

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Sep 29 2025

S.C. SUPREME COURT

Certiorari to Spartanburg County

Honorable Eugene C. Griffith, Circuit Court Judge

TERRELL A. BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000798

APPENDIX

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Doctor David Wren - Direct examination
By Solicitor Bulsa

1 either they saw, heard, or sensed by smell or something of
2 that nature. However, there is an exception when someone is
3 qualified because of education or experience. They are
4 permitted to give their opinion in certain areas that the
5 Court qualifies them that way.

6 This witness will be qualified in the area of forensic
7 pathology to give opinion testimony in that area. That does
8 not mean that you must accept the opinion but it is evidence
9 for you to use in anyway that you see fit.

10 Yes, sir, Mr. Solicitor.

11 SOLICITOR BULSA: Thank you, Your Honor.

12 CONTINUED DIRECT EXAMINATION

13 BY SOLICITOR BULSA:

14 Q Doctor Wren, were you asked to perform an autopsy on a
15 Nahtyriean Parks?

16 A Yes, I did an autopsy on an individual identified as
17 Nahtyriean Shaquille Parks on September the 2nd, 2013,
18 beginning at approximately 12:45 in the Spartanburg Regional
19 Medical Center autopsy room.

20 Q Was he a black male aged 20 years old?

21 A Yes, he was a black male that appeared the stated age.
22 He measured 70 inches in length and weighed 185 pounds at
23 autopsy.

24 Q What wounds did you find to his body?

25 A He had a, he had a little abrasion above his left

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By Solicitor Bulsa

1 kneecap. He also had a gunshot wound to, to the chest that
2 I can describe with an exit in the right back. The entrance
3 was 17 and a half inches from the top of his head and one
4 and a half inches to the right of his midline. The, the
5 exit in the back was 24 inches from the top of the head.

6 So, the projectile was going downward when it hit him
7 or either he was leaned over enough to where it had an
8 ejection -- a appearance of going downward. And that exit
9 was three and a half inches to the right of his midline.
10 So, it was going from his left to his right and, as such, it
11 passed through his diaphragm. It passed through his liver
12 and caused a good bit of hemorrhage and laceration of
13 tissues.

14 While he was resuscitated, I think he -- they had taken
15 out the, the left, I'm sorry, the right kidney and the right
16 adrenal gland because of the bleeding and they had tried to
17 tack off the, the liver to keep it from bleeding. It bleeds
18 rather easily because it's not a basically solid tissue
19 although it -- it has considerable amount of blood and it
20 doesn't have much supporting structure. It just has a lot
21 of cells in there that do the -- that perform the metabolic
22 functions.

23 And so, this bullet that -- I did not recover the
24 bullet. The wound -- the, the entrance wound was about
25 .35 inches in diameter if you manipulated it to a round

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By Solicitor Bulsa

1 state or stretched it out, and it was .28 inches in
2 diameter, a quarter -- below a quarter of an inch if you
3 just let the skin hang loose. And the reason I measured
4 both of those is because one can't tell whether the skin is
5 stretched tight or whether it's loose when a bullet passes
6 into it.

7 And so, you can get some indication of the caliber of
8 the bullet by measuring the diameters of the wounds if they
9 are an entrance wound and they're going pretty much straight
10 in. The rule of thumb is that a one inch diameter wound can
11 vary up to 25 percent. So, the actual diameter of the
12 bullet went in -- that went in a one inch wound, if it were
13 one that big, would be from very -- three-quarters of an
14 inch to an inch and a quarter.

15 So, in this case, the bullet was probably, was probably
16 a medium caliber bullet because of the smallness of the
17 smallest diameter. If you added 25 percent to that, it
18 would be .35. If you added 25 percent to the .35, it'd be a
19 42, .42. So, I think it was a medium caliber bullet.

20 Q And what, what are those caliber bullets that would fit
21 within that range?

22 A Anywhere from a .32 to a .40, possibly a .45.

23 Q So, would a .38 be in that range?

24 A Yes.

25 Q And it's your expert opinion that he was shot from the

Doctor David Wren - Direct examination
By Solicitor Bulsa

1 front and it exited the rear?

2 A There's no question he was shot from the front. The
3 front defect was round in shape and the exit defect was
4 irregular with tissue protruding from that wound and it was
5 much larger. It measured three-fifths of an inch by
6 two-fifths of an inch in diameter -- in overall dimensions
7 and, furthermore, that wound could be re-approximated
8 closed.

9 when a bullet passes into the body through the skin, it
10 actually bores a hole in there as it's going through
11 spinning. When it comes out, it usually doesn't have enough
12 momentum to, to bore out because it stretches the skin up,
13 and when the skin stretches up, it tears out. So, it
14 doesn't leave a defect. It could be -- it plops back in.
15 You can push it back together and actually sew it up where,
16 if it healed well, you couldn't even tell it was a wound
17 there to start with.

18 Q And what was the cause of death of Mr. Parks?

19 A Well, he survived a little bit but he lost a lot of
20 blood in surgery. He did make it to ICU. I attributed his
21 cause of death as irreversible shock secondary to internal
22 hemorrhage secondary to a gunshot wound to the chest or in
23 the lower abdomen. It was actually to the chest although it
24 didn't pass into the, into the lung itself in the chest
25 cavity.

Doctor David Wren - Direct examination
By Solicitor Bulsa

1 And the reason I call it irreversible shock is, once
2 you lose probably ten to fifteen percent of your blood
3 volume, the body reacts trying to, to preserve functions,
4 and, often times, you go into shock. And what physicians
5 call disseminated intravascular coagulation, which the
6 clotting mechanisms are all messed up and you continually
7 hemorrhage, and it's irreversible. So, people die anyway if
8 you -- even if you can give them enough blood to get their
9 blood pressure back.

10 Q Do you have an opinion as to how far he would of been
11 from the shooter?

12 A This one you couldn't tell. I assume he had clothing
13 on although he was unclothed when I saw him. There was no
14 indication that it was within 12 to 15 inches. So, we call
15 anything past where we can tell something is happening as
16 distant and it could be as far as a bullet will travel with
17 some momentum.

18 Q Thank you, Doctor Wren.

19 And did you also perform an autopsy of Laquinton
20 Phelps-Yeargin?

21 A Yes, I did that autopsy on the 3rd of September, 2013.
22 I began that one at 10:30AM. The same place as the
23 previous.

24 Q Was he identified as a black male aged 21?

25 A Yes, he was a little bit older. He looked older than

Doctor David Wren - Direct examination
By Solicitor Bulsa

1 his stated age. He measured 69 inches in length and he only
2 weighed 124 pounds at autopsy.

3 Q what wounds did he have on his body?

4 A well, beside the surgery -- well, well, really wounds,
5 he had four gunshot wounds to the body. One was through and
6 through. I'll cover them in order of severity I guess would
7 be the best way.

8 The through and through gunshot wound passed in the
9 right lateral back near the posterior axilla. An axilla, in
10 a medical term, is actually the armpit. So, if you draw a
11 line down from the front of the armpit, that's the anterior
12 axillary line, and, from the back, it's posterior. You can
13 draw them vertically down.

14 So, it was near that line. It was 26 inches from the
15 top of his head and five and a half inches to the right of
16 his midline. It was .35 inches in diameter, similar to the
17 one I talked about previously, and it did have an abrasion
18 border, which is, as the bullet passes in the skin, if it
19 doesn't pass in straight in, it will have where it abrades
20 or scrapes the skin. And, with a magnifying lense or even
21 visually, if you're use to it, you can tell that the, this
22 is an abrasion border there.

23 And the abrasion border is where the bullet passed in
24 and actually abraded the, the surface of the skin as it was
25 boring in. And it was from twelve to six o'clock.

Doctor David Wren - Direct examination
By Solicitor Bulsa

1 So, if you stood the person up and drew a clock around
2 the wound, from twelve to six o'clock would be where the
3 bullet came in, into the, to the body and it was passing
4 rather tangentially to the skin because that wound, the
5 abrasion border was 15 hundredths of an inch in width. So,
6 it was passing pre-tangential to the skin.

7 It passed through the soft tissues of the back and
8 exited in the left lateral back just about the same distance
9 that I measured it, 26.25 inches from the top of the head
10 and 1.75 inches to the left of his midline. And that exit
11 wound, again, was irregular in shape like I previously
12 described. And that bullet was not recovered.

13 So, it was going very slightly downward. It was going
14 from the decedent's right to his left and it was almost
15 coronally. Coronally is the planes that are parallel to the
16 front of the body. If you just drew imaginary planes
17 through the body vertically, and oriented them from left to
18 right, and then you have a, an infinite number of coronal
19 planes in the body. So, it was going coronally as it passed
20 through.

21 It didn't hit any vital tissues. Just the soft tissues
22 of his back. That was gunshot wounds three and four. We
23 number them separately.

24 And gunshot wound number one was in the right lower
25 neck. It was almost at the clavicle or the collar bone and

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By Solicitor Bulsa

1 that -- it was also tangential and it was oval in shape. It
2 was ten and, 10.25 inches from the top of the head and two
3 and a quarter inches to the right of his midline. It
4 measured .39 by .25 inches.

5 So, it wasn't on -- it was more of an oval round rather
6 than a round wound. And it had an abrasion border from
7 twelve to four o'clock. So, it was medial to, to his body
8 toward his -- the midportion of his body and that abrasion
9 border measured 45 hundredths of an inch in width. So, it
10 was the -- of course, the neck's not a flat surface. So,
11 when it was going in, there was quite a curve in the neck.

12 That bullet passed, and I couldn't tell whether there
13 was stippling, which is an indication a bullet -- of a
14 weapon being fired closely or whether it was a slap
15 abrasion, which is if one has clothing on, as the bullet
16 hits, it will knock the tissues up to -- I mean the clothing
17 up against the skin and it will look like little stippled
18 abrasions. I couldn't tell which it was.

19 So, I did take some, some tissue beneath that and
20 sometimes you can see powder under the microscope. I
21 couldn't see any. So, I couldn't tell for sure. More than
22 likely it's a slap abrasion. That bullet passed downward,
23 it passed backward, and it passed left to right and came to
24 rest in the back in his upper back. It did not pass into
25 his lung cavity and it didn't, as far as I could tell, not

Doctor David Wren - Direct examination
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1 hit any vital tissues like an artery or something that would
2 make him bleed a lot from that area. Although it probably
3 did bleed because there was hemorrhage there.

4 I did recover a copper jacketed lead bullet there and
5 it had visible lands and grooves and it measured around 35
6 hundredths to 36 hundredths inches in diameter at the base
7 and .58 inches, almost three-quarters, three -- six-tenths
8 of an inch or three-fifths of an inch in, in length. And I
9 labeled that bullet with an Arabic number eight, which is
10 the last number of his autopsy, a Greek letter Delta, which
11 is a triangular mark, Capital Greek Delta, and English
12 letter A to indicate it was the -- one of the first bullets
13 I took out. Forwarded it to Officer Sean Nix of Spartanburg
14 County Police Department.

15 Now -- and the fatal gunshot wound was in his upper
16 abdomen lower chest left of his neckline by about
17 three-quarters of inch. So, it was almost in the midline
18 and it was 21 inches from the top of his head. That bullet
19 was circular and -- I mean that wound was circular in shape.
20 Did not show any abrasions.

21 So, it was -- either the skin was perpendicular to the
22 bullet, path of the bullet, or it was straight on. It
23 wasn't probably straight on cause it did, it did not come
24 out the exact same. Sagittal plain, which is imaginary
25 planes that are running perpendicular to the front of the

Doctor David Wren - Direct examination
By Solicitor Bulsa

1 body.

2 That bullet passed slightly upward, right to left, and
3 front to back and it came into -- came to rest in the
4 subcutaneous tissues of the left back where I recovered it.
5 And it was almost the exact same dimensions as the, the one
6 in his -- that I described previously and I labeled that
7 eight and Delta and a B. Forwarded it to Officer Sean Nix
8 of the county police.

9 Now, what happened with this wound is it passed through
10 vital organs inside, caused a lot of hemorrhage. It passed
11 through his intestines several times and I'd have to review
12 exactly what they -- if they took out anything. But he did
13 have hemorrhage both in his chest and in his abdomen and
14 then in the soft tissues partially due to resuscitation
15 attempt, partially due to the injuries.

16 Q And the cause of death, I believe you---

17 A I called that one the same thing, irreversible shock
18 secondary to internal hemorrhage with anoxia. He lost a lot
19 of blood and I think he had anoxic episodes based on
20 microscopic examination of his brain showing that he did
21 have considerable insult to his oxygenation of his tissues.

22 Q So, to recap, you recovered two bullets from Mr.
23 Yeargin's body?

24 A That's correct.

25 Q And they were both similar in dimension?

Doctor David Wren - Direct examination
By Solicitor Bulsa

1 A Yes.

2 Q And the through and through entrance wound on Mr.
3 Yeargin was .35 inches in diameter?

4 A Yes.

5 Q And the entrance wound to Mr. Parks was .35 inches in
6 diameter.

7 A I could stretch it to that, yes. I didn't even see the
8 other, the second person, Mr. Phelps-Yeargin, when I
9 measured the first wound.

10 Q Okay.

11 A The, the first autopsy I talked about that had the
12 measurements of .28, if it -- the skin were loose, and .35
13 if it were stretched out. And that's not completely
14 stretched out. I probably could of stretched it to a half
15 inch if I wanted to. I just tried to do it -- quick look
16 natural around it. It was .35.

17 Q Based on your examination of both bodies, the wounds
18 were similar in appearance?

19 A The bullets?

20 Q The wounds.

21 A The wounds, yes. Right.

22 Q All right. Thank you.

23 That's all I have.

24 CROSS-EXAMINATION

25 BY MR. BROWN:

Doctor David Wren - Cross-examination
By Mr. Brown

1 Q Doctor, very briefly.

2 You mentioned an oval wound versus the round wound?

3 A Yes.

4 Q You said the diameter of that would be .45?

5 A Yeah, it was, it was -- as it passes in, it's going at
6 an angle. So, it makes a bigger hole in one dimension that
7 in the -- it's going perpendicular. It might make a bigger,
8 wider hole and it will be narrower as it, you know, and, of
9 course, it stretches out some too.

10 Q And you said that was related to the first wound?

11 A That was a wound in his neck was that, was that size I
12 think. Well, let me look for sure.

13 (Pause.)

14 A The one in his -- the one in Mr. Phelps-Yeargin's right
15 lower neck was .35 by .25., .39 by .25. So, what had
16 happened was, of course, the skin is kind of flexible. And
17 so, when I measured, I measure it -- I mean I can't tell how
18 his neck was, whether he had his neck like this and then
19 when it straightened out so I can see it. It would be a
20 little bit wider or whether he had it like this. When I
21 looked at his neck straight, it would of been a little bit
22 narrower but those were the measurements I got.

23 Q Okay. And you said that---

24 A But I did find the bullet went in there. So, we have
25 no question where the bullet was.

Doctor David Wren - Cross-examination
By Mr. Brown

1 Q Yes, sir.

2 And you said the fatal---

3 A The fatal wound went in his lower chest, upper abdomen
4 just to the right -- the left of midline and we're talking
5 about the second guy?

6 Q Yes, sir.

7 A Just to the left of midline and it passed and came to
8 rest in his back.

9 Q The chest area essentially?

10 A Well, the reason I said lower chest upper abdomen is
11 because your abdomen actually ends at the diaphragm.

12 Q Yes, sir.

13 A The diaphragm is a, is a dome shape. So, if you see a
14 bullet that goes in right there, the doctors, without
15 looking in there, they can't tell whether it went into the
16 chest or whether it went into the abdomen because you don't
17 know whether the person was breathing in, which lowers the
18 diaphragm when they -- when the bullet hit him or whether
19 they were breathing out, which raises the diaphragm to force
20 the air out the lungs.

21 So, you don't know. You just know what -- where it
22 was. And so, it was -- that wound was .21 inches from the
23 top of his head. That's classically the way we measure
24 them. And three-quarters of an inch to the left of his
25 midline.

Doctor David Wren - Cross-examination
By Mr. Brown

1 Q You said it was a straight on wound at some portion
2 between the---

3 A I said it was, it was slightly upward right to left.
4 If you're looking at him, if I'm looking at you, slightly
5 upward, right to left, and front to back. So, the bullet
6 wound was up more toward his left arm than it did his right
7 arm and his back compared to where it went in.

8 Q So, the initial point of entry---

9 A So, the person that shot him, either he was turned with
10 his right shoulder toward the guy where the bullet was
11 coming or the guy was over to his right shoulder and shot
12 straight at him.

13 Q But a direct straight shot?

14 A It didn't hit anything, no, except him. It didn't hit
15 any bone to, to cause it to ricochet. That's why both of
16 the bullets were -- we look at the bullets that's probably
17 pristine. They probably just look like a bullet. They
18 don't have any distortion to them --

19 Q Yes, sir.

20 A -- where they would of hit a surface or bone. They'll
21 make a little dents in them or, or partially sheered off
22 depending on how hard the bone is.

23 Q Thank you.

24 THE COURT: Any redirect, any redirect limited to what
25 he went into?

Dan DeFreese - Direct examination
By Solicitor Bulsa

1 SOLICITOR BULSA: No, Your Honor.

2 THE COURT: Thank you, sir. You may step down.

3 Any reason why this witness can not be excused?

4 SOLICITOR BULSA: No, sir.

5 MR. BROWN: No, no problem, Your Honor.

6 THE COURT: Thank you, sir -- doctor. Thank you for
7 coming. You may be excused as well.

8 THE WITNESS: Thank you.

9 SOLICITOR BULSA: State calls Dan DeFreese.

10 THE COURT: Sir, come right up here, if you would, and
11 let the Clerk of Court swear you in.

12 (Witness complies.)

13 DAN DEFREese, being first duly sworn,
14 testified as follows:

15 THE CLERK: Thank you. You may be seated.

16 THE COURT: Just have a seat in the red chair and pull
17 the chair up to the microphone.

18 (Witness complies.)

19 DIRECT EXAMINATION

20 BY SOLICITOR BULSA:

21 Q would you introduce yourself to the jury please.

22 A My name is Frank Dan DeFreese. That's spelled D-E
23 capital F-R-E-E-S-E.

24 Q who are you employed with?

25 A I work for the South Carolina Law Enforcement Division

Dan DeFreese - Direct examination
By Solicitor Bulsa

1 in the forensic services laboratory in Columbia.

2 Q How long have you been with the South Carolina Law
3 Enforcement Division?

4 A For 48 years.

5 Q Do you have an expertise with them?

6 A I'm assigned to the department within the laboratory
7 where we do the analysis of firearm and tool mark evidence.

8 Q And what is the benefit of your education and
9 experience in that field?

10 A Well, I'm a graduate of the University of South
11 Carolina in Columbia but my principal training in firearm
12 and tool mark analysis occurred after my employment with
13 SLED that I was first assigned to the firearms department,
14 and I began a course of instruction that lasted
15 approximately two and a half years. I studied the
16 techniques of identification with Lieutenant Miller Cate.
17 Lieutenant Cate established the SLED laboratory when SLED
18 itself was established in 1947.

19 I also studied with Lieutenant Carl Stokes, who was
20 another examiner at the time, and approximately two and a
21 half years of working cases under their supervision, I began
22 accepting cases for analysis on my own and have been
23 performing work and testifying as to my results ever since.

24 Q And have you testified as an expert?

25 A I have.

Dan DeFreese - Direct examination
By Solicitor Bulsa

1 Q In firearms and tool mark identification?

2 A Yes, sir.

3 SOLICITOR BULSA: Your Honor, State would offer Agent
4 DeFreese as an expert in firearms.

5 MR. BROWN: Without objection, Your Honor.

6 THE COURT: All right. Give me that field again.

7 SOLICITOR BULSA: Firearms and tool mark
8 identification.

9 THE COURT: All right. Ladies and gentlemen, again,
10 normally a person can not give opinion testimony. Normally,
11 when a person testifies, they must do so as to either what
12 they saw, heard, or sensed by smell or something of that
13 nature. However, there is an exception when someone is
14 qualified because of education or experience. They are
15 permitted to give their opinion in certain areas if the
16 Court qualifies them that way.

17 This witness will be qualified in the area of firearms
18 and tool mark identification to give opinions in that area.
19 Now, that does not mean that you must accept the opinion but
20 it is evidence for you to use in anyway that you see fit.

21 SOLICITOR BULSA: Okay. Thank you, Your Honor.

22 THE COURT: Yes, sir.

23 CONTINUED DIRECT EXAMINATION

24 BY SOLICITOR BULSA:

25 Q Agent DeFreese, did you receive some items from the

Dan DeFreese - Direct examination
By Solicitor Bulsa

1 Spartanburg County Sheriff's Office regarding the deceased
2 victims, Laquinton Phelps-Yeargin and Nahtyriea Parks?

3 A I did.

4 Q And how many items did you receive?

5 A Eight.

6 Q Okay. And you said, you said eight items and then two
7 firearms?

8 A There were two firearms among the eight items I
9 received.

10 Q Okay.

11 A There were two firearms, a fired 9-millimeter Luger
12 caliber cartridge case, a fired .38 special caliber
13 cartridge case, and three fired bullets, and the magazine to
14 the 9-millimeter caliber and handgun.

15 Q Okay. Let's talk about the two firearms.

16 What makes were those?

17 A One of them was a Smith & Wesson Model 67. It's a .38
18 special caliber six shot revolver. The other is a Kel-Tec
19 Model PF-9, 9-millimeter Luger caliber semiautomatic pistol.

20 Q And what condition was the .38 received in?

21 A When I received the .38, it was submerged in water
22 inside a, a fabricated carrier that was made out of like
23 eight inch diameter water pipe. The water that was in it
24 was, was turbid. That it was, was dirty and you couldn't
25 see the gun as you looked into it. I extracted the gun from

Dan DeFreese - Direct examination
By Solicitor Bulsa

1 the water and rinsed the gun, removed as much sediment from
2 the gun as I could get, and then cleaned the gun further
3 prior to my test firing it.

4 Q Was there anything contained within the gun, bullets,
5 or shell casings?

6 A No.

7 Q It was empty?

8 A At the time I received it it was empty.

9 Q Was it in working condition?

10 A It was. It's, it's a stainless steel revolver and the
11 water had not had a, a tremendously bad effect on the, the
12 stainless steel metal parts. The grips to the revolver were
13 swollen and had turned black and they were somewhat
14 deteriorated but the gun was in working order. I mean I
15 could of literally pulled it out of the water and put
16 cartridges in and shot it. It was capable of being shot at
17 this time.

18 Q Would you look at State's Exhibit 42 and see if that is
19 the weapon you've been describing?

20 A It is.

21 Q All right. And you actually placed it in that
22 packaging when you were finished?

23 A I did. It was -- these containers do have my, my
24 initials. At least the outer container. This, this one has
25 my initials and sealing date. And I recognize the revolver

Dan DeFreese - Direct examination
By Solicitor Bulsa

1 itself from the, the marks that I placed on it while I was
2 doing my, my analysis and test firing it. The only
3 difference is now the grips have gotten very loose because
4 they dried out.

5 Q Okay. Now, the 9-millimeter pistol, I show you State's
6 Exhibit 38.

7 Is that the pistol?

8 A Yes, sir, it is.

9 Q Okay. And was that loaded when you received it?

10 A No, sir.

11 Q Did the magazine that was sent with that pistol, did it
12 match that magazine -- match that weapon?

13 A It did. The magazine that was submitted was a correct
14 magazine and it functioned and I used it for test firing the
15 pistol.

16 Q Okay. And was that pistol in working condition?

17 A It was.

18 Q All right. Now, how many spent rounds did you say you
19 received?

20 A There was one fired 9-millimeter Luger caliber
21 cartridge case and then there was one fired .38 Special
22 caliber cartridge case.

23 Q And what test did you perform on each of those?

24 A Well, after doing my basic write-up on collecting the
25 information that I needed on the case, I test fired both of

Dan DeFreese - Direct examination
By Solicitor Bulsa

1 the handguns. So, I obtained test bullets and cartridge
2 cases for comparison purposes. I then microscopically
3 compared my test cartridge cases with the evidence cartridge
4 cases to see if I could find sufficient matching individual
5 marks.

6 When I compared my test 9-millimeter Luger caliber
7 cartridge cases with the cartridge cases fired by State's
8 Exhibit 38, I found sufficient differences in the markings
9 to conclude that the submitted 9-millimeter Luger caliber
10 cartridge case was not fired by State's Exhibit 38.

11 Q Okay.

12 A In the case of the fired .38 Special caliber cartridge
13 case, I made a similar microscopic comparison and found
14 matching individual markings from which I concluded that
15 that cartridge case was indeed fired by the Smith & Wesson
16 .38 caliber revolver.

17 Q Okay. Just to recap what you just said.

18 State's 39, the Kel-Tec magazine, is the proper
19 mechanism to go with State's 38?

20 A Yes, sir, it is.

21 Q Okay. State's 40 and 41 appear to be live rounds,
22 9-millimeter.

23 Are they the proper caliber to be used in that magazine
24 to be fired out of that weapon?

25 A Yes, sir, they are.

Dan DeFreese - Direct examination
By Solicitor Bulsa

1 Q Okay. Circle this testimony. Let's just set all these
2 in State's 41.

3 That appears to be another 9-millimeter round?

4 A Yes, sir, it is.

5 Q Okay. Is that a similar make and model of the other
6 loose rounds?

7 A It's the same caliber. It's not actually the same
8 make.

9 Q Okay. Is that common to see?

10 A Yeah, it -- any manufacturer's 9-millimeter Luger
11 caliber ammunition should function in this firearm.

12 Q Okay. Now, State's 21, that is the actual fired
13 cartridge casing, and if I understood your testimony, that
14 was not consistent with being fired from the 9-millimeter
15 pistol, State's 38?

16 A Yes, sir, that's correct. This cartridge case was not
17 fired by State's Exhibit 38 --

18 Q Okay.

19 A -- even though it is the same caliber.

20 Q Okay. Let's move these aside for now.

21 We have the .38. You testified that the spent .38
22 casing was consistent with being fired by this -- the
23 revolver, State's 42.

24 A That's correct, sir. State's Exhibit 37, the fired .38
25 special caliber cartridge case, was fired by this revolver,

Dan DeFreese - Direct examination
By Solicitor Bulsa

1 by State's Exhibit 42.

2 Q Okay. Now, you also received three projectiles?

3 A I did.

4 Q Okay. Those were State's Exhibits 30, 31, and 35.

5 Can you review those and make sure those are the ones?

6 A All right. So, I have previously examined State's
7 Exhibits 30, 31, and 35.

8 Q Okay. And what, what kind of rounds were those?

9 A These are copper alloy jacketed bullets of the type
10 that we see loaded into .38 special caliber cartridges.
11 They're what's known as a full metal jacket or a full metal
12 case bullet and they nominally weigh right round 130 grains.

13 Q Okay. And did you test those against the .38 revolver?

14 A I did.

15 Q What were your results?

16 A In the case of State's Exhibits 35 and 31---

17 Q Could you identify on those packages where those came
18 from?

19 A Thirty-five says, location of recovery, 206 Wendy
20 Court.

21 Q Is that Woody Court maybe?

22 A And the other one, State's Exhibit 31, says location of
23 recovery, 101 East Wood Street.

24 Q Okay. That one actually came from the body of Mr.
25 Yeargin?

Dan DeFreese - Direct examination
By Solicitor Bulsa

1 A It says victim, Phelps-Yeargin, and the other one
2 doesn't state a victim.

3 Q Okay. All right.

4 A One of them, State's Exhibit 31, was in the hospital
5 type specimen container and it says R and then shoulder --

6 Q Okay.

7 A -- on State's Exhibit 31.

8 In the case of these two bullets, they had both the
9 same general rifling characteristics, and they had matching
10 individual striated marks that were present on State's
11 Exhibits 31 and 35. From those marks, I concluded that
12 these two bullets, State's Exhibit 31 and State's Exhibit
13 35, were fired by the .38 special revolver, by State's
14 Exhibit 42.

15 Q Okay. What about the last one?

16 A In the case of State's Exhibit 30, which is also in, in
17 a specimen container, and it's marked L, lateral back, it
18 had the same general rifling characteristics, that is the
19 same number of land and groove impressions, and it had a
20 number of similar individual markings on it. But they were
21 just not sufficient to conclude that they were fired by this
22 particular firearm. They could have been fired by State's
23 Exhibit 42 but I just can't say so for certain because the
24 lack -- they just weren't sufficient markings on this
25 bullet.

Dan DeFreese - Direct examination
By Solicitor Bulsa

1 Q Is that common in your line of work?

2 A It, it just happens that sometimes, either through
3 abrasion or for a number of reasons, they just don't have
4 enough markings to tell for certain and that was the case
5 here.

6 Q In your expert opinion, based on the recovery of the
7 two rounds from the body of Mr. Yeargin, is it more likely
8 than not that the same firearm fired that -- those bullets?

9 A They're the same caliber, same general rifling
10 characteristics, a lot of similar individual
11 characteristics. Good chance they were both fired by the
12 same firearm but I just can't say so from looking at the
13 marks that are left on the bullet.

14 Q Okay. But there's no doubt that the one recovered from
15 the 206 location and the right shoulder of Mr. Phelps were
16 fired by that weapon?

17 A No, sir, they were, they were well marked and they were
18 definitely fired by that firearm.

19 Q Okay. And then the other one was most likely fired by
20 it?

21 A The -- it could of been fired by that firearm and it,
22 it was not fired by the 9-millimeter. It had the wrong
23 general rifling characteristics. It could not have been
24 fired by it.

25 Q Okay. All right. Well, thank you, Agent DeFreese.

Dan DeFreese - Cross-examination
By Mr. Brown

1 That's all I have.

2 CROSS-EXAMINATION

3 BY MR. BROWN:

4 Q Agent DeFreese, what would you describe the striations
5 in bullets?

6 what would you compare that to if you had to give an
7 analogy?

8 A The striated marks that you find on a bullet are like
9 the gun's signature. That's the closest, you know, analogy
10 I can make because they're not the same every single time
11 and they, they change over a great long period of time.
12 They're -- it's not the same thing as a fingerprint.

13 Q Is it more distinctive than a fingerprint or --?

14 A well, they're every bit as distinctive but the striated
15 marks that are left on bullets are left there for a number
16 of reasons, and, unlike fingerprints, which remain the same
17 from before we're born till after we die, and will have a
18 tendency to regenerate themselves, if they're not, if the
19 tissue underneath it is not permanently scarred, guns don't
20 regenerate. You know, once they are -- a gun barrel is ever
21 damaged or worn, the markings produced over a period of time
22 will change somewhat. So, in, in that sense, it's more
23 nearly like the signature than it is the fingerprint.

24 Q In a matter of seconds of projectiles being discharged
25 from a gun, would striations change typically?

Dan DeFreese - Cross-examination
By Mr. Brown

1 A Typically, no. In a, in a gun of good quality, the
2 markings that that gun will, will leave remain relatively
3 stable over a period of time. Now, there are some guns that
4 are, are -- their markings are so erratic and so variable
5 that, that you can't match one bullet to another. You know,
6 the -- it's not -- the markings are not always able to be
7 matched back to the particular gun.

8 Q And so, in testing the particular .38 revolver, when
9 you did the test, did your test match the two identified
10 discharged projectiles?

11 A They did.

12 Q So, your, your, your test was exactly the same as the
13 previous two?

14 A I'm not sure I follow your question there.

15 Q well, you---

16 A My test bullets both matched each other and they
17 matched two of the three bullets.

18 Q And the third one was inconclusive?

19 A The third one was inconclusive because the third bullet
20 just didn't have enough markings that remained on it.

21 Q And based upon that information that you shared with
22 the investigators and the prosecution, you said it could of
23 come from another .38?

24 A Because the fact I can not identify it back to that
25 specific gun, I have to admit the possibility that another

Dan DeFreese - Cross-examination
By Mr. Brown

1 gun with exactly the same land and groove specifications
2 could of fired it.

3 Q Or -- I understand that you're a firearms, firearms and
4 tool marks identification expert.

5 Do you also have any training in any biological testing
6 of, of weapons materials?

7 A Not at -- not as a -- would apply like a physician.
8 I'm familiar with what they do but I'm not qualified to do
9 it.

10 Q In terms of seeking to get DNA evidence off of any
11 items that may come before you, such as a gun, shell
12 casings, or projectiles, are you qualified in that area?

13 A I, I do collect biological evidence from fired
14 ammunition components when I discover it.

15 Q Did you look for any biological evidence in this case?

16 A I did.

17 Q What did you see?

18 A Well, in the case of two of the bullets, the one in
19 State's Exhibit 30 and the one in State's Exhibit 31, which
20 were identified to me as being autopsy bullets, I did find
21 evidence of dried blood and dried tissue on those bullets.

22 Q Did you match them up with any type of provided DNA
23 samples?

24 A No, we typically would not because, in the case of a
25 bullet that was removed from somebody's body, you would

Dan DeFreese - Cross-examination
By Mr. Brown

1 expect to see dried blood and tissue on it. We typically
2 will collect biological specimens when we have like an
3 unknown recovered bullet like in a structure or at a
4 location and we don't know whether it went through
5 somebody's body or not. In that case, if we found dried
6 blood or tissue, we would certainly collect that and, and
7 make it available for possible identification.

8 Q what about a shell casing?

9 A we would do that if, if there were blood present on the
10 shell casing.

11 Q If there wasn't blood present, you wouldn't search for
12 any type of DNA evidence?

13 A Typically not.

14 Q But it's possible?

15 A It is possible.

16 Q what type of DNA evidence could you conclude from a
17 shell casing if you searched?

18 A In rare cases, it is occasionally possible to discover
19 the DNA of someone who touched a cartridge or a cartridge
20 case. It doesn't happen very often but it can happen. In
21 the case of cartridges or cartridge cases that are found at
22 a crime scene where there is blood letting, that is where
23 there is either splattered blood or blood on the floor, it's
24 possible that they'll sometimes roll around and get in the
25 blood and that might or might not be probative. You know,

Dan DeFreese - Cross-examination
By Mr. Brown

1 it might or might not have any real influence on the case
2 but we could certainly, if we found blood on an ammunition
3 component, we could swab it for possible comparison
4 purposes.

5 Q In taking a sample from a potential shell casing that
6 may have some form of DNA on it, how specific can you be
7 without having a comparison swab?

8 A That I don't -- I -- how, how do you -- how individual
9 could you make an identification from it?

10 Q Could you make an, an -- without having a comparison
11 type of swab, could you even identify that the person is a
12 male or female without having a comparative swab?

13 A You would have to ask a DNA person about that.

14 Q Okay.

15 A I'm, I'm not certain the extent of what they could tell
16 you from it without a, a person to compare it with.

17 Q And as far as you know, the evidence that was provided
18 to you to examine, it wasn't passed on to a DNA expert in
19 your agency?

20 A Not to my knowledge.

21 Q And as the items that came before you, when you
22 examined them, how do you typically examine them?

23 Are you wearing any type of special gloves or do you
24 just, merely as you did here in the courtroom, open an item
25 and examine them for evidence?

Dan DeFreese - Cross-examination
By Mr. Brown

1 A No, when I'm opening evidence and evaluating it because
2 we, we collect a great deal of information before we ever do
3 any kind of microscopic comparison with the item, and the --
4 that would include gloving up because we don't know what's
5 on, for instance, a fired bullet and we, we take what's
6 known as universal precautions with it. We assume that,
7 that there's something infectious present on anything that
8 could of been exposed to blood and a bullet certainly could.
9 So, that would be one of the things we, we would do as a
10 matter of normal business.

11 Q But, in this instance, you didn't pass it along to
12 anyone else in your agency in order for DNA to be evaluated?

13 A Well, with the exception of the two autopsy bullets
14 that I did see dried blood and tissue on, and I would expect
15 to see dried blood and tissue on --

16 Q Yes.

17 A -- there just wasn't anything else on any of the other
18 specimens that looked like a biological sample.

19 Q So, can you say, with absolute certainty, that there
20 was nothing on the spent shell casing matching the
21 9-millimeter?

22 A I can't say with absolute certainty but there was no
23 indication, no clear cut indication of biological material
24 on it but there could of been.

25 Q And it wasn't checked for it?

Dan DeFreese - Cross-examination
By Mr. Brown

1 A No, I didn't check it and, to my knowledge, it wasn't
2 checked.

3 Q Thank you.

4 THE COURT: Any redirect?

5 SOLICITOR BULSA: No, Your Honor.

6 THE COURT: Thank you, sir. You may step down.

7 Any reason why the witness can not be excused?

8 SOLICITOR BULSA: No, sir.

9 THE COURT: Thank you, sir. You may be excused as
10 well.

11 THE WITNESS: Thank you.

12 SOLICITOR BULSA: Your Honor, the State would rest at
13 this time.

14 THE COURT: All right. Ladies and gentlemen, that
15 requires me to take up a few matters with the attorneys. If
16 you would, I need to remind you not to have any discussions
17 among yourselves about anything involving the case. You may
18 retire back to the jury deliberation room and we will get
19 you back just shortly.

20 (WHEREUPON, the following takes place outside the
21 presence of the jury.)

22 THE COURT: Yes, sir, Mr. Brown.

23 MR. BROWN: May it please the Court, Your Honor.

24 If I could approach.

25 THE COURT: (Nods affirmatively.)

1 MR. BROWN: Your Honor, as it relates to State's
2 indictment relating to the weapons or unlawful carrying of a
3 pistol, it would be the defense position that, during the
4 pendency of the presentation by the State, we didn't hear
5 any evidence as it relates to my client, Mr. Terrell Brown,
6 having violated the laws of our State in the fact that he
7 was unlawfully in possession of a handgun and not being
8 authorized by law to so possess that firearm. Didn't hear
9 any testimony as it related to that, either direct or
10 circumstantial.

11 And as it relates to information that came directly
12 from the chief investigator, Mr. Lorin Williams, he said, in
13 speaking with my client, that my client did relay to him
14 immediately that this was some form of self-defense. Court
15 understanding those are also mitigating circumstances which
16 would lead to my next motion in regards to both counts of
17 murder.

18 One of the underlying and most obvious circumstances as
19 relates to murder is malice aforethought. Again, by way of
20 the information that was shared with the investigator as
21 well as information that came out from the limited
22 statements and indeed the testimony that we received from
23 the young ladies who were at the scene, there was no
24 provocation on my client's behalf, no form of malice
25 aforethought was presented, and the information that came

1 from the witnesses was simply a matter of him having to
2 react to the situation.

3 I know Mr. Bulsa mentioned, in his opening statement,
4 to make it culpable with the murder charges, he mentioned
5 manslaughter. Those charges are not before the Court and,
6 again, I would ask the Court to recognize the lack of the
7 State reaching its burden and direct a, direct a verdict on
8 behalf of the defense.

9 SOLICITOR BULSA: Your Honor, first as to the firearms
10 charges, there was clear evidence that the defendant
11 possessed a firearm out in a public place, Kelly Acres.
12 Certainly was not entitled to do that. That certainly fits
13 the Statute 16-23-30, excuse me, 16-23-20.

14 As to the malice aforethought, that's a matter for the
15 jury to decide. We do have multiple shots fired and we have
16 descriptions of witnesses that the victims were unarmed.
17 Both victims were unarmed. They sat -- they were in the
18 area. One of them approached the defendant. One witness
19 even testified the victim had his hands raised, Mr. Yeargin
20 had his hands raised, raised.

21 The use of the weapon, plus the multiple shots, and the
22 location and the timing of the shots, that's clearly a jury
23 issue for malice aforethought.

24 THE COURT: Tell me, on the weapons argument, tell me
25 again what's the State's position on -- why don't you tell

1 me what 16-23-20 provides?

2 SOLICITOR BULSA: It provides that it's unlawful to
3 possess a weapon in South Carolina unless an exception
4 exists, and under State v. Cabrera-Pena, 261 S.C. 372, the
5 State's not required to negate every exception. That case
6 references State v. Clark, 302 S.C. 423, where it
7 actually -- that case actually references as to the defense
8 should produce something that falls within one of those
9 exceptions.

10 In this case, we have nothing. We have a young man
11 that one witness testified, that we didn't elicit, it, it
12 was his friend that testified he wouldn't give him a gun
13 because he's not entitled to have a gun.

14 THE COURT: Any reply?

15 MR. BROWN: Simply as relates to the State's reference
16 to Mr. Asa Lake, he was called as the State's witness. Not
17 the defense witness. The introduction of any reference
18 towards my client having a felony of him was not
19 corroborated by the State. Simply by a statement by a
20 family member who may or may not know of his criminal
21 background.

22 But indeed, Your Honor, we led to believe that could
23 lead to a mistrial based upon that information being
24 garnered and given directly by the State. To say that he
25 didn't elicit it, it was his witness. We didn't call him.

1 THE COURT: All right. Any other motions I need to
2 consider?

3 SOLICITOR BULSA: Not from the State.

4 THE COURT: All right. We'll come back. Take a short
5 recess.

6 Can I have the indictment?

7 We'll stand at ease for a moment.

8 SOLICITOR BULSA: Okay.

9 (WHEREUPON, a short recess was taken at this time.)

10 THE COURT: Okay. All right. We'll go back on the
11 record.

12 As everybody should know, at the stage that we are at
13 this juncture, a directed verdict motion, the standard of
14 review that this Court has to view the evidence that has
15 been presented in this Court is that it has to view that
16 evidence that is in a light that is most favorable to the
17 State.

18 When doing so, the evidence -- viewing that evidence in
19 the light most favorable to the State as well as the
20 inferences that the State wishes this Court to draw would
21 this Court view that there is a set of facts that could
22 establish that there was only one gun that was at that
23 location on that particular night. There was only one
24 person who shot that gun on that particular night, and that
25 that gun was fired into one of the victims with the victim's

1 hands being held up as -- and then with the -- not only one
2 shot, but multiple shots, into that victim and then also
3 that same person, the defendant then firing into the crowd,
4 then which hit, unfortunately, the second victim.

5 Given the facts that are presented and the standard
6 that this Court has to view those facts on directed verdict
7 motion, I would have to deny all of the motions at this
8 time.

9 All right. Is -- do the lawyers want to approach?

10 (WHEREUPON, a bench conference was held at this time.)

11 MR. BROWN: Your Honor, one of the collateral things
12 that was mentioned to the Court in looking at our directed
13 verdict motion, I did mention that, based upon the
14 information that came from one of the State's witnesses,
15 there was a mention as to some form of record, a felony, in
16 fact, of my client.

17 I think, of course, that would, under the
18 circumstances, the charges in this case, and without it
19 being corroborated or any information presented by the
20 State, outside of an individual they called to take the
21 stand to say such, would be grounds for a mistrial in light
22 of no other corroborating evidence. I wanted to make sure I
23 made that very clear for the purpose of the record, Your
24 Honor.

25 THE COURT: All right.

1 SOLICITOR BULSA: Your Honor, I believe he's talking
2 about Asa Lake and how he responded to a question I asked
3 about whether he gave the 9-millimeter pistol to Mr. Brown.
4 That did not require an extended answer that Mr., that
5 Mr. Lake gave. He volunteered that of his own free will. I
6 did not touch it after that. I moved away from it
7 immediately. Never made any reference to it.

8 We feel there's no prejudice to the defendant that
9 would cause a mistrial or, or should result in a mistrial.

10 THE COURT: All right. I would deny the motion. If
11 the defense though felt that the defense would want me to
12 instruct the jury that they should disregard that statement
13 made by that witness, I'm willing to do that. That might
14 draw more attention to it than, than maybe what they've
15 already heard because it was in passing, it was rather fast,
16 and if the State does not argue that in its, in its
17 presentation to the Court, then I don't think there would be
18 any prejudice to him but I'll be more than happy to do a
19 curative instruction if the defense wants, you know. You
20 can think about that---

21 MR. BROWN: Yes, sir.

22 THE COURT: ---and let me know prior to closing.

23 Okay. All right. Mr. Brown, Mr. Terrell Brown, if you
24 would, I've got a few questions that I need to ask you and
25 so, if you would, please rise and let me place you under

1 oath.

2 Let the Clerk of Court swear you in.

3 (WHEREUPON, the defendant was placed under oath at this
4 time.)

5 THE COURT: All right. Mr., Mr. Brown, at this time
6 I'm going to explain to you certain of your rights. And if
7 you do not understand anything that I say, please let me
8 know. If you want me to explain anything in more detail,
9 please let me know that as well.

10 You understand, sir?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay. Sir, we have now reached the stage
13 of the trial where you may present your defense. You have
14 the right to claim the protections given to you by the Fifth
15 Amendment to the Constitution of the United States. This
16 amendment provides, in part, no person shall be compelled,
17 in any criminal case, to be a witness against himself.

18 This means that you can not be required to testify in
19 this case. You have the right to testify on your own
20 behalf. However, no one can make you testify. This is a
21 personal right and no one can waive this right except you.

22 If you decide to testify, you'll be subject to the same
23 rules that govern other witnesses and you may be examined
24 and cross-examined on any relevant issue in this case. In
25 addition, if you have any convictions involving dishonesty

1 or false statement or for crimes punishable by imprisonment
2 for more than one year, and this Court determines that the
3 probative value of admitting this evidence outweighs its
4 prejudicial effect to you, the solicitor will be able to
5 introduce your record to attack your credibility.

6 If you decide to testify, this decision, on your part,
7 must be freely, voluntarily, and intellectually made with
8 knowledge of the protections given to you by the Fifth
9 Amendment and the consequences of your decisions to
10 testify -- of your decision to testify. If you decide not
11 to testify, I will instruct the jurors that they can not
12 give the fact that you did not testify any consideration
13 whatsoever, and that there is to be absolutely no prejudice
14 to you because you did not testify.

15 It's entirely left up to you whether or not you
16 testify. You may talk with your attorney, your family, and
17 your friends, or anyone else. The final decision will be
18 left entirely up to you.

19 Do you understand what I just explained to you?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you have any questions about what I have
22 explained to you?

23 THE DEFENDANT: No, sir.

24 THE COURT: Have you discussed with your lawyer whether
25 you should or should not testify?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And do you wish to speak with your lawyer
3 anymore at this time on this issue?

4 THE DEFENDANT: No, sir.

5 THE COURT: All right. And, sir, do you wish to
6 testify or do you wish to not testify?

7 THE DEFENDANT: I do.

8 THE COURT: You do wish to testify?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. Sir, in making that decision to
11 testify, has anybody come to you and threatened you in
12 anyway or have they made you any promises?

13 THE DEFENDANT: No, sir.

14 THE COURT: Am I correct to conclude that your decision
15 to wish to testify is a free and voluntary decision on your
16 part?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. And presently are you satisfied
19 with the work that your lawyer's done so far?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. All right. I'll find that your
22 decision to testify is a free, voluntarily, knowingly, and
23 intellectual decision on your part.

24 Sir, if, between now and the time that you are called
25 to testify, if you wish to change your mind, just let your

1 lawyer know or let me know and, and we'll change it.

2 okay?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Thank you, sir. You may be seated.

5 Is the defense ready to call their first witness?

6 MR. BROWN: We are, Your Honor.

7 THE COURT: All right. Do you need time to set up or
8 can we go ahead and bring them on in?

9 MR. BROWN: Just a few moments if, if I could, Your
10 Honor.

11 (Pause.)

12 THE COURT: I'm gonna step in the back. Just let me
13 know when you're ready.

14 MR. BROWN: Thank you, Your Honor.

15 (WHEREUPON, a short recess was taken at this time.)

16 THE COURT: All right. Let's bring the jury in.

17 (WHEREUPON, the following takes place within the
18 presence of the jury.)

19 THE COURT: Yes, sir, Mr. Brown.

20 MR. BROWN: Thank you, Your Honor.

21 The defense would call Mr. Kierri Gilliam.

22 THE COURT: Sir, just come right up here. Let the
23 Clerk of Court swear you in.

24 (Witness complies.)

25 KIERRI GILLIAM, being first duly

Kierri Gilliam - Direct examination
By Mr. Brown

1 sworn, testified as follows:

2 THE CLERK: You may be seated.

3 THE COURT: Just have a seat in the red chair and pull
4 the red chair up to the microphone.

5 (Witness complies.)

6 DIRECT EXAMINATION

7 BY MR. BROWN:

8 Q Good afternoon, sir.

9 A Afternoon.

10 Q Make sure you speak up so that young lady can hear you.
11 She's recording everything you're saying.

12 Could you state your name?

13 A I'm Kierri Gilliam.

14 Q And where do you live?

15 A Woodruff, South Carolina.

16 Q And do you know why you're here today?

17 A Yes, sir.

18 Q Are you familiar with the events that took place on
19 September the 2nd, 2013?

20 A Yes, sir.

21 Q In particular, a shooting that occurred at Kelly Acres?

22 A Yes, sir.

23 Q Could you tell us where you -- where were you at on
24 that day?

25 A well, when I got down there, I came to see this girl I

Kierri Gilliam - Direct examination
By Mr. Brown

1 had been talking to at the time, and when I got down there,
2 Tee Alexander, Jay was down there, a couple more people.
3 The girls I can remember were Myesha, Kesha, a couple people
4 that were with---

5 Q Kesha Jackson being one of them?

6 A Yeah. Yes, sir.

7 Q And you said Big J.

8 Is that Jamar Murray?

9 A Yes, sir.

10 Q Did you see Mr. Brown there at that point?

11 A Not at that point.

12 Q Okay. You saw him later on?

13 A Yeah.

14 Q Did you go inside any of the buildings and then come
15 back out?

16 A Yes, sir.

17 Q well, as it relates to direct time span around the
18 shootings, where were you at and what were you doing?

19 A You talking about when the shooting happened?

20 Q Yes.

21 A I was outside at that time.

22 Q Okay. What was going on?

23 A well, when I -- I went in the house cause like, before
24 I went in the house the first time I got down there, with --
25 everybody was talking about playing cards. So, I was like

Kierri Gilliam - Direct examination
By Mr. Brown

1 okay, I'll find a deck. Come holler at me. I'm gonna be in
2 here with Myesha.

3 well, my little brother came up. He came in the house,
4 hollered at me. I asked him what he was doing. He said
5 that he was gonna be down there chilling for a minute. So,
6 I went back outside to hang out with him.

7 Q Uh-huh. (Affirmative).

8 A About the time I got out there, Tee and Quinn and all
9 them had pulled up, got out there. When they got out the
10 car, dapped everybody up. Everybody was talking. They had
11 a case of beer out there that people was drinking and start,
12 you know, talking to everybody and Tee was over here by the
13 car with me and Tray drinking. And, by that time, I guess
14 they exchanged words and Big J was like we ain't with that
15 down here. We're about money. You have to take that
16 somewhere else.

17 Q Okay. You say Tee and Quinn pulled up.

18 Did anyone else pull up?

19 A I think I remember Brittany being out there and Summer
20 being out there and Tee, Quinn, and, and Frado.

21 Q Frado, what's his real name?

22 A Travis.

23 Q Travis, that's Brittany's brother?

24 A Yeah.

25 Q All right. What, what happened next and -- well,

Kierri Gilliam - Direct examination
By Mr. Brown

1 excuse me. Let me back up. You say they were exchanging
2 words.

3 when you say they, who is they?

4 A Tee. Well, Quinn, and Big J, and Frado.

5 Q Tee as in Tee Parks?

6 A No, Tee was with us by me and Tray by the car.

7 Q Okay. So, you're saying Quinn and Jamar Murray were
8 exchanging words?

9 A (Witness nods affirmatively.)

10 Q You got to speak up.

11 A Yes, sir.

12 Q Okay. So, what happened next?

13 A well, Tee was like I just got out. I mean Derrick was
14 like I just got out.

15 SOLICITOR BULSA: Objection, Your Honor.

16 THE COURT: All right. Rephrase that. Rephrase the
17 question.

18 Q In, in terms of what you knew to happen next, what
19 happened next?

20 A Garrett was just like I just got out.

21 SOLICITOR BULSA: Objection, Your Honor.

22 THE COURT: All right. Yeah, he can't testify as to
23 hearsay information.

24 Q what did you, what did you, what did you see?

25 Not what you heard in terms of what Yearg may of told

Kierri Gilliam - Direct examination
By Mr. Brown

1 you. You can't say what someone told you by way of hearsay.

2 A Tee was on like the front, like the -- one, one side of
3 the sidewalk because, where we were, like the way Kelly
4 Acres is, you got a sidewalk on this side, you got houses,
5 and then toward the back there's more houses and a trash
6 can. And, on the other side of the road, is houses over
7 here. Quinn was on this side of the road with Terrell but
8 they were on opposite sides of the sidewalk.

9 Q Okay. I want to show you what's been introduced as
10 State's Exhibit No. 24, and when you say the sidewalk, where
11 would you have been?

12 A The side with one car.

13 Q Up here?

14 A Yeah.

15 Q And, Terrell, where, where would he have been standing?

16 A To the side right there. Closest to the car there.

17 Q Right in here?

18 A Yeah.

19 Q And which direction was Quinn coming from?

20 A The same side of -- like Frado down here.

21 Q Do you know if he was coming from a car that was parked
22 down here or was he just walking this way?

23 A I think he was just walking that way.

24 Q Okay. And, at some point, you observed Quinn come up
25 on the sidewalk?

Kierri Gilliam - Direct examination
By Mr. Brown

1 A Yes, sir.

2 Q And what did you see next?

3 A Summer and Tee holding him back. Everybody trying to
4 calm him down. He was just like -- he said I just wanna
5 holler at him. I just got out. What's up, Rell, you know
6 trying to talk to him but Terrell wasn't saying nothing to
7 him.

8 Q Okay. And Summer and who else was trying to pull Quinn
9 back?

10 A Tee had, by that point, when Tee seen Yearg like
11 getting all riled up, he was trying to go calm him down.

12 Q You say Tee meaning Tee Parks?

13 A Yes.

14 Q Okay. And after they calmed him down or pulled him
15 back, what happened?

16 A He just kept I just want to holler at him, man. It
17 ain't nothing like that. I just want to talk to him.

18 Q So, he didn't let his point go of being upset or
19 wanting to have some kind of conversation?

20 He didn't drop it?

21 A No, sir.

22 Q So, what happened after that?

23 A Frado had his weapon behind his back and then Tee, not
24 Tee, but Yearg, I mean he was kind of behind his back too,
25 and he kept just wanting to talk to him, holler at him or

Kierri Gilliam - Direct examination
By Mr. Brown

1 whatever, and he started approaching Terrell.

2 Q So, when you say Yearg was behind his back as well, did
3 he just have his hand behind his back or did he have
4 something in his hand?

5 A I guessing that he had something. If he didn't, I just
6 thought he was behind his back.

7 Q But what -- you saw his hand behind his back?

8 A Yes, sir.

9 Q Okay. And once he put his hand behind his back, what
10 actions did Yearg next take?

11 A He just continued forward.

12 Q Continuing forward coming towards who?

13 A Terrell.

14 Q And where was Terrell standing?

15 A By the car.

16 Q Just standing there?

17 A (Witness nods affirmatively.)

18 Q Was he saying anything to Quinn or Yearg?

19 A He wasn't saying nothing. He was just shaking his
20 head.

21 Q So, Yearg kept approaching?

22 A Yes, sir.

23 Q And, at some point, Yearg got close to Terrell?

24 A Yes, sir.

25 Q And what happened next?

Kierri Gilliam - Direct examination
By Mr. Brown

1 A Terrell shot him.

2 Q So, he just pulled up --?

3 A (Witness nods affirmatively.)

4 Q During that time period, what did you observe the
5 actions of Quinn to be?

6 Did he still have his -- like he had---

7 A He had---

8 Q ---had something?

9 A He just approaching him. Just say I just want to
10 holler at you. Just kept approaching forward.

11 Q All right. Did you hear any screams before that
12 relating to a gun being seen out there?

13 A I mean I heard Abreshia say he had guns and Myesha was
14 telling the girls to come back in the house, and I was
15 telling my little brother, I was just like, you know, come
16 in the house with me.

17 Q Okay. So, someone did say they had guns?

18 A Uh-huh. (Affirmative).

19 Q Not just one gun that you heard?

20 A No.

21 Q So, once Terrell pulled up and shot Quinn, what
22 happened next?

23 A Well, as soon as he shot, everybody took off running.

24 Q Okay. You didn't see anyone else out there?

25 A Everybody that was out there took off.

Kierri Gilliam - Direct examination
By Mr. Brown

1 Q Did you hear anything else after you heard the initial
2 gunshots?

3 A Just everybody screaming and yelling. People screaming
4 he shot Yearg, half of us running out the top gate of Kelly
5 Acres, half of us running down to the bottom, half of the
6 people running in the house.

7 Q while you were out there, did anyone else seem like
8 they were making it seem like they were armed?

9 A I mean Tee, Tee was walking towards Quinn but I don't
10 remember him having a weapon or trying to show a weapon. I
11 remember him like pushing back. Terrell, I know I seen him
12 have his behind his hands -- behind his back. Yearg was
13 behind his back. And Frado was like in the middle of the
14 road walking like toward the trash cans.

15 Q So, you're saying Frado was right, right here and that
16 one---

17 A On up toward there a little bit.

18 Q Okay. So, Frado was directly across from where Terrell
19 was standing on the sidewalk?

20 He was over here somewhere?

21 A Yes, sir.

22 Q And Quinn or Yearg was coming up from this direction?

23 A Yes, sir.

24 Q Okay. And so, you took off running.

25 where did you run to?

Kierri Gilliam - Direct examination
By Mr. Brown

1 A I ran toward the top gate. Like where I was standing
2 on the, on the sidewalk, it's a space between the houses.
3 It's grass. Like if you run through there, the top of the
4 gate at Kelly Acres, and it will be open.

5 Q Okay. Are you related to anybody?

6 A We all just grew up together.

7 Q Okay. Did you ever see anybody do this?

8 A No, sir.

9 Q You never saw anybody hold their hands up --

10 A No, sir.

11 Q -- while you were out there prior to the gun being
12 pulled out --

13 A No, sir.

14 Q -- and the shooting?

15 A No.

16 Q When did you first learn about the events after this,
17 that same night?

18 A Well, I came because Myesha was in the house and I came
19 back cause she wanted me to stay with her. So, when I came
20 back, the police officers came, and everybody that was still
21 in Kelly Acres, they made them stay. So, we all couldn't
22 leave and then they was coming and questioning everybody
23 about what they seen and what happened.

24 Q Did anybody take your statement?

25 A No, sir, I talked to a heavy set lady with blonde hair.

Kierri Gilliam - Direct examination
By Mr. Brown

1 She had glasses. I talked to her in Woodruff but I told her
2 I didn't want to talk to her. I actually wanted to talk to
3 Officer Montjoy because I knew him as my wrestling coach.

4 Q So, this was Woodruff Police officers?

5 A Uh-huh. (Affirmative).

6 Q No one from the county came and talked to you?

7 A No, sir.

8 Q And the only time someone would of talked to you would
9 of been that evening?

10 A Yes, sir.

11 Q And you, you never had some other officer or
12 investigator come speak with you about the events that
13 evening?

14 A I mean other than her and Officer Dawkins. Just them
15 two.

16 Q Okay. And this is the first time you've had a chance
17 to tell your story completely?

18 A Yes, sir.

19 Q Were you here yesterday during any of the testimony?

20 A No, sir.

21 Q Is this your first day coming to this trial?

22 A Yes, sir.

23 Q And this is your true and accurate information that
24 you're sharing with the Court?

25 A Yes, sir.

Kierri Gilliam - Cross-examination
By Solicitor Bulsa

1 Q And that's what you saw?

2 A Yes, sir.

3 Q All right. Please answer any questions that the State
4 may have.

5 CROSS-EXAMINATION

6 BY SOLICITOR BULSA:

7 Q Mr. Gilliam, I'm a little bit confused as to where you
8 were actually located when you said you witnessed all this.
9 Look at this picture here.

