

VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

G. Thomas Cooper, Jr., Circuit Court Judge

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S.C. Supreme Court

GEORGE PORTERFIELD
a/k/a LARRY BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000245

APPENDIX

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VOLUME II OF II
PAGES 501-961

INDEX

INDEX	i
TRIAL TRANSCRIPT	1
APPLICATION FOR POST-CONVICTION RELIEF	905
RETURN	912
POST-CONVICTION RELIEF HEARING TRANSCRIPT	918
ORDER OF DISMISSAL	947
INDICTMENTS	958

Tena Goff - Direct examination
by Solicitor Jophlin

1 where it is within the evidence room?

2 A Yes, sir, or whether it's been signed out or not and
3 who it's signed out to.

4 Q Did that piece of evidence get signed out to anyone
5 or -- first, I'm sorry. What date did you receive that?

6 A I received this on November 27 of 2006 at twelve
7 o'clock noon.

8 Q After it came into your possession, did you sign it out
9 to anyone?

10 A Give me a moment please.

11 (Pause.)

12 A I did not, no.

13 Q I'm sorry. Anyone within your department sign it out?

14 A Yes, on November 27th, later that day, it was signed
15 out from Ms. Joy Delatorre to Doctor Gray Amick in the DNA
16 lab.

17 Q Where is she currently located?

18 A Last I knew it was Colorado, but I have no knowledge of
19 that.

20 Q You have any more knowledge of that?

21 A She does not.

22 Q Did you train her as far as things pertaining to your
23 evidence room?

24 A Yes.

25 Q Train her as the proper methods of receiving and

Tena Goff - Direct examination
by Solicitor Jophlin

1 handling evidence?

2 A Yes.

3 Q Do you have any occasion to believe she would have
4 handled this piece of evidence correctly per your training
5 and instructions?

6 A She did handle it properly, yes.

7 Q Per your training and---

8 A Yes.

9 Q ---you gave her?

10 Also going to hand you what's been marked Exhibit 98
11 for ID. I think those are some cotton swabs.

12 who received, turned in that package?

13 A This was submitted by Investigator Robert Oates from
14 the lab.

15 Q And was it given hand-to-hand to someone or put in one
16 of these drop boxes or lockers?

17 A This was given to person from Investigator Oates to
18 Mrs. Delatorre.

19 Q By looking at the package and from your training, do
20 you have any reason to believe it was tampered with in any
21 way once in your evidence room?

22 A No, the original seal and signature dates are still on
23 it.

24 Q I see some bar codes on there.

25 So, the proper procedure was followed at signing the

Tena Goff - Direct examination
by Solicitor Jophlin

1 bar codes from every item inside that package?

2 A Yes.

3 Q If that was received in your evidence area not properly
4 labeled or properly sealed up or anything, it would have
5 been turned away per your instructions?

6 A That is correct.

7 Q I'm going to hand, hand you State's Exhibit 124 for
8 identification at this time.

9 Who turned that item into your evidence room?

10 A Sergeant Stan Richards from the lab.

11 Q On what date?

12 A He submitted it on November 28 of 2006. Looks like
13 7:30 or could be 9:30 in the morning.

14 Q That's his writing on there?

15 A That is his handwriting.

16 Q And was it given hand-to-hand or drop box or locker?
17 Can you tell?

18 A He marked manner of submission person-to-person. He
19 handed it to Ms. Delatorre.

20 Q And what date did he have to or does it say on there
21 Ms. Delatorre---

22 A She received it November 28, 2006, at 11:15 in the
23 morning.

24 Q Do you have any reason to suspect or believe that that
25 package was tampered with in any way once it was in your

Tena Goff - Direct examination
by Solicitor Jophlin

1 evidence room?

2 A No, it was not tampered with.

3 Q Do you have any reason to suspect, to believe that when
4 Ms. Delatorre received it it was, lacked proper packaging or
5 handling or labeling once she received it?

6 A No, it was all done properly.

7 Q It appears on there some bar code on that as well
8 properly logged into your evidence room?

9 A Yes, sir.

10 Q In that particular exhibit, 124, did it go anywhere?
11 Once it came into your evidence room, did it go
12 anywhere else?

13 A It did.

14 Q Where did it go?

15 A Give me just a second.

16 (Pause.)

17 A I took it to SLED on December 12 of 2006.

18 Q Did you tamper with it in any way -- so, you
19 transported it from the sheriff's department to SLED?

20 A I did.

21 Q And did you tamper with it in any way?

22 A No.

23 Q Was it still in a sealed secured, secured condition?

24 A Yes.

25 Q Did you turn it into people at SLED?

Tena Goff - Direct examination
by Solicitor Jophlin

1 Did you turn it into them in that same condition in a
2 secured, secured condition?

3 A Yes, I did.

4 SOLICITOR JOPHLIN: Beg the Court's indulgence.

5 (Pause.)

6 SOLICITOR JOPHLIN: Beg the Court's indulgence.

7 (Pause.)

8 SOLICITOR JOPHLIN: Nothing further, Your Honor.

9 MR. O'NEILL: I have no questions for this witness.

10 THE COURT: Thank you. You can step down and be
11 excused.

12 GRAYSON AMICK, being first duly
13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY SOLICITOR CAMPBELL:

16 Q Doctor Amick, where are you employed?

17 A Richland County Sheriff's Department.

18 Q What do you do there, sir?

19 A I'm the supervisor and technical leader of the forensic
20 DNA laboratory.

21 Q The forensic DNA laboratory?

22 A That's correct.

23 Q As part of the leader of the forensic DNA laboratory,
24 what does it do?

25 A We receive evidence from crime scenes and employees of

Grayson Amick - Direct examination
by Solicitor Campbell

1 the sheriff's department to try to develop DNA prints from
2 those and compare them to people who are involved in those
3 cases.

4 Q Could you tell this jury a little bit about your
5 education and training?

6 A Sure. I have a Bachelor's Degree in biology in 1989
7 and a Ph.D. Degree from in biochemistry. From there I was
8 hired at the South Carolina Law Enforcement Division
9 commonly known as SLED. I worked there for 11 years. At
10 that agency I was trained by qualified experts in the fields
11 of forensic serology and forensic DNA analysis, validated
12 methods, and all through their current protocol.

13 In 2004 I was hired by Sheriff Leon Lott to start a DNA
14 laboratory for Richland County. I did that in test training
15 at Richland County since November of 2004, again validating
16 methods and offering protocols and involved in continuing
17 education every year in the field of forensic serology and
18 analysis.

19 Q You have been qualified before as an expert in forensic
20 DNA analysis and comparison?

21 A Yes, I have.

22 Q How many times?

23 A 578 different times.

24 SOLICITOR CAMPBELL: At this time I offer him as an
25 expert in DNA analysis.

Grayson Amick - Direct examination
by Solicitor Campbell

1 MR. COOPER: No objection.

2 THE COURT: So qualified.

3 Q Turn your attention to the case involving Larry Brown,
4 the defendant, and the victim, Eugene Frost, and we've heard
5 references to a Buccal swab in that.

6 What is the purpose of collecting someone's known DNA?

7 A A Buccal swab is a swab known for your mouth commonly
8 referred to as a Buccal swab. So, it's simply kind of a
9 Q-tip swab. Brush it on your gums and gives us a known
10 standard or known DNA sample, and the purpose of that is to
11 be able to compare that known standard to unknown evidence
12 at the scenes.

13 Q In this case, did you receive -- used to be we had to
14 get blood, but now we can do it with Buccal swabs.

15 A That's correct.

16 Q In this case, did you receive certain known standards
17 or from certain people involved in this case?

18 A I do.

19 Q Who did you receive Buccal swabs from?

20 A Buccal swab from Larry Brown and Tyrone Williams and I
21 think that's it.

22 Q Okay.

23 A Two I see on my list right here.

24 Q You had known standards from the victim in the case and
25 that would have been collected from the autopsy in this

Grayson Amick - Direct examination
by Solicitor Campbell

1 case, in a murder case?

2 A Usually, yes.

3 Q You also got a known standard from Larry Brown.

4 When you received those standards, they were packaged
5 properly and sealed in a proper condition?

6 A Yes.

7 Q No evidence of any tampering?

8 A Correct.

9 Q In addition to that, did you also receive any items of
10 evidence to be tested?

11 A I did.

12 Q Testimony in this case is there were a number of blood
13 swabs from the victim's blood and the scene that were
14 collected all over.

15 Did you test every single swab that was collected in
16 this case?

17 A I don't believe so.

18 Q Did you get together with investigators and test
19 certain items you think might or might not be probative or
20 at the time were thought to be probative?

21 A Yes, on a homicide case we were, will meet with
22 investigators and see to their expertise and as well as the
23 crime scene people who actually went to the scene to let,
24 let us know what's probative to test and then we'll go from
25 there, testing.

Grayson Amick - Direct examination
by Solicitor Campbell

1 Q In this case -- I want you to look at these blowup
2 items, State's Exhibit No. 122 and 123.

3 Is this basically a summary of the items you tested and
4 your results?

5 A Yeah, looks like a blowup of a document that I reviewed
6 that is a summary of my results.

7 SOLICITOR CAMPBELL: Your Honor, at this time we would
8 offer these into evidence.

9 MR. COOPER: Your Honor, I have no objection to this.

10 THE COURT: Okay.

11 (Whereupon, State's Exhibit Nos. 122 and 123 were
12 received into evidence at this time.)

13 Q In addition to the known standards, I believe you also
14 received a number of shell casings, a black---

15 A Yes.

16 Q A swab from the far wall, grand, window sill?

17 A That's correct.

18 Q A swab from the broken wall?

19 A Yes.

20 Q The nails from the victim taken at autopsy?

21 A That's correct.

22 Q And a swab from the left-hand and I believe the
23 right-hand of the victim taken off at the scene?

24 A That's correct.

25 Q A swab from the bathroom molding from Harper Street?

Grayson Amick - Direct examination
by Solicitor Campbell

1 A Bathroom molding, correct.

2 Q And Item 71 -- well, in addition to that, two pairs,
3 actually three pairs of shoes---

4 A Correct.

5 Q ---and a swab from a Bud Lite bottle?

6 A That's correct.

7 Q Those were the items you tested in this case?

8 A That's correct.

9 Q Certain items -- did you first do a preliminary test
10 that tested for the presence of blood?

11 A Yes, we do.

12 Q Why do you do that on certain items?

13 A Well, we will have information from the crime scene
14 this is a swab of blood, and so, additionally we'll look at
15 it and see if it looks like blood, and if it does, we'll do
16 a presumptive test at that point to see if it is or if it
17 could be blood.

18 SOLICITOR CAMPBELL: Your Honor, may the witness step
19 down?

20 THE COURT: Yes, ma'am.

21 Q In certain cases, you just -- go on that side.

22 In certain cases also you made an attempt or extracted
23 DNA?

24 A That's correct.

25 Q If you extract it, does that necessarily mean you're

Grayson Amick - Direct examination
by Solicitor Campbell

1 going to get a result?

2 A No, it doesn't.

3 Q Explain that to the jury.

4 A It's essential as you have to have a certain amount of
5 DNA to get a profile so you can extract DNA, but you may not
6 have enough in your profile so that basically explains --
7 you get extraction of DNA or purify it, but you may not
8 get---

9 Q In fact, from the swabs that were taken from the .40
10 caliber casings at the scene that were found in such a
11 manner, you made an attempt or extract some DNA?

12 A That's correct.

13 Q Were you able to get any kind of result?

14 A No.

15 Q what does that mean, there's not enough DNA to test?

16 A That's right. Not enough DNA.

17 Q Is that unusual when it comes to swabs on shell
18 casings?

19 A No, on touch items we can extract DNA, but a lot of
20 times we don't get enough on the profile.

21 Q In this case you got profiles, eight in number,
22 thirteen, a black cap, you did not test that, but you did
23 extract DNA from that?

24 A Correct.

25 Q what were the results when you compared in each of

Grayson Amick - Direct examination
by Solicitor Campbell

1 these cases to the -- you compared the DNA known profile
2 from the victim and the defendant, is that correct?

3 A That's correct.

4 Q And when you compared Item Number 13, the DNA you were
5 able to extract from the knit cap that was found on the
6 couch, what were your conclusions?

7 A The conclusion was that the DNA that developed --
8 profile developed from Item 13, which is the black knit cap,
9 or was a mixture, meaning it wasn't just a single person's
10 DNA, and that T. Williams could not be excluded as being a
11 contributor. So, his profile could possibly be in that
12 mixture, and that L. Brown could be excluded from that
13 mixture so he was not on that hat.

14 Q So, there was more than one person's DNA present in the
15 hat in the part you tested?

16 A That's correct.

17 Q And in that you mentioned you could exclude the
18 defendant from being a contributor in any way to, to that
19 mixture, of the mixtures of DNA's?

20 A Say that again.

21 Q When you get a mixture of DNA, an, an items
22 specifically on, a cloth item like if I wear a hat one day
23 and my sister wears it the next day, and then my brother
24 wears it the next day, it could be a combination of two or
25 three of us, is that correct?

Grayson Amick - Direct examination
by Solicitor Campbell

1 A That's correct.

2 Q And whenever you get a mixture in most problems, the
3 most you can do is either say it could be one of those
4 persons or you can exclude that person?

5 A That's right. The attempt is to include or exclude
6 them on an item.

7 Q On that item, the black hat, you were able to say that
8 Larry Brown, L. Brown, it wasn't his DNA on there?

9 A That's correct. L. Brown can be excluded from being a
10 contributor.

11 Q However, the victim's DNA profile was included within
12 the mixture?

13 A Correct. T. Williams couldn't be excluded, which is
14 another way of saying he was included.

15 Q I understand you have to talk technical with---

16 A Right, just semantics basically.

17 Q But it would be consistent with having been Mr.
18 Williams, if his DNA was on the hat?

19 A Correct. He was not excluded from being on that hat.

20 Q The swab Item Number 14 from the glass window sill, you
21 designated it with the presence of blood?

22 A Yes.

23 Q It tested positive for the presence of blood?

24 A Correct.

25 Q You also were able to extract DNA?

Grayson Amick - Direct examination
by Solicitor Campbell

1 A Correct.

2 Q And would you then compare the blood that was found on
3 the window sill at the window to the victim and the
4 defendant in the case?

5 A I did.

6 Q Did it match the victim?

7 A It matched L. Brown.

8 Q That means it didn't match the victim?

9 A I don't know. I just know the names.

10 Q Mr. Williams. Sorry.

11 A The DNA profile developed from Item Number 14 matches
12 L. Brown.

13 Q Does not match Mr. Williams?

14 A Correct.

15 Q Whenever you are able to make a match in a DNA profile,
16 you can get what's known as a partial profile or a full
17 profile?

18 A That's correct.

19 Q Explain the difference to the jury as far as making the
20 match.

21 A Goes back to the amount of DNA you have there. If you
22 have enough DNA to get some of the profile it can be a, a
23 partial profile. You can get some of the information and
24 may be able to make a conclusion on that. If you get enough
25 DNA you can get a full profile and get information in every

Grayson Amick - Direct examination
by Solicitor Campbell

1 single place we look at.

2 Q When you get a full profile, can you then also make a
3 calculation as to the probability of matching what is the---

4 A Yeah, unrelated individual. So, what we'll do is we'll
5 attach a probability to that or weight to that much and I'll
6 read it to the Court a lot easier.

7 Q Thank you.

8 A The frequency of seeing this profile in the Caucasian
9 population is probably a, one in a hundred quintillion, and
10 in the African-American population probably 1.12
11 quintillion. So, what that means, the evidence matches this
12 individual L. Brown and the chance of me walking down the
13 street and matching somebody in the sidewalk and having the
14 random or same profile are those numbers, 1.32 quintillion
15 for African-American, one in a hundred quintillion for
16 Caucasian population.

17 Q How many people actually reside here on earth?

18 A I think it's around 6.8 billion.

19 Q 6.8 billion.

20 How many zeros does a billion have?

21 A A billion has 12 zeros.

22 Q In -- this number is 3.2 for the African-American
23 population.

24 Is 3.2 the---

25 A Quintillion. I have it misspelled here. Quintillion.

Grayson Amick - Direct examination
by Solicitor Campbell

- 1 Q Probably was I spelled it wrong.
2 How many zeros would that be?
3 A Three with 18 zeros. It is a bigger number.
4 Q Is that right?
5 A You put three to the left in there.
6 Q Whatever. It's close.
7 That would be that many more times people on earth.
8 Do you have any opinion that you can give this jury as
9 to whether or not that was Mr. Brown's blood?
10 A Yeah, I would say, based on my opinion, that L. Brown
11 is the source of that blood on Line 14.
12 Q Moving on to Item Number 15.
13 Were you able to test for the presence of blood in his
14 blood?
15 A Yes.
16 Q And in this case you also were able to extract DNA?
17 A Yes.
18 Q And in this case it matched him?
19 A T. Williams.
20 Q And that would be the victim in the case?
21 A Correct.
22 Q Moving on to -- but you don't put a number next to this
23 one again as well as---
24 A We did put a number. Kind of goes to after consulting
25 with investigators. We have to know what evidence is

Grayson Amick - Direct examination
by Solicitor Campbell

1 probative to how, to write the report. Sometimes I don't
2 know if that evidence is probative to whether or not it
3 matches this person. So, either we will put a statistic or
4 we won't based on the crime scene investigation.

5 Q Moving down past the known standard, 56.1 and 56.2 from
6 the victim, you were able to extract DNA?

7 A Correct.

8 Q In one of them it matched the victim.

9 It's -- is that when you get nail scrapings?

10 A The expected result.

11 Q And the other, there was no DNA profile?

12 A That's correct.

13 Q Is that unusual?

14 A Not unusual.

15 Q And the known standards of the victim, Item 58, a swab
16 taken from the left-hand of the victim at autopsy, you were
17 able to test for blood and the presence of blood?

18 A Yes.

19 Q And the only DNA you got off his hand at that point was
20 his?

21 A Correct.

22 Q Swab from the right, again, matched the hand of the
23 victim?

24 A Correct.

25 Q So, that matched Mr. Williams himself and that would be

Grayson Amick - Direct examination
by Solicitor Campbell

- 1 expected?
- 2 A Correct.
- 3 Q Moving on to 170, you were able to test for blood?
- 4 A Yes.
- 5 Q DNA was extracted?
- 6 A Yes.
- 7 Q Whose DNA did that match?
- 8 A Also matched L. Brown.
- 9 Q Again, you didn't attribute a number on that on your
10 report, but it was his blood?
- 11 A Correct.
- 12 Q Then there were some shoes that were submitted during
13 the -- were you able to test blood solutions submitted if
14 you want in this case -- DNA was extracted?
- 15 A Yes.
- 16 Q Both of those, again, matched Mr. Brown?
- 17 A That's correct.
- 18 Q Item Number 77 was another pair of shoes, Harper
19 Street, you tested, there was no blood?
- 20 A Correct.
- 21 Q And you did the same test?
- 22 A Correct.
- 23 Q Shoes on---
- 24 A That's correct.
- 25 Q No blood is -- finally, there was a swab from the Bud

Grayson Amick - Direct examination
by Solicitor Campbell

1 Lite bottle and you were able to extract DNA and that came
2 back to neither the victim more---

3 A That's correct. Excluded both of those individuals.

4 Q And that was basically the testing you did in this
5 case?

6 A That's correct.

7 Q Are there certain procedures your laboratory follows to
8 ensure the quality of your work?

9 A Yes, there is.

10 Q You, in fact, are an accredited laboratory?

11 A Yes, we are actually internationally accredited.

12 Q There are testing done, reviews done in this case
13 reviewed by another analyst?

14 A Correct. All the work that I would perform I write-up
15 in the report form. It's all given to another qualified
16 analyst and they have to agree with my interpretation and
17 results and sign off on that as well as administrative
18 review in addition to all the controls that we run within
19 the process to ensure the quality.

20 Q And also whenever you're doing testing or receive items
21 from evidence, especially from crime scenes, you check them
22 to make sure there's no evidence of any tampering,
23 contamination, or anything?

24 A That's correct.

25 Q And we have also heard degradation, that happens to DNA

Grayson Amick - Direct examination
by Solicitor Campbell

1 perhaps?

2 As time passes, a sample can degrade?

3 A That's correct.

4 Q Was there any evidence of that in this case?

5 A It is difficult to say if this item degraded or not.

6 If it did degrade we would get a partial profile, which we
7 talked about earlier, or we wouldn't get a profile at all.

8 So, there may have been some degradation. I don't know. It
9 is not a result I would report, but based on getting a
10 partial profile or no profile, some of the items you could
11 possibly safely say there was some degradation?

12 Q That wouldn't change the result to make it look like
13 somebody else. That would just inhibit or change to not get
14 a result.

15 A That's correct. It will either inhibit the profile,
16 but or not get one, but it won't change the result.

17 Q And Number 14, the glass.

18 A It either 14 -- let me look at my chart. Yeah, that
19 was a full profile.

20 Q Other than your testing of these items, you didn't have
21 any further involvement in this case?

22 A No.

23 SOLICITOR CAMPBELL: That's all I have.

24 THE COURT: Anything further?

25 MR. COOPER: No questions, Your Honor.

1 THE COURT: Step down. Be excused.

2 Have a short one?

3 SOLICITOR CAMPBELL: Not a short one.

4 THE COURT: Okay. We'll excuse for the evening. I
5 have to go step out for a speaking engagement. We'll have
6 you start back at 10:00 because I do know there's a matter,
7 legal matter I have to take up in the morning and I don't
8 want to have you waiting. I'm really trying to think
9 through that. So, let's start promptly at 10:00, and, of
10 course, the lawyers, if anything comes up in the morning,
11 y'all let me know because I would like to start promptly
12 with them at 10:00.

13 I excuse you for the evening. Have a good evening and
14 don't discuss the case.

15 Thank you.

16 (Whereupon, the following takes place outside the
17 presence of the jury panel.)

18 THE COURT: Anything needs to be taken up?

19 MR. O'NEILL: No, Your Honor.

20 SOLICITOR CAMPBELL: No.

21 THE COURT: Have a good evening and we'll see y'all in
22 the morning.

23

24 (Whereupon, Court was in recess for the evening.)

25

Thursday, August 26th, 2009

BAILIFF: Jury is seated, Your Honor.

THE COURT: State ready to continue the case?

SOLICITOR CAMPBELL: May it please the court?

THE COURT: Yes.

SOLICITOR CAMPBELL: State calls Doctor Clay Nichols.

DOCTOR CLAY NICHOLS, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY SOLICITOR CAMPBELL:

Q Doctor Nichols, where are you employed?

A Chief medical examiner for Richland Memorial Hospital and Richland County.

Q Your training?

A Bachelor's Degree from the University of Oklahoma 1981. After that I received my M.D. Degree from Oklahoma in 1985. Entered the residency program in forensic pathology, USC, completing that in 1990. Following that I was the professor on faculty at MUSC until 2000, and after that I have been at private practice until this point in Richland County. Board certified by the American Board of Pathology in both anatomic and forensic pathology, and I have a limited license to practice surgery and medicine in the State of South Carolina.

Clay Nichols - Direct examination
by Solicitor Campbell

1 Q You have been qualified before this board in forensic
2 pathology?

3 A Yes.

4 Q How many times?

5 A A couple hundred.

6 SOLICITOR CAMPBELL: At this time we offer him as an
7 expert in forensic pathology.

8 MR. COOPER: No objection.

9 THE COURT: So qualified in this Court.

10 Q Doctor, explain to the jury, there is general pathology
11 and forensic pathology, what is the difference.

12 A Every, apologized; has to understand go, general
13 pathology, and that's where the doctors, instead of having
14 patients, part of their practice, they become laboratory
15 doctors and see parts of patients anytime sort of tissue is
16 remove and sent to the laboratory where a pathologist looks
17 at the tissue for the presence or absence of disease. Part
18 of the process is learning how to do an autopsy, which is
19 dissection of a person in order to determine how they die.

20 Forensic pathology has another one or two year
21 fellowship on top of that in order to do autopsies on people
22 who die suspiciously or an unnatural death.

23 Q Turn your attention to, back to November 22.

24 That morning did you perform an autopsy on Tyrell
25 Williams?

Clay Nichols - Direct examination
by Solicitor Campbell

1 A Yes, I did.

2 Q What was the purpose of doing that autopsy?

3 A I was requested to do the autopsy on Mr. Williams by
4 the coroner of Richland County, Gary Watts, because it
5 appeared the deceased died a violent death.

6 Q When you first started performing your autopsy, what
7 are your initial observations or what you do initially?

8 A The autopsy begins with a phone call where the request
9 is made for an autopsy and initial information is exchanged.
10 The body is stored at Richland Memorial Hospital in our
11 morgue facility. The body is removed and looked at first in
12 order to determine whether or not there's any evidence of
13 injury and then the body is dissected once again determining
14 if there's any evidence of injury. Fluids are removed at
15 this time for toxicological examination and small pieces of
16 tissue are also removed and processed for microscopic
17 examination.

18 Q During the course of doing the autopsy, are people
19 present from the coroner's office and the sheriff's
20 department?

21 A Yes.

22 Q Do they collect certain items?

23 A Yes, they do.

24 Q In this case, when you came in contact with
25 Mr. Williams that morning when you first observed him, how

Clay Nichols - Direct examination
by Solicitor Campbell

1 did his hands appear?

2 A They were bagged.

3 Q They were bagged?

4 A Yes.

5 Q Is that unusual in a situation where a shooting occurs?

6 A No, it's not just a shooting, but anytime there's a
7 violent death the hands are bagged in order to preserve any
8 sort of trace evidence on the hands.

9 Q During the course -- at some point in the autopsy, at
10 the appropriate time the people from the sheriff's
11 department would gather any trace evidence---

12 A That's correct.

13 Q ---and the hands would be unbagged?

14 A That's correct and that's before the autopsy.

15 Q That was done in this case?

16 A Yes, sir.

17 Q When you eventually observed the victim's body that
18 morning, did you note any obvious injuries?

19 A Yes, I did.

20 Q What did you observe?

21 A Specifically there were the holes in Tyrell's body as a
22 result of gunshot wounds. After further examination, that
23 indicated there were six entrance and exit wounds to make
24 the 12.

25 Q So, six entrance and six exit wounds?

Clay Nichols - Direct examination
by Solicitor Campbell

1 A That's correct.

2 Q Can you tell the jury where the wounds were on
3 Mr. Williams?

4 A Yes. Yes, I numbered one through six and the numbering
5 sequence does not indicate the firing sequence. I do not
6 know that. They are numbered to keep track of the
7 individual's wounds.

8 Gunshot wound number one is to the right mid-chest at a
9 distance of 17-inches from the top of the head and 6-inches
10 to the right of midline. No soot or powder stippling is
11 identified. A 0.2-inch abrasion border is present at the
12 nine o'clock position. The bullet was found to enter the
13 body at this site traveling backwards probably 60-degrees to
14 the right, 30-degrees with no significant deviation from the
15 upward down. Along the course the bullet lacerated the
16 right minimal lung lobe, associated right hemorrhage, which
17 means there's blood in the chest cavity as a result of the
18 gunshot wound.

19 The bullet exits and is not recovered. The exit wound
20 is located on the right lateral back 17-inches from the top
21 of the head and 6-inches from the top to the headline. The
22 wound is elliptical measuring 0.3 by 0.1 inches. A zero
23 is -- border is present around the wound indicating a short
24 exit wound, which means the deceased was up against
25 something tight. One -- the bullet exited the body.

Clay Nichols - Direct examination
by Solicitor Campbell

1 Gunshot wound number two is to the mid-chest, 19-inches
2 from the top of the head and 0.5 inches to the right of the
3 midline. The wound is circular measuring 0.3-inches in
4 diameter. No soot or powder substance identified. The
5 distinguishing abrasion border's not identified. The bullet
6 was found to enter the chest at this site with fracture of
7 the sternum. The sternum is the biggest bone right in this
8 area. The bullet travels to the right 45-degrees, backwards
9 45-degrees, and probably 10-degrees downward. Along its
10 course the bullet lacerates the right lower lung lobe. Once
11 again, there's an associated right hemithorax.

12 The exit wound is located on the right lateral back
13 21-inches from the top of the head and 6.5, to the right,
14 inches of the midline. The wound is circular measuring
15 6.3-inches in diameter and roughly 0.1-inch abrasion wound
16 is located around this wound. Once again, this is a short
17 exit wound. The bullet exits the body and is not recovered.

18 Gunshot number three is located in the mid abdomen
19 24-inches from the top of the head, and 1.5-inches to the
20 right of the midline. The wound is circular measuring
21 1.5-inches in diameter. A distinct abrasion border is not
22 identified. No soot or powder stippling was identified.
23 Found to enter the body traveling to the right probably
24 45-degrees, backwards 45-degrees, and downwards
25 approximately ten to fifteen degrees. Along its course the

Clay Nichols - Direct examination
by Solicitor Campbell

1 bullet lacerated the liver with associated hemo peritoneum
2 meaning there's blood in the abdominal cavity. The bullet
3 exits the body at the right lower leg 26-inches from the top
4 of the head and 58.57 inches to the top of the headline.
5 The wound is elliptical measuring 0.3 by 0.5-inches. The
6 wound has L-circular edges and is not recovered.

7 Gunshot number four is located 36-inches from the top
8 of the head in the eye. The gunshot wound is circular
9 measuring 0.3 inches in diameter. No soot or powder
10 stippling is identified. A distant abrasion border is not
11 identified. The bullet travels essentially straight back
12 tangentially through the muscle of the left thigh exiting
13 the back left thigh at a distance from 36-inches from the
14 top of the head and 6-inches to the left of midline. The
15 wound has lacerated his edges and measures 0.2 by 0.15-inch.
16 The bullet exits the body and is not recovered. No vital
17 structures transected.

18 Gunshot wound measures to the right 19-inches,
19 19-inches from the top of the head, elliptical, measuring
20 0.4 by 0.3-inch. Circular abrasion border is present. No
21 soot or powder stippling is identified. The bullet travels
22 to the muscle of the upper arm exiting the back of the upper
23 arm 19-inches from the top of the head. The wound is
24 circular measuring 0.3-inches in diameter. No bullet is
25 recovered and no vital structure is transected. Excuse me.

Clay Nichols - Direct examination
by Solicitor Campbell

1 Number five is really through the left upper arm.

2 Gunshot wound number six is to the left anterior lower
3 arm near the elbow located 25-inches from the top of the
4 head. The wound is circular measuring 0.3-inches in
5 diameter. A distinct abrasion border is not identified. No
6 soot or powder stippling identified. The bullet is found to
7 enter the soft tissue of the arm at this site traveling
8 straight back 90-degrees and slightly upper. Exit wounds
9 located in the back of the arm of the left elbow and
10 measures 0.32 and 0.3-inches in greatest diameter. The
11 wound is lacerated, and, once again, no vital structures
12 transected.

13 Q Doctor, I notice you mentioned in the three wounds that
14 were two -- I believe one to the leg and two to the arm.
15 You mentioned no vitals were transected.

16 A That's correct.

17 Q Could he have possibly survived those wounds?

18 A Yes.

19 Q The thigh into the chest and abdomen area, how would
20 you characterize those three shots individually?

21 A Any one of the three gunshot wounds to the chest or
22 abdomen could have caused his death from bleeding.

23 Q And, in fact -- let me back up. I want to show you
24 what's been marked as State's Exhibit No. 51. That's a
25 general diagram.

Clay Nichols - Direct examination
by Solicitor Campbell

1 A Yes.

2 Q Could you explain to the jury, using this diagram,
3 where the gunshots were?

4 A Yes.

5 SOLICITOR CAMPBELL: Your Honor, may he step down?

6 THE COURT: You may.

7 (Witness comes down from the stand.)

8 A Gunshot wound number one, the entrance is probably in
9 this area and the exit is probably in that area. Number two
10 is probably in this area and exits probably here. Number
11 three is probably in this area and exits probably here.

12 Number four is right in this area and exits in this area.

13 Number five is here and exits approximately here, and number
14 six is right there and exits right at the elbow here.

15 Q Thank you. You can sit back down.

16 (Witness returns to the stand.)

17 SOLICITOR CAMPBELL: At this time we offer State's
18 Exhibit 51 in evidence.

19 THE COURT: Admitted.

20 (Whereupon, State's Exhibit No. 51 was received into
21 evidence at this time.)

22 Q Doctor, I show you a series of photographs. First ask
23 if you recognize those.

24 A Yes, I do.

25 Q Would those assist you in describing the wounds to the

Clay Nichols - Direct examination
by Solicitor Campbell

1 jury as we talked further about the injuries?

2 A Yes, they would.

3 MR. O'NEILL: Your Honor, may we approach?

4 THE COURT: Yes, you may.

5 (Whereupon, a bench conference was held out of the
6 hearing of the jury at this time.)

7 THE COURT: Ladies and gentlemen, I ask you to step to
8 the jury room. During this time I'm going to have -- while
9 I take up a matter of law with them, I'm going to ask y'all
10 to go ahead and order lunch.

11 (Whereupon, the following takes place outside the
12 presence of the jury.)

13 THE COURT: You may proceed. Go ahead, State.

14 SOLICITOR CAMPBELL: Your Honor, the burden of proof is
15 on us to prove malice, and also I believe, under the law,
16 there are some capital cases in addition to the one I just
17 handed up I could get for you. There is a balancing test to
18 be made. We have tried to pick photographs that are not
19 offensive and I do agree one photograph needs to be cropped.
20 I don't know which number it is, but I -- that would be
21 State's Exhibit No. 56. If we could crop it right at the
22 top of the leg there.

23 MR. O'NEILL: I guess---

24 SOLICITOR CAMPBELL: We tried to limit ones that -- no
25 hid shots. Nothing of that nature. But just ones that show

Clay Nichols - Direct examination
by Solicitor Campbell

1 the wounds.

2 MR. O'NEILL: For the record, Your Honor, we don't
3 object to State's 55, 58, 125.

4 SOLICITOR CAMPBELL: And agrees with the cropping on
5 after.

6 These are the ones you object to?

7 MR. O'NEILL: Yes.

8 SOLICITOR CAMPBELL: Let her see the other two.

9 MR. O'NEILL: We don't get to---

10 THE COURT: Let me see.

11 Okay. These are the ones not objected to?

12 SOLICITOR CAMPBELL: Yes, ma'am.

13 THE COURT: Let me look at these first. Cropping 56
14 for purposes of taking off the---

15 SOLICITOR CAMPBELL: Top part.

16 THE COURT: Genitals of -- okay.

17 SOLICITOR CAMPBELL: And we'll crop this one right
18 here.

19 THE COURT: Okay. This is No. 59 that will be cropped
20 to take off the head of the defendant. I mean the victim.

21 SOLICITOR CAMPBELL: So, the two he objects to are
22 these two?

23 MR. O'NEILL: Yes.

24 THE COURT: On 57, crop the head.

25 SOLICITOR CAMPBELL: Okay.

Clay Nichols - Direct examination
by Solicitor Campbell

1 THE COURT: Okay. Then No. 127.

2 SOLICITOR CAMPBELL: Shows the arm in proximity to the
3 chest.

4 MR. O'NEILL: Is there another picture of the arm or
5 different gunshot wound?

6 SOLICITOR CAMPBELL: Different gunshot wound.

7 THE COURT: Okay. I'm referring to 127, what is on
8 here.

9 SOLICITOR CAMPBELL: That's---

10 THE COURT: That's---

11 SOLICITOR CAMPBELL: That's in another picture they've
12 already let in.

13 THE COURT: It's different. This one is sideways and
14 this one is there. But this one shows -- I see what you're
15 saying. I don't think these are overly, too duplicative.
16 So, all of these will come into evidence the way we
17 indicated they be cropped?

18 SOLICITOR CAMPBELL: Your Honor, for the record?

19 THE COURT: Yes.

20 SOLICITOR CAMPBELL: That would be State's 52, 57, 59,
21 56, 55, 58, 127, 125, and 126.

22 THE COURT: Just because we've got the jury out, do you
23 anticipate any other evidence through this witness that
24 might be objectionable so we don't have to send you back
25 out?

Clay Nichols - Direct examination
by Solicitor Campbell

1 SOLICITOR CAMPBELL: I'm not putting anything else as
2 far as physical evidence. There's more testimony.

3 THE COURT: Right. Okay. All right. Jurors, please.
4 (Whereupon, the following takes place within the
5 presence of the jury panel.)

6 SOLICITOR CAMPBELL: Your Honor, for the record, they
7 have agreed to the way we redacted the pictures.

8 THE COURT: As indicated earlier.

9 SOLICITOR CAMPBELL: Your Honor, at this time we would
10 introduce into evidence you want me -- excuse me. Redacted
11 versions of 57, 59, 56, 55, 58, 127, 125, and 126, Your
12 Honor.

13 THE COURT: Okay. All right.

14 SOLICITOR CAMPBELL: I believe that's without
15 objection.

16 THE COURT: That is without objection with the
17 redactions.

18 (Whereupon, State's Exhibit Nos. 55 through 59 and 125
19 through 127 were received into evidence at this time.)

20 CONTINUED DIRECT EXAMINATION

21 BY SOLICITOR CAMPBELL:

22 Q I'm showing you a series of photographs and the first
23 one I want to talk about is this one, State's Exhibit 52.

24 what does that show?

25 A 52 shows the deceased's hands are bagged in paper bags

Clay Nichols - Direct examination
by Solicitor Campbell

1 prior to the autopsy.

2 Q That would have been taken prior to the autopsy?

3 A Yes.

4 Q Later on there are some pictures without the bags on,
5 and that's because the sheriff's department had already
6 collected whatever evidence they wanted?

7 A That's correct.

8 Q That's shown in State's Exhibit 52. The next one
9 that's shown -- these were all photographs taken at autopsy?

10 A That's correct.

11 Q State's Exhibit 57, the redacted version.

12 A Yes.

13 Q And what does that show?

14 A It shows the three potentially fatal gunshot wounds to
15 the chest and abdomen. Gunshot number one is near the right
16 temple. Number two is at the mid-chest and slightly below
17 that in the belly or abdomen area is gunshot number three.

18 Q Again, you can't say what order these wounds were
19 inflicted upon this victim. Just that's a way for you to
20 refer to them.

21 A That's correct.

22 Q I show you what's been marked as State's Exhibit 59,
23 the redacted version.

24 what does that show?

25 A These show the exit wounds of the one next to the

Clay Nichols - Direct examination
by Solicitor Campbell

1 L-shaped ruler is number one and then they go down in order
2 to two and three.

3 Q And those are the same wounds that you drew onto the
4 chart?

5 These are the exit wounds.

6 How do you tell an entrance wound from an exit wound?

7 A The usual case is you look for the physical
8 characteristics of the wound. It is not the size of the
9 wound, but the fact there is an abrasion border or not
10 abrasion border or other evidence such as soot in the wound.
11 In this case the three exit wounds have similar
12 characteristics to exit wounds because they are considered
13 the short exit wounds which means the skin is up against
14 something firm when the bullet exited the body.

15 Q Let's exhibit redacted version No. 56.

16 what does that show?

17 A This shows gunshot wound number four to the left thigh.

18 Q And that would be considered an entrance wound?

19 A Yes, it would.

20 Q And State's Exhibit No. 55 I believe is a closer-up
21 view of that?

22 A That's correct.

23 Q And that would be the abrasion wound to the upper
24 thigh, is that correct?

25 A That's correct.

Clay Nichols - Direct examination
by Solicitor Campbell

1 Q State's Exhibit No. 58 would be an exit wound?

2 A That's correct. This is near the lateral thigh, and
3 you can see the butt cheeks for our reference.

4 Q Again, the entrance wound would have been on the front
5 and the exit wound more towards the back?

6 A That's correct.

7 Q State's Exhibit No. 127, I'm sorry, what does that
8 show?

9 A 127 shows the entrance wound to the upper arm.

10 Q To the upper arm?

11 A Yes, I think it's upside down.

12 Q And that shows the proximity to the chest?

13 A That is correct.

14 Q State's Exhibit 125 shows what?

15 A 125 shows the exit wound is for number five, and it
16 also shows the exit wound for number six at the elbow.

17 Q I show you State's Exhibit No. 126.

18 A 126 shows the entrance wound to the left lower arm.

19 Q Doctor, when you were describing these entrance wounds,
20 you mentioned the word stippling, soot.

21 A Yes.

22 Q What do those -- why do you note that in your autopsy?
23 what is that significant for?

24 A That indicates the distance, relative distance that the
25 muzzle of the gun was to the victim when the trigger was

Clay Nichols - Direct examination
by Solicitor Campbell

1 pulled. The closer the gun is to the victim the more dirt,
2 soot, gun powder will be deposited around the wound. At
3 some point, as the muzzle of the gun goes further back from
4 the victim, that type of evidence dissipates, is no longer
5 positive around the gunshot wound, and once it gets to that
6 point it is known as a distant wound. Exactly what that
7 distance is I don't know. That depends on the type of
8 ammunition used and the type of gun, but initially we're
9 talking some place between 12 and 18-inches is back as a
10 rough estimate.

11 Q At least 12 or 18-inches back?

12 A Yes.

13 Q Could it even be further back?

14 A Absolutely.

15 Q In this case, in all these wounds as you went through
16 them, you didn't note any soot, stippling, or abrasion
17 border?

18 A Abrasion border is not a characteristic of distance.

19 Q Apologize. That indicates to you the end of the gun
20 was at least 12 to 18-inches away---

21 A That's correct.

22 Q ---from Mr. Williams when he was shot?

23 A Yes.

24 Q And could be as far away as the gunfire?

25 A That's correct.

Clay Nichols - Direct examination
by Solicitor Campbell

1 Q So, these wounds were not typical?

2 There was no constant wound?

3 A No.

4 Q There wasn't a, close in range?

5 A No.

6 Q There's been testimony that the victim -- there were
7 multiple shots heard and the victim was able to go a short
8 distance and collapse.

9 would that be consistent with the wound you observed?

10 A Yes, it would. A person who is bleeding to death won't
11 immediately drop down. It is quite possible he could move
12 several feet or several yards during the course of or after
13 being shot.

14 Q Was there any way for him to survive these wounds?

15 A No.

16 Q You mentioned that there was an entrance and an exit in
17 this.

18 So, you didn't recover any projectiles because it's a
19 through and through as we call it?

20 A Yes.

21 Q The wounds to the arm and the leg, those alone would
22 have been somewhat disabling?

23 A Somewhat disabling, but not fatal.

24 Q However, any one of the wounds to the chest area or the
25 abdomen area would have been enough to kill him?

Clay Nichols - Direct examination
by Solicitor Campbell

1 A Yes.

2 Q Was there anything else in your -- you performed a
3 complete autopsy when you did this.

4 Was there anything else significant as far as cause of
5 death in this case?

6 A Other than the toxicology, no.

7 Q Toxicology -- you do always run blood tests for
8 toxicology?

9 A Yes.

10 Q Were there any other drugs indicated in his system?

11 A Yes, he was positive for marijuana.

12 Q Are there other drugs in---

13 A Atropin, codeine, which is a nicotine tablet as well.

14 Q Finally, doctor, in your expert opinion, what caused
15 the death of Tyrell Williams?

16 A Mr. Williams died as a result of bleeding to death as a
17 result of multiple gunshot wounds.

18 SOLICITOR CAMPBELL: Thank you, sir. Please answer any
19 questions the defense may have.

20 MR. COOPER: May it please the Court, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. COOPER:

23 Q Good morning, doctor.

24 A Good morning.

25 How are you doing?

Clay Nichols - Cross-examination
by Mr. Cooper

1 Q Good.

2 First, I'd like to go over a couple of things about
3 pathology for the jury since I don't think most people are
4 really familiar with it.

5 You told Ms. Campbell you are a board certified
6 forensic pathologist?

7 A That's correct.

8 Q Who board certified you as a forensic pathologist?

9 A The American Board of Pathology.

10 Q Is that the same board that certified you as a regular
11 pathologist?

12 A Yes, it is.

13 Q Very briefly, just one more time because they heard a
14 lot of testimony since the last time you said this, briefly
15 describe the difference between forensic pathology and
16 pathology.

17 A Essentially forensic pathology has training in order to
18 do autopsies on people that die from unnatural deaths.

19 Q So, you had to take an extra test in order to become a
20 forensic pathologist?

21 A That's correct.

22 Q Are you board certified in any other specialty?

23 A Only anatomic and forensic pathology.

24 Q Now, doctor, you were talking about, with Ms. Campbell,
25 the entrance wounds in this case. If I can refer to State's

Clay Nichols - Cross-examination
by Mr. Cooper

1 Exhibit 51.

2 It's true, isn't it, that all of the entrance wounds
3 have either been found on the side of the body or the front
4 of the body, that being the arm?

5 A Yes.

6 Q And another simpler way to do that is there were no
7 entrance wounds in the back?

8 A That's correct.

9 Q Now, you -- Ms. Campbell showed you a picture of
10 Mr. Williams' hands being bagged, and that's how they were
11 when the body got to you, correct?

12 A That's right.

13 Q The body was clothed when it initially came to you,
14 right?

15 A Correct.

16 Q The body had a shirt on it when it got to you?

17 A I do not have the clothing inventoried, but I believe
18 it had a shirt on, yes.

19 Q The body had pants on?

20 A Yes, I believe two pair of pants.

21 Q Now, you also talked about what you called distant
22 gunshot wounds, and correct me if I'm wrong, but there are
23 three classifications of gunshot wounds when it comes to
24 distance, is that right?

25 A Certainly could be. You have hard contact, loose

Clay Nichols - Cross-examination
by Mr. Cooper

1 contact, close, or intermediate range, and then distant.

2 Q And you characterized the distant wound as being as
3 close as a foot away, 12 inches?

4 A Well, whatever the type of ammunition and type of gun
5 allows as far as when the trigger is pulled, but no
6 additional soot or powder stippling is actually positive
7 around the wound.

8 Q You characterize that as being as close as 12 inches,
9 correct?

10 A A minimum as an approximation, yes.

11 Q Twelve inches, one foot?

12 A Uh-huh. (Affirmative).

13 Q And those are the types of wounds that you found on the
14 body, right?

15 A That's correct.

16 MR. COOPER: Beg the Court's indulgence one second.

17 (Pause.)

18 Q Doctor, thank you. That's all I have for you.

19 A Thank you.

20 SOLICITOR CAMPBELL: Just a couple questions.

21 REDIRECT EXAMINATION

22 BY SOLICITOR CAMPBELL:

23 Q He asked you about the fact that the defendant was
24 clothed at the time he presented to you.

25 A Yes.

Clay Nichols - Redirect examination
by Solicitor Campbell

1 Q Does that affect your findings as far as soot and
2 stippling in any way?

3 A The clothing could theoretically filter out the soot or
4 powder during the gunshot process.

5 Q But that's something you take into consideration
6 when---

7 A I also take into consideration -- but that's also given
8 to people for further analysis.

9 Q And in addition to that -- and you characterized these
10 as distant shots?

11 A I did from my examination of the body, yes.

12 Q You have been doing this how many years?

13 A Twenty-six.

14 Q And in your experience -- again, it depends on the type
15 of ammunition and things of that nature that would be inches
16 away?

17 A Approximation. It could be further, but I'm using 12
18 to 18 as an approximation.

19 Q At the very least?

20 A Yes.

21 RECROSS EXAMINATION

22 BY MR. COOPER:

23 Q Doctor, were you aware, in your investigation and
24 autopsy, were the clothing tested for stippling, soot?

25 A I do not do the testing. They are turned over to law

Clay Nichols - Recross examination
by Mr. Cooper

1 enforcement for further evaluation as deemed necessary.

2 Q So, you don't know?

3 A That's correct.

4 THE COURT: Thank you. You can step down and be
5 excused.

6 WITNESS: Thank you, Your Honor. I appreciate it.

7 SOLICITOR CAMPBELL: State calls David Collins.

8 DAVID COLLINS, being first duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY SOLICITOR CAMPBELL:

12 Q Investigator Collins, where are you employed?

13 A Richland County Sheriff's Department.

14 Q What do you do there?

15 A I'm a firearms and tool mark examiner in the forensics
16 field.

17 Q Can you tell the jury about your education in that?

18 A I was initially hired by the South Carolina Law
19 Enforcement Division, otherwise known as SLED, as a firearms
20 examiner trainee in 1980, and I entered a training program
21 with them, tobacco, firearms and tool mark examiner, and
22 this training program lasted probably two and a half to
23 three years. So, initially an apprenticeship or on-the-job
24 training program and successfully completed that and was
25 certified by SLED as a firearms and tool marks examiner.

David Collins - Direct examination
by Solicitor Campbell

1 Following that examination I began a case load of my
2 own and joined our professional associations, the
3 Association of Firearms and Tool Mark Examiners otherwise
4 known as AFTI. Through that organization and other training
5 opportunities afforded me at SLED, my training continued
6 throughout my year there.

7 In 2002 I was employed by the Richland County Sheriff's
8 Department to establish their firearms analysis section.
9 Essentially to establish a ballistics laboratory at the
10 Richland County Sheriff's Department. Since I have been
11 there, my continuing training and education has continued.

12 Q You have been qualified before as an expert in this
13 area?

14 A Yes, I have been qualified in the State or Circuit
15 Courts of South Carolina as an expert in this area in excess
16 of 200 times. During my career, also qualified as an expert
17 in the State Courts of Georgia, North Carolina, the Federal
18 Court some, and the Military Court system.

19 SOLICITOR CAMPBELL: Your Honor, at this time we offer
20 him as an expert.

21 MR. COOPER: No objection.

22 THE COURT: So qualified in this Court.

23 Q Investigator Collins, did you do some examinations on
24 some of the evidence in this case?

25 A I did.

David Collins - Direct examination
by Solicitor Campbell

1 Q Specifically I want to show you what's been marked as
2 State's Exhibit 106, which is actually three items I
3 believe. The first, I'll ask -- how -- how is that?

4 Gun lock on that?

5 A Yes.

6 SOLICITOR CAMPBELL: Your Honor, we would note we did
7 put a gun lock on the gun.

8 A Yes, I can identify these three items as a High Point
9 Grand model J.H. semiautomatic pistol that I have examined
10 and various markings I made on it in the laboratory so I
11 could identify it later, a pistol magazine assembly, and one
12 unfired .45 caliber cartridge. All these items bare my
13 markings and I have examined them.

14 Q And those were turned over to you from investigators
15 from this case?

16 A Yes.

17 Q And I want to show you -- did you also receive some
18 spent shell casings?

19 A I did.

20 Q And I'm going to show you what's been marked as State's
21 Exhibit 119, 115, 116, 114, 113, 117, 118, and 120, and ask
22 you to look at those.

23 A I can identify these as they also bare my markings.
24 Actually physically examined seven of these items and the
25 eighth one bares my markings, but I did not break the seal

David Collins - Direct examination
by Solicitor Campbell

1 on it to examine the contents, but all of these are fired
2 cartridge cases I, I examined that were submitted to me in
3 this case.

4 Q Finally, I show you what's been marked State's Exhibit
5 107 through 112, and ask you to look at those.

6 A I have also examined these items, a total of six fired
7 projectiles or projectile fragments. Each of these
8 containers bare my markings as well.

9 Q Were those all the items you examined in this case?

10 A I did receive additionally an unfired .32 auto caliber
11 cartridge submitted to me at a later date.

12 Q I'll get back to that in a minute.

13 As far as when we're talking about projectiles or
14 projectile fragments, is it unusual when -- explain how a
15 bullet fires.

16 A When, when a firearm is fired, the projectile is
17 initially contained in what is known as a cartridge. The
18 cartridge contains a small amount of gunpowder. There is a
19 primer on the back of the cartridge that serves to initiate
20 a combustion of the gun powder. The primer is struck by the
21 firing pin of the gun, which starts the chain reaction,
22 which causes the primer to detonate, which then expands and
23 forces the bullet out of the cartridge case. When this
24 happens, the bullet is going to travel down the barrel of
25 the firearm, has only one direction it can go, which is

David Collins - Direct examination
by Solicitor Campbell

1 forward, and as it passes down the barrel, it is in hard
2 contact with the barrel, a tight fit. It exits the barrel
3 of the firearm and proceeds in a direction the firearm is
4 pointed in the cartridge case, in the case of a
5 semiautomatic firearm within being dejected from the gun.

6 Q Without having the actual gun that fires it, can you
7 tell which direction the cartridge would have been ejected?

8 A Without having the actual firearm for at least visual
9 examination and to determine visually which direction it can
10 eject, no, I can not.

11 Q In this case, there were eight shell casings found at
12 that scene.

13 would that be consistent if they all matched each
14 other, I'll get to that in a minute, with a gun, a
15 semiautomatic gun being fired eight times, if it was an area
16 such as in a hotel room?

17 A That would be consistent with a semiautomatic firearm
18 being fired at least eight times.

19 Q In this case, there were not actually eight projectiles
20 recovered.

21 Is that unusual?

22 A No.

23 Q Can you explain how the projectiles break up and---

24 A A projectile is manufactured mostly of lead and the
25 lead is a very soft metal compared with other metals, and

David Collins - Direct examination
by Solicitor Campbell

1 if, if it is traveling at a very high rate of speed, if it
2 strikes anything substantial such as bone or concrete or any
3 other hard material, it has a tendency to fragment and
4 deform. It is not unusual for bullets to become so
5 fragmented that they are easily missed during the search of
6 a crime scene.

7 Q In this case, what test did you actually perform on the
8 eight items provided to you?

9 A The first thing I, do when I receive any type of
10 evidence in the laboratory, whether a firearm, ammunition,
11 or a fired ammunition component, is to take notes as to its
12 condition, when I received it, and then I began a visual
13 examination of an item perhaps taking measurements where
14 appropriate or forensics of the bullet to determine where it
15 was fired from and cartridge examination can usually reveal
16 what brand and, what brand of caliber of ammunition they are
17 from.

18 Once I have taken the notes and perhaps photographed,
19 document the condition of the items as they are received, I
20 will then move along to a microscopic examination of the
21 items. What I'm attempting to do, if I have several fired
22 bullets from a crime scene and do not have a suspect
23 firearm, my first task is to try to determine what type of
24 firearm could have fired them based on the microscopic
25 analysis and also to compare them to each other to look for

David Collins - Direct examination
by Solicitor Campbell

1 markings the firearm left on the surface of those bullets
2 that would be unique to that firearm and to try to determine
3 if all the bullets were fired by one gun or perhaps more
4 than one that was at the crime scene.

5 Same with cartridge cases. When the firearm was
6 manufactured, part of the manufacturing process leaves
7 behind, on the surface on the barrel of the inside and
8 perhaps on the inside of the firearm, microscopic defects
9 that are unique in the location of the firearm to that
10 particular gun. No two guns will have the same defects in
11 exactly the same location. When a bullet is fired through
12 the barrel of the firearm, these details in the barrel will
13 leave behind scratch marks on the surface of the bullet
14 which may be found in a microscopic analysis, and the
15 pattern of the scratch marks leading to that particular gun
16 in which much the same way a fingerprint leads to an
17 individual.

18 Similarly, when a cartridge case is fired in the gun
19 and the cartridge is fired, the cartridge case will be fired
20 by the firing pin, breach face and various other parts of
21 the gun will be fired in a manner that is unique to that
22 particular firearm. What gives us additional information is
23 that firearm manufacturers for handguns and rifles place is
24 spiraling grooves in the barrel of the firearm called
25 rifling. The rifling caused the bullet to spin or twist as

David Collins - Direct examination
by Solicitor Campbell

1 it leaves the barrel of the gun and stabilizes the
2 projectile in flight. Different manufacturers may use
3 different numbers of rifling graphs with different
4 directions of twists and in different dimensions and that
5 information, when taken from the surface of the fired
6 bullet, may allow us to determine what type of firearm, as
7 in the brand of firearm that could have fired that bullet,
8 and we can get a list of those brands to the investigators
9 if need be.

10 Q What you're essentially saying is when a gun is fired,
11 the bullet, the shell casings may have unique markings as
12 well as the projectile?

13 A That is correct.

14 Q Even though they kind of exit out over two different
15 parts of the gun?

16 A Yes, the bullet exits from the muzzle in the firearm,
17 and the cartridge, in the case semiautomatic pistol, would
18 be ejected from the ejection chamber of the gun. They are
19 both marked by the gun, but different portions of the gun.

20 Q What is the difference between a semiautomatic handgun
21 and a revolver?

22 A In a semiautomatic handgun, the functioning properly, a
23 magazine is placed in the firearm, and once loaded, and the
24 safety is off, each time you pull the trigger it will fire
25 one shot and when it fires that shot there is a part of a

David Collins - Direct examination
by Solicitor Campbell

1 mechanical operation of the firearm will cause it to eject
2 the spent or fired cartridge case, and it will automatically
3 reload it, and be ready for the next shot, will fire one
4 time. Each time you pull the trigger until you either stop
5 or the firearm is empty and this was no ammunition.

6 Q In a revolver?

7 A In a revolver, if you load the firearm, it will fire
8 again each time you pull the trigger. If it is a double
9 action revolver, in some you actually have to pull the
10 hammer, not as common as they once were, but still
11 available. Most revolvers you have to pull the trigger.
12 However, the difference between that and a semiautomatic
13 pistol would be a revolver does not eject the cartridge case
14 while being fired, but you would have to stop and manually
15 unload the revolver to, unload the firearm.

16 Q Like in the westerns when you see the six shooter, they
17 twirl it all the time, that would be a revolver?

18 A Yes, in that situation.

19 Q But a semiautomatic handgun, in State's Exhibit 106, is
20 a semiautomatic handgun?

21 A That is a semiautomatic handgun.

22 Q It doesn't have that little barrel.

23 The caliber, does that affect your findings?

24 A It can affect my findings, but we will report -- can
25 determine what type of gun, of caliber is used, determine

David Collins - Direct examination
by Solicitor Campbell

1 the bullets looking for caliber if we're to report that. If
2 we have other firearms submitted that are not to the correct
3 caliber on the front-end, you can determine if the firearm
4 is submitted in a different caliber essentially than the
5 bullet and cartridge cases you receive, and you can exclude
6 that firearm as a possible source.

7 Q Are the types of the bullet or size of the bullet --
8 you tell me -- the caliber, what is unique between say a .32
9 and a .40?

10 Are they different just, before anything gets shot?

11 A Many different types of firearms will fire bullets of
12 similar diameters. When you look at caliber, there is two
13 ways to look at the definition of the term. One way to look
14 at it is in general terms. For instance, a .38 caliber
15 firearm would be something like a .38 special caliber
16 revolver, a .357 magnum caliber revolver. A 9-millimeter
17 fires a bullet of probably a same diameter. So, you have to
18 move beyond simply looking at the diameter of the
19 projectile, but other features, the shape, style, design of
20 the bullet, and perhaps the rifling characteristics of the
21 bullet and even on the bullet and microscopic, but it was
22 placed on the bullet to determine how that was used.

23 In most cases we're going to look at the diameter of
24 the projectile if it can be determined if it's not too badly
25 damaged to make that determination and look at the weight of

David Collins - Direct examination
by Solicitor Campbell

1 the projectile if it's much left to give a good weight, and
2 that may give us enough information to narrow it down to a
3 specific caliber such as to determine whether it's a,
4 consistent with the 9-millimeter versus a .38 Special so we
5 might be able to narrow it down. In many cases we can not
6 determine the caliber of the projectile because it's too
7 badly damaged.

8 Q That's something you test for.

9 In this case, like when these shell casings were
10 referred to as .40 caliber---

11 A Yes.

12 Q ---is that obvious from anything on it?

13 A Markings on cartridge cases placed by the manufacturer
14 and they usually will mark the caliber on the base of the
15 cartridge case will say what caliber it is and also the
16 other markings that will indicate the brand of ammunition.

17 Q Did you do any examination on Item Number 106, which is
18 the gun with the magazine and the single live round I
19 believe?

20 A Yes, I did.

21 Q When we say live round, and you've heard an unfired
22 bullet, are those the same thing?

23 A To me, it's what we call in the laboratory an unfired
24 cartridge.

25 Q So, that was in -- State's Exhibit 106, you were

David Collins - Direct examination
by Solicitor Campbell

1 provided with a magazine that was empty?

