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ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of General Sessions
Edward B. Cottingham, Circuit Court Judge

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S.C. Supreme Court

THE STATE,

PETITIONER,

V.

BRITTANY JOHNSON,

RESPONDENT.

SUPPLEMENTAL APPENDIX

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Edward B. Cottingham, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRITTANY JOHNSON,

APPELLANT

Appellate Case No. 2011-185926

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PRE-TRIAL

MOTIONS AND RULING OF THE COURT

THE COURT: All right.

Scott, are you ready?

MR. GRAUSTEIN: Yes, sir, Your Honor.

THE COURT: All right.

Let the record reflect that we are here in the case as stated, and you have that case?

COURT REPORTER: No, sir, Your Honor. I do not. I need them to state it on the record.

If Mr. Graustein could state it on the record, that would be helpful.

THE COURT: Go ahead and state your case, please.

MR. GRAUSTEIN: The case of The State vs. Brittany Alexis Johnson, Indictment 2008-GS-26-3648, true-billed indictment on the charge of murder.

COURT REPORTER: Thank you, Your Honor.

THE COURT: All right.

Let the record reflect that the defendant is in court accompanied by her attorney, Ron Hazzard.

All right, sir.

We'll first deal with any motions from the State at this time.

MR. GRAUSTEIN: Your Honor, the State would move for a

1 Jackson v. Denno hearing on the matter of the State has to
2 present a video taped statement made by the defendant to the
3 police officers.

4 THE COURT: All right.

5 Let's defer that to - - is that the only motion you have?

6 MR. GRAUSTEIN: At this time, yes, Your Honor.

7 THE COURT: All right.

8 At this time, Mr. Hazzard has some quick, quick motions we
9 need to deal with first.

10 Go ahead, Mr. Hazzard.

11 MR. HAZZARD: Yes, sir, thank you, Your Honor.

12 On behalf of the defendant, first, I want to bring to the
13 Court's attention that previously when Ms. Johnson was arraigned
14 in front of Judge John, she stated on the record at that time
15 that she did not trust me and did not want me to represent her
16 and wished alternate counsel. Judge John did not do anything
17 with her statements at that point in time. Obviously, since
18 that time I've spoken with Ms. Johnson on several occasions, and
19 I'd specifically ask her, "Do you still wish to try to obtain
20 another attorney or anything of that nature?"

21 The last time we spoke regarding that matter, Ms. Johnson
22 said that she was perfectly willing to go forward with my
23 representation. I would ask that the Court speak with Ms.
24 Johnson about that and - - and clarify that for the record if
25 possible.

1 THE COURT: Please stand.

2 MR. HAZZARD: Stand up, please.

3 THE COURT: Ms. Johnson, are you satisfied with Mr.
4 Hazzard's representation?

5 MS. JOHNSON: Yes, sir.

6 THE COURT: You have no problems with him?

7 MS. JOHNSON: No, sir.

8 THE COURT: You are withdrawing whatever complaints you
9 may have had.

10 MS. JOHNSON: Yes, sir.

11 THE COURT: You are asking me to go forward in this case
12 with Mr. Hazzard as your attorney.

13 MS. JOHNSON: Thank you.

14 You may be seated.

15 She clearly understands and she wants you, Mr. Hazzard.

16 MR. HAZZARD: Okay.

17 Thank you, Your Honor.

18 THE COURT: What's your next motion?

19 MR. HAZZARD: Okay.

20 The defense also filed a motion regarding Judge John's
21 administrative order that said that all, um, all discoverable
22 information and documentation was supposed to be provided prior
23 to the case going on the trial docket. In preparing for this
24 trial, I note that the police investigative reports or records
25 indicated, among other things, that a gunshot residue test was

1 performed on the hands of the decedent, the deceased, and I have
2 spoken with Assistant Solicitor Graustein regarding that and the
3 fact that I have never received that, and I would ask the Court
4 to address that issue at this time.

5 THE COURT: Solicitor?

6 MR. GRAUSTEIN: Yes, Your Honor, I - - the State is
7 aware of the defense motion. The State by this office has
8 contacted SLED where that test would have been conducted, and
9 they have informed us that there is no record of any gunshot
10 residue test being submitted to them or in doing such a test in
11 this case.

12 THE COURT: Well, if it's not in existence, they can't
13 comply, Mr. Hazzard.

14 MR. HAZZARD: Okay.

15 THE COURT: So, I conclude that they have complied with
16 Judge John's order in that regard.

17 MR. HAZZARD: Okay.

18 Thank you, Your Honor.

19 Further, the defense would make a motion under Rule 615 of
20 South Carolina Rules of Evidence to exclude any witnesses from
21 the courtroom until such time that they actually testify.

22 Obviously, after they testify we don't have any problems
23 with them being in the courtroom.

24 THE COURT: Are you asking for a rule of sequestration?

25 MR. HAZZARD: Yes.

1 THE COURT: I will - - I will permit it on both sides.

2 MR. HAZZARD: Thank you, Your Honor.

3 THE COURT: And I - - I put the burden on the attorneys
4 involved to make sure that the rule is complied with.

5 MR. HAZZARD: Yes, sir.

6 THE COURT: All right, sir.

7 MR. HAZZARD: I would ask for clarification. Who is the
8 case officer for the State that will be staying?

9 MR. GRAUSTEIN: John King.

10 MR. HAZZARD: John King?

11 Okay.

12 Also, Your Honor, ah, on or about September 30th of 2010,
13 the prosecutor sent a plea offer to Ms. Johnson, and that plea
14 offer was to recommend voluntary manslaughter in the sentence
15 range from twenty-five to thirty years. Ms. Johnson and I
16 have discussed it in great detail. Great detail we have
17 discussed it, and it has always been my understanding that she
18 rejects that plea offer. I simply ask the Court to speak with
19 Ms. Johnson and place that on the record at this time.

20 THE COURT: I'm sure you've done so but I want the
21 record to reflect she's indicted for murder

22 MR. HAZZARD: Yes, sir.

23 THE COURT: Does she understand that if a jury should
24 convict her of murder, the trial judge including me has no
25 alternative but to either give her thirty years without parole

1 or life imprisonment? She understands that?

2 MR. HAZZARD: That is my understanding, yes, sir, Your
3 Honor.

4 THE COURT: And does she understand that she could have
5 received twenty-five years, a parolable offense as to
6 manslaughter?

7 MR. HAZZARD: Yes, sir, Your Honor.

8 THE COURT: Does she understand that depending upon the
9 evidence a manslaughter charge may or may not be appropriate in
10 this case? It well - - I haven't heard the evidence.

11 MR. HAZZARD: Yes, sir.

12 THE COURT: It well may be a verdict of either guilty or
13 not guilty as to murder. Does she understand that?

14 MR. HAZZARD: It is my understanding that she does, Your
15 Honor.

16 THE COURT: Are you hearing and understanding what we're
17 saying?

18 MS. JOHNSON: Yes, sir.

19 THE COURT: The reason I do this is to protect the
20 record and the attorney. So often, I've found that when a
21 negotiated possible settlement is made and the defendant does
22 not take it and later convicted and gets more time, they file a
23 post-conviction relief and say that their lawyer never told him
24 that.

25 Your lawyer has told you that, has he not?

1 MS. JOHNSON: Yes, sir.

2 THE COURT: And you fully understand it?

3 MS. JOHNSON: Yes, sir.

4 THE COURT: Let there be no question about it, now. You
5 are entitled to trial by jury. You are presumed innocence, and
6 that presumption will remain with you throughout the trial until
7 a jury, if ever, has found you guilty beyond a reasonable doubt.

8 You do need to know, though, that manslaughter may or may
9 not be charged in this matter depending upon the facts.

10 You do need to know that if, and I say that advisedly, if
11 you were convicted of murder, the judge would have to give you
12 either thirty years without parole or life imprisonment.

13 You understand this?

14 MS. JOHNSON: Yes, sir.

15 THE COURT: And you understand that you could have
16 received twenty-five years under manslaughter with an
17 opportunity for probation or parole later?

18 MS. JOHNSON: Yes, sir.

19 THE COURT: And it is your decision to reject that
20 offer?

21 MS. JOHNSON: Yes, sir.

22 THE COURT: Is that correct?

23 MS. JOHNSON: Yes, sir.

24 THE COURT: All right.

25 You may be seated.

MR. KING - DIRECT EXAMINATION BY MR. GRAUSTEIN (IN CAMERA)

8

1 Any other inquiry you would have me make, Mr. Hazzard, as
2 to that issue?

3 MR. HAZZARD: No, Your Honor.

4 THE COURT: All right, sir.

5 MR. HAZZARD: Thank you very much.

6 THE COURT: Thank you.

7 MR. HAZZARD: Those are all of the matters other than the
8 Jackson v. Denno. My understanding is we have the Jackson v.
9 Denno and then the issue of competency once Dr. Frierson arrives
10 from the Department of Mental Health.

11 THE COURT: All right, sir.

12 Let's proceed with Jackson v. Denno, please.

13 JACKSON V. DENNO HEARING (IN CAMERA)

14 MR. GRAUSTEIN: Thank you, Your Honor.

15 The State would call John King.

16 THE COURT: Is this a statement you propose to introduce
17 into evidence?

18 MR. GRAUSTEIN: It is, Your Honor.

19 THE COURT: All right, sir.

20 (The witness takes the witness stand.)

21 (IN CAMERA) JOHN GLENN KING, BEING DULY
22 SWORN, TESTIFIES AS FOLLOWS:

23 CLERK OF COURT: Please state your name and spell your
24 last.

25 MR. KING: John Glenn King, K-i-n-g.

MR. KING - DIRECT EXAMINATION BY MR. GRAUSTEIN (IN CAMERA)

9

1 DIRECT EXAMINATION BY MR. GRAUSTEIN:

2 Q. Mr. King, where are you currently employed?

3 A. I'm retired.

4 Q. You're retired? Where are you retired from?

5 A. Conway Police Department.

6 Q. Were you working for Conway Police Department in June of
7 2008?

8 A. Yes, I was.

9 Q. Okay.

10 And were you involved in an investigation involving, ah,
11 regarding a shooting incident on Bayview Avenue in Conway on
12 June 24, 2008?

13 A. Yes, on Bayside - - on Bayside Street.

14 Q. On Bayside.

15 A. Yes.

16 Q. Thank you.

17 Um, and, ah, at that - - during the course of your
18 investigation, did you have an opportunity to interview the
19 defendant in this case, Brittany Johnson?

20 A. Yes, I did.

21 Q. Do you remember the time and place of that?

22 A. The place would have been Conway Police Department Annex
23 which is located on Racepath Street in one of the interview
24 rooms.

25 The date, I'm not approximately sure on the date. I

MR. KING - DIRECT EXAMINATION BY MR. GRAUSTEIN (IN CAMERA)

10

1 believe it was around July 2nd.

2 Q. Okay.

3 And were you present in the room during the interview?

4 A. Yes, I was.

5 Q. Was anybody else present?

6 A. Yes, Sgt. Shaun Patterson.

7 Q. Was he a Conway Police Department Officer?

8 A. Yes, he was.

9 Q. Was he - - was he involved in your investigation of this
10 matter?

11 A. Yes, he was the Investigation Supervisor.

12 Q. And during your interview with the, ah, with the defendant,
13 were you able to determine whether she was under the influence
14 of alcohol or drugs?

15 A. Yes, I asked her those questions prior to the interview?

16 Q. Okay.

17 And how did she respond?

18 A. She respond that she was not under the influence of alcohol
19 or drugs.

20 Q. Good.

21 Were you able to determine whether there was any physical
22 or mental, ah, disability that would impair her ability to
23 understand what you - - what was going on?

24 A. Ah, she seemed to understand all the questions I was asking
25 her.

MR. KING - DIRECT EXAMINATION BY MR. GRAUSTEIN (IN CAMERA)

11

1 Q. Okay.

2 Now, you said this happened at the Annex, the Conway Police
3 Department Annex on Racepath?

4 A. Yes.

5 Q. Okay.

6 What sort of room was that - - was that interview conducted
7 in there?

8 A. It's a, um, a normal, um, interview room. Ah, it has a
9 table, chairs. Um, it has a - - a camera in the corner to
10 record the, ah, interview itself.

11 Q. Okay.

12 Do you remember how long - - about approximately how long
13 this, ah, interview took?

14 A. I don't really recall. Maybe thirty minutes.

15 Q. Okay.

16 Did you take any breaks or anything during the course of
17 that interview?

18 A. I don't believe we did.

19 Q. Okay.

20 Ah, do you remember how long the defendant was in the room
21 prior to you commencing the interview?

22 A. It wouldn't have been more than five minutes if - - if that
23 long.

24 Q. Okay.

25 Did she ever ask to use the bathroom or - - or say she

MR. KING - DIRECT EXAMINATION BY MR. GRAUSTEIN (IN CAMERA)

12

1 wanted to call anybody?

2 A. Not that I can recall she didn't.

3 Q. Did she ever ask for any food or something to drink?

4 A. No.

5 Q. Okay.

6 Did you ever make any threats or promises to her during the
7 course of the interview?

8 A. No, I didn't.

9 Q. Now, was she under arrest at this time?

10 A. Yes, she was.

11 Q. Was she advised of her Miranda, ah, given her Miranda
12 warnings?

13 A. Yes, she was.

14 Q. Okay.

15 And did she waive those?

16 A. Yes, she did.

17 Q. All right.

18 THE COURT: What specific warnings did you give her?

19 A. I advised her that she had the right to remain silent, that
20 anything she said can and will be used, ah, against her in a
21 court of law. She had a right to have an attorney present with
22 her. If she could not afford to hire an attorney, one would be
23 appointed to represent her before any question if she wished
24 one, and if she decided to make a statement and answer
25 questions, she had the right to stop at any time.

MR. KING - DIRECT EXAMINATION BY MR. GRAUSTEIN (IN CAMERA)

13

1 THE COURT: Proceed.

2 MR. GRAUSTEIN: Thank you, Your Honor.

3 Q. Did you provide her with an Advisement of Rights Form?

4 A. Yes, I did.

5 MR. GRAUSTEIN: May I approach this witness, Your
6 Honor.

7 THE COURT: Go ahead.

8 Q. I ask you if you recognize that?

9 A. Yes, I do.

10 Q. And what is that?

11 A. This is a Conway Police Department Advisement of Rights
12 Form.

13 Q. All right.

14 And what does that - - does that contain the Miranda
15 warnings that you provided to her?

16 A. Yes, it does.

17 Q. Does it advise the defendant to either - - waive those?

18 A. Yes, it does.

19 Q. And let me see that for just a second.

20 Did she indicate on this form that she wished to waive
21 those, ah, her right to an attorney?

22 A. Yes, she did.

23 Q. Okay.

24 How did she do that?

25 A. Ah, she did that by signing her name saying that, ah, she

MR. KING - DIRECT EXAMINATION BY MR. GRAUSTEIN (IN CAMERA)

14

1 was willing to talk with us.

2 Q. Is that her signature or a copy of her signature on the
3 bottom of this form?

4 A. Yes, it is.

5 THE COURT: At this time I'm admitting it as Court's
6 Exhibit. He may exhibit it as his own later.

7 MR. GRAUSTEIN: Thank you, Your Honor.

8 THE COURT: And that's for the purpose of this Jackson
9 v. Denno hearing only.

10 COURT REPORTER: Thank you, Your Honor.

11 (The Court Reporter accepts exhibit as Court's Exhibit #1.)

12 Q. Now, you - - so, you - - did you go - - did you go through
13 those warnings orally - - those Miranda warnings with her?

14 A. Yes. Sgt. Patterson and I did.

15 Q. Okay.

16 And, also, she was given that form in writing?

17 A. Yes, she was. She was given a copy.

18 Q. Okay.

19 And was there any indication that she was unable to read
20 that form?

21 A. No, there was not.

22 Q. Okay.

23 And that form also contains an advisement, ah, whether or
24 not for her to make a statement, whether she's under the
25 influence of alcohol or drugs.

MR. KING - DIRECT EXAMINATION BY MR. GRAUSTEIN (IN CAMERA)

15

1 Correct?

2 A. Yes.

3 Q. Okay.

4 During the course of your questioning, did the defendant
5 appear rational?

6 A. Yes, she - - she appeared to understand everything.

7 Q. Okay.

8 Did she ever get real estate so that she seemed like she
9 was losing control of herself?

10 A. No, she did not.

11 Q. And, again, you asked her if she wanted an attorney?

12 A. Yes.

13 Q. And what was her response?

14 A. She did not.

15 Q. Did she understand what the nature of this questioning was?

16 Did she understand that she was being charged?

17 A. Yes, she did.

18 Q. And did she understand what she was being charged with?

19 A. Yes, she did.

20 Q. Did she at any point during the questioning say, "I think
21 I want an attorney now," or anything like that?

22 A. No, she did not.

23 Q. She never asked for an attorney at any point during your
24 interview?

25 A. No, she did not.

MR. KING - DIRECT EXAMINATION BY MR. GRAUSTEIN (IN CAMERA)

16

1 Q. And to the best of your knowledge, did the defendant make
2 her statement to you freely and voluntarily?

3 A. Yes, she did.

4 Q. Okay.

5 And was this statement, ah, was a recording of her
6 statement made?

7 A. Yes, it was an audio and video?

8 Q. Audio and video.

9 Okay.

10 THE COURT: One question. Have you seen the audio and
11 video, Mr. Hazzard?

12 MR. HAZZARD: I have, Your Honor.

13 THE COURT: All right, sir.

14 MR. HAZZARD: The State was good enough to provide me with
15 that.

16 MR. GRAUSTEIN: May I approach, Your Honor?

17 Q. I ask if you can identify that?

18 A. Yes, I can.

19 Q. And what is that?

20 A. This is a CD copy of the interview with Brittany Johnson,
21 and I recognize my handwriting on - - on this.

22 Q. And have you viewed this - - this recording?

23 A. Yes, I have.

24 Q. Is that a fair and accurate recording of the interview that
25 you conducted with - - with Ms. Johnson?

MR. KING - DIRECT EXAMINATION BY MR. GRAUSTEIN (IN CAMERA)

17

1 A. Yes, it is.

2 Q. Now, did you ever - - did you ever have Ms. Johnson provide
3 you with a written statement? Did she ever write one out?

4 A. Not for me she did not.

5 Q. Okay.

6 Did she ever write one, ah, ah, for anybody else or did you
7 ever have her sign any sort of written statement?

8 A. I never had her sign any written statement.

9 Q. Okay.

10 And, ah, just, ah, generally, um, the - - could you tell
11 the Court the content of the statement the defendant made to
12 you?

13 A. Ah, basically, um, she told what happened, ah, of the
14 incident between her and the victim.

15 Q. Did she, ah, rather with the Court's permission, I'll just
16 play the statement that was recorded for the Court's information
17 - -

18 THE COURT: All right.

19 Q. - - if you deem it necessary.

20 THE COURT: You may do so.

21 (The DVD of the statement of Brittany Johnson is played for
22 the Court.)

23 MR. GRAUSTEIN: The Court's indulgence, Your Honor.
24 I'm not very technically savvy.

25 THE COURT: Do you have anybody in your august

MR. KING - CROSS EXAMINATION BY MR. HAZZARD (IN CAMERA)

18

1 department who is technically savvy?

2 MR. GRAUSTEIN: Yes, sir.

3 THE COURT: Is it a lengthy statement. You can read the
4 statement to me instead of - - -

5 MR. GRAUSTEIN: Well, I do have a transcript of it,
6 Your Honor, but if Mr. Hazzard was willing to stipulate to the
7 accuracy of that transcript?

8 THE COURT: Anybody here know - - can help him with the
9 problem?

10 (The Solicitor works with the DVD until he can begin
11 playing it and then it is played in its entirety.)

12 THE COURT: Have somebody turn the lights on, please.
13 You have any further questions of this witness, Solicitor?

14 MR. GRAUSTEIN: Just very briefly.

15 Q. Mr. King, were you the uniformed officer in that video?

16 A. Yes, I was.

17 Q. Okay.

18 Just so we're clear on that.

19 MR. GRAUSTEIN: No other questions of him, Your Honor.

20 THE COURT: Mr. Hazzard.

21 MR. HAZZARD: Yes, sir.

22 CROSS EXAMINATION BY MR. HAZZARD:

23 Q. Detective King, I'm a little confused because you - - I
24 think you told Mr. Graustein that you spoke with Brittany in the
25 interview room, correct?

MR. KING - CROSS EXAMINATION BY MR. HAZZARD (IN CAMERA)

19

1 A. Yes.

2 Q. Okay.

3 But there is no question that there was conversation
4 between you and Brittany that didn't take place on camera.
5 Isn't that correct?

6 A. I don't believe it was. I believe what you saw is what
7 happened.

8 Q. Okay.

9 So, when your partner in the room says that he had
10 introduced himself to Brittany earlier. So, you're saying that
11 you didn't talk to her prior to the camera?

12 A. That's correct.

13 Q. But, obviously, he did.

14 A. Well, now, I - - I - - I can't explain what he was saying.
15 I don't know if he saw her when the Marshals brought her from
16 Florence or what. So, that - - that part of it I can't tell you
17 because I wasn't present for that.

18 Q. Uh-huh. Okay.

19 So, if she said that she asked him for an attorney, you
20 have no knowledge of that?

21 A. No, I no knowledge of that but, ah, to my recollection, she
22 never asked for an attorney.

23 Q. So, you're saying not in your presence?

24 A. That's correct.

25 Q. But, obviously, there was some discussion between her and

MR. KING - CROSS EXAMINATION BY MR. HAZZARD (IN CAMERA)

20

1 the other detective outside of your presence?

2 A. I don't know if there was discussions at all. I know you
3 heard what you heard on the tape.

4 Q. Yes, sir.

5 He says, "I introduced myself to you earlier."

6 A. Yes.

7 Q. And that's at the beginning of the tape, isn't it?

8 A. Right. But when he introduced himself to her, I don't
9 know what -- under what context that was. I don't know if she
10 was just coming in or what.

11 Q. Yes.

12 A. And I can't answer that.

13 Q. Yes, sir.

14 You mentioned the Marshals. So, you did not arrest
15 Brittany, correct?

16 A. That's correct.

17 Q. Okay.

18 You weren't the first law enforcement officer she came in
19 contact with?

20 A. That's correct.

21 Q. Okay.

22 So, did the Marshals transport her to Conway?

23 A. I don't know who transported her to Conway.

24 Q. All you know is she showed up in Conway?

25 A. Yes.

MR. KING - CROSS EXAMINATION BY MR. HAZZARD (IN CAMERA)

21

1 Q. But when she showed up in Conway it is your understanding
2 that she was in police custody at that time, correct?

3 A. Yes. Yes, that's correct.

4 Q. Okay.

5 And do you have any knowledge regarding any statements made
6 to her, any promises made to her prior to her being in that room
7 with you?

8 A. No, I don't.

9 Q. Okay.

10 You did not accompany the Marshals?

11 A. No.

12 Q. Okay.

13 So, their interaction with her would have been outside of
14 your presence?

15 A. That's correct.

16 Q. Okay.

17 All right. Thank you.

18 MR. HAZZARD: No further questions.

19 THE COURT: All right, sir.

20 You may come down.

21 (The witness leaves the witness stand.)

22 THE COURT: You have any other witnesses?

23 MR. GRAUSTEIN: No, Your Honor.

24 The State would move that the statement be allowed to be
25 entered into evidence.

MS. JOHNSON - DIRECT EXAMINATION BY MR. HAZZARD (IN CAMERA)

22

1 THE COURT: You have any other witnesses?

2 MR. HAZZARD: The defense would call Brittany Alexis
3 Johnson.

4 THE COURT: All right, sir.

5 MR. HAZZARD: For the purpose of this in camera hearing.
6 (The witness takes the witness stand.)

7 (IN CAMERA) BRITTANY ALEXIS JOHNSON,
8 BEING DULY SWORN, TESTIFIES AS FOLLOWS:

9 CLERK OF COURT: State your full name and spell your
10 last.

11 MS. JOHNSON: Brittany Alexis Johnson. My last name is
12 J-o-h-n-s-o-n.

13 DIRECT EXAMINATION BY MR. HAZZARD:

14 Q. Good morning, ma'am. How are you?

15 A. Fine.

16 Q. First of all, I want to make clear. What we're going to
17 be talking about is the circumstances around your arrest.
18 Okay.

19 Where were you when you were arrested?

20 A. In, um, Darlington County in, um, this woman named Joyce Du
21 Bois' house.

22 Q. And who arrested you? To your knowledge, what agency
23 arrested you?

24 A. Um, the State Troopers.

25 THE COURT: You're going to have to talk a little

MS. JOHNSON - DIRECT EXAMINATION BY MR. HAZZARD (IN CAMERA) 23

1 louder, now, so we can all hear you, Ms. Johnson.

2 A. The State Troopers.

3 Q. The State Troopers arrested you? Okay. Is that how they
4 identified themselves to you?

5 A. Uh-huh.

6 Q. How many of these troopers were there?

7 A. I don't know.

8 Q. Was there more than one, just one?

9 A. There was a lot of them.

10 Q. Okay.

11 And, um, when they arrested you, ah, what happened then?
12 Where did they put you?

13 A. In a, um, sometime of SUV like a Expedition or something
14 and took me to Darlington County jail.

15 Q. Okay.

16 Do you recall whether the vehicle was a marked vehicle or
17 unmarked vehicle?

18 A. Unmarked.

19 Q. Okay.

20 Ah, at the time of your arrest were you told why you were
21 under arrest?

22 A. No, sir.

23 Q. Okay.

24 Did anyone at that time advise you of your rights?

25 A. No, sir.

MS. JOHNSON - DIRECT EXAMINATION BY MR. HAZZARD (IN CAMERA)

24

1 Q. Okay.

2 Did anyone ask you any questions?

3 A. The only question that they asked me was how did I get my
4 baby.

5 Q. Okay.

6 And did you respond to that question?

7 A. Uh-uh.

8 Q. Okay.

9 Now, at some point you ended up or they took you to the
10 Darlington County Detention Center. Is that correct?

11 A. Uh-huh.

12 Q. Tell the Court, if you will, what happened at the
13 Darlington County Detention Center.

14 A. Um, I was booked in, and they put me into a holding cell
15 until my county came and got me.

16 Q. Did they - - when you say you were booked in, were you
17 advised of the charges against you at that time?

18 A. No, sir.

19 Q. Okay.

20 Did anyone question you at that time?

21 A. No, sir.

22 Q. Okay.

23 How much time passed between the time you were booked in at
24 the Darlington County Detention Center and the time that
25 officials from Horry County came to get you?

MS. JOHNSON - DIRECT EXAMINATION BY MR. HAZZARD (IN CAMERA) 25

1 A. I can't say for sure. It was at least a couple of hours,
2 maybe three hours.

3 Q. Okay.

4 And do you have any knowledge as to who came from Horry
5 County to get you?

6 A. I don't recall.

7 Q. Okay.

8 Do you see that person or persons in the room at this time?

9 A. I wouldn't be able to tell you.

10 Q. Okay.

11 Ah, can you - - first of all, how many individuals?

12 A. Um, came to - - I think it was two that came to retrieve
13 me.

14 Q. Okay.

15 And to your recollection were these gentlemen white, black,
16 Latino, Asian?

17 Q. I remember one of them being white but that's only because
18 he was the one what had took my purse and check me - - check me
19 for anything.

20 Q. Ummm.

21 Do you have a recollection as to whether the other
22 gentleman was African-American or Caucasian?

23 A. No.

24 Q. Okay.

25 A. I don't.

1 Q. Okay.

2 Was it Detective John King sitting back there or do you
3 know?

4 A. I can't even remember.

5 Q. Okay.

6 Um, when they arrived, did they - - what happened when
7 these gentlemen arrived at the Darlington County Detention
8 Center?

9 A. Um, the people from the U. S. Marshals, they gave them my
10 property, and they signed some papers, and then I was - - my
11 stuff was put in the back of the car, and I was put in the car.

12 Q. Okay.

13 Now, let's back up.

14 When we talked about your arrest, you indicated that you -
15 - you - - that you were arrested by the State Troopers,
16 transported by the State Troopers.

17 A. Uh-huh.

18 Q. Where did the Marshals - - where does the U. S. Marshals
19 come into this?

20 A. It's the same thing, isn't it? It's not the same thing?

21 Q. I don't believe so.

22 So, either the State Troopers or the U. S. Marshal Service
23 representatives arrested you? Correct?

24 A. Uh-huh.

25 Q. Transported you to the Darlington County Detention Center?

MS. JOHNSON - DIRECT EXAMINATION BY MR. HAZZARD (IN CAMERA)

27

1 A. Uh.

2 Q. You were there for some period of time, correct?

3 A. Yes, sir.

4 Q. But on that same day representatives from Horry County,
5 apparently, came to retrieve you. Is that a correct statement?

6 A. Yes, sir.

7 Q. Okay.

8 Now, when these and I take it you're referring to two men
9 came to retrieve you?

10 A. Yes, sir.

11 Q. Okay.

12 When these two men came to retrieve you, was there any
13 discussion? At any point in time did you ask for an attorney?

14 A. Yes, sir.

15 Q. And when was this?

16 A. I asked - - the first time I asked for an attorney was with
17 - - while I was being signed over by whoever that Marshal was -
18 -

19 Q. Uh-huh.

20 A. - - that signed my paperwork.

21 Q. And who did you ask, the Marshal or the people who were
22 waiting to get you?

23 A. The Marshal because at the time I was in, like, a partition
24 where it's locked on both sides while he did my fingerprints and
25 signed over - -

MS. JOHNSON - DIRECT EXAMINATION BY MR. HAZZARD (IN CAMERA)

28

1 Q. Uh-huh.

2 A. - - um, signed some paperwork to hand me back over to them.

3 Q. Okay.

4 And when you asked this Marshal, you asked this gentleman,
5 what specifically did you say regarding an attorney as best you
6 can recall?

7 A. I just asked him was I going to need an attorney.

8 Q. Okay.

9 You asked if you were going to need an attorney?

10 A. Uh-huh.

11 Q. Okay.

12 And what did the Marshal say?

13 A. He was pretty sure I would.

14 Q. Okay.

15 And after that did you ever ask anyone regarding receiving
16 legal assistance?

17 A. Yes, sir.

18 Q. Okay.

19 And tell the Court about that. When and what were the
20 circumstances under which you made that request?

21 A. When we got back to Conway, upon entering the, um, the
22 police department on Racepath, I thought - - well, I thought I
23 would just be, like, booked in and then put in jail but when I
24 got there and they opened up the door to the interview room and
25 when I went in there, I realized what was going on, and I said,

MS. JOHNSON - DIRECT EXAMINATION BY MR. HAZZARD (IN CAMERA)

29

1 "I need an attorney for this, don't I?"

2 Q. Uh-huh.

3 A. And I said, "I need an attorney for this."

4 Q. All right.

5 A. And their response was, "The Judge will - - the Judge will
6 take care of that. When you get downtown, he issues a warrant."

7 Q. Uh-huh.

8 A. And that was the end of that.

9 Q. So, you said, "I need an attorney for this."

10 A. Uh-huh.

11 Q. And the response that you received from agents of the State
12 or of the County was that the Judge would take care of that?

13 A. Uh-huh.

14 Q. Okay.

15 Okay.

16 And once you received that response, once you requested an
17 attorney and were told that the Judge would take care of it
18 later, did you believe you had the right at that point to not
19 answer any questions?

20 A. I was under the impression that it was okay. It was okay
21 to talk.

22 Q. Okay. All right.

23 All right. Please answer any questions the State or the
24 Court may have.

MS. JOHNSON - CROSS EXAMINATION BY MR. GRAUSTEIN (IN CAMERA)

30

1 CROSS EXAMINATION BY MR. GRAUSTEIN:

2 Q. Ms. Johnson, back in 2008, were you still in school?

3 A. No, sir, not at the time.

4 Q. And how far did you go in school?

5 A. Eleventh grade.

6 Q. Eleventh grade?

7 Okay.

8 You ever been in trouble with the law before?

9 A. Um, Juvenile.

10 Q. Juvenile?

11 And so you've had a little bit of experience with the
12 criminal justice system?

13 A. Somewhat.

14 Q. And you're - - -

15 THE COURT: Ms. Johnson, your testimony is going to have
16 to be before twelve jurors. You're going to have to talk
17 louder so everybody can hear you. You understand?

18 A. Uh-huh.

19 THE COURT: Okay.

20 Q. So, you - - you have some experience with the criminal
21 justice system?

22 A. Somewhat.

23 Q. And you've been represented by attorneys before?

24 A. Yes, sir.

25 Q. Okay.

MS. JOHNSON - CROSS EXAMINATION BY MR. GRAUSTEIN (IN CAMERA) 31

1 MR. GRAUSTEIN: May I approach, Your Honor, the
2 witness?

3 THE COURT: Yes, sir.

4 Q. Ms. Johnson, I'm going to ask you to take a look at this.
5 It's been marked Court's Exhibit #1. Do you recognize that?

6 A. Yes, sir.

7 Q. And what does it say at the top of that?

8 A. Conway Police Department Advisement of Rights.

9 Q. Okay.

10 What's the first thing it says?

11 A. "You have the right to remain silent."

12 Q. Are those initials next to it?

13 A. Yes, sir.

14 Q. Okay.

15 You understood you had the right to remain silent?

16 Correct? That's what the initials meant?

17 Also, what's the next thing it says?

18 A. "Anything you say can and will be used against you in a
19 court of law."

20 Q. Those your initials next to that?

21 A. Uh-huh.

22 Q. You understand.

23 COURT REPORTER: Your Honor, may I ask that she say yes
24 or no for the record.

25 THE COURT: Please.

MS. JOHNSON - CROSS EXAMINATION BY MR. GRAUSTEIN (IN CAMERA) 32

1 A. Sorry.

2 COURT REPORTER: Thank you.

3 THE COURT: A nod of the head we can't use. Say yes or
4 no.

5 And I want to tell you again. At the trial of this case
6 you're going to be talking to twelve people, and that person on
7 the end, there's no way in the world they can hear you with your
8 mumbling. Please talk louder for your own protection. Okay?

9 A. Okay.

10 THE COURT: All right.

11 Q. What's the last advisement they give you there?

12 A. "If you make a statement or answer questions, you have the
13 right to stop at anytime."

14 Q. Okay.

15 That's your initials next to that?

16 A. Yes.

17 Q. And you initialed and it says that you understand your
18 rights.

19 A. Yes, sir.

20 Q. And what did you initial there?

21 A. Yes.

22 Q. And then it asks you, "You understand your rights and you
23 wish to waive them."

24 Is that what it says next line down?

25 A. Yes, sir.

MS. JOHNSON - CROSS EXAMINATION BY MR. GRAUSTEIN (IN CAMERA) 33

1 Q. And what did you initial on that?

2 A. Yes.

3 Q. Okay.

4 So, you're stating that you didn't understand that by
5 talking to the police at this point, they'd be able to use it
6 against you?

7 A. What I'm saying is I felt - - I felt like it was okay for
8 me to talk once they pretty much gave me the okay like I didn't
9 need a lawyer.

10 Q. But you've had experience with the law and the criminal
11 justice system?

12 A. But I've never - - I've never - - anytime I had any problem
13 with DJJ, I haven't been served a waiver that a form like that.

14 Q. You don't - - I understand that.

15 A. I don't even think they have that.

16 MR. HAZZARD: Your Honor, I ask that she be allowed to
17 complete her answer. I know the prosecutor isn't trying to talk
18 over her but - - -

19 THE COURT: Proceed.

20 A. I never had to make a statement with DJJ, and to my
21 knowledge, I don't even think that they do the waiving rights
22 stuff. I don't think so.

23 Q. But you understand that you had a right to an attorney?

24 A. Uh-huh.

25 With DJJ, an attorney is given to you on the spot.

MS. JOHNSON - CROSS EXAMINATION BY MR. GRAUSTEIN (IN CAMERA) 34

1 Q. But you also understood that you had a right to an attorney
2 in this matter, didn't you?

3 A. Uh-huh.

4 Q. And you also understood you had a right to remain silent?

5 A. Yes, sir.

6 Q. And that any statement - - you were also advised that any
7 statement that you made would be used against you. Correct?

8 A. Yes, sir.

9 Q. And you initialed on that form that you understood that.

10 A. Yes, sir.

11 Q. And you also indicated on that form and you initialed on
12 that form is that you wished to waive those rights. Correct?

13 A. Yes, sir.

14 Q. Is that your signature on the bottom of that sheet?

15 A. Yes, sir.

16 Q. So, everything - - well, we've seen a taped interview.
17 That was you where you state verbally to the officers present
18 that you wish to waive your rights. Correct?

19 A. Yes, sir.

20 Q. We have a written document that has advisements of your
21 right to remain silent and that anything you say will be used
22 against you. Correct?

23 A. Yes, sir.

24 Q. And you had indicated on that that you understood those
25 rights. Correct?

MS. JOHNSON-REDIRECT EXAMINATION BY MR. HAZZARD (IN CAMERA) 35

1 A. Yes, sir.

2 Q. You also indicated you wished to waive those rights.
3 Correct?

4 A. Yes, sir.

5 Q. And you signed that form?

6 And so now you're here today to say that at some point you
7 asked for an attorney but you had all the time during that forty
8 minute interview at any point on that form to say, "I want an
9 attorney. I'm going to be quiet and I don't want to talk to
10 you."

11 Correct.

12 A. But I was under the impression that the attorney wasn't
13 just going to show up. You know, I wasn't going to get an
14 attorney right then.

15 Q. But you were informed you had a right to remain silent at
16 that point right there when you were given that form and that
17 anything you said would be used against you. Correct?

18 A. Yes, sir.

19 Q. All right.

20 Thank you.

21 MR. HAZZARD: Very briefly, Your Honor.

22 REDIRECT EXAMINATION BY MR. HAZZARD:

23 Q. Brittany, at any after you asked for an attorney did you
24 ever indicate to the officers that you wanted to talk to them?
25 Did you ever initiate a conversation with them?

1 A. No, sir.

2 Q. All right.

3 Thank you.

4 No further questions.

5 THE COURT: You may come down.

6 (The witness leaves the witness stand.)

7 THE COURT: Do you have any other witnesses?

8 MR. HAZZARD: None from the defense, Your Honor.

9 THE COURT: Anything in reply?

10 MR. GRAUSTEIN: Nothing in reply, Your Honor.

11 RULING OF THE COURT

12 THE COURT: In regards to the evidentiary hearing just
13 held in this case, I have held an evidentiary hearing in this
14 matter, and I am convinced beyond a reasonable doubt and so find
15 that the confession or statement obtained by the defendant was
16 freely and voluntarily given and that the same was given without
17 duress, without coercion and without undue influence and without
18 any threats, inducements or hope of reward.

19 I further find that the defendant in compliance with
20 Miranda v. Arizona was advised of her constitutional rights;
21 that is, the right to have an attorney present with her during
22 the interview and the interrogation; that the Court would
23 appoint an attorney for her if she was without funds to employ
24 one without cost to her; that she had the right to remain
25 silent; that she had the right to terminate after the

1 interrogation at any time and not to answer any questions and
2 that anything the defendant said could be used against her as
3 evidenced in this case.

4 I further find that the defendant knowingly, understood
5 these rights and intelligently waived such rights under the
6 Fifth Amendment to remain silent and to have counsel present
7 with her at the interview and interrogation.

8 I find that the decision to make the statement was a
9 product of the defendant's own unferreted will. She had the
10 capacity to comprehend the meaning and effects of waiving her
11 constitutional rights.

12 This statement if offered will be admitted into evidence.

13 Yes, sir?

14 MR. HAZZARD: I would like to put a couple of matters on
15 the record - -

16 THE COURT: You may do so.

17 MR. HAZZARD: - - if it please the Court.

18 Um, I understand the Court's ruling. No question about
19 that. Our objection to this statement being admitted into
20 evidence is that it is uncontradicted that Ms. Johnson asked a
21 representative of law enforcement and specifically said, "I need
22 an attorney for this."

23 My understanding of State and U. S. Supreme Court law is
24 that once that implication of the need for legal counsel is made
25 that there is to be no further questioning, no further

1 involvement between the defendant and law enforcement or the
2 State unless and until the defendant indicates that they wish to
3 speak.

4 And I would submit to the Court it is uncontradicted that
5 she invoked her right to legal counsel, ah, and they went ahead
6 and questioned her anyway without her indicating that she wished
7 to, um, wished to give a statement.

8 So, I want to place that on the record.

9 Secondly, we object to the, um, video taped statement being
10 admitted into evidence simply because I don't know if the Court
11 could hear but, ah, the audio quality is not very good.

12 THE COURT: Well, in that connection I would propose
13 that a transcript be presented to the jury during the hearing of
14 the tape and withdrawn afterwards so that they could hear it
15 clearly.

16 MR. HAZZARD: Well, if a certified transcriptions can - -
17 can actually transcribe it, that's fine.

18 THE COURT: You've read it. Are you comfortable with
19 the transcript as it exists? I thought you said that you were
20 earlier.

21 MR. HAZZARD: No, sir. I would want it to be certified.

22 THE COURT: No, I will not - - go - - what else do you
23 have? Any other objections?

24 MR. HAZZARD: Well, I don't know if we can use a
25 transcript that's not certified, Your Honor.

1 Um, I also wanted - - -

2 THE COURT: I would not let it go into evidence. It
3 would just be an aid to the jury during the presentation itself.

4 MR. HAZZARD: So, you are proposing to hand out copies - -
5 -

6 THE COURT: I offer that as a suggestion only - - -

7 MR. HAZZARD: Okay.

8 The defense would object to that but we can cross that
9 bridge when we get to it, I suppose.

10 I also want to at the very least to redact a statement
11 where there is this discussion of her juvenile record, Your
12 Honor.

13 Obviously, that prior juvenile record is not something for
14 the jury to hear.

15 THE COURT: I would redact that part of it, yes.

16 MR. HAZZARD: Okay.

17 And those are the matters I wish to place on the record,
18 Your Honor.

19 No more objections.

20 THE COURT: Thank you.

21 You care to respond to his comments?

22 MR. GRAUSTEIN: Just that, Your Honor, I have provided
23 a copy of the transcript that our office, ah, ah, created which
24 a copy was given to Your Honor, and I've provided a copy of that
25 to Mr. Hazzard, ah, a week ago Friday, and he's had an

1 opportunity to look at that and, ah, if you want to discuss
2 anything as to its accuracy - - -

3 THE COURT: Well, the audio is - - is not good at the
4 beginning of it but it gets stronger as it ends, and if he
5 objects to it, I'm not going to do it but quite often I find
6 that it is helpful to the jury during the playing of it to - -
7 to let them read it but if he objects to it, we'll play the
8 audio as many times as the jury wants to hear it.

9 MR. HAZZARD: Your Honor, I believe the position that I am
10 in is that I have objected to it in its totality. I don't think
11 I can then say, "Well, fine. Let's hand them a transcript of
12 it."

13 So, I'll have to stand with that objection.

14 THE COURT: I understand.

15 MR. HAZZARD: Thank you, Your Honor.

16 THE COURT: My entering of it would not agree that you
17 accepted. My entering of it would be that this is the
18 transcript of it but that - - do you care to comment on his
19 other remarks that it is uncontradicted that she asked for an
20 attorney?

21 MR. GRAUSTEIN: Your Honor, um, it's uncontradicted.
22 We don't have anybody who says she ever asked that. She states
23 that she asked for an attorney. She had forty minutes of tape
24 and had a document where she could have indicated at any point
25 that she had asked for an attorney but she did during any of

1 that time. So, where is the evidence supporting - - -

2 THE COURT: I would conclude that her testimony on that
3 issue is simply not plausible in that with Officer King she had
4 ample opportunity to express her desire for her an attorney and
5 that's, obviously, indicated not only on Mr. King's testimony
6 but on the video itself, and I note your objection for the
7 record, Mr. Hazzard, but my findings as previously stated will
8 stand.

9 All right, sir.

10 What other issue - - -

11 MR. GRAUSTEIN: I think - - the only other issue raised
12 by Mr. Hazzard, and I don't know with regard to the video which
13 contains a brief mention of her juvenile record, I don't know if
14 that's something we would be able to redact. I guess we could
15 try to skip over it at that point if the defense could identify
16 at what point that is.

17 THE COURT: Well, make some effort to do that.

18 MR. GRAUSTEIN: Yes, Your Honor.

19 THE COURT: If you can't do it, I will explain to the
20 jury that that has no bearing at all in this case but I prefer
21 to redact it if we can do it technically.

22 MR. GRAUSTEIN: Yes, Your Honor.

23 THE COURT: And, Mr. Hazzard, work with him to see if
24 that can be done but I will give an appropriate jury instruction
25 with that regard if you can't technically redact it.

1 Now, can we go forward on the - - on the - - -

2 MR. HAZZARD: On the Blair?

3 THE COURT: Yeah.

4 MR. HAZZARD: Your Honor, I would think that that is going
5 to be somewhat lengthy. Ah, if we could have a lunch break,
6 I'd appreciate it.

7 THE COURT: All right.

8 Let's - - let's take a fifty-five minute lunch break and be
9 back at two because I want to try and start with the jury as
10 close to 2:30 as I can.

11 MR. HAZZARD: All right.

12 THE COURT: So, let's break. Be back at 2:00.

13 Now, let me ask you this. Does the attending physician
14 need to talk to the defendant?

15 MR. HAZZARD: That would be up to the State, Your Honor.

16 THE COURT: Prior to his testimony.

17 How about it?

18 Make an inquiry.

19 MR. GRAUSTEIN: Yes, he would like to have an
20 opportunity to speak with the defendant.

21 THE COURT: Set up an appropriate place for him to do it
22 in private with appropriate security, now.

23 MR. GRAUSTEIN: Yes, sir.

24 THE COURT: Do that now.

25 MR. GRAUSTEIN: Yes, sir.

1 THE COURT: All right, sir.

2 Security, I want him - - I want the doctor and the
3 defendant in a secure place alone.

4 DEPUTY: We'll take care of it, Your Honor.

5 THE COURT: All right.

6 Thank you.

7 All right. We are in recess.

8 (The Court recesses the trial of this case for a short
9 lunch break and thereafter reconvenes the trial of this case.)

10 THE COURT: Good afternoon, ladies and gentlemen.

11 Please be seated.

12 All right, Solicitor, are you - - where is the Solicitor?

13 MR. GRAUSTEIN: Right here, Your Honor.

14 THE COURT: Solicitor, are you ready to proceed?

15 MR. GRAUSTEIN: Yes, Your Honor.

16 THE COURT: One moment.

17 Let the record reflect that the defendant is in court
18 accompanied by her attorney.

19 Yes, sir?

20 MR. GRAUSTEIN: Yes, sir.

21 Just one matter before we get going on the Blair hearing.

22 The State's done the Jackson v. Denno hearing - - -

23 THE COURT: Wait one minute.

24 Donna, I want to make sure my jury stays downstairs until
25 I hear this motion.

1 CLERK OF COURT: Yes.

2 How many did you need?

3 THE COURT: Forty.

4 CLERK OF COURT: Okay.

5 THE COURT: I don't want them coming up here now.

6 CLERK OF COURT: They won't.

7 THE COURT: Okay.

8 Proceed.

9 MR. GRAUSTEIN: Thank you, Your Honor.

10 The State played for the Court a DVD recording of a
11 statement made by the defendant during a Jackson v. Denno
12 hearing. The State would request that this be made - - this be
13 marked as a Court's Exhibit for the - - Court's Exhibit #2 for
14 the purposes of that hearing.

15 THE COURT: Yes.

16 While we're talking, what did you do about the possible
17 redact of - - -

18 MR. GRAUSTEIN: We weren't able to find a way to redact
19 that. We may be able to skip over that. I think will
20 probably - - we'll attempt to do that.

21 THE COURT: Well, make every effort. If it comes, I'll
22 give a curative instruction, Mr. Hazzard.

23 MR. HAZZARD: Thank you, Your Honor.

24 THE COURT: All right.

25 That is introduced as Court's Exhibit #2.

1 MR. GRAUSTEIN: Thank you, Your Honor.

2 (The Court Reporter accepts the DVD statement of the
3 defendant as Court's Exhibit #2.)

4 THE COURT: Mr. Hazzard, anything further from you
5 before we proceed, sir?

6 MR. HAZZARD: Nothing on behalf of the defense, Your
7 Honor.

8 THE COURT: All right.

9 BLAIR HEARING (IN CAMERA)

10 MR. HAZZARD: Your Honor, I would say, though, if we are
11 ready to go forward with the Blair hearing, then that would
12 technically be a matter of the defendant.

13 THE COURT: Go ahead.

14 MR. HAZZARD: I was saying that if, um, if we are ready to
15 go forward with the Blair hearing at this time - -

16 THE COURT: Yes, sir.

17 MR. HAZZARD: Oh, we are.

18 I want to hand up to the Court a motion that I filed on
19 October 19th of 2010, and that was a notice and motion for a
20 corrected mental health evaluation report and extension of
21 deadline to respond to plea offer or in the alternative a motion
22 for a second mental health evaluation pursuant to Section 44-23-
23 410.

24 Um, as I indicated to the Court previously, um, Ms. Johnson

1 was evaluated by Dr. Frierson on March 29th of 2010.
2 Subsequently, he issued a report that was full of inaccuracies,
3 um, such as indicating that Ms. Johnson was diagnosed as having
4 depression when she was incarcerated in the Department of
5 Juvenile Justice in 1991. The problem with that is this young
6 lady was born in 1991, Your Honor.

7 And it is - - it is rife with inaccuracies, both factual
8 and procedural, and so we simply asked to have a corrected
9 report.

10 Well, subsequent to that, a corrected report was received,
11 and that one also had the same problems with it. So, I
12 subsequently files this particular motion back in October, and
13 we were scheduled to have it heard in November but I was
14 involved in the trial of a case at that time, and it has not
15 been rescheduled up to this point, and I would like to address
16 it at this time.

17 THE COURT: Seems like to me I could resolve the issue
18 after hearing the doctor's testimony, don't you think?

19 MR. HAZZARD: Well, the issue is the motion corrected, and
20 it's, obviously, not this Court's fault because this Court
21 wasn't involved back in October, but the motion specifically
22 requested alternative relief, one of them being a second mental
23 health evaluation that is permitted under Section 44-23-410, and
24 through no fault of the defense, we've never been entitled to
25 receive that from an independent - - -

1 THE COURT: Well, let me ask you. Let me interrupt you
2 if I may.

3 What's your position on this?

4 MR. GRAUSTEIN: Well, Your Honor, I believe that the matter
5 can be resolved if the doctor who made and issues this report -
6 - -

7 THE COURT: Yeah, I would - - I will listen to his
8 testimony, and if I conclude he's based it on inaccurate facts,
9 I'll rule accordingly but in making the rule, I'll need to hear
10 the doctor's testimony and ascertain what facts he did rely on.

11 So, let's proceed with the doctor, and I will proceed from
12 there.

13 I would like a copy of his report - -

14 MR. GRAUSTEIN: Yes, Your Honor. I have that.

15 THE COURT: - - as I listen to his testimony.

16 MR. HAZZARD: And the defense, with regard to this motion
17 would like to make this a Court's Exhibit.

18 THE COURT: Is that the first or second?

19 MR. HAZZARD: No, this is our actual motion, Your Honor.

20 THE COURT: Court's Exhibit #3. Hand it to Mrs.
21 McCall, please.

22 (The Court Reporter accepts Court's Exhibit #3.)

23 THE COURT: Well, tell me this, Mr. Hazzard. If the
24 doctor now says that his finding is based on accurate facts, why
25 would you need a second hearing. I don't understand that - -

1 assuming that the doctor has rectified the facts upon which he
2 based opinion. Why would you need a second opinion?

3 MR. HAZZARD: I don't know what he's going to say, Your
4 Honor.

5 My concern - - -

6 THE COURT: Well, let's address - - I understand that,
7 and I accept his concern but - -

8 MR. HAZZARD: Uh-huh, uh-huh.

9 THE COURT: I would have it, too, but I want to hear his
10 testimony, and I will decide from there.

11 MR. HAZZARD: Yes, sir.

12 THE COURT: But I do note that in her own testimony by
13 that statement, she was in eleventh grade of school, and she was
14 a good student, and she admitted she was a good student.

15 MR. HAZZARD: Well, yes, sir, and that - - -

16 THE COURT: Well, let's hear what the doctor said. Go
17 ahead, Scott.

18 MR. GRAUSTEIN: This is a copy of the doctor's initial
19 report and his amended report.

20 THE COURT: And you have both of these, Mr. Hazzard?

21 MR. HAZZARD: Yes, sir, Your Honor.

22 THE COURT: All right.

23 MR. HAZZARD: This document I actually have received.

24 THE COURT: Proceed.

25 MR. GRAUSTEIN: Your Honor, the State would call Dr.

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1 Richard Frierson.

2 (The witness takes the witness stand.)

3 (IN CAMERA) DR. RICHARD LESANE FRIERSON, BEING
4 DULY SWORN, TESTIFIES AS FOLLOWS:

5 CLERK OF COURT: Please state your name for the Court
6 spelling your last.

7 DR. FRIERSON: My name is Richard Lesane Frierson, F-r-i-e-
8 r-s-o-n.

9 THE COURT: Proceed.

10 MR. GRAUSTEIN: Thank you, Your Honor.

11 DIRECT EXAMINATION BY MR. GRAUSTEIN:

12 Q. Dr. Frierson, tell the, ah, where are you currently
13 employed?

14 A. I'm employed by the University of South Carolina School of
15 Medicine.

16 Q. And what sort of educational background do you have?

17 A. I have a Bachelors Degree in Music from the University of
18 South Carolina, completed a medical doctorate from the
19 University of South Carolina School of Medicine in 1988. I
20 completed four years of training in general psychiatry in 1992
21 at the William S. Hall Psychiatric Institute. I am - -
22 concluded a fellowship in Forensic Psychiatry, a one year
23 fellowship in 1993 at William S. Hall Psychiatric Institute.

24 THE COURT: Do you admit his qualifications?

25 MR. HAZZARD: No, Your Honor, I do not.

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1 THE COURT: Go ahead.

2 Q. Dr. Frierson, you stated you are employed at the Medical
3 University of South Carolina?

4 A. No, the University of South Carolina School of Medicine in
5 Columbia.

6 Q. The University of South Carolina School of Medicine. Okay.
7 And how long have you been employed there?

8 A. I've been there since 2004.

9 Q. Were you employed anywhere before that?

10 A. Yes. From 1993 until that time I was employed by the
11 South Carolina Department of Mental Health.

12 Q. All right.

13 And anything before that?

14 A. No, I mean premedical school but - - -

15 Q. Oh, all right.

16 THE COURT: You have been qualified as an expert in many
17 courts of this state, have you not, Dr. Frierson?

18 DR. FRIERSON: Yes, sir.

19 THE COURT: I would permit you to examine as to his
20 qualifications only at this time but I conclude that from his
21 own testimony and from his prior record that he's qualified in
22 this area of clinical psychology having been found as an expert
23 not only in my court but I think every court in this state but
24 you're certainly entitled to cross examine him at this time only
25 as to his qualifications.

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1 You may proceed.

2 MR. HAZZARD: The defense has no questions regarding
3 qualification, Your Honor.

4 THE COURT: All right, sir.

5 You want to tell me for the record why you declined to
6 accept his qualifications?

7 MR. HAZZARD: Because until he stated them on the record,
8 Your Honor, I did not know what his qualifications were.

9 THE COURT: I understand. That's fair enough. You may
10 be seated, and thank you.

11 MR. HAZZARD: Yes, sir.

12 MR. GRAUSTEIN: And just for clarification, Your Honor,
13 the State would move that Dr. Frierson be qualified as an expert
14 in the area of Forensic Psychology.

15 THE COURT: I so find him in that field.

16 MR. GRAUSTEIN: Thank you, Your Honor.

17 THE COURT: Dr. Frierson, we're glad to have you.

18 DR. FRIERSON: Thank you.

19 THE COURT: Let the record reflect, of course, that this
20 is outside the presence of the jury.

21 Q. Dr. Frierson, did you receive an order from the Court to
22 examine the defendant in this case?

23 A. The Department of Mental Health received an order to
24 examine the defendant pursuant to SC Code Section 44-23-14 for
25 a competency to stand trial only.

1 Q. Okay.

2 And did you conduct such an examination?

3 A. Yes.

4 Q. All right.

5 What information, if any, did you obtain prior to your
6 doing the examination on the defendant?

7 A. From the defense attorney we had received copies of the
8 arrest warrants, the police investigative reports, the autopsy
9 report on the victim and numerous statements of witnesses, um,
10 in the case. Um, additionally, we sought out and obtained
11 medical records from the South Carolina Department of
12 Corrections, the Waccamaw Mental Health Center and the South
13 Carolina Department of Juvenile Justice.

14 Q. Okay.

15 A. We had requested a family member contact for the ability to
16 get a social history. We made several calls to the attorney for
17 such a contact, and we were never provided one.

18 Q. All right.

19 Now, you say you - - other than by family contact as just
20 stated, did you obtain or did you receive that information that
21 you just stated?

22 A. Yes.

23 Q. Okay.

24 And did you use that as part of your examination?

25 A. Yes.

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1 Q. Ah, and what significance is this information?

2 A. Well, it just provides some understanding as to what the
3 defendant is charged with, what the evidence is because one of
4 the things that we need to do is to ascertain whether the
5 defendant has the ability to weigh evidence, view evidence, the
6 strength and weaknesses of the evidence, that kind of stuff.

7 Also, the medical records help us to understand if she's
8 been treated for prior mental illness, what that mental illness
9 is that she's been treated for, um, as well as how she appears
10 to be doing currently.

11 Q. All right.

12 And when was this exam done? Do you know?

13 A. This examination was done on March 29th of 2010.

14 Q. Okay.

15 And who was present when that examination was done?

16 A. The second examiner who was a licensed social worker,
17 Cassandra Sims, and a fourth year resident in psychiatry,
18 Kristen Arthur.

19 Q. All right.

20 How much time did y'all spend with the defendant?

21 A. Approximately one hour and forty-five minutes.

22 Q. And, ah, did you - - have you talked or examined the
23 defendant today?

24 A. Yes.

25 Q. Okay.

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1 And are you familiar with the legal standards of competency
2 to stand trial?

3 A. Yes.

4 Q. Okay.

5 And, ah, what have you done to - - what did you do to
6 determine whether or not the defendant met those standards?

7 A. Basically, we took a history as to her understanding as to
8 the roles of various court officers, whether she was aware of
9 the charges against her, the potential sentence she could
10 receive.

11 Did she understand how court works, how she could plead?
12 Could she adequately explain the concepts that are involved in
13 plea bargaining? Could she problem solve within the courtroom
14 and solve a hypothetical problem? Ah, did she understand how
15 she's suppose to behave in court, how to maintain appropriate
16 courtroom demeanor? Did she understand evidence of the case,
17 the strength and weaknesses in the evidence of her case?

18 Q. Okay.

19 And were you able to determine if there was any evidence
20 that the defendant is mentally retarded in any way?

21 A. There is no evidence of mental retardation in this case.
22 We have prior IQ testing of the defendant that is in the average
23 to above average range. Her full scale of IQ as measured at the
24 Department of Juvenile Justice was 109 with a verbal IQ of 101
25 and a performance IQ of 118.

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1 Q. And what significance is there to that?

2 A. Well, the performance IQ is actually in the high average
3 range. Certainly, Ms. Johnson is brighter than the large
4 majority of criminal defendants that we have the occasion to
5 evaluate in Columbia.

6 Q. Now, were you able to determine if there was any evidence
7 that the defendant has a mental illness?

8 A. Um, yes. There is evidence that she has been treated for
9 mental illness.

10 Q. Okay.

11 And could you describe what sort of illness that was?

12 A. Yeah.

13 Now, there are several things, actually.

14 First of all, Ms. Johnson has a history of, um, being
15 treated for depression: Sad mood, difficulties with sleep and
16 appetite. Um, at the time that I saw her she did not meet full
17 criteria for major depression but I did note that she had been
18 placed on an antidepressant. So, it could be that some of her
19 symptoms had improved by the time that I saw her.

20 The other issues is because she has - - was a heavy user
21 of cannabis before her incarceration, it's unclear how much of
22 her mood symptoms might be complicated by her - - by the affect
23 of her cannabis use.

24 So, because of this diagnostic ambiguity we assign in these
25 cases what's called depression not otherwise specified as a

1 diagnosis.

2 Additionally, ah, Ms. Johnson has a history of childhood
3 abuse. She has had chronic difficulties with irritability and
4 anger control. However, she didn't meet the full diagnostic
5 criteria for post-traumatic stress disorder in that she did not
6 have or did not report nightmares of the traumatic event itself
7 or have avoidance behaviors, um, but she does have a history of
8 hoarding weapons and knives since she was a little child,
9 excessive worry of how those things might be used by people.
10 She would hide forks, knives and hammers, and these symptoms are
11 consistent with obsessive compulsive disorder.

12 Um, but the reason I do not make that diagnosis is because
13 in order to meet the diagnostic criteria, you have to engage in
14 this behavior more than an hour a day or it has to cause
15 significant impairment in routine current functioning which we
16 could not get that history from Ms. Johnson but I wanted to note
17 that these symptoms were present. That's why I assigned the
18 diagnosis of anxiety disorder not otherwise specified.

19 Q. Okay.

20 A. And, finally, I assigned the diagnosis of cannabis
21 dependence, ah, based on her report of her pattern of cannabis,
22 her feeling and report that she did show she was addicted at one
23 point and significant physiological tolerance that she has
24 displayed.

25 Q. Okay.

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1 Do any of her mental health conditions that you just
2 diagnosed the defendant with, do they, any of them, affect her
3 competency to stand trial?

