I'm
6 going to give it to the bailiff and attach it to that ---

7 MR. COLER: Yes, sir.

8 THE COURT: --- and send it back. And we'll make that
9 Court's Exhibit 5 and then, send it back.

10 MR. COLER: Yes, sir.

11 THE COURT: Thank you all. And you all stay -- stay
12 available.

13 MR. COLER: Yes, Your Honor.

14 (Whereupon, Court's Exhibit Number 5 was marked and
15 admitted into evidence over objection.)

16 (The other trial commenced once again.)

17 (A verdict was reached at 2:12 p.m.)

18 THE COURT: How about getting me the lawyers in the
19 first case, Barry.

20 MR. BARNETTE: Yes, sir. I'm trying to get Bob now.

21 (Pause while all parties are summoned to the courtroom.)

22 (Off-the-Record Comments)

23 THE COURT: All right, Gentlemen, we have a verdict.
24 For those of you in the audience, I'll tell you once again, or
25 remind you once again, of my rule. I don't know what the

VERDICT

Page 383

1 verdict is; obviously, it's going to be one of two things, and
2 somebody is going to be -- anyway, I don't want any display of
3 any emotion whatsoever, notwithstanding what the verdict is.
4 If you cannot control yourselves, please, leave now.

5 If there are any outbursts, you will be subject to be
6 held in contempt of court and incarcerated. So, if you cannot
7 control yourself, I ask that you leave now.

8 Once, again, I commend everyone on how they've behaved to
9 date. I know we have some new people in here. So, if you
10 can't control yourself, I have officers all over the
11 courtroom, and you will be escorted out and dealt with
12 accordingly.

13 (The jury entered the courtroom at 2:22 p.m.)

14 THE COURT: Madam Forelady, have you all reached a
15 verdict?

16 MS. BROWN: Yes, sir, we have.

17 THE COURT: Would you hand it to the bailiff, please,
18 ma'am?

19 MS. BROWN: Yes, sir.

20 (Verdict form handed to the bailiff, who, in turn, handed
21 it up to the Court.)

22 THE COURT: Can I have the Defendant stand, please.

23 (Mr. Gist stood as requested.)

24 (Verdict form handed to the deputy clerk for publishing.)

25 MADAM CLERK: "The State of South Carolina, County of

VERDICT

Page 384

1 Spartanburg, State of South Carolina v. Terrence Gist in
2 indictment number 2005-GS-42-4263, we, the jury, find the
3 defendant in this case, Terrence Gist, acted in self defense
4 -- guilty of murder. Signed foreperson, Angela Brown, March
5 fifteen (15), two thousand, six (2006)."

6 Ladies and gentlemen of the jury, is this your verdict
7 and still your verdict? If so, please, answer yes or no?

8 (Responses of "yes," heard.)

9 MADAM CLERK: Thank you.

10 THE COURT: Thank you. You may be seated. Anything
11 from the jury panel before I dismiss them?

12 MR. PRICE: I would ask that the jury be polled
13 individually, Your Honor.

14 THE COURT: All right. What that simply means is the
15 clerk is going to call your name and ask you, "Is that your
16 verdict, and is it still your verdict?" And, if that is
17 correct, you say, I do; and if it's not correct, say do you
18 not. When your name is called, if you'll answer the question.

19 MADAM CLERK: Bennie Hood?

20 THE COURT: Is that your verdict and is it still your
21 verdict?

22 MR. HOOD: Yes, sir.

23 THE COURT: Thank you.

24 MADAM CLERK: Dianne Lanford?

25 THE COURT: Is that your verdict and is it still your

VERDICT

Page 385

1 verdict?

2 MS. LANFORD: Yes, sir.

3 MADAM CLERK: Bobby Rainwater?

4 THE COURT: Is that your verdict and is it still your
5 verdict?

6 MR. RAINWATER: Yes, sir.

7 MADAM CLERK: Sandra Skinner?

8 THE COURT: Is that your verdict and is it still your
9 verdict?

10 MS. SKINNER: Yes, sir.

11 THE COURT: Thank you.

12 MADAM CLERK: Angela Brown?

13 THE COURT: Is that your verdict and still your verdict?

14 MS. BROWN: Yes, sir.

15 THE COURT: Thank you.

16 MADAM CLERK: Serena Mathis?

17 THE COURT: Is that your verdict and is it still your
18 verdict?

19 MS. MATHIS: Yes, sir.

20 THE COURT: Thank you, ma'am.

21 MADAM CLERK: Tanya Cagle?

22 THE COURT: Is that your verdict and is it still your
23 verdict, ma'am?

24 MS. CAGLE: Yes.

25 THE COURT: Thank you.

VERDICT

Page 386

1 MADAM CLERK: Wendy Lynn?

2 THE COURT: Is that your verdict and is it still your
3 verdict, ma'am?

4 MS. LYNN: Yes, sir.

5 THE COURT: Thank you.

6 MADAM CLERK: Ida Keller?

7 THE COURT: Is that your verdict and is it still your
8 verdict, ma'am?

9 MS. KELLER: Yes, sir.

10 MADAM CLERK: Jenny Toney?

11 THE COURT: Is that your verdict and is it still your
12 verdict, ma'am?

13 MS. TONEY: Yes.

14 MADAM CLERK: Deborah Sherbert?

15 THE COURT: Is that your verdict and is it still your
16 verdict, ma'am?

17 MS. SHERBERT: Yes, sir.

18 THE COURT: Thank you.

19 MADAM CLERK: And Bobbie Arthur?

20 THE COURT: Is that your verdict and is it still your
21 verdict ma'am?

22 MS. ARTHUR: Yes, sir.

23 THE COURT: Thank you. Anything else?

24 MR. PRICE: Nothing of this jury, Your Honor.

25 THE COURT: Thank you. All right. Madam Forelady,

VERDICT

Page 387

1 ladies and gentlemen, I will dismiss you at this time. Call
2 back after 6:00. If you all have any questions of me, if you
3 do, I'll be glad to go in chambers answer them or go into your
4 jury room and answer them. And, if not, I will allow you to
5 leave now, if you'll take them back out to the jury room.

6 MR. PRICE: Your Honor, before the jury is dismissed,
7 may I look at that verdict form?

8 THE COURT: Madam Forelady, I need you to sign the
9 verdict form, please.

10 (Brief pause while Ms. Brown signs the verdict form.)

11 THE COURT: And date it, please.

12 (Document handed to Mr. Price to review.)

13 THE COURT: And, Madam Forelady -- Forelady, and ladies
14 and gentlemen, you all are excused now. Everybody else remain
15 seated, please, and can go with the bailiff.

16 (The jury exited the courtroom at 2:30 p.m.)

17 THE COURT: All right. It's 2:30 and I'm going to not
18 sentence to about five o'clock (5:00). I'm going to continue
19 to go with this trial, and that gives you all an ample
20 opportunity to get up whoever you want to speak at sentencing
21 and whatever you want to put up. So, at this time, we
22 will -- maybe make it -- let's say 4:30.

23 MR. PRICE: All right, sir.

24 THE COURT: All right. At 4:30 we'll do the sentencing,
25 and that gives you an opportunity to talk whoever you need to

SENTENCING

Page 388

1 talk to, as well as you. So, at this time, those of you who
2 would like to like leave, I'd like for this side (indicating)
3 to go first, the victim's family.

4 (Members of the audience exit the courtroom as requested.)

5 THE COURT: And you can make your motions at 4:30.

6 (Off-the-Record Comments)

7 THE COURT: All right. These family members may leave
8 and come back at 4:30 if you want to.

9 (Defendant's family members exit the courtroom as
10 requested.)

11 THE COURT: All right, Gentlemen, I'll see you all at
12 4:30.

13 MR. PRICE: Post-trial motions at 4:30?

14 THE COURT: Yes, sir.

15 (Off-the-Record Comments)

16 (Whereupon, the other trial resumed until 4:35 p.m., at
17 which time sentencing began.)

18 (Off-the-Record Comments)

19 (Counsel, Mr. Gist and family members and friends
20 returned to the courtroom for sentencing)

21 THE COURT: All right. I'd be glad to entertain any
22 motions, Mr. Price.

23 MR. PRICE: Your Honor, at this time, I would move for a
24 new trial on two basis. Number one, the grounds that I,
25 previously cited or asked for as far as a directed verdict is
PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

SENTENCING

Page 389

1 concerned. Number two, I would further move for a new trial
2 on the ground that the -- when the jury came out and asked a
3 question concerning the -- or requested the elements of both
4 murder and manslaughter, and it was obvious that they were
5 struggling with a conviction or whatever on those two charges,
6 we asked the Court to also submit the State v. Jackson
7 (phonetic) State v. King charge with the elements. The Court
8 did not do so, and we move for a new trial on that basis.

9 THE COURT: All right. Well, obviously, I think there
10 was ample evidence in the record to support the jury's
11 verdict. And I respectfully deny your motion on the requested
12 addition that the jury asked for in their note, Number 3 -- or
13 4.

14 They simply asked me to give them the elements of murder
15 and voluntary manslaughter, which I did. And I had already
16 charged your requested language in my general charge. And I
17 don't think it was necessary to re-submit that to them,
18 particularly not with the language they gave us in their
19 question, so, respectfully denied.

20 MR. PRICE: That's our request, Your Honor.

21 THE COURT: Mr. Coler?

22 MR. COLER: Yes, sir, Your Honor.

23 THE COURT: Okay. Bring the defendant forward, please.

24 (Brief pause while Mr. Price, Mr. Beasley, and Mr. Gist
25 step forward for sentencing.)

SENTENCING

Page 390

1 THE COURT: All right. Let me have the victim's
2 representatives over here. And how many do I have, one, two,
3 three, four?

4 (Victim's family and friends step forward.)

5 THE COURT: All right. I tell you, Mr. Price, why don't
6 you just -- until we get ready to hear from you all, then,
7 I'll let you bring ---

8 MR. PRICE: That's fine.

9 THE COURT: --- the Defendant's mother to stand up here
10 with him.

11 MR. PRICE: We would have the mother and the sister ---

12 THE COURT: Well, if she wants to come on now, or we can
13 wait until we have -- just mom right now.

14 (Mr. Gist's mother steps forward and stands with him.)

15 (Off-the-Record Comments)

16 THE COURT: I have -- as well as everyone in here --
17 heard all the evidence, and it's a tragic situation. We have
18 in essence one life taken away and we're basically destroying
19 another teenager's life.

20 And not only that, you can look around and see what
21 you've done to this family over here (indicating), and turn to
22 your right, and your momma loves you more than anybody in the
23 world and you've just absolutely broke her heart.