2 A Uh-huh. (Affirmative).

3 Q A single live cartridge?

4 A Single unfired cartridge.

5 Q Unfired cartridge and a gun.

6 Did you do any testing on that?

7 A I did. My testing of that item consisted of, as I
8 stated before, I initially took notes as to its condition
9 when I received it and I fired it to determine if it was in
10 working order.

11 Q Was it in working order?

12 A Yes, it was.

13 Q Any gun that's submitted to you, can't tell exactly
14 that's it's been fired before, can you?

15 A No, the only thing we can tell potentially by looking
16 down the barrel of the firearm is whether it's clean or oily
17 indicating that it has not been fired since the last
18 cleaning, or having that present, fired since last cleaned,
19 but there's no scientific analysis I can perform that would
20 indicate when that gun was last fired. In some cases we
21 have an indication it has been some time because you will
22 find a little dust, spider webs, and insects in the firearm
23 that will indicate that it has been some time since it was
24 used.

25 Q Turning your attention to the shell casings of this

David Collins - Direct examination
by Solicitor Campbell

1 case, did you do examinations of those?

2 A I did.

3 Q What were your results of the .40 caliber shell cases?

4 A The eight shell casings examination was done
5 microscopically, and I was able to determine they a, all had
6 been fired by one firearm, a .40 Smith and Wesson firearm,
7 which is the firearm they were intended from.

8 Q So, your findings were all eight shell casings had been
9 fired by the same gun?

10 A Same firearm, yes.

11 Q And that that would have been, in your expert opinion,
12 what type of gun?

13 A A .40 Smith and Wesson caliber semiautomatic pistol is
14 what it would consistent of having been fired from.

15 Q For the record, what was the caliber of the make of the
16 pistol provided to you in 106?

17 A .45 caliber semiautomatic pistol.

18 Q The projectiles, did you do any examination of those in
19 making a, and make any determinations?

20 A Yes, again, I initially examined the, microscopically
21 compared these items with each other, and I was able to
22 determine that of the six fired projectiles, four of them
23 had been fired from one firearm by comparisons of the other.
24 My comparisons of the other two were inconclusive due to the
25 damaged condition. In other words, I was not able to

David Collins - Direct examination
by solicitor Campbell

1 determine if they had been fired by the other four, but it
2 is possible, based on the likely characteristics, that they
3 were, could have been done from another firearm just similar
4 with overall characteristics. The physical, visual
5 examination of these items showed that they were also
6 consistent with bullets found in some .40 Smith and Wesson
7 or 10-millimeter auto caliber ammunition.

8 Q Let me back up a minute.

9 The eight fired casings were from what caliber?

10 A .40 caliber.

11 Q Smith and Wesson?

12 A .40 Smith and Wesson caliber is the same, type,
13 specific type of ammunition, but that does not indicate they
14 were Smith and Wesson firearm, but simply type of
15 ammunition.

16 Q They were all from the same gun?

17 A Yes.

18 Q You had six projectiles or---

19 A Fragments.

20 Q ---fragments. And based on your -- you were able to
21 say that four of those were definitely by the same gun?

22 A Yes, four of them were definitely, in my opinion, fired
23 by one gun.

24 Q And two were too damaged?

25 A Too damaged to be able to determine, yes. I was able

David Collins - Direct examination
by Solicitor Campbell

1 to determine, as a result of these comparisons and the
2 examinations of the two, that were too badly damaged to
3 determine they were not fired by the .45 caliber pistol that
4 was submitted due to differences in the rifling
5 characteristics.

6 Q Let me get back to that too.

7 On the .45 caliber pistol provided to you, could it
8 have fired any of those shell casings?

9 A No.

10 Q Could it have fired the projectiles?

11 A No.

12 Q So, the .45 caliber that was turned into you that was
13 found at the scene didn't fire any of those projectiles or
14 shell case?

15 A No, based on what we call differences of the caliber of
16 the, between fire, fired cartridge cases and bullets, I was
17 able to exclude it as possible sources of these items.

18 Q So, this has been excluded?

19 A Yes.

20 Q As far as the eight shell casings, those were all fired
21 by the same gun?

22 A Yes.

23 Q Four of the six you can say for sure were fired by the
24 same gun, and the others were too damaged to determine what
25 fired them?

David Collins - Direct examination
by Solicitor Campbell

1 A Yes.

2 Q It's all consistent with the .40 caliber---

3 A The two that were badly damaged, one was actually so
4 badly damaged that I couldn't determine the type that it
5 came from at all, but did bare rifling characteristics that
6 were similar with those fired from the other projectiles.

7 Q What other determinations were you able to make as far
8 as the shell casings and the projectiles?

9 A Essentially concluded what I was doing with the shell
10 casings. One of them was submitted to the State Law
11 Enforcement Division to be entered into the night and data
12 base. That would simply mean it's going into a data base to
13 see if the firearm may have been involved in another
14 incident. We do that with everything that comes through the
15 laboratory in this fashion. We also sent test fired
16 specimens from the evidence firearm that was submitted for
17 the same reason. But beyond determining, first off, the
18 caliber of those cartridge cases and then comparing them to
19 determine if they were all fired by one gun, there was
20 really nothing further to be done with them at that point.

21 Q As far as the projectiles, were you able to make any
22 determination as to what type of gun could have fired those?

23 A Based on the -- again, going back to what we're talking
24 about, the different manufacturers using different numbers
25 of rifling grooves and whatnot on the projectiles, I was

David Collins - Direct examination
by Solicitor Campbell

1 able to determine, based on the dimensions of the rifling
2 grooves and the number and directions of the twists, they
3 were consistent from possibly having been fired from a
4 Taurus or Astro brand firearm. Although the database that
5 provides us that information may not be all inclusive, and
6 is just as good as what goes into it by labs across the
7 country, so, we can't use that as a possible---

8 Q So, the shell casings of a .40 caliber gun, the
9 projectiles, you have a list of .40 caliber guns it could
10 have been fired by?

11 A That's correct.

12 Q What was that list?

13 A The three brands the database generated were High
14 Point, Taurus, and Astro.

15 Q And none of those items could have been fired by
16 State's 106, which was the gun submitted with the empty
17 magazine, and with one bullet what I call---

18 A That's correct.

19 Q In addition to that, you also received a live round or
20 a bullet from a .32.

21 Could it have been, in any way, involved in any of
22 these guns?

23 A No --

24 Q .30 caliber?

25 A It's simply the wrong caliber to be involved with any

David Collins - Direct examination
by Solicitor Campbell

1 of these other items.

2 Q Can you make any comparison between the shell casings
3 and projectiles themselves in making the determination?

4 A That's not typically possible. Theoretically it has
5 been in a, done in a couple of instances across this
6 country, but it is typically not possible to be, identify
7 which cartridge case a particular bullet was fired from..

8 Q Your findings were they were .40 caliber shell casings
9 fired by the same gun, projectiles would have been fired in
10 what was consistent with a .40 caliber High Point, Taurus,
11 or Astro?

12 A That is correct.

13 Q So, in your expert opinion, everything was consistent
14 with having been, would be consistent with having been fired
15 by the same gun?

16 A It's possible that all six of the projectiles or
17 fragments were fired from the same gun fired or cartridge
18 casings. I just don't have the means or laboratory
19 available to determine them.

20 Q It's all consistent with .40 caliber?

21 A The cartridge casings were definitely fired by the .40
22 caliber. We can't rule out the possibility of a different
23 rare auto, which is somewhat rarer, fair argument, but fires
24 the same diameter type bullet, but also nothing to indicate
25 they weren't .40 caliber as well.

David Collins - Direct examination
by Solicitor Campbell

1 Q It couldn't have been the .45?

2 A That is correct. None of the fired projectiles, based
3 on past characteristic differences could have been fired by
4 the .45 caliber firearm I looked at.

5 Q The fact they weren't able to find the eight completed
6 projectiles that would have been consistent with the eight
7 -- is not unusual?

8 A Not in my experience, no.

9 Q In this case you mentioned there is a difference
10 between a revolver and a semiautomatic.

11 Tell this jury, with the semiautomatic handgun, the
12 type that would typically expel the shell casings there at
13 the scene, can you tell, from where the shell casing ended
14 up, exactly where that gun was fired?

15 A Typically, no. The reason for that being the cartridge
16 case ejection, direction, and manner in which it is ejected
17 will depend on so many variables. It can depend on the
18 height the gun is off the ground and how far it will be, go,
19 the manner in which the gun is held. If it's sideways, it
20 will eject some areas completely different than if it's held
21 another way. The type of ammunition that is used can affect
22 it, and the amount of force the shooter is using to grip the
23 gun it will affect it. So, that affects on the front end
24 and after the fact when you have people coming in and out of
25 a crime scene stepping on or inadvertently moving cartridge

David Collins - Direct examination
by Solicitor Campbell

1 cases, that can further disturb the pattern by which they
2 fell and also if they fall on a hard surface they tend to
3 bounce or jump in some distance and end up in unusual
4 places. I found cartridge cases on top of furniture where
5 you would have a hard time understanding how it got there.
6 So, it is very limited with how much you can say when you
7 look at projection patterns and the place of the shooter.

8 Q When you find a pattern or shell casing in a certain
9 room, perhaps that can be indicative it was fired in that
10 room?

11 A I would expect if you found the cartridge cases in a
12 closed room it would indicate they were fired in that room.

13 Q As far as how it ejects, does it, does it dribble out
14 of the gun or how does it eject it's---

15 A They are typically ejected with a fair amount of force.
16 Semiautomatic pistols most eject to the right. Some eject
17 differently. Most firearms, the way it is designed is to
18 eject the cartridge cases to the right and the primary
19 reason for that is most -- that left-handed people are the
20 minority. Right-handed people are the majority. So, they
21 design most handguns to be for a right-handed shooter. That
22 it will eject to the right is not going to throw it into
23 your face first. So, they typically eject to the right, but
24 as to how far to the right and whether there is some
25 distance forward or back to the right, I wouldn't know that

David Collins - Direct examination
by Solicitor Campbell

1 unless I tested that firearm with the exact same ammunition
2 that was used in the incident to be able to render that
3 conclusion.

4 Q But it can go as far as several feet, depending on what
5 it hits, can bounce, can roll, things of that nature?

6 A You can find it anywhere from that couple of feet from,
7 from where the shooter was standing to several feet or yards
8 away.

9 Q Again, a pattern at the scene of shell casings found in
10 the same general area could be more significant than a
11 single shell casing?

12 A Could.

13 Q And as far as to make this gun fire, is it one of those
14 you just pull the trigger and it keeps firing until you let
15 go?

16 A A type of firearm you would continue to fire until you
17 pull the trigger would be like a machine gun or sub-machine
18 gun, fully automatic, and first off looking at the types of
19 firearms that could have fired the bullets based on my list,
20 the, the Taurus, Astro, and High Point, there are none of
21 those that are fully automatic that I'm aware of. All of
22 those would represent semiautomatic firearm.

23 Q And with a semiautomatic firearm, how do you make it
24 fire each separate bullet?

25 A If it's a fully automatic firearm only, if it's, for

David Collins - Direct examination
by Solicitor Campbell

1 instance, a sub-machine gun and it doesn't have any setting
2 on the firearm except for fully automatic or safe, you would
3 technically have to be very quick to be able to pull the
4 trigger and release it very quickly to cycle it for just one
5 shot. It will continue to fire as long as you pull the
6 trigger. The only way to make it stop is to run out of
7 ammunition in the magazine or release the trigger.

8 Q In this case, with the Taurus or one of those you
9 described as a semiautomatic, how does that work?

10 A It will work one time until you pull the trigger.

11 Q It's not that you just keep shooting?

12 If you pull the trigger, have to separately pull the
13 trigger each time on a semiautomatic?

14 A That is correct.

15 Q Thank you.

16 THE COURT: Cross.

17 MR. COOPER: May it please the Court, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. COOPER:

20 Q Good morning, sir.

21 How are you?

22 A Good morning.

23 Q Sir, is it possible to alter a semiautomatic weapon to
24 make it back a fully automatic weapon?

25 A It is theoretically possible and has been done in some

David Collins - Cross-examination
by Mr. Cooper

1 cases, yes.

2 Q Is it possible to do that with a pistol?

3 A Yes, theoretically can be done.

4 Q Sir, it's -- like to direct your attention back to
5 State's 106 and that's the .45.

6 A Correct.

7 Q .45 High Point semiautomatic, right?

8 A Correct.

9 Q That was -- when you received State's 106, there was a
10 live round in the chamber, is that correct?

11 A I can refer to my notes?

12 Q Yes, sir.

13 A As I received that item I believe that cartridge had
14 already been removed by the crime scene person.

15 Q There was a cartridge in the chamber of the weapon?

16 A A cartridge submitted to me with the firearm. Whether
17 it came from the chamber or not I'm not sure. But it's
18 possible.

19 Q If a live round were in the chamber of a .45 caliber
20 High Point, and one were to pull the trigger of that .45
21 caliber, would the cartridge be fired?

22 A If the safety was off, yes, it would.

23 Q Sir, that's all I have. Thank you very much.

24 SOLICITOR CAMPBELL: Court's indulgence.

25 (Pause.)

David Collins - Redirect examination
by Solicitor Campbell

1 REDIRECT EXAMINATION

2 BY SOLICITOR CAMPBELL:

3 Q Sir, he asked you if it is a, theoretically possible to
4 alter a semiautomatic handgun into a full automatic making
5 it more like a machine gun.

6 A Yes.

7 Q What would be the purpose to alter a gun to be that
8 way?

9 A To increase its rate of fire.

10 Q Make it more deadly?

11 A Potentially.

12 THE COURT: Sir, you can step down and be excused.

13 THE COURT: Ladies and gentlemen of the jury, we'll
14 take a short break at this time. I remind you not to
15 discuss the case.

16 (Whereupon, the following takes place outside the
17 presence of the jury panel.)

18 THE COURT: Anything needs to be taken up at this time?

19 SOLICITOR CAMPBELL: No, sir.

20 THE COURT: Be at ease about ten or fifteen minutes.

21 (Whereupon, a short recess was taken at this time, and
22 the following taking place in the presence of the jury
23 panel.)

24 SOLICITOR CAMPBELL: State calls Investigator Stan
25 Richard.

Stan Richard - Direct examination
by Solicitor Jophlin

1 STAN RICHARD, being first duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY SOLICITOR JOPHLIN:

5 Q Investigator Richard, where are you currently employed?

6 A Richland County Sheriff's Department.

7 Q How long you been there?

8 A Since 1978. But I've been with the crime scene
9 investigative unit for about eight and a half years.

10 Q What kind of training did you receive when getting into
11 the crime scene unit?

12 A Educational background is in criminal justice from the
13 University of South Florida. Graduate studies in Fairbanks
14 Alaska in sociology. Have had a myriad of training courses
15 and a lot of different disciplines. Some things would
16 include latent print development and comparison, crime scene
17 investigation, footwear and tire wear, sheeting
18 reconstruction, crime scene reconstruction, DNA collection
19 procedures, blood pattern analysis, just to name a few, and
20 I have been certified as a crime scene investigator and a
21 footwear examiner through the International Association for
22 Identification.

23 Q Investigator Richard, have you ever testified in Court
24 as a crime scene investigator or analyst?

25 A Yes, I have.

Stan Richard - Direct examination
by Solicitor Jophlin

1 Q Do you know probably how many times?

2 A I have been qualified as an expert in that area about
3 278 times.

4 SOLICITOR JOPHLIN: Your Honor, at this time we would
5 ask, ask Investigator Richard to be qualified as an expert
6 in crime scene investigation.

7 THE COURT: Any objection?

8 MR. COOPER: Crime scene investigator?

9 SOLICITOR JOPHLIN: And analyst.

10 MR. COOPER: Your Honor, no, I don't object to it.

11 THE COURT: So qualified in this Court.

12 Q Investigator Richard, do you have a chance to become
13 involved with this case with regard to what happened at the
14 Grand Motel back in November 2006?

15 A Yes, I did. On November 22, 2006, I responded to the
16 morgue and participated and observed in the autopsy of a,
17 who was identified to me as Tyrell Williams along with
18 Doctor Nichols, a pathologist at that time.

19 Q When you arrived on that, into the morgue, was the
20 victim's hands already covered by brown paper bags?

21 A Yes, I observed the victim fully clothed at that time
22 and my initial observance were his hands in brown paper
23 bags.

24 Q What is the purpose of that bagging?

25 A Bags are placed on the victim's hands at a crime scene.

Stan Richard - Direct examination
by Solicitor Jophlin

1 They're going to be transported to the morgue before any
2 trace evidence are removed and that is done to preserve that
3 type of evidence in transport.

4 Q And from your observations -- I'll hand you what's been
5 marked as State's Exhibit 52.

6 Did you take that picture?

7 A I did.

8 Q Does it appear to you that his hands have been properly
9 bagged?

10 A Yes, they were properly bagged and sealed.

11 Q And that's for the -- so law enforcement can obtain
12 what's called a gunshot residue or GSR kit?

13 A Along with other trace evidence.

14 Q Okay. Can you explain what is a gunshot residue kit or
15 GSR kit?

16 A Well, the kit itself is a way of, two, a two-step
17 process and a way of collecting possible gunshot residue off
18 a person's hands that may have fired a weapon. Any gunshot
19 residue is, as you've already been told or instructed in,
20 when a weapon is fired and the primer and the, expels the
21 bullets, but also expelled particles throughout the weapon,
22 whatever hole might be there, and the -- the trigger housing
23 or up above, wherever, particles can escape if they are
24 expelled the same way the bullet is. But it comes out in
25 another direction. These particles I'm talking about go to

Stan Richard - Direct examination
by Solicitor Jophlin

1 the air to form aerosol and they land on whatever is in the
2 immediate area, hand, clothing, or any other items in the
3 immediate area. These particles are formerly called
4 antimony, barium, and lead particles. One or any number of
5 these particles could be consistent with gunshot residue.

6 Q And did you perform or obtain -- perform this case on
7 Tyrell Williams?

8 A I performed collection procedures, yes.

9 Q I wanted to hand you what's been marked as State's
10 Exhibit 124, I believe is still ID, and is that the GSR kit
11 you collected?

12 A Yes, that's in my, my handwriting, the evidence label I
13 submitted to our evidence room, and they, in turn, submitted
14 it to, for analysis.

15 Q And that's your signature on the bottom of that
16 submission form?

17 A It is.

18 Q Was that properly sealed when you turned it into the
19 evidence room?

20 A It was.

21 Q Properly labeled and with your signature on the tape?

22 A Yes.

23 Q Did you observe how the bullet wounds were in Tyrell
24 Williams' body?

25 A Along with exhibiting some other evidence. I did

Stan Richard - Direct examination
by Solicitor Jophlin

1 observe Doctor Nichols as he started the autopsy procedures,
2 along with removing the clothes, I observed what he
3 identified as entry and exit wounds of the victim.

4 Q Did you observe probably six gunshot wounds?

5 A Yes, I did.

6 Q And in addition to this GSR kit, did you collect some
7 other items from the deceased?

8 A Yes. In addition to the GSR, I collected nail
9 scrapings from under the fingernails, which is procedures we
10 do almost for everyone, could be mostly for some DNA
11 purposes, postmortem, or identification purposes, if needed,
12 hair samples, Buccal swabs, which is swabs also for DNA to
13 identify an individual if necessary. I swabbed the victim's
14 hands again. That's after the GSR was taken for possibly
15 any other DNA that might be on the hands of the victim or
16 otherwise, ten dollar bill, Wall Green receipt, the clothing
17 the victim was wearing at the time.

18 Q Look at State's Exhibit 128. Are those -- can you list
19 what items were in that package?

20 A This is the nail scrapings from the victim's hands, the
21 Buccal swab from his mouth for ID purposes, his DNA, one
22 left-hand and right-hand swab.

23 Q That's your handwriting on the form?

24 A It is.

25 Q And your signature saying you submitted it to the

Stan Richard - Direct examination
by Solicitor Jophlin

1 evidence room on November 27, 2006?

2 A That's correct.

3 Q It was properly packaged when you turned it in?

4 A Yes.

5 Q And that's your date or signature on that tape?

6 A It is.

7 SOLICITOR JOPHLIN: At this time we ask to move into
8 evidence State's Exhibit 128.

9 THE COURT: Any objection?

10 MR. COOPER: Beg the Court's indulgence.

11 (Pause.)

12 MR. COOPER: We have no objection, Your Honor.

13 THE COURT: It is admitted.

14 (Whereupon, State's Exhibit No. 128 was received into
15 evidence at this time.)

16 Q You stated you also collected some clothing from the
17 victim?

18 A Yes, I had one black head scarf, a gray T-shirt, a
19 black cloth jacket, green underpants, two jean pants, a,
20 white socks, and black pair of tennis shoes.

21 Q I'm going to show you what's been marked as State's
22 Exhibit 130. Take a look.

23 Are those the items that you collected?

24 Are those the clothing items you collected?

25 A Yes, they are.

Stan Richard - Direct examination
by Solicitor Jophlin

1 Q Is that your writing on that label?

2 A It is.

3 Q Your signature saying you turned in the evidence
4 November 27, 2006?

5 A That's correct.

6 Q Was it properly sealed and packaged when you turned it
7 into the evidence room?

8 A Yes, it was.

9 Q Not in this condition?

10 A No.

11 SOLICITOR JOPHLIN: At this time we ask to admit
12 State's Exhibit 130 into evidence.

13 MR. COOPER: No objection.

14 THE COURT: That will be admitted as well.

15 (Whereupon, State's Exhibit No. 130 was received into
16 evidence at this time.)

17 Q We heard some testimony earlier about the proximity of
18 a gunshot, of a gun to a person's body and the resulting
19 markings that be left on a person's body depending on the
20 distance of the gun to the body, talked about soot, or
21 stippling.

22 Are you familiar with that concept?

23 A I am, yes.

24 Q Can you explain, in a more detailed fashion, the
25 stippling is, what it looks like.

Stan Richard - Direct examination
by Solicitor Jophlin

1 A Sooting and stippling start with -- it's pretty
2 prominent when you see it if you know it. When you see it
3 you know it. That being said, Doctor Nichols talked about
4 the different types of gunshots and their distances. When
5 you started with hard contact, which is a weapon right up
6 against someone's skin, the gases aren't able to escape at
7 that point. So, you have charring plus maybe the, plus
8 muzzling indentation on a person's skin, and that's called
9 hard contact.

10 And once you get away, if that, you start choosing at
11 least contact, I believe you call it, loose contact all the
12 way until you get to some distances. Anywhere from about
13 10-millimeters, 18 to 24-inches you can get sooting and
14 stippling. That is because you also have, besides the
15 projectile being expelled out of the front of the gun,
16 powdering that comes out of there and with a lot of force.
17 In-between that limited distance that powder can strike
18 either skin, clothing, whatever, at such a force that it
19 embeds into that, either in the form of a powder or as it
20 backs up somewhat, the stippling, which disperses as it gets
21 further back.

22 It is called stippling or tattooing for a reason
23 because it embeds. It's into the skin and that's what you
24 have -- normally you would see that and contact to see that
25 and after that it is normally due to gravity and --

Stan Richard - Direct examination
by Solicitor Jophlin

1 Q And would that affect happen on a person's clothing?

2 A Sure.

3 Q If they didn't have on clothing, would they have it on
4 their skin?

5 A Yes, sir.

6 SOLICITOR JOPHLIN: And Your Honor, may I ask the
7 witness to step down?

8 THE COURT: Yes, you may.

9 Q If you could, I'm going to ask you to look at some of
10 the clothing you collected that day during Tyrell Williams'
11 autopsy. These are all items within State's Exhibit 130.

12 Is this your handwriting?

13 A Yes, it is.

14 Q What does it say?

15 A It says a gray T-shirt.

16 Q This is the gray t-shirt you collected from the victim?

17 A Yes, at autopsy.

18 Q Investigator Richard, I'm going to ask if you can pull
19 that gray t-shirt out and get these very small gloves on our
20 hands?

21 A I'll try.

22 Q Take a look at that t-shirt the victim was wearing and
23 see if you're able to identify those bullet holes. They,
24 they are probably three to the front side of his body to his
25 chest area and a couple to his arms.

Stan Richard - Direct examination
by Solicitor Jophlin

1 A This looks like the front, maybe the front of the
2 shirt, and as you can see the line of -- three separate
3 impact points, those holes.

4 Q Talking about that there, right down there?

5 A Yes.

6 Q Do you see any type of stippling on those bullet entry
7 holes?

8 A No.

9 Q Do you see what you refer to as soot on any of those
10 holes?

11 A No.

12 Q The person was wearing that -- I mean it would collect
13 on the t-shirt possibly rather than the skin?

14 A I would expect it to be on the t-shirt as well as
15 there's a possibility some could have gone through depending
16 on how loosely the clothes are fitting, but I would have
17 expected it, to see it on the clothes.

18 Q Is that your handwriting on the outside of this bag?

19 A Yes.

20 Q What is, does this state?

21 A Sweatshirt jacket, black.

22 Q This would be the sweatshirt, a jacket the victim was
23 wearing at the time of the autopsy?

24 A Yes.

25 Q These clothes in the condition they are are sort of cut.

Stan Richard - Direct examination
by Solicitor Jophlin

1 up and everything?

2 Did you cut these up?

3 Why are they cut up?

4 A They could have been, could have assisted in cutting
5 the clothing off purely so we wouldn't be cutting any impact
6 points on the clothes. It's -- but usually by -- we would
7 cut the clothes off so I take them at that point and I
8 retain possession.

9 Q Do you think -- on this jacket, you could observe
10 bullet holes, entry, entry points?

11 A This is the right side.

12 Q This would be the arm of the jacket?

13 A Yeah, two points on the arm, one and two, and then two
14 exit -- sorry. One there and possibly this one as the entry
15 points on the left arm with the exits and the other point.
16 should be---

17 Q I think this would be the front of that jacket?

18 A This would be one, two. Okay. Three.

19 Q Okay.

20 A Three different points or impact points on two and
21 three, which is identified by -- there's three impact points
22 on the front of the, a jacket, left side of the jacket, and
23 those correspond with the injury/wounds identified by Doctor
24 Nichols at the autopsy.

25 Q And do any of those three entry points show any sign of

Stan Richard - Direct examination
by Solicitor Jophlin

1 stippling?

2 A This is a black jacket obviously. So -- but stippling
3 would be broke in in such a fashion there would be charring
4 in here and around the area of the hole. If it was back
5 18-inches or so, it would be a rather large stippling effect
6 and I don't see any.

7 Q Any soot?

8 A I don't see any.

9 Q Going back to the sleeve you looked at with these other
10 two entry points, did you see any kind of stippling on the
11 arm entry---

12 A No.

13 Q ---points?

14 Or any soot?

15 A No.

16 Q Is that your handwriting on this bag?

17 A It is.

18 Q What is in this bag?

19 A The underpants, socks, and scarf.

20 Q I'll switch places for you and make that, will make it
21 easier for the court reporter to hear you.

22 I wanted to show you the, I guess the underpants and---

23 A An impact point.

24 Q That's an impact point there?

25 A It is.

Stan Richard - Direct examination
by solicitor Jophlin

1 Q Do you see any soot or stippling around that?

2 A No.

3 Q Do you see any other impact points on the garment?

4 A Well, just the rear side, the exit.

5 Q Okay.

6 A But the initial entry at that point, no, I do not see
7 anything else.

8 Q Finally, Investigator Richard, is that your
9 handwriting?

10 A Yes.

11 Q What is that?

12 A Jeans.

13 Q I'm going to have you take a look at those.

14 Do you see any kind of entry point on those jeans?

15 A That appears to be impact point at disposition here and
16 that's all I see.

17 Q On that impact point, do you notice any stippling?

18 A No.

19 Q Any soot?

20 A No.

21 Q Is that a no?

22 A No.

23 Q Thank you, investigator.

24 Now, as we know, this crime happened back in November
25 of 2006. So, it has been almost three years ago.

Stan Richard - Direct examination
by Solicitor Jophlin

1 A Yes.

2 Q Won't soot or stippling -- well, let's stick with soot
3 first.

4 would soot degenerate or wipe away like an ash on the
5 ground, get blown away?

6 A Soot and stippling is burned into either the skin or
7 charred into the clothing. I would expected to see it
8 unless the clothing had been washed in some fashion.

9 Q As far as stippling, over time, would stippling wear
10 away or be brushed away in any way?

11 A It would be the same.

12 Q So, you expect, looking at these clothes today, that it
13 would be probably what you could have observed also back in
14 2006, would be no degeneration of that?

15 A I would expect to see if stippling had been to the
16 point of autopsy and I took possession of them at that time
17 and placed them in the bags, dried them if they needed to be
18 dried in the drying chamber and package and sealed and
19 placed them into evidence, then, yes, that's where I would
20 expect to see some now.

21 Q Regardless, you wrote a report of your observations
22 during the autopsy, correct?

23 A Correct.

24 Q In your report, you took various notes of what you
25 observed and took with you into evidence?

Stan Richard - Direct examination
by Solicitor Jophlin

1 A Yes.

2 Q If you had observed any type of stippling or soot
3 markings, would you have also noted that in your report?

4 A Yes.

5 Q Was there any kind of notation in your report regarding
6 that effect?

7 A No, no notice regarding stippling or sooting or
8 anything of that nature in my report to include what was
9 observed against the, the victim's skin.

10 Q And do you have any personal recollection of any soot
11 or stippling---

12 A No, I don't.

13 Q ---on the body?

14 I believe that's all from this witness.

15 THE COURT: Cross.

16 MR. COOPER: Please the Court, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. COOPER:

19 Q Good afternoon, investigator. You just went through
20 some evidence with Mr. Jophlin. He held it up here for you
21 to look at it.

22 At the autopsy, you didn't go through that same thing
23 with Doctor Nichols, did you?

24 A Taking it off and hold them up like we did here?

25 Q Yes, sir.

Stan Richard - Cross-examination
by Mr. Cooper

1 A I don't believe I would have done that. What I did do
2 at autopsy was try to correspond the entry wounds that were
3 found on the victim with the entry wounds that was found on
4 the clothing and I did do that one too one.

5 Q Yes, sir, I understand that.

6 But, but as far as the demonstration we witnessed, you
7 and Doctor Nichols didn't do anything similar to that?

8 A No.

9 Q You didn't take them back to a lab and conduct a
10 similar investigation, did you?

11 A Did not, no, sir.

12 Q Mr. Jophlin also talked with you about the possibility
13 of stippling degenerating or washing away. Your testimony
14 was -- I believe it was in a piece of evidence or clothing
15 that had been washed that could have happened, right?

16 A Sure.

17 Q So, if a piece of clothing got wet or had been washed,
18 it is possible that stippling could wear away?

19 A It is possible, but would not be observed, yes, sir,
20 absolutely.

21 REDIRECT EXAMINATION

22 BY SOLICITOR JOPHLIN:

23 Q You examined this clothing at the autopsy?

24 A I tried to make it clear. I examined those impact
25 points along with then sketching the corresponding wounds on

Stan Richard - Redirect examination
by Solicitor Jophlin

1 the victim at the same time.

2 Q Do you need any special scientific equipment to
3 observe, make the observations of stippling?

4 A No, it's a top process also without using any type of
5 chemicals, which you wouldn't do at an autopsy setting.

6 It's observation.

7 Q And you didn't see any stippling and so you did not put
8 anything in your notes regarding that, correct?

9 A That's correct.

10 SOLICITOR JOPHLIN: Nothing further.

11 SOLICITOR CAMPBELL: State calls Ida Simmons.

12 IDA SIMMONS, being first duly
13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY SOLICITOR CAMPBELL:

16 Q Agent Simmons, where are you employed?

17 A SLED forensic laboratory, trace evidence department.

18 Q What do you do?

19 What do you do?

20 A Gunshot residue, glass fragments, arson residue,
21 explosive residue, and do fiber and paint comparison.

22 Q Tell this jury a little bit about your education and
23 training in the field of trace evidence.

24 A I have a Bachelor's of Science Degree in Chemistry.

25 After completing that I went to SLED and began work there,

Stan Richard - Redirect examination
by Solicitor Jophlin

1 worked for the first three years in a training program with
2 a Court-qualified SLED certified trace evidence examiner
3 where I learned to collect and analyze trace evidence. I
4 had to complete oral, written, and practical examinations in
5 all of these areas successfully before I could be qualified
6 as a trace evidence examiner.

7 Upon completing that I became a member of the Southern
8 Association of Forensic Scientists, the Academy of Forensic
9 Scientists, and also I'm a member of the FBI's GSR
10 symposium. That's where the FBI invites GSR analysts from
11 around the world to come and discuss the standards and
12 practices that would be held in place for all analysts.

13 Q In addition to that, are you also in the---

14 A We are, yes.

15 SOLICITOR CAMPBELL: At this time I would move her as
16 an expert in trace evidence.

17 THE COURT: Any objection?

18 MR. O'NEILL: No objection.

19 THE COURT: So qualified.

20 Q Agent Simmons, you're familiar with gunshot residue
21 testing, GSR?

22 A Yes, ma'am.

23 Q Tell the jury how that is collected and what's done
24 with that.

25 A It is a mixture of microscopic chemicals that come out

Stan Richard - Redirect examination
by Solicitor Jophlin

1 of the gun when fired that can get on anything in close
2 proximity to the weapon including the hands of the person
3 firing the weapon. It is composed primarily of chemical
4 components, lead, barium, and antimony. We have
5 standardized kits that are put together by companies and
6 used to collect this evidence. They consist of particle
7 lifts, which is double sided sticky tape on them, and taken
8 over the areas of the hands. You have a sample taken from
9 the palm of the right-hand, and another sample from the back
10 of the hand and palm of the left-hand, and a sample from the
11 left-hand from which one who may have fired a weapon or been
12 in the vicinity of a weapon when fired.

13 Q When a gun is fired, if an object is armed, the area
14 right at the end of the muzzle, that's the area where the
15 powder comes out that we're referring to as the gunshot
16 residue?

17 A Yes.

18 Q In addition to the projectile, there is gunshot residue
19 and we want to talk about stippling, but comes out the end
20 of the barrel?

21 A Yes.

22 Q So, if you have a hand say on a gun or especially like
23 a handgun or a pistol or a revolver or something like that,
24 typically gunshot residue could get on their hands?

25 A Yes.

Stan Richard - Redirect examination
by Solicitor Jophlin

1 Q In that same manner, if someone's hands are right, even
2 if they don't have the weapon, but their hands are within
3 say a foot or so of the barrel, they could get gunshot
4 residue on their hand?

5 A Yes, 98 percent of the residue comes out of the muzzle.
6 So, if someone's hands were directly in front of the muzzle
7 when it went off, they should have tremendous amounts of
8 residue.

9 Q So, if you fire a gun, they can get gunshot residue
10 around the back of your hands?

11 A Yes.

12 Q And if you have your hands on the muzzle you can get
13 the residue?

14 A Yes.

15 Q In addition, can you also get residue under the palm?

16 A Yes, if the gunshot fired has residue on it, you can
17 transfer some of the residue from the gun onto your hands.

18 Q Is there a period of time for which you can actually do
19 the gunshot residue testing on a live person?

20 A On a living individual gunshot residue begins to fall
21 away immediately. It has the consistency of flour. So,
22 very easily removed within six hours of an incident. No
23 gunshot residue will be left, but if someone washes or wiped
24 their hands they can remove it. But even if you sat as
25 still as you possibly could, without washing your hands in

Stan Richard - Redirect examination
by Solicitor Jophlin

1 six hours, there would be no residue remaining.

2 Q The closer proximity to the crime -- are you familiar
3 with the way someone's hands may be bagged once deceased?

4 A Yes.

5 Q What is the purpose of that?

6 A To obtain any trace or DNA evidence on the hands.

7 Q If that is done, can the trace evidence last on a
8 knowing living person for an extended period of time until
9 an autopsy is performed?

10 A Even without the bagging of the hands, once someone is
11 deceased, the heart stops beating, they stop sweating, the
12 skin is no longer absorbing things, so, the hands become an
13 inanimate object. Therefore, gunshot residue can remain on
14 them indefinitely until removed by an outside source.

15 Q That's important because once the person is deceased
16 they quit shedding the cells on a gunshot residue---

17 A You.

18 Q So, but on a live person, there's a six hour period?

19 A That's correct.

20 Q So, if say someone's not apprehended until close to a
21 week later, there would be no purpose on doing a gunshot
22 residue test on someone who fired a weapon six, seven days
23 before?

24 A No. No.

25 Q The bagging is to ensure---

Stan Richard - Redirect examination
by Solicitor Jophlin

1 A Yes.

2 Q You mentioned also in order to collect---

3 A Yes, ma'am, sticky tabs and also cotton swabs.

4 Q And that's collected and then it would be forwarded to
5 you?

6 A Yes, ma'am.

7 Q In this case, before -- you're referring to the Case
8 Number L0617509, did you receive State's Exhibit No. 124,
9 which is a gunshot residue kit belonging to a Mr. Tyrell
10 Williams?

11 A Yes, ma'am, I did. This is marked with our laboratory
12 identification number. Each case that comes in is given a
13 laboratory identification number. Each item with evidence
14 that comes in is given an item number and it also has my
15 initials on the item.

16 Q When that item was logged in and presented to y'all at
17 SLED, was it packaged properly and collected properly as far
18 as you could tell?

19 A Yes, ma'am.

20 SOLICITOR CAMPBELL: At this time we would offer
21 State's 124 into evidence.

22 MR. O'NEILL: No objection.

23 THE COURT: Okay. It is admitted.

24 (Whereupon, State's Exhibit No. 124 was received into
25 evidence at this time.)

Stan Richard - Redirect examination
by Solicitor Jophlin

1 Q Tell the jury exactly what testing you did once you
2 received the gunshot residue testing kit from Tyrell
3 Williams.

4 A We prepared the cotton swabs for testing and tried to
5 determine how much of the three elements I mentioned were
6 present on the swabs.

7 Q And the first item you mentioned I believe was the
8 gunshot residue kit collected from the right palm?

9 A Yes, ma'am.

10 Q What were the results of your findings when you tested
11 the gunshot residue kit collected from the palm of
12 Mr. Williams?

13 A The quantities of metals we detected did not indicate
14 the presence of gunshot residue.

15 Q When you tested the back of his hand, what did you
16 find?

17 A The back of the right-hand also did not indicate
18 presence of gunshot residue.

19 Q And the palm of his left-hand -- on the wrong hand,
20 left-hand, what did that find?

21 A Also that did not indicate presence of gunshot residue.

22 Q Finally, the back of his left-hands?

23 A The same. No gunshot residue indicated.

24 Q So, in all four sides of the hands that were tested and
25 collected it did not indicate gunshot residue?

Stan Richard - Redirect examination
by Solicitor Jophlin

1 A That's correct.

2 Q Would that be consistent with someone that was say
3 further away from the edge of the barrel?

4 A Yes, ma'am, that is a possibility in a situation where
5 the hands were not available to the gunshot residue coming
6 out the weapon.

7 Q So, if say someone's a few feet back from a person and
8 fires, even if their hands are up in front of them, if they
9 are more than 18-inches away, you wouldn't expect to find
10 gunshot residue?

11 A That depends upon the weapon and the caliber, yes,
12 as---

13 Q And I'm using that as an estimate.

14 A That is a possibility.

15 Q But, of course, the further away you are from someone
16 when they're firing a gun at a person, the further, further
17 the victim is away, you aren't going to get---

18 A Right, the less likely you are to have gunshot residue
19 on your hands.

20 Q Even if a person had handled a gun, you could expect or
21 it would be consistent that you could find gunshot residue
22 say on the palm area?

23 A That is possible.

24 Q In this case, your results were negative?

25 A That's correct.

Stan Richard - Redirect examination
by Solicitor Jophlin

1 Q For the back of the hands it was negative?

2 A Yes, ma'am.

3 Q You mentioned there's a six-hour period beyond which
4 there's no, it's not probative of anything?

5 A That's correct. We have done laboratory testing where
6 people have fired guns of all types and calibers and all
7 different types of ammunition and after six hours there is
8 no gunshot residue on the hands.

9 Q But once a person dies, the shedding effect the body
10 does on the gunshot residue ceases at that point?

11 A Yes, ma'am, has to be removed by an outside source.

12 Q Even if it hadn't been bad, you could collect an
13 autopsy and get an accurate result of what maybe---

14 A Yes, sir.

15 Q But bagging ensures a better result?

16 A Yes.

17 Q This, again, there would have been no point in testing
18 anyone days later?

19 A No.

20 SOLICITOR CAMPBELL: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. O'NEILL:

23 Q Ms. Campbell was talking to you about gunshot residue.

24 A Yes.

25 Q I notice you kept using the words if someone's hands

Ida Simmons - Cross-examination
by Mr. O'Neill

1 was in the range of gunshot residue they could get gunshot
2 residue on the hands?

3 A Yes, sir, that's a possibility.

4 Q I wanted to make sure the absence of gunshot residue
5 doesn't mean they were not in that same range?

6 A Right. They do not have to be in close proximity, but
7 can still have their hands in a position of gunshot residue
8 where residue could not have gotten on them.

9 Q So, they could be in a close range of 12 to 18-inches
10 and still not get residue on their hands?

11 A That's a possibility.

12 Q I think you said the range depends on the type weapon
13 used?

14 A Yes.

15 Q And the type ammunition used?

16 A Correct.

17 Q And I think you referred to the residue test as
18 microscopic examination?

19 A Yes.

20 Q I think you used the words that these microscopic
21 examinations are easily transferred?

22 A Yes, sir, and also easily removed from the hands.

23 Q I think you said they're very easily transferred?

24 A Yes, sir, they are.

25 Q They can be wiped off?

Ida Simmons - Cross-examination
by Mr. O'Neill

1 A Yes, sir.

2 Q For instance, if somebody were to place their hands on.
3 a wall and do this, if the hand originally had gunshot
4 residue, it could be wiped off on the wall?

5 A Yes, sir.

6 Q I think you also said, may not have said this, but
7 gunshot residue since -- it's microscopic chemicals can be
8 affected by fluids and liquids?

9 A Yes, sir, if you're sweating you can sweat the residue
10 off the hands.

11 Q Sweat can affect it?

12 A Yes.

13 Q What about the water?

14 A Yes.

15 Q Water also affects it?

16 A Yes.

17 Q And when were you given any items, any items from 162
18 to evaluate from gunshot residue?

19 A No, sir, I was not.

20 Q Were you given any other items to examine for gunshot
21 residue?

22 A No, sir, just the gunshot residue collection kit.

23 MR. O'NEILL: Beg the Court's indulgence.

24 (Pause.)

25 MR. O'NEILL: Nothing further, Your Honor.

Matt Ellis - Direct examination
by Solicitor Campbell

1 SOLICITOR CAMPBELL: Okay. Nothing.

2 THE COURT: Step down and be excused. Thank you.

3 MATT ELLIS, being first duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY SOLICITOR CAMPBELL:

7 Q Sergeant Ellis, where are you employed?

8 A Richland County Sheriff's Department.

9 Q What do you do there, sir?

10 A Supervise part of the control evidence unit in the
11 crime investigative unit.

12 Q In December of 2006 were you employed there at that
13 point?

14 A Yes, ma'am.

15 Q What were you doing then?

16 A I was an investigator in the major crimes unit.

17 Q When did you become involved in a case involved in --
18 you weren't involved in the initial investigation in this
19 case, is that correct?

20 A Correct.

21 Q You became involved I believe on that Monday, the 27th?

22 A 27th. I was asked to execute the search warrant.

23 Q Where?

24 A Harper Street, [REDACTED]

25 Q Prior to executing the search warrant, had the search

Matt Ellis - Direct examination
by Solicitor Campbell

1 warrant been signed by a magistrate authorizing you to
2 enter?

3 A Yes, by an individual investigator actively working the
4 case.

5 Q And the judge?

6 A Correct.

7 Q Who all was with you when you went to execute the
8 search warrant at [REDACTED]

9 A Myself, Investigator Godfrey, Faust, Digos, Martin, and
10 Brian Jones were there and a couple of uniformed officers
11 were there.

12 Q And at that point had arrest warrants already been
13 issued for Eugene Frost and Larry Brown?

14 A Yes, I believe so.

15 Q When you entered the house, tell the jury what you
16 found.

17 A We entered the house and there was an individual on
18 the, I believe it was the sofa to the left of the door that
19 was taken into custody by I believe Investigator Godfrey who
20 had the warrants and he was waiting to transport to our
21 office for questioning.

22 Q That was by Captain Smith and Investigator Preston?

23 A I believe so.

24 Q Did you stay at the house and participate in the actual
25 search of the house?

Matt Ellis - Direct examination
by Solicitor Campbell

1 A I didn't.

2 Q This was on the 27th.

3 So, some six days after the murders actually occurred,
4 is that correct?

5 A Correct.

6 Q And during the course of your search, were you looking
7 for certain clothing items, shoes, any type of weapon?

8 A Yes, in the search warrant it is listed out what we
9 would be looking for, described to the judge the items we're
10 actively searching for.

11 Q Let me back up for a minute.

12 You mentioned Larry Brown was taken into custody?

13 A Correct.

14 Q Was Eugene Frost present that morning when y'all
15 entered?

16 What type of day was it y'all did the search warrant?

17 A I believe in the morning. Some time after 9:00.

18 Q And when you got there, Larry Brown was there, taken
19 into custody, and placed under arrest.

20 Was Eugene Frost there at the residence that morning?

21 A He was not. His mother was there. I believe we
22 received information that he had gone to traffic court.

23 Q And while you were there, were there different people
24 looking in different areas of the house?

25 A Correct.

Matt Ellis - Direct examination
by Solicitor Campbell

1 Q And some clothing items you were specifically looking
2 for.

3 I believe one mentioned was of a cap?

4 A A black skull, a cap listed as an item for us to search
5 for inside the residence.

6 Q I show you what's been marked as State's 131 and this
7 is going to be marked 132.

8 (Whereupon, a cap was marked as State's Exhibit No. 132
9 for identification purposes only at this time.)

10 Q Were those two of the items collected that day?

11 A Both these items were brought to me and I packaged them
12 up.

13 Q Those were found in the house that day?

14 A Yes.

15 Q Specifically where?

16 A One was found in a den in a chest and the other one
17 was, have found on the left side of the sofa in the den
18 also.

19 SOLICITOR CAMPBELL: Okay. Your Honor, at this time we
20 would offer State's Exhibit 131 and 132 into evidence.

21 THE COURT: No objection.

22 MR. O'NEILL: No objection.

23 (Whereupon, State's Exhibit Nos. 131 and 132 were
24 received into evidence at this time.)

25 Q Show you another item that's State's Exhibit 63.

Matt Ellis - Direct examination
by Solicitor Campbell

1 Was this another item that was found that day?

2 A Yes, it is.

3 Q What is that, sir?

4 A Marked as a homemade crack pipe.

5 Q Where was that found?

6 A On a table in a bedroom beside the table in a drawer.

7 Q In a bedroom in a table in a drawer.

8 Your Honor, at this time we offer State's Exhibit 63
9 into evidence.

10 MR. COOPER: No objection.

11 (Whereupon, State's Exhibit No. 63 was received into
12 evidence at this time.

13 Q At this time I show you State's 129, a live round.

14 A Also found in the bedroom, bedside table, bottom
15 drawer.

16 Q That was collected that morning?

17 A Yes.

18 SOLICITOR CAMPBELL: Your Honor, at this time we offer
19 State's Exhibit 129 into evidence.

20 THE COURT: Objection overruled. Subject to the
21 limitations the Court has indicated.

22 (Whereupon, State's Exhibit No. 129 was received into
23 evidence at this time.)

24 Q For the record, State's Exhibit 129, this live round,
25 was found at the execution of the warrant on the 27th. Not

Matt Ellis - Direct examination
by Solicitor Campbell

1 found at the crime scene. It's---

2 A Correct, only at Harper Street.

3 Q Not found on the defendant, but in the house in the
4 bedside table?

5 A That is correct.

6 THE COURT: Approach. Ask you to do a little bit more.

7 (Whereupon, a bench conference was held out of the
8 hearing of the jury at this time.)

9 Q This was found in the house?
10 You can't connect it directly to the defendant?

11 A No, ma'am.

12 Q Did you also find a pair of hair clippers, which is
13 item, going to be hopefully Item 133?

14 A I did.

15 Q Where was this found?

16 A In the den between the sofa and a wall.

17 SOLICITOR CAMPBELL: No objection at this time, we move
18 Item No. 133 into evidence.

19 MR. O'NEILL: No objection?

20 THE COURT: It is admitted.

21 (Whereupon, the hair clippers were marked as State's
22 Exhibit No. 133 and received into evidence at this time.)

23 Q Did you also collect various clothing that may or may
24 not have been connected with this case?

25 A We did.

Matt Ellis - Direct examination
by Solicitor Campbell

- 1 Q And also some pairs of shoes?
- 2 A Correct.
- 3 Q I believe -- how many pairs of shoes were in the house?
- 4 A Two I believe. I believe there's two pairs of shoes.
- 5 Q One pair of Nike's and one Starter shoes?
- 6 A Yes, ma'am, they---
- 7 Q From the side porch?
- 8 A Both on the outside.
- 9 Q Once those items were collected in addition to those
- 10 already in evidence, were those packaged and placed into
- 11 evidence?
- 12 A Yes, ma'am.
- 13 Q While the search was ongoing, did you receive a phone
- 14 call from Captain Smith?
- 15 A I did.
- 16 Q What was the substance of that phone call?
- 17 A He asked me to ascertain from Ms. Frost, who's present
- 18 at this location, if they knew, if they---
- 19 Q That would be Eugene Frost's, mother, his aunt?
- 20 A Correct.
- 21 Q And a Ms. Moyd?
- 22 A Moyd. Excuse me. Not Moyd. Yes.
- 23 Q Were they able to give you that information?
- 24 A Yes.
- 25 Q And did you relay that back to Captain Smith?

Matt Ellis - Direct examination
by Solicitor Campbell

1 A I did.

2 Q Via your Nextel?

3 A Correct.

4 Q And what information did you relay back to Captain
5 Smith?

6 A I was advised by both -- had happened approximately a
7 week before this search warrant took place, which would have
8 been just after the incident.

9 Q Just after the night, night of the 21st?

10 A Correct.

11 Q That's all I have.

12 CROSS-EXAMINATION

13 BY MR. O'NEILL:

14 Q Sergeant Ellis, Ms. Campbell went over with you some
15 stuff you did find. Let's talk about what you didn't find.

16 Did you find any drugs there at Harper Street?

17 A We did not recover any.

18 Q Did you find any large sums of money there off the
19 street?

20 A We did not.

21 Q Did you find anything that you could attribute
22 belonging to Tyrell Williams?

23 A I'm not sure. Only items we collected are what's
24 listed. I don't know what was related back to any specific
25 individual.

Matt Ellis - Cross-examination
by Mr. O'Neill

1 Q Did you find any belongings of anybody that was in Room
2 162 that day, the Goodwin sisters, Ms. Austin, Ms. Holly,
3 anybody, find---

4 A I'm not sure. I don't know what items belonged to who.

5 Q Did you find anything that was readily apparent to you
6 that belonged to somebody else?

7 A No ID's that had somebody's name on it.

8 MR. O'NEILL: Beg the Court's indulgence.

9 (Pause.)

10 MR. O'NEILL: Nothing further.

11 REDIRECT EXAMINATION

12 BY SOLICITOR CAMPBELL:

13 Q He asked you if you found any drugs in the house.
14 You did find the crack pipe?

15 A Correct.

16 THE COURT: Step down. Be excused.

17 SOLICITOR CAMPBELL: Your Honor, may we approach?

18 THE COURT: Yes.

19 (Whereupon, a bench conference was held at this time
20 out of the hearing of the jury.)

21 THE COURT: Ladies and gentlemen of the jury, we're
22 going to take our lunch break now. Lunch should be in your
23 jury room. It doesn't mean you are required to stay. You
24 are fine to leave the premises, but we will start the trial
25 back at two o'clock. So, I remind you not to discuss the

1 case.

2 (Whereupon, the following takes place outside the
3 presence of the jury.)

4 SOLICITOR JOPHLIN: Your Honor, briefly, as a
5 housekeeping matter, before we get started I wanted to make
6 sure -- I think all the pictures were entered into evidence,
7 but we're not sure, just wanted to make sure all the
8 pictures are entered into evidence at this time over their
9 previous objections to some pictures.

10 MR. O'NEILL: Make sure we still state, note objection
11 60 and 61.

12 THE COURT: And also that they were redacted and
13 appropriately and I believe they were.

14 SOLICITOR JOPHLIN: And also, Your Honor, State's
15 Exhibit 53, 53, 98, and 121, that was in yesterday, was
16 established, which didn't enter into evidence.

17 THE COURT: Any objection?

18 MR. O'NEILL: No, sir.

19 SOLICITOR CAMPBELL: As far as any other issue, I don't
20 have Captain Smith here yet.

21 Could we take that up right at 2:00?

22 THE COURT: Okay.

23 SOLICITOR CAMPBELL: That---

24 THE COURT: Remind me what was the issue.

25 SOLICITOR CAMPBELL: Statement and he said he objects

1 to how he characterized his reaction or something.

2 THE COURT: Okay. But the statement was pre-arrest?

3 MR. O'NEILL: Post-arrest.

4 THE COURT: Post-arrest.

5 SOLICITOR CAMPBELL: Post-arrest. He was in custody,
6 been advised of his rights, and he was still talking about
7 that point and then he, we would not go into the invocation
8 of rights in front of the jury. We would not mention that.

9 MR. O'NEILL: Post-Miranda and what I'm concerned about
10 is---

11 SOLICITOR CAMPBELL: And pre-invocation. He disputes
12 his rights when he gets to headquarters.

13 THE COURT: In other words, post-arrest, he's in
14 custody, had been advised of his rights and then---

15 MR. O'NEILL: What I'm concerned about, Sergeant Smith,
16 after you get on advising rights he comments he, he meaning
17 Larry, remained calm and somber during this time, says
18 investigating officer about this, about what was, this was
19 about, about the incident at the motel which happened last
20 Tuesday, and then he says -- I'm not concerned about that.

21 SOLICITOR CAMPBELL: I think there was only one part
22 you're concerned about.

23 MR. O'NEILL: I apologize, Your Honor. Says
24 investigator further advised him he had been positively
25 identified as the, in this case, again Larry, did not react

1 with any sort of surprise or shock that he was being accused
2 of this crime. Simply remained somber as much of the time
3 and he had his head down.

4 SOLICITOR CAMPBELL: I think he can describe his
5 demeanor. I will tell him not to use the word incredulous,
6 which I can't even say, and that he just -- he can describe
7 his demeanor and that he had his head down, but beyond that
8 he can't comment on the fact that he didn't act surprised.

9 MR. O'NEILL: I don't object to having the head down
10 part. I object to the somber part. Somber. Advised
11 both -- with the head down and not saying anything, which is
12 kind of implicit saying he didn't say anything.

13 SOLICITOR CAMPBELL: He didn't say anything at that
14 point.

15 THE COURT: Comment that he---

16 SOLICITOR CAMPBELL: He didn't invoke his right to
17 silence, Your Honor, and I will hand up those cases. He did
18 not -- he invokes his rights later on. So, at that point
19 the fact he didn't say anything is admissible.

20 MR. O'NEILL: The implication is not -- the, this is
21 not---

22 SOLICITOR CAMPBELL: I'll get you the case law, judge.
23 It's got to be a clear invocation of the rights and he
24 clearly invokes his rights at headquarters, but I won't go
25 into that because that would be a dual violation, and I have

1 cautioned both -- you did not mention the fact he invoked
2 his rights because basically what happens is right after
3 they're talking about the consent and Buccal swab. Then he
4 says he doesn't want to consent anymore and then he says I
5 want my lawyer, but they can't mention anything beyond that
6 was terminated. So, I don't want that to be a dual
7 violation.

8 THE COURT: So, he is in the car and---

9 SOLICITOR CAMPBELL: Do you want a copy of his
10 follow-up?

11 THE COURT: Follow-up?

12 SOLICITOR CAMPBELL: Stan Smith's follow-up. Might be
13 easier for you to follow along.

14 THE COURT: Yes, but you want the portion of when he
15 mentioned that he---

16 SOLICITOR CAMPBELL: After he is asked the question,
17 about---

18 THE COURT: Or that he's told that this was a shooting
19 and that he was ID'd and what his reaction was.

20 MR. O'NEILL: It is a part of that I left out, Your
21 Honor, when -- after Stan Smith and -- puts him under
22 arrest. Also a notation in the report Larry once asked if
23 he was surprised in any way.

24 SOLICITOR CAMPBELL: I will advise him he was advised
25 of his rights and didn't say anything who's asked of his

1 questioning.

2 SOLICITOR JOPHLIN: I'm to the part about saying he
3 didn't say anything. So --.

4 MR. O'NEILL: I will hand the case law up over lunch.
5 The point of Demar case is when he is advised of his rights,
6 you can not comment on any silence of that. He has a right.
7 Whether he's invoked the right is not important.

8 SOLICITOR CAMPBELL: It is important if he invoked his
9 rights.

10 THE COURT: I guess---

11 MR. O'NEILL: Whether he invoked the right is not
12 important.

13 THE COURT: I guess the defense is trying to say if you
14 have the right to remain silent and you don't say anything
15 is that in and of itself you invoking your---

16 SOLICITOR CAMPBELL: Is not per the case law. I'll get
17 you that over lunch.

18 MR. O'NEILL: The case is not dealing with -- that's
19 will whether you invoke the right. I'm concerned about
20 commenting on whether or not somebody has invoked their
21 right.

22 SOLICITOR CAMPBELL: That's correct. If they haven't
23 invoked their right it's not a comment on it.

24 MR. O'NEILL: It is a comment. If you just give Mr.
25 Brown's rights, is he going to comment on the fact he hasn't

1 invoked the right? That's exactly what he is concerned
2 about. You comment on the fact he didn't invoke the right.
3 whether he did or did not -- can not make a comment on
4 whether he either did or did not invoke his right to remain
5 silent. He has the right to remain silent.

6 SOLICITOR CAMPBELL: If he invokes it.

7 THE COURT: Okay. Let me look at that. That is a big
8 distinction between both.

9 SOLICITOR CAMPBELL: I agree.

10 THE COURT: Let's get back here right about five of
11 2:00.

12 MR. O'NEILL: Yes, Your Honor.

13 (Whereupon, Court was in recess for the evening.)

14 THE COURT: There's no jury in here. So, I'm going to
15 go ahead and start. My understanding from you-all is this
16 is a situation where the defendant is in custody, has
17 already been arrested, is in the back of the police car, and
18 has been given his Miranda warnings.

19 MR. O'NEILL: Yes, Your Honor.

20 THE COURT: So, the issue is the State wants to make an
21 observation of the defendant and comment on the post-arrest,
22 what the post-Miranda says.

23 MR. O'NEILL: Yes, sir.

24 THE COURT: When we did our research, and we did this
25 with cases from the solicitor, but we are referring to the

1 case of the State versus Brown, a 2007 case, Court of
2 Appeals.

3 MR. O'NEILL: Brown v. State?

4 THE COURT: Brown v. State.

5 MR. O'NEILL: I have that too, Your Honor.

6 THE COURT: Okay.

7 MR. O'NEILL: You want my copy?

8 THE COURT: I got it in that case -- you can go to Page
9 8 particularly. But I've read all up until there because I
10 don't like to see holdings, but the factual scenarios, but
11 it gives a good rendition of Doyle, and the whole part of
12 giving Miranda rights is to advise them of their rights,
13 right to remain silent, right to have counsel, have counsel,
14 telling them their rights may be used against them, and also
15 if they can't afford an attorney they will get one appointed
16 for them, and this case is saying once a governmental entity
17 does that you have basically induced the right to remain
18 silent.

19 So, it is common sensical if a person essentially
20 remains silent they have exercised their right to remain
21 silent. I think some of the cases that the State has given
22 me are when, after post-Miranda you told them they have
23 these rights and then they voluntarily state them, then you
24 have to quibble about whether that's voluntary and those
25 types of things.

