

STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. 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

SARAH E. SHIPE
S.C. Commission on Indigent Defense
1330 Lady Street, Suite 401
Columbia, SC 29201
ATTORNEY FOR RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

D. RUSSELL BARLOW, II
Senior Assistant Deputy Attorney General
S.C. Bar No. 105228

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
803-734-3737
ATTORNEYS FOR PETITIONER

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1 to that place, you will have to do what the State's attorney
2 is said, a search for the truth. You will have to conduct
3 that search, and that search will consist of you listening
4 to and looking at the evidence that the State will be
5 presenting, and the evidence that the State will be
6 presenting will be a lot of law enforcement officers, and
7 the testimony of some of the people that were familiar with
8 the circumstances then and there prevailing before, after,
9 and during the alleged shooting.

10 Now, this search is not gonna be very easy for you
11 because it's more complicated than you would think on the
12 surface. What we have here is a case where there are two
13 automobiles being used with gunfire being exchanged between
14 the two automobiles. The questions that you will need to
15 answer will be where the shots came from, who initiated the
16 shots, who was shooting, who were the victims, who were the
17 incident ones.

18 Now, the State, before they can prove its case against
19 my client and against Mr. Reeder, has to prove each one of
20 those elements, in your search for truth, beyond a
21 reasonable doubt. And I contend that, in the case of The
22 State versus Darius Cathcart, on these three indictments,
23 the state will not be able to do so because, number one, a
24 lot of questions are gonna be unanswered. Number two, the
25 state will fail to meet the burden of proof that it needs to

1 meet to make these cases stick.

2 Now, you've heard it mentioned that there were some
3 injuries inflicted by some of the people that are going to
4 testify. Well, Mr. Reeder and Mr. Cathcart were injured
5 also.

6 And guess what?

7 They were injured by gunfire.

8 So, I ask that you listen to the evidence very
9 carefully because it's important. We have young men that
10 are charged with the most serious crimes that can be brought
11 against someone in this state.

12 I thank you for your time. I thank you for your
13 patience and your willingness to put what is going to be a
14 necessary task to, at work to bring justice to them.

15 Thank you.

16 THE COURT: Mr. Brown.

17 MR. BROWN: Thank you, Your Honor.

18 May it please the Court?

19 THE COURT: Yes, sir.

20 MR. BROWN: Good afternoon, ladies and gentlemen.

21 You heard both from the State as well as co-counsel,
22 Mr. Roger Poole, and I won't belabor the information that
23 you already have before you except to state that my client
24 is being charged with the exact same offenses as assault and
25 battery with intent to kill, both two counts, and one count

1 of murder.

2 And as my co-counsel has brought to your attention,
3 they're few elements that you will have a chance to search
4 for indeed the truth as to relates to what will come before
5 you by way of testimony as well as information that will
6 allude to paperwork that was taken in regards to this case.
7 Some form of investigation occurred, and just remember that
8 some form of investigation happened, and you will have a
9 chance to hear, throughout the entire course of this trial,
10 what that investigation may or may not have entailed.

11 I'm here representing the interest of Mr. Rashawn
12 Reeder, the other gentleman seated at that table. And as we
13 search for the truth, you will be empowered, at the very
14 conclusion of this case, to render a verdict.

15 Now, obviously, as lawyers, we learn different things
16 through the course of our legal careers as well, in
17 particular, through law school, and one of the things I, I
18 have heard time and time again and remember so vividly is
19 the concept of veredicto. Veredicto is the Latin word for a
20 verdict. It means literally to, to speak the truth, and
21 that's ultimately what we're asking you to do in regards to
22 all the factors related to this case.

23 You'll have a chance to hear the testimony. You'll
24 have a chance to observe the evidence as it's presented
25 throughout the course of this trial. Because it's so very

1 important what you do here today. I want to thank you for
2 your service. I know it's a process involved in terms of
3 being selected for the jury, and ultimately being seated.
4 It's very important for the State, and everyone associated
5 with this case, and it's also very important to the
6 gentleman seated at this table.

7 So, please, please give us your undivided attention,
8 and I look forward to speaking with you at the conclusion of
9 this trial, and having the opportunity to speak with you
10 again in particularly as to how it relates to what the
11 prosecution has the burden to meet, and ultimately what the
12 defense will show in regards to Mr. Reeder and the lack
13 thereof in terms of that allegations they have been raised
14 against him, and I would simply ask you to entertain the
15 opportunity to speak with you again as we relate to what has
16 not been proven in regards to this case. Indeed, the three
17 charges against my client, Mr. Rashawn Reeder.

18 Thank you for your service.

19 THE COURT: All right. The State may call its first
20 witness.

21 SOLICITOR GRAY: Thank you, Your Honor.

22 State calls Mr. Bryant Miller.

23 THE COURT: Come forward, please, over here to my left
24 and be sworn.

25 BRYANT MILLER, having been first duly

Bryant Miller - Direct examination
by Solicitor Gray

1 sworn, testified as follows:

2 THE COURT: Have a seat please. Pull as close to the
3 microphone as you can, and state your name.

4 WITNESS: Bryant Miller.

5 THE COURT: Mr. Gray---

6 SOLICITOR GRAY: Thank you, Your Honor.

7 THE COURT: ---your witness. Yes, sir.

8 DIRECT EXAMINATION

9 BY SOLICITOR GRAY:

10 Q Mr. Miller, how old are you?

11 A Twenty-two.

12 Q Could you --

13 A This one?

14 Q No, not that one. That one. Just tilt, just tilt it
15 back a little for us.

16 A (Witness complies.)

17 Q There you go.

18 How old are you?

19 A Twenty-two.

20 Q And March 14th, 2009, how old were you then?

21 A Twenty.

22 Q Now, March 14th, 2009, were you hanging out with
23 Mr. Dwight Geter?

24 A Yes, sir.

25 Q Where were you when you were hanging out at?

Bryant Miller - Direct examination
by Solicitor Gray

- 1 A Club of Dreams.
- 2 Q Where is Club Dreams located?
- 3 A Off of Asheville Highway.
- 4 Q Is it near the circle or near the college?
- 5 A Yeah, near the college.
- 6 Q Is that big club from 585 that you see down the hill?
- 7 That's Club Dreams?
- 8 A Yes, sir.
- 9 Q Is that still opened?
- 10 A No, sir.
- 11 Q All right. Who else were you hanging out with that
- 12 night at Club Dreams?
- 13 A Me, Dwight, his brother, and another friend, Mark.
- 14 Q Now, what is his brother's name?
- 15 A Duncan.
- 16 Q Duncan?
- 17 A Yes, sir.
- 18 Q You, Duncan, Dwight, and Marty you said hanging out?
- 19 A Yes, sir.
- 20 Q Who did you ride there with?
- 21 A All of us.
- 22 Q Okay. Who was driving?
- 23 A Dwight.
- 24 Q Do you remember what kind of car Dwight had?
- 25 A It's a red Crown Vic.

Bryant Miller - Direct examination
by Solicitor Gray

- 1 Q Now, when you got to the club, how long did you guys
- 2 stay at the club?
- 3 A Probably about an hour.
- 4 Q Why did you only stay an hour?
- 5 A They had got into a fight.
- 6 Q Who got into a fight?
- 7 A Dwight -- Dwight, Duncan, and Mark.
- 8 Q With each other?
- 9 A No.
- 10 Q Who were they fighting against?
- 11 A Cathcart and them.
- 12 Q Please -- Mr. Cathcart and some others?
- 13 A Yes, sir.
- 14 Q All right. Did you participate in the fight?
- 15 A No, sir, I was at the bar.
- 16 Q You were at the bar, and they were fighting?
- 17 A Yes, sir.
- 18 Q Did you ever help them in the fight?
- 19 A No, sir.
- 20 Q Now, about what time did Club Dreams usually close?
- 21 A Three or four o'clock.
- 22 Q But you didn't stay that long, did you?
- 23 A No, sir.
- 24 Q Why not?
- 25 A They had got put out for fighting.

Bryant Miller - Direct examination
by Solicitor Gray

- 1 Q All of you?
- 2 A Yes, sir.
- 3 Q You and Dwight and Duncan and Marty?
- 4 A Yes, sir.
- 5 Q And Mr. Cathcart and his friends also, is that correct?
- 6 A I don't, I don't know if they had got put out or not.
- 7 Q All right. But you guys, you guys got thrown out of---
- 8 A Yes, sir.
- 9 Q ---Club Dreams?
- 10 well, where did you go after you left Club Dreams?
- 11 A We had left and went to the Waffle House.
- 12 Q Okay. I know you're in Spartanburg.
- 13 which Waffle House?
- 14 A On Asheville Highway.
- 15 Q On Asheville Highway?
- 16 The one near the circle.
- 17 A Yes, sir.
- 18 Q Did you go into the Waffle House?
- 19 A No, sir.
- 20 Q What did you do?
- 21 A We just sat in the parking lot.
- 22 Q And you and Mr. Geter and his brother and this Marty
- 23 person all sat in the parking lot?
- 24 A Yes, sir.
- 25 Q Now, did you ever see Mr. Cathcart and his people?

Bryant Miller - Direct examination
by Solicitor Gray

- 1 A No, sir.
- 2 Q Not at that, not at that Waffle House?
- 3 A No, sir.
- 4 Q How long did you stay at that Waffle House?
- 5 A About 30 or 45 minutes.
- 6 Q And why did you leave there?
- 7 A Police had pulled up.
- 8 Q So, what kind of cars were they pulling, police cars?
- 9 Do you remember the colors?
- 10 A I say it was a black and white and like a Durango with
- 11 a K-9 unit.
- 12 Q Did you -- were you the only ones to leave or did other
- 13 people leave too?
- 14 A It was more, a lot of people leaving.
- 15 Q So, you were hanging out in the parking lot, the cops
- 16 show up, and everybody scattered?
- 17 A Yes, sir.
- 18 Q Now, where did you guys go after you left the Waffle
- 19 House?
- 20 A We went around the circle and got on 85 headed towards
- 21 221.
- 22 Q Okay. Why 221?
- 23 A We was going to Lakeview Manor.
- 24 Q Who lives in Lakeview Manor?
- 25 A I was living out there then at the time.

Bryant Miller - Direct examination
by Solicitor Gray

- 1 Q Well, was anybody else living out there?
- 2 A No, sir.
- 3 Q Just you?
- 4 A Yes, sir.
- 5 Q All right. Were, were they taking you home to Lakeview
- 6 Manor?
- 7 A Yes, sir.
- 8 Q Did they take you home to Lakeview Manor?
- 9 A We rode -- we went out there and then we had left.
- 10 Q Okay. You have to explain it to me.
- 11 You went to Lakeview Manor?
- 12 A Yeah, we went to Lakeview Manor, we went to my house,
- 13 and then we pulled out, and we fixing to take Duncan home.
- 14 Q Gonna take Duncan home?
- 15 A Yes, sir.
- 16 Q Why were you gonna take Duncan home?
- 17 A It was late.
- 18 Q But all, all four of you are out.
- 19 Is Duncan the youngest?
- 20 A Yes, sir.
- 21 Q How old was Duncan?
- 22 A Sixteen.
- 23 Q So, the plan was to take Duncan home?
- 24 A Yes, sir.
- 25 Q Now, did you -- after you left Lakeview Manor, where

Bryant Miller - Direct examination
by Solicitor Gray.

1 did you go?

2 A When we left out the neighborhood, we pulled up at the
3 four way, and that's when the car pulled up behind us and
4 started shooting.

5 Q What kind of car was it if you remember?

6 A It was like a dark green Nissan.

7 Q All right. Did you remember anything else about that
8 car, anything unusual?

9 A I believe it had like some rims on it tinted with some
10 rims and the tinted windows.

11 Q All right. How did you know the car was pulling up
12 beside you?

13 A Sir?

14 Q How did you know a car was pulling up behind you or
15 beside you or what?

16 A We didn't know it was pulling up behind us, but we just
17 heard the gunshot, and that's when I looked to my left and I
18 seen the car was beside us.

19 Q Were you driving?

20 A No, sir, I was behind in the back seat behind the
21 driver's seat.

22 Q Behind the driver's seat.

23 Did you ever see any headlights behind you?

24 A No, sir.

25 Q You, you guys were taught, caught totally by surprise?

Bryant Miller - Direct examination
by Solicitor Gray

- 1 A Yes, sir.
- 2 Q The dark green Nissan pulls up and what happens?
- 3 A We heard a gunshot and it was completely gunshot going
4 off.
- 5 Q Where was Duncan located in the car?
- 6 A Behind the passenger seat.
- 7 Q You and he were in the back seat?
- 8 A Yes, sir.
- 9 Q Now, how many times did this dark green Nissan shoot at
10 this red car?
- 11 A I don't know how many times it was.
- 12 Q Did it break any glass, the gunfire?
- 13 A Yes, sir.
- 14 Q Did you see the people who were shooting at you?
- 15 A No, sir.
- 16 Q Okay. About what time was this?
- 17 A It was around about four o'clock.
- 18 Q Did anybody in your car shoot back at the green Nissan?
- 19 A Yes, sir.
- 20 Q Who was that?
- 21 A Me.
- 22 Q What type of gun did you shoot back with?
- 23 A A .40 cal.
- 24 Q Did you see Mr. -- excuse me.
- 25 Did you see A.J. get shot?

Bryant Miller - Direct examination
by Solicitor Gray

- 1 A No, sir.
- 2 Q Did you get shot?
- 3 A Yes, sir.
- 4 Q When did you realize you were shot in the neck?
- 5 A Like after the shots first went off, and then I, I just
- 6 got like a little stiff, and then I realized I was shot.
- 7 Q Now, which car -- did -- which car pulled off first,
- 8 the dark green Nissan or the red car you were in?
- 9 A The Nissan pulled off first.
- 10 Q So, the Nissan pulled up, started shooting, pulled off?
- 11 A No.
- 12 Q Is that correct?
- 13 A When he pulled up started shooting. After I realized I
- 14 was shot, and I was stiff for a little minute, then I was
- 15 back able to move, they was still shooting and that's when I
- 16 started back shooting.
- 17 Q All right.
- 18 A And then they pulled off.
- 19 Q Was anybody in the car shot besides you?
- 20 A Duncan.
- 21 Q He was sitting right beside you?
- 22 A Yes, sir.
- 23 Q Where was he shot?
- 24 A In the neck.
- 25 Q After the car left, what did you guys do?

Bryant Miller - Direct examination
by Solicitor Gray

- 1 where did you go?
- 2 A We had pulled off and went on Bryant Road.
- 3 Q Okay. After you pulled off on Bryant Road, where did
- 4 you go?
- 5 A We went to Mary Black.
- 6 Q Mary Black Hospital?
- 7 A Yes, sir.
- 8 Q Where -- and what was Duncan's condition like when you
- 9 got to Mary Black Hospital?
- 10 A He was already dead.
- 11 Q Was he -- did you -- you're not a doctor, correct?
- 12 A No, sir.
- 13 Q Were you trying to help him at all during this time?
- 14 A Yes, sir.
- 15 Q But you had your own injury, correct?
- 16 A Yes, sir.
- 17 Q well, actually -- begging the Judge's pardon.
- 18 May I approach?
- 19 THE COURT: Yes, sir.
- 20 Q Could you do me a favor and lift your hair out of the
- 21 way for a second?
- 22 A (Witness complies.)
- 23 Q Where is the entry wound?
- 24 A Right here.
- 25 Q Let me see. Put your hand down.

Bryant Miller - Direct examination
by Solicitor Gray

- 1 That big block spot on the back of your neck?
- 2 A Yes, sir, there.
- 3 Q Is that where it came out?
- 4 A No, it went in right there.
- 5 Q Went in right there?
- 6 A It came out on this side.
- 7 Q Came out on that side.
- 8 (WHEREUPON, a photograph was marked as State's Exhibit
- 9 No. 1 for identification purposes only at this time.)
- 10 Q I want to show you what's been marked as State's
- 11 Exhibit No. 1, and see if you recognize that.
- 12 Do you recognize that, sir?
- 13 A Yes, sir, that's me.
- 14 Q Those are about four pictures.
- 15 What are those pictures of, sir?
- 16 A Me in the hospital.
- 17 Q It shows your injury?
- 18 A Yes, sir.
- 19 Q And I doubt you know -- that's you in the photograph?
- 20 A No, that's me.
- 21 Q It shows your injury to your neck?
- 22 A Yeah, but you can't really see it.
- 23 Q All right. Did -- was any surgery performed on you?
- 24 A No, sir.
- 25 Q Was the bullet still inside you?

Bryant Miller - Direct examination
by Solicitor Gray

1 A No, sir.

2 Q It passed through your neck and out---

3 A And it hit Duncan in the neck.

4 Q Hit Duncan?

5 A Yes, sir.

6 SOLICITOR GRAY: State asks to move Exhibit No. 1 into
7 evidence.

8 MR. POOLE: No objection here.

9 MR. BROWN: No objection, Your Honor.

10 THE COURT: Without objection, it will be received as
11 marked.

12 (WHEREUPON, State's Exhibit No. 1 was received into
13 evidence at this time.)

14 SOLICITOR GRAY: Request permission to publish, Your
15 Honor.

16 THE COURT: You may.

17 Ladies and gentlemen, by publishing, what that means is
18 I'm gonna let you pass the photo among you. I'd ask that
19 you not let it detract from what you're listening to as the
20 trial goes on. We'll continue with the testimony. It will
21 give you an opportunity to take a look at the exhibit more
22 closely.

23 You may proceed.

24 SOLICITOR GRAY: Thank you, Your Honor.

25 Q Now, I just want to make, make it clear cause it looks

Bryant Miller - Direct examination
by Solicitor Gray

1 Like you got hit sort of in the left side and came out the
2 right.

3 Which side of the car, of your car was the dark green
4 Nissan?

5 A On the left side.

6 Q So, the dark green Nissan had the passenger side facing
7 the driver's side of your car, correct?

8 A Yes, sir.

9 Q All right. And that's when the bullets came from your
10 left?

11 A Yes, sir.

12 Q Once you got to the hospital and got treated, did you
13 ever see Duncan again?

14 A No, sir.

15 Q Did you find out what had happened to Duncan?

16 A Yes, sir.

17 Q Was Duncan also shot?

18 A Yes, sir.

19 Q Where was Duncan shot?

20 A In the neck also.

21 Q And later, what happened to Duncan?

22 A He, he passed away.

23 SOLICITOR GRAY: One moment, Your Honor.

24 THE COURT: Yes, sir.

25 (Pause.)

Bryant Miller - Direct examination
by Solicitor Gray

1 (WHEREUPON, 13 photographs were marked as State's
2 Exhibit Nos. 2 through 14 for identification purposes only
3 at this time.)

4 Q I'm also gonna show you some pictures marked Exhibits 2
5 through 14.

6 I believe you guys have seen these.

7 Look through those and I want to ask you a couple of
8 questions, Mr. Bryant.

9 A Yes, sir.

10 Q During this shoot-out I guess, was your window down or
11 was it up?

12 A No, sir, it was, it was shattered and I just knocked it
13 on out.

14 Q So, the driver's side passenger window was up?

15 A Sir?

16 Q The driver's side, driver's side window was up, the
17 back seat?

18 A Yes, sir.

19 Q So, you didn't shoot it out, did you?

20 A No, sir.

21 Q All right. What, what about the rest of the windows on
22 the car, were they up or down?

23 A I believe they were -- I believe all the windows was
24 up.

25 Q So, you're sitting at the stop sign when all of that

Bryant Miller - Direct examination
by Solicitor Gray

1 happens to the car and to the windows?

2 A Yes, sir.

3 Q You -- did you ever get a chance to let your window
4 down to return fire?

5 A No, sir, I just -- it was already kind of shattered.
6 So, I just knocked it out.

7 Q Did those picture accurately reflect the condition of
8 the car after the shooting?

9 A Yes, sir.

10 SOLICITOR GRAY: At this time, Your Honor, I'd like to
11 move exhibits 2 through 14 into evidence.

12 THE COURT: Objections, Mr. Poole?

13 MR. POOLE: None here.

14 MR. BROWN: No objection, Your Honor.

15 THE COURT: They'll be received into evidence as
16 they've been marked.

17 (WHEREUPON, State's Exhibit Nos. 2 through 14 were
18 received into evidence at this time.)

19 Q Now, you said this occurred at Mt. Pleasant Road?

20 A Yes, sir, at the four way stop sign.

21 Q At the four way stop sign.

22 Near Lakeview Manor?

23 A Yes, sir.

24 Q That's still here in Spartanburg County, right?

25 A Yes, sir.

Bryant Miller - Direct examination
by Solicitor Gray

1 Q Thank you. No further questions.

2 Request permission to publish these, Your Honor.

3 THE COURT: You may.

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

6 THE COURT: Mr. Poole, your witness.

7 MR. POOLE: Thank you.

8 THE COURT: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. POOLE:

11 Q Mr. Miller, let me ask you a few questions about the
12 going ons of that night.

13 okay?

14 A Yes, sir.

15 Q This was in March, two, two years ago, 2009, March 14,
16 is that right?

17 A Yes, sir.

18 Q And that you began your testimony with saying that you
19 went to Club Dreams on Asheville Highway along with Dwight
20 Duncan and Marty?

21 A Yes, sir.

22 Q And that you rode there with those three individuals in
23 a red Crown Victoria automobile?

24 A Yes, sir.

25 Q And that you were there for about one hour?

Bryant Miller - Cross-examination
by Mr. Poole

- 1 A Yes, sir.
- 2 Q And Dwight Duncan and Mark got into a fight, is that
- 3 right?
- 4 A Yes, sir.
- 5 Q With whom were they fighting?
- 6 A Cathcart and the people that was with him.
- 7 Q Well, who were they?
- 8 A I don't know who all was with them.
- 9 Q Okay. You say there was a fight between Cathcart and
- 10 the people that he was with?
- 11 A Yes, sir.
- 12 Q And you do not know who they were?
- 13 A No, sir.
- 14 Q You did not participate in the fight?
- 15 A No, sir.
- 16 Q But these were three individuals who were friends of
- 17 yours?
- 18 A Yes, sir.
- 19 Q And you just kept yourself out of it?
- 20 A No, sir, I was at the bar.
- 21 Q Pardon me?
- 22 A I was at the bar.
- 23 Q But you didn't get involved in the altercation?
- 24 A I didn't see it, no, sir.
- 25 Q Pardon me?

Bryant Miller - Cross-examination
by Mr. Poole

1 A No, sir, I didn't see it.

2 Q You didn't see the altercation?

3 A No, sir.

4 Q Well, how do you know who were the participants in it?

5 A Cause my cousin ran up to me at the bar and told me who
6 was fighting.

7 Q So, you got your information about who was fighting
8 from what somebody told you?

9 A Yes, sir.

10 Q And you didn't see the altercation at all?

11 A No, sir.

12 MR. POOLE: Your Honor, I have a matter of law I think
13 I need to take up with the Court.

14 THE COURT: All right. Ladies and gentlemen of the
15 jury, at this point in time I'm gonna ask you to step back
16 to the jury room. Don't begin any discussions until such
17 time as I've advised you to do so. You may retire to the
18 jury room. Just leave those on the counter there.

19 Thank you.

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

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

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

24 THE COURT: Uh-huh. (Affirmative).

25 MR. POOLE: What we have a -- this could be a

Bryant Miller - Cross-examination
by Mr. Poole

1 participating, a precipitating event, this fight that
2 occurred. It's critical to have the right information in
3 this case for the jury to hear.

4 THE COURT: Yes, sir.

5 MR. POOLE: Now, this witness testified, under direct
6 examination, that he knew who individuals were. At least
7 that were my impression. Now he testifies that the only way
8 he knows who the participants were was through hearsay and
9 hearsay only.

10 THE COURT: Yes, sir.

11 MR. POOLE: So, we've got a real problem here in that,
12 at the very least, I'm gonna ask for a curative instruction
13 from the Court to disregard any testimony from this witness
14 about the participants of a fight that happened at Club
15 Dreams for he does not know.

16 THE COURT: So, you're asking that I strike that
17 testimony?

18 MR. POOLE: Yes, sir.

19 THE COURT: Mr. Gray.

20 SOLICITOR GRAY: Yes, sir, Your Honor.

21 I don't believe that testimony should be stricken in
22 this situation. He is said he knew about it. I never asked
23 him how he knew about it. Mr. Poole asked him how he knew
24 about it, and he opened that door, Your Honor. He said he
25 knew the participants. He rode with some of the

Bryant Miller - Cross-examination
by Mr. Poole

1 participants, and I don't see any need for a curative
2 instruction much less striking his testimony up to this
3 point. He was under oath and Mr. Poole asked him a question
4 and he told him the truth.

5 THE COURT: Mr. Brown, any position?

6 MR. BROWN: Your Honor, I would join, join in the
7 request for a curative instruction based upon testimony you
8 heard that seems to be completely that of hearsay, and just
9 because Mr. Poole went into that line of questioning, he was
10 able, because of his cross-examination, to ascertain what
11 the prosecution had an opportunity to know before even
12 putting this witness on the stand, Your Honor.

13 THE COURT: Anything further, Mr. Poole?

14 MR. POOLE: No, sir.

15 THE COURT: All right. I'm gonna take the matter under
16 advisement briefly. We'll take a short break.

17 I'm gonna ask the witness not to discuss his testimony
18 with anyone during the break.

19 Court's in recess briefly.

20 Defendants remain in custody.

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

22 THE COURT: Mr. Gray, do you want to step outside and
23 see if you can find your witness?

24 SOLICITOR GRAY: Yes, sir.

25 THE COURT: Thank you.

Bryant Miller - Cross-examination
by Mr. Poole

1 (Pause.)

2 THE COURT: Sir, if you'll come back to the witness
3 stand.

4 (Witness complies.)

5 THE COURT: All right. I'm gonna ask the witness just
6 a couple questions here on the, my own information.

7 Sir, you were testifying concerning the fact that
8 someone had told you that these individuals were engaged in
9 some type of an argument or fight, is that right?

10 WITNESS: Yes, sir.

11 THE COURT: Who told you that?

12 WITNESS: My cousin. He was at the club too.

13 THE COURT: Is that person got a name?

14 WITNESS: Yeah.

15 THE COURT: What's -- who is it?

16 WITNESS: His name is Brandon Glenn.

17 THE COURT: Mr. Glenn told you that.

18 When did Mr. Glenn tell you that?

19 WITNESS: Like right, right after the fight was over
20 with. He came to the bar and told me what was going on.

21 THE COURT: All right. So, right after the fight had
22 ended he came into the bar and told you what was going on?

23 WITNESS: Yes, sir.

24 THE COURT: All right. Do you wish to ask any other
25 questions?

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1 SOLICITOR GRAY: No, sir, Your Honor.

2 THE COURT: Mr. Poole.

3 MR. POOLE: Your Honor, I didn't get the name of the
4 person that told him.

5 THE COURT: Mr. Glenn.

6 WITNESS: Brandon Glenn.

7 THE COURT: Brandon Glenn.

8 MR. POOLE: Okay. Was it an hour, an hour after?

9 THE COURT: No, sir, right after.

10 MR. POOLE: I could not hear the witness.

11 THE COURT: Okay. Speak into the, speak into the
12 microphone and tell him what happened.

13 WITNESS: Yeah, it was right after.

14 THE COURT: He says right after the fight.

15 MR. POOLE: Okay.

16 THE COURT: All right. Now, do you wish to argue your
17 objection?

18 MR. POOLE: Your Honor, same objection, same reasons.

19 THE COURT: Well, now, I don't know. Exceptions to the
20 hearsay rule, there's a present sense impression by another
21 person or even res gestae if he was in, in watching a fight.

22 MR. POOLE: But we don't know -- well, I understand,
23 Your Honor.

24 THE COURT: Well, you can ask some more questions if
25 you'd like, but I'm, I'm just saying -- let me, let me go to

Bryant Miller - Cross-examination
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1 what I'm talking about, and I'll tell you what I'm talking
2 about. I didn't think we had gone far enough with our
3 inquiry earlier as to exactly how, but I didn't want to do
4 that in front of the jury either.

5 But in looking at the -- a statement describing or
6 explaining an event or condition made while the, the
7 declarant is perceiving the event or condition or
8 immediately thereafter. That's Rule 803(1) is the
9 exceptions to the hearsay rule.