4 A. No.

5 Q. Okay.

6 Now, I've got ask you a question here.

7 MR. GRAUSTEIN: May I approach the witness, Your Honor?

8 THE COURT: Yes, sir.

9 MR. GRAUSTEIN: Thank you.

10 Q. Let me ask if you recognize this, Doctor?

11 A. This was the initial report submitted to the Court dated
12 March 29, 2010.

13 Q. Okay. Okay.

14 So, this was your initial report on - -

15 A. Uh-huh.

16 Q. - - okay.

17 Now, I've got a couple of questions here.

18 Item 9, would you read what that states there?

19 A. Medical records from the Department of Juvenile Justice
20 dated June 7, 1991.

21 Q. All right.

22 Is that accurate?

23 A. No.

24 Q. What's wrong with that?

25 A. I refer the Court to the actual records from the Department

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1 of Juvenile Justice. There were key dates on this record. One
2 was her date of birth, and one is the date that she was
3 evaluated at the Department of Juvenile Justice.

4 I'm not perfect, Your Honor. I put the date of birth on
5 the DJJ records which is the most prominent date on this report
6 rather than the actual date that she was evaluated there.

7 So, that #9 in my amended report should read March 15,
8 2005.

9 THE COURT: Is there any initial difference in your
10 initial report and your amended report?

11 DR. FRIERSON: Well, I just realized as I was preparing for
12 my testimony today on page 9 - - -

13 THE COURT: Show me which is the amended report. Both
14 of them indicate March 29th.

15 MR. GRAUSTEIN: I'm sorry, Your Honor.

16 THE COURT: You did not designate which is which.

17 DR. FRIERSON: The front of the report should say, "Amended
18 Report".

19 THE COURT: All right. I got it now.

20 Thank you.

21 Go ahead.

22 A. The only other correction that needs to be made to the
23 amended report would be on page 3 under Psychiatric History,
24 third line, the - - the year 1991 should be 2005 there as well.

25 THE COURT: With these wrong dates initially, and I

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1 understand we all make mistakes, would they have interfered with
2 your evaluation?

3 DR. FRIERSON: No.

4 THE COURT: You may proceed.

5 Q. Well, Doctor, will you identify this item for us?

6 A. This is a copy of the Amended Report dated October 27,
7 2010. I was called in - - it was explained to me that there was
8 a question about that date. So, I agreed to change that date
9 under #9 which is where it was brought - - on page 2, #9,
10 because that's where it was brought to my attention that there
11 was an error.

12 So, I corrected that error and submitted this amended
13 report.

14 What I did not realize is that 1991 was also on page 3 but,
15 for the record, where it says "1991 evaluating at the Department
16 of Juvenile Justice", that was on their report but it's her date
17 of birth that I put on here by mistake. Her actual date of
18 evaluation with the Department of Juvenile Justice was March 15,
19 2005.

20 Q. So, Doctor, here today as you testify is there any doubt in
21 your mind that the Department of Juvenile Justice Records that
22 you reviewed in connection with this case were those of the
23 defendant, Brittany Johnson?

24 A. I'm not sure I understand that question but let me just
25 say. It is my understanding and belief that the records that I

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1 was using from the South Carolina Department of Juvenile Justice
2 are those of Brittany Alexis Johnson.

3 Q. Okay.

4 So, Doctor, based on that and other records you reviewed
5 and the examination you conducted, in your expert opinion to a
6 reasonable degree of medical certainty can you offer an opinion
7 as to the defendant's competency to stand trial?

8 A. Yes.

9 Q. And what is that opinion?

10 A. It is my opinion that she is currently competent to stand
11 trial.

12 Q. And I think as you previously stated you, ah, generated an
13 initial report?

14 A. Yes.

15 This is a copy of my initial report.

16 MR. GRAUSTEIN: Your Honor, I'd like that marked as
17 Court's Exhibit #3 - - #4.

18 THE COURT: You may.

19 Q. And, then, you subsequently - - -

20 THE COURT: Have you put in his first report and his
21 amended report yet?

22 MR. GRAUSTEIN: I'm putting in the amended report right
23 now, Your Honor.

24 THE COURT: Put in the first report, too.

25 MR. GRAUSTEIN: That's it, Your Honor.

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1 Q. And that - - could you identify that?

2 A. Yes. This is a copy of the amended report.

3 Q. That is the amended report that you submitted in this case
4 after you became aware that there was a problem with a date on
5 it?

6 A. Yes.

7 MR. GRAUSTEIN: And, ah, Your Honor, we would request
8 that this be marked as Court's Exhibit #5.

9 THE COURT: All right, sir.

10 So ordered.

11 (The Court Reporter accepts Court's Exhibits #4 and #5.)

12 MR. GRAUSTEIN: No other questions, Your Honor.

13 THE COURT: Mr. Hazzard.

14 MR. HAZZARD: Thank you, Your Honor.

15 CROSS EXAMINATION BY MR. HAZZARD:

16 Q. Okay.

17 Dr. Frierson, you indicated you talked with Brittany for
18 about an hour and forty-five minutes back on March 29th of 2010.
19 Is that correct?

20 A. Yes.

21 Q. And until today had not spoken with her since that time.
22 Correct?

23 A. That's correct.

24 Q. Okay.

25 Now, when you talked with her back then, what medication,

1 if any, was she on?

2 A. She was taking anti-psychotic medication seroquel. She was
3 taking anti-depressant medication flouxetine, otherwise known as
4 Prozac. And she was taking antihistamine called hydroxyzine
5 otherwise known as vistaril.

6 Q. And seroquel comes with a black box warning, correct?

7 A. Yes.

8 Q. Okay.

9 If you would, explain for the record what a black box
10 warning is, sir?

11 A. A black box warning is a warning issued by the Federal Drug
12 Administration, ah, regarding, um, serious potential side
13 affects the medications - - the physicians should be aware of.

14 Q. And with regard to seroquel, those side affects are
15 increased suicidal behavior and thinking young adults, correct?

16 A. Yes.

17 Q. Okay.

18 And the requirement under a black box warning for seroquel
19 is to monitor patients closely for clinical worsening,
20 suicidality or unusual changes of behavior. Correct?

21 A. I don't have it in front of me but I don't disagree with
22 what you're saying?

23 Q. Okay.

24 On March 29, 2010, or at any time subsequent to that do you
25 have any knowledge regarding who has been monitoring Ms. Johnson

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1 and how that monitoring has been performed?

2 A. No, I do not.

3 Q. Okay.

4 Now, did you indicate in your report that she had a history
5 of suicide attempts?

6 A. I don't know that I put that in my report, no.

7 Q. Okay.

8 Were you aware that she had a history of suicide attempts
9 - - -

10 A. There was mention of that, um, where she had - - she told
11 us about some prior suicide attempts during my interview of her.
12 That she had walked in front of a car before, had slashed her
13 wrists, had taken an overdose and once took some of her mother's
14 pills.

15 So, there were at least four prior attempts.

16 Q. And that didn't make it into your report?

17 A. I did not include that in my report.

18 Q. Okay.

19 Now, with regard to an individual's ability to make
20 decisions as to the trial of a case, do you think someone is
21 more capable of assisting in the trial of their case and making
22 appropriate decisions that defendants have to make such as to
23 whether to accept or reject a plea offer, whether to testify or
24 not to testify, things of that nature, do you think someone who
25 is suicidal is more or less capable of making those decisions

1 than someone who is not?

2 A. I don't think being suicidal in and of itself affects your
3 ability to make those decisions.

4 Where we are concerned about people who are suicidal are
5 when people want to get a maximum sentence or want to get the
6 death penalty in a death penalty case because they are suicidal.

7 Ms. Johnson with me was quite capable of discussing that
8 she had been offered a plea of twenty-five to thirty years for
9 voluntary manslaughter and was able to tell me her reasons for
10 not accepting that plea.

11 In her reasoning - - her reasoning did not appear to be
12 based in mental illness. She said to me that twenty-five to
13 thirty years was similar to a life sentence in her view of
14 things, and, therefore, she just might as well take a chance.

15 Q. Uh-huh. Okay.

16 Now, with regard to the seroquel, what is her dosage?

17 A. The last time I had MER, her dosage was 300 mg.

18 Q. Okay.

19 Now, with regard to that, and you indicated this was an
20 anti-psychotic medicine, correct?

21 A. It is an anti-psychotic. However, it is used for lots
22 things other than treatment of psychosis and, specifically, Ms.
23 Johnson does not have psychotic systems. They were using this
24 medication with Ms. Johnson in the Department of Correction to
25 try to help her better control her anger.

DR. FRIERSON - CROSS EXAMINATION BY MR. HAZZARD (IN CAMERA)

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1 Q. Uh-huh, okay.

2 A. Because it's often used for that on occasion.

3 Q. Okay.

4 And who prescribed this medication that you indicated was
5 for her anger, sir?

6 A. I believe in the Department of Corrections the only
7 psychiatrist that I saw listed was Dr. Pamela Crawford.

8 Q. Okay.

9 Now, you had indicated, I believe, and correct me if I'm
10 wrong, that you didn't feel that Brittany fit the diagnosis for
11 post-traumatic stress disorder. Is that correct?

12 A. That's correct.

13 She does have some symptoms of post-traumatic stress
14 disorder but she doesn't have the number of symptoms needed to
15 meet the diagnostic criteria.

16 Q. But now your report, it indicates and this is page 3,
17 paragraph 3, under Psychiatric History, it says, "At the
18 Department of Corrections, she (meaning Brittany Johnson) is
19 currently diagnosed with obsessive compulsive disorder, post-
20 traumatic stress disorder and depression not otherwise
21 specified.

22 A. That's what they diagnosed with, yes.

23 Q. Okay.

24 And you disagree with that diagnosis?

25 A. Based on my interview with her, the symptoms she reported,

1 yes.

2 Q. Okay.

3 A. The symptoms necessary for that diagnoses, there's two
4 diagnoses, are not contained in sufficient detail in the
5 Department of Corrections for me to ascertain that she actually
6 met the criteria needed.

7 Q. Okay.

8 A. It just mentions the diagnoses themselves.

9 Q. Okay.

10 A. I do think that Ms. Johnson has had traumatic events in her
11 lifetime: Her early childhood, ah, abuse. She was removed
12 from the home for neglect for awhile by the Department of Social
13 Services. Ah, she also has a history of a sexual assault, and
14 those things are certainly sufficient traumas that would set
15 someone up to have PTSD.

16 She has subsequently developed chronic difficulties
17 controlling her anger and her irritability which is a symptom of
18 PTSD.

19 Q. In the next paragraph of your report, it said, "She was
20 molested at age three and ages eight through twelve."

21 I take it that that is repetitive molestation?

22 A. That's what she said, yes.

23 Q. Okay.

24 And then on page 4, you said, "Age three and then again
25 from ages five to nine."

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1 A. Right.

2 Q. Which is it?

3 A. It depends on where you look and who you talk to as to when
4 it is. It's reported differently in different places.

5 Q. All right.

6 And in your report do you specify that one report is
7 different from another, sir?

8 A. No.

9 Q. Okay.

10 A. She reports, just to be clear for you - -

11 Q. Uh-huh.

12 A. - - on interview - - and let me find it in my notes.

13 She doesn't remember the first one which would not be
14 surprising because people don't remember things, even traumatic
15 things that can happen at age three. Um, most of our earliest
16 memories go back to about that age, um, but she said age five to
17 nine to me.

18 Q. Okay.

19 Then who said ages - - -

20 A. It was in the Department of Juvenile Justice records. It
21 had been reported differently.

22 Q. Okay.

23 But you didn't - - you don't specify in your report where
24 your information comes from.

25 A. I did not. I did not realize you would find that

1 important.

2 Um, the important thing to me was - -

3 Q. Inconsistencies I always find important.

4 A. - - the important thing to me was is around those ages she
5 was sexually assaulted. I think that's the take-home picture.
6 Whether it was five to nine or eight to twelve - - -

7 Q. Okay.

8 So, getting back to seroquel, um, literature says that is
9 for treatment of bi-polar disorder, depressed phase, major
10 depressive disorder, manic bi-polar disorder, schizophrenia.
11 Which of these conditions was seroquel prescribed for Ms.
12 Johnson, sir?

13 A. You would have to ask Dr. Crawford who prescribed it
14 because I did not.

15 Q. Okay.

16 A. It's mentioned in the Correction records for anger control
17 at times.

18 Q. Okay.

19 Now, one of the recognized adverse affects of seroquel is
20 somnolence, correct, doctor?

21 A. Yes. It's currently used for that purpose.

22 Q. I mean, basically, it's suppose to dumb someone down so
23 that they remain calm, almost to the point of being catatonic.
24 Is that correct?

25 A. No, that's not correct.

DR. FRIERSON - CROSS EXAMINATION BY MR. HAZZARD (IN CAMERA) 69

1 I - - I - - I do not accept that characterization of
2 seroquel.

3 Q. How would you characterization of somnolence, then, sir?

4 A. Sleepiness.

5 Q. Sleepiness.

6 So, if someone is on trial for there life, it is a good
7 thing that they be sleepy and drowsy as opposed to awake and
8 alert?

9 A. Of course not but that's why it's dosed at night so that
10 the somnolence will help people sleep, and after they sleep that
11 should not be a significant problem during the daytime, and if
12 it is, the person monitoring and prescribing the seroquel can
13 lower the dose.

14 Q. Are you aware that she, Ms. Johnson, is prescribed it twice
15 daily, sir?

16 A. Ah, no, I was not.

17 Q. Okay.

18 Would that change your opinion of how effective and how
19 appropriate seroquel would be under these proceedings?

20 A. Let me just say that I was here during her testimony at the
21 Jackson v. Denno hearing. Although she did at times did not
22 speak loudly and had to be reminded to do so, she appeared to be
23 alert enough to follow questions, to answer questions
24 appropriately, and when I interviewed her down in the holding
25 area, she also demonstrated an ability to interact with me and

DR. FRIERSON - CROSS EXAMINATION BY MR. HAZZARD (IN CAMERA) 70

1 answer my questions, and so I don't have evidence that the
2 cerequil is currently impairing her ability to do those things.

3 Q. Okay.

4 Now, you stated that she is also prescribed Prozac. Is
5 that correct, sir?

6 A. Yes.

7 Q. Okay.

8 And that, also, is another medication that comes with a
9 black box warning, correct?

10 A. Yes.

11 Q. Okay.

12 And that black box warning is specifically with regard to
13 increased suicidal thinking and behavior, correct?

14 A. Yes, in young adults and teenagers.

15 Q. And this young lady would be a?

16 A. Young adult.

17 Q. All righty.

18 Okay.

19 Thus, requiring close observation, correct?

20 A. Yes.

21 Q. Okay.

22 Any knowledge regarding what observation and monitoring, if
23 any, has been performed in Ms. Johnson's case since she's been
24 diagnosed this med - - or since she's been prescribed this
25 medication?

DR. FRIERSON - CROSS EXAMINATION BY MR. HAZZARD (IN CAMERA) 71

1 A. I know what sort of follow-up that she received and
2 monitoring up until this time that I saw her when she was in the
3 Department of Corrections in March of 2010.

4 Q. Okay.

5 A. It's my understanding that April 16th of 2010, she was
6 removed back to the J. Reuben Long Detention Center.

7 Q. Uh-huh.

8 A. I have not seen records from the J. Reuben Long Detention
9 Center.

10 Q. Uh-huh.

11 A. Since she got back.

12 Q. And you have not considered those in making your opinion
13 here today?

14 A. I made my opinion back in March of 2010 before these
15 documents would have even existed.

16 I make my opinion today based on having interviewed her
17 downstairs and not noting a significant change between her prior
18 evaluation and how she was able to respond and answer my
19 questions regarding the competency today.

20 Q. So, then when I asked you, "You have not considered those
21 records in making your opinion today?" your answer would be
22 what, sir?

23 A. No.

24 Q. Thank you.

25 Now, with regard to vistaril, that is used for the purpose

1 of sedation, correct?

2 A. It's used for a variety of things. Um, it's not commonly
3 used as a sedative. It's commonly used to treat people with
4 itching. However, it is a non-controlled substance that
5 remains an option to treating people who report significant
6 anxiety. So, it's used to treat anxiety.

7 Q. And to your knowledge, why was it prescribed for Ms.
8 Johnson?

9 A. For anxiety.

10 Q. Okay, and not for itching?

11 A. No.

12 Q. And one of the side affects of vistaril is it also causes
13 somnolence, correct?

14 A. It can, yes.

15 Q. Now, sir, your initial report was inaccurate, correct?

16 A. The opinion in my report was not inaccurate but the
17 inaccurate - - it had a date that was incorrect.

18 Q. Okay.

19 And that date is repeated throughout the report, correct?

20 A. I don't know where it's repeated other than once, and that
21 would be on page 4.

22 Q. Well, what I'm looking is a copy of this report. Second
23 paragraph, page 3, says, "Ms. Johnson has had longstanding
24 symptoms of depression for which she has received treatment over
25 the years."

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1 Second sentence, "She was diagnosed with depression not
2 otherwise specified in 1991 when she was incarcerated in the
3 Department of Juvenile Justice."

4 A. That should be 2005 as well.

5 Q. And then under Psychiatric History, second sentence, "At
6 the Department of Juvenile Justice in 1991, she was diagnosed
7 with depression not otherwise specified, disruptive behavior,
8 parent/child problem and cannabis abuse."

9 A. That should be 2005.

10 Where ever it says "Department of Juvenile Justice in
11 1991," should be 2005.

12 Q. Okay.

13 And when you were asked to - - how did it come to your
14 attention that there was a problem with the report that you had
15 offered?

16 A. Um, I received a call from the Solicitor.

17 Q. Okay.

18 And what did the Solicitor say?

19 A. That he had had a problem with the date under Item 9 in my
20 report.

21 Q. Okay.

22 And did you go back and actually look at the report or did
23 you simply tell someone else to change it?

24 A. I went back and changed Item 9.

25 Q. Okay, without a reading of the report?

DR. FRIERSON - CROSS EXAMINATION BY MR. HAZZARD (IN CAMERA)

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1 A. I did not go through the entire report, no.

2 Q. Okay.

3 So, then, basically, then what happened is you issued at
4 least two reports that had the same inaccurate information,
5 correct?

6 A. In the body, yes. Not in the sources of information.

7 Q. Yes, sir.

8 Now, do you where that can cause concern as to whether
9 there is any lack of detention to detail to the person who is
10 making a determination as to someone's competency to stand
11 trial?

12 A. That - - it certainly can be your opinion.

13 Q. Uh-huh.

14 A. I try to be diligent in my work, Mr. Hazzard. I try to be
15 as careful as I can. I am not perfect.

16 Q. No, sir. No, sir.

17 But in this case where there is a mistake, a mistake is
18 brought to your attention, and the mistake is then repeated.
19 Would you strike you as a level of competence or incompetence,
20 sir?

21 A. The - - first of all, I don't agree with the presupposition
22 that you are saying. It was not called to my attention that
23 there were typographical errors in the report, only in the
24 sources of information.

25 Q. With regard to post-traumatic stress disorder, I believe

DR. FRIERSON - CROSS EXAMINATION BY MR. HAZZARD (IN CAMERA) 75

1 you indicated that Brittany did not fit that criteria because
2 she did not indicate nightmares of that event and problems
3 sleeping.

4 Sir, isn't that why she was initially placed on seroquel?

5 A. No.

6 She has nightmares but her report to me was that the
7 nightmares are not related to the traumatic events that she has
8 experienced.

9 She has nightmares about something happening to her child,
10 that her child gets killed somehow. Ah, that's not related to
11 childhood sexual abuse.

12 Q. Uh-huh.

13 Okay.

14 Now, at the end of all of your reports, you recommended
15 that Brittany continue to be followed by a psychiatrist during
16 her incarceration.

17 If there is nothing wrong with her, sir, what would be the
18 purpose of having her continue to receive psychiatric
19 evaluations and treatment?

20 A. I have never said there was nothing wrong with Ms. Johnson.

21 Q. Okay.

22 What's wrong with Ms. Johnson, sir?

23 A. Ms. Johnson has depression. Ms. Johnson has symptoms of
24 an anxiety disorder, and those things need to be treated and
25 monitored.

DR. FRIERSON - CROSS EXAMINATION BY MR. HAZZARD (IN CAMERA)

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1 And she's currently prescribed psychiatric medication.

2 Q. Uh-huh, okay.

3 And so every time you have seen her, she has been on this
4 medication?

5 A. Yes.

6 Q. Do you have any knowledge as to how her psychiatric issues
7 manifest themselves when they are not masked with medication?

8 A. All I know is what's in the record in prior descriptions of
9 her. I have never seen her off medications.

10 It would appear that she feels the medications have been
11 helpful, that there is indication at least to Waccamaw Mental
12 Health Center that she was more severely depressed in 2006 when
13 she was evaluated there.

14 Q. Uh-huh.

15 A. And as a result of that - - those symptoms she actually got
16 a diagnosis of major depression

17 Q. Uh-huh.

18 A. Without psychotic features.

19 Q. Uh-huh.

20 Okay.

21 So, if someone else were evaluating her, then, they may
22 very well see things differently than you see them. Correct?

23 A. We all see things differently, Mr. Hazzard, certainly.

24 Q. Okay.

25 How long were you employed with the Department of Mental

DR. FRIERSON - CROSS EXAMINATION BY MR. HAZZARD (IN CAMERA)

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1 Health, sir?

2 A. From 1993 until 2000 and - - it was either 2004 or 2005.

3 Q. Okay.

4 Let's say 2004. That would be approximately eleven years,
5 correct?

6 A. Yes.

7 Q. Okay.

8 And, roughly, how many evaluations did you perform during
9 that time, sir.

10 A. I have no idea.

11 Q. Okay.

12 A. I could tell you in my career what I've done.

13 Q. Okay. Okay.

14 Well, in eleven years how many did you do per month, sir?

15 A. It depends on what you are talking about.

16 Q. Okay.

17 Well, I mean, let's get a ballpark figure. We talking
18 about hundreds of evaluations, thousands of evaluations?

19 A. In 1998, for example, I did 333 evaluations.

20 Q. Okay.

21 A. That is - - currently a much higher number than I would do
22 now.

23 Last year I completed, roughly, a hundred evaluations.

24 Q. Yes, sir.

25 Now, in those eleven years, roughly, how many individuals

1 did you find to be not competent to stand trial, sir?

2 A. I have no idea.

3 Q. More or less than ten?

4 A. More.

5 Q. You think so? All right.

6 A. Probably close to fifteen percent.

7 Q. Okay.

8 MR. HAZZARD: No further questions for this witness, Your
9 Honor.

10 THE COURT: I'm going to have this witness come down.
11 You may come down.

12 (The witness leaves the witness stand.)

13 THE COURT: You have any other witnesses on this issue?

14 MR. GRAUSTEIN: No, I don't, Your Honor.

15 THE COURT: Okay.

16 Mr. Hazzard, you have any witnesses on this issue?

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

18 THE COURT: Okay.

19 RULING OF THE COURT

20 THE COURT: Mr. Hazzard, I find that the mistake in date
21 was complete inadvertence. I don't see where it's any prejudice
22 to this defendant. It clearly is amended at a subsequent time.
23 You've had the benefit of that amended statement with the
24 correct dates.

25 I would conclude that this defendant pursuant to the

1 testimony of the doctor and my viewing her own testimony is
2 totally competent to stand trial, and this doctor's statement is
3 introduced as a finding of the Court and adopted in toto as the
4 finding of the Court, and, Mr. Hazzard, I see no basis in fact
5 for requiring additional adjudication as to mental illness when
6 this is simply a date mistake that could have been made by
7 anyone.

8 So, we'll go forward with the trial of the case.

9 MR. HAZZARD: Thank you, Your Honor.

10 Please note my objection for the record.

11 THE COURT: I will.

12 MR. GRAUSTEIN: Your Honor, I - - I request if there is
13 no objection, Dr. Frierson is released from this trial.

14 THE COURT: Yes.

15 Dr. Frierson, I appreciate your services in this case.

16 Thank you so much. Good to see you again.

17 (The witness leaves the witness stand.)

18 MR. GRAUSTEIN: Thank you, Doctor.

19 THE COURT: All right, sir.

20 Are we ready to bring the jury up, gentlemen?

21 What says the State?

22 MR. GRAUSTEIN: The State is ready, Your Honor.

23 THE COURT: How about it, Mr. Hazzard? Have we
24 disposed of any motions?

25 MR. HAZZARD: We have disposed of all defense motions at

1 this time, Your Honor.

2 THE COURT: Okay.

3 Are you ready for the selection of a jury?

4 MR. HAZZARD: The defense is ready to select a jury, Your
5 Honor.

6 THE COURT: All right.

7 I'm going to ask that the folks on the right hand side move
8 to the left, if you will, for the purpose of having the jury be
9 seated, and once I select the jury, you may come back to your
10 side of the aisle if you care to.

11 Is that satisfactory to everybody? I just want to have the
12 jury.

13 All right, Donna, call down and have the jury come up,
14 please.

15 Dana, when my jury comes, have them sit on the right hand
16 side, please.

17 DEPUTY: Judge, we're going to need more space than these
18 three rows in here.

19 THE COURT: Okay.

20 You folks, please move to the back until I get my jury
21 selected. Then you can sit where you choose.

22 DEPUTY: I'm going to need at least two rows, Your Honor.

23 THE COURT: All right.

24 Everybody move to the back.

25 DEPUTY: It would be better if they would go to the

1 THE COURT: Anything further from the defendant?

2 MR. HAZZARD: Nothing further from the defense, Your
3 Honor.

4 THE COURT: Give us the strikes. The strikes are five
5 and ten. Call the roll.

6 Ladies and gentlemen, as your name is called I ask that you
7 come forward, turn and face the jury panel for me.

8 JURY SELECTION

9 CLERK OF COURT: #355, Judith Succo.

10 Come right up here, please, and turn around and face the
11 back of the courtroom.

12 What say the State?

13 MR. GRAUSTEIN: Present the juror.

14 CLERK OF COURT: The defense?

15 MR. HAZZARD: Please swear the juror.

16 CLERK OF COURT: Have a seat in the jury box, please.

17 #97, Henry Eddy.

18 What say the State?

19 MR. GRAUSTEIN: Please present the juror.

20 CLERK OF COURT: The defense?

21 MR. HAZZARD: Please excuse Mr. Eddy from the trial
22 of this particular case.

23 CLERK OF COURT: You're excused from this particular
24 case.

25 #37, Todd Brenner.

1 Please take them to the jury room just a moment.

2 (The jury retires to the jury room at 3:35 p.m.)

3 THE COURT: Any issues for the jury at this time --
4 considering the jury?

5 MR. GRAUSTEIN: No, Your Honor.

6 THE COURT: How about it?

7 For the defendant?

8 MR. HAZZARD: None on behalf of the defense, Your Honor.

9 THE COURT: All right, sir.

10 Then the jury as selected will be sworn in this case.

11 Ms. Donna, what instructions for the remainder of the panel
12 who were not selected in this case.

13 CLERK OF COURT: Call back tonight after six.

14 THE COURT: Ladies and gentlemen, I want to thank all of
15 you for being here this afternoon, especially, your patience.

16 You've got your call-back number. Please call in. It's
17 important that you do so. Please call in after 6:00 tonight
18 for further instructions.

19 You are now excused for the day.

20 (The remaining jury panel is released for the day and
21 departs the courtroom.)

22 THE COURT: Mr. Bailiff, that's all right.

23 Gentlemen, for the record, I am designating Juror Harriet
24 Charles as Forelady of this jury.

25 All right.

1 JUROR CHARLES: Thank you, sir.

2 THE COURT: Has nothing to do with any issue.

3 JURY SWORN

4 THE COURT: Ladies and gentlemen, prior to proceeding
5 and prior to being sworn - - no, go ahead and swear the witness
6 - - swear the jurors, please.

7 (Clerk of Court swears the jury.)

8 REMARKS OF THE COURT

9 THE COURT: Madame Foreman, ladies and gentlemen,
10 recognizing that for many of you this may be the first
11 opportunity you have had to serve in an alleged criminal case.
12 Let me tell you how we proceed.

13 The State of South Carolina has the burden of proof on this
14 case, and their burden of proof is beyond a reasonable doubt.
15 They will make an opening statement to you as to what they say
16 their case is about. That's a guideline to help you follow the
17 introduction of evidence.

18 Now, what the lawyers tell you is not evidence. Evidence
19 comes from this witness stand under oath and such documents as
20 I have introduced.

21 Mr. Ron Hazzard represents the defendant. He will make a
22 statement to you regarding his position.

23 Following that, we will be taking the testimony of various
24 witnesses who may be called in the trial of this case.

25 At the conclusion of all of the testimony, I will give you

1 the instructions in the law, and you will have final summation
2 by counsel.

3 Now, there's several important things that you need to
4 know.

5 This defendant and all defendants come into this court
6 under the presumption of innocence and that presumption remains
7 with this defendant throughout the trial until you, the jury, if
8 ever, have convinced her of guilty - - find her guilty beyond a
9 reasonable doubt.

10 As I indicated, the State of South Carolina has the burden
11 of proving her guilt beyond a reasonable doubt. She doesn't
12 have to prove a thing. She's presumed innocent. It is the
13 State's burden.

14 I also tell you that you twelve are the sole and only
15 finders of the facts in this case. As a presiding judge, I am
16 not entitled to a factual opinion and I have none.

17 If any ruling, mannerism or actions of mine might tend to
18 indicate to any of you how I feel about any factual situation,
19 please disregard that. I am not entitled to a factual opinion,
20 and I have none.

21 I'm also permitted to say to you that you are the judges of
22 the credibility meaning the believability of every witness who
23 testifies. You bring your common sense to bear as finders of
24 the facts.

25 We know that in everyday life when folks tell us things, we

1 size them up. We decide for ourselves whether we're going to
2 believe all of it, some of it or none of it.

3 Sometimes we ask ourselves. "How did this person come to
4 know what they're telling me?"

5 We may ask ourselves, "Hey, do they have some reason or
6 bias or prejudice to give the testimony that they gave."

7 You as finders of the facts may think if other things that
8 you use in judging credibility and believability but I tell you
9 that as finders of the facts, you are the sole and only judges
10 of the credibility.

11 As I've indicated, you may believe all of what a witness
12 says or some or none. Obviously, you do not determine the
13 truth or falsity of a matter by counting up the number of
14 witnesses who may have testified for one side or the other.

15 Now, we'll begin with the opening statement of the
16 Solicitor.

17 You may proceed.

18 OPENING STATEMENT BY MR. GRAUSTEIN

19 MR. GRAUSTEIN: Thank you, Your Honor.

20 Ladies and gentlemen of the jury, first, I'd like to thank
21 you all for being here. I know it's a burden on y'all and, um,
22 you'd rather take off here and do what you want to be doing than
23 sit here and listen to a case but you'd probably rather be doing
24 something else but this is an important case.

25 It's important. As the judge told you, it's a murder case.

1 Somebody died and somebody killed somebody.

2 Now, we've all got jobs to do in the courtroom. We got
3 the court reporter, the clerk, the judge, the Solicitor, my job.

4 The defense attorney represents the defendant. My job is to
5 represent the State and present evidence to y'all. Most
6 importantly, my job is to prove to you beyond a reasonable doubt
7 that the defendant, Brittany Johnson, committed the crime that
8 she's alleged to have committed.

9 And I say, "allege", because she is presumed innocence.
10 It's up to you to determine whether or not she's guilty or not.

11 Now, that burden, beyond a reasonable doubt, it's a heavy
12 burden to me. We don't want y'all to guess if somebody did
13 something. Maybe they did it. You want to be sure, and we're
14 going to present the evidence so that you will be sure.

15 But it's also not an insurmountable, unbelievably high
16 burden to cross. It's not beyond any doubt. It's beyond a
17 reasonable doubt.

18 And you're reasonable people. That's why you're here so
19 y'all can decide what's a reasonable doubt and what isn't.

20 Now, I'm going to present evidence to you through various
21 witnesses: Police officers; detectives who investigated the
22 crime; forensic specialists, crime scene investigators that
23 collected evidence; witnesses who were present and saw what
24 happened.

25 They're all going to testify and it's going to be up to you

1 to weigh who to believe, who not to believe, how much to
2 believe. At the end of it, you're going to - - I think you're
3 going to be able to view all of this evidence. You're going to
4 have a clear picture of what happened on June 24, 2008, because
5 you never want to forget there is a victim in this case, Monica
6 Burroughs.

7 The evidence is going to show you that she was just sitting
8 outside of her house with some friends, and the defendant came
9 up. Started a confrontation and shot Ms. Burroughs dead in
10 front of her house.

11 I don't want you to make up your minds now. I don't want
12 you to have it in for her now, not by any means. The evidence
13 is going to show you that is exactly what happened.

14 So, take your time. Listen to everybody. Listen to
15 what's not said by some folks. Listen to what other folks say.
16 I think the evidence will be very consistent for you. There
17 shouldn't be a whole lot of questions about what happened that
18 day, a hot June day in Conway.

19 Be mindful of everything. You are the ultimate tryers of
20 the facts. You are the fact finders. You are the one at the
21 end of the day who is going to go back there and deliberate and
22 say, "This is what happened."

23 That's an important responsibility, one we know you're all
24 up to because that's why we picked you to be here, what you're
25 doing here.

1 Give the defense every opportunity or every - - give her
2 the presumption that she deserves at the beginning of this trial
3 that she's innocent but I don't think at the end of this trial
4 after viewing all of the evidence that you'll believe that she's
5 innocent of what she's charged with.

6 Again, thank you for being here.

7 You may wonder why I'm finishing up so quick. Well, this
8 isn't a who done it, folks. This is not a who done it, and
9 it's not a big jigsaw puzzle. This is not a thousand piece
10 jigsaw puzzle.

11 I know the defense is going to tell there's about fifteen
12 hundred pieces in this jigsaw puzzle. This is a preschool
13 jigsaw puzzle.

14 Listen to the evidence. Weigh it carefully, and after - -
15 and after we present it, the you'll be able to deliberate

16 Again, thank you. Thank you for being here. Thank you for
17 your attention and, hopefully, we'll be able to move right along
18 with the case.

19 Thank you very much.

20 THE COURT: Thank you, Solicitor.

21 Mr. Hazzard.

22 OPENING STATEMENT BY MR. HAZZARD

23 MR. HAZZARD: Thank you, Your Honor.

24 May it please the Court?

25 Good afternoon, ladies and gentlemen.

1 My good friend, Scott Graustein, is correct. This is,
2 indeed, a preschool jigsaw puzzle, very few pieces, all of them
3 easy to fit in.

4 Now, Brittany is charged with murder. Murder has,
5 basically, five elements: An unlawful killing of another
6 person with malice aforethought. Okay. Those are the five
7 elements of murder.

8 Now, the interesting about this case is evidence and
9 testimony, I believe, will show that, yes, indeed, Monica
10 Burroughs tragically lost her life on June 24th of 2008, in the
11 Huckabee Heights Projects about 1.4 miles outside the Town of
12 Conway..

13 However, after this incident occurred, evidence and
14 testimony will show that Monica Burroughs had two people in the
15 car with her, a Joanne Davis and a Teresa Cox.

16 Evidence and testimony will show that Detective John King
17 of the Conway Police Department talked with both Ms. Cox and Ms.
18 Davis who were present in the car with Ms. Burroughs; and
19 evidence and testimony will show that they both told Detective
20 King, "I don't think she meant to shoot her. I don't even think
21 she knew the gun went off."

22 Now, does that sound like the intentional action of killing
23 another?

24 Evidence and testimony will show that, in fact, Joanne
25 Davis says, "There was a struggle over the gun."

1 And evidence and testimony will show, I believe, that
2 Detective King asked her several times very clearly. "Did Ms.
3 Burroughs have her hands on the gun when the shot was fired?"

4 And evidence and testimony will indicate that Ms. Davis
5 said over and over to Detective King, "Yes, yes. They were both
6 fighting over this gun. The gun discharged. Don't believe
7 anyone knew."

8 In fact, they didn't even think that Ms. Burroughs knew she
9 had been shot.

10 Again, is this an intentional action?

11 Yes, preschool jigsaw puzzle, large pieces. The only
12 problem is when you're talking about those five pieces of the
13 unlawful killing of another person with malice beforehand, those
14 five pieces will not fit in this case.

15 I simply ask that you take the time and listen to all of
16 the evidence that will be submitted for you, and then you take
17 the law as the judge gives it to you as far as those elements,
18 realizing that not a single person who will testify for the
19 State or the defense will say that this was an intentional
20 action or an action of malice, and then the puzzle for you to
21 decide will be what, if anything is Brittany Alexis Johnson
22 guilty of because I submit to you. We all will know that it is
23 not, not the crime of murder.

24 Thank you.

25 THE COURT: Call your first witness.

MR. KING - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 Thank you, Mr. Hazzard.

2 MR. HAZZARD: Thank you, Your Honor.

3 MR. GRAUSTEIN: The state calls John King.

4 (The witness takes the witness stand.)

5 JOHN GLENN KING, BEING DULY SWORN,

6 TESTIFIES AS FOLLOWS:

7 CLERK OF COURT: Please be seated.

8 State your full name and spell your last, please.

9 MR. KING: John Glenn King, K-i-n-g.

10 DIRECT EXAMINATION BY MR. GRAUSTEIN:

11 Q. Mr. King, are you currently employed?

12 A. I'm retired.

13 Q. Okay.

14 You're retired.

15 What did you do before you retired?

16 A. I worked, ah, twenty-five years of law enforcement in South
17 Carolina and two and half years of international police
18 overseas.

19 Q. Okay.

20 Ah, where have you worked in South Carolina?

21 A. I worked at Myrtle Beach Police Department and Conway
22 Police Department.

23 Q. In what capacity did you work at Myrtle Beach?

24 A. I worked as Investigation Supervisor at Myrtle Beach, and
25 at Conway I worked as a defective.

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1 Q. All right.

2 And how long were you a detective with the Conway Police
3 Department?

4 A. Approximately five years.

5 Q. Okay.

6 Were you a detective at the Conway Police Department on
7 June 24, 2008?

8 A. Yes, I was.

9 Q. On June 24, 2008, did you get called out to investigate a
10 shooting?

11 A. Yes, I did.

12 Q. And where did that occur? Do you remember?

13 A. It occurred in, um, Huckabee Heights in the City Limits of
14 Conway.

15 Q. All right.

16 Here in Horry County?

17 A. Yes.

18 Q. All right.

19 Tell the jury what - - what the nature of that situation
20 was that you got called out to investigate.

21 A. It, ah, if memory serves me correct, myself and Detective
22 Rodmaker, we were together, and we heard on the radio of a
23 shooting on Leonard Avenue in Huckabee Heights area.

24 Q. Well, that - - do you remember what time this was?

25 A. I believe we worked either the eight to four shift or the

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1 nine to five shift. Ah, it would have been somewhere after,
2 probably after lunch time.

3 I do recall that we were riding together, and we responded
4 there together.

5 Q. Okay.

6 Was it light out?

7 A. Yes, it was.

8 Q. Okay.

9 So, it was still daylight?

10 A. Yes, it was.

11 Q. Okay.

12 And about how long did it take you to get to the incident
13 location after you got the call?

14 A. Maybe three to five minutes.

15 Q. All right.

16 When you got there, what did you see?

17 A. Ah, upon my arrival, I talked with the, ah, one of the
18 officers on the scene which was, I believe, Patrolman Edwards,
19 and he advised of a witness who was on the scene, and I talked
20 with that witness and asked that witness to accompany me to my
21 office which was located on Racepath Street at the Annex Police
22 Department to interview her.

23 Q. Okay.

24 Do you recall who that was? Do you recall the name of
25 that person?

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1 A. The witness?

2 Q. Yes.

3 A. It was, I believe, Ms. Cox.

4 Q. Okay.

5 All right.

6 Did you - - at that point, did you know if anybody had been
7 hit, had been shot?

8 A. Yes..

9 Uh, upon my arrival, the victim was still on the scene.
10 She was being treated by Rescue EMS and was being transported to
11 Conway Hospital.

12 Q. Okay.

13 Were you able to observe at all the nature of her injuries?

14 A. No, I was not. I was mainly concentrating on trying to
15 get statements from, ah, the witness.

16 Q. Were you able to identify the person who had been shot at
17 that point?

18 A. At that point, no.

19 Q. Okay.

20 So, now, you're going to do some investigating. You say
21 you started talking to some witnesses.

22 A. Yes. I took Ms. Cox. I'm not sure if she rode with me to
23 the station or if she had a ride to the station.

24 Q. All right.

25 And you did an interview with her?

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1 A. Yes, I did.

2 Q. Okay.

3 Were you able to gather any information from her?

4 A. Yes, I was.

5 Q. Okay.

6 So, you - - what sort of information were you able to
7 gather?

8 A. Um, she gave me some background history as to the victim,
9 on the suspect, and she told me what happened that particular
10 day.

11 Q. Okay.

12 Was she able to identify the victim for you?

13 A. Yes, she was.

14 Q. Okay.

15 And what - - what - - who did she say the victim was?

16 A. Ah, she said the victim was her friend, Monica Burroughs.

17 Q. All right.

18 And you said that she gave you some information on the
19 suspect. Were you able to develop a suspect?

20 A. Yes, I was.

21 Q. How were you able to develop a suspect at this point?

22 A. She gave me a name. She gave me a first name. Ah, she
23 didn't know a last name but she knew the - - the suspect on
24 sight from past dealings with the suspect, seeing the suspect in
25 the past.

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1 Q. And what name did she give you?

2 A. Brittany.

3 Q. All right.

4 Did you, ah, in the investigation, did you interview any
5 other witnesses?

6 A. Ah, yes. Um, I'm - - I'm not sure - - I' pretty sure it
7 was during that same day or in days to follow we interviewed
8 different people based on different information, ah, that we
9 were getting from different witnesses.

10 Q. All right.

11 Now, you said that Ms. Cox when you interviewed her was
12 only able to give you a first name, correct?

13 A. That's correct.

14 Q. Were you able to ever - - ever determine a last name of the
15 suspect?

16 A. Ah, yes. Um, there were several people from the
17 investigative division working on this case: Myself, Detective
18 Rodmaker, Sgt. Addison. Um, I believe, Detective Johnson.

19 And upon them talking with different people, a - - a last
20 name was, ah, obtained.

21 Q. And what was that last name?

22 A. Johnson.

23 Q. Okay.

24 So, now you have Brittany and Johnson?

25 A. Yes.

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1 Q. Now, at any point - - at some point during your
2 investigation were you able to obtain an arrest warrant?

3 A. Yes, I was.

4 Q. Okay.

5 Do you know when that was?

6 A. I'm not exactly sure what date it was but it would have
7 been pretty close to that same date.

8 Q. All right.

9 And who was that arrest warrant for?

10 A. Brittany Johnson.

11 Q. All right.

12 And what was your basis for getting that warrant?

13 A. It was based on two eyewitness accounts of what happened.

14 Q. Okay.

15 Are you saying that two people were able to identify the
16 defendant as - - as the person who did the shooting?

17 A. That's correct.

18 Q. Okay.

19 At the time you got the warrant, what was the charge on
20 that warrant?

21 A. Murder.

22 Q. Okay.

23 So, at that point - - at the point you got that arrest
24 warrant, had you determined that Monica Burroughs had died?

25 A. Yes.

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1 Upon me interviewing the first witness, Ms. Cox, after that
2 interview - - sometime after that interview, I was advised that
3 the victim had passed.

4 Q. Okay.

5 Were you advised of the reason that they had passed?

6 A. Due to the gunshot that she received.

7 Q. Okay.

8 All right.

9 So, you got an arrest warrant - - and - - did you go arrest
10 Ms. Johnson, the defendant?

11 A. Not at that time. We could not find her.

12 Q. You couldn't find her?

13 A. No, we could not.

14 Q. Had your investigation given you any idea what happened - -
15 where she had gone or where she was?

16 A. No.

17 We - - we looked through her - - we had an address of her
18 last known address. We checked that area. We checked some
19 other places but we were never able to find her on that day.

20 Q. Okay, on that day.

21 Did there come a time subsequent to that day and obtaining
22 the arrest warrant that you were able to arrest Ms. Johnson?

23 A. Yes. Ms. Johnson was arrested, I believe, the 2nd of July
24 in, I believe, Darlington County by the Marshals.

25 Q. Okay.

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1 Do you know if she had been - - were the Marshals looking
2 for her?

3 MR. HAZZARD: Objection is asking this witness something
4 that he doesn't know what the Marshals were doing.

5 THE COURT: Well, I don't know if he does or not. We'll
6 let him answer and see.

7 MR. HAZZARD: All right. Okay.

8 THE COURT: Answer the question.

9 A. I believe we had entered Ms. Johnson into the NCIC. That's
10 the National Crime Information Center, ah, as a wanted person.

11 THE COURT: Objection is overruled.

12 Go ahead.

13 A. And Sgt. Addison was in contact with some - - some people
14 with the Marshal Service.

15 Q. Okay.

16 Ah, so, did Conway Police Department take Ms. Johnson, the
17 defendant, into custody?

18 A. She was originally taken into custody by the Marshals.

19 Q. Okay.

20 And then did Conway Police Department take - - take her
21 into custody after that after the Marshals did?

22 A. Yes. Eventually, she was brought to Conway.

23 Q. Okay.

24 And was that because of the warrant that you had?

25 A. Yes, sir.

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1 Q. Okay.

2 It was Darlington County? Is that where you said that she
3 was arrested?

4 A. I believe it was somewhere in Darlington County.

5 Q. Okay.

6 After Ms. Johnson was taken into custody by Conway Police
7 Department, did you have an opportunity to talk with her?

8 A. Yes, I did.

9 Q. Okay.

10 Was she advised that she was under arrest?

11 A. Yes, she was.

12 Q. Okay.

13 Did you advise her of her Miranda - - give her her Miranda
14 warnings before you began talking with her?

15 A. Yes. Myself and Sgt. Addison interviewed her. Sgt.
16 Addison was the one that actually read the Miranda warnings to
17 her but I was present at the time it was done.

18 Q. Okay.

19 And did she waive those - - her right to an attorney?

20 A. Yes, she did.

21 Q. And did she waive her right to remain silent?

22 A. Yes, she did.

23 Q. Okay.

24 And did she provide a statement to you?

25 A. Yes, she did.

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1 Q. All right.

2 And was a recording of that statement made?

3 A. Yes, there was a video recording of it.

4 Q. Okay.

5 THE COURT: One minute.

6 Have you had an opportunity to have a copy of this
7 statement given to you?

8 MR. HAZZARD: Yes, sir, Your Honor.

9 THE COURT: And the video?

10 MR. HAZZARD: Yes, sir, Your Honor.

11 THE COURT: Do you have any motions in connection with
12 the introduction - - - are you proposing to introduce this
13 statement?

14 MR. GRAUSTEIN: Yes, Your Honor.

15 MR. HAZZARD: I would renew the objection made pursuant to
16 the Jackson v. Denno hearing that we held in camera prior to
17 this proceeding.

18 THE COURT: Your objection is noted. I will permit it.

19 Q. Okay.

20 Mr. King, I'm going to ask you if you recognize this?

21 A. Yes, I do.

22 Q. If you will, tell me what that is?

23 A. It's a CD, ah, which contains a recording of the interview,
24 ah, that myself and Sgt. Addison had with the defendant.

25 Q. Okay.

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1 THE COURT: All right.

2 Let me talk to the jury a moment.

3 Ladies and gentlemen of the jury, there is being admitted
4 into the record in this case an alleged statement said to have
5 been made by this defendant.

6 I charge you that before you may consider this statement as
7 evidence for any reason, you must determine for yourselves four
8 questions.

9 First, did the defendant make this statement? They must
10 prove this beyond a reasonable doubt.

11 Secondly, was the defendant warned of her constitutional
12 rights? They must prove this beyond a reasonable doubt.

13 And, thirdly, did this defendant knowingly and
14 intelligently waive her constitutional rights? They must prove
15 that beyond a reasonable doubt.

16 And, fourth, was the statement given voluntarily, knowing
17 and intelligently? They must prove that beyond a reasonable
18 doubt.

19 The fact that this Court has admitted - - is admitting this
20 statement into evidence should not be considered by you as any
21 evidence whatsoever that the defendant made such statement or
22 the required constitutional safeguards were made, in fact,
23 provided and waived by the defendant or that the statement is
24 voluntarily given because these issues are for you, the jury, to
25 determine.

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1 The State must prove these four elements beyond a
2 reasonable doubt that I have stated to you.

3 You may proceed.

4 MR. GRAUSTEIN: Thank you, Your Honor.

5 Q. And just, let me step back, if I might.

6 Let me show you what has been previously marked as Court's
7 Exhibit #1. Can you identify that for me?

8 A. Yes, I can.

9 Q. And what is that?

10 A. It's a Miranda form.

11 Q. Okay.

12 When you say a Miranda form, what - - what is a Miranda
13 form?

14 A. It's advisement of your rights.

15 Q. Okay.

16 And what do you use those for?

17 A. We use those to advise someone of their rights when we are
18 questioning him when they are under arrest.

19 Q. All right.

20 And what, ah, what rights are they advised of?

21 A. Advised that they have the right to remain silent.
22 Anything they say can and will be used against them in a court
23 of law. They are advised that they have the right to talk
24 with a lawyer and have him present with them while they're being
25 questioned, and if they cannot afford to hire a lawyer, one will

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1 be appointed to represent them before any questioning if they
2 wish one. If they desire to make a statement or answer
3 questions, they have the right to stop at any time.

4 Q. Okay.

5 Now, what procedure do you go - - do you show that to a
6 person you're questioning? That form? Did you show them that
7 type of form?

8 A. Yes. Normally, what we would have is a form in front of
9 the, ah, suspect, and we would go line by line. Read each
10 particular sentence and ask the suspect if they understand and
11 get him to initial that they understand before we proceed to the
12 next step.

13 Q. Okay.

14 You go through it and by them placing their initials next
15 to one of those rights, that's - - that would indicate that they
16 understand it?

17 A. Yes.

18 Q. All right.

19 Was one of them provided to the defendant in this case?

20 A. Yes. They would get a copy of it.

21 Q. Okay.

22 Was one provided to her?

23 A. Yes.

24 Q. Okay.

25 -Was it the form that you're holding right there?

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1 A. Yes, it was.

2 Q. Thank you.

3 THE COURT: Mr. Hazzard, has a copy of this alleged
4 document been presented to you, sir?

5 MR. HAZZARD: Yes, sir, Your Honor. I have received a
6 copy of the alleged document.

7 THE COURT: All right.

8 Q. All right.

9 And you said that the individual initials next to each one
10 of those rights that's on there. Did the defendant, Brittany
11 Johnson, place her initials on that - -

12 A. Yes, she did.

13 Q. - - on that form?

14 Okay.

15 How many times did she initial that form?

16 A. A total of nine times.

17 Q. All right.

18 Did she sign that form?

19 A. Yes, she did.

20 Q. Did you sign that form?

21 A. Yes, I did.

22 Q. So, you were signing - - you signed as a witness to it?

23 A. Yes, I'm signing as a witness.

24 Q. All right.

25 MR. GRAUSTEIN: Your Honor, I move that this - - the -

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1 - the exhibit be marked as State's - State's #5 and entered into
2 evidence.

3 THE COURT: So ordered.

4 (The Court Reporter accepts State's Exhibit #5 into
5 evidence.)

6 Q. As you went through this Miranda warning and advisement
7 procedure with the defendant - -

8 A. Yes.

9 Q. - - prior to her giving you her statement?

10 A. Yes, myself and Sgt. Addison did, yes.

11 Q. Okay.

12 And that form that was just marked as State's #5, that is
13 the - - the copy of the form that you presented and went over
14 with - - by the defendant, Brittany Johnson?

15 A. That is correct.

16 Q. All right.

17 And she initialed on that form that she understood her
18 rights?

19 A. Yes, she did.

20 Q. And that she was going to waive those rights and talk with
21 you?

22 A. That's correct.

23 Q. Okay.

24 Now, you identified this disc previously marked as Court's
25 Exhibit #2, correct?

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1 A. Yes.

2 Q. And that is a - - what was that again?

3 A. This is, ah, this is a recording of the interview that
4 myself and Sgt. Addison did with the defendant, and this is my
5 handwriting that I recognize on here, and it says, "Interview
6 with Brittany Johnson".

7 Q. Okay.

8 Is it a video recording?

9 A. Yes, it is.

10 Q. Audio as well?

11 A. That's correct.

12 Q. Okay.

13 THE COURT: Mr. Hazzard, has this video been provided to
14 you?

15 MR. HAZZARD: Yes, sir, Your Honor, it has been provided
16 to me previously.

17 MR. GRAUSTEIN: Your Honor, the State would move to admit
18 this as State's Exhibit #4, this video recording of the
19 interview with the defendant.

20 THE COURT: I will permit it subject to the instructions
21 on this issue previously given to the jury.

22 MR. GRAUSTEIN: All right. Thank you, Your Honor.

23 (The Court Reporter accepts the DVD as State's Exhibit #4
24 into evidence.)

25 MR. HAZZARD: And, of course, note my prior objection on

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1 my motion.

2 THE COURT: Your objection is noted for the record.

3 MR. HAZZARD: Okay.

4 Thank you, sir.

5 MR. GRAUSTEIN: Your Honor, at this time the State
6 would move to publish this statement of the defendant to the
7 jury.

8 THE COURT: You may do so.

9 MR. GRAUSTEIN: Thank you, Your Honor.

10 THE COURT: Dim the lights.

11 (The video statement of the defendant is then played for
12 viewing by the jury.)

13 THE COURT: Madame Foreman, anything that is introduced
14 into evidence including this video will be with you in the jury
15 room during your deliberations, and, of course, we'll set up if
16 you and your jury wants to hear all or some portion of it, we'll
17 make it available to you either in the jury room or bring you
18 back out here.

19 I understand, as you do, that some parts are somewhat
20 unintelligible but it will be available for you or any member of
21 your jury to play it back or any part of it as long as you
22 choose.

23 Okay?

24 FORELADY: All right.

25 THE COURT: All right, sir.

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1 Turn the lights on, Solicitor.

2 THE COURT: Yes.

3 FORELADY: Is it possible to have a written transcript with
4 that or just - - -

5 THE COURT: I'm thinking about that. It's not available
6 at this moment. We'll see if we can do so. Some portions of it
7 are unintelligible but we'll make appropriate inquiry.

8 FORELADY: Thank you.

9 THE COURT: Thank you for the question.

10 All right, sir.

11 MR. GRAUSTEIN: Thank you, Your Honor.

12 Q. Now, Detective King, are you aware if a weapon was ever
13 recovered from the scene?

14 A. It was not.

15 Q. It was not. Okay.

16 What effort - - did you make any efforts to locate it?

17 A. Yes.

18 Q. Okay.

19 And what were those?

20 A. Detective Rodmaker and I one day took Brittany out one day
21 to show us the area that she believed that she dropped the
22 weapon off in, ah, and we proceeded to go down towards 378. Ah,
23 she mentioned some area by, ah, she said she recognized the Hot
24 Stop. She pointed out one particular area that she thought it
25 may have been able but we were never able to locate it.

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1 Q. Okay.

2 And you wanted that weapon recovered why?

3 A. Ah, it was evidence, and we didn't want anybody else to get
4 hurt.

5 Q. All right.

6 Now, during the course of your investigation did anyone
7 ever tell you that the victim in this case was armed or had been
8 armed?

9 A. No.

10 Q. And was, I guess, I may be repeating myself here. Did you
11 recover a weapon of any sort at the scene or you aware if any
12 weapon of any sort was recovered at the scene?

13 A. No.

14 Q. Okay.

15 And during the course of your investigation, did any of the
16 persons that you interviewed state that the victim, Monica
17 Burroughs, had initiated the confrontation with the defendant on
18 this - - on June 24th?

19 A. No.

20 Q. And during the course of your investigation did anyone you
21 interviewed state that the defendant was attempting to flee from
22 the victim, Monica Burroughs, on June 24th?

23 A. Repeat that question.

24 Q. Did anybody ever - - did anybody you interviewed ever say
25 the defendant was trying to get away from Monica Burroughs, the

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1 victim, on June 24th?

2 A. No.

3 Q. Okay.

4 MR. GRAUSTEIN: Court's indulgence, Your Honor, just a
5 moment.

6 No questions at this time, Your Honor.

7 Please answer any questions that Mr. Hazzard may have.

8 THE COURT: Mr. Hazzard.

9 MR. HAZZARD: Thank you, Your Honor.

10 CROSS EXAMINATION BY MR. HAZZARD:

11 Q. All right but that's not quite true, is it John? When Mr.
12 Graustein asked you, "Did anyone say that Monica initiated
13 anything or was the aggressor?"

14 Because you talked to Tamika Skipper, and she said, "I just
15 seen all the doors fly open on the car. All the girls jumped
16 out. So, I ran off my porch. I ran off my porch trying towards
17 them, you know what I mean. So, by the time I got half - - more
18 than half way there, that's when I heard the shot."

19 A. Let me see what you're referring to.

20 Q. Yes, sir.

21 I'm referring to page 5 of your interview of Ms. Skipper.

22 A. Let me see your glasses.

23 Q. I don't - - I don't think they'll help you but give it a
24 shot.

25 I'm talking about page 5, line 6, from line 6 down to line

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1 11.

2 MR. GRAUSTEIN: Your Honor, I haven't seen this
3 document - - -

4 MR. HAZZARD: I apologize, Your Honor.

5 THE COURT: Yes, sir.

6 MR. GRAUSTEIN: I haven't seen the document that he's
7 referring to. I have no idea.

8 MR. HAZZARD: Okay.

9 I apologize, Your Honor.

10 I've got an original for the Court. I also have a copy
11 that I provided to Detective King earlier.

12 THE COURT: Identify it for the record, please. What is
13 the document?

14 MR. HAZZARD: The document is a transcript of the video
15 interview of Tamika Skipper on July 22, 2008, at the Conway
16 Police Department Annex.

17 THE COURT: With this witness?

18 MR. HAZZARD: Yes, sir.

19 THE COURT: Well, I assume you've got a copy of it,
20 wouldn't you have?

21 MR. GRAUSTEIN: Not of the - - not of the transcript
22 he's referring to.

23 MR. HAZZARD: He gave us a video, and I took the video and
24 had it transcribed, and I gave a copy to Detective King. If he
25 can tell me where his copy is, then Solicitor Graustein can also

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1 follow along.

2 THE COURT: Who prepared the copy of the transcript?

3 MR. HAZZARD: A court reporter, Your Honor. I've
4 provided you with the sealed court reporter's copy right there.

5 THE COURT: Okay.

6 All right, sir.

7 He's asked were these statements made to him. He can
8 reply.

9 A. Okay.

10 Go ahead with your question again.

11 Q. Okay.

12 The Prosecutor asked you, "During your investigation, did
13 anyone say anything to you indicating that Monica initiated this
14 or was the aggressor?"

15 Your response was, "No."

16 And I said, "That's not quite true, is it, John?"

17 Because, in fact, when you interviewed Tamika Skipper, she
18 said, "I just saw all the doors fly open on the car. All the
19 girls jumped out. So, I ran off my porch. I ran off my porch
20 trying to run towards them, you know what I mean? So, by the
21 time that I got half - - more than half way there, that's when
22 I heard the shot."

23 Is that what she said to you on that date?

24 A. Well, that's in her statement but - - -

25 Q. Yes, sir.

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1 (Both parties talk on top of each other.)

2 THE COURT: Let - - let him finish.

3 A. May I finish?

4 Q. Yes.

5 A. But from the defendant's own statement - - -

6 Q. Sir, I'm not asking you about the defendant's statement.

7 THE COURT: Wait a minute. He's entitled to give his
8 explanation, now. Let him do so.

9 MR. HAZZARD: All right.

10 THE COURT: Go ahead.

11 A. She says that she struck Monica with the gun on the
12 shoulder, and Monica pushed her back, and then that's when
13 Monica got out of the car. So, I don't see that as Monica being
14 the aggressor.

15 Q. Okay.

16 Now, on page 6, line 8, you asked Tamika, "When you came
17 back outside, where was Brittany at then?"

18 She says, "She was over there next to Ms. Saminthia's
19 house."

20 And you said, "Is that across the street or - - -"

21 And she said, "Yeah, it's across the street."

22 And you said, "So, it's across the street?"

23 She says, "Yeah."

24 And you asked, "And the girls were still in the car?"

25 And she answers, "And then they jumped out, and that's what

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1 got me. That's why I ran towards her. I thought they were
2 going to jump her."

3 Is that the questions you asked and the answers that Tomika
4 Skipper gave?

5 A. Yes, that's what in there but the defendant herself
6 contradicts that.

7 Q. Yes, sir, I understand that.

8 A. Okay.

9 Q. I asked you, "Was there any information provided?" and I
10 mean any information as an unbiased third party, not someone who
11 was involved in the maylay but someone who lived down the
12 street.

13 Now, in fact, when speaking of Ms. Skipper, she tells you
14 that thirty minutes - - at least thirty minutes before this
15 occurred, Brittany and her son were asleep in Tamika's house.
16 Correct?

17 A. I don't recall that. I mean, if I could see a statement -
18 -

19 Q. You don't recall that?

20 A. - - I don't doubt that but I - - I don't recall that.

21 Now, I know Brittany says that - - -

22 THE COURT: Wait a minute, now. You're not letting him
23 answer.

24 MR. HAZZARD: Yes, sir. I apologize, Your Honor.

25 THE COURT: Please let him.

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1 Go ahead.

2 MR. HAZZARD: Go ahead, John.

3 A. Brittany says in her own - - in her own statement that she
4 was at one of her home girl's house. Now, that could be this
5 person that you're referring to.

6 Q. Yes, sir. Did you talk with Ms. Skipper?

7 A. I'm - - I'm just answering the question.

8 Q. Okay.

9 And my next question is, "Did you talk with Ms. Skipper?"

10 A. You're looking at the statement.

11 Q. So, is that a yes?

12 A. Yes, I talked with her but what I'm saying is, ah, you said
13 that she was at Ms. Skipper's house asleep.

14 Q. Uh-huh.

15 A. I'm not saying that that didn't happen.

16 Q. Uh-huh.

17 A. All I'm saying is she did tell me she was at her home
18 girl's house.

19 Q. Okay.

20 A. Now, in that particular statement I don't recall that she
21 gave me Ms. Skipper's name or not but she referred to it as her
22 home girl because I asked her, "Where did you come from?"

23 And she said, "I was at my home girl's house."

24 Q. Okay.

25 Well, look at page 4 of Ms. Skipper's interview that you

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1 did with her and lines 7 and 8 where Ms. Skipper says, "No, I
2 came home from Subway. I had to knock on the door. She was in
3 my house asleep."