24 It's not a good situation for you, for the victim's
25 family, or for our community. And I've watched you throughout

SENTENCING

Page 391

1 this trial, and you seem to be an intelligent guy, young man,
2 and, you know, right next door we're trying two kids who were
3 sixteen years old when they allegedly killed somebody. And
4 you were sixteen years old when you killed this man.

5 And I don't know when you young people are going to -- I
6 don't know who you are using for role models, whether it's the
7 t.v. shows or gangster shows or gangster music or whatever.
8 But you all are ruining -- ruining a generation. And I can
9 look at your mom and I can guarantee you weren't raised like
10 this.

11 And, you know, it might be cool and hip and all that to
12 carry on and act like this, but this is the result we get.
13 And you're going to spend a long time in jail.

14 And the other young man is dead and gone. And I hope the
15 community is going to wake up and I hope some of these parents
16 are going to wake up and snatch you all up by the seat of your
17 pants and smack some sense into some of you.

18 It's crazy, day in and day out having to deal with
19 children with 357 Magnums killing other -- well, he wasn't a
20 child, but he wasn't far from it -- dealing with children.
21 That's all the preaching I'm going to do.

22 I just -- it just breaks my heart to sit up here day in
23 and day out and seeing young lives destroyed. But you could
24 have been a productive citizen in society.

25 Obviously, the Lord blessed you with some intelligence.

SENTENCING

Page 392

1 I listened to you in that interview, and I've watched you
2 interact with your lawyers, and you could have used your
3 intelligence for a lot better reasons than trying to be some
4 hip hop gangster for lack of a better term.

5 Mr. Solicitor, I'll be glad to hear from you.

6 MR. COLER: Thank you, Your Honor. As you've said,
7 you've heard the facts of this case, so, I -- I don't have
8 anything to add to the Court, but I do have several people
9 here that would like to address the Court. Most importantly
10 is the victim's mom, Sudie Tennant (phonetic) and some of her
11 family and friends.

12 Also with me, representing the police department, the
13 city police that investigated this case, as you saw, Detective
14 Guthro was here throughout the case. He was one of the lead
15 detectives, and the director of Public Safety, Tony Fisher
16 (phonetic).

17 And his -- his agency is dealing with the problem that
18 you just spoke to the defendant about day in and day out. And
19 he would like to just speak to the Court briefly about that,
20 along with the public safety department officer, Steve Kurst
21 (phonetic), and I'd ask the Court to listen to the victim's
22 family and friends.

23 THE COURT: All right.

24 MR. FISHER: Your Honor, on behalf of our community, I
25 just want to say to you that, as you stated so eloquently, day

SENTENCING

Page 393

1 in and day out, we're seeing young people with guns. We're
2 seeing young people raised with no consequences, who don't
3 know, and they come into Court and they seem to have a
4 different version of the realities of what they've been
5 involved in over long periods of time.

6 This community particularly has been gripped with some
7 homiocides that absolutely make no sense. I think that
8 certainly this is an opportunity to show our community that
9 the criminal justice system do, in fact, work and those who
10 are held responsible for tragic events like this that there
11 are, in fact, consequences.

12 And I speak not only for the Public Safety officers who
13 are taking guns off folks, but for the community we try to
14 serve and to make our community safe.

15 THE COURT: And I would challenge you, sir, and I
16 -- obviously, you could be a substantial role model for a lot
17 of these young men, a man in your position and the way you
18 handle yourself. If we can just get some positive role models
19 in their lives as opposed to this tough guy mentality so to
20 speak.

21 So, I challenge you, to get down to these projects, and
22 these communities and offer yourself as a role model. I know
23 your plate is full, and I know you have Spartanburg's interest
24 at heart. But, if you can take some of these young people and
25 try to give them some -- some statute to look up to, that life

SENTENCING

Page 394

1 can be great if you just follow the rules; life can be fun.

2 Look at you; look at your position.

3 But you can't do it the way they're acting now. So, I
4 challenge you to, please, serve as a role model to these young
5 -- young men in the community.

6 OFFICER GUTHRO: I would just take on your sentiment and
7 Director Fisher's. It's a heartbreaking situation that we're
8 seeing more and more often.

9 THE COURT: Well we've got three right now. We've got
10 two in here (indicating) and one in here.

11 OFFICER GUTHRO: Yes, sir. And I guess that's all I
12 would have to say on the situation. It's becoming more and
13 more prevalent, and very oftentimes, it seems to be over
14 absolutely nothing.

15 THE COURT: Well, I don't know what this one was over.
16 I really, really don't, other than trying to be tough, trying
17 to be -- I don't know what it is. It's not trying to tough,
18 it's just trying to -- I don't know what it's trying to be.
19 It's senseless. It's beyond describing. Mom?

20 MS. TENNANT: I just wanted to say my son, Robert
21 Tennant, he was a wonderful person. And he -- he treat
22 everybody the same; friends, strangers, anybody. And
23 strangers he ain't never seen before, he treated them the same
24 way. So, he didn't deserve what he got.

25 THE COURT: No, ma'am, he didn't deserve that. You're

SENTENCING

Page 395

1 right. And my heart goes out to you and your family, and I
2 hope --

3 MS. SIMS: Thank you, sir.

4 THE COURT: And I can't imagine. I've got two boys; I
5 can't imagine losing one of them. Yes, ma'am? You are?

6 MS. SIMS: Rose SIMS (phonetic). Robert was my brother.
7 I'm the oldest out of my brothers and sisters. And, we would
8 certainly would like to thank all of you, you know, because I
9 know it is hard for young kids today, you know, in this world.

10 THE COURT: Well, is it hard? Why is it hard?

11 MS. SIMS: I have -- I have five kids. I have my son
12 here today, and he's 21. I have twins 21 years old, and --
13 it's just, you know, the parents have got to -- you know,
14 they've got to be there for their kids no matter what because
15 I know it's hard, and I'm -- I'm a single parent.

16 And I raised them. And when they wanted to go out and do
17 stuff and get involved with the wrong people, you know, I went
18 looking for them because, you know, if -- if they feel like
19 the parents don't care, you know, who -- who is going to care
20 for them? Who is going to be there for them if we're not
21 there to care for them?

22 THE COURT: Well, I challenge you and everybody in the
23 community to be there for their children. And that's a lot
24 easier said than done.

25 MS. SIMS: Yes, sir, it is.

SENTENCING

Page 396

1 THE COURT: And I know how boys can be, but you all got
2 to show them that there's a better way than end up like this
3 gentlemen over here (indicating) as opposed to ending up in a
4 grave or in Columbia in the Department of Corrections. He's
5 not going to have any fun for the next long time.

6 MS. SIMS: I know for myself, my brother, he was a loving
7 person. And, if anybody ever got to know him -- you know, he
8 don't care who you was, he would show them. He would show
9 love to you no matter who you was. That was just the type he
10 was.

11 And if Terrence had gotten to know him, just an inch,
12 there ain't no way he would have killed him, there ain't no
13 way in this world. And I feel like I represent and put my
14 life it's so hard to live in this world, you know, without him
15 because you don't --

16 THE COURT: Well, do me this favor. How about let's
17 make something good out of this bad situation. And I
18 challenge you and your five children to be there for them and
19 show them a better way than living in the streets and getting
20 in this type of situation. Do that for me, okay?

21 MS. SIMS: I will.

22 THE COURT: And that will make your brother's death have
23 some meaning.

24 MS. SIMS: Yes, sir.

25 THE COURT: Yes, sir?

SENTENCING

Page 397

1 MR. VICTOR: My name is Akia Victor (phonetic), and
2 Robert Tennant was my father figure or whatever, and I just
3 think they was wrong because he took a big of my life and also
4 my family's life. And it's just very hard for me, you know
5 what I'm saying, a bad time or whatever not having him around,
6 you know what I saying, like having him to talk to him and
7 stuff we used to do together. And it's just -- it's just been
8 hard on me and my family.

9 THE COURT: Well, do me a favor, now that you need a new
10 father type figure, this man right over here, I bet you could
11 call him and he'll help you out with anything you need. Okay?
12 Yes, ma'am?

13 MS. MARLOW: Your Honor, my name is Melissa Marlow
14 (phonetic), and Robert Tennant was employed by my family's
15 company, Marlow Trucking Company. And I had the privilege of
16 working with him for six years, and he was a great guy. He
17 was dependable, sincere.

18 He did not meet a stranger. He would help anybody, and
19 one of the things that I wanted to share with you, when we had
20 to clean his truck out, after his death, and take his personal
21 items out of his truck, most drivers, they carry TVs and VCRs,
22 DVDs, and Robert had a road atlas and a Bible in his truck.
23 And I think that is representative of the type of life that he
24 tried to lead.

25 THE COURT: It's a tragedy. Thank each and every one of

SENTENCING

Page 398

1 you. Mr. Price?

2 MR. PRICE: Yes, sir. Mom, will you address the Court,
3 please?

4 MS. GIST: Yes.

5 THE COURT: Yes, ma'am?

6 MS. GIST: First of all, I would like to say -

7 MR. PRICE: And her name is Anika Gist (phonetic).

8 THE COURT: Ms. Gist?

9 MS. GIST: Well, first of all, I would like to say to the
10 Tennant family I'm very sorry for what took place on that
11 night. And I'm sure that my son did not mean to kill Robert.

12 He does not have a heart like that. My son would give
13 you the shirt off of his back. And he was raised in the
14 church.

15 It was just something that teenagers were there that
16 night and one thing led to another, and he just happened to be
17 caught up in it. It was brought to him. All those that was
18 in the car that night, Terrence was not in that car. He was
19 at Hub City.

20 THE COURT: That's what's so sad about this whole
21 situation.

22 MS. GIST: And all of it come to him and just him
23 thinking, you know, these are my home boys. And I tell him, I
24 said, "You don't have no home boys."

25 THE COURT: Well, see, that's the whole thing, this home

SENTENCING

Page 399

1 boy deal.

2 MS. GIST: But I love my son.

3 THE COURT: I know you do.

4 MS. GIST: I love my son unconditionally.

5 THE COURT: You love him more than anybody in this
6 world.

7 MS. GIST: And I know what happened that night was wrong,
8 and I don't try to uphold him in it. But I just wanted you
9 all to understand that he is not a murderer just to murder
10 somebody. It was just something that happened that night. He
11 did not shoot that gun intending to kill anyone.

12 THE COURT: Well, ma'am, I can look at you and tell
13 number one, that you love him as much as any momma can love a
14 son. It's a different kind of love.