10 So, if the person who makes the statement makes the
11 statement immediately after the event occurred, then it's
12 not considered to be hearsay, and here he's saying Mr. Glenn
13 told him right after the fight happened what happened.

14 MR. POOLE: I see the rule, Your Honor.

15 THE COURT: Yes, sir.

16 MR. POOLE: I'm familiar with the rule, and I would
17 submit to the Court that, given this being the possibility,
18 if not the probability of being a precipitating event, that
19 is still within the Court's discretion to determine whether
20 it's prejudicial effect outweighs its probative value.

21 THE COURT: Well, on that point, Mr. Poole -- but the
22 problem -- the problem I've got is the testimony is already
23 been put into the record in direct testimony.

24 MR. POOLE: Uh-huh. (Affirmative).

25 THE COURT: And, at that time, the defense made no

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1 objection as to a foundation, requiring a foundation for
2 that information or what foundation it might be based upon.
3 Now, I realize that may not have been an issue at that time
4 until all of a sudden he said somebody told him about it.
5 But at the time there was not a foundation requested. So,
6 it's already in the record and in front of the jury
7 unobjected to.

8 Then we get down to the fact that it does appear to be
9 a present sense impression after reading the rule, and I
10 thought, given the proximity of the events, that it couldn't
11 have been very long after the fight happened that he learned
12 the fight had happened. So, that's the reason I came back
13 and asked the questions that I asked.

14 I do not find that the prejudicial effect would
15 outweigh its probative value. I do find that the statement,
16 as described by this witness, would constitute a present
17 sense, present sense impression by the declarant, and,
18 therefore, immediately after a fight, not time for anybody
19 to make up a story or anything like, it seems to be that the
20 courts have said that is reliable enough to avoid the
21 pitfall of the hearsay rule.

22 MR. POOLE: Okay.

23 THE COURT: So, I'm gonna deny the objection, and allow
24 the witness to testify.

25 MR. POOLE: Deny my objection and disallow---

Bryant Miller - Cross-examination
by Mr. Poole

1 THE COURT: And---

2 MR. POOLE: ---a curative instruction.

3 THE COURT: Right. Exactly.

4 MR. POOLE: Yes, sir.

5 THE COURT: Now, if, if you wish to go into this
6 witness about the fact that it was based on what someone
7 told him and the reliability of that person, you certainly
8 have the right to cross-examine on that point --

9 MR. POOLE: Yes, sir.

10 THE COURT: -- and argue whether or not the information
11 is accurate or not. But, at this point in time, I'm, I'm
12 denying the motion and the objection will go forward.

13 Bring the jury in.

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

16 THE COURT: The two alternates will always sit in the
17 back two chairs on that row, and you can sit -- are those
18 the two alternates?

19 Are those the alternates?

20 BAILIFF: Yes, sir.

21 THE COURT: That will work fine.

22 There's no other assigned seats. Those folks just have
23 to sit back there. I understand.

24 Now, ladies and gentlemen of the jury, let me explain
25 to you a little bit about the process that we just went to

Bryant Miller - Cross-examination
by Mr. Poole

1 because I didn't mention it to you earlier.

2 From time to time, if there are objections made during
3 the process of the trial, and it's my belief that the
4 discussion that I must have with the attorneys concerning
5 that objection might involve a discussion of matters that
6 would be perhaps not admissible or something that shouldn't
7 be considered by you, I may ask you to step into the jury
8 room while I consider those objections. That's what we just
9 did. It's simply me doing my job to see to it that only
10 properly admissible evidence, under the rules, is considered
11 by you.

12 Now, in this case, I have considered the arguments. I
13 have denied the objection or overruled the objection.

14 Mr. Poole, you may proceed with your cross-examination.

15 MR. POOLE: Thank you, Your Honor.

16 THE COURT: Yes, sir.

17 CONTINUED CROSS-EXAMINATION

18 BY MR. POOLE:

19 Q Mr. Miller, your last testimony was along the lines
20 that you were told that there was an altercation there at
21 Club Dreams?

22 A Yes, sir.

23 Q And who told you that?

24 A My cousin, Brandon Glenn.

25 Q Your cousin?

Bryant Miller - Cross-examination
by Mr. Poole

- 1 And what was his name?
- 2 A Brandon Glenn.
- 3 Q Is he here?
- 4 A No, sir.
- 5 Q Okay. And did he come with y'all on that evening?
- 6 A No, sir.
- 7 Q Were you suppose to meet up with some other folks that
- 8 evening?
- 9 A No, sir.
- 10 Q And after the altercation, you were asked to leave?
- 11 A Yes, sir.
- 12 Q Is that right?
- 13 A They was -- Dwight and them was asked to leave. I just
- 14 went ahead and left with them cause I rode with them.
- 15 Q That's Dwight Duncan and Mark were asked to leave?
- 16 A Yes, sir.
- 17 Q Okay. And then where did you go?
- 18 A To the waffle House.
- 19 Q Did you go inside?
- 20 A No, sir.
- 21 Q I believe there were testimony that you sat in the
- 22 parking lot for 30 to 35 minutes, is that right?
- 23 A Yes, sir.
- 24 Q What was the purpose of sitting in the parking lot for
- 25 30 to 35 minutes?

Bryant Miller - Cross-examination
by Mr. Poole

- 1 A We just sitting out there chilling.
- 2 Q Okay. And then I think is your testimony that you left
- 3 because the police pulled up?
- 4 A Yes, sir.
- 5 Q Why did you leave when the police pulled up?
- 6 A Everybody was leaving. So, we just went ahead and
- 7 left.
- 8 Q Who's everybody?
- 9 A Everybody was in the parking lot.
- 10 Q I mean does everybody just swarm out of the parking lot
- 11 when the police pull up?
- 12 A Something like that, yeah.
- 13 Q Were y'all having conversations with somebody in other
- 14 cars or anything like that?
- 15 A Yes, sir.
- 16 Q You were?
- 17 A Yes, sir.
- 18 Q You were talking to others?
- 19 A They were standing out there in the parking lot.
- 20 Q So, it was a crowd --
- 21 A Yes, sir.
- 22 Q -- of people that all left in different cars when the
- 23 police pulled up?
- 24 A Yes, sir.
- 25 Q Is that a fair statement?

Bryant Miller - Cross-examination
by Mr. Poole

- 1 I'm not trying to put words in your mouth. I'm just
2 asking you if that's a fair statement.
- 3 A Yes, sir.
- 4 Q All right. Then you went to Lakeview Manor?
- 5 A Yes, sir.
- 6 Q And who lives there?
- 7 A I do.
- 8 Q Who?
- 9 A Me.
- 10 Q You do.
- 11 A (Witness nods affirmatively.)
- 12 Q And then why did you go there to Lakeview Manor to your
13 home?
- 14 A I went out there to my house to chill.
- 15 Q Somewhere else to chill?
- 16 A Yes, sir.
- 17 Q Okay. How long did you stay there?
- 18 A Not long, about like ten minutes, and then we left
19 right back out.
- 20 Q And the purpose for leaving then was to take Duncan
21 home?
- 22 A Yes, sir.
- 23 Q You stayed at Lakeview Manor for about ten minutes?
- 24 A Yes, sir.
- 25 Q Did you pick anything up there, Mr. Miller?

Bryant Miller - Cross-examination
by Mr. Poole

- 1 A No, sir.
- 2 Q You sure?
- 3 A I'm positive.
- 4 Q Then it was your further testimony that you pulled up
5 to the four way stop and then this, this gunfire ensued, is
6 that right?
- 7 A Yes, sir.
- 8 Q Now, who was the driver of the car?
- 9 A Dwight.
- 10 Q Dwight would be the driver say up in the upper, would
11 be under the wheel, right?
- 12 A Yes, sir.
- 13 Q And you were in the passenger's side, right?
- 14 A No.
- 15 Q The passenger seat?
- 16 A No, I was behind Dwight.
- 17 Q You were behind Dwight?
- 18 A Yes, sir.
- 19 Q On the driver's side?
- 20 A Yes, sir.
- 21 Q Okay. And was Duncan right beside you?
- 22 A Yes, sir.
- 23 Q who was up here?
- 24 who was in the passenger seat?
- 25 A Marty.

Bryant Miller - Cross-examination
by Mr. Poole

- 1 Q Marty?
- 2 A Yes, sir.
- 3 Q So, Marty was with you during the whole time?
- 4 A Yes, sir.
- 5 Q Okay. All right. And now we're talking about 3:30 or,
- 6 or four o'clock in the morning, is that right?
- 7 A Yes, sir.
- 8 Q You had a .40 caliber firearm with you, didn't you?
- 9 A Yes, sir.
- 10 Q Did it have a magazine, a clip?
- 11 A Yes, sir.
- 12 Q How many clips did you have?
- 13 A I only had one clip.
- 14 Q Okay. And what kind of ammunition did you have in the
- 15 clip?
- 16 A I'm not for sure what kind of bullets it was.
- 17 Q You don't know?
- 18 It was a .40 caliber, right?
- 19 A Yeah. Yeah.
- 20 Q Okay. Did you have this gun with you the entire night?
- 21 A Yes, sir.
- 22 Q Were you carrying it around with you on your person the
- 23 entire night?
- 24 A Yes, sir.
- 25 Q And you had a clip in it the entire night?

Bryant Miller - Cross-examination
by Mr. Poole

- 1 A Yes, sir.
- 2 Q Do you know whether or not the ammunition that you had
- 3 was manufactured by Winchester?
- 4 A I'm not for sure.
- 5 Q Who was the manufacturer of the .40 caliber?
- 6 A It was Taurus.
- 7 Q Taurus?
- 8 A Yes, sir.
- 9 Q What's the difference between a .40 caliber and a
- 10 9-millimeter Luger?
- 11 A .40 cal is a little bigger.
- 12 Q Pardon me?
- 13 A .40 cal is bigger.
- 14 Q What's the Taurus look like?
- 15 Not, not -- we don't know what a Taurus looks like. We
- 16 know what a Taurus car looks like.
- 17 What does a firearm, a Taurus with a clip in it look
- 18 at, look like?
- 19 A It's a small -- look like, to me, like a Glock.
- 20 Q Like a Glock?
- 21 Okay. What does a 9-millimeter Luger look like?
- 22 A I don't know.
- 23 Q You ever seen one?
- 24 A No, sir.
- 25 Q Do you know -- who, who else had a gun in your car that

Bryant Miller - Cross-examination
by Mr. Poole

- 1 night, in the car you were riding in?
- 2 A Just me.
- 3 Q That's your testimony?
- 4 A Yes, sir.
- 5 Q You're the only one that had a gun?
- 6 A Yes, sir.
- 7 Q Then it's your testimony further that, after the fire
- 8 fight, gunfire fight, you pulled off Bryant Road and went to
- 9 Mary Black Hospital?
- 10 A Yes, sir.
- 11 Q Did you not stop at the Jeter home?
- 12 wasn't there a stop made there?
- 13 A Yes, sir.
- 14 Q You didn't mention that a while ago?
- 15 A I said we stopped on Bryant Road.
- 16 Q You stopped on Bryant Road?
- 17 A Yes, sir.
- 18 Q Is that where the Geter home is?
- 19 A Yes, sir.
- 20 Q What was the purpose of the stop at the Geter home?
- 21 A We had let Marty out.
- 22 Q Let Marty out?
- 23 A Yes, sir.
- 24 Q He didn't live there, did he?
- 25 A No, sir.

Bryant Miller - Cross-examination
by Mr. Poole

1 Q why was he let out?

2 A We was going to the hospital.

3 Q Would it not have been more important to get to the
4 hospital before you let somebody out of a car if you'd been
5 shot in the neck through and through?

6 A Yes, sir.

7 Q So, what was the real reason for stopping at the Geter
8 house?

9 A To drop Marty off.

10 Q Okay. Just one final question.

11 Do you know the difference between the projectile, a
12 component, and a bullet for a .40 caliber Taurus?

13 Do you know the difference between copper and lead?

14 A I don't know, sir.

15 Q You don't?

16 A No, sir.

17 Q Okay. Thank you. Answer any questions Mr. Brown may
18 have for you.

19 THE COURT: Mr. Brown, your witness.

20 CROSS-EXAMINATION

21 BY MR. BROWN:

22 Q You said y'all let Marty out?

23 A Yes, sir.

24 Q That was at 150 Gower Road?

25 A Yes, sir.

Bryant Miller - Cross-examination
by Mr. Brown

- 1 Q where is that located?
- 2 Is that in Lakeview Manor?
- 3 A No, sir.
- 4 Q It's not in Lakeview Manor?
- 5 A No, sir.
- 6 Q But you live in Lakeview Manor?
- 7 A Yes, sir.
- 8 Q You didn't let Marty out at your house?
- 9 A No, sir.
- 10 Q So, where's Gower Road at?
- 11 A Off Bryant Road.
- 12 Q How far is Bryant Road from Lakeview Manor?
- 13 A About a, about a good mile and a half.
- 14 Q So, you went to Bryant Road.
- 15 Is that close to Mary Black or is that farther away
- 16 from Mary Black?
- 17 A Bryant Road is closer.
- 18 Q Closer, closer to Lakeview Manor?
- 19 A Yes, sir.
- 20 Q And you said y'all were chilling at your house for
- 21 about ten minutes?
- 22 A Yes, sir.
- 23 Q Did you go inside the Geter house?
- 24 A No, sir.
- 25 Q Did y'all stay at the Geter house more than thirty

Bryant Miller - Cross-examination
by Mr. Brown

- 1 seconds?
- 2 A Probably like five minutes.
- 3 Q Five minutes.
- 4 So, in being at the Geter house, what did you do for
- 5 those five minutes?
- 6 A We pulled up, let Marty out, and we was checking on
- 7 Duncan.
- 8 Q Check on Duncan?
- 9 A Yes, sir.
- 10 Q And how was Duncan at that point?
- 11 A He wasn't responding.
- 12 Q So, five minutes y'all were there.
- 13 Did anyone else get out, besides Marty, and go inside
- 14 the house?
- 15 A No, sir.
- 16 Q Did Dwight go inside the house?
- 17 A No, sir.
- 18 Q Did anybody come from inside the house out to where
- 19 y'all were?
- 20 A No, sir.
- 21 Q Did anyone have a conversation with y'all besides
- 22 people that was in the car?
- 23 A I believe Duncan mama came to the door once we pulled
- 24 up.
- 25 Q okay. And she came to the door.

Bryant Miller - Cross-examination
by Mr. Brown

- 1 Did she talk to you?
- 2 A Yes, sir.
- 3 Q And you had a conversation with her?
- 4 A I really didn't say much. I ain't say much. She had
- 5 to know what was going on.
- 6 Q You told her what was going on?
- 7 A Hu huh. (Negative).
- 8 Q You didn't?
- 9 A No, sir.
- 10 Q You refused to talk to her?
- 11 A Yes, sir.
- 12 Q why did you refuse to talk to her?
- 13 A I didn't want to let her know what was going on.
- 14 Q Did Dwight talk to her?
- 15 A I can't remember.
- 16 Q Anybody else inside the house come to the door and talk
- 17 to y'all?
- 18 A No, sir.
- 19 Q Let me clarify -- help me clarify something.
- 20 Mr. Gray asked you a question earlier about a bullet
- 21 that, as he pointed to both sides of your neck, he had you
- 22 remove your hair, to the left side of your neck.
- 23 A Yes, sir.
- 24 Q And he also talked about the right side of your neck.
- 25 Were you grazed on the right side as well?

Bryant Miller - Cross-examination
by Mr. Brown

- 1 A No, I mean it went in the left side and came out the
2 right side.
- 3 Q Went in the left side and came out the right side.
4 It passed through your entire neck?
- 5 A Yes, sir.
- 6 Q Went through your skin and everything?
- 7 A Yes, sir.
- 8 Q You were released from the hospital on that same
9 evening?
- 10 A Yes, sir.
- 11 Q Didn't have to have any surgery?
- 12 A No, sir.
- 13 Q Did you have any major stitches?
- 14 A No, sir.
- 15 Q Didn't hit any bone going through your neck?
- 16 A No, sir.
- 17 Q And in saying that, you're saying that bullet was the
18 bullet that passed through you and struck Mr. Duncan Geter?
- 19 A Yes, sir.
- 20 Q And you know that for sure?
- 21 A That's what the doctors told me.
- 22 Q And you say that you were seated behind Dwight in the
23 vehicle?
- 24 A Yes, sir.
- 25 Q And, so, you were seated on the driver's side behind

Bryant Miller - Cross-examination
by Mr. Brown

- 1 Dwight in the vehicle?
- 2 A Yes, sir.
- 3 Q Not on the passenger side in the back?
- 4 A No, sir.
- 5 Q And definitely not on the passenger side in the front
- 6 of the car?
- 7 A No, sir.
- 8 Q The Waffle House, you were out having conversations
- 9 with people.
- 10 Was it a bunch of people out at the Waffle House?
- 11 A Yes, sir.
- 12 Q You said you were there for about 30 minutes?
- 13 A Yes, sir.
- 14 Q Just chilling?
- 15 A Yes, sir.
- 16 Q And the police pulled up and you say people pulled off?
- 17 A Yes, sir.
- 18 Q Was anything going on that would of caused you to want
- 19 to pull off when the police pulled up?
- 20 A No, sir, we just left.
- 21 Q Were you doing anything wrong?
- 22 A No, I just -- I had a gun on me.
- 23 Q And you got in the club with that gun?
- 24 A No, sir.
- 25 Q Where was the gun when you went inside the club?

Bryant Miller - Cross-examination
by Mr. Brown

1 A In the car.

2 Q Where in the car?

3 A I'm not sure. I believe it was in the dashboard.

4 Q So, if the gun was in the dashboard of the car, you got
5 in the car, as you sat in the back seat of the car, how did
6 you get the gun?

7 A I told them to hand me, hand me my gun.

8 Q Told who?

9 A Marty.

10 Q Why would you tell Marty to hand you your gun?

11 A He was in the passenger seat.

12 Q Okay. But why would you tell him to hand you your gun
13 if your gun was inside the dashboard?

14 A Just to keep it on me.

15 Q If you were sitting in front of the, the car in the
16 passenger side, and he's gonna reach in that dashboard
17 though, right?

18 A Say what?

19 Q You would agree with me it would of been much easier
20 for you if you were sitting in the front passenger seat of
21 that car to reach in the dashboard and get it yourself if
22 you were seated in that seat?

23 A Yes, sir.

24 Q Does Marty live near anyone, near the Geter's?

25 A No, sir.

Bryant Miller - Cross-examination
by Mr. Brown

- 1 Q Does Marty live anywhere near you or where you lived at
2 that time in Lakeview Manor?
- 3 A No, sir.
- 4 Q Was there a problem with Marty staying at your house in
5 Lakeview Manor?
- 6 A No, sir.
- 7 Q But instead y'all drove to the Geter's house?
- 8 A Yes, sir.
- 9 Q And you only let Marty out?
- 10 A Yes, sir.
- 11 Q Did you take your, your gun to the hospital with you?
- 12 A No, sir.
- 13 Q What happened to your gun?
- 14 A I threw it out.
- 15 Q Where?
- 16 A On the way to the hospital.
- 17 Q And you shared this with law enforcement?
- 18 A Sir?
- 19 Q You shared this with law enforcement?
- 20 A No, sir.
- 21 Q You didn't leave it at the Geter's house?
- 22 A No, sir.
- 23 Q You didn't leave it at your house?
- 24 A No, sir.
- 25 MR. BROWN: That's all the questions I have.

James Carter - Direct examination
by Solicitor Gray

1 THE COURT: Redirect.

2 SOLICITOR GRAY: No redirect, Your Honor.

3 THE COURT: You may step down, step down.

4 SOLICITOR GRAY: We're done with this witness, Your
5 Honor.

6 THE COURT: You want to excuse him?

7 SOLICITOR GRAY: Yes, sir.

8 THE COURT: Any objection to the witness being excused?

9 MR. POOLE: No, sir.

10 MR. BROWN: None, Your Honor.

11 THE COURT: You're free to go if you'd like, sir.

12 State may call it's next witness.

13 SOLICITOR GRAY: Doctor James Carter.

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

15 JAMES CARTER, having been first duly
16 sworn, testified as follows:

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

19 WITNESS: James W. Carter, M.D.

20 THE COURT: Mr. Gray, your witness.

21 SOLICITOR GRAY: Thank you, sir.

22 THE COURT: Yes, sir.

23 DIRECT EXAMINATION

24 BY SOLICITOR GRAY:

25 Q Doctor Carter, how long have you been a doctor?

James Carter - Direct examination
by Solicitor Gray

1 A Oh, about 35 years.

2 Q Hold on. I need you to speak into---

3 A About 35 years.

4 Q Thank you, sir.

5 Do you have any specialties?

6 A Emergency medicine.

7 Q How long have you been doing emergency medicine?

8 A Including the moonlighting on my residency, probably 23
9 years.

10 Q On March 14th, 2009, were you in, in the emergency
11 room at Mary Black Hospital?

12 A I was.

13 Q And speak up please.

14 A I was.

15 Q Thank you.

16 Do you remember anything -- well, I won't say anything
17 unusual.

18 Did you have a shooting victim come in?

19 A We did.

20 Q All right. Do you know who that shooting victim was?

21 A Yes.

22 Q What was his name?

23 A I'd have to look. It's a Mr. Geter, Duncan Geter.

24 Q When Mr. Geter arrived, arrived at Mary Black Emergency
25 Room, where was he located?

James Carter - Direct examination
by Solicitor Gray

1 Was he in an ambulance?

2 A No, sir.

3 Q What kind of car was it?

4 A It was a private vehicle that had been driven up into
5 the ambulance bay. The driver had jumped out and come in
6 saying that he had someone that had been shot in the car.

7 Q Now, did you go out to that private vehicle?

8 A I did.

9 Q Did you see the individual that had been shot?

10 A I'm sorry?

11 Q Did you see the individual that had been shot?

12 A I did.

13 Q Was there one individual that had been shot or two?

14 A There were two shot, but there was only one in the car
15 when I went out there.

16 Q Okay. What was his condition in the vehicle?

17 A He appeared to be dead. He was laying on his right
18 side with a lot of shards of glass all around him. It was
19 unresponsive to any verbal stimuli or tactile stimuli,
20 touching him, and we literally had to pick him up out of the
21 back of the seat and put him on a gurney and bring him
22 inside.

23 Q Once he was inside, did you perform any motions,
24 movements, tests, or anything to resuscitate him?

25 A We took him into ER Room 6 and attached him to the, the

James Carter - Direct examination
by Solicitor Gray

1 monitor. He had no spontaneous respirations. He had no
2 spontaneous cardiac activity. He was not responding in any
3 way whatsoever.

4 Q what type of injury did he have?

5 A The only injury I found was the gunshot wound entering
6 the left side of the neck about four centimeters below the
7 ear, and on the opposite side of the neck you could palpate
8 what was probably a projectile.

9 Q went in the left side, did not come out the right side?

10 A Did not come out the right side.

11 Q Did Duncan Geter ever revive?

12 A No, sir.

13 Q Did you pronounce him dead?

14 A I pronounced him dead on arrival.

15 Q About what time was that, sir?

16 A Around four o'clock. I would have to look at my papers
17 to see exactly, but they got there around four o'clock.

18 Q One moment.

19 (Pause.)

20 Q When you extracted Mr. Duncan, Mr. Geter out of the
21 vehicle --

22 A Uh-huh. (Affirmative).

23 Q -- did you have any gloves on at that time?

24 A Pretty sure I did, yeah.

25 Q That---

James Carter - Direct examination
by Solicitor Gray

1 A I typically would have.

2 Q Did you go through the vehicle looking for anything?

3 A No, sir.

4 Q What was your job at that moment?

5 A My job at the moment was to extract the patient, get
6 him into the ER and see what was going on with him, see what
7 could be done for him.

8 Q You didn't do any investigation of the vehicle or
9 anything?

10 A No, sir.

11 Q Did you remember what the inside of the vehicle even
12 looked like?

13 A It was dark, and, of course, it was in an ambulance
14 bay, four o'clock in the morning. The lights were on. But
15 what I mainly remember is most all the glass was shot out,
16 appeared to be shot out.

17 Q Yes, sir.

18 Thank you for your time. Please answer any questions
19 these two gentlemen may have, Mr. Poole and Mr. Brown.

20 A Okay.

21 THE COURT: Mr. Poole, your witness.

22 MR. POOLE: Yes, sir. Just bear with me for just a
23 minute, Your Honor.

24 THE COURT: Yes, sir.

25 (Pause.)

James Carter - Direct examination
by Solicitor Gray

1 MR. POOLE: No questions here, Your Honor.

2 THE COURT: Mr. Brown.

3 MR. BROWN: None, Your Honor.

4 THE COURT: Sir, you may step down.

5 Do you wish to have the witness excused?

6 SOLICITOR GRAY: Yes, sir, Your Honor.

7 THE COURT: Any objections?

8 MR. POOLE: None.

9 THE COURT: You're free to go. Thank you for coming,
10 sir.

11 WITNESS: Thank you, sir.

12 THE COURT: State may call its next witness.

13 SOLICITOR GRAY: Thank you.

14 State calls Shawn Cape.

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

17 SHAWN CAPE, having been first duly
18 sworn, testified as follows:

19 THE COURT: Have a seat. Once you're seated, sir, I'd
20 ask that you state your name.

21 WITNESS: My name is Shawn Cape.

22 THE COURT: Mr. Gray, your witness.

23 SOLICITOR GRAY: Thank you, sir.

24 DIRECT EXAMINATION

25 BY SOLICITOR GRAY:

Shawn Cape - Direct examination
by Solicitor Gray

1 Q May -- March 14th, 2009, Mr. Cape, where were you
2 working?

3 A I was working in the ER parking lot at Mary Black.

4 Q What were your duties and responsibilities at that
5 time?

6 A To help patients up that needed to be, make sure
7 everything was secure in the parking lot and just patrol as
8 needed in that area of the ER.

9 Q You're a security guard?

10 A Yes, I was.

11 Q How long had you been a security guard for Mary Black?

12 A For Mary Black, I'd say a little over a year.

13 Q All right. But you weren't -- you didn't have police
14 powers or investigative duties or anything like that,
15 correct?

16 A No, my job was to make sure everything was secure for
17 the, that area that I was in.

18 Q All right. March 14th, 2009, did a red Crown Vic
19 come to the ER?

20 A Yes, it did.

21 Q At Mary Black Hospital?

22 A Yes, it did.

23 Q What did you do or see in and around this red Crown
24 Vic?

25 A Can you clarify please?

Shawn Cape - Direct examination
by Solicitor Gray

1 Q Yes, sir.

2 When it came -- when the car went to the, the emergency
3 bay area --

4 A Uh-huh. (Affirmative).

5 Q -- what did you see in the car?

6 A I saw the, I don't know their names, but I saw the one
7 that been shot in the neck sitting in the back seat, the one
8 that had passed away was laying in the back seat, and the
9 driver. I immediately -- they both jumped out, of course,
10 wanting to get help for him, and I immediately took them in
11 the front to be, to get some help for them.

12 Q All right. I show you what's been marked as Exhibits 2
13 through 14. See if you recognize these. Just look through
14 those real quick please.

15 A Yes, I recognize this.

16 Q What is that?

17 A That is the Crown Vic --

18 Q Where---

19 A -- sitting in the bay.

20 Q In the bay where?

21 A In the ER bay at Mary Black.

22 Q That's the car that you saw that night?

23 A Yes, sir.

24 Q That's the car you saw with the deceased in the back
25 seat?

Shawn Cape - Direct examination
by Solicitor Gray

- 1 A Yes, sir.
- 2 Q Okay. Did you do anything else to, to assist these
- 3 gentleman or the doctors?
- 4 A No, sir, I did not assist them in any way other than
- 5 take them in to see the receptionist to try to get help per
- 6 my protocols at the time.
- 7 Q Did you go inside the car to investigate at all?
- 8 A No, sir.
- 9 Q Did you touch the inside of the car at all?
- 10 A No, sir.
- 11 Q Did you keep other people from touching the car?
- 12 A That was my duty, to secure the, the area and to make
- 13 sure that nobody touched the car, yes.
- 14 Q Did anybody touch that car or investigate inside that
- 15 vehicle before the Sheriff's Office arrived?
- 16 A Not to my knowledge.
- 17 Q Thank you. Please answer any questions that Mr. Brown
- 18 or Mr. Poole may have.
- 19 A All right.
- 20 THE COURT: Mr. Poole, your witness.
- 21 MR. POOLE: Thank you, Your Honor.
- 22 CROSS-EXAMINATION
- 23 BY MR. POOLE:
- 24 Q Mr. Cape, you gave a statement in this case on the
- 25 same, on March 14th of 2009, didn't you?