4 And your question is, "Who is she?"

5 And Ms. Skipper says, "Brittany."

6 And you asked. Question, line 11, "Brittany was in
7 there?"

8 Answer: She was in that house asleep. Her and her son
9 were in the house asleep. So, we beat on the door to get in."

10 Do you remember asking those questions and receiving those
11 responses?

12 A. I - - I don't refute that she said that.

13 Q. Yes, sir.

14 A. Because it's here.

15 Q. Yes, sir.

16 A. But your question to me was, "Was the victim the
17 aggressor?"

18 Q. My question, to you, sir, my question to you was, "Did you
19 receive any evidence indicating the victim was the aggressor?"

20 I have not even gotten to asking you about Ms. Cox and Ms.
21 Davis. We'll get to them in a minute.

22 My question is, "Did you receive any information during
23 your investigation that tended to show that Ms. Burroughs may
24 have been the aggressor?"

25 A. No. I still stand behind that. No.

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1 Q. So, you didn't believe what Ms. Skipper told you is what
2 you're saying?

3 A. Well, what - - what you have to understand is a lot of
4 people see things differently, okay, and I'm going by the two
5 witnesses that was there at the scene.

6 Q. Uh-huh.

7 A. The information they gave me.

8 Q. Uh-huh.

9 A. I'm going by the information that the defendant gave me,
10 and it contradicts what Ms. Skipper is saying.

11 Q. Uh-huh.

12 A. So, I'm not telling you that Ms. Skipper told me a flat out
13 lie.

14 Q. Uh-huh.

15 A. You know, Ms. Skipper might have told me what she thought
16 actually happened but still, I don't see that as the victim
17 being the aggressor.

18 Q. Okay.

19 So, you said, "Different people see things from different
20 ways and different angles?"

21 Correct.

22 A. That's true.

23 Q. Okay.

24 Now, with regard to Ms. Cox, Ms. Cox is the individually
25 who, supposedly, was driving the car that - - matter of fact,

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1 let me back up.

2 What we're talking about here, and correct me if I'm wrong.

3 We're talking about the situation where three women are on
4 oppressively hot June day say that they were there for an hour
5 sitting in the driveway of their apartment. Is that correct,
6 Ms. Burroughs' apartment? Is that correct?

7 A. I can tell you that they were in the car. For how long, I
8 don't know but they were in the car with the doors open or the
9 vehicle with the doors open.

10 Q. Uh-huh.

11 Well, Ms. Cox told you they were out there for an hour,
12 right?

13 A. I don't recall. I mean, she may have said how long they
14 were out there but I - - I - - I don't recall exactly how long
15 they were out there.

16 Q. All right.

17 Let me hand you the transcript of your interview with
18 Teresa Cox, now. Here you go.

19 Please look at page 4, line 18, sir.

20 Now, does she or does she not say, "I went by there."

21 Starting on line 15, "I went by there."

22 That would be Ms. Burroughs' house.

23 We were just sitting in the truck. I had some stuff that
24 was on my mind. So, I wanted to talk to her.

25 Okay. We were sitting there for maybe an hour."

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1 A. Yes, that's what she said.

2 Q. Okay.

3 And, in fact, when you talked with Joanne Davis who was
4 also in the car, didn't Ms. Davis tell you that they were
5 sitting out there for an hour?

6 A. Well, if it's in the statement, I don't refute what's in
7 the statement.

8 Q. Okay. Okay. That's fine.

9 So, we now have three women sitting outside somebody's
10 apartment that, presumably has air conditioning and just sitting
11 in the car in the driveway for about a hour. Right? According
12 to what they told you? Right?

13 A. Yeah.

14 Q. Okay.

15 Thank you, sir.

16 Now, one of the women, Joanne Davis told you that she was
17 familiar with Brittany Johnson, right?

18 A. By sight, yes.

19 Q. By sight, yes, and that she was familiar with Brittany
20 because she saw Brittany walk her son there in the projects
21 virtually every single day.

22 A. That's not what she told me.

23 Q. That's not what she told you?

24 A. No.

25 Q. She never told you that?

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1 A. She told me she was familiar with Brittany based on the
2 fact of all the confrontation that had been going on between
3 Brittany and the victim and Putty about for a year.

4 Q. Uh-huh.

5 A. That's what she told me.

6 Q. Okay.

7 Please look at page 9, lines 9 through 11 of Joanne Davis'
8 statement, sir.

9 A. You want to give me that one.

10 Q. Page 9.

11 Which one did I give you.

12 A. You gave me Cox and - -

13 Q. Skipper?

14 A. - - Skipper.

15 Q. There you go. Page 9, lines 9 through 11.

16 Now, on page 9, lines 9 through 11, does it not state as an
17 answer, "I've been seeing her from the day I moved here. She
18 walks a lot with her little boy, like, every day."?

19 A. You finished?

20 Q. Yes, sir.

21 Does it not state that?

22 A. Yes but go down to line 19.

23 Q. Sir, I didn't ask you about line 19.

24 THE COURT: Wait a minute. Wait a minute, again.

25 He's entitled to answer it.

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1 What is your question - - what is your answer with
2 reference to 19?

3 Q. Okay, lines 18 and 19, answer.

4 Well, Question, line 17, "You don't know his real name?"
5 meaning Franklin Putty Pyatt.

6 Answer: "And she was infatuated with him. She's seventeen,
7 and from my understanding, the girl was messing with him at
8 least two or three years."

9 Okay. Is that what you wanted hear?

10 A. Yes, but that - - that's not what I'm talking about.

11 Let me get - - let me get my notes.

12 Q. Okay.

13 Get your notes.

14 If there's something that will help your recollection other
15 than that, please have at it, sir.

16 THE COURT: Solicitor, I'm letting this testimony in
17 because you haven't objected. It's clearly hearsay. Now, he
18 can call these witnesses to this effect but if you want to
19 proceed - - -

20 MR. GRAUSTEIN: Yes, Your Honor.

21 MR. HAZZARD: And, Your Honor, our position would be he
22 opened the door when he asked the Prosecutor - - I mean, when he
23 asked the detective, "Did you talk to individuals who gave you
24 certain information?"

25 And I feel that I am - - -

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1 THE COURT: No. The answer is yes but they didn't go -
2 - he didn't go into detail as to what those people have said.

3 No, sir, unless you're - - -

4 MR. GRAUSTEIN: Your Honor - - Your Honor, I'd have to
5 object. We're going into things that don't have anything to do
6 about the case.

7 THE COURT: Well, all of it is hearsay. If he wants to
8 get in what they told him, he can call those witnesses but been
9 hearsay - - -

10 MR. GRAUSTEIN: And nothing - - and nothing goes to
11 what - - -

12 THE COURT: I understand.
13 Are you objecting on grounds of hearsay?

14 MR. GRAUSTEIN: Yes, Your Honor.

15 THE COURT: I sustain it.

16 MR. HAZZARD: Okay.

17 THE COURT: Now, you - - having said that, you're fully
18 entitled to call those witnesses so that he - - they are subject
19 to cross examination.

20 MR. HAZZARD: Thank you, Your Honor.

21 THE COURT: I'm not depriving you of the right to call
22 the witnesses but you can't get what they said in through him
23 because he doesn't have the right to cross examine them.

24 MR. HAZZARD: Uh-huh.

25 THE COURT: All right.

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1 Move to another subject.

2 Q. Now, you indicated and the Prosecutor asked you about why
3 the murder warrant was issued, and you indicated it was issued
4 because you talked with Ms. Cox and Ms. Davis. Correct?

5 A. Yes, I said two eyewitnesses, yes.

6 Q. And those were the two you were referring to, right?

7 A. That's correct.

8 Q. Now, Ms. Cox and Ms. Davis, both of them indicated that
9 they felt this shooting was an accident, correct?

10 MR. GRAUSTEIN: Objection, Your Honor.

11 THE COURT: Sustained.

12 Counsel.

13 MR. HAZZARD: Yes, Your Honor?

14 THE COURT: In this sort of testimony, you are depriving
15 the State of the right of cross examination, and they're
16 entitled to that.

17 If you want - - -

18 MR. HAZZARD: Your Honor, he's got them on his witness
19 list as well. I'm sure he'll call Ms. Cox and Ms. Davis.

20 THE COURT: Well, no. If - - if you want to call them
21 and they want to say that, you've got the right to do it but you
22 can't get their testimony in through him.

23 MR. HAZZARD: Well, I would submit that it's unfair to
24 allow him to say that he issued a warrant for murder based on
25 these two witnesses and then leave it out there as to what they

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1 say.

2 THE COURT: No, sir. It's sufficient for him to say
3 what he did.

4 MR. HAZZARD: Okay.

5 THE COURT: Now, if you want to contradict that, you
6 call the witness.

7 MR. HAZZARD: Okay.

8 No problem.

9 THE COURT: You are entitled to ask him this.
10 What witnesses did he rely on? You're certainly entitled
11 to do that.

12 MR. HAZZARD: Well, thank you, Your Honor.

13 Q. Now, with regard to your investigation, is it fair to say
14 that not any eyewitness you spoke with said that this incident
15 was intentional?

16 A. The witnesses that I spoke to, the two that was there
17 confirmed that it happened. Now, I don't think they could have
18 tell me what was in the defendant's mind whether it was
19 intentional or not.

20 Q. Uh-huh.

21 In fact, they told you quite the opposite. They said it
22 was - - -

23 THE COURT: There you go again.

24 You going to have to call those witnesses, now - -

25 MR. HAZZARD: That's not a problem, Your Honor.

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1 THE COURT: - - Mr. Hazzard.

2 Ladies and gentlemen, let me explain to you the rule of
3 hearsay.

4 Under our system when some third party makes a statement,
5 it has got to be said here under oath so that the opposing party
6 shall have the right for cross examination and of confrontation.

7
8 To permit this witness to testify as to what somebody else
9 told him is depriving him of that opportunity to cross examine
10 so that you'll see the whole thing.

11 So, that's hearsay, and it's inadmissible.

12 Now, Mr. Hazzard can call this witness if he wants to. The
13 State can call them but I'm not going to let some third party's
14 testimony come in through this witness.

15 All right. You may proceed.

16 Q. Can I have my glasses back?

17 Thank you, sir.

18 If you need them, you can get them back.

19 A. Okay.

20 Q. Now, do you have your investigative notes there, Detective
21 King?

22 A. I do.

23 Q. Okay.

24 Let's see.

25 Now, did your investigation reveal information asserting

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1 that there was a struggle over the gun at the time of the shot
2 being fired?

3 A. I don't believe that it does because if you listen to the
4 defendant herself, ah, she says she got separation from, ah, the
5 victim and then shot.

6 Q. And no one else told you anything different? You didn't
7 find - - you didn't discover anything different is what you're
8 telling this jury?

9 A. I don't believe that I did.

10 Q. All right.

11 You realize you're under oath, now, right?

12 A. Oh, yes.

13 Q. Okay. All right.

14 Did your investigation reveal that approximately two weeks
15 prior to this incident Mr. Pyatt, the third party of this love
16 triangle, had moved out from Ms. Burroughs' home?

17 And if you don't recall, that's fine. It seems a lot you
18 don't recall.

19 A. I don't - - I don't even know if he was living there.

20 Q. All right.

21 A. All I knew was that they were dating. I don't - - I don't
22 know the living arrangements.

23 Q. Uh-huh.

24 I mean, you do recall talking with Ms. Davis and Ms. Cox,
25 right?

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1 A. Oh, yes.

2 Q. Okay. Just checking.

3 Where was Tamika's apartment in relation to - - in relation
4 to where Ms. Burroughs and Ms. Davis and Ms. Cox were seated in
5 the car?

6 A. I - - I don't really recall.

7 I - - I know it's all out there in the area but where her
8 particular apartment is I don't know. I mean if - - if you say
9 she's in 22B and it's in my notes that she's in 22B, I don't
10 dispute that, ah, but right now, I can't really - - I can't
11 remember that.

12 Q. Well, I mean, because you asked Brittany on the interview.
13 You said, "Well, these people are tell me," and the judge
14 admitted that, "These people are telling me you came out of
15 nowhere."

16 So, I'm asking you. Where is nowhere? Where is Tamika
17 Skipper's apartment?

18 A. Well - - what - - what my point was what I was - - what I
19 was trying to make is - - -

20 Q. Sir, I'm not asking you about your point.

21 THE COURT: Wait a minute.

22 MR. HAZZARD: I'm asking him to give an answer.

23 THE COURT: He's trying to, and you won't let him.

24 Now, go ahead.

25 MR. HAZZARD: He's talking about the point he wants to

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1 make. I'm talking about answering my question.

2 THE COURT: Let him respond in the way that he thinks is
3 appropriate.

4 Go ahead.

5 Thank you.

6 A. These people were inside a vehicle having a conversation,
7 and they were not - - I couldn't say what they were talking
8 about but the next thing they knew. They looked up and there
9 she was.

10 Like they said. Well, she just appeared out of nowhere.

11 Q. Okay.

12 I'll repeat the question.

13 Where is Tamika Skipper's apartment in relation to where
14 the three women were sitting in the car?

15 A. And I believe I already answered that question.

16 MR. HAZZARD: Your Honor, please instruct the witness to
17 answer the question.

18 THE COURT: Answer it again for me, please.

19 A. I - - I don't know.

20 Q. You don't know.

21 THE COURT: That's the answer.

22 Q. All right.

23 So, now, these three women are sitting in this car, and you
24 testified that the car doors are open, correct?

25 A. According to them, yes, sir.

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1 Q. According to them, yeah.

2 And there's one in the passenger seat and one in the
3 driver's seat and one in the backseat. Right?

4 A. That's correct.

5 Q. Okay.

6 All the doors are open. Legs are hanging out. Right?

7 A. I don't know.

8 Q. Okay.

9 So, if I'm - - it's ninety-something degrees, high
10 humidity. Right.

11 A. It was summertime. What the temperature was, I don't know.

12 Q. All right.

13 Now, there's the a driver facing this way. The passenger
14 is facing that way and the person in that seat is either facing
15 this way or that way. Exactly where is coming out nowhere
16 according to what they said? How in the world - - -

17 MR. GRAUSTEIN: Your Honor, objection. Your Honor,
18 he's assuming facts not in evidence as to who is looking in what
19 direction.

20 THE COURT: Yes, sir.

21 I sustain that.

22 MR. HAZZARD: No, that was on the video. He asked
23 Brittany, and Brittany told him.

24 THE COURT: I sustain -- I sustain that.

25 MR. HAZZARD: Okay, Your Honor. Thank you.

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1 Okay.

2 MR. HAZZARD: So, the fact that there were three people
3 sitting in the car is not in evidence. Is that the ruling?

4 THE COURT: No, sir, I didn't say that.

5 MR. HAZZARD: Oh, I'm and, please, some clarification,
6 please. I'm not clear what's in evidence, now.

7 MR. GRAUSTEIN: Your Honor, I object as to which
8 direction anybody was looking. I don't know of any evidence as
9 to who was looking at what direction and when.

10 THE COURT: There is no evidence as to who was looking
11 where, and that's why I sustained the objection.

12 MR. HAZZARD: Yes, sir.

13 THE COURT: You are presupposing facts that are not in
14 the record, now, counsel.

15 You can't tell me of three people in the car which way they
16 were looking: Down or up, sideways, north, south. Now, that's
17 not in the record.

18 MR. HAZZARD: Yes, sir.

19 THE COURT: And that's the basis for his objection and
20 the basis for my sustaining it.

21 MR. HAZZARD: Of course, Your Honor.

22 Okay.

23 Q. First of all, can we both agree based on your investigation
24 that there were three women in the car? Can we agree on that?

25 A. Yes.

1 Q. We can agree on that?

2 A. Yes.

3 Q. Based on your investigation can we agree that those three
4 women at some point got out of the car?

5 A. Yes.

6 Q. We can agree on that?

7 A. Yes.

8 Q. Can we agree that there is one Brittany Johnson, not two or
9 three? Can we agree on that?

10 A. Yes.

11 Q. Okay.

12 Is there anything in your investigation that would indicate
13 that at any point there was a struggle over the gun between Ms.
14 Burroughs and Ms. Johnson?

15 A. Not - - -

16 Q. Not whether you believe it?

17 THE COURT: May - - wait a minute. He started to
18 respond and you - - what was your response?

19 MR. KING: There's nothing in my investigation that
20 indicates that.

21 Q. Okay.

22 Nothing at all?

23 A. No.

24 Q. Okay.

25 Did your investigation indicate in any way, shape or form

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1 that Brittany acted recklessly with the weapon on that day?

2 MR. GRAUSTEIN: Your Honor, calls for a legal
3 conclusion?

4 THE COURT: I sustain that. That's for the jury to
5 determine.

6 Q. Is there any information received during the course of your
7 investigation indicating that Mr. Pyatt, the third party in this
8 love triangle, had begun exclusively dating Ms. Johnson just
9 prior to the incident in question?

10 A. The - - the information that I had was that he was actually
11 seeing both of them.

12 Q. Uh-huh.

13 So, you received no information indicating that he had left
14 Ms. Burroughs? You deny that?

15 A. I'm just telling you. That's the information that I had.

16 Q. Okay.

17 I'm going to be very clear about this, sir, because you are
18 under oath.

19 Are you denying that anyone told you during the course of
20 this investigation that Mr. Pyatt and Ms. Burroughs had broken
21 up?

22 A. And what I'm saying. What I have - - -

23 Q. It's just a yes or no.

24 THE COURT: Wait a minute. Let him - - let him answer.
25 Go ahead.

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1 MR. HAZZARD: If his answer would be responsive, Your
2 Honor - - -

3 THE COURT: No, sir. No, sir.

4 Go ahead.

5 He started to tell you, and you won't let him.

6 Go ahead.

7 A. I don't believe I have anything in my notes to indicate
8 that.

9 Q. So, that mean you don't recall it or that it never
10 happened?

11 A. What I have in my notes is what I can stand by.

12 Q. So, does that mean you don't recall or that - - -

13 THE COURT: He's answered that question twice. That's
14 sufficient.

15 Go to something else.

16 MR. HAZZARD: Court's indulgence, Your Honor.

17 THE COURT: Yes, sir.

18 Q. What time did you speak with Ms. Cox?

19 A. I don't recall the time but on the tape of the interview,
20 it gives the date, ah, the time the interview started and the
21 time the interview ended.

22 Q. Okay.

23 And is it fair to say that you spoke with Ms. Cox and Ms.
24 Davis before you spoke with anyone else, correct?

25 Well, let me tell you. Ms. Cox was the first person you

1 spoke to, right?

2 A. That's correct.

3 Q. Okay.

4 MR. HAZZARD: All right.

5 No further questions for this witness.

6 THE COURT: All right, sir.

7 Anything in reply?

8 MR. GRAUSTEIN: No, Your Honor.

9 THE COURT: All right.

10 (The witness leaves the witness stand.)

11 REMARKS OF THE COURT

12 THE COURT: It's quitting time. It should have been a
13 little earlier but it's later.

14 Ms. Foreman, ladies and gentlemen, ordinarily I would have
15 you come back at 9:30 but in this instance, I'm going to have
16 you come back at ten. I will be here at 9:30 on other cases not
17 involving you, and I don't want to keep you waiting.

18 So, in the morning, please be back not in the courtroom but
19 in your jury room promptly at 10:00.

20 Now, remember this, please.

21 Do not discuss this case with anyone. Permit no one to
22 discuss it with you. You must not even discuss it among
23 yourselves until I have given you the case for deliberation.

24 Sometimes, two or three jurors as we break at night get
25 around their car. They start discussing some issue in the case

1 but that's improper for the following reason. Ultimately, your
2 decision must be the unanimous decision of all twelve of you,
3 and if several of you are discussing some issue, you are
4 depriving your fellow jurors of your thought process, and
5 they're entitled to that.

6 So, Madame Foreman, under no circumstances let any
7 conversation transpire in the jury room regarding issues in this
8 case until I have given it to you for your deliberation.

9 Thank you.

10 See you in the morning at 10:00.

11 (The jury is released and depart for the day at 5:40 p.m.
12 with instructions to return at 10:00 a.m. on Tuesday.)

13 THE COURT: Madame Clerk, please have some hot biscuits
14 and coffee for the jury in the morning.

15 Counsel, come forward, both of you.

16 (Bench conference is held off the record and outside the
17 presence of the jury.)

18 THE COURT: All right. We are in recess.

19 Now, let me - - I understand there are some emotions on
20 behalf of the family of the deceased and the family of the
21 defendant but I've noticed some gestures from this side that are
22 inappropriate, and I didn't want to call your attention to it
23 because I didn't want to embarrass you in front of the jury and
24 prejudice the rights of the defendant but I want the family of
25 the defendant to cut out those gestures I was seeing.

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1 THE COURT: Court's Exhibit - - now, one other
2 housekeeping matter I need to address.

3 I have received another communication from the jury which
4 I have shared with counsel for the State and it is as follows:

5 "We are all in agreement that we need to see and hear the
6 video tape again. We would like to know if it would be
7 possible to view the tape again before proceeding."

8 And, again, they say, "Are we allowed to take notes?"

9 And the answer is yes.

10 This is a specific communication from the jury who desire
11 to see the video that was - - that is in evidence and was
12 displayed during the time of the first witness.

13 Ah, what's the position of the State?

14 MR. GRAUSTEIN: The State is that the, ah, State would
15 recall, ah, John King who is the witness who was the last
16 witness on the stand on behalf of the State. No other witnesses
17 have been called since he finished his testimony. He'd be
18 recalled in order to comply with the jury's wishes, Your Honor.

19 THE COURT: What is the position of the defendant, Mr.
20 Hazzard?

21 MOTIONS AND RULING OF THE COURT

22 MR. HAZZARD: Your Honor, the defendant objects to this on
23 a couple of grounds.

24 The first is that my understanding that the note that the
25 Court has referenced was received this morning, um, that we have

1 had no other action in this case since we broke yesterday
2 evening.

3 The contents of the note concern and trouble me because my
4 understanding is the note basically states that we are all in
5 agreement that we need to hear this piece of evidence again.

6 The defense position is that is an improper discussion of
7 the elements and the facts of the case. The Court specifically
8 instructed the jury to not discuss the case. The Court also
9 instructed the jury yesterday that the tape was in evidence or
10 the disc is in evidence and they would have it to play as many
11 times as they liked in the jury room during their deliberation.

12 So, on the one hand I submit that the note indicates
13 improper discussion regarding this case, and on that ground, the
14 defense requests a mistrial.

15 Secondly, if the Court will not grant that mistrial, we
16 object to this disc being played again at this time because we
17 feel that, again, the Court has instructed them that it is a
18 piece of evidence like any other piece of evidence, and they
19 will have it with them for their deliberation, and for them to
20 then hear it again before any other evidence they hear gives the
21 impression that they have already placed undue weight on that,
22 and to play it for them again reinforces that undue weight on
23 it.

24 So, first, we ask for a mistrial.

25 Secondly, if the Court does agree to go ahead and play it

1 and decide to play it, note our objection for the record, Your
2 Honor.

3 THE COURT: First, with reference to a mistrial, there's
4 no basis in this note for me to assume that they've discussed
5 any issue in the trial.

6 The record will reflect and should reflect, and I say it
7 now, the playing of that video was totally imperfect in many
8 ways, particularly in sound, and this Court and the jury could
9 not even hear what was said.

10 In accordance with the jury's request, I am having
11 additional microphones put up so that the jury will understand
12 the contents of that tape.

13 Obviously, they were concerned, and you will have to agree
14 that some of it was inaudible. You will have to agree with that
15 because it's apparent that it was.

16 The jury has said and has specifically requested that they
17 view now this document which is in evidence, and in accordance
18 with their request, I'm going to do it for several reasons.

19 One is they requested it.

20 Two, it was entered by the first witness, and no other
21 witness has come on the jury box - - jury - - on the witness
22 stand.

23 And, three, I'm doing it because the initial rendering of
24 this video was imperfect in a number of ways, particularly
25 sound, and I feel obligated to honor the jury's request who say

1 to me, "Judge, we listened to it but we couldn't understand it."

2 And that would be the contents of this letter.

3 And so your motion for a mistrial is respectfully denied,
4 and your motion not to permit them to hear it again is also
5 respectfully denied for the reasons stated.

6 MR. HAZZARD: Okay, Judge.

7 THE COURT: All right, sir.

8 MR. HAZZARD: I understand your ruling.

9 THE COURT: I understand but you are protected on that
10 issue for the record.

11 MR. HAZZARD: To be clear you are - - -

12 THE COURT: But it's clear to me that the jury couldn't
13 understand the video nor could I.

14 MR. HAZZARD: So, is the Court then allowing the State to
15 reopen their direct examination?

16 THE COURT: No, sir. I'm just permitting the State to
17 replay the video because the jury said they couldn't understand
18 it. That's all I'm doing.

19 You understand that, Solicitor?

20 MR. GRAUSTEIN: Yes, Your Honor.

21 THE COURT: We're not reopening it. We're not going to
22 reopen that or the cross examination. I'm just complying with
23 the jury's request. They couldn't understand it, and I
24 couldn't understand it but I'm setting up some microphones so we
25 can understand it today.

1 Have you got the microphones yet?

2 MR. GRAUSTEIN: Your Honor, I have brought some
3 speakers up here to check them.

4 THE COURT: I want the record to reflect that I am
5 bringing in additional speakers at this time. We are outside
6 the presence of the jury so that they can understand it more
7 intelligently.

8 Where are the speakers?

9 MR. GRAUSTEIN: Right here, Your Honor.

10 THE COURT: All right.

11 Let's set it up.

12 MR. HAZZARD: Your Honor, one other matter to address.

13 I've spoken to Ms. Johnson. Ms. Johnson indicates - -
14 obviously, the defendant has the right to be present for any
15 part or all of their trial but also have the right to excuse
16 themselves for any part or all of their trial if they so desire.
17 Ms. Johnson has informed me that she does not wish to be in the
18 courtroom for the second playing of this disc. I would ask that
19 the Court confer with her and confirm that.

20 THE COURT: I'm not - - I'm not sure she has a right not
21 to be in the courtroom.

22 MR. HAZZARD: Yes, Your Honor.

23 The defendant has the right to be present for their trial,
24 and they have the right not to be present.

25 THE COURT: They have the right to be present but what

1 is the position of the State?

2 MR. GRAUSTEIN: Your Honor, seems it would be a hybrid
3 between a trial in her absence and trial with her absence. I
4 don't know.

5 THE COURT: Well, I would have some concerns with that
6 because it might - - the jury might not understand. I would
7 hate to tell the jury she asked not to be present, and her
8 absence would have to be explained to the jury, counsel. That
9 would give me some concern, and I certainly couldn't go forward
10 with her not sitting there and the jury wondering why.

11 MR. HAZZARD: I am simply passing along my client's
12 statement.

13 THE COURT: Well, how would you - - how would you
14 suggest that I handle the jury on this - - on this question?

15 MR. HAZZARD: You can tell them she's already heard it and
16 doesn't choose to hear it again, that the defendant has the
17 right to be present for any and all of their trial and has the
18 right to be absent for any and all of their trial if they so
19 desire.

20 THE COURT: I'm going to deny that motion. I'm afraid
21 it would prejudice the jury if she's absent. I decline to do
22 that. She may not have but I think it would be prejudicial to
23 the jury in her case if she was not here.

24 MR. HAZZARD: Okay.

25 Your Honor, so that the record is clear. Would you please

1 confer with the defendant and have her place on the record that
2 that was her wish? I understand that you're denying that motion
3 but I don't want the record to seem as if I just said that. I
4 want it from her mouth.

5 THE COURT: Oh, I know. You are an officer of the
6 court.

7 MR. HAZZARD: Yes, Your Honor.

8 THE COURT: Let me say this to you, Ms. Johnson.

9 If I permitted you to leave, I would have to tell the jury
10 why you are not here, and that might prejudice your case. You
11 understand that?

12 MS. JOHNSON: Yes, sir.

13 THE COURT: Do you?

14 MS. JOHNSON: Yes, sir.

15 And given that, I'm going to let you stay here.

16 If you want to leave, you put me in the position to tell
17 the jury that you chose not to be here which I'll do but that's
18 not to your interest to do that.

19 You understand?

20 MS. JOHNSON: Yes, sir.

21 THE COURT: Do you?

22 You're going to have to say yes or no, now. You can't be
23 nodding your head with me.

24 MS. JOHNSON: Yes, sir.

25 THE COURT: If you wish to walk out of that door, I'm

1 going to do it but I'm going to tell the jury why you are not
2 here because they are entitled to know that because this jury is
3 - - knows that you are entitled to be here, and I would not want
4 them to have any adverse reason.

5 I think for this reason it is to your interest for you to
6 stay. You understand that?

7 MS. JOHNSON: Yes, sir.

8 THE COURT: All right.

9 Be seated.

10 All right, sir.

11 MR. GRAUSTEIN: Your Honor, if we may, if we can go off
12 the record while I see if these will work properly?

13 THE COURT: Yes, sir.

14 Next time we do this, I want you to have some technicians
15 in here rather than lawyers trying to set it up.

16 MR. GRAUSTEIN: Yes, sir.

17 (The Court is at ease while the speakers are set up for
18 playing the video.)

19 THE COURT: Yes, sir.

20 MR. GRAUSTEIN: Your Honor, I believe that is loud - -
21 much louder than it was.

22 THE COURT: All right, sir.

23 If at some point in time she starts talking louder, you may
24 cut it down some but at the beginning, that's appropriate.

25 The record will reflect that she was barely in a whisper,

1 and I want this record to reflect it.

2 I understand that the jury couldn't understand it because
3 I couldn't understand it nor my law clerk, and not many people
4 in this courtroom could based on the sound - - the quality of
5 the sound.

6 MR. HAZZARD: Okay.

7 THE COURT: All right.

8 MR. HAZZARD: Your Honor, if I can, the defense renews its
9 request that a redaction be done. The defense made the motion
10 for the redaction previously. The Prosecution did not redact
11 the case - - redact the tape with regard to the discussion of
12 Ms. Johnson's juvenile record. The Court has not given any
13 type of curative instruction, and now we're getting ready to
14 hear it again.

15 THE COURT: I'm going to give the jury the instruction
16 at this time.

17 MR. GRAUSTEIN: Yes, Your Honor.

18 THE COURT: There's no way to redact it counsel.

19 MR. HAZZARD: He can turn the sound down at the time at
20 which it was said. It's done in other trials. It was not
21 difficult. It ain't rocket science. All he's got to do is look
22 at the video. See the time stamp.

23 THE COURT: Well, based on my observations of the way
24 they started yesterday, I didn't see no rocket scientists in
25 here.

1 Can you cut the sound down at that time?

2 MR. GRAUSTEIN: I will get the exact moment, Your
3 Honor, and - - -

4 THE COURT: We will attempt to redact it in accordance
5 with your request.

6 MR. HAZZARD: Thank you, Your Honor.

7 THE COURT: In the event it does not occur, at the
8 conclusion of it, I will give a curative instruction.

9 MR. HAZZARD: Thank you, Your Honor.

10 THE COURT: All right, sir.

11 Bring the jury in.

12 MR. GRAUSTEIN: Your Honor, if I could have a moment to
13 find that spot.

14 THE COURT: Okay.

15 Have they been advised they can take notes?

16 Pardon me?

17 Yes or no.

18 Advise them they can take notes.

19 Have you advised Mr. McManus that he is now a juror.

20 Mrs. Has she been advised?

21 BAILIFF: Yes, sir.

22 THE COURT: All right.

23 Tell them when I call them out that they can take notes.

24 Hold them just a minute.

25 Those two communications, gentlemen, from the jury are now

1 made a part of the record.

2 Let me know when you're ready, now.

3 MR. GRAUSTEIN: I'm ready, Your Honor.

4 THE COURT: All right.

5 Is the next witness ready, Solicitor?

6 MR. GRAUSTEIN: Yes, he is, Your Honor.

7 THE COURT: Is he in the courtroom?

8 MR. GRAUSTEIN: Yes, he is.

9 THE COURT: All right.

10 Have both of you complied with my sequestration order?

11 MR. GRAUSTEIN: Yes, the State has, Your Honor.

12 MR. HAZZARD: The defense has complied, Your Honor.

13 (The jury returns to the courtroom at 10:50 a.m.)

14 THE COURT: Good morning, Madame Foreman, ladies and
15 gentlemen.

16 Two things.

17 One of your jury for physical reasons asked that I excuse
18 her, and by and with the consent of counsel for the State and
19 the defendant, obviously, I have done that.

20 Therefore, in accordance with our rules, the two names of
21 the alternates were put in a container and drawn out at random,
22 and Juror McManus is that new juror who will be the juror during
23 the trial of this case.

24 Yesterday, it was apparent that the sound quality of the
25 video being played was not good and, certainly, not as it should

1 be. By your communication this morning, you have expressed to
2 me the same thought that I had.

3 We have attempted to amplify the situation by putting up
4 some additional microphones, and in accordance with your
5 request, we are going to replay the video and hope that the
6 sound quality has improved.

7 As I told you yesterday, that video is in evidence and
8 during your deliberations, you may - - you will have all of the
9 evidence with you, and you will have the opportunity to look at
10 it as many time as you would.

11 Now, I do want to tell you that it is perfectly all right
12 for y'all to agree that the video is improper and ask to see it
13 again but remember my admonitions of yesterday with regards to
14 any issues in the trial of this case. You must not discuss it
15 with each other under any circumstances until I have given you
16 the case for your trial - - for your deliberation.

17 And the reason for that is obviously. If you discuss it
18 now, your thought process may change when you hear some
19 subsequent witnesses.

20 So, we have concluded under the rule that it is best to let
21 a jury begin their deliberation after they have heard all of the
22 testimony, heard final arguments of counsel and heard the
23 judge's instruction in the law. So, please follow that.
24 Permit, Madame Foreman, no discussion of any issue in the trial
25 of this case.

MR. KING - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 The fact that you found the sound inadequate on the video
2 was certainly proper, and I thank you for calling that to my
3 attention.

4 All right.

5 The first witness has left the stand. You may call your
6 second witness.

7 MR. GRAUSTEIN: Your Honor, for purposes of playing the
8 video, I need to recall John King.

9 THE COURT: Just for that purpose only.

10 MR. GRAUSTEIN: For that purpose.

11 THE COURT: All right.

12 MR. GRAUSTEIN: The State would recall John King.

13 THE COURT: Madame Clerk, I am permitting at your
14 request the replaying of the video, and, hopefully, the sounds
15 are to your liking.

16 Other than that, the witness will be excused.

17 You may proceed.

18 (The witness takes the witness stand.)

19 JOHN GLENN KING, HAVING PREVIOUSLY BEEN
20 SWORN DEPOSES AS FOLLOWS:

21 DIRECT EXAMINATION BY MR. GRAUSTEIN:

22 Q. Mr. King, I'm going to show you what's been marked as
23 State's Exhibit #4 and ask if you can identify that.

24 A. Yes, I can.

25 Q. And what is that?

MR. KING - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 A. It's the CD copy of the interview that was done with
2 myself, Sgt. Addison and the defendant, Ms. Brittany Johnson.

3 THE COURT: The record will reflect that the defense
4 counsel has previously been provided a copy of that video.

5 MR. HAZZARD: Yes, Your Honor.

6 Q. And to your knowledge, is that an accurate copy - - fair
7 and accurate copy of that interview?

8 A. Yes, it is.

9 Q. Any omissions or deletions?

10 A. No, there's not.

11 MR. GRAUSTEIN: Your Honor, the State would move to,
12 ah, present this, ah, recording to the jury.

13 THE COURT: I am going to permit it in accordance with
14 the jury's request and in accordance with the poor quality of
15 the initial presentation.

16 MR. HAZZARD: Let the record note the defense's objection,
17 Your Honor.

18 THE COURT: Yes, sir. It is noted.

19 (The video identified as State's Exhibit #4 is played for
20 viewing by the jury.)

21 THE COURT: All right.

22 Madame Foreman, ladies and gentlemen, I'm going to let you
23 go to the jury room for just a few minutes, and I'll be calling
24 you right back out.

25 Thank you.

MR. KING - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 (The jury retires to the jury room at 11:40 a.m.)

2 THE COURT: Where is Mr. Hazzard?

3 MR. HAZZARD: I apologize, Your Honor. I had to leave the
4 courtroom because this witness - - -

5 THE COURT: That's all right.

6 Let the record reflect that in the last viewing I sat near
7 the jury box and had an opportunity to observe the video from
8 their perspective, and it - - the sound was vastly improved.

9 MR. GRAUSTEIN: Yes, Your Honor.

10 THE COURT: All right, sir.

11 Call your next witness.

12 Wait a minute. Wait until the jury comes back.

13 MR. HAZZARD: Your Honor, there's something I want the
14 record to reflect.

15 I left the courtroom for about four minutes during the
16 video because Ms. Tashita Cash who is on the defense witness
17 list - -

18 THE COURT: I saw you as you left.

19 MR. HAZZARD: - - was brought in, and so I had to take
20 her back out.

21 THE COURT: It was only during the playing of the video.
22 I noticed that.

23 MR. HAZZARD: Thank you, Your Honor.

24 THE COURT: And the record will reflect that I never
25 left the Bench. I was over there closer to the jury panel

MR. KING - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 during the video.

2 MR. HAZZARD: Yes, sir, Your Honor.

3 THE COURT: I at all times was in the courtroom during
4 the playing of the video.

5 Yes, Solicitor?

6 MR. GRAUSTEIN: And the State has no more questions of
7 this witness.

8 THE COURT: Sir?

9 MR. GRAUSTEIN: The State has no more questions of this
10 witness.

11 THE COURT: No, sir.

12 He may come down.

13 (The witness leaves the witness stand.)

14 THE COURT: There was no additional for the defense, was
15 there?

16 MR. HAZZARD: Well, Your Honor, it was my understanding
17 that no questions would be allowed.

18 THE COURT: Correct.

19 It was just a replaying of the video.

20 There was exhaustive direct and cross examination.

21 Unless you are ascertaining there is some new matter that
22 you didn't observe during the initial playing?

23 MR. HAZZARD: No, sir, Your Honor.

24 THE COURT: All right, sir.

25 Tell the jury we're ready to resume if they are.

MS. DAVIS - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 (The jury returns to the courtroom at 11:46 a.m.)

2 THE COURT: Madame Foreman, the viewing I sat next to
3 you over there, and the sound appeared to be vastly improved
4 from the first one. I hope you can agree with me.

5 FORELADY: Yes, sir.

6 Thank you so much.

7 THE COURT: All right.

8 Call your next witness.

9 MR. GRAUSTEIN: The State calls Joanne Davis.

10 (The witness takes the witness stand.)

11 JOANNE DAVIS, BEING DULY SWORN,

12 TESTIFIES AS FOLLOWS:

13 CLERK OF COURT: Please state your name and spell your
14 last.

15 MS. DAVIS: Joanne Davis, D-a-v-i-s.

16 DIRECT EXAMINATION BY MR. GRAUSTEIN:

17 Q. Ms. Davis, where do you live?

18 A. Conway.

19 Q. How long have you lived in Conway?

20 A. Over twenty years.

21 Q. Over twenty years.

22 And how old are you?

23 A. Thirty-six.

24 Q. Did you have a victim - - did you know the victim in this
25 case, Monica Burroughs?

MS. DAVIS - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 A. Yes.

2 Q. How do you know her? How did you come to know her?

3 A. My sister.

4 Q. She's your sister.

5 Okay.

6 So, your sister by blood?

7 A. Stepsister.

8 Q. Okay.

9 So, your stepsister.

10 Did y'all live together?

11 A. No, we didn't.

12 Q. Did y'all live in the same neighborhood?

13 A. Yes.

14 Q. Okay.

15 Where did you live in relation to where Monica lived?

16 A. Across the street.

17 Q. How often did you see Monica?

18 A. Every day.

19 Q. Did Monica have any children?

20 A. Yes.

21 Q. How many?

22 A. Four.

23 Q. All right.

24 And they all lived with her?

25 A. Yes.

MS. DAVIS - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 Q. Did you see Monica on January - - on June 24, 2008?

2 A. Yes.

3 Q. When did you first see her that day?

4 A. I woke her up.

5 Q. Do you know about what time?

6 A. Some time that morning, I'm not sure.

7 Q. Okay.

8 And that - - you woke her up. So, was that over at her
9 house?

10 A. Yes.

11 Q. All right.

12 And when - - did you ever - - did you leave her house?

13 A. Yes.

14 Q. Okay.

15 Now, when you left her house, where did you go?

16 A. To my house.

17 Q. Okay.

18 Did you - - did Monica go with you?

19 A. Yes.

20 Q. And then at some point did you ever end up back at Monica's
21 house?

22 A. Yes.

23 Q. All right.

24 And do you know the or you were you - - are you familiar
25 with the defendant?

MS. DAVIS - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 A. Yes.

2 Q. Did you know her or know of her in June of 2008?

3 A. I know of her. I know of her.

4 Q. You know of her?

5 A. Yes.

6 Q. You knew her by?

7 A. The neighborhood.

8 Q. Okay.

9 You - - had - - had you ever talked with her?

10 A. Yes.

11 Q. Okay.

12 And so would it be fair to say if you saw her, you knew
13 her?

14 A. Yes.

15 Q. All right.

16 Did you see the defendant - - and how did you know her?

17 Did you know her as Brittany Johnson?

18 A. Yes.

19 Q. Okay.

20 Did you see her on June 24, 2008?

21 A. Yes.

22 Q. All right.

23 Why don't you tell us about your seeing her on June 24,
24 2008?

25 A. Well, at the time when I saw Brittany on June 24th, she was

MS. DAVIS - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 present to the vehicle that we were sitting in.

2 Q. Okay.

3 So, you say, "We were sitting in."

4 So, you were sitting in a vehicle?

5 A. Yes.

6 Q. All right.

7 Who else was in that vehicle?

8 A. My sister and Teresa.

9 Q. When you say your sister, who are you talking about?

10 A. Monica.

11 Q. Monica?

12 A. Yes.

13 Q. Monica Burroughs?

14 A. Yes.

15 Q. All right.

16 You're sitting in a car or was it a car or - - -

17 A. It was a Jeep like a Cherokee or a truck or something.

18 Q. All right.

19 And where were you sitting?

20 A. In the back.

21 Q. In the back. You were sitting in the backseat?

22 A. Yes.

23 Q. And you said, "Teresa".

24 A. Teresa was the driver.

25 Q. Teresa who? Do you know?

MS. DAVIS - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 A. Cox.

2 Q. Okay.

3 And she - - and where was she sitting?

4 A. She was the driver.

5 Q. Okay.

6 So, she's in the driver's seat.

7 A. Yes.

8 Q. And where was Monica sitting?

9 A. In the passenger.

10 Q. Okay.

11 The passenger up front or in the back?

12 A. In the front.

13 Q. In the front.

14 So, would it be fair to say that Teresa and Monica were
15 sitting next to each other?

16 A. Yes.

17 Q. And you were sitting behind them?

18 A. Yes.

19 Q. All right.

20 And where was the car parked?

21 A. In the parking lot of Monica's parking lot.

22 Q. All right.

23 I'm going to show you what has been marked for
24 identification as State's Exhibit #1 and ask you if - - -

25 (Court Reporter marks exhibit for identification as State's

MS. DAVIS - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 Exhibit #1.)

2 THE COURT: Have you shared that - - you - -

3 MR. GRAUSTEIN: Yes.

4 THE COURT: - - all of these exhibits have been shared
5 with you to save time. Is that correct?

6 MR. HAZZARD: That's correct, Your Honor.

7 THE COURT: All right, sir.

8 Q. I'd like you to take a look at this. Can you identify what
9 that is a picture of?

10 A. Yes.

11 Q. What is it? What is it a picture of?

12 A. My sister's apartment where she got killed at.

13 Q. Okay.

14 Now you said you were parked - - is the place where the
15 car was parked in this picture?

16 A. Yes.

17 Q. Where - - where was it? Could you point to it?

18 A. Here.

19 Q. Right here?

20 A. Yes.

21 Q. All right.

22 And where is that in relation to Monica's apartment?

23 A. Here.

24 Q. So, it was right in front?

25 A. Yes.

MS. DAVIS - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 Q. Okay.

2 And the car was parked?

3 A. Here.

4 Q. Okay.

5 So, y'all were sitting in that car. Were the doors open or
6 closed in the car?

7 A. It was open.

8 Q. Okay.

9 Y'all had the doors open?

10 A. Yes.

11 Q. Okay.

12 And doing anything in particular?

13 A. Yes, talking?

14 Q. Just talking?

15 A. Yes.

16 Q. About anything in particular or anything you can recall?

17 A. Shades.

18 Q. Shades?

19 A. Yes.

20 Q. Okay.

21 And by "shades" you mean?

22 A. Glasses.

23 Q. Sunglasses?

24 A. Yes.

25 Q. Okay.

MS. DAVIS - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 So, now, let's get back to -- okay.

2 So, we've got the car. It's parked is parked out front,
3 and you and Monica and Teresa are sitting in the car.

4 A. Yes.

5 Q. And you say that you saw the defendant while you were in
6 the car?

7 A. Yes.

8 Q. Okay.

9 Tell -- tell us about that.

10 A. Well, she approached the vehicle. When I saw her, she was
11 at the vehicle in the front seat. It's like she was trying to
12 get on top of my sister. She had a gun in her hand. She was
13 trying to hit her with it.

14 Q. Okay.

15 You say you saw the defendant, and she was, like, in the
16 front seat?

17 A. She was already in the front seat.

18 Q. Okay.

19 Was she actually in the seat, leaning in?

20 A. In, she was already in, yes.

21 Q. Okay.

22 And you said she was hitting your sister. Again, you're
23 talking about Monica?

24 A. Yes.

25 Q. Okay.

1 She was hitting Monica with the gun?

2 A. Yes.

3 Q. Do you recall which hand she had the gun in?

4 A. I don't know.

5 Q. Okay.

6 Now, can you just show what you mean by hitting?

7 A. You know, if you shooting somebody, you pointing forward.

8 She wasn't. She had the gun turned the other way. It was like
9 she was trying to pistol whip her. She had tried to hit her
10 with it.

11 Q. Okay.

12 And was she - - how was she swinging at her?

13 A. She wasn't. She was like.

14 Q. Okay.

15 All right.

16 And from where you were sitting, did - - she hit Monica
17 with the gun? Could you see?

18 A. Yes, I could see.

19 She blocked it.

20 Q. Okay.

21 Did you hear - - did anybody say anything sat this point?

22 A. Yes.

23 Q. Okay.

24 What did you hear said?

25 A. Monica said, "Oh - - ". Can I say it?

MS. DAVIS - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 THE COURT: Go ahead and say it.

2 A. "Oh, shit."

3 Q. Okay.

4 Then what happened?

5 A. I proceeded to jump out.

6 Q. Okay.

7 Did you see what everybody else that was in the car was
8 doing?

9 A. Yes. Teresa jumped out, too.

10 Q. Okay.

11 Ah, were you able to see what Monica was doing?

12 A. Yes.

13 Q. And what was she doing?

14 A. When I looked up, her and Brittany was hand to hand.

15 Q. Okay.

16 So, they were in close contact to each other?

17 A. Yes.

18 Q. Would that be fair to say?

19 And where were they in relation to the car?

20 A. It was, like, on the side of the vehicle where Monica was
21 sitting at.

22 Q. All right.

23 And which side of the vehicle did you get out of?

24 A. The left.

25 Q. The left side.

1 All right.

2 Let's go back. We are looking at State's Exhibit #1.

3 Now, is the car parked head in?

4 A. Yes.

5 Q. All right.

6 So, the driver's side was over here?

7 A. Yes.

8 Q. The passenger side over here?

9 A. Yes.

10 Q. All right.

11 And which side of the vehicle did you get out on?

12 A. This side.

13 Q. This side of the vehicle.

14 All right.

15 And you said that Monica and the defendant were in close
16 contact - -

17 A. Here.

18 Q. - - right over here on this side.

19 A. Uh-huh.

20 Q. And how were you able to see - - I'm just - - because I'm
21 sure some folks have questions - - you're on this side of the
22 vehicle.

23 A. Yes

24 Q. And you're able to see what's going on over here?

25 A. Everything.

MS. DAVIS - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 Q. Okay.

2 And how can you see that?

3 A. I was looking, also, looking. I didn't know she was there
4 until and I looked up, and she said, "Oh, shit."

5 And that's when I saw her with the gun like she was trying
6 to pistol whip her with it.

7 Q. Okay.

8 A. And that's when I proceeded to get out. My actions was to
9 grab her, get out and grab her.

10 Q. Okay.

11 Now, so, you're out of the vehicle now?

12 A. Yes.

13 Q. And you're saying - - you say you're able to see what's
14 going on on the other side?

15 A. Yes.

16 Q. And, Okay.

17 So, now.

18 I guess I just - - to make myself clear.

19 So, Monica got out of the car? Is that what you're saying?

20 A. Yes.

21 She - - she had - - she tried to get up out the car because
22 Brittan was already I the car. So, she tried to come up out of
23 the car. So, when she came up out the car, they was tussling
24 hand to hand together for like a briefly second.

25 Q. Uh-huh?

MS. DAVIS - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 A. And then when I proceeded to come around the car, they was
2 already separated.

3 Q. Uh-huh.

4 A. Like, she was standing here, and she was standing here.
5 They already are parted.

6 Q. Okay.

7 So, you're going around the car. Were you going to the
8 front of the car?

9 A. I was going making my way around, yes.

10 Q. To the front of the car?

11 A. Yes.

12 Q. And, so, Monica came out of the car. They were close
13 together, and then you saw them then. There was some distance
14 between them.

15 A. Let go. They was hand to hand, like, holding each other.

16 Q. Uh-huh.

17 A. And they already separated. They wasn't touching each
18 other anymore.

19 Q. Okay.

20 About how far apart were they? Do you remember?

21 A. Not far apart. Just here to here.

22 Q. Okay.

23 A. It's, like, the next person was trying to wait and to see
24 what the next person was going to do. It was, like, she just
25 let go, and she was standing there.

MS. DAVIS - DIRECT EXAMINATION BY MR. GRAUSTEIN

191

1 Q. All right.

2 Now.

3 Had anything indicated to you at this point that a gun had
4 been fired?

5 A. Yes.

6 Q. Okay.

7 And I'm just talking about at this point. Okay.

8 So, had a gun been fired by the time they separated or - -
9 -?

10 A. No.

11 Q. Okay.

12 So, they just got separated, and you're seeing - - and
13 you're - - and you see them a little bit apart?

14 A. Yes.

15 Q. And you have not heard any indication of gunfire at that
16 point?

17 A. No.

18 Q. Okay.

19 What was the next - - now, what happened after that?

20 Now, you've worked your way to the car. They were a little
21 bit apart. What happened after that?

22 A. As I was going to the front of the car to go around, I
23 heard a gunshot.

24 Q. Okay.

25 You heard the gunshot?

MS. DAVIS - DIRECT EXAMINATION BY MR. GRAUSTEIN

192

1 A. Yes.

2 Q. Okay.

3 And what did you do then? What did you do?

4 A. I ducked down.

5 Q. You ducked down.

6 Okay.

7 Where were you in relation to the vehicle at that point?

8 A. At the end.

9 Q. Okay.

10 So, you were at the front end of the car?

11 A. Yes.

12 Q. Okay.

13 And you ducked down after you heard the gunshot?

14 A. Yes.

15 Q. Did you know, ah, what was the next thing that you saw?

16 A. My sister ran by me.

17 Q. Okay.

18 So, that would be Monica?

19 A. Yes.

20 Q. I just want to be real - - make sure the jury is real
21 clear on that.

22 So, Monica ran by you?

23 A. She ran by me.

24 Q. Okay.

25 And what did you think at that point?

MS. DAVIS - DIRECT EXAMINATION BY MR. GRAUSTEIN

193

1 A. That she was fine.

2 Q. Okay.

3 Did you know at that point - - well, what did you see after
4 that?

5 Okay, Monica has run by you.

6 A. She ran by me. I was just worried about me and Teresa.
7 We were scared to get up.

8 Q. Okay.

9 You were scared to get up? Why were you scared?

10 A. Because Brittany was still there with the gun jumping up.

11 Q. I mean, you saw her standing there with the gun?

12 A. Yes.

13 Q. So, she was holding onto the gun.

14 A. She was still pointing it out. She was saying things.

15 Q. Okay.

16 What did she say?

17 A. It's okay if I say it.

18 THE COURT: You can say what she said.

19 A. "I told you I was going to get you, bitch. I told you I
20 was going to get you. I told you I was going to get you."

21 She said about four or five times or more.

22 Q. All right.

23 And let me ask you this.

24 Go back here in State's Exhibit #1. Now, it would be fair
25 to say you said you were right up here - -

MS. DAVIS - DIRECT EXAMINATION BY MR. GRAUSTEIN

194

1 A. Uh-huh.

2 Q. - - when - - at the front of the car?

3 A. Yes.

4 Q. Can you see in this picture where Brittany was standing?

5 A. Yes, here.

6 Q. She was standing over here?

7 A. Yes.

8 Q. Okay.

9 All right.

10 How long did you stay there behind the car?

11 A. Until she ran.

12 Q. Okay.

13 All right.

14 About how long was that? Do you have any idea how long
15 that was?

16 A. Um, maybe a couple of seconds.

17 Q. Okay.

18 And then she ran?

19 A. She ran.

20 Q. And then what did you do?

21 A. I ran to check on my sister.

22 Q. Okay.

23 Where did you go first to look for her?

24 A. I proceeded to go in the house.

25 Q. All right.

MS. DAVIS - DIRECT EXAMINATION BY MR. GRAUSTEIN

195

1 So, you went to look for her in her house?

2 A. Yes.

3 Q. All right.

4 And did you find her there?

5 A. I never made it in.

6 Q. Okay.

7 A. I - - I ran into the inspection man that was just coming
8 out of her house.

9 Q. Okay.

10 A. And I looked to the left, and she was lying on the porch
11 beside her house. She didn't ever make it into the house.

12 Q. All right.

13 And you saw her laying there?

14 A. Yes.

15 Q. What did you see with regards to - - did you see if she was
16 injured at all?

17 A. Yes. She was hurt.

18 Q. Could you tell where she was hurt?

19 A. Her chest.

20 Q. And - - what did you do then?

21 Well - - -

22 THE COURT: Dana, get the witness a cup of water,
23 please.

24 Madame witness, you take your time, now, please.

25 MS. DAVIS: Thank you.

MS. DAVIS - DIRECT EXAMINATION BY MR. GRAUSTEIN

196

1 Q. You okay?

2 A. Yes.

3 Q. Now, we're looking at State's Exhibit #1 here, and this
4 picture shows where you found Monica?

5 A. Yes.

6 Q. And where did you find her?

7 A. Here.

8 Q. She was here?

9 A. Yes.

10 Q. On this side or the other side?

11 A. The other side.

12 Q. On the other side of that - - those bushes right there.
13 Not inside the building?

14 A. No.

15 When I got here, I ran into this section here, and I
16 started - - I looked to the left, and that's when I saw her.

17 Q. Okay.

18 Did you, ah, go over to check on Monica's condition?

19 A. Yes.

20 Q. Did, ah, did she say anything to you?

21 A. "Why, sister? Why?"

22 A couple of times because she didn't understand.

23 Q. Okay.

24 I'm going to ask you a couple more questions about that
25 day.

MS. DAVIS - DIRECT EXAMINATION BY MR. GRAUSTEIN

197

1 Did Monica - - was she armed at all that day?

2 A. No.

3 Q. Did she have a weapon of any sort?

4 A. Not at all.

5 Q. And were any of Monica's children at home when this
6 happened?

7 A. Yes.

8 Q. How many of them?

9 A. Two.

10 Q. Do you know their names?

11 A. Yeah. Rashon and Little D.

12 Q. Okay.

13 Now, as you sit here today under oath, this is your
14 recollection of the events on June 24, 2008?

15 A. Yes.

16 Q. Let me ask you a quick question.

17 Do you know about what time this happened?

18 A. I don't really remember.

19 Q. Was it daylight, nighttime?

20 A. It was daylight.

21 Q. It was daylight.

22 Okay.

23 Sunny day?

24 A. Yes.

25 Q. Thank you, Ms. Davis.

MS. DAVIS - CROSS EXAMINATION BY MR. HAZZARD

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1 If you can answer any questions Mr. Hazzard has.

2 THE COURT: Mr. Hazzard.

3 MR. HAZZARD: Thank you, Your Honor.

4 CROSS EXAMINATION BY MR. HAZZARD:

5 Q. Good afternoon, ma'am. How are you?

6 Good afternoon, Ms. Davis. How are you?

7 A. Good.

8 Q. Okay.

9 Now, this is not the first time we've met, correct?

10 A. No.

11 Q. Okay.

12 We actually had a chance encounter last Friday or the
13 Friday before that?

14 A. Excuse me. Yes.

15 Q. Okay.

16 So, we didn't discuss this case or anything of that nature,
17 correct?

18 A. Correct.

19 Q. Okay.

20 And, ma'am, do you remember talking to Detective Rodmaker
21 and Detective King the day after the incident on June 25th of
22 2008?

23 A. Yes.

24 Q. Okay.

25 And you are aware that they video-recorded that statement,

MS. DAVIS - CROSS EXAMINATION BY MR. HAZZARD

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1 correct?

2 A. Yes.

3 Q. Okay.

4 And they came to your apartment, right?

5 A. Yes.

6 Q. Okay.

7 Now, when you talked to them, you indicated - - -

8 THE COURT: If you propose to use that, let her have a
9 copy so she can appropriately respond.

10 MR. HAZZARD: Yes, sir, Your Honor.

11 THE COURT: If you desire to use that - - that
12 statement, please refer to the line and page number, please.

13 MR. HAZZARD: Yes, sir, Your Honor.

14 THE COURT: Solicitor, you have a copy of this
15 transcript?

16 MR. GRAUSTEIN: I believe so, Your Honor.

17 THE COURT: All right.

18 Go ahead. Proceed, Mr. Hazzard.

19 MR. HAZZARD: Thank you, Your Honor.

20 Q. Now, I first direct your attention to page 3, lines 14 and
21 fifteen.

22 Okay.

23 Do you see where I'm referring to?

24 A. Yes.

25 Q. Okay.

MS. DAVIS - CROSS EXAMINATION BY MR. HAZZARD

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1 And you indicated there that you, yesterday, meaning the
2 day of the incident, you went and woke your sister up exactly
3 1:14.

4 Was that your statement?

5 A. Yes.

6 Q. And that was 1:14 in the afternoon?

7 A. Yes.

8 Q. Okay.

9 And page 3, lines 21 and 22, you're saying, "I woke her up
10 like I do everyday. Go over there to see her."

11 Is that what you said at that time?

12 A. Yes.

13 Q. Okay.

14 So, you went over and woke your sister up at 1:14 in the
15 afternoon like you do everyday. Correct?

16 A. Yes.

17 Q. Okay.

18 Who watches her children while she is sleeping into the
19 afternoon, ma'am?

20 MR. GRAUSTEIN: Your Honor, I'm going to object to
21 relevance.

22 THE COURT: Well, this is cross examination. I'll see
23 where he's going with it and if it's relevant, I don't know.

24 Go ahead.

25 Is it relevant?

MS. DAVIS - CROSS EXAMINATION BY MR. HAZZARD

201

1 MR. HAZZARD: He asked her if two - - if any of the
2 children were present..

3 THE COURT: Well, that's what I'm going to ask the
4 question.

5 A. Yes.

6 Q. Okay.

7 My question was who was watching the children?

8 A. She were.

9 Q. So, the children were asleep, too?

10 A. The children wasn't - - no, the two boys was there.

11 Q. Okay.

12 A. I don't know where the two boys was at the time. They
13 might have ben upstairs.

14 Q. Okay. All right.

15 Now, I direct your attention to page 5, lines 10 through
16 13.

17 Do you see what I'm referring to, ma'am?

18 A. Yes.

19 Q. Okay.

20 Starting with where it says, "when."

21 "When she came, her intentions I don't think was to shoot
22 her at that time because when she came, she came hitting her.
23 She came with the gun, like, tried to hit her in the face."

24 Did you make that statement at that time?

25 A. Yes.

1 Q. The day after the incident?

2 And so that - - that is consistent to what you testified
3 here to today, correct?

4 A. Yes.

5 Q. Okay.

6 I direct your attention, please, to page 11, lines 8 and 9.

7 Okay.

8 Do you see where I'm going to, ma'am, page 11, lines 8 and
9 9?

10 A. Yes.

11 Q. Okay.

12 And starting on line 8, did you say, "Her intentions wasn't
13 to shoot her."

14 It says, "When you want to shoot somebody, you come
15 shooting at somebody. When she ran up to her, she had it the
16 opposite way at that - - the bottom. She came to hit her. She
17 tried to hit her in the face."

18 Okay.

19 Did you give that answer on Jan - - on June 25th of 2008?

20 A. Yes.

21 Q. Okay.

22 I direct your attention on page 18, lines 7 and 8, please.

23 Okay.

24 And you see where I'm referring to, ma'am?

25 A. Yes.

MS. DAVIS - CROSS EXAMINATION BY MR. HAZZARD

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1 Q. And I'll start actually at the beginning of line 6 at the
2 beginning in answer it says, "But you - - when it's - - no,
3 because the way she came at her, she is the opposite way, and
4 she ain't had, like, she didn't - - wasn't intention to shoot
5 her."

6 Did you make that statement on June 25th of 2008?

7 A. Yes.

8 Q. Okay.

9 And I believe you told Mr. Graustein that you and Ms. Cox
10 both jumped out of the car, and your intention at that time was
11 to grab Brittany, correct?

12 A. Yes.

13 Q. Okay.

14 Now, you were seated - - Teresa Cox is in the driver's
15 seat, correct?

16 A. Yes.

17 Q. And Ms. Burroughs is in the passenger - - front passenger
18 seat?

19 A. Yes.

20 Q. Okay.

21 And you were in the rear seat, the rear seat driver's side.
22 Is that correct?

23 A. Yes.

24 Q. Okay.

25 Now, I direct your attention to page 11, lines 1 and 2,

1 ma'am.