10 A Uh-huh. (Affirmative).

11 Q Would you be able to point out in that picture -- would
12 you be able to point out in this picture where you were?

13 A Yes, sir.

14 Q All right. Let's try using State's 5.

15 Is there any way we can dim the lights?

16 I can't see this.

17 (WHEREUPON, the bailiff complies.)

18 Q All right. This picture is taken from Connie Drive
19 looking, now I've got it backwards, looking down onto Woody
20 Court.

21 All right?

22 A All right.

23 Q You have to say yes or no.

24 A Yes, sir.

25 Q Okay. Now, this wasn't taken at the time of the

Kierri Gilliam - Cross-examination
By Solicitor Balsa

1 incident. This was taken at a later day. So, these cars
2 are not accurate as to where they were.

3 But where, in this area, would you have been standing?

4 A Like right in front of the first white car that's
5 like---

6 Q Over here?

7 A In front of the car is---

8 Q Over here on the sidewalk?

9 A Yes, sir.

10 Q So, you'd been on the sidewalk?

11 A Yes, sir.

12 Q Looking back this way?

13 A Yes, sir.

14 Q Where did you say you lived?

15 A I don't live there.

16 Q You don't live in Kelly Acres?

17 A (Witness nods negatively.)

18 Q Where's the girl that you were visiting live?

19 A She don't live in Kelly Acres.

20 Q Oh, she doesn't live in Kelly Acres. You, you
21 testified that you went into a house---

22 A Uh-huh. (Affirmative).

23 Q ---out there.

24 Which house were you going into?

25 A The one directly in front of the car.

Kierri Gilliam - Cross-examination
By Solicitor Bulsa

- 1 Q This one over here?
- 2 A Uh-huh. (Affirmative).
- 3 It's the same, the same as the first building. It's
- 4 just the house on the end.
- 5 Q I don't understand that. Let's see if we can do it
- 6 from an overhead picture.
- 7 All right. Okay. This is State's No. 1. This is an
- 8 aerial picture of Woody Court.
- 9 Do you agree with that?
- 10 A Uh-huh. (Affirmative).
- 11 Q And you've told us that you would of been standing
- 12 somewhere over in this area?
- 13 A Yeah, I was in the house directly in front of this.
- 14 Q So, this is the house you were going in and out of?
- 15 A Yeah.
- 16 Q Okay. And who lived there?
- 17 A The girl I was talking to, her cousin stayed there.
- 18 Q I didn't hear that.
- 19 A The girl I was talking to, her cousin stays there.
- 20 Q So, your friend's cousin---
- 21 A Yeah.
- 22 Q ---stayed there?
- 23 Was she out there when all this happened?
- 24 A No, sir. No, sir.
- 25 Q Was anybody from this house outside on this parking lot

Kierri Gilliam - Cross-examination
By Solicitor Bulsa

1 when this happened?

2 A People that were in the house -- like it was like more
3 than us was in there together.

4 Q Okay.

5 A And we all just happened to go outside.

6 Q All right. I'm gonna ask it this way.

7 How many of these people that live in these seven
8 buildings do you know?

9 A Two.

10 Q Two.

11 And which of those buildings do those people live in,
12 this one?

13 A Well, including her, it will be three.

14 Q So, you know somebody that lived here?

15 A Uh-huh. (Affirmative).

16 Q And which other building?

17 A The one across.

18 Q This one?

19 A To the side. Right there.

20 Q This one here?

21 A Yeah.

22 Q Okay. Was anybody from this building outside?

23 A (Witness nods negatively.)

24 Q No?

25 A Not that I can remember.

Kierri Gilliam - Cross-examination
By Solicitor Bulsa

1 Q And you've told us nobody from this building was
2 outside?

3 A Hu huh. (Negative).

4 Q So, everybody that you knew out here didn't live in
5 this area.

6 Is that right?

7 A Uh-huh. (Affirmative).

8 Q Okay. And y'all are just there hanging out?

9 A Yes, sir.

10 Q And what kind of activity was being done?

11 A Just drinking and chilling.

12 Q Drinking and chilling.

13 How old are you?

14 A 23.

15 Q 23?

16 A Yes, sir.

17 Q Okay. You actually look a little younger than that.

18 So, you're out there hanging out drinking and chilling and
19 you told us a bunch of nicknames.

20 But when you -- did you leave this sidewalk at anytime
21 during this incident that was going on over here?

22 A Excuse me?

23 Q You were on the sidewalk, right --

24 A Uh-huh. (Affirmative).

25 Q -- in front of this apartment.

Kierri Gilliam - Cross-examination
By Solicitor Bulsa

1 Did you, at anytime while all this activity you
2 described was taking place between Mr. Yeargin and
3 Mr. Brown, did you, at anytime, leave this sidewalk and go
4 towards the, towards that area?

5 A No, sir.

6 Q So, everything you are observing is from this position?

7 A Yes, sir.

8 Q So, you're looking across the parking lot through the
9 cars and truck and -- is that accurate?

10 Is that right?

11 A Yes, sir.

12 Q Okay. How were you able to see a gun in Mr. Brown's
13 hand?

14 A Cause I -- he was standing like facing that way. So,
15 it's behind his back.

16 Q You were standing on this sidewalk?

17 A Uh-huh. (Affirmative).

18 Q Facing this direction?

19 A Yes, sir.

20 Q So, you can see between the cars?

21 A Yes, sir.

22 Q Okay. So, you clearly saw him with a weapon?

23 A Yes, sir.

24 Q And Mr. Brown was asking you about Mr. Yeargin and you
25 testified you didn't actually see him with a weapon, did

Kierri Gilliam - Cross-examination
By Solicitor Bulsa

- 1 you?
- 2 A I seen him with his hands behind his back, sir.
- 3 Q You, you saw him with his arm behind his back?
- 4 A Yes, sir.
- 5 Q But you didn't see anything in his hand.
- 6 A It could of been.
- 7 Q I didn't hear that.
- 8 A I said it could of been. It could not of been.
- 9 Q Okay. And that's because you couldn't see because of
- 10 the cars.
- 11 Is that right?
- 12 A (No response.)
- 13 Q You didn't see it?
- 14 A I mean---
- 15 Q How clearly could you see his back?
- 16 A I mean you can see a lot of---
- 17 Q Okay.
- 18 A ---a lot of his hands---
- 19 Q Okay. So, you had no problems seeing Mr. Brown and
- 20 you're clear that he had a weapon?
- 21 A Yes, sir.
- 22 Q And you're telling us you had no problems seeing Mr.---
- 23 A Yeargin.
- 24 Q ---Yeargin but you only saw his hand behind his back
- 25 and you didn't see him with a weapon?

Kierri Gilliam - Cross-examination
By Solicitor Bulsa

1 Is that right?

2 A I seen him with his hand behind his back.

3 Q Okay. All right. So, you did not see a weapon.

4 Okay. Did you see anybody else out there with a weapon
5 at anytime that evening?

6 A Yes, sir.

7 Q Who?

8 A It was a juvenile. I don't know his real name but his
9 name -- he had his but I---

10 Q I, I -- you got to speak up a little louder.

11 A I don't know his real name but his name -- we call him
12 Bone. He had a weapon.

13 Q Bone had a weapon --

14 A Yeah, he had one out there.

15 Q -- out there that night?

16 A Yeah.

17 Q Was he out there when the shooting happened?

18 A Yes, sir.

19 Q Okay. Whereabouts would he have been positioned?

20 A Like down toward the edge of the sidewalk also.

21 Q Down on this side?

22 A No.

23 Q This is the side -- down this side?

24 A Yeah.

25 Q Okay. All right. So, would he have been positioned

Kierri Gilliam - Cross-examination
By Solicitor Bulsa

1 over there at the time of the shooting?

2 A Yes, sir.

3 Q Okay. Do you know if he had his gun out at the time of
4 the shooting?

5 A I know I seen him with his. He was running towards the
6 top of Kelly Acres.

7 Q So, he ran in the same direction you ran?

8 A Yes, sir.

9 Q And he had the gun with him?

10 A Yes, sir.

11 Q What kind of gun?

12 You don't know?

13 A No, sir.

14 Q Okay. Well, did you see him shoot that gun?

15 A No, sir, I wasn't paying attention.

16 Q Okay. In fact, isn't it true the only person you saw
17 shoot was Mr. Brown?

18 A Yes, sir.

19 Q And your testimony is, is Mr. Yeargin was going towards
20 Mr. Brown and Mr. Parks was some, somewhere behind him
21 facing the same direction?

22 Is that right?

23 A Can you say it again?

24 Q Mr. Parks was facing the same direction as Mr. Yeargin?

25 A No, sir.

Kierri Gilliam - Cross-examination
By Solicitor Bulsa

1 Q Which way was he facing?

2 A Like the opposite way trying to hold him back.

3 Q Okay. Hold him back but, at the time of the shooting,
4 where was Mr. Parks?

5 A Probably right there beside like telling him get back.

6 Q All right. Right beside Mr. Yeargin---

7 A Yes, sir.

8 Q ---telling him to get back?

9 A Yes, sir.

10 Q Okay. And from your prospective, sir, it appeared that
11 Mr. Yeargin was wanting to talk to Mr. Brown.

12 Is that right?

13 A Yes, sir.

14 Q Okay. Let me back this out a minute.

15 Still using State's Exhibit 1, where did you say you
16 ran to?

17 A The entrance.

18 Q Okay. Here's the entrance. Here's the entrance in.
19 There's Connie Drive, Woody Court, and you were over here.

20 You ran this way --

21 A Through the---

22 Q -- or this way?

23 A Through the houses.

24 Q Through the houses and you said you didn't actually
25 leave Kelly Acres?

Kierri Gilliam - Cross-examination
By Solicitor Balsa

- 1 A No, sir.
- 2 Q Where did you wind up stopping?
- 3 A Like I ran like toward the back of the houses on the
4 side of the street.
- 5 Q All right. Use that pointer. Push that pointer.
6 And you ran over there to get out of the way?
- 7 A (Witness nods affirmatively.)
- 8 Q And you recall everybody sort of scattering?
- 9 A Yes, sir.
- 10 Q Did you say which direction Mr. Brown ran?
11 He ran towards -- he ran the opposite way you ran?
- 12 A Yeah.
- 13 Q So, you didn't -- did you see or could you see, from
14 your location, anything going on with Woody Court after the
15 shooting?
- 16 A Like after I heard the first gunshot, I took off. So,
17 anything else that happened I don't know.
- 18 Q Okay. But then when you got behind this building, did
19 you kind of peek around and see if anything was taking
20 place?
- 21 A Yeah, I was just looking for who all was around.
- 22 Q Okay. And did you see anything going on there at Woody
23 Court?
- 24 A Besides people running, no, sir.
- 25 Q Did you see Mr. Yeargin getting put in a car?

Kierri Gilliam - Cross-examination
By Solicitor Bulsa

- 1 A No, sir.
- 2 Q Okay. Did you even see the car leave?
- 3 A Yes, sir.
- 4 Q You did?
- 5 A Yes, sir.
- 6 Q Do you know whose car it was?
- 7 A Summer's car.
- 8 Q Summer's car?
- 9 A Yes, sir.
- 10 Q Did she speed out of there fast?
- 11 A Yes, sir.
- 12 Q Anybody else speed out in a car?
- 13 A Yes, sir.
- 14 Q They did.
- 15 How many cars left?
- 16 A I can remember one car leaving because that's the car
- 17 my brother was in.
- 18 Q whose -- what was it?
- 19 A It was a blue car leaving and that's the car my brother
- 20 was in.
- 21 Q All right. So, at least one other car?
- 22 A Yes, sir.
- 23 Q And your brother left.
- 24 was your brother out there when this happened?
- 25 A Yes, sir.

Kierri Gilliam - Cross-examination
By Solicitor Balsa

- 1 Q What's his name?
- 2 A Tosh Gilliam.
- 3 Q Tosh?
- 4 A Tosh Gilliam.
- 5 Q Tosh Gilliam?
- 6 A Yes, sir.
- 7 Q Okay. And how old was he?
- 8 A Nineteen.
- 9 Q Nineteen.
- 10 Okay. And they all -- how long did it take for the
- 11 police to get there after the shooting?
- 12 A I couldn't tell you.
- 13 Q Estimate.
- 14 A About 45 minutes maybe.
- 15 Q Forty-five minutes?
- 16 A Yes, sir.
- 17 Q You're telling me it took 45 minutes for Woodruff
- 18 Police to arrive at this shooting scene?
- 19 A Yes, sir.
- 20 Q What were you doing for 45 minutes?
- 21 A I went back in the house.
- 22 Q In whose house?
- 23 You walked back down there to the house?
- 24 A Yes, sir.
- 25 Q And hang around -- hung around for 45 minutes?

Kierri Gilliam - Cross-examination
By Solicitor Balsa

- 1 A I was on the inside of the house.
- 2 Q I know but you hung around inside the house for 45
- 3 minutes?
- 4 A Yeah, before they came and talked to us.
- 5 Q well, before that 45 minutes -- is that 45 minutes
- 6 before they came to talk to you or before they got there at
- 7 all?
- 8 A Like before they actually came and talked to me.
- 9 Q Okay. So, did you see when they arrived?
- 10 A No, sir.
- 11 Q Okay. Forty-five minutes seems like a long time.
- 12 So, just so the jury understands, it was 45 minutes
- 13 before anybody came to speak to you?
- 14 A Yes, sir.
- 15 Q How is it that they came to speak to you?
- 16 Did they come knocking on the door?
- 17 A Yeah, they went from door-to-door asking everybody---
- 18 Q Okay.
- 19 A ---what happened.
- 20 Q So, you remember the police actually going door-to-door
- 21 and seeing if anybody knew anything, and you actually did,
- 22 didn't you?
- 23 You knew something, didn't you?
- 24 A (Witness nods affirmatively.)
- 25 Q Is that a yes?

Kierri Gilliam - Cross-examination
By Solicitor Bulsa

- 1 A Yes, sir.
- 2 Q And you didn't talk to the police, did you?
- 3 A No, I told them what happened.
- 4 Q I thought you said you didn't talk to the lady. You
5 wanted to talk to Officer Montjoy.
- 6 A I talked to Officer Dawkins and he told me to come down
7 and talk to him later. And when I got there, I didn't -- he
8 wasn't there. So, I talked to a kind of heavy set white
9 woman with blonde hair---
- 10 Q Yes, ma'am.
- 11 A ---and glasses.
- 12 Q Yes, sir.
- 13 And did you give her a statement?
- 14 A Yes, sir.
- 15 Q You did give her a statement?
- 16 A Yes, sir.
- 17 Q A written statement?
- 18 A Not written statement.
- 19 Q Oh, you're just telling us you told her what you've
20 told us today?
- 21 A Yes, sir.
- 22 Q Okay. All right. So, you told Darrell, Officer
23 Dawkins, who was the chief at the time, right --
- 24 A Yes, sir.
- 25 Q -- that you knew something and he said come down to the

Kierri Gilliam - Cross-examination
By Solicitor Bulsa

1 station and give a police or give a statement?

2 A Yes, sir.

3 Q Okay. And you actually went and spoke to somebody but
4 didn't write it down?

5 A Yes, sir.

6 Q Okay. But, in any event, you -- the only person with a
7 gun that you saw for sure was Mr. Brown, right?

8 A No, sir.

9 Q well, other than the fellow up the, up at the sidewalk,
10 Mr. Bone --

11 A Terrell.

12 Q -- who you saw?

13 A Terrell, Bone, and Frado had one.

14 Q Frado had one too?

15 A Yes, sir.

16 Q Okay. I thought I already asked you who else had a
17 gun.

18 How do you know Frado had a gun?

19 A Because he was on -- like he was in the middle of the
20 road. He wasn't like pointing or showing nothing but he had
21 his like to his side too.

22 Q Okay. So, did Frado ever -- so, he never pointed it
23 from what you could tell?

24 A No, sir.

25 Q All right. The only one actually pointed it and shot

Kierri Gilliam - Redirect examination
By Mr. Brown

1 was Mr. Brown?

2 A Yeah, but he -- once Quinn got close enough, he shot
3 and everybody took off running. So, if anybody else was
4 shooting, like we heard gunshots, but I couldn't tell you
5 who shot.

6 Q Okay. All right. Thank you, sir.

7 THE COURT: Any redirect limited to what he went into?

8 REDIRECT EXAMINATION

9 BY MR. BROWN:

10 Q So, you say you ran away and you heard additional
11 gunshots?

12 A Yes, sir.

13 Q Did Frado run with you?

14 A Not, not, not in my direction.

15 Q Okay. But he ran?

16 A I'm guessing, yes.

17 Q And you weren't paying attention to anything---

18 A I was just trying to get out the way.

19 Q State's Exhibit No. 5.

20 where was Frado standing?

21 A Like as far as the trash can.

22 Q Right in here?

23 A Back as far as the trash can.

24 Q Okay. And you say you saw him with his gun?

25 A Like to his side, yeah.

Kierri Gilliam - Redirect examination
By Mr. Brown

1 Q Okay. And you saw that he had a gun?

2 A Yeah.

3 Q Mr. Brown, because of the way you were looking, he was
4 facing this way?

5 A Yes, sir.

6 Q On the sidewalk?

7 A Yes, sir.

8 Q Yearg, he was coming up the sidewalk this way?

9 A Yes, sir.

10 Q He had his hand like this?

11 A Yes, sir.

12 Q So, you couldn't see directly through his body?

13 A No, sir.

14 Q But you saw that he had his hand to his side?

15 A Yes, sir.

16 Q You were able to see Mr. Brown cause he was facing you
17 with the open part of his body?

18 A Yes, sir.

19 Q Yearg, you couldn't see the open part of his body?

20 A (Witness nods negatively.)

21 THE COURT: Sir, if you will, give a -- don't -- give
22 words when you respond. Just don't shake your head.

23 Okay?

24 THE WITNESS: Yes, sir.

25 THE COURT: Thank you.

Jamar Murray - Direct examination
By Mr. Brown

1 Q So, again, just for the record, Mr. Brown, facing your
2 way, open part of his body, you could see he had a gun?

3 A Yes, sir.

4 Q Yearg, this side of his body, you couldn't see through
5 it, so you couldn't see if he had a gun?

6 A Yes, sir.

7 Q But you saw that he had his hand down to his back like
8 he --?

9 A Yes, sir.

10 MR. BROWN: Okay. That's all the questions I have.

11 THE COURT: Thank you, sir. You may step down.

12 Any reason why the witness can not be excused?

13 SOLICITOR BULSA: Not from the State.

14 MR. BROWN: Not from the defense.

15 THE COURT: Thank you, sir. You may be excused. Thank
16 you very much -- thank you for coming.

17 Defense ready to call your next witness?

18 MR. BROWN: We call Mr. Jamar Murray.

19 THE COURT: Sir, just come forward and let the Clerk of
20 Court swear you in.

21 (Witness complies.)

22 JAMAR MURRAY, being first duly
23 sworn, testified as follows:

24 THE CLERK: Thank you. You may be seated.

25 THE COURT: Sir, have a seat in the red chair and pull

Jamar Murray - Direct examination
By Mr. Brown

1 the red chair up to the microphone.

2 (Witness complies.)

3 DIRECT EXAMINATION

4 BY MR. BROWN:

5 Q If you could, sir, please state your name for the
6 record.

7 A Jamar Murray.

8 Q And, Mr. Murray, are you a resident of Woodruff?

9 A Yes, sir.

10 Q Do you know why you're here today?

11 A Yes, sir.

12 Q Do you have direct knowledge of the events that took
13 place on the morning of September 2nd, 2013?

14 A Yes, sir.

15 Q Where were you during that time period?

16 A I was on standing like right by the cars where the
17 shooting occurred.

18 Q Use the pointer if you need to.

19 A Like right in that area right there in front of that
20 apartment right there.

21 Q Okay. Anyone else was out there with you?

22 A My brother as well as Mr. Brown and Deweet.

23 Q Deweet.

24 A Yes, sir.

25 Q Is that Mr. DeAdrien Morton?

Jamar Murray - Direct examination
By Mr. Brown

1 A Yes, sir.

2 Q So, y'all were standing out there doing what?

3 A We were, you know, just chilling. We had been out
4 there, you know, basically all day, you know, just, just
5 chilling, you know, just hanging out.

6 Q Okay. And you were chilling and as some -- at some
7 point did you observe Yearg and Quinn -- Yearg and Tee come
8 to the scene?

9 A You know, Tee came to the scene first with Summer.

10 Q Okay.

11 A You know, Summer, she pulled out. She left and like no
12 less than like ten to -- five to ten minutes, she came back
13 with Quinn, Brittany Jeter, and Travis Geter, and I guess
14 his name is Robin Nesbitt. That's the ones. I really don't
15 know him that well.

16 Q Okay. And once they got there, what was the next thing
17 to occur after they got there?

18 A You know, Tee, he got out the car. He basically dapped
19 everybody up saying what's up, you know, and Quinn basically
20 did the same thing. You know, walked up, dapped everybody
21 up, and, you know, basically just, just, just cool,
22 chilling.

23 Q Okay. And after he came out and dapped people up or
24 said hello, did anything next happen immediately?

25 A No, he walked off.

Jamar Murray - Direct examination
By Mr. Brown

1 Q Okay. Well, you were, you were present during the
2 testimony in which you heard, at some point, there was some
3 type of argument?

4 A Yeah, it was an argument, you know. He -- like I say,
5 I said I -- he walked up. I seen that they had a gun. I
6 was like, you know, he got a gun and I was basically, you
7 know, telling him, you know, like, you know, let it go. You
8 know, we ain't with that tonight. You know, we basically
9 just chilling, you know. We ain't trying to cause no
10 problems, you know.

11 Q Okay. And once you said that, what was the next thing
12 you did?

13 A He walked off again.

14 Q Did anyone have to restrain him or anyone make any
15 actions like they was trying to pull him back?

16 A Yeah, Tee and Summer, they grabbed him and pulled him
17 back towards the, towards Summer's car.

18 Q Okay. And after they pulled him back towards Summer's
19 car, from which direction was Summer parked at?

20 A She was like parked -- I don't know -- but I don't know
21 exactly was it this spot but she was parked like two spaces
22 down from this burgundy car right there.

23 Q Okay. So, that would of been consistent with the
24 direction that we heard Mr. Yeargin coming from at some
25 point?

Jamar Murray - Direct examination
By Mr. Brown

1 A Yes, sir.

2 Q Okay. So, after she pulled him back, they headed
3 towards Summer's car, what was the next thing that happened?

4 A You know, he came back up and say I, you know,
5 basically want to talk to him, see what's up, you know. I
6 want to holler at my cousin. That's basically what he said.

7 Q Okay.

8 A But he still had the gun in his hand when he was
9 walking up -- as he was walking up.

10 Q All right. And that seemed to be threatening?

11 A It was threatening to me.

12 Q All right. How did that make you feel?

13 A You know, I was shocked, you know. I was just, you
14 know, just had stood there, you know, like in shock cause I
15 basically had talked to him like two days before like, you
16 know, don't come home with this crazy, brah. Just came home
17 from prison, you know. I know you don't want to go back,
18 you know. So, I was in shock when they even back out here
19 doing the same thing he was doing before he got locked up.

20 Q And, and you know he was out here doing the same thing
21 he did before---

22 SOLICITOR BULSA: Objection, Your Honor.

23 THE COURT: Sustain the objection.

24 Q So, he was coming up the sidewalk with a gun in his
25 hand?

Jamar Murray - Direct examination
By Mr. Brown

- 1 A Yes, sir.
- 2 Q And who was standing on the sidewalk?
- 3 A Me, Re'll, my brother, and Deweet.
- 4 Q Did he come up to you with a gun?
- 5 A No, he didn't come up to me.
- 6 Q What about Deweet?
- 7 A He didn't come up to Deweet.
- 8 Q How about your brother?
- 9 A He didn't come up to my brother.
- 10 Q well, specifically came up to Mr. Brown?
- 11 A Yes, sir.
- 12 Q He was making his way towards Mr. Brown?
- 13 A Yes, sir.
- 14 Q What was Mr. Brown doing?
- 15 A Just standing there.
- 16 Q Standing there.
- 17 He wasn't moving?
- 18 A No.
- 19 Q Was he mouthing off going back and forth?
- 20 A Not at all.
- 21 Q And, at some point with you standing on the sidewalk,
- 22 what was the next thing you observed?
- 23 A As he walked up, you know, I felt like he was gonna
- 24 lift the gun up and Re'll shot him.
- 25 Q How close did he get to Terrell?

Jamar Murray - Direct examination
By Mr. Brown

1 A It was like, like face-to-face like, you know what I
2 mean, you know?

3 Q So, he was walking up with his hand?

4 A Yes, sir.

5 Q And then, at some point, did he come up or he just had
6 his hand and he kept advancing towards?

7 A From what I seen, he came up with it. From what I
8 seen.

9 Q Okay. So, he, he started to raise up?

10 A Yeah.

11 Q And what was the next thing you saw?

12 A Like I said, Re'll shot him.

13 Q And what was the next thing that you did after --?

14 A You know, as Yearg hit the ground, I took off running.

15 Q All right. Which direction did you run in?

16 A Up towards that way behind the office right there cause
17 my brother's girlfriend stayed in the apartment next door to
18 these -- to that building right there.

19 Q Did you hear anymore gunshots?

20 A I heard like four more gunshots as I, as I was running.

21 Q At the time in which Mr. Brown shot Mr. Yeargin, do you
22 recall how many gunshots you could of heard?

23 A After he shot him or before he shot him or what you
24 mean?

25 Q As he was shooting.

Jamar Murray - Direct examination
By Mr. Brown

1 A I ain't hear Re'll shoot nothing but four times.

2 Q And you're saying that you heard additional gunshots
3 after you---

4 A I heard four more gunshots after I was running.

5 Q Was it coming from the direction of the sidewalk?

6 A You know, I can't, you know, basically say what
7 direction it was coming from. I just heard it. You know,
8 my back was turned. I was basically trying to get away.

9 Q Okay. You observed Mr. Brown with a handgun that
10 evening. You observed Mr. Yeargin.

11 Did you observe anyone else out there with a handgun?

12 A Not that I could see.

13 Q And after you ran, how long did you -- did you stay in
14 the area or did you leave Kelly Acres?

15 A I stayed in Kelly Acres.

16 Q Okay.

17 A And as I was running from behind Erica's apartment, Mr.
18 -- Officer Teal, he stopped me and asked me where I was
19 coming from.

20 Q And you talked to Teal?

21 A Yeah, he patted me down and searched me, asked me where
22 I was coming from, and he let me go.

23 Q And you, at some point, gave a statement to law
24 enforcement?

25 A Yes, sir.

Jamar Murray - Direct examination
By Mr. Brown

1 Q And you told them that you only saw Terrell shoot?

2 A Mr., Mr. Yeargin.

3 Q Where was Tee, Tee Parks, at during this time period?

4 A He was like standing in this area like in-between this
5 like behind this truck and this burgundy car right here.

6 Q So, he's between the truck and the car and Yeargin had
7 made it up on the sidewalk?

8 A Yeah, he was already on the sidewalk. Yeah, he was on
9 the sidewalk.

10 Q All right. Did you see a gentleman by the name of
11 Frado out there?

12 A Yes, sir.

13 Q Where was he standing?

14 A He was like standing on this side over here in this
15 area over here.

16 Q Okay. So, he took off running and you couldn't see
17 where he went?

18 A I couldn't, I couldn't see everybody. You know, like
19 when I, when I heard the shots and seen him hit the ground,
20 I took off running.

21 Q Did you observe anybody doing this?

22 A No, sir.

23 Q Did you observe anybody walking towards Mr. Brown with
24 their hands up?

25 A No, sir.

Jamar Murray - Cross-examination
By Solicitor Bulsa

1 Q You never saw that?

2 A Never saw that.

3 Q From where you were standing, was Tee Parks in the
4 general line of view or the, the general area where Mr.
5 Yeargin was standing?

6 A I say he was standing like behind this burgundy car and
7 this truck.

8 Q Okay. And Yeargin was standing where?

9 A In this area walking up through here coming towards
10 Mr. Brown standing right there.

11 Q All right. Please answer any questions the State may
12 have.

13 CROSS-EXAMINATION

14 BY SOLICITOR BULSA:

15 Q Where did you say you were, Mr. Murray?

16 A I was standing exactly right here right beside
17 Mr. Brown.

18 Q All right. Right beside Mr. Brown.

19 Okay. And where were the other two people you said?

20 A We was all standing right beside each other.

21 Q So, there were four of you there?

22 A Yes, sir.

23 Q Your testimony is, is Mr. Yeargin was walking up to
24 talk to Mr. Brown?

25 A Yes, sir.

Jamar Murray - Cross-examination
By Solicitor Bulsa

1 Q Okay. And then, when he walked up, Mr. Brown shot him?

2 A No, that's not what I'm saying.

3 Q That's what you testified to.

4 A I said I seen him with a pistol as he was walking up.

5 I just, I just didn't say that he just shot him just cause

6 he was coming up talking to him. I ain't say that. I say I

7 saw him with a pistol. That's what, that's what I said.

8 Q Okay. And where was the pistol?

9 A He had it to his side.

10 Q Which side?

11 A I don't know exactly what side it was on.

12 Q Okay. How many times did Mr. Yeargin walk up to

13 Mr. Brown?

14 A Three.

15 Q How many times?

16 A Three.

17 Q Three times?

18 A Yes, sir.

19 Q All right. Tell me what happened the first time.

20 A He walked up, you know, he was like, you know, I -- he

21 said -- like I say, he dapped everybody up, walked off, came

22 back. You know what I'm saying? Had a gun in his hand. He

23 was like, you know, he basically kill everybody out here.

24 So, I like, you know, told let it go. Basically out here

25 just chilling. You know, we ain't trying to cause no

Jamar Murray - Cross-examination
By Solicitor Bulsa

1 problems and we ain't with that tonight.

2 So, he walked off again. That's when he came back up
3 with the gun in his hand and was like, you know, what's up,
4 Re'll, you know, can I holler at you?

5 Q So, he did this three times?

6 A Yes, sir.

7 Q And you're telling this jury that two of those times
8 that he had a pistol?

9 A From what I saw, yes, sir.

10 Q Okay. And Mr. Brown had a pistol?

11 A Yes, sir.

12 Q Where was his pistol?

13 A It was behind his back.

14 Q Okay. And then the last time Mr. Yeargin walked up is
15 when Mr. Brown pulled the pistol and shot him?

16 A Yes, sir.

17 Q And when did you begin running away?

18 A Like as soon as Yearg hit the ground I took off
19 running.

20 Q Okay. All right. You're telling this jury that you
21 know Mr. Brown shot four times?

22 A Yeah, four times.

23 Q How can you be certain of that?

24 A I was standing right beside of him.

25 Q So, you didn't start running until he fired all four of

Jamar Murray - Cross-examination
By Solicitor Bulsa

1 his shots?

2 A I didn't take off running until Yearg hit the ground.

3 Q All right. Was Mr. Brown still shooting?

4 A I'm saying like he was still shooting even -- and then
5 he hit the ground and I took off running.

6 Q And which direction did you run again?

7 A Up towards between these -- right here between this
8 building and these apartments right here.

9 Q Which way did Mr. Brown run?

10 A He ran that way.

11 Q All right. And you say you actually got stopped by the
12 police that night?

13 A Yes, sir.

14 Q And did you tell them what you saw?

15 A No.

16 Q You didn't?

17 A No, I did not.

18 Q Okay. And you didn't see anybody else with a gun, did
19 you?

20 A Seen anybody else like who?

21 Besides---

22 Q Anybody.

23 A Besides the---

24 Q Did you see anybody else with a gun?

25 A Besides Mr. Yeargin and Brown?

Jamar Murray - Cross-examination
By Solicitor Bulsa

- 1 Q Yes, sir.
- 2 A No, sir.
- 3 Q All right. But you're telling this jury that you heard
4 at least four more shots?
- 5 A As I was running.
- 6 Q And you heard eight shots?
- 7 A In all. In total. It was eight shots that I heard in
8 all.
- 9 Q Okay. And from your prospective, where did you say
10 those shots were coming from the last four?
- 11 A In the same area that we was -- that I had ran from.
- 12 Q Were they shooting at you?
- 13 A Not that I was -- not that I was aware of.
- 14 Q And how far away did you make it in Kelly Acres?
- 15 A What you mean how far did I make it?
- 16 Q Before the police arrived.
- 17 A I mean I was right here. Like I say, I came off
18 between apartments. The police stopped me.
- 19 Q All right. So, how long---
- 20 A But I didn't get to make it---
- 21 Q How long -- so, you didn't even get very far?
- 22 A No.
- 23 Q So, the police got there pretty quick?
- 24 A No -- yes, sir.
- 25 Q Okay. It wasn't 45 minutes, was it?

Jamar Murray - Cross-examination
By Solicitor Bulsa

1 A No, sir.

2 Q They got there pretty quick, Officer Teal.

3 So, you were the -- one of the men he stopped?

4 A Yes, sir.

5 Q Okay. Cause he testified that he stopped three men and

6 spoke to them --

7 A Yes, sir.

8 Q -- and asked them and they all said they didn't know

9 anything?

10 A Yes, sir.

11 Q You being one of them?

12 A Yes, sir.

13 Q So, you lied to him?

14 A I -- basically, yes, sir.

15 Q Right?

16 Okay. Isn't it true you've been convicted yourself of

17 burglary in 2010?

18 A Yes, sir.

19 Q And you've also been convicted of a drug, drug charge

20 in 2011?

21 A Yes, sir.

22 Q Thank you.

23 That's all I have.

24 THE COURT: Any redirect limited to what he went into?

25 REDIRECT EXAMINATION

Jamar Murray - Direct examination
By Mr. Brown

1 BY MR. BROWN:

2 Q Have you seen shootings or heard shootings around that
3 area before?

4 A Yes, sir.

5 Q And it's not uncommon for the police to come out and
6 want to talk to people?

7 A No, sir.

8 Q It's not uncommon for people not to want to talk to the
9 police?

10 A It is, it is -- people don't want to talk to the
11 police.

12 Q Okay. And that's how you felt at the time?

13 A That's how I felt.

14 Q But eventually you came and gave a written statement?

15 A Yeah, cause my name was brought up saying that I had
16 something to do with the deaths. So, I went to the police
17 station and gave a statement.

18 Q Okay. And you made sure that you gave the facts that
19 you have given here today?

20 A Yes, sir.

21 Q This is your true statement?

22 A Yes, sir.

23 MR. BROWN: That's all I have.

24 THE COURT: He -- any new matter that he went into?

25 SOLICITOR BULSA: He -- just about the statement. I

Jamar Murray - Recross examination
By Solicitor Bulsa

1 believe he brought something new up.

2 RECROSS EXAMINATION

3 BY SOLICITOR BULSA:

4 Q So, you only gave your statement to the police to get
5 yourself out of it.

6 Is that right?

7 A Not -- basically, you know, like, like I say, my name
8 was brought up in the situation. I felt the need that I
9 needed to go to the police station and let them know what I
10 saw.

11 Q Okay. Thank you.

12 THE COURT: Thank you, sir. You may step down.

13 MR. BROWN: We call Franklin Higgins.

14 THE COURT: If you would, just come right up here and
15 let the Clerk of Court swear you in.

16 (Witness complies.)

17 FRANKLIN HIGGINS, being first
18 duly sworn, testified as follows:

19 THE CLERK: Thank you. You may be seated.

20 THE COURT: Sir, just have a seat in the red chair and
21 pull the red chair up to the microphone.

22 (Witness complies.)

23 DIRECT EXAMINATION

24 BY MR. BROWN:

25 Q If you could, please state your name for the record.

Franklin Higgins - Direct examination
By Mr. Brown

- 1 A Franklin Higgins.
- 2 Q Mr. Higgins, are you a resident of Woodruff?
- 3 A Yes, sir.
- 4 Q And are you familiar with the events of September the
5 2nd, 2013?
- 6 A Yes, sir.
- 7 Q At some point in the day were you out at Kelly Acres?
- 8 A Yes, sir.
- 9 Q Could you tell us about that?
- 10 A When I was out there, that was when they was first
11 pulling up I was out there. Everybody jump out the car.
12 Then they took off and that's when I had left.
- 13 Q Okay. And from that day, did you -- at some point did
14 you have the occasion to come in contact with Mr. Quinn
15 Yeargin and Mr. Tee Parks?
- 16 A Did I have contact with them?
- 17 Q Were they out there at the same time you were out
18 there?
- 19 A Yes, sir.
- 20 Q And anyone else?
- 21 A Let's see. Frado. It was just -- like -- it was like
22 20 people out there.
- 23 Q Okay. Peaceful time?
- 24 A Yeah.
- 25 Q You hung around for a while?

Franklin Higgins - Direct examination
By Mr. Brown

- 1 A Not too long.
- 2 Q And why did you leave?
- 3 A Because like, when I left, Terrell had done left too.
- 4 So, that's, that's the only reason I had, you know, cause I
- 5 wasn't gonna leave him out there. So, when I left, he was
- 6 gone. Everybody basically was gone.
- 7 Q Okay. And why would you leave with Terrell at the same
- 8 time?
- 9 A why wouldn't I?
- 10 Q why would you?
- 11 why would you leave?
- 12 A why would I leave it with him?
- 13 Q Yes.
- 14 A I didn't leave.
- 15 Q Okay. But you left after he did?
- 16 A Yeah.
- 17 Q Did you have any concerns with leaving him out there by
- 18 himself or with everybody else?
- 19 A No. No, sir.
- 20 Q And so, a peaceful time period?
- 21 A Yeah, at that time while I was there.
- 22 Q Okay. No altercations going on?
- 23 A No, it was like, like they say, Tee got out the car
- 24 giving everybody -- speaking to everybody and all that. So
- 25 --.

Franklin Higgins - Direct examination
By Mr. Brown

1 Q No run-in's with Mr. Quinn Yeargin?

2 A From the past or that night?

3 Q You tell us.

4 SOLICITOR BULSA: Objection, Your Honor.

5 A I had---

6 THE COURT: Sustain the objection.

7 Q On that day, were there any run-in's in particular that
8 you may of had with Mr. Yeargin?

9 A No, sir.

10 Q No words exchanged?

11 A No, I hadn't said nothing to him.

12 Q So, it was nice and peaceful while you were out there?

13 A Yeah.

14 Q Okay. At what point did you learn something had
15 happened?

16 A When I had -- like, like 30 minutes after I got to the
17 house.

18 Q Okay. How did you find out?

19 A Phone call.

20 Q All right. And, after that 30 minutes, what was the
21 next thing that you did?

22 A Just calling around seeing what happened, really
23 happened.

24 Q Did you make your way back to Kelly Acres?

25 A No, sir.

Franklin Higgins - Direct examination
By Mr. Brown

1 Q And since that time period, have you had a chance to
2 interact with anybody?

3 A No.

4 Q Ever talk to law enforcement?

5 A I talked to them like the next day after all that
6 happened.

7 Q Okay. And who did you go see?

8 A Darrell Dawkins.

9 Q And why did you go see Darrell Dawkins?

10 A Just to give him my opinion of what I think.

11 Q Okay. And he talked to you?

12 A Uh-huh. (Affirmative).

13 Q But he didn't write anything down?

14 A He was taking little notes but he didn't bother to do
15 that.

16 Q And you told him what you, what you saw that day?

17 A Uh-huh. (Affirmative).

18 Q You told him that people were out there drinking?

19 A I tell him -- like we wasn't drinking cause like
20 when -- they pulled up drinking.

21 Q Okay.

22 A I didn't tell him that.

23 Q well, when you say they, who is they?

24 A The people that rode up, Brittany, Summer. You could
25 tell they was drunk. Frado. You could tell they was drunk.

Franklin Higgins - Cross-examination
By Solicitor Bulsa

1 Q How could you tell they were drunk?

2 A Just by how, how they got out the car.

3 Q Were they loud?

4 A Yeah, but at the same time it was -- it wasn't no crazy
5 loud. It was just you can tell. You can tell when somebody
6 been drinking.

7 Q Okay. Please answer any questions the State may have.

8 CROSS-EXAMINATION

9 BY SOLICITOR BULSA:

10 Q what were you doing out there?

11 A My cousins stay in the apartment we was in front of.

12 Q Were you drinking?

13 A No, sir.

14 Q were you smoking?

15 A No, sir.

16 Q No, sir?

17 A Not, not at that moment. I have been that day.

18 Q You had been smoking that day?

19 A Yeah.

20 Q what?

21 A Marijuana.

22 Q Marijuana.

23 was anybody else smoking marijuana out there?

24 A A couple people.

25 Q A couple people.

Franklin Higgins - Cross-examination
By Solicitor Bulsa

1 Okay. All right. You weren't actually there when the
2 shooting happened?

3 A No, sir.

4 Q So, you don't really know what happened, do you?

5 A No, sir.

6 Q Okay. And you said you went and talked to the police
7 just to give your opinion?

8 A Yes, sir.

9 Q But it wasn't to give any facts?

10 A No, sir, cause I wasn't there.

11 Q Okay. But when you left it was peaceful.

12 A Yeah, when I left, everybody had done cleared out
13 basically.

14 Q And what time would you have left?

15 A It's 12:00. Like around about 11:00, 11:15.

16 Q And who called you and told you about this?

17 A I had a whole bunch of phone calls. My aunt cause she
18 stayed down the street. She told me that she heard gunshots
19 and all that.

20 Q Okay. And how did you know Mr. Brown?

21 A How do I know him?

22 Q Yes, sir.

23 A Good friend. My sister baby mama.

24 Q Your sister's baby daddy?

25 A Yeah.

Jasmine Brown - Direct examination
By Mr. Brown

1 Q So, it's the father of your sister's child?

2 A Yeah.

3 Q Did you take Mr. Brown to that location?

4 A No, sir.

5 Q Did y'all ride together?

6 A No, sir.

7 Q And y'all just met up out there?

8 A Yes, sir.

9 Q Okay. Thank you.

10 THE COURT: Any redirect limited to what he went into?

11 MR. BROWN: No, Your Honor.

12 THE COURT: Thank you, sir. You may step down.

13 MR. BROWN: We call Miss Jasmine Brown.

14 THE COURT: Just come right up here and let the Clerk
15 of Court swear you in.

16 (Witness complies.)

17 JASMINE BROWN, being first duly
18 sworn, testified as follows:

19 THE CLERK: Thank you. You may be seated.

20 THE COURT: Have a seat in the red chair, ma'am, and
21 pull the red chair up to the microphone.

22 (Witness complies.)

23 DIRECT EXAMINATION

24 BY MR. BROWN:

25 Q Good morning, ma'am. If you could, please, for the

Jasmine Brown - Direct examination
By Mr. Brown

1 record, state your name.

2 A Jasmine Brown.

3 Q And are you a resident of Woodruff?

4 A Yes, sir.

5 Q And are you familiar with the events that took place on
6 September 2nd, 2013?

7 A I heard about it, yeah.

8 Q Do you know this young man sitting over there?

9 A Yes, sir.

10 Q Who is he to you?

11 A My brother.

12 Q At some point you heard that he was involved in the
13 shooting?

14 A Yes, sir.

15 Q And where were you living specifically at the time?

16 A In Kelly Acres.

17 Q Okay. And as a result of living in, in Kelly Acres,
18 did you ever have contact with the police?

19 A No.

20 Q Did you ever have contact from anybody of authority?

21 A No.

22 Q Did anyone from the management of Kelly Acres ever
23 contact you?

24 A You mean after that night?

25 Q Yes.

Jasmine Brown - Direct examination
By Mr. Brown

1 A Yeah.

2 Q why did they contact you?

3 A Cause I heard -- they heard my life was in danger and
4 I---

5 SOLICITOR BULSA: Objection, Your Honor.

6 THE COURT: I'll have to sustain the objection.

7 Lawyers wants to approach.

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

10 Q And you didn't meet up with your brother on that
11 evening?

12 A He was with me that day.

13 Q Earlier that day?

14 A Uh-huh. (Affirmative).

15 Q Okay. But during the time period of the shooting, you
16 weren't out there?

17 A No.

18 Q And no one from law enforcement ever came and talked to
19 you?

20 A Right.

21 Q Please answer any questions the State may have.

22 CROSS-EXAMINATION

23 BY SOLICITOR BULSA:

24 Q Did you spend the night at your house that evening,
25 ma'am?

Jasmine Brown - Cross-examination
By Solicitor Bulsa

- 1 A No.
- 2 Q Okay. Did your brother visit you before this happened?
- 3 A He was with me that day.
- 4 Q He was with you that day.
- 5 Did he have free reign of your apartment?
- 6 A Yeah.
- 7 Q Oh, so, could he have gotten back into your apartment
- 8 after this?
- 9 A He could have if I was there.
- 10 Q Okay. But you weren't there?
- 11 A No.
- 12 Q Okay. All right. Did he call you after the incident?
- 13 A No.
- 14 Q Did he call you to pick you (sic) up and give him a
- 15 ride?
- 16 A No.
- 17 Q No.
- 18 Okay.
- 19 THE COURT: Any redirect limited to what he went into?
- 20 MR. BROWN: None, Your Honor.
- 21 THE COURT: Thank you, ma'am. You may step down.
- 22 Any reason why the witness can not be excused?
- 23 MR. BROWN: None, Your Honor.
- 24 SOLICITOR BULSA: None.
- 25 THE COURT: Ma'am, you may be excused as well. Thank

1 you for coming.

2 MR. BROWN: May we approach, Your Honor?

3 (WHEREUPON, a bench conference was held out of the
4 hearing of the jury at this time.)

5 THE COURT: All right. Ladies and gentlemen, speaking
6 with the attorneys concerning scheduling, I think it best
7 that we terminate the taking of the testimony at this time
8 for today.

9 I want to thank you for your work and for your
10 attention to the witnesses. I want to remind you that you
11 can't do any type of independent research or investigation
12 or anything involved in the case. Don't read any type of
13 news accounts. Don't talk to anybody in your families or
14 friends or, or fellow workers about the case. But I'm gonna
15 ask, if you would, to please be back in the jury
16 deliberation room by 9:30 in the morning. You may go with
17 the bailiff. He'll show you out.

18 Thank you very much.

19 I ask that everyone remain seated.

20 (WHEREUPON, the following takes place outside the
21 presence of the jury.)

22 THE COURT: All right. We're going to, to go
23 off-the-record. Be at ease.

24 May I see the lawyers for a moment?

25 Stand at ease.

1 (WHEREUPON, a bench conference was held at this time.)

2 THE COURT: All right. We'll stand at ease.

3

4 (WHEREUPON, Court was in recess for the evening.)

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1 Thursday, March 19th, 2015

2
3 MR. BROWN: May we approach, Your Honor?

4 THE COURT: Yes, sir.

5 (WHEREUPON, a bench conference was held at this time.)

6 THE COURT: All 12, 13, 14 jurors present?

7 THE BAILIFF: Yes, sir.

8 THE COURT: Okay. All right. And is the defense
9 ready?

10 MR. BROWN: We are, Your Honor.

11 THE COURT: All right. Let's bring them in.

12 (WHEREUPON, the following takes place within the
13 presence of the jury.)

14 THE COURT: Yes, sir, Mr. Brown.

15 MR. BROWN: Thank you, Your Honor.

16 Defense would call from Mr. DeAdrien Morton.

17 THE COURT: Is he in the courtroom?

18 THE DEPUTY: He's incarcerated.

19 THE COURT: Okay. Come right up here and let the Clerk
20 of Court swear you in.

21 (Witness complies.)

22 DeADRIEN MORTON, being first duly
23 sworn, testified as follows:

24 THE CLERK: Thank you. You may be seated.

25 THE COURT: Just have a seat in the red chair and pull

DeAdrien Morton - Direct examination
By Mr. Brown

1 the chair up to the microphone if you would.

2 (Witness complies.)

3 DIRECT EXAMINATION

4 BY MR. BROWN:

5 Q Good morning, sir.

6 A Good morning.

7 Q would you state your name for the record?

8 A DeAdrien Morton.

9 Q And you are a resident of Woodruff, South Carolina?

10 A Yes, sir.

11 Q And do you know why you're here today?

12 A Yes, sir.

13 Q Were you present on the morning of September 2nd,
14 2013, related to the incident that we're here for today?

15 A Yes, sir.

16 Q well, let me ask you this.

17 Do you have a nickname?

18 A Yes, sir.

19 Q what is that nickname?

20 A Dweet.

21 Q Dweet?

22 A Yes, sir.

23 Q Okay. well, if you could tell us, as far as what you
24 recall the morning of 2000, September the 2nd, 2013, as
25 relates to what do you remember?

DeAdrien Morton - Direct examination
By Mr. Brown

1 A Talking about when we was out there in Kelly Acres?

2 Q Yes.

3 A Just hanging out one night. Me, Terrell, Big J, Tee
4 Street, a couple more friends or whatever, hanging out
5 there, chilling. Next thing I know, Summer and Tee Parks
6 had pulled up down there. They joined the crowd. We was
7 all hanging out, tripping, laughing.

8 Next thing I know, like about 15, 20 minutes later,
9 Brittany Jeter, Yearg, Travis Jeter, and her boyfriend
10 pulled up. They get out, you know what I mean, try to join
11 the crowd.

12 And next thing I know, Yearg done -- about title. All
13 the really about title or whatever. He approached Re11 and
14 me and Re11 talking about what's up? Ain't fooling with me
15 or whatever since I got out of jail or whatever. You know,
16 I ain't pay it no attention, whatever. So, they kept, kept
17 on going with it or whatever.

18 Next thing I know whipped out on it, you know what I
19 mean, talking about well, so, y'all don't F with me, y'all
20 don't F with me and all this.

21 Q And what do you mean by whipped out?

22 A whipped out a gun.

23 Q who, who whipped out a gun?

24 A Yearg.

25 Q Yearg, Mr.---

DeAdrien Morton - Direct examination
By Mr. Brown

1 A Mr. Yeargin.

2 Q Quinton, Quinn Yeargin?

3 A Yes, sir.

4 Q Okay. I'm sorry. Go ahead.

5 A So, y'all don't F with me, y'all don't F with me. Just
6 kept walking back and forth. Walked up about like the
7 second time, and that's when my little friend, Terrell, had
8 whipped out a gun and put it behind his back. And then,
9 shoot, he had walked back up like the third time, and like
10 he intent to lift the hand up on me, you know what I mean,
11 like he gonna get him or do something with it. Shoot,
12 that's when Terrell had fired shots at him.

13 Q So, it's your testimony that you say someone was
14 lifting up the hand.

15 who do you say was lifting or attempting to lift up the
16 hand?

17 A Yearg.

18 Q Mr. Yeargin?

19 A Yes, sir.

20 Q Okay. And after you say Terrell shot his handgun, what
21 happened next?

22 A He had took off between the apartments.

23 Q All right. And where were you at that point?

24 A That's when I had, I had backed back after and he had
25 left a couple rounds and I had took a couple feet back.

DeAdrien Morton - Direct examination
By Mr. Brown

- 1 Q Okay. what happened next?
- 2 A Happened -- Yearg homeboy started firing at Terrell.
- 3 Q Yearg's home boy.
- 4 who, who is Yearg's homeboy?
- 5 A Travis Jeter.
- 6 Q Travis Jeter's related, related to who?
- 7 A Brittany Jeter.
- 8 Q Does Travis Jeter have a nickname?
- 9 A Yes, sir.
- 10 Q what is that nickname?
- 11 A Frado.
- 12 Q And you're saying that you saw Frado shoot in the
- 13 direction of where Mr. Brown was or Terrell was?
- 14 A Yes, sir.
- 15 Q And where were you standing during the whole time
- 16 period of this?
- 17 A First I was standing beside Terrell when he had shot
- 18 Yearg or whatever. Then after he had shot and took off,
- 19 that's when I backed back.
- 20 Q So, you were on the sidewalk?
- 21 A Yeah, I was on the sidewalk.
- 22 Q And when you stepped back, what was the next thing that
- 23 you saw after you say Frado or Travis Jeter started
- 24 shooting?
- 25 what was the next thing that happened?

DeAdrien Morton - Direct examination
By Mr. Brown

1 A That's when everybody woke up with a shock really and
2 that's when everybody start, you know, scrambling or
3 whatever.

4 Q Okay. And did you scramble?

5 A Yes, sir.

6 Q Which direction did you go?

7 A I went like back up towards the main office in, in
8 Kelly Acres.

9 Q Okay. And did you have anybody else with you?

10 A It was just me and homeboy Big J and Tee Streets.

11 Q Okay. And, at some point with the three of you, did
12 y'all come in contact with law enforcement when you were at
13 the front?

14 A No, sir.

15 Q Okay. Did you ever talk with anybody from law
16 enforcement?

17 A No, sir.

18 Q Did you ever come forth and give a statement to law
19 enforcement?

20 A No, sir.

21 Q Did anybody from law enforcement try to contact you?

22 A No, sir.

23 Q I see currently that you have on a County Detention
24 Facility outfit.

25 A Yes, sir.

DeAdrien Morton - Direct examination
By Mr. Brown

1 Q why are you in the county?

2 A child support.

3 Q You have a child support warrant?

4 A Yes, sir.

5 Q You had a previous conviction of giving false
6 information.

7 what was that related to?

8 SOLICITOR BULSA: Objection, Your Honor.

9 THE COURT: I'll -- the lawyers want to approach.

10 (WHEREUPON, a bench conference was held out of the
11 hearing of the jury at this time.)

12 THE COURT: I'll sustain the objection.

13 Q You do have a conviction for giving false information?

14 A Yes. Yes, sir.

15 Q Is what you're saying here today what you remember
16 happened on September 2nd, 2013?

17 A Yes, sir.

18 Q That's just the way it happened?

19 A Yes, sir.

20 Q Did anyone from the Woodruff Police, Police Department
21 ever speak with you?

22 A No, sir.

23 Q And so, this is your first opportunity to come before
24 anybody and tell them what you saw?

25 A Yes, sir.

DeAdrien Morton - Cross-examination
By Solicitor Bulsa

1 Q Please answer any questions that the State may have.

2 CROSS-EXAMINATION

3 BY SOLICITOR BULSA:

4 Q And where do you live?

5 A Woodruff, South Carolina.

6 Q What's your address?

7 A 233 Woodruff Street.

8 Q 233 Woodruff Street?

9 A Yes, sir.

10 Q Is that in Kelly Acres?

11 A No, sir.

12 Q Is that near Kelly Acres?

13 A About a mile from there.

14 Q About a mile from there?

15 A Yes, sir.

16 Q And isn't it true, the night of this incident, you
17 weren't in Kelly Acres visiting anybody, were you?

18 A I was down there with -- visiting Terrell's sister.

19 Q You were visiting Terrell's sister?

20 A Yes, sir.

21 Q And what's her name?

22 A Jasmine Brown.

23 Q Jasmine Brown?

24 A Yes, sir.

25 Q And what part of Kelly Acres does Jasmine Brown live

DeAdrien Morton - Cross-examination
By Solicitor Bulsa

- 1 at?
- 2 A Like toward the bottom of it.
- 3 Q Toward the bottom of it.
- 4 Not toward the top of it, right?
- 5 A No, sir.
- 6 Q She certainly didn't live on Woody Court, did she?
- 7 A Nah, she didn't stay on Woody Court.
- 8 Q What time of day were you out at Jasmine Brown's house?
- 9 A Probably like 9:00 probably. It was kind of late.
- 10 About 9:00 something.
- 11 Q About 9:00 or something and then you went up to Woody
- 12 Court?
- 13 A Yes, sir.
- 14 Q Did -- you weren't visiting anybody up at Woody Court,
- 15 were you?
- 16 A We were just hanging out down there.
- 17 Q Just hanging out at Woody Court, right?
- 18 A (Witness nods affirmatively.)
- 19 Q Hanging out doing what?
- 20 A Just kicking a Bobo really.
- 21 Q What does that mean?
- 22 A Just hanging out, sitting around.
- 23 Q Drinking?
- 24 A No, sir.
- 25 Q Well, we saw a liquor bottle in the pictures.

DeAdrien Morton - Cross-examination
By Solicitor Bulsa

- 1 A We wasn't drinking.
- 2 Q Is that yours?
- 3 A Nah.
- 4 Q Smoking?
- 5 A I was.
- 6 Q You were?
- 7 A Yes, sir.
- 8 Q What?
- 9 A Marijuana.
- 10 Q Marijuana.
- 11 Other people smoking marijuana?
- 12 A I don't know. A few people. Not everybody.
- 13 Q How about Mr. Brown?
- 14 A Not to my knowledge. I don't, I don't know. It was
- 15 nighttime. I ain't pretty sure everybody, everybody smoking
- 16 or whatever.
- 17 Q Okay. Part of your testimony was -- is that Quinn
- 18 walked up to y'all on three separate occasions.
- 19 Is that right?
- 20 A Yes, sir.
- 21 Q Okay. And it was on the second occasion that he first
- 22 showed his gun is your testimony?
- 23 A The first occasion he had it.
- 24 Q So, he walked up to y'all three times showing his gun?
- 25 A Twice.

DeAdrien Morton - Cross-examination
By Solicitor Bulsa

- 1 Q what?
- 2 A walked up twice with his gun out.
- 3 Q But he walked up three times?
- 4 A The third time he came, that's when---
- 5 Q Oh, the third time.
- 6 So, the first two times he had his gun as well?
- 7 A Uh-huh. (Affirmative).
- 8 Q Did he have it the third time?
- 9 A Yeah, he had it in his hand the third time, sir.
- 10 Q Okay. And you were standing with Mr. Brown the whole
- 11 time?
- 12 A Yes, sir.
- 13 Q And y'all just stood there?
- 14 A Yes, sir.
- 15 Q Did you talk to him the first two times?
- 16 A Looked at him, looked at him crazy, you know.
- 17 Q Okay. And is he your homeboy?
- 18 A Yes, sir.
- 19 Q Okay. How do you know him?
- 20 A School.
- 21 Q School.
- 22 Do you hang out with him a lot?
- 23 A Yes, sir.
- 24 Q Did you leave Kelly Acres that night?
- 25 A After the incident, yeah.