1 SOLICITOR CAMPBELL: Respectfully, State versus Reid is
2 directly on point in this case. The police officer
3 testified he advised him of his rights and answered a number
4 of questions for 15 to 20 minutes and the defendant did not
5 answer the questions.

6 THE COURT: Did not?

7 SOLICITOR CAMPBELL: Did not and that was the testimony
8 in front of the jury.

9 Am I wrong?

10 MR. O'NEILL: Are you citing my Reid or the Reid you
11 had?

12 SOLICITOR CAMPBELL: My Reid.

13 MR. O'NEILL: I think Brown, 2007 Court of Appeals case
14 is clearly on point that this, this is dealing with---

15 THE COURT: I guess what I'm saying is once you have
16 post-arrest and Miranda, and you have said you have the
17 right to remain silent, if a defendant then remains silent,
18 this case, particularly Brown v. State is indicating the
19 state has induced that right to remain silent. So then it
20 becomes when the defendant exercises the right to remain
21 silent, you can ask for counsel, but when you remain silent,
22 when you tell them they remain silent, and they speak and
23 it's used against them, that they exercise their right or
24 they could because it would be used against them.

25 SOLICITOR CAMPBELL: Only thing I would differentiate

1 in Brown v. State is he didn't make any statements. This
2 defendant does make statements.

3 THE COURT: That's my distinction, but earlier y'all
4 were commenting he was silent and that's the part Doyle says
5 you can not do when you tell them they can remain silent and
6 anything can be used against them if they don't.

7 SOLICITOR CAMPBELL: Can observe their behavior or -- I
8 pulled case law on that as well. I pulled State v. Reid --
9 different State v. Reid, State v. Reid with a I, 324 S.C.
10 74, and that goes on the case law, talks about, it's 324
11 S.C. 74 and in that disposition, both pretrial silence, and,
12 and I think they refer to it in this case as lack of remorse
13 they can even---

14 SOLICITOR CAMPBELL: I agree. We can't say he had a
15 lack of remorse.

16 THE COURT: You can't have suggestive comments.

17 SOLICITOR CAMPBELL: There's no question we can't say
18 lack of remorse.

19 MR. O'NEILL: Captain or Sergeant Smith?

20 Captain Smith, his comment, he appears somber, is
21 essentially complacent, not saying either he didn't have any
22 remorse or is remorseful for something he may have done. The
23 somber comment I think is also---

24 THE COURT: Okay. So, when you were talking earlier,
25 one of the statements you indicated was you wanted your

1 person, whoever was going to testify, to say he didn't react
2 to being accused of a crime, but that is a comment---

3 SOLICITOR CAMPBELL: Instead of saying that I can say
4 he did not respond.

5 THE COURT: But did not respond is commenting on the
6 silence.

7 SOLICITOR CAMPBELL: I respectfully disagree.
8 However---

9 THE COURT: Sure. But I'm saying if you look at the
10 cases---

11 SOLICITOR CAMPBELL: Look at the cases I handed up to
12 Your Honor, which includes Reid, which is still good law,
13 talks about the detectives testified the appellate's Miranda
14 warnings and obtained signature on rights form---

15 THE COURT: After post-arrest and post-Miranda?

16 SOLICITOR CAMPBELL: Yes, ma'am.

17 MR. O'NEILL: There's no explanation of Doyle in this
18 case. That's no allegation of a Doyle violation.

19 SOLICITOR CAMPBELL: If they thought it was they would
20 have argued it.

21 THE COURT: Here's the thing. On Page 7 of that one
22 they talk about a defendant has been advised of their
23 rights, but nevertheless chooses to make the statement.
24 That's a distinction.

25 SOLICITOR CAMPBELL: This is---

1 THE COURT: Originally the preference was comment on
2 failure to respond, which is silence. That's silence.

3 SOLICITOR CAMPBELL: This says appellate initially
4 failed to respond to questions. The detectives talk with
5 the appellate for about 20 to 30 minutes, attempted to talk
6 to appellate after the other detectives left the room. At
7 that time he started making statements.

8 MR. O'NEILL: The issue is whether those statements are
9 admissible. Not whether he made a comment on his silence.
10 The question in the Reid case she's referring to is whether
11 or not those statements---

12 SOLICITOR CAMPBELL: Tell me what you want me to do.

13 THE COURT: I guess what I'm saying is once you advised
14 him of the rights and their silence, that's Doyle. If you
15 advise of the rights and then there's statements, then you,
16 their issue becomes whether those statements are voluntary
17 and then you can potentially get into those.

18 SOLICITOR CAMPBELL: Okay. So, should -- having to go
19 through the quality of -- he asked him this statement and
20 then no comment and then he asked another statement and he
21 responded to that one. That's what happened.

22 THE COURT: That's what I'm trying to get at or
23 originally you were saying didn't react to be accused and to
24 me that gets maybe into Doyle, but thing -- we've got
25 another thing about an observation of a head down. Defense

1 says they're okay with that.

2 MR. O'NEILL: No, the head down.

3 THE COURT: Head down?

4 MR. O'NEILL: He can say he had his head down, yes.

5 SOLICITOR CAMPBELL: He is not to use the words he did
6 not react or comment on the -- just that I asked the
7 question---

8 MR. O'NEILL: That is the purpose of---

9 THE COURT: Then there is an issue about what he said
10 or didn't say because once he's been Mirandized you can not
11 infer he didn't remain silent because he just told him he
12 can.

13 SOLICITOR CAMPBELL: Can he say he was under arrest?

14 THE COURT: You can say he was under arrest and you can
15 say he was Mirandized. You can't comment on silence after
16 that if you told him he did, does not have to speak or it
17 can be used against him.

18 SOLICITOR CAMPBELL: So, he said if he removed him from
19 the residence that he was placed under arrest he then
20 verbally---

21 THE COURT: Remind you that Doyle deals with
22 post-arrest and post-Miranda. The pre-stuff is totally
23 different.

24 SOLICITOR CAMPBELL: That was pre-Miranda.

25 THE COURT: That's a different issue. I'm talking

1 about post-arrest and post-Miranda. That's what Doyle deals
2 with. Can not comment on silence when---

3 SOLICITOR CAMPBELL: Respectfully, Your Honor, he says
4 he -- they find Larry in the living room, place handcuffs on
5 him, and place him under arrest, and tell him he's under
6 arrest, and that's when he didn't -- the first time he
7 didn't -- that's before Miranda.

8 THE COURT: That's pre-Miranda?

9 SOLICITOR CAMPBELL: So that's okay.

10 MR. O'NEILL: Your Honor, we argued the last ten
11 minutes before the break everything was post-Miranda.

12 THE COURT: I'm trying to -- hold on a second. Once I
13 say something I get a different set facts. Let's make it
14 clear that post-arrest and post-Miranda. No comment on the
15 silence because you told him he can remain silent and
16 anything would be used against him. He does not have to say
17 I choose to remain silent. That's not common sensical to a
18 defendant. If you tell him remain silent and it's going to
19 be used against him and you remain silent, he has invoked
20 his right to remain silent. So, no comment on post-arrest,
21 post-Miranda. Pre-arrest, that's a different situation and
22 pre-Miranda.

23 MR. O'NEILL: I was under the impression everything
24 we've argued about the last 20 minutes that every
25 conference---

1 SOLICITOR CAMPBELL: You were very clear.

2 MR. O'NEILL: You were very clear everything was
3 post-arrest, post-Miranda.

4 SOLICITOR CAMPBELL: But that first statement is
5 pre-Miranda. It is in follow-up.

6 MR. O'NEILL: It, it has become the pre-arrest. We
7 just talked about everything in the last 20 minutes was
8 post-arrest, post-Miranda.

9 THE COURT: Let's move on. Now we---

10 MR. O'NEILL: The State was arguing the whole time
11 under the premise there were no statements pre-Miranda.

12 THE COURT: I need for the State to clarify then
13 because---

14 MR. O'NEILL: I base it on Your Honor's ruling it was
15 before Miranda.

16 SOLICITOR CAMPBELL: I'm not changing the facts. It's
17 the follow-up I handed to the judge. I haven't changed the
18 facts. It's in the follow-up you have.

19 THE COURT: We need to establish what specifically was
20 pre-Miranda.

21 SOLICITOR CAMPBELL: Only thing pre-Miranda was he was
22 placed under arrest and he remained calm or never asked why
23 he was under arrest. He is then taken and advised of his
24 rights in the car.

25 Do you see where I am?

1 THE COURT: I see it. Advised of his rights and then?

2 SOLICITOR CAMPBELL: Marking through that part. He
3 can't say he remained calm and somber at this time. Advised
4 him about the motel. Said he didn't know anything. Said
5 that would be admissible. Asked him when he cut off his
6 dreadlocks, said one month prior, made contact with
7 Investigator Ellis, received a response of a week prior,
8 allowed him to hear this exchange. Again, he can not make
9 any comment of that.

10 The next line I've marked through, he didn't react at
11 all or protest the conflicting information. He then asked
12 incident location, in order to refresh his memory, asked if
13 anything looked familiar. At this point he asked if he was
14 going to be taken to jail or not. So, I marked through the
15 two sentences that were after Miranda. That comment on his
16 demeanor or what you recalled. Then escorted to the office.
17 Preston departs. They try to hear side of the matter, that
18 he had been positively identified, and at that point all
19 they can say is he had his head down, right?

20 THE COURT: Okay. You're going to take out he simply
21 remains somber.

22 SOLICITOR CAMPBELL: Yes, I'm taking out he didn't act
23 with any sort of incredible -- I can't say that word, but
24 that the only part he can comment was he had his head down.
25 They -- then they, they conducted several procedures, and

1 then collected case prints, went to retrieve the consent
2 form. said he wasn't going to sign anything, and then
3 didn't make a comment about -- I've instructed Investigator
4 again was -- well, Captain Smith, and -- we'll say at that
5 point the interview was terminated.

6 Is that good?

7 MR. O'NEILL: Your Honor, for the record, I still -- I
8 read -- I know what the current case law says about
9 post-arrest. The pre-Miranda statements I still, for the
10 record, know the case law at this juncture. Don't agree
11 with me on that point, but want to preserve that issue for
12 further litigation in that regard, but---

13 THE COURT: But for your purposes, you do understand
14 from her which events occurred when?

15 MR. O'NEILL: Yes, Your Honor.

16 THE COURT: And you are indicating, as she has read
17 this through, you understand which events were pre-Miranda.

18 MR. O'NEILL: I understand at this point what they---

19 THE COURT: You just dispute the law or---

20 MR. O'NEILL: Yes, one of these -- at this point my
21 argument back -- and it's clearly -- I clearly -- the case
22 law and whatnot is not in any fashion as relationship to
23 Doyle, to post-arrest. The pre-Miranda statements at this
24 point, I have a 403 argument, defense argument. I argue
25 there is no relevance to whether or not Mr. Brown never once

1 ask, asked why he was under arrest. There is no probative
2 value in that in any form of that. It significantly is
3 outweighed by the same kind of Doyle concerns that the
4 Supreme Court has.

5 THE COURT: That's post-arrest, the pre-Miranda?

6 I -- was he told what he was under arrest for at the
7 time he was arrested?

8 SOLICITOR CAMPBELL: Yes.

9 THE COURT: He told them. He's going to testify to
10 that. If it's not in this statement y'all can quibble with
11 that.

12 MR. O'NEILL: No, Your Honor. I'm saying he -- Captain
13 Smith tells him he's under arrest for murder and his
14 observation is Larry once never asked why he was under
15 arrest.

16 THE COURT: I see what you're saying. Questioning like
17 murder of who---

18 MR. O'NEILL: Yes, my contention is that under 403 --
19 first, I saw, say it's not relevant. Even if it, it is
20 relevant, it's way more prejudicial than it is probative. I
21 concede that.

22 THE COURT: well, that's kind of a comment that's
23 injected. I mean let's talk about that a little bit because
24 once you say you're under arrest for murder to, then have an
25 officer say but he didn't ask anything for murder or who I

1 was talking about or whenever that's --

2 MR. O'NEILL: That's kind of like Captain Smith's
3 commentary.

4 SOLICITOR CAMPBELL: I can at least say did he say
5 anything at that point. No.

6 THE COURT: Because I'm concerned about subjective
7 commentary. But, yes, that follow-up you mentioned may be
8 more appropriate.

9 SOLICITOR CAMPBELL: How is did he say anything or ask
10 any questions. No. Then did you advise him of his rights.

11 THE COURT: That's fine.

12 Anything further?

13 Good intellectual exercise.

14 Are we ready to proceed?

15 SOLICITOR JOPHLIN: Yes, ma'am.

16 THE COURT: Jurors please.

17 MR. O'NEILL: I will reserve this contemporaneously
18 when the testimony comes out.

19 THE COURT: Certainly.

20 (Whereupon, the following takes place within the
21 presence of the jury panel.)

22 THE COURT: Hope you all enjoyed your lunch and we're
23 ready to continue.

24 Go ahead.

25 SOLICITOR JOPHLIN: State calls Investigator Brian

Brian Gwyn - Direct examination
by Solicitor Jophlin

1 Gwyn.

2 BRIAN GWYN, being first duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY SOLICITOR JOPHLIN:

6 Q Investigator Gwyn, where are you employed?

7 A Richland County Sheriff's Department.

8 Q How long you been employed for the sheriff's
9 department?

10 A Five years.

11 Q What is the capacity of your employment with the
12 department?

13 A Say again?

14 Q What are your duties in your capacity of the
15 department?

16 A An investigator that investigates homicides and
17 burglaries.

18 Q Being an investigator of crime scenes and murders, what
19 does that involve?

20 Do you go to every crime scene and investigate?

21 A Depends on the case. Certain crime scenes we'll go to
22 the scene and get an idea of what happened and certain cases
23 we don't have that opportunity.

24 Q Did you have a chance to become involved in a murder at
25 3003 Two Notch Road, the Grand Motel back on November the

Brian Gwyn - Direct examination
by Solicitor Jophlin

1 27th, 2006?

2 MR. O'NEILL: Objection, Your Honor.

3 May we approach?

4 THE COURT: Yes.

5 (Whereupon, a bench conference was held out of the
6 hearing of the jury at this time.)

7 SOLICITOR JOPHLIN: I'm going to strike that last
8 sentence, Your Honor.

9 Q You responded to a crime scene at 3003 November 21,
10 2006?

11 A I did the following day, yes, sir.

12 Q I'm sorry. How did you become aware of this, the
13 killing on November 27 that you became involved in?

14 A Captain Smith advised me I was going to be a secondary
15 investigator on the homicide from the Grand Motel with
16 Investigator Godfrey.

17 Q And were you given a minute or two -- to start your
18 investigation, given a brief synopsis of what occurred the
19 previous evening?

20 A I was.

21 Q And as part of your initial investigation that morning
22 on the 22nd, did you speak be -- go to the motel?

23 A We did.

24 Q Or go to the Grand Motel?

25 A We did.

Brian Gwyn - Direct examination
by Solicitor Jophlin

1 Q Did you speak with anyone who had knowledge of the
2 incident?

3 A Yes, sir, we spoke with Marilyn Thomas who is a
4 cleaning lady at the motel.

5 Q Do you recall the proximity of where she was that
6 evening to where the scene of the crime was?

7 A Her room was 170. The scene was 162. A room or two
8 down from it.

9 Q In the course of your discussions with her, were you
10 able to -- was she able to give you any kind of credible
11 information that led y'all on a certain investigatory path?

12 A She did. She gave us two individuals that had,
13 individual visited her in her room earlier that evening,
14 gave -- stated that they drove a van that was similar to the
15 one that was observed at the time of the shooting, and the
16 physical descriptions fit that of the people that were
17 inside the room.

18 Q I believe you -- I believe she gave you the names of
19 John Detouche a man named Ken?

20 A She actually gave us Big John who we later identified
21 as John Detouche.

22 SOLICITOR JOPHLIN: Beg the Court's indulgence.

23 (Pause.)

24 Q Because the van was similar, y'all followed-up with
25 that, that lead?

Brian Gwyn - Direct examination
by Solicitor Jophlin

1 A We did.

2 Q During the course of that lead, you were pointed to a
3 couple of, I think Bud Lite beer bottles?

4 A A couple of beer bottles that were left behind during
5 the course of our visits in her room.

6 Q You collected those two bottles?

7 A We did.

8 Q I believe one of them was swabbed and later on turned
9 into Mr. Gray Amick, who we heard from yesterday. He tested
10 it.

11 A It was turned into evidence, that's correct.

12 Q Moving on to later on that day, I believe a credible
13 witness had contacted y'all?

14 A They did. They contacted Investigator Godfrey.

15 Q And he gave you credible information regarding another
16 lead on this incident?

17 A He did.

18 Q Did that lead then enable you to develop three suspects
19 in this shooting?

20 A It did.

21 Q And I believe you were able to develop, from that
22 information, the names of -- at first I think you were given
23 the name of Harry weathers?

24 A Yes.

25 Q And Eugene Frost and Frank Livingston?

Brian Gwyn - Direct examination
by Solicitor Jophlin

1 A That's right.

2 Q Larry Weathers was later determined to be Larry Brown?

3 A That is correct.

4 Q How is that distinction?

5 A Larry Weathers and Larry Brown are related through
6 extended family, and I believe they are related by Hatti
7 Brown, which is Larry Brown's sister, and Edna Frost, which
8 is Eugene Frost's mother. They are sisters and related in
9 that nature.

10 Q After learning of these three suspects, you developed
11 photo lineups of Larry Brown and Eugene Frost?

12 A There were photo lineups that were compiled, yes.

13 Q And then after developing these lineups did you then
14 speak with a Jacqueline Holly?

15 A We did.

16 Q And she was a resident of the Grand Motel at the time?

17 A She was. She was staying in Room 110.

18 Q And how was she involved?

19 was she able to give you a version of events of how she
20 was involved in this incident?

21 A She did. She told us that they come to her wanting to
22 purchase crack cocaine and she took them to Room 162.

23 Q Did she tell y'all that she was able to identify Room
24 162?

25 A That is correct.

Brian Gwyn - Direct examination
by Solicitor Jophlin

1 Q And the two men she saw go in there?

2 A Yes, sir.

3 Q And was she also able to identify the person who she
4 saw shoot the gun and shoot Tyrell Williams?

5 A She was.

6 Q Were you with the investigator when he showed that to
7 Ms. Holly?

8 A I was.

9 Q She was able to identify Mr. Brown by this lineup, is
10 that correct?

11 A She was.

12 Q In addition, you were still concerned with that person
13 holding a door, correct?

14 A That is correct.

15 Q Was she able to identify anyone that held that door?

16 A She identified Eugene Frost as the individual standing
17 with the door closed.

18 Q She showed him the lineup as well?

19 A That's correct.

20 Q When Ms. Holly, she was viewing these lineups, when
21 she's viewing the photo lineup with Brown, what kind of
22 physical reaction did she have to you and that photo of
23 Mr. Brown?

24 A When the photo lineup was placed in front of her she
25 immediately identified Mr. Brown. She became visibly shaken

Brian Gwyn - Direct examination
by Solicitor Jophlin

1 and---

2 MR. O'NEILL: Objection. Hearsay.

3 SOLICITOR JOPHLIN: Present impression regarded
4 recollection as he's giving---

5 MR. O'NEILL: Take up a matter of law, Your Honor?

6 THE COURT: I'm going to rule with the defense on that
7 issue.

8 Q She became visibly shaken when she viewed the picture?

9 A That is correct.

10 Q Very emotional?

11 I think you described her eyes got wide?

12 A Very wide. She was a hundred percent positive of who
13 she was picking.

14 Q After talking with Ms. Holly and she was able to
15 identify Mr. Brown as the shooter, who shot Mr. Williams, I
16 believe you then spoke with the manager of the motel?

17 A That is correct.

18 Q And did he provide y'all -- also give you a statement
19 at that time?

20 A He did. He provided a statement.

21 Q And I believe he had previously provided a written
22 statement?

23 A That's right.

24 Q And in his discussions with you, is it substantially
25 similar to that written statement?

Brian Gwyn - Direct examination
by Solicitor Jophlin

- 1 A Yes, sir.
- 2 Q What he saw that evening?
- 3 A The statement---
- 4 Q I believe -- and he described more the robust heavy set
5 man at the door that he saw?
- 6 A He did. That's the only individual he saw. He never
7 saw the second one inside the room.
- 8 Q And he showed him a line-up of Eugene Frost as well?
- 9 A Yes, sir.
- 10 Q And he's able to identify that?
- 11 A He identified Eugene Frost.
- 12 Q After this, were you able to speak with any of the
13 female witnesses that were inside the room at the time of
14 the shooting?
- 15 A You talking about the same day or later on?
- 16 Q I believe later on.
- 17 A I did. I accompanied Godfrey to Ms. Satierra Austin's
18 residence.
- 19 Q And she was able to give you a statement as to what she
20 saw that evening on the 21st?
- 21 A She did.
- 22 Q And you showed her again a lineup containing Larry
23 Brown's picture, a photo lineup of Larry Brown's picture?
- 24 A Yes, we showed her a separate lineup.
- 25 Q And I show you State's Exhibit 2.

Brian Gwyn - Direct examination
by Solicitor Jophlin

1 Is that the lineup you showed her along with
2 Investigator Godfrey?

3 A That is correct.

4 Q Was she able to pick out Larry Brown's photo from that
5 photographic lineup?

6 A She did. She identified Photo P, which is Larry Brown.

7 Q On both of these lineups, you showed one to Jacqueline
8 Holly and Satierra Austin, did y'all influence either of
9 these women into picking Larry Brown's photo?

10 A No, sir.

11 Q Coerce them in any way?

12 A No, sir.

13 Q Make any promises or threats of any kind?

14 A No, sir.

15 Q Was Ms. Satierra Austin able to give you a rendition of
16 what happened?

17 A She was and it was pretty consistent with what we had
18 heard previously.

19 Q And she said that she -- according to your notes, she
20 saw Larry Brown shoot Tyrell Williams?

21 A That is what she told us, yes.

22 Q And then she -- along with her testimony, she then says
23 she ran in the bathroom with a two year old child she was
24 holding at the time that was in the room when the shooting
25 started?

Brian Gwyn - Direct examination
by Solicitor Jophlin

1 A That's right.

2 Q We've also heard testimony regarding a shoe print that
3 was in the room.

4 Were you able to collect shoes from Ms. Austin at that
5 time?

6 A We did. We recovered boots. Can't remember what kind
7 of boots, but she gave them to us to submit for evidence.

8 Q And Investigator Bouknight said he compared those boots
9 to the impression on the floor?

10 A I believe so. I believe so.

11 Q And your next involvement was I believe execution of a
12 search warrant at [REDACTED]

13 A That is correct.

14 Q Whose residence was that?

15 A We were notified that was going to be Eugene Frost's
16 mother's address.

17 Q And at the time were you the only person that went to
18 this address or were there several?

19 A Several investigators and line units.

20 Q Probably what time of day?

21 A I believe about 9:00, between 9:00 and 9:30 in the
22 morning.

23 Q And when you entered the house, who was located inside
24 the house?

25 A Larry Brown.

Brian Gwyn - Direct examination
by Solicitor Jophlin

1 Q Is there anyone else at the home at the time?

2 A I believe Ms. Edna Frost was home at the time, but I
3 can't recall correctly at this time.

4 Q When Larry Brown -- when he was located in the living
5 room, what occurred next?

6 A He was placed under arrest.

7 Q And was he Mirandized?

8 A He was. He was.

9 Q Did you witness the giving of his rights to him?

10 A I did.

11 Q Who gave the rights to him?

12 A Captain Smith.

13 Q Captain Stan Smith?

14 A That's correct.

15 Q After he was Mirandized and arrested, where was he
16 taken next?

17 A Taken to headquarters.

18 Q You followed behind them?

19 A I did.

20 Q Once back at the headquarters did you then become
21 involved again in helping and investigation as pertained to
22 Larry Brown?

23 A Yes.

24 Q You are aware a search warrant was obtained to obtain a
25 Buccal swab for inside his mouth?

Brian Gwyn - Direct examination
by Solicitor Jophlin

- 1 A Yes.
- 2 Q Pictures were taken?
- 3 A I was not present at the time the pictures were taken.
- 4 Q When Larry Brown was inside the house, that was Edna
5 Frost's house, correct?
- 6 A That's correct.
- 7 Q Where was -- was Eugene Frost inside the house?
- 8 A No, sir.
- 9 Q Do you know where he was, at the time, where he was at
10 the time y'all executed the search warrant?
- 11 A He was not home at the time and after we left and
12 brought Mr. Brown back to headquarters we were told he
13 arrived at the house and observed law enforcement at the
14 house and then fled.
- 15 Q Did you then assist after that in trying to apprehend
16 Mr. Frost after he left from the house?
- 17 A Yes, sir.
- 18 Q You believe a few days later y'all were able to
19 apprehend Frost at the hotel where he was arrested for the
20 crime?
- 21 A That's correct.
- 22 Q Investigator Gwyn, do you see the man you arrested for
23 the murder of Tyrell Williams sitting in the courtroom?
- 24 A I do.
- 25 Q Where is he seated today?

Brian Gwyn - Direct examination
by Solicitor Jophlin

1 A At the defense table in the middle wearing a white
2 shirt and tie.

3 SOLICITOR JOPHLIN: Let the record reflect he has
4 pointed out the defendant.

5 THE COURT: So reflected.

6 SOLICITOR JOPHLIN: Nothing further.

7 CROSS-EXAMINATION

8 BY MR. O'NEILL:

9 Q You were the secondary investigator in this case?

10 A Yes, sir.

11 Q Did you actually go out to the hotel, go out to the
12 Grand Motel at anytime on your investigation?

13 A We went several times, yes, sir.

14 Q Now, did you go to the office portion of the Grand
15 Motel?

16 A Yes, sir.

17 Q And did you actually go to Room 162?

18 A We did not enter. We went to the room but did not
19 enter, yes, sir.

20 Q Then would you agree with me that the office, the
21 office of the Grand Motel and Room 162 are pretty far apart?

22 A Yes, sir.

23 Q Probably on a diagonal from each other up a level of
24 hotel rooms?

25 A The parking lot sinks down. So, it's pretty -- the

Brian Gwyn - Cross-examination
by Mr. O'Neill

1 upper level of the -- the secondary building is level with
2 the front parking lot.

3 Q So, the office would be up here, essentially up here on
4 the hill, and these two would be down the hill on a second
5 level?

6 A Correct.

7 Q At a pretty fair distance away from each other?

8 A Correct.

9 Q Could you estimate how long it would take to walk from
10 the office to Room 162?

11 Your best estimate?

12 A It would depend on the nature of how you're walking.

13 Q At a camel's pace?

14 A At a camel's pace?

15 Q Yeah.

16 A Maybe a minute.

17 Q You talked to Mr. Jones, the manager in the office?

18 A Yes, sir.

19 Q He never actually saw what happened in Room 162 and he
20 arrived after everything, all the turmoil was over with?

21 A Actually he arrived during from what my understanding
22 was.

23 Q When he arrived he never saw Larry in that room.

24 He only saw Eugene at the door?

25 A Correct.

Brian Gwyn - Cross-examination
by Mr. O'Neill

1 Q And I think you showed some lineups to Ms. Austin,
2 Ms. Holly, Mr. Jones?

3 You showed them a lineup as well?

4 A Yes, we did.

5 Q And I think you spent a lot of your time in this
6 investigation trying to run down this Big John lead?

7 A Wasn't a lot of time, but we had spent maybe---

8 Q Fair amount of time?

9 A An hour or two trying to figure out who he was.

10 Q That, for the lack of a better word, was a wild goose
11 chase?

12 A It was thorough, yes, sir.

13 Q But that source didn't turn out to be relevant to this
14 case?

15 A That is correct.

16 Q You talked to -- you were there when Investigator
17 Godfrey talked with Ms. Austin when he took her statement?

18 A I was present, yes, sir.

19 Q And you said Ms. Austin -- your testimony was
20 Ms. Austin's rendition of events that night was consistent
21 with what you already knew?

22 A Fairly consistent, yes, sir.

23 Q She had a different detail than most people had that
24 night, correct, about Jackie?

25 A I would have to look at the statement.

Brian Gwyn - Cross-examination
by Mr. O'Neill

1 Q Let me let you look at it then. Make sure those are in
2 the right order.

3 when y'all are talking to Ms. Austin, y'all impressed
4 upon her the importance of the statement she gave?

5 A She was asked to give a statement.

6 Q I guess you told her you need to tell the truth?

7 A Investigator Godfrey took the statement. I was there.
8 I was asking questions during that period of time.

9 Q She told you and Investigator Godfrey that when Jackie
10 came in the room she said there he go, get him?

11 A I think in the statement it said there you go. I don't
12 remember saying in the statement get him.

13 Q Let me let you look at it again.

14 A Yes, sir.

15 Q That's what she said?

16 A That's what's in the statement.

17 Q That portion was in nobody else's statement?

18 A Not to my recollection, no, sir.

19 Q Of course, Jackie Holly didn't tell you that?

20 A No.

21 Q Nobody else in that room told you that portion?

22 A Correct.

23 Q And that would be an important detail?

24 A It could be, yes, sir.

25 Q So, that -- in that regard, Ms. Austin's statement

Brian Gwyn - Cross-examination
by Mr. O'Neill

1 wasn't consistent with everybody else's rendition of what
2 happened that night?

3 A Fairly consistent with what happened.

4 Q On that particular point it was not consistent from
5 everybody else's perspective?

6 A That didn't differ.

7 Q Was not inconsistent?

8 A Correct.

9 MR. O'NEILL: Nothing further, Your Honor.

10 REDIRECT EXAMINATION

11 BY SOLICITOR JOPHLIN:

12 Q Mr. O'Neill asked you if you talked to Mr. Jones,
13 correct---

14 A That is correct.

15 Q ---the manager?

16 He was explaining how Mr. Jones didn't see the
17 incident, he was outside the hotel room?

18 A Right.

19 Q You did talk to Ms. Jacqueline Holly, correct?

20 A Correct.

21 Q And Satierra Austin?

22 A Correct.

23 Q And they said they were inside the room?

24 A Correct.

25 Q And they said they saw the defendant, Tyrell Williams?

Brian Gwyn - Direct examination
by Solicitor Jophlin

1 MR. O'NEILL: Nothing.

2 THE COURT: Step down. Be excused.

3 STAN SMITH, being first duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY SOLICITOR JOPHLIN:

7 Q Captain Smith, are you employed?

8 A Richland County Sheriff's Office. I'm an investigator.
9 Supervisor of violent crimes. Most of my time is spent
10 handling homicides.

11 Q In the course of your work, do you actively become
12 involved in some of the investigations?

13 A I do.

14 Q Want to turn your attention back to November 21 of
15 2006.

16 Were you briefed that evening that there had been a
17 homicide that occurred at the Grand Motel?

18 A Yes, ma'am, we had a major crime or a supervisor, if
19 you will, will handle crime issues on call. All this time
20 in this case it was Sergeant Randy Strange called me at home
21 and told me about this incident, and I got a preliminary
22 briefing at that point in time.

23 Q The crime scene was processed and the next morning did
24 you attend a briefing involving the primary investigators?

25 A Yes, the initial morning occurred tonight -- the

Brian Gwyn - Direct examination
by Solicitor Jophlin

1 initial next business day personnel on the case at that
2 briefing will be the forensic personnel over the crime
3 scene, the leads we have or don't have. At that point
4 strategies are discussed to pursue the investigation and
5 that was done in this case.

6 Q Specifically, even though formal statements may have
7 not been able -- eventually were the eye witnesses
8 interviewed that evening and information gotten from them
9 about what had happened as well as descriptions of the two
10 men in the hotel room?

11 A Yes, we had clear descriptions of two suspects involved
12 in this case. One suspect described as older, in his late
13 40's, early 50's, dreadlocks. The second suspect was
14 described as being similar in age and heavy set.

15 Q So, one was taller and thinner with dreadlocks and the
16 other was shorter?

17 A Yes.

18 Q Did you also have information about a vehicle that had
19 been involved?

20 A A van had been described by some of the eye witnesses
21 and that was significant. That might have been significant.

22 Q That would have been Wednesday morning, is that
23 correct?

24 A I'm not sure.

25 Q Later that day, that afternoon, did Investigator

Brian Gwyn - Direct examination
by Solicitor Jophlin

1 Godfrey receive information from a confidential informant?

2 A Yes, a significant development in the case came later
3 that afternoon, and I see in my notes it was Wednesday
4 afternoon. I apologize. He had an informant that provided
5 the names of the two individuals that actually were
6 described initially by the witnesses.

7 Q Let me ask you this, Captain, as a policy of your
8 office and your department, when a person calls to say to
9 Crime Stoppers or something and wishes to remain
10 confidential, do y'all honor their wishes?

11 A That detail alone is what keeps Crime Stoppers
12 functioning at the level that it does. The anonymity you
13 could provide people that provide tips, if you couldn't
14 promise that, it would fail to function.

15 Q Why do people wish to remain confidential?

16 A Various reasons. Probably the most significant is fear
17 of retaliation especially if it's a violent crime, possible
18 association with people involved, retribution, that kind of
19 thing. There are other factors, but that is the most
20 common.

21 Q The information provided by the confidential informant,
22 did y'all follow-up on that?

23 A Yes, we did.

24 Q Based on that information, were you able to develop a
25 photograph of Larry Brown?

Brian Gwyn - Direct examination
by Solicitor Jophlin

1 A I did.

2 Q In addition to that, were you also able to get
3 information on Eugene Frost?

4 A Yes, I knew he matched the physical description of the
5 heavy set individual.

6 Q When you got information on Larry Brown, did he also
7 match the physical description of one of the individuals?

8 A Yes.

9 Q And which individuals would that have been?

10 A That would have been the one with the dreadlocks.

11 Q The shooter?

12 A Yes.

13 Q Based on that information, did you then develop some
14 photo lineups?

15 A Myself and my, Lieutenant Scott McDonald both
16 participated in the development of the lineups. I believe I
17 actually purged any, formulated the Frost lineup and my
18 lieutenant did the Brown lineup.

19 Q Once those lineups were developed, did you turn them
20 over to the primary investigator in the case, Investigator
21 Godfrey and Gwyn?

22 A I turned them over to Godfrey right away and his intent
23 was to go out and start locating the witnesses to present
24 the lineups.

25 Q By that evening were you getting information about

Brian Gwyn - Direct examination
by Solicitor Jophlin

1 whether or not anyone had been identified in the lineups
2 that had been provided?

3 A By the evening of the 22nd I received information from
4 Godfrey he was getting picks on both Brown and Frost from
5 witnesses involved in the case.

6 Q The next day was Thanksgiving?

7 A Yes, the next day was the 23rd, Thanksgiving, and I
8 actually gave the detectives the day off that day.

9 Q On the 24th, on the 25th, did they continue to show
10 lineups and develop information?

11 A Yes, they worked the day after Thanksgiving in addition
12 to that Saturday and continued to get progress made with
13 regard to the case. On that same day, that Saturday, they
14 actually prepared a search warrant for the Frost known
15 residence at Harper Street, and the plans were made to serve
16 an arrest warrant, an arrest warrant at that time as well.
17 Based on the positive identification of the suspects, plans
18 were made to do that Monday morning.

19 Q In addition to that, were arrest warrants secured?

20 A Yes.

21 Q The plan was to execute the search warrant once the
22 judge signed it when?

23 A That Monday morning, which would have been the 27th of
24 November.

25 Q Did that happen?

Brian Gwyn - Direct examination
by Solicitor Jophlin

1 A Yes.

2 Q Did you participate?

3 A I did.

4 Q Did you go to the address on Harper Street?

5 A Yes, we went to the [REDACTED] [REDACTED] at 9:30 that
6 morning to execute the warrants.

7 Q And the address at Harper Street, as far as where the
8 Grand Motel and where the address on Harper Street is, how
9 close are those?

10 A It is probably within a mile and a half of each other.
11 Harper Street runs off of Two Notch Road as the Grand Motel
12 is right off of Two Notch Road. Harper Street would be
13 further inbound coming into the city not too far from --
14 there's a temporary care there as you approach the area
15 where Harper Street is. You come a little further down Two
16 Notch to the right-hand side a mile and a half, less than
17 2-miles.

18 Q Show you a diagram marked State's Exhibit 75, and I
19 believe it has an address denoted up here and an address
20 denoted right there.

21 A This is the cemetery I talked about here, Crescent Hill
22 Cemetary. As you come right by it, there's a street,
23 church, and Harper Street would be over to the right if
24 you're coming inbound.

25 Q Up here on Two Notch past Beltline?

Brian Gwyn - Direct examination
by Solicitor Jophlin

1 A That's the Grand Motel.

2 SOLICITOR CAMPBELL: At this time, we offer 75 into
3 evidence.

4 MR. O'NEILL: No objection?

5 THE COURT: Admitted.

6 (Whereupon, State's Exhibit No. 75 was received into
7 evidence at this time.)

8 Q Once you got to the residence, the search warrant was
9 served?

10 A Yes.

11 Q And once inside the residence did you make contact with
12 anyone?

13 A Yes, I located Larry Brown in the front room,
14 recognized him immediately, placed him under arrest. I
15 handcuffed him at that point in time.

16 Q Was his appearance any different from the witness
17 reports of what the shooter looked like that night?

18 A I immediately noticed he had a freshly cut haircut. No
19 dreadlocks.

20 Q At that point did you place Larry Brown under arrest?

21 A Yes.

22 Q Once he was under arrest, where did you take him?

23 A I took him to my automobile and enlisted the aid of
24 Investigator Preston at that point because I attempted to
25 advise him of his rights at that point in time.

Brian Gwyn - Direct examination
by Solicitor Jophlin

1 Q Let me stop you before you get to that.

2 Once you placed him under arrest, did he say or ask you
3 anything?

4 A No, ma'am.

5 MR. O'NEILL: I renew my previous objections.

6 THE COURT: Based on the Court's prior rulings you can
7 continue on with those limited rulings.

8 SOLICITOR CAMPBELL: I understand.

9 Q Once you got in your car, you indicated you then
10 advised him of his rights?

11 A Yes.

12 Q What is the purpose of advising a person that's under
13 arrest their rights?

14 A Obviously we had an intent to then talk to him about
15 the case we were investigating, and a person that, that's --
16 they're entitled to their Miranda rights. We advised them
17 they had a right to remain silent, not to talk to us, and we
18 knew the conversation was probably on the way into the
19 sheriff's department.

20 Q What rights did you advise him that day?

21 A I advised him he had the right to remain silent. That
22 anything he said could be used against him in Court. That
23 he had a right to talk to a lawyer before advice, before we
24 asked him any questions. And, and if he could not afford
25 one, one would be appointed to him for any questions if he

Brian Gwyn - Direct examination
by Solicitor Jophlin

1 wish. That he had the right to stop answering questions at
2 anytime until he talked to a lawyer or that he had the right
3 to simply stop answering at anytime.

4 Q Was anyone else present when you advised him of his
5 rights?

6 A Yes, Investigator Preston I believe -- whenever this is
7 done you like to have someone with you, and I think
8 Investigator Preston had gone with Investigator Gwyn to
9 accompany me to my car and witness the rights advice, and
10 the short trip from Harper Street to our office, which is
11 probably less than four miles away.

12 Q I believe Investigator Gwyn was also present for the
13 advice of rights?

14 A Yes, I believe he stayed to the said of the car to make
15 sure the defendant was secured.

16 Q Once you advised him of his rights did the defendant
17 indicate he understood his rights?

18 A Yes.

19 Q Once in the car and after being advised of his rights,
20 he indicated he understood -- by the way, for the record,
21 did you promise him anything to make him talk to you?

22 A No, ma'am.

23 Q Did you pressure him into talking to you?

24 A No.

25 Q Coerce him in any way?

Brian Gwyn - Direct examination
by Solicitor Jophlin

1 A No.

2 Q Did you physically touch him in any way to make him
3 talk to you?

4 A No, ma'am.

5 Q And was he talking to you voluntarily on that trip
6 there?

7 A Yes.

8 Q Then later once you got to the sheriff's department?

9 A Yes.

10 Q Once you were driving towards the office, did you tell
11 him exactly what you wanted to talk to him about?

12 A Yes, I advised him he was under arrest for murder, but
13 did not give him any additional detail, but it was about the
14 shooting at the motel that happened Tuesday night and I told
15 him Tuesday night. He said he didn't know anything about
16 that, that he had been home all that night.

17 Q Indicated he was home all that night on Tuesday?

18 A Right. I then asked him when he had cut his dreadlocks
19 off, which was significant in my view at that time. He said
20 he had cut them off about a month prior was his response to
21 that.

22 Q When you asked him about him cutting his dreadlocks or
23 hair, he indicated he had done that months earlier, is that
24 correct?

25 A Yes.

Brian Gwyn - Direct examination
by Solicitor Jophlin

1 Q At that point what did you do?

2 A We are all issued Nextels because they have the two-way
3 radio capability. I knew one of my detectives in the case
4 might be, Sergeant Ellis, back at the scene conducting the
5 search. Knew there were some family members present, and I
6 wanted Investigator Ellis to check with them in an attempt
7 to refute his claim that he had cut his dreadlocks off a
8 month earlier.

9 So, I made two-way contact with Investigator Ellis and
10 had it on the speaker at that point in time. Ellis
11 immediately replied that he had, that the relative said he
12 cut the dreadlocks off a week prior.

13 Q That would have been after the Tuesday night?

14 A Yes.

15 Q Did you then ask Larry anything else?

16 A I asked him if he needed to see the scene or incident
17 location maybe to refresh his memory. And as I stated
18 earlier, I actually -- from Harper Street to my office in
19 the 5600 Block to the complex, you have to pass by the Grand
20 Motel. So, we were about approaching the location when I
21 asked him that question. He indicated he didn't care either
22 way at that point.

23 So, I pulled in and rode to the complex where the
24 incident happened. I asked him if anything looked familiar
25 to him. At that point he asked me why he was taken there

Brian Gwyn - Direct examination
by Solicitor Jophlin

1 and he asked if he were going to jail or not.

2 Q Once you got to the sheriff's department did you then
3 take the defendant to your office?

4 A Yes, I did.

5 Q At that point did Investigator Gwyn ride with y'all?

6 A Yes, he did for the purpose of -- he was secondarily
7 involved in the homicide. Was, I wasn't present in the
8 interview. So, I had him switch places at that point.

9 Q At that point did you tell him what you wanted?

10 A I told him I wanted to hear his side of the story, and
11 that he had been positively identified as the shooter in the
12 case.

13 Q At that point how was he sitting?

14 A Sort of with his head down.

15 Q Did you advise him about some procedures that would be
16 taking place?

17 A Yes, I talked to him about checking major case prints,
18 which is fingerprints that include the palm and side of your
19 hand, and also the collection of a Buccal swab, which is
20 nothing more than a Q-tip put in your mouth for DNA.

21 Q Did you explain to him what the Buccal swab was?

22 A Yes.

23 Q At that point did he indicate he would consent to you
24 taking his DNA?

25 A At that point in time he indicated -- initially said he

Brian Gwyn - Direct examination
by Solicitor Jophlin

1 would. He changed his mind.

2 Q Did he indicate at that point he wasn't going to sign
3 anything?

4 A That's right.

5 Q At that point was Larry escorted to a cell?

6 A Yes, at that point in time he was escorted to a nice
7 holding cell we have up in the criminal investigative
8 division.

9 Q Based on that, did you then do a search warrant for a
10 buccal swab of his DNA?

11 A I prepared immediately. Next thing I did was prepare a
12 search warrant for the acquisition of a Buccal swab and then
13 I took that search warrant to the Magistrate's Office that's
14 in our office to a magistrate.

15 Q Why is it important to get the defendant's DNA as well
16 as the victim's?

17 A When you have a crime scene of this nature a person can
18 leave their DNA at any scene, but we were basically told if
19 they are there their DNA could be.

20 Q Could be there?

21 A Would be there.

22 Q The chances go up if body fluids are left at the scene?

23 A Yes, in this case we knew from the facts of the
24 witnesses account that there had been a rear window broken
25 out of this location, some blood in that area, that it could

Brian Gwyn - Direct examination
by Solicitor Jophlin

1 very well have been one of the perpetrator's blood. In
2 addition, there is blood from the victim, but there is a
3 good possibility it would have been the perpetrator's blood.

4 Q Did you get the search warrant for his, to get his DNA
5 signed by a judge?

6 A Yes.

7 Q What did you do with the search warrant?

8 A Took the search warrant back to Investigator Bouknight.
9 I believe he testified already.

10 Q At that point did you also note some injuries on his
11 hands you wanted to get photographed as well as his haircut?

12 A Yes, I wanted him to photograph Larry Brown's hands and
13 arms, that I felt like there were some injuries that were
14 evidenced there from where he again went through this
15 window.

16 Q At that point you handed up a search warrant.

17 Why was that?

18 A He would be executing it for me any way because he
19 would be the one collecting the DNA. I could actually do it
20 myself, but all the times I affirmed people will be the ones
21 to do it. Especially in addition with the photographing,
22 that's something he would do as well, kind of do it at the
23 same time. But we got some additional information that
24 Frost may have returned to the scene of the search and was
25 attempting to allude capture.

Brian Gwyn - Direct examination
by Solicitor Jophlin

1 Q And, in fact, was he videotaped going through an
2 elementary school?

3 A Yes, he was. He actually returned to the scene of the
4 search warrant, dead-end street. Before my detectives could
5 realize he was in an automobile, he had put it together I
6 guess before they realized it was him and he bailed out of
7 that car at the end of the street and ran to a nearby
8 elementary school and got through the front door of the
9 elementary school and out the back.

10 Q On November 28, which I think would have been the next
11 day, did you receive information again from I believe a
12 confidential informant?

13 A We got actually, in that particular case, a direct
14 Crime Stopper's tip.

15 Q And what information did you receive that you followed
16 up on?

17 A We, we received specific information that Eugene Frost
18 was at the western end of Bush River Road. It was good
19 information because he was there..

20 Q And that was going to be my next question, did
21 investigators go and was Mr. Frost apprehended the next day?

22 A He was apprehended around 8:30 that evening of the 28th
23 by an arrest team which included my two primary detectives
24 on the case, Godfrey and Gwyn. Sergeant Ewing was also
25 present with them at that time.

Brian Gwyn - Direct examination
by Solicitor Jophlin

1 Q The person that you placed under arrest for this
2 murder, one of the -- how many people are actually charged
3 with murder in this case?

4 A Two actually were charged initially with murder.

5 Q And I believe there was a Mr. Frank Livingston
6 subsequently identified?

7 A Owe -- as the driver involved in the case.

8 Q He wasn't apprehended until April next year?

9 A Some time after.

10 Q He wasn't charged with misprison---

11 A I believe it was misprison of a felony.

12 Q But he and Mr. Rogers were both charged with attempted
13 armed robbery and murder?

14 A Yes.

15 Q The person that you placed under arrest, do you see him
16 in the courtroom?

17 A I do.

18 Q He is the same person that you talked to that day about
19 his hair and everything?

20 A Yes.

21 Q Can you point him out for the jury?

22 A He's sitting the, to Mr. O'Neill's right wearing the
23 dark, dark tie and the white shirt in the middle of that
24 table.

25 SOLICITOR CAMPBELL: May the record reflect he

Stan Smith - Direct examination
by Mr. O'Neill

1 identified the defendant?

2 THE COURT: So reflect.

3 CROSS-EXAMINATION

4 BY MR. O'NEILL:

5 Q Did the law enforcement identify Mr. Livingston as a
6 person of interest early on in this investigation?

7 I guess person of interest might not be the term they
8 used, but---

9 A We don't really like that term.

10 Q You identify Frank Livingston as somebody who may have
11 some information about this case?

12 A When investigators got the initial tip about the
13 informant, Frank Livingston's name was mentioned as well.

14 Q Did Frank ever get in contact with law enforcement to
15 the best of your knowledge?

16 A My recollection of it, no, he didn't, that I recall,
17 get in touch with law enforcement. We were just sort of on
18 the run.

19 Q Frank Livingston never got in touch with law
20 enforcement?

21 A I don't know if he turned himself in or not. He may
22 have initially. I don't recall that.

23 Q You said he was apprehended in April of '07?

24 A Again, I told the solicitor it was some time later. It
25 could have been -- I wouldn't dispute that.

Stan Smith - Direct examination
by Mr. O'Neill

1 Q Y'all were looking for him and didn't find him until
2 later on?

3 A I don't know whether he initiated the contact or not.
4 I don't know that. Investigator Godfrey would that, have
5 that information.

6 MR. O'NEILL: Beg the Court's indulgence.

7 (Pause.)

8 MR. O'NEILL: Nothing further, Your Honor.

9 SOLICITOR CAMPBELL: A couple of questions.

10 REDIRECT EXAMINATION

11 BY SOLICITOR CAMPBELL:

12 Q There was never any information or indication that
13 Frank Livingston did anything but drive him to the scene of
14 the van?

15 A That's correct.

16 Q Thank you.

17 THE COURT: You can step down. Be excused if you
18 choose.

19 WITNESS: Thank you, Your Honor.

20 SOLICITOR CAMPBELL: State would call Kevin Preston.

21 KEVIN PRESTON, being first duly
22 sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY SOLICITOR CAMPBELL:

25 Q Investigator Preston, where are you employed?

Kevin Preston - Direct examination
by Solicitor Campbell

1 A Richland County Sheriff's Department.

2 Q What do you do there, sir?

3 A Burglary investigator and also assigned to the homicide
4 unit.

5 Q I want to turn your attention back to November 27th of
6 2006.

7 Did you become involved in an execution of a search
8 warrant at Harper Street?

9 A Yes, ma'am.

10 Q That was your first involvement in this homicide, is
11 that correct?

12 A Yes, ma'am.

13 Q Did you actually accompany I believe Investigator Gwyn
14 to the scene at Harper Street?

15 A That's correct.

16 Q Once there, were you aware that a Larry Brown was taken
17 into custody and placed under arrest?

18 A Yes, ma'am.

19 Q Did Captain Smith request that you ride with him back
20 to headquarters with the defendant in the car?

21 A That's correct.

22 Q Is that unusual?

23 A No.

24 Q Prior to leaving the scene after he placed him in the
25 car though did he advise him of his rights?

Kevin Preston - Direct examination
by Solicitor Campbell

1 A Yes.

2 Q What is known as the Miranda rights?

3 A Yes.

4 Q And without going through them, again, it is the right
5 to remain silent and for a lawyer?

6 A Correct.

7 Q Did Captain Smith go through all those rights with the
8 defendant?

9 A Yes, ma'am.

10 Q Did he indicate he understood his rights?

11 A Yes, ma'am.

12 Q Is that important to do prior to questioning in the
13 case?

14 A Yes, ma'am.

15 Q At anytime did anyone promise him anything to make him
16 talk?

17 A No, ma'am.

18 Q Threaten him in any way?

19 A No.

20 Q Try to coerce him?

21 A No.

22 Q Make any promises to him?

23 A No.

24 Q In your opinion as an investigator, did he talk to
25 y'all voluntarily that day?

Kevin Preston - Direct examination
by Solicitor Campbell

1 A Yes, ma'am.

2 Q You were in the car for the ride back to the sheriff's
3 department?

4 A Yes, ma'am.

5 Q And initially during the, when you were in the car, did
6 Captain Smith advise him this was about the incident that
7 happened on last Tuesday night?

8 A That's correct.

9 Q How did the defendant respond as to whether or not he
10 knew anything about what was going on?

11 A He didn't respond.

12 Q Do you recall him, him saying that he didn't know
13 anything about it and that he was home that night?

14 A That's correct.

15 Q Did investigator, Captain Smith, excuse me, also ask
16 him about cutting his hair and when that occurred?

17 A Yes, ma'am.

18 Q And what did the defendant tell you and Captain Smith
19 about his hair?

20 A He stated he cut it off about a month ago.

21 Q And you were there when Captain Smith made contact with
22 Investigator Ellis?

23 A That's correct.

24 Q He kept his phone on speaker phone?

25 A Correct.

Kevin Preston - Direct examination
by Solicitor Campbell

1 Q So, everyone could hear what the response is---

2 A Correct.

3 Q ---of Sergeant Ellis at the crime scene?

4 A Correct.

5 Q You also recall Captain Smith asking him if he needed
6 to visit the incident location in order to refresh his
7 memory?

8 A Yes, ma'am.

9 Q Mr. Brown then said he didn't care one way or the
10 other?

11 A Correct.

12 Q At that point y'all drive through the parking lot?

13 A Correct.

14 Q At that point did Larry ask why he was being taken
15 there?

16 A Yes, ma'am.

17 Q And if he was going to jail?

18 A (Witness nods head affirmatively.)

19 Q Once back at the sheriff's department, did you then
20 help Captain Smith escort him to Captain Smith's office?

21 A Yes.

22 Q Once there, had Investigator Gwyn gotten back to
23 headquarters?

24 A Yes.

25 Q Investigator Gwyn had gone to try to find Mr. Frost at

Kevin Preston - Direct examination
by Solicitor Campbell

1 the traffic court?

2 A That's correct.

3 Q He had time to try to get to the sheriff's department?

4 A Right.

5 Q At that point you didn't have any more involvement?

6 A No, ma'am.

7 Q At any point while you were with the defendant did
8 anyone pressure him in any way to make him talk?

9 A No, ma'am.

10 SOLICITOR CAMPBELL: That's all I have.

11 CROSS-EXAMINATION

12 BY MR. O'NEILL:

13 Q Investigator Preston, basically you were with Larry and
14 Captain Smith from the Harper Road residence to
15 headquarters?

16 A Correct.

17 MR. O'NEILL: No further questions.

18 THE COURT: You can step down and be excused if you
19 choose.

20 BRIAN GODFREY, being first duly
21 sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY SOLICITOR CAMPBELL:

24 Q Where are you employed?

25 A The Richland County Sheriff's Department.

Brian Godfrey - Direct examination
by Solicitor Campbell

1 Q What do you do?

2 A I'm currently the supervisor over the cold case
3 homicide unit.

4 Q And back in 2006 -- did you also work homicides back
5 then?

6 A Yes, ma'am.

7 Q The night of the 21st, you didn't actually go to the
8 crime scene that evening, did you?

9 A I did.

10 Q You did go to the crime scene. I apologize.

11 A Yes, ma'am.

12 Q Once you got there, was the crime scene already being
13 processed?

14 A That's correct.

15 Q And is it important to let the crime scene people do
16 their job first?

17 A Absolutely.

18 Q That evening did you make contact with one of the
19 witnesses there?

20 A I did.

21 Q And who did you make contact with?

22 A Initially I made contact with Ms. Jacqueline Holly.

23 Q Jacqueline Holly?

24 A Yes, ma'am.

25 Q And were you being briefed by other investigators there

Brian Godfrey - Direct examination
by Solicitor Campbell

1 at the scene about the eye witnesses and what they were
2 saying?

3 A I was.

4 Q And for the record, was each witness that night
5 interviewed rather formally or informally?

6 A Yes, ma'am.

7 Q Is that a common practice as an investigative tool?

8 A Yes, ma'am.

9 Q And a later date was each one of the eye witnesses
10 followed-up with a formal statement?

11 A Yes, ma'am.

12 Q Is that unusual?

13 A No, ma'am.

14 Q In fact, is that good police practice?

15 A I believe so.

16 Q That night did you also try to make contact with some
17 people in the, Room 162 by the name of Marilyn Thomas?

18 A I did. I made contact with Ms. Thomas.

19 Q At that point did you have descriptions of the two
20 people that had gone to the scene?

21 Were you developing descriptions of the people that had
22 done the shooting and been in the room?

23 A Potentially.

24 Q Had it come to your attention there was a vehicle
25 involved in this?

Brian Godfrey - Direct examination
by Solicitor Campbell

1 A A potential vehicle.

2 Q That would be a van?

3 A That's correct.

4 Q At some point that evening did you escort Ms. Holly --
5 where did you make contact with Jacqueline Holly at her
6 room?

7 That would be Room 110.

8 A That's correct.

9 Q This crime actually occurred in 162, is that correct?

10 A Yes, ma'am.

11 Q I'm going to show you a diagram of the Grand Motel.
12 Basically this is State's Exhibit 71.

13 Your Honor, may he step down?

14 THE COURT: Yes, ma'am.

15 Q Is this a diagram of the Grand Motel?

16 A Yes, ma'am.

17 Q If you'll come on this side and speak up so the court
18 reporter can hear you.

19 Where is Two Notch Road on that diagram?

20 A Right here.

21 Q Where would you make the entrance in kind of two
22 entrances into it?

23 Right there?

24 One on this side and the actual big side?

25 A That's correct.

Brian Godfrey - Direct examination
by Solicitor Campbell

- 1 Q Big sign?
- 2 A That's correct.
- 3 Q Come on this side or this side?
- 4 A Yes, ma'am.
- 5 Q Once you get in, where is the, the rent office or the
6 main office?
- 7 A Be right here in this overhang.
- 8 Q The closest to Two Notch?
- 9 A That's correct.
- 10 Q Where was Room 110 where you found Ms. Holly that
11 night?
- 12 A Right about here.
- 13 Q And these buildings here in the front part kind of make
14 a U?
- 15 A Yes, ma'am.
- 16 Q How many stories in those buildings?
- 17 A Those are single story buildings.
- 18 Q Is there parking all in here?
- 19 A That's correct.
- 20 Q This is probably where Ms. Holly's room was right here?
- 21 A Yes, ma'am.
- 22 Q Second or third -- in front of the second or third
23 parking---
- 24 A Yes, ma'am.
- 25 Q The Room 162, was it in a different part of the motel?

Brian Godfrey - Direct examination
by Solicitor Campbell

1 A It was.

2 Q Where is that located?

3 A Upper level at this end.

4 Q And in order to get here you have to come in one of
5 these two entrances, right?

6 A Correct.

7 Q There's no way to drive out back here?

8 A No.

9 Q And probably -- where was the Room 162?

10 A Upper level right in here.

11 Q Right in here?

12 A Yes, ma'am.

13 Q When you made contact with Ms. Holly she was there, is
14 that correct?

15 A Yes, ma'am.

16 Q I show you what has been marked as State's Exhibit 75
17 while I've got you up here.

18 Does this show probably where the Grand Motel is?

19 A Yes, ma'am.

20 Q It is near that pinpoint -- should be up a little.

21 A That's correct.

22 Q This through here is a major thoroughfare, is it not?

23 A It is.

24 Q What street is that?

25 A West Beltline, which turns into North Beltline.

Brian Godfrey - Direct examination
by Solicitor Campbell

- 1 Q This is Beltline Avenue?
- 2 A That's correct.
- 3 Q And then here is the section -- number one says Two
- 4 Notch Road anyway?
- 5 It's Two Notch Road?
- 6 A That's correct.
- 7 Q So, the Grand Motel is near the cross where those two
- 8 are?
- 9 A That's correct.
- 10 Q Harper Street, which we'll get into in a minute, is
- 11 also shown in this map?
- 12 A Yes, it is.
- 13 Q It's a straight shot down Two Notch?
- 14 A That's correct. This is a dead-end.
- 15 Q And that's pretty significant.
- 16 The house, it is about halfway down?
- 17 A On this side of the road.
- 18 Q On this side?
- 19 A Yes, ma'am.
- 20 Q After you cut off of Waters Road?
- 21 A Turn right on School House, left on to Waters, and this
- 22 runs around into Harper Street, and you take a right and it
- 23 would be down here on the left.
- 24 Q And this ends.
- 25 So, that would be a dead-end?

Brian Godfrey - Direct examination
by Solicitor Campbell

1 A That's correct.

2 Q One more diagram while you're up there. Sorry. You
3 were just talking about Harper Street. This shows part of
4 it, but it doesn't even show where it dead-ends. This would
5 be Two Notch over here.

6 A That's correct.

7 Q School House?

8 A Waters and around and then Harper Street.

9 Q And where is the house?

10 A Right, right off here. The one on the left.

11 SOLICITOR CAMPBELL: At this time we offer 73 in
12 evidence.

13 MR. O'NEILL: No objection.

14 (Whereupon, State's Exhibit No. 73 was received into
15 evidence at this time.)