2 Okay.

3 Do you see where I'm referring to?

4 A. Yes.

5 Q. Page 11, lines 1 and 2?

6 A. Yes.

7 Q. Okay.

8 When you talked to Detective King and Detective Rodmaker on
9 June 25th of 2008, did you say, "We all had the door still open.
10 You know, still talking with our legs hanging out."

11 Was that your statement to them on that day?

12 A. Yes.

13 Q. Okay.

14 So, explain to me if you would. So, you were seated in the
15 car but turned facing out with your legs actually outside the
16 car?

17 A. No. No.

18 I was sitting inside the vehicle.

19 Q. Okay.

20 A. The door was open.

21 Q. Uh-huh.

22 A. I don't remember me facing out hanging out the vehicle. I
23 don't remember that.

24 Q. Okay.

25 A. If I did, I don't recall it.

MS. DAVIS - CROSS EXAMINATION BY MR. HAZZARD

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1 Q. Okay.

2 Then, do you have any idea what you meant when you told
3 Detective Rodmaker and King that we were all sitting there in
4 the vehicle with our doors open, legs hanging out?

5 A. Yes. That don't specifically mean myself.

6 Q. Okay.

7 To your recollection, was anyone else seated facing out of
8 the vehicle?

9 A. Yes, my sister was.

10 Q. Okay.

11 So, she was facing in the direction from which you say
12 Brittany came?

13 A. Yes.

14 Q. Okay.

15 Ma'am, if you would, please, I direct your attention to
16 page 5 of the transcript, line 15.

17 Okay.

18 Do you see what I'm referring to?

19 A. Yes.

20 Q. Okay.

21 And starting there, did you say in response to a question,
22 "Then she got out of the car with her" meaning your sister,
23 Monica, "and they was, like, tussling a little bit, and then as
24 I immediately tried to go around, my intentions was th grab the
25 girl, me and the other, the young lady" referring to Teresa Cox.

MS. DAVIS - CROSS EXAMINATION BY MR. HAZZARD

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1 "My intentions was to grab her but what stopped me. I
2 heard the gunshot."

3 Did you make that statement on June 25th of 2008?

4 A. Yes.

5 Q. If you would, ma'am, please turn to page 11 of the
6 transcript.

7 Starting with line 24 which is a question. The question
8 posed to you states, "So, when the gun went off, they were
9 struggling."

10 What was your answer that you gave on that day, ma'am?

11 Okay.

12 Line 25, "Yeah, they were struggling."

13 Did you say that on June 25th of 2008?

14 A. Yes.

15 Q. Okay.

16 And turning over to page 12, line 1.

17 THE COURT: And you're - - she's entitled to read her
18 full reply at that time. You cut her off.

19 MR. HAZZARD: I'm sorry. I apologize.

20 THE COURT: Read the full reply, please.

21 MR. HAZZARD: I mean, actually, that was the full reply.
22 The next thing was a question but that's okay.

23 THE COURT: Read your full reply, please, on line 2.

24 Q. Oh, he wants your full reply - - -

25 THE COURT: Wait a minute. Excuse me.

MS. DAVIS - CROSS EXAMINATION BY MR. HAZZARD

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1 MR. HAZZARD: You talking about page 12, line 1 and 2.

2 THE COURT: Didn't you last - - -

3 MR. HAZZARD: The last thing I read was the answer, line
4 25 on page 11.

5 THE COURT: Okay. I got you.

6 Go ahead. I'm sorry.

7 MR. HAZZARD: But, then, that's fine.

8 Q. On page 12, line 1, the very next thing is the question of
9 the statement by the officer is, "Okay."

10 And then line 2, did you not say on page 12, did you not
11 then say, "Yeah, they were struggling. My sister was trying to
12 take it from her. They were struggling."

13 Did you make that statement on June 25th of 2008?

14 A. Yes.

15 Q. Okay.

16 I direct your attention to page 14, ma'am, of the
17 transcript.

18 THE COURT: What page this time?

19 MR. HAZZARD: Page 14, Your Honor, lines 6 through 9.

20 Q. Okay.

21 Ma'am, on page 14, starting on line 6, were you asked the
22 question, "Yeah. Did you actually see them struggling?"

23 And did you give the answer, "Yes."?

24 A. Yes.

25 Q. And then were you asked the question again?

1 "Okay. You saw them struggling?"

2 And then did you give the response, "Yes."?

3 A. Yes.

4 Q. Okay.

5 Okay.

6 And I'm going to direct your attention to page 16 starting
7 at line 22, and this is going to go through page 17, line 21.

8 Okay.

9 Do you see what I'm referring to, ma'am?

10 A. Yes.

11 Q. Okay.

12 The question is asked half-way down starting on line 22,
13 "What I'm asking you is after your sister got out of the
14 vehicle, did you see her and Brittany struggling?"

15 And your response was, "Yes, I did."

16 Correct.

17 A. Yes.

18 Q. And the questioner, John King, says, "Okay."

19 And your answer is then, "I seen them standing up. I seen
20 my sister and her standing up."

21 Question, "Okay."

22 Answer, "And then when I heard the gunshot, that's when I
23 immediately dropped."

24 John King then begins the question on line 17, "So."

25 And you go ahead and respond, "But I could see them before

MS. DAVIS - CROSS EXAMINATION BY MR. HAZZARD

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1 I dropped. They was together."

2 Correct?

3 A. Yes.

4 Q. He then says, "Right. Okay. So, what you're telling us is
5 they were in close combat."

6 Your answer, "They was together. That's right."

7 Question, "Like this? And then the gun - - and the gun
8 went off?"

9 Answer, "And the gun went off. That's right."

10 Question, "Okay."

11 Answer, "That's exactly right. She still had it. My
12 sister wasn't ever able to get it from her."

13 Question, "Yeah. Okay. I understand that."

14 Answer, "She was just trying to keep her from shooting her.
15 That's what she was trying to do. She wasn't - - she wasn't
16 trying to let it go. She was trying to get it, too."

17 Were you asked those question? Did you give those answers
18 on June 25th of 2008?

19 A. Yes.

20 Q. Okay.

21 And when you were talking to Detective King and Detective
22 Rodmaker, you were telling them the truth of the events as you
23 recalled them, correct?

24 A. Yes.

25 Q. Okay.

MS. DAVIS - CROSS EXAMINATION BY MR. HAZZARD

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1 I mean, you weren't trying to mislead them in any way?

2 A. No.

3 Q. Yes, ma'am.

4 And what type of gun did Monica own?

5 A. She didn't own a gun as I recall.

6 Q. Please turn to page 8, ma'am, of the transcript.

7 I direct your attention on page 8 to lines 15 through 17.

8 On June 25th of 2008, did you tell the police, "I told her.

9 I said, 'Because before she take your life, you take hers,'

10 because my sister had a gun. She had one."

11 Did you make that statement to the police on June 25th of
12 2008?

13 A. Yes.

14 Q. Okay.

15 I direct your attention to page 9, lines 9 through 11,
16 please ma'am.

17 Okay.

18 On page 9, starting at 9 - - line 9, your answer is, "I've
19 been seeing her," meaning Brittany, "fr the day I moved here.

20 She walks a lot with her little boy, like, every day."

21 Did you give that statement to the police June 25th of 2008?

22 MR. GRAUSTEIN: Your Honor, I'd object.

23 THE COURT: Sir?

24 MR. GRAUSTEIN: I don't understand the purpose of that
25 question. I don't know if it's an inconsistent statement.

MS. DAVIS - CROSS EXAMINATION BY MR. HAZZARD

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1 MR. HAZZARD: No, it's something that she's told the
2 police.

3 Q. Did you make that statement on June 25, 2008?

4 A. Yes.

5 Q. Thank you, ma'am.

6 THE COURT: Now, you - - you can use this deposition to
7 cross examine her on inconsistent statement but, otherwise, just
8 ask her what questions you want to ask her.

9 MR. HAZZARD: Yes, sir.

10 Thank you very much.

11 THE COURT: All right.

12 Q. Okay.

13 Now, you stated you ran into the inspection man coming out
14 of Monica's house, correct?

15 A. Yes.

16 Q. And so it's your testimony that this inspection man came
17 outside. Saw that someone had been shot and then, apparently,
18 where did he go after that?

19 A. Where did he go?

20 Q. Yes, ma'am.

21 A. I have no clue.

22 Q. Okay.

23 Did he wait around for the police to get there?

24 A. Yes. I was with my sister.

25 Q. No, not you. Did he wait around for the police?

MS. DAVIS - CROSS EXAMINATION BY MR. HAZZARD

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1 A. I don't know.

2 Q. Okay.

3 So, I understand that you were more concerned about the
4 immediate situation but, basically, what we're left with is from
5 what you know the inspection man came out and then just left
6 with someone laying in the - - on the porch?

7 A. Yes.

8 Q. Okay.

9 Now, let us be clear on the time because you woke your
10 sister up at 1:14 in the afternoon, correct?

11 A. Yes.

12 Q. And she then - - you said she got right up, and if you want
13 I'll show you the point in your transcript so you can refresh
14 your recollection if you need to but you told the police that
15 she got right up, that y'all talked for about twenty minutes or
16 so, and then Ms. Cox, Teresa Cox apparently called.

17 Do you recall that?

18 A. Yes.

19 Q. Okay.

20 And that as a result of Ms. Cox's phone call, you went from
21 your apartment back to outside of Ms. Burroughs' apartment,
22 correct?

23 A. Yes.

24 Q. Okay.

25 What kind of distance are we talking about between your

MS. DAVIS - CROSS EXAMINATION BY MR. HAZZARD

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1 apartment and Ms. Burroughs' apartment?

2 A. It's right across the street.

3 Q. Okay.

4 Now, when you get - - when you got back over there, was Ms.
5 Cox already seated in her, ah, parked in her driveway or in the
6 parking lot?

7 A. Yes.

8 Q. Okay.

9 And, um, so you lived pretty much across the street from
10 your sister?

11 A. Yes

12 Q. Okay.

13 And you went over to her house. Woke her up?

14 A. Yes.

15 Q. She gets ready, and you then go back over to your house?

16 A. Yes.

17 Q. And then about twenty minutes later you go back to - - to
18 the parking area?

19 A. Yes.

20 Q. And the three of you then sit there in the car?

21 A. Yes.

22 Q. On a ninety degree day?

23 A. Yes.

24 Q. Okay.

25 And you sat there for the better part of an hour?

MS. DAVIS - REDIRECT EXAMINATION BY MR. GRAUSTEIN

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1 A. Not an hour.

2 Q. Okay.

3 But you told the police that this day - - you got out there
4 in the car around two or a little after two, and the incident
5 didn't happen until around or some time after three, correct?

6 A. Yes.

7 Q. Okay.

8 Once you got in the parking lot, did you ever leave the
9 driveway?

10 A. No.

11 Q. Okay.

12 Thank you.

13 MR. HAZZARD: Nothing further, Your Honor.

14 THE COURT: Any additional question?

15 MR. GRAUSTEIN: Yes, sir, briefly, Your Honor.

16 REDIRECT EXAMINATION BY MR. GRAUSTEIN:

17 Q. Ah, Ms. Davis, you just when you were talking with Mr.
18 Hazzard, he brought up that you told the police about the
19 defendant's intentions on June 24th.

20 Correct. Is that correct?

21 A. Yes.

22 Q. Did you have any special knowledge of her intentions?

23 A. No, sir.

24 Q. Okay.

25 Were you able - - -

MS.. DOZIER - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 THE COURT: Mr. Hazzard?

2 MR. HAZZARD: Objection, Your Honor.

3 THE COURT: Well, I - - he hadn't said anything yet.

4 I'm not going to permit his intentions. She wouldn't know
5 that. He can - - she can say what she observed but not her
6 intentions. I'd let the jury make that determination, if any.

7 MR. GRAUSTEIN: Yes, Your Honor.

8 That's all I have, Your Honor.

9 THE COURT: All right, sir.

10 You may come down.

11 Come down, please.

12 Thank you.

13 You may remain in the courtroom.

14 (The witness leaves the witness stand.)

15 THE COURT: Call your next witness.

16 MR. GRAUSTEIN: The State calls Teresa Cox.

17 (The witness takes the witness stand.)

18 TERESA COX DOZIER, BEING DULY SWORN,

19 TESTIFIES AS FOLLOWS:

20 CLERK OF COURT: Please state your name spelling your
21 last.

22 MS. DOZIER: Teresa Cox Dozier.

23 DIRECT EXAMINATION BY MR. GRAUSTEIN:

24 Q. Teresa Cox Dozier.

25 Were you recently, ah, were you recently married?

MS. DOZIER - DIRECT EXAMINATION BY MR. GRAUSTEIN

216

1 A. Yes.

2 Q. Did you - - did you formerly go by the name of Teresa Cox?

3 A. Yes.

4 Q. Okay.

5 And since you've become married, you changed your name to
6 Teresa Cox Dozier?

7 A. Yes.

8 Q. Okay.

9 Did you know the victim in this case, Monica Burroughs?

10 A. Yes.

11 Q. How long had you known her prior to, well, how long did you
12 know her?

13 A. I went to school with her.

14 Q. You went to school with her?

15 A. Yes.

16 Q. So, how long - - about how long had you known her?

17 A. About twelve years.

18 Q. Okay.

19 Had you been friends that whole time?

20 A. No, not the whole time.

21 Q. Okay.

22 Did you come to become friends?

23 A. Yes.

24 Q. And when was that?

25 A. Um, probably about three years before she died.

MS. DOZIER - DIRECT EXAMINATION BY MR. GRAUSTEIN

217

1 Q. All right.

2 How often would you see Monica?

3 A. Everyday.

4 Q. Everyday?

5 Did you live in the same area?

6 A. I lived in Conway.

7 Q. All right.

8 But you didn't live in the same neighborhood?

9 A. No.

10 Q. Okay.

11 But you'd see her everyday.

12 Did you consider yourself good friends?

13 A. Yes.

14 Q. Did you, ah, did you know the defendant in this case,
15 Brittany Johnson?

16 A. I didn't know her personally. I knew of her.

17 Q. You knew of her?

18 A. Yes.

19 Q. Did you know her if you saw her?

20 A. Yes.

21 Q. Now, I'm talking about if you would know her if you saw her
22 back in 2008?

23 A. Yeah.

24 Q. Okay.

25 But you never spoke with Ms. Johnson at all?

MS. DOZIER - DIRECT EXAMINATION BY MR. GRAUSTEIN

218

1 A. I've never spoken to her.

2 Q. All right.

3 Did you see Monica on June 24, 2008?

4 A. Yes.

5 Q. Do - - did you see her several times during the day or just
6 one time?

7 A. I was - - that one time before I was going to work, I
8 stopped by her house.

9 Q. Okay.

10 About what time did you stop by her house?

11 A. It had to be between one and two.

12 Q. Between one and two?

13 Okay.

14 And you were - - you said you were on your way to work?

15 A. Yes.

16 Q. And where did you work at the time?

17 A. I was working for Plantation Resort.

18 Q. All right.

19 A. It's a telemarketing.

20 Q. Okay.

21 And when you stopped by, you were - - you drove over there?

22 A. Yes.

23 Q. Okay.

24 Ah, what kind of vehicle did you have?

25 A. A '99 Grand Cherokee.

MS. DOZIER - DIRECT EXAMINATION BY MR. GRAUSTEIN

219

1 Q. What color was it? Do you remember?

2 A. White - -

3 Q. All right.

4 A. - - with gray trim and black trim.

5 Q. All right.

6 So, you went over - - you said you drove over to Monica's.

7 Do you remember where you parked?

8 A. Directly in front of her apartment.

9 Q. All right.

10 I'm going to show you what's marked as State's Exhibit #1
11 and ask if you can identify what that's a picture of.

12 A. Monica's house

13 Q. Okay.

14 Which one is Monica's house?

15 A. This one.

16 Q. This one right here?

17 A. Uh-huh.

18 Q. Okay.

19 And when you drove over, where did you park over there?

20 A. Right here.

21 Q. Right here?

22 A. Uh-huh.

23 Q. Okay.

24 In this parking spot right here?

25 A. Uh-huh.

MS. DOZIER - DIRECT EXAMINATION BY MR. GRAUSTEIN

220

1 Q. Did you head in?

2 A. Yeah.

3 Q. You didn't back in?

4 A. No.

5 Q. You were parked head in.

6 Okay.

7 Did you go into Monica's house?

8 A. No.

9 Q. No?

10 Why did you come to see her?

11 A. I called her and told her I was on the way.

12 Q. Uh-huh.

13 A. And I called her when I pulled up, and she - - her and
14 Joanne came outside.

15 Q. Okay.

16 They came outside. Did you get out of your vehicle?

17 A. No, they got in the vehicle.

18 Q. Okay.

19 When Monica got in the vehicle, where did she get in? What
20 seat did she get into?

21 A. She got in the front passenger.

22 Q. Okay.

23 And Joanne got in the vehicle?

24 A. Yes.

25 Q. And where did she get in?

MS. DOZIER - DIRECT EXAMINATION BY MR. GRAUSTEIN

221

1 A. The back passenger.

2 Q. Okay.

3 She got in the backseat?

4 A. Right.

5 Q. All right.

6 So, what were y'all doing in the vehicle?

7 A. Just talking. She was showing me that she had bought two
8 pairs of shades, some Prado shades.

9 Q. When you were talking about shades, you mean?

10 A. Glasses.

11 Q. Sunglasses?

12 A. Yeah.

13 Q. Okay.

14 Okay, go ahead.

15 A. We were talking about the shades, and she told me she had
16 bought two pair of shades. Um, then she got out and went in the
17 house to get the shades to show me, and she came back in the
18 car.

19 I tried on the first pair of glasses, and I told her I
20 really didn't like those. I liked the other ones. I tried
21 those on, and when I tried those on, I was telling her, "You
22 know, Putty's going to be mad because he likes Prado shades."

23 And she was, like, "Oh, whatever. He ain't - - these are
24 my shades. He ain't getting these shades."

25 And we were just talking about a song, and I looked to the

1 right, and there was Brittany.

2 Q. Okay.

3 Up to this point was your door open?

4 A. Yes.

5 Q. Was Monica's door open?

6 A. Yes.

7 Q. How about in the back?

8 A. Joanne?

9 Q. Yes.

10 A. Uh-huh.

11 Q. Okay.

12 So, the doors were open, and you looked up and you saw
13 Brittany. You mean the defendant, Brittany Johnson?

14 A. Yes.

15 Q. Okay.

16 And you said you saw her. What was she doing?

17 A. Ah, when I looked over, she was coming in the car with her
18 right hand.

19 Q. Uh-huh.

20 A. Ah, she had something in her hand. I didn't know it was a
21 gun at that point. I thought it was a knife that she was
22 trying to swing to hit her in the face.

23 Q. To hit who when you say, "her"?

24 A. Monica.

25 Q. Okay.

MS. DOZIER - DIRECT EXAMINATION BY MR. GRAUSTEIN

223

1 A. Ah, after that, Monica just kind of grabbed her hand, and
2 they both - - she jumped out of the truck.

3 Q. All right.

4 A. When she jumped out of the truck, I jumped out also. When
5 I had jumped out the truck, I didn't even make to my front tire,
6 and I heard a shot.

7 Q.. Okay.

8 So, let's just go back here, and Brittany came up, and she
9 was trying to hit Monica.

10 A. Right.

11 Q. And with something?

12 A. Uh-huh.

13 Q. Now, what did Monica do?

14 A. She, you know, threw her hands up to kind of defend herself
15 from being hit.

16 Q. Okay.

17 A. And at same time while she threw her hands up, she got out
18 of the truck.

19 Q. Okay.

20 So, fair to say tussling right then?

21 A. Not actually a tussle.

22 Q. Okay.

23 A. It was just, like, you know, she was defending herself from
24 being hit in the face, and when she got out, they were
25 separated.

MS. DOZIER - DIRECT EXAMINATION BY MR. GRAUSTEIN

224

1 Q. Okay.

2 And you say you got out of the car.

3 A. Yes.

4 Q. So, you got out of the car. Which side of the car did you
5 get out of?

6 A. On the driver's side.

7 Q. All right.

8 Let's go back to the picture here.

9 Monica was on what side?

10 A. The passenger side.

11 Q. Right here?

12 A. Uh-huh.

13 Q. And you were on this side?

14 A. Right.

15 Q. Okay.

16 And you said Brittany came up and was trying to hit Monica
17 on this side?

18 A. Right.

19 Q. Okay.

20 And then they - - they came out.

21 A. Right.

22 Q. And you got out of the vehicle?

23 A. On that side.

24 Q. On this side?

25 A. Uh-huh.

MS. DOZIER - DIRECT EXAMINATION BY MR. GRAUSTEIN

225

1 Q. Where did you - - where were you going?

2 A. I was going to the front. I was trying to go around - -

3 Q. Uh-huh.

4 A. - - to the other side.

5 Q. Okay.

6 A. I never made it around.

7 Q. Okay.

8 So, you were trying - - you got out, and you were going to
9 the front trying to get around to the other side. What were you
10 planning on doing?

11 A. I thought they were going to fight. So, I went around to
12 stop them from fighting.

13 Q. Okay.

14 So, at some point as you got to the front of the vehicle,
15 you say you heard a gunshot?

16 A. Yes.

17 Q. Okay.

18 What did you do when you heard the gunshot?

19 A. I ducked down behind my vehicle.

20 Q. Ah, did you see who shot? Did you see who shot?

21 A. Did I see who shot?

22 Q. Yeah.

23 A. Brittany shot her.

24 Q. Did you see that happen?

25 A. Oh, did I see her actually shoot her?

1 Q. Yeah.

2 A. No.

3 Q. Okay.

4 And you ducked down?

5 A. Uh-huh.

6 Q. What's the next thing you saw after you ducked down?

7 A. Well, I - - I saw - - I didn't see anything until I heard
8 Brittany screaming.

9 Q. Okay.

10 A. She was, like, maybe right at the back of my truck on the
11 curb right at the highway, and she was yelling, "I told you I
12 was going to get you, b."

13 That's when I looked up, and I saw her with the gun in her
14 hand.

15 Q. Okay.

16 Did you see Monica at any point?

17 A. After the shot, Monica ran past us.

18 Q. Okay.

19 So, she ran past you.

20 A. Yeah.

21 Q. And what did you think at that point?

22 A. I just thought, you know, she was all right. You know, she
23 was running away from it. So, I thought she was all right. She
24 didn't get shot or anything.

25 Q. Okay.

MS. DOZIER - DIRECT EXAMINATION BY MR. GRAUSTEIN

227

1 That's what you were thinking?

2 A. Yeah.

3 Q. Okay.

4 So, you said you - - now, was this before or after you
5 heard Brittany?

6 A. This was before.

7 Q. Okay.

8 So, Monica runs by, and you're hiding behind the car.

9 A. Yes.

10 Q. And then at some point you heard and you said you heard
11 Brittany, the defendant, yelling?

12 A. Yes.

13 Q. Do you know about how long it was from when Monica ran by
14 to when you started hearing Brittany.

15 A. Like, as soon as she ran off.

16 Q. Okay.

17 And what, if anything, was Brittany saying?

18 A. "I told you I was going to get you, b."

19 Q. Okay. B or did she use the whole word?

20 A. She used the whole word.

21 Q. Okay.

22 You can go ahead and use the whole word.

23 A. Oh.

24 She said, "I told you I was going to get you, bitch."

25 Q. Okay.

1 Ah, about how many times did she say that?

2 A. She said it probably four, four or five times.

3 Q. All right.

4 I'm going to ask you real quick looking back at this
5 picture. Do you know about - - can you see in this picture
6 about where you saw Brittany standing?

7 A. Yes. She was about right up in here.

8 Q. Okay.

9 All right. All right.

10 So, she - - so, while Brittany's yelling, did you see
11 anything in her hand or anything?

12 A. Yes. I saw a gun in her hand.

13 Q. You saw a gun in her hand?

14 Could you tell what kind of gun?

15 A. I don't know what kind of gun, like, I don't know the name
16 of the gun.

17 Q. Okay.

18 Do you know what color it was?

19 A. Yeah. It was a real long silver gun.

20 Q. A real long silver gun.

21 A. Uh-huh.

22 Q. Okay.

23 And about how long did she stand out there? Do you know?

24 A. It wasn't long.

25 Q. Okay.

MS. DOZIER - DIRECT EXAMINATION BY MR. GRAUSTEIN

229

1 Then - - then what happened? Then what did she do? Did
2 you see what she did after - - -

3 A. She ran off behind the apartments.

4 Q. Okay.

5 She ran off, and then what did you do?

6 A. I was trying to find my phone to call the police.

7 Q. All right.

8 And did you call the police?

9 A. Yes.

10 Q. Okay.

11 Then what happened? Then what did you do?

12 A. I was just kind of hysterical waiting on the - -

13 Q. Okay.

14 A. - - ambulance.

15 Q. After Monica ran by you, did you ever see her again?

16 A. I - - I didn't see her. Ah, the guy that was in the house
17 came out and saw her laying there, and that's when I saw her
18 there.

19 Q. Okay.

20 But that's when you saw her?

21 A. Yeah.

22 Q. Okay.

23 In this picture, can you - - does this picture show where
24 you saw Monica?

25 A. She was laying on this porch behind these bushes.

MS. DOZIER - DIRECT EXAMINATION BY MR. GRAUSTEIN

230

1 Q. Okay.

2 When you saw her, could you tell whether or not she had
3 been injured?

4 A. Yes.

5 Q. How could you - - was she injured or not?

6 A. She was.

7 Q. And how could you tell?

8 A. Um, she was laying on the porch with a lot of blood, and,
9 um, I - - it's like you could see almost a little hole, like,
10 where her back was right in the chest, back area.

11 Q. Okay.

12 A. And there was a lot of blood.

13 Q. Okay.

14 Did she say anything to you?

15 What did she say?

16 A. She held her head up and asked me, "Why?"

17 Q. You okay?

18 A. Uh-huh

19 Q. All right. Ready to go?

20 I've got a quick question to ask you.

21 I notice in this picture your vehicle isn't there. Do you
22 know what happened to your vehicle?

23 A. Ah, the police took me to the police station.

24 Q. Okay.

25 So, do you know what happened to your vehicle?

MS. DOZIER - CROSS EXAMINATION BY MR. HAZZARD

231

1 A. I drove it.

2 Q. Okay.

3 You drove - - had the ambulance arrived at that point?

4 A. Yes.

5 Q. Okay.

6 Do you know what - - do you know where the ambulance was
7 parked in this picture?

8 A. The ambulance was parked kind of like at that first
9 apartment right there because there was so much going on.

10 Q. Okay.

11 So, it was up in this section?

12 A. Right.

13 Q. Okay.

14 And Monica was up there?

15 A. Uh-huh.

16 Q. And do you know if Monica had any sort of weapon on June
17 24, 2008?

18 A. Absolutely not.

19 Q. Please answer any questions Mr. Hazzard may have.

20 THE COURT: Mr. Hazzard, you may examine her.

21 MR. HAZZARD: Thank you, Your Honor.

22 CROSS EXAMINATION BY MR. HAZZARD:

23 Q. Ma'am, did the police ever search your car that day?

24 A. No.

25 Q. I'm sorry?

MS. DOZIER - CROSS EXAMINATION BY MR. HAZZARD

232

1 A. No.

2 Q. And you talked with Detective King on the date of the
3 incident, June 24th of 2008. Correct?

4 A. Yes.

5 Q. All right.

6 THE COURT: Now, you can use this for purposes of
7 contradiction, if any.

8 MR. HAZZARD: Yes, sir.

9 THE COURT: All right, sir.

10 MR. HAZZARD: Thank you.

11 Q. I hand you a copy of that transcript for you to review if
12 necessary.

13 That interview took place at the Conway Police Department,
14 correct?

15 A. Yes.

16 Q. And you gave that interview around 3:40 that afternoon,
17 correct?

18 A. Uh-huh. Yes.

19 Q. Okay.

20 And that was within thirty minutes of the incident?

21 A. I guess. I wasn't keeping up with the time.

22 Q. Okay.

23 When you talked to Detective King, you told him on that day
24 that Brittany probably didn't know she'd shot Ms. Burroughs,
25 probably thought she'd fired the gun in the air.

MS. DOZIER - CROSS EXAMINATION BY MR. HAZZARD

233

1 Do you recall making that statement?

2 A. No, I do not.

3 Q. Okay, ma'am.

4 Please turn to page 10, lines 23 to 25.

5 Okay.

6 Do you see page 10, lines 23 to 25?

7 A. Uh-huh.

8 Q. Okay.

9 Please read your answer, lines 23 to 25.

10 A. "She must be didn't know she shot her. She probably
11 thought, you know, maybe she shot in the air or something."

12 Q. Okay.

13 Now, does that refresh your recollection that you made that
14 statement to Detective King on June 24th of 2008?

15 A. No, it doesn't refresh it.

16 Q. Okay.

17 And you deny making that statement?

18 A. No.

19 Q. All right.

20 Now, do you recall telling Detective King that you heard
21 the shot but didn't see the shot?

22 A. Yes.

23 Q. Okay.

24 And, in fact, I mean, you told Mr. Graustein that you
25 actually saw some distance between Brittany and, ah, Ms.

1 Burroughs?

2 A. Uh-huh.

3 Q. Correct?

4 A. Yes.

5 Q. But when you talked to Detective King that day, you said
6 that you, basically, didn't see anything at all.

7 Do you recall telling him that. That, basically, there
8 was an altercation behind the car and as soon as you went to hop
9 out, you heard the shot, then, immediately ducked down so that
10 you didn't see anything at all?

11 A. Ah, yeah, I said that.

12 Q. Okay.

13 When you talked to Detective King on June 24th, you told
14 them that anytime Brittany went to Ms. Burroughs apartment, it
15 was to see Franklin Putty Pyatt, it wasn't to see or confront
16 Monica Burroughs, correct?

17 A. Right.

18 Q. Okay.

19 And you told Detective King that Ms. Burroughs and Mr.
20 Pyatt had broken up or at least you thought that they had broken
21 up at least two weeks before this incident?

22 A. Yes.

23 Q. And you had been around Ms. Burroughs home. Had not seen
24 Mr. Pyatt. Knew that he had moved out. Correct?

25 A. Not that he'd moved out. I knew that he wasn't there.

MS. DOZIER - CROSS EXAMINATION BY MR. HAZZARD

235

1 Q. Okay.

2 And that it was your understanding that they had broken up?

3 A. Uh-huh.

4 Q. Okay.

5 And it was your understanding that they had broken up
6 because of Ms. Johnson, correct?

7 A. Not because of Ms. Johnson.

8 Q. Okay.

9 Did you tell Detective King that any problems that they had
10 were related to Ms. Johnson?

11 A. Yes.

12 Q. Okay.

13 Did you tell Detective King when you hopped out of the car,
14 your intention was to circle the car and approach Ms. Johnson?

15 A. Uh-huh.

16 Q. All right.

17 Thank you. No further questions.

18 THE COURT: All right..

19 Does that conclude - - I want to conclude this examination
20 as quickly as you can.

21 MR. GRAUSTEIN: Yes, sir. Very quickly, very quickly.

22 THE COURT: The jury's lunch is here. I'm feeding them
23 here today.

24 I don't want to limit you but if you've gone over it
25 before, don't do it again.

MS. DOZIER - REDIRECT EXAMINATION BY MR. GRAUSTEIN

236

1 MR. GRAUSTEIN: I understand, Your Honor.

2 REDIRECT EXAMINATION BY MR. GRAUSTEIN:

3 Q. Now Ms. Cox Dozier, how soon after this incident did you
4 give your statement to police?

5 A. Right after.

6 Q. Okay.

7 Would it be fair to say you were upset at that time?

8 A. Tremendously.

9 Q. Okay.

10 MR. GRAUSTEIN: No further questions, Your Honor.

11 MR. HAZZARD: Nothing further, Your Honor.

12 THE COURT: You may come down.

13 (The witness leaves the witness stand.)

14 THE COURT: All right.

15 Let's break for lunch. We want to start back at 2:00.

16 The jury's lunch is in the jury room. You may proceed to have
17 lunch.

18 We'll start back at 2:00, Madame Foreman.

19 Everybody remain seated while the jury retires, please.

20 (The jury retires to the jury room at 12:53 p.m.)

21 THE COURT: All right.

22 We are at recess subject to the Court's call.

23 MR. GRAUSTEIN: Thank you, Your Honor.

24 THE COURT: Thank you.

25 (The Court recesses the trial of this case for lunch and

1 thereafter resumes the trial of this case.)

2 THE COURT: Good afternoon.

3 Please be seated.

4 All right.

5 Is the State ready to proceed?

6 MR. GRAUSTEIN: Yes, Your Honor.

7 THE COURT: Is the defense ready?

8 MR. HAZZARD: The defense has two matters to take up
9 before the jury comes back in, Your Honor.

10 THE COURT: All right, sir.

11 MR. HAZZARD: Okay.

12 First of all, Your Honor - - -

13 THE COURT: Let the record reflect the defendant is in
14 court.

15 MOTIONS AND RULING OF THE COURT

16 MR. HAZZARD: First of all, Your Honor, as the Court
17 knows, the last two witnesses for the State were Ms. Davis and
18 Ms. Cox.

19 THE COURT: Yeah.

20 MR. HAZZARD: The prosecutor has not provided me with an
21 NCIC or rap sheet on them. As an Officer of the Court, I would
22 assume that was because they had absolutely no record, and he
23 had run their rap sheet. He indicates to me now that he has
24 not.

25 So, I ask the Court to instruct him to provide me with

1 that, and if there are anything - - is anything impeachable on
2 either one that I be allowed to either have that published to
3 the jury or have the witness recalled and the cross reopened for
4 that purpose.

5 THE COURT: If there is a rap sheet, I will - - the
6 Court will recall the witnesses, and you may then cross examine
7 them on that issue.

8 MR. HAZZARD: Okay. That's fine.

9 THE COURT: Why haven't you provided them?

10 MR. GRAUSTEIN: No - - no valid reason, Your Honor. It
11 will be provided to him within the next few minutes.

12 THE COURT: Want it in the next few minutes because if
13 there is a rap sheet, he's entitled to inquire about that, and
14 I will recall those witnesses.

15 They are still available?

16 MR. GRAUSTEIN: Yes, Your Honor.

17 THE COURT: Keep them here.

18 MR. HAZZARD: Okay.

19 Second thing - - -

20 THE COURT: Why don't - - let's make a quick inquiry.
21 Step back there and just find out first. Ask them privately.

22 MR. GRAUSTEIN: Okay.

23 If they - - -

24 THE COURT: Yeah.

25 We can solve it right now. Then you can - - I just want to

1 know. We can get a rap sheet anyway.

2 MR. HAZZARD: Yes, sir.

3 THE COURT: You had another motion?

4 MR. HAZZARD: Yes, Your Honor.

5 THE COURT: Well, let's deal with this first, and then
6 I'll hear the next one.

7 MR. HAZZARD: Okay.

8 THE COURT: Do they have some type of prior record?

9 MR. GRAUSTEIN: Yes, they do, Your Honor.

10 Ms. Cox - - -

11 THE COURT: Well, that's - - go - - go ahead and get
12 their rap sheet so he'll know exactly what they're talking
13 about.

14 MR. GRAUSTEIN: Okay.

15 THE COURT: Do that immediately now.

16 MR. GRAUSTEIN: Yes, sir.

17 It's in progress as we speak.

18 THE COURT: All right, sir.

19 Now, what's your second motion?

20 MR. HAZZARD: Okay, Your Honor.

21 Thank you.

22 It came to my attention during the lunch break because I'm
23 not one who reads the paper on a regular basis but it came to my
24 attention on the lunch break that there is a story on the online
25 addition of The Sun News, today's Sun News, February 8, 2011,

1 regarding this trial, and what concerns me about it is that it
2 also mentions other charges pending against Ms. Johnson.

3 THE COURT: That's in The State paper today, I mean, in
4 The Sun News today.

5 MR. HAZZARD: Yes, sir.

6 And I would simply ask that the Court pole the jury and
7 make sure that no one has read anything about this trial in The
8 Sun News or any other media outlet that would be improper.

9 THE COURT: I will do that, and if they have I will give
10 a curative instruction.

11 MR. HAZZARD: Thank you, Your Honor.

12 THE COURT: You're entitled to that.

13 Bring the jury in, please.

14 (The jury returns to the courtroom at 2:12 p.m.)

15 THE COURT: Good afternoon.

16 I trust that the lunch provided to you was satisfactory.

17 There may have been some article in The Sun Newspaper today
18 involving some aspect of this case. Any of you - - were any of
19 you who have read such an article, please raise your right hand.

20 Okay.

21 Now, with reference to any article that may have been in
22 the newspaper, you must under your oath as jurors completely
23 disregard that.

24 You understand?

25 Please stand.

1 JUROR: Yes, sir.

2 THE COURT: You read the article.

3 JUROR: I read some of it, yes.

4 THE COURT: Okay.

5 May I have your name?

6 JUROR: My name is Sharri Hammonds.

7 THE COURT: And your juror number?

8 JUROR: #157.

9 THE COURT: Okay.

10 Can you tell me that you can dismiss whatever was in that
11 article and base your verdict on the law and evidence in this
12 courtroom?

13 JUROR: Absolutely.

14 THE COURT: Okay.

15 What - - you just glanced over it?

16 JUROR: I just glanced over it.

17 THE COURT: Please disregard that.

18 JUROR: Okay.

19 THE COURT: It's important and I say this to all jurors.
20 It's important that whatever your verdict is be based on the law
21 and evidence in this courtroom.

22 Thank you.

23 JUROR: Okay.

24 THE COURT: All right, sir.

25 I think that takes care of that issue.

MR. CESTARE - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 Thank you.

2 Proceed.

3 MR. GRAUSTEIN: Your Honor, the State calls Peter
4 Cestare.

5 (The witness takes the witness stand.)

6 PETER J. CESTARE, BEING DULY SWORN,
7 TESTIFIES AS FOLLOWS:

8 MR. CESTARE: Good afternoon, Your Honor.

9 THE COURT: Good afternoon.

10 CLERK OF COURT: Please state your name and spell your
11 last.

12 MR. CESTARE: Peter J. Cestare, C-e-s-t-a-r-e.

13 DIRECT EXAMINATION BY MR. GRAUSTEIN:

14 Q. Mr. Cestare, where are currently employed?

15 A. I am - - my rank is Specialist. I'm employed by the Horry
16 County Police Department, and I'm the Commander of the Crime
17 Scene Investigations Unit.

18 Q. Okay.

19 What are your - - what are your duties with regard to the
20 Horry County Police Department?

21 A. I respond to violent crimes, any type of crime scenes that
22 require processing, any type of crime scenes that require any,
23 um, forensic evidence gathering, anything of that nature.

24 Q. Okay.

25 So, you do like they do on tv. You go and collect

MR. CESTARE - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 evidence?

2 Sort of like that?

3 A. Somewhat, yes.

4 Q. Okay.

5 I know it's probably not as glamorous as it is on tv.

6 A. No, sir, it's not.

7 Q. All right.

8 And did you have an occasion to, ah, respond to a crime
9 scene on Bay View Avenue in Conway in June of 2008?

10 A. Yes, sir, I did.

11 Q. Okay.

12 And was that on June 24, 2008?

13 A. Yes, sir, it was.

14 Q. Okay.

15 About what time did you arrive at the scene?

16 A. I'm going to say roughly about 4:00 in the afternoon.

17 Q. All right.

18 Were you the only member of the - - were you the only crime
19 scene investigator present at the scene?

20 A. No, sir. Um, one of my senior investigators, John Robert
21 Caulder, responded as well. He was my designated, um, um,
22 investigator for that scene.

23 Q. Okay.

24 Does he work for you?

25 A. Yes, sir.

1 Q. Okay.

2 And you were present - - you were present at that scene?

3 A. Yes, sir. I was there to supervise that scene.

4 Q. Okay.

5 And did you participate in the collection of evidence at
6 that scene?

7 A. Ah, not in the direct collection of evidence. I supervised
8 Investigator Caulder collecting evidence at that particular
9 scene. I did collect evidence the following day at the autopsy.

10 Q. All right.

11 Would you have in your position as supervisor at the scene,
12 were you able to observe evidence that was collected at that
13 scene?

14 A. Yes, sir. I observed every piece of evidence that was
15 collected at that scene by Caulder.

16 Q. Okay.

17 I'm going to show you what's been marked as State's Exhibit
18 #2 for identification and ask if you can identify that.

19 A. Yes, sir. Am I permitted to open the box?

20 THE COURT: You may.

21 A. Yes. This is a - - before I open it, let me just show it
22 this way.

23 This is a standard evidence box that we use for particular
24 types of evidence. Generally speaking, we use these types of
25 boxes for any bullet types of evidence: Casings, projectiles,

MR. CESTARE - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 things of that nature.

2 On the face of this box it's marked #2. That reflects
3 Evidence Item #2 that was collected by Investigator Caulder. IT
4 reflects a case number which is the County's case number. Um,
5 that corresponds to the Conway Police Department Case Number.

6 We responded to that - - to Conway at their request.

7 It's got the date that it was collected which is June 24,
8 2008. Collected by JRC, John Robert Caulder, and the
9 description on the box is "Casing, brass colored, 45 caliber
10 auto CBS stamping".

11 And inside that box is a casing. 45 caliber, brass in
12 color, CBS stamping. That is the casing that was collected at
13 the scene that day.

14 Q. Okay.

15 So, that is the casing that you observed being collected at
16 the Bay View Project.

17 A. Yes, sir. 2209 Bay View Avenue, yes, sir.

18 Q. Okay.

19 Were - - and did you - - were any other casings collected
20 at that scene?

21 A. No, sir, just that one casing.

22 Q. Okay.

23 Now, I'm going to also show what's been marked as State's
24 Exhibit #3 and ask if you can identify that.

25 A. Yes, sir.

MR. CESTARE - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 Again, that is a cardboard evidence box commonly used by my
2 staff for projectiles and casings. It's marked on the facing of
3 the box #1 which corresponds with the County Police chain of
4 custody Item #1, brass projectile.

5 On the face of the box is the case number which corresponds
6 with our number for the investigation, ah, assisting Conway
7 Police Department. It is dated 6/24 of 2008, collected by JRC,
8 John Robert Caulder, and the description on the box is brass
9 projectile.

10 Inside that box is, in fact, a brass in color projectile,
11 and this is, in fact, the projectile that was collected that day
12 at 2209 Bayside Avenue.

13 Q. Okay.

14 Were any other projectiles collected that day?

15 A. No, sir. No other projectiles were collected.

16 Q. Okay.

17 Were any other projectiles collected at that scene in the
18 immediate days following?

19 A. No, sir, not that I'm aware.

20 Q. Okay.

21 Any cases collected?

22 A. No, sir, not that I'm aware of.

23 Q. Okay.

24 Were any other weapons recovered - - were any weapons
25 recovered at the scene?

MR. CESTARE - CROSS EXAMINATION BY MR. HAZZARD

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1 A. No, sir, not to my knowledge.

2 Q. Okay.

3 No firearms were recovered?

4 A. No, sir, not at that scene, no, sir.

5 Q. Okay.

6 No weapon of any sort?

7 A. No, sir.

8 Q. Okay.

9 And just so we're clear, your testimony is that the casing
10 is the casing that you observed being collected at the scene on
11 the 24th of June, 2008?

12 A. Yes, sir, it is.

13 Q. And the projectile is the projectile you observed being
14 collected at the scene on the 24th of June, 2008?

15 A. Yes, sir, it is.

16 MR. GRAUSTEIN: Okay.

17 Answer any questions Mr. Hazzard would have.

18 MR. HAZZARD: Thank you, Your Honor.

19 CROSS EXAMINATION BY MR. HAZZARD:

20 Q. What is your rank, sir?

21 A. Specialist.

22 Q. Okay.

23 Specialist Cestare, you were advised of the incident around
24 3:45 or so. Would that be correct?

25 In other words, you knew of it before you got there, right?

MR. CESTARE - CROSS EXAMINATION BY MR. HAZZARD

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1 A. Yes, sir, that's correct.

2 Q. Okay.

3 And I think we've got a log here that says you actually
4 arrived about 5:07. Does that sound about accurate?

5 A. Um, without seeing the log I don't know.

6 Q. Okay.

7 Court's indulgence, Your Honor.

8 THE COURT: If the log says 5:07, you're an officer of
9 the Court, we will accept it. What does the log say?

10 MR. HAZZARD: The log says he got there at 5:07 and left
11 at 5:32, Your Honor.

12 MR. CESTARE: If I may make a statement in reference to
13 that.

14 THE COURT: You may.

15 MR. CESTARE: That log represents when I entered the
16 physical crime scene, not when I arrived at that location.

17 Q. Okay.

18 I'm not trying to trick you.

19 A. Yes, sir, that's a crime scene entry log, and you are
20 correct. According to this log when I entered the physical
21 scene was at seven minutes after five, yes, sir.

22 Q. Okay.

23 But you might have been there longer than that?

24 A. Yes, sir.

25 Q. Okay.

MR. CESTARE - CROSS EXAMINATION BY MR. HAZZARD

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1 And you knew about it at least around 3:45. Does that
2 sound - - -

3 A. Yes, sir, that's correct.

4 Q. Okay.

5 Because you called some other folks and told them to get
6 there.

7 A. Yes, sir.

8 Q. Okay.

9 Now, I note that you also indicated you attended the
10 autopsy, correct?

11 A. Yes, sir, that's correct.

12 Q. And you performed a gunshot residue test on Ms. Burroughs'
13 hands. Is that correct?

14 A. Yes, sir, I did so.

15 Q. Okay.

16 Explain to the jury what the purpose of a gunshot residue
17 test is, sir.

18 A. A gunshot residue test is generally collected within,
19 depending upon whether the victim is alive or deceased, within
20 a certain amount of hours.

21 It's performed on each hand, and there are two parts to the
22 test. There is one part that is a magnetic dauber that's
23 applied to the back of the hand and to the palm of the hand all
24 the way up into the wrist region. Um, that's done on both part
25 of the tests.

MR. CESTARE - CROSS EXAMINATION BY MR. HAZZARD

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1 The second part of the test is a swab that is meant to
2 collect any residue.

3 What it's looking for is any medals or any trace indication
4 that that person fired a handgun or a long gun, some type of a
5 firearm.

6 Um, yes, I did perform that test at the autopsy that
7 morning.

8 Q. Okay.

9 So, you did both the dauber test and the swab test?

10 A. Yes, sir.

11 Q. Okay.

12 Now, is that something that you would analyze yourself or
13 would you send it off to the South Carolina Law Enforcement
14 Division in Columbia?

15 A. Generally speaking, sir, we would send that straight to
16 SLED, South Carolina Law Enforcement Division.

17 Q. Okay.

18 A. In this case, however, since it's a Conway Police
19 Department case, evidence is generally turned over to the
20 respective agency, and then they would then take it up with SLED
21 if they so desire.

22 Q. Okay. Okay.

23 And the purpose of the test is to see whether someone fired
24 a gun or was in close proximity to a gun, at least their hands,
25 at the time the gun was fired. Is that correct?

MR. CESTARE - CROSS EXAMINATION BY MR. HAZZARD

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1 A. Yes, sir, that would be correct.

2 Q. Okay.

3 Now, to be fair, though, you actually did this - - this was
4 not done until the next morning at the autopsy, correct?

5 A. Yes, sir, that's correct.

6 Q. Okay.

7 And I think your notes indicated the autopsy was scheduled
8 to begin at 7:00 a.m. at Grand Strand Regional Medical Center on
9 June 25, 2008?

10 A. Yes, sir.

11 Q. Okay.

12 All right.

13 Thank you, I have no further questions.

14 MR. GRAUSTEIN: I have nothing further, Your Honor.

15 THE COURT: All right, sir.

16 You may come down.

17 (The witness leaves the witness stand.)

18 MR. CESTARE: Thank you, Your Honor.

19 MR. GRAUSTEIN: Your Honor, Court's indulgence.

20 Your Honor, the State would call - - -

21 MR. HAZZARD: Your Honor, before he calls that witness,
22 might we approach?

23 THE COURT: Yes.

24 MR. HAZZARD: Thank you, Your Honor.

25 (A bench conference is held off the record and in the

MS. DAVIS - EXAMINATION BY MR. HAZZARD

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1 presence of the jury but outside the hearing of the jury.)

2 MR. GRAUSTEIN: Your Honor, if the Court would call
3 those two witnesses.

4 THE COURT: Yes, sir, the Court would call those two
5 witnesses one at a time.

6 MR. GRAUSTEIN: Okay.

7 Joanne Davis.

8 (The witness takes the witness stand.)

9 THE COURT: You may proceed.

10 MR. HAZZARD: Thank you, Your Honor.

11 JOANNE DAVIS, BEING PREVIOUSLY SWORN,

12 TESTIFIES AS FOLLOWS:

13 DIRECT EXAMINATION BY MR. HAZZARD:

14 Q. Ms. Davis, thank you for returning to the stand.

15 Ma'am, is it true or is it correct that you have a
16 conviction for grand larceny value of \$1,000 but less than
17 \$5,000. Received a sentence of three years suspended to
18 probation a court date of June 22nd of 1999?

19 A. Yes.

20 Q. Okay.

21 Thank you.

22 No further questions.

23 THE COURT: You may come down.

24 (The witness leaves the witness stand.)

25 THE COURT: Call the next one, please.

MS. DOZIER - EXAMINATION BY MR. HAZZARD

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1 MR. GRAUSTEIN: Teresa Cox.

2 (The witness takes the witness stand.)

3 THE COURT: All right, sir.

4 MR. HAZZARD: Thank you, Your Honor.

5 TERESA COX DOZIER, BEING PREVIOUSLY
6 SWORN, TESTIFIES AS FOLLOWS:

7 DIRECT EXAMINATION BY MR. HAZZARD:

8 Q. Ms. Cox, thank you for returning to the stand.

9 Is it correct that you have a conviction or about March 21,
10 2006, for possession of less than one gram of meth or cocaine
11 base and received a three year sentence suspended to two years
12 probation?

13 A. Yes.

14 Q. Okay.

15 Thank you.

16 No further questions.

17 THE COURT: Okay.

18 Come down. Thank you.

19 (The witness leaves the witness stand.)

20 THE COURT: Call your next witness, please.

21 MR. GRAUSTEIN: The State - - the State calls Dr.
22 Edward Proctor.

23 (The witness takes the witness stand.)

DR. PROCTOR - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 DR. EDWARD LEROY PROCTOR, JR., BEING
2 DULY SWORN, TESTIFIES AS FOLLOWS:

3 CLERK OF COURT: Please state your name and spell your
4 last name for the Court.

5 DR. PROCTOR: I am Edward Leroy Proctor, Jr., and that's
6 P-r-o-c-t-o-r.

7 DIRECT EXAMINATION BY MR. GRAUSTEIN:

8 Q. Good afternoon, Dr. Proctor.

9 A. Hi.

10 Q. Can you tell me where you're currently employed?

11 A. I'm self-employed.

12 Q. You're self-employed?

13 A. Yes, sir.

14 Q. What do you do to be self-employed?

15 A. Well, I am a physician engaged in the practice of pathology
16 to include anatomic pathology, clinical pathology and forensic
17 pathology.

18 Q. Okay.

19 And how long have you been doing that sort of work?

20 A. I have been a Board Certified Anatomic and Clinical
21 Pathologist since 1982 and a Board Certified Forensic
22 Pathologist since 1994.

23 MR. HAZZARD: Your Honor, the defense will stipulate to
24 Dr. Proctor's qualifications.

25 THE COURT: Fine.

DR. PROCTOR - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 Yes, Dr. Proctor has testified in all the courts of this
2 state including mine on many occasions. I find that he is an
3 expert in clinical pathology.

4 MR. GRAUSTEIN: Thank you very much.

5 Also in forensic pathology, Your Honor?

6 THE COURT: Yes.

7 MR. GRAUSTEIN: Okay. Thank you.

8 Q. Okay.

9 Dr. Proctor, did you have an occasion to conduct an autopsy
10 on one Monica Burroughs on June 25, 2008?

11 A. Yes, sir, I did.

12 Q. Okay.

13 And where was that autopsy conducted?

14 A. That autopsy was performed at Grand Strand Regional Medical
15 Center in Myrtle Beach.

16 Q. All right.

17 And that, ah, was on June 25, 2008?

18 A. That is correct, yes, sir.

19 Q. About what time?

20 A. Approximately seven a.m.

21 Q. Okay.

22 And just for the jury's edification, what sort of - - when
23 you do an autopsy, what sort of procedures do you?

24 A. In a forensic autopsy, the request comes from the coroner
25 or his designee, and we take what information we have at the

DR. PROCTOR - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 time which is usually very sketchy, and we work with law
2 enforcement crime scene, and we do a complete external
3 examination and internal examination, take x-rays if necessary,
4 ah, draw body fluids and perform a toxicology or have it
5 performed, and once we complete the entire examination we
6 determine the cause of death and in a forensic case the manner
7 of death.

8 Q. Okay.

9 And did you perform all of those sorts of examinations on
10 Monica Burroughs?

11 A. Yes, sir.

12 Q. All right.

13 I want to show you something and ask if you can identify
14 that.

15 A. Yes.

16 THE COURT: You've been supplied a copy of that, have
17 you not, Mr. Hazzard?

18 MR. HAZZARD: If he's talking about the autopsy and the
19 anatomical pathology results, yes, I have, Your Honor.

20 THE COURT: All right, sir.

21 Thank you.

22 A. Yes, these are a copy of my autopsy report plus the
23 toxicological evaluation that was performed by National Medical
24 Services Forensic Laboratories.

25 Q. Okay.

DR. PROCTOR - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 MR. GRAUSTEIN: I would like that marked as - - for
2 identification as State's Exhibit #6 and move that it be placed
3 into evidence.

4 THE COURT: All right, sir.

5 Q. Now, Doctor - - -

6 THE COURT: This report, Madame Foreman, will be with
7 you in the jury room during your deliberations.

8 Q. Do you have a copy of that?

9 A. I have a copy, yes, sir, I do.

10 COURT REPORTER: It is in evidence.

11 THE COURT: Yes. He has introduced it into evidence
12 without objection.

13 (The Court Reporter accepts State's Exhibit #6 into
14 evidence.)

15 Q. All right.

16 So, you conducted an external examination?

17 Well, first, let's start with this.

18 Monica Burroughs, how old was she?

19 A. Ah, from the records that I was given, she was twenty-nine
20 years old.

21 Q. Okay.

22 Twenty-nine years old. Female?

23 A. Yes, sir.

24 Q. What race was she?

25 A. African-American.

DR. PROCTOR - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 Q. And did you conduct an external pathological examination of
2 Ms. Burroughs?

3 A. Yes, I did.

4 Q. And what did you - - and what findings did you come - - did
5 you have on that?

6 A. The external examination revealed two gunshot wounds to Ms.
7 Burroughs. One was an entrance wound, and one was an exit
8 wound.

9 The entrance was in the left chest in what we call the
10 axillary line which is the line that runs on the curve of the
11 body on the lateral aspect.

12 That was the entrance wound at approximately the seventh
13 rib area, and we also found an exit wound in the right anterior
14 chest just to the right of the midline below the breast area.

15 Q. Okay.

16 Now, I know it's hard to show us where that entry wound
17 was. It's on the left side, you say?

18 A. That's correct.

19 Q. Okay.

20 So, it would have been on this side of Ms. Burroughs?

21 A. Yes, sir.

22 Q. And you said - - and what - - -

23 A. It was in the lateral aspect in what we call the axillary
24 line which is the measure line that runs from your armpit on the
25 lateral side of your body - -

DR. PROCTOR - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 Q. All right.

2 A. - - about this area, seventh rib lateral.

3 Q. Well, that was pretty much in her side?

4 A. Ah, yes, sir, but higher than where you have here.

5 Q. Higher than I have it?

6 A. Yes, sir.

7 About the seventh rib here in space, you see the edge of
8 your ribs.

9 Q. Okay.

10 A. Those of us who are thin enough can roll over a couple of
11 ribs, and that's where it was.

12 Q. Would you point to it?

13 A. I can point to it. Yes, sir.

14 Seventh rib would be about this area right here.

15 Q. That's about where that entrance wound was?

16 A. Yes, sir.

17 Q. Okay.

18 And as it came out the exit wound - - -

19 A. It came out right anterior chest, approximately the same
20 rib space below the right breast area. So, it would be the
21 anterior chest about this area.

22 Q. Okay.

23 A. Just to the right of the midline.

24 Q. Okay.

25 And it came out here?

1 A. Yes, sir.

2 Q. All right, sir.

3 It went in up here and came out here?

4 A. Yes, sir.

5 Q. All right.

6 Did you find - - was anything - - was there anything else
7 that was remarkable from the exterior examination that you did?

8 A. The external examination, when we investigate gunshot
9 wounds, we look for what we call stippling or residue. Residue,
10 the actual smoke and soot coming out of the end of the gun;
11 stippling, the hot powder when it comes out, it can burn the
12 skin or burn clothing, and in this case I was able to examine
13 both the clothing on the victim and the victim herself, and
14 there was no residue, no stippling.

15 Q. What does that tell you?

16 A. That tells me that the weapon used to shoot Ms. Burroughs
17 was at a distance greater than about eighteen to twenty-four
18 inches, so at least a couple of feet away or more.

19 Q. Okay.

20 So, from your external examination, you were able to
21 determine that the bullet entered her in the side, laterally
22 came out the chest - -

23 A. Anterior.

24 Q. - - and pretty much was going straight across?

25 A. It came slightly from - - it followed approximate forty-

DR. PROCTOR - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 five degree angle from the entrance to the chest and exit.

2 Q. Okay.

3 And - - and that - - wherever that projectile came from, it
4 was more than eighteen inches away?

5 A. Eighteen inches to two feet away or greater.

6 Q. Or greater?

7 A. Yes, sir

8 Q. Okay.

9 Now, anything else remarkable from the - - from your
10 external examination?

11 A. No, sir.

12 Q. Okay.

13 A. There was not.

14 Q. So, you have a bullet wound. Went in her side. Passed
15 through, and you conducted an internal examination?

16 A. Yes, sir.

17 Q. And what did that internal examination reveal?

18 A. The internal examination revealed that the projectile that
19 entered her left chest came through the seventh rib inner space,
20 passed through the left lower lung lobe, passed through the body
21 of the heart and came out through the right side of the sternum
22 below the breast at about the fourth or fifth rib inner space,
23 and there was a lot of tissue damage and hemorrhage along the
24 projectile path.

25 Q. Okay.

1 So, it went through part of her lung?

2 A. Yes, sir.

3 Q. And it went through her heart?

4 A. Yes, sir.

5 Q. Those are pretty significant injuries, are they not?

6 A. Yes, sir, they are.

7 Q. Are those survivable injuries?

8 A. Ah, usually not.

9 Q. Okay.

10 So, from - - and then you said the bullet exited?

11 A. The bullet exited, yes, sir.

12 Q. So, did you recover a projectile from the body of Ms.
13 Burroughs?

14 A. I did not.

15 Q. Okay.

16 Did the - - did it appear from your examination that the
17 bullet had struck any of her ribs?

18 A. The, ah, it actually - - it came through the seventh rib
19 inner space, and I have described this as the sternum at the
20 fourth or fifth rib inner space. So, the thick part of the
21 breast plate where the ribs come off, it did hit part of the
22 bone there, yes, sir.

23 Q. Okay.

24 Did you, ah, did your internal examination reveal anything
25 else that you found to be of significance?

DR. PROCTOR - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 A. The - - the most significant part of the internal
2 examination was there was a significant degree of hemorrhage,
3 blood in the chest cavity, blood filling up the sack around the
4 heart and just, ah, tissue damage within the lung and the heart
5 itself.

6 Q. And could this have been caused by the injuries that you
7 observed to her organs?

8 A. Ah, these - - these were caused specifically by the track
9 of the bullet passing through it and allowing hemorrhage to
10 ensue.

11 Q. Okay.

12 Doctor, were you able to determine the cause of death?

13 A. The cause of death of Ms. Burroughs was a gunshot wound to
14 the chest with massive hemorrhage.

15 Q. And this was a - - a forensic pathological examination,
16 correct?

17 A. That is correct, yes, sir.

18 Q. All right.

19 So, you also were to determine the manner of death?

20 A. Yes, sir. That is correct.

21 Q. All right.

22 Were you able to - - were you able to determine the manner
23 of death?

24 A. The manner of death based upon my examination and
25 information I had from the coroner's office and the police

DR. PROCTOR - DIRECT EXAMINATION BY MR. GRAUSTEIN

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1 investigators at the time is homicide.

2 Q. Okay.

3 Dr. Proctor, in your expert opinion and to a reasonable
4 degree of medical certainty can you state the cause of death of
5 Monica Burroughs?

6 A. The - - the cause of death of Ms. Burroughs was gunshot
7 wound to chest with massive hemorrhage as the cause, and manner
8 is homicide.

9 Q. And, Doctor - - Doctor, in your expert opinion to a
10 reasonable degree of medical certainty can you state the manner
11 of death of Monica Burroughs?

12 A. Homicide.

13 Q. Please answer any questions Mr. Hazzard has for you,
14 Doctor.

15 A. Yes, sir.

16 THE COURT: What?

17 MR. GRAUSTEIN: I'm just done with my direct, Your
18 Honor.

19 THE COURT: Sir?

20 MR. GRAUSTEIN: I'm done with my direct.

21 THE COURT: Okay.

22 Go ahead.

23 MR. HAZZARD: Thank you.

DR. PROCTOR - CROSS EXAMINATION BY MR. HAZZARD

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1 CROSS EXAMINATION BY MR. HAZZARD:

2 Q. Good afternoon, Dr. Proctor.

3 How tall was Ms. Burroughs?

4 A. Ms. Burroughs was 68 inches tall, five feet, eight.

5 Q. She was five feet, eight inches?

6 A. Yes, sir.

7 Q. And what you told us is that, first of all, let's talk
8 about this whole thing about the stippling.

9 Um, you were not present when EMS was working on her, were
10 you?

11 A. I was not.

12 Q. You don't know what measures that had been taken with
13 regard to cleaning the area for the purpose of treatment, do
14 you?