Shawn Cape - Cross-examination
by Mr. Poole

- 1 A Yes, I did.
- 2 Q Okay. And you basically testified just now as to what
3 you had containing your statement, didn't you?
- 4 A Pretty much that's it, yes.
- 5 Q Okay. You stated that two guys came in with one, with
6 you, one wearing a black shirt, the driver of the car, and a
7 guy that had been shot wearing a reddish pink shirt?
- 8 A To my knowledge, yes, that's correct.
- 9 Q And he went back without permission, is that right?
- 10 A Yes, I stopped him before he got into the ER. That
11 being I, if I remember correctly, it was a, the one that had
12 been shot in the neck.
- 13 Q Was that Bryant Miller?
- 14 A I think so. The -- I don't know their names. I
15 apologize.
- 16 Q Was he the individual who testified a moment ago?
- 17 A Yes, he was.
- 18 Q That was him?
- 19 A Yes.
- 20 Q He was the one that went in without permission?
- 21 A Yes, he went through right back behind the receptionist
22 and I stopped him.
- 23 Q Okay. Thank you.
- 24 THE COURT: Mr. Brown.
- 25 MR. BROWN: No questions, Your Honor.

Shawn Cape - Cross-examination
by Mr. Poole

1 THE COURT: Anything on redirect?

2 SOLICITOR GRAY: No, sir, Your Honor.

3 THE COURT: You may step down, sir.

4 Do you wish to excuse the witness?

5 SOLICITOR GRAY: Yes, sir.

6 THE COURT: Without any objections?

7 MR. BROWN: No objection.

8 MR. POOLE: None.

9 THE COURT: Without objection, sir, you're free to go.
10 You may stay if you'd like.

11 WITNESS: Thank you.

12 THE COURT: State may call its next witness.

13 SOLICITOR GRAY: State calls Karen Geter.

14 THE COURT: Come forward, ma'am, to be sworn.

15 KAREN GETER, having been first duly
16 sworn, testified as follows:

17 THE COURT: Have a seat, ma'am, and once you're seated,
18 state your name.

19 WITNESS: Karen Geter.

20 THE COURT: Mr. Gray, your witness.

21 SOLICITOR GRAY: Thank you.

22 DIRECT EXAMINATION

23 BY SOLICITOR GRAY:

24 Q Ms. Geter, are you the mother of Dwight Geter?

25 A Yes, sir.

Karen Geter - Direct examination
by Solicitor Gray

1 Q You're also the mother of Duncan Geter?

2 A Yes, sir.

3 Q What was Duncan's nickname?

4 A A.J.

5 Q How old was Duncan May 14th, 2009?

6 A Sixteen.

7 Q I want to ask you about that night, Ms. Geter.

8 Did you know where Duncan and Dwight were going that
9 night?

10 A No, he just told me that he was going out with his
11 brother, but he didn't say where they were going.

12 Q So, Duncan was tagging along with his older brother?

13 A Right, they were close.

14 Q They were close brothers?

15 A Yeah.

16 Q So, what time did they leave the house?

17 A I don't know. I had -- I don't know. I had went to
18 bed before they left. So, I don't know what time they left.

19 Q Now, where did you live at that time?

20 A 150 Gower Road right off of Bryant Road.

21 Q How far from Bryant Road?

22 A Just right across from the elementary, Chapman
23 Elementary School.

24 Q All right. You say you were asleep.

25 With anybody else in the home with you when you were

Karen Geter - Direct examination
by Solicitor Gray

1 asleep at that time?

2 A Yes.

3 Q who else was there?

4 A At the time my boyfriend, Zimmerman Owens.

5 Q All right. Were you awakened from your sleep by
6 anyone?

7 A Yes, I was.

8 Q who did that?

9 A I heard a banging on the door, and I sit straight up in
10 the bed. And when I went to the door, I saw Bryant standing
11 in the, on my walkway.

12 Q Is that Mr. Miller?

13 A Bryan Miller, uh-huh. (Affirmative).

14 Q And what did -- did you talk to Mr. Miller?

15 A Yes, I could hear my oldest son screaming, and I asked
16 him what was wrong. He said A.J. had got shot, and I
17 guess -- Bryant was the one that knocked on the door. I
18 don't remember him saying anything. I just heard D.J.
19 screaming.

20 Q what did you do?

21 A I lost it I guess. I mean just went hysterical and
22 started screaming and hollering and yelling and stuff, and I
23 really can't remember what I did right at that time.

24 Q All right.

25 A I just went back in the house and I think I tried to

Karen Geter - Direct examination
by Solicitor Gray

1 find some clothes to put on, and told them to just take him
2 to the hospital, take A.J. to the hospital.

3 Q You told Dwight to do that?

4 A Yeah, I told him y'all just go on and take him to the
5 hospital.

6 Q And which hospital is closer to Gower Road?

7 A Mary Black.

8 Q Did they leave at that time?

9 A Yeah, they did.

10 Q And what did you do, ma'am?

11 A I think I went in the house and put some clothes on and
12 I left right behind them.

13 Q Did you ever look in the car while they were there at
14 your home?

15 A No, sir.

16 Q Why not?

17 A I just chose not to. I mean I guess I was too
18 hysterical at the time.

19 Q All right. Once you got to the hospital, what did you
20 do or see?

21 A What did I do?

22 Q Yes, ma'am.

23 A Well, when they did let me back, they took me in this
24 little room and told me just sit there, and, you know,
25 someone would talk to me in a little bit, and then I guess

Karen Geter - Direct examination
by Solicitor Gray

1 it was like five minutes later maybe, seemed, seemed like an
2 hour, and I saw the doctor or doctor and the nurse coming
3 down the hall cause I kept getting up going back and forth
4 to the door. And when he came in, he told me to sit down,
5 and I told him I didn't want to sit down, just let me know
6 what happened to my son. And my boyfriend at the time told
7 me to sit down and I sit down, and he told me that it had
8 been a shooting, and A.J. didn't survive.

9 Q Did you talk to Dwight at the hospital?

10 A He wasn't really talking. He wasn't really saying much
11 cause he was kind of upset hisself.

12 Q That was the night A.J. died?

13 A Yes, sir.

14 Q No further questions. Please answer any questions Mr.
15 Poole or Mr. Brown may have.

16 THE COURT: Mr. Poole, your witness.

17 MR. POOLE: No questions at this time.

18 THE COURT: Any---

19 MR. BROWN: No questions, Your Honor.

20 THE COURT: Ma'am, you may step down.

21 WITNESS: Thank you.

22 THE COURT: Any objections to this witness being
23 excused?

24 SOLICITOR GRAY: She probably wants to stay, Your
25 Honor.

Zimmerman Owens - Direct examination
by Solicitor Owens

1 THE COURT: All right. Mr. Gray, you may call your
2 next witness.

3 SOLICITOR GRAY: Okay. Zimmerman Owens.

4 THE COURT: Come forward, sir, to be sworn.

5 ZIMMERMAN OWENS, having been first duly
6 sworn, testified as follows:

7 THE COURT: Have a seat, sir.

8 (Witness complies.)

9 THE COURT: State your name please.

10 WITNESS: Zimmerman Owens.

11 THE COURT: Mr. Gray, your witness.

12 DIRECT EXAMINATION

13 BY SOLICITOR GRAY:

14 Q Mr. Owens, do you know the Geter family?

15 A Yes, I do.

16 Q How long have you known the Geter family?

17 A About six years.

18 Q March 14th, 2009, were you in the Geter home?

19 A Yes.

20 Q Did something happen that day that you remember?

21 A All I remember saying A.J. told me he was going out
22 with his brother that night, and I told him, and I asked
23 him, I said are you sure you want to go. He said yeah, man,
24 I been sitting in the house all this long. I been playing
25 basketball. It's time to get out on the weekend to have

Zimmerman Owens - Direct examination
by Solicitor Owens

1 sone fun with my brother. And, so, he asked his mama could
2 he go out with him. You know, he went out and he never did
3 come back home.

4 Q Did Dwight ever come back home?

5 A Dwight come back, but he didn't, A.J. didn't.

6 Q Were you there when Dwight and Mr. Miller first came by
7 the house after the shooting?

8 A Yes, I was.

9 Q What did you see?

10 A Bryant come to the door, knocked on the door, and told,
11 told, told A.J. mother A.J. had been shot, and she probably
12 couldn't remember, but I can remember when he asked -- he
13 said A.J. had been shot. She said why come y'all didn't
14 take him on to the hospital right then and there. So, me
15 and her got and put our clothes on and went to Mary Black
16 and --

17 Q I think we know the rest. That's all, Mr. Zimmerman.
18 Please answer any questions they may have for you.

19 MR. POOLE: No questions.

20 THE COURT: Mr. Brown.

21 CROSS-EXAMINATION

22 BY MR. BROWN:

23 Q Mr. Owens, you saw, you saw the boys leave and go to
24 the hospital?

25 A Yes, sir.

Zimmerman Owens - Cross-examination
by Mr. Brown

1 Q Did you see---

2 A We followed -- we didn't follow right then and there,
3 but we got really -- we put our clothes on and went on to
4 the hospital behind them.

5 Q You saw Mr. Miller get in the back seat where A.J. was?

6 A No, we -- I did not see anybody in the car cause we
7 never did look in the car.

8 Q Okay. And, so, did you see them drive off?

9 A No.

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

12 THE COURT: Redirect?

13 SOLICITOR GRAY: No, sir, Your Honor.

14 THE COURT: You may step down.

15 Wish to excuse the witness?

16 SOLICITOR GRAY: Oh, yes, sir, Your Honor.

17 THE COURT: Any objection?

18 MR. POOLE: None.

19 MR. BROWN: No objection.

20 THE COURT: You're free to go, sir.

21 State may call its next witness.

22 SOLICITOR GRAY: Can we approach, Your Honor?

23 THE COURT: You may.

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

Chris Durham - Direct examination
by Solicitor Gray

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

2 CHRIS DURHAM, having been first duly
3 sworn, testified as follows:

4 THE COURT: Have a seat please, sir. Once you're
5 seated, state your name.

6 WITNESS: Jack Christopher Durham.

7 THE COURT: Mr. Gray, your witness.

8 SOLICITOR GRAY: Thank you.

9 DIRECT EXAMINATION

10 BY SOLICITOR GRAY:

11 Q Please state -- sorry.

12 Where do you work, sir?

13 A Spartanburg County Sheriff's Office.

14 Q How long have you worked there?

15 A Ever since '90.

16 Q What kind of jobs have you had since you've been there?

17 A I been a road deputy. I worked in forensics, and I'm
18 currently in investigations.

19 Q On March 14th, 2009, what were your duties and
20 responsibilities?

21 A I was on call that night for violent crimes.

22 Q You were an investigator at the time?

23 A Yes, sir.

24 Q As an investigator of violent crimes, what did you do?

25 A Just investigate crimes of person, someone gets hurt or

Chris Durham - Direct examination
by Solicitor Gray

1 someone gets shot, robbery, things of that nature.

2 Q So, a regular deputy will be on the scene or something
3 and you will be called in?

4 A Yes, sir, I'd be called in after it is, after they've
5 discovered that it's needed, an investigation is needed --

6 Q Okay.

7 A -- they called me.

8 Q On the evening in question for Mr. Duncan's shooting,
9 excuse me, Mr. Geter's shooting, were you called in as a
10 violent crimes investigator?

11 A Yes, sir, got called approximately four o'clock in the
12 morning. They told me that they were, been shooting victims
13 at two different hospitals. One was at Spartanburg
14 Regional. The other one's at Mary Black.

15 Q And which location did you go to?

16 A I went to Spartanburg Regional.

17 Q All right. Were any of the officers there at
18 Spartanburg Regional?

19 A Yes, sir, there was.

20 Q Who -- do you remember who, who was there?

21 A I don't really remember who was there.

22 Q All right.

23 A I just remember officers were there because that's when
24 they directed me to the rooms that the, the shooting victims
25 were, were in.

Chris Durham - Direct examination
by Solicitor Gray

1 Q Do you know the names of the shooting victims?

2 A I was advised that a Mr. Reeder and a Mr. Cathcart had
3 been shot.

4 Q That Mr. Cathcart and Mr. Reeder, is that them in the
5 courtroom seated here today?

6 A Yes, sir.

7 Q Did you investigate Mr. Reeder and Mr. Cathcart as
8 victims or suspects?

9 A At, at first victims. I mean they, they were shot.
10 So, I just pretty much wanted to find out what was going on,
11 you know, get a cursory investigation, an overview of what
12 happened.

13 Q So, you didn't go in with the mind set that something
14 else had happened, just that they had been shot?

15 A Right.

16 Q Now, did you talk to either of these individuals?

17 A Yes.

18 MR. BROWN: Your Honor, we have a matter, matter of
19 law.

20 THE COURT: All right. Ladies and gentlemen of the
21 jury, at this point in time I'll ask you to step back to the
22 jury room. Don't begin any discussion until I've asked you
23 to do so. You may retire.

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

Chris Durham - Direct examination
by Solicitor Gray

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

2 MR. BROWN: Your Honor, I know that we had a number of
3 pretrial motions, and, in particular, three officers during
4 the course of the Jackson v. Denno hearing, questioning, in
5 particular, the chief investigator here. The Court gave
6 specific instructions as related to any testimony being
7 taken from Mr. Durham having the opportunity as well as any
8 type of conversation he may of may not have had with my
9 client. I think this line of questioning could lead to a
10 presumption if he's not allowed to go into the fact that he
11 never spoke with me or he didn't have the ability to speak
12 with my client based upon what was happening.

13 He could give some form of impression to the jury
14 potentially that just because of that, Your Honor, I
15 strongly object to this line of questioning as it may, as if
16 there's something that the defense may or, may be trying to
17 hide. And, so, of course, I would direct this to the
18 Court's attention and remind Mr., Mr. Gray.

19 SOLICITOR GRAY: Yes, sir, I have an outline here
20 specifically for that hearing you had, and my---

21 THE COURT: I'm sorry. I couldn't hear you. Somebody
22 coughed.

23 What did you say?

24 SOLICITOR GRAY: I'm sorry, Your Honor. I have an
25 outline for that hearing when you had on the Jackson v.

Chris Durham - Direct examination
by Solicitor Gray

1 Denno.

2 THE COURT: Uh-huh. (Affirmative).

3 SOLICITOR GRAY: My understanding specifically was that
4 Mr. Reeder merely said he was left-handed and no other
5 statements were admissible. It's not that I'm trying to say
6 that Mr. Reeder was trying to withhold anything. I believe
7 the officer testified under oath last time that they thought
8 that he was under too much medication and anesthesia and
9 that's why he didn't say anything. Not that he was
10 exercising his Fifth Amendment rights.

11 MR. BROWN: I understand that, based upon that ruling,
12 Your Honor---

13 (WHEREUPON, Defendant Reeder stands up at this time.)

14 THE COURT: Sir, have a seat.

15 (Defendant Reeder complies.)

16 THE COURT: Thank you. Go ahead.

17 MR. BROWN: Your Honor, based upon that ruling, any
18 information that would of come out of any type of
19 conversation that Mr. Durham and Mr. Reeder, in terms of
20 any, any potential conversation, should not be allowed to
21 come in through this witness. I thought that was the
22 Court's ruling, any information, any conversation.

23 SOLICITOR GRAY: No, my understanding was that, that---

24 THE COURT: What, what's the purpose in even going into
25 this, Mr. Gray?

Chris Durham - Direct examination
by Solicitor Gray

1 SOLICITOR GRAY: With Mr. Reeder, the purpose of this
2 situation, Your Honor, is that statements were taken from
3 Mr. Cathcart orally.

4 THE COURT: Yes, sir.

5 SOLICITOR GRAY: So, initially he didn't talk to them.
6 Eventually he did talk to them. I'm building up to that,
7 trying to lay the foundation of the Jackson v. Denno, Denno
8 statements, and also Mr. Reeder did tell him he was
9 left-handed. No more statements were taken from him because
10 of his condition. He was not interrogated. He was not
11 questioned because of his condition. Mr. Cathcart was and
12 that was already ruled upon previously that Mr. Cathcart,
13 two of his statements could come in, a third one can not.

14 THE COURT: That's right.

15 SOLICITOR GRAY: Is -- so, I would -- so, he kind of
16 derailed me before I even---

17 THE COURT: And you represent Mr. Reeder, Mr. Brown,
18 and, so, you say that you shouldn't even mention the fact
19 that he had a conversation with Mr. Reeder.

20 MR. BROWN: That's correct, Your Honor, and to direct
21 the Court's attention to a prior ruling, ruling, the first
22 thing that I think the Court said directly would have been
23 potentially admissible and that related to Detective, Deputy
24 Harrell. Two other conversations that were had were by
25 Investigator Chris Durham as well as Investigator Williams.

Chris Durham - Direct examination
by Solicitor Gray

1 And, so, those two the Court directly stated that they
2 could not come in. So, any conversation even with the
3 attempt of Mr. Gray to just want to get in that he was
4 left-handed, we feel that that information should not be
5 allowed.

6 THE COURT: I'll sustain the objection. Let's not do
7 that there.

8 Anything further?

9 MR. BROWN: (Nods negatively.)

10 MR. POOLE: Your Honor?

11 THE COURT: Do you want to talk to your client?

12 I don't know why he's standing up or what he wants.
13 So -- sir, talk to your lawyer. You've got a lawyer.

14 (Pause.)

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

16 MR. BROWN: We are, Your Honor.

17 THE COURT: Mr. Poole.

18 MR. POOLE: While we're here, Your Honor, may it please
19 the Court?

20 THE COURT: Yes, sir.

21 MR. POOLE: I would like, at this point in time, to
22 renew my objection that was made pretrial---

23 THE COURT: Yes, sir.

24 MR. POOLE: ---so I won't need to do that at the
25 hearing in front of, in front of the jury, renew my prior

Chris Durham - Direct examination
by Solicitor Gray

1 Jackson v. Denno objection.

2 THE COURT: I understand.

3 MR. POOLE: We had a hearing and my notes indicate that
4 the ruling was, as applied to my client, what he said at the
5 hospital, since it was not custodial in nature --

6 THE COURT: Uh-huh. (Affirmative).

7 MR. POOLE: -- was, was allowed, and the police station
8 was okay up until when he invoked his right to counsel --

9 THE COURT: Yes, sir, that's right.

10 MR. POOLE: -- and anything thereafter is not to come
11 in.

12 THE COURT: Exactly.

13 MR. POOLE: And I just wanted to make my understanding
14 is on the same page as everybody else.

15 THE COURT: Is that, that your understanding, Mr. Gray?

16 SOLICITOR GRAY: Absolutely, Your Honor.

17 THE COURT: The fact that he invoked his rights can't
18 come in either.

19 MR. POOLE: Right. Right.

20 SOLICITOR GRAY: Exactly right, Your Honor.

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

22 Mr. Poole, my ruling would be the same as to the
23 renewed objections.

24 MR. POOLE: Yes, sir.

25 (WHEREUPON, the following takes place within the

Chris Durham - Direct examination
by Solicitor Gray

1 presence of the jury.)

2 THE COURT: All right. During the break I have renewed
3 the previous rulings made by the Court.

4 Mr. Gray, you may proceed.

5 SOLICITOR GRAY: Thank you, Your Honor.

6 CONTINUED DIRECT EXAMINATION

7 BY SOLICITOR GRAY:

8 Q Once you initiated your investigation of this shooting
9 that had occurred where Mr. Reeder and Mr. Cathcart were the
10 victims, did you talk to anyone in law enforcement?

11 A You mean when I got to the hospital, sir?

12 Q Yes, sir.

13 A Yes, sir, I spoke to the officer that was there, and
14 he, he directed me to, to where the people were, and, you
15 know, they were shot, gave me the overview of where they
16 were shot.

17 Q What kind of injuries did Mr. Cathcart and Mr. Reeder
18 have?

19 A I was advised that Mr. Reeder got shot in the hand or
20 the wrist of some sort, and I was advised that Mr. Cathcart
21 has a, a grazing injury I think to his side.

22 Q Do you remember which side?

23 A No, sir.

24 Q Okay.

25 A On the right side, yes, sir, I wrote it down.

Chris Durham - Direct examination
by Solicitor Gray

1 Q Do you remember which hand Mr. Reeder was injured in?

2 A I don't really remember what.

3 Q That's fine.

4 A No, sir.

5 Q After investigating, did you talk with Detective Lorin
6 Williams?

7 A Yes, sir, he, he showed up at Regional -- well, let me,
8 let me digress. When I was advised there were, there were
9 two, I guess you could say, hospital, at Mary Black and at
10 Regional, I called Mr. Williams and directed him to go to
11 Regional, I mean to Mary Black and I went to Regional. So,
12 both of us were at different hospitals.

13 Q So, two violent crime investigators --

14 A Yes, sir.

15 Q -- at two -- were you investigating this as two
16 separate incident?

17 A At first, yes, sir, I was advised by Deputy Cockrell or
18 Sergeant Cockrell, when I first got a call, they were two
19 victims at two different hospitals. So, one at Mary Black
20 and one was at Regional.

21 Q Now, did you speak with Mr. Cathcart?

22 A Yes, sir, I did.

23 Q At this time, was Mr. Cathcart a suspect in anything?

24 A No, sir.

25 Q Was he under arrest for anything?

Chris Durham - Direct examination
by Solicitor Gray

- 1 A No, sir.
- 2 Q The -- if he would of wanted to, he could of got up and
3 walked out of the hospital?
- 4 A I'm not sure about that.
- 5 Q Okay.
- 6 A But I wasn't holding him.
- 7 Q You weren't holding him?
- 8 A I'm talking about not medically, no. I wasn't holding
9 him, I don't believe the officers there were. But I don't
10 know about his medical.
- 11 Q All right. When you spoke to Mr. Cathcart, you were
12 speaking to him as a suspect or a victim?
- 13 A As a victim, wanted to know what's going on, what, what
14 happened, how he got shot.
- 15 Q What did he tell you?
- 16 A He said he was at the Dreams Nightclub, him and
17 Mr. Reeder and a guy named Black. He said that he was
18 driving his girlfriend's Nissan. He said he didn't remember
19 much. Everything went so fast. He said it happened just
20 right down the street from the club.
- 21 Q Did he say how he got to the hospital?
- 22 A That -- he said he did not see the suspect vehicle or
23 the suspect. He could not give a description. He drove
24 himself and Mr. Reeder to the hospital and the, the Black,
25 that's what they call him, that's what, his nickname, Black

Chris Durham - Direct examination
by Solicitor Gray

1 took off in the vehicle. He said he didn't know Mr. Black,
2 that was Reeder's friend.

3 Q All right. Did you relay this information to, to
4 anyone?

5 A To Deputy William when he come to the, to the hospital.

6 Q Now, when Deputy Williams came to the hospital and you
7 two spoke, did it still seem like two separate incidents?

8 A I think Deputy, Deputy Williams is, victims are also at
9 Club Dreams, and because of the connection with Club Dreams
10 prior to the shootings, we kind of connected the, the
11 shooting.

12 Q You connected the shooting victims, at this point in
13 time, at Spartanburg Regional Hospital to the shooting
14 victims at Mary Black Hospital?

15 A Yes, sir, just based on the fact they were both at Club
16 Dreams just prior to the shootings.

17 (WHEREUPON, the waiver form was marked as State's
18 Exhibit No. 15 for identification purposes only at this
19 time.)

20 Q Show you what's been marked State's Exhibit No. 15 for
21 identification and ask you if you recognize that.

22 A Yes, sir. It's a Spartanburg County Sheriff's
23 Department pre-interrogation waiver form.

24 Q Now, what is that form used for?

25 A It's for questioning people who are, I guess you can

Chris Durham - Direct examination
by Solicitor Gray

1 say, in custody.

2 Q And was Mr. Cathcart in custody at this time?

3 A No, sir, this was done at the Sheriff's Office.

4 Q It was done at the Sheriff's Office?

5 A Yes, sir.

6 Q Okay. Is -- was that after Mr. Cathcart was released
7 from the hospital?

8 A Yes, sir.

9 Q And after you spoke to Detective Williams?

10 A That's correct. After Detective Williams and I spoke,
11 you know, considering, I guess, both sides say it happened,
12 they were at Club Dreams prior to the shooting, both of them
13 involved in shootings in cars, we kind of knew that we would
14 be talking about the same thing. So, we, we asked our
15 officers to bring Mr. Cathcart to the Sheriff's Office when
16 he gets released from the hospital.

17 Q Was he officially arrested at this point?

18 A No, sir.

19 Q Well, he couldn't leave if he wanted to?

20 A We, we brought him to the Sheriff's Office and put him
21 in, in one of those questioning, interrogation rooms, and at
22 which point we controlled his, his movements. So, that's
23 why we did the pre-interrogation waiver form.

24 Q But he wasn't charged with---

25 A No, sir.

Chris Durham - Direct examination
by Solicitor Gray

1 Q ---anything at this time?

2 A No, sir.

3 Q Did you know that Mr. Geter was deceased at this time?

4 A Yes, sir, I did. Mr. Williams told me that when he got
5 to the hospital. But what, what, you know, I asked him
6 what's going on over there, and that's when he tells me
7 about the Club Dreams, they were also involved in shooting
8 involving two cars, and one of the, one of the victims were,
9 was deceased.

10 Q Now, when you go through this waiver form, how do you
11 do that?

12 If you can read that for me?

13 A I asked him to read along with me.

14 Q Uh-huh. (Affirmative).

15 A And I placed it in front of him, and I just go through,
16 get their name, their address, their age, date of birth, and
17 actually the date, the time, the location. And it just says
18 Spartanburg County Sheriff's Office, 8045 Howard Street, and
19 then I read it to him. You have the right to remain silent.
20 Anything you say can and will be used against you in a Court
21 of law. You have the right to talk to a lawyer and have him
22 present with me while I'm being questioned. If I can not
23 afford to hire a lawyer, one will be appointed to represent
24 me before any questioning if I so wished. I have the right
25 to stop answering question at any point during questioning.

Chris Durham - Direct examination
by Solicitor Gray

1 The above rights have been read to me by C. Durham, and
2 that is, that is me, and I've read the same and I understand
3 my rights fully. And then there's a second part of this
4 that says I waive, and in parenthesis, give up, my rights as
5 explained above and agree to talk to C. Durham in reference
6 to crimes in Spartanburg County, and my statement that I may
7 make is of my own free will without fear, threat, promise,
8 or favor of reward of any kind. I'm able, able to read and
9 write the English language and I finished eleven years in
10 school.

11 And I asked him first if he understood his rights, and
12 if he does, to sign where it says and it says -- and I
13 usually -- I X it and I did in this case where it's a
14 signature, and I asked him if he wants to talk to me in
15 reference to this crime to sign where it says signature, and
16 I witnessed both and Detective Steve Calhoun notarized, who
17 is in the interrogation room with us.

18 Q And you got all that done before you started asking him
19 any questions?

20 A Yes, sir.

21 SOLICITOR GRAY: I'd like to move State's 15 into
22 evidence, Your Honor.

23 THE COURT: Any objections?

24 MR. POOLE: Subject to our prior objections, Your
25 Honor.

Chris Durham - Direct examination
by Solicitor Gray

1 MR. POOLE: Is that your position as well, Mr. Brown?

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

3 THE COURT: You may.

4 MR. BROWN: No, no objection, Your Honor.

5 THE COURT: All right. The Court will make the same
6 ruling. It will be admitted and marked.

7 SOLICITOR GRAY: Thank you, Your Honor.

8 (WHEREUPON, State's Exhibit No. 15 was received into
9 evidence at this time.)

10 Q Now, after he signed this, you went through his rights,
11 how did the interrogation process go?

12 A You know, I just reminded him we talked at the
13 hospital, and if wished to, you know, tell me again what
14 happened, just, you know, to, I guess, to reiterate what he
15 said at the hospital.

