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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

On Petition for Writ of Certiorari to the Court of Common Pleas
Appeal from Spartanburg County
Honorable Heath P. Taylor, Post-Conviction Relief Judge
Honorable Roger Couch, Trial Judge

Appellate Case No. 2025-000338

DARIUS T. CATHCART, #303063,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

APPENDIX

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Q Now, these items, when you went out to the scene, was there anyone there already?
A Investigator Talanges was already there.
Q And what, what was the condition of the scene when you got there?
A The scene was wet. It was -- it had been raining that day and it was still, still continuing to rain when I arrived there.
Q Okay. And could you please explain to the jury your process for obtaining, when, when you find something as seen, what you do when you get there, and how you do mark and how you do collect things and put them into evidence?
A Yes, ma'am, when you arrive on scene, first of all, you want to look around and see if there's any evidence present at a scene. And once you locate the evidence, you want to take photographs of it, and this is just very general.

After you photograph it, you then want to place down number placards, then measure where these items at in relation to usually a fixed location. And then after you do that, you take photos of the items with the number of placards indicating what they are and then, after that, you collect the items.

Q And, so, these items that we've just identified there were the ones you collected?
A Yes, ma'am.

Q Could you describe what they are?
A They are two CBC Smith & Wesson .40, .40 caliber shell case, one R-P 9-millimeter Luger shell casing, and one Star I Star Smith & Wesson .40 caliber shell casing.
Q And when you say a shell casing, can you please explain what that is?
A You -- they refer to either a shell casing or a cartridge casing. They're basically the little brass cylinders that are left after a, after a bullet or a piece of ammunition has been fired.
Q Okay. Please answer any questions that Mr. Brown or Mr. Poole may have for you.

THE COURT: Mr. Poole, your witness.

MR. POOLE: Thank you.

THE COURT: Yes, sir.

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

THE COURT: You may.

CROSS-EXAMINATION

BY MR. POOLE:

Q Investigator Davis, are you familiar with that document there?
A Well, I'm Investigator Nix, and yes, I am---
Q I'm sorry.
A ---familiar with that.
Q I'm sorry. I'm sorry.

A That's fine.
Q I asked Investigator Davis the same question this morning.
Investigator Nix?
A Yes, sir.
Q You're familiar with this document?
A Yes, sir.
Q Did you originate this document?
A No, I did not.
Q Okay. Does this document indicate the location of the shell casing that you just mentioned?
A Yes, sir, it does, by numbers.
Q And you did -- you placed the placards and, and numbered them, is that right?
A I placed the placards down whichever order that we decided to place them down, yes, sir.
Q Okay. Is this a four way stop?
A To my memory it is a four way stop, sir.
Q Okay. And could I get -- may I ask the Court to get, allow one of the solicitors to help me operate this.
THE COURT: Oh, sure. If you'll turn, turn on the---
MR. POOLE: I do not know how.
THE COURT: I understand.
SOLICITOR GRAY: Your Honor, briefly, may we approach?
THE COURT: Certainly.

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

Q You are familiar, once again, you are familiar with this document?

A Yes, sir, I am.

Q And does it accurately reflect the placing of the placards and the numbering of the items that you saw?

A To my knowledge, yes, it does.

Q Okay. And you've seen it before?

A I have seen it before.

MR. POOLE: Okay. Your Honor, I would ask that this document be -- let me withdraw that question, Your Honor.

THE COURT: Yes, sir.

Q You've mentioned certain shell casings.

A Uh-huh. (Affirmative).

Q And they were located on Mt. Pleasant Road, is that right?

A Mt. Pleasant Road at the intersection of Burns Road.

Q Okay. And what was Item Number 1?

A You have my -- well, wait a minute.

Q I'm sorry.

A I'm sorry. No, I've actually got it here.

Q Okay.

A Item Number 1 is labeled as CBC Smith & Wesson .40 caliber shell casing.

Q CBC .40 caliber shell casing?
A Yes, ma'am. Yes, sir. I'm sorry.
Q Number 2 was pieces of broken vehicle glass?
A That is correct, sir.
Q Number 3, what was that?
A Number 3 is listed as another CBC Smith & Wesson .40 caliber shell casing.
Q And what does CBC stand for?
A I have no idea.
Q Is that -- that's what's stamped?
A It's a type of manufacturer's stamp, but what it stands for exactly, the initials, I couldn't tell you, sir.
Q Okay. And Item 4.
A Hold on one second. Item 4 is listed as R-P 9-millimeter Luger shell casing.
Q A 9-millimeter Luger shell casing?
A Correct, sir.
Q Okay. And was there any other shell casings found?
A Yes, sir, Item 5, which would be a Star I Star Smith & Wesson .40 caliber shell casing.
Q Okay. So, there's two different calibers?
A Judging by the cartridge cases, they're two, they're two different caliber cartridge cases present, yes, sir.
Q There at the scene?
A Yes, sir.

Q Thank you. Thank you.
A Yes, sir.
THE COURT: Mr. Brown.
MR. BROWN: Very briefly.
CROSS-EXAMINATION
BY MR. BROWN:
Q You reported to -- if I could look at this inventory sheet, Mt. Pleasant and Burns Road?
A Yes, sir.
Q And you identified the very shell casings, in particular the .40, .40 calibers and the 9-millimeter?
A Yes, sir.
Q And you say this was located in the roadway?
A Yes, sir.
Q Now, how long have you been with the Sheriff's Department?
A Ten years, sir.
Q And how long have you, approximately, investigated crime scenes that involve the dispensing of shell casings?
A I investigated crime scenes as long as I've been with the crime scene unit, which will be four years this past November.
Q And throughout the four years, you've had cases that obviously have involved shell casings or---
A We've had shootings in those four years, yes, sir.

Q And the shell casings you discovered, were they inside any vehicle?
A The one on Mt. Pleasant and Burns Road?
Q Yes.
A No, they're not inside of a vehicle.
Q They were on the side of the road, weren't they?
A They were on the side of the roadway.
Q And this is a CBC .40 cal, two of those?
A Two of those, yes, sir.
Q And RP?
A R-P 9-millimeter, and then a Star---
Q One of those?
A ---I Star .40 caliber.
Q And based upon your investigation, would they be consistent with the shooting that occurred outside of the vehicle that you found on the side of the road?
A I couldn't tell you how they got there.
Q Is it possible---
A It is possible.
Q ---based upon your investigation and experience?
A It's possible, yeah, they could of landed outside.
Q So, you can't rule that out based upon what you saw at the scene?
A Rule what out, sir?
Q That any type of shooting could of occurred outside of

any vehicle based upon the location of these shell casings?
A I can't tell you for 100 percent sure how they got there.
Q Thank you. That's all the questions I have.
THE COURT: Redirect?
REDIRECT EXAMINATION
BY SOLICITOR TAILOR:
Q Just as you couldn't tell where shell casings came from a shooting from outside of the vehicle, I mean could they have come from inside a vehicle as well?
A Yes, sir, they could be ejected out of -- I mean yes, ma'am, they could of ejected out of a car if they were fired from inside a car.
SOLICITOR TAILOR: No further questions, Your Honor.
THE COURT: Anything further, Mr. Poole?
MR. POOLE: No, sir.
THE COURT: Mr. Brown.
MR. BROWN: One additional question.
RECROSS EXAMINATION
BY MR. BROWN:
Q You also identified, identified a large pool of biological material?
A I don't remember that.
SOLICITOR GRAY: Objection, Your Honor.
WITNESS: I'm sorry.

THE COURT: I think that's outside the scope of redirect.

MR. BROWN: I'll move on, Your Honor.

THE COURT: I don't recall that coming up on redirect.

MR. BROWN: I'll, I'll move on, Your Honor.

THE COURT: All right. You may step down, sir.

WITNESS: Thank you.

THE COURT: The State may call its next witness.

SOLICITOR GRAY: Robert Talanges.

THE COURT: Come forward, sir.

ROBERT TALANGES, having been previously sworn, testified as follows:

THE COURT: Officer Talanges, you've been sworn previously. You remain under that oath at this time. Have a seat please.

WITNESS: Thank you.

THE COURT: Mr. Gray, your witness.

SOLICITOR GRAY: Thank you.

DIRECT EXAMINATION

BY SOLICITOR GRAY:

Q Deputy Talanges, we asked you earlier about processing a red Crown Vic I believe.

Did we ask you about that?

A No, sir, never did the Crown Vic.

Q Okay. You did do the GSR on the alleged defendants, is

that correct?
A Well, when I first arrived at the hospital, everybody was victims, and, yeah, I did three victim GSR kits there.
Q At that time they were the victims?
A Correct.
Q All right. After doing that, was it the same day or a couple days later that you processed a burned out vehicle?
A I believe we did it on the, I think it was the 17th.
Q 17th?
A Yes, sir.
Q Three days after the alleged incident?
A Yes, sir, I believe it was the 17th.
Q Now, what, if you recall, what kind of condition was that vehicle in?
A The vehicle was completely burned. There was nothing left to it, a completely burned out vehicle.
Q Well, that type of situation, if ID is called, what do you do?
A Well, you can't, you can't process for latent prints. We photograph the car, of course. The first thing that we always do is photo documentation. We found bullet holes and bullet strikes to the passenger side. We had the seats removed so we could dig through the debris to find, if any, shell casing were inside the vehicle.
Q You said bullet strikes to the passenger side?

A The passenger's side.
Q Any bullet strikes to the driver's side?
A Negative. None were found.
Q You remember -- do you know how many bullets strikes to the passenger side?
A If I recall, I think we -- it was either three or four.
Q Did you stop there with your processing of the vehicle?
A After -- what we did was we photographed to scale and we photographed the bullet strikes and the bullet holes and we removed the seats so we could actually get inside the car and dig through all the debris cause it was heavily burned out, and we were locating, myself, Sergeant Hogsed, and Deputy Davis, he searched the passenger side, I searched the passenger backside, the driver's rear and Sergeant Hogsed did the front driver's side area.
Q Was there anything recovered?
A Each one of us located a spent shell casing .40 caliber inside the vehicle.
Q Do you remember where in the vehicle they were found?
A Davis worked the passenger side. The passenger front area he located one. I located one in just I guess where the passenger seat would sit, back floor area, and then underneath the driver's seat is where Sergeant Hogsed located his, and then all were fully documented.
Q And those were all .40 caliber?

A Yeah, matter of fact, to be exact, they were Items Number 71, 72, and 73. One was a CBC .40 Smith & Wesson. That's on the base of the cartridge casing it says the information from the manufacturer, and caliber size, and that's what -- one was a CBC, one was a Blazer, and one was a Winchester.

Q I show you what's been marked State's Exhibit No. 20. Excuse me one second. I show you what's been marked as State's Exhibit No. 27, and ask you if you recognize that.

A Yes, it's a -- it's inventory number, and it's inventory number 71, 72, and 73 as in evidence numbers. It's gonna be the spent cartridge casings which were recovered from the Nissan four door that was burned out.

Q And once you recovered those, what did you do with those?

A They're packaged and, as you see the envelope, and they're gonna be submitted for more analysis.

Q Were those submitted for analysis?

A Yes, they were. You got the SLED evidence tape on them. So, they were submitted to SLED for testing.

Q But those are the three shells that you recovered from the burned out vehicle that was used in the shoot-out, is that correct?

A That's correct.

Q Thank you.

At this time, Your Honor, State moves No. 27 into evidence.

THE COURT: Objections?

MR. POOLE: None.

MR. BROWN: No objection, Your Honor.

THE COURT: It will be received into evidence as marked.

(WHEREUPON, State's Exhibit No. 27 was received into evidence at this time.)

SOLICITOR GRAY: No further questions of this witness, Your Honor.

Please answer any question that Mr. Poole or Mr. Brown may have.

THE COURT: Mr. Poole.

CROSS-EXAMINATION

BY MR. POOLE:

Q Deputy, there were three shell casings and they were all .40 caliber, right?

A Yes, sir.

Q Would you, once again, tell us the location of them.

A Okay. One was located by Deputy Davis, and it's gonna be located in the front passenger floor area. Sergeant Hogsed located a .40 caliber casing in the driver's, the driver's side area. It appeared to be under the front seat cause the seats were removed, and I located one. It's going

to be at the passenger rear area, seat area, in the floor.
Q Thank you.
THE COURT: Mr. Brown, any questions?
CROSS-EXAMINATION
BY MR. BROWN:
Q And one of the casings was a Winchester .40 caliber?
A Yes, sir, Winchester was one of the brands.
Q And it wasn't a I Smith & Wesson .40 caliber?
A The I Star I was not found in the car, but a CBC and Blazer were.
Q Okay. And the Blazer is not the same thing as a R-P 9-millimeter Luger shell casing either, correct?
A R-P 9-millimeter Luger would be a smaller shell casing.
Q Totally different?
A Totally different.
Q You also noted that there was a -- beg the Court's, Court's indulgence.
THE COURT: Yes, sir.
(Pause.)
MR. BROWN: That's all the questions I have, Your Honor.
THE COURT: Redirect?
SOLICITOR GRAY: No redirect, Your Honor.
THE COURT: You may step down.
The State may call its next witness.

SOLICITOR GRAY: State calls Barbara Waddell.

THE COURT: Come forward to my left, ma'am, and be sworn.

BARBARA WADDELL, having been first duly sworn, testified as follows:

THE COURT: Have a seat please, ma'am. Once you're seated, I'd ask that you state your name please.

WITNESS: Barbara Waddell.

THE COURT: Mr. Gray, your witness.

SOLICITOR GRAY: Thank you, Your Honor.

DIRECT EXAMINATION

BY SOLICITOR GRAY:

Q Ms. Waddell, where do you work?

A Southeastern Converters.

Q Where is that located?

A Mt. Pleasant Road.

Q Is that anywhere near Burns Road?

A Yes, sir, Burns Road is the intersection to the left of our business.

Q Now, at your business -- well, what do you do at your business?

A We do automotive recycling.

Q Do you have any type of security system?

A Yes, sir, we have video surveillance and a security system as well.

Q How good is it?
A Very good I would, I would say.
Q How many cameras do you have?
A Sixteen inside and outside.
Q Do you have a camera or two or three or whatever with a view of Mt. Pleasant Road?
A Yes, sir.
Q Now, Ms. Waddell, how did you become tangentially involved in this case?
A We received a call from Spartanburg County.
Q From Spartanburg County deputies?
A Yes, sir.
Q And what was the point of that call?
A Just to make us aware of the incident at the intersection and to see if we had any surveillance of that.
Q That's March 14th, 2009?
A Yes, sir.
Q Now, your camera system, recording system, is in constantly---
A Yes, sir.
Q ---recording?
A Yes, sir, 24 hours a day, seven days a week.
Q So, it's not motion activated?
A No, sir.
Q And was it working fine on March 14th, 2009?

A Yes, sir.
Q Now, at the request of law enforcement, did you find any tape or images regarding a potential shooting near your business at Mt. Pleasant and Burns Road?
A Yes, sir.
Q Did you view that evidence?
A Yes, sir.
Q Did you record -- did you turn it over to anybody at the Sheriff's Department?
A Yes, sir.
Q Who was that?
A Detective Lorin Williams.
Q Now, you viewed it before then.
Have you reviewed it, viewed it again since then?
A No, sir.
Q Okay. But the DVD you turned over, you gave to Detective Lorin Williams?
A Yes, sir, I, I apologize. I have, I have since looked at the recording in your presence, but at our business we have not.
Q All right. And the one you looked at, is that a fair representation of what you gave to Lorin Williams?
A Yes, sir.
Q There have been no alterations---
A No, sir.

Q ---to it?
No deletions?
A No, sir.
Q Thank you.
At this time we move State's Exhibit No. 28 into evidence.
MR. POOLE: No objection, Your Honor.
MR. BROWN: No objection, Your Honor.
THE COURT: Without objection it will be received into evidence as it's marked.
(WHEREUPON, State's Exhibit No. 28 was received into evidence at this time.)
Q I have no further questions, ma'am. Please answer any questions Mr. Poole or Mr. Brown may have.
MR. POOLE: No questions, Your Honor.
THE COURT: Mr. Brown.
MR. BROWN: No questions, Your Honor.
THE COURT: Ma'am, you may step down.
Do you wish to have the witness excused?
SOLICITOR GRAY: Yes, sir.
THE COURT: Any objections?
MR. BROWN: No objection, Your Honor.
THE COURT: ma'am, you're free to go if you'd like.
WITNESS: Thank you.
THE COURT: Thank you very much.

You may call your next witness.

SOLICITOR GRAY: May we approach, Your Honor?

THE COURT: Certainly.

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

THE COURT: Ladies and gentlemen, the State's going to publish the video, but it's gonna take a minute to get the computer hooked up through the overhead systems. So, rather than you watch all that, we'll let you take a break, stretch your legs at this point in time.

So, you can step back to the jury room, and, again, don't begin any discussions until I've advised you to do so.

You may retire.

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

THE COURT: All right. The Court will be in recess for about ten to fifteen minutes.

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

THE COURT: All right. Are you ready to proceed?

SOLICITOR GRAY: Yes, sir, Your Honor.

THE COURT: Defense ready?

MR. POOLE: Yes, sir.

THE COURT: Mr. Brown, are we ready to go forward?

MR. BROWN: We are, Your Honor.

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

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

THE COURT: All right. The record will reflect that the jury has returned to the courtroom.

At this time I believe you indicated, Mr. Gray, you'd like to publish the video that was introduced?

SOLICITOR GRAY: That's correct, Your Honor.

THE COURT: All right. You may do so at this time.

SOLICITOR GRAY: Thank you.

(WHEREUPON, State's Exhibit No. 28 was published to the jury at this time.)

SOLICITOR GRAY: That's the entirety.

THE COURT: That's, that's what you wanted to show?

SOLICITOR GRAY: Yes, sir.

THE COURT: All right.

SOLICITOR GRAY: May we approach, Your Honor?

THE COURT: You may.

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

THE COURT: Ladies and gentlemen, we're gonna take a break. I'll ask you to step back to the jury room. Don't begin any discussions until I've advise you to do so.

Thank you very much.

(WHEREUPON, the following takes place outside the hearing of the jury.)

THE COURT: All right. I'll see the attorneys in chambers.

Court will be in recess briefly.

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

THE COURT: All right. Bring the jury in.

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

THE COURT: All right. Ladies and gentlemen, I've had a brief conference with the attorneys. The remaining witnesses for the State in the case are individuals who are with the State Law Enforcement Division out of Columbia. The witnesses today have gone a little faster than anticipated, and the witnesses from the State Law Enforcement Division will not be here until nine o'clock in the morning.

For that reason, we're gonna break at this point in time. We'll resume at nine o'clock in the morning. Please be in the jury room at that time and we should be starting shortly thereafter.

Again, the same instructions that I have given you in the past when you have left the court house. Do not discuss the case with anyone or gather any information from any outside source. Do not watch, read, or listen to any media reports and please report any contacts that you might have from anyone concerning your participation in the jury.

Please be in the jury room at nine o'clock in the morning. We should be in a position to start immediately thereafter.

Thank you very much.

You're free to go.

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

THE COURT: All right. Court's in recess until nine o'clock in the morning. Thank you.

SOLICITOR GRAY: Thank you.

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

Thursday, May 12th, 2011

SOLICITOR GRAY: Your Honor, may we approach?

THE COURT: Yes, you may.

Gentlemen.

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

THE COURT: All right. Mr. Gray, is the State ready to proceed?

SOLICITOR GRAY: Yes, sir. Yes, sir.

THE COURT: Defense ready to proceed, Mr. Poole?

MR. POOLE: Yes, sir.

THE COURT: Mr. Brown.

MR. BROWN: Yes, sir.

THE COURT: Bring the jury in.

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

THE COURT: All right. The record will reflect that the jury has returned to the courtroom.

If any juror had any difficulty in following my instructions of yesterday afternoon, please stand.

(No response.)

THE COURT: It appears that all jurors are present, have been able to follow the instructions, and are ready to proceed.

At this time the State may call its next witness.

SOLICITOR TAILOR: State calls Nikki Perry.

THE COURT: Come forward please, ma'am, to my left to be sworn.

NIKKI PERRY, having been first duly sworn, testified as follows:

THE COURT: Have a seat in the witness stand please, and once you're seated, state your name.

WITNESS: Nikki Perry, P-E-R-R-Y.

THE COURT: All right. Ms. Tailor, your witness.

DIRECT EXAMINATION

BY SOLICITOR TAILOR:

Q Ma'am, where do you work?

A I'm employed at the South Carolina Law Enforcement Division commonly known as SLED.

Q And where are your duties there?

A I'm a forensic technician in the evidence control department. We log in packages and transfer evidence that's submitted to the lab for forensic analysis.

Q Okay. And what, what does that entail?

A Officers will come into my department to submit evidence for the lab for testing. They will provide us with log-in sheets that detail the case information as well as evidence that they're submitting. I will log in all that information into our computer, and it will, the computer will generate a unit lab number for that case, an item

number for each item submitted.
Q So, when the evidence comes to you, is it in a certain form?
A The evidence will come in unsealed to us in our department.
Q Okay. And then do you open it when it comes to you?
A I do not open up evidence.
Q Okay. I'm gonna hand you what's been marked as State's Exhibit No. 20, 21, 22, 23, 24, 25, 26, and 27.
Do you recognize those items?
A I recognize that our SLED lab number is written on the outside of the envelopes, which is L09-04116.
Q So, would all items that came in reference to this case be under that SLED lab number?
A Yes, ma'am, they would.
Q Okay. And do all those SLED numbers match on those items?
A Yes, ma'am, they do.
Q Ms. Perry, there's, there's tape on the top of those packages. It says SLED on it I believe.
Did you put that tape on those packages?
A No, I did not.
Q Would, would the technician who received the items have put that tape on there?
A When it comes into the evidence control department, we

do place SLED tape on some of the items. It's according to the type of items that come into our department, and we do seal it with SLED tape, and we have the submitting officer initial and date the seals.

Q Okay. And the original tape that the Spartanburg County Sheriff's Office would have placed on that is never opened?

A Not by my department.

Q Okay. Please answer any questions Mr. Brown or Mr. Poole may have for you.

THE COURT: Mr. Poole, your witness.

MR. POOLE: No questions for this witness, Your Honor.

THE COURT: Mr. Brown.

CROSS-EXAMINATION

BY MR. BROWN:

Q Ma'am, you -- so, you didn't do any type of analysis in regards to the information that was just placed before you?

A No, sir, I did not.

Q Okay. So, you have no direct knowledge in regards to that information before you?

A I do not.

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

THE COURT: Redirect.

REDIRECT EXAMINATION

BY SOLICITOR TAILOR:

Q Ms. Perry, all you did do was assign the SLED number, correct?
A That is correct.
SOLICITOR TAILOR: No further questions.
THE COURT: Anything further, Mr. Poole or Mr. Brown?
MR. POOLE: No, sir.
MR. BROWN: No, Your Honor.
THE COURT: All right, ma'am. You may step down. Thank you very much.
WITNESS: Thank you.
THE COURT: I assume that you'd like the witness excused when she's ready to go, is that correct?
SOLICITOR TAILOR: Yes, Your Honor.
SOLICITOR GRAY: Yes, Your Honor.
THE COURT: Any objections?
MR. POOLE: No, sir.
MR. BROWN: No, Your Honor.
THE COURT: You're free to go, ma'am, when you're ready to go.
You may call your next witness.
SOLICITOR TAILOR: Ila Simmons.
THE COURT: Come forward, please, sir, and be sworn.
SOLICITOR TAILOR: Beg your pardon, Your Honor. It's Lisa McReynolds.
THE COURT: Okay. All right. Ma'am, if you'll come

forward to my left to be sworn please.

LISA MCREYNOLDS, having been first duly sworn, testified as follows:

THE COURT: Have a seat in the witness stand, and please state your name.

WITNESS: My name is Lisa McReynolds Waananen. Last name is spelled W-A-A-N-A-N-E-N.

THE COURT: Ms. Tailor, your witness.

DIRECT EXAMINATION

BY SOLICITOR TAILOR:

Q Ma'am, where do you work?

A South Carolina Law Enforcement also known as SLED.

Q Okay. And what do you do there?

A I'm a forensic technician in the trace evidence department and I process gunshot residue kits.

Q Okay. And in March of 2009, where -- were your responsibilities the same?

A Yes, ma'am.

Q And what is gunshot residue?

Would you---

A The analyst probably could better answer that than I could.

Q Okay. When you say you process GSR kits, what, what does that entail?

A I pick it up from log-in. I bring it upstairs and

prepare a case jacket with all the documents. Then I prepare it for the analyst to put on the instrument.

Q When you say prepare the case jacket, what, what is a case jacket and what type of documents are within that jacket?

A It is everything that's in the system that was submitted for that case. It's just that usually the submitting documents. Sometimes the incident report. That's usually the main paperwork, and then when I open the GSR kit, there's a GSR information form inside that. I make sure all the correct information is on that form, and I fill out a data sheet for that.

Q And how do you confirm the information that's on this form?

Do you compare it to the actual kit itself?

A The GSR information form is inside the kit.

Q And are you the one that assures that the kit is completed when it comes to you?

A Yes, ma'am.

Q What items should be inside of a complete kit?

A They're usually four sticky tabs or double sided lifts and swabs.

Q I'm gonna hand you what's been marked as State's Exhibit 33, 34, and 35.

Do you recognize these?

A May I open them?
They're open.
Q They are open.
A Yes, I do. On 33, there is a evidence label with a lab number on it, the item number, the date I opened it, and my initials.
Q Okay. And with, with that kit, was that kit complete when it came to you?
A Yes, it was.
What is marked as Evidence 34 also has the lab number, Item Number 13, the date I open it, and my initials.
Q And was that kit complete when you opened it?
A Yes, it was.
Q And could you please tell us who was that kit for?
A This kit was on Crossley.
Q And the previous kit that you just said was complete, who was that one for?
A Cathcart. And the Item Marked Number 35 is from Reeder. It also had the lab number, Item Number 10, the date I opened it, and my initials.
Q And was that kit complete?
A Yes, ma'am, it was.
Q Okay. When you say the date you opened it, would anyone have opened that kit before you at SLED?
A No, I make sure it is sealed when I open it.

Q Okay. Now, when you opened those kits, you said you checked the information that's inside, and then you prepare the case file.

What type of things do you do to the actual kit itself to prepare it for the technician?

A I put an internal standard solution in it, the samples. I put it in a Sonnocator, and then I extract the sample from it and put it in a clean test tube, and then put it in a rack, a test tube rack, and hand it over to that analyst.

Q Is there anything else you do to check the kits themselves such as the, the condition of the samples that, that have been received?

Do you mark any of that?

A I mark down if there's, if the swabs are dirty or bloody or if anything's missing or if anything's out of the ordinary.

Q Okay. Was there anything during your bloody or, anything out of the ordinary about these kits?

A I will have to check my notes.

On the kit from Reeder, the swabs were bloody. On the kit from Cathcart, the swabs were dirty. And on Crossley, the swabs were dirty.

Q And is there a time period from when the items come to SLED or from when the kits were actually taken, is that time period listed on there the time the kits were taken from the

subjects?
A Yes, ma'am, they're on the information form and it has to be within six hours of the incident.
Q And were these kits all within six hours?
A Yes, ma'am, they were.
Q Why is it six hours?
A The analyst probably could answer that better than I can.
Q Please answer any questions Mr. Poole or Mr. Brown may have for you.

MR. POOLE: No questions here.

THE COURT: Mr. Brown.

MR. BROWN: Very briefly, Your Honor.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. BROWN:

Q And you are the first person that opened these GSR kits which have been labeled State's Exhibit 33, 34, and 35?
A Yes, sir.
Q And on the, the day, you said how many hours?
A Six.
Q On the day in which you examined those, did you examine any other GSR kits?
A For this case?
Q Yes.

Q And who were they associated with?
A The names on those kits, last name was Miller, Geter, and Geter. Dwight Geter and Duncan Geter.
Q And Miller, what's the first name on that one?
A Bryant.
Q All right. I'm showing you what's been marked as State's Exhibit 36, 37, and 38.

If you could take a look at those and tell me if you're familiar with those.

A Okay.

THE COURT: Yes, sir.

SOLICITOR GRAY: Your Honor, if Mr. Brown wants to enter these into evidence, there's no objection from the State.

THE COURT: Do you want to have those put into evidence?

MR. BROWN: Yes, sir, I will, Your Honor.

THE COURT: All right. Any objection, Mr. Poole?

MR. POOLE: No, sir.

THE COURT: All right. Without objection then those kits will be admitted into evidence as marked.

You may proceed, Mr. Brown.

Q And based upon what we've heard, based upon your prior testimony---

THE COURT: Just one second.

SOLICITOR GRAY: Those will be Defense 1, 2, and 3 I believe, Your Honor.

THE COURT: Okay. So, they're marked as State's? I didn't know what they were marked.

SOLICITOR GRAY: Yes, sir, they were.

MR. BROWN: Yes, sir, they're State's.

THE COURT: All right. We'll have them marked as Defense Exhibits. If you'll hand them to the court reporter. She'll need to change that designation.

MR. POOLE: Your Honor, may, may we approach?

THE COURT: Yes, you may.

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

(WHEREUPON, the GSR kits previously marked as State's Exhibit Nos. 36, 37, and 38 were now marked as Defendant's Exhibit Nos. 2, 3, and 4 and received into evidence at this time.)

Q Just very briefly.

Do you recognize these that have been marked as Defense Exhibit 1, 2, and 3?

A Two, three, and four?

Q Yes.

A Okay. It has -- it also has the lab number, the item number six on Item Number Two, the day I opened it, and my initials.

Q Okay. And you were the person that originally handled that particular item first?
A I'm first on that one, yes, sir. And No. 3 also has the lab number, the date I opened it, and my initials.
Item Number 4 has the lab number, the day I opened it, and my initials.
Q Okay. And, in particular as relates to what's been marked as Items 2, 3, and 4, No. 4 is for who?
A Dwight Geter.
Q No. 3.
A Duncan Geter.
Q And No. 2.
A Bryant Miller.
Q Thank you.
That's all the questions I have.
THE COURT: Redirect?
SOLICITOR TAILOR: No, Your Honor.
THE COURT: Ma'am, you may step down.
WITNESS: Thank you.
THE COURT: I assume there's no objection to this witness being excused when she's ready to go?
State?
SOLICITOR GRAY: Yes, sir, no objection.
THE COURT: Anything?
MR. POOLE: No, sir, no objection.

MR. BROWN: No, sir.
THE COURT: You're free to go when you like, ma'am.
WITNESS: Thank you.
THE COURT: You may call the, your next witness.
SOLICITOR TAILOR: Ila Simmons.
THE COURT: Come forward please to be sworn.
ILA SIMMONS, having been first duly sworn, testified as follows:
THE COURT: Have a seat please, ma'am. Once seated, I'd ask that you state your name.
WITNESS: My name is Ila Simmons.
THE COURT: Your witness, Ms. Tailor.

DIRECT EXAMINATION

BY SOLICITOR TAILOR:

Q And, ma'am, where do you work?
A At the South Carolina Law Enforcement Division in the forensics laboratory trace evidence department.
Q And what is your title there?
A I'm a forensic chemist.
Q And for how long have you been a forensic chemist?
A Eleven years.
Q And while there, what are your duties and qualifications?
A In the trace evidence department, we analyze gunshot residue, gun powder residue. We perform fiber comparisons,

paint comparisons. We also analyze glass and arson explosives.

Q And what is gunshot residue testing?

A Gunshot residue is a mixture of microscopic chemicals that come out of the gun when it's discharged. It can get on anything in close proximity to the gun including the hands of the person shooting the gun.

Q Ma'am, what is your educational background?

A Have a Bachelor's of Science Degree in Chemistry. After completing that I came to work at SLED. My first three years there I worked with a Court qualified SLED certified trace evidence examiner who taught me how to collect trace evidence and analyze trace evidence. During that time I had to take written and practical examinations and pass them with one hundred percent efficiency. After completing all these examinations, I was then qualified as a expert examiner in trace evidence.

Q Okay. Are you a member of any professional organizations that are associated with this work?

A Yes, ma'am, I'm a member of the Southern Association of Forensic Science, American Academy of Forensic Science. I'm also a member of the FBI's GSR symposium where they invite GSR analyst from around the world to come to Quantico and discuss the standards and practices that everyone will put into place when analyzing gunshot residue.

Q And have you testified previously in the field of gunshot residue testing?
A Yes, ma'am, over 200 times in the federal and state and civil courts in South Carolina.
SOLICITOR TAILOR: Your Honor, at this time the State would like to move to qualify Ms. Simmons as an expert in the field of firearms identification and GSR testing.
THE COURT: Any objections?
MR. POOLE: No, sir.
MR. BROWN: No objection, Your Honor.
WITNESS: Ma'am, I am not in firearms identification.
SOLICITOR TAILOR: I'm sorry. Just GSR testing only, Your Honor.
THE COURT: All right. I assume no objections to that destination?
MR. POOLE: That's correct.
THE COURT: Ladies and gentlemen of the jury, let me explain briefly what we're doing here.
Generally, under the rules of evidence that govern the introduction of testimony in our courts, witnesses are not allowed to express their opinions concerning matters. An exception to that general rule is made for a witness who, that's been designated as an expert within some profession or field or science. For those witnesses that are designated as experts within a certain field, they are

allowed to state their opinions within their area of expertise and are allowed to state the reasons or the basis for formulating those opinions.

This particular witness is now been offered and is being certified as an expert within the field of gunshot residue analysis, and as such, she would be allowed to offer her opinions within that area of expertise and state the reasons for that. Later on, when I charge you concerning the law, I will give you additional information as to how you have a right to treat the testimony of an expert, but, in this case, this witness has now been certified as an expert and will be allowed to testify as such.

Ms. Tailor, you may proceed.

SOLICITOR TAILOR: Thank you, Your Honor.

Q Now, I know you already explained what gunshot residue, what's commonly referred to as GSR, is that correct?

A Yes, sir.

Q And you said what that is.

Could you explain that to us one more time please?

A It's a mixture of microscopic chemicals that come out of a gun. When a cartridge is placed into a gun, it contains several components. It has a primer. It has a cartridge case. It has gun powder and then a bullet. And when the firing pin strikes the primer, there are shock sensitive chemicals in this primer that create a spark. The

spark starts the gun powder burning. The burning of the gun powder generates pressure inside the gun and pushes the bullet, the projectile out of the gun.

Well, a mixture of all these chemicals come out of the gun along with the bullet and can get on the hands of a person shooting the gun or anything in close proximity to the gun when it's discharged.

Q Okay. And can this happen inside an enclosed area and outside?

A Yes, ma'am, it can happen within about five feet, five to six feet of most handguns.

Q Okay. And earlier we, we learned that this testing usually has to occur within six hours.

Why is there a six hour window?

A Because the human body, this is on a living individual -- on someone who's deceased, there's no time limit. On a living individual, we're constantly touching things with our hands. Our bodies are absorbing things through the skin. We sweat. So, gunshot residue has the consistency of salt.

So, if you get it on your hands, and you swipe your hands or you can wash your hands or just the act of sweating can remove the gunshot residue from the hands. So, it is optimum to collect the GSR kit as quickly after a shooting incident as is possible, and we tested thousands of types of

ammunition, hundreds of types of weapons, and found that after six hours someone will not have gunshot residue on their hands even if you haven't washed their hand or done any excessive movement with their hand.

Q So, is it better to get a kit sooner than later?

A Yes, ma'am, as soon as possible is best.

Q All right. I want to show you what's been marked as State's Exhibit 35, 34, and 33.

Do you recognize these?

A Yes, ma'am, I do.

Q Could you please tell us who those kits are assigned to?

A Yes, ma'am, State's Exhibit 33 was labeled as coming from Darius Cathcart. State's Exhibit 34 is labeled as coming, being collected from Michael Crossley, and State's Exhibit 35 is labeled as being collected from Rashawn Reeder.

Q Did you do testing on these items?

A Yes, ma'am.

Q Could you please explain as to what type of testing you would do on a, on a kit such as these?

A When a kit comes into the laboratory, we're trying to determine whether or not someone was in the vicinity of a gun when it was fired, either holding the gun, discharging the gun, or just being in close proximity with the gun, and

the way we do this is we're looking for these microscopic chemicals that I mentioned before.

The chemicals are primarily lead, barium, and antimony. And, so, what we do is we analyze part of the kit to see what concentrations of these elements are present, and then we put them on a very powerful microscope that can see over a hundred thousand times greater than the eye can see, and see the, the shape and the size of the particles, and see if lead, barium, and antimony are present.

Q Okay. Was there anything present on these kits?

A I'll begin with -- would you just like me to read the results of each kit for each person?

Q If you could just tell if there was---

A Okay.

Q ---residue on a kit or if not.

A Okay. On Rashawn Reeder, yes, there was residue found on the palm of the right-hand, and the palm of the left-hand, and on the back of the left-hand.

On Darius Cathcart there was round lead particles were found on the right palm, and round lead particles, which is a component of gunshot residue, was found on the left palm.

And on Michael Crossley, no gunshot residue was detected. The metals that were found did not indicate the presence of gunshot residue.

Q Okay. So, you only found things on Darius Cathcart and

Rashawn Reeder?
A Yes, ma'am, that's correct.
Q When you say -- I think I heard you say that some where consistent and some you found particles.
What is the difference between those, those findings?
A Well, I found, on, on some, I found gunshot residue, and on some I found round lead particles. Gunshot residue is when we find the three elements that we're looking for. We find lead. We find barium and antimony all together in one round particle.
Being that most of the gunshot residue that comes out of the gun is lead, because we're not only getting lead from the primer mixture, we're also getting it from the projectile if it breaks down coming through the barrel. About 98 percent of it is lead. When you generally find more, found lead then we do the actual gunshot residue particles. And we found round lead on the, the back of Mr. Reeder's hand and on the palms of Mr. Cathcart's hands.
Q And what is that consistent with, in your opinion?
A It is consistent with someone either handling a firearm after its been discharged, discharging a firearm, or being in very close proximity to the firearm when it is discharged.
Q So, you're saying the residue finding versus particle finding, which one is more precise or is---

A The gunshot residue is actually all three elements that we're looking for in one particle, and the round lead is just one of the elements that we're looking for.
Q Okay. To help the jury better understand, if you could, please come and show us cause I think you said some were on the palm, some were on the back of the hands.
A Okay.
Q If you could please come and show the jury what you found on the palms on both Mr. Cathcart---
THE COURT: The witness may step down---
WITNESS: Okay.
THE COURT: ---to the, the viewer.
(Witness comes down from the stand.)
A All right. I'm not exactly sure what you're asking though.
What would you like me to do?
Q Just if -- for -- let's start with Mr. Cathcart.
A Okay.
Q I'm looking at the---
Q Okay.
A Okay. I found---
Q On his right-hand---
A Yes, ma'am.
Q ---what did you find on the, on his palm?
A Okay. You want me to write the numbers down and

then---
Q Yes, please.
A I have to try and make sure I get the correct spelling.
A Okay. And that was Mr. Cathcart's results.
Q Okay. And what time period -- do you know when the kit was taken?
A Let me check my notes very quickly.
Mr. Cathcart's kit was collected at about 5:50 a.m. on looks like March 14th of 2009, and the incident occurred approximately at 4:00 a.m. on the same date. So, about, about approximately two hours or so after the incident.
Q Could you jot down the same things in the same manner of what you found on Mr. Reeder?
A Okay.
Q So, in looking at this, it looks like Mr. Cathcart and Mr. Reeder both had some, some manner of gunshot residue or particles on their palms only?
A Yes, ma'am, that's correct.
Q Now, when you, when you test these items -- you may return to your seat.
A Okay.
(Witness returns to the stand.)
Q Now, when you do the testing to, once you locate particles and or residue, is there some sort of level that triggers that this is actually residue or particles?

Is there, is there a threshold of some sort?
A Yes, on the -- when we're, when we're determining how many or how, what concentration is of our metals, we have certain threshold levels that we set up that we've established by shooting different types of weapons and determining what levels someone would have in a scientific setting. So, we do. We have levels of approximately -- the lead, barium, and antimony, the lead is approximately 170 counts. The barium is about 170 counts. And the antimony would be 17 counts.
Q And would this be the lowest levels that you would -- if you got anything lower than that, would you give it a positive result?
A No, ma'am, that -- those are our minimum threshold levels for us to say that some, that is, you know, that something is going on, that there could possibly be gunshot residue present.
Q And what were the levels found on Cathcart?
A On the right palm, it was 19 counts of antimony and 214 counts of lead, and on the left palm, 19 counts of antimony and 325 counts of lead.
Q And you said the thresholds are?
A 17, 170, and 170 of antimony, then lead, then barium respectively.
Q Okay. What about on Mr. Reeder?

A On the right palm, we found 21 counts of antimony, 284 counts of lead, 206 counts of barium, and on the left palm we found 18 counts of antimony, 308 counts of lead, and 650 counts of barium.
Q Six hundred and --?
A Fifty.
Q Are my numbers up here correct?
A Yes, ma'am, they appear to be.
Q Okay. And the reason that Mr. Reeder has three numbers and Cathcart only has two numbers, is that because you found residue on one and then---
A Well, actually---
Q ---you found---
A ---on Mr. Cathcart, the, on the left palm, I didn't give you the barium count. I'm sorry. That was my, my error. On his left palm it was 402, and on his right palm it was a negative number. He did not have barium. But our threshold levels, if we have two of the three, they're, they also meet our threshold level.
Q Okay. Now, are these -- what are these numbers, when you have levels of this, this number, what does that tell you in your opinion?
A That this can be consistent with someone having handled a firearm that's been discharged or having fired a firearm that, and somehow the gunshot residue -- we generally

expect, if someone's shooting a gun, that you're gonna have gunshot residue on the palm and the back of the hand because the gunshot residue comes out in a cone shape cloud and wraps around the hand. Generally, if someone's shooting a gun, you're gonna expect to have it on the palm, have the gunshot residue on the palms and backs of the hands, and if they're shooting with one hand, the palm and the back of the hand.

So, if this were the case, and someone were firing a weapon, I would of expected to find it on the back of the hand as well unless it was removed in some way.

Q And what would cause the residue to come off the backs and remain on the palms?

A If someone were to wipe their hands in and out of their pockets or something like that where the palms were obscured or if someone were to wipe their hands clean and then touch something again, they had gunshot residue on it with just the palm area.

Q And would something like blood or water, would that wipe off any residue?

A Yes, ma'am, it can.

Q When the kit, and I should of asked you this earlier, when the kit is taken, you said at, it's within the six hour period, but once the specimens are obtained within a kit, do they change any or are they preserved in the, in the

condition that they were taken from this subject?
A They're preserved. We have taken kits and done laboratory testing, we'll let someone shoot a gun in the laboratory and then we'll take a kit from them, and we've let it sit six months, a year, and gone back and analyzed them, and we'll have two kits that were taken exactly the same time from one hand, and then the other, and they'll be, these numbers will be congruent with another. It doesn't change over a year.
Q Please answer any questions Mr. Poole or Mr. Brown may have for you.
THE COURT: Mr. Poole, your witness.
MR. POOLE: Thank you.

CROSS-EXAMINATION

BY MR. POOLE:

Q Good morning, Ms. Simmons.
A Good morning.
Q During the course of your testimony, you mentioned, in the very beginning and then toward the end of your testimony, that gunshot residue can be present on a person's hands if they handled, discharged, or were in close proximity of a firearm that had been fired.
A Yes, sir.
Q Is that true?
A Yes, sir.

Q And I think that you testified that the proximity could extend up to six feet --
A Yes, sir.
Q -- of the discharging of a---
A On a, on a handgun yes, sir.
Q ---firearm?
Okay. And it was your further testimony that it's typical that one who fires a firearm to see residue on the palm and on the back?
A Yes, sir.
Q Is that true?
A Yes, sir, that's correct.
Q Okay. How does it come to be that the residue gets on the back of a hand?
A Because when the gun is fired, the gunshot residue comes out in a cone shape cloud. As it meets the air resistance, as it's coming out of the gun, it's very light, it's microscopic. So, it will -- the resistance and just the atmosphere will cause the gunshot residue to wrap some back on the hands of the person firing the gun.
Q Okay. So, because of that fact, if you see it on the palm and the back of the hand --
A Uh-huh. (Affirmative).
Q -- then that is more persuasive, persuasive evidence that that individual discharged the firearm?