15 A. I do not.

16 Q. Okay.

17 With regard to the clothing, I believe your report says
18 that a brief inspection doesn't show any discrete residue.

19 Does that mean you basically took a look at it, put it back
20 down and went back to work?

21 A. That means I did a visual examination and did not see it.

22 Q. Okay.

23 A. Ah, my visual examination, I saw none.

24 Q. Okay. That's fine.

25 No microscope, no tests to see if there was residue on it?

DR. PROCTOR - CROSS EXAMINATION BY MR. HAZZARD

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1 A. No, sir.

2 Q. Okay.

3 A. Those were - - those were given to the crime scene
4 investigators for their examination.

5 Q. Yes, sir. Thank you very much.

6 Now, you list the time of death at 3:44 p.m. That is what
7 someone told you, correct?

8 A. Time of death at 3:44 p.m. was the time of death recorded
9 by the deputy coroner on the case, yes, sir.

10 Q. Okay. Okay.

11 No problem.

12 But it's not like CSI where you're taking liver
13 temperatures and all like that and going back to the day before?

14 A. No, sir.

15 Q. Okay.

16 This is based on information you received?

17 A. Yes, sir.

18 Q. All right.

19 Now, let me be very clear on this.

20 A. Uh-huh.

21 Q. It's in the left side of the body nine centimeters lower
22 than the exit wound, right?

23 A. That is correct.

24 Q. Okay.

25 So, you're talking about here, then out here at a forty-

DR. PROCTOR - CROSS EXAMINATION BY MR. HAZZARD

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1 five degree angle up and down?

2 A. And angled forward.

3 Q. And angled forward.

4 What kind of angle forward are we talking about?

5 A. Just, oh, probably about ten degrees or so.

6 Q. So, very, very tight.

7 A. Yes.

8 Q. As far as entering here and exiting right there?

9 A. That's correct.

10 Q. So, basically, if you're trying to kill somebody, this
11 ain't really the shot you want to take?

12 MR. GRAUSTEIN: Objection, Your Honor.

13 THE COURT: I sustain that.

14 Q. In your toxicology report - - -

15 A. I drew toxicology report under chain of custody, and it was
16 forwarded to National Medical Services, and the blood ethanol
17 was negative. The blood drug screen was positive for
18 marijuana, marijuana metabolite.

19 Q. Okay.

20 Now, given the fact that you do not know what EMS did as
21 far as sterilizing the entry wound for the purpose of prepping
22 it, for the purpose of any type of treatment, you really do not
23 know whether there was going to be or whether there was
24 previously any residue or stippling there. You simply know what
25 you saw 7:00 the next morning, correct?

DR. PROCTOR - CROSS EXAMINATION BY MR. HAZZARD

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1 A. I can tell you that stippling would have still been there.
2 Stippling is actual burning of the skin.

3 Q. Uh-huh.

4 A. So, if there had been stippling, we would have seen it.
5 Residue, itself, can be wiped away but the stippling actually
6 burns the clothing and burns the skin.

7 So, had there been stippling, I would have seen it.

8 Q. Okay.

9 No problem.

10 A. Yes, sir.

11 Q. Now, with regard to your statement as far as the number of
12 inches away, eighteen to twenty-four inches, two people fighting
13 over a gun can have that gun eighteen to twenty-four inches
14 away. Correct?

15 A. Depends on the length of the arms but I would assume so.
16 Yes, sir.

17 Q. Thank you.

18 MR. HAZZARD: Nothing further.

19 THE COURT: All right.

20 MR. GRAUSTEIN: Nothing further from the State.

21 THE COURT: All right.

22 I'm going to excuse Dr. Proctor. Any objection?

23 Dr. Proctor, we appreciate your appearance in court. Good
24 to see you.

25 DR. PROCTOR: Good to see you, too.

DR. PROCTOR - CROSS EXAMINATION BY MR. HAZZARD

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1 (The witness leaves the witness stand.)

2 THE COURT: Madame Foreman, ladies and gentlemen, I
3 qualified the previous witness as an expert, and I charge you
4 that witnesses who are - - who by training, education or
5 experience are considered as experts in a particular field and
6 they may give their opinions based on that expertise.

7 You, of course, may accept or reject if you choose in whole
8 or in part any portion of an expert's testimony based on your
9 experiences.

10 You may proceed.

11 MR. GRAUSTEIN: Ah, the State calls Detective Owen
12 Rodmaker.

13 MR. HAZZARD: Your Honor, may we approach?

14 THE COURT: Yes, sir.

15 (A bench conference is held off the record and in the
16 presence of the jury but outside the hearing of the jury.)

17 MR. HAZZARD: Thank you, Your Honor.

18 (The witness takes the witness stand.)

19 DETECTIVE OWEN DANIEL RODMAKER, BEING
20 DULY SWORN, TESTIFIES AS FOLLOWS:

21 CLERK OF COURT: Please state your name and spell your
22 last name.

23 MR. RODMAKER: Sure,

24 Owen Daniel Rodmaker. The last name is R-o-d-m-a-k-e-r.

1 DIRECT EXAMINATION BY MR. GRAUSTEIN:

2 Q. Detective Rodmaker, where do you currently work?

3 A. Conway Police Department.

4 Q. Okay.

5 All right.

6 I'm just going to show you what's been marked as State's
7 Exhibit #2. Can you identify that?

8 Have you seen that before?

9 A. I have. When I opened up the case from the County
10 yesterday, it was inside the case.

11 Q. Do you know how that got to the courthouse?

12 A. I brought it over.

13 Q. And where did you get that from?

14 A. Our evidence, the evidence locker.

15 Q. Okay.

16 I'm going to ask you if you can identify State's Exhibit
17 #3.

18 A. Yes, sir.

19 Q. Okay.

20 And have you seen that before?

21 A. I have. When I opened up the box yesterday.

22 Q. Okay.

23 And how did that get to the courthouse?

24 A. I brought it over from our evidence locker.

25 Q. Okay.

DETECTIVE RODMAKER - CROSS EXAMINATION BY MR. HAZZARD

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1 You got it, too, from the evidence locker?

2 A. Yes, sir.

3 Q. Okay.

4 Thank you.

5 MR. GRAUSTEIN: Your Honor, the State would move to
6 admit State's Exhibit #2 and #3 into evidence.

7 MR. HAZZARD: Without objection.

8 THE COURT: All right.

9 (The Court Reporter accepts State's Exhibits #2 and #3 into
10 evidence.)

11 THE COURT: You have any questions on his testimony?

12 MR. HAZZARD: Very briefly.

13 CROSS EXAMINATION BY MR. HAZZARD:

14 Q. You were present on the date of the incident on Bayside
15 Avenue, correct?

16 A. Correct.

17 Q. Okay.

18 What was the weather like that day?

19 A. It was a summer day. It was pretty warm.

20 Q. Okay.

21 In the nineties with high humidity?

22 A. I never had the temperature but it sounds about right.

23 Q. All right.

24 Thank you.

25 No further questions.

1 THE COURT: You may come down and are excused from
2 further participation.

3 (The witness leaves the witness stand.)

4 THE COURT: Call your next witness.

5 THE STATE RESTS

6 MR. GRAUSTEIN: Your Honor, the State would rest at s
7 time.

8 THE COURT: All right.

9 I'll let you go to your jury room. I'll be calling you
10 back very shortly.

11 (The jury retires to the jury room at 2:50 p.m.)

12 THE COURT: All right.

13 Any motions as this time on behalf of the defense

14 MR. HAZZARD: Court's indulgence, Your Honor.

15 THE COURT: All right.

16 MOTIONS AND RULING OF THE COURT

17 MR. HAZZARD: At this time, Your Honor, the defense makes
18 a motion for a directed verdict with regard to the charge of
19 murder. In the light - - the evidence in the light most
20 favorable to the State, I would like for the Court to take
21 notice of the fact that there has not been a single witness for
22 the State who testified that the shooting was intentional, that
23 it was wilful and that it was with malice, and those are
24 elements that are necessary in order for there to be a
25 conviction of murder.

1 THE COURT: You want to respond to that position?

2 MR. GRAUSTEIN: Yes, Your Honor.

3 That - - the, ah, the jury is free to infer malice from - -
4 from the, ah, testimony that they have and the evidence that has
5 been presented.

6 THE COURT: If believed, there is ample evidence of
7 malice in this case. You've got the use of a deadly weapon,
8 if believed. You've got premeditation, if believed. It's for
9 the jury to, ah, it's for the jury to determine but there is
10 ample evidence for the jury to make that determination that this
11 defendant deliberately and feloniously killed that victim with
12 malice aforethought.

13 That is a judgment for the jury.

14 MR. HAZZARD: Okay.

15 Note my objection for the record, Your Honor.

16 THE COURT: I will.

17 All right.

18 Anything else at this time? Any motions - - anything from
19 the State?

20 MR. GRAUSTEIN: Nothing from the State, Your Honor.

21 THE COURT: All right, sir.

22 Can you tell me how many witnesses you going to have just
23 for scheduling purposes? This is for the next trial.

24 MR. HAZZARD: Your Honor - - -

25 THE COURT: This is outside the presence of the jury.

MS. SKIPPER - DIRECT EXAMINATION BY MR. HAZZARD

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1 We ready to proceed?

2 MR. HAZZARD: The defense is ready to proceed.

3 THE COURT: Bring the jury in, please.

4 (The jury returns to the courtroom at 3:21 p.m.)

5 THE COURT: The jury is present. The defendant is in
6 court.

7 Madame Foreman, just prior to recess, the State had
8 concluded its presentation of its evidence, and we now go to the
9 defense.

10 Yes, sir. Call your first witness.

11 MR. HAZZARD: Thank you, Your Honor.

12 The defense calls Tamika Skipper to the stand.

13 (The witness takes the witness stand.)

14 TAMIKA SKIPPER, BEING DULY SWORN,
15 TESTIFIES AS FOLLOWS:

16 CLERK OF COURT: Please state your name and spell your
17 last.

18 MS. SKIPPER: Tamika Skipper, S-k-i-p-p-e-r.

19 DIRECT EXAMINATION BY MR. HAZZARD:

20 Q. Thank you, Ms. Skipper.

21 Where do you live?

22 A. 2309 *** (unintelligible)

23 Q. 2309 - -

24 A. Huckabee Heights.

25 Q. Huckabee Heights? Okay.

MS. SKIPPER - DIRECT EXAMINATION BY MR. HAZZARD

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1 And did you live there June 24, 2008?

2 A. Yes, sir.

3 Q. Okay.

4 Do you remember that day and the incidents that occurred
5 that day?

6 A. Yes, sir.

7 Q. Okay.

8 If you would, did you see Brittany on June 24, 2008?

9 A. Yes, sir.

10 Q. Okay.

11 And when and where did you see Brittany?

12 A. When I came home from my mother's house. She was on my
13 porch with her son.

14 Q. Okay.

15 And had she arranged to be there or did she just happen to
16 be there?

17 A. She just happened to be there.

18 Q. Okay.

19 Was this something that was unusual?

20 A. No.

21 Q. Okay.

22 And what happened when you saw Brittany on your porch?

23 A. She was talking her little junk. Asked me where I was at,
24 and we went in the house.

25 Q. About what time was it? Do you recall?

MS. SKIPPER - DIRECT EXAMINATION BY MR. HAZZARD

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1 A. Like twelvish.

2 Q. Okay.

3 So around noon or a little after noon?

4 A. Uh-huh.

5 Q. Okay.

6 And y'all greet each, went in the house?

7 A. Uh-huh.

8 Q. What did you do once you got in the house?

9 A. Well, she went in the house. Started talking. I was
10 hungry. So, I ask her did she want to go up to Subway with me.
11 She said no.

12 Q. Okay.

13 And so what did you then?

14 A. I went to Subway.

15 Q. Did you go by yourself or did you go with someone else?

16 A. Me and my friend, Iesha.

17 Q. Okay.

18 So you left Brittany and your son in your home?

19 A. No, at first, no. She was outside talking to some of her
20 friends.

21 Q. Okay.

22 Who was she talking to?

23 A. Um, it was a whole bunch of people. It was in the project.
24 It was just a whole bunch of people meeting up together just
25 talking.

MS. SKIPPER - DIRECT EXAMINATION BY MR. HAZZARD

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1 Q. Like, right outside your apartment or where?

2 A. Well, just right across the street from my apartment.

3 Q. Okay.

4 Now, where was your apartment - - tell the jury where your
5 apartment was or is, actually, in relation to the apartment that
6 Ms. Burroughs lived in.

7 A. Um, we're, like, diagonal.

8 Q. Okay.

9 Diagonal or catty-cornered?

10 A. Yeah.

11 Q. Okay.

12 About how far from hers would you say?

13 A. I'd say from this corner right here to that corner over
14 there.

15 Q. From one corner to another?

16 A. Yes, something like that.

17 Q. Approximately about thirty yards, maybe, twenty yards?

18 A. Something like that.

19 Q. Okay.

20 Now, you and Iesha were going to go to Subway.

21 A. Uh-huh.

22 Q. And you said that Brittany was standing outside. Now,
23 where was her son?

24 A. With her.

25 Q. With her. So, they were standing outside talking.

MS. SKIPPER - DIRECT EXAMINATION BY MR. HAZZARD

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1 A. Yeah.

2 I give her my key since she said she didn't want to go to
3 Subway.

4 Q. Okay.

5 So, when you left to go to Subway, you gave her your keys -
6 - -

7 A. It was hot. Ain't no use in her being outside.

8 Q. Okay.

9 And so you and Iesha went to Subway?

10 A. Uh-huh.

11 Q. Okay.

12 About how long were you gone?

13 A. Enough to walk to Subway and back.

14 Q. About how far is Subway?

15 A. Um - - um, I want to say a mile if that.

16 Q. Okay. All right.

17 Now, when you got back from Subway, what did you do?

18 A. I came home. Um, found out my door was locked. Beat down
19 my door - - about five minutes and she woked up and unlocked
20 the door for me.

21 Q. Okay.

22 When you got back from Subway, Brittany had gone inside,
23 locked the door?

24 A. Uh-huh.

25 Q. And, apparently, was asleep.

MS. SKIPPER - DIRECT EXAMINATION BY MR. HAZZARD

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1 A. Yeah.

2 Q. Okay.

3 Were you upset that she had locked you out of your home?

4 A. Yes, sir.

5 Q. And did you tell her you were upset?

6 A. Yes, sir.

7 Q. Okay.

8 And after y'all had that discussion, what happened next?

9 A. She ask me would I watch her son while she go to the
10 bootlegger house.

11 Q. Okay, when you say, "the bootlegger", what is a bootlegger?

12 A. Someone that sells cigarettes, candy, popcorn.

13 Q. Okay.

14 A. Someone who just sells stuff.

15 Q. Okay.

16 So, basically, someone who engages in the illegal sale of
17 retail goods out of their home?

18 A. Yeah.

19 Q. Okay.

20 And does Huckabee Heights have one of those?

21 A. Yeah, we got three.

22 Q. Okay.

23 Now, which - - do you have any knowledge of which
24 bootlegger's house?

25 A. I can't tell you.

1 Q. Okay.

2 So, where were the three houses? Where did the three
3 bootleggers live?

4 A. We got one down from me. We got one right across from
5 Monica house. Um, one right on the same road but pushed
6 further back.

7 Q. Okay. All right.

8 So, Brittany said, "Watch my son for a minute. I'm going
9 to go to the bootlegger's house."

10 Did she ask you if you wanted anything?

11 A. I told her bring me back some cookies, some strawberry
12 cookies.

13 Q. Okay.

14 Now, do you have any idea about what time it was then?

15 A. No, sir.

16 Q. Okay.

17 Now, you said, "Bring back some strawberry cookies."

18 What did Brittany do, if anything?

19 A. She say, "You greedy. You like that eating."

20 And I told her, "Bring me back some cookies."

21 Q. Okay.

22 A. That's all.

23 Q. And what - - what did she do? Did she leave at that time?

24 A. Yeah. Yes, sir.

25 Q. Okay.

MS. SKIPPER - DIRECT EXAMINATION BY MR. HAZZARD

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1 Now, when she left, did she appear upset or angry or
2 anything like that?

3 A. No. She was, like, in a daze, you know, because I must
4 have startled her when I woke her up.

5 Q. Okay.

6 All right.

7 Now, ah, when she left, what did you do?

8 A. I went back in the house. Talked to Iesha for a little
9 minute. Then I came back on the porch.

10 Q. Okay.

11 When you say, "a little minute", how long we talking about?

12 A. Probably three - - three, less than five minutes. Not even
13 long, you know, just enough to talk to her, you know.

14 Q. Okay.

15 Now, when you come back on the porch what, if anything, did
16 you see?

17 A. I, um, I seen Brittany across the street, and I seen Monica
18 in a jeep backing out, and then I seen the brake lights jump on
19 and four car doors open up, and then they surrounded - - by the
20 time they surround her, I started running.

21 Q. Slow down.

22 A. Go ahead.

23 Q. Let's take it one step at the time.

24 A. All right.

25 Go ahead.

MS. SKIPPER - DIRECT EXAMINATION BY MR. HAZZARD

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1 Q. You came back out on the porch?

2 A. Uh-huh.

3 Q. Okay.

4 At this point had you heard any gunshots?

5 A. No, sir.

6 Q. Okay.

7 Was there anybody running in panic?

8 A. No, sir.

9 Q. Okay.

10 So, you come back out on the porch, and you see Brittany
11 across the street from where you are? Across the street from
12 Ms. Burroughs place? Across the street from where?

13 A. Right across the street from, um, okay. Ms. Burroughs
14 apartment right here. She was in the other driveway.

15 Q. Okay.

16 So, not - - -

17 A. Closer to the bootleg.

18 Q. Okay.

19 So not across the street but, like, kind of half building
20 over?

21 A. Yeah, a driveway over.

22 Q. Okay.

23 What kind of distance is that the porch?

24 A. It's, um, the distance from who?

25 Q. From where you are to whatever point you want to make?

MS. SKIPPER - DIRECT EXAMINATION BY MR. HAZZARD

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1 A. From, like, who? From Brittany to Monica or from me to
2 Brittany?

3 Q. From Brittany - - from Brittany to Monica. From Brittany
4 to the car.

5 A. A driveway space. I'd say about from here to you. From
6 right here corner to that there. Just a driveway space, two
7 lane driveway. Two car driveway.

8 Q. I'm going to show you what's been marked State's Exhibit
9 #1.

10 MR. HAZZARD: I'm sorry, Your Honor?

11 THE COURT: For identification.

12 Q. And ask you if this fairly and accurately depicts the
13 building where Ms. Burroughs lived?

14 A. Yes, sir.

15 Q. Okay.

16 Now, from this picture - -

17 A. Uh-huh.

18 Q. I'm sorry.

19 A. I said, "Uh-huh."

20 Q. Can you give us an indication as to where the vehicle was
21 that Ms. Burroughs and whoever else was in?

22 A. Right there. Her vehicle was right here. Brittany was
23 over there.

24 Q. Okay.

25 Well, who lives over here?

MS. SKIPPER - DIRECT EXAMINATION BY MR. HAZZARD

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1 A. Bootlegger.

2 Q. Okay.

3 One of the bootleggers live over there?

4 A. Yes, sir.

5 Q. Okay. All right.

6 So, you come back out and you saw the jeep start to back
7 up?

8 A. Yes, sir.

9 Q. And then the brake lights came on?

10 A. Yes, sir.

11 Q. Okay.

12 And Monica was over here?

13 A. No. Monica was right there. They was in the jeep.
14 Brittany was right over there.

15 Q. Okay.

16 Brittany was over there?

17 A. Uh-uh.

18 Q. Okay.

19 Jeep brake lights come on?

20 A. Uh-huh.

21 Q. So, did the jeep stop at that point or what?

22 A. It stopped, and all four car doors opened.

23 Q. Okay.

24 So, when you first came out and saw it, were the doors
25 opened or closed?

MS. SKIPPER - DIRECT EXAMINATION BY MR. HAZZARD

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1 A. Closed.

2 Q. Okay.

3 When you came out, were you looking for Brittany?

4 A. I glanced, you know, just - - just glanced.

5 Q. Uh-huh.

6 So, what caught your eye, then, to cause you to look in
7 that direction?

8 A. Because I seen Brittany there, and I seen the car backing
9 out, and then I seen the brake lights. Then the doors flew
10 open.

11 Q. Okay.

12 A. So, you know what I'm saying. That kind of put me on edge
13 right there.

14 Q. Okay.

15 Did you hear anything? Did you hear shouting - -

16 A. No, sir.

17 Q. - - or threats from either direction?

18 A. No, sir.

19 Q. Okay.

20 Now, once that happened - - once the car doors flew open,
21 what happened next?

22 A. Um, they surrounded her.

23 Q. When you say, "they", who are you referring to?

24 A. Um, Teresa, Liz, Joanne and Monica.

25 Q. And Liz? Who is Liz?

MS. SKIPPER - DIRECT EXAMINATION BY MR. HAZZARD

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1 A. Um, one of the ladies that was there.

2 Q. Okay.

3 So, you indicate that there was actually four people there?

4 A. There was four people, yes, sir.

5 Q. Not three?

6 A. Four, four.

7 Q. Okay. All right. All right.

8 Now, what happened when they surrounded her?

9 A. Um, I was running towards her. Next thing you know I was
10 about halfway to her, and a shot went off. So, I stopped.

11 And everybody screaming and hollering, screaming and
12 hollering, and I just seen her standing there just like this
13 right here stunned.

14 I yelled her name five, six times - - five or six times.
15 I told her to run.

16 Q. Uh-huh.

17 Okay.

18 Now, when you saw them surround her - -

19 A. Yes, sir.

20 Q. That - - you were running.

21 A. Yeah.

22 Q. Did it seem like - - did you take it as being threatening?

23 A. Yes, sir.

24 I won't going to let them jump her. Whatever her and
25 Monica got going, that's between her and Monica but no one else

MS. SKIPPER - DIRECT EXAMINATION BY MR. HAZZARD

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1 was going to touch her.

2 Q. Okay.

3 All right. All right.

4 So, you ran up to Brittany?

5 A. I didn't make it up to her, sir.

6 Q. Okay. Okay.

7 So, you ran off your porch. About how far did you get
8 before you heard the gunshot?

9 A. Halfway, halfway.

10 Q. Halfway. Okay.

11 Do you know where Monica was in relation to Brittany at the
12 time of the shot?

13 A. They was in front of each other's face, like, confronting
14 each other.

15 Q. Okay.

16 Close or far away?

17 A. It wasn't that close. They wasn't face to face but it
18 was, you know, arm reach.

19 Q. Within arm reach?

20 A. Yeah.

21 Q. Okay.

22 Now, how were they angled? Was Brittany's back to you?
23 Was her side to you? Was her front to you?

24 A. Her back was towards me. Her back was towards me.

25 Q. Okay.

MS. SKIPPER - DIRECT EXAMINATION BY MR. HAZZARD

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1 All right.

2 Okay.

3 Now, you indicated that after the shot, you ran up to her,
4 and she was just standing there?

5 A. No, I didn't make - - I didn't make it up to her. I just
6 stopped where I was at.

7 Q. Okay.

8 Then, what did you do then?

9 A. And I just looked. I looked for a minute to see who it was
10 and what it was, and I seen that - - that she was just standing
11 there. She was the only one just standing there. Everybody
12 else done ran or went everywhere, and I just heard told her to
13 run. Run. Run, B, run.

14 Q. So, everybody ran?

15 A. Yeah.

16 Q. Okay.

17 And Brittany is just standing there?

18 A. Just standing there - - stuck.

19 Q. Okay. All right.

20 Um, did you see where Ms. Cox went?

21 A. She run on the other side of the building.

22 Q. Okay.

23 And what about Ms. Davis?

24 A. I can only tell you everybody was gone.

25 Q. Okay.

MS. SKIPPER - DIRECT EXAMINATION BY MR. HAZZARD

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1 A. But I seen her run across. That's the first - - all I know
2 was Ms. Cox because she was the first one just run off
3 screaming.

4 Q. Okay.

5 A. So, she run on the other side of the building.

6 Q. Okay. All right.

7 And, so, you are at a distance from Brittany, and you were
8 just shouting at her telling her to run?

9 A. Yeah, yes, sir.

10 Q. When this - - when you heard the shot - -

11 A. I stopped.

12 Q. - - did you - - I'm sorry?

13 A. I stopped.

14 Q. Okay.

15 A. When I heard the shot.

16 Q. When you heard the shot, did you realize what had happened?

17 A. No, sir.

18 Q. Okay.

19 So, your angle wasn't a situation where Brittany was
20 holding the gun out like this or anything like that that you
21 could see?

22 A. Beforehand or what?

23 Q. At the time of the shot.

24 A. What you talking about?

25 Q. At the time of the shot.

MS. SKIPPER - DIRECT EXAMINATION BY MR. HAZZARD

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1 A. She just had the gun like that and stuck.

2 Q. You mean after the shot or before the shot?

3 A. After the shot.

4 Q. Okay.

5 Before the shot?

6 A. I didn't ever see a gun.

7 Q. Okay. All right.

8 So, at some point did Brittany ever move or did she just
9 stay right there?

10 A. After, like, the fifth time I done yelled at her, she
11 finally just ran.

12 Q. Okay. All right.

13 Did you hear her shouting at anyone or talking to anyone or
14 - - -

15 A. No, sir.

16 Q. Okay.

17 Now, at the time this incident - - well, let's go around
18 the time of the incident.

19 A. Okay.

20 Q. Um, you come back from Subway?

21 A. Uh-huh.

22 Q. And you have to beat the door down to get in the house with
23 Brittany and her child in there asleep?

24 A. Yes, sir.

25 Q. Okay.

MS. SKIPPER - DIRECT EXAMINATION BY MR. HAZZARD

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1 You, um, tell Brittany that you are not happy about being
2 locked out of your own house.

3 A. Yes, sir.

4 It was hot.

5 Q. It was hot.

6 You then, maybe, talked a little bit?

7 A. Yes, sir.

8 Q. Okay.

9 Were people still standing across the street from your
10 apartment?

11 A. No, sir, they was gone.

12 Q. I'm talking about before the shot?

13 A. Before the shot - - by the time I came back from Subway,
14 everybody was gone. It look like a ghost town.

15 Q. Okay.

16 A. There were so many people out there before I left. Then
17 when I came back home, everybody was gone.

18 Q. Okay. All right.

19 So, that when you come back out on the porch after you talk
20 with Iesha - -

21 A. Uh-huh.

22 Q. And you see the brake lights hit, and you see the car doors
23 fly open?

24 A. Yes, sir.

25 Q. There was the four women in the car because you said there

MS. SKIPPER - DIRECT EXAMINATION BY MR. HAZZARD

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1 was another woman named Liz who was there also?

2 A. Yes, sir.

3 Q. There's Brittany basically two, two and a half doors down?

4 A. Yes, sir.

5 Q. And then there's you?

6 A. Yes, sir.

7 Q. All right.

8 Did you see anyone else out there?

9 A. No, sir.

10 Q. Okay.

11 After - - after this shot and after people scattered and
12 you're standing there about halfway to where Brittany is and
13 where Ms. Burroughs was - -

14 A. Uh-huh.

15 Q. What did you do then?

16 A. What did I do then?

17 Q. Yes, ma'am.

18 After Brittany took off running, what did you do?

19 A. Went back in the house to her son. Called, um, called her
20 mother.

21 Q. Okay. All right.

22 Did you come back out at any point? Did you see anyone
23 else? Did you see anyone that entire time who did not live
24 there or who wasn't normally around there?

25 A. No, sir. It be some of everybody in the project.

MS. SKIPPER - CROSS EXAMINATION BY MR. GRAUSTEIN

297

1 Q. Okay.

2 But if it were someone you were not familiar with, you
3 would notice?

4 A. Yeah, we would notice them.

5 Q. Okay. Okay. Okay.

6 All right.

7 After you called Brittany's mother.

8 A. Uh-huh.

9 Q. And what was the purpose for calling her mother?

10 A. Just to tell her what - - what happened, and Jamir was with
11 me?

12 Q. And Jamir was her son - - is her son?

13 A. Uh-huh.

14 Q. Okay.

15 All right.

16 From that point did you have any interaction with Brittany?

17 A. No, sir.

18 Okay. All right.

19 Thank you.

20 Please answer any questions that Solicitor Graustein may
21 have?

22 A. All right.

23 CROSS EXAMINATION BY MR. GRAUSTEIN:

24 Q. Okay, Ms. Skipper.

25 You're friends with Brittany?

MS. SKIPPER - CROSS EXAMINATION BY MR. GRAUSTEIN

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1 A. Yes.

2 Q. How long you known her?

3 A. Since she was a baby.

4 Q. Okay.

5 She come over to your house a lot?

6 A. Yeah.

7 Q. She stay there quite a bit?

8 A. Every now and then.

9 Q. You watch her kid for her?

10 A. Every now and then.

11 Q. Now, you talked with the police about what you saw that
12 day, didn't you?

13 A. Yes, sir.

14 Q. Okay.

15 You remember when you spoke with the detective?

16 A. I can't remember the date.

17 Q. Okay.

18 Would you disagree that it was on July 22nd of 2008?

19 A. It probably was.

20 Q. Okay.

21 It was about a month after this all happened, wasn't it?

22 A. Uh-huh.

23 Q. All right.

24 Had you gone out and visited Brittany at the jail before
25 you talked to police?

MS. SKIPPER - CROSS EXAMINATION BY MR. GRAUSTEIN

299

1 A. No.

2 Q. What?

3 A. No, I don't think so.

4 Q. You don't think so.

5 Okay.

6 But you gave this statement to the police and, well, you
7 just testified. Now, how far - - how far is your house from
8 where this all happened?

9 A. Right at - - diagonal. I see her front door. She could
10 see mine.

11 Q. Right but, like, how far away?

12 I mean, it could be fifty feet, a hundred feet.

13 A. I don't know in feet. I could see her house. She could
14 see me. From one end to another.

15 Q. You can see just - - you can see down there just as clear
16 as I'm standing right - - -

17 A. Yeah.

18 Q. Okay.

19 Now, you talked to the police on - - a month after this all
20 happened. Did you tell them about the car backing up?

21 A. Yes, sir.

22 Q. Did you tell them about seeing brake lights?

23 A. Yes, sir.

24 Q. Are you sure?

25 A. I'm positive.

MS. SKIPPER - CROSS EXAMINATION BY MR. GRAUSTEIN

300

1 Q. Okay.

2 MR. GRAUSTEIN: Your Honor, it's a copy of the
3 transcript of the interview.

4 THE COURT: Give her a copy of it, and you refer to the
5 book and page number, and let me have a copy.

6 Please identify the document to which you are now
7 referring.

8 MR. GRAUSTEIN: Your Honor, I'm referring to transcript
9 video interview of Tamika Skipper, July 22, 2008, in the Conway
10 Police Department Annex.

11 This is a defense - - prepared by defense counsel.

12 THE COURT: All right, sir.

13 If you care to examine her on her prior statement, please
14 give her a copy so she can refer to it.

15 MR. GRAUSTEIN: She has a copy of it.

16 THE COURT: Refer to page and line of your concern, if
17 any.

18 MR. GRAUSTEIN: Well, Your Honor, I guess my problem
19 with that. My question is referring to the car backing up, I
20 don't have a line and page where she told the police about that.

21 THE COURT: All right.

22 You may proceed without it. You had indicated you were
23 going to proceed on her former statement. You may go ahead.

24 Q. Ms. Skipper, I would refer you to page 5.

25 A. Uh-huh.

MS. SKIPPER - CROSS EXAMINATION BY MR. GRAUSTEIN

301

1 Q. Line 21.

2 A. I don't have numbers on the line.

3 Q. You don't have what?

4 That's the line.

5 A. Okay.

6 Q. Now, hang on.

7 Page 6. The question that was asked you by the officers
8 was, "Okay. Now, when Brittany left your house, did you watch
9 the whole time she went over to Monica's house?"

10 And what was your answer?

11 A. No, sir, I didn't watch her go over to Monica house.

12 Q. Well, that - - could you read what your answer was?

13 A. No. That was not my answer.

14 Q. Are you saying that this isn't an accurate - - -

15 A. No, sir. It's not accurate.

16 Q. Okay.

17 Now, you didn't see her go over to Monica's house?

18 A. No, sir. She went to the bootlegger house.

19 Q. Okay.

20 Well, could you just read - - so, you did not say when they
21 asked you, "Did you watch her go over to Monica's house?", "Uh-
22 huh. I told you I went back into the house. I got the phone.
23 When I got the phone from her, I went back - - -

24 A. What line this on? Give me the line because I didn't read
25 the whole paragraph.

MS. SKIPPER - CROSS EXAMINATION BY MR. GRAUSTEIN

302

1 MR. HAZZARD: Okay, Your Honor, I think part of the
2 confusion might be the classification.

3 With regard to line 23, the question was, "Okay. Now, when
4 Brittany left your house, did you watch her the whole time go
5 over to Monica's house."

6 The answer is "Huh-uh." which would be a negative as
7 opposed to a positive, and I think that's what possibly
8 confusing the witness.

9 THE COURT: All right.

10 Thank you for the clarification.

11 MR. HAZZARD: Yes, sir.

12 Q. Now, I think if you and that's okay if you want to read
13 your entire answer starting at line 23 and it goes on to the
14 next page.

15 A. "Huh-uh. I told you I went back in the house."

16 Q. Okay.

17 A. You want me to continue?

18 Q. Yes. Could you read that complete answer?

19 A. "I got the phone. When I got the phone from her, and she
20 said she went ahead. I told - - I thought she was going back
21 over there to the lady house right across the street from
22 Monica's. That's where the - - that's where we, you know, you
23 know what I'm saying. We chill over there, too. You know that
24 I'm saying. That's who I thought it was, and I just left there
25 for reason. I just came outside and went and went and seen them

MS. SKIPPER - CROSS EXAMINATION BY MR. GRAUSTEIN

303

1 part."

2 That don't sound right.

3 Q. Okay.

4 And go down to, ah, line 10 of that page, line, ah, page 6.

5 The question was, "Across the street?"

6 And what was your answer?

7 A. Yes. So they say.

8 Q. So, it's across the street, and then your answer on page -
9 - line 13 was?

10 A. "Yeah, so they say."

11 Q. And the next question was asked, "And the girls were still
12 in the car?"

13 And your - - and what was your answer on line 15.

14 A. "And they jumped out."

15 "And they jumped out and that's when - - and that's - -" I
16 don't know what that means. "That's why I run to her and say I
17 thought they was going to jump her."

18 Q. Okay.

19 Now, any where in there do you mention brake lights or the
20 vehicle backing up?

21 A. No, sir.

22 Q. Okay.

23 A. I didn't mention half of this stuff that's in here.

24 Q. Okay.

25 So, you talk about her being over there, and the girls

MS. SKIPPER - CROSS EXAMINATION BY MR. GRAUSTEIN

304

1 jumped out. Now, did you see her walk all the way over there?

2 A. See who?

3 Q. Brittany.

4 A. No, I didn't - - that's written in the paper.

5 Q. Okay.

6 I'm just asking you if you saw her run - - walk all the way
7 over there?

8 A. No.

9 Q. Okay.

10 You went back in the house for a little bit in the house,
11 didn't you?

12 A. Uh-huh.

13 Q. And when you came out, where was she?

14 A. Right at the bootlegger driveway.

15 Q. Okay.

16 And so when you got - - so could something have happened
17 between the time you went in your house and the time you came
18 out?

19 A. Don't get me speculating.

20 Q. I'm just saying something could happen. I'm not asking
21 you to tell me what did happen.

22 A. I said don't get me - - how would I know?

23 THE COURT: I - - if you speculating, I'll rule on that.
24 You just answer yes or no.

25 MR. HAZZARD: The answer calls for speculation.

MS. SKIPPER - REDIRECT EXAMINATION BY MR. HAZZARD

305

1 THE COURT: I'll deal with any speculation.

2 Thank you.

3 A. I would be speculating.

4 MR. HAZZARD: The answer calls for speculation. He's
5 asking her something she does not know the answer to, Your
6 Honor.

7 MR. GRAUSTEIN: I'm asking her - - -

8 THE COURT: Just ask the question again.

9 A. I don't know.

10 Q. Okay.

11 You don't know if anything happened while you were inside
12 the house?

13 A. No.

14 Q. Okay.

15 That's what I'm asking.

16 So, you can't say definitively - - you can't say without
17 question that Brittany did not strike Monica first?

18 A. No, I can't say that.

19 Q. Okay.

20 Thank you.

21 No further questions.

22 MR. HAZZARD: Okay.

23 Very briefly, Your Honor.

24 REDIRECT EXAMINATION BY MR. HAZZARD:

25 Q. He was asking you about the street and the driveway.

MS. SKIPPER - REDIRECT EXAMINATION BY MR. HAZZARD

306

1 A. Uh-huh.

2 Q. When you're talking about - - you mentioned in your
3 statement about Ms. Saminthia?

4 A. Uh-huh.

5 Q. Okay.

6 Is her unit on this picture?

7 A. Yes, sir. Right there. Ms. Saminthia live right there.

8 Q. Okay.

9 So, when you say in your statement that I thought she was
10 going to Ms. Saminthia's house - -

11 A. No.

12 She was going - - that's the bootlegger house. That's
13 Monica house. I never said that.

14 Q. Okay.

15 So, you indicate she's, like, along in there?

16 A. She was up in here.

17 Q. Okay.

18 Now, the prosecutor asked you whether or not you saw Ms.
19 Johnson striking one or anything of that nature. Correct?

20 A. Yes, sir.

21 Q. Okay.

22 And you told him quite honestly - -

23 A. No.

24 Q. - - you have no knowledge of that, right?

25 A. No. I have no knowledge. No.

MS. SKIPPER - REDIRECT EXAMINATION BY MR. HAZZARD

307

1 Q. All you know is what you saw when you came back out of the
2 house?

3 A. What I saw.

4 Q. Okay.

5 When you came back out of the house, were the car doors
6 open or closed?

7 THE COURT: Now, let's - - let me - - hold a minute.

8 A. Closed.

9 THE COURT: This is your witness. You are cross
10 examining her. Follow the rule, please.

11 MR. HAZZARD: I was just asking her were the car doors
12 open when it happened.

13 THE COURT: Well, that's fine.

14 MR. GRAUSTEIN: That was not raised on cross, Your
15 Honor.

16 THE COURT: I'll permit that. There's sufficient cause
17 to go into it.

18 MR. HAZZARD: Yes, Your Honor, very briefly.

19 THE COURT: Go ahead.

20 MR. HAZZARD: Very briefly.

21 THE COURT: Go ahead.

22 MR. HAZZARD: Okay.

23 THE COURT: But just follow the rule.

24 MR. HAZZARD: Yes, sir.

25 Q. So, he asked you about whether or not you know what

1 happened when you were in the house?

2 A. Yes, sir.

3 Q. And what's your answer to that?

4 A. I don't know.

5 Q. Okay.

6 But when you came out of the house were the four ladies in
7 the vehicle or out of the vehicles?

8 A. In the vehicle..

9 Q. All right.

10 Thank you.

11 No further questions.

12 A. Thank you.

13 THE COURT: You may come down.

14 (The witness leaves the witness stand.)

15 THE COURT: Call your next witness.

16 MR. HAZZARD: We have a matter to take up outside the
17 presence of the jury, Your Honor.

18 THE COURT: All right, sir.

19 Let the jury go to the jury room.

20 I'll be calling you right back.

21 I'll be calling you right back, Madame Foreman. It won't
22 be but just a minute.

23 (The jury retires to the jury room at 3:51 p.m.)

24 THE COURT: The jury is outside the presence of the
25 Court

1 Yes, sir?

2 MR. HAZZARD: One of the defense witnesses is Joseph
3 Gagun. It has been brought to my attention by my investigator
4 that despite the fact that he is under subpoena lawfully served
5 by the sheriff that Mr. Gagun was here earlier but has absented
6 himself. We are trying to get him back here now, Your Honor.

7 THE COURT: All right, sir.

8 Can we go forward with any other witnesses that you have?

9 MR. HAZZARD: The only other witness that we would have
10 would be Ms. Johnson, Your Honor.

11 THE COURT: Why can't we take her out of order and then
12 in fairness to the jury, I hate to keep the jury waiting here
13 for a witness that, ah - - -

14 MR. HAZZARD: Court's indulgence, Your Honor.

15 THE COURT: All right.

16 Did anybody give him permission to leave or anything?

17 MR. HAZZARD: No one from - - no one on behalf of the
18 defense gave him permission to leave, Your Honor.

19 THE COURT: Can you tell me what area he will testify?

20 MR. HAZZARD: He will testify, um, regarding statements
21 that were made to him by Ms. Cox regarding the intentions of the
22 ladies that day.

23 THE COURT: I can't - - Ms. Cox - - that's hearsay. I
24 can't let that in for Ms. Cox.

25 You can call Ms. Cox back if you care to and ask her if

1 that occurred.

2 MR. HAZZARD: So, you're saying that I'm not allowed to
3 rebut her testimony, Your Honor?

4 THE COURT: No, sir, I'm not saying that at all. I'm
5 saying that you're trying to get in again hearsay testimony by
6 somebody who is not here subject to confrontation by the
7 Solicitor. I'm not going to permit that.

8 I will grant you the opportunity to call her back and ask
9 her that specific question, and then we'll determine whether or
10 not she ought to be contradicted as to that issue but I'm not
11 going to do that until I find there is a contradiction.

12 MR. HAZZARD: Yes, sir.

13 THE COURT: I'm not excluding you in anyway. You call
14 and ask her, and if she denies it, then if he wants to say it,
15 I'll permit a contradiction as to that issue but we're not going
16 into a long conversation with your defense witness about what
17 the plaintiff said - - the plaintiff - - I mean, that witness.
18 She's already testified. I'm not going to do that.

19 MR. HAZZARD: Yes, sir.

20 THE COURT: What else is he going to testify to?

21 MR. HAZZARD: That would be it, Your Honor.

22 THE COURT: What's the position of the State on that?

23 MR. GRAUSTEIN: Well, Your Honor, I believe - - I mean,
24 Ms. Cox, she's here by both State and defense. I mean, she may
25 if he - - -

1 THE COURT: If you care to call her, she's your own
2 witness. You may do that.

3 MR. HAZZARD: Thank you, Your Honor.

4 THE COURT: All right.

5 You care to do so at this time?

6 MR. HAZZARD: Let me confer with my client.

7 THE COURT: All right.

8 MR. HAZZARD: Okay, Your Honor.

9 My investigator, Mr. Randall, informs me that Mr. Gagun is
10 not here at the present time. We would ask that the Court
11 request that the Sheriff's Office go and get him.

12 THE COURT: I will do so.

13 Make the appropriate arrangements here.

14 You know where to find him? What his address is? Do you
15 have a phone number?

16 MR. HAZZARD: We have an address and a phone number, Your
17 Honor.

18 THE COURT: Well, first, have you got a cell phone?

19 MR. HAZZARD: We have called, Your Honor.

20 INVESTIGATOR RANDALL: I called, and his mother answered
21 the phone.

22 THE COURT: What does his mother say?

23 INVESTIGATOR RANDALL: Said that she had that phone for
24 the afternoon. He was here earlier. She said he's headed back
25 down this way. That's been fifteen minutes ago, Your Honor.

1 THE COURT: Heading back down this way? He may be
2 around the courtroom.

3 INVESTIGATOR RANDALL: We've checked downstairs for the
4 last twenty minutes.

5 THE COURT: Well, what else is he - - I'm not going to
6 let him get on the stand and talk about hearsay testimony.
7 It's not admissible. I'm not going to do that.

8 What else do you need him here for?

9 MR. HAZZARD: Unless it were a matter of contradiction,
10 correct?

11 THE COURT: Sir? Yes, sir.

12 MR. HAZZARD: Okay.

13 Then, that would be at. That's the only reason why I would
14 need him.

15 THE COURT: All right, sir.

16 Let's go forward with the defendant's testimony. Isn't
17 that appropriate.

18 MR. HAZZARD: If the Court says so, Your Honor.

19 THE COURT: Yes, sir.

20 Well, the jury has been very patient. Let's go forward,
21 and if later you determine you want him but I'm not going to let
22 him go in to testify as to what Ms. Cox may or may not have told
23 him but I'll permit you to recall Ms. Cox, and I'll permit you
24 to cross examine her.

25 MR. HAZZARD: Thank you, Your Honor.

1 I appreciate it.

2 THE COURT: Yeah.

3 Do you care to call Ms. Cox? She's in the courtroom.

4 MR. HAZZARD: Yes, sir.

5 THE COURT: All right. Bring the jury in.

6 I'm going to call Ms. Cox in fairness to counsel.

7 MR. GRAUSTEIN: Yes, Your Honor.

8 That will save that witness, perhaps, that witness.

MS. DOZIER - EXAMINATION BY MR. HAZZARD

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1 THE COURT: Now, I'm going to recall the Court's witness
2 so that counsel can cross examine on that issue.

3 MR. HAZZARD: Okay, Your Honor.

4 THE COURT: We limit to that issue, you understand.

5 MR. HAZZARD: Yes, sir, I will be very brief.

6 THE COURT: And, let us make inquiry while we're here,
7 now. I don't think we're going to need him but I want somebody
8 to check on him.

9 Can you make arrangements for that?

10 DEPUTY: Yes, sir, Your Honor.

11 THE COURT: Okay. Thank you.

12 (The jury returns to the courtroom at 3:57 p.m.)

13 THE COURT: All right.

14 Ms. Cox previously testified. The Court is calling her for
15 further cross examination.

16 Ms. Cox, come around, please.

17 (The witness takes the witness stand.)

18 THE COURT: Ms. Cox, I remind you, ma'am, that you're
19 still under oath.

20 Thank you. Please have a seat.

21 TERESA COX DOZIER, BEING PREVIOUSLY
22 SWORN, TESTIFIES AS FOLLOWS:

23 EXAMINATION BY MR. HAZZARD:

24 Q. Ms. Cox, following the events of June 24, 2008, did you
25 ever make statements in the presence of others indicating that

MS. DOZIER - EXAMINATION BY MR. HAZZARD

315

1 there was an intention and a plan between you, Ms. Davis and Ms.
2 Burroughs to jump on and physically harm Brittany Johnson on
3 June 24, 2008?

4 A. No, sir.

5 Q. Did not make those statements?

6 A. Not at all.

7 Q. To anyone?

8 A. Nope.

9 Q. At any time?

10 A. At any time.

11 Q. All right.

12 You familiar with Latonya Moses, ma'am?

13 A. Yeah.

14 Q. Okay.

15 You ever been to her home?

16 A. Yes.

17 Q. Okay.

18 Ever been to her home after June 24, 2008?

19 A. Yes

20 Q. All right.

21 Thank you, ma'am.

22 No further questions.

23 THE COURT: Any examination?

24 MR. GRAUSTEIN: Nothing from the State.

25 THE COURT: All right.

MS. JOHNSON - DIRECT EXAMINATION BY MR. HAZZARD

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1 You may come down.

2 (The witness leaves the witness stand.)

3 THE COURT: All right.

4 Let's call your other witness at this time, please.

5 MR. HAZZARD: The defense calls Brittany Alexis Johnson to
6 the witness stand.

7 THE COURT: All right.

8 (The witness takes the witness stand.)

9 BRITTANY ALEXIS JOHNSON, BEING DULY
10 SWORN, TESTIFIES AS FOLLOWS:

11 CLERK OF COURT: State your full name and spell your
12 last name for the Court.

13 MS. JOHNSON: Brittany Johnson, J-o-h-n-s-o-n.

14 DIRECT EXAMINATION BY MR. HAZZARD:

15 Q. Okay.

16 What's your middle name, ma'am?

17 A. Alexis.

18 Q. Okay.

19 And what's your date of birth?

20 A. June 7, 1991.

21 Q. Back on June 24th, how old were you?

22 A. Seventeen.

23 Q. You'd just turned seventeen. Okay.

24 When did you start dating Franklin Putty Pyatt?

25 A. 2009, I believe in March.

MS. JOHNSON - DIRECT EXAMINATION BY MR. HAZZARD

317

1 Q. 2009?

2 A. In 2007, I apologize, sorry.

3 2007, I think it was either March or April.

4 Q. Okay.

5 And what were the circumstances under which you started
6 dating Mr. Pyatt?

7 A. You mean how I met him?

8 Q. Yes, ma'am.

9 A. Um, he - - he's the weed man.

10 Q. He was the weed man?

11 A. Uh-huh.

12 Q. Okay.

13 So, that means he sold marijuana?

14 A. Uh-huh.

15 Q. Okay.

16 And you smoked marijuana?

17 A. Uh-huh.

18 COURT REPORTER: Your Honor, may I ask that she say yes
19 or no.

20 MR. HAZZARD: Yes.

21 Q. We're going to need you to - - I know you're young. I know
22 you're nervous but the Court Reporter is going to take down
23 everything you say, and she needs your responses to be in word
24 form.

25 THE COURT: As does the jury need to hear her, too.

MS. JOHNSON - DIRECT EXAMINATION BY MR. HAZZARD

318

1 Those gentlemen - - that gentleman on the far part would have
2 difficulty in hearing her.

3 MR. HAZZARD: Okay.

4 Q. Brittany, I'm going to walk over here and talk to you, and
5 so what I need you to do for me is I need you to talk so I can
6 hear you because if I can hear you, then everybody on the jury
7 can hear you, okay?

8 A. Yes, sir.

9 Q. Okay.

10 Thank you, ma'am.

11 Now, you indicated that Mr. Pyatt was the weed man,
12 correct?

13 A. Yes, sir.

14 Q. Okay.

15 And where did Mr. Pyatt live at that time?

16 A. Um, with Monica Burroughs in Huckabee Heights.

17 Q. Okay.

18 And he was living with her. How is it that y'all started
19 dating?

20 A. He, um, first, he talked - - well, he hangs with some of my
21 cousins. So, first he put the word out to them and one time I
22 went to his house and he slipped a note in, um, my bag of weed.

23 Q. Okay.

24 Now, after this romantic gesture, did you and he start
25 dating?

MS. JOHNSON - DIRECT EXAMINATION BY MR. HAZZARD

319

1 A. Yes, sir.

2 Q. Okay.

3 Now, at that time did Ms. Burroughs know that you and Mr.
4 Pyatt were dating?

5 A. No, sir.

6 Q. Okay.

7 At some time and you say this began in what? 2007?

8 A. Yes, sir.

9 Q. Okay.

10 Now, after you started dating Mr. Pyatt, at some point did
11 Ms. Burroughs find out about your and Mr. Pyatt's relationship?

12 A. Yes, sir.

13 Q. Okay.

14 How did she find out about your relationship?

15 A. By word of mouth.

16 Q. Okay.

17 A. It just - - everybody pretty much knew.

18 Q. Okay.

19 And what happened once Ms. Burroughs found out about your
20 and Mr. Pyatt's relationship?

21 A. She approached me.

22 Q. Okay.

23 And when and where was this?

24 A. Um, this was in August, I believe.

25 She approached me asking me why I had messed up Putty's car

MS. JOHNSON - DIRECT EXAMINATION BY MR. HAZZARD

320

1 and was I sleeping with him?

2 Q. Okay. August of what year?

3 A. '07.

4 Q. Okay.

5 Now, you say she asked you why you had messed up his car.

6 Had you messed up Mr. Pyatt's car?

7 A. Yes, sir.

8 Q. Okay.

9 And how had you messed it up?

10 A. Um, I cracked the windshield.

11 Q. Okay.

12 And why had you cracked the windshield?

13 A. Me and him had - - earlier that day we had got into it,
14 and, um, pretty much I went out there, and he had hit me and
15 then left the room that we were staying at.

16 Q. Okay.

17 And you say you were staying at a room. What type of room:
18 Apartment, hotel, motel?

19 A. Just a motel.

20 Q. Okay.

21 You say that he had hit you?

22 A. Yes, sir.

23 Q. Okay.

24 Was that the first time that Mr. Pyatt had been physically
25 abusive towards you?

MS. JOHNSON - DIRECT EXAMINATION BY MR. HAZZARD

321

1 A. Yes, sir.

2 Q. Okay.

3 And as a result of him slapping you, what did you do to his
4 car?

5 A. I cracked it - - the windshield.

6 Q. Now, that was his car. That was not Ms. Burroughs' car,
7 was it?

8 A. No, that was his car, and this happened in July. This
9 happened, um, I messed up his car, I think July 3rd because the
10 next day was - - no, the 2nd because a couple of days later it
11 was July 4th, and she didn't approach me until the next month.

12 Q. Okay.

13 This happened on or about July 2nd. She then approached you
14 sometime in August of 2007?

15 A. Yeah. She sees me everyday but didn't approach me until
16 August.

17 Q. Okay.

18 Now, why did she see you everyday?

19 A. Because I be - - that's where I hang at.

20 Q. Okay.

21 Now, where were you living in 2007-2008?

22 A. In 2007, I was living back and forth between my momma and
23 my daddy.

24 Q. Okay.

25 And where does your mother live?

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1 A. In Conway on Ninth Ave.

2 Q. Okay.

3 And how far is Ninth Avenue from Huckabee Heights?

4 A. Like a two minute walk.

5 Q. Okay.

6 So, you indicated Ms. Burroughs would see you everyday
7 because that's where you would be at. Correct?

8 A. Yes, sir.

9 Q. Were you still occasionally going over to that residence to
10 purchase marijuana?

11 A. No, sir, not after that day.

12 Q. Okay.

13 Not after that day. Not after the - - not after she
14 confronted you about it?

15 A. I never went on the - - I still bought weed from him but
16 only when he said I could come get it.

17 Q. Okay.

18 And when did he say you could come get it?

19 A. Um, at times when she wasn't around or if she was asleep or
20 he would just tell me to get somebody to come over there and get
21 it for me.

22 Q. Okay. All right.

23 So, now, when she confronted you or ask you about why you
24 had messed up Mr. Pyatt's car and whether or not you were
25 sleeping with her boyfriend in August of 2007, what was your

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1 response?

2 A. Ah, at first I didn't say nothing, and I then I told her -
3 - I told her I didn't know. Maybe I had the wrong car.

4 Q. Okay.

5 So, at this point you were trying to keep Mr. Pyatt's
6 secret?

7 A. Yes, sir.

8 Q. Okay.

9 So, what happened, if anything, after that confrontation in
10 August of 2007?

11 A. Nothing. She had came off the porch - - well, I thought we
12 were going to get into a fight because she came off the porch
13 with a broom in her hand but she didn't do nothing. She just
14 walked away, and I walked away, too.

15 Q. Uh-huh.

16 Okay.

17 And, um, when was the next time that you were in contact
18 with Ms. Burroughs, if at all?

19 A. Um, a couple of months of later I saw her when I - - Putty
20 had me over there. I was in the backyard waiting - - waiting on
21 him to give me some weed, and she pulled up. I think she pulled
22 up. I don't know if she was in the house but she pulled up - -
23 -

24 Q. Okay.

25 Let me stop you right there. Let me back up right there.

1 So, you're over there. You're in the backyard waiting.

2 A. Uh-huh.

3 Q. Were you alone or was anyone with you?

4 A. Um, several dudes what I hang with.

5 Q. Okay.

6 And who were these folks?

7 A. Um, ah, Darnell James. Um, Spook. I'm not sure his first
8 name but we were all just waiting to get butt.

9 Q. Okay.

10 So, all of y'all were in the backyard or out behind the
11 apartment?

12 A. Uh-huh.

13 Q. Okay.

14 And what happened next?

15 A. Before we were in the backyard, we were across the street,
16 and Putty called us over there to the yard.

17 Q. Okay.

18 Now, what is across the street?

19 A. From the backyard this way.

20 Q. No, not where? What? You said you were across the
21 street. What's across the street? Where were you at?

22 A. Nothing. We just be posting up.

23 Q. You just standing in a field or what?

24 A. Just standing across where it's a big oak tree with shade.

25 Q. Okay.

1 And he called you and asked you to do what?

2 A. He called me over there. I asked him for some butt. He
3 told me to hold on but the dudes what I was with asked could we
4 stay in the chairs because of where they stay at, that's, like,
5 the only place that has all the shade in it, and it have chairs
6 back there, and Putty say, "Yes."

7 And when he said that and went back in the house to get the
8 butt, sometime after Monica pulled up.

9 Q. Okay.

10 And then what happened?

11 A. She came out and, um, she took off her - - she saw me
12 outside. She went back in the house, and you could hear, like,
13 her slamming stuff, and Putty was in there, too, and they
14 started arguing.

15 Then, she came outside with her sister behind her, and she
16 approached me.

17 Q. Okay.

18 When you say, "her sister", are you referring to Joanne
19 Davis or are you referring to her other sister?

20 A. No, I didn't know Joanne was her sister. I'm talking
21 about her other sister.

22 Q. Okay.

23 Her sister, Michelle?

24 A. Yes.

25 Q. Okay. Okay.

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1 A. She came off that, um, she and her sister were yelling at
2 me saying, "What the F*** are you doing in my yard? Get the
3 F*** out of my yard." Da, da, da, da, da, da.

4 And, um, she start taking off her shoes and her jewelry,
5 and then she said, "Hold on. Stay right there."

6 No, she said, "I'm about to beat this bitch ass. Hold on.
7 Stay right there."

8 Q. Whoa, whoa, whoa.

9 She said what?

10 A. She was about to beat, um, about to beat this bitch ass.

11 Q. Referring to you?

12 A. She said, "Hold on. Stay right there."

13 She gave her phone and her shoes to her sister.

14 Q. Okay.

15 So, she took off her jewelry. Took off her shoes. Handed
16 her valuables to someone else and said she was getting ready to
17 beat your ass.

18 Okay.

19 What happened then?

20 A. Nothing. She was still screaming. I got up. She got up.
21 Went back in the house and was, like, "Be there when I come
22 back. Be there when I come back."

23 But when she was coming back out, I was already leaving the
24 yard.

25 Q. Uh-huh.

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1 A. In the process of passing her sister, and that was it.

2 Q. Okay.

3 All right.

4 When was the next time, if at all, that you had an
5 interaction with Mr. Pyatt?

6 A. Um, everyday.

7 Q. Okay.

8 What do you mean by everyday?

9 A. We talk everyday. We'd get together at least three times
10 a week.

11 Q. Okay.

12 And all this time was he still living with Ms. Burroughs or
13 had he moved out?

14 A. He was still living there.

15 Q. Okay.

16 Now, to your knowledge, did Ms. Burroughs know that you and
17 Mr. Pyatt were still seeing each other?

18 A. Yes, sir.

19 Q. And how do you know that Ms. Burroughs knew that you and
20 Mr. Pyatt were still seeing each other?

21 A. Because of, um, some of her friends use to do things like
22 come around my house asking me questions about me and Putty or
23 she would go to him and make up her lies saying, "Oh, Brittany
24 called my phone today saying that she needed twenty dollars for
25 some Pampers, whatever," when, really, my baby wasn't even on

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1 Pampers at the time. Just little things like that.

2 Q. Okay.

3 So, you think it was a matter - - I'm not going to ask you
4 what you think about it.

5 Um, when was the next time, if at all, that you spoke with
6 Ms. Burroughs in person?

7 A. In person? It would have been December, I believe, 14th.

8 Q. And that's December of which year, ma'am, 2007?

9 A. 2007.

10 Q. Okay.

11 And what was the significance of December 14, 2007, to you?

12 A. Um, we got into a physical fight that day. When I went out
13 to the project, everybody was stopping me saying that Monica - -
14 telling me not to go in there because Monica and her girls were
15 suppose to be jumping me or whatever when they saw me.

16 Q. And you and Ms. Burroughs got into a physical fight that
17 day?

18 A. Yes, sir.

19 Q. Okay.

20 So, you entered the projects, and what happened at that
21 point in time.

22 A. I was at this female's named Christy's house with, um, my
23 cousin, Evelle.

24 Q. Uh-huh.

25 A. And, um, Putty had been calling me all that morning but I

1 hadn't answered.

2 Q. And when you say that, you mean Franklin Pyatt?

3 A. Yes.

4 Q. Okay.

5 Go ahead.

6 A. But when I finally did call him, I was I the project at the
7 time but he calling me in order to get me - - trying to set me
8 up to get his girlfriend to beat me up from messing up his car
9 a second time.

10 Q. Okay.

11 Then, let's back up.

12 We hadn't heard about the second time you messed up Mr.
13 Pyatt's car.

14 Why did you - - when was the second time you messed up his
15 car?

16 A. Um, it had to be a couple of days before that.

17 Q. Okay.

18 And what did you do to his car and why?

19 A. This time I keyed it.

20 Q. Okay.

21 And why did you key Mr. Pyatt's car?

22 A. Same thing.

23 Q. Because he physically struck you?

24 A. Uh-huh.

25 Q. Okay.

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1 Tell the jury. When you say he struck you, how did he
2 strike you?

3 A. Different times, different ways. More often, he would
4 choke me until I passed out.

5 Q. But yet you continued seeing him?

6 A. Yes, sir.

7 Q. Why, ma'am?

8 A. Being stupid. I don't know.

9 Q. Did you having feelings for Mr. Pyatt?

10 A. Yes, sir.

11 Q. Do, sometime, then, around December 12th or shortly before
12 that, Mr. Pyatt had physically assaulted you, and in
13 retaliation, you keyed his car. Is that correct?

14 A. Yes, sir.

15 Q. And as a result of that on December 14th, you feel he was
16 trying to get you to lure you to the projects so that Ms.
17 Burroughs and her friends could beach you up?

18 A. Yes, sir.

19 Q. Okay.

20 So, what happened then?

21 Well, you finally answered the phone and talked to him. Is
22 that correct?

23 A. Yes, sir.

24 Q. Okay.

25 And as a result of that phone call, what did you do?

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1 A. He was asking me where I was at. I told him I was in the
2 projects.

3 And he said, "Where at?"

4 I guess he was looking out the window because he saw me,
5 and he was, like, "Oh, yeah. I see your little dumb ass,
6 whatever."

7 Um, my cousin, Eve, went and knocked on Monica's door and
8 told - - talked to Putty and told Putty that I was out there.

9 Q. Uh-huh.

10 A. So, Putty came out first. Putty came out and first he just
11 pushed me, and he kept saying or screaming back at the house or
12 back at the road. He kept screaming back at the house.