DeAdrien Morton - Cross-examination
By Solicitor Bulsa

1 Q You did?

2 A Yeah.

3 Q You did?

4 Before the police got there?

5 A Yes, sir.

6 Q How did you leave?

7 A I had caught a ride up top of the hill.

8 Q Ride on the top of the hill?

9 A I had caught a ride.

10 Q Is that near the, near the apartments or near the
11 office?

12 A Yeah.

13 Q You say you were able to get in a car and leave before
14 the police arrived---

15 A Yes, sir.

16 Q ---in Kelly Acres?

17 Did you pass the police as they were coming?

18 A No, sir.

19 Q Okay. When did you learn Mr. Brown was arrested?

20 A The next morning.

21 Q The next morning?

22 A Yes, sir.

23 Q Was that when you went to the police and told them what
24 happened?

25 A I hadn't went down to the police department.

DeAdrien Morton - Cross-examination
By Solicitor Balsa

1 Q Okay. Do you know where the police department is
2 though, don't you?

3 A Yes, sir.

4 Q Sir, you said that Mr. Brown shot how many times?

5 A About three, four.

6 Q Three or four?

7 A Yes, sir.

8 Q And then he took off running?

9 A Yes, sir.

10 Q And did I hear you right is that, after he started
11 running, you heard some other shots?

12 A Yes, sir.

13 Q Well, at what point did you start running?

14 A After everybody had quit shooting.

15 Q You didn't run until the shooting stopped?

16 A I ain't want to turn my back cause I ain't know if he
17 gonna turn on me.

18 Q Okay. So, you were -- so, you stood there and watched
19 this whole thing?

20 A After I took a couple feet back. After Terrell had
21 fired, I took like probably like ten feet back.

22 Q Okay. Ten feet back?

23 A Yes, sir.

24 Q And was everybody else just sitting there watching this
25 going down too?

DeAdrien Morton - Cross-examination
By Solicitor Bulsa

1 A Really it was like me, Terrell, and Streets, we -- it
2 was like us four and the crowd right here, and it was like
3 Frado, Yearg, and Tee Parks, they was like little -- three
4 little crowd right here. But it's like everybody else was
5 like out towards the apartment line a little bit. We was on
6 the sidewalk.

7 Q Isn't it true that, when Terrell started shooting, that
8 everybody scattered?

9 A Yeah, sort of like that.

10 Q Okay. All right. So, they didn't wait until Terrell
11 stopped shooting. It's when he first started shooting they
12 scattered.

13 A Uh-huh. (Affirmative).

14 Q And you're telling us that you merely just took a
15 couple steps back and watched the whole thing?

16 A Yes, sir.

17 Q And then you -- in which direction did Terrell run in?

18 A In-between the apartments.

19 Q Towards the bottom part of the---

20 A Yes, sir.

21 Q ---complex?

22 A Yes, sir.

23 Q where did you go after the shooting?

24 A went to my friend girl house.

25 Q Your friend girl's house?

DeAdrien Morton - Cross-examination
By Solicitor Bulsa

- 1 A (Witness nods affirmatively.)
- 2 Q Are you the one that gave Mr. Brown a ride to his
- 3 sister's?
- 4 A No, sir.
- 5 Q How did you ride?
- 6 A My friend girl came and got me.
- 7 Q Was Mr. Brown already at his sister's when you got
- 8 there that day?
- 9 A Talking about after the incident?
- 10 Q No, before the incident.
- 11 A Yeah, he was already down there.
- 12 Q He was already there and you just happened to show up?
- 13 A Yes, sir.
- 14 Q So, y'all were all there and did Jasmine leave?
- 15 A No, sir.
- 16 Q She didn't leave that evening?
- 17 A Nah, she was at the house.
- 18 Q She stayed at the house and y'all left?
- 19 A Yes, sir.
- 20 Q And went up to Woody Court?
- 21 A Yes, sir.
- 22 Q Does she have any children?
- 23 A Yes, sir, she do.
- 24 Q She does.
- 25 How many?

DeAdrien Morton - Cross-examination
By Solicitor Bulsa

1 A Two.

2 Q Two kids.

3 Were those kids at -- there also?

4 A Yes, sir.

5 Q So, so, did you and Mr. Brown leave her apartment
6 around the same time?

7 A Yes, sir.

8 Q Y'all both walked up to Woody Court?

9 A Yes, sir.

10 Q Met up with everybody else?

11 Y'all met up with everybody else?

12 A Yes, sir.

13 Q And left Jasmine over there.

14 why didn't she walk up with you?

15 A She had her kids.

16 Q She stayed there with her kids?

17 A Yes, sir.

18 Q Okay. And it was in 2012 that you had giving false
19 information to police conviction, correct?

20 A If I'm not mistaken, yes, sir.

21 Q Okay. Thank you.

22 THE COURT: Any redirect limited to what he went into?

23 REDIRECT EXAMINATION

24 BY MR. BROWN:

25 Q You said -- Mr. Bulsa asked you did people started

Tyrus Murray - Direct examination
By Mr. Brown

1 scattered after Terrell shot his, his gun.

2 Did Frado scatter?

3 A No, sir.

4 Q It's your testimony that Frado did what?

5 A He shot back at Terrell.

6 MR. BROWN: That's all the questions I have.

7 THE COURT: Thank you, sir. You may step down. Watch
8 your step as you're coming down.

9 Defense ready to call their next witness?

10 MR. BROWN: Yes, Your Honor.

11 We would call Mr. Tyrus Murray.

12 THE COURT: Just come right up here, if you would, and
13 let the Clerk of Court swear you in.

14 (Witness complies.)

15 TYRUS MURRY, being first duly
16 sworn, testified as follows:

17 THE CLERK: Thank you. You may be seated.

18 (Witness complies.)

19 DIRECT EXAMINATION

20 BY MR. BROWN:

21 Q If you could, please, sir, state your name.

22 A Tyrus Murray.

23 Q Mr. Murray, you're, you're currently incarcerated?

24 A Yes, sir.

25 Q And where at?

Tyrus Murray - Direct examination
By Mr. Brown

- 1 A SCDC in Wateree.
- 2 Q Okay. Where are you originally from or where have you
3 lived?
- 4 A Woodruff.
- 5 Q Where?
- 6 A Woodruff, South Carolina.
- 7 Q And do you have any direct knowledge as it relates to
8 the events that took place on the morning of September
9 2nd, 2013?
- 10 A Yes, sir.
- 11 Q You want to tell us about where you were and what was
12 going on?
- 13 A We was at -- we was in the parking lot at Woody Court
14 in Kelly Acres Apartments. We were just all standing in a
15 group talking or whatever.
- 16 Q And when you say we, who do you mean?
- 17 A Me, Terrell Brown, Tee Parks, my brother, Jamar Murray.
- 18 Q All right. And what, what else was going on?
- 19 A Man, at that time right there we was all just sitting,
20 talking, politicking.
- 21 Q Okay. And, at some point, did some other people come
22 up?
- 23 A Yeah, Quinn Yeargin.
- 24 Q When did you notice Quinn Yeargin?
- 25 A Well, he had came up and spoke to us as soon as they,

Tyrus Murray - Direct examination
By Mr. Brown

- 1 as soon as they had pulled up.
- 2 Q Okay. And who did he pull up with?
- 3 A I don't know. I know he was in a white car.
- 4 Q All right. And was he with anyone else that you, you
- 5 recognized?
- 6 A No, sir.
- 7 Q But you recognized Quinn Yeargin?
- 8 A Yes, sir.
- 9 Q Okay. And when you say he came up, what was going on
- 10 when he came up?
- 11 A And we was -- me and Terrell Brown was just sitting
- 12 right there on the sidewalk talking.
- 13 Q Okay.
- 14 A And he shook my hand or whatever and, after that, we
- 15 stopped talking.
- 16 Q All right.
- 17 A And, after that, I don't know what happened. He went
- 18 to his car. Went to the white car he was at. He came back
- 19 mad for some reason. He had a gun in his hands. Approach
- 20 around -- approach my friend, Terrell Brown.
- 21 Q All right. And he approached Terrell Brown with a gun
- 22 in his hand?
- 23 A Yes, sir.
- 24 Q What happened then?
- 25 A He started asking I'm your cousin. Why you ain't come?

Tyrus Murray - Direct examination
By Mr. Brown

1 why you ain't gonna speak to me or whatever? I just got out
2 of prison.

3 Q All right. And what happened next?

4 A Well, he say -- he walked around a little bit. Then it
5 was like shoot, I'll kill all y'all little homeboys and
6 y'all little crew, and he came back and approached Terrell
7 Brown and --.

8 Q Okay. And what happened next?

9 A He had the gun raised up. Before he could pull the
10 trigger on him, Terrell pulled it first.

11 Q All right. You say Terrell shot in his direction?

12 A Yes, sir.

13 Q What was the next thing that you saw?

14 A I really didn't see. I just seen Yeargin falling and I
15 took off running.

16 Q Okay.

17 A I just heard a whole bunch more shots.

18 Q So, you heard some more shots?

19 A Yes, sir.

20 Q Did you see anybody else that was shooting?

21 A No, sir.

22 Q And what, what direction -- where did you run to after
23 you ran?

24 A Towards the maintenance building in Kelly Acres.

25 Q Okay. And, at some point, if you were near the

Tyrus Murray - Direct examination
By Mr. Brown

1 maintenance building, did you come in contact with anybody
2 from law enforcement?

3 A No, sir.

4 Q Nobody from law enforcement talked to you?

5 A No, sir.

6 Q Did you leave Kelly Acres?

7 A Yes, sir.

8 Q How did you leave Kelly Acres?

9 A Through the back gate.

10 Q Okay. You walked through the back gate?

11 A (Witness nods affirmatively.)

12 Q Where did you go after that?

13 A To my aunt's house. Woodruff Arms.

14 Q Okay. Did you ever have a chance to speak with law
15 enforcement about this?

16 A They spoke to me after I got incarcerated in November.
17 Some detectives came through.

18 Q Okay. Do you recognize this investigator right here?

19 A The one on the left?

20 Q Yes.

21 A Yes, sir.

22 Q Lorin Williams?

23 A Nah, the one on the left. I don't remember him.

24 Q He never came and spoke to you?

25 A The one on the left did.

Tyrus Murray - Direct examination
By Mr. Brown

1 Q The prosecutor spoke to you?

2 A Yes, sir.

3 Q Okay. Well, that was the first time someone associated
4 with law enforcement came to speak with you?

5 A Yes, sir.

6 Q All right. Have you ever spoken with me?

7 A No, sir.

8 Q This is your first time meeting me?

9 A Yes, sir.

10 Q It's your first time talking to me?

11 A Yes, sir.

12 Q It's your first time you had an opportunity to come
13 into an open Court and tell what you know happened on that
14 day?

15 A Yes, sir.

16 Q And you say that you know Quinn Yeargin was there?

17 A Yes, sir.

18 Q Did you recognize anybody else out there that night?

19 A Nah, just me and my brother and Mr. Morton.

20 Q Okay. Please answer any questions the State may have.

21 CROSS-EXAMINATION

22 BY SOLICITOR BULSA:

23 Q You say I spoke to you?

24 A Yes, sir.

25 Q Was I with somebody?

Tyrus Murray - Cross-examination
By Solicitor Bulsa

- 1 A Yes, sir.
- 2 Q who?
- 3 A I don't remember his name. It's an older guy. Gray
- 4 headed.
- 5 Q Okay. I don't remember that.
- 6 All right. Unless that -- you say you were out there
- 7 with who again?
- 8 A Terrell Brown, Jamar Murray, and DeAdrien Morton.
- 9 Q Okay. You first said Tee Parks?
- 10 A Yeah, Tee Parks was with us too.
- 11 Q Okay. And you didn't say DeAdrien Morton the first
- 12 time.
- 13 A Yes, sir.
- 14 Q Okay. whereabouts were y'all?
- 15 A We was standing in the parking lot at first.
- 16 Q Okay. And where did you move to?
- 17 A The sidewalk.
- 18 Q Do you remember what time you got out there?
- 19 A No, sir.
- 20 Q Is that the first place you went to in Kelly Acres?
- 21 A Yes, sir.
- 22 Q So, you don't live there?
- 23 A No, sir.
- 24 Q You weren't visiting anybody there?
- 25 A No, sir.

Tyrus Murray - Cross-examination
By Solicitor Balsa

- 1 Q You were just hanging out there?
- 2 A Yes, sir.
- 3 Q What time of day was this?
- 4 A I don't know, sir. I know it was nighttime.
- 5 Q Nighttime?
- 6 A Yes, sir.
- 7 Q And when whatever happened happened, you said you left?
- 8 A Yes, sir.
- 9 Q Did you run?
- 10 A Yes, sir.
- 11 Q So, did you run out the back gate before the police
- 12 arrived?
- 13 A Yes, sir.
- 14 Q Were you running with Mr. Brown?
- 15 A No, sir.
- 16 Q Did you see him leave out the back gate?
- 17 A No, sir.
- 18 Q You didn't?
- 19 A (Witness nods negatively.)
- 20 Q Did you, did you run to the police station?
- 21 A No, sir.
- 22 Q Did you run to -- you said you ran to your aunt's
- 23 house?
- 24 A Yes, sir.
- 25 Q Did you tell her what happened?

Tyrus Murray - Cross-examination
By Solicitor Bulsa

- 1 A No, sir.
- 2 Q You didn't tell her what happened?
- 3 A (Witness nods negatively.)
- 4 Q You didn't tell her you just saw somebody get shot?
- 5 A No, sir.
- 6 Q why not?
- 7 A I was shocked.
- 8 Q Okay. I understand being shocked but you didn't tell
- 9 her?
- 10 A No, sir.
- 11 Q when did you get---
- 12 A I left immediately after that.
- 13 Q what's that?
- 14 A I left immediately after that.
- 15 Q Oh, then you left from her place.
- 16 where did you go from there?
- 17 A To my grandfather's house---
- 18 Q Grandfather's house?
- 19 A -- since then---
- 20 Q Did you tell them what happened?
- 21 A No, sir, my grandpa -- grandfather was asleep.
- 22 Q Okay. All right. when did you hear about Mr. Brown
- 23 getting arrested?
- 24 A I think it was the next day if I ain't mistaken.
- 25 Q Okay. Is that when you went to the police station --

Tyrus Murray - Cross-examination
By Solicitor Balsa

- 1 A No, sir.
- 2 Q -- and said y'all got the wrong guy?
- 3 A No.
- 4 Q Didn't do that?
- 5 A No, sir.
- 6 Q You never did?
- 7 A No, sir.
- 8 Q How well do you know Mr. Brown?
- 9 A Real well.
- 10 Q Real well.
- 11 A Yes, sir.
- 12 Q And how well is real well?
- 13 A We use to hang together everyday.
- 14 Q Okay. Good friend then?
- 15 A Yes, sir.
- 16 Q Isn't it true, in 2014, you were convicted of giving
- 17 false information to police?
- 18 A Yes, sir.
- 19 Q Isn't it true you're currently incarcerated for assault
- 20 and battery in the first degree?
- 21 A Yes, sir.
- 22 Q Thank you, sir.
- 23 That's all I have.
- 24 THE COURT: Any redirect limited to what he went into?
- 25 MR. BROWN: None, Your Honor.

1 THE COURT: Thank you, sir. You may step down.

2 Any reason why the witness can not be excused?

3 SOLICITOR BULSA: Not by the State.

4 THE COURT: Mr. Brown.

5 MR. BROWN: None by the defense, Your Honor.

6 THE COURT: Thank you, sir. You may be excused as
7 well.

8 THE WITNESS: Thank you.

9 MR. BROWN: Your Honor, we have a matter of law that we
10 want to address.

11 THE COURT: All right. Ladies and gentlemen, I need
12 for you to retire back to the jury deliberation room. If
13 you would please, do not have any discussions among
14 yourselves about anything involved in this case. We'll get
15 you back just shortly.

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

18 THE COURT: Yes, sir.

19 MR. BROWN: Your Honor, Mr. Brown will be my next
20 witness that I intend on calling. My understanding is Mr.
21 Bulsa has had the opportunity to present prior criminal
22 histories of individuals. We think that will come into play
23 as relates to Mr. Brown being able to address this Court
24 clearly under Rule 608 as well as 609. Any credibility
25 evidence, any matters that would relate to truthfulness are

1 not in question as relates to any record or lack thereof of
2 Mr. Brown.

3 So, I just wanted to make the Court aware of this prior
4 to Mr. Brown's testimony.

5 THE COURT: Well, has Mr. Bulsa provided you with a
6 copy of his NCI (sic)?

7 MR. BROWN: He has, Your Honor.

8 THE COURT: And does he have anything on his NCI (sic)
9 that, that could be used for impeachment?

10 MR. BROWN: Not to my knowledge.

11 THE COURT: Do you---

12 SOLICITOR BULSA: Your Honor, he has a conviction for
13 possession with intent to distribute cocaine out of
14 Greenville from which he pled in 2008 to that charge. So,
15 that's a crime that carries more than a year. The State
16 would ask to allow to impeach him if -- as to whether he was
17 convicted of a crime that carried more than one year --

18 THE COURT: I think---

19 SOLICITOR BULSA: -- under Rule 609.

20 THE COURT: I think he's allowed to ask it. He just
21 can't go into it.

22 MR. BROWN: If it is in that matter of broaching that
23 he may of been convicted of a felony that carries more than
24 one year without the specifics of it --

25 THE COURT: Well, I---

Terrell Brown - Direct examination
By Mr. Brown

1 MR. BROWN: -- as I understand it.

2 THE COURT: That's my understanding that he can---

3 MR. BROWN: Yes, sir.

4 THE COURT: ---he can ask but you can't---

5 SOLICITOR BULSA: I would not do that, Your Honor.

6 THE COURT: Yeah.

7 SOLICITOR BULSA: Okay.

8 THE COURT: Okay.

9 MR. BROWN: Thank you, Your Honor.

10 THE COURT: All right. Bring the jury back.

11 (WHEREUPON, the following takes place within the
12 presence of the jury.)

13 THE COURT: Yes, sir, Mr. Brown.

14 MR. BROWN: Defense would call Mr. Terrell Brown.

15 THE COURT: Sir, if you will, just come right up here
16 and let the Clerk of Court swear you in.

17 (Witness complies.)

18 TERRELL BROWN, being first duly
19 sworn, testified as follows:

20 THE CLERK: Thank you. You may be seated.

21 THE COURT: Sir, just have a seat in the red chair and
22 pull the red chair up to the microphone if you would.

23 (Witness complies.)

24 DIRECT EXAMINATION

25 BY MR. BROWN:

Terrell Brown - Direct examination
By Mr. Brown

1 Q Sir, if, if you would, please state your name.

2 A Terrell Brown.

3 Q And where are you from?

4 A I'm originally from Woodruff.

5 Q Okay. And, at some point, did you live in
6 Simpsonville, South Carolina?

7 A Yeah, we stayed in Greenville, the Greenville area,
8 for, for a little bit.

9 Q Okay. And you've been present throughout the
10 testimonies that have been given in the course of this
11 trial?

12 A Yes, sir.

13 Q Clearly you were present on the morning of September
14 2nd, 2013?

15 A Yes, sir.

16 Q Can you tell us as you recall the events on that day?

17 A Well, it started off, we was all out at Kelly Acres
18 just chilling. Me, the guy that just left, Tyrus Murray,
19 DeAdrien Morton, Big J or Jamar Murray, and a couple more
20 people. It was like -- had to be about 20 out there and we
21 was just chilling. Just not bothering nobody. Having a
22 good time with it.

23 And I remember I had walked -- I had like walked down
24 the street for a little bit and walked back. I seen my
25 cousin, Tee Parks, out there. So, me and Tee Parks, he came

Terrell Brown - Direct examination
By Mr. Brown

1 up to me. We dapped, shook hands, started reminiscing, just
2 talking about, you know, everything. Just, just chilling.

3 And then, next thing I know, two cars pull up in the
4 parking lot and I see, I see Summer Bayne, Brittany Jeter,
5 my cousin, Yearg, and Travis Jeter or Frado, and I think it
6 was Brittany Jeter boyfriend. And they pull up. That was
7 my first time seeing Yearg. You know, I knew he was in
8 jail. I didn't know he had done got out. He had been gone
9 for like 18 months.

10 So---

11 SOLICITOR BULSA: Objection, Your Honor. That's not
12 relevant to this case.

13 MR. BROWN: Your Honor, I think we've heard testimony
14 as relates to that.

15 THE COURT: All right.

16 MR. BROWN: Not the time period.

17 THE COURT: Allow him to go into it.

18 SOLICITOR BULSA: Okay.

19 A And so, they get out the car and, you know, they, they
20 shook a few people's hands. Really everybody except mine.
21 And, you know, speaking of everybody and I just remember
22 like the vibe -- I just felt a bad vibe, you know, and I
23 remember that they was chilling there for at least ten
24 minutes. You know, just kind of across the parking lot. I
25 mean a little distance from me by the cars.

Terrell Brown - Direct examination
By Mr. Brown

1 I was sitting -- I was positioned on the, on the
2 sidewalk the whole time. I never, I never moved and I just
3 remember I kept hearing them. I kept hearing them say
4 little slick stuff to each other like I'll shoot this, I'll
5 shoot this place up and them boys, them boys ain't got no
6 guns and them boys, them boys don't want it tonight and all
7 this.

8 Q When you say they saying slick stuff to each other, who
9 do you mean by that?

10 A I heard Frado, Travis Jeter, and he was talking to my
11 cousin, Yearg.

12 SOLICITOR BULSA: I object. That's hearsay.

13 THE COURT: I'll sustain that one.

14 Q Don't tell me exactly what Mr. Yearg said but you're
15 saying that Mr. Jeter was saying something to Mr. Yearg?

16 A Yeah, he was saying it to -- he was saying it to Yearg
17 but he was saying it loud enough to where everybody could
18 hear it. And I was just like I hope -- I was, I was just
19 like I hope they ain't on this crazy stuff tonight cause,
20 you know, I'm just, I'm just trying to chill. And then I
21 heard them say man, this -- man, this boring out here, man,
22 let's, let's go. I'm like good, they about to leave.

23 So, they start walking toward they cars. When they got
24 there, they like just like sat back on them like on the
25 doorways and just sat back and was just looking at

Terrell Brown - Direct examination
By Mr. Brown

1 everybody. So, then I heard---

2 Q You had -- you, you -- were you looking at them the
3 whole time or were they---

4 A Yeah.

5 Q ---happened to---

6 A Yeah, I was looking at them the whole time.

7 Q why didn't you take your eyes off of them?

8 A Cause I was, like I said, I had a bad vibe like
9 something's about to go down. It's the way -- and the way
10 they was talking.

11 Q Did you have any, any reason to, to know that they
12 could be a bad vibe going down?

13 A Yes. Yes, sir, cause we had done had problems in the
14 past.

15 Q when you say we had problems in the past, who, who you
16 mean?

17 A Me and, me and Frado in particular and he kind of
18 influenced my cousin, Yearg, to be like his little tag
19 along.

20 Q Okay. So, y'all ever had any type of confrontation or
21 anything as a result of that?

22 A Yeah, we done had, we done had a fight before, me and
23 Frado.

24 Q Okay.

25 A Yeah, and---

Terrell Brown - Direct examination
By Mr. Brown

1 Q Was Yearg ever present when that occurred?

2 A He was present but he wasn't, he wasn't like trying to
3 get into it.

4 Q Okay. But you, you were just saying after they went to
5 their cars and leaned against it, you kept your eyes on them
6 the whole time.

7 what happened next?

8 A Then next, I seen Frado whispering in, in Yearg ear and
9 then Yearg looked, he looked over by our way. He was like
10 hey, Dweet, and Dweet, my friend, Dweet, he kind of, he kind
11 of scary. So, he just like he looking the other way like,
12 like he don't even hear them.

13 Q Is Dweet the gentleman that just left out of the
14 courtroom?

15 A Yeah, the gentleman that was in the orange jumpsuit.

16 Q DeAdrien Morton?

17 A Yes, sir.

18 Q Okay.

19 A And so, yeah, it was like Dweet, Dweet. Dweet just
20 like -- I guess he had already felt they vibe too. So, he
21 just like -- he looking away like I ain't, hu huh.

22 (Negative).

23 So, then it was like I guess that didn't work. So,
24 he -- I seen Frado whisper in his ear again, and then, after
25 that, he said -- he was like, hey, Re'll. You know, this my

Terrell Brown - Direct examination
By Mr. Brown

1 cousin. So, I'm just like -- I'm like what's up? And then
2 he start, he start walking my way but he was kind of like,
3 like stumbling. I could tell he was drunk. It was like he
4 was trying to make something up as he went. He was like
5 hey, you suppose to be my cousin. You ain't hollered at me
6 since I got out. I'm like that don't even -- that didn't
7 make sense to me. So, I'm just looking like. I threw my
8 hands up like cause, like I said, I ain't even know he was
9 out of jail. I didn't, I didn't know what he was talking
10 about.

11 So, then I was just like man, I said I don't know what
12 you talking about, man. Then he backed up a little bit. He
13 turned back around and he had a gun in his hand. He say I'm
14 trying to see what's up. I'm just looking like.

15 So, then, after that, right after that, Tee, Tee Parks
16 and Summer Bayne ran up to him like no, chill out, chill
17 out. Put it up. Put it up. So, they pushing him back.
18 So, he end up putting it up. So, I'm like cool. Okay.
19 That's, that's over with.

20 So, then he -- him and, him and Frado went to the
21 middle of the street. They like who want to fight? who
22 want to fight? we'll shoot this, we'll shoot this, excuse
23 my language, we'll shoot this bitch up. I'm just like man,
24 they -- I'm like why is all that happening?

25 Like we ain't -- ain't nobody said nothing to make them

Terrell Brown - Direct examination
By Mr. Brown

1 feel like we was trying to harm them.

2 So, so, then I seen Frado whispering in his ear again,
3 and he came back over there, pulled the gun out again. He
4 was like, he like man, I'll kill everybody out here. Choo,
5 choo. So, I'm just like man, I hope he playing. I'm like
6 maybe he just trying to scare me. I don't, you know what I
7 mean, I didn't want to, I didn't want to, you know, have to
8 do nothing to my, to my own cousin.

9 But then he, then he, he started back walking over
10 there again. So, that's when I pulled mine out. I did like
11 that. I don't, I don't think he ever seen it cause I had it
12 like this. I'm just like man, man, I hope he don't come
13 over here.

14 But, to my surprise, he start back walking over there,
15 and I waited till he got all the way up on me cause, like I
16 said, I didn't want, I didn't want to. He, he got real
17 close up on me and he came out like this. And that's when I
18 started shooting.

19 Q So, you said, at some point, he came up on you and he
20 begin to raise his hand?

21 A Yes, sir.

22 Q And you fired?

23 A Yes, sir.

24 Q How many times do you remember firing?

25 A I fired at him twice cause the first time I fired at

Terrell Brown - Direct examination
By Mr. Brown

1 him he kept coming. I fired again and that's when he fell.
2 But, at the same time, immediately after I started firing,
3 shots -- some more shots start coming towards me. Mr. Frado
4 started shooting at me. So, I had to, I had to start
5 shooting at him now.

6 Q Frado meaning Travis Jeter?

7 A Yes, sir.

8 Q And where was Travis Jeter standing at?

9 A Me and Yearg was on the sidewalk. He was like out in
10 the parking lot like kind of behind the cars. The, the, the
11 cars that was parked right there, he was like behind them.
12 And, you know, he was shooting, he was shooting at me like
13 this way. Yearg was like right here.

14 Q Okay. And how many times you think you shot in his
15 direction?

16 A Like three.

17 Q Okay. And, at that point, what happened next?

18 A At that point, I started running. I shot at, shot at
19 him about three times and started running.

20 Q And, during this time period, where was Tee Parks in
21 that?

22 A Frado was like this way in the parking lot, and Tee was
23 like over in this direction in the parking lot.

24 Q And where was Mr. Yeargin?

25 A Yeargin was like right in front of me.

Terrell Brown - Direct examination
By Mr. Brown

1 Q And so, after you finished shooting, what was the next
2 thing you did?

3 A Like I said, I started running. I was still being shot
4 at. So, I just -- I took off running.

5 Q All right. And where did you run to?

6 A I ran to the, the back entrance of Kelly Acres.

7 Q Uh-huh. (Affirmative).

8 A And went out the gate.

9 Q Okay. And when you went out the gate, where did you go
10 next?

11 A I start walking down the street and I was like -- I
12 like hid kind of towards some woods like in a little wooded
13 area where can't nobody see me.

14 Q Okay. And from being in that wooded area, where did
15 you go next?

16 A I just kept, I just kept walking. I walked like
17 probably like ten minutes before I stopped at this dead-end
18 by Allen Street. I stayed right there.

19 Q And, at some point, from -- well, what was the next
20 thing you did after that?

21 A I called, I called my cousin to come get me.

22 Q And what's your cousin's name?

23 A Asa Lake.

24 Q And, after you called him, at some point he did come
25 pick you up?

Terrell Brown - Direct examination
By Mr. Brown

1 A Yes, sir.

2 Q All right. You got in the car with him and where did
3 you head to next?

4 A We headed towards Greenville.

5 Q All right. And, at some point, you got in Greenville
6 County?

7 A Yes, sir.

8 Q What happened once you got in Greenville County?

9 A Once we got in Greenville County, I remember we, when
10 we met up, we met up with my mama and my girl. And, and
11 after that, we, we went to this little neighborhood that had
12 a big lake in it. And I, I got out the car. I told him my,
13 told my cousin to hold on and I got out the car and walked
14 down the street by the lake and I threw the gun in the lake.

15 Q Okay. And you got back in the car and where did you
16 head to next?

17 A My girl had called me and said that my, my son, at the
18 time, he was like five months, said he needed some, some
19 formula. So, I, I told my cousin to go to Wal-Mart on
20 Woodruff Road and we got some formula for my son.

21 Q And you got some formula for your son and then where
22 did you go next?

23 A Then we, then we -- yeah, I told, I told my cousin just
24 go ahead and drop me off at a hotel and for him to take the
25 formula to my, to my son. So, he, he took me to the hotel.

Terrell Brown - Direct examination
By Mr. Brown

1 Q And why, why did you go to a hotel?

2 A Cause I kept, I kept getting like, like calls, like
3 death threats calls. We gonna, we gonna get you and all
4 this. They wasn't -- they wouldn't never tell who it was
5 though but I had so many different people calling my phone
6 telling me they was gonna kill me. We still, we still
7 looking for you and all this.

8 So -- and I didn't want to bring that drama to none of
9 my family member's house. So, I just told him to take me to
10 a hotel. My plans was to, my plans was to turn myself in
11 the next morning. I just, at the time, I just wanted to be
12 alone. So, I told him to take me to a hotel.

13 Q Okay. And once you got to the hotel, did you come in
14 contact with anybody else?

15 A Yes, sir.

16 Q Who did you come in contact with?

17 A A dude I went to school with in Greenville. Dude named
18 Richard Brooks.

19 Q All right. And how did you come in contact with him?

20 A I had called him and he was like, he was like man, he
21 say what's going on with you? I said man, I said I been --
22 I'm in a little trouble. People coming at me and I
23 explained the situation and just -- it had just happened and
24 he was like---

25 SOLICITOR BULSA: Objection to what Mr. Brooks and he

Terrell Brown - Direct examination
By Mr. Brown

1 talked about. It's hearsay.

2 THE COURT: I'll sustain it as to what the other
3 gentleman would say.

4 Q You, you can tell him -- you can tell us what you were
5 talking about but you can't say what he said to you.

6 A Okay. Well, I just told him about what had happened.

7 Q All right. And after you told him what happened, what
8 was the next thing that you said to him?

9 A Well, he -- I didn't say -- after I told him what
10 happened, he started talking. So --.

11 Q So, at some point, there was an offer of some sort from
12 him?

13 A Yeah, he offered -- he said do you need---

14 SOLICITOR BULSA: Objection.

15 Q Not---

16 THE COURT: I'll sustain the objection.

17 Q Don't tell me what he, what he said but did he make an
18 offer of some sort?

19 A Yes, sir.

20 Q What was offered to you?

21 A A pistol.

22 Q Okay. And what kind of pistol?

23 A A 9-millimeter.

24 Q All right. You've been present during the course of
25 testimony and evidence that's been shared in this case, and

Terrell Brown - Direct examination
By Mr. Brown

1 two weapons have been presented in this courtroom. The
2 second one was a 9-millimeter.

3 Is that the one you were referring to?

4 A Yes, sir.

5 Q Okay. So, at some point -- well, how did you get the
6 9-millimeter?

7 A He dropped it off. He dropped it off in some bushes
8 right there or right surrounding the hotel.

9 Q Okay. So, you went down and picked up the
10 9-millimeter?

11 A Yes, sir.

12 Q And that's how you got it?

13 A Yes, sir.

14 Q So, once you got the 9-millimeter, what was the next
15 thing that you did with it?

16 A I went back to the room with it.

17 Q Okay. And, at some point, you, you received phone
18 calls from your cousin, Asa?

19 A Yeah. Yes, sir, he told me he was gonna bring me
20 something to eat and some clothes.

21 Q Okay. And did he?

22 A He was on his way to.

23 Q He never did make it, make it to the room to give you a
24 chance to get those clothes and something to eat?

25 A Nah, cause when he, when he pulled back up, that's when

Terrell Brown - Direct examination
By Mr. Brown

1 he -- they start talking to the detectives.

2 Q All right. And you, and you saw that or --?

3 A No, I had seen, I seen him pulling up. So, I was
4 coming outside to meet up with him. Then I seen them over
5 there. I seen them over there like he was talking to, to
6 somebody, like he talking to some detectives or something.
7 So, I just started walking the other way.

8 Q Okay. And when you started walking the other way, did
9 you go back to the room?

10 A No, sir.

11 Q And while you were walking the other way, did you have
12 your phone with you?

13 A Yes, sir.

14 Q And what were you doing next?

15 A I was just -- I just kept going to, towards the QT on
16 Woodruff Road, and then I just -- I remember, I remember
17 seeing a bunch of police kept circling around, and I, I kind
18 of panicked and I just went off in the woods and just hid
19 there.

20 Q Okay. And were you using your telephone or your cell
21 phone during this time period?

22 A Yes, sir.

23 Q Who were you calling?

24 A I had called Asa back.

25 Q All right. Did he pick up the phone?

Terrell Brown - Direct examination
By Mr. Brown

1 A Yes, sir.

2 Q Did he say something to you?

3 A He was just like where you at and I said I'm, I'm right
4 here in the woods behind QT.

5 Q Okay. And, at some point after that phone call, did
6 you come in contact with law enforcement?

7 A Yeah, after the phone call, yeah, they end up coming
8 out in the woods and picking me up.

9 Q Okay. Did you struggle?

10 A No, sir. Well, they, they put a dog on me but I don't
11 know why cause, once I seen him---

12 (WHEREUPON, a phone rings in the courtroom.)

13 A Once I seen him, I remember seeing him. They had on
14 the vests and the big shotguns and the canines with them. I
15 was laying down. They didn't see me but I seen them. I
16 lift my hands. I said -- I was like I give up and they seen
17 me and he, he let the dog go. And once the dog got up on
18 me, I'm sitting there -- they let the dog bite on me for
19 like two minutes. That's why I had to go to the hospital
20 cause my bites was so bad. And then they finally came over
21 there and pulled the dog off and put me in handcuffs.

22 Q Okay. So, once they put you in handcuffs you were
23 placed in the back of a patrol car?

24 A Yes, sir.

25 Q And where did you go to next?

Terrell Brown - Direct examination
By Mr. Brown

1 A The hospital.

2 Q And you received treatment at the hospital?

3 A Yes, sir.

4 Q And once you left the hospital, where did you go?

5 A To the interrogation room with Mr. Lorin Williams.

6 Q So, you were brought back to Spartanburg County?

7 A Yes, sir.

8 Q And, at some point, you had a chance to speak with

9 Mr. Lorin Williams?

10 A Yes, sir.

11 Q What, what were you discussing with Mr. Williams?

12 A He just kept, he just kept asking me to tell him what
13 happened and tell him where the gun was. And, at first, I
14 just -- first I wasn't talking to him. I kept telling him I
15 ain't want to talk and he just like, you know, you know,
16 you -- they, you know, Mr. Nice Guy act to them like, you
17 know, we trying to help you and all this.

18 Then he -- I remember him telling me, he like, man, he
19 like you -- he say we really don't need no gun. We really
20 don't need no gun to convict you. He say but -- he say we
21 just, we just trying to get it -- we just trying to get it
22 so we know what happened and all that.

23 So, then he, he end up telling me that -- I'm like man,
24 you know -- I think he said, you know, Tee Parks just died,
25 and I didn't -- at the time, I didn't even know Tee had done

Terrell Brown - Direct examination
By Mr. Brown

1 got hit. So, I remember I, I started crying like a, like a
2 baby cause I didn't know. It was a shock to me.

3 Then, after that, I started talking to him. I kind of
4 told him, I was like man. I say man, I was, I was just
5 trying to defend myself out there, and, you know, people was
6 trying to get at me. And then he told me, he say, he say if
7 you was trying to defend yourself, he was like it is your
8 God given right to defend your life. And he said if -- he
9 said if you really was trying to defend yourself, then it's
10 gonna come out.

11 So, after that, I was like I said well, you know what,
12 man? I said I'll, I'll show you where the gun at. So, me,
13 him, and like two more detectives got in a car and I took
14 them to where the gun was at and pointed in the direction I
15 threw it.

16 Q Okay. And after you took them to the, to the, to the
17 neighborhood with the lakes, what happened next?

18 A He just told me, it was like -- he was like you better
19 be telling me the truth and I was like I'm telling you the
20 truth. It's out there. And he was like well, he was
21 like -- he said since you helped me, I'm gonna help you and
22 stuff like that.

23 And I was just like, I was just like man, just -- I
24 just told him, I said, y'all just do y'all job. If you'll,
25 if -- you'll see. The evidence speak for itself. And they

Terrell Brown - Direct examination
By Mr. Brown

1 took me to the county. Took me to Spartanburg County.

2 Q So, prior to him telling you that Tee Parks had been
3 hit by a bullet, he was telling you something of
4 convictions. He could convict you.

5 A Yes, sir.

6 Q So, it's your testimony that his first opportunity to
7 speak with you he was automatically talking about you being
8 convicted?

9 A He said I don't need no gun -- he said I don't need no
10 gun to convict you.

11 Q And this is before you had a chance to even talk to him
12 about what had occurred?

13 A Yes, sir.

14 Q And, at some point, you explained to him what occurred?

15 A Yes, sir. Well, a little bit of it. I just told
16 him -- I didn't go into detail with them. I just told
17 him -- I was like man, people was trying to get at me, you
18 know, pulling guns out on me and whatnot. That's when he
19 told me like well, he's like it's your God given right to
20 defend your life. So --.

21 Q So, after that, he didn't, he didn't go through a list
22 of questions and try to get you to breakdown every aspect of
23 what was happening at Kelly Acres at that point?

24 A No, sir.

25 Q He was focusing more on trying to recover the weapon?

Terrell Brown - Direct examination
By Mr. Brown

1 A Yeah, he -- yeah, he wanted that gun bad.

2 Q And so, he didn't ask you who you were out there with?

3 A Yeah. Yeah, he did.

4 Q Did he ever tell you that he was gonna go try to talk
5 with some of the people you were with?

6 A Yes, sir.

7 Q Did you ever have an opportunity to speak with
8 Investigator Williams again?

9 A Yeah, like a week later he came to the county and was
10 talking to me. He pulled me in a side room by booking. He
11 was asking me -- he asking me was -- he said, he said was
12 Tee Parks shooting at you too, and I was like, I was like I
13 really don't know. And then he asked me, he said where do
14 you think -- where do you think they would be hiding Mr.
15 Yeargin's gun? I was like, I was like I -- sir, I wasn't
16 here. I wouldn't know.

17 Q So, he used the term hiding?

18 A Yes, sir.

19 Q And when he, when he said they, did he say who they
20 would of been?

21 A No, sir.

22 Q Okay. So, after he, he asked you that, what happened
23 next?

24 A After that, he was -- he told me he had like two
25 statements with them, a statement from, from Kesha Jackson,

Terrell Brown - Direct examination
By Mr. Brown

1 from Jamar Murray but he wouldn't let me see them. I asked
2 him to -- could I see them? He said nah, I'll just read
3 some of it to you. And he read some of it to me. And after
4 that, he, he was just like whatever. We working on it. You
5 know, we gonna find, we gonna find all the evidence and I
6 told him again, I said man, y'all just do y'all job and
7 y'all see what happened.

8 Q All right. And you say he had two statements.
9 He didn't have a statement of Summer Bayne at that
10 time?

11 A I mean maybe he did. He didn't mention it though.

12 Q And from the information he shared with you from two
13 statements, was it consistent with what you heard during the
14 course of this case?

15 A Yeah.

16 Q And, after that, you went back?

17 A I mean yeah. And I went back to my cell.

18 Q Okay. And Mr. Williams never came to see you again?

19 A No, sir.

20 Q You were never contacted by anyone else in law
21 enforcement?

22 A No, sir.

23 Q On that evening in which you find yourself being
24 confronted by Mr. Yeargin, you didn't act all of a sudden?

25 You took your time to make sure that nothing was gonna

Terrell Brown - Direct examination
By Mr. Brown

1 happen before you approached him?

2 A Yeah, cause I, I kind of figured -- well, I kept, I
3 kept telling myself I hope that he just playing like. I
4 hope he just gonna do what he did, pull it out, and once
5 they calm him out, calm him down, he was gonna leave. But
6 he just kept on coming back and forth with it, pointing at,
7 threatening, and I could tell he was drunk. So, once, once
8 he cocked it, that made it even more real.

9 Q You, you were present during the testimony of Summer
10 Bayne --

11 A Yes, sir.

12 Q -- and when she said she knew that he had a handgun or
13 he had guns?

14 A In her -- when she testified?

15 Q Yes, sir.

16 A You said did she say that?

17 Q No, I'm asking what she said. I said you were present
18 during her testimony.

19 A Right.

20 Q And when she said she knew he was the person that would
21 have guns.

22 A Oh, right.

23 Q You were present during that testimony?

24 A Yes, sir.

25 Q Because he was your cousin, did you know that about him

Terrell Brown - Direct examination
By Mr. Brown

1 as well?

2 A Yes, sir.

3 Q And you knew he would be the kind of person that have a
4 gun prior to the events of September 2nd, 2013?

5 A Yes, sir.

6 Q And you knew him to be the person that had prior
7 incidents with handguns?

8 A Yes, sir, he had shot a car---

9 SOLICITOR BULSA: Objection, Your Honor.

10 THE COURT: I'll sustain the objection.

11 SOLICITOR BULSA: Thank you.

12 THE COURT: I think you need to rephrase the question.

13 Q I'm not asking you -- well, let, let me, let me say it
14 this way then.

15 So, you, you, you knew the reputation of your cousin?

16 A Yes, sir.

17 Q And so, you had a reason to be worried that evening if
18 he presented a handgun to you?

19 A Yes, sir.

20 Q Is that the reason why you, you pulled your gun to
21 defend yourself?

22 A Yes, sir.

23 Q Is that the primary reason why you shot in defending
24 yourself?

25 A Yes, sir, cause the first time he pulled his out, I

Terrell Brown - Direct examination
By Mr. Brown

1 still didn't pull mine out cause, like I said, I didn't want
2 to, I didn't want that to go down. So, after he kept --
3 after he just kept going with it, I was like man, I got
4 to -- I was like maybe he ain't playing. Then when he
5 cooked, he cocked his gun, said I'll kill everybody out
6 here, I was like maybe he is serious.

7 Then he start walking towards me and start lifting his
8 hands up, started lifting his gun up like that. Once he --
9 he got real close-up on me and started lifting it up. So,
10 I, I thought fast. I had to think fast.

11 Q In terms of being a crowd of people out there, over 20
12 plus people, when you pulled your gun out as you were
13 shooting, were you turning towards the crowd shooting?

14 A No, sir, I, like I said, once I, I shot at Yearg the
15 two times, I automatically -- I was being shot at from a
16 different angle. I said Frado was like in this direction.
17 He was shooting towards me. I couldn't -- I could actually
18 like hear the bullets passing my -- like going past my ears.
19 I had to turn towards him to start shooting his way.

20 Q So, the only reason why you turned and start shooting
21 towards his way is because you were being shot at?

22 A Yes, sir.

23 Q You weren't trying to shoot just reckless in the
24 audience?

25 A I was aiming at Frado.

Terrell Brown - Direct examination
By Mr. Brown

1 Q And you were present during the testimony of Doctor
2 Wren?

3 A Doctor Wren?

4 Q The pathologist.

5 A Oh, yes, sir.

6 Q And were you present and you recall the testimony and
7 what you (sic) talked about the fatal wound to Mr. Yeargin?

8 A Yes, sir.

9 Q The manner in which you shot Yeargin, was it like this
10 or were you shooting in this direction?

11 A He was -- it was straight forward.

12 Q You were straight on?

13 A Yeah, it was straight on.

14 Q And when you pulled up, did you go forth with your
15 right arm, your left arm, when you start shooting?

16 A Hold up. I was shooting with my right, with my
17 right-hand.

18 Q Okay. And you were straight on?

19 A Yeah.

20 Q He's right in front of you?

21 A He was, he was right, right in front of me.

22 Q And you shot just like this?

23 A Yes, sir.

24 Q Anything else you want us to know about the events of
25 that evening?

Terrell Brown - Direct examination
By Mr. Brown

1 A That it was just a, it was just a crazy situation. A
2 life and death situation.

3 Q Do you feel like you had any other option at the point
4 in which you pulled out your gun and shot Mr. Yeargin?

5 A No, sir, I felt like my back was against the wall.

6 Q And were you trying to shoot Mr. Tee Parks?

7 A No, sir.

8 Q Did you mean to shoot in his direction?

9 A No, sir, I don't -- like I said, I don't, I don't
10 remember him even -- I didn't know he had done got shot. I
11 don't -- I really don't think I shot him but --.

12 Q But in leaving that scene that evening, you knew you
13 shot Mr. Yeargin?

14 A Yes, sir.

15 Q Did you have any clue that Tee Parks had been shot?

16 A I had no clue.

17 Q And with you being there in, in Kelly Acres, did you
18 have a family member that stayed there?

19 A Yeah, my sister was staying out there at the time.

20 Q And what's your sister's name?

21 A Jasmine Brown.

22 Q All right. And did you stay with Jasmine from, from
23 time to time?

24 A Sometimes I would stay the night.

25 Q Any reason why?

Terrell Brown - Direct examination
By Mr. Brown

1 A Me and my girl might, you know, fall out. I might have
2 some -- a few problems and I'll stay over there for a night
3 or two.

4 Q Did she ever tell you you couldn't be in Kelly Acres?

5 A No, sir.

6 Q And so, you were a guest or she allowed you to stay
7 there?

8 A Yes, sir.

9 Q On that day when you left your sister's place, did she
10 leave at some point or you wouldn't know because you were
11 down on Woody Court?

12 A Yeah, I left her house before she left.

13 Q Okay. And that was with Mr. Dweet?

14 A Yes, sir.

15 Q Please answer any questions the State may have.

16 CROSS-EXAMINATION

17 BY SOLICITOR BULSA:

18 Q Mr. Brown, isn't it true that you're the kind of person
19 that carries a gun?

20 A Yeah, I can carry a gun.

21 MR. BROWN: Objection, Your Honor.

22 THE COURT: He's on cross-examination. He has a
23 little---

24 MR. BROWN: Yes, sir.

25 THE COURT: He has a little leeway.

Terrell Brown - Cross-examination
By Mr. Brown

- 1 MR. BROWN: Yes, sir.
- 2 Q Isn't it true you just told this jury that you knew
- 3 Quinn was the kind of person that carried a gun?
- 4 A Yes, sir.
- 5 Q But you yourself are the kind of person that carried a
- 6 gun, right?
- 7 A Yes, sir.
- 8 Q In fact, you had a gun that night, right?
- 9 A Yes, sir.
- 10 Q That you were not suppose to possess, correct?
- 11 A Right.
- 12 Q And then you went and got another one, right?
- 13 A Yes, sir.
- 14 Q That you weren't suppose to possess?
- 15 A Yes, sir.
- 16 Q So, where did you get the first gun, the revolver?
- 17 A Bought it off the street.
- 18 Q Bought it off the street.
- 19 Are you the one that filed the serial number down?
- 20 A No, sir.
- 21 Q You know how to shoot it though, don't you?
- 22 A Yes, sir.
- 23 Q Pull it one click at a time, right?
- 24 You squeeze the trigger and one shot comes out, right?
- 25 A Yes, sir.

Terrell Brown - Cross-examination
By Mr. Brown

- 1 Q Was it fully loaded that night?
- 2 A Yes, sir.
- 3 Q Okay. And isn't it true you shot Mr. Yeargin at least
- 4 three times?
- 5 A I shot at him two times.
- 6 Q Just two times but he had four wounds in his body,
- 7 correct?
- 8 A Yes, sir.
- 9 Q So, you're only accepting the two bullets that were in
- 10 his body.
- 11 Is that correct?
- 12 A Yes, sir.
- 13 Q State's 30 and 31.
- 14 Yet he was right in front of you when you were shooting
- 15 at him, correct?
- 16 A Yes, sir.
- 17 Q And after you shot him, he fell to the ground, correct?
- 18 A Yes, sir.
- 19 Q And nobody else shot, according to you, until after you
- 20 fired your shots, correct?
- 21 A Yes, sir.
- 22 Q So, you put the third entry wound and exit wound in
- 23 him, didn't you?
- 24 A No, sir.
- 25 Q You put all four wounds in that man's body and isn't it

Terrell Brown - Cross-examination
By Mr. Brown

1 true you were also shooting in the direction of Tee Parks?

2 A No, sir.

3 Q So, you just randomly shooting at people?

4 A No, I was shooting at people that was shooting at me.

5 Q And you hit Miss Jackson as she was running away even?

6 A No, sir.

7 Q Don't sit there and be all high and mighty acting in
8 self-defense.

9 You didn't stay there and wait for the police to get
10 there, did you?

11 A No, sir.

12 Q You didn't stay there and say hey, I did -- I had to do
13 what I had to do, did you?

14 A No, sir.

15 Q In fact, you told Mr. Brown your plan was you were
16 gonna turn yourself in the next morning.

17 Is that right?

18 A Yes, sir.

19 Q Where were you living at the time?

20 A I was living with my girl in Woodsdale in Woodruff.

21 Q Woodsdale in Woodruff.

22 What is that address?

23 What's that address?

24 A 100 Eastlyn Drive.

25 SOLICITOR BULSA: Are these in order?

Terrell Brown - Cross-examination
By Mr. Brown

1 I'm looking for the receipt to the hotel. I got it. I
2 got it.

3 What address did you give Mr. Williams?

4 A Yeah, that's my, that's my mailing address.

5 Q What address did you give Mr. Williams?

6 A 304 Ravis Street Court.

7 Q 304 Ravis Street Court.

8 Yet, at the time of this, you were living in Woodruff,
9 right?

10 A Right.

11 Q What address was given to the hotel?

12 A 304 Ravis Street Court.

13 Q Exactly.

14 A What's your point?

15 Q You visited your sister that night, correct?

16 A Yes, sir.

17 Q And your testimony is now that you left before she
18 left?

19 A Yes, sir.

20 Q So, you didn't go back to her house after this
21 happened, did you?

22 A No, sir.

23 Q You didn't go back to her house to use the telephone,
24 did you?

25 A No, sir.

Terrell Brown - Cross-examination
By Mr. Brown

1 Q You didn't go back to her house to use the telephone to
2 call the police, did you?

3 A No, sir.

4 Q You didn't pull out your own cell phone to call the
5 police, did you?

6 A No, sir.

7 Q You didn't walk to the Woodruff Police Department, did
8 you?

9 A No, sir.

10 Q You, at no time, called the police that night, did you?

11 A No, sir.

12 Q Yet, your plan was to turn yourself in, right?

13 A Yeah, the next day.

14 Q The next day.

15 Okay. Well, let's get to the next day.

16 You're at a -- Greenville County, right?

17 A Right.

18 Q On the way you just happen to stop at a lake and toss
19 the gun, correct?

20 A Yes, sir.

21 Q You did more than just toss it, didn't you?

22 A No, I just -- I threw it in the lake.

23 Q Didn't you open it up?

24 A I---

25 Q Didn't you open it up, sir?

Terrell Brown - Cross-examination
By Mr. Brown

1 A Yes, sir.

2 Q And you emptied out the shell casings, didn't you?

3 A Yes, sir.

4 Q And what did you do with the shell casings?

5 A I threw them in the river too.

6 Q Right.

7 A I mean the lake.

8 Q So, if the gun was ever found, it couldn't be told how
9 many shots were fired, could it?

10 A No, sir.

11 Q Cause you got rid of the evidence, right?

12 A Yeah, I wasn't thinking straight at the time.

13 Q Yet, your plan was to turn yourself in, wasn't it?

14 A Yes, sir.

15 Q Okay. And in planning that, you were disposing of the
16 evidence, right?

17 A No, I didn't, I didn't think -- I didn't think of that
18 until I got to the hotel. That's when I decide I was
19 like---

20 Q Oh.

21 A ---I'm gonna turn myself in the next day.

22 Q Did you tell your mama what happened?

23 A I didn't go into detail with her. I just told her that
24 some people was trying -- to -- had tried to get at me.
25 Tried to kill me.

Terrell Brown - Cross-examination
By Mr. Brown

- 1 Q You told your mama somebody was trying to kill you?
- 2 A Yes, sir.
- 3 Q Did you tell your mama you had to shoot somebody?
- 4 A Yes, sir.
- 5 Q You did?
- 6 A Yes, sir.
- 7 Q Did she call the police?
- 8 A No, sir.
- 9 Q Did your girl -- was your girl there?
- 10 Did she hear all that?
- 11 A Yes, sir.
- 12 Q She heard you telling your mama?
- 13 A Yes, sir.
- 14 Q Did she call the police?
- 15 A No, sir.
- 16 Q In fact, your act was to go hide in the hotel, correct?
- 17 A Yes, sir.
- 18 Q And you had a conversation with somebody, and the
- 19 result of that was to get a second gun, correct?
- 20 A Yeah, people kept calling my phone making death
- 21 threats.
- 22 Q Well, why didn't you use that phone, sir, to call 9-1-1
- 23 or why didn't you call Mr. Lake and say drive me to the
- 24 police station?
- 25 A Cause I, like I said, I panicked at the time. I wasn't

Terrell Brown - Cross-examination
By Mr. Brown

1 thinking straight.

2 Q Oh. Oh. Well, your plan, you said when you got to the
3 hotel, was to turn yourself in the next morning, correct?

4 A Yeah, but after I had a little time to myself at the
5 hotel---

6 Q Oh.

7 A ---and thought about it, I was like I'm gonna turn
8 myself in.

9 Q This plan is developing later and later and later,
10 isn't it?

11 A That's---

12 Q That's the way your testimony is going.

13 A No, sir, it developed at the hotel.

14 Q Okay. Where you got Mr. Lake coming to bring you some
15 food and some clothes.

16 Remember that?

17 A Yes, sir.

18 Q You actually saw him and went out to get it?

19 A Yes, sir.

20 Q And you saw the officers there talking to him?

21 A Yes, sir.

22 Q Is that when you walked up and said hey, officers, I'm
23 glad you're here, I was planning to turn myself in?

24 A No, I wanted to, I wanted to get an opportunity to, to
25 spend a little bit of time with my son and my girl before I

Terrell Brown - Cross-examination
By Mr. Brown

1 turned myself in.

2 Q Okay. Okay. All right. So, you saw they were police
3 officers cause they had the sheriff on their chest, right?

4 A Nah, they ain't have sheriff on their chest. I could
5 just tell they was police officers.

6 Q Oh, you could tell?

7 A Yeah.

8 Q Okay. All right. But you, in your mind, you knew they
9 were officers?

10 A Yes, sir.

11 Q And your act was to go hide in the woods in the bushes,
12 right?

13 A Yes, sir.

14 Q And then you hear Greenville Police coming in.
15 How long did you actually hide in the woods?

16 A I'm really, I'm really not sure. Probably like two
17 hours.

18 Q About two hours.

19 A Yes, sir.

20 Q And you never once, during that two hours, said hey,
21 thank you for coming to save me, I want to turn myself in?

22 Did you do that, sir?

23 A No, sir.

24 Q In fact, you wound up getting bit because you wouldn't
25 turn yourself in, isn't that true?

Terrell Brown - Cross-examination
By Mr. Brown

1 A I got bit but I told them -- I threw my hands in the
2 air.

3 Q Okay. You want this jury to believe that Mr. Yeargin
4 threatened you on three occasions that night, right?

5 A He really did, sir.

6 Q And that you felt something was not right, right?

7 A Yes, sir.

8 Q Yet, at anytime, sir, you didn't just walk away from
9 that location, did you?

10 A No, sir, cause you got to, you got to understand this
11 my cousin. So, I can't avoid him. We, we really family.
12 We got---

13 Q I see.

14 A ---mutual family. We gonna -- we have to meet up again
15 and I, and I told myself we need to -- I was kind of -- I
16 was kind of hoping we would solve that problem that night,
17 and then he would see that I wasn't trying to harm him.

18 Q Well, your response was to pull a pistol, right?

19 A Not at first, sir.

20 Q It wasn't to go up to him and say hey, Quinn, let's
21 talk this out, what's going on, man?

22 MR. BROWN: Your Honor, that's---

23 Q I'm glad to see you.

24 You didn't do that, did you?

25 MR. BROWN: I think counsel's being argumentative.

Terrell Brown - Cross-examination
By Mr. Brown

1 THE COURT: All right. I'll sustain the objection.

2 A Like I said, I just -- I was just hoping that he would
3 see that I wasn't trying to harm him and that he would show
4 the same courtesy.

5 Q But you didn't, you didn't try to do that, did you?

6 A Yes, I did, sir. I never---

7 Q You didn't?

8 A I never aggressed him. I never -- even after he pulled
9 the gun out the first time, I still didn't pull mine out.

10 Q Sir, if this happened like you said, you just stood
11 there and waited on him to come back and you were ready for
12 him if he did come back, right?

13 A Yeah, I was just standing there, sir.

14 Q With your gun behind your back?

15 A Not the first time.

16 Q Right?

17 A After he started approaching the last time, that's when
18 I pulled it out.

19 Q And after you shot at him, at least three times, you
20 shot into the direction of Mr. Parks, correct?

21 A No, I shot in the direction of Mr. Frado or Travis
22 Jeter.

23 Q Oh, you want to blame all this on Frado?

24 A That's why (sic) I was shooting at cause he was
25 shooting at me.

Terrell Brown - Cross-examination
By Mr. Brown

1 Q All right.

2 A That's why y'all find that, that extra nine shell on
3 the scene, sir.

4 Q Oh, that's your explanation about that?

5 So, where's the rest of them?

6 A It probably -- well, when everybody took off running, I
7 wasn't---

8 MR. BROWN: Speculation, Your Honor.

9 A I was at the crime scene anymore.

10 THE COURT: But he's on cross-examination.

11 A I wasn't at the crime scene no more. So, my guess is
12 they tried to pick up all the shells but they forgot one.

13 Q Oh, so, your explanation is, is that these guys cleaned
14 up the scene before the police got there?

15 A That's my guess, sir. I wasn't there.

16 Q Oh, okay. Now -- so, is it your explanation also that
17 Frado must have put that third hole in Mr. Yeargin?

18 A He could have, sir.

19 Q well, that's because it went through and through and
20 there's no direct bullet to your gun.

21 So, you think you got an out, don't you?

22 A Nah, it just makes sense since, soon as I started
23 shooting, he started shooting in my direction and Mr. Yearg
24 was right in front of me.

25 Q Oh, and is that your explanation how Mr. Parks got shot

Terrell Brown - Cross-examination
By Mr. Brown

1 too?