16 Q What did he say this time?

17 A It's pretty much the same thing. He said that -- I'd
18 have to read what I put in my notes. He said he was the
19 driver of the gray Nissan, which belonged to his girlfriend.
20 He said that he, that he drove his two friends, Rashawn
21 Reeder, and another guy known as Black, he was driving them
22 home from Club Dreams. He left Club Dreams and went to the
23 Waffle House on Asheville Highway next to the Kentucky, next
24 to the Kentucky Fried Chicken. He left the Waffle House and
25 went across the street to Sonoco.

Chris Durham - Direct examination
by Solicitor Gray

1 They were sitting in the parking lot at Sonoco and no
2 one went inside. He said they left and went around the
3 circle and exit right. As they were getting onto I-85
4 business, and prior to getting on to I-85, he said there was
5 a vehicle that came up beside and started shooting at them
6 while they were on the ramp.

7 Q Okay.

8 A He said the suspect vehicle continued on I-85 business
9 northbound as he made a right onto 585. He said that he and
10 Mr. Reeder were shot. He drove -- he said he drove to
11 Church's Chicken across the street from Spartanburg Regional
12 Medical Center. They got out and went to the hospital, and
13 an unknown man by the name is, known as Black and took the
14 vehicle and drove off, drove off.

15 Q So, they---

16 A And, again, he said he didn't know who Black was.

17 Q They went to the hospital and somebody else took the
18 car away?

19 A Yes, sir.

20 Q Okay. What happened to that car?

21 A We were notified that they found the vehicle in flames
22 at Casey Avenue on the railroad tracks, and that vehicle was
23 later identified, not by me personally, but identified as a
24 vehicle that Mr. Cathcart was in control of or owned it.

25 Q All right. Now, this story about this I-85 shooting,

Chris Durham - Direct examination
by Solicitor Gray

1 Business 85 I believe, is that correct?

2 A I -- it's like the -- when he was talking about the
3 on-ramp right at the circle getting on Business 85.

4 Q Okay. Is that where Mr. Cathcart told you this
5 shoot-out, shooting took place?

6 A That's where he was talking, he was talking about at
7 the hospital. Yeah, I mean at the Sheriff's Office, yes.

8 Q Now, were there any calls at all about any shooting in
9 that area that Mr. Cathcart told you about?

10 A No, sir, also I was advised that officers were in the
11 Hearon Circle area at the time and not, not, no officer said
12 that he heard anything or, or got any calls for shooting,
13 shots fired on the, the ramp.

14 Q Did, for this date, this March 14th, was a scene
15 found that looked like a shooting had occurred?

16 A Sergeant Cockrell notified us---

17 MR. POOLE: Objection to any hearsay, Your Honor.

18 THE COURT: I'll sustain the objection if he's about to
19 give hearsay.

20 SOLICITOR GRAY: Thank you. Yes, sir.

21 WITNESS: I apologize.

22 It was determined that it was a, a scene found at Mt.
23 Pleasant and Burns.

24 Q Is that near Bryant Road?

25 A Yes. Well, no. Well --.

Chris Durham - Direct examination
by Solicitor Gray

1 Q Go ahead.

2 A I mean a few miles from Bryant Road.

3 Q A few miles from Bryant Road?

4 A Yeah.

5 Q Is that the Lakeview Manor neighborhood?

6 A Yes, sir.

7 Q But there was no crime scene shoot-out located where
8 Mr. Cathcart told you he had gotten shot?

9 A I didn't find any crime scene. I didn't -- I don't
10 know if anything was searched on that road just based on the
11 fact that---

12 Q Uh-huh. (Affirmative).

13 A ---officers didn't hear any shots fired while they were
14 present.

15 SOLICITOR GRAY: All right. One moment, Your Honor.

16 (Pause.)

17 Q Just briefly.

18 Both of your statements from Mr. Cathcart, did you
19 write any of these down for Mr. Cathcart?

20 A No, sir.

21 Q Did you write the first interview down and have him
22 sign it --

23 A No, sir.

24 Q -- or the second one?

25 A Neither one. It was -- both of them were verbal

Chris Durham - Direct examination
by Solicitor Gray

1 statements.

2 Q He gave the statements freely, correct?

3 A Yes, sir.

4 Q Why weren't they written?

5 A He, he didn't write them down.

6 Q All right. Thank you. Please answer any questions
7 that Mr. Poole or Mr. Brown may have.

8 THE COURT: Mr. Poole, your witness.

9 MR. POOLE: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. POOLE:

12 Q Investigator Durham, your testimony's essentially this,
13 that you went to Spartanburg Regional Medical Center and you
14 spoke with Darius Cathcart and he had been injured?

15 A Yes, sir.

16 Q And he gave you some information?

17 A Yes, sir.

18 Q Okay. And then, at a later date, you spoke with him at
19 the Sheriff's Department?

20 A Later on that day, yes, sir.

21 Q Okay. And he gave you some information?

22 A Yes, sir.

23 Q And it's your testimony that that information was
24 pretty much the same?

25 A Pretty much the same other than the fact it might of

Chris Durham - Cross-examination
by Mr. Poole

1 been more detailed that what he said the first time at the
2 hospital happened right down the street from Club Dreams and
3 this one he, he---

4 Q Okay.

5 A ---sort of detailed is on, on the on-ramp of Business
6 85.

7 Q So, he had been treated for an injury and he been at
8 the hospital for some period of time before he gave you the
9 statement, right?

10 A Yes, sir.

11 Q And the second -- the first statement, you did not ask
12 him to sign a pre-interrogation waiver form?

13 A That's correct.

14 Q Is that right?

15 A Yes, sir.

16 Q The second one you did?

17 A Yes, sir.

18 Q Because he was there at the Sheriff's Department?

19 A Yes, sir.

20 Q In custody?

21 A Yeah, he was -- custody being that he couldn't roam
22 freely, yes, sir. I was in charge of his movements, yes,
23 sir.

24 Q Okay. And you don't know what kind of treatment he
25 received at the hospital, do you?

Chris Durham - Cross-examination
by Mr. Poole

1 A No, I did not.

2 Q You don't know what kind of medication he had been
3 taking, do you?

4 A No, I do not.

5 Q You don't know the extent of his injuries other than
6 what you observed of him, do you?

7 A Only the fact that he was ambulatory when he got to the
8 Sheriff's Office.

9 Q Okay. And these places we're talking about, Bryant
10 Road, you know, and 85, and I don't, I don't know where all
11 these places, places are.

12 Do you know where they are?

13 A Yes, sir.

14 Q You do?

15 Is it a fair assumption to say it's easy to not know
16 where they are?

17 I mean we're talking about such different variety of
18 places.

19 A If you're not from this area I can see how you could
20 say, you know --.

21 Q uh-huh. (Affirmative).

22 A But if you're from the area, I think everyone in
23 Spartanburg knows where Hearon Circle is.

24 Q What about three o'clock at night if you're
25 unexperienced and don't know the area that well?

Chris Durham - Cross-examination
by Mr. Poole

1 A I couldn't testify to that.

2 Q Okay. You're saying you're---

3 A I pretty much, if I was knocked out right now and woke
4 up somewhere in Spartanburg County, I would know exactly
5 where I was within five minutes, but---

6 Q You're suppose to know, aren't you?

7 A Yeah.

8 Q Okay. But you don't know whether or not -- you have no
9 way of knowing what is inside Darius Cathcart's head when he
10 tells you locations?

11 A That's correct.

12 Q Whether he's, you know, telling you the exact place or
13 not?

14 A No, sir.

15 Q And you don't know whether or not he's telling one
16 place he really believes that he is at that place?

17 You don't know that, do you?

18 A I couldn't testify to that, no, sir.

19 Q Okay. Or if he does mention he's at a particular place
20 that he's hiding any information from you, do you?

21 A I couldn't testify to that, no, sir.

22 Q Okay. You were involved pretty much in this
23 investigation along with Lorin Williams?

24 A I think we only worked together that, at the hospital.

25 Q Okay.

Chris Durham - Cross-examination
by Mr. Poole

1 A He, he had me go off and do other stuff and I was
2 reporting back to him, yes, sir.

3 Q Okay. Was he the lead investigator?

4 A Yes, sir.

5 Q Okay. And you were helping him?

6 A A support role, yes, sir.

7 Q Okay. And there was a lot of law enforcement involved,
8 right?

9 A There is. There was.

10 Q In fact, that night afterwards more and more law
11 enforcement became involved.

12 Is that a fair statement?

13 A Yes, sir.

14 Q Okay. And as a result of your investigation, is it
15 fair to characterize this incident when there were shots
16 fired from two vehicles that it was a shoot-out?

17 A I guess you could say that. You can, you can
18 categorize it that way if two people shoot back and forth at
19 each other, yes.

20 Q Thank you.

21 THE COURT: Mr. Brown, your witness.

22 CROSS-EXAMINATION

23 BY MR. BROWN:

24 Q Officer Durham, you stated there was information about
25 a gray Nissan?

Chris Durham - Cross-examination
by Mr. Brown

- 1 A I spoke to Mr. Cathcart and he claimed that he was in
2 his girlfriend's gray Nissan.
- 3 Q You said there was another car involved in this, this
4 incident based upon any information that you received?
- 5 A Based upon information I received that there were two
6 cars.
- 7 Q But there was, wasn't any other description from any
8 conversation you had at that time---
- 9 A At that time---
- 10 Q ---based upon a description?
- 11 A No, sir.
- 12 Q Do you know of any other description of any other
13 vehicle was ever involved in the entirety of this case?
- 14 A I was just involved in one, locating of Mr. Cathcart's
15 girlfriend gray Nissan, which we did---
- 16 Q Okay.
- 17 A ---and it didn't have any holes in it.
- 18 Q All right. That's not my question.
- 19 My question is, based upon your involvement in this
20 case and from, you know, in terms of dealing with other
21 investigators and members of law enforcement, are there any
22 other descriptions of the vehicles potentially related in
23 this case?
- 24 A I'm not sure. I'm not sure if anyone told me to look
25 for a specific vehicle or not.

Chris Durham - Cross-examination
by Mr. Brown

- 1 Q And is it your testimony that you said officers in the
2 area didn't hear any gunshots of I-85?
3 A That's what I was told. They're officers in the Hearon
4 Circle area and they didn't report any shots fired.
5 Q What officers were in the area?
6 A I, I couldn't tell you.
7 Q But you were told that?
8 A Yes, sir, I was told.
9 Q But you don't know which officers---
10 A No, sir.
11 Q ---were in the area?
12 A No, sir, I couldn't, I couldn't say I knew this officer
13 was there.
14 Q So, you can't say you talked to any officers that
15 potentially may have been in the area directly yourself?
16 A That is correct.
17 Q And, so, you can't rule out that there was any type of
18 gunshots that could of potentially went off in that area
19 because upon that portion of your investigation?
20 A I can just tell I was told there are, they didn't hear
21 anything.
22 MR. BROWN: That's all the questions I have.
23 THE COURT: Redirect.
24 SOLICITOR GRAY: Yes, sir, Your Honor.
25 THE COURT: Yes, sir.

Chris Durham - Redirect examination
by Solicitor Gray

1 REDIRECT EXAMINATION

2 BY SOLICITOR GRAY:

3 Q Did Mr. Cathcart give you specific street names during
4 your interview?

5 A I don't believe he did. Well, no, sir, I don't believe
6 he did. I think the first time he told me at the hospital
7 it happened just right down the street from Club Dreams, and
8 then the second time he was talking about the Waffle House
9 on Asheville Highway next to Kentucky Fried Chicken,
10 which---

11 Q He said---

12 A ---then he was talking about---

13 Q He said Asheville Highway?

14 A Well, I wrote Asheville Highway, and then he was
15 talking about getting on to the I-85---

16 Q On ramp?

17 A ---and we do have a Waffle House right there at I-85.

18 Q And there was no crime scene established at that
19 location?

20 A No, sir.

21 Q And the vehicle that Mr. Brown was asking you about,
22 was it the same vehicle that Mr. Cathcart described?

23 Did you ever find that vehicle?

24 You said you found it.

25 A Found his girlfriend's vehicle.

Chris Durham - Redirect examination
by Solicitor Gray

1 Q Oh, okay. You found that one?

2 A Yes, sir.

3 Q And where was that?

4 A That was at -- we talked to her at her, at her job.

5 Q What is her name?

6 MR. POOLE: Your Honor, I object to this. I don't
7 think this is proper redirect.

8 THE COURT: Is this some new matter that was brought
9 out on cross-examination?

10 SOLICITOR GRAY: This is a matter talked about
11 different cars, any cars that, that were otherwise
12 investigated by Mr. Brown. He asked about it.

13 THE COURT: I'm gonna allow you to go into it.
14 Overruled.

15 Q What's her name?

16 THE COURT: He can ask the question.

17 A It was Ms. Morris, a Terrin Morris, and we located her
18 at her job at 111 Corporate Drive.

19 Q You said there was no damage to that vehicle?

20 A We didn't see any damage.

21 Q Thank you.

22 THE COURT: Now -- recross?

23 MR. POOLE: No, sir.

24 THE COURT: Mr. Brown, recross?

25 MR. BROWN: No, Your Honor.

1 THE COURT: You may stay down.

2 All right. Ladies and gentlemen of the jury, we're
3 inside of ten minutes till five o'clock. Let me go over
4 something with you at this point in time.

5 This week is a little unusual in that tomorrow is an
6 official South Carolina State holiday, and, for that reason,
7 we will not be holding Court tomorrow. That means we resume
8 the trial of this case on Wednesday morning at nine o'clock.

9 During the break, I'm going to give you the same
10 instructions that I gave you when you left the court house
11 at lunch. That is not to attempt to gather any information
12 about the case, not to discuss the case with anyone. Don't
13 allow anyone to discuss it with you. Don't listen to,
14 watch, or read any media reports concerning the case. And
15 I'll ask you to be back in the jury room that's in use for
16 this case at nine o'clock on Wednesday morning.

17 I regret the fact we have this break. But this is ~~the~~
18 only week of the year where we have a State holiday in ~~the~~
19 middle, in the middle of the week. So, we'll be breaking
20 for tomorrow and then Wednesday morning we'll resume at ~~nine~~
21 o'clock.

22 I hope everyone has a good break. We'll see you on
23 Wednesday morning. You're free to go at this time.

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

1 THE COURT: All right. Court's in recess until nine
2 o'clock on wednesday morning.

3 Defendants remain in custody. Thank you very much.

4
5 (WHEREUPON, Court was in recess at this time.)
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1 Wednesday, May 11th, 2011

2

3 (WHEREUPON, State's Exhibit Nos. 16 through 38 were
4 marked for identification purposes at this time.)

5 THE COURT: All right. Is the State ready to proceed?

6 SOLICITOR GRAY: Yes, sir, Your Honor.

7 THE COURT: Defense ready to proceed?

8 MR. POOLE: Yes, sir.

9 MR. BROWN: Yes, Your Honor.

10 THE COURT: All right. In chambers I had informed
11 counsel that I had received a report from the Clerk's Office
12 that Juror Number 93 had called in and indicated she was ill
13 this morning and was unable to go forward. I instructed the
14 clerk to advise that juror that they were released from the
15 case. That means that we'll go forward with selecting an
16 alternate from the two that remain.

17 Any objection to my proceeding in that fashion from the
18 State?

19 SOLICITOR GRAY: None, Your Honor.

20 THE COURT: Any from the defense, Mr. Poole?

21 MR. POOLE: No, sir.

22 THE COURT: Mr. Brown.

23 MR. BROWN: No, Your Honor.

24 THE COURT: All right. I'd ask the clerk then to write
25 the numbers of the two alternates on a slip of paper and

1 fold those and mix them up.

2 (WHEREUPON, the clerk complies.)

3 THE COURT: If you'll pass that over to the bailiff
4 Mr., over here and let them hold them, shake them up, and
5 then I'll ask the clerk to pull one of the slips of paper.

6 (WHEREUPON, the clerk complies.)

7 THE COURT: Number 10. Number 10 will be seated as a
8 regular juror.

9 Any objection from the State?

10 SOLICITOR GRAY: No, sir, Your Honor.

11 THE COURT: Any from the defense?

12 MR. POOLE: No, sir.

13 MR. BROWN: None, Your Honor.

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

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

17 THE COURT: The record will reflect the jury has
18 returned to the courtroom.

19 If any juror had any difficulty in complying with my
20 instructions of Monday, please stand.

21 (No response.)

22 THE COURT: It would appear that all jurors have been
23 able to comply with my instructions.

24 This morning I have released Juror Number 93, Anna
25 Layne Kinsley, Kinsley. She was ill this morning and unable

1 to continue. As a result of release of that juror, Juror
2 10, Mr. Ballard, you are now on the regular jury panel.

3 Do you understand that, sir?

4 JUROR: Yes, sir.

5 THE COURT: All right. Now, at this point in time the
6 State is still in the process of presenting its evidence.

7 You may call your next witness.

8 SOLICITOR GRAY: Thank you, Your Honor.

9 The State calls Dwight Geter.

10 THE COURT: Sir, come forward to my left and be sworn.

11 DWIGHT GETER, having been first duly
12 sworn, testified as follows:

13 THE COURT: Have a seat please.

14 (Witness complies.)

15 THE COURT: State your name.

16 WITNESS: Dwight Geter.

17 THE COURT: Mr. Gray, your witness.

18 SOLICITOR GRAY: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY SOLICITOR GRAY:

21 Q Mr. Geter, how old are you?

22 A Twenty.

23 Q On the night of March 14th, 2009, how old were you?

24 A Eighteen.

25 Q When that day started, what were your plans for the

Dwight Geter - Direct examination
by Solicitor Gray

- 1 evening?
- 2 A We were gonna go out, me and my brother.
- 3 Q Okay. What time did you and your brother go out?
- 4 A We left about 11:30 to 12:00.
- 5 Q Where did you leave from?
- 6 A My house, Lawson Fork, Bryant Road.
- 7 Q Lawsons Fork, Bryant Road?
- 8 A Yes, sir.
- 9 Q Okay. Lawsons Fork is a subdivision?
- 10 A Yes, sir.
- 11 Q Now, is that Lakeview Manor or near Lakeview Manor?
- 12 A Yes, it's near Lakeview Manor.
- 13 Q Okay. When you and your brother left, 12:00, 11:30,
- 14 12:00, did you pick anybody up?
- 15 A No, they was already in the car with us.
- 16 Q And who was that?
- 17 A They came to pick us up.
- 18 Q Okay. Who was that?
- 19 A Bryant and Marty.
- 20 Q Bryant Miller?
- 21 A Yes, sir.
- 22 Q And that was a red Crown Victoria?
- 23 A Yes, sir.
- 24 Q Now, were you the driver that night --
- 25 A Yes, sir.

Dwight Geter - Direct examination
by Solicitor Gray

- 1 Q -- even though they came to pick you up?
- 2 A Yes, sir.
- 3 Q When they left the house, where did you guys go?
- 4 A The Dreams.
- 5 Q Is that a club?
- 6 A Yeah.
- 7 Q And where is that club located?
- 8 A Off Asheville Highway.
- 9 Q Off of Asheville Highway.
- 10 Is, is it near the circle or near 585, Pine Street,
- 11 or---
- 12 A I mean---
- 13 Q Let me help you. Hold on a second. Excuse me one
- 14 minute.
- 15 Q I have for you what's been marked State's Exhibit 16.
- 16 Okay. Then I ask you real briefly, what are these
- 17 pictures of, the overhead pictures?
- 18 A Say what these are pictures of?
- 19 Q Yes, sir.
- 20 Do you recognize any of the landmarks in that?
- 21 A It's 85.
- 22 Q Uh-huh. (Affirmative).
- 23 All right. Is -- in this photo, I guess you're saying
- 24 off 85 right in this area?
- 25 A Yes, sir.

Dwight Geter - Direct examination
by Solicitor Gray

- 1 Q All right. After you went to Club Dreams, what
2 happened at Club Dreams?
- 3 A We got in, we got into an altercation.
- 4 Q Got into an altercation.
5 who did you get into an altercation with?
- 6 A With Darius Cathcart and them.
- 7 Q Okay. I'm sorry. I'm gonna have to ask you to be a
8 little, more specific.
9 Is Darius Cathcart?
- 10 A That's the only one.
- 11 Q That's the only one you remember?
- 12 A Yeah.
- 13 Q Okay. Who was actually in the fight?
- 14 A Me, my brother, and Marty.
- 15 Q You, your brother, and Marty?
- 16 A (Witness nods affirmatively.)
- 17 Q Do you recognize Mr. Cathcart?
- 18 A Yes, sir.
- 19 Q Can you point him out please?
- 20 A The blue shirt.
- 21 Q All right. Let the record reflect---
22 THE COURT: well, there's two blue shirts.
23 Are you talking about the dark blue or the light blue?
24 WITNESS: The dark blue.
25 THE COURT: Dark blue shirt.

Dwight Geter - Direct examination
by Solicitor Gray

1 SOLICITOR GRAY: Dark blue.

2 THE COURT: All right. Thank you.

3 The record will reflect that he's indicated Mr.
4 Cathcart.

5 SOLICITOR GRAY: Thank you, Your Honor.

6 Q So, you, your brother, and another individual, Marty,
7 got into a fight at Club Dreams.

8 Now, after you left Club Dreams, where did you go?

9 A We went to the -- we went to Waffle House.

10 Q At Waffle House, what happened?

11 A No, we were just sitting there and the police came.
12 So, we left.

13 Q Okay. After you left there, where did you go?

14 A Got on 85 and went to Lakeview.

15 Q At Lakeview, did you do anything there, pick somebody
16 up, drop somebody off?

17 A We dropped Marty off.

18 Q Okay. After you dropped off Marty, what happened then?

19 A We left out. We turned right at, come out of the
20 neighborhood.

21 Q Uh-huh. (Affirmative).

22 A We came to a stop sign, and a car just pulled up beside
23 us and started shooting.

24 Q You remember what road you were on?

25 A I forgot the name of the road.

Dwight Geter - Direct examination
by Solicitor Gray

1 Q Mt. Pleasant Road, Mt. Pleasant Road and Burns Road?

2 A Yeah, I think that's it.

3 Q You think so.

4 Now, show me -- tell me again what happened when you
5 pulled out into the street.

6 Exactly what happened during the incident?

7 A We pulled up to the stop sign. We pulled up to the
8 stop sign, a car went over, with the lights off, pulled up
9 beside us and just started shooting into the car.

10 Q The car had its lights off?

11 A Yeah, not our car. The other car.

12 Q The other car had the headlights on?

13 The other car---

14 A Yeah.

15 Q ---that pulled up beside you had the headlights off?

16 A Yeah.

17 Q And then once they pulled up beside you, what happened
18 then?

19 A Started shooting.

20 SOLICITOR GRAY: Okay. Your Honor, I'd like to enter
21 these into evidence.

22 MR. POOLE: No objection.

23 THE COURT: Let the defense take a look at them.

24 SOLICITOR GRAY: Yes, sir.

25 THE COURT: Any objection?

Dwight Geter - Direct examination
by Solicitor Gray

1 MR. BROWN: No objection, Your Honor.

2 THE COURT: Any objection, Mr. Poole?

3 MR. POOLE: No, sir.

4 THE COURT: All right. Without objection, then they'll
5 be admitted.

6 Are they already marked?

7 SOLICITOR GRAY: Yes, they are.

8 THE COURT: All right. They'll be admitted as they've
9 been marked.

10 (WHEREUPON, State's Exhibit No. 16 was received into
11 evidence at this time.)

12 THE COURT: You may proceed.

13 SOLICITOR GRAY: Thank you.

14 Q Okay. Mr. Cathcart -- excuse me. I'm sorry. Mr., Mr.
15 Geter, said you was off Asheville Highway when all this
16 occurred. This is Hearon Circle, Asheville Highway.

17 I guess Club Dreams would be somewhere in here, is that
18 correct?

19 A Yes, sir.

20 Q Is that Club Dreams came down to the circle, to the
21 waffle House, that's about right here on Asheville Highway,
22 is that correct?

23 A Yes, sir.

24 Q Now, when you left that club, excuse me, waffle House,
25 did you get on Business 85 going south or north?

Dwight Geter - Direct examination
by Solicitor Gray

- 1 A I think south.
- 2 Q Well, where is Lakeview Manor located?
- 3 Is it up near 221?
- 4 A Yes, sir.
- 5 Q So, it's 85 north. So, you got 85 north.
- 6 Now, you got off on which exit?
- 7 Did you get off at 221?
- 8 A We got off on 221.
- 9 Q You got off on 221.
- 10 okay. Once you got off on 221 -- this is 85 up 221 to,
- 11 to 221.
- 12 Once you got off 221, how did you get to Lakeview Manor
- 13 from there?
- 14 A You turn left at the light to get on 221.
- 15 Q okay.
- 16 A We made a right beside McDonald's on Mt. Pleasant.
- 17 Q Right beside McDonald's?
- 18 A Yes, sir.
- 19 Q So, as soon as you get off the exit, it's right beside
- 20 the McDonald's, you take that up to your destination?
- 21 A Yes, sir.
- 22 Q Did you notice anybody behind you from the Waffle House
- 23 parking lot?
- 24 A No, sir.
- 25 Q Okay. So, you went, dropped somebody off, went down,

Dwight Geter - Direct examination
by Solicitor Gray

1 went down Mt. Pleasant Road to the Lakeview Manor area,
2 dropped Marty off?

3 A Yes, sir.

4 Q Come back down Mt. Pleasant -- okay. Come back down
5 and right here is a business called -- well, you come by
6 here and right about here is where the incident happened?

7 A At the four way.

8 Q At the four way near that red A right there?

9 A Yes, sir.

10 Q Now, at anytime between leaving Club Dreams, going to
11 the Waffle House, going to Lakeview Manor, did you see
12 anybody following behind you?

13 A No, sir.

14 Q Did you get into any incidents between Club Dreams and
15 coming back from Lakeview Manor until the shooting occurred?

16 A No, sir.

17 Q Now, when the shooting situation happened, where were
18 you in the car?

19 A I was the driver.

20 Q Did the car pull up on your right side or your left
21 side?

22 A My left side.

23 Q So, the right side of the other car would of been
24 facing you, the passenger side of the other car?

25 A Yes, sir.

Dwight Geter - Direct examination
by Solicitor Gray

1 Q Now, did you have a chance to look into the other car,
2 see, see who was in it?

3 A No.

4 Q Okay. I, I don't know -- how instant or slowly was the
5 attack?

6 I mean please describe it to me.

7 A It was bad. I couldn't see nothing.

8 Q So---

9 A As soon as they started -- I mean as soon as they
10 started shooting, I just laid, laid down.

11 Q You lay down?

12 A Yeah.

13 Q Did you have a weapon?

14 A No, sir.

15 Q So, you didn't just shoot back---

16 A No, sir.

17 Q ---at all?

18 A No, sir.

19 Q Did you have an opportunity to see what happened to
20 your brother during the shooting or after the shooting?

21 A Afterward.

22 Q And how long did the gunfire last?

23 A About like---

24 Q How long?

25 A Seemed like---

Dwight Geter - Direct examination
by Solicitor Gray

- 1 Q How long did it seem to last?
- 2 A It seemed like, like five minutes, but it was probably
- 3 like two, like two minutes.
- 4 Q Was anybody in your car shooting back?
- 5 A Yes, sir.
- 6 Q Who was that?
- 7 A Bryant.
- 8 Q But there's no doubt that the car that pulled up beside
- 9 you began shooting first, is that correct?
- 10 A Oh, yeah. Yeah, they---
- 11 Q Were your windows up or down?
- 12 A All the windows was up.
- 13 Q Did you have any special tint on your windows or
- 14 anything?
- 15 A Yeah, I think it was tint on the windows.
- 16 Q So, at that intersection -- and did they -- did you see
- 17 the car pull out behind you?
- 18 A No, sir.
- 19 Q You didn't.
- 20 When's the first time you noticed there was another car
- 21 on that road when you were leaving Lakeview Manor?
- 22 A They started shooting.
- 23 THE COURT: Bring the lights back up.
- 24 You're not gonna use those?
- 25 SOLICITOR GRAY: No, I'm done that with, yes, sir.