15 And I can look at you and probably tell that he was
16 raised with values that you -- that all of us would admire.
17 But I don't know what it is, when they get outside of the
18 house, instead of settling differences by talking or even
19 fighting, why do they have to inject guns into this thing and
20 instead of having a bloody nose or a black eye or a broke arm,
21 we've got a kid in the grave dead, and your son pulling a 357
22 Magnum gun and shooting at him. It's a tragedy all the way
23 around.

24 And we've -- we've got to hope that mother's love and
25 mother's teachings and things that you try to instill in them,

SENTENCING

Page 400

1 they can take and carry that outside with him instead of
2 trying to act -- or follow role models that are totally
3 inappropriate. And my heart goes out to you as well, and
4 thank you for standing beside your son. I've watched you all
5 week. Thank you. Is this your sister?

6 MS. GIST: Yes.

7 THE COURT: Yes, ma'am?

8 UNIDENTIFIED FEMALE: Yes, first give him up to God, who
9 is a giver of all life. And you all see Terrence as one
10 person; we see Terrence as someone else. My heart does go out
11 to your family. I know you have lost, and we are losing also,
12 especially with my boys.

13 My boys see Terrence as a role model. Terrence took time
14 with them. He sat down and read with them, and he played ball
15 with them. I mean, when they come home from school, the first
16 thing they ask for is Terrence. "You said we're going to the
17 investigator's, is Terrence going?" (Phonetic) It's all about
18 Terrence.

19 We are losing a great deal also. They are losing a role
20 model. What Terrence did, they didn't see that. We didn't
21 see it. I didn't see it. And I was there with Terrence when
22 Terrence was born, and we are losing a great deal also.

23 THE COURT: Well, why does he act like such a great guy
24 with your children, reading to them and going out and doing
25 things, and then, he gets out in the streets with a simple,

SENTENCING

Page 401

1 inflamed passion thing, and then, pull a gun? How do you
2 explain that?

3 UNIDENTIFIED FEMALE: Well, he talked to them about
4 violence, and violence is not the right way, not the correct
5 way. And they see violence on t.v. and they say what they
6 want to be, and he talked to them and teaches them a right way
7 of life. And, I mean, he is a great role model to them.

8 That's my -- if I haven't been here, there's no way no
9 one could have convinced me that Terrence did it because
10 Terrence is an entirely different person; that is not
11 Terrence.

12 Terrence have a heart of gold. He's very patient. He's
13 a good role model, and he's saying they want a role model,
14 Terrence at home, Terrence is a great role model. My sons is
15 really losing him to sit down to have to explain to them, the
16 little boys in the neighborhood, that the one that they look
17 up to, the one that they come home to, would not be able to be
18 there for them any more.

19 THE COURT: Will you, please, tell them why he's not
20 going to be there?

21 UNIDENTIFIED FEMALE: Of course, I will.

22 THE COURT: Will you tell them that he chose -- instead
23 of acting like he did at home, he chose to act like somebody
24 entirely different and should not be a role model. He chose
25 to use violence and ended up killing somebody, and now, he's

SENTENCING

Page 402

1 going to be gone a long time.

2 UNIDENTIFIED FEMALE: And like -

3 THE COURT: Please, tell them that.

4 UNIDENTIFIED FEMALE: --- we don't know what happened
5 that night, and we -- we don't understand. We wasn't there,
6 and we don't know what happened. We don't know what took
7 place that night.

8 But, of course, I will explain to them because it is
9 better to know what went on and why he will not be there any
10 more for them. But, I mean, he is -- he -- you all portray
11 him as someone ---

12 THE COURT: No, ma'am, we're not portraying him -

13 UNIDENTIFIED FEMALE: I know him as who he really is, and
14 he really is a great role model. He -- he is a very good
15 person.

16 THE COURT: And I don't doubt that he's a good person.
17 He just was a good person who exercised horrible judgement on
18 one evening and he's going to be punished for it right now.
19 Thank you for coming by. Thank you.

20 MR. PRICE: Terrence?

21 THE DEFENDANT: Yes, I just want to apologize to the
22 family. I know Robert was a good man, and I took an innocent
23 life. Well, it really wasn't innocent, but I still caused it
24 and I want to apologize for it, and I'll ask you all for
25 forgiveness. I mean, because he -- I can't really say what it

SENTENCING

Page 403

1 was.

2 And I pray that one day -- I hope he's in a better
3 place, and that we'll meet up one day and shake hands and we
4 can be friends.

5 THE COURT: Thank you. Mr. Price?

6 MR. PRICE: Your Honor, when I addressed the jury
7 Monday, or whenever it was, I complimented the solicitor on
8 the discovery. And the reason I'm saying that now is that the
9 discovery in this case was mixed as far as what happened that
10 night, different eye witnesses. And the reason I'm saying
11 that is that this was a good faith defense. This was not
12 something that ---

13 THE COURT: I agree. I agree.

14 MR. PRICE: Now, of course, the jury has rejected that,
15 and I respect this jury, and I respect this Court, but I
16 wanted to let the Court know this: Ms. Tennant and the Tennant
17 family, I've never had a chance to talk to you, and I know
18 I've said some things that probably upset you, but I want you
19 to understand that, two things, I'm just doing my job here. I
20 wish all of you God's peace, and I hope that one day you'll
21 understand.

22 Judge, I have represented this young man for an year now.
23 I've never seen him or talked with him when he was not
24 remorseful about this. He has always accepted responsibility
25 to the extent that I should not have been there; I should not

SENTENCING

Page 404

1 have been there with a gun. This was stupid. And I firmly
2 believe that.

3 I would ask you to take into account that he was sixteen
4 and two thirds years when this happened. And I would also
5 take -- ask you to take into account that he had no criminal
6 record.

7 This young man made a major mistake, as you said, and --
8 and it is obvious. There's nothing we can do about that now.
9 I would just ask you to have mercy.

10 And I know that, to a large extent, your hands are tied,
11 but if you were to see fit to give him a -- a thirty-year
12 sentence, that's thirty --thirty years day per day, day after
13 day after day, no eighty-five (85) percent, none of that. And
14 I would ask you to show mercy on this young man.

15 THE COURT: Anything, Ryan?

16 MR. BEASLEY: No, sir, Your Honor. Mr. Price covered
17 it.

18 SENTENCE

19 THE COURT: Mr. Gist, you know the law in South
20 Carolina, for someone who has been convicted of murder, the
21 sentence range is thirty (30) years to life in prison without
22 parole. You understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: So, my choice is somewhere in a range of
25 thirty (30) years to the balance of your natural life.

SENTENCING

Page 405

1 (Brief Pause)

2 THE COURT: And it certainly is not part of the job that
3 I relish by sending young people to jail for anywhere from
4 thirty (30) years or the rest of their life. And you're
5 seventeen years old, but I have to send a message to the
6 community that, if they're going to go to Hub City or anywhere
7 else, and act like you all acted on this night to settle your
8 differences with 357 Magnums, we're just not going to have you
9 in the community until you grow up.

10 So, for all of the people in this community, if they want
11 to resolve their differences such as you did yours, they can
12 just go down to Columbia for a long, long, long time.

13 But, by the same token, I am going to take into
14 consideration your age and hopefully one day something
15 positive is going to come out of this. So, it's the sentence
16 of the Court, sir, that you be committed to the State
17 Department of Corrections for a period of thirty (30) years.

18 (Ms. Gist becomes emotional.)

19 THE COURT: Stand at ease. Take him out. Everybody
20 else remain seated, please.

21 (Whereupon, the proceeding concluded at 5:04 p.m.)

22

23

24

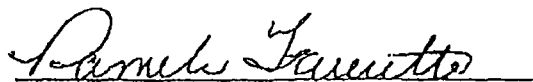
25

REPORTER'S CERTIFICATE

I, the undersigned PAMELA FAUCETTE, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 405, were transcribed by me and represent a complete and accurate transcription of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

July 5, 2006



Pamela Faucette
Official Court Reporter
Seventh Judicial Circuit

WITNESSES
SENTENCE MADE
P. Brewster
REPORT ENDED
Public Safety Dept.
INDEXED
CHECKED WARRANTS
CHECKED SIGNATURE
ASSESSMENT AND
FINE CARD MADE
TRAFFIC VIOLATIONS CODE

Computer

Computer

ARREST WARRANT NUMBER

H781992

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 9/29/05

VERDICT

Guilty - Murder

Angel Brown

3-15-06

Foreperson of Petit Jury

Date:

DOCKET NO.

05-GS-42-4263

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

OCT 03 2005

TERM

THE STATE

v

Terrance Gist

Indictment for

MURDER

SC Code 16-03-0010, 0020

CDR Code 116

Class FEL-EXM

FILED
CLERK OF COURT
SPARTANBURG, SC
2005 OCT -5 PM 12:48
MARC KITCHENS

A CERTIFIED COPY
Marc Kitchens
CLERK OF COURT
SPARTANBURG COUNTY
BY [Signature]
DATED 6-13-06

487

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

SEP 29 2005

At a Court of General Sessions, convened on _____, the
Grand Jurors of Spartanburg County present upon their oath:

MURDER

That Terrance Gist, did in Spartanburg County on or about October 3, 2004, feloniously, willfully, and with malice aforethought, kill one Robert Lee Tennant by shooting him with a gun, and that the victim died as a proximate result thereof, all in violation of §16-3-0010, 0020, *The South Carolina Code of Laws*, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

Computer

STATE OF SOUTH CAROLINA

COUNTY OF Spartanburg
STATE MS.