2 A I don't know how Mr. Parks got shot, sir.

3 Q All right. Wasn't Mr. Parks facing you?

4 A No, sir.

5 Q He must -- he was facing you during the whole time.

6 Wasn't everybody watching what was going on?

7 A I, I just had my eyes on Mr. Yeargin.

8 Q Your testimony is this guy was cussing and making

9 threats to kill.

10 Are you telling me that everybody wasn't watching that?

11 A They probably was, sir. I'm pretty sure they were.

12 Q Now, when you were arrested, not after you turned

13 yourself in, you met with the detectives, right?

14 A Yes, sir.

15 Q And isn't it true that you didn't want to talk to them?

16 A Not at first, sir.

17 Q Right, not at first.

18 So, you weren't, you weren't forthcoming with them?

19 A No, sir.

20 Q You weren't oh, I'm so glad I get a chance to talk to

21 you, officer. I was gonna turn myself in.

22 You didn't do that, did you?

23 A No, sir.

24 Q In fact, you tried to hide stuff from him, didn't you?

25 A I didn't try to hide from him.

Terrell Brown - Cross-examination
By Mr. Brown

1 Q You were, you were fishing for information, weren't
2 you?

3 A No, sir.

4 Q Trying to figure out what kind of shell casings they
5 might of got?

6 A No.

7 Q what kind of bullets there might of been?

8 A No, he told me what kind of shell casings he had, and
9 that's when I explained to him that, if he did his job, he
10 would see that that shell casing didn't belong to me.

11 Q He had to drag it out of you to get you to tell him
12 where the gun was, didn't he?

13 A Look, he explained to me that it's my God given right
14 to defend myself. Then I told him.

15 Q Oh, you had to have, had to have him tell you that?

16 A I mean most of the time, when it -- when you, when you
17 dealing with young black males, the police don't really
18 believe what we got to say. They don't believe -- it's like
19 they don't believe that, that we can defend ourselves and,
20 and you know. They didn't -- they just don't believe what's
21 going on. I already knew I was gonna have to come to jail
22 and spend time in jail before I even got opportunity to come
23 up here and let, let it be known what happened.

24 Q You just, just distrust the police like your cousin,
25 Asa Lake, does?

Terrell Brown - Cross-examination
By Mr. Brown

1 A It ain't that I distrust the police but they don't,
2 like I said, they don't really -- they looking at us young
3 blacks males like -- they just misjudge us really like.

4 Q well, we're not here---

5 A Like we don't have the opportunity or we don't have
6 the, the right to, to defend ourselves or, you know --.

7 Q who gave you that philosophy, sir?

8 A That's just, that's just how it's been. That's just
9 how I done experienced stuff through experience.

10 Q what do you mean through experience?

11 A Just through experience. Just seeing stuff on how
12 stuff be happening on TV, how stuff happen in, in different
13 cases like, like George Zimmerman and Trayvon Martin.
14 Trayvon Martin didn't even have a gun but his---

15 Q So, you're telling me that was running through your
16 head --

17 A Yes, sir.

18 Q -- at the time you were talking to the officer?

19 A Yes, sir.

20 Q You felt threatened by that officer?

21 A I didn't feel threatened by him but I just -- I kind of
22 figured they wouldn't believe me. I kind of figured that he
23 wouldn't take me seriously like, you know.

24 Q Didn't he tell you that two young black men died?

25 A Yes, sir.

Terrell Brown - Cross-examination
By Mr. Brown

1 Q Okay. And he was trying to figure out how those two
2 young black men died, right?

3 A Right.

4 Q And you're a young black man?

5 A Right.

6 Q And those two young black men died at the hand of a
7 black man, didn't they?

8 A Yes, sir.

9 Q So, you, you're trying to tell this jury that you were
10 afraid of the police?

11 A It wasn't that I was afraid of them. Like I said, I
12 just, I just figured that he wouldn't really take me serious
13 or wouldn't try to believe what I was telling him. That's
14 why I told him just look at the evidence.

15 Q And, sir, isn't it true that you, yourself, have a
16 conviction for a crime that carries more than one year?

17 A Yes, sir.

18 Q Thank you.

19 THE COURT: Any redirect limited to what he went into?

20 REDIRECT EXAMINATION

21 BY MR. BROWN:

22 Q Mr. Brown, you're charged with two counts of murder,
23 aren't you?

24 A Yes, sir.

25 Q So, it's true that Lorin Williams didn't believe you?

Terrell Brown - Redirect examination
By Mr. Brown

1 A Yes, sir.

2 SOLICITOR BULSA: Objection, Your Honor.

3 THE COURT: I'd sustain the objection.

4 Q Mr. Brown, the solicitor went into the point of you
5 having this particular revolver but the only way that the
6 police were able to recover this is because you told them?

7 A That's right, sir.

8 Q You didn't have to tell them anything?

9 A I didn't have to.

10 Q But you told the truth?

11 A Yes, sir.

12 Q And you told them exactly how everything happened?

13 A Yes, sir.

14 Q And from you telling them where the hand gun was, they
15 were able to recover it?

16 A Yes, sir.

17 Q And everything else you told them happened as you
18 remember it?

19 A Yes, sir.

20 MR. BROWN: That's all the questions I have.

21 THE COURT: Thank you, sir. You may step down. Watch
22 your step when you're stepping down.

23 MR. BROWN: Beg the Court's, Court's indulgence.

24 (Pause.)

25 MR. BROWN: Your Honor, we would call Mr. Nicklous

1 Rhodes.

2 SOLICITOR BULSA: What's the name?

3 MR. BROWN: Nicklous Rhodes.

4 THE COURT: Lawyers approach a moment.

5 Mr. Brown.

6 THE BAILIFF: No response.

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

9 THE COURT: All right. Ladies and gentlemen, we're
10 gonna take a short recess. I'm gonna need to remind you not
11 to have any discussions among yourselves about anything
12 involving the case but I'm gonna let you retire back to the
13 jury deliberation room. Get you back just shortly.

14 (WHEREUPON, the following takes place outside the
15 presence of the jury.)

16 THE COURT: All right. The lawyers approach.

17 (WHEREUPON, a bench conference was held at this time.)

18 THE COURT: Stand at ease.

19 (WHEREUPON, a short recess was taken at this time.)

20 THE COURT: The lawyers approach.

21 (WHEREUPON, a bench conference was held at this time.)

22 THE COURT: All right. Let's bring the jury back in.

23 (WHEREUPON, the following takes place within the
24 presence of the jury.)

25 THE COURT: Yes, sir, Mr. Brown.

1 MR. BROWN: Your Honor, at this time, the defense
2 rests.

3 THE COURT: And does the State intend to have any
4 reply?

5 SOLICITOR BULSA: No, Your Honor.

6 THE COURT: All right. Ladies and gentlemen, we have
7 now reached the point in this trial where all of the
8 evidence and testimony that you are going to consider as
9 part of your deliberations has been presented to you. What
10 we have remaining to do is for the lawyers to give their
11 closing arguments to you, and then for me to instruct you on
12 the law that you will apply to the facts that you find from
13 the evidence that's been presented.

14 There are still a couple of matters that I have to take
15 up with the attorneys that relate to the law of this case.
16 And so, as opposed to keeping you held hostage in the back,
17 I'm gonna let you, at this time, go ahead and take an early
18 lunch.

19 I need to stress to you that you can not have any
20 discussions among yourselves about anything involved in the
21 case at this juncture. Also, do not let anyone talk to you
22 outside of the courthouse about anything involving this
23 case. And do not do any type of independent research or
24 investigation into any of the facts or to what you think the
25 law might be in this case. Allow the lawyers to argue their

1 cases. Allow me to present to you the law that you will
2 apply to this case.

3 But I am going to, again, let you take an early lunch.
4 Looking at that clock on the wall, I'm gonna ask that you be
5 back in the jury deliberation room by 1:30. That will --
6 should give us enough -- opportunity to do the things we
7 need to do outside of your presence, and then allow y'all
8 also an opportunity to have, to have lunch. But, again,
9 thank you for your time and your effort this morning. You
10 may go with the bailiff.

11 Everyone keep their seats.

12 (WHEREUPON, the following takes place outside the
13 presence of the jury.)

14 THE COURT: All right. If -- any, anything before I
15 step down?

16 SOLICITOR BULSA: No, sir.

17 THE COURT: Lawyers approach.

18 (WHEREUPON, a bench conference was held at this time.)

19 THE COURT: All right. We'll be at ease.

20 (WHEREUPON, Court was in recess for the lunch hour.)

21 THE COURT: Yes, sir?

22 Anything before we bring the jury in?

23 SOLICITOR BULSA: Not from the State.

24 THE COURT: Okay. Let's bring the jury in.

25 (WHEREUPON, the following takes place within the

1 presence of the jury.)

2 THE COURT: Mr. Foreman, ladies and gentlemen, the
3 parties have presented their evidence in this case, and it
4 is now time for the attorneys to make what is called their
5 closing arguments to you.

6 Let me give you -- instruct you that the arguments of
7 the attorneys are not evidence in the case. Their
8 statements and arguments are meant to help you understand
9 the evidence and apply the law to the evidence. You should
10 disregard any remark, statement, or argument which is not
11 supported by the evidence presented during this trial or the
12 law that I will explain to you after their arguments.

13 But, at this time, we will receive the closing
14 arguments from counsel.

15 Yes, sir.

16 MR. BROWN: Thank you.

17 May it please the Court.

18 Your God given right to defend yourself. Those are the
19 very first words we had a chance to utter to you as you sit
20 where you find yourself here today doing one of the most
21 valuable things that can be done in our process of our
22 judicial system. That's to serve as a member of the jury.

23 Now, what qualifies you to be here today?

24 Is it some form of special or different type of
25 education?

1 Is it some different type of background that you may
2 have or were you just picked randomly out of a pool of
3 numbers that came from the computer and you just so happened
4 to come before us, myself and the solicitor, and we pulled
5 your number?

6 No, ladies and gentlemen, it's much different. It's
7 much more special than just that process because what
8 qualifies you to be here today is something I know each and
9 every one of you have and that's common sense.

10 When you walk through those doors, you came into this
11 door, you brought with you your life experiences, things
12 that you've learned along the way. They're your ability to
13 look at different situations in life, and, in essence,
14 what's going to come to play, weigh matters of credibility.

15 Sure, you've heard the testimony as it relates to
16 evidence that's been put before you. Some of it directly
17 relates to what you will have to consider. Other things, we
18 will contend to you, came in after the fact of what happened
19 on that day in September 2nd of 2013 in Kelly Acres in
20 Woodruff, South Carolina. Not anything happened in
21 Greenville, South Carolina, but what happened in Woodruff,
22 South Carolina, which is in Spartanburg County.

23 Now, in just a few moments His Honor's gonna have the
24 chance to give to you the elements of the law as it relates
25 to the things that you've heard in this case. He is the

1 last, the first, and the only decider of what the law is in
2 this case.

3 But, again, what makes you special in terms of using
4 your life experiences and the common sense that you have,
5 you're the tryers of fact. Things that you heard, the
6 testimony that's coming to this Court before you from the,
7 this witness stand, you are the parties that will decide
8 what the facts are.

9 And what are those facts?

10 As you've had the chance to see both Mr. Bulsa and I
11 take a lot of notes cause there were a number of people that
12 came before you and had a seat in that witness stand.
13 Things that were being said at the time that neither he nor
14 I knew was gonna be said in advance. Some things came out
15 that we should of anticipated gonna be said, but other
16 things, didn't have a clue of.

17 But what I would say to you, principally, is this young
18 man, Mr. Terrell Brown, finds himself seated over there
19 facing three charges. Two of which are the most serious
20 charge we would say that a person can face. That's murder.

21 You will have the chance to hear the elements of what
22 murder is as the judge will give them to you. But consider
23 what you've heard from parties on both sides of this case.
24 Consider if you've ever heard anyone take the stand and say
25 Terrell Brown, in what he would deem as defending himself,

1 acted maliciously, that he had malice, that he had a chance
2 to think beforehand for the premeditated opportunity to
3 murder anyone in this case. The judge will talk to you
4 about that.

5 SOLICITOR BULSA: Your Honor, may we approach?

6 THE COURT: All right.

7 SOLICITOR BULSA: I apologize, Your Honor, but---

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

10 SOLICITOR BULSA: Your Honor, the State would object to
11 counsel's reference to malice being premeditation.

12 THE COURT: All right. Ladies and gentlemen, as, as
13 I've already instructed you, the -- you should disregard any
14 remark, statement, or argument which is not supported by the
15 evidence as you find it or supported by the law which I will
16 instruct you after the arguments of counsel.

17 Yes, sir, Mr. Brown.

18 MR. BROWN: Malice aforethought, that's the term. The
19 judge will instruct you what that means. But you're to
20 consider what you heard in this courtroom as it relates to
21 the charges of murder, if you've heard those aspects. The
22 judge will give you that law.

23 You'll also hear presented to you, for consideration,
24 of voluntary manslaughter and involuntary manslaughter. I
25 want you to carefully consider those aspects cause that, in

1 principal, is what is gonna come before you in terms of what
2 you have to decide as the jury. Some of the things I do
3 want to highlight, things we had a chance to hear in this
4 courtroom.

5 First of all, it will be up to you to decide if you
6 heard that there was a fight that took place on that day,
7 September 2nd, between Mr. Brown and any one of the other
8 parties involved in crime. But, in particular, as it
9 relates to Mr. Yeargin and Mr. Parks, consider that because
10 that's gonna be very important during your opportunity to go
11 back and deliberate the aspects of this case.

12 Also, I want you to consider, throughout this entire
13 period, if Mr. Brown ever acted as an aggressor to what was
14 occurring on that day, September the 2nd. Think about that.

15 One of the things we did learn that wasn't in any bit
16 of evidence initially was testimony that Investigator Matt
17 Davis gave us. He's the officer that initially went to the
18 hospital to interview and to see what had actually occurred,
19 and having the chance to try to calm down a situation that
20 was occurring at that hospital with a young lady and a young
21 man. And if you'll remember, Mr. Davis testified it was
22 Brittany Jeter who was having a conversation with a
23 gentleman that was telling Miss Geter to not talk to the
24 police. Don't tell them anything.

25 well, a name that you've heard throughout the testimony

1 in this trial is one name known as Travis Jeter. Nickname
2 also is Frado. Consider that name because Frado was the one
3 of the persons that was alleged to not only be at the scene
4 at the time in which these alleged acts occurred, but also
5 he's said to having a person that was shooting in the
6 direction of Mr. Brown. And you heard Mr. Brown's testimony
7 in terms of him attempting, upon him being -- realizing that
8 he's getting shot at, to shoot back in the direction of
9 where Mr. Travis Jeter, the brother of Brittany Jeter, was
10 shooting at him. Let that be a part of the things that you
11 need to consider.

12 Lee Teal, an officer from the City of Woodruff, had a
13 conversation with Officer Teal. The two decedents in this
14 case, he said their names were known by their nicknames,
15 Quinn and Tee. Told me about them directly.

16 When asked directly by Mr. Bulsa are you were familiar
17 with Quinn, you were familiar with Tee, were you familiar
18 with Terrell?

19 No.

20 Wasn't known. Wasn't a common name. Wasn't a person
21 known to the Woodruff Police Department. Consider that.
22 That goes towards your considerations in this case.

23 He also said the area out there wasn't very bright.
24 Nighttime. That goes with a number of things that you heard
25 throughout this trial in terms of the placing of hands, the

1 visibility of various items, and the simple fact that it was
2 dark out there. People couldn't be seen in clear view. All
3 actions couldn't be understood in the dark except for one
4 very important and direct action. At some point, Quinn
5 Yeargin made his way and came up on the person of
6 Mr. Terrell Brown.

7 You've heard others testify that they saw or what they
8 thought to be was a gun that was being possessed by
9 Mr. Quinn Yeargin, and having that gun pointed in the
10 direction of Mr. Brown. His Honor will also give you
11 instructions on mere appearances. Keep that in mind.
12 That's gonna be very important.

13 Officer Horton testified that it took him two and a
14 half hours to make it to that scene after the shooting.
15 Consider that.

16 At the time of the shooting, we had information that,
17 at some point, people fled from the scene. But we know that
18 there were a number of people still left at the scene. Mr.
19 Yeargin, was testified to, was on the ground. Summer Bayne,
20 Mr. Yeargin's girlfriend or the mother of his child,
21 Brittany Jeter, Travis Jeter, and the other individual that
22 on that day was shot, Tee Parks.

23 what did you hear and what do you know?

24 Two vehicles at least had to make it heading towards
25 Spartanburg Regional. We had testimony that Summer Bayne,

1 along with the help of Tee Parks, put Mr. Quinn in her car.
2 Summer Bayne, Tee Parks, and Quinn Yeargin in the same
3 vehicle heading to the hospital, but, at some time period in
4 which Brittany Jeter was there. Again, it was another
5 person that was at that scene.

6 We submit to you that was Travis Jeter who was the
7 person at the hospital. Last five people that were there.
8 People that were concerned with Mr. Quinn Yeargin going to
9 the hospital. Those five people. Consider that.

10 Travis Geter was at the scene. Frado was at the scene.
11 Don't make light of that fact.

12 Officer Nix testified that he looked around different
13 areas, but, through his own testimony, he looked in each and
14 every possible place that he could have for additional
15 bullets or fragments.

16 Is it possible, from what you've heard, that, with the
17 discharging of a weapon, projectiles may not be found?

18 Certainly, if they've gone into the distance.

19 We know that projectiles close-up, meaning the action
20 that Mr. Brown described, and where Doctor Wren said, in
21 terms of a straight on shot with your shoulder straight
22 forward, those projectiles were found. Unfortunately, with
23 the loss of Mr. Yeargin's life but we will submit to you, as
24 Mr. Brown told Investigator Lorin Williams from the outset
25 of having a conversation with him, he did it in

1 self-defense.

2 You will hear, you will hear the elements of
3 self-defense as it's gonna be presented to you by the Court.
4 Keep that in mind. No other photos were taken of any other
5 buildings, any other grounds, any other surroundings by
6 Investigator Nix after the initial two and a half hours when
7 it took the first investigator to make it to the scene.
8 Investigator Nix didn't make it to the scene until that
9 morning. Nine hours later.

10 we've heard that there were three wounds when assessing
11 the body of Mr. Quinn Yeargin. Two projectiles and one
12 passthrough. That's for you to consider.

13 You've heard the direction of the entry wound of the
14 bullet that passed through him, and you've also heard there
15 were other people out there shooting. Projectile was never
16 found.

17 Is it possible that other projectiles were discharged
18 at that same location?

19 They wouldn't be found. Consider that cause you heard
20 that testimony.

21 When Miss Bayne took the stand, she was presenting
22 herself in a very exact way. If you noticed, from her
23 questions, she really was uncomfortable but she answered in
24 a direct manner that was very, very limited, and the
25 information that we were attempting to get from her, she

1 really didn't want to say some of the things that she
2 initially had said. But what she did say, in truthfulness,
3 she knew Quinn Yeargin to be an individual that would carry
4 a gun. She knew that. In her words, she also said he was
5 high. Keep that in mind in terms of the events as they
6 related to September 2nd and as it related to Terrell
7 Brown. And keep that in mind, ladies and gentlemen.

8 She said, at one point, that she remembers and recalls
9 Terrell aiming towards the middle of the parking lot.

10 Beg the Court's indulgence.

11 (Pause.)

12 MR. BROWN: State's Exhibit 22. From her description,
13 the middle of the parking lot, from this position on the
14 sidewalk, you'd of found Terrell Brown, Jamar Murray, Tyrus
15 Murray, and the person known as Dweet, DeAdrien Morton. The
16 middle of the parking lot. Somewhere in this direction.

17 Summer Bayne described shots being fired at some point
18 by Terrell Brown. You also heard testimony that there was
19 an individual that was standing in this area seen with a
20 handgun.

21 Who was that individual?

22 Keep that in mind.

23 Travis Jeter, the individual that Terrell Brown said he
24 was shooting back at from that direction, and lawfully.
25 Don't, don't forget the piece of evidence that was taken

1 from this area compared to the two revolvers that were
2 presented in this Court. One revolver, one semiautomatic
3 handgun. The 9-millimeter. 9-millimeter tested by the SLED
4 agent. The 9-millimeter round that did not match any weapon
5 that's been presented for your consideration. The
6 9-millimeter round discharged shell casing that was found in
7 this same area. Keep that in mind, ladies and gentlemen.

8 Also, just before she exited the stand, she did say
9 that she couldn't see what Quinn was doing with his hands
10 because it was dark. She couldn't come before you and say
11 hey, the man that I know to carry guns, I didn't see if he
12 had one or not. She just said hey, I didn't see him with a
13 gun necessarily that day but I can't say what he was doing
14 with his hands. Consider that.

15 The next person we heard from, Miss Brittany, Brittany
16 Jeter, took the stand initially and wanted to try to, try to
17 change her story about what it meant in terms of when she
18 said an altercation. In explaining herself, she had to
19 agree with the testimony that you heard that's been
20 consistent throughout this case that the altercation was
21 simply the fact that Mr. Quinn Yeargin was trying to make
22 his way over to Terrell Brown. Words initially. Oh,
23 cousin, you haven't hollered at me since I've got out of
24 prison.

25 why would there of been an attempt by Summer Bayne and

1 others to pull Mr. Quinn Yeargin back?

2 Think about his actions. Think about the actions that
3 were brought on.

4 Is there anything that Mr. Brown was doing out there
5 that caused that?

6 Did you hear any testimony as it relates to that?

7 Defense would say that we contend that you didn't.
8 Mr. Brown told you his actions. He stayed on the sidewalk
9 the whole time. Mr. Yeargin eventually found his way over
10 to Mr. Brown all without anyone restraining him, if it was
11 two or indeed the third time, with intent to present what
12 Mr. Brown believed to be a handgun. Consider that.
13 Consider the testimony that you've heard from the State's
14 witnesses.

15 The first thing that she said, Brittany Jeter, she
16 heard someone say the words of Big J, Jamar, Quinn got a
17 gun. The first thing. Recognized. Then someone else said
18 yo, you don't go up to someone with a gun, talking to Quinn.
19 And, again, after that testimony, which has been consistent
20 from everyone else, Mr. Brown, at some point, pulled his
21 handgun in defending himself.

22 Kesha Jackson, the next person to testify, with a
23 little prompting -- as you saw, she was sitting here with
24 her statement. We brought over another statement for her to
25 look another. The same one. She had to be prompted for one

1 line and one line in particular. She didn't want to testify
2 to the fact that she too observed that Mr. Quinn Yeargin had
3 to be restrained and pulled back. Never heard Mr. Brown was
4 doing anything to provoke that. Never heard that Mr. Brown
5 was saying anything out of his mouth to provoke that, to
6 make him mad.

7 No. The testimony was that hey, he was quiet. He even
8 was wanting, through his own testimony, for his cousin to
9 realize hey, just let it go. Let's be in peace. Didn't
10 sound like a situation in which anyone said that he was
11 trying to fight or be aggressive towards Mr. Yeargin. Keep
12 that in mind. That's the consistent testimony of the three
13 initial witnesses by the State.

14 And why are they very important?

15 Because they gave written statements during that time
16 period. They were the three people that ultimately was
17 contacted by law enforcement at some point. But not by the
18 chief investigator of Spartanburg County, Mr. Lorin
19 Williams. You heard his testimony as well.

20 Really an investigation or, as a matter of having a
21 conversation with Mr. Brown at some point in Spartanburg
22 County, he had his mind made up. He's already gonna charge
23 him with murder, two counts, and Mr. Brown didn't know it's
24 two counts. He knew he shot Quinn Yeargin. Had no idea
25 that Tee Parks had been hit by a bullet out there. No idea.

1 But it is your God given right to defend yourself and
2 the defense would agree with those words by Investigator
3 Lorin Williams. It was Mr. Brown's right to defend himself.
4 That's what you heard from him that, that evening.

5 You had a chance to observe in their own way, with
6 their own personal problems, with their own personal
7 defects, with the reality of where they find themselves at
8 in that situation in Woodruff, South Carolina, being the
9 young men that they are, having some challenges, Jamar
10 Murray, Tyrus Murray, Adrien, DeAdrien Morton, came in here
11 on this stand and you saw them all wearing a particular type
12 of suit. They came and told you, in their own words, what
13 they saw on that evening without preparation.

14 In fact, one of the guys never had a chance to even lay
15 my eyes on until today. Tyrus Murray. He told you what was
16 going on at that time period.

17 You'll have a chance to weigh their credibility, to
18 what they provided, the information that they came forth
19 freely with.

20 Murder, I think not. Doesn't rise to that standard.

21 And, not as a surprise witness, cause what I can tell
22 you, most of the witnesses that would of come from this
23 stand could of been a surprise to the State cause, as you
24 heard, Investigator Williams didn't bother to really go to
25 investigate or discuss anything with anyone but one person

1 and one person essentially and that was Terrell Brown.

2 But he did make an effort of some sort, and we will
3 admit that, that he came back to see him a week later and
4 said hey, where do you think they're hiding Quinn Yeargin's
5 gun at recognizing and acknowledging, a week has gone by,
6 and I've gotten information that yeah, there was another gun
7 at the scene. Consider that, ladies and gentlemen.

8 And outside of that, the State's majority of their
9 witnesses were members of law enforcement. None of which
10 were present at Kelly Acres on that morning on September the
11 2nd, 2013. They paraded in officer after officer after
12 officer after officer. Half of which was Greenville County.
13 we're here in Spartanburg County talking about a situation
14 that occurred in Spartanburg County. Greenville County has
15 absolutely nothing to do with this.

16 Mr. Brown told you his frame of mind of why he found
17 himself in Greenville County, and through what they've
18 presented by way of the testimony that was elicited from
19 this stand.

20 That hotel room was being rented from one week?

21 Three days?

22 No.

23 One day.

24 And what did Mr. Brown tell you?

25 He was gonna turn himself in the next day. Had a

1 chance to see his mother, had a chance to see his
2 girlfriend, and had a chance to see his child. And he said
3 he knew, from the way he had heard things and the fact that
4 this was a shooting, he knew, based upon his reality to
5 where he found himself in in Kelly Acres, he knew, from the
6 things he had seen in life, he was gonna have to spend some
7 time in detention. So, he knew he was gonna have to go to
8 jail the next day. Preparing himself for that.

9 You didn't hear Mr. Brown say he tried to evade law
10 enforcement. At that hotel, he tried to run, make a break
11 for it. He hid in the bushes. He came up with his hands
12 out. And once he came out, law enforcement apprehended him.

13 what did the use of the dog taking him into custody and
14 talking to Lorin Williams?

15 They want to tell you that he didn't want to talk to
16 them.

17 But how is the gun recovered?

18 Didn't have to say anything. He told them, after Lorin
19 Williams had a discussion with him, a discussion dealing
20 with his God given right to defend himself.

21 The prosecution can't tell you that's something wrong
22 with trying to defend himself. They can ring words saying
23 that there was some form of mutual combat. They were out
24 there fighting with each other or the fact, if he was trying
25 to murder or commit some type of manslaughter against Mr.

1 Yeargin, that if he and Tee Parks, in the midst of doing it,
2 there was some motion of transferred intent. I submit to
3 you we don't have those elements here, ladies and gentlemen.

4 And the State does have the burden and the Court will
5 tell you what that burden is. But I simply want to thank
6 you on the behalf of my client because this is a, a tough
7 part of the duty of being called upon. And that duty comes
8 for you to recognize and speak the truth.

9 I told you, at the outset, what veredicto means.
10 That's what you're about to have the opportunity to extend
11 in this case, to extend a verdict in this case.

12 From what he's been charged with and what you're gonna
13 hear, carefully weigh what you know. Don't be distracted by
14 some of the side issues they want to try to make you think
15 of, the number of officers they brought out here, the fact
16 that they produced a 9-millimeter handgun that was gained
17 after all and this and he told you why he had it. Receiving
18 threats on his life.

19 wasn't gonna interact with law enforcement between that
20 time period. So, he had to -- someone bring him a gun to
21 protect himself. We're gonna kill you.

22 You heard from his sister. She told you about the
23 threats she received. It's very real. And, as I take my
24 seat, I want you to remember one thing. When I pointed out
25 Jamar Murray the other day, he raised his hands as I made my

1 way to walk back here. But there was another gentleman that
2 was on this side. He too raised his hand.

3 State witness but they never called him. But he was
4 here during the testimony of Summer Bayne, Brittany Jeter,
5 and Kesha Jackson.

6 who was that person who had to come and make sure the
7 testimony that was gonna come from those three young ladies
8 will be a certain kind of testimony?

9 The other guy that was recognized by others, Travis
10 Jeter. Frado.

11 Don't forget the words of Kierri Gilliam as Mr. Gilliam
12 took that stand and told you he saw more than my client with
13 a gun that evening. He saw my client facing this way where
14 he could see. He saw Quinn Yeargin facing this way. But
15 from his location, cause he was on the sidewalk on the other
16 side from the small parking lot, he was able to see the
17 person that was closest to him, and the person that was
18 standing behind that car.

19 And who was that person?

20 Travis Jeter. Frado.

21 He didn't say he wasn't sure that he saw something that
22 looked like a gun. He was definite and he said he saw a gun
23 in the hands of Frado. The same man that Mr. Brown told you
24 was shooting at him. Consider those factors as you make
25 your deliberation.

1 On behalf of my client, I thank you for this
2 opportunity to speak with you and we look forward to coming
3 back and speaking the truth. Fundamental elements in this
4 case in terms of what he's been charged, we would contend to
5 you they don't exist. It will be your duty to come back
6 with verdicts none other than not guilty.

7 But as it relates to Mr. Tee Parks, if there's any
8 question in your mind, please do consider it's not, it's not
9 my client's intention, if you deem that he was the person
10 that shot Mr. Tee Parks, to harm him, and that would be
11 something that was involuntary on his part.

12 Thank you, ladies and gentlemen. Thank you for your
13 time.

14 THE COURT: Yes, sir, Mr. Solicitor.

15 SOLICITOR BULSA: Please the Court?

16 THE COURT: Yes, sir.

17 SOLICITOR BULSA: Ladies and gentlemen.

18 Justice for all, the last three words of the Pledge of
19 Allegiance. We're here asking for justice for two young
20 black men, Quinton Yeargin, Nahtyriean Parks, the two
21 decedents that were killed at the hands of another young
22 black male, Terrell Brown.

23 I first want to go over with you how the State
24 presented their case. We put up law enforcement, crime
25 scene investigators to present to you this scene so you

1 could have a good picture and a good understanding of what
2 it was like that night as the lay witnesses came in to
3 testify. So you could see the pictures, put things in
4 proper prospective.

5 we started with Lee Teal, one of the first officers on
6 the scene. He arrived in a expedient amount of time, two to
7 three minutes.

8 what did we see?

9 we saw a darkly lit area, Kelly Acres.

10 It turned off.

11 Darkly lit area in Kelly Acres pretty much illuminated
12 by one street light on each side of the parking lot. We
13 called the crime scene investigators and they told you how
14 they proceeded to look for evidence. They had to use
15 illumination from their vehicles to help assist in
16 illuminating the parking lot. I believe they said there
17 were at least two cars that had headlights on them. We also
18 used a flashlight. And then they held the scene to well
19 into the daylight hours and brought another more experienced
20 officer to go over that scene again.

21 The defendant made a comment in his cross-examination
22 about following evidence. That's what he wants us to do. I
23 showed you the photographs. We presented the items. Now
24 let's follow it and see what it tells us.

25 we have two bullets that come from the body of

1 Laquinton Yeargin. We have one bullet taken from across the
2 parking lot, across the parking lot. That's the view where
3 the shooting happened. This is the opposite side where Miss
4 Jackson was fully -- so, we have three bullets.

5 Those three bullets fired by this weapon that the
6 defendant had in his possession. We have one shell casing
7 at the scene that was a 9-millimeter. And then we have one
8 shell casing that was taken from the defendant's pocket when
9 he was arrested.

10 We have zero shell casings in this six shot revolver
11 cause the defendant had disposed of them, and we have three
12 wounds, three entrance wounds, one exit wound, to the body
13 of Laquinton Yeargin. We have one entrance wound and one
14 exit wound to the body of Tee Parks.

15 Do you recall the testimony of Doctor Wren?

16 The size of all those entrances were similar and
17 comparable to each other. It is very interesting that the
18 defendant only admits to shooting twice at Laquinton Yeargin
19 from close range. He's only claiming the two bullets that
20 came from his -- Mr. Yeargin's body.

21 Mr. Brown talked to you about common sense. I'm asking
22 you to use common sense.

23 Mr. Yeargin was shot three times by that man at close
24 range. The police swept this area. They're not perfect.
25 They're not gonna find everything. But the location where

1 the shell casing was found, that's probably the most
2 disturbing piece of evidence that you may be looking at
3 cause we're getting -- we have no weapon from Quinn Yeargin.

4 The only two weapons we have came from who?

5 This man.

6 There's no weapon from Quinn Yeargin. So, we know he
7 didn't fire a gun based on the location where he was found
8 and the blood and where his shoe was. One shoe on the
9 ground, one shoe in the car that drove 120 miles an hour
10 getting to the hospital. We know he didn't shoot his gun.

11 So, was somebody else out there with a firearm?

12 I don't know. We got all these people on this side,
13 friends and relatives, people who wouldn't talk to the
14 police, wouldn't write it down.

15 Are they credible?

16 we brought you the people who spoke to the police who
17 were willing to put it on paper. They didn't want to come
18 to Court, but they knew they had to, and their testimony was
19 consistent with the statements they gave. Not because
20 somebody was sitting in an audience. That's -- those are
21 the witnesses we found.

22 We got one shell casing.

23 You remember Mr. Brown had that other shell casing in
24 his pocket?

25 Does a shell casing on the ground mean it was fired at

1 that time?

2 Is it just one that someone missed as they were
3 cleaning up the scene in a matter of two minutes before the
4 police got there in a darkly lit parking lot?

5 Does that make sense that they were able to clean up
6 the crime scene?

7 Remember, the only people who heard other shots, other
8 than this man, came from this side and from not credible
9 witnesses.

10 So, Mr. Solicitor, how does that get there?

11 well, I wasn't out there but I think you heard
12 testimony that Kelly Acres is known for shootings.

13 Could it have been up there from a previous incident or
14 could it have been pulled out of somebody's pocket?

15 Not potentially. But as they were pulling something
16 out, while they were there, you had 20 people there, could
17 they have had it in their pocket just like Mr. Brown had a
18 round in his pocket?

19 He didn't have the .38 anymore. He had the
20 9-millimeter but he still had a .38 round, spent shell
21 casing, in his pocket.

22 Could somebody else at that scene had a 9-millimeter
23 shell casing in their pocket and they dropped it?

24 You don't have to believe that. I submit to you it's
25 plausible. You can believe that that 9-millimeter,

1 solicitor, tells me that somebody was shooting out there.

2 we know it wasn't Quinn Yeargin shooting. Tee Parks
3 was not shooting.

4 Was somebody mad at the defendant for shooting their
5 friend?

6 Could they have just shot one round?

7 But it doesn't matter, even if they did, because what
8 matters is the actions of this defendant on
9 September 1st and 2nd of 2013, how he responded to an
10 approach of his cousin. I submit to you, ladies and
11 gentlemen, that the act of pulling out of a gun and holding
12 it his -- behind his back, you could take that as having
13 some forethought, malice aforethought, and wielding it and
14 the shot, and the shot, and the shot, and the shot, and the
15 shot. At least five times.

16 why do I say five?

17 Three in Mr. Yeargin, one in Mr. Parks, and one that
18 struck the back of Mrs. Jackson. Consider the positioning
19 of the -- I talked about the diameter of the sizes of the
20 wounds as Doctor Wren talked about. He also told you about
21 where they were on the bodies. Mr. Yeargin's shots were to
22 his front and one under his armpit.

23 Now, how in the world does he get under his armpit?

24 Mr. Brown kind of talked a lot about Brittany Jeter.
25 well, I think she's the one that said Quinn walked up to

1 talk to Mr. Brown with his hands up. Mr. Brown, just as
2 Mr. Brown said, Terrell Brown walked out with his arms up
3 and the police found him with the dogs. Remember he didn't
4 do that. Mr. Brown came out because the dog bit him. Mr.
5 Yeargin, I submit to you, the wound to his armpit is
6 consistent with Miss Jeter's testimony. He didn't have his
7 gun out. He had his arms up in the air.

8 Tee Parks was shot front to back. He was looking in
9 the direction of the shooter. We know one person was
10 shooting from the direction of Mr. Terrell Brown. That was
11 Terrell Brown. There was only one shooter from that side of
12 the parking lot from that sidewalk.

13 If any other shots were fired, based on the positioning
14 of that shell casing, they were fired back towards
15 Mr. Brown. There's no way, I submit to you, that any of
16 those rounds struck Mr. Parks or Mr. Yeargin. The man who
17 did all the damage was him. He was responsible for both of
18 those young mens' deaths.

19 Follow the evidence.

20 what did he do with the evidence?

21 He got rid of it.

22 Now, the judge is gonna charge you with the law. He
23 told you a little bit in his opening charge to you that you
24 are the judges of the facts. That's why you were asked to
25 pay close attention to the witnesses and to the exhibits and

1 the items admitted and you'll have these in the jury room
2 with you to help you sort this out and discuss it.

3 You are the judges of the credibility of the witnesses.
4 I talked about that a little bit, about why we call the
5 people we call. We called everybody who cooperated with law
6 enforcement except I added one. I added Asa Lake only
7 because I needed the link between Woodruff and Greenville.
8 And law enforcement, by their own admission, got lucky.
9 It's in here somewhere. You'll see it. They got lucky.

10 They happened to go to the first hotel and they found
11 out the defendant was staying there. He didn't rent the
12 room. He had \$600.00 on his pocket, on his person but he
13 didn't rent the room. Asa Lake did.

14 So, we knew Asa Lake. We call Asa Lake and you heard
15 his testimony. It's ashamed that he distrusts police. I
16 can't comment on that. It's just ashamed. I mean if you
17 really wanted to protect his brother, the man he called like
18 a brother, his cousin, take him to the police, tell his
19 story, give the police the evidence if that's the truth.

20 I submit to you he didn't do that because it's not the
21 truth. He wants you to believe that he drove him to a, a, a
22 place where there's a couple of lakes or ponds, and the
23 defendant wanted to get out to kind of just have a moment to
24 himself and it's a beautiful sight. I don't know what he
25 did. The place that was in the middle of a subdivision that

1 you had to drive off the main road to get to.

2 Does that make sense?

3 That's not credible.

4 But Mr. Lake would know that he drove his brother,
5 cousin, whatever you want to call him, to Greenville County
6 and tried to hide him out. I needed you to hear that point.
7 That's why we brought that one person. We brought that one
8 person who didn't cooperate with the police.

9 You heard what was going on when the police had his
10 phone on speaker. The defendant was still trying to get him
11 to come pick him up cause the defendant was still running
12 from the police, still hiding from the police. He was not
13 going to turn himself in. I'm not gonna go back through
14 that. We did that in cross-examination.

15 How did that sound?

16 The defendant is not credible.

17 All the other witnesses the defense called, are they
18 credible?

19 A majority of them had criminal records. You can
20 consider those criminal records when you consider somebody's
21 telling the truth. Are they a credible witness, including
22 the defendant who has a criminal record of something that
23 carries more than a year.

24 You heard all this talk about Mr. Yeargin and just
25 getting out of prison. We didn't hide that. He's cousins

1 with the defendant. He's hanging out with people the
2 defendant's hanging out with.

3 The defendant wants you to believe that Mr. Yeargin's
4 known to carry a gun. Well, I submit to you no gun was
5 found. But, Mr. Solicitor, somebody could of easily picked
6 it up. They could have. Maybe they did. I submit they
7 probably didn't pick up any shell casings though. But maybe
8 they did.

9 But does that mean he's a bad person?

10 He was breaking the law, just like the defendant is, if
11 he had a gun. But the defendant wants you to believe -- I
12 think he used the comment, I wrote this down, Yeargin was
13 the kind of person who carried a gun. Well, I
14 cross-examined Mr. Brown on that comment. The defendant
15 himself is the type of person that carries two guns.

16 Does that mean he's twice as bad?

17 Does that mean the defendant -- the defendant went to
18 his sister's house in Kelly Acres. Sister had two young
19 kids. With a gun. We know he had the gun when he went
20 there cause he had a gun when he shot. He left his sister's
21 house, went to Woody Court, where he had no right to be in.
22 He wasn't visiting anybody over there.

23 We had a little episode in here that I don't know how
24 to respond to. I was kind of shocked at an answer I got and
25 I don't know where it came from. That's when the defendant

1 I was talking -- we were talking about the defendant talking
2 with Lorin Williams, and he was -- he maybe readily admitted
3 that he wasn't -- didn't want to talk and Lorin, I submit,
4 pulled some things out of him. The defendant said he didn't
5 trust the police. He referenced Trayvon Martin.

6 where did that come from?

7 This is nothing about anything like that.

8 This is about young black men with guns that shoot.

9 That's his response. He said, and his witnesses said, and I
10 don't know if a girl said it because they were interacting
11 with other people, and that's something to remember when
12 you're looking at what these people were saying, what their,
13 what their version of the facts are.

14 They're not gonna get everybody consistent with the
15 other because they're not paying attention to the same
16 thing. It's human nature. Your attention is drawn to
17 different things. You're watching them play. You're not
18 gonna watch -- everybody's not gonna be watching the same
19 piece of the action.

20 So, anyway, his people say, this is about the one
21 consistent thing, is that Mr. Yeargin walked up in an angry
22 fashion on three separate occasions to Terrell Brown.
23 Terrell Brown tells you he knew Mr. Yeargin to carry a gun.

24 So, what does he do?

25 He doesn't walk off, go back to his sister's, get out

1 of there. He draws his gun and he's ready.

2 The judge will charge you on the law of self-defense.
3 There are four things that exist in self-defense in order
4 for you to excuse this crime.

5 Number one. He has to be without fault for bringing on
6 this difficulty.

7 He has to be in fear or actual fear or in likely fear
8 of being injured or killed.

9 Number three. That a reasonable person, viewing that
10 same set of circumstance, would of had that same belief.

11 And, number four, he had no other way of avoiding the
12 conflict. He had a duty to retreat so to speak.

13 Okay. The judge will charge you, within that
14 self-defense, the concept of mutual combat. If you
15 essentially agree to fight, self-defense goes out. It means
16 you're not without conflict or you're not without fault.
17 But when he pulled his gun, and I submit to you, instead of
18 walking away, he became involved in a mutual combat.

19 Number two is a reasonable -- is it reasonable -- would
20 a reasonable person stay there if they knew this was gonna
21 elevate?

22 If he saw a gun one time, and the guy went away, was
23 drove back, and then he went back, he would of left and he
24 had a duty to retreat because he was in the middle of a
25 public, actually a housing complex parking lot, full of

1 people. He had a duty to retreat and not stick around.

2 self-defense is not there. I told you, at the
3 beginning of this case, that your decision, from the State's
4 opinion, was between murder and voluntary manslaughter.

5 Murder is the unlawful killing of another human being
6 with malice aforethought. Remember we talked about malice
7 aforethought. Pulling the gun out, being ready.

8 Voluntary manslaughter is the unlawful killing of a
9 human without malice accompanied by words or conduct --
10 words and/or conduct by -- to kill a person, that's
11 provocation, that, that created the heat of passion in his
12 mind to fire the fatal shot. The judge will describe those
13 to you in more detail. Probably more eloquently than I did.

14 But I submit to you, I submit to you that the evidence,
15 we followed the evidence, and what we have is that Mr.
16 Yeargin approaching Mr. Terrell Brown and getting shot three
17 times, and Mr. Brown shooting into the crowd or, when he was
18 shooting at Mr. Yeargin, he missed once, twice cause he hit
19 Miss Jackson and Mr. Parks. That's malice. You shoot five
20 times in a public place. Especially the first one should of
21 put him down on the ground.

22 There's actually evidence, if you believe, he actually
23 stood over and shot him. And there is a, there is a strike,
24 remember, to the truck, the truck bumper. There's a strike
25 where he fell.

1 Now, it's manslaughter, I submit to you, voluntary
2 manslaughter, if you believe Mr. Yeargin had that gun and
3 walked towards him with a gun, that would be, I submit to
4 you, provocation enraging him to the level of heat of
5 passion to respond and shoot. I submit to you that that
6 could fit voluntary manslaughter.

7 Now, Mr. Brown, Attorney Brown, referenced one other
8 level of homicide. The levels of homicide go murder,
9 voluntary manslaughter, and involuntary manslaughter.
10 Involuntary manslaughter is, in essence, you're handling a
11 gun in a lawful fashion but -- and the gun was negligently
12 handled. The judge will explain those definitions in
13 specifics to you.

14 I submit to you this is not a voluntary -- this was a
15 deliberate act. This deliberate act either in murder or
16 deliberate act in manslaughter, voluntary manslaughter.

17 Involuntary manslaughter, I submit to you, it's more
18 like you're just misusing a weapon. It goes off and you're
19 mishandling it. You listen to how the judge charges it.

20 Ladies and gentlemen, I hope you can follow the
21 evidence and the pictures and exhibits and I trust that it
22 makes sense to you. All the physical evidence explains what
23 happened. That's what the police have to work with. That
24 and the few people that come forward. People that don't
25 come forward, want to come forward later and come tell you

1 what they said they saw, I submit to you that you have to
2 look at with a little bit of suspicion or a motive. Look at
3 the motives everybody has, what their bias is towards their
4 side of the case, and I'm asking you to serve justice for
5 Laquinton Parks -- Laquinton Yeargin and his family,
6 Nahtyriean Parks and his family, and for Spartanburg County.
7 I'm asking you to find that little man guilty of murder for
8 both counts and also unlawful carrying of that pistol.

9 THE COURT: All right. Ladies and gentlemen, if you
10 would, please stand and stretch your legs for a minute.

11 Mr. Solicitor, if you'll roll that device out of the
12 way.

13 (WHEREUPON, the jurors and solicitor comply.)

14 THE COURT: All right. Let's come to---

15 THE DEPUTY: Come to order.

16 THE COURT: Let's come to order.

17 Mr. Foreman, and ladies and gentlemen, I remind you
18 that, during this trial, you and I have certain duties to
19 perform.

20 As the trial judge, it has been my responsibility to
21 preside over the trial of this case, and I also have the
22 duty to -- and I also have the duty to rule, rule on the
23 admissibility of evidence that's been offered during this
24 trial.

25 You are to consider only the competent evidence that is

1 before you. If there was any testimony ordered stricken
2 from the record in this case during the trial, you must
3 disregard that testimony. You are to consider only the
4 testimony which has been presented from this witness stand
5 and any exhibits that have been made part of the record of
6 this case.

7 Now, I have the additional duty to charge you the law
8 applicable to this case, and, as the presiding judge, I am
9 the sole judge of the law of this case. It is your duty, as
10 jurors, to accept the law as I now state it to you. If you
11 already have any ideas as to what the law is or what the law
12 ought to be and it does not agree with what I now tell you
13 the law is, you must abandon this idea because you are sworn
14 to accept the law and apply the law exactly as I state it to
15 you.

16 In every case tried in this Court before a jury, the
17 jury becomes the sole and exclusive judge of the facts. A
18 trial judge can not intimate, state, comment on, or make any
19 statement to a trial jury about the facts of a case. Since
20 you are the sole judge of the facts in the case, you are not
21 to infer, from what I have said during the progress of this
22 trial in ruling on the admissibility of evidence or
23 otherwise or anything that I say now during the course of
24 this instruction, that I have any opinions about the facts
25 of this case.

1 The law does not allow me to have an opinion about the
2 facts in this case. This is a matter solely for you, the
3 jury, to determine.

4 As jurors, it is your duty to determine the effect,
5 value, weight, and truth of the evidence that has been
6 presented during the course of this trial.

7 Now, ladies and gentlemen, the indictments charge the
8 defendant in this case with two counts of murder and one
9 count of unlawful possession of a weapon.

10 Now, I remind you that the fact that the defendant was
11 arrested, charged, and indicted in this case is not evidence
12 in this case and can not be considered by you as evidence of
13 guilt in this case nor does it create any presumption or
14 inference of guilt. These documents are simply the formal
15 written instruments which contain the charges made against
16 the defendant. They are the formal documents by which this
17 case is brought in the Court. The defendant has pled not
18 guilty to these indictments and that plea puts the burden on
19 the State to prove the defendant guilty.

20 A person charged with committing a criminal offense in
21 South Carolina is not required to prove himself innocent. I
22 charge you that it is an important rule of law that the
23 defendant, in a criminal trial, no matter what the
24 seriousness of the charge may be, will always be presumed to
25 be innocent of the crime for which the indictment was issued

1 unless guilt has been proven by evidence satisfying you of
2 that guilt beyond a reasonable doubt.

3 This presumption of innocence does not end when you
4 begin your deliberation but it accompanies the defendant
5 throughout the trial until you reach a verdict of guilt
6 based on evidence satisfying you of that guilt beyond a
7 reasonable doubt. The presumption of innocence is like a
8 robe of righteousness placed about the shoulders of the
9 defendant which remains with the defendant until it has been
10 stripped from the defendant by evidence satisfying you of
11 the defendant's guilt beyond a reasonable doubt.

12 The presumption of innocence is not mere legal theory.
13 It is not just a legal phrase. It is a substantial right to
14 which every defendant is entitled unless you, the jury, are
15 satisfied, from the evidence, of the defendant's guilt
16 beyond a reasonable doubt.

17 what is reasonable doubt in the law?

18 A reasonable doubt is the kind of doubt that would
19 cause a reasonable person to hesitate to act. The State has
20 the burden of proving the defendant guilty beyond a
21 reasonable doubt.

22 Some of you may have served in jurors in civil cases
23 where you were told that it is only necessary to prove a
24 fact is true -- is more likely true than not true. Such as
25 by the greater weight of the evidence or preponderance of

1 the evidence.

2 In criminal cases, the State's proof must be more
3 powerful than that. It must be beyond a reasonable doubt.

4 Proof beyond a reasonable doubt is proof that leaves
5 you firmly convinced of the defendant's guilt. There are
6 very few things in the world that we know with absolute
7 certainty and, in criminal cases, the law does not require
8 proof that overcomes every possible doubt.

9 If, based on your consideration of the evidence, you
10 are firmly convinced that the defendant is guilty of the
11 crimes charged, you must find the defendant guilty. If, on
12 the other hand, you think there is a real possibility that
13 the defendant is not guilty, you must give the defendant the
14 benefit of the doubt and find him not guilty.

15 Necessarily, there are two types of evidence which are
16 generally presented during the course of a trial, direct
17 evidence and circumstantial evidence.

18 Direct evidence is testimony of a person who claims to
19 have actual knowledge of a fact such as an eye witness. It
20 is evidence which immediately establishes the main fact to
21 be proved.

22 Circumstantial evidence is proof of a chain of facts
23 and circumstances indicating existence of a fact. It is
24 evidence which immediately establishes collateral facts from
25 which the main fact may be inferred. Now, circumstantial

1 evidence is based on inference and not on personal knowledge
2 or observation.

3 But the law makes absolutely no distinction between the
4 weight or value to be given to either direct or
5 circumstantial evidence. Nor is a great degree of certainty
6 required of circumstantial evidence than of direct evidence.
7 You should weigh all the evidence in this case. After
8 weighing all the evidence, if you are not convinced of the
9 guilt of the defendant beyond a reasonable doubt, you must
10 find the defendant not guilty.

11 Now, ladies and gentlemen, necessarily you must
12 determine the credibility of witnesses who have testified.
13 Credibility simply means believability. It becomes your
14 duty, as jurors, to analyze and to evaluate the evidence and
15 determine which evidence convinces you of its truth.

16 In determining the believability of witnesses who have
17 testified, you may believe one witness over several
18 witnesses or several witnesses over one. You may believe a
19 part of the testimony of a witness and reject the remaining
20 part of the testimony of that same witness. You may believe
21 the testimony of a witness in its entirety or reject the
22 testimony of a witness in its entirety. You may consider
23 whether any witness has exhibited to you any interest, bias,
24 prejudice, or other motive in this case. You may also
25 consider the appearance and the manner of the witness when

1 they were on the witness stand.

2 A person who has a past criminal record is competent to
3 testify during a trial. A past record does not affect the
4 ability of the witness to testify. The past record may only
5 be considered by you, if at all, in determining the witness'
6 believability. Remember you are the sole judges of the
7 facts in this case and of the believability of any and all
8 witnesses who have testified.

9 The rule of, the rule of evidence ordinarily does not
10 permit witnesses to testify to opinions or conclusions. An
11 exception to this rule exists for witnesses who are called
12 expert witnesses.

13 A witness, who by education or experience, has become
14 an expert in some art, science, profession, or calling may
15 state an opinion as to relevant and material matters in
16 which the witness claims to be an expert and may also state
17 the reasons for those opinions. You should consider any
18 expert opinion received in evidence in this case, and like
19 other evidence, give it the weight that you think that it
20 deserves.

21 If you decide that the opinion of an expert is not
22 based on sufficient education and experience or if you
23 conclude that the reasons given in support of the opinion
24 are not sound or the opinion is outweighed by other
25 evidence, you may disregard that opinion in its entirety.

1 An expert witness' testimony is to be given no greater
2 weight than that of other witnesses simply because the
3 witness is an expert. Further, you are not required to
4 accept an expert's opinion even though it is not contested.

5 In order to establish criminal liability, criminal
6 intent is required. For example, the mental state required
7 to be proven by the State for a particular crime might be
8 purpose, intent, knowledge, recklessness, or criminal
9 negligence. Criminal intent must be proven by the State
10 beyond a reasonable doubt. Criminal intent is always a
11 matter that must be determined by the jury from the
12 circumstances surrounding a situation.

13 There is no way to prove intent to a mathematical
14 certainty. There is no way medical science can dissect a
15 person's brain and determine what the person had in mind.
16 So, the law says that criminal intent may be inferred from
17 the circumstances shown to have existed. This is how you
18 make a determination of whether or not the element requiring
19 intent was present. It is not necessary to establish intent
20 by direct and positive evidence but intent may be
21 established by inference in the same way as any other fact
22 by taking into consideration the acts of the parties and all
23 of the facts and circumstances of a case.

24 Criminal intent is a mental state, a conscious
25 wrongdoing. It is up to you to determine what the defendant

1 intended to do based on the circumstances shown to have
2 existed. Criminal intent can arise from action or a failure
3 to act. It may arise from negligence, recklessness, or an
4 indifference to duty or to the consequences that is
5 considered by the law to be the equivalent of criminal
6 intent.

7 If the defendant, with malice aforethought, attempts to
8 kill another person, but makes -- but, by mistake, injures
9 or kills a different person, the defendant still has the
10 intent to kill. The intent to kill is merely transferred
11 from the original person the defendant attempted to kill to
12 the actual person killed or injured. The defendant would be
13 guilty just as the act -- just as if the act had resulted in
14 the death or injury of the person the defendant intended to
15 kill.

16 Ladies and gentlemen, the defendant is charged with
17 murder. The State must prove, beyond a reasonable doubt,
18 that the defendant killed another person with malice
19 aforethought.

20 Malice is hatred, ill will, or hostility towards
21 another person. It is the intentional doing of a wrongful
22 act without just cause or excuse and with an intent to
23 inflict an injury or under circumstances that the law will
24 infer an evil intent.

25 Malice aforethought does not require that malice exist

1 for any particular time before the act is committed but
2 malice must exist in the mind of the defendant just before
3 and at the time of the act is committed. Therefore, there
4 must be a combination of the previous evil intent and the
5 act.

6 Malice aforethought may be expressed or inferred.
7 These terms, expressed and inferred, do not mean different
8 kinds of malice but merely the manner in which the malice
9 may be shown to exist. That is either by direct or by
10 inference from the facts and circumstances which are proved.

11 Expressed malice is shown when a person speaks words
12 which express hatred or ill will for another or when the
13 person prepared beforehand to do the act with which later --
14 which was later accomplished. For example, lying in wait
15 for a person or any other act of preparation going to show
16 that the deed was within the defendant's mind would be
17 expressed malice. Malice may be inferred from conduct
18 showing a total disregard for human life.

19 If you find, ladies and gentlemen, that the State has
20 failed to prove, beyond a reasonable doubt, that the
21 defendant committed murder, you may consider whether the
22 State has proved, beyond a reasonable doubt, that the
23 defendant committed voluntary manslaughter. Included within
24 the definition of murder is the lesser included offense of
25 voluntary manslaughter.

1 To prove voluntary manslaughter, the State must prove,
2 beyond a reasonable doubt, that the defendant took the life
3 of another in the sudden heat of passion based on sufficient
4 legal provocation. Both heat of passion and sufficient
5 legal provocation must be present at the time of the killing
6 to constitute voluntary manslaughter.

7 Sudden heat of passion may, for a time, affect a
8 person's self-control and temporarily disturb a person's
9 reason. The sudden heat of passion must be the type that
10 would make an ordinary person unable to coolly reflect on
11 his action and would produce an uncontrollable impulse to do
12 violence. Sufficient legal provocation must be the type
13 that would make a person of ordinary reason and caution
14 become enraged and to lose control temporarily.

15 The provocation needed for voluntary manslaughter must
16 come from some act of or related to the victim. Words
17 alone, however vulgar or insulting, are not enough to be
18 legal provocation.

19 where death is caused by the use of a deadly weapon,
20 the words must be accompanied by some overt threatening act
21 which could have produced the heat of passion. The exercise
22 of a legal right, no matter how offensive it is to another,
23 is never sufficient legal provocation for voluntary
24 manslaughter.

25 If, if the heat of passion had cooled or if there was

1 enough time between the provocation, if any, and the killing
2 for the passion of a reasonable person to cool, the killing
3 would not be voluntary manslaughter. In deciding whether a
4 reasonable person would of had enough time to cool off, you
5 should consider all of the circumstances surrounding the
6 killing. You may consider the nature of the provocation, if
7 any, the defendant's mental and physical state, and the
8 circumstances and relationship between the parties.

9 Ladies and gentlemen, if you find that the State has
10 failed to prove, beyond a reasonable doubt, that the
11 defendant committed voluntary manslaughter, you may consider
12 whether the State has proved, beyond a reasonable doubt,
13 that the defendant committed involuntary manslaughter.
14 Included within the offense of voluntary manslaughter is the
15 lesser included offense of involuntary manslaughter.

16 To prove involuntary manslaughter, the State must
17 prove, beyond a reasonable doubt, that the defendant
18 unintentionally killed the victim without malice but while
19 engaged in an unlawful activity not naturally tending to
20 cause death or great bodily harm or that the defendant
21 unintentionally killed the victim without malice while
22 engaged in a lawful activity with reckless disregard for the
23 safety of others.

24 Unintentional means the defendant did not intend for
25 anyone to be killed or seriously injured. Recklessness,

1 disregard for the safety of others is more than mere
2 negligence or carelessness. Mere negligence or carelessness
3 is the failure to use the care that a person of ordinary
4 reason would use under the same circumstances. Recklessness
5 is a conscious failure to use ordinary care. Reckless
6 disregard for the safety of others means that you are not
7 interested in the consequence of your act or the rights and
8 safety of others. In other words, it signifies an
9 indifference to the consequences of one's acts.