13 "Monica, come outside and beat this bitch ass. Monica,
14 come on. Come outside and beat this," whatever.

15 And I was, like, "Why? What is the problem? What's the
16 purpose?"

17 Because we was just cooling there but that was before he
18 knew that it was me that messed up his car.

19 Q. Okay.

20 A. So, he was, like, "Because you fucked up my car."

21 Q. Okay.

22 A. So, he kept calling her and calling her saying, "My bitch
23 going to beat your ass," whatever.

24 When I turned to walk away, that's when Monica ran outside
25 though I had been standing there for, like, maybe five to seven

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1 minutes. She waited until I turned away to run outside and
2 swing on me. We got into a physical altercation.

3 Um, I was pretty much getting the best of her and Putty
4 jumped on me. He pushed me. He shoved me, and I flew against
5 he next door car, and then he kicked me, and then he walked off.
6 Told her to come on in the house.

7 Q. Okay.

8 So, this altercation between you and Ms. Burroughs, that
9 was just you and her?

10 A. Yes, until the end.

11 Q. Until the end when Mr. Pyatt jumped in.

12 A. Yes, sir.

13 Q. Okay.

14 So, that's December 14th of '07?

15 A. Yes, sir.

16 Q. Okay.

17 Is this before or after - - well, at some point - - we'll
18 get to that.

19 When was the next time you spoke with Mr. Pyatt, ma'am?

20 A. The same day. He called me, like, when I got home.

21 My mom was telling me I wanted to call the police. The
22 police did come by for a second.

23 But, um, he was calling. My mom didn't really want me to
24 talk to him but he was calling to apologize or whatever.

25 Q. Uh-huh.

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1 A. And it's the same thing every time.

2 Q. Okay.

3 And when he would call and apologize after these incidents
4 of violence, did you accept the apologies, and then y'all were
5 right back in your physical relationship?

6 A. More often than not, yes.

7 Q. Okay.

8 And how old were you at that time?

9 A. Seventeen.

10 Q. Okay.

11 In December of 2007?

12 A. No, I'm sorry. Sixteen. I'm sorry.

13 Q. Sixteen.

14 Okay.

15 Now, how old was your son when you were sixteen, ma'am?

16 A. Um, he was - - he was one going on two.

17 Q. Okay.

18 So, how old were you when your son was born?

19 A. Ah, fifteen.

20 Q. Okay.

21 Now, we're going to stop at December of 2007. At this
22 point you and Mr. Pyatt are on again, off again in a cycle of
23 injurious actions and making up.

24 What happened to you? Where were you - - where were you
25 born?

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1 A. Conway, South Carolina.

2 Q. Okay.

3 And did you have a mother and father in your home?

4 A. Um, my mom was there. My dad never stayed with us, not
5 that I recall.

6 Q. Okay.

7 Now, were you ever sexually abused?

8 A. Yes, sir.

9 Q. And when did that occur?

10 A. Um, the first time I don't recall. I just know because
11 it's in my mental health paperwork.

12 Q. Okay.

13 But according to that, you were first abused at the age of
14 three?

15 A. Yes, sir.

16 Q. Okay.

17 And was this a family member or - - -

18 A. I'm not sure who it was that time.

19 Q. Okay.

20 Was that the only time you were sexually abused?

21 A. No, sir.

22 Q. Okay.

23 And tell the jury, if you would, when it happened again.

24 A. Um, my older cousin was staying with us. He stayed with us
25 on and off.

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1 Q. And how old were you at that time?

2 A. The first time I probably was - - I probably was six or
3 seven.

4 Q. Okay.

5 And how long did this abuse last?

6 A. On and off, on and off for - - on and off for three years.

7 Q. Did it finally end somewhere around the age of ten or
8 eleven, something like that?

9 A. Yeah, yeah.

10 It was, like, I think, maybe, a year before I went to the
11 sixth grade.

12 Q. Okay. Okay.

13 And these incidents are documented in your paperwork and
14 all that stuff?

15 A. Yes, sir.

16 Q. Okay.

17 So, as a result, ma'am, how old were you when you became
18 sexually active by choice?

19 A. I was eleven.

20 Q. Okay.

21 And then your son was born when you were fifteen?

22 A. Uh-huh, yes, sir.

23 Q. Okay.

24 And during this entire time, ah, did you ever have your
25 father in the home or any father figure or anything of that

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1 nature?

2 A. No, sir.

3 Q. Okay.

4 So, did you ever see a stable, loving relationship between
5 a man and a woman?

6 A. No, sir.

7 Q. Okay.

8 Now, December of 2007 - - -

9 THE COURT: Counsel, I've sat here and listened to all
10 of this. It has no relevancy in this case, and you haven't
11 objected. So, I let it in.

12 MR. GRAUSTEIN: Yes, Your Honor.

13 THE COURT: But move on to something else, now, please.

14 MR. HAZZARD: Well, Your Honor, we are talking about a
15 physical assault between the alleged victim and the defendant.

16 THE COURT: That physical assault - - there's no testify
17 involving a physical assault when she was three years old having
18 any relevancy on what occurred on this date but it's in, and he
19 didn't object to it but let's move on to something else.

20 MR. HAZZARD: Yes, sir.

21 Q. December, 2007, how old were you?

22 A. Sixteen.

23 Q. All right.

24 Now, since the Court, apparently, wants us to jump forward

25 - - -

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1 MR. HAZZARD: How forward do you want us to jump forward,
2 Your Honor?

3 THE COURT: I leave it to - - you the lawyer. I'm not
4 going to try the case for you.

5 Go ahead.

6 MR. HAZZARD: Thank you, Your Honor.

7 I appreciate that.

8 Q. When was your interaction, if any, with Monica Burroughs?

9 A. Um, um - - I think in January.

10 Q. Okay.

11 And what, if anything, occurred in January between you and
12 Ms. Burroughs?

13 A. This was - - ah, this female, one of her friends had
14 stopped by my house asking me questions about Monica, whatever.

15 Ah, we didn't have direct contact that day but earlier that
16 day, I had went to her house to get some money from Putty.

17 Q. Okay.

18 And she was - - was she home or not home to your knowledge?

19 A. She was home. She was home but I think she was asleep.

20 Q. Okay.

21 So, no interaction at all with her that day?

22 A. No.

23 Q. Okay.

24 Now, following that, when was the next time you had actual
25 interaction with her, talked with her or anything of that

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1 nature?

2 A. I talked to her on the phone several times.

3 Q. Now, would you call her or would she call you?

4 A. Both.

5 Q. Now, why - -

6 A. Back and forth.

7 Q. Okay.

8 Why were y'all calling each other?

9 A. I would call her, like, say, for instance, this woman named
10 Vanessa Genna Bruce showed up at my house one day asking
11 questions like I said. I called her. I asked her why did she
12 send them over there because it's not the first time that people
13 - - she would send people around asking questions about me or
14 Putty or trying to get them to say stuff or do some of the
15 things to back her up, and her cousins, Michelle, she's a crack
16 fiend. She started posting up in front of my house.

17 Q. Now, what do you mean by posting up in front of your house?

18 A. Like, she started using as across the street from my house
19 as a trick spot.

20 Q. Okay.

21 A. And she was a crack head.

22 So, and I asked Monica about that, too.

23 Q. Okay.

24 And why would Monica call you on the occasions that she
25 called you?

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1 A. Wanting to know if I was still messing with Putty or he's
2 lying, so she asked him the background disputing what I'm
3 saying, and he's saying this and I'm saying that or I'm saying
4 that this time she was really going to leave him if he was still
5 messing with me or whatever, whatever, but it never - - it never
6 happened.

7 Q. Okay.

8 A. The last time that - - the last time that she had called me
9 it was to tell me that whatever was between me and Putty was
10 between me and Putty, and I agreed with her, and I told her that
11 was fine.

12 Q. And when was that?

13 A. This was - - had to be - - had to be around March?

14 Q. March of '08?

15 A. Around March.

16 Q. March of '08?

17 A. Uh-huh, March of '08.

18 Q. Okay.

19 At some point was Ms. Burroughs under the impression that
20 you were carrying Mr. Pyatt's child?

21 A. Yes, sir.

22 Q. Okay.

23 And why was she under that impression?

24 A. I guess she had heard it from people?

25 Q. Okay.

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1 And were you carrying Mr. Pyatt's child?

2 A. Yes, sir.

3 Q. Okay.

4 Did you carry that child to term?

5 A. No, sir.

6 Q. Okay.

7 And why not, ma'am?

8 A. Um, I got an abortion.

9 Q. Okay.

10 Now, did Ms. Burroughs - - when - - when did you get this
11 abortion, ma'am?

12 A. May 19th.

13 Q. May 19th of 2008?

14 A. Yes, sir.

15 Q. Okay.

16 And at that time did you have any conversation or
17 interaction with Ms. Burroughs from May 19th of 2008 up until
18 June 24th of 2008?

19 A. Yes, I did.

20 In two days I had the abortion before I had the abortion I
21 had contact with her.

22 Q. Tell the jury about that if you would, please, ma'am.

23 A. Um, I believe it was March 16th, when I was walking - - -

24 Q. March or May?

25 A. 2008?

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1 Q. March 16, 2008, or May 16, 2008?

2 A. Um, May - - May 16th - - May 16th, a couple of days before I
3 got the abortion.

4 Q. Okay. Go ahead.

5 A. I was on my way out of the projects at Huckabee with my
6 baby. I was pushing my baby in the stroller, and I was going
7 through the project area. Monica was coming from the back of
8 the buildings which was strange because she doesn't - - she
9 never comes out the house, and when she comes out the house,
10 it's just - - she might stay on her own porch or go across to
11 her friend's house but I've never seen her, like, detour through
12 there or walk right up the street this place outside the project
13 same thing.

14 So, when I got to the gate with the hole, it's like a path
15 where the fence is broken, and I was pulling my baby's stroller
16 up, and Monica approached me, and she asked me was I pregnant,
17 and I didn't answer. She told me to stay the fuck away Putty or
18 she started reaching in her purse or whatever but it - - she
19 just pulled out the handle and put it back in, a black gun which
20 - - -

21 Q. What - - -

22 A. That was it. She turned back around. She didn't even go
23 anywhere. She didn't even have a destination but I don't even
24 know why she - - it was - - it was strange seeing her, period,
25 because she - - she never comes that way. She never leaves her

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1 porch or her friend's house.

2 Q. So, now, I show you what's been marked for identification
3 State's Exhibit #1, do you recognize this location?

4 A. Yes.

5 Q. Okay.

6 So, is this the front or the back of - - -

7 A. The front.

8 Q. The front?

9 A. The front.

10 I was this way. She was this way in the back.

11 Q. Okay.

12 So, you're saying behind this building is where she came
13 across here. You were walking one direction. She was walking
14 another?

15 A. No.

16 When I was going this way, I looked behind me, and she was
17 coming from the back this way.

18 So, we - - we had to meet up at the path.

19 Q. Okay. All right.

20 And you indicated at that time behind these buildings was
21 when she presented a firearm to you?

22 A. Yes, sir.

23 Q. Okay.

24 And said, "Stay away from Mr. Pyatt."

25 A. Yes, sir.

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1 Q. Okay.

2 When was the telephone conversation when she said what's
3 between you and him needs to stay between you and him?

4 A. That was in March.

5 Q. Okay.

6 So, what happened between March and May that all of a
7 sudden now you're getting threats?

8 A. I got pregnant.

9 Q. You got pregnant. All right.

10 After May 19th, that was the day that you have the abortion,
11 correct?

12 A. Yes, sir.

13 Q. Okay.

14 Did you have any interaction with Ms. Burroughs?

15 A. Yes, sir.

16 Q. Okay.

17 If you would, tell us about that.

18 A. The next time I believe was on June 21st.

19 That day she had been home but her kids were outside. Her
20 son spit on my son.

21 Q. Okay.

22 A. I went - - I called Putty first. Putty told the kids to go
23 in the house.

24 When Monica came home, I went to her house, and I told her
25 that her son had been, um, I would usually let my son play with

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1 her kids but then I saw that Little D was always prodding my
2 baby, pushing his hands and pushing him down and stuff.

3 Q. Uh-huh.

4 A. So, this particular day he told me that he had spit on
5 Jamir which I didn't even think that he had spit on Jamir but
6 this little boy is always telling me - - I didn't have problems
7 with him but he was just doing things that a child shouldn't do.

8 Q. Okay.

9 Let's leave D out of it.

10 A. Okay.

11 Q. So, as a result of what happened with Little D and your
12 Jamir, you ended up talking with Ms. Burroughs - -

13 A. Yes.

14 Q. - - ah, as parents are want to do when there is an incident
15 between their children.

16 A. Yes.

17 Q. Okay.

18 Did anything jump off then or were y'all able to talk like
19 reasonable adults?

20 A. We tried to talk like reasonable adults.

21 She said that he was only four and didn't understand, and
22 I explained to her that my baby was two, and he understood.

23 And she told him to stay - - her kids to stay away from me,
24 and I walked off from her, and her and whoever she was sitting
25 on the porch with started laughing about the situation.

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1 Q. Okay. Okay.

2 Did you feel that was kind of disrespecting you?

3 A. Yes, sir.

4 Q. Now, did you have any interaction with her from that day -
5 - well, tell me what happened on June 23rd.

6 A. Um, that night, me and Putty had went to her home. He had
7 left me in the room. He came home. He took me home after the
8 club - - no, before the club, he took me back home.

9 I was home about six in the morning. He had got in the
10 club and stopped at my house. We sat in my, well, not in the
11 yard but he parked behind our house. He sat there for a good,
12 maybe, forty-five minutes - -

13 Q. Uh-huh?

14 A. - - sitting on the car. Then we got into it again.

15 Q. What did you get into it about again, ma'am?

16 A. About me getting another boyfriend because he was still at
17 her house - -

18 Q. Uh-huh.

19 A. - - and I felt like - - we got into an argument because I
20 felt like he made me get the abortion so that he could tell her,
21 "Okay, this girl is crazy. She wasn't really pregnant, and
22 whatever."

23 Q. Okay.

24 Who paid for the abortion, ma'am?

25 A. Putty.

MS. JOHNSON - DIRECT EXAMINATION BY MR. HAZZARD

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1 Q. Okay.

2 Now, after you got into it, was a physical altercation or
3 just a shouting match or just - -

4 A. Physical.

5 Q. - - heated discussion?

6 A. Physical.

7 Q. Okay.

8 And who got the best of this physical altercation, you or
9 him?

10 A. Putty.

11 Q. Okay.

12 And after he put his hands on you, what happened then, if
13 anything?

14 MR. GRAUSTEIN: Your Honor, I'm going to object to
15 these - - -

16 THE COURT: Yes, sir. I'm going to sustain that.
17 That's got nothing to do with any issue in this case.

18 Proceed with something else unless you can tie it up in
19 some way.

20 MR. HAZZARD: Well, if he - - if the Prosecution says they
21 are not going to ask any questions about June 23rd, I won't ask
22 any questions about that.

23 THE COURT: I didn't hear him say that.

24 MR. GRAUSTEIN: Your Honor, I'm objecting to what's
25 going on between her and Putty.

1 THE COURT: Sustained, and that's irrelevant as to any
2 issue in this case.

3 Proceed with something else, please.

4 I've ruled, now. Go ahead.

5 MR. HAZZARD: Okay.

6 My next question was, "What happened next, if anything?"

7 THE COURT: Okay.

8 I can take that question as long as it doesn't involve any
9 further altercations between her and Putty.

10 MR. HAZZARD: All right.

11 THE COURT: Go ahead.

12 A. I - - I don't believe - - I didn't have on shoes, and I put
13 on shoes and I went to Huckabee Heights.

14 Q. Okay.

15 Now, when was the next time that you saw Monica Burroughs?

16 A. That morning.

17 Q. The morning of the 23rd or the morning of the 24th?

18 A. The 24th.

19 Q. Okay.

20 A. I mean, no, the 23rd, the 23rd.

21 Q. Okay.

22 And when you saw her on the 23rd, did you have any
23 interaction with her at that time?

24 A. Um, no. It was really just me and Putty fighting.

25 Q. Okay.

MS. JOHNSON - DIRECT EXAMINATION BY MR. HAZZARD

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1 A. She was saying things in the background but, other than
2 that, no.

3 Q. Okay. Okay.

4 So, you had went and gone back over there, and you and
5 Franklin Pyatt were fighting?

6 A. Uh-huh.

7 Q. Okay.

8 A. He had just got out and come in the house when I was coming
9 in the projects from my house.

10 Q. Okay.

11 Is that the time that you mentioned in the police about
12 throwing the charcoal fluid on the car?

13 A. Uh-huh.

14 He had left my house and by the time he had got to the
15 house and got in the door, I was already out there because it
16 was just like a walk right there.

17 Q. Okay.

18 Now, so she was in the background urging him on or whatever
19 but no interaction between you and her?

20 A. No, sir.

21 Q. Okay.

22 And I believe that in your statement to the police, you
23 indicated that you actually went there that morning. You and
24 Putty got into it and poured the charcoal fluid on the car. He
25 beat you down. Then you went back again.

MS. JOHNSON - DIRECT EXAMINATION BY MR. HAZZARD

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1 Was she there the second time?

2 A. No.

3 The second time when I had the charcoal fluid, yes, she was
4 there.

5 Q. Okay.

6 So, the first time, no charcoal fluid?

7 A. Un-uh.

8 Q. Okay.

9 Then, at some point you come back on the 23rd?

10 A. Like a few minutes later. I hadn't even left out the
11 projects. I saw the charcoal fluid on somebody's porch.

12 Q. Okay.

13 And, so, you went back. Poured it on his car?

14 A. Uh-huh.

15 Q. Not her car, his car?

16 A. Uh-huh.

17 Q. Okay.

18 And was she in the house to your knowledge or did you hear
19 her or see her or talk with her at that time?

20 A. Her and Joanne were sitting on the front porch, and when
21 she saw me walking up with the lighter fluid, she went in the
22 house and got Putty.

23 Q. Okay. Okay.

24 And did you threaten her at that time?

25 A. No, sir.

MS. JOHNSON - DIRECT EXAMINATION BY MR. HAZZARD

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1 Q. Okay.

2 Now, after the second incident on that day on the 23rd
3 between you and Mr. Pyatt, did you, in fact, go back there a
4 third time?

5 A. Yes, because the time when I had the charcoal, we had got
6 into it again, and this time he was dragging me on the ground.

7 Q. Uh-huh.

8 A. So, the front of my legs was skinned up. I came back,,
9 like, maybe twenty minutes later. It wasn't that late, and this
10 time I came back. When I came back I had intentions of shooting
11 him.

12 Q. You had intentions of shooting him?

13 A. Yes, sir.

14 Q. Okay.

15 So, you brought a gun back on that occasion?

16 A. Yes, sir.

17 Q. Okay.

18 And this was after you had seen Ms. Burroughs or Ms.
19 Burroughs had showed you her gun, correct?

20 A. Yes, sir.

21 Q. Okay.

22 Now, did you shoot Mr. Pyatt that day?

23 A. No, sir, he was gone.

24 Q. I'm sorry.

25 A. He was gone.

MS. JOHNSON - DIRECT EXAMINATION BY MR. HAZZARD

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1 Q. Okay.

2 A. When I came back, he was pulling in the projects but, um,
3 and I was standing there with the gun, and he was, like, yelling
4 out the window, "Does she got a gun?"

5 And somebody was, like, "Yeah."

6 So, he backed all the way - - he backed out of the
7 projects.

8 Q. Okay.

9 Did - - were you in their yard, on their porch? Where were
10 you standing with this gun?

11 A. I was in the road.

12 Q. You were out in the street in front of the house?

13 A. No. I was more at the stop sign where Bayside and Leonard
14 is at, and he was - - -

15 Q. Down at the corner?

16 A. Uh-huh.

17 And he was coming over the first speed bump.

18 Q. Okay. All right.

19 So, then, at that time when you were standing there with
20 this gun, did you threaten Ms. Burroughs in anyway or attack her
21 in anyway?

22 A. I didn't attack her. I don't think she was home.

23 Q. Okay.

24 Um, did you make some threatening statements or shout out
25 anything or anything of that nature?

MS. JOHNSON - DIRECT EXAMINATION BY MR. HAZZARD

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1 A. I did.

2 Q. Okay.

3 Were they directed at Ms. Burroughs or Mr. Pyatt or who?

4 A. Um, both, really.

5 Q. Okay.

6 Did you have intentions at that time of shooting Ms.
7 Burroughs?

8 A. No, ma'am - - no, sir.

9 Q. Why not? She was part of your problem, right?

10 A. Yes, but she - - she wasn't the catalyst.

11 Q. Okay.

12 A. He was.

13 Q. Other than your one physical altercation, she'd never
14 beaten you, had she?

15 A. Uh-uh.

16 Q. She'd never dragged you and skinned up your knees or
17 anything like that, right?

18 A. No, sir.

19 Q. She'd never choked you until you passed out?

20 A. No, but she did set a few of them up.

21 Q. Okay. Okay.

22 Now, on the 24th, June 24, 2008, how is it that you ended up
23 on Tamika Skipper's porch with your son?

24 A. Um, that day one of my little cousins what had - - had just
25 brought my baby back from the pool, and I had met them back on

1 Horry Street.

2 Q. Where is that?

3 A. Horry Street is by Wydemoor Park.

4 Q. And where is that?

5 A. Um, right behind Huckabee.

6 Q. Okay.

7 Within walking distance?

8 A. Yes, sir.

9 Q. Okay.

10 So, you go to - - you get your son back. What happened
11 next?

12 A. I went back to Tamika's house.

13 Q. Okay.

14 A. I came from home. I went through Gasoline Alley and
15 Wydemoor Street, um, and met one of my little cousins halfway
16 to get my baby. They were from the pool and went to Tamika's
17 house.

18 Q. Now, once you got to Tamika's house, what did you do?

19 A. I stopped to talk to - - I went to her house first, and it
20 was her - - her - - I think she was by herself. I left her
21 house and went back outside across the street, and I was talking
22 to, um, Lazy and I can't remember who else it was.

23 Q. You were talking to folks outside?

24 A. Uh-huh.

25 Q. Did you see Monica Burroughs at that time?

MS. JOHNSON - DIRECT EXAMINATION BY MR. HAZZARD

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1 A. No, sir.

2 Q. Okay.

3 Now, what did you do after finished talking to the folks
4 outside of Ms. Skipper's house?

5 A. I went back on her porch, and then we went in her house.

6 Q. And where was your son at this time?

7 A. With me.

8 Q. Okay.

9 What happened when you went back in Ms. Skipper's house?

10 A. Um, Iesha came up, and Iesha and Tamika wanted to go to
11 Subway, and Iesha agreed, and they went to Subway.

12 Q. Okay.

13 And they left you there?

14 A. Yes, sir.

15 Q. Okay.

16 And what did you do?

17 A. I closed the door and went to sleep.

18 Q. Okay.

19 To your knowledge, was Ms. Burroughs home at that time?

20 A. I'm not sure.

21 Q. Okay.

22 Were you looking for her at that time?

23 A. No, sir.

24 Q. Okay.

25 But you had a gun with you, right?

MS. JOHNSON - DIRECT EXAMINATION BY MR. HAZZARD

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1 A. Yes, sir.

2 Q. Why were you carrying a gun?

3 A. I had been carrying a gun for, like, the last month and
4 some change.

5 Q. Why?

6 A. Ever since she -- I got into it with her. Ever since she
7 had threatened me when I was coming out the projects and ever
8 since she had set up for Putty to beat me up the last time we
9 had fought.

10 Q. Okay. All right.

11 So, you went to sleep. Is that correct?

12 A. Yes, sir.

13 Q. Okay.

14 At some point were you awakened?

15 A. Uh-huh.

16 Q. Okay.

17 And what woke you up?

18 A. Tamika bamming on the door and Iesha at the window.

19 Q. Okay.

20 The two -- one was knocking on the door and the other was
21 knocking on the window?

22 A. Uh-huh.

23 Q. Okay.

24 And you were hard asleep, weren't you?

25 A. Yeah.

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1 Q. Okay.

2 So, when, ah, I take it you got up and opened the door?

3 A. Yes, sir.

4 Q. Okay.

5 Well, what happened then?

6 A. Tamika asked me where her key was. I gave her the key.
7 She was mad but not too mad or whatever.

8 We sat down for a second. We had some bud. So I told her
9 I was going to go over to the bootlegger to get some cigars.

10 Q. Now, when you say some bud, you talking about some
11 Budweiser?

12 A. No, sir. Marijuana.

13 Q. You talking about marijuana?

14 A. Yes, sir.

15 Q. Okay.

16 And you were going to the bootlegger to get some cigars.

17 What would be the significance of or the purpose for
18 obtaining cigars with marijuana?

19 A. To roll them in.

20 Q. Okay.

21 To hollow out the tobacco and roll them in the tobacco leaf
22 wrapper?

23 A. Yes, sir.

24 Q. Okay.

25 So, you said you were going to go handle that.

1 What happened then?

2 A. I started walking off. I left my phone with Tamika. I
3 started walking off, um, was halfway up the hill, like, it's a
4 rise when you're going up the hill, and, ah, I was going to
5 Joanne's house. She's a bootlegger.

6 Q. Okay.

7 A. But I don't think I ever went - - made it on her porch. I
8 think I was in her driveway. She called me. I know that.

9 Q. She called your name or called you on the phone? Called
10 out your name?

11 A. Called out my name? I guess because I was about to head
12 up on her porch.

13 Q. So, when she called you, where was she?

14 A. Um, I'm thinking she was in the front of Monica's house.

15 Q. Okay.

16 Now, to your knowledge, specifically, to your knowledge,
17 not what you have heard, not what you have seen on tv, to your
18 knowledge, what happened next?

19 A. I'm not sure.

20 Q. Well, I mean, you seemed pretty sure on that statement you
21 gave to the police.

22 A. I know.

23 Q. So, why were you so sure on that statement if you're not
24 sure here in front of this jury?

25 A. Because I had a week's time to sit on it. My mom wanted me

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1 to tell what happened. She wanted me to turn myself in. I
2 guess, not knowing, saying that I don't know was a justifiable
3 excuse. So, I just pretty much took a piece of everybody's
4 story and put it together.

5 Q. Okay. Okay.

6 Now, you indicated on your statement that you had heard
7 what people were saying on tv, I guess their statements on the
8 news where they were being interviewed on the - - on tv news.
9 Is that correct?

10 A. Yes, sir.

11 Q. Okay.

12 Also, um, you say you took some of those statements, tried
13 to piece them together?

14 A. Including statements that I was getting from one of my
15 cousins who I was talking to.

16 Q. Okay.

17 Now, some of your information came from what Teresa Cox
18 said, right?

19 A. Uh-huh.

20 Q. Okay.

21 Her version of what occurred there that day.

22 Did she have some connection or did she have some
23 connection to your family?

24 A. Ye.

25 Well, she did at my baby grandma house, Latonya Moses.

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1 Q. Yes.

2 A. And that was where she was at when I was getting what she
3 was saying.

4 Q. Yeah. Okay.

5 Now, let's make sure we're straight here.

6 This occurred on June 24, 2008.

7 There's no question after this the incident occurred that
8 you took off running, right?

9 A. Yes, sir.

10 Q. Okay.

11 And as you told them in the interview, you made your way to
12 Darlington or Hartsville, correct?

13 A. Yes, sir.

14 Q. And you were arrested by the U. S. Marshals on July 2nd, I
15 believe.

16 Does that sound right?

17 A. Yes, sir.

18 Q. Okay.

19 So, some nine days later?

20 A. Yes, sir.

21 Q. Okay.

22 Now, when you came back or were brought back by the
23 Marshals, you gave a statement that was video taped, right?

24 A. Yes, sir.

25 Q. Okay.

MS. JOHNSON - DIRECT EXAMINATION BY MR. HAZZARD

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1 Does that video tape depict and show all of your
2 interaction with your police on that day?

3 A. No, sir.

4 Q. Okay.

5 What is missing? What happened and occurred between you
6 and the police at the Conway Police that isn't on that tape?

7 A. I spoke with them prior.

8 Q. You spoke with them prior to that?

9 A. Yes, sir.

10 Q. Okay.

11 Did they indicate why they wanted to talk to you or why did
12 they want to talk with you without the tape running, ma'am?

13 A. Yes, sir.

14 The Detective Shawn King was the one who tole me that my
15 momma wanted me to talk. He said he went to school with her.

16 Q. Okay.

17 Shawn King or Shawn Addison?

18 A. Not King, I mean the Addison.

19 Q. Whatever his name that started with an A?

20 A. Shawn.

21 Q. Okay.

22 So, he told you your momma wanted you to talk and tell them
23 what they wanted to know - -

24 A. Uh-huh.

25 Q. Or wanted to hear?

MS. JOHNSON - DIRECT EXAMINATION BY MR. HAZZARD

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1 A. Uh-huh.

2 Q. Okay.

3 A. He said my momma - - -

4 MR. GRAUSTEIN: Your Honor, I'm going to object. It's
5 hearsay.

6 THE COURT: Yes, sir. I sustain that. We're not going
7 into what momma said.

8 COURT REPORTER: Mr. Hazzard.

9 MR. HAZZARD: Yes, ma'am.

10 COURT REPORTER: Could I, again, ask if she would say
11 yes or no?

12 MR. HAZZARD: Yes, ma'am, I apologize.

13 COURT REPORTER: Thank you.

14 Q. Now, you got really - - you need to enunciate, "Yes,"
15 "No."

16 "Uh-huh and Un-uh" ain't going to do it, ma'am.

17 Okay?

18 A. Yes, sir.

19 Q. Okay.

20 So, was it your understanding, then, that you needed to
21 tell the police something?

22 A. Yes, sir.

23 Q. Okay.

24 Did you intentionally cause the death of Monica Burroughs?

25 THE COURT: Let me stop right there.

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1 I've observed your testimony here for the last thirty
2 minutes, and you are violating the rules. This is your
3 witness. You are trying to cross examine her. Ask her
4 questions approximately. You know what the rule is. This is
5 your witness. You can't cross examine her.

6 MR. HAZZARD: Sir, I asked her - - -

7 THE COURT: No, you were getting ready to say, "Did you
8 do so and so," which suggests the answer.

9 Change that - - ask her what happened next or ask her what
10 she did she tell the police. Don't say, "Did you say so and
11 so?"

12 That's suggestive of the answer, and it's improper.

13 MR. HAZZARD: Yes, sir.

14 THE COURT: All you got to do is ask her, "What did you
15 tell the police?"

16 And let her reply without suggesting it to her.

17 Go ahead.

18 Solicitor, you're going to have to object to some of this
19 testimony, now.

20 Go ahead.

21 MR. HAZZARD: Okay.

22 So, you want me to ask it in a "What happened next?"
23 format?

24 THE COURT: No, sir, I just want you to follow the rule
25 in examining your own witness. You're a good lawyer, and you

MS. JOHNSON - DIRECT EXAMINATION BY MR. HAZZARD

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1 know what the rule is.

2 Please follow it.

3 MR. HAZZARD: Okay.

4 So, I cannot ask her with regard to her intent to that day?

5 THE COURT: Sir?

6 MR. HAZZARD: I cannot ask her with regard to her intent
7 on that day?

8 THE COURT: I will accept that, yes, sir.

9 MR. HAZZARD: Okay.

10 Q. Brittany?

11 THE COURT: Just don't say, "Was your intent so and so?"
12 Go ahead.

13 You know the way to ask her. Go ahead.

14 Q. Brittany, on June 24, 2008, when you left Tamika Skipper's
15 apartment, what was your - - where were you headed?

16 A. To the bootlegger.

17 Q. To the bootlegger's.

18 Okay.

19 Were you ever intending to go to Ms. Burroughs' house? Was
20 that your attention?

21 A. No, sir. My son was around. My son was around.

22 Q. Your son was around.

23 Okay.

24 So, you - - is it your statement that you would not have
25 fought in front of your son? Is that it?

MS. JOHNSON - DIRECT EXAMINATION BY MR. HAZZARD

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1 A. No, sir.

2 Q. No.

3 Okay. All right.

4 I mean - okay. We'll try it the Court's way.

5 What happened next?

6 THE COURT: No, sir. That's not a proper statement.
7 You're not trying it the Court's way. You're trying the way
8 that the law provides.

9 MR. HAZZARD: Yes, sir.

10 THE COURT: And that is in direct examination, you know
11 the rule. You know the rule.

12 MR. HAZZARD: Yes, sir.

13 THE COURT: It's not my rule. It's the Court's rule.

14 MR. HAZZARD: Okay.

15 Q. All right.

16 After you left Ms. Skipper's house, what, if anything,
17 happened next?

18 A. Um, I remember us being at the head of Joanne's driveway.
19 I heard somebody call me. Um, I assume that it was her because
20 I was about to go on her porch.

21 Q. You assumed it was Joanne?

22 A. Yes.

23 Q. Okay.

24 And then what happened?

25 A. Um, um, I'm not sure.

1 I - - I know I pulled the trigger.

2 Q. You know you pulled the trigger. How do you know that,
3 ma'am?

4 A. Um, because that's what - - I mean, I was just standing
5 there, and I saw her in front of me with the shot going off.

6 Q. Okay. Okay.

7 And what did you do then, if anything?

8 A. Um, I - - I paused, for a second. Then I ran.

9 Q. You paused for a second, and then you ran?

10 A. Uh-huh.

11 Q. Okay.

12 All right.

13 Please answer any questions the Prosecutor might have.

14 THE COURT: Thank you, counsel.

15 You may examine her.

16 CROSS EXAMINATION BY MR. GRAUSTEIN:

17 Q. Okay.

18 Ms. Johnson, are you saying - - you were seeing Putty, and
19 he was staying with Monica?

20 A. Yes.

21 Q. All right.

22 THE COURT: You got to say, "Yes," or "No."

23 You got to speak up.

24 MS. JOHNSON: Yes, sir.

25 Q. And you were, essentially, sneaking around with Putty?

MS. JOHNSON - CROSS EXAMINATION BY MR. GRAUSTEIN

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1 A. Yes, sir.

2 Q. Okay.

3 And that - - and the fact you were sneaking around with
4 Putty upset Monica?

5 A. Yes, sir.

6 Q. Okay.

7 You can understand why she was upset by that situation?

8 A. Yes, sir.

9 Q. All right.

10 I think you - - Mr. Hazzard asked you about this.

11 Monica had never been physically violent with you?

12 A. Not up until December 14th.

13 Q. Okay.

14 So, one time y'all got into a fight?

15 A. Yes, sir.

16 Q. According to you, you got the better of her. She never
17 messed with you again, did you?

18 A. Yes.

19 Q. She did - - physically attack you?

20 A. No, sir.

21 Q. Okay.

22 She never physically attacked you again?

23 So, six months later in June - - and I'm going to go by
24 what you told the police because you had a week to get your
25 story straight before you talked to the police, right?

MS. JOHNSON - CROSS EXAMINATION BY MR. GRAUSTEIN

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1 A. Uh-huh.

2 Q. And you - - they didn't arrest you the day this all
3 happened?

4 A. Uh-huh.

5 MR. GRAUSTEIN: You have to say, "Yes," or "No."

6 A. Yes, sir.

7 Q. Okay.

8 And where were you arrested?

9 A. In Darlington.

10 Q. In Darlington.

11 And you got there by way of Lake City?

12 A. Yes, sir.

13 Q. You'd been hitching rides?

14 A. Somewhat.

15 Q. Okay.

16 Along the way, threw that gun away that you had?

17 A. Yes, sir.

18 Q. Right?

19 A. Yes, sir.

20 Q. Okay.

21 Changed your hair?

22 A. Yes, sir.

23 Q. You didn't want to get caught, did you?

24 A. Somewhat?

25 Q. You didn't turn yourself in, did you?

MS. JOHNSON - CROSS EXAMINATION BY MR. GRAUSTEIN

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1 A. I was suppose to turn myself in at 3:00 that day.

2 Q. Okay.

3 So, you, ah, you changed your appearance. Disposed of the
4 gun, and you just stated that you pulled the trigger, right?

5 A. Yes, sir.

6 Q. I need a response.

7 Right?

8 A. Yes, sir.

9 Q. Okay.

10 But you're saying despite everything you told the police,
11 you really don't remember a lot of it as you sit here today?

12 A. No, sir.

13 Q. All right.

14 But you were carrying a 45 caliber handgun on July 24th?

15 A. On June 24th.

16 Q. June 24th?

17 A. Yes, sir.

18 Q. 2008?

19 A. Yes, sir.

20 Q. You'd had it the day before, too, hadn't you?

21 A. Yes, sir.

22 Q. You were running all around in front of Monica's with that
23 gun, hadn't you, the night before?

24 A. The day before?

25 Q. The day before?

1 A. Yes, sir.

2 Q. Okay.

3 Standing out front?

4 A. Yes, sir.

5 Q. Presenting that gun?

6 A. Yes, sir.

7 Q. So they could see it?

8 A. Yes, sir.

9 Q. You were mad at Monica that day, weren't you, the 23rd?

10 A. Somewhat but Putty more so.

11 Q. You were mad at her because didn't you say you were going
12 to kill her that day?

13 A. Yes, sir.

14 Q. No?

15 You told the police you said you were going to kill her?

16 A. Yes, sir.

17 Q. Now, this isn't about not remembering when you pulled the
18 trigger?

19 A. Yes, sir.

20 Q. This is the day before?

21 A. Yes, sir.

22 Q. Are you saying that that's not true, that you didn't
23 threatened her the day before?

24 A. They suggested it, and I said, "Yes."

25 Q. They suggested it? You said you were over there

MS. JOHNSON - CROSS EXAMINATION BY MR. GRAUSTEIN

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1 hollering?

2 Okay.

3 But she wasn't home.

4 In fact I believe you said, "Come on out and eat -- eat
5 the bullets."

6 You said that on the 23rd?

7 A. Yes, I did.

8 Q. And that's not threatening to kill somebody?

9 A. Yes, it is.

10 Q. Okay.

11 But she didn't' come out that day, did she?

12 A. I don't believe she was home.

13 Q. Okay.

14 The next time you saw Monica Burroughs was the afternoon of
15 June 24th, correct?

16 A. Yes, sir.

17 Q. Okay.

18 You still had that gun?

19 A. Yes, sir.

20 Q. And you went walking across the parking lot, and you saw
21 her sitting in the vehicle over right in front of her house.
22 Isn't that true?

23 A. I recall the vehicle.

24 Q. The doors were open?

25 A. I'm not sure. I think so.

MS. JOHNSON - CROSS EXAMINATION BY MR. GRAUSTEIN

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1 Q. Well, you told the police the doors were open.

2 Is the true that the doors were open or not or do you not
3 remember today?

4 A. I'm not sure.

5 Q. Okay.

6 Well, do you agree with what you told the police? Was that
7 accurate? Was that true?

8 A. Yes, if everybody else think it was accurate.

9 Q. Okay.

10 All the doors were open, and you say, now, you went up and
11 you took that gun out, that 45 caliber pistol, you had it out,
12 right?

13 A. I don't recall.

14 Q. All right.

15 And you walked up to that car, and you hit Monica Burroughs
16 with that pistol, correct?

17 A. I don't recall.

18 Q. You don't recall that.

19 But you said it was accurate when you told the police that
20 when they interviewed you in 2008?

21 A. I told the police that.

22 Q. So, you struggled with the gun, with that pistol, and she
23 came up out of that car. Right?

24 A. That's what I had said.

25 Q. Right.

MS. JOHNSON - CROSS EXAMINATION BY MR. GRAUSTEIN

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1 She comes up out of that car. Did that surprise you - -

2 A. I guess so.

3 Q. - - when she came out of that car?

4 A. All of them surprised me.

5 Q. Coming out of there brave like they did?

6 So, that surprised you when they all came out of that car?

7 I need you to say yes or no.

8 A. Yes, sir.

9 Q. You were surprised because you were holding the gun, right?

10 A. No, sir.

11 Q. You didn't have a gun at that point?

12 A. Yes, but I don't - - I don't think it was out.

13 Q. It wasn't? You said you hit Monica with it?

14 A. Yes, I did.

15 Q. And then they all came out of the car. So, the gun would
16 have to be out, wouldn't it?

17 A. And I said that because that's what Teresa Cox was saying
18 on tv because that's what she was telling my family.

19 Q. Oh, Okay.

20 So, they come out of the car, and then you tell you the
21 police in your statement. Did you get some separation coming
22 out of the car?

23 A. That's what she said.

24 Q. That's what she said? Isn't that what you said also?

25 A. Yes.

1 Q. And got some distance between you, and then you shot her?
2 Isn't that -- isn't that what happened?

3 A. I'm not sure if that's what happened but that's what was
4 said.

5 Q. And that -- and that's what you said?

6 A. Yes.

7 Q. Okay.

8 I guess my question -- so you say you came up with this
9 story from Teresa Cox?

10 A. Not just her story.

11 Q. Not just her story.

12 Well, how did you get all these stories?

13 A. Talking to a family member.

14 Q. Oh? Okay.

15 So, let me get this straight.

16 You have a week to get these stories that you're going to
17 tell the police. You have a week to get it straight?

18 A. Yeah.

19 Q. Correct?

20 A. Uh-huh.

21 Q. And then you go and talk to the police.

22 And at this point you can tell them anything you want.
23 Correct?

24 A. Uh-huh.

25 Q. I need a verbal response.

MS. JOHNSON - CROSS EXAMINATION BY MR. GRAUSTEIN

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1 A. Yes, sir.

2 Q. Okay.

3 You can tell them at that point anything you want?

4 A. Yes, sir.

5 Q. You could have told them, "She pulled the gun on me first."

6 You could have told them that she started the fight?

7 A. Yes, sir.

8 Q. You could have told them, "The car started backing up, and
9 they all jumped out."

10 Right?

11 A. Yes, sir.

12 Q. You could have told them that?

13 But you didn't tell them any of that?

14 A. No, sir.

15 Q. You told them that you came up; attacked Monica. She came
16 out of the car, and you shot her.

17 That's the best story you could come up with?

18 A. No, it wasn't but it was the story I felt was right.

19 Q. You felt it was right?

20 So, you feel that story was accurate?

21 A. Because I was - - I felt like I was wrong. I killed
22 somebody, and that was on my conscience.

23 Q. Okay.

24 All right.

25 So, you - - so you say here that you killed somebody?

MS. JOHNSON - CROSS EXAMINATION BY MR. GRAUSTEIN

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1 A. Yes, sir.

2 Q. Okay.

3 And that it was wrong?

4 A. Uh-huh.

5 Q. All right.

6 MR. GRAUSTEIN: I ask if I may approach the witness,
7 Your Honor.

8 THE COURT: Sir?

9 MR. HAZZARD: May I approach the witness?

10 THE COURT: Sure.

11 Q. I ask if you recognize that?

12 A. Uh-huh.

13 Q. Can you identify that for me?

14 A. It's a letter that I had wrote to a friend of mine.

15 Q. Okay.

16 You wrote - - -

17 MR. HAZZARD: Okay.

18 Your Honor, we have a matter to take up outside the
19 presence the jury.

20 THE COURT: All right.

21 I'll let you go to your jury room just a moment. I'll be
22 calling you right back.

23 (The jury retires to the jury room at 5:01 p.m.)

24 THE COURT: Yes, sir. Yes, sir.

25 Close the door.

1 Okay.

2 Yes, sir?

3 MOTION AND RULING OF THE COURT

4 MR. HAZZARD: Your Honor, he's about to ask her about some
5 letter, and I wanted to get a ruling on the admissibility of it
6 before we got much further into this.

7 MR. GRAUSTEIN: Well, Your Honor, I believe she just
8 said she recognized that letter and she wrote it.

9 THE COURT: What does the letter say?

10 MR. GRAUSTEIN: The letter says that - - I can show
11 Your Honor a copy of it?

12 THE COURT: Wait a minute. Is this what we dealt with
13 in pretrial?

14 MR. GRAUSTEIN: Yes, sir.

15 THE COURT: An unsigned statement?

16 MR. GRAUSTEIN: Yes, sir.

17 THE COURT: I told you I wasn't going to permit that.

18 MR. GRAUSTEIN: She just authenticated it, Your Honor.

19 MR. HAZZARD: It's something that - - it's allegedly a
20 letter written days after the incident itself. It has nothing
21 to do with the incident itself.

22 THE COURT: Wait a minute. Let's see what the letter
23 says. If she said she wrote it, it's - - it could be a
24 declaration against interest.

25 What does it say. Just read it to me.

1 MS. JOHNSON: I didn't say I wrote it.

2 THE COURT: Pardon?

3 MS. JOHNSON: I didn't say I wrote it.

4 THE COURT: She said she didn't say she wrote it.

5 MR. GRAUSTEIN: Well, she said she knew what it was.

6 THE COURT: No, sir. I'm not going to let that in.

7 As I recall from pretrial, that's a document unsigned by
8 anybody.

9 MR. HAZZARD: Yes, sir.

10 MR. GRAUSTEIN: I was - - I was just trying to get her
11 to authenticate it, Your Honor.

12 I admit I was - - -

13 THE COURT: She said she didn't write it.

14 MR. HAZZARD: And she said she didn't write it.

15 Yes, sir.

16 MR. GRAUSTEIN: Well, she did after the objection.

17 THE COURT: No, sir, I think that's improper. You don't
18 need it in this case, and I'm not going to permit.

19 MR. HAZZARD: Thank you, Your Honor.

20 THE COURT: It's a document - - it's an unsigned
21 document. She now says she didn't write it. So - - I'm not
22 going to permit it.

23 Bring the jury back in.

24 Objection sustained. That was raised in pretrial, and I
25 said it at the time I wasn't going to admit it.

1 Both of y'all approach the Bench.

2 (Bench conference held at the bench off the record and
3 outside the presence of the jury.

4 The jury returns to the courtroom at 5:04 p.m.)

5 THE COURT: All right, sir.

6 We're ready to proceed.

7 JURY FORELADY: Your Honor, if we could ask the witness to
8 speak up and speak into the microphone so that everyone can
9 hear, please?

10 THE COURT: Yes, sir.

11 I think, okay. I think we've concluded her testimony but
12 I'll -- have you concluded your testimony?

13 MR. GRAUSTEIN: I have no further questions, Your
14 Honor.

15 THE COURT: All right, sir.

16 Do you have anything further?

17 MR. HAZZARD: Nothing further, Your Honor.

18 THE COURT: All right, sir.

19 The witness may come down. The witness' testimony is
20 concluded.

21 Come down, please.

22 (The witness leaves the witness stand.)

23 THE DEFENDANT RESTS

24 THE COURT: Aright.

25 Any further witnesses?

1 MR. HAZZARD: At this time, Your Honor, the defense rests.

2 THE COURT: All right.

3 You got anything in reply?

4 MR. GRAUSTEIN: Nothing in reply, Your Honor.

5 THE COURT: All right, sir.

6 Mr. Foreman, ladies and gentlemen, that will conclude all
7 of the testimony in this case. When you return, I'm going to
8 ask you to return at 9:30 in the morning, not ten but 9:30.

9 At that time we'll have final summation of counsel, and I
10 will charge you with regards to the law on the issues raised in
11 this case.

12 I ask, please, that you do not listen to any television
13 should anything appear. I certainly ask you not to read the
14 papers in the morning. I've told you previously. Do not
15 discuss the case. Do not permit anyone to discuss it with you.

16 See you in the morning, please, at 9:30.

17 Thank you.

18 (The jury is released for the day and departs the courtroom
19 at 5:05 p.m. to return at 9:30 a.m. on Wednesday.)

20 THE COURT: Counsel for the defense, that witness is
21 found and is in the courtroom. You have said to me you do not
22 now desire to call him. Is that correct?

23 MR. HAZZARD: That is correct, Your Honor, and I will
24 place that on the record.

25 Mr. Gagun was under subpoena, and at the wishes of the

1 defendant and in speaking with her, she had indicated that he
2 would state something that I have and my investigator talked
3 with him, and he indicates that he did not have the information
4 that we were led to believe that he had, and so I wasn't going
5 to put him on the stand for any other purpose.

6 THE COURT: I understand. That' fine.

7 I was going to - - I was going to let you take him outside
8 of the presence of the jury to see what he said - -

9 MR. HAZZARD: Yes, sir.

10 THE COURT: - - but if you made that determination,
11 that's appropriate.

12 MR. HAZZARD: Yes, sir.

13 CHARGE CONFERENCE

14 THE COURT: Now, let me hear. Do you have any specific
15 requests to charge?

16 What says the State?

17 MR. GRAUSTEIN: Ah, the State would request that, ah,
18 that, ah, there be no charge of murder, ah, that there be no
19 charge of manslaughter nor a charge for self-defense in this
20 case.

21 THE COURT: Okay.

22 What would you request, counsel?

23 MR. HAZZARD: Your Honor, the defense has six requests to
24 charge, and I will hand them up to you.

25 THE COURT: I'll deal with it now.

1 MR. HAZZARD: The defense requests lesser included of
2 involuntary manslaughter, self-defense and accident.

3 The defense submits that based on the testimony of Tamika
4 Skipper that she saw the defendant surrounded - - -

5 THE COURT: I can answer your question.

6 I'm going to charge accident with the caveats involved - -

7 MR. HAZZARD: Yes, sir.

8 THE COURT: - - you understand the caveats involved in
9 that incident?

10 MR. HAZZARD: Yes, sir.

11 THE COURT: I'm not going to charge involuntary
12 manslaughter based on all the testimony in the case.

13 How about manslaughter? Do you request the charge of
14 manslaughter?

15 MR. HAZZARD: Manslaughter and involuntary manslaughter,
16 Your Honor.

17 I would submit that the Court take a look at The State vs.
18 Light and the other case law that specifically states that where
19 there is any evidence whatsoever that goes to a - - not the
20 weight because, remember, this is - - the determination is
21 whether the charge is based in the light most favorable to the
22 defendant, and we would submit that Ms. Skipper's - - -

23 THE COURT: There is no evidence of unintentional
24 killing. All of the testimony by all of the witnesses, ah,
25 including the defendant herself says that she took that gun and

1 went out to the car.

2 MR. HAZZARD: Your Honor - - -

3 THE COURT: And you can't do that and then claim
4 unintentional - - involuntary manslaughter.

5 MR. HAZZARD: Your Honor, Ms. Davis' testimony and her
6 statement to the police was that the shooting was unintentional.

7

8 Ah, Ms. Cox's statement to the police was that she told the
9 police that she felt it was an unintentional action.

10 We would submit that that in and of itself is information
11 sufficient for involuntary manslaughter.

12 THE COURT: I'll consider it. I don't think I'm going
13 to do it but I'll certainly consider it.

14 MR. GRAUSTEIN: Your Honor, on that point, neither one
15 of them is qualified - -

16 THE COURT: Sir?

17 MR. GRAUSTEIN: - - I'd say neither one of them is
18 qualified as to intent.

19 THE COURT: Well, I'm going to charge manslaughter.

20 MR. HAZZARD: Uh-huh.

21 THE COURT: Ah, it's close on that charge because, ah,
22 under this thing but I'm going to charge manslaughter. I don't
23 think I'm going to charge involuntary but I'll consider it
24 tonight.

25 MR. HAZZARD: Thank you.

1 THE COURT: Let's see what else you got.

2 I can tell you this.

3 I'm going to charge circumstantial evidence. I'm going to
4 charge the law of confession.

5 What else did I have?

6 And I'm going to charge accident with the caveats imposed
7 on that.

8 MR. HAZZARD: Yes, sir.

9 THE COURT: And let's see what else you got on here.

10 Defendant's #1, I'm going to take under advisement. I
11 don't think I'm going to do it but I'll tell you in the morning.

12 MR. HAZZARD: That's fine, Your Honor.

13 If you take it under advisement, we'll discuss it in the
14 morning.

15 THE COURT: Okay.

16 Number 2, of course, goes to involuntary. That, of course,
17 goes to what I decide in the morning.

18 MR. HAZZARD: Yes, sir.

19 THE COURT: Number 3, again, that involves involuntary
20 manslaughter.

21 MR. HAZZARD: And that - - that's Tisdale vs. State.
22 That's a case of 2008 specifically talks about the evidence of
23 a struggle between the defendant and the victim over a weapon.

24 THE COURT: Yes, sir, it does but it doesn't address the
25 fact of where the victim by her own testimony loaded herself

1 with a 45 and went out to the car looking for her.

2 MR. HAZZARD: Uh-huh.

3 THE COURT: That's the only difference in this case.

4 MR. HAZZARD: Uh-huh.

5 THE COURT: And then a struggle ensues, and then she
6 want's to claim involuntary manslaughter.

7 MR. HAZZARD: Uh-huh.

8 THE COURT: Whereby her own testimony and every witness
9 here, she had a loaded gun and went to the car. That's
10 uncontradicted but I'll consider it overnight after I check it
11 out.

12 MR. HAZZARD: Yes, sir. Yes, sir.

13 THE COURT: Let's see. Under the next one here, Number
14 5.

15 MR. HAZZARD: That's was a straight King charge, Your
16 Honor.

17 THE COURT: Yeah, sure.

18 I do that but the Supreme Court has said we don't have to
19 do that anymore but I will in fairness to the defendant.

20 MR. HAZZARD: I appreciate that, Your Honor.

21 THE COURT: And your next one, Number 6, goes to
22 involuntary.

23 MR. HAZZARD: Okay.

24 THE COURT: I'm going to charge manslaughter thought
25 it's close. There's no question in my mind about that.

1 MR. HAZZARD: Yes, sir.

2 THE COURT: I have serious doubts as to the involuntary
3 manslaughter.

4 MR. HAZZARD: All we ask is that the Court consider it
5 over the evening and give me a chance to place my position on
6 the record very succinctly.

7 THE COURT: Okay.

8 Solicitor, let me say. I'm going to charge manslaughter
9 under sufficient legal provocation. I don't know what a legal
10 provocation is.

11 MR. GRAUSTEIN: Your Honor, I would object to that. I
12 don't know if you want to wait until morning for that but I - -
13 -

14 THE COURT: No, I'm going to charge that under sudden
15 heat of passion.

16 MR. GRAUSTEIN: Okay.

17 THE COURT: I'm going to give her that charge.

18 MR. GRAUSTEIN: Okay.

19 And just for the record I object to that because I do not
20 there is evidence in the record.

21 THE COURT: I understand.

22 Let me hear what you have to say about involuntary
23 manslaughter in the morning. I want you to research that issue.

24 MR. GRAUSTEIN: Yes, Your Honor.

25 THE COURT: I have some concerns about that.

1 I'm tilting to give you manslaughter.

2 MR. HAZZARD: Yes, sir. I understand.

3 THE COURT: But I don't think I'm going to do
4 involuntary but I want to hear from you, Solicitor, with some
5 law on that issue in the morning.

6 You don't have any request for self-defense. I don't see
7 that.

8 MR. HAZZARD: No, sir, Your Honor. I was going to make
9 that an oral motion for a standard self-defense charge.

10 THE COURT: No, sir.

11 I decline to that under the circumstances.

12 The case is clear. You can't start a difficulty of your
13 own volition and it ensues into a struggle and then claim self-
14 defense. You just can't do that.

15 The problem you have here is uncontradicted that she loaded
16 herself with a 45 and went to where the unfortunate victim was
17 and was later killed by that 45. So, I would decline any self-
18 defense charge in this case.

19 MR. HAZZARD: Okay.

20 Note my objection for the record, Your Honor.

21 Thank you.

22 You may want to review a case I tried in Charleston, not
23 the Appellate Court Division but the Supreme Court Division,
24 State v Slater.

25 MR. HAZZARD: I've got it.

1 THE COURT: It bears on that question where you can't go
2 to - - can't start a difficulty and then claim self-defense.

3 MR. HAZZARD: Yes, sir.

4 THE COURT: Now, in fairness to you, counsel, let me
5 hear any motions with regards to the sufficiency of the
6 evidence, you having rested.

7 MOTIONS AND RULING OF THE COURT

8 MR. HAZZARD: Okay, Your Honor.

9 At this time the defense renews it's motion for a directed
10 verdict.

11 We submit after all of the evidence is in, there has been
12 insufficient evidence even taking it in the light most favorable
13 to the State for this matter to be submitted the jury for it's
14 consideration.

15 We, therefore, respectfully request a directed verdict of
16 not guilty on the charge of murder, Your Honor.

17 THE COURT: For the reasons previously stated, the
18 evidence is just simply clearly that this defendant took a 45
19 and went looking of rhe unfortunate deceased and found her and
20 by her on admission, quote-unquote, "I pulled the trigger".

21 It is a question for the jury.

22 Thank you.

23 Motion denied respectfully.

24 Anything further from the State?

25 MR. GRAUSTEIN: Nothing from the State, Your Honor.

1 THE COURT: All right.

2 I want to hear from you first thing in the morning about
3 the involuntary manslaughter thing, and as you do that, there is
4 a case in the last three years that I tried in Orangeburg where,
5 frankly, I did charge it and was reversed.

6 So, you may take a look at that case, too.

7 All right.

8 Thank you.

9 We are recess until 9:30.

10 And, incidentally, let me say this to the audience today.

11 You were most respectful to our proceedings. You abided by
12 my concerns of this morning, and I thank all of you for that.

13 We are in recess until 9:30 in the morning.

14 MR. GRAUSTEIN: Thank you, Your Honor.

15 MR. HAZZARD: Thank you, Your Honor.

16 THE COURT: One minute. Let me talk with the lawyers.

17 We are off the record.

18 (The Court adjourns the trial of this case for the evening
19 and thereafter resumes the trial of this case on Wednesday at
20 9:53 a.m.)

WEDNESDAY, FEBRUARY 9, 2011

CHARGE CONFERENCE

THE COURT: Good morning, ladies and gentlemen.

Please be seated.

Have the defendant - - the defendant is in the courtroom.

All right.

On yesterday, we had certain requests for charges. I was concerned about the defendant's request to charge as to involuntary manslaughter, and I asked that you research that issue for me, Solicitor.

MR. GRAUSTEIN: Yes, Your Honor.

THE COURT: Let me hear from you.

MR. GRAUSTEIN: I don't believe a jury charge of involuntary manslaughter is proper in this case. Numerous case law, State vs. Rivera being the most recent case states that involuntary manslaughter is - - if the defendant was engaged in unlawful conduct that would not naturally intent to cause death or great bodily harm.

Here the defendant was clearly involved in unlawful conduct. She had a loaded piston on her person which at the time she was seventeen. That in and of itself is unlawful.

The evidence is that she produced that weapon. Used it in a threatening manner. She struck the victim with it, all of this with a loaded weapon. She pointed it, presented it. That's an unlawful conduct, ah, and a loaded 45 most certainly

1 would naturally lead to someone getting killed or suffering
2 great bodily injury.

3 THE COURT: Counsel for the defense, what's concerning
4 me here, I understand that involuntary manslaughter can be
5 charged under certain circumstances, particularly when even an
6 unlawful act not tending to create great bodily harm or death
7 but the evidence is uncontradicted here that your client sought
8 out the deceased. Went to the car with a loaded 45, and,
9 obviously, a loaded 45 is likely to cause serious bodily harm or
10 death.

11 What is your response to that?

12 You just can't go looking for somebody, and it's
13 uncontradicted that she did it with the gun in her hand.

14 MR. HAZZARD: Well, Your Honor, actually, it is
15 contradicted.

16 THE COURT: Where?

17 MR. HAZZARD: The testimony of Tamika Skipper.

18 Ms. Skipper's testimony as I am sure the Court recalls is
19 that she saw Ms. Johnson two doors down from the individuals in
20 the car. She saw the car doors open. She saw the individuals
21 exit the car and proceed towards Ms. Johnson in a threatening
22 manner.

23 THE COURT: The problem is your client admits that not
24 only she had the gun but she said, "I shot her."

25 And further apologized for it under oath.

1 MR. HAZZARD: And I understand that, Your Honor.

2 However, if the Court looks at State vs. Gibson and State
3 vs. Cole, those cases require that if there is any evidence
4 tending to show something, then the defendant is entitled to the
5 charge.

6 It's not about whether the evidence is contradicted. It's
7 not about the weight of the evidence, and, in fact, when it
8 comes to a jury charge or a defense charge, it is the same
9 weight the Court places on it as when it is a motion for a
10 directed verdict.

11 The Court is not concerned with whether it is contradicted.
12 You're not concerned with the weight of it. They're concerned
13 with the existence of it.

14 THE COURT: What is your position over the last witness
15 to which he referred? I don't think she said what you said she
16 said.

17 MR. GRAUSTEIN: Your Honor, I would say she did, in
18 fact, not contradict the statements that the defendant had the
19 gun out and, in fact, struck.

20 In fact, she was specifically asked if she could say the
21 defendant did not strike the victim first, and she said she
22 could not say that.

23 THE COURT: Counsel - - -

24 MR. HAZZARD: And the inference in the situation,
25 therefore, for it not to be contradictory would be that the

1 women were in the car; that Ms. Johnson allegedly approached
2 them. Struck Ms. Burroughs. Then Ms. Burroughs and the other
3 women jump out of the car; that then Ms. Johnson somehow
4 retreats. They get back in the car, and then Ms. Skipper sees
5 them exit the car a second time.

6 I would submit that is something not believable.

7 THE COURT: I understand.

8 MR. HAZZARD: Therefore, the statement - - -

9 THE COURT: Counsel for the defendant, you are very
10 eloquent arguer - - attorney and I accept that.

11 The facts in this case are uncontradicted, basically, and
12 I'll let the jury make that determination, that this defendant
13 sought that unfortunate victim for three days, and on the
14 unfortunate day in question loaded herself with a 45 weapon.
15 Went to that car, and there was some scuffle but killed her.

16 If the Supreme Court wants to say an involuntary
17 manslaughter is appropriate in a case like that, they can have
18 at it but I don't think it is.

19 Now - - -

20 MR. GRAUSTEIN: Well, Your Honor, actually, the Supreme
21 Court has already said on several occasions that is an
22 appropriate situation for the charge.

23 THE COURT: Not on the cases that I've read but, anyway,
24 we've had enough discussion on that.

25 Now, you've also asked for a manslaughter charge which I am

1 going to do. It's a close question on that.