AKA:

Race: W. Sex: M Age: 18DOB: #:Address: TCity, State, Zip Spartanburg SCDL# SID#

IN THE COURT OF GENERAL SESSIONS

05
AW#: H78P92INDICTMENT/CASE#: 4263Date of Offense: 10/3/04S.C. Code §: 16-3-10CDR Code #: 0 1 1 1 1 6☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: MURDERin violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0 1 1 1 1 6☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Paul A. Cih

Solicitor

Defendant Terrance GistAttorney for Defendant [Signature]

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to 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, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

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	\$ <u>110.00</u>
\$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	\$ <u>25.00</u>
\$33.7, 1B TP (Drug Court Surcharge)	\$100	\$
\$50-21-114(BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/lea	\$
3% to County (if paid in installments)	\$	\$ <u>3.75</u>
TOTAL	\$	\$ <u>128.75</u>

Kimberly McKinnon, DC
Clerk of Court/ Deputy Clerk
Court Reporter: Ram Jauette

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.
PRESIDING JUDGE MP EarlyJudge Code: 0136Sentence Date: March 15, 2006

FORM 5

STATE OF SOUTH CAROLINA

County of SpartanburgTerrance GIST, # 314379

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2009-CP-42

D381e

APPLICATION FOR

POST-CONVICTION RELIEF

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 South Carolina Department of Corrections [Lee Correctional Institution]; 990 Wiscacky Highway; Bishopville, South Carolina 29010.
2. Name and location of Court which imposed sentence Spartanburg County General Sessions Court; Post Office Box 3483; Spartanburg, South Carolina 29304-3483.
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2005-65-42-4263 / Murder
 - (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully
- (a) See attachment.
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attachment.
- (b) _____
- (c) _____
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-convictions relief? no
- (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. _____
- 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. _____

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:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) 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) *Ineffective Assistance of Counsel and must present in a PCR application.*
 (b) _____
 (c) _____

17. 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 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. *Mr. James H. (Chip) Price, Esquire; 644 E. Washington Street; Greenville, South Carolina 29601.*
 ii. *Mr. Ryan Beasley, Esquire; 644 E. Washington Street; Greenville, South Carolina 29601.*
 iii. *Mr. Joseph L. Savitz, III, Chief Attorney; S.C. Comm. on Indigent Defense/ Div. of Appellate Defense; P.O. Box 11589; Columbia, S.C. 29211-1589*
 (b) the proceedings at which each such attorney represented you:
 i. *arraignment, plea of not guilty and, trial and sentencing.*
 ii. *arraignment, plea of not guilty and, trial and sentencing.*
 iii. *direct appeal.*

19 State clearly the relief you seek in filing this application

Vacate conviction and sentence.

Reverse and Remand for a new trial.

20 Are you now under sentence from any other court that you have not challenged?

No.

STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

I, Terrance Gist, #314379, 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.

Terrance Gist

SWORN to and subscribed before me this 16
day of Jan, 2012

D. Bruce Simon (L.S.)
Notary Public

My Commission Expires: 5/16/15

2012 AUG 21 09:09

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Terrance Gist, #314379, 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 of 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 said proceeding or give
security thereof.

Terrance Gist
Applicant

SWORN or affirmed to and subscribed before me this
16 day of Jan, 2012
Alfred J. Simon
Notary Public

My Commission Expires: 5/16/12

2012 JAN 22 PM 1:53

STATE OF SOUTH CAROLINA)
COUNTY OF Spartanburg)

IN THE COURT OF COMMON PLEAS
FOR THE 7th JUDICIAL CIRCUIT

TERRANCE GIST, #314377
Applicant,

v.

STATE of South Carolina
Respondent.

ATTACHMENT TO APPLICATION
FOR
POST-CONVICTION RELIEF

2012 AUG 23 PM 1:53

NOW COMES, the above-Referenced Applicant, to state concisely the grounds on which applicant base his allegation that are being held in custody unlawfully set out in question ten (10); and, state concisely and in the same order the facts which support each of the grounds set out in question eleven (11).

I.

WHETHER TRIAL COUNSEL INEFFECTIVE IN ASSISTANCE FOR FAILING TO REQUEST THE JURY'S VERDICT BE CLARIFIED WITH RESPECT TO THE FINDING OF THE MURDER CONVICTION

Applicant's charge arose out of the following facts. The victim display a handgun and another man discharged his handgun causing the applicant to pull out his handgun and fire only one shot in self-defense. Tr. p. 167, lines 6-8, 13-16; Tr. p. 171, line 7 - tr. p. 172, line 6; Tr. p. 176, lines 4-7; Tr. p. 205, line 18 - tr. p. 206, line 14; Tr. p. 207, lines 2-4; Tr. p. 220, line 20 - tr. p. 221, line 7; Tr. p. 222, line 25 - tr. p. 223, line 10. See also, Tr. p. 269, line 18 - tr. p. 270, line 16 and Tr. p. 293, line 18 - tr. p. 294, line 18. The applicant thought that he had shot the victim in the arm, when in fact, it were Jon Petty that got shot in the left arm. Tr. p. 79, line 21 - tr. p. 82, line 4; Tr. p. 92, line 1 - tr. p. 93, line 25; Tr. p. 207, line 20 - tr. p. 208, line 5. No handgun was recovered in this case and was not determined by SLED exactly the kind of bullet taken from the body of the victim. Tr. p. 121, lines 16-23; Tr. p. 251, line 2 - tr. p. 252, line 10; Tr. p. 258, lines 11-18. More likely, a .38 special bullet and not a .357 magnum bullet, that the type of handgun the applicant had in his possession. Tr. p. 88, line 16-25; Tr. p. 115, line 20 - tr. p. 116, line 5; Tr. p. 116, line 15 - tr. p. 118, line 24; Tr. p. 119, line 17 - tr. p. 120, line 6; Tr. p. 252, lines 11-24.

The first day of the trial after motions and matters, the trial judge inquired about the type of verdict forms:

... Also, Mr. Beasley (co-counsel for Gist) and Mr. Coler (assistant prosecutor), I will need verdict forms. ... Mr. Beasley, my clerk has got some done, so, look at them and see what. ... (Counsel Review documents) and (Off-the-Record Comments). Tr. p. 126, lines 7-8, 10-13.

During the jury charge, the trial court charged the jury (excerpt):

--- The defendant has raised the defense of self defense. Now, self defense is a complete defense and, if it is established, you must find the defendant not guilty. The State has the burden of disproving self defense by proof beyond a reasonable doubt. If you have a reasonable doubt of the defendant's guilt, after considering all of the evidence, including the evidence of self defense, then, you must find the defendant not guilty. On the other hand, if you have no reasonable doubt of the defendant's guilt, after considering all of the evidence, including the evidence of self defense, then, you obviously must find the defendant guilty. Tr.p. 372, lines 3-14.

The trial court subsequently charged the jury regarding the forms of the verdict:

Now, ladies and gentleman, you will have a verdict form in the jury room. First of all, your verdict must be unanimous. All twelve of you must agree on the verdict. Madam Forelady, it's your responsibility to sort of facilitate the deliberations. And, once you all have reached a decision, then, you sign the verdict form. And here's how you do it: The verdict form is as such, you, first of all, consider the -- whether or not the State has proven, beyond a reasonable doubt, all of the elements of the crime of murder. If you decide that they have not, then, you would -- then, you would consider the lesser included offense of voluntary manslaughter and go down to number two. If you decide that the State has proved him guilty, beyond a reasonable doubt, of murder, then, you would check guilty of murder and stop. If you decide they have not proved that, then, you would go down and decide whether or not they've proven voluntary manslaughter, and you check either guilty or not guilty.

Now, if you find that the defendant acted in self defense, as I've described it to you, then, obviously, your guilty -- your verdict would be not guilty as to both. So, you have to consider those three things; murder, and if you decide that they did not prove murder, beyond a reasonable doubt, then, you would go down to the lesser included offense of voluntary manslaughter. And, then, as to each of those offenses, you would also have to include in that whether or not self defense is applicable in this case. And if it is, then, it would be not guilty on both. Tr.p. 375, line 11 - Tr.p. 376, line 15. Also, the verdict forms was reviewed before sent to the jury to began deliberating. Tr.p. 377, lines 13-17; Tr.p. 378, lines 9-14.

The forelady of the jury handed the verdict form to the bailiff, who, in turn, handed it up to the Court. Then the Court handed the verdict form to the deputy clerk for publishing and the verdict of the jury on Murder was:

"The State of South Carolina, County of Spartanburg, State of South Carolina v. Terrance Gist in indictment number 2005-GS-42-4263, we, the jury, find the defendant in this case, Terrance Gist, acted in self defense -- guilty of murder. Signed foreperson, Angela Brown, March fifteen (15), two thousand, six (2006)." Tr.p. 383, lines 14-25 and Tr.p. 384, lines 1-5. Trial counsel's did request that the jury be polled individually, Tr.p. 384, lines 12-13, but trial counsel's did not request that the verdict be clarified as to whether the verdict was not guilty of murder, with acted in self defense being applicable in the case a complete defense. Tr.p. 386, lines 23, 24; Tr.p. 387, lines 6-7, 12. The trial court issued the sentence for murder, taking into consideration Gist age, which was thirty years imprisonment. Tr.p. 404, line 18 - Tr.p. 405, line 17.

Petitioner claims trial counsel's was ineffective for failing to request that the

verdict be clarified with respect to the finding of the murder conviction. Gist further asserts, because he was acting in self defense of the charge of murder and because the trial court did not answer the jury questions on the circumstance of how tall is Terrance Gist, Review the written statements of Erika James and Tamika Hines, tr.p. 378, line 22 - tr.p. 380, line 8, the jury apparently did not find how tall Gist was nor to find the numerous statements of Erika James and Tamika Hines to support a not guilty murder verdict.

For applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective assistance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Brown v. State, 340 S.C. 390, 533 S.E. 2d 308 (2000).

In State v. Day, Day was indicted for murder and possession of a firearm during the commission of or attempt to commit a violent crime. Although the trial judge indicated he would not charge the jury on self-defense, he gave a self-defense instruction based upon a question from the jury inquiring about the South Carolina law of self-defense. The jury found Day guilty, finding that self-defense was not applicable in the case, and the trial judge sentenced him to life imprisonment for murder and to a concurrent sentence of five years imprisonment for the possession of a firearm during the commission of a violent crime. Id. at 341 S.C. 410, 415, 535 S.E. 2d at 431, 434 (S.C. 2000).

Applicant asserts that the facts he was acting in self defense of the charge of murder showed the jury intended to find him not guilty of the murder rather than guilty of murder. However, this argument does aid applicant.

In State v. Alexander, 303 S.C. 377, 401 S.E. 2d 146 (1991), we abolished the rule prohibiting inconsistent verdicts. In Alexander, the jury found Alexander guilty of kidnapping and criminal sexual conduct (CSC) in the third degree. Alexander claimed that the fact he had been implicitly acquitted of first degree CSC, which has as one definition of it a sexual battery accompanied by a kidnapping, entitled him to a new trial because the jury had rendered an inconsistent verdict. However, we rejected this claim. Applicant's claim that the jury could not have found him guilty of murder because the jury had found him acting in self defense is eviscerated by State v. Alexander.

In any event, the question remains whether the jury's verdict was unclear as to the finding of murder with which applicant was convicted, and, if so, whether counsel was ineffective for failing to have the verdict clarified at the time of trial.

"A verdict should be certain and import a definite meaning free from ambiguity." Lorick & Lowrance v. Julius H. Walker & Co., 153 S.C. 309, 319, 150 S.E. 789, 792 (1929) (citation omitted).