10 If a person who knows or should know that ordinary care
11 requires certain precautions to be, to be taken for the
12 safety of others when using a dangerous instrumentality,
13 such as a gun or a car, but that person fails to use those
14 precautions without concern, the person's acts are
15 considered reckless.

16 The State must prove, beyond a reasonable doubt, that
17 the defendant's acts was the proximate cause of death.
18 Proximate cause is the direct cause. It is the immediate
19 cause. It is the efficient cause. It is the cause without
20 which the death of the victim would not have resulted.
21 There must be a chain of causation from the time of injury
22 inflicted by the defendant until the time the -- of the
23 victim's death.

24 Proximate cause does not necessarily mean that it
25 occurred immediately prior to death. There may be more than

1 one proximate cause. The acts of two or more people may
2 combine together to be a proximate cause of the death of a
3 person. The defendant's acts may be regarded as a proximate
4 cause if it is a contributing cause of the death of the
5 victim.

6 The fact that other causes may also contribute to the
7 death of the victim does not relieve the defendant from
8 responsibility. The defendant acts -- the defendant's act
9 need not be the sole cause of death but must be a proximate
10 cause contributing to the death of the victim.

11 Now, ladies and gentlemen, the defendant has raised the
12 defense of self-defense. Self-defense is a complete defense
13 and, if it is established, you must find that the defendant
14 is not guilty. The State has the burden of disproving
15 self-defense by proof beyond a reasonable doubt. If you
16 have a reasonable doubt of the defendant's guilt, after
17 considering all of the evidence, including the evidence of
18 self-defense, then you must find the defendant not guilty.

19 On the other hand, if you have no reasonable doubt of
20 the defendant's guilt, after considering all of the evidence
21 including the evidence of self-defense, then you must find
22 the defendant guilty.

23 The following elements are required to establish
24 self-defense.

25 First, the defendant must be without fault in bringing,

1 in bringing known to the victim that he would be -- excuse
2 me one second.

3 (Pause.)

4 THE COURT: All right. Ladies and gentlemen, if you
5 would, I'm gonna ask, if you would, to not have any
6 discussions among yourselves about anything involved in the
7 case but to retire to the jury deliberation room. I need to
8 make a correction on something.

9 If you would, retire back to the jury deliberation
10 room.

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

13 THE COURT: All right. Ladies and gentlemen, I'm gonna
14 step down just for a moment.

15 (WHEREUPON, a short recess was taken at this time.)

16 THE COURT: All right. Bring the jury back. Bring the
17 jury back in.

18 (WHEREUPON, the following takes place within the
19 presence of the jury.)

20 THE COURT: All right. Mr. Foreman, ladies and
21 gentlemen, I will restart with the charge on the issues of
22 self-defense.

23 The defendant has raised the defense of self-defense.
24 Self-defense is a complete defense and, if it is
25 established, you must find the defendant not guilty. The

1 State has the burden of disproving self-defense by proof
2 beyond a reasonable doubt.

3 If you have a reasonable doubt of the defendant's
4 guilt, after considering all of the evidence, including the
5 evidence of self-defense, then you must find the defendant
6 not guilty. On the other hand, if you have no reasonable
7 doubt of the defendant's guilt, after considering all of the
8 evidence, including the evidence of self-defense, then you
9 must find the defendant guilty.

10 The following elements are required to establish
11 self-defense.

12 First, the defendant must be without fault in bringing
13 on the difficulty. If the defendant's conduct was the type
14 which was reasonably calculated to and did provoke a deadly
15 assault, the defendant would be at fault in bringing on the
16 difficulty, and would not be entitled to an acquittal based
17 on self-defense. Self-defense is not available to a person
18 who uses language which is so contemptuous that a reasonable
19 person would expect it to bring on physical -- a physical
20 encounter and which did actually contribute to the physical
21 encounter.

22 If the defendant voluntarily participated in mutual
23 combat for purposes other than protection, the killing of
24 the victim would not be self-defense. This is true even if,
25 during the combat, the defendant feared death or serious

1 bodily injury. However, if, before the killing is
2 committed, the defendant withdraws and tries, in good faith,
3 to avoid further conflict, and either, by word or act, makes
4 that fact known to the victim, he would be without fault in
5 bringing on the difficulty.

6 For mutual combat, there must be a mutual intent and
7 willingness to fight. This intent may be shown by the acts
8 and conduct of the parties and the circumstances surrounding
9 the combat. In addition, it must be shown that both parties
10 were armed with a deadly weapon.

11 Where two people are mutually engaged in combat, and
12 one kills the other, and, at the time of the killing, it be
13 maliciously done, it is murder. If the killing is done in
14 the heat of -- sudden heat of passion upon sufficient
15 provocation, without malice, it would be manslaughter.

16 The second element of self-defense is that the
17 defendant was actually in immanent danger of death or
18 serious bodily injury or that the defendant actually
19 believed he was in immanent danger of death or serious
20 bodily injury. If the defendant was actually in immanent
21 danger, it must be shown that the circumstances would have
22 warranted a person of ordinary firmness and courage to
23 strike the fatal blow to prevent death or serious bodily
24 injury. If the defendant believed he was in immanent danger
25 of death or serious bodily injury, it must be shown that a

1 reasonably prudent person of ordinary firmness and courage
2 would have had the same belief.

3 In deciding whether the defendant actually was or
4 believed he was in immanent danger of death or serious
5 bodily injury, you should consider all the facts and
6 circumstances surrounding the crime including the physical
7 condition and characteristics of the defendant and the
8 victim. The defendant does not have to show that he was
9 actually in danger. It is enough if the defendant believed
10 he was immanent -- believed he was in immanent danger and a
11 reasonably prudent person of ordinary firmness and courage
12 would of had the same belief.

13 The defendant has the right to act on appearances even
14 though the defendant's beliefs may have been mistaken. It
15 is for you to decide whether the defendant's fear of
16 immanent danger of death or serious bodily injury was
17 reasonable and would have been felt by an ordinary person in
18 the same situation.

19 Words, accompanied by hostile acts, may, depending on
20 the circumstances, establish self-defense. Evidence of
21 prior difficulties between the defendant and the victim may
22 be considered in deciding whether a threat existed, whether
23 the defendant had a reason to believe a threat existed, and
24 how serious that threat was. The reputation of the victim
25 as a violent person may be considered in deciding, in

1 deciding whether there was a need for force, whether the
2 defendant had a reason to believe there was a need for
3 force, and whether deadly force was reasonably necessary.
4 Prior instances of violence by the victim may be considered
5 in deciding whether, in deciding whether the defendant
6 basically believed he was in immanent danger of death or
7 serious bodily injury or was actually in immanent danger.

8 The final element of self-defense is that the defendant
9 had no other probable way to avoid the danger of death or
10 serious bodily injury than to act as the defendant did in
11 the particular instance. The defendant had no duty to
12 retreat if, by doing so, the danger of being killed or
13 suffering serious bodily injury would increase.

14 The defendant is also charged with unlawful carrying of
15 pistol. The State must prove, beyond a reasonable doubt,
16 that the defendant unlawfully carried a pistol about his
17 person, whether concealed or not.

18 A weapon is about the defendant's person if it is
19 readily accessible and convenient for immediate use. The
20 pistol need not be actually touching the person of the
21 defendant.

22 Now, Mr. Foreman, ladies and gentlemen, I have prepared
23 for your use in the jury room three verdict forms. The
24 three verdict forms, Mr. Foreman, if you'll notice, will be
25 a jury verdict form in regards to the death of Mr. Parks and

1 in regards to the death of Mr. Yeargin, and then also we
2 have, we have a third verdict form in regards to the gun
3 charge. I have listed there a murder charge, a voluntary
4 manslaughter charge, and involuntary manslaughter charge.
5 You will consider them in that order since the manslaughter
6 is a lesser included offense of murder and the involuntary
7 is a lesser included offense of, of voluntary manslaughter.

8 I need to let you know, Mr. Foreman, that the jury's
9 decision needs to be unanimous. All 12 members of the jury
10 must agree on the jury's verdict. The jury's verdict can
11 not be based on passion or sympathy and can not be
12 capricious but it must be based on the evidence that has
13 been presented to the jury in the course of this trial.

14 If ever, during the jury's deliberation, one member of
15 the jury has to leave to go to the restroom, make a phone
16 call, do something, then the deliberations need to cease and
17 not begin again until all 12 members are present.

18 Mr. Foreman, once the jury has made their decision in
19 regards to the charges, then I'll need for you to execute
20 the document accordingly. Sign your name and date it. And
21 please knock on the door and let the bailiff know.

22 One time I had a jury, I forgot to tell them to knock
23 on the door and let the bailiff know. They stayed back
24 there for hours and we couldn't figure out what was going
25 on. Finally, we had to send the bailiff back there and they

1 said well, you didn't tell us what to do once we finished.

2 But, Mr., Mr. Foreman, if you would, you may retire
3 back to the jury deliberation room. Do not begin your
4 deliberations yet. I still have a couple matters that I
5 have to take up with the, with the attorneys.

6 Okay. You may retire.

7 (WHEREUPON, the following takes place outside the
8 presence of the jury.)

9 THE COURT: Any exceptions to the charge from the State
10 or the defense?

11 SOLICITOR BULSA: None by the State.

12 MR. BROWN: None by the defense, Your Honor.

13 THE COURT: All right. If y'all would, be sure that we
14 have the proper exhibits and that we're not gonna send
15 anything back that doesn't need to go back.

16 (Pause.)

17 THE COURT: Okay. Give it to Maxie and then they'll be
18 able to---

19 SOLICITOR BULSA: Okay.

20 THE COURT: All right. Gentlemen, we have two
21 alternates. We can either dismiss them if there's an
22 agreement to go with less than 12 in the event we have an
23 emergency or I can have them placed in the other room in the
24 event we need them.

25 (No response.)

1 THE COURT: I'll have them placed in the other, other
2 room.

3 Take the alternates into the other jury room and while
4 they -- the other 12 engage in deliberations.

5 All right. All right. We will step down. Be sure
6 that everybody hangs, hangs tight so we can get you in the
7 event we need you.

8 (WHEREUPON, the jury began deliberations at 3:14PM and
9 returned with a question at 4:23PM.)

10 THE COURT: All right. We have a -- the jury has a
11 question.

12 They've asked for clarification of the law of murder
13 versus voluntary manslaughter. Signed Zerno Martin, Juror
14 Number 87.

15 What I would propose we do is let me bring the foreman
16 out here. Let me tell him that what I can do is I can
17 recharge them on both murder and also on voluntary
18 manslaughter and that -- tell him the procedure and then let
19 him tell me if that's what he wants to do.

20 SOLICITOR BULSA: That's fine with the State.

21 MR. BROWN: That's fine with defense.

22 THE COURT: All right. Let's bring the foreman out.

23 (WHEREUPON, the foreman enters the courtroom at this
24 time.)

25 THE COURT: All right. Mr. Foreman, Mr. Foreman, I've

1 got your note.

2 what I can do is I can bring the entire jury back out
3 here and I can review the charge that I gave you on murder
4 and the charge on voluntary manslaughter.

5 Do you think that's what the jury wants?

6 THE FOREMAN: I think that's what they want, Your
7 Honor.

8 THE COURT: Okay. All right. Let me find my notes and
9 we'll get you back out just shortly.

10 (WHEREUPON, the foreman leaves the courtroom at this
11 time.)

12 THE COURT: All right. Let's bring the jury in.

13 (WHEREUPON, the following takes place within the
14 presence of the jury.)

15 THE COURT: All right. Mr. Foreman, ladies and
16 gentlemen, the defendant is charged with murder. The State
17 must prove, beyond a reasonable doubt, that the defendant
18 killed another person with malice aforethought.

19 Malice is hatred, ill will, or hostility towards
20 another person. It is the intentional doing of a wrongful
21 act without just cause or excuse and with an intent to
22 inflict an injury or under circumstances that the law will
23 infer an evil intent.

24 Malice aforethought does not require that malice exist
25 for any particular time before the act is committed but

1 malice must exist in the mind of the defendant just before
2 and at the time of the act is committed. Therefore, there
3 must be a combination of the previous evil intent and the
4 act.

5 Malice aforethought may be expressed or inferred.
6 These terms, expressed and inferred, do not mean different
7 kinds of malice but merely the manner in which the malice
8 may be shown to exist. That is either by direct evidence or
9 by inference from facts and circumstances which are proved.

10 Express malice is shown when a person speaks words
11 which express hatred or ill will for another or when the
12 person prepared beforehand to do the act which was later
13 accomplished. For example, lying in wait for a person or
14 any other acts of preparation going to show that the deed
15 was within the defendant's mind would be expressed malice.

16 Malice may be inferred from conduct showing a total
17 disregard for human life.

18 If you find that the State has failed to prove, beyond
19 a reasonable doubt, that the defendant committed murder, you
20 may consider whether the State has proved, beyond a
21 reasonable doubt, that the defendant committed voluntary
22 manslaughter. Included within the offense of murder is the
23 lesser offense of, offense of voluntary manslaughter.

24 To prove voluntary manslaughter, the State must prove,
25 beyond a reasonable doubt, that the defendant took the life

1 of another in the sudden heat of passion based on sufficient
2 legal provocation. Both heat of passion and sufficient
3 legal provocation must be present at the time of the killing
4 to constitute voluntary manslaughter.

5 Sudden heat of passion may, for a time, affect a
6 person's self-control and temporarily disturb a, disturb a
7 person's reason. The sudden heat of passion must be the
8 type that would make an ordinary person unable to coolly
9 reflect on his actions and would produce an uncontrollable
10 impulse to do violence. Sufficient legal provocation must
11 be the type that would make a person of ordinary reason and
12 caution become enraged and to lose control temporarily. The
13 provocation needed for voluntary manslaughter must come from
14 some act of or related to the victim.

15 words alone, however vulgar or insulting, are not
16 enough to be legal provocation. Where death is caused by
17 the use of a deadly weapon, the words must be accompanied by
18 some overt threatening act which would have produced the
19 heat of passion.

20 The exercise of a legal right, no matter how offensive
21 it is to another, is never sufficient legal provocation for
22 voluntary manslaughter. If the heat of passion had cooled
23 or if there was enough time between the provocation, if any,
24 and the killing for the passion or the reason -- of a
25 reasonable person to cool, the killing would not be

1 voluntary manslaughter.

2 In deciding whether a reasonable person would have had
3 enough time to cool off, you should consider all the
4 circumstances surrounding the killing. You may consider the
5 nature of the provocation, if any, the defendant's mental
6 and physical state and the circumstances and relationships
7 between the parties.

8 Mr. Foreman, ladies and gentlemen, you may return back
9 to the jury deliberation room.

10 (WHEREUPON, the following takes place outside the
11 presence of the jury.)

12 THE COURT: We've made the note a Court's Exhibit to
13 the proceeding.

14 (WHEREUPON, the note was marked as Court's Exhibit No.
15 1 and received into evidence at this time.)

16 THE COURT: All right. We will stand at ease.

17 (WHEREUPON, the jury began deliberations again and
18 returned with another question at 5:43PM.)

19 THE COURT: Are they bringing your client in?

20 THE CLERK: Yes, sir.

21 MR. BROWN: Yes, sir.

22 (WHEREUPON, the defendant entered the courtroom at this
23 time.)

24 THE COURT: Lawyers approach.

25 (WHEREUPON, a bench conference was held at this time.)

1 THE COURT: All right. Let's bring the foreman in.

2 (WHEREUPON, the following takes place within the
3 presence of the foreman of the jury.)

4 THE COURT: All right. Mr. Foreman, I've received your
5 note.

6 First of all, we don't want to know what's going on in
7 the jury room but I want to propose something to you based
8 on my interpretation of your note.

9 There was a section of the law that I instructed the
10 jury that dealt with intent that also contained the
11 sub-issue of transfer of intent or transfer intent. I would
12 propose that I answer the jury's question by bringing them
13 out here and me instructing the jury once again on the
14 intent section.

15 That, that -- do you feel that that would answer the
16 jury's question?

17 THE FOREMAN: Let's hope so. I hope so, Your Honor.

18 THE COURT: Okay.

19 THE FOREMAN: Yes.

20 THE COURT: All right. If you'll go tell them to get
21 ready. Then we will bring them out here and I will charge
22 them on the issue of intent.

23 (WHEREUPON, the following takes place within the
24 presence of the jury.)

25 THE COURT: All right. Mr. Foreman, ladies and

1 gentlemen, I'm gonna recharge the jury on the intent
2 element.

3 In order to establish criminal liability, criminal
4 intent is required. For example, the mental state required
5 to be proven by the State for a particular crime might be
6 purpose, intent, knowledge, recklessness, or criminal
7 negligence. Criminal intent must be proven by the State
8 beyond a reasonable doubt. Criminal intent is always a
9 matter that must be determined by the jury from the
10 circumstances surrounding the situation.

11 There is no way to prove intent to a mathematical
12 certainty. There is no way medical science can dissect a
13 person's brain and determine what the person had in mind.
14 So, the law says that criminal intent may be inferred from
15 the circumstances shown to have existed.

16 This is how you make a determination of whether or not
17 the element requiring intent was present. It is not
18 necessary to establish intent by direct and positive
19 evidence but intent may be established by inference in the
20 same way as any other fact by taking into consideration the
21 acts of the parties and all of the facts and circumstances
22 of the case.

23 Criminal intent is a mental state, a conscious
24 wrongdoing. It is up to you to determine what the defendant
25 intended to do based on circumstances shown to have existed.

1 Criminal intent can arise from action or failure to act. It
2 may arise from negligence, recklessness, or an indifference
3 to duty or to consequences that is considered by law to be
4 the equivalent of criminal intent.

5 If the defendant, with malice aforethought, attempts to
6 kill another person, but, by mistake, injures or kills a
7 different person, the defendant still has the intent to
8 kill. The intent to kill is merely transferred from the
9 original person that the defendant attempted to kill to the
10 actual person killed or injured. The defendant would be
11 guilty just as if the act had resulted in the death or
12 injury of the person the defendant intended to kill.

13 All right. Thank you very much, ladies and gentlemen.

14 You may retire back to the jury deliberation room.

15 (WHEREUPON, the following takes place outside the
16 presence of the jury.)

17 THE COURT: All right. I've given the note to the
18 court reporter to make part of the record of this
19 proceeding.

20 (WHEREUPON, the note was marked as Court's Exhibit No.
21 2 and received into evidence at this time.)

22 THE COURT: We'll stand at ease.

23 (WHEREUPON, the jury returned to deliberations and
24 returned with a verdict at 7:13PM.)

25 THE COURT: All right. I'm, I'm informed that the jury

1 has reached a verdict.

2 I would like to caution and warn members of the
3 gallery, I can appreciate the emotional aspects that y'all
4 would feel for this case. But there's not to be any sounds
5 made, regardless of what the verdict is, after the jury has
6 returned its verdict.

7 All right. If there is, the officers are instructed
8 they're to remove you immediately from the courtroom.

9 Anything else before we bring the jury in?

10 SOLICITOR BULSA: Not from the State, Your Honor.

11 MR. BROWN: None from the defense, Your Honor.

12 THE COURT: Okay. Let's bring the jury in.

13 (WHEREUPON, the following takes place within the
14 presence of the jury.)

15 THE COURT: And we can bring the alternates in as well
16 and have them sit in the gallery.

17 Maxie, you want to bring the alternates into, into the
18 gallery?

19 THE BAILIFF: Yes, sir.

20 (WHEREUPON, the alternate jurors were brought into the
21 courtroom at this time.)

22 THE COURT: All right. Mr. Foreman, I have been
23 informed that the jury has reached a verdict.

24 Is that correct?

25 THE FOREMAN: Yes, sir.

1 THE COURT: If you will, give the verdict form to the
2 bailiff.

3 (WHEREUPON, the Foreman complies.)

4 THE COURT: All right. Madam Clerk.

5 (Pause.)

6 THE COURT: All right. Madam Clerk, if you will,
7 please publish the verdicts.

8 THE CLERK: Yes, sir.

9 The County of Spartanburg, State of South Carolina
10 versus Terrell Antonio Brown, on Indictment Number
11 2013-GS-42-4250, in regards to the deaths of -- death of
12 Laquinton Yeargin, we, the jury, unanimously find Terrell
13 Antonio Brown guilty of voluntary manslaughter. Signed by
14 the foreperson dated 3/19 of 2015.

15 On Indictment Number 2013-GS-42-4249, in regards to the
16 death of Nahtyriean Parks, we, the jury, unanimously find
17 Terrell, Terrell Antonio Brown guilty of voluntary
18 manslaughter.

19 On Indictment Number 2014-GS-42-5071, we, the jury,
20 unanimously find Terrell Antonio Brown guilty of unlawfully
21 carrying of pistol. Signed by the foreperson dated 3/19 of
22 2015.

23 Ladies and gentlemen of the jury, is this your verdict
24 and still your verdict, if so, please raise your right-hand.

25 (WHEREUPON, all jurors raise their hands at this time.)

1 THE CLERK: So say you-all.

2 THE COURT: All right. Thank you.

3 Mr. Foreman, ladies and gentlemen -- anything before we
4 dismiss the jury from the State or the defense?

5 SOLICITOR BULSA: Not from the State.

6 MR. BROWN: None from the defense, Your Honor.

7 THE COURT: Thank you, gentlemen.

8 (WHEREUPON, the jury panel was dismissed at this time.)

9 THE COURT: Oh, yes, the alternates can go as well.
10 Thank y'all very much.

11 Any reason why -- anything now that the jury's been
12 dismissed?

13 Anything from either side before we proceed with
14 sentencing?

15 SOLICITOR BULSA: Not from the State.

16 THE COURT: All right. Mr. Brown, if you will, please
17 stand.

18 (WHEREUPON, the Defendant complies.)

19 THE COURT: Mr. Brown, I have a few questions for you.
20 You are 25.

21 Is that correct?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And how far did you go in school?

24 THE DEFENDANT: Graduated.

25 THE COURT: Are you married, single, divorced, or

1 widowed?

2 THE DEFENDANT: I got a girlfriend.

3 THE COURT: All right. Do you have children?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: How many?

6 THE DEFENDANT: One.

7 THE COURT: How old?

8 THE DEFENDANT: Two.

9 THE COURT: And prior to your being arrested on these
10 charges, did you have a job outside the home?

11 THE DEFENDANT: No, sir.

12 THE COURT: How were you supporting yourself
13 financially at the time?

14 THE DEFENDANT: Just around the way stuff.

15 THE COURT: Ever served in the military?

16 THE DEFENDANT: No, sir.

17 THE COURT: And how long have you been in jail on these
18 charges?

19 THE DEFENDANT: Eighteen months.

20 THE COURT: Do you remember the date that you got
21 arrested?

22 THE DEFENDANT: September 2nd.

23 THE COURT: And, Mr. Solicitor, any prior record?

24 SOLICITOR BULSA: Yes, sir, you heard it briefly.

25 He had a possession with intent to distribute cocaine.

1 He pled guilty in 2008. He received a youthful offender
2 sentence suspended to probation. That youthful offender
3 sentence was revoked in June of 2010. That is his prior
4 record.

5 THE COURT: All right. Did, did anyone wish to address
6 the Court on behalf of the victims?

7 SOLICITOR BULSA: Yes, sir, they did. I -- Your Honor,
8 Mrs. Tabatha Parks is the mother of Tee Parks. She doesn't
9 wish to speak. Mr. Earl Harbin is the stepfather of Mr.
10 Yeargin. He would like to address the Court.

11 THE COURT: All right. Yeah.

12 And you're Mr. Harbin?

13 MR. HARBIN: Yes, sir.

14 THE COURT: Sir, just need to let you know we are
15 making a recording of everything that happens here. When
16 you speak, please speak up loud enough so that both the
17 court reporter and I can hear you.

18 MR. HARBIN: Uh-huh. (Affirmative).

19 THE COURT: And just start by giving us your full name.

20 MR. HARBIN: Earl Lee Harbin.

21 THE COURT: Yes, sir, Mr. Harbin.

22 MR. HARBIN: I know the young man whole family. You
23 know what I'm saying? I wish all of this could of went,
24 went the other way. You know what I'm saying? I hate this
25 happened. I hate this happened for his mother. I hate it

1 happened for his brother. Mainly, his son, you know.

2 I ain't mad at him. Ain't nobody mad at him. I
3 forgave him, you know, and I hope all of this could just,
4 you know, fall.

5 THE COURT: I'm sorry.

6 MR. HARBIN: I wish all of this could of been avoided.
7 It didn't happen, you know, cause I know his family. I know
8 it's hurting them now and I -- and it's hurting us too.
9 That's all I got to say.

10 THE COURT: Thank you, sir.

11 And there was no victim impact on behalf of the Parks
12 family?

13 SOLICITOR BULSA: They are too broken up, Your Honor.

14 THE COURT: Okay.

15 SOLICITOR BULSA: Mrs. Tabatha Parks.

16 MRS. TABATHA PARKS: It hurts me to know that -- it's
17 hurting me because Terrell was close to me. Really close.
18 And I just don't want to see him spend so much time behind
19 bars. He does have a son. I know it -- what happened took
20 my son away from me but I don't want him to spend the rest
21 of his life away from his son.

22 THE COURT: All right. Thank you, ma'am.

23 Anything else from the State?

24 SOLICITOR BULSA: No, sir.

25 THE COURT: Yes, sir, Mr. Mike Brown.

1 MR. BROWN: May it please the Court, Your Honor.

2 You've heard my client's age. He is a high school
3 graduate. He is a father of one young child. Of course, he
4 has the love and support of family members that are seated
5 in this courtroom on both sides.

6 It's an unfortunate set of facts that have been
7 presented to this Court. You did hear what we would of
8 provided by way of mitigation in terms of what
9 Mr., Mr. Brown said happened on that unfortunate morning.
10 He would have me to express to the Court that, again, it
11 wasn't his intention, in any way, shape, or form, to
12 willfully and intentionally to take someone's life without
13 him feeling the threat that he felt he faced that morning.

14 He is extended, during the time period of the pendency
15 of this case, his apologies to the family members on the
16 other side and he remains with that same apology before the
17 families and, of course, to the Court.

18 We would ask the Court to consider what you heard the
19 record of seven years ago when indeed he was a youth when he
20 did receive a youthful offender sentence, and the
21 circumstances behind why he's standing before the Court.

22 A minimum sentence, Your Honor, we understand that
23 there has been a loss of life but, under these
24 circumstances, it was not anything that he was intending to
25 have happened but for the circumstances that he found

1 himself faced with that morning.

2 we would ask that the Court would consider these
3 factors. If he's able to, he would want to address the
4 Court, of course, and speak to the families in his own way.

5 THE COURT: Mr. Terrell Brown, do you agree with the
6 statements that were just made by your lawyer?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And, Mr. Mike Brown, is there anyone else
9 that wishes to address the Court on behalf of Mr. Brown
10 prior to my hearing from Mr. Brown?

11 MR. BROWN: I have not spoken with any members of the
12 family but I don't know if anyone would want to say anything
13 from Mr. Brown's family.

14 THE COURT: Okay.

15 MR. BROWN: I don't think so.

16 THE COURT: Mr. Terrell Brown, is there anything else
17 that you would like to say or want me to know or consider?

18 THE DEFENDANT: I just want to say that I'm sorry all
19 this happened. I wish it never happened and I just -- I
20 sincerely felt threatened that night, and I, I never wanted
21 to harm nobody. That's all I got to say.

22 THE COURT: All right. Thank you, sir.
23 Voluntary manslaughter carries?

24 SOLICITOR BULSA: Two to thirty.

25 MR. BROWN: Two to thirty, Your Honor.

1 THE COURT: And the unlawful carrying of pistol?

2 SOLICITOR BULSA: Zero to one.

3 MR. BROWN: Zero to one.

4 THE COURT: Can you split manslaughter?

5 MR. BROWN: I believe, yes, sir.

6 (Pause.)

7 THE COURT: I'll find that there's a substantial
8 factual basis -- all right. I don't have to do that. This
9 is not a plea.

10 All right. This is what we're gonna do.

11 On the voluntary manslaughter charges, these will be
12 concurrent sentences, a like sentence under each, will be a
13 30 year sentence at the State Department of Corrections.
14 That will be suspended upon the service of 15 years and the
15 service of five years of supervision. Gets credit since
16 September the 2nd, 2013. That charge will run concurrent
17 with the one year sentence on the unlawful carrying of a
18 pistol charge to which he'll also receive credit from
19 September the 2nd, 2013.

20 Good luck to you, sir.

21 MR. BROWN: Thank you, Your Honor.

22 THE COURT: I'll step down.

23

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

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

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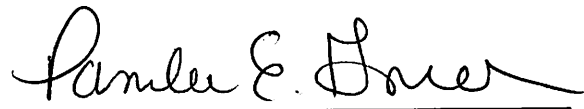
25

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 16th through 19th days of March, 2015.

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

May 3rd, 2017



PAMELA E. GREEN, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Spartanburg)Terrell Antonio Brown)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2016-CP-42-**4549**

APPLICATION FOR

POST-CONVICTION RELIEF

M. HOPE BLACKLEY

2016 DEC 19 AM 10:45

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Inst. 4460 Broad River Road, Columbia, South Carolina 29210.
2. Name and location of Court which imposed sentence Court of General Sessions, Spartanburg, South Carolina.
3. Name(s) of co-defendant(s) (if any) None!
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014-GS-42-04249 Voluntary Manslaughter; 2014-GS-42-04250 Voluntary Manslaughter; 2013-GS-42-05071 Unlawful Carrying firearm.

- (b) _____
 (c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) March 19, 2015 (Volunt. Manslaughter 15 yrs x 2 concur.)
 (b) March 19, 2015 (unlawful carry pistol 1 year concur.)
 (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
 (b) after a plea of not guilty Trial
 (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
Applicant believed Counsel appealed.

8. If you answered Ayes@ to (7), list:

- (a) the name of each Court to which you appealed:
 i. Case was explained would be pending in S.C. Court of Appeals. Only to learn none was ever filed.
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. N/A
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. N/A
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. N/A
 ii. _____
 iii. _____

2016 DEC 19 AM 10:45

M. HOPE BLACKLEY

9. If you answered Ano@ to (7), state your reasons for not so appealing:

- (a) Applicant "was not aware counsel did not appeal", until instructions led family member to check on the status of the "requested appeal".

- (b) _____
 (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel, in violation of
Applicant's Sixth and Fourteenth Amendment rights.
 (b) _____
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Counsel failed to immediately or directly, to appeal
 (b) the trial judge's pre-trial ruling where the court de-
 (c) denied Applicant under the Protect Person or Property
Act. See White v. State 208 S.E.2d at 39.

12. Prior to this application have you filed with respect to this conviction: No.

- (a) any petition in a State Court under South Carolina Law? N/A
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
 (d) any other petitions, motions or applications in this or any other Court? N/A

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

- (b) the name and location of the Court in which each was filed:

i. N/A

ii. N/A

iii. N/A/

M. HOPE BLACKLEY

2016 DEC 19 AM 10:45

CLERK OF COURT
 CRIMINAL DIVISION

- iv. _____
- (c) the disposition thereof: _____
- i. N/A _____
- ii. N/A _____
- iii. N/A _____
- iv. _____
- (d) the date of each such disposition: _____
- i. N/A _____
- ii. N/A _____
- iii. N/A _____
- iv. N/A _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition: _____
- i. N/A _____
- ii. N/A _____
- iii. N/A _____
- iv. N/A _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No. _____

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented: N/A

- i. _____
- ii. _____
- iii. _____

- (b) the proceedings in which each ground was raised:

- i. N/A _____
- ii. N/A _____
- iii. N/A _____

2016 DEC 19 AM 10:46

M. HOPE BLACKLEY

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Counsel "failed to perfect appeal".

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes.

(c) your sentencing? Yes.

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No Appeal was perfected.

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? None.

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Michael D. Brown, 145 N. Church St. Spartanburg 20306
(Unit 39)

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. General Sessions Court (pre-trial and trial)

ii. _____

iii. _____

2016 DEC 19 AM 10:46
M. HOPE BUCKLEY

19. State clearly the relief you seek in filing this application:
Reverse and remand for new trial, based on counsel's inef-
fectiveness, which caused Applicant to be unlawfully detained
and convicted. (See Attached Sheets)

20. Are you now under sentence from any other court that you have not challenged?

No.

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

I, Terrell Antonio Brown, 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.

Terrell Brown

SWORN to and subscribed before me this 13
day of December, 2016.

[Signature] (L.S.)
Notary Public

My Commission Expires: 8/14/2020

2016 DEC 19 AM 10:46
M. HOPE BLACKLEY

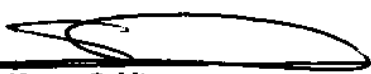
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Terrell Antonio Brown, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
13 day of December, 2016.


Notary Public

My Commission Expires: 7/16/2020

2016 DEC 19 AM 10:46
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Terrell Antonio Brown, #341207,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

2016-CP-42-4549

**RETURN AND PARTIAL
MOTION TO DISMISS**

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on December 19, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted by the September 2013 term of the Grand Jury for Spartanburg County for two counts of murder (2013-GS-42-4249, 4250). Applicant was later indicted by the October 2014 term of the Grand Jury for Spartanburg County for unlawful carrying of a pistol (2014-GS-42-5071). Applicant was represented at trial by Michael Demorris Brown, Esquire. Applicant proceeded to trial before the Honorable J. Mark Hayes, II, and a jury. Applicant was convicted of two counts of the lesser included offense of voluntary manslaughter and convicted as indicted of unlawful carrying of a pistol. On March 19, 2015 Judge Hayes sentenced Applicant to imprisonment of thirty (30) years suspended upon the service of fifteen (15) years and five (5) years' probation for each count of voluntary manslaughter, as well as one (1) year for unlawful carrying of a pistol. All sentences are concurrent. Applicant did not appeal his conviction.

II.

In his application and attachment thereto, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

- a. "Counsel failed to immediately or directly appeal the trial judge's pre-trial ruling where the court denied Applicant under the Protect Person or Property Act."
- b. "See White v. State, 208 S.E.2d at 39."
- c. "Applicant 'was not aware counsel did not appeal,' until instructions led family member to check on the status of the 'requested appeal.'"
- d. "Ineffective assistance of counsel in violation of Applicant's Sixth and Fourteenth Amendment rights."

Attached herewith and incorporated herein by reference are the records of the Spartanburg County Clerk of Court regarding the subject convictions and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

III.

Applicant claims that he was denied effective assistance of counsel because his trial counsel did not appeal his conviction. The decision of the South Carolina Supreme Court, in White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), holds that even though the post-conviction relief court finds that the Applicant had never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. However, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

Respondent submits that this allegation is meritless and demands strict proof thereof. Nevertheless, the allegation raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

IV.

All allegations in the application, with the exception of the failure to file an appeal claim under White v. State, 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. Specifically, the act requires 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 on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

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 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) 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.”

Applicant was convicted and sentenced on March 19, 2015. The current application was not filed until December 19, 2016—nine months after the one-year statutory filing period expired. Therefore, the application, with the lone exception of the White claim, should be summarily dismissed as barred by the statute of limitations.

V.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VI.

Each and every allegation contained within the application not either expressly admitted, qualified, or explained is hereby denied.

[Remainder of page left blank intentionally]

VII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claim that trial counsel failed to file an appeal.

Respectfully submitted,

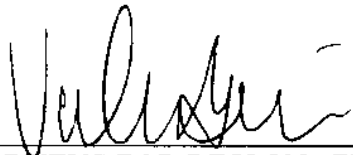
ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

By: 
ATTORNEYS FOR RESPONDENT

May 18, 2017

RECEIVED
MAY 18 2017
OFFICE OF THE ATTORNEY GENERAL

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

3
4 TERRELL ANTONIO BROWN,) TRANSCRIPT
5 APPLICANT,) OF
6 vs.) RECORD
7 STATE OF SOUTH CAROLINA,)
8 DEFENDANT.) 2016-CP-42-4549

9
10 January 31st, 2018
11

12 B E F O R E:

13 THE HONORABLE GRACE GILCHRIST KNIE, Judge.
14

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

16 SUSANNAH C. ROSS
17 ESQ.
Attorney for the Applicant

18 VALERIE GIOVANOLI
19 ASSISTANT ATTORNEY GENERAL
20 Attorney for the State
21
22

23 Pamela E. Green
24 Circuit Court Reporter
25

I N D E XWITNESSESPAGE

Motion

3

TERRELL BROWN

Direct examination by Ms. Ross

11

Cross-examination by Ms. Giovanoli

13

DEVONTE BROWN

Direct examination by Ms. Ross

19

MICHAEL BROWN

Direct examination by Ms. Giovanoli

22

Cross-examination by Ms. Ross

27

Redirect examination by Ms. Giovanoli

31

Closing by Ms. Ross

32

Closing by Ms. Giovanoli

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Certificate

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P R O C E E D I N G S

MS. GIOVANOLI: May it please the Court?

THE COURT: Yes, ma'am.

MS. GIOVANOLI: Okay. This is the case of Terrell Antonio Brown versus the State of South Carolina. Docket Number 2016-CP-42-4549.

We're before the Court on an application for post-conviction relief filed on December 19th, 2016. In this case, applicant was indicted in September of 2013 for two counts of murder. Applicant was later indicted in October, 2014 for unlawful carrying of a pistol and apparently was represented by Michael Demorris Brown.

He proceeded to trial before a jury and the Honorable J. Mark Hayes, II. He was convicted of two counts of the lesser included offense of voluntary manslaughter and convicted, as indicted, on the unlawful carrying of a pistol.

On March 19th, Judge Hayes sentenced applicant to imprisonment for 30 years suspended upon the service of 15 years and five years probation for each count of voluntary manslaughter as well as one year for the unlawful carrying of a pistol. All sentences were to, to run concurrent and applicant did not appeal his conviction or sentences.

Today we're before the Court on an application for

1 post-conviction relief that was actually filed outside the
2 one year statute of limitations. It was actually filed
3 nine months after that statute of limitations had ran,
4 and, as such, this Court lacked subject matter
5 jurisdiction to hear the action. Jurisdiction -- to hear
6 a post-conviction relief matter is conferred by statute
7 and that's the South Carolina Code Section 17-27-30.

8 So, the time in which a post-conviction relief
9 application may be filed and heard is set by statute and
10 also Section 17-27-45(a). I'll, I'll reference that.

11 So, because a post-conviction relief is a legal claim
12 and not a case in equity, the statute of limitations must
13 be strictly construed. Principles of equity are not
14 applicable in a legal action with a strict statutory
15 filing requirement absent extraordinary circumstances and
16 I will cite to *Pelzer versus State*, which I have made
17 copies of for both opposing counsel and the Court.

18 If I may approach?

19 THE COURT: Yes, ma'am.

20 MS. GIOVANOLI: There you go.

21 So, in *Pelzer*, our Supreme Court of South Carolina,
22 they've elaborated on equitable tolling statutes of
23 limitations and when an in -- inmate is entitled to
24 toll -- to that tolling and I'm gonna refer to Page 3 of
25 the printout of *Pelzer*.

1 THE COURT: Yes, ma'am.

2 MS. GIOVANOLI: And it's stated at the -- at Headnote
3 6 and 7, equitable tolling is reserved for extraordinary
4 circumstances and they refer to another case, a Supreme
5 Court case, stating that while equitable tolling was
6 allowed where a claimant actively pursued remedies but
7 filed defective pleading or were induced by adversary into
8 allowing deadline to pass, we've generally been much less
9 forgiving in receiving late filings where the claimant
10 failed to exercise due diligence in preserving his legal
11 rights.

12 It goes on further down to talk about equity --
13 equitable tolling. However, equitable tolling, which
14 allows the plaintiff to initiate an action beyond the
15 statute of limitations deadline, is typically available if
16 the claimant was prevented, in some extraordinary way,
17 from exercising his or her rights or, in other words, if
18 the relevant facts presents -- presents sufficiently rare
19 and exceptional circumstances that would warrant apply --
20 application of the doctrine. And then it goes on to kind
21 of give examples of that.

22 And so, in this case, we would argue that
23 extraordinary circumstances do not exist. Applicant
24 claims that he believed he had a direct appeal pending.
25 But given that it was a year and nine months of believing

1 that a direct appeal was pending, he would -- should have
2 reached out to an attorney, should of had communications,
3 been checking on the status, which is openly available via
4 the C-track on the Court's website. And, notably, our
5 Supreme Court has only carved out two very narrow
6 exceptions to the equitable tolling and that was in
7 *Ferguson* where an applicant was actually incompetent. And
8 so they found that, because of his incompetency, the
9 statute of limitations should be equitably tolled.

10 And the other one was more recently, *Mose*, and that
11 was a -- where *Mose* actually filed close to the deadline.
12 But that -- the Court said that, with proof from an inmate
13 that it got to the South Carolina Department of
14 Corrections mailroom prior to the statute of limitations
15 expiring, that they would equitably toll the statute of
16 limitations.

17 And so, because our case law has carved out two very
18 narrow exceptions, I would argue that this does not fall
19 under those exceptions. If the Court does -- if the
20 appellate courts do want to make this an exception, they,
21 they will have ample cases to do so. There's just no case
22 law to support equitable tolling in this case.

23 So, we would argue that the PCR be dismissed, with
24 the exception of the belated *White* claim, which is that
25 counsel failed to file a direct appeal and the State is

1 ready to present testimony from Mr. Brown on that issue
2 today. The *White* claim does survive the statute of
3 limitation. However, the rest of the allegations on
4 ineffective assistance of counsel do not.

5 And, at this point, I'll hand it over to Ms. Ross who
6 represents the -- Mr., I'm sorry, Brown.

7 THE COURT: Yes, ma'am.

8 MS. ROSS.

9 MS. ROSS: Thank you, Your Honor.

10 I understand equitable tolling. In, in this case, I
11 would argue there's a *Seals v. Tennessee*. I didn't make a
12 copy of that case. It is out-of-state. But it does bring
13 up the fact that due process considerations may also toll
14 a statute of limitations and that's what we would argue
15 exists in Mr. Brown's case.

16 Mr. Brown tells me that the reason he didn't file a
17 PCR is he was simply waiting for his appeal, which it was
18 his understanding, from his family and himself, that the,
19 the appeal was requested from Mr. Brown, his lawyer, and,
20 and that was -- that process was underway.

21 Given that that was his understanding, he was under
22 the, the impression that it was going forward as an appeal
23 and going through that process and, and having a year for
24 an appeal to go forward to the, the Court of Appeals is
25 not unheard of in that matter, and given the lack of

1 access from SCDC to computers to find out the status of
2 cases, it makes it more understanding this delay in
3 filing.

4 So, he would request that he be given a full hearing
5 on, on this matter and a continuance so that we could get
6 the, the, the packet or the, the trial transcript and
7 review it to see whether there was some real ineffective
8 assistance of counsel or not in this case.

9 THE COURT: Okay.

10 MS. GIOVANOLI: And if I may just briefly respond?

11 THE COURT: Yes, ma'am.

12 MS. GIOVANOLI: I call the Court's attention to Page
13 4 of *Pelzer*, which is authoritative in this circuit,
14 unlike the Tennessee case that's persuasive. There's a
15 quote on the right-hand column, any indication of equity,
16 the relief is strict application of the statute of
17 limitations must be guarded and frequent less
18 circumstances of individualized hardships supplant the
19 rules of clearly drafted statutes. To apply equity,
20 equity generously would loosen the rule of law to whims
21 about the adequacy, adequacy of excused, divergent
22 responses to claims of hardship, and subjective notions of
23 fair accommodation.

24 We believe, therefore, that any resort to equity must
25 be reserved for those rare instances where, due to

1 circumstances external to the party's own conduct, would
2 be unconscionable to enforce the limitation period against
3 the party and gross injustice would result.

4 In this case, applicant waited one year and nine
5 months to file his application. Although he thought he
6 had a pending direct appeal, that is not an excuse for not
7 exercising due diligence. It's certainly not something
8 that prevented him from asserting his rights.

9 So, we would argue that *Pelzer*, the standing
10 authority, argues against extending equity tolling in this
11 instance.

12 THE COURT: Thank you.

13 All right. And so, Ms. Ross, as I understand your
14 motion, your motion is that you would also like a
15 continuance to further prepare the post-conviction relief?

16 MS. ROSS: Correct. There has been -- no, no
17 transcript has been provided to me at this time to, to
18 review for the post-conviction relief because we were
19 under the agreement that it would be -- if we go forward
20 with that full hearing, we'd need a continuance to both
21 have time to review the transcripts so that we can both be
22 fully prepared on the case.

23 MS. GIOVANOLI: So, just to be clear, I did mail the
24 return packet. I have the transcript. But I don't oppose
25 a continuance if Your Honor does not dismiss the PCR.

1 As of today, we are both ready to proceed on the
2 *White* claim, which is not barred by the statute of
3 limitations. So, we can dispose of that.

4 As far as the State's motion to dismiss, we would
5 need a ruling to determine whether or not we were
6 proceeding on a, a late PCR application that's prohibited
7 by statute.

8 THE COURT: Okay. And, Ms. Ross, what is your
9 position about your -- are you, are you prepared to move
10 forward on the *White* claim?

11 MS. ROSS: Yes, Your Honor.

12 THE COURT: Okay. And so this, this is what I would
13 propose. I am going to take the statute of limitation
14 matter under advisement and I will issue instructions on
15 that and we will go forward with the *White* issue today.
16 And if, in fact, I find that there -- that, that this
17 matter is not tolled by the statute of limitations, I will
18 allow Ms. Ross an opportunity to prepare and review the
19 transcript, which I think this, from looking at the
20 transcript, this was a several day trial.

21 Am I correct?

22 MS. GIOVANOLI: You're, you're correct.

23 THE COURT: All right. And so, when counsel is
24 ready, I'm happy to hear from you on, on the *White* issue.

25 MS. GIOVANOLI: Okay. It's applicant's case. So,

1 I'll defer to Ms. Ross.

2 THE COURT: Yes, ma'am.

3 MS. ROSS: Thank you, Your Honor.

4 We would -- I'm sure you're familiar with *White v.*
5 *State* and we'd simply go ahead and call Mr. Terrell Brown
6 to the stand to address, address that issue.

7 THE COURT: Okay. Mr. Brown, good morning, sir. I
8 need for you to come up to this witness stand and I'm
9 gonna need to swear you in.

10 okay?

11 THE WITNESS: Okay.

12 THE COURT: Sir, will you raise your right-hand for
13 me?

14 TERRELL BROWN, being first duly
15 sworn, testified as follows:

16 THE COURT: Thank you, sir. If you'll watch your
17 step and make yourself comfortable in that chair and
18 adjust that microphone.

19 All right?

20 Yes, ma'am.

21 MS. ROSS: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MS. ROSS:

24 Q. Mr. Brown, I'm just gonna cut to the chase.

25 Did, did you -- you had a trial, correct?

1 A. Correct.

2 Q. And, after that trial, did you have any desires or
3 instructions for your lawyer regarding an appeal?

4 A. Yes, ma'am, we, we had -- we had discussed the appeal
5 even before the trial and we had come to an understanding
6 that, had I lost the trial, that an appeal would be
7 immediately filed, a direct appeal.

8 Q. Okay. And you say an understanding.

9 was this based on what your lawyer told you would
10 happen?

11 A. Yes, ma'am, we discussed it. I told him -- I clearly
12 told him that I wanted an appeal if it happened and he
13 clearly told me that he would file for an appeal --

14 Q. Okay.

15 A. -- if --.

16 Q. So, as you were sent off to SCDC, you received a 15
17 year sentence. They came back guilty on reduced charges.

18 Your understanding and your desire was that that case
19 be appealed?

20 A. Yes, ma'am, we even discussed it right after the
21 trial once I seen him -- once we got into the hallway, I
22 asked him again are you gonna file for my direct appeal
23 and he told me yeah.

24 Q. Okay. Now, let's go back to your, your state of
25 mind. You're down in SCDC. You didn't file this PCR

1 within a year.

2 why didn't you?

3 A. To be honest with you, ma'am, I didn't, I didn't know
4 that was an option. I didn't know anything about a PCR.
5 I was just waiting on my appeal to go through. I was, I
6 was under the impression that it was a long process, that
7 it, that it took -- sometime it takes a year, a year or
8 two or three. I was under that impression.

9 So, I was just sitting there waiting for the appeal
10 process to get through.

11 Q. Okay. And what had your lawyer told you about it, if
12 anything?

13 A. About --?

14 Q. About the appeal process.

15 A. I, I -- the only thing he had told me, before the
16 trial, he did tell me that, you know, sometimes it takes,
17 it takes a long time, that it's a long process. That's
18 pretty much all he told me about the appeal.

19 Q. Okay. All right. I have no further questions at
20 this time.

21 THE COURT: Counsel.

22 MS. GIOVANOLI: Just briefly.

23 CROSS-EXAMINATION

24 BY MS. GIOVANOLI:

25 Q. Good morning, Mr. Brown.

1 So, you never received any word from Mr. Brown
2 regarding your appeal after you got sent to SCDC.

3 Is that correct?

4 A. Um.

5 Q. I mean all these conversations you're talking about
6 happened before your trial and right after your trial?

7 A. Right.

8 Q. Okay. So, after you went to SCDC, there was
9 communicate -- communication between you and Mr. Brown
10 regarding an appeal?

11 A. Not directly. But it was a, a, a friend of mine that
12 was saying that she was working with him. So, I sent word
13 through her about it.

14 Q. And you never heard from Mr. Brown regarding the
15 appeal after you went to SCDC.

16 Is that correct?

17 A. That's correct.

18 Q. Okay. And you made no attempt to find out if you had
19 a -- an appeal pending?

20 A. No, I did attempt. I, I tried to contact him. I
21 didn't get any answer or any --.

22 Q. How did you try to contact him?

23 Did you mail him a letter?

24 A. No, I -- through my, through my family. Through my
25 family and through the, the friend I was telling you

1 about.

2 Q. Okay. Did they go to his officer and try to talk to
3 him about this appeal?

4 A. I think so, yeah.

5 Q. Okay. And what was the result of that meeting or
6 that -- them going to his office?

7 A. My -- the friend that was working with him said, said
8 that he said that it was under a way -- it was under way.

9 Q. So, your testimony is that Mr. Brown told a family
10 member that he had an appeal pending for you?

11 A. She wasn't a family, a family member. She was a
12 friend of mine.

13 Q. Okay. So your friend told you that?

14 A. Yes, ma'am.

15 Q. But other than that, you made no attempt to find out
16 about your direct appeal?

17 A. Other than that, no, ma'am.

18 Q. And you received no word from Mr. Brown while you
19 were in SCDC regarding an appeal?

20 A. No, ma'am.

21 Q. Okay. Have no further questions. Thank you.

22 THE COURT: Okay. MS. ROSS.

23 MS. ROSS: Nothing further for Mr. Brown.

24 THE COURT: Okay. Mr. Brown, thank you, sir. If you
25 would watch your step.

1 MS. ROSS: Beg the Court's indulgence.

2 (Pause.)

3 MS. ROSS: Beg the Court's indulgence.

4 THE COURT: Yes, ma'am. Take your time.

5 (Pause.)

6 MS. ROSS: We'd call Devonte Brown to the stand.

7 THE COURT: Good morning, sir. If you would, state
8 your full name for me.

9 THE WITNESS: Devonte Brown.

10 THE COURT: And will you spell your first name?

11 THE WITNESS: D-E-V-O-N-T-E.

12 THE COURT: Devonte Brown.

13 Okay, sir. Will you raise your right-hand for me?

14 DEVONTE BROWN, being first duly
15 sworn, testified as follows:

16 THE COURT: Thank you. Yes, sir, you can put your
17 hand down. Make yourself comfortable in that chair, sir,
18 and pull up to the microphone.

19 okay?

20 MS. GIOVANOLI: Your Honor, I object to the calling
21 of this witness. I had no advance notice that this
22 witness was gonna be testifying and, in all fairness, I
23 have no opportunity to cross-examine him on matters that I
24 could of prepared to cross-examine him on. So, I think
25 it's, due to fairness, I would object to this witness

1 being called at this hearing.

2 THE COURT: Okay. Counsel, your position on that?

3 MS. ROSS: Your Honor, this is Devonte Brown, Terrell
4 Brown's brother. He can confirm what Terrell Brown
5 testified to. It would not go outside of that matter.
6 This goes directly to a discussion I had prior to the
7 hearing with Michael Brown and, and, and, and, and is
8 pertaining to that.

9 So, we would ask that he be allowed to testify at
10 this time and it is just to the appeal issue. There is no
11 surprise issue that will come out about that from
12 Mr. Devonte Brown.

13 THE COURT: Yes, ma'am.

14 MS. GIOVANOLI: My issue is simply with credibility.
15 I don't have the opportunity to cross-examine with him --
16 him on maybe any potential criminal history that could
17 effect his credibility in this Court's view of his
18 testimony.

19 THE COURT: Okay. Counsel, if we were to break for
20 15 minutes, would that assist you?

21 MS. GIOVANOLI: I, I hope it will. I can --.

22 THE COURT: Okay. All right.

23 MS. GIOVANOLI: I can try to resolve that and then I
24 can---

25 THE COURT: Okay. Why don't, why don't we just be in

1 recess then until about 10 till 11:00 and, counsel, if
2 you-all want to talk about the, the, the testimony of this
3 witness also and we will reconvene at that time for
4 Mr. Devonte Brown's testimony.

5 MS. GIOVANOLI: Thank you.

6 THE COURT: Mr. Brown, sir, you -- you'll remain
7 under oath, sir. But we're going to be in recess. Why
8 don't -- you can step down from that witness stand, okay,
9 and I'll call you back up in just a few minutes.

10 MS. ROSS: Judge, I'd be happy to discuss his
11 testimony with him in the presence of the A.G. if that's
12 allowed. I know sometimes, when someone's under oath, you
13 don't allow further speaking to them on, on any matters.

14 THE COURT: I think that's fine.

15 MS. ROSS: Thank you.

16 THE COURT: Okay. All right. We'll be in recess for
17 15 minutes.

18 (WHEREUPON, a short recess was taken at this time.)

19 MS. GIOVANOLI: Your Honor, we're just waiting on the
20 criminal history report and it's on the way down.

21 THE COURT: Okay. We're -- we've still got time.

22 (Pause.)

23 MS. GIOVANOLI: Okay. Your Honor, we're ready to
24 proceed.

25 THE COURT: Okay. Ms. Ross, are you ready?

1 MS. ROSS: Yes, Your Honor.

2 We would recall Devonte Brown to the stand.

3 THE COURT: Okay. Mr. Brown, Devonte Brown, if
4 you'll come forward again, sir. You're still under oath.
5 Watch your step.

6 THE WITNESS: Yes, ma'am.

7 THE COURT: Make yourself comfortable.

8 THE WITNESS: Okay.

9 THE COURT: Okay. Yes, ma'am.

10 MS. ROSS: Thank you, Your Honor.

11 DEVONTE BROWN, having been previously
12 sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. ROSS:

15 Q. Mr. Brown, how do you know Terrell Brown?

16 A. That's my big brother.

17 Q. All right. And what is your background just to
18 briefly -- where, where do you work?

19 A. I go to school. I recently got out of the military a
20 couple months ago.

21 Q. All right. Now, were you there for your brother's
22 trial?

23 A. Yes, ma'am.

24 Q. And do you recall talking to Michael Brown, your
25 brother's trial attorney, about an appeal?

1 A. Yes, ma'am.

2 Q. What was the context of that?

3 What is your recollection of that experience,
4 experience?

5 A. We just basically asked how did it work and that we
6 wanted it and he explained to us how it worked and that he
7 could possibly get more time. Yeah.

8 So we still told him that we wanted to go through
9 with it. The only thing I remember was my mother was the
10 only one that was kind of iffy about that. But everybody
11 else, including Terrell, said we wanted to go through with
12 it.

13 Q. All right. And so, so your, your recollection was,
14 at the time right after the trial, Terrell still wanted --
15 you told his attorney he still wanted an appeal?

16 A. Yes, ma'am.

17 Q. So, what was your understanding that was gonna be the
18 next thing done regarding Terrell's case?

19 A. The appeal process was gonna start or however he file
20 for it.

21 Q. Okay. And, and where did you get that understanding?

22 A. From Michael Brown.

23 Q. Okay. But -- and, and he told you that?

24 A. Yes, ma'am.

25 Q. Okay. I have no further questions.

1 THE COURT: Thank you.

2 MS. GIOVANOLI: I have no questions for this witness.
3 Thank you.

4 THE COURT: Okay. Thank you.

5 Okay. Mr. Devonte Brown, sir, you are excused or --
6 well, you can step down.

7 May he be excused, counsel?

8 MS. ROSS: Yes, Your Honor.

9 THE COURT: Any objection?

10 MS. GIOVANOLI: No objection from the State.

11 THE COURT: Okay. Sir, you're free to go or you can
12 stay. Thank you.

13 THE WITNESS: Yes, ma'am.

14 MS. ROSS: Okay. That's Mr. Terrell Brown's case at
15 this time.

16 THE COURT: Okay.

17 MS. GIOVANOLI: And the State would call Michael
18 Brown.

19 THE COURT: Okay. Mr. Brown. Sorry. We have so
20 many Mr. Browns. Mr. Michael Brown.

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Sir, if you'll raise your right-hand?

23 MICHAEL BROWN, being first duly
24 sworn, testified as follows:

25 THE COURT: Thank you, sir. Have a seat. Make

1 yourself comfortable.

2 THE WITNESS: All right.

3 THE COURT: Yes, ma'am.

4 DIRECT EXAMINATION

5 BY MS. GIOVANOLI:

6 Q. Good morning, Mr. Brown. Thank you for being here.

7 A. Morning.

8 Q. You heard the testimony earlier with regard to
9 discussions about a direct appeal from Mr. Brown's trial,
10 correct?

11 A. That's correct.

12 Q. Okay. And what discussions did you have, prior to
13 trial, regarding a direct appeal with your client?

14 A. Well, we talked about the realities of trial, the
15 fact that he's facing two murder charges, and he was
16 apprised of, I guess, the opportunity of an appeal if that
17 were to be the case in the event he was convicted based
18 upon our conversations that I recall for two murder
19 charges.

20 Q. So, you advised him of his right to a direct appeal?

21 A. Yes, ma'am.

22 Q. Okay. And then, after trial, did you have other
23 discussions regarding a direct appeal?

24 A. I, I don't recall him talking about pursuing an, an
25 appeal. What we did talk about, during the course of the

1 trial, there was, there was testimony that came from a
2 young lady that was said to be girlfriend of one of the
3 decedents, and, throughout the trial, we were receiving
4 information in the course of the case, and I would try to
5 run down information in the trial, but one of the things
6 that he and I discussed was that this young lady
7 apparently was gonna change her testimony or was gonna
8 present after the trial that what she said was not true.

9 And, in regard to that, we discussed that would
10 potentially be a motion for a new trial if she was gonna
11 bring forth or change her testimony that she, she gave in
12 the course of the trial. So, that's what I -- that's what
13 I do recall.

14 Q. Okay. Do you recall discussing a potential 29(b)
15 motion --

16 A. Yes, ma'am.

17 Q. -- for a new trial?

18 A. Yes, ma'am.

19 Q. Okay. Did the applicant ever request that you file a
20 notice of appeal?

21 A. After trial, I don't, I don't recall having that
22 conversation with Terrell or his brother. I know it was
23 questions during the case about the potential of an appeal
24 just because of the I guess the merits of the case if he
25 were to lose. But, after that, what I understood from

1 the, from the family, with the outcome of the case, which
2 we could predict based upon him being convicted of the two
3 voluntary manslaughter charges, and I think it was at the
4 trial table at that time he still had a question about an
5 appeal.