A It's more consistent than finding it just on the palms of the hands, yes, sir.
Q Okay. And isn't it true you -- well, you've already testified that gunshot residue or lead particles, which is part of the gunshot residue, right?
A Yes, sir, it's a component, yes, sir.
Q Could be picked up just by being in close proximity to the discharging of a firearm?
A Yes, sir.
Q It's not conclusive that the person who had the GSR or lead particles in their palm was the one who discharged the firearm?
A That's correct.
Q Is that correct?
A Yes, sir.
Q Okay. And could it not be the case that one could pick up GSR from touching a surface that was near the discharging of a firearm?
A Yes, sir.
Q So, the presence of GSR on a person's palms could be explained in several ways other than actually discharging a firearm?
A Yes, sir.
Q Is that true?
A It can.

Q Okay. Did you analyze the contents of a kit from a Bryant Miller?
A Yes, sir, I did.
Q And did you analyze the contents of a kit from Duncan Geter?
A Yes, sir.
Q And one Dwight Geter?
A Yes, sir, I did.
Q Thank you, Ms. Simmons.
THE COURT: Mr. Brown, your witness.
MR. BROWN: Very briefly.

CROSS-EXAMINATION

BY MR. BROWN:

Q The last thing that you said was typically if there were some form of firearm that's being held was typically found on the backs of a person?
A If someone discharges a firearm, we expect to find gunshot residue, residue on the back of the hand as well as the palms of the hand unless it is removed in some way. And as I was saying, it has the consistency of salt. So, it can be removed easily.
Q Okay. From Mr. Reeder, the right back, you indicated through your analysis, there was no residue---
A That's correct.
Q ---present based upon barium, antimony, and lead

particulants---
A Yes, sir.
Q ---through your typical analysis?
A Yes, sir.
Q And as relates to his left back, same situation?
A Yes, sir, that's correct.
Q In the fall -- Mr. Poole's question -- I mean obviously you didn't conduct the actual gunshot residue analysis?
A I conducted, I conducted the analysis. I didn't collect the kit.
Q Didn't collect the kit?
A Yes, sir.
Q So, you don't know from what areas potentially, besides what you have before you, that was described to you in terms of the information that was collected, you don't know exactly how that was collected.
A No, sir, I do not.
Q And would you agree with me, based upon the potentials of collecting, that information could be taken, taken directly from a wound area?
A It has been before, yes, sir, we received it, but generally if someone takes something from a wound, they'll write on it that this is collected from, from a wound.
Q Okay. Is it possible that if the person touches, with the inside of the hand, an area that has gunshot residue,

they can have that on their palms?
A Yes, sir, it can be transferred.
Q And it could have various levels of concentration involved?
A Yes, sir.
Q And, so, your numbers up here, whether they're high or low, really can't tell exactly the nature of how these various particulants came into play?
A No, they can not.
Q And you also had a chance, based upon Mr. Poole's question, to analyze GR, G, GSR kits for Bryant Antonio Miller?
A Yes, sir.
Q As well as, besides Mr. Crossley, Dwight Geter?
A Yes, sir.
Q And you also had a chance to analyze a GSR kit involving Mr. Duncan Geter?
A Yes, sir, I did.
Q If I could have you bring your information---
A Uh-huh. (Affirmative).
Q ---as it relates to the type of analysis you did for all three of those individuals, and place that upon the screen for me?
A I certainly can.
(Witness comes down from the stand.)

Q Do that for me.
A You want results sheets, right?
Q Yes. If you want to start.
A Okay.
Q Then I'm gonna ask you to write, write it down. I can give you another sheet of paper. Yes, ma'am.
A Move that way.
Q Yes, I will.
A Okay. I'm gonna write RP for right palm, RB for right back. That will just shorten things.
Q Yes, ma'am.
A These results were all the same. On Bryant Miller, it was all what was found was consistent with gunshot residue.
Q Yes, ma'am.
A Just go do it that way.
Q Yes, ma'am.
A That was the, those three.
Q Okay. Thank you.
A Yes, sir.
Q And based upon your analysis in terms of what you described to be an indicator of someone holding a firearm, again, discussing the backs of one's palms, as opposed to Mr. Cathcart and Mr. Reeder -- for Mr. Miller, you found gunshot residue on the right back as well as the left back?
A Yes, sir, and the palms of both hands. I found metals

consistent with gunshot residue.
Q And, again, you're not a firearms expert. So, you, you couldn't differentiate between a more powerful caliber type of handgun or the particular make or model for the particular discharge of the various particulants, barium, antimony, and lead?
A No, sir, with the different types of ammunition, a larger caliber handgun will generally just produce more gunshot residue. Federal, Remington, all of these different companies use the same types of primers and the same types of gun powder. So, you can't really differentiate one from the other.
Q And a smaller caliber may have a different type of indication in terms of the particulants so even the amount of residue that you could find?
A Yes, sir.
Q You agree with that?
A Yes, sir.
Q For Mr. Dwight Geter, based upon your previous statement typically in terms of how you would find gunshot residue, especially in a person handling the gun, you found particulants on the left back?
A On Dwight Geter, I found it on the right palm, the left palm, and the left back, I found metals that are associated with gunshot residue. That means that, with Mr. Miller, we

found, consistent with gunshot residue, the levels were higher than associated would be a lower level.

Q Okay. And for Mr. Duncan Geter, again, keeping in mind your previous point, you found particulants on his right back as well as his left---

A Yes, sir.

Q ---back?

A I found metals associated with gunshot residue on the backs of both hands.

Q Which would be consistent based upon what you say potentially?

A Well, I would expect to find, if someone were shooting a gun, find it on the palms and backs of both hands.

Q Okay. And you definitely found the backs of Mr. Duncan Geter's---

A Yes, sir, there was metals associated with gunshot residue on the backs of his hand.

MR. BROWN: That's all the questions I have, I have, Your Honor.

THE COURT: Redirect.

Ms. Tailor, do you want to use the overhead?

Should we leave the lights down?

SOLICITOR TAILOR: Yes, Your Honor. Briefly I would.

THE COURT: All right. Thank you.

You may proceed.

REDIRECT EXAMINATION

BY SOLICITOR TAILOR:

Q Ms. Simmons, did you also check the levels on Mr. Miller and both of the Geter's?

A Yes, ma'am, I did.

Q Could you please tell us what the levels were found on them?

A Yes, ma'am. On Mr. Miller, the levels of antimony was 46, the level of lead was 840, and the level of barium was 957. On the back of the right-hand, antimony was 28, lead was 458, and the barium was 295.

Q I missed that first number.

A Oh, 28. And on the left palm, the antimony, the first number is 85. The second was 1,796, that's for lead, and then the barium would be 600. On the back of the left-hand, the first number is 51. The lead is 818, and the barium is 76.

Q And, again, consistent versus associated---

A Yes.

Q ---which would?

A Consistent is a higher level that we found. As you see, like on the left palm, 1,796 is a very high level in comparison to what we would say if someone were shooting a gun. Our minimum level is 170. So, this can be consistent with someone having been in the close proximity to a gun

when it was discharged, even on the muzzle end of the gun. That is a possibility here---

Q Okay.

A ---with this, with that high of a level on that one area.

Q And, in your opinion, is that what you think?

A That is -- yes, ma'am, that is a possibility.

Q Okay. And what's the difference when you say here you have consistent and associated written for, for them, but on Cathcart and Reeder you have particles of residue actually found?

A Well---

Q What is the difference there?

A There's the particles on Cathcart and Reeder were particles that we found on the microscope. They were actually round particles containing, on the gunshot residue on Reeder, lead, barium, and antimony were found in round particles, and then on Mr. Cathcart, round lead particles were found. So, we had the concentrations and then we also had the particles.

Q Okay. And on Mr. Reeder on the, on the left back, you said there was no, no residue found, is that correct?

A Let me just make sure real quickly. I'm sorry. I wrote that down wrong. Round lead was found on the left back. I'm sorry about that. So, if you want to change

that.
Q So, you said on the left back?
A Left back, yes, ma'am, round lead particles were found.
Q Round lead particles?
A Yes, ma'am, I'm sorry about that.
Q Do you have the levels that were found there?
A Yes, ma'am, the antimony is 19, the lead is 674, and the barium is 171.
Q 171?
A Yes, ma'am.
Q So, in your opinion, if Mr. Reeder did have a gun, where would that have been?
A I'm sorry. Where would the gun have been?
Q Which hand would that have been in?
A I, I can't say for certain. It depends upon how the gun's being held, and they're other variables that come into play.
Q Is that it likely that it was in his left-hand?
A That is a possibility and somehow also the right palm had gunshot residue on it too. So, it must of made contact with the gun at some time.
Q And you stated that gunshot residue was transferred on to the hands or, or palms or any parts by touching possibly a gunshot wound.
A Yes.

Q In your opinion, is it likely -- can you tell, off of these levels, if it was from contact or if it was from the actual discharge of a weapon?
A No, ma'am, I can't necessarily say. It depends upon how much of the gunshot residue is present on the object that someone touches. If there's a tremendous amount of gunshot residue like on a, a gun that's been discharged, then someone could have transferred that amount of gunshot residue on to their hands.
Q But it is likely that this gunshot residue in those levels could of also come not just from touching the wound, but from firing a weapon or being around a weapon?
A Yes, that is possible.
Q And what direction does gunshot residue go?
A Gunshot residue goes toward a target like the projectile will follow, but will also, some will come out and be swept back with the air. So, it comes back in a cone shape cloud.
Q So, is there more residue in the front than there is in the---
A Yes, ma'am.
Q ---back?
A There's -- about 98 percent of gunshot residue goes out away from the muzzle. Only two percent would wrap back on the hand of someone shooting a gun.

Q Please answer any other questions.

THE COURT: Mr. Poole -- let me check with Mr. Poole. Any questions?

MR. POOLE: No questions.

THE COURT: All right. Mr. Brown.

RECROSS EXAMINATION

BY MR. BROWN:

Q Based upon the questions asked, I think you were asked directly about the amounts. You testified as relates to the, the three variables particulants.

A projectile could also have those particulants, correct?

A Yes, sir, they can.

Q And you don't know if the projectile, in terms of the type of analysis, in terms of getting those numbers, was even the source of that generation, do you?

A No, sir, I can't say if it came from the bullet or if it came from the primer mixture. I can't say.

Q And you can't say if it came from the wound site itself?

A No, sir.

Q And you can't, based upon your, your experience, for the amounts that you see in terms of particulants, if it was associated with a projectile, would you not indeed have numbers that would be indicated --

A If---
Q -- from being shot?
A Yes, sir, if someone is shot, about 65 percent of the, the gunshot residue kits we get from persons who have sustained a gunshot wound will have gunshot residue on their hands even if they have never fired a gun.
Q And, in particular, if you were shot in your left wrist or left palm, would you not indeed, if that was the area of source of even taking a GSR kit from the left palm or left back, would you not have numbers?
A Yes, you could.
Q More than likely?
A Yes, sir, you could.
Q Thank you. That's all the questions I have.
THE COURT: Anything further from the State?
SOLICITOR TAILOR: No, Your Honor.
THE COURT: You may step down, ma'am.
I assume you wish to have the witness excused.
Any objections from the State?
SOLICITOR TAILOR: No, Your Honor.
THE COURT: Any from the defense?
MR. POOLE: No, sir.
THE COURT: Mr. Brown.
MR. BROWN: None, Your Honor.
THE COURT: You're free to go if you'd like, ma'am.

State may call its next witness.

SOLICITOR TAILOR: Kenneth Whitler.

THE COURT: Come forward, sir, to my left and be sworn.

KENNETH WHITLER, having been first duly sworn, testified as follows:

THE COURT: Have a seat please, sir. And once you're seated, I'd ask that you state your name please.

WITNESS: My name is Kenneth H. Whitler. The last names is spelled W-H-I-T-L-E-R.

THE COURT: Ms. Tailor, your witness.

DIRECT EXAMINATION

BY SOLICITOR TAILOR:

Q Mr. Whitler, where do you work?

A Work for the South Carolina Law Enforcement Division that's also known as SLED in the forensics services division, which is the laboratory in the firearms department.

Q Okay. And for how long have you worked there?

A Since 1997.

Q And what is firearms identification and testing that you said is your department?

A Firearms identification is the study of the marks on fired components such as bullets and cartridge casings for the purpose of associating those bullets and cartridge cases with a particular firearm, or if you don't have a firearm to

compare them to, with other similar components such as bullets to bullets, cartridge cases to cartridge cases.

Q And what is your educational background?

A I have undergraduate and graduate degrees from the University of South Carolina.

Q Are you a member of any professional organizations that are associated with the work you do?

A Yes, I am. I'm a member of the association of firearms and tool mark examiners.

Q And what specialized training have you had in your present work?

A There is no degree in firearms identification. The only way you learn it is from other qualified examiners. When I was employed in the FBI laboratory I underwent their training program, which takes approximately two years, and you basically work with every examiner in the department. You also did independent study. You did problems that they set up for you. You also did your own studies, and you worked on real cases as well as cases that they set up for you.

In their training program, you have to -- you start off on the real cases. For example, you do very little actual work, but you do a lot of watching. As you progress in your experience, you're doing more and more of the work and the examiner in charge of the case does more and more of the

supervision in watching you do the work. When all the examiners in the department who have worked with you feel that you have reached the level of necessary competence, then they give you a series of three tests, and if you successfully complete those three tests, then you are certified to do a firearms identification for the FBI laboratory.

I successfully completed that training program and was certified in 1991 to become an examiner for the FBI laboratory. In 1997 I retired from the FBI and came back to South Carolina to do the, basically the same job for the SLED firearms department.

Q Have you testified previously in the field of firearm testing?

A Yes, I have.

Q How many times?

A Approximately 235 or more times in various state, federal, and territorial courts.

SOLICITOR TAILOR: Your Honor, at this time the State would move to qualify Kenneth Whitler as an expert in the field of firearms identification and testing.

THE COURT: Any objections?

MR. POOLE: No, sir.

MR. BROWN: None, Your Honor.

THE COURT: All right. Without objection then, the

witness will be qualified as an expert in that field.

You may proceed.

Q Mr. Whitler, I'm handing you what's been marked as State's Exhibit 20, 21, 22, 23, 24, 25, 26, and No. 27.

Do you recognize these?

A Yes, I do.

Q Were these items that you did some testing on?

A These are sealed envelopes that I have marked on the outside with item number, my initials, and the case number. Since the packages are still sealed, as well as I can determine, these marks, these numbers correspond to items I examined and issued a report for.

Q And you said each of those packets does have your initials on them?

A Yes, they do.

Q Okay. So, would anyone else have handled that package before you at SLED as far as opening it?

A In some cases they do. If they were say, for example, cartridge cases, a latent fingerprint request, it would go to latent fingerprints first. They would do their examinations, put it back in the package, seal it up, and then it would be transferred to me. I received -- all the evidence I received was in a sealed condition when I received it. After I do my exams, I reseal it and it's returned to the contributor.

Q In this case, did anything go to latent fingerprints?
A I wouldn't have -- I wouldn't know at that point, that point.
Q So, once the items came to you, what do you do?
A When, for example, these items came, they were in a sealed envelope. I would open the envelope, determine what's inside, and whether it's a cartridge case, bullet, or what have you, write it up, and then, if there's a firearm to compare, I would test fire the firearm, and then compare the test fired bullets and cartridge cases to whatever bullet or cartridge cases were submitted.

In this instance, there was no gun submitted. So, I basically grouped all the cartridge cases together, grouped all the bullets together, and then I inner compared cartridge cases to cartridge cases and the bullets to the bullets.
Q So, in this case, you had bullets and cartridges, is that---
A Cartridge cases, yes.
Q Okay. And what are -- what is a cartridge case?
A A cartridge case is mainly the, the brass part or the part that holds the bullet, and it also holds the gun powder and the primer. When the cartridge is fired, the bullet is expelled from the gun down the barrel. The cartridge case is the part that's left in the gun or ejected on to the

ground.
Q When do they -- where do they usually eject?
A It depends on many factors where they -- they generally will come out of the gun. The gun will have what is known as an ejection port, and on most pistols that's on the right-hand side. So, most of the time the cartridge cases will come out and to the right slightly. But that's no guarantee that they will be found to the right of wherever the shooter was. It depends on how you're holding the gun.

If you're holding it perfectly vertical, they may go to the right. If you do like you see on television, the hero turns it sideways, they can go to the left. So -- and then that's other factors like, when they hit the ground, do they bounce and roll ten or fifteen feet somewhere else. So, all that you can be certain is that the gun did eject a cartridge case.
Q Does a cartridge hold multiple bullets or is it each time the bullet fired there's one cartridge that's expelled?
A Most cartridges are, generally only have one projectile in them. There are some speciality cartridges that will have multiple bullets in one cartridge case.
Q In this case, what type of testing did you do?
A I did a microscopic comparison of the cartridge cases that were submitted. I took the cartridge cases, put them on the microscope, which is the comparison microscope, which

basically allows you to look at two objects at the same time. Microscopically they look like they're side-by-side, and then you can manipulate them to see if the marks on the cartridge case on the left matches the cartridge, the marks on the right.

This is all strictly visual. They're no lights that flash match like you see on television. There's no charts or graphs or anything. It's purely a physical, visual, visual confirmation by the examiner's eyes. When you see enough corresponding marks on the left that match up to the same marks on the right, then you're able to come up with your conclusion.

Q Which cartridge cases did you test?

Could you tell us which numbers?

A Okay. I tested State's Exhibit 20, which in my report was Items 2 through 5. Excuse me. Two, two through five. State's Exhibit -- let me go back.

State's Exhibit 20 has my, were my items, my items two through five, which was also a bullet it looks like.

State's Exhibit 21, State's Exhibit 22, State's Exhibit 23, State's Exhibit 24, State's Exhibit 25, 26, and 27, microscopically compared all of these items. And, as I said, some are cartridge cases and some were bullets or bullet cores.

Q Did any of these cartridge cases, when you were testing

them, are you looking for things that match, that things that were from the same firearm, is that---

A Yes, ma'am, the whole theory is that, when the gun puts the marks on the cartridge case or the bullet, it leaves marks that can be identified to that particular gun. In order to say it was fired by a particular gun or by the same gun, you've got to have sufficient corresponding marks on both items that match up.

Q Did you find any matches?

A Yes, I did.

Q What, what items matched?

A It's going to be -- I'll have to refer to my report. Basically there were, because your State's Exhibit Numbers cover multiple items. Basically there were the eleven 406 S&W caliber cartridge cases submitted. Of those, five were fired by one firearm and five were fired by another firearm. So, they -- those five -- the five were not fired by the same gun. They were five by one gun, five by another.

The eleventh cartridge case was not fired by one of the cartridge, by one of the guns and -- but it could of been fired by one of the other, by the other firearm. That's a little confusing I know, but one gun definitely shot five and another firearm definitely shot five. One of the guns could not have fired the eleventh cartridge case due to class characteristics, but it could of been fired by the

other firearm.

Q So, based on your findings and your opinion, we definitely have two different cartridge, two different weapons that fired---

A Yes, ma'am, and a possibility for a third, but at least two. There was also a 9-millimeter cartridge case submitted. There were no other 9-millimeter cartridge cases submitted. So, there was nothing to compare it to. Nine millimeter is a different caliber than a .40. It can not -- they can't be fired in the same gun. So, at a minimum, you have at least three firearms at this point.

The other items were a unfired 9-millimeter cartridge, and then we had three bullets and two bullet jacket fragments. The three bullets were fired by the same gun, and they were fired from a gun with a polygonally rifle barrel. Excuse me. I said they were fired, but they, they weren't fired by the same -- I couldn't say they were fired by the same gun, but they were, they could of been fired by the same gun. They were all fired from a polygonally rifle barrel and it was consistent with bullets that are loaded in the .40 S&W caliber or 10-millimeter auto cartridges.

The -- there were two bullet jacket fragments submitted, and based on the class characteristics and the rifling characteristics, those fragments could not of been fired by the gun or guns that fired the three bullets. Two

different rifling characteristics.

So---

Q So---

A There was at least, when we say consistently, we mean the, those three bullets could of been fired by the same firearm or by three different firearms with similar rifling characteristics. A polygonally rifle barrel is a very difficult to identify to each other because they are just so smooth. They're very few marks. But I can definitely say that the bullet jacket fragments weren't fired by the same gun because it has conventional rifle, rifling.

So, it is at least two guns if not -- there's a possibility that three guns could of fired the polygonally rifled bullets, and a fourth gun could of fired the other two cartridge, the bullet jackets fragments. But that's the most that could happen. But at the minimum, there were at least two different guns involved in this set, and then there were lead fragments and two bullet core fragments, I mean two bullet cores submitted, and bullet cores are the interior, the lead portion of a jacketed bullet.

So, when the bullet hits something, if the jacket comes off, the core's exposed. The core doesn't have any marks that can be identified back to a particular gun because when the bullet goes down the barrel, the jacket is what is in contact with the bore. The core is not.

So, if the, if the bullet comes apart, the core can not, doesn't have any marks of any value. So, those cores and lead fragments have no marks of value and were not suitable for identification purposes.

Q So, according to your testing on the bullets, again, you know that they're at least two weapons?

A Yes, ma'am.

Q But you said up to how many?

A Well, there was three bullets submitted. We couldn't identify the bullets to each other. So, in all fairness, we have to say there is -- if you have three bullets, you can't identify them to each other, but they all have the same rifling characteristics. Then you got the maximum possibility of three guns could of fired it.

A lot of times -- it's not like you see on television. You don't get a guaranteed identity everytime you look at particular bullets. Some guns mark very well. Some guns don't mark very well at all, and you can shoot a gun and not identify any of the test fires with each other.

Q And based on the casings and the bullets that you had, could you actually identify what millimeter weapons they went with?

A The cartridge cases were .40 S&W. They were 11 of those, and then there was 9-millimeter cartridge case.

Q I'm sorry. I -- my knowledge is not as extensive on

weapons.

When you say S&W, what does that mean?

A That's just the name they give the cartridge. It's like .357 magnum or 9-millimeter Luger. Whenever they design a cartridge, they have to name it something and that's what they chose to call this. Mostly, in this case, it was because Smith & Wesson had a great deal to do with development of the cartridge. So, they needed a little advertisement for it.

Q One final question.

When, when cartridges are expelled, do they usually go forward, forward from the gun, away from the gun, or do they just go wherever, like you said, depends on how they're holding it?

A The cartridge cases?

Q The cases.

You said the cases are expelled?

A Yes, if it's a pistol, the cartridge cases have to be ejected from a gun before the next cartridge can be fired. If it's a revolver, then the cartridge case stays in the gun until whoever's shooting it opens it up and physically removes the cartridge case. And when the cartridge cases come out, they are ejected from the gun, you know, but it depends on where the ejection port is. They're some guns with ejection ports on the left side. So, they would eject

to the left. Most of them are on the right. So, they would go somewhere to the right.

But, again, just because the ejection port opens to the right doesn't mean that a cartridge case has to go to the right. In test firing, I've had guns with the ejection port to the right and the cartridge case goes over my head or hits me in the head. So -- going straight backwards.

So, it just depends on the gun how it reacts with that particular ammunition.

Q And is that the same for guns that take a .40 S&W?

A Yes.

Q And for a 9-millimeter?

A Yeah, that's a general statement for pistols. I mean they will generally go out the direction of the ejection port, but they can do anything -- sometimes they'll -- some will go to the right, and some will go back, you know, but it just depends on the gun.

Q Please answer any questions Mr. Poole or Mr. Brown may have for you.

THE COURT: Mr. Poole, your witness.

MR. POOLE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. POOLE:

Q Mr. Whitler, I just got a couple of questions just primarily to clarify for my own benefit.

A Okay, sir.
Q Okay. So, you had, in your possession, and you did your testing and analysis of 11 shell casings?
A That's correct. Well, 11 40 S&W cartridge cases, and then, like I said, there was a 9-millimeter cartridge case also submitted that had been fired.
Q Okay. All right. Let's stay with the 11 S&W.
A Okay, sir.
Q The .40 caliber?
A That's correct.
Q Right.
Five of those were fired by one gun?
A That's correct.
Q A particular gun.
Five of those were fired in another gun?
A That's correct.
Q But a .40 caliber nonetheless, right?
A Yes, sir.
Q Both, both were fired?
A Both were .40 S&W caliber pistols.
Q Okay.
A Or could fire that cartridge.
Q And then you testified that there was another casing that could be fired, could of possibly have been fired from a third gun?

A Let's -- let me see if I can make it a little simpler.
Q Okay.
A Let's say gun number one --
Q Uh-huh. (Affirmative).
A -- fired five cartridge, of the cartridge cases.
Q Okay.
A Gun number two fired another five cartridge cases.
Q Okay.
A The left -- the one remaining cartridge case could have been fired, had the same class characteristics as the five cartridge cases fired by the first gun, but they were different class characteristics than from the five cartridge cases fired by gun number two. So, we can say that although there wasn't enough characteristics to say gun number one fired that sixth, that eleventh cartridge case, we have to say it could have been fired by that gun. But because the class characteristics were different --
Q Uh-huh. (Affirmative).
A -- it couldn't have been fired by gun number two that fired the second group of five cartridge cases.
Q Okay.
A Because the class differences.
Q Okay. Does that open the possibility for a third gun?
A Yes, sir, when we say consistent, it -- many times if a cartridge case or a bullet doesn't mark well, it very well

could of been fired by that gun. But it's either damaged or the gun doesn't mark well or for whatever reason. There's not enough to be able to say it definitely was fired by this gun.

So, in that case we have to say it couldn't have been fired by that gun, but in order to be fair, we have to say it could of been fired by another pistol---

Q I see.

A ---or firearm that produces similar marks.

Q Okay.

A So---

Q All right.

A ---we definitely have at least two guns, and because of that cartridge, that eleventh cartridge case that we couldn't identify to either gun, the possibility exists there was a third gun.

Q Okay. Now, on the 9-millimeter casing, that, that---

A That would---

Q ---brings into picture another gun?

A That -- yes, sir, because a 9-millimeter can't be fired in a .40.

Q Okay. And under, under any circumstances as far as you know?

A I can be---

Q In your experience.

A It can be done, but when it does it, because there's been actually people who have mixed up their ammunition, when it, when it does happen, the cartridge case is, is deformed. It's really expanded. It doesn't look like a normal 9-millimeter, which was not the case here.
Q Okay.
A Whatever fired this gun, it was in the properly chambered firearm.
Q Okay.
A So, I mean and you have to work to -- in firearms, you can almost make anything, anything do anything if you do some wierd things. We've had people put tape around small cartridges to make them big enough to fit in big chambers, and -- but if you try to -- in this case, the cartridge case was very consistent with being fired in a 9-millimeter pistol. Not something because, like I said, if it had been fired in a .40, the cartridge case would of been super expanded and it would be very noticeable.
Q Okay. All right. So, in this case then, the, the existence of this 9-millimeter shell casing indicates that there were at least three guns involved?
A That's correct.
Q Is that right?
A That's correct.
Q Okay. That's all I have. Thank you.

MR. BROWN: No questions, Your Honor.
THE COURT: Anything on redirect?
SOLICITOR TAILOR: No, Your Honor.
THE COURT: You may step down, sir.
THE COURT: Any objection to the witness being excused from the State?
SOLICITOR GRAY: No, sir.
THE COURT: Defense?
MR. POOLE: No, sir.
MR. BROWN: No, sir.
THE COURT: You're free to go if you'd like, sir.
All right. Ladies and gentlemen of the jury, we've been going for about an hour and a half. It's time we would take a break.
I'm gonna ask you to step back to the jury room, and, again, don't begin any discussions concerning this case until I've advised you to do so. You may retire.
Thank you very much.
(WHEREUPON, the following takes place outside the presence of the jury.)
THE COURT: All right. Court will be in recess for about ten to fifteen minutes.
Thank you.
(WHEREUPON, a short recess was taken at this time.)
THE COURT: State ready to proceed?

SOLICITOR TAILOR: Yes, sir, Your Honor.
THE COURT: Defense ready, Mr. Poole?
MR. POOLE: Yes, sir.
THE COURT: Mr. Brown.
MR. POOLE: Yes, Your Honor.
THE COURT: Bring the jury in.
(WHEREUPON, the following takes place within the presence of the jury.)
THE COURT: All right. The record will reflect the jury's return to the courtroom.
At this time the State may call its next witness.
SOLICITOR TAILOR: State calls Doctor Wren.
THE COURT: Sir, come forward to my left and be sworn please.

DAVID WREN, having been first duly sworn, testified as follows:

THE COURT: Have a seat, please, and once you're seated, state your name.
WITNESS: My name's John David Wren.
THE COURT: Ms. Tailor, your witness.

DIRECT EXAMINATION

BY SOLICITOR TAILOR:

Q Doctor Wren, what is your occupation and profession?
A I'm a medical doctor with a specialty in pathology.
Q And what education and qualifications do you have that

allows you to do what you do?

A Well, as a background, I have a Bachelor's Degree, a Master's Degree, and a Doctor of Philosophy Degree in Chemical Engineering from Clemson University. I attended the Medical University of South Carolina, graduated in 1979. I started a residency in pathology at the Medical University in February of 1979, and I was -- I finished that residency with credits from my research both at the Medical University and earlier in my doctorate training in three years and ten months.

While I was there, I was assistant medical examiner for Charleston County from July of 1980 until January, the end of January of 1983. I did autopsies one weekend a month for most of that time for, forensic pathology cases that were sent to the Medical University of South Carolina. So, as a result, I qualified for forensic pathology also. I never took those boards, but I have passed the boards on first attempt in both anatomic and clinical pathology. So, I'm a board certified anatomic and clinical pathologist.

Also have been qualified as an expert in forensic pathology in probably half the counties in South Carolina testifying both as a resident, and since then, since then, since I came to work here in, October the 18th, 1982, I started working in Spartanburg for Spartanburg Pathology Associates. We eventually merged with Carolinas Pathology

Group in Charlotte. And, so, I am now a member of Carolinas Pathology Group in both states. That's my training.

SOLICITOR TAILOR: Your Honor, the State would move to qualify Doctor Wren as an expert in the field of medicine specifically in pathology.

THE COURT: Any objection?

MR. POOLE: No objection, Your Honor.

MR. BROWN: None, Your Honor.

THE COURT: Without objection, he'll be qualified as an expert within that field.

You may proceed, Ms. Tailor.

Q Doctor Wren, did you do an examination on a Duncan Lamar Geter?

A Yes, I did a complete autopsy on a black male identified by the Coroner's Office as Duncan Lamar Geter, and the Spartanburg Regional Medical Center autopsy on March the 14th, 2009, beginning that autopsy at approximately 10:45 a.m.

Q And when you did the autopsy, what, what does that generally entail?

A A complete forensic autopsy includes a description of clothing with a collection of trace evidence. Then the body is unclothed, a complete external examination is then performed. The body is washed of any blood or any other external material and reexamined with attention to any

injuries that may be there to do a clinical, clinico-medical legal pathologic correlation of what was found, any wounds are described, and a complete internal examination, including the head, is performed with attention to any pathology that is found internally.

Q And on Duncan Geter, when you performed this exam, is it done primarily to determine cause of death?

A Yes, in, in forensic cases, yes, it is. Along with any evidence that may substantiate legal matters.

Q And what were your findings with Duncan Geter?

A I didn't find any acute injuries other than a distant gunshot wound to the neck that entered in the left side. That wound appeared below the inferior border of the ear on the left side. It was seven and a half inches from the top of his head and he was six foot one-half inch tall. He was seven and a quarter inches from the top of his head, three inches to the left of the midline, and 3.75 inches circumferentially from the midline anteriorly.

That wound appeared approximately one and a half inches below that border of the ear. It, it measured nine-tenths centimeters or 9-millimeters in diameter. It had an abrasion boarder from 8:30 to one o'clock meaning, if you look at the wound as a clock, from 8:30 around to one o'clock there was an abrasion boarder indicating that the, the leading edge of the bullet caused a little abrasion as

it entered tangentially to the skin in that area. It measured up to two and a half millimeters in thickness indicating it was going at a slight angle, and that bullet passed slightly downward, past left to right in his body, and almost coronally.

That means if you drew perpendicular lines or parallel lines from the front of the body to the back horizontally or vertically, then it went almost straight through in a coronal plane it's called. It passed through his spinal cord and column at approximately T-4, I'm sorry, C-4, which is the fourth cervical vertebra, and came to rest in his lateral right neck a little bit inferior, and I recovered a bullet from that area that measured one centimeter in diameter at the base or, or 10-millimeters in diameter at the base, and 1.4 centimeters in length.

I labeled that bullet with a Number 9, which was the last digit in the autopsy, which was FA09-59, and I also labeled it with a Greek letter, Delta, so I could identify it. It had visible lands and grooves. It was copper jacketed.

Q And in your, your determination that you made, what was that that causes, caused his death?

A That was -- the approximate, the immediate cause of death -- I signed the cause of death as respiratory arrest secondary to trauma to spinal cord laceration and contusion

secondary to a distant gunshot wound to the neck.
Q And with a wound of this sort, how long would it have taken from the time of impact to the time of death?
A Well, he probably would of lost consciousness relatively quickly. When someone stops breathing -- well, let me go back.

Someone will -- if they stop breathing, they can retain consciousness about as long as that individual could hold his breath. Some people can only hold their breath a short time. Others can hold it a longer time. But nevertheless, the brain becomes anoxic, the person loses consciousness, and then one dies, the rule of thumb, is six minutes after a person stops breathing was when the brain -- so, six minutes or so.

Q Thank you. Please answer any questions Mr. Poole or Mr. Brown may have for you.

THE COURT: Mr. Poole, your witness.

MR. POOLE: No questions here, Your Honor.

THE COURT: Mr. Brown.

MR. BROWN: No questions, Your Honor.

THE COURT: Sir, you may step down.

Any objection to the witness being excused from the State?

SOLICITOR TAILOR: No, Your Honor.

THE COURT: Any from the defense?

MR. POOLE: No, sir.

MR. BROWN: None, Your Honor.

THE COURT: You're free to go. Thank you for coming. State may call its next witness.

SOLICITOR GRAY: State rests, Your Honor.

THE COURT: All right. Ladies and gentlemen of the jury, that completes the presentation of evidence by the State. There's some matters I have to take up with the attorneys at this point in time. I'm gonna ask you, again, to step back to the jury room and not begin any discussions until I've asked you to do so.

You may retire.

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

THE COURT: All right. Any motions from the defense at this time?

MR. POOLE: Your Honor, on behalf of Darius Cathcart, I would move for a directed verdict of not guilty on the three charges of murder, assault and battery with intent to kill, and assault with intent to kill.

The evidence presented by the State basically indicates that -- well, we've got two witnesses who were in a vehicle. Let's, let's call that vehicle the Crown Vic. They could not identify Darius Cathcart as being a shooter or a driver. The physical evidence that has been presented indicates that

there was some sort of, at the very minimum, a mutual combat between two occupants or between occupants of two different cars at a particular location where at least three guns were used.

The Court is heard the evidence and no, you know better than I do probably what all of it is. But I think the only thing that has been mentioned about Mr. Cathcart's involvement is a statement made by Mr. Cathcart to Officer Durham that he was a driver of a car that had been shot at. No weapon in his hand. No intent manifested by Mr. Cathcart. No criminal intent of any nature to commit any crime much less of the serious charges of murder, which entails malice aforethought, and the other two charges.

And based upon that, and the previous rulings that, previous motions that have been made prior to us beginning the trial of this case this week, that is the pretrial motions, and based upon the fact that Mr. Miller stated a statement that was clearly hearsay about an alleged argument, all of these things I would ask the Court to take into consideration and consider my motion for directed verdict of not guilty.

THE COURT: Mr. Brown.

MR. BROWN: Your Honor, I would join in Mr. Poole's motion before the Court obviously for a directed verdict. I would distinguish my motion in the obvious matter of mere

presence, Your Honor. If there is any type of accusation that could be alleged, it would be simply one of mere presence.

My client has not been identified by anyone from the State as being directly or indirectly involved. His name only came up from an outside source the State is not presented, never was heard from the stand, has never been presented through any type of evidence, either any reports or any testimony that, that we've heard, Your Honor.

The intent, malice aforethought---

THE COURT: Now, wasn't there a statement made by Mr. Cathcart that is in evidence that indicated your client was in the vehicle when the shooting took place?

MR. BROWN: And, again, Your Honor, that's why I start off by saying mere presence.

THE COURT: Uh-huh. (Affirmative).

MR. BROWN: Any of the other elements related to, to the notions of murder or the other charges involved, the assault with intent to kill, of course, as relates to Mr. Geter and the other charge relating to Mr. Miller have not been directly attributed to my client. I would point this to the Court's attention, and, of course, at the appropriate time the Court would want substantiating case law I can provide that as well.

THE COURT: All right. I'll hear from the State.

SOLICITOR GRAY: Thank you, Your Honor.

I believe this case is clearly a circumstantial case. Circumstantial evidence is admissible as direct evidence as, is admissible.

We've always proceeded under the theory the hand of one the hand of all, accomplice liability. In this case, that is clear, from the GSR results, to, to handling the gun, to firing the gun, being in proximity of a gun.

It is stated, through testimony, that there was a disturbance, a fight, whatever, at a club earlier that night. These men followed the victims around that night and later got into a shooting. Mr. Cathcart states there was a shooting, a shoot-out, if you will. He was victimized.

He gave false information as to where it occurred. The police canvassed the entire area, went to Mt. Vernon, Mt. Pleasant and Burns Road. They found the actual crime scene. Gunshot residue was found on both gentlemen, and Mr. Miller testified he shot back at the car once the car shot at him.

Mr. Cathcart says he was the driver. Mr. Reeder was in the car. I believe, circumstantially, we can show that if Mr. Cathcart is the -- we say Mr. Cathcart's the driver, Mr. Reeder's the shooter in this situation. From the video, you can see on Mt. Pleasant Road, the victim's car come down the road, and the defendant's car followed. Approximately ten minutes later, as Mr. Miller testified to, is when the

actual shooting occurred.

All elements can be proven especially malice aforethought, and this was in concert. When the victim's vehicle proceeded back down the road in the video, the car Mr. Cathcart was driving and Mr. Reeder was a passenger in, the lights were off. They followed them to the four way stop with the lights still off, the lights come on, and you see flashes. That is the shooting back and forth. The car that Mr. Cathcart was driving, Mr. Reeder was the passenger, shot into that car.

Three .40 caliber shell casings in the car that Mr. Cathcart and Mr. Reeder were driving. Numerous bullet holes, bullet strikes would have you to the car that the victims were in.

I believe this case is clearly a case where both acted in concert to accomplish assassination of this young man, and the assassination attempt of Mr. Geter and Mr. Miller, Your Honor.

THE COURT: All right. Anything further?

MR. POOLE: No, sir.

THE COURT: Mr. Brown.

MR. BROWN: Your Honor, I'll just direct the Court's attention to State v. Madison. Of course, it's a Supreme Court case out of South Carolina in regards to my previous motion, and all other matters.

THE COURT: Well, it is a circumstantial evidence case, and in a circumstantial evidence case, there has to be substantial circumstantial evidence that points toward the potential guilt of a party, and, of course, in this particular case, I must take the evidence and the inferences that can be drawn from the evidence in the light most favorable to the State.

And in doing that, based on the evidence cited by counsel in his argument, I'm not gonna go through it all, there has been testimony that both individuals were in the car, in this case the Nissan I think that ended up being burned later that evening, there is evidence of the cars going up and down the road, one following the other, which would indicate some intent if, if believed, and, of course, then a shooting took place, and the evidence is clear that the, from, from the testimony of the State's witnesses, that the firing began from the other vehicle, not from theirs, and that they simply returned fire once that occurred.

Based on all of those factors, factors, I do find that there is sufficient evidence to send the question to the jury. So, I'm going deny the motion at this time.

Now, any other motions from the defense before I discuss the right to testify with the defendants?

MR. POOLE: No, sir.

MR. BROWN: None, Your Honor---

THE COURT: All right.

MR. BROWN: ---at this time.

THE COURT: I'm gonna ask that the, that you would sware both defendants at this time please, Mr. Cathcart and Mr. Reeder.

(WHEREUPON, both defendants were placed under oath at this time.)

THE COURT: You can be seated.

Gentlemen, Mr. Cathcart and Mr. Reeder, at this time I'm going to explain to you certain of your constitutional rights. When I finish my explanation, if either of you have a question about what I've gone over with you, you have every right to ask me and I'll do my best to explain the situation so that I'm sure that you do understand the rights that I've gone over with you, and the options and questions that you might have concerning those rights.

We've reached the stage of the trial where either of you has the right to present your defense in this case. You have the right also, at this time, to claim the protections which are given to you under the Fifth Amendment to the United States Constitution. That particular amendment reads in part that no person shall be compelled in any criminal case to be a witness against himself.

Now, what that means is that, while you have the right to testify, no one can make you testify in this case. It's

a -- the right to remain silent in a case is a personal right and no one can waive or give up the protections that are given to you under the Fifth Amendment except yourself.

Now, I will advise both of you that if you decide to testify in this case, you will be subject to the same rules that govern the testimony of any other witness who would testify in this case. You'll be treated the same.

What that means is that you would be examined by your lawyers, and you would be cross-examined by the State's attorney, and, of course, by the other defendant's attorney, and, in addition to that cross-examination, should you have any convictions on your record which involve either dishonesty or false statements or for crimes which were punishable by imprisonment for more than one year, and this Court makes the determination that the probative value of admitting that evidence outweighs any prejudicial effect to you, if that were to occur, then the solicitor would be able to introduce your criminal record to attack your credibility.

Now, I also will advise you that the, should you decide not to testify in this case that I will instruct the jurors that the fact that you did not testify in this case can not be considered by them in any manner whatsoever in reaching a verdict in this case. In fact, I will instruct them that they can't even discuss that matter in their deliberations

in this case.

Now, if you decide to testify, the decision made by you must be made freely, voluntarily, and intelligently. That means it's made with knowledge of the protections which are given to you by the Fifth Amendment to the Constitution. Also with knowledge of the consequences that could result should you decide to testify.

Now, you have the right to discuss this particular decision with anyone you wish to discuss it with, your lawyer, your family, friends, anybody you'd like to talk it over with. But I will tell you, your final decision as to whether or not you testify in this case is left entirely up to you. It's your decision and your decision alone.

Now, Mr. Cathcart, do you understand what I've gone over with you at this time?

DEFENDANT CATHCART: Yes, sir.

THE COURT: Mr. Reeder, do you understand what I've gone over with you?

DEFENDANT REEDER: Yes, sir.

THE COURT: Now, do either of you have any questions concerning what I've explained, Mr. Cathcart?

DEFENDANT CATHCART: No, sir.

THE COURT: Mr. Reeder?

DEFENDANT REEDER: No, sir.

THE COURT: Now, Mr. Cathcart, have you had sufficient

time in which to discuss your decision with your lawyer?

DEFENDANT CATHCART: Yes, sir.

THE COURT: Do you wish to take any additional time to discuss it with anyone else?

DEFENDANT CATHCART: No, sir.

THE COURT: Mr. Reeder, have you had sufficient time to discuss this decision with your attorney?

DEFENDANT REEDER: Yes, sir.

THE COURT: And have you had sufficient time to discuss it with anyone else?

DEFENDANT REEDER: No.

THE COURT: So, you'd like to talk it over with someone else?

DEFENDANT REEDER: Oh, no, no, I say I ain't over, understand that questions.

THE COURT: Well, I'm just asking you, do you want any additional time to discuss the decision---

DEFENDANT REEDER: Oh, no, sir.

THE COURT: Okay. So, you've had enough time to talk it over with anybody you'd like to talk it over with?

DEFENDANT REEDER: Yes, sir.

THE COURT: All right. Now, Mr. Cathcart, do you intend to testify in this case?

DEFENDANT REEDER: No, sir.

THE COURT: Mr. Reeder, do you intend to testify?

DEFENDANT REEDER: No, Your Honor.

THE COURT: All right. Thank you very much.

Now, does the defense have any other witnesses you wish to call, Mr. Poole?