16 Q The dead-end you were talking about would be right
17 about here?

18 A It comes on and then dead ends.

19 Q Take the stand.

20 (Witness returns to the stand.)

21 Q When you made contact with Ms. Holly that night, did
22 you observe anything about her clothing?

23 A She had apparently what I believe to be blood on her
24 clothes.

25 Q Was she cooperative?

Brian Godfrey - Direct examination
by Solicitor Campbell

- 1 A She was.
- 2 Q What was her demeanor?
- 3 A She was somewhat hysterical, visibly upset.
- 4 Q Did you transfer her down to headquarters?
- 5 A I did.
- 6 Q Did you take an actual statement from her that night?
- 7 A I did.
- 8 Q Did you also collect her clothing?
- 9 A I did.
- 10 Q Because at that point were you totally sure of what her
- 11 role was?
- 12 A I was not completely sure of her involvement at that
- 13 point.
- 14 Q In fact, prior to taking the statement, did you advise
- 15 her of her rights?
- 16 A I did, just to be cautious.
- 17 Q I believe you left Sergeant Strange interviewing
- 18 witnesses at the scene as well as another investigator?
- 19 A That's correct.
- 20 Q And there have been some questions about when people
- 21 were forthcoming with what was going on.
- 22 Were you aware that, as chief investigating officer,
- 23 Sergeant Strange interviewed Camillia Goodwin that night?
- 24 A I was.
- 25 Q And during the course of her interview with Sergeant

Brian Godfrey - Direct examination
by Solicitor Campbell

1 Strange, did she make him aware of what Tyrone was doing
2 that night?

3 A She acknowledged he was selling drugs.

4 Q So, that was told to, to the police, you, the police
5 that first night?

6 A Yes, it was.

7 Q When you collected -- I'll get back to all the shoes
8 that were collected in this.

9 You were aware there was a possible pair of footprints
10 that may have relevance at the time?

11 A That's correct. In talking to the initial interview
12 and investigators that responded, I communicated with the
13 lab investigator that responded.

14 Q Did you collect Ms. Holly's shoes that night?

15 A I did.

16 Q Was Ms. Holly able to give you the description of the
17 two men she escorted to the room that night to buy drugs?

18 A She did.

19 Q Did she also give you a description of a van?

20 A She was.

21 Q That night, after interviewing Ms. Holly some time I
22 believe shortly before midnight -- some time before midnight
23 the next morning did you attend a briefing with Captain
24 Smith and other investigators?

25 A That's correct. It's common that after a homicide or a

Brian Godfrey - Direct examination
by Solicitor Campbell

1 significant event that the primary investigator and a
2 secondary investigator meet with the supervisors, the chief
3 investigations, the chief of major crimes, and explain to
4 them what's going on and obtain suggestions on how to go
5 forward.

6 Q And, in fact, did you even -- did you review notes from
7 Agent Elsey?

8 A I did.

9 Q Sergeant at the time?

10 A That's correct.

11 Q That morning did y'all attempt to go down to see if
12 there were any videos at the Dick Dyer Toyota or anywhere
13 else that might be able to help you?

14 A Yes, ma'am, we went to numerous locations.

15 Q Were you able to get anything that would help?

16 A No, ma'am.

17 Q Did you also go back to the Grand Motel that morning?

18 A Yes, ma'am, went several times.

19 Q Did you go to different rooms prior to trying to see if
20 anyone else had any additional information in addition to
21 the people inside the room?

22 A we did that and we also canvassed the area around
23 the -- on the outside, outskirts of the hotel, immediate
24 area of the hotel.

25 Q That morning did you also make contact with a Marilyn

Brian Godfrey - Direct examination
by Solicitor Campbell

1 Thomas adjacent to one of the rooms near to 162?

2 A I did.

3 Q Was she able to give you some information about someone
4 she knew who drove a van?

5 A She was, someone that---

6 Q Did you call her up with that information?

7 A We did.

8 Q And were you able to exclude the person she named as
9 being involved in any way?

10 A Yes, ma'am.

11 Q That afternoon did you receive a call -- and I'm not
12 going to go into the specifics of what was said to you.

13 Did you receive a call from a confidential informant?

14 A I did.

15 Q Is it the policy of the sheriff's department, if
16 someone, in order to, people to encourage to come forward
17 with information, if someone wishes to remain confidential,
18 you make sure they remain confidential?

19 A Definitely.

20 Q Based on the information he was able to give you; did
21 y'all make an attempt to corroborate what he was telling
22 you?

23 A We did.

24 Q Were you able to get physical descriptions as well as
25 photographs of both Eugene Frost and Larry Brown?

Brian Godfrey - Direct examination
by Solicitor Campbell

1 A With the assistance of other investigators, yes.

2 Q The third name provided to you was Frank Livingston?

3 A That's correct.

4 Q Based on that, were you able -- was a photo lineup
5 developed I believe by Captain Smith and Sergeant,
6 Lieutenant Donald and Captain Smith?

7 A That's correct.

8 Q One of those photo lineups, and just to be sure for the
9 jury because we aren't here about Eugene Frost here today,
10 but you didn't put both of them in the same lineup?

11 A No, ma'am.

12 Q Were the physical descriptions of Eugene Frost and
13 Larry Brown significantly different?

14 A Drastically different.

15 Q And for that place -- and the photo lineups of Eugene
16 Frost -- and show you State's Exhibit 54.

17 Do you recognize that?

18 A I do.

19 Q Is that a photograph of Eugene Frost?

20 A It is.

21 SOLICITOR CAMPBELL: At this time I would offer that
22 into evidence.

23 (Whereupon, State's Exhibit No. 54 was received into
24 evidence at this time.)

25 Q Lineups developed of State's Exhibit No. 19 and 2,

Brian Godfrey - Direct examination
by Solicitor Campbell

1 those were developed of the defendant, Larry Brown?

2 A That is correct.

3 Q Wouldn't be proper to put them both in the same lineup,
4 would it?

5 A It would not.

6 Q That's because you try to put people in the lineup that
7 have more similar characteristics about their face?

8 A That's correct.

9 Q And in that case you were given photo lineups having
10 Eugene Frost and five unrelated individuals that were
11 similar to Eugene Frost.

12 In State's Exhibit 1 and 2, the defendant's actually in
13 different places on those lineups?

14 A Yes, ma'am, I specifically did that.

15 Q Why is that?

16 A I didn't want to show -- I obviously couldn't show
17 everybody in the same lineup in the same time. So, I didn't
18 want to put them in the same spot in the, between the time I
19 talked with the one individual and went to the next. They
20 could communicate and say he, he's number three, number
21 four. I wanted to move it around.

22 Q That's a way to ensure the integrity of your lineup?

23 A Yes, ma'am.

24 Q When you got the initial lineup, I believe you got one
25 of Eugene Frost, did you go and show it to Ms. Holly that

Brian Godfrey - Direct examination
by Solicitor Campbell

1 afternoon, Jackie Holly?

2 A I did.

3 Q Where did you go to show it to her?

4 A To her room.

5 Q Had she been instructed to go and stay at the room at
6 the Grand Motel?

7 A That's where she'd been instructed, yes, ma'am.

8 Q When you got there was anyone else present?

9 A No, ma'am, I don't remember anybody else being there.

10 Q But her husband wasn't a witness to any kind of---

11 A He wasn't at the hotel.

12 Q When you showed her the lineup, what, if anything, did
13 you say to her?

14 A I asked her if she recognized anyone in the lineup.

15 Q I believe you said it would be State's Exhibit No. 1
16 that you showed her?

17 A That's correct.

18 Q For the record, when you showed her that lineup, it
19 didn't have a handwriting on it, did it?

20 A It did not.

21 Q Did you do anything to induce her to pick someone?

22 A Absolutely not.

23 Q Did you influence her decision in any way?

24 A Absolutely not.

25 Q When you showed her these photographs and she looked at

Brian Godfrey - Direct examination
by Solicitor Campbell

1 them, what was her reaction?

2 A It was abundantly clear she recognized number four.

3 She became visibly upset.

4 Q Did she indicate why she recognized that person?

5 A She said that she was a hundred percent sure that was
6 the person that shot the gentleman at 162.

7 Q Earlier that day had you also shown her a lineup of
8 Eugene Frost?

9 A I had.

10 Q Had she been able to recognize anyone in the lineup
11 when you showed her Eugene Frost?

12 A She recognized Eugene Frost.

13 Q Did she indicate to you when she identified the
14 people -- and this was on a separate occasion?

15 A That's correct.

16 Q Why did you go back two different times?

17 A I initially developed Eugene Frost before I understood
18 who Larry Brown was and so which---

19 Q The lineup was showed to you earlier on Eugene Frost?

20 A That's correct.

21 Q You showed that one first and she---

22 A He's the gentleman that held the door so no one could
23 get out.

24 Q She was clear about that?

25 A Absolutely.

Brian Godfrey - Direct examination
by Solicitor Campbell

1 Q When you showed her the photograph, was she clear of
2 what his role was?

3 A Absolutely. She said she was 100 percent sure.

4 Q Again, her reaction when she saw the second lineup was
5 what?

6 A She was visibly upset and immediate---

7 Q Later -- it's about the same time, did you also make
8 contact with a Michael Jones?

9 A That's correct.

10 Q Had he indicated earlier to police officers whether or
11 not he had seen one or both the individuals?

12 A He said he had seen one face-to-face.

13 Q And based on the information you already had at that
14 point and the physical descriptions, did you also show him a
15 lineup that evening separately from Ms. Holly?

16 A I did.

17 Q Was he able to identify anyone in the lineup you showed
18 him?

19 A He immediately identified Eugene Frost as the person he
20 confronted at the door.

21 Q I want to turn your attention to November 24, and that
22 would be that Friday after Thanksgiving?

23 A Yes, ma'am.

24 Q Did you make contact with Camillia and Jamilla Goodwin?

25 A I did. I went to their residence located off Bluff

Brian Godfrey - Direct examination
by Solicitor Campbell

1 Road.

2 Q What was your purpose in going to talk to them that
3 day?

4 A I had photo lineups as well as I wanted to clarify the
5 statements they had already given to the investigators at
6 the scene that night.

7 Q Did you get any -- did Jamilla indicate to you whether
8 or not she got a good look at the shooter or the person back
9 at the door?

10 A She stated she did not get a clear look at either of
11 the suspects.

12 Q Was she able to describe, however specifically, what
13 the shooter was wearing?

14 A Yes, she was.

15 Q Did you show any lineups to Camillia?

16 A I did.

17 Q Which lineup did you show Camillia?

18 A Camillia stated she got a good look at the person
19 holding the door.

20 Q Based on that information did you show her the lineup
21 you had with Eugene Frost?

22 A That's correct. I showed her a lineup that contained
23 Eugene Frost.

24 Q Was she able to identify him?

25 A Yes, she identified Frost as the person holding the

Brian Godfrey - Direct examination
by Solicitor Campbell

1 door shut.

2 Q Did she indicate whether she got a good look at the
3 shooter?

4 A She said she did not.

5 Q Did you also take statements from them?

6 A I did.

7 Q When you take statements and show lineups and
8 everything, was anybody in there holding out?

9 A No, when I initially made contact they were in the same
10 room, but then I specifically told them I couldn't interview
11 them both at the same time. I went to the kitchen area and
12 interviewed them both separately at the kitchen table.

13 Q Had you follow, already gotten follow-ups and gave
14 information the night this occurred?

15 A I did.

16 Q Was that corroborated or essentially the same as the
17 information you got in a formal statement on the 21st?

18 A Essentially.

19 Q And sometimes is it unusual for them not to include
20 every detail when they're still visibly upset having
21 witnessed a murder?

22 A No, absolutely not.

23 Q I want to turn your attention to Satierra Austin.
24 Did she make contact with you on Friday, the 24th?

25 A That's correct. She called me on my cell phone.

Brian Godfrey - Direct examination
by Solicitor Campbell

1 Q Did you make arrangements to meet with her as well?

2 A I did.

3 Q Did you meet with her?

4 A Myself and Investigator Gwyn went to her residence.

5 Q And that would have been around five o'clock in the
6 afternoon.

7 A That's correct.

8 Q And did she indicate whether or not she got a good look
9 at either the shooter or the person at the door?

10 A That's correct. When she called me on my cell phone
11 she advised me she got a good look at the shooter, who
12 responded to her address and showed her a photo lineup
13 containing Larry Brown.

14 Q And when you showed her that lineup, again, which is
15 State's Exhibit 2, did you or Investigator Gwyn or who was
16 present when you were showing the lineup?

17 A Myself and Investigator Gwyn.

18 Q When you were showing her State's Exhibit No. 2, did
19 anyone influence her in any way?

20 A Absolutely not.

21 Q Did you tell her who to pick?

22 A No.

23 Q Did you encourage her to pick -- is it number three in
24 that one or number four?

25 A It's number three.

Brian Godfrey - Direct examination
by Solicitor Campbell

1 Q In fact, when she viewed the six photographs you
2 presented to her, what was her reaction?

3 A She said that she thought his hair was longer now, but
4 that his facial features were right. She stated on a scale
5 of one to ten the pick was an eight.

6 Q And you then took a formal statement from her as well?

7 A I did.

8 Q In that statement did you go over the fact of whether
9 or not she was confident that was the person who had done
10 the shooting?

11 A That's correct.

12 Q At this point you've got two different people
13 identifying Larry Brown, three different people that are
14 identifying Eugene Frost, is that correct?

15 A That's correct.

16 Q You don't have any of the DNA evidence in yet?

17 A That's true.

18 Q Any of the DNA evidence, anything of that nature?

19 A No.

20 Q That next day, on the 25th, did you obtain warrants for
21 Brown and Frost?

22 A That is correct.

23 Q And what -- did you obtain a warrant for attempted
24 armed robbery?

25 A I did.

Brian Godfrey - Direct examination
by Solicitor Campbell

1 Q For both?

2 A Yes, ma'am.

3 Q And murder?

4 A That's correct.

5 Q For both?

6 A Yes, ma'am.

7 Q How can both be charged with murder for their own
8 shooting?

9 A They both were there for a common -- we believe common
10 interest to rob an individual and as a result of that
11 someone lost their life.

12 Q Were you aware, during the course of the weekend, a
13 search warrant was prepared for Eugene Frost's mother's
14 residence?

15 A I was.

16 Q Was that the best contact information you had for Larry
17 Brown and Eugene Frost?

18 A Yes, ma'am.

19 Q And that search warrant was lawfully signed by a judge
20 prior to execution?

21 A That is correct.

22 Q And did you join in with everyone else in executing
23 that search warrant on Monday morning, the 27th, around
24 9:30?

25 A I did.

Brian Godfrey - Direct examination
by Solicitor Campbell

- 1 Q Did you go to Harper Street?
- 2 A I did.
- 3 Q Once at Harper Street y'all just made entry?
- 4 Didn't have to force entry?
- 5 A No forced entry into the residence.
- 6 Q Once inside, was Larry Brown placed in custody and
- 7 taken under arrest?
- 8 A Yes, ma'am.
- 9 Q Katherine Smith actually went with him that day?
- 10 A He did.
- 11 Q Did you-all get information from Ms. Edna Frost,
- 12 Eugene's mother and Larry's aunt, about the whereabouts of
- 13 Eugene or Elroy?
- 14 A Yes, ma'am.
- 15 Q Based on that information, did you go somewhere else?
- 16 A I did. I responded to the city court.
- 17 Q Was he there when you got to city court?
- 18 A Already left court.
- 19 Q After that did you return to the house on Harper
- 20 Street?
- 21 A Yes, ma'am.
- 22 Q Did you interview a Ms. Moyd?
- 23 A I did.
- 24 Q And Ms. Frost?
- 25 A I did.

Brian Godfrey - Direct examination
by Solicitor Campbell

1 Q Were both very cooperative?

2 A They were. Absolutely.

3 Q While there was, there also -- were you out front when
4 a green Explorer drove by?

5 A Actually it was a Ford Escort. We were -- myself and
6 Investigator Ellis, Sergeant Ellis, excuse me, was walking
7 Edna Frost and Beverly Moyd out to our vehicles to take them
8 to the sheriff's department to interview them in the
9 escort---

10 Q You were going to take formal statements?

11 A Yes, ma'am.

12 Q That was done eventually?

13 A Yes, ma'am.

14 Q Did you notice anything about one of the people in the
15 car?

16 A The passenger appeared to be heavy set, which was
17 consistent with Eugene Frost.

18 Q Based on that information, what you observed, what did
19 you do?

20 A Walked towards the end of the road where they passed
21 the residence and went to the dead-end, parked right in
22 front of the fence.

23 Q There's a dead-end down there?

24 A That's correct.

25 Q As you approached the dead-end, what happened?

Brian Godfrey - Direct examination
by Solicitor Campbell

1 A Actually before I got there both persons got out and
2 the passenger appeared to be attempting to look down the
3 street in indiscriminately. As I'm walking toward the end
4 of the street the passenger went around the hole in a fence
5 and went in a vacant house on the other side of the fence
6 and at that time I started to run down the street toward the
7 dead-end. And as I passed the driver, I asked him if the
8 defendant, Eugene Frost, was the passenger. As a result of
9 that conversation I went around the house, cleared the
10 house, and I was unable to find Mr. Frost.

11 Q And did y'all get on the radio and convey that Eugene
12 Frost might be in the area?

13 A I believe Agent Ellis got on the phone.

14 Q And then you returned, took Ms. Frost to headquarters,
15 is that correct?

16 A I did.

17 Q And was she able to give you information about that
18 Tuesday night about Larry?

19 A Yes, ma'am, she gave the information she testified to.

20 Q As well as he shaved his head the next day?

21 A Yes, ma'am.

22 Q When you transported her back to her residence, had she
23 given you some information about Larry going to the bathroom
24 and possibly having blood on his hands or something?

25 A That's correct. She mentioned his hair was falling

Brian Godfrey - Direct examination
by Solicitor Campbell

1 into the sink and he cut off his braids and also messed,
2 touching walls and getting blood on them, but she stated she
3 cleaned it up.

4 Q And did you follow up on that by getting a lab unit out
5 there?

6 A I did. That was enough information. So, at that time
7 we received a, the search warrant we already served and gave
8 the residence up. So, at that point I obtained written
9 consent to search the residence again in an effort to
10 process that area.

11 Q Did you also the next, that same day make attempts to
12 find Frank Livingston?

13 A That day and several days after.

14 Q And over the course of the next several days, without
15 going through everywhere you went, you made repeated
16 attempts to one, two, three, four, five, or six---

17 A A -- six and then---

18 Q Some -- yeah, two and -- to find Frank Livingston?

19 A Yes, ma'am.

20 Q And he was no where to be found that you could find
21 him?

22 A No, ma'am.

23 Q At what point -- let me recap for a second.

24 Once you had Larry Brown identified by two of the eye
25 witnesses and Eugene Frost identified by three at that point

Brian Godfrey - Direct examination
by Solicitor Campbell

1 on the 24th, was it -- you got arrest warrants for them?

2 A November 25th at four o'clock warrants were obtained
3 for Frost and Brown.

4 Q At this point had you gotten any kind of warrants on
5 Frank?

6 A We did not.

7 Q At -- as your -- as your investigations continued, did
8 he eventually, even though you couldn't find him, also get a
9 warrant for him for misprision of a felony?

10 A Yes, I did.

11 Q What does that mean?

12 A It means he had information about a felony that was
13 committed and failed to come forward to law enforcement.

14 Q Moving on to November 28th, did you receive information
15 about a, a Crime Stoppers tip?

16 A I did.

17 Q What was that information?

18 A Wait a moment. Just trying to catch up. It was about
19 eight o'clock that evening I received a Crime Stoppers tip
20 stating Frost was held up in the Best Western Hotel on Bush
21 River Road in Room 264.

22 Q Did you proceed to the Best Western Motel?

23 A That's correct.

24 Q Were you able to place Eugene Frost under arrest
25 without incident?

Brian Godfrey - Direct examination
by Solicitor Campbell

1 A That's correct.

2 Q Later on in December Jacqueline Holly gave you
3 information where she was living again?

4 A Yes.

5 Q So, she decided to move from the Grand Motel?

6 A She did.

7 Q During the course of your investigation, as far as the
8 eye witnesses, was anyone, other than Eugene Frost for his
9 role at the door, or Larry Brown, identified by anyone as
10 being involved?

11 A No, ma'am.

12 Q During the course of the investigation, Investigator
13 Faust had shoes he had collected?

14 A Yes.

15 Q And you had collected them from various places?
16 What was the purpose of that?

17 A I had found out that there was a shoe print that was
18 recovered from the scene. So, we decided to collect the
19 shoes from the individuals that were present in the room
20 that night to compare to see---

21 Q Who all did you collect shoes from?

22 A Two shoes that were recovered from the residence on
23 Harper Street that we never identified who they belonged to,
24 a pair of shoes recovered from Mr. Brown, and a pair of
25 shoes that were recovered from the victim, and a pair of

Brian Godfrey - Direct examination
by Solicitor Campbell

1 black boots recovered from Satierra Austin, a pair of black
2 Nike shoes recovered from Jamilla Goodwin, a pair of white
3 Reebok collected from Camillia Goodwin, and I collected the
4 white Nike shoes from Jackie the night I made contact with
5 her.

6 Q And those were all the shoes Investigator Bouknight
7 used in making his comparisons?

8 A Yes, ma'am.

9 Q I believe he was able to eliminate all of Jamilla's?

10 A That's correct.

11 Q There's also been some testimony that a lot of the
12 blood swabs were collected at the crime scene and other
13 evidence, certain items y'all decided to test, how is that
14 determination made as far as what may be probative till the,
15 the victim's identity was known?

16 A Yes, ma'am.

17 Q And he was shot six times and this was a rather bloody
18 crime scene?

19 A Yes, ma'am.

20 Q But was there significant evidence that you felt could
21 be probative to the identity of the defendant, of the
22 defendant that was tested?

23 A Yes, ma'am.

24 Q And when in doubt y'all tested the evidence?

25 A Absolutely.

Brian Godfrey - Direct examination
by Solicitor Campbell

1 Q But you chose not to test all the swabs of the blood
2 like down the hall and all that?

3 A That's correct.

4 Q Why is that?

5 A We always get together. Like I say, it's not just me,
6 but the forensic team, the DNA analyst, the supervisor, the
7 chief over the investigation. The -- this case is
8 constantly reviewed, even at the conclusion of it, reviewed
9 to make sure everything is done and what is considered
10 probative is finished. So, you don't come to the trial and
11 you haven't done something. So, it is under scrutiny
12 constantly. We discussed the case, described what is
13 probative, what we think is important to the case, and then
14 we'll testify about it.

15 Q And that was done in this case?

16 A Absolutely.

17 Q And in this case he was charged -- both were charged
18 with attempted armed robbery rather than an armed robbery.
19 Were any drugs or money of any significance found in
20 this case?

21 A No, ma'am.

22 Q In the motel room?

23 A No, ma'am.

24 Q Or even on I believe the victim's person?

25 He might have had ten dollars?

Brian Godfrey - Direct examination
by Solicitor Campbell

1 A If any, it was a small amount.

2 Q And even though those items were gone, why didn't you
3 charge him with a armed robbery?

4 A Although we feel like they went there for the purpose,
5 we don't have any direct knowledge that they, we can say
6 they took---

7 Q But you know you went there for the purpose so that
8 that would be the attempt?

9 A That's correct.

10 Q There was also some questions by the defense from
11 Investigator Gwyn about the comment that Satierra heard
12 Jackie say.

13 A Yes, ma'am.

14 Q Was that consistent with pretty much what everyone
15 said?

16 A Her statement was consistent with what everybody said.

17 Q In fact, Jackie told you from the very beginning she
18 went there and was telling them to get the drugs from the
19 guy?

20 A That's right. She says there he go, there he go, get
21 him, which I didn't interpre -- and she said it was like go
22 tackle him, and could have been there he is, the one with
23 the drugs. I'm not sure what she was trying to relate if he
24 said, say that that's what she heard.

25 Q That didn't set alarms off any different from what

Brian Godfrey - Direct examination
by Solicitor Campbell

1 anybody else heard?

2 A Not to me.

3 Q So, in a case like this with a crime of a pretty
4 violent magnitude and depending on where everyone is
5 situated in a room, they can hear things differently?

6 A In my experience, we hear things differently, see
7 things differently. In my experience we can all see the
8 crime and come out with different perspectives. They see
9 different things in the room, look at different things,
10 focused on different things.

11 Q Clearly in this case people saw different parts on what
12 happened depending on where they were, how they were hiding,
13 their head, or what was going on?

14 A Actually it was -- some people said I only saw the
15 person at the door. Some people said I saw the shooter.
16 Some people said I saw both.

17 SOLICITOR CAMPBELL: Beg the Court's indulgence.

18 THE COURT: Certainly.

19 Q Larry Brown, you see him here in the courtroom?

20 A I do.

21 Q And can you point him out for the jury?

22 A Yes, ma'am, he's the gentleman with the white shirt and
23 tie sitting between, to the right of Mr. O'Neill.

24 Q Thank you, investigator.

25 CROSS-EXAMINATION

Brian Godfrey - Cross-examination
by Mr. O'Neill

1 BY MR. O'NEILL:

2 Q Investigator Godfrey, let me get this right.

3 How long have you been an investigator?

4 A Been at the sheriff's department a little over 11
5 years. Probably been an investigator over eight years.

6 Q Investigate major crimes division?

7 A A lot of divisions.

8 Q How long have you been in the major division for
9 investigating crimes?

10 A Probably homicide division since 2005.

11 Q Four years?

12 A Yes, sir.

13 Q You're telling us today that you're investigating a
14 robbery attempt and a witness says that somebody in the room
15 said there he is, go get him, that didn't set off any bells
16 to you?

17 A I'm telling you the context of what she said. I could
18 take it either -- I don't remember clarifying it with her.
19 I could take it either like we're walking in the room and
20 there he is like he's the one which is consistent with him
21 walking towards the guy as was testified. I don't remember
22 her saying like there he is, get him, jump him. I don't---

23 Q Let me give you her statement so you can refresh your
24 memory.

25 A Have a copy right here.

Brian Godfrey - Cross-examination
by Mr. O'Neill

1 Q She said Jackie, move to the side and said there he go,
2 get him, that didn't set off any bells to you?

3 A No, sir.

4 Q But you went out there to see her that night?

5 A I did.

6 Q Shortly after I guess the initial deputy was on
7 dispatch?

8 A I was at my residence doing a research paper at the
9 time. So, it took me a little while to get dressed and come
10 out there.

11 Q When you got out there -- it was raining pretty hard
12 when you got out there?

13 A Raining profusely.

14 Q I think you said you took a statement from Ms. Holly
15 that particular night?

16 A I did.

17 Q As an investigator, you rely on statements to further
18 your investigation.

19 Fair to say?

20 A Absolutely.

21 Q And when giving these statement, you impart to the
22 person you're giving the statement that it is important to
23 be thorough?

24 A Absolutely.

25 Q Accurate?

Brian Godfrey - Cross-examination
by Mr. O'Neill

1 A That's correct.

2 Q And as forthcoming as they possibly can be?

3 A As they possibly can be.

4 Q You know these statements get relied on potentially in
5 trials?

6 A Absolutely.

7 Q Relied on by prosecutors to use?

8 A Yes, sir.

9 Q Defense attorneys to use?

10 A Yes, sir.

11 Q You know how important they are?

12 A Yes, sir.

13 Q You took a statement from Ms. Jackie Holly, correct?

14 A I did.

15 (Whereupon, the statement and rights form was marked as
16 Defendant's Exhibit No. 1 for identification purposes only
17 at this time.)

18 Q Let me show you what's marked as Defendant's 1 for ID.

19 A Yes, sir.

20 Q What is that?

21 A Advisement of rights form, robbery questionnaire, and
22 then a -- the bottom is kind of chopped up, but it appears
23 to be the entire statement I took from her.

24 Q Is it one of the statements you're talking and typing
25 at the same type or you typed this one after you finished

Brian Godfrey - Cross-examination
by Mr. O'Neill

1 talking?

2 A Maybe a combination of both. Maybe some talking and
3 clarification and questions.

4 Q But she's talking, you're talking with her and you're
5 clarifying some things and then you're writing down what's
6 there?

7 A Yes, sir.

8 Q You're trying to be as accurate as you possibly can
9 when you're writing down what's there and what they're
10 talking about?

11 A Absolutely.

12 Q That is a fair and accurate representation of the
13 statement she gave you that night?

14 A It is. It is a little bit slanted down. But---

15 MR. O'NEILL: Your Honor, at this time we move
16 Defendant's No. 1 in evidence.

17 SOLICITOR CAMPBELL: Without objection.

18 (Whereupon, Defendant's Exhibit No. 1 was received into
19 evidence at this time.)

20 Q In this statement, if you go to the second page of her
21 statement---

22 A Yes, sir.

23 Q ---on the middle point of the -- the first page,
24 paragraph -- the only big paragraph---

25 A Yes, sir.

Brian Godfrey - Cross-examination
by Mr. O'Neill

1 Q ---Ms. Holly told you that I walked the other -- she
2 said I walked the other dude around the corner.

3 A I do.

4 Q When she said she, I walked the other dude around the
5 corner referring to the guy with the dreads to the best of
6 your recollection?

7 A Let me read this real quick.

8 (Pause.)

9 A Yes, sir, she's talking about the gentleman with the
10 dreads.

11 Q You're familiar with this room right here, 162?

12 A Yes, sir.

13 Q Okay. She says I walked the other dude around the
14 corner. That's what she's saying. That's what her
15 statement says.

16 A I don't know if she's talking about that corner or that
17 corner.

18 Q But she's saying I walked that dude around the corner?

19 A Yes, sir, she says---

20 Q I walked the other dude around the corner---

21 A I walked the dude around the corner.

22 Q And he and the guy that got shot were making the
23 transaction?

24 A That's correct.

25 Q Those are her words?

Brian Godfrey - Cross-examination
by Mr. O'Neill

- 1 A That's correct.
- 2 Q Then say, saying I turned around and was walking back?
- 3 A Yes, sir.
- 4 Q Those are her words, not yours, right?
- 5 A Yes, sir.
- 6 Q Towards the door to go out, correct?
- 7 A Yes, sir.
- 8 Q And the other guy wouldn't let her out?
- 9 A Right.
- 10 Q And she said I asked him to get out and he would not
- 11 let me out?
- 12 A Yes, sir.
- 13 Q She says I asked him what was going on.
- 14 That's her words?
- 15 A Yes, sir.
- 16 Q And that's when she said I heard tussling?
- 17 A That's correct.
- 18 Q She says she hears tussling and then a gunshot, and a
- 19 gunshot?
- 20 A Yes, sir.
- 21 Q Then she starts talking about how she runs around the
- 22 room?
- 23 A That's correct.
- 24 Q And then, if you turn to the last portion of her -- I
- 25 mean you ask her a question specifically about whether or

Brian Godfrey - Cross-examination
by Mr. O'Neill

1 not she heard the guy, whether she heard anything?

2 A I did. Last page.

3 Q You ask her when the incident occurred you heard him
4 say that?

5 A Yes.

6 Q Talking specifically -- she said I didn't hear the guy
7 with the gun say anything. They were too busy fighting.

8 A Yes, sir.

9 Q Those were her words?

10 A Yes, sir.

11 Q You wrote them down?

12 A Yes, sir.

13 Q That's what she's saying?

14 A Yes, sir.

15 Q You wouldn't have wrote them down if she didn't say
16 them?

17 A Absolutely not.

18 Q Now, were you also in charge of, I guess, ultimately in
19 charge of getting the scene processed?

20 A Ultimately everything is my responsibility. Other
21 persons are tasked with the responsibilities.

22 Q For lack of a better word, the buck stops with you
23 essentially?

24 A My captain would probably agree with that.

25 Q Y'all found I guess a handgun in the nightstand, is

Brian Godfrey - Cross-examination
by Mr. O'Neill

1 that correct?

2 A Yes, sir.

3 Q That handgun was loaded?

4 A Had one round.

5 Q .45 caliber?

6 A Yes, sir.

7 Q And I think you said you were -- on the day after the
8 shooting you reviewed some notes from Ms. -- I think at that
9 time Ms. Clemmons, but not Ms. -- Elsey. She got married or
10 something in-between.

11 A Something like that, yeah.

12 Q And she told you about some additional crime scene
13 process that needs to be done, correct?

14 A Yes, sir.

15 Q She sent you an email specifically about -- saying
16 additionally crime scene processing needed as deemed
17 necessary.

18 You remember getting that email?

19 A I believe I did.

20 Q She told you, among other things, that they had did a
21 good search of the location for drug money, et cetera.

22 You remember her saying that?

23 A I don't have the, the email, but---

24 Q Look here.

25 A Yes, sir.

Brian Godfrey - Cross-examination
by Mr. O'Neill

1 Q She said we had searched some, correct?

2 A Trying to find where you're at.

3 Q The very last sentence.

4 A Yes, sir.

5 Q Ms. Clemmons at that point is the person in charge of
6 the processing. She was one of the people there processing
7 the crime scene.

8 A The initial night, yes, sir.

9 Q She said that they had searched some for drugs and
10 money there, but I guess, in her words, it needs to be done
11 thoroughly?

12 A Uh-huh. (Affirmative).

13 Q And the search that needs to be done more thoroughly
14 was for drugs and money?

15 A I would say the second day they continued to search
16 more thoroughly for anything they could possibly find
17 related to the crime.

18 Q Ms. Clemmons said specifically she searched the first
19 night and sent you an email the next day that said, the next
20 day, need to search more thoroughly for drugs and money.

21 Q Can I see that again?

22 A Yes, you can.

23 A I see et cetera on there, good search for drugs, money,
24 et cetera. We searched some, but needs to be done more
25 thoroughly.

Brian Godfrey - Redirect examination
by Solicitor Campbell

1 MR. O'NEILL: Beg the Court's indulgence.

2 (Pause.)

3 MR. O'NEILL: Nothing further, Your Honor.

4 SOLICITOR CAMPBELL: Beg the Court's indulgence.

5 REDIRECT EXAMINATION

6 BY SOLICITOR CAMPBELL:

7 Q Investigator, he's asked you some specific questions
8 about Jacqueline.

9 A Yes, ma'am.

10 Q Is her description of the shooter and the general
11 events that night corroborated by each and every other
12 person in that room?

13 A Without a doubt.

14 Q And he has made emphasis about who she say said what.
15 Are you familiar with Deputy Ulmer?

16 A I am.

17 Q All right.

18 A I am.

19 Q When she first -- what was Jackie Holly's demeanor that
20 night?

21 A She was a mess. She was visually upset and just shook.

22 Q In fact, didn't it take quite a while to get a
23 statement because she was so upset?

24 A We had to get her calmed down a little bit and get her
25 down to the sheriff's department and relax a little bit.

Brian Godfrey - Redirect examination
by Solicitor Campbell

1 Q And when you interviewed her that night, the first
2 person to the scene to make contact with Jackie Holly was
3 Deputy Ulmer?

4 A That's correct.

5 Q And he made notes about his brief encounter with
6 Ms. Holly?

7 A He did.

8 Q When he wrote down what she said, what did she say
9 about who said get the money?

10 A Let me find it to be accurate. As subject number one
11 walked into the room, he grabbed the victim and asked
12 where's the money. Subject number one is the defendant,
13 Larry Brown.

14 Q Subject number one would be whom?

15 A Larry Brown, and no, it isn't stated the gentleman with
16 the dreads.

17 Q That's what you testified to?

18 A Yes, ma'am.

19 Q And when someone's extremely upset or something and
20 they're trying to relate the important events, they might
21 misconstrue who they meant?

22 A Absolutely. I've seen crime videos and they have no
23 intent to lie. They get things mixed up sometimes.

24 Q And is that a central element in this case?

25 A This -- what you mean?

Brian Godfrey - Redirect examination
by Solicitor Campbell

1 Q Who said get the money first?

2 A Absolutely.

3 Q Is it critical who said it or what was said?

4 A Not who said it, but that it was said.

5 Q And is it critical---

6 A Critical for the common purpose.

7 Q The first time you made contact with Jackie Holly or
8 Satierra Austin or the Goodwin's, what is the description
9 she gives?

10 A The shooter was the gentleman with the dreads.

11 Want me to go through the whole description?

12 Q Robbery questionnaire and clarified in the statement as
13 well, is that correct?

14 A Yes.

15 Q So, not once or twice, but---

16 A I ask, request you describe the male that shot the
17 victim. She said he has long dreadlocks on his head and in
18 his fifties. Looks like he had some kind of disease on his
19 face. He had soars on his face. He had a hat on his head,
20 and when I, when I saw his hat come off his head is when I
21 noticed his face.

22 Q And of all the eye witnesses in this case, does anyone
23 put a gun in anyone's hand other than Larry Brown?

24 A Never at any point.

25 Q She ask, asked you about the search of the room, and it

Brian Godfrey - Redirect examination
by Solicitor Campbell

1 was done and people went back the next day as well, is that
2 correct?

3 A Yes, ma'am.

4 Q Was the search on the exterior somewhat limited that
5 night because of the rain?

6 A It was raining profusely.

7 Q This is a stupid question too, but if the victim died
8 inside the room, but not outside in the rain, then it would
9 wash his hands off?

10 A Yes, ma'am.

11 Q From your knowledge of the investigation of that crime
12 scene, the only handgun was found in a closed drawer, is
13 that correct?

14 A Yes, ma'am.

15 Q Did any witness or is there any evidence in this case
16 that anyone other than Larry Brown had a handgun in the
17 shooting that night?

18 A Absolutely not.

19 Q And whose DNA was found at the window where they went
20 out to get, broke it out to get out away from the police?

21 A The defendant, Larry Brown.

22 Q And the victim was shot six times?

23 A Yes, ma'am.

24 Q Thank you.

25 RECROSS EXAMINATION

Brian Godfrey - Recross examination
by Mr. O'Neill

1 BY MR. O'NEILL:

2 Q Ms. Campbell asked you about Deputy Ulmer talking to
3 Jackie Holly on that night.

4 A Yes, sir.

5 Q He's a deputy, correct?

6 A He is.

7 Q He responded out to the scene, first, first response
8 out?

9 A Yes, sir.

10 Q You're an investigator?

11 A I am.

12 Q You've been in school I'm assuming to get that rank as
13 investigator?

14 A Yes, sir.

15 Q Been through training?

16 A Absolutely.

17 Q You're trained in how to take statements from
18 witnesses?

19 A Yes, sir.

20 Q Trained about how to get statements from suspects
21 essentially as well?

22 A Yes, sir.

23 Q You got hours of training?

24 A I do.

25 Q Do it on a daily basis?

Brian Godfrey - Recross examination
by Mr. O'Neill

- 1 A All the time.
- 2 Q How many statements have you taken in your career?
- 3 A Can't even begin to fathom.
- 4 Q Can't even number the statements you take, have taken?
- 5 A No.
- 6 Q When you talk with her, you said you clarified with,
- 7 some things with her?
- 8 A I do.
- 9 Q If you feel like something needed to be clarified any
- 10 more you would have clarified that with Ms. Holly?
- 11 A With -- are you asking me would I try to change her
- 12 statement?
- 13 Q No, not change her statement.
- 14 If anything in her statement wasn't clear you would
- 15 have tried to clear that up?
- 16 A I can tell you I didn't have a copy of this report at
- 17 the time. This is a work in progress. You get there and
- 18 there's a crime scene that needs to be developed. The
- 19 incident report is not necessarily going to be typed up the
- 20 moment the deputy arrived at the scene. I don't remember
- 21 having access to the report until the following day, which
- 22 would have been after I took the statement from Jacqueline.
- 23 Q When you got the report, did you go back to Ms. Holly
- 24 and try to clear anything up?
- 25 A No, sir.

Brian Godfrey - Recross examination
by Mr. O'Neill

1 Q She contacted you in December?

2 A I didn't know she was moving.

3 Q If anything needed to be cleared up, you would have
4 cleared it up?

5 A Absolutely.

6 Q No further questions.

7 THE COURT: Step down and be excused.

8 Ladies and gentlemen of the jury, I'm going to ask you
9 to step to the jury room. We'll take a break.

10 Thank you for your patience.

11 Remind you not to discuss the case.

12 (Whereupon, the following takes place outside the
13 presence of the jury panel.)

14 THE COURT: Anything need to be taken up now?

15 SOLICITOR CAMPBELL: Your Honor, we anticipate resting.
16 So, you may want to go ahead and advise about Brady.

17 THE COURT: I can do that.

18 SOLICITOR CAMPBELL: Not trying to---

19 THE COURT: No, that's --

20 MR. O'NEILL: Your Honor, Your Honor, Your Honor, can
21 we do our directed verdict motion at this point before we do
22 that?

23 Your Honor, I guess at this point I would like to renew
24 all my previous objections specifically, but not limited to
25 our original objection, objection to State's 61 and 60,

1 which are the photos of Mr. Brown in handcuffs, and
2 objection to the Doyle question, and at this time I move for
3 a directed verdict in the evidence in the light most
4 favorable to the State I don't think they have presented
5 enough competent evidence to prove the charge of both murder
6 and attempted armed robbery in this case.

7 THE COURT: State.

8 SOLICITOR CAMPBELL: Your Honor, I think the evidence
9 is overwhelming of murder and attempted armed robbery, and
10 that we would let the record speak for itself.

11 THE COURT: The Court has thoroughly studied all the
12 prior motions with respect to the case law and as well as
13 the arguments by counsel. I'm going to stand by my prior
14 rulings and with respect to the issue of murder and
15 attempted armed robbery, all we know, all they have to do is
16 present some evidence on the issue. It's not for the Court
17 to represent any conflicting testimony or evidence, and
18 that's for the province of the jury, and I believe they
19 submitted it to, on each element. So, that's respectfully
20 denied.

21 The State intends to rest. So, Mr. Brown, if you
22 would, please stand up and court recorder, if you would,
23 swear him in please.

24 (Whereupon, the defendant was placed under oath at this
25 time.)

1 THE COURT: Mr. Brown, remain standing.

2 At this time I'm going to explain to you your rights,
3 and if there's anything you do not understand please let me
4 be informed. You obviously understand we just went through
5 the portion of the trial of the State's case and it's the
6 State's burden of proof in this case throughout the trial.
7 In fact, you don't have to put up any evidence, never have
8 to prove yourself innocent, and the jury will be so informed
9 about that issue as well.

10 You have exercised your constitutional right to go to a
11 trial as you have pled not guilty. Defense has made motions
12 with respect to directed verdict. So, now it is the time for
13 the defense and yourself to decide whether or not you wish
14 and choose to put up a case.

15 Again, you don't have to. If you decide to put up a
16 case through yourself testifying or put up any witnesses,
17 they will be subject to the same rights of cross-examination
18 by the State just like you and your defense team were able
19 to cross-examine the State's witnesses. That includes any
20 issues with respect to bias or any other impeaching
21 information, whether there's prior convictions, just various
22 other things as you have indicated from your counsel when
23 they cross-examined the State's witnesses so those same
24 rules apply both ways.

25 Particularly I need to explain to you about whether or

1 not you wish to testify because you have the absolute right
2 not to testify. Our Fourth Amendment indicates no person
3 shall be compelled in any criminal case to be a witness
4 against himself. Again, the State has that burden of
5 proving this beyond a reasonable doubt.

6 You are not required nor is the State allowed to
7 require you to testify in their case. They could use
8 various statements, and those were able to come in, but they
9 can't make you get on the stand to actually testify because
10 you have the right against self-incrimination. It is your
11 option, your privilege.

12 Have you duly discussed that right with your attorneys?

13 Have you discussed that right with your attorney?

14 DEFENDANT: Yes, ma'am.

15 THE COURT: And do you understand that right?

16 DEFENDANT: Yes, ma'am.

17 THE COURT: And you've been here throughout the trial
18 of the State, correct?

19 DEFENDANT: Yes, ma'am.

20 THE COURT: So, you understand how a trial proceeds?

21 DEFENDANT: Yes, ma'am.

22 THE COURT: And to the extent that you decide to
23 testify or you decide to have witnesses presented on your
24 behalf, the trial would proceed the same way with the
25 exception that you, your attorneys would put up those

1 witnesses or yourself and then allow the State to
2 cross-examine.

3 You understand that?

4 DEFENDANT: Yes, ma'am.

5 THE COURT: Okay. What is your desire with intent to
6 whether you would like to testify in this case?

7 Do you wish to testify?

8 DEFENDANT: Yes, ma'am.

9 THE COURT: Okay. You have thoroughly discussed that
10 right with your attorneys?

11 DEFENDANT: Yes, ma'am.

12 THE COURT: And I remind you that that is your right to
13 do so, and that you will be subjected to the same rules of
14 cross-examination in terms of any buys or any prior
15 convictions that are relevant and admissible just as those
16 issues were determined to be relevant and admissible as to
17 certain of the witnesses who testified on behalf of the
18 State.

19 You understand that?

20 DEFENDANT: Yes, ma'am.

21 THE COURT: Defense counsel, do you wish to add
22 anything in terms of, on the record about -- thank you. You
23 can sit down. Thank you.

24 In terms of advising him of his rights or anything you
25 would like to place on the record?

1 MR. O'NEILL: No, Your Honor. Only thing I would say
2 is it's already a little after 4:00, and I can ask we do --
3 the defense be allowed to present their case first thing in
4 the morning while the jurors are fresh and---

5 SOLICITOR CAMPBELL: No, we need to finish this up as
6 much as we can because I don't know how much he's going to
7 put up. We would request to proceed in a normal manner
8 until at least the five o'clock hour.

9 MR. O'NEILL: We will still be able to conclude this
10 trial tomorrow.

11 THE COURT: Okay. Well, tomorrow is a long day. Like
12 it's an eight hour day so---

13 MR. O'NEILL: In the morning tomorrow. I still just --
14 should be able to conclude this case by tomorrow lunchtime.

15 THE COURT: Counsel, y'all approach please?

16 (Whereupon, a bench conference was held at this time.)

17 THE COURT: Just have them come on back and then I can
18 release them and then y'all can take your break.

19 (Whereupon, the following takes place within the
20 presence of the jury panel.)

21 THE COURT: Ladies and gentlemen of the jury, I'm going
22 to release you today and we'll get this case to you
23 tomorrow. Instead of going late into the night, let's go
24 ahead and be fresh in the morning. You've been at it quite
25 a long time. I remind you to not discuss the case because

1 it has not been handed to you because I would like you to
2 still give a fair side because the State and the defense has
3 some issues they would like to present to you as well. 9:30
4 promptly. I'll stay here and work with them to make sure
5 we're here with you.

6 (Whereupon, the following takes place outside the
7 presence of the jury panel.)

8 THE COURT: We had a side bar. While they were on the
9 record, the defense had a request they be able to put up Mr.
10 Brown and whoever else potentially. Right now I've only
11 been informed of Mr. Brown. I went ahead and granted that
12 request because it is significant and we are at 4:10, and
13 will have some -- we will take this time appropriately to do
14 that. I did not make the State rest on the record because
15 now they know Mr. Brown may testify. They may have some
16 things they anticipate doing tomorrow, and that may -- I
17 didn't make you, force you to rest and have that
18 opportunity. Remind you they always have the ability to
19 reply.

20 That being said, I've got a copy of Ms. Holly's
21 statement, the advisement of rights form you gave me
22 earlier, which was actually Defense Exhibit 1. Y'all also
23 referred to her incident reports in terms of the testimony.

24 Can somebody give me a copy of that so I can better
25 refresh myself in terms of evidence?

1 I know it's not in evidence. But because that was the
2 testimony related to it so I can match it up with any
3 potential jury charges and then let's go ahead and go over
4 potential jury charges.

5 SOLICITOR CAMPBELL: Your Honor, can we settle his
6 record?

7 THE COURT: Yes. Let's do that. In fact, can we be at
8 ease about ten minutes because you-all didn't have a chance
9 to rest and neither did I.

10 (Whereupon, a short recess was taken at this time.)

11 THE COURT: Before we get to the charge conference, is
12 there anything else we need to discuss?

13 MR. O'NEILL: To settle Mr. Brown's record.

14 THE COURT: That's right. That's where we left off.

15 SOLICITOR CAMPBELL: Your Honor, in the last ten years,
16 he has a civil disturbance for a drug charge and I think the
17 Court's are clear that doesn't come into the record for --
18 and other than that he has 2005, one assault with intent to
19 kill conviction and one pointing a firearm conviction,
20 present --

21 THE COURT: Assault with intent to kill and---

22 SOLICITOR CAMPBELL: Pointing and presenting, which we
23 would concede the drug charge is not.

24 THE COURT: Okay.

25 MR. O'NEILL: I would say the assault with intent to

1 kill is too similar under Coffee matters to be used against
2 Mr. Brown. We will pass that case up to Your Honor.

3 THE COURT: The State's intention was to use it?

4 SOLICITOR CAMPBELL: Yes, Your Honor.

5 MR. O'NEILL: I would hand up, Your Honor, State v.
6 Bright, as well to kind of go through Coffee and all
7 decisions as it applies to that particular case.

8 THE COURT: Okay.

9 MR. O'NEILL: In the Bright case, the defendant is on
10 trial for murder, and I think the State is wanting to
11 introduce his voluntary manslaughter conviction and prior
12 firearm convictions, and I think the State, at that point,
13 conceded the voluntary manslaughter was too similar a crime
14 to try to be admitted. Trial Court, at that point, allowed
15 them to introduce Mr. Bright's prior file and I want to make
16 sure I incorporate the exact previous crime he had. I think
17 he had possession of a firearm and pointing and presenting a
18 firearm, and he was on trial for -- he was on trial for
19 murder at that point.

20 The Trial Court, at that, with that particular case,
21 allowed his prior firearms and prior pointing and presenting
22 and the Court of Appeals reviewed it and said as long as it
23 went through the Coffee analysis it wasn't going to disturb
24 the Court's prior ruling as long as it went through the
25 Coffee analysis. Of course, because the Trial Court is more

1 in tune with what's going on in the case, while, give -- the
2 evidence in the Coffee analysis applies to the particular
3 case here. I think the Court has to concede it is to harm
4 the impeachment value of the prior crime at the point in
5 time of the conviction of the witness and the witnesses
6 subsequent history.

7 The similarity between the past crime and the charged
8 crime is that important of the defendant's testimony, and
9 the centrality of the direct issue, and I think assault with
10 intent to kill in a murder case, in a murder charge are very
11 similar to one another. The same way as the pointing and
12 presenting is real, real similar to murder and an attempted
13 armed robbery case in this situation, Your Honor.

14 The allegation in this case is that Mr. Brown came into
15 the hotel room, pointed a firearm, and then since attempted
16 to rob Mr. Williams and then struggled, shot and killed Mr.
17 Williams. The pointing and presenting charge and the
18 assault with intent to kill charge, which we have the, the
19 actual incident reports from the assault with intent to kill
20 charge, is actually a charge which Mr. Brown pled guilty to
21 shooting of a firearm. It actually has another individual I
22 think.

23 I think those two crimes are real similar in nature.
24 Your Honor, I think Mr. Brown's testimony is central to his
25 defense as though he's in the room and there have been

1 testimony from other people in the room that he has a
2 different version of what Mr. Brown's version of what
3 happened out of the room is. I think his testimony is
4 central to his defense. His testimony is the only way he
5 can really contradict what the other witnesses are saying
6 happened in that room that day.

7 I don't think this assault with intent to kill has a
8 very high impeachment value, and it doesn't show anything to
9 his credibility as a witness. It is not like it is a charge
10 of dishonesty that could be used to impeach Mr. Brown to a
11 higher level of importance when it relates to whether or not
12 he's credible as a witness. It has a low impeachment value
13 and real similar to the charge he's on trial for right now.
14 I think his testimony is real important to that, to his
15 defense of this case.

16 Your Honor, I think the only real purpose bringing an
17 assault with intent to kill would be to show that Mr. Brown
18 has a propensity to carry weapons and to fire weapons and I
19 will lastly say that even in determining that the Trial
20 Court did make an error, in State v. Brown, it did caution
21 the bench that it's improper, that it be similar to the
22 charged offense is inherently prejudicial and should only be
23 done rarely and as to including the requirements within the
24 opinion in State v. Bright.

25 THE COURT: Okay. Anything further from you, Mr.

1 O'Neill?

2 MR. O'NEILL: No, Your Honor.

3 THE COURT: State.

4 SOLICITOR CAMPBELL: I'm reading State versus Bright,
5 Your Honor. It is my understanding they did a Culp analysis
6 in State versus Bright and in Colty, I think I'm saying that
7 right, there was an issue as to the staleness of the
8 convictions. They were over ten years old and that was one
9 of the issues it brought up, and then it set out the
10 balancing test I think Your Honor would have to go through.

11 Am I reading this wrong in this case in State versus
12 Bright that you just---

13 MR. O'NEILL: You're reading that correctly. I'm not
14 saying---

15 SOLICITOR CAMPBELL: That it wasn't an appropriate time
16 to let it in being the defense would be, several defense
17 witnesses I'm anticipating here, Your Honor. It is a
18 similar situation in this one. The judge went through a
19 balancing test, which we would respectfully ask the Court to
20 do. We feel like when you do that balancing test, they are
21 well within the ten-year limit, and the time this occurred
22 was 2006. He had just been convicted in 2005 and here we
23 are in 2009.

24 In addition to that, Your Honor, if you will note in
25 that case they said Bright's prior conviction for pointing

1 and presenting and the weapon charge should come in, is that
2 correct?

3 MR. O'NEILL: That's correct. I'm not saying the Court
4 didn't -- I'm not representing to the Court that the Court
5 in State v. Bright didn't say those convictions were not
6 admissible. What I'm saying is I use State v. Bright to
7 illustrate the five point analysis that State v. Colty
8 requires, and that more than just the, the analysis, one
9 part analysis, but the Court also has to look at whether or
10 not the similarities between the two offenses and whether or
11 not the offense that the, that the State is trying to
12 introduce really has any impeachment value and whether or
13 not, how central Mr. Brown's testimony is to his defense.

14 while I would surely grant the 2005 records is near in
15 time to his 2006 offense that he is on trial with right now,
16 I'm not saying there is a staleness issue that, but the, the
17 low impeachment value, the similarity between the offenses,
18 and the importance of Mr. Brown's testimony to his trial
19 outweigh any impeachment value that those, those other
20 offenses have.

21 THE COURT: On that one about the centrality of the
22 testimony, but the, the State argues the opposite, that they
23 need it if he's going to put up several defenses.

24 SOLICITOR CAMPBELL: And I believe that's what they
25 approved in Bright as was my reading.

1 THE COURT: Or if he's going to put up potentially
2 anything related to voluntary manslaughter.

3 SOLICITOR CAMPBELL: Defense in that case is
4 essentially predicated upon his version of the facts, which
5 here we're going to have the same situation, and I'm
6 assuming, and I haven't told yet, it's several defenses, but
7 I would presume that's what they've been doing when they
8 have attacked the credibility of these witnesses. That has
9 been repeatedly their case, and I think it is central to the
10 State's case and the defense.

11 THE COURT: Okay. Let me read these carefully, but I
12 have to do the analysis. So, we'll get to that.

13 Okay. It's just assuming -- on the jury charges.

14 MR. O'NEILL: Two scenarios I would -- voluntary and
15 involuntary.

16 SOLICITOR CAMPBELL: I haven't heard the testimony on
17 this, but there is no evidence so far on the record of any
18 involuntary or voluntary.

19 THE COURT: Short of his testimony because the Court
20 will be required to put in the, any charges where there is
21 some evidence on it, whether there has to be some evidence
22 on an issue. Do you agree -- what is your position there as
23 to whether there is any evidence on either of these at this
24 point in time?

25 MR. O'NEILL: I think there is some evidence of

1 involuntary manslaughter based on the State's case at this
2 point. I think there is more case law that says if a gun
3 goes off during a struggle then you're entitled to
4 involuntary manslaughter. I have that case law and I will
5 pass it up to you.

6 SOLICITOR CAMPBELL: State versus Willie Reese, the
7 Supreme Court, same issue, came up in a case before Judge
8 Cooper here, went up to the Court of Appeals, they said
9 that's precluded, involuntary manslaughter, because of the
10 pointing and presenting being underlying, and so far the
11 testimony is undisputed that this defendant pulled the gun
12 and I can get you the Court cite.

13 MR. O'NEILL: Your Honor, of course, we haven't had the
14 full presentation of all the evidence here I just said---

15 THE COURT: Okay. I'm saying up to this point, when he
16 testifies, that might be a different thing, but I want to
17 know what is relevant at this point.

18 MR. O'NEILL: I'm not presenting to the Court that at
19 this point we're entitled to a voluntary or involuntary---

20 THE COURT: That's what I was asking.

21 You agree right now the only thing that would have been
22 relevant is murder and attempted armed robbery is what he's
23 charged with?

24 MR. O'NEILL: Yes.

25 THE COURT: That's what I was asking.

1 MR. O'NEILL: No dispute about that.

2 THE COURT: At this juncture, if, if he had not
3 testified, I want to hear the jury charges from the
4 standpoint first if he had not testified, we just have those
5 charges, and the fact the defendant has not testified, if he
6 had not testified.

7 Was there anything else at this point---

8 SOLICITOR CAMPBELL: Yes, ma'am.

9 THE COURT: ---assuming he hadn't testified, which we
10 haven't got there yet? Okay.

11 SOLICITOR CAMPBELL: Your Honor, you do Darby
12 reasonable doubt, proof beyond a reasonable doubt is proof,
13 bla, bla, bla, bla?

14 THE COURT: Firmly convinced and---

15 SOLICITOR CAMPBELL: And that whole paragraph about not
16 beyond every doubt, but---

17 THE COURT: Right.

18 SOLICITOR CAMPBELL: Oh, yeah, then I won't hand up
19 that one.

20 THE COURT: And hesitate to act.

21 SOLICITOR CAMPBELL: On circumstantial evidence, you do
22 Grippon?

23 THE COURT: Let me see yours.

24 SOLICITOR CAMPBELL: Two types of evidence presented in
25 a trial, circumstantial, direct, persons of the chain have

1 actual proof of chain, and the law makes absolutely no
2 distinction between the weight or value.

3 THE COURT: I do.

4 SOLICITOR CAMPBELL: Your Honor, as far as prior
5 record, a person who has a past criminal -- I think this is
6 taken from y'all's charge book actually.

7 THE COURT: Okay.

8 SOLICITOR CAMPBELL: Competent to testify during a
9 trial, past record, does not affect the ability of a witness
10 to testify, is only to be considered by you at all in
11 determining a witness' credibility. I will hand that up
12 to -- I think this is from your charge book.

13 THE COURT: Any objection so far?

14 MR. O'NEILL: No, Your Honor.

15 THE COURT: He is making copies of the rest for the
16 defendant's to hand up, which would be the -- I don't think
17 it's a felony murder rule here, Your Honor. But a felony
18 murder inference under State versus Norris and Nor versus
19 Lyles and that progeny of cases.

20 THE COURT: I'm sorry. You said you wanted felony
21 murder inference?

22 SOLICITOR CAMPBELL: I'm getting copies. Some of these
23 may already be included, Your Honor, and I'm getting a copy
24 of the defense.

25 THE COURT: I'm going to give you copies of ones---

1 SOLICITOR CAMPBELL: Your Honor, I may withdraw some of
2 these once I see your charge.

3 THE COURT: Let's look at what we have and then we'll
4 go from there.

5 SOLICITOR JOPHLIN: Your Honor, while y'all are looking
6 at that, I was going to hand these to the reporter for ID
7 purpose. We premarked 69, 70, 86, and 87, already
8 introduced these, and wanted to put that on the record and
9 hand them to the reporter.

10 THE COURT: All right. Look through those that we have
11 given you and then we can go back to what the State has
12 asked for additionally.

13 (Pause.)

14 THE COURT: I'm ready.

15 SOLICITOR CAMPBELL: Potentially tomorrow, after he
16 testifies, we might be talking about voluntary and
17 involuntary manslaughter based on the evidence before you.
18 We would direct and ask State versus Mouson charge on malice
19 doesn't -- I think it expands a little on something that's
20 already in yours. If we could have that additional language
21 in there.