Dwight Geter - Direct examination
by Solicitor Gray

- 1 THE COURT: Okay. Bring the lights back up.
2 (Bailiff complies.)
3 THE COURT: Thank you.
4 Go ahead.
5 Thank you.
6 SOLICITOR GRAY: Thank you, Your Honor.
7 Q After the shooting, which car left first?
8 A The other car pulled off.
9 Q Did you get an idea of what color the other car was?
10 A I just know it was a dark car.
11 Q Dark car.
12 Now, when you left the scene, where did you go first?
13 A We went to, went to my house.
14 Q You went to your house?
15 A Bryant Road.
16 Q On Bryant Road.
17 Why would you go to your house if you knew your brother
18 was shot?
19 A I don't know. I just went to tell my mama.
20 Q The first thing incident (sic) was to tell your mother?
21 A Yeah.
22 Q Once you got there, did you, in fact, tell your mother
23 what had happened?
24 A Yes, sir.
25 Q How long did you stay at your mother's house before you

Dwight Geter - Direct examination
by Solicitor Gray

- 1 went to the hospital?
- 2 A It wasn't that long. Like, about like four or five
3 minutes. Not even that long.
- 4 Q How long did it take you to get to the hospital?
- 5 A About probably five minutes.
- 6 Q Once you got to the hospital, what did you do?
- 7 A I ran in and told them my, my brother was shot.
- 8 Q Did you ever see your brother again after you went to
9 the hospital?
- 10 A No, sir.
- 11 Q Did you help bring him out of the car?
- 12 A No, sir.
- 13 Q Did you go into the room where he was being treated?
- 14 A They wouldn't let nobody in the room.
- 15 Q And when did you find out your brother was dead?
- 16 A Like a couple minutes later after we got to the
17 hospital.
- 18 Q And the reason he died is because of a shooting from
19 this other dark car?
- 20 A Yes, sir.
- 21 Q Like I say, this car followed, this car followed you
22 from Club Dreams or from the Waffle House?
- 23 A I guess from the Waffle House.
- 24 Q And you said one of the participants in that fight that
25 night you recognized was a Mr. Cathcart, is that correct?

Dwight Geter -- Direct examination
by Solicitor Gray

- 1 A Yes, sir.
- 2 Q I show you what's been marked as State's Exhibit No.
- 3 30. I ask if you, if you recognize this, sir.
- 4 A Yes, sir.
- 5 Q What is that, sir?
- 6 What is that?
- 7 A A lineup.
- 8 Q A lineup?
- 9 A Yes, sir.
- 10 Q In that lineup, did you identify the person -- did you
- 11 identify somebody in that lineup?
- 12 A Yes, sir.
- 13 Q Who did you identify?
- 14 A Darius Cathcart.
- 15 Q And on the other side, I believe, if you'll flip that
- 16 over, who did you identify Mr. Cathcart as?
- 17 A The one that we was fighting with---
- 18 Q At Club---
- 19 A ---at the club.
- 20 Q At Club Dreams?
- 21 A Yes, sir.
- 22 SOLICITOR GRAY: Your Honor, I'd like to, I'd like to,
- 23 like to move Exhibit No. 30 into evidence, Your Honor.
- 24 MR. POOLE: No objection, Your Honor.
- 25 THE COURT: Any objection?

Dwight Geter - Direct examination
by Solicitor Gray

1 MR. BROWN: Your Honor, I'd like to take a look at
2 that.

3 THE COURT: Yes, sir, please do.

4 (Pause.)

5 THE COURT: Any objection, Mr. Brown?

6 SOLICITOR GRAY: We have a matter, Your Honor.

7 MR. BROWN: Your Honor, we have a matter of law.

8 THE COURT: All right. Ladies and gentlemen of the
9 jury, at this time I need to discuss something with the
10 attorneys. I'll ask you to step back to the jury room. As
11 always, I'll instruct you not to begin any discussions until
12 I've advised you to do so.

13 You may retire.

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

16 THE COURT: Yes, sir.

17 MR. BROWN: Your Honor, specifically the assistant
18 solicitor directly examined Mr. Geter as relates to the
19 affidavit of the photo identification by Mr. Geter
20 identifying Mr. Cathcart, and from the testimony we heard on
21 the stand as well as the direct questions coming from
22 Mr. Gray, he specifically asked about the club. However,
23 the affidavit of the photo identification by the penmanship
24 goes just a little bit further, Your Honor. In particular,
25 it says I think the person who was involved in the fight at

Dwight Geter - Direct examination
by Solicitor Gray

1 the club and shooting was my brother.

2 We've not heard any testimony or any presentation in
3 Court as relates to and shooting my brother, Your Honor. I
4 think that goes just a little bit too far in terms of what's
5 been presented thus far especially at the point in which
6 Mr. Gray was attempting to enter this. So, I would object
7 to that portion. Not the entirety of the affidavit, but I
8 would ask the Court to have this redacted just for the line
9 that says and shooting my brother.

10 SOLICITOR GRAY: No disagreement, Your Honor. We
11 understand he did not identify Mr. Cathcart or Mr. Reeder
12 during the shooting, Your Honor. He said he laid down once
13 the bullets started flying.

14 THE COURT: All right. So, you wish to -- this is an
15 original.

16 Do you wish to make a copy and do a redaction?

17 MR. BROWN: Have the copy presented to the jury in
18 terms of---

19 THE COURT: Get the copy presented for the jury. This
20 will be marked for identification purposes---

21 MR. BROWN: Yes, sir.

22 THE COURT: ---and put in the record for identification
23 purposes. It is the original.

24 MR. BROWN: Yes, sir.

25 THE COURT: And, of course, the law requires the

Dwight Geter - Direct examination
by Solicitor Gray

1 original generally. But now if you -- unless you, you
2 wanted to, want to go ahead and offer the original. I don't
3 know if you want to do that or not.

4 MR. BROWN: I don't have a problem with that, Your
5 Honor. The prosecution does.

6 THE COURT: Well, I'm asking him now.

7 SOLICITOR GRAY: I don't have a problem with it, Your
8 Honor.

9 THE COURT: All right. Well, I'm gonna pass it down.
10 Somebody got a magic marker or something we can redact
11 it?

12 MR. BROWN: But as long as -- I know Mr. Poole
13 definitely have a problem with my ability for the jury to
14 see any whiting out.

15 THE COURT: All right. Well, why don't we -- let's --
16 we can make a copy and, and, and take it off.

17 MR. POOLE: Yes, I'm just concerned that the jury might
18 see white-out.

19 THE COURT: And I'm concerned also about the quality of
20 the copy because what it looks -- the document is a photo
21 lineup. On one side it has the photos that were used in the
22 lineup. On the other side is the affidavit in question.
23 And obviously the quality of the photos may be, come into
24 question. And, so, the original has some importance in the
25 case.

Dwight Geter - Direct examination
by Solicitor Gray

1 MR. POOLE: Yes, sir.

2 THE COURT: But you can't split a paper in that
3 direction. So, I'll -- so, I'll let you attorneys talk
4 about it, see how you want to work it out. If you want to
5 make copies and see how the copy turns out, maybe you want
6 to look at that. So, we'll take a moment and let you see
7 what you can do with it. We've got a copy machine right
8 here if you want to try to make a copy.

9 (Pause.)

10 SOLICITOR GRAY: Your Honor, I think we have a
11 solution. It's gonna take a few minutes.

12 THE COURT: Okay. Well, we'll take about a five minute
13 recess at this point in time.

14 I'll instruct the witness not to discuss his testimony
15 with anyone during the break. You may step down from the
16 witness stand and move about the courtroom.

17 Court will be in recess for about five to ten minutes.
18 Just let us know when you're ready, Mr. Gray.

19 SOLICITOR GRAY: Yes, sir.

20 THE COURT: Thank you.

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

22 THE COURT: All right. Has the exhibit been repaired?

23 SOLICITOR GRAY: Yes, sir, Your Honor.

24 THE COURT: Been redacted?

25 SOLICITOR GRAY: Yes, sir.

Dwight Geter - Direct examination
by Solicitor Gray

1 THE COURT: Any objection to, objection to the redacted
2 version?

3 MR. POOLE: No, sir.

4 MR. BROWN: No, sir.

5 THE COURT: All right. Has it been marked?

6 SOLICITOR GRAY: Yes, sir.

7 THE COURT: All right. It will be admitted as it's
8 marked.

9 SOLICITOR GRAY: Thank you, Your Honor.

10 (WHEREUPON, State's Exhibit No. 30 was received into
11 evidence at this time.)

12 THE COURT: All right. State ready for the jury?

13 SOLICITOR GRAY: Yes, sir, Your Honor.

14 THE COURT: Defense ready?

15 MR. POOLE: Yes, sir.

16 MR. BROWN: Yes, sir.

17 THE COURT: Bring the jury in.

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

20 THE COURT: The jury has returned to the courtroom.

21 The State may proceed with this witness.

22 SOLICITOR GRAY: Thank you, Your Honor.

23 CONTINUED DIRECT EXAMINATION

24 BY SOLICITOR GRAY:

25 Q I had just asked you about the lineup, and moved it

Dwight Geter - Direct examination
by Solicitor Gray

1 into evidence.

2 At this time, Your Honor, State has no further
3 questions of this witness.

4 THE COURT: All right.

5 Q Please answer questions Mr. Poole or Mr. Brown may
6 have.

7 THE COURT: Mr. Poole.

8 MR. POOLE: Thank you.

9 CROSS-EXAMINATION

10 BY MR. POOLE:

11 Q Mr. Geter, it was your testimony just a moment ago that
12 you left around 11:30 or twelve o'clock with your brother,
13 Marty, and Bryant Miller?

14 A Yes, sir.

15 Q What's Marty's last name?

16 A Jackson.

17 Q Jackson.

18 Okay. And that you were the driver of the car?

19 A Yes, sir.

20 Q And that y'all went to Dreams --

21 A Yes, sir.

22 Q -- is that right?

23 And then there was an altercation?

24 A Yes, sir.

25 Q Were y'all thrown out of that club?

Dwight Geter - Cross-examination
by Mr. Poole

- 1 A Yes, sir.
- 2 Q Okay. Who was thrown out?
- 3 A Just us three, for the fight.
- 4 Q That was us three being whom?
- 5 A Me, my brother, and Marty.
- 6 Q Okay. You, your brother, and Marty?
- 7 A Yes, sir.
- 8 Q Okay. And it was -- you further testified that it was
- 9 actually you, your brother, and Marty that was involved in
- 10 the altercation, is that true?
- 11 A Yes, sir.
- 12 Q And you stated that Darius Cathcart was involved in the
- 13 altercation, is that right?
- 14 A Yes, sir.
- 15 Q And then you-all went to the Waffle House, is that
- 16 correct?
- 17 A Yes, sir.
- 18 Q The police came and you left?
- 19 A Yes, sir.
- 20 Q And then you dropped off Marty?
- 21 A Yes, sir.
- 22 Q And then a car pulled up beside you and shot at you?
- 23 A Yes, sir.
- 24 Q And that you had no weapon?
- 25 A No, I didn't.

Dwight Geter - Cross-examination
by Mr. Poole

1 Q You testified that you had no weapon a while ago.

2 A Yes, sir.

3 Q Is that right, you had no weapon?

4 A Yes, sir.

5 Q Okay. And that -- I believe that was the important
6 parts of, as I got my notes, of your testimony today, is
7 that right?

8 A Yes, sir.

9 Q Let me take you back to the evening or early morning of
10 March 14th, 2009.

11 Do you remember talking to Investigator Lorin Williams?

12 A Yes, sir.

13 Q He's been a detective here for a long time in
14 Spartanburg County?

15 A Yes, sir.

16 Q Do you remember talking to him?

17 A Yeah.

18 Q Do you remember telling him that your brother had
19 gotten into an altercation with some guys that he didn't
20 know?

21 A Yes, sir.

22 Q That you didn't know?

23 A Yes, sir.

24 Q You remember telling him that?

25 A Yes, sir.

Dwight Geter - Cross-examination
by Mr. Poole

1 Q And that you stated that you had never seen them
2 before?

3 A Yes, sir.

4 Q You remember telling him that?

5 A Yeah.

6 Q And why is your testimony changing from what you told
7 Detective Williams and what you're testifying today?

8 A What changed?

9 Q You testified, under direct examination just a moment
10 ago, that who was in the fight was me, my brother, and Marty
11 and Darius Cathcart?

12 A Yes, sir.

13 Q Just a while ago.

14 A Yes, sir.

15 Q The very night of this incident, you told Lorin
16 Williams that your brother had gotten into an altercation
17 with some guys that you didn't know.

18 Explain the inconsistency.

19 A Cause I recognized them now. I ain't know who it was
20 at the time.

21 Q You stated that you had never seen them before.

22 A I didn't know them.

23 Q You stated, on that night, that you had never seen them
24 before.

25 Explain the inconsistency.

Dwight Geter - Cross-examination
by Mr. Poole

1 A (No response.)

2 Q Can you?

3 A No.

4 Q So, you're lying?

5 A No, I ain't lying.

6 Q Explain the inconsistency then.

7 A Can't explain it.

8 Q You were being evasive -- well, let me, let me ask you
9 this.

10 You had a further conversation with Investigator Lorin
11 Williams and you told him some more, gave him some more
12 information that's inconsistent with your prior testimony
13 today and let me ask you about this.

14 Didn't you tell the detective that you heard the
15 gunshots, we're talking about the shoot-out now, laid over
16 in the seat and removed the gun from the console and
17 returned fire?

18 A Yes, sir.

19 Q Yet you testified under oath today that you had no
20 weapon?

21 A Yes, sir.

22 Q Explain the inconsistency.

23 A The reason I said that the first, the first cause I
24 ain't want, I ain't want nobody else to go down for that,
25 the shooting, me shooting back. But on the testimony I give

Dwight Geter - Cross-examination
by Mr. Poole

1 here today is the truth.

2 Q So, on the very date of this shoot-out, you told the
3 law enforcement that you laid over in the seat and removed a
4 gun from the console and returned fire?

5 You admit that?

6 A Yes, sir.

7 Q Let me show you a document here which is dated 11,
8 let's see, 11:47 a.m. on the 14th of March.

9 Is that your signature?

10 A Yes, sir.

11 Q Could you -- and did you give this statement?

12 A Yes, sir.

13 Q And who did you give it to?

14 A The officer.

15 Q All right. Would you read it to the jury?

16 A We got into it at the club.

17 Q Could you speak up a little please?

18 A We got into it at the club, left. They followed us and
19 we got to the four way and then we -- we, we got to the four
20 way. They pulled up and started shooting. When I seen that
21 my brother was shot, I started shooting back. I said that.

22 Q You said you started shooting back?

23 A Yes, sir.

24 Q So, on March 14th you gave an oral statement stating
25 that you laid over in the seat, removed a gun from the

Dwight Geter - Cross-examination
by Mr. Poole

1 console, and returned fire, right?

2 A Yes, sir.

3 Q You gave a written statement when you, you admitted
4 that you were shooting back, right?

5 A Yes, sir.

6 Q And you testified under oath today that you had no
7 weapon?

8 A Yes, sir.

9 Q Again, I ask you to explain the inconsistencies.

10 A I can't explain them.

11 Q Are you lying?

12 A No, I'm not lying. I just told you what I said about
13 it.

14 Q Well, I think one of the things you said that you
15 didn't want anybody else to get in trouble.

16 Who are you covering up for?

17 A Nobody. But at the time I was. I was just gonna --
18 I -- at the time I was covering up for Bryant. But now I'm
19 telling the truth.

20 Q At the time you were covering up for Bryant?

21 A Yeah.

22 Q So, at the time, at the time was the night that this
23 happened?

24 A Yep.

25 Q So, at that time you were lying?

Dwight Geter - Cross-examination
by Mr. Poole

- 1 A Yep.
- 2 Q And you're telling the truth now?
- 3 A Yes, sir.
- 4 Q why should you expect this jury to believe you now when
- 5 you stated that you were lying then?
- 6 A Cause I'm telling you that I was lying.
- 7 Q Did you not also say to, on this very night, to
- 8 Detective Williams that you threw the gun out of the car on
- 9 Floyd Road?
- 10 A Yes, sir.
- 11 Q Can you explain the inconsistency in that statement?
- 12 A No, that was where we threw the gun --
- 13 Q Pardon me?
- 14 A -- on the way to Mary Black.
- 15 Q Pardon me?
- 16 A On the way to Mary Black, that's where we threw the
- 17 gun.
- 18 Q We threw the gun?
- 19 A well, he threw the gun.
- 20 Q He threw the gun?
- 21 A Yeah.
- 22 Q Didn't you tell Lorin Williams --
- 23 A After.
- 24 Q -- that you threw the gun out of the car on Floyd Road?
- 25 A Yeah.

Dwight Geter - Cross-examination
by Mr. Poole

1 Q Now it's we threw the gun out on Floyd Road.

2 Can you explain that?

3 A Nope.

4 MR. POOLE: State's Exhibit No. 30, is that, Mr. Gray,
5 right here?

6 SOLICITOR GRAY: Yes, sir.

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

8 THE COURT: You may.

9 Q Mr. Geter, this is been introduced into evidence as
10 State's Exhibit No. 30. It is an affidavit of photo,
11 photograph identification along with a lineup and circled on
12 the lineup, I think you've testified, is a photo of Darius
13 Geter, is that right?

14 A Huh?

15 Yeah.

16 Q Did you circle that?

17 A Yes, sir.

18 Q Okay. Is that a photo of Darius Geter?

19 A Darius Geter?

20 Q Yes, sir.

21 A No.

22 Q I'm sorry. I am misusing -- I'm getting my names
23 confused. I apologize.

24 Darius Cathcart, is that a photo, photograph of Darius
25 Cathcart?

Dwight Geter - Cross-examination
by Mr. Poole

- 1 A Yeah.
- 2 Q Did you circle it?
- 3 A Yeah.
- 4 Q Now, read what you stated in your affidavit.
- 5 A I think was involved in the fight at the club.
- 6 Q You -- I think was involved in the fight at the club?
- 7 A I ain't write that.
- 8 Q But you told -- you made a statement I think was
- 9 involved in the fight at the club, right?
- 10 A Yeah.
- 11 Q And this is a sworn document, isn't it?
- 12 A Yeah.
- 13 Q So, you made that statement under oath?
- 14 A Yes, sir.
- 15 Q I think was involved in the fight at the club, right?
- 16 A Yeah.
- 17 Q And now you're stating that you know he was involved in
- 18 the fight at the, at the club, right?
- 19 A Yeah.
- 20 Q And then one more time, back to what you told Detective
- 21 Williams, you told him that your brother had gotten into an
- 22 altercation with some guys, some guys that you didn't know.
- 23 which statement should we believe now?
- 24 A The one I just gave you.
- 25 Q Pardon me?

Dwight Geter - Cross-examination
by Mr. Poole

- 1 A The one -- whatever statement you want to believe.
2 Q Whatever statement we want to believe.
3 A The statement I just gave you.
4 Q Which one is that?
5 Help us out.
6 A The last statement I just gave you.
7 Q The last statement?
8 A Yeah.
9 Q Not the one you gave right just a few hours after
10 all---
11 A Nope.
12 Q ---this went down?
13 A Nope.
14 Q Right.
15 Don't believe anything that you say -- you don't want
16 us to believe anything you said just a few hours after all
17 this went down?
18 A Nope.
19 Q Did you ever tell Lorin Williams that there was a Monty
20 that was dropped off, off out of the, the car, not a Marty?
21 A He might of thought I said Monty, but---
22 Q Was Marty dropped out of the car before or after the
23 shooting?
24 A Before.
25 Q Before?

Dwight Geter - Cross-examination
by Mr. Poole

1 A Yeah.

2 Q Were you in the courtroom when Mr. Miller testified
3 yesterday?

4 A Yeah.

5 Q Do you remember what he said about when Marty was
6 dropped off?

7 A Yeah.

8 Q What did he say?

9 A He said we dropped him off first.

10 Q He didn't say---

11 A No, he said we -- I, I really don't remember what he
12 said.

13 Q Did he not say that y'all let Marty out after the
14 shooting?

15 A Yeah.

16 Q So, which is -- which case is true?

17 A We dropped him off before. We dropped him off at
18 Lakeview Manor.

19 Q You dropped him off before the shooting?

20 A Yes, sir.

21 Q And not after?

22 A Nope.

23 Q So, you're saying -- well, your testimony is
24 inconsistent with Mr. Miller's, isn't it, on that point?

25 A (No response.)

Dwight Geter - Cross-examination
by Mr. Poole

- 1 Q Can you explain it?
- 2 A No, sir.
- 3 MR. POOLE: Ask the Court bear with me just a minute
- 4 please.
- 5 THE COURT: Yes, sir.
- 6 (Pause.)
- 7 Q Okay. At least one thing we've gotten fairly clear is
- 8 that there was a gun in the, in the car you were in, right?
- 9 A Yes, sir.
- 10 Q what kind of gun was it?
- 11 A I don't know.
- 12 Q where did it come from?
- 13 A I don't know. Bryant had the gun.
- 14 Q Pardon me?
- 15 A I guess he had it the whole time. I don't know.
- 16 Q He had it on him?
- 17 A Yeah.
- 18 Q What kind of gun was it?
- 19 A I don't know.
- 20 Q He's a friend of yours?
- 21 A Yes, sir.
- 22 Q Y'all go out a lot?
- 23 A Yes, sir.
- 24 Q Has he carried a gun with him before?
- 25 A Yes, sir.

Dwight Geter - Cross-examination
by Mr. Poole

- 1 Q You've never seen it?
- 2 A I seen it, but I don't know what kind of gun it is
- 3 though.
- 4 Q what did it look like?
- 5 A I don't know. It was black.
- 6 Q Black.
- 7 Is that the gun that was thrown out?
- 8 A Yes, sir.
- 9 Q Any other guns in the car?
- 10 A No, sir.
- 11 Q whose car was, did, did the Crown Victoria belong to?
- 12 A It was Marty's car.
- 13 Q I'm sorry.
- 14 who?
- 15 A It was Marty's car.
- 16 Q Marty's car?
- 17 A Yeah.
- 18 Q Marty who was dropped off before or after --
- 19 A Yeah.
- 20 Q -- the shooting we don't know, right?
- 21 A Yes, sir.
- 22 Q That's Marty.
- 23 okay. Do you know what a Luger is?
- 24 A No, sir.
- 25 Q You know what it looks like?

Dwight Geter - Cross-examination
by Mr. Poole

- 1 A I don't know what it is.
- 2 Q okay. All right.
- 3 Just a moment please.
- 4 THE COURT: Yes, sir.
- 5 (Pause.)
- 6 MR. POOLE: That's all the questions I have of this
- 7 witness, Your Honor.
- 8 THE COURT: Mr. Brown, your witness.
- 9 MR. BROWN: Thank you, Your Honor.
- 10 THE COURT: Yes, sir.
- 11 MR. BROWN: Very briefly.
- 12 CROSS-EXAMINATION
- 13 BY MR. BROWN:
- 14 Q Mr. Geter, you said me, my brother, and Marty, y'all
- 15 were the only ones that got kicked out of the club?
- 16 A Yes, sir.
- 17 Q So, the people that your brother got into, they didn't
- 18 get kicked out as far as you know?
- 19 A I don't know if they got -- I don't know if they got
- 20 kicked out.
- 21 Q But you know you got kicked out?
- 22 A Yeah.
- 23 Q Did you enjoy getting kicked out?
- 24 A No.
- 25 Q You was upset about that?

Dwight Geter - Cross-examination
by Mr. Brown

- 1 A No, I wasn't upset.
- 2 Q So, did you enjoy getting kicked out?
- 3 A I didn't enjoy it, but I was ready to go home anyway.
- 4 So --.
- 5 Q So, you were mad about getting kicked out?
- 6 A No, sir.
- 7 Q Were you mad about getting into it with anybody?
- 8 A Yes, sir.
- 9 Q So, that made you mad?
- 10 A Yes, sir.
- 11 Q Do you know Brandon Glenn?
- 12 A No, sir.
- 13 Q Do you know Bryant Miller?
- 14 A Yes, sir.
- 15 Q You wouldn't know Brandon Glenn if you saw him?
- 16 A I don't know that name.
- 17 Q Did you ever see anybody come up and speak with
- 18 Mr. Miller at the bar?
- 19 A We got kicked out and he was still in there. So, I
- 20 don't know.
- 21 Q Were you at the bar with Mr. Miller?
- 22 A No, sir.
- 23 Q Did you ever go to the bar that night?
- 24 A No, sir.
- 25 Q After you got kicked out, where did you go?

Dwight Geter - Cross-examination
by Mr. Brown

- 1 A To the Waffle House.
- 2 Q How long did you stay at the Waffle House?
- 3 A Probably like thirty minutes.
- 4 Q And then you left?
- 5 A Yes, sir.
- 6 Q Talk to anybody at the Waffle House?
- 7 A Yeah, I think we talked to a couple peoples.
- 8 Q Talked to anybody at the Waffle House about what
- 9 happened at the club?
- 10 A No, sir.
- 11 Q Talked to anybody at the Waffle House about the fact
- 12 that you said someone jumped on your brother?
- 13 A No, sir.
- 14 Q So, you had let it go at that point?
- 15 A Yes, sir.
- 16 Q Y'all didn't even talk about it?
- 17 A No, sir.
- 18 Q You, your brother, and no one else?
- 19 A No, sir.
- 20 Q You just let it go, getting kicked out of the club?
- 21 A Yeah, basically.
- 22 Q Any, any ladies at the club that night?
- 23 A Yes, sir.
- 24 Q When you go to the club, if you're rolling, then how
- 25 many cars would you take, more than one?

Dwight Geter - Cross-examination
by Mr. Brown

1 A If you what?

2 Q If you had more than five people with you, would you
3 just take one car or would you take two?

4 A More than one car.

5 Q And if friends were meeting at the club, coming from
6 different places, you would agree with me that you would
7 take more than one car to a club?

8 A Yes, sir.

9 Q And that's been the situation with you on a few times?

10 A Yes, sir.

11 Q If you had some friends coming to the club, they didn't
12 come at the same time you did, they would come in a
13 different car?

14 A Yes, sir.

15 Q All right. Do you know what a banana clip is?

16 A A clip.

17 Q Yes.

18 SOLICITOR GRAY: Objection, Your Honor. Relevance.

19 THE COURT: He's on cross-examination. He can ask him
20 if he's familiar with that.

21 Q Have you heard---

22 THE COURT: Overruled.

23 Q You've heard the term Chiquita?

24 A No, sir.

25 Q You've never heard the term Chiquita.

Dwight Geter - Cross-examination
by Mr. Brown

- 1 You ever heard the term banana clip?
- 2 A Yes, sir.
- 3 Q You've heard the term .40 cal?
- 4 A Yeah.
- 5 Q What's a .40 cal?
- 6 A It's a gun.
- 7 Q Were you present in the courtroom during the time when
- 8 Mr. Miller took the stand?
- 9 A Yes, sir.
- 10 Q Did you hear him talk about the .40 cal?
- 11 A Yeah.
- 12 Q What do you know a .40 cal to be?
- 13 A A gun.
- 14 Q And in particular, the .40 cal that relates to
- 15 Mr. Miller, what does that mean to you?
- 16 A Say that again?
- 17 Q As it relates to Mr. Miller and the .40 cal, what does
- 18 that mean to you?
- 19 A Nothing.
- 20 Q Did you hear Mr. Miller say he possessed a .40 cal on
- 21 this evening?
- 22 A Yes, sir.
- 23 Q Do you know what a .40 cal is?
- 24 A Yeah.
- 25 Q And you knew what a .40 cal was before coming here?

Dwight Geter - Cross-examination
by Mr. Brown

- 1 A Yeah.
- 2 Q Do you know what a Glock is?
- 3 A A gun.
- 4 Q Do you know what a 9-millimeter is?
- 5 A A gun.
- 6 Q Do you know what a Chopper is?
- 7 A Yeah.
- 8 Q How do you know what a Chopper is?
- 9 A It's a -- just know the guns.
- 10 Q So, you do know what guns are?
- 11 A Yeah.
- 12 Q So, when Mr. Poole asked you about your knowledge of
- 13 weapons, you did have some understanding of weapons?
- 14 You would agree with me on that?
- 15 A Yeah.
- 16 Q Okay. Now, it's your, it's your testimony here today,
- 17 almost some two years after this incident, that you didn't
- 18 shoot any gun on that evening?
- 19 A No, sir.
- 20 Q But in the time period very close to when this incident
- 21 occurred, you told Investigator Williams that you did shoot
- 22 that evening, correct?
- 23 A Yes, sir.
- 24 Q And you're saying you're covering up today for Bryant?
- 25 A Yeah, I was.