MR. POOLE: Your Honor, on behalf of Mr. Cathcart, we have no witnesses, no other witnesses or exhibits or any type of evidence whatsoever.

THE COURT: All right. Mr. Brown, any other information you would do in this case?

MR. BROWN: Your Honor, I think I'm going to recall officer Talanges.

THE COURT: All right. Now, are there any specific requests for charge from the State?

SOLICITOR GRAY: Accomplice liability, Your Honor.

THE COURT: All right. The hand of one is the hand of all---

SOLICITOR GRAY: Yes, sir.

THE COURT: ---is what you're talking about?

SOLICITOR GRAY: Yes, sir, Your Honor.

THE COURT: All right. And any specific request from the defense?

MR. POOLE: Your Honor?

THE COURT: And, of course, you can let me know once the testimony is in, but I'd like to be preparing for that. You can advise me. We'll go over this.

MR. POOLE: Okay.

THE COURT: All right.

MR. POOLE: I'll let -- I'd ask the Court to consider, on behalf of Mr. Cathcart, mere presence, self-defense, mutual combat.

THE COURT: All right. Now, self-defense we can talk about a little bit because self-defense requires that the person acting have no hand whatsoever in the bringing on of the difficulties. I have a problem with that one in this particular case.

MR. POOLE: Well---

THE COURT: But we'll talk about that a little further. But, you know, where it, where it appears that somebody is out following someone around in the public after having been in a fight with them, doesn't sound like they're exercising a duty to retreat. But we'll talk about that in just a minute and see whether that might flow, float or not.

Yes, sir, Mr. Brown.

MR. BROWN: I would ask that the Court request similar charges with regards to my client.

THE COURT: And, again, we'll discuss that again once the evidence is all in.

MR. BROWN: Yes, sir.

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

Anybody need to take a break while we're taking a

break?

SOLICITOR GRAY: No, sir.

THE COURT: Ready to go forward?

Defense ready?

MR. POOLE: Yes, sir.

THE COURT: Bring the jury in.

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

THE COURT: All right. The record will reflect that the jury has returned to the courtroom, and at this time the defense has the right to present any evidence that the defense wishes to present.

Mr. Brown, you've indicated that you have witnesses you wish to call.

Mr. Poole, you've indicated that there is no, no further witnesses from your client's prospective, is that correct?

MR. POOLE: That's correct.

THE COURT: All right. Mr. Brown, you may call your first witness.

MR. BROWN: Thank you, Your Honor.

I'd like to recall Officer Talanges.

THE COURT: Sir, if you'll come forward to the witness stand, please, and, officer, I'm going to remind you that you've been placed under oath in this case and you remain

under oath at this time. Have a seat please, sir.

ROBERT TALANGES, having been previously sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q Mr. Talanges, I just have a few questions.

In regards to the depiction I think that's been shared both with you and Officer Nix in this courtroom today?

A Yes, sir.

Q Are you familiar with this?

A Oh, yes, I am.

Q And this is the description of what presenting---

A This is a crime scene sketch of the location on Mt. Pleasant, Burns Road, and Sims Road.

Q And are those your initials?

A Yes, they are.

Q R.C.T.?

A Correct.

Q You circled that, this is your document?

A Yes, it is.

MR. BROWN: Okay. Like to have this marked.

(WHEREUPON, the document was marked as Defendant's Exhibit No. 5 for identification purposes only at this time.)

Q Thank you, officer.

Again, I'm gonna show you what's been marked as Defendant's Exhibit No. 5.

In relation to the rounds or the shell casings that were found on the side of the road, could you tell us, cause this, of course, is being recorded, principally where or by what letter that you demarcated on this sheet where those rounds are located or those casings I should say?

It's A, B, C, D?

A Okay. A, B, C, D, it's looking -- you're looking at -- they're -- A, B, C, D reflect the triangulation location we took measurements from, and it's gonna be at Burns and Mt. Pleasant. One, two, three, four, five, six, seven, and eight are gonna be evidence that was collected at the location between Burns Road and Sims Road.

Q Okay. And you, you also have, what you just mentioned, another road indicated there, Sims Road?

A Sims Road, correct.

Q Is that close to Burns Road?

A According to my sketch here, which would be about center of the intersection to Evidence Number Seven would be about center of Sims Road was about 512 feet.

Q 512 feet?

A Yes.

Q It's not close?

It's a great distance from here to the back of that

courtroom?
A A lot further than that.
Q All right. And approximation of Mt. Pleasant Road and Sims Road, what's Item Number Seven?
A Item Number Seven, large blood spot was marked by Officer Tim Davis at the, prior to the bad weather coming in.
Q And you have direct knowledge of that blood spot being there?
A Yes, sir, it was photographed. He marked it with some kind of a cover, actually a paper bag he had marked it and covered it to try to preserve it.
Q Okay. And do you know if any testing was done on that?
A I do not know.
Q All right. And Item Number Six, again, I guess almost in the center of Sims Road and well in-between Sims Road and Burns Road, what is that item?
A We, we located it as tissue, biological matter, but we -- appeared to be some type og maybe vomit or something of that nature that we looked at while we were there.
Q All right. And that is not close, according to what you just stated, to Mt. Pleasant and Burns Road?
A You're looking -- Mt. Pleasant and Burns Road, it was 383 feet is what measured from the location of, from C, which is on the diagram, to Number Six.

Q And, again, there was no type of testing done?
A Not that I know of.
Q All right. And those were fresh items, you would agree with me, from the evening in which or the morning in which these events transpired?
A Those are items that we located that, that morning or that, for this, in this incident area.
Q Okay. And based upon this, did you issue any search warrants in terms of this information?
A No, I never, never had done any search warrants or anything of any nature.
Q Did you seek any arrest warrants in this case?
A No, sir, did not.
Q Who sought the arrest warrants in this case?
A The arrest warrant would of been done by the lead investigator.
Q Who was that?
A I believe Lorin Williams.
Q Okay. Investigator Williams sitting here?
A Yes, I believe it was.
MR. BROWN: Okay. Your Honor, I ask that this be admitted into evidence.
THE COURT: Any objection?
SOLICITOR GRAY: No objection, Your Honor.
THE COURT: Mr. Poole.

MR. POOLE: No, sir. No, sir.
THE COURT: Okay. It will be admitted and marked as a Defense Exhibit.
(WHEREUPON, Defendant's Exhibit No. 5 was received into evidence at this time.)
MR. BROWN: That's all the questions I have.
THE COURT: Mr. Poole, any questions of this witness?
MR. POOLE: Just one minute, Your Honor.
(Pause.)
THE COURT: Mr. Brown, do you wish to re-open your examination?
MR. BROWN: Yes, sir, after conferring---
THE COURT: Any objection from the State to allow Mr. Brown to ask additional questions?
SOLICITOR GRAY: No, sir.
THE COURT: You may proceed.
Q Also, because you were, from the outset, involved in the case---
A (Witness nods affirmatively.)
Q ---you went and photographed various items associated with this case?
A At the Sims or the Mt. Pleasant area, yes, I took photographs.
Q Okay. Any other place that you responded to in the course of this investigation

A Been to Mary Black, excuse me, went to Spartanburg Regional first of all.
Q Okay. Well, let me ask you about Regional specifically.
Who was located at Spartanburg Regional when you went there?
A When I first responded, we had Mr. Reeder and Mr., the---
Q Cathcart.
A Cathcart, yes.
Q Would you agree or disagree with me that Mr. Reeder had a gunshot wound to his wrist?
A Yeah, I know he had a gunshot wound to his left, left arm area.
Q Okay. Would you agree or disagree that it was to his wrist area?
A I'd have to look at the photographs, but I know he did have a gunshot wound.
Q All right. On his left.
Would you agree or disagree that Mr. Cathcart was also shot?
A Per the photos, it probably showed a graze.
Q Okay. And the graze, do you know if it produced any biological blood at the hospital?
A Not that I know of.

Q Well, in particular, can you say if Mr. Reeder touched his wound with his right-hand---
A Can not.
Q ---or not?
A No.
Q And can you say if Mr. Cathcart also touched his grazed or wound about his body?
A Can not say that.
Q From a, from a gunshot?
A I can not say.
Q You can't say that, can you?
A No, sir.

MR. BROWN: All right. No further questions, Your Honor.

THE COURT: Yes, sir, Mr. Gray. Your witness.

SOLICITOR GRAY: Yes, sir, just briefly.

CROSS-EXAMINATION

BY SOLICITOR GRAY:

Q What was the condition in that area that day?

What was, what was the weather like?

A We had a lot of rain. It pretty much was a rainy rainy early morning.
Q Downpour that day?
A Yes, sir.
Q Difficult to collect the blood or anything else?

A The weather conditions would damage a lot of any other evidence that was there if it was blood, stuff of that nature, or---

Q Well, do you, do you know -- was a presumptive test done on that?

A On the blood?

Q Yes, sir.

A I don't know if Deputy Davis did it or not because he was the first at that location and he physically marked that.

Q So, you don't know if there was blood?

A Do not.

Q It could of been something else?

A That's correct.

Q Along with the unknown biological material?

A Correct.

Q Thank you, sir.

Oh, and your -- that diagram is not to scale, correct?

A No diagram, no diagram is ever to scale.

Q Thank you, sir.

No further questions, Your Honor.

THE COURT: Anything further from the defense from this witness?

MR. POOLE: No, sir.

MR. BROWN: None, Your Honor.

THE COURT: You may step down.

Does the defense wish to call any other witnesses?

MR. BROWN: No, Your Honor.

THE COURT: All right. Any witnesses in reply or rebuttal from the State?

SOLICITOR GRAY: No, sir, Your Honor.

THE COURT: All right. Ladies and gentlemen of the jury, that concludes the presentation of evidence by both sides in the case. Again, I have to discuss some matters with the attorneys before we go to the next step of the trial. It shouldn't be a very long break, but I'm gonna ask you to step back to the jury room. And, again, don't begin any discussions until I've advise you to do so.

You may retire to the jury room.

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

THE COURT: All right. Anything further from the State at this point in time?

SOLICITOR GRAY: No, sir, Your Honor.

THE COURT: Defense?

MR. POOLE: No, sir.

THE COURT: All right. Let's talk about your charge request.

Again, Mr. Poole.

MR. POOLE: Yes, sir, Your Honor.

As I previously informed the Court, I would ask, on behalf of Darius Cathcart, to charge mere presence, self-defense, and mutual combat. The Court indicated that---

THE COURT: Now, mutual combat and self-defense -- they exclude each other.

You understand that?

MR. POOLE: Yes, sir.

THE COURT: In other words, if someone engages voluntarily in mutual combat, they can't claim self-defense.

MR. POOLE: Yes, sir.

THE COURT: So, I'm gonna ask you which one do you want me to charge.

MR. POOLE: Okay.

THE COURT: Because I can't charge them both.

MR. POOLE: Okay. Well, I think, I think I was asking for both of them because this case is just, just so, from my prospective, so wierd. And, so---

THE COURT: Well, I got---

MR. POOLE: It could be, it could be viewed under a myriad of circumstances.

THE COURT: Yes, sir.

MR. POOLE: So, I'm aware of that, Your Honor, and I wasn't going to ask for both of them. But now that you've told me that you're not going to do that, I would ask that

you, at least, charge mutual combat.

THE COURT: All right. Mr. Brown, your request for charge?

MR. BROWN: Your Honor.

THE COURT: On what point -- do you wish to be heard on that point?

MR. BROWN: Again, I would reiterate my request for, for mere, mere presence, and, I'm sorry, I was talking.

THE COURT: Well, we were discussing -- Mr. Poole had asked me to charge mutual combat and self-defense, and I was explaining that they exclude each other because self-defense presupposes someone who had no, no role in the bringing on of the difficulties, did not want to engage in fight, a fight or combat, and only used violence to defend themselves. Whereas mutual combat indicates that there's some willingness on both sides to, to fight. And, so, mutual combat is different and it excludes self-defense. I can't charge both is what I'm saying.

MR. BROWN: Well, Your Honor, I guess the only problem that I would have with either one of those is there would be a presumption one way or the other involved. But if we were to pursue any grounds, it would be under the one of self-defense.

THE COURT: So, you wish to charge self-defense?

All right. State want to be heard on that one?

SOLICITOR GRAY: Yes, sir, Your Honor.

I don't think self-defense applies in this case cause obviously they had that duty to retreat, and, and one element of not bringing on the difficulty itself. Went in the car, the lights off, following these guys from say approximately 585 Pine Street down to Hearon Circle, then they went to the Waffle House, then they went back up Business 85, 221, to near Lakeview Manor, turned off their lights in the proximity of the business that recorded the shooting, turned the lights on, went up -- they got close enough to start shooting. I don't see how any of that qualifies under self-defense, Your Honor.

MR. BROWN: And, again, Your Honor, Mr., Mr. Gray would allege, if their version of the facts were, were to be believed---

THE COURT: Well, I just have to go by what's in the record.

MR. BROWN: Well---

THE COURT: And I think that the record is that there was an altercation that occurred at a, at a night spot, and then some miles away a shooting occurred. That's what's in the record.

MR. BROWN: And based on what we heard that's in the record, Mr. Reeder was never named as being involved in the altercation, number one, Your Honor. Number two, Mr. Reeder

never had been alleged to have been in control or have the ability to operate any vehicle on that evening. So, the ability, duty to retreat, the opportunity to control what was going on in that situation could be compromised if it is to be believed, based upon what's in the record, that a person that's a passenger can control what another person is doing in terms of operating of the vehicle.

In addition, based upon whatever occurred in that club, because it's not been attributed to Mr. Reeder, there was a break in time, at the Waffle House, Mr. Reeder could of got in the car. I don't know. He would have to have the intent or the prior knowledge of what was occurring in that club to continue on any type of aggravated behavior. That is not been presented to this Court.

So, I would say self-defense could definitely apply because Mr. Reeder wasn't in control of the vehicle and didn't have any prior dealings with this situation and no one is claiming---

THE COURT: Well, he makes a point, Mr. Gray, concerning Mr. Reeder.

SOLICITOR GRAY: Yes, sir.

THE COURT: When you try two defendants together, well, that's the kind of issues that come up.

SOLICITOR GRAY: Yes, sir, Mr. Cathcart said Mr. Reeder was in the car. Mr.---

THE COURT: Well, I understand that, but then -- let me finish, let me finish.

SOLICITOR GRAY: Yes, sir.

THE COURT: What he's saying is that there's no evidence though that Mr. Reeder was engaged in the prior difficulties that went on between the parties. I didn't hear that.

SOLICITOR GRAY: That's correct, Your Honor. But Mr. Cathcart places Mr. Reeder at the shooting himself.

THE COURT: No doubt about that.

SOLICITOR GRAY: The substance---

THE COURT: And, of course, mere presence doesn't make someone guilty.

SOLICITOR GRAY: I understand, Your Honor, but he could of gotten out of the car at the Waffle House. He could of gotten out the car---

THE COURT: I don't -- he's pointed out there was no proof that he was in the car before that.

SOLICITOR GRAY: He could of gotten out of the car when they stopped, before they turned their lights off and followed them again. Mr. Cathcart places him there at the shooting. The only way he gets to the shooting is with Mr. Cathcart, and if he didn't want to engage in the shoot-out, don't shoot. Get out of the car at 4:00 in the morning or 5:00 in the morning or wherever they were on the

road. If he's saying that he had no, no knowledge of that intent---

THE COURT: Well, you're making a jury argument to me now, which is fine. But I'm not the jury.

SOLICITOR GRAY: Yes, sir, I understand that.

THE COURT: What I'm looking what, at is, is issues are in the case and what should be charged.

SOLICITOR GRAY: Yes, sir.

THE COURT: And as to Mr. Reeder, I don't have any evidence that he was involved in the prior difficulties.

SOLICITOR GRAY: No, sir.

THE COURT: And that he had any duty to retreat from anybody. There's no -- none of the people put him in that altercation that occurred at the bar. I haven't heard that testimony.

SOLICITOR GRAY: No, sir, Your Honor. But that altercation is not the issue. The issue---

THE COURT: Well, it is an issue as far as self-defense is concerned because if there's a fight---

SOLICITOR GRAY: Yes, sir.

THE COURT: ---and it went on, and then somebody leaves that place and follows one of the combatants---

SOLICITOR GRAY: Yes, sir.

THE COURT: ---then they're, they're participating in bringing on the difficulty, and it makes it difficult to get

a self-defense charge if you participate in bringing on the difficulties. You got a duty to retreat. At that point in time, the people that participated in that fight had separated, could of gone their separate ways. But I don't know that Mr. Reeder was involved in that fight or had any knowledge of what went on at the bar.

SOLICITOR GRAY: That's true, Your Honor.

THE COURT: Nothing in regard to that point.

SOLICITOR GRAY: I, I understand that.

THE COURT: When you try them together, again, you got to try them for both and I got to charge for both.

SOLICITOR GRAY: Well, we're not talking about the difficulty at the club. We're talking about this shooting. He's arguing that self-defense applies because of the shooting. Not because of the fight at the club. At the shooting, he had a duty to retreat---

THE COURT: Well---

SOLICITOR GRAY: ---get out of the car. Not shoot the weapon in that situation, Your Honor.

THE COURT: Those are all questions for a jury to decide I believe.

SOLICITOR GRAY: Yes, sir.

THE COURT: All right. Anything further as far as the charge is concerned?

MR. BROWN: No, Your Honor.

MR. POOLE: No, sir.

THE COURT: All right. It's gonna take me a few minutes to work that out. So, we're gonna take a recess.

Court will be in recess for about 15 minutes.

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

THE COURT: All right. For counsel's information, I will be charging self-defense, and I will be charging mere presence both of which were requested by the defense. The question of mutual combat is an argument the State can make, which would negate the self-defense defense, but there is sufficient evidence to, at least, allow the question to go to the jury.

On the question of order of final arguments, State versus Crowe, a case I just, just looked up, indicates that where one of a jointly tried defendant introduces evidence, that affects your closing argument as well, Mr., Mr. Poole. So, the State will be going last in this case.

Now, I don't know, as far as you two, if there's any particular order you'd like to go in. I'll let you discuss that among yourselves. But the State will have the final argument.

MR. POOLE: Your Honor, I will go first.

THE COURT: Okay. That will be fine.

Are you ready to proceed?

MR. POOLE: Yes, sir.

THE COURT: State ready to proceed with closing argument?

SOLICITOR GRAY: Yes, sir, Your Honor. I just need---

THE COURT: All right. Get together whatever you need before the jury gets in here.

SOLICITOR GRAY: Yes, sir.

MR. BROWN: Your Honor, can we approach?

THE COURT: You may.

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

SOLICITOR GRAY: Apologize for the delay.

THE COURT: Are you, are you ready now?

SOLICITOR GRAY: Yes, sir, Your Honor.

THE COURT: Defense ready?

MR. POOLE: Yes, sir.

MR. BROWN: Yes, sir.

THE COURT: Let's bring the jury in.

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

THE COURT: All right. The record will reflect that the jury has returned to the courtroom.

And as I indicated to you earlier, we had completed the presentation of evidence in this case, and, at this time, we'll allow the attorneys to make a closing statement or argument to, to you. I believe Mr. Poole will be going

first for the defense.

MR. POOLE: That's correct.

THE COURT: You may proceed.

MR. POOLE: Thank you, Your Honor.

May it please the Court?

THE COURT: Yes, sir.

MR. POOLE: Good afternoon.

There are a lot of things I want to say, but if I, if I were to say everything I wanted to say I think we'll be here too long and probably lose interest. They're going to be two other closing arguments. One made by Mr. Brown on behalf of his client, Mr. Reeder. Of course, I am here for Darius Cathcart, and then the State through Mr. Gray or Ms. Tailor will make their argument to you.

But I want to thank you all for your attention that you've given to every aspect of this trial. Every one of you have listened to the witnesses. You've shown interest and that is what part of jury duty is. And the end of your duty will come when you end up with a collective unanimous decision as to the guilt or innocence, and I'm speaking now only for my client, Darius Cathcart.

First of all, I think it has to be said that this is a tragic case. This is a terrible case. A young life was taken and there was no sense in it.

Now, that can only be compounded if there is not a

measure of justice to be handed out today, and that measure of justice is going to be handed out by you, and you will have to take the issue of whether or not Darius Cathcart is guilty or innocent into your own hands, and you will have to do that by applying your common sense, by going over the evidence that is been presented, and finding out, to your own satisfaction in your search for truth, whether or not the State has proved its case, its cases against Darius Cathcart beyond a reasonable doubt.

They haven't. They have not.

Mr. Cathcart is not charged with arson. He's not charged with burning a car. He's not charged with anything other than what you know he's charged with, murder, assault and battery with intent to kill, and assault with intent to kill.

Now, let's see what the State has brought to you. Its, their, burden, their burden of proof, and what they have brought to you are basically two witnesses and that were allegedly bare and some circumstantial evidence regarding firearms, et cetera, gunshot residue, and all that business.

Now, let's start -- and I'm not gonna go through the whole trial. But let me, let me -- I'll have to refer to my notes. So, I'll be looking down at them. But let me, let me go over the, some of the notes that I made when Bryant Miller, he was the very first witness, when he was on the

witness stand, what he said, and some of the inconsistencies. Now, when I say inconsistencies, I think I'm saying lies and -- but you can use any characterization that you want to characterize it. But, you know, we're dealing in truth. We're dealing in trying to get to the truth.

But Mr. Miller, he stated that he was hanging out at Club Dreams and there was a fight, and that he was there with Dwight Duncan and Marty, and there was a fight with Darius Cathcart alone or with others. And then he testified the only way he knew that was cause somebody told him that. So, you've got him starting out with this testimony like that.

He then goes on to testify that, that Dwight Duncan and Mark were thrown out of the club, they went to Waffle House, sat in the parking lot. When the police come up, you know, they scattered, for whatever reason, they scattered. Then there was some driving around, went to Lakeview Manor, pulled up to four way, car pulled up beside them, and there was a shoot-out. There was some shooting between the two cars. Passengers were in the back seat, Bryant Miller and, and Duncan Geter. In the front passenger seat was Marty.

Now, this Marty, we haven't seen him. We haven't heard from him. We don't even know what happened to him. We know that, that Mr. Miller said that before they went to the

hospital they took him to, somewhere to his house was his testimony, and he further stated that he had a .40 caliber Taurus handgun with him and he kept it with him all that night, and that he carried it with him before.

But upon me asking him some further questions, he stated that he had to reach over from the back seat to get to the glove compartment, which is in the front, in front of the passenger side where Marty was allegedly riding, pull it out, and then shot at the other car.

All right. That's his testimony.

Now, that doesn't square at all with the testimony and the inconsistencies that line up with the next witness that was allegedly there and that was Mr. Dwight Geter.

Now, remember also that Bryant Miller stated that they threw, he threw the gun out of the window too. All right. That he threw the gun out. Dwight Geter, his testimony, he gets up, and this is the very first words out of his mouth, he says go out to go clubbing with Marty, his brother, and Bryant Miller. He was the driver, went to, to Dreams, got into an altercation with Darius Cathcart, the people that involved was, were him, his brother, and Marty, and Darius Cathcart. They went on to the Waffle House, had some overlapping, you know, consistencies.

But do you remember when we started asking him about the, what were the inconsistencies that he stated in his

conversation with the lead investigator in this case, Detective Lorin Williams?

Now, I started asking him about that. That was yesterday morning. And I, I want you to remember all those. Because he basically gave me or told us that we believed just about whatever we wanted to believe because he didn't know what he was saying was a truth or a lie it seemed to me. And he said, at one point in time, that he was trying to cover-up for somebody.

Well, he's still covering up for somebody. We don't have the whole picture here, and I'll tell you the reason for that, why I say that in just a moment. But he stated to the lead investigator that his brother, A.J. had gotten into an altercation with some guys he didn't know. But he testified under direct examination it was Darius Cathcart.

If you look at State's Exhibit, oh, No. 30, you'll see a photographic lineup, and you will see, on the front of it, the affidavit, and he said I think this person on the back was Darius Cathcart, a photograph of Darius Cathcart. I think this was the one that was at the club.

Well, he knew yesterday that it was Darius Cathcart. A few minutes or a short time afterwards, he gave this State's Exhibit No. 30, and he says I think it was Darius Cathcart. But -- and then, in the very beginning, he said he did not know who was involved.

So, when you start getting witnesses to start telling inconsistencies and lies, where can you find the truth?

Where do you know what really happened?

He goes on and he testified that he told Lorin Williams other inconsistent statements, which were he stated that he laid over in the seat and removed a gun from the console and returned fire.

Now we got him taking the gun out of the console.

How many guns in the console?

I don't know.

But they got, got a lot of leaning over and getting guns out of the console by two different people.

And he also stated that he threw the gun out, he threw the gun out on Floyd Road. That's what he told Detective Williams. But yesterday he stated on the witness stand that he had no weapon.

Where are we?

Where's the State's case at this point?

We just don't know.

There, there's something more that's, that's not in front of you and has not been brought to your attention and that's somebody's covering for somebody and whoever were the occupants in that car they knew what was going on. But the truth is not out for you to consider. And because of that, I'm submitting to you you can not find Darius Cathcart

guilty.

Now, Mr. Geter, Dwight Geter, stated also that they dropped Marty off before the shooting. Mr. Bryant said, said after the shooting. I'm very interested in This Marty. But we don't have anything about him.

Let's move on to what the physical evidence is. In the crown Victoria we have -- by now I think everybody has a little bit of knowledge about shell casings, calibers, and gauges of firearms, and they found, in the Crown Victoria, four spent .40 caliber cartridges, and in the right rear seat was a 9-millimeter Luger unfired bullet.

What was found at the scene?

.40 caliber shell casings and one 9-millimeter Luger spent casing.

So, we have, in the right rear seat of the Crown Victoria and on the scene, we have a 9-millimeter fired from a 9-millimeter gun, two. One, one fired and one not fired. So, there were at least two guns.

Now, today, we heard the evidence from the SLED man, Mr. Whitler. He stated that, and let me make sure that I say this right, correctly, that there were, there was one .40 caliber gun, another .40 caliber gun, and there was a 9-millimeter Luger, and there were at least three guns involved.

As far as other scientific evidence is concerned, we

have some residue on the palms, lead particles on the palms of Darius Cathcart's hands. Okay. The testimony from the experts was you can get that from being in close proximity to a gun being discharged. You can get that indicator if you rub something that has those particulates on it within a five or a 6-foot radius or you can get it from rubbing a wound.

We don't have a gun in Darius Cathcart's hands. Okay. We don't have it. The State has not shown it to you. At most, what you have is a statement by Darius Cathcart himself stating that he was a driver, and they were shot at at a particular time.

Judge Couch will instruct you on mere presence and he will explain what that means. If you're present when a crime happens, that doesn't automatically make you guilty.

I want you to take all of these factors into consideration, ladies and gentlemen, because if the State has not provided to you a clear, clean case, then justice demands that you have to conclude they have not proved it beyond a reasonable doubt, and what that translates to is Darius Cathcart is innocent.

And when you consider all of the evidence in its entirety, I ask that you come back and render a verdict that speaks the truth, and that is Darius Cathcart is innocent and not guilty.

Thank you for your time. Thank you for your attention.

THE COURT: Mr. Brown.

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

THE COURT: Yes, sir.

MR. BROWN: Veredicto. We talked about that at the very beginning of my conversation with you, and, in particular, in our search for the truth. We're at that point now where you have the opportunity to speak, to speak the truth, to give the verdict, and you are empowered with the most important job in this Court.

You've heard from the State, Mr. Gray, Ms. Tailor. You've heard from Mr. Poole and myself. And you've heard the judge guide us throughout this case, and he's the person that ultimately will give you the law, and you must apply what you know to be the facts in this case.

And how do you ascertain that?

From what you've heard right here, and what you've seen presented right here.

The most important duties that you have at citizens, one is to vote, and one is to serve on the jury. Most powerful ones obviously, the decisions that you can make as impacts lives involved on both sides of this case.

You've had a chance to hear the evidence in this case. You've also had a chance to know what has been presented.

Now, if there's a question in your mind of what has not been presented, that that notion, as I submit to you on behalf of Mr. Rashawn Reeder, is what will give you an opportunity to say is there reasonable doubt or not as it relates to any presumption against Mr. Reeder, as it relates to the charges that you have before you, and the reasonable doubt is a type of doubt that would make a reasonable person hesitate or pause to act.

Let me think about it.

Could it have happened or did it?

If there's a question in your mind, then I say to you you are empowered and have no other duty but to find Mr. Rashawn Reeder not guilty.

You've heard Mr. Poole give you a rendition of some of the elements involved in this case. But I submit to you something that would help us clear up this case, and I feel without question, and that would be two people and potentially three. But two people in particular.

The individual by the name of Marty. The prosecution is empowered with the ability, because it's their case that they bring this information to you, they're empowered with the ability to issue what's known as a subpoena, which they did, for a number of individuals on their side. But we didn't hear from the Marty person that also was in the car on that day, a neutral person that wasn't a member of the

family.

We do grieve their loss. But Marty was not related to anyone and it wasn't said that Marty was the best friend either like Mr. Miller.

Why haven't we heard from Marty?

The second person, indeed the person that brings this case to this very courtroom that we have not heard from, but they're here, they been here everyday, is this man right here. Investigator Lorin Williams.

You've heard me talk to Investigator Talanges who came out, took pictures, ascertained the physical evidence involved in this case. But the person that put the whole case together, the person that talked to all the parties involved, the person that talked to Bryant Miller in terms of what information he gave, what he didn't give, the inconsistencies, in fact, the untruths that was presented in this courtroom, I submit not from this side without. Lorin Williams could of cleared this up for us.

But you have to ask yourself why didn't we hear from Investigator Williams?

He, in fact, went out and got the warrants for the arrest involved in this case against both of these gentleman. He sits here, but he utters nothing. We can't hear from him.

Why?

He's on the side of the State. He's the person that brought the charges. It's important that we should of heard from him.

You're empowered with what we hope all of us have, but by your very presence here, in terms of listening to what has occurred in this case, we know that you're empowered with what God hopefully is given each and every one of us and that's common sense. Don't sit to the side when you have a chance to go back and talk about what's in this case or what's not in this case. And one of the most important factors you need to consider again is why didn't Lorin Williams take the stand.

Why?

Because he talked to people associated with this case, people involved in terms of the charges being brought. He knows the elements to this case. We didn't hear from him.

Does that cause a reasonable person to pause or hesitate to act in terms of the charges involved?

I submit to you that it should. But we've not heard from him.

Now, they're gonna show you a video of what they allege to be the vehicle involved, but I submit to you, on behalf of my client, Mr. Rashawn Reeder, you've never heard anyone say that Mr. Reeder was in control or operating the vehicle, was driving the car, determine which way the car could go if

you are to believe what's being submitted so far.

More importantly, as relates Mr. Rashawn Reeder, did you ever hear anyone say he's at the club?

No.

Did you ever hear anyone come and take this stand and say Rashawn Reeder was involved in the fight at Club Dreams?

No.

Did you ever hear anyone say Rashawn Reeder had my back, had this person's back, or fighting?

Did you hear Mr. Geter come and say Mr. Rashawn Reeder was fighting?

No. No. Obviously not Marty and hadn't come to this courtroom.

No one has identified Rashawn Reeder as being in that club, and supposedly, whatever transpired on this evening, the events stemmed from whatever occurred at that club. A fight supposedly happened. Someone was mad and whatever else happened after that brings us to this point. But you never heard from this stand the name of Rashawn Reeder.

Was he at the Waffle House?

Did he have the ability to get in the car after whatever happened in the club and not knowing what was going on?

I submit to you that's possible.

Does that cause you to potentially pause, to hesitate

to think, hum, could it have happened?

I submit to you that it should potentially.

But more telling, no other testimony puts Mr. Reeder in this case with any type of malice aforethought. Those words are very important because the judge will instruct you, at the conclusion of this case.

You've also heard, in the course of this trial, some ballistics information as it relates to -- and I simply show it to you. You've seen it on the screen. Gunshot residue. You've heard directly from the expert from SLED, the chief analyst, and she took the stand. You've heard what was posed by the prosecution, which was only to present certain amount of evidence as related to two individuals.

But in terms of being completely open, I requested that we talk about all of the evidence. Not just some of the evidence they wanted to present. So, we also included gunshot residue kits that were taken from Mr. Miller and both of the Geter brothers.

As it relates to Mr. Miller, the concentration levels were extremely high and was, without question, that as she described to us, and, once again, employing your common sense, to know if you have a gun in your hand, you're gonna cover the main portion of the gun. If there's a blast, it's gonna come out -- naturally it's gonna come out and occur on the backs of your hand as she told you will be a clear

indication.

Mr. Miller, definitely on his right back and left back, gunshot residue. Mr. Dwight Geter, gunshot residue on the left back. Two other areas where gunshot residue was located.

Duncan Geter, and I can't say what, again, what occurred on that evening, but Duncan Geter had gunshot residue associated on his left back as well as his right back. And, of course, ballistics shows 9-millimeter rounds were found within that car, and, in particular, 9-millimeter round was found on the side of the car that's alleged to have been occupied by Mr. Duncan Geter also known as A.J.

As relates to Mr. Reeder, right palm, gunshot residue in amounts that are much lower than the amounts for Mr. Miller. Much lower. Right back, no residue whatsoever. Left palm, gunshot residue, again, in lower amounts. And, of course, left back. Round lead, again, low.

I believe you also heard testimony from Investigator Talanges to where my client was shot. Left arm. Use your common sense. A bullets hit you -- remember the question I placed directly to the analyst, outside of the factors that the prosecution wanted to present, is it possible, indeed it is, and I submit to you this is the situation in this case. If an actual particle, meaning the bullet itself, travels in your body, is embedded there, you're gonna have the three

components and you're also gonna have the presence of a bullet itself because it's there. The question I placed directly to the analyst. The facts that were before you in his left, not his right, and, again, with your common sense.

I'm a tall guy, I don't, know if you would say I'm a big guy, look at Mr. Reeder. You've had a chance to observe him. Look, look at what size he is. Look, look at his height.

I'm not asking you to put your hands up, sir.

Just look at the height of the young man. Look at the weight. We not talking about a 9-millimeter which you've heard information from that portion of this case, which is supposedly a smaller caliber, maybe a less powerful handgun. We're not talking about a 9-millimeter or any evidence thereof associated with anything with Mr. Reeder.

If they are trying to point any type of information towards Mr. Reeder, that involves a very powerful weapon, a .40 caliber. Again, no gunshot residue on the one hand. Obviously shot in the other hand where the residue was found.

Use your common sense. If a person who has nothing to do with any type of argument is present, it's not their fault in terms of what may occur. Again, that's the information that they want to present to you. Not us. He's guilty by association. Not in this case, ladies and

gentlemen, because, again, you have not heard anyone come into this courtroom and say that Mr. Reeder had something against this side and Mr. Reeder was involved in the altercation. Mr. Reeder knew any of these people. Mr. Reeder had a reason to be upset and wanted to fight.

Thank about that. The judge will also give you additional instructions about other possibilities that are related to this case for a man that is seated where Mr. Reeder is.

Lastly, you saw me speak with the Investigator Talanges, and I asked him to go over a diagram that was presented as I look for it. I'll get a copy of it.

I want you to pay attention to the video cause, again, no one is alleging Mr. Reeder was even driving the car, was in control of the car. But they're gonna show you the video where, from what you've heard in the courtroom, is that a vehicle operated by Mr. Geter and the people that were in that car drove into Lakeview Manor and came to a four way stop.

Well, automatically what you see on the video, that's not the case. You'll see the vehicle operated by the Geter's proceed down the road, and then watch the video again. Two cars proceed down this way. Then you see two cars come back.

Now, I can't say what cars or a car that they're trying

to identify. I didn't hear anyone take the stand and saying this car is being operated by anyone in this case. Haven't heard that. But that's what they're gonna try to make you think. But, once again, use your common sense. Coming up into the neighborhood was a one way situation. A car went down, a car comes up. Cars go down, cars come up.

And, in particular, as I asked Investigator Talanges, and you'll have the actual document before you, about Items Six and Seven. Biological material and blood in the roadway far from the scene of Mt. Pleasant and Burns. Over 250 feet away. As you heard, he said a greater distance than from where I was standing here asking him questions beyond this courtroom.

Think about it.

What could have occurred?

Think about the angles of the cars.

Did we hear anyone say that hey, there's no way in the world something could have occurred inside that vehicle meaning someone could of shot and hit someone inside the vehicle?

We don't know that, do we?

That's something to think about.

Could anyone be upset on this side?

Something accidentally could of happened in order to shoot a car that they felt was following them?

I don't know. I wasn't there. You don't know. You were not there. But think about it. But we have blood on a rainy day in the middle of a road.

Your common sense, again, will tell you, on a rainy day, would the blood be there for a long period of time?

Long enough for Investigator Talanges, and, in particular, Lorin Williams, to make their way and know about it. Use your common sense. It's an element that we don't know, as Mr. Poole told you, involved in this case. Reasonable doubt.

Is a question involved?

What transpired after they came up the road?

Once again, we don't know.

No one has ever come in this courtroom and said, at that stop sign, it was this person or that person. But we did hear about friends that could come to the courtroom. Could come, or as I questioned him directly from Mr. Geter, was rolled deep. Rolled deep means you come in one car, you come in more than one car. Don't know the situation. But you've heard directly in terms of the elements that are involved in this case, and as relates to your common sense.

What has not been presented here?

I submit to you that my client maintains and is cloaked in the veil of innocence, and it's not our burden to prove that he's innocent. It's their burden to prove, beyond a

reasonable doubt, that this young man, who no one has ever said had anything to do with anything that occurred on this evening, is involved in this matter.

So, I'll ask you to listen very closely to what the judge is gonna say to you at the conclusion of this case. The prosecution will tell you and present to you what's known as circumstantial evidence involved in this case. It's a guessing game for you, and this would of been cleared up, as I close, if more search warrants, indeed if a true investigation had been done by Lorin Williams cause the only people that got charged, even though there's allegations of people getting shot on both sides, they got charged in this case are those two gentleman.

But clearly there's evidence that there was gun play from somewhere over here and those people aren't here. There's allegations involved, presumptions of guilt and innocence made automatically without true investigation involved.

You heard from the SLED analyst when she talked about other factors that could be analyzed, clothes, fabrics, whatever.

Did you hear GSR taken from any clothes or anyone wearing?

I don't think a gun blast evidence would have helped this case out?

If you have it on your clothes, that would be much more clear cut than what's being presented here today, and you have the video and you have the other people that were talked to, none of that has been presented.

Ladies and gentlemen, I ask that you consider, during your deliberations, everything you've heard today, and know that the State has not met its burden, and know that Mr. Rashawn Reeder is not guilty of what they have brought charges for him.

I thank you for your time, and I thank you for your service.

THE COURT: Mr. Gray.

SOLICITOR GRAY: Thank you, Your Honor.

THE COURT: Yes, sir.

SOLICITOR GRAY: Mr. Brown, Mr. Poole.

I've known Mr. Brown and Mr. Poole a long time. I respect both of them.

I've known Detective Williams a while too. But this isn't about them. It's not about him. It's about Duncan.

And you know who can clear this whole situation up?

Duncan.

But he, he's dead. He was assassinated by these two.

It's a crazy crazy time we live in. This, this is how these two and others like them handle their problems these days. They didn't want a fight. That's why they had guns.

This is not a self-defense situation. This is not mutual combat, some mutual shoot-out, some rain slick highway where it was just back 1930's, Chicago, or something. It was an assassination plain and simple.

It started on March 14th, 2009. There was a fight at the club, Club Dreams. Duncan was there with his older brother, following him around, got into a fight. They got thrown out of the club. Mr. Miller told you that. Mr. Geter told you that.

Went down to the Waffle House. Everybody was there. No falling out. No fight. Nothing. Because officers showed up. They left there.

Now, Mr. Dwight Geter's statement to Detective Williams says and to Mr., to Leslie Harrell says they got shot at somewhere between the Waffle House and 85 ramp. Officer William says cops sent to investigate. No crime scene. Nothing happened there.

What happened was that they followed the red Crown Vic all the way up to 221, Chesnee area almost, and you saw on the video, cars following cars. You saw the red Crown Vic come back past the camera, another car comes back.

You'll have it in the back. Now, I want you to slow it down cause Mr. Brown tells you I want to show you the video. I want you to watch the video. Slow it down frame by frame once you see the car come back. The front lights of the

second car they were driving don't come on. They're laying in wait for them to come back.

Mr. Miller told you, five, ten minutes. It's almost exactly ten minutes on the video. It's the time they come down and come back. Watch it frame by frame. You'll see the red Crown Vic, this dark gray Nissan they were driving.

Well, actually, use to be green. But, mysteriously, the car they were driving burned up. But Mr. Williams there still did his job and found, with the help of ID, three .40 caliber shell casings. They tried their best to get rid of evidence and they didn't.

SLED told you two .40 caliber handguns at a minimum. Mr. Miller told you I had a .40 caliber handgun. The other .40 caliber handgun, obviously in the car they were driving, riding.

Why is this the hand of one, hand of all?

Cause it was a plan. Mr. Cathcart was the driver. Mr. Reeder was the shooter.

Mr. Miller has some numbers. 46, 840, and 957.

Mr. Reeder has some numbers. 18, 308 and 650.

It's two men with two highest numbers are the shooters. It's plain and simple. They are the ones who are the shooters. Mr. Reeder stuck his left arm out the window. When he pulled up, started shooting.

How else does his left arm get injured?

He's in the passenger side of the car.

The driver, Mr. Cathcart, got grazed under his right arm. He is in the car on the correct side not putting his arm out the window shooting across. He's driving. He did get shot. Mr. Miller may of been the one to do it, but after their lives were in danger.

They were sitting at the four way stop, car pulls up and starts blasting. They lay down. Mr. Miller gets the gun and starts shooting back. Almost instantaneously Duncan, through the neck, doesn't exit right area. You heard Doctor Wren say six minutes.

Now, I, I understand Mr. Brown's enthusiasm, and I appreciate it, the fact he thinks I do a pretty good job and Detective Williams controls everything. But, for quality sake, Mr. Brown, Mr. Poole, they have subpoena powers also as you saw today when Investigator Talanges took the stand.

I did not call him to the stand. They subpoenaed him. If mr. Brown is so worried about Detective Williams clearing up this case, issue a subpoena.

But he didn't do that, did he?

Why would he do that?

My job here today is not to prosecute these two men. It's to let you know the evidence, to lay out the evidence, the puzzle, put it together. Circumstantial evidence carries the same weight as direct evidence.

There's no eye witness to the shooting, and there's a bullet wound on Mr. Reeder.

There's no eye witness to the shooting?

There's GSR residue on Mr. Cathcart from the shooting of the gun by Mr. Reeder.

There's no eye witness to the shooting?

There's Duncan Geter.

There's no eye witness to the shooting?

There's this red Crown Vic. Over ten bullet strikes.

There's no eye witness to the shooting?

There's this blown up burned car that still had three .40 caliber shells in it.

There's no eye witness to the shooting?

That's what they want you to believe.

All of this says there is.

Well, unfortunately, one of those eye witnesses isn't here anymore. Don't let -- don't give them credit for their careful planning, for following up there, doing this in the middle of the night. And thank God for this video surveillance camera. Otherwise we wouldn't even be here.

Don't give them the benefit of the doubt. Don't give them that reasonable doubt cause we know, this evidence shows, beyond a reasonable doubt, through their statements, through their injuries, through the GSR and the video, what happened.

They tried to kill him. They tried to kill Mr. Miller, and they did kill his brother.

This is the eye witness to the shooting.

THE COURT: All right. Ladies and gentlemen, that completes the argument by counsel, and I told you that when we reached this stage of the trial, it would be my responsibility to charge you concerning the law in the case.

Before I get into the law in the case, I do want to go over the charges with you again. When we started this trial, I went over the indictments with you. Those are the documents that bring this case into the Court. I'm going to go over those indictments with you again.

In this case, there are two separate defendants. Each of whom is charged with three different offenses, and I'm going to go over those with you. I'm gonna read the indictments to you so you'll understand exactly what's alleged in the indictments, and then I'll discuss those with you.