If a party believes there is confusion in the wording of a jury's verdict, that party should call it to the attention of the trial court at the time the verdict is rendered so that any confusion in the verdict's language can be easily cleared up. Howard v. Kirtan, 144 S.C. 89, 142 S.E. 39 (1928). It is "the duty of the trial judge to decide what the verdict meant, and, in reaching his conclusion thereabout, it [is] his duty to take into consideration not only the language of the verdict, but all the matters that occurred in the course of the trial." Id. at 101, 142 S.E. at 43. See also Durst v. Southern Ry. Co., 161 S.C. 498, 159 S.E. 844 (1931) (to determine what jury intended to find construction of verdict can and should depend upon language used by jury and other things occurring in trial).

A verdict of a jury should be upheld when it is possible to do so, and carry into effect what was clearly the intention of the jury. When a verdict is so confused, however, that it is not absolutely clear what the jury intended to do, the safest and best course for the court to pursue is to order a new trial. Judges and parties should not be required to guess as to what verdict a jury sought to render.

Lorick & Lowrance, supra at 320, 150 S.E. at 798.

In State v. Wilson, 162 S.C. 413, 437, 161 S.E. 104, 113 (1931) (quoting State v. Smith, 18 S.C. 149 (1882) (emphasis added by Wilson court)), the Court stated:

"... a general verdict of guilty furnishes... no ground for a new trial, provided the jury have been explicitly instructed that the effect of a general verdict will be to find the party accused guilty of the highest offense charged in the indictment, and that they have the right to designate in their verdict which one of the particular offenses charged they believed the accused to be guilty of."

See also State v. Johnson, 186 S.C. 202, 195 S.E. 329 (1938) (same).

In the instant case, the trial court's instructions to the jury on how the verdict should be rendered were unclear. The trial court, as noted previously, instructed the jury regarding the forms of the verdict: see TG#2. The trial court did not explicitly instruct the jury to specify which finding of murder for which they were finding petitioner/applicant based on applicability of acted in self defense are not guilty and without acted in self defense are guilty. Further, the jury was not charged that a general verdict had the effect of finding applicant guilty of the highest offense charged in the indictment if acted in self defense. See State v. Wilson, supra.

Given these unclear instructions and the general verdict rendered by the jury, counsel's was deficient for failing to have the verdict clarified as to whether acted in self defense the jury was finding Gist not guilty. See State v. Wilson, supra. Counsel's should have called the ambiguous verdict to the trial court's attention at the time it was rendered, and, at that time, the confusion could have been easily cleared up. See Howard v. Kinton, supra.

And find there is a reasonable probability, but for counsel's error of not requesting that the jury's verdict be clarified, the result of the trial would have been different because the applicant would be free instead imprisonment. See Johnson v. State, 325 S.C. 182, 480 S.E. 2d 733 (1977) (to show prejudice, applicant must show, but for counsel's errors, there is reasonable probability result of trial would have been different).

Accordingly, the PCR court should grant applicant a new trial on this ground. See Lorick & Lowrance, supra (when verdict is so confused, safest and best course for court is to order new trial).

2013 JUN 22 PM 1:53

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Terrance Gist, #314379,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2009-CP-42-0386

RETURN

The Respondent, making its Return to the Application for Post-Conviction Relief filed January 22, 2009, 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 Clerk of Court for Spartanburg County. The Applicant was indicted at the October 2005 term of the Court of General Sessions for Spartanburg County for Murder (05-GS-42-4263). He was represented by James H. "Chip" Price, III, Esquire, and Ryan L. Beasley, Esquire. On March 15, 2006, the Applicant proceeded to trial after which he was found guilty of Murder. He was sentenced by the Honorable Doyet A. Early, III, to confinement for a period of thirty (30) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Gist, Op. No. 2008-UP-551 (S.C. Ct. App. filed October 9, 2008). The Remittitur was issued on October 27, 2008.

Attached herewith and incorporated herein by reference are the records of the Spartanburg County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, the Applicant's trial transcript, and the Applicant's appellate records.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel.
 - a. Trial Counsel failed to request the jury's verdict be clarified with respect to the finding of the murder conviction.

III.

The Respondent interprets the Applicant's allegation to be a claim that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. 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, 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, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured 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.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held.

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MICHELLE PARSONS KELLEY
Assistant Attorney General

By: *Michelle Parsons Kelley*
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

July 7, 2009

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT
3
4 Terrance Gist,)
5 Applicant,) TRANSCRIPT OF RECORD
6 -vs-) 2009-CP-42-0386
7 The State.) September 17, 2009
8 Spartanburg, South Carolina
9

10 B E F O R E:

11 HONORABLE J. DERHAM COLE, JUDGE
12
13

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

15 VANESSA CASON, ESQUIRE
16 Attorney for the Applicant

17 MICHELLE PARSONS KELLEY, ESQUIRE
18 Attorney for the State
19
20

21 Linda D. Moffitt
22 Circuit Court Reporter
23
24
25

1	<u>INDEX</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3	TERRANCE GIST (AW)	
4	Direct examination by Ms. Cason	3
5	Cross-examination by Ms. Kelley	7
6	Redirect examination by Ms. Cason	8
7	JAMES H. "CHIP" PRICE (SW)	
8	Direct examination by Ms. Kelley	9
9	Cross-examination by Ms. Cason	11
10	RYAN L. BEASLEY (SW)	
11	Direct examination by Ms. Kelley	12
12		
13		
14		
15	No exhibits entered into evidence.	
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

Terrance Gist
Direct examination by Ms. Cason

1 (Proceedings September 17, 2009)

2 MS. KELLEY: Your Honor, this case is Terrance Gist.

3 THE COURT: All right. Ms. Cason, you represent him?

4 MS. CASON: Yes, Your Honor, I do.

5 THE COURT: Are you ready to proceed on the
6 application?

7 MS. CASON: I am ready to proceed. I call Terrance
8 Gist to the stand.

9 THE COURT: Let me ask y'all this. How long is this
10 going to take if you know?

11 MS. CASON: About maybe 45 minutes.

12 THE COURT: In total?

13 MS. CASON: Probably in total, yes, sir.

14 THE COURT: Okay.

15 TERRANCE GIST, having been
16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MS. CASON

18 Q Mr. Gist, you filed an application for post conviction
19 relief, is that correct?

20 A Yes, ma'am.

21 Q And in your application what were your specific
22 grounds?

23 A Inconsistent verdict.

24 Q Okay. Were you alleging ineffective assistance of
25 counsel?

Terrance Gist
Direct examination by Ms. Cason

- 1 A Yes, ma'am.
- 2 Q And was that based on the fact that you believe that
- 3 there was an inconsistent verdict --
- 4 A Yes, ma'am.
- 5 Q -- delivered at your trial?
- 6 A Yes, ma'am.
- 7 Q Okay. Was the -- was the verdict read at the end of
- 8 the trial?
- 9 A Yes, ma'am.
- 10 Q Okay. And you've actually seen the transcript?
- 11 A Yes, ma'am.
- 12 MS. CASON: May I approach the witness, Your Honor?
- 13 THE COURT: You may.
- 14 Q Mr. Gist, I'm showing you the transcript from the
- 15 trial, and that is the record. Now, what was the verdict
- 16 that was delivered at the end of the trial?
- 17 A "The State of South Carolina, County of Spartanburg,
- 18 State of South Carolina vs. Terrance Gist in Indictment No.
- 19 2005-GS-42-4263, we, the jury, find the defendant in this
- 20 case, Terrance Gist, acted in self-defense. Guilty of
- 21 murder. Signed foreperson, Angela Brown, March 15th,
- 22 2006."
- 23 Q Okay. Now, specifically what are you alleging went
- 24 wrong with that verdict?
- 25 A During the jury charge when the judge charged the jury

Terrance Gist
Direct examination by Ms. Cason

1 he charged them on three separate charges -- murder,
2 manslaughter and self-defense. And during those charges he
3 told the jury if you find the defendant acted in self
4 defense you must find him not guilty as to both charges.

5 Q Okay. And, again, when the clerk delivered the
6 verdict what was stated on the record?

7 A They found that I acted in self-defense, guilty of
8 murder.

9 Q Okay. And do you believe that that is an inconsistent
10 verdict?

11 A Yes, ma'am.

12 Q And what do you believe that entitles you to?

13 A An acquittal.

14 Q Okay. Are you seeking --

15 A I'm seeking to get it reversed right now to at least
16 reprimand for new trial.

17 Q Okay. Do you believe that the jury actually found
18 that you acted in self-defense?

19 A Yes, ma'am.

20 Q Was the jury polled?

21 A Yes, they was polled.

22 Q Okay. And your attorney polled the jury?

23 A Yes, ma'am.

24 Q Okay. Did you request that your attorney ask the jury
25 to clarify its verdict?

Terrance Gist
Direct examination by Ms. Cason

- 1 A No, ma'am.
- 2 Q Okay. Did you understand that the jury found you
- 3 guilty?
- 4 A I understood they found I acted in self-defense,
- 5 guilty of murder.
- 6 Q And what did that mean to you?
- 7 A By the rule that I was not guilty.
- 8 Q Okay. And did you talk with your attorney about that?
- 9 A No, ma'am. I thought it was -- I mean, it said
- 10 blatantly, so I didn't think there was no need for me to
- 11 say it.
- 12 Q Okay. Well, tell the Court how you believe that your
- 13 counsel acted ineffectively then.
- 14 A Because he didn't request to have the jury clarify the
- 15 verdict, like when the verdict was read, when he polled
- 16 them he should have had the verdict clarified as to what
- 17 the clerk said, as to what she read off the verdict form or
- 18 whatever.
- 19 Q Okay. And because your counsel did not do that you
- 20 believe that nonaction entitles you to --
- 21 A A reversal.
- 22 Q Are you asking for a new trial?
- 23 A I would really like just to put this behind me, I
- 24 mean, if I can.
- 25 Q What do you mean?

Terrance Gist
Cross-examination by Ms. Kelley

1 A Like a new trial if that's what it takes, I mean, I'll
2 do it, but I really just want to put it behind me, I mean,
3 and so, but, I mean, because I was young when I did this, I
4 mean, and I understand it. And I accepted responsibility
5 for this.

6 And, I mean, when I wrote the statement, I mean, I did
7 this, and, I mean, but it was not -- it was, I mean, I feel
8 that he should have at least, I mean, objected and said, I
9 mean, we want this cleared up. I mean, if so I can't at
10 least get a time cut or reversal or, I mean, remand for a
11 new trial or decide again, I mean.