22 THE COURT: Tell me where you're referring to.

23 SOLICITOR CAMPBELL: Malice is not necessarily ill will
24 towards the individual injured, but significant condition of
25 mind which shows a heart regardless of social duty and

1 fatally bent on mischief. State versus Mouson.

2 THE COURT: So, add it after the---

3 SOLICITOR CAMPBELL: In your charge---

4 THE COURT: We have the second paragraph, put it as a
5 third paragraph, or in the same second paragraph. Yes, on
6 the second page of your murder -- okay.

7 SOLICITOR CAMPBELL: Malice may show a total
8 disregard---

9 THE COURT: Oh, okay. It could actually go right in
10 there.

11 THE COURT: Okay.

12 SOLICITOR CAMPBELL: Then, Your Honor, as far as the
13 two -- I handed up two on felony murder. We would just
14 request one of them, which ever one you like to -- probably
15 State versus Norris.

16 THE COURT: Okay. Back to the malice, you don't need
17 the other one that you had?

18 SOLICITOR CAMPBELL: Which one, Core versus Lee?

19 THE COURT: Yes.

20 SOLICITOR CAMPBELL: I will withdraw that.

21 THE COURT: Before we go there, you are fine with that,
22 defense counsel, on the second page of the murder charge?

23 MR. O'NEILL: Or sorry, Your Honor.

24 SOLICITOR CAMPBELL: Getting ready to withdraw the
25 other one if those come in.

1 THE COURT: It will be on the second page, second first
2 full paragraph.

3 SOLICITOR CAMPBELL: If we can add the Mouson, Your
4 Honor, and the State versus Norris.

5 THE COURT: It will be after the first full sentence.

6 MR. O'NEILL: Your Honor, your first sentence
7 essentially says the same things.

8 SOLICITOR CAMPBELL: We add that sentence to be
9 expanded to include the Mouson and that's all and I withdraw
10 the rest.

11 THE COURT: So, you want the Mouson and are withdrawing
12 everything else?

13 SOLICITOR CAMPBELL: No, ma'am, I want the Mouson and
14 State versus Norris.

15 THE COURT: Okay.

16 SOLICITOR CAMPBELL: The law allows for a jury to
17 conclude malice was---

18 THE COURT: Any objection?

19 MR. O'NEILL: No objection.

20 THE COURT: Both of those will be included and she's
21 withdrawing the lengthier malice.

22 SOLICITOR CAMPBELL: Yes, but the one about the prior
23 record I still leave with you.

24 THE COURT: That's still in and no objection by the
25 defense and the other one about malice, State v. Nilum, that

1 will be withdrawn as well, right?

2 SOLICITOR CAMPBELL: You have that in yours. That's
3 already in your statement. I think it's on Page 1.

4 THE COURT: Okay. Felony murder, let's move to that
5 one.

6 what did you ask me?

7 MR. O'NEILL: You withdrew that one?

8 SOLICITOR CAMPBELL: I think it is covered in State
9 versus Norris and the Gore versus Leakman is duplicative.
10 It's the same thing.

11 THE COURT: All right. I have the other about a two or
12 more combined act.

13 SOLICITOR CAMPBELL: I like that one.

14 MR. O'NEILL: I object to that, Your Honor. I think
15 it's not necessary in this case. It would be necessary if
16 we were trying Eugene Frost in this case or the Eugene Frost
17 person, but I think, for the State's purposes, there's been
18 no testimony that Mr. Brown was anything but an actor in
19 this case.

20 SOLICITOR CAMPBELL: But he combined with someone else
21 and should the jury possibly infer Mr. Frost was in, Frost
22 was more culpable, I mean whenever two or more people are
23 combined in a crime I always ask for hand of one hand of
24 all.

25 MR. O'NEILL: I think it is duplicative. If I was

1 representing Mr. Frost, that puts me in the predicament I
2 have to defend Eugene Frost as opposed to Mr. Brown.

3 SOLICITOR CAMPBELL: Your Honor, I think, when he puts
4 in a statement about Jacqueline Holly, when he said who
5 apparently was it, give me the money to do the armed robbery
6 depending upon their version of the inference of the facts,
7 which one's heading up the whole, directing the other or
8 anything and they need to understand when two people combine
9 together that is the result and that is the law.

10 MR. O'NEILL: I don't plan on arguing somehow Jackie
11 Holly on this, Your Honor.

12 THE COURT: No, Eugene Frost, not Jackie Holly, talking
13 about her version of the facts.

14 MR. O'NEILL: Her point just now was I -- at least her
15 testimony about Jackie Holly saying he did, he go get it,
16 and all that and that was the State's point.

17 SOLICITOR JOPHLIN: No.

18 THE COURT: She did -- the one who had the gun didn't
19 say anything. They were tussling the other said. She's
20 talking and that portion of the statement.

21 MR. O'NEILL: I think, Your Honor, you're confusing the
22 issue making the issue whether or not what Eugene Frost did
23 as opposed to what Larry Brown did that puts me in the
24 predicament of how Gene Frost's actions---

25 THE COURT: I don't see how, how this, in any way,

1 shifts the burden upon Eugene Frost. His name has come up
2 as much as Larry Brown because they're acting together. The
3 jury needs to understand if you don't instruct---

4 THE COURT: She's trying to get them to not separate
5 because---

6 MR. O'NEILL: They should have to separate because
7 Larry Brown is---

8 THE COURT: Whenever you say separated the actions,
9 like make your claime, only committed the murder versus
10 accident, the armed robbery, because they're putting
11 inference that this one did this or did that, you know.

12 MR. O'NEILL: The inference is if Eugene Frost did
13 something, even if I think Larry Brown is totally innocent,
14 Eugene Frost did something, Larry Brown---

15 SOLICITOR CAMPBELL: It's true. They acted together.

16 MR. O'NEILL: Important in this case, the State's
17 theory that Larry Brown is the actor here. He has been like
18 the get-away driver would be, and it would be appropriate if
19 I were representing Eugene Frost and Larry Brown wasn't on
20 trial that the hand of one the hand of all jury charge would
21 be appropriate in that case because he, Larry Brown,
22 wouldn't be here on trial.

23 SOLICITOR CAMPBELL: The evidence is both were charged
24 as principals, two acted together. That's been all the
25 evidence, Your Honor. We're merely trying to put it before

1 a jury when two people combine together to commit any crime
2 or in this case the felony.

3 MR. O'NEILL: My point is, Your Honor, that point puts
4 me in a position of having to try to defend my client and
5 Eugene Frost at that point.

6 THE COURT: Just listening, because I always like to
7 not rule but make sure I understand your arguments, at
8 first, if I hear Mr. O'Neill correctly, the way this charge
9 reads it's saying if a homicide is committed by one of the
10 factors as a probable or natural consequence of the acts
11 done in pursuant of a common design, all present
12 participating are as guilty as the one who committed the
13 act. From his standpoint he is indicating that most of a
14 reference to Eugene Frost since he was not the shooter.

15 SOLICITOR CAMPBELL: If he wants to stipulate his guy
16 was the shooter and committed the act I will withdraw that.

17 MR. O'NEILL: I'm not going to argue Eugene Frost was
18 the shooter.

19 SOLICITOR CAMPBELL: But he will not stimulate Larry
20 Brown was committing murder either.

21 MR. O'NEILL: I surely wouldn't do that. I wouldn't be
22 standing here if I were going to stipulate that.

23 SOLICITOR CAMPBELL: That's not just what he argues,
24 but what the jury may infer.

25 THE COURT: Yes.

1 MR. O'NEILL: I don't think it's appropriate for the
2 jury to infer Eugene Frost was the shooter and then Larry
3 Brown is guilty.

4 SOLICITOR CAMPBELL: He can't tell them what to infer.
5 It's what they may infer.

6 THE COURT: To the other end, Ms. Campbell is
7 indicating, without a stipulation, essentially as to who was
8 the shooter, and then just letting you put up whatever
9 defenses or responses that issue may be. Then she still has
10 to deal with---

11 MR. O'NEILL: Your Honor, I think the -- confusing the
12 issue, the issue is either Mr. Brown went in there with
13 malice aforethought and killed Mr. Williams or didn't.
14 There's no dispute that---

15 SOLICITOR CAMPBELL: No, ma'am.

16 MR. O'NEILL: Mr. Frost was---

17 SOLICITOR CAMPBELL: That is not clear.

18 THE COURT: Hold on.

19 MR. O'NEILL: No disputed -- no evidence in the record
20 that Mr. Frost or anybody else did---

21 THE COURT: Okay. So stated, where do you think, since
22 you put up your case, anything would be confusing such that
23 they might have to use a charge that says the combined act
24 is still the agent of one or the other?

25 SOLICITOR CAMPBELL: If it was Eugene Frost directing

1 it and perhaps they think he's more culpable, the original
2 attempted armed robbery, I mean that version, because there
3 has been testimony Eugene was the one that said go get him
4 or whatever the words are.

5 THE COURT: I see it on that issue as opposed to the
6 homicide, but that this charge refers to the homicide.

7 SOLICITOR CAMPBELL: Ultimately, once you get them both
8 acting together to do the armed robbery, doesn't matter
9 which one does the homicide.

10 MR. O'NEILL: Says two or more people commit an
11 unlawful act such as a robbery, the homicide is committed by
12 one of the actors as a probable and natural consequence of
13 the act done pursuant -- all the common design, all the
14 persons to participant in the unlawful undertaking just to
15 get as one committed to fade away. The only testimony
16 that's been about somebody come in here and fade away is
17 Mr. Brown. They don't need this -- this jury charge would
18 be applicable if they were trying Eugene Frost.

19 SOLICITOR CAMPBELL: But, Your Honor, the cases that
20 have held and that comes from the case that that is an
21 appropriate law.

22 MR. O'NEILL: I don't say it's appropriate law. I said
23 it's not applicable to the context of this case.

24 THE COURT: Definitely. It looks like it is applicable
25 to Eugene Frost, no doubt, because he's the one that was the

1 shooter and coming in and I'm trying to read it in the
2 context of this case.

3 SOLICITOR CAMPBELL: Your Honor, whenever I go forward
4 and there are two or more people charged as principals, this
5 is the standard charge we request and get or a hand of one
6 hand of all. If you want to redo it like that way, I'll
7 submit something on that.

8 THE COURT: You dispute hand of one hand of all?

9 SOLICITOR CAMPBELL: It is not applicable to this case.
10 They're two people acting together. They each have a role.
11 We have charged both of them and that has come out in front
12 of this jury. We have to understand what theory they're
13 able to do that regardless of which role either play.

14 MR. O'NEILL: You would need that if you were saying
15 that somebody beside Mr. Brown was the shooter. You don't
16 need this---

17 SOLICITOR CAMPBELL: Yes, I would if I'm also charging
18 him with robbery.

19 THE COURT: You've also got, within the murder charge,
20 that it says it's an intentional doing of the wrongful act
21 and some of those elements that---

22 MR. O'NEILL: This charge, as is custom, or does not
23 explain that. This charge right here is required only if
24 you're talking about Eugene Frost.

25 SOLICITOR CAMPBELL: Your Honor, I don't know how I can

1 get up in front of them and explain how we charge two people
2 with one murder without explaining hand of one hand of all.
3 That goes to my police officer's direct---

4 MR. O'NEILL: It is not important to explain why Eugene
5 Frost is charged with murder and the jury charge relating to
6 the case of Larry Brown is immaterial why Eugene Frost is
7 charged with murder.

8 THE COURT: What you-all are concluding, you, you are
9 concluding, among the evidence in the case as to Mr. Brown,
10 you're not needing to go into that foreclosing or trying to
11 tie all that in.

12 SOLICITOR CAMPBELL: I'm sorry. I don't understand.

13 THE COURT: Are you trying to include anything as to
14 Mr. Frost when you're employing and concluding your case in
15 terms of his involvement?

16 We're trying Mr. Frost here today, but much has been
17 said---

18 SOLICITOR CAMPBELL: But he is an integral part. One
19 of the co-conspirators. Therefore, all the evidence I
20 brought in here about Mr. Frost, you know, I mean is before
21 this Court.

22 THE COURT: Okay.

23 SOLICITOR CAMPBELL: I don't know how you separate
24 them.

25 THE COURT: Let me look at it again. I got your

1 arguments down. It is clear it is as to Mr. Frost, but let
2 me read it with some fresh eyes in a minute on that one.

3 Okay. What else?

4 If the defendant hadn't testified yet, what's all
5 relevant right at this point and then we'll go into the
6 defendant's testimony.

7 Anything else or---

8 MR. O'NEILL: I think that's it, Your Honor.

9 THE COURT: So, we've got a good set for the defendant
10 has not testified. The only exception is me dealing with
11 the last request. Oh, and then I'll have to -- the other
12 issue for me to consider is that analysis. Should the
13 defendant testify, let's anticipate what the charges would
14 be because I don't want to have to spend 30 minutes tomorrow
15 in-between a closing and all if we can resolve it today.

16 SOLICITOR CAMPBELL: My anticipation, just at this
17 point, are for voluntary and involuntary manslaughter.

18 THE COURT: Just those two?

19 MR. O'NEILL: Just those two. Just those two.

20 THE COURT: Not self-defense?

21 MR. O'NEILL: No, Your Honor.

22 THE COURT: Those charges read pretty straight forward.

23 THE COURT: I'll have her copy those and we'll clean it
24 up and then, after the defendant testifies, we'll know if
25 any evidence is presented on the issue so that it won't be

1 difficult since there is a concession that as of now it
2 doesn't apply. If those come in and, of course, no evidence
3 at this point, but if voluntary and involuntary come in, he
4 has conceded no self-defense is there.

5 Anything else y'all anticipate as a charge?

6 You can think about it overnight in terms of any
7 supplemental charges.

8 SOLICITOR CAMPBELL: It's hard for me to guess without
9 knowing what the testimony is.

10 MR. O'NEILL: I don't anticipate a voluntary
11 intoxication. So, if you want to---

12 SOLICITOR CAMPBELL: If he testifies he had been taking
13 anything like that, we would anticipate that.

14 THE COURT: What about mentioning mutual combat
15 earlier?

16 SOLICITOR CAMPBELL: Requires both parties armed coming
17 to a place to fight.

18 THE COURT: Okay.

19 MR. O'NEILL: That's not an issue.

20 THE COURT: Want to make sure we're discussing
21 everything possible. Those are the only other two. I've
22 just got two issues to review for this evening.

23 SOLICITOR CAMPBELL: I don't know what the testimony is
24 going to be, Your Honor. So, I don't want to lock myself
25 in.

1 THE COURT: No, I'm saying only two potential other
2 charges they want. I'm leaving the door open for y'all to
3 have supplemental charges to further explain if those come
4 in, but right now they're not in.

5 SOLICITOR JOPHLIN: Your Honor, we renew our reciprocal
6 Rule 5 discovery motion and ask that any pictures/reports,
7 tangible objects, reports, examinations that they plan on
8 using we be notified of them and be able to look at them and
9 examine them even if they're pictures of ours.

10 MR. O'NEILL: Your Honor, I think that's not what the
11 rule requires. Let's go to the rule and speak about what it
12 requires before we talk in abstract.

13 THE COURT: I don't -- tangible objects, have those all
14 been presented?

15 MR. O'NEILL: No doubt about tangible objects.

16 THE COURT: Reports of examination and tests?

17 MR. O'NEILL: No.

18 SOLICITOR JOPHLIN: I would argue the pictures follow
19 the documents and tangible items.

20 THE COURT: Specifically says photographs, books,
21 papers, documents, any of that. So, you're indicating none
22 for documents and tangible objects as well as reports of
23 examination and tests.

24 MR. O'NEILL: None -- photos --

25 THE COURT: Photos included in documents.

1 MR. O'NEILL: I may introduce the photos that have been
2 provided to me and---

3 SOLICITOR JOPHLIN: Unless he's talking about the
4 photos that are sitting on that table. If there's anything
5 other than that which we wanted to see them.

6 MR. O'NEILL: This rule doesn't, doesn't force me to
7 tell them what pictures I plan on using. I may not use any
8 pictures that the State has provided me in discovery. I may
9 use those in my case in chief.

10 THE COURT: Okay. It says such documents and tangible
11 objects which are within the possession, custody, or control
12 of the defendant and which the defendant intended to
13 introduce as evidence in chief at the trial.

14 SOLICITOR JOPHLIN: So, if he intends to introduce them
15 we have a right to look at them.

16 MR. O'NEILL: What I would do, the State has given me a
17 copy of the photos on CD and I will bring a copy of the
18 photos on CD up to the State's office where they can inspect
19 any of the pictures I may use.

20 SOLICITOR CAMPBELL: Playing games.

21 MR. O'NEILL: They don't tell me what pictures they may
22 use. They---

23 SOLICITOR JOPHLIN: We spent the entire first day
24 telling you what was in, going to be in our trial.

25 MR. O'NEILL: That's not because of Rule 5, but so we

1 can premark and not object to them.

2 SOLICITOR CAMPBELL: Same reason.

3 MR. O'NEILL: I'll tell you I plan on using some. So,
4 we can premark them.

5 SOLICITOR JOPHLIN: So, now, again, it's postponing,
6 until the morning of closing, until we can adequately
7 prepare.

8 MR. O'NEILL: How can they---

9 THE COURT: Hold on a second. Is there that much more
10 than what was already introduced?

11 SOLICITOR JOPHLIN: Your Honor, these are the remainder
12 of the pictures in this case.

13 MR. O'NEILL: That's the same pictures they gave me.

14 SOLICITOR CAMPBELL: That's why we did the curious
15 thing and went through them.

16 THE COURT: I mean the rule could anticipate
17 specifically what you intend to introduce as evidence in
18 chief at trial, which is what it says, but it also
19 anticipates you have something different from what the State
20 has, and I guess that's what---

21 MR. O'NEILL: I don't have anything different, Your
22 Honor, but I got what they gave me.

23 THE COURT: Definitely not limited to what they have.
24 You-all, meaning you-all, not me, want to get together by
25 8:45 in the morning?

1 SOLICITOR CAMPBELL: We may need time after that, Your
2 Honor.

3 THE COURT: I agree. Is that fair to you? I guess---

4 MR. O'NEILL: 8:45, that's fair.

5 THE COURT: You-all get together at 8:40.

6 SOLICITOR CAMPBELL: We can see the pictures at 8:45
7 and he's going to be on the stand at 9:30?

8 THE COURT: If you need more time---

9 MR. O'NEILL: These are the pictures they took.

10 THE COURT: If you need more time I'll have to deal
11 with that, but he's telling me it's within your custody and
12 control right now and he has not made up his mind
13 specifically as to which ones they're going to be, and if
14 that requires more time by y'all, then I'm going to have to
15 deal with that and he is too.

16 SOLICITOR CAMPBELL: He doesn't seem to have to deal
17 with any of the consequences for this.

18 THE COURT: Mr. -- let me ask you this. Mr. O'Neill,
19 you already told me, when I had a side bar, you knew your
20 client was wanting to testify. So, that's not a surprise to
21 you.

22 MR. O'NEILL: No, Your Honor, it's not.

23 THE COURT: The rule does anticipate possession,
24 custody, and control of the defendant which defendant
25 intended to introduce as evidence in your case in chief at

1 trial.

2 SOLICITOR CAMPBELL: Yes.

3 THE COURT: There was nothing extra in your custody and
4 control and which you intend to---

5 MR. O'NEILL: I don't have anything but what the
6 pictures they have given me. I don't understand how they're
7 going to be shocked by a picture that their own crime scene
8 people took. They have had that for the last three years.

9 SOLICITOR JOPHLIN: Says he should produce them to us
10 if he plans to introduce them because it makes innocuous
11 notion that he can just choose from every piece of State's
12 evidence and introduce it.

13 SOLICITOR CAMPBELL: And not produce it the day of
14 trial. This is all supposed to be done in a timely manner.

15 SOLICITOR JOPHLIN: This arguably should have been done
16 on Monday.

17 MR. O'NEILL: How can I produce things they already
18 had?

19 THE COURT: But it says which you plan to introduce in
20 your case in chief.

21 MR. O'NEILL: what they expect me to introduce a copy
22 of the CD---

23 SOLICITOR JOPHLIN: If---

24 MR. O'NEILL: I'll give them a copy---

25 THE COURT: They're not asking you to give them back.

1 MR. O'NEILL: That's not what the rule says though. It
2 doesn't say tell me what you plan on -- what, the issues you
3 plan on using.

4 SOLICITOR CAMPBELL: Yes, it does.

5 SOLICITOR JOPHLIN: Arguably violating it because you
6 didn't give it to us until Monday.

7 MR. O'NEILL: I'll put all the pictures in in the
8 morning, Your Honor.

9 SOLICITOR CAMPBELL: That is disrespectful to the
10 Court.

11 THE COURT: It is, Mr. O'Neill.

12 SOLICITOR JOPHLIN: And we might be here till more than
13 five o'clock.

14 THE COURT: The Court's ruling is that defense, you
15 just need to sit here and y'all figure it out tonight.

16 SOLICITOR CAMPBELL: Thank you.

17 SOLICITOR JOPHLIN: Thank you, Your Honor.

18 THE COURT: Anything else?

19 SOLICITOR CAMPBELL: No, ma'am.

20 SOLICITOR JOPHLIN: No, Your Honor.

21 THE COURT: I will be ready for y'all at 9:15 to put my
22 ruling on the record about whether you get to use the prior
23 conviction. Let me read these cases as well as one other
24 thing -- oh, this other jury charge.

25 SOLICITOR CAMPBELL: Your Honor, if I could submit an

1 alternative hand of one hand of all and you could maybe use
2 between them and see what would be more and appropriate,
3 which one---

4 SOLICITOR CAMPBELL: Okay. All right. Anything else?

5 MR. O'NEILL: No, Your Honor.

6 SOLICITOR CAMPBELL: I want to make -- as an officer of
7 the Court, he handed up State versus Bright, Court of
8 Appeals case, said it was inappropriate, later overturned,
9 and said it could not come in for impeachment.

10 THE COURT: Said should not?

11 SOLICITOR CAMPBELL: Yes.

12 THE COURT: Is -- so, are you withdrawing that it come
13 in?

14 Solicitor, I, I have to read the case. First I want
15 you to have that.

16 THE COURT: Okay. All right. Have a good evening.
17 See y'all at 9:15.

18

19 (Whereupon, Court was in recess for the evening.)

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24

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Friday, August 28th, 2009

1
2
3 THE COURT: As to the charge from both parties, I agree
4 voluntary and involuntary testimony until we agree by the
5 defense -- at least at this juncture it is not in the
6 charges I have. There was a request by the solicitor's
7 office that we charge a charge that's dealing with a
8 combination of two or more persons. I think it's more
9 appropriate to charge hand of one hand of all because the
10 solicitor has inferred testimony about whether more than one
11 person who could be charged with the same crime. That's
12 opinion kind of testimony.

13 There's also been some statements by Ms. Holly about
14 defendant, this particular defendant not saying anything,
15 and then later on saying, said something and that's just the
16 State's prerogative to clear all of that information with
17 respect to how an individual can be charged in a particular
18 crime. So, we'll deal with that one.

19 We already discussed the various portions of the charge
20 as well as the prior arrest charge. Those will be
21 appropriately charged here. Then last night the State
22 indicated they would not be putting forth any of the
23 defendant's prior record because they're not appropriate,
24 with the assault with intent to kill, and pointing and
25 presenting.

1 SOLICITOR CAMPBELL: Yes, Your Honor, the rules -- when
2 he takes the stand it doesn't fall under any rule which can
3 go into it for impeachment. As to correct---

4 THE COURT: Right. And then if he opens the door for
5 some reason we can take up that issue in that regard, but
6 I'm pretty sure the defense will tow the line on that issue.

7 Okay. I will give you guys copies of the charge that
8 we have.

9 Anything else you can think of in terms of being ready
10 to proceed?

11 MR. O'NEILL: Your Honor, so the record is clear, we do
12 object to the hand of one is the hand of all.

13 THE COURT: That's okay. And I've explained my reasons
14 for giving it.

15 MR. O'NEILL: Your Honor, one more thing.

16 Can we have his feet shackles removed before taking the
17 stand?

18 I would submit he has been absolutely no problem during
19 this trial.

20 THE COURT: And let me go ahead and go into this
21 because I know security will say there are certain reasons
22 for not doing it, but there is law also that says there has
23 to be a finding on the record as to why we would have some
24 security issue in this record.

25 Does the State have any objection to that?

1 SOLICITOR CAMPBELL: Your Honor, we feel like the way
2 he is shackled now -- we've had this come up before and I've
3 had judges have him on the stand and never get off the stand
4 in front of the jury.

5 THE COURT: The only problem is that to not inhibit
6 them in terms of how they wish their client to testify. If
7 he was going to get down and make any demonstrations or do
8 anything of that nature, it's more of an issue there.

9 SOLICITOR CAMPBELL: The only other issue, Your Honor,
10 there is, this is a pretty brutal murder case, and this jury
11 is going to be 4-feet from him. I don't have a problem as
12 long as we can station someone near him for security. If we
13 could put a deputy up against the wall or something.

14 MR. O'NEILL: That is totally inappropriate for a
15 deputy to stand there.

16 SOLICITOR CAMPBELL: I'm trying to balance. I'm not
17 trying to insist on one way, but---

18 THE COURT: Do we have any indications of any issues
19 with respect to this defendant that anyone is aware of?

20 MR. O'NEILL: No, Your Honor.

21 THE COURT: We're here to protect each other.

22 SOLICITOR CAMPBELL: It's a security factor because the
23 only thing between this jury would be the defendant and me
24 at one point. That's not going to do them any good.

25 MR. O'NEILL: There is no indication he poses a threat

1 to anybody.

2 THE COURT: Are we aware of any disciplinary actions
3 within the facility or any harm, threats, just anything?

4 MR. O'NEILL: No, Your Honor.

5 MR. COOPER: I think, if you pay special attention, his
6 behavior in this trial has been exemplary.

7 SOLICITOR CAMPBELL: He's been shackled.

8 MR. O'NEILL: He is 2-feet from us.

9 MR. COOPER: He sat here just like---

10 SOLICITOR CAMPBELL: Your Honor, could we put a deputy
11 right there?

12 MR. O'NEILL: There's a deputy sitting right there at
13 all times.

14 SOLICITOR CAMPBELL: We haven't had one, but would like
15 to have one right there.

16 THE COURT: I think it's fair for right here. Not at
17 the footsteps, but right there. He will be appropriately
18 able to testify. That will be the court's ruling.

19 Anything else?

20 Okay. My inclination is to allow the state to rest.
21 We've already gone over the various motions. And so then
22 defense can proceed. Then we would take a break before
23 there would be the closing so y'all can set up.

24 SOLICITOR CAMPBELL: There may be more testimony we
25 have to put up at that point.

1 THE COURT: Absolutely. Whatever the State's case, the
2 conclusion of the case is there would be a break and then
3 y'all can appropriately set up for closing.

4 SOLICITOR CAMPBELL: It may take a little longer.

5 THE COURT: It's okay. Whatever it is, it is. But I'm
6 saying we would take a break between the conclusion of the
7 case and closing.

8 Anything else?

9 We have all the jurors?

10 SOLICITOR CAMPBELL: Let me check.

11 THE COURT: Okay. You need to take care of that issue
12 now. Get them. I thought he understood that. Stop them.
13 Don't bring them in yet.

14 BAILIFF: He's just now coming down the hall.

15 THE COURT: He has to take care of that first. I
16 explained appropriately he has been duly advised of his
17 rights as to whether he wishes to proceed with the defense,
18 and that's why he's sitting there.

19 MR. O'NEILL: I got the impression that they were going
20 to take his shackles off. I would prefer he walk up like
21 everybody else walks up.

22 THE COURT: You have a deputy placed right?

23 Okay. I'm going to let him do it. I have not seen any
24 indication that's the showing that has to be made.

25 Sir, you can step down.

1 SOLICITOR CAMPBELL: There isn't a showing to begin
2 with.

3 THE COURT: I know that, but I'm saying a showing prior
4 to that there is a threat. That's what the record has to
5 reveal. Okay.

6 SOLICITOR CAMPBELL: Are you going to have someone walk
7 up with him?

8 THE COURT: He is seated right there. I don't find it
9 necessary. He is seated right there. Put two right there
10 and you're right there. Okay.

11 SOLICITOR CAMPBELL: Why isn't he seated over there?

12 THE COURT: Somebody's going to sit right there.

13 OFFICER: Right here?

14 THE COURT: In that area right there. At least right
15 there.

16 THE COURT: Where is the bailiff generally?

17 OFFICER: Right here.

18 THE COURT: You have to be there. You can go to the
19 next one. Let the bailiff be right there.

20 SOLICITOR CAMPBELL: We prefer the bailiff be in the
21 back. One -- because the bailiff's not going to be able to
22 do anything.

23 THE COURT: That's fine.

24 Anything else?

25 MR. O'NEILL: No, Your Honor.

1 THE COURT: Everyone here?

2 BAILIFF: They're all here.

3 THE COURT: Jurors please.

4 (Whereupon, the following takes place within the
5 presence of the jury panel.)

6 THE COURT: Good morning, ladies and gentlemen of the
7 jury. We are ready to proceed with the case.

8 State, if you could---

9 SOLICITOR CAMPBELL: Your Honor, at this time the State
10 would rest.

11 THE COURT: Ladies and gentlemen, the State has rested.
12 At this time they have presented all of their evidence. The
13 Court was aware that they were going to rest this morning.
14 As I told you earlier, this is the portion at which I would
15 have had to take up legal matters. We went ahead and took
16 care of that last night. So now we will proceed on to the
17 defendant's case.

18 MR. O'NEILL: Your Honor, for the record, I renew my
19 previous motion.

20 THE COURT: Absolutely. And the Court will stand by
21 its prior rulings.

22 MR. O'NEILL: At this time the defense calls Larry
23 Brown.

24 LARRY BROWN, being first duly sworn,
25 testified as follows:

Larry Brown - Direct examination
by Mr. O'Neill

1 DIRECT EXAMINATION

2 BY MR. O'NEILL:

3 Q Good morning, Larry.

4 A Good morning.

5 Q I talk a little bit fast. So, if you need me to slow
6 down, let me know.

7 Okay. Tell us a little bit about yourself.

8 How old are you?

9 A Forty-nine.

10 Q Where are you from?

11 A Columbia.

12 Q Were you born and raised here?

13 A Yes, sir.

14 Q What part of Columbia?

15 A Fort Plain.

16 Q Got family here in Columbia?

17 A Yes, sir.

18 Q Who is that?

19 A My mother, brother, sister.

20 Q Where do they stay at?

21 A My mother stay at Fairfield Grove and my sister stay on
22 Leesville Road and my brother stay in St. Andrews.

23 Q Did you go to school here in Columbia?

24 A Yes, sir.

25 Q Where at?

Larry Brown - Direct examination
by Mr. O'Neill

- 1 A C.A. Johnson.
- 2 Q How far did you go in school?
- 3 A Eleventh grade.
- 4 Q You didn't finish school?
- 5 A No, sir.
- 6 Q Did you ever get your GED or anything like that?
- 7 A Yes, I did.
- 8 Q What did you do after you got your GED?
- 9 A I went to work at Southern Pass in Western Columbia.
- 10 Q You have a wife and kids or anything like that?
- 11 A I have one daughter in Ft. Lauderdale.
- 12 Q What is her name?
- 13 A Gail Brown.
- 14 Q And you have any grandkids?
- 15 A No, sir.
- 16 Q Let me ask you about a couple of people's names we
- 17 brought up in this trial this week.
- 18 Do you know Eugene Frost?
- 19 A Yes, sir, I do.
- 20 Q How do you know Eugene?
- 21 A That's my cousin.
- 22 Q Do you know Edna Frost?
- 23 A Yes, sir, I do.
- 24 Q How do you know Edna.
- 25 A That's my aunt.

Larry Brown - Direct examination
by Mr. O'Neill

- 1 Q Do you know Frank Livingston?
- 2 A Yes, sir.
- 3 Q How do you know Frank?
- 4 A Me and her are family.
- 5 Q Did you know Tyrell Williams?
- 6 A No, sir, not really.
- 7 Q Now, prior to the night of the shooting, November 21,
- 8 2006, had you ever had any contact from Tyrell Williams?
- 9 A Yes, I bought some drugs from him one day.
- 10 Q Where was that?
- 11 A A week before the shooting.
- 12 Q Where did you buy some drugs from him?
- 13 A The Grand Motel.
- 14 Q How did you know to find him at the Grand Motel?
- 15 A I didn't. I went up there looking for a dealer to cop
- 16 some dope, to buy some dope, and he called me over, talked
- 17 to me.
- 18 Q What happened once he called you over to talk to you?
- 19 A We went up to his room and we discussed how much dope I
- 20 wanted and I got a \$30 piece of dope from him.
- 21 Q Did anything catch your attention in this room?
- 22 A Yes.
- 23 Q What was that?
- 24 A His gun in his waist side.
- 25 Q Did you see him do anything with the gun he had in the

Larry Brown - Direct examination
by Mr. O'Neill

1 waist side?

2 A Put it in the drawer, the nightstand drawer.

3 Q was there anybody else in the room that day, Tyrell?

4 A No, sir.

5 Q Okay. So, at some point y'all conducted a drug deal?

6 A Yes, we did.

7 Q And with -- we'll come back to that a little bit later.

8 Let's fast forward a little bit to 2006.

9 where were you working back then, late 2006, where were
10 you working?

11 A Late 2006 I was laid off from work. I was drawing
12 unemployment.

13 Q Speak up so the court reporter can take down what
14 you're saying and everybody in the jury can hear you, okay?

15 A Okay.

16 Q where were you working at back in late 2006?

17 A I was drawing unemployment at the time.

18 Q And where were you living at back then?

19 A with my aunt.

20 Q That's Ms. Edna Frost?

21 A Yes, sir.

22 Q And where were you -- what was the address you lived
23 at?

24 A 

25 Q Now, Larry, did you have a drug problem back then?

Larry Brown - Direct examination
by Mr. O'Neill

1 A Yes, sir, I did.

2 Q How long had you been struggling with drugs?

3 A Twenty-five years.

4 Q And how did you get the money to get these drugs you
5 wanted?

6 A I worked most of the time, but I was working, drawing
7 unemployment, wasn't drawing unemployment, go to the Plasma
8 Center.

9 Q And you'd donate plasma at the Plasma Center?

10 A Yes, sir.

11 Q Let's talk about November 21, 2006, the day of the
12 shooting, okay?

13 A Yes.

14 Q How did that day start?

15 A I woke up that morning about ten o'clock, had some
16 breakfast. Then about twelve o'clock I went and bought my
17 first hit of crack.

18 Q Where were you staying at on that particular day?

19 A At the house.

20 Q Who was at the house that day?

21 A Ms. Frost, Eugene Frost, and Beverly.

22 Q Did a point of time come when Frank Livingston came
23 later that day?

24 A Later that afternoon he did.

25 Q What happened once Frank came over?

Larry Brown - Direct examination
by Mr. O'Neill

1 A I got some dope from Frank.

2 Q what happened once the dope you got from Frank ran out?

3 A I asked him to let me borrow \$30. I'd pay him back
4 when I get my check, my unemployment check, which was about
5 a couple of days away from getting it. So, he let me have
6 \$30.

7 Q what were you going to do with the \$30 he gave you?

8 A Buy some dope with it.

9 Q Did there ever come a point in time where y'all left
10 Harper Street to go get some more dope?

11 A Yes, sir.

12 Q Did you take anything with you when you left Harper
13 Street?

14 A No, sir.

15 Q Did you have -- did you take a firearm, a gun with you
16 when you left Harper Street?

17 A Only that.

18 Q why did you take that?

19 A Because I was going to Barry. I know people have been
20 robbed up there before.

21 Q I guess at this time you were kind of running in and
22 out of the streets for lack of a better word?

23 A Yes, I was.

24 Q How did y'all leave Harper Street?

25 A In a van.

Larry Brown - Direct examination
by Mr. O'Neill

1 Q who all was in the van?

2 A Frank Livingston, Eugene Frost, and myself.

3 Q what has been talked about while y'all were in the van?

4 A who I was going to buy dope from.

5 Q Did anybody -- was there any talk about robbing anybody
6 in the van?

7 A No, sir.

8 Q No talk about stealing anything from anybody in the
9 van?

10 A No, sir.

11 Q where did y'all wind up going at when---

12 A when we pull into the parking lot and park the van
13 there was a young lady standing in the doorway, and we got
14 out of the van and she waved us over to her room, and I went
15 over to her room, talked to her. She asked me what we was
16 looking for. I told her I was looking for around a 30,
17 about a \$30 piece of crack.

18 Q why not go back to the room you had went to a week
19 earlier?

20 A Because I figured he might be gone by then. Drug
21 dealers don't usually stay in the room a week. They just
22 rent them out for a couple of days and leave. I figure he
23 might be gone and she can show us where to get some more
24 dope from.

25 Q Did she wind up showing you where you could get some

Larry Brown - Direct examination
by Mr. O'Neill

1 more dope from?

2 A She end up taking me back to the room where I once was
3 at a week ago.

4 MR. O'NEILL: Permission to approach?

5 THE COURT: Yes.

6 Q Larry, at some point y'all wound up getting to the Room
7 162?

8 A Yes.

9 Q When y'all walk into Room 162, is anybody running in,
10 anybody---

11 A No, sir.

12 Q Let's talk about what happens when you get to Room 162.
13 Okay?

14 A Yes, sir.

15 Q Who knocks on the door?

16 A Jackie.

17 Q What happens when she knocks on the door?

18 A Another lady opens the door.

19 Q At some point do y'all go in the room?

20 A Yes.

21 Q Who goes in the room first?

22 A Jackie.

23 Q What does Jackie do once she goes in the room?

24 A Stop by the table.

25 Q This table right here?

Larry Brown - Direct examination
by Mr. O'Neill

- 1 A Yes.
- 2 Q What does she do when she is, stops at this table?
- 3 A Talks to Tyrell.
- 4 Q What does she tell Tyrell?
- 5 A That guy wants to get a 30.
- 6 Q What does Tyrell do once Tyrell tells them that?
- 7 A Tyrell went up and got and went around the corner to
- 8 this corner.
- 9 Q What do you do when Tyrell goes around this corner?
- 10 A I went around the corner with him.
- 11 Q You get up and, and go around this corner as well?
- 12 A Right.
- 13 Q What does Eugene do?
- 14 Do you know?
- 15 A I left him standing in the doorway.
- 16 Q At this point can you see what's going on with the
- 17 other people in the room?
- 18 A No, I can't see around the corner.
- 19 Q Can't see around the corner here?
- 20 A Yes.
- 21 Q What happens when you and Tyrell are around this corner
- 22 here?
- 23 A He gave me a piece of dope that was supposedly a \$30
- 24 piece and I told him it wasn't and I give him my money and
- 25 then he told me that's all I'm getting and I told him to

Larry Brown - Direct examination
by Mr. O'Neill

1 give me my money back or give me some more dope.

2 Q How would you describe the conversation you and Tyrell
3 are having at this point?

4 A It was getting kind of heated up at the moment. He
5 start cussing me and then I told him I wasn't going nowhere
6 until he give me my money back or give me some dope.

7 Q What did he say to you?

8 A He told me to get the hell out of the room or he'd blow
9 my head off.

10 Q What did you say when he said that?

11 A I told him I wasn't going nowhere, just give me my dope
12 or my money either one.

13 Q What did he do when you say that?

14 A He reached into the drawer, the nightstand drawer for
15 the weapon.

16 Q Now, had you seen this weapon before?

17 A A week ago.

18 Q Now, how are you feeling at this point?

19 A I'm feeling threatened and angry. So, when he reached
20 and got, grabbed for the gun I pulled my gun and he grabbed
21 me and the gun went off.

22 Q And what happens after he grabbed you and the gun goes
23 off?

24 A He fell to the floor, both of us together, and it went
25 off again a few more times.

Larry Brown - Direct examination
by Mr. O'Neill

1 Q Do you know how many times it went off?

2 A No, sir.

3 Q What happens against -- ultimately what ends the tussle
4 between you and Tyrell?

5 A A loud banging at the door, the room door. So, I
6 kicked the window out and I got out the window.

7 Q And what did you do once you got out the window?

8 A I ran.

9 Q Why didn't you stay there until the police got there?

10 A I was afraid from buying dope.

11 Q Where do you wind up going after you leave the hotel
12 that night?

13 A I went back to my aunt's house.

14 Q That's your Aunt Ms. Frost's house?

15 A Yes, sir.

16 Q Right there on Harper Street?

17 A Yes, sir.

18 Q Why did you tell Ms. Frost that you had got into a
19 fight?

20 A Because I didn't want her to worry about what had
21 happened. I know how she was so concerned about me. So, I
22 just kept that from her.

23 Q Now, did you wind up cutting your hair off?

24 A She asked me about my hair. It was all broken,
25 dreadlocks was all broken, and broken and hanging down. So,

Larry Brown - Direct examination
by Mr. O'Neill

1 I told her I cut my hair.

2 Q You wound up cutting your hair?

3 A Yes.

4 Q Now, between that night and the day you got arrested,
5 where were you staying at?

6 A Where was I staying?

7 Q Yeah.

8 A In the house.

9 Q The same house you'd always stayed at?

10 A Yes.

11 Q Did you go out of town or anything like that?

12 A No.

13 Q Mr. Larry, why did you go to Room 162 that night?

14 A Buy some dope.

15 Q Did you go there with the intention to rob anybody?

16 A No, sir.

17 Q Did you go there with the intention to kill anybody?

18 A No, sir.

19 MR. O'NEILL: Beg the Court's indulgence, Your Honor.

20 (Pause.)

21 Q Nothing further at this time. Answer any questions
22 Ms. Campbell has for you, Larry.

23 CROSS-EXAMINATION

24 BY SOLICITOR CAMPBELL:

25 Q Mr. Brown, your testimony here today is you had bought

Larry Brown - Cross-examination
by Solicitor Campbell

1 dope from Mr. Williams on one prior occasion?

2 A Yes, I have.

3 Q On that occasion it just happened he had his gun in his
4 waistband and he went and put it in the nightstand?

5 A Yes, ma'am.

6 Q Did that scare you?

7 A Yes, it did.

8 Q Because why would he have the gun out in his waistband,
9 is that right?

10 It was scary to see that he had a gun?

11 A He was standing on the outside at that time when I
12 talked to him about the dope, and we walked back up to the
13 room and then he put his gun up.

14 Q Had you already gotten the dope outside?

15 A No, ma'am.

16 Q You had to go in his room to get the dope?

17 A Yes.

18 Q And that's when he put the gun up in front of you that
19 week before?

20 A Yes.

21 Q So, you knew he was armed and dangerous and he's a drug
22 dealer?

23 A Yes.

24 Q And, as you testified, this was a dangerous place, the
25 Grand Motel?

Larry Brown - Cross-examination
by Solicitor Campbell

- 1 A Yes, ma'am.
- 2 Q Because that's why you took your gun?
- 3 A Yes, ma'am.
- 4 Q Where did you get your gun?
- 5 A From Frank Livingston.
- 6 Q From Frank Livingston?
- 7 A Yes.
- 8 Q The friend of the family, Frank Livingston, gave you a
9 gun?
- 10 A Yes.
- 11 Q So, you could protect yourself when you had to go to
12 dangerous places to buy drugs?
- 13 A Yes, ma'am.
- 14 Q Frank Livingston didn't have a gun that day when he
15 went to the Grand Motel, did he?
- 16 A No, ma'am.
- 17 Q And Eugene Frost didn't have a gun that day when he
18 went to the Grand Motel?
- 19 A That day with me?
- 20 Q Yes, sir.
- 21 A No, ma'am.
- 22 Q So, you were the only one that happened to have the gun
23 that you needed to protect yourself, they knew it was
24 dangerous too, though, didn't they?
- 25 A Yes, they knew.

Larry Brown - Cross-examination
by Solicitor Campbell

1 Q But they didn't feel the need to have, have to arm
2 themselves prior to going, and just to purchase \$30 worth of
3 crack?

4 A No, ma'am.

5 Q And that day you mentioned that you got up around
6 10:00?

7 A Yes.

8 Q And you, I believe the testimony, don't let me put any
9 words in your mouth, Frank came over and how many times that
10 day prior to going to purchase the crack cocaine at the
11 Grand Motel had you smoked crack?

12 A How many times I smoked crack?

13 Q That day.

14 A That day. All day long. I'd say about five or six
15 times.

16 Q Five or six times.

17 Where did you get all that crack cocaine you smoked
18 five or six times that day?

19 A I got it from Frank.

20 Q You got it all from Frank?

21 A Yes.

22 Q Because he's a friend of the family?

23 A Yes.

24 Q And you still consider him a friend of the family?

25 A Do I consider him a friend of the family?

Larry Brown - Cross-examination
by Solicitor Campbell

- 1 Q Uh-huh. (Affirmative).
- 2 A Yes.
- 3 Q And that day Frank was nice enough to give you -- and
- 4 typically a hit is about \$30 worth?
- 5 A Yes, ma'am.
- 6 Q And the more you smoke crack the more you want crack,
- 7 is that right?
- 8 A Certain cases.
- 9 Q That's why you kept having to smoke it over and over
- 10 and over again that day because the more you smoke it the
- 11 more you want it?
- 12 A Yes.
- 13 Q In fact, it's to the point where you'll do almost
- 14 anything to get the crack cocaine you need to smoke?
- 15 A No, ma'am, I wouldn't do anything. I had a job. My
- 16 job laid me off. I had other -- to get other ways to come
- 17 up with money.
- 18 Q That day you said to get this final rock of crack
- 19 cocaine, or maybe this wasn't going to be the final one, you
- 20 had to borrow \$30 from your friend of the family, Frank?
- 21 A Yes.
- 22 Q And you didn't have any money because you said your
- 23 check wasn't in yet for you being laid off?
- 24 A Right.
- 25 Q And you didn't have any other sources of money other

Larry Brown - Cross-examination
by Solicitor Campbell

1 than Frank Livingston, and you had already smoked all his
2 crack because you had to buy more?

3 A Right.

4 Q And you had already borrowed money from him. So, you
5 were kind of at the end of your rope about money that you
6 needed to get the drugs.

7 A Well, I know Frank lend me \$30. Once I go spend that
8 \$30 that would be it and I had like a couple of days to go
9 before my check come in the mail. So, I can just chill out
10 and didn't worry about the crack.

11 Q So, it's not addictive like everyone says it is?

12 A Certain people just from their actions.

13 Q But that day you smoked crack cocaine five or six times
14 during the day; you, you had to get some more that night,
15 and that's why you had to go to the Grand Motel?

16 A Right.

17 Q And you just happened to think ahead of time, before
18 you went there ahead of time, before you went there in case
19 you got in trouble, is that right?

20 A Yes, in case someone tried to take the money, rob me,
21 try to give you some bad dope, give you something that look
22 like dope but it don't be dope, they take your money, and
23 won't give it back.

24 Q So, you took the gun to make sure you got good dope---

25 A Yes.

Larry Brown - Cross-examination
by Solicitor Campbell

1 Q ---that night because you needed to smoke it?

2 A Yes.

3 Q And no one else needed to be armed but you?

4 A Everybody was with me.

5 Q You said that you just happened to pull up at the Grand
6 Motel.

7 where did you usually buy your dope?

8 A I usually buy my dope from different places.

9 Q And do you always take a gun with you when you go to
10 buy dope in these different places?

11 A Sometimes, yes.

12 Q Sometimes?

13 A Yes.

14 Q Had you ever had to pull it out before to make sure you
15 didn't get the bad dope?

16 A No.

17 Q So, it was just on this one occasion you've ever had to
18 actually pull out your gun and shoot someone?

19 A That I had to pull out my gun, yes.

20 Q That day you just happened to see a young lady standing
21 in the front of the motel in the room?

22 A Yes, she stand in the doorway.

23 Q You asked her if she knew where you could buy some
24 dope?

25 A Yes, she asked me what I was looking for and I told her

Larry Brown - Cross-examination
by Solicitor Campbell

1 I was looking for some dope.

2 Q Okay. At that point she says she knows where you can
3 get some and she starts walking you towards the back of the
4 motel?

5 A Yes.

6 Q You've got Eugene Frost with you?

7 A Yes.

8 Q And as you're walking towards the back of the motel you
9 finally start to realize oh, my gosh, she's starting to walk
10 me back to that place where that dangerous drug dealer lives
11 that I've already bought drugs from a week earlier?

12 A Right.

13 Q So, at that point did you tell her I don't want to go
14 there, he's got a gun?

15 A No, ma'am, the only thing about that is it was raining
16 that night and he was the only one out that I know was
17 selling any dope or he was the only drug dealer there.

18 Q How do you know?

19 A Because wasn't nobody out in the hotel parking lot.

20 Q He wasn't out in the hotel parking lot?

21 A He wasn't either. That's why I thought he'd be done
22 gone. I thought he was gone at that time.

23 Q You thought he was gone at that time?

24 A Yes.

25 Q At that point you perceive what happens to be the exact

Larry Brown - Cross-examination
by Solicitor Campbell

1 same room where you had bought the drugs from a dangerous
2 drug dealer the week before who had a gun in his waistband
3 when you saw him?

4 A Right.

5 Q And you walk into the room?

6 A Right.

7 Q And as you walk into the room you go oh, my God, here's
8 a dangerous drug dealer because you testified you were
9 scared of him?

10 A Yes, I was.

11 Q So, at that point you say, oh, my God, this is a
12 dangerous drug dealer, I need to leave and buy drugs from a
13 dangerous drug dealer?

14 Did you -- that ever cross your mind?

15 A He had good dope and I know the dope was good.

16 Q He had good dope?

17 A Yes.

18 Q Because no matter what, you were going to get the dope
19 you needed to smoke that night?

20 A Yes.

21 Q That's why you had your gun?

22 A No.

23 Q You testified earlier that you had the gun to protect
24 yourself from the dangerous people. You knew he, according
25 to your testimony, was a dangerous person, but you were

Larry Brown - Cross-examination
by Solicitor Campbell

1 going to buy dope no matter what?

2 A Yes.

3 Q And you needed the dope and you needed a lot of dope
4 because you had already smoked dope five times that day?

5 A Yes, ma'am.

6 Q And you needed, in fact, more than just a 30 to take
7 you through the night?

8 A I needed what my money paid for to take me through the
9 night.

10 Q And your testimony here today -- and this happened
11 almost three years ago?

12 A Yes, ma'am.

13 Q Is that -- you're kind of the victim in this case?

14 A Excuse me.

15 Q You're the victim, right?

16 You just went there to make a transaction?

17 A Yes.

18 Q And who did you see pull out the gun first?

19 A I said Tyrell reached for a gun.

20 Q He reached for his gun?

21 A Yes.

22 Q And exactly where in the room did he reach for his gun?

23 A In the bedroom.

24 Q In the bedroom?

25 A Yes.

Larry Brown - Cross-examination
by Solicitor Campbell

1 Q And it's up on that diagram -- I think you showed your
2 lawyer that, didn't you?

3 A Yes.

4 Q And he reached for the gun.

5 was the gun laying on top of the TV?

6 A It was in the drawer, the nightstand drawer.

7 Q Was he about to get the gun out?

8 A No, ma'am.

9 Q Was he able to open the drawer?

10 A Yes, that's when I saw the gun.

11 Q So, now your testimony is he was able to open the
12 drawer and that he was actually reaching for that?

13 A Yes.

14 Q And that's when you pulled out your gun?

15 A Yes, ma'am.

16 Q And that's after y'all had an argument about how much
17 dope, right?

18 A Right.

19 Q And you told him you weren't leaving until you got the
20 dope you think you deserved---

21 A Right.

22 Q ---is your testimony?

23 That's when he went and said something to you and then
24 reached for the gun?

25 A Yes, ma'am.

Larry Brown - Cross-examination
by Solicitor Campbell

- 1 Q So, you pulled out your gun.
2 was he able to grab his gun?
3 A No, ma'am.
4 Q And you mentioned that at that point a tussle starts.
5 How did the tussle start?
6 A He grabbed me.
7 Q He grabbed you?
8 A Yes, ma'am.
9 Q So, in response to you pulling out a gun when he is
10 reaching, and he was almost -- I mean it must have been he
11 had his hand almost close enough to touch that gun for you
12 to pull yours out?
13 A Yes.
14 Q But he didn't just -- as he says, you pull out your
15 gun, he didn't grab his gun like he could have, he tackled
16 you---
17 A Right.
18 Q ---as you had your gun in your hand?
19 A Right.
20 Q Because at that point he didn't want to have a gun to
21 battle your gun, he just tackled you?
22 A Yes, ma'am.
23 Q Then you said that y'all tussled.
24 where all in the room did y'all end up?
25 where did it start?

Larry Brown - Cross-examination
by Solicitor Campbell

- 1 You tell me according to you.
- 2 A Next to the dresser drawer.
- 3 Q Right here where he could have easily reached in here
- 4 and the drawer was opened according to you, right?
- 5 A He opened it.
- 6 Q He opened it?
- 7 A Yes.
- 8 Q But he was never able to get that gun because instead
- 9 he tackled you?
- 10 A Right.
- 11 Q And then y'all start tussling?
- 12 A Start tussling.
- 13 Q When you're tussling, how close are y'all?
- 14 A Wrapped up.
- 15 Q Wrapped up?
- 16 A Yeah, wrestling.
- 17 Q Wrestling.
- 18 Closer than you and I are?
- 19 Actually touching physically?
- 20 A Yes, ma'am.
- 21 Q And you're wrapped around him and y'all are fighting?
- 22 A Yes, ma'am.
- 23 Q And the gun is in your hands?
- 24 A Yes.
- 25 Q And you said it just went off?

Larry Brown - Cross-examination
by Solicitor Campbell

- 1 A Yes, ma'am.
- 2 Q Over -- how many times did it go off?
- 3 A I'm not sure.
- 4 Q But y'all were very close, right?
- 5 A Right.
- 6 Q Was he trying to get the gun from you?
- 7 A Yes, ma'am.
- 8 Q Did he actually have his hands on the gun?
- 9 A I'm not sure.
- 10 Q But it was so close it was in-between you and y'all
- 11 were touching.
- 12 So, the gun would actually be touching you and touching
- 13 him---
- 14 A Yes.
- 15 Q ---and it went off and did you get shot?
- 16 A No, ma'am. We fell to, to the floor.
- 17 Q You fell to the floor and it went off?
- 18 A Again.
- 19 Q Again---
- 20 A Yes.
- 21 Q ---and again and is he still fighting you?
- 22 A Yes.
- 23 Q And it went off again?
- 24 A Yes.
- 25 Q And he's still fighting you?

Larry Brown - Cross-examination
by Solicitor Campbell

- 1 A Yes, ma'am.
- 2 Q And it went off again?
- 3 A Yes, ma'am.
- 4 Q And he's still fighting you?
- 5 A Yes.
- 6 Q And it went off again?
- 7 A I don't know how many times it went off, but---
- 8 Q Eight times. And literally the gun is just stuck
- 9 between y'all touching him and he's trying to grab the gun
- 10 with his hands?
- 11 A Yes.
- 12 Q But you're the one that had your hand on the trigger?
- 13 A Yes.
- 14 Q And you just shot him over and over and over and over
- 15 and over and over and over and over and over again in
- 16 self-defense?
- 17 A Yes, ma'am.
- 18 Q And you managed to shoot him six times?
- 19 He was actually trying to get away from you down the
- 20 hall?
- 21 Do you remember that?
- 22 A No, ma'am.
- 23 Q Then your testimony is, is that you then decided that
- 24 you -- you heard a banging at the door.
- 25 That's the only thing that happened it---

Larry Brown - Cross-examination
by Solicitor Campbell

- 1 A Yes.
- 2 Q And at that point -- and the banging at the door and it
3 stopped him.
- 4 Did he stop fighting you at that point or did you just
5 stop shooting at that point?
- 6 A We stopped fighting at that point.
- 7 Q You stopped fighting at that point?
- 8 A Yes, ma'am.
- 9 Q Did you still have the gun?
- 10 A Excuse me?
- 11 Q Did you still have the gun?
- 12 A Yes.
- 13 Q Were you relieved that help had come?
- 14 A Yes.
- 15 Q So, in relief that help had come, did you think that
16 might be the police at the door?
- 17 A Might have been.
- 18 Q So, luckily someone's knocking at the door. He stops
19 fighting when he hears the knocks and at that point you've
20 already shot him six times and luckily people are there to
21 help you, right?
- 22 A Right.
- 23 Q So, your response to that was to jump out the window?
- 24 A Yes, ma'am.
- 25 Q Why didn't you wait for the help to come in?

Larry Brown - Cross-examination
by Solicitor Campbell

- 1 A Because I'm afraid.
- 2 Q You were afraid?
- 3 why were you afraid?
- 4 A Of what had happened.
- 5 Q In fact, you even cut yourself going out the window,
- 6 you were in such a hurry to get out.
- 7 where was Eugene the whole time this was going on?
- 8 A I don't know. I didn't see him. He was tussling
- 9 and---
- 10 Q Do you know why he was holding the door shut that
- 11 night?
- 12 A No, I don't.
- 13 Q Do you know why he would tell you to get the money?
- 14 A No, he didn't.
- 15 Q He didn't?
- 16 You're sure about that?
- 17 A I'm sure.
- 18 Q At that point you ran home and when you confronted
- 19 Ms. Frost, who's like a mother to you, she raised you?
- 20 A Yes, ma'am.
- 21 Q You told her you'd had a fight because you didn't want
- 22 her to worry, is that right?
- 23 A Yes.
- 24 Q And that night you remember this all clearly just like
- 25 you told this jury details.

Larry Brown - Cross-examination
by Solicitor Campbell

1 You remember everything clearly, right?

2 A Some things.

3 Q So, you don't remember what happened that night?

4 A I do.

5 Q You do. If you had only smoked crack five or six times
6 that day, and you have a clear recollection of that happened
7 that night, do you know -- let me ask you this.

8 When you walked in there and he went over where his
9 stash of drugs were, you told him that wasn't enough, so
10 obviously you saw that he had more drugs?

11 A Yes.

12 Q Where was he keeping the drugs?

13 A Right there in plain view on the nightstand, dresser
14 drawer.

15 Q And could you see whether or not he had any money on
16 him?

17 A No.

18 Q Okay. Did you see any money on the dresser?

19 A No.

20 Q The same dresser -- where did you see it?

21 A The dresser.

22 Q The same dresser where the TV was?

23 A Yes.

24 Q Did you see more crack cocaine?

25 A No.

Larry Brown - Cross-examination
by Solicitor Campbell

- 1 Q You just testified you knew he had more because you saw
2 it in plain view. So, you would have to be able to see it
3 to say that.
- 4 A I saw the bag.
- 5 Q You saw the bag with the drugs?
- 6 A Yeah, but I didn't know how much was in there.
- 7 Q Do you know what happened to the bag of drugs?
- 8 A No, ma'am.
- 9 Q You didn't grab that as you were going out the window?
- 10 A No, I didn't.
- 11 Q So, all you left with was your crack, your rock, right?
- 12 A Yes.
- 13 Q And the only other thing -- you had already given him
14 the \$30?
- 15 A Yes.
- 16 Q And when he got the \$30, where did he put it?
- 17 A I didn't see him put it nowhere.
- 18 Q So, you don't know what happened to the \$30?
- 19 He didn't put it in his pocket?
- 20 A I didn't pay any attention.
- 21 Q During the struggle, it didn't end up on the ground?
- 22 A I don't know.
- 23 Q But the \$30 you didn't take either when you left?
- 24 A No.
- 25 Q Mr. Brown, you've been struggling with drugs for a long

Larry Brown - Cross-examination
by Solicitor Campbell

1 time?

2 A Yes, ma'am.

3 Q You're aware robbing drug dealers is an easy way to
4 make money?

5 A No, I'm not aware of that.

6 Q You aren't aware of that?

7 A No.

8 Q Let me ask you this then, do drug dealers typically
9 have large amounts of cash on them?

10 A Some do I guess.

11 Q And do drug dealers typically have large amounts of
12 drugs on them or within their disposal?

13 A Some do I guess.

14 Q It would make sense those would be the types of things
15 you need to support your habit, and you've been laid off and
16 you weren't getting a check for a couple of days at least,
17 right?