I'm gonna start off with the indictments that apply to Mr. Cathcart. The first indictment is in Case Number 2010-GS-42-2874. Excuse me. That indictment is for assault with intent to kill.

The indictment states in the body that Darius Tavarious Cathcart did, in Spartanburg County, on or about March 14th of 2009 unlawfully attempt to commit a violent

injury to the person of another with malice aforethought accompanied by a present ability to complete the act. To wit, by shooting into the victim, Dwight Jamar Geter's vehicle, with a gun. All in violation of the common law of the State of South Carolina and Code Section 17-25-30, of 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, and as we go through these, I'll point to you that the victims in these cases are all different victims depending on what the State alleges occurred in the different charges.

The next charges that involves Mr. Cathcart is in Case Number 2010-GS-42-2876. That is for assault and battery with the intent to kill.

That indictment states that Darius Tavarious Cathcart did, in Spartanburg County, on or about March 14, 2009, with malice aforethought, commit an unlawful act of violent injury upon the victim, Bryant Miller, by shooting the victim in the neck causing the victim to require medical attention all in violation of the laws of the State of South Carolina and Section 16-3-620 of the Code of Laws of South Carolina, 1976, as amended, again, against the peace and dignity of the State and contrary to the statute in such case made and provided. That's the second charge against Mr. Cathcart.

The third charge that Mr. Cathcart faces is in Case Number 2010-GS-42-2875. That is for the offense of murder.

The indictment states that Darius Tavarious Cathcart did, in Spartanburg County, on or about March 14th, 2009, feloniously, willfully, and with malice aforethought kill Duncan Geter by shooting him with a gun, and he died as a proximate result thereof all in violation of Section 16-3-1o and 20 of the South Carolina Code of Laws, 1976, as amended, against the peace and dignity of the State and contrary to the statute in such case made and provided.

Those are the three charges that apply to Mr. Cathcart in the case.

Now, as to the other defendants in this case, Mr. Rashawn Lamar Reeder, there are the same three charges made against him. I'm gonna go over them, them with you, and I know I'm being repetitive, but I'm gonna go over those charges with you again. So, again, I'll point out to you that each involves a different victim and each involves a separate allegation of what occurred.

The first indictment is Case Number 2010-GS-42-2926. This is for assault with intent to kill, and it states that Rashawn Lamar Reeder did, in Spartanburg County, on about March 14th of 2009, unlawfully attempt to commit a violent injury to the person of another with malice aforethought accompanied by a present ability to complete the act. To

wit, by shooting into the victim, Dwight Jamar Geter's vehicle, with a gun all in violation of the common law of the State of South Carolina in Section 17-25-30 of the Code of laws of South Carolina, 1976, as amended. All indictments end with the wording against the peace and dignity of the state and contrary to the statute in such case made and provided.

That's the first indictment against Mr. Reeder.

The second indictment is in Case Number 2010-GS-42-2928. It's for assault and battery with the intent to kill.

That indictment states that, that Rashawn Lamar Reeder did, in Spartanburg County, on or about March 14th, 2009, with malice aforethought, commit an unlawful act of violent injury upon the, the victim, Bryant Miller, by shooting the victim in the neck causing the victim to require medical attention. All in violation of the, of the laws of the State of South Carolina and Section 16-3-620 of the Code of laws of South Carolina, 1976 as amended, and, again, the standard language.

The final indictment is in Case Number 2010-GS-42-2927. Again, it's for murder.

This indictment against Mr. Reeder states that Rashawn Lamar Reeder did, in Spartanburg County, on or about March 14, 2009, felonious, willfully, and with malice aforethought

kill Duncan Geter by shooting him with a gun and he died as a proximate result thereof. All in violation of Section 16-3-10 and 20 of the South Carolina Code of Laws, 1976, as amended. Again, against the peace and dignity of the State and contrary to the statute in such case made and provided.

Those are all the indictments in this case, and, again, each defendant is charged with three separate offenses.

Now, I'm going to remind you that the fact that a defendant has been arrested, charged, and even indicted in this case can not be considered by you as evidence of guilt in this case nor does it create any presumption of guilt. The documents I just read to you are simply the documents that bring the case before this Court. They contain the charges that have been levied against the defendants. It informs the Court of the charge to be tried. It informs the defendant of the charge that's been brought against the defendant.

Now, the indictments in this case, again, charge, charge separate offenses, and each indictment is a separate and distinct offense. You must, as a jury, decide each indictment separately on the evidence and the law applicable to that particular indictment without being concerned with the result or the verdict found in any of the other cases. A defendant can be convicted or acquitted on any of the offenses that have been charged, and, again, you're going to

be asked to write a separate verdict as to each indictment and each defendant in the case.

Now, there are two different defendants in this case, each charged with three different crimes, and in the case of each defendant, the evidence and the law concerning that defendant should be considered separately and individually. Your verdict does not have to be the same for both defendants.

The fact that you may find one defendant guilty or not guilty should not control your verdict as to the other defendant, and where there's more than one person charged with a crime, if the evidence warrants it, you can convict one, and acquit other. You can acquit both or you can convict both. It will depend on your view of the testimony and the evidence as it relates to each separate charge, and to the separate defendants that are involved in this case. And, again, you'll be required to act, write a separate verdict as to guilt or not guilty on each indictment for each defendant.

Now, the defendants have pled not guilty to all of the indictments, and that plea, under the law and the Constitution of this state, places the burden upon the State to prove the defendant guilty. A person charged with the commission of a crime is never required to prove himself innocent of that charge. It's an important rule of law that

a defendant in a criminal trial, no matter what the seriousness of the crime might be, will always be presumed to be innocent of the crime for which the indictment has been issued unless guilt has been proven to you, the jury, by evidence satisfying you of that guilt beyond a reasonable doubt.

The presumption of innocence does not end when you begin your deliberations. It accompanies the defendant throughout the proceedings and into your deliberations until such time as you might reach a verdict of guilt, again, based on evidence that satisfies you of that guilt beyond a reasonable doubt.

Now, many people describe the presumption of innocence that defendants have in this courtroom somewhat like a robe that I wear into the courtroom. That presumption of innocence remains about the shoulder of the defendant throughout the trial and accompanies him into your deliberations. That robe of innocence remains about the defendant's shoulders until it has been stripped from him by evidence that satisfies you of that defendant's guilt beyond a reasonable doubt.

The presumption of innocence that a defendant has is not a mere legal theory, and it's not just a legal phrase. It's a substantial right that every defendant is entitled to unless you, the jury, are satisfied, from the evidence, of

the defendant's guilt beyond a reasonable doubt.

Now, you've heard me refer to that standard of proof already about three or four times in my charge, proof beyond a reasonable doubt. You may be asking yourself well, just what is meant legally by a reasonable doubt.

A reasonable doubt is that kind of doubt which would cause a reasonable person to hesitate to act, and the State has burden of proving the defendant's guilty beyond a reasonable doubt.

Now, some of you may of been involved in or served in juries that were involved in civil matters, and let me explain to you the difference so you won't be confused. A civil trial is where someone is seeking mandatory damages either for a breach of contract, a failure to pay a debt, someone may of been injured in some type of accident or something of that nature. That's what is meant by a civil trial and that's where someone seeks monetary damages.

Now, the standard of proof in those cases is by the greater weight or the preponderance of the evidence. That means the scales of justice tilting ever so slightly one way or the other. That's not the standard of proof in this case. The standard of proof in this case is more powerful than, than the great weight of, the preponderance of the evidence. It's proof beyond a reasonable doubt.

Now, proof beyond a reasonable doubt is that kind of

proof that would leave you firmly convinced of the defendant's guilt. Now, there's very few things that go on in anybody's life that can be proven in a Court beyond any doubt whatsoever. That's not the standard of proof to which the State is placed in this case. They are not required to prove the case beyond any doubt whatsoever.

I will tell you that if, based on your consideration of the evidence, if you're firmly convinced that the defendant is guilty of the crime charged, you must find the defendant guilty. However, on the other hand, if you think there's a real possibility that the defendant is not guilty, then you must give the defendant the benefit of the doubt and find him not guilty.

I'm going to remind you that, during this trial, you and I have had different duties to perform. As the trial judge, it's been my duty and responsibility to preside over the case and to rule on admissibility of evidence and appropriateness of questions that have been presented, and you are to consider only the competent evidence that I admitted into the evidence during, into the record of the trial into evidence during the trial of the case.

If there's anything that I excluded or any question that I disallowed, you should disregard those matters in their entirety. They should not even be considered by you in reaching a verdict in this case. You are to consider

only the testimony that's been presented from this witness stand and any exhibits which have been made a part of the record in this case or any stipulations or agreements by counsel for evidence to come into the, this case.

I have the additional duty now of charging you concerning the law to be applied in this case, and I told you, at the beginning of the trial, the law and Constitution of this State, that makes you the sole judges of the facts makes me the sole judge of the law in this case. The law, as I state it to you now, is the law, only law that you should apply in this case. And if you came into this courtroom with any idea as to what the law is or what it ought to be, you should leave that notion outside of the jury room. You should take the law as I now state it to you. Then apply it to the facts as you find them to be. That should put you in a position then to reach a just and a true verdict under the law and the Constitution of our state.

Now, every case that's tried before a jury in this courtroom, the jury is the sole and exclusive judges of the facts in this case. You should not take from anything that I say or do in the discharge of my duties to indicate to you one way or the other as to how you determine the facts in this case. Cause, you see, the law doesn't allow me an opinion on the subject. I don't have an opinion as to how

you determine the facts in this case. Excuse me.

Now, it's your duty, as jurors, to determine the effect, the value, the weight, and the truth of the evidence that's been presented to you during this trial. Now, in doing so, there's two types of evidence that you have the right to consider. Let me explain to you what I mean by two types of evidence.

The first type of evidence we describe as direct evidence. Now, that's testimony from a witness who claims to have direct knowledge of the facts about which that person is testified. Someone who actually experienced the event, who saw it, felt it, smelled it, heard it. In other words, claims to have direct knowledge of the facts about which that person testified. That's what we mean by direct evidence.

Now, there's another type of evidence that juries have the right to consider, and that type of evidence is what is called circumstantial evidence.

Now, circumstantial evidence is proof of a chain of facts or circumstances which indicate the existence of another fact. Sometimes it's described as proof of collateral facts from which a main fact can be reasonably entered. I use a very simple example of what might be meant by proof of a fact by circumstantial evidence, and I think it will give you some idea of what I'm talking about.

Let's say last night, before you went to bed, you decided to look outside your window, and the stars were shining. It was a pretty, pretty night. You went to bed. You slept well all night. Didn't wake up at all, and the next morning you woke up, and you walked to the same window and looked outside, and the sun was shining. But when you looked outside, there's water dripping from all the trees. There's puddles in the driveway. The road in front of the house might be wet.

Now, you didn't -- you slept well all night. So, you didn't directly hear it rain or see it rain or experience the fact that it did rain. But from those collateral facts that you know to be true, you could reasonably, reasonably infer that, at some time during the night, it, in fact, did rain. So, that's what is meant by proof of collateral facts from which a main fact could be reasonably referred.

For that reason, circumstantial evidence is, is based on the facts and circumstances that you find or know to have existed at anytime during an event. Circumstantial evidence is based on inference and not on personal knowledge or observation.

Now, the law makes no distinction between the weight or value that you, the jury, can give to either direct or circumstantial evidence nor is there a greater degree of circumstantial evidence required that than of direct. You

should, as a jury, weigh all of the evidence. Give it the weight you choose to give it after weighing the evidence. And after weighing all of the evidence, if you are not convinced of the defendant's guilt beyond a reasonable doubt, then you must find the defendant not guilty. However, on the other hand if you are firmly convinced of the defendant's guilt beyond a reasonable doubt, then you must find the defendant guilty.

Now, in doing your job as the finders of the facts, I told you, at the beginning of the trial, it's gonna be necessary for you to determine the credibility or believability of the testimony and evidence that you heard during the trial. Credibility means simply that, believability. It's your duty, as jurors, to analyze the evidence, to determine which evidence convinces you of its truth.

In determining the believability of the witnesses who testify during the case, you, the jury, can believe one witness against all the others. You can believe all the others against one. You have the right to believe all of, part of, or none of what a witness has told you in the case. You can believe -- you may consider whether a witness has exhibited to you an interest, a bias, or a prejudice or other motive in testifying. You also have the right to consider the appearance and the manner in which the witness

has testified during the trial as that -- the way they acted on the witness stand. Again, as I told you at the beginning of the case, use your own good common sense in determining credibility, credibility or believability of the evidence that you've heard during the trial.

Now, I told you, during the case, that we had a couple of witnesses who were, maybe three or four, who were qualified as experts in this case, and I told you I'd talk to you a little bit more about that. And as I told you at the time that that evidence came into the case, generally witnesses are not allowed to give their opinions concerning matters in controversy in a case. But an exception to that rule is made for those witnesses that we decare to be experts in some science, field, or profession, or art. Those witnesses are allowed to state opinions about the matters that they're testifying about within their field of expertise, and can state the reasons for giving those opinions.

I'll tell you to consider the opinions or testimony of experts like any other witnesses you heard during the trial of this case. You give the weight you think it deserves. If you decide that the opinion of an expert is not based on sufficient evidence or education or experience or you conclude that the reasons given by an expert for their opinions are not valid or sound, you have the right to

disregard an expert's opinion in its entirety if you choose to. Just like the other witnesses. You can believe all of, part of, or none of what any witness has said during the trial of this case.

So, an expert's testimony not to be given greater weight just because the person's been declared to be an expert. You're not required to accept an expert's opinion even though it might be not contradicted by other testimony. In other words, weigh all of the evidence including the evidence given by experts. Give it the weight you think it deserves in reaching your decision in this case.

Now, I'm going to instruct you and I'm going to emphasize to you that the fact that the defendants did not testify in this case is not a factor to be considered by you in your deliberations and in your consideration of the question of guilt or innocence in this case. It must not be considered by you in any manner whatsoever.

A defendant has a constitutional right, under the Constitution of this state and the United States, to remain silent, and the assertion of that right by a defendant must not be considered by you in your deliberations at all. I repeat to you that, under your oath as jurors, you are to draw no conclusions whatsoever from the fact that the defendants in this case did not testify. The fact that the defendants did not testify should not even be discussed by

you in your deliberations.

As I've stated to you, the burden of proof in this case is upon the State and upon the State alone. The defendant is not required to prove their, their innocence. The burden of proof remains upon the State to prove the case beyond a reasonable doubt throughout the trial.

Now, there's another theory in the law that I want to go over with you, and that is, is called the hand of one is the hand of all, and let me explain to you what that phrase means under the law. If a crime is committed by two or more people who are acting together in the commission of a crime, the act of one of them becomes the act of all of them. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a probable and a natural consequence of the acts done in carrying out the common plan and or purpose.

For example, two people can be guilty of killing another person when only one of the two had a gun, and there was only one bullet fired, and only one of the two fired the shot that caused the death. If the two or more persons are together, acting together, assist each other in committing the offense, the act of one is the act of all, or as it sometimes is said, the hand of one becomes the hand of all.

Prior knowledge that a crime is going to be committed

without more is not sufficient to make a person guilty of that crime. Mere knowledge that another person is going to commit a crime, even if the defendant is present when the crime is committed, is not sufficient to convict the defendant as a principal of that, in that crime. Guilt, as a principal in a crime, is shown by actual or constructive presence at a scene as a result of a prior arrangement.

Therefore, a finding of a prior arrangement or a common plan or scheme is necessary in order to find guilt as a principal. The State must prove, beyond a reasonable doubt by competent evidence, the therapy of the hand of one being the hand of all.

A principal in a crime is one who either actually commits the crime or is present assisting, aiding, abetting in the commission of the crime. When a person does an act in the presence of and with the assistance of another, the act is done by both. Where two or more are acting as part of a common plan or intent are present at the commission of the crime, it does not matter who actually commits the crime. All are guilty. Again, the hand of one is the hand of all.

Present at the commission of a crime means to be sufficiently near so as to aid, abet, assist in the commission of the crime. However, mere presence at the scene of a crime, in and of itself, is not sufficient to

convict one as a principal on the theory of aiding and abetting.

Intent is also a necessary element for there must have been a common design or intent to commit the crime, and the crime must have been committed pursuant thereto with the person, again, aiding, abetting by some overt act. Intent means intending the result which actually occurs. Not done accidentally or involuntarily. Intent may be shown by acts and conduct of the defendant and other circumstances from which you might naturally and reasonably infer their intent. The State must prove these elements beyond a reasonable doubt.

Now, as I've told you though, mere presence at the scene of a crime is not sufficient to prove someone guilty of the crime. A defendant's presence where a crime is being committed or mere association with the person who does commit a crime does not make the person an accomplice, an aider or abettor of the person committing a crime, and, again, the burden is upon, is upon the State to prove the elements of the crime charged. And if, after reviewing all of the evidence you find that the State has proved that the defendant was only present at the scene of a crime, and that they have not proved, beyond a reasonable doubt, any other participation in the crime, then you must find the defendant not guilty. The law is that the proof, being proof of

someone being at a crime, in and of itself, is not sufficient to find someone guilty of that crime.

Now, I've talked a little bit about intent, and let me explain to you what is legally meant by intent. Because, later on, when I talk to you about the offenses, I'm gonna talk to you about intent.

In order to establish criminal liability, criminal intent is required. That's the mental state that's required to be proven by the State for a particular crime, and that might be intent, knowledge, recklessness, criminal negligence. Criminal intent must be proven by the State, beyond a reasonable doubt, and criminal intent is always a matter to be determined by the jury from the circumstances surrounding the situation.

Now, there's no way to prove intent, what someone intended to do by direct evidence. It always has to be proven from the facts and circumstances that surround the crime because there's no medical way, at the time that an act is, is happening, that we can open up somebody's brain and look and scientifically and mathematically determine what they're intending to do at that time.

So, intent is always shown by the facts and circumstances that you find to have existed at the time that the act occurred. Therefore, it's not necessary to establish the intent portion of these crimes by direct

evidence. It may be established by inference like any other fact, again, from the facts and circumstances that exist.

Now, criminal intent means a mental state. It's a conscious wrong doing. It will be up to you to determine what the defendants intended to do based on the circumstances that have been shown to have existed at the time of the alleged event.

Now, there has also been evidence presented that witnesses may have made prior inconsistent statements. That is statements that weren't consistent with their current trial testimony. Contradictory statements, you may use the, the earlier contradictory statements to determine the truth of those statements as well as the truth of the present testimony made during the trial. It's up to you to decide whether to believe the earlier statements or the testimony given at trial.

If a witness has been shown to knowingly have testified untruthfully concerning any matter, you may consider this in determining whether to trust the witness' testimony as to other matters. You as the jury, as I've told you, have the right to believe all, part of, or none of what a witness tells you. You also have the right to give the testimony of a witness the weight that you think it deserves.

Now, I'm going to go over the alleged offenses as a group because each defendant is charged with the same

offenses, and alleged the same victims on the same occurrence. So, I'm not gonna charge you separately as to each defendant, but I'm gonna charge each offense separately.

The first offense I'm going to charge you concerning is assault with intent to kill. The defendants are charged with assault with intent to kill, and in order to prove assault with intent to kill, the State must prove, beyond a reasonable doubt, that the defendant, with malice aforethought, unlawfully attempted or offered to commit a violent injury upon another person, and had the present ability to complete the attempted injury.

An assault is the intentional creation of a reasonable fear of immediate bodily harm. It's not necessary that the attempted injury or harm actually take place for assault to occur.

I'll give you an example of what I mean by that. If I were to walk up to any of you out in the hallway outside the courtroom, and I walked up close enough to you so that I could reach out and touch you, and I drew back my fist as if to hit you, that would constitute an assault because I'm threatening to commit a bodily injury, and I'm close enough to you that if I were to bring my fist forward I could hit you. So, I have the present ability to, to strike the blow. Had I been standing at the other end of the building and

drew back my fist, that's not an assault cause I can't reach you with my fist from that location.

So, again, an assault takes place when you put somebody in fear of bodily injury and you have the present ability to carry out that particular assault.

Now, it talks about malice aforethought. Malice is defined as hatred or ill will or hostility toward another person. It is the intentional doing of a wrongful act without just cause of excuse. Again, with the intent, there's that thing about intent, to inflict an injury or under circumstances that the law would infer an evil intent.

Malice aforethought is another legal phrase, and what malice aforethought -- and it comes up in these other charges too. So, I'm gonna go over this with you now, and we'll talk about it in a little bit when we get to those other charges. But malice aforethought does not require that malice exist for any particular length of time before the act is committed, but the malice must exist in the mind of the defendant just before and at the time that the act is committed. Therefore, the law requires that there must be a combination between the evil intent and the act that occurs.

Malice aforethought can be expressed or inferred. Now, the words expressed or inferred simply means -- there's not too different kinds of malice. It's the manner in which, which they can be shown to have existed. That is either by

direct evidence, where it's expressed, or by inference from the facts and circumstances that were shown to have existed. Express malice is shown when a person speaks words which express hatred or ill will to another person or when the persons prepares beforehand to do the act that they later do such as lying in wait for a person or any other act showing preparation going to show that the deed was within the defendant's mind would be express malice.

Malice may be inferred from conduct showing a total disregard for human life. Inferred malice may arise when a deed is done by a person using a deadly weapon. A deadly weapon is any article or instruments or substance which is likely to cause death or great bodily harm. Now, whether an instrument is used as a deadly weapon is a question of fact for a jury to decide.

The following are examples which, under the law, have been determined to be deadly weapons. Those include a pistol, a shotgun, a rifle, a dirk, a dagger, a knife, a slingshot, metal knuckles, razors, gasoline, fire bombs. All of those things are, have been shown in cases to have been used as deadly weapons, but the question of whether it is a deadly weapon is a question of fact for the jury to decide.

Now, assault and battery with intent to kill is the second charge that has been brought. And, again, the

assault with intent to kill talks about firing into the vehicle of Dwight Jamar Geter. That, that's the, the victim in that case.

The assault and battery in both cases alleges the injury to Bryant Miller, and assault, assault and battery with intent to kill, the State has to prove, beyond a reasonable doubt, that the defendant committed an unlawful act in a violent nature to the person of another, again, with malice aforethought.

An assault, I've already described to you, occurs when someone offers to commit an injury and has the present ability to carry out that threat. An assault is the intentional creation of a reasonable fear of harm.

Now, the additional element in this charge has to do with a battery. Under the law, a battery is the unlawful touching of another person by a person who is committed an assault. An unlawful touching can be done by a part of the accused body or by any object that was put into motion by the accused. A battery is the completion of the assault by applying force to another person in a slight, rude, angry, or, however slight, in a rude, angry, resentful manner without legal justification for doing so.

If I use my earlier example of me walking up to you out in the hallway and I got close enough to, to, to reach out and touch you and I drew back my fist, that would be the

assault. Now, if I brought my fist forward in a rude, angry or resentful manner and touched you ever how slightly, that's the completion of the assault and battery. So, that's what is meant by an assault and battery.

I've already defined to you what is meant by malice and malice aforethought. That same definition applies to this charge as well.

The final charge that's been placed against both defendants is that of murder, and the defendants have been charged with that offense, and that is murder.

In murder, the State must prove, beyond a reasonable doubt, that the defendant killed another person with malice aforethought. Again, malice is defined as hatred or ill will or hostility towards another person. It's the intentional doing of a wrongful act without just cause or excuse with an intent to inflict injury or under circumstances that the law would infer an intent, and I've already talked to you about malice aforethought does not require that the malice exist for any particular length of time, but there must be a combination between the ill will or the hatred in the mind of the actor and the time, at the time that the act occurred. So, malice aforethought, there must be a combination between the evil intent and the act.

Now, the defendants have raised the defense of self-defense, and I'm going to talk to you a little bit

about the defense of self-defense. Self-defense would constitute a complete defense, and if it is established, you must find the defendants not guilty.

Now, the State has the burden, burden of disproving self-defense beyond a reasonable doubt. If you have a reasonable doubt of the defendant's guilt, after considering all of the evidence including the evidence of self-defense, then you would find the defendant not guilty. However, on the other hand, if you have no reasonable doubt of the defendant's guilt, after considering all of the evidence and any evidence of self-defense, you must find the defendants guilty.

Now, there's three elements that are required in order to establish a defense of self-defense. First, the defendant must be without any fault in bringing about the difficulty which occurs between the parties involved. If the defendant's conduct was of a type which would reasonably calculate being, reasonably calculated to and did provoke a deadly assault, the defendant would not, would be at fault in bringing on the difficulty and would not be entitled to an acquittal based on self-defense.

If the defendant voluntarily participated in mutual combat for the purpose of other than self-protection, the killing of the victim would not be self-defense. This is true even if, during the combat, the defendant feared death

or bodily injury. However, if, before the killing is committed, the defendant withdraws and tries, in good faith, to avoid further conflict either in words or acts that make known the fact of the victim, the defendant would be without fault in bringing on the difficulty.

For mutual combat, there must be a mutual intent and a willingness to fight. The intent must be, may be shown by acts and conduct and the, of the parties and circumstances surrounding the conduct. In addition, it must be shown that both parties were armed with deadly weapons.

The second element is imminent danger. The second element of self-defense is that a defendant was actually in imminent danger of death or serious bodily injury or that the defendant actually believed that he was in imminent danger of death or serious bodily injury. If the defendant was actually in imminent danger, it must be shown that the circumstances would of warranted a person of ordinary firmness or courage to strike the fatal blow to prevent death or serious bodily injury to himself.

If the defendant believed that he was in imminent danger of death or serious body injury, it must be shown that a reasonably prudent person of ordinary firmness and courage would of had the same belief. In deciding whether the defendant was actually or believed that he was in imminent danger of death or bodily injury, you should

consider all the facts and circumstances surrounding the crime including the physical condition and characteristics of both the defendant and the victim.

Evidence of prior difficulties between a defendant and a victim may be considered in deciding whether a threat existed and whether the defendant had a reason to believe that a threat existed and how serious that threat was.

The third element is that there's no other way to avoid danger. The final element of a defense of self-defense is that the defendant had no probable way to avoid danger or death of bodily injury other than to act as the defendant acted in this particular instance.

There is a duty to retreat under the law in South Carolina. However, the defendant has no duty to retreat if, by doing so, the danger of being killed or injured seriously would increase.

Under the law of self-defense, a defendant may also -- the defendant may take another's life in defense of others. That right to intervene and protect others is subject to the same rights and limitations as the general right of self-defense. The defendant may take the life of a person who assaults a friend or relative or a bystander if that friend, relative, or bystander would of had the right of self-defense.

To show that the person being defended had the right of

self-defense, it must be shown, be shown that the person being defended and the defendant were both without fault in bringing on the difficulty. If the conduct of the person defended or the defendant was of the type which was reasonably calculated to and did provoke a deadly assault, then the person would be at fault in bringing on the difficulty and would not of had the right of self-defense. Therefore, the defendant would not have had the right to use deadly force in defending that person.

Now, ladies and gentlemen of the jury, as I told you at the beginning of the trial, your verdict must be unanimous in this case.

Sir, I'm gonna ask you your name?

(Juror points.)

THE COURT: Yes, sir.

JUROR: Nathan.

THE COURT: Last name?

JUROR: Mims.

THE COURT: All right. Sir, I'm gonna appoint you as the foreperson of this jury. I've been watching you. You've paid very close attention throughout the trial, and I'm going to appoint you as the foreperson.

That doesn't give you a greater say in the outcome of the case than anyone else. But you will be the person who will be presiding over the jury, conducting the

deliberations of the jury. You will also be the person, if the jury has a question of the Court, to submit that question in writing back to the Court. I'll decide what answers I can give, and I've told you already, I can't become involved in your decisions concerning the facts. I can answer questions the law that I've charged you on, the procedures that we followed, and some things about the evidence.

Don't edit the questions. Submit them to me. I'll decide what the appropriate answer is once I receive the questions.

Once a verdict has been reached, it will be necessary for you to record the verdict on the verdict form and submit it, through the bailiff, back to the Court. You'll be brought back into the Court to submit that verdict to us.

I've gone over a lot of things with you, and I'm going to allow the attorneys to, to go over those things with me to see if I've left something out or misspoken. Also, I'm gonna gather the evidence together. You'll have that in the jury room with you during your deliberations. I have to be sure that only proper evidence goes back to your jury room. So, we'll be doing that as well.

So, for a few minutes here, I'm going to ask you to step back to the jury room one more time.

Mr. Foreman, don't allow any deliberations or

discussion to begin until I bring you back for your final charge.

You may retire.

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

THE COURT: Any objections to the charge from the State?

SOLICITOR GRAY: No, sir, Your Honor.

THE COURT: Defense, Mr. Poole?

MR. POOLE: No, sir.

THE COURT: Mr. Brown.

MR. BROWN: No, Your Honor.

THE COURT: I'd ask you attorneys to step up and go over the exhibits. Let's be sure that only the properly admitted exhibits go back to the jury. And once you've completed that, I have the verdict forms. You're welcome to take a look at those.

(Pause.)

THE COURT: All right. We got an agreement on the evidence, ladies and gentlemen?

(All parties nod affirmatively.)

THE COURT: All right. Come up and take a look at the verdict form.

(Pause.)

THE COURT: All right. Any objections, ladies,

gentlemen?

SOLICITOR GRAY: No, sir.

MR. POOLE: No, sir.

MR. BROWN: No, sir.

THE COURT: All right. Bring them in.

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

THE COURT: All right. The jury has returned to the courtroom.

Mr. Foreman -- Mr. Bailiff, if I could get you to pass this over to the foreman for me.

BAILIFF: Yes, sir.

THE COURT: Thank you.

Mr. Foreman, I'm handing you the verdict form that can be used in this case. I'll go over those with you so that we have an understanding.

THE COURT: There's two different forms. One for each defendant. Other than the case numbers and the names, they'll read basically the same.

The top of the form indicates the State and county that we're in, the Court that we're in. Below that the caption of the case, The State versus whichever defendant it is. Over to the right it's a verdict form for three different case numbers. Below that, under the verdict, there are three different verdicts to be rendered since they're three

different indictments, and for each the choice is guilty, not guilty or guilty.

Now, I'll tell the jury, don't take from the fact that I've put those choices on any order on this form to indicate that I have a preference. That's the way it is on my computer. Everytime I do a verdict form they're in that order. So, it has nothing to do with this particular case.

I'll ask you to check the appropriate verdict for each charge. Once you've completed the form for each defendant, you'll sign it and date it. Once all verdicts have been rendered, knock on the door, inform the bailiff, we'll bring the jury back into the courtroom to receive the verdict at that time.

Now, the evidence is here. It's going to be presented to you. There is a laptop available. It's a clean laptop. It should go directly to a program to play the DVD. The DVD I believe is Exhibit 28 if you want to play that.

If you have any difficulty in playing that, just let us know. We'll bring it out and get it set up so it will run for you. But you should be able to -- it's a laptop. It should be able to -- most people know how to run that. So, if you have a problem with that, let us know. It's available to you. You have a right to view it if you'd like to.

All right. At this time, I'm going to ask that the

jury -- ma'am, you're the alternate. I'm gonna ask you to remain seated, but that the jury retire to the jury room to begin your deliberations.

Now, lunch is going to be served. If someone has to come into the jury room to do that or have to do with that, don't discuss the case until those people have left the room. Then begin your deliberations. Don't be discussing the case with people who are not on the jury in the court, in the jury room.

You understand?

(Jurors nod affirmatively.)

THE COURT: You may retire and begin your deliberations.

(WHEREUPON, the following takes place outside the presence of the jury and the alternate juror was dismissed from the courtroom.)

THE COURT: Any objection to final instruction from the State?

SOLICITOR GRAY: No, sir, Your Honor.

THE COURT: Any from the defense?

MR. POOLE: No, sir.

MR. BROWN: None, Your Honor.

THE COURT: All right. Court's in recess until such time as a verdict has been reached.

(WHEREUPON, the jury began deliberations at 1:46 and

returned with a question at 2:51.)

THE COURT: Ask the attorneys to approach.

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

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

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

THE COURT: All right. The record will reflect the jury has returned to the courtroom.

I've received a question from the jury. The question is is the defense pleading not guilty because of self-defense. We are unclear.

It's a little bit of a confusing situation, but I'll try to clear it up as best I can.

As I indicated to you, the defendant is always presumed to be innocent in the case until such time as that presumption has been removed from the defendant by evidence that satisfies you of the defendant's guilt beyond a reasonable doubt. So, when you say the defendant's pleading not guilty, the defendant has pled not guilty to the indictments. But that -- there, there is no burden of proof that goes with that plea. Defendants are presumed, under the law, to be not guilty. So, that's -- it's just simply that is a presumption under the law.

Now, when I charged you concerning self-defense, I'll go back over the beginning of the charge, and if you'll

listen carefully maybe you'll understand the distinction here.

The defendant has raised the defense of self-defense. Self-defense is a complete defense if it is established. You must -- if it, if it is established, you must find the defendant not guilty. But now, the burden of proof in the criminal case is always upon the State. So, the State has the burden of disproving self-defense by proof beyond a reasonable doubt.

So, when you start talking about burden of proofs, the burden of proof is always upon the State at all times and in the case of self-defense, the burden is upon the State to prove that, that the defense of self-defense does not exist. So, that's -- does that answer the question as to the relative burden of proof, Mr. Foreman?

FOREMAN: I believe so. I believe what we were unclear as to is that, whether or not the defense was raising the defense of self-defense.

THE COURT: Well, through the, through the facts, and, of course, in the closing argument the defense argued self-defense.

FOREMAN: Okay.

THE COURT: And, of course, they've, they've raised that defense. But there's -- they don't plead not guilty, not the -- not guilty plea simply means they're pleading

what they're presumed, that they are not guilty. And, of course, self-defense is a complete defense if it, if that, if you find that it exist. But it's the State prove, burden to disprove that defense beyond a reasonable doubt.

So, I hope that clears it up. It's a little bit unusual. But as I told you, the defendant never has a burden of proof in the case. The defendant has no burden of proof at all. They're presumed to be innocent at the beginning of the trial, throughout the trial, and into your deliberations until you find that person not guilty, find that person guilty by proof beyond a reasonable doubt should you find them that way.

Does that answer the question?

FOREMAN: Yes, I believe---

THE COURT: It's semantics.

FOREMAN: Our question was not properly --

THE COURT: Okay.

FOREMAN: I didn't write it properly.

THE COURT: Now, if the jury would like for me to recharge the defense of self-defense I can do that. But I don't -- I didn't take your question as being, you being confused by that, that. You simply wanted to know perhaps who has the burden of proof or who is pleading what. And, again, in this case, the defendant has pled not guilty. They can plead not guilty because they're presumed to be not

guilty, and, of course, by the facts, you have the right to find them either guilty or not guilty. Again, to find someone guilty, it must be beyond a reasonable doubt.

You may retire and resume your deliberations.

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

THE COURT: Any objections to my response from the inquiry from the State?

SOLICITOR GRAY: No, sir.

THE COURT: Any from defense?

MR. POOLE: No, sir.

MR. BROWN: None, Your Honor.

THE COURT: All right. The question from the jury will be made a Court's Exhibit and part of the record.

(WHEREUPON, the note from the jury was marked as Court's Exhibit No. 1 for identifications purposes only at this time.)

THE COURT: We'll remain in recess until such time as a verdict has been reached.

(WHEREUPON, the jury began deliberations again at 2:51 and returned with a verdict at 3:13.)

THE COURT: I'm informed a verdict has been reached. Is the State ready to receive the verdict?

SOLICITOR GRAY: Yes, sir, Your Honor.

THE COURT: Defense ready?

MR. POOLE: Yes, sir.

MR. BROWN: Yes, sir.

THE COURT: Let me caution all that are present that any reaction from the Court to the verdict would be considered to be contempt of Court. If you have any problems in controlling your emotions, leave the courtroom now. They want -- you won't have to deal with that. Otherwise, I will expect, expect everyone to accept the verdict quietly and with proper composure.

Bring the jury in.

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

THE COURT: Mr. Foreman, I've been informed that a verdict's been reached.

Is that true?

FOREMAN: Yes.

THE COURT: Pass the forms to the bailiff please. Thank you.

(Foreman complies.)

THE COURT: All right. In the case of the State of South Carolina versus Darius Tavarious Cathcart, Case Numbers 2010-GS-42-2874, 75, and 76, as to Indictment 2010-GS-42-2874, with assault and battery, assault with intent to kill, we, the jury, unanimously find the defendant, Darius Tavarious Cathcart, guilty.

As to Indictment Number 2010-GS-42-2875 for murder, we, the jury, unanimously find the defendant, Darius Tavarious Cathcart, guilty.

As to Indictment Number 2009-GS-42-2876 for assault and battery with intent to kill, we, the jury, unanimously find the defendant, Darius Tavarious Cathcart, guilty.

Signed by the foreman, May 12th, 2011.

In the case of the State of South Carolina versus Rashawn Lamar Reeder, Cases Number 2010-GS-42-2926, 2927, and 2928, as to Indictment Number 2010-GS-42-2926 for assault with intent to kill, we, the jury, unanimously find the defendant, Rashawn Lamar Reeder, guilty.

As to Indictment Number 2010-GS-42-2927 for murder, we, the jury, unanimously find the defendant, Rashawn Lamar Reeder, guilty.

As to Indictment Number 2009-GS-42-2928, assault and battery with intent to kill, we, the jury, unanimously, unanimously find the defendant, Rashawn Lamar Reeder, guilty.

Signed by the foreman, dated May 12th, 2011.

Madam Clerk, please inquire of the jury if this is still their verdict.

CLERK: Ladies and gentlemen of the jury, if this is your verdict and still your verdict, if so, please raise your right-hand.

(WHEREUPON, all jurors raise their hands at this time.)

THE COURT: Thank you.

Anything further from the State before I release the jury?

SOLICITOR GRAY: No, sir, Your Honor.

THE COURT: Anything further from the defense?

MR. POOLE: Could Your Honor poll the jury?

THE COURT: Is that being requested by both defendants?

MR. BROWN: Yes, sir, Your Honor.

THE COURT: Madam Clerk, if you would please, poll the, the jury.

(WHEREUPON, the jury was polled at this and all jurors responded in the affirmative that this is their verdict and remains their verdict at this time.)

THE COURT: Thank you, Madam Clerk.

Anything further from the defense before I release the jury?

MR. POOLE: No, sir.

THE COURT: Mr. Brown?

MR. BROWN: No, Your Honor.

THE COURT: All right.

(WHEREUPON, the jury was dismissed at this time.)

THE COURT: All right. Anything from the defense before we pass sentence?

MR. POOLE: Your Honor, at this time I would renew our

previous motion for directed verdict and make, move for a new trial. The -- this motion is based upon the motions that were made pretrial, during the trial, and after the verdict. We would move for a new trial on those grounds.

THE COURT: Mr. Brown, any further motions?

MR. BROWN: Your Honor, I would also renew my previous motions and move for a directed verdict and clearly I would ask for a new trial in light of what I, what was before the Court in terms of any lack of, of evidence against Mr. Rashawn Reeder.

THE COURT: All right. Motions are considered by the Court. Motions will be denied.

Now, are you ready to proceed with sentencing?

MR. POOLE: Yes, sir.

THE COURT: Have you signed the documents?

MR. BROWN: Your Honor, I don't know if either one of them are in the mind set to sign the documents at this time. It may be at the Court's direction.

THE COURT: I'm directing them to sign the documents.

DEFENDANT REEDER: What it is I'm signing?

THE COURT: Beg your pardon?

DEFENDANT REEDER: What is it I'm signing?

THE COURT: Talk to your lawyer. He can give you legal advice.

DEFENDANT REEDER: I'm not signing the papers, Your

Honor.

THE COURT: Is he refusing to sign the documents?

DEFENDANT REEDER: No, I ain't refusing to sign. I don't know what I'm signing.

THE COURT: All right. I told you to talk to your lawyer. Talk to your lawyer about the documents.

DEFENDANT REEDER: I mean I been lied to the whole time.

How do I know what I'm signing?

THE COURT: Well, you might try reading it.

(Pause.)

THE COURT: All right. Mr. Poole, if you'll approach with Mr. Cathcart first.

MR. POOLE: Certainly.

THE COURT: Mr. Cathcart, if you'll step around right here in front of the microphone please, sir.

(Defendant Cathcart complies.)

THE COURT: Thank you.

All right. Mr. Cathcart, you have been convicted by a jury of your peers of the offense of murder, assault and battery with intent to kill, and assault with intent to kill. At this point in time, I'll be happy to hear from you or your attorney concerning sentencing.

I'll begin with Mr. Poole.

MR. POOLE: May it please the Court, Your Honor.

THE COURT: Yes, sir.

MR. POOLE: Your Honor, Darius Cathcart, he's 25 years of age. He's been a life long resident of Spartanburg County. He's a graduate of Dorman High School. He -- he's worked during his young life. His last employment or next to his last employment was like in shipping and receiving at Martex. I think that's a facility over on 295, and he's the father of one child who is one year old.

During the course of this trial, he has had support from family and friends who are behind me and to the Court's right. And his mother is here. His sister is here. I've known the, a sister of Darius for a few years and I got to know some of the members of the family by briefly speaking to them this week and before about Darius, Darius' cases.

They're good folks, and, and this is certainly an unfortunate and awful situation where there has been loss of life and some bodily injury, and I'd ask the Court to take into consideration, in passing sentence, that there was an element of things that should not exist but do, and that is youth with guns, and who knows what else is out there in the street. And that was not a point in time when Mr. Cathcart felt that he was not, to a certain extent, a victim also. That's the best way I can state it.

I would ask the Court not to penalize him for the fact that he exercised his right to a jury trial. The Court has

the ability to give a certain lower sentences in these cases, and the Court also has the ability to run them concurrent. I would ask, on his behalf, that you do so.

THE COURT: All right. Mr. Cathcart, is there anything that you'd like to say to the Court at this point in time?

DEFENDANT CATHCART: Yes, sir.

THE COURT: Yes, sir.

DEFENDANT CATHCART: Well, I feel like this trial, it just snuck up on me because I had, I had another attorney and I was assigned him, and I done spoke with this guy, and the detective over my, over the whole case. And they already know what happened, but they tell me we can't use this. They know the person that was actually involved. But since I told Turnipseed I ain't want to talk to them no more cause I want to put nothing on paper, they told me they gonna go ahead and charge me with murder, and they already know. They done talked to the victim, but they refused. I mean they wasn't being honest about the whole thing.

THE COURT: Any of the family members wish to speak?

MR. POOLE: Your Honor, I think his mother would like to be heard.

THE COURT: Come forward please, ma'am.

Yes, ma'am, your name?

MRS. CATHCART: Patricia Cathcart.

THE COURT: Yes, ma'am.

MRS. CATHCART: I'm -- Darius is my son, and he has been working with this detective doing what he could do for Mr. Turnipseed, and he was dismissed. They would promise him things for his cooperation, and he cooperated with them the best of his ability.

And when they would make promises, when they came down to deliver these promises to him for his cooperation, next thing we know the attorney was taken off the case because I simply asked the attorney why y'all making promises to my son and having him to work with y'all when y'all know y'all gonna use these evidence against him.

Later on, when I asked Mr. Turnipseed this, he was taken off my son's case, and he was appointed to Mr. Poole. And I just felt like that somebody cooperate and they trust you to do what you say -- they ask him to take polygraph, he did that. Everything they have asked him to do he have said something, and he have done so, and in the midst of it, they turned their backs on him and he sits there like he never done anything when they know they laid this stuff down.

We brought witnesses that could testify for my son. He would not talk to these people. Mr. Turnipseed would not talk to these people. These people was willing to come and talk. They said they did not need these people or they said we, we couldn't get their numbers. The people actually -- we brought them to them. They never did this.

I just felt like my son, I was not there that night. I don't know. But I know my son wouldn't of intentionally -- he wouldn't have hurt her son, and I feel bad for her family cause she lost their son. And now my son get the rest of his life. I done lost my son as well.

But my son felt like he had a fighting chance working with these people that promised him and only lied to him and that's not right. When you give your word, your word should be your bond not he give his word and try to help himself and help his case for it to be used against him later on which was what---

THE COURT: Ma'am, ma'am, ma'am, you need to address me.

MRS. CATHCART: Okay. Which was what happen.