12 Q Okay. I have no further questions. Answer any
13 questions that counsel may have.

14 CROSS-EXAMINATION

15 MS. KELLEY

16 Q So your allegation here today is that your attorney
17 failed to make a motion to clarify the verdict?

18 A Yes.

19 Q And that's your sole allegation?

20 A That's my sole allegation.

21 Q And your desired outcome is a time cut or reversal of
22 your conviction. Are you aware that if you prevail today
23 then you would receive a new trial?

24 A Yes, ma'am.

25 Q Okay. And that would be the outcome, a new trial, not

Terrance Gist
Redirect examination by Ms. Cason

1 a time cut. Are you aware of the nature of that?

2 A Yes, I'm aware.

3 Q Okay. And you said that you have accepted
4 responsibility and you actually did commit this murder?

5 A Yes, I did. When I wrote the statement I said that I
6 did it, and, I mean, and I was willing to plead guilty if a
7 plea was offered. I was willing to. I mean, excuse me. I
8 was willing to, but so I was forced to go to trial. I
9 mean, I was forced to take this trial and present this the
10 way it was.

11 Q No more questions.

12 MS. CASON: Thank you, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. CASON

15 Q Mr. Gist, when you say you were forced to go to trial,
16 what did you mean by that?

17 A I'm saying it wasn't no, no way that I could accept
18 responsibility without, I mean, because there was no plea
19 offered. I mean, my lawyer never came at me with a plea.
20 So I'm assuming there was no plea. I mean, and if it was,
21 then I would have pled guilty.

22 Q All right.

23 MS. CASON: No further questions.

24 THE COURT: Step down.

25 MS. CASON: Your Honor, that concludes Mr. Gist's

James H. "Chip" Price
Direct examination by Ms. Kelley

1 case.

2 MS. KELLEY: Your Honor, the state calls James Price.

3 JAMES H. "CHIP" PRICE, having
4 been first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MS. KELLEY

6 Q Mr. Price, can you state your full name for the
7 record?

8 A James H. Price, III.

9 Q And how much of your practice is criminal law?

10 A Probably 90 percent.

11 Q And how long have you been practicing?

12 A Since November of 1975.

13 Q You've heard the applicant's testimony here today
14 regarding the motion to clarify.

15 A Yes, ma'am.

16 Q Do you have any thoughts on that allegation?

17 A Do I have any testimony to offer about that?

18 Q Yes.

19 A Obviously, I was in court when the clerk read the
20 portion of the transcript or read the sheet that Mr. Gist
21 just testified about.

22 It surprised me too because they were inconsistent.
23 So in the transcript I asked the judge to allow me to look
24 at the sheet that the clerk was reading from. I looked at
25 the sheet before the jury was dismissed. The sheet was

James H. "Chip" Price
Direct examination by Ms. Kelley

1 proper. I think the sheet is part of this court's record.
2 And the Court, excuse me, the clerk had just misread the
3 verdict form.

4 Q So you did look into it on the record.

5 A Yes, ma'am.

6 Q Okay. And the applicant was indeed found guilty of
7 murder.

8 A According to the jury verdict sheet, yes, ma'am. The
9 first question was was the -- "Do you find that defendant
10 was acting in self-defense? Yes or no." They checked no
11 before they could go to the second thing, which was
12 consideration of murder. They had to answer the first one
13 in the negative, which they did.

14 Q Now, the only other allegation the applicant made here
15 today is that he was forced to go to trial and that you
16 failed to pursue plea negotiations. Did you pursue plea
17 negotiations?

18 A Yes, ma'am. Ryan Beasley -- Ryan Beasley was helping
19 me on the case. We realized very early that we had a
20 serious problem because Mr. Gist had given both a written
21 statement and about a 1-hour video-taped statement
22 admitting that he did the shooting.

23 We -- I don't want to use the word begged -- but we
24 aggressively talked with Bob Coler, the prosecutor, asking
25 for a plea to manslaughter. Bob said that he could not do

James H. "Chip" Price
Cross-examination by Ms. Cason

1 so without asking the family. And several months before
2 the trial he had met with them. The family had rejected
3 any plea negotiations. So we had no choice but to go to
4 trial or plead guilty to murder, which there was no sense
5 in doing to that.

6 Q No more questions. Thank you.

7 A Yes, ma'am.

8 CROSS-EXAMINATION

9 BY MS. CASON

10 Q Mr. Price, did Mr. Gist talk with you about the
11 inconsistent verdict when it was read?

12 A Ms. Cason, I don't remember. You know, we had
13 finishing -- finishing up the trial. I really can't say
14 that he did or did not.

15 I know from the way that it was read that it was
16 completely inconsistent, made no sense, which is why I
17 asked the judge to look at it before discharging the jury.
18 But I can't remember if Mr. Gist had said anything to me or
19 not.

20 Q Okay. And in your years of practice -- well, based on
21 your years of practice had he asked would you have
22 explained it to him?

23 A Yes, ma'am. Mr. Gist and I worked very well together.
24 We worked very well with Mr. Beasley. We had good
25 communication between all of us.

Ryan L. Beasley
Direct examination by Ms. Kelley

1 Q Thank you.

2 MS. CASON: No further questions.

3 MS. KELLEY: No further questions. Thank you.

4 THE COURT: You may step down.

5 MS. KELLEY: Your Honor, the state would call Ryan
6 Beasley.

7 RYAN L. BEASLEY; having been
8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MS. KELLEY

10 Q Mr. Beasley, what was your involvement with this case?

11 A I assisted Mr. Price as co-counsel defending Mr. Gist
12 in this murder trial.

13 Q And were you there when the verdict was read?

14 A I was.

15 Q Did you observe Mr. Price approach the judge about a
16 clarification?

17 A I did.

18 Q And was it discovered that the jury had indeed found
19 the applicant guilty of murder?

20 A Yes.

21 Q Did you also enter into plea negotiations with
22 Mr. Price on the applicant's behalf?

23 A Yes.

24 Q And were you able to ascertain any plea deal?

25 A No.

Ryan L. Beasley
Direct examination by Ms. Kelley

1 Q Thank you.

2 MS. KELLEY: No more questions.

3 MS. CASON: I have no questions of this witness.

4 THE COURT: You may step down.

5 MS. KELLEY: The state has no further witnesses.

6 THE COURT: I will review the record and issue an
7 order.

8 END OF REQUESTED TRANSCRIPT OF RECORD

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

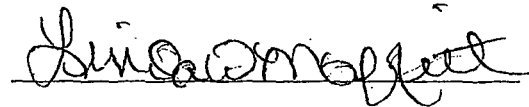
25

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh 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 of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 17th day of September 2009.

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

April 16, 2012



Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Terrance Gist, #314379,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2009-CP-42-0386

ORDER OF DISMISSAL

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2009 NOV 30 PM 2:04
MARC KITCHENS

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 22, 2009. An evidentiary hearing into the matter was convened on September 17, 2009, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Vanessa Cason, Esquire. Michelle Parsons Kelley of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on his own behalf. James H. "Chip" Price, III, and Ryan L. Beasley testified on behalf of the State. This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Spartanburg County Clerk of Court, the Applicant's appellate records, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. The Applicant was indicted at the October 2005 term of the Court of General Sessions for Spartanburg County for Murder (05-GS-42-4263). He was represented by James H. "Chip"

[Handwritten signature]

Price, III, Esquire, and Ryan L. Beasley, Esquire. On March 15, 2006, the Applicant proceeded to trial after which he was found guilty of Murder. The Honorable Doyet A. Early, III, sentenced him to confinement for a period of thirty (30) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. Gist, Op. No. 2008-UP-551 (S.C. Ct. App. filed October 9, 2008). The Remittitur was issued on October 27, 2008.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2009 NOV 30 PM 04
MAFC KITCHENS

II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR EVIDENTIARY HEARING

At the PCR evidentiary hearing, the Applicant testified trial counsel was ineffective for failing to clarify the jury verdict. The Applicant testified that when returning the verdict, the clerk said the Applicant acted in self-defense before announcing the jury found him guilty of murder. (Tr. p. 384, l. 4). The Applicant also testified he was willing to plead guilty, but the solicitor's office didn't extend a plea and forced him to go to trial.

Chip Price, the Applicant's lead counsel, also testified at the PCR hearing. Price testified he had been practicing law since 1975 and 90% of his practice was criminal. Price testified the clerk misread the jury form when announcing the verdict. Price testified he noticed it immediately and asked the judge to look at the verdict sheet before dismissing the jury. The verdict sheet stated the jury found the Applicant guilty of murder. Price also asked the judge to inspect the sheet prior to dismissing the jury.

In preparing for trial, Price met with the Applicant several times, reviewing discovery, elements of the crime, and any possible defenses. Price testified the main obstacle at trial was a one hour videotaped statement made by the Applicant. Price testified he had no basis for

suppressing the statement. Price testified he aggressively pursued a manslaughter plea, but the solicitor consulted with the victim and the victim rejected a manslaughter plea. As the solicitor refused to extend any offer, Price testified they had to go to trial. Price testified the trial state was to cross-examine the State's witness and to win on final argument. Towards the end of the trial, however, the Applicant "panicked" and insisted on putting up two witnesses. Price felt these witnesses hurt the Applicant's overall credibility and cost them their final argument position.

FILED
CLERK OF COURT
SPRINGFIELD
MAY 30 2009
PRICE
MERCY KITCHENS

Ryan Beasley sat second chair in the Applicant's trial. He testified he witnesses Price clarify the sentence after the clerk misread the jury form. Beasley testified it was clear the jury found the Applicant guilty of murder. Beasley further testified they attempted to negotiate a plea deal on the Applicant's behalf, but the solicitor was not interested.

III. APPLICABLE LAW

Ineffective Assistance of Trial Counsel

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

003

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 and Wiggins. 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 proceedings would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

FILED
CLERK OF COURT
SOUTH CAROLINA
2009 NOV 30 PM 2:04
MARC KITCHENS

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. § 17-27-80 (1985), this Court makes the following findings of fact based upon all of the probative evidence presented.

This Court finds counsels' testimony to be credible and the Applicant's to be incredible. This Court finds the Applicant's attorney was not ineffective for failing to have the jury individually polled regarding the jury verdict. Both attorneys testified Price thoroughly investigated the clerk's misstatement and clarified the jury verdict. The Applicant has failed to demonstrate the verdict was anything other than murder. This Court denies and dismisses this allegation.

4

The Applicant also claimed he was forced to go to trial because the solicitor refused to extend a plea offer. PCR testimony indicated Price and Beasley attempted to negotiate on the Applicant's behalf, but were unable to secure an offer through no fault of their own. As a result, this Court denies and dismisses this allegation.