Dwight Geter - Cross-examination
by Mr. Brown

1 Q You was.

2 But you're not today?

3 A No, sir.

4 Q Why aren't you covering up for Bryant today?

5 A Cause he told me I would help him.

6 THE COURT: That's all the questions I have, Your
7 Honor.

8 THE COURT: Redirect.

9 SOLICITOR GRAY: Yes, sir, Your Honor. Briefly.

10 THE COURT: Yes, sir.

11 REDIRECT EXAMINATION

12 BY SOLICITOR GRAY:

13 Q On the night of the shooting, which car shot first?

14 A The car that pulled beside us.

15 Q Thank you.

16 Nothing further, Your Honor.

17 THE COURT: Anything further, Mr. Poole?

18 MR. POOLE: No, sir.

19 THE COURT: Mr. Brown?

20 MR. BROWN: No, sir.

21 THE COURT: You may step down, sir.

22 The State may call its next witness.

23 SOLICITOR TAILOR: The State calls Heather Forrester.

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

Heather Forrester - Direct examination
by Solicitor Tailor

1 HEATHER FORRESTER, having been first duly
2 sworn, testified as follows:

3 THE COURT: Have a seat please, ma'am. Once you're
4 seated, state your name.

5 WITNESS: Heather Forrester.

6 THE COURT: Ms. Tailor, your witness.

7 SOLICITOR TAILOR: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY SOLICITOR TAILOR:

10 Q Can you tell us where you work, ma'am?

11 A Spartanburg County Sheriff's Office.

12 Q And how long have you worked there?

13 A Since August of '05.

14 Q Okay. On the night of March 14th of 2009, were you
15 working?

16 A I was.

17 Q And where were you around midnight that night?

18 A Around midnight?

19 Q Or during that night.

20 A I was working. About 4:00 a.m. Deputy Davis and I were
21 working off of Skylyn Drive in Spartanburg County.

22 Q And did you receive a call?

23 A I did.

24 Q What was that call in reference to?

25 A I got called. Dispatch called me at approximately,

Heather Forrester - Direct examination
by Solicitor Tailor

1 approximately 4:06 and said that there were two gunshot
2 victims at Mary Black Hospital.

3 Q And what did you find when you went to Mary Black
4 Hospital?

5 A When I arrived on scene, I saw a red Crown Ford Vic
6 parked in the EMS ramp where they were doing construction.
7 No one was in the car and I observed Mr. Dwight Geter on
8 the, I guess, the ramp.

9 Q Okay. Did you find out what happened?

10 A When I first tried to speak with Mr. Geter, he, he
11 wouldn't talk to me. It appeared to me maybe, you know, he
12 was in shock. When his mother arrived on scene and started
13 speaking with him, then he told me what had happened.

14 Q What did you---

15 A Briefly what had happened.

16 Q What did you observe on that Crown Victoria, the
17 vehicle that was there?

18 A I really didn't. I was more focused on Mr. Geter. So,
19 I really didn't look at the car at all. Deputy Davis was
20 securing the vehicle.

21 Q And then what else did you do that day?

22 A I spoke with Mr. Geter briefly.

23 Q What did he tell you?

24 A He told me that earlier in the night he and his brother
25 and a friend, the friend's name that he gave me was Bryant

Heather Forrester - Direct examination
by Solicitor Tailor

1 Miller, they were at the Club Dreams in, in Spartanburg
2 County, and they got into an altercation with two black
3 males that they did not know. He stated that he was on
4 Burns Road and Mt. Pleasant Road and came to a stop. A
5 green vehicle pulled up to the side and began shooting.

6 Q Did you report that information back to your, your boss
7 or your, or your---

8 A Yes, to my supervisor.

9 Q Did you speak with anyone else that night or observe
10 any other people at the hospital that night?

11 A As far as?

12 Q As far as any other victims or any other people who
13 arrived in relation to, to that incident.

14 A I know that there was a victim who was being, being
15 treated at the hospital. The only victim I spoke to was,
16 was Mr. Geter, Dwight Geter.

17 Q Okay. Please answer any questions Mr. Poole and Mr.
18 Brown may have for you.

19 THE COURT: Mr. Poole, your witness.

20 MR. POOLE: Thank you.

21 CROSS-EXAMINATION

22 BY MR. POOLE:

23 Q How are you doing, Ms. Forrester?

24 A I'm good.

25 How are you?

Heather Forrester - Cross-examination
by Mr. Poole

1 Q Fine.

2 Just one question.

3 Dwight Geter told you on that very evening that he got
4 into a fight with two black males that he did not know?

5 A He told me that he and his friends, his brother, and
6 his friend got into an altercation at Club Dreams with, with
7 several unknown black males.

8 Q With several?

9 A Yes, sir.

10 Q Not two, but several?

11 A Several.

12 Q Several.

13 Thank you.

14 A You welcome.

15 THE COURT: Mr. Brown.

16 MR. BROWN: No questions, Your Honor.

17 THE COURT: Redirect?

18 SOLICITOR TAILOR: No, Your Honor.

19 THE COURT: Ma'am, you may step down. Thank you very
20 much.

21 State may call its next witness.

22 SOLICITOR TAILOR: Call Matt Davis.

23 THE COURT: Come forward and be sworn please.

24 MATT DAVIS, having been first duly
25 sworn, testified as follows:

Matt Davis - Direct examination
by Solicitor Tailor

1 THE COURT: Have a seat please on the witness stand,
2 and once you're seated I'd ask that you state your name.

3 WITNESS: Matthew Davis.

4 THE COURT: Ms. Tailor, your witness.

5 DIRECT EXAMINATION

6 BY SOLICITOR TAILOR:

7 Q Mr. Davis, where do you work?

8 A Spartanburg County Sheriff's Office.

9 Q And approximately how long have you worked there?

10 A Been there since July of '08. Before that I was at
11 Spartanburg City Police Department.

12 Q On the night of March 14th, 2009, were you working?

13 A I was.

14 Q And could you please explain to us what happened that
15 day?

16 A That night I was, met up with Deputy Forrester, and we
17 were just having a small talk conversation when a call come
18 out that needed to respond to Mary Black. We were just down
19 the road from Mary Black and responded over to Mary Black,
20 arrived on scene the same time. Once we got there, I was
21 advised by security that the red Ford Crown Vic that we
22 observed right there in the EMS bay, cause they were having
23 construction, they had pulled up in that area that was
24 actually not being utilized at that time, that there had
25 been a shooting. They had pulled one person out, the

Matt Davis - Direct examination
by Solicitor Tailor

1 medical personnel, and one was inside, one was to the side.
2 And they pointed just down a little walkway where he was
3 standing there and that's the only thing he was doing. He
4 was later identified as Mr. Geter. And I, at that time,
5 secured the vehicle to ensure that no one or nothing came in
6 or out of that little area.

7 Q So, when you say you secured the vehicle, did you tape
8 it off?

9 Did you just stand there---

10 A I did.

11 Q ---and observe it or what did you do?

12 A It's our practice, when we refer to secure something,
13 is to, to tape off the scene. Taped it off around the
14 entrance to allow for that cause they had construction so
15 that way people could still walk out to go to their cars. I
16 was able to tape it off to a manner to where people could
17 still walk to get to their vehicles and not have to go to
18 the other side of the building, then walk all the way back
19 in the parking lot. It was taped off. And then I observed
20 it to make sure that no one touched anything, took anything,
21 that if they were coming by the crime scene tape, the only
22 thing they could do was just look at it with their eyes as
23 they walked by because I make, if there's any shift change,
24 that everybody just kind of kept the pace of moving out, not
25 getting near the vehicle, just keep on walking.

Matt Davis - Direct examination
by Solicitor Tailor

1 Q Okay. Did you stay with the vehicle until what time?

2 A I stayed with it till 7:20 hours. The only time I had
3 to do anything out of the ordinary other than watching it is
4 when I observed a female who identified herself as the
5 mother of Mr. Geter. She pointed and said I'm his mother.
6 She was coming up to make sure she wasn't gonna penetrate
7 that area of the crime scene, which I listened to the
8 statement she made to her son.

9 Q When you said his mother, are you talking about Mr.
10 Geter?

11 A Yes, she pointed to Mr. Geter and said I'm his mother.
12 So, I allowed her to walk over there to where he was at.

13 Q All right. But she still did not touch the vehicle or
14 go near the vehicle?

15 A No, ma'am.

16 Q Did you hear her say anything---

17 A I did.

18 Q ---as she walked up?

19 what, what did her demeanor appear to be?

20 A She appeared to be very concerned, upset. She said
21 that -- she asked, I guess it'd be her son, the older
22 brother, younger brother, the brother said, you know, what,
23 what's basically you know how his, what's his -- basically
24 referred to his physical status, is he okay, you know what
25 are they saying about him. He was at a loss for words. Do

Matt Davis - Direct examination
by Solicitor Tailor

1 not recall him saying anything.

2 Before he could really mumble anything, she asked him,
3 she said why did you come to the house first, why didn't you
4 just come here to the hospital. And during that time I
5 maintained a crime scene log. So, it'd be documented who
6 was there in that area with us as far as our --.

7 Q Okay. And what time did you -- did you release that
8 vehicle to anyone within your department?

9 A I did. ID Officer Shawn Nix, he arrived with a search
10 warrant at that time. He was going to take over the scene,
11 security, processing. Him and the coroner had arrived
12 around the same time, which was Mike Shaw. And it was
13 released to him. Paperwork was given to them.

14 Q Please answer any questions that Mr. Brown or Mr. Poole
15 may have.

16 THE COURT: Mr. Poole, your witness.

17 MR. POOLE: No questions, Your Honor.

18 THE COURT: Mr. Brown.

19 CROSS-EXAMINATION

20 BY MR. BROWN:

21 Q Are you Brian T. Davis?

22 A No, I'm Matthew B. Davis.

23 Q But you're familiar with Officer Davis, Brian T. Davis?

24 A There's a lot of Davis'.

25 Q Or T. Davis?

Matt Davis - Cross-examination
by Mr. Brown

1 A T. Davis?

2 Q Yes.

3 A Yes, I believe so.

4 Q Did you ever speak with that officer on this evening?

5 A If I would of spoken with him it would of had to of
6 been by telephone.

7 Q Okay. And you didn't make any type of identification
8 of any materials or items associated with the vehicle that
9 you observed at the hospital?

10 A The only thing I did was ensure that, that nothing went
11 in, nothing come out of that area. Did not make any, as far
12 as no, no physical identifications as far as where things
13 were located, no, sir.

14 Q Okay. And during, during that time period, did you see
15 anyone return to the vehicle?

16 In particular, either Mr. Geter or Mr. Miller?

17 A No, sir, no one returned. I wouldn't even allow the
18 security officer anywhere near it. His job was done. I
19 told him he needed to write a statement. He was at the side
20 doing that. I didn't even get to see his statement. It was
21 given to Deputy Forrester. I just made sure no one else
22 touched that vehicle once we got there to the scene so
23 everything would be preserved.

24 Q Thank you, officer.

25 That's all the questions I have, Your Honor.

Matt Davis - Cross-examination
by Mr. Brown.

1 THE COURT: Redirect?

2 SOLICITOR TAILOR: No further questions, Your Honor.

3 THE COURT: You may step down, sir.

4 State may call its next witness.

5 SOLICITOR GRAY: Thank you.

6 State calls Tim Davis.

7 THE COURT: Come forward, sir, to be sworn.

8 TIM DAVIS, having been first duly
9 sworn, testified as follows:

10 THE COURT: Have a seat please, sir. Once seated, if
11 you would state your name.

12 WITNESS: Tim Davis.

13 THE COURT: Your witness, Mr. Gray.

14 SOLICITOR GRAY: Thank you.

15 DIRECT EXAMINATION

16 BY SOLICITOR GRAY:

17 Q Deputy, first of all, Mr. Davis, where do you work?

18 A At the Spartanburg County Sheriff's Office.

19 Q Did you respond on March 14th, 2009, in regards to
20 the shooting incident?

21 A I did.

22 Q What did you do that night, sir?

23 A I was asked to respond to a location on the roadway
24 along Mt. Pleasant and Burns in reference to a, collecting a
25 swab of possible blood that was seen in the roadway.

Tim Davis - Direct examination
by Solicitor Gray

- 1 Q All right. Did you ever go to Mary Black Hospital?
- 2 A Not that I recall.
- 3 Q Okay. Did you ever go back to your county tow shop?
- 4 well, what's it called when you guys get cars and bring
- 5 them in?
- 6 A Yes, it's the county impound or, or county shop.
- 7 Q Did you go there then?
- 8 A Not that night I didn't.
- 9 Q Okay. But you did go eventually concerning this case?
- 10 A I may have. If I did, it was simply to assist Deputy
- 11 Talanges. I wasn't directly the one in charge of processing
- 12 any of the vehicles.
- 13 Q Okay. Did you take any pictures?
- 14 A It's possible.
- 15 Q I want to show you some pictures, ask you if you
- 16 recognize them. It's State's Exhibit 17.
- 17 A I do recognize the photos.
- 18 Q Uh-huh. (Affirmative).
- 19 A Most of which were taken by Deputy Talanges.
- 20 Q Most of the ones taken by Deputy Talanges?
- 21 A Yes, sir.
- 22 Q And did you -- standard procedure in this case would be
- 23 to follow this car back from Mary Black to the county
- 24 impound?
- 25 A It's usually secured in some manner. A lot of times

340

Tim Davis - Direct examination
by Solicitor Gray

1 it's actually followed by an officer to that, to that
2 location quite often.

3 Q And were you with Officer Talanges when he took these
4 pictures?

5 A Through most of them, yes, sir.

6 Q Have these pictures been altered in any way?

7 A No, sir.

8 Q And is this a correct representation of what the car
9 was and what was found in the car?

10 A That is correct.

11 Q Thank you.

12 At this time we move State's 17 into evidence, Your
13 Honor.

14 MR. POOLE: No objection.

15 THE COURT: Any objections?

16 MR. BROWN: No objection, Your Honor.

17 THE COURT: All right. The pictures will be received
18 as marked.

19 (WHEREUPON, State's Exhibit No. 17 was received into
20 evidence at this time.)

21 SOLICITOR GRAY: Thank you, Your Honor. No further
22 questions of this witness. Please answer any questions Mr.
23 Brown or Mr. Poole may have.

24 THE COURT: Mr. Poole, any questions?

25 CROSS-EXAMINATION

Tim Davis - Cross-examination
by Mr. Poole

1 BY MR. POOLE:

2 Q How are you doing today, deputy?

3 A Good, sir.

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

5 THE COURT: You may.

6 Q Are you familiar with this diagram here, deputy?

7 A No, sir, not really. I realize it's related to the
8 case due to the information on it.

9 Q Okay. It had your name on it. I didn't know if you
10 were the originator of it.

11 A I was the first one that went to that location.

12 Q Okay. So -- and what -- when you say this location,
13 what location are you talking about?

14 A That location on, at Mt. Pleasant and Burns.

15 Q Is that a four way stop?

16 A There's one close by.

17 Q One close by?

18 A Yes, sir.

19 MR. POOLE: Okay. May I approach again, Your Honor?

20 THE COURT: Yes, you may.

21 Q On this diagram, could you mark for me please where the
22 four way stop is if it's on there?

23 A I believe that's gonna be Mt. Pleasant and Burns if I'm
24 not mistaken.

25 Q You believe it's Mt. Pleasant and Burns?

Tim Davis - Cross-examination
by Mr. Poole

- 1 A Yes, sir.
- 2 Q Okay. Now, so, you went to this scene at some point in
3 time?
- 4 A Yes, sir.
- 5 Q Is that right?
- 6 It would of been on March 15?
- 7 A That's quite possible.
- 8 Q And did you collect some shell casings?
- 9 A No, sir, I did not.
- 10 Q Okay.
- 11 A I was asked to respond to that location in advance of
12 Deputy Talanges and Deputy Shawn Nix, who arrived at the
13 scene to completely process that area.
- 14 Q Okay. well, I might be looking at something.
15 May I approach again, Your Honor?
16 I'm sorry.
- 17 THE COURT: You may.
- 18 Q Let me just ask you this.
19 Are you the originator of this document?
- 20 A Yes, sir. Yes, sir, I am. I do believe shell casings,
21 yeah.
- 22 Q So---
- 23 A I was thinking that was all I collected was something
24 else, but yeah.
- 25 Q Okay.

Tim Davis - Cross-examination
by Mr. Poole

- 1 A Yes, sir.
- 2 Q So, you did collect some shell casings --
- 3 A Yes, sir.
- 4 Q -- from the scene we're talking about?
- 5 A Yes, sir.
- 6 Q And I'll leave that with you right there and could you
- 7 tell us---
- 8 A This, this was actually at another location on Gower
- 9 Road. That's what that's from looking at the report.
- 10 Q Okay.
- 11 A This is at 168 Gower Road.
- 12 Q Okay. Is that related to this case?
- 13 A To my knowledge it is, yes, sir.
- 14 Q And, so, you collected some shell casings?
- 15 A It says I did collect a shell casing with a head stamp
- 16 of winchester 40SW and one bullet. It simply means the
- 17 whole thing with a head stamp of winchester 9-millimeter
- 18 Luger from the end of the roadway and turn around section
- 19 near 168 Gower Road.
- 20 Q Okay. So, you collected a shell casing of a winchester
- 21 40 S&W, Smith & Wesson?
- 22 A That's correct.
- 23 Q And the shell casing -- that .40 refers to a caliber,
- 24 is that correct?
- 25 A Yes, sir.

Tim Davis - Cross-examination
by Mr. Poole

1 Q And one bullet?

2 A Yes, sir.

3 Q From the head of the roadway at the turnaround section?

4 A Uh-huh. (Affirmative).

5 Q Near 168 Gower Road?

6 A That's correct.

7 Q Okay. Now, what -- that's the full entire unfired
8 bullet, is that right?

9 A That is correct.

10 Q Okay. And that was a Winchester 9-millimeter?

11 A That was a Winchester 9-millimeter.

12 Q And then you say Luger?

13 A Yes, sir.

14 Q Okay. So, these -- the shell casings and the entire
15 bullet had to go to two guns, did they not?

16 A Two different firearms, that's correct.

17 Q Okay. All right. Thank you.

18 THE COURT: Mr. Brown.

19 MR. BROWN: No questions, Your Honor.

20 THE COURT: Redirect.

21 REDIRECT EXAMINATION

22 BY SOLICITOR GRAY:

23 Q Those two bullets, were they fired or unfired?

24 A One was a shell casing, the .40, and it was a spent
25 round. The one that had been fired and spits the casing out

Tim Davis - Redirect examination
by Solicitor Gray

1 of the firearm. The 9-millimeter bullet was the entire
2 bullet that you could put into a gun to fire it.

3 SOLICITOR GRAY: Nothing further, Your Honor.

4 THE COURT: Anything further, Mr. Poole?

5 MR. POOLE: No, sir.

6 THE COURT: Mr. Brown.

7 MR. BROWN: None, Your Honor.

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

9 WITNESS: Thank you.

10 THE COURT: State may call its next witness.

11 SOLICITOR GRAY: Yes, sir, Your Honor.

12 State calls Patrick Cockrell.

13 THE COURT: Come forward and be sworn please, sir.

14 PATRICK COCKRELL, having been first
15 duly sworn, testified as follows:

16 THE COURT: Have a seat please. Once you're seated,
17 state your name.

18 WITNESS: Patrick Cockrell.

19 THE COURT: Mr. Gray, your witness.

20 SOLICITOR GRAY: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY SOLICITOR GRAY:

23 Q Mr. Cockrell, where do you work?

24 A Spartanburg County Sheriff's Office.

25 Q How long have you worked there?

Patrick Cockrell - Direct examination
By Solicitor Gray

1 A Almost 13 years now, next month.

2 Q What are your primary duties and responsibilities, sir?

3 A I'm a patrol supervisor on the uniform patrol division
4 on night shift.

5 Q On May 14th, excuse me, March 14th, 2009, what were
6 your duties and responsibilities?

7 A The, the same. I was performing as patrol supervisor
8 for uniform patrol.

9 Q Did you get a call about a shooting that night or, or
10 early in the morning?

11 A Yes, sir, I did.

12 Q What were you tasked with doing in relation to the
13 shooting?

14 A Basically to assist the other officers on, on the call
15 to make sure that they had everything they needed to assist
16 them in, in locating witnesses or evidence, crime scenes,
17 anything and everything that the other officers needed.

18 Q Let's talk about the crime scenes.

19 Did you go to different locations in the county looking
20 for crime scenes that night, that night?

21 A Yes, sir, I did.

22 Q Where did you go?

23 A One of the places I went was Spartanburg Regional
24 Hospital. I also went to an area around Mt., Mt. Pleasant
25 Road and Burns Road, in those areas.

Patrick Cockrell - Direct examination
By Solicitor Gray

1 Q Did you go near Charisma Drive?

2 A Charisma Drive, yes, sir. I did go there as well.

3 Q Did you go to anywhere near the Hearon Circle Waffle
4 House?

5 A I, I can't recall, sir.

6 Q All right. But the Charisma Drive, did you find a
7 crime scene?

8 A I, I didn't personally find one, no, sir.

9 Q All right. You said that Mt. Pleasant Road and --

10 A Burns Road.

11 Q -- Burns Road.

12 what did you find there?

13 A At that location we found several spent shell casings
14 in and around the roadway and the intersection there.

15 Q And what did you do at that scene?

16 A I have some orange cones in my, in the trunk of my
17 patrol car that I used to mark and identify, locate evidence
18 for the ID technicians when they arrive on scene.

19 Q Did you call the ID technicians?

20 A Yes, sir.

21 Q I want to show you what's been marked as State's
22 Exhibit No. 18.

23 MR. POOLE: No objection.

24 MR. BROWN: No objection, Your Honor.

25 THE COURT: Without objection, it will be, be -- are

Patrick Cockrell - Direct examination
By Solicitor Gray

1 those photographs, is that right?

2 SOLICITOR GRAY: Yes, sir.

3 THE COURT: They'll be received in evidence as they
4 have been marked.

5 (WHEREUPON, State's Exhibit No. 18 was received into
6 evidence at this time.)

7 THE COURT: You may proceed.

8 SOLICITOR GRAY: Thank you, Your Honor.

9 Q If you look over those real quickly please.

10 A Yes, sir.

11 Q Now, does that accurately reflect what you said you do
12 at this scene?

13 A Yes, sir, it does.

14 Q Now, was it raining that day?

15 A Yes, sir, it was raining quite heavily at times.

16 Q Now, what did you do to secure that particular scene?

17 A We kept the, the area clear from, from traffic.

18 Basically shut down the roads right around that area, and,
19 again, as I said earlier, I put the, the cones out to mark
20 that evidence, and that way, when the ID officers arrived on
21 scene, and I could go through it and point out to them and
22 tell them exactly where everything was that we had located.

23 Q And what things did you locate?

24 A Mostly just spent shell casings.

25 Q Spent shell casings?

Patrick Cockrell - Direct examination
By Solicitor Gray

1 A Yes, sir.

2 SOLICITOR GRAY: All right. Your Honor, I'd like to
3 publish these to the jury.

4 THE COURT: You may.

5 SOLICITOR GRAY: One moment, Your Honor.

6 THE COURT: Yes, sir.

7 (Pause.)

8 Q No further questions of this witness. Please answer
9 any questions Mr. Poole or Mr. Brown may have for you.

10 A Yes, sir.

11 THE COURT: Mr. Poole, your witness.

12 CROSS-EXAMINATION

13 BY MR. POOLE:

14 Q Deputy, you said you found some spent shell casings
15 there at the scene?

16 A Yes, sir.

17 Q Could you describe them in detail?

18 Do you know what they were?

19 A No, sir, not in detail. All I remember was it was
20 spent, spent shell casing brass colored with, with no
21 bullets attached to them as if they had been fired.

22 Q About how many were there?

23 A I don't remember the exact number. I'm guessing it was
24 probably in the neighborhood of, of four to six if I
25 remember correctly. But I'm not certain of that, the

Patrick Cockrell - Cross-examination
by Mr. Poole

1 number.

2 Q Thank you.

3 A Yes, sir.

4 THE COURT: Mr. Brown.

5 MR. BROWN: No questions, Your Honor.

6 THE COURT: You may step down, sir.

7 State may call its next witness.

8 SOLICITOR GRAY: Thank you, Your Honor.

9 The State calls David Hogsed.

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

11 DAVID HOGSED, having been first duly
12 sworn, testified as follows:

13 THE COURT: Have a seat please, sir, and once you're
14 seated, I'd ask that you state your name for the record.

15 WITNESS: David Hogsed.

16 THE COURT: Mr. Gray, your witness.

17 SOLICITOR GRAY: Thank you, sir.

18 DIRECT EXAMINATION

19 BY SOLICITOR GRAY:

20 Q Deputy Hogsed, how long have you worked for the
21 Sheriff's Department?

22 A I started with the Sheriff's Office in August of 2005.

23 Q What are your primary duties and responsibilities?

24 A Currently the supervisor of the night shift with the
25 crime scene unit.

David Hogsed - Direct examination
By Solicitor Gray

1 Q I've heard reference to ID a couple times.

2 what is that exactly?

3 A ID basically with the Sheriff's Office is an old term
4 and it means identification cause it's job actually -- right
5 now, if you see any of our cars, you actually see the crime
6 scene unit across our cars. That's basically a crime scene
7 unit, but a shorter acronym is ID for identification.

8 Q Spartanburg CSI?

9 A Pretty much.

10 Q All right. When there's ever a scene, you guys
11 respond?

12 A Yes, anytime that a patrol officer or a detective,
13 basically any officer within the Sheriff's Office or any
14 town, we also assist municipalities within Spartanburg
15 County. If they think that they, they need us to process a
16 crime scene, we respond and process that scene.

17 Q Now, on this incident, did you assist in processing
18 anything involved with this case?

19 A I actually did not become involved in this case until
20 the following day, which is on March 15th of 2009 where I
21 responded to our county shop, which is where our fleet
22 maintenance shop is, where a red colored Ford Crown Victoria
23 had placed there to, secured there with crime scene tape and
24 I executed a search warrant that had been given to me on
25 that vehicle.

David Hogsed - Direct examination
By Solicitor Gray

1 Q Now, that vehicle was secured --

2 A Yes.

3 Q -- when you arrived at it?

4 A Usually what happens is one of us was not able to
5 follow -- usually one of us follows the car to the shop.
6 We, we actually watch it from Point A to Point B. That car
7 is then lowered into the building, and one of us, if we can,
8 you know, will literally put crime scene tape around that
9 car telling everybody pretty much to stay off of it, stay
10 away from it, and then the car's then looked up within that
11 building overnight.

12 Q All right. Show you what's been marked as State's
13 Exhibit No. 17, it's in evidence, a series of photographs.

14 A All these were taken by me when I executed the warrant.

15 Q Thank you, sir.

16 Now, in those photographs are some numbered different
17 things.

18 What did you do to process the victim's vehicle?

19 A The first thing we started doing is taking exterior and
20 interior photographs of the vehicle as we see it when we
21 approach it without putting anything to it or whatever. We
22 take photographs as you see it. And then I went back and
23 there were several what I call impact marks, a lot of people
24 refer to them as bullet holes, on the vehicle, and those
25 were marked with stickers, numbered stickers, and then after

David Hogsed - Direct examination
By Solicitor Gray

1 all those were done, I -- the evidence was gonna be taken
2 out of the car. I used an alphabet placard to mark those
3 items of evidence to photograph prior to collecting those to
4 show the location within the vehicle.

5 Q Did you do anything else?

6 A No. Once the -- all the photographs, the photography
7 work was done, the projectile marks were marked, and
8 those -- there were dowel rods put into the car. What I
9 mean by dowel rods, dowel rods, excuse me, wooden dowel rods
10 basically put in to show estimated trajectory of, of the
11 path that was taken prior to striking the car. Once all
12 that was done and all the evidence collected, that was, was
13 pretty much it.