THE COURT: And I'm here to hear about sentencing.

MRS. CATHCART: Okay.

THE COURT: And I don't know if you want to talk about sentencing.

MRS. CATHCART: And I just---

THE COURT: Let me talk for a second.

MRS. CATHCART: Okay.

THE COURT: I don't know if you want to talk about that or not.

MRS. CATHCART: Yes.

THE COURT: But this is your opportunity to do so.

MRS. CATHCART: Yes, Your Honor.

THE COURT: Go ahead.

MRS. CATHCART: Your Honor, I'm just saying -- I'm just upset cause my son life is on the line. I just would like for you to consider that he has a child, and this is my only son. And I would like to see my son again, and I just, would just ask would you have mercy on him and his life.

THE COURT: Thank you, ma'am. You can be seated.

MRS. CATHCART: And I love you, son.

DEFENDANT CATHCART: Love you too.

THE COURT: Mr. Cathcart, you indicated you wanted to say something else.

DEFENDANT CATHCART: Yes, sir, I ask you do this. This whole thing, they already knew who this third person was. It was a third person in my car that already knew cause they told me, since I ain't want to cooperate, I ain't want to talk to them no more cause they kept making promises. Now they tell me we shouldn't use the third party. It's not like it just now came up. They knew that thing since 2009.

They already know. They know who this dude was. The detective told me, he said, I'm pretty -- I know he was involved. I heard and he said that I'm pretty sure this guy got six unsolved homicides, and, again, I got statements. The statements, people done wrote me statements that said that this guy told them, but he still didn't want to use

them cause he say he waited, it's too -- he waited too late to charge him.

He knew about this in 2009. Both -- I done met with Mr. Gray, and I done met with Mr. Lorin Williams, and Derrick Bulsa cause Derrick Bulsa was my, I mean my current prosecutor and it went down to Able Gray. These guys asked me where I get the other guy to incriminate himself by me putting on a, a wire, but my life on the line. I'm not about to sit up here and do that.

So, they tell me that's my problem. I mean I don't think I should be wrong -- I mean, I mean I just think that ain't, that ain't fair.

THE COURT: Mr. Gray.

SOLICITOR GRAY: 2003, public disorderly conduct.

2004, obtaining property by false pretenses, possession of Scheduled II illegal substances, receiving stolen goods, breaking into motor vehicles, and petty larceny.

2005, two counts of false info, driving under suspension, failure to stop, the third property offense, FTC theft, resisting arrest, habitual traffic offender.

2006, unlawful carrying of a weapon.

2008, driving under suspension and speeding.

THE COURT: The victims wish to be heard?

SOLICITOR GRAY: No, sir, Your Honor.

THE COURT: All right.

All right. Mr. Cathcart, if you'll have a seat.

Mr. Brown.

MR. BROWN: Your Honor, for the purposes of the record, if I could, again, renew my previous motion to set aside this verdict, ask for a new trial especially in light of what I've now heard today in this courtroom. Mr. Reeder has maintained his innocence from the outset, and apparently there was a question of any third party involvement, and if, unbeknownst to either one of us, Mr. Reeder and myself, if this information was shared at different phases with other elements, with either prior negotiations, or prior information that was shared, that was not shared with us, and I suppose the Court was not, then I think it would be an unfair advantage, number one, in light of the charges that have been laid out for Mr. Reeder as well as Mr. Cathcart.

And, of course, to have to go through a trial without all the information being disclosed to us, and I understand if the Court takes a certain position, and, of course, I'll advise Mr. Reeder appropriately in light of that.

THE COURT: Well, do you wish to respond to the motion, Mr. Gray?

SOLICITOR GRAY: I think it's a false motion. I have been involved with no negotiations with Mr. Cathcart or Mr. Reeder whatsoever. I'm a little disappointed right now of the accusation. But be that as it may, it's a little

too, too little too late, Your Honor.

THE COURT: All right. Motion denied.

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

THE COURT: Yes, sir.

MR. BROWN: Mr. Reeder is 21 years old. He doesn't have any children. He is maintained his high school equivalency, and, in fact, he's attending Spartanburg Community College pursuing a Associates in Business. His mother is here today in support of him. His father has been here. From what I understand he has a very serious breathing situation, and, of course, in light of this verdict, he can not present himself or maintain himself in front of this Court.

THE COURT: I understand.

MR. BROWN: Your Honor, Mr. Reeder, from the outset, has maintained his innocence. If there was information that was, again, known about a third person, that was rumored to have floated around. However, we never saw any concrete information in that regard, and, in fact, the individual, the individual that he was named, that was also floated around. I think that was known in several corners in this community, and this is just so unfortunate that Mr., Mr. Reeder is standing before this Court facing something that he will admit to the Court that he was simply a victim of based upon the shooting.

We understand the jury's verdict, Your Honor. But we'd ask the Court take this factor into consideration.

In talking with Mr. Reeder throughout Mr. Reeder being charged, he is maintained his innocence, maintains he didn't have, possess any firearm that evening, and the Court is heard what has been presented in this very courtroom with the lack of any direct testimony implicating Mr. Reeder.

In, in addition, Your Honor, understanding what Mr., Mr. Reeder is facing, he would, would ask, have me ask the Court if the Court would consider the minimum type of sentence that could possibly be given in light of all the questionable circumstances behind this. He is, throughout this, stated to me that it was something that he did not participate in. He has no direct knowledge of any ongoing situation with anyone involved in this, and he simply was shot on that evening, and, of course, there's the physical evidence that he was expressing to the Court for purposes of the record to show what occurred, Your Honor.

It is indeed a tragic loss of life because, as a young black man myself, to stand here time and time again, this is one of the first times I've ever had to face this during a trial, and on this end of the sentence, to know that there's really a loss of life all the way around. And, of course, we extend our apologies to anything that's happened with the family involving any issue with these young men, and we

extend our sincere sympathy to the Geter family.

Your Honor, I would ask that you can take these factors into consideration, and, of course, I've advised Mr. Reeder of any additional matters that he would want to take up at some subsequent moment to this.

THE COURT: Mr. Reeder, your opportunity to speak to the Court.

Is there anything you'd like to say to me?

DEFENDANT REEDER: Continue to hold, plead the Fifth, exercise my Fifth Amendment.

THE COURT: Okay, sir. Anybody in his family wish to be heard?

You just mentioned his mother was here.

MR. BROWN: Yes, sir, Your Honor.

THE COURT: She can come forward.

Ma'am, your name is?

MRS. REEDER: Ruth Reeder.

THE COURT: Yes, ma'am.

MRS. REEDER: This is my son, Rashawn Reeder. He's my -- he's my only child, and I hope, I hope that you don't hold him leaving home detention. I believe him because I have -- our home was shot up twice.

THE COURT: Ma'am, I'm not understanding what you're saying. If you'll take a moment. I'd like to hear what you have to say.

MRS. REEDER: I said I hope that you don't hold him leaving the home detention against him because our home was shot up twice, and I believe that's the only reason why he left. Because he was going to school and he was really trying. And I'm sorry.

THE COURT: Ma'am, I can, I can assure you that has nothing to do with this sentence.

MRS. REEDER: And I'm sorry that that Geter boy has lost his life, but he's just my only son, and I just hope you have mercy on him please. That's all I have to say.

THE COURT: Mr. Reeder, you indicated to me you wished to exercise your Fifth Amendment rights. You have every right to do so. But I do want to explain to you that the issue before the Court right now is the sentencing that's involved. You have every right to speak with me about that. But, again, if you wish to exercise your Fifth Amendment rights, you have every right to do so. But this is not concerning the merits of the case necessarily. It's more concerning the appropriateness of the sentence.

DEFENDANT REEDER: Excuse me, sir. I just wanted to tell my mom to don't cry. That's it. I apologize.

THE COURT: Mr. Gray.

SOLICITOR GRAY: Thank you, Your Honor.

He has one violent offense from 2006, assault and battery with intent to kill.

THE COURT: What year was that?

SOLICITOR GRAY: 2006.

THE COURT: All right. All right. Court's going to be in recess for about ten to fifteen minutes. I'll consider the sentence.

Court's in recess.

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

THE COURT: All right. I couldn't agree more with Mr. Brown in that this case, I think, involves loss of life. Certainly the victim's experienced loss of someone's life. And, in this case, we've got two young men, both of whom are in the prime of their life, and they're about to lose a good portion of that life as far as their freedom is concerned.

However, the Court is also mindful of the fact that every weekend it seems on the streets of our community these types of dramas are played out for some reason. We have young people with guns settling issues. Sometimes apparently minor or trivial issues. Sometimes matters involving other criminal activity with guns, and they solve it by hurting people. They're destroying lives and property.

So, the Court's not unmindful that that occurs in our community as well. It's something that I would hope that our community, at some point in time, would stop and, at some point in time, people who live in the community would

reject that, that type of behavior.

I'm only dealing, however, with the cases that are in front of me, and the ones that are brought before me. And in this case, a review of the facts and the evidence, I have sat through the trial, I've listened to the matters involved.

Mr. Cathcart, I'm aware that you have been involved in the past with criminal activity. Nothing that rose to this level. But certainly involved in matters that did involve the law and the laws involvement. I've tried to take that into consideration as well as consideration concerning your station in life.

It's a difficult decision, but the Sentence in this case, as to assault and battery with intent to kill, 20 years run down concurrently. As to assault with intent to kill, ten years run concurrently. As to murder, the sentence is 45 years run concurrently.

Good luck to you, sir.

(WHEREUPON, Defendant Cathcart and one of the victims began to argue with each other.)

THE COURT: Mr. Gray, if you'll instruct your victim if he wants to stay in the courtroom he'll keep his mouth closed.

SOLICITOR GRAY: Yes, sir, Your Honor.

THE COURT: Another outburst will be considered as

contempt of Court and I'll sentence him as such.

Can he stay in the courtroom, Mr. Gray?

SOLICITOR GRAY: He says he can.

THE COURT: All right. Let's bring in Mr. Reeder.

(Defendant Reeder enters the courtroom at this time.)

THE COURT: Mr. Reeder, you weren't present for the comments that I had during Mr. Cathcart's sentencing. However, I do want you to know that the Court expressed deep concern over the fact that situations like this seem to happen on a regular basis in our community. It's unfortunate that these things do occur, but it seems almost on a weekly basis that these type of things are going on, and, unfortunately, it appears that, for some, it's become a way of life for some reason.

My concern concerning your case centers primarily around your previous conviction for a crime not unlike what you're in front of the Court again on. You're 21 years of age. We're looking at two very serious situations. One that resulted in a previous conviction, and, of course, this is resulted in a conviction of three crimes that are considered to be, at least, two of which are considered to be violent, serious, and most serious offenses. The Court's not unmindful of that, and, of course, has taken that into consideration in your sentencing, and that's probably my primary concern concerning your case.

In this case, the Sentence for assault and battery with intent to kill is 20 years run concurrently.

The Sentence for assault with intent to kill is ten years run concurrently.

The Sentence is imprisonment for murder is imprisonment for your natural life.

Good luck to you, sir.

The Court is adjourned.

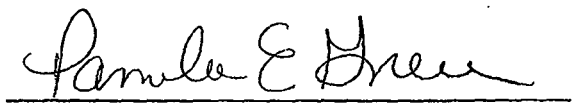
(WHEREUPON, Court was in recess.)

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 9th, 11th, and 12th day of May, 2011.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 1st, 2011



PAMELA E. GREEN, Court Reporter

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No Respondent's Brief Filed

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DARIUS CATHCART,

APPELLANT

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COUNTY OF SPARTANBURG — 2010-GS-42-02874 to 02876
2010-GS-42-02926 to 02928

THE STATE of SOUTH CAROLINA

-vs-

DARIUS CATHCART &
RASHAWN REEDER,

Defendants.

TRANSCRIPT OF RECORD

March 28, 2011
Spartanburg, South Carolina

Ordered: March 30, 2012
Delivered: June 8, 2012

B E F O R E:

THE HONORABLE ROGER COUCH, Presiding Judge.

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

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Assistant Solicitor Appearing for the State

MR. ROGER POOLE, Esquire
Attorney Appearing for the Defendant Darius Cathcart

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Attorney Appearing for the Defendant Rashawn Reeder

Pamela Faucette
Circuit Court Reporter

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March 29, 2011 2:00 P.M.

(Off-the-Record Comments)

(Whereupon, State's Exhibit Numbers 1 and 2 were marked for identification.)

THE COURT: All right. We're on the record in the case of *The State of South Carolina vs. Darius Cathcart and Rashawn Reeder.*

My understanding is that there are some pre-trial matters that we need to take up?

MR. GRAY: Yes, sir. I think primarily it's going to be *Jackson v. Denno* matters. I know part of it falls under that purview, but I wanted to present it to the Court for the Court to decide, Your Honor.

THE COURT: All right. Well, there's -- Mr. Poole?

MR. POOLE: Your Honor, I agree. And there are some statements that were made by my client, Mr. Darius Cathcart.

THE COURT: Yes, sir.

MR. POOLE: A couple of them are oral; a couple of them are written.

THE COURT: Uh-huh (affirmative).

MR. POOLE: And that's the scope of the -- the hearing.

THE COURT: So, you're -- you're making a motion for the Court to determine the voluntariness of the

statements?

MR. POOLE: Yes, sir. And there's going to be sort of a hybrid issue as to whether or not *Miranda* was -- was given or -- or not or appropriately or inappropriately.

THE COURT: I see.

MR. POOLE: Thank you.

THE COURT: Mr. Brown, your position in connection with Mr. Reeder's case?

MR. BROWN: Your Honor, there may be some oral statements that were allegedly given by my client in the hospital. So, I would have the same type of concerns.

THE COURT: All right. Does the State wish to call witnesses concerning ---

MR. GRAY: Yes, Your Honor.

THE COURT: --- the matter? All right. You may call your first witness.

MR. GRAY: Thank you, Your Honor. The State calls Deputy Leslie Harrell.

THE COURT: Sir, if you'll come forward to my left and be sworn, please.

(The witness complied with the Court's request.)

(Whereupon,

DEPUTY LESLIE HARRELL

having first been duly sworn, testified as follows:)

THE COURT: have a seat, please, sir. I'd ask that you state your name for the record.

THE WITNESS: Deputy Leslie Harrell.

THE COURT: All right.

MR. GRAY: Thank you, Your Honor.

THE COURT: Your witness.

DIRECT EXAMINATION by MR. GRAY: **2:01 P.M.**

Q. Deputy Harrell, on the night of March 14th, two thousand, nine (2009), were you working?

A. I was.

Q. And where were you working at that time?

A. In 31 Stricken Central (phonetic) in Spartanburg County.

Q. All right. About three o'clock (3:00), four o'clock (4:00), did you get some instructions over 911 or receive over the radio to do something?

A. I did.

Q. What was that, sir?

A. Respond to the hospital for shooting victims.

Q. Which hospital?

A. Spartanburg Regional.

Q. Spartanburg Regional Hospital?

A. Yes.

Q. Did you get any information about any other shooting victims anywhere also?

A. I think before I arrived there they also informed me there were shooting victims at Mary Black Hospital.

Q. So, at the time you arrived at the Spartanburg Regional Hospital, you had shooting victims in your mind?

A. That's right.

Q. Once you arrived there, who did you meet or see?

A. Darius Cathcart and Rashawn Reeder.

Q. The two gentlemen in the orange here at the table?

A. Yes.

Q. Now, what was their condition at the time when -- when you met them?

A. I believe Mr. Cathcart had a graze wound from a bullet. And Mr. Reeder had a -- had a wound. I'm really not sure where it was at, but he was shot by a gun.

Q. All right. At this time, was Mr. Cathcart or Mr. Reeder under arrest for anything?

A. No.

Q. Did you put handcuffs on Mr. Cathcart or Mr. Reeder?

A. I did not.

Q. Did you interrogate them as suspects?

A. No, I did not.

Q. And, again, when you talked with them, what was your intent at that time?

A. My impression they were victims of a crime. I was wanting to find out who were possible suspects that -- that --

you know, responsible for these actions.

Q. At Spartanburg Regional Hospital you thought that both of these gentlemen were the vic -- the potential victims of gunshot wounds, did you talk to Mr. Cathcart about his injuries?

A. Yes.

Q. And what did Mr. Cathcart tell you?

A. He said he got grazed I believe it was under his right arm on his side.

Q. Did he tell you what had happened?

A. He said at a yield sign on Charisma Drive (phonetic).

Q. All right. At that time, did he tell any other possible location?

A. No.

Q. Did you talk to Mr. Reeder also?

A. Yes.

Q. What did Mr. Reeder say?

A. He -- he didn't give me a location. He was very, very short in his answers.

Q. Okay. What type of answers did he give you?

A. Ah ---

Q. What type of questions did you ask him?

A. Just about who possibly did it, where -- the location of where it happened.

Q. What were his responses?

A. Do you mind me looking back at my report?

Q. No, sir.

(Brief pause while witness examines documents.)

A. He stated that he didn't know where they were or who shot them.

(Brief Pause)

Q. Did he tell you who was in the car with him —

A. He said he —

Q. --- and Mr. Cathcart —

A. He said he and Mr. Cathcart and a guy named "Black."

Q. --- or individuals when they were shot?

A. No. He said he and Mr. Cathcart was in the vehicle when he got shot. And the Black subject drove the car away from the hospital.

Q. But you never got this individual's full name ----

A. No.

Q. --- who drove away?

A. No.

Q. Did Mr. Cathcart tell you that Mr. Reeder was in the car with him when he got shot?

A. Can I look at my report one more time?

(Brief pause while witness examines documents.)

A. Yeah, he said that -- that Mr. Reeder was in the car with him.

Q. All right.
A. And that they both left from that location.
Q. Okay. Did he ever identify any potential shooters?
A. No.
Q. And you were talking there was another incident, a potential shooting? I -- I don't want to put words in your mouth, but at the time of this incident?
A. Yes.
Q. About what time did that other shooting occur?
A. Where or what time?
Q. What time?
A. From my understanding, within fifteen (15) minutes of from -- from when this call came in -- I'm sorry, in less than fifteen (15) minutes, the other people arrived at the other hospital.
Q. And who were the other people?
A. I'm not sure.
Q. Okay. You didn't go to that hospital?
A. No, I did not.
Q. You only went to Spartanburg Regional and talked to Mr. Cathcart and Mr. Reeder?
A. That's correct.
Q. As potential victims?
A. That's right.
MR. GRAY: Thank you. Please, answer any questions

that Mr. Poole may have or Mr. Brown may have.

A. Okay.

THE COURT: Mr. Poole, your witness.

MR. POOLE: Thank you, Your Honor.

CROSS EXAMINATION by MR. POOLE: **2:10 P.M.**

Q. Deputy Harrell ---

MR. POOLE: May I approach the witness, please?

THE COURT: You certainly may, uh-huh (affirmative).

Q. --- can I take a look at your report, please?

(Document handed to Mr. Poole.)

A. Sure.

Q. Were -- were you with anyone when you went to talk to Darius Cathcart?

A. There may have been an investigator with me. I'm not -- I'm not -- I can't recall.

Q. Is that person in this room?

A. The two investigators that were on the scene are in this room.

Q. They are?

A. Yes.

Q. Was one of them with you?

A. I don't recall if he was or not.

Q. Okay.

(Brief Pause)

Q. Okay. And, so, you spoke with Mr. Cathcart at the hospital; is that right?

A. Yes.

Q. And, at that point in time, he was, as far as you were concerned, a victim of a shooting?

A. Yes.

Q. And had he already been treated by a physician or staff?

A. They were looking at him at that -- looking at him at the time.

Q. So, you were talking to him while he was being treated?

A. Yes.

Q. And had he been administered any drugs to your knowledge?

A. No.

Q. How do you know?

A. Well, from my knowledge, no.

Q. But he could have been?

A. He could have been.

Q. Okay. And how long had he been at the hospital?

A. He was only there just a few minutes before I got there.

Q. Okay. Did doctors or nurses or any member of the staff tell you what they had done up -- to him up to that

point?

A. No.

Q. And did they tell you what kind of treatment they had provided to him up to that point?

A. No.

Q. Were Mr. Reeder and Mr. Cathcart together?

A. No, they were in separate rooms.

Q. Okay. And did you -- obviously you spoke with them separately?

A. Yes.

Q. And you -- I didn't get the name of the drive that you mentioned when you said Mr. Cathcart gave you a location.

A. Uh-huh (affirmative).

Q. What was the name of that drive?

A. Charisma Drive (phonetic).

Q. Charisma? Do you know where that is?

A. I do.

Q. Were you involved in any other aspects of this investigation?

A. No, sir.

Q. Okay.

(Brief Pause)

Q. And finally, Deputy, did Mr. Cathcart mention "Black"?

A. I don't think he did, but Mr. Reeder mentioned the

name "Black."

Q. Mr. Reeder was the only one?

A. I believe so.

MR. POOLE: Okay. Thank you.

THE WITNESS: Yes, sir.

CROSS EXAMINATION by MR. BROWN: 2:13 P.M.

Q. Investigator, you said Mr. Reeder mumbled something at the hospital?

A. That he mumbled something?

Q. Yes.

A. I don't recall that he mumbled something.

Q. Well, you say you talked to him, right?

A. Yes.

Q. And, when you talked to him, was he clear in his responses?

A. He was clear, yes.

Q. And did you ascertain that he was shot anywhere?

A. I believe he was. If I'm not mistaken, I think it was an arm wound.

Q. Okay. So, you didn't say earlier that he had mumbled his answers?

A. No.

Q. Did you ascertain his state of mind at the time?

A. Yes.

Q. And what did you determine that to be?

A. At that time, he was -- I'm not sure if he was administered any medication, but he was talking just fine to me.

Q. And, so, when you talked to him, how soon after would another officer have a chance to talk to him?

A. Within fifteen (15) or twenty (20) minutes.

Q. And no one was there with you?

A. I don't think so. I -- I don't recall.

Q. So, you don't know if an officer -- another officer talked to him immediately?

A. The only other officer, a uniformed officer, would be Deputy Driggers (phonetic), but an investigator didn't shortly after I was there.

Q. Okay. Do you know if he had received any type of treatment for his gunshot wound?

A. I do not.

Q. Could you -- could you see his gunshot wound?

A. Yes.

Q. Was it covered up?

A. I -- I believe it was.

Q. Was it bandaged?

A. I believe so.

Q. And was he -- did he have any IVs?

A. No.

Q. Didn't have any IVs?

A. I don't think so.
Q. Do you know if he received any shots?
A. No, sir.
Q. Any medication?
A. No, sir.
Q. At what point in your conversation did he mention Black?
A. When I was talking about how he got to the hospital.
Q. And, in regards to Black, he said Black drove?
A. Yes, that's right.
Q. And that's the only thing he said in regards to Black?
A. Yes.

MR. BROWN: Okay. No more questions.

THE COURT: Yes, Mr. Gray?

MR. GRAY: Yes, sir, briefly.

REDIRECT EXAMINATION by MR. GRAY: 2:15 P.M.

Q. You said earlier ---
A. Uh-huh (affirmative).
Q. You said that Mr. Reeder was short -- gave you short answers, correct?
A. That's correct.
Q. And you said he -- he didn't know where he was —
A. Yes, sir.
Q. --- when he was shot? He didn't know who shot him?

A. Uh-huh (affirmative).
Q. And he stated it was he and Mr. Cathcart who got shot at?
A. Uh-huh (affirmative), that's right.
Q. And that they were in a Nissan when they got shot?
A. That's correct.
(Brief Pause)
MR. GRAY: Thank you.
THE COURT: Anything further, Mr. Poole?
MR. POOLE: No recross.
THE COURT: Mr. Brown?
MR. BROWN: No, Your Honor.
THE COURT: You may step down, sir.
(The witness complied with the Court's request.)
THE COURT: Mr. Gray, you may call your next witness.
MR. GRAY: Thank you, Your Honor. I call Investigator Chris Durham.
THE COURT: Come forward and be sworn, sir.
(The witness complied with the Court's request.)
(Whereupon,
DEPUTY CHRIS DURHAM
having first been duly sworn, testified as follows:)
THE COURT: Have a seat, please. And, once your

seated, please, state your full name.

THE WITNESS: Jack Christopher Durham.

THE COURT: Mr. Gray, your witness.

MR. GRAY: Thank you, Your Honor.

DIRECT EXAMINATION by MR. GRAY: 2:18 P.M.

Q. On March 14th at approximately four (4:00) a.m., did you get involved in a shooting call from communication with someone?

A. Yes, sir. I received a phone call in the middle of the night telling me that a sergeant on uniformed patrol wanted me to give him a call.

At which point I called him. He said it looked like there have been two shootings at two separate locations and the victims were at two separate hospitals.

Q. And -- and the two separate hospitals which were...?

A. Regional and Mary Black.

Q. All right. So, which hospital did you go to first?

A. I went to Regional. I -- I didn't go to Mary Black.

Q. Once you got to Spartanburg Regional, did you talk to any -- any potential victims?

A. I spoke to -- I was directed to Mr. Reeder's room.

Q. Uh-huh (affirmative).

A. I -- I briefly spoke to him. It looked like he was on pain medication. He was -- he was slurring his words.

He -- he couldn't give me any information but I kind

of, you know, understood because he was slurring his words and he -- he was saying he didn't know what had happened it happened so fast.

So, I left his room and went and talked to Mr. Cathcart.

Q. At that time did he say anything about himself?

A. No, sir. I asked him if he knew who shot him; he said no. He kept -- he kept saying he was blacking it out and didn't know anything.

Q. Did he say that he was right handed or left handed to you?

A. Well, I -- I put in my notes Mr. Reeder is left handed. And I can only -- I don't -- I don't remember which hand he was shot in, so, I think that's why I put he was left handed because I think I asked, you know, what handed are you or something to that effect.

Q. All right. Did you also talk to Mr. Cathcart?

A. I did.

Q. I want to show you what's been marked as State's Exhibit Number 1 and see if you recognize it.

A. Right. This wasn't done at the hospital. That was done at the sheriff's office.

Q. Okay.

A. A couple of hours later.

Q. All right.

A. But, yes, I do recognize it. It's a pre-interrogation waiver form that I read to Mr. Cathcart on the 14th at 8:47 a.m. at the sheriff's office.

It was -- I witnessed it. And Detective C. Calhoun (phonetic) notarized it. He was also in the room with me when I advised him of these rights.

Q. Okay. It's important and I wanted to ask you about that piece of paper and the hospital —

A. Okay.

Q. --- the difference be -- between them. At the hospital, when you talked to Mr. Reeder -- excuse me, Mr. Cathcart, was he a suspect at that time?

A. At that -- at that time I thought he was a victim. I really didn't know what was going on.

I walked into his room and he -- and I was advised he was grazed; they said it didn't enter the body cavity.

And I talked to him, basically just wanted to know what's going on. You know, just, you know, did he know you shot him, things of that nature.

Q. Trying to gather information?

A. Yes, sir.

Q. From the victim?

A. That's correct.

Q. And what did Mr. Cathcart tell you?

A. He said he did not remember much of the -- that

everything went so fast. He -- he gave a -- a description of the location. He said it happened right down the street from Club Dreams.

He said that he drove himself and Mr. Reeder to the hospital and Black took off with the vehicle.

Q. Did he say what kind of vehicle he was driving in?

A. Let's see if he...

(Brief pause while witness examines documents.)

A. He said he was driving his girlfriend's green Nissan.

Q. All right.

A. And -- and he said, once he got to the hospital, Black took off in his -- in his vehicle.

Q. And did he give you the location of the incident where he was injured?

A. At the hospital, he said it happened just right down the street from Club Dreams.

Q. Right down the street from Club Dreams?

A. Yes.

Q. All right. Did you question him any more at the hospital about the incident?

A. No, I did not.

Q. Did he say anything more about this Black person?

A. No. He -- he actually said Black was Reeder's friend and he doesn't really know him.

Q. Did he say anything about who was with him in the car when this incident happened?

A. He said that he drove him and Reeder to the hospital after they got shot, so...

Q. All right. Now, you also have a piece of paper there, State's Exhibit Number 1 ---

A. Yes.

Q. --- for identification. Again, that is a standard pre-interrogation waiver form submitted by you?

A. It is.

Q. Is it used by the sheriff's department?

A. Yes, yes, sir.

Q. What time was it when you talked to Mr. Cathcart after this incident?

(Brief pause while witness examines documents.)

A. I got the call at my house about four (4:00) a.m. in the morning. So, I probably got to the hospital an hour later or within the hour. So, I'd say around five o'clock (5:00) in the morning.

Q. What time ---

A. So...

Q. --- did you do that second interview?

A. That was at 8:47 a.m.

Q. At that time, where was Mr. Cathcart?

A. At the sheriff's office.

Q. And was he detained at the sheriff's office at that time?

A. Well, he -- he was -- I don't know how he got down there either. I don't know if we brought him down there. I think we did. I'm not sure. Or he was asked -- or he came on his own. I'm not sure.

Q. Uh-huh (affirmative).

A. But, you know, since he's not free to roam free at the sheriff's office -- you know, we -- we put him in an interview room, you know, I -- I -- I do pre-interrogation waiver forms at any time like that.

Also, too, when Detective Lorin Williams and I got together, because he went to Mary Black, we found out that -- we had a feeling that these two incidents were now involved because they're both at Club Dreams.

So, that's another reason why we took him down to the sheriff's office because I wanted to read him his rights to find out what's going on with this case.

Q. At that point, did you have any different information besides the Club Dreams similarity ---

A. Yeah. Ah -

Q. --- between the two situations?

A. I think Lorin Williams had told me -- he came to the sheriff's office -- actually, he came to the hospital and told me that it -- it looks like these are going to be involved

because they both -- both parties were at Club Dreams.

Also, I was advised by Sergeant Cockrell (phonetic) they found the -- I guess the scene, one scene at Mt. Pleasant Road but they couldn't find the other scene.

Q. The one on Mt. Pleasant Drive?

A. That's correct.

Q. So, the Mt. Pleasant and Burns intersection ---

A. That's correct.

Q. --- they had found a crime scene?

A. That's correct.

Q. Now was this -- did you have this information before you issued -- you issued that second piece of paper -

A. Yes, sir.

Q. --- to fill out?

A. Yes, sir.

Q. Did you talk to Mr. Cathcart about needing that pre-interrogation waiver form after receiving this additional information?

A. I'm sorry?

Q. Did you give him that form after you received this additional information?

A. Yes, sir. I gave him this one at the sheriff's office. When I -- when I got done speaking to him at the hospital -- that was the last time I spoke to him, at the hospital.

Q. Okay.

A. I spoke with him that one time. And, then, that's when Detective Williams shows up and we start talking about the similarity of these cases. And that's when I find out that one scene was found, not the other.

So, I think -- I think Mr. Williams advised the officers on duty could they bring them on down to the sheriff's office. I'm not sure how they got down there.

But they -- they did get down to the sheriff's office.

Q. Okay.

A. And that's when I read him this pre-interrogation waiver form.

Q. Could you read it, please?

A. It says, "Spartanburg County Sheriff's Department, Spartanburg, South Carolina Pre-interrogation Waiver Form." The name is "Cathcart, Darius, Travorus" (phonetic).

Address is "230 Carlton Drive," (phonetic) "Age 23." The date is "3/14/09." The time was "8:47 a.m."; location "SCO" -- "SCS" -- I sorry -- "SPSO," that's Spartanburg County Sheriff's Office, "8045 Howard Street" (phonetic).

Do you want me to read the -- the rights?

Q. As you would read that form to him, yes.

A. Okay. It says, "I have the right to remain silent. Anything I say can and will be used against me in a Court of

Law;

"I have the right to talk to a lawyer and have him present with me while I'm being questioned. If I cannot afford to hire a lawyer, one will be appointed to represent me for any questioning if I so wish.

"I can stop answering questions at any point during the questioning. The above rights have been read to me by C. Durham. I've read and understand my rights fully." Then, I read him the second part.

"I waive or give up my rights as explained above and agree to talk with Officer C. Durham in reference to crimes in Spartanburg County. And I understand any statement that I may make is of my own free will without fear, threat, promise of favor or reward of any kind.

"I'm able to read and write the English language and I've finished eleven (11) years in school."

Q. And is there any place on there for you to sign or for Mr. Cathcart to sign?

A. Yes, sir. There's a witness -- Mr. Cathcart signed that he understood these rights and he understood that he -- and, then, he also signed the part where it says he wishes to talk to me.

Q. So, he signed it not once but twice?

A. Two places, yes, sir. And, then, I signed as a witness and Detective Steve Calhoun, who was in the room with

us at the time, he notarized it.

Q. Now, at any time after he signed this, did you ask Mr. Cathcart questions about the shooting?

A. Yes, I did.

Q. What kind of questions did you ask Mr. Cathcart?

A. Pretty much I -- I asked him to explain what happened. And he advised us he was the driver of a grey [sic] Nissan that belonged to his girlfriend.

He said that he drove his two friends, Rashawn Reeder and another guy he knows as Black, he was driving them home from Club Dreams.

He left Club Dreams and went to Waffle House on Asheville Highway next to Kentucky Fried Chicken. He left Waffle House and went across the street to the Sunoco.

They were sitting in the parking lot at Sunoco. No one went inside. He said they left and went around the Circle to exit right as if they were getting onto I-85 Business.

Prior to getting on I-85, he said they were -- there was a vehicle that came up beside them and started shooting at them while still on the ramp.

He said the suspect vehicle continued on I-85 Business northbound as he made a right onto I guess I-85 -- yeah.

Q. And all these statement were made to you voluntarily?

A. He -- he was talking -- you know, I'm -- I'm asking him -- you know, he's -- he's telling me what happened.

Q. There were no promises made to Mr. Cathcart?

A. No, not at all.

Q. Any deals?

A. No.

Q. Any threats?

A. No.

Q. Did you investigate that on ramp or find any shots fired that Mr. Cathcart was talking about?

A. I was told later on that there were officers at Heron Circle that night because of -- I guess there was a swarm of cars.

Q. Uh-huh (affirmative).

A. And, you know, there were officers there at the time at Heron Circle and they didn't hear any gunshots that went onto I-85 on that on ramp.

Q. All right.

A. You want me to continue with what he was telling me?

Q. Yes, please.

A. Okay. He said that he and Mr. Reeder were shot. He said they drove to Church's Chicken across the street from Spartanburg Regional Medical Center.

They got out and went inside the hospital. The unknown man, by the name of Black, then took the vehicle and

drove off.

Mr. Cathcart doesn't know Black, so, he said that Mister -- that -- he said that was Mr. Reeder's friend. The current -- the vehicle's current whereabouts were unknown.

I asked him if he wanted to write this down. I gave him a -- a statement form, said, "You can write it down."

Me and Detective Calhoun, we -- we left the room to give him, you know, time to -- to write. And I -- I came back and he hadn't written -- written anything.

MR. GRAY: Thank you. Please, answer any questions that Mr. Poole or Mr. Brown would have.

THE COURT: Mr. Poole, your witness.

MR. POOLE: Thank you, Your Honor.

THE COURT: Yes, sir.

CROSS EXAMINATION by MR. POOLE: 2:29 P.M.

Q. Investigator Durham –

A. Yes, sir.

Q. --- it's my understanding -- and I think you're probably going by your incident report that you have in front of you ---

A. My write-up, yes, sir.

Q. Okay. And, so, it's my understanding that a brief synopsis of your version of your involvement was essentially on the 14th you went to the hospital. And that's when you spoke with Darius Cathcart?

A. Yes, sir.
Q. Okay. And he was being treated —
A. Yes, sir.
Q. --- at the time you saw him?
A. Yes, sir.
Q. Okay. Was Deputy Harrell there?
A. You know, I don't know. I do know that -- well, in my report I wrote that Deputy Talanges was there. And there could have been other officers behind me.

But Deputy Harrell, he was there before I got there. So, I don't know if he was behind me in the room or he was out doing his report at the nurses' station.

Q. All right. When you saw him there at the hospital, was he was being treated?
A. Mr. Cathcart?
Q. Yes, sir.
A. When I saw him at the hospital, he was laying in the bed. So, I -- I guess he was being -- in the process of being treated, that is correct.
Q. Okay. And you don't know what had been administered to him by way of medication —
A. No, sir.
Q. --- do you?
A. No, sir, I do not.
Q. And you don't know the nature of the treatment that

he was receiving?

A. No, sir, I do not.

Q. And you did not know what the nature of the wound was except that it wasn't told to you; is that right?

A. Let me read this.

(Brief pause while witness examines documents.)

A. I wrote in there that I was apprised that he was grazed and the bullet did not enter the body cavity.

Q. Okay. And, then, basically you said he said what his girlfriend's name was, gave you her phone number ---

A. Yes, sir.

Q. --- all that sort of thing?

A. Yes, sir.

Q. And, then, you did not see him until the next day?

A. No, sir, it was later -- it was later on that same day, on the 14th.

Q. Okay.

A. A few hours later.

Q. Okay. On the 14th?

A. Yes, sir.

Q. Is that the incident report too?

A. Yes, it is. That's when I -- I read him his rights, his waiver, Mister -- Mr. Cathcart.

Q. Uh-huh (affirmative).

A. He -- he came to the sheriff's office. I -- I don't

know how he got there, but...

Q. That was at the sheriff's office? What's the date on the waiver form?

A. The 14th.

Q. At what time?

A. Eight -- 8:47 a.m.

Q. Okay. And that was early in the morning then?

A. That was.

Q. And what time did you see him at the hospital?

A. It was about five -- five (5:00) or six o'clock (6:00) in the morning.

Q. So, just about three or four hours afterwards?

A. Yeah.

Q. Okay.

A. A little over -- yeah, about two or three hours afterwards, yes.

Q. He had not had any sleep, had he?

A. Not that I know of.

Q. Okay. And, so, you -- you don't know how he got there, but it was there at the sheriff's office?

A. I -- yeah. I -- I should maybe -- he was transported, but I'm not sure.

Q. Okay. Okay. And, then, by that time, at 8:48 on the 14th, a.m. -- at that time, he was no longer a victim or a witness, but you considered him a suspect?

A. I didn't really know what he was. It -- it sort of -- we -- we felt like now both parties were -- were -- this is connected because they're at the -- at the Club Dreams or whatever.

Q. Uh-huh (affirmative).

A. And I guess I -- I guess you could say, yeah, I -- we did consider him a suspect to the extent where we found one crime scene and not the other.

And that's -- you know, that was one of the reasons why we read him his rights on the waiver form.

Q. All right. But —

A. So, he knows what's going on.

Q. You -- you would not have him sign the pre-interrogation waiver form unless he was a potential suspect; is that a fair statement?

A. Not just that. If -- if no one is in custody, and I want to ask them questions, of course I'm going to do it.

Q. Okay. And he gave you some information and you testified about what that information was. And, then, you left him alone to write it down?

A. Yes, sir.

Q. And -- and, then, when you came back in, that's when he asked for an attorney?

A. Yes, sir. He -- I -- I -- I saw that he hadn't write -- written anything ---

Q. Uh-huh (affirmative).

A. --- and I said, "Is there a problem?" And he -- he said he would rather have his attorney present before he writes anything.

Q. Okay. So, did you take that to mean that he didn't really want to convey this information to you ---

A. Oh, yes.

Q. --- to start with unless he had an attorney with him?

A. No, no, unless you tell me you don't -- you want an attorney, you know, I -- I gave him -- he said he wanted to talk and he gave me this statement.

And, then, I asked him if he wanted to write it down. When I came back, he said he would rather have an attorney before he writes anything down.

(Brief Pause)

Q. Okay. And, so, this was like -- again, this was just a few hours after you saw him at the hospital?

A. Yes, sir.

Q. After he had been treated, right?

A. Yes, sir.

Q. And you don't know what kind of medication --

A. I have no idea.

Q. --- or treatment he received?

A. No, sir.

Q. And he talked to you and gave you some information?
A. Yes, sir.
Q. And, then, said he wanted an attorney?
A. After -- after I went back in there, he said he'd rather have an attorney present before he writes anything down. And in which case I escorted him down to the lobby.
Q. Well, let me ask you this: Did you ask him, as is usually done I think, if you leave somebody alone and you come back in, do you ask him, "Hey, is there anything you want to change about your story?"
A. Well, I -- I came in and he hadn't written anything down. He -- I -- I said, "Well, I'll write it down if you want to dictate it to me," And he goes, "I'd rather not write anything down."
Q. But, at any point in time, did you ask him -- you know, whether he had written it down or not, you left the room?
A. Right.
Q. And, then, you came back in. I mean, did it ever occur to you to ask him, "Is there anything you wanted to change about your story"?
A. No, sir, because right when he said he'd -- he'd rather have his attorney present, I didn't ask any more questions.
Q. Okay. All right.

(Brief Pause)

MR. POOLE: That's all the questions I have. Thank you.

THE COURT: Mr. Brown, your witness.

CROSS EXAMINATION by MR. BROWN: 2:35 P.M.

Q. Investigator, when you spoke to Mr. Reeder, you spoke with him at Spartanburg Regional?

A. Yes, sir.

Q. And, at the onset of your conversation with him, you determined that he was under the influence of something?

A. From my write-up, I -- I -- I could tell he was under the influence of pain -- of pain medication. He was slurring his words and I -- I can say he looked drowsy and mumbled answers to questions.

Q. And, in fact, your statement says you could tell he was under the influence of pain medication?

A. Right.

Q. He was drowsy and he mumbled some answers to questions that were asked of him?

A. Right.

Q. You knew he wasn't necessarily all the way there?

A. Right.

Q. And, at some point, you said he stated he was left handed?

A. Yeah. I ---

Q. Did you ask him that or did he tell you?

A. I think I asked him that.

Q. Okay. So, it's possible that, based upon him being kind of drowsy, he could have agreed with you if you asked that question to him directly?

A. I don't know what -- how my -- how I questioned it.

Q. How you what?

A. I don't know what -- if I said, "What handed are you," or -- because I knew he was shot in the hand or wrist or something to that effect. And I can't remember which one he had up or which one he had bandaged.

Q. Well, let me ask you this: What -- what hand do you know him having been shot in?

A. I mean, I can't remember. I -- I actually think it was the right hand, but I'm not sure.

Q. Okay. So, if he was shot in his left hand, is it possible that your question could have been, "Which hand did you get shot in?"

A. Pardon me?

Q. If he was shot in his left hand, is it possible that your question could have been, "Which hand did you get shot in?"

A. No, sir because I remember I -- I wrote he said he was left-handed. So, I wouldn't have asked what hand he got shot in.

Q. And that was based upon the questions you were asking him directly about which hand are you?

A. Right.

Q. And you don't know, based upon the state he was in, that he could have misinterpreted your question?

A. No, sir. I'm -- I'm -- I'm not qualified to determine what he was thinking, no, sir.

Q. But you do recognize that he was under the influence ---

A. Yes, sir.

Q. --- of medication ---

A. Yes, sir.

Q. --- and was the equivalent of not all the way there?

A. Yes, sir. That's why I wasn't getting any answers. I thought he was going in and out. So, I just walked off and went and talked to Mr. Cathcart.

Q. All right. And, on the following day, on the 15th at ten, twenty-seven (10:27), you went back to see him again?

A. I think Detective Lorin Williams and I at the hospital did.

Q. Okay. And, at that point, you determined that he was -- he was definitely on pain medication; his words were still slurred?

A. That's -- that's -- I think that's what we put down.

Q. Okay. You didn't present to him an opportunity to

sign a waiver of his rights on an affidavit form –

A. No, sir.

Q. --- at that point?

A. No, sir. I don't -- I don't -- you know, I don't think we asked him any –

Q. And this was the second time of coming to talk to him?

A. Right. I didn't go -- we didn't get a waiver form signed.

Q. And -- but, even under those circumstances, you say in your report that he said that he was there -- the second to the last page?

A. Okay. Thank you.

(Brief pause while witness examines documents.)

A. Next to the last page?

Q. Uh-huh (affirmative), Paragraph 2.

A. Okay. Yes, sir; he said he was with Darius.

Q. Okay. Again, was that based upon a question that you suggested or did he come out directly and say it?

A. Yes, sir. I -- I just said that he said he was with Darius. So, I -- I don't know if me or Investigator Williams asked him what -- you know, "Who were you with," or I don't know how the question was -- was posed.