Therefore, this Court finds that the Applicant failed to carry his burden to show that trial counsel's representation fell below the standard of professional reasonableness for a criminal defense attorney in this regard. Strickland v. Washington; Cherry v. State. The Court finds that the Applicant cannot satisfy either requirement of the Strickland test. Further, any allegation raised but not addressed herein is also denied by this Court.

FILED
CLERK OF COURT
SARAH C. GREG
2006 NOV 10 10:28
HARCKITTEH

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to South Carolina Appellate Court Rule 227 for appropriate procedures after notice has been timely filed.



IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 25 day of November, 2009.

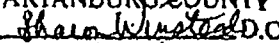
FILED
CLERK OF COURT
SPARTANBURG COUNTY
2009 NOV 30 PM 2:04
MARC KITCHENS


HONORABLE J. DERHAM COLE
Presiding Judge
Seventh Judicial Circuit

_____, South Carolina.

A CERTIFIED COPY



CLERK OF COURT
SPARTANBURG COUNTY
BY:  D.C.
DATED 12-01-09

750
2010-GP-42-4425

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Spartanburg)~~James Earl Ray~~)Full name and prison number (if any) of Applicant.
TERRANCE GIST #314379)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

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
2. Name and location of Court which imposed sentence Spartanburg General
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) MURDER 2005-GS-42-4263
 (b) _____
 (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) MARCH 15, 2006 SENTENCE: 30 years
 (b) _____

South Carolina
 2010 AUG 23 AM 10:31
 FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 M. HOPE BLACKLEY

- (c) _____
6. 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 _____
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. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. DENIED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: SEE ATTACHMENT

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 AUG 23 AM 10:31
M. HOPE BLACKLEY

- (a)
 (b)
 (c)

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) See attachment
 (b)
 (c)

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? ✓
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief?
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
 (d) any other petitions, motions or applications in this or any other Court?

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. PCR application

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. DENIED

ii.

iii.

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2018 AUG 23 AM 10:31
 M. HOPE BLAKEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
FOR THE 1st JUDICIAL CIRCUIT

Terrence Gist #314379
Applicant,
v.
State of South Carolina,
Respondent.

ATTACHMENT TO APPLICATION
FOR
Post-Conviction Relief

Now comes the above referenced Applicant to state concisely grounds on which applicant base his allegation that are being held in custody until fully set out in question ten (10) and state concisely in the same beds the facts which support each of the grounds set out in question Eleven (11).

I.

WHETHER PCR COUNSEL WAS INEFFECTIVE IN ASSISTANCE FOR FAILING TO TIMELY SEEK REVIEW OF DENIAL OF APPLICANT FIRST PCR APPLICATION?

Applicant's original application for was denied after a hearing. Applicant subsequently filed this application alleging that his PCR counsel was ineffective in failing to seek appellate review of the denial of PCR. Claims arose from the following facts. After the hearing came to a conclusion, counsel verbally asked applicant if he wanted counsel to file a SC(9)E. Applicant stated yes. Two months later applicant PCR was denied. Applicant was under the impression that the SC(9)E was filed and was pending the outcome. Five months later applicant wrote Spartanburg Clerk of Court asking the status of his SC(9)E. Clerk wrote back stating that they "haven't received anything from applicants counsel. Applicant wrote counsel asking why counsel didn't seek review (SC(9)E) as requested? Still pending response.

The right to seek appellate review of the denial of PCR is expressly authorized by state law S.C. CODE ANN. §17-27-100 (1985) Supreme Court Rule 50(9). Whether such review is granted is discretionary with the courts. Knight vs. State 284 S.C. 138 325 S.E.2d 535 (1985).

While aware that the constitutional right to counsel does not extend to discretionary appeals on collateral attack was ruled that Anders vs. California 386 U.S. 738, 87 S.Ct. 1396 18 L.E.2d 493 (1967) shall continue to apply in PCR matters. Johnson v. State 294 S.C. 310, 361 S.E.2d 20 (1988) compare Pennsylvania v. Finley 481 U.S. 551, 107 S.Ct. 1990, 95 L.E.2d 539 (1987). Anders requires appellate counsel to brief arguable issues despite counsel's belief the appeals are frivolous as a safeguard of the right to appeal. In applying Anders PCR court have recognized a prisoner's right to the assistance of appellate counsel in seeking review of the denial of PCR. Supreme Court Rule

LED
OF COUR
URR COL
AM ID:
BLACK LI

506) expressly provides for the appointment of counsel to seek appellate review on PCR.

For applicant to be granted PCR relief as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that she was prejudiced by his counsel's ineffective assistance. Strickland v. Washington, 466 U.S. 688, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984); Brown v. State, 340 S.C. 390, 533 S.E.2d 308 (2000). Counsel failed to render reasonably effective assistance due to the fact that counsel failed to file SOGUE under professional norms as requested by applicant, which clearly violates applicant's right to counsel. Also denied prejudiced by the failure to obtain review of a meritorious issue, which may have been reversed. Accordingly, PCR court should grant applicant a new hearing based on this ground. See Austin v. State, 305 S.C. 483, 409, 81 E.2d 395.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 AUG 23 AM 10:31
M. HOPE BLACKLEY

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. _____

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?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) 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) _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

FILED
CLERK OF COURT
SPARABURG COUNTY
2010 MAR 23 AM 10:31
M. HOEPLACHLEY

- (a) your arraignment and plea? _____
- (b) your trial, if any? ✓
- (c) your sentencing? ✓
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ✓
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- James "Chip" Price
 - Ryan Bostley
 - Vanessa Casan
- (b) the proceedings at which each such attorney represented you:
- Trial
 - Trial
 - PCR
19. State clearly the relief you seek in filing this application:
Reversed and vacated, awaiting new PCR hearing
20. Are you now under sentence from any other court that you have not challenged?
NO

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2010 AUG 23 AM 10:31
 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, _____, 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.

Terrance Hill

SWORN to and subscribed before me this 5 day of July, 2010

[Signature] (L.S.)
Notary Public

My Commission Expires: 5-16-12

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 AUG 23 AM 10:31
M. HOPE BLACKLEY

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Terrence Hest, 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 of 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 said proceeding or give security thereof.

Terrence Hest
Applicant

SWORN or affirmed to and subscribed before me this

5 day of July, 2010
[Signature]
Notary Public

My Commission Expires: 5-16-11

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 AUG 23 AM 10:32
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Terrance Gist, #314379,	)	2010-CP-42-4425
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent (the State), making its Return to the application for Post-Conviction Relief (PCR) filed August 23, 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 Clerk of Court for Spartanburg County. The Applicant was indicted at the October 2005 term of the Court of General Sessions for Spartanburg County for Murder (05-GS-42-4263). He was represented by James H. "Chip" Price, III, Esquire, and Ryan L. Beasley, Esquire. On March 15, 2006, the Applicant proceeded to trial after which he was found guilty of Murder. The Honorable Doyet A. Early, III, sentenced him to confinement for a period of thirty (30) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Gist, Op. No. 2008-UP-551 (S.C. Ct. App. filed October 9, 2008). The Remittitur was issued on October 27, 2008.

The Applicant subsequently filed an application for PCR on January 22, 2009, in which he alleged the following grounds for relief:

1. Ineffective assistance of trial counsel, in that:
 - a. Trial Counsel failed to request the jury's verdict be clarified with respect to the finding of the murder conviction.

On September 17, 2009, an evidentiary hearing was held before the Honorable J. Derham Cole, at which the Applicant was present and was represented by Vanessa Cason, Esquire. Michelle Parsons Kelley of the South Carolina Office of the Attorney General represented the State. By Order dated November 25, 2009, Judge Cole denied and dismissed the Applicant's Application for PCR.

Attached herewith and incorporated herein by reference are the records of the Spartanburg County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the records from the Applicants first PCR application.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of PCR counsel, in that:
 - a. Counsel failed to appeal previous PCR hearing decision.

III.

The Applicant's contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S.

722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under § 17-27-90." Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin "is limited to its particular factual situation" Aice, 305 S.C. at 452, 409 S.E.2d at 394. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. The Respondent lacks sufficient information to admit or deny this allegation. The Respondent requests an evidentiary hearing on this ground for relief. Sharper, Id.; Austin, 305 S.C. 453, 409 S.E.2d 395.

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of whether the Applicant was denied a right to appeal. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that a hearing be held.

Respectfully submitted,

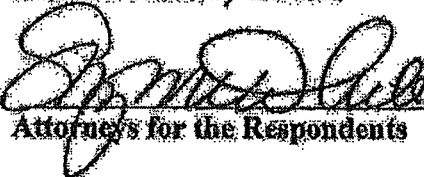
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOT
Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By:



Attorneys for the Respondents

Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

February 15, 2011.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Terrance Gist,

) 2010-CP-42-4425
)

) Applicant,
)

) v.
)

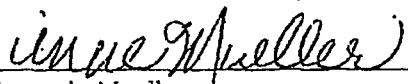
) CERTIFICATE OF SERVICE BY MAIL
)

) State of South Carolina,
)

) Respondent.
)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Ray E. Thompson, Jr., Esquire
Burts Turner Rhodes & Thompson
P.O. Box 3408
Spartanburg, South Carolina 29304



Anne A. Mueller
Legal Assistant for the Respondent

DATED this 15th day of February, 2011.

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O Box 3483
Spartanburg, SC 29304-3483



Phone (864) 596-2591
Fax (864) 596-2239

M. Hope Blackley
Clerk of Court

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Terrence Leiot #314376

Applicant

7TH JUDICIAL CIRCUIT

CASE # 010CD42 4425

VS
Stacy
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the
In this action dated 9-8, 2011 on

Order of Dismissal
9-13-11

By mailing to him/her, at his/her last known address; by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

John Mueller
Suzanne White
Terrence Leiot
Ray Thompson

9-13-11

(Date)

Corie Seay
(Signature)

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT
3 Terrance Gist,)
4 Applicant,) TRANSCRIPT OF RECORD
5 -vs-) 2010-CP-42-4425
6 The State.) April 6, 2011
7 Spartanburg, South Carolina
8
9

10 B E F O R E:

11 HONORABLE J. DERHAM COLE, JUDGE
12
13

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

15 RAY E. THOMPSON, ESQUIRE
16 Attorney for the Applicant

17 SUZANNE H. WHITE, ESQUIRE
18 Attorney for the State
19
20

21 Linda D. Moffitt
22 Circuit Court Reporter
23
24
25

Scan
✓
SFB

INDEX

- 1
- 2 Motions -- page 3.
- 3 No sworn testimony; no exhibits entered into evidence.
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

1 (Proceedings April 6, 2011)

2 THE COURT: This is Terrance Gist.

3 Mr. Thompson, you represent him.

4 MR. THOMPSON: Yes, sir, I do.

5 THE COURT: All right. I will hear from you.

6 MS. WHITE: Your Honor, if you would, allow me to
7 place a few things on the record first before we begin.

8 THE COURT: Okay.

9 MS. WHITE: This is -- Mr. Gist filed a P.C.R.
10 application. He has previously had a P.C.R. which was
11 denied, however there was no appeal filed.