14 Q And the majority of the impact marks, were they on the
15 left side of the vehicle or the right side?

16 A On the driver's side.

17 If I may refer to my report?

18 I marked ten impact marks of bullets and projectiles on
19 the driver's side of the vehicle. Two were at the bottom
20 area of the driver's side of the windshield, six to the
21 driver's door, and two to the left side rear door of the
22 vehicle.

23 Q Did you find anything, anything inside of the car?

24 A Yes, there was actually several items of evidence,
25 physical evidence, that was collected out, out, from within

David Hogsed - Direct examination
By Solicitor Gray

1 the vehicle.

2 Would you like me to read them off my report?

3 Q Yes, sir.

4 A As I stated, I used an alphabet marker, and that was
5 because, during the investigation, what happens is we try to
6 keep all of our evidence chronological, and at the time I
7 was doing this, I had no clue what evidence item number to
8 start with. So, I used the alphabet and then went back and
9 gave it an evidence number.

10 So, there was a lead projectile fragment recovered from
11 the top of the dashboard on the driver's side, a Winchester
12 .40, when I say .40, I mean .40 caliber, Smith & Wesson
13 cartridge casing on the top of the dashboard on the
14 passenger's side, a Winchester .40 Smith & Wesson cartridge
15 case on the right side of the floorboard, a red colored New
16 York ball cap on the right side of the floorboard, a
17 Winchester 9-millimeter Luger, unfired bullet on the right
18 side rear seat, a projectile from the left side rear seat, a
19 Winchester .40 Smith & Wesson cartridge case from the front
20 center console, a Winchester .40 S&W cartridge case from the
21 driver's seat, lead projectile from inside the driver's door
22 after we removed the interior door panel, copper projectile
23 fragments from inside the driver's door, projectile from
24 inside the driver's door, lead projectile fragments from
25 inside the driver's door, and then there was an additional

David Hogsed - Direct examination
By Solicitor Gray

1 items taken that was not marked with placards.

2 We actually took the entire driver's door interior
3 panel because it had impact marks where the bullets came
4 through, it struck the panel, pushed it out, but did not
5 actually penetrate, a partially smoked cigar from the
6 ashtray, a blood swab from the back rest of the left side
7 rear seat. When I said left side rear seat, that would of
8 been if you're sitting in the car would be on the driver's
9 side, and a blood swab from the seat cushion on the right
10 side, which would be the passenger side seat.

11 Q Okay. Let me ask you about some of the projectiles,
12 casings, and bullets you found. Show you State's Exhibits
13 Nos. 21, 22, 23, 24, 25, and 26.

14 A All of these were collected by me.

15 Q And are those some of the items that you were talking
16 about before as far as projectiles and such?

17 A That's correct.

18 Q Now, could you give me, briefly, which number
19 corresponds to each item that you found?

20 A Okay. If you look at the evidence items, I wrote on
21 the evidence envelope, this is actually evidence Item Number
22 50. But when I'm photographing it for collection purposes
23 and documentation on the car, it actually represents Item
24 Number A within the car. 51 would be Number B. 52 is C.
25 53, D. And so forth. It was done that way because, at the

David Hogsed - Direct examination
By Solicitor Gray

1 time, I did not know what, which item numbers to put down.
2 So, I went to an alphabet system and then correspond them
3 with the numbers.

4 Q All right. So, 50 would be the lead projectile
5 fragment?

6 A Right, 50 is the lead projectile fragment, which came
7 from the top of the dashboard on the driver's side. 51,
8 which is a Smith & Wesson .40 cartridge casing is actually B
9 in the photographs, and it would be the cartridge casing
10 from the right side front floorboard, which is basically
11 your passenger side front floorboard.

12 C, which is Number 52, is a .40 Smith & Wesson
13 cartridge casing. I'm sorry. B came from the top of the
14 dashboard on the passenger. C came from the right side
15 front floorboard. So, 52 actually was on the, on the top of
16 the dash. 51 and 52 was in the floorboard.

17 This is Number 55, which is F in the photos, and it was
18 on the left side rear seat, and, and so forth. This is 56,
19 which is photographed as G, and this is a cartridge casing
20 from the front center console, and this is 57, which is H,
21 cartridge casing from the driver's seat.

22 Q I apologize. I forgot one. That's State's Exhibit No.
23 31.

24 A And this is Number 54, which is photographed as E.
25 It's a 9-millimeter Luger unfired bullet from the right side

David Hogsed - Direct examination
By Solicitor Gray

1 rear seat.

2 Q Sir, all these items were recovered from the red Crown
3 Victoria?

4 A Yes, that was the only -- that -- the red Crown
5 Victoria was the only thing I did that day when I was
6 involved with this case.

7 Q And it was shot up pretty good?

8 A Yes, actually all the car windows were out and had --
9 were busted out, and the right front door window was
10 actually laying inside. It was pretty much held together
11 because of the window tint. I pretty much tried to put it
12 back in place and photograph it as best I could, but --.

13 SOLICITOR GRAY: Your Honor, at this time, State would
14 moves State's Exhibit 21, 22, 23, 24, 25, 26, and 31 into
15 evidence, Your Honor.

16 THE COURT: Any objections?

17 MR. POOLE: No objections.

18 THE COURT: Any objections?

19 MR. BROWN: No objections, Your Honor.

20 THE COURT: They're received into evidence as marked.

21 (WHEREUPON, State's Exhibit Nos. 21 through 26 and
22 State's Exhibit No. 31 were all received into evidence at
23 this time.)

24 Q Did you do anything else regarding this car, these
25 projectiles or anything you had in evidence?

David Hogsed - Direct examination
By Solicitor Gray

1 A Once I bag and tag them, and that's a law enforcement
2 term, but once they're put into evidence -- each one is put
3 into its own evidence envelope and all that, I then
4 submitted it to evidence. Investigator Talanges,
5 Investigator Nix worked the major crime scene. They were
6 basically what we refer to in our unit as the leads on the
7 case. My documentation report was given to them, and then
8 they would of worked on then sending those down to SLED, and
9 I can tell by the evidence envelope, just by looking at
10 them, several of them had gone to SLED for analysis.

11 Q All right. Now, you said that's all you did on that
12 vehicle?

13 A Yes, on that vehicle, yes, sir.

14 Q Do -- did you ever process another vehicle?

15 A Two days later I went to the county, back to the county
16 shop with Investigator Talanges to help him and, with the,
17 with searching of another vehicle. I can tell that I think
18 it was a Nissan, and that it had been burnt pretty much to
19 the framing.

20 Q And what did you do in that situation?

21 A Basically was photograph and to take -- and I just
22 assist, assist Investigator Talanges in searching through
23 the debris from the fire looking for cartridge casings, and
24 actually I did find a cartridge casing inside the driver's
25 seat. And once I found it, I just backed away and let them

David Hogsed - Direct examination
By Solicitor Gray

1 know so photography could be done, photography work could be
2 done on it and Investigator Talanges actually collected that
3 cartridge casing.

4 Q You didn't collect anything from that burned vehicle?

5 A I did not. Once I found it, I said I backed up, said
6 we got a cartridge casing, and, and they, you know,
7 photography work was done to show the documentation, and
8 then actually Investigator Talanges actually did the
9 physical collection of that item.

10 Q And you didn't photograph the vehicle either?

11 A No.

12 Q Show you Exhibit 19. Ask you if you recognize those
13 photographs.

14 A Yeah, that's the car -- this is the vehicle that I
15 assisted just by searching.

16 Q The next day?

17 A Well, I think I was out the 15th. I think this was
18 actually done on the 17th.

19 Q All right.

20 A Like two days after I was on the red Crown Vic.

21 Q Thank you very much, sir. No further questions at this
22 time. Please answer questions Mr. Poole and Mr. Brown may
23 have.

24 THE COURT: Mr. Poole, your witness.

25 MR. POOLE: Thank you, Your Honor.

David Hogsed - Cross-examination
by Mr. Poole

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. POOLE:

4 Q Sergeant, is that right?

5 A Yes, sir.

6 Q Sergeant Hogsed, just a few questions --

7 A Yes, sir.

8 Q -- about what you found inside the Crown Vic. I want
9 to talk about the, the cartridge casings, and the unfired
10 bullet.

11 A Uh-huh. (Affirmative).

12 Q 51-B, by your notes, was a cartridge casing from the
13 top of the dashboard?

14 A That's correct.

15 Q And just for -- of course, we don't have a car here,
16 but let's say this is the dashboard of the car.

17 okay?

18 A Uh-huh. (Affirmative).

19 Q And where I'm standing would be where a driver would
20 be.

21 okay?

22 A Be to your right?

23 Q okay.

24 A The cartridge casing would be to your right on the
25 passenger side.

David Hogsed - Cross-examination
by Mr. Poole

1 Q Okay. That winchester .40 caliber Smith & Wesson
2 cartridge was on top of the dashboard, right, in the
3 vehicle?

4 A On the passenger side. I don't know how -- without the
5 photograph I can't tell you the exact area---

6 Q Sure.

7 A ---on the passenger side, but it was on the, more to
8 the passenger side.

9 Q If this were the dashboard it would be right over here?

10 A Yes, it would be on that top of the dashboard.

11 Q Okay. And the next .40 caliber would be on the right
12 side front floorboard, which would be right down here?

13 A Correct.

14 Q All right. And the 9-millimeter Luger unfired bullet,
15 that's an intact bullet?

16 A Unfired bullet.

17 Q Okay. Would be on the right side rear seat back here?

18 A That's correct.

19 Q Is that right?

20 A That's correct.

21 Q And the .40 caliber, another .40 caliber casing from
22 the front center console --

23 A Uh-huh. (Affirmative).

24 Q -- which would be right here?

25 A That's correct.

David Hogsed - Cross-examination
by Mr. Poole

- 1 Q And then a .40 caliber casing from the driver's seat---
- 2 A Correct.
- 3 Q ---which would be right here?
- 4 A Correct.
- 5 Q So, does that sort of demonstrate where they were
- 6 found?
- 7 A Yes.
- 8 Q Okay. Now, are you familiar with a Taurus?
- 9 A A Taurus?
- 10 Q A Taurus, a handgun?
- 11 A It's a brand of handgun made, yes.
- 12 Q Okay. Are you familiar with it?
- 13 A I mean I know they make them. I've never owned one,
- 14 wouldn't own one.
- 15 Q Okay. Why wouldn't you own one?
- 16 A I just don't like them.
- 17 Q Okay. Well, does it have a clip?
- 18 A Some do. Depends. I mean they make various calibers
- 19 in all handguns.
- 20 Q Okay. Do they make a .40 caliber?
- 21 A Yes.
- 22 Q Okay. And the -- after the gun is fired, it's -- the
- 23 casing is ejected, isn't it?
- 24 A That's correct.
- 25 Q And if the gun's being held in the right-hand, from

David Hogsed - Cross-examination
by Mr. Poole

1 which side of the gun is the casing ejected?

2 A It wouldn't matter which hand it was held in, it's
3 always gonna---

4 Q Well---

5 A I'm not a firearms expert, but you -- most automatic
6 weapons or semiautomatic weapons, when they fire -- okay.

7 Do you all understand what a clip is?

8 Feeds up into the weapon. Slide will come back, after
9 the weapon's fired, the slide comes back, it ejects the
10 cartridge casing, loads a fresh round. Most handguns made
11 today will eject the round up, back, and to the right.

12 Q Okay. So, if it's held by either hand --

13 A It's gonna go up and to the right.

14 Q -- it ejects the same way?

15 So, it's up, back, and to the right?

16 A Somewhat to the back. It can be -- I mean it just
17 depends on how it flips it. How -- you know, if you ever
18 get a chance to watch law enforcement practice, we'll be
19 practicing, and some will go behind us and some will
20 actually go straight out to the side. It just depends on
21 how the weapon is cycled at that time.

22 Q Okay. And, of course, it's angled too?

23 A That's right. It's angled and---

24 Q All right. Now, what is a 9-millimeter Luger?

25 A Nine millimeter is basically just a, a smaller round

David Hogsed - Cross-examination
by Mr. Poole

1 than a .40 caliber is. It's just, when you look, rounds are
2 made in calibers. Start at .22, .25, .38, .32, and, and
3 9-millimeter is actually a smaller round than a .40 caliber
4 round, and I can't tell you the millimeters. I'm not a
5 firearms expert. But it's a smaller round and it's based on
6 the millimeter. That's why I call it 9-millimeter. The
7 casing is -- the bullet is 9-millimeter wide.

8 Q Okay. All right. So, a -- but is it true that a
9 9-millimeter bullet can not be used in a .40 caliber?

10 A No, it's not true.

11 Q It can be?

12 A It can. A .40 caliber can fire a 9-millimeter, but a
13 9-millimeter can not fire a .40 caliber.

14 Q Okay. Okay. Thank you very much.

15 THE COURT: Mr. Brown, your witness.

16 CROSS-EXAMINATION

17 BY MR. BROWN:

18 Q Sergeant, very briefly.

19 You say you found a 9-millimeter in the right side
20 passenger side?

21 A That's correct.

22 Q And what is an A-F-I-S report?

23 A A.F.I.S.?

24 Q Yes, sir.

25 A It's an Automated Fingerprint Identification System.

David Hogsed - Cross-examination
by Mr. Brown

1 Q In regards to any rounds that you've identified, did
2 you conduct that type of analysis?

3 A You don't have an A.F.I.S. report unless you're
4 actually doing fingerprints and turn it in to perform a
5 fingerprint analysis.

6 Q As far as you know---

7 A Were these, were these processed by me, is that what
8 you're asking, for latent fingerprints?

9 Q Yes.

10 A No.

11 Q Okay. Can we mark this Defense Exhibit 1?

12 Did you submit a supplemental narrative?

13 A Here's my report on the vehicle.

14 (WHEREUPON, a report was marked as Defendant Exhibit
15 No. 1 for identification purposes only at this time.)

16 Q Okay. And you're employed by the Spartanburg County
17 Sheriff's Department?

18 A Uh-huh. (Affirmative).

19 Q And you're familiar with reports that are taken often
20 times as relates to latent fingerprints?

21 A Uh-huh. (Affirmative).

22 Q As well as any type of report that was done in
23 conjunction to this case?

24 A Uh-huh. (Affirmative).

25 Q And what I'd like to show to you right now is

David Hogsed - Cross-examination
by Mr. Brown

1 identified from the Spartanburg County Sheriff's Office.

2 It's a supplemental narrative.

3 And, in particular, it says that it was submitted by?

4 A It was submitted by me.

5 Q Okay. In regards to this particular document I'm
6 showing you, what does it refer to?

7 A I don't, I don't remember. I don't have no clue what
8 it came off of.

9 Q My question to you, sir, in regards to this document,
10 which was submitted by you, what does it refer to in the
11 narrative?

12 A It says one latent print submitted that had, had
13 sufficient ridge detail to enter into A.F.I.S. The latent
14 prints or that print was entered into A.F.I.S. with negative
15 results. It was compared to Rashawn Lamar Reeder and to
16 Darius Tavarious, I'm assuming that's right, Cathcart with
17 negative results. And whatever the latent print was, it was
18 not a match for Mr. Cathcart or Mr. Reeder.

19 Q Okay. And this was done by you?

20 A Yes.

21 Q And you're just now remembering this?

22 A I don't remember fingerprinting anything on this case
23 to be honest with you.

24 Q But this, this was submitted by you?

25 A Yes.

David Hogsed - Cross-examination
by Mr. Brown

1 Q Okay.

2 A At least that's what the report says.

3 THE COURT: Are you offering that into evidence?

4 MR. BROWN: I'm not, Your Honor.

5 THE COURT: Oh, okay.

6 MR. BROWN: I'll move on.

7 THE COURT: All right.

8 Q And one final question, sergeant.

9 Did you have a chance to go to the actual scene as
10 relates to Mt. Pleasant, Burn Road, and Burns Road?

11 A No, sir, I never seen that.

12 Q Thank you. That's all the questions I have.

13 THE COURT: Redirect.

14 REDIRECT EXAMINATION

15 BY SOLICITOR GRAY:

16 Q Deputy Hogsed, well -- in association with this, you
17 say you can't remember where this fingerprint analysis came
18 from?

19 A I have no clue. I don't remember fingerprinting
20 anything for this.

21 Q You didn't fingerprint the car?

22 A If I -- usually if I fingerprint something, it's,
23 there's a documentation recorded on it.

24 Q Or the bullets?

25 A No.

David Hogsed - Redirect examination
by Solicitor Gray

1 Q Or the fragments?

2 A No.

3 Q So, that---

4 A Those are not, those are -- we did not fingerprint the
5 shell casings. We, we actually rarely ever fingerprint
6 shell casings.

7 Q Okay. Did you fingerprint the victim's car?

8 A Not that I recall.

9 Q All right. Thank you very much.

10 THE COURT: Anything further?

11 MR. BROWN: Nothing further, Your Honor.

12 THE COURT: You may step down.

13 WITNESS: Am I released, judge?

14 THE COURT: Beg your pardon?

15 WITNESS: Am I released?

16 THE COURT: Any objection to this witness being
17 excused?

18 SOLICITOR GRAY: No, sir, Your Honor.

19 MR. POOLE: No, sir.

20 MR. BROWN: No, Your Honor.

21 THE COURT: You're free to go. Thank you, sir.

22 Ladies and gentlemen of the jury, we're gonna take
23 about a five to ten minute break at this time. I'll ask you
24 to step back to the jury room. Don't begin any discussions,
25 as always, until I've advised you to do so.

1 You may retire.

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

4 THE COURT: All right. Court will be in recess for
5 about five to ten minutes.

6 Thank you.

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

8 THE COURT: All right. State ready to proceed?

9 SOLICITOR GRAY: Yes, sir, Your Honor.

10 THE COURT: Defense ready?

11 MR. POOLE: Yes, sir.

12 MR. BROWN: Yes, Your Honor.

13 THE COURT: Bring the jury in.

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

16 THE COURT: The jury has returned to the courtroom.
17 The State may call its next witness.

18 SOLICITOR GRAY: Yes, sir, Your Honor.

19 State calls Robert Talanges.

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

21 ROBERT TALANGES, having been first duly
22 sworn, testified as follows:

23 THE COURT: Have a seat please, sir, and once seated,
24 state your name for the record.

25 WITNESS: Robert Charles Talanges.

Robert Talanges - Direct examination
by Solicitor Gray

1 THE COURT: Mr. Gray, your witness.

2 SOLICITOR GRAY: Thank you, sir.

3 THE COURT: Yes, sir.

4 DIRECT EXAMINATION

5 BY SOLICITOR GRAY:

6 Q Deputy Talanges, what do you do at the Sheriff's
7 Department?

8 A I'm assigned to the forensics division, Spartanburg
9 County Sheriff's Office.

10 Q Again, Spartanburg CSI basically?

11 A Correct. We do all, any and all crime scenes that
12 we're called to respond to.

13 Q Now, on March 14th, 2009, or thereabouts, did you
14 respond to a crime scene or different crime scenes?

15 A Yeah, received a call from Deputy Davis, Tim Davis,
16 that a shooting had taken place. Had one victim was
17 deceased at Mary Black. There were several, two -- at the
18 time, all I know is we even have victims. Victims were at
19 Spartanburg Regional and crime scene was over on Mt.
20 Pleasant.

21 Q All right. Did you respond to Mt. Pleasant Drive at
22 all?

23 A I first responded to Spartanburg Regional Medical
24 Center where I took photographs of two individuals, and I
25 collected three GSR kits as well as Buccal swabs.

Robert Talanges - Direct examination
by Solicitor Gray

1 Q Please explain what a GSR kit is.

2 A GSR kit is a gunshot residue kit. What it is is a swab
3 as well as a blotter type system. Anybody who has either
4 fired a gun, recently fired a gun, we take the GSR from left
5 and right-hand, both palms, side and backside, and we look,
6 for testing, we look for the gunshot or the powder and the
7 components of the powder coming from the cartridge casing.

8 Q Is this a, some type of chemical which you have lying
9 around or is this a kit?

10 A It's a kit.

11 Q And what's in the kit usually?

12 A The kit contains swabs, acetic acid. For the swabs, it
13 contains little samples with -- in the inside, once you take
14 it apart, it's got little like sticky tape on it there that
15 you dab the hand with to collect any and all the particles
16 from it.

17 Q Now, you say you collect, how do you actually swab the
18 hand?

19 A Basically they're the sterile swabs that, your little
20 Q-tip swabs. You apply the acetic acid inside the kit and
21 it all comes with it. You apply a little bit of the
22 moisture to it and basically you wipe the hand, both sides,
23 back and front.

24 Q I show you what's been marked State's Exhibit 33, 34,
25 and 35. I ask you if you recognize what's inside. Please

Robert Talanges - Direct examination
by Solicitor Gray

1 open those and look inside please.

2 A No. 19 is marked GSR kit, Evidence No. 19. It's from
3 Mr. Cathcart. It was taken about 5:50 in the morning.

4 Okay. These are the little blotters that I was referring to
5 that you take the subject, like a two sided sticky tape on
6 the inside. Swabs that were taken for analysis. SLED has
7 removed those as well as all the paperwork. But this is for
8 Mr. Cathcart. I also have one from a -- second subject was
9 a Reeder. Yeah, same blotters on the inside.

10 Also took one from, at the request of the detective
11 that was up there, Crossley, Michael Crossley. He had no
12 injuries, but he was at the hospital with the other two
13 subjects. Yeah, each kit -- well, this is what they
14 contained when you get them back from SLED.

15 Q Okay. Now, when you complete a GSR kit, a swabbing, do
16 you seal it?

17 A Yeah, that's what the back side is. Evidence tape is
18 sealed on it. That's -- it's actually glued on top. You
19 moisten the glue, seal it, and then you put actually
20 evidence sealing tape and sign it.

21 Q You put tape -- you signed it---

22 A Yeah, you initial---

23 Q ---on each form?

24 A You initial the back side of it.

25 Q I see something yellow on there.

Robert Talanges - Direct examination
by Solicitor Gray

1 What is that?

2 A That's a SLED number.

3 Q So, that would be the number?

4 A This is, this is where SLED would take custody of that.

5 Q SLED would take custody of it.

6 All right. Now, once you seal it, what do you do with
7 it?

8 A Envelope, resealed again, and then it goes for testing.

9 Q And do you deposit it in evidence?

10 A Yes, sir.

11 Q How do you deposit it in the evidence---

12 A Oh.

13 Q ---or give it to evidence?

14 A This would be -- these items here were at, placed on
15 evidence property sheet and it was all turned in in one
16 large sum because that's the type of case it is.

17 Q All right. Now, I notice on the outside there's,
18 there's some writing, the different time you took these GSR
19 swabs.

20 What times were those?

21 A This one here -- Reeder was taken at 5:10. I have
22 Cathcart at 5:50, and a Crossley at 6:24 a.m.

23 Q Do you know approximately when this situation occurred?

24 A I just, according to the report when I got called,
25 we're looking at approximately -- I got 4:20 hours when I

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Robert Talanges - Direct examination
by Solicitor Gray

1 got, when I responded.

2 Q You took these swabs rather quickly.

3 Why is that?

4 A Went from straight to the location where they were at.

5 Q Okay.

6 A So, you're looking at about an hours time from when
7 they were at the hospital until I arrived.

8 Q All right. Is there any reason that you took these
9 swabs so quickly?

10 A You have an expiration time. It's usually six hours on
11 a GSR kit because of, on a, on a live individual, you
12 perspire, sweat, and that would, brakes down the components
13 of the gun powder or gun, GSR kit, the items that you're
14 trying to collect. On a deceased individual, since they
15 don't sweat, they don't perspire, we have an unlimited
16 window.

17 Q Now, do you ask any other questions of these
18 individuals, if they're left-handed or right-handed or
19 anything of that nature?

20 A Yes, you do, and that's -- the question's on it are is
21 there any type of debris in the hand, which is blood,
22 grease, oils, any, anything of that nature. If they have --
23 let's see. We had a hand -- if they're right or left-hand,
24 how they would sign, and that's basically all -- and what
25 type of profession that they're in.

Robert Talanges - Direct examination
by Solicitor Gray

1 Q Now, on this case, did, did you do that for each
2 individual?

3 A Yes, sir.

4 Q Do you have those results?

5 A I do not have those, no.

6 SOLICITOR GRAY: One moment, Your Honor.

7 THE COURT: Yes, sir.

8 A Let me check the main file here.

9 Yes, I do have them.

10 Q All right. And what's that sheet called?

11 A This is the gunshot residue analysis information form.

12 Q Okay.

13 A And that's what we're looking at here. It---

14 Q Now---

15 A Mr. Reeder.

16 MR. BROWN: Your Honor, we have a matter of law.

17 THE COURT: Ladies and gentlemen of the jury, I'll ask
18 you to step to the jury room. Don't begin any discussions
19 until I've asked you do so.

20 You may retire.

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

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

24 MR. BROWN: Your Honor, I don't know where the
25 investigator may go, but based upon Mr. Gray's questioning,

Robert Talanges - Direct examination
by Solicitor Gray

1 it seems that one of the particularly, particular
2 identifiers, as it relates to the gunshot residue, he wants
3 to talk about which hand, and I'm just trying to ascertain,
4 prior to this line of questioning, how he was able to
5 ascertain that information without questioning my client,
6 which, again, would fall under our same objection that we
7 had the previous, which was in camera, the previous
8 testimony we heard from other officers associated with
9 anything that happened at the hospital in terms of type of
10 information that was ascertained.

11 So, for this officer to present any information in
12 terms of which hand he was, that seems to be some type of
13 information he would of had to receive from directly having
14 some form of conference with my client.

15 SOLICITOR GRAY: Your Honor, you can answer that
16 without---

17 THE COURT: Well, why don't you just ask him if he
18 knows what handed he was.

19 Q How do you know which hand he was?

20 A What is it is a standardized form that they have with
21 the kits, and when we take their information, that's name,
22 date of birth, it says is any debris on the hands, and I can
23 physically see if there is or not, occupation, and it says,
24 you know, it says right here, subject wash his hands during
25 the shooting, yes or no. It's a question that we ask when

Robert Talanges - Direct examination
by Solicitor Gray

1 we talk to them.

2 MR. BROWN: Officer, you have the form in your hand.
3 Clearly the form asked is the subject right-handed or
4 left-handed or unknown.

5 WITNESS: Right.

6 MR. BROWN: And you have that marked in relation to Mr.
7 Reeder which hand he was, correct?

8 WITNESS: Correct.

9 MR. BROWN: And my question or the prosecutor's
10 question directly to you is how did you get the information
11 to know which hand he was?

12 WITNESS: Asked him at the scene cause I had to do it
13 on him.

14 THE COURT: Okay.

15 MR. BROWN: Well, again, Your Honor, based upon what
16 we've heard, with the prior testimony from officers that
17 arrived at the scene, if this information was gathered from
18 my client, I think he still would have the same type of
19 infirmities that would of caused anything that came from him
20 potentially to be tainted, and if he answered this officer's
21 question, I would simply say that falls under the same line
22 of questioning we've heard previously.

23 THE COURT: Well, the issue is not the weight of the
24 evidence, but the---

25 MR. BROWN: I understand.

Robert Talanges - Direct examination
by Solicitor Gray

1 THE COURT: ---admissibility of the evidence.

2 MR. BROWN: Yes, sir.

3 THE COURT: Is that objection go to the weight of the
4 evidence or to its admissibility?

5 MR. BROWN: Well, for me, it goes to the admissibility
6 based upon the officer's testimony here today by saying that
7 he asked him. He's asking him is the same issue that I've
8 had, that we've had with another officer asking which hand
9 are you. That information was not allowed to come in. And
10 I think it would simply apply to the same officer who came
11 at a later time even after the first investigator that spoke
12 with him, which was after the initial officer who came to
13 the scene. So, this person was further in time.

14 SOLICITOR GRAY: No, Your Honor. I think, in this
15 situation, it was non-custodial, not an interrogation. It's
16 just a matter of a procedure to perform a test, Your Honor.
17 He's not asking him do you consent, do you not consent. He
18 was not, of custodial in nature. He merely asked him to
19 perform this procedure.