Q. Is it possible that someone could have said, "You were with Darius, right?"

A. I -- I'm not sure. I guess it's possible. I don't remember how it was posed.

Q. Okay. But it's clear that you stated that he said that he doesn't -- possibly he doesn't remember anything about that happened?

A. Yes, sir.

Q. Because he was, indeed, under pain medication and his words were still slurred?

A. Yes, that's -- that's what I put.

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

THE COURT: Yes, sir, Mr. Gray?

MR. GRAY: Just briefly, Your Honor?

THE COURT: Yes, sir.

REDIRECT EXAMINATION by MR. GRAY: 2:39 P.M.

Q. Regarding Mr. Reeder, the difference between Mr. Cathcart's and Mr. Reeder's second interview was Mr. Cathcart was interviewed where the second time?

A. At the hospital -- oh, Mr. Cathcart. I'm sorry, I got them confused. Mr. Cathcart was interviewed the second time at the sheriff's office.

Q. Mr. Reeder was interviewed the second time where?

A. At the hospital.

Q. He was not in detention at that time?

A. Not that I know of.

Q. Did you place any handcuffs on Mr. Reeder at that

time?

A. No, I hadn't, no. I don't know if he has.

Q. Was he told he was under arrest for anything at that time?

A. I'm not sure. No, not that I know of.

Q. I mean by you?

A. No, not by me.

Q. So, did you read him his rights at that time?

A. I didn't put in here that I did.

Q. Did you see any need to read him his rights at that time at the hospital?

A. No. I mean, no, he wasn't -- I guess he wasn't being detained or anything like that.

Q. Did you tell Mr. Reeder he -- he wasn't free to leave the hospital?

A. No, huh-uh (negative).

Q. Did you tell Mr. Reeder that he was a suspect at that time?

A. Not that -- I didn't -- I didn't say anything like that, no, sir.

Q. Okay. At that time, again, when you were at the hospital, were you just gathering information at that time?

A. I went with Investigator Lorin Williams. I think he did most of the talking, but I was with him.

But, yeah, he -- I think we cut the whole thing

short because we could still see -- tell he was under the influence of something. And we just walked out.

Q. He never inter -- attempted to interrogate him at that time?

A. We went in there to question him. But, you know, I don't think -- there was no reason to go in there to see how he was doing, you know, just -- you know, kind of went into his room.

MR. GRAY: Thank you very much.

THE COURT: Any other questions, Mr. Poole?

MR. POOLE: None here, Your Honor.

THE COURT: Mr. Brown?

MR. BROWN: No, Your Honor.

THE COURT: You may step down, sir.

(The witness complied with the Court's request.)

THE COURT: You may call your next witness.

MR. GRAY: Thank you. The State calls Detective Lorin Williams.

THE COURT: Sir, if you would, step up and be sworn.

(The witness complied with the Court's request.)

(Whereupon,

DETECTIVE LORIN WILLIAMS

having first been duly sworn, testified as follows:)

THE COURT: Have a seat, please, sir.

(The witness complied with the Court's request.)

THE COURT: Once you're seated, state your name for me.

THE WITNESS: Lorin Williams.

THE COURT: Mr. Gray, your witness.

MR. GRAY: Thank you, Your Honor.

THE COURT: Yes, sir.

DIRECT EXAMINATION by MR. GRAY: 2:41 P.M.

Q. Detective Williams, were you also called out on the night of March 14th ---

A. Yes, I was.

Q. --- two thousand, nine (2009) regarding some shootings in Spartanburg County?

A. Yes, sir, I was.

Q. What did you do once -- once you were notified of these shootings?

A. I was originally notified by Investigator Durham that he had two shooting victims at Spartanburg Regional Medical Center.

Once I had gotten ready and left -- left my residence, I spoke to Investigator Durham again. And he, at that time, advised me that we, in fact, had two separate incidents.

We had two sets of shooting victims; one at

Spartanburg Regional Medical Center and one at Mary Black.

Q. And which hospital did you respond to?

A. Due to the fact that there was a -- a death involved in the shooting incident that had occurred at Mary Black, Investigator Durham told me the he had spoken with Sergeant Wood, who advised for me to take the -- the -- the death and for him to respond to Spartanburg Regional to that -- to deal with that -- that set of victims.

Q. Once you got to Mary Black Hospital, who was the individual who was dead?

(Brief pause while witness examines documents.)

A. The deceased victim was identified as a Duncan Geter (phonetic), otherwise known as "AJ"

Q. Were there any other individuals with the decedent when he was injured?

A. At -- at the time that I arrived at the hospital, there were actually three individuals that were pointed out to me by uniformed officers that were on the scene.

There was the decedent. There was another young man; the last name is Miller. I'm not -- Bryant Miller (phonetic). And, then, the decedent's brother.

Q. Was it Dwight Geter (phonetic)?

A. Yes, sir.

Q. Did you *Mirandize* the individuals, Mr. Miller or Mr. Geter?

A. No, sir, not at all.

Q. Did you talk to Mr. Geter or Mr. Miller?

A. I did.

Q. And what was the point of not *Mirandizing* these two individuals?

A. They were -- they were victims. At that point, everything that I had, all the information that I had at that point, they were victims.

And I was there to try to find out where the incident had occurred and who may have been responsible for the incident.

Q. Did you have any idea these two -- this situation was linked to the two victims at Spartanburg Regional and the victims at Mary Black?

A. No, sir, not at that time.

Q. Okay. Did you continue to talk to Mr. Geter and Mr. Miller?

A. I spoke with Mr. Miller. He was being treated for his injuries. I spoke to the decedent's brother, and at -- at some point -- bear with me one second.

(Brief pause while witness examines documents.)

A. Mr. Miller had given a possible location of the crime scene. So, I had asked that uniform patrol go there and, then, have Mr. Geter transported to the sheriff's office where I could talk to him further.

Q. And where was the crime scene location?

A. The -- the location that -- that Mr. Miller had -- had stated they were at was leaving Lakeview Manor (phonetic). Patrol units went up to that area and actually located the crime scene in the area of Burns Road (phonetic) and Mount Pleasant Road.

It is a -- an intersection just down from Lakeview Manor.

Q. At that point, did you -- did you interview Mr. Geter further or go over to Spartanburg Regional Hospital?

A. No. I went over to Spartanburg Regional, went over to the hospital and spoke to Investigator Durham at that point.

Q. And I guess you guys shared information. Did you develop any potential single crime scene or numerous crime scenes?

A. Well, based on what Investigator Durham had told me at that point, that the two victims at the hospital were telling him that they had been shot there at the exit ramp on Heron Circle and I-85 Business, and due to the fact there had been no reported shots fired or any type of -- of other things to substantiate, you know, what they were claiming; at that point, I believe we began at that point to feel that both incidents were going to be related.

Q. Did you gather any information from Mr. Geter or Mr.

Miller that they had difficulties with any individuals at Club Dreams earlier that night?

A. They -- they did. Mr. Geter -- Dwight Geter had indicated that they had originated -- that they had -- the events that led up to the shooting had originated from Club Dreams.

Q. And what -- and, again, did you talk to Detective Durham about the identical information about Club Dreams and a later shooting?

A. That's correct.

Q. Is that when you believed that these two incidents were related and had occurred at the same time?

A. Once -- once -- once it was discovered that both of the incidents allegedly had -- or both of the sets of -- the two sets of individuals had been at Club Dreams, we began to realize, at that point, this was probably going to be a related situation and not two separate incidences.

Q. Did Mr. Geter and Mr. Miller ever identify anybody, either Mr. Cathcart or Mr. Reeder, as being involved?

A. Mr. Geter did.

Q. Who had been involved?

A. He identified Mr. Darius Cathcart as the individual that his brother had gotten into an altercation with at the club.

Q. All right. And did he tell you about the shooting

that happened later?

A. Yes, he did.

Q. What did he say?

A. He stated that they had gotten into an altercation; that it had gone into the parking lot, at which point everybody had broken up and left in -- in separate vehicles.

He went on to tell me about going to the Sunoco and to the Waffle House. At some point, the sheriff's office was notified of the crowd that was gathering at the Waffle House. The sheriff's office came in to disperse the crowd.

They had left the Waffle House and were going to -- excuse me -- to Lakeview Manor. While they were in Lakeview Manor, they had -- he observed a vehicle that was following them.

They actually went into Lakeview. And I believe, if I remember correctly, he was going to see someone by the name of I think it was Marty.

But, anyway, they -- they had been in Lakeview for a very brief period of time. When they came back out, as they approached the intersection at Mount Pleasant and Burns Road, he observed a vehicle coming up behind him with no headlights on.

He went on to say that the vehicle pulled along side of him and that was when the shots started to be -- to be fired.

Q. Did he describe the vehicle?

A. I believe he described it as a...

(Brief pause while witness examines documents.)

A. He described it as a small car. And he thought that it could have been green.

Q. All right. Did he say anything -- who shot first or they shot first?

A. He stated that they shot first.

Q. Did this information sound similar to the information that Mr. Cathcart had given to Detective Durham?

(Brief pause while witness examines documents.)

A. I don't recall exactly what -- at that point, what Mr. Cathcart had told Investigator Durham.

Q. Did you -- did you go talk with Mr. Cathcart?

A. No, no, I did not.

Q. Did you talk with Mr. Reeder?

A. No, sir, I did not.

Q. At any time, did you talk to Mr. Cathcart or Mr. Reeder?

A. Not -- not during the initial part of this, no.

Q. Not on March 14th?

A. No, sir.

Q. On March 15th, did you go talk to Mr. Cathcart?

A. On March the 15th, I did talk to Mr. Cathcart.

Q. I show you what's been marked as State's Exhibit

Number 2 and ask you if you recognize that?

(Documents handed to the witness.)

A. Yes, sir, I do.

Q. What is that document?

A. It is a pre-interrogation waiver form used by the Spartanburg County Sheriff's Office.

Q. And did you use that pre-interrogation waiver form with Mr. Cathcart when you were talking to him?

A. I did.

Q. Where did that discussion take place?

A. At the Spartanburg County Sheriff's Office.

Q. When Mr. Cathcart was at the sheriff's office at that time, was he considered a suspect?

A. He was under arrest at that point on a search warrant I believe.

Q. On a bench warrant?

A. Yes, sir.

Q. Did you discuss with Mr. Cathcart anything involving the death of Mr. Duncan Geter?

A. No, sir. At this point, I -- we had already found the vehicle that had been burned. And I wanted to speak to Mr. Cathcart in regards to the -- the burning of that -- of that car.

Q. The vehicle that you thought had been involved in the shooting?

A. Well, we didn't know at that point.

(Brief Pause)

Q. Did Mr. Cathcart, after being advised of his rights, tell you anything about a shooting that happened?

A. Well, once -- once I had *Mirandized* him, and told him that I needed to speak to him about the -- the car being burned, I asked him if he would just give a statement in regards to that.

He stated that he would. I provided him with a voluntary statement form, filled out the top of it. And I gave him the -- the pad and -- or the statement form and a pen. And I left the room.

Q. All right. And, on the interrogation form, would you read that, please?

A. "Pre-interrogation Waiver Form, Spartanburg County Sheriff's Office"; "Darius Cathcart"; the address is "336 Crestview Drive"; "age: 23".

The date, "3/15/09"; Time, "5:45 p.m."; Location, "Spartanburg County -- or "The sheriff's office, CID." (Phonetic)

"You have the right -- "I have the right to remain silent. Anything I say can and will be used against me in a court of law.

"I have a right to talk to an attorney and have him present while I'm being questioned. If I cannot afford to

hire an attorney, one will be appointed to represent me before any questioning if I so wish.

"I have the right to stop answering questions at any point in the questioning. My rights have been read to me by L. Williams. I have read the same and understand my rights fully."

Q. Did he sign that?

A. He did. He actually -- he actually signed it in the witness slot. And I showed him -- he printed it in the witness slot, and then, signed it in the -- in the correct place.

Q. Did you -- were there any other information on it related to him?

A. The second part to the form is, "I waive or give up my rights as explained above and agree to talk to Officer Williams in reference to crimes in Spartanburg County." And, then, I rotated that it was a vehicle, in reference to a vehicle.

"And my statement -- and my statement that I may make is of my own free will without fear, threat, promise, favor, or award of any kind. And I'm able to read and write the English language." And he stated to me that he had completed eleven (11) years in school.

Q. All right. And did he also sign that one?

A. Yes, sir, he did.

Q. Was it witnessed?

A. It was. It was witnessed by myself and notarized by Investigator Jason Bryant (phonetic).

Q. Okay. Also attached to State's Exhibit Number 2 I believe -- is there a written statement attached?

A. Yes, sir, there is.

Q. Who wrote that statement?

A. Mr. Cathcart.

Q. Did he write that statement in your presence?

A. He wrote the statement. And, then, I came back in and asked him if it was his statement. He acknowledged that it was.

At the end of it, I write "End of Statement" and cross out any additional lines, fill out the date and the time and the number of pages that the statement consists of. And, then, have him sign it in my presence and witness and notarize the statement.

Q. Okay. And what did Mr. Cathcart tell you about the shooting?

A. Well, in his statement, he said that, "...around three-thirty (3:30) or four (4:00) an incident happened involving Rashawn and I getting shot. I drove to Church's Chicken and went to the hospital.

"A guy named Black was to drop my car off in Park Hills. When I was released, I went to look for my car. It

was nowhere in Park Hills."

He went on to Rashawn's mother -- do you want me to read it verbatim or just ---

(Brief Pause)

Q. You can just -- was this statement given in relation to the shooting or something else?

A. No, sir. I had explained to him -- when -- when he first came in the interview room, he wanted to talk about the shooting.

And I told him that, since he had asked for -- asked for an attorney in regards to the shooting, that I -- I had nothing to talk to him about with that; that I was merely inquiring about the vehicle being burned and to see what knowledge, if any, he had about how his car wound up being set on fire.

And this was the statement that he provided to me as to the whereabouts of his car and the last time he knew where his car was, who would have had his car, and things such as that.

Q. And based, on you interviewing him, did you find out about if the same car that was burned was the car he was in with Mr. Reeder when the shot -- the shooting occurred?

A. Correct.

Q. And the ascertain -- what you were asking him about was a car?

A. Well, about the car and -- and the fact that we knew that or we felt that the car had been intentionally set afire; the fire Department felt that it was an arson, things such as that.

So, it -- it was merely trying to figure out what was going on with the vehicle.

Q. Did Mr. Cathcart at any time say that car that was burned was not the car that he was driving that night ---

A. No, sir.

Q. --- of the shooting?

A. No, sir.

Q. And -- never mind. Did you ever give Mr. Cathcart any deal regarding the car or the shooting situation?

A. Absolutely not.

Q. Any promises?

A. No, sir.

Q. Any threats?

A. No, sir, none at all.

Q. And this I guess about one page statement that he gave about the shooting says he and Mr. Reeder were involved in the shooting; is that correct?

A. It -- it gives an -- an approximate time. "An incident happened involving Rashawn and I getting shot."

Q. And that was the same as the situation involving Mr. Geter being shot and killed, correct?

A. That's correct.

MR. GRAY: Okay. Are those questions are finished. I have no more questions. Please, answer any questions Mr. Poole may have or Mr. Brown may have.

THE COURT: Mr. Poole?

MR. POOLE: Thank you, Your Honor.

THE COURT: Yes, sir.

CROSS EXAMINATION by MR. POOLE:: 2:57 P.M.

Q. Detective Williams, basically -- I mean, the long and short of what you're saying is that, as far as any statement, we're talking about that Mr. Cathcart gave you, was the one on March 15th; is that right?

A. Yes, sir, that's correct.

Q. So, for purposes of this hearing, we could just limit this to that statement; is that right, the -- the one you just mentioned?

A. That was the only -- the only opportunity that I had at that point to -- to interview him.

Q. Okay. So, you never did talk to him about this case except for these two dates or -- or right around the time this initial -- the gunfire happening between these two vehicles occurred on March 14th?

A. If -- are -- if you're asking me did I have an opportunity to interview him at the hospital, no, sir, I did not.

Q. Okay. But, within let's say a seventy-two (72) hour period after the incident of the shooting, we're confined to this statement that you're just talking about, right?

A. Yes, sir. This -- this is the -- the very first time that I personally had contact with Mr. Cathcart.

Q. And this was on March 15th at six, ten (6:10)?

A. No, sir. The -- the -- the statement was completed at 6:10 p.m. And he was actually picked up -- I'm not sure what time the car stop was initiated. But he was -- he was brought to the sheriff's office and given *Miranda* at 5:45 p.m.

Q. Okay. Yeah. Well, that's what I'm talking about. I mean, we're talking about an incident that occurred in the early morning hours of March 14th. That's the shooting?

A. That's correct.

Q. And, then, on six -- five (5:00) -- or six o'clock (6:00) on the 15th is the only contact you had with -- direct contact you had with Darius Cathcart?

A. Yes, sir.

Q. And that was basically for the purpose of talking about a car burning?

A. That's correct.

Q. Is that right?

A. That's correct.

Q. And let me ask you this: Did you check out what he said in this statement?

A. (No response)
Q. Did you follow up on it ---
A. Yes, sir.
Q. --- to ensure its accuracy?
A. After -- after the fact, yes, sir.
Q. Okay. Did what he tell you -- was it accurate?
A. As far as dropping -- getting dropped off?
Q. As far as you know?
A. At...
(Brief Pause)
A. Yes, yes. As far as that goes, I mean, he ---
Q. Okay. The -- the contents of his statement?
A. Yes, sir.
Q. So, you have no reason to believe that he was saying anything untruthful in that statement?
(Brief Pause)
A. Well, at that point, I didn't know.
Q. Okay. Well, at any point later, did you determine that what he was saying was untruthful?
(Brief Pause)
A. At -- as far as the ---
MR. GRAY: Excuse me, Your Honor. I -- I understand this is a pre-trial hearing. And I understand what his hang up is on this situation.
For the Court's edification, I believe Mr. Cathcart

was subjected to a lie detector test; is that correct –

A. Yes, sir.

MR. GRAY: --- at a later time, Your Honor, as far as this officer answering this question truthfully. But I'm telling the Court that there were lie detector tests and the results were ---

THE WITNESS: Well, Your Honor, if I may ---

THE COURT: Well, this is a pre-trial hearing ---

MR. GRAY: Yeah.

THE COURT: --- so, you can -- you can testify about that.

MR. GRAY: Thank you, Your Honor.

THE COURT: You -- you can testify about any kind of lie detector test or whatever effect that had on your questioning. So, testify freely about that.

THE WITNESS: Okay.

THE COURT: Now, at the trial, that will be different matter. But this -- when the jury is present. Go ahead.

THE WITNESS: How should I address prior counsel?

Q. (By Mr. Poole) Well, I'm -- I'm just -- I'm just trying to get a couple of things clear. We're just talking about this statement that I'm showing you?

A. Right, the March 15th statement.

Q. Dated 6:10 p.m.?

A. Yes, sir.
Q. And did you write this statement out?
A. No, sir, I did not.
Q. Okay. He wrote it out?
A. That's correct.
Q. All right. Now, as far as these facts are concerned, did you talk to anybody he mentioned in this statement such as his aunt or anybody else?
A. Yes, sir.
Q. Okay. And by all those -- all those things regarding the prior burning, did they pan out?
A. No, they did not as far as -- as far as his truthfulness as to this information ----
Q. Uh-huh (affirmative).
A. --- no, not -- not at this point. Now later on in - when -- when Mr. Turnipseed represented him and -- and we had some of those meetings and motions ---
Q. Uh-huh (affirmative).
A. --- you know, I mean definitely none of this was the way that it actually happened.
Q. Okay. See, I wasn't there ---
A. Right.
Q. Uh-huh (affirmative).
A. And I just don't know how in depth we need to go right now for this. But, I mean, he indicated who Black was.

He indicated, you know, that Black had -- had burned the car; that he had full knowledge of everything that, you know, had gone on there.

That -- so, you know, if you're asking me was this -- this statement truthful, no, it wasn't.

Q. Okay. That's what I'm asking.

A. Right.

Q. All right. So, you're saying this statement is not truthful?

A. No, sir.

Q. Okay. So, it's fake?

A. I mean, you asked me did I follow up on it.

Q. Uh-huh (affirmative).

A. Do I know that it's not truthful now? Yes.

Q. Are you -- okay. So, it's not truthful?

A. Based on his own statements it's not.

Q. Okay. That's what I wanted to know.

(Brief Pause)

Q. Now this interview occurred at the sheriff's department; is that right?

A. Yes, sir.

Q. And you were aware that earlier he had asked for an attorney?

A. That's correct.

Q. And, so, we're talking about a car that was

associated with the shootout and wherein a murder occurred?

A. Not -- that's correct. That's correct.

Q. And you knew that at the time you started asking him questions?

A. Well, at the time, based on the statements that he had given to Investigator Durham, he had no idea who had his car or where his car would have been.

And I was trying to ascertain who would've -- who would've burned his car; why would -- how would his car wind up on the railroad tracks in Una on fire?

Q. Okay. But you knew that this car was a -- probably the car that was involved in the shootout between two vehicles?

A. That's correct.

Q. And you knew that he had been in that car?

(Brief Pause)

A. That -- yes, sir, yes, sir.

Q. Okay. And you further knew that earlier that day he had invoked his right for an attorney with regard to him being viewed as a suspect in a murder?

A. That's correct.

MR. POOLE: Okay. Thank you.

THE COURT: Mr. Brown?

MR. BROWN: Very briefly.

THE COURT: Yes, sir.

CROSS EXAMINATION by MR. BROWN: 3:05 P.M.

Q. You didn't talk to Mr. Reeder?

A. Not until we went to the hospital, no, sir.

Q. And, based upon your report, once you went to the hospital, were you advised by Investigator Durham as it relates to Mr. Reeder's condition?

A. I -- I don't understand your question. Mr. Durham was with me when we went to the hospital.

Q. Specifically I draw your attention to the second page of your report, the first paragraph.

(Brief pause while witness examines documents.)

Q. Does it state that Mr. Reeder was taken to surgery and that he was shot in the left arm?

A. Yes. But you asked me when I had -- when I went to the hospital and met with him. The first time I went was when he was already upstairs in the -- was the first encounter that I actually had with Reeder.

Q. All right. And based upon that, did you ascertain any information from Mr. Reeder?

A. Based on what?

Q. When you first met with him?

A. No, sir, I did not.

Q. All right. And, so, that would be consistent that you knew he was shot in the left arm and he went to surgery and you didn't get anything else from him?

A. No, sir. When I -- we -- we went to the hospital to talk to him. And he was -- he was under the influence of pain medication.

At that point, warrants were signed on him. And I did not -- did not try to elicit any information from him whatsoever at the hospital.

Q. Based upon his being under the influence?

A. That's correct.

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

MR. GRAY: Your Honor —

THE COURT: Mr. Gray?

MR. GRAY: --- briefly.

THE COURT: Yes, sir.

REDIRECT EXAMINATION by MR. GRAY: 3:06 P.M.

Q. Investigator Williams, as far as Mr. Cathcart's written statement saying he and Mr. Reeder were together when the shooting occurred, that -- that part you believe is truthful or not?

A. That part is -- is truthful, yes, sir.

Q. But the part related to any of the burning of the car, disposal of the car, you -- you say that's not true?

A. That's correct.

MR. GRAY: Okay. Thank you. Nothing further.

THE COURT: Mr. Poole?

MR. POOLE: Nothing further, Your Honor.

THE COURT: You may step down.

(The witness complied with the Court's request.)

THE COURT: The State may call its next witness.

MR. GRAY: We would have no more witnesses at this time, Your Honor, subject to testimony related to State's Number 1 and Number 2 shall be admitted.

THE COURT: All right. Describe what those -- what is State's Number 1 and Number 2? Is that the ---

MR. GRAY: State's Number 1, Your Honor, ending -- testimony regarding these two. State's Number 1 is the sheriff's department's pre-interrogation waiver form. State's number 2 is a pre-interrogation waiver form also by Mr. Cathcart by Mr. Williams;

Any testimony -- any testimony given by officers -- statements given by Mr. Cathcart and Mr. Reeder be admitted against their interest as true subject to their testimony at this time, Your Honor.

THE COURT: All right.

MR. GRAY: And we're resting at this time.

THE COURT: I understand. Does the Defense wish to call witnesses?

MR. POOLE: Yes, sir. Your Honor, I'd call Darius Cathcart.

THE COURT: Come forward, sir, to my left and be sworn. Right over here (indicating).

(The witness complied with the Court's request.)

(Whereupon,

DARIUS CATHCART

having first been duly sworn, testified as follows:)

THE COURT: Once you're seated, state your name.

THE WITNESS: Darius Cathcart.

MR. POOLE: May it please the Court?

THE COURT: Your witness.

DIRECT EXAMINATION by MR. POOLE: **3:08 P.M.**

Q. Mr. Cathcart, do you know the reason you're here today?

A. Yes, sir.

Q. Do you know that this is a limited hearing?

A. Yes, sir.

Q. And you know the issues; what we're talking about?

A. Yes, sir.

Q. We're talking about these statements?

A. Okay. Yes, sir.

Q. Do you understand that?

A. Yes, sir.

Q. And that's all we're limited to?

A. Yes, sir.

Q. Do you further understand -- were you present in the courtroom when we heard these three (3) State's witnesses?

A. Yes, sir.

Q. Do you remember the testimony of Deputy Harrell, the first witness?

A. Harrell? Oh, yes, sir, yes, sir.

Q. Okay. All right. Do you remember talking to him?

A. Yes, sir.

Q. On the 14th of March?

A. Yes, sir.

Q. Tell us the circumstances of that conversation.

A. The only thing he was really asking me was what happened, where did the shooting take place. And I told him I don't recall.

And I think him and Brad James (phonetic) was -- I told them it was like after the club; I would tell him the location, but they kept on saying Charisma Drive (phonetic). I never told them Charisma Drive.

Q. Okay. Well, where did this conversation take care -- take place?

A. It took place in the emergency center -- room.

Q. Had you been shot?

A. Yes, sir.

Q. What was the nature of your wound?

A. I mean, I was in pain. They gave me a pill.

Q. Did you have a bullet entry wound?

A. No, sir, just blood.

Q. Okay. What kind of treatment did you receive?

A. I don't know what kind of medicine they gave me.

Q. Okay. Were you under the influence of drugs when you talked to ----

A. Yes, sir.

Q. --- Deputy Harrell?

A. Yes, sir.

Q. All right. What kind of -- do you recall the treatment they gave you?

A. No, sir.

Q. How long were you in the hospital?

A. From the time the incident occurred till the time an officer took me to the sheriff's office.

Q. How long was that?

A. I think I was in the hospital I'd say probably about -- about three (3) hours I want to say.

Q. Did you get any sleep?

A. No, sir.

Q. How were you taken to the sheriff's Department from the hospital?

A. The sheriffs told me I had to come into the sheriff's office.

Q. Okay.

A. I can't recall what sheriff it was.

Q. Do you remember your conversations either at the

hospital or at the sheriff's office with Investigator Chris Durham?

A. Which one Durham?

Q. Number two (2).

A. Yes, sir.

Q. Okay. Tell us about the circumstances surrounding that interview.

A. Well, he was just -- he basically asked me what happened. And I told him I want my -- an attorney present. And, so, he left out of the room.

He never came back. And, then, another officer told me -- I kept on asking him can I leave; am I being arrested. And I said, "Can I leave?" He said no, I'm on investigative detention or something like that.

Q. Okay. Well, did you give Investigator Durham -- did you recite to him a factual circumstance surrounding the shooting ---

A. No, sir.

Q. --- before you -- I haven't finished my question.

A. Okay. Sorry about that.

Q. Did -- well, when did you ask for an attorney is what I'm asking you —

A. Well, he was asking me ---

Q. --- when you were talking to Investigator Durham?

A. He was asking me everything that happened. And I

told him I wanted my attorney present.

But he had a -- another officer come in and sign a paper that said I wanted an attorney present.

Q. Okay. Well, did you talk to Investigator Durham about what happened?

A. I just told him it was a shootout.

Q. Okay.

A. Yes, sir.

Q. All right. Were you under the influence of drugs?

A. Yes, sir.

Q. Had you been given a prescription?

A. Yes, sir.

Q. How many -- let me ask you this: What kind of drugs were they?

A. Lortabs.

Q. How many had you been given?

A. I don't know. They gave me about -- I think they gave me two (2). And, then, they gave me a prescription to take home with me.

Q. Okay. And you didn't fill that prescription before you went to the sheriff's department?

A. No, sir.

Q. Okay. So, my question to you is, do you remember when you asked for an attorney when you were talking to Investigator Durham?

A. Yes, sir.

Q. Do -- you do remember talking to him?

A. Yes, sir.

Q. When was that?

A. At the sheriff's office.

Q. No, when during the course of your interview with Investigator Durham, did you ask for an attorney?

A. Well, I had told him -- he asked -- he really asked me what happened, and I told him there was a shootout. And, then, I told him -- he asked me do I want to write a statement and I told him I wanted to see an attorney. I would feel comfortable if I had my attorney present.

Q. Okay. Did he leave the room and ask you to write the statement?

A. Yes, sir, he did.

Q. And you did not?

A. Yes, sir. Then he had another officer come in and sign off.

Q. Okay. Do you remember your ---

THE COURT: He had another officer come in and do what?

THE WITNESS: I think he had another officer come in and sign off on the paper that was saying that I wanted my attorney present.

THE COURT: Okay. Go ahead.

Q. (By Mr. Poole) Do you remember speaking with Detective Lorin Williams?

A. Yes, sir.

Q. And under what circumstances were those discussions?

A. When I -- when I arrested on a Sunday.

Q. So, you were actually arrested?

A. Yes, sir.

Q. Were you taken to the sheriff's department?

A. Yes, sir.

Q. Was it around five, forty-five (5:45)?

A. Yes, sir.

Q. Okay. And did he tell you that he wanted to talk to you just about the car?

A. Yes, sir. Well, he told me -- he was asking me about the car. And, then, I was explaining to him about the car, but then he told -- he wanted me to write a statement;

But he said, "You got bigger problems you need to worry about; let's talk about this shooting." And, then, he told me that I was going to be charged with murder.

Q. Okay. Did you give a written statement to him?

A. Yes, sir.

(Brief Pause)

A. Because he basically said that the shooting -- I mean the car fire that -- that wasn't important. He was basically asking something about the shooting; let's talk

about the shooting because that's -- that's what -- that's more import -- important.

Q. Had you been to bed that day?

A. No, sir.

Q. Had you been taking your Lortab?

A. Yes, sir.

Q. Had you gotten your prescription filled?

A. Yes, sir.

(Brief Pause)

Q. Were you under the influence of drugs when you had an interview with Lorin Williams?

A. Yes, sir, I had ---

Q. Had you taken Lortab?

A. Yes, I had taken one earlier.

(Brief Pause)

MR. POOLE: Answer any questions that the State or Mr. Brown may have for you.

THE COURT: Mr. Brown, you wish to ask any questions?

MR. BROWN: No, I don't have any questions.

THE COURT: Mr. Gray?

MR. GRAY: Thank you, Your Honor.

CROSS EXAMINATION by MR. GRAY: 3:16 P.M.

Q. Mr. Cathcart, the second -- the second day, when you were under arrest, you wrote a statement?

A. Yes, sir.
Q. The first day, the first statement, you weren't under arrest, but you gave him that statement?
A. Yes, sir.
Q. So, when you knew you were handcuffed and properly charged with the arson of a car or murder, you decided to write a statement?
A. Yes, sir.
Q. And, when you weren't considered a suspect at the sheriff's office, you didn't want to write a statement then?
A. Well, it sure seemed like they was trying to make me out as a suspect the first day when I went to the sheriff's office.
Q. Answer -- answer my question.
A. Yes, sir.
Q. When you were -- you knew you were a suspect on the second time; that's when you decided, "Let me write this down"?
A. Well, the main focus was my -- he was talking about my car at first, and then, it switched into the murder, the shooting.
Q. And that's why -- is that why the first page you said on here in the statement is, "An incident happened involving Rashawn and I getting shot"?
A. Yes, sir.

Q. That's why the first thing you said about -- was about a shooting when you think the detective was asking you about the car?

A. Well ---

Q. Why would you say anything about a shooting if you just testified that the detective was asking you about a burned car?

A. Well, it led up to it. I mean, you got to go through "A" to "B." It led up to it.

Q. I understand -- yes, sir, I agree with you. But you started with "B," ---

A. Right.

Q. --- correct?

A. Well, the shooting happened first.

Q. All right.

A. So, after the shooting, the car was burnt.

Q. Thank you very much. All right. Now, you were in the hospital. Did any of these officers come to talk to you ---

A. Yes, sir.

Q. --- at the hospital?

A. Yes, sir.

Q. Okay. Did any of these officers give you any *Miranda* rights or anything like that at the hospital?

A. No, sir.

Q. Did they tell you, you were under arrest for a potential crime?

A. No, sir.

Q. Did they tell you that they were -- they would investigate your shooting as a victim?

A. Yes, sir.

Q. They did tell you that? And that's when you first talked to this officer (indicating)?

A. Yes, sir.

Q. So, you weren't a suspect at that time?

A. No, sir.

Q. You knew that, correct?

A. Yes, sir.

Q. All right. And, then, the second time, when you were at the sheriff's office, and you knew you were not a suspect, you talked to Officer Durham; is that correct?

A. Yes, sir.

Q. And the third time, when he told you, then, that you were a suspect, you gave him a written statement?

A. Well, he was asking about the car; that's all.

Q. No, but he said you were a suspect in a crime. And you -- of course, you knew that was a shooting, correct?

A. No, he didn't tell me I was a suspect. He didn't say I was a suspect.

Q. All right. Excuse me, sir. Let me show you State's

Number 2.

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

THE COURT: Yes.

Q. (By Mr. Gray) Sir, I want to show you a document here. And I was going to ask you -- and I'll ask you: Is that your signature?

A. Uh-huh (affirmative).

Q. And right here, what is this? Would you read this part of this statement?

A. "I waive my rights."

Q. No, "...in..."

A. "In reference to..."

Q. And what does it say right there (indicating)?

A. "...crimes in Spartanburg County, a vehicle."

Q. "Crimes in Spartanburg County..."

A. "A vehicle."

Q. "...a vehicle."

A. Uh-huh (affirmative).

Q. So, you knew you were talking about some vehicle crime?

A. Yes, sir.

Q. In Spartanburg County?

A. Uh-huh (affirmative).

Q. The burning of a car would be a vehicle crime in Spartanburg County?

A. Yes, sir.
Q. And you talked about a car getting burned that you didn't know anything about?
A. Yes, sir.
Q. Okay. You said it at the end of the statement, not at the beginning?
A. Well, I didn't know nothing about my vehicle got burnt until after it got burnt.
Q. But you knew about the shooting that you and Mr. Reeder were part of, correct?
A. Yes, sir.
Q. And that's what you put first?
A. Yes, sir.
Q. Now, did they ever threaten you with anything?
A. No, sir.
Q. Did they make any promises to you?
A. No, sir.
Q. At any time, any of these three gentlemen (indicating)?
A. No, sir.
Q. Never made you any promises about the charges or arrest charges or any stuff that had to do—with the solicitor's office or anything like that?
A. No, sir.
Q. About any possible sentencing, did they make any

promises to you?

A. No, sir.

Q. And Mr. Cathcart, I don't mean to be indelicate here, but this isn't your first rodeo, is it?

A. No, sir.

Q. So, you understand what *Miranda* warnings really mean, correct?

A. Yes, sir.

Q. So, let's see, in two thousand, three (2003) you were arrested?

A. Yes, sir.

Q. For public disorderly conduct?

A. Uh-huh (affirmative).

Q. You were convicted of that, correct?

A. Yes, sir.

Q. Also, in two thousand, five (2005), you were arrested and convicted of —

MR. POOLE: Your Honor, may it please the Court?

THE COURT: Yes, sir?

MR. POOLE: I -- I think we're getting a little bit further off the path of a *Jackson vs. Denno* hearing with his prior record recitation.

MR. GRAY: Your Honor, I'm going to education, knowledge, and ability in this situation. If you can't -- if he had never been arrested at all, he wouldn't have

known anything about *Miranda* warnings.

THE COURT: I'm going to overrule the objection. The Court can sift through this. Go ahead.

MR. GRAY: Thank you, Your Honor.

Q. (By Mr. Gray) Also, you had one, two, three charges in two thousand, four (2004) for petit larceny, correct?

A. Yes, sir.

Q. Let's see, two thousand, six (2006) a weapons charge, correct?

A. Yes, sir.

Q. So, it looks like you've been arrested at least seven (7) to ten (10) times, correct?

A. Yes, sir.

Q. And every time you were *Mirandized* and understood your *Miranda* warnings?

A. Well, I didn't understand then; I was just charged with them. I mean, like I was convicted of other crimes like three years after they happened.

Q. Three years after they happened?

A. Most of these charges happened in two thousand, three (2003), but I was enrolled at SCDC in two thousand, five (2005) roughly to the end of two thousand, seven (2007).

Q. Okay.

A. So, I was brought back to plead on criminal charges.

Q. You were driving under suspension in two thousand,

eight (2008), did you not understand it then?

A. No, because I -- I mean, I wasn't no suspect. And I wasn't convicted of that. I wasn't convicted of it.

MR. GRAY: May I approach, Your Honor?

THE COURT: You may.

MR. GRAY: Thank you.

(Mr. Gray approaches the witness and shows him document.)

Q. (By Mr. Gray) Mr. Cathcart, would you look at this, please?

(The witness complied with the request.)

Q. Do you see that name right there (indicating)?

A. Yeah.

Q. That's your name, correct?

A. Yeah.

Q. And what does that say?

A. That's a pending charge.

Q. What else does it say, sir?

A. I wasn't convicted of it. I never came to the court on it.

Q. What does that say?

A. "Convicted."

Q. Okay.

A. I've never been to court on it.

Q. For driving under suspension?

A. I've never been to court on it.

Q. Okay. So, that's your understanding, if you don't go to court on stuff, that's not a conviction?

A. Well, it's a pending charge.

Q. It's a pending charge?

A. Uh-huh (affirmative).

Q. But your understand your arrest rights —

A. Uh-huh (affirmative).

Q. --- all of them?

A. Yeah.

Q. So, Mr. Cathcart, you were interviewed by officers; this officer (indicating), and this officer (indicating). And, when you were interviewed by this officer (indicating), you knew exactly what was going with regard to your *Miranda* rights, sir?

A. Uh-huh (affirmative).

MR. GRAY: Thank you. Nothing further, Your Honor.

THE COURT: Anything further, Mr. Poole?

MR. POOLE: No redirect, Your Honor.

THE COURT: You may step down. I assume, Mr. Brown, you have no other questions?

MR. BROWN: None, Your Honor.

THE COURT: All right.

(The witness complied with the Court's request.)

THE COURT: Any other witnesses, Mr. Poole?

MR. POOLE: No, sir.

THE COURT: Mr. Brown, do you wish to call any witnesses?

MR. BROWN: Your Honor, we call Rashawn Reeder.

THE COURT: Come forward, sir, and be sworn.

(The witness complied with the Court's request.)

(Whereupon,

RASHAWN REEDER

having first been duly sworn, testified as follows:)

THE COURT: Have a seat, please.

DIRECT EXAMINATION by MR. BROWN: **3:24 P.M.**

Q. Mr. Reeder, if you would, state your name.

A. Rashawn Lamar Reeder (phonetic).

Q. Mr. Reeder, you understand why you're here today?

A. I believe so, sir.

Q. Well, you know you've been charged with murder and two additional counts?

A. Yeah.

Q. And you're charged with Mr. Cathcart there?

A. Yes, sir.

Q. Mr. Reeder, you heard from Investigator Harrell in this case. And you also heard from Investigator Durham and you've also heard from Investigator Williams?

A. Yes, sir.

Q. You heard their testimony here today?

A. Yes, sir.

Q. And tell me, when you saw or potentially saw these three individuals, were you in Spartanburg Regional Medical Center?

A. Uh-huh (affirmative) -- I only remember really one of them, seeing one of them, or either talking to one of them.

Q. All right. Which person was that?

A. I ain't sure of his name right here (indicating), what's his name right here (indicating)? Yeah, there you go.

Q. Investigator Lorin Williams?

A. Yeah, that's -- that's the one I'm sure -- I'm sure about right now.

Q. Okay. And you've heard Mr. Williams' testimony today in court?

A. Uh-huh (affirmative), yes, sir.

Q. And you -- you heard him say that he didn't have a conversation with you based upon the fact that you were out of it or he understood that you were under some -- some kind of medication?

A. I heard him say that; I know he said it.

Q. And, at the time you had been upstairs in that -- in that room at the hospital, is it true what you heard in the courtroom today, that you were out of it?

A. Yeah. Yeah, I pretty well -- the whole time, yeah.

Q. You were on some kind of medication?
A. Yes, sir.
Q. And you heard some discussion, based upon their testimony, that you were shot somewhere?
A. No, I don't -- I don't -
Q. Well, let me -- let me clarify my question. Were you shot in the arm?
A. Oh, yeah.
Q. Which arm?
A. That would be my left arm.
Q. And what type of injury was it to your left arm?
A. A shot -- a shot from a gunshot wound.
Q. And were you taken to surgery based upon that?
A. Yes, sir.
Q. And were you in the hospital for a few hours?
A. I'm not real sure of the time, but I do know I was upstairs and quick I know.
Q. How long did you stay in the hospital?
A. About five (5) days.
Q. Okay. And, so, you had a pretty serious injury?
A. Yeah, pretty serious. They didn't want to release me.
Q. Okay. So, in essence, you really don't remember talking to or giving any type of statement to these officers (indicating)?

A. No, sir.

Q. So, you say that you were out of it or under medication during that time period?

A. Yes, sir.

Q. And you would imagine it would have to be some serious pain killers of some sort?

A. Yeah. I believe it was Lortab that they -- they had gave me when I went to the County Jail.

Q. Okay. And that was later on after you were transported from the hospital?

A. Yeah. I -- I remember he -- he tried to talk with me, when they -- when they released me from the County Jail when I came to the -- no, when they released me from the hospital and I came to the County Jail.

Q. Okay. And, at that time, they had already served warrants on you?

A. Yeah, yeah, they had already served the warrants.

Q. So, you advised them you wanted an attorney at that point?

A. Yeah, I had -- yeah.

MR. BROWN: Please, answer any questions Mr. Gray might have.

THE COURT: Let me check and see if -- Mr. Poole, do you have any questions?

MR. POOLE: No, sir, I do not.

THE COURT: Now you may proceed, Mr. Gray.

MR. GRAY: Thank you, Your Honor. I apologize.

THE COURT: That's all right.

CROSS EXAMINATION by MR. GRAY: 3:27 P.M.

Q. Mr. Reeder, at any time when any of these officers while talking to you, were you under arrest at the hospital?

A. Was I under arrest?

Q. Yes, sir. Did somebody come in and handcuff you, while you were in the hospital, and put you under arrest and start talking to you at the hospital?

A. They didn't put me in handcuffs when I as at the hospital. They just -- they shipped me to another room or something I believe.

I think that they did; they kept moving me around. That's all I remember.

Q. So, you didn't talk to any one of these officers?

A. No. I remember talking with Mr. Lorin Williams. I don't remember talking to the other two.

Q. You don't remember talking to the other two?

A. Huh-uh (negative).

Q. Do you remember telling Mr. Williams that you're left handed?

A. Nah, I don't remember saying anything like that.

Q. Do you remember telling this officer here (indicating), Mr. Harrell, that Mr. Cathcart and you were in

-- in a car that had been shot up to this investigator?

A. No, I -- I -- I never said a statement, huh-uh (negative).

Q. Okay. Which is it, you didn't give a statement or you don't remember?

A. I don't remember. I ain't state nothing. I don't know; it's the same thing.

Q. You don't remember making a statement or you didn't make a statement?

A. I ---

Q. Because I'm lost because Mr. Brown asked you if ---

A. That's the same thing you're asking me.

THE COURT: Well, I'm going to ask the witness to wait until he finishes the questions. And, then, answer the question.

You have the right to explain your answer but, if both of you are talking at the same time, the court reporter cannot take that down.