18 Let me ask you this, that night you were high, you had
19 been smoking crack all day, you went home, the next day you
20 decided to shave your head, why was that?

21 A Back during the fight it was some dreads was broken
22 off, some was broken. So, I decided to cut it all off.

23 Q So, incidentally, because of what happened to you in
24 the fight, you decided to cut it all off.

25 were you aware the news was running descriptions of the

Larry Brown - Cross-examination
by Solicitor Campbell

1 people that had been, the shooter and the other person in
2 the motel?

3 A No, I'm not aware.

4 Q It wasn't because there was a description put out by
5 the sheriff's department describing a man stating your
6 description with dreads that you cut your hair off?

7 A No, I'm not aware of that.

8 Q The next day when you woke up did you sober up?

9 A Yes.

10 Q Let me back up one second.

11 That night when you got back to the house, you told Ms.
12 Frost what happened and then Eugene came home too, didn't
13 he?

14 A I didn't see him until that morning.

15 Q Do you recall Ms. Moyd being there?

16 A Yes.

17 Q And Ms. Moyd said that y'all came in after y'all had
18 been back out around 2:00 in the morning?

19 A Yes.

20 Q So, where did you and Eugene -- you were traumatized by
21 this?

22 A Yes, I was.

23 Q Where did you and Eugene go that night after you had
24 been traumatized because you had to shoot a man six times?

25 A We went for a walk.

Larry Brown - Cross-examination
by Solicitor Campbell

- 1 Q Did you smoke your crack?
- 2 A No, ma'am.
- 3 Q what happened to your crack?
- 4 A I lost it.
- 5 Q You lost it?
- 6 A Yes, ma'am.
- 7 Q So, y'all didn't go out?
- 8 Eugene wanted drugs too, didn't he?
- 9 A Yes.
- 10 Q So, y'all didn't go out and smoke the crack y'all had
- 11 gotten that night. You just went out to walk.
- 12 A Yes.
- 13 Q where did you walk?
- 14 A We walked down the street in the neighborhood.
- 15 Q what did y'all talk about?
- 16 A Talked about what had happened.
- 17 Q what did y'all decide after you talked?
- 18 A we decided to stay to the house because we know sooner
- 19 or later they're going to come for us because I know I had
- 20 cut myself going out the window. So, I knew they was going
- 21 to come for us sooner or later and we just waited for him.
- 22 Q So, your testimony here is you just waited for them at
- 23 the house to come get you?
- 24 who's them?
- 25 A The police.

Larry Brown - Cross-examination
by Solicitor Campbell

1 Q But that night your cousin Doris came over and you went
2 out partying with her, didn't you?

3 A No.

4 Q You didn't go out partying with her?
5 Did you just go walking?

6 A Just went walking.

7 Q So, you and Doris and Eugene just went out for some
8 walks that night?

9 A Yes.

10 Q So, you knew, at that point, you had shot him?

11 A Yes.

12 Q The next day it was all over the news?

13 A Yes.

14 Q You became aware of that, and you knew what had
15 happened to you.

16 So, the next day you sobered up, that's when you went
17 to the police?

18 A No, ma'am.

19 Q Why not?

20 A Because I was afraid to.

21 Q Why were you afraid?

22 A Because of what had happened.

23 Q Why would you be afraid if you were the victim in this
24 case?

25 A I don't know.

Larry Brown - Cross-examination
by Solicitor Campbell

1 Q You don't know?

2 A (Witness nods negatively.)

3 Q You don't know?

4 A No, ma'am.

5 Q As so, as you thought about it that Wednesday, you were
6 afraid.

7 So, that Thursday did you go to Ms. Frost, who you
8 considered like a mother, and tell her what happened to you
9 and get advice?

10 A No, ma'am.

11 Q Did you call the police to let them know what had
12 happened to you?

13 A No, ma'am.

14 Q You were afraid of the police?

15 A Yes, ma'am.

16 Q But you just testified earlier, when you heard the
17 knock at the door, you thought it was the police and you
18 were relieved that help was there even though you then
19 jumped out the window?

20 A Yes.

21 Q And it just happens the drugs were never found there at
22 the scene and the money was never found there at the scene?

23 A Yes.

24 Q And when you went out the window you took your gun with
25 you?

Larry Brown - Cross-examination
by Solicitor Campbell

- 1 A Yes, ma'am.
- 2 Q where is the gun?
- 3 A I threw it away.
- 4 Q why did you throw it away?
- 5 A Because I was afraid of it.
- 6 Q You were afraid of the gun?
- 7 A Afraid of having it in my possession.
- 8 Q But this was the gun you brought to protect yourself,
- 9 right, or that Frank gave you?
- 10 I apologize.
- 11 A Yes.
- 12 Q It was Frank's gun, but you threw it away?
- 13 A Yes.
- 14 Q where did you throw it?
- 15 A I was walking along the road going home that night. I
- 16 went through the graveyard and I threw it away in the
- 17 graveyard.
- 18 Q So, that night you had just been traumatized because
- 19 you had been the victim of an assault and had to jump out
- 20 the window when the police came to save you.
- 21 So, at that point, the gun that had saved you, you
- 22 threw in the cemetery so the police couldn't find it?
- 23 A I don't know. It was woods, graveyard. I just threw
- 24 it.
- 25 Q You wanted to get rid of that gun right away?

Larry Brown - Cross-examination
by Solicitor Campbell

1 That was important?

2 A Yes.

3 Q And you did get rid of that gun right away.

4 That wednesday you knew the police were looking for a
5 person who had shot and killed someone at the Grand Motel?

6 A Yes.

7 Q So, by then, at least you know that the man you shot is
8 dead?

9 A Yes.

10 Q So, Thursday, did you turn yourself in?

11 A No, I was thinking about it.

12 Q You were thinking about it?

13 A Yes.

14 Q So, Thursday did you call the police up and say listen,
15 you need to know what really happened?

16 A No.

17 Q So, that Friday you're still thinking about it?

18 A Yes.

19 Q And at that point are you still smoking crack cocaine
20 that might cloud your judgment?

21 A No, ma'am, I didn't smoke no crack that day.

22 Q That Friday?

23 A That Friday.

24 Q What about that wednesday and Thursday?

25 A No, I didn't smoke none that day.

Larry Brown - Cross-examination
by Solicitor Campbell

1 Q You were able to give it up?

2 A For a couple of days.

3 Q So, by that weekend though the police haven't come and
4 found you?

5 A Excuse me?

6 Q The police haven't come to find you --

7 A No.

8 Q -- even though you knew they were going to come and you
9 haven't, you've been thinking about calling them, but you
10 haven't called them, right?

11 A Right.

12 Q So, by that weekend, it's the weekend, so, you're
13 smoking crack cocaine again?

14 A Yes.

15 Q So, where did you get your crack this time?

16 A I got it from Frank.

17 Q From Frank.

18 So, you did see Frank after all this happened?

19 A He came over about a week later.

20 Q About a week later. That weekend wouldn't be quite a
21 week later.

22 So, where did you get your crack that weekend?

23 A School House Road.

24 Q School House Road?

25 A Yes.

Larry Brown - Cross-examination
by Solicitor Campbell

- 1 Q Is that a dangerous area?
- 2 A Yes.
- 3 Q Were you armed?
- 4 A No.
- 5 Q But you knew now more than ever that drug dealers can
- 6 be dangerous people, but you needed your crack cocaine?
- 7 A Yes.
- 8 Q Because that's how strong an addictive drug it is,
- 9 you'll do anything for crack cocaine unfortunately, is that
- 10 right?
- 11 A No, not anything.
- 12 Q That weekend, Saturday, Sunday, you smoked crack
- 13 cocaine?
- 14 A Yes.
- 15 Q And during the course of that weekend, at any point,
- 16 did you think, hey, I need to tell the police what happened
- 17 to me, it is important they know the real story?
- 18 A Yes.
- 19 Q You contacted them?
- 20 A No.
- 21 Q And at this point you've changed your appearance,
- 22 you're at your aunt's house, you're smoking crack cocaine,
- 23 and then they show up on that Monday and you said you knew
- 24 they were coming, right?
- 25 A Yes.

Larry Brown - Cross-examination
by Solicitor Campbell

- 1 Q And when they came in the house that Monday morning,
2 when Investigator Godfrey, Investigator Preston, Captain
3 Smith came in the house, what did you think?
- 4 A What did I think?
- 5 Q Uh-huh. (Affirmative).
- 6 A I didn't think anything.
- 7 Q Well, at the point when they placed you in handcuffs
8 and said you're under arrest for murder, what did you tell
9 them?
- 10 A I didn't tell them anything.
- 11 Q Why not?
- 12 A I wanted to talk to a lawyer.
- 13 Q Captain Smith, you remember talking to him?
14 He put you in his car?
- 15 A Yes.
- 16 Q And he advised you of your rights?
- 17 A I don't remember that.
- 18 Q You're disputing that he advised you of your rights?
19 Were you smoking crack cocaine that morning?
- 20 A No, I wasn't.
- 21 Q So, were you fairly sober that morning?
- 22 A Yes, I was.
- 23 Q Do you recall Captain Smith, while this officer right
24 here was present, advising you of your rights?
- 25 A No, I don't recall that.

Larry Brown - Cross-examination
by Solicitor Campbell

1 Q So, they didn't do that?

2 A I don't remember.

3 Q Do you recall Captain Smith asking you the question,
4 let me make sure I get it right, that you were being
5 arrested and it was about a shooting incident in the motel
6 last Tuesday?

7 A Yes.

8 Q That rang a bell, didn't it?

9 A Yes.

10 Q So, at that point you told them what had happened to
11 you?

12 MR. O'NEILL: Objection, Your Honor.

13 WITNESS: No.

14 MR. O'NEILL: We have a matter of law we need to take
15 up.

16 THE COURT: Y'all just approach.

17 (Whereupon, a bench conference was held out of the
18 hearing of the jury at this time.)

19 THE COURT: Ladies and gentlemen of the jury, I'm going
20 to have to send you out to take up a matter of law. I
21 remind you not to discuss the case.

22 (Whereupon, the following takes place outside the
23 presence of the jury.)

24 THE COURT: All right. Defense.

25 MR. O'NEILL: Your Honor, at this time I renew my

Larry Brown - Cross-examination
by Solicitor Campbell

1 objection and ask for a mistrial based on the Doyle
2 violation, based specifically on State v. Hill, which I
3 passed up to Your Honor. I think it is clear by State v.
4 Hill, once Mr. Brown invokes his -- not -- I take that back.
5 Once Mr. Brown is given his Miranda rights, which is clearly
6 the question of concern in this case, Mr. Campbell asks him
7 after his -- Captain Smith had you in the car, read you your
8 rights, you never told him what happened. That is a clear
9 violation. He has a right to remain silent.

10 State v. Hill is specifically on point. The defendant
11 in that case was claiming self-defense. The question that
12 the solicitor asked is that question was that you didn't
13 tell Terry Harvard, which is the officer that night, it was
14 self-defense, did you? The Court, in that case, there was a
15 clear Doyle violation and required reversal and this is the
16 exact same situation.

17 SOLICITOR CAMPBELL: Your Honor, if I may clear it up
18 for the record?

19 THE COURT: Okay.

20 SOLICITOR CAMPBELL: The testimony in the record is --
21 and I limited it to just the questions where he might answer
22 and the testimony in the record is that, is that on the --
23 when Captain Smith asked him that question, he said I don't
24 know anything about it. I was at home that night. He did
25 not make a statement. I am then allowed to impeach him with

Larry Brown - Cross-examination
by Solicitor Campbell

1 that statement.

2 MR. O'NEILL: Your Honor, State v.---

3 THE COURT: Hold on. Let's clarify if I, where we are
4 with the statement.

5 Is it a post-Miranda?

6 MR. O'NEILL: Post-Miranda.

7 SOLICITOR CAMPBELL: It's the one -- I'm not referring
8 to a question when he was silent. The question is when he
9 was asked by Captain Smith, this is about an incident, a
10 shooting that occurred on Tuesday night at the motel. He
11 answered I don't know anything about it. I was at home and
12 that's the limited inquiry I'm going into.

13 MR. O'NEILL: She can ask him whether or not he said
14 that. She can't ask him did he tell this story back then.
15 That's what she said.

16 SOLICITOR CAMPBELL: If she wants him to rephrase it
17 I'll rephrase it.

18 THE COURT: Hold on one second. He had not, at this
19 point, answered it, is that correct?

20 The defense---

21 MR. O'NEILL: I don't want the State to -- I'm asking
22 the Court right now for a mistrial because of the Doyle
23 violation.

24 THE COURT: But the defendant has not answered the
25 question, is that correct?

Larry Brown - Cross-examination
by Solicitor Campbell

1 MR. O'NEILL: Correct, Your Honor. But it is the
2 question that's impermissible and warrants a mistrial.

3 THE COURT: I want to make sure that I'm clear. We're
4 saying that that was post-arrest and post-Miranda.

5 SOLICITOR CAMPBELL: Yes, ma'am.

6 MR. O'NEILL: Yes, Your Honor.

7 THE COURT: And then state what the question again is.

8 SOLICITOR CAMPBELL: He is asked the question is
9 this -- you are -- something about -- let me get to the
10 quote. This is about the shooting incident at the motel
11 last Tuesday, and he answers, and it's in the record, he
12 didn't know anything about it. He was at home.

13 THE COURT: So, once he's been advised of his rights,
14 the question comes after that?

15 SOLICITOR CAMPBELL: And then he answers it. I'm not
16 asking him any questions where he was silent before. We've
17 already ruled on those.

18 THE COURT: Your point is once he's been advised of his
19 rights, as long as, as that statement -- once he's advised
20 of his right, and as long as he does not invoke---

21 SOLICITOR CAMPBELL: Or remain silent.

22 THE COURT: ---or remain silent, I can impeach him
23 about his answer.

24 MR. O'NEILL: Can't---

25 THE COURT: Hold on. I'm trying to get her argument

Larry Brown - Cross-examination
by Solicitor Campbell

1 done.

2 MR. O'NEILL: That's not done---

3 THE COURT: Hold on. Post-arrest and Miranda, when the
4 defendant does not invoke his right to remain silent or
5 right to have counsel, and then Captain Smith asked him a
6 question and your point is that he's voluntarily answering?

7 SOLICITOR CAMPBELL: That's the testimony in the
8 record.

9 THE COURT: That's where they are with it. So, it's
10 not a comment on -- I'm just saying what her argument is.

11 MR. O'NEILL: That's not the issue, Your Honor. That's
12 not my objection. So, I don't want you to go down that line
13 of inquiry because that's not even my objection.

14 THE COURT: Okay. You're saying that once, once he
15 advises of, of the right, then he asks him a question and
16 then, if a defendant voluntarily answers, then that's where
17 she's saying we have the jury issue as to whether---

18 SOLICITOR CAMPBELL: Case law that's clear on that.

19 THE COURT: Jury issue as to whether or not it's
20 voluntary, but you're saying what then?

21 MR. O'NEILL: My argument, Your Honor -- the issue in
22 this situation is, first of all, she's not impeaching him
23 because she's not even asking what the, what would state, be
24 made. You can't impeach before you actually confront him
25 with the statement and allow him to either deny or say that

Larry Brown - Cross-examination
by Solicitor Campbell

1 he made the statement. He hasn't even done that. So, it's
2 not improper impeachment.

3 Second, Your Honor, she can't say -- her question was
4 not what did you say. My question was you didn't say
5 anything about the shooting.

6 SOLICITOR CAMPBELL: I was going to follow-up -- the
7 next question was you told him you were home that night.

8 THE COURT: It's -- the first question, that's improper
9 and warrants a mistrial?

10 SOLICITOR CAMPBELL: If he had not answered, Your
11 Honor, he's correct under your previous ruling. He did
12 answer the question, according to the testimony, and I
13 limit -- I'm not going into any of the questions he didn't
14 answer. I'm limiting it to when he made statements. I am
15 allowed to impeach him with prior statements.

16 MR. O'NEILL: She can't impeach if she didn't give him
17 the chance to either admit or deny the statement. It's not
18 inappropriate at that point.

19 THE COURT: For impeachment purposes he would have to
20 be given the opportunity to say what he said, and if there
21 is a dispute about that, you could bring forward---

22 MR. O'NEILL: But she has not done that.

23 THE COURT: Okay. Right now, before you even get
24 there, the issue is about once he's been Mirandized and then
25 he does not invoke his right to remain silent, right to

Larry Brown - Cross-examination
by Solicitor Campbell

1 counsel---

2 MR. O'NEILL: The invoking part does not matter. I'm
3 concerned about -- invoking of rights is immaterial as it
4 relates to Doyle. Doyle is concerned about the giving of
5 Miranda rights and the defense's right not to say anything.

6 THE COURT: Absolutely but. Once he says something,
7 that's where---

8 MR. O'NEILL: She's asking whether or not he told this
9 story before. He has no duty to tell this story at the time
10 he's talked to Stan Smith because he's been given the right
11 to remain silent.

12 THE COURT: Because your point is she can only question
13 him about the statement that was said, not what else you
14 didn't say.

15 SOLICITOR CAMPBELL: I will be glad to rephrase that.

16 MR. O'NEILL: It is too late at this point.

17 THE COURT: He didn't answer the question.

18 MR. O'NEILL: He's not concerned -- it's her question
19 that implies that somehow because he didn't tell this jury
20 before that is not true.

21 SOLICITOR CAMPBELL: They know he was asked the
22 question. They heard the testimony.

23 MR. O'NEILL: That's not the issue, Your Honor. The
24 issue is whether or not---

25 THE COURT: Let me just take this real quick. I hear

Larry Brown - Cross-examination
by Solicitor Campbell

1 you.

2 MR. O'NEILL: The issue is whether or not, by her
3 questioning, it is an inference that -- because he didn't
4 tell this story before that this story is not true because
5 he didn't tell us on the time when he came in contact with
6 Stan Smith. That is the inference and that's the inference
7 that Doyle is concerned about. That's the inference why the
8 defense in these cases got cases reversed and why the
9 Supreme Court said this is a Doyle violation.

10 THE COURT: Let me just look at the case.

11 (Pause.)

12 MR. O'NEILL: Your Honor, State v. Hill says the
13 prosecution attempted to show in self-defense, if he had
14 acted in self-defense. He would have shown to the Courts
15 because the state directly tied to their defense could not
16 be -- therefore, reverse conviction remands for a new
17 trial.

18 SOLICITOR CAMPBELL: He's correct. If he had been
19 silent is---

20 MR. O'NEILL: Her question implies that. Her
21 question was you never told Stan Smith this story.

22 SOLICITOR CAMPBELL: Because the defendant is in the
23 record. He never told them another sorry.

24 THE COURT: You were going to say something else?

25 SOLICITOR CAMPBELL: I got a case on point, State

Larry Brown - Cross-examination
by Solicitor Campbell

1 versus Kinzy, a little different situation because in this
2 case it was actually a prior Miranda violation, but they
3 were allowed to impeach him with the statement because he
4 allowed him to impeach at trial.

5 MR. O'NEILL: I'm saying a Miranda violation is a
6 whole---

7 SOLICITOR CAMPBELL: I'm not saying the Miranda
8 violations had anything to do with it. Just saying he made
9 a statement to the police and it's proper for him to be
10 impeached with the prior statement.

11 MR. O'NEILL: I agree she can ask him whether or not
12 she said I was at home that night and if she didn't -- you
13 can say she didn't bring Stan Smith up, but that's not what
14 she said.

15 THE COURT: I think where we are, I was explaining
16 yesterday post-arrest and post-Miranda warnings, once a
17 defendant remains silent, that is an indication that he has
18 revoked his right to silence. Any statement he has made
19 there is an argument about whether it was voluntary or not,
20 and that's why we have a jury charge that indicates that
21 still has to prove it was voluntary, but the only thing that
22 I believe the State can cross-examine is the actual
23 statement made after that post-arrest registration, the
24 post-Miranda.

25 SOLICITOR CAMPBELL: That was the statement that was

Larry Brown - Cross-examination
by Solicitor Campbell

1 made in response to this question.

2 THE COURT: Right, and so, in other words, to impeach,
3 he had, has to be given an opportunity to talk about that
4 statement.

5 MR. O'NEILL: Your Honor---

6 THE COURT: I am going to find that I do not believe a
7 mistrial is appropriate this, at this point. I can offer a
8 curative instruction in that the last state, question by the
9 State is to be disregarded and that they are to give it no
10 weight and no consideration and that we will proceed on with
11 a cautionary ruling to the State that---

12 SOLICITOR CAMPBELL: Your Honor, so I can be sure, I
13 would then want to go back and say do you remember Captain
14 Smith -- I'll say Captain Smith asked you so and so and you
15 told him you were at home that night, whatever the statement
16 that is, that's in his report, yes.

17 THE COURT: But you can -- well, better thing to ask --
18 well, I can't tell you how to phrase it, but the thing is it
19 can only be that statement, whether you told him what it is
20 in his records or whether you ask him what he said, but it
21 can only be limited to that statement if you get what I'm
22 saying.

23 SOLICITOR CAMPBELL: Yes, I'm not going any further
24 with it.

25 THE COURT: Either you open it for him to say it or

Larry Brown - Cross-examination
by Solicitor Campbell

1 cross-examine, put the words in his mouth and let him say
2 yes or no. But you open it to that statement, not anything
3 he had to say because he has the right to remain silent, but
4 it's limited to that statement.

5 MR. O'NEILL: I wanted to make sure the only question
6 is, with a mistrial, the only---

7 THE COURT: Respectfully. Absolutely.
8 Jurors please.

9 (Whereupon, the following takes place within the
10 presence of the jury panel.)

11 THE COURT: Ladies and gentlemen of the jury, I had to
12 take up a matter of law with counsel. I ask you to totally
13 disregard the last statement by the prosecution. It is to
14 be given no consideration and no weight.

15 Thank you.

16 SOLICITOR CAMPBELL: Thank you. I'll rephrase

17 CONTINUED CROSS-EXAMINATION

18 BY SOLICITOR CAMPBELL:

19 Q Mr. Brown, you remember being in the car with Captain
20 Smith and Investigator Preston?

21 A Yes.

22 Q We'll get past the advice of rights.

23 Do you remember him asking you the question or telling
24 you that this was about the shooting incident last Tuesday
25 at the Grand Motel?

Larry Brown - Cross-examination
by Solicitor Campbell

1 A Yes.

2 Q And you told him you didn't know anything about it,
3 that you were at home?

4 A Yes.

5 Q And that's what you told him?

6 A Yes.

7 Q Do you remember him asking if you wanted to see the
8 motel?

9 A Yes.

10 Q And you told him you didn't care?

11 A I don't remember that.

12 Q Do you remember asking him why are we going here and
13 finally am I going to jail?

14 A I asked him whether I was under arrest and when I'm
15 going to jail.

16 Q Why did you ask him that?

17 A Because he had me in handcuffs.

18 Q You have been in court this week?

19 A Excuse me?

20 Q I withdraw that.

21 Beg the Court's indulgence.

22 (Pause.)

23 Q Do you recall Captain Smith asked you also about when
24 you had cut off your dreadlocks?

25 Do you recall asking him that?

Larry Brown - Cross-examination
by Solicitor Campbell

1 A Yes.

2 Q You told him you had cut them off a month ago?

3 A Yes.

4 Q Why did you tell him that?

5 A Because I didn't know, because I didn't want him to
6 know that when I cut them off, the day I cut them off.

7 Q Why didn't you want him to know the day you cut them
8 off?

9 A I don't know.

10 SOLICITOR CAMPBELL: That's all I have.

11 MR. O'NEILL: Just a few things.

12 REDIRECT EXAMINATION

13 BY MR. O'NEILL:

14 Q Why did you pull your gun out that night?

15 A Excuse me?

16 Q Why did you pull your gun out that night?

17 A Because he was reaching for his gun.

18 Q Why did you go back to that same room?

19 A Because I know he had good dope.

20 Q You were going there to buy drugs from him?

21 A Yes, sir.

22 Q Were you going there to take drugs from him?

23 A No, sir.

24 Q Were you going there to take money from him?

25 A No, sir.

Larry Brown - Redirect examination
by Mr. O'Neill

1 Q What did he say right before you reached for his gun?

2 A What did he say?

3 Q Yeah.

4 What did he say right before you reached for his gun?

5 A Told me he was going to blow my fucking head off.

6 MR. O'NEILL: That's all I have.

7 THE COURT: Any recross?

8 SOLICITOR CAMPBELL: None.

9 THE COURT: Sir, you may step down.

10 MR. O'NEILL: Your Honor, at this time the defense
11 rests.

12 THE COURT: Okay. Ladies and gentlemen, I'm going to
13 ask you to step to your jury room for a matter and remind
14 you not to discuss the case. I have to take up some legal
15 matters with them and we'll be with you shortly.

16 (Whereupon, the following takes place outside the
17 presence of the jury panel.)

18 THE COURT: Court's ready to proceed with any legal
19 matters.

20 MR. O'NEILL: I renew my mistrial motion I made earlier
21 and my directed verdict motion I made at this time. Even in
22 the light most favorable to the State, with Mr. Brown's
23 testimony included, I think they have not elicited enough
24 evidence to go to the jury on the charges of murder,
25 specifically on the element of malice, and attempted armed

1 robbery as well.

2 THE COURT: State.

3 SOLICITOR CAMPBELL: Your Honor, we think that at this
4 point it is, what it is and with their defense should go to
5 the jury.

6 THE COURT: Motion respectfully denied. There is
7 evidence, evidence on these elements of those various
8 crimes.

9 Does the State intend to have any reply testimony?

10 SOLICITOR CAMPBELL: No, ma'am.

11 THE COURT: All right. Let's discuss the jury charges.

12 MR. O'NEILL: Your Honor, I think voluntary
13 manslaughter is an appropriate charge and also involuntary
14 manslaughter is an appropriate charge.

15 THE COURT: Let's start with the involuntary.
16 What do you see in the appropriateness there?

17 MR. O'NEILL: I think I passed up State v. Casey to
18 Your Honor yesterday, 305 S.C. 445.

19 THE COURT: One moment.

20 (Pause.)

21 THE COURT: Madame Clerk, hand them the chart. The one
22 I'm handing you does not have voluntary or involuntary in
23 it. We haven't put that together yet, but at that time.
24 Okay.

25 MR. O'NEILL: Also have Tisdale versus State, which is

1 378 S.C. 122 and cites Cayce and says---

2 THE COURT: Say again. The State---

3 MR. O'NEILL: Sorry. It's 378 S.C. 122.

4 THE COURT: What is the name of the case?

5 MR. O'NEILL: Tisdale versus State, 2008, PCR case.

6 THE COURT: All right. What is your claim in that
7 case?

8 MR. O'NEILL: Cayce versus State, which is 305 S.C.
9 445, says evidence of a struggle between defendant and a
10 victim sufficient for submission of a involuntary
11 manslaughter charge, instruction. I'm sorry. The jury and
12 states, State v. Patrick, 289 S.C. 301, and Tisdale versus
13 State repeats that same language, Your Honor. It also goes
14 on to explain a little bit more. It says evidence of a
15 struggle between the defendant and the victims over a weapon
16 supports submission of involuntary manslaughter charge,
17 her -- here there is evidence of a struggle with the gun,
18 the fact that a victim's wounds may have been inconsiderate
19 with Petitioner's testimony that a gun fired by the
20 defendant's hand is not overwhelming evidence that
21 Petitioner intentionally killed the victim. Same scenario
22 we have here, Your Honor.

23 THE COURT: What about the nature for the charge itself
24 for involuntary manslaughter where it indicates you may have
25 unintentionally killed the victim without malice while

1 engaged in a lawful activity with reckless disregard for the
2 safety of others?

3 what are you referring to on the -- I don't know what
4 those cases state about what the lawful activity was.

5 SOLICITOR JOPHLIN: Your Honor, if I may, he was
6 unlawful in going there to buy drugs and also unlawful in
7 State v. Reese, 370 S.C. 31, a Supreme Court case from 2006
8 where a defendant brandished a gun threatening suicide and
9 supposedly, allegedly shot the victim on accident. I think
10 they found involuntary was unwarranted because of
11 brandishing that gun. He's completing the felony of
12 pointing and presenting.

13 MR. O'NEILL: Your Honor---

14 SOLICITOR JOPHLIN: Your Honor, borrowing the same case
15 here, he brought the gun into the hotel presenting it to the
16 victim in this case. He was not armed, did not have a gun,
17 and he attacked him, but he still brandished the gun while
18 committing the felony of pointing and presenting and also
19 buying drugs.

20 MR. O'NEILL: That's the State's version of what
21 happened that day. Mr. Brown's version of why the gun is
22 brought up if it's not that version---

23 THE COURT: Okay. But help me out with involuntary
24 referring to lawful activity that you have an unintentional
25 killing without malice while engaged in a lawful activity.

1 SOLICITOR CAMPBELL: Your Honor, it would be our
2 contention that at the point that the shooting occurred and
3 the drug deal -- the actual -- the drug transaction
4 eventually was either -- depending on exactly what you
5 believe, Mr. Brown's testimony would either, either, about
6 to proceed, about to happen or that it never happened to
7 start with and was already finished.

8 THE COURT: What is the lawful activity?

9 SOLICITOR JOPHLIN: His contest he received the drugs.
10 The transaction is complete.

11 MR. O'NEILL: I agree the transaction is complete.
12 He's not doing anything unlawful at that point.

13 SOLICITOR CAMPBELL: He is possessing drugs.

14 MR. O'NEILL: Gun goes off in relation to him
15 possessing drugs is not unlawful activity at that point.

16 SOLICITOR CAMPBELL: The whole reason the gun came out
17 is because they're arguing over the sale of the terms of the
18 drug.

19 MR. O'NEILL: Arguing over the sale of the drug is not
20 illegal activity.

21 SOLICITOR CAMPBELL: Yes, it is.

22 MR. O'NEILL: Arguing I---

23 THE COURT: Let me ask, does the State have any
24 disagreement, before we finish up basically on involuntary,
25 not voluntary, based only -- that there is some evidence on

1 the record---

2 SOLICITOR CAMPBELL: Voluntary?

3 THE COURT: Voluntary.

4 SOLICITOR CAMPBELL: His testimony was it was
5 unintentional, the gun just kept going off.

6 THE COURT: Well, voluntary requires the sudden heat of
7 passion based on sufficient legal provocation.

8 MR. O'NEILL: That's clearly supported, Your Honor.

9 SOLICITOR CAMPBELL: His testimony wasn't that he was
10 acting in heat of passion, but more that it was an imperfect
11 self-defense.

12 MR. O'NEILL: Your Honor, it's clear this has been an
13 argument which constituted sudden heat and passion, that his
14 testimony is he saw this individual, reached for a gun which
15 is clearly legal provocation.

16 THE COURT: It indicates that in the charge that the
17 words, whether or not threatening act or some overt act
18 produced the heat of passion and this was a sufficient
19 cooling off period. I'm a little closer on that one, but
20 will look at those charges more carefully. But let me get
21 back to involuntary because you're still not answering my
22 questions about unlawful act because basically involuntary
23 deals with more of a showing of criminal negligence and
24 that's what that's intended for.

25 MR. O'NEILL: Your Honor, I would say any unlawful

1 act -- the drug transaction is the unlawful act. At the
2 time it was a struggle over the gun. The unlawful act had
3 ceased.

4 THE COURT: No, it says while engaged in a lawful act.

5 MR. O'NEILL: Your Honor, if the unlawful act had
6 ceased. Therefore, any other unlawful acts---

7 THE COURT: What's lawful?

8 MR. O'NEILL: If he's not doing anything unlawful he
9 has to be doing something lawful.

10 THE COURT: No.

11 SOLICITOR CAMPBELL: That's not---

12 THE COURT: That's not an automatic inference that if
13 I'm not doing lawful, unlawful, I'm doing something lawful.

14 MR. O'NEILL: Either you're doing something lawful or
15 unlawful. There's no gray area in there. You're either
16 breaking the law or you're not breaking the law.

17 SOLICITOR CAMPBELL: He's breaking the law.

18 MR. O'NEILL: At the time the struggle ensues he's not
19 breaking a law.

20 SOLICITOR CAMPBELL: He's carrying a pistol, which is
21 unlawful, and he's buying drugs, which is unlawful, and he's
22 shooting people, which is unlawful.

23 MR. O'NEILL: Your Honor, the gun goes off at the
24 struggle. There is case law specifically on the fact that
25 unlawful carrying of a pistol cannot be an unlawful act that

1 negates involuntary manslaughter because if that were the
2 case you could never get any voluntary manslaughter with
3 a---

4 SOLICITOR CAMPBELL: And---

5 THE COURT: You also indicate you're killing him
6 without malice, unintentionally killing him without malice.

7 MR. O'NEILL: He said he didn't go there to rob him.
8 That negates malice. Said he didn't indicate to kill him.
9 That's no indication of malice.

10 THE COURT: That could be inferred---

11 MR. O'NEILL: Yes, Your Honor, that makes it a jury
12 issue.

13 THE COURT: All right. While I'm looking at a couple
14 of cases, y'all get your set up for closing, whatever you
15 intend to use. Go ahead and take your break now.

16 SOLICITOR CAMPBELL: Your Honor, we would also request
17 voluntary intoxication.

18 (Whereupon, a short recess was taken at this time.)

19 THE COURT: On the voluntary, the Court has concluded
20 that would come in. I looked at State v. Byrd because there
21 was a common -- right now I'm going to look at this right
22 now about a victim. The defendant went to the car, left the
23 victim to go get his gun and came back. Here we have the
24 words about something to the effect of I'll blow your head
25 off and a victim reaching for a gun and then it's all going

1 right to that time. So, voluntary is in. I just want to
2 know if you have any thoughts.

3 As I was mentioning earlier to you, Mr. O'Neill, I
4 apologize. Voluntary -- involuntary has two standards and I
5 was only focusing on the last one, voluntarily,
6 intentionally killed the victim without malice, but while
7 engaged in an unlawful activity not to cause death or great
8 bodily harm or that the defendant unintentionally killed the
9 victim without malice in engaging in lawful activity and was
10 focusing on the latter part. But I think you were focused
11 more on the --

12 MR. O'NEILL: I think the unlawful activity has to
13 naturally, traditionally unlawful activity has to usually
14 negate -- in order for unlawful activity to negate the
15 voluntary unlawful charge, and I don't think there's any
16 testimony that -- I don't think -- well Your Honor would
17 have to I guess---

18 THE COURT: What is your evidence?

19 You say there's evidence there is an unintentional
20 killing?

21 SOLICITOR CAMPBELL: I think it would be either way. I
22 think Mr. Brown testified he had -- the victim had his hand
23 on the gun and Mr. Brown had his hand on the gun as well and
24 the gun went off. That's what his testimony was. Your
25 Honor, on cross I think I clarified that. I said you were

1 the one pulling the trigger and he said so. He admitted he
2 was intentionally pulling the trigger.

3 MR. O'NEILL: I don't think Mr. Brown intentionally --
4 the words intentionally never came out of Mr. Brown's mouth.
5 So, whether intentional or unintentional---

6 THE COURT: That concerns me because of the case law of
7 dealing with a tussle and I struggle and I don't want us to
8 be setting anything up. I want to look closer at the facts
9 of the case as well.

10 SOLICITOR CAMPBELL: Which case are you referring to,
11 Your Honor?

12 I'm sorry.

13 MR. O'NEILL: The case is Tisdale---

14 SOLICITOR CAMPBELL: Those were cases talking about
15 involuntary manslaughter, right?

16 THE COURT: Involuntary.

17 SOLICITOR JOPHLIN: Does the defense have copies of
18 those cases?

19 MR. O'NEILL: 378 S.C. 122. Y'all have it? That's
20 Tisdale. Here is the case.

21 THE COURT: Is Cayce, 305 S.C.2d 445.

22 MR. O'NEILL: 445.

23 THE COURT: S.C.2d---

24 MR. O'NEILL: No, Your Honor. 378 S.C. 445. I gave
25 Your Honor my copy, but it's highlighted.

1 THE COURT: If that's -- okay.

2 MR. O'NEILL: Cayce is actually a step further. They
3 struggle with the third person over, third party with the
4 gun, but it still says that principal extends to everyone
5 struggling over the weapon with the third party.

6 THE COURT: State, you have anything to add on that?

7 SOLICITOR JOPHLIN: Your Honor, I have a problem
8 reconciling these cases with State v. Reese where it talks
9 about the defendant points, brings out pointing of a firearm
10 to someone else then---

11 THE COURT: You give me that one, State v. Rhodes?
12 What is the State site on that?
13 Where are you now?

14 That's the one you said 301 S.C. 2d 381 or S.C.---

15 SOLICITOR JOPHLIN: I think there's a struggle in that
16 case.

17 SOLICITOR CAMPBELL: One gun.

18 THE COURT: Okay. I think I have to charge involuntary
19 manslaughter because there's evidence of a struggle and even
20 other witnesses couldn't tell what was going on. They
21 mentioned a tussle, and as we know it, was a version
22 included---

23 SOLICITOR CAMPBELL: Be safe where to go.

24 THE COURT: Both will be in. Give me five minutes.

25 SOLICITOR CAMPBELL: Your Honor, we may be 45-minutes

1 because I've got to get involuntary. I anticipate---

2 THE COURT: Right.

3 MR. O'NEILL: Have to get my charges together too.

4 SOLICITOR JOPHLIN: With State v. Avery, we had a
5 charge stating in regards to the crime of involuntary
6 manslaughter does not include while otherwise engaged in a
7 felony?

8 MR. O'NEILL: So---

9 SOLICITOR JOPHLIN: If the jury finds attempted armed
10 robbery, he was engaged in a felony.

11 MR. O'NEILL: I agree.

12 THE COURT: Do you have this written out as a charge
13 already?

14 SOLICITOR JOPHLIN: Your Honor, there is a charge the
15 Judge gave on Section 4 of that case.

16 THE COURT: What page?

17 SOLICITOR JOPHLIN: Page 110 of the printout I gave
18 you.

19 THE COURT: Okay. I think we're all clear. Thank you
20 for your indulgence. I want to get it right.

21 SOLICITOR JOPHLIN: Just insert the proper statute and
22 codes.

23 THE COURT: Tell me where you are on Page 10.

24 SOLICITOR CAMPBELL: Your Honor, we will be opening on
25 the law.

1 THE COURT: Okay. And because---

2 SOLICITOR CAMPBELL: And we get last argument.

3 THE COURT: We've got at least, at a minimum, a
4 combination of 45-minutes or more, right?

5 SOLICITOR CAMPBELL: Oh, yes.

6 THE COURT: Because she can work on the charge while
7 you're closing. She can be finishing up the charge. Get
8 your board. I'll be right back.

9 (Whereupon, a short recess was taken at this time.)

10 THE COURT: Are y'all ready to proceed with closing?

11 SOLICITOR CAMPBELL: Slight problem. They didn't
12 blow-up the involuntary manslaughter charge last night and
13 they're supposed to be doing it right now. The problem is
14 our machine is not working. They have to go to Kinko's and
15 that's where they are right now.

16 THE COURT: Okay.

17 SOLICITOR CAMPBELL: I apologize.

18 MR. O'NEILL: Your Honor, we could do lunch now for the
19 jury then if they need that much time.

20 THE COURT: Their lunch is not here.

21 SOLICITOR CAMPBELL: I can give a call and see. It is
22 just down there right across from the law school.

23 (Whereupon, the following takes place within the
24 presence of the jury panel.)

25 THE COURT: Thank you, ladies and gentlemen of the

1 jury, for your patience throughout the trial. We have now
2 come to the conclusion with the trial. The State has rested
3 with respect to their evidence as well as the defense and
4 now you will be presented with the closing arguments in this
5 case.

6 I remind you these are arguments, not evidence. The
7 evidence you will recall from the witness stand and any
8 evidence that was actually entered into evidence, but this
9 is the portion of the trial where both sides are granted the
10 opportunity to refresh your memory about the various
11 testimony and evidence in the case, and, of course, try to
12 persuade you to their side of the case.

13 Please give them just as much attention to their
14 respective arguments as you have throughout the trial.

15 Ms. Campbell.

16 SOLICITOR CAMPBELL: May it please the Court.

17 Good afternoon.

18 The first thing I want to do, on behalf of the state of
19 South Carolina, citizens of Richland County, is to thank you
20 for your service this week. I know, when you showed up for
21 jury duty Monday morning you thought you might be listening
22 to a case about an automobile accident or even if you got on
23 a case at all. But I think it has become clear, over the
24 last several days, this is a very important case both to the
25 State of South Carolina and to the victim, Tyrell Williams,

1 the family, and to the defendant Larry Brown.

2 Your role is the most important role in this courtroom.
3 As the Judge told you at the beginning of this trial, every
4 party has a role. The prosecutor is to bring forth all the
5 relevant, credible evidence we can present as far as this
6 crime in this courtroom. The defense's role is obvious, to
7 defend the client to the best of his ability. The Judge's
8 role is to determine what is admissible that you are allowed
9 to hear, and in a few minutes she will instruct you on what
10 the law is, and that's the law that you are to apply to the
11 facts as you find them.

12 But as she told you in the beginning, there is no more
13 important role in this courtroom than yours. Each of you
14 individually and ultimately, collectively, once you go back
15 to that room, to render a verdict. The word verdict comes
16 from a Latin phrase, veredicto, and it means very simply to
17 speak the truth. All the State asks you in this case,
18 ladies and gentlemen, is to determine what credible
19 evidence, both the testimony which I submit is totally
20 corroborated by the forensic evidence, in determining what
21 happened in that room back on November 21st of 2006.

22 Now, I'm going to talk to you a little bit about the
23 law at first and I'm going to sit down and then you'll hear
24 from Mr. O'Neill, and then, because the burden is on the
25 State of South Carolina, I will have the opportunity to get

1 back up and talk to you a little bit more in depth about the
2 facts of this case. And as I'm going through things, as if,
3 I talk about the law and because I'm going to talk about
4 theories of law, if I say anything different than the judge
5 gives you, it's not intentional. You take it as the judge
6 gives it to you because she is the sole finder of the law.
7 In that same vain, if either side mischaracterizes any
8 facts, you remember because you are the sole finders of the
9 facts in this case.

10 Now, you have heard all the evidence upon which you can
11 base your verdict.

12 What is the evidence?

13 It is the testimony, the sworn testimony from the
14 stand, and the physical evidence that will go back with you
15 when you are back there deliberating. It's not questions,
16 fishing expeditions, innuendos, speculation, or just plain
17 wishful thinking. Testimony and the evidence are the
18 answers from the stand, the credible evidence that's been
19 entered into.

20 I want to take this opportunity to apologize. Over the
21 last several days, if I have done anything or Mr. Jophlin
22 has, to offend you in any way, sometimes you get caught up
23 in the jury room and my questioning has been, at a minimum,
24 clumsy and inartful at times, and so please do not hold that
25 against the State and Mr. Williams family.

1 The criminal case is somewhat unique. As you notice,
2 we have brought -- there have been references to numbers of
3 reports, incident reports, pathologist reports, statements
4 given by witnesses, and typically those types of things are
5 not admissible by the State. So, that is why the burden is
6 on us and it's the defendant's right. The theory behind it
7 is the defendant has the right to confront each and every
8 witness that comes before you and that's why every person
9 has come and testified.

10 The only time statements typically come in in this
11 case, one was admitted by the defense for the State, are
12 statements made by the defendant. So, that's why you've
13 heard from each individual witness because you must have the
14 opportunity the law recognizes in criminal cases to
15 confront, to judge the credibility of the witness. The
16 defendant has the right to confront him and that's why we
17 haven't just put in the pathologist report. That's why you
18 haven't seen the crime scene investigator's reports. There
19 have been no depositions or videotapes that have been
20 admitted and that's the purpose in that.

21 In that same vain too, you have heard references to
22 other officers at the scene such as Sergeant Strange talked
23 to Camillia Goodwin that day. Another investigator, McRae,
24 search warrant on Harper Street. They didn't necessarily
25 testify, and the reason for that is the State is not allowed

1 to bring up person after person to say the same thing over
2 and over again.

3 In this case, Investigator Godfrey could cover some of
4 what Investigator Strange could say. So, that's the reason
5 you haven't heard from each and every police officer or
6 person such as Ms. Thomas. She didn't have anything
7 relevant to add to this case. She didn't have any knowledge
8 that would help you in determining what happened that day.

9 I want to talk a little bit about the burden of proof.
10 As you heard from the defense and the State in opening
11 statements, the burden of proof, as it should be, is on the
12 State of South Carolina to prove the defendant guilty beyond
13 a reasonable doubt. Let me repeat that. The burden is on
14 the State to prove his guilt beyond a reasonable doubt, and
15 I submit, ladies and gentlemen, in this case, perhaps more
16 than any other, the State welcomes that burden.

17 What is proof beyond a reasonable doubt?

18 The Courts have defined it in a manner such as -- and
19 the simplest way to think about it, proof beyond a
20 reasonable doubt, reasonable doubt is the kind of doubt that
21 would make a person hesitate to act. But the Courts have
22 gone further and the Judge will instruct you and listen to
23 her as she tells you this. There are different levels of
24 proof. She will tell you that.

25 In civil cases, it's just a preponderance of the

1 evidence, of the evidence. More likely than not. It must
2 be stronger than that as it should be in criminal court.

3 What is proof beyond a reasonable doubt?

4 It's proof that leaves you firmly convinced of the
5 defendant's guilt. There are very few things in this world
6 that we know with absolute certainty, and in criminal cases
7 the law does not require proof that overcomes every possible
8 doubt. If, based on your consideration of the evidence, you
9 are firmly convinced the defendant is guilty of the crime
10 charged you must find him guilty. On the other hand, if you
11 think there is a real possibility that he is not guilty,
12 then you must give him that benefit and find him not guilty.
13 It is proof that leaves you firmly convinced.

14 The law even recognizes that we may not be able to
15 overcome every possible doubt although I submit, ladies and
16 gentlemen, in this case it either happened like the witness
17 said, like the forensics showed, or it happened like
18 Mr. Brown testified. So, that's what, a definition that you
19 can use in your determinations when y'all go back there.

20 Now, there are two indictments, and I want to talk
21 about those separately, and the judge is going to instruct
22 you on the law of what is murder and ironically, or maybe
23 just simply in our law murder, there are lesser included and
24 I'll talk about in a minute as perhaps the shortest
25 definition in our books.

1 what is murder?

2 The unlawful killing of any person with malice
3 aforethought either expressed or implied.

4 what is expressed or implied in malice mean?

5 I want to talk to you about those terms. The first
6 term I want to talk about is malice because in order to find
7 him guilty you must find the defendant was acting
8 unlawfully, killed another person while he had malice in his
9 heart.

10 what is malice?

11 In its popular sense, the term malice conveys the
12 meaning of hatred, ill will, or hostility towards at,
13 another, a term importing wickedness, just cause or excuse,
14 something that strings from a heart fatally bent on mischief
15 and may be implied by the doing of an unlawful act without
16 just cause or excuse or from the use of a deadly weapon.
17 The use of a deadly weapon, coupled with an unlawful killing
18 alone, is enough to infer malice. Although, in this case,
19 we have much more than that, but that alone is enough to
20 infer malice. An unlawful killing with malice.

21 The law even takes it a little bit further because they
22 understand, in certain circumstances, malice may not be
23 expressed or it may be just implied.

24 what is expressed malice?

25 It's not a different kind of malice, but typically

1 things such as walking up to another person saying I'm going
2 to kill you, pulling out a gun and shooting them would be
3 expressed malice. Laying in wait, waiting for them that, so
4 you can ambush them and kill them is expressed malice.

5 The law recognizes typically, in murder cases, you
6 aren't going to have express malice. Therefore, malice may
7 be inferred.

8 what does that mean?

9 Malice can be inferred from the actions of the
10 defendant himself and I'll talk a little bit too about when
11 malice -- malice is inferred when one is doing an unlawful
12 act such as a felony, such as attempted armed robbery, and
13 I'll get to that in a minute. Another definition of malice
14 that the judge is going to charge you is malice doesn't
15 necessarily -- doesn't -- to get malice you don't actually
16 have to have a zoned in reason to hate this person. It
17 doesn't necessarily impart ill will towards the individual,
18 but signifies rather a general malignant recklessness of the
19 lives and safety of others or a condition of mind which
20 shows a heart regardless of social duty and fatally bent on
21 mischief, and I submit, ladies and gentlemen, Larry Brown
22 and Eugene Frost were definitely fatally bent on mischief.

23 Their intent -- and it doesn't matter if they decided
24 the moment before they pulled out the gun, walking to the
25 thing, they don't have to like -- here, listen to the judge.

1 she's not going to tell you we have to prove motive. She
2 won't tell you that we have to prove there's any
3 premeditation. All we have to prove is that, at the time
4 that the fatal blow, from this point six of them, happened
5 that he was acting with malice and to show that you have to
6 look at the circumstances surrounding that.

7 Now, how long does malice have to be there?

8 I told you there's no premeditation necessary, and the
9 judge will instruct you that malice does not need to exist
10 for any appreciable period of time before the omission of
11 the act, before the act actually happens. Indeed it may be
12 conceived at the very moment the fatal blow is struck. It
13 must be there with enough time that, at the moment he starts
14 shooting, his intent to rob it doesn't prove his actions
15 alone. The number of shots is pretty malicious. There are
16 many ways to show malice, and I submit, ladies and
17 gentlemen, this case reeks of malice.

18 The law also goes one step further about malice. It
19 allows you to infer malice if you conclude that the homicide
20 was a direct, proximate, excuse me, backwards, proximate
21 direct result of a commission of a felony, and that
22 attempted armed robbery would be a felony under our law.

23 You can imply malice exists in a person of a crime, of
24 a felony at the time of the attempted fatal blow. Those are
25 factors you can consider in determining whether or not.

1 malice existed, and I submit, ladies and gentlemen, ladies
2 and gentlemen, malice was overwhelming in this case with
3 these facts.

4 Typically in this case there are lesser included
5 offenses that are always charged to the jury by the Judge
6 because, if you find that the defendant didn't kill the
7 victim with malice, you can consider the lesser included
8 charges. I'm sure Mr. O'Neill will talk to you about what
9 is voluntary manslaughter.

10 To prove voluntary manslaughter the State must prove
11 the defendant took the life of another in sudden heat of
12 passion based on sufficient legal provocation. Both heat of
13 passion and sufficient legal provocation must be present at
14 the time to make it voluntary manslaughter, and, in other
15 words, to reduce it from, from a murder, which I submit this
16 is, to a voluntary manslaughter, which is a lesser included.

17 The exercise of a legal right, no matter how offensive
18 it is to another, is never sufficient legal provocation for
19 voluntary manslaughter. If heat of passion is cooled or
20 there is enough time between the provocation and killing for
21 a reasonable person to kill would be voluntary manslaughter.

22 Basically listen carefully because the judge will
23 charge you further about what is legal provocation, and what
24 it is, and in this case it's very important because it's
25 what you believe because there are two completely different

1 versions of facts in this case. The defendant would want
2 you to submit it was voluntary manslaughter. I submit the
3 facts would prove it is murder.

4 There is another charge, lesser included offense, is
5 involuntary manslaughter and what is that?

6 Very simply, the killing of another without malice and
7 unintentionally while engaged in either an unlawful act not
8 naturally intending to cause of death or great bodily harm
9 or a lawful act with reckless disregard for the safety of
10 others, and I don't think anybody's going to get up here and
11 argue this was lawful, what was going on that day. So, it
12 is intentional, and I submit the defendant's own testimony
13 here today in this courtroom when he said, yes, I had my
14 finger on the trigger, I kept pulling the trigger, that
15 surpasses the unintentional.

16 He was intentionally shooting him at that moment.
17 Because an unlawful act not naturally intending to cause
18 death, a classic example of involuntary manslaughter, a
19 person near the woods in Carowinds was out shooting
20 unlawfully looking for deer. Unlawful place to look and he
21 shoots at what he thinks is deer, and the bullet passes
22 through the woods and goes into the park and hits a young
23 lady. This was no malicious intent. There was no
24 intentional act there. It was very unintentional, but he
25 would still be guilty of involuntary manslaughter. It's

1 almost like being a very reckless accident.

2 So, that's the law. I submit, I could be wrong, that
3 no one would really get up here and argue it was involuntary
4 manslaughter because even if you listen to the defendant's
5 own testimony he said he intentionally shot him. The other
6 thing too that's not going to be charged is you won't hear
7 any charges on self-defense. That's -- attempted armed
8 robbery, a person is guilty of attempted robbery while armed
9 with a pistol, slingshot, in this case a pistol, or while
10 alleging, by either actions or words he was armed using the
11 representation of object a person believed to be a deadly
12 weapon, and the easiest way to explain armed robbery or
13 attempted armed robbery in this case, and it was explained
14 to you during the thing is no one actually witnessed the
15 defendant when he got the bat or the drugs and went out
16 there. So, therefore, he should and does get the benefit of
17 that.

18 He's charged with attempted armed robbery because his
19 intentions were clear. However, because the -- no one saw
20 him actually get the stuff, although it was gone and so was
21 the money afterwards, then he gets the benefit of attempted
22 armed robbery. Attempted armed robbery is a fragment. The
23 judge will tell you that in this case.

24 what is armed robbery?

25 what's the difference between that and larceny?

1 Larceny is when a person walks up say in a school, your
2 locker, it's open, they reach in and take someone's school
3 book, that reaches a larceny, and then rising to the level
4 of armed robbery, which is a lesser included offense of
5 armed robbery, if I walk up to another person, threaten to
6 hit him if they don't give me the book and then take the
7 book from their person or presence, what makes it armed
8 robbery is if you threaten to take something or try to take
9 something from another person by either violence or putting
10 them in fear while armed with either, either a weapon and
11 the law even goes so far -- he can be guilty of armed
12 robbery if you're just acting like you are. In this case,
13 nobody's going to get up there and say he doesn't have a
14 weapon.

15 Those are some of the elements and the judge will
16 instruct you more fully on attempted armed robbery.

17 In this case, when they go in, I submit why does he
18 pull the gun?

19 It's not to enforce anything because either you believe
20 all the witnesses at the scene or you believe Mr. Brown.
21 So, the moment he pulls the gun, all the witnesses testify
22 to other people, the action when going there for a purported
23 drug deal is an indication of intent, and if you believe the
24 State's witnesses, there is no question this was an
25 attempted armed robbery. Eugene Frost was there aiding and

1 abetting and he will have his own day in court. And under
2 that theory, where we go the hand of one is the hand of all,
3 and in this state the law recognizes when two or more people
4 combine together say to do an armed robbery, even if one is
5 outside as the lookout when I know one goes in under the
6 hand of one the hand of all, both are guilty. If a crime is
7 committed by two or more persons that are acting together in
8 the commission of a offense, the hand of, act of one is the
9 act of all. Two people can be guilty of another murder when
10 only one had a pistol if both are together or acting
11 together assisting each other in the commission of the
12 offense, the law says, under those circumstances, the act of
13 one is the hand of all or sometimes said the hand of one is
14 the hand of all.

15 That is this. It doesn't matter whether Larry Brown
16 was the shooter, as he is in this case, or Eugene Frost.
17 Eugene Frost's role was to make sure nobody got out of the
18 door until they got what they came for. Larry Brown's role
19 was to get the drugs. That is the reason for that.

20 Now, in this case also you have heard some testimony
21 about how the defendant was smoking crack cocaine that day.
22 The law says you are not absolved from your criminal
23 responsibility just because you choose to get voluntarily
24 intoxicated. In other words, even if, normally when he
25 hasn't smoked crack six times that day Larry Brown wouldn't

1 do that, the fact that he voluntarily either drinks or takes
2 drugs doesn't absolve him from the way. He is just as
3 responsible, under the law, for what he does because, think
4 about it, you can't go out and get intoxicated or under the
5 influence of drugs and then become, because that drives you,
6 because no matter what you've got to have more crack
7 cocaine, you can't just go around killing people to satisfy
8 your habit.

9 Voluntary intoxication is never an excuse or defense to
10 a crime. A person who voluntarily renders herself -- she
11 will have a much longer version of this. Being intoxicated
12 is no longer responsible for his abilities if in such a
13 condition. If a person voluntarily takes intoxicants or
14 drugs, testimony is he was voluntarily smoking crack, and
15 while under that commission commits an act to commit a
16 crime, the fact of drunkenness or intoxication would not
17 relieve the intoxicated person from responsibility and
18 that's the law and I think the reasoning for it is obvious.

19 There are two types of evidence in every case, well, in
20 most cases I should say, that you can base your verdict on.
21 There is direct evidence and circumstantial evidence. It
22 doesn't mean that one type is better than the other or
23 they're really any different. It is just kind of how you
24 come to a conclusion.

25 Direct evidence is the testimony of a person who

1 asserts to have actual knowledge of facts of -- in this
2 case, like an eye witness. Several people saw different
3 things.

4 Circumstantial evidence is proof of attained, of
5 circumstances indicating the existence of a fact. The
6 classic example in this case is the DNA because the DNA
7 speaks volumes. It puts Larry Brown in that room the night
8 it happens, the circumstances around it, the broken window,
9 someone went out it, the blood at the window. That's
10 circumstantial evidence that Larry Brown was the shooter.

11 Now, the law doesn't, makes absolutely no distinction
12 between the weight or value to be given to either direct or
13 circumstantial evidence nor is it a degree of certainty with
14 regard to circumstantial evidence or direct evidence. You
15 should weigh all the evidence in the case. Those are the
16 types of evidence that are in this case and in this case
17 it's really fortunate we have both because the one totally
18 corroborates the other.

19 Remember the witness ID's are made early on of Larry
20 Brown and Eugene Frost, and later on, when the DNA testing
21 is done, guess who's blood is on the window?

22 Larry Brown.

23 That's how circumstantial and direct evidence can be
24 used to corroborate each other. The judge will also
25 instruct you you have heard several people who are qualified

1 to be experts. In certain circumstances, if people have the
2 proper training and education, then they are allowed to come
3 in and give expert testimony or opinion testimony.
4 Typically, if I took the stand, I have no expertise,
5 therefore, if I take the stand I can talk about what I saw
6 or know and that's typically lay witness testimony. An
7 expert is allowed to give you an opinion such as
8 Dr. Nichols, the crime scene investigators, all those people
9 qualified as experts. So, they could give you an opinion
10 such as the stippling on the clothes or how Dr. Nichols
11 would be able to tell you how far away the gun would have
12 been when it was fired, what would end up being crucial in
13 this case. So, that's the reason you would be instructed on
14 expert testimony and you consider him the same way as you do
15 any other witness in the case.

16 The judge will instruct you on identification.
17 Although I submit now identification ultimately, after the
18 defendant testified, is no longer a big issue in this case.
19 There is no dispute, and I would go through the languages,
20 but there was no dispute it was Larry Brown and Eugene Frost
21 in that room back there, and, finally, what she'll also
22 instruct you on the law on considering the statements the
23 defendant made at the time of arrest, and that's important
24 because before the State can bring forth statements you must
25 make a finding those statements made by Mr. Brown on

1 November 27 to Captain Smith and Investigator Preston were
2 voluntary.

3 was he -- most important to consider his age, his
4 capacity to understanding. You actually had an opportunity
5 to observe Mr. Brown. So, you can actually make those
6 assessments yourselves.

7 In addition to that, it's very important, once he was
8 explained what his Miranda rights are, and the reason for
9 that is because it's his constitutional guarantees and, in
10 this case, ladies and gentlemen, the police did everything
11 by the book. They were lawful search warrants. His rights
12 were read to him. Everything was done by the book as it
13 should be, and in this case he was advised of his rights.
14 At that point he made some statements about being at home,
15 was he going to jail, things of that nature, that you must
16 determine before considering those and use those as evidence
17 if those statements were, in fact, voluntary.