2 You've asked as I understand it for a self-defense charge.

3 MR. HAZZARD: That is correct.

4 THE COURT: I specifically deny that because you can go
5 to - - what is my case in Charleston - - the Slater case.

6 The defendant can't go to the scene of a difficulty, then
7 claim self-defense.

8 So, I respectfully deny your motion to charge self-defense.

9 MR. HAZZARD: I understand that, Your Honor.

10 I would point out for the record, and I have handled - -
11 hand your Law Clerk a Memorandum of Law for the Court's review.

12 THE COURT: I've read it, and I thank you for that.

13 MR. HAZZARD: I would ask that the Court mark it as a
14 Court's Exhibit - -

15 THE COURT: I will do that.

16 MR. HAZZARD: - - for the purposes of appeal.

17 The distinction with regard to the Slater case is that in
18 the Slater case it was completely uncontroverted that Mr. - - -

19 THE COURT: Counsel, as I understand. My jury is
20 waiting. I've heard enough on this issue.

21 I've made my decision. I'm not going to charge involuntary
22 manslaughter.

23 MR. HAZZARD: So, the Court is indicating that it will not
24 allow me to complete my argument in this regard.

25 THE COURT: No, sir.

1 I'm not telling you how to argue. I'm just telling you
2 that involuntary manslaughter will not be a charge by me in this
3 case.

4 MR. HAZZARD: Okay.

5 Thank you.

6 There are just a couple of things I'd like to put on the
7 record at this time.

8 THE COURT: You may do so.

9 MR. HAZZARD: Thank you very much, Your Honor.

10 With regard to involuntary manslaughter, Your Honor, the
11 Supreme Court has ruled on many occasions - - -

12 THE COURT: No, sir, I've told you now. I've read the
13 cases. I'm satisfied with it. I'm not going to charge
14 involuntary manslaughter and I need no further argument on that
15 issue.

16 You may submit any type of memorandum for the record that
17 you care to.

18 Your argument is succinctly stated in the memorandum
19 provided me this morning which I am making a Court's Exhibit.

20 MR. HAZZARD: Yes, sir.

21 THE COURT: All right, sir.

22 MR. HAZZARD: Note the defense objection for purposes of
23 an appeal.

24 THE COURT: All right, sir.

25 (The Court Reporter accepts the Memorandum of Law as

1 Court's Exhibit #9.)

2 THE COURT: I am honored, this morning, to have with me
3 the Socastee High School Mock Trial Unit.

4 Who is the teacher here with them, please?

5 Please stand.

6 (The teacher stands and identifies herself and thanks the
7 Court for allowing them to be present.)

8 THE COURT: It's my pleasure, and who is the coach of
9 this distinguished team?

10 (The Coach stands and identifies herself.)

11 THE COURT: Delighted to have you.

12 Let me tell you my policy.

13 First, they need to know that - - you may be seated.

14 This is a murder case, and the facts in the case will be
15 derived from summation of counsel.

16 I'm going to charge the law of this case in the beginning.
17 Then we'll have summation from the Solicitor and the counsel for
18 the defense after which the jury will begin their deliberations.

19 For the teacher and the coach, it is my policy if you have
20 given of your time to bring this team to my Court, I'm going to
21 give my time to your team at the conclusion of summation to go
22 to chambers so we can discuss the case, and I'll be glad to
23 answer any questions that your team may have.

24 Is your schedule such that you are going to be with us this
25 morning?

1 THE COURT: Okay. You may be seated.

2 I'm always delighted to have these students in my
3 courtroom, particularly the Mock Trial Teams of the various high
4 schools. That is a national competition, and as I recall. You
5 may correct me.

6 Didn't the Socastee High School Team win the national
7 championship three or four years ago?

8 TEACHER: We won it in 1986.

9 THE COURT: I thought that you did.

10 So, it's an outstanding group of people that we are all
11 proud of and should be.

12 As is my policy, at the appropriate time during this case,
13 probably while you are deliberating, I will bring this
14 distinguished group of young students to my chambers, and
15 they'll be permitted to have any questions and answers regarding
16 the trial of this case, and I'm always so pleased to do that.

17 CHARGE OF THE COURT

18 THE COURT: As we begin, I want to thank all of you for
19 your services in the past several days.

20 I've noticed that all of you - - some have taken notes.
21 All of you have listened very intently to all of the questions
22 and testimony, and, Madame Foreman, you have presented to me
23 several questions which were, indeed, appropriate.

24 All of these are good examples of a Horry County jury
25 intent on performing their juries, and all of us involved in the

1 trial of this case including the litigants and judges thank you
2 for your valuable services in this case.

3 Now, ordinarily, in our proceedings we have final summation
4 of counsel first and then we charge the jury but over the years,
5 jurors have said to me, "Judge Cottingham, I wish you would have
6 told us what the law was first. I believe we could have
7 followed the position of counsel better."

8 And that simply makes sense to me.

9 So, by and with the consent of the attorneys here, I am now
10 going to charge you, and even after summation, I'll have some
11 additional remarks regarding this case but I've used this
12 procedure. I've been on the bench twenty-seven years, now, and
13 I've used this procedure, I suspect, the last fifteen, and it,
14 apparently, works.

15 So, either I or my Law Clerk here, Josh, will be giving you
16 the instructions in the law as it relates to the various issues.

17 You, of course, based on your findings of the facts, may
18 reject or accept some or all of these propositions of law. It
19 depends on what your findings of facts will be but this is the
20 law relative to the various issues that I have determined are
21 appropriately raised in the trial of this case.

22 Now, Madame Foreman, and members of the jury, as you are
23 well aware, the State of South Carolina charges this defense
24 with the crime of murder. The indictment has been read to you.
25 So, I will not go into the allegations. Of course, the

1 attorneys will detail those various allegations to you in their
2 summation.

3 Now, to this indictment, this defendant has pled not guilty
4 which places upon the State of South Carolina the burden of
5 proving the defendant guilty, if they can, beyond a reasonable
6 doubt.

7 A person charged with committing a crime in South Carolina
8 is never, ever required to prove herself innocent. It is the
9 State's burden.

10 I charge you that it a vital important rule of law of
11 evidence that the defendant in a criminal trial no matter how
12 great or serious may be the offense with which he is charged
13 must always be presumed innocent until the guilt has been
14 established to your satisfaction beyond a reasonable doubt.

15 This presumption of innocence remains with the defendant at
16 all times from the moment of her arraignment throughout the
17 trial until you, the jury, have upon the testimony and evidence
18 presented reached a verdict of guilty beyond a reasonable doubt.

19 For it is the solemn duty, Madame Foreman, of this jury if
20 not clearly convinced of her guilt beyond every reasonable doubt
21 to the contrary to acquit the defendant.

22 And so it is, and I emphasize to you, the burden of proof
23 is upon the State of South Carolina to establish evidence to
24 your satisfaction the guilt beyond a reasonable doubt of this
25 defendant here on trial for murder.

1 Now, as I've indicated, let's talk about the definition of
2 beyond a reasonable doubt.

3 The State has the burden of proving the defendant beyond a
4 reasonable doubt, as I have stated on several occasions. Some
5 of you may have served as jurors in civil cases where you were
6 told that it is only necessary to prove that a fact is more
7 likely true than not. In criminal cases, the State's proof
8 must be more powerful than that. It must be beyond a reasonable
9 doubt.

10 Ladies and gentlemen, proof beyond a reasonable doubt is
11 proof that leaves you firmly convinced of the defendant's guilt.

12 There are very few things in this wide world that we know
13 with absolute certainty, and in criminal law does not require
14 proof that overcomes every possible doubt.

15 If based on your consideration of the evidence you are
16 firmly convinced that the defendant is guilty of the crime
17 charged, you must find her guilty.

18 If, on the other hand, you think that there is a real
19 possibility that she is not guilty, you must give her the
20 benefit of that doubt and find her not guilty.

21 And then I will have provided for you appropriate verdict
22 forms, Madame Foreman.

23 Now, ladies and gentlemen, I touched on some of these
24 things at the beginning of trial but I want to emphasize them
25 again.

1 Ladies and gentlemen of the jury, under the Constitution
2 and Laws of South Carolina, you are the finders of the facts - -

3 -
4 MADAME FORELADY: I'm sorry, sir.

5 Could you please turn the light down a little bit. It's
6 shining in some people's eyes.

7 THE COURT: Is that better?

8 MADAME FORELADY: Yes, thank you.

9 THE COURT: Thank you.

10 Under the Constitution and Laws of South Carolina, you are
11 the finders of the facts in this case. I do not have the right
12 to pass upon any of the facts in the case, and I have no opinion
13 as to facts.

14 If any word, ruling, mannerism of mine might tend to
15 indicate to any of you how I feel about any factual situation,
16 please disregard that. I am not entitled to a factual opinion,
17 and I have none.

18 I am permitted to say to you that you are also the judges,
19 the sole judges of the credibility meaning the reliability of
20 the witnesses who have been instructed in this case.

21 In passing upon their credibility you may take into
22 consideration many things.

23 Of course, you always use and bring into court your common
24 sense to bear based on your life experiences in judging
25 credibility and believability of what people tell you.

1 Some of the things that you might consider, and it's for
2 you to determine, is the appearance and manner of the witness
3 sometimes referred to as the demeanor of the witness.

4 You may consider. Was a witness forthright or hesitate?

5 Did the witnesses testimony, was it consistent or did it
6 contain discrepancies?

7 You may, if you choose, consider. What was the ability of
8 a witness to know the facts about which he or she has testified?

9 Another thing: Did the witness have a cause or reason to
10 be biased or prejudiced in favor of the testimony that he or she
11 has given?

12 Was the testimony of the witness corroborated or made
13 stronger by other testimony in evidence or was it made weaker or
14 impeached?

15 Madame Juror, you have a right to believe all of what a
16 witness says or small a portion of none depending on your view
17 of that witness' testimony. You may believe all of a witness'
18 testimony or none as I have indicated.

19 Most certainly you do not determine the truth or falsity of
20 a matter by counting up the number of witnesses who may have
21 testified for one side or the other.

22 Throughout this entire process you have but one single
23 objective, just one, and that is to seek the truth, to seek the
24 truth regardless of from what witness that testimony may have
25 been derived - - to seek the truth.

1 All of these things you will consider bearing in mind that
2 you must give the defendant the benefit of every reasonable
3 doubt.

4 Now, by the same Constitution and law which makes unto you
5 the finders of the facts and of the evidence as I have discussed
6 with you, I am the judge, made the sole judge with regards to
7 the instructions in the law, and you are required to accept the
8 law as I give it to you. Even though you or I for that matter
9 might disagree with what the law is, under your oath please
10 accept the law as I charge it to you remembering that you find
11 the facts as you believe them to be and apply those facts to the
12 law of this case.

13 Now, at this point, I'm going to instruct you with regards
14 to the specific indictment and charges relative to this matter.

15 Now, as I have indicated to you and you are well aware, the
16 State has charged in this indictment that this defendant is
17 guilty of the crime of murder. So, it becomes necessary to
18 instruct you as to the law of that crime in South Carolina.

19 Now, under the principle recognized in South Carolina that
20 a greater crime includes a lesser, this indictment not only
21 includes the charge of murder but also the charge of
22 manslaughter. So, I must also charge you as to that crime.

23 Let's first talk about the definition of murder.

24 What is murder by definition?

25 Well, murder may be defined as the wilful felonious killing

1 of a human being by a human being with malice aforethought.

2 Thus, in order to convict of murder, the State must prove
3 not only the killing of the deceased by the defendant but that
4 it was done with malice aforethought. Such proof must be
5 beyond a reasonable doubt.

6 Let's talk about manslaughter.

7 What is manslaughter by definition?

8 Manslaughter may be defined as the felonious killing by a
9 human being without malice in sudden - - sudden heat and passion
10 upon a sufficient legal provocation so that as you can see. The
11 difference between manslaughter is the presence or absence of
12 malice, malice being present in murder but not present in
13 manslaughter. Malice is the difference.

14 Now, having spoken to you about malice, let me give you the
15 legal definition of that term.

16 Malice, ladies and gentlemen, is a word suggesting
17 wickedness, hatred, a determination to do what one knows to be
18 wrong without just cause or excuse or legal provocation.

19 Malice need not be in the mind of the one doing the killing
20 any particular length of time before the act of killing to
21 render the killing murder. If it is present in the mind of the
22 one doing the killing any length of time before the act, then
23 its presence would be sufficient to render the killing murder.

24 Malice is said to be expressed when there is manifested a
25 violent, deliberate intention unlawfully to take away the life

1 of another human.

2 Malice may be implied where one intentionally and
3 deliberately does an unlawful act which he or she then knows to
4 be wrong and in violation of her duty to another.

5 Malice may be implied when no excuse or legal provocation
6 for the killing appears and when the circumstances attending the
7 killing show an abandoned heart, a malignant heart fatally bent
8 upon mischief.

9 Such implications or inferences are not conclusive, and
10 you, the jury, depending upon your view of the evidence may
11 accept or reject the same.

12 The law says if one intentionally kills another with a
13 deadly weapon, the implication of malice may arise if facts are
14 proven beyond a reasonable doubt sufficient to raise an
15 inference of malice to your satisfaction. This inference would
16 simply be another evidentiary fact to be taken into
17 consideration by you, the jury, along with other evidence in the
18 case, and you may give it such weight as you in your judgment
19 determine it should receive.

20 In other words, the inference of malice from the use of a
21 deadly weapon is simply an evidentiary fact that you may take
22 into consideration along with all of the other evidence in this
23 case.

24 Madame Foreman, and ladies and gentlemen, if, and I say
25 that advisedly, if the evidence should show under what

1 circumstances a shot was fired or a blow delivered which took
2 the life of another, then you, the jury, would have to determine
3 whether under such circumstances such an act was malicious.

4 Now, earlier in this charge, I told you that the defendant
5 is charged with murder and under the theory that the lesser
6 includes the greater which can be manslaughter depending on your
7 findings of the facts, it now behooves me to charge you the law
8 of manslaughter for your consideration.

9 Whether or not manslaughter is or is not appropriate is for
10 you, the jury, to determine as the sole and only finders of the
11 facts.

12 I charge you the law of manslaughter to the extent that
13 your deliberations shall, if ever, may get you to that view.

14 Now, manslaughter is, as I have already indicated, the
15 unlawful or felonious killing of a human being without malice in
16 sudden heat and passion upon a sufficient legal provocation.

17 A legal provocation is some act which either alone or in
18 connection with words or circumstances is calculated to throw
19 one into a passion.

20 Now, the sudden heat and passion upon a sufficient legal
21 provocation which mitigates or reduces down a felonious killing
22 from murder to manslaughter, while it need not dethrone or
23 eliminate reason entirely, it must be such as would naturally
24 disturb or sway the reason of an ordinary person and render her
25 mind incapable of cool reflection and produce what according to

1 human experiences may be called an uncontrollable impulse to do
2 violence.

3 Now, in connection with what I have instructed you about
4 manslaughter, that is as to whether or not reasonable time for
5 cooling has elapsed, you should take into consideration the
6 whole circumstances surrounding the difficulty. You should
7 consider the nature of the provocation, the defendant's physical
8 and mental constitution, her condition in life and particular
9 situation at the time of the affair, her education and habits,
10 her conduct, manner and conversation throughout the transaction.

11 In a word, all pertinent circumstances may considered and
12 the time in which an ordinary person in like circumstances would
13 have cooled. That is reasonable time.

14 Incidentally, Madame Foreman, I am having my Law Clerk
15 prepare a copy of all of these instructions which by consent of
16 counsel for the State and the defense will be permitted to go
17 into the jury room during your deliberations.

18 MADAME FORELADY: Thank you.

19 THE COURT: So, you will have a copy of all that I have
20 prepared for you in connection with the trial of this case.

21 And let me digress a moment to say that there will be, as
22 you know, pencil and paper provided to you in the jury room, and
23 if at any time, Madame Foreman, you or any member of your
24 distinguished group has a question, please do as yesterday.
25 Write that question down. Let a bailiff know, and I will answer

1 if at all possible.

2 MADAME FORELADY: Thank you.

3 THE COURT: Now - - all right.

4 Now, I'm going to charge you the law with regards to
5 accidental killing.

6 I charge you further that where death results from an act
7 of a person engaged in a lawful enterprise with no intent on the
8 part of such person to do bodily harm or injury to another and
9 under the reasonable belief that no harm will result and without
10 negligence in the doing of the act, the death is the result of
11 an accidental killing, and such person could not be convicted of
12 involuntary manslaughter or any other criminal offense.

13 The burden is upon the State to establish beyond a
14 reasonable doubt that the death involved in this case was not
15 the result of an accidental killing.

16 I charge you that one cannot be convicted of criminal
17 homicide if the evidence shows that the death was due to an
18 accident. A killing done through an accident presupposes that
19 the accident was brought about through know fault of the person
20 charged with the killing.

21 The killing of a human being by misadventure is the
22 accidental killing of another when the slayer - - when the
23 slayer is engaged in a lawful act unaccompanied by criminal or
24 reckless conduct.

25 An accidental killing that occurs after the exercise of

1 care required by law to prevent its occurrence.

2 Homicide by misadventure or accident is distinguished from
3 criminal homicide in that it happens in consequence of a lawful
4 act not done with reckless disregard to the safety of others.

5 Criminal homicide happens in consequence of an unlawful act
6 done with disregard with the safety of others.

7 To constitute a misadventure or accidental killing in a
8 homicide, three requisites must be met.

9 One, there must have been no intention to do harm.

10 Two, proper precaution must be taken to avoid mischief.

11 Three, the act from death resulting must have been lawful.

12 If one imposes the defense of homicide by misadventure or
13 accident, such a defense would not be an affirmative defense and
14 the burden is not on the defendant to prove a thing.

15 On the other hand, the State is required to prove beyond a
16 reasonable doubt that the killing of the human being was not
17 caused by misadventure or accident.

18 I charge you that if the death of the deceased happened in
19 such a manner that it was not the proximate, direct result and
20 consequences of the defendant's actions, then the defendant
21 would be entitled to an acquittal of not guilty.

22 Now, with regards to evidence, there are two types of
23 evidence which are generally presented during a trial - - direct
24 evidence and circumstantial evidence.

25 Direct evidence is the testimony of a person who asserts or

1 claims to have actual knowledge of a fact such as an eyewitness.

2 Circumstantial evidence is proof of a chain of facts and
3 circumstances indicating the existence of a fact.

4 The law makes absolutely no distinction between the weight
5 or value to be given to either direct or circumstantial evidence
6 nor is a greater degree of certainty required of circumstantial
7 evidence than of direct evidence.

8 You should weigh all of the evidence in this case. After
9 weighing all of the evidence if you are not convinced of the
10 guilt of the defendant beyond every reasonable doubt, you must
11 find the defendant not guilty.

12 Now, you will recall in the testimony presented during the
13 case there was an alleged statement or video of the defendant.
14 In that connection, I charge you as follows.

15 While the Court generally determines the admissibility of
16 evidence, I instruct you that as regards any alleged statement
17 made by the defendant, you, the members of the jury, make the
18 ultimate determination of whether or not the defendant made such
19 statement, and if she did make the statement, was the statement
20 made by the defendant voluntarily and of her own free will and
21 accord?

22 And, finally, just what weight, if any, should be given to
23 any alleged statement.

24 I charge you that you must determine if the alleged
25 statement was a product of an essentially free and unconstrained

1 choice by its maker, the defendant.

2 If you determine it was, and the burden is upon the State
3 to prove this fact as all other facts beyond a reasonable doubt,
4 then you may give the statement such further consideration as
5 you deem proper.

6 If you determine the alleged statement was not the free and
7 voluntarily willed expression of the defendant, then you must
8 not consider the statement at all.

9 In determining whether a defendant's will was overcome in
10 obtaining a statement, you should consider both the
11 characteristics of the accused, the details of the interrogation
12 which is referred to in the law as the totality of the
13 circumstances.

14 Some of the facts, ladies and gentlemen, that you may
15 consider are the age of the accused, her education or lack
16 thereof, her mental ability or capacity, her IQ or intelligence
17 or otherwise background and environment, the advise or lack
18 thereof to the accused of her constitutional rights including
19 but not limited to the safeguards known as the Miranda warnings
20 concerning her right to remain silent, that statement could be
21 used against her in a court of law, her right to have an
22 attorney present, if indigent and she could not afford a
23 lawyer, then a lawyer would be appointed to represent her
24 without any costs.

25 Other facts to consider are the place and length of the

1 detention and the nature of the questions.

2 You, the jury, must carefully scrutinize all of the
3 surrounding circumstances before you give any weight to an
4 alleged statement.

5 You must be satisfied beyond a reasonable doubt that the
6 statement was made by the accused uninfluenced by promise of
7 reward, threat or diminution of value.

8 Now, ladies and gentlemen, you twelve have been selected as
9 fair and impartial jurors sworn to impartially try and determine
10 the facts of this case, and when you comply with your oath to do
11 so, then no one will have a right to criticize your verdict, and
12 you would have fully discharged your duty as jurors.

13 You must not be influenced by opinions or expressions of
14 opinions, if any, which you may have heard on the outside but
15 you are to decide this case according to the testimony that you
16 have heard from the lips of the sworn witnesses and other
17 evidence which has been introduced.

18 Now, at the appropriate time after summation of
19 distinguished counsel, I will give you a verdict form which has
20 three to it.

21 Whatever your verdict is as to any issue, it must be the
22 unanimous verdict of all twelve.

23 There is a verdict of "We find the defendant guilty of
24 murder."

25 There is a second, or, "We find the defendant guilty of

1 manslaughter."

2 Or, "We find the defendant not guilty."

3 Whatever your verdict is, and it's your verdict, you would
4 sign your name and we will accept it and read it in the
5 courtroom.

6 Madame Foreman, you're very -- you've been very patient in
7 this lengthy text that I've given you. I'm going to let you go
8 the jury room and break just a few minutes.

9 After counsel has final summation, all of the evidence will
10 be sent to the jury room along with my charge to you.

11 Please go to the jury room for just a few minutes and
12 relax. I'd like to call you back as soon as possible.

13 (The jury retires to the jury room at 10:42 a.m.)

14 THE COURT: Has the jury departed the courtroom?

15 BAILIFF: Yes, Your Honor.

16 THE COURT: All right.

17 Any exceptions or additions on behalf of the State?

18 MR. GRAUSTEIN: No, Your Honor.

19 THE COURT: On behalf of the defendant?

20 MR. HAZZARD: Your Honor, yesterday, we discussed a King
21 charge, and I believe the Court indicated it was going to submit
22 that charge to the jury, the King charge regarding between the
23 greater and the lesser, if there is a reasonable doubt, the jury
24 must resolve it in behalf of the lesser offense.

25 THE COURT: Well, I told you I would do it. Our Supreme

1 Court has said that's not - - that's not now necessary but I
2 told you I would do that, and I will.

3 Hand me the precise language, and I'll do that at my
4 concluding remarks.

5 MR. HAZZARD: I will find that for you.

6 THE COURT: I may have it here.

7 No other objections?

8 MR. HAZZARD: No other from the defense other than those
9 already - - those already mentioned.

10 THE COURT: I see.

11 All right.

12 And we have agreed that they will have the charge in the
13 jury room.

14 All right, sir.

15 Now, let me ask you this.

16 The State is entitled to both an opening and closing. Do
17 you want to just have the first argument.

18 First, I'll ask you.

19 You want both or one?

20 MR. GRAUSTEIN: Just one, Your Honor.

21 THE COURT: All right, sir.

22 Suit you?

23 MR. HAZZARD: That suits me, Your Honor.

24 THE COURT: All right, sir.

25 Then, the defense will go first followed by the State.

1 SUMMATION BY MR. HAZZARD

2 MR. HAZZARD: Thank you, Your Honor.

3 May it please the Court.

4 Good morning.

5 I told you when we talked on Monday afternoon, the first
6 thing I said was, "This is not a murder case." That's the first
7 thing I told you.

8 Now, the judge has told you what the murder are: Unlawful
9 killing of another; malice aforethought. Those are the first
10 three elements of it.

11 And if I state anything that is incorrect regarding the
12 law, listen to what the judge has already charged you. As he
13 indicated, you will have a copy of his charge in the jury room
14 for your consideration if you need go back and look at anything.

15 Also, with regard to any portion of evidence that you have
16 heard - - anyone's testimony, any exhibits that have been
17 admitted into evidence - - if you need or want to review them
18 again, they will be made available to you by the Court but this
19 is not a murder case.

20 What did the judge tell you? He said, "Murder includes
21 malice."

22 What is malice? Intent.

23 Now, the State has the burden of proving each and every
24 element of the offense charged, each and every element, and that
25 includes malice. That includes intent to do harm.

1 Now, who did the State bring to you as witnesses to prove
2 this malignant, this intentional act? Well, they bring to you
3 Teresa Cox, and what was Ms. Cox's testimony in part?

4 She said, "When I talked to Detective John King less than
5 thirty minutes after the incident - - ", what did she tell him?

6 "I don't think Brittany meant to shoot anyone. In fact, I
7 think she thought she fired the gun up in the air."

8 Is that intent and deliberateness or is that mistake and
9 accident?

10 Two days after the incident, Detective King and Detective
11 Rodmaker go to Joanne Davis' house, one of the other individuals
12 who was in the car with Ms. Burroughs, and what does Joanne
13 Davis testify that she told Detective King two days after the
14 incident?

15 "I don't believe Brittany intended to shoot anyone."

16 Is this a malice, intentional act or is this an accident?
17 Is this something that is unintentional?

18 Now, there has been testimony also from Ms. Davis that
19 there was a struggle over the weapon, okay?

20 And, in fact, I asked Detective King. I said, "Did anyone
21 - - ", now, let's back up a second.

22 What did Detective King tell you?

23 He said, "I made the charge of murder based on testimony or
24 statements of two people: Ms. Cox and Ms. Davis, the same two
25 people who said it was unintentional or accidental.

1 And I asked him. I said, "Well, John." I call him John
2 because I've known him for several years, not out of any
3 disrespect because I've known him a long, long time.

4 I said, "John, did anyone during your investigation tell
5 you that there was any type of struggle which caused an
6 accidental discharge of a firearm?"

7 And what did John say? He said, "No, nobody told me
8 that."

9 And I even tried to give him a way out. I said, "John, is
10 it that no one said it or is it that you don't remember?"

11 And I believe as I recall his response was, "No, nobody
12 ever said that."

13 But, then, Ms. Davis gets on the stand, and what does she
14 testify to? That on at least and I believe five occasions
15 during her discussion with Detective King, she says, "Yeah,
16 there was a struggle over the weapon. Monica had it in her
17 hand. Brittany had her hand on it. The gun went off. They
18 were standing right there together. They were in what we refer
19 to as close combat at the time the weapon was discharged."

20 So, even taking this case from the State's perspective, is
21 this an intentional action or is this an accident?

22 Now, I will not - - I will say this.

23 Once Detective King makes this charge, he's kind of stuck
24 with this charge. So, I do not - - I do not particularly fault
25 him with trying to put in the best possible light but there is

1 no question what he testified to you under oath and what was
2 subsequently shown to be something that was not as correct as it
3 could have been.

4 Now, another thing that strikes me about the State's case.
5 Who do they present next? They present Specialist CSI Cestare,
6 and the main thing I got out of him is, basically, he said it
7 was his job. He collects evidence, things of that nature, and,
8 in fact, he is the supervisor of it.

9 So, obviously, he's been doing it a while. He does a good
10 job of it.

11 What struck me with him is I asked him, I said, "Well, your
12 records indicate that there was a gunshot residue test performed
13 on Ms. Burroughs' hands."

14 And he said, "Yeah, I performed the test. I took the swab,
15 and I used the dauber swab. Then I used the other swab, and I
16 sealed it up like I was supposed to, and I submitted it back to
17 the appropriate agency which would be the Conway Police
18 Department."

19 I wonder why you have not received any evidence or
20 testimony regarding the results of that test.

21 I submit to you that they were never sent to the South
22 Carolina Law Enforcement Division for analysis.

23 Now, wouldn't that be information and evidence that would
24 be significant to you in reaching your determination of is this
25 a struggle as Ms. Davis says and an accidental discharge of a

1 firearm or whether it's something different, whether it's a
2 potential shooting?

3 Now, unfortunately, I do not have the authority to require
4 the police to send something to the Law Enforcement Division for
5 analysis but that is evidence that the State has failed to bring
6 you in this case that I submit would be very significant for
7 your consideration even looking at things from the State's
8 perspective of what occurred.

9 Then you have Detective Rodmaker who got on the stand for
10 a minute, and, basically, all he talked about was he was the
11 chain of custody witness despite of the fact that he is or was
12 at that time because John is retired now, um, he was John's
13 partner. He didn't testify to a whole lot, and that's okay
14 because Detective King pretty much covered most of it.

15 He was a chain of custody witness. He talked about the
16 projectile and shell casing. The projectile is simply the
17 bullet, and the shell casing is the shell casing that was on it.

18 Um, but I asked him something that you heard me ask just
19 about everybody, and you probably even wondered why or got a
20 good laugh out of it which is, "Wasn't it a very hot, humid day
21 on June 24, 2008?"

22 And he said, "Yes, it was."

23 Well, at least he didn't deny it was.

24 And you might have asked yourself the whole time, "Well,
25 why in the world does he say this? Why does he keep asking

1 these people this, something that is obviously? It is hot on
2 June 24th?"

3 The reason being also looking at the case the State has
4 brought you is, remember. From what the State says and for
5 this charge to truly be murder, you have to believe that Ms.
6 Burroughs, Ms. Davis and Ms. Cox, despite the fact that Ms.
7 Davis lives there in Huckabee Heights. Ms. Burroughs who is
8 her stepsister lives, basically, in the adjoining or adjacent
9 nearby buildings, and they have both have buildings and
10 apartments with air conditioning in them, that when they receive
11 a phone call from Ms. Cox that she's going to come through on
12 her way to work, they going to sit outside in the hot sun in the
13 car for an hour and that while they're just sitting there baking
14 in this car that this girl who had just turned seventeen less
15 than three weeks before that runs up and just starts beating on
16 Ms. Burroughs.

17 That's their case. That's what they say, and if you
18 believe that that's how it could have happened, then you have
19 every right to convict Brittany of murder if you believe that
20 story.

21 I suggest to you that it is unbelievable, uncredible and
22 incomprehensible because we even got into a little situation and
23 the Prosecutor objected.

24 When I asked, I said, "Okay, Ms. Davis, you said that y'all
25 were sitting there with your legs hanging out, right?"

1 Because they were talking about, remember, "Brittany came
2 out of nowhere. She just came out of nowhere."

3 Okay?

4 Now, and I asked her. I said, "You got three people
5 sitting in a car, and if your legs are hanging out and if Ms.
6 Burroughs is facing this way and Ms. Cox is facing that way and
7 you're in the backseat facing this way or that way, you pretty
8 much got all the angles covered, don't you?"

9 And there was an objection on that.

10 You see. It's the little things in a case that show you
11 where the truth lies.

12 My grandmother told me. Years ago, she said, "Lord have
13 mercy. You want to know which way the wind is blowing, don't
14 look at the big oak tree. Look at the little leaves on it.
15 That will tell you the way the wind is blowing."

16 Now, so, if you believe the State's case again, these three
17 ladies for reasons satisfactory only to themselves choose to sit
18 out in the hot sun for an hour, and while they're doing that,
19 Brittany just runs up on them.

20 Now, I would submit to you that it was more in light of
21 what Ms. Skipper tells you.

22 You all remember Tamika Skipper. She gave you that very
23 interesting background expose of what life in Huckabee Heights
24 is like and how many bootleggers you have and where they are
25 located.

1 What does Ms. Skipper tell you?

2 Ms. Skipper says, "I got home and Brittany and her son was
3 sitting on my porch."

4 "Well, Tamika, how far away is your porch from Monica
5 Burroughs' porch?"

6 It's, "I can see it one from the other, from one corner of
7 this courtroom to the other which might be twenty to thirty
8 yards."

9 Okay.

10 "What happened when you got home and saw Brittany and her
11 son on your porch?"

12 "I let them in, and I told her I was going to go, me and
13 Iesha, we was going to go to Subway but I gave her my key.

14 You know, because it's hot out here. We were talking to
15 some folks. Might not want to be out there talking to folks
16 while I'm gone.

17 So, if you want to go inside, here is the key. We'll be
18 back."

19 She comes back and what is Brittany doing, this person that
20 the State alleges is - - has this plan, this master plan to
21 murder because that's what she's charged with, murder, which is
22 the intentional action with malice aforethought planed out ahead
23 of time, okay?

24 This criminal master mind, what is she doing when Tamika
25 Skipper gets back? She is inside Tamika's apartment asleep,

1 asleep less than twenty to thirty minutes before this tragic,
2 unfortunate incident occurs.

3 Okay?

4 Now, what does Ms. Skipper have to do? She and Iesha have
5 go beat on the doors and the windows to wake Brittany up.

6 Yeah, and she was upset, and I don't blame her. If
7 somebody locked me out of my own house, I would be pretty ticked
8 off as well.

9 Well, Brittany finally wakes up. Rubs sleep out of her
10 eyes. Let's Tamika in. They eat. Sit around and talk a little
11 bit, and then what does Tamika say happens?

12 She says Brittany says, "Well, I'm going to go next door or
13 across the way to the bootlegger's."

14 And, Brittany, Lord knows, whatever you believe about her
15 as a person, you cannot say that she says things to make herself
16 look good.

17 She doesn't spin anything. She doesn't sugar coat
18 anything. What did Brittany tell you?

19 She got on this witness stand, and she said, "Yeah, I was
20 going next door to the bootlegger's because, yeah, I wanted to
21 get, you know, some blunt, you know, those little cigars you can
22 buy in the convenience stores."

23 You know, "Why did you need them, Brittany?"

24 "Because I was going to hollow them out and put some
25 marijuana in them, and I was going to smoke them."

1 Okay.

2 Now, "Tamika, you need anything?"

3 "Yeah. Bring me back some, you know, strawberry cookies."

4 And what was Brittany's response, "Man, you still hungry?"

5 You just ate, didn't you?"

6 You know, just ragging on a friend a little bit.

7 Does that sound like someone who is in a murderous rage,
8 someone who has malice and the intent to kill someone?

9 No.

10 What does Tamika tell you happens then?

11 She says Brittany walks out the door, walks, you know,
12 however many yards it is, you know, twenty, thirty yards, and
13 she says, Tamika says, "I came back out on the porch, and when
14 I came out on the porch, what did I see?"

15 Now, of all the people there: Ms. Cox; Ms. Davis; Brittany
16 Johnson, Tamika Skipper is the one person who has absolutely no
17 dog in this fight. She's got no ax to grind. You know, there
18 is no testimony that she had any bad blood or ill will with
19 Monica Davis - - Monica Burroughs, Joanne Davis or Teresa Cox,
20 but, yet, you know, she lives catty-cornered to them.

21 These are things that the Court has instructed you that you
22 will consider in determining whether to believe all of what a
23 witness has told you, part of what a witness has told you or
24 none of what a witness has told you.

25 These are things that you will consider: The demeanor,

1 the credibility and believability in determining whether you
2 will believe one witness against many, many witnesses against
3 one.

4 So, this person with no ax to grind, says, "When I look
5 out, Brittany is two doors at Ms. Saminthia's house, one of the
6 bootleggers. The jeep looks like it's about to back up. I
7 see the brake lights go on. The jeep stops. The doors fly
8 open, and they come out at her."

9 Okay?

10 Now, the Prosecutor, I thought it was interesting, that the
11 Prosecutor asked her. He said, "Oh, well. Nowhere in your
12 statement to Detective King when you talked to him, nowhere did
13 you tell him about the brake lights, did you?"

14 And she said, "Well, I don't see it in here. Maybe I
15 didn't."

16 But I noticed one thing he didn't question her about. He
17 didn't question her about seeing those car doors fly open, and
18 he didn't question her about seeing those women run out. He
19 never even came close to telling her on that witness stand that
20 she didn't tell that to John King because that's what she told
21 him, and that's what she's told him back in 2008 just like she
22 told me the same thing under oath with her hand on that Bible
23 yesterday.

24 Okay?

25 And that's the one person with no dog in this fight, no ax

1 to grind.

2 Now, she says that she sees the women approach towards
3 Brittany, that Brittany's kind of got her back to her but she
4 did say Monica is right there in front of her.

5 So, whether that is consistent with then the struggle
6 occurs over the gun, I do not know because I am under the same
7 impediment you are which is I wasn't there on June 24, 2008,
8 either. All I can go by is what all of the witnesses said, and
9 just like you try to piece it together, I try to piece it
10 together.

11 Okay?

12 Now, the gun discharges, and what did Tamika say.

13 "Everybody scatters."

14 And she says, "Brittany's just standing there, just
15 standing there in a daze."

16 And that's when she runs up to her and says, "Run, run."

17 And, in fact, she was very - - very nice about it as far as
18 her testimony on the stand when she actually told Detective King
19 when she ran up to Brittany and said four or five times, "Run,
20 bitch, run, run, run, run."

21 You know?

22 But, and, then, finally, Brittany does start running.

23 Now, again, this is not a murder case because to hear the
24 State tell it and to believe what the State says, you would have
25 to believe this seventeen year old at the time criminal

1 mastermind had malice in her heart when she walked out the door
2 and that her plan was, "Oh, I see Monica and at least two other
3 people," because I think if you listen to Brittany's tape
4 again, she says there are actually four people in the car, and
5 Tamika says, "Yeah, there's someone named Elizabeth there, too."

6 Who knows?

7 That at least three people are in the car.

8 And if she's just going to take that opportunity, three on
9 one, to run up and start a fight.

10 Not hold them at gunpoint, mind you, because in the light
11 of the State's testimony, how they perceived it, she runs up
12 with the gun. She's going to start pistol whipping Monica or
13 whatever, but still, it's still three on one.

14 But that's their thing that this criminal mastermind, she's
15 going to run over. Start a fight, one on three. Then, she's
16 just going to leave her son and run away on foot.

17 That is what they tell you the intention, the plan, the
18 murder was.

19 This is not a murder case.

20 Now, what did Joanne Davis tell you?

21 One of the things that she told you, she said, "That day
22 didn't start out a whole lot different than any other day.

23 I got up,"

24 or whatever she does in the morning, and handles her
25 morning business, and then she went by at precisely 1:14 in the

1 afternoon to wake up her sister as she does every day.

2 Says she woke her sister. Sister got ready. Sister then
3 got a phone call, and that's why they went back to Ms.
4 Burroughs' house, and that's where you get to the whole issue of
5 standing around outside or sitting in a hot car outside.

6 Now, you've heard a little bit of testimony, and that's one
7 thing about giving my argument to you first is I don't get to
8 come back and address anything he says. So, I got to try and
9 cover it all now, and I will try to be brief, and I thank you
10 for your attention.

11 But you've heard a little testimony about an inspection
12 man, okay? I'm assuming that, supposedly, Ms. Cox was saying
13 that someone from the Housing Authority was there to inspect Ms.
14 Burroughs' apartment.

15 Now, give that the credibility that you choose to as far as
16 that statement is concerned because to believe they were sitting
17 outside because the inspection man was inside, that then
18 presupposes according to her testimony and the State's case that
19 the inspection man when he walked outside while Monica Burroughs
20 was lying there on the porch, apparently, stepped over or around
21 her body and just was, like, "I got things to do."

22 And left.

23 That's what they bring you.

24 This is not a murder case.

25 Now, let's look at who has a reason and a possible motive

1 for causing an interaction. Was it Brittany or was it Ms.
2 Burroughs?

3 Now, there was no question that Brittany and Franklin Putty
4 Pyatt had had their issues the day before, you know.

5 Three occasions Brittany went back. Three occasions he'd
6 slap her around, you know?

7 And she'd leave, and that's when she went and got the gun.

8 But what did she tell you her intention was? She wanted to
9 shoot Putty.

10 What did she even tell you on that statement of hers?

11 She said, "It wasn't really ever about me and Monica. It
12 was about me and Putty."

13 You know?

14 She got on the stand and testified and said there which is
15 really mind boggling to me that there were times and incidences
16 and occasions where Brittany's child and Monica's children
17 played together.

18 So, now, if you've got that kind of bad blood with
19 somebody, I'm really not thinking you're going to let your
20 children around them.

21 And this is testimony uncontradicted by the State because
22 it's true. They can't contradict it.

23 But what did Brittany tell you?

24 She said that, um, back in March of '08, things had kind of
25 - - kind of calmed down between her and Monica, that Monica had

1 said at that point, "You know, I'm a twenty-nine year old woman.
2 Here you are, seventeen year old girl. If you got - -
3 whatever's going on between you and Putty, y'all need to keep it
4 between you and Putty."

5 And that's - - that strikes me as a very adult way of
6 handling things.

7 Now, when did Brittany tell you that that attitude changed?
8 After Monica found out that Brittany was pregnant with Putty's
9 child, and all of a sudden, everything changed.

10 And when did she say that Putty convinced her to have the
11 abortion? The abortion date May 19, 2008.

12 And what did Teresa Cox tell you? That Putty and Monica
13 had broken up at least two weeks before June 24, 2008, and that
14 the breakup was regarding Putty's relationship with Brittany.

15 See, now, there was no question at this point that
16 everybody knows that this relationship exists between Brittany
17 and Putty Pyatt because what does Brittany tell you?

18 She said, initially, "When Monica first confronted me about
19 it, I tried to keep Putty's secret."

20 You know, I said, "You must be mistaken. We're not doing
21 anything."

22 You know?

23 Because, obviously, that would not be good for Putty.

24 But, once you get around March, it's kind of hard to deny
25 to this woman, she runs into April and May and she's pregnant

1 and everybody knows she's pregnant, and everybody knows she's
2 seeing Putty Pyatt, and it's kind of hard to deny it at that
3 point, and at that point Brittany tells her and testifies that
4 Ms. Burroughs feelings are extremely, extremely hurt.

5 So, on June 24th of 2008, her and Putty had broken up. He
6 had been gone at least two weeks according to Teresa Cox. He's
7 gone because of Brittany. Who has got the motive to want to
8 start something, you know? Brittany who can have this wonderful
9 man, Putty Pyatt, who will beat her anytime she wants or Ms.
10 Burroughs who that relationship has ended because of Brittany's
11 action, and you have the added embarrassment in the community of
12 this girl taking your man from you, this girl being pregnant by
13 your man.

14 Okay?

15 So, maybe, when you're upset about something like that,
16 maybe it is worth sitting out in the hot car for an hour waiting
17 on somebody to come out of her friends apartment and walk across
18 the street because what if - - it was either Ms. Cox or Ms.
19 Davis told you.

20 They said, um, "We - - yeah, we know Brittany. We
21 recognized Brittany because she walks her son in the projects,
22 like, everyday.

23 So, you know, she's going to be around. If it ain't
24 raining, she's going to come by at some point. She's going to
25 come by."

1 Now, I thought it was interesting when Assistant Solicitor
2 Graustein asked Brittany on the stand regarding her statement to
3 the police, and let's talk about that statement for one second.

4 There's no question that after this occurred Brittany took
5 off running because, remember, that's part of the master plan
6 the State says she has to kill Ms. Burroughs and then just run
7 off on foot with no means of escape leaving her son behind.

8 Um, but there is no question that she fled, none
9 whatsoever, no. She's a seventeen year old girl, and what do
10 teenagers do when they're confronted trouble? Try to hide from
11 it. Try to run from it.

12 "What have I done? What - - what can come of this?"

13 So, she goes. She manages to hitchhike rides, make her way
14 to the Darlington/Hartsville area, and I think it's nine days
15 later or thereabouts on July 2nd, she's picked up by the
16 Marshals, and the Marshals bring her back to Conway.

17 And what did Brittany tell you? She said, "They brought
18 me in, and one of the detectives, ah, the white guy, not
19 Detective King but the other guy, he talks to me away from the
20 cameras."

21 And he says, "Well, you know, I went to school with your
22 momma, and, you know, we need you to just tell us, you know,
23 what we need to know. You know, just tell us. Just say what
24 happened."

25 I don't know, and that will be something for your

1 consideration as the judge said when you're considering
2 someone's statement is were they promised anything, were they
3 threatened in anyway.

4 I don't think Brittany was threatened. I think they
5 probably told her, "You know, look. We know what happened
6 already. You know, because, after all, we've talked to Ms. Cox
7 and Ms. Davis. We know what happened. So, just give us a
8 statement that says that."

9 And Brittany complies. She gives them a statement that
10 says that, you know, because if you're seventeen and they tell
11 you, "You're going to sit in that room, and you're going to
12 talk."

13 And you noticed. There wasn't no testimony that Brittany
14 chose to give a statement. No.

15 When you're seventeen, they can put a sheet of paper in
16 front of you, and they can say, "You made it through the
17 eleventh grade, and you should know that you have the right o
18 remain silent. Anything you say can and will be used against
19 you in a court of law, and all like that."

20 But do you really feel free to leave? You ain't free
21 leave. You're not free to leave.

22 So, what you going to do? You going to talk or you going
23 to be quiet?

24 And you got these adults, these older individuals saying,
25 "We already know what happened. You know, just give us a

1 statement."

2 And if you have any doubt about that, watch it again - -
3 that disc again because what's the first thing that, um, the
4 officer says or the detective says?

5 John King either introduces himself or is introduced, and
6 the other fellow says, "Yeah, you remember me because we talked
7 earlier. I introduced myself earlier."

8 Why isn't that on there?

9 You want to get somebody's statement - - if you want to get
10 a true, accurate representation for the purposes of law as to
11 what occurred and what they had to say, why is part of it, "Oh,
12 we're going to have a discussion over here but then when we got
13 it where we want it, then we're going to turn the tape on."

14 As the judge told you, consider that in considering the
15 validity of the statement.

16 There is no question, and Brittany got on the stand and she
17 said, "You know, I don't - - I remember up to the end of the
18 bootlegger's door. Then, Ms. Davis called me. I came back
19 down, and I'm not really clear on what happened after that."

20 And the Prosecutor may try to make that seem like, "Well,
21 isn't this convenient?"

22 No, because it's not the least bit convenient for me. I
23 tell you, and it ain't convenient for her.

24 Wouldn't it be much more convenient for us if Brittany
25 could say, "Yeah, it happened just like Tamika said, you know?"

1 I was standing there, and they rushed me, and I - - and I
2 had the gun, and I shot, and Monica was grabbing it."

3 It would be much better for us if she could get on the
4 witness stand and say that. That would help us out immensely.

5 But you want to talk about brutal and hurtful honesty?
6 What does she say?

7 "I told them that I had to have been guilty because my hand
8 was on the trigger."

9 This girl doesn't know the law. All she knows is she was
10 holding the gun, and the gun discharged, and somebody's dead.
11 That's all she knows, and that's what she told you.

12 It wasn't no long convoluted drawn out story, you know?
13 Nothing of that nature. She tells you the truth unvarnished
14 and as hurtful or unhurtful as it may be as she knows it, and
15 you consider that as well in your determination of the
16 believability, the credibility of a witness against what other
17 witnesses said.

18 This is not a murder case.

19 The judge told you that in order to find Brittany guilty of
20 the offense charged or of any offense you, the jury, must be
21 firmly convinced of that guilt.

22 I ask you to look in your deliberations at the evidence
23 that the State has brought you.

24 Does the inconsistent statement of Detective King regarding
25 whether he was ever told about a struggle leave you more or less

1 firmly convinced of guilt?

2 Does the testimony of Ms. Davis which says, There was a
3 struggle and from what I saw in my view point, it appeared to be
4 unintentional. It appeared to be accidental," does that make
5 more or less firmly convinced of the guilt for murder or
6 manslaughter or not guilty by reason of accident?

7 Does the testimony of Ms. Skipper who testifies that what
8 she saw was Brittany standing two doors down when the ladies
9 jumped out of the car, does that leave you more or less firmly
10 convinced that this was some premeditated act or that this was
11 an accidental shooting after a struggle over a weapon?

12 And something I almost forgot. Dr. Proctor, my favorite
13 doctor, Dr. Proctor said that the entrance wound is about the
14 seventh rib right around there, I believe, and that it's a very
15 shallow shot right across the body in an upward forty-five
16 degree angle with the bullet exiting here.

17 Is that more or less consistent with a struggle here
18 because it sure enough ain't - - it sure enough ain't pointing
19 at somebody like that.

20 Even if Monica had turned to the side, still, you're not
21 going to have an upward forty-five degree angle of the bullet.

22 The only way you could have an upward forty-five degree
23 angle would be if Brittany is standing up is if Ms. Burroughs is
24 down like that.

25 You know, then, maybe, it could come in there. Exit there.

1 But what did Ms. Davis say, "No, they were both standing
2 face to face."

3 What did Ms. Skipper say, "They were both standing face to
4 face."

5 You know, no one has testified anybody tripped, did anybody
6 fall.

7 So, what you have is two people close together, face to
8 face, and you end up with a bullet that enters down here, goes
9 shallow across the body. Exits up here by the breast. Okay?

10 And you deliberate on that in the jury room. Enact it.
11 Is that consistent with hands down here in a struggle; gun
12 points upward; bullet accidentally discharges or is it
13 consistent with someone intentionally taking a shot?

14 Does his information that there may be an arm length
15 struggle over the gun and the path of the bullet run down to up
16 at a forty-five degree angle leave you more or less firmly
17 convinced that this is a murder or a manslaughter or that this
18 is an accidental shooting?

19 Now, there is no question that Brittany said what she said
20 as a seventeen year old girl. There's no question that she said
21 what she said. There's no question that she made threats toward
22 Mr. Pyatt, and there's no question in her frustration she had
23 made threats to Ms. Burroughs.

24 Note the time, place and circumstance of those alleged
25 threats. They were made with her standing out on the street,

1 not in anybody's yard, not in anybody's door, not in anybody's
2 house.

3 In fact, all of the testimony you heard was that anytime
4 she went to Ms. Burroughs' door, it was to see Mr. Pyatt. It
5 wasn't to see Ms. Burroughs. It wasn't to confront Ms.
6 Burroughs. It was to see Mr. Pyatt.

7 She says the only time, that I recall in her testimony or
8 any other testimony, the only she ended up over there in a
9 confrontation with Ms. Burroughs was when Mr. Pyatt set it up.

10 Because, remember, even after Monica had threatened to beat
11 her in the backyard and, you know, said, "Y'all need to get out.
12 You and your friends need to get out of her. You don't need to
13 be around here."

14 And they were in the backyard waiting for Putty to bag up
15 the weed.

16 Even after that happened, you know, Brittany said that, "On
17 occasion we were still over there or I was still over there if
18 Putty would call and say, 'Well, Monica is not here,' or 'Monica
19 is asleep', or something of that nature."

20 Well, on the one occasion with the actual fist fight, what
21 is the testimony. "That Putty called. Set me up. Said, 'Come
22 on over', and when I come over, that's when Monica come and got
23 in a fight with me."

24 There's absolutely no other testimony, no other evidence
25 that this young lady, this seventeen year old girl at the time

1 ever went over there for the purpose of starting a physical
2 confrontation with Ms. Burroughs.

3 Now, did she have a gun the day before? Did she say the
4 words she said? Yes, she did.

5 But, now, you want to talk about somebody who intended to
6 do something, you know. She even tells you, "I wanted to shoot
7 Putty."

8 You know.

9 And I would submit that ain't helpful to our case but,
10 again, she tells you the unvarnished truth as she knows it.

11 But she says, "Monica wasn't inside the day before when I
12 was standing out there."

13 Because, remember, the whole thing was she was standing out
14 there. She's got the gun. She's shouting and screaming because
15 she's so mad. Um, Putty Pyatt was gone, and then he starts to
16 drive back in the neighborhood, and he sees that she's standing
17 out there with a gun, and he turns around and does a u-turn and
18 takes off.

19 Um, what does Brittany also tell you? That shortly
20 thereafter she sees Monica sitting on Ms. Davis' porch.

21 And that's what she said, "When I was standing out there
22 across the street shouting this stuff out on the corner, I don't
23 think Monica was even home because shortly thereafter I see her
24 sitting on Ms. Davis' porch."

25 Now, if you had the intention to kill somebody, Putty ain't

1 around and you still got the forty-five, and you know where she
2 is.

3 Ladies and gentlemen, this is not a murder case.

4 The evidence shows one thing and one thing only. A
5 struggle over a weapon. The accidental discharge of that
6 weapon.

7 Now, they maybe - - the Prosecutor may say, "Well, you got
8 - - you got to be lawfully in possession of a weapon."

9 Anyone regardless of age has certain rights. Has certain
10 rights under our Constitution, and I submit to you that if the
11 issue of her being in possession of that weapon were a true
12 issue for your consideration that she'd be standing here right
13 now on trial for unlawful possession of a firearm but she's not.

14 So, don't let that - - don't take that - - don't let that
15 red herring take you anywhere.

16 I have lived with this case since December of 2008, and I
17 have done all that I am capable of doing for this young lady.
18 I have seen her grow from the age of seventeen to the age of
19 nineteen, and I've done what I can, and I turn it over to you,
20 and I leave her in your hands. I leave her in your hands.

21 This is not - - not a murder case.

22 Thank you for your time and for your attention.

23 THE COURT: Thank you, Mr. Hazzard.

24 Solicitor, you may have your summation.

25 MR. GRAUSTEIN: Thank you, Your Honor.

1 SUMMATION BY MR. GRAUSTEIN

2 MR. GRAUSTEIN: Ladies and gentlemen, good morning.
3 We're still in the morning.

4 This is a murder case. There's no question that this is
5 a murder case.

6 First - - but, first, let me thank y'all for doing your
7 civic duty and being here.

8 I know you all have been very attentive, and I certainly
9 appreciate that with the evidence that's been presented and the
10 testimony.

11 The judge has instructed you on the law, and he's given you
12 those instructions. If I say anything during my closing here -
13 - during my summation that is in conflict with what the judge
14 tells you the law is, go with what the judge tells you it is.
15 That's his - - that's his purview.

16 You've all been chosen both the defense attorney and myself
17 see you as reasonable people, people with common sense, people
18 who can bring your own judgment, life experiences here and will
19 be able to sift through the evidence that's been provided to you
20 and come to a decision as to what happened because, ultimately,
21 you are the ones who will decide what happened on Bayside Avenue
22 on June 24, 2008.

23 This is a murder case. The evidence shows that it is a
24 murder case.

25 First of all, let's be sure we understand. The victim here

1 is Monica Burroughs.

2 The defendant gave some testimony about her history.
3 Nothing on that bears in this case.

4 This is not a manslaughter case. You've been charged that
5 you can find manslaughter. I do not believe manslaughter is an
6 appropriate verdict in this case because two things need to be
7 present - Heat of passion and sufficient legal provocation.

8 There's no evidence of heat of passion here. There's no
9 evidence that there was some big fight going on and that all of
10 a sudden the, ah, the gun came out and because - - and then that
11 the defendant was provoked that she just lost her mind and
12 fired.

13 And both of those things need to be present for
14 manslaughter. I don't think that's - - those were present.

15 Also, this wasn't an accident. The defendant had a loaded
16 forty-five caliber pistol on her. She'd been carrying it around
17 the neighborhood for a couple of days.

18 Of course, it's just - - at seventeen you're not allowed to
19 carry a pistol in the State of South Carolina but she also
20 states and witnesses state that she came up and hit - - began
21 hitting the victim with it. She's committing an assault with a
22 loaded forty-five pistol. She commits an assault, and that - -
23 and nobody says that that did not happen. Nobody says the
24 defendant did not go up and assault the victim to start this
25 whole thing on the 24th.

1 Tamika Williams (sic) gave her version of what happened and
2 what she saw from her house.

3 She said, "I went inside, and I came out and when I came
4 out, this is what I saw."

5 But I asked her, "Can you say that the defendant didn't hit
6 Monica Burroughs?"

7 "No, I can't say that."

8 Okay.

9 So, it's - - nobody disputes - - the testimony is and the
10 defendant herself says she struck the victim first.

11 So, we're left with murder. The killing of a person with
12 malice aforethought.

13 There's no question a person was killed, and that person
14 was killed as the result of being shot with a forty-five pistol
15 fired by the defendant. There's no question. The defendant
16 says she did it.

17 She says, "I pulled the trigger. I shot her, and it was
18 wrong."

19 No question about that.

20 So, now, we're left with the question, "Was there malice?"

21 And, of course, just - - Dr. Proctor said, "Hey, Monica
22 died as a result of being shot with a forty-five. It went
23 through her chest. It went right through her heart. That's
24 what killed her."

25 So, the question, then, we have is, "Was there malice?"

1 Well, as the judge has told you, you can - - you can infer
2 malice.

3 Now, Joanne Davis and - - and, ah, Ms. Cox, oh. Well, they
4 said they didn't think she intended to. Well, what do they
5 know?

6 They were just - - they observed what happened but they
7 don't know what the defendant was thinking. They have no idea
8 what the defendant was thinking.

9 Those - - what they said in their police statements, they -
10 - about her intent - - they - - they have no idea what the
11 defendant's intent was.

12 It's up to you to determine what the defendant's intent
13 was. It's up to you to determine what malice - - whether or not
14 there was malice.

15 So, let's look at some of the actions - - some of the
16 things she did that day and the day before.

17 As the defense has already told you, she stood out in front
18 of the victim's home with the forty-five waiving it, yelling and
19 screaming, hollering.

20 "Come on out. Eat the bullets."

21 Of course, she says she has the gun for self-defense.
22 She's scared but she's standing out in front of Monica's house
23 waiving it around.

24 You decide.

25 The physical evidence, Mr. Hazzard told you about the

1 physical evidence.

2 Dr. Proctor testified. This was not a close contact wound.
3 The victim was shot in the side of her chest. It passed through
4 and came out the front of her chest.

5 That tends to me that the bullet was moving from the back
6 of her body to the front of her body. It was also moving
7 upwards at an angle like Mr. Hazzard said.

8 I don't know how two people struggling over a gun could
9 make that happen and not leave any stippling or gunshot residue
10 on the victim.

11 It had to be at least eighteen inches to two feet away.
12 That gun had to be eighteen to two - - I don't know how it
13 happened. I'm actually long-armed. I don't know if I could
14 even do that to myself without struggling.

15 I think the statement about a struggle, I think Ms. Davis
16 clarified that in her testimony before you. I don't think - -
17 she clarified it. She did make a statement to the police and
18 talked about a struggle but she clarified it.

19 There was a struggle but it was very brief and then there
20 was separation.

21 So, the malice. Now, the defendant, and, of course, we
22 have this word "aforethought". The defense would have you
23 believe that she had to come up with some master plan here that
24 she was going to carry out that day. She doesn't need to have
25 a master plan to have malice, and the State sure has never said

1 that she had a master plan to do anything.

2 And the State still doesn't contend she - - she had a
3 master plan.

4 As far as showing malice aforethought, if she had that gun
5 - - she was holding that gun, she just decided, "I'm going to
6 pull the trigger and shoot Monica."

7 That's it. That's all the malice aforethought you need.

8 "I'm going to pull the trigger."

9 So, she left - - so, she said she had a gun the day before.
10 So, she - - she went and got her gun. Something had been going
11 on the day before. She went and got her gun.

12 Then she came back. Stood out front. Waiving it.

13 "Come on out. Eat the bullet. Eat the bullets."

14 So, in her statement, she actually tells - - says why she
15 was mad - - what the issue was - - what her issue was with
16 Monica that day.

17 I'm not saying that this was actually brought on by some
18 long running feud between the two. Yes, there was bad blood
19 between Monica Burroughs and the defendant. Yes, there was but
20 that's not what led to this - - to Monica being killed. Not
21 according to the defendant.

22 She says in her statement that during some of that - - one
23 of those incidents the day before. I think it might have been
24 the first one but you can look at her statement and see where
25 she talks about that but she says there was something going on

1 between her and Putty, and Monica, I guess, maybe, had chipped
2 in on it.

3 And Brittany says - - told Monica, "Stay out of it. I'm
4 going to kill you."

5 And she said Monica's reaction was, essentially, "I ain't
6 buying that. I don't believe you."

7 And that made the defendant mad. She - - Monica didn't
8 believe her.

9 Then she says the next day that was still bothering her,
10 the 24th, the day of the shooting, that was still bothering her,
11 and she had to get it off her chest.

12 I'm not saying she walked out Tamika's door set on killing
13 Monica Burroughs. I'm saying she walked out that door just like
14 she said going over to the - - to the bootleggers, and the
15 opportunity presented itself.

16 She saw Monica sitting outside.

17 What happened at that car? Three people are alive today
18 to tell us what happened at the car on June 24th. All of them
19 tell the same story. All of them say the same thing happened.

20 Why? Because that's what happened.

21 But they would have you to believe that she used somebody's
22 else's story when she talked to the police.

23 Well, she did a little bit of alibiing, then. You look
24 at that statement. You look at that statement. You look when
25 she gives that statement. She's talks about Monica coming out

1 of that car. She's being all brave.

2 "I didn't expect that."

3 I don't know whose story that came from.

4 But she didn't expect that. Didn't expect that.

5 She went up and she hit her. I don't know what she
6 expected but she didn't expect Monica to come out of the car
7 fighting.

8 And then when Monica did that, at that point she could have
9 said, "Well, we were struggling over the gun," if that's what
10 happened.

11 No.

12 "I jumped back."

13 She even gets up and demonstrates.

14 "I got - - I got up and I jumped back. Got me a little
15 distance and shot her."

16 I don't know whose story that came from.

17 That's what she told the police happened.

18 Said she was about that far away pointing at the far corner
19 of the room.

20 That's why there was no gunshot residue. She was feet
21 away, and what happened? She jumped back just like she said.

22 Remember, the defendant says, "I'm holding that gun. I'm
23 left-handed."

24 How do you shoot the victim in the left side facing each
25 other?

1 "I got the gun in my left hand. I jumped back. I pointed
2 it."

3 Then what did Monica Burroughs naturally do?

4 That's what happened, and that's why that bullet entered in
5 her side and travels upwards. She turned. Anybody would have
6 done that.

7 Just real briefly, the defense tries to make a little bit
8 of hay about, "well, a gunshot residue test was done. A swab
9 was done. It was collected. Turned into the police."

10 Well, then the defendant walks in and says, "I shot her.
11 I'll tell you what happened. I walked in. I hit her with the
12 gun and then I shot her."