So, I'm going to ask the witness to wait until the question is finished, then, answer the question. Now, Mr. Gray, ask a question.

Q. (By Mr. Gray) Do you know what you were under the influence of in the hospital?

A. It had to be Lortabs or something. I know I was on some serious pain medication.

Q. Do you know exactly what it was?

A. From -- from what I was given from the hospital, it had to be Lortab because that's what they gave me.

Q. All right.

A. So, I'm pretty sure it was the same thing because whatever it was, it kept having me out.

Q. Okay. From the day of March 14th, what was your first clear day after March 14th, two thousand, nine (2009)?

A. Laying in the hospital bed.

Q. So, while you were still in the hospital, you had a moment of clarity?

A. I mean, I don't know if it was clear, but I know I was still -- I be -- I might be up for one day and, then, I'm back to sleep.

Q. You remember Officer Harrell?

A. I just told you I didn't remember. The only one I remember is Lorin Williams. You're asking me the same question over and over.

THE COURT: I'm going to ask the witness not to argue with Counsel. Answer the questions and I'll see that he moves on.

THE WITNESS: Okay.

THE COURT: Thank you.

MR. GRAY: Thank you, Your Honor.

Q. (By Mr. Gray) But, as far as you knew at that time

in the hospital, you were not under arrest, were you? If you made any statement, you were not under arrest at the hospital; is that correct?

A. Yeah, I was.

Q. Who arrested you?

A. I think Lorin Williams came in there and said, "You're under arrest."

Q. Okay. What day was this?

A. I'm not really sure, but I believe it was on Sunday or Monday or something like that. I don't know.

Q. Do you know if it was March 15th or 16th?

A. I'm not really sure.

Q. So, he came in and told you, you were under arrest

A. Yeah.

Q. Detective Williams came in and told you, you were under arrest?

A. Yeah.

Q. What were you under arrest for?

A. I think the charges -- the charge I'm -- I'm being held on right now.

Q. You can remember that, but you don't remember making any statement to the officers?

A. No.

Q. And you don't remember on what day you were under arrest by Mr. Williams?

A. Sunday or Monday.

MR. GRAY: All right. Nothing further, Your Honor.

THE COURT: Redirect?

MR. BROWN: That's all the questions.

THE COURT: You may step down.

(The witness complied with the Court's request.)

THE COURT: Any other witnesses from the Defense?

MR. POOLE: No, sir.

MR. BROWN: No, Your Honor.

THE COURT: All right. Mr. Poole, I'll hear from you concerning -- I assume the State has no reply testimony?

MR. GRAY: No, sir.

THE COURT: All right.

MR. POOLE: May it please the Court?

THE COURT: Yes, sir.

ARGUMENTS OF COUNSEL

MR. POOLE: Your Honor, on behalf of Mr. Cathcart, we're talking about statements that were issued to Deputy Harrell, Investigator Durham, and Detective Williams.

And, within the context of *Jackson vs. Denno*, I want to go over the testimony that's been presented by our only witness, Mr. Darius Cathcart.

While the Court has already heard that, I would just point out that what we have is an incident that occurs in

the early morning hours of March 14th. And Mr. Cathcart is wounded.

He has -- is at the hospital. He has received medical treatment. And, during the course of that treatment, he has been given medication.

Under these circumstances -- and furthermore later on, as he is transported to the sheriff's department, he is still under the influence of medication; that is drugs, probably Lortab.

And he engages in a conversation, an interview, an interrogation with Investigator Durham.

So, we have a continuum here of -- of -- of confinement, under the influence, restricted movement, and all the other factors that go into *Jackson vs. Denno*.

Now, when we get to Invest -- Detective Williams, we have a little -- a little change. But you still have *Jackson v. Denno* concerns such as lack of sleep, continued use of meds, whether the free and voluntariness of a statement under *Jackson v. Denno*.

By that time, we have what's happening on the outside world is warrants had been asked for murder, assault and battery with intent to kill, and assault with intent to kill by law enforcement before he gets picked up at a traffic stop I believe the testimony was for bench warrants, taken to the sheriff's department —

THE COURT: Well, that was a little bit unclear. He -- he left the hospital on his own?

MR. POOLE: I -- I think so.

THE COURT: And, then, he was later ---

MR. CATHCART: May I, sir?

THE COURT: You're going to have to -- consult with your client, Mr. Poole.

(Off-the-Record Discussion)

MR. POOLE: I was -- I'm under the impression that the -- that in the morning he talked to Deputy Harrell; he was taken to ---

(Off-the-Record Discussion)

MR. POOLE: I think there was testimony that he was taken to the sheriff's department. And that's the statement that's on March 14th around 8:47 under Investigator Durham.

Then, he's released from custody, okay? And, then, he's picked up. Now, while he's released, warrants are obtained for murder, assault and battery with intent to kill, and assault with intent to kill.

Well, then, he's picked up by Investigator Calhoun and Durham observed him driving. And, then, he's picked up by I believe Detective Williams said on bench warrants, which just happened to be driving is what I do believe.

Well, then, he's taken into custody again. And I'm not sure if he's served with these warrants or not, but an interrogation begins.

And Detective ---

THE COURT: Now, that was when *Miranda* rights read and sign that day, isn't it?

MR. POOLE: That's right. Detective Williams is aware that earlier that day Mr. Cathcart has invoked his right to have an attorney present.

And -- but nothing has really changed. It's still the same case; we've got questioning -- giving Detective Williams the benefit of the doubt, he does tell him, "I don't want to talk about the murder or the assaults with intent to kill and all of that. I just want to talk about the fire burning, the car burning."

But the problem is, we're talking about the same car that was involved in the alleged murder and the assault. And the Defendant has invoked his right to counsel on that very point already earlier that day.

He did not initiate contact with law enforcement. He did not tell them that he wanted to speak with them. This was a -- an interrogation that led to the taking of a statement, after he had already invoked his right to an attorney with regard to the murder and assault and necessarily the car;

Which has bullet holes in it, which evidence was taken from, which I -- which will be presented I assume, or attempted to be presented later on in this case, involving the murder.

So, that's the argument; not necessarily under *Jackson*, but under the whole area of *Miranda*. And, so, I make all these motions on behalf of Mr. Cathcart.

THE COURT: Thank you. Mr. Brown?

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

THE COURT: Yes, sir.

MR. BROWN: You've heard directly from Mr. Reeder as well as the testimony of Investigators Harrell, Durham, and Williams.

Clearly two out of the three officers directly stated that they recognized my client was under the influence of medication based upon the serious injury that he received.

Mr. Reeder also testified, in regards to that, to be consistent with what he heard from those officers. Recognizing also, Your Honor, the fact that he was in the hospital for a substantial period of time.

And, at some point, even at the original admission moment -- and I think the admission moment came and it may have been around the time period in which we heard that Investigator Williams came to the hospital to serve

my client with the warrant placing him under arrest to have him transported by officers to the County Detention Facility.

Secondly, Your Honor, based upon the testimony you heard involving both sides, my client, under the auspices of *Jackson v. Denno*, didn't have the opportunity to give a free and voluntary statement due to being under the influence of very powerful narcotics at the time, Lortab.

And that may be legal, but we do understand that he was taken to surgery and the Court -- the Court does have an understanding of Lortab -- Lortab to a person to be taken into surgery right around the same time period in which he was under and being treated at the hospital.

For those reasons, Your Honor, any inference of any type of statement that is linked to, with regards to Mr. Reeder, we ask that it be suppressed.

THE COURT: Yes, sir?

MR. GRAY: Thank you, Your Honor. Firstly ---

THE COURT: Well, let me get one thing clear.

MR. GRAY: Yes, sir.

THE COURT: He's -- this gentleman was released?

MR. GRAY: Mr. Cathcart?

THE COURT: Yes.

MR. GRAY: He was.

THE COURT: And, then, later picked up on a -- on a

driving charge?

MR. GRAY: Yes, sir.

THE COURT: What was the length of time that he was released?

(Off-the-Record Discussion)

MR. GRAY: About a day, no less than a day, Your Honor.

THE COURT: Well, are we talking about twenty-four (24) hours or are we talking about less than twenty-four (24) hours?

(Off-the-Record Discussion)

MR. GRAY: A little over twenty-four (24) hours, Your Honor.

THE COURT: A little over twenty-four (24) hours?

MR. GRAY: Yes, sir, Your Honor. Apparently one statement was taken at eight (8:00) a.m., it was taken. And, then, the second statement was taken at five (5:00) p.m.

THE COURT: The next day?

MR. GRAY: The next day.

THE COURT: Okay. Do you disagree with that time line, Mr. Poole?

MR. POOLE: No, sir. I think -- I think that's right. And I -- I could have been mistaken during the questioning.

THE COURT: And he invoked his right to counsel at the first meeting?

MR. POOLE: That's right.

THE COURT: Okay. I'm sorry. Go ahead. I -- I just wanted to be sure I had it clear.

MR. GRAY: Yes, sir, Your Honor.

THE COURT: It's a little confusing since there was a break in custody.

MR. GRAY: Yes, sir.

THE COURT: All right. Go ahead.

MR. GRAY: As far as Mr. Reeder, at no time was he in custody as a suspect in this situation in that he was in the hospital the entire time. Every report says he was coming in and out.

He would tell the officer, when he had moments of clarity, "Myself and Mr. Cathcart were in the car when I got shot." "I am left handed," and things of that nature.

There were no written statements taken from Mr. Reeder. And the right to caution by the officers, when they thought he might be under the influence of something; they didn't know.

They didn't place him under arrest. There was no investigative detention. He was arrested after he got out of the hospital. I think after five (5) days.

THE COURT: Uh-huh (affirmative).

MR. GRAY: Your Honor, his -- his inference that he was under arrest or became in some way is disingenuous in this situation because in the first conversation he was never even thought of as a suspect; he was a victim, especially initially ---

THE COURT: So, he was released from the hospital. He wasn't arrested immediately, was he? Or was he?

MR. GRAY: The -- yes, sir.

THE COURT: He was arrested at the hospital? He never left the hospital?

MR. GRAY: Yes, sir.

THE COURT: All right. Go ahead.

MR. GRAY: So, any statement that was given before the arrest, Your Honor, when he was not in investigative detention, did not deny him an opportunity to have his *Miranda* warnings being read.

THE COURT: Well, like was his room under guard or was somebody standing guard outside his door?

(Off-the-Record Discussion)

MR. GRAY: There was a guard outside his door.

THE COURT: Okay. Well, all right.

MR. GRAY: Yes, sir, Your Honor. And any statements to the officers anyway, Your Honor, were freely and voluntarily given by Mr. Reeder. He was never

interrogated or questioned.

And as far as Mr. Cathcart ---

THE COURT: Now, the only statement you're trying to get in are the ones that were made the very first night when he was in the emergency room?

MR. GRAY: Yes, sir, Your Honor.

THE COURT: And nothing after that while he was in ---

MR. GRAY: No, sir.

THE COURT: Okay. Go ahead.

MR. GRAY: The statement he made to the officer was that he and Mr. Cathcart were together during the shooting.

Now, as far as Mr. Cathcart, when he was first, for lack of a better word interviewed, he was considered a victim at that time by Officer Harrell.

The second time, when he was interviewed by Investigator Chris Durham, he was advised of his rights. He signed the waiver form that's in State's Exhibit Number 1, Your Honor.

And second the statement was verbal at the hospital and he was a victim at that time.

And the third statement I believe was the one that he -- excuse me. That's the fourth (4th) statement. The third statement was to Officer Durham. The fourth (4th)

statement, after he was released, he was arrested again, Mirandized again.

And he signed a waiver form again, Your Honor.

THE COURT: Just -- just one second. Let me talk to my law clerk.

(Off-the-Record Discussion)

THE COURT: Go ahead. I'm sorry.

MR. GRAY: Thank you, Your Honor. And, so, the officer that actually cautioned him -- the first time, they believed he was a victim of a shooting and they talked to him as such.

The second time, Your Honor, the statement was verbal. At that time, he was still a victim at the hospital.

The third was he was arrested -- in investigative detention. Excuse me, Your Honor.

THE COURT: He was brought from the hospital to the police station ---

MR. GRAY: Yes, Your Honor.

THE COURT: --- by the police?

MR. GRAY: He was in detention, Your Honor.

THE COURT: All right.

MR. GRAY: That was verbal. "I'm not writing anything down." He understands that. "I'm not going to write it down, but I'm going to tell you what I'm going

to say."

THE COURT: Now, when he got to the police station under those circumstances, he got his *Miranda* warnings?

MR. GRAY: Yes, sir.

THE COURT: Made a statement?

MR. GRAY: Yes, sir.

THE COURT: But, when he was asked to write it down, he said, "I want to see a lawyer"?

MR. GRAY: Yes, sir, Your Honor.

THE COURT: Go ahead.

MR. GRAY: He was released. On the following day, he was arrested again. He was *Mirandized* again.

THE COURT: Now, at that time, was he arrested on the murder warrants?

MR. GRAY: No, sir. He was arrested ---

THE COURT: Just for the driving offense?

MR. GRAY: --- on the driving warrants, yes, sir. And the officer said to him, "I want to talk to you about this burned car." The first thing on his statement is, "Mr. Reeder and I got shot, at three –

THE COURT: Now, he was re-*Mirandized* at that point in time?

MR. GRAY: Yes, sir, Your Honor. He signed it. Based on their crimes about -- Spartanburg County crimes, regarding a vehicle, he signed that *Miranda* form; nothing

about the murder or a shooting.

The officers wanted to talk to him about the vehicle crime. At that time, the first statement he writes is about the shooting.

We believe that all these statements are voluntarily given. There was no cautious (phonetic). There is nothing here to -- that was tantamount to interrogation or threats or bargain given to this individual. As a matter of fact, they said they were given their medication.

If that is so, it would be tantamount to threat and harm if they withheld their medication and they did not get it, if what they're saying is true at this time, Your Honor.

So, there was no threat or harm. There's no threat of harm. Everything voluntarily given from Mr. Reeder and Mr. Cathcart to all three of the officers, Your Honor.

(Brief Pause)

THE COURT: Anything further, Gentlemen?

MR. POOLE: Briefly, Your Honor?

THE COURT: Yes, sir.

MR. POOLE: It's my understanding that he was picked up in the late afternoon on the 15th on -- due to bench warrants or for a traffic stop.

Prior to that, it's my understanding the warrants had been sought for these felonies pursuant to ---

THE COURT: But they weren't served?

MR. POOLE: They had not been served. That's my understanding. But, when he invoked his right to counsel, on the morning of the 14th ---

THE COURT: Yes, sir.

MR. POOLE: --- it's our position that, that basically served to insulate him from any further questioning relating to any aspect of the felonies.

And the car is part of -- if I use the word correctly -- part of the corpus delicti or the body of the crime that is associated with the murder and the assault. So, it's the same thing.

THE COURT: Well, I'm -- I'm just looking at cases. And I'm going to go back and read them just to be sure.

Once -- once -- my understanding of law is, once someone invokes their right to counsel, it's not offense specific.

In other words, you can't turn around and start inquiring about some other offense and say that -- that invocation of my right of counsel doesn't apply to the other offense.

So, I don't -- I don't think that holds a bit of water as far as I'm concerned as to whether or not they

were just asking him about the car or asking him about the murder.

Once he invokes his right to counsel, he's invoked his right to counsel period.

Now, there is a concern on the Court's part where there is a break in custody, where custody has been given up by the police and he's out on his own and, then, he's re-arrested.

And there's a case that I'm getting right now, *Maryland vs. Shatzer* (phonetic), a 2010 case, last year, a U.S. Supreme Court case, that addresses that issue. I'm going to read it and see what it says.

But it specifically addresses, when someone has been in custody and invoked their right to counsel, and later on is re-arrested and re-interrogated on something else.

Now, in that case, the break in time was about a week -- excuse me, two weeks between the release and arrest. Here it was twenty-four (24) hours.

I don't know what effect that might have on that because I haven't read that case, but I'm going to read that.

But I understand the arguments. I understand the position that you're in.

Now, let me ask you to comment on one thing for me, Mr. Gray.

MR. GRAY: Yes, sir.

THE COURT: The original conversations with Mr. Reeder ---

MR. GRAY: Yes, sir.

THE COURT: --- I'm not sure from the testimony that I got the timing down exactly the way I should have. So, I want to be sure I understand and you folks can -- can correct me if I'm wrong.

But my understanding is they present themselves to the hospital; in other words, they -- they didn't come in by ambulance. They walk in ---

MR. GRAY: That's correct, Your Honor.

THE COURT: They walked in, or however they got in, they -- they got there. And, once they got there, the -- it went out that there was a shooting.

MR. GRAY: Yes, sir.

THE COURT: And there were two victims at the hospital ---

MR. GRAY: At Spartanburg Regional.

THE COURT: --- two people who had been wounded were at the hospital.

MR. GRAY: Yes, sir.

THE COURT: The uniformed officer arrives, talks to both individuals.

MR. GRAY: Yes, sir.

THE COURT: I think what he said was there was a break in time before the other investigators got there. And it might have been like a half an hour or something, but I'm not sure what -- I think that's what he said.

MR. GRAY: About a half hour to an hour, yes, sir.

THE COURT: All right. Between the time that -- and he said he got there shortly after they presented themselves.

MR. GRAY: Yes, sir.

THE COURT: Hadn't been there very long.

MR. GRAY: Yes, sir.

THE COURT: Now that's my understanding of what the testimony was that I've heard.

MR. GRAY: Yes, sir, Your Honor.

THE COURT: Mr. Brown, do you disagree with what I -- the -- the -- what I've heard about the testimony?

MR. BROWN: The only thing that I would -- I would advise the Court is Mr. Reeder says that he was taken via wheelchair upstairs that was waiting for him ---

THE COURT: Oh, I don't doubt -- once someone comes in shot, I bet they do put them in a wheelchair.

MR. BROWN: And based upon -- based upon the -- the time period from which he came in up until the time period he was questioned, he was in -- in an actual room, after being photographed.

THE COURT: All right. They just -- I think they said they saw him in the emergency room, didn't they? They said there were two different rooms in the emergency room.

MR. GRAY: Yes, sir.

THE COURT: That's where the officer said he saw him.

MR. BROWN: But, again, he already begun to receive treatment. And based, upon his injuries, he had already received -- because he was already ----

THE COURT: Oh, I -- I understand. The question in my mind, though, is whether that treatment had begun to take hold just yet.

MR. BROWN: Well ---

THE COURT: Because the testimony of the police officer was that he appeared to be okay and not under the influence by the first one. Now, the second one said he was slurring his words and couldn't talk.

MR. BROWN: Well, I -- I know we have it right, Your Honor, based upon the investigative reports of the officer. Obviously the whole testimony will give a plausible -- without being substantiated from his report -- that he was okay, that my client was fully capable of even remembering having a conversation with him based upon the seriousness of his injury.

THE COURT: And the question I've got to determine at this point in time by -- by -- I believe the test is the preponderance of the evidence is whether or not it appears that there was a -- a valid statement that was taken. And I'm -- I'm looking into it.

But, again, I think the testimony of the uniformed officer was -- and his report indicates that Mr. Reeder was able to talk to him.

Now, the second gentleman who came in, the other next investigator, indicated he was slurring his words and he wouldn't take a statement from him because he was obviously under the influence of drugs at that point in time.

And that was about thirty (30) minutes later after the first officer got there and before the second officer got there. That's the way I believe I heard the testimony, Mr. Brown.

All right. I'm going to take a short recess. I'll be back. Court is in recess at this time.

(Whereupon, a recess was taken for the Court to review documents from 3:51 p.m. till 4:11 p.m.)

(Off-the-Record Comments)

COURT'S RULING

THE COURT: All right. As to the motion made by Mr. Cathcart, first of all, an -- an invocation of a

Fifth Amendment right to counsel before giving a statement is not offense specific.

So, once an accused invokes the right to counsel for interrogation regarding one offense, he may not be approached regarding any offense unless counsel is present.

As to the statements that he made at the hospital, I find that they were not custodial in nature. I also find that the testimony of the officers is sufficient to establish, by the greater weight of the evidence, that he was not so under the influence of any drugs that he may have taken as to render his statements involuntary.

So, as to the statements made at the hospital, I'm going to allow those to come in.

As to the statements made at the police station, up until the time that he exercised his right to counsel, I will find that they also were voluntarily given and were given after having received *Miranda* warnings.

I do not find that at that time he was under the influence of drugs to the point that it removed his independent thinking.

Also, he did not appear to be so tired from his lack of sleep, or any other outside influence, as to rob him of his ability to make decisions because he did make the decision to invoke his right to counsel;

He understood the rights that had been read to him. And he ultimately did decide not to proceed with any further interrogation and -- unless he had spoken to counsel.

Now, as to his re-arrest and being brought back into custody some twenty-four (24) hours later, I find that that would violate the rules set down in *Maryland v. Shatzer*, last year, a U.S. Supreme Court case.

That indicates that the time frame in which -- for which someone to overcome the influence of a custodial investigation to have an opportunity to talk to friends, family, or counsel, is two weeks, fourteen (14) days.

And, in this particular case, the length of time was some twenty-four (24) hours.

So, I will find that his previous invocation of his right to have counsel present would still apply and anything that was received as a result of that interrogation would be excluded under that particular case.

Now, as to Mr. Reeder, I find the testimony of the officer who first interrogated him to be very persuasive. And that Mr. Reeder was answering questions and answering them appropriately at the time that he spoke to him.

The responses that he gave -- gave were responsive to the questions that were asked. It is clear to me that

the evidence establishes that he had arrived only recently at the hospital and any treatment that he was receiving had only just begun at that point in time.

Also, I find that Mr. Reeder, in his testimony today, I find him not to be a credible witness. Some of his answers appear to me to be contrived and argumentative.

And, as a result of my finding concerning his testimony, I find that the initial statements made to the first officer will be allowed to -- to come in.

Now, of course, I don't believe he made any further statements after that time for which there was any challenge. And, so, therefore, it would not be necessary for me to rule on those.

I find that the time he was talked to by that officer, he was not in custody at that point in time. There was not a custodial interrogation; therefore, the *Miranda* warnings would not have applied at that point in time.

It was simply an investigate -- an investigative discussion concerning someone that the officer believed to have been a victim rather than the perpetrator of any crime. So, I'm going to allow that to come in.

Now, any other pre-trial motions that I need to address?

(Brief Pause)

THE COURT: From the Defense?

(Both Mr. Poole and Mr. Brown shake their heads and respond in the negative.)

THE COURT: From the State?

MR. GRAY: Not at this time, Your Honor.

THE COURT: All right. Now, I will -- I will be meeting concerning the first case on the docket in the morning concerning trial in absence. In that case, depending on my ruling, this case may be coming up fairly soon tomorrow. So, I'll just make you aware of that.

We will have a hearing on that at nine o'clock (9:00). And we'll proceed accordingly. Thank you very much. Court is in recess at this time.

MR. POOLE: Thank you, Your Honor.

THE COURT: Yes, sir.

(Whereupon, the proceeding concluded at 4:19 p.m.)

REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the Court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 113, were transcribed by me and represent a complete and accurate transcription of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

June 7, 2012

Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	COURT OF GENERAL SESSIONS
STATE OF SOUTH CAROLINA, PLAINTIFF, vs. DARIUS CATHCART and RASHAWN REEDER, DEFENDANTS.	TRANSCRIPT OF RECORD 2010-GS-42-2874 - 2876 2010-GS-42-2926 - 2928

May 9th - 12th, 2011
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE ROGER L. COUCH, Judge, and a jury.

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

ABEL GRAY AND PRINA TAILOR
ASSISTANT SOLICITORS
Attorneys for the State

ROGER POOLE
ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant Cathcart

MICHAEL BROWN
ESQ.
Attorney for the Defendant Reeder

PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

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PROCEEDINGS

THE COURT: All right. We're gonna take about a ten minute break and then we'll be ready to go.

Are your clients ready to start?

MR. POOLE: Yes, sir.

MR. BROWN: Yes, sir.

THE COURT: All right. There was one thing.

Are you ready to go on the record?

COURT REPORTER: Yes, sir.

THE COURT: You want to call the cases for me, Mr. Gray?

SOLICITOR GRAY: Yes, sir, Your Honor.

May it please the Court.

The State is pursuing charges against Mr. Darius Tavarious Cathcart, Cathcart on Indictment 10-GS-42-2874. That's assault with intent to kill.

10-GS-42-2875, that's murder.

10-GS-42-2876, that's assault and battery with intent to kill.

Also are pursuing cases against Mr. Rashawn Lamar Reeder on Indictment 10-GS-42-2926. That is for assault with intent to kill.

10-GS-42-2927, that's for murder.

10-GS-42-2928, assault and battery with intent to kill.

THE COURT: Pass those up please.

SOLICITOR GRAY: Yes, sir.

Now, Mr. Poole, is your client been arraigned -- you represent I believe Mr. Cathcart, is that right?

MR. POOLE: Yes, sir.

THE COURT: Has be been arraigned on these charges?

MR. POOLE: Yes, sir.

THE COURT: All right. So, he is -- he's pled not guilty?

MR. POOLE: He's pled not guilty, yes, sir.

THE COURT: And he wants a trial by jury, is that correct?

MR. POOLE: He wants a trial by jury, Your Honor.

THE COURT: And, Mr. Reeder, has he also been arraigned on the charges?

MR. BROWN: He has, Your Honor.

THE COURT: And is he pleading still not guilty?

MR. BROWN: That's correct, Your Honor.

THE COURT: And he wishes to be tried by a jury?

MR. BROWN: He does, Your Honor.

THE COURT: All right. Now, as soon as they -- are they prepared to bring them into the courtroom?

BAILIFF: They are, Your Honor.

THE COURT: Well, what I'm gonna do is I'm gonna take about a five, ten minute break. When we come back in we'll

put on the record the motion that you had and the response, and I don't know if there's anything else that needs to go on the record other than that, is that correct?

SOLICITOR GRAY: No, sir.

THE COURT: We had other hearings earlier. So --.

SOLICITOR GRAY: Yes, sir.

THE COURT: All right. We'll be in recess for about five to ten minutes.

(WHEREUPON, a short recess was taken at this time, and the following takes place within the presence of the entire jury panel.)

THE COURT: All right. Ladies and gentlemen of the jury panel, we're about to begin the trial of the, of the case of The State of South Carolina versus Darius Cathcart, and The State of South Carolina versus Rashawn Reeder.

Now, there's going to be some questions that I'm going to ask you concerning these particular cases, and it will be necessary, again, that you be sworn concerning the answers that you're about to give to the questions that I'm going to ask.

So, at this time, I'm going to ask that the clerk please swear the prospective jury panel for me.

(WHEREUPON, the jurors were placed under oath at this time.)

THE COURT: Now, if there was any member of the jury

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panel who either failed or refused to take the oath just administered by the clerk, I'd ask that you now please stand.

(No response.)

THE COURT: The record will reflect that all prospective jurors have been sworn for purposes of the trial.

Now, before we begin the questioning, there's some information that I'm going to go over with you that will help you better answer the questions that I'm about to ask. The first thing I'm going to do is ask that the attorneys that are involved in the trial of this case that they introduce themselves to you.

First of all, for the State.

SOLICITOR GRAY: Thank you, Your Honor.

My name is Able Gray. I'm assistant solicitor here in Spartanburg County. This is Prina Tailor, co-counsel.

THE COURT: Thank you very much.

And the attorneys for the defense, I'd ask that you introduce yourselves please.

MR. POOLE: I am Roger Poole of the Seventh Judicial Circuit Public Defender's Office.

THE COURT: And?

MR. BROWN: Michael Brown, attorney here in Spartanburg County.

THE COURT: I'd ask that you also introduce your clients.

Mr. Poole, if you'll introduce your client.

MR. POOLE: Yes, I represent Mr. Darius Cathcart.

MR. BROWN: I represent Mr. Rashawn Reeder.

THE COURT: Thank you very much.

Now, ladies and gentlemen of the jury, at this time I'm going to go over some documents with you. The documents that I'm going to go over with you are the indictments in this case.

Now, the indictments are documents that are handed to this Court and they inform this Court of the charge that's to be tried. They inform the defendants of the charges that have been brought against them. Also, the indictments will contain some information concerning when the particular events that are alleged to have occurred, and also the alleged victims of the events.

First of all, in the case of Mr. Cathcart, the first, the first indictment that I will go over with you is the indictment in Case Number 2874, 2010-GS-42-2874. That particular indictment is for the offense of assault with intent to kill.

The indictment states that Darius Tavarious Cathcart did, in Spartanburg County, on or about March 14 of 2009, unlawfully attempt to commit a violent injury to the person

of another with malice aforethought accompanied by a present ability to complete the act. To wit, by shooting into the victim, Dwight Jamar Jeter's vehicle with a gun. All in violation of the common law of the State of South Carolina in Code Section 17-25-30 of 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.

The next indictment that I will go over with you is in Case Number 2010-GS-42-2875. The indictment is for the offense of murder.

The indictment states, in the body, that Darius Tavarious Cathcart did, in Spartanburg County, on or about March 14 of 2009, felonious, willfully, and with malice aforethought kill Duncan Geter by shooting him with a gun and he died as a proximate result thereof. All in violation of Section 16-3-10 and 20 of 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.

The third indictment in this particular, for this particular defendant is in Case Number 2010-GS-42-2876. That indictment is for the offense of assault and battery with the intent to kill.

That indictment states that Darius Tavarious Cathcart

did, in Spartanburg County, on or about March 14 of 2009, with malice aforethought, commit an unlawful act of violent injury upon the victim, Bryant Miller, by shooting the victim in the neck causing the victim to require medical attention. All in violation of the laws of the State of South Carolina in Section 16-3-620 of 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.

Now, the first indictment I read you was for assault with intent to kill. That indictment that I just read you was assault and battery with intent to kill.

Now, as to the other defendant, there are also three indictments before this Court. The first indictment that I will go over with you is in Case Number 2010-GS-42-2926. That is for assault with intent to kill.

The indictment states, in the body, that Rashawn Lamar Reeder did, in Spartanburg County, on or about March 14 of 2009, unlawfully attempt to commit a violent injury to the person of another with malice aforethought accompanied by a present ability to complete the act. To wit, by shooting into the victim, Dwight Lamar Jeter's vehicle with a gun. All in violation of the common law of the State of South Carolina and Code Section 17-25-30 of 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.

The next indictment that I will go over with you is in Case Number 2010-GS-42-2927. This indictment is for the offense of murder.

The indictment states that Rashawn Lamar Reeder did, in Spartanburg County, on or about March 14 of 2009, feloniously, willful, and with malice aforethought, kill Duncan Geter by shooting him with a gun and he died as a proximate result thereof. All in violation of Code Section 16-3-10 and 20 of 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.

The final indictment in this case is in Case Number 2010-GS-42-2928. That indictment is for the offense of assault and battery with intent to kill.

This indictment states that Rashawn Lamar Reeder did, in Spartanburg County, on or about March 14 of 2009, with malice aforethought, commit an unlawful act of violent injury upon the victim, Bryant Miller, by shooting the victim in the neck causing the victim to require medical attention. All in violation of the laws of the State of South Carolina in Section 16-3-620 of 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.

Now, ladies and gentlemen, those are the indictments in this case. Indictments can not be used by a jury in any fashion in determining the guilt or the innocence of a defendant brought before the Court. Again, it is simply the document that informs this Court of the charges to be tried and informs the defendant of the charges that have been lodged against him, the defendant.

Now, ladies and gentlemen, I'm going to go over with you again a series of questions. We will follow the same procedure that we followed earlier during jury qualification. If you have a answer to any of the questions, I'll ask that you stand. I will need to get your name and juror number before I proceed with receiving the answer in this case.

Now, has any member of this jury panel ever been related by marriage or have you been or are you related by blood to the defendants, Darius Tavarious Cathcart or Rashawn Lamar Reeder, if that's true, please stand.

(No response.)

THE COURT: Has any member of the jury panel ever had a close personal or a social relationship with either of the defendants, Darius Tavarious Cathcart, or Rashawn Lamar Reeder, if that's true, please stand.

(Jurors respond.)

THE COURT: Yes, ma'am, I need your name and number.
JUROR: Michelle Tareze. I'm Number 32.
THE COURT: Yes, ma'am.
JUROR: And I know Mr. Darius.
THE COURT: You know who?
JUROR: Darius.
THE COURT: All right. And can you tell me how you know, might know him?
JUROR: Neighbor for years.
THE COURT: All right. Ma'am, would that affect your ability to be fair and impartial in the trial?
JUROR: Yes, it would.
THE COURT: I'll excuse you from the trial of the case. Please be seated. Thank you.
Name and number please, sir.
JUROR: Antonio Lynch, 104.
THE COURT: Yes, sir.
JUROR: I know Darius.
THE COURT: All right.
JUROR: We went to school together.
THE COURT: You went to school with him?
JUROR: Yes, sir.
THE COURT: Well, I don't know how many years ago that was.
Have you had contact with him since that time?

JUROR: No, it's not been a minute.

THE COURT: All right. Would it affect your ability to be fair and impartial in this trial?

JUROR: No, sir.

THE COURT: All right, sir. You can be seated.

Anyone else?

(No response.)

THE COURT: Now, has any member of the jury panel ever been related by blood, or excuse me, ever been related by marriage or are you related by blood or have you ever had a close personal or a social relationship with any of the individuals that were named as alleged victims in this case and, in particular, that would be Dwight Jamar Geter, Duncan Geter, Bryant Miller. Let me be sure I've got them all.

All right. If you -- again, if you, if you've ever been related by marriage or you're related by blood or have you had a close personal or social relationship with any of those individuals that I named as alleged victim in this case, if that's true, please stand.

(No response.)

THE COURT: Now, has any member of this jury panel ever been represented by any of the attorneys that are involved in this case or have they ever appeared on the other side of some legal matter from you, if that's true, please stand.

(Juror responds.)

THE COURT: Yes, sir, name and number.
JUROR: 148. I've had cases with---
THE COURT: And I need your name.
JUROR: I'm Chad Pye.
THE COURT: Thank you.
JUROR: I, of course, had cases with Mr. Poole and Mr. Brown.
THE COURT: All right. Would that affect your ability to be fair and impartial in this trial?
JUROR: No, sir.
THE COURT: Thank you. You can be seated.
Anyone else?
(No response.)
THE COURT: Now, has any member of the jury panel ever been related by marriage or are you related by blood or have you had a close personal or a social relationship with any of the attorneys that are involved in the trial of this case, if that is true, please stand.
(Jurors respond.)
THE COURT: Name and number please, ma'am.
JUROR: Mary Thomas, 179.
THE COURT: Yes.
JUROR: And I know, I know Michael. Just grew up, and, Roger, through family.
THE COURT: All right. Would that affect your ability

to be fair and impartial in the trial?

JUROR: No.

THE COURT: Thank you. You can be seated.

Name and number please.

JUROR: Mike Bell, Number 4.

THE COURT: Yes.

JUROR: I know Mr. Brown as a fraternity brother.

THE COURT: All right. Would that affect your impartiality in this trial?

JUROR: No.

THE COURT: Thank you. You can be seated.

Ma'am, name and number.

JUROR: Terry Smith, 171.

THE COURT: Yes.

JUROR: I have a daughter that's go to school with him or I did.

THE COURT: Mr. Gray, you were indicating?

JUROR: Yes.

THE COURT: The gentleman from the State?

SOLICITOR GRAY: She's at the school where my daughter is at.

THE COURT: Oh, okay.

JUROR: And I'm social with him, but not just around him.

THE COURT: Well, would that affect your impartiality

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if you were selected on the jury?

JUROR: No, sir. No, sir.

THE COURT: Thank you. You can seated.

Now, ladies and gentlemen, I'm going to go over quite a list of witnesses. These are people that have been identified to me as potential witnesses in the case. Now, I don't know if any of them are in the courtroom. In fact, most of them are not. I'll identify them, if possible, as to where they might live, or excuse, me, where they might work for those that I've been given that information for. Listen carefully because it is a long list, and then I'm going to ask you some questions about these individuals.

Heather Forrester with the Spartanburg County Sheriff's Office.

Matt Davis with the Spartanburg County Sheriff's Office.

Shawn Cape.

Doctor James Carter with the Mary Black Hospital.

Lorin Williams with the Sheriff's Office.

Chris Durham with the Sheriff's Office.

Leslie Harrell with the Sheriff's Office.

Ruth Lanford.

Tom Lanford.

William Dendy.

Elizabeth Pennington with the Sheriff's Office.

Robert Schaffer with the Sheriff's Office.
Mike, it's Julazadeh.
Did I say that right?
Is that correct?
SOLICITOR GRAY: Yes, sir.
Bryant Miller.
Dwight Geter.
Karen Geter.
Rodney Jamichael Hutchins.
Michael Crossley.
Tarny Morris.
Steve Calhoun.
Christian Nash.
Keith Sims.
Patrick Cockrell.
David Hogsed.
Tim Davis.
Robert Shaffter.
Lieutenant Lestage with the Sheriff's Office.
S. Nix with the Sheriff's Office.
Robert Talanges with the Sheriff's Office.
Barbara Waddell.
Zimmerman Owens.
Kamilla Jones.
Doctor David Wren with the Spartanburg Regional

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Hospital System.

Mike Shaw with the Coroner's Office.

Randy Bogan with the Coroner's Office.

Dwayne Corn with the Coroner's Office.

Dickie Mason with the Coroner's Office.

Robin S. Forest with the Coroner's Office.

Kenneth A. Whitler with the State Law Enforcement Division.

Catherine Leisy, L-E-I-S-Y, with the State Law Enforcement Division.

Ila Simmons with the State Law Enforcement Division.

Tim Grambow with the State Law Enforcement Division.

Lisa McReynolds with the State Law Enforcement Division.

Nikki Perry with the State Law Enforcement Division.

Selena Kinard with the State Law Enforcement Division.

Tenisha Cathcart.

Toria Keenan.

Denise Shaw.

Chasity Booker, Booker.

Samone Winn.

Christian Nash.

Monique Brown.

Keith Meadows.

Edward, Edward Robinson.

Twan Mack.

Terren Morris.

Deangelo Miller.

Patricia Cathcart.

Braylin Morris.

Now, as to those individuals that I just named as potential witnesses in the trial of this case, has anyone ever been related by marriage or are you related by blood or have you had a close personal or a social relationship with any of the individuals that I just named as potential witnesses in the trial, if that's true, please stand.

(Jurors respond.)

THE COURT: Ma'am, I'll need your name and number.

JUROR: Hello, my name is Keisha Lanford. My Number is 96.

THE COURT: Yes, ma'am.

JUROR: Ruth Lanford is my mother-in-law.

THE COURT: Yes, ma'am, so, she is a relative of yours?

JUROR: She's my mother-in-law, yes, sir.

THE COURT: I'm gonna excuse you from service on the case. If you'll have a seat please.

JUROR: Tom Lanford is my husband also.

THE COURT: All right. That's another reason I would excuse you.

Name and number please, ma'am.

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JUROR: Okay. Emily Kennedy, and my Number is 93.
THE COURT: Yes, ma'am.
JUROR: And I played basketball with some of the men---
THE COURT: All right. Ma'am, the fact that you -- well, I don't know how long ago that was.
JUROR: It was three or four years ago.
THE COURT: All right. Would that affect your ability to be fair and impartial in the trial?
JUROR: No, sir.
THE COURT: You can be seated. Thank you.
Name and number please, sir.
JUROR: Grady Branson, 131.
THE COURT: Yes, sir.
JUROR: I played, I played football with a number of guys.
THE COURT: All right. Well, again, I don't know how long ago that was. I suspect several years ago.
Would that affect your impartiality in the trial?
JUROR: No, sir.
THE COURT: Thank you. You can be seated.
Anyone else?
(No response.)
THE COURT: Has any member of the jury panel ever been arrested for, charged or, with, or convicted of any crime involving any type of violence in any State Court such as

General Sessions Court, the Family Court, Magistrate Court, or a City Court, if that's true, please stand.

(No response.)

THE COURT: Does any member of the jury panel have any member of your immediate family or a close personal friend that's been arrested for, charged with, or convicted of any crime of violence in any State Court, Family Court, Magistrate Court, or City Court, if that's true, please stand.

(Juror responds.)

THE COURT: Name and number please, sir.

JUROR: Thomas Lynch, Number 4.

THE COURT: Yes, sir.

JUROR: My uncle got convicted of murder.

THE COURT: Would that affect your impartiality in this trial?

JUROR: No, sir.

THE COURT: Thank you, sir. You can be seated.

Anyone else?

(Juror responds.)

THE COURT: Name and number please, ma'am.

JUROR: Cheryl Stepp, 332.

THE COURT: Yes.

JUROR: And my stepfather was convicted.

THE COURT: All right. Would that affect your

impartiality in the trial, ma'am?

JUROR: No.

THE COURT: Thank you. You can be seated.

Is there any member of the jury panel or a member of your immediate family who is currently or has been prosecuted by the Solicitor's Office or the Attorney General's Office in this state and county, if that's true, please stand.

(No response.)

THE COURT: Has any member of the jury panel ever been arrested by the Spartanburg County Sheriff's Department or the Spartanburg City Police Department, if that's true, please stand.

(Jurors respond.)

THE COURT: Name and number please, sir.

JUROR: Donald Smith, 168.

THE COURT: Yes, sir.

JUROR: DUI.

THE COURT: Would that affect your impartiality in this trial, sir?

JUROR: No, sir.

THE COURT: You can be seated.

Name and number please, sir.

JUROR: David Wells, 188.

THE COURT: Yes, sir.

JUROR: DUI.
THE COURT: Would that affect your impartiality in the case?
JUROR: No, sir.
THE COURT: You can be seated. Thank you.
Name and number please, sir.
JUROR: James Franklyn, 59. My father was arrested.
THE COURT: All right.
JUROR: It would not affect my---
THE COURT: It wouldn't affect your impartiality in the case?
JUROR: No, sir.
THE COURT: Thank you. You can be seated.
Name and number please, sir, gentleman on the front, yes, sir.
JUROR: Thomas Lynch, 104.
THE COURT: Yes, sir.
JUROR: Simple possession.
THE COURT: I'm sorry?
JUROR: Simple possession.
THE COURT: Would that affect your impartiality in this case?
JUROR: No, sir.
THE COURT: Thank you.
Name and number please, sir.

JUROR: I'm Justin Sims, 165.

THE COURT: Yes, sir.

JUROR: Underage possession of alcohol, but that was a couple of years ago.

THE COURT: Well, I understand that, but would that affect your impartiality in this trial?

JUROR: No, sir, I was arrested in Greenwood a year ago for disorderly conduct.

THE COURT: Okay. Would that affect your, your view in this case?

JUROR: No, sir.

THE COURT: Thank you, sir.

JUROR: Anthony Shappell, 33.

THE COURT: Yes, sir.

JUROR: I was arrested for DUI in 1991.

THE COURT: Would that affect your impartiality in this case, sir?

JUROR: No, sir.

THE COURT: Thank you, sir.

Now, has any member of this jury panel gathered any information from any source whatsoever outside of this courtroom such that it would have caused you to form or express an opinion about any matter or any issue that might be involved in the trial of this case, if that's true, please stand.

(No response.)

THE COURT: Is there any member of this jury panel who is aware of any bias or prejudice that you might have either for or against the State or the defense in the case, if that's true, please stand.

(No response.)

THE COURT: Is there any member of the jury panel who may have been a member of the Grand Jury which issued the indictments in these cases, if that's true, please stand.

(No response.)

THE COURT: Is there any member of this jury panel which is a member of or a contributor to any group which has as its primary concern the promotion of law enforcement or victims rights?

These groups would include, but not be limited to, such groups as Mothers Against Drunk Driving, Students Against Drunk Driving, Citizens Against Violent Crime, the South Carolina Sheriff's Association, the South Carolina Troopers Association, or other similarly oriented organizations, if that's true, please stand.

(Juror responds.)

THE COURT: Name and number please, sir.

JUROR: Number 67, David Graymont, and the county domestic violence board.

THE COURT: All right. Would that affect your

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impartiality in this trial, sir?

JUROR: No, sir.

THE COURT: Thank you. You can be seated.

Anyone else?

(Juror responds.)

JUROR: I guess I should stand, Mary Thomas, 179.

THE COURT: Yes, ma'am.

JUROR: Anything that, you know, we're -- my foundation -- our foundation is all about promoting good will.

THE COURT: Uh-huh. (Affirmative).

JUROR: And, so, I just have to---

THE COURT: Are you talking about the Spartanburg County Foundation?

JUROR: Yes, sir.

THE COURT: All right, ma'am. Would that affect your impartiality in this case?

JUROR: I don't think so.

THE COURT: All right. Well, I have to be sure.

JUROR: No.

THE COURT: Okay. Thank you.

Does any member of the jury panel know of any reason whatsoever why he or she should not serve as a juror in this case with particular emphasis being placed upon your ability to be both fair and impartial to both the State and the

defense, if that's true, please stand.

(No response.)

THE COURT: Are there additional questions from the State?

SOLICITOR GRAY: No, sir, Your Honor.

THE COURT: Additional questions from Mr. Poole?

MR. POOLE: No, sir.

THE COURT: Mr. Brown.

MR. BROWN: No, sir.

THE COURT: All right. Now, at this time, ladies and gentlemen, I'm going to ask that the clerk prepare a list of potential jurors.

Madam Clerk, if you'll stand up for just a second.

(Pause.)

THE COURT: All right. Ladies and gentlemen of the jury, let me explain what we're doing at this time.

All of you who remain in the jury pool at this time, your name is in the computer system here, and the, the clerk is preparing a list of jurors. I tell people that back when I first started practicing law we pick juries, jurors by putting names in a barrel and we spin it around and the law required that a blind, legally blind person had to select the names out of the barrel. Now we do it by random selection on the computer. So, it will list the names as it selects them on a sheet of paper. We'll be calling your

names shortly according to that list to come forward.

Now, how we go through jury selection in this courtroom is that, when your name is called, you'll come down the center aisle. They'll be a bailiff standing right in front of the clerk. When you get to that point, we'll ask that you stop and face the back of the courtroom. At that time the attorneys that are involved in the trial of this case will be in a position to exercise their strikes.

Now, if you are selected to serve on the jury, you will be going directly to the jury box over here to my left. So, if you have a pocketbook or other personal belongings that you've brought into the courtroom, bring it with you down front because, if you're selected, you won't be going back to your seat. You'll be going over here into the jury. So, be sure you bring anything with you that you would like to have.

I'm gonna ask that the attorneys approach briefly.

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

THE COURT: Madam Clerk, do you have the list for me?

CLERK: Yes, sir.

THE COURT: Thank you.

All right. Madam Clerk, at this time you can begin the jury selection process.

(WHEREUPON, a jury panel was selected at this time.)

THE COURT: All right. We are now selecting the Alternate Number One, Alternate Number One.

(WHEREUPON, Alternate Number One was selected at this time.)

THE COURT: Selecting Alternate Number Two.

(WHEREUPON, Alternate Number Two was selected at this time.)

THE COURT: That completes the jury selection process.

Any objections to the process from the State?

SOLICITOR GRAY: Yes, sir, Your Honor.

THE COURT: All right. Ladies and gentlemen of this jury, I'm gonna ask you to step back into the jury room. Do not discuss this case at all among yourselves at this point in time. I'll give you further instructions later.

If you'll take them back to the jury room please.

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

THE COURT: And I'll ask the bailiffs to return the remainder of the jury panel to the assembly room please.

(WHEREUPON, the remaining jurors leave the courtroom at this time.)

THE COURT: All right. I'll hear the State's objection.

SOLICITOR GRAY: Thank you, Your Honor.

I hate to, hate to bring this up. I was reviewing the

strikes by the defense team. It seems they had 15 strikes used. Ten of those were white females, Your Honor. The remainder were white males. They only struck one black female out of the entire group, Your Honor.

THE COURT: All right. Any -- are you challenging all of the strikes of females?

SOLICITOR GRAY: Well, I'm challenging the fact they struck, they struck one, ten of the fifteen were white females, that the majority of the strikes were white people in general, and that the -- and I would guess the number of females additionally that they struck.

THE COURT: All right. So, again, I'm trying to narrow it down, the scope again.

SOLICITOR GRAY: Yes, sir.

THE COURT: You know, according to the cases, you need to tell me which one's you're challenging.

SOLICITOR GRAY: Well, I need---

THE COURT: I need to know which ones you're challenging.

All the white females?

SOLICITOR GRAY: Yes, sir, Your Honor.

THE COURT: All right. Now, I need to know a, the reasons why you struck those white females.

MR. POOLE: Well, Your Honor, of course, we were pooling our strikes together, and Mr. Brown and I were going

over the jury list, and I was here for jury qualification, and I had made some notes on all the jurors. All those that were stricken and all those that were seated. In fact, all the jurors in the pool.

And I have an old fashion way of putting, assigning certain numbers to names, which is on a scale of like one to three. Three is somebody I like off the bat. One is somebody I, I don't want on the jury because of some sort of, over the years, it's my been my experience that, and I can be very wrong on this, I'm dealing with first impressions. I'm not exactly sure -- I can't look at this list and say who are the white females. I just know that---

THE COURT: Well, I can, I can go down the list and tell you the ones that are the white females.

MR. POOLE: Okay.

THE COURT: And I need a, a reason why you exercised each strike, and it's got to be something other than a race based reason. There's got to be some reason why you exercised that strike.

MR. POOLE: Yes, sir.

THE COURT: First white female stricken was Jamie Lowe, Number 102.

MR. POOLE: Your Honor, I, I just had her, just a number two besides her and we struck her because we had enough strikes in order to exercise a strike to try to get

to the number three's on the list.

THE COURT: Is that your reason?

MR. POOLE: Well, Your Honor, there was no reason why we would go out striking white females because---

THE COURT: Well, you know, I'll -- let's just look at the strikes. They, they've raised the issue, and the strikes that you did exercise, you gave me the figures. Go over those figures again.

Did you write them done?

SOLICITOR GRAY: Yes, sir, I believe ten out of the fifteen strikes used were for white females.

THE COURT: Two-thirds of your strikes were for white females. I think that establishes that there appears to be a possibility that these were based on either sex or race when two-thirds of the strikes are of white females. Now you have to give me a reason that is not a pretext as to why they were stricken, some specific reason why they were stricken in that fashion. Just can't exercise your strike -- Batson doesn't allow you to pick all the white females and strike them.

MR. POOLE: Uh-huh. (Affirmative).

Well, that---

THE COURT: There's got to be a non, a, either not based on race, not based on gender. There has to be like that person's been involved in criminal activity before,

that person is done -- there's, there's got to be some non-pretextual reason, and, you know, given the numbers, it does appear to be that there is a, somewhat of a pattern when two-thirds of the strikes appear from one racial and sexual group. Batson requires now that I get from you a non-pretextual reason as to why those strikes were given, and if the -- if that's your reason, that's fine. Then I've got to make a ruling.

MR. POOLE: Your Honor, I don't think I give you a better reason than what I've already given that it was based on a first impression and the way that I was using my numbers.

THE COURT: All right.

MR. BROWN: And, Your Honor, I can simply say, with my ability to assent on some numbers, if Mr. Gray does recall on the number of jurors that I did assent to, in fact, the females that are on the jury that are white, in all instances I'm the one -- I spoke up in regards to those as well as the majority of the pool that was involved. I think we look at the overall numbers. That may answer something in terms of what was available to us. In an alternating pattern between our strikes, Mr. Poole utilized some and I utilized some.

But I did assent to, to the white females that are actually on the jury, Your Honor. So, I don't think race

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came into any type of consideration. Of course, if the Court had a chance to review my posture, my, my head was simply down. In the course of looking at the list, involving employment factors, community factors, number of years in school, as well as what they have been located in the county, in addition to any potential possible relation to anyone involved. So, they're a number of factors I, I looked at in my sheet reviewing simply the numbers that were presented to us, Your Honor, excluding any factors of race.

THE COURT: Well, I, I can go over all of these, but if I'm wasting my time, tell me.

I mean are there any of the ones, the white females that were stricken, and I've got Jamie Lowe or Lowe, 102, Tracy Pressley, 146, 106, Katelyn Mabry, 167, Stephanie Sizemore, 151, Kathryn Russell, 84, Elizabeth Hyland, 41, Patricia Cothran, 180, Joyce Towe or Towe, 80, Carol Hornbuckle.

Are you objecting to the jury itself or the ones, ones -- there was one strike of a female on the alternates, a white female?

SOLICITOR GRAY: The jury itself, Your Honor.

THE COURT: All right.

MR. BROWN: I would ask the Court to, in lieu of the jurors that were stricken, if the Court could apprise us to who would replace that juror just so we'll know at this

point.

THE COURT: Well, the issue is whether or not there is, there's been, on the face of it, there appears to---

MR. BROWN: Yes, sir.

THE COURT: ---have possibly been some discrimination in the exercising of your strikes. If, on the face of it it appears that, then you're required to give me a race neutral or a gender neutral reason for having exercised each of those strikes when that's been questioned. And thus far, the reason is that, on your scoring system, they didn't score very well. That could be because of their race or their color. I don't know -- or their gender. I don't know how you got there. You haven't given me a race neutral reason other than it didn't score well on your scoring system. That probably won't work.

MR. POOLE: Well, Your Honor, I, I will say this. It just never crossed my mind, you know, in talking about all of these jurors that have been enumerated here, that when they were picked that they were all, you know, I was intentionally, I was intentionally striking jurors that happened to be white females. I mean I would have no reason to start, to think like that at the beginning of the jury selection process because I don't know how that would factor into this case at all.

THE COURT: Well, I don't know how it factors into

this. We don't look at how it relates to the case. We look at whether or not there is a race neutral reason for having exercised the strike, and that can be any number of things. You know, the person's unemployed, the person is had a family member arrested before, the person has -- you know, any number of reasons what is the race neutral reason. But when, on the face of it, when you look at two-thirds of your strikes are white females, that---

MR. POOLE: Well---

THE COURT: ---looks a little, that looks a little strange.

MR. POOLE: Your Honor, okay. Well, maybe we can proceed with -- I think the last number was 80, and let me try to enunciate a reason for each one.

Okay?

THE COURT: Just one second before you do that.

(Pause.)

THE COURT: All right. Let me go over the procedure we have to follow in this case.

First of all, I'm required to hold a hearing, according to Batson, when members of a cognizable racial group are struck and the opposing party requests a hearing. Based on my findings thus far, there is a -- two-thirds of the strikes exercised were of white females.

Is that correct, Mr. Gray?

That's your position?

SOLICITOR GRAY: Yes, sir, Your Honor.

THE COURT: That does appear that there's, there's a cognizable racial group that was struck. Therefore, I'm required to hold a hearing.

Once that occurs, I have to give you an opportunity to give a race neutral reason for having exercised those strikes. Once that occurs, once you've given that, then the State has the right to show that that reason given is a pretext.

So, at this time we're at the point where I have found that there's a cognizable group in your strikes. So, therefore, you have to give to me a race neutral reason for having exercised the strikes that have been questioned.

So, we'll start again with Jamie Lowe or Lowe, 102.

MR. POOLE: Yes, sir, she had some college education, Your Honor.

THE COURT: Anything else?

MR. POOLE: No, sir.

THE COURT: The next one is Tracy Pressley.

MR. POOLE: What number would that be?

THE COURT: She is Number 146.

MR. POOLE: Your Honor, the -- her occupation was one of manufacturing. Her husband was one of a warehouseman. They're both workers that require a great deal of

responsibility and a great deal of, I'm assuming, education behind that.

THE COURT: The next one stricken in the group would of been 106, Katelyn Mabry.

MR. POOLE: Your Honor, she is a current college student, and I may have her confused with someone else. But it was brought to my attention that they, they were graduating or getting ready to graduate, and I was thinking that maybe if that was the case with her, then she would be thinking or preoccupied with her studies for exams or whatever would end up here at the end of the year.

THE COURT: The next one is Stephanie Sizemore, Number 167.

MR. POOLE: Your Honor, she's technically educated and she was dressed in her work clothes as I remember, and I thought that likewise she may be preoccupied with her occupation.

THE COURT: The next one is Kathryn Russell, 155.

MR. POOLE: Your Honor, she stated that she was not now employed, but had been employed with the Department of Health in Florida. Her educational level was, therefore, a post-nursing school. So, she was stricken for that reason.

THE COURT: The next one is Elizabeth Hyland, Number 84.

MR. POOLE: She, in her jury information, the

information she said that she had, her ex-husband was involved in a car accident, involved in a lawsuit against the company, and that she also had some technical college education.

THE COURT: The next one is Patricia Cothran, Number 41.

(Pause.)

THE COURT: All right. Excuse me. Go ahead.

MR. POOLE: Your Honor, she was born in 1951 and she was the mother of two children.

THE COURT: Which one are we talking about now?

I've been interrupted. I'm sorry.

MR. POOLE: Number 41.

THE COURT: Thank you. Go ahead.

MR. POOLE: The mother of two children, which could very well be the ages of the victim in this case or victims.

THE COURT: All right. Next one is Joyce Towe, Number 180.

MR. POOLE: Your Honor, she had previously served on a criminal jury. She was the older mother of two children also.

THE COURT: Next is Carroll Hornbuckle, Number 80.

MR. POOLE: Her husband's -- her husband was an engineer and she has a Bachelor of Science in Nursing, and she is employed currently at Greenville Tech.

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THE COURT: The next one is Deidre or Deidre Bonds, Number 18.

MR. POOLE: She was the interior designer with a Bachelors in Fine Arts, and her husband was an industrial systems engineer.

THE COURT: All right. I believe that covers them, is that right?

SOLICITOR GRAY: Yes, sir, Your Honor.

THE COURT: Anything?

MR. BROWN: And just very briefly, Your Honor. I know, in terms of our, of our colloquy here, I just wanted to reiterate, as relates to two of them, besides the medical occupations involved in 155 and Number 80, Number 84 obviously has a previous lawsuit, and there was a jury service, served that Mr. Poole's indicated with another.

THE COURT: Uh-huh. (Affirmative).

MR. BROWN: 106, there wasn't a lot of information there besides the fact we knew she was a college student. She really didn't fill out the questionnaires involved.

167, St. Luke's, I know both Doctor Snyder as well as the actual founders of St. Luke's. My understanding is this trial could go on for more than one day, and maybe the possibility for some form of discussion or mentioning my involvement with the case with the employer or someone associated with there.

But a few others, besides their education, I did take into consideration the ages of the potential jurors, and, in particular, the fact that they had two or more children that possibly could of been the age of Mr. or the Jeter's involved in this case.

THE COURT: All right. The State's opportunity to show that the reasons given for strikes are pretext.

SOLICITOR GRAY: Yes, sir, Your Honor.

We do have a very diverse jury. I want to acknowledge that. It's troubling that age is a factor, as Mr. Brown says, in determining these. Seemingly, seemingly situated strikes at and seated jurors in this situation, the only difference I can really see between the majority of these people that Mr. Brown and Mr. Poole struck is their ages. Education levels are similar across the board.

THE COURT: Well, you're gonna have to be specific now. You've got to show---

SOLICITOR GRAY: All right.

THE COURT: ---me that there were jurors who were seated who it appears to me -- and be specific as a lot of the reasons given were too much education.

SOLICITOR GRAY: Okay.

THE COURT: A lot of the -- some of the reasons were given that their work might interfere with their service on the jury. So, you got to be able to show me that there were

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people who were seated from other racial groups that also had too much education or may have, you know -- you follow what I'm saying?

SOLICITOR GRAY: Yes, sir, I do.

THE COURT: So, you need to show me how the, the people that got seated would of fit the same criteria upon which they have stricken these individuals.

SOLICITOR GRAY: Yes, sir, Your Honor.

THE COURT: They didn't strike those.

SOLICITOR GRAY: Yes, sir, Number 93, a white female student at Clemson.

THE COURT: Is that one that was seated?

SOLICITOR GRAY: Yes, sir.

THE COURT: All right.

SOLICITOR GRAY: We also have I believe Number 119 is seated. Strayer University. 109---

THE COURT: Let's see. 119 was a black female who had completed college?

SOLICITOR GRAY: Yes, sir.

THE COURT: Go ahead.

SOLICITOR GRAY: Number 109 was a student. She was a single white female, full-time student.

THE COURT: Now, she's of the same racial group.

SOLICITOR GRAY: Yes, sir, there was a -- and also I understand they're in the same racial group and they were

seated. There's -- as, as far as the---

THE COURT: In other words, you're saying they didn't use the same criteria for all of them.

SOLICITOR GRAY: Yes, sir.

THE COURT: Go ahead.

SOLICITOR GRAY: Yes, sir, Your Honor.

Also, as far as dedication I'm assuming to work, there was the custodian, black female custodian who was seated, and her husband was a custodian. But they're saying cause one lady wore a uniform up here she was too dedicated to her job. I don't understand that.

And Number 41 she stated was a homemaker. In this situation, they seated a homemaker, 105. I don't see the differentiation between that homemaker and this homemaker.

THE COURT: All right. Let me find 105, Kimberly Lynch.

All right. Go ahead.

SOLICITOR GRAY: We also have a couple white men out here who were, who were students or educated, recent grad. Looks like here, Your Honor, that most of these individuals, whether be a black female, or specific age, Number 20, 93, a white female who is a student at Clemson. 156, a black female at Wal-Mart. 89, a student at -- he's just a white male. Number 77, a warehouseman I believe it was stated, and, and Number 11 also black female of the age who could be

a mother.

But there, as I was saying, under 77, they said 157 was educated, work clothes again. I don't understand how the warehouseman, Number 77, was seated, but she is differently situated somehow in the white female who was in her work clothes. How he is -- basically I don't understand the, their reasons in differentiating.

THE COURT: All right. Let's, let's talk specifics.

SOLICITOR GRAY: Yes, sir.

THE COURT: I want you to specifically tell me a name of a person who was stricken, but someone then who was seated from another racial group that would of had the same qualifications or reasons why they said they struck someone else.

SOLICITOR GRAY: White male seated Number 11.

THE COURT: All right. Number 11.

SOLICITOR GRAY: Was seated.

THE COURT: Juror Number 11 is Sarah Barksdale.

SOLICITOR GRAY: Sorry, Your Honor. Number 25, Your Honor, 25. My mistake. First juror seated, Your Honor. Number 25.

THE COURT: I've got that one.

You say she is a --?

SOLICITOR GRAY: He is a white male.

THE COURT: He is a white male.

SOLICITOR GRAY: Yes, sir.

THE COURT: College student?

SOLICITOR GRAY: Recent grad.

THE COURT: All right.

SOLICITOR GRAY: Number 106 was stricken and the reason given was she's a white female, she's a student, won't pay attention.

THE COURT: All right. Other specific instances, someone who is seated from a different racial group that had the same reasons, same qualification, or same circumstances as someone who is was stricken from the white female group.

SOLICITOR GRAY: I would say 120, a recent grad, white male, was seated, and Number 18, college graduate, engineer. I believe the reason was too much education. Both college graduates.

Number 11, custodian, a black female, and Number 41. They had a, struck Number 41 because she was of age to have children. So, that's, that would be similar to the victim. So is Number 11 in this case. She was born in 1968. Those are my specific examples, Your Honor.

THE COURT: All right. Your opportunity, then in the words of the case I'm reading, which is State versus Edwards, to explain the inconsistencies that he's pointed out.

MR. POOLE: The first number was Number 25 I believe?

THE COURT: Yes, sir.

MR. POOLE: Your Honor, he was the first juror that stood up. My jury information was he was a high school graduate. No reason to strike him. He was the first juror. We had plenty of strikes. We have, you know, no, no need to strike.

THE COURT: Well, I think he's pointing out though that you, you -- one of the indications you gave was someone who was a student that you were concerned that they wouldn't be, take their, I guess, their duties responsibly because --.

MR. POOLE: I was looking at the information that was employed by Michelin, and that this, that he had graduated from high school?

THE COURT: On Bryson?

MR. POOLE: Yes, sir.

THE COURT: Number 25.

All right. Go ahead.

MR. POOLE: Is the next one 120?

THE COURT: The next one you pointed out was what number, Mr. Gray?

SOLICITOR GRAY: I believe he's correct, Your Honor, 120.

THE COURT: All right. He's a white male.

What was his situation?

MR. POOLE: Your Honor, at that point in time that was

near, near the end. We had exercised several strikes by that time.

THE COURT: I have you down as having exercised 14 up to that point in time.

MR. POOLE: Yes, sir, and just didn't want to exercise a strike that could be used more discretionally.

THE COURT: All right. What's the next one?

Of course, Mimms was the last one seated. So, there wasn't any need to have other strikes once he was seated. That was the 12th juror. You wouldn't be saving strikes once the jury is selected.

MR. POOLE: Yes, sir, I wasn't -- I'm, I might not of been paying attention to who was sat, but I -- this is a male, isn't it?

THE COURT: Well, I think you pointed out that he was similarly situated to some of the white females as far as the reasons that you gave. Specifically -- you want to refresh my memory, Mr. Gray, Ms. Tailor.

SOLICITOR TAILOR: It was Number 106, Your Honor.

THE COURT: 106 was stricken. That's Katelyn Mabry. She was a college student. You said she might be graduating. You were concerned about that. And Mr., let me get his name again, Mimms was apparently similarly situated with her, but white male.

MR. POOLE: Also, on his, on Number 120, his occupation

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was listed as unemployed.

THE COURT: Now, 120 is, is -- he's, he was seated?

MR. POOLE: Yes, sir.

THE COURT: Uh-huh. (Affirmative).

I think he---

MR. POOLE: And they're drawing comparison with selection of, against 106, is that right?

THE COURT: They were comparing that one to 106, Katelyn Mabry.

Let me ask the State, Mr. Mimms had finished school, right, but was unemployed?

SOLICITOR GRAY: I believe that's correct, Your Honor.

THE COURT: Whereas Ms. Mabry was an active student?

SOLICITOR GRAY: Yes, sir.

THE COURT: Okay. All right. Whose the next one you want us to examine?

SOLICITOR GRAY: Sir?

THE COURT: Any others you want me to examine with him?

SOLICITOR GRAY: No, sir.

THE COURT: All right. I'll hear from the State.

SOLICITOR GRAY: Your Honor, I guess we reiterate our earlier, earlier arguments specifically, especially as it has to do with Number 11 and Number 41 specifically, Your Honor. The, the black female who was a custodian, of age to have children, the defendant's age of, the victim's age, and

plus the pattern. On its face, it seems to be not racially neutral for fifteen, ten, fifteen picks to be white females. Particularly on Mr. Brown's statement that they were of a certain age additionally, Your Honor. So, we believe---

THE COURT: Well, one thing that concerns me about this situation is that in -- we've picked the jury out of the first 28 jurors called.

SOLICITOR GRAY: Yes, sir.

THE COURT: Of that 28, let me get it right, be sure I'm correct -- wait a second. Nine of them are male.

SOLICITOR GRAY: Yes, sir.

THE COURT: So, we had -- the majority of the jurors presented were female.

SOLICITOR GRAY: That is correct.

THE COURT: So, I'm -- it's not terribly surprising to me that the majority of the strikes exercised would of been female.

Do you follow what I'm saying?

SOLICITOR GRAY: Yes, sir, I do.

THE COURT: Just statistically they were more opportunities to strike female than they were males.

SOLICITOR GRAY: Yes, sir, Your Honor.

THE COURT: Now, as to the -- and, and I'm not sure how---

SOLICITOR GRAY: And I understand your reasoning here,

Your Honor. It's just when I saw the numbers, facially---

THE COURT: Yes, sir.

SOLICITOR GRAY: ---it's just a little, a little wierd to me as far as the strike. I'm not saying where you don't have a racially diverse jury. We do.

THE COURT: We do have a racially diverse jury.

SOLICITOR GRAY: Yes, sir, we do, and I'm not as---

THE COURT: And, and gender was fairly diverse.

SOLICITOR GRAY: Yes, sir, absolutely. But, on its face, it, to me, it looked to not be racially neutral, the strikes that the defense exercised.

THE COURT: All right. Well, it says here I'm to determine this issue based on the totality of the facts and circumstances in the record including the credibility of the strikes proponent and the plausibility of the neutral and otherwise unpervasive, pervasive reason.

In this particular -- unpersuasive reason.

In this particular case, it appears most of the strikes were executed with, sounds like, on educational basis.

Were there people with, with high levels of, of education that were seated?

I haven't reviewed it from that. There aren't that many high level education people that were seated.

SOLICITOR GRAY: No, sir, Your Honor.

THE COURT: So, I mean I think they're consistent in

that regard as, as far as the people who---

SOLICITOR GRAY: And some, some of the strikes, yes, sir.

THE COURT: All right. I'm gonna find that, based on the totality of the circumstances that I have reviewed, that a violation of Batson has not occurred in this case, and I'll allow the case to go forward with the jury that we have.

Anything further from the State?

SOLICITOR GRAY: Did you want the third party, Your Honor, record now or---

THE COURT: Let's put that on the record now.

You had made a motion concerning third party guilt. We discussed that in chambers.

SOLICITOR GRAY: Yes, sir.

THE COURT: During the chambers discussion, both defendants' attorneys indicated that they did not intend to offer any evidence that would be considered to be evidence concerning a third party's guilt in the case.

Is that a correct statement, Mr. Poole?

MR. POOLE: That is a correct statement, Your Honor.

THE COURT: And, Mr. Brown, is that your --?

MR. BROWN: One moment, Your Honor.

THE COURT: Yes, sir.

(Pause.)

MR. BROWN: Your Honor, my client -- as the Court's having a conversation with Mr. Reeder in regards to other matters that may or may not come before this Court. So, there are no objections as relates to third party guilt, Your Honor.

THE COURT: Okay. So, you don't intend to offer any evidence on that point either?

MR. BROWN: No. No, sir.

THE COURT: All right. So, at this point in time, I would be -- since they indicated they don't intend to offer any such evidence, I won't make a ruling.

SOLICITOR GRAY: Yes, sir.

THE COURT: However, if it does appear that that type of evidence is later brought before the Court, I will consider it at that time.

SOLICITOR GRAY: Yes, sir, Your Honor.

THE COURT: All right. Anything further that the State would like to bring up---

SOLICITOR GRAY: No, sir.

THE COURT: ---before we go forward?

SOLICITOR GRAY: No, sir.

THE COURT: Defense?

MR. POOLE: No, sir.

MR. BROWN: No, Your Honor.

THE COURT: All right. We're, we're to the point at

one o'clock. I'm just gonna bring the jury in. I am going to swear them, but I am going to release them to come back after lunch once we have sworn the jury, and then we'll proceed after, at that time.

All right. Let's bring the jury in.

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

THE COURT: All right. Ladies and gentlemen of the jury, at this point in time I'm going to be asking the clerk to administer your oath concerning your duties and responsibilities as jurors in this case.

Madam Clerk, please swear the jury panel.

(WHEREUPON, the jury panel was placed under oath at this time.)

THE COURT: All right. Ladies and gentlemen, I'm, I'm not unmindful of the fact that we've reached one o'clock in the afternoon. And, so, we're gonna not start the case until after you've had a chance to go get lunch. I do want to go over some things with you though and instruct you concerning certain matters as you leave the courthouse for the first time during this trial.

You have been sworn as jurors in this case. And as such, I'm going to ask you that you not attempt to gather any information outside of this courthouse concerning this case. That includes from media reports. That includes from

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Internet sources. That includes from family, friends, or any other source. You have just taken an oath to decide this case based upon the law and the evidence.

Now, the only place that you're going to hear the law and the evidence is gonna be in this courtroom during this trial. The only evidence that will be presented during the trial will be the testimony of witnesses who have been sworn to tell the truth and will be testifying from this witness stand during the trial of the case and whatever, whatever evidence comes into the record through that testimony. The only law that you're going to hear in this case will come from me, the judge. I will charge you concerning the law in this matter.

Therefore, it would be highly improper for you to attempt to gather any information about this matter from any other source outside of the courtroom. In fact, it would be a violation of your oath as jurors to do so.

For that reason, I'm going to ask that you not discuss the case with anyone. Don't, again, don't attempt to gather any information outside of the courthouse. Don't allow anyone to discuss the case with you. Should anyone attempt to contact you concerning your service on this jury, please report that to the Court.

I've already explained to you, jury tampering is a felony in this state. I take it seriously. And I'll see to

it that the proper investigations are begun should anyone attempt to contact you concerning your service on this jury during our break.

I hope you realize that you've been chosen as fair and impartial jurors with an open mind about this case. If you begin to discuss even what the case is about or what the charges are about with someone else, you may begin to formulate opinions about this case, and lose that open mindedness and fairness that you have. I want you to keep an open mind throughout the case during the arguments made by the lawyers, during the presentation of evidence, even during my charge concerning the law and not to begin any discussions about this case until I've asked you to do that and then only with your fellow jurors in the jury room during the deliberations.

So, don't discuss the case with anyone. If a family members says, well, you've gotten selected on a jury, say yes, and that's the end of the discussion. Tell them you'll discuss it with them when it's over. At that time I'll give you instructions at to how you will proceed. But, again, during breaks and when you leave the courthouse, I'm going to ask you not to discuss the case with anyone, and, again, don't attempt to gather any information outside of the courthouse.

Now, if you are present and you hear a media report,

television, radio, that sort of thing, either turn it off, leave the room, don't listen to it because those sources of information, quite often, contain information that should not be considered by a jury in reaching a verdict in this case. In fact, that information, quite often, would violate the rules of evidence under which courts operate and proceed. And, again, for that reason, don't listen to, watch, or read any media reports concerning this case during our break.

All right. I'm going to ask that you be back in the jury room -- now, it's 1:00, it's five minutes after 1:00. I'll ask that you be back in the jury room at 20 minutes after 2:00.

Now, they'll show you where the jury room is that's in use for this case. You come back to that jury room. Don't go back to the assembly room. Come back to that jury room. We should be in a position to begin the case shortly thereafter.

At this time you're free to go to lunch. Have a good lunch.

Thank you.

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

THE COURT: All right. Anything further from the State before we break for lunch?

SOLICITOR GRAY: No, sir, Your Honor.
THE COURT: Anything from the defense?
MR. POOLE: No, sir.
MR. BROWN: No, Your Honor.
THE COURT: All right. Defendants remain in custody. Thank you very much.
Court's in recess.
(WHEREUPON, Court was in recess for the lunch hour.)
THE COURT: I wanted to be sure I didn't -- I don't know that I got that far.
Your objection was the Batson motion, is that right?
SOLICITOR GRAY: That's correct, Your Honor.
THE COURT: I didn't hear any objections from the defense to the jury selection process.
Were there any objections?
MR. POOLE: No, sir.
MR. BROWN: None.
THE COURT: Okay. Just wanted to be sure.
All right. Is there anything before we bring the jury back from the State?
SOLICITOR GRAY: No, sir, Your Honor.
THE COURT: From the defense?
MR. POOLE: No, sir.
THE COURT: Mr. Brown.
MR. BROWN: None, Your Honor.

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

(Whereupon, the following takes place within the presence of the jury.)

THE COURT: All right. The record will reflect that the jury has returned to the courtroom.

If any of you had any difficulty in following my instructions to you before the lunch break, I'd ask that you now please stand.

(No response.)

THE COURT: It appears that everyone was able to follow my instructions.

Before we begin this trial, there's some matters that I want to go over with you.

Probably, for most of you, this is your first experience in actually being selected and serving on a jury in the trial of a case, and for those of you for whom this is your first experience in serving on a jury, probably most of what you know about the jury system that, that exists in our justice system you would of learned from such sources as television shows you've watched or movies that you've seen or perhaps books that you've read, perhaps something from your schooling.

And while those sources of information are all interesting, they're entertaining, they have good story lines and interesting plots, they keep your attention, you

have to realize that those sources of information are intended for your entertainment. I think that's obvious when, in the case of television, you can have a, a crime committed, the case tried and completed in the space of an hour, and they still have time for commercials during that time.

So, it's obviously that they take what's known as literary license with what goes on in the courtroom. Again, because it's intended to entertain you.

What you're engaged in today is something that is for, is anything but your entertainment. What you're engaged in is a search for the truth. It's an effort to see that justice is done between the parties that are before this Court. In this case, the State of South Carolina that has, has brought charges against some, two of its citizens. And you can expect that a search for the truth and an effort to see that justice is done between the parties will be slow, it will be deliberate, sometimes it will be repetitive. And I would think that that's just what you would expect from a search for the truth. That it be slow, repetitive, and deliberate.

Now, the -- this courtroom is a place of honor. It's dedicated to the preservation of citizen's rights through this system of justice that we have, our jury system. It's a system that many believe to be one of the greatest systems

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ever devised on the face of this earth. It's not a perfect system. No system devised and operated by man would ever be perfect. But it does allow for direct participation by citizens such as yourselves in the important decision making matters that go on in your courtrooms. If you look around the world today, most justice systems don't allow for direct participation by citizens in the important decisions that take place in this case, in a case brought by the State against two of its citizens.

Now, the attorneys that will appear before you in this case are here to represent their client's interest, and I'm sure that they're going to do an admirable job in presenting their client's position to you in connection with this case. But first and foremost, those attorneys are also officers of this Court. At some point in time they have appeared before this Court and they've taken an oath to assist you in your search for the truth. And, for that reason, you can expect that they'll act in a reasonable, professional, and ethical manners in the presentation of their client's cases before you during this trial.

I'm gonna remind you that you come before this Court as well. You've taken an oath. You're expected to decide this case based upon the law and the evidence that's presented during the trial. You also have a responsibility to act in a reasonable, an ethical, and a professional manner in the

discharge of your duties as jurors in this Court. Again, I want to thank you very much for your willingness to come forward and serve and to assume this responsibility that you've assumed as jurors in this case.

What I'm telling you now is not intended to be an instruction concerning the law in this case. You'll find that once all the evidence has been presented and all the arguments have been made, at that time I will charge you concerning the law that you're to apply in this case. I am going to go over with you the roles and responsibilities that we all have in the trial of this case and the responsibilities that you, in particular, have as jurors serving in this case.

Now, I started this case earlier today by going over with you the indictments in this case, and I'm going to read those indictments to you again. Both defendants are charged with assault with intent to kill, assault and battery with intent to kill, and with the crime of murder.

Now, again, the indictment is simply the charge that brings the case before this Court. It's the document that brings the charge to this Court's attention as to what charges are to be tried. It informs the defendants of the charges that have been lodged against the defendant.

Now, the defendants in this case have pled not guilty to each and every one of those indictments, and, under the

law and the Constitution of this state and the, of the United States, that not guilty plea places the burden upon the State to prove the defendant's guilt of the indictments by proof beyond a reasonable doubt. And at the close of the trial I will discuss with you the burden of proof that the State has, but suffice it to say, it will be your responsibility, at the close of the trial, to determine whether or not the State has met its burden of proof in this case.

For that reason, it will be your purpose and your purpose as jurors only to determine the facts in this case. You will be the sole judges of the facts in this case. You are to determine those facts from the testimony that you will hear and from other evidence that's introduced during the trial of the case, and it's up to you to determine which evidence you feel may be, and what, what inferences and what conclusions can be drawn from the evidence that is presented before this Court.

It's especially important that you, the jury, perform your duties as the fact finders in this case diligently and conscientiously because, under our system of justice, ordinarily there's no means by which an erroneous determination of facts made by a jury can ever be corrected.

Now, the same law that makes you the sole judges of the facts in this case will make me the sole judge of the law in

this case. You will take the law as I give it to and apply it to the facts as you find them to be at the close of the trial, and that should put you in a position to render a just and a true verdict in this case.

Now, I am the presiding officer in this case, and as the presiding officer, it will my additional responsibility to rule on questions concerning the admissibility of evidence or the appropriateness of questions that might have been asked during the trial. I will tell you now that you should not take from anything that I say or that I do in the discharge of my duties as the presiding officer of this trial to, to indicate to you that I have an opinion one way or the other as to how you should determine the facts in this case. You see, the law doesn't allow me an opinion concerning the facts, and I can assure you I have no opinion as to how you determine the facts in this case.

Now, just as the law doesn't allow me to disagree with you concerning the facts that you find in this case, that same law doesn't allow you to disagree with me concerning the law to be applied in this case. It's your responsibility, at the close of the trial, to take the law exactly as I give it to you and apply it to the facts as you determine those facts to be.

Now, if you came into this courtroom with an idea or a notion as to what the law is or what it ought to be, those

notions and ideas should be left outside of the jury room before you begin your deliberations. Again, you are to take the law as I give it to you at the close of the trial, apply it to the facts as you determine them to be, and that should put you in a position to render a just and a true, a true and a fair verdict in this case.

Now, I've already told you, but I'm gonna tell you many times, until I advise you to begin your deliberations in this case, you should not begin any discussions concerning any matter involved in this case or anything about this case. Because, you see, the only time that you're going to have all of the information that you will need to make that decision and to begin to make decisions will be after you've heard all of the arguments made by the lawyers, you've heard all of the evidence to be presented by the parties, you've heard me charge you concerning, with, with the law in the case, and then and only then will you have all of the facts necessary to begin to make an intelligent decision or discussion as to what decision should be made in this case.

Again, I'll caution you not to attempt to gather any information from any other source other than the information that's supplied during this trial in this courtroom.

In a few minutes I'm going to begin the trial, and I'm going to allow the attorneys to make an opening statement. Now, an opening statement is just that. It's a statement

made by the lawyers involved in this case. They will tell you what the case is about or perhaps what they, they expect to prove or what they think the trial might show you as the trial goes along.

At the close of the trial I will allow the attorneys to make a closing or summation, a closing argument or a summation argument at the close of the trial. At that time, they will sum up the evidence that you've heard from their client's prospective.

I will tell you now that statements made by attorneys during the trial do not constitute evidence in this case, and can't be used by a jury directly in determining the guilt or the innocence of a defendant. Again, the arguments simply are the statements made by the lawyers. They tell you, at the beginning of the trial, what the case is about. They'll tell you, at the close of the trial, their client's position concerning the evidence, but those statements are not evidence in and of themselves. The only evidence that you will hear, again, is the testimony of witnesses sworn to tell the truth who will testify from the witness stand, and whatever comes into the record through that testimony.

Now, as the sole judge of the facts, it's going to be your responsibility and your obligation to determine the credibility and the believability of the witnesses that you hear during the trial, and in making that decision, as to

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credibility or believability, I'm going to tell you to use your own good common sense that you brought into the courtroom. Each of you, every day, make common sensical decisions as to what you choose to believe and what you choose not to believe, and determining credibility is your sole responsibility in this case as the finders of the facts.

As the sole judges of the facts, you have the right to believe all of what a witness tells you, part of what a witness tells you, or none of what a witness tells you. You can believe one witness against all the others. You can believe all the others against one. You're the sole judges of the facts. Therefore, you're the sole judges of the credibility or the believability of the witnesses.

You have the right to take into consideration such factors as whether or not a witness has a stake in the outcome of the trial, whether or not the witness might be biased or prejudiced for or against the State or the defense in the case, whether or not the witness had the ability to know the facts about which the witness testifies, and I would ask you to observe the witnesses as they testify, the way they speak. Take all of the factors that I just discussed with you again. Use your own good common sense and make determinations as to credibility or believability of the witnesses as they testify. Then and only then, at

the close of the trial, will you be in a position to discuss all of the facts presented during the trial.

So, try to pay close attention to what goes on. Try not to let your thoughts wonder during the case. But pay attention to what is said. That will put you in a position to be able to deliberate with your fellow jurors at the close of the trial.

Now, I do not appoint a foreperson of the jury until the end of the trial during my charge on the law. I know, on television, they appoint the foreperson at the beginning. But I don't do it that way. So, I'll appoint that person at the close of the trial, and one of the reasons I do that is because I want to emphasize to you that, of the 12 members of the jury, each and every one of you has an equal say in the outcome of the case.

I will tell you, at the close of the trial, before the jury can reach a verdict, it must be unanimous. Each and every one of you must agree upon that verdict before it is the verdict of the jury. For that reason, each and every one of you has an equal say in the outcome of the case.

The foreperson's only responsibility will be to preside over deliberations, to submit questions to the Court during deliberations, and to write the verdict once the verdict has been reached, and I'll discuss that with the foreperson once I make that appointment, again, at the close of the trial.

So, I don't appoint a foreperson at this time. I'll do that at a later time during the trial at, during the trial, during the charge.

Now, I want to be sure that my opening comments did not violate anyone's rights.

Is there an objection from the State?

SOLICITOR GRAY: No, sir, Your Honor.

THE COURT: From the defense, Mr. Poole?

MR. POOLE: No, sir.

THE COURT: Mr. Brown.

MR. BROWN: None, Your Honor.

THE COURT: All right. Now, I've already explained to you that the plea in this case is not guilty. Therefore, the burden and the only burden of proof rests upon the State. For that reason, we allow the State to go first when we do our arguments at the beginning of the trial. Also, the State will be allowed to present its evidence first during the trial. So, the State will be going first during opening arguments.

Mr. Gray, are you going to offer the argument for the State?

SOLICITOR GRAY: Yes, sir, Your Honor.

THE COURT: You may proceed.

SOLICITOR GRAY: Thank you.

Counsel.

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Good afternoon, ladies and gentlemen. I work for the Seventh Circuit Solicitor's Office. Some are called solicitors, prosecutors. We prosecute cases. And what we really do is we present cases to, to juries, and it's for you to decide whether or not somebody is guilty. We don't.

In this case, Mr. Cathcart and Mr. Reeder are charged with some very serious offenses. March 14th, 2009, about 3:00 in the morning, maybe 3:30, they lay in wait for a car filled with Mr. Dwight Deter, Mr. Bryant Miller, and another individual who's not here, Mr. Dwight Geter's little brother went by A.J. named Duncan Geter.

They lay in wait, and on a strip of road, pulled in behind the car filled with these three young men, pulled up beside it, and started blasting. It's something, as Judge Couch said, a TV show. But what we have, what the State has to prove is was it done on purpose, was it intentional, and with malice aforethought.

It's not exactly premedication. But they did it with an evil intent. They shot at this vehicle, these three young men with an evil intent.

You're gonna hear some testimony from these two survivors of the incident about how, what led up to this shooting. You'll have some paper evidence, some other types of evidence, but mainly it's testimony you're gonna hear, and you're gonna have to decide who's telling the truth in

this situation, the victims in this case and the victim who's not here.

Basically we have to prove that some type of weapon was used in this situation. In this case, a gun. We do not have the gun or guns that were used in this situation.

They were fired upon a number of times from close range. Mr. Dwight Geter was not struck. That's assault with intent to kill. They shot at him a number of times, but they missed.

Assault and battery with intent to kill, Mr. Miller. He was in the back seat. He got struck in the neck, and the bullet went in his neck and came out the back of his neck. It's a miracle he's alive.

And there's Duncan Geter. He also was shot in the neck. He wasn't as fortunate. He died as a direct result of their actions. Murder.

Three charges arising out of one incident. Three for Mr. Cathcart, three for Mr. Reeder. We're not gonna say who shot the gun just yet, who pulled the trigger. But it was a common scheme in the situation. Somebody was driving. Somebody was shooting. They acted together. The driver lay in wait with the lights off, pulled behind them. Once he saw them again, pulled up beside of them, the shooting occurred, flipped his lights on, took off.

Ladies and gentlemen, in the State of South Carolina,

if those facts are proven beyond a reasonable doubt, which I think we can do that, those two men are guilty of assault and battery with intent to kill, assault with intent to kill, and murder.

Thank you.

THE COURT: Mr. Poole.

MR. POOLE: May it please the Court?

THE COURT: Yes, sir.

MR. POOLE: Good afternoon.

Again, I'm Roger Poole. I represent Darius Cathcart, the young man over there in the blue shirt and tie. Mr. Cathcart lives here in Spartanburg. He's a young man who's in his twenties.

He is charged, as the State has told you and as the Court has told you, with three very very serious offenses, assault with intent to kill, assault and battery with intent to kill, and murder. He's charged with assault with intent to kill in shooting into the vehicle of Dwight Geter. He's charged with assault and battery with intent to kill by shooting Bryant Miller in the neck. And with murder with regard to killing Duncan Geter with a gun.

Those are the words of the indictment, and those are the crimes that he's charged with. Judge Couch will instruct you on what constitute the elements of each and every one of these offenses. But the Court, before you get