18 Finally, I want to talk a little bit about credibility.
19 This case, just as everyone know, boils down to credibility
20 because, as you have heard it, either it happened the way
21 all the witnesses said it did or it happened the way Larry
22 Brown said it did. It either happened the way forensics
23 show it happened or it happened the way Larry Brown said it
24 happened, and it's very important, in this case, because
25 it -- if you take it from being a murder to say a voluntary

1 manslaughter, it could take it down. Credibility.

2 Believability.

3 You can believe part of what a witness said, all of
4 what a witness says, none of what a witness says. You can
5 believe one against many. Many against one. The judge will
6 instruct you. She will also tell you, in considering, you
7 need to consider the bias, prejudice.

8 Do they have something to gain or to lose?

9 Is there a reason that their testimony has changed?

10 In determining credibility, the defense has made a big
11 deal, especially about Jacqueline Holly, that you can't
12 believe, I concluded in opening argument, you can't believe
13 any of the State's witnesses because they've told one story
14 back then and they come forth and are going to tell another
15 story now.

16 I submit, ladies and gentlemen, no one has changed
17 their story about the events of what happened, who pulled
18 the gun first, who was the only one with the gun since day
19 one because if, if they had you would have heard about it.
20 Have Ms. Holly -- one of them said it to the second officer.
21 She thought the other one said it.

22 I submit, ladies and gentlemen, she was panicked that
23 night. It was a horrific event all those people went
24 through. Not only were, were they trying to save their
25 lives of the two year old, they watched someone they knew

1 die in front of their eyes.

2 So, was she a little bit confused?

3 Yes.

4 And I submit, ladies and gentlemen, doesn't that make
5 her credible?

6 what if every one of these witnesses came in here and
7 they said I know now that doesn't make sense?

8 what makes them credible is how they are able to
9 identify different people. That's real life. If they all
10 come in here and identify the same person over and over and
11 have a story and it matches perfectly, you better be
12 concerned. It's like a car wreck. There's a person on this
13 corner and a person on this corner and one person says the
14 car is tan and one says it's gold and the light was green or
15 maybe it was yellow. No one is purposefully trying to skew
16 its precision.

17 Some people have a better ability to recall than
18 others. Some people were focused more than others on
19 different things. As the defense told you in their opening,
20 your eyes are going to be opened up. This is a foreign
21 world nobody wants to think about, but, ladies and
22 gentlemen, even in that world, including Mr. Brown, are
23 human beings that deserve the same consideration by the law
24 that anyone else does.

25 Listen to the judge. She's not going to tell you

1 because Tyrell Williams was doing illegal acts that Larry
2 Brown had a license to kill him because he's an easy mark.
3 That's not the law. No matter how much they may want you to
4 think that way, the law -- everybody drinks from the same
5 cup of justice, no matter whether you're a victim or what,
6 and all we're asking is you hold him responsible for Larry
7 Brown's decisions.

8 Tyrell Williams is dead. He's not allowed to make any
9 more good decisions or bad. All we're asking you to do is
10 hold him responsible for his decisions, for what he chose to
11 do, and for what he did do.

12 Thank you. I'm going to sit down now and she's going
13 to talk and I'll be back.

14 MR. O'NEILL: What we intend on happening isn't always
15 what happens. What we intend on happening isn't always what
16 happens.

17 What Larry intended on doing that night in Room 162 was
18 going to buy some drugs. He had a drug habit that he's
19 dealt with for a long time and what he was intending on
20 doing was going there to get some drugs.

21 Now, Mr. Cooper told you about what a different world
22 from what most of us don't know anything about, and that was
23 what Larry was going there to do. What ended up happening
24 was a tragedy. A tragedy for all involved.

25 Now this case is kind of different than most cases that

1 are heard. There's only really one main issue.

2 What was Larry's intention in the moments after he
3 walked in that door to when Tyrell was shot?

4 You heard from a lot of witnesses. You heard from
5 forensic experts, DNA experts, crime scene experts, whole
6 week of testimony. For a lot of those witnesses we didn't
7 have little -- literally sometimes no questions asked
8 because those witnesses shed very little on what Larry's
9 intention was. The main issue we have to focus on today is
10 what Larry's intentions were. If he didn't have any malice
11 on that day, if he didn't intend to rob anybody on that day,
12 there's no malice, no murder.

13 Now, how do we determine what Larry was intending to do
14 that day?

15 Judge Childs will tell you you can't look into Larry's
16 mind and figure out what he was intending on doing. So, you
17 have to tell the intentions from either his actions or the
18 other things that are in contest.

19 Let's look at who you can hear from to tell what Larry
20 intended on doing that day. One of the people you heard
21 from was Frank. He told you he, Larry, and Eugene hung out
22 that day. Frank was at the house that day. You didn't hear
23 Frank say one word about him talking about robbing anybody
24 during the house that day or during the time when Frank
25 drove Larry and Eugene to Room 162. No talk of robbery. No

1 intention of robbery.

2 You heard from Edna Frost. She was there in the house
3 that day. She didn't tell you one time that you heard Larry
4 or Eugene talking about robbing anybody, taking any drugs.
5 No talk about robbery, no intention to rob, no intention to
6 murder.

7 You heard from Jackie Holly. She was the person, when
8 they first go to the Grand Motel, stopped at her room first.
9 When they were there in her room she said they didn't talk
10 anything about robbing anybody. When she walked from her
11 room to Room 162 there was no talk of robbery or murder, no
12 intention to rob, no intention to murder.

13 Then you heard from Larry himself about his intentions
14 that day. Larry, he told you he had a drug problem and he
15 went to buy drugs. No talk about robbery at the house. No
16 talk about robbery in the van. No malice. No murder.

17 He told you about what happened there in that room that
18 day. This is where everybody's story diverged. The moment
19 Larry walks in the room of 162 some people's story diverged
20 about what happened from the moment he walks in that door
21 until the moment the struggle happens. Everybody agrees
22 there was a struggle, gunshot, and everybody scattered, but
23 where everybody's story diverges at is when he steps in that
24 room.

25 He told you exactly what happened when he got in that

1 room, that Ms. Holly came in first. She went over here to
2 talk to Tyrell, told Tyrell they wanted a 30, he went around
3 the corner, Larry followed him around the corner, and the
4 drug transaction occurred that day. They began arguing
5 about that drug transaction. Tyrell told him to get out the
6 room or he would blow his head off. He went and took him to
7 this nightstand where a loaded .45 caliber gun was is there.
8 He went into that nightstand and reached for this gun.
9 That's what Larry told you.

10 Ms Campbell said it's just Larry's word that you got to
11 take. I'm not so sure about that. Let's look at the
12 evidence that you, that you see and hear and the forensic
13 testimony you heard from forensic experts. One important
14 thing one of the crime scene people said a, is, is that
15 there was impact splatter on the wall near here around the
16 corner. That supports exactly what Larry said.

17 Impact splatter is when someone is shot with a gun and
18 this splatter comes out from the wound. That impact
19 splatter is on this wall.

20 what -- where did Larry say things happen?

21 Around the corner when nobody else could see.

22 Everybody else was over here. They said Larry came in
23 and struggled right behind him over here. There's no impact
24 splatter on this wall. The impact splatter is on this side
25 wall right where Larry said the struggle started was.

1 The forensic backs up what Larry said, the shell
2 casings, right here and right here, things that eject out
3 after a gun, once a gun is fired.

4 where does Larry say they struggled at?

5 Over here by the cabinet.

6 where are the drugs at?

7 You heard from Camillia Goodwin's evidence that the
8 drugs are right over here in this cabinet where the gun was,
9 right where Larry said they were at, and right where the
10 struggle happened. The most, very important about the fact
11 the struggle happened over here is around the corner
12 everybody else was seated at this table. The action
13 happened around the corner where nobody else could see what
14 was going on. They were around the corner blocked by this
15 wall right here.

16 What's probably more important about what, than what
17 the forensic evidence shows is what's missing from this
18 crime scene.

19 What is missing from the scene that you would expect if
20 this was an attempted armed robbery?

21 Let's talk about that for a second. There were no
22 fingerprints of Larry Brown on any of these drawers or any
23 of these things around here. If he was there to arm rob
24 somebody, after the shooting would have occurred he would
25 have went through some of these drawers, something like

1 that, but none of these fingerprints are on his drawers.

2 You know why?

3 Because he wasn't looking for anything or trying to
4 take anything.

5 If Larry and Eugene was coming for armed robbery, why
6 are there no -- why didn't they wear any gloves?

7 Probably the most glaring problem with the State's case
8 is that if Larry Brown and Eugene Frost went there to arm
9 rob Tyrell, why didn't they bring along Jackie?

10 You go into a place to arm rob somebody, why do you
11 bring along a weakness?

12 If they want to arm rob a person with drugs and they
13 stop by 110 to ask Ms. Holly where the drug was, they would
14 have said just tell us where the room is at, we'll go there
15 ourself, but no, they let Jackie go along with them. They
16 didn't intend to rob anybody. They didn't intend to kill
17 anybody.

18 Why, if they came here to arm robbery, when Larry walks
19 in the door, is he -- why does he say we have to get down on
20 the floor?

21 There's several other people in this courtroom. If he
22 was there to arm rob them, then they're multiple people in
23 the room, and he doesn't even know about multiple rooms in
24 this apartment, here the first thing he would say is get
25 down on the floor, control the situation. If you've been

1 armed, they say get down on the floor. Nobody ever
2 testified Larry Brown put a gun at them or anybody else in
3 the room. There was no attempt to control anyone because
4 they didn't intend to go there to rob him.

5 what else is missing from the scene?

6 If they went there to arm rob them, why doesn't Eugene
7 help?

8 Nobody in this room -- why is Eugene on his way?

9 why doesn't Eugene move when the gunfire starts?

10 If they went there to armed rob and gunfire is breaking
11 out, Eugene is going to do one of two things. He's either
12 going to go here to help Larry out or, two, he's going to
13 take off and run.

14 what does Eugene do?

15 He stays at the front door.

16 Eugene is in shock. He doesn't know what's going on.
17 He didn't expect any gunshots to ring out.

18 You know why he didn't expect any gunshots to ring out?

19 Didn't go there with the intent to rob anybody.

20 Now, the State rests their case mainly on the testimony
21 of the Goodwin sisters and Ms. Holly. Let's talk about
22 Jamilla. She's coming with the sister -- her sister was
23 dating Tyrell. She gave her statement, written statement
24 three days later at her house.

25 what did her sister do?

1 we're not saying that these people all got together and
2 colluded and sat around a table and decided what they were
3 going to say. What happened is all this happened fast and
4 something is very important about what Investigator Godfrey
5 said. He said, in his experience and career as an
6 investigator, has seen times where there's been a crime on
7 video and a witness has misidentified the culprit because
8 sometimes when things happen so fast you miss parts of it,
9 but your mind, later on in processing, tries to pick the
10 pieces back together, and you -- well, it must have happened
11 this way, that's what happened in this case, this all
12 happened fast.

13 Camillia's prints, her baby is in this courtroom. Her
14 focus is not on when somebody pulls out a gun. Her focus is
15 on her baby. It was her boyfriend. Of course, she wants to
16 protect her boyfriend. She admitted to me this all happened
17 fast and she gave two statements, two very different
18 statements.

19 On the night this happened, she said two guys rush in
20 there and grabbed Tyrell and she didn't see much else. Then
21 three days later, when she's at home with her sister, she
22 now says something to the effect that Tyrell said it ain't
23 going down like that, which was, was the same thing to fill
24 in her sister's statement on the same day.

25 Then you heard from Ms. Austin. Ms. Austin told me

1 something that was very different from anybody else. She
2 said something about Jackie being involved. Let me make
3 sure I'm very clear on this issue. I don't think Ms. Holly
4 was involved in this case at all. She took Larry, Eugene,
5 and told them they, what, what they wanted to do and what
6 they came there to do, but Ms. Austin is the only person who
7 said Jackie, when this happened, and she walked in the door
8 and said there he go, get him.

9 That was the words Ms. Austin put in her statement
10 about Jackie. I bring that up only to tell you how
11 differently the statements are, how three days later, when
12 Ms. Austin is trying to process this issue and remember in
13 her mind what happened, she thinks Jackie said that and
14 obviously she didn't say that. And when you focus on the
15 details, focus, focus only on important details because
16 what's important is what happened, when that happened, and
17 before the struggle began.

18 She also told you the two year old was in her lap, but
19 what is probably most important about Ms Austin's statement
20 is where she was sitting at. She was sitting right here
21 facing the wall.

22 Guess what?

23 Her back is to all the action. That happened back
24 here. She couldn't have seen what happened. Her back was
25 to the action.

1 Ms. Campbell kind of states either you believe their
2 witnesses or theirs, but that isn't exactly true. What she
3 wants to gloss over and don't want you to pay attention to
4 is Jackie Holly's statement on that night. Jackie Holly was
5 a person who took Larry and Eugene to the room. The person
6 who's probably paying the most attention, everybody else was
7 playing cards, watching TV, holding the baby, she was the
8 person who was paying the most attention. She's the only
9 really neutral person in this whole situation.

10 Talk about credibility and bias and reasonings to
11 misstate or change their story?

12 Isn't it true Miss Holly on that night was the most
13 neutral party involved?

14 You're going to have her statement back there. You're
15 going to have her robbery questionnaire when they asked her
16 what was dinner like, she said unknown. When she is -- oh,
17 they asked her what hand he had a gun in. She said unknown.
18 why?

19 You know why she didn't know what hand she had a gun
20 in?

21 Because at the time she saw the gun they were already
22 in the struggle. She didn't see a lot of it. She didn't
23 hear Larry say get the money. She didn't hear Larry say
24 anything. You can read her statement. Take your time.
25 Read her statement. See exactly what she says. She goes

1 into precise detail about what happened that night. You
2 will have her statement back there. Read over it. See if
3 it lines up about what Larry said that night.

4 In this statement she says she walks Larry around this
5 corner, that he and Tyrell are doing a drug transaction, and
6 what is important is she says she turns and walks out the
7 door or towards the door. Now, Larry walked to here like
8 over here. Wants to say he did with a gun out over here.
9 When Jackie turns and walked towards the door she would have
10 saw him with the gun at that point and she would have put it
11 in this statement.

12 Investigator Godfrey told y'all he is trained to take
13 statements. Went to the academy. A thousand statements
14 probably and he stressed the importance of being truthful in
15 statements and being accurate.

16 Look at this statement. She says she turns, walk
17 towards the door, no mention of seeing Larry pull out a gun,
18 or no mention of hearing Larry say anything. Read her
19 statement. What's really important is, about her statement
20 she says she hears a tussle and then a gunshot. The order
21 of those words are very important. She hears a tussle and
22 then a gunshot. Not a gunshot. Then a tussle. She hears a
23 tussle and then a gunshot. That lines up exactly with what
24 Larry told you happened and that won't let it -- if they
25 tussled and then the gun went off. You have her statement.

1 Take it back there and read it.

2 So, the State's case, this is armed robbery.

3 why is he the science of armed robbery?

4 Ms. Campbell has been talking to you about, well,
5 there's no gunshot residue on Tyrell's hand. So, it
6 couldn't happen the way Larry said it happened. But you
7 heard the gunshot residue expert to tell you how easy the
8 gunshot residue wipes off your hand. You had the pictures
9 back there how somebody was struggling with the bloody hand
10 on the wall. That gunshot residue could have easily been
11 wiped off right then. You heard about how it was raining
12 profusely and they took Tyrell down to the hospital and is
13 supposed to go from the room to the ambulance. These hands
14 could have been washed off by rain with that one.

15 why are there no signs of armed robbery?

16 No talk about armed robbery anywhere before they got to
17 the room.

18 They planned a -- if that happened, an armed robbery,
19 why is there no talk about it?

20 where is the plan?

21 If they had somebody that talked about a plan of armed
22 robbery, they would have brought them in here.

23 Have you heard from Eugene Frost or anybody that could
24 say Larry Brown went there with the intention to rob?

25 Ms. Campbell asked Larry where is the money, where is

1 the drugs?

2 I don't know.

3 You heard from Investigator Godfrey who said he got the
4 e-mail from Ms. Clemmons, at that time Anna Elsey, who said
5 they need to do some more searching, search more thoroughly.
6 There are other people in the room that know. I don't know
7 what they picked up. Neither does Larry. Because if he
8 went there to rob anybody in that room he would have the
9 money and the drugs.

10 They searched Larry's house a week later when they got
11 there. No belongings for Tyrell there. No money there. No
12 drugs there. They talk about the eyewitnesses and Mr.
13 Cooper, at the beginning of the case, they were trying to
14 tell you that these eyewitness' stories are different. That
15 means they're telling the truth, and by God, they did tell
16 you that.

17 They -- the details in this case are very important.
18 We're not talking about the difference between a red shirt
19 and a blue shirt. But whenever we talk about eye witness,
20 we're talking about the crux of this case.

21 The only issue in this case is what Larry's intentions
22 were. These witnesses, the differences in these witness'
23 statement all go to whether or not Larry went there with the
24 intention to rob or whether he went there with the intention
25 to buy drugs. The details are very important. That's why

1 we harp on the details because those details show whether or
2 not Larry had intended to rob, intend to murder.

3 Are you going to be able to consider, when it relates
4 to the murder, three different choices?

5 In murder, quite simply, if you find there is no
6 malice, there's no murder.

7 Ladies and gentlemen, there is no malice here. He
8 didn't go there with a heart fatally bent on mischief and he
9 didn't go there with the intention to rob. He didn't go
10 there with those two. If he didn't go there with those two
11 intentions, there's no murder.

12 Then you've got to consider manslaughter. Quite simply
13 put, voluntary manslaughter is an act done in heat of
14 passion or legal provocation.

15 what is the heat of passion?

16 The argument they had. You heard Larry tell you about
17 the argument they had about the drugs, what Tyrell said to
18 him, I'll blow your head off.

19 what is the legal provocation?

20 He said he saw Tyrell reach for his gun, the gun in the
21 drawer, gun that was found in the drawer, loaded by police.
22 He said at that point Larry said I reached for my gun and we
23 struggled.

24 You'll also consider involuntary manslaughter.

25 Involuntary manslaughter -- and I love Ms. Campbell's

1 example about the manslaughter at Carowinds because I'm
2 sure -- she told you that very intentionally pulled the
3 trigger and that can't be voluntary manslaughter. But I'm
4 sure Ms. Campbell's example of the hunter in that case
5 intentionally pulled the trigger. Involuntary manslaughter
6 essentially is an accidental killing.

7 Larry told you about the struggle. Everyone in this
8 courtroom says it was a struggle. Everyone, the Goodwins,
9 Mr. Austin, Ms. Holly, who had -- the only thing that is
10 consistent in everybody's story in this room is that there
11 was a struggle. We have pictures in the room. That's going
12 to indicate to you is that there was a struggle. The
13 struggle is the only thing that's consistent in everybody's
14 story.

15 Now, in a few moments, after I finish talking and Ms.
16 Campbell comes back and talks to you again you're going to
17 have to go back in that jury room and decide what's the
18 correct verdict in this case. The two things I want to talk
19 to you about is burden of proof and what is the level of
20 that proof.

21 Ms. Campbell told you the state of South Carolina has
22 the burden of proof. It is their job to prove these cases
23 to you beyond a reasonable doubt and the reason that is,
24 I'll tell people don't ever get confused about the
25 sturdiness of wood on this table because on this table, I'm

1 going to tell people, rests all the resources, all the
2 strength, and all the powers in the State of South Carolina.
3 I mean you heard from police experts, crime scene people,
4 SLED people. They have all the power to bring these people
5 in and that's why they have the burden and it is their job
6 to prove to you this case.

7 It is not Larry's job to prove to you that he's not
8 guilty. It is their job to prove he had malice if they were
9 to convict him for murder and that he attempted to arm rob
10 somebody. They attempt to convict him on armed robbery.

11 What is the level of convincing you might have?

12 Some of you may have served before and talk about civil
13 cases. In civil cases we use preponderance of the evidence.
14 That's because it's only somebody's money involved with
15 that. Use preponderance of the evidence, of the evidence.
16 Like Family Court cases, we talk about child custody. We
17 have clear and convincing and that's the standard that's
18 used when we use child custody things of that nature.

19 But in criminal cases, you use beyond a reasonable
20 doubt. That's the highest standard you have. People ask me
21 what's beyond a reasonable doubt. I think -- the example
22 I'm about to give is I imagine a person wakes up in the
23 morning and sees somebody they know, a loved one being
24 charged and accused of committing a serious crime.

25 What is the level of convincing it would take for that

1 purpose to believe that their loved one they knew actually
2 did that crime?

3 That's the same kind of conviction you have to have
4 here today. That's the same kind of benefit you have to
5 give Larry in this case. If they haven't proved their case,
6 and you're back there saying, well, maybe it happened this
7 way, I'm not sure whether it happened that way, Larry gets
8 the benefit of the doubt because it's their burden to prove
9 their case.

10 Now, probably one of my famous -- probably the most
11 favorite quotes by M.L.K., Martin Luther King, Junior, is
12 the true dose of a man is not where he stands in time of
13 comfort or convenience, but in times of challenge and in
14 times of controversy.

15 Today, ladies and gentlemen, for you 14 this is a true
16 test. The true test of our judicial system. We have the
17 best system in the world. I always tell people that. The
18 jury system. We have 14 people who come in here like you 14
19 came in here and serve on a jury. For 200 people were
20 chosen for jury duty and out of that 200 you 14 were chosen
21 because we knew you could do this job, knew you would hold
22 the State to their burden of beyond a reasonable doubt, and
23 you would presume that Larry's innocent unless and until
24 they can, can prove to you otherwise.

25 I'm not going to ask you to do what's convenient. It

1 would be convenient to find Larry guilty of murder because
2 those three girls say it happened that way. Their story is
3 a little bit different. I'm not going to worry about
4 details that it would be comfortable to find Larry guilty of
5 armed robbery and murder because I feel sorry for the
6 victim's family and I feel sorry for the victim's relatives
7 as well. But you have to take all those emotions and
8 simply -- and all the kind of passion and any kind of
9 emotion you have and set it aside and do your job.

10 I'm not asking you to do what's comfortable. I'm not
11 asking you to do what's convenient. But I will ask you, the
12 law demands you to do what's correct. What is correct is,
13 is to find Larry not guilty of attempted armed robbery, to
14 conclude that what happened that day is saying Tyrell was
15 some sort of manslaughter.

16 Thank you.

17 THE COURT: Let's take a very short break and we will
18 let you all control this break because the State does get to
19 reply and just remind you not to discuss the case. Y'all
20 knock on the door when you're ready.

21 (Whereupon, the following takes place outside the
22 presence of the jury panel.)

23 THE COURT: Y'all be at ease for a few moments.

24 (Whereupon, a short recess was taken at this time.)

25 THE COURT: within the voluntary intoxication piece

1 there was that charge about insanity. We took that out.
2 Just said if he is intoxicated---

3 SOLICITOR CAMPBELL: Just short.

4 THE COURT: No definition of insanity here. So, we
5 don't want to use that.

6 Jurors please.

7 (Whereupon, the following takes place within the
8 presence of the jury panel.)

9 THE COURT: Ms. Campbell, you may proceed.

10 SOLICITOR CAMPBELL: May it please the Court.

11 You know, in every case, when you're getting ready for
12 trial, you try and anticipate what the defense may be and
13 listen close to, to opening arguments and in this case it's
14 pretty standard. First they talk about a story, Mr. Cooper
15 did, and his grandmother as a child, her grandfather's
16 brother was a bad seed. He was into gambling and he didn't
17 go to church and then one day they got the news that he was
18 dead. He had been killed because he was involved in an
19 illegal car deal, and I guess the inference we're all
20 suppose to get from that is that he got what he deserved.
21 Bad things happen to bad people. It's not a big deal even
22 though she didn't understand it because she was a child.

23 Then he went on to talk about witnesses in the case and
24 how you couldn't believe them because that's crucial to them
25 because they had changed their story over and over.

1 Important part of their story. You weren't going to be able
2 to believe them and then he talked about reasonable doubt.

3 Let me be the first to tell you the burden of proof or
4 the last day I guess until the judge tells you is only the
5 state of South Carolina to prove this defendant's guilt
6 beyond a reasonable doubt as it should be. In this case,
7 ladies and gentlemen, with these facts and this physical
8 evidence it is a burden we welcome. Follow the law as the
9 judge gives it to you. It doesn't mean you have to believe
10 Larry Brown or a relative. All we ask is the verdict that
11 speaks justice.

12 He got up here in closing argument and he talked about
13 we can't prove that going up to that motel room that Larry
14 Brown expressed his intent to commit a robbery. He is
15 correct in that part of that statement. We don't have to
16 prove that he told everybody that he met that he was going
17 to commit a robbery.

18 Most people don't talk about it. They do it. Like
19 him. He told you the only thing consistent with what any of
20 the witnesses in the room said was that there was a
21 struggle. That's not true. Every single witness that was
22 in that room talked about they came in, there was a drug
23 deal, one or the other said get the money, and that the
24 defendant pulled out a gun. That's in addition to the part
25 he talked about.

1 That's when the struggle began and he talked about
2 there was no shots prior to the struggle. Nobody came in
3 there and said there were any shots prior to the struggle.
4 Tyrell Williams, at that point, someone pulls a gun on him,
5 he has a right to try to defend himself, or defend the two
6 year old in the room. Tyrell Williams lost his life doing
7 that.

8 He talked about how we know where it happened, this,
9 this room, that it happened right here just like Larry said
10 around this corner because, my gosh, you can't see anything
11 around this corner if you're sitting at this table.

12 Ladies and gentlemen, this isn't the Taj Mahal. These
13 aren't large rooms. Look at the pictures. I just pulled
14 one.

15 Were the people sitting at this table able to see what
16 was going on right here?

17 In the diagram, which is not to scale, yeah, you can
18 try to make it look like you can't see there, but everyone
19 in the diagram there's a direct line of sight. It's not
20 around the corner. Jackie came into here around this corner
21 or this corner. It doesn't matter. You can see everything
22 from any point.

23 Take Jackie's statement, which they put in. That's the
24 one they choose to put in. She's saying a struggle happened
25 at one point. I think on the bed or something, something.

1 He happens and he talks about how the shell casings, these
2 two shell casings, there's a projectile in the TV, right
3 here happened to prove the way he said.

4 Ladies and gentlemen, he ignored every other shell
5 casing where the majority of the shooting occurred because
6 that doesn't tell you. That doesn't support what Larry
7 Brown said. He talked about that this wouldn't be an armed
8 robbery because there was no man with gloves, no witnesses
9 there.

10 Ladies and gentlemen, they've gotten up here and told
11 you over and over and over and you cannot believe these
12 people, they're hanging out with a drug dealer, they're scum
13 of the earth, they are not believable, and guess who thought
14 that first?

15 Larry Brown. He doesn't care if there are any
16 witnesses. He's got an easy mark. He doesn't need a mask
17 or a gun. He's just robbing a drug dealer. That's what he
18 counted on, that the police wouldn't care, that the
19 prosecution wouldn't care, and that you wouldn't care
20 because he is just robbing a drug dealer.

21 We don't have to prove that he went there with the
22 intention of killing Tyrell. We don't have to prove that he
23 didn't have any intent of robbing him until he saw the
24 opportunity present itself, and I submit, ladies and
25 gentlemen, even without all the words, without Eugene Frost

1 holding the back door shut to make sure nobody got out till
2 they got what they came for, even without them saying get
3 the money from him, pulling out his gun alone speaks
4 volumes. It wasn't to say hi, I'm here for a visit.

5 He pulled out his gun because he needed crack cocaine
6 and he needed money because he was out of both. He had
7 already smoked five to six times that day. Yet, he was able
8 to get up here and give you a clear rendition minimizing
9 what happened. No, not every one is minimizing.

10 Blaming the victim for his own death, is that credible?

11 Couple that with the physical evidence in this case. I
12 notice they didn't talk about Stan Richard. They didn't
13 talk about Dr. Nichols. They didn't want you to think about
14 how far the gun had to be away from the body when it's shot
15 because that and that alone proves he didn't tell you the
16 truth. Ignore that. Gloss over that. Lamé.

17 The facts are the facts. It could not have happened
18 the way Larry Brown wants to tell you it did. The physical
19 evidence alone disproves that. Then look at his actions
20 afterwards.

21 why did he ditch the gun?

22 Because, in his mind, he's almost made it into a
23 self-defense case. He's the victim. He is the victim here
24 because he went to this dangerous drug dealer's house, which
25 he happened to oh, suddenly, been there before. And this

1 guy won't give him the right amount of drugs, this guy that
2 he knows is dangerous, that, according to him, had, had a
3 gun on a previous occasion and he's arguing with him about
4 the amount of crack because he wants his \$30 worth, the \$30
5 which we never recovered anywhere, and by the way, it is
6 amazing all the drugs happen to be gone and the money in the
7 room before, after he's out the window, and just amazing
8 enough too, I guess, when the victim supposedly reached down
9 and opened the drawer -- he said he opened the drawer to
10 reach for the gun at which point Larry pulled his gun, and
11 they got into the tussle, he was able to close it back
12 nicely before he left because I submit, ladies and
13 gentlemen, even they couldn't get up there and say that the
14 girls went back and did that.

15 Credibility. Believability. You know, there's an old
16 joke about two people walking down a street. One is a
17 preacher and one is a lawyer and the preacher looks down and
18 it rained the night before and there is a puddle right there
19 beside the sidewalk and there is mud at the bottom, but at
20 the bottom of the puddle you can see perfectly clearly
21 through the water a silver dollar, and the preacher looks at
22 it and says look there's a silver dollar, and the lawyer
23 picks up the stick and stirs up the water with the silver
24 dollar and the mud and you can't see it any more and he
25 stirs up the water and says what silver dollar, you can't

1 see it any more.

2 Ladies and gentlemen, I want to take a moment for you
3 to hear about the facts you heard. The forensic evidence
4 that you heard and the facts you must apply to the law as
5 the judge gives it to you. The defense has, is, has gotten
6 up here and asked you to find him guilty of manslaughter,
7 voluntary manslaughter.

8 I submit, ladies and gentlemen, he is guilty as charged
9 of murder. All we're asking is to hold him responsible for
10 his actions back when this happened for his choices, his
11 actions that cost Tyrell Williams his life.

12 And guess what, ladies and gentlemen?

13 In our justice system, if you're a victim or defendant,
14 it doesn't matter. Everyone gets justice. Just because you
15 make bad choices or have bad ideas it doesn't justify being
16 killed. He doesn't get a free pass or less of a pass just
17 because he murdered someone who was selling drugs. Listen
18 carefully when the judge tells you about what the law is.

19 One last thing I want to touch on, and I'll be back in
20 a minute. He talked about how also, if you look at the
21 testimony and listen, I submit remember the testimony,
22 there's blood here, blood here, blood on the chair, blood
23 all down this wall, hall. The one place he told you there
24 was blood spatter there isn't any. Remember the testimony.
25 It doesn't support his version. None of the forensics

1 support what he said happened. He also wanted you to
2 believe that, oh my gosh, he's walking down the hall and his
3 hand went up in the hall to cause this smear.

4 Ladies and gentlemen, you don't have to be an expert to
5 tell that this may be a bullet hole to the arm being slung
6 down the wall, but it's not a handprint.

7 what about the backs of his hand?

8 It got washed off in the rain going to the ambulance?
9 Who did you hear from?

10 I'm not going to call this. You heard from Ms. Austin,
11 Ms. Holly, Ms. Goodwin, and Ms. Goodwin. All of them were
12 interviewed that night independently. Every single one of
13 them walked in and said there were drugs, asked him about
14 money, and at that appointment this man pulled out his gun.
15 No one changed that story because they had to have heard it.
16 Every one of them says the same thing about who pulled out
17 the gun and what was going on when that happened.

18 Nobody was reaching for a drawer. Nobody shut a drawer
19 back. No one said that there were any gunshots prior to the
20 actual physical altercation. Everyone is consistent on that
21 point. Then after that they're at different places and hear
22 different things.

23 The miracle of this case?

24 No one else got shot.

25 Satierra Austin, Jackie Holly, Jamilla Goodwin, and

1 Camillia Goodwin, they all came up here and told you what
2 they knew. Mical Jones was -- why is he important?

3 Remember when he talked about how he was banging on the
4 door and it opened up and he could see the two girls trying
5 to get out the door and that his cousin, who was with him at
6 the door, had his hand on them as if to control them?

7 Does that support what these people all said?

8 Let's get one thing straight. If you're in the middle
9 of the Okay Corral battle and they're trying to get in
10 there, they don't want to stay in there if the gunshots are
11 coming through walls.

12 Why wouldn't they have been out of there but for Eugene
13 Frost making sure he had his back, making sure no one got
14 out till they got what they wanted?

15 What's more telling, what did Mical Jones tell you,
16 what Eugene Frost said as he opened the door?

17 I didn't do that. I'm not responsible for that. You
18 remember his words. I don't exactly.

19 Remember?

20 Even his cousin knew he committed a crime and he was
21 trying to separate himself from him. Even Eugene Frost knew
22 he committed the murder.

23 By the way, where is Eugene Frost?

24 He has the same rights he does. He has his own day in
25 court.

1 Frank Livingston, family friend, according to the
2 defendant, got up here and he told you what he knew. He
3 didn't know anything ahead of time as he testified. We
4 don't have to prove, ladies and gentlemen, that he told
5 everyone on earth that he was going to go rob people.
6 That's not an element of the crime. At the moment he pulled
7 out a gun and they're asking for money, the intent is
8 obvious. I don't have to have it manifested down the street
9 at the Dairy Queen. That's all we have to prove.

10 Listen to the judge. If she told you something
11 different, please. She will also instruct you on the law
12 that if you find that he was committing a robbery or
13 attempting a robbery in this case that you can't even
14 consider an involuntary manslaughter.

15 Frank Livingston met up with him a couple days later,
16 had a conversation, and in that conversation what did the
17 defendant tell his family friend that had given him the gun?

18 Say enough about that, but he told him, yeah, I pulled
19 the gun on a guy and then he jumped me so I had to shoot
20 him. When he was talking to his family friend he didn't
21 say, well, the guy wouldn't give me my stuff and was trying
22 to cheat me out of my food because he had good crack,
23 remember, and he went for the gun after he told me he was
24 going to blow my, I won't use the word, head off. That's
25 what, not what he told his good friend.

1 was Livingston believable?

2 Ms. Frost had to bring him here. I'm sorry. I
3 apologize.

4 what did you hear forensic, Lieutenant Elsey say?
5 She talked about the blood splatter.

6 This was a chaotic scene, but what's significant about
7 what they found?

8 I will get to David Collins in a minute. All these
9 shell casings, and you remember are right here where
10 everyone except him says everything started. There is a
11 shell casing here and one here too. As David Collins told
12 you, they eject to the right. They can hit things, role,
13 things of that nature, but if you have a pattern where they
14 are close, it can be significant in telling you where a
15 person was when the shooting occurred.

16 Blood, for the blood spatter, Robert Oates, Bouknight,
17 Polis, Collins, they talked to you too about they're not --
18 oh, oh. If that he had committed a robbery, we would have
19 found his fingerprints on the drawer where the gun was
20 because he must have kept the guns in the drawer.

21 well, he didn't keep them in a drawer according to his
22 own testimony since he said they were in a bag on top. He
23 knew where the drugs were. Never said. And beyond that
24 yeah, he knew because the victim's own fingerprints weren't
25 on there and we know he's been in the drawer.

1 Patricia Reed-Enzor, Tena Goff, Stan -- I wanted to
2 tell you why we have to bring all these people in. We have
3 to prove a chain of evidence. Before a chain of DNA can
4 come to you because we have to prove to the Court and you
5 ultimately no one tampered with or altered any evidence in
6 any way in this case, but that's why you had to listen to
7 those witnesses talk about stuff that you were like, well, I
8 don't really care, were they important.

9 Expert witnesses?

10 Who are important?

11 Expert witnesses with specialized knowledge that talked
12 about what happened. Dr. Clay Nichols, he and Stan Richard
13 both looked for stippling, soot, none.

14 What does that mean that's significant?

15 That means the barrel, the end of that .40 caliber that
16 was loaded with at least eight rounds was at least 12, more
17 like 18-inches away from the body where it hit. Could have
18 been further. That gets his case.

19 There is no way it happened like he said. If you look
20 at the angles, there's a struggle, might go downwards,
21 sideward, these are through and through, not exactly
22 straight on, but not at diverse angles where a struggle may
23 have occurred.

24 Most of them are to the area right here and right in
25 here. He wasn't trying to move him. He was going for the

1 gut.

2 Dr. Gray Amick talked about the DNA. It is important
3 in this case. Remember we didn't have any DNA results back
4 when Sergeant Smith interviewed that man. We didn't know
5 whether or not the DNA was going to show he was there.

6 There was -- he was never confronted with any DNA evidence.

7 Investigator David Collins, all the shell casings from
8 the same gun that the, the gun that was found in the room
9 could not have fired those. Agent Ida Simmons, the gunshot
10 residue.

11 why is that important?

12 Because at -- his testimony, if you want to believe it,
13 they were struggling with the gun and the defendant, victim,
14 excuse me, had his hands on the gun even though he says he
15 was intentionally shooting. Remember he had his finger on
16 the trigger. There would have to be gunshot residue of at
17 least one side of something because he didn't leave ten
18 minutes. Remember it quit sluffing off as soon as you got
19 it. That's the testing. They talked about how there was
20 blood and all this other stuff that was in the rain, trying
21 to get away from the fact that the victim had no gunshot
22 residue.

23 You heard from Deputy Ulmer and they have made a big
24 deal about Jackie and whether or not she said that the
25 shooter said get the money or the other guy said to get the

1 money. It doesn't matter. Under the hand of one the hand
2 of all, the, both of them there together, acting together,
3 doesn't matter who said what or who did what. But they are
4 trying to distance themselves from that.

5 The first officer on the scene was Deputy Ulmer. He
6 talked to Jackie right as she came out and she was still
7 visibly upset. We went through that whole line of
8 questioning because the only time you can get into certain
9 things a person says like that is because it's an excited
10 utterance. The law recognizes people when they've been
11 under the influence of some type of trauma don't have time
12 to make something up.

13 And what did Deputy Ulmer says, even though he was
14 trained, he's a police officer. He's trained. I don't know
15 why they don't think so. Deputy Ulmer told you she came
16 out, she said the guy with the gun said get the money,
17 that's not a big deal. Again, it doesn't matter. It is to
18 them. She's told officers from the beginning the guy pulled
19 the gun and said get the money.

20 Investigator Matt Ellis, Preston, Captain Smith, get
21 down to that. This defendant wants you to believe that he
22 did all this on his way from the scene where he quote
23 unquote didn't take the drugs or the money even though
24 they're gone and somehow he didn't smoke crack for the next
25 two days. I guess he doesn't want you to think he smoked

1 his crack for the next two days, that he was smart enough,
2 even though he had no intention and was traumatized because
3 he was the victim in this case, to ditch the gun in a
4 cemetery that was far enough away from the crime scene that
5 the police didn't know to go there and look for it, that
6 when he is -- that week he thinks about it. He knows he
7 shot and killed the person because it's all over the TV. He
8 thinks about what he should do, but he just never does
9 anything, and he even doesn't smoke crack until the weekend.

10 Then, on that Monday when he's arrested by Captain
11 Smith, he isn't asked the question about this is, about the
12 incident that occurred at the Grand Motel on Tuesday night
13 and his answer is I don't know anything about that I was at
14 home.

15 Indicative of guilt?

16 His question.

17 when did you cut off your dreadlocks?

18 A month ago.

19 why lie?

20 He knows he doesn't want to connect him to that scene.

21 Credibility. All we ask is that you hold him responsible.

22 Tyrell williams was a human being. He may have been
23 doing wrong things, but that doesn't give Larry Brown the
24 right to rob him and try to rob him is, is, is and take his
25 life. It either happened the way he said it happened and

1 then it's only manslaughter or it happened the way every
2 piece of evidence and witness, all the credible evidence
3 says it did and on that night they went there and whether
4 they planned it out in a elaborate form or not beforehand,
5 once they were in the room, Eugene Fröst had the back door,
6 Larry had the gun when he went back the way to dangerous
7 drug dealer's room because -- any way he went up there,
8 pulled out the gun, someone said get the money, and then
9 Tyrell and he got into a fight and he shot him and he didn't
10 shoot him just so he could get away, but he shot him once
11 and then he shot him again, and then he shot him again, and
12 then he shot him again and again.

13 He didn't try just to disable him. He made sure he
14 finished him off.

15 malice?

16 This case reeks of malice. All we ask is tell Larry
17 Brown he doesn't get a free pass or a voluntary manslaughter
18 because the victim was involved in illegal activities. Hold
19 him responsible for his actions and what he did. All the
20 State asks is a, once you consider the evidence, find him
21 guilty for the murder and the attempted armed robbery back
22 in November of 2006.

23 THE COURT: Ladies and gentlemen of the jury, if you
24 would now direct your attention to me. We certainly
25 appreciate your patience throughout the trial. And as

1 you're aware, we are certainly appreciative and in support
2 of you being here for such a very serious matter.

3 I am now going to charge you with the law of the case.
4 So, if you would, please listen carefully.

5 Now, Mr. Foreperson, and members of the jury, you have
6 heard the evidence and the arguments of both parties. I
7 will now explain to you the law which applies to this
8 action.

9 Defendant Larry Brown is charged with murder and
10 attempted armed robbery. The indictments charge the
11 defendant with these offenses. I remind you that the fact
12 that the defendant was arrested, charged, and indicted in
13 this case is not evidence in this case and cannot be
14 considered by you as evidence of guilt in this case nor does
15 it create any presumption or inference of guilt.

16 The indictment is simply the formal written instrument
17 which contains the charges made against the defendant. It
18 is the formal document by which the case is brought into
19 this court.

20 I remind you that, during this trial, you and I have
21 certain duties to perform. As the Trial Judge, it is my
22 responsibility to preside over the trial of this case, and I
23 have the duty to rule on the admissibility of the evidence
24 offered during this trial. You are to consider only the
25 competent evidence before you. If there was any testimony

1 ordered stricken from the record in this case during the
2 trial you must disregard that testimony. You are to
3 consider only the testimony which has been presented from
4 this witness stand, any exhibits which have been made a part
5 of the record in this case, and any stipulations of counsel.

6 I have the additional duty to charge you with the law
7 applicable to this case. As the presiding judge, I am the
8 sole judge of the law of this case, and it is your duty, as
9 jurors, to accept and apply the law as I now state it to
10 you. If you already have an idea as to what the law is or
11 what the law ought to be, and it does not agree with what I
12 now tell you the law is, you must abandon your prior ideas
13 because you are sworn to accept and apply the law in every
14 case as I state it to you.

15 In every case tried before the jury a judge becomes the
16 sole trier of facts in this case. A judge cannot comment on
17 or make any statement to a jury about the facts in this
18 case. Since you, the jury, are the sole fact finders in
19 this case, you are not to infer, from what I have said in
20 the process of this trial in ruling upon the admissibility
21 of evidence or otherwise or anything I said now during the
22 course of this instruction to you that I have any opinion
23 about the facts in this case.

24 The law does not allow me to have an opinion about the
25 facts in this case. This is a matter solely for you to

1 determine as jurors. It is your duty to determine the
2 effect, value, weight, and truth of the evidence presented
3 during this trial. The defendant is charged with murder.
4 The State must prove, beyond a reasonable doubt, that the
5 defendant killed another person with malice aforethought.
6 Malice is hatred, ill will, or hostility towards another
7 person. It is the intentional doing of a wrongful act
8 without just cause or excuse and with the intent to inflict
9 an injury or under circumstances that the law will infer an
10 evil intent.

11 Malice does not necessarily impart ill will towards the
12 individual injured, but signifies rather a general malignant
13 recklessness of the lives of others or a condition of mind
14 which shows a heart regardless of social duty and fatally
15 bent on mischief. Malice aforethought does not require it
16 exist for any particular time before the act is committed,
17 but must exist in the mind of the defendant just before and
18 at the time the act is committed. Therefore, there must be
19 a combination of the previous evil intent and the act.

20 Malice aforethought may be expressed or inferred.
21 These terms expressed and inferred do not mean different
22 kinds of malice, but merely the manner in which malice may
23 be shown to exist. Specifically malice may be shown either
24 by direct evidence or by inference from the facts and
25 circumstances which are proved.

1 Express malice is shown when a person speaks words
2 which express hatred or ill will for another or when the
3 person prepared beforehand to do the act which was later
4 accomplished. For example, lying in wait for a person or
5 any other about or preparation going to show that the deed
6 was there in the defendant's mind would be expressed malice.
7 Malice may be inferred from conduct showing a total
8 disregard for human life. Inferred malice may also arise
9 when the deed is done with a deadly weapon and that is any
10 article, instrument, or substance which is likely to cause
11 death or great bodily harm.

12 Whether an instrument has been used as a deadly weapon
13 depends upon the facts of this case. Additionally, the law
14 may allow the jury to conclude malice if you decide the
15 crime was accomplished as a direct result and in that regard
16 attempted armed robbery would be a felony under our law, and
17 you can infer malice existed if a person is in the
18 commission of a felony at the time of a final blow. If you
19 find the State has failed to prove, beyond a reasonable
20 doubt, the defendant murdered, you may consider whether or
21 not the State has proven beyond a reasonable doubt that the
22 defendant committed voluntary manslaughter as a lesser
23 offense of murder.

24 To prove voluntary manslaughter the State must prove,
25 beyond a reasonable doubt, that the defendant took the life

1 of another and in the sudden heat of passion based on
2 sufficient legal provocation. Both heat of passion and
3 sufficient legal provocation must be present at the time of
4 the killing to constitute voluntary manslaughter. Sudden
5 heat of passion may be, for a time, affect a person's
6 self-control and temporarily disturb a person's reason. The
7 sudden head of passion must be the type that would make an
8 ordinary person unable to coolly reflect on his actions and
9 would produce an uncontrollable impulse to do violence.

10 Sufficient level provocation must be the type that
11 would make a person of ordinary reason become enraged and to
12 lose control temporarily. The provocation needed for
13 voluntary manslaughter must come from some act of or related
14 to the victim. Words alone, however vulgar or insulting,
15 are not enough to be legal provocation. Where death is
16 caused by the use of a deadly weapon, the words must be
17 accompanied by some overt threatening act which could have
18 produced the heat of passion. The exercise of a legal
19 right, no matter how offensive it is to another, is enough
20 sufficient legal provocation for voluntary manslaughter.

21 If the heat of passion had cooled or there was enough
22 time by, between the provocation, if any, and the killing
23 for the passion of a reasonable person to kill, the killing
24 would not be voluntary manslaughter. In deciding whether a
25 reasonable person would have had enough time to cool off,

1 you should consider all the circumstances surrounding the
2 killing. You may consider the nature of the provocation, if
3 any, the defendant's minimal and physical state and the
4 circumstances and relationships between the parties.

5 If you find the State has failed to prove, beyond a
6 reasonable doubt, that the defendant committed voluntary
7 manslaughter, you may consider whether the State has proved,
8 beyond a reasonable doubt, that the defendant committed
9 involuntary manslaughter. It is a lesser included offense
10 of murder. To prove involuntary manslaughter, the State
11 must prove, beyond a reasonable doubt, that the defendant
12 unintentionally killed the victim without malice, but while
13 engaged in an unlawful activity not naturally tending to
14 cause death or great bodily harm or that the defendant
15 unintentionally killed the victim without malice while
16 engaged in a lawful activity with reckless disregard for the
17 safety of others.

18 Unintentional means the defendant did not intend for
19 anyone to be killed or seriously injured. Reckless
20 disregard for the safety of others is more than mere
21 negligence or carelessness. Mere negligence or carelessness
22 is the failure to use the care that a person of ordinary
23 reason would use under the same circumstances. Recklessness
24 is a conscious failure to use ordinary care. Reckless
25 disregard for the safety of others means you are not

1 interested in the consequences of your acts or the right and
2 safety of others.

3 If a person who knows or should know that ordinary care
4 requires certain precise cautions be taken for the safety of
5 others when using a dangerous instrumentality such as a gun
6 or car, but that that person fails to use those precautions
7 without concern for the person's actions are considered
8 reckless. The offense of involuntary manslaughter does not
9 include the killing of another while engaged in a felony.
10 If you find that the State has proved, beyond a reasonable
11 doubt, that the defendant committed attempted armed robbery
12 in violation of South Carolina Code annotated Section
13 16-11-330, then you can not find the defendant guilty of
14 involuntary manslaughter.

15 The defendant is charged with attempted armed robbery.
16 An attempt is an effort to accomplish a crime which does not
17 succeed. Attempt includes the specific intent to accomplish
18 all of the elements that constitute a criminal act, but
19 which fall short of the completed criminal act intended.

20 The State must show more than mere preparation and
21 intent. There must be some overt act committed in the
22 effort to commit the crime. The State must prove the
23 defendant attempted to commit armed robbery beyond a
24 reasonable doubt. Defendant must have intended to commit
25 armed robbery. Intentional must mean intending the result

1 which occurs, not accidentally, or involuntarily. Intent
2 may be shown by ability and conduct of the defendant and
3 other circumstances for which you may naturally and
4 reasonably infer intent.

5 Under South Carolina law, armed robbery occurs when a
6 person commits a robbery while armed with a pistol, dirk,
7 slingshot, metal knuckles, razors, or other deadly weapon,
8 or while alleging, either by action or words, he was armed
9 while he was using a representation of a deadly weapon or
10 any object which a person present during the commission of a
11 robbery reasonably believed to be a deadly weapon.

12 Additionally, armed robbery consists of the defendant
13 taking personal property from the person or presence of
14 another person. Property is in the presence of a person if
15 it is within the person's reach, inspection, observation, or
16 control so that the person could, if not overcome with
17 silence or prevented by fear, keep possession of the
18 property. Armed robbery also consists of the defendant
19 carrying the property away intending to permanently deprive
20 the owner of the property and to keep the property for the
21 defendant's own use. The slightest removal of the property
22 or the complete possession of the property, even for an
23 instant by the defendant, is sufficient to show a taking and
24 carrying away of the property. The taking and carrying away
25 of the property must have been done with violence or in a

1 manner which put the owner of the property in fear of
2 violence.

3 Finally, armed robbery occurs if the defendant was
4 armed with a deadly weapon during the completion of the
5 robbery. A deadly weapon is any article, instrument, or
6 substance which is likely to cause death or great bodily
7 harm. Whether an instrument has been used as a deadly
8 weapon depends on the facts and the circumstances of this
9 case.

10 The following are deadly weapons: a pistol, a rifle, a
11 dirk, slingshot, metal knuckles, razor, gasoline, Molotov
12 cocktail, and lighter fluid. A gun may be a deadly weapon
13 even if it is not operating.

14 The defendant has pled not guilty and that plea puts
15 the burden on the State to prove the defendant guilty. A
16 person charged with committing a criminal offense in South
17 Carolina is never required to prove himself innocent. No
18 matter how grave or serious may be the offense with which he
19 is charged, the defendant is presumed to be innocent unless
20 and until the State has established guilt beyond a
21 reasonable doubt.

22 This presumption of innocence is legal proof of
23 innocence, and does not end when you begin your
24 deliberations, but it accompanies the defendant throughout
25 the trial until you reach a verdict of guilt based on

1 evidence satisfying you beyond a reasonable doubt. This
2 presumption of innocence is like a robe of righteousness
3 placed about the shoulders of the defendant, and remains
4 with the defendant until it has been stripped from the
5 defendant by evidence satisfying you of the defendant's
6 guilt beyond a reasonable doubt. The presumption of
7 innocence is a substantial right to which every defendant is
8 entitled unless you, the jury, are satisfied, from the
9 evidence, of the defendant's guilt beyond a reasonable
10 doubt.

11 The State has the burden of proving the defendant
12 guilty beyond a reasonable doubt. The State is required to
13 prove every element of the charged offense by which, which,
14 satisfied each of you of the guilt of the defendant beyond a
15 reasonable doubt. The defendant is not required to prove
16 his own innocence. The State's burden of proving the
17 defendant guilty beyond a reasonable doubt always remains
18 upon the State of South Carolina.

19 Some of you may have served as jurors in civil cases
20 where you were told that it is only necessary to prove that
21 a fact is more likely true than not true such as the greater
22 weight or preponderance of the evidence. In criminal
23 evidence, excuse me, criminal cases, the State's proof must
24 be more powerful than that. It must be beyond a reasonable
25 doubt.

1 A reasonable doubt is the kind of doubt that would
2 cause a reasonable person to hesitate to act. The term
3 reasonable doubt should be given its plain and ordinary
4 meaning. There are very few things in this world that we
5 know with absolute certainty. And in criminal cases, the
6 law does not require proof that overcomes every possible
7 doubt. If, based on your consideration of the evidence, you
8 are firmly convinced the defendant is guilty of the crimes
9 charged, you must find him guilty. If, on the other hand,
10 you conclude there is a real possibility that he is not
11 guilty, you must give the defendant the benefit of that
12 doubt and find the defendant not guilty.

13 If a crime is committed by two or more people who are
14 acting together to commit the crime, the act of one is the
15 act of all. A person who joins with another to commit an
16 unlawful act is criminally responsible for everything done
17 by the other person which happens as a probable or natural
18 consequence of the acts done in carrying out the common plan
19 and purpose. If two or more people are together, acting
20 together, assisting each other in committing the offense,
21 the act of one is the act of all or, as it is sometimes
22 said, the hand of one is the hand of all. Prior knowledge
23 that a crime is going to be committed without more is not
24 sufficient to make a person guilty of that crime. Mere
25 knowledge that another person is going to commit a crime,

1 even if the defendant is present when the crime is
2 committed, is not sufficient to convict the defendant as a
3 principal.

4 Guilt, as a principal, is shown by actual or
5 constructive presence at the scene as a result of prior
6 arrangement. Therefore, a finding of a prior arranged plan
7 or common scheme is necessary for a finding of guilt as
8 principal. The State must prove, beyond a reasonable doubt,
9 by competent evidence, the theory of the hand of one is the
10 hand of all.

11 A principal in a crime is one who either actually
12 commits the crime or who is present aiding, abetting, or
13 assisting in committing the crime. When a person doesn't
14 act in the preparation of and with the assistance of
15 another, if the act is done by both where two or more acting
16 with a common plan or intent are present at the commission
17 of a crime, it does not matter who actually commits the
18 crime. All are guilty. The hand of one is the hand of all.

19 Presence at the commission of a crime is to be present
20 sufficiently to aid, abet, and assist in the commission of
21 the crime. However, mere presence at the scene of a crime
22 is not sufficient to convict one as a principal on the
23 theory of aiding and abetting. Intending is also a
24 necessary element for which there must have been a common
25 design or intent to commit the crime, and it must have been

1 committed pursuant thereto with the person aiding and
2 abetting by some other act. Commit means intending the
3 result which actually occurs not necessarily but or by
4 voluntarily.

5 Intent may be shown by acts and or conduct of the
6 defendant and from other circumstances from which you may
7 naturally and reasonably intend. The State must prove these
8 elements beyond a reasonable doubt. A person who
9 voluntarily becomes intoxicated is just as responsible for
10 the acts committed while intoxicated as when the person is
11 not intoxicated.

12 There are two types of evidence generally presented
13 during a trial, direct evidence and circumstantial evidence.
14 Direct evidence is the testimony of a person who asserts or
15 claims to have actual knowledge of a fact such as an eye
16 witness. It is evidence that immediately states the main
17 fact to be proved. Circumstantial evidence is proof of a
18 chain of facts and circumstances indicating the existence of
19 a fact. It is based on inference and not on personal
20 knowledge or observation. The law makes absolutely no
21 distinction between the weight or value to be given to
22 direct or circumstantial evidence. Nor is a greater degree
23 of evidence required for circumstantial evidence or direct
24 evidence.

25 You should weigh all the evidence in this case. After

1 weighing all the evidence, if you are not convinced of the
2 guilt of the defendant beyond a reasonable doubt, you must
3 find the defendant not guilty.

4 Necessarily, you must determine the credibility of
5 witnesses who have testified in this case. Credibility
6 simply means believability. It becomes your duty, as
7 jurors, to analyze and evaluate the evidence and determine
8 which evidence convinces you of its truth.

9 In determining the credibility of witnesses who have
10 testified in this case, you may believe one witness over
11 several witnesses or several witnesses over one witness.
12 You may believe only a part of the testimony of a witness
13 and reject the remaining part of the testimony of that same
14 witness. You may believe the testimony of a witness in its
15 entirety or reject the testimony of a witness in its
16 entirety. You may consider whether any witness has
17 exhibited to you any interest, bias, prejudice, or other
18 motive in this case. You may also consider the appearance
19 and manner of a witness on the witness stand.

20 A person who has a past criminal record is competent to
21 testify during a trial. A past record does not affect the
22 ability of that witness to testify. The past record may
23 only be considered by you if at all in determining the
24 witness' believability.

25 Remember, you are the sole judge of the facts in this

1 case and of the believability of any and all of the
2 witnesses. Normally witnesses are limited to testify about
3 facts and knowledge and not allowed to give opinions, but an
4 exception exists for certain witnesses by their training,
5 education, or experience are considered experts in a
6 particular fields who may give their opinions in that field
7 based upon the facts of a matter and their conclusions.

8 These witnesses constitute evidence to be considered by
9 you in connection with all of the other testimony and
10 evidence in the case. You may consider the expert's opinion
11 just as you do all other evidence in this case. It is for
12 the jury to give it such weight as you, in your experience
13 and discretion, may determine. You must weigh such evidence
14 and accept or reject it in the same manner that you treat
15 all other evidence in the case.

16 If you decide that the opinion of an expert witness is
17 not based on sufficient education, experience, or if you
18 conclude that the reasons given in support of the reason are
19 not sound or that the opinion is outweighed by other
20 evidence you may disregard the opinion entirely. An expert
21 witness' testimony is to be given no greater weight than
22 that of other witnesses simply because the witness is an
23 expert. Further, you are not required to accept an expert's
24 opinion even though it is not contradicted.

25 An issue in this case is the identification of the

1 defendant as the person who committed the crime charged.
2 The State has the burden of proving identity beyond a
3 reasonable doubt. You must be satisfied, beyond a
4 reasonable doubt, of the accuracy of the identification of
5 the defendant before you may convict the defendant.

6 Identification testimony is an expression of belief or
7 impression by a witness. You must consider the
8 believability of each identification witness in the same way
9 as any other witness. You may consider whether the witness
10 had an adequate opportunity to observe the defendant at the
11 time of the offense. This will be affected by things like
12 how long or short a time was available, how far or close the
13 witness was, the lighting conditions, and whether the
14 witness had the chance to see or know the person in the
15 past.

16 Once again, I instruct you the burden of proof on the
17 State extends to every element of the crime charged and this
18 specifically includes the burden of proving, beyond a
19 reasonable doubt, the identity of the defendant as the
20 person who committed the crime. If, after examining the
21 testimony, you have a reasonable doubt as to the accuracy of
22 the identification, you must find the defendant not guilty.

23 A statement alleged to have been made by the defendant
24 has been admitted into evidence in this case. While the
25 Court has determined that the statement is admissible, I

1 instruct you that you make the ultimate decision on whether
2 or not the defendant made the statement. If the defendant
3 did make the statement, you must determine whether that
4 statement was made by the defendant voluntarily and of his
5 own free will. This mean that is the statement was not
6 caused by pressure, force, fear, threats, coercion, or
7 intimidation, or by hope, or promise of leniency, or rewards
8 of any kind.

9 In determining whether the statement was voluntary, you
10 should consider both the characteristics of the defendant
11 and the details of the questioning. Some of the factors
12 that you must consider are the age of the defendant, the
13 defendant's education or lack of education, the defendant's
14 mental ability or capacity, the defendant's IQ or education,
15 the defendant's background and environment, the place and
16 level of detention, the nature of the questioning, and the
17 advice or lack thereof to the defendant of his
18 Constitutional rights including but not limited to the right
19 to remain silent, that any statement could be used against
20 him in a court of law, the right to have a lawyer present,
21 that if he could not afford a lawyer a lawyer would be
22 appointed to represent him without any costs, and that he
23 does not have to make a statement at any time.