13 What do you need to test the gunshot residue for?

14 I think in the end you'll see what happened here but you
15 might be left because, remember.

16 "Come on out. Eat the bullet. Eat the bullets. I'm going
17 to kill you."

18 These are words that the defendant said to Monica Burroughs
19 the day before.

20 So, you're left with one question. You might be left with
21 one question. I don't know, probably, the same question Monica
22 Burroughs had. Why?

23 The defendant told you why. The defendant said why.

24 "I told you I'd get you. I told you I'd get you."

25 Look at the evidence. Return a verdict for murder.

1 Thank you.

2 FINAL CHARGE OF THE COURT

3 THE COURT: Madame Foreman and ladies and gentlemen,
4 you've now heard the final summations. You've heard the
5 instructions in the law. You've heard all of the testimony in
6 the trial of this case.

7 It now behooves you as finders of the facts to deliberate
8 and to make a proper decision.

9 Your decision - - as I've indicated to you, of course, the
10 State has the burden of proof beyond a reasonable doubt as to
11 any of the issues involved.

12 With reference to the two charges, should you have some
13 question as to whether or not the defendant is guilty of murder,
14 you will then consider the charge of manslaughter.

15 Of course, if you conclude that there is not - - they have
16 not proved either charge beyond a reasonable doubt, you would
17 find the defendant not guilty.

18 Just remember, please, that any judgment that you make must
19 be the unanimous judgment of all twelve of you.

20 ALTERNATE SEPARATED

21 THE COURT: I'm going to let you - - at this time I'm
22 going to discharge your alternate. Take the alternate out.

23 Mr. Alternate, everybody appears to be okay but you never
24 know.

25 I'm going to have you go to another place comfortably.

1 We'll wait on the verdict of the jury.

2 Now, Madame Foreman, I'm going to send you to the jury
3 room. Do not begin your deliberations until all of the evidence
4 comes in, until the verdict form comes in and my Law Clerk will
5 be getting you my charge, and that will come in in just a
6 minute.

7 Thank you.

8 You may go.

9 (The jury retires to the jury room at 11:57 a.m.)

10 EXHIBITS AGREED UPON

11 THE COURT: Counsel, I want y'all to come forward and
12 agree on what's in the exhibits.

13 First, gentlemen, is there any exceptions or additions to
14 that subsequent charge?

15 MR. GRAUSTEIN: No, Your Honor.

16 MR. HAZZARD: None from the defense, Your Honor.

17 THE COURT: All right.

18 Thank you.

19 Linda, do this for me. Write this on the bottom.

20 The following language is being included on the bottom of
21 the Charge of the Court.

22 Ms. McCall, I'm presenting to the jury and for your records
23 a copy of my charge including the King charge - - including the
24 King charge.

25 The following addition was made by me orally.

1 "Of course, if you could not find the defendant guilty of
2 either charge unless your findings of guilt are beyond a
3 reasonable doubt."

4 Let that be a part of the record.

5 (The Court has the Court Reporter mark the Charge of the
6 Court as Court's Exhibit #10.

7 JURY BEGINS DELIBERATIONS

8 The exhibits go to the jury room, and the jury begins it's
9 deliberations at 11:59 a.m.

10 The Court then recesses the trial of this case awaiting the
11 call of the jury.)

1 JURY QUESTIONS AND RESPONSE OF THE COURT

2 (After receiving a jury question from the jury to view
3 the defendant's statement recorded on CD, the Court and
4 counsel off the record discuss and agree on the manner and
5 location to allow the jury to view the video of the statement,
6 and arrangements are made.

7 The Court then reconvenes the trial of this case with all
8 parties present other than the jury alternates in the
9 courtroom to address a question from the jury.

10 The jury returns to the courtroom at 3:09 p.m.)

11 THE COURT: Madame Foreman, ladies and gentlemen, the
12 video that we've discussed, of course, is in evidence. You
13 have seen it twice.

14 Is it my understanding that you wish to see it again?

15 Pardon me?

16 FORELADY: Yes, sir.

17 THE COURT: All right.

18 Is your - - does the jury wish to see all of it again or
19 certain portions of it. I say that for time.

20 FORELADY: I would say certain portions of it but
21 I can't tell you exactly where to start it.

22 THE COURT: You'll maybe have to see it all.

23 I'm going to start another case - - the jury has already
24 been picked - - in this courtroom immediately. I have another
25 courtroom on the second floor, and they are now with

1 technicians down there setting it up so that you can see it
2 down there.

3 In that courtroom there will be one technician, and what
4 is her name, Mrs. McCall?

5 COURT REPORTER: Her first name is Carmen, Your Honor.

6 THE COURT: Her first name is Carmen.

7 She is there as a technician only.

8 You must not - - while viewing this video, you must not
9 discuss the case with anyone even among yourselves because she
10 will be in the room, and that's improper.

11 So, if you have any discussions about it, wait until you
12 get back into your jury room.

13 FORELADY: I do understand.

14 We can't ask her to leave?

15 THE COURT: You can - - you can. That's fine. As
16 long as nobody is in the courtroom but you when you instruct
17 her. You may do that? That's fine.

18 FORELADY: So, we would ask her to stop the tape
19 and ask her to leave and we would discuss that part of it?

20 THE COURT: That's fine.

21 As long as your discussion deals with the tape only.

22 Obviously, you would not discuss any issue of the case
23 that she would not review.

24 FORELADY: Correct.

25 THE COURT: But if you had some technical question.

1 You want her to run the tape back or run the tape forward.
2 She's coming in a minute.

3 Where is - - can we get Carmen down here, please?

4 DEPUTY: She's in 2-A.

5 THE COURT: I know that but I want her where I am.

6 We'll wait just a minute.

7 Does that address the concerns of the State and the
8 defense?

9 MR. HAZZARD: Your Honor, may we approach?

10 THE COURT: Sure.

11 (A Bench Conference is held in the presence of the jury
12 but off the record and outside the hearing of the jury.)

13 THE COURT: Just remember. Yes. If at any time y'all
14 want to discuss any issue there, make sure that nobody's there
15 including the technician.

16 FORELADY: I understand.

17 THE COURT: And, ah, I would not want the jury to
18 attempt to operate the equipment themselves. I'll have her
19 stand outside. Knock on the door and bring her back in, and
20 you can look at it as many times as you want to or any portion
21 of it that you desire.

22 FORELADY: Thank you, Your Honor.

23 THE COURT: I'm having the technician come up here so
24 that we'll all be clear, and I apologize for the fact that I
25 can't bring you back here but I'm starting another serious

1 case, and I've got another jury waiting.

2 FORELADY: I understand.

3 THE COURT: All right.

4 FORELADY: Thank you.

5 THE COURT: Carmen will be here in a minute.

6 Now, I want a Bailiff standing outside the courtroom at
7 all times so that this jury will not be interfered with.

8 DEPUTY: Yes, sir.

9 THE COURT: Okay.

10 And I want to make sure that all the other evidence is
11 secured in the other jury room, you understand?

12 I would suggest, Madame Foreman, that once you have
13 satisfied yourself as to any issues in the video that you
14 return to your regular jury for further deliberations.

15 FORELADY: Yes, sir, we will

16 THE COURT: But I have no problems with -- if
17 somebody's got some question during the playing of the video
18 to ask the technician to leave as long as nobody is in that
19 room except you twelve, not even the alternate.

20 FORELADY: Yes, sir.

21 THE COURT: Madame Technician, come forward, please.

22 I have explained to the jury that you are down there with
23 them in the sole capacity of technician, and you will run the
24 computer for them in that regard.

25 They understand that they are not to ask of you any

1 questions except the technical questions concerning the
2 computer, and, of course, under no circumstance would you be
3 discussing with them any issues.

4 Now, may I ask if the trial of the case - - the video
5 they want to stop it at a certain point and excuse you so they
6 can discuss it, would you be willing to step out? That poses
7 no problems for you?

8 CARMEN: Yes, Your Honor.

9 THE COURT: So, if they ask you to step out just
10 momentarily, do so but don't leave. Stay outside the door so
11 they can come and get you.

12 But insofar as they have any technical questions
13 concerning the video, you may respond.

14 Does that suit you, too? The State?

15 MR. GRAUSTEIN: Yes, Your Honor, the State, Your
16 Honor.

17 THE COURT: How about it?

18 MR. HAZZARD: That is satisfactory to the defense, Your
19 Honor.

20 THE COURT: You set up and ready to go yet?

21 CARMEN: Yes, Your Honor.

22 THE COURT: All right. Mr. Bailiff?

23 DEPUTY: Yes, sir.

24 THE COURT: Take this distinguished jury down. What
25 room is it, two what?

1 DEPUTY: F.

2 THE COURT: 2-F. Have them seated appropriately, and
3 the only person in the jury room with them is this technician
4 but I want somebody outside the door so they will not be
5 disturbed.

6 DEPUTY: Yes, sir.

7 THE COURT: At the time they tell the technician they
8 are satisfied with viewing the - - the video, then I want one
9 of your bailiffs to take them back down here.

10 DEPUTY: Yes, sir.

11 THE COURT: That clear?

12 You may proceed.

13 Take them to 2-F.

14 And I'm sorry to run you to another courtroom. That's
15 the only one available.

16 And, ma'am, thank you so much for helping us.

17 Did you run a trial-run?

18 CARMEN: Yes, sir.

19 THE COURT: All right.

20 (The Court recesses the trial of this case awaiting the
21 advice of the jury and to address other matters before the
22 Court at 3:17 p.m.

23 The Court reconvenes the trial of this case at 6:17 p.m.
24 in response to another jury question.)

25 THE COURT: Is the defendant coming in?

1 MR. HAZZARD: Yes.

2 And you're going to make those Court's Exhibits, right?

3 THE COURT: Yes.

4 (The Court Reporter marks various jury questions and
5 notes and Court's Exhibits #12, #13 and #14.)

6 THE COURT: Bring the defendant in, and bring the jury
7 in.

8 All right. Bring the jury in. The defendant is in the
9 courtroom. Let the record so reflect.

10 (The defendant returns to the courtroom and the jury
11 returns to the courtroom at 6:20 p.m.)

12 THE COURT: Is the alternate present? Bring the
13 alternate. The alternate is entitled to any instructions
14 though he does not sit with the jury during any deliberations.
15 As soon as I have instructed the jury, the alternate will be
16 separated from the jury.

17 (The alternate joins the jury in the courtroom.)

18 THE COURT: Mr. Alternate, I regret that we have to
19 keep you here but let me say to you. I was trying a murder
20 case similar to this one in Charleston, South Carolina. I let
21 the alternate go. Fifteen minutes later one of the jurors had
22 an epileptic attach, and I was getting ready to have to
23 mistrial a five day case. Fortunately, we were able to run
24 down the alternate, and he had not discussed the case with
25 anyone, and I was able to use him.

1 In other case, I was getting ready to let the alternate
2 go when one of the jurors received notice that her daughter
3 was in the hospital as a result of an automobile wreck, and I
4 had to let her go. So, I needed the alternate.

5 So, my jury looks mighty healthy but things happen, and
6 for that reason I need to keep you.

7 ALTERNATE: I understand.

8 THE COURT: Now, ladies and gentlemen, you've been a
9 very attentive juror throughout the several days of the trial
10 of this case but let me emphasize to you, now, that you're to
11 try this case on the law and evidence in this case. We're
12 not interested in Matlock. We're not interested in Columbo.
13 We're not interested in the various cases that you hear on tv.
14 Most of the time they do not reflect a genuine trial. So,
15 don't be speculating. Base your verdict by the law and
16 evidence in this case and be guided by the testimony and the
17 law as I give it to you.

18 Now, I tell you. I am quite concerned over your
19 communication that you don't understand what malice is. By
20 consent of the parties you have in your hands the instructions
21 with regards to malice, and I ask that you read it.

22 In an abundance of precaution, I'm going to read it to
23 you but it's for you to determine whether malice does or does
24 not exist. There's no question about that, and as to the
25 murder charge, the State must prove malice beyond a reasonable

1 doubt but let me again instruct you with regards to malice.

2 Malice is a word suggesting wickedness, hatred and a
3 determination to do what one knows to be wrong without just
4 cause or legal provocation.

5 Listen to this statement very carefully.

6 Malice need not be in the mind of the one doing the
7 killing any particular length of time before the act of
8 killing to render the killing murder. If malice is present
9 in the mind of one doing the killing any length of time before
10 the act, then its presence would be sufficient to render the
11 killing murder.

12 Malice is said to be expressed when there is manifested
13 a violent, deliberate, intentional, unlawful act to take away
14 the life of another human being. Malice may be implied where
15 one intentionally and deliberately does an unlawful act when
16 he or she then knows to be wrong and in violation of her duty
17 to another.

18 Malice may be implied where no excuse or legal
19 provocation appears and where the circumstances attending a
20 killing shows an abandoned heart, a malignant heart, a heart
21 fatally bent upon mischief.

22 Such indications or emphasis of malice are not concluded
23 if in you, the jury, depending upon your view of the evidence
24 may accept or reject the same.

25 I charge you the law says that when one intentionally

1 kills another with a deadly weapon, the implication of malice
2 may arise. If facts are proven beyond a reasonable doubt
3 sufficient to raise an inference of malice to your
4 satisfaction, this inference would be simply an evidentiary
5 fact to be taken into consideration by you, the jury, and you
6 may, if you choose, accept or reject that inference.

7 Now, this charge of malice, again, is before you. I
8 suggest, Madame Foreman, that you take it line by line and --
9 and get the comments of the jury as to their concerns about
10 that.

11 You've asked me the definition of malice, and I cannot
12 give you a stronger definition than that which has been
13 approved by the courts of this state.

14 I do appreciate your comments, though, and I'm concerned
15 about your concern, and I ask, now, that you review what I've
16 just said with regard to malice and make your determination
17 remembering at all times that to convict one of murder, if at
18 all, the State must prove beyond a reasonable doubt malice.

19 Now, you have also said to me, "In what order should we
20 consider these various issues that arise in the case?"

21 You may consider them in any way that you choose. As a
22 suggestion by me and a suggestion only, I suggest that you
23 consider the charge of murder first, and I suggest, Madame
24 Foreman, again that using my charge you go over each element
25 to ascertain whether or not the State has proven murder beyond

1 a reasonable doubt.

2 If you, the jury, conclude that they have, then your
3 verdict must be unanimous, and she is to be found guilty of
4 murder.

5 If you conclude that the State has not proved malice and
6 has not proven the defendant guilty of murder then taking my
7 charge as to the elements of manslaughter, and, again, I ask
8 that you take it one by one and see what the jury has to say
9 as to each element.

10 If the State has proven manslaughter by - - by - - beyond
11 a reasonable doubt, then you must find her guilty of
12 manslaughter.

13 Of course, if they do - - as I charged you, if you do not
14 find her beyond a reasonable doubt guilty of murder or
15 manslaughter, you'd have to find her not guilty.

16 Now, I've also charged you accident. Again, Madame
17 Foreman, the definition of accident is laid out one by one in
18 this charge. If you get to that element, I suggest that you
19 read each element one by one and as you read each element
20 discuss with the jury their view of that element.

21 So, you take it either way you want it but I would
22 suggest you first consider murder and, if necessary, consider
23 manslaughter, and, thereafter, if necessary, consider
24 accident.

25 And if you conclude that the State has not proven any of

1 these charges beyond a reasonable doubt, your verdict must be
2 not guilty. It would have to be a unanimous verdict.

3 I trust that I have responded to both of your inquiries,
4 Madame Foreman.

5 FORELADY: Yes, sir.

6 THE COURT: Now, let me ask you this.

7 If - - it's getting late. If you decide that you can
8 reach a verdict tonight and wish to stay, we'll, of course, be
9 glad to stay with you. If you conclude, and I suggest you
10 take a vote on it, if you conclude you rather go home; refresh
11 yourself; come back at 9:30 in the morning, that is perfectly
12 permissible and perfectly satisfactory to the Court. You've
13 been here all day.

14 So, I'm saying to you if you can reach a verdict tonight
15 and wish to do so, please do. Just let me know. If you want
16 to go home and come back at 9:30 in the morning, please do.

17 We've got all day tomorrow, all day Friday and all day
18 Saturday. So, we've got plenty of time to review these
19 issues. So, don't hurry tonight if you don't want to but if
20 you want to go home, go back and let the bailiff know, and
21 I'll excuse you until 9:30 in the morning.

22 Thank you.

23 If you have any other questions before you go, let me
24 know.

1 FORELADY: All right.

2 THE COURT: Thank you.

3 (The jury retires to the jury room to continue
4 deliberations at 6:31 p.m.)

5 THE COURT: These two communications received by the
6 jury - - this relates to what order they should receive them.
7 The second relates to the definition of malice.

8 Any exceptions or additions to that inquiry?

9 What say the State?

10 MR. GRAUSTEIN: None from the State, Your Honor.

11 THE COURT: What says the defense?

12 MR. HAZZARD: Yes, Your Honor. Two objections.

13 First, with regard to reading the law of malice, the
14 Court began reading the charge. Then stopped and said, "Now
15 listen to this very carefully."

16 The defense submits that at that point the Court is
17 placing a greater emphasis on one part of the charge as
18 opposed to the charge as a whole.

19 THE COURT: That was not the intention, and the
20 inflection of my voice did not indicate that. It was - - the
21 inference was that they - - that they had a charge back there
22 and to follow it very closely and in reading the totality of
23 my charge, I told them two or three times, "Take it one by one
24 and consider each one." So, I'm comfortable with that issue.

25 What's your next one?

1 MR. HAZZARD: Okay.

2 Note that objection.

3 THE COURT: Okay.

4 MR. HAZZARD: Second, um, in speaking to the jury
5 regarding taking murder and then manslaughter and then
6 accident, I believe the Court indicated you told the jury to
7 consider murder and make the determination on mal - - on the
8 element of malice and did not indicate they needed to consider
9 any other element for the charge of murder.

10 THE COURT: No, that's not - - you do not understand
11 what I said. I said, "Take it each element one by one and
12 hear the comments of each one of them and decide."

13 I respectfully disagree with your interpretation of what
14 I said. Clearly, you can read it back.

15 Didn't I say, "one by one," Mrs. McCall?

16 COURT REPORTER: At different points, yes, sir.

17 THE COURT: Sure I did.

18 MR. HAZZARD: Note my objection that point.

19 THE COURT: I - - I understand but - -

20 MR. HAZZARD: Thank you.

21 THE COURT: - - as you understand, they gave a
22 convoluted question about the thing, and I told them they
23 could do it either way they wanted to but I suggested that
24 they do manslaughter first. Read the charge that by consent
25 they had before them. Take element one by one. Get the

1 comments of the jurors, and, then, depending on their view go
2 to manslaughter, and, depending on their view of that, go to
3 accident, again, suggesting that they consider the element one
4 by one and receive comments from each juror as to each one.

5 So, I - - I'm comfortable with what they said to them but
6 we'll see if they want to work or stay with us. I hope they
7 would like to go home tonight. Don't you?

8 MR. HAZZARD: Yes, sir.

9 MR. GRAUSTEIN: Yes, sir.

10 THE COURT: But we'll see.

11 MR. HAZZARD: I, quite frankly, wouldn't given the
12 choice.

13 Thank you.

14 (The Court recesses the trial of this case and thereafter
15 resumes the trial of this case upon receiving advice of the
16 jury.)

17 THE COURT: They want to go home.

18 Any members of the family outside?

19 MR. HAZZARD: Yes, sir.

20 THE COURT: They can come in if they want to.

21 MR. HAZZARD: Yeah. The waiting room is filled, Judge.

22 (The jury returns to the courtroom at 6:44 p.m.)

23 THE COURT: Madame Foreman, the bailiff has advised me
24 that it is your desire to break for the evening and to return
25 in the morning. Is that correct?

1 FORELADY: Yes, sir.

2 THE COURT: That is a perfectly proper request, and
3 I've found from years of experience on the Bench that that's
4 proper because to go home and get a good night's sleep
5 sometimes refreshes things and look at things differently or
6 look at them again, whatever, but it often happens and helps
7 a jury to go home and refresh themselves and start back the
8 following morning. So, I am glad that that is your decision.

9 I do ask of you to remember my admonitions. Don't
10 discuss the case with anyone. Let no one discuss it with you.
11 Try not, please, to read anything that may be in your local
12 paper. I want your verdict, as you well know, to be based on
13 the law and evidence in this case - - courtroom and from no
14 other place.

15 Please be back in your jury room promptly at 9:30 in the
16 morning.

17 Thank you.

18 FORELADY: Thank you, sir.

19 THE COURT: And I appreciate your efforts all day.

20 FORELADY: Thank you, Your Honor.

21 ALTERNATE: You need the alternate, Your Honor?

22 THE COURT: Yes, sir, you'll have to come back, too.

23 Not going to let yo go.

24 (The jury departs the courtroom for the evening at 6:48
25 p.m. with instructions to return Thursday at 9:30 a.m.)

THURSDAY, FEBRUARY 10, 2011

(The Court reconvenes the trial of this case on Thursday morning.)

MS. LIVESAY: I believe they've got something they want to put on the record, Judge.

THE COURT: All right, sir.

What is that?

MR. GRAUSTEIN: Mr. Hazzard.

THE COURT: Yes, Mr. Hazzard.

MR. HAZZARD: Yes, sir, Your Honor.

Yesterday evening just before we broke, the jury had a question, and as I recall it, to paraphrase the question was the order in which they should consider the different charges, that being murder, manslaughter and then the defense of accident, and as I recall the Court's explanation, the Court said they could go either way but the Court's suggestion was they start with murder. Then if they didn't find the elements of murder, then they go to manslaughter. Then if they didn't find the elements of manslaughter, it would be not guilty.

The defense is concerned that that might be misleading to the jury because nowhere in there does it indicate that they are to consider the defense of accident as a part of their deliberations on murder and manslaughter.

THE COURT: Well, in telling them if they couldn't find murder or manslaughter, they would find a verdict of not

1 guilty, that's in and of itself they found accident, does it
2 not?

3 Anyway, I did as you suggested. Suggested that they
4 start from the top down to the bottom to suggest - - I also
5 told them in fact, that it was their call, and they could
6 reverse it anyway that they saw to deal with the various
7 charges.

8 So, ah, I - - I respectfully disagree with you.

9 MR. HAZZARD: I appreciate that, Your Honor. I just
10 simply wanted to put it on the record - -

11 THE COURT: It is.

12 MR. HAZZARD: - - that this objection was made, ah,
13 before the jury began any further deliberation after the
14 Court's last evening.

15 THE COURT: It was clear to me, though, that I told
16 them, also, they could start from the bottom up and come back.

17 MR. HAZZARD: Yes, sir, Your Honor.

18 THE COURT: But still, logically, it seems to me the
19 way I suggested might be the better way but I specifically
20 told them that was in their province.

21 MR. HAZZARD: Yes, sir.

22 THE COURT: All right, but you are on the record and
23 protected for that issue.

24 MR. HAZZARD: Thank you, Your Honor.

25 MR. GRAUSTEIN: Thank you, Your Honor.

1 THE COURT: All right, sir.

2 (The jury is instructed to resume deliberations at 9:58
3 a.m., and the Court recesses the trial of this case awaiting
4 the call of the jury.

5 The Court thereafter reconvenes the trial of this case
6 for consideration of a jury communication at 11:06 a.m. with
7 all parties present in the courtroom.)

8 THE COURT: I have received the following communication
9 which I will share with you.

10 It's designated simply as "Update".

11 "Currently, we are nine to three in our discussions.

12 One - - "

13 What is that?

14 "One juror repeatedly has stated that he or she will not
15 change her or his mind."

16 It don't say about what.

17 "We continue to review and to reread your instructions in
18 the law. Shall we continue?"

19 Signed, Foreperson.

20 I have sent word for them to continue.

21 Let me share this with you.

22 (Attorneys approach the Bench to review the jury
23 communication.)

24 THE COURT: It don't say they're hung up at this time.
25 It asks shall they continue.

1 All right.

2 Any comments on that instruction?

3 What says the State?

4 MR. GRAUSTEIN: No objection to that instruction, Your
5 Honor.

6 THE COURT: All right.

7 What says counsel for the defense?

8 MR. HAZZARD: The instructions are to continue
9 deliberating?

10 THE COURT: Yes, sir.

11 MR. HAZZARD: It light of the fact that they have said
12 that they have not reached a specific impasse?

13 THE COURT: Right.

14 MR. HAZZARD: No objection.

15 THE COURT: Thank you.

16 Court's Exhibit.

17 (The Court Reporter accepts the Jury Note as Court's
18 Exhibit #16.)

19 THE COURT: Court's in recess.

20 (The Court recesses this trial awaiting advice from the
21 jury as the jury continues deliberating at 11:09 a.m.

22 The Court thereafter reconvenes the trial of this case at
23 12:37 p.m.)

24 THE COURT: This is matter involving the first trial.
25 The Solicitor is represented by Nancy. So, I can deal with

1 deliberations.

2 Go ahead and tell them.

3 (The Court recesses the trial of this case as the jury
4 resumes deliberations at 2:49 p.m.

5 The Court thereafter resumes the trial of this case at
6 4:24 p.m. to consider another note from the jury.)

7 THE COURT: All right.

8 Have a seat.

9 Further communication is the same as the last one. They
10 are still at eleven to one. Did not say they were hung up.
11 So, I sent it back and asked them to continue their
12 deliberations.

13 (Jury Note is made Court's Exhibit #17)

14 MR. HAZZARD: Your Honor, let the record reflect that
15 Candice Lively is here on behalf of the State.

16 THE COURT: I've got this.

17 MR. HAZZARD: "The juror is not willing to discuss it
18 further. Please advise."

19 I would submit that if they want to discuss it, then the
20 Court has two options, either the Allen charge or - - -.

21 THE COURT: I'm going to tell them. They haven't said
22 they're hung up. I'm going to tell them to continue
23 deliberations. We don't - - I'm not ready for that yet.

24 MR. HAZZARD: But is it deliberations if they say one of
25 the jurors will not discuss it?

1 THE COURT: They haven't said they're un-irrevocably
2 hung up.

3 MR. HAZZARD: But if one of the jurors say they're not
4 willing to deliberate?

5 THE COURT: Deliberate.

6 MR. HAZZARD: So, that's not deliberation.

7 THE COURT: I'm going to call them back and tell them
8 under their obligation they've got to deliberate.

9 Bring the jury in on #1.

10 Some of them downstairs. We'll deal with it later.
11 Let's deal with this other matter first.

12 (The Court addresses off the record a member of the
13 audience regarding conduct outside the courtroom in the
14 presence of the Victim's Advocate and admonishes the party to
15 remain civil.

16 The Court recesses the trial of this case and thereafter
17 reconvenes the trial of this case regarding another jury
18 question.)

19 THE COURT: Be seated.

20 (The jury returns to the courtroom at 4:54 p.m.)

21 THE COURT: I need the alternate. I may have to use
22 them.

23 Mr. Alternate, I hope you haven't been lonesome.

24 I wish I didn't have to keep you but you never know
25 what's going to occur. Some people get sick or things happen,

1 and I would need you, and I say that for this reason. We
2 always have to have twelve, and this case has been going on
3 since Monday, and if I let you go and then somebody got sick
4 and couldn't continue, I'd be in a position of having to retry
5 this case and go over the whole thing again, you understand?

6 And because we couldn't go with eleven, so that's why
7 I've got to keep you.

8 Madame Foreman, I recognize that all of you have been
9 working very diligently to resolve the issues in this case,
10 and I thank you for that.

11 I've received the following communication.

12 "We are still at eleven to one after much deliberation.
13 The one juror is not willing to discuss it further.

14 Please advise."

15 I'm not interested in which juror refuses to discuss it
16 further. I am interested, however, in the concept of the
17 jury, and in that concept, jurors under their oath are
18 required to discuss their issues among themselves so that we
19 can reach an understanding.

20 A juror who says, "I am just not going to discuss my
21 position," whatever it is, is not rendering efficient jury
22 service.

23 If the great majority of you feel one way, they are
24 entitled to explain to that one juror their position.
25 Equally important, the one juror is entitled to explain his or

1 her position but no juror is doing justice to our system of
2 justice in saying, "Well, I'm not going to discuss it, and
3 we're going to do my way or no way."

4 That's not effective - - sufficient jury service.

5 Discussion is necessitated among all of you.

6 It's about 5:00. I'm going to let you go home. Again,
7 ask you to return at 9:30 in the morning. As I've indicated,
8 we've been here since Monday. We can be here tomorrow and
9 Saturday and Sunday if necessary.

10 I ask that you exchange ideas with one another.

11 You know, what ultimately would occur is a mistrial, and
12 a mistrial helps no one. Simply what would occur is that each
13 of the parties would come forth and tell twelve people just
14 like you, no more than you, same thing. Ask twelve people to
15 resolve it.

16 Lot of times I've had jurors say, "Well, Judge, I thought
17 if I mistried the case, it would be over."

18 Well, that's not the law. It would be retried.

19 And we've been here five days. So, I want you to
20 continue it and see can we resolve it. I would never ask
21 anybody to withhold their heartfelt opinion about any issue
22 but I would insist that all jurors, at least, discuss their
23 positions with everyone else to see if their positions is the
24 correct one. Discuss the evidence and discuss each other's
25 views, remembering, though, that I have no way to suggest that

1 I can get twelve people more intelligent than you, twelve
2 people more bent on doing their duty.

3 But that - - what would happen, the twelve folks would be
4 selected the same process as you. We'd bring everybody back,
5 and it would be another week, and, so, if at all possible, I
6 would ask that you continue deliberations and see can we get
7 it resolved with the caveat I would never ask anybody to give
8 up their heartfelt opinions about any position. Would not do
9 that but I would insist that everybody talk to each other.

10 I don't know what witness is failing to say anything but,
11 apparently, he or she won't even discuss it. Well, that's not
12 jury service.

13 Whoever it is is entitled to their opinion and entitled
14 to talk to the majority of you to see if you might be
15 convinced by what they say.

16 On the other hand, the majority of you are entitled to
17 her to see if she - - he or she is, perhaps, wrong in their
18 view.

19 But it is important in our judicial system that we get
20 this resolved.

21 You know, sometimes it's difficult to get two people to
22 agree on anything to start with but, I tell you that,
23 ultimately, in our jury system it works. It works, and if you
24 have mistrial, our system does not work.

25 And so it is if at all possible, whatever you do, I want

1 an opinion that is unanimous.

2 Again, I emphasize, I don't want anybody to give up their
3 heartfelt opinions. I don't know who feels what way but, as
4 I've indicate, a lot of jurors say, "Well, we'll get it
5 resolved. We just won't reach a decision."

6 Well, that resolves nothing. It just puts everybody in
7 the position of going through the same process again.

8 So, I'm going to let you - - it's 5:00. I'm going to let
9 you go home.

10 Don't discuss the case with anyone. Let no one discuss
11 it with you. Please don't try to read the paper. Refresh
12 yourself. Come back here at 9:30 in the morning, and
13 everybody, now, including whoever is refusing to talk, come
14 back in the morning and discuss your various issues with you,
15 and let's see can we get this thing resolved.

16 You are excused until 9:30 in the morning.

17 Thank you.

18 (The jury is released for the day and departs the
19 courtroom to return at 9:30 a.m.)

20 THE COURT: All right.

21 The communication to which I referred is made a part of
22 the record.

23 (The Court Reporter accepts the Jury Note as Court's
24 Exhibit #18.)

25 THE COURT: Any objections or additions to the comments

1 made to the jury.

2 MR. GRAUSTEIN: None from the State, Your Honor.

3 THE COURT: How about the defense?

4 MR. HAZZARD: No objections, exceptions or additions or
5 deletions.

6 THE COURT: Thank you, sir.

7 Mrs. McCall. Make a copy.

8 Mr. Bailiff, let those folks who are interested in Trial
9 #1, let them know that as to that we will have no further
10 activity until tomorrow morning at 9:30. There's no need to
11 have them sit around tonight.

12 I would suggest based on what I've been hearing that you
13 let each family go out separately.

14 I don't want to have to resolve a fight.

15 MR. HAZZARD: Your Honor, would it be prudent to have the
16 bailiff wait about five or ten minutes so that the jury can
17 get on their way before the families start streaming out?

18 THE COURT: Wonderful suggestion

19 DEPUTY: We've already taken steps, Your Honor.

20 We've got them closed up right now. They're out of the
21 hallways. They're clear.

22 THE COURT: Well, leave the family of the victim - -
23 is there going to be any need for a discussion with the
24 family?

25 Come forward a minute.

FRIDAY, FEBRUARY 11, 2011

(Upon all members of the jury returning at 9:30 a.m. on Friday, the Court instructs the jury off the record to resume its deliberations.

The jury resumes deliberations at 9:30 a.m.

At 9:55 a.m., the Court reconvenes the trial of this case to address question of the jury.)

THE COURT: Let's come to order, please.

I have received the following communication from Jury #W1 as follows:

"We would like to review the written transcripts of the witnesses' deposition if possible"

My response is as follows:

"Several depositions which are not in evidence were used for purposes of cross examination only. Consequently, they are not available."

So far, is that okay?

MR. HAZZARD: I would ask that they also - - -

THE COURT: I'm getting ready to do that. I'm talking about now where I am?

MR. HAZZARD: That's fine.

THE COURT: "The testimony of all the witnesses were recorded, and you may, if you choose, listen to all or any portion of their testimony by recording,"

Is that what you want?

1 MR. HAZZARD: Yes, sir.

2 MR. RICHARDSON: Your Honor, you might want to tell
3 them that they can review the video. I don't know if that
4 would do any good.

5 THE COURT: No. I don't want to encourage -- they've
6 already had four hours of it.

7 (The Court sends the response into the jury room, and the
8 jury continues to deliberate at approximately 9:40 a.m.

9 At 10:17 a.m., the Court reconvenes the trial of this
10 case for a further question of the jury.)

11 THE COURT: Bring the Jury #1 in for me.

12 Counsel, y'all come forward.

13 (A Bench Conference is held off the record and outside
14 the presence of the jury.

15 The jury returns to the courtroom at 10:18. a.m.)

16 THE COURT: Good morning, Madame Foreman, ladies and
17 gentlemen.

18 Again, I appreciate all of the effort that you and your
19 distinguished juror are making to resolve these issues in this
20 case.

21 I've received the following communication, and I've been
22 on the Bench twenty-seven years, and I never have in all of
23 those years had a request from a jury that wants to rehear all
24 of the testimony which would mean that we'd have to start back
25 and retry the whole case.

1 So, if that's what y'all want to do, I'm going to
2 certainly do it but I would suggest that before we go to start
3 with the first witness and end sometime tomorrow or Monday
4 morning, it would be that long but that's fine with me. I
5 would be here.

6 I would suggest, Madame Foreman, and it's a suggestion
7 only, that you inquire of the various jurors who were
8 concerned about some particular testimony and attempt to
9 narrow your request to that witness.

10 As an example, over the years, I've had a witness on the
11 stand for two or three hours. The jurors wanted to hear a
12 particular portion of that testimony with regard to a certain
13 issue, and I had my Court Reporter go to the recording and go
14 to that portion and replay it, and I told the jury, "When we
15 get what you're interested in, we'll stop."

16 And they raised their hand and they said, "That's it."

17 So, in doing it that way, we saved the jury a vast amount
18 of time.

19 Now, my time is not important in this case nor is my
20 Court Reporter. Your time is important to me but if for some
21 reason, you and your jury want to replay the entire trial
22 which lasted, what? Two and a half days, I'm going to
23 accommodate you but I would think there may be some witness
24 with some portion that you are concerned with that we can save
25 a lot of time.

1 The final statement is. This Court is going to do
2 exactly what you want to do. Okay?

3 Return and tell me what you need.

4 Thank you.

5 I do not believe you need to play every witnesses'
6 testimony, though.

7 MR. HAZZARD: Your Honor?

8 THE COURT: Yes, sir.

9 MR. HAZZARD: I would like to place an objection on the
10 record.

11 I'm sure it was inadvertent but the jury was brought in,
12 and the Court spoke with them with the defendant not being
13 present.

14 THE COURT: Well, that's through inadvertence. Why
15 didn't you call that to my attention?

16 MR. HAZZARD: Because the jury was already in the room,
17 Your Honor.

18 THE COURT: Well, do you want me to bring them out and
19 tell them the same thing again in the presence of the
20 defendant. I'll be glad to do that.

21 MR. HAZZARD: I would appreciate it, Your Honor.

22 THE COURT: All right.

23 Where is the defendant?

24 Next time, though, you need to call that to my attention.

25 MR. HAZZARD: I understand.

1 THE COURT: Instead of bringing them back, let me tell
2 him what I told the jury. Would that be sufficient?

3 MR. HAZZARD: Well, what I think is prejudicial is that
4 the jury is in the courtroom and the defendant is not here
5 which could possibly give them an indication that the
6 defendant - - -

7 THE COURT: All right.
8 Bring the jury in.

9 Next time, please call that to my attention. I'm sitting
10 here working on three separate issues: Two trials and
11 arraignments, and you sit there. Have every opportunity to
12 call that to my attention and don't do that. That's not fair
13 to me, and it's not fair to the jury, and it's not fair to
14 your client. You got a responsibility, too, to help us here
15 this morning. We're dealing with three separate things.

16 MR. HAZZARD: Yes, sir, Your Honor, and I apologize.

17 THE COURT: All right.
18 Bring the jury in.

19 (The jury returns to the courtroom at 10:20 a.m., and the
20 defendant is present.)

21 THE COURT: Madame Foreman, ladies and gentlemen, under
22 our system of jurisprudence and very properly so, a defendant
23 in any case is entitled to hear any instructions that I give
24 to the jury.

25 It was called to my attention in giving to you those

1 previous instructions the defendant through no fault of his
2 own is present. He is present now, and I give you the same
3 instructions that I did before, and that is if you care to
4 hear the entire trial again, that's your prerogative, and it
5 will be granted. If you care to hear any portion of any
6 particular jurors' testimony by recording I will do that.

7 As I told you earlier, in the interest of time, your
8 time, not mine, I would ask that you narrow your request to a
9 specific witness and a specific portion of the testimony. It
10 will save you time.

11 But if you care to hear the entire trial again starting
12 from, "Good morning," I'm go to turn the recording on, and
13 that's what we going to do.

14 I want it to be abundantly clear. That's your call but
15 I do suggest that, perhaps, you narrow it in some way if that
16 will be helpful to you.

17 You may now retire, and I hate to call you back but the
18 defendant was entitled to hear those instructions.

19 (The jury retires to the jury room at 10:26 a.m. to
20 continue deliberations.)

21 THE COURT: Was that sufficient?

22 MR. HAZZARD: Very much so, Your Honor.

23 THE COURT: All right, sir.

24 (The Court recesses the trial of this case awaiting
25 advice from the jury.

1 if I have any outbursts, you going to jail, and I don't want
2 to do that but if you force me to, I will.

3 Now, Officers, I want my rules fully conformed with.

4 Everybody understand that? Anybody got any question?

5 Bring the jury in.

6 (The jury returns to the courtroom at 11:31 a.m.)

7 VERDICT

8 THE COURT: Madame Foreman, the Bailiff advises me that
9 you and your distinguished jury have reached a unanimous
10 verdict?

11 MADAME FOREMAN: That's correct, Your Honor.

12 THE COURT: Please give her the verdict, please.

13 (Clerk of Court accepts verdict and presents it to the
14 Court.

15 THE COURT: Publish the verdict, please, for me.

16 CLERK OF COURT: State of South Carolina vs. Brittany
17 Alexis Johnson, Indictment 2008-GS-26-3648.

18 We, the jury, by unanimous consent find the defendant,
19 Brittany Johnson, guilty of murder.

20 Harriet Charles, Foreperson, June 11, 2011.

21 THE COURT: Madame Foreman, if this be the verdict of
22 all twelve, so signify by raising your right hand, please.

23 Please raise your right hand.

24 If this be the verdict of everybody, please raise your
25 right hand.

1 Madame Foreman?

2 MADAME FOREMAN: Yes, sir.

3 THE COURT: Did you raise your hand?

4 MADAME FOREMAN: I raised my hand.

5 THE COURT: All right. Thank you so much.

6 The jury has indicated by the raising of their right hand
7 that the verdict is unanimous.

8 Anything further from the jury?

9 MR. HAZZARD: Nothing further regarding the jury, Your
10 Honor.

11 THE COURT: All right, sir.

12 The jury has requested that they be here for the
13 sentencing, and they are certainly entitled to do that.

14 After sentencing, I'll hear any appropriate post-trial
15 motions.

16 Have the defendant come forward. Have the defendant
17 come forward here for me in front of me.

18 (The defendant stands before the Court.)

19 THE COURT: Counsel for the defense, I'll be glad to
20 hear any post-trial motions at the conclusion of these
21 proceedings. Is that satisfactory?

22 MR. HAZZARD: That is satisfactory, Your Honor.

23 THE COURT: Okay.

24 Ms. Johnson, I have sat here all week listening to the
25 testimony. I've been on the Bench now on my twenty-seventh

1 year. From the testimony I conclude that this is one of the
2 most callous, pre-meditated murders that I've ever witnesses
3 in my courtroom.

4 You stalked that poor girl, the mother of four children,
5 for three days. Even the day before you killed her, you said,
6 "Come on out and eat some of my bullets."

7 On that day when she was sitting in her car with her two
8 friends minding her own business, you went over with a forty-
9 five and started beating her.

10 By your own testimony you said, "I pulled the trigger,
11 and I'm sorry for it."

12 I have to tell you, though, in spite of the overwhelming
13 testimony, that jury deliberated here for about three days,
14 one of th best jurors I've ever had the opportunity of working
15 with. They must have sent me fifteen communications on
16 various things.

17 During the trial of the case you were represented by Ron
18 Hazzard who gave you the best possible defense that he could
19 under the circumstances. There was no way in the world that
20 he could get around your video sworn statement where you said,
21 "I pulled the trigger." Quote, unquote.

22 "And I'm sorry for it."

23 It was a callous, pre-meditated murder, and I have no
24 comment to make about it except the evidence in this case
25 fully justifies the verdict of guilty of murder rendered by

1 this jury.

2 I'll be glad to hear from you, now, or your distinguished
3 counsel.

4 Mr. Hazzard, I'll be glad to hear from you here or Ms.
5 Johnson. She faces under this charge in my discretion a
6 sentence of thirty years or life in prison.

7 Be glad to hear from you on that issue.

8 MR. HAZZARD: Thank you, Your Honor.

9 As the Court knows after having - - -

10 THE COURT: Let me say this to you.

11 You gave her a defense at absolutely no cost to her, and
12 I congratulate you on the efforts that you did on her behalf.

13 Thank you.

14 MR. HAZARD: Thank you, Your Honor.

15 I appreciate that.

16 THE COURT: Go ahead.

17 MR. HAZZARD: As the Court is aware at the time this
18 happened Brittany was three weeks past her seventeenth
19 birthday. She had just turned seventeen years old.

20 The Court is also aware that this young lady had one of
21 the hardest and horrendous and horrific and most unimaginable
22 upbringings that any child could ever have or be expected to
23 endure.

24 As the Court also knows in matters that we handled prior
25 to the jury being involved in the case, Ms. Johnson has been

1 treated at Waccamaw Mental Health for most of her life
2 starting at around the age of eleven and twelve with regard to
3 her adolescence, and that her treatment has been for what she
4 suffered as a child, for the, ah, manic depressive, somewhat
5 by-polar action she has or the depression that she has been
6 diagnosed for.

7 As the Court knows, she's on three different forms of
8 medication: Seroquel, Vizarill and Prosac, and that the
9 woman who is with you standing beside me here today is much
10 different from the raging young lady that I met two years ago
11 before her medication was fine-tuned, and I must point out
12 that Ms. Johnson spent part of her time awaiting trial. She
13 has been incarcerated since she made arrangements with the
14 Marshals to come pick her up on July 2, 2008. She has been
15 incarcerated since that time.

16 And a good part of that time, about a year or so of that
17 time, she spent up in Columbia with the South Carolina
18 Department of Corrections receiving specific psychiatric
19 treatment, and that was where they were able to finally fine-
20 tune the mediation and get her the treatment that she needs,
21 and, um, that's why this young lady who has been here with you
22 this week is not an angry, raging, obstinate individual that
23 existed back in June of 2008. She is a young woman that has
24 not caused this Court any problem whatsoever except for the
25 admonition to pleas speak up because you talk to softly.

1 And there is no question that what happened on June 24th
2 of 2008, was an absolute tragedy that cannot be changed,
3 cannot be changed but I would ask the Court when you consider
4 the testimony that you heard from this witness stand even two
5 and a half years after the fact to the young lady that you saw
6 with the confused, the raging, the emotional and upset young
7 lady you saw on that video that did make most statements that
8 the Court mentioned. That's not the same lady you're seeing
9 here this week, and the Court knows that.

10 Judge, you've been doing this twenty-seven years. You
11 have learned to a far greater degree than I probably ever will
12 how to judge and evaluate individuals, and I'm sure you know
13 that the woman you saw in the video and the woman who is here
14 now are two different people.

15 I simply point out to you that this young lady does have
16 a son who as a result of her actions on that day in 2008, will
17 now, undoubtedly, grow up without his mother, and I am sure
18 that Ms. Burrough's family knows that they are dealing,
19 obviously, with her four small children who are growing up
20 without their mother.

21 Brittany has done the only thing she can do which is to
22 say, "I am sorry for my actions."

23 She did not sugar coat in the stand.

24 She did say, "I've got the responsibility because my hand
25 was on the gun and on that trigger."

1 We simply ask Your Honor that whatever lenience and mercy
2 that you can give that you seriously consider and give.

3 THE COURT: One of the significant pieces of testimony
4 in this entire trial that stood out before me. When that poor
5 victim, the mother of four young children, dying on the steps
6 of her apartment said, "Why?"

7 Looked up at her sister and said, "Why?"

8 And it was just because of the pre-meditated malice in
9 her heart that she shot and killed that unfortunate victim.

10 I do want to tell the jury that when someone has been
11 admitted for examination to the hospital, we have a complete
12 hearing out of your presence with appropriate doctors to
13 testify. Those doctors clearly said that she knew right from
14 wrong, had the capacity to enter-act with her attorney and
15 could certainly stand trial for murder.

16 Based on that medical testimony, I concluded, and
17 properly so, that it was proper that we go forward.

18 Ms. Johnson, I take no pleasure in imposing a sentence
19 upon you because your actions greatly concern me on this
20 occasion, particularly the pre-meditated aspect of it when you
21 stalked for three days trying to kill her.

22 Why somebody didn't stop it at that time, I'll never
23 know. When you stood outside that house and said, "Come on
24 out. I'm going to let you eat three bullets," somebody,
25 somewhere in that entire project should have said, "Go get her

1 before additional trouble erupts."

2 Why somebody didn't, I don't know but under the fact that
3 they didn't, that young girl in the prime of life is dead
4 leaving four young children.

5 I'm going to give you a modicum of mercy.

6 MR. GRAUSTEIN: Your Honor.

7 THE COURT: Yes.

8 MR. GRAUSTEIN: I'm sorry, Your Honor.

9 Would it be appropriate for the victims to address the
10 Court prior to sentencing.

11 THE COURT: I will listen to one of them, not all of
12 them. We've all heard the testimony but I'll be glad.
13 They're entitled to do that. That's fair, and I think the
14 jury would want to hear them.

15 Have the gentleman come stand on the left-hand side over
16 here.

17 (The father of the victim stands before the Court.)

18 THE COURT: I know these proceedings would be extremely
19 difficult for you but you have the right to make a statement,
20 and I'm glad to hear. May I have your name, please.

21 MR. BURROUGHS: My name is Ervin Burroughs. I'm
22 Monica Burroughs' father. Last spelled B-u-r-r-o-u-g-h-s.

23 THE COURT: Come forward a little bit, please.

24 Mr. Burroughs, as I indicated, as the father of the
25 deceased, I know these proceeding have been very difficult for

1 you. Be glad to hear from you.

2 MR. BURROUGHS: Well, most I am here for - - wait
3 a minute - - for these kids.

4 These are my kids, Monica kids.

5 THE COURT: You may show them to the jury if you care
6 to.

7 Proceed.

8 MR. BURROUGHS: Well, my daughter talked to me
9 all the time, and she called me.

10 Brittany stalked her more and more than one time. She
11 called me. She said, "Daddy, she going to kill me."

12 I told her to move. That's what she was doing when
13 Brittany killed her. She was going to pick the kids of from
14 my house, and the one thing - - the reason I'm here, God be
15 with me, is for her kids. Two of the kids staying - - I've
16 had them kids in counseling for a year.

17 But I got to for her and they say there was four witness,
18 three witness. There was six witness because them two kids
19 seen everything. They - - the oldest one went outside and
20 said, "Granddaddy, I ask her why she kill my momma," and said
21 Brittany picked the gun up and pointed it at him and put it
22 back down.

23 And I - - what hurt me, and Brittany know what she's
24 doing. She know what she doing. She had sense enough to know
25 some other child could pick that gun up and put it down. She

1 know what she been doing.

2 That's all I want to say. Thank you.

3 SENTENCE OF THE COURT

4 THE COURT: Ms. Johnson, as I was getting ready to say
5 that this was a pre-meditated murder if I ever saw one. I
6 charged manslaughter to the jury to give them an opportunity
7 but this case was never a manslaughter. It was murder.

8 Even under manslaughter, you could receive and would
9 receive thirty years in jail.

10 When one is convicted of murder, the trial judge has two
11 options:

12 One, life imprisonment; or

13 Two, thirty years in jail.

14 Given your age and the fact that you do have a young
15 child, I want to give you the opportunity to some day somehow
16 to get back out of jail if you behave yourself while in jail.

17 Of course, during the two years you've been in jail, I'm
18 aware of the fact that you hit another patient over the head
19 with a food tray, and you also in these last two years
20 assaulted one of the arresting officers.

21 Now, I tell you that if you ever want to get out of jail,
22 you'll never get out if you continue that sort of conduct, and
23 you've done this while awaiting trial for this case.

24 Having said that, I'm going to give you a modicum of
25 mercy by sentencing you to the State Penitentiary for a period

1 of thirty years.

2 You may be discharged.

3 Thank you.

4 Madame Foreman, ladies and gentlemen, let me first say to
5 you that none of you asked to come into court and to be the
6 judge and jury in such a serious case. Knowing human nature,
7 I suspect that all of you would have wished somebody else
8 would have had that responsibility, and I understand that but
9 having given - - been given that responsibility as citizens of
10 this county and this magnificent country, you've met your
11 obligations as jurors.

12 I want to congratulate the Solicitor's Office and the
13 defense and police officers of this county in bringing this
14 forward but when somebody deliberately, maliciously with
15 malice aforethought deliberately takes the life of another, if
16 we are to have peace and justice in our county, they must be
17 brought to justice, and by your verdict, you have done that,
18 and the people of Horry County and the State of South Carolina
19 are in your gratitude, and we thank all of you.

20 You are now dismissed.

21 Now, let me say this to you.

22 This case given the nature of it has brought a lot of
23 attention. I'm sure the news medial is going to want to talk
24 to you. If you choose to talk to them, you may. If you
25 choose not to, just say, "I don't want to discuss it."

1 I leave that to your good discretion whether you want to
2 discuss it with anybody or somebody or nobody.

3 Just remember. I know that the news media is going to be
4 hounding you, and if you don't to participate just say, "I've
5 done my duty. I have nothing further to say."

6 I would ask that the Foreman be escorted to my chambers
7 for just a minute.

8 The rest of you may be excused and thank you so much for
9 your dedicated services. You have my gratitude, too.

10 Thank you.

11 All right, sir.

12 We're going to take just a fifteen minute break. Those
13 who are not interested - - wait a minute. I want them to
14 leave very quietly, please.

15 Officers, I want them to very leave quietly but we going
16 to be in recess for fifteen minutes.

17 (The Court recesses this trial and thereafter reconvenes
18 the trial of this case.)

19 THE COURT: Be seated.

20 All right.

21 Mr. Hazzard.

22 POST-TRIAL MOTIONS AND RULING OF THE COURT

23 MR. HAZZARD: Yes, sir, Your Honor.

24 At this time the defense makes a motion for a new trial
25 asking the Court to grant the defendant a new trial. The

1 basis of that motion is we feel the evidence adduced at trial
2 was insufficient to support the verdict rendered.

3 THE COURT: You've heard my comments on that, of
4 course..

5 As I indicated before, her testimony alone was sufficient
6 to go to the jury, and there is more than ample testimony to
7 show malice aforethought and murder in the first degree, and
8 I respectfully deny that motion.

9 MR. HAZZARD: Okay.

10 The only other matter would be that during the course of
11 the trial, there were certain transcripts that were referred
12 to by me. The sealed copies were provided to the Court for
13 the Court's review. I would ask that those be marked as
14 Court's Exhibits - -

15 THE COURT: They will be.

16 MR. HAZZARD: - - in case there's a question for the
17 appellate court.

18 THE COURT: All right.

19 Anything further.

20 MR. HAZZARD: No.

21 That would be it.

22 THE COURT: Do you care to make any remarks, Solicitor?

23 MR. GRAUSTEIN: No, Your Honor.

24 THE COURT: I didn't think so.

25 COURT REPORTER: Your Honor, I would like to have on

1 record the number of these transcripts that I'm suppose to
2 have.

3 THE COURT: Let's get on the record with the numbers
4 of the transcripts we're suppose to have.

5 MR. HAZZARD: There are three transcripts: One from Ms.
6 Joanne Davis, one from Ms. Teresa Cox and one from Ms. Tamika
7 Smith.

8 COURT REPORTER: Thank you.

9 (The Court Reporter accepts these as Court's Exhibits
10 #20, #21 and #22.)

11 THE COURT: Any further motions.

12 MR. HAZZARD: None on behalf of the defendant, Your
13 Honor.

14 THE COURT: Mr. Hazzard, I, again, publicly want to say
15 that you did an outstanding job, particularly, confronted with
16 some overwhelming facts against your positions including the
17 defendant's own video.

18 Your representation of this defendant without any cost to
19 her exemplifies some of the very finest that we have in our
20 judicial system, that somebody guilty of murder unable to
21 obtain and attorney can find and have such astute services as
22 you rendered.

23 I thank you for that.

24 MR. HAZZARD: Thank you, Your Honor.

25 THE COURT: All right.

1 Anything further with regards to this case.

2 MR. GRAUSTEIN: Nothing from the State, Your Honor.

3 THE COURT: All right.

4 (The Court adjourned the trial of this case.)

5 - - - END OF TRANSCRIPT - - -

We're all in agreement that we need to see & hear the video tape again.

We would like to know if it would be possible to view the tape again before proceeding?

Are we allowed to take notes?

EXHIBIT

W COURT
& 8 LWM

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT

Indictment # 2008-GS-26-3648

STATE OF SOUTH CAROLINA)

) Defendant's Memorandum in Support of

Vs.) Request for Lesser Included Offenses of

Brittany Alexis Johnson,) Voluntary Manslaughter and Involuntary

_____) Manslaughter and charge of Self-Defense

The Defendant in the above-captioned case moves this Honorable Court to submit the lesser included offense of Involuntary Manslaughter to the jury for their consideration. In a unanimous decision, the South Carolina Supreme Court held in Casey v. State, 305 SC 445, 409 SE2d 391 (1991) that a request to charge a lesser included offense is properly refused only when there is no evidence that the defendant committed the lesser rather than the greater offense. They further held that evidence of a struggle is sufficient for the trial court to charge the jury on the offense of Involuntary Manslaughter.

In Casey, the defendant armed himself with a shotgun after perceiving himself to have been threatened with a knife by the victim. The only testimony regarding the incident indicated that the defendant struggled with his female cousin, who was trying to disarm him, and the shotgun discharged, striking and killing the victim. The Supreme Court held that evidence of a struggle, whether between the defendant and the victim or the defendant and a third party, entitled the defendant to have Involuntary Manslaughter submitted to the jury as a lesser included offense. The Supreme Court reiterated this holding in Tisdale v. State, 387 SC 174, 691 SE2d 482 (2008).

EXHIBIT

5-2-08 COURT 9 RWM

In the instant case there was testimony from Joanne Davis, a witness for the State, that on at least four (4) occasions during her police interview two days after the incident she told Det. John King of the Conway Police Department that the defendant and the victim were struggling over the gun when the single, fatal shot was fired. It is a well-settled tenet of law that in determining whether to charge the lesser included offense of manslaughter the trial court must view the evidence in the light most favorable to the defendant. State v. Knoten, 347 SC 296, 555 SE2d 391 (2001). The Defendant in the instant case asserts that under this standard the question is not whether the evidence is contradicted by other testimony but whether any evidence exists. If evidence exists, it is for the jury to determine the weight to be given, especially in light of the trial court's standard charge that instructs the jury that they may believe one witness against many or many witnesses against one. The jury therefore has the option to assign what weight, if any, it chooses to give Ms. Davis' testimony regarding what she characterized as her truthful statement to Detective King, asserting that defendant and victim were struggling over the gun at the time the gun discharged.

With regard to Defendant's request for a jury charge on the law of self-defense, in the instant case Tamika Skipper testified that the defendant was standing approximately two doors away from the car containing the victim and others when the occupants of the car jumped out and surrounded the defendant in a threatening manner. This testimony in and of itself warrants a charge on the law of self-defense.

In State v. Light, 378 SC 641, 664 SE2d 465 (SC 2008) the Supreme Court stated that if there was any evidence in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the trial judge's failure to do so is reversible error. The Supreme Court further held that a self-defense charge and an Involuntary Manslaughter charge are not mutually exclusive as long as there is any evidence to support both charges, and that the factual issue as to whether the shooting was in self-defense or committed unintentionally is one for the jury to decide and the defendant is entitled to both charges.

Unlike the factual situation in State v. Slater, 373 SC 66, 644 SE2d 50 (2007) where the uncontroverted testimony indicated that the defendant armed himself with a gun and interjected himself into an ongoing dispute, then subsequently fired the weapon, testimony given by Ms. Skipper indicates that the victim and others got out of the car and advanced toward the defendant.

In State v. Starnes, 388 SC 590, 698 SE2d 572 (2010), the Supreme Court held that Voluntary Manslaughter and self-defense are not mutually exclusive. In light of the defendant's testimony regarding prior difficulties with the victim and her fear when confronted by multiple individuals, Voluntary Manslaughter is an appropriate lesser included offense for the jury's consideration. According to the Supreme Court, if the facts disclose any basis for the charge, then the charge must be given. Defendant submits that Voluntary Manslaughter is an appropriate lesser included offense for the jury to consider in this case.

Respectfully Submitted,

Ronald W. Hazzard

Attorney for Defendant

477

WITNESSES

Det. J.G. King Conway Police Department

FILED
Horry County

2011 FEB 15 AM 11:42

MELANIE HUGGINS-WARD
CLERK OF COURT

ARREST WARRANT NUMBER

I216048

CDR: 0116 16-03-0010, 0020

DOA: 7/3/2008

ACTION OF GRAND JURY

TRUE BILL
James Wilburn
Foreperson of Grand Jury
Date: SEP 25 2008

VERDICT

Foreperson of Petit Jury

Date:

C
DOCKET NO. 2008-GS-26-3698

The State of South Carolina

2011 FEB 15 AM 11:42
County of Horry

Scott Graustein

08H03016

Melanie Huggins-Ward
CLERK OF COURT
COURT HOUSE GENERAL SESSIONS

SEPTEMBER, 2008 TERM

THE STATE

VS.

Brittany Alexis Johnson
/ F

DOB: [REDACTED]
SSN: [REDACTED]

ATTORNEY: Galmore, James Cullen

Indictment for

MURDER

J. Gregory Hembree, Solicitor

ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

FILED
 HORRY COUNTY
 2011 FEB 15 AM 11:42
 MELANIE HUGGINS-JARRO
 CLERK OF COURT

At a Court of General Sessions, convened on SEPTEMBER 25, 2008, the Grand Jurors of Horry County present upon their oath:

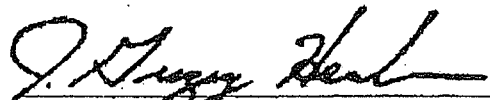
MURDER

CDR: 0116 16-03-0010,0020

That **Brittany Alexis Johnson** did in Horry County, on or about June 24, 2008, willfully, feloniously, and intentionally kill the victim, Monica Burroughs, with malice aforethought, either express or implied, by means of **SHOOTING VICTIM IN UPPER TORSO AREA WITH A HANDGUN**, and the victim did die as a proximate result thereof on or about JUNE 24, 2008 in Horry County, in violation of Section 16-3-20, C of Code of Laws, 1976, as amended.

FILED
 HORRY COUNTY
 2011 FEB 15 AM 11:48
 MELANIE HUGGINS-JARRO
 CLERK OF COURT

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 J. GREGORY HAMBREE
 FIFTEENTH CIRCUIT SOLICITOR

COUNTY OF
STATE

Horry

VS.

Brittany Alexis Johnson

AKA:

Race:

Sex: F

Age: 19

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Murder (30 - Life)

INDICTMENT/CASE#: 2008GS2603648

A/W#: I216048

Date of Offense: 6/24/2008

S.C. Code §: 16-03-0010, 0020

CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or

in violation of § 16-03-0010, 0020

of the S.C. Code of Laws, bearing CDR Code #

0116

☒ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS(CSC
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury,

(defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Graustein, Scott A.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

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

probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions
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
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. CodePursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

\$

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§ 56-5-2995 (DUI Assessment)

\$12

\$

§ 56-1-286 (DUI Breath Test)

\$25

\$

Proviso 47.9 (Public Def/Prob)

\$500

\$

§ 14-1-212 (Law Enforce. Funding)

\$25

\$

§ 14-1-213 (Drug Court Surcharge)

\$150

\$

§ 50-21-114(BUI Breath Test Fee)

\$50

\$

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

Proviso 90.5 (SCCIA Surcharge)

\$5

\$

§ 44-53-450(C) (Conditional Discharge)

\$350

\$

3% to County (if paid in installments)

\$

TOTAL

\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

Presiding Judge

Judge Code:

Sentence Date:

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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 17th, 2012



Breen Richard Stevens
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT