

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Georgetown County
Steven H. John, Circuit Court Judge

RECEIVED

OCT 14 2013

S.C. Supreme Court

HEYWARD DAVIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213604

A P P E N D I X

CARMEN V. GANJEHSANI
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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

STATE OF SOUTH CAROLINA	)	
	)	
STATE	)	
VS.	)	TRANSCRIPT OF RECORD
	)	06-GS-22-529
HEYWARD DAVIS, JR.	)	
	)	
DEFENDANT	)	

May 1, 2007
Georgetown, South Carolina

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE; and a jury.

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

DORIE C. BIAGIANTI, ASSISTANT SOLICITOR
MATTHEW MODICA, ASSISTANT SOLICITOR
Attorneys for the State

CHARLES DAVID BARR, ESQ.
Attorney for the Defendant

FRANCES BAKIS-RAY, RPR
Official Court Reporter

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STATE'S:

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1 (WHEREUPON, State Exhibits Nos. 1 through 7 were
2 marked for identification only.)

3 MS. BIAGIANTI: Thank you, Your Honor. The State
4 would call case number 2006-GS-22-531 charging the
5 defendant Heyward Davis, Jr., with burglary in the first
6 degree as well as 2006-GS-22-529 charging Heyward Davis,
7 Jr., assault and battery with intent to kill. As well as
8 2006-GS-22-530 charging Heyward Davis, Jr., indictment for
9 assault with intent to kill and 2006-GS-22-532 charges
10 Heyward Davis, Jr., with possession of a weapon during
11 commission of a violent crime.

12 THE COURT: Thank you, Solicitor. Ladies and
13 gentlemen of the jury, as you heard, the Solicitor which
14 is the State's attorney if some of you are not familiar
15 with our Court system and the terms we use, called the
16 case of entitled the State versus Heyward Davis, Jr.
17 charged in the bills of indictment by the grand jury of
18 Georgetown County with the offense of burglary first
19 degree, assault and battery with intent to kill, assault
20 with intent to kill, possession of a weapon during the
21 commission of a violent crime. Mr. Davis is present in
22 Court. I'm going to ask at this time if he would stand
23 and then face the jury so I can pose a question about
24 relationship.

25 Thank you, sir. You may be seated.

25 THE COURT: Number 51. How are you doing, sir?

1 THE POTENTIAL JUROR: I just know him, I mean, you
2 know.

3 THE COURT: Okay. You know him, you're not related
4 to him?

5 THE POTENTIAL JUROR: No.

6 THE COURT: Would the fact that you know him, if you
7 were to be seated on this jury, can you give both the
8 State and the Defendant, Mr. Davis, a fair and impartial
9 trial?

10 THE DEFENDANT: Yeah, I don't feel -- yeah.

11 THE COURT: Okay. That's what we need to know.
12 Thank you.

13 (Potential juror Number 51 was returned to the panel and
14 Number 34 approached court reporter's station for an
15 on-the-record discussion.)

16 THE BAILIFF: He's number 34.

17 THE COURT: 34. I believe you said you knew
18 Mr. Davis.

19 THE POTENTIAL JUROR: Yes, sir. Me and him went to
20 school together.

21 THE COURT: Went to school together?

22 THE POTENTIAL JUROR: Yeah.

23 THE COURT: All right. I'm going to ask you a
24 straightforward question. If you were to be seated on
25 this jury, could you give both the State and Mr. Davis a

1 fair and impartial trial?

2 THE POTENTIAL JUROR: I'd rather not serve this one.

3 THE COURT: Okay. So I take that as a ---

4 THE POTENTIAL JUROR: I'd rather not do it.

5 THE COURT: ---no.

6 THE POTENTIAL JUROR: (No audible response.)

7 THE COURT: Okay. Thank you, sir. 34 is excused.

8 (Potential juror Number 34 was returned to the panel.)

9 THE COURT: Anybody on the jury presently represented
10 or represented in the past by the Solicitor's Office or by
11 Mr. Barr, Mr. Charles Barr of the Williamsburg County Bar
12 over there next to us, next county over. Anybody
13 presently represented or represented in the past by them?

14 (There was no response.)

15 THE COURT: All right. The alleged offenses
16 allegedly occurred in Georgetown County on or about May
17 the 13th, 2006. I ask you now, does anybody have any
18 opinion or has any bias or prejudice in this case or have
19 any knowledge of any allegation or matter in this case
20 whereby you could not be a fair and impartial juror? We
21 need for you to come up at this time.

22 (There was no response.)

23 THE COURT: Does anybody know of any reason
24 whatsoever why you should not be a juror on this case?

25 All right. You've already been up.

1 Anyone else?

2 (There was no response.)

3 THE COURT: Any additional voir dire?

4 MS. BIAGIANTI: Nothing from the State. I hand up my
5 witness list.

6 MR. BARR: Judge, just whether or not any members of
7 the panel have actually heard anything, not whether it's
8 influenced their opinion, but whether they've heard
9 anything. And in addition whether or not any member of
10 the panel or their immediate families have been a victim
11 of a home invasion or a criminal offense involving such as
12 assault and battery with intent to kill or further
13 assault.

14 THE COURT: Okay. I'll break it down for us.
15 Anybody on the panel or have immediate family member
16 that's been the victim of a home invasion or burglary or
17 of an assault and battery in -- with intent to kill or in
18 high and aggravated nature?

19 Yes, ma'am.

20 THE POTENTIAL JUROR: Yes. I was a victim of a home
21 invasion, burglary.

22 THE COURT: Home invasion burglary.

23 THE POTENTIAL JUROR: Yes.

24 THE COURT: What is your name, please?

25 THE POTENTIAL JUROR: Tanya McMillan, juror number

1 94.

2 THE COURT: 94, okay. Thank you.

3 THE POTENTIAL JUROR: My brother was a victim of a, I
4 think it was high and aggravated nature, assault and
5 battery of a high and aggravated nature with intent to
6 kill.

7 THE COURT: And your name, please?

8 THE POTENTIAL JUROR: Catherine Player, 115 juror
9 number.

10 THE COURT: 115. That was your brother?

11 THE POTENTIAL JUROR: Right.

12 THE COURT: Yes.

13 THE POTENTIAL JUROR: When I was a child my home was
14 broken into, my parents' home.

15 THE COURT: All right. We need your name.

16 THE POTENTIAL JUROR: Carolyn Stubblefield.

17 THE COURT: And your number.

18 THE POTENTIAL JUROR: Number 140.

19 THE COURT: Parents' home. When you were a child you
20 had a break-in at your home.

21 THE POTENTIAL JUROR: Right.

22 THE COURT: It just now hit me, and I'm going to try
23 to get out of the habit of calling for your name. We --
24 some of the courts are now operating with just you having
25 to give your number. I apologize for that. I've got to

1 get a different mindset about the way I pose those
2 questions. So if you will give us your number that would
3 be sufficient.

4 THE POTENTIAL JUROR: Number 140.

5 THE COURT: Yes, ma'am.

6 POTENTIAL JUROR: Number 79, Deborah Kubale. I had
7 an aunt that was attacked at her business and was almost
8 killed.

9 THE COURT: That was your aunt?

10 THE POTENTIAL JUROR: My aunt.

11 THE COURT: Okay. Next question, does anybody have
12 any personal knowledge about any matter in this case?
13 Those of you that have already responded you're okay.

14 (There was no response.)

15 THE COURT: Okay. Anything further from the State or
16 the Defense?

17 MR. BARR: Nothing, Judge.

18 MR. MODICA: Witness list, Judge.

19 THE COURT: All right. Anybody on the panel related
20 by blood or by marriage or have any business, social,
21 fraternal, or religious relationship with any of these
22 individuals? If you're present in court, I'm going to ask
23 them to stand when I call their name. Christopher Gamble,
24 Lesley Parish also known as Lesley Brown, Investigator
25 Eddie Lee with Andrews Police Department, Officer Eric

1 Dean of the Andrews Police Department, Doctor Charles D.
2 Garner, Eve Eggiman with central communication, Deputy
3 Nowell Smith of Georgetown County Sheriff's Office, and
4 Suzann Cromer with the State Law Enforcement Division. If
5 so, we need you to stand at this time.

6 Yes, ma'am.

7 THE POTENTIAL JUROR: Deputy Lee is my sister's
8 father-in-law. Christopher Gamble is family by marriage.

9 THE COURT: And your number.

10 THE POTENTIAL JUROR: Number 48.

11 THE COURT: Thank you.

12 Yes, sir.

13 THE POTENTIAL JUROR: Your Honor, number 56.

14 Ms. Eggiman goes to the same church as I do.

15 THE COURT: 56.

16 THE POTENTIAL JUROR: Correct. 126. I know of him.
17 Lesley Brown, I just -- I know him.

18 THE COURT: Okay.

19 THE POTENTIAL JUROR: Juror number 63. Ms. Eggiman
20 is a friend and I go to church with her.

21 THE COURT: You're number 63 and ---

22 THE POTENTIAL JUROR: Correct.

23 THE COURT: And Ms. Eggiman is...

24 THE POTENTIAL JUROR: Social friend and a church
25 member.

1 THE COURT: Anyone else?

2 (There was no response.)

3 THE COURT: All right. I'm going to re-ask the
4 question now. Those are potential witnesses in this case.
5 Does anybody now have any reason whatsoever that you could
6 not be a fair and impartial juror in this case should you
7 be called?

8 Your name, please. I mean, your number please.

9 THE POTENTIAL JUROR: 23.

10 THE COURT: Come up please, ma'am.

11 (WHEREUPON, potential juror approached the court
12 reporter's stand for an on-the-record discussion.)

13 THE POTENTIAL JUROR: I was thinking back about the
14 first question you asked. My sister's home was broken
15 into. My mother was robbed at gun point and ---

16 THE COURT: Your sister and your mother?

17 THE POTENTIAL JUROR: Uh-huh.

18 THE COURT: Okay. But if you were to be selected on
19 this case could you be both fair and impartial?

20 THE POTENTIAL JUROR: Probably. Probably so.

21 THE COURT: Okay.

22 (Potential Juror Number 23 returned to the panel.)

23 THE COURT: Will that do it?

24 MS. BIAGIANTI: Yes, sir.

25 THE COURT: Madam Clerk, let's pull this jury.

1 MR. BARR: Five and ten, Judge?

2 THE COURT: Right.

3 MS. BIAGIANTI: Yes.

4 THE CLERK OF COURT: Five and ten.

5 When I call your name I need you to come to the gate
6 and stand right here in front of the mic and face
7 everybody out there, okay.

8 Juror number 65, Yolunda Holmes (black female). And
9 bring all your belongings when you come up. What says the
10 State?

11 MS. BIAGIANTI: Please excuse the juror.

12 THE CLERK OF COURT: You may return to your seat.

13 Juror number 29, Donna Cribb (white female). What says
14 the State?

15 MS. BIAGIANTI: Please present Ms. Cribb.

16 THE CLERK OF COURT: What says the Defense?

17 MR. BARR: Seat the juror please.

18 THE CLERK OF COURT: Please take a seat in the jury
19 box.

20 Juror number 14, Mary Bromell (black female). What
21 say the State?

22 MS. BIAGIANTI: Please present Ms. Bromell.

23 THE CLERK OF COURT: What says the Defense?

24 MR. BARR: Seat the juror.

25 THE CLERK OF COURT: Have a seat in the jury box.

1 Juror number 94, Tanya McMillan (white female). What
2 says the State?

3 MS. BIAGIANTI: Please present Ms. McMillan.

4 THE CLERK OF COURT: What says the Defense?

5 MR. BARR: Please excuse the juror from this
6 particular case.

7 THE CLERK OF COURT: You may return to your seat.

8 Juror number 139, Levon Strickland (white male).
9 What says the State?

10 MS. BIAGIANTI: Please present Mr. Strickland.

11 THE CLERK OF COURT: What says the Defense?

12 MR. BARR: Excuse the juror from the trial of this
13 case.

14 THE CLERK OF COURT: You may return to your seat.

15 Juror number 124, Marion Rogerson (white male): What
16 says the State?

17 MS. BIAGIANTI: Please present Mr. Rogerson.

18 THE CLERK OF COURT: What says the Defense?

19 MR. BARR: Excuse the juror.

20 THE CLERK OF COURT: You may return to your seat.

21 Juror number 136, Frances Steele (white female).
22 What says the State?

23 MS. BIAGIANTI: Please present Ms. Steele.

24 THE CLERK OF COURT: What says the Defense?

25 MR. BARR: Please excuse the juror from the trial of

1 this particular case.

2 THE CLERK OF COURT: You may return to your seat.

3 Juror number 82, Terry Lasell (white male).

4 MS. BIAGIANTI: What number?

5 THE CLERK OF COURT: 82. What says the State?

6 MS. BIAGIANTI: Please present Mr. Lasell.

7 THE CLERK OF COURT: What says the Defense?

8 MR. BARR: Please excuse the juror from this
9 particular case.

10 THE COURT: You may have a seat. Juror number 18,
11 Vikki Brownlee (white female). What says the State?

12 MS. BIAGIANTI: Please present Ms. Brownlee.

13 THE CLERK OF COURT: What says the Defense?

14 MR. BARR: Seat the juror, please.

15 THE CLERK OF COURT: Just take a seat in the jury
16 box. Juror number 120, Marc Richardson (black male).
17 What says the State?

18 MS. BIAGIANTI: Please excuse Mr. Richardson.

19 THE CLERK OF COURT: You may return to your seat.

20 Juror number 77, Colleen Kisner (white female). What says
21 the State?

22 MS. BIAGIANTI: Please present Ms. Kisner.

23 THE CLERK OF COURT: What says the Defense?

24 MR. BARR: Court's indulgence. Excuse her from this
25 particular case.

1 THE CLERK OF COURT: You may return to your seat.
2 Juror number 36, Marcia Dunn (white female). What says
3 the State?

4 MS. BIAGIANTI: Please present Ms. Dunn.

5 THE CLERK OF COURT: What says the Defense?

6 MR. BARR: Excuse the juror from this case.

7 THE CLERK OF COURT: You may return to your seat.

8 Juror number 138, Heather Stone (white female). What
9 says the State?

10 MS. BIAGIANTI: Please present Ms. Stone.

11 THE CLERK OF COURT: What says the Defense?

12 MR. BARR: Seat the juror please.

13 THE CLERK OF COURT: Please take a seat in the jury
14 box.

15 Juror number 140, Carolyn Stubblefield (white
16 female). What says the State?

17 MS. BIAGIANTI: Please present Ms. Stubblefield.

18 THE CLERK OF COURT: What says the Defense?

19 MR. BARR: Please excuse the juror from the trial.

20 THE CLERK OF COURT: You may return to your seat.

21 Juror number 42, Tonda Faulconer (white female).

22 What says the State?

23 MS. BIAGIANTI: Please present Ms. Faulconer.

24 THE CLERK OF COURT: What says the Defense?

25 MR. BARR: Seat the juror, please.

1 THE CLERK OF COURT: Just take a seat in the jury
2 box. Juror number 95, Edward Meadow (white male). What
3 says the State?

4 MS. BIAGIANTI: Please present Mr. Meadow.

5 MR. BARR: Seat the juror, please.

6 THE CLERK OF COURT: Please take a seat in the juror
7 box. Juror number 30, Holly Cusack. (white female).
8 What says the State?

9 MS. BIAGIANTI: Please present Ms. Cusack.

10 THE CLERK OF COURT: What says the Defense?

11 MR. BARR: Swear her, please.

12 THE CLERK OF COURT: Have a seat in the jury box.

13 Juror number 126, Mary Ruffin (black female). What
14 says the State?

15 MS. BIAGIANTI: Please present Ms. Robinson.

16 THE CLERK OF COURT: What says the Defense?

17 MR. BARR: Seat the juror, please.

18 THE CLERK OF COURT: Have a seat in the jury box.

19 Juror number 9, Sandra Booth (white female). What
20 says the State?

21 MS. BIAGIANTI: Please present Ms. Booth.

22 THE CLERK OF COURT: What says the Defense?

23 MR. BARR: Seat the juror, please.

24 THE CLERK OF COURT: Please take a seat in the jury
25 box.

1 Juror number 149, Jacqueline Williams (black female).

2 What says the State?

3 MS. BIAGIANTI: Please present Ms. Williams.

4 THE CLERK OF COURT: What says the Defense?

5 MR. BARR: Seat the juror, please.

6 THE CLERK OF COURT: Please take a seat in the jury
7 box.

8 Juror number 99, Latarsha Moore (black female). What
9 says the State?

10 MS. BIAGIANTI: Please excuse Ms. Moore.

11 THE CLERK OF COURT: You may return to your seat.

12 Juror number 39, Benny Elliot (white male). What
13 says the State?

14 MS. BIAGIANTI: Please present Mr. Elliot.

15 THE CLERK OF COURT: What says the Defense?

16 MR. BARR: Please excuse the juror from the trial of
17 this case.

18 THE CLERK OF COURT: You may return to your seat.

19 Juror number 63, Sally Hogan (white female). What
20 says the State?

21 MS. BIAGIANTI: Please present Ms. Hogan.

22 THE POTENTIAL JUROR: What says the Defense?

23 MR. BARR: Seat the juror, please.

24 THE CLERK OF COURT: Please take a seat in the jury
25 box.

1 Juror number 87, Judy Long (white female). What says
2 the State?

3 MS. BIAGIANTI: Please present Ms. Long.

4 THE CLERK OF COURT: What says the Defense?

5 MR. BARR: Seat the juror.

6 THE CLERK OF COURT: Take your seat in the jury box.

7 Juror number 15, Eddie Brown (black male). This is
8 for alternate. What says the State?

9 MS. BIAGIANTI: Please present Mr. Brown.

10 THE CLERK OF COURT: What says the Defense?

11 MR. BARR: Seat the juror.

12 THE CLERK OF COURT: Please take a seat in the jury
13 box.

14 THE COURT: Okay. Any matters concerning jury
15 selection?

16 MS. BIAGIANTI: Nothing from the State, Your Honor.

17 MR. BARR: No, sir, Judge.

18 THE COURT: All right. Ladies and gentlemen now
19 seated on this particular jury, I'm going to ask you to
20 step back to the jury room just a few minutes to give us a
21 little time here to get ready. Possibly -- we may get
22 started; we may not. But just give us a minute or two to
23 get organized here. Don't discuss this case. Get to know
24 each other and -- I tell you what, since I don't know any
25 of you and I don't, haven't have a chance to look at your

1 background, while you're back there discuss with each
2 other and come up with a foreperson. If somebody's served
3 on a jury before, if you've been a foreperson, you may
4 want to talk about that. Get to know each other, decide
5 who wants to be the foreperson, when we come back we'll
6 take care of that.

7 (WHEREUPON, the jury was removed from the
8 courtroom at 12:12 p.m., and the following proceedings
9 commenced in open court.)

10 THE COURT: Unless you got something I would propose
11 let's take about five minutes and let the jury talk about
12 the foreperson. We'll decide what we want to do. Bottom
13 line is, the triers of the fact is now seated, if there's
14 any room for negotiation or anything like that now is the
15 time.

16 MR. MODICA: First, if we can ask Mr. Barr if he has
17 any motions prior to starting this case.

18 MR. BARR: No motions.

19 MS. BIAGIANTI: Your Honor, before you get off the
20 Bench, with regards to this case, since this trial is
21 about to commence it is our policy that we ask that the
22 defendant be remanded due to the seriousness of the
23 defendant's charges he's currently out on bond. But I
24 would ask that you remand him to the custody of the
25 Sheriff's Department.

1 THE COURT: All right.

2 MR. BARR: Judge -- well, the case has now been
3 called; that's not any problem.

4 THE COURT: All right, motion granted.

5 MS. BIAGIANTI: Thank you.

6 (WHEREUPON, a recess was taken from the proceedings.)

7 THE COURT: What we're going to do, we'll find out
8 who they want to be foreperson and let's release them for
9 lunch and we'll come back at 2:15 on this case. That way
10 we'll have time to get those other matters worked out and
11 free those attorneys up.

12 MR. MODICA: Yes, sir. Just so Mr. Barr understands.
13 Mr. Barr, we're coming out -- back at 1:45 to do.

14 MR. BARR: Yes, sir.

15 THE COURT: Also on this case, we are -- we will
16 recess till 2:15. Those other cases we will reconvene at
17 1:45 so everybody knows our schedules. That will give us
18 a little over an hour for lunch. So bring the jury in and
19 we'll release them for lunch.

20 (WHEREUPON, the jury was returned to the courtroom at
21 approximately 12:31 p.m., and the following
22 proceedings commenced in open court.)

23 THE FOREMAN: My number 42. Faulconer.

24 THE COURT: All right. Juror 42, Ms. Faulconer is
25 foreperson. It's 12:30 now. We're not going to fire up;

1 we'd just have to stop in a minute or two. It's lunch
2 time and I've got some other matters I've got to take care
3 of prescheduled. So y'all go ahead and go to lunch.
4 Don't discuss this case with anyone. Should anybody try
5 to approach you to discuss this case with you do not talk
6 to them about it and immediately notify the Sheriff's
7 Department or the Court of any such contact. Don't even
8 discuss this case amongst yourselves until you're asked to
9 deliberate, all right? When we come back we'll put you
10 under oath. We're going to get started at 2:15. All
11 right. So y'all are in recess till 2:15. The other Court
12 staff got to be back here at 1:45. That's -- we're taking
13 a little extended lunch hour for y'all. We've got --
14 we've got some prescheduled matters.

15 Yes, sir.

16 THE JUROR: You said be back at 2?

17 THE COURT: 2:15. 2:15. If you will report to the
18 jury room from whence you just came, that will be fine.
19 All right. Anything else before we stop?

20 MS. BIAGIANTI: Nothing from the State.

21 MR. BARR: Nothing from the Defense, Judge.

22 THE COURT: The jury may leave at this time and then
23 we will recess.

24 (WHEREUPON, the jury was removed from the
25 courtroom at 12:34 p.m. and a lunch break was taken.)

1 MS. BIAGIANTI: Your Honor, just for the record
2 Defense counsel is consenting that both Mr. Chris Gamble,
3 one of the victims, Ms. Lesley Brown, the other victim, do
4 have a little bit of a record, all of which is not
5 admissible. It's either beyond ten year level or
6 magistrate level offenses so I believe Mr. Barr consents
7 to not ask them about any record. Is that correct?

8 (No audible response from Mr. Barr.)

9 THE COURT: Okay, y'all step up here just a minute.

10 (WHEREUPON, counsel approached the Bench for an
11 off-the-record discussion.)

12 THE COURT: Everybody ready?

13 MS. BIAGIANTI: Yes, sir.

14 (WHEREUPON, the jury was returned to the courtroom at
15 approximately 2:52 p.m., and the following
16 proceedings commenced in open court.)

17 THE COURT: All right. We've got all the jurors
18 back. Thank you for your patience, a little bit late in
19 starting. We were able to bring several folks up, get
20 some matters taken care of as far as scheduling. We need
21 to put you under oath.

22 Madam Clerk, let you administer the oath.

23 (WHEREUPON, the jury was sworn at 2:53 p.m.)

24 THE DEPUTY CLERK OF COURT: You may be seated.

25 THE COURT: I've just got some brief opening remarks

1 to make to you, let you know how we're going to proceed.
2 All of you know that we're trying criminal cases now that
3 are pending here in Georgetown County this week. It's
4 called Court of General Sessions. If we were trying civil
5 cases it would be called Court of Common Pleas. The trial
6 phases will go as follows, and I'm going to tell you what
7 they are and then I'm going to give you a little
8 description. Both sides will be allowed to make brief
9 opening statements. Then will come the evidentiary part
10 of the case, then the closing arguments and then the
11 judge's charge of the law. Only after all of those phases
12 are completed will you be asked to deliberate. That's why
13 I gave you the instructions don't discuss this case until
14 you're asked to deliberate.

15 Opening statements, basically an outline from that
16 particular side of the case they're going to present. The
17 evidentiary portion of the case is where you will receive
18 the evidence. It is crucial that you listen and observe
19 the evidence because you are the triers of the facts in
20 this case and I am the judge of the law. The end result
21 of any case in court we'll call reaching a verdict.
22 Verdict's a Latin derivative word which means true saying
23 so it can be said that a trial is a search for the truth.
24 Now how do you reach a verdict? Simply stated, you find
25 the facts from the evidence presented, apply the law of

1 the case that I will give to you during my charge to those
2 facts, and thus is the end result of a verdict. I will
3 tell you at this time when you are asked to deliberate a
4 verdict it will have to be a unanimous verdict. All 12
5 jurors must be in agreement on the verdict whatever it is
6 on each indictment.

7 The evidentiary portion of the trial, of course as I
8 told you, is where you receive the evidence. It may be
9 different forms of evidence. It can be testimony from the
10 witness stand. It can be photographs, documents, other
11 physical type items. Whatever the evidence is, of course,
12 it is your duty to listen and observe. What weight you
13 give to it is strictly within your discretion. The
14 situation about note taking, I don't -- some judges don't
15 want you taking notes. I don't have any particular care
16 about it. If I were on a jury I wouldn't do it. Why?
17 Because if I try to take notes on something I find myself
18 putting my mind on trying to get that according to the
19 note and I miss something that's said afterwards. So
20 personally I wouldn't keep notes; but if you do keep them
21 you got to keep them to yourself, can't be shared with
22 other jurors.

23 All right. The next phase is the closing arguments
24 where you will receive the arguments of counsel try to
25 persuade you to see the evidence as they see it. Then the

1 judge's charge. This is a criminal case. Our law
2 provides, requires, that the State prove the guilt of the
3 defendant beyond a reasonable doubt. If the State fails
4 in that then you would be required to find the defendant
5 not guilty. If the State -- if the State succeeds in
6 proving guilt beyond a reasonable doubt, then it would be
7 your duty to find the defendant guilty. In our country
8 and in this state a defendant is presumed innocent of all
9 charges, and that innocence stays with him throughout any
10 trial and only then if you the jury were to find him
11 guilty, okay? I think I've covered everything. If you
12 need a break -- we'll try to break every hour or so. If
13 you need a break let us know and we'll try to take care of
14 that. Please do not fall asleep on me. If you go out and
15 eat a big lunch, if you're like me, sometimes you can feel
16 like you need to take a siesta. If that were to happen in
17 the court you would have dire consequences so I don't want
18 that to happen. If you feel like you're getting sleepy
19 and you need a cup of coffee or a Coca-Cola, raise your
20 hand and we'll take a break, find a Coca-Cola.

21 I believe I've covered everything I wanted to say,
22 Solicitor, so I will turn it over to you and Mr. Barr at
23 this time for the trial.

24 MS. BIAGIANTI: Thank you, Your Honor, may it please
25 the Court. Good afternoon, ladies and gentlemen. My name

1 is Dorie Biagianti and I was introduced to you earlier.
2 Sitting there with me is Matthew Modica. He is also an
3 assistant solicitor here and also seated with me is
4 investigator Eddie Lee of the Andrews Police Department.

5 When does no mean no. Anger and jealousy is what
6 this case is about. Imagine lying in your bed in the
7 sanctity of your home, when you feel something, sense
8 something. You wake up and look out into your bedroom and
9 see something or someone in the shadows. Imagine the
10 fear, the fear that those two victims, Ms. Lesley Parish
11 and Christopher Gamble who are seated in the front row are
12 going to tell you about. You will hear that on -- in the
13 early morning hours of May 13th, 2006, Ms. Parish and
14 Mr. Gamble, they share a common child, a 12-year-old
15 daughter together. He happened to spend the night that
16 night which they're going to tell you about, when that man
17 sitting right there, the victim's ex-boyfriend, breaks
18 into her trailer, fires a weapon. Fires a rifle right
19 into the victim, hitting the male victim, hitting Chris in
20 his back causing some pretty significant injuries that he
21 will tell you about. Defendant's not done then, picks up
22 the rifle, aims right toward Lesley, his ex-girlfriend.
23 Shoots at her and thank God he missed. Somehow, some way
24 someone was looking over Lesley and he missed. They're
25 going to tell you about that evening. You're also going

1 to hear from a Doctor who treated Chris and they're are
2 going to tell you about the fear that was instilled in
3 them that early morning.

4 Now, you as jurors, you bring some important things
5 to the table, most of which is your common sense. So
6 please use your common sense when listening to the
7 witnesses, when seeing the evidence. Don't be afraid of
8 the obvious. If you listen and pay attention this is
9 actually a relatively simple case. Ex-boyfriend breaks
10 into the house, shoots male victim and attempts to shoot
11 his ex-girlfriend. It's that simple.

12 Now, the defendant is charged with several offenses.
13 Burglary first degree, that's where he breaks into the
14 residence, happened in the night time. And the judge will
15 explain all this to you at the end when he charges you the
16 law. And another element could be that the defendant had
17 a gun, which he did, there's no doubt. He shot Chris
18 Gamble. The ABWIK, assault and battery with intent to
19 kill, is where he shoots Chris Gamble. The assault with
20 intent to kill is where, thank God, he missed Ms. Lesley
21 Parish. And the possession of a weapon during a violent
22 crime. If you find that he's guilty of a violent crime
23 that's where the weapon comes in. So I ask you to listen,
24 pay attention, watch the victims in this case. And you, I
25 know, will find a verdict which speaks the truth and

1 that's guilty on all charges. Thank you.

2 MR. BARR: Please the Court Judge, Solicitor. Ladies
3 and gentlemen, I'm Charles David Barr. I practice law in
4 Kingstree. I practice under the firm name of Barr and
5 Barr. I practice with my brother Verdell. Our offices
6 are located at 319 West Main Street. I don't know how
7 many of you have ever been to Kingstree. This is just
8 right before you go across the river going across Black
9 River. I represent Mr. Heyward Davis, who is the person
10 referred to as the defendant. He's the young man seated
11 by me with the white shirt on. He's a defendant in this
12 case. In other words, he is the person that's charged
13 with having committed the offenses that you just heard the
14 solicitor talking about. Now I learned a long time ago
15 that whenever I'm trying a criminal case, in opening
16 statement, that's where I am now. His Honor in his very
17 excellent preliminary instructions attempted to and did
18 set out for you just a few minutes ago some basic things
19 concerning a criminal trial. And of course, one of those
20 things is that with respect to the jurors, that your
21 duties and your responsibilities are different from
22 anybody else in this courtroom. They're different from
23 the solicitors, they're different from the witness,
24 different from the bailiffs, different from me as a
25 defense lawyer. But there are certain things, there are

1 basic things that must occur in a criminal trial. In
2 other words, when somebody has been charged with a
3 criminal offense by way of a warrant and that warrant has
4 gone before a grand jury -- and of course in grand jury in
5 South Carolina nobody can ever be tried for a criminal
6 case unless they have been indicted by the grand jury.
7 And of course a grand jury is that proceeding where the
8 solicitor as well as whatever witnesses they got appear
9 and the grand jury finds there's a reasonable, a grounds
10 to issue an indictment, that is to try a person on an
11 allegation of having committed a criminal offense. Of
12 course, in South Carolina a defendant's not entitled to be
13 present during a grand jury proceeding, neither his lawyer
14 present. So Mr. Howard Davis -- Heyward Davis comes here
15 today on an indictment for three or four criminal
16 offenses.

17 Now just by way of procedure, as I indicated a few
18 minutes ago, as jurors your duty and your responsibility
19 in this case will be to listen to the evidence and all of
20 you will be listening some of you might be able to
21 perceive. When I say perceive I'm talking about it might
22 be such that it's presented to you by way of some
23 document, it might be something else to appeal to other
24 some other sense. It might be what we call demonstrative
25 evidence. It might be even testimonial evidence and of

1 course that you will listen to. But now whatever the case
2 might be as it relates to that evidence, it will be your
3 duty and your responsibility to determine whether or not
4 in this case now -- and here's another one of these
5 elements of the procedure. In a criminal case the
6 prosecution has the burden of proving a defendant's guilt
7 and in South Carolina by a standard that we call beyond a
8 reasonable doubt. In other words, they have the burden of
9 proof, that's this table over here, and not only do they
10 have the burden of proof but they have the standard proof
11 which is beyond a reasonable doubt. Now His Honor will
12 tell you at the end of the trial what a reasonable doubt
13 is. That's after all the evidence has been -- has been
14 adduced. But now let me just tell you, that's just two
15 things.

16 There's just a couple of other things I want to
17 mention at this point and then I'm going to sit down. I'm
18 going to let the prosecution present their case. But now
19 my role as a defense lawyer is to make certain that my
20 client gets a fair trial. As he sits over here even right
21 now, our law in South Carolina says that procedurally he
22 is presumed innocent. Now what does that mean? That
23 means right now, before you hear anything, the law says
24 that under our system he is presumed innocent right now.
25 Before you hear anything, see anything, you must formulate

1 in your mind right now, a presumption of innocence. I
2 know that's difficult for somebody because particularly
3 people that aren't familiar with the criminal justice
4 system say, well look, we came in here somebody charged
5 him with something, I can't imagine that they charged him
6 with something if he wasn't guilty. But ladies and
7 gentlemen, that's the process that we went through this
8 morning where His Honor qualified you as impartial jurors
9 in this case. In other words, you might see lawyers
10 sitting down here at the table fumbling with papers and
11 going through; but what we want to do is make sure that
12 we've got 12 people that can sit as a neutral trier of
13 fact, listen to the evidence, and apply the law. And
14 notice that I say the law. And the law is what the Court
15 tells you it is. It's not what we come here thinking.
16 It's not what we come here thinking. Now His Honor is
17 going to instruct you at the appropriate time on what the
18 law is. And what we want to do as defense lawyers and
19 even as prosecutors, we want to make sure that we've got
20 12 people that will sit down and take the law as the Court
21 gives it to you. Not what you believe it to be, not what
22 you think it ought to be, but what he tells you that law
23 is and apply it to the facts as you find them to be that
24 is in your collective wisdom as jurors. There's 12 of you
25 and you must agree that eventually His Honor will instruct

1 you that in the end in terms of your verdict you have to
2 come up with a unanimous verdict. That means all 12 of
3 you will have to agree. So as you find the facts based on
4 what has been presented, you'll have to apply it to the
5 law as His Honor will give it to you. And sometimes that
6 becomes difficult particularly when people have got their
7 own ideas on what the law ought to be. But now His Honor
8 will instruct you that you are to participate as jurors in
9 this process. Sometimes there's give and take because
10 when you go to your jury room, you're done with your
11 deliberation, and many times the people have difference of
12 opinions but you will still have to come up with some kind
13 of agreement. And the agreement you will come up in this
14 case is you'll need to decide, you'll have to decide
15 whether or not the prosecution has proven to you beyond a
16 reasonable doubt, that Heyward Davis on the 13th of May of
17 2006 committed the offense of first degree burglary,
18 entering a dwelling house at night without permission with
19 the intent to commit a crime in there, whether he
20 committed the offense of assault and battery with intent
21 to kill, whether he committed the offense of assault with
22 intent to kill. And of course assault with intent to kill
23 is when you put somebody in fear of apprehension of an
24 immediate battle and it's violent. Assault and battery
25 with intent to kill contains all the elements of murder

1 except the death of a person, the death of a victim. It's
2 an unlawful act of violent injury to the person of
3 another. That's an assault -- assault and battery with
4 intent to kill.

5 And of course, possession of a weapon during a
6 violent crime, if you find that the prosecution has proven
7 to you in this case that a violent crime occurred and that
8 the defendant did, in fact, at the time that crime
9 occurred possess a weapon, then that kind of speaks for
10 itself. But now let me just say, before I go sit down,
11 that I certainly would take this opportunity to welcome
12 each and every one of you to jury service. I don't know,
13 maybe some of you have served on a jury before, maybe you
14 haven't. You can't turn on the TV now unless there's a
15 reality show concerning something going on in the
16 courtroom. But this is not one of those reality shows.
17 This is reality. This is the real thing. This is the
18 real thing.

19 And this gentleman over here, this defendant, His
20 Honor will instruct you, he is entitled to a fair trial at
21 the hand of his peers. And what that means is at the end
22 of the day if you're not convinced and if you're not
23 convinced beyond a reasonable doubt, the kind of doubt
24 that would cause a person to hesitate to act. In other
25 words, if you have at the end of the day some reasonable

1 belief and you're not firmly convinced that the defendant
2 is guilty, been proven, beyond a reasonable doubt His
3 Honor will instruct you that your charge will be to find
4 him not guilty. That's not something that I brought up
5 here today with me from Kingstree. That's the law.
6 That's the law in Georgetown, that's the law in
7 Williamsburg County, in Florence County, and all the 46
8 counties throughout the State of South Carolina. That's
9 the law.

10 And I'm convinced that after looking at your
11 qualifications, I see no reason why as fair and impartial
12 jurors you will not be able to discharge your
13 responsibilities in this case, that is, in listening to
14 the evidence and applying the evidence as you find it to
15 be to the law as the law is given to you and coming back
16 with a verdict which speaks the truth. Thank you.

17 MS. BIAGIANTI: The State will call Christopher
18 Gamble.

19 THE COURT: Come forward to be sworn please.
20 WHEREUPON,

21 CHRISTOPHER GAMBLE,
22 having been duly sworn by the Deputy Clerk of Court,
23 testified as follows:

24 THE DEPUTY CLERK OF COURT: Please state your full
25 name for the record and you may be seated.

1 THE WITNESS: Christopher Gamble.

2 DIRECT EXAMINATION

3 BY MS. BIAGIANTI:

4 Q Mr. Gamble, can you please tell the jury how old you
5 are?

6 A I'm 39.

7 Q Are you married?

8 A Divorced.

9 Q Do you have any children?

10 A Yes, I have five kids.

11 Q What are their names and ages?

12 A My oldest is -- excuse me for a second.

13 Q Sorry, take your time.

14 A My oldest is Minor . Minor (ph) who's 16. My
15 next oldest is Minor he's 13. My next
16 is Minor (ph) Minor , she's 12. My third child is Minor
17 (ph) , she's 9. And my baby is 14 months.

18 Q And do you know the other victim in this case,
19 Ms. Lesley Parish?

20 A Yes, ma'am.

21 Q How do you know Ms. Parish?

22 A I met her about 13 years ago. She was a co-worker of
23 mine.

24 Q And did there come a point in time where you and
25 Ms. Parish had a relationship?

1 A Yes, ma'am.

2 Q And do you have a child with Ms. Parish?

3 A Yes, ma'am. I have a 12-year-old daughter, Minor a.

4 Q Minor ?

5 A Yes, ma'am.

6 Q And she lives with Lesley?

7 A Yes, ma'am.

8 Q And from time to time over the years you remained
9 friends with Lesley?

10 A Yes. That's accurate.

11 Q Did there come a point in time where sometimes you
12 would stay at Lesley's house?

13 A No, I never.

14 Q Not regularly but on occasion?

15 A Well, just to pick my child up.

16 Q And on the night that we're talking about May 12th
17 going into the early morning hours May 13, did you stay
18 that night?

19 A Yes, ma'am.

20 Q And did you have an intimate relationship that night
21 with Lesley?

22 A Yes, ma'am.

23 Q And tell our jury a little bit where you're working?

24 A At that particular -- present time I was working at
25 International Paper Company.

1 Q And where are you working currently?

2 A I'm an over-the-road truck driver.

3 Q And when you're in this area, where do you stay?

4 A I reside at my mother's on

5 Q But mainly you travel across the United States on
6 your truck?

7 A Yes, ma'am.

8 Q And do you have any prior military experience?

9 A Yes, ma'am. I have four years of active, three years
10 of the reserve in the United States Marine Corp.

11 Q Did you serve in any war?

12 A Yes, ma'am. I served in Desert Storm.

13 Q Do you know the defendant Heyward Davis?

14 A Not personally but I've met him on two encounters.

15 Q Do you recognize him?

16 A Yes, ma'am.

17 Q Can you please describe for the Court an article of
18 clothing he's wearing?

19 A He's the gentlemen with the white button-up shirt
20 sitting.

21 Q Your Honor, just let the record reflect that he's
22 just described the defendant.

23 Can you point to him, please, for the jury.

24 A Sitting to my right (indicated by pointing).

25 Q Thank you. Now directing your attention to May 12th,

1 2006, and into May 13th, 2006, please tell our jury a
2 little bit about what you were doing that day.

3 A I worked 7 a.m. to 3 p.m. that afternoon.

4 Q At where?

5 A I was on morning shift at International Paper. I
6 spoke to Lesley Parish early that day in regards to taking
7 my daughter some money for this event that was going to be
8 held in Andrews that following weekend.

9 Q What was that event called, if you remember?

10 A The Good Ole Days. And upon taking her money she
11 told me that my daughter had did extremely well on her
12 report card so I then told her I would give her a little
13 extra for her academic achievements. And I was late and I
14 told her I would be there, and I called her on the phone
15 but she never responded so I took the initiative and
16 drove, drove there. And upon arriving to her place I
17 called her one last time and she responded. I then went
18 inside.

19 Q What time, approximately, did you get there?

20 A It was between 10 or 11 p.m. that night.

21 Q On May 12?

22 A Yes, ma'am.

23 Q And please continue.

24 A We -- my daughter wasn't there at the time so we
25 talked.

1 Q Do you know where the ---

2 A She spent the night at one of her female friend's
3 house, and we talked briefly in regards of my daughter and
4 then we changed the discussion towards ourselves, as far
5 as what was going on in her life and what was going on in
6 mine.

7 Q Okay, let me just stop you quickly. Do you know the
8 location of where Ms. Parish lived?

9 A It was a mobile park but the exact address I don't
10 know.

11 Q Was it in the city of Andrews?

12 A Yes, ma'am.

13 Q Here in Georgetown County?

14 A Yes, ma'am.

15 Q And who lived at that address as far as you know?

16 A Lesley Parish and my daughter and her sister.

17 Q Her sister, what's her sister's name?

18 A Minor

19 Q And how old is she?

20 A She's 15.

21 Q So Lesley, Minor , and Minor are the only ones
22 who live there?

23 A Yes, ma'am. We then -- I was amazed at the features
24 of her TV so we began discussing it and probably about 30,
25 45 minutes after me being there her telephone had rung.

1 Q Hold -- hold on one second, please.

2 Judge, can I have a second.

3 All right, go ahead. You said he received -- or she
4 received a phone call while you were there?

5 A Yes, ma'am. She came back and we again talked
6 briefly and I got sort of -- well, I got -- I was dozing
7 off while I'm watching TV, and she woke me up and told me
8 to come on in the bedroom if I'm too tired to make an
9 attempt to drive back.

10 Q And did you agree and decide to stay the night?

11 A Yes, ma'am. Upon arriving in her bedroom, again we
12 talked briefly. We had sexual intercourse. I got up and
13 got some water and she fell asleep and I woke her up
14 probably an hour after being in the bedroom because I
15 heard like a thump-- well, a thumping noise. She then got
16 up and checked -- checked the doors and checked around.
17 She told me that her central unit when it's activated or
18 deactivates it makes that noise.

19 Q When you say central unit, you mean AC? Or air
20 conditioning?

21 A Yes, ma'am.

22 Q Describe for us if there were any lights on in the
23 trailer at this point?

24 A Yes, ma'am. There were a light above her stove in
25 the kitchen.

1 Q Was there any additional outside lights?

2 A It was an outside light in the back, one of those
3 like street light or...

4 Q Okay. And tell us what happened when -- when you
5 mentioned this thumping noise to Lesley.

6 A Well, I was kind of skeptical because there was a
7 train maneuvering back and forth probably within 50 to 100
8 yards away from her mobile home.

9 Q She lives by a railroad track in Andrews?

10 A Yes, ma'am. And I couldn't really get into a deep
11 sleep because of my conscious, my intuition. And probably
12 to -- 45 to -- about an hour after we cut the television
13 off I just vaguely opened my eyes and saw a individual
14 like peeping in at the bedroom.

15 Q Was the bedroom door open or closed?

16 A It was open.

17 Q Now these people -- and I wasn't there that night so
18 if you could just slow down and tell us in detail what
19 happened next.

20 A Upon opening my eyes I saw an individual standing
21 there, and when I realized who it was I called his name.

22 Q Who did you call?

23 A Mr. Heyward. I said Heyward, is that you? Heyward?
24 And he never responded after me calling his name. He then
25 proceeded with his entire body, like stepped into the

1 room.

2 Q At that point could you see fully who he was?

3 A Yes, ma'am.

4 Q Who was that person?

5 A Mr. Heyward Davis. And when -- when I first saw his
6 face I didn't know he had a weapon and when I called his
7 name that's when he stepped into the room -- in the room
8 area. And when I realized he had a weapon, you know,
9 it -- I was in shock. And I attempted to -- well, I
10 called his name again. I was sitting there, you know,
11 trying to see what he was doing, what was his motive, and
12 when I looked in his eyes I knew he was going to shoot.

13 Q So what did you do?

14 A Well, at that time I was looking at him face to face
15 and I ---

16 Q Were you still in bed?

17 A Yes, ma'am. And he was so -- he was about probably
18 about four feet away from me and I just reacted quick. I
19 knew had he give me a direct shot I would have died
20 instantly so I just turned slightly my body towards him;
21 and he shot me in the rear, in the back, lower portion of
22 my back.

23 Q On what side of your body, your left or your right
24 side?

25 A My left side.

1 Q If -- if we were -- if the jury and I were looking at
2 the bed what side of the bed were you on, the left or the
3 right.

4 A On the right side.

5 Q Now, if you're looking at the headboard?

6 A I was on the left, if you're looking at it.

7 Q And Lesley was where in the bed?

8 A She was to the right side of it.

9 Q Continue.

10 A Upon shooting me -- it's a horrific feeling. I
11 blacked out at the time; and when I came to, before I
12 blacked out I heard a second shot so I didn't know whether
13 he shot me twice or what was going on. And the room was
14 silent for momentarily so I heard Lesley's feet like
15 thumping on the ground, on the floor. So I was afraid to
16 talk because I didn't know whether he was still there or
17 not. And she got up crying and running around. Then I
18 knew he was gone. So I then attempt to tell her she --
19 she got to call 911 because I knew I was shot and I knew I
20 was bleeding heavily. And she ---

21 Q How -- I'm sorry. How was Lesley acting at that
22 point?

23 A She was going all berserk, crying and running around.
24 So I knew I had to get her calmed down or I was going to
25 bleed to death. So she finally came to -- to call 911 but

1 she still wasn't able to really talk. So I told her she
2 got to turn me over and get a towel to stop the bleeding
3 because if not I was going to bleed to death. And ---

4 Q Did there come a point where you spoke to the 911
5 operator?

6 A Yes, ma'am.

7 Q And why is that?

8 A Because Lesley was -- she was too frightened to even
9 talk.

10 MS. BIAGIANTI: Your Honor, can I approach the
11 witness?

12 BY MS. BIAGIANTI:

13 Q Chris, I show you what's been marked State's Exhibit
14 Number 7 for I.D. Do you recognize this?

15 A Yes, ma'am.

16 Q What is this?

17 A That's a copy of the 911 call that night.

18 Q And how do you know that?

19 A Because my voice is on it.

20 Q And have you heard this since May 13th, 2006?

21 A Yes, ma'am.

22 Q Whose voice besides yours do you recognize?

23 A Ms. Lesley Parish's.

24 Q And is this a true and accurate copy of the 911 call
25 that you made or -- that you and Lesley made that early

1 morning of May 13th?

2 A Yes, ma'am.

3 Q And have there been any deletions or additions?

4 A No, ma'am.

5 Q After Lesley called 911 do you know if she called
6 anybody else?

7 A She called her parents.

8 Q Why'd she call her parents?

9 A At the time we knew I was bleeding heavily and my
10 body was changing drastically and she thought I was going
11 to die right in front of her eye.

12 Q Describe for us how you were feeling about the pain.
13 Was it painful to be shot?

14 A Oh, it's like somebody poured gasoline on your back
15 and just light it. And I tried to talk to the 911
16 operator, but I could smell the gunpowder and I knew I was
17 bleeding through my mouth, so you know, I have to really
18 talk really slow. And I couldn't really move because I
19 knew I was par -- I couldn't move on either side.

20 Q Did there come a point in time that you had a
21 discussion with Lesley about the future?

22 A Yes, ma'am.

23 Q What did you tell her?

24 A Well, I told her to tell the kids that I love them
25 and my parents as well.

1 Q Why did you tell her that?

2 A Because I just -- I knew I was going to die at the
3 time.

4 Q What happened next?

5 A We -- I then heard the emergency vehicles coming,
6 coming towards the house, but they weren't sure where to
7 go so I ---

8 Q Why do you say that?

9 A Because I could hear them passing, passing by. So I
10 attempted to get Lesley to calm down so she can go out
11 there and direct them to exactly where we was at.

12 Q Were you successful in trying to get Lesley to go
13 outside of the bedroom?

14 A Well, by the grace of God one of the emergency
15 individuals came knocking at the back door and then Lesley
16 screamed up and alert them that this was the house.

17 Q Is that back door close to the master bedroom that
18 you were in?

19 A Yes, ma'am.

20 Q Do you remember telling the police what happened that
21 morning?

22 A Yes, ma'am.

23 Q And who did you tell the police did this to you?

24 A Mr. Heyward Davis.

25 Q Tell us a little bit about your injuries, in general,

1 that you sustained that night at the hand of Mr. Davis?

2 A Well, the entrance wound went through the lower part
3 of my back breaking four of my ribs and then ricocheted up
4 to my left shoulder blade, broken it, then it punctured my
5 lungs and ricocheted and came up through the middle part
6 of my spine.

7 Q How many days did you spend in the hospital?

8 A Five days.

9 Q How many days did you spend in ICU?

10 A Three.

11 Q Did you have to have a blood transfusion?

12 A I have several. Two of them to be exact.

13 Q Do you have any permanent scars?

14 A Yes, ma'am. I have four permanent scars, two of them
15 being from the entrance and the exit wound and two from
16 the tube that was into my lungs and the incision that they
17 did to get the ---

18 Q Can you point to those for us so that the jury can
19 see?

20 A It's two here (pointing), one in my spine here, and
21 the huge one is in my back.

22 Q Now describe for us the gun that was used that night.

23 A It was a rifle with a -- some type of lens on it.
24 And it had like a hunting scrap on it.

25 MS. BIAGIANTI: Your Honor, can I approach the

1 witness.

2 BY MS. BIAGIANTI:

3 Q Mr. Gamble, I show you what's been marked as State's
4 Exhibit Number 1 for I.D. Do you recognize this photo?

5 A Yes, ma'am.

6 Q And what is it?

7 A That's the entrance door to Lesley Parish's home.

8 Q The front door?

9 A Yes, ma'am.

10 Q And was the door in this condition when you ---

11 MR. BARR: Your Honor, I'm -- I'm going to object to
12 him testifying as to what it is. It's not in evidence.
13 My understanding is he was identifying it. He's now
14 telling what it is. It hasn't been admitted into
15 evidence.

16 MS. BIAGIANTI: That's fine, Judge. I'll move on and
17 see if...

18 THE COURT: Okay.

19 BY MS. BIAGIANTI:

20 Q I show you what's been marked as State's Exhibit
21 Number 2 for I.D. Do you recognize what this is?

22 A Yes, ma'am.

23 Q And how do you recognize it?

24 A That's my shirt.

25 Q State's Exhibit Number 3 for I.D. Do you recognize

1 what this is?

2 A Yes, ma'am.

3 Q And how do you recognize it?

4 A Again, that's my shirt. And that's the bed I was
5 lying in.

6 Q Is this Lesley's house?

7 A Yes, ma'am.

8 Q State's Exhibit Number 4 for I.D. Do you recognize
9 what this is?

10 A Yes, ma'am.

11 Q And how do you recognize it?

12 A That's the room we was in that day.

13 Q State's Exhibit Number 5, do you recognize what this
14 is?

15 A Yes, ma'am.

16 Q And how do you recognize it?

17 A Again, that's the same place that we was located at.

18 Q This would be the other wall?

19 A Yes, ma'am.

20 Q And State's Exhibit Number 6, do you recognize this
21 photo?

22 A Yes, ma'am.

23 Q And how do you recognize it?

24 A That's the cartridge where the room is at.

25 Q Bullet piece?

1 A That's right.

2 MS. BIAGIANTI: Your Honor, at this time I'd like to
3 move all these into evidence.

4 MR. BARR: There's no foundation raised for that,
5 Judge.

6 MS. BIAGIANTI: Your Honor, he recognized them, he
7 said he knew what they were. He doesn't have to be the
8 one to take the photos.

9 THE COURT: Let me take a look at them. All right,
10 I'm going to allow them in but we note the objection.

11 (WHEREUPON, State Exhibit Nos. 1 through 6 were
12 admitted into evidence.)

13 MS. BIAGIANTI: Can I have the witness step down?
14 (Witness complies).

15 MR. BARR: Your Honor, if I might. Is this one
16 exhibit or is...

17 THE COURT: Six.

18 MR. BARR: Six different. What exhibit numbers?

19 MS. BIAGIANTI: One through six.

20 BY MS. BIAGIANTI:

21 Q Chris, again I show you what's now in evidence
22 State's Exhibit Number One. What is this?

23 A That's the entrance of the door.

24 THE COURT: You're going to have to speak up.

25 A That's the entrance to the door at Lesley Parish's

1 home.

2 Q And was the door in this condition when you entered
3 that home that night?

4 A No. No, it wasn't.

5 Q I'm showing you what's been marked State's Exhibit
6 Number 2 which is now in evidence. How do you recognize
7 this?

8 A That's my shirt that the paramedics cut off me and
9 that's the bed where I was lying.

10 Q This is in Lesley's house?

11 A Yes, ma'am.

12 Q And is this the pillow that you were sleeping on that
13 night?

14 A Yes, ma'am.

15 Q What is all this? Stupid question, but all this red
16 stuff?

17 A The portion of the writing part of my shirt and
18 the ---

19 Q What is this red stuff?

20 A There was the sheets and towels that I told Lesley to
21 get to stop the bleeding.

22 Q Blood?

23 A Yes, ma'am.

24 Q From you?

25 A Yes, ma'am.

1 Q State's Exhibit Number 3, which is now in evidence,
2 again, tell the jury what this is.

3 A That's -- again, this is the bedroom and that's the
4 bed that I was lying in and that's a portion.

5 Q What side of the bed were you laying in?

6 A On the left side, this side.

7 Q And point to where Lesley was in bed?

8 A She was to the right side. Over here.

9 Q And this is Lesley's master bedroom?

10 A Yes, ma'am.

11 Q All right. Showing you State's Exhibit Number 4,
12 which is now in evidence, do you recognize that?

13 A Yes, ma'am.

14 Q And comparing it with State's Exhibit Number 3 can
15 you tell the jury where this -- what is this?

16 A That's the bullet hole from the gun shot.

17 Q And where is this in relation to State's Exhibit
18 Number 3?

19 A Here.

20 Q Along that wall?

21 A Yes, ma'am.

22 Q Thank you. Now I know you told the jury a little bit
23 about the lighting in the house that night. Tell us about
24 the lighting in the bedroom. Could you see the stove
25 lights from inside the bedroom?

1 A Yes, ma'am.

2 Q Did you have any trouble seeing who was in the
3 bedroom that night?

4 A No, ma'am.

5 Q Any question in your mind as to who shot you?

6 A Not a doubt.

7 Q Who shot you?

8 A Mr. Heyward Davis.

9 MS. BIAGIANTI: Your Honor, at this time too I'd also
10 like to move State's Exhibit Number 7 into evidence, the
11 911 tape.

12 MR. BARR: Objection, Your Honor, no foundation.

13 THE COURT: I'll have to sustain the objection but
14 certainly I'll give you an opportunity to lay foundation.

15 MS. BIAGIANTI: I will. Thank you. Nothing further.

16 THE COURT: Your witness.

17 MR. BARR: Thank you, Judge.

18 C R O S S - E X A M I N A T I O N

19 BY MR. BARR:

20 Q Mr. Gamble, how are you today?

21 A Pretty good. You, sir?

22 Q I'm doing good. Now tell me something, let me
23 just -- where are those exhibits?

24 MS. BIAGIANTI: I'm sorry.

25 BY MR. BARR:

1 Q I've got a couple questions here about these
2 exhibits, and I'm going to start with number -- State's
3 Exhibit Number One. Take a look at State's Exhibit Number
4 1. And it was -- you described for the Assistant
5 Solicitor a few minutes ago what you thought that was.
6 Tell me again, if you don't mind please, sir.

7 A What that is?

8 Q Yes, sir. Depicted in that photograph?

9 A It's the entrance to Lesley Parish's home, front
10 door.

11 Q The entrance to her home. And did you take this
12 photograph?

13 A No, sir.

14 Q And do you know when the photograph was taken?

15 A I -- during the incident.

16 Q You didn't take the photograph but you know when this
17 photograph was taken.

18 A Excuse me, sir?

19 Q You did not take this photograph but you say you know
20 when it was taken. Take another look at it. Now are you
21 sure that's in Ms. Lesley Parish's house?

22 A Accurately. Completely, sir.

23 Q How do you know?

24 A Because I knew how her house was designed by being --
25 coming here.

1 Q And it's your testimony today that looking at just
2 this photograph you can tell that this is Ms. Lesley
3 Parish's house and not somebody else's house who is
4 essentially similar to hers?

5 A That's correct.

6 Q Now I notice that there appears to be some paint
7 scraped from the door in this photograph. Do you agree?

8 A Yeah, there's some. That's not -- structural damage
9 done to it whether it's paint scraping or what, I'm not an
10 expert at that, sir.

11 Q You're not an expert at it. But you -- but even
12 though you're not an expert at it, it's still your opinion
13 or your belief that it's Ms. Lesley Parish's house.

14 A That's correct.

15 MS. BIAGIANTI: Your Honor, I object. That's asked
16 and answered.

17 BY MR. BARR:

18 Q The scraping of the paint that you saw or that you
19 said that's in that photograph, do you know how it
20 occurred?

21 A No, sir.

22 Q Do you know when it occurred?

23 A No, sir.

24 Q Now tell me when you were in Ms. Lesley Parish's
25 house and you observed this paint scraping.

1 A Excuse me?

2 Q Tell me when were you present, physically present, in
3 Ms. Lesley Parish's house and you observed this paint
4 scraping?

5 A After the incident. After I was up and well.

6 Q After what now?

7 A The incident -- after the shooting.

8 Q Yes, sir.

9 A When I could maneuver around and the detective came
10 to my house -- to my mother's house, and we went through
11 details as far as what happened to the best of my
12 knowledge and that's what I told him. That's what
13 actually happened.

14 Q Well, my question was, when were you physically
15 present in her house and saw this paint scraping and was
16 able to identify it?

17 A I saw it in the picture, the picture that you're
18 holding up.

19 Q After you was up and well?

20 A Upon being released from the hospital.

21 Q I see. So when you were released from the hospital,
22 I believe you testified that you were in the hospital some
23 four to five days?

24 A That's correct.

25 Q That's when you first saw what's been entered into

1 evidence as State's Exhibit Number 1?

2 A That's correct.

3 Q All right. Now, Number 2, take a look at Number 2.

4 And I believe you said that that's the bed where you say
5 Heyward Davis shot you?

6 A That's accurate, sir.

7 Q And I notice that the items on the bed are moved
8 around. Do you know how they got like this?

9 A Yes, sir.

10 Q How did they get this way?

11 A The paramedics when they came, the first thing they
12 did was cut the shirt -- shirt off of me to find where
13 were the wounds at so they'd know what to -- what to work
14 on.

15 Q Did you take this photograph?

16 A No, sir.

17 Q Now does this photograph truly to the best of your
18 knowledge reflect where these clothings were at the time
19 that the shooting supposedly took place?

20 A When the shooting took place they were on my body.

21 Q So you don't -- you don't know how this got arranged
22 the way it is now, do you?

23 A They cut it off of me, sir.

24 Q Well, but -- in terms of the arrangement on -- in
25 here when they cut it off you I assume they put you on a

1 stretcher and took you to the hospital; did they not?

2 A What they did, they put a gurney under my entire body
3 and rolled me over in the back so whatever I had on me was
4 all just jumbled because of them moving me through the
5 process of getting me in the ambulance.

6 Q Well, the point is, though, in terms of placing these
7 items the way that they are now, you didn't see them
8 placed this way, did you?

9 A No, sir.

10 Q I see. So you don't know how they got like this?

11 A Excuse me?

12 Q You don't know how the items that are depicted in
13 this photograph, how they were placed in this position, do
14 you?

15 A Well, I can't tell you how they were at, I knew they
16 were cut off of me.

17 Q But you don't know how they got like this in this
18 photograph?

19 A I don't understand your question.

20 Q You didn't put them this way, did you?

21 A No, sir.

22 Q All right.

23 A They cut it off of me.

24 Q Now let me take a look at State's Exhibit Number --
25 Number 3. And I believe you said that this was

1 Ms. Parish's bed?

2 A Again, that's a photograph of the room that I was in.

3 Q And who took this photograph?

4 A I don't -- I think the detective -- I don't know,
5 sir.

6 Q You don't know. You don't know who took it and you
7 don't know when it was taken.

8 A I know where it's at, where it's located at.

9 Q Well, you don't know who took it and you don't know
10 when it was taken?

11 A I don't know whether it was -- well, it's quite
12 obvious it happened after -- during the shooting.

13 Q The question was, do you know when it was taken?

14 A No, sir.

15 Q All right. So then would it be fair to say that with
16 respect to the things, the items that are depicted in this
17 photograph, you don't know how they got positioned, where
18 they were positioned, or when they were positioned that
19 way?

20 A I know when they got that way, sir.

21 Q Did you see them placed in the position that they are
22 placed now?

23 A They cut it off of me.

24 Q State's Exhibit Number 4, you say you know what that
25 is?

1 A Yes, sir.

2 Q What do you think it is?

3 A That's a hole.

4 Q And how did it get there?

5 A How did it get there?

6 Q Yes, sir.

7 A From a gunshot.

8 Q And are you telling the ladies and gentlemen of this
9 jury that you saw this hole placed in this wall?

10 A I heard that hole.

11 Q Oh, you heard it.

12 A That's correct.

13 Q Now the first time you saw -- or have you ever seen
14 this hole in the wall?

15 A Yes, sir.

16 Q When did you see it?

17 A When -- at -- when they brought the pictures to me.

18 Q I see. When they brought the pictures to you. When
19 you say "they" I assume you're talking about Investigator
20 Lee?

21 A The investigator, sir.

22 Q Yes, sir. So now the truth of the matter is you
23 didn't see this photograph until Investigator Lee brought
24 it to you?

25 A Right.

1 Q And you certainly don't know whether or not I took my
2 knife and put this hole in here or whether or not it's a
3 bullet hole, do you?

4 A Well, what happened when I told ---

5 Q My question is, sir, do you know whether or not it's
6 by knife hole or a bullet hole?

7 A It's a bullet hole, sir.

8 Q Now tell the ladies and gentlemen how you know, you
9 didn't see it put there, you only saw the photograph of
10 Investigator Lee brought it to you, but yet you say it's a
11 bullet hole.

12 A Because I was there when -- it was two shots. One
13 intruded, hit my body, and the other one striking that
14 wall there, sir.

15 Q And you saw the bullet strike the wall?

16 A I heard it.

17 Q When did you first notice the wall and notice that
18 what you heard was a hole in the wall?

19 A When did I notice the wall?

20 Q Yes, sir.

21 A I don't understand your question.

22 Q When did you notice the wall in Ms. Parish's house
23 and you were able to identify the hole in her wall as a
24 bullet hole put there by a weapon of Mr. Heyward Davis
25 discharge?

1 A Because it was accurate to what happened.

2 Q No. I said when did you notice that?

3 A Upon reviewing the pictures.

4 Q So when you saw these pictures then you said -- or
5 you recognized that there was a hole in the wall made by a
6 bullet.

7 A No, sir. I told them exactly what happened, and upon
8 seeing the pictures this what happened, the pictures is
9 verified by what I told them had happened.

10 Q The night that you were shot or claim that you were
11 shot?

12 A Correct, sir.

13 Q Did you see this hole in the wall?

14 A I heard that shot.

15 Q But you didn't see it, did you?

16 A No, sir.

17 Q And would it be fair to say that you never looked at
18 the wall and you don't know whether or not it was a bullet
19 hole in the wall or not, do you?

20 A In all fairness true.

21 Q Pardon me?

22 A In all fairness, yes.

23 Q Well, that's what we want, you to be fair and tell
24 the truth. Now you don't know whether or not it was a
25 bullet hole in that wall or not, do you?

- 1 A I knew there was a hole somewhere, sir.
- 2 Q Now State's Exhibit Number 5, what is -- tell us what
- 3 that is.
- 4 A That's the -- the bathroom adjacent to the room that
- 5 we were in.
- 6 Q And you see the crack on the wall?
- 7 A Yes, sir.
- 8 Q Do you know what caused that crack?
- 9 A Looks like some type of puncture or something, sir.
- 10 Q Looks like some type of puncture. So you don't know
- 11 what it is?
- 12 A Not being accurate.
- 13 Q All right, sir. Now you went to Ms. Parish's house,
- 14 Ms. Brown's house, on the 13th of May to see your
- 15 daughter.
- 16 A I went there the 12th of May, sir.
- 17 Q Well, on the 12th of May. I notice that some of the
- 18 documents say 13, some say 12. But you went there on the
- 19 12th. Sir?
- 20 A Yes, sir.
- 21 Q And what time did you get there?
- 22 A Again, between 10 and 11:00 p.m.
- 23 Q Ten and 11 o'clock p.m. that night?
- 24 A Yes, sir.
- 25 Q Did you call before you went over?

1 A Yes, sir.

2 Q And did Ms. -- did you talk to Ms. Parish?

3 A Not on the first one or two attempts, no, I did not.

4 Q Well, the first time you talked to her then, when was
5 that?

6 A When I -- upon arriving in her yard.

7 Q So you went to her house before you spoke to her to
8 find out whether or not your daughter was there?

9 A Well, we spoke earlier that day.

10 Q When you went to her house at 11 o'clock, what
11 time -- whatever time you said it was, do you know whether
12 or not her daughter was there?

13 A I know Lesley was there. I didn't know whether my
14 daughter was there or not.

15 Q I see. So now you told the ladies and gentlemen of
16 this jury that you went over to Lesley Parish's house to
17 carry some money to your daughter, did you tell them that?

18 A That's correct.

19 Q But the truth of the matter is you went over there
20 and you didn't know whether your daughter was over there
21 or not, do you?

22 A Because she told me that they was going to an event.

23 Q So you went over there knowing that your daughter
24 wasn't even there?

25 A No, I didn't know -- I didn't discover she wasn't

1 there until I got there.

2 Q And you didn't discover that she was not there before
3 she got there because you didn't find out, did you?

4 A Until I got there.

5 Q Until you got there. How long was it after you were
6 there that you found out that your daughter wasn't there?

7 A Immediately.

8 Q Now what time did you say you arrived?

9 A Between 10 and 11, sir.

10 Q So you arrived between 10 and 11 and you found out
11 immediately that your daughter wasn't there?

12 A That's correct.

13 Q But you didn't leave?

14 A No, sir.

15 Q And if I'm not mistaken you went over there not even
16 knowing whether your daughter was there.

17 A Assuming that she would be there.

18 Q But you had called several times?

19 A Yes, sir.

20 Q And you didn't talk to your daughter?

21 A No, sir.

22 Q But yet you presumed that she -- somehow even though
23 you didn't get called several times, did you talk to
24 anybody when you called the several times?

25 A No, sir.

1 Q You didn't talk to anybody, you didn't talk to
2 Ms. Parish either?

3 A When I got in her yard I talked to her.

4 Q Did you talk to her on the telephone?

5 A Yes, sir.

6 Q And you talked to her on the telephone and didn't ask
7 her whether or not your daughter was there?

8 A Well upon -- when I got in her yard she answered the
9 phone, I said I'm outside, she said okay come on in.
10 That's when I discovered my daughter wasn't there.

11 Q So you were talking to her from your cell phone?

12 A That's correct.

13 Q And you got there between 11 and 12?

14 A Ten and 11.

15 Q Ten to 11. Daughter wasn't there but you didn't
16 leave.

17 A That's correct.

18 Q You and her started talking, going down memory lane?

19 A That's not what happened, sir.

20 Q Well, did you ask her whether she was seeing somebody
21 else?

22 A No, sir, it was none of my business, sir.

23 Q My question was did you ask her if she was seeing
24 somebody else. Yes or no.

25 A Later on in the conversation that day.

1 Q But at the time when you decided to stay beyond the
2 time that you knew your daughter wasn't there, you didn't
3 ask her whether she was seeing somebody else?

4 A No, sir.

5 Q Now did you ask her whether another man was living at
6 the house with her?

7 A Well we -- I knew nobody stay there.

8 Q Did you ask her whether or not another man was living
9 at the house with her?

10 A No, sir.

11 Q All right. Now of course she had other children, you
12 said?

13 A Yes, sir.

14 Q And do you know the ages of those children?

15 A Yes, sir. Minor , 15.

16 Q Were there any children at all at the house when you
17 got there?

18 A No, sir.

19 Q No children?

20 A None at all.

21 Q And I believe you said you have how many children?

22 A Five, sir.

23 Q Are you married?

24 A No, sir.

25 Q When was the last time you saw Mr. Heyward Davis

1 prior to the night that you claim you saw him in Lesley's
2 house?

3 A About two weeks before the incident.

4 Q And where did you see him at?

5 A I came to pick my daughter up.

6 Q Came to pick your daughter up?

7 A Yes, sir.

8 Q From Ms. Lesley Parish's house?

9 A Well, I came here to get her from Lesley Parish's
10 house but I met her down the road.

11 Q But you saw Heyward Davis at the house?

12 A Yes, sir.

13 Q And where was he when you saw him at the house?

14 A In the kitchen part of the house.

15 Q Kitchen. What was he doing in the kitchen?

16 A Well, he just came there.

17 Q Did you get there -- you didn't get there before he
18 got there, do you -- did you?

19 A Yes.

20 Q So he came after you came?

21 A That's correct.

22 Q So now you were in the house, an old ex-boyfriend
23 still kind of keeping some fire going, but he came in the
24 house.

25 A That's correct.

1 Q Did you ask him, Heyward Davis, what you coming in
2 here for?

3 A No, sir, that's none of my business.

4 Q None of your business. So you're at Ms. Parish's
5 house, the woman that you got the child with.

6 A Yes, sir.

7 Q And Heyward Davis came to the house. Did he knock on
8 the door when he came?

9 A Yes, sir.

10 Q And who let him in?

11 A Ms. Parish.

12 Q I see. And you saw her let him in?

13 A Yes, sir.

14 Q So now let me make sure -- so when you let him in,
15 did he go to the living room or did he come to the
16 kitchen?

17 A He stopped at a bar stool at the kitchen.

18 Q Sat down or stood up?

19 A He stood up.

20 Q And did he have any conversation with you?

21 A Just speaking.

22 Q Spoke to you?

23 A Yes, sir.

24 Q Did he also speak to Ms. Parish?

25 A Yes, sir.

1 Q So there you were, you did not know at the time and
2 you didn't suspect that there was any kind of relationship
3 going on between Mr. Davis and Ms. Parish, did you?

4 A Sir, I didn't -- say that again.

5 Q Did you suspect that there was some kind of
6 relationship going on between Mr. Davis and Mr. Parish at
7 that time or Ms. Parish and Mr. Davis at that time?

8 A Well, she told me he was a previous boyfriend.

9 Q A previous boyfriend?

10 A Yes, sir.

11 Q When did she tell you that?

12 A That same day.

13 Q So he left first?

14 A I left first.

15 Q You left him there?

16 A That's correct.

17 Q But while he was there she told you that he was a
18 previous boyfriend?

19 A She introduced me as, you know, her ex-boyfriend.

20 Q She introduced you as her ex-boyfriend?

21 A Correct. No, him as her ex-boyfriend.

22 Q Of course you didn't consider that any kind of a
23 little bit strange, you an ex-boyfriend.

24 A Well my ---

25 Q He's an ex-boyfriend and you leaving him there and

1 you know?

2 A My purpose is getting my daughter, sir. That's my
3 main priority.

4 Q Main priority?

5 A That's correct.

6 Q But that wasn't your main priority the night of the
7 12th, was it?

8 A Excuse me, sir?

9 Q That was not your main priority the night of the
10 12th, was it?

11 A Yes, it was, sir.

12 Q So after you found out that your daughter wasn't
13 there and you got there between 11 and 12, considering
14 your main priority you decided to just sleep over?

15 A Yes, sir.

16 Q You were -- you were waiting for your daughter to
17 come?

18 A No, sir. I knew she wasn't going to return that
19 night, sir.

20 Q So your priority had changed?

21 A No, sir.

22 Q Now what time was it when you decided that you were
23 going to stay over that night instead of going back to
24 your own house?

25 A Well, actually I was going to get a couple of hours

1 sleep and then leave, sir, because I had work the next
2 morning.

3 Q You were going to get a couple of hours sleep?

4 A That's what I had planned, sir.

5 Q In Ms. Parish's bed?

6 A That's correct.

7 Q She was in the bed with you?

8 A Yes, sir.

9 Q Y'all had your clothes off?

10 A Yes, sir.

11 Q You were going to get a couple of hours of sleep and
12 get up and go?

13 A Yes, sir.

14 Q That was your plan?

15 A Yes, sir.

16 Q Now you said, so Mr. Davis, you saw him in the house.
17 And initially, when you first saw him you said -- would it
18 be fair to say that you couldn't quite see all of him?

19 A I saw from the shoulder on up, sir.

20 Q I notice that you testified when you were answering
21 the question for the assistant solicitor that you said
22 Heyward, is that you? Did you say that?

23 A That's correct, sir.

24 Q Now I assume that you said Heyward, is that you,
25 because I mean if you were looking at him and saw that it

1 was him you wouldn't have to ask him anything like that,
2 would you?

3 A That's the first thing that came to my mind, sir.

4 Q Is that you?

5 A I knew it was him.

6 Q But yet you asked him, is that you.

7 A It's a gesture, saying why -- you know, he stunned
8 me, why are you here, so I said is that you.

9 Q Let me make sure I understand this.. Now you were
10 looking at him you said.

11 A Correct.

12 Q And he looked the same way he looked or he looks now?

13 A That's correct.

14 Q So then you wasn't sure about your own eyes or what
15 you were seeing or -- I mean, why is that you? I mean ---

16 MS. BIAGIANTI: Your Honor, objection. Asked and
17 answered.

18 MR. BARR: I'll move on, Judge. I'll move on. Thank
19 you.

20 BY MR. BARR:

21 Q Now after you asked him whether or not that was him I
22 think you said he moved closer to you?

23 A Yes, sir.

24 Q And approximately -- now I want you to attempt to
25 stop me. Tell me when I'm close enough. Was it as close

1 as I am to you now?

2 A A little closer.

3 Q Little closer.

4 A Right there, sir.

5 Q Right here. He was that close?

6 A Yes, sir.

7 Q And he shot you?

8 A Yes, sir.

9 Q And you were laying in the bed?

10 A Yes, sir.

11 Q With Ms. Parish laying in there with you?

12 A That's correct, sir.

13 Q And I believe you said you blacked out when he shot
14 you or you turned your back to him?

15 A Yes, sir.

16 Q So he wouldn't shoot you in the face or in the front.

17 A That's correct, sir.

18 Q And you blacked out?

19 A Yes, sir, momentarily.

20 Q Momentarily. Now you don't know about how long you
21 were blacked out, do you?

22 A No, sir. Seconds. I'm not accurate.

23 Q Why do you say seconds? I mean, if you don't know,
24 what makes you say seconds?

25 A Because I came back to.

1 Q Oh, you came back to. And when you came back to, was
2 he still standing there with the gun?

3 A No, sir.

4 Q He booked up and took off?

5 A I presume, sir.

6 Q I see. So if you saw him shoot you and you blacked
7 out; and when you came back to he was gone. You couldn't
8 have possibly seen him shoot at Ms. Parish, could you?

9 A No, I said I heard the second shot.

10 Q You heard a second shot?

11 A That's accurate, sir.

12 Q And you heard the second shot after you came back to
13 after you had blacked out?

14 A That's correct, sir.

15 Q And the second shot, you don't know what direction he
16 was shooting in, do you?

17 A No, sir.

18 Q Now I just got a few more questions of you. You said
19 after Mr. Davis shot you you blacked out and at some point
20 you start considering your demi-- you start considering
21 the possibility of your imminent departure, that you were
22 going to die.

23 A That's correct.

24 Q And when did this occur?

25 A When did what occur?

1 Q That you started talking to yourself or talking to
2 Ms. Parish concerning the possibility of your dying?

3 A Immediately after -- upon getting shot.

4 Q Immediately after getting shot?

5 A Yes, sir.

6 Q Now I would assume that you -- that you started
7 talking about dying because you thought you were going to
8 die; is that right?

9 A That's correct.

10 Q And of course, if Heyward Davis shot you and he is
11 charged with assault and battery with intent to kill, the
12 fact that you thought that you were going to die, does
13 that seem to you to support ---

14 MS. BIAGIANTI: Objection.

15 MR. BARR: ---the claim that he was -- that he shot
16 you to kill you?

17 THE COURT: I got an objection.

18 MS. BIAGIANTI: Your Honor, it goes to his state of
19 mind. And it's a jury question. It's a question for the
20 jury whether or not assault and battery with intent to
21 kill needs to have this victim believe that he's dying or
22 not. That's irrelevant whether he believes he's dying or
23 not.

24 THE COURT: Well ---

25 MR. BARR: Your Honor, it's state of mind.

1 THE COURT: I'm going to give you leeway.

2 THE WITNESS: What's the question again, sir?

3 BY MR. BARR:

4 Q You said that you thought you were going to die?

5 A That's correct.

6 Q And you started telling Ms. Davis that you thought
7 you were going to die -- or telling Ms. Parish?

8 A Yes, sir.

9 Q Now do you remember giving Officer Lee a statement
10 subsequent to the time that you claim this offense took
11 place ---

12 A Yes.

13 Q ---a recorded statement?

14 A Yes, sir.

15 Q Have you seen that statement since you gave it to
16 him?

17 A Yes, sir, I've heard it.

18 Q You listened to it?

19 A Yes, sir.

20 Q So you're familiar with it?

21 A Yes, sir.

22 Q Now would it be fair to say that in that statement
23 you -- you have never once indicated that you told
24 Ms. Parish that you thought you were going to die, did
25 you?

1 A Did I indicate in the statement?

2 Q Yes, sir. He asked you to tell him everything that
3 happened, didn't he?

4 A Yes, sir.

5 Q But now not one time did you ever tell him that you
6 think you thought that you were going to die?

7 A That's quite obvious, sir.

8 Q Is it quite obvious you said?

9 A That's quite obvious, sir.

10 Q But my question is though, did you one time tell
11 Investigator Lee that you told anybody, including
12 Ms. Davis (sic) that you thought you were going to die?
13 You didn't do that, did you?

14 A I got to hear the tape, sir, I can't recall.

15 Q Well, I'll show it to you.

16 MS. BIAGIANTI: Your Honor, can we approach.

17 (WHEREUPON, counsel approached the Bench for an
18 off-the-record discussion.)

19 BY MR. BARR:

20 Q So, now you've not -- you've not read your statement
21 in preparation for this trial? You've not read your
22 statement, gone back over your statement, have you?

23 MS. BIAGIANTI: Your Honor, I object. He's had ---

24 MR. BARR: What's ---

25 MS. BIAGIANTI: You asked him -- if it was an audio

1 statement how can he read an audio statement?

2 MR. BARR: I'm asking him a different question
3 altogether.

4 MS. BIAGIANTI: Your Honor.

5 THE COURT: All right, pose the question.

6 MR. BARR: Your Honor, I just asked him whether or
7 not in preparation for this trial he reviewed his
8 statement.

9 MS. BIAGIANTI: Okay.

10 THE COURT: Okay.

11 BY MR. BARR:

12 Q Did you?

13 A Did I review my statement?

14 Q Yes, sir.

15 A From whom?

16 Q The statement that you made describing what you claim
17 took place?

18 A Vaguely I did.

19 Q You did it vaguely. Did you review it alone or did
20 you review it with somebody else?

21 A I reviewed it among here ---

22 Q Among who?

23 A The Court.

24 Q Among the Court?

25 A Correct.

1 Q What court?

2 A This court, sir.

3 Q You didn't review it with me?

4 A I reviewed it sitting in the back, sir.

5 Q Oh, you were in the back of the courtroom when you
6 reviewed it?

7 A Yes.

8 Q So you saw your statement in writing?

9 A Yes, sir, vaguely.

10 Q Where is it?

11 A I don't have it.

12 Q What did you do with it?

13 A Excuse me?

14 Q What did you do with it?

15 A What did I do with it?

16 Q Yes, sir.

17 A The solicitor has it.

18 Q Do you mind if I take a look at it? You can come
19 down and get it.

20 MS. BIAGIANTI: I'm a little confused what you're
21 referring to.

22 MR. BARR: He said he reviewed his statement.

23 MR. MODICA: He reviewed what you gave to me

24 Mr. Barr.

25 MR. BARR: I don't want y'all to testify, I want him

1 to testify.

2 MR. MODICA: Your Honor, as I reviewed what Mr. Barr
3 handed me which I don't know -- I don't know what this is.
4 I handed it to him and I allowed him to read it.

5 MS. BIAGIANTI: The one you just made your ruling on.

6 THE COURT: No, I didn't never make a ruling because.

7 MS. BIAGIANTI: We withdrew the question.

8 THE COURT: I thought we were going to do it through
9 another witness.

10 MS. BIAGIANTI: Yes, sir. Correct.

11 MR. BARR: Thank you, sir. I have no further
12 questions.

13 THE WITNESS: You're welcome, sir.

14 MS. BIAGIANTI: Nothing further for this witness,
15 Judge.

16 THE COURT: Okay, you may step down. Let's take ten
17 minutes. We'll come back and continue with some
18 testimony.

19 MS. BIAGIANTI: Yes, sir.

20 THE COURT: Ladies and gentlemen of the jury, you can
21 step out and relax a few minutes.

22 (WHEREUPON, the jury was removed from the
23 courtroom at 4:13 p.m., and the following proceedings
24 commenced in open court.)

25 THE COURT: Counsel, y'all may approach.

1 (WHEREUPON, as jury was removed from the courtroom a
2 Juror Number 9 approached the Bench for an
3 off-the-record discussion.)

4 THE COURT: Attorneys approach.

5 (Juror confers with attorneys and the Court at the Bench
6 in an off-the-record discussion.)

7 THE COURT: This needs to be on the record. The fact
8 that you know him you, realize you know him, from working
9 experience, would that affect your ability to give both
10 the State and the Defendant a fair and impartial trial?

11 THE JUROR: I don't believe so.

12 THE COURT: Okay. You know -- we better get on the
13 record who you are.

14 THE JUROR: I know Chris Gamble from having worked at
15 the same place that he does, or did, at International
16 Paper Container division. I worked in the office he
17 worked out in the -- somewhere out in the plant. I knew
18 him only to say good morning, how are you, you know, hey,
19 just pleasantries, and that's it.

20 THE COURT: If you will step right over there just a
21 minute and let me talk with counsel.

22 THE JUROR: Okay.

23 (Juror steps away while an on-the-record discussion takes
24 place at the Bench.)

25 THE COURT: Y'all got any questions you want me to

1 pose to her, what I asked, standard.

2 MS. BIAGIANTI: No, sir. I think that's sufficient.

3 (End of on-the-record discussion.)

4 THE COURT: Okay. You may go on to the jury room.

5 MR. MODICA: Thank you, ma'am.

6 Thank you, Judge.

7 THE COURT: We're in recess.

8 (WHEREUPON, a recess was taken from the proceedings.)

9 THE COURT: Got another witness ready?

10 MS. BIAGIANTI: Yes, sir.

11 THE COURT: Mr. Barr, you ready?

12 MR. BARR: Yes, sir.

13 THE COURT: Bring them on.

14 (WHEREUPON, the jury was returned to the courtroom at
15 approximately 4:31 p.m., and the following
16 proceedings commenced in open court.)

17 THE COURT: All right.

18 MS. BIAGIANTI: Thank you, Judge. State would call
19 Dr. Charles Garner.

20 THE BAILIFF: Place your left hand on the Bible,
21 raise your right hand.

22 WHEREUPON,

23 CHARLES DAVID GARNER,

24 having been duly sworn by the Deputy Clerk of Court,
25 testified as follows:

1 THE DEPUTY CLERK OF COURT: Please state your full
2 name for the record. You may have a seat.

3 THE WITNESS: Charles David Garner.

4 DIRECT EXAMINATION

5 BY MS. BIAGIANTI:

6 Q Good afternoon, Dr. Garner.

7 A Hi.

8 Q Can you please tell us -- tell our jury a little bit
9 about your education background, experience, undergrad,
10 medical school, internship, residency.

11 A I went to College of Winthrop University here in
12 South Carolina. Graduated from Medical University of
13 South Carolina in Charleston where I did my medical school
14 training. Did my internship at MUSC in Charleston and did
15 my residency in Roanoke, Virginia, in general surgery.

16 Q And for how long -- how long have you been practicing
17 medicine, Doctor?

18 A 11 years in Georgetown.

19 Q And what is your area of expertise?

20 A General Vascular Surgery.

21 Q And can you tell us, are you in with a practice?

22 A Yes, I am.

23 Q What doctors are in your practice?

24 A Dr. Craig Bradley, Dr. Anthony Dehoss*, and
25 Dr. Matthew Metts.

1 Q And in what areas are you board certified?

2 A General surgery.

3 Q And are you a member of any professional societies or
4 organizations, Doctor?

5 A Yes, I am.

6 Q What are they?

7 A The Fellow of American College of Surgery.

8 Q And how long have you held a license in South
9 Carolina?

10 A 11 years.

11 Q And what privilege -- or what hospitals do you
12 currently hold privileges at?

13 A Just at Georgetown Hospital and Waccamaw Hospital in
14 Murrell's Inlet.

15 MS. BIAGIANTI: And Your Honor, at this time I would
16 like to qualify this doctor as an expert in the area of
17 general surgery.

18 MR. BARR: I don't have no objection.

19 THE COURT: So qualified.

20 BY MS. BIAGIANTI:

21 Q Doctor, I'm directing your attention to the early
22 morning hours of May 13th, 2006. Were you working at
23 Georgetown Hospital that morning or were you on call?

24 A I was on call.

25 Q And did you treat a patient by the name of

1 Christopher Gamble?

2 A Yes, I did.

3 Q Tell us a little bit about how you got involved with
4 his treatment.

5 A The emergency room physician called to notify me that
6 we had a patient with a gunshot wound to the back, which
7 was hypotensive, which means the patient had a low blood
8 pressure. He was immediately concerned about possible
9 surgical indications so I came in to evaluate the patient
10 at that time.

11 Q And after you evaluated Mr. Gamble what did -- what
12 medical intervention did you take?

13 A Initially I placed a chest tube, left-sided chest
14 tube on Mr. Gamble while he was in the emergency room. We
15 admitted him to the ICU shortly thereafter. That was
16 after initial evaluation of him and all the x-rays that
17 were involved.

18 Q Tell our jury a little bit, what a chest tube is for,
19 why you placed it in Mr. Gamble.

20 A Sure. He had a chest x-ray of admission obviously
21 because he had a gunshot wound to the left side of his
22 chest. Reportedly, his blood pressure initially at the
23 scene was normal and when he arrived to the emergency room
24 it was low in the 80 to 90 range.

25 Q Why is that significant, Doctor?

1 A Because we were concerned about blood loss basically.
2 His initial chest x-ray showed diffused haziness
3 throughout the left side of his chest which is consistent
4 with what we call a hemothorax which means a collection of
5 blood within the chest cavity. And that combined with the
6 fact that he had a gunshot wound and low blood pressure
7 makes us immediately place chest tubes inside the chest to
8 drain the blood that is inside the chest out of the chest
9 to let the lung fully re-expand.

10 Q And were you able to get blood out of his chest when
11 you put the chest tube in?

12 A We got a very small amount of blood out of the chest
13 when we put the chest tube in which was surprising and
14 immediately it became available -- well obviously, that
15 this was not a hemothorax that this was more a primary
16 lung injury itself.

17 Q And what does that mean, a hemothorax versus just
18 other lung injury?

19 A Well, we went on to do x-rays to evaluate what --
20 whether or not he had a hemothorax and hemothorax just
21 means blood inside the chest cavity. Pneumothorax means
22 free air inside the chest cavity. There should be neither
23 one of those inside the chest cavity. Only thing in the
24 chest cavity is the lung itself. If you have a
25 penetrating injury such as a bullet, a knife, or some

1 other type of penetrating trauma to the chest, that's
2 going to obviously injure the lung. You can have a direct
3 injury or an indirect injury and I thought he was going to
4 have a direct injury where the bullet would actually
5 traverse the lung, go through the substance of the lung
6 itself. That would cause bleeding from the lung. That
7 would cause leakage of air from the lung and cause the
8 haziness seen on the chest x-ray. Also when I initially
9 evaluated Mr. Gamble I thought that I could only see an
10 entrance wound so we assumed based on the fact that we saw
11 an entrance wound and no exit wound, and we saw numerous
12 bullet fragments on his chest x-ray that the bullet had
13 essentially disintegrated inside his chest injuring the
14 lung. As it turns out he did not have a direct injury to
15 his lung; he had an indirect injury. The bullet never
16 entered the chest cavity. It traversed by the chest
17 cavity; and it was the impact of the bullet, the indirect
18 effect of the bullet, that caused his lung injury which is
19 what we call a pulmonary contusion.

20 Q And why is the pulmonary contusion significant?

21 A Because basically all the small air sacs within the
22 lung fill up with blood. So now you can longer exchange
23 oxygen across those spaces.

24 Q Now when you were examining the victim, Chris Gamble,
25 can you point on your body as to where the entrance wound

1 of the gunshot was?

2 A Yeah, we usually measure it in terms of thoracic
3 spinal levels and -- or thoracic vertebral body levels.

4 As I recall I saw an entrance wound at what we call T-5
5 level which is essentially the center of the chest. I
6 can't rotate my arm around posteriorly enough, but it was
7 in the posterior aspect of his back about half-way up from
8 the lower rib cage to his shoulder.

9 Q And tell the jury a little bit about your opinion as
10 to the direction of travel of the bullet, the velocity of
11 the bullet, and what effect that's had overall?

12 A Well, it was obviously a high velocity bullet versus
13 low velocity and we see that with regards to the impact of
14 the soft tissue trauma that occurs. His entrance wound
15 being at the lower aspect of the spine or back. And later
16 on I guess we can discuss where the exit wound was; but
17 you can tell while looking at his chest CT scan, not the
18 chest x-ray but the CAT scan, and basically track the
19 track of the bullet and tell where it went. Based on the
20 pattern of the bullet fragments, the pattern of bone
21 fragments, and the degree of soft tissue trauma you can
22 also get an idea of which way the bullet went because when
23 the bullet enters the skin it is a -- it's a perfect
24 missile-shaped trajectory; it pierces the skin. Once it
25 hits soft tissue the bullet deforms and causes more blast

1 effect injury the further it goes. So you actually see
2 more significant soft tissue injury at the exit site
3 versus the entrance site.

4 Q Now you mentioned the term blast effect. Tell us a
5 little bit about that and why that's significant.

6 A That has to do with a high velocity injury.

7 Q So in other words this wasn't a small caliber bullet.
8 This was a high-powered bullet.

9 A That's correct. It's similar to comparing a high
10 power bullet entrance wound to the entrance wound same
11 size and diameter of a knife. A knife is a low velocity
12 weapon. When it goes in it will only cause a penetrating
13 injury; there is no blast effect. With a high velocity
14 weapon the entrance and exit wound are not the only
15 wounds. It's the actual impact disbursed among the soft
16 tissues that causes the majority of the damage, not so
17 much the penetration itself.

18 Q Now you might have already said this, I might have
19 missed it, but where was the exit wound on Mr. Gamble?

20 A Well, we didn't find the exit wound until several
21 hours after his admission. He had what we call a
22 Philadelphia Collar in the sense that's the firm collar
23 around the cervical spine which most trauma patients are
24 wearing when they arrive to the emergency room. And we do
25 not remove that collar until the patient's awake and alert

1 and can cooperate with physical exam and tell us if
2 they're not having any neck pain. And since he had a
3 penetrating trauma he was awake and alert, but here again,
4 we had bullet fragments up at the base of the neck on
5 regular chest x-rays so we weren't going to take that the
6 Philadelphia collar off until the orthopaedic surgeon saw
7 him. About four hours perhaps after his admission to the
8 intensive care unit he began to have significant bleeding
9 around that collar while in bed and the nurses called me.
10 I went up to evaluate him for a second time and we log
11 rolled him meaning we turn him up on his side while
12 someone is supporting his head and neck. And we take the
13 Philadelphia collar off while we're supporting his head
14 and neck, not going to let him move those structures. And
15 that's when we actually found that the exit wound was
16 being covered up by the Philadelphia collar.

17 Q Significant blood loss that he had to have a blood
18 transfusion?

19 A He received a blood transfusion prior to that blood
20 loss actually. They started blood transfusion while he
21 was in the emergency room as I recall.

22 Q And that was due to the blood loss on the scene?

23 A And the fact that his blood pressure was low on
24 admission, yes.

25 Q Doctor, could you tell from your physical

1 examination, from what Mr. Gamble told you, if the
2 entrance wound and exit wound was consistent with someone
3 laying in bed, you know, sitting up being shot or was it
4 consistent with someone who is walking around?

5 A He had to either be lying down or bending over.

6 Q Explain to us the other injuries that Mr. Gamble
7 sustained that night besides the hemothorax.

8 A Right. He had several posterior rib fractures. The
9 bullet did traverse or go through the scapula, the
10 shoulder blade. And he has several, what we call spinus
11 process fractures. If you've ever looked at a spinal
12 column of just about any animal, the little spikes on the
13 top of spine that you feel when you rub your fingers down
14 the back or the middle of someone's spine, those are
15 called spinus processes. He had multiple spinus process
16 fractures, and then the pulmonary contusion.

17 Q All caused by the gunshot?

18 A Yes.

19 Q Do you know how many days in total he spent in the
20 hospital?

21 A I don't recall. I think it was probably four or five
22 days.

23 Q And was he given medicine for pain?

24 A Yes.

25 Q Being shot with a gun is a painful injury?

1 A Yes.

2 Q Stupid question but I have to ask it.

3 A I haven't experienced it myself, but yes, I would
4 assume so.

5 Q How lucky was Mr. Gamble that night?

6 MR. BARR: Objection.

7 THE COURT: Rephrase that question. Sustained.

8 BY MS. BIAGIANTI:

9 Q Based on your observations and examination of
10 Mr. Gamble could his injuries have been life threatening?

11 A Yes.

12 Q And explain that to us if you can.

13 A It's difficult to explain. There are numerous things
14 that could actually be injured in that particular region.
15 Number one, is the lung. Here again, he did not have a
16 penetrating injury to the lung, but he had significant
17 what we call pulmonary contusion. That'd cause much more
18 of a significant finding in an elderly patient who does
19 not have the same ability to recuperate from something
20 like that. If you had a penetrating trauma and you could
21 get what we call a pneumothorax, which I explained earlier
22 would be air leaking outside the lung. Problem with air
23 leaking outside the lung is you get the tension
24 pneumothorax. So where as air leaks out of the lung, it
25 has no place to go but within the chest cavity so the more

1 air that leaks out the more the lung must collapse to
2 allow space for that air to expand and eventually the lung
3 will fully collapse and the other lung and heart will get
4 compressed to the other side of the chest and that's
5 called a tension pneumothorax and that would be a lethal
6 event if not treated immediately. And lastly is the major
7 vascular injury. He didn't have a major vascular injury,
8 but you know, there again the subclavian artery,
9 subclavian vein, carotid artery and vein, they're all in
10 the same trajectory or within the same vicinity of the
11 trajectory of that bullet.

12 Q So what you're saying is that the bullet just missed
13 some vital organs or a vital part of his body that could
14 have been more detrimental?

15 A I'm sorry, I didn't quite...

16 Q So what you're saying is the bullet barely missed
17 vital arteries or organs. It could have been much
18 serious, in hindsight.

19 A Absolutely, yes.

20 Q And can you just point to the jury where the exit
21 wound was on Mr. Gamble?

22 A It was just at the base of -- basically where the
23 neck and the back meet posteriorly on his left side.

24 Q Thank you, Doctor.

25 MR. BARR: I have no questions of the doctor.

1 MS. BIAGIANTI: Your Honor, can the doctor be excused
2 from his subpoena?

3 MR. BARR: Yes, sir.

4 THE COURT: Doctor is excused. Thank you, sir.

5 MS. BIAGIANTI: Thank you, Judge. Can we approach.

6 (WHEREUPON, counsel approached the Bench for an
7 off-the-record discussion.)

8 THE COURT: Okay. We're going to stop for the
9 evening. It's almost 5:00. What time y'all want to fire
10 up, 9:30 or 10?

11 MS. BIAGIANTI: 9:30.

12 MR. BARR: 9:30.

13 THE COURT: 9:30 it is. See you in the morning.

14 (WHEREUPON, the jury was removed from the
15 courtroom at 4:49 p.m., and the following proceedings
16 commenced in open court.)

17 THE COURT: All right.

18 (Whereupon, court adjourned at 4:50 p.m. and resumed on
19 May 2, 2007 at 9:41 a.m.)

20 MR. BARR: Your Honor, I just had-- there is a
21 suppression issue regarding the gun and the rifle.

22 THE COURT: Okay.

23 MR. BARR: I would want them to cite -- actually come
24 into evidence.

25 MR. MODICA: We -- Your Honor, we asked if there was

1 any suppression motions and he said no.

2 MR. BARR: Well, you asked about pretrial motions. I
3 don't anticipate what evidence you're going to attempt.
4 You walk in with a shotgun.

5 MR. MODICA: He has a lab result relating to the gun
6 and a bullet so it wouldn't have taken brain scientists to
7 figure out that we might try to move the gun. But
8 obviously we should try and do that now.

9 THE COURT: My question, do you want to do it now?
10 If it's not going to be with the first witness just put it
11 over there where nobody can see it.

12 MR. MODICA: Might I suggest, Your Honor, if I could,
13 that we handle it now. The reason being the other thing's
14 the SLED agent is driving all the way from Columbia as we
15 speak. So if for some reason, we could, that we call her
16 and tell her not to come.

17 THE COURT: Let's try to resolve it now since the
18 jury is secured.

19 MR. MODICA: I take it's Mr. Barr's motion and I
20 don't know what other motion he has.

21 MR. BARR: Judge, I would move to suppress the
22 introduction into evidence of the weapon that was
23 supposedly seized. It would be our position that in
24 addition to -- it was seized in violation of the
25 defendant's Miranda rights as well as the 6th Amendment

1 right to trial.

2 THE COURT: All right. You better develop some
3 testimony from here if we need to decide on it.

4 MR. MODICA: Fine, Your Honor. At this time then we
5 would call Investigator Ed Lee.

6 WHEREUPON,

7 EDDIE LEE,
8 having been duly sworn by the Deputy Clerk of Court,
9 testified as follows:

10 THE DEPUTY CLERK OF COURT: Please be seated and
11 state your full name for the record.

12 THE WITNESS: Eddie Lee.

13 P R O F F E R E X A M I N A T I O N

14 BY MR. MODICA:

15 Q Please tell the Court where you are employed, the
16 length of time you have been so employed and in what
17 capacity?

18 A I'm employed at Andrews Police Department. I been
19 supervisor on patrol society for 14 years. I've been
20 investigator about approximately four and a half years at
21 Andrews Police Department.

22 Q And did you have occasion to as the investigator at
23 the police department who calls you in regard to the
24 shooting case the subject matter of this trial ---

25 A Yes.

1 Q ---on May 13th of 2006?

2 A Yes, I -- yes, I did.

3 Q And as part of your investigation did you come to
4 know that who the shooter was?

5 A Yes.

6 Q And who was the shooter?

7 A Heyward Davis, Jr.

8 Q Okay. Did there come a time at approximately --
9 approximately 9 a.m. on May 13th of 2006 that you received
10 a telephone call from somebody?

11 A Yes, I did.

12 Q And did the person on the phone identify themselves?

13 A Yes, they did.

14 Q Who did the person identify himself as?

15 A Heyward Davis, Jr.

16 Q Did you have a conversation with him?

17 A Yes, I did.

18 Q Tell the Court what you remember about the
19 conversation.

20 A I was at the Georgetown Police Department in
21 reference trying to get a criminal history check on
22 Mr. Heyward Davis. I received a phone call; he identified
23 himself as Heyward Davis, Jr. He said that this is --
24 from what I could tell is exactly what he told me. He
25 said he was ready to turn himself in to me. I in turn

1 asked him you're not going to try nothing, you know, to
2 hurt me. He said no, then he give me his address and I
3 think it was . And I went down there to
4 pick him up.

5 Q Okay. Did you tell him you were coming?

6 A Yes, I did.

7 Q Okay. And did you leave immediately from the Andrews
8 Police Department and travel to ---

9 A No. I left from the George -- I was in Georgetown
10 when I got the call.

11 Q I'm sorry. My mistake. You were at Georgetown
12 where?

13 A Police department in the central dispatch area.

14 Q Okay. Which is next door to Georgetown City Police
15 Department?

16 A Yes, sir.

17 Q Here in Georgetown.

18 A Yes, sir.

19 Q Did you travel to the address that -- the person who
20 identified himself as Heyward Davis, Jr., did you travel
21 to that address?

22 A Yes, I did.

23 Q Approximately how long did that take?

24 A Take me approximately about 10 to 15 minutes to get
25 there.

1 Q When you arrived there describe to the Court what you
2 saw or took place?

3 A I saw Mr. Heyward Davis -- I think it was one of his
4 cousins standing in the front yard of his residence.

5 Q And what did Mr. Heyward Davis do?

6 A He was standing up. I approached him and I asked
7 him -- basically asked him to turn around, that I needed
8 to put the handcuffs on him.

9 Q Did you know who he was?

10 A Yes, I knew who he was.

11 Q Okay. Did you put the handcuffs in front or the
12 back?

13 A In the back.

14 Q Were you there with any other police -- police
15 officer at all?

16 A No, sir.

17 Q No member of your department ---

18 A No, sir. Just me.

19 Q --- or any other department?

20 A No, sir.

21 Q Just you?

22 A Just me.

23 Q Okay. Handcuff him -- I might have asked this.
24 Front or back handcuff?

25 A In the back.

- 1 Q After handcuffing him where did you place him?
- 2 A In the front seat.
- 3 Q Of what?
- 4 A My Explorer. Of my vehicle.
- 5 Q Okay. You don't have a cage in that vehicle?
- 6 A No, sir. No cage in that vehicle.
- 7 Q Now, did you have a conversation with the defendant
- 8 while you were in your Explorer?
- 9 A Yes, very limited. Yes, sir.
- 10 Q Okay. Tell us how the conversation started and what
- 11 you said and what --- by the way, for the record can you
- 12 identify the person that you arrested?
- 13 A Yes.
- 14 Q Can you point him out and describe him?
- 15 A To the white shirt on the other side of Mr. Barr.
- 16 (indicated by pointing.)
- 17 Q All right. Tell us what you said to him and what he
- 18 said to you?
- 19 A Well, when I got him in the vehicle we left his
- 20 residence. The first thing I asked him was where was the
- 21 gun that ---
- 22 Q What, if anything, did he say?
- 23 A He told me whenever we get to Andrews he would show
- 24 me where it's at.
- 25 Q And did he tell you what road it was on or --

1 A From what I recall he told me it was a block over
2 from where the incident happened at.

3 Q Did you give him Miranda warnings commonly referred
4 to as Miranda rights prior to asking him that question?

5 A No, sir, I didn't.

6 Q Can you tell our judge why you arrested him?

7 A The reason why I was really concerned about the gun I
8 was kind of thinking maybe some kid or some citizen would
9 pick it up and somebody could get hurt with it.

10 Q Okay. Tell the Court, if you would, what other
11 conversations you had with him in the vehicle about this
12 case as you traveled back to Andrews to look for the
13 weapon.

14 A I asked him why -- why was the reason he called me
15 and he informed me that the reason why he called me is
16 that whenever the Sheriff's Department was looking for him
17 he given his black Escalade to his brother. He was in the
18 woods, looking at the officer had his brother down on the
19 ground, and he was in the woods and he seen, he said, one
20 of the deputies walking around in the woods with a
21 shotgun. He got concerned and he said he wasn't going to
22 turn himself into the Sheriff's Department. That's why he
23 called me.

24 Q Okay. What else did y'all talk about?

25 A He -- Mr. Davis basically initiated all the

1 conversation. One other thing he was telling me about
2 said that he stayed at the residence. He had clothes
3 there, something to that effect. And he also stated that
4 you know, he screwed up, he messed up. He basically lost
5 his temper.

6 Q You weren't asking questions or anything?

7 A No, sir. It was very limited.

8 Q Hold on a second. Don't talk when I'm talking.

9 A Yes.

10 Q Other than the questions that you described that you
11 asked him, like why did he call me and where the gun was,
12 do you recall asking him any other questions up to the
13 point where you went to Andrews and found the gun?

14 A I can't recall.

15 Q From the best of your memory you ---

16 A Best I remember I didn't.

17 Q From the best you remember he volunteered that
18 information about messing up and that he stayed there any
19 further?

20 A Yes.

21 Q All right. When you got to the Andrews area tell us
22 how it was that you -- you found the gun actually?

23 A Uh-huh.

24 Q Okay. Tell the Court, please, how it was -- what
25 happened as you got into Andrews from traveling, how you

1 found the gun.

2 A Okay. After we got in Andrews off of 521 he said the
3 gun was about a block over from where a incident happened.
4 We made a right turn from 521 on North Magnolia, went down
5 approximately another block-and-a-half and made a right
6 turn on Cherry Street, which is a block over from the
7 incident. And he basically nodded with his head because I
8 had him handcuffed in the back. He said pull over here to
9 the side. Me and him both exited the vehicle. The gun,
10 the 30.30 rifle, was in some bushes on the right-hand side
11 of the road.

12 Q Okay. How did you -- obviously he told you where to
13 stop. You got out the car, what happened?

14 A When we got out the car and he basically walked in
15 front of me and told me the gun was right over there in
16 the bushes. We went over there and I saw it and picked it
17 up.

18 Q Okay. Obviously he's handcuffed so he kind of -- he
19 wasn't able to point, but he kind of directed?

20 A Nod basically with his head, yes, sir.

21 Q Nodded with his head, okay, all right. Without
22 taking it out this box here, it has had SLED and it's
23 white, that's -- the gun is in there?

24 A Yes, sir.

25 MR. BARR: Your Honor, for the purpose of the hearing

1 we're not going to take out the gun but I think it's
2 fairly clear.

3 BY MR. MODICA:

4 Q Would you please tell the Court in an effort to get
5 the information relative to the gun, where it was, and
6 finding it did you threaten, force, coerce ---

7 MR. BARR: Objection. You're leading the witness,
8 Your Honor.

9 MR. MODICA: There's no other way to ask this
10 question, Your Honor. I would ask latitude and the jury
11 is not here.

12 THE COURT: Well, since we're not before the jury
13 I'll give you some latitude.

14 MR. MODICA: Thank you.

15 BY MR. MODICA:

16 Q Could you tell our Court, the judge, whether in an
17 effort to get him to tell you where the gun was, take you
18 there and show you where the gun was, did you threaten,
19 force, coerce, intimidate or strike the defendant?

20 A No, sir, I didn't.

21 Q Did you promise him anything?

22 A No, sir.

23 Q Thank you. I have nothing further.

24 THE COURT: Mr. Lee.

25 C R O S S - E X A M I N A T I O N

1 BY MR. BARR:

2 Q 14 years you say that you've been a police officer.

3 A Yes, sir.

4 Q And you during that time -- you are now an
5 investigator?

6 A Yes, sir.

7 Q And you've investigated homicides, robberies, the
8 whole gamut of criminal activity?

9 A Yes, sir.

10 Q Now with respect to your duty and responsibilities as
11 an investigator do you agree that whenever you question a
12 subject ordinarily you're taught to Mirandise them?

13 A Yes, sir.

14 Q And whenever you arrest a person, take them into
15 custody, put the handcuffs on them, front or back?

16 A Uh-huh.

17 Q At the time simultaneously with the time that you
18 arrest them you Mirandise them?

19 A Yes, sir.

20 Q Now I want to know, first of all, what statements are
21 you claiming that Mr. Davis made to you during the
22 interchange between you and him at the time that you
23 arrested him?

24 A Just exactly what I told the prosecutor. What I just
25 testified to, Mr. Barr.

1 Q What was that? I'm not sure I heard it.

2 A Oh, the conversation in reference that what he said
3 that he'd messed up and he lost his temper and the
4 question I asked him where was the gun at.

5 Q Now he made those statements to you after you put the
6 handcuffs on him?

7 A Yes, sir, he did. Yes, sir --

8 Q And at the time that you took him into custody when
9 you put the handcuffs on him you didn't Mirandise him?

10 A No, sir. I have to tell you the truth.

11 Q And he made the statement to you, told you where the
12 gun was after you had arrested him?

13 A Yes, sir. He wasn't under arrest at that time,
14 Mr. Barr, I just put the handcuffs on him. I didn't read
15 him the warrants until I got to the police department.

16 Q Well, but now you had the handcuffs on him.

17 A Yes, sir. This is for officer safety.

18 Q Now of course ordinarily whenever you question a
19 witness or a defendant in custody, do you agree that it's
20 the general practice to at least obtain a written consent
21 and waiver, if they're not going to have a lawyer present?

22 A Mr. Barr, the only way I can answer that question to
23 be honest with you -- you asked me a question. I didn't
24 read his Miranda rights and I agree with it; but that
25 didn't happen, what you just asked me.

1 Q Well, I know it didn't. That's why I'm asking you
2 about it. I'm asking you whether it should have happened.

3 MR. MODICA: Your Honor, the State will stipulate for
4 the record that Miranda wasn't given, that he was under
5 arrest. We're clearly stipulating to that for the record.

6 MR. BARR: Your Honor ---

7 MR. MODICA: We can speed that issue along.

8 MR. BARR: I don't want to stipulate to anything.
9 There's no question about it. Then I'm going to object to
10 him asking that.

11 THE COURT: All right.

12 BY MR. BARR:

13 Q Do you agree that ordinarily as an investigator when
14 you question a suspect you usually have a consent and
15 waiver form?

16 A Yes, I do, Mr. Barr.

17 Q And the consent and waiver form is for the purpose of
18 verifying that the defendant is giving you a free,
19 voluntarily, and intelligent statement.

20 A Yes, sir.

21 Q Now in this instance you went to see Mr. Davis after
22 having learned that he was involved in a shooting?

23 A He called me, Mr. Barr.

24 Q You went to see Mr. Davis ---

25 A Yes, sir.

1 Q ---after you learned that he had been involved in a
2 shooting?

3 A Yes, after he called me.

4 Q All right. Now so you certainly considered him a
5 suspect at that time you went there to arrest him.

6 A Yes, sir, I did.

7 Q Now you said he called you.

8 A Yes, sir, he sure did.

9 Q And you -- it is your testimony that you spoke with
10 Mr. Davis himself on the telephone.

11 A Yes, sir. He identified himself as Heyward Davis and
12 I know Mr. Davis.

13 Q And incidentally, during your recording of this
14 incident whereby Mr. Davis contacted you?

15 A Uh-huh.

16 Q It wouldn't have happened that you would have written
17 any of this down, would it?

18 A Yes, sir. I got it in my incident report that he
19 called me.

20 Q You have your incident report now?

21 A Yes, sir.

22 Q Can I see it a second, please?

23 A Prosecutor got it over there and I got it right
24 there.

25 Q Can I see it?

1 A Yes, sir. It's right over there on the table. He
2 got a copy.

3 MR. BARR: Your Honor, counsel has a copy if you go
4 over to your -- may I ask if you got it. Let me see it.

5 MR. MODICA: We gave it to him in discovery, Your
6 Honor.

7 MR. BARR: Your Honor, I don't see the incident
8 report in my discovery.

9 THE COURT: Have you got an extra one there?

10 MS. BIAGIANTI: Not an extra one.

11 MR. BARR: I don't need an extra one, I just need the
12 one that you got.

13 MR. MODICA: We'll make a copy.

14 MR. BARR: I don't need a copy. I just need to see
15 it.

16 MR. MODICA: All right. We'll make you a copy. One
17 moment please, Your Honor.

18 (Document tendered to Mr. Barr.)

19 MR. BARR: Thank you.

20 BY MR. BARR:

21 Q Now the person that you indicated that called you on
22 the telephone and represented to himself as Mr. Davis,
23 were you in fact able to confirm that it was, in fact,
24 Mr. Davis?

25 A Yes, sir, 'cause ---

1 Q How did you confirm that?

2 A I confirmed that probably about three to four weeks
3 before the situation happened. Me and Mr. Davis was at my
4 son father-in-law sitting up so I know him, me and him
5 closer than you. I know his voice.

6 Q I'm not sure I understand that.

7 A I said I know him previous to this and then prior to
8 this situation occurred on the 13th me and him was sitting
9 closer than me and you at a sitting up where was a guy --
10 a -- my son father-in-law died on Columbus Road. I was
11 out there cooking a perlo so we was closer than me and
12 you.

13 Q And how long did you talk to Mr. Davis on that
14 occasion?

15 A Probably about two hours-and-a-half or something like
16 that.

17 Q And are you telling this Court and representing to
18 this Court that you were able to identify Mr. Davis' voice
19 positively ---

20 A Yes.

21 Q ---based on a prior conversation ---

22 A Yes, sir.

23 Q ---that you had with him?

24 A Yes, sir. Yes, sir.

25 Q Thank you, sir. I have nothing further at this time.

1 MR. MODICA: Nothing further.

2 THE WITNESS: Thank you, sir.

3 MR. MODICA: State's not calling anymore witnesses.

4 THE COURT: The defendant instituted the contact
5 responded to the question about where is the weapon.
6 Y'all got any law on this issue? It's got to have
7 happened before sometime or another.

8 MR. MODICA: Yes, sir. Of course it's his motion.
9 But Supreme Court New York versus Quarrels indicates that
10 in a situation where police officers got a report of a man
11 having committed a rape on a woman and had just run into a
12 supermarket. The police arrived there after seeing a
13 person fitting that description. He runs around the aisle
14 and the police officer loses sight for a couple of
15 seconds, contains him, handcuffs him, pats him, finds a
16 holster, no gun, and says where is the gun. And the
17 defendant says, you know, basically points him to this --
18 some shelving and says it's over there. And obviously he
19 was detained; he was arrested. There were four police
20 officers around him; and obviously, in that case, you
21 know, it's a little bit different because this defendant
22 initiated the contact with the police officer. But there
23 it said due to public safety there was not a necessity of
24 Miranda warnings. Now the case does -- quite honestly
25 does talk about on the factual scenario presented and it

1 does talk about the motivation of the police officer, says
2 that if the motivation of the police officer is public
3 safety and something else that's quite all right because
4 the exception is that it involved public safety and
5 because of that Miranda warnings do not have to be given.
6 That's the gist of the case. And we submit under these
7 circumstances all the facts and circumstances including
8 the fact that the defendant is surrendering himself,
9 initiated contact, told him where he was but there were
10 all those facts and circumstances and that the motivation
11 of the police officer as testified by Investigator Lee was
12 public safety concern for that weapon being around where
13 children and other people could get it. We would submit
14 that that falls under New York versus Quarrels which is
15 cited as 467-US-649 and that he be allowed to testify
16 about that as well as allowing the gun to come into
17 evidence. Thank you, Your Honor.

18 MR. BARR: Your Honor, please the Court, in all -- in
19 all my years of practicing law I don't think I've ever
20 seen a clearer case where as a result of police improper
21 conduct evidence should not admitted as a result of police
22 having not followed the proper procedure. Of course in
23 this case assuming for the sake of argument that the
24 defendant did call the officer, clearly when he went and
25 arrested the man, any time you take the person into

1 custody he is required to Mirandise him. He's required to
2 let him know. One of the things he's required to let him
3 know, he has a right to have a lawyer present during any
4 questioning. And the questioning took place specifically
5 when the officer, Officer Lee, said where is the gun. He
6 had no lawyer present; he had not been Mirandised. I just
7 don't see -- I don't see any room for any exception here
8 other than the fact that he was interrogated in addition
9 to being -- having been arrested prior to being Mirandised
10 and he told him where the gun was in response to the
11 interrogation in response to the question that he had been
12 asked by the arresting officer who clearly should have
13 known that he was required under the law to at least let
14 the defendant know when he took him into custody that he
15 had the right to have a lawyer present during the time
16 that he was being questioned. If he couldn't afford one,
17 that the State would appoint him one. And in this case he
18 didn't do that. And Your Honor, we would respectfully
19 request that any statement supposedly made to the
20 defendant as well as this weapon, be suppressed as a
21 result of the violation of Miranda and his 6th amendment
22 right to trial. Judge, we don't usually get a situation
23 where the officer admits that he never but in this case he
24 clearly admits it.

25 THE COURT: Well, in this case as I said, the

1 defendant initiated the contact and this Quarrels case,
2 the public safety factor I think it's clear that the
3 Supreme Court will allow the officer to ask about that
4 gun. He didn't get into why did you do it or what did you
5 do or what was your motive. Nothing like that was the
6 initial question strictly concerning the weapon. So I
7 think the State can admit that it would be admissible and
8 I'll have to overrule the objection on it based on the
9 finding of this case and other public safety factors now.
10 If there's other statements made by the defendant that
11 were in response to specific questions about why, where,
12 things like that, then I'll have to take that up
13 separately.

14 MS. BIAGIANTI: Your Honor, if you'd like, what we
15 can do is just have the police officer testify where is
16 the weapon and told him and that they drove there and
17 picked it up. I will tell you that when they got back to
18 the station and did give Miranda the defendant did give a
19 statement. In that statement we're not intending to
20 introduce but there are self serving statements of the
21 defendant indicating that the incident took place at the
22 doorway rather than the bedroom and that he was acting in
23 self-defense because he saw Mr. Campbell -- Gamble move or
24 had something in his hands. So we're not -- obviously
25 we're not going to use that statement, number one. Number

1 two, just as a heads up we're asking that the defense be
2 precluded from asking about it because it's a self-serving
3 statement not subject to the Hearsay rule because it's
4 only statements against penal interest that are allowed to
5 be used by the State against the defendant. If the
6 Defense was allowed to question the police officer about
7 did he tell you it was self-defense that Mr. Gamble had
8 something in his hand then Defense would never be, you
9 know, we would never be able to cross-examine that and
10 that's why those self-serving statements aren't allowed.
11 There is case law to in effect -- I don't have a cite --
12 but if you need that cite I can get it.

13 THE COURT: That's fine. But Mr. Barr made a
14 statement a few minutes ago that -- the --

15 MR. MODICA: You're concerned about the statements
16 that ---

17 THE COURT: No, no. The general statement about what
18 somebody has taken into custody whether you got a
19 technical argument or are they under arrest or not.
20 Miranda warnings are not required until an officer decides
21 to question the individual as -- as to the specifics of
22 the crime and this quarrels case takes care of it so I
23 don't have any problem. If y'all want to put anything
24 else on the record, now is the time.

25 MS. BIAGIANTI: Yes, sir.

1 MR. BARR: Your Honor, I think what -- what -- what
2 Mr. Modica is attempting to do is -- and I guess you make
3 it by way of some motion in limine, suggesting that I can
4 not -- once this witness gets on the stand and if he gets
5 on the stand and he claims that the defendant had made
6 certain statements to him then I can't ask him about the
7 statement. And I just -- I don't see how I can be
8 prevented once he gets on the witness stand and testified
9 if he acknowledged that the defendant made the statement I
10 can ask him about it.

11 THE COURT: Yeah. Well, we'll cross that when we get
12 to it.

13 MR. MODICA: Well obviously I am making a motion in
14 limine. The reason being is, if he starts questioning him
15 in front of the jury and he got back to the station,
16 didn't you give him Miranda and didn't you give a
17 statement telling you that it's acting in self-defense.
18 Well, the cat's out of the bag and I've lost my ability to
19 prevent the jury from hearing that. And that's why I'm
20 bringing it up in advance that the State intends to have
21 him testify, where is the gun and that when he said, you
22 know, over there, I'll show you. And then driving there
23 and getting the gun; not about, gee, I messed up bad and
24 that kind of stuff. The State's not even going to get
25 into that because arguably, you know, even though one

1 might argue that at that point in time that he's just
2 saying those things.

3 THE COURT: So what you're saying and whatnot, if
4 it's going to get into that then he would have to call
5 this defendant as a witness and bring it up, then he can
6 re-call the officer.

7 MR. MODICA: Right.

8 THE COURT: Okay.

9 MR. MODICA: As a prior inconsistency.

10 THE COURT: Okay.

11 MR. BARR: Judge, if that's the case, then I'd be
12 forced to have the defendant take the witness stand and
13 testify against himself and clearly he has a right not to
14 do that.

15 MR. MODICA: Yeah. Correct. And he has -- but he
16 doesn't have a right to prevent -- to present a
17 self-defense through a self-serving.

18 MR. BARR: But then it's ---

19 MR. MODICA: Hearsay statements, self-serving hearsay
20 statements which do not fall under any exception.

21 MR. BARR: Judge, he wants to have it both ways. He
22 wants his cake and he wants to eat it too.

23 THE COURT: One at a time.

24 MR. MODICA: Very important. Hearsay rules, very
25 clear. If that investigator is testifying and he

1 testifies about what the defendant says, that's Hearsay.
2 So it has to fall within an exception. The exception
3 relative to the gun is based upon its against his penal
4 interest which clearly is an exception to the Hearsay
5 rule. Self-serving statements are clearly not the type of
6 Hearsay exception that is within our rules basically
7 following the federal rules. There's no exception to
8 that. If you accept his version of the Hearsay rule, what
9 could happen is every defendant could give a convoluted
10 story about what happened during the course of the crime,
11 have it come in through an investigator, and have the
12 defense go before a jury before the State ever gets to
13 cross-examine the truthfulness of that statement. That's
14 not the situation here. You know having sat on the Bench
15 for 14 years that in order to present a defense the State
16 would be allowed to cross-examine that defense. And since
17 what would come out would be a self-defense, we would have
18 no ability to cross-examine him about the self-defense.

19 MR. BARR: Your Honor, Mr. Modica is creating some
20 new law in South Carolina. The clear exception to hearsay
21 rule is a statement by the -- a statement made by the
22 defendant. And in this case, this gentleman would be the
23 one that would be testifying concerning the statement.
24 There is no absolute right to cross-examine -- or on
25 behalf of the State where the statement that's made is

1 being made by this officer as a statement that was made by
2 the -- by the defendant. Just because he doesn't have a
3 right to cross-examine the defendant, that does not make
4 this gentleman's statement to the effect that he made a
5 statement inadmissible. And to argue that there's some
6 kind of convoluted defense, well, that's -- that's the
7 prosecution's point of view. I mean, that -- that doesn't
8 necessarily -- this statement in and of itself doesn't
9 become convoluted until he presents that bill.

10 MR. MODICA: Your Honor, if you look at Section 804
11 (b) (3), it's statement against interest. That's how it
12 comes in. When you -- when you're claiming self-defense,
13 that's not against your interest, that's your defense. If
14 you admit to a crime or admit that, you know, where the
15 gun is that was used in the crime, that's a statement
16 against penal interest.

17 THE COURT: Right.

18 MR. MODICA: And that's the distinction. That's why
19 he can't get it in. I didn't make up these rules; they've
20 existed for years. Your Honor, if you'd like, you know,
21 during the break I can get you the case law on that that
22 talks about that.

23 THE COURT: Well, I'll be willing to hear anything.
24 But I mean, you -- you've got the rules right there before
25 you. Doesn't come up often but it sounds correct to me.

1 All right. You got a witness ready to go?

2 MR. MODICA: Yes, sir. So that we're clear, the gun
3 is permissible coming in evidence and he is not allowed to
4 cross-examine Investigator Lee regarding the self-serving
5 statements.

6 THE COURT: That's correct, unless you open the door
7 somehow.

8 MR. MODICA: Yes, sir. Trust me, I will not.

9 MR. BARR: Well, Your Honor, I don't understand how
10 at this point in this juncture in the trial, we have not
11 said anything about a self-defense. But at this juncture
12 of the trial, what -- in essence what the prosecution is
13 claiming because that that issue might very well arise
14 that this officer cannot testify concerning what
15 statements were made to him by the defendant, if the
16 defendant in fact made a statement.

17 THE COURT: Not initially, but he -- if according to
18 what you do he can be -- he can testify afterward.

19 MR. BARR: If the defendant testified afterwards?

20 THE COURT: If you bring it up, within the rules on
21 your side of the case then you can bring the officer back
22 to the stand and go back into it. Technically, the way
23 those rules read the solicitor is right in my opinion.

24 MR. BARR: But Judge, it seems to me in many cases
25 where -- and this is done all the time -- where the

1 officer gets up and attributes a statement to the
2 defendant. I'm trying to figure out what in the rule ---

3 THE COURT: That's correct, but that's -- in that
4 case it's where the defendant made a statement against his
5 own interest; and see, self-defense is not a statement
6 against interest. It's complicated.

7 MR. BARR: Your Honor, I disagree with Mr. Modica's
8 interpretation of the rule.

9 MR. MODICA: Your Honor, we're ready to go. I just
10 want to indicate to the Court and I'll do it now if you'd
11 like, outside of the presence of the jury, that this gun
12 has been readily safe and will be shown to the next
13 witness that's testifying. I can open it up and show you
14 now.

15 THE COURT: All right. I want the sheriff to come
16 around and check that gun at this time and make sure it's
17 unloaded.

18 MR. MODICA: I did that yesterday but I will be glad
19 to do it again.

20 MR. BARR: Your Honor. Your Honor, just for the
21 record, as I understand the testimony that the officer
22 gave concerning public safety -- of course, I understand
23 that that was something Mr. Modica told him after they got
24 together. But clearly, prior to the time that -- prior to
25 the time that -- if you look at -- even if you take the

1 position that Mr. Davis did call this officer, he didn't
2 tell him anything about any gun and he didn't admit
3 anything about any gun. The gun issue came up when the
4 interrogation took place.

5 THE COURT: No, sir. Sheriff?

6 THE SHERIFF: Yes, sir.

7 THE COURT: Okay. We're ready to get started.

8 MR. MODICA: Thank you, Your Honor.

9 (WHEREUPON, the jury was returned to the courtroom at
10 approximately 10:18 a.m., and the following
11 proceedings commenced in open court.)

12 THE COURT: Ladies and gentlemen of the jury, once
13 again, thank you for your patience. As I told you
14 yesterday you are the judge of the facts and I'm the judge
15 of the law. The Court's the judge of the law. Sometimes
16 we have issues that come up that we have to handle outside
17 your presence. We didn't want y'all to think we've been
18 out here enjoying ourselves and drinking coffee and eating
19 doughnuts, anything like that. We have been resolving
20 matters of law and we're ready to get back to the
21 testimony at this time.

22 Solicitor.

23 MS. BIAGIANTI: Thank you, Your Honor. The State
24 would call Eve Eggiman to the stand.

25 WHEREUPON,

1 EVE EGGIMAN,
2 having been duly sworn by the Deputy Clerk of Court,
3 testified as follows:

4 THE DEPUTY CLERK OF COURT: You may be seated and
5 state your full name for the record.

6 THE WITNESS: I'm Eve Eggiman.

7 D I R E C T E X A M I N A T I O N

8 BY MS. BIAGIANTI:

9 Q Good morning.

10 A Good morning.

11 Q Can you please tell the jury where you are employed,
12 in what capacity, and for how long you've been employed
13 there?

14 A I'm the manager of the Georgetown County 911 Center.
15 I've been employed with Georgetown County 911 since its
16 inception in 1993, but I've been with the county as a
17 dispatcher for 22 years.

18 Q And what is your job title at central dispatch?

19 A I'm the 911 manager. I'm responsible for the
20 staffing, all tapes, all recordings, everything related to
21 any cases.

22 Q And does that include the record keeping and keeping
23 of 911 calls that come into the center?

24 A It does.

25 Q And -- can I approach the witness, Your Honor?

1 Ms. Eggiman, I show you what's been marked as State's
2 Exhibit Number 7 for I.D. Do you know what this is?

3 A It's a copy of the 911 call.

4 Q And how do you know that?

5 A Because we have them either on a CD or we have them
6 sent to be copied to a CD for any cases.

7 Q And have you listened to this before today?

8 A Yes, I have.

9 Q And do you recognize it as a 911 call?

10 A Yes, I do.

11 Q Do you recognize the voice of the 911 operator on
12 this CD?

13 A Yes, I do.

14 Q And who's?

15 A Marcy Cherry.

16 Q And how long have you worked with Ms. Cherry?

17 A She worked with us for about six years before she
18 left.

19 Q And she has now since moved away?

20 A Yes, she's relocated to Maryland.

21 Q And can you tell our jury when did this call come
22 into the 911 center?

23 A It came in on May 13th, 2006 at about 1:30 in the
24 morning.

25 MS. BIAGIANTI: Your Honor, at this time I would ask

1 that this be moved into evidence, Exhibit Number 7.

2 MR. BARR: Your Honor, I have just a few questions.

3 VOIR DIRE EXAMINATION

4 BY MR. BARR:

5 Q The 911 recording, you said that you have listened to
6 it prior to ---

7 A Yes, sir. I have to -- I have to make the recordings
8 so I listen to all calls that are sent for any cases.

9 Q And -- but you weren't the person that received this
10 call?

11 A No, sir, I was not.

12 Q I see. And when's the last time you listened to this
13 911 recording?

14 A Probably in the last 24 hours. I did nine tapes
15 yesterday for different cases, as well as reviewing any
16 that I have to go to Court for, so that makes about ten
17 calls yesterday so it was sometime yesterday.

18 Q Ordinarily when 911 recordings are made, after
19 they're made where are they kept?

20 A They're kept on our hard drive on our recorder. Once
21 I've turned it over to the officers I can't tell you where
22 the officers keep their copy but the original is always on
23 our recorder.

24 Q So there is an original recording on the hard drive
25 of your computer now of the 911 call that was made on this

1 occasion?

2 A Yes, sir, there is.

3 Q Now with respect to the copy that's here, do you know
4 who made this copy?

5 A That copy was made by my supervisor on duty at the
6 time of the call because it was requested at 1:30 or so in
7 the morning and I was not in the office.

8 Q So you were not present at the time that your
9 supervisor duplicated the original?

10 A No, sir, I was not.

11 Q So then with respect to the accuracy of the original,
12 you do not know whether or not this accurately reflects
13 what is in fact on the original?

14 A I can tell you that the supervisors that make the
15 tapes can in no way modify or change any tapes.

16 Q No, ma'am. What my question was, with respect to the
17 accuracy of this duplicate, can you by your own knowledge
18 tell us whether or not this recording accurately reflects
19 what's on the original?

20 A Again, without listening ---

21 Q Yes or no, please ma'am.

22 A Not without hearing it.

23 MR. BARR: I see. Thank you, ma'am. Your Honor,
24 we'll object on relevancy ground as well as best evidence
25 rule.

1 MS. BIAGIANTI: Your Honor, I would say it comes in
2 under the hearsay exception itself or kept in normal
3 course of business of 911. She is the supervisor; she
4 keeps all the records. She testified that in no way can
5 it be modified or changed in any manner if it's copied.

6 THE COURT: Can the original be -- can -- let me back
7 up. Can the original equipment, this hard drive, can it
8 reasonably be brought into court and played to the jury?

9 THE WITNESS: No, sir.

10 THE COURT: I'll have to overrule your objection.

11 MS. BIAGIANTI: Thank you, Your Honor. No further
12 questions from the State.

13 THE COURT: Concerning that.

14 MS. BIAGIANTI: Concerning that issue no further
15 questions at all. We just ask that it be moved into
16 evidence.

17 THE COURT: Okay, I overrule. He did -- he did
18 object and I overrule so go ahead.

19 MS. BIAGIANTI: Your Honor, we're not going to
20 publish it at this time but I would ask that if Mr. Barr
21 has no further questions that Ms. Eggiman be excused from
22 her subpoena.

23 THE COURT: Any other questions?

24 MR. BARR: No other questions from this witness,
25 Judge.

1 (WHEREUPON, State Exhibit No. 7 was admitted into
2 evidence.)

3 MS. BIAGIANTI: Your Honor, the State would call
4 Ms. Lesley Parish.

5 WHEREUPON,

6 LESLEY PARISH,
7 having been duly sworn by the Deputy Clerk of Court,
8 testified as follows:

9 THE DEPUTY CLERK OF COURT: Please be seated and
10 state your full name for the record.

11 (WHEREUPON, State Exhibit Nos. 8-A, 8-B were marked
12 for identification only.)

13 DIRECT EXAMINATION

14 BY MS. BIAGIANTI:

15 Q Good morning.

16 A Good morning.

17 Q Can you please tell the jury how old you are.

18 A 35 years old.

19 Q And are you married?

20 A Separated.

21 Q And do you have any children?

22 A Two girls.

23 Q What are their names and ages?

24 A Minor , 12, Minor , 14.

25 Q And do you know the other victim in the Case,

1 Mr. Chris Gamble?

2 A Excuse me?

3 Q Do you know the other victim in this case, Mr. Chris
4 Gamble?

5 A Yes.

6 Q How do you know Mr. Gamble?

7 A I know Chris for like 13 years, coworker at Eagle
8 Electric.

9 Q And Chris is the father of Laswanna?

10 A Yes.

11 Q And is it fair to say that you and Chris have
12 remained friends over the years?

13 A Yes.

14 Q And where are you currently working?

15 A I'm currently working at the Harbor Motor Inn in
16 Myrtle Beach.

17 Q Is that a hotel?

18 A Yes.

19 Q How long have you been employed there?

20 A I been there three years.

21 Q And what is your job title?

22 A Executive housekeeping.

23 Q And do you know the defendant in this case, Heyward
24 Davis?

25 A Yes.

1 Q How do you know Mr. Davis?

2 A I know Heyward a little through high school but
3 personally working at the Harbor Motor Inn.

4 Q And when did you first meet Mr. Davis?

5 A Working at the Harbor Motor Inn.

6 Q When? I'm sorry.

7 A In the early summer like 2004.

8 Q And at some point in time did you develop a
9 relationship with Mr. Davis?

10 A Yes.

11 Q Boyfriend/girlfriend relationship?

12 A Yes.

13 Q And throughout this relationship did he on occasion
14 happen to spend the night with you?

15 A Yes.

16 Q What was the address of your trailer that you stayed
17 at?

18 A It was

19 Andrews.

20 Q Andrews. Is that here in Georgetown County?

21 A Yes.

22 Q And if Mr. Gamble -- if you know if Mr. Gamble was --
23 excuse me, Mr. Davis was not spending the night with you,
24 where would he stay?

25 A In his home in Sandpit. He had his own.

1 Q Do you know what address that was?

2 A It was

3 Q And the trailer that you stayed at, who lived there
4 with you?

5 A My two kids, Minor and Minor

6 Q And yourself?

7 A And myself.

8 Q Who paid the bills?

9 A I do.

10 Q Defendant ever pay bills?

11 A No.

12 Q Any bills in the defendant's name?

13 A No.

14 Q Did there ever come a point in time where the
15 defendant lived with you?

16 A No.

17 Q Why didn't he live with you?

18 A Because he had a home on his own.

19 Q And tell our jury who had keys to your trailer.

20 A Me and my two kids, Minor and Minor

21

22 Q So a total of how many keys?

23 A Three.

24 Q And on occasion would the defendant use a key to get
25 into the trailer?

1 A Yes.

2 Q Tell the jury a little bit about that.

3 A It'd been occasion that if he get to my home before
4 me and I be at my mom's picking up my kids, I let him use
5 Minor keys. When he's finished with the key he'd put it
6 on the counter top.

7 Q And why would he put it on the counter top?

8 A Because the key didn't belong to him; it was
9 Minor 's.

10 Q And she needed it back?

11 A Yes.

12 Q Throughout your relationship did you happen to ever
13 spend the night at his house?

14 A Yes.

15 Q And explain to the jury a little bit about the
16 trailer park and the area around it.

17 A The mobile home that I lived in, I lived -- it's like
18 across the train track and my trailer was on the left side
19 of a mobile home facing the bedroom like in facing the
20 mobile home part. The train track and the bedroom was on
21 the same side. And it's like, it's noisy, constantly
22 noise from the train track.

23 Q I might have neglected to ask you this but tell our
24 jury when the relationship started with Mr. Davis, the
25 defendant.

1 A My relationship started with him like in the mid
2 summer of '04.

3 Q After you met him in '04.

4 A Yes.

5 (WHEREUPON, State Exhibit No. 9 was marked for
6 identification only.)

7 MS. BIAGIANTI: Your Honor, can I approach the
8 witness?

9 BY MS. BIAGIANTI:

10 Q Ms. Parish, I'm showing you what's been marked as
11 State's Exhibit Number 9 for ID. Do you recognize this?

12 A Yes.

13 Q And how do you recognize it?

14 A That's my lease agreement to my home.

15 Q Home where, what address?

16 A

17 Q And how do you recognize it as being your lease
18 agreement to that trailer?

19 A Because I agreed to buy this mobile home and I signed
20 it. My signature is on there.

21 Q Is that your signature?

22 A Yes.

23 Q And obviously this is a copy. Have you seen the
24 original?

25 A Yes.

1 Q And is this copy a fair and accurate reflection of
2 the original?

3 A Yes.

4 MS. BIAGIANTI: Your Honor, at this time I would
5 offer it into evidence, showing it to Mr. Barr.

6 THE COURT: Without -- it's in without objection.

7 (WHEREUPON, State Exhibit No. 9 was admitted into
8 evidence.)

9 MS. BIAGIANTI: Thank you.

10 BY MS. BIAGIANTI:

11 Q Tell me whose name appears on that lease.

12 A Lesley Parish.

13 Q Does Heyward Davis' name appear anywhere on that
14 lease?

15 A No.

16 Q And what time period is that lease from?

17 A 12 ---

18 Q When is it first dated?

19 A December 7th of '05.

20 Q And if you can turn to Page 2 for me. What time
21 period is this lease from, beginning what date, ending
22 what date.

23 A December 7th, 2005; December 31st, 2006.

24 Q So from December 7, 2005 through December 31st, 2006?

25 A Yes.

1 Q Okay, thank you. Do you see Mr. Davis in the
2 courtroom today?

3 A Yes.

4 Q Can you please point to him?

5 A (Indicating.) Right over there by Mr. Barr in the
6 white shirt.

7 MS. BIAGIANTI: Your Honor, please let the record
8 reflect that Ms. Parish has pointed to the defendant.

9 BY MS. BIAGIANTI:

10 Q Back to your relationship with the defendant, were
11 there difficulties in your relationship that led you to
12 break up with the defendant?

13 A Yes.

14 Q And in relation to May 13th, 2006, approximately when
15 did you break up with him?

16 A About two weeks before the shooting.

17 Q And after you broke up with the defendant did there
18 come a point in time when the defendant came over to ---

19 A Yes.

20 Q ---collect his belongings?

21 A Yes.

22 Q Who did he come with?

23 A He came with two officers, Andrews Police Department.

24 Q And explain to the jury a little bit about that.

25 A When -- I heard a knock on the door. I opened the

1 door; it was two officers and Mr. Heyward Davis. I let
2 them in. They stated to me that they was coming because
3 he said he had some belongings there. So I let them in
4 the house, took them to the bedroom. I opened all my
5 drawers, took all my clothes out to see -- let them see
6 that he didn't have any clothes in there. I opened the
7 closet, had a walk-in closet. I let them in the closet.
8 He didn't have any clothes in there. We went back around
9 to the living room part where it stand out. And I told
10 them, I said anything he say he got in here I want him to
11 get it out tonight. But he left with a door bell.

12 Q Explain that. What do you mean he left with a door
13 bell?

14 A He asked for a screwdriver. I gave him a
15 screwdriver. He took the door bell off the door and that
16 was it.

17 Q Did Mr. Davis buy that door bell?

18 A Yes.

19 Q And when did this happen in relation to the shooting
20 on May 13th, 2006?

21 A When?

22 Q When did this incident where he came with the two
23 police officers to collect his belongings?

24 A This happened about a week before the shooting.

25 Q Now directing your attention -- or excuse me, let me

1 back up. Directing your attention to May 12th of 2006.

2 Do you remember what day of the week that was?

3 A A Friday.

4 Q Tell our jury a little bit about what you did that
5 day?

6 A Well, I did my normal routine. I got up, left for
7 work, got to work before 8:00. I say about somewhere
8 around 10 I got a call from Heyward Davis. We both
9 working on the same job. So my position, I'm the head of
10 executive housekeeping; he's the head of maintenance. I
11 have to go -- and I went up to the 6th floor to see what
12 he wanted. I got up there; we had a conversation. He
13 stated to me that he wanted to start all over again; that
14 he was sorry for the problem in our relationship so I told
15 him that I don't think that's a good idea. The best thing
16 to just leave it like friends being that we work together;
17 we just have to get along on the job. And I went back,
18 got on the elevator, went back to my office. So later on
19 that day I worked ---

20 Q Let me stop right there. He works at the same place
21 you do?

22 A Yes.

23 Q Do you have to see him on a daily basis?

24 A Yeah.

25 Q Okay, I'm sorry. Continue about once you got off

1 work.

2 A I worked that day. I got off about 4:00. We got off
3 about the same time. So I went home, went to my mom house
4 to pick up my kids, doing my normal routine.

5 Q Did they normally stay at your mom's house?

6 A Yes, after school.

7 Q They go to your mom's house?

8 A Yes, after school. Then I do my normal routine.

9 I -- that day they want to stay with their friends that
10 night. We was having a event in Andrews.

11 Q What was that?

12 A The Good Ole Days.

13 Q What's the Good Ole Days?

14 A It's a festival that comes to Andrews every year.
15 They wanted to stay with their friends. I took them to
16 get them some clothes, took them to their friend house,
17 dropped them off. Then I ride around a little like I
18 didn't really want to go home that day.

19 Q All right.

20 A I didn't really want to go home that day so I stopped
21 at Arbor Place in Andrews with a friend Sue Lee. I
22 stopped at her house. We sat on the porch and talked a
23 while.

24 Q And who is Sue Lee to you? Who is Sue Lee to you?

25 A A friend of mine. We stopped. We sat on the porch

1 and talked a while. And I say about ten minutes of my
2 time there on the porch I seen Heyward Davis walking
3 across B Street of the projects. He was walking across.
4 He had on his work shirt and his cap. And we sit there,
5 and I was like that's Heyward. She's like, yeah. About
6 ten minutes later he came back around the corner; and her
7 daughter, , I sent her to the front to see if
8 that was him.

9 Q Why did you do that?

10 A To make sure -- well, to see what he was driving. I
11 knew it was him, just to see where he was going, what he
12 was getting in. Just curious, wondering why was he
13 walking.

14 Q So you said you were curious?

15 A Uh-huh.

16 Q What happened then?

17 A About -- he left. About 15 minutes later he came
18 back and came back into Arbor Place and Sue Lee told me
19 that Heyward was out there so I went out to speak with
20 Heyward.

21 Q Why did you do that?

22 A Because he had called me. I went out to see what he
23 wanted.

24 Q So he had motioned or called you to?

25 A Yeah.

1 Q Okay. Keep going.

2 A I went out to see what he wanted. He was asking what
3 are you -- what are you doing today? I'm like, nothing.
4 What are you planning doing? Nothing. It was just like
5 brushing him off. I really didn't want to talk to him.

6 Q And why didn't you want to talk to him?

7 A Because I didn't want to give him -- I just didn't
8 want to be with him. That's ---

9 Q You had already broken up with him.

10 A Yes.

11 Q Then what happened?

12 A Then I went home. It was around about 8. Then I
13 talked to Chris. He said he was coming to Andrews to
14 bring Minor some money. Then I think Chris called back
15 about -- probably about 9:00, 10, 11, somewhere like that.
16 Then he said he was outside.

17 Q So when he called you he was in your yard?

18 A Yes. So I let him in. When Chris came in we sat
19 down; we talked about Minor. Then he was talking about
20 the Good Ole Days, just talking in general. Just talking.

21 Q What happened then?

22 A And then we left from the living room to the bedroom.
23 We were sitting up in the bedroom in the bed looking at
24 the TV. The TV was -- the volume was down low; we was
25 just conversate.

1 Q What time approximately was that?

2 A This had to happen about 11, 11:30, somewhere around.

3 Q Did you and Chris have a conversation about whether
4 he should stay over or not?

5 A Yeah. It was kind of late, and I was like, well, you
6 can stay and rest a little while.

7 Q And I don't mean to be crude, but did you guys have
8 intercourse that evening?

9 A Yes.

10 Q Tell us what happened after that.

11 A And after that we stay up for a little while. Chris
12 was like, he was hungry. He got up, fumbling in the
13 kitchen. He got some water and got back in the bed. I
14 was kind of sleepy. And he was like, you hear that noise?
15 I was like, no. I say, my AC unit does that when it
16 clicks off and on. And wait about a couple of minutes and
17 he said it again. So I got up.

18 Q And why did you get up?

19 A To make him satisfied I got up. I went to the back
20 door. I peep out the blinds to the back door. I didn't
21 see anything out there so I walked down to the -- walk
22 down the hall where my girls' room is. I looked in my
23 girls' room, cut the light on, looked, make sure nothing
24 was going on in their room. Then I came back passing
25 the -- back -- passing the front door on my way back to my

1 room. I checked my front door to make sure it was locked
2 and I got back in the bed.

3 Q Did you -- explain to the jury a little bit about the
4 lighting in your trailer that night.

5 A Okay. I have the light over my stove on. I have a
6 yard light outside with -- when you got blinds in your
7 house you can see little yard lights coming directly into
8 your house so you can kind of have little lights from the
9 yard light.

10 Q And when you checked the front door was it locked?

11 A It was locked.

12 Q And when you went back to the bedroom?

13 A Went back to the bedroom.

14 Q Was the bedroom door open or closed?

15 A My bedroom door was open. I went back to the
16 bedroom, got in the bed. I got sleepy. Chris turned the
17 TV off. I fell asleep.

18 Q What side of the bed were you on, what side of the
19 bed was Chris on?

20 A Chris was on the left side; I was on the right. I
21 got -- I fell asleep. Next thing I remember Chris calling
22 my name.

23 Q How did he call your name?

24 A Lesley. And I jumped. When I jumped that's when I
25 seen a loud noise and a -- and a flash. Then I jumped out

1 the bed. When I jumped out the bed I got toward the
2 wall -- I backed up towards the wall and Heyward Davis
3 turned the light on and he was looking at me. He was
4 pointing the gun directly at me and I was looking like,
5 what are you doing?

6 Q Did you say that or were you thinking that?

7 A Yeah. I said what are you doing? He said, Lesley.
8 And he stopped. And the next thing I know the trigger
9 went off and somehow I fell to the floor and the bullet
10 went past my right shoulder.

11 Q And how do you know that?

12 A Because I'm looking directly at Heyward.

13 Q Recognize him?

14 A Yes.

15 Q Know him?

16 A Yes.

17 Q No question in your mind?

18 A No.

19 Q Tell us what happened then.

20 A Then I lie there on the floor after he shot the
21 second time. I didn't move.

22 Q Why is that?

23 A Because I didn't want him to shoot again. Sort of
24 play dead. Then I wait a minute. Then I seen when he
25 walk away.

1 Q How did he walk away?

2 A He walked away just -- he walked away calm. And I
3 wait a minute just giving him time to get -- I figure he
4 could get to the front door. That's when I can get up.
5 When I did get up I ran and locked the bedroom door.

6 Q Why didn't you go out -- did you go out into the
7 living room?

8 A No, I did not. I locked the bedroom door.

9 Q Why didn't you go out into the living room?

10 A Because I was afraid. I didn't know where he was in
11 the other part of the house so I locked the bedroom door.
12 Then I grabbed the phone and dialed 911. Chris was
13 telling me to call 911. I'm crying hysterical, just
14 crying, shaking. I'm trying to talk to 911, trying,
15 trying. And he was like, I'm going to die. In the back
16 of my mind I was thinking to myself, I'm thinking you're
17 going to die too but I have to hold up and tell him he's
18 not going to die, just comforting him.

19 Q At some point did Chris have to talk to the 911
20 operator?

21 A Yes.

22 Q Why is that?

23 A Because I was hysterical crying, just crying.

24 Q After you got off the phone to 911 did you call
25 anyone else?

1 A Yes.

2 Q Who did you call?

3 A I called my dad.

4 Q Why did you call your dad?

5 A Because I just wanted to talk to my dad, just tell
6 him what Heyward done.

7 Q What did you tell your dad?

8 A I said, Daddy, Heyward shot Chris and he shoot at me
9 too.

10 Q What's the next thing that happened?

11 A Next thing that happened was I heard sirens. The EMS
12 was coming. And the next thing was I went -- when I heard
13 a knock at the front door I went to the back because I was
14 afraid to go to the front door because I didn't know
15 whether Heyward was still in the house. So I went to the
16 back door. I swing the back door open, swinging around
17 here, but I hear a knock again so I went, take my chances
18 going to the front door and I open the front door and
19 that's when the EMS, the police officer, and all came in.

20 Q How close is the back door to your bedroom door?

21 A It's how you reach when you open up my bedroom, the
22 back door is right there.

23 Q And before EMS arrived -- let me back up for a
24 minute. Was Chris bleeding?

25 A Yes.

1 Q Describe that to our jury.

2 A He was bleeding a lot.

3 Q Did you have to get ---

4 A Yes, I had to get a towel to pute -- to put on him to
5 keep him from bleeding so much.

6 Q What happened? Tell the jury what happened when the
7 police and the EMS got there.

8 A I let them in. They asked me where was the victim.
9 I said back in the bedroom. They went in and start
10 working on him. And then I was around in the living room
11 crying, hugging my momma. She was comforting me trying to
12 calm me down. I was crying.

13 Q Did you tell the police what happened that night?

14 A Yes.

15 Q Just like you told us?

16 A Yes.

17 Q Who did you tell them did this?

18 A Investigator Lee.

19 Q Who did you tell the police that shot Chris?

20 A I told them Heyward Davis.

21 (WHEREUPON, State Exhibit No. 10 was marked for
22 identification only.)

23 MS. BIAGIANTI: Your Honor, can I approach the
24 witness?

25 THE COURT: Sure.

1 BY MS. BIAGIANTI:

2 Q Ms. Parish, I'm showing you what's been marked as
3 State's Exhibit Number 10 for I.D. It's a plastic bag
4 with a little box inside. You see that?

5 A Yeah.

6 MS. BIAGIANTI: Showing it to Mr. Barr.

7 BY MS. BIAGIANTI:

8 Q And I'm opening up the package, the box. Do you
9 recognize this?

10 A Yes.

11 Q What is it?

12 A It's a piece of the bullet.

13 Q And how do you recognize this?

14 A That's the piece of the bullet I took out the pillow
15 two days later.

16 Q Okay. Explain to our jury how you found this, when
17 you found it.

18 A I found that when I went back to my home two days
19 later to clean up my bedroom.

20 Q And where did you find this?

21 A In the pillow.

22 Q Which pillow?

23 A In the pillow that Chris Gamble was lying on.

24 Q And how did -- tell us a little bit about how you
25 found it.

1 A I was in the room just stripping the bed, cleaning
2 up, and I happened to look at the pillow and I seen a
3 bullet hole. I flipped the pillow over. I didn't see no
4 way out so I just stick my hand in the pillow in the hole
5 going around it and I found it.

6 Q And once you found this what did you do with it?

7 A I put it in a bag and took it up to the Andrews
8 Police Department.

9 Q And who did you give it to?

10 A I gave it to Joyce.

11 Q A member of the Andrews Police Department.

12 A Yes, victim advocate.

13 MS. BIAGIANTI: Your Honor, at this time I would
14 offer this into evidence.

15 MR. BARR: No objection.

16 (WHEREUPON, State Exhibit No. 10 was admitted into
17 evidence.)

18 BY MS. BIAGIANTI:

19 Q Now Lesley, let's back up a little bit. Did you know
20 Mr. Davis had a gun?

21 A Yes.

22 Q Describe that gun to us.

23 A It's a rifle with a scope on it with a strap.

24 Q That's the gun that you're talking about that you saw
25 that night -- early morning May 13th?

1 A Yes.

2 Q Had you seen that gun before?

3 A Yes.

4 Q And how and when approximately did you see that gun?

5 A I seen it several times at his home.

6 Q Whose home?

7 A At Heyward house.

8 Q Did you know it to be his gun?

9 A Yes.

10 MS. BIAGIANTI: Your Honor, just for the record, the
11 State's pulling out of a box marked State's Exhibit 8-A
12 and the gun is -- and it's been rendered safe, Your Honor,
13 by the Sheriff's Department and I believe the gun is
14 actually 8-B.

15 BY MS. BIAGIANTI:

16 Q Is this the gun that you saw the night, early morning
17 hours of May 13th, 2006?

18 A Yes.

19 Q This is the gun that Heyward Davis had?

20 A Yes.

21 Q Is this the gun that you've seen on prior occasions?

22 A Yes.

23 MS. BIAGIANTI: Your Honor, at this time I would
24 offer it into evidence.

25 THE COURT: Subject to ---

1 MR. BARR: Subject to our previous objection, Judge.

2 THE COURT: All right.

3 MS. BIAGIANTI: Thank you, Your Honor. Your Honor,
4 let the record reflect that we're returning it into the
5 box. 8-A and 8-B.

6 (WHEREUPON, State Exhibits Nos. 8-A and 8-B were
7 admitted into evidence.)

8 MS. BIAGIANTI: Your Honor, may the witness step
9 down?

10 THE COURT: Sure.

11 MS. BIAGIANTI: Thank you.

12 BY MS. BIAGIANTI:

13 Q Ms. Parish, please come. Speak loud enough so the
14 court reporter can hear you. I'm showing you what's been
15 marked as State's Exhibit Number 1 which is already in
16 evidence. Do you recognize what that is?

17 A Yes.

18 Q And what is it?

19 A That's the front entrance to my home.

20 Q And how do you know that?

21 A That's my door. That's my house.

22 Q Was this door in that condition when you got home on
23 May 12th, 2006?

24 A No.

25 Q Was it in this condition when Chris came over to the

1 house May 12th, 2006?

2 A No.

3 Q Was it in this condition when you checked the front
4 door ---

5 A No.

6 Q ---that evening, early morning? Do you know who took
7 this picture?

8 A Yes.

9 Q Who took it?

10 A Investigator Lee.

11 Q And how do you know he took it?

12 A Because I was there.

13 Q When did he take it?

14 A Early morning after the shooting.

15 Q Showing you what's been marked as State's Exhibit
16 Number 2 -- excuse me, it's already in evidence. Do you
17 recognize what this is?

18 A Yes, this is my bedroom.

19 Q How do you know it's your bedroom?

20 A It's my bed.

21 Q And what does this show?

22 A It shows the side that Chris was laying on, bloody
23 T-shirt.

24 Q Was that the T-shirt that Chris was wearing?

25 A Yes.

1 Q And all these pictures I'm referring to, do you know
2 who took all these pictures, State's Exhibits Number 1
3 through 6?

4 A Yes.

5 Q Who took those pictures?

6 A Investigator Lee.

7 Q And when did he take those pictures?

8 A Early morning after the shooting.

9 Q I'm going to show you State's Number 3 and 4
10 together. Do you know what this is?

11 A Yes. That's my bedroom, my bed.

12 Q And do you know what this is, State's Exhibit Number
13 4?

14 A That's the wall.

15 Q Which wall?

16 A That's the wall to the bathroom on the right-hand
17 side, over here.

18 Q Okay. And point to State's Exhibit Number 3 where
19 State's Exhibit Number 4 is.

20 A This bullet hole is right up in here against the wall
21 where I was staying over here.

22 Q Was that bullet hole there previous to May 13th,
23 2006?

24 A No.

25 Q How did that bullet hole get there?

1 A Heyward Davis when he shot, when he pulled the
2 trigger.

3 Q And where were you standing when that happened?

4 A I was standing right here against the wall.

5 Q State's Exhibit Number Five, do you recognize what
6 that is?

7 A That's my shower.

8 Q Is that the -- comparing it with State's Exhibit
9 Number 3 ---

10 A This picture is behind this wall. This shower is
11 behind the wall right there.

12 Q So State's Exhibit Number 5 is behind the wall of
13 State's Exhibit Number 3?

14 A Yeah.

15 Q And was that wall in this condition before May 13th,
16 2006?

17 A No.

18 Q How did that come to be in that condition?

19 A From the gunshot.

20 Q I'm showing you State's Exhibit Number 6. Do you
21 recognize that?

22 A Yes.

23 Q What is it?

24 A That's the casing off the bullet.

25 Q From ---

1 A From that gun.

2 Q From what gun?

3 A From the rifle that Heyward shot.

4 Q From May 13th, 2006?

5 A Yes.

6 Q Was this casing -- where is this casing in relation
7 to your ---

8 A That casing is -- like the entrance of the bedroom
9 right there, the dresser, in front of the dressing room.

10 Q So the casing is in the bedroom?

11 A Uh-huh.

12 Q And was that casing there in the bedroom before May
13 13th, 2006?

14 A No.

15 Q You can have a seat please. When you went back in --
16 when you went back in your house the early morning hours
17 when the police were there May 13th, 2006, everything
18 depicted in the photographs, is that the way things were
19 after the shooting?

20 A Yes.

21 Q And you saw Investigator Lee take the photographs?

22 A Yes.

23 MS. BIAGIANTI: Your Honor, beg the Court's
24 indulgence. Nothing further.

25 Thank you. Please answer any question Mr. Barr has

1 for you.

2 C R O S S - E X A M I N A T I O N

3 BY MR. BARR:

4 Q Ms. Parish, I don't think you and I have met. Of
5 course you were in the courtroom yesterday when I
6 introduced myself. I just got a few questions I need to
7 ask you. I believe you indicated that you and Heyward
8 Davis had a romantic kind of relationship that had been
9 on-going for a period of time. Is that correct?

10 A Yes.

11 Q And when did you initially meet Mr. Davis?

12 A I met him like the summer part of '04.

13 Q And you and he started dating?

14 A Yes.

15 Q And would it be fair to say that this relationship
16 continued on a pretty regular basis? That is, you seeing
17 him and he seeing you.

18 A Yes.

19 Q And I believe you indicated that prior to the time
20 that you and Mr. Davis had somewhat of a misunderstanding
21 there were times when he spent nights at your house?

22 A Yes.

23 Q And you spent nights at his house?

24 A Yes.

25 Q And would it be fair to say that during this

1 particular time Mr. Davis at least retained some of his
2 personal belongings at your house?

3 A No, sir. No.

4 Q Was there ever a time when Mr. Davis got into a
5 dispute with your landlord about being evicted?

6 A No, sir. It wasn't about him being evicted, it was
7 about -- something about him being parked in the wrong
8 place.

9 Q Parked in the wrong place?

10 A Yes.

11 Q And what was to park the wrong place?

12 A He was parked, like, it was a trailer in the front,
13 trailer in the back, and he was parked further up past the
14 trailer. The landlord wanted you to park like on the --
15 like the end of the trailer, not up in between the
16 trailer.

17 Q And what kind of vehicle was he driving?

18 A He was driving a Cadillac Escalade and sometime a
19 Cherokee Jeep and sometime a Cadillac.

20 Q Did you and Mr. Davis tell the landlord at that time
21 that Mr. Davis was living at that house?

22 A No, we did not.

23 Q You did not -- you did not tell the landlord that
24 Mr. Davis was a resident at the ---

25 A No, I did not.

1 Q ---address where you live?

2 A No, sir. He spent some nights, but he wasn't a
3 resident there.

4 Q You didn't tell the landlord he was a resident?

5 A No, sir.

6 Q Well you said he stayed some nights. During the
7 course of a week do you ever recollect a time where he
8 ever stayed more than one night during the night (sic)?

9 A Excuse me?

10 Q During the course of a week do you have -- ever have
11 a recollection of him ever staying more than one night a
12 week?

13 A Yes.

14 Q And how about as much as two nights a week?

15 A He might stay two, go home two, it depend.

16 Q Stay two, go home two. Stay two.

17 A Back and forth.

18 Q Go home two, back and forth. So now Heyward Davis
19 was -- was -- at least up to the point that you indicated
20 that y'all had this misunderstanding, would you say that
21 he was at least ---

22 MS. BIAGIANTI: Objection, Your Honor, to the
23 characterization of misunderstanding.

24 THE COURT: Well, I don't think he got far enough
25 into the question for me to really get involved in it.

1 Go ahead and pose your question, Mr. Barr.

2 BY MR. BARR:

3 Q Well, you did claim that you and Mr. Davis had a
4 misunderstanding and the relationship terminated?

5 A Yes.

6 Q Now up to this time, whatever time that was, you
7 would agree that you and Mr. Davis was at least staying in
8 the same residence and sleeping in the same bed at least
9 50 percent of the time?

10 A No, sir.

11 Q 40?

12 A Like I said, back and forth.

13 Q Back and forth. But regularly?

14 A Back and forth. Not often. He has his own house.

15 Q Well, I know he has his own house and his children at
16 that house but I think he probably spent more time at the
17 house with you than he did at his own house; did he not?

18 A It depend.

19 Q All right. Now you indicate that for whatever reason
20 that back and forth relationship came to a dead halt. It
21 stopped you said?

22 A Yes.

23 Q And when it came to a dead halt, when it stopped, it
24 happened just about two or three days you say before the
25 shooting supposedly took place at your house.

1 A No.

2 Q How long?

3 A About two weeks before the shooting.

4 Q Oh, two weeks. And two weeks prior to the shooting
5 is when your relationship with Mr. Davis ended?

6 A Yes, sir.

7 Q And he didn't come spend anymore nights at your house
8 after that two weeks prior to it?

9 A No, sir.

10 Q Now at least prior to the two weeks you had a pretty
11 ongoing relationship. Who, if anybody, did you tell, if
12 anybody, that you and Mr. Davis was breaking it off?

13 A I talked to Chris Gamble a week before the shooting.

14 Q You did talk to Chris Gamble a week before the
15 shooting?

16 A Yes, I did.

17 Q And you told him y'all were breaking it off?

18 A Yes, I did. We were just talking in general.

19 Q Were you there the day that Mr. Davis came to your
20 house when Chris Gamble was there when he came in the
21 kitchen?

22 A Yes, I was there.

23 Q And was that the same Mr. Davis that you then told
24 Chris Gamble, if you did, he was just an ex-boyfriend?

25 A Well, at that time, me and Heyward was dating at that

1 time. He came -- Chris Gamble came to pick up his
2 daughter. Chris -- Heyward -- Chris was there picking up
3 Minor . He was outside and Heyward came inside the
4 house. That's when Chris got out the car and came in. I
5 introduced them. Heyward, this is Chris, Chris this is
6 Heyward.

7 Q Well, was this then during the time when your
8 relationship with Heyward Davis was back and forth, back
9 and forth?

10 A No. The spending the night was back and forth; the
11 relationship ---

12 Q Yes, ma'am.

13 A ---was a relationship.

14 Q Yes, that's what I'm talking about. So at the time
15 when Chris Gamble met Heyward Davis at your house where
16 he -- where they met each other in the kitchen, at that
17 time Heyward Davis was not just an ex-boyfriend but y'all
18 were still spending two nights here ---

19 A No.

20 Q ---two nights there. You weren't?

21 A He weren't the ex-boyfriend at the time; we was
22 dating at the time.

23 Q So you were -- he wouldn't -- so you didn't introduce
24 him as an ex-boyfriend?

25 A No, I did not.

1 Q Well, who did you introduce him as?

2 A Excuse me?

3 Q Who did you introduce him to Chris Gamble as if not
4 an ex-boyfriend?

5 A I just said this is Heyward; Heyward, this is Chris.

6 Q Oh. You indicated that, I believe in your direct
7 testimony, that the night that the shooting supposedly
8 took place you unequivocally saw Heyward Davis fire a shot
9 at Mr. Gamble.

10 A Yes, I did.

11 Q And now as I understand it Mr. Gamble was laying in
12 the bed at the time that he was shot?

13 A Yes.

14 Q And you were in the bed with him.

15 A Yes.

16 Q And the lights were off?

17 A Yes, at that time.

18 Q Now when Mr. Gamble was shot was his back turned to
19 you or was he facing you?

20 A My back was turned to him. He was laying flat on his
21 back.

22 Q Laying flat on his back?

23 A He was -- I was just turned from him. I was -- my
24 back was turned to him.

25 Q So then you did not see Heyward Davis shoot

1 Mr. Gamble.

2 A I was there.

3 Q The question was ---

4 A Yes.

5 Q Are you saying yes, you saw him shoot him or did you
6 just ---

7 A Yes, I did.

8 Q But your back was turned?

9 A I was up at the point that when Chris called me, call
10 my name Lesley, that's when I jumped up and turned and
11 looked. And that's when the flash went; Chris was shot.

12 Q So were you able to see Mr. Davis' face then at the
13 time that he was shot?

14 A I couldn't see if -- Davis -- no, I didn't. Davis
15 Heyward, I know his figure. I knew it was Heyward.

16 Q How did you know?

17 A Because the cap he was wearing, this is just his body
18 figure, and the depth, really the lights from the --
19 between the bedroom door to where he was standing. I knew
20 it was him, and I knew it was him when he turned on the
21 lights.

22 Q I see. So then ---

23 A I got a good look.

24 Q You saw a similitude of him ---

25 A Yes.

- 1 Q ---as he cast a shadow and you thought it was him.
- 2 A No, I know it was him.
- 3 Q You wasn't sure then -- pardon me?
- 4 A I knew it was him.
- 5 Q Even before you saw his face?
- 6 A I knew it was Heyward.
- 7 Q But he turned on the light you said at some point.
- 8 A Yes, he did.
- 9 Q I see. And you were still in the bed then next to
- 10 Mr. ---
- 11 A No.
- 12 Q Where were you?
- 13 A I was out the bed against the wall.
- 14 Q Against the wall.
- 15 A Yes.
- 16 Q So then after he shot Mr. Gamble you got out of the
- 17 bed.
- 18 A That's when I jumped out quick and just jump out of
- 19 bed.
- 20 Q Now do you think he was shooting at you or
- 21 Mr. Gamble, ma'am?
- 22 A I don't know who he was -- what he was doing; all I
- 23 know I jumped out of bed. I know shot was fired.
- 24 Q How far was he away from you?
- 25 A He had to have been probably about -- he was still

1 standing in the same spot about 4-feet away from where he
2 fired the first shot at.

3 Q About the distance that I am from you now?

4 A If we was stand -- yeah, but a little toward the side
5 like the dresser in the door way and the bed is over on
6 this side.

7 Q About 8 -- about 7 or 8-feet -- about 8-feet, 7 or
8 8-feet from you?

9 A He was about 7 from me and he was closer to Chris
10 than he was to me because I jumped towards the other side
11 of the bed on the wall.

12 Q Now I think I heard you tell Ms -- tell the assistant
13 solicitor that -- and I'm showing you now State's Exhibit,
14 it's been entered into evidence as State's Exhibit Number
15 4, and that's the bullet hole in the wall.

16 A Yes, it is.

17 Q And that's in the wall in your house?

18 A Yes.

19 Q And how far would you say that -- and you know it's a
20 bullet hole?

21 A Yes.

22 Q You saw it put there.

23 A That hole wasn't there before that night.

24 Q No, what -- it wasn't there before that night?

25 A No.

1 Q When did you first notice the hole?

2 A After the accident -- well, the shooting was over and
3 everything calmed down that's when I noticed it.

4 Q But you had never noticed a hole before?

5 A No hole was there before.

6 Q Well, when was the last time you inspected the wall
7 to see whether or not there was a hole?

8 A There was no hole there. No.

9 Q Isn't it fair to say that -- of course you didn't
10 find this hole until after you spoke with Investigator
11 Lee.

12 A Well, I knew there would be a hole there ---

13 Q Listen to my question please, ma'am. Is it not true
14 that you didn't find this hole until after you spoke with
15 Investigator Lee?

16 A Yes.

17 Q Now you didn't speak with Investigator Lee the night
18 that the shooting took place, but was it the following
19 day?

20 A No. He tried talking to me that day -- that night.

21 Q And you didn't know about any hole then, did you,
22 when he spoke to you that night? You didn't know about
23 any hole in the wall, did you?

24 A I know the bullet went somewhere. I was standing
25 there.

- 1 Q Did you know about a hole in the wall?
- 2 A Yes.
- 3 Q Oh, you did?
- 4 A It went somewhere.
- 5 Q Did you -- do you understand my question?
- 6 A Yes, sir. Did I know the bullet hole was there
- 7 before that night?
- 8 Q At the time that you spoke with Investigator Lee that
- 9 night did you know that there was a bullet hole in the
- 10 wall?
- 11 A Yes, sir.
- 12 Q And you showed it to him that night?
- 13 A No, I did not show it to him.
- 14 Q Well then, if you knew there was a bullet hole in the
- 15 wall, you didn't show it to him that night?
- 16 A No, sir.
- 17 Q But you knew it was one there?
- 18 A Yes, sir.
- 19 Q Well, when was the photograph taken?
- 20 A That photograph was taken on that early morning after
- 21 the shooting, May 13th.
- 22 Q By who?
- 23 A By Investigator Lee.
- 24 Q Now I think you told Ms, the assistant solicitor,
- 25 that you were standing near where this bullet hole went in

1 the wall; is that correct?

2 A Yes, sir.

3 Q Show me where you were standing please, ma'am.

4 A I was standing like right in this area near the wall.

5 Q And the bullet went right by you.

6 A Yes, sir.

7 Q Did you hear it come by?

8 A No, sir.

9 Q But after it came by you saw the hole in the wall,
10 know it went somewhere?

11 A No, sir.

12 Q So after Mr. Gamble or after Mr. Davis shot

13 Mr. Gamble and then you said he shot at you, and you were
14 standing there and the bullet missed you and hit the wall.

15 A Yes, sir.

16 Q Do you remember -- do you remember giving a statement
17 to Officer Lee?

18 A Yes, sir.

19 Q Looks like it might have been on the 24th of May at
20 10:20.

21 A Yes, sir.

22 Q I'm going to let you take a look at it. Tell me
23 whether you remember giving him that statement.

24 A Yes, sir.

25 Q Now do you not agree that according to you, on that

1 occasion you indicated to him that Mr. Davis shot
2 Mr. Gamble, you jumped out of the bed and jumped on the
3 floor, and stayed on the floor.

4 A I jumped against the wall.

5 Q You said you stayed on the floor; did you not?

6 A Yes, I did. Well, after I fell -- after I fell to my
7 feet I stayed on the floor.

8 Q You said you stayed on the floor until all the
9 shooting was over. That's what you said; isn't it? Take
10 a look at it.

11 A Yeah, I stated I stayed over to the floor after he
12 took a shot at me I did.

13 Q Oh. After he took a shot at you?

14 A Yes, sir.

15 Q Where did you say that in the statement?

16 A Right here. "Then Heyward Davis turned the bedroom
17 light on and fired one shot at me. But I, Lesley Parish,
18 fell to the floor and stayed there still until I think he
19 was gone about two minutes. Chris Gamble was quiet too."

20 Q Now that would have been after you got out the bed;
21 would it not?

22 A That was after I got out the bed.

23 Q Yes, ma'am.

24 A Yes, sir.

25 Q Now when Mr. Davis shot Mr. Gamble you immediately

1 got out of the bed.

2 A Yes, sir.

3 Q And you didn't go stand up by the wall; but according
4 to you, you jumped on the floor; didn't you?

5 A Jumped to the floor and got up against the wall.

6 Q And -- and according to you you stayed on the floor.

7 A I stayed there still until I think he was gone.

8 Q Well now, how could it be then that you were standing
9 up by the wall and you heard this bullet pass and make
10 this indentation in the wall?

11 A Because that's the wall I was against.

12 Q Well, but then ---

13 A After the shooting I fell to the -- after the trigger
14 was pulled I somehow fell to the floor.

15 Q Now, Ms. Parish. The truth of the matter is, would
16 you not agree Heyward Davis, if he wanted to shoot you,
17 could have popped it to you; couldn't he? If he want --
18 you said you looked in his eyes and -- now I'm just --
19 according to what you say ---

20 MS. BIAGIANTI: Your Honor ---

21 MR. BARR: ---and he was ---

22 MS. BIAGIANTI: I object. State of mind. She can't
23 testify as to what he could have done. He -- he asked if
24 he wanted to could he have shot her.

25 MR. BARR: I can rephrase the question if you want me

1 to.

2 THE COURT: You can look at that at two or three
3 different angles. Go ahead, Counsel.

4 BY MR. BARR:

5 Q Standing right in front of you you said, right?

6 A It's in the door way.

7 Q With a rifle?

8 A Yes, sir.

9 Q You said that he didn't have a key anymore.

10 A No, sir.

11 Q And that whenever he came to your house, in terms of
12 how he got in you had to let him in because he didn't have
13 a key or either you let him in by your daughter's key; is
14 that correct?

15 A I let him in usually when he come. Some occasions,
16 he got there before me. I let him use my key because he
17 didn't have a key of his own. That was Minor 's key.

18 Q Sometimes he got there before you and he had your
19 daughter's key. And when he got through with it he'd put
20 it on the counter so your daughter could get it back
21 because it was hers and you only had three keys.

22 A That's correct.

23 Q Now Ms. Parish, isn't it true that Mr. Davis had his
24 own key?

25 A No, sir.

1 Q How did he get your daughter's key when he came to
2 the house before you got there and he used your daughter's
3 key to get in, then he put it back on the counter after he
4 got through getting it? How did he get it?

5 A I give him the key. I think it was the night before
6 to use.

7 Q So whenever he came to your house and got there
8 before you would get there, the night before you would
9 always give him the key ---

10 A No, it wasn't the night before. It was just that one
11 particular night I gave him the key.

12 Q So then Heyward Davis only used the key, your
13 daughter's key, one time that you remember?

14 A He used the key one time.

15 Q And that's all you remember him using the one time.

16 A Yes, because we always end up at the house the same
17 time. I be there and he come.

18 Q You didn't tell us earlier in here today that there
19 were times when Mr. Davis would come to your house and
20 would get there before you did and he would always use
21 your daughter's key to gain entry into the house? You
22 didn't say that to me?

23 A There was a point that he did use my daughter's key.
24 He didn't have a key of his own. Personally, Heyward did
25 not have a key of his own.

1 Q Well -- now you said he wasn't paying -- in fact, you
2 had a lease that you said the lease is in your name and he
3 was not paying, wasn't paying -- well, is that a lease or
4 an installment agreement? Were you buying the mobile
5 home?

6 A Yes, sir.

7 Q So you really didn't have a lease. You were
8 purchasing the home from Ms. McKenzie?

9 A Yes, sir.

10 Q And you were making monthly installment payments on
11 the -- to purchase the home.

12 A It was like renting to own. I have a lease, sir.

13 Q And -- how about -- how about the land itself that
14 the mobile home was on, was that with the mobile home?
15 Who owned the land?

16 A McKenzie. I was just renting the lot space.

17 Q So then you were paying for the land and the
18 residence ---

19 A Yes, sir.

20 Q ---all together?

21 A Yes, sir.

22 Q Now, isn't it true that Mr. Davis was giving you part
23 of the money to pay for it?

24 A No, sir.

25 Q Wasn't he also paying the light bill, too?

1 A No, sir.

2 Q Well, whenever he gave you money what did you do with
3 it?

4 A Heyward didn't give me money against nothing in my
5 home.

6 Q Ms. Davis -- I mean, Ms. Parish, are you telling the
7 ladies and gentlemen of this jury Heyward Davis never gave
8 you a dime?

9 A No, sir, not towards utility, not towards mortgage,
10 not towards nothing.

11 Q Well, what was the money for? What was it toward?

12 A He wouldn't give me no money.

13 Q Never gave you a penny?

14 A If Heyward spent money it -- maybe he was going to
15 McDonald's or something to get something to eat. As far
16 as paying bills, no, sir.

17 Q I'm talking about putting cash money ---

18 A No, sir.

19 Q ---in your hand.

20 A No, sir.

21 Q Never?

22 A I'm not going to say he never give me money towards
23 but never utility, mortgage, none of that.

24 Q Well, I mean, you can call it whatever you want to
25 call it after you got it. But what I'm saying is you got

1 the money to do with it whatever you wanted to do with it
2 whether you paid the rent, made the house payment or
3 whatever you did with it, paid the light bill, but you got
4 the money though; didn't you?

5 A No, sir, not towards no utility, mortgage, anything
6 like that. If anything, he give money to those kids,
7 McDonalds or something like that; but bills, no, sir.

8 Q So whenever he got ready to buy something maybe he
9 needs for the children he would give the money to you and
10 let you buy it?

11 A No, sir. He give it to them. They was old enough to
12 handle their money.

13 Q So then what -- go -- what happened to the money he
14 gave you?

15 A Heyward didn't give me any money.

16 THE COURT: Solicitor, would you pour that juror some
17 water, please.

18 BY MR. BARR:

19 Q State's Exhibit Number 1, you say this is -- is
20 this -- this is an entrance door into your house?

21 A Yes, sir.

22 Q Is it the front door or the back door?

23 A That's the front door.

24 Q And -- do you know how -- how this -- well, let's
25 see. Looks like somebody scratched some paint off the

1 door. Does it appear that way to you?

2 A That look like a busted case to me. That don't look
3 like scratched paint.

4 Q Look like what now?

5 A That look like ---

6 Q That looks like ---

7 A ---bust -- don't look like no scratched paint.

8 Q Who did that?

9 A Heyward Davis.

10 Q He did?

11 A Yes, sir.

12 Q And you saw him do this?

13 A I didn't see him do it but my door was locked.

14 Q Now you say that you -- that Heyward did it, and I
15 would think that you're saying that because you believe
16 that. Is that correct?

17 A That's how he got in. My door wasn't like that.

18 Q Well, did you see him come in the house?

19 A No, sir.

20 Q Do you know whether he came in with a key or whether
21 he breaked in?

22 A By looking there it look like he break in. I don't
23 know if he had a key or not but that look like a break-in
24 to me.

25 Q Well, you say you don't know if he had a key or not.

1 Now of course, according to you there are only three keys,
2 two for your daughter and one for you. So now you don't
3 know whether or not he had a key, that means that you
4 don't know whether or not he possessed a key if he came in
5 at the time he came in. Now I'll ask you again ---

6 MR. MODICA: Objection, Your Honor.

7 MR. BARR: ---if not ---

8 MS. BIAGIANTI: She needs to give -- Mr. Barr needs
9 to give her an opportunity to answer the question.

10 BY MR. BARR:

11 Q Am I asking the questions too fast for you? I want
12 you to take as much time as you need. Well I'll -- if you
13 look at this door, you say that's the door casing around
14 the door?

15 A Yes, sir.

16 Q And who took this photograph?

17 A Investigator Lee.

18 Q And Investigator Lee, I would assume, took this
19 photograph because you directed him to a point by the door
20 that you considered evidentiary concerning this matter
21 with you and Mr. Davis; is that correct?

22 A No, sir, I didn't point him to it. That just when he
23 was doing his investigation that's how he find out that --
24 he got it -- Mr. Davis got in.

25 Q He investigated and found the bullet hole, you didn't

1 show it to him?

2 A No, sir, I didn't show him the bullet hole.

3 Q He found the bullet hole?

4 A Yes, sir.

5 Q Well, I thought you said earlier that you found the
6 bullet hole and you showed it to him on the wall but the
7 bullet passed you and popped the hole in the wall?

8 A I told him that where I was standing at.

9 Q So you didn't find the bullet hole in the wall,
10 Investigator Lee found it?

11 A Investigator Lee find -- he -- well, after he did his
12 investigation that's when he find it, but I was standing
13 there when the shot was made.

14 Q Well now, Investigator Lee wasn't there during the
15 shooting if the shooting took place as you said and he
16 wouldn't have known whether or not, how the hole got in
17 the wall, whether or not -- how long the hole was there
18 or ---

19 MS. BIAGIANTI: Your Honor, I object ---

20 MR. BARR: ---so he asked you ---

21 MS. BIAGIANTI: He's asking for Investigator Lee's
22 state of mind. These are questions he needs to be
23 asking ---

24 MR. BARR: I'll rephrase the question.

25 THE COURT: Okay.

1 BY MR. BARR:

2 Q The -- well, I'll go into something else. The
3 scraping on this door, how many locks was on the front?

4 A Two. A dead bolt and a regular door knob lock.

5 Q Is there a lock missing from the door?

6 A That's -- yes. The whole casing where the dead bolt
7 lock goes and the door knob lock.

8 Q So now this latch that's showing in this photograph,
9 that was not used to secure your door?

10 A No, that's like a storm door.

11 Q Storm door. So now when you got up the next morning
12 you were missing the whole lock off the door?

13 A Not off the door itself. It just the casing that
14 holds the door together was gone.

15 Q Where is the lock?

16 A The lock is on the door. I don't -- piece -- I guess
17 on the floor.

18 Q On the floor? Well now, you know what I -- that's
19 worried me when I first saw this thing.

20 MS. BIAGIANTI: Your Honor, I object. We don't need
21 his editorial comment to the jury. He's ---

22 MR. BARR: Well, let me -- let me ask you this much.
23 The lock that fell off you said that was on the floor,
24 where are the photograph of the lock that shows how he
25 broke the lock and knocked the lock off? Where are the

1 photograph of the lock? No photograph of the lock.

2 A No.

3 Q Now I just got two or three more questions. You
4 indicated on the direct examination that -- that Mr. Davis
5 came into your house and turned the lights on and ---

6 MS. BIAGIANTI: Your Honor, I object. I don't think
7 that's what she testified to. I think that Mr. Barr is
8 misstating what she testified to.

9 BY MR. BARR:

10 Q Did you say earlier in the courtroom that Howard
11 (sic) Davis on the night the shooting take -- took place
12 he turned your lights on in your house?

13 MS. BIAGIANTI: Your Honor, same objection. Plus
14 it's asked and answered.

15 MR. BARR: Judge I, I'm allowed her to ask her the
16 questions that she ---

17 THE COURT: No, that's specific. It's a little
18 different. Go ahead.

19 BY MR. BARR:

20 Q You did say that?

21 A Yes, I did.

22 Q And then you did say that you -- I believe you called
23 his name, and you asked him a question. Or what was it
24 that you say you ---

25 A No, I said he called my name.

1 Q He called your name?

2 A All this took place in the bedroom.

3 Q He called your name?

4 A Yes, he did.

5 Q And what did he call you, Lesley?

6 A He said Lesley and stopped.

7 Q And you heard him clearly?

8 A Yes, I did. I was looking -- I was looking dead at
9 him.

10 Q And I, you know, and I know that -- I know that you
11 certainly considered -- did you tell Investigator Lee
12 about that, him calling your name?

13 A Excuse me?

14 Q Did you tell Investigator Lee about him calling your
15 name?

16 A Yeah.

17 Q I'm going to direct your attention -- redirect your
18 attention back to this May 24th statement, 2006.

19 MS. BIAGIANTI: Your Honor, can we have that marked
20 for the record for ID, Defense Exhibit for ID.

21 MR. BARR: I don't intend to put it into evidence.

22 MS. BIAGIANTI: I know but just so the record is
23 clear what she's looking at it needs to be marked.

24 THE COURT: Make it a Court Exhibit.

25 MS. BIAGIANTI: Thank you.

1 (Court's Exhibit Number 1 was marked
2 and made a part of the record.)

3 BY MR. BARR:

4 Q Did you give Officer Lee more than one handwritten
5 statement or just one?

6 A I think one.

7 Q And I'm going to show you now what's been marked for
8 identification purposes, Court's Exhibit Number 1 which is
9 the May 24th statement that you gave Officer Lee. And
10 it's just to refresh your memory. And tell me, if you
11 would please, ma'am, would it be fair to say that in that
12 statement you -- you made no reference to Officer Lee to
13 any time Mr. Davis called your name?

14 A Excuse me? I don't understand the question.

15 Q You made no reference in that statement or you didn't
16 say it one time that Heyward Davis called your name. You
17 didn't say that to Mr. -- Investigator Lee, did you?

18 A No, sir.

19 Q Ma'am?

20 A No, sir.

21 Q Now of course, I know Investigator Lee at some point
22 asked you prior to the time that you wrote this statement,
23 who came in your house and did the shooting; is that
24 right?

25 A Yes, sir.

1 Q And it would have been important, would you not
2 agree, to identify the person doing the shooting?

3 A Excuse me?

4 Q It would have been important, would you not agree, to
5 identify the person doing the shooting?

6 A I didn't understand what you said.

7 Q Would not it have been important to properly identify
8 the person who ---

9 A No, sir.

10 Q That wouldn't have been important?

11 A You saying would it not have been important to
12 identify it, is that what you're saying?

13 Q No, I'm not saying in a negative. Would not you
14 agree ---

15 A Yes, sir.

16 Q ---that it would've been important to -- it would
17 have been. And certainly if Heyward called your name, I
18 mean, that would be, I mean, he -- Heyward Davis, he
19 called my name; it was him. So that ordinarily would have
20 been something that would seem that you would want to told
21 the investigator but you didn't tell him about that.

22 A No, sir.

23 Q One last question. Now I know that this has been --
24 this ordeal has been somewhat of an uncomfortable
25 situation for you; is it not?

1 A Yes, sir.

2 Q I mean, you've been caught up in this love triangle.

3 MS. BIAGIANTI: Your Honor, I object to the
4 characterization of a love triangle. I don't think she
5 was married to Mr. Davis.

6 MR. BARR: Your Honor, I'm -- I'm not necessarily
7 referring to marriage. I'm not necessarily referring to
8 marriage.

9 MS. BIAGIANTI: Your Honor, I still object. Love
10 triangle. She wasn't -- she testified she wasn't dating
11 him at the time.

12 THE COURT: All right, I'll overrule the objection.

13 BY MR. BARR:

14 Q Let me ask you another way. When you were still
15 dating Heyward Davis about two weeks before you said this
16 incident occurred, were you still having sexual
17 intercourse with him?

18 A No, sir.

19 Q Prior to the two weeks, were you?

20 A No, sir.

21 Q He was just staying at your house overnight just --
22 and getting up every morning and going off to work and ---

23 A Yes, sir.

24 Q Y'all weren't having sexual intercourse?

25 A Maybe -- maybe before we started having our bad

1 terms but ---

2 Q Before what now?

3 A Not before we start having our disagreement in our
4 relationship.

5 Q When is the last time that y'all ---

6 A Probably -- maybe three weeks before ---

7 Q Oh, three.

8 A ---the break-up.

9 Q Three weeks before the break-up you were still having
10 sex, and the break-up occurred two weeks before the
11 shooting at your house and you were having sex with
12 Mr. Gamble. So now would you not agree that at least you
13 got yourself, Mr. Gamble, and Mr. Davis, both of whom
14 you're having sex with at least within a five week time
15 span. You would agree with that though; would you not?

16 A No, sir.

17 Q All right, well -- now has it presented any kind of
18 problem for you -- well, that's all right. I have nothing
19 further.

20 MS. BIAGIANTI: Briefly, Your Honor.

21 R E D I R E C T E X A M I N A T I O N

22 BY MS. BIAGIANTI:

23 Q Mr. Barr just asked you if you thought it would be
24 important to -- Mr. Barr just asked you if you thought it
25 would be important to identify the person who shot you;

1 correct?

2 A Yes.

3 Q Okay. I'm showing you what's been marked as Court's
4 Exhibit Number 1 which is -- recognize this?

5 A Yes.

6 Q Statement you gave to Investigator Lee?

7 A Yes.

8 Q I just want you to make sure I'm reading this
9 correctly. I look up and Heyward Davis was standing in
10 the door of my bedroom. Is that what it says?

11 A Yes, ma'am.

12 Q Chris Gamble left ---

13 MR. BARR: Your Honor, I object. I don't know if
14 this is impeachment or what it is ---

15 MS. BIAGIANTI: Your Honor, he ---

16 MR. BARR: I used her statement to impeach her
17 because she made a prior inconsistent statement.

18 MS. BIAGIANTI: Your Honor, can we approach?

19 MR. BARR: The Solicitor is now reading from the
20 statement that's not in evidence.

21 MS. BIAGIANTI: I can bring out consistent statements
22 which he tried to impeach her with.

23 MR. MODICA: Can we approach, Your Honor?

24 THE COURT: Sure.

25

1 (WHEREUPON, counsel approached the Bench for an
2 off-the-record discussion.)

3 BY MS. BIAGIANTI:

4 Q I'll continue. And your statement goes on to say,
5 Chris Gamble left up. Is that what your statement says?

6 A Left up.

7 Q That's when Heyward Davis, Jr. fired one shot. That
8 what it says?

9 A Uh-huh.

10 Q Later I learned Chris got hit.

11 A Yes.

12 Q Heyward Davis shot Chris in the dark.

13 A Uh-huh.

14 Q I, Lesley Parish, then ---

15 MR. BARR: Your Honor, I can't -- I can't let this --
16 I still have to object. She is reading the statement
17 verbatim. If she thinks that -- that in my impeachment of
18 her witness that her witness was taken advantage of, then
19 she can use that same statement to clarify anything that
20 she's thought was unknown fairly; but she cannot read the
21 statement, it's not in evidence.

22 MS. BIAGIANTI: Your Honor, this is how you do a
23 prior consistent statement.

24 THE COURT: Okay. Are you through?

25 MS. BIAGIANTI: Two more sentences. Couple more

1 sentences.

2 BY MS. BIAGIANTI:

3 Q "I, Lesley Parish, then jump up and got to the wall
4 in the bedroom. Then Heyward Davis turned the bedroom
5 light on and fired one shot at me but I, Lesley Parish,
6 fell to the floor and stay there still until I think he
7 was gone about two minutes." Is that what your statement
8 says?

9 A Yes, ma'am.

10 Q Okay. Was it an oversight on your part that you
11 forgot to tell Investigator Lee what Mr. Barr was saying
12 about calling -- Mr. Davis calling your name?

13 MR. BARR: Objection. Objection to leading the
14 witness, Your Honor.

15 BY MS. BIAGIANTI:

16 Q Was it an oversight that you forgot to tell
17 Investigator Lee?

18 A Yes, ma'am.

19 Q 'cause you'd just been shot at?

20 A Yes, ma'am.

21 Q Thank you.

22 MS. BIAGIANTI: Nothing further, Judge.

23 THE COURT: All right.

24 MR. BARR: Nothing further, Judge.

25 MS. BIAGIANTI: Can the witness step down, Your.

1 Honor?

2 THE COURT: We need to take a recess too. Let's take
3 about 10 or 12 minutes.

4 (WHEREUPON, the jury was removed from the
5 courtroom at 11:49 a.m., and a recess was taken.)

6 THE COURT: Bring them back in.

7 (WHEREUPON, the jury was returned to the courtroom at
8 approximately 12:05 p.m., and the following
9 proceedings commenced in open court.)

10 THE COURT: All right.

11 MS. BIAGIANTI: Thank you, Your Honor. The State
12 would call Investigator Ed Lee to the stand.

13 WHEREUPON,

14 EDDIE LEE,
15 having been duly sworn by the Deputy Clerk of Court,
16 testified as follows:

17 THE DEPUTY CLERK OF COURT: Please be seated and
18 state your full name for the record.

19 THE WITNESS: Eddie Lee.

20 D I R E C T E X A M I N A T I O N

21 BY MS. BIAGIANTI:

22 Q Good afternoon, Investigator Lee. Can you please
23 tell the jury where you are employed -- where you are
24 employed and how long you've been employed there and what
25 position you currently hold?

1 A Okay. I'm currently working at Andrews Police
2 Department. My job title is a criminal investigator. I
3 was working Shilo (ph) supervisor patrol 14 years. I've
4 been investigator almost approximately five years.

5 Q And as an investigator tell our jury a little bit
6 about what you do.

7 A Basically my job consists of responding to calls. I
8 normally handle general sessions cases in reference to
9 forgery, car theft, murder, homicide, and my other job is
10 to go -- go to a crime scene. First thing is to process
11 the crime scene. That consists of taking photograph,
12 collecting evidence, talking to witnesses and either
13 potential witnesses.

14 Q Investigator Lee, directing your attention to May
15 13th of 2006 approximately 1:45 a.m., did you have a
16 attempt to respond to Ms. Parish's residence?

17 A Yes. I was called by the chief of police officer to
18 respond to that location.

19 Q And you had a chance to process the crime scene ---

20 A Yes.

21 Q ---at that residence in Andrews?

22 A Yes, sir -- yes, ma'am.

23 Q We're going to get to that in a minute. I'm going to
24 skip forward a little bit into that morning. About 9:00
25 a.m. May 13th, 2006, did you receive a phone call?

1 A Yes, I did.

2 Q And who did that person say they were?

3 A He identified himself as Heyward Davis, Jr.

4 Q And did you recognize his voice?

5 A Yes, ma'am. Yes, I did.

6 Q And how did you recognize his voice?

7 A I know Mr. Heyward, Mr. Heyward Davis.

8 Q Personally?

9 A I wouldn't say personally but I know of him and
10 his -- where he stays at down in Sanford section area.

11 Q And you heard his voice before?

12 A Yes, ma'am. I talked to him I think about three or
13 four weeks earlier. My son father-in-law had died and
14 Mr. Heyward was at the setting up and I was actually
15 cooking a perlo. And we was actually closer to me and you
16 talking.

17 Q How long did you talk to him that day?

18 A Probably about an hour and a half, two hours, one.

19 Q And when you got this phone call what did the
20 defendant tell you?

21 A He identified himself as Heyward Davis. He said that
22 he wanted to turn himself in to me and he wanted me to
23 come pick him up at his residence.

24 Q What did you tell him?

25 A I tell him okay. I told him, I said, you're not

1 going to try anything and he tell me no. I said, well,
2 I'll be down there shortly.

3 Q And you said come pick him up at his residence,
4 that's what he told you?

5 A Uh-huh, yes, ma'am.

6 Q Did he give you his address?

7 A I think -- I think he did.

8 Q Where is that?

9 A That's off of Columbus Road in the Georgetown County,
10 Sanford section.

11 Q Okay. And did you respond to ?

12 A Yes, ma'am.

13 Q Sanford. Tell our jury what it looked like when you
14 got to that address in Sanford.

15 A When I arrived at the resident probably about 10 or
16 15 minutes later he was standing in the yard. I don't
17 know the name of other subject, the one that he was
18 standing with him and I approached him.

19 Q What did you tell him?

20 A I told him I needed him to turn around for me. I
21 needed to put the handcuffs on him.

22 Q Why did you tell him that?

23 A That's basically for officer safety.

24 Q And when -- did you put the front -- handcuffs in the
25 front or the back?

- 1 A In the back.
- 2 Q And what did you do with Mr. Davis?
- 3 A I put him in the -- in the front seat of my vehicle.
- 4 Q Why did you put him in the front seat?
- 5 A I don't have a cage. I have a marked unit, unmarked
- 6 unit Explorer.
- 7 Q And once you got into your vehicle where were you
- 8 going back to?
- 9 A Going back to Andrews.
- 10 Q And did -- at some point you asked Mr. Davis a
- 11 question.
- 12 A Yes, I asked him -- my main concern, I asked him,
- 13 where was the gun.
- 14 Q Why did you ask him that?
- 15 A I was concerned about the gun. I was expecting the
- 16 gun that he just got the gun someplace, and I got
- 17 concerned about maybe some kids might pick the gun up.
- 18 Q And you said you suspected that?
- 19 A Yes, ma'am.
- 20 Q Based on your experience as a police officer?
- 21 A Yes, ma'am.
- 22 Q Before asking him that question did you give him
- 23 Miranda?
- 24 A No, ma'am, I didn't.
- 25 Q And why did you not do that?

1 A Well, the reason why I didn't give him Miranda
2 because the number one thing is, well, I was -- I was
3 outside of my jurisdiction. And like I said, the second
4 part was, I wanted to actually before I start asking him
5 any questions before I go any part about whether he
6 participated in this crime I want to give him -- give him
7 his Miranda warning once I go to Andrews Police
8 Department.

9 Q Well, tell us why you did not ask him about -- did
10 not ask him or tell him his Miranda warning but asked him
11 about the gun that you alluded to it before?

12 A Okay, because I didn't went in no direct questioning
13 to him as to whether he was involved with it or not.
14 That's why I didn't give him his Miranda warning.

15 Q But you were concerned about the gun?

16 A I was actually really concerned about the gun, some
17 kid getting a hold to the gun.

18 Q And what did he tell you once you asked him that
19 question?

20 A Once we get in Andrews we was on 521 ---

21 Q Prior to getting to Andrews did he tell you -- once
22 you asked him where was the gun, did he answer?

23 A Yes, he tell me.

24 Q What did he tell you?

25 A He said that -- that the gun was on a street a block

1 away from where the incident location take place which
2 is -- would be Cherry Street.

3 Q And you drove to Andrews?

4 A Yes, ma'am.

5 Q And did you drive to Cherry Street?

6 A Yes, ma'am.

7 Q What happened once you got to Cherry Street?

8 A Once we got in Cherry Street I had him handcuffed in
9 the back and I asked him where at, he nodded his head. He
10 said go further back, go further back.

11 Q You were still in the car?

12 A Yes, ma'am. And we stopped, me and him both exited
13 the vehicle. He was walking in front of me and he nodded
14 with his head where the gun was at. The gun was on the
15 right-hand side of the road down in some grass.

16 Q And you pulled off to the side of the road?

17 A Yes, ma'am.

18 Q Based on what he told you?

19 A What he tell me.

20 Q And both of you got out?

21 A Yes, ma'am.

22 Q And how did he tell you where the gun was?

23 A He basically nodded with his head because, you know,
24 he had his hands behind his back. He said just go up,
25 walk up, walk up, and pointed -- he basically pointed with

1 his head and the gun was over there to the right. It was
2 clearly visible where you could see it, down in between
3 some grass.

4 Q Once you saw the weapon what did you do?

5 A I went and secured it.

6 Q Put it in your patrol car?

7 A Yes, ma'am.

8 MS. BIAGIANTI: Your Honor, just for the record so
9 it's clear, Mr. Modica, the other solicitor is taking the
10 gun out of the box which is marked State's Number, excuse
11 me, 8 -- 8-A.

12 BY MS. BIAGIANTI:

13 Q Do you recognize what Assistant Solicitor Modica is
14 showing you marked as State's Exhibit number 8-B?

15 A Yes, I do.

16 Q And how do you recognize it?

17 A I recognize by the color of the gun, the scope, and
18 the scrap (sic) on it.

19 MS. BIAGIANTI: Your Honor, just for the jury's
20 clarification the gun has been rendered safe by the
21 Sheriff's Department and it's cleared.

22 BY MS. BIAGIANTI:

23 Q What did you recognize it as?

24 A It's a 30.30 rifle.

25 Q And this is the gun that you recovered that day where

1 Heyward Davis, the defendant, told you it was?

2 A Yes, ma'am.

3 Q Thank you. Now I neglected to ask you but, is there
4 any type of accessory on the gun?

5 A The only accessory would be the scrap and the scope.

6 Q The strap and the scope. Thank you. And after ---
7 (WHEREUPON, State Exhibit No. 11-A was marked for
8 identification only.)

9 BY MS. BIAGIANTI:

10 Q Investigator Lee, moving backwards, when you first
11 processed the crime scene in the early morning hours of
12 May 13, 2006, did you have occasion to look at
13 Ms. Parish's house?

14 A Yes, I did.

15 Q And tell us what you did in -- in regards to
16 processing the crime scene.

17 A Basically what I did is when I arrived on the scene I
18 got assisted with Chief Willie Sparkman and you can
19 clearly see the front door to the side where it was
20 forceable entry into the residence by ---

21 Q I'm showing you -- I'm sorry to interrupt you.
22 State's Exhibit Number 1 that's already in evidence.

23 A Yes, ma'am.

24 Q Do you recognize that?

25 A Yes, ma'am.

1 Q What is that?

2 A That is the framing of the door separated from the
3 trailer itself.

4 Q Of whose house?

5 A Ms. Lesley Parish.

6 Q Is this the way the door was when you responded that
7 morning?

8 A Yes, ma'am.

9 Q And based on your experience as a police officer, how
10 was this door opened?

11 A By force.

12 Q Thank you. I'm sorry, continue telling our jury what
13 else you did processing the scene.

14 A Processed the scene, I took several photograph :
15 according to where I also found a shell casing in the
16 bedroom where the incident took place. Also was a bullet
17 hole in the wall to the area where Ms. Lesley Parish say
18 she was in, position she was at.

19 Q States' Exhibit Number 2 already in evidence, do you
20 recognize this?

21 A Yes.

22 Q And what did that show?

23 A That shows where the bedroom where the incident took
24 place around where Mr. Chris Gamble was at and what
25 appeared to be blood, a lot of blood.

1 Q And ---

2 A Go ahead.

3 Q I'm sorry, continue.

4 A There also was a T-shirt that EMS -- EMS person had
5 to cut off Mr. -- to render him medical treatment.

6 Q And is this the way the scene was when you responded
7 that morning?

8 A Yes, ma'am.

9 Q State's Exhibit Number 3, already in evidence, do you
10 recognize what that is?

11 A Yes, ma'am.

12 Q What is that?

13 A That's the bedroom at Ms. Lesley Brown resident.

14 Q Similar to what Exhibit Number 2 is.

15 A Yes, ma'am.

16 Q Showing you State's Number 3 and 4 together, also
17 already in evidence, what do those pictures depict?

18 A Consistency in both of them. This right here is over
19 there near the wall over there.

20 Q And just so the record is clear, you pointed to
21 State's Exhibit Number 4 ---

22 A Yes, ma'am.

23 Q ---being a blown-up version of what's on State's
24 Exhibit Number 3?

25 A Yes, ma'am.

1 Q And how did you -- how did you -- what is that
2 actually?

3 A From what I can tell it's appeared to be a bullet
4 hole.

5 Q And how did you find that?

6 A Well, I find that through the Chief Willie Sparkman
7 was helping me process the crime scene, and he showed it
8 to me, brought it to my attention. I took a photograph of
9 it.

10 Q And where was Ms. Parish at this time?

11 A She was all the way up in the front. She was never
12 back there when I was processing the crime scene.

13 Q So you found this on your own?

14 A Yes, ma'am, with assistance from Chief Willie
15 Sparkman.

16 Q State's Exhibit Number 6, already in evidence, do you
17 recognize what that is?

18 A Yes, ma'am.

19 Q What is that?

20 A It's a shell casing in the bedroom where the incident
21 took place. It's more closer to the entry door into the
22 bedroom.

23 Q And is that the way you found it ---

24 A Yes, ma'am.

25 Q ---when you responded to the scene?

1 A Yes, ma'am. What I did is, took a photograph of it
2 before we moved it from the location into possession.

3 Q Now I'm going to show you what's marked as -- now let
4 me jump back briefly for a second. State's Exhibit Number
5 1 I believe is the door, the front door to Ms. Lesley's
6 home. Mr. Barr was asking Ms. Parish about the bolts or
7 the -- whatever is on the frame, whatever you call that
8 piece that's on the frame. Tell our jury a little bit
9 about that.

10 A Basically what -- what you can see of the picture
11 right here, you got chipped paint but it's very obvious
12 you can tell that some type of force was used to pry away
13 the framework ---

14 MR. BARR: Judge, Judge, objection. I object. This
15 witness is absolutely incompetent to give the testimony.
16 Unless he's there and observed that, he's giving his
17 opinion now and his -- and he does not have the expertise
18 to give his opinion concerning how the door was opened.

19 MS. BIAGIANTI: Your Honor, I believe this officer as
20 a officer for 18 years is duly testified to -- qualified
21 to tell the jury that based upon his experience force was
22 used. That's the way the door was when he responded to
23 the scene.

24 MR. BARR: Your Honor ---

25 THE COURT: I don't want him getting into any unless

1 you can show qualified with tool markings or anything like
2 that. There's experience is certainly can testify to and
3 some he can't. So let's just stop that right now and you
4 pose the next question and keep it in line with what I
5 just said.

6 MS. BIAGIANTI: Yes, sir.

7 BY MS. BIAGIANTI:

8 Q Based upon your experience as a police officer was
9 force used to open that door?

10 A Yes.

11 Q And is -- based on looking at the door and the other
12 components of the door was something missing from the
13 frame?

14 A Yeah. It's appear to be a lock missing from it from
15 what I can tell.

16 Q Thank you. I'm showing you what's been marked as
17 State's Exhibit Number 11 for ID. I'm about to open it
18 now. 11-B.

19 (WHEREUPON, State Exhibit No. 11-B was marked for
20 identification only.)

21 BY MS. BIAGIANTI:

22 Q I'm showing you what's been marked as 11-B for I.D.
23 coming out of 11-A. Do you recognize what this is?

24 A Yes.

25 Q And how do you recognize it?

1 A There are two shell casings. And I did the
2 information on the top of the reference for evidence.

3 Q That's your hand-writing as you ---

4 A That's my hand-writing. Yes, ma'am.

5 Q Where was this -- tell the jury where these two
6 casings were, where they were collected from?

7 A Okay. One of them came out the residence. The other
8 one came out the gun, 30.30 Winchester rifle.

9 Q Now you say out the residence. Is that -- is that
10 what is depicted in State's Number 6?

11 A Yes, it is.

12 Q Okay. And the other casing, where did that come out
13 of?

14 A Out of the rifle.

15 Q And when did you discover that it came out of the
16 rifle?

17 A When Mr. Heyward Davis showed me where the rifle was,
18 and I checked it to make sure there was no live round in
19 it and found the shell in the chamber.

20 MS. BIAGIANTI: Your Honor, at this time I would ask
21 that State's Exhibit Number 11-A and B be admitted into
22 evidence, the two shell casings.

23 MR. BARR: No objection.

24 MS. BIAGIANTI: Thank you.

25

1 (WHEREUPON, State's Exhibits Nos. 11-A and 11-B were
2 admitted into evidence.)

3 BY MS. BIAGIANTI:

4 Q Investigator Lee, did you -- I'm now showing you
5 what's already in evidence State's Exhibit Number 10.

6 A Yes, ma'am.

7 Q Do you recognize what this is?

8 A Yes, ma'am.

9 Q Is this your hand-writing on the outside the bag?

10 A Yes, ma'am.

11 Q And do you recognize what this box is?

12 A Yes, ma'am.

13 Q How do you recognize it?

14 A I recognize it by the hand-writing that says evidence
15 box.

16 Q Your hand-writing?

17 A My hand-writing.

18 Q I'm not going to handle it but do you recognize
19 what's in the box?

20 A Yes, ma'am.

21 Q Number 10, what is that?

22 A That's a part of a bullet that was discharged.

23 Q And how did you get this?

24 A I got possession of it from Ms. Joyce Robinson, the
25 victim advocate.

1 Q And this is the bullet that Ms. Parish referred to
2 that she found in the pillow?

3 A Yes, ma'am.

4 Q Did you take State's Exhibit Number 10, State's
5 Exhibit Number 8-A and 8-B, which is the rifle and 8-A
6 with the box, as well as State's 11-A and -B, the casings,
7 to SLED?

8 A Yes, I did.

9 Q And at another point in time did you go back to SLED
10 to pick them up?

11 A Yes, ma'am.

12 Q Thank you. Please answer any questions Mr. Barr has.

13 C R O S S - E X A M I N A T I O N

14 BY MR. BARR:

15 Q Investigator Lee.

16 A Yes, sir.

17 Q You -- prior to May 13th, 2006 did you have an
18 occasion to go to Ms. Parish's residence?

19 A No, sir.

20 Q And would it be fair to say that inasmuch as you've
21 never been to the residence you certainly did not know at
22 that time anything about the situation or the condition of
23 any of the doors entering her residence?

24 A Yes, sir. No, sir, I didn't.

25 Q Now, I'm going to direct -- or redirect your

1 attention back to State's Exhibit Number 1.. Now you
2 testified a few minutes ago that in your opinion entry had
3 been gained to Ms. Parish's residence by force?

4 A Yes, sir.

5 Q And would you consider the damage to this casing in
6 this door, is that the basis for which you conclude or you
7 have opined that the door was open by force?

8 A Yes, sir.

9 Q Now if you would please, sir, can you look at the
10 damage to this door and tell me whether or not it was done
11 before or after the door was open?

12 A I can't tell you that, Mr. Barr. The only way I can
13 answer the question is be honest with you just tell you it
14 was forced to use -- it was force on the door.

15 Q The only way you can answer that question is that you
16 were there when the damage was done?

17 A No, sir, I'm not saying that. I'm just saying this
18 was there when I got to the scene.

19 Q I see. It was there when you got to the scene, and
20 the fact of the matter is you don't know how it got there,
21 do you?

22 A No, sir. The question was asked me does it look like
23 force and that's what it look like is force.

24 Q Well, I'm going to ask you now, do you know how it
25 got there?

1 A No, sir, I don't.

2 Q Do you know whether or not it was placed there after
3 or before the door was open if in fact it was open?

4 A No, sir, I do not.

5 Q Do you know whether or not the condition of that door
6 as reflected in that photograph had anything to do with
7 the opening or the closing of the door?

8 A No, sir, I don't.

9 Q Now, of course you believe that there was a lock,
10 bolt lock on this door?

11 A Yes, sir.

12 Q Did you find one anywhere?

13 A No, sir, I didn't find one.

14 Q If you had found one you would have taken a
15 photograph?

16 A Taken a photograph of it and put it in my report.

17 Q Now are -- ordinarily, in terms of your training, you
18 indicated that you secured the scene when you arrived at
19 Ms. Parish's house; is that correct?

20 A Say that again, Mr. Barr.

21 Q You indicated that you secured the scene when you
22 arrived at Ms. Parish's house?

23 A I don't recall saying that, Mr. Barr.

24 Q Well, did you secure the scene?

25 A Yes, sir, I did.

1 Q And would you agree that the purpose of securing the
2 scene is to make sure it's not tampered with?

3 A Yes, sir.

4 Q Now of course, at the time that you arrived were
5 there any other persons present at the scene?

6 A Yes, sir.

7 Q And who was there?

8 A Chief Sparkman, Officer Nettles, Officer Nesmith, and
9 Ms. Lesley and her mother and father.

10 Q Do you know whether or not the scene had been
11 tampered with prior to the time you got there?

12 A No, sir, I didn't, Mr. Barr.

13 Q Did you put up any kind of tape or anything to cordon
14 off the area or -- when you say you secured it, what did
15 you do to secure the scene?

16 A This situation happened inside the residence, not
17 outside the residence.

18 Q What did you do to secure the scene? You said
19 you ---

20 A Kept everybody out the area where we was
21 processing ---

22 Q You did what now?

23 A We kept everybody out the area where we was while we
24 was processing the crime scene. You just got a hallway, a
25 little small hallway going back to the incident location.

1 We just kept everybody out there while me and the Chief
2 processed the crime scene.

3 Q So you stood there and you stood guard to make sure
4 that nobody interfered with anything?

5 A No, sir. I had the two officers assisting me along
6 with the Chief while I was processing the crime scene
7 where nobody can enter back into that area.

8 Q But what happened to the lock?

9 A Mr. Barr, I can't answer that. I don't know what
10 happened to that lock.

11 Q Now how long you say you've been an investigator?

12 A Almost approximately about four-and-a-half, five
13 years.

14 Q And have you ever investigated a burglary before?

15 A A whole bunch of them, Mr. Barr.

16 Q I see. And when you go to a crime scene, ordinarily,
17 and with an opinion such as yours in this particular case,
18 do you not agree that it would have been of some concern
19 to you that there is no lock?

20 A I didn't see a lock, Mr. Barr.

21 Q Well, now of course, if you were going to do a
22 thorough investigation it would certainly seem that a --
23 that -- a lock might have been something you might have
24 looked for?

25 A Yes, sir.

1 Q And inasmuch as you arrived at the scene after having
2 been called by either Ms. Parish or by somebody, a good
3 investigator such as yourself would certainly inquire about
4 the lock.

5 A Mr. Barr, the only thing I can tell you is, I did a
6 thorough job; I did a professional job. I looked around
7 the area where the door was at. I checked the room. I
8 checked all the rooms to make sure I didn't lose sight of
9 anything. I did the best I could do. The only thing I
10 can tell you I didn't see a lock. I looked for a lock.
11 You didn't ask me whether I looked for a lock. I didn't
12 see a lock.

13 Q But now you would have -- you would have been
14 concerned about the whereabouts of the lock; would you
15 not?

16 A I would say so, yes, sir.

17 Q Now, and if you were concerned then it would seem to
18 me that one of the likely persons that you would have
19 asked would have been Ms. Parish?

20 A Yes, sir, I ---

21 Q Did you ask her?

22 A No, sir, I sure didn't.

23 Q Then you weren't concerned about it.

24 A I wouldn't put it that way. I'm always concerned,
25 Mr. Barr.

1 Q Well, if you were concerned you would have asked.
2 You can't have it both ways. Either you were concerned or
3 you weren't concerned. You said you didn't ask. Who did
4 you ask?

5 A I didn't ask anybody where it was at, Mr. Barr.

6 Q So you didn't look for it?

7 A I did look for it. I made an effort but I didn't see
8 a lock.

9 Q Where did you go looking for the lock?

10 A Inside the residence on the outside of the step. Go
11 up in that -- in the house. It was dark that night any
12 way.

13 Q Wait a minute, you didn't put the lock anywhere so
14 you would have known where it was tucked away in the house
15 or was tucked away. So you wouldn't even know where to --
16 where to -- where to look for the lock. Why were you
17 looking for something that you didn't even know where it
18 was?

19 A I made the effort, Mr. Barr, to look for it.

20 Q Made the effort?

21 A Yes, sir.

22 Q So if you made the effort then it would seem to me
23 that it must have struck you as being somewhat unusual
24 that somebody would go to all of that trouble to -- to
25 dislodge the door and somehow the lock just disappeared.

1 I know you were worried about that.

2 A Mr. Barr ---

3 MS. BIAGIANTI: Your Honor, object.

4 THE WITNESS: --- I didn't see any.

5 MS. BIAGIANTI: Your Honor, I object. I know you
6 were worried about that, I don't know if that's a
7 question.

8 BY MR. BARR:

9 Q Well, I'll ask then, were you worried about it?

10 A Yes, sir, but I didn't see it, Mr. Barr. That's the
11 only thing I can tell you. You asked me a question. I'm
12 being honest with you.

13 Q Well, now you claim that Mr -- or at least you
14 believe that Mr. Davis broke the lock off. Did you ask
15 him where the lock is?

16 A No, sir, I sure didn't.

17 Q The bullet hole, State's Exhibit Number 1, Number 4,
18 I'm given to believe now that -- that you -- you did not
19 find this bullet hole but you said that Officer Sparkman
20 found it and showed it to you?

21 A Yes, sir.

22 Q Now is that a bullet hole?

23 A That what it appears to be, Mr. Barr.

24 Q Do you think that perhaps it would be more correct if
25 I were to say that it appears to be a hole?

1 A You can make that assumption but I'm not going to
2 make it.

3 Q Well, did you see a bullet make this hole?

4 A No, sir.

5 Q And you -- you -- you did have the assistance of
6 SLED, South Carolina Law Enforcement Division, during
7 this?

8 A Not in reference to processing the crime scene I
9 didn't.

10 Q Well, I mean, in terms of getting technology would
11 you not agree that in -- in -- in many instances as far as
12 forensic evidence, these things -- and you're not
13 qualified to conduct any forensic test to determine the
14 results such as whether or not a bullet made this hole,
15 are you?

16 A No, sir, I'm sure not.

17 Q And quite frankly, the technology very well existed.
18 If you really wanted to know if this was a bullet hole you
19 could have found out very easily; couldn't you?

20 A Yes, sir.

21 Q But you didn't do that, did you?

22 A I'll do it the next time. You teach me to be an
23 investigator, go ahead.

24 Q Well, I'm just trying to do my job. Now, I'll ask
25 you again. With respect to this hole, if in fact it were

1 a bullet hole or if a bullet hadn't made the hole, you
2 could have found that out.

3 A Yeah, I could have cut -- cut -- cut that out and ---

4 Q And take it to SLED.

5 A And send it to SLED in reference of gunpowder
6 residue.

7 Q And they would have been able to tell you just like
8 that.

9 A Yes, sir, they sure would.

10 Q Now you come to Court and you got to say I don't
11 know.

12 A Yeah. You don't want me to lie, do you?

13 Q I sure don't.

14 A You know what purgery is, giving false information.

15 Q I -- I've been practicing law 29 years. I know
16 exactly what it is.

17 A I know what it is. I know the consequences of it,
18 too, so I'm going to tell the truth.

19 Q Yeah. Now of course Officer Sparkman, he's not here.
20 And he discovered and based on what you know about this
21 whole investigation I think the evidence was probably in
22 your custody; would you not agree?

23 MS. BIAGIANTI: Your Honor, I object. Form of the
24 question.

25 THE COURT: That's a wide open question.

1 MR. BARR: Well, let me ask it another way.

2 BY MR. BARR:

3 Q You don't have any -- or you didn't take a sample to
4 SLED, you've indicated that. So Officer Sparkman, as far
5 as you know, would not have known what -- how this hole
6 was made either?

7 A Well, let me answer it this way and tell you. That
8 information, it was relayed to us from Ms. Lesley Parish
9 as to where she was and where Mr. Heyward shot at her.
10 That's where the hole was at, close to where she was at.

11 Q I see. So Ms. Parish did bring your attention to
12 this hole in the wall?

13 A No, Mr. Barr, you're misunderstanding.

14 Q I don't want to misunderstand.

15 A I need you to listen to me now.

16 Q I'll listen to you.

17 A She told us that in her statement that he shot Chris
18 and shot at her when she was on the other side of him.
19 That's in perpendicular to where the hole was at, where
20 Ms. Lesley Parish was at.

21 Q Well now, if I'm not mistaken she told you that
22 she -- that she -- that she jumped out of the bed and got
23 on the floor; did she not?

24 A Only thing I can tell you is what she tell me and
25 what she said in her statement. The hole is in the wall

1 where she was at.

2 Q Listen to -- listen, listen to my question. Now, do
3 you know horizontally or vertically -- which is it?
4 Vertically. How far is this hole from the floor upward on
5 the wall?

6 A Mr. Barr, I don't have the expertise to answer that
7 question for you.

8 Q Well, all you had to do was measure it. You don't
9 need a whole lot of expertise for that.

10 A I'm being honest with you; I didn't measure it.

11 Q Something else you didn't do?

12 A Where what?

13 Q You'll do the next time?

14 A Yes, sir.

15 MS. BIAGIANTI: Your Honor -- he'll do it next time?

16 THE WITNESS: Yeah.

17 MS. BIAGIANTI: I object.

18 BY MR. BARR:

19 Q You -- in hindsight, you probably shouldn't have done
20 it; shouldn't you?

21 A Yes, sir, I agree with you. Yes, sir.

22 Q So -- so -- so now, it -- would it be your testimony
23 today that with respect to the distance between the floor
24 and this hole you really can't tell us exactly what that
25 distance is?

1 A No, sir, sure can't.

2 Q So then even if it were a bullet hole, which you
3 don't know -- well no, I'm not going to ask you that. Now
4 you said something earlier to Ms -- the Assistant
5 Solicitor Ms. Dorie, about you being out of your
6 jurisdiction. What did you mean by that?

7 A Answer you a truthful question whenever Mr.
8 Heyward ---

9 Q Truthful please.

10 A We answer always, Mr. Barr. When Mr. Heyward called
11 me that morning, Heyward Davis called me, he told me where
12 he was at. The Sanford area is outside of my
13 jurisdiction. Let me -- I'm going to answer your
14 question. Let me reiterate this.

15 Q So that's in the county?

16 A That's in the county. Let me re -- you want me to
17 answer the question now?

18 Q Yes, sir, sure do.

19 A He made the contact with me; I didn't call him. He
20 called me. I went down and tell him where he was and he
21 said he was ready to turn hisself in. That's how I made
22 the -- he made the contact with me.

23 Q Now of course you -- you -- you claim that it was his
24 voice that you spoke with on the telephone.

25 A No, sir, I didn't claim it; that was his voice.

1 Q Well, I mean, you know, that's what you say.

2 A Yes, sir.

3 Q We've got your word for it. You know, that's all
4 we've got. You knew you were going out of your
5 jurisdiction?

6 A Yes, sir.

7 Q And when you say out of your jurisdiction that
8 means ---

9 MS. BIAGIANTI: Judge, I object, asked and answered.
10 Three or four times.

11 MR. BARR: I only asked it one time.

12 MS. BIAGIANTI: Well still, asked and answered.

13 BY MR. BARR:

14 Q You had no authority where you went.

15 A Yes, sir. No, sir.

16 Q No authority.

17 A No, sir.

18 Q Now of course you were still in Georgetown County or
19 were you in Williamsburg County?

20 A Georgetown County, Mr. Barr.

21 Q Georgetown County. You could have easily picked up a
22 telephone, called the Sheriff's Department, gotten a
23 Williamsburg deputy to assist you.

24 A Uh-huh.

25 Q So really, you didn't have -- you didn't have any

1 authority to go and arrest Mr. Davis for anything,
2 considering where he was.

3 A You want me to answer that?

4 Q Yeah, that's a question.

5 A Well, like I -- I'm going to reiterate what I said.

6 Q You don't have any territorial authority, do you?

7 MS. BIAGIANTI: Judge, can he answer the question?

8 THE COURT: Go ahead.

9 THE WITNESS: Like I said, he made the initial
10 contact with me, told me he wanted me to come pick him up.
11 He also told me that he was not going to turn himself in
12 to the Sheriff's Department; that he thought they was
13 going to do something to him.

14 BY MR. BARR:

15 Q So then you decide to take it on your own and go
16 someplace where you ain't had no business going.

17 A He called me, Mr. Barr; I didn't call him. He called
18 me, said he wanted to turn himself in. I didn't call him.

19 Q Now if I'm not mistaken Georgetown County Sheriff's
20 Department has jurisdiction throughout the county of
21 Georgetown; don't they?

22 A Yes, sir.

23 MS. BIAGIANTI: Judge, can we approach? I think we
24 have a matter of law.

25 THE COURT: Sure.

1 (WHEREUPON, counsel approached the Bench for an
2 off-the-record discussion.)

3 MR. BARR: Officer Lee, I have no further questions.
4 Nothing further.

5 MS. BIAGIANTI: Nothing further. Can this witness be
6 excused? Do you want to approach and talk about
7 scheduling, or break?

8 THE COURT: Well, about an hour and 15 minutes suit
9 everybody?

10 MS. BIAGIANTI: Yes, sir.

11 THE COURT: Is that enough? We'll be back at 2:00.
12 Y'all enjoy lunch. Everybody remain seated while the jury
13 departs. Wait just a minute, there's something I forgot.
14 I'm glad I thought about it. Avoid any press reading and
15 local press, listening to any local news until this case
16 is over. You can read after the case is over. This is
17 not going to take a tremendous amount of time. I'm not
18 saying you can't watch the national news; that's fine.
19 But just during this trial let's avoid any press coverage.
20 Like I said, don't let anybody communicate with you about
21 the case. You got to decide the case based on what's
22 before you in the courtroom, not by what somebody else
23 says. See you at 2:00.

24 (WHEREUPON, the jury was removed from the
25 courtroom at 12:47 p.m., and the following proceedings

1 commenced in open court.)

2 THE COURT: All right.

3 MR. BARR: Your Honor, we would at this time
4 respectfully move for the record for mistrial. It would
5 be the Defense's contention that in view of the officer's
6 present testimony concerning his authority or the
7 authority that he had at the time that he actually made
8 the arrest which goes back to the issue of the -- his
9 seizing the gun, his having obtained statements from the
10 defendant. It would be the Defense's position that --
11 that -- that the -- that the defendant would be entitled
12 to a new trial based on the officer's testimony at this
13 point so we would respectfully move for a new trial.

14 THE COURT: All right. I'll have to deny that.

15 MR. BARR: Sir?

16 THE COURT: I'll have to deny that motion.

17 MR. BARR: Or mistrial.

18 THE COURT: Mistrial. I'll have to deny. You know,
19 the officer testified to the background of it. It's quite
20 common practice. Quite often people turn themselves in to
21 law enforcement officers that they may know or may not,
22 you know, be in the specific jurisdiction. And on that
23 information or the testimony already developed about the
24 brother and the Sheriff's Department, I see no reason to
25 step in on that. But so noted.

1 MS. BIAGIANTI: Thank you.

2 MR. BARR: Thank you, Judge.

3 (WHEREUPON, a lunch break was taken and court resumed
4 at 2:18 p.m.)

5 THE COURT: All right.

6 MR. BARR: Your Honor, I would request that the
7 defendant be advised of his rights not to or to take the
8 witness stand at this time.

9 THE COURT: All right. I will -- you got another
10 witness?

11 MS. BIAGIANTI: Sir? Yes, sir, we have one more
12 witness.

13 THE COURT: Let me cover that with him a few minutes.
14 Let me get my sheet on that. I want to make sure I don't
15 leave anything out. It's very important.

16 (WHEREUPON, the jury was returned to the courtroom at
17 approximately 2:19 p.m., and the following
18 proceedings commenced in open court.)

19 MS. BIAGIANTI: State would call Suzann Cromer to the
20 stand.

21 WHEREUPON,

22 SUZANN CROMER,

23 having been duly sworn by the Deputy Clerk of Court,
24 testified as follows:

25 THE DEPUTY CLERK OF COURT: Please be seated and

1 state your name for the record.

2 THE WITNESS: My name is Suzann Cromer.

3 BY MS. BIAGIANTI:

4 Q Good afternoon, Ms. Cromer.

5 A Good afternoon.

6 Q Can you please tell the jury where you are employed,
7 in what capacity, and for how long you've been so
8 employed?

9 A I'm employed by the South Carolina Law Enforcement
10 Division commonly referred to as SLED as a firearm and
11 tool mark examiner. I've been there a little over
12 nine-and-a-half years.

13 Q And explain to the jury a little bit about your
14 background education and experience.

15 A I have a Bachelor's Degree from Clemson University.
16 I did some post-graduate work at the University of South
17 Carolina. I completed the Criminal Justice Academy, or
18 Police Academy. I've also completed SLED's in-house
19 training for firearms examiners. It's about three to five
20 years of study under six court qualified firearms
21 examiners taking multiple tests. I've also been to
22 numerous seminars on pathology of gunshot wounds, those
23 type of things. I'm a member of the South Carolina
24 Chapter of the International Association for
25 Identification, and I'm also a member of the Association

1 of Firearms and Tool Mark Examiners.

2 Q And have you been qualified as an expert in firearms
3 and tool marking identification before?

4 A Yes, I have.

5 Q In the courts of South Carolina?

6 A Yes, I have.

7 Q And how many times have you been qualified as such an
8 expert?

9 A Three times in Fed -- in state court and once in
10 federal court.

11 MS. BIAGIANTI: Your Honor, at this time I would
12 offer Ms. Cromer as an expert in firearms, as a firearms
13 examiner and tool mark examiner.

14 THE COURT: So qualified.

15 MS. BIAGIANTI: Thank you, Your Honor.

16 BY MS. BIAGIANTI:

17 Q Directing your attention to why you are here today, I
18 believe it's your lab number 06-07242; is that correct?

19 A Yes, ma'am.

20 Q Tell us a little bit about how you got involved in
21 this case.

22 A I received a gun, two fired cartridge cases, and a
23 bullet for examination. And what I do primarily is I
24 examine fired and unfired ammunition components: Bullets,
25 cartridge cases, shotgun shells, back to a specific

1 firearm to see whether they were fired by or loaded into
2 and extracted from that firearm.

3 Q And -- Your Honor, can I approach the witness? I
4 show you what's been marked as State's Exhibit Number 8-A
5 which is the box, 8-B, State's Exhibit Number 10 as well
6 as State's 11-A and B. Now for the record, you are
7 looking at State's Exhibit Number 10.

8 A Yes.

9 Q Do you recognize that?

10 A Yes. This was my item one in this case.

11 Q And how do you recognize it?

12 A Because on the base of this bullet, very hard to see
13 with the naked eye, but I've scribed my lab number, my
14 item number, and my initials.

15 Q And if you could, ma'am, please read that into the
16 record.

17 A Okay. It's L06-7242 I1SFC.

18 Q And that's one of the items you received?

19 A Yes, it is.

20 Q And if you could please take a look at Exhibit Number
21 11-A which was previously opened earlier for Investigator
22 Lee.

23 A These all have my lab number, item number, and
24 initials on the outside packaging, too.

25 Q And you're referring to State's 11 as well as State's

1 10?

2 A Yes, ma'am.

3 Q And do you recognize what those are?

4 A Yes. These were my items two and three; and I know
5 that because they are also scribed with my lab number,
6 item number, and initials.

7 Q And you're pointing on the bullet. Where are they
8 inscribed?

9 A They are inscribed on the cartridge case near the
10 extractor groove, up here.

11 Q And you received both those as well?

12 A Yes, ma'am.

13 Q Now I'm showing you State's Exhibit 8-A, which is a
14 box and 8-B, which is the firearm inside that box. Do you
15 recognize that item?

16 A Yes, I do because it's also scribed.

17 Q Where is it inscribed?

18 A It's scribed very smally on the barrel right here and
19 I also scribed it on the bolt down here. My lab number,
20 item number, and initials.

21 Q And you recognize that item?

22 A Yes, I do.

23 Q Now can you tell our jury when these items were
24 brought to SLED by Investigator Lee?

25 A They were brought in on May 22nd, 2006.

1 Q And tell us a little bit about the process when items
2 are sent to SLED for testing.

3 A An investigator will bring it into our log-in
4 department in our forensics lab. They bring it in. Our
5 technicians make sure that it's sealed, initialed, and
6 dated.

7 Q And why is that done?

8 A To secure -- make sure that the chain of custody is
9 secure.

10 Q So it's not tampered with?

11 A Correct. In this case firearms evidence, they put it
12 in a firearms holding area so I come down and pick it up
13 myself or whichever examiner is assigned to that firearms
14 case.

15 Q And you're telling our jury that you went down to the
16 log-in and picked that item up?

17 A Yes. I picked it up. I brought it back to my office
18 and I started my examination. What I do is I usually
19 start with the firearm first. I look at it; I take notes
20 on it. I check to make sure that it's safe to fire. Then
21 I move to my fired evidence. I look at that; I document
22 its condition.

23 Q And when you say fired evidence, what are you talking
24 about?

25 A I talk about fired cartridge cases and bullets. This

1 is a cartridge case.

2 Q Can you refer to that, I'm sorry, by its number?

3 A This is State's Exhibit 11-B. These are fired
4 cartridge cases. And this is State's Exhibit 10 and this
5 is a fired bullet.

6 Q Now you notice when you -- when we opened it earlier
7 that there's something else in State's 10.

8 A Correct.

9 Q So ---

10 A Part of ---

11 Q ---tell us about that.

12 A Part of my job is to while doing my initial
13 examination, if there's anything that could be considered
14 trace evidence, to remove it, collect it and preserve it.
15 So that's what I did in this case. There were some tiny
16 green and tan fibers. I collected them, preserved them.
17 And what we do is we notify the submitter in our report,
18 and if they want to resubmit it for trace examination then
19 they can do that.

20 Q Please continue telling us about what you initially
21 did.

22 A Okay.

23 Q And type testing you did.

24 A Once I have done my initial first visual inspection
25 then I proceed to clean. I cleaned this bullet in Clorox

1 solution just because I don't know where it's been, and it
2 might have biological material on it. Once I've cleaned
3 it then I go back to my test firing. What we do is, I
4 fire -- I test fire ammunition into -- from this gun. I
5 usually do it into a vertical tank of water. But since
6 this rifle was pretty long and our tank comes up to about
7 here on me, it was very difficult for me to reach over and
8 shoot this into a tank so I did it into a cotton box which
9 is about a 15-yard long box full of raw cotton soaked in
10 oil. So I test fired it three times into that cotton box
11 and retrieved the test fires.

12 Q Why do you test-fire it into the cotton box, for what
13 purpose?

14 A I do that so I can look at what I have knowingly shot
15 from that gun and compare the markings on the bullet.
16 Inside the barrel of the firearm are lands and grooves.
17 They're put there by the manufacturer as a series of
18 raised areas and indented areas. If you've ever looked at
19 a pumpkin that has that one rectangular tooth in its
20 mouth, it's kind of like that all the way around the
21 circle, very minute. And they're put there so that way
22 when the bullet is going down the barrel it'll twist very
23 similar to a quarterback throwing a football. When he
24 throws the football he puts it into a tight spiral so he
25 can rely on it going to its receiver more accurately.

1 That's what rifling in the gun barrel is done. It's put
2 there to put spin on the bullet to get it to its receiver
3 or target more accurately. And those are our bases for
4 examination.

5 During the manufacturing process defects are made on
6 the tools and this is hard steel, working on hard steel.
7 Wear and tear puts these little individual characteristics
8 in that barrel and they are passed on to that bullet when
9 that bullet is fired down that barrel. So what I do is I
10 get my test-fires back and I'll look at them under my
11 comparison microscope. And a comparison microscope kind
12 of looks like binoculars with the eyepiece, but you have
13 two stages that you can look at two items and compare them
14 to each other. So when I'm looking at a bullet I can
15 rotate those bullets 360 degrees and look at both of them
16 against each other. And that's what I do with the
17 bullets. Cartridge cases are very similar. I shoot, I
18 receive my -- I retrieve my cartridge cases. I go back; I
19 look at them on the comparison microscope. And if I
20 knowingly can compare what I have knowingly fired, then
21 I -- it makes my job easier.

22 Q So you compare your known to your unknown that was
23 submitted to you for testing?

24 A Right. I do that after I knowingly compare all my
25 test fires. And that also helps me to see, you know,

1 maybe there's a big defect that will stand out that I can
2 look at when I go to look at my evidence. So after I
3 compare all my test fires then I go to my evidence. And I
4 looked at the cartridge cases first, and I concluded that
5 it was inconclusive.

6 We come up with four conclusives in our department.
7 Positive, yes it was fired by that gun. Negative, no it
8 wasn't fired by that gun. Inconclusive means that it
9 could have been, there's just not enough markings on it
10 for us to tell. Unsuitable, it's too damaged or there are
11 no markings at all.

12 Q So you're not telling the jury that this -- these
13 casing were not fired by this weapon, just that you
14 couldn't tell because there wasn't enough ridges and
15 grooves to compare.

16 A Well, a cartridge case is different. There aren't
17 ridges and grooves on it. Basically what we look at on a
18 cartridge case is the breech face impression. We look at
19 the head of the cartridge case. This is the part of
20 cartridge that is blown backwards against the breech face
21 of the firearm while being shot.

22 Q And breech face of the firearm, explain that a little
23 bit to us.

24 A The breech face of the firearm is what holds the
25 cartridge in place during the shooting. It also has the

1 firing pin aperture in it, where the firing pin comes out
2 and it strikes the primer -- this is your primer area in
3 the middle -- and causes that ignition from the primer and
4 it causes an ignition spark to go through the flash hole,
5 to light the gun powder. When the gun powder starts
6 burning, it's all those gases from the burning that shoot
7 the bullet down the barrel. So while it's shooting a
8 bullet that way it's also blowing it, the cartridge, back
9 up against that breech face. And doing my -- my
10 examination, I could not find enough individual markings
11 to say that these were fired by that gun.

12 Q Did you next test the spent bullet casing that you
13 received?

14 A Yes. After I examined my test fires I started
15 examining the fired bullet and I could find enough
16 identifying markings and I could say that this bullet was
17 fired by that gun item. State's Exhibit item 10 was fired
18 by that firearm and no other firearm.

19 Q I'd like to mention this. What type of rifle -- tell
20 the jury a little bit about the rifle, the make, model,
21 type power of the gun.

22 A It is a Marlin model -- hold on one second, let me
23 look at my notes. It's a Marlin model 336A. It's a lever
24 action rifle. That means that it has that little -- may I
25 get the rifle, please?

1 Q Yes.

2 A What I mean by lever action is that this lever
3 controls the loading and unloading of this firearm. That
4 means you -- you put an unfired, unfired cartridge, in
5 here and then you have to move this lever to shoot it. So
6 in between any other rounds shot you have to do this. So
7 it's a Marlin model 33 -- 336A lever action 30.30
8 Winchester caliber with -- the serial number is 27038648.

9 Q Is this a high powered rifle?

10 A It's 30 caliber so it is a litter higher powered than
11 what you would normally think of as a 9-millimeter or
12 something like that.

13 Q And you're telling our jury that the spent bullet,
14 State's Number 10, definitely came from that weapon, it
15 was fired from that weapon?

16 A Yes, it was fired from that firearm and no other
17 firearm ever made.

18 Q Thank you. I don't have any further questions.

19 MR. BARR: Nothing.

20 THE COURT: May the witness be excused?

21 MR. BARR: Yes, sir.

22 MS. BIAGIANTI: Thank you. Your Honor, at this time
23 I would ask to publish to the jury State's Number 7
24 already in evidence. Thank you.

25 (State's Exhibit No. 7 was played for jury.)

1 MS. BIAGIANTI: Your Honor, at this time the State
2 would rest.

3 THE COURT: Ladies and gentlemen of the jury, if
4 you'd step back to the jury room. I have to take up a few
5 matters of law at this time.

6 (WHEREUPON, the jury was removed from the
7 courtroom at 2:44 p.m., and the following proceedings
8 commenced in open court.)

9 THE COURT: All right. Mr. Barr.

10 MR. BARR: Judge, the Defense would move for a
11 directed verdict on each count of the four count
12 indictment. Our position would simply be that the
13 evidence as it has been presented is insufficient as a
14 matter of law to submit the issue or issues of ABIK as
15 well as assault with intent to kill, possession of the
16 weapon during a violent crime, and third degree burglary.

17 THE COURT: At this time I'll deny the motions except
18 for possession of a weapon during the commission of a
19 violent crime. Have you read that indictment?

20 MS. BIAGIANTI: Your Honor, can I move to amend the
21 handgun part that was referred to? It was not a handgun
22 but a rifle. I think the evidence is clear that it was a
23 gun and mistake on my part that I put handgun instead of
24 rifle.

25 THE COURT: Mr. Barr.

1 MR. BARR: Judge, I have to take the position that
2 the -- the -- the offense described in the indictment by
3 the Solicitor's Office, and of course the evidence, at
4 least from the standpoint of the elements of offense must
5 comply with what's stated in the indictment. And we don't
6 believe that that's -- that the evidence is sufficient
7 evidence matter of law to submit that issue to the jury
8 for jury consideration. No evidence of that.

9 MS. BIAGIANTI: Your Honor, the statute is listed
10 16-22-490 and I believe that the statute would cover a
11 weapon in general and it puts the defendant on notice of
12 what he's being charged with. I think there's ample
13 evidence that he had a weapon or some type of gun.

14 MR. BARR: Judge, of course at this stage it's not --
15 the issue is not whether or not the defendant was put on
16 notice. The prosecution has already presented their
17 evidence. Our position is that the evidence simply
18 doesn't -- doesn't comply with what the law would require
19 as to make the sufficient evidence, send that issue to the
20 jury. We will submit that in a matter of law the Defense
21 is entitled to directed verdict.

22 MS. BIAGIANTI: Your Honor, briefly, just -- it
23 doesn't prejudice the defendant in any way. And 16-22-490
24 says if a person is in possession of a firearm visibly
25 displays what appears to be a firearm or visibly displays

1 a knife during the commission of a violent crime and it
2 goes on to say the penalties. So I would just say
3 that moving -- move to amend it to read a firearm as
4 opposed to handgun.

5 THE COURT: All right, I'll grant that.

6 MS. BIAGIANTI: Thank you.

7 MR. BARR: Judge, I'm going to object to -- I'm going
8 to object to an amendment at this point after where we've
9 made a motion for directed verdict.

10 THE COURT: I'll note that and I'm going to do some
11 further research on that. It's my understanding with the
12 most recent appellate decisions I don't believe that would
13 be fatal to that. I'm going to allow it to stay in. Let
14 me talk to y'all up here just a minute please at the side.

15 (WHEREUPON, counsel approached the Bench for an
16 off-the-record discussion.)

17 MR. BARR: Judge, at this time then I would ask that
18 the defendant be brought before the Court and advised of
19 his right not to take the witness stand.

20 THE COURT: Mr. Davis, I need your undivided
21 attention at this time. Counsel has requested that I
22 speak with you and advise you about your Fifth Amendment
23 rights and under the United States Constitution, as well
24 as the similar counter part provision of our State
25 Constitution concerning your right not to testify. In

1 other words, our Constitution sets up a constitution of
2 safeguard whereby the State cannot compel you to be a
3 witness against yourself; in other words, cannot compel
4 you to testify. You have a constitutional right to elect
5 not to testify and it can not be used against you in any
6 way. In fact, I will tell the jury that. And the State
7 can't even comment upon it or make any statement or to
8 litigate to use it against you in any way. It is a
9 constitutional right and nobody can waive that right
10 except you. Your attorney can advise you and talk with
11 you about it but the final decision rests with you. If
12 you elect to testify then you will be treated as any other
13 witness. You may be cross-examined and impeached on any
14 relevant issue or the evidence in this case just as any
15 other witness. And you will, in effect, waive your
16 constitutional right to remain silent.

17 MS. BIAGIANTI: Your Honor, I don't want to interrupt
18 you but I didn't know if you wanted to put the defendant
19 under oath when he -- before he answers any questions.

20 THE COURT: That's fine. Have you talked with your
21 attorney about that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Have y'all thoroughly discussed it?

24 THE DEFENDANT: Well, we -- I mean, we talked about
25 it.

1 THE COURT: Do you want a little more time to talk
2 with him about that at this time?

3 THE DEFENDANT: Yes, sir, let me talk to him.

4 THE COURT: You got any questions of me? I prefer
5 you ask him first and then. Let me let y'all talk and
6 then I'll come back with you and I'll talk to you later.

7 MS. BIAGIANTI: Can we stand down for a minute to use
8 the restroom?

9 THE COURT : Sure. Let's go ahead and take about
10 five minutes and they can talk and we'll come back and
11 finalize this.

12 (WHEREUPON, a recess was taken from the proceedings.)

13 THE COURT: All right, Mr. Davis. Let me further
14 advise you if you elect to testify in this case that
15 decision on your part must be freely and voluntarily,
16 intelligently, and made with knowledge of the protections
17 given to you by the Fifth Amendment of the Constitution of
18 the United States and with knowledge of the consequences
19 of your election to testify. Do you wish to have any
20 further questions answered, or have you discussed this
21 thoroughly with your attorney at this time?

22 THE DEFENDANT: No, sir, I don't have any other
23 questions.

24 THE COURT: Pardon?

25 THE DEFENDANT: I don't have any other questions to

1 ask.

2 THE COURT: Okay. You understand everything your
3 counsel has explained to you?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And you understood what I just went over?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you wish to testify?

8 THE DEFENDANT: No, sir.

9 THE COURT: Thank you, sir.

10 All right, Mr. Barr, will there be any further
11 defense?

12 MR. BARR: No, sir, Judge. In as much as the Defense
13 has now rested I don't think there's any need to renew our
14 motions. We didn't put up any evidence so, but for the
15 record we would note that. Your Honor, are you going to
16 charge ABHAN?

17 MS. BIAGIANTI: Your Honor, if I can, before you make
18 your decision, I don't think there's a reason to charge
19 ABHAN. That's not a reasonable view of the evidence.
20 It's either ABWIK or nothing at all. That would be the
21 State's position. I don't think that there's any
22 reasonable -- any evidence to support an ABHAN charge.

23 MR. BARR: Judge, I think that's a matter that would
24 be left up to the jury. He's charged with assault and
25 battery with intent to kill. And intent, it's always

1 factual matter for the jury to decide. Of course if the
2 jury should find that there was an aggravated assault
3 notwithstanding the use of a deadly weapon they can still
4 not find that he intended to kill him or intended to kill
5 anybody. And we would specifically request a charge of
6 ABHAN.

7 MS. BIAGIANTI: Your Honor, specific intent to kill
8 isn't required for ABWIK. State of mind, his specific
9 intent to kill isn't necessary. Oh, and the -- the
10 inference that he used the gun would not, I don't think,
11 would support ABHAN charge. The inference that he used
12 the gun will support the ABWIK.

13 MR. BARR: Judge, the only inference from the use of
14 the weapon would be malice. And clearly, under the
15 evidence of, as it has been presented, notwithstanding the
16 use of the gun. Under these circumstances, as I said,
17 it -- certainly the jury may consider that aggravating
18 circumstances and still may not find intent to kill. I
19 would remind the counsel that the offense of assault and
20 battery with intent to kill has all the elements of the
21 offense of murder except the death of a person. So
22 clearly we think that the jury can very well find that
23 there was an aggravated assault but that there was no
24 intent to kill.

25 THE COURT: Solicitor.

1 MS. BIAGIANTI: Yes, sir.

2 THE COURT: I have a little problem with the argument
3 of the State on that and I'll tell you why. I'm going
4 to -- I'm going to charge the lesser included offense and
5 that is because the charge of assault with intent to kill,
6 I feel like I need to do that because he stepped,
7 allegedly stepped, the perpetrator allegedly stepped in
8 the room and shot the first victim and then the same range
9 and possibly closer, he shot at the second victim who was
10 standing against the wall according to the testimony that
11 I understood it when the shots were fired, and did not hit
12 her. I have a little problem on that, and I think because
13 of that I'm going to agree with Mr. Barr.

14 MS. BIAGIANTI: Thank you, Your Honor.

15 THE COURT: That needs to be charged.

16 MS. BIAGIANTI: Before I forget, Your Honor, what
17 reasonable doubt charge do you use? Do you use firmly
18 convinced or?

19 THE COURT: Victor.

20 MS. BIAGIANTI: Versus Nebraska, okay.

21 THE COURT: ---versus Nebraska.

22 MS. BIAGIANTI: Okay.

23 THE COURT: Okay. No evidence submitted by the
24 Defense so that reverses the role in the closing argument.
25 Y'all ready to go or you need a little more time?

1 MS. BIAGIANTI: I'm ready.

2 THE COURT: All right.

3 MR. BARR: Yes, sir.

4 THE COURT: Bring them in.

5 (WHEREUPON, the jury was returned to the courtroom at
6 approximately 3:05 p.m., and the following
7 proceedings commenced in open court.)

8 THE COURT: All jurors accounted for. We now move to
9 the closing argument phase of the trial, ladies and
10 gentlemen. I turn it over to counsel.

11 Solicitor.

12 MS. BIAGIANTI: Thank you, Your Honor, may it please
13 the Court. Good afternoon. First of all, I just want to
14 thank you for listening very patiently and closely to the
15 testimony. As I told you in my opening, this case is
16 about when does no mean no. It's about jealousy and anger
17 on the part of the defendant. Don't be afraid of the
18 obvious. As I told you earlier, I think if you really
19 listen to the facts and see what's in evidence, this is
20 really a pretty simple case. Now the Defense has kind of
21 thrown all these things at you at cross-examination. You
22 know, about the photographs, were you having relations,
23 you know, having a love triangle. But that's not the
24 issue. The issue is that man right there break into his
25 ex-girlfriend's home, shoot Chris Gamble, shoot at his

1 ex-girlfriend Lesley while he had a weapon. That's the
2 issue. Now, I don't know about you but listening to that
3 911 call, wow, that was bone chilling. Even if you don't
4 believe a word out of the victim's mouth, either victim's
5 mouth on that witness stand, either that lady deserves an
6 academy award or I don't know what. If she were just
7 making up her ex-boyfriend's name Heyward -- you heard it
8 on the 911 tape, who shot you? The 911 operator said,
9 Who shot you, who did this? Heyward. Heyward Davis.
10 Well, she's either a really great actress to be able to
11 come up if -- if someone came into the house and call his
12 name or she's telling the truth. And she's telling the
13 truth. She told you on the stand what happened. The male
14 victim told you on the stand what happened, Chris. His
15 story has never lingered. She told you the same thing on
16 the stand that you heard on that 911 call. My
17 ex-boyfriend broke into my house. He shot my baby's dad,
18 Chris. And he tried to shoot at me. Now if you need to
19 listen to it over again, you're more than welcome to come
20 back here and ask for it to be replayed, but I think if
21 you remember you will hear all those things.

22 Now Mr. Barr -- I have the burden of proof so I'm not
23 going to be able to stand back up here after Mr. Barr
24 speaks to you in response. He'll get the last word. So I
25 want you to think about what would the State say when he's

1 up here telling you his version of the event. You know,
2 one of the things I'm sure I can foresee him bringing up
3 is their motivation to lie, both Lesley and Chris. What
4 possible motivation do they have to lie, come into court
5 and call that man's name, just happen to call his name.
6 None. To go through since May 13th of 2006, go through
7 this ordeal, come before you, re-live this horrible,
8 horrible, horrible event in their life and tell 12, 13
9 strangers about this event. Going back to -- even if you
10 didn't believe the victims, all of the evidence is
11 corroborated. SLED agent, Ms. Cromer, came on the stand
12 and said, I know, I know this spent casing, State's Number
13 10 -- you'll have it back in the room with you -- I know,
14 I can positively say it came from that firearm. The
15 firearm, the only testimony you've heard is, the firearm
16 was brought to the attention of Investigator Lee by the
17 defendant. He calls Investigator Lee on the phone, I want
18 to turn myself in, I want to turn myself in. Where's the
19 firearm? Oh, it's over there on Cherry Street. How did
20 he know? Because he did it, that's how he knew. He went
21 into that house, broke in, and even in the stuff that
22 Mr. Barr was saying about the key and paint scrapings -- I
23 don't know where that came from but -- anyway, even if he
24 had a key it doesn't matter. The door could have -- it
25 doesn't matter if the door was locked. The judge will

1 instruct you, just walking into a house that's breaking
2 and entering, that's burglary. And the judge will
3 instruct you this will be burglary in the first degree
4 because number one, it was a dwelling which was a
5 residence. I don't think there's any dispute that it was
6 Ms. Lesley's trailer. One of the elements of burglary
7 first degree is it happened in the night time. It
8 happened at 1:35 in the morning when you listen to the 911
9 tape. Or, I don't even have to have all these elements,
10 I'm just going to tell you some possibilities: A, B, C,
11 or D. B is burglary in the first degree because someone
12 who is -- someone meaning the defendant, used a weapon and
13 caused harm to someone not participating in a crime. All
14 he has to do is cause harm to someone. Well, he shot
15 Chris; he almost killed Chris. You heard the doctor on
16 the stand say Chris was very lucky. No uncertain terms,
17 he was lucky it didn't hit any major organs. You heard
18 how it broke his ribs, broke his shoulder, has permanent
19 nerve damage. The doctor talked about the blast effect.
20 Imagine this bullet, the size of this bullet -- it's not a
21 small bullet, not a small caliber -- going through you. I
22 don't know how fast, but blasting through your body what
23 the doctor called ----

24 MR. BARR: Objection, Your Honor. Improper argument.
25 It's improper argument.

1 MS. BIAGIANTI: I think that if the doctor testified,
2 Your Honor, that was a blast effect.

3 MR. BARR: You cannot ask the jurors to put
4 themselves in the defendant's place and imagine the bullet
5 going through them. You can use some other analogy but
6 you cannot ---

7 THE COURT: Okay. Try to...

8 MS. BIAGIANTI: Yes, sir, thank you. Imagine what
9 the defendant -- excuse me, what the victim went through
10 that night, how he felt. Now Mr. Barr's probably also
11 going to talk to you about reasonable doubt and the judge
12 will charge you on that. He's going to tell you
13 reasonable doubt is the kind of doubt that would cause a
14 reasonable person to hesitate to act, and a reasonable
15 doubt is something that would also leave someone not
16 firmly convinced. If you are firmly convinced you must
17 return a guilty verdict.

18 Now he's in this -- Mr. Barr I'm sure will also go
19 into the fact about doubts. It's not my job and I don't
20 have to by law to prove it beyond all doubt. That's not
21 the law. The law is I have to prove it beyond all
22 reasonable doubt. Not all doubt, just reasonable doubt.
23 So again, if you cannot put your finger on it and say this
24 is why I'm not firmly convinced, you must find him guilty.
25 Some of the other testimony, when Mr. Barr on

1 cross-examination started asking Chris, the defendant,
2 about, you know, seeing, seeing the defendant before. He
3 said, yeah, I've seen him, I've seen him around, cordial
4 to each other. As a matter of fact I saw him in Lesley's
5 house a couple of weeks before this. Well, Lesley gets on
6 the stand and she says that happened, but I think we were
7 still boyfriend and girlfriend. I don't remember
8 introducing him as my ex-boyfriend. Well, that makes it
9 more credible. If they were in some collusion together or
10 lying on this poor defendant here they would have their
11 story straight; but no, people remember it differently.
12 She remembers that he was -- he came -- Chris came to her
13 house to pick up ^{Minor}, their daughter. And Heyward
14 came over there. And said, Chris, this is Heyward;
15 Heyward, this is Chris.

16 Big deal was made of these photographs. You heard
17 Investigator Lee testify; he thought it was forced open.
18 The defendant lived there, he had a key. Why would there
19 be a need to do this? Why would he have to do it?
20 Because he didn't live there, because he didn't have a key
21 and the only way he could get in was to break the door.
22 State's 2, wow. Laying in the bed, seeing the defendant
23 when he shoots you. This is what both victims had lived
24 through that night. Now Mr. Barr, again, asking Lesley,
25 asking Investigator Lee about this bullet hole. You sure

1 it's a bullet hole; yes, it's a bullet hole. That's the
2 best Mr. Barr could do? You heard it from Lesley's mouth,
3 I jumped up as soon as I saw the flash and I heard the gun
4 shot and I jumped up out of the bed and I got along this
5 wall. And somehow she said, she doesn't know how, but her
6 feet were swept under her and she fell to the ground. I
7 don't have to explain that to you. I can't explain it to
8 you why she fell to the ground. I can't tell you why she
9 wasn't shot that night but for the grace of God. She told
10 you that bullet hole wasn't there beforehand. Well, how
11 else can you explain it? You can't explain it but for the
12 fact that that man, ex-boyfriend, for some reason comes
13 into the house -- I don't know, maybe jealousy, maybe
14 seeing another man's car -- couldn't let go. Couldn't let
15 go, had to do this. Miraculously appeared. I don't think
16 so.

17 Another photo Investigator Lee took of a casing.
18 Bullet wasn't there beforehand, how did it get there?
19 Again, I don't want to preach and beat a dead horse; but
20 if you take the facts and listen to them and look at the
21 evidence, it's pretty straight forward. Now the judge,
22 when he instructs you on the law a little -- I told you a
23 little bit about burglary. Again, resonant, causing
24 injury to another or in the night time or even displaying
25 a weapon, there doesn't even need to be a physical injury,

1 displaying a weapon. You know, it's a question that's
2 been in my -- in my mind the whole time. Just happened to
3 have a gun with him? Just happened to go over to her
4 house and have a gun with him? No, he went over there
5 because he meant business. He meant business. You just
6 don't accidentally have a 30.30 rifle toting it around with
7 you if you don't mean for something to happen. And the
8 judge is going to talk about that. Malice, and assault
9 and battery with intent to kill. What the State needs to
10 prove for someone to be convicted of assault and battery
11 with intent to kill. And one inference is, one way we can
12 show malice, an intent by having a weapon. As far as the
13 assault with intent to kill, which is the charge against
14 Lesley, again, I can't explain why she didn't get hit that
15 night; thank God she didn't. She's here to tell you what
16 happened. She said, coming in, flicked on the light
17 after -- after shooting Chris, I clearly see him. Heck,
18 she dated this man for a couple of years. She knew what
19 he looked like. I don't think there's any doubt in
20 anyone's mind that she -- there's no question that it was
21 Heyward that night, no doubt. So the AWIK, what we call
22 AWIK, assault with intent to kill, is him attempting to
23 shoot her. It's everything but the battery, and he had
24 the present ability to do so meaning he raised his gun,
25 shot, thankfully missed.

1 Another point that Mr. Barr made was when Chris was
2 on the stand on cross-examination, Didn't you say Heyward,
3 Heyward -- I quoted -- "Is that you?" What is he supposed
4 to say? Hey, want to come sit down and have tea with us.
5 No, it was an expression. He was shocked to see some man
6 in -- in this room, and Mr. Barr wanted to make a big deal
7 of Heyward, Heyward, is that you, I guess, implying that
8 it could have been some -- someone else. Well, I asked
9 both victims clearly. No doubt in your mind it was
10 Heyward Davis? Both said no, no doubt in my mind. I'll
11 never forget that night.

12 Again, don't be afraid of the obvious. This is
13 obvious. Now I'm going to quickly finish up. One thing
14 is not to compromise. The judge is going to read you his
15 jury instructions, charges on the law, and he's going to
16 give you a lesser included offense of assault and battery
17 of a high and aggravated nature; that is, a lesser
18 included offense of assault and battery with intent to
19 kill. And by the way, assault and battery with intent to
20 kill, you don't need -- that man doesn't have to intend to
21 kill. Specific intent is not a part of it. He just has
22 to do serious bodily injury. And I think there's no
23 question that that happened. That victim right there
24 spent five days in the hospital, three days in ICU, blood
25 transfusions, broken bones, so you don't have to have a

1 specific intent to kill someone. But the judge, like I
2 said, is going to give you a charge of assault and battery
3 of a high and aggravated nature which is a lesser included
4 offense of assault and battery with intent to kill. But I
5 say to that, if he didn't do it, he doesn't need you to
6 compromise. If he didn't do it, if you truly believe that
7 that man right there didn't do this, then find him not
8 guilty. But if he did do it, and I think that all of you
9 believe that, don't compromise, don't find him guilty on
10 the assault and battery of a high and aggravated charge,
11 find him guilty on the ABWIK charge. So I ask you please
12 to find a verdict which speaks the truth; and the truth
13 is, that that man right there is guilty of burglary first
14 degree, assault and battery with intent to kill, assault
15 with intent to kill, and possession of a weapon during a
16 violent crime. Thank you.

17 MR. BARR: May it please the Court, Judge.

18 THE COURT: Yes, sir.

19 MR. BARR: Ladies and gentlemen, the Prosecution
20 gives me too much credit. I'm not going to take up a
21 whole lot of your time because quite frankly, I'm not
22 crazy. And I was not at Ms. Parish's house on the 13th of
23 May. I'm glad I wasn't there. In terms of knowing
24 exactly what took place, I don't think we'll ever know.
25 I've seen too many times in court where people come to

1 court and they put their hands on the Bible and they swear
2 to tell the truth and somehow one says one thing, somebody
3 else says something else all together different and they
4 got all kind of different stories. It would almost appear
5 sometimes as if they were in different places. Well, I'm
6 not going to insult your intelligence. Now you're not
7 being called upon to reconstruct what may or may not have
8 happened on the 13th of May. That would be much, much too
9 difficult. It would be much, much too difficult. What
10 you're being called upon to do is to examine the evidence
11 or lack of evidence. If you remember, I asked you when I
12 was doing my opening remarks, I said, look, we're
13 concerned about whether or not people are able to -- to
14 put aside the feelings that they have when they come to
15 jury service and -- and come back and make a decision
16 based on the evidence and the law as His Honor is giving
17 it to you. Now when I say put aside your feelings, I'm
18 not going to tell you this afternoon and suggest to you
19 that this is not an emotional kind of situation; but at
20 the same time I'm not going to try to drag you down an
21 emotional road such as sitting here and if you notice the
22 prosecution, the last thing they presented today you was
23 this -- this 911 tape. Now the 911 tape is designed -- it
24 kind of makes you cry a little bit because you want to
25 sympathize. My goodness, anybody would sympathize with a

1 person crying the way Ms. Parish was on the telephone in a
2 situation where somebody's been shot. But now I submit to
3 you that you can't go down that road. You can't go down
4 the emotional road and the desire, or at least the
5 invitation by the prosecution, to get you to make a
6 decision in this case based on your emotions because
7 that's just not it. You will make your decision based on
8 the evidence. His Honor will instruct you.

9 Now I sat here and I listened to the evidence in this
10 case just as you did. And quite frankly, there's no
11 question in my mind when you listen to the evidence you
12 got two people who said that -- that they identified
13 Heyward Davis come in to the house and shot Mr. Gamble.
14 Well, I'm not going to run back to Kingstree and leave my
15 car if y'all come back this afternoon and say, well look,
16 he shot the man. I assure you I'm not going to do that
17 because I know what the evidence has said. And I'm
18 willing to do that because I know what the evidence has
19 said. Now when I say evidence, I indicated to you at the
20 very beginning, in this case you will probably see a
21 number of different kinds of evidence. Some might be
22 testimonial evidence, some might be documentary evidence,
23 might be demonstrative evidence. This is -- this is
24 demonstrative evidence. It's designed to demonstrate
25 something to you, to prove a point to you by presenting

1 you with a demonstration of it. Now of course, I would
2 submit to you that whatever the situation is or whatever
3 kind of evidence it is, when it comes to testimonial
4 evidence in particular, His Honor is going to instruct you
5 that the credibility of a person who gets on the witness
6 stand is always an issue in the case. And credibility is
7 nothing more than believability. In other words, when a
8 person that gets on the witness stand, His Honor will
9 instruct you that you don't have to just believe
10 everything they say. You can believe part of what they
11 say, some of what they say. The thing about it is as
12 jurors you have to draw and use your own good common sense
13 to make a decision concerning whether or not somebody
14 telling you the truth or part of the truth.

15 Now my colleague is a little bit confused concerning
16 my inquiry of Mr. Gamble, Heyward is that you? I don't
17 want to you to think for one second that I didn't think
18 that he could see him. But the question is, Heyward, is
19 that you? Why is he expecting Heyward? Now ladies and
20 gentlemen, we weren't born under a log someplace. He was
21 expecting Heyward because he was in the house where
22 Heyward was living. That's why he was expecting Heyward.
23 My goodness. Now if you believe Ms. Gamble's (sic)
24 testimony, she all but -- and I don't expect her to admit
25 that she was living with Heyward at the same time and

1 seeing Mr. Gamble. I don't expect her to admit that.
2 Yeah, I call it a love triangle. I don't know anything
3 else to call it other than a love triangle. If you
4 remember when I asked her and even Mr. Gamble himself, he
5 said, Well, she introduced me as an ex-boy -- or
6 introduced me to Mr. Davis, she said he was an
7 ex-boyfriend. Now in terms of chronological time, that
8 was a time according to Ms. Parish some three weeks prior
9 to the time that they had the breakup. He wasn't an
10 ex-boyfriend then. He was the man of the house. They was
11 going back and forth from his house to her house. Well,
12 she said, well maybe two nights here and two nights there.
13 Well y'all -- were y'all intimate with each other? No,
14 well, we hardly ever -- give me a break.

15 Ladies and gentlemen, you have to use your good
16 common sense. You have to use your good common sense.
17 You cannot decide these things based just on what a
18 perception is. Dorie talked about Mr. Gamble having to
19 break-in; and of course, I would submit to you, it would
20 be highly unusual for a man to stay with you two nights a
21 week and somehow he just mysteriously gets the key to get
22 in by the daughter who she gets the key from the day
23 before so every time -- every two nights before he comes
24 there he got to go by her to get the key. Huh-uh. The
25 man was living there. He was living there and when he

1 came in there and found them in there, it obviously
2 probably upset him. Did he intend to kill Mr. Gamble?
3 You'll have to answer that question. You heard the
4 evidence.

5 The evidence suggests that there were two shots
6 fired. Now I asked Mr. Gamble -- Mr. Gamble was sitting
7 on this witness stand right here; he was sitting up here.
8 And I asked him, I said, tell me how far to move back and
9 show me where Ms -- Mr -- Mr. Davis was at the time he
10 fired. And if I'm not mistaken I was standing about right
11 along here, and he said, well, that's where he was.
12 Ladies and gentlemen, even without using this, it'd be
13 hard to miss somebody if you want to kill them.

14 Now Ms. Parish, well, now I want you to recall her
15 testimony as you recall it, not as I recall it. I recall
16 her saying that she jumped out of bed and she got -- she
17 got down on the floor and stayed on the floor until
18 everything was over. Now she got on the witness stand,
19 she testified, she said, I was standing up and the bullet
20 came by me whizzing by me and went in the wall. I'm
21 not -- I'm not asking Investigator Lee about important
22 things such as whether or not this is in fact a bullet
23 hole just for the sake of argument. That's my job. And
24 it's his job if he wants to prove to you that it is in
25 fact a bullet hole, it's his job to get the evidence and

1 bring it to court. The simple fact of the matter is he
2 admitted on the witness stand, and I'm going to submit to
3 you that you don't have anything else. Nobody knows
4 whether that's a bullet hole or not. That's just the
5 short and the long of it. There's no magic trick involved
6 in that or any -- now if they wanted to find out, they
7 could have found out whether or not it was a bullet hole.
8 Why it would have lend some credit to somebody's assertion
9 that this man actually tried to kill Ms. Parish and tried
10 to shoot Ms. Parish. And the woman is standing right up
11 here in the front. And it never ceases to amaze me as a
12 defense lawyer, you know, a lot of times people are very
13 suspicious. They say, well you know, he want to get up
14 there and try to cross me, up. That's what he want to do.
15 I'm not trying to cross anybody up. I'm trying to get to
16 the bottom of it. Now I would submit that if Mr. Davis
17 had gone there and tore up the door like how you will see
18 in Exhibit Number 4 and everybody admit that, well, the
19 lock got torn off, then what happened to the lock? Why
20 did he not look for it? He said he was interested in
21 finding it; but yet he didn't ask one person that knew or
22 should have known where it was, Ms. Parish. My goodness,
23 I can take my wings and fly; I ain't got no wings.
24 Ms. Parish would have been the person that would have
25 known where the lock was. Don't bring me just some

1 scratch on the door and say, look, the man broke in. The
2 man came in the house with his gun because that's where he
3 was living. If he wasn't at his house that's where he
4 stayed.

5 Now whether you call it two nights this way and two
6 nights that way, two nights this way, I got another name
7 for it. I'm not going to say that, but that's not an
8 issue here. But whatever you call it the people were
9 living together. One man came in and found the other man
10 in the house in the bed after they had sex. Now that'll
11 get you in trouble. It's just as simple as that. That's
12 human nature. That's why we're here today dealing with
13 the case, but the question is not that. The question is
14 what has the prosecution proven as related to the offenses
15 that the defendant is charged with. He's charged with
16 burglary, entering a dwelling house at night without the
17 consent of the owner with the intent to commit a crime.
18 What's your heat (ph)? Yeah, he entered at night but he
19 had consent, he had a key. He comes and go as he pleases.
20 They didn't expect him to walk in with this. That's why
21 he -- Heyward, is that you? Well, who else did he expect
22 other than Heyward because they were afraid if Heyward
23 would walk in therein. There's no other reason for that.
24 He knew he was someplace where he shouldn't have been.
25 And if it was Heyward, then it's curtain time. Then

1 somebody -- somebody better dip. Even if he didn't have a
2 gun it would have been trouble. But the question is
3 whether or not -- as I said His Honor will instruct you
4 ladies and gentlemen that -- and I know my time is almost
5 up. The prosecution has the burden of proving each and
6 every element of these criminal offenses. And I just gave
7 you the elements of burglary. And they have to prove each
8 one to you beyond a reasonable doubt, a kind of doubt that
9 would cause a person to hesitate. In other words, if
10 you're not firmly convinced that the prosecution has
11 proven anyone beyond a reasonable doubt, your charge is to
12 find the defendant not guilty. And I'm concerned about
13 this burglary and this assault on Ms. Parish, on this
14 assault with intent to kill, because obviously the
15 evidence that doesn't bear out the assertion that this man
16 was trying to shoot her. At least not talking about
17 killing; may have been upset. Quite frankly, you know,
18 this, love is a strange thing, makes people do strange
19 things, get into all kinds of situations that they ought
20 not be in.

21 Now the other three offenses, possession of a weapon
22 during a violent crime, that's not a difficult. The
23 elements of that quite simple. His Honor is going to
24 instruct you that if you find that a violent crime was
25 committed -- now notice when I say violent crime, assault

1 and battery of high and aggravated nature is not
2 considered a violent crime. Assault and battery with
3 intent to kill is. And assault and battery -- or assault
4 with intent to kill is, burglary is, but not assault and
5 battery of a high and aggravated nature. His Honor will
6 charge you and give you the law on assault and battery of
7 a high and aggravated nature because it's a lesser
8 included offense that you may very well decide that in
9 this instance if Mr -- if Mr. Davis went into this house
10 and shot as Mr. Gamble said he shot him, Ms. Parish said
11 he shot at her. But if you find that at that time
12 Mr. Davis did not intend to kill anybody, even if you
13 find, then that takes that out. It takes that out; it
14 could be assault and battery of a high and aggravated
15 nature. Now I'm not telling you what to feel. I'm
16 telling you to follow the law as His Honor gives it to
17 you. And when you go to your jury room conduct your
18 deliberations, you all will have to come up with a
19 unanimous verdict. You all must agree, all 12 of you.
20 And sometimes that's just not easy; that's just not easy.

21 But now there are about three things that I want to
22 tell you just before I go take my seat. First of all,
23 even now as we sit here God forbid, there's so many things
24 going on in the world now I get scared when I get up in
25 the morning. And that's difficult to have to live in, but

1 if something were to happen right now this little Heyward
2 Davis -- irrespective of what you might think of him as an
3 individual His Honor will instruct you that he -- he's not
4 responsible for presenting his own defense. He doesn't
5 have to take the witness stand; you can't even much as
6 consider that. You can't even talk about it because the
7 law says that he is presumed innocent until proven guilty.
8 So right now he is presumed innocent. He is only guilty
9 after, ladies and gentlemen, if you find him guilty. His
10 Honor will instruct you on the law and you all in your
11 collective wisdom to decide that you're convinced beyond a
12 reasonable doubt that the prosecution has proven his guilt
13 of every offense that he's charged with. That is, that
14 you, firmly convinced, firmly convinced, that he did what
15 he's charged with having done. If you're not firmly
16 convinced, if there is a doubt, His Honor will instruct
17 you that that doubt has to be resolved according to the
18 law, not according to me. And I tell you, I said
19 yesterday that it was something that would not be
20 something I brought from Kingstree. I spent more time in
21 Georgetown than I spend in Kingstree, but it's not
22 something I brought over here today. That's the law in
23 South Carolina. If there is, it has to be resolved on
24 behalf of the defendant and you have to find him not
25 guilty. Now sometimes especially when we get directly

1 involved in a situation like that, we might not -- I might
2 not even like that role. I'm going to tell you, I get
3 partisan sometimes. I know how I feel about my people and
4 how I feel about certain things. I may not like it, but
5 now when I put my hand to the gospel and apply it and say,
6 I reside to listen to the evidence and to come back with a
7 verdict that speaks the truth I have to divorce myself
8 from my own personal feelings and honor the oath that I've
9 taken. And that's where you are. You have to honor the
10 oath that you've taken and come back with a verdict in
11 this case which speaks the truth based on the law and
12 based on the evidence as you find it to be or the lack of
13 evidence. There's no question in my mind that each and
14 every one of you -- I've been watching you during the
15 course of this trial. You're eminently qualified to do
16 that. You've been paying attention. So whatever your
17 verdict is, I assure you we're going to have to live with
18 it and you will have discharged your duties and your
19 responsibilities as long as your verdict speaks the truth
20 based on the law, not on emotions, 911 tapes, not on what
21 the prosecutor says, but what you as jurors find the
22 evidence to be when you take into conjunction the law as
23 His Honor will give it to you.

24 Now, as I sit down, let me just say again, I
25 don't know how many of y'all have ever served on a jury

1 but I simply hope that your experience here this afternoon
2 or during the last two days will be one that if you've
3 never had it before it will be one that will be of some
4 value to you because this criminal justice system is an
5 integral part of our law. It's a very integral part. But
6 it does not get any bigger or any smaller than the people
7 that make up the system. On behalf of Mr. Davis, on
8 behalf of this criminal justice system, on behalf of the
9 court, even the bailiffs, we thank you for the splendid
10 jury service that you've given thus far and there's no
11 question in my mind I'm convinced that once you complete
12 your jury service that that will be justice done. Thank
13 you, ladies and gentlemen.

14 THE COURT: All jurors okay? Anybody need a brief
15 recess? Madam Forelady and ladies and gentlemen of the
16 jury, it now becomes my duty to charge you the law of the
17 case. I thank both counsel for the State and the Defense
18 for their able presentation of the case and their
19 arguments to the jury. Under our Constitution and the law
20 of this state it is my duty at this time to charge and
21 instruct you the law applicable to the case. It is your
22 duty as jurors to accept and apply the law as the Court
23 states it to you. As jurors it's your exclusive duty to
24 decide all the issues of fact in this case and for that
25 purpose to determine the effect, the value, the weight,

1 and truth of the evidence. Both the State and the
2 Defendant have the right to expect that you will
3 conscientiously consider and evaluate the evidence and
4 apply the law of the case thereto to the end that both the
5 State of South Carolina and the Defendant will receive and
6 obtain a fair and impartial trial in this case.

7 As you have heard, the State of South Carolina by the
8 bills of indictment in this case have charged the
9 defendant with the offenses of burglary first degree,
10 assault and battery with intent to kill, assault with
11 intent to kill, and possession of a firearm during the
12 commission of a violent offense. Now to all of these
13 charges to the indictment the defendant has entered a plea
14 of not guilty. A plea of not guilty by a defendant places
15 the burden of proof on the State to prove by the evidence
16 the guilt of the defendant beyond a reasonable doubt
17 before you, the jury, can find a defendant guilty. The
18 defendant is presumed in law innocent of the charges
19 contained in the indictment. It is a cardinal and
20 fundamental rule of the law of evidence that a defendant
21 irrespective of the enormity of the charge against him
22 will always be presumed innocent of the crime for which he
23 is indicted unless and until the guilt of the defendant
24 has been proved by evidence that satisfies you, the jury,
25 of his guilt beyond a reasonable doubt. The presumption

1 of innocence is not a mere legal theory, and it's not just
2 a legal phrase. The presumption of innocence is a
3 substantial right which every accused is entitled. The
4 Supreme Court has declared that the presumption of
5 innocence is like a robe of righteousness placed about the
6 shoulders of a defendant; and it remains with him and
7 assigns him to that class, the innocent, until that
8 presumptive robe of righteousness has been stripped from
9 his person by evidence satisfying you, the jury, of the
10 guilt of the defendant beyond a reasonable doubt. The
11 presumption of innocence accompanies a defendant from the
12 time of his arraignment and appearance in court and
13 continues with a defendant throughout every stage of the
14 trial and continues with a defendant after you retire to
15 the jury room to deliberate your verdict. Presumption of
16 innocence continues in existence to the benefit of the
17 defendant until you, the jury, reach the conclusion that
18 the State has proved the guilt of the defendant beyond a
19 reasonable doubt. The State is not required to prove the
20 guilt of a defendant beyond all doubt or beyond every
21 doubt but beyond a reasonable doubt.

22 Some of you may have served as jurors in civil cases
23 where you were told that it is only necessary to prove
24 that a fact that's more likely true than not true. In
25 criminal cases the government's proof must be more

1 powerful than that; it must be beyond a reasonable doubt.
2 Proof beyond a reasonable doubt is proof that leaves you
3 firmly convinced of the defendant's guilt. There are very
4 few things in this world that we know with absolute
5 certainty, and in criminal cases the law does not require
6 proof that overcomes every possible doubt. If based on
7 your consideration of the evidence you are firmly
8 convinced that the defendant is guilty of the crime
9 charged you must find him guilty. If on the other hand
10 you think there's a real possibility that he is not guilty
11 you must give him the benefit of the doubt and find him
12 not guilty. A defendant is entitled to every reasonable
13 doubt arising in the case. If upon any issue of fact
14 essential to conviction of the verdict of guilty you have
15 a reasonable doubt as to how that issue should be resolved
16 it would be your duty to resolve that reasonable doubt in
17 favor of the defendant. Defendants are not required to
18 prove their innocence, but the State is required in law to
19 prove every essential element of the offense charged
20 against a defendant by evidence that satisfies you, the
21 jury, of the guilt of the defendant beyond a reasonable
22 doubt before you can convict a defendant and find him
23 guilty. If then upon the whole case you have a reasonable
24 doubt as to the guilt or the innocence of the defendant,
25 he is entitled beyond a reasonable doubt and would be

1 entitled to acquittal and a verdict of not guilty. But on
2 the other hand, if upon the whole case you find that the
3 State has proved by evidence that satisfies you, the jury,
4 of the guilt of the defendant beyond a reasonable doubt
5 then in such circumstances it would equally be your duty
6 to convict a defendant and find him guilty. Now when I
7 say the whole case you'll have to take up each indictment
8 separately because each indictment of course is its own
9 case and you'll have to reach verdicts on each and every
10 indictment.

11 Now let me talk with you about lesser included
12 offenses. If you find the defendant guilty but you have a
13 reasonable doubt as to whether the defendant be guilty of
14 the greater crime charged or a lesser crime charged then
15 you would resolve that reasonable doubt in favor of the
16 defendant and write a verdict of guilty only as to the
17 lesser charge. But of course you could not write a
18 verdict of guilty to any charge unless as to that charge
19 you find all evidence of the charge had been proven by the
20 State beyond a reasonable doubt.

21 Ladies and gentlemen, the indictment that you will
22 have later on when you are asked to deliberate I tell you
23 it is not evidence and cannot be considered by the jury as
24 evidence in the case. An indictment is simply the formal
25 written instrument which contains the charge against the

1 defendant, and it serves as the formal document by which
2 the case is processed into the court. During the trial
3 each of us, you and I, have certain duties to perform. As
4 the trial judge it is my responsibility to preside over
5 the trial of this case, and I also have the duty to rule
6 upon or pass upon the admissibility of the evidence
7 offered during the progress of the trial. You are to
8 consider only the competent evidence before you, and you
9 are to disregard and disabuse from your mind any testimony
10 ordered stricken from the record of this case during the
11 progress of the trial if there be any. And you are to
12 consider only the testimony which has been presented from
13 the witness stand together with any exhibits admitted into
14 the record of this case and any stipulations of counsel
15 made into the record if there be any.

16 Now I have the additional duty to charge you the
17 applicable law of the case. As a presiding judge I am the
18 sole judge of the law of the case, and it's your duty to
19 accept and apply the law as I state it to you. If you
20 have a preconceived idea as to what the law is or what the
21 law ought to be in the case and you should not agree with
22 what I tell you the law is, you are obligated under your
23 oath to abandon this preconception on your part because
24 you are sworn to accept the law precisely as the Court
25 states it to you. Now in every case tried in this court

1 before a jury the jury becomes the sole and exclusive
2 judge of the facts in a case. You, the jury, are the
3 judge of the facts in the case; the Court is the judge of
4 the law. The constitution of this State has declared that
5 the trial judge shall not intimate, state, comment upon,
6 or make any statement to a trial jury about the facts of a
7 case. Since you are the sole judges of the facts you are
8 not to infer from anything that I've said during the
9 progress of this trial in ruling upon the admissibility of
10 evidence or otherwise or anything that I say during the
11 course of this charge to you that I have an opinion about
12 the facts. The law does not permit me to have an opinion
13 about the facts. That is a matter solely for you, the
14 jury, to determine. As jurors then it is your duty to
15 determine as I have stated to you the effect, the value,
16 the weight, and the truth of the evidence presented during
17 the course of this trial.

18 Necessarily then you must assess the credibility of
19 the witnesses who have testified. Credibility is simply a
20 legalistic term which means believability. It becomes
21 your duty then to analyze and evaluate the evidence and
22 determine that evidence which convinces you of its truth.
23 I charge you that in determining the question or the
24 credibility and believability of the witnesses you may
25 believe one witness as against several witnesses or

1 several witnesses as against one witness. You may believe
2 a part of the testimony of a witness and reject the
3 remaining part of the testimony of that same witness. You
4 may believe the testimony of a witness in its entirety or
5 reject the testimony of a witness in its entirety. You
6 may consider whether any witness has exhibited any
7 interest, any bias, or any prejudice in the case. You may
8 consider the demeanor of a witness and the appearance of a
9 witness from the witness stand. You may consider the
10 opportunity for knowledge concerning those things about
11 which a witness testified. And in doing so and exercising
12 your mental processes and in determining what you consider
13 to be true, the law simply requires that you exercise your
14 good common sense, your good judgment, your sense of logic
15 and reason, and your experiences in life. You then apply
16 these attributes of ability to the evidence and determine
17 what you consider the truthful evidence. And to those
18 true state of facts as determined by you, the jury, to
19 take and apply the law as I state it to you and thus
20 arrive at true verdicts in the case.

21 Now let me talk with you about the election of a
22 defendant in a trial to test -- to not to testify in his
23 own behalf. I charge you that is not a factor to be
24 considered by you in any way in your deliberation and in
25 your consideration on the question of the guilt or

1 innocence of the accused. It must not be considered by
2 you in any manner whatsoever against the defendant or
3 mitigate against him in any respect whatsoever. A
4 defendant has a constitutional right to remain silent and
5 the assertion of such constitutional right cannot and must
6 not be considered by you in your deliberations. Under
7 your oath then you are to reach no inference and draw no
8 conclusion whatsoever from the fact that a defendant in
9 the case did not himself testify. This should not even be
10 discussed in the jury room. As I have told you the burden
11 of proof is upon the State. It is not incumbent upon an
12 accused or a defendant to prove his innocence.

13 Now, I have charged you, I've told you about the
14 credibility. I talked with you about the evidence. I'll
15 tell you at this time, the attorneys in trying the case
16 what they say is not necessarily evidence. They may
17 repeat evidence or they may comment upon evidence, but
18 their argument or statements are not evidence. In
19 reaching a verdict I call upon you to use your common
20 sense and decide this case based upon proper evidence
21 before the Court and not on anything that you may have
22 heard extraneous from the court, in other words, outside
23 of this courtroom, anything that you have seen at the
24 movies, on television, any kind of theatrical performance,
25 or any comment made outside of this courtroom should not

1 play into your decision. It's just a matter of searching
2 for the truth, finding the facts, applying the facts to
3 the law presented to you, using your common sense, and
4 reaching a fair and just verdict.

5 Now I move into the section of the charge where I
6 speak with you about the specific charges. The first
7 indictment I picked up is for that of burglary first
8 degree. Under Section 16-11-311 of the South Carolina
9 Code of Laws of 1976 as amended, burglary in the first
10 degree is defined as the entering of the dwelling house of
11 another without consent with the intent to commit a crime
12 therein as I will define for you which is accompanied by
13 one of the following circumstances. When entering or
14 while in the house or aflu -- fleeing, the defendant is
15 armed with a deadly weapon or explosive, causes physical
16 injury to anyone not participating in the crime, uses or
17 threatens to use a dangerous object, or displays what is
18 or appears to be a knife, pistol, revolver, rifle,
19 shotgun, machine gun, or other firearm, or the defendant
20 entered or remained in the house at night. I charge you
21 at common law the nighttime is that period between sunset
22 and sunrise during which the face of a person cannot be
23 discerned by the light of the sun. There are some
24 essential elements to the requirement that defendant enter
25 into the dwelling house of another without consent with

1 intent to commit a crime. And they are that, there must
2 be an entering. The State must prove that there was an
3 entering; that is, the defendant actually went inside the
4 house or some part of it. It is not necessary, however,
5 that the entire body of the defendant enter the house.
6 The smallest entry is sufficient; and it may be of any
7 part of the body, a hand, a foot, or even an implement
8 such as a hook or other instrument. No force need be used
9 to gain entry. The entry must be without consent. Aside
10 from the usual and normal understanding of the phrase
11 without consent, the term entry also means to enter a
12 building by using deception, artifice, trick, or
13 misrepresentation to gain consent to enter from the person
14 of lawful possession.

15 The place entered must be a dwelling house. The term
16 dwelling house means any building inhabited by a person or
17 persons and in which they customarily sleep. A building
18 constructed as a dwelling that has never been occupied
19 cannot be considered as a dwelling within the definition
20 but a temporary absence of the inhabitant or inhabitants
21 does not effect the building's character as such. The
22 term dwelling also means the living quarters of the
23 building used or normally used for sleeping, living, or
24 lodging by a person. All houses, outhouses, building,
25 sheds and erections that are within 20 -- excuse me,

1 within 200 yards of a dwelling shall be considered a part
2 of it.

3 The defendant must have an intent to commit a crime.
4 The mere entry into a dwelling house without consent is
5 not a violation of this burglary statute. It is only
6 where there is an intent to commit a crime whether it be a
7 felony or a misdemeanor that the crime is complete. Proof
8 of intent necessarily rests on inference from conduct. It
9 is essential that the felonious intent exists at the time
10 of the entry. It is not sufficient that the felonious
11 intent is formed afterwards. On the other hand, where the
12 intent exists at the time of entry it is no defense that
13 the intent was abandoned after the entry. It does not
14 matter that the intended crime was not completed.

15 Now the next two indictments I'm going to talk with
16 you about are for assault and battery with intent to kill.
17 The assault and battery with intent to kill involves an
18 indictment where Christopher Gamble was the alleged
19 victim. The assault with intent to kill is the next
20 indictment and it involves the assault involving Lesley M.
21 Parish. Now to keep me from having to repeat this charge
22 which would be very repetitious for me to go through the
23 charges twice, I'm going to explain to you what assault is
24 and what battery is. The second indictment there, assault
25 with intent to kill, does not involve a battery. The same

1 basic principles that I'm going to read to you in giving
2 you this charge of course would apply to both except you
3 have to keep in mind that that second indictment does not
4 allege that a battery occurred. Of course many -- many in
5 the legal field define battery as an offense of touching.
6 The allegations in this case were in the first -- in the
7 first instance assault and battery with intent to kill
8 that the victim was actually hit by a bullet. And of
9 course with the assault and battery -- assault with the
10 intent to kill the bullet missed the victim. So you need
11 to keep that in mind because you're going to have to take
12 both of these indictments and deliberate on them and
13 consider the elements, the factors that have got to be
14 reviewed for you to determine the verdict. Now as I said,
15 in these indictments the defendant's charged with either
16 assault and battery with intent to kill or either assault
17 with intent to kill.

18 Now I'm going to go through and I'm going to define
19 the differences to you, and keep in mind now what I just
20 told you about the basic two differences about the
21 presence of battery and the lack of battery. And also
22 upon principle law now, that any primary or greater
23 offense automatically includes and embraces any a lesser
24 offense. So even though the actual lesser offense is not
25 contained in the indictment under the law it may be

1 present if the jury so finds. So with the case of the
2 assault and battery with intent to kill there's a possible
3 lesser included offense that I'm going to charge you.
4 It's entitled assault and battery and high and aggravated
5 nature. And the same thing applies with the -- with the
6 indictment on assault with intent to kill, the lesser
7 included offense of assault in a high and aggravated
8 nature.

9 I am going to define for you at this time the word
10 assault, then the word battery, and then the words assault
11 and battery of a high and aggravated nature, and finally,
12 the words of assault and battery with intent to kill.

13 What is an assault? An assault is the unlawful attempt*
14 to offer with force or violence to do corporal hurt or
15 injury to the person of another where there is the present
16 ability to complete the attempt to offer by a battery.

17 What is a battery? A battery is the unlawful touching of
18 a person or another by the party committing the assault
19 himself or by any object put in motion by the party
20 committing the assault. A battery may be further defined
21 as the carrying into effect an assault by using or
22 applying force to the person of another however slight in
23 a rude, angry, or resentful matter -- or manner, without
24 legal justification.

25 Now, as I said, you can have the charge of assault

1 and battery with intent to kill as a possible lesser
2 included offense that I -- that you may need to consider
3 according as to how you see the evidence and that is
4 assault and battery of a high and aggravated nature. And
5 that is defined as an unlawful act of violent injury to
6 the person of another accompanied by circumstances of
7 aggravation. Once again now, the most serious offense of
8 assault and battery is assault and battery with intent to
9 kill which is defined as an unlawful act of violent injury
10 to the person of another accompanied with malice
11 aforethought. So, keep that in mind as you consider the
12 indictment for assault and battery with intent to kill and
13 the possible lesser included offense of assault and
14 battery of a high and aggravated nature; and also, you got
15 to keep in mind when you go to deliberate that next
16 indictment where you just have the assault with intent to
17 kill and the lesser included charge of offense of assault
18 and high and aggravated nature.

19 Now as I've already stated to you, the offense of
20 assault and battery with intent to kill is defined as an
21 unlawful act of violent injury to the person of another
22 accompanied with malice aforethought. Assault and battery
23 with intent to kill contains all of the elements of the
24 offense of murder except the actual death of the person
25 assaulted. So before the defendant can be convicted of

1 assault and battery with intent to kill the jury must be
2 satisfied beyond a reasonable doubt that if the victim or
3 the person assaulted had died as a result of the injuries,
4 the defendant would have been guilty of murder. In order
5 for you to more fully understand assault and battery with
6 intent to kill it's going to be necessary for me to speak
7 with you to a limited extent under that charge the law of
8 murder; and I will parallel these two offenses for you,
9 murder on the one hand and assault and battery with intent
10 to kill on the other. Murder is the killing of a human
11 being with malice aforethought expressed or inferred.
12 Malice as an essential ingredient for murder does not
13 necessarily import ill will toward the individual injured
14 but signifies rather a general, malignant, and reckless
15 disregard of the lives and safety of others or a condition
16 of the mind which shows a heart regardless of social duty
17 and fatally bent on mischief. Malice is an essential
18 element in the crime of murder, and malice is an essential
19 element of the crime of assault and battery with intent to
20 kill. As I have stated malice is a term of art, a
21 technical term importing wickedness and excluding just
22 cause or legal excuse. Malice in any form designed for
23 doing mischief whether it arises from hatred, ill will or
24 otherwise is still malice. Malice springs from depravity,
25 from a heart devoid of social duty and fatally bent on

1 mischief. Malice must be aforethought. The law does not
2 require that malice should exist for any particular time
3 before the commission of the act. But malice must exist
4 aforethought; that is, malice must exist in the mind of
5 the accused just before and at the time of the commission
6 of the act. There must be a combination of the previous
7 evil intent and the act producing a fatal result. Malice
8 aforethought may be expressed or inferred. These words
9 "malice aforethought expressed or inferred" do not mean
10 different kinds of malice but merely the manner in which
11 the only kind of malice known to the law may be shown to
12 exist. That is either by direct evidence or by necessary
13 inference from the facts and circumstances which are
14 proved. Expressed malice is shown when one by word of
15 mouth, expresses his hatred or ill will for another or
16 where the state shows that he made preparation beforehand
17 to do the deed which was later accomplished. Lying in
18 wait for a person and any acts of preparation going to
19 show that the deed was within his mind would be expressed
20 malice.

21 What is inferred malice? The implication of malice
22 may arise when the deed is done with a deadly weapon such
23 as a knife, pistol, or dagger, or some weapon of that
24 nature which when used with the intent to injure another
25 is calculated to produce death or serious bodily injury or

1 harm. If facts have proved beyond a reasonable doubt
2 sufficient to raise an inference of malice to your
3 satisfaction this inference would be simply an evidentiary
4 fact to be taken into consideration by you, the jury,
5 along with the other evidence in the case and you may give
6 it such weight as you determine it should receive.

7 Now ladies and gentlemen of the jury, before the
8 defendant can be convicted and found guilty of assault and
9 battery with intent to kill the jury must be satisfied
10 beyond a reasonable doubt that if the party assaulted had
11 died as a result of the injuries inflicted upon him the
12 defendant would have been guilty of murder. Therefore,
13 ask yourself this question: If the person assaulted had
14 died as a result of an injury would the defendant have
15 been guilty of murder? If your answer to this question is
16 yes, the defendant is guilty of assault and battery with
17 intent to kill. If you should conclude that the State has
18 failed to satisfy the jury beyond a reasonable doubt that
19 the defendant would have been guilty of murder had the
20 person assaulted died as a result of an injury, the
21 defendant would be not guilty of the assault and battery
22 with intent to kill and you would then consider the lesser
23 included offense of assault and battery of a high and
24 aggravated nature. And I'm going to talk with you about
25 that now.

1 Now let me talk -- in speaking of malice, in speaking
2 with you about, I said something about depravity or
3 depraved heart. I charge you that malice is an essential
4 ingredient of murder, does not necessarily import ill will
5 toward the individual that is injured, but instead
6 signifies malignant reckless -- excuse me, signifies
7 malignant recklessness of the lives and safety of others
8 or a condition of the mind which shows a heart fatally
9 bent on mischief. I need to charge you and charge you at
10 this time that under the law of South Carolina that a
11 person need not have any specific intent to kill or injure
12 another person to be guilty of murder. Where there is
13 evidence of such recklessness and wantonness as to
14 indicate a depravity of mind and regardless for human life
15 which malice may be inferred.

16 Now as to assault and battery of a high and
17 aggravated nature, as I previously stated to you that the
18 offense of assault and battery of a high and aggravated
19 nature is defined as an unlawful act of violent injury to
20 the person of another accompanied by circumstances of
21 aggravation. Examples of aggravation includes the use of
22 a deadly weapon, the infliction of serious bodily injury,
23 the intent to commit a felony, a great disparity between
24 the ages or physical condition of the parties, a
25 difference of the sexes, indecent liberties or

1 familiarities with a female accomplished by force, or the
2 purposeful infliction of shame and disgrace, resistance of
3 lawful authority and others. This is an assault
4 accompanied by circumstances of aggravation. For example,
5 an assault committed with a deadly weapon in a spirit of
6 wantonness and with a reckless disregard of the safety of
7 others could be an assault with a high and aggravated
8 nature. Neither serious bodily harm nor the use of a
9 deadly weapon is an essential element of assault and
10 battery of a high and aggravated nature, but they are
11 circumstances of aggravation that you may consider.
12 Malice is not a required element of assault and battery of
13 a high and aggravated nature; however, the presence of
14 malice does not prevent an assault and battery from being
15 classified as aggravated because the circumstances that
16 make an assault and battery aggravated can also give rise
17 to an inference of malice. In other words, the presence
18 or absence of malice alone will not determine whether the
19 defendant is guilty of assault and battery of a high and
20 aggravated nature.

21 If you, the jury, should find the defendant is not
22 guilty of assault and battery with intent to kill but that
23 the State has proven beyond a reasonable doubt that the
24 defendant committed an assault and battery and that
25 circumstances of aggravation existed then the defendant

1 would be guilty of assault and battery of a high and
2 aggravated nature. And of course, if the elements of that
3 particular offense are not proved to you then your verdict
4 would have to be that of not guilty.

5 Let me speak with you now of criminal intent.
6 Criminal intent is a necessary element of each crime and
7 that must be proved by the State beyond a reasonable
8 doubt. Criminal intent is always a matter that must be
9 determined by the jury from the circumstances surrounding
10 the situation. There is no way medical science can
11 dissect a person's brain and determine what he had in his
12 mind so the law states that criminal intent may be
13 inferred from the circumstances shown to have existed.
14 This is how the jury makes a determination of whether or
15 not the element requiring an intent was present within a
16 crime. Criminal intent is the state of mind which
17 operates jointly with an act and commission of a crime.
18 Criminal intent is a mental state, a conscious wrongdoing,
19 so it is up to you, the jury, to determine what the
20 defendant intended to do based on the circumstances shown
21 to have existed. I tell you that the State must prove
22 criminal intent as it must prove every other element
23 beyond a reasonable doubt.

24 All right. Now I've gone through that precise
25 extended charge about assault and battery, intent to kill,

1 assault and battery of a high and aggravated nature. And
2 once again, if the State has not proved the greater crime
3 charged or has not proved the lesser crime charged, they
4 failed to have proved any of that beyond a reasonable
5 doubt then of course your verdict would have to be that of
6 not guilty. I've gone through all that. Keep in mind now
7 that you've got to come back on the next indictment and
8 deliberate on it except on the assault with intent to kill
9 and the assault and battery -- in the assault in a high
10 and aggravated nature, you do not have the allegation of
11 battery. But you've got to use the same principles that I
12 have just given to you about malice with the intent to
13 kill and with aggravation about high and aggravating,
14 okay, which is just there's no battery alleged.

15 Now I got one more I got to go over with you and it's
16 a lot shorter. That's the possession of a weapon during
17 the commission of a violent crime. Section 16-23-490 of
18 our code of laws makes it illegal to possess a firearm or
19 visibly display what appeared to be a firearm during the
20 commission of a violent crime. Section 16-160 provides a
21 violent crime include the offenses, and I'm not going to
22 go through all of them but we have assault and battery
23 with intent to kill, burglary in the first degree. For
24 you to find the defendant guilty of this separate
25 statutory offense of possessing a firearm during a violent

1 crime you must first find the defendant guilty of the
2 violent crime. If you find the defendant guilty of the
3 violent crime then you must determine whether the State
4 has proved beyond a reasonable doubt that the defendant
5 was in possession of a firearm or visibly displayed what
6 appeared to be a firearm during the commission of the
7 violent crime. As used in Section 16-23-490 of the Code
8 of Laws of South Carolina, a firearm is defined as any
9 machine gun, automatic rifle, revolver, pistol, or any
10 weapon which will or is designed to or may be readily
11 converted to expel a projectile.

12 So, simply stated, if you do not find the defendant
13 guilty of two possible violent crimes that I mentioned
14 there, that is burglary first degree and assault and
15 battery with intent to kill, then you would not, you would
16 not be able to find him guilty of that particular offense
17 simply stated. Remember, though, the State has that duty
18 to prove all crimes alleged beyond a reasonable doubt.

19 Ladies and gentlemen, you're not partisans or
20 advocates for the State of South Carolina or for the
21 Defendant. You do not serve as jurors to reward friends
22 or punish enemies. Obviously such a perverted system of
23 justice would be intolerable in our society. You have
24 been selected by both sides in this state to be fair and
25 impartial jurors. It is your duty then by your joint

1 deliberations to determine the truth in this case giving
2 to the defendant the benefit of each and every reasonable
3 doubt on the issues as I have charged. Then to the facts
4 which you determine to be true you then take and apply the
5 law which has been given to you by the Court and thus
6 arrive at verdicts which speak the truth of the case. As
7 I told you, the word verdict is a Latin derivative word
8 which means a true saying. Now when you have accomplished
9 these responsibilities you will have satisfied your oath
10 as jurors and will have discharged your duty to the Court.

11 The possible forms of verdict in this case, and as I
12 said, you're going to have to take up each indictment
13 separately. On the burglary first degree indictment, two
14 possible forms of verdict. You're not to give any weight
15 as to how I give them in order to you. I have to give
16 them to you in some fashion so don't give any weight as to
17 how I go over them with you as far as the order of them.
18 But there are two possible forms of verdict in the one for
19 burglary first degree; that is, guilty or not guilty.
20 Madam Forelady, it will be your duty to sign your name
21 where it says foreman of the petit jury and the date, the
22 verdict. That verdict there is in the bottom left-hand
23 section on the indictment, okay? And that's the same
24 place on every indictment.

25 Now as to the assault and battery with intent to kill

1 it will be three possible verdicts there. The jury finds
2 the defendant guilty of the indicted offense. That will
3 be guilty of assault and battery with intent to kill.
4 Possible lesser included offense would be guilty of
5 assault and battery of a high and aggravated nature. Or
6 not guilty. And in order to simplify that for you what I
7 will do on this indictment and also on the assault with
8 intent to kill, I'm going to run a copy and I'm going to
9 write in the three possible forms of verdict for you so
10 where you can keep that straight. And then after you have
11 reached a verdict we will conform that on to the original
12 indictment, okay? Now the same case with the indictment
13 for assault with intent to kill. Three possible forms of
14 verdict: Assault with intent to kill, assault of a high
15 and aggravated nature, and that of not guilty. And once
16 again now, on the last of possession of a weapon during
17 the commission of a crime, two possible forms of verdict
18 there: Guilty or not guilty. But you cannot reach a
19 verdict of guilty unless you first find that the defendant
20 was guilty of a violent crime, okay?

21 That just about closes me out except to tell you that
22 your verdict on each and every one of these indictments
23 will have to be a unanimous verdict. All 12 jurors will
24 have to be in agreement. As I said, the forelady will be
25 responsible for writing in the verdict, dating the form,

1 and signing it. As you reach a verdict, if you have any
2 problems either knock on the door or we will receive the
3 verdict or entertain any problems you may have. I am
4 going to ask the 12 regular jurors to step back but do not
5 begin your deliberations until we get the exhibits checked
6 off and get these verdict forms ready and presented to
7 you. Once we send those back to you you may begin your
8 deliberations.

9 Now Madam Bailiff, we need to find a room. I would
10 like the alternate juror -- we have one, right? -- to
11 relax back there for a few minutes in a separate room for
12 a few minutes, okay, whoever is going to be taking care of
13 that.

14 Do not begin your deliberations now until we send
15 these indictments back. I also need to tell you, Madam
16 Forelady, that if anybody leaves the room for a smoke
17 break or goes to the restroom, cease your deliberations
18 until all 12 are back, okay? Y'all may step back.

19 (WHEREUPON, the jury was removed from the
20 courtroom at 4:25 p.m., and the following proceedings
21 commenced in open court.)

22 THE COURT: Anything for the record from the State?

23 MS. BIAGIANTI: Briefly, Your Honor. I don't know if
24 you wanted to charge the statement of the defendant
25 because some testimony came out, you know, from

1 Investigator Lee that -- about the gun, where the gun was.
2 I was just reading the statement of the defendant charge
3 from my computer; and if you wanted to charge that
4 excluding part about Miranda that you've already ruled on
5 the Miranda part of it. You know, how it lists the
6 factors, if you wanted to do that. As well as before you
7 send the indictment for possession of a firearm back, if
8 you will just, as discussed earlier, you will amend the
9 indictment to read firearm as opposed to handgun. Thank
10 you.

11 THE COURT: I'll send a copy back. I will not do
12 that unless counsel's got some specific problem with ---

13 MR. BARR: Judge, I don't have any problem with you-
14 charge.

15 THE COURT: Counsel, I appreciate y'all working
16 together in this case.

17 (Deliberations began at 4:33 p.m. and court was in recess
18 awaiting the verdict.)

19 THE COURT: All right, bring them in please.

20 (WHEREUPON, the jury was returned to the courtroom at
21 approximately 5:40, and the following proceedings
22 commenced in open court.)

23 THE COURT: Madam forelady, I have a receipt of your
24 inquiry. The written -- this is the inquiry, "We would
25 like to see the written statement by Lesley." And it was

1 a Court exhibit. It was indeed marked as a Court exhibit.
2 It is not into evidence so I cannot present that to you.
3 Now I can have the court reporter go back and locate the
4 testimony that was elicited from that and replay that to
5 you. That's what we can do which was part of it, as I
6 remember anyway. That's all I can tell you concerning
7 that at this time.

8 THE FORELADY: I don't know, I mean, I don't think we
9 want to -- I don't know. Can we talk about it?

10 THE COURT: Sure.

11 THE FORELADY: Okay. I can't just say -- do what?
12 Well, we need to go in there so we'll go talk about it and
13 we'll let you know.

14 (WHEREUPON, the jury was removed from the
15 courtroom at 5:17 p.m., and the following proceedings
16 commenced in open court.)

17 THE COURT: Anything for the record?

18 MS. BIAGIANTI: No, sir.

19 THE COURT: Mr. Barr.

20 MR. BARR: Sir?

21 THE COURT: Anything for the record?

22 MR. BARR: No, sir.

23 THE COURT: I'll make this a Court exhibit.

24 (Court's Exhibit Number 2 was marked
25 and made a part of the record.)

1 (Jury continued its deliberations and court was in
2 recess.)

3 THE COURT: The jury has indicated they reached a
4 verdict. Is the alternate still in that other room?

5 THE BAILIFF: I just released him.

6 THE COURT: That's fine. And we need everybody in
7 that wants to come in. Bring them in.

8 THE BAILIFF: Yes, sir.

9 (WHEREUPON, the jury was returned to the courtroom at
10 approximately 5:21 p.m., and the following
11 proceedings commenced in open court.)

12 THE COURT: All right. Madam.

13 (Verdict tendered to the Court.)

14 THE COURT: Madam Forelady, I have verdicts on three
15 of the four on the.

16 THE FORELADY: Oh, okay, so I missed something.

17 THE COURT: Just an oversight.

18 THE FORELADY: Yes.

19 THE COURT: You just did not fill it in?

20 THE FORELADY: Yes, yes, we ---

21 THE COURT: Madam Clerk, if you will return that to
22 Madam Forelady.

23 (Forelady writes on the verdict form and then tendered to
24 the Court.)

25 THE COURT: Madam Clerk, you may publish the verdict

1 and after we publish we need to get Madam Forelady to
2 conform to the other verdict forms to originals which I
3 will hand to you at this time.

4 THE CLERK OF COURT: State of South Carolina,
5 Georgetown County versus Heyward Davis, Jr. Indictment
6 for burglary first: The verdict of the jury is guilty.
7 State of South Carolina, Georgetown County, Heyward Davis,
8 Jr., and this is for indictment 06-22-529, indictment for
9 assault and battery with intent to kill: The verdict of
10 the jury is guilty of assault and battery with intent to
11 kill. Indictment 06-22-530, State of South Carolina,
12 Georgetown County versus Heyward Davis, Jr., indictment
13 for assault and battery with the intent to kill: The
14 verdict is guilty of assault and battery with intent to
15 kill. Indictment 06-22-532, State of South Carolina,
16 Georgetown County versus Heyward Davis, Jr., indictment
17 for possession of a weapon during the commission of a
18 violent crime; the verdict is guilty.

19 Ladies and gentlemen of the jury, if these are your
20 verdicts and these are still your verdicts would you
21 please let it be known by raising your raising your right
22 hand.

23 (All jurors complied by raising their right hand.)

24 THE CLERK OF COURT: Thank you.

25 THE COURT: Thank you, Madam Clerk.

1 Counsel, anything further of the jury?

2 MS. BIAGIANTI: Your Honor, can Mr. Barr and I
3 approach because I think -- can we just approach?

4 (WHEREUPON, counsel approached the Bench for an
5 off-the-record discussion.)

6 THE COURT: All right. Just make sure we're correct
7 on it. 06-GS-22-530, that's guilty of assault with intent
8 to kill. 529, guilty of assault and battery with intent
9 to kill. Madam Clerk, at this time I'm going to give you
10 those two back, and if you will have Madam Forelady
11 conform the verdict over to your originals.

12 (Documents tendered to the forelady, then returned to the
13 Court.)

14 THE COURT: Ladies and gentlemen of the jury, thank
15 you so much for your being served on this case. Thank you
16 so much for your patience with the Court. The way the
17 Court works as you found out is you have to find the facts
18 and I have to be the judge of the law and sometimes that
19 means we have to keep you back there in the jury room for
20 an extended period of time. I apologize for that. That's
21 just the way we have to do things and we thank you for
22 your patience. The next phase of this trial is what we
23 call mitigation and sentencing. I will leave it up to you
24 if you would like to stay for that. We will move into
25 that in just a few minutes. If you would like to be

1 excused you may leave at this time, but I didn't want you
2 to leave until we could thank you for your service. You
3 will be receiving an expense check hopefully in a few
4 days. If it doesn't come in within, say, the next week,
5 by the end of next week, be sure and check with the
6 clerk's office to see what the problem might be. All
7 right, with that said, if you would like to stay and
8 listen to mitigation and sentencing you are welcome to do
9 so; otherwise, we'll let you leave through this door. If
10 you'd like to stay you can just stay in your seats.

11 (Jury was excused.)

12 MR. BARR: Post-trial motions, Judge.

13 THE COURT: Mr. Barr.

14 MR. BARR: We would respectfully move for a new
15 trial. Our position would be that the verdict against the
16 overwhelming *of the evidence that being we would move for
17 a new trial.

18 THE COURT: So noted. I'll have to deny that motion
19 at this time.

20 MR. BARR: Thank you.

21 THE COURT: Solicitor.

22 MS. BIAGIANTI: Thank you, Your Honor. You heard the
23 facts of this case, and the horrific nature of this man
24 breaking into his ex-girlfriend's house when he violently
25 and with obvious malice tried to kill Chris Gamble and

1 attempted to shoot his girlfriend but for the grace of God
2 she is still here today. Your Honor, speaking with the
3 victims, preparing for this case, not only has he caused
4 fear in both of them, they will never be able to rest in
5 their home again with that feeling of comfort and safety
6 that everyone should have because that was taken away from
7 them at the hands of this man. Chris Gamble has permanent
8 nerve damage due to his gunshot injury which as a long
9 haul truck driver makes for a rocky road. He can't sit
10 long periods of time. That's never going to be reversed.
11 All because of the rage and the defendant just losing it.
12 And that's what he did; he lost it that night. And for
13 whatever reason we'll never know apparently why he did
14 this. So we ask, as you're aware, burglary first carries
15 15 years up to life in prison. Assault and battery with
16 intent to kill up to 20 years. Assault with intent to
17 kill up to 10, and possession of a weapon during a violent
18 crime up to 5. We leave it in your discretion however.
19 The victims have told me while I was preparing for this
20 trial that they want him to be punished for what he did.
21 Thank you.

22 THE COURT: What is the age of the defendant
23 according to any records you may have?

24 MS. BIAGIANTI: I believe he's 35.

25 THE COURT: I'll come back to anything the victims

1 might want to say.

2 MS. BIAGIANTI: Yes, sir.

3 THE COURT: Mr. Barr.

4 MR. BARR: If it please the Court, Judge. Mr. Davis
5 is in fact 35 years old. He is a life-long resident of
6 Georgetown County. He currently works. In fact, he was
7 working -- he'd been working for the last 9 months. Quite
8 frankly, he spent an extended period of time in jail
9 before he was able to make bond. I think initially his
10 bond was something like about 50,000 dollars. That bond
11 was reduced by Judge Cottingham and he was released. That
12 was about 9 months ago. He has since gotten a new job.
13 He was working at the same place where the -- where
14 Ms. Parish works. He had worked about 13 years on that
15 job. And with the last job that he had since he got out
16 of prison, got out of jail on bond, he's now been working
17 for about 9 months on that job.

18 Your Honor, he has absolutely no criminal record.
19 This -- this young man, until this incident his name
20 wasn't even on the books; but it's a great tragedy, this
21 entire situation. And of course, I don't know why he
22 reacted in this particular situation the way that he did.
23 Your Honor, the only thing that I can say is that of
24 course you are being called upon at this time to sentence
25 him. And Judge, I would just ask that any sentence that

1 you impose, that that sentence be tempered with mercy;
2 that -- that considering the amount of time that he could
3 actually get on each one of these offenses what's the most
4 serious of which is a burglary offense which could carry
5 up to life. But we would simply ask that if you should
6 see fit to impose some sentence, Your Honor, that I think
7 that clearly he's demonstrated that -- that ordinarily he
8 is a person that can continue to make a contribution to
9 society. He's still relatively young. He's 35 years old.
10 I've discussed all of this with him. I discussed it with
11 him before we started this trial. And of course, he knows
12 that with respect to any sentence that you will impose
13 he's going to wind up doing 85 percent because it's going
14 to be considered a violent crime so -- so he -- he
15 understands that. And Judge, I would additionally ask the
16 Court that whatever sentence the Court might impose on the
17 individual offenses that he gets a concurrent sentence.
18 Thank you, sir.

19 THE COURT: Thank you, Mr. Barr.

20 Mr. Davis.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Anything you would like to say?

23 THE DEFENDANT: Well, I'm just sorry for everything
24 that happened. It's just that I just went there that
25 night, that's where I stay, and I happened to have the gun

1 with me. I didn't went there to do no harm to nobody.
2 And I didn't -- I didn't know Mr. Gamble was in there.
3 Sorry for everything that occurred.

4 THE COURT: Why did you have the gun?

5 THE DEFENDANT: Well, I work -- Mr. -- I work for --
6 my boss man got collection of guns and I was going to his
7 house the next morning, and he -- he was supposed to look
8 at the, something on the gun for me. And that's the only
9 reason why I had that rifle there because, you know, he --
10 he got a gun collection and I wanted him to look at the
11 gun. That's the only reason why I took it there.

12 THE COURT: And with the shells?

13 THE DEFENDANT: Sir?

14 THE COURT: With the shells, the cartridges?

15 THE DEFENDANT: Well, I didn't know -- I thought that
16 I had emptied the gun because I had it in -- in my truck.
17 I didn't want to leave it in the truck for somebody to
18 break in there and taking all of that.

19 THE COURT: The situation is this with the appellate
20 rights and I need to cover that with you and I'm sure
21 Mr. Barr did, too. You need -- if you want to appeal any
22 conviction you need to file a notice of appeal within ten
23 days. If you fail to do that then you jeopardize your
24 appeal running. I need to tell you that.

25 MS. BIAGIANTI: Your Honor, you know this is Chris

1 Gamble and he would just like to address the Court.

2 THE COURT: Mr. Gamble.

3 VICTIM GAMBLE: Your Honor, first of all I would like
4 to say thanks to the staff, the members, and the jurors.
5 What was told today was honest and that's exactly what
6 happened. On that particular night a part of me did die
7 and I can never regain it. I gave Mr. Davis ample time to
8 reveal or say, you know, his motive for being there and he
9 did what he did. He was consciously and he did what he
10 did mindfully knowing what he was going to do and I feel
11 no remorse for him, sir. And the way I feel right now is
12 wrong for me to say, but justice was served and is need --
13 and every individual that does an act that he does deserve
14 to be punished.

15 THE COURT: The thought went through my mind when you
16 described what happened to you, you know, you -- if you
17 hadn't had that marine training that you had you may not
18 be here today because apparently you knew to keep yourself
19 still and what to do about putting pressure on those
20 wounds.

21 VICTIM GAMBLE: Yes, sir.

22 THE COURT: I commend you for what you did do to help
23 your own self and try to preserve your life.

24 VICTIM GAMBLE: Thank you, sir.

25 MS. BIAGIANTI: Thank you, Judge.

1 THE COURT: Yes, ma'am.

2 MS. BIAGIANTI: This is Ms. Canteen (ph), our
3 victim's advocate.

4 THE COURT: All right, anyone else?

5 MS. BIAGIANTI: No, sir.

6 THE COURT: Okay. Don't think the thing deserves a
7 life sentence, Mr. Barr. I just don't think that would be
8 appropriate because we don't have a -- we don't have a
9 situation where we had one of the victims to leave us
10 fortunately. They survived. Even though there are
11 complications so I, you know. I don't think Mr. Davis
12 needs to be put away forever, but it is a serious offense.
13 He didn't go in there and scare anybody carrying a 30
14 caliber or 30.30 whatever it was, and it's just extremely
15 fortunate that it wasn't a death. Tempers can sure get
16 you in hot water. Go ahead and take him into custody.

17 The sentence of the Court on 2006-22-531 for burglary
18 in the first degree is that Heyward Davis, Jr. be confined
19 to the State Department of Corrections for a period of 25
20 years. The Department of Corrections will calculate and
21 apply appropriate credit for time served pursuant to code
22 24-13-40. On the possession of a weapon during commission
23 of a violent crime, the sentence of the Court is 5 years
24 concurrent, jail time to be applied as the law in this
25 state. 530, assault with intent to kill, the sentence is

1 10 years concurrent, credit for any jail time. But on
2 529, the assault and battery with intent to kill, sentence
3 is 20 years concurrent, credit for any jail time. Thank
4 you everybody very much. Good day.

5 (WHEREUPON, the proceedings were at 5:43 p.m.)
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COUNTY OF FLORENCE

15 I further certify that I am neither counsel for, nor
16 related to nor employed by any of the parties connected to
17 the action, nor am I financially interested in the action.

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FRANCES BAKIS-RAY, RPR
My Commission Expires: 9-13-2014

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Heyward Davis, Jr., Appellant.

Appeal From Georgetown County
Paul M. Burch, Circuit Court Judge

Unpublished Opinion No. 2009-UP-166
Submitted April 1, 2009 – Filed April 27, 2009

AFFIRMED

Appellate Defender Lanelle C. Durant, of Columbia, for
Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, Senior
Assistant Attorney Norman Mark Rapoport, all of
Columbia; and Solicitor J. Gregory Hembree, of
Conway, for Respondent.

PER CURIAM: Heyward Davis, Jr. appeals his convictions and sentences for assault and battery with intent to kill, assault with intent to kill, first-degree burglary, and possession of a weapon during the commission of a violent crime. Specifically, Davis argues the trial court erred in denying his motion to suppress the weapon used in the crime. We affirm^[1] pursuant to Rule 220(b), SCACR, and the following authority: U. S. v. Patane, 542 U.S. 630 (2004) (holding the failure to give Miranda warnings does not require the suppression of the physical "fruits" of a defendant's unwarned but voluntary statements).

AFFIRMED.

HUFF, WILLIAMS, and KONDUROS, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

2009-CP-22-01540

STATE OF SOUTH CAROLINA)
 County of GEORGETOWN)

In the Court of Common Pleas

Heyward Davis, Jr. #321720)
 Full name and prison number, if any, of applicant)

v.)

State of South Carolina)
 Name of Respondent)

APPLICATION FOR
 POST-CONVICTION RELIEF

FILED
 GEORGETOWN COUNTY, S.C.
 2009 SEP 23 AM 9:20
 ALMA Y. WHITE
 CLERK OF COURT

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention McCormick Corr. Inst. 386 Redemption Way, McCormick, South Carolina 29899
2. Name and location of Court which imposed sentence Georgetown County Court of General Sessions, Georgetown, South Carolina
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

Assault and Battery w/Intent to Kill 20yrs. - 2006-GS-22-529;

 - (a) 2006-GS-22-531 - Burglary 1st - 25-yrs.
 - (b) Poss. of a Weapon During the Comm. of a violent Crime - 2006-GS-22-532
 - (c) 5-yrs.; Assault w/intent to kill 2006-GS-22-530 - 10yrs.
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) All sentences imposed on May 1, 2007
 - (b) 25-yrs. - 20-yrs. - 5-yrs. - 10-yrs. All sentences are ran concurrently
 - (c) _____

5. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty XXXXXXX
 - (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? Yes
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. AFFIRMED
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. Submitted April 1, 2009 - Filed April 27, 2009
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. Unpublished Opinion No. 2009-UP-166
 - ii. _____
 - iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) N/A
 - (b) _____
 - (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Trial Counsel
 - (b) _____
 - (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) See Attached Memorandum

(b)

(c)

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

Other than appeal, no.

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)

No

(d) any other petitions, motions or applications in this or any other Court?

No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i.

N/A

ii.

iii.

iv.

(b) the name and location of the Court in which each was filed:

i.

N/A

ii.

iii.

iv.

(c) the disposition thereof:

i.

N/A

ii.

iii.

iv.

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) The issue of ineffective assistance of trial counsel can only be raised
- (b) in a P.C.R. application if it was not preserved for appellate review. In
- (c) this case it was not preserved and this is the first chance to present it.

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
Yes
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? N/A

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Charles D. Barr, 319 W. Main St. Kingstree, SC
- ii. LaNelle C. Durant, SCCID, 1330 Lady St., Suite 401, Columbia, SC 29201
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. 17(a)i represented me at 16(a), (b) & (c)
- ii. 17(a)ii represented at 16(d)
- iii. _____

18. State clearly the relief you seek in filing this application.

Find that trial counsel was ineffective and reverse the sentences and convictions rendered in this case and remand this case for a new trial.

19. Are you now under sentence from any other court that you have not challenged?

No

2009 CP 22-01516

STATE OF SOUTH CAROLINA)

) VERIFICATION

COUNTY OF McCormick)

I, Heyward Davis, Jr. #321720, 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.

Heyward Davis Jr.

Sworn to and subscribed before me

This 10 day of Sept, 2009

Joan L. Young L.S.

Notary Public for South Carolina

My Commission Expires 8.28.2011

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Heyward Davis, Jr. #321720, do 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 proceeding or give security therefor.

Heyward Davis Jr.
Applicant

Sworn to and subscribed before me

This 10 day of Sept, 2009

Joan L. Young L.S.

Notary Public for South Carolina

My Commission Expires: 8.28.2011

FILED
CLERK OF COURT
2009 SEP 23 AM 9:20
GEORGETOWN COUNTY, S.C.

STATE OF SOUTH CAROLINA)
County of Georgetown)

IN THE COURT OF COMMON PLEAS
15th Judicial Circuit

Heyward Davis, Jr., #321720,
Applicant,

v.

State of South Carolina,
Respondent.

Case No.:

MEMORANDUM OF LAW IN
SUPPORT OF APPLICATION
FOR POST-CONVICTION RELIEF

FILED
GEORGETOWN COUNTY, S.C.
2009 SEP 23 AM 9:31
ALMA Y. WHITE
CLERK OF COURT

2009-09-23-01540

Comes Now the above-named Applicant, pro-se, who respectfully submits this Memorandum of Law in Support of his Application for Post-Conviction relief in reference to the above entitled matter. The Applicant contends that his right to the effective assistance of counsel as guaranteed him under Article I, §14 of the South Carolina Constitution and the Sixth Amendment of the United State Constitution were violated at his trial. The Applicant submits that in support of these allegations he would show this Court the following:

Procedural History

The applicant was indicted by the Georgetown County Grand Jury on June 14, 2006, on the charges of assault and battery with intent to kill, assault with intent to kill, burglary in the first degree and possession of a weapon during the commission of a violent crime. Trial was held in this matter on May 1, 2007 before the Honorable Paul M. Burch and a jury. The Applicant was represented at trial by Charles D. Barr, he was found guilty of all the charges for which he was indicted. Judge Burch sentenced

the Applicant to 20-yrs., 10-yrs., 25-yrs. and 5-yrs. All sentences were ran currently..

Trial counsel Barr filed a notice of appeal in a timely fashion on May 9, 2007. The appeal was perfected by Attorney LaNelle C. Durant of the South Carolina Commission on Indigent Defense. Attorney Durant raised the following issue in the "Initial Brief":

"Did the trial court err in failing to grant appellant's motion to suppress the gun which was seized in violation of appellant's Miranda rights and his right to counsel?"

The South Carolina Court of Appeals affirmed the Applicant's case in an unpublished opinion.

Ineffective Assistance of Counsel

In order to prevail on a claim of ineffective assistance of counsel, the Applicant must demonstrate, not only that his counsel's performance fell below an objective standard of reasonableness, but also that he was prejudiced inasmuch as there exists "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different." Strickland v. Washington, 466 U.S. 668, 694 (1984). "A reasonable probability is a probability sufficient to undermine confidence in the outcome" of the Applicant's trial.

Id. The ultimate issue is a mixed question of law and fact and the South Carolina Supreme Court has found trial counsel to be ineffective in many instances. See Riddle v. State, 418 S.E.2d 308 (1991)(counsel ineffective for declining judge's offer to instruct on alibi where that was whole theory of defense and solicitor argued alibi to the jury); Dandy v. State, 391 S.E.2d 581 (1990)(Counsel ineffective for failing to object to improper self-defense jury charge); and Simmons v. State, 419 S.E.2d 225 (1992)(Counsel ineffective for failing to object to solicitor's cross-examination of defendant, and closing argument, regarding his refusal to consent to search of his vehicle).

The Applicant will establish ineffective assistance in the instant case by way of the following issues:

TRIAL COUNSEL WAS INEFFECTIVE DURING TRIAL FOR FAILING TO OBJECT, ASK THE COURT FOR CURATIVE INSTRUCTIONS OR MOVE FOR A MISTRIAL DUE TO THE IMPROPER AND INFLAMMATORY REMARKS MADE BY THE ASSISTANT SOLICITOR DURING CLOSING ARGUMENT, WHICH RESULTED IN THE BOLSTERING OF PROSECUTION WITNESSES AND INSERTION OF THE ASSISTANT SOLICITOR'S PERSONAL OPINION, THEREBY DENYING THE APPLICANT DUE PROCESS OF LAW.

The assistant solicitor made the following remarks during her closing argument in reference to the testimony of the alleged (prosecution witnesses) victims in this case: Tr. Trans. page 244, lines 2-15;

----Now, I don't know about you but listening to that 911 call, wow, that was bone chilling. Even if you don't believe a word out that victim's mouth, either victim's mouth on that witness stand, either that lady deserves an academy award or I don't know what. If she were just making up her ex-boyfriend's name Heyward --- you heard it on the 911 tape, who shot you? The operator said, Who shot you, who did this? Heyward. Heyward Davis. Well, she's either a really great actress to be able to come up if -- if someone came into the house and call his name or she's telling the truth. And she is telling the truth. She told you on the stand what happened. The male victim told you on the stand what happened, Chris. His story never lingered. (emphasis added).

The assistant solicitor further, in an effort to bolster the credibility of the prosecution witnesses, asked the jury: Tr. trans. page 245, lines 3-6;

-----What possible motivation do "they" have to lie, come into court and call that man's name. "None". (emphasis added).

And further on Tr. Trans. page 245, lines 9-11:

-----Going back to -- even if you didn't believe the victim's, all of the evidence is corroborated. (emphasis added).

It is clear that the assistant solicitor's comments to the jury served to bolster the credibility of the prosecution witnesses. The United States Supreme Court has long ago counseled.

prosecutors "to refrain from improper methods calculated to produce a wrongful conviction..." See Berger v. United States, 295 U.S. 78, 88, 55 S.Ct. 629, 633, 74 L.Ed.2d 1314 (1935). The Court made clear, however, that the adversary system permits the prosecutor to "prosecute with earnestness and vigor". Ibid. The Court explained that, "while the prosecutor may strike hard blows, he is not at liberty to strike foul ones". Ibid.

The South Carolina Supreme Court has held that "it is inappropriate for the solicitor to assure the jury of a witness's credibility, because the jury is charged with assessing the credibility of witnesses based on evidence in the record". See Matthew v. State, 565 S.E.2d 766 (S.C. 2002). In Matthew the South Carolina Supreme Court found it was reversal error when the solicitor in that case stated to the jury during closing argument the following:

Now, you may not have liked Bimbo Hudson.
I didn't like Bimbo Hudson. I don't have to
like him. All I have to do is determine whether
or not he is a credible witness. I don't trust
any of these people until I corroborate their
testimony. And once I corroborate their
testimony, yes, I put them on the witness stand
because they were the ones that were there, they
were the ones that can tell it.

Id. at 767.

In the instant case, there is no evidence whatsoever that supports the solicitor's argument that the alleged victims were telling the truth during their testimony. It is for the jury, without assistance from the the solicitor, to determine whether or not a particular witness is being truthful during their

testimony. In the this case, the solicitor has assumed the roles of the judge, jury and prosecutor.

Counsel for the Applicant was ineffective for failing to object, ask the court for curative instructions or move for a mistrial because of the improper and inflammatory remarks made by the solicitor during closing argument.

In the instant case, trial counsel's performance fell below the objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the results of the trial would have been different. See Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in outcome of the trial. Johnson v. State, supra.

CONCLUSION

The Applicant ask that this Court convene an evidentiary hearing on the issues raised in this application and memorandum in this matter. The Applicant also ask that this Court appoint counsel to represent him in this matter. See See Rule 71.1 (d), of the S.C.R.C.P..

Date: _____

Respectfully submitted,

Heyward Davis, Jr. #321720

Heyward Davis Jr.
McCI F-4 B-side
386 Redemption Way
McCormick, SC 29899
Applicant

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Heyward Davis, Jr., # 321720,

2009-CP-22-1540

Applicant,

v.

RETURN

(Attorney Appointment Requested)

State of South Carolina,

Respondent.

Respondent, making its Return to the Application for post-conviction relief filed September 23, 2009, by Heyward Davis, Jr., would respectfully show this Court:

I. – Procedural History

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to convictions from Georgetown County. The Applicant was indicted in June 2006 for assault and battery with intent to kill (ABWIK) (2006-GS-22-0529), assault with intent to kill (AWIK) (2006-GS-22-0530), burglary in the first degree (2006-GS-22-0531) and possession of a weapon during the commission of a violent crime (2006-GS-22-0532). Charles D. Barr, Esquire, represented the Applicant. On May 1-2, 2007, the Applicant was tried before the Honorable Paul M. Burch, and a jury. He was convicted of all charges, and Judge Burch sentenced him to 20 years for ABWIK, 10 years for AWIK, 25 years for burglary first, and 5 years for the weapon charge. All sentences were to run concurrently. A timely Notice of Appeal was filed, and an appeal was perfected on the Applicant's behalf by LaNelle C. DuRant, Esquire. On appeal, the Applicant argued that the trial court erred in failing to suppress the weapon due to a Miranda violation. On April 27, 2009, the South Carolina Court of Appeals affirmed the conviction (2009-UP-166), and the case was remitted to the circuit court on May 13, 2009.

Incorporated herein by reference are the records of the Georgetown County Clerk of Court regarding the Applicant's convictions; the Applicant's SCDC records; the trial transcript, and the records from the Applicant's direct appeal. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. – Allegations and Relief Sought

In his Application, Mr. Davis alleges that his custody is unlawful for the following reasons:

(1) Ineffective assistance of trial counsel, including the following:

- a. Failure to properly challenge, by way of objection, request for curative instruction, or motion for mistrial, improper statements (inflammatory; bolstering; personal opinion) made by the solicitor in closing argument, as reflected at page 244, lines 2-15; page 245, lines 3-6; and page 245, lines 9-11.

The Applicant states he is seeking reversal of his sentences and convictions and remand for a new trial.

III. – Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant bears the burden of proving his or her allegations by a preponderance of the evidence. Stalk v. State, 375 S.C. 289, 297, 652 S.E.2d 402, 405 (Ct. App. 2007) (citations omitted); Rule 71.1(e), SCRCP. "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.'" Dalton v. State, 654 S.E.2d 870, 873 (Ct. App. 2007) (citing Strickland v. Washington, 466 U.S. 668, 669 (1984); Butler v. State, 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. Id.

A two-pronged test is used to evaluate allegations of ineffective assistance of counsel. Dalton v. State, 654 S.E.2d 870, 873 (Ct. App. 2007). "In order to prove that counsel was ineffective, a PCR applicant must show that: (1) counsel's performance was deficient; and (2) there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different." Smith v. State, 375 S.C. 507, 515, 654 S.E.2d 523, 527-28 (2007) (citations omitted). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Id. (citations omitted). "Furthermore, when a defendant's conviction is challenged, 'the question is whether there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt. Id. (citations omitted). "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Id. (citations omitted). The applicant must overcome this strong presumption in order to obtain relief. Stalk, supra (citation omitted).

The Respondent submits that the Applicant will not be able to prove that counsel was deficient, or that he was prejudiced by the solicitor's comments. However, because his allegations may raise questions of fact that the record does not conclusively refute, Respondent requests an evidentiary hearing to fully resolve these issues. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation, claim, or other statement contained within the Application not expressly admitted, qualified, or explained is hereby DENIED.

V.

WHEREFORE, having made its Return, the Respondent requests that counsel be appointed and an evidentiary hearing held.

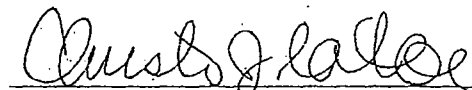
Respectfully submitted,

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

CHRISTINA J. CATOE
Assistant Attorney General



ATTORNEYS FOR RESPONDENT

Office of the Attorney General

Post Office Box 11549

Columbia, South Carolina 29211

(803) 734-3737

October 22, 2009

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

Heyward Davis, Jr., # 321720,

Applicant,

v.

State of South Carolina,

Respondent.

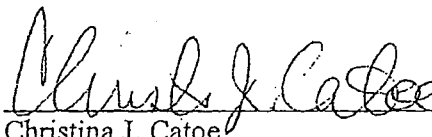
IN THE COURT OF COMMON PLEAS

2009-CP-22-1540

CERTIFICATE OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the State's RETURN in the above-captioned matter on the following person(s) by depositing in the United States mail, postage prepaid:

Heyward Davis, Jr., # 321720
 McCormick Correctional Institution
 386 Redemption Way
 McCormick, SC 29899

DATED this 22nd day of October, 2009.


Christina J. Catoe
 Office of the Attorney General
 Post Office Box 11549
 Columbia, South Carolina 29211
 (803) 734-3737

1 STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
 2 COUNTY OF GEORGETOWN) No. 11 CP 22 1620

3

4 HEYWARD DAVIS)
)
 5 Petitioner)

6 versus) TRANSCRIPT OF RECORD
)

7)
)

8 STATE OF SOUTH CAROLINA)
)

9

Georgetown, South Carolina

10

August 26, 2010

11

12 B E F O R E :

13 HONORABLE LARRY B. HYMAN, JR., Judge

14

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

16 For the Petitioner: * ARCHER, Esq.

17 For the State: * CATOE, Esq.
 Assistant Attorney General

18

Reporter Present: LINDA McCALL

19

20 * First names not shown

21

22 HARRIET P. BENNETT
 Reporter, S. C. Court Administration
 23 46 Regency Oaks Drive
 Summerville, S. C. 29485

24

25

I N D E X

DIRECT-REDIRECT CROSS-RECROSS

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HEYWARD DAVIS, JR.

By Mr. Archer

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Q. by the Court 6

By Ms. Catoe

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MOTION 11

EXHIBITS

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NOTE: No Exhibits were proffered or marked

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1 (The within matter came before the Court for hearing
2 on August 26, 2010)

3 MR. ARCHER: We'd call Mr. Davis.

4 HEYWARD DAVIS, JR., being duly
5 sworn, testified as follows:

6 CLERK: Please have a seat and when you are seated if
7 you would state your name for the record.

8 WITNESS: Heyward Davis.

9 DIRECT EXAMINATION

10 BY MR. ARCHER:

11 Q. You are Heyward Davis, Junior?

12 A. Yes, sir.

13 Q. Mr. Davis, you filed for PCR, post conviction relief,
14 is that correct?

15 A. Yes, sir.

16 Q. On ineffectiveness of counsel, is that correct?

17 A. Yes, sir.

18 Q. And your counsel was Mr. Charles Barr?

19 A. Yes, sir.

20 Q. And was he appointed?

21 A. He was retained.

22 Q. So you paid him?

23 A. Yes, sir.

24 Q. Now, I spoke with you today, is that correct?

25 A. Yes, sir.

MR. DAVIS ON DIRECT

1 Q. And I also wrote you a letter?

2 A. Yes, sir.

3 Q. And I explained what PCR is; that you would have to
4 convince a Judge that without Mr. Barr's efforts in all
5 likelihood the jury would not have found you guilty. Is
6 that correct?

7 A. Yes, sir.

8 Q. Okay, and isn't it true that you told me that what
9 happened was you shot at somebody, but without any in-
10 tention to kill them?

11 A. Yes, sir.

12 Q. Is that correct, that you didn't mean to kill any-
13 body?

14 A. Yes, sir.

15 Q. But you admit that you shot them or that you shot
16 at them?

17 A. Yes, sir. I shot at them.

18 Q. And then you were charged with assault and battery
19 with intent to kill?

20 A. Yes, sir.

21 Q. And with burglary first?

22 A. Yes, sir.

23 Q. And you received twenty-five years, correct?

24 A. Yes, sir.

25 Q. All right, and when I spoke with you at that time

MR. DAVIS ON DIRECT

1 you told me that you were guilty of assault and battery
2 with intent to kill?

3 A. Yes, sir.

4 Q. And I told you that you could have gotten twenty-
5 five years just for that, assault and battery with intent
6 to kill, and you understand that?

7 A. Yes.

8 Q. And your argument is that you shouldn't have been
9 charged with burglary first?

10 A. Yes, sir.

11 Q. And that is your only complaint, is that correct?

12 A. Yes, sir, that's right.

13 Q. Is there anything else you would like to tell the
14 Judge?

15 A. No, not really.

16 THE COURT: Let me ask you this. You say you
17 shouldn't have been charged with burglary in the first de-
18 gree?

19 A. Yes, sir.

20 THE COURT: All right, sir.

21 BY MR. ARCHER:

22 Q. Did the jury convict you of burglary, first?

23 A. Yes, sir.

24 Q. Did Mr. Charles Barr represent you at that time?

25 A. Yes, sir.

Q. BY THE COURT

1 THE COURT: What do you think your attorney could
2 have done to keep the State from charging you with that?

3 A. . . .

4 THE COURT: The State makes up its own mind as to
5 what you should be charged with. Do you think Mr. Barr
6 would have been able to keep the State from charging you
7 with that?

8 A. Yes, sir.

9 (Portion not audible on tape).

10 THE COURT: What do you think your attorney
11 could have done to keep them from charging you with that?

12 A. What could he have done?

13 THE COURT: That's what I'm asking you.

14 I mean, from the looks of what I see here, it looks
15 like you had a pretty lengthy trial. During your trial,
16 did you say -- I'm talking about your trial. Okay?

17 Did you tell Mr. Barr during the trial what you
18 were thinking wasn't right?

19 A. You mean, while we were sitting there in front of
20 the jury?

21 THE COURT: Yeah, during the trial.

22 A. I think there were a lot of things he didn't do that
23 he should have.

24 THE COURT: All right. Did you go into the house?

25 A. Yes, sir.

Q. BY THE COURT

1 THE COURT: Did you have permission to go into the
2 house?

3 A. No, sir. (Portion inaudible on tape)

4 THE COURT: Did you help Mr. Barr with your Defense,
5 tell him everything?

6 A. I didn't talk much with Mr. Barr. I mean, me and
7 him talked, but we didn't spend five minutes together
8 during the trial. If I get on the stand . .

9 THE COURT: Did you take the stand?

10 A. No, sir.

11 THE COURT: What in your trial did Mr. Barr do that
12 -- I'm talking about your trial now. What in your trial
13 do you think Mr. Barr did that wasn't right?

14 A. You mean what he should have done that he didn't do?

15 THE COURT: Yes, during your trial.

16 A. Well, I think he didn't put up a good fight that he
17 should have, and . .

18 THE COURT: In what regard?

19 A. I told him I had a witness, and he didn't contact
20 my witness.

21 He didn't never contact my witness, and I thought
22 that he should have.

23 THE COURT: This is your PCR. You can't just come
24 in and say that. You have to bring him to your PCR so
25 I can see that.

1 If you have a witness, you need to bring him in so
2 we can see if that is a credible witness. You seem to
3 have difficulty trying to pinpoint what you think Mr.
4 Barr did inappropriately during your trial. Is that
5 correct?

6 A. Yes, sir. Well, I -- you see, I'm not supposed to
7 talk, so . . .

8 THE COURT: Okay. Any further questions Mr. Archer?

9 MR. ARCHER: No, sir.

10 THE COURT: Ms. Catoe.

11 MS. CATOE: Just a couple of questions, Your Honor.

12 CROSS EXAMINATION

13 BY MS. CATOE:

14 Q. Mr. Davis, during your trial did Mr. Barr Strenu-
15 ously argue to the jury that you were not guilty of burglary
16 first because based on the evidence you still lived in
17 the house of your girlfriend, you had a key, and you only
18 shot when you found your girlfriend in bed with another
19 woman? Did he argue that to the jury?

20 A. (No audible answer)

21 Q. Did he argue to the jury that you were not guilty of
22 burglary first and try to convince the jury that you were
23 not guilty of that?

24 A. I can't remember. I know he brought up something
25 about the key.

MR. DAVIS ON CROSS

1 Q. Did he cross examine several witnesses and especi-
2 ally Ms. Parish about that she gave you a key and that
3 you had a key? That you lived there still with her?

4 A. Well, she didn't say I -- she tried to say I was
5 staying there two days a week.

6 Q. Did she testify that you had moved out about two
7 weeks before, and that officers came to help you get
8 your things?

9 A. I don't know. I don't remember that, maam.

10 THE COURT: What are you looking at in the transcript,
11 Ms. Catoe?

12 MS. CATOE: This is page 138, I believe, Your Honor.

13 THE COURT: Thank you.

14 (Brief pause in proceeding)

15 THE COURT: All right.

16 MS. CATOE: Starting on page 137.

17 BY MS. CATOE:

18 Q. Do you remember Ms. Parish testifying that she said
19 you came to the house to get your belongings with two
20 officers from the Andrews Police Department?

21 A. No, maam.

22 Q. Okay.

23 THE COURT: Mr. Davis, you don't recall Mr. Barr argu-
24 ing those points she brought up to the jury, that you
25 were living there?

Q. BY THE COURT

1 A. No, sir.

2 THE COURT: He tried to defend you in that regard,
3 did he not?

4 A. Yes, sir.

5 THE COURT: Anything else, Ms. Catoe?

6 MS. CATOE: Nothing further of Mr. Davis.

7 THE COURT: Mr. Archer?

8 MR. ARCHER: No further questions. Nothing further.

9 MS. CATOE: Your Honor, at this time the State would
10 make a motion for a directed verdict because the Appli-
11 cant has failed to present any testimony that would be
12 sufficient to grant post conviction relief.

13 THE COURT: Do you want to respond to that, Mr.
14 Archer?

15 MR. ARCHER: No, sir.

16 THE COURT: I am inclined to grant your motion be-
17 cause he just told me he didn't know what else Mr. Barr
18 could do or what Mr. Barr should have done.

19 He said he did have a witness, but that witness is
20 not here. I don't know if he had a witness or not.

21 Certainly his lawyer had no imput in the State's de-
22 cision to charge burglary or any other offense. When
23 it came to trial, it looks like his attorney vigorously
24 defended that charge, but still a jury found him guilty
25 of that charge beyond a reasonable doubt.

1 Perhaps, there was probable cause or sufficient prob-
2 able cause for that charge anyway. I'm going to deny the
3 application..

4 Thank you.

5 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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1 CERTIFICATE

2 I, HARRIET P. BENNETT, Official Court Reporter for
3 South Carolina Court Administration, hereby certify that
4 the foregoing Transcript was prepared from the records of
5 Linda McCall TO THE BEST OF MY ABILITY, having been heard
6 in the Court of Common Pleas for Georgetown County on
7 August 26, 2010.

8 FURTHER, I certify that I am neither of kin nor of
9 counsel to any party to this action, nor do I have any
10 interest in the same.

11 May 3, 2013

Harriet P. Bennett

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Heyward Davis, Jr., # 321720,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2009-CP-22-1540

ORDER DENYING
POST-CONVICTION RELIEF

FILED
GEORGETOWN COUNTY S.C.
2010 OCT 19 AM 10:32
ALMA Y. WHITE
CLERK OF COURT

This matter came before the Court pursuant to an Application for post-conviction relief filed September 23, 2009, by Heyward Davis, Jr. Respondent made a Return on October 22, 2009. An evidentiary hearing was convened at the Georgetown County Courthouse on August 26, 2010. The Applicant was present in court and represented by Paul Archer, Esquire. The Respondent was represented by Christina J. Catoe, Assistant Attorney General.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to convictions from Georgetown County. The Applicant was indicted in June 2006 for assault and battery with intent to kill (ABWIK) (2006-GS-22-0529), assault with intent to kill (AWIK) (2006-GS-22-0530), burglary in the first degree (2006-GS-22-0531) and possession of a weapon during the commission of a violent crime (2006-GS-22-0532). Charles D. Barr, Esquire, represented the Applicant. On May 1-2, 2007, the Applicant was tried before the Honorable Paul M. Burch, and a jury. He was convicted of all charges, and Judge Burch sentenced him to 20 years for ABWIK, 10 years for AWIK, 25 years for burglary first, and 5 years for the weapon charge. All sentences were to run concurrently. A timely notice of appeal was filed, and an

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DEC 12 2012

1 of 5

SCANNED

SC Court of Appeals

appeal was perfected on the Applicant's behalf by LaNelle C. DuRant, Esquire. On April 27, 2009, the South Carolina Court of Appeals affirmed the conviction (2009-UP-166), and the case was remitted to the circuit court on May 13, 2009.

STANDARD OF REVIEW

In a post-conviction relief proceeding, the applicant bears the burden of proving his allegations by a preponderance of the evidence. Caprood v. State, 338 S.C. 103, 109-110, 525 S.E.2d 514, 517 (2000); Rule 71.1(e). "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.'" Dalton v. State, 654 S.E.2d 870, 873 (Ct. App. 2007) (citing Strickland v. Washington, 466 U.S. 668, 669 (1984); Butler v. State, 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. Id.

A two-pronged test is used to evaluate allegations of ineffective assistance of counsel. Dalton v. State, 654 S.E.2d 870, 873 (Ct. App. 2007). "In order to prove that counsel was ineffective, a PCR applicant must show that: (1) counsel's performance was deficient; and (2) there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different." Smith v. State, 375 S.C. 507, 515, 654 S.E.2d 523, 527-28 (2007) (citations omitted). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Id. (citations omitted). "Furthermore, when a defendant's conviction is challenged, 'the question is whether there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt. Id. (citations omitted). "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable

professional judgment in making all significant decisions in the case." Id. (citations omitted).

The applicant must overcome this strong presumption in order to obtain relief. Stalk, supra (citation omitted).

Allegations

In his Application, Mr. Davis alleged that his custody was unlawful for the following reason(s):

- (1) Ineffective assistance of trial counsel: failure to properly challenge, by way of objection, request for curative instruction, or motion for mistrial, improper statements made by the solicitor in closing argument, as reflected at page 244, lines 2-15; page 245, lines 3-6; and page 245, lines 9-11.

Set forth below are the relevant findings of fact and conclusions of law, as required by S.C. Code Ann. § 17-27-80 (2003):

FINDINGS OF FACT AND CONCLUSIONS OF LAW

At the PCR hearing, this Court had before it the Applicant's PCR file, the records of the Georgetown County Clerk of Court regarding the conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appeal records. The Applicant testified in his own behalf at the hearing. At the conclusion of the Applicant's brief testimony, the State made a motion for summary judgment. Counsel for the State argued that the Applicant's testimony raised no questions of fact; that the testimony presented no meritorious issues of ineffective assistance of counsel, and that the State was entitled to judgment as a matter of law. This Court granted the motion, finding that the Applicant's contentions were clearly and entirely refuted by the trial transcript.

Regarding the allegation raised in the PCR Application, which is a matter of law regarding an improper closing argument by the solicitor, this Court finds that counsel was not

ineffective for failing to object to the solicitor's closing argument. The first comment referenced by the Applicant (Trial Transcript, page 244, lines 2-15) was an argument regarding the credibility of the victims, which is permissible. See e.g., Smith v. State, 375 S.C. 507, 522-23 654 S.E.2d 523, 531-32 (2007). The second comment referenced by the Applicant (Trial Transcript, page 245, lines 3-6) was a similar argument regarding credibility and the witnesses' motives, or lack thereof, to lie. This was also permissible. See Smith v. State, *supra*; see also Randall v. State, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004). Finally, the last comment referenced by the Applicant (Trial Transcript, page 245, lines 9-11) was an argument that the victims' testimony was corroborated by the evidence presented at trial. Contrary to the Applicant's argument in his Memorandum of Law attached to his PCR Application, this was not an improper comment asserting that the solicitor had *independently* corroborated the victim's testimony in violation of Matthews v. State, 350 S.C. 272, 565 S.E.2d 766 (2002). In any event, the Applicant's trial counsel thoroughly responded to the solicitor's comments in his own closing argument, and the solicitor's comments were harmless in light of the overwhelming evidence in this case. See State v. Baccus, 367 S.C. 41, 55, 625 S.E.2d 216, 223 (2006).

CONCLUSION

Accordingly, this Court finds and concludes that the Applicant failed to show any entitlement to post-conviction relief. Therefore, the PCR Application must be denied and dismissed with prejudice for failure to meet the burden of proof under Strickland v. Washington, 466 U.S. 668 (1984), and Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

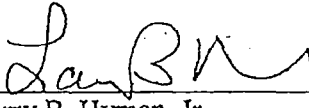
Counsel's attention is directed to Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), and Rule 59(e), SCRPC, regarding the filing of a Motion to Alter or Amend should counsel believe this Order fails to adequately address all issues raised as required by S.C. Code Ann. §

17-27-80 (2003). This Court further advises that if Applicant desires to secure appellate review of this Order, a notice of appeal must be filed and served within thirty (30) days of the service of this Order. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

IT IS THEREFORE ORDERED THAT:

1. The Application for post-conviction relief is **DENIED** and **DISMISSED** with **PREJUDICE**.
2. The Applicant must remain in the custody of the State for completion of his sentence.

AND, IT IS SO ORDERED this 12 day of ^{October}~~September~~, 2010.



Larry B. Hyman, Jr.
Presiding Judge
Fifteenth Judicial Circuit

Counsel, South Carolina

PAUL ARCHER

Attorney at Law

Phone/FAX: (843) 979-4000

Email: archerlawfirm@gmail.com

*Certified as Lead Counsel for Death Penalty Defense**Member N.J. Bar since 1966**Member S.C. Bar 1994**Federal Bar since 1967**United States Supreme Court 1976**8231 Ocean Highway**Palmyra Island, South Carolina 29585*

Mr. Heyward Davis, Jr. # 321720
 McCormick Correctional
 386 Redemption Way
 McCormick SC 29899

October 18, 2010

Dear Mr. Davis:

Enclosed is your Order Denying Post Conviction Relief.

You have a direct appeal to the State Supreme Court if you wish.

Because of the budget shortage there was no money to pay me for last terms eighteen PCRs, one of which was yours.

You have thirty days to file a Notice Of Appeal and serve it on the proper parties.

My fee to do this for you will be \$500.00 dollars.

Very truly yours,


 Paul Archer

Mr Paul Archer wants money from me to represent me. He Refuse to ask for a continuance at PCR Hearing do to the fact that Trial Attorney was not there, which Violate my 5, 6, 8, and 14 Amendment.

Kindest Regard
 Heyward Davis JR

2010 NOV -2 PM 4:50
 CLERK
 STATE COURT

HEYWARD DAVIS, JR. #321720

McCI F-4 A-side
386 Redemption Way
McCormick, South Carolina 29899

October 26, 2010

Alma Y. White
Georgetown County Clerk of Court
Court of Common Pleas
P.O. Box 479
Georgetown, SC 29442

RE: MOTION TO ALTER OR AMEND JUDGMENT
Davis v. State - Case No.: 2009-CP-22-1540

Dear Clerk:

Enclosed for filing is the "Motion to Alter or Amend Judgment Pursuant to Rules 52(b) and 59(e), SCRCP," along with the Certificate of Service.

Thank you for your attention and assistance in this matter.

cc: Christina J. Catoe
Attorney for Respondent

Kindest regards,

Heyward Davis Jr

IN THE COURT OF COMMON PLEAS
15th JUDICIAL CIRCUIT

Case No.: 2009-CP-22-1540

MOTION TO ALTER OR AMEND
JUDGMENT PURSUANT TO RULES
52(b) and 59(e), SCRCP

State of South Carolina,
Respondent.

An evidentiary hearing was convened at the Georgetown County Courthouse on August 26, 2010. The Applicant was present and represented by Paul Archer, Esquire. Respondent's attorney was Christina J. Catoe of the Attorney General's Office. The Applicant raised an allegation of ineffective assistance of counsel in his original application for post-conviction relief,

and as the Court stated in its Order on page 2, "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'". Dalton v. State, 654 S.E.2d 870, 873 (Ct. App. 2007)(citing Strickland v. Washington, 466 U.S. 668, 669 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985)). The problem the Applicant had with this requirement is that his trial attorney, the attorney that the Applicant alleged was ineffective during trial, did not show up at the hearing to enable the Applicant to cross-examine trial counsel on the issue of ineffective assistance of counsel, and to also lodge additional allegations against trial counsel during the time trial counsel was on the witness stand.

The Applicant wanted to ask trial counsel why didn't he do a proper investigation prior to trial to determine that the Applicant actually lived at the residence that was allegedly burglarized in this matter.

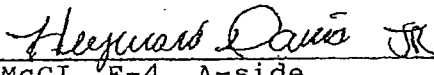
There were many avenues of ineffective assistance that should have been explored at the Applicant's hearing through his trial counsel's testimony. The Applicant was not given his full "bite" at the apple. See Aice v. State, 305 S.C. at 452, 409 S.E.2d at 395. The Applicant contends that there were many irregularities in the procedures employed at the Applicant's hearing.

WHEREFORE having made this Motion to Alter or Amend Judgment Pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure, the Applicant pray that this Court recind its previous order and allow him to reappear in court to fully develop the issue of ineffective assistance of counsel. PCR counsel should have asked for a continuance, and the hearing should have been held on another date when trial counsel could be available.

October 26, 2010

Respectfully submitted,

Heyward Davis, Jr. #321720


McCI F-4 A-side
386 Redemption Way
McCormick, SC 29899
Applicant

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
15th JUDICIAL CIRCUIT

Heyward Davis, Jr.; #321720,)
Applicant,)

Case No.: 2009-CP-22-1540

V.

CERTIFICATE OF SERVICE

State of South Carolina,)
Respondent.)

The Applicant certify that he has served a copy of the attached "Motion to Alter or Amend Judgment" on the Respondent by delivering a copy of same to the McCormick Correctional Institution mail room on this day, with sufficient postage prepaid and properly addressed to "Christina J. Catoe, Assistant Attorney General, PO Box 11549, Columbia, South Carolina 29211."

This 27 day of Oct, 2010

SWORN to and subscribed to me this

29 day of Oct, 2010

Notary Public of South Carolina

My Commission Expires 8 28 2011

Heyward Davis, Jr. #321720

Hyemond O'Neil JR
MCC1 F-4 A-side
386 Redemption Way
McCormick, SC 29899
Applicant

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Heyward Davis, Jr., # 321720,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2009-CP-22-1540

ORDER DISMISSING *PRO SE*
MOTION TO ALTER OR AMEND

2010 DEC 20 AM 11:39

CLERK OF COURT

FILED

This matter came before the Court pursuant to an Application for post-conviction relief filed September 23, 2009, by Heyward Davis, Jr. Respondent made a Return on October 22, 2009. An evidentiary hearing was convened at the Georgetown County Courthouse on August 26, 2010. The Applicant was present in court and represented by Paul Archer, Esquire. The Respondent was represented by Christina J. Catoe, Assistant Attorney General. Following the Applicant's testimony, and after a review of the PCR file including the trial transcript, this Court granted the State's motion for summary judgment. A formal Order Denying Post-Conviction Relief was filed on October 19, 2010.

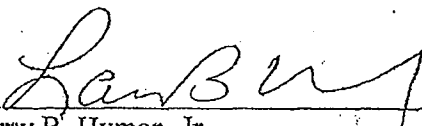
On October 26, 2010, the Applicant submitted a *pro se* Motion to Alter or Amend the Judgment. This Court finds, pursuant to the South Carolina Supreme Court case of Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010), that the Applicant's *pro se* motion is improper, is a nullity, and that this Court need not rule on it.¹ Further, because it is a nullity and should not have been accepted, this Order dismissing it has no effect on the time period in which a notice of appeal may be filed pursuant to Rules 203(b)(1) & 243(b), SCACR. See Miller v. State, *supra*.

¹ This Court is addressing the *pro se* motion only because the clerk of court has already accepted and filed it. This Order dismissing the motion will ensure timely and proper disposition of the file in the clerk's office.

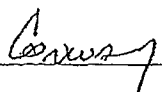
However, the Court takes this opportunity to address the "irregularities" which the Applicant contends were employed at his PCR hearing. (See Applicant's Motion, pages 2-3). The Applicant asserts that his trial counsel was not present at the hearing and that this violated his right to present his case. However, at the time the PCR hearing was commenced, this Court and both attorneys were aware that the Applicant's trial counsel, Charles D. Barr, Esquire, was on his way to the courthouse and was due to arrive shortly. Meanwhile, the Applicant had a full opportunity to raise any and all PCR allegations via his testimony. After carefully listening to the Applicant's testimony, and after a review of the entire PCR file including (among other things) the PCR Application and the trial transcript, this Court found that the Applicant failed to raise any meritorious issues that were not directly refuted by the trial transcript. Therefore, this Court concluded that the State's motion for summary judgment was properly granted. Summary judgment is clearly an authorized method of disposition, and this did not violate the Applicant's rights in any way. See S.C. Code Ann. § 17-27-70(c); S.C. Code Ann. § 17-27-80; Rule 41(b), SCRCF.

Because the Applicant's *pro se* Motion to Alter or Amend is a nullity pursuant to Miller v. State, *supra*, it is hereby **DISMISSED**.

AND, IT IS SO ORDERED this 14 day of Dec., 2010.



Larry B. Hyman, Jr.
Judge, Fifteenth Judicial Circuit

, South Carolina

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2), SCRCF, the Director of the South Carolina Department of Corrections has designated Sgt. J. T. H. (Server) as his duly authorized agent for the purpose of making service of the signed Order Dismissing Pro Se Motion To Alter Or Amend on the below named individual.

STATE OF SOUTH CAROLINA) AFFIDAVIT OF PERSONAL SERVICE
COUNTY OF McCormick)

On this 6 day of January, 2011, I served the signed Order Dismissing Pro Se Motion To Alter Or Amend on Inmate Heyward Davis, Jr., SCDC Inmate No. 321720, by delivering personally and leaving a copy of the same at McCormick Correctional Institution, McCormick, South Carolina. Deponent is not a party to this action.

s/ [Signature]
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 6 day of Jan, 2011
[Signature] (L.S.)

Notary Public for South Carolina

My Commission Expires: 8-28-2011

ADMISSION OF SERVICE

Service of a copy of the signed Order Dismissing Pro Se Motion To Alter Or Amend is admitted at the S.C. Department of Corrections, McCormick Correctional Institution, MCCI, McCormick County, South Carolina, this 6 day of January, 2011.

s/ Heyward Davis
Inmate Signature
SCDC No. 321720

FILED
GEORGETOWN COUNTY, S.C.
2011 DEC 29 AM 10:59
ALISA J. WHITE
CLERK OF COURT

STATE OF SOUTH CAROLINA
County of Georgetown

In the Court of Common Pleas
2011-CP-22-01620

Heyward Davis Jr # 321720
Full name and prison number (if any) of Applicant,

vs.

The State of South Carolina
Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention McCormick Corr. Inst 386 Redemption Way McCormick
SC 29869
2. Name and location of Court which imposed sentence Georgetown Ct. of General
Sessions
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
(a) 2006-GS-22-0529/ABWIK, 0530/AWIK
(b) 2006-GS-22-0531/Burglary 1st
(c) 2006-GS-22-0532/poss. of a weapon during violent crime
4. The date upon which sentence was imposed and the terms of the sentence:
(a) All sentences imposed on May 1, 2007
(b) 20yrs / 10yrs / 25yrs and 5yrs concurrently
(c) _____

5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty ☒ _____

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. Submitted April 1, 2009 - filed April 27, 2009

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. #2009-UP-166

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) N

(b) _____

(c) A

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of P.C.R. counsel

(b) _____

(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) See attached sheet

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? YES
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. Appeal
- ii. P.C.R.
- iii. 52(b) / 59(c)
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. South Carolina Court of Appeals
- ii. Georgetown Ct. of Common Pleas
- iii. Georgetown Ct. of Common Pleas
- iv. _____

(c) the disposition thereof:

- i. Affirmed
- ii. Denied
- iii. Denied
- iv. _____

(d) the date of each such disposition:

- i. Submitted April 1, 2009 - Filed April 27, 2009
- ii. Oct 12, 2010
- iii. Dec 14, 2010
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. Affirmed
- ii. Denied
- iii. Denied
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N
- ii.
- iii. A

(b) the proceedings in which each ground was raised:

- i. N
- ii.
- iii. A

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) See 10(a) Applicant. First time raising ground
- (b)
- (c)

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea?
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Charles D. Barr 319 W. Main St. Kingstree, SC
- ii. LaNelle C. Durant 1330 Lady St. Suite 401 Colq SC 29201
- iii. Paul Archer 8231 Ocean Highway Pawleys Island SC 29585

(b) the proceedings at which each such attorney represented you:

- i. Trial
- ii. Appeal
- iii. P-C-R

18. State clearly the relief you seek in filing this application.

Austin belated appeal, and any other relief the court deems just and fair

19. Are you now under sentence from any other court that you have not challenged?

NO

10(a) Ineffective Assistance of P.C.R. Counsel

- (1) Here, counsel Paul Archer never inform me that I had an up coming P.C.R. hearing. SCOC just packed me up and set me to court without my P.C.R. papers. Once I was at my P.C.R. hearing I told counsel, that I did not have my amended P.C.R. Miranda RIGHT issues.

Counsel told me that I was not going to have my hearing because my trial lawyer was not there, it had been re-set. But the next thing I knew, the court was calling my case for a hearing without my trial lawyer being there.

I asked counsel Archer to move for a continue, but he did not, So thereafter my hearing a asked counsel to file a timely 59(c) motion on that issue, "counsel not being there", Because "I had a right to cross-examine my trial lawyer on the issue of ineffective. But counsel told me that I would have to pay him \$500.00 as part of his fee - for he can also appeal my case. see 17-27-80; Pruitt v State 423 SE2d 127; McCray v State 408 SE2d 24; Bryson v State 493 SE2d 500; Mardis v State 653 SE2d 266.

Since counsel would not file a 59(c) motion. I filed my own. Which the state said it was a "nullity" and the judge denied my 59(c) motion.

- (2) Moreover, counsel never did appeal the denial of my P.C.R., as I asked him to, if my case was denied. Although. Mr. Paul Archer wrote me a letter, where

counsel Archer, he told me that it would be \$500.00 dollars for him to appeal my case SEE: attached Ex. A.

Therefore, I wrote Jean Toal at the Supreme Court about this matter, because I had a right to appeal my P.C.R. SEE: attached Ex. B. Still counsel Archer would not appeal the denial of my first P.C.R.

Here, the state law expressly authorizes the right to seek appellate review of the denial of PCR^s. See: S.C. Code Ann 17-27-100.

Austin v State 409 SE2d 395. And, I strongly argue that I did not freely nor voluntarily waive my right to appeal.

In this regards, the one year statute of

limitations under 17-27-45 ea; and the successive under 17-27-90 does not apply under these unusual circumstances. SEE: Aice v State 409 SE2d 392; Where the interest of justice is at hand see: Case v State 289 SE2d 413. Austin Id.

Where Austin appeals/belated appeals intended to correct unjust procedural defects Also see Wilson v State 559 SE2d 581; and Odom v State 523 SE2d 753.

WHEREFORE: for the foregoing reasons an evidentiary hearing should be held on all issues.

Date 12/20/11

Respectfully Submitted

Raymond Odom Jr

PAUL ARCHER

Attorney at Law

Phone/FAX: (843) 979-4000

Email: archerlawfirm@gmail.com

Certified as Lead Counsel for Death Penalty Defense

EXA

*Member N.Y. Bar since 1966**Member S.C. Bar 1994**Federal Bar since 1967**United States Supreme Court 1976**8231 Ocean Highway
Pawleys Island, South Carolina 29585*

Mr. Heyward Davis, Jr. # 321720
McCormick Correctional
386 Redemption Way
McCormick SC 29899

October 18, 2010

Dear Mr. Davis:

Enclosed is your Order Denying Post Conviction Relief.

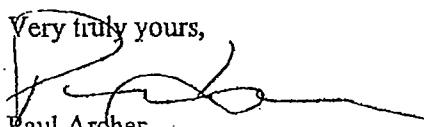
You have a direct appeal to the State Supreme Court if you wish.

Because of the budget shortage there was no money to pay me for last terms eighteen PCRs, one of which was yours.

You have thirty days to file a Notice Of Appeal and serve it on the proper parties.

My fee to do this for you will be \$500.00 dollars.

Very truly yours,


Paul Archer



Ex B

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

January 21, 2011

Paul Archer, Esquire
233 Muirfield Drive
Pawleys Island, SC 29585

Re: Heyward Davis, Jr.

Dear Mr. Archer:

This will acknowledge a letter from Mr. Davis received in this office on January 20, 2011. Since you are counsel of record for Mr. Davis, we are forwarding you a copy of his recent letter for any assistance you may be able to give him.

Very truly yours,

CLERK

/bs

Enclosure

CC: Mr. Heyward Davis, Jr. #321720

STATE OF SOUTH CAROLINA

County of McCormick

VERIFICATION

I, Weyward Davis Jr, 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.

✓ Weyward Davis Jr

SWORN to and subscribed before me this 20day of December, 19 2011

Joyce L Young (L.S.)
Notary Public

My Commission Expires: 10-11-2021

FILED
SOUTH CAROLINA
2011 DEC 29 AM 10:59
ALYCE Y. WHITE
CLERK OF COURT

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Weyward Davis Jr, 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 therefor.

✓ Weyward Davis Jr
Applicant

SWORN or affirmed to and subscribed before me this

20 day of December, 19 2011

Joyce L Young
Notary Public

My Commission Expires -

10-11-2021

STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN)

Heyward Davis, Jr. 321720)

2011-CP-22-1620)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

RETURN
AND MOTION TO DISMISSALMA Y. WISITE
CLERK OF COURT

2012 MAR -1 PM 2:01

FILED
GEORGETOWN COUNTY, S.C.

The Respondent, making its Return to the application for post conviction relief (PCR) filed December 29, 2011, would respectfully show this Court:

I.

Applicant is presently confined in the McCormick Correctional Institution of the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown Clerk of Court. The Applicant was indicted at the June 2006 term of the Georgetown County Grand Jury for:

1. Possession of a firearm in the Commission of a Violent Crime, Indictment No. 2006-GS-22-532.
2. Burglary First Degree, Indictment No. 2006-GS-22-531.
3. Assault with Intent to Kill, Indictment No. 2006-GS-22-530.
4. Assault and Battery with intent to Kill, Indictment No. 2006-GS-22-529.

Charles D. Barr, Esquire, represented the Applicant at the trial of this matter on May 1-2, 2007 before the Honorable Paul M. Burch and a jury. Applicant was convicted of all the above-referenced charges, and Judge Burch sentenced applicant to twenty years imprisonment for ABWIK,

ten years imprisonment for AWIK, twenty-five years imprisonment for Burglary First degree, and five years imprisonment for the weapon charge. All sentences were to run concurrently. Applicant filed a timely notice of intent to appeal, and LaNelle C. DuRant, Esquire perfected the appeal on Applicant's behalf. On April 27, 2009, the South Carolina Court of Appeals affirmed the conviction (2009-UP-166), and the case was remitted to the circuit court on May 13, 2009.

The Applicant subsequently filed his first application for PCR in which he alleged ineffective assistance of trial counsel. An evidentiary hearing was convened at the Georgetown County Courthouse on August 26, 2010 where the first PCR matter was heard before the Honorable Larry V. Hyman, Jr. Applicant was present and represented by Paul Archer, Esquire. Christine J. Catoe of the South Carolina Office of the Attorney General represented Respondent. By Order dated October 12, 2010, Judge Hyman denied and dismissed the Applicant's Application for PCR.

Applicant then submitted a *pro se* Motion to Alter or Amend the Judgment on October 26, 2010. In addressing the Motion, Judge Hyman found pursuant to Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010), that the Applicant's *pro se* motion was improper, and therefore was a nullity. Further, because it was a nullity and should not have been accepted, the order dismissing the motion had no effect on the time period in which a notice of appeal could be filed in Applicant's case. Applicant then filed a second PCR Application on December 29, 2011 alleging ineffective assistance of PCR counsel.

II.

Attached herewith and incorporated herein are the records of the Georgetown County Clerk of Court regarding the subject convictions, and the Applicant's records from the South Carolina Department of Corrections. 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.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of PCR counsel.

Applicant seeks to have an "Austin belated appeal, and any other relief the court deems just and fair" as a result of this proceeding.

III.

Applicant contends his PCR counsel was ineffective for failing to perfect an appeal of the denial of his first PCR. Ineffective Assistance of PCR counsel is generally not a claim that can be raised in a post-conviction relief proceeding. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). Further, the Sixth Amendment right to effective assistance of counsel does not extend to state post conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed. 2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not per se a 'sufficient reason' warranting a successive PCR application under § 17-27-90." Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). The only recognized exception to the rule barring claims of ineffective assistance of post conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Austin recognizes a general exception to this rule where prior post conviction relief counsel fails to appeal the denial of the application. Id. Austin "is limited to its particular factual

situation..." Aice, supra. Pursuant to Austin, a post conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application.

Respondent denies that Applicant's knowingly and voluntarily waived his rights to an appeal, nonetheless the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160.

S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). A formal order denying Post Conviction Relief was filed October 19, 2010. Applicant's counsel purports to have mailed the order by letter to Applicant the next day. The Applicant was required to file an application within one year. This Application was filed on December 29, 2011, which was beyond the time that the statutory filing period had expired. Realizing his error, Applicant argues in his Application amendment, page 2 and 3, "the one year statute of limitations under 17-27-45 (a); and the successive under 17/27/90 does not apply under these unusual circumstances.

See: Aice v. State 409 SE2d 392, where the interest of justice is at hand..." Applicant fails to provide a sufficient legal or factual basis, or to even go beyond a mere assertion as to why his application should go forward.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

V

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII

WHEREFORE, having made its Return, the State requests the Application be denied, and the matter dismissed with prejudice.

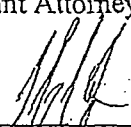
Respectfully submitted,

ALAN WILSON
Attorney General.

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

2/15, 2012.

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

HEYWARD DAVIS, JR., #321720)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2011-CP-22-1620

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion to Dismiss in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Heyward Davis, Jr., #321720
 McCormick Correctional Inst.
 386 Redemption Way
 McCormick, SC 29899

FILED
 GEORGETOWN COUNTY, S.C.
 2012 MAR -1 PM 2:01
 ALMA Y WHITE
 CLERK OF COURT

DATED this 15th day of February, 2012

Norma Bigbee
 Norma Bigbee, Legal Assistant

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN)

2011-CP-22-01620

HEYWARD DAVIS,)

Plaintiff,)

Transcript of Record

vs.)

November 16, 2012

STATE OF SOUTH CAROLINA,)

Defendant.)

B E F O R E:

Honorable Steven H. John
Georgetown County Courthouse
Georgetown, South Carolina

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

Brett Mehalic, Esquire
Attorney for Plaintiff

Tyson Andrew Johnson, Sr., Esquire
Attorney for State of South Carolina

Kay H. Richardson, CVR
Circuit Court Reporter

Davis v. State of South Carolina - 2011-CP-22-01620
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Davis v. State of South Carolina - 2011-CP-22-01620
BY THE COURT

3

1 (November 16, 2012)

2 THE COURT: All right. You want to call the case, Mr.
3 Attorney General.

4 MR. JOHNSON: Your Honor, this is Heyward Davis versus
5 South Carolina. This is 2011-CP-22-1620. Mr. Davis was
6 indicted at the June 2006 term of the Georgetown County Grand
7 Jury for possession of firearm in the commission of a violent
8 crime, burglary first degree, assault with intent to kill and
9 assault and battery with intent to kill.

10 Charles Barr -- I'm sorry, yeah, Charles Barr represented
11 Mr. Davis.

12 MR. MEHALIC: Calvin Barr was the trial attorney.

13 MR. JOHNSON: That's right. Mr. Barr was the trial
14 attorney.

15 THE COURT: All right.

16 MR. JOHNSON: And Mr. Davis was convicted on the charges
17 I've just listed. Judge Burch sentenced him to twenty years
18 in prison for the ABWIK, ten years for the assault with intent
19 to kill, twenty-five years for the burglary first degree and
20 then five years in prison on the weapons charge with all
21 sentences to run concurrently.

22 THE COURT: Mr. Archer, is there something else? I'm
23 sorry, you're standing there. Are you involved in this case?

24 MR. ARCHER: Yes, sir.

25 THE COURT: He is, okay.

Davis v. State of South Carolina - 2011-CP-22-01620
PAUL ARCHER - DIRECT BY MR. MEHALIC

4

1 MR. MEHALIC: This is a PCR asking for a belated appeal
2 of his first PCR. Mr. Archer was his first PCR attorney.

3 THE COURT: All right. Okay. All right. I appreciate
4 that. So, the witness then would not -- would also -- we'd
5 need to put Mr. Archer's name down there in the witness
6 category.

7 MR. JOHNSON: Yes, sir. Mr. Barr would not be the
8 witness in this one.

9 THE COURT: All right. So, I need to put that down.
10 And all right, and so, Mr. Mehalic, do you have a motion?

11 MR. MEHALIC: I'm sorry, sir?

12 THE COURT: Is there a motion or are we proceeding in
13 this matter?

14 MR. MEHALIC: Well, I believe we're proceeding in this
15 matter.

16 THE COURT: All right. Very good.

17 All right. Very good. Call your first witness then.

18 MR. MEHALIC: I'd call Paul Archer to the stand.

19 THE COURT: All right. Sir, please come around and be
20 sworn.

21 PAUL ARCHER, HAVING BEEN SWORN, TESTIFIED
22 AS FOLLOWS:

23 CLERK: Please be seated and state your name for the
24 record.

25 MR. ARCHER: It's Paul Archer, A-R-C-H-E-R.

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PAUL ARCHER - DIRECT BY MR. MEHALIC

5

1 THE COURT: Go ahead, sir.

2 MR. MEHALIC: Thank you, Your Honor.

3 DIRECT EXAMINATION OF PAUL ARCHER BY MR. MEHALIC:

4 Q: Mr. Archer, you represented Mr. Heyward Davis in post
5 conviction relief action; is that correct?

6 A: Yes, sir.

7 Q: That was back in August of 2010 was the hearing?

8 A: I don't remember.

9 Q: Take my word for it?

10 A: Yes, sir.

11 Q: Okay. Do you remember that hearing?

12 A: Vaguely. I know it was denied and that's all I remember
13 and I -- they were all denied except one, I believe -- I think
14 it was Judge Hyman -- he did grant one of my PCRs, so and I
15 know it was not that one. So, it was -- the PCR was denied.

16 Q: Do you remember whether or not Mr. Davis' trial attorney
17 was present?

18 A: Do I remember what?

19 Q: Whether or not Mr. Davis' trial attorney was present --
20 whether Mr. Barr was at the PCR?

21 A: I assume he was if he was the witness.

22 Q: You haven't had a chance to look over this file in a
23 while?

24 A: I briefly looked at it and what I do is if I know there's
25 a question of an appeal and I cover in my files, I always ask

1 the prisoners if they want to appeal and if they do, I circle
2 a big appeal on my cover. And then I also looked at my bill
3 and I put on my bill on my last item on the bill I say will
4 file a notice of appeal and I put one hour down or whatever it
5 is. I did look at my bill and there was nothing there. I
6 didn't file a notice of appeal. But what I do remember is he
7 asked me to file a reconsideration and I remember saying and I
8 usually say to most of them, he gave a perfectly clear
9 decision that his PCR was denied and there's really nothing
10 for him to do, to reconsider.

11 Q: Did you explain to Mr. Davis the difference between a Rule
12 59 motion and a notice of intent to appeal?

13 A: No. No, I just asked him, would you like to appeal. And
14 my record would show that it would be no. Now, he may've said
15 something about later on or something around that time or even
16 there, file a motion to reconsider and I may've said, there's
17 nothing to reconsider.

18 Q: Had you ever discussed the possibility of appealing prior
19 to the end of the case? What I mean is ---

20 A: Well, that's when I do -- at the end, I say, would you
21 like to appeal and if the client says yes, I circle my file.

22 Q: But had he ever expressed the desire for you to appeal if
23 you lost prior to the time ---

24 A: I recall -- I think he expressed he wanted me to file a
25 motion for the judge to reconsider.

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7

1 Q: So, you're saying that you had never spoken with him. He
2 had never asked you -- he never said, if we lose this I want
3 to appeal prior to even holding the hearing, you don't recall
4 a conversation like that?

5 A: I don't do it that way. I mean, he could've won the
6 hearing so why would I even say that. I say it when the Judge
7 says PCR denied. And if I recall at that time, the Judge was
8 doing it from the bench and he made his decision and I think
9 he may've said file a motion to reconsider and I probably said
10 to him there's nothing to reconsider. But I do recall that
11 was a bad time. You know, Indigent Defense owed me about
12 twenty cases I'd worked all year on and I was told I wasn't
13 gonna get paid.

14 Q: Let's talk about that. When you received the order
15 denying Mr. Davis' post conviction relief ---

16 A: Right.

17 Q: You sent a copy of it to him along with a letter; is that
18 correct?

19 A: Yes. I'm -- you showed me that letter and I am aware of
20 that letter.

21 MR. MEHALIC: You mind if I approach?

22 THE COURT: Yes, sir.

23 Q: Just so everybody -- make sure, does that appear to be a
24 letter that you wrote?

25 A: Yeah. You showed me that letter and I do recall it.

1 MR. MEHALIC: Judge, I don't know if I need to enter
2 this. This was an exhibit to Mr. Davis' application.

3 THE COURT: If you want to have it considered ---

4 MR. MEHALIC: Yes, sir. I'll enter this as my first
5 exhibit.

6 THE COURT: Any objections from the Attorney General?

7 MR. JOHNSON: Well, Your Honor, if we could just have a
8 foundation laid for the relevance of that, then we may not
9 have an objection but right now I'll -- I think I've seen it
10 but I don't know if I have or not.

11 THE COURT: Well, let's -- first, let's show it to the
12 Attorney General.

13 MR. MEHALIC: I apologize. This is the letter we've been
14 talking about. It's included in his application as Exhibit A.

15 MR. JOHNSON: All right. No objection.

16 THE COURT: All right. Very good.

17 APPELLATE'S EXHIBIT NUMBER ONE

18 ADMITTED INTO EVIDENCE

19 BY MR. MEHALIC:

20 Q: All right. If you would, read this letter for the Court
21 which you sent Mr. Davis.

22 A: Enclosed is your order denying post conviction relief.

23 You have a direct appeal to the State Supreme Court if you

24 wish. Because of the budget shortage, there was no money to
25 pay me for last term's eighteen PCRs, one of which was yours.

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9

1 You have thirty days to file a notice of appeal and serve it
2 on the proper parties. My fee to do this would be \$500.

3 And to be quite honest with you, there is a place on the
4 voucher where you can get money from the prisoners. I've
5 never did it but -- and I did it on one, Chico Thompson on
6 this and they paid me and I subtracted it from my bill. But
7 when I wrote this letter, I was quite upset because I was
8 getting stiffed for about \$20,000. And I didn't think he had
9 a case but he's using the word notice of appeal. I think it
10 was really a motion to reconsider and then I think he filed it
11 pro se. And in all retrospect, when I go back to that period
12 of time, I was probably wrong in doing this. I should never
13 have written this letter.

14 Q: And I understand that you were frustrated. But you did
15 send him that letter; is that correct?

16 A: Oh, no doubt about it.

17 Q: He never -- did he ever respond to you to that letter?

18 A: No. I've never got any money and I never filed a -- I
19 thought it was a motion to reconsider, not an appeal. And I
20 may've use that word appeal because a lot of times the
21 prisoners get confused which -- what it means, a motion to
22 reconsider and appeal are two different things.

23 Q: Do you remember what the -- the next thing you heard about
24 in this case?

25 A: I think he -- I think he, he filed a motion to reconsider.

1 Q: That's correct.

2 A: And it was denied.

3 Q: And do you have -- you didn't speak with Mr. Davis
4 subsequent to any of this, you didn't contact him?

5 A: I don't remember.

6 Q: Based on the letter that you wrote to Mr. Davis, let me
7 ask you: Do you believe that he believed that he would have
8 to pay you in order to get you to file the notice of intent to
9 appeal?

10 A: I have no idea what he thought. All I know is that when I
11 wrote him this letter, I shouldn't have -- I should have not
12 never done that but I was very upset at that time. When I
13 agreed to take all these cases, I went to Indigent Defense and
14 I said, is there any way I won't get paid, if it's one case or
15 two cases, I don't mind, I just waive my fee. But they told
16 me that -- how the system works, is that if they run out of
17 funds, they dip into the general fund. The problem was during
18 those years, there was no general fund. So, I was told I
19 wasn't gonna get paid. And then somebody comes along and
20 they, they, you know, want me to file a notice to reconsider
21 and the Judge's decision was very clear, there was nothing to
22 reconsider. I had a case the other day a man, DNA was 140-
23 quadrillion and he wants me to have another DNA test done and
24 this is ridiculous ---

25 Q: I understand your frustration, Mr. Archer, but ---

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PAUL ARCHER - CROSS BY MR. JOHNSON

11

1 THE COURT: Any other questions, Mr. Mehalic?

2 MR. MEHALIC: Just one, Judge.

3 BY MR. MEHALIC:

4 Q: Had Mr. Davis asked you to file a notice of intent to
5 appeal, you would've had to do that, correct?

6 A: No -- I would've done it. I do it all the time.

7 Q: But you're saying he didn't ask you?

8 A: I didn't in this case and I should've never written this
9 letter saying I needed \$500.

10 MR. MEHALIC: Nothing further, Your Honor.

11 THE COURT: Cross examination.

12 CROSS EXAMINATION OF PAUL ARCHER BY MR. JOHNSON:

13 Q: Mr. Archer, I'd like to follow up with the very last
14 question that Mr. Mehalic just asked you and I want to do so
15 just for clarity. Mr. Davis never asked you to file a notice
16 of intent to appeal, did he?

17 A: I think he asked me to -- he may've said something about
18 can't you get the judge to reconsider or something. If he
19 would've asked me, appeal it, I would've definitely filed a
20 notice of appeal and I would've circled my file. And I have
21 my file and it's not circled and I have my bill and there's --
22 it's not in my bill, I would've billed for it.

23 Q: Yes, sir. We're talking about two different things that
24 could've been filed, a motion to reconsider or a motion for
25 reconsideration is one; and the second thing would be a notice

1 of intent to appeal.

2 A: Correct.

3 Q: And my question to you is -- I understand there was some
4 discussion of a motion for reconsideration, but my question is
5 regarding the notice of intent to appeal. And Mr. Davis never
6 asked you to file such a document, did he?

7 A: You know, in all fairness, I don't know. My letter would
8 indicate that he did, I mean, I clearly stated that you have a
9 direct appeal, so maybe he did and maybe I didn't mark it on
10 my file. My file is not marked.

11 Q: But you normally do mark it on your file jacket, do you
12 not?

13 A: That's my procedure.

14 Q: And an equally important question, wouldn't you have
15 billed for that if you had been asked to do a notice of intent
16 to appeal? That's certainly something you would not have
17 failed to bill for.

18 A: I have done 500 of these and I always do what they ask me.
19 I ask them, do you want me to appeal and I always do it.

20 Q: Well, but I'm asking you about the proof of whether the
21 question was asked. One bit of proof would've been, did you
22 mark it on your file jacket as is your normal practice and
23 this was not the case, was it?

24 A: No, it's not on my file.

25 Q: The other bit of proof would've been, did you bill for it?

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13

1 A: No.

2 Q: You certainly would have billed for it if he'd ask you to
3 and you'd done the work, wouldn't you?

4 A: No, actually, I do it before. On other words, because I
5 -- in order to appeal, I have to wait till the order comes in.
6 I always submit my bill before that and if the person asks me
7 to file a notice of appeal, it would be on my bill and I say
8 will file notice of appeal when I get the order. I looked at
9 my bill; it's not on there and it's not on my jacket.

10 Q: What is that likely an indicator of to you?

11 A: That just -- I think there's a confusion in the words
12 between appeal and filing a motion to reconsider.

13 Q: All right. So, when you sent Mr. Davis the letter, did he
14 respond to your letter?

15 A: I don't remember. I know -- I know he did file a notice
16 to reconsider and it was denied.

17 Q: All right. But do you have anything in your file that
18 would be a written response from him concerning the notice of
19 intent to appeal?

20 A: No, I never heard from him.

21 Q: And do you have any indication in your file that he called
22 you and said, yes, I want you to do this?

23 A: No.

24 Q: All right. So, at the conclusion of this case, Mr. Davis
25 did a pro se motion for reconsideration, didn't he?

1 A: Yes.

2 Q: But he did not do a pro se notice of intent to appeal, did
3 he?

4 A: No.

5 Q: Could have, couldn't he?

6 A: Yes.

7 Q: And is it your practice to discuss with the client the
8 difference between a motion for reconsideration and notice of
9 intent to appeal when this topic comes up?

10 A: I would explain the difference because if he asked me to
11 file a notice to reconsider, I would normally say it isn't --
12 you're wasting everybody's time, he's not gonna reconsider
13 because it was clearly denied and it was clearly he lost and
14 there was nothing for the judge to reconsider.

15 Q: And a very important question, you had that discussion in
16 this case, didn't you?

17 A: If he asked me. I don't recall if I had the discussion.
18 I do say, would you like me to file a notice of appeal and he
19 obviously must've said no because I don't have it circled on
20 my file and I never billed for it.

21 MR. JOHNSON: Nothing further, Your Honor.

22 THE COURT: Thank you very much.

23 Any redirect?

24 MR. MEHALIC: Just one question -- one or two questions,
25 Judge.

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PAUL ARCHER - REDIRECT BY MR. MEHALIC

15

1 REDIRECT EXAMINATION OF PAUL ARCHER BY MR. MEHALIC:

2 Q: After receiving that letter, if Mr. ---

3 A: After receiving what letter?

4 Q: After Mr. Davis got your letter, why would he then contact
5 you to file a notice of intent to appeal if he didn't have the
6 \$500?

7 A: You'd have to ask him that, I have no idea.

8 Q: Is it fair to say that your ---

9 MR. JOHNSON: Objection, Your Honor; he wouldn't know the
10 answer to that question.

11 THE COURT: Well, the question that Mr. Mehalic was gonna
12 ask -- I don't know what the question is because he never got
13 to ask the question. The previous question was already
14 answered so the objection comes too late. Ask your next
15 question and if there's an objection, I'll hear it.

16 MR. MEHALIC: No, Judge, I have nothing further.

17 THE COURT: Very good. You may step down, Mr. Archer.

18 MR. ARCHER: Thank you, sir.

19 THE COURT: All right, Mr. Mehalic, your next witness,
20 please, sir.

21 MR. MEHALIC: I'd call Mr. Davis to the stand.

22 THE COURT: Please come around and be sworn.

23 HEYWARD DAVIS, HAVING BEEN SWORN,

24 TESTIFIED AS FOLLOWS:

25 CLERK: Please be seated and state your name for the

1 record.

2 MR. DAVIS: Heyward Davis.

3 THE COURT: Go ahead, Mr. Mehalic.

4 MR. MEHALIC: Thank you, Your Honor.

5 DIRECT EXAMINATION OF HEYWARD DAVIS BY MR. MEHALIC:

6 Q: Mr. Davis, do you recall your post conviction relief here
7 back in 2010, summer of 2010?

8 A: Yes, sir.

9 Q: Mr. Archer represented you at that hearing?

10 A: Yes, sir.

11 Q: Did you speak with him prior to going into the hearing?

12 A: Well, he -- talked with Mr. Archer back in the back and he
13 told me, said he was gonna ask for a continuance.

14 Q: Why is that?

15 A: Because Mr. Barr wasn't gonna be here on that day.

16 Q: What did you say in response to that?

17 A: Well, I didn't -- I didn't say anything because I thought
18 we was going up there in front the judge and ask for a
19 continuance and I was gonna come back.

20 Q: What's the next thing you remember? What's the next thing
21 you remember happening?

22 A: I got in front the Judge and the Judge -- Mr. Paul Archer
23 didn't say anything. The Judge asked me some questions and it
24 was denied. And I asked Mr. Paul Archer if he could appeal
25 it, put in a appeal. And I thought he was gonna put in a

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17

1 appeal.

2 Q: So, you -- when did you ask him to appeal it for you?

3 A: When I -- when the Judge denied it and me -- I come off of
4 the stand here and asked him would he appeal it.

5 Q: Okay. The next thing that happened is you got a copy of
6 the order in the mail; is that right?

7 A: Yes, sir.

8 Q: I'm gonna show you a copy of the -- Plaintiff's Exhibit
9 One, do you recognize that?

10 A: Yes, sir.

11 Q: And is that a copy of the letter you received from Mr.
12 Archer?

13 A: Yes, sir.

14 Q: Again, tell the Court what the letter says or what you
15 took it to mean.

16 A: Okay. What I took it to mean is that he said I had to
17 have \$500 for him to appeal it. I didn't have the money so
18 I'm assuming he wasn't gonna do it.

19 Q: So, what did you do after receiving that letter and a copy
20 of your order?

21 A: I filed a 59(e).

22 Q: What was -- why did you file a 59(e)?

23 A: Because I didn't -- I didn't -- I didn't have the money to
24 pay for the appeal so I filed a 59(e) to try to get my -- get
25 it on record.

1 Q: That 59(e) motion was denied by Judge Hyman; is that
2 right?

3 A: Yes, sir. He see -- say I couldn't do it, my attorney had
4 to do it.

5 Q: You couldn't file a 59(e) pro se, your attorney would have
6 to do that. At that point, did you -- did you know you could
7 appeal -- file an appeal by yourself without Mr. Archer?

8 A: No, sir.

9 Q: Did you know that if you'd asked Mr. Archer to appeal, he
10 would have to do it whether you gave him \$500 or not?

11 A: I didn't know that, sir.

12 Q: So, in your mind, you had tried to take the case further
13 and it was denied; is that right?

14 A: Yes, sir.

15 Q: At some point down the road, you filed this post
16 conviction relief action; is that right?

17 A: Yes, sir.

18 Q: How did you -- why did you file this action?

19 A: Because I wanted to go forward with the Court. I didn't
20 want to lose my chance of getting an appeal, you know, getting
21 back to court.

22 Q: So, you later found out that you should've been able to
23 get an appeal back then; is that right?

24 A: Yes, sir.

25 Q: And that's all you're asking the Court to do ---

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19

1 A: Yes, sir.

2 Q: --- is to allow somebody to take a look at your PCR
3 hearing and see if whether there's an appellate issue or not?

4 A: Yes, sir.

5 Q: Is there anything else you want to tell -- you want to let
6 the Court know?

7 A: Well, I -- I had some -- when Mr. Paul Archer, in this
8 case asking for money, I see where he had to go to
9 disciplinary school for it. He got in trouble for taking the
10 money and not reporting it to the State.

11 Q: I'm sure the Court is aware of all that.

12 A: That's all.

13 Q: You didn't have the \$500; is that correct?

14 A: No, sir.

15 Q: You were locked up at the time and had no way of getting
16 any money?

17 A: Yes, sir.

18 Q: You had been given an attorney for free to do the PCR; is
19 that right?

20 A: Yes, sir.

21 Q: Because you were declared indigent?

22 A: Yes, sir.

23 MR. MEHALIC: I have nothing further, Your Honor.

24 THE COURT: Cross examination?

25 CROSS EXAMINATION OF HEYWARD DAVIS BY MR. JOHNSON:

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HEYWARD DAVIS - CROSS BY MR. JOHNSON

20

1 Q: Mr. Davis, the PCR was filed December 29th, 2011. I'm
2 wondering why it was filed at that time and not sooner.

3 A: Well, that was -- I was assuming that Mr. Paul Archer had
4 filed an appeal for me. When I realized that he didn't filed
5 it, I filed a 59(e). I wrote the Clerk of Court asking them
6 to show -- to send me a copy of the appeal but they said he
7 never filed it.

8 Q: All right. And so you thought that Mr. Archer had filed a
9 notice of intent to appeal for you?

10 A: Yes, sir.

11 Q: And when did you believe that this was not correct?

12 A: When I got -- when they filed -- I didn't know it until
13 they turned down my 59(e) and told me said I couldn't do it,
14 my attorney had to file that. So, I'm assuming that he didn't
15 do it because I had to have the money.

16 Q: Okay. Well, let me get back to, you know, your PCR
17 hearing was on or about August of 2010; is that right?

18 A: Yes, sir.

19 Q: August of 2010. And you filed your PCR application
20 December 29, 2011 and when I asked you why did you file so
21 late, I mean, it's just little over a year later but your
22 answer was you thought that Mr. Archer had filed a notice of
23 intent to appeal?

24 A: Yes, sir.

25 Q: Let me make sure I understand this. I don't want to put

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21

1 words in your mouth. Is that ---

2 A: That's what I said but I didn't know -- I didn't know I
3 could file a notice of a appeal.

4 Q: Yes, sir. All right. And what made you come to believe
5 that he had not filed the notice of intent to appeal if that
6 was your belief at that time?

7 A: Because I haven't -- I haven't heard nothing from the
8 Court, got anything in the mail from them.

9 Q: Okay. All right. So, at some point, let's back up in
10 time here. At some point you filed a pro se request for
11 reconsideration.

12 A: Yes, sir.

13 Q: And then that was not successful, why then did you not
14 also file a pro se notice of intent to appeal?

15 A: I didn't -- I didn't know I could do it, sir. I didn't
16 know I could've filed for appeal.

17 Q: How did you learn that you could file a pro se motion for
18 reconsideration?

19 A: By -- I went to the -- you know, by doing the studies at
20 the law library, I found that I could do a 59(e), I found out
21 I had -- could've did it but I didn't know it was gonna get
22 denied ---

23 Q: Now, you were here ---

24 A: I didn't know an attorney had to do it.

25 Q: I'm sorry.

1 A: I didn't know that an attorney had to apply for it.

2 Q: Yes, sir. Now, you were here during the testimony of Mr.
3 Paul Archer; is that correct?

4 A: Yes, sir.

5 Q: And he says -- in listening to his testimony about whether
6 or not you asked him to file the appeal, you heard his
7 answers, did you not?

8 A: Yes, sir.

9 Q: Okay. Is there any question in your mind as to whether
10 you asked him to file a notice of intent to appeal or a motion
11 for reconsideration?

12 A: I asked him for a notice of appeal. He might've thought I
13 said a motion for reconsideration. He might've misunderstood
14 what I said.

15 Q: But isn't it odd that subsequently you filed a pro se
16 motion for reconsideration after that?

17 A: Yes, sir. I filed for a 59(e).

18 Q: Well, isn't it possible that your request to him was
19 actually for a 59(e)?

20 A: No, sir.

21 Q: You don't think that's possible?

22 A: No, sir. I -- when I asked him for an appeal, I didn't
23 know I couldn't make the appeal on my own.

24 Q: But you did the motion for reconsideration on your own?

25 A: Yes, sir, but it was unsuccessful; it got turned down,

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ARGUMENT BY MR. MEHALIC

23

1 denied.

2 Q: Please answer any questions that Mr. Mehalic may have.

3 THE COURT: Any redirect?

4 MR. MEHALIC: Nothing further, Your Honor.

5 THE COURT: All right. You may step down, sir.

6 All right. Mr. Mehalic, further presentation, witnesses
7 or evidence?

8 MR. MEHALIC: No, Your Honor.

9 THE COURT: All right. Very good. Any argument you want
10 to make?

11 MR. MEHALIC: Yes, sir, if I could.

12 THE COURT: Be glad to hear you.

13 MR. MEHALIC: Your Honor, in this case, the case is based
14 on Austin, belated appeal from denial of a PCR. It's the only
15 thing that he can do as far as a PCR on a PCR attorney. The
16 cases make it pretty clear and I'm specifically looking at
17 Odom versus the State of South Carolina, 523 S.E.2d 753. It
18 says PCR applicant is entitled to an Austin appeal if the PCR
19 judge affirmatively finds either -- either the applicant
20 requested and was denied an opportunity to seek appellate
21 review or to the right of -- the right to appellate review of
22 a previous PCR where it was not knowingly and intelligently
23 waived.

24 Our argument in this case, Judge, is that Mr. Davis
25 clearly didn't knowingly and intelligently waive his right to

1 have an appeal. He evidenced his intention to want to go
2 forward with the case by filing his own 59(e) but Judge Hyman
3 correctly, I believe, denied his right to file it himself and
4 actually told him that it was a nullity and that his attorney
5 would have to file his 59(e). When he gets a letter prior to
6 that actually from Mr. Archer telling him that if he wants Mr.
7 Archer to file notice of intent to appeal, it will cost him
8 \$500. At that point, he -- I believe he doesn't know --
9 doesn't think he has any more options and that's why it's
10 taken this long to seek his appellate review of his PCR.
11 Considering that letter and the fact that my client did try to
12 continue to argue his case by filing the 59(e), I just don't
13 believe that he knowingly and intelligently waived his right
14 to have the appeal.

15 THE COURT: All right, sir. Thank you.

16 All right. Mr. Johnson any argument?

17 MR. JOHNSON: Yes, Your Honor. We see generally two
18 groups of these. You've got the cases where the applicant --
19 it's clear that they asked and counsel either forgot or will
20 openly admit, I've -- I knew he wanted it and I just didn't do
21 it. And we have the other cases where it really becomes a
22 credibility issue between an applicant who says he did and
23 counsel who is insisting that he never asked me, I would've
24 done it. And this one really doesn't fall into either
25 category to me it seems. And I really -- I like Mr. Mehalic's

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ARGUMENT BY MR. JOHNSON

25

1 argument. He's saying that the motion for reconsideration was
2 evidence that Mr. Davis wanted to continue moving forward and
3 I hadn't seen that before. I thought that was a really
4 interesting argument. And in the legal standard that we have
5 to deal with here is whether or not he knowingly and
6 intelligently waived his right to an appeal. What is
7 problematic for us is that all the evidence seems to indicate
8 that Mr. Davis asked for a motion for reconsideration and he
9 didn't ask for an appeal. And I think we have to look a
10 little deeper and say does that equal a knowing waiver and it
11 may not. And I think that if the Court believes Mr. Davis
12 that he did not knowingly and intelligently waive his right to
13 appeal that he would be entitled to that. But we have
14 interesting pieces of evidence that seem to indicate to the
15 contrary and that's -- and I asked Mr. Archer about this, that
16 he didn't mark his file, he does normally do that. And I
17 think more telling is that he didn't bill for it. If Mr.
18 Archer had been asked to file a notice of intent to appeal and
19 had done the work, rest assured, it would have been billed for
20 and it was not. So, I think that's very interesting and it
21 seems to indicate that that discussion was not had between Mr.
22 Archer and his client and I'll let Mehalic respond.

23 MR. MEHALIC: To that last point, Judge, I mean, clearly,
24 he said that if he had -- if he'd been asked to file the
25 intent to appeal and had done the work, he would've billed for

Davis v. State of South Carolina - 2011-CP-22-01620
RULING OF THE COURT

26

1 it. Obviously, he didn't file the notice of intent to appeal.
2 Which I think the question here is did he knowingly and
3 intelligently waive his right appeal and once he gets a letter
4 telling him that -- his attorney says, if you want me to file
5 a notice of intent to appeal, you have to come up with \$500
6 and I don't know how we can say that he knowingly and
7 intelligently waived his right to have his appeal. He thought
8 he couldn't afford to have his attorney do it and once he
9 files the 59(e) and gets told he can't file that pro se, how
10 does he know that he can then file the notice of intent to
11 appeal.

12 THE COURT: All right. Thank you.

13 Thank you, Mr. Mehalic, appreciate it.

14 RULING OF THE COURT:

15 THE COURT: Based upon the facts and circumstances
16 presented in this matter, counsel for the State and the
17 Applicant are correct in that the standard here is did the
18 Applicant knowingly waive his right to an appeal, knowingly
19 and intelligently waive his right to an appeal. In this
20 particular case -- in some cases, I'm called to decide
21 credibility and believability, you know, the attorney over the
22 applicant or the applicant over the attorney. In this case, I
23 don't think I really need to call into question anybody's
24 credibility or believability. Both sides have testified, in
25 the Court's mind, as to a confusion over whether the Applicant

Davis v. State of South Carolina - 2011-CP-22-01620
CERTIFICATE OF COURT REPORTER

27

1 asked for an appeal, whether the appeal was to go forward or
2 not. Mr. Archer indicates that he believes there was some
3 confusion. The Applicant in his testimony certainly indicates
4 that I can't find in testimony and evidence presented that the
5 Applicant knowingly and intelligently waived his right to an
6 appeal considering either party's testimony. I can't see that
7 the evidence rises to that standard. Therefore, I do find
8 that the belated appeal is proper under these circumstances.
9 The facts and the evidence do not indicate that the Applicant
10 knowingly and intelligently waived his right to appeal and
11 therefore such a belated appeal is granted.

12 Mr. Mehalic, I want you to do a proposed order to that
13 effect. I appreciate it. I would like to have it in my
14 office by noon on Tuesday, next Tuesday. The reason for that
15 is obviously, you've got Thanksgiving after the end of that
16 and the following week I'm holding court outside the circuit
17 so I don't want to wait that long to issue an order in this
18 case. So, you can have it to me by next Tuesday by then. All
19 right? If you need my clerk's email address, you want to
20 email it to her and the Assistant Attorney General at the same
21 time; that'd be great.

22 MR. MEHALIC: That'd be fine, Your Honor.

23 THE COURT: All right. Very good.

24

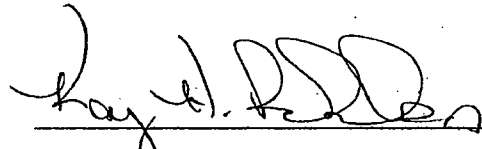
25

(Adjourned.)

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the PCR hearing held in the case of Heyward Davis versus State of South Carolina, held in the Court of Common Pleas for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on November 16, 2012.

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



Kay H. Richardson, CVR

Official Reporter

April 19, 2013.

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Heyward Davis, Jr., # 321720,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2011-CP-22-1620

ORDER GRANTING BELATED APPEAL
PURSUANT TO AUSTIN V. STATE

FILED
GEORGETOWN COUNTY
2012 NOV 26 3:44 PM
ALMA Y. WHITE
CLERK OF COURT

This matter came before the Court pursuant to an Application for post-conviction relief filed December 29, 2011, seeking a belated appeal from his post-conviction relief action. An evidentiary hearing was convened at the Georgetown County Courthouse on November 16, 2012. The Applicant was present in court and represented by Brett L. Mehalic, Esquire. The Respondent was represented by Tyson Andrew Johnson, Sr., Assistant Attorney General.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from Georgetown County. Applicant was indicted at the June 2006 term of the Georgetown County Grand Jury for Assault and Battery with Intent to Kill (2006-GS-22-529), Assault with Intent to Kill (2006-GS-22-530), Burglary First Degree (2006-GS-22-531), and Possession of a Firearm in the Commission of a Violent Crime (2006-GS-22-532). Charles D. Barr, Esquire, represented Applicant. On May 2, 2007, Applicant was convicted of all charges following a jury trial. The Honorable Paul M. Burch sentenced Mr. Davis to twenty years imprisonment for Assault and Battery with Intent to Kill, ten years for Assault with Intent to Kill, twenty-five years for Burglary First Degree, and five years for the weapon charge, all sentences to run concurrently.

A timely Notice of Intent to Appeal was filed and Lanelle C. Durant, Esquire perfected the appeal on Applicant's behalf. On April 27, 2009, the South Carolina Court of Appeals affirmed all of the convictions.

Petitioner then filed his first PCR application alleging ineffective assistance of trial counsel. A hearing was held before the Honorable Larry B. Hyman, Jr. on August 26, 2010. Applicant was represented at this hearing by Paul Archer, Esquire. Judge Hyman issued an Order on October 12, 2010 denying Petitioner's request for a new trial.

Applicant then filed a *pro se* Motion to Alter or Amend the Judgment on October 26, 2010. On December 14, 2010, Judge Hyman dismissed this Motion, ruling that it was improperly filed under Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010), and was therefore a nullity. This Order was filed on December 20, 2010.

Neither Petitioner nor his PCR counsel filed a Notice of Intent to Appeal within the required timeframe. However, on December 29, 2011, Petitioner filed this PCR alleging ineffective assistance of counsel and requested a belated appeal of the denial of his PCR application.

STANDARD OF REVIEW

In a post-conviction relief proceeding, the applicant bears the burden of proving his allegations by a preponderance of the evidence. Caprood v. State, 338 S.C. 103, 109-110, 525 S.E.2d 514, 517 (2000); Rule 71.1(e). "A PCR applicant is entitled to an *Austin* appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived." Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999), *citing King v. State*, 308 S.C. 348, 417 S.E.2d 868 (1992).

Set forth below are the relevant findings of fact and conclusions of law, as required by S.C. Code Ann. § 17-27-80 (2003).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In considering the Applicant's belated appeal claim, this Court had before it the PCR pleadings, the records of the Georgetown County Clerk of Court regarding the convictions, and the Applicant's

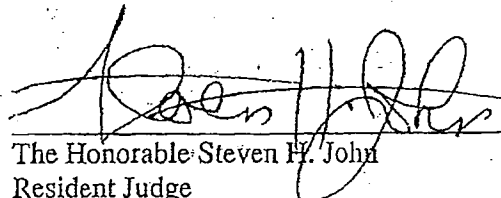
records from the South Carolina Department of Corrections. The Applicant and the Applicant's former counsel testified at the hearing.

The Applicant, who was represented by Paul Archer at his post-conviction relief hearing, testified that he asked his attorney to file an appeal after sentencing. Paul Archer testified that he believed that Applicant asked him to file a Rule 59(e) Motion for Reconsideration, although he admitted that there was considerable confusion about what the Applicant was requesting. No appeal was filed.

This Court finds that the Applicant did not knowingly and voluntarily waive his right to a direct appeal, and that he is entitled to petition the South Carolina Supreme Court for review of his PCR appeal issues pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). See S.C.Code Ann. § 17-27-100 (1985); Supreme Court Rule 50(9).

CONCLUSION

Accordingly, the Applicant's request to petition for belated review of his post-conviction relief action is hereby **GRANTED**. Within thirty (30) days of service of this Order, counsel for the Applicant must file a notice of belated appeal with the South Carolina Supreme Court to secure the appropriate review of the Applicant's convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986), and Rule 243, South Carolina Appellate Court Rules, for the appropriate procedure for a belated appeal. See also Rules 203 and 206, South Carolina Appellate Court Rules.


 The Honorable Steven H. John
 Resident Judge
 Fifteenth Judicial Circuit

November 20, 2012
 At Chambers, South Carolina

BAIL set by

Judge Howellon 05-14-06Type and Amount: Bond \$10,000

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

WITNESSES:

Andrews Police Department

DOCKET NO. 06 GS22.529 X

The State of South Carolina,

County of Georgetown

21451

DCB

COURT OF GENERAL SESSIONS

JUNE TERM 2006

005

ARREST WARRANT NUMBER:

AWW: H-827631

CDR: 0014 §16-03-0620

L:

VS.

THE STATE

DOI: 5-13-06

HEYWARD DAVIS, JR.

SID: SC01015052

Georgetown, SC 29440

DOB:

SSN:

ACTION OF GRAND JURY

TRUE BILL

Date

Foreman of Grand Jury

INDICTMENT FOR

J. GREGORY HEMBREE, SOLICITOR

ASSAULT AND BATTERY WITH

INTENT TO KILL

VERDICT

Guilty of Assault and

Battery with Intent to Kill

Willie S. Paulina - 5-2-07

Foreman of Petit Jury

STATE OF SOUTH CAROLINA

INDICTMENT FOR:

COUNTY OF GEORGETOWN

) ASSAULT AND BATTERY WITH INTENT TO KILL

At the Court of General Sessions, Convened on June 14, 2006, the Grand Jurors of Georgetown County present upon their oath:

That Heyward Davis, Jr. did in Georgetown County on or about May 13, 2006, commit an unlawful act of violent injury to the victim, Christopher Gamble with malice, by shooting the victim on the left side of his body under his shoulder blade, thus committing the crime of Assault and Battery with Intent to Kill, in violation of §16-3-0620, 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.


SOLICITOR DCB

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATEGeorgetown

VS.

Heyward Davis, Jr.

INDICTMENT/CASE#:

06 -GS- 22 - 529

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

Georgetown, SC 29440SID# SC 01015052

AW#:

Date of Offense:

S.C. Code §:

CDR Code #:

H-8276315-13-0616-03-0620016114☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIAL0-20In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Assault & Battery w/ Intent to Kill (ABWIK)in violation of § 16-3-620 of the S.C. Code of Laws, bearing CDR Code # 010114☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Don C. Bryant

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$ 35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$	
\$	
\$100	\$100.00
\$100	\$
\$12	\$
\$500	\$
\$25	\$25.00
\$100	\$
\$50	\$
\$40/ea	\$
\$	\$3.75
\$	\$128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

Frances Parks-Ray

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ 10.00 beginning 1 mo after release

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

5/14/07

ARREST WARRANT

H 827632

H827632

STATE OF SOUTH CAROLINA

X ☐ County/ ☐ Municipality of
GEORGETOWNFILED
GEORGETOWN COUNTY

2006 MAY 17

THE STATE

HEYWARD DAVIS JR

ALMA Y. BROWN
CLERK OF COURTS

Address: GEORGETOWN, SC 000029440

P- No: H Race: Height: SSN: Weight:

DL State: Agency ORI#:

DOB: Prosecuting Agency:

Offense: COMMON LAW
Code/Ordinance Sec: Offense Code:This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant Heyward Davis Jr
on 5-13-06Signature of Constable/Law Enforcement Officer
Vernon C. SmithRETURN WARRANT TO
JUDGE BENJAMIN Y. BROWN
110 N. MORGAN AVE.
ANDREWS, S.C.

295100000

STATE OF SOUTH CAROLINA

X ☐ County/ ☐ Municipality of
GEORGETOWN

AFFIDAVIT

INV EDDIE LEE APD

HEYWARD DAVIS JR

I, the following particulars:
did within this county and state on 5/13/2006State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of

violates the criminal laws of the

COMMON LAW

ALMA Y. BROWN
CLERK OF COURTSI further state that there is probable cause to believe that the defendant named above did, commit
that on or about May 13, 2006 in the town of Andrews, Georgetown County,
the defendant did an unlawful attempt to commit a violent injury to Leslie
Brown with malicious intent accompanied by a present ability to complete
the act, this being against the peace and dignity of the State of South
Carolina.

INV. LEE 0605112 APD

Signature of Affiant

1507 8/10/06

5/13/2006
STATE OF SOUTH CAROLINA☐ County/ ☐ Municipality ofAffiant's Address 101 NORTH MORGAN AVE
ANDREWS SC 29510
Affiant's Telephone 8432645223

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

X It appearing from the above affidavit that there are reasonable grounds to believe that
defendant did violate the criminal laws of the State of South Carolina (or ordinance of☐ County/ ☐ Municipality of
DESCRIPTION OF OFFENSE:HEYWARD DAVIS JR
as set forth below.

COMMON LAW

I, the undersigned, being a sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of his execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on May 13, 2006

Signature of Issuing Judge
Benjamin Y. Brown (L.S.)

Judge Code: 8432648321

Judge's Address 110 N. MORGAN AVE.

ANDREWS, S.C.

Judge's Telephone 8432648321

Issuing Court: X ☐ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

BAIL set by

Judge Moeller

on 05-14-06

Type and Amount: Bond \$10,000

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(Indicate jury trial, bench trial, plea, not. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

WITNESSES:

Andrews Police Department

ARREST WARRANT NUMBER:

AW: H-827632

CDR: 0768 C/L, \$16-03-0620, \$17-25-0030

L:

DOI: 5-13-06

SID: SC01015052

ACTION OF GRAND JURY

Date

6/9/06

TRUE BILL

Foreman of Grand Jury

John A. H. A. J.

DOCKET NO. 06 GS22 530 ✓
The State of South Carolina,

County of Georgetown

21451

DCB

COURT OF GENERAL SESSIONS

JUNE TERM 2006

DCB

THE STATE

VS.

HEYWARD DAVIS, JR.

Georgetown, SC 29440

DOB:

SSN: 2

J. GREGORY HEMBREE, SOLICITOR

INDICTMENT FOR

ASSAULT WITH THE INTENT

TO KILL

VERDICT

Guilty of Assault with intent

to kill

Andre S. Pauler-5-2-07

Foreman of Petit Jury

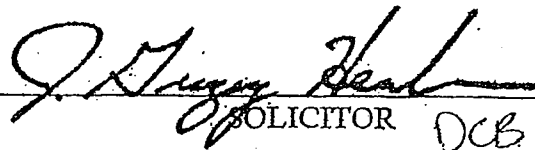
STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT FOR:
ASSAULT WITH THE INTENT TO KILL

At the Court of General Sessions, Convened on June 14, 2006, the Grand Jurors of Georgetown County present upon their oath:

That Heyward Davis, Jr. did in Georgetown County on or about May 13, 2006 unlawfully attempt to commit a violent injury to Leslie Brown aka: Leslie M. Parish to wit: defendant did fire a rifle at the victim, with malicious intent accompanied by a present ability to complete the act, in violation of the Common Law crime of Assault with Intent to Kill.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR DCB

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Georgetown
STATE VS.

INDICTMENT/CASE#:

Heyward Davis, Jr.A/W#: 016 GS- 22 - 530
H-827632

AKA:

Date of Offense: 5-13-06Race: B Sex: M Age: 35S.C. Code §: CL 16-3-620, 17-25-30DOB: 1 SS#: 6CDR Code #: 0 1 7 1 6 1 8

Address:

☐ CASE RESTOREDCity, State, Zip: Georgetown, SC 29440

SENTENCE

DL# SID# SC010150521☐ PLEA ☒ TRIAL0-10yrIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Assault w/ Intent to Killin violation of CL 16-3-620 of the S.C. Code of Laws, bearing CDR Code # 0 1 7 1 6 1 8☒ NON-VIOLENT 17-25-30 ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Don C. Bryant

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$ _____

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

\$56-5-2995 (DUI Assessment) \$12 \$ _____

\$35.13 (Public Def/Prob) \$500 \$ _____

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

\$50-21-114(BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ 10.00 beginning mo. after release

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 1Sentence Date: 3/2/07

Court Reporter:

Clerk of Court/ Deputy Clerk

Frances Bakis-Ray

ARREST WARRANT

H- 827633

STATE OF SOUTH CAROLINA
X ☐ County/ ☐ Municipality of
GEORGETOWN

THE STATE
against
HEYWARD DAVIS JR

Address: GEORGETOWN, SC 000029440

Phone: SSN: _____

Face: Height: Weight: _____

DL State: Agency ORI#: _____

DOB: _____

Prosecuting Agency: _____
CLERK OF COURT (AFTER JUNE 20, 1985) - FIRST D
OFFENSE: _____

Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of _____

The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge _____ (L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant Heyward Davis Jr
on 5-13-06

Signature of Constable/Law Enforcement Officer
James Currier

RETURN WARRANT TO:
DGE BENJAMIN A. DUNN
O N. MORGAN AVE.
DREWS, S.C.

295100000

STATE OF SOUTH CAROLINA
X ☐ County/ ☐ Municipality of
GEORGETOWN

AFFIDAVIT

INV EDDIE LEE APD
HEYWARD DAVIS JR

FILED: I, _____, did appear before me the affiant
being duly sworn deposes and says that
on 5/13/2006 at 11:00 PM
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____) violate the criminal laws of the

ALMA V. BROWN
CLERK OF COURT (AFTER JUNE 20, 1985) - FIRST D EGREE

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth above that probable cause is based on the following facts:
THAT ON OR ABOUT MAY 13, 2006 IN THE TOWN OF ANDREWS, GEORGETOWN COUNTY,
THE DEFENDANT DID, WITHOUT CONSENT, ENTER THE DWELLING OF LESLIE BROWN AT
ANDREWS, SC, WITH INTENT TO COMMIT A CRIME
THEREIN, WHILE ARMED WITH A 30/30 RIFLE A DEADLY WEAPON. THIS INCIDENT
HAPPEN IN THE NIGHTTIME. THIS BEING AGAINST THE PEACE AND DIGNITY OF THE
STATE OF SOUTH CAROLINA.

INV, LEE 0605112 APD

5/13/2006 Signature of Affiant

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Georgetown

Affiant's Address 101 NORTH MORGAN AVE
ANDREWS, SC 29510
Affiant's Telephone 8432645223

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

X ☐ It appearing from the above affidavit that there are reasonable grounds to believe that
defendant HEYWARD DAVIS JR
did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____)

DESCRIPTION OF OFFENSE: 16-11-0311
HEYWARD DAVIS JR as set forth below:

HEYWARD DAVIS JR (AFTER JUNE 20, 1985) having been duly sworn are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me
on May 13 2006

Signature of Issuing Judge
Benjamin A. Dunn (L.S.)

Judge Code: _____

Judge's Address 110 N. MORGAN AVE.
ANDREWS, S.C.

Judge's Telephone 8432648321
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

BAIL set by

Judge Moell

on 05-14-06

Type and Amount 1st Appearance

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____
(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

CODEFENDANTS

WITNESSES:

Andrews Police Department

DOCKET NO. 06 GS22 531 x

The State of South Carolina,

County of Georgetown

21451

DCB

ARREST WARRANT NUMBER:

AW: H-827633

CDR: 0079 §16-11-0311(A)

L:

DOI: 5-13-06

SID: SC01015052

ACTION OF GRAND JURY

HEYWARD DAVIS, JR.

Georgetown, SC 29440

DOB:

SSN:

VS.

THE STATE

COURT OF GENERAL SESSIONS

JUNE TERM 2006

TRUE BILL

Date

Foreman of Grand Jury

J. GREGORY HEMBREE, SOLICITOR

INDICTMENT FOR

BURGLARY, FIRST DEGREE

VERDICT

guilty

Foreman of Petit Jury

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

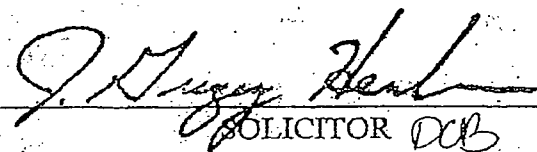
INDICTMENT FOR:

BURGLARY, FIRST DEGREE

At the Court of General Sessions, Convened on June 14, 2006, the Grand Jurors of Georgetown County present upon their oath:

That Heyward Davis, Jr. did in Georgetown County on or about May 13, 2006, enter the dwelling of Leslie Brown aka: Lesley M. Parish, located at Andrews, South Carolina without consent and with the intent to commit a crime therein and the entering or remaining occurred in the nighttime and/or was armed with a deadly weapon and/or caused physical injury to any person who is not a participant in the crime and/or used or threatened the use of a dangerous instrument and/or displayed what is or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm, in violation of §16-11-0311(A), 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.


SOLICITOR DUB

STATE OF SOUTH CAROLINA

COUNTY OF
STATEGEORGETOWNVS.
HEYISAED DAVIS, JR.

AKA:

Race: W Sex: M Age: 33

DOB: _____ SS#: _____

Address: _____

City, State, Zip _____

DL# _____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2006 -GS- 22 - 531A/W#: H-827633Date of Offense: 5-13-06S.C. Code §: 16-11-311ACDR Code #: 0101719☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIAL15-LifeIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSTO: SUBJURY FIRST DEGREEin violation of § 16-11-311A of the S.C. Code of Laws, bearing CDR Code # 0101719☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Donal C. Beal

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS

Recipient: _____

*Fine: \$ _____

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

\$56-5-2995 (DUI Assessment) \$12 \$ _____

\$35.13 (Public Def/Prob) \$500 \$ _____

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

\$50-21-114(BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 2.75TOTAL \$ 128.75April A. Pope

Clerk of Court/Deputy Clerk

Court Reporter: Frances Bakis-Ray

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ 10.00 beginning 1 mo after release

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 1 1 4 18Sentence Date: 5/2/07

WITNESSES:

Andrews Police Department

ARREST WARRANT NUMBER:

DIRECT INDICTMENT

CDR: 0549 §16-23-0490

L:

DOI: 5-13-06

SID: SC01015052

ACTION OF GRAND JURY

TRUE BILL

Date

6/14/06

Foreman of Grand Jury

Wm. A. H. Davis

VERDICT

guilty

Foreman of Petit Jury

5-2-07

DOCKET NO. 06 GS22-532 W

The State of South Carolina,

County of Georgetown

21451

DCB

COURT OF GENERAL SESSIONS

JUNE TERM 2006

JCB

THE STATE

VS.

HEYWARD DAVIS, JR.

Georgetown, SC 29440

DOB:

SSN:

J. GREGORY HEMMEREE, SOLICITOR

INDICTMENT FOR

POSSESSION OF A WEAPON
DURING THE COMMISSION OF A
VIOLENT CRIME

STATE OF SOUTH CAROLINA)

INDICTMENT FOR:

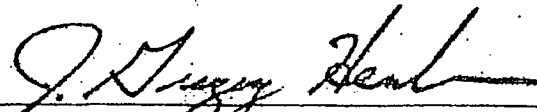
COUNTY OF GEORGETOWN)

POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

At the Court of General Sessions, Convened on June 14, 2006, the Grand Jurors of Georgetown County present upon their oath:

That Heyward Davis, Jr. did in Georgetown County, on or about May 13, 2006, possess a handgun, or visibly display what appeared to be a ^{firearm} handgun, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR DCB

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATEGeorgetown

VS.

Heyward Davis, Jr.

AKA:

Race:

Sex: MAge: 35

DOB:

SS#:

Address:

City, State, Zip

Georgetown, SC 29140

DL#

SID# SC 01015052

INDICTMENT/CASE#:

06

-GS-

22532

AW#:

Dir. Ind.

Date of Offense:

5-13-06

S.C. Code §:

16-23-0490

CDR Code #:

0151419☐ CASE RESTORED

SENTENCE

☐ PLEA☒ TRIAL

0-5 yrs

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSTO: possession of weapon while in Commission of a Violent Crimein violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0151419☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Donie C. Burt

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$100

\$100

\$12

\$500

\$25

\$100

\$50

\$40/ea

\$3.75

\$128.75

PTUP

_____ days/hours Public Service Employment.

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ 10.00 beginning 1 mo after release

\$ _____ paid to Public Defense Fund

Other:

☐ Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

5/18/07

Court Reporter:

Clerk of Court/ Deputy Clerk

Frances Babis-Ray