6 As we were waiting for the sentence to be handed
7 down, one of the -- the mother of one of the decedents,
8 she did, in fact, come forth and speak on Terrell's behalf
9 asking I guess essentially for some leniency, leniency in
10 regards to him facing time. And, because of that, I think
11 she -- received a 15 year sentence. He had been in jail
12 the entire time he was awaiting trial. And what I
13 understood from then on, they, they were okay with the
14 amount of time that he, he was gonna get compared to what
15 we had discussed that he could possibly receive --

16 Q. Okay.

17 A. -- based upon being convicted.

18 Q. Okay. And you said that you don't recall him
19 requesting you file a notice of appeal.

20 Do you mean that you don't remember that or that that
21 didn't happen?

22 A. No, at that point, prior to sentencing, there was a
23 discussion about an appeal. But in, in, in light of him
24 getting the 15 years plus the, the, the credit that he
25 should of received or would of potentially received,

1 nothing else came of any conversations. No more direct
2 requests in terms of an appeal.

3 Q. Okay. And go -- just for clarification, there was a
4 break between when the jury rendered its guilty verdict to
5 voluntary manslaughter and the sentencing?

6 A. Yes, ma'am.

7 Q. Is that correct?

8 And your, your testimony is that the mother of the
9 victim actually testified in mitigation for his
10 sentencing?

11 A. Yeah. Yes, ma'am.

12 Q. Okay. So, he got significantly low sentence with
13 regard to, you know, originally based on two charges of
14 murder.

15 Do you agree with that?

16 A. Yes, ma'am.

17 Q. Okay. All right. And there's also been testimony
18 that, that -- from Mr. Brown, the applicant, he sent a
19 female friend to your office to discuss an appeal.

20 Do you -- did that happen?

21 A. No, ma'am, I never had discussions with a female
22 about him receiving an appeal.

23 Q. Did you ever tell anyone his -- him, him, the
24 applicant himself, a friend or family member, that he had
25 a pending appeal?

1 A. No, ma'am.

2 Q. Okay. Did you have any discussions with applicant, a
3 friend, or a family member, after Mr. Brown had gone to
4 SCDC?

5 A. No, I don't, I don't recall a conversation after the
6 trial with his, with his brother. Again, there were
7 questions that the family clearly had during the, the
8 course of the, the case, prior to trial, and during trial.
9 And we were in constant communication out in the hall. I
10 know they came to my office.

11 But I don't recall talking to his brother after the
12 case was done and I certainly, which is my practice, I
13 don't tell anyone to go to trial. I don't tell anyone to
14 plea. I'm not -- I won't try to stop you from going to
15 trial or taking a plea or even exercising your right to an
16 appeal. It's a, it's a sheet of paper --

17 Q. Right.

18 A. -- that can be sent off---

19 Q. Okay.

20 A. ---and that just wasn't the case.

21 Q. So, you never told the applicant not to pursue an
22 appeal?

23 A. I'm, I'm not gonna stand in anybody's way of doing
24 anything they want to do, no.

25 Q. Do you have any reason not to file a notice of appeal

1 if you had been requested to file one?

2 A. No, ma'am, it's -- again, it's just one sheet of
3 paper.

4 Q. All right.

5 A. Yes, ma'am.

6 Q. Okay. So just for the record, you informed applicant
7 of his right to appeal and he did not request an appeal?

8 A. No, ma'am.

9 Q. Is that correct?

10 Okay. Thank you. No further questions.

11 THE COURT: Counsel.

12 CROSS-EXAMINATION

13 BY MS. ROSS:

14 Q. Now, you testified a number of times that you did not
15 recall that.

16 Are you changing that testimony?

17 A. No, I'm not changing that testimony. There was
18 conversations, prior to trial and during the trial, about
19 the notion of an appeal and that's well before we even
20 knew what was gonna be the outcome of the case, whether he
21 was gonna get convicted or if he was obviously gonna be
22 exonerated.

23 Q. All right.

24 A. The fact that he did receive lesser sentences, and
25 ultimately the, the, the family member of the decedent

1 coming to testify, at, at that moment any notions of
2 appeal were --.

3 Q. And do you have anything signed by Mr. Terrell Brown
4 to that effect saying I do not want an appeal, that
5 there -- anybody signed?

6 A. No, I don't have any letters from him, no.

7 Q. Is there anything in writing --

8 A. Not that I have.

9 Q. -- to that effect?

10 And this was two and a half years ago --

11 A. Yes, ma'am.

12 Q. -- his trial or thereabouts?

13 Almost three -- I guess March of 2015?

14 A. Yes, ma'am.

15 Q. Okay. Now, as far as the, the trial itself, would
16 you agree that Mr. Brown had a fairly decent stand your
17 ground hearing prior to this trial?

18 A. I tried to make it a decent stand your ground
19 hearing, yes, ma'am.

20 Q. And the judge found that, that the only reason it
21 wasn't that was because of possibly the kids were
22 loitering out there?

23 Do, do you recall that loitering out at the apartment
24 complex?

25 A. Yes, I know there was a sign posted and we did have a

1 hearing in regards to the loitering issue. That -- that's
2 correct.

3 Q. And would, would you agree that that was an
4 appealable issue?

5 MS. GIOVANOLI: I'm gonna object at this point. I
6 think this issue -- this is not relevant to this issue.
7 The issue is whether or not the applicant requested to, to
8 pursue an appeal and whether or not counsel failed to file
9 that notice of appeal.

10 THE COURT: I'm going to allow it.

11 Go ahead.

12 Q. Would you agree that that would be an appealable
13 issue, the, the ruling on the stand your ground motion?

14 A. Base -- based upon what I tried to turn it into with
15 an argument and based upon what I knew was the facts in
16 regards to Mr. Brown staying at that, that apartment
17 complex, the fact that he did, that's not -- that wouldn't
18 of been an issue for me to --.

19 Q. Appeal.

20 well, isn't it true his sister lived at that
21 apartment complex?

22 wasn't that the testimony during the trial?

23 A. Yes, ma'am.

24 Q. All right. And so, for a family member, it wouldn't
25 necessarily have been loitering if his sister, in fact,

1 lived there when the defendant did not have any -- I mean
2 the victim didn't have any real issue---

3 MS. GIOVANOLI: Objection again to relevance.

4 THE COURT: Counsel, can y'all approach?

5 (WHEREUPON, a bench conference was held at this
6 time.)

7 Q. Okay. I guess, suffice it to say the transcript
8 speaks for itself, you did not pursue an interlocutory
9 appeal of the ruling?

10 A. No, ma'am.

11 Q. And then -- and clearly y'all had discussed -- you
12 recall discussing an appeal but you did not---

13 A. That's correct.

14 Q. ---put in for an appeal?

15 All right. And, and you have nothing in, in your
16 notes or anything that say chose not to appeal for cause
17 of anything like that?

18 A. No, I, I just remember based upon the, the sentence
19 itself.

20 Q. All right.

21 A. Yes, ma'am.

22 Q. And that -- and you're aware that, once -- you, you
23 can file a notice of appeal and withdraw it at anytime at
24 a later date?

25 A. Or, or I could of filed it late and requested a

1 belated appeal --

2 Q. All right.

3 A. -- based upon that.

4 Q. Based upon --?

5 A. If, if, if I came in -- if I heard from the family
6 and attempted to file something three, four, five months
7 later but I never did have, have those conversations. I
8 never did file anything, no, ma'am.

9 Q. All right. You never did.

10 Okay. No further questions.

11 MS. GIOVANOLI: And just a brief redirect.

12 THE COURT: Yes, ma'am.

13 REDIRECT EXAMINATION

14 BY MS. GIOVANOLI:

15 Q. You said there was not letters or anything in writing
16 of his waiver of a direct appeal.

17 Did you ever receive letters of him requesting a
18 direct appeal?

19 A. I haven't had any correspondents with Mr. Brown.

20 Q. Okay. And the last issue that you just touched on,
21 your testimony here today is truthful.

22 Am I correct?

23 A. Well, presented as it is.

24 Q. You have no reason for him not to receive a belated
25 *White* appeal?

1 A. No, I, I, I defended Terrell. It was a complicated
2 case. It involved a -- family members for him and I know
3 both sides and he's, he's, he's an incredible young man
4 and I wish him well --

5 Q. Thank you.

6 A. -- and everything.

7 Q. Thank you very much. No further questions.

8 THE COURT: Okay. Thank you. Please step down.

9 THE WITNESS: Yes, ma'am.

10 THE COURT: Is there any objection to Mr. Michael
11 Brown being excused?

12 MS. GIOVANOLI: No objection from the State.

13 THE COURT: Okay.

14 MS. ROSS: No objection.

15 THE COURT: Okay, sir. You are free to go if that is
16 your wish.

17 Okay. Anything else?

18 MS. GIOVANOLI: Nothing further from the State.

19 MS. ROSS: No, Your Honor. Just very brief argument.

20 THE COURT: Okay. Yes, ma'am.

21 MS. ROSS: It, it would just be we, we, we would
22 request a *White v. State* appeal here. When there's a
23 trial, an, an attorney has a, a duty to make the client
24 fully aware of his right to appeal and, and we would argue
25 that goes to making sure any waiver of any appeal is very

1 clear and, and here that just did not exist.

2 Mr. -- you've heard from two witnesses, Terrell
3 Brown, and, and his brother, who both say their
4 understanding was that, that appeal was being put in. The
5 only reason I brought in any stand your ground issues was
6 that there was a decent stand your ground argument for
7 appeal and a reason to pursue an, an appeal despite the
8 verdict to a lesser included and the sentence of 15 years.

9 THE COURT: Thank you, ma'am.

10 Yes, ma'am.

11 MS. GIOVANOLI: And I, I believe the testimony's
12 pretty clear and undisputed that an appeal was discussed.
13 So, he was apprised of his right to an appeal.

14 The testimony diverges on whether or not the
15 applicant requested an appeal and I submit to you that
16 boils down to a matter of credibility. Applicant
17 obviously provided self-serving testimony. Counsel has no
18 reason to testify that, that he was never requested to
19 file an appeal. He has no reason to not want applicant to
20 get a, a belated appeal.

21 So, I believe that counsel's testimony on that point
22 was more credible, that they discussed the direct appeal.
23 He was pleased with the low sentence that he received and
24 especially because the victim's mother actually testified
25 on his behalf in mitigation of sentencing and he waived

1 his right to his direct appeal.

2 And, further, if this Court is inclined to grant a
3 belated appeal, I just wanted to further elaborate with
4 regard to the State's motion to dismiss that anytime a PCR
5 is appealed pursuant to *White*, that Appellate Defense, or
6 whoever the appellate attorney is, can't argue both issues
7 with regard to the statute of limitation and equitable
8 tolling as well as briefing the issues from a direct
9 appeal. Just wanted to put that out there.

10 So, thank you.

11 THE COURT: Okay. Thank you.

12 All right. Anything else, counsel?

13 MS. ROSS: No, Your Honor.

14 THE COURT: All right.

15 Okay. Mr. Terrell Brown, sir, and, and I'm speaking
16 to counsel and, and to you, but I want to make sure you
17 understand.

18 Okay. I am taking this under advisement and what
19 that means is I'm going to do some research before I issue
20 my ruling on these issues that were before me today.

21 And so I will issue instructions for an order to be
22 drafted in the very near future and I will email those to
23 your lawyer and to the lawyer for the Attorney General's
24 Office and then a written order is going to be drafted
25 that I will sign.

1 okay. I, I usually handle these matters in the order
2 that I hear them and I heard many matters on Monday and
3 I've heard some today. And so, sir, I think you're maybe
4 fifth in line for me to make my decision for the week.

5 So, I tell you all of that in saying that it may be
6 30 days before I, I issue instructions to counsel.

7 okay. I wish you the best of luck, sir. I know this
8 is very important to you and I take it very seriously.

9 okay?

10 THE APPLICANT: Thank you.

11 THE COURT: Do you understand?

12 THE APPLICANT: Yes, ma'am.

13 THE COURT: Okay. All right. Anything else,
14 counsel, based on my remarks?

15 MS. GIOVANOLI: No, thank you.

16 THE COURT: Okay.

17 MS. ROSS: No, Your Honor.

18 THE COURT: Good luck to you, Mr. Brown.

19 THE APPLICANT: Thank you.

20

21 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

22

23

24

25

C E R T I F I C A T E

I, Pamela E. Green, 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 proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 31st day of January, 2018.

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

August 22nd, 2025



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT
)
)

TERRELL ANTONIO BROWN,
APPLICANT.

) ORDER DENYING THE STATE'S
) MOTION TO DISMISS
)

v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

) CASE # 2016-CP-42-4549
)
)

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 MAY -9 AM 11:43
H. ROPE CLARK, JR.

BEFORE THE COURT is the State's Motion to Dismiss the Applicant's Post-Conviction Relief (PCR) matter based upon the Applicant's Petition being filed outside of the one-year statute of limitations period allowed by law per the Uniform Post Conviction Relief Act, SC Code Section 17-27-45(a). A Post-Conviction Relief hearing was held on January 31, 2018, in Spartanburg County, South Carolina. Representing the State was Valerie Giovanoli, Esq., of the South Carolina Attorney General's Office. The Applicant was present and represented by Susannah Ross, Esq.

At the commencement of the hearing Counsel for the State argued its Motion to Dismiss stating that the circuit court is granted jurisdiction by statute only and that the court lacks subject matter jurisdiction to hear the PCR. Counsel for the Applicant argued that equitable tolling is appropriate and justified in this matter due to Applicant's misunderstanding that a direct appeal had been filed by his legal counsel for the jury trial. Counsel stipulated that the only issues before the court at this hearing were as to the tolling statute of limitations and the White v. State issue. And that in the event the Court denied the State's motion to dismiss the PCR and toll the statute of limitations, that the PCR matter shall be re-scheduled in order to give counsel adequate time to prepare.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to order of commitment of the Clerk of Court Spartanburg County. Applicant was indicted by the September, 2013, term of the Grand Jury for Spartanburg County for two counts of murder (2013-GS-42-4249, 4250). Applicant was later indicted by the October, 2014, term of the Grand Jury for Spartanburg County for unlawful carrying of a pistol (2014-GS-42-5071). Applicant was represented at trial by Michael Demorris Brown, Esquire. Applicant proceeded to trial before the Honorable J. Mark Hayes, II, and a jury. Applicant was convicted of two counts of the lesser included offense of voluntary manslaughter and convicted as indicted of unlawful carrying of a pistol. On March 19, 2015, Judge Hayes sentenced Applicant to imprisonment of thirty (30) years suspended upon the service of fifteen (15) years and five (5) years' probation for each count of voluntary manslaughter, as well as one (1) year for unlawful carrying of a pistol. All sentences are concurrent. Applicant did not appeal his conviction and filed this Post Conviction Relief Application on December 19th, 2016.

TESTIMONY PRESENTED

The Applicant appeared credible when he testified during the hearing as to his recollection that he and Attorney Brown discussed the filing of the direct appeal. That he remembered discussing it before trial, during trial, and immediately after trial. He had also discussed the matter of appeal with his family members, including his brother who also testified at the hearing corroborating Applicant's recollection. Applicant testified that he had sent a female friend to Attorney Brown's office to discuss with him Applicant's appeal after the jury trial. Applicant's brother, Devonte Brown, testified that he attended his brother's jury trial and his

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CLERK OF COURT
SPARTANBURG COUNTY

recollection was that he discussed the possibility of appeal with Attorney Brown after the jury trial, and that all of the Applicant's family members wanted to pursue the appeal even though it could mean that Applicant could possibly "get more time", with the exception of Applicant's mother whom was hesitant about the appeal, but ultimately agreed to the appeal.

The Applicant's trial attorney, Michael D. Brown, also appeared credible when he testified during the hearing as to his recollection that he and the Applicant discussed the possibility of direct appeal prior to the trial and during course the jury trial and considered the possibility of appealing the matter even before the sentence was issued. However after being sentenced, it was Attorney Brown's recollection that Applicant reconsidered and abandoned his request of counsel for a direct appeal. Attorney Brown explained that there may have been confusion on Applicant's behalf because there were discussions during the trial about the possibility of a witness changing her testimony given in the course of trial, and the possibility of filing of a post-trial 29(b) Motion for a new trial on newly discovered evidence in the event of that occurrence.

CONCLUSION

The Court has reviewed the transcript of record from the underlying action, the Application, the Return, the Motion to Dismiss, and other pertinent documents. The Court has also taken into consideration all testimony presented at the Post-Conviction Relief hearing. Based upon the arguments of counsel, testimony presented, upon review of the transcript of the underlying jury trial for the criminal offense, the Application, the Return, and all other pertinent documents, the Court concludes that due the confusion on the part of Applicant and the misunderstanding of his family members that a direct appeal had been filed on his behalf as well as the fact that upon learning that the appeal had not been filed the Applicant filed this PCR

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application, the statute of limitations should be tolled.

IT IS THEREFORE ORDERED that Applicant shall be allowed to pursue his action for PCR and a date be scheduled for a full hearing on all claims available to him under the Uniform Post Conviction Relief Act, SC Code Section 17-27-20.

IT IS FURTHER ORDERED that this is the final Order of the Court on this issue.

AND IT IS SO ORDERED this 9th day of May, 2018.



The Honorable Grace Gilchrist Knie
Resident Judge, Seventh Judicial Circuit

Spartanburg, South Carolina

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SPARTANBURG COUNTY
2018 MAY -9 AM 11:43

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

Terrell Antonio Brown, #341207,)
Applicant,)

v.)

State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2016-CP-42-4549

AMENDED RETURN

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 AUG -7 AM 9:38
J. HOPKINS BLACKLEY

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on December 19, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted by the September 2013 term of the Grand Jury for Spartanburg County for two counts of murder (2013-GS-42-4249, 4250). Applicant was later indicted by the October 2014 term of the Grand Jury for Spartanburg County for unlawful carrying of a pistol (2014-GS-42-5071). Applicant was represented at trial by Michael Demorris Brown, Esquire. Applicant proceeded to trial before the Honorable J. Mark Hayes, II, and a jury. Applicant was convicted of two counts of the lesser included offense of voluntary manslaughter and convicted as indicted of unlawful carrying of a pistol. On March 19, 2015 Judge Hayes sentenced Applicant to imprisonment of thirty (30) years suspended upon the service of fifteen (15) years and five (5) years' probation for each count of voluntary manslaughter, as well as one (1) year for unlawful carrying of a pistol. All sentences are concurrent. Applicant did not appeal his conviction.

II.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Counsel failed to immediately or directly appeal the trial judge's pre-trial ruling where the court denied Applicant under the Protect Person or Property Act."
 - b. "See White v. State, 208 S.E.2d at 39."
 - c. "Applicant 'was not aware counsel did not appeal,' until instructions led family member to check on the status of the 'requested appeal.'"
 - d. "Ineffective assistance of counsel in violation of Applicant's Sixth and Fourteenth Amendment rights."

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Respondent made its Return and Partial Motion to Dismiss on May 18, 2017. On January 31, 2018, a hearing on Respondent's Motion to Dismiss was conducted in Spartanburg County before the Honorable Grace G. Knie. Respondent was represented by Assistant Attorney General Valerie Giovanoli. Applicant was represented by Susannah Ross, Esquire. On May 2, 2018, Judge Knie denied Respondent's Motion to Dismiss and ordered a full hearing on the application for post-conviction relief.

Attached herewith and incorporated herein by reference are the records of the Spartanburg County Clerk of Court regarding the subject convictions and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

III.

Applicant claims that he was denied effective assistance of counsel because his trial counsel did not appeal his conviction. The decision of the South Carolina Supreme Court, in White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), holds that even though the post-conviction relief court finds that the Applicant had never voluntarily and intelligently abandoned his appeal, the

court has no jurisdiction to grant a belated appeal. However, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

The allegation raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 303 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

IV.

Applicant claims he was denied effective assistance of counsel when his trial attorney failed to immediately or directly appeal the trial court's pre-trial ruling denying immunity under the Protection of Persons and Property Act. The South Carolina Supreme Court has held that an Order denying immunity under the Protection of Persons and Property Act is not immediately appealable, because it is not a final order in the case. State v. Isaac, 405 S.C. 177, 747 S.E.2d 677 (2013). Applicant's claim that his trial counsel was ineffective for failing to immediately appeal the pre-trial denial of immunity under the Protection of Persons and Property Act is directly contradictory of current South Carolina law and should be denied and dismissed with prejudice.

V.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. Applicant is currently represented by counsel, therefore only

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SPARTANBURG COUNTY
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AT HOPE BLACKLEY

Applicant's PCR counsel is authorized to amend the application. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VI.

Each and every allegation contained within the application not either expressly admitted, qualified, or explained is hereby denied.

VII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claims of ineffective assistance of counsel and Applicant's right to a belated appeal pursuant to White v. State.

Respectfully submitted,

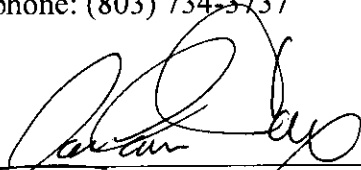
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JORDAN A. COX
Assistant Attorney General

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

By: 
ATTORNEYS FOR RESPONDENT

August 3, 2018

FILED
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SPARTANBURG COUNTY
2018 AUG - 7 AM 9:39
M. HOPE BLACKBERRY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

TERRELL ANTONIO BROWN,
S.C.D.C. No. 341207,

2016-CP-42-4549

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

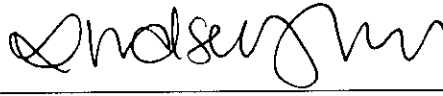
STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Amended Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Susannah C. Ross, Esquire
Ross & Enderlin, PA
330 East Coffee Street
Greenville, South Carolina 29601

DATED this the 3rd day of August, 2018.


Lindsey McCoy, Legal Assistant
For Respondent

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT
)
)

TERRELL ANTONIO BROWN,
APPLICANT.

) AMENDED APPLICATION
)
)

v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

) CASE # 2016-CP-42-4545
)
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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

This matter comes before the Court by way of application of post conviction relief filed December 19, 2016, alleging ineffective assistance of trial counsel for failing to appeal the judge's pre-trial ruling denying dismissal under the Protect Persons or Property Act, failing to appeal after being requested to do so depriving the Applicant of his right to direct appeal, and violation of Sixth and Fourteenth Amendment rights. A Return and Partial Motion to dismiss was made on May 18, 2017. A hearing was held January 31, 2018, on the State's motion to dismiss based on the Applicant's Petition being filed outside of the one year statute of limitations period allowed by law per the Uniform Post Conviction Relief Act, SC Code Section 17-27-45(a) and the Honorable Grace Gilchrest Knie ordered that Applicant shall be allowed to pursue his action for PCR and a date be scheduled for a full hearing on all claims available to him under the Uniform Post Conviction Relief Act, SC Code Section 17-27-20.

This application is intended to incorporate the application and with the additions of the following allegations:

1. Ineffective assistance of trial counsel for

(a) failure to argue SC Code Section 16-11-450 (c) effectively; (p. 186)

(b) failure to object to leading or point out the mischaracterization of testimony of by the Solicitor when he asked a witness "You said Mr. Brown shot him while he was on the ground" and continued to question "two shots to Quinn on the ground" when she had just testified that the Applicant shot Quinn Yeargin three times once, then two more times as he fell back on the car; (pp. 319, l. 5, 320, l. 5, 321, l. 11)

(c) failure to argue 404 SCRE allows the jury to know victim was just released from prison for shooting at car because it is not to argue conformity therewith but the state of mind of the defendant at time of shooting and that limitations on questions as to specific instances of the victim shooting at someone denied the defendant a full and fair cross; (pp. 328, l. 4, pp. 334-337, p. 576, l.22, p. 591, l.4)

(d) failing to challenge search warrant, bring up jurisdictional issues and argue SCRE 403 and 404 that the probative value of bringing up an unrelated gun and marijuana in a Greenville hotel room was outweighed by the prejudicial effect and constituted impermissible evidence of other crimes, (pp. 383-5, pp. 402-3)

(e) failure to object to testimony regarding flight extending to batter regarding roads being closed during the search that blocked traffic ruining citizen's morning commute; (p.400-1) and

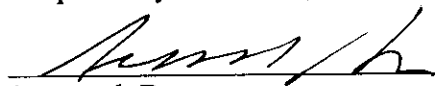
(f) failure to argue the defendant had a right to carry a gun on Kelly Acres because he was an invitee of his sister; (p. 533-5)

(g) failure to argue defendant's testimony that he heard the victim and "Fredo" talking to each other about shooting this or that was not hearsay because it was not offered for the truth of the matter asserted but was to the state of mind of the defendant who argued he shot in self-defense p. 632, l. 12)

(h) failed to call witness Nicholas Rhodes

(i) failed to request a jury charges including one that a defendant may continue to shoot in self defense as long as he reasonably believes it is necessary to use deadly force. State v. Marin, 745 S.E.2d 148, 404 S.C. 615 (S.C. App., 2013)

Respectfully submitted,



Susannah Ross
Attorney for the Applicant
330 E. Coffee St,
Greenville, SC 29601
(864) 242-0029

Greenville, South Carolina

This 4 day of September 2018

FILED
CLERK OF COURT
SPARTANBURG COUNTY
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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT
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TERRELL ANTONIO BROWN,
APPLICANT.

) AFFIDAVIT OF SERVICE
) BY MAIL
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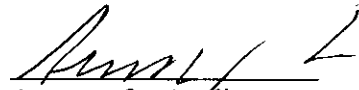
v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

) CASE # 2016-CP-42-4549
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1. I am the attorney for the Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Amended Application** in the above-captioned matter on the following person by depositing the same in the United States mail with proper postage affixed thereto:

Office of Attorney General Alan Wilson
P.O. Box 11549
Columbia, SC 29211


Attorney for Applicant

FILED
CLERK OF COURT
SPARTANBURG COUNTY
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M. HOPE BLACKLEY

This 5 day of September 2018

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Julie A. Cendroski,
Circuit Court Reporter
Seventh Judicial Circuit

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EXHIBITS

MARKED

ENTERED

NO EXHIBITS PROFFERED

1 TERRELL ANTONIO BROWN VS. THE STATE OF SOUTH CAROLINA

2 THE COURT: All right. Ms. Ross, you asked me if
3 the packet contained what?

4 MS. ROSS: Well, I did an amended application and
5 then there was a May 2018, order denying the State's
6 Motion to Dismiss.

7 THE COURT: Yeah, it's in here.

8 MS. ROSS: Okay, good. That's where it gives an
9 idea of the procedural background of this case.

10 THE COURT: All right. Mr. Isenberg, are you
11 ready?

12 MR. ISENBERG: May it please the Court?

13 THE COURT: Yes, sir.

14 MR. ISENBERG: Thank you for your patience, Your
15 Honor. I apologize about that.

16 The next case is Terrell Antonio Brown vs. The
17 State of South Carolina. That's Case Number
18 2016-CP-42-4549. This case is based upon an application
19 originally filed on December 19th, 2016, by Mr. Brown.
20 That application was amended in September of 2019, to
21 the best of my knowledge.

22 He's presently confined to the South Carolina
23 Department of Corrections pursuant to orders of
24 commitment of the Clerk of Court for Spartanburg County.
25 He was Indicted in September of 2013 by the grand jury

1 for Spartanburg for two counts of murder. He was
2 later indicted in the October 2014 term for unlawful
3 carrying of a pistol.

4 He was represented at trial by Michael Brown, who
5 is here today. He proceeded to trial before the
6 Honorable J. Mark Hayes, II, and a jury, obviously. He
7 was convicted of two counts of the lesser included
8 offense of involuntary manslaughter and convicted, as
9 indicted, of unlawful carrying of a pistol.

10 On March 19, 2015, Judge Hayes sentenced him to
11 imprisonment of 30 years, suspended upon the service of
12 15 years for the manslaughter charge and five years
13 probation for the other manslaughter charge, as well as
14 one year for the unlawful carrying of a pistol. All
15 sentences are to run concurrent. He did not appeal his
16 conviction or his sentence.

17 With that being said, I'll turn it over to
18 opposing counsel to give a brief opening statement and
19 then proceed forward with her case.

20 THE COURT: Okay. All right, Ms. Ross.

21 MS. ROSS: Judge, I filed an amended application,
22 and in it I sort of put my allegations of ineffective
23 assistance of counsel. Basically, there was a pretrial
24 stand your ground motion that was denied, and then it
25 wasn't immediately appealed. And this is sort of --

1 this trial happened to be tried during a small period of
2 time where the law was you could immediately appeal the
3 ruling on a stand your ground motion, you didn't have to
4 wait, like you do now, until the end. So that was one
5 issue.

6 Then there are a number of issues that sort of
7 lay out the specificity in the amended application of
8 places where objections weren't made that I thought
9 could have been made. Oh, a lot of it would go to --
10 one of them was an issue of hearsay. There was, the
11 defendant were [sic] testifying that he heard the victim
12 and "Fredo" talking to each other about shooting this or
13 that, and there was an objection to hearsay. And,
14 clearly, that would not be necessarily be for the truth
15 of the matter asserted; that would come in to go to the
16 mindset of the defendant who was being accused of
17 shooting someone and being charged with murder.

18 And he was stating his argument was that he knew
19 this, the victim before. Knew the victim had shot up
20 someone's grandmother's car before and then just got out
21 of prison for that and was standing in front of the
22 applicant's, basically, apartment complex threatening
23 him with a gun.

24 So, that was sort of a factual scenario here.
25 And I've laid out in the application a number of

1 allegations. And finally the last one was the failure
2 to appeal the conviction at trial and due process
3 violation.

4 So, at this point I'd go ahead and call Terrell
5 Brown to the stand.

6 (Witness comes forward.)

7 THE COURT: All right. Mr. Brown, do you promise
8 to tell the truth or affirm to the tell the truth, so
9 help you God?

10 THE DEFENDANT I do.

11 THE COURT: All right. Be seated.

12 TERRELL ANTONIO BROWN,
13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. ROSS:

16 Q. Hi, Mr. Brown. We've talked about this. You
17 were acquitted on a murder, but if you win at PCR, your
18 relief is to be put back in the position you were back
19 in before your trial facing manslaughter charges. Do
20 you understand that?

21 A. Yes, ma'am.

22 Q. Could get up to 30 years?

23 A. Yes, ma'am.

24 Q. And you got 15, right?

25 A. Uh-huh.

1 Q. Just briefly, can you explain sort of the factual
2 scenario of what happened leading to this manslaughter
3 conviction?

4 A. What do you mean?

5 Q. Just a fact scenario. You were at, you were at
6 Kelly Acres with your sister where she lives?

7 A. Oh, yeah. I was at Kelly Acres Apartments where
8 my sister was staying at at the time. And everybody was
9 just, you know, chilling. And when ---

10 Q. And you've stayed with her there before, spent
11 the night?

12 A. Yes, ma'am. And when the victim had pulled up,
13 they pulled up and got out and was, you know, kind of on
14 some -- the whole vibe chains like to where, you know,
15 they was kind of making little smart comments about what
16 they was gonna do about shooting this and that. And a
17 gun was pulled out on me, pointed at me, and they made
18 him put it back up, you know, going to the middle of the
19 parking lot, pulling it back out and cocking it and they
20 started going towards me.

21 Q. Now -- okay. What did you think he was going to
22 do with that gun when he was coming towards you after he
23 cocked it?

24 A. Shoot me.

25 Q. Now, did you know a prior shooting incident with

1 that same person?

2 A. Yeah. Like I say, he had just did, I think, like
3 18 months for shooting -- for a shooting.

4 Q. And you knew about that at the time of the
5 shooting?

6 A. Yeah. Yeah, I knew about that. And, um...

7 Q. What was he saying to you about when he was in
8 jail? Wasn't he yelling at you about something?

9 A. He was just like a, you're supposed to be my
10 cousin. Like ---

11 MR. ISENBERG: Objection, Your Honor, this is
12 hearsay.

13 THE WITNESS: I don't know how that's hearsay.

14 THE COURT: I'll consider it.

15 MR. ISENBERG: Thank you, Your Honor.

16 BY MS. ROSS:

17 Q. Go ahead.

18 A. Yeah. He told me, you're supposed to be my
19 cousin, why ain't you hollered at me since I got out?
20 And that's when he pulled a gun out.

21 Q. And at that time you knew why he'd been in?

22 A. Yeah.

23 Q. And what was that for?

24 A. For shooting.

25 Q. Okay. Now, just going back to Kelly Acres, did

1 they have a gate around Kelly Acres or anything like
2 that?

3 A. Yes, they did.

4 Q. Was it closed or did you have a password for it,
5 or how do people get in and out?

6 A. I mean, the front entrance, of course, ain't
7 gonna have no gate. And then it's a back way, it's a
8 back way where you can walk through the gate.

9 Q. Okay. And as far as staying with your sister,
10 did she have a car at the time?

11 A. I don't think so, no.

12 Q. Okay. And you drove her around some?

13 A. Yes, ma'am.

14 Q. And you could come and go from her apartment
15 whenever you wanted to?

16 A. Yes, ma'am.

17 Q. Now, so at this time you did end up shooting and
18 killing somebody or two people were shot?

19 A. Yes, ma'am.

20 Q. Now, you testified pretty much to the same thing
21 at pretrial and at your trial; is that correct?

22 A. Yes, ma'am.

23 Q. Now, what happened at the pretrial immunity
24 hearing?

25 A. The judge stated that he wasn't granting any

1 stand your ground, saying that, that it was something in
2 the policy that said I couldn't be out there. But the
3 landlord lady, Debbie Marshall, I saw it in the
4 transcript, she had clearly stated that if you were a
5 guest to a resident, then you would not be considered
6 loitering if you was to come outside and walk around.
7 So I never understood why he would say that I didn't
8 have a right to be out there.

9 Q. Okay. So he ruled that you were loitering and,
10 therefore, you couldn't claim stand your ground even
11 though you were there?

12 A. His exact words were there was something in the
13 policy about you not being able to be out there.

14 Q. And was that on page 186 of your transcript?

15 A. Yeah. Yeah, 186.

16 Q. Now, hadn't a police officer, didn't she roll
17 through earlier that evening and talk to you all?

18 A. Yes, ma'am. Her name was Misty.

19 Q. And did she charge you with anything or tell you
20 you were breaking the law or had to leave?

21 A. No, ma'am. She just said to keep the noise down.

22 Q. And you weren't charged with using drugs or
23 selling drugs or anything when she came by earlier?

24 A. No, ma'am.

25 Q. And she didn't tell you you were breaking the law

1 for anything?

2 A. No, ma'am.

3 Q. Now, your lawyer didn't immediately appeal the
4 denial of stand your ground protection, did he?

5 A. No, he didn't.

6 Q. And after the trial, what was your understanding
7 about an appeal?

8 A. Somebody had told me that you get like ten days
9 after your trial, a condition to file for direct appeal.

10 Q. Uh-huh.

11 A. And I had already spoke with my lawyer at the
12 time, Michael Brown, about if I lost I definitely wanted
13 an appeal. So when I heard about the ten-day window and
14 after the ten days of trying to get in contact with him,
15 I couldn't contact him, I thought I was -- I thought it
16 was over with for me as far as appeals.

17 Q. Okay. But you had told him you wanted to appeal
18 if you were convicted?

19 A. Definitely.

20 Q. Now, turning to the actual trial, there's
21 testimony from Summer Bayne. And I'll refer you to page
22 319 and 320 and 321, line 5. At line 5 what does she
23 say?

24 A. I seen Quinn fall against the white truck. As he
25 fell Rel shot him two more times.

1 Q. Okay. And how about 320, line 5?

2 A. The solicitor said, let's go back to Quinn being
3 shot on the ground -- I mean, being on the ground and
4 shot -- you said Mr. Brown shot him while he was on the
5 ground?

6 Q. Now, is that what she said just before on Page
7 319? Did she say, he was shot on the ground?

8 A. No. She said on the truck. He fell against the
9 white truck.

10 Q. All right. And also going back, I'll refer you
11 to 321, line 11.

12 A. While Quinn's on the ground and then shot -- and
13 then shot her twice more towards the parking area.

14 Q. All right. And that's the solicitor saying that?

15 A. Yeah. That's the solicitor saying that.

16 Q. So his question is: So, while Quinn was on the
17 ground, and he's saying that you were shooting him down
18 on the ground twice more, that was his question to that
19 witness?

20 A. Correct.

21 Q. But the witness had not said ever that you had
22 shot anyone on the ground. She said that there was
23 shooting as he was falling next to the truck, correct?

24 A. Correct.

25 Q. All right. Now, who is Summer Bayne?

1 A. That's, that's Quinn's -- the mother of his
2 child.

3 Q. And then Quinn was one of the victims?

4 A. Yes, ma'am.

5 Q. All right. And was Quinn the one who was
6 threatening you?

7 A. Yes, ma'am.

8 Q. All right. And she's the only one who says that
9 Yeargin didn't have a gun; is that correct?

10 A. Her and her friend, Brittany. Both of them said
11 that He didn't.

12 Q. Okay.

13 A. But they said, they said they never seen him with
14 a gun.

15 Q. Okay. And how many other people said that they
16 had seen him with a gun?

17 A. If I'm not mistaken, it was like three or four.

18 Q. All right.

19 A. But, like I said, they never said, her or Jeter,
20 they never said that he didn't have a gun, they said
21 they didn't see him with a gun. And Michael Brown had
22 asked her at one point, could it have been a time where
23 he pulled a gun out and you didn't see? And she said
24 maybe. That's in the transcript too.

25 Q. Okay. Going back to Mr. Brown, when on page 319

1 and 320, when we just referred to that testimony of
2 Summer Bayne, did your lawyer ever object to leading or
3 mischaracterization of the testimony at that point?

4 A. No, he didn't.

5 Q. And you were alleging a self-defense claim,
6 correct?

7 A. Right. I went for a stay your ground and then
8 self-defense.

9 Q. Do you believe that mischaracterization of the
10 testimony hurt your chances of getting a self-defense
11 case, having the solicitor say that you were shooting
12 someone when they were on the ground?

13 A. Definitely.

14 Q. Now, later in the testimony of Summer Bayne, I'd
15 refer you to page 328, line 4. The solicitor objects
16 when your attorney, Brown, asks witness Summer Bayne
17 whether she knows whether the victim went to prison.

18 A. Yeah. He said, do you know why he went to
19 prison?

20 Q. Now -- and Mr. Brown moves on. And then on page
21 334, line 7, the solicitor objects, preventing attorney
22 Brown from asking about Quinn's prior record or prior
23 going to prison for carrying a gun, correct?

24 A. Uh-huh.

25 Q. Now, did Mr. Brown ever argue that, that this

1 testimony was admissible and necessary to show the state
2 of mind of you, the defendant, when you're being
3 attacked by someone who has a -- that you knew had just
4 gotten out of jail for shooting someone or at a car or
5 something?

6 A. No, I don't -- not that I recall.

7 Q. Well, that was sort of a terrible question, but
8 did -- and so those arguments weren't made by your
9 lawyer?

10 A. No, ma'am.

11 Q. Now, do you think that hurt your case, that the
12 jury didn't know that the victim, who you shot, actually
13 had just gotten out of prison for shooting at somebody,
14 and you knew that when you -- it went to your state of
15 mind at the time, correct?

16 A. Yeah. Yeah, I think it hurt my case.

17 Q. All right. Now, later in the trial during the
18 testimony of Jamar Murray, I'd refer you to page 576,
19 line 22. The solicitor -- do you have it?

20 MR. ISENBERG: What page?

21 MS. ROSS: 576, line 22, according to my notes.

22 BY MS. ROSS:

23 Q. What does the solicitor do?

24 A. You don't think -- I guess Michael Brown's
25 asking: And you know he was out here doing the same

1 thing he did before? And the solicitor said, objection.

2 Q. All right. And Jamar Murray was a witness who
3 was there, correct?

4 A. Correct.

5 Q. And he also knew about -- was it Yeargin who had
6 the prior shooting incident, about your just getting out
7 of prison for shooting at somebody?

8 A. Yes, ma'am.

9 Q. So he knew that, too, and he's right there?

10 A. Yeah.

11 Q. And did, did Mr. Brown continue along his line
12 after the solicitor's objection to that testimony?

13 A. Yeah. He -- I'm sorry, what was the question?

14 Q. I'm sorry. So after the objection, that
15 testimony doesn't come in about Yeargin just getting --
16 y'all knew that Yeargin just had just gotten out of
17 prison for shooting somebody?

18 A. Oh, no, he asked me something else. I forgo.

19 Q. Okay. So he knew Don?

20 A. Yeah.

21 Q. I'll also refer you to page 591, line 4. This is
22 during the testimony of Franklin Higgins. Line 4?

23 A. Okay.

24 Q. There was another objection by the State,
25 correct?

1 A. Correct.

2 Q. And that's another witness trying to talk about
3 prior history with Yeargin, the shooting victim --

4 A. Yeah.

5 Q. -- being violent with people, shooting.

6 A. Correct.

7 Q. Now, did attorney Brown ever argue that the rules
8 of evidence allow, allow that? And limitations on
9 questions as to specific incidents in the past of the
10 victim shooting at someone would deem necessary to a
11 full and fair cross of a victim?

12 A. No, ma'am. Not from where I'm seated.

13 Q. Okay. And I would just note, going to the record
14 on page 328, line 4, this occurred. Line 3.

15 A. Oh, yeah.

16 Q. And that's when he's objecting to testimony about
17 why that victim had just gotten out of prison. And also
18 again on page 334 through 337. Is that the same thing?

19 A. Yes. This is April.

20 Q. Objecting to that testimony. Now, also, page
21 576, line 22. Same thing. And then on page 591, line
22 4.

23 A. Uh-huh.

24 Q. Now, if -- do you think that affected the jury's
25 perception of the case against you?

1 A. Yes, ma'am.

2 Q. How -- what do you think it did to your
3 self-defense claim for all this stuff not to come in?

4 A. I guess it made it -- it made it seem like I
5 didn't have -- like my mind state wasn't in a
6 self-defense mode or something, you know?

7 Q. All right.

8 A. It kind of wore me down.

9 Q. All right. And that was the crux of your case,
10 that's what you were saying the whole time, correct?

11 A. Yes. I was pleading self-defense/stand your
12 ground.

13 Q. Okay. Now, I'd refer you to page 383 through
14 385. This is the point where the State's offering
15 evidence of how you left Greenville after the shooting,
16 correct?

17 A. Uh-huh.

18 Q. Why did you leave Greenville after the shooting?

19 A. You said, why did I leave Greenville?

20 Q. Yeah.

21 A. What do you mean, why did I leave Greenville?

22 Q. Well, why didn't you just stay? I mean, not
23 leave Spartanburg and go to Greenville, sorry.

24 A. To be honest with you, like when I left the scene
25 I was still being shot at, so I want to stay in

1 Woodruff.

2 Q. Okay. Now, there was some jurisdictional -- and
3 I'd also refer you to page 402 and 403 about that. Did
4 your lawyer challenge the search warrant they used or
5 bring up any jurisdictional issues or argue that the
6 prejudice was great of bringing in an unrelated gun and
7 marijuana into this case?

8 A. No, not that I know of.

9 Q. So all that came in, all about you leaving
10 Woodruff, going to Greenville?

11 A. Yeah.

12 Q. Having a gun that wasn't involved in these
13 shootings, correct?

14 A. Correct.

15 Q. And they talked about you having marijuana too?

16 A. I really can't remember. I don't remember them
17 saying that about Marijuana.

18 Q. Okay. And I'll just refer you to page 400, line
19 1. That's about -- these officers are talking about how
20 they had to close down roads and inconvenience people
21 because of your actions. Was there any objection to
22 that?

23 A. No, ma'am.

24 Q. And on page 445, the officers talk about having
25 to deploy -- how they had to deploy the dog on you

1 because they were worried that you had a gun or was
2 trying to pull a gun on them, was there any objection to
3 that?

4 A. No.

5 Q. On page 550 -- 533, line 5. At the directed
6 verdict stage, did your lawyer argue you had the right
7 to carry a gun on Kelly Acres as an invitee of your
8 sister?

9 A. No, ma'am.

10 Q. As far as preparation for trial, did you meet
11 with your lawyer and talk about and prepare your
12 testimony?

13 A. When he came to see me in the county a couple
14 times. I had already let him know that I was willing to
15 get on the stand.

16 Q. Okay. And then on page -- did he practice with
17 you? Did he come sit with you?

18 A. I don't think we ever practiced.

19 Q. Okay. I'd refer you to page 632, line 12.
20 Again, this is during your testimony at trial, and the
21 solicitor objects, correct?

22 A. Uh-huh.

23 Q. And what are you saying when the solicitor
24 objects?

25 A. That I heard, I heard "Fredo" talking to "Yearg"

1 he was saying some to "Yearg". And then that's when he
2 said I object.

3 Q. All right. What did you think he was saying?
4 What were you trying to say?

5 A. It sounded like he was saying something about,
6 something about shooting, because right after that,
7 that's when "Yearg" approached me and pulled a gun out.

8 Q. Wasn't he talking about, talking to each other
9 about shooting?

10 A. Uh-huh.

11 Q. Wasn't that the testimony?

12 A. Yeah.

13 Q. And your lawyer never argued that that went to
14 your state of mind in reacting and shooting back?

15 A. No.

16 Q. Now -- and also on page 651, the solicitor again
17 objected, correct, when you were talking about that you
18 knew the shooting victim and you knew of the prior
19 shooting?

20 A. Yeah.

21 Q. Now, without the objection what would you have
22 said about Yeargin's prior conviction of shooting at
23 your friend "T"?

24 A. Excuse me?

25 Q. Didn't you know that Yeargin had the prior

1 conviction of shooting at your friend "T"; is that
2 right?

3 A. No.

4 Q. What was it for?

5 A. It wasn't "T".

6 Q. Oh, I'm sorry, who was it?

7 A. I'm not really -- I just knew he had shot at --
8 he ended up shooting at my baby momma's brother while
9 they was -- they was in their grandma car and left like
10 a hole in the gas tank.

11 Q. Okay. And you knew all about that?

12 A. Yeah.

13 Q. At the time of the shooting?

14 A. Yeah, I knew about that.

15 Q. And the fact that you knew about that, how did
16 that make you feel when Yeargin was coming at you with a
17 gun?

18 A. Like, like with their situation.

19 Q. Were you scared?

20 A. Yeah.

21 Q. Were you scared for your life, like life or
22 death?

23 A. Yes, ma'am, I was scared for my life.

24 Q. Now, if the solicitor hadn't objected at that
25 time or you'd been able to say that, would you have said

1 that at your trial?

2 A. Yes, ma'am.

3 Q. Okay. I don't think I have any more questions.
4 Is there anything else you'd like to say about your
5 case?

6 A. Just that -- I just wanted to say that he had --
7 he waived my preliminary hearing without my permission.

8 Q. Okay.

9 A. I don't know if that's, if that's relevant to --
10 I don't know if that's relevant to, what's the other
11 one? In-assistant -- ineffective assistance of counsel,
12 but I never asked him to waive my preliminary hearing.
13 And I know that at the preliminary hearing, that's where
14 I'll be able to see what the State has against you, what
15 evidence they have against you. And that can better --
16 help you better prepare for your case and for your
17 trial. And it's a possibility that it could have gotten
18 thrown out at a preliminary hearing. And...

19 Q. Okay. That makes sense. I also refer you to
20 page 676. This is where your lawyer is requesting jury
21 instructions. Did he ever hand up a list of jury
22 instruction requests?

23 A. I really, I really can't remember whether he did.

24 Q. Okay. But can you tell, he failed to request a
25 specific charge that you have no duty to retreat when

1 you're in a place you have a right to be.

2 MR. ISENBERG: Objection, Your Honor.

3 THE COURT: If it's in the transcript, it's in
4 the transcript.

5 MS. ROSS: Okay. I'll move on as well.

6 THE COURT: Okay.

7 BY MS. ROSS:

8 Q. Okay. Unless you have anything else, I have no
9 further questions.

10 A. I wanted to refer back to the whole direct appeal
11 situation.

12 Q. Okay.

13 A. Like I said, I was under the impression that I
14 was gonna direct appeal. Me and him spoke before my
15 trial, during my trial, and after my trial about the
16 direct appeal. I never waived my rights. I never
17 stopped, you know, fighting my case.

18 Q. Did you ever say, no, man, I don't want you to
19 appeal?

20 A. No, I never said that.

21 Q. All right.

22 A. Never said it.

23 MS. ROSS: Nothing further.

24 MR. ISENBERG: Beg the Court's indulgence?

25 THE COURT: Yes, sir.

1 MS. ROSS: Oh, I should have said, please answer
2 any questions the Attorney General may have for you.

3 MR. ISENBERG: May it please the Court?

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. ISENBERG:

7 Q. Good morning, Mr. Brown.

8 A. Good morning.

9 Q. How are you doing today?

10 A. I'm good.

11 Q. Good. Now, you testified on direct that Mr.
12 Brown was your attorney on this case, correct?

13 A. Correct.

14 Q. Okay. When did you first meet Mr. Brown?

15 A. I guess a couple -- a month after I got charged.

16 Q. Okay. And so was this an in-person meeting?

17 A. No, because I was in the county. I was in jail,
18 so my family met with him.

19 Q. Okay. So when was the first time you met with
20 him?

21 A. I want to say either a couple days before or
22 after my preliminary hearing.

23 Q. Okay. So you did have a preliminary hearing?

24 A. No, he waived it.

25 Q. Okay.

1 A. I was scheduled to have one. My family came to
2 court and all on the day of my preliminary hearing. I
3 never knew that he was gonna waive it. We never
4 discussed him waiving it.

5 Q. Okay.

6 A. When it was the day of and I was supposed to go
7 to my preliminary hearing, I was sitting in my cell
8 still waiting to go and nothing ever happened. And I
9 finally spoke with my family and that's when they told
10 me that he had came up here to the courthouse but he had
11 then waived it.

12 Q. Okay. And you said you met with him potentially
13 a couple days after?

14 A. Yeah.

15 Q. Okay. What did y'all talk about in that first
16 meeting?

17 A. We talked about my case.

18 Q. Okay. And what about your case?

19 A. About, I guess, just about the facts about the
20 case, about my defense.

21 Q. What did you tell him your defense was?

22 A. Self-defense.

23 Q. Okay. And what facts did you give to him to base
24 your self-defense on?

25 A. That a gun was pointed at me and I reacted.

1 Q. Okay. So, after that first meeting, when was the
2 next time you met with Mr. Brown?

3 A. I mean, it's been so long ago, I don't -- I can't
4 give you exact dates when we met, but he came to see me
5 a couple times while I was -- I was in the county jail
6 for 19 months waiting to go to trial. So, within those
7 19 months he came to see me probably about four times.

8 Q. Did he ever come to the jail to discuss trial
9 preparation with you?

10 A. Yeah.

11 Q. Okay. And during those discussions did y'all
12 talk about self-defense?

13 A. Yeah.

14 Q. Okay. And he told you that he would present a
15 case on your behalf for self-defense based upon the
16 facts that you gave him, correct?

17 A. I guess, yes, on the facts of the case, the
18 motion of discovery.

19 Q. Okay.

20 A. Things of that nature.

21 Q. Okay. So y'all agreed that you would pick your
22 self-defense based upon you being fired upon first,
23 correct?

24 A. We, we agreed upon -- he told me he was gonna do
25 a stand your ground hearing before my trial based on the

1 fact that, like I said, a gun was pulled out on me and
2 pointed at me.

3 Q. Right.

4 A. And, and I reacted.

5 Q. Right. Did y'all discuss the invitee issue for
6 stand your ground?

7 A. No. No.

8 Q. So y'all just -- all of y'all did was discuss the
9 fact that a gun was pulled on you and you stood your
10 ground?

11 A. Basically.

12 Q. Was there anything else that y'all talked about
13 in regards to the immunity hearing?

14 A. In regards to the immunity hearing?

15 Q. Yeah, beforehand in preparation.

16 A. Not that I remember. We just talked about, you
17 know, the fact that I was at, you know, my sister's
18 apartment.

19 Q. Okay.

20 A. Somewhere that I had a right to be.

21 Q. Okay. So you were inside her apartment?

22 A. No, I wasn't inside her apartment.

23 Q. Ok.

24 A. But, like I said, Ms. Debbie Marshall, I guess
25 she was a landlord --

1 Q. Uh-huh.

2 A. -- at the time she gave testimony that you didn't
3 have to be inside the apartment, that you could walk
4 around. If you were an invitee, then it wouldn't be
5 considered loitering.

6 Q. Was there any other testimony that she gave about
7 being an invitee on the premises?

8 A. What was the question?

9 Q. Was there any other testimony that you could
10 remember Debbie Marshall giving about the requirements
11 to be an invitee on the premises?

12 A. I don't know. I could turn to it right now.

13 Q. Well, I just -- do you remember her testifying
14 about signing in?

15 A. Yeah. She said that's if you were an overnight
16 guest.

17 Q. Okay.

18 A. I wasn't an overnight guest.

19 Q. Okay. So she testified that to be an overnight
20 guest you had to sign in, correct?

21 A. Yeah, she said something like that. If you was
22 trying to be an overnight guest, then they usually had
23 you sign in and something else like that. But, like I
24 said, I was not an overnight guest.

25 Q. Okay. So you were just there to hang out with

1 your sister?

2 A. Yeah. I was basically housesitting for her until
3 she got back.

4 Q. Okay. And so, your plan was to leave and that
5 made you not an overnight guest, correct?

6 A. Correct.

7 Q. Okay. And so while you were housesitting for
8 your sister, how long did you actually stay in the
9 house?

10 A. A couple hours.

11 Q. Okay. So you weren't in the house, though, when
12 this incident occurred, correct?

13 A. No.

14 Q. So, who was watching the house?

15 A. Nobody.

16 Q. Okay. So, while you're outside this incident
17 occurs, correct?

18 A. Correct.

19 Q. So why did you leave the house and go outside?

20 A. I don't remember a specific reason. I just
21 remember walking, walking down the street.

22 Q. Okay. So you leave the house while you're
23 housesitting for no reason and you start walking down
24 the street, correct?

25 A. Correct.

1 Q. Okay. And while you're walking down the street
2 you have a gun on you, correct?

3 A. Correct.

4 Q. So you leave the house for no reason with a gun
5 on you and just start walking down the street, right?

6 A. Right.

7 Q. Okay. And at that point you see your cousin,
8 correct?

9 A. No. I didn't see him immediately. Like I said,
10 they end up driving to that spot where we was at and
11 getting out, and that's when the incident occurred.

12 Q. Okay.

13 A. I didn't even know he was out of jail.

14 Q. And you see "Yearg" and he's not too happy with
15 you, correct?

16 A. Right. It looked like he was drunk from, from
17 what I could see.

18 Q. Okay. And the only person you had an issue with
19 was "Yearg", correct?

20 A. Wrong. Because at the time I didn't even think
21 me and him had any issues that serious. Like, my mind
22 stayed with it, I'm gonna show him that I'm not trying
23 to harm him and just stand up here and just not do
24 nothing. Just chill and maybe he'll, maybe him knowing
25 that I'm not trying to harm him will make him not to try

1 to harm me.

2 Q. Why did you feel like you needed to show him that
3 if y'all didn't have any issues?

4 A. Because he had issues with people that I hung
5 around.

6 Q. Okay. So there was some bad blood between y'all?

7 A. Between people that I hung around with.

8 Q. Okay. And you speculated that maybe he might
9 have an issue with you because of the bad blood between
10 other people -- with other people?

11 A. Yeah. Once he got out and the way he was acting.

12 Q. Okay. So when you see him, what did you do?

13 A. I didn't do nothing.

14 Q. And then he approached you?

15 A. Correct.

16 Q. Okay. And then y'all talked about issues
17 stemming from you not speaking to him for a long time?

18 A. No. He just asked me. We never really had a
19 discussion, he just was -- he made a statement, you're
20 supposed to be my cousin, you haven't hollered at me
21 since I got out.

22 Q. Okay.

23 A. And he said I'm trying to see what's up. And
24 that's when he pulled a gun out and pointed it at me.

25 Q. Okay. And so, after he pulled the gun out, what

1 did you do?

2 A. I froze.

3 Q. Okay. And after you froze what happen?

4 A. After I froze, I remember "T" and, I think,
5 Summer, if I'm not mistaken, kind of rushed up to him
6 and was telling him to put the gun away.

7 Q. Okay.

8 A. He ended up putting it away, but then he ended up
9 pulling it right back out.

10 Q. So when he pulled it right back out, what
11 happened?

12 A. That's when he started saying -- making, you
13 know, crazy comments. I'll kill everybody out here.
14 Y'all don't want it with us, things like that. And then
15 he started coming to the sidewalk where I was at.

16 Q. And so, when he comes to the sidewalk what
17 happens?

18 A. When you start -- once he reached the sidewalk,
19 that's when I reached in my pocket and pulled it out.

20 Q. Pulled out what?

21 A. A gun.

22 Q. How did you come into possession of that gun?

23 A. I bought it.

24 Q. Bought it from who?

25 A. I don't, I don't know his name.

1 Q. Did you buy it legally?

2 A. (Witness shakes head back and forth.)

3 Q. Okay. Can you answer affirmatively for the
4 record?

5 A. No.

6 Q. Okay. So, you were supposed to be housesitting,
7 correct? You weren't in the house, correct?

8 A. Correct.

9 Q. You had a gun in your pocket that you hadn't
10 bought legally, correct?

11 A. Correct.

12 Q. You walked out of the house, correct?

13 A. Correct.

14 Q. You got into a confrontation with someone on the
15 premises, correct?

16 A. No, we never -- I said it was never a
17 confrontation, he just said his comment and then pulled
18 a gun out.

19 Q. Okay.

20 A. It wasn't a back and forth.

21 Q. And so, at that point you pulled out a gun that
22 you weren't supposed to have, correct?

23 A. Right. But if you look at the Fourteenth
24 Amendment, it clearly states that a couple things like
25 immunity, things like that that you're not supposed to

1 be -- I'm not supposed to be like prejudiced against
2 because of that. So are you saying a convicted felon
3 and not supposed to have a gun, that doesn't take away
4 the fact.

5 Q. I never said that.

6 A. No. I'm just saying, it's like you're trying to
7 lead up to that, so I'm just letting it be known that me
8 being a convicted felon doesn't take away -- doesn't
9 mean that I don't get to defend my life.

10 Q. Okay. I wasn't going to lead up to that, but I
11 think you made a good point. You didn't know you had
12 any issues with your cousin, correct? That's what you
13 just testified to.

14 MS. ROSS: I think that's asked and answered.

15 MR. ISENBERG: No, I -- okay. I'll rephrase.

16 THE COURT: That's a good idea.

17 BY MR. ISENBERG:

18 Q. You just testified that before you saw your
19 cousin that night, you did not realize that you two had
20 any issues, correct?

21 A. Correct. He said he must come out.

22 Q. Okay.

23 A. Yeah, I didn't even know he was out.

24 Q. Okay.

25 A. That was his second day out of prison.

1 Q. Okay. So you weren't thinking about your cousin
2 when you bought that handgun illegally, correct?

3 A. Correct.

4 Q. Okay. So you did not buy it to defend yourself
5 from your cousin, correct?

6 A. Correct.

7 Q. Okay. So I just wanted to make that point clear.

8 A. All right.

9 Q. All right. So, you testified at your hearing, I
10 believe at the pretrial hearing, that you were there
11 with a person named, sorry, DeAdrien Morton; is that
12 correct?

13 A. Yeah.

14 Q. Okay. What's your relationship with Mr. Morton?

15 A. Childhood friend.

16 Q. Okay. So he was with you when you were walking
17 up?

18 A. When I was walking up?

19 Q. Yes.

20 A. I never walked up.

21 Q. Okay. When did you first see Mr. Morton that
22 night?

23 A. Oh, you're talking about -- okay. Yeah. Once I
24 got to the area, I think it was Woody Court --

25 Q. Uh-huh.

1 A. -- that's when I seen him.

2 Q. Okay. And so, was that before you saw your
3 cousin?

4 A. Yeah.

5 Q. Okay. So, was Mr. Morton with you when you saw
6 your cousin?

7 A. Yeah. He -- my cousin, Yeargin, he ended up
8 calling Mr. Morton before he called me.

9 Q. Okay.

10 A. But Mr. Morton ignored him, and that's when he
11 called me.

12 Q. Did your sister give Mr. Morton permission to be
13 on the premises?

14 A. You said, did she give him permission to be on
15 the premises?

16 Q. Yes.

17 A. This is, this is apartments.

18 Q. Right. So I'm just wondering, did your sister
19 give permission to Mr. Morton to be on the premises?

20 A. She didn't have to. Like I said, these are
21 public apartments.

22 MS. ROSS: Your Honor, I'd object. He doesn't
23 know what his sister did or not.

24 THE COURT: It doesn't matter. This is about
25 post-conviction relief application, not about retrying

1 the case.

2 MR. ISENBERG: Okay, Your Honor. I apologize.

3 BY MR. ISENBERG:

4 Q. Do you remember Mr. Morton testifying that he did
5 not get permission to be at the apartment complex,
6 correct?

7 A. I mean, I don't remember. I don't remember him
8 saying that. If it's in there, I guess so. Like I
9 said, he wasn't -- he wasn't in my sister's apartment,
10 he wasn't -- like I said, this was down the street.

11 Q. Okay. So after you lost the preliminary hearing,
12 did you talk to your counsel?

13 A. I never lost the preliminary hearing, I never
14 went to it.

15 Q. I apologize. After you lost the pretrial hearing
16 for immunity, did you talk to your counsel about what to
17 do?

18 A. Right after the stand your ground hearing, my
19 lawyer at the time, Michael Brown, came to me and said
20 that the State was offering me zero to five, zero to
21 five on one of them, for involuntary manslaughter and 10
22 to 15 on the other one for voluntary manslaughter, ran
23 concurrent.

24 Q. Okay. And what did you -- how did you respond?

25 A. I said I want to go to trial.

1 Q. Okay. So y'all didn't have any conversations
2 about appeal at that hearing immediately?

3 A. No. I didn't, I didn't even know that was an
4 option.

5 Q. Okay. So you never requested an immediate
6 appeal?

7 A. No, I didn't even know you could. I would have
8 definitely wanted to if I would have known.

9 Q. Okay. So during your direct testimony you said
10 that you asked counsel throughout the trial to appeal if
11 y'all lost, correct?

12 A. Correct.

13 Q. Okay. And how did you approach counsel during
14 the trial about appealing the case?

15 A. I just asked him. I was like, are you still
16 going to appeal if I lose and he said yeah.

17 Q. And he said yes?

18 A. Yeah.

19 Q. Okay. And then after the trial did you talk to
20 him about appealing?

21 A. Yeah. I was leaving the courtroom and I was
22 saying, I was saying something to him about am I gonna
23 appeal again, and he was telling me he was telling me he
24 was to speak to my family.

25 Q. Okay.

1 A. Speak to my family about it.

2 Q. And throughout the trial you obviously felt
3 prejudiced by plenty of objections made by the
4 solicitor, correct?

5 A. Correct.

6 Q. Okay. And did you say anything to your counsel
7 about those objections when they were made?

8 A. I think so, yeah.

9 Q. Okay. Do you remember how you -- what you said
10 to your counsel about the objections made by the
11 solicitor?

12 A. Yeah. I said, I said, he can do that?

13 Q. Okay. How did your counselor respond?

14 A. I don't think he responded because it was, it was
15 so much going on that...

16 Q. Okay. And you obviously were being charged for
17 two counts of murder and unlawful carrying of a pistol,
18 correct?

19 A. Correct.

20 Q. And that could have carried up to a maximum
21 sentence of life in prison without parole, correct?

22 A. Correct.

23 Q. Okay. And so, the jury found you guilty on the
24 lesser included offense, correct?

25 A. Correct.

1 Q. And you served -- you're serving 15 years, with
2 five years probation, correct?

3 A. Correct.

4 Q. Okay. And so, with a potential maximum exposure
5 compared to what you actually got, do you still feel
6 like your attorney did a bad job?

7 A. Yes. I don't feel like -- I don't feel like
8 that's yours or his place to judge how I feel about my
9 time, especially when I was just defending my life. I
10 know 15 years is less than life, which is what I was
11 facing, but at the same time, I've got a son, I've got a
12 family, and I don't feel like, I don't feel like I
13 should be in for just defending my life.

14 Q. Okay. And I can certainly understand that. And
15 you feel like you were defending your life based upon
16 how Mr. -- your cousin approached you, correct?

17 A. Correct.

18 Q. What about the other person that you shot?

19 A. Once I, once I started shooting, he's -- Mr. "T"
20 started shooting as well.

21 Q. Uh-huh.

22 A. At the time I didn't even know that was him, I
23 guess because of how dark it was. But I just kind of
24 reacted to his shooting.

25 Q. Okay.

1 A. And, you know, I didn't even know I done shot
2 him. I still don't know if I did.

3 Q. So you don't -- you didn't see him fall to the
4 ground and then continue shooting, correct?

5 A. I seen somebody. Like I said, it was so dark and
6 he was, he was kind of across the parking lot to where I
7 didn't, I didn't even realize who it was until
8 investigators told me, and they told me he didn't die.

9 Q. Okay. And after that you obviously fled the
10 scene, correct?

11 A. Correct.

12 Q. And then eventually law enforcement caught up to
13 you, correct?

14 A. Correct.

15 Q. And then you actually told them where the weapon
16 was that you had with you, correct?

17 A. Correct.

18 Q. And that weapon was in the pond, correct?

19 A. Correct.

20 Q. So you gave them information and you told them
21 where the gun was and then they located it, correct?

22 A. Right.

23 Q. Okay. So you had no issue with them finding that
24 gun, right?

25 A. No.

1 Q. Okay. And just a couple more things that I want
2 to touch over. You said that you felt like you should
3 have been able to talk about a trial, the fact that you
4 knew that your cousin was -- had just gotten out of
5 prison for shooting someone, correct?

6 A. Correct.

7 Q. Okay. And so, based upon him just getting out of
8 prison for shooting someone, you were afraid, correct?

9 A. I mean, yeah, once he pulled a gun out I was
10 afraid, because I didn't, I didn't think he was joking.

11 Q. Okay. So you weren't afraid until he pulled that
12 gun out, correct?

13 A. Correct.

14 Q. You weren't thinking about the fact that he had
15 just got out of prison for shooting someone?

16 A. No. No. Other than -- like I said, I didn't
17 even know he was out of prison. So seeing him was a
18 surprise itself.

19 Q. Uh-huh.

20 A. So, like I said, I know that he had problems with
21 people that I hung around. I think he went to prison
22 for shooting at somebody that I hung around.

23 Q. Uh-huh.

24 A. But, like I said, I figured if I showed him I'm
25 not trying to harm you, I'm not gonna talk junk to you,

1 I'm not gonna come at you aggressively, and you just got
2 out of prison, I know you want to, you know, get stuff
3 done, I thought he was gonna show me the same, the same
4 respect. I never expected him to pull a gun out on me.

5 Q. Okay. And so, I can certainly understand that.
6 Let's just touch on a couple of things then I'll be
7 done. So, you were housesitting, right?

8 A. (Nods head up and down.)

9 Q. You had the gun illegally, correct?

10 A. (Nods head up and down.)

11 Q. Okay. You didn't see the second guy that you
12 shot when he was falling down to the ground, right?

13 A. Right.

14 Q. Okay. And you weren't thinking about your cousin
15 just getting out of jail for shooting someone when that
16 all was happening, correct?

17 A. Until he pulled a gun out on me.

18 Q. Okay. And after that you went to Greenville and
19 gave consent for them to search the car -- I mean search
20 the pond. You gave them -- you told them where the
21 firearm was, correct?

22 A. Right.

23 Q. Okay. No further questions.

24 REDIRECT EXAMINATION

25 BY MS. ROSS:

1 Q. Just briefly. Weren't there -- I can't exactly
2 remember from the case and I'm not sure it even matters,
3 but there was more than one person shooting that night?

4 A. Correct.

5 Q. Did the evidence show that there was more than
6 one person shooting that night?

7 MR. ISENBERG: Your Honor, I would object to
8 speculation, because's already testified that he
9 couldn't see.

10 THE WITNESS: What?

11 THE COURT: No. No. He testified somebody else
12 was shooting also.

13 MR. ISENBERG: Right.

14 THE COURT: Another guy was shooting and he ran
15 and there was still shooting going on, I think was his
16 testimony.

17 THE WITNESS: Right. Right.

18 THE COURT: Answer the question.

19 THE WITNESS: There was 9 millimeter shells on
20 the scene.

21 THE COURT: You didn't see those because you were
22 running. So ask your next question.

23 BY MS. ROSS:

24 Q. Well, you knew that from discovery?

25 A. Yeah, from my motion of discovery that there was

1 9 millimeter shells on the scene.

2 Q. So when you say you're not even sure whether you
3 shot the second person, that's because you're not,
4 right? Someone else could have done it who was shooting
5 that night?

6 A. Maybe.

7 Q. Okay. I have no further questions.

8 THE COURT: Okay. You can stand down.

9 MS. ROSS: We call Jasmine Brown.

10 THE COURT: I need a break. Y'all took a break
11 earlier. I'm ready for my nap.

12 (Recess was had from 11:49 a.m. to 11:54 a.m.)

13 MS. ROSS: We call Jasmine Brown.

14 THE COURT: Okay. Come forward and be sworn.

15 All right. Ma'am, do you swear or affirm the
16 testimony you give the court will be the truth?

17 THE WITNESS: I do.

18 JASMINE BROWN,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. ROSS:

22 Q. Ms. Brown, how are you related to Terrell?

23 A. I'm his sister.

24 Q. And you testified at his trial in 2013, didn't
25 you?

1 A. Yes, ma'am.

2 Q. And where did you live at the time of the
3 shooting?

4 A. Kelly Acres.

5 Q. And you heard the testimony, your apartment
6 wasn't right next to where it occurred but it was
7 nearby, correct?

8 A. Correct.

9 Q. As far as I asked about gated, could anyone drive
10 in and out of Kelly Acres or was it ---

11 A. Yes, ma'am.

12 Q. And as far as you heard some testimony about
13 Terrell had stayed overnight with you in the past?

14 A. Uh-huh.

15 Q. The policy, the owner said -- the rental agent
16 for Kelly Acres said that someone was supposed to sign
17 in if you had any guests. Did that always happen?

18 A. No.

19 Q. Okay. So while it was a rule, it wasn't
20 necessarily something that was always ---

21 MR. ISENBERG: Objection, Your Honor. This is
22 purely speculation.

23 MS. ROSS: No, it's her experience.

24 MR. ISENBERG: She can't know if it always
25 happens or not.

1 THE COURT: She'd know if she did it every time
2 or not. It's okay we're good.

3 BY MS. ROSS:

4 Q. Did you do it every time?

5 A. No, ma'am.

6 Q. All right. Now, and you weren't -- your
7 testimony, you weren't there, you had left your house
8 before the shooting, correct?

9 A. Correct.

10 Q. And did you drive?

11 A. No, I was picked up.

12 Q. And did you drive at that time? Did you have a
13 car around that period?

14 A. I didn't have a car.

15 Q. And who often drove you around?

16 A. Terrell, my brother.

17 Q. Okay. And, and was he allowed to stay at your
18 apartment when you weren't there?

19 A. Yes, ma'am.

20 Q. How did he access it?

21 A. With a key.

22 Q. So he had his own key to your apartment?

23 A. Yes, ma'am.

24 Q. And was there any kind of parking permit or
25 anything required --

2 Q. -- at Kelly Acres?

4 Q. There wasn't? Okay. I have no further
5 questions.

7 MR. ISENBERG: Beg the Court's indulgence. May
8 it please the Court?

10 CROSS-EXAMINATION

12 Q. Good morning, Ms. Brown.

14 Q. How are you doing today?

16 Q. Good. Good. Now, you just testified that your
17 brother stayed over at your house frequently, correct?

18 A. I never said frequently, but it has happened
19 before, yeah.

20 Q. Okay. How often did he stay at your house?

21 A. Every now and then whenever he wanted to. I
22 never kept count.

23 Q. Okay. How did he have access to your house?

24 A. A key or I'd let him in.

25 Q. So he had a key to your house?

1 A. He did.

2 Q. Okay. Was the apartment complex aware that he
3 had a key?

4 A. I'm not sure. I didn't let them know.

5 Q. Okay. You never let them know that you gave him
6 a key?

7 THE COURT: What's the relevance to all this?
8 She wasn't there when it happened. I mean, what's the
9 relevance to any of that? She's not on trial.

10 MR. ISENBERG: Your Honor, if you don't feel like
11 it's relevant, then I'll withdrawal the question.

12 THE COURT: He's outside her apartment. He had
13 permission to be on the premises, that's enough for me.

14 MR. ISENBERG: Okay.

15 THE COURT: I don't see whether he had a key or
16 she knew what the code to the ---

17 MR. ISENBERG: Your Honor, the trial judge ruled
18 that he didn't have proper permission to be there.

19 THE COURT: I know, but I thought he had
20 permission to be there and be on the grounds. He could
21 just walked around. It's, the immunity hearing, he
22 didn't sign the lease, that's different. That's not
23 anything she could keep him at that, so I understand it.
24 I think y'all are chasing a rabbit, too. I don't see
25 any point in asking her, you know, did he have a key to

1 the house.

2 MR. ISENBERG: Okay. I can appreciate that.
3 I'll withdrawal the line of questions. I don't have any
4 questions for her.

5 THE COURT: Okay.

6 MS. ROSS: We'd call Jamar Murray at this time.

7 THE COURT: I don't see him -- the presumption in
8 his application is there was a line of questions the
9 solicitor objected to that weren't challenged by the
10 defense lawyer. None of those were, I believe he had a
11 key in his pocket. I mean, so that's all fine. The
12 fact that this is so low impact, it didn't matter.

13 Do you swear or affirm the testimony you're about
14 to give the court will be the truth so help you God?

15 THE WITNESS: Yes, sir, I will.

16 JAMAR MURRAY,
17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. ROSS:

20 Q. What's your name?

21 A. Jamar Murray.

22 Q. And you testified twice at this prior trial; is
23 that correct?

24 A. Yes, ma'am.

25 Q. One pretrial and one during trial?

1 A. Yes, ma'am.

2 Q. Now, at the pretrial you testified in more
3 detail, but on page 576 -- well, I don't have it, but if
4 you'll just believe me, that's during your testimony the
5 solicitor objected. And you're talking about what
6 happened, and then you start trying to going into the
7 prior shooting and kind of what you were seeing.

8 A. Uh-huh.

9 Q. All right. Now, if he hadn't objected, what
10 would you have said?

11 A. That, you know, I basically like knew that Quinn
12 took the gun, basically, you know, from prior
13 altercations that went on before this altercation went
14 on.

15 Q. And that "Yearg", the same guy?

16 A. Yes, ma'am.

17 Q. And so you knew all about that. What would he do
18 with the gun that he carried around with him?

19 A. I heard that he shot up a dude ---

20 MR. ISENBERG: Objection, Your Honor, this is
21 hearsay.

22 THE COURT: I think it's already been testified
23 that he was to serve time for shooting somebody.

24 MS. ROSS: Yeah. And, also, I'd go to ---

25 THE COURT: I mean that's what I understood.

1 Somebody else can contend if this is a proffer.

2 THE APPLICANT: It was basically the same
3 altercation anyway.

4 MS. ROSS: Okay. Sorry.

5 THE COURT: If it was another instance of bad
6 behavior, that would be something different.

7 MR. ISENBERG: Your Honor?

8 THE COURT: Yes, sir.

9 MR. ISENBERG: He's about to go into things that
10 he heard about this guy doing, outside of the things
11 that he went to prison for.

12 MS. ROSS: It's not for the truth of the matter
13 asserted; it goes to the state of mind of the person
14 perceiving someone coming at him.

15 THE COURT: Isn't that part of the self-defense
16 charge, they have to know the reputation for --

17 MS. ROSS: It is.

18 THE COURT: -- misbehavior and that sort of
19 thing? And if it was limited, maybe that's where she
20 angling for. So, I mean, I don't have to believe this.
21 It's when he's standing trial. I mean, if you're
22 standing trial, yeah, I get it, but this is a
23 post-conviction relief hearing.

24 MR. ISENBERG: Thank you, Your Honor.

25 BY MS. ROSS:

1 Q. Okay. And how -- you were standing right there,
2 how did you feel?

3 A. I mean, I felt the same way Terrell felt, I
4 feared for my life.

5 Q. You thought you were gonna get shot?

6 A. Yes, ma'am.

7 Q. Did you have a gun with you?

8 A. No. No, ma'am, not at all.

9 Q. If you had one, what would you have done?

10 A. I probably would have did the same thing Terrell
11 did.

12 MS. ROSS: All right. Nothing further.

13 THE COURT: Okay. Answer any questions ---

14 MS. ROS: Oh, please answer any questions from
15 the Attorney General.

16 CROSS-EXAMINATION

17 BY MR. ISENBERG:

18 Q. You just testified that if you had a gun you
19 would had done the same thing that Terrell did?

20 A. Yes, sir.

21 Q. You would have just shot blindly into the dark?

22 A. I mean, not blindly into the dark. But if a man
23 pulls a gun out on me and I fear for my life, I'm gonna
24 do what I have to do to protect myself basically.

25 MR. ISENBERG: Okay. No further questions.

1 THE COURT: You may step down.

2 MS. ROSS: That's the applicant's case, Your
3 Honor.

4 THE COURT: Okay. Mr. Isenberg, what you got?

5 MR. ISENBERG: Your Honor, I call trial counsel,
6 Michael Brown.

7 THE COURT: Come on up.

8 Mr. Brown, do you swear or affirm the testimony
9 you provide the court will be the truth so help you God?

10 THE WITNESS: I do.

11 MICHAEL BROWN,
12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. ISENBERG:

15 Q. Good afternoon, Mr. Brown.

16 A. Good afternoon.

17 Q. How are you doing today?

18 A. Excellent, sir, and you?

19 Q. Thank you for being here. I just want to go
20 ahead and start with how did you come about representing
21 Mr. Brown?

22 A. Oh, gosh, Carlos. I know Terrell's family. I've
23 known them basically since I was in middle school, high
24 school. And they contacted me about the fact that he
25 had been charged with shooting two people.

1 Q. Okay. And before your representation of Mr.
2 Brown, how long had you been practicing law?

3 A. Gosh, after clerking for then trial Judge Beatty
4 at the time, I went to Florida for a year, so I actually
5 started my formal practice in 2002.

6 Q. Okay. And before you represented him, had you
7 taken on any cases that involved a murder charge?

8 A. Most definitely. When I first started practice,
9 I guess I had the great fortune of being on the list to
10 appoint cases.

11 Q. Uh-huh.

12 A. I began being appointed to the most serious
13 cases, armed robbery, murder cases and a few other kind
14 of cases. I also took those as a part of my private
15 practice as well.

16 Q. Right. And during the duration of you trying or
17 practicing all these cases before you came to represent
18 him, had you run into any cases that involved
19 self-defense?

20 A. Yes. This was the first case, I think, that I
21 had with standing -- with a potential stand your ground
22 issue. I guess nothing self-defense.

23 Q. So this was your first stand your ground issue
24 case?

25 A. Yes.

1 Q. Okay. And when was the first time that you can
2 remember meeting with Mr. Brown, Mr. Brown number two?

3 A. For the time period of which he was charged, I
4 went to visit him at the county, I don't know, maybe a
5 month or less, me going to see him.

6 Q. Okay. Do you remember addressing any issues with
7 the preliminary hearing in this case?

8 A. I don't. I don't even know if he actually had a
9 prelim or if he was indicted at that time. So
10 customarily what the county would do, they would
11 transport you, obviously down to the magistrate's court,
12 and he at that time would have a chance to waive it.

13 Now, I don't recall if I hold and waive it. But
14 if I did, as a matter of preparation it was my initial
15 experience of doing prelims. And I always say it's
16 worthy to go to a prelim to at least to be able to see
17 what the State has, and so that's always been my
18 position. But to argue prelims is different in terms of
19 if you're gonna try to argue something that you would
20 essentially give your defense away.

21 The only time period I know, based upon the
22 discovery, was some lack thereof that there was any
23 mention of one of the things I discovered that helped me
24 pay the bond. The issue with the stand your ground, the
25 signs that were related to loitering. I don't think any

1 of that had been provided during that time period.

2 At some point what was presented to us was
3 photographs that was taken, apparently, from Kelly Acres
4 showing signs of loitering. And so without that being
5 said, I knew that was gonna be an issue at some point.

6 Q. Okay.

7 A. But I don't think that was available during that
8 time period.

9 Q. Have you done any preliminary hearings in your
10 times of work?

11 A. Yes.

12 Q. Okay.

13 A. But this is my standard practice, each and every
14 time, to go to prelims and I've done prelims, yes.

15 Q. Do you believe his case would have been dismissed
16 at a preliminary hearing, based upon the evidence?

17 A. Based upon the evidence that was being presented
18 at that time and the judge basically found that this
19 could be pounded over, I'm 99.99999 percent certain that
20 it would have been held over. But, unfortunately, I
21 don't take prelims, so...

22 Q. Okay. And so you just testified that you
23 originally kind of discovered the stand your ground
24 issue. What facts led to you believing that was a
25 potential defense in this case?

1 A. You know, at some point the police chief of
2 Woodruff had talked to me because, you know, I was
3 trying to look into the case and investigate the case.
4 I heard what he had to say in regards to Terrell being
5 on the scene. I knew that a female officer had come out
6 on that day and there was an impression that was being
7 given based upon everyone that would come out there.
8 You know, this is where they go out and hang and chill
9 or smoke and that stuff. The terms were being given to
10 me.

11 And I think law enforcement was at that point
12 taking a different position. And so I knew in spite of
13 what we wanted to try to present, in regards to at least
14 one of the decedents type of character, that that would
15 give us our strongest opportunity that I wanted to try
16 to present a stand your ground or an immunity defense.

17 Q. Okay. And what issues did you spot with stand
18 your ground defense?

19 A. Well, I stated it to more like, I guess, being on
20 the sites, the sister's apartment, stayed there
21 sometimes. Was living with his girlfriend at different
22 times, would come back and forth. Clearly that was
23 gonna be an issue based upon the way the housing complex
24 would have looked at -- and this after getting notice
25 that there was a sign on the premise and the pictures

1 were taken at some point in the discovery process that
2 the sign clearly pointed out there was no loitering.

3 At some point it probably would have been an
4 argument of the State if we had tried to put forth any
5 kind of just bland self-defense issue that he wasn't on
6 a lease, he didn't have -- had signed in, wasn't a
7 person that was allowed to be there, and had made it's
8 way to the sister's apartment. And if he really came
9 like everyone else, came straight to this location in
10 this parking lot and was hanging out.

11 Q. Right. And the apartment complex had a policy
12 when it came to overnight guests, correct?

13 A. As I, as I recall, yes.

14 Q. Did Mr. Brown tell you that he was staying
15 overnight at his sister's house when he gave you the
16 facts of the case?

17 A. As I, as I recall -- as I said, he did tell me at
18 different times he stayed with his sister, and other
19 times he was living with his girlfriend and he was
20 staying there. As I understood it, during this time
21 period he was living there.

22 Q. Living with his sister?

23 A. Yes. He was staying there, yes, sir.

24 Q. So him staying overnight, you would have followed
25 policy of the apartment complex, correct?

1 A. If that's the way that they were gonna present
2 it. Clearly, in our defense we was trying to show that
3 at a minimum, based upon his sister being on the lease
4 and living there, this is her brother.

5 Q. Right.

6 A. She had the ability to allow who she wanted to,
7 to be in the apartment. A point we were arguing that --

8 Q. Right.

9 A. -- he was clearly an invitee.

10 Q. Okay. And so when you got to this hearing before
11 trial, did you discuss an immediate appeal with Mr.
12 Brown?

13 A. No. Not in regards to that issue, no.

14 Q. Okay. What's your custom when it comes to
15 immediately appealing pretrial motions?

16 A. If it's pursuant to a trial, I think that will be
17 the issue. I don't think at that point we had even
18 entertained an appeal, as I recall.

19 Q. Okay. And while we're on the subject, did you
20 have any discussions with him about appealing after he
21 lost the motion?

22 A. Not that I recall. The only -- not in terms of
23 appealing it at, at the outset. We discussed what an
24 appeal will be, but the only time I recall that we
25 talked in detail about appeals was during the course of

1 the trial itself.

2 Q. And what did he say to you about an appeal made
3 at trial?

4 A. During the trial, because he was facing two
5 counts of murder, during the breaks he would mention,
6 you know, if I lose, if I lose, are we gonna appeal, are
7 we gonna appeal, if I lose, if I lose? So he was quite
8 concerned, clearly, throughout the course of the case,
9 so he did bring that up --

10 Q. And after he was ---

11 A. -- a number of times.

12 Q. Sorry. After he was convicted of manslaughter,
13 what conversations did y'all have about an appeal?

14 A. Towards the end, clearly there was sadness
15 because he was convicted in light of the defense that we
16 tried to provide. But on the other hand, I guess it was
17 looked at. I don't want to say there was elation,
18 because no one would want to go to prison for clearly
19 something that they felt that they should have never
20 been charged with.

21 There was a difference of perspective because we
22 had one of the alleged victim's mother, she came to the
23 trial and clearly she did offer by way of mitigation her
24 own sympathies for Terrell, the situation because
25 they're family. And we got a sense that clearly he

1 wasn't gonna face the maximum that he could have faced
2 at that point under the convictions of the two
3 manslaughters.

4 When he got 15 years, at that point I don't
5 recall us having continued conversations about any
6 appeal at that moment. Later on I did speak with his
7 family. I got a sense that that was the same sense that
8 it wasn't life, it wasn't 30 years, it was 15 years. No
9 one wants to go to prison, but obviously 15 years is
10 completely different than him facing at that point the
11 manslaughter of 30 years.

12 Q. So your perception on the matter is they didn't
13 want to mess with the sentence that was imposed based
14 upon the charge that he was convicted of?

15 A. Absolutely.

16 Q. Okay. And that's the final impression you had in
17 regards to that issue?

18 A. I did. Later on, after I heard about the fact
19 that he apparently filed a post-conviction relief
20 application, which was well after that incident.

21 Q. Okay. Now, he's alleging that you failed to
22 object in several instances in this trial. Do you
23 remember there being testimony about -- from a witness
24 about the way one of the victims fell into a car and
25 then to the ground?

1 A. I don't recall that in particular, but I do
2 recall the evidence that was submitted for the jury's
3 consideration. I also recall what Terrell had to say,
4 what other people were saying during the course of the
5 trial and in particular, the nature of the autopsy and
6 what the doctor had to say. So I don't think any of
7 that could have been shown or proven that Terrell was
8 standing over someone shooting.

9 Q. Right.

10 A. I don't think we medically heard that
11 information.

12 Q. So, in your opinion, that information never came
13 out in trial; i.e. he stood over the victim and shot him
14 twice?

15 A. No. During the course of trials you get a feel,
16 obviously of the tempo of the way the trial is going.

17 Q. Uh-huh.

18 A. And clearly throughout our questioning of the
19 various people that took the stand, we had an
20 opportunity to try to get into the fact that Yeargin was
21 a person that had a past. Clearly, when something is
22 said from this stand to a jury, they have a chance to
23 hear it.

24 Q. Uh-huh.

25 A. And in the full of the trial, each and every time

1 you may not object just because, as he said, as Terrell
2 said, so much was going on but at the same time period
3 you get a sense of the way a jury can perceive what's
4 occurring during the course of a trial.

5 Q. Right.

6 A. If you had a chance to see the way that Mr. Bulsa
7 tries a case, it's very clear at different times when
8 he's questioning, he is trying to force or direct a
9 certain perception, just in the very nature of his
10 trial. So I didn't, as I recall, this being one of
11 them, I didn't object to that because it had come up a
12 few times about the fact that Mr. Yeargin was carrying a
13 gun.

14 The second part is, clearly we had to overcome
15 the perception of black men being in this particular
16 area, well known Kelly Acres, that not only did Mr.
17 Yeargin have a gun, Terrell had a gun. One of the
18 things that threw me off but we had to adjust was the
19 fact that there was an additional witness that was gonna
20 talk about being a person that was actually in the car
21 that Yeargin had shot.

22 Q. Uh-huh.

23 A. That person, for whatever reason, backed out at
24 the very last minute. We didn't know there was an
25 additional person that their name came up in the case.

1 And law enforcement, for whatever reason, didn't pursue
2 him because he was said to be at the scene at the same
3 time, even though he came actually to the trial one day.

4 And we feel -- we felt in that time period,
5 Terrell and I did, he might have put some undue
6 influence on this person at testifying. That would have
7 come out during the course of trial. We didn't have
8 that.

9 The second thing was, in my line of questioning
10 to Terrell, one of the things I do recall asking him was
11 is -- did he have a problem previously with Yeargin or
12 you had some kind of situation with him. I may not have
13 framed it that way, but Terrell's immediate response was
14 no.

15 And, you know, after the trial's over, it's not
16 for me to go to him and try to pitch the pieces of the
17 trial that didn't go in a manner in which we had
18 previously discussed. Because he had told me that there
19 was a time period in which he and Yeargin had --
20 directly had confrontation and he was hit with a bottle.

21 So when he was on the stand and I asked that
22 question and he didn't immediately say, yeah, we've had
23 problems before, he hit me upside the head with a
24 bottle, again, the jury is watching this. I didn't want
25 to make it to seem like I'm trying elicit something or

1 trying to create something or try to cause him to say
2 something at the time period and the jury could perceive
3 that, hey, I'm trying to get him to lie or say something
4 that wasn't there.

5 Q. Just to clarify, he told you before trial he had
6 an incident with Yeargin and then at trial he -- you
7 anticipated him talking about that incident and then he
8 never said anything about it?

9 A. That's correct.

10 Q. Okay.

11 A. I think the other thing was it was said or known
12 that Yeargin was trying to get in contact with him since
13 he had been out and Terrell didn't want to have anything
14 to do with it. He was just trying to avoid any kind of
15 issues with him. And so that's why they weren't -- he
16 wasn't gonna communicate with Yeargin.

17 Q. Okay.

18 A. Now, him knowing when he was out, I can't say
19 whether he knew that or if he knew it at the time
20 period, he just -- I think he knew at some point Yeargin
21 was trying to get in contact with him. But Terrell just
22 didn't want to, from my conversations with him,
23 historically he just didn't want to have anything to do
24 with Yeargin, because he knew that Yeargin wasn't the
25 kind of person that would have been friendly or family

1 like in terms of dealing with him.

2 Q. Right. And so, we jumped around a couple issues.
3 Just to clarify, what was your strategy in regards to
4 the facts with pursuing self-defense in this case?

5 A. Well, it was to show that where Terrell was
6 standing at that time period, that night, he was on one
7 side of the parking lot near a sidewalk. The testimony
8 that was being presented was that at some point, I think
9 the gun had represented the heated exchange amongst the
10 parties and the gun was put away and a person went to a
11 car. Then a person comes back out of the car. And then
12 the issue of guns being presented again.

13 Q. What about the lighting during this time? Did
14 you plan to point out anything in regards to it being
15 too dark to see or, you know, being tough to see when
16 the shooting was going on?

17 A. I don't recall that. What my strategy would have
18 been, I don't know.

19 Q. Okay. I just -- did Mr. Brown ever indicate to
20 you that he couldn't see when he was shooting at the
21 other party?

22 A. I don't recall that necessarily being an issue
23 more so than -- Yeargin obviously being a person that
24 was having a gun, but a third person on the scene that
25 would have been a perception of being one of the person

1 that was causing all of this nonsense, "Fredo".

2 "Fredo", being a person that was the catalyst of a lot
3 of this that was going.

4 Q. Instigator?

5 A. Yes.

6 Q. Okay. And what about in regards to the state of
7 mind, did you ever have any discussions with your client
8 about knowing what Yeargin was in jail for?

9 A. Oh, yes. He knew what he was in jail for. But,
10 again, there was an incident that was related to him.
11 What I anticipated from my previous conversation was the
12 fact that, hey, I had a personal situation with Yeargin
13 and this is gonna come out on the stand.

14 Q. So you thought his personal situation with
15 Yeargin was more important at trial than ---

16 A. It's on the record. It's not something that he
17 would have heard about discussed. It was a personal
18 interaction that he had in a negative manner. So --

19 Q. Okay.

20 A. -- I thought that's what we were gonna get to
21 when I asked that question, but it didn't come out and I
22 didn't want to force it out of him.

23 Q. And was it fair to say that before that point
24 when he said that there was no prior incidents, it was
25 your trial strategy to bring this up and then talk about

1 it during closing statements?

2 A. Yes.

3 Q. Okay. So, they also talk -- he's also alleged
4 that you failed to challenge a search warrant based upon
5 them discovering some stuff in his hotel room. What was
6 your strategy in attacking that search warrant?

7 A. I don't recall that being an issue at the time.
8 What was -- that was being elicited -- well, could have
9 been elicited from Terrell but he offered when he was
10 asked by law enforcement prior to counsel being
11 involved, he told them where the gun that he used to --
12 involved in the incident.

13 And there was questions in terms of where the
14 second gun came from. And so -- amongst us. And so we
15 just moved on beyond that, and we wanted to focus
16 clearly on the fact of being caught with a gun at that
17 point, bolster his testimony, and what we do with the
18 fact that we're calling or contacting this family,
19 threatening his life.

20 "Fredo" was out in the streets still being this
21 third party that we feel had a great deal to do with all
22 of these circumstances. He wasn't on the run from doing
23 something wrong, he was merely trying to protect his
24 life and he got away from his family, not trying to have
25 them involved in the situation or potentially putting

1 themselves in danger, but as I recall, his sister did
2 receive threatening phone calls.

3 But he merely was in a position now as someone
4 that is a fugitive, but he was in a place where he was
5 trying to survive. He was trying to make sure that no
6 one would kill him in light of him getting away from the
7 scene.

8 Q. Right.

9 A. So that was the mindset during that period.

10 Q. And you made the Court aware of that during your
11 objection to that evidence being admitted, correct?

12 A. Yes. As I recall, yes.

13 Q. Right. And do you feel like there was anything
14 else you could have done to make the Court aware of the
15 nature of that evidence at trial?

16 A. No. Not in light of obviously my objection being
17 given and that being placed on the record. And again,
18 what we knew to have been all the circumstances behind
19 the issues involved.

20 Q. And he's also alleged that you should have
21 objected when a police officer testified that there was
22 unnecessary traffic caused by addressing the scene of
23 the crime. Do you feel like you should have objected?

24 A. You know, I don't recall that particular
25 objection. But, again, in the flow and the tempo of the

1 trial, Terrell obviously was being painted in a certain
2 light at that point, but we were showing the opposite
3 side of it. You combine it with the fact that, you
4 know, he was hiding out.

5 You've got, you know, obviously law enforcement
6 made it seem like they were on the scam man. In fact,
7 you turned a dog against him. You let a dog go and you
8 the dog bit him. I mean, just the way he was being
9 treated by law enforcement, it was the essence of us
10 showing that, hey, they were quick to, quick to judge,
11 quick to label him as yet again another young black male
12 with a gun that took lives. And here is law enforcement
13 coming to get him, in the way and the manner which we
14 did come and get him, so that the officer for us was
15 bolstering his position of everything that he was doing.

16 We had to block the roads. We did this and that.
17 But did you go into the fact that you released a dog and
18 you let the dog bite him? Did you determine the manner
19 in which you arrested him, what you said to him? So it
20 looks like, again, it was in the course of the trial and
21 stylistic at that point.

22 Q. Your saying it did not appear to be significant
23 at the time over the ---

24 MS. ROSS: I object to leading.

25 MR. ISENBERG: Okay. That's fine. I'll

1 withdraw.

2 THE COURT: I think he explained his answer. He
3 didn't object so that he could get into the fact that
4 maybe the police overreacted, as opposed to anything
5 else. He wanted the good and the bad of it. It was a
6 stretch in that he was trying to let them run with it to
7 create sympathy perhaps. I don't know.

8 MR. ISENBERG: Understood. I'll withdraw the
9 question.

10 BY MR. ISENBERG:

11 Q. So, I don't think I have any more questions for
12 you, other than he's alleged that there was a failure to
13 request a jury charge based upon State v. Marin. Were
14 you aware of the law in that case when this trial
15 occurred?

16 A. I don't know if I, in particular, looked at that
17 case. I don't know if I recall looking at that case,
18 but I looked at a number of cases in regards to an
19 alleged position of self-defense. And, obviously,
20 seeking immunity based upon the stand your ground
21 motion, and as well as making that our defense, which
22 clearly, you know, we're not required to prove anything
23 in the course of a trial. But, clearly, I pointed out
24 throughout the course of the trial that it was actually
25 self-defense.

1 Q. Well, I have no further questions. Thank you,
2 Mr. Brown. Please answer any questions from opposing
3 counsel.

4 CROSS-EXAMINATION

5 BY MS. ROSS:

6 Q. Let's go backwards. Okay. Going back, on page
7 723, did you -- you didn't hand up any written requests
8 for specific jury instructions, did you?

9 A. No. We'd already discussed the charges.

10 Q. And he did say that the State must disprove
11 self-defense in his instruction, or do you recall
12 whether ---

13 A. I don't recall, but if it's there.

14 Q. All right. And can this record reflect what it
15 reflects on that whole issue about jury instructions?

16 A. Yeah, that's fine.

17 Q. Okay. Now, just going back to a little bit, to
18 page -- do you have the transcript there by any chance?

19 A. I don't. I can refer to your words on that.

20 Q. On page 632, they -- the defendant was trying to
21 testify that he heard the victim and "Fredo" talking to
22 each other about shooting someone and this and that and
23 the State objected. Did you argue that that goes to the
24 state of mind of my client and that's admissible
25 testimony?

1 A. Not that I recall. Again, there had been prior
2 testimony. And, as I said, in the course of a trial
3 it's not always my position, and I've been successful
4 with this, to not make it seem like you're trying to
5 hide something, but then it had been brought out, it had
6 been brought out a few times that clearly the victim had
7 a gun and based on the previous situation.

8 Q. Okay. And then just going on. As far as, you
9 gave some testimony about the, I guess, the alleged
10 flight and the Greenville pickup and siccing the dogs on
11 them. Didn't they testify they sicced the dogs on them
12 because they were aware afraid he had a gun?

13 A. I don't recall, but that may have been their
14 testimony clearly, but we were showing -- and where he
15 was at that point was indeed his state of mind.

16 Q. And, and you agree that you didn't object to
17 that? It was an unrelated gun, it was not the gun ---

18 A. If that's in the transcript, then that's in the
19 record and I'm gonna have to go with that. I don't
20 recall.

21 Q. Okay. And as far as just the whole hotel room,
22 marijuana, gun found there, wouldn't you agree that it
23 would have been better if the jury just didn't hear
24 about any of that?

25 A. If, if we were gonna exclude the fact of -- if it

1 could have been shown that he wasn't in Greenville at
2 all.

3 Q. Okay. Or how about, couldn't you have argued
4 that the probative value of that information was clearly
5 outweighed by the prejudicial effect of them talking
6 about marijuana, an unrelated gun, closing down I-85 for
7 a manhunt? Would you agree you could have argued that
8 the prejudicial nature of that outweighed the probative
9 value?

10 A. I mean, certainly that could have been argued.
11 But, again, from where we were in terms of presenting
12 our defense in relation to the shooting, him being found
13 in Greenville and under the circumstances, and the fact
14 that he had a -- he was in a position that he was
15 fearful of his life.

16 Q. Okay.

17 A. That was just a judgment call and trial strategy
18 that we had talked about.

19 Q. Okay. Now, on page 142 -- I'll hand this up to
20 you -- at line 13, this is Debbie Marshall, who was the
21 deputy who went out to the scene and talked to the men
22 that night. And what's she saying about loitering?

23 A. I was questioning her about what constitutes
24 loitering, since she had rarely used the term.

25 Q. All right. And you essentially got out of her

1 that these guys were not loitering at Kelly Acres since
2 they had a right to be there, right?

3 A. Yes. She didn't know what loitering was under
4 the definition of the law. And, again, our position was
5 that Terrell definitely had a right to be there. I
6 don't know about everyone else.

7 Q. And Spartanburg does have a city code ordinance
8 section 13-300, that defines loitering, doesn't it?

9 A. Is this city or county? I apologize. I want to
10 make sure I'm correct.

11 Q. Okay. I think it's -- I think it's county.

12 A. Okay.

13 Q. But I'm not sure.

14 A. Understand there's 13. I couldn't say what
15 Woodruff's would have been at that time.

16 Q. Okay. Well, okay. Would you agree that in most
17 counties and cities loitering isn't a criminal charge?

18 MR. ISENBERG: Objection, Your Honor, as to the
19 relevance of this. I thought we decided earlier that it
20 wasn't gonna be relevant to go into the loitering aspect
21 of this case.

22 MS. ROSS: I think it would go to him bringing it
23 up at the trial.

24 THE COURT: I thought it was regarding whether or
25 not immunity was granted or not. The judge made a

1 decision on that, but the self-defense has got nothing
2 to do with that. If immunity is denied, it's
3 self-defense, period.

4 MR. ISENBERG: Your Honor, I ---

5 THE COURT: Whether they were committing the
6 crime. The immunity stands on its own. And then if
7 it's denied, then the trial stands on its own and
8 self-defense can be argued regardless of what the
9 defense presents or not.

10 MR. ISENBERG: Your Honor, the testimony that
11 counsel is referring to is from the immunity hearing.
12 She's -- the line of questioning is about the immunity
13 hearing.

14 THE COURT: I'm not aware of that.

15 BY MS. ROSS:

16 Q. Well, I guess what I'm arguing is, did you ask
17 her specifically, you know, did you arrest them or
18 ticket them for loitering?

19 A. Oh, no. No, I never asked that question. And we
20 didn't take it as -- obviously durng that pretrial
21 hearing and to about -- our contention or our theory
22 under the law that it would have been that type of
23 situation.

24 Q. Okay. And I'll go back to that. And the judge
25 ruled against you and said that -- found that the boys

1 were not engaged in a lawful activity, thus they
2 couldn't have immunity, correct?

3 A. Yes. And I think it was based upon the code that
4 was presented.

5 Q. Or the signs?

6 A. The signs.

7 Q. And that they found that they were loitering?

8 A. Yes.

9 Q. And as far as appealing that ruling, you didn't
10 immediately appeal the denial of, the pretrial, denial
11 of stand your ground?

12 A. No.

13 Q. And were you aware this was prior to
14 State v. Duncan?

15 A. Again, I ---

16 Q. That's complicated.

17 A. There were a number of cases even trying to get
18 to this immunity opportunity, so I don't recall.

19 Q. Okay. And as far as the failing to appeal the
20 conviction, you're saying y'all discussed appealing a
21 great deal and you didn't recall going back and
22 confirming whether or not he wanted an appeal?

23 A. Not after the acquittal on the two murder charges
24 and the fact that -- from the course of the case we knew
25 -- I felt that the maximum, it would be some form of

1 manslaughter. We were hoping that the involuntary
2 manslaughter would apply, at least for one of the
3 charges.

4 Q. Okay. And was it true what he was saying about
5 how there was a plea offer at some point for
6 involuntary? Do you recall?

7 A. I recall I did bring him the State's offer.

8 Q. Okay. Now, just briefly, in pretrial you
9 testified about -- there was testimony about how Yeargin
10 was being really scary and was acting really scary, but
11 then at trial the State objected to that testimony. Do
12 you recall that? And a little bit was discussed with
13 the applicant and --

14 A. Yeah. I don't recall --

15 Q. -- his kind of went through the record.

16 A. -- the scary -- I mean, if you're saying was it
17 being presented that he was --

18 Q. Well, he was being presented --

19 A. -- scary?

20 Q. -- that he knew about the prior shooting
21 incident, correct?

22 A. Yes.

23 Q. And the State kept on objecting to testimony
24 about that, correct?

25 A. After the, I think, from the testimony people

1 heard. I mean, obviously the jury heard repeatedly. It
2 was being said, yes.

3 Q. Okay. And did you ever come back and just argue
4 when the solicitor would object, no, this goes to his
5 state of mind, it's proper?

6 A. No. No, not during that time period, not in the
7 course of what was occurring.

8 Q. And did you ever, you know, 404, the rules of
9 evidence goes to prior actions. Did you ever argue this
10 isn't to argue, it's in conformity with his prior
11 action, this testimony would just go to what my client
12 was thinking?

13 A. No.

14 Q. All right. And one other question. I'd refer
15 you to page -- this goes back to the argument that I was
16 talking about. The witness, the solicitor kept on
17 trying to characterize her testimony that Mr. Brown was
18 shooting the victim while he was on the ground and
19 continuing to shoot and that you didn't object to this.
20 Did you -- also, you didn't object on Page 706 of the
21 State's closing argument where he states on line 22,
22 there's actually evidence, if you believe he actually
23 stood over and shot him. And there is a strike.

24 MR. ISENBERG: Objection, Your Honor. This is an
25 argumentative allegation. This is irrelevant.

1 MS. ROSS: I didn't list that page number. I
2 just saw this, but I believe under this new case that
3 just came out, if something comes up, I can bring it up
4 even if it's not in there.

5 THE COURT: I thought that there was an
6 allegation regarding the not objecting to her testimony,
7 saying she was standing over there and that was
8 consistent and this is their closing argument following
9 that up?

10 MS. ROSS: Yes.

11 THE COURT: Is that -- that's not the same issue?

12 MR. ISENBERG: Your Honor ---

13 MS. ROSS: I believe so, Your Honor.

14 MR. ISENBERG: Failure to object to closing
15 argument and failure to object to testimony, those would
16 be, in the State's opinion, separate arguments. We made
17 separate arguments ---

18 THE COURT: I mean, it's the same issue. It's
19 the witness said he was standing over him shooting down
20 and this is him repeating that same issue.

21 MR. ISENBERG: Your Honor, just one more point on
22 that. In failure to object issues, it's about the
23 attorney's state of mind as is. Failure to object to
24 testimony is as ---

25 THE COURT: Let her keep going. We're trying to

1 get done and you keep arguing law. I'm gonna give y'all
2 a chance to argue that.

3 MR. ISENBERG: Thank you, Your Honor.

4 BY MS. ROSS:

5 Q. You didn't object in that closing argument, did
6 you?

7 A. No. And I think the results may not have gone in
8 the direction that the State was trying to show that
9 Terrell just killed someone in cold blood as a murderer.
10 There was mitigating factors that I could have shown
11 that it was some form of manslaughter, as I discussed
12 with him.

13 Q. And the testimony -- in his closing, what he was
14 saying was based on testimony that did not reflect the
15 facts of the case, that the victim was shot while he was
16 on the ground, correct?

17 A. We would have argued it. I mean, clearly one
18 person had a different take. Everyone else that was out
19 there, again, it would have gone, in our opinion, to the
20 credibility that was trying to be elicited at that
21 point, but there was nothing from everyone else that
22 would have shown that Terrell would have stood over
23 someone.

24 Q. Okay. And that one witness, talking about
25 standing over, her initial testimony was not stood over.

1 It only became stood over after the solicitor
2 continually characterized his questions ---

3 MR. ISENBERG: Objection, Your Honor, that's
4 argumentative.

5 THE COURT: I'm gonna let him answer the
6 question.

7 THE WITNESS: And that goes to, again, the style
8 of the manner of the questioning and the mannerisms, the
9 body language. Clearly the way that the prosecutor was
10 trying to, to elicit that to the jury. And I think the
11 jury saw beyond that.

12 MS. ROSS: All right. I have no further
13 questions.

14 THE COURT: Anything else?

15 MR. ISENBERG: Just a couple questions.

16 REDIRECT EXAMINATION

17 BY MR. ISENBERG:

18 Q. Mr. Brown, have you ever had a judge rule on an
19 objection without giving you a chance to offer anything
20 in rebuttal?

21 A. Yes.

22 Q. Okay. And when the judge does that, you don't
23 just respond with rebuttal, correct?

24 A. Oh, clearly not.

25 Q. Okay.

1 A. No.

2 Q. So if it happened during this trial, you wouldn't
3 have just responded with rebuttal if the judge decided
4 it without asking if you had anything, correct?

5 A. Not, not if it would cool off the, again, the
6 tempo of the trial and if it was in a position that I
7 didn't win, based upon the objection. But, no, I've
8 been in the position where I've been argumentative with
9 a judge in a very serious trial, and it's not a good
10 position to be in if you're trying to defend someone.

11 MR. ISENBERG: Okay. No further questions, thank
12 you.

13 THE COURT: All right. You can step down.

14 (Witness leaves witness stand.)

15 MR. ISENBERG: I'd ask that Mr. Brown be excused.

16 MS. ROSS: No objection.

17 THE COURT: He can be excused.

18 (Mr. Brown leaves courtroom.)

19 MR. ISENBERG: That's the conclusion of the
20 State's case, Your Honor.

21 THE COURT: All right. Ms. Ross, do you want to
22 summarize what you think is correct?

23 MS. ROSS: A lot of it, I think I put generally
24 in the amended application with page number and stuff.
25 As far as just a summary of what I know I was

1 persnickety going through these things, where things
2 weren't objected to. And the reason I was like that is
3 because in this case I think there was just -- the jury
4 was left with a mischaracterization where they were
5 missing some serious elements as far as the loitering
6 issue, the judge's pretrial ruling on the loitering.

7 That officer's testimony should have had some
8 effect on that. She didn't arrest for loitering and
9 that was not argued concisely. And that wasn't
10 appealed. And State v. Duncan came out after this trial
11 that said it's not immediately appealable. But before
12 immunity pretrial hearings were immediately appealable.
13 And that was not done, arguably changing the outcome of
14 the case.

15 And then Mr. Brown was really not allowed to
16 present applicant Brown his position on the case as to
17 self-defense at all because every time he would go into
18 elements of his state of mind and this, this victim's
19 prior shooting that he knew about. He was blocked from
20 doing so by objections by the State, which we would
21 argue could have been challenged and overcome quite
22 easily with the rules of evidence, and allowed those
23 things to come to the attention of a jury. And there's
24 no reason why it would be an effective idea or strategy
25 to not let this strong defense come out in the eyes of a

1 jury.

2 And we'd argue that applies as well to this one,
3 you know, victim's girlfriend's testimony that ended up
4 being turned around to shooting someone on the ground,
5 which really hurts and nullifies self-defense. You can
6 see in the record of the case, the jury had questions.
7 They sent back notes. This was a close case. And that
8 characterization of shooting someone on the ground
9 versus not, certainly could have affected the outcome of
10 the case.

11 There were no jury instructions requested. I
12 think certainly with the way closing argument
13 instruction that he'd have a right to was the *Marin*
14 instruction that I was asking about. When you're
15 shooting in self-defense, you have a right to shoot to
16 kill and as many times as you need to. That's important
17 to Mr. Brown's case.

18 And I'm probably skipping some things, but
19 finally, the appeal issue. The Light v. State, I think
20 he'd certainly have a right to belated appeal at this
21 time. It was his understanding that it was being
22 appealed. And that's almost been -- she didn't reach
23 that, but Judge Knie sort of looked at that at his prior
24 hearing and that's all in that order denying the State's
25 Motion to Dismiss.

1 So based on that, we would argue that Mr. Brown
2 deserves relief. I know, be careful of what you ask
3 for, because he's looking at potentially more, but he's
4 testified about it and explained it to you. And I
5 believe that he'd have a decent case and I can respect
6 his decision to go forward.

7 THE COURT: Okay. And to clarify one thing I
8 said earlier about an immunity hearing, I haven't read
9 the record, and for which I will. An immunity hearing,
10 the part of the proof is different than it is at a
11 trial.

12 MS. ROSS: True.

13 THE COURT: An immunity hearing, the elements of
14 proof to be declared and granted immunity are outlined
15 in the statute. Once that's denied and it goes to
16 trial, then those immunity specifics don't come into the
17 instruction on self-defense. You have a behavior and
18 you're either gonna defend yourself or not.

19 MS. ROSS: Right.

20 THE COURT: Immunity doesn't come into play.
21 It's were you self-defending yourself?

22 MS. ROSS: Right.

23 THE COURT: And that's a horrible issue to
24 distinguish, and the Supreme Court and the Court of
25 Appeals hasn't been given a whole lot of guidance for

1 the judge to know how to instruct that, but it's my
2 understanding that immunity hearing, the burden of proof
3 is on the defense to see if they've gotten it. If they
4 failed to do it, then the self-defense, how they stand
5 on their charge is self-defense, it's not, it's the
6 immunity elements also.

7 MS. ROSS: Right. And I understand that. And
8 I'd also add, I didn't -- I believe, I can't remember
9 the jury instructions specifically in this case, but
10 when it goes on to trial, they would still be allowed an
11 instruction that they have no duty to retreat. That
12 part of self-defense disappears if you're in a place
13 where you had the right to be. So that's where it has
14 sort of come to play here.

15 And, again, that was a jury instruction that I
16 don't think was requested by the applicant's lawyer.
17 And as far as the closing thing, I think I did outline
18 that in the beginning in my application, but I just
19 refer. If not, that was my mistake and I don't -- I'd
20 like to amend my application at this late date and
21 reference this *Lovevieth* Carolina case that came out in
22 October. Appellate case 2016-2233, that kind of relaxes
23 a little bit where we were going with every single
24 little thing has to be a different bullet and put in the
25 amended application.

1 THE COURT: Okay. Well, I'm gonna read this.

2 MS. ROSS: Okay.

3 THE COURT: I've got to study this and your
4 application and all that. So I'll let y'all know why
5 you did it and adjusted it. Okay.

6 MS. ROSS: Thank you, Judge.

7 THE COURT: Anything else from the application?

8 MR. ISENBERG: Your Honor, may I just point out
9 before the record is closed that State v. Marin came out
10 after this trial, so trial counsel would have had no
11 indication that this was going to be the law when he was
12 proceeding with jury instructions, so there's obviously
13 a clairvoyance rule when it comes to trial counsel. If
14 the case came out after the trial, then he's not
15 required to know the law of the case when he's
16 proceeding forward with jury instructions.

17 MS. ROSS: Okay.

18 THE COURT: And sometimes you wonder whether
19 that's really applied or not. Yeah, I'm with you on
20 that.

21 MR. ISENBERG: Okay.

22 THE COURT: Okay. Good enough.

23 MS. ROSS: Thank you, Judge.

24 THE COURT: I'll study this report.

25 MR. ISENBERG: Thank you, Your Honor.

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1 (Hearing concluded at 12:52 p.m.)

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4 --- THIS ENDS REQUESTED TRANSCRIPT ---

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COURT REPORTER CERTIFICATE

I, the undersigned Julie A. Cendroski, Court Reporter for the Seventh Judicial Circuit Court of the State of South Carolina, do hereby certify that to the best of my ability the foregoing is a true, accurate, and complete transcript of record of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the Court of Common Pleas for Spartanburg County, South Carolina, on the 19th day of November, 2019.

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

s/Julie A. Cendroski
Julie A. Cendroski
Circuit Court Reporter III
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	FOR THE SEVENTH JUDICIAL CIRCUIT
	)	
Terrell A. Brown, #341207	)	CASE NO. 2016-CP-42-4549
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	WITH PREJUDICE
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Presiding Judge:	Hon. Eugene C. Griffith, Jr.
Applicant's Attorney:	Susannah C. Ross, Esq.
Respondent's Attorney:	Suzanne Shaw, Esq.
Trial Counsel:	Michael D. Brown, Esq.
Date of Hearing:	November 13, 2019
Court Reporter:	Julie A. Cendroski

This matter comes before the Court by way of Terrell A. Brown's (Applicant) application for post-conviction relief (PCR) filed on December 19, 2016. On May 22, 2017, Respondent, the State of South Carolina, filed its Return and Partial Motion to Dismiss based on the statute of limitations for Applicant's untimely PCR filing. On January 31, 2018, a hearing convened before the Honorable Grace G. Knie on Respondent's Motion to Dismiss to determine whether Applicant could pursue his PCR action despite having filed outside of the one-year statute of limitations. On May 9, 2018, Judge Knie denied Respondent's Motion to Dismiss. On August 7, 2018, Respondent filed an Amended Return. On September 11, 2018, Susannah Ross, Esquire (PCR Counsel), filed amendments to Applicant's PCR application.

On November 13, 2019, an evidentiary hearing convened at the Spartanburg County Courthouse before the Honorable Eugene C. Griffith Jr. Assistant Attorney General Jacob A. Isenburg represented Respondent. Applicant was present and represented by Susannah C. Ross, Esquire. At the hearing, Applicant proceeded with the claims in his original and amended

applications. In support of these claims, Applicant testified on his own behalf and presented testimony from his sister Jasmine Brown and eyewitness Jamar Murray. Respondent presented testimony from Michael D. Brown, Esquire (Trial Counsel).

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC). During its October 2013 term, the Spartanburg County Grand Jury indicted Applicant for two counts of murder (2013-GS-42-4249, -4250). Subsequently, during its October 2014 term, the Spartanburg County Grand Jury indicted Applicant for unlawful carrying of a pistol (2014-GS-42-5071). Michael D. Brown, Esquire, of Rainey & Brown, LLC, represented Applicant. Assistant Deputy Solicitor Derrick B. Bulsa of the Seventh Judicial Circuit Solicitor's Office prosecuted the case.

On March 16, 2013, Applicant's case proceeded with a stand your ground (SYG) and Jackson v. Denno¹ hearing before the Honorable J. Mark Hayes, II. Judge Hayes denied Applicant's Motion for Immunity under the provisions of S.C. Code Ann. § 16-11-450. Judge Hayes ruled that the State had met its burden regarding the Jackson v. Denno issue concerning Applicant's statement to the police officers and found that it was voluntary, not coerced, and not under undue duress.

¹378 U.S. 368, 12 L.Ed.2d 908 (1964).

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On March 17-19, 2013, Applicant proceeded to a jury trial before Judge Hayes. The jury found Applicant guilty of two counts of the lesser included offense of voluntary manslaughter and guilty as indicted of unlawful carrying of a pistol. On March 19, 2015, Judge Hayes sentenced Applicant to thirty years' imprisonment, suspended upon the service of fifteen years' imprisonment to be followed by five years' probation for each count of voluntary manslaughter, and one years' imprisonment for unlawful carrying of a pistol, sentences to run concurrently.

Applicant did not appeal his convictions and sentences.

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Counsel failed to immediately or directly, to appeal the trial judge's pre-trial ruling where the court denied Applicant under the Protect Person or Property Act. See White v. State, 208 S.E.2d at 39."
 - b. "Applicant was not aware counsel did not appeal, until instructions left family member to check on the status of the requested appeal."

On September 11, 2018, Applicant, through PCR Counsel, amended his PCR application raising the following allegations:

2. "Failure to argue SC Code Section 16-11-450(c) effectively; (p. 186)."
3. "Failure to object leading or point out the mischaracterization of testimony of by the Solicitor when he asked a witness "You said Mr. Brown shot him while he was on the ground" and continued to question "two shots to Quinn on the ground" when she had just testified that the Applicant shot Quinn Yeargin three times once, then two more times as he fell back on the car; (pp. 319, 1. 5, 320, 1. 5, 321, 1. 11)."
4. "Failure to argue 404 SCRE allows the jury to know victim was just released from prison for shooting at car because it is not to argue conformity therewith but the state of mind of the defendant at time of shooting and that limitations on questions

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as to specific instances of the victim shooting at someone denied the defendant a full and fair cross; (pp. 328, 1. 4, (pp. 334-337, p. 576, 1.22, p. 591, 1.4)"

5. "Failing to challenge search warrant, bring up jurisdictional issues and argue SCRE 403 and 404 that the probative value of bringing up an unrelated gun and marijuana in a Greenville hotel room was outweighed by the prejudicial effect and constituted impermissible evidence of other crimes. (pp. 383-5), pp. 402-3)."
6. "Failure to object to testimony regarding flight extending to banter regarding roads being closed during the search that blocked traffic ruining citizen's morning commute, (p. 400-1) and."
7. "Failure to argue the defendant had a right to carry a gun on Kelly Acres because he was an invitee of his sister; (p. 533-5)."
8. "Failure to argue defendant's testimony that he heard the victim and "Fredo" talking to each other about shooting this or that was not hearsay because it was not offered or the truth of the matter asserted but was to the state of mind of the defendants who argued he shot in self-defense (p. 632, 1. 12)."
9. "Failed to call witness Nicholas Rhodes."
10. "Failed to request jury charges including one that a defendant may continue to shoot in self-defense as long as he reasonably believes it is necessary to use deadly force. State v. Marin, 745 S.E.2d 148, 404 S.C. 615 (S.C. App. 2013)."

At the evidentiary hearing, Applicant raised the following additional allegations not previously included in his amendment as follows:

11. Failure to object to officer's talking about having to deploy a canine dog because they were worried Applicant had a gun.
12. Failure to prepare Applicant to testify.
13. Failure to object to Solicitor's mischaracterization of evidence in closing.

Applicant seeks relief in the form of "reverse and remand for new trial, based on counsel's ineffective assistance ineffectiveness, which caused Applicant to be unlawfully detained and convicted."

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Before this Court are the Spartanburg County Clerk of Court records regarding the subject convictions and sentences, the Applicant's records from the South Carolina Department of Corrections, the Applicant's trial transcript, and the records of the current PCR action.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act² (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a

² S.C. Code Ann. §§ 17-27-10 to -160.

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question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland v. Washington to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687–88; accord. Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable." (citation and internal quotation marks omitted)).

Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384 (1986).

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(1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and "evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel's performance was deficient, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691. To meet this burden, counsel's deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625; see Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different."). Importantly, "[t]he likelihood of a different result must be

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substantial, not just conceivable." Richter, 562 U.S. at 112.

Finally, the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

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Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRCP (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code:

INITIAL FINDINGS

This Court further finds applicable the strong presumption that at all stages of Trial Counsel's representation of Applicant that he rendered adequate assistance and exercised reasonable professional judgment in her representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689, 104 S.Ct. 2052; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992). See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle

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is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL ALLEGATIONS

Allegation 1(a): Failure to Appeal the Pre-Trial Ruling Denying Applicant's Motion for Immunity Under the Protection of Persons and Property Act

Applicant alleges Trial Counsel was constitutionally ineffective for failing to appeal the trial court's pre-trial ruling denying his motion for immunity under the Protection of Person and Property Act (the Act). This Court finds this allegation to be without merit because it fails as a matter of law.

An immediate appeal may be filed on the following:

1. Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; *provided*, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
2. An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
3. A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
4. An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

S.C. Code Ann. § 14-3-330.

In State v. Isaac, the Court held that "an order granting a request for immunity under the Act is immediately appealable because it is a final order in that case." 405 S.C. 177, 182, 747 S.E.2d 677, 679 (2013). "However, an order denying a request for immunity is not a final order."

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in the case." Id. "An order denying a request for immunity under the Act does not fall within any category of orders which are immediately appealable under [S.C. Code Ann. §] 14-3-330." Id. at 181, 747 S.E.2d at 679.

Accordingly, Applicant's claim that Trial Counsel was constitutionally ineffective fails as a matter of law because the denial of immunity was not immediately appealable. This Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 1(b): Trial Counsel Failed to File a Direct Appeal

Applicant alleges Trial Counsel was constitutionally ineffective for failing to file a direct appeal. This Court finds allegations are without merit.

In White v. State, 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974), the South Carolina Supreme Court held that, even though a post-conviction relief court may find that an applicant did not voluntarily and intelligently abandon his right to a direct appeal, the PCR court does not have jurisdiction to grant a belated appeal. However, when an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected. Id. at 119, 108 S.E.2d at 39-40.

Counsel has a constitutionally imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470 (2000). When counsel has consulted with the defendant regarding the right to appeal, "Counsel performs in a professionally unreasonable manner only by

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failing to follow the defendant's express instructions with respect to an appeal." Id. at 478 (underlining added). In order to establish that he was prejudiced by counsel's failure to file an appeal, an applicant must show he would have appealed absent counsel's deficient performance. See Id. at 484. "Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver." Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981).

Evidentiary Hearing

On direct examination, Applicant testified, "Somebody told [him] that you get like 10 days after your trial, a condition to file for direct appeal." (PCR Tr. p. 13). Applicant testified he spoke to his Trial Counsel about wanting to appeal if he lost the hearing. (PCR Tr. p. 13). Applicant testified when he heard about the ten-day window to appeal and was unable to reach Trial Counsel, he "thought it was over with for [him] as far as appeals." (PCR Tr. p. 13). Applicant testified, "[he] and [Trial Counsel] spoke before [his] trial, during [his] trial, and after [his] trial about the direct appeal." (PCR Tr. p. 26). Applicant testified he "never waived [his] rights" nor stopped fighting for his case. (PCR Tr. p. 26).

On cross-examination, Applicant testified that he asked Trial Counsel, "Are you still going to appeal if [he] loses and [Trial Counsel] said yeah." (PCR Tr. p. 41). Applicant testified he brought it up again after trial when he was leaving the courtroom and asked Trial Counsel how to appeal again, and Trial Counsel told him he would speak to his family. (PCR Tr. p. 41).

On direct examination, Trial Counsel testified, "We discussed what an appeal will be, but the only time I recall we talked in detail about appeals was during the course of trial itself." (PCR Tr. p. 64). Trial counsel testified that at trial, Applicant was facing two counts of murder; during breaks, Applicant would mention, "If I lose, are we gonna appeal, are we gonna appeal; if I lose,

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if I lose?" (PCR Tr. p. 64). Trial Counsel testified that Applicant was clearly concerned and brought it up a number of times. (PCR Tr. p. 64). Trial Counsel testified when Applicant was sentenced to fifteen years, "At that point, I don't recall us having continued conversations about any appeal at that moment." (PCR Tr. p. 65). Trial Counsel testified, "...it wasn't life, it wasn't 30 years, it was 15 years. No one wants to go to prison, but obviously 15 years is completely different than him facing at that point the manslaughter of 30 years." (PCR Tr. p. 65). Trial Counsel testified he was under the impression Applicant and his family did not want to mess with the sentence imposed. (PCR Tr. p. 65).

On cross-examination, Trial Counsel testified that he did not recall confirming whether Applicant wanted to proceed with an appeal. (PCR Tr. p. 82). However, Trial Counsel testified, "not after the acquittal on the two murder charges...we were hoping that the involuntary manslaughter would apply, at least for one of the charges." (PCR Tr. p. 82).

Findings

This Court finds Trial Counsel's credible testimony that he discussed the appeal process with Applicant in detail during trial but did not recall continued discussions about any appeal when Applicant was convicted of two counts of the lesser-included offense of manslaughter and sentenced to fifteen (15) years imprisonment. Trial Counsel testified that he was under the impression that Applicant and his family did not want to appeal the sentence imposed based on the conviction of the lesser-included charges, considering he received a significantly reduced sentence compared to a sentence for murder. Trial Counsel had no inclination that the Applicant or family wished to pursue an appeal.

This Court finds under the totality of the circumstances, that Applicant has failed to prove a reasonable person would have wanted to appeal. While this Court notes Applicant's interest in

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an appeal during trial, Trial Counsel's credible testimony on this matter is persuasive that Applicant no longer had an interest in an appeal.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 2: Trial Counsel Failed to Argue SC Code § 16-11-440(C) Effectively³

Applicant alleges Trial Counsel was constitutionally ineffective for failing to argue S.C. Code Ann. § 16-11-440(C) effectively. This Court finds this allegation is without merit.

The "Protection of Persons and Property Act" ("the Act") provides that "[a] person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force[.]" S.C. Code Ann. § 16-11-450. The Act further provides, in part, that:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

S.C. Code Ann. § 16-11-440(C). "A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard[.]" State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) (citing State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011)).

³ In the amended application, Applicant lists S.C. Code § 16-11-450(c). However, this Court finds this is a scrivener's error, and the correct code is §§ 16-11-440(C) and 16-11-450 and will address this allegation as such.

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Where a defendant seeks treatment under § 16-11-440(C), it is not enough for a defendant to establish that he was "not engaged in an unlawful activity" and was in a "place where he has a right to be." Rather, "[c]onsistent with the Castle Doctrine and the text of the Act, *a valid case of self-defense must exist*, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity" save the duty to retreat. *Id.*, 406 S.C. at 371, 752 S.E.2d at 266 (emphasis added). Notwithstanding the Act or other provisions of law, in order to establish self-defense, the defendant must show (1) he was without fault in bringing on the difficulty; (2) he actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) a reasonably prudent person of ordinary firmness and courage would have entertained the same belief; and (4) he had no other probable means of avoiding the danger. State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997).

That a defendant was engaged in unlawful activity at the time of the incident does not in-and-of-itself defeat a claim for immunity. Rather, where a defendant was engaged in unlawful activity at the time of the incident, the trial court must consider whether the unlawful activity was the proximate cause of the incident. A person who is otherwise acting lawfully is not deprived of the right to self-defense by merely incidental illegality. State v. Glenn, 429 S.C. 108, 120-21, 838 S.E.2d 491, 497-98 (2019) (citing State v. Burriss, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999); State v. Goodson, 312 S.C. 278, 280 n.1, 440 S.E.2d 370, 372 n.1 (1994)).

Relevant Stand Your Ground (SYG) Hearing Testimony⁴

On cross-examination, DeAdrian Morton (Morton) testified that he and Applicant were hanging out smoking marijuana. (Trial Tr. p. 29). Morton testified that he did not have permission to be at the Kelly Acres complex and also did not know he needed permission. (Trial Tr. p. 29).³

⁴ SYG hearing was held on March 16, 2013, before the Honorable J. Mark Hayes.

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On cross-examination, Jamar Murray (Murray) testified that he was hanging out in the Kelly Acres neighborhood on the night that the shooting occurred. (Trial Tr. pp. 58-60). Murray testified that the Kelly Acres neighborhood had two main roads and identified one of the roads as Woody Court. (Trial Tr. p. 59). Murray testified that the shooting happened in the Woody Court area of the neighborhood. (Trial Tr. p. 59). Murray testified that Woody Court was an area in which people would routinely hang out. (Trial Tr. p. 61). Murray testified that he and Applicant were hanging out in Woody Court when the shooting occurred. (Trial Tr. pp. 60-62). Murray testified to his knowledge that Applicant's sister lived in the Kelly Acres neighborhood. (Trial Tr. p. 60). Murray testified that he was unaware of the exact location of Applicant's sister's apartment within the Kelly Acres neighborhood, but knew that she did not live in Woody Court. (Trial Tr. p. 60).

During direct examination, Applicant's sister, Jasmine C. Brown (Jasmine), testified that she lived in Kelly Acres. Jasmine testified that Applicant had permission to visit her, and management never told her she could not have visitors walking around the neighborhood. (Trial Tr. pp. 82-83). Jasmine testified that Applicant would sometimes stay with her, and she never told him he could not come over. (Trial Tr. pp. 84-85).

On cross-examination, Jasmine testified that she lived in Aurelia Court within Kelly Acres. (Trial Tr. p. 85). Jasmine testified that on the night of the shooting, she left and stayed gone the entire night, and Applicant was not staying at her residence. (Trial Tr. p. 88). Jasmine testified that she and Applicant left her residence, and she locked the door. (Trial Tr. p. 88). Jasmine repeated that Applicant was not staying at her residence the night of the shooting. (Trial Tr. pp. 88-89).

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On cross-examination, Spartanburg County Deputy Lorin Williams testified that a bullet from the left shoulder and a bullet from the back were extracted from the victim.⁵ (Trial Tr. p. 104).

On direct examination, Applicant testified that he shot victim as victim advanced towards him. (Trial Tr. p. 113). Applicant testified that victim pointed a gun at him several times, and he felt it was a real threat. (Trial Tr. pp. 118-119). Applicant testified that his sister allowed him to come over and never told him he could not walk around. (Trial Tr. p. 120). Applicant testified that he perceived the victim as a credible threat. (Trial Tr. p. 123).

On direct examination, Debbie Marshall, the manager of Kelly Acres, testified that Applicant did not have permission to stay at Kelly Acres. (Trial Tr. p. 137).

On direct examination, Summer Bayne (Bayne) testified that she was present when the shooting began and only saw Applicant with a gun. (Trial Tr. p. 157). Bayne testified that she heard multiple gunshots but only saw Applicant with a gun. (Trial Tr. p. 158; 161).

On cross-examination, Bayne testified that Victim was known to pull guns on people. (Trial Tr. p. 162).

On redirect examination, Bayne testified that she was unaware of any issues between Victim and Applicant. (Trial Tr. p. 165). Bayne testified that Victim did not approach Applicant in an angry fashion but wanted to know why Applicant had not talked to him since he got out of prison. (Trial Tr. p. 166).

The SYG court found the following:

All right. On the, on the first series of motions, to invoke the provisions of South Carolina 16-11-450 and to do so to prevent prosecution of these cases, the immunity that's offered by that section, I believe the Legislature has been quite clear that persons

⁵ Quinn Yeargin (Victim) was the victim in this case.

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can not be prosecuted for offenses when a defendant asserts that statute and meets their burden of proof by preponderance of the evidence to establish the provisions of the statute. Part of the statute does provide that the person had to lawfully be at an area where he had a right to be. We've got two different victims in this case. I think that — the fact that they had a policy in effect that said you can't be out there, the fact that it was in the lease about the conduct, I do not believe that the defense has met its burden of establishing, by preponderance of the evidence, the necessary elements to make this statute applicable. So, I don't feel like I have to — I note that there's gonna be a big difference in the facts of the case. There's gonna be testimony about, about one of, one of the deceased had a gun. There also will be testimony that a particular deceased didn't have a gun. So, I don't -- I'm not addressing that — those issues. My understanding is that, you know, if the defense still desires, they can still put up the defense of self-defense, and have, have me properly charge a jury on those elements. So, I understand that there's gonna be a factual dispute in this case on the other elements that relate to self-defense.

(Trial Tr. pp. 186-187).

Relevant Evidentiary Hearing Testimony

On direct examination, Applicant testified he would come and go from his sister's apartment whenever he wanted. (PCR Tr. p. 11). Applicant testified the trial judge determined Applicant did not have a right to be at the apartment complex and denied his SYG motion. (PCR Tr. p. 11). Applicant testified earlier that evening, Officer Misty had been to the complex and told them to keep the noise down. (PCR Tr. p. 12). Applicant testified he was not charged for breaking the law or told to leave. (PCR Tr. p. 12).

On cross-examination, Applicant testified he told Trial Counsel his defense was self-defense. (PCR Tr. p. 28). Applicant testified he agreed with Trial Counsel that he would pursue an SYG hearing before Applicant's trial since a "gun was pulled out on [him] and pointed at [him]." (PCR Tr. p. 30). Applicant testified he did not discuss the invitee issue with Trial Counsel but did discuss a gun was pulled on him, and he stood his ground. (PCR Tr. p. 30). Applicant testified he and Trial Counsel discussed Applicant was at his sister's house. (PCR Tr. p. 30). Applicant

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testified he was not an overnight guest. (PCR Tr. p. 31). Applicant testified he was "housesitting" for his sister. (PCR Tr. p. 32). However, when the incident occurred, Applicant testified, that he was not inside the house, and nobody was watching the house. (PCR Tr. p. 32).

On direct examination, Trial Counsel testified he proceeded with the SYG hearing based on his investigation and discussion with Woodruff's Chief of Police and what he heard about Applicant being on the scene. (PCR Tr. p. 61). Trial Counsel testified he knew a female officer had stopped by that day and there was an impression that "this is where they go out and hang and chill or smoke and that stuff." (PCR Tr. p. 61). Trial Counsel testified in spite of his defense strategy concerning one of the decedent's types of character "that would give us our strongest opportunity" to present at the SYG hearing. (PCR Tr. p. 61).

Trial Counsel testified that some of the issues he found with the SYG hearing were Applicant "being on the sites, the sister's apartment, Applicant staying there sometimes and living with his girlfriend at different times, and Applicant coming back and forth." (PCR Tr. p. 61). Trial Counsel testified there was a "no loitering" sign that could also be an issue. (PCR Tr. p. 61). Trial Counsel testified at a minimum he was trying to show Applicant was an invitee because it was his sister's apartment, and she could allow whoever to come stay over. (PCR Tr. pp. 62-63). Trial Counsel testified the apartment complex had a policy regarding overnight guests. (PCR Tr. p. 62). Trial Counsel testified as he recalled Applicant frequently stayed at his sister's apartment and other times with his girlfriend. (PCR Tr. p. 62). Trial Counsel testified as he understood it during this time period Applicant was living with his sister. (PCR Tr. p. 62).

Findings

This Court finds Applicant has failed to prove Trial Counsel was deficient or failed to render reasonably effective assistance under prevailing professional norms at the SYG hearing.

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Contrary to the Applicant's testimony, Trial Counsel articulated a reasonable strategy in trying to show Applicant was considered an invitee and had a right to be on the premises. Trial Counsel testified Applicant was clearly an invitee because Applicant stayed with his sister, and Applicant's sister lived on the premises and was on the lease. (PCR Tr. p. 63). Trial Counsel testified Applicant's sister could decide who entered her apartment. (PCR Tr. p. 63).

Notably, this Court cannot ignore the testimony of Applicant's sister, Jasmine, during the SYG hearing. Jasmine testified that Applicant was not staying with her and was not spending the night on the night of the shooting. Jasmine testified that she and Applicant left her residence simultaneously, and she locked her door and did not return for the remainder of the night. This directly contradicts Applicant's testimony at the evidentiary hearing, where he testified that he was "housesitting" for his sister. Accordingly, this Court agrees with Judge Hayes' decision to deny Applicant's request for immunity. Judge Hayes correctly found that the defense had not met its burden of establishing the necessary elements to invoke the protections as outlined in the Act by a preponderance of evidence. (See Trial Tr. pp. 186-187).

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

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- Allegation 3:** Failure to object to leading or point out the mischaracterization of testimony by the Solicitor when he asked a witness "You said Mr. Brown shot him while he was on the ground" and continued to question "two shots to Quinn on the ground" when she had just testified that the Applicant shot Quinn Yeargin three times once, then two more times as he fell back on the car. (pp. 319, 1. 5, 320, 1. 5, 321, 1. 11).
- Allegation 12:** Failure to object to Solicitor mischaracterizing evidence in closing.

Applicant alleges Trial Counsel was constitutionally ineffective for failing "to object to leading or point out the mischaracterization of testimony by the Solicitor when he asked a witness, "You said Mr. Brown shot him while he was on the ground" and continued to question "two shots to Quinn on the ground" when she had just testified that the Applicant shot Quinn Yeargin three times once, then two more times as he fell back on the car." Also, Applicant avers Trial Counsel was constitutionally ineffective for failing to object to the same line of mischaracterization in closing. This Court finds these allegations are without merit.

The "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3d Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[e] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than

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sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess." (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003))); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness").

Moreover, when counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); see Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) ("Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel).

Evidentiary Hearing

On direct examination, Applicant testified Trial Counsel failed to object to leading or the mischaracterization of Bayne's testimony. (PCR Tr. p. 16). Applicant testified having the solicitor mischaracterize the testimony and say that [Applicant] was shooting someone when they were on the ground "definitely" hurt his chances of claiming self-defense. (PCR Tr. p. 16).

On direct examination, Trial Counsel testified he did not recall his failure to object in particular but did recall the evidence submitted for the jury's consideration. (PCR Tr. p. 65). Trial Counsel testified he recalled what Applicant had to say, what other people testified during trial, the nature of the autopsy, and the doctor's testimony. (PCR Tr. p. 66). Trial Counsel testified "[he] didn't think any of that could have shown or proven that [Applicant] was standing over someone shooting." (PCR Tr. p. 66).

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Trial Counsel testified that at trial you get a sense of how the jury can perceive what is occurring at trial, and you may not object just because. (PCR Tr. p. 67). Trial Counsel testified when something is said from this stand to a jury, the jury has a chance to hear it. (PCR Tr. p. 66).

On cross-examination, the following colloquy occurred with Trial Counsel:

Q. All right. And one other question. I'd refer you to page -- this goes back to the argument that I was talking about. The witness, the solicitor kept on trying to characterize her testimony that Mr. Brown was shooting the victim while he was on the ground and continuing to shoot and that you didn't object to this. Did you -- also, you didn't object on Page 706 of the State's closing argument where he states on line 22, there's actually evidence, if you believe he actually stood over and shot him. And there is a strike.

...

Q. You didn't object in that closing argument, did you?

A. No. And I think the results may not have gone in the direction that the State was trying to show that Terrell just killed someone in cold blood as a murderer. There was mitigating factors that I could have shown that it was some form of manslaughter, as I discussed with him.

Q. And the testimony -- in his closing, what he was saying was based on testimony that did not reflect the facts of the case, that the victim was shot while he was on the ground, correct?

A. We would have argued it. I mean, clearly one person had a different take. Everyone else that was out there, again, it would have gone, in our opinion, to the credibility that was trying to be elicited at that point, but there was nothing from everyone else that would have shown that Terrell would have stood over someone.

Q. Okay. And that one witness, talking about standing over, her initial testimony was not stood over. It only became stood over after the solicitor continually characterized his questions ---

A. And that goes to, again, the style of the manner of the questioning and the mannerisms, the body language. Clearly the way that the prosecutor was trying to, to elicit that to the jury. And I think the jury saw beyond that.

(PCR Tr. pp. 83-86).

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This Court finds Applicant has failed to show Trial Counsel was deficient in these allegations. Trial Counsel articulated a reasonable strategy in deciding not to object to what the Solicitor was attempting to characterize from Bayne's testimony to the jury regarding whether Victim was on the ground when Applicant shot him. Specifically, Trial Counsel felt that the jurors were not buying what the Solicitor was saying, and it went more to the credibility of the witnesses. The record before this Court provides those multiple eyewitnesses testified, and none of the others testified that Applicant was standing over Victim shooting him. Further, this Court finds that had the jury believed the Solicitor's characterization of Bayne's testimony, then Applicant would have been found guilty of murder and not voluntary manslaughter.

Further, Applicant has merely speculated as to how Trial Counsel's alleged deficiency prejudiced him. This Court finds Applicant has failed to show how he was prejudiced by the Solicitor's characterization of Bayne's testimony. Consequently, speculation cannot satisfy Applicant's burden of proving prejudice. See Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice).

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 4: **Failure to argue 404 SCRE allows the jury to know victim was just released from prison for shooting at car because it is not to argue conformity therewith but the state of mind of the defendant at time of shooting and that limitations on questions as to specific instances of the victim shooting at someone denied the defendant a full and fair cross; (pp. 328, 1. 4, (pp. 334-337, p. 576, 1.22, p. 591, 1.4).**

Applicant alleges Trial Counsel was constitutionally ineffective for failing "to argue 404 SCRE allows the jury to know victim was just released from prison for shooting at car because it

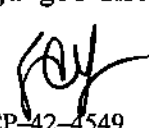
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is not to argue conformity therewith but the state of mind of the defendant at time of shooting and that limitations on questions as to specific instances of the victim shooting at someone denied the defendant a full and fair cross." This Court finds these allegations are without merit.

Rule 404, SCRE, provides the following:

- a) Character Evidence Generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:
 - 1) Character of Accused. Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same;
 - 2) Character of Victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;
 - 3) Character of Witness. Evidence of the character of a witness, as provided in Rules 607, 608, and 609.
- b) Other Crimes, Wrongs, or Acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.

"In the murder prosecution of one pleading self-defense against an attack by the deceased, evidence of other specific instances of violence on the part of the deceased are not admissible unless they were directed against the defendant or, if directed against others, were so closely connected at point of time or occasion with the homicide as reasonably to indicate the state of mind of the deceased at the time of the homicide, or to produce reasonable apprehension of great bodily harm." State v. Day, 341 S.C. 410, 419-420, 535 S.E.2d 431, 436 (2000) (citing State v. Brown, 321 S.C. 184, 467 S.E.2d 922 (1996)); State v. Amburgey, 206 S.C. 426, 34 S.E.2d 779 (1945). "Whether a specific instance of conduct by the deceased is closely connected in point of time or occasion to the homicide so as to be admissible is in the trial judge's discretion and will not be



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disturbed on appeal absent an abuse of discretion resulting in prejudice to the accused." Id. (citing State v. Peak, 134 S.C. 329, 133 S.E. 31 (1926)).

At the evidentiary hearing on direct examination, Applicant testified it hurt his case that the jury did not know Victim had just been released from prison for shooting at somebody. (PCR Tr. p. 17). PCR Counsel asked Applicant, "Now, do you think that hurt your case, that the jury didn't know that the victim, who you shot, actually had just gotten out of prison for shooting at somebody, and you knew that when you -- it went to your state of mind at the time, correct?" Applicant replied, "Yeah. Yeah, I think it hurt my case." (PCR Tr. p. 17). Applicant testified that he guessed it made the jury not think his mind was in a self-defense "mode or something" (PCR Tr. pp. 19-20).

On cross-examination, Trial Counsel testified that "in the course of what was occurring," he did not think to object to evidence of Victim's prior bad acts as being admissible because it went to the state of mind of Applicant because the jury heard it repeatedly. (PCR Tr. pp. 82-83).

First, this Court finds Applicant failed to overcome "the strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). This Court finds the trial court was correct in sustaining the objection as the probative value was very limited and more prejudicial in that it could confuse the jurors. Further, this Court finds the trial court sustaining the objection was correct because there was no direct connection between the shooting and Applicant.

Next, in addressing the claim that Trial Counsel should have argued this evidence went to Applicant's state of mind, this Court finds it is wholly without merit. This Court finds no basis for any assertion that Victim shooting at a vehicle not connected to Applicant over a year prior to the

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incident produced a reasonable apprehension of great bodily harm to Applicant. See Day supra. Thus, even if Trial Counsel had argued as Applicant contends, it is not likely the trial court would have reversed its ruling and overruled the objection.

Additionally, this Court finds Applicant has failed to meet his burden proving Trial Counsel's alleged deficiency prejudiced him. Whether the evidence Applicant contends should have been more readily presented would have changed the outcome of Applicant's trial is mere speculation in light of the breadth of the trial record. Consequently, speculation cannot satisfy Applicant's burden of proving prejudice. See Clark v. State; 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice).

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial counsel or any prejudice flowing therefrom. Thus, these allegations must be **DENIED** and **DISMISSED**.

- Allegation 5:** Failure to challenge the search warrant, bring up jurisdictional issues, and argue SCRE 403 and 404 that the probative value of bringing up an unrelated gun and marijuana in a Greenville hotel room was outweighed by the prejudicial effect and constituted impermissible evidence of other crimes.
- Allegation 11:** Failure to object to officer's talking about having to deploy a canine dog because they were worried Applicant had a gun.

Applicant alleges Trial Counsel was constitutionally ineffective for failing "to challenge search warrant, bring up jurisdictional issues, and argue SCRE 403 and 404 that the probative value of bringing up an unrelated gun and marijuana in a Greenville hotel room was outweighed by the prejudicial effect and constituted impermissible evidence of other crimes." Also, Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to the officer's testimony about having to deploy a police canine because they were worried Applicant had a gun. This Court

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finds these allegations are without merit.

Contrary to Applicant's assertion in this allegation, the following occurred at trial:

Mr. Brown: Your Honor, I understand this is Mr. Bulsa's contention on trying to elicit from this particular witness the location of my client outside of Spartanburg County. I think the additional information that my understanding to be correct would be sought in terms of his actual location in the county of Greenville as well as information as relates to items that could have been recovered. I don't know if that would be deemed in terms of a continuous set of activities associated with the alleged acts that occurred in Kelly Acres but I don't, I don't understand the probative value of merely presenting to the jury that my client was out of the County of Spartanburg, and, at some point, was in Greenville County and whatever activities were alleged to be associated with that will be a value for a jury to hear. I think it would be substantive if there was information that, at some point, he made his way to the Sheriff's Office and an interview was conducted. But to go into activities as relates to Greenville County, I don't see the value in that in terms of that being presented to the jury.

Solicitor Bulsa: Your Honor, the defendant clearly fled the scene, we have information that he fled into Greenville County. And when he was going to be apprehended, he fled from officers in Greenville County and it took a manhunt to locate him. That certainly goes to a consciousness of guilt. The jury can infer that that's the purpose of this, this witness and subsequent witnesses coming up.

The Court: Well, are you going to be — am I going to hear testimony that he engaged in criminal activity or just that, that the defendant engaged in flight?

Solicitor Bulsa: Your Honor, we did intend to introduce a pistol that was recovered from the hotel room we believe was attributed to the defendant. That pistol was sent down, it was a 9-millimeter and it was sent down to SLED in conjunction with the other items of evidence to be compared with the 9-millimeter shell casing at the scene. It did not

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match, but to present the full picture to the jury, we felt that that was important so they could —

The Court: Give me that again.

Solicitor Balsa: —have the full picture.

The Court: is that — is — but it's the pistol that was referred in Greenville, that's not the pistol that the state is contending is the basis for the unlawful carrying of a pistol charge?

Solicitor Balsa: No, sir, that, that pistol — the pistol of the unlawful carrying is a revolver which was recovered from a pond that the defendant showed the police---

The Court: All right.

Solicitor Balsa: ---he threw it. That's actually also in Greenville county as well.

The Court: Okay. I'm going to not sustain the, the objection to the testimony. I think it goes more — I mean you can attack the testimony, attack the credibility of it, and attack the weight to which the jury would want to consider that testimony. But I — I'm going to allow it. Now, in regards to the pistol, you can -- I'm gonna allow you to bring it up but I don't want to hear anything much more about it other than just the basic stuff because I, I think that might — got into too much about that pistol might lead to the confusion of the jury on a pistol because I've yet to hear any information about — yet presented to the jury about what the basis of the unlawful carrying of the pistol charge is.

(Trial Tr. pp. 383-385).

Evidentiary Hearing

On direct examination at the evidentiary hearing, Applicant testified that Trial Counsel did not challenge the search warrant or bring up jurisdictional issues and argue the prejudice was great for bringing in an unrelated gun and marijuana. (PCR Tr. p. 21). Applicant testified that there was no objection to the testimony that roads were shut down and that they deployed a police canine because they were concerned Applicant had a gun. (PCR Tr. pp. 21-22).

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On direct examination, Trial Counsel testified that he did not recall the search warrant being an issue at the time. (PCR Tr. p. 72). Trial Counsel testified Applicant provided to law enforcement prior to counsel being involved where the gun used in the murder was located. (PCR Tr. p. 72). Trial counsel testified in terms of the second gun found, they "moved beyond that." (PCR Tr. p. 72). Trial counsel testified that their focus was Applicant being caught with a gun, bolstering Applicant's testimony, and determining what to do with family threatening his life. (PCR Tr. p. 72).

Trial counsel testified Applicant was not on the run from doing something wrong. (PCR Tr. p. 72). Trial counsel testified Application was "merely" trying to protect his life and get away from his family to avoid putting them in danger. (PCR Tr. p. 73). However, Trial counsel testified Applicant's sister received threatening phone calls. (PCR Tr. 73). Trial counsel testified Applicant was in a position as a "fugitive" trying to survive and avoid being killed in light of getting away from the scene. (PCR Tr. p. 73).

Trial counsel testified that when he objected to the evidence found in hotel room, he made the court aware of that mindset. (PCR Tr. p. 73). Trial counsel testified in light of his objection placed on the record, there was nothing else he could have made the Court aware relating to the nature of that evidence at trial. (PCR Tr. 73).

On cross-examination, Trial Counsel testified as to the unrelated gun and marijuana found in the hotel room; if he were to exclude evidence, that would be based on a showing Applicant was not in Greenville at all. (PCR Tr. p. 78). As to its prejudicial effect, Trial Counsel testified that it could have been argued. (PR TR. p. 78). However, Trial Counsel testified it was a "judgment call and trial strategy" that he and Applicant had discussed. (PCR Tr. p. 78). Trial counsel testified their defense in relation to the shooting, him being found in Greenville and; under

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the circumstances, centered on the fact he was in a position where he feared for his life. (PCR Tr. p. 78).

Findings

The Court finds Trial Counsel's credible testimony in not challenging the search warrant that was the basis for evidence found in the hotel room. Trial counsel credibly testified prior to counsel having been appointed Applicant revealed the whereabouts of the gun used at the incident to law enforcement. Trial counsel credibly testified he did not recall the search warrant being an issue to challenge. Trial counsel credibly testified he objected to the nature of the evidence, and the objection was placed on the record. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996). Contrary to Applicant's allegation, Trial Counsel argued against the admittance of evidence found in the hotel room.

Subject matter is the power of a court to hear and determine cases of the general class to which the proceedings in question belong. Pierce v. State 338 S.C. 139, 526 S.E.2d 222 (2000). The criminal courts have subject matter jurisdiction to hear criminal matters. As to jurisdiction, there is no jurisdictional issue. Trial counsel credibly testified the search warrant was not an issue thereby Applicant's jurisdiction allegation is unsound.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial counsel or any prejudice flowing therefrom. Thus, these allegations must be **DENIED** and **DISMISSED**.

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Allegation 6: Failure to object to testimony regarding flight extending to banter regarding roads being closed during the search that blocked traffic, ruining citizen's morning commute (p. 400-1).

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to testimony regarding flight extending to banter regarding roads being closed during the search that blocked traffic, ruining citizen's morning commute (p. 400-1). This Court finds this allegation is without merit.

The "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3d Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[e] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess." (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness").

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Moreover, when counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); see Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) ("Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel).

Evidentiary Hearing

At the evidentiary hearing on direct examination Applicant testified that there was no objection to the officers talking about how they had to close the roads and inconvenienced people because of Applicant's actions. (PCR Tr. p. 21). Applicant testified, "To be honest, like when I left the scene [he] was still being shot, so [he] wanted to stay in Woodruff." (PCR Tr. p. 21).

On direct examination, Trial Counsel testified he did not object to testimony regarding flight extending to roads as a defense strategy, "It looks like, again, it was in the course of trial and stylistic." (PR Tr. p. 74). Trial Counsel testified the way law enforcement treated Applicant, in essence, showed "They were quick to judge, quick to label as yet again another young black male with a gun that took lives." (PCR Tr. p. 74).⁶ Trial counsel testified law enforcement testified "This and that" but "Did you get into the fact you released a dog and you let the dog bite him? Did you determine the matter in which you arrested, what you said to him?" (PCR Tr. p. 74).

Findings

Applicant could not have been prejudiced by Trial Counsel's failure to object because such objections – could not have and would not have had any impact on the outcome of Applicant's trial

⁶ At the evidentiary hearing, the trial court stated on the record Trial Counsel did not object so that he could get into the fact that maybe the police overreacted, as opposed to anything else. He wanted the good and bad of it. It was a stretch in that he was trying to let them run with it to create sympathy, perhaps. (PCR Tr. p. 75).

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in light of the overwhelming evidence presented at trial. Trial counsel credibly testified his failure to object was tactical in lieu of what was occurring at trial and what he believed would benefit his client.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial counsel or any prejudice flowing therefrom. Thus, these allegations must be **DENIED** and **DISMISSED**.

Allegations 1(C), (E), (K) and (M): Failure to argue.

Applicant alleges Trial Counsel was ineffective for failure to argue specifically as outlined in items 1C, 1E, 1K, and 1M. This Court finds those allegations are without merit.

Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

Allegation 7: Failure to argue [Applicant] had a right to carry a gun on Kelly Acres because he was an invitee of his sister.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to argue that

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Applicant had a right to carry a gun on Kelly Acres property because he was an invitee of his sister. This Court finds this allegation is without merit.

The "Protection of Persons and Property Act" (the Act) provides that "[a] person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force." S.C. Code Ann. § 16-11-450. The Act further provides, in part, that:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

S.C. Code Ann. § 16-11-440(C). "A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard[.] "State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) (citing State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011)).

Where a defendant seeks treatment under § 16-11-440(C), it is not enough for a defendant to establish that he was "not engaged in an unlawful activity" and was in a "place where he has a right to be." Rather, "[c]onsistent with the Castle Doctrine and the text of the Act, *a valid case of self-defense must exist*, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity" save the duty to retreat. Id., 406 S.C. at 371, 752 S.E.2d at 266 (emphasis added). Notwithstanding the Act or other provisions of law, in order to establish self-defense, the defendant must show (1) he was without fault in bringing on the difficulty; (2) he actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) a reasonably prudent person of ordinary firmness and courage would

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have entertained the same belief; and (4) he had no other probable means of avoiding the danger. State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997).

That a defendant was engaged in unlawful activity at the time of the incident does not in and of itself defeat a claim for immunity. Rather, where a defendant was engaged in unlawful activity at the time of the incident, the trial court must consider whether the unlawful activity was the proximate cause of the incident. A person who is otherwise acting lawfully is not deprived of the right to self-defense by merely incidental illegality. State v. Glenn, 429 S.C. 108, 120-21, 838 S.E.2d 491, 497-98 (2019) (citing State v. Burriss, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999); State v. Goodson, 312 S.C. 278, 280 n.1, 440 S.E.2d 370, 372 n.1 (1994)).

Evidentiary Hearing

At the evidentiary hearing on direct examination, Applicant testified that Trial Counsel failed to argue Applicant had the right to carry a gun on Kelly Acres as an invitee of his sister. (PCR Tr. p. 22). Applicant testified he did not discuss an invitee issue with his Trial Counsel for his SYG hearing. (PCR Tr. p. 30).

On cross-examination, Applicant testified that if he were considered an invitee then it would not be considered loitering. (PCR Tr. p. 31). Applicant testified the landlord testified there was a requirement of signing in to be considered an overnight guest. (PCR Tr. p. 31). However, Applicant testified he was not an overnight guest. (PCR Tr. p. 31). Applicant testified he had a gun with him for no reason when he walked down the street to meet the rest of the group. (PCR Tr. p. 33). Applicant testified that being a convicted felon does not mean he cannot defend his life. (PCR Tr. p. 37).

On direct examination, Trial Counsel testified that, at a minimum, their defense was to show that Applicant had a right to be in the apartment based on his sister being on the lease and

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living there. (PCR Tr. p. 63). Trial counsel testified that the Applicant was "clearly an invitee." (PCR Tr. p. 63).

On cross-examination, Trial Counsel testified that the defense's position was that the Applicant had a right to be there and didn't know about everyone else. (PCR Tr. p. 79). Trial Counsel testified the pre-trial court found Applicant was not engaged in lawful activity and loitering. (PCR Tr. p. 81). Trial counsel testified Applicant was found loitering based upon the signs posted on the property. (PCR Tr. p. 81).

Findings

The Court finds Trial Counsel's credible testimony indicates Trial Counsel argued at a minimum Defendant's right to be on the property. However, the pre-trial court ruled Applicant was loitering and not engaged in lawful activity. Applicant possessed a firearm in a public place on Kelly Acres. Applicant was in violation of SC Code §16-23-20 (Trial Tr. p. 534). At trial, Applicant was charged with the unlawful carry of a pistol charge and sentenced to one year imprisonment. (Trial Tr. p. 745). There was no evidence indicating Applicant had a right to be on the premises and carry a firearm on Kelly Acres. On the contrary, Applicant admits he was not an overnight guest, and simply housesitting his sister's apartment which by itself does not change his status to invitee.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial counsel or any prejudice flowing therefrom. Thus, these allegations must be **DENIED** and **DISMISSED**.

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Allegation 1M. Failure to argue Defendant's testimony that he heard the victim and Fredo talking to each other about the shooting this or that was not hearsay because it was not offered for the truth of the matter asserted but was to the state of the defendant's who argued he shot in self-defense.

At the evidentiary hearing on direct examination, Applicant testified that he heard "Fredo" talking to victim, and he was saying something to victim prior to solicitor making an objection. (PCR Tr. p. 23). Applicant testified it sounded like something about shooting, because "right after that, that's when [victim] approached me and pulled a gun out." (PCR Tr. p. 23). Applicant testified victim and Fredo were talking to each other about the shooting. (PCR Tr. p. 23). Applicant testified Trial Counsel did not argue that victim and Fredo discussing the shooting went to the Applicant's state of mind in reacting and shooting back. (PCR Tr. p. 23).

On direct examination, Trial Counsel testified that Fredo was a third person on the scene "being a person that was the catalyst of a lot of this." (PCR Tr. p. 71). Trial counsel testified "yes" when asked if Fredo was an instigator.

On cross examination, Trial Counsel testified "not that I recall" when asked if he argued the prior conversation between Applicant and Fredo would support Applicant's state of mind. (PCR Tr. p. 77). Trial counsel testified "in the course of trial, it's not always [his] position, and have been successful with this, to not make it seem like you're trying to hide something, but then it had been brought out a few times that the victim had a gun and based on the previous situation." (PCR Tr. p. 77).

Findings

The Court finds Trial Counsel's credible testimony indicates Trial Counsel had a valid strategy to not necessarily argue about the conversation between victim and Fredo. Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (where "counsel articulates a valid reason for

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employing certain strategy, such conduct will not be deemed ineffective assistance of counsel"). Trial counsel credibly testified at trial it had been brought out several times that victim had a gun and had been released from prison in relation to an unrelated shooting incident that took place prior to incident. Here, Applicant failed to present any testimony or evidence on how additional preparation would have changed the outcome of the SYG hearing and at trial had Trial Counsel made the argument of the conversation between victim and Fredo. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial.). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993).

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial counsel or any prejudice flowing therefrom. Thus, these allegations must be **DENIED** and **DISMISSED**.

Allegation L. Failure to request jury charges including one that a defendant may continue to shoot in self-defense as long as he reasonably believes it is necessary to use deadly force. State v. Marin, 745 S.E.2d 148, 404 S.C. 615 (S.C. App. 2013).

Applicant alleges Trial Counsel was constitutionally ineffective for failing to request jury charges including one that a defendant may continue to shoot in self-defense as long as he reasonably believes is necessary. This Court finds allegation is without merit.

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Evidentiary Hearing

At the evidentiary hearing on direct examination, Applicant testified that he cannot remember whether his Trial Counsel handed over a list of jury instruction requests at trial. (PCR Tr. p. 25).⁷

On direct examination, as to a failure to request a jury charge based upon State v. Marin and whether Trial Counsel knew about the caselaw at the time of trial, Trial Counsel testified "[he] did not recall looking at that case...but looked at a number of cases in regard to an alleged position of self-defense." (PCR Tr. p. 75). Trial counsel testified part of the defense strategy was to seek immunity upon Applicant's stand your ground motion and pursue a self-defense theory at trial, which he clearly pointed out throughout the course of trial. (PCR Tr. p. 75).

On cross examination, Trial Counsel testified he did not specifically hand in any written requests for specific jury instructions. (PCR Tr. p. 76). Trial counsel testified they had already discussed the charges. (PCR Tr. p. 76). However, Trial Counsel testified that the trial record beginning on p. 723 accurately reflects the whole issue about jury instructions. (PCR Tr. p. 76).

On redirect, Trial Counsel testified that when a judge rules on an objection without giving a chance to offer anything in rebuttal, you "Clearly not" respond with a rebuttal. (PCR Tr. p. 86). Trial counsel testified he has been argumentative with a judge in a serious trial, and it is "not a good position to be in when you're trying to defend someone." (PCR Tr. p. 87).

Findings

The Court finds Trial Counsel made reasonable efforts and performance in his representation of Applicant. It is generally accepted that Trial Counsel cannot be held ineffective

⁷ The trial record wholly refuted Applicant's allegations in that the trial court provided jury instructions for self-defense and no objection was preserved by either party. (Trial Tr. pp. 722-728).

for failing to anticipate every possible event or outcome. Reasonable efforts and performance are all that is required of Trial Counsel. Thornes v. State, 310 S.C. 306, 426 S.E.2d 764 (1993). Even if Trial Counsel did not provide written jury instructions, the trial court provided jury instructions on self-defense and no objections were made at trial by either side. The trial record wholly refuted Applicant's allegations concerning Trial Counsel's failure to request jury charges for self-defense.

Specifically, there were no jury instructions based on State v. Marin. However, the PCR record reflects that case came after Applicant's trial and Trial Counsel would have had no indication that this was going to be the law when he was proceeding with jury instructions at trial. (PCR Tr. p. 92). Applicant has not been prejudiced, nor was Trial Counsel ineffective for not adopting that case at Applicant's trial.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial counsel or any prejudice flowing therefrom. Thus, these allegations must be **DENIED** and **DISMISSED**.

Allegation N. Failed to call witness Nicholas Rhodes.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to call witness, Nicholas Rhodes. This Court finds allegation is deemed abandoned.

Prejudice from Trial Counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at the post-conviction relief hearing. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). In order to show prejudice from the failure to contact an allegedly favorable witness, a PCR applicant must present the testimony of that witness at the PCR hearing. Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). The applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993).

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The PCR record reflects Applicant failed to provide any testimony, nor did Applicant call Nicholas Rhodes to testify at the evidentiary hearing. Applicant failed to show prejudice from the failure to contact said witness, and to present what favorable information would have changed the outcome of trial. Applicant's mere speculation is insufficient and cannot by itself satisfy the burden of showing prejudice. Therefore, this Court interprets this allegation as deemed abandoned.

ALLEGATIONS RAISED AT THE EVIDENTIARY HEARING

Allegation: **Failure to object to officer's talking about having to deploy a canine dog because they were worried Applicant had a gun.**

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to officer's talking about having to deploy a canine dog because they were worried Applicant had a gun. This Court finds allegation is without merit.

"An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from failure to object unless there is a legally supportable argument for exclusion of the evidence).

Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance.

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of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

Evidentiary Hearing

At the evidentiary hearing on direct examination, Applicant testified that Trial Counsel made no objection to officer's talking about having to deploy a dog because they were worried Applicant had a gun. (PCR Tr. p. 22).

On direct examination, Trial Counsel testified that law enforcement stated "We had to block the roads. We did this and that. But did you go into the fact that you released a dog and you let the dog bite him?" Trial counsel testified it was a "stylistic" decision not to object. Essentially, Trial Counsel's strategy was to include the good and bad of law enforcement's handling of Applicant's arrest.

On cross examination, Trial Counsel testified that he did not recall and that may have been law enforcement's testimony in regard to the dog, but his defense strategy was to show Applicant's state of mind. (PCR Tr. p. 77).

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Findings

This Court finds Applicant has failed to show how he was prejudiced by Trial Counsel's failure to object to officer's talking about deploying a dog. Consequently, speculation cannot satisfy Applicant's burden of proving prejudice. See Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice). Applicant could not have been prejudiced by Trial Counsel's failure to object because such objection – could not have and would not have had any impact on the outcome of Applicant's trial in light overwhelming evidence presented at trial. Trial counsel testified it was part of his defense strategy not to object and had discussed with Application. Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (where "counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel").

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial counsel or any prejudice flowing therefrom. Thus, these allegations must be **DENIED** and **DISMISSED**.

Allegation Failure to prepare Applicant to testify.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to prepare Applicant to testify. This Court finds allegation is without merit.

A criminal defendant has the right to testify and the right to zealous representation by a lawyer. United States v. Scott, 909 F.2d 488 (11th Cir. 1990). Moreover, the right to testify "does not extend to testifying falsely." Nix v. Whiteside, 475 U.S. 157, 173, 106 S.Ct. 988, 997, 89 L.Ed.2d 123 (1986). While no specific inquiry must occur on the record, the decision to testify or not to testify is ultimately up to the defendant. "The decision to testify or not is a perilous one. If a defendant does not testify, he foregoes the opportunity to tell the jury his version of events."

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[However], if a defendant chooses to testify, he subjects himself to cross-examination, including possible impeachment with prior convictions." Brown v. State, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000). "If a defendant chooses not to take the stand in his own defense, the trial judge must, if requested, instruct the jury that the defendant's failure to testify cannot be held against him or considered by the jury in any manner during its deliberations." Id. "A defendant's decision to testify or not must be made with knowledge of the consequences of either choice." Id.

To establish counsel failed to adequately prepare for trial, applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768. Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). When claims of ineffective assistance of counsel are based on lack of preparation time, an applicant challenging his conviction must show specific prejudice resulting from counsel's lack of time to prepare. Cronic, *infra*; U. S. v. LaRoache, 896 F.2d 815 (4th Cir. 1990).

Evidentiary Hearing

At the evidentiary hearing, on direct examination Applicant testified as far as preparation for trial and preparing his testimony, Trial Counsel came to see him a couple of times in the county jail. (PCR Tr. p. 22). Applicant testified he had told Trial Counsel his willingness to testify. (PCR Tr. p. 22). Applicant testified he does not think he and Trial Counsel practiced. (PCR Tr. p. 22).

On direct examination, Trial Counsel testified that for the time Applicant was charged, he visited Applicant at the county jail maybe a month or less. (PCR Tr. p. 59). Trial Counsel testified Applicant knew why Victim was in jail. (PCR Tr. p. 71). Trial counsel testified it was his trial strategy to discuss and bring it up during closing arguments. (PCR Tr. p. 71). Trial counsel

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testified throughout their questioning of several witnesses, they had the opportunity to try and get into the fact that victim had a past. (PCR Tr. p. 66).

Trial counsel testified it was their defense strategy Applicant was in a position that he was fearful for his life. (PCR Tr. p. 78). Trial counsel testified that when something is said from the stand, the jury has a chance to hear it. (PCR Tr. p. 66). Trial Counsel testified Applicant had stated he had prior incidents with victim previously and when he took the stand "... didn't come out and [he] didn't want to force it." (PCR Tr. 71). Trial counsel testified when Applicant was on the stand "he hit me upside the head with a bottle, again, the jury is watching." (PCR Tr. p. 68). Trial counsel testified "[he] didn't want to make it seem like...trying to elicit something or cause [Applicant] to say something." (PCR Tr. p. 69).

Findings

This Court finds Applicant has failed to show how he was prejudiced from Trial Counsel's lack of preparing him to testify at trial and how it would have changed the outcome of the case. The Court strongly presumes Trial Counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Counsel is obligated to exercise reasonable judgement and not force or coerce Applicant what to say.

Applicant willingly testified. While Applicant took the stand, Applicant failed to bring up certain discussions he had with Trial Counsel that presumably might have supported his self-defense case concerning his past relationship with victim. Applicant has failed to show how Trial Counsel's conduct undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)). Trial counsel **credibly** testified he met with Applicant and discussed the case. Trial counsel **credibly** testified as to his defense strategy and the fact he reviewed a number

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SPRINGFIELD, MO

of cases to best present the position of self-defense at trial. Initially, Applicant was facing two counts of murder and at trial was convicted for two counts of the lesser offense of manslaughter. There is no indication Trial Counsel failed to render adequate assistance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial counsel or any prejudice flowing therefrom. Thus, these allegations must be **DENIED** and **DISMISSED**.

[CONCLUSION PAGE FOLLOWS]

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SPARTANBURG, SC

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED with PREJUDICE.**

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 16 day of April, 2025.


 THE HONORABLE Eugene C. Griffith, Jr.
 Presiding Judge
 Seventh Judicial Circuit

 _____, South Carolina

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 2025 APR 21 AM 10:50
 CLERK OF COURT
 SPARTANBURG COUNTY

WITNESSES

1
SCSO
1. SENTENCE MADE
2. REPORT ENDED
3. CARD PULLED
4. INDEXED
5. CHECKED WARRANTS
6. CHECKED SIGNATURE
7. ASSESSMENT AND FINE
8. TRAFFIC VIOLATION COPY
Direct Indictment

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: OCT 24 2014

VERDICT

Foreperson of Petit Jury

Date: 3/19/15

DOCKET NO.

14-GS-42-5071

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

OCT 27 2014

TERM

THE STATE
vs.

Terrell Antonio Brown

Indictment for

WEAPONS/UNLAWFUL
CARRYING OF PISTOL

SC Code: 16-23-20, 0050 (A) (2)

CDR Code: 0044

Class MIS-C

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CLERK OF COURT
SPARTANBURG COUNTY
2014 OCT 30 PM 2:26
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on OCT 24 2014 the

Grand Jurors of Spartanburg County present upon their oath:

WEAPONS/UNLAWFUL CARRYING OF PISTOL

That Terrell Antonio Brown did in Spartanburg County on or about September 2, 2013, unlawfully possess a handgun and not being authorized by law to so possess the said firearm, all in violation of §16-23-20, 50 (A) (2), *THE 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.


DEPUTY SOLICITOR

WITNESSES

3
Spartanburg County Sheriff's Office

1. SENTENCE MADE

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANT

6. CHECKED SIGNATURE

7. ASSESSMENT AND
FINE CARD MADE

8. TRACKING SYSTEM
ARREST WARRANT NUMBER

2013A4210203367

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

SEP 27 2013

VERDICT

Guilty of voluntary manslaughter

Foreperson of Petit Jury

Date: 3/19/15

DOCKET NO.

13-GS-42-4250

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

OCT 07 2013

TERM

THE STATE

vs.

Terrell Antonio Brown

Indictment for

MURDER

SC Code 16-03-0010, 0020

CDR Code 116

Class FEL-EXM

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 OCT -2 AM 9:29
M. HOPE BLACKLEY

RK

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

SEP 27 2013

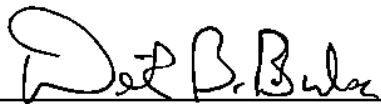
At a Court of General Sessions, convened on _____, the

Grand Jurors of Spartanburg County present upon their oath:

MURDER

The Defendant, Terrell Antonio Brown, did in Spartanburg County on or about September 2, 2013, feloniously, willfully, and with malice aforethought, kill one Laquinton Yeargin, by shooting the victim with a firearm and the victim died as a proximate result thereof, all in violation of Section 16-3-0010, 0020, 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.


Deputy Solicitor

WITNESSES

1. REPORT MADE County Sheriff's Office

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND
FINE CARD MADE

8. TRAFFIC VIOLATION COPY

ARREST WARRANT NUMBER

2013A4210203191

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

SEP 27 2013

VERDICT

Guilty of voluntary manslaughter

Foreperson of Petit Jury

Date: 3/19/15

DOCKET NO. -

13-GS-42-4249

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

OCT 07 2013

TERM

THE STATE

vs.

Terrell Antonio Brown

Indictment for

MURDER

SC Code 16-03-0010, 0020

CDR Code 116

Class FEL-EXM

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2013 OCT -2 AM 9:28

M. HOPE BLACKLEY

RA

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

SEP 27 2013

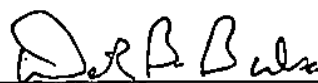
At a Court of General Sessions, convened on _____, the

Grand Jurors of Spartanburg County present upon their oath:

MURDER

The Defendant, Terrell Antonio Brown, did in Spartanburg County on or about September 2, 2013, feloniously, willfully, and with malice aforethought, kill one Nahtyrieon Shaquille Parks, by shooting the victim with a firearm and the victim died as a proximate result thereof, all in violation of Section 16-3-0010, 0020, 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.


Deputy Solicitor

COUNTY OF SPARTANBURG
STATE VS.

Terrell Antonio Brown

AKA:

Race: BLACK Sex: M Age: [REDACTED]

DOB: [REDACTED]

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Weapons / Unlawful carrying of pistol

INDICTMENT/CASE#: 2014GS4205071

A/W#: 2014GS4205071

Date of Offense: 9/2/2013

S.C. Code § : 16-23-0020; 16-23-0050(A)

CDR Code #: 0044

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-23-0020; 16-23-0050(A) of the S.C. Code of Laws, bearing CDR Code # 0044

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: B. B. Bulsa 15264 Terrell Brown Attorney for Defendant 69749
BULSA, DERRICK SC Bar# Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 1 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. Since September 2, 2013☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ 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	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$10/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL		\$ 133.90

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Clerk of Court/ Deputy Clerk A. SeamusCourt Reporter: M. Woods

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2137Sentence Date: 3/19/15

COUNTY OF
STATE

SPARTANBURG

VS.

Terrell Antonio Brown

AKA:

Race: BLACK Sex: M Age: [REDACTED]

DOB: [REDACTED]

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Voluntary Manslaughterin violation of § 16-3-50 of the S.C. Code of Laws, bearing CDR Code # 0217
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: D.B. Bulsa 15264 Terrell Brown Michael J. [Signature] 69749
BULSA, DERRICK SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of 15 days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5months/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. See Sept 16 2013☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

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 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ca \$ _____

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90

INDICTMENT/CASE#: 2013GS4204250

A/W#: 2013A4210203367

Date of Offense: 9/2/2013

S.C. Code § : 16-03-0010; 16-03-0020

CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Clerk of Court/ Deputy Clerk: A. SeamyCourt Reporter: M. Woods

SCCA/217 (03/2011)

Presiding Judge _____

Judge Code: 2132Sentence Date: 3/19/15

STATE OF SOUTH CAROLINA

Computer

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
 STATE VS.
Terrell Antonio Brown
 AKA:
 Race: BLACK Sex: M Age:
 DOB:
 Address:
 City, State, Zip:
 DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Voluntary Manslaughter

in violation of § 16-3-50 of the S.C. Code of Laws, bearing CDR Code # 0217
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST D. B. Bula 15264 Terry J. [Signature] Michael P. [Signature] 69749
 BULSA, DERRICK SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of 15 days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 5

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. Start September 7, 2013

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$ 3.90
TOTAL	\$133.90

PTUP

 days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk A. Seamy

Court Reporter: M. Woods

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2132

Sentence Date: 3/19/15