12 He filed the second application alleging that previous
13 P.C.R. counsel failed to file the appeal once he requested
14 it.

15 We do not have his previous P.C.R. counsel present to
16 testify. I've spoken with her on the phone, and the state
17 would stipulate that her testimony is she has no
18 recollection of whether or not he did ask her to file an
19 appeal. She has no notes, no communication in the file
20 regarding an appeal.

21 And so we wanted to go ahead and perhaps proceed with
22 Mr. Thompson's case knowing that that would be the state's
23 testimony.

24 THE COURT: All right. So Ms. Cason's testimony would
25 be that she has no recollection one way or another?

1 MS. WHITE: Essentially. She does not recall having a
2 conversation, does not recall him specifically asking to
3 file an appeal. So she does not say that she didn't file,
4 that he asked and she didn't file it, but she says she does
5 not recall whether or not they discussed it at all.

6 THE COURT: So her testimony is she would have no --
7 she has no recollection --

8 MS. WHITE: Essentially, yes, sir.

9 THE COURT: -- one way or another.

10 MS. WHITE: Yes, sir, Your Honor.

11 THE COURT: All right. Mr. Thompson.

12 MR. THOMPSON: May it please the Court, Your Honor.

13 I believe this what would otherwise be a successive
14 appeal was filed by Mr. Gist I believe it was
15 August 23rd of 2010.

16 And as Ms. White has stated, previously he had filed a
17 P.C.R. application, and he had appointed counsel, and
18 appointed counsel was Ms. Vanessa Cason. And there was a
19 hearing before Your Honor as to the initial P.C.R.
20 application, and Your Honor did not rule from the bench.

21 The matter was taken under consideration, and Mr. Gist
22 and -- had a discussion with him. He tells me that he
23 actually did not have an opportunity to discuss the case
24 with Ms. Cason until about ten minutes before the hearing
25 and that they proceeded with the hearing and that he was

1 not very satisfied with the way the hearing was conducted
2 and had concerns about the potential for a negative
3 outcome.

4 And after that Your Honor indicated that there
5 wouldn't be a ruling verbally, it would be taken under
6 consideration and the ruling would later come in the form
7 of a written order, that he told Ms. Cason that he had real
8 concerns about the hearing itself and that in the event
9 that the Court ruled in a negative fashion as to his P.C.R.
10 application that he wanted her to immediately file and
11 perfect a notice of intent to appeal the Court's P.C.R.
12 ruling.

13 And he tells me that she followed him that -- and of
14 course we don't have that order yet, and we may possibly
15 even need to file a Rule 59(e) first for reconsideration or
16 possibly if an issue has not been ruled on in the written
17 order that was properly before the Court.

18 And Mr. Gist instructed her that if that was the
19 protocol and procedure to follow as far as first filing a
20 Rule 59(e) that he wanted her to do that and instructed her
21 to do that.

22 She indicated that she would. And he further
23 instructed her that in the event that the case was still in
24 a negative light from the Court's P.C.R. ruling that he
25 wanted her to immediately file and perfect an appeal. And

1 she indicated that she would do that and that he -- she was
2 her -- his counsel of record at the time. And as he was
3 represented by counsel he could not file the appeal.

4 And he reasonably relied on her to do it and believed
5 that she would do it and thought that she had done it and
6 did not realize that there had been neither a 59(e) or an
7 appeal filed until after the time to file either had
8 already expired, which resulted in his filing this
9 application seeking a belated appeal of the denial of his
10 initial P.C.R. application.

11 And I could call Mr. Gist as a witness, but, Your
12 Honor, that would be the substance of his testimony.

13 THE COURT: Well, you'll have to call him.

14 MR. THOMPSON: Okay.

15 THE COURT: I mean, unless, unless Ms. White is going
16 to stipulate to it.

17 MS. WHITE: Well, Your Honor, without knowing
18 unfortunately from Ms. Cason as her conversation with me is
19 a little bit unclear and a little vague, I didn't feel like
20 we were necessarily in a position to consent to the belated
21 P.C.R. appeal based on that I don't know that anything
22 would change were she to testify or were Mr. Gist to
23 testify. But I didn't know if Your Honor thought it would
24 be better to go ahead and hear from him knowing what her
25 testimony apparently intended to be.

1 MR. THOMPSON: And, Judge Cole, in discussions with
2 Ms. White it was my impression -- and she can certainly
3 correct me if I'm wrong -- but that with the lack of
4 recollection by Ms. Cason and with the anticipated
5 testimony of Mr. Gist as I just indicated to the Court that
6 taking that he would be entitled to a belated appeal
7 essentially as a matter of law.

8 THE COURT: Well, let me make myself clear.

9 I don't mind ruling on this matter based upon the
10 stipulation of fact. And if y'all will stipulate as to
11 what all the witnesses will testify to and then me just
12 take that stipulated testimony and decide the case, I'll be
13 happy to; but I cannot try the case based upon what y'all
14 anticipate the witnesses' testimony might be because I
15 wouldn't have the slightest idea what anticipated testimony
16 is. I mean, we often anticipate testimony that doesn't
17 come out when they take the witness stand.

18 MS. WHITE: Your Honor, I believe that we are willing
19 to stipulate to the fact that Mr. Gist instructed Ms. Cason
20 to file an appeal and was under the impression that she
21 would and that Ms. Cason has no recollection of any
22 conversation with Mr. Gist about an appeal and did not file
23 an appeal on this case.

24 THE COURT: Okay. Then -- and you're opposed to the
25 granting of a belated appeal?

1 MS. WHITE: Not necessarily, Your Honor. I
2 obviously --

3 THE COURT: Okay. If you're not opposed to it, what
4 other choice do I have?

5 MS. WHITE: I was going to leave it in your hands,
6 Your Honor.

7 THE COURT: Well, what choices do I have?

8 MS. WHITE: Granting the belated P.C.R. appeal.

9 THE COURT: Okay. Well, that's the only choice I have
10 that I can see, but it was an interesting exercise. I'm
11 glad we engaged in it, but the motion is granted.

12 MR. THOMPSON: Thank you, Judge Cole.

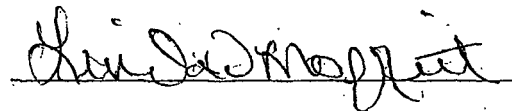
13 END OF REQUESTED TRANSCRIPT OF RECORD
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh 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 of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 6th day of April 2011.

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

April 16, 2012



Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Terrance Gist, #314379,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2010-CP-42-4425

ORDER OF DISMISSAL
(Granting Austin v. State belated appeal)

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 SEP 12 PM 10:18
M. HOPE BLUMBERG

This matter comes before the Court by way of an application for post-conviction relief filed August 23, 2010. An evidentiary hearing was held at the Spartanburg County Courthouse on April 6, 2011.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. The Applicant was indicted at the October 2005 term of the Court of General Sessions for Spartanburg County for Murder (05-GS-42-4263). He was represented by James H. "Chip" Price, III, Esquire, and Ryan L. Beasley, Esquire. On March 15, 2006, the Applicant proceeded to trial after which he was found guilty of Murder. The Honorable Doyet A. Early III, sentenced him to confinement for a period of thirty (30) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Gist, Op. No. 2008-UP-551 (S.C. Ct. App. filed October 9, 2008). The Remittitur was issued on October 27, 2008.

2009-CP-42-0386

The Applicant subsequently filed an application for PCR on January 22, 2009, in which he alleged the following grounds for relief:

1. Ineffective assistance of trial counsel, in that;
 - a. Trial Counsel failed to request the jury's verdict be clarified with respect to the finding of the murder conviction.

On September 17, 2009, an evidentiary hearing was held before the Honorable J. Derham Cole, at which the Applicant was present and was represented by Vanessa Cason, Esquire. Michelle Parsons Kelley of the South Carolina Office of the Attorney General represented the State. By Order dated November 25, 2009, Judge Cole denied and dismissed the Applicant's Application for PCR.

2010-CP-42-4425

The Applicant then filed a second PCR application alleging that he was denied the right to appeal the dismissal of the first PCR application. At the hearing on April, 6, 2011, Applicant was present and represented by Ray E. "Chuck" Thompson, Esquire. At that time, the State consented to allow the Applicant to pursue a belated Austin appeal.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the evidence and legal arguments of counsel. Pursuant to S.C. Code Ann. § 17-27-80 (1985), the Court makes the following findings of fact and conclusions of law.

Appeal

State law expressly authorizes the right to seek appellate review of the denial of post-conviction relief. See S.C. Code Ann. § 17-27-100 (1985). In the absence of an intelligent waiver by the applicant, counsel must advise the applicant of his appellate rights. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South

Carolina Supreme Court for review of post-conviction relief issues pursuant to Austin v. State. See King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992).¹

The Court affirmatively finds that the Applicant did not knowingly and voluntarily waive his right to appellate review. The Court concludes that the Applicant is entitled to a belated review of the denial of his first application. The Applicant's lack of a PCR appeal can be remedied by a petition for belated review pursuant to Austin v. State, *Id.* This court notes that it will be necessary for counsel for the Applicant to appeal this order to secure appropriate review pursuant to Austin.

III. CONCLUSION

The Applicant has proven by a preponderance of evidence that his first post-conviction relief counsel failed to properly advise him of his appellate rights and that he is entitled to an appeal pursuant to Austin v. State.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is **DENIED AND DISMISSED WITH PREJUDICE**.
2. Within thirty (30) days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicant's first post-conviction relief action. Counsel and the Applicant are directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and South Carolina Appellate Court Rule 243² for the appropriate procedure for a belated appeal; and;
3. The Applicant is remanded to the custody of the Respondent for the completion of his sentence.

¹ "Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for... review (emphasis added)." Davis v. State, 288 S.C. 290, 291 at n. 1, 342 S.E.2d 60 (1986).

² Formerly Rule 227, SCACR. Rules 224 through 230, SCACR, were renumbered as Rules 240 through 246, SCACR, by order of the South Carolina Supreme Court dated April 29, 2009.

AND IT IS SO ORDERED this 8 day of September, 2011.


J. Derham Cole
Presiding Judge

Spartanburg South Carolina.

CLERK
OF COURT
SPARTANBURG COUNTY
2011 SEP 12 AM 10:19
M. HOPE BLANCHETT