24 You must carefully consider all of the surrounding
25 circumstances before you give any weight to the alleged

1 statement. The State has the burden of proving, beyond a
2 reasonable doubt, that the alleged statement was voluntary.
3 If you determine it was, you may give the statement any
4 further consideration that you deem proper. You must decide
5 what weight, if any, should be given to the alleged
6 statement. If you determine the alleged statement was not
7 the free and voluntary statement of the defendant, you
8 should not consider the statement at all.

9 Finally, your verdict can not be based on sympathy,
10 passion, prejudice, emotion, or any other consideration.
11 Only evidence in this case. It is mandated that your
12 verdict be unanimous. That is, meaning that every juror
13 must agree on the jury verdict. There can not be any split
14 or divided vote in any form or fashion such as is one to
15 eleven, ten to two, or nine to three. Each of you must
16 agree. Please do, please do not sign the verdict form until
17 every single juror agrees.

18 Okay. Now, with respect to you, you will conduct your
19 deliberations. You will go to your jury room and you will
20 wait until everybody is comfortable and seated at the table.
21 The alternates will not be a part of the deliberations
22 because only who was in the original 12 has remained, fine
23 and healthy, and was able to carry out their role in the
24 case. You will wait to deliberate after you receive all of
25 the evidence into your jury room, and then the foreperson,

1 you'll also be given the verdict form.

2 On the verdict form it will indicate the charges,
3 attempted armed robbery, and murder, guilty or not guilty.
4 Again, the Court does not comment on the facts. The only
5 reason it says guilty or not guilty, G comes before N. Then
6 we have other instructions to you that if you find the
7 defendant guilty of murder, stop and end your deliberations.
8 If you don't, then that's when you proceed on to the lesser
9 included offenses of voluntary manslaughter or involuntary
10 manslaughter.

11 Once you have concluded those deliberations, then the
12 foreperson will sign and date the form, knock on your door,
13 and let the bailiffs know. Indicate you are through with
14 your proceedings.

15 We apologize for the length of the trial. We know your
16 lunch is here. It is up to you how you wish to proceed.
17 You're welcome to eat lunch and then take a break or
18 whatever. The only instruction is that you cannot begin any
19 deliberations until everyone is in the room. So, you-all
20 decide for yourself however you wish to do that.

21 I apologize. I know some of you ordered hot meals. We
22 will make microwaves available to you. So, don't worry
23 about that issue.

24 Thank you so much for your patience at this time. I'm
25 going to excuse you to your jury room and let me take up any

1 issues with the attorneys, and then we will get the evidence
2 into you.

3 Alternates, do not go inside the jury room and then
4 wait until I release you.

5 Okay. Thank you-all. Remind you not to discuss the
6 case.

7 (Whereupon, the following takes place outside the
8 presence of the jury panel.)

9 THE COURT: Exceptions to the charge other than as
10 previously indicated?

11 MR. O'NEILL: I just renew any previous objections that
12 I had to the charges.

13 THE COURT: And the Court will stand by that ruling.
14 Anything further?

15 Anything further?

16 Check the evidence and then we'll let them begin.

17 (Whereupon, the jury begins deliberations at 2:12.)

18 THE COURT: The jury says can we have the description
19 of murder, manslaughter, and involuntary manslaughter, which
20 would be my instruction. I'm starting, getting closer on
21 the side of giving them because this is happening all too
22 often in trials.

23 SOLICITOR CAMPBELL: No matter how much you go over it
24 it seems to happen every time.

25 THE COURT: It is a complicated charge.

1 SOLICITOR CAMPBELL: This one, too, with lesser
2 included.

3 You're going to do the entirety with lesser included?

4 THE COURT: Right.

5 SOLICITOR CAMPBELL: That's fine.

6 THE COURT: I did find all the proposed State's
7 requested charges. That's going to be a Court's Exhibit and
8 the charges we actually gave them, that will be a Court's
9 Exhibit as well.

10 Madam Clerk, if you would, take that and I'm going to
11 ask that juror's note be signed and indicated by the
12 foreperson with the number.

13 Okay.

14 MR. O'NEILL: Can we make the results of the
15 investigation of the phone call a Court Exhibit?

16 SOLICITOR CAMPBELL: We got -- this morning came in a
17 call shortly after six o'clock. We were going to hand it up
18 to you and let you decide what you were going to do.

19 SOLICITOR JOPHLIN: There is a call at 6:06 and 6:24.

20 SOLICITOR CAMPBELL: We haven't done any further
21 investigation as to where those numbers come from. If you
22 want us to pursue it, we will. If you don't---

23 THE COURT: The juror's note will be made a Court's
24 Exhibit.

25 Anybody see any need to pursue it?

1 SOLICITOR CAMPBELL: Since there hasn't been any more
2 problem, I don't---

3 THE COURT: I'll just make it a Court's Exhibit. Thank
4 y'all. Be at ease.

5 (Whereupon, the jury note was marked as Court's Exhibit
6 No. 6. The State's requests to charge were marked as
7 Court's Exhibit No. 7. The jury charges were marked as
8 Court's Exhibit No. 8. The AT&T phone log was marked as
9 Court's Exhibit No. 9. All of the above exhibits were for
10 identification only at this time. The jury returned with a
11 verdict at 4:40.)

12 THE COURT: I understand the jurors have reached a
13 verdict?

14 Y'all ready?

15 MR. O'NEILL: Yes, Your Honor.

16 (Whereupon, the following takes place within the
17 presence of the jury at this time.)

18 THE COURT: Foreperson, have you and your jurors
19 reached a verdict?

20 FORELADY: We have, Your Honor.

21 THE COURT: If you will please pass that to the
22 bailiff.

23 THE COURT: Madam Clerk, if you would, publish the
24 verdict.

25 CLERK: Court of General Sessions, Firth Judicial

1 Circuit, State of South Carolina versus Larry Brown,
2 Indictment Number 2007-GS-40-11094 and 2007-GS-40-11099, as
3 for the charge of attempted murder, attempted armed robbery,
4 we, the jury, now find the defendant guilty. As to the
5 charge of murder, we, the jury, find the defendant guilty.

6 Mr. Foreperson, is this your verdict and the verdict of
7 the entire jury?

8 FOREMAN: It is.

9 THE COURT: Anything from counsel at this time?

10 MR. O'NEILL: Poll the juror.

11 (Whereupon, the jury was polled at this time and all
12 jurors answer affirmatively that this was and is still their
13 verdict.)

14 THE COURT: Does counsel have any reason why I can't
15 release the jurors now?

16 MR. O'NEILL: No, Your Honor.

17 (Whereupon, the jury was dismissed at this time.)

18 THE COURT: Is -- how would you like to proceed?

19 MR. O'NEILL: Your Honor, at this time I would renew my
20 previous motions and objections and I would ask for a new
21 trial based on specifically, but not limited to my pretrial
22 Riddle motion, State's 60 and 61, Doyle violations by the
23 State, and Your Honor's charge on the hand of one is the
24 hand of all.

25 THE COURT: The Court will abide by its prior rulings.

1 I did study the law during that time as those rulings were
2 being made and I feel comfortable for doing so and
3 respectfully deny it.

4 Anything else?

5 Do y'all want to proceed with sentencing now?

6 SOLICITOR CAMPBELL: Yes, ma'am.

7 Your Honor, present in the courtroom is the victim's
8 mother and---

9 MR. O'NEILL: Your Honor, the paperwork.

10 SOLICITOR CAMPBELL: Oh, the paperwork.

11 (Pause.)

12 SOLICITOR CAMPBELL: Your Honor, the victim's mother is
13 here in the courtroom. She has been here most days. His
14 sister was here I believe yesterday. She has two children.
15 So, they have traded off being here for the children and
16 being able to be here. I believe, at the appropriate time,
17 she would like to be able to address the Court just about
18 the loss of her son.

19 Is now okay?

20 THE COURT: This is fine.

21 MRS. JACKSON: Good evening, everyone. My name is
22 Cathy Jackson and I'm Tyrell's mom. First of all, I wanted
23 to say thank you so much to everyone that participated in
24 this in getting justice for my son. He was my one and only
25 son. Not that if I had ten, they couldn't still take the

1 place of Tyrell. I just had the two children and we're
2 basically a small family, me, my daughter, Tyrell, and my
3 three grandchildren, which one belonged to him that he did
4 not get to see. His life was taken in November. She wasn't
5 born until February. So, she'll never see her dad.

6 I will never ever get to hold my son anymore. I'll
7 never see him walk through the door with that big old smile
8 and say what's up mama, what you cooking. My daughter never
9 will get to talk with her brother or argue with her brother
10 anymore. That was her, you know, and only sibling. No one
11 would ever know what this has done to my family. We will
12 never ever be the same.

13 But as small a family that we are, we are a strong
14 family in God. We hung in there. We hung in there and we
15 just kept believing that justice would be done. I just
16 thank you all so much.

17 I also want to say, before I sit down, is that I really
18 feel -- my heart goes out to Mr. Brown's family because
19 being in their shoes this is not easy for them either. But
20 at least they will get to see him again. At least they will
21 be able to go to talk to him and touch him. I can't touch
22 my son. I can't talk to him. I can't laugh with him ever
23 again. I don't condone -- his whereabouts at the time,
24 condone his whereabouts at the time. I didn't raise him --
25 don't believe no mom raise her children like that, but it

1 wasn't worth -- his life should not have been taken for
2 that, but my heart just goes out to Mr. Brown's family, and
3 I thank you-all, thank you-all very much for all the work
4 you've put into this over the years.

5 Just want to let you know I appreciate you, judge, and
6 each and every one here that participated in the justice for
7 my son. God bless each and every one of you. Thank you.

8 THE COURT: Thank you ma'am.

9 SOLICITOR CAMPBELL: Your Honor, as far as his prior
10 record, starting back in 1976, appears to be his first
11 conviction, was convicted of housebreaking. Don't know what
12 happened to the larceny. His next conviction was in 1994.
13 He was convicted of possession of crack cocaine within half
14 mile of a school and it looks like a trafficking in cocaine,
15 10 to 28.

16 In 1995 is when he went into the Department of
17 Corrections for those charges. In 2004 I'm not showing a
18 disposition on the CDV's, but in 2005, Your Honor, he was
19 convicted of assault with intent to kill and pointing and
20 presenting a firearm at a person. I know in that case that
21 he was on probation I believe. He had done some time and
22 then got out on probation, Your Honor, and that case
23 involved him shooting at someone some 13 times is the
24 information I had.

25 Your Honor, the only other thing we'd like to do is

1 thank the sheriff's department for the excellent job they
2 did in investigating this case.

3 THE COURT: Was he on probation during the time of the
4 '05 assault with intent to kill and the pointing and
5 presenting?

6 Do you know what the sentence was?

7 SOLICITOR CAMPBELL: It looks like one year suspended
8 on the service of 202 days plus three years probation.
9 Excuse me. Five years suspended to 202 plus three years
10 probation.

11 THE COURT: Okay. Then don't we know who the victim
12 was in those cases?

13 SOLICITOR CAMPBELL: Yes, I've got that. According to
14 the incident report, it involved a 9-millimeter handgun.
15 His girlfriend was involved with one of the witnesses and
16 his girlfriend's -- was a 17 year old male. Looks like
17 there was a verbal confrontation at which time the defendant
18 went and got his 9-millimeter handgun and started shooting
19 at the victim as he was running away and that occurred on
20 May 14 of 2005.

21 He also pointed -- the pointing and presenting came
22 out. He also -- there were two other people there. One was
23 a nine year old child and one was a 39 year old. Looks like
24 her father. Apparently he pointed the gun at them, pulled
25 the trigger twice, but it never went off.

1 THE COURT: Okay. Anything further?

2 SOLICITOR CAMPBELL: No, ma'am.

3 THE COURT: All right. Go ahead.

4 MR. O'NEILL: Your Honor, before I say anything I want
5 to express my sincere condolences to Mr. Williams' mother
6 here. I think that shows the extent of the time -- in the
7 midst of her own loss here, Your Honor, he's expressed
8 remorse to me about the situation and obviously the sense of
9 loss of this young man's life.

10 This was a case that we attempted to try and resolve
11 short of a trial, Your Honor. Larry talked to me about
12 trying to take responsibility for this and trying to fashion
13 a resolution I guess that would be suitable for both sides
14 and we were unable to do that unfortunately. So, we
15 actually -- that's why we're here today, Your Honor.

16 Just to speak on the 2005 charge, I guess -- of course,
17 I didn't represent Larry for that charge, but I would point
18 out, digress, that the sentencing judge at that point saw
19 fit -- had probably a lot more information from both sides
20 during the sentencing colloquy. He saw fit this, that that
21 was a situation that deserved probation for the sentence and
22 that's all I can say about that situation in 2005. It's not
23 being addressed fully, the whole context of that, that
24 charge, Your Honor.

25 I guess, Your Honor, I have seen Larry during this

1 whole week and observed his demeanor on the stand and the,
2 the demeanor that you saw of Larry on the stand is the
3 demeanor he's always had with me. He has always been quiet
4 and reserved, helpful in this case, and never a harsh word.
5 From the description of the events that night, that doesn't
6 seem like the Larry I have come to know or the Larry his
7 family knows. I have spoken with his mother on separate
8 occasions. She always had fond things to say about him.

9 As Your Honor is aware, Mr. Brown is 50 years old and
10 he told the Court today he's had a 20 plus year struggle
11 with drugs himself. Delving in that world of drugs is what
12 got us here today, but if we had to do it all over again we
13 would take another course of action. I would say, in my
14 talking with Larry and during the case, I don't think he
15 went there, went there on the night of November 21, '06,
16 with the intention to take no one's life.

17 I know, as it relates to legally and the guilt phase,
18 it doesn't matter one way or the other about -- I say that
19 as it relates to mitigation, Your Honor. As Your Honor is
20 duly aware, the minimum on the murder charge is 30 years.
21 Mr. Brown is 50 years old and any prolonged time would be a
22 life sentence for Larry. I would ask the Court to consider
23 30 years since I think that sentence is long enough to send
24 a message and also do justice and also try to temper that
25 justice with a little bit of mercy.

1 THE COURT: Okay. State.

2 SOLICITOR CAMPBELL: Your Honor, the only other thing I
3 would say is he had just gotten out of jail for doing
4 another offense involving a weapon again where he was
5 shooting at people. In this case he did shoot the victim
6 six times, and I think that speaks for itself.

7 THE COURT: Give me the dates for which he gets credit
8 for the time he has served.

9 MR. O'NEILL: November---

10 SOLICITOR CAMPBELL: 7.

11 MR. O'NEILL: I'm sorry. November 27th, 2006.

12 SOLICITOR CAMPBELL: And he has been in jail since
13 then.

14 THE COURT: I've been here throughout this week and my
15 condolences to you and your family and I would say these
16 words. I'm very concerned about the defendant's prior
17 record with violence, the number of shots, the many people
18 who were around, the fact that whoever is around includes
19 children and just kind of that senseless recklessness
20 because right now we're here on murder this time, but it
21 could have very well have been more murder the other times.
22 I do want to say the State has done an outstanding job and
23 through law enforcement.

24 And Mr. O'Neill and Mr. Cooper, you did an outstanding
25 job. So, I don't want that to be at all remiss. He

1 exercised his right to a, constitutional right to a trial,
2 which he absolutely had the ability to do so and the Court
3 now sees fit to render sentence. These all run concurrent.

4 Attempted armed robbery, ten years.

5 Murder, life imprisonment.

6 SOLICITOR CAMPBELL: Thank you, Your Honor.

7

8 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 24th through the 28th days of August, 2009, as reported by Priscilla Nay, and transcribed to the best of my ability.

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

April 30th, 2010



PAMELA E. GREEN, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Richland

Full name and prison number (if any) of Applicant.

Larry K. Brown A.K.A. George Porterfield
226071

v.

State of South Carolina

2012 CP#005023
IN THE COURT OF COMMON PLEASRICHLAND COUNTY
FILED
2012 JUL 23 PM 2:43
ANNETTE W. MORRIS
C.C.P. & G.S.

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and veified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make car to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay threes and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Inst
2. Name and location of Court which imposed sentence Richland County Judicial Center
3. Name(s) of co-defendant(s) (if any) Eugene Frost, Frank Livingston,
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Murder 2007-GS-40-1199
 - (b) Attempted Armed Robbery - 2007-GS-40-1194
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Aug 28, 2009
 - (b) Life with out Parole

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. May 30, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished 2012-UP-322
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of trial Counsel
 (b) Ineffective Assistance of Appellate Counsel
 (c) Devised Due-process of Law

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) See Attachment brief
 (b) See Attachment brief
 (c) See Attachment brief

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
 ii. _____
 iii. _____
 iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. _____
 ii. _____
 iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Those are PCU Issues and CARI

(b) only be raised at a PCU hearing

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Deon Oneal

ii. Joey Savitz III

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial

ii. Appeal

iii. _____

19. State clearly the relief you seek in filing this application:

New trial

20. Are you now under sentence from any other court that you have not challenged?

no

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Larry R. Brown A.K.A. George Pontefield

SWORN to and subscribed before me this 21st
day of June, 2014

Steven T. Milne (L.S.)
Notary Public

My Commission Expires: November 7, 2016

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Larry K. Brown AKA George Postfield
Applicant

SWORN or affirmed to and subscribed before me this
21st day of June, 2012
Steven T. Mulvaney
Notary Public

My Commission Expires: January 7, 2016

RICHLAND COUNTY
FILED
2012 JUL 23 PM 2:43
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
)

PORTERFIELD George -
00226071,

) 2012CP4005023
)
)

) Applicant,
)

) v.
)

) RETURN
)

) State of South Carolina,
)

) Respondent.
)
_____)

The Respondent, making its Return to the application for post conviction relief (PCR) filed July 23, 2012, would respectfully show this Court:¹

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was true bill indicted at the February 2007 term of the Richland Grand Jury for Murder and Attempted Armed Robbery (2007-GS-40-11099;11094).² He was represented by Deon O'Neil, Esquire, and Jay Cooper, Esquire, on the charge(s). On August 24, 2009, Applicant proceeded to jury trial before The Honorable J. Michelle Childs. On August 29, 2009, the Applicant was found guilty of the charges as indicted. He was sentenced to life imprisonment for Murder and ten (10) years imprisonment for Attempted Armed Robbery, to run concurrently.

¹<http://www4.rcgov.us/publicindex/PICaseDetails.aspx?County=40+&Casenum=2012CP4005023&CourtType=G&CaseType=Civil&CourtAgency=40002>

² <https://sword.doc.state.sc.us/scdc-public/inmateDetails.do?id=+00226071>

Direct Appeal

A notice of appeal was filed and an Anders brief was submitted on Applicant's behalf by Joseph L. Savitz, III, Esquire, of the South Carolina Office of Appellate Defense. After receipt of Applicant's *pro se* brief, the South Carolina Court of Appeals dismissed the appeal on May 29, 2012. State v. Larry Brown a.k.a. George Porterfield, Op. No. 2012-UP-322 (S.C. Ct. App. filed May 30, 2012). The remittitur was issued June 19, 2012.

The application for post conviction relief (PCR) was filed July 23, 2012.

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript, and the Applicant's applicable direct appeal files.³ The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

III.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

³ The Respondent will utilize the Record on Appeal if the direct appeal was an Anders appeal.

- (a) Ineffective Assistance of trial Counsel
- (b) Ineffective Assistance of Appellate Counsel
- (c) Devised One-process of law

II. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) See Attachment brief
- (b) See Attachment brief
- (c) See Attachment brief

IV.

For the purposes of this Return, the Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

⁴ There was no brief attached to the application. Respondent hereby notes that all amendments to the application should be made at least one (1) full week prior to the convening of the evidentiary hearing; Respondent will object to and oppose any amended allegations raised for the first time at the evidentiary hearing.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. **The Respondent requests an evidentiary hearing to fully resolve this issue.** See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Charles T. Brooks, III, Esquire regarding when the hearing should be set.⁵

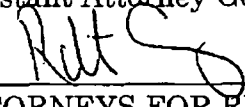
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

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General

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By: 
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October 12, 2012

⁵ The current PCR Roster for the 5th Circuit is available at <http://www.scag.gov/criminal-litigation/postconvictionrelief>

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

COURT OF COMMON PLEAS

GEORGE PORTERFIELD A/K/A)
LARRY BROWN 226071)

PETITIONER,)

v.)

TRANSCRIPT OF RECORD
12-CP-40-05023

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

January 15, 2013
Columbia, South Carolina

BEFORE :

THE HONORABLE C. THOMAS COOPER, JR., JUDGE

APPEARANCES:

CHARLES T. BROOKS, III, ESQ.
Attorney for the Petitioner

ROB D. CORNEY, ESQ.
Attorney for Respondent

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter
Typed for Elizabeth Harris

INDEX

	Page
Background of the case	3
George Porterfield:	
Direct examination by Mr. Brooks	4
Cross-examination by Mr. Corney	11
Deon O'Neil:	
Direct examination by Mr. Corney	12
Cross-examination by Mr. Brooks	20
Redirect examination by Mr. Corney	22
Recross-examination by Mr. Brooks	24

(There were no exhibits submitted.)

1 MR. CORNEY: The State would call the
2 post-conviction relief action of George Porterfield,
3 also known as Larry Brown. Just to be clear on the
4 record, his SCDC number is 226071. This is docket
5 number 2012-CP-40-5023. Mr. Porterfield was true
6 bill indicted at the February 2007 term of the
7 Richland Grand Jury for murder and attempted armed
8 robbery. He proceeded to jury trial August 24th,
9 2009 before Judge Childs. After a five day trial he
10 was convicted of both charges as indicted. Mr.
11 Porterfield was sentenced to life imprisonment for
12 murder and ten years imprisonment for attempted
13 armed robbery to run concurrently.

14 A notice of appeal was filed and an Anders
15 was submitted to the South Carolina Court of Appeals
16 on applicant's behalf by Danny Zenir (ph), public
17 defender, Joseph Savitz of the South Carolina Office
18 of Appellant Defense. After receiving applicant's
19 pro se briefs the South Carolina Court of Appeals by
20 order dated May 30th, 2012 granted the motion to be
21 relieved and dismissed the appeal. There was a
22 subsequent pro se motion for re-hearing that was
23 denied by the Court of Appeals. The remittitur was
24 issued June 19th, 2012 and the PCR application was
25 timely filed July 23rd, 2012. He is represented

PW - L. BROWN - DIRECT

1 today by Mr. Charles Brooks. And for the record,
2 Deon O'Neil, who served as trial counsel, is present
3 and prepared to testify today, Your Honor.

4 THE COURT: All right.

5 MR. CORNEY: Thank you.

6 THE COURT: Mr. Brooks.

7 MR. BROOKS: Ready, Judge?

8 THE COURT: Any time you are.

9 MR. BROOKS: Judge, we call Mr.
10 Porterfield to the stand.

11 WHEREUPON,

12 **LARRY BROWN,**

13 having been duly sworn by the Court, testified as
14 follows:

15 THE COURT: Have a seat in the witness box
16 and state your full name for the record.

17 THE WITNESS: My name is Larry Kenneth
18 (ph) Brown.

19 MR. BROOKS: You ready, Judge?

20 THE COURT: Yes, sir.

21 **DIRECT EXAMINATION**

22 **BY MR. BROOKS:**

23 Q Now, just to make sure we clarify, sometimes
24 you're known as Larry Brown and sometimes you're
25 known as George Porterfield; is that right?

PW - L. BROWN - DIRECT

1 A Right.

2 Q Now obviously -- and which do you prefer, Mr.
3 Porterfield or Mr. Brown?

4 A I prefer Mr. Brown; but they be, you know, at
5 SCDC they calling me Mr. Porterfield.

6 Q Okay, all right. I'll call you Mr. Brown?

7 A Thank you, sir.

8 Q Now Mr. Brown, you are serving a life sentence in
9 this case; is that correct?

10 A That is correct.

11 Q Basically, Mr. Brown, this was as highlighted in
12 the trial a drug deal gone bad; is that correct?

13 A That is correct.

14 Q You went there to buy some drugs from the
15 deceased; is that right?

16 A Yes, I did.

17 Q And obviously an altercation occurred and you
18 testified in your case; is that correct?

19 A Yes, I did.

20 Q Okay. You testified that you were actually
21 scared for your life; is that right?

22 A Yes, I was.

23 Q Okay. Now you also went for a mental health
24 evaluation; is that correct?

25 A Yes, I have.

PW - L. BROWN - DIRECT

1 Q And you said you had some mental health issues?

2 A Yes, I did.

3 Q You want to tell the Court what those mental
4 health issues are or were?

5 A I had post-traumatic stress syndrome,
6 schizophrenic, border line personality disorder.

7 Q Anything else?

8 A That's it.

9 Q Now did your lawyers, were they aware of all
10 this?

11 A No, he did not do an investigation.

12 Q No, no, no. Were they aware of these mental
13 health -- were they aware of these mental health
14 problems?

15 A No, he wasn't.

16 Q Did you ever tell him about them?

17 A Well, I told him I was on medication at the
18 jailhouse.

19 Q For mental health issues?

20 A Right.

21 Q So as far as you know they didn't check those
22 out; is that correct?

23 A That's correct.

24 Q Okay. Do you recall how long they were on your
25 case before you went to trial?

PW - L. BROWN - DIRECT

1 A From 2006. I believe I was assigned to him
2 around the end of 2006. About the middle of 2006
3 when I assigned to -- when he was assigned to me. I
4 say approximately three years.

5 Q Okay. Now fast forward into the trial. There
6 were a lot of witnesses that testified, it was a
7 five day trial, and you testified; isn't that
8 correct?

9 A Yes, I did.

10 Q You told the Court and the jury that you thought
11 this was a self-defense issue; is that correct?

12 A Yes, I did.

13 Q Can you tell -- tell us in your own word what you
14 told the jury.

15 A I told the jury and the Court that night I went
16 there to the Grand Motel to purchase crack cocaine.
17 I met with a young lady named Jackie Holly at the
18 motel, and she escorted me and my cousin Eugene
19 Frost upstairs to the room where the guy was selling
20 crack cocaine. And she knocked on the door. And
21 she entered, and they let her in. Then I entered
22 the door, entered, and went in, and my cousin
23 followed.

24 Q Okay.

25 A She told the dude there that I wanted to buy

PW - L. BROWN - DIRECT

1 crack cocaine so the dude motioned me, told me to
2 come to the back of the room. And I went to the
3 back of the room while they were sitting -- while
4 the witnesses were sitting at the table playing
5 cards me and him went to the back of the room and
6 started discussing the deal on crack cocaine.

7 Q Okay.

8 A Okay. The deal went that I wanted to buy a
9 certain amount of crack and I give him my money, and
10 he gave me the crack and I told him this is what I
11 wanted to buy, I paid for more, way more than this.
12 Me and him got into a verbal conversation.

13 Q Okay.

14 A And we was talking loud, arguing. The next thing
15 I know he told me if I didn't leave the motel room
16 that he was going to blow my fucking head off,
17 excuse my language, but those were exact words.

18 Q Did you take that seriously?

19 A Yes, I did.

20 Q Okay.

21 A And I told ---

22 Q And what happened next? Go ahead.

23 A I told him I just want my money back, and let's
24 forget about the deal. He told me he wasn't giving
25 me no money back and that if I didn't leave the

PW - L. BROWN - DIRECT

1 fucking room this time the last time telling me he
2 was going to blow my fucking head off. So at that
3 point he reached and into the desk drawer next to
4 the bed and proceed to grab this .45 pistol. At
5 that time I was afraid for my life.

6 Q What happened next?

7 A I pull my pistol. He grabbed me. I didn't let
8 him get to his pistol.

9 Q Now go ahead. Go ahead and speak.

10 A And we both started struggling over the gun.
11 Next, all I heard was shots.

12 Q Okay.

13 A And they tell me it was about six shots I read in
14 my transcript. They tell me it was about six shots.
15 Never one of them hit me, but all of them hit him.

16 Q Okay. Now you testified to all this at trial; is
17 that right?

18 A Yes, I did.

19 Q And you told your lawyers and that your lawyers
20 in this case what you just told this courtroom; is
21 that right?

22 A That is correct.

23 Q And in your trial the judge never charged the
24 jury self-defense; is that correct?

25 A That is correct.

PW - L. BROWN - DIRECT

1 Q Okay. Do you think you should have been given a
2 self-defense charge?

3 A Yes, I do.

4 Q And based on looking in your transcript your
5 lawyers never asked for a self-defense charge; is
6 that correct?

7 A That's correct.

8 Q Okay. Do you think that effected your trial?

9 A I think that prejudiced me, and I think that was
10 ineffective assistance of counsel, trial counsel.

11 Q Okay. As a result of that you want a new trial;
12 is that correct?

13 A That is correct.

14 Q Is there anything else you want to tell the
15 Court, anything we have not covered?

16 A Well, as far as me having mental health problems
17 I don't think my counsel investigated my mental
18 health and got a second opinion on my mental health,
19 even asked my family about my mental health which is
20 my mother out there in the courtroom and my sister.
21 Both can testify about my mental health. So I
22 think, I think he failed to do so. I think that he
23 prejudiced me, and I think that he was ineffective
24 assistance of counsel.

25 Q Okay. Is there anything else?

PW - L. BROWN - CROSS

1 A That is all.

2 Q Okay. Answer any questions that the attorney
3 general has.

4 **CROSS-EXAMINATION**

5 BY MR. CORNEY:

6 Q Mr. Brown, you don't contest that you went into
7 that room that day to conduct a drug deal, correct?

8 A Yes, I did.

9 Q And there was some testimony presented at trial
10 from some of the State's witnesses that you had
11 pulled the gun and there was an attempted robbery,
12 correct?

13 A That's what they say.

14 Q That's what they said. And you said there was a
15 struggle for the gun, correct?

16 A Right.

17 Q And you don't know whether you pulled the trigger
18 or the gun went off by itself during the struggle,
19 you're not sure how the gun got fired?

20 A I'm not sure.

21 Q That's all the questions I have, Your Honor.
22 Thank you very much.

23 THE COURT: Redirect?

24 MR. BROOKS: No other questions, Judge.

25 THE COURT: You may come down, sir.

RW - D. O'NEIL - DIRECT

1 Next witness.

2 MR. BROOKS: That's the applicant's case.

3 THE COURT: All right. From the State?

4 MR. CORNEY: Yes, sir, Your Honor. The
5 State would call Deon O'Neil to the stand please.

6 WHEREUPON,

7 **DEON O'NEIL,**

8 having been duly sworn by the Court; testified as
9 follows:

10 THE COURT: Have a seat in the witness
11 box.

12 THE WITNESS: Deon O'Neil.

13 **DIRECT EXAMINATION**

14 **BY MR. CORNEY:**

15 Q Mr. O'Neil, you recall your representation of
16 Larry Brown in this case?

17 A I do.

18 Q And you represented him in your capacity as an
19 assistant public defender at the time?

20 A I did.

21 Q And you had cocounsel in this case, correct?

22 A I did.

23 Q And that was Mr. Cooper, Ms. Cooper?

24 A That's correct.

25 Q Were y'all both, were you both just cocounsel or.

RW - D. O'NEIL - DIRECT

1 Next witness.

2 MR. BROOKS: That's the applicant's case.

3 THE COURT: All right. From the State?

4 MR. CORNEY: Yes, sir, Your Honor. The
5 State would call Deon O'Neil to the stand please.

6 **DEON O'NEIL,**

7 having been duly sworn by the Court, testified as
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9 THE COURT: Have a seat in the witness
10 box.

11 THE WITNESS: Deon O'Neil.

12 **DIRECT EXAMINATION**

13 **BY MR. CORNEY:**

14 Q Mr. O'Neil, you recall your representation of
15 Larry Brown in this case?

16 A I do.

17 Q And you represented him in your capacity as an
18 assistant public defender at the time?

19 A I did.

20 Q And you had cocounsel in this case, correct?

21 A I did.

22 Q And that was Mr. Cooper, Ms. Cooper?

23 A That's correct.

24 Q Were y'all both, were you both just cocounsel or
25 somebody lead counsel on that, do you recall?

RW - D. O'NEIL - DIRECT

1 A I was lead counsel. I actually remember
2 Mr. Brown's case specifically. We actually tried,
3 me and Ms. Cooper actually tried Mr. Brown's case
4 the week before we tried Mr. Louis Gainey's case.

5 Q Do you recall me putting up Mr. Brown to discuss
6 the facts and charges he was facing?

7 A I do.

8 Q All right. You remember reviewing his
9 constitutional rights, the elements of the offenses,
10 charges as set forth in the indictment?

11 A I did.

12 Q At any point during your discussions with him
13 pretrial did you have any issues or any concerns
14 with his ability to comprehend your conversations?

15 A Well, I guess I have to correct something
16 Mr. Brown said initially. I was not Mr. Brown's
17 first attorney. Mr. Brown was initially represented
18 in our office by Ms. Kristy Grafton. She was
19 assigned to Mr. Brown's case back in November of
20 2006. It appears that Mr. Brown was then
21 transferred to Ms. Lane Danielsen in our office on
22 December 4th of 2006. And then Mr. Brown's case was
23 transferred to Ms. Lana Barkley in my office on
24 March 3rd of 13th of 2007. And after that
25 Mr. Brown's case was transferred to Mr. Grace

RW - D. O'NEIL - DIRECT

1 Collins in our office, and I ultimately represented
2 Mr. Brown starting October of 2008.

3 Q When you took over his representation did you
4 receive files that the previous kept on as notes and
5 anything they prepared?

6 A That's correct. It looks like Mr. Brown had
7 received a private email by Doctor Martin back in
8 2007, and then there was an additional mental health
9 eval that I witnessed that when I represented him in
10 October of 2008.

11 Q All right. So you evaluated him once prior to
12 you taking representation and then once after you
13 took over representation?

14 A That's correct.

15 Q And do you recall the results of those
16 evaluations?

17 A Those -- I don't have a copy of the results in
18 the file I have in front of me, but I remember those
19 results being that he was competent to stand trial.

20 Q He was now competent, okay. Did he seem to have
21 any issues participating in your discussion with him
22 about his case and in comprehending what you were
23 discussing with him?

24 A No, I remember -- our discussions about what
25 happened that night are almost exact, exactly

RW - D. O'NEIL - DIRECT

1 similar to what Mr. -- to the facts that Mr. Brown
2 just relayed about what happened that night.

3 Q And that's a drug deal gone bad essentially?

4 A Yes.

5 Q And the State was alleging that they entered the
6 room that night, he and his co-defendant, to rob
7 this victim in this case, correct?

8 A That's correct.

9 Q And there was testimony elicited at trial that
10 upon entering the room he had withdrawn a firearm
11 and his co-defendant's holding the door closed. Is
12 that your recollection?

13 A Some of the female witnesses in the room
14 testified that shortly after entering the room that
15 he and Mr. Frost both drew their weapons.

16 Q And it seems that the main allegation that he's
17 bringing forth before the Court is failure to
18 request a self-defense charge on his behalf. Just
19 to start with, this case was based in part at least
20 on the felony murder rule. Is that your kind of
21 what -- would you say that's an accurate
22 representation?

23 A Yeah. The State had two different theories. One
24 theory could have been that, you know, it was a
25 stand alone murder case strictly could have been a

RW - D. O'NEIL - DIRECT

1 death in the commission of an armed robbery.

2 Q Okay. And there was some testimony that was
3 elicited also that it was his co-defendant, not him,
4 who had yelled, you know, give me the money or
5 stuff, initiated this robbery; is that correct?

6 A That's correct.

7 Q And under accomplice liability theory is the
8 understanding that he'd be held culpable for that
9 robbery all the same as if he had played a part in
10 it?

11 A Yes, it was -- if the jury believed it was truly
12 the hand of one.

13 Q Now at the close of the State's case, and this is
14 on page -- I'm gonna give you a copy of the
15 transcript in front of you. I'll direct the Court's
16 attention to page 737. The Court specifically --
17 we're going through requests to jury charges. And
18 at that point the Court asked whether you wanted a
19 self-defense charge and you said, no, not
20 self-defense. Do you recall that?

21 A At the close of the State's case, yes, sir.

22 Q And at that point in time why was it that you
23 didn't want a self-defense charge?

24 A Mr. Brown hadn't testified at that point.

25 Q And after that point obviously Mr. Brown did take

RW - D. O'NEIL - DIRECT

1 the stand in his defense, correct?

2 A Correct.

3 Q Do you recall ever requesting a self-defense
4 charge after that?

5 A I did not.

6 Q Okay. Any reason you didn't do that?

7 A The main reason I didn't request a self-defense
8 charge was that Mr. Brown version or what happened
9 is exactly what he had said just now. Essentially
10 the victim in the case got shot while him and the
11 victim was struggling over a firearm. I didn't
12 think I could get a self defense charge because
13 Mr. Brown's version was essentially he didn't
14 intentionally shoot the victim, that the victim died
15 as a result of them struggling over a firearm. And
16 I thought, I had case law on point that would make
17 involuntary manslaughter a better charge to request
18 than self-defense.

19 Q And you did, in fact, request a voluntary and
20 involuntary manslaughter charge, correct?

21 A Correct.

22 Q And I believe the jury was charged, I believe, on
23 both of those; is that correct?

24 A Correct. They were charged on murder, voluntary
25 manslaughter, and involuntary manslaughter.

RW - D. O'NEIL - DIRECT

1 Q So in your discretion, I suppose, in your
2 analysis of the case you thought it would be more
3 beneficial to ask for a voluntary or involuntary
4 than a self-defense?

5 A Well, I thought we -- I thought based on the
6 facts we couldn't get both a involuntary and a
7 self-defense charge.

8 Q You get to pick or choose between the two
9 essentially?

10 A Yes.

11 Q And at that point in time you thought the facts
12 would better fit a voluntary --

13 A Involuntary.

14 Q Involuntary, okay. Is that something you'd ever
15 had the opportunity to discuss with Mr. Brown prior
16 to that point?

17 A We discussed, not specifically that. We
18 discussed as to what happened in that particular
19 day, and my main concern was Brown's story whether
20 or not he had saw the weapon that day. I think his
21 testimony at trial that day was more extensive than
22 what our conversation was prior to his testimony.

23 Q And you've been here and heard Mr. Brown's
24 testimony obviously this morning, correct?

25 A Correct.

RW - D. O'NEIL - DIRECT

1 Q Any other allegations that you disagree with him
2 on or wanted to address?

3 A No, I -- I say no. I was aware of his mental
4 health past or I had those records. I think there's
5 records in the file from both Department of Mental
6 Health, his mental health records at the jail. I
7 don't recall whether or not that we actually had a
8 Blair hearing in front of, before Mr. Brown's trial
9 or not, but I do recall that he had a DMH eval when
10 it relates to his competency. I don't recall
11 whether or not we actually had a formal Blair
12 hearing that I think that was required by statute
13 once he have a eval for his competency.

14 Q And just as a last question, is it your testimony
15 told it was your trial strategy to call -- to not
16 request a self defense in favor of requesting
17 involuntary manslaughter charge?

18 A Yeah, it was clearly a decision I made based on
19 thinking I could not get both involuntary and
20 self-defense.

21 MR. CORNEY: That's all the questions I
22 have, Your Honor. Thank you.

23 THE COURT: Cross-examination.

24 **CROSS-EXAMINATION**

25 **BY MR. BROOKS:**

RW - D. O'NEIL - CROSS

1 Q Mr. O'Neil, how are you?

2 A All right.

3 Q Now at the end of the State's case Judge Childs
4 had asked you about whether or not you were just
5 asking for these two charges referring to voluntary
6 and involuntary; is that correct?

7 A Correct.

8 Q And she asked you, you don't want to do
9 self-defense?

10 A Correct.

11 Q And you said no, and this was before Mr. Brown
12 testified, right?

13 A Yeah.

14 Q So now his testimony today about what happened
15 then, it was pretty consistent with what he
16 testified to on the stand at trial; isn't it?

17 A Yes, I think he -- he had at one part today that
18 I don't think that's in the transcript I think about
19 being fearful for his life, I don't believe he said
20 that, but I mean, the transcript kind of speaks for
21 itself but. Other than that, small wording here,
22 what he said today is exactly what he told me before
23 the trial and what he said during the trial.

24 Q So his story has actually been consistent, what
25 he told you before the trial and here today?

RW - D. O'NEIL - CROSS

1 A Correct.

2 Q And after that did you ask Judge Childs for a
3 self-defense charge?

4 A No.

5 Q Okay. So by virtue of the fact that you didn't
6 ask for it, you don't know whether or not she would
7 have granted it?

8 A Correct.

9 Q Okay. If -- if the jury would have believed his
10 version and they had been given a self-defense
11 charge, the jury could have vote for self-defense;
12 isn't that correct?

13 A Correct.

14 Q And obviously he would have been in a much
15 different situation than what he is in now, serving
16 life?

17 A Correct.

18 Q Okay. You did have the mental health records
19 that were sent as a part -- well, not the mental
20 health records but the mental health evaluation,
21 that were sent to you as his defense lawyer from the
22 Department of Mental Health. You had access to
23 them; is that correct?

24 A I had access to it, yes, sir.

25 Q And you read it where it talks about him having

RW - D. O'NEIL - REDIRECT

1 some mental health issues?

2 A Yes.

3 Q Okay. And knowing that do you think his mental
4 health issues could have conceivably put him in a
5 position that he was fearful of his life?

6 A I don't know whether or not his mental health
7 issues really -- I can't speak on whether or not his
8 mental issues really contributed to whether or not,
9 to his mental state about being fearful that day or
10 not.

11 Q All right. Beg the Court's indulgence. No other
12 questions, Judge.

13 MR. CORNEY: Very brief, Your Honor, if I
14 may.

15 THE COURT: Go ahead.

16 **REDIRECT EXAMINATION**

17 Q Mr. O'Neil, one of the requirements of
18 self-defense is that the actor be acting lawfully,
19 at the time, correct?

20 A Correct.

21 Q And some of the State's argument here is that he
22 was there to purchase drugs and there was testimony
23 about the State's witnesses that they had tried to
24 rob the victim in this case, and that wouldn't be
25 lawful conduct if the jury believed that, would it

RW - D. O'NEIL - REDIRECT

1 be?

2 A Yeah, we had that same argument with relation
3 involuntary manslaughter. The question also became
4 whether or not he was acting lawful at that point at
5 well.

6 Q Has there ever maybe a strategy to not having the
7 jury charged on every potential thing out there, I
8 mean, to maybe limit the scope to what they can
9 consider?

10 A Yes.

11 Q Okay. And would you agree that having voluntary
12 manslaughter, involuntary manslaughter, self-defense
13 could be somewhat contradictory charged, if the jury
14 was charged on those?

15 A I agree. I think the issue between, the choice
16 between a self-defense and involuntary manslaughter,
17 I thought both charges really cover the same conduct
18 so if the jury believed Mr. Brown's version of what
19 happened they were just as likely to find him guilty
20 of just involuntary manslaughter if they would be
21 for self-defense. But self defense also required
22 him to essentially have been actively trying to
23 defend himself when the shot was fired, and I
24 thought that's not what Mr. Brown's testimony was

25 Q And his testimony was there was a struggle for

RW - D. O'NEIL - RECROSS

1 the gun. He -- in fact you heard his testimony
2 before, he can't testify that he ever pulled the
3 trigger, correct?

4 A Correct.

5 Q So it's not really certain how the gun even went
6 off, right?

7 A Yes.

8 Q Based on the circumstances of his testimony it's
9 your testimony that you don't think self-defense
10 would apply to that?

11 A That's -- I didn't think I could get -- based on
12 what Mr. Brown testified to, I didn't think I could
13 get both self-defense and involuntary manslaughter.

14 Q And that was why you decided not to request self-
15 defense, correct?

16 A That's correct.

17 MR. CORNEY: That's all the questions I
18 have. Thank you, Judge.

19 THE COURT: Mr. Brooks.

20 **RECROSS EXAMINATION**

21 **BY MR. BROOKS:**

22 Q On that issue, Mr. O'Neil, page 737 that the
23 attorney general had referred you to, the judge
24 asked you about whether or not you wanted a
25 self-defense charge and you only talked about

RW - D. O'NEIL - RECROSS

1 voluntary involuntary before Mr. Brown actually
2 testified; isn't that correct?

3 A That's correct.

4 Q So, and you after he testified you never asked
5 her, hey judge, we want a self-defense charge?

6 A Yes.

7 Q You never asked that; is that correct?

8 A That's correct.

9 Q Right. And even though you think that some of
10 the facts were similar for the involuntary
11 manslaughter charge as well as what we've been given
12 for self-defense, self-defense was something else
13 for the jury to consider as well if they had been
14 given that charge; isn't that correct?

15 A That's correct.

16 Q And you've tried a fair amount of cases in this
17 courtroom; haven't you?

18 A That's correct.

19 Q And I'm sure you've probably experienced
20 situations where you had various sets of verdicts
21 that the jury come back with, a higher charge, a
22 lesser charge, and then the not guilty. And
23 sometimes you kind of think from practicing trial
24 attorney that sometimes jurors compromise; don't
25 they?

RW - D. O'NEIL - RECROSS

1 A Correct.

2 Q I know you had -- I've had some of that. You
3 think some of the jury thinks the highest form the
4 person is guilty of and some of them think the
5 person is not guilty and sometimes they kind of
6 split and meet halfway to the middle?

7 A Correct.

8 Q If he had been given a self-defense charge and he
9 has on the high end murder, is it conceivable then
10 for the jury to do what we just described?

11 A That's conceivable, yes, sir.

12 Q Okay. No other questions.

13 MR. CORNEY: Nothing further for this
14 witness.

15 THE COURT: You may come down, Mr. O'Neil.

16 MR. CORNEY: The State doesn't have any
17 other witnesses, Your Honor. The State would rest
18 at this point. Thank you.

19 THE COURT: Anything further?

20 MR. BROOKS: That's the case, Judge. We
21 would just ask the Court grant the post-conviction
22 relief because of not being granted self-defense
23 charge as indicated in the transcript.

24 THE COURT: All right. I'll take it
25 under advisement. I'm trying to read through the

1 transcript right now, but I'll give you ten days to
2 submit proposed orders if you wish to do so. Thank
3 you very much.

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5 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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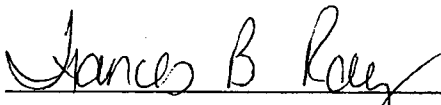
C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered
Professional Reporter (RPR), court reporter for the
State of South Carolina, Twelfth Judicial Circuit,
do hereby certify that the foregoing proceeding was
transcribed for Elizabeth Harris through
computer-aided transcription; that the foregoing
transcript contains a true record of the proceedings
to the best of my ability.

I further certify that I am neither
counsel for, nor related to nor employed by any of
the parties connected to the action, nor am I
financially interested in the action.

Witness my hand at Florence, South
Carolina, this 24th day of April, 2013.


FRANCES BAKIS-RAY, RPR

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

George Porterfield, #226071,
a/k/a Larry Brown,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2012-CP-40-05023

ORDER OF DISMISSAL

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for Post-Conviction Relief (PCR) filed July 23, 2012. An evidentiary hearing into the matter was convened on Tuesday, January 15, 2013, at the Richland County Courthouse before this Court. Applicant was present at the hearing with counsel, Charles T. Brooks, III, Esquire. Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also testifying was Applicant's former trial attorneys, Deon O'Neil, Esquire, and Jay Cooper, Esquire. This Court also had before it a copy of the transcript of the proceedings against Applicant, the records of the Richland County Clerk of Court, the documents related to Applicant's direct appeal and Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted at the February 2007 term of the Richland County Grand Jury for Murder and Attempted Armed Robbery (2007-GS-40-11094, -11099). On August 24, 2009, Applicant proceeded to jury trial with his attorneys, Assistant Public Defenders

PORTERFIELD George a/k/a Larry Brown #226071 – Order of Dismissal (2012-CP-40-05023)

Page 1 of 11

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COA

Deon O'Neil and Jay Cooper, before the Honorable J. Michelle Childs. After a five (5) day trial, Applicant was found guilty of both charges as indicted. Judge Childs sentenced Applicant to life imprisonment without the possibility of parole for Murder and ten (10) years imprisonment for the Attempted Armed Robbery, the sentences running concurrently.

In the current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:¹

Trial Counsel prejudiced Applicant by his failure to request a second opinion by personal psychiatrist to determine the Applicant's incompetency to stand trial. Applicant was mentally incompetent at the time of the murder and attempted armed robbery in 2006, and at the time of trial in 2009, and was found guilty by Jury in violation of the South Carolina Constitution, United States Constitution, and the Federal Constitution's Fourteenth Amendment's due process clause. Incorporated into allegations is that Applicant was prejudiced and denied effective assistance of counsel and due process of law at his 2009 Jury Trial for murder and attempted armed robbery, because he was mentally incompetent at the time of this crime in 2006, and at his 2009 Jury Trial.

Trial counsel prejudiced the defendant by failure to request Jury charge on law of Self-Defense.

The Applicant was denied his Sixth and Fourteenth Amendment rights to effective assistance of appellate counsel for failure to raise Applicant's Jury instruction on inference of malice from the use of a deadly weapon.

Trial Counsel prejudiced defendant by failure to request a copy of written notice in seeking Life Without Possibility of Parole; in violation of both the 6th and 14th Constitutional Amendments due process of law; and violation of South Carolina Code Law 17-25-45(A)(H).

¹ At the PCR hearing, Applicant expressly waived all allegations except for two (2) allegations of ineffectiveness on counsel's part in: failing to request a self-defense jury charge; and failing to investigate his mental health history.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient



performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failure to Investigate Mental Health History

Applicant first alleges counsel was ineffective for failing to conduct a more thorough investigation of his mental health issues prior to the start of trial. Applicant testified he suffers from Post-Traumatic Stress Disorder ("PTSD") and Borderline Personality Disorder. He went on to say his attorneys may not have been aware of his suffering from those disorders as he never told them, but said he did tell counsel in their pretrial meetings that he was on medication. Applicant contends counsel should have undertaken some further investigation into his alleged mental health issues prior to the start of trial.

Applicant's lead trial counsel, Deon O'Neil (hereafter "counsel") testified he took over representation of Applicant in October of 2008 after several other attorneys at the Richland County Public Defender's Office previously represented Applicant. Counsel said he did not have any concerns with Applicant's ability to understand and participate in their pretrial conversations. He went on to say Applicant was mentally evaluated once on 2007 prior to his taking over Applicant's case, and again thereafter at his request once he took over Applicant's case. Both evaluations came back finding Applicant competent, counsel said. Counsel went on to say he did not recall whether a Blair hearing was ever held, but reiterated Applicant was evaluated and found competent by the South Carolina Department of Mental Health. On cross-examination, counsel testified he did review Applicant's mental health records and agreed Applicant did have a history of some diagnosed mental illnesses.

574

Based on a thorough review of the record and testimony presented, this Court finds the current allegation must be denied and dismissed. First, this Court finds counsel's performance was not deficient or objectively unreasonable in any way relating to this claim. Counsel testified that based on his meetings with Applicant, he had no concern with Applicant's ability to comprehend or participate in their discussions about his case. This Court finds that testimony to be **credible**. Any testimony presented by Applicant to the contrary is **not credible**. Further, Applicant was mentally evaluated by SCDMH once prior to counsel's representation and found mentally competent. Counsel, out of an abundance of caution and in an exercise of due diligence, had Applicant evaluated once more after taking over Applicant's representation, which also returned a report finding Applicant competent and criminally responsible. Counsel credibly testified he was able to review Applicant's medical records, but was unable to uncover any evidence that Applicant was incompetent at the time of the trial or insane at the time of the crime. This Court finds counsel's investigation to have been objectively reasonable and wholly sufficient. Accordingly, counsel was not deficient in this regard.

Further, this Court finds Applicant has failed to prove resulting prejudice from counsel's alleged deficient investigation. Applicant failed to present any medical records, mental evaluation results or witness testimony to show what he claims would have been discovered had counsel conducted some further investigation. "Under the second prong of Strickland, the petitioner need only demonstrate a 'reasonable probability' that he was either insane at the time of the shooting or incompetent at the time of the [trial]." Jeter v. State, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992). Applicant has failed to produce any such probability aside from his own uncorroborated, vague assertion of "mental health issues". In fact, the record and counsel's credible testimony affirmatively refute that Applicant was either incompetent at the time of trial

or insane at the time of the crime. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Therefore, Applicant has failed to prove resulting prejudice. Accordingly, this allegation must be denied as Applicant has failed to meet either of the two necessary prongs for ineffectiveness under Strickland v. Washington.

Failure to Request Self-Defense Jury Charge

Applicant's only other claim raised through this action is that counsel was ineffective for failing to request the trial judge charge the jury on the law of self-defense. Applicant testified the current conviction arose from a "drug-deal-gone-bad". Applicant testified he went to victim's apartment with his codefendant on the day of the incident to buy drugs from victim. Upon completing the transaction, victim and Applicant got into a verbal altercation over the weight of the drugs purchased. Applicant stated victim told him to get out of the apartment or he would "blow [Applicant's] fucking head off". Applicant testified he had previously seen victim with a gun and said he was scared for his life following this threat. Applicant said when victim walked towards a nearby dresser, he believed victim was procuring that gun. Applicant stated he pulled out his firearm and victim immediately ran at him grabbing for the gun. During the course of the ensuing struggle, victim was shot six (6) times. Applicant testified he was unsure whether he pulled the trigger, the victim pulled the trigger, or the gun just went off during the struggle.

Counsel testified he recalled Applicant's case well, including his request not to charge the jury with the law of self-defense during the charging conference. Counsel noted there were several witnesses whose testimony indicated Applicant had pulled out a gun immediately upon entering victim's apartment as the entire incident was an attempted robbery of the victim.

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Counsel said that was the theory of the case the state presented at trial, which was supported by the witnesses' testimony that Applicant and codefendant demanded money and drugs from the victim once they entered the apartment. Counsel testified he did not request the jury be charged with self-defense because he believed the factual scenario Applicant recited to him about the alleged struggle for the gun was a stronger case for involuntary manslaughter.

Counsel stated his in depth legal research on the applicability of self-defense revealed a shooting during a struggle for a gun was best argued as involuntary manslaughter. Counsel said if he was able to have the jury charged with involuntary manslaughter as a lesser included offense to murder, he did not want the jury to also be charged with self-defense as he believed the two theories could come across to the jury as somewhat inconsistent. Counsel explicitly stated he made the strategic decision to request a jury charge on involuntary manslaughter while declining to request a self-defense charge as he wanted to avoid confusing or otherwise losing credibility with the jury. He also noted there was some question as to whether Applicant was "acting lawfully" at the time which could cause problems with a self-defense theory, as Applicant was in the apartment armed with a weapon for the purpose of conducting an illegal drug transaction. Counsel conceded the jury could have considered acquittal if self-defense was charged to the jury, but noted in his experience as a criminal defense attorney there are times when he would not want the jury instructed on every conceivable offense and/or defense as too many options can tend to confuse and mislead the jurors.

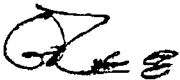
Counsel noted he believed an involuntary manslaughter conviction was the most appropriate outcome and best case scenario based on Applicant's own statement that he could not remember who pulled the trigger or if the gun just "went off" during the physical struggle. In



short, counsel said, it was his strategic decision to request the jury **not** be instructed on the law of self-defense.

This Court finds counsel was not ineffective in this regard. First, this Court finds counsel's intentional and informed decision to decline a jury instruction on the law of self-defense to be an objectively reasonable exercise of valid trial strategy. "Where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective." Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). While self-defense and involuntary manslaughter are not mutually exclusive, and counsel may have been able to have the jury instructed on both legal theories in this case, counsel's decision to only request an involuntary manslaughter charge was an objectively reasonable trial strategy based upon the underlying facts of the case. See State v. Light, 378 S.C. 641, 664 S.E.2d 465 (2008) ("When there is a factual issue as to whether the shooting was committed intentionally in self-defense or was committed unintentionally, then the defendant is entitled to both charges [on involuntary manslaughter and self-defense] as there is 'any evidence' to support each charge."). By eliminating self-defense from consideration, counsel was able to limit the number of legal theories the jury would be able to consider, which counsel reasonably believed would avoid confusion and allow the jury to focus more intently on involuntary and voluntary manslaughter verdicts. Counsel plainly noted he believed a conviction on one of the two manslaughters was much more likely than an acquittal based upon self-defense. Therefore, this Court finds no deficiency in counsel's representation.

Further, this Court finds Applicant has failed to prove resulting prejudice as there is **no** reasonable likelihood that had the jury been instructed on self-defense, the outcome of Applicant's case would have been different. Both voluntary and involuntary manslaughter were



charged to the jury by the trial judge. The jury, in reviewing the law as it relates to those two lesser offenses, clearly did not believe either was appropriate as the verdict returned was 'guilty' of murder. While this Court can do nothing more than speculate as to the jury's particular reasoning for their verdict, this Court finds Applicant's PCR testimony outlining "his version" of the incident to be wholly **not** credible. Applicant's testimony at trial was the *only* evidence presented that would support a verdict of not-guilty based upon self-defense. Having assessed Applicant's testimony to that end at the PCR hearing, this Court finds no reasonable likelihood the jury would have returned a verdict of not-guilty based upon self-defense had such a jury charge been given.

The state's evidence presented at trial through several eye witnesses, including one of Applicant's own codefendants, clearly establishes a consistent and more credible account of the incident. The evidence presented by the state refutes any indication Applicant was acting in self-defense. In particular, the state elicited testimony from three eye-witnesses in the apartment at the time of the incident (Jackie Holly, Satierra Austin and Camilla Goodwin), whom all indicated Applicant drew his weapon in an attempt to rob the victim without any indication of a developing argument between the two prior thereto. The state also elicited testimony from Applicant's codefendant, Frank Livingston, that three (3) days later Applicant admitted to Livingston he had robbed and shot the victim. Additionally, the victim was shot six (6) times, and there was no evidence of stippling or soot on victim's skin or clothes to indicate the shots were anything but distance shots.

After reviewing the entirety of the record and testimony presented at the PCR hearing, this Court is firmly convinced there is no reasonable likelihood the jury been instructed on the law of self-defense, the outcome of Applicant's case would have been any different.



Having found both allegations raised by Applicant at the PCR hearing to be wholly without merit, this Court finds the current application for post-conviction relief must be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise all additional allegations raised in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

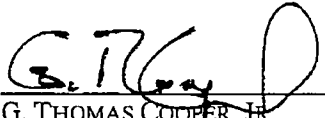
This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR

counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed **with prejudice**; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 30 day of January, 2013.



G. THOMAS COOPER, JR.
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.

WITNESSES

(S) BRIAN GODFREY - RCSD

ARREST WARRANT NUMBER

I-979937

ACTION OF GRAND JURY

TRUE BILL

FEB 14 2007

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-40-11099

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2007

42

THE STATE

vs.

LARRY BROWN

Indictment for

MURDER

SC Code: 16-3-10

CDR Code: 0116

Class FEL/EXM(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

958

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on February 14, 2007, the Grand Jurors of Richland County present upon their oath:

MURDER

That Larry Brown did in Richland County on or about November 21, 2006, feloniously, willfully and with malice aforethought, kill one Tyrell Williams by means of multiple gunshot wounds and that the said victim died as a proximate result thereof. All in violation of SC Code of Laws § 16-3-10

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B. Giese
Warren B. Giese, SOLICITOR

WITNESSES

(S) BRIAN GODFREY - RCSD

ARREST WARRANT NUMBER

I-979965

ACTION OF GRAND JURY

TRUE BILL

FEB 14 2007

~~FEB 14 2007~~

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-40-11094

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2007

42

THE STATE
vs.

LARRY BROWN

Indictment for
ATTEMPTED ARMED ROBBERY

SC Code: 16-11-0330
CDR Code: 0026
Class FEL-C(V)

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

096

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on February 14, 2007, the Grand Jurors of Richland County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Larry Brown did in Richland County on or about November 21, 2006, while armed with a deadly weapon, attempt to feloniously take from the person or presence of Tyrell Williams, by means of force or intimidation goods or monies of Tyrell Williams, being described as follows: U.S. Currency, with the intent to deprive the owner permanently of such property, all in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B. Giese
WARREN B. GIESE, SOLICITOR