20 THE COURT: Where, where did this take place?

21 SOLICITOR GRAY: At the hospital.

22 THE COURT: All right.

23 MR. POOLE: Your Honor, I join -- for the record,
24 Darius Cathcart joins in the same objection.

25 THE COURT: Oh, I understand.

Robert Talanges - Direct examination
by Solicitor Gray

1 THE COURT: Well, are you saying he was in custody at
2 that time?

3 MR. BROWN: I'm saying that the same manner in which
4 the information was obtained with my client not only being
5 obviously in great pain, but under the type of medication he
6 was under and experiencing, he didn't have the ability to
7 fully engage this officer to provide the type of answers
8 that ultimately could of been to his detriment as we're
9 seeing being presented here today.

10 SOLICITOR GRAY: We've heard no testimony about his
11 condition at 5:00 p.m, I mean 5:00 a.m. or 6:00 a.m. when
12 this was done, Your Honor. It---

13 THE COURT: well, maybe you ought to lay a foundation
14 for that because help me with -- the previous interrogation
15 took place---

16 SOLICITOR GRAY: Well, almost immediately.

17 THE COURT: ---almost immediately after the incident.

18 SOLICITOR GRAY: Yes, sir, Your Honor, where he said he
19 was in great pain.

20 THE COURT: There was no question he was under pain
21 medication---

22 SOLICITOR GRAY: Yes, sir, Your Honor.

23 THE COURT: ---at this, that, and he was okay. So,
24 now, how much longer, later was this done?

25 SOLICITOR GRAY: What time was it?

Robert Talanges - Direct examination
by Solicitor Gray

1 WITNESS: I got -- I received a call at 4:20, and I
2 responded, and I took these at 5:10 and then 5:50.

3 SOLICITOR GRAY: Two to three hours later. Two hours
4 later. Okay.

5 WITNESS: So, we're looking at getting ready. So,
6 we're looking at about 40 minutes, 45 minutes.

7 SOLICITOR GRAY: All right.

8 THE COURT: Well, if he has some independent knowledge
9 as to what handed he was, I don't know, he may of observed
10 him, what he was doing. I can watch people and tell whether
11 their right-handed and left-handed without talking to them.

12 SOLICITOR GRAY: Yes, sir, Your Honor.

13 THE COURT: I, I -- depending on what they're doing.

14 MR. BROWN: And based upon what we just heard, Your
15 Honor, to not give him a chance to rehabilitate his previous
16 answer to the Court, he said yes, if Mr. Williams came two
17 minutes afterwards, 5:10, I don't see what the great
18 difference would be in time.

19 THE COURT: Well, I don't either. So, I'm gonna, I'm
20 gonna exclude it just like I did the other, anything that he
21 said to him.

22 SOLICITOR GRAY: Yes, sir, Your Honor.

23 THE COURT: So, I believe it was a previous finding was
24 he was under the influence of drugs at the time.

25 MR. BROWN: And what -- this relates to the

Robert Talanges - Direct examination
by Solicitor Gray

1 introduction of the gunshot residue analysis form in itself,
2 Your Honor?

3 SOLICITOR GRAY: Well, we're not intending to introduce
4 the form.

5 THE COURT: He says he's not gonna offer it.

6 SOLICITOR GRAY: Can't offer the form if we can't
7 say---

8 MR. BROWN: Any, any evidence about which hand.

9 THE COURT: Well, I -- again, I'm not gonna prevent him
10 from testifying as to what he observed.

11 MR. BROWN: Yes, sir. Yes, sir.

12 THE COURT: So, I'm not -- I haven't ruled on that.

13 MR. BROWN: Yes, sir.

14 THE COURT: I have ruled on any statement that your
15 client might of made at that time, and I don't know what
16 that's gonna reveal. We'll see what that reveals, but---

17 MR. BROWN: Yes, sir.

18 THE COURT: ---again, I'm not -- I've ruled that he
19 can't use his statement.

20 MR. BROWN: Yes, sir.

21 SOLICITOR GRAY: Yes, sir.

22 THE COURT: That's all.

23 Bring the jury back.

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

Robert Talanges - Direct examination
by Solicitor Gray

1 THE COURT: The jury has returned to the courtroom. I
2 have sustained the defense objection.

3 You may proceed, Mr. Gray.

4 SOLICITOR GRAY: Thank you, Your Honor.

5 CONTINUED DIRECT EXAMINATION

6 BY SOLICITOR GRAY:

7 Q After you proceed with the different GSR kits, you seal
8 them on, in the inside of each of those envelopes, is that
9 correct?

10 A That's correct.

11 Q And what information do you put on the outside of the
12 envelope?

13 A Case number, date, time, where it was collected at, who
14 it was from, and victim, type of offense.

15 Q Okay.

16 A Standard evidence form.

17 Q Now, were these the only three GSR kits done to your
18 knowledge?

19 A No, they were not. Those are the three that I
20 collected.

21 Q The three that you collected?

22 A Correct.

23 Q I show you this. You were talking about earlier
24 sending them, sending these GSR kits down to SLED at one
25 time.

Robert Talanges - Direct examination
by Solicitor Gray

1 A Correct.

2 Q Is that how it would normally be done?

3 A SLED repackaged this and it's been sent back to --

4 Q Okay.

5 A -- Spartanburg County, and it's got list of all the
6 GSR, who the names on the envelope or the forms or on the
7 packages are and signed, sealed, and that's how I received
8 it.

9 Q That's how you get it back?

10 A Correct.

11 SOLICITOR GRAY: All right. At this time, Your Honor,
12 I would move State's Exhibits 34, 35, and 33 into evidence.

13 THE COURT: Objections?

14 MR. BROWN: No, sir.

15 MR. BROWN: Well, like to see it.

16 THE COURT: You can see it.

17 MR. BROWN: No objection, Your Honor.

18 THE COURT: They'll be admitted into evidence as
19 marked.

20 (WHEREUPON, State's Exhibit Nos. 33 through 35 were
21 received into evidence at this time.)

22 SOLICITOR GRAY: Those are all the questions we have at
23 this time, Your Honor, for this witness. We reserve the
24 right to recall him, this witness.

25 THE COURT: All right.

Robert Talanges - Direct examination
by Solicitor Gray

1 Q Please answer any questions Mr. Brown or Mr. Poole may
2 have.

3 MR. POOLE: No questions here.

4 MR. BROWN: None, Your Honor.

5 THE COURT: You may step down, sir.

6 Ask the attorneys to approach briefly.

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

8 THE COURT: All right. Ladies and gentlemen, given the
9 length of the next witness, and we're about five minutes
10 till 12:00, I'm gonna go ahead and stop for lunch at this
11 time. I'll ask you to be back in the jury assembly room at
12 15 after 1:00. That will be 1:15.

13 During the break, same instructions I've given you
14 everytime you leave the court, court house, not to listen
15 to, watch, or read media reports. Don't attempt to gather
16 any information outside the court house. Don't discuss the
17 case with anyone. Don't allow anyone to discuss it with
18 you. Be back in the jury room, 1:15.

19 Have a good lunch. Thank you very much.

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

22 THE COURT: All right. Court will be in recess until
23 1:15.

24 Defendant's still in custody.

25 Thank you very much.

1 (WHEREUPON, Court was in recess for the lunch break.)

2 THE COURT: All right. Is the State ready to proceed,
3 Mr. Gray?

4 SOLICITOR GRAY: Yes, sir, Your Honor.

5 THE COURT: Defense ready?

6 MR. POOLE: Yes, sir.

7 MR. BROWN: Yes, Your Honor.

8 THE COURT: Let's bring the jury in.

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

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

13 The State is in the process of presenting its evidence,
14 and, Mr. Gray, you may call your next witness.

15 SOLICITOR GRAY: Thank you, Your Honor.

16 SOLICITOR TAILOR: Leslie Harrell.

17 THE COURT: Sir, come forward to my left, sir, and be
18 sworn in please.

19 LESLIE HARRELL, having been first duly
20 sworn, testified as follows:

21 THE COURT: Have a seat.

22 (Witness complies.)

23 THE COURT: State your name for the record please.

24 WITNESS: Deputy Leslie Harrell.

25 THE COURT: Ms. Tailor, your witness.

Leslie Harrell - Direct examination
by Solicitor Tailor

1 DIRECT EXAMINATION

2 BY SOLICITOR TAILOR:

3 Q Where do you work?

4 A Spartanburg County Sheriff's Office.

5 Q And what do you do there?

6 A I work uniform patrol.

7 Q And for how long have you been working with the
8 Sheriff's office?

9 A Almost three years.

10 Q In March of 2009, what were your duties and
11 responsibilities?

12 A I was working uniform patrol at night, and responded to
13 the hospital for a shooting.

14 Q Okay. Which hospital did you, did you respond to?

15 A Spartanburg Regional.

16 Q Okay. And what was the call that you got?

17 A Once I got there I found out I had two shooting victims
18 at the hospital.

19 Q Okay. And did you later find out the names of those
20 victims?

21 A Yes.

22 Q What were they?

23 A It was Darius Cathcart and Rashawn Reeder.

24 Q At that time did you obtain any information from Mr.
25 Cathcart?

Leslie Harrell - Direct examination
by Solicitor Tailor

1 A Yes.

2 Q What did -- how did you do that?

3 A I spoke with him when he was in his room receiving
4 medical attention.

5 Q And when you spoke with him, what, what did you ask
6 him?

7 A Asked him about the shooting, how he got shot.

8 MR. POOLE: May it please the Court, this is subject to
9 our previous objection.

10 THE COURT: Prior objections are noted, and the Court
11 would make the same rulings.

12 You may proceed.

13 A Asked him about where he got shot, the location of
14 where he got shot. Mr. Cathcart stated -- the information
15 that was given was kind of vague. Said he got shot near,
16 leaving Club Dreams at a yield sign. Said a vehicle pulled
17 up beside him, three black males got out of the vehicle,
18 shot about ten rounds into the vehicle. He said Rashawn
19 Reeder was in the car with him. They drove near the
20 hospital, stopped the car, and ran to the hospital receiving
21 medical attention.

22 Q Did he tell you what type of car they were in?

23 A I believe he said a Maxima.

24 Q Okay. Do you know what color the car was?

25 A If you'll give me one second I'll refer to my report.

Leslie Harrell -- Direct examination
by Solicitor Tailor

- 1 Q He said it was a gray Nissan Maxima four door.
- 2 Q Okay. Was there anything else that you did while you
- 3 were at the hospital?
- 4 A I spoke with Mr. Reeder.
- 5 Q And did any investigators respond to the scene?
- 6 A Yes, there was actually two investigators that
- 7 responded, Lorin Williams and Chris Durham.
- 8 Q And did you leave at that time?
- 9 A No, I still stood there a good while after they got
- 10 there.
- 11 Q What time did you get to the hospital?
- 12 A 4:15 in the morning.
- 13 Q Okay. So, what time did you end your patrol that day?
- 14 A Seven o'clock that morning.
- 15 Q Did you go back to work the next day?
- 16 A Yes.
- 17 Q And what happened the next day?
- 18 A The next evening I actually recovered a vehicle that
- 19 was on fire on Case Avenue.
- 20 Q Okay. And what type of vehicle was that?
- 21 A It was a Nissan Maxima.
- 22 Q Was it -- could you tell the color?
- 23 A I could tell the color and I could also read the tag on
- 24 it.
- 25 Q Okay. What did you do with the information that you

Leslie Harrell - Direct examination
by Solicitor Tailor.

1 obtained from those tags?

2 A I immediately gave it to dispatch, and I was actually
3 sitting within about a hundred yards of the vehicle when it
4 was started on fire. There responding Una Fire Department
5 out there, gave them the vehicle description, also the tag
6 information.

7 Q You said you were sitting near the vehicle.
8 why were you---

9 A I was actually watching a narcotic house.

10 Q Okay. I'm gonna hand you what's been marked as State's
11 Exhibit No. 19, these photos.

12 Do you, do you recognize these?

13 A I do. I recognize the car, yes.

14 Q Is that the vehicle you found on fire that day?

15 A It was.

16 Q And is that the car that you later found to be involved
17 in a shooting?

18 A Yes, there's actually -- I can see bullet holes inside
19 the car while it was still beside the tracks after it was
20 put out.

21 SOLICITOR TAILOR: Your Honor, we would move to, move
22 that State's Exhibit No. 19 into evidence.

23 THE COURT: Any objections, Mr. Poole?

24 MR. POOLE: No, sir.

25 THE COURT: Mr. Brown.

Leslie Harrell - Direct examination
by Solicitor Tailor

1 MR. BROWN: None, Your Honor.

2 THE COURT: All right. It will be received into
3 evidence as marked.

4 (WHEREUPON, State's Exhibit No. 19 was received into
5 evidence at this time.)

6 SOLICITOR TAILOR: Permission to publish to the jury,
7 Your Honor?

8 THE COURT: You may.

9 Q Deputy Harrell, were -- this vehicle that was found on
10 fire the next day, was it found to be linked as part of the
11 investigation of the shooting that occurred the day before?

12 A Yes, we were looking for the gray Nissan Maxima, which
13 is the one that was set on fire the next evening.

14 Q And that was the shooting that occurred on Mt. Pleasant
15 Road investigation?

16 A That's correct.

17 Q Did you find out who owned the vehicle?

18 A Mr. Williams. I have his information here. Dendy
19 Williams or William Henry Dendy is the way the vehicle came
20 back to.

21 Q Okay. And you obtained information from when you read
22 the license tag?

23 A Yes, ma'am.

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

Leslie Harrell - Direct examination
by Solicitor Tailor

1 THE COURT: Mr. Poole, your witness.

2 MR. POOLE: Thank you.

3 CROSS-EXAMINATION

4 BY MR. POOLE:

5 Q Deputy Harrell, just a couple of questions.

6 You, you said you spoke with the victims, Darius
7 Cathcart and Rashawn Reeder, about 4:15 in the morning, is
8 that right?

9 A Yes, sir.

10 Q And Mr. Cathcart had been treated for a gunshot wound?

11 A Yes.

12 Q And how far was he, he in his treatment when you
13 talked, spoke with him?

14 A When I was speaking with him, it was a graze wound
15 under his arm. There was no puncture in the arm or in his
16 body, and he was there, I'm sure, probably 15 minutes before
17 I go there.

18 Q Did you talk to his treating doctor?

19 A No, I did not.

20 Q Do you know if he was under the influence of drugs --

21 A I did not.

22 Q -- or whether he had been administered any drugs?

23 A No.

24 Q And was he -- how was he dressed?

25 Did he have a, a hospital garb, garments on?

Leslie Harrell - Cross-examination
by Mr. Poole

1 A Yeah, he was sitting in a pair of pants and didn't have
2 a shirt on --

3 Q Okay.

4 A -- if I recall.

5 Q All right. And he told you that there was a gray
6 Nissan Maxima --

7 A Yes.

8 Q -- that he was driving, is that right?

9 A Yes.

10 MR. POOLE: Okay. That's all the questions I've got.

11 THE COURT: Mr. Brown.

12 MR. BROWN: No questions, Your Honor.

13 THE COURT: Redirect.

14 SOLICITOR TAILOR: No, Your Honor.

15 THE COURT: You may step down, sir. Thank you very
16 much.

17 The State may call its next witness.

18 SOLICITOR GRAY: State calls Mr. William Dendy.

19 THE COURT: Come forward please.

20 WILLIAM DENDY, having been first duly
21 sworn, testified as follows:

22 THE COURT: Have a seat please, sir.

23 (Witness complies.)

24 THE COURT: State your name.

25 WITNESS: William Dendy.

William Dendy - Direct examination
by Solicitor Gray

1 THE COURT: Mr. Gray, your witness.

2 SOLICITOR GRAY: Thank you, sir.

3 DIRECT EXAMINATION

4 BY SOLICITOR GRAY:

5 Q Mr. Dendy, are you related, in any way, to either one
6 of the defendants?

7 A Darius Cathcart.

8 Q How are you related to Mr. Cathcart?

9 A I'm his uncle. He's my nephew.

10 Q Okay. Mr. Dendy, it's been testified to that you owned
11 a gray Nissan that was involved in some type of shoot-out?

12 A Yes. Yes.

13 Q Did you own that vehicle?

14 A No, it was in my name, but it had belonged to Darius.

15 Q It belongs to Darius?

16 A Yes.

17 Q Okay.

18 A Darius were buying the car, but it was in my name.

19 Q You signed for the vehicle?

20 A Right.

21 Q Darius made the payments on it?

22 A Made the payments.

23 Q Who drove the car?

24 A He did.

25 Q He drove the car?

William Dendy - Direct examination
by Solicitor Gray

1 A All the time. I never did drive it.

2 Q You never were in that vehicle---

3 A Never.

4 Q ---at all?

5 There's been also testimony that there was a fire to
6 the car?

7 A Yeah, I heard that.

8 Q Were you -- how were you notified about the fire?

9 A Well, there was an officer that came by looking for
10 Darius, and he told me that car had been burned. Then I saw
11 it on TV, but I never did see it in person.

12 Q All right. Mr. Dendy, were you ever in the car with
13 these gentlemen---

14 A No.

15 Q ---the night of March 14th, 2009.

16 A Hu huh. (Negative).

17 Q So, you don't know anything about the shoot-out or
18 anything?

19 A Except what I heard on the media.

20 Q I understand.

21 And you didn't set your own car on fire, did you?

22 A No.

23 Q You didn't had nothing to do with that car being set on
24 fire?

25 A No.

William Dendy - Direct examination
by Solicitor Gray

1 Q As a matter of fact---

2 A Cause.

3 Q ---did you receive anything from your insurance
4 company?

5 A Yeah.

6 MR. POOLE: Objection, Your Honor. I think we're
7 getting into the area of hearsay. Anything from the
8 insurance company, I don't know what the next question's
9 going to be.

10 THE COURT: Well, I don't know what the question is,
11 but he hasn't asked for anything at this point in time.

12 Overruled.

13 Let's see what the next question is.

14 Q Did you receive a check from the insurance company?

15 A Not -- after I went through the process of letting them
16 know what had happened --

17 Q Right.

18 A -- then they paid it off. Not the full amount. But to
19 their value.

20 Q And that way -- you had nothing to do with the fire?

21 A Uh-huh. (Negative).

22 Q Thank you.

23 Nothing further, Your Honor.

24 Please answer any questions these gentlemen may have.

25 THE COURT: Mr. Poole.

Michael Nix - Direct examination
by Solicitor Tailor

1 MR. POOLE: No questions.

2 THE COURT: Mr. Brown.

3 MR. BROWN: No questions, Your Honor.

4 THE COURT: Sir, you may step down.

5 The State may call its next witness.

6 SOLICITOR TAILOR: Michael Nix.

7 THE COURT: Come forward, sir, to be sworn.

8 MICHAEL NIX, having been first duly

9 sworn, testified as follows:

10 THE COURT: Have a seat please, sir.

11 (Witness complies.)

12 THE COURT: State your name.

13 WITNESS: Michael Shawn Nix.

14 THE COURT: Your witness, Ms. Tailor.

15 DIRECT EXAMINATION

16 BY SOLICITOR TAILOR:

17 Q Mr. Nix, where do you work?

18 A Spartanburg County Sheriff's Office.

19 Q And what do you do there?

20 A Crime scene unit.

21 Q And for how long have you worked there?

22 A I've worked at the Sheriff's Office for ten years.

23 Q And back in March of 2009, what were your duties and
24 responsibilities?

25 A Crime scene unit.

Michael Nix - Direct examination
by Solicitor Tailor

1 Q And that's what we call the Spartanburg CSI, correct?

2 A Yes, ma'am.

3 Q Okay. Did you respond to Mt. Pleasant and Burns Road?

4 A Later in the day, yes, ma'am, I did.

5 Q Okay. And while you were there, what did you do?

6 A I assisted Investigator Talanges with the, anything
7 that he needed.

8 Q Okay. I'm gonna hand you what's been marked as State's
9 Exhibit 20.

10 Do you recognize this?

11 A Yes, ma'am, I do.

12 Q And what are they?

13 A It appears to be approximately four of various types of
14 cartridge casings that are shell casings.

15 Q Okay. And where did you find those?

16 A They were collected at, on Mt. Pleasant Road.

17 SOLICITOR TAILOR: Okay. Your Honor, at this time
18 State would move to move State's Exhibit No. 20 into
19 evidence.

20 MR. POOLE: No objection, Your Honor.

21 MR. BROWN: No objection, Your Honor.

22 THE COURT: Without objection, they'll be received into
23 evidence as marked.

24 (WHEREUPON, State's Exhibit No. 20 was received into
25 evidence at this time.)

Michael Nix - Direct examination
by Solicitor Tailor

1 Q Now, these items, when you went out to the scene, was
2 there anyone there already?

3 A Investigator Talanges was already there.

4 Q And what, what was the condition of the scene when you
5 got there?

6 A The scene was wet. It was -- it had been raining that
7 day and it was still, still continuing to rain when I
8 arrived there.

9 Q Okay. And could you please explain to the jury your
10 process for obtaining, when, when you find something as
11 seen, what you do when you get there, and how you do mark
12 and how you do collect things and put them into evidence?

13 A Yes, ma'am, when you arrive on scene, first of all, you
14 want to look around and see if there's any evidence present
15 at a scene. And once you locate the evidence, you want to
16 take photographs of it, and this is just very general.

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

23 Q And, so, these items that we've just identified there
24 were the ones you collected?

25 A Yes, ma'am.

Michael Nix - Direct examination
by Solicitor Tailor

1 Q Could you describe what they are?

2 A They are two CBC Smith & Wesson .40, .40 caliber shell
3 case, one R-P 9-millimeter Luger shell casing, and one Star
4 I Star Smith & Wesson .40 caliber shell casing.

5 Q And when you say a shell casing, can you please explain
6 what that is?

7 A You -- they refer to either a shell casing or a
8 cartridge casing. They're basically the little brass
9 cylinders that are left after a, after a bullet or a piece
10 of ammunition has been fired.

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

13 THE COURT: Mr. Poole, your witness.

14 MR. POOLE: Thank you.

15 THE COURT: Yes, sir.

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

17 THE COURT: You may.

18 CROSS-EXAMINATION

19 BY MR. POOLE:

20 Q Investigator Davis, are you familiar with that document
21 there?

22 A Well, I'm Investigator Nix, and yes, I am---

23 Q I'm sorry.

24 A ---familiar with that.

25 Q I'm sorry. I'm sorry.

Michael Nix - Cross-examination
by Mr. Poole

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

Michael Nix - Cross-examination
by Mr. Poole

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

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

5 A Yes, sir, I am.

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

8 A To my knowledge, yes, it does.

9 Q Okay. And you've seen it before?

10 A I have seen it before.

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

13 THE COURT: Yes, sir.

14 Q You've mentioned certain shell casings.

15 A Uh-huh. (Affirmative).

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

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

19 Q Okay. And what was Item Number 1?

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

21 Q I'm sorry.

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

23 Q Okay.

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

Michael Nix - Cross-examination
by Mr. Poole

- 1 Q CBC .40 caliber shell casing?
- 2 A Yes, ma'am. Yes, sir. I'm sorry.
- 3 Q Number 2 was pieces of broken vehicle glass?
- 4 A That is correct, sir.
- 5 Q Number 3, what was that?
- 6 A Number 3 is listed as another CBC Smith & Wesson .40
- 7 caliber shell casing.
- 8 Q And what does CBC stand for?
- 9 A I have no idea.
- 10 Q Is that -- that's what's stamped?
- 11 A It's a type of manufacturer's stamp, but what it stands
- 12 for exactly, the initials, I couldn't tell you, sir.
- 13 Q Okay. And Item 4.
- 14 A Hold on one second. Item 4 is listed as R-P
- 15 9-millimeter Luger shell casing.
- 16 Q A 9-millimeter Luger shell casing?
- 17 A Correct, sir.
- 18 Q Okay. And was there any other shell casings found?
- 19 A Yes, sir, Item 5, which would be a Star I Star Smith &
- 20 Wesson .40 caliber shell casing.
- 21 Q Okay. So, there's two different calibers?
- 22 A Judging by the cartridge cases, they're two, they're
- 23 two different caliber cartridge cases present, yes, sir.
- 24 Q There at the scene?
- 25 A Yes, sir.

Michael Nix - Cross-examination
by Mr. Poole

1 Q Thank you. Thank you.

2 A Yes, sir.

3 THE COURT: Mr. Brown.

4 MR. BROWN: Very briefly.

5 CROSS-EXAMINATION

6 BY MR. BROWN:

7 Q You reported to -- if I could look at this inventory
8 sheet, Mt. Pleasant and Burns Road?

9 A Yes, sir.

10 Q And you identified the very shell casings, in
11 particular the .40, .40 calibers and the 9-millimeter?

12 A Yes, sir.

13 Q And you say this was located in the roadway?

14 A Yes, sir.

15 Q Now, how long have you been with the Sheriff's
16 Department?

17 A Ten years, sir.

18 Q And how long have you, approximately, investigated
19 crime scenes that involve the dispensing of shell casings?

20 A I investigated crime scenes as long as I've been with
21 the crime scene unit, which will be four years this past
22 November.

23 Q And throughout the four years, you've had cases that
24 obviously have involved shell casings or---

25 A We've had shootings in those four years, yes, sir.

Michael Nix - Cross-examination
by Mr. Brown

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

Michael Nix - Cross-examination
by Mr. Brown

1 any vehicle based upon the location of these shell casings?

2 A I can't tell you for 100 percent sure how they got
3 there.

4 Q Thank you. That's all the questions I have.

5 THE COURT: Redirect?

6 REDIRECT EXAMINATION

7 BY SOLICITOR TAILOR:

8 Q Just as you couldn't tell where shell casings came from
9 a shooting from outside of the vehicle, I mean could they
10 have come from inside a vehicle as well?

11 A Yes, sir, they could be ejected out of -- I mean yes,
12 ma'am, they could of ejected out of a car if they were fired
13 from inside a car.

14 SOLICITOR TAILOR: No further questions, Your Honor.

15 THE COURT: Anything further, Mr. Poole?

16 MR. POOLE: No, sir.

17 THE COURT: Mr. Brown.

18 MR. BROWN: One additional question.

19 REXCROSS EXAMINATION

20 BY MR. BROWN:

21 Q You also identified, identified a large pool of
22 biological material?

23 A I don't remember that.

24 SOLICITOR GRAY: Objection, Your Honor.

25 WITNESS: I'm sorry.

Michael Nix - Recross examination
by Mr. Brown

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

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

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

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

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

7 WITNESS: Thank you.

8 THE COURT: The State may call its next witness.

9 SOLICITOR GRAY: Robert Talanges.

10 THE COURT: Come forward, sir.

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

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

16 WITNESS: Thank you.

17 THE COURT: Mr. Gray, your witness.

18 SOLICITOR GRAY: Thank you.

19 DIRECT EXAMINATION

20 BY SOLICITOR GRAY:

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

23 Did we ask you about that?

24 A No, sir, never did the Crown Vic.

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

Robert Talanges - Direct examination
by Solicitor Gray

1 that correct?

2 A Well, when I first arrived at the hospital, everybody
3 was victims, and, yeah, I did three victim GSR kits there.

4 Q At that time they were the victims?

5 A Correct.

6 Q All right. After doing that, was it the same day or a
7 couple days later that you processed a burned out vehicle?

8 A I believe we did it on the, I think it was the 17th.

9 Q 17th?

10 A Yes, sir.

11 Q Three days after the alleged incident?

12 A Yes, sir, I believe it was the 17th.

13 Q Now, what, if you recall, what kind of condition was
14 that vehicle in?

15 A The vehicle was completely burned. There was nothing
16 left to it, a completely burned out vehicle.

17 Q Well, that type of situation, if ID is called, what do
18 you do?

19 A Well, you can't, you can't process for latent prints.
20 We photograph the car, of course. The first thing that we
21 always do is photo documentation. We found bullet holes and
22 bullet strikes to the passenger side. We had the seats
23 removed so we could dig through the debris to find, if any,
24 shell casing were inside the vehicle.

25 Q You said bullet strikes to the passenger side?

Robert Talanges - Direct examination
by Solicitor Gray

1 A The passenger's side.

2 Q Any bullet strikes to the driver's side?

3 A Negative. None were found.

4 Q You remember -- do you know how many bullets strikes to
5 the passenger side?

6 A If I recall, I think we -- it was either three or four.

7 Q Did you stop there with your processing of the vehicle?

8 A After -- what we did was we photographed to scale and
9 we photographed the bullet strikes and the bullet holes and
10 we removed the seats so we could actually get inside the car
11 and dig through all the debris cause it was heavily burned
12 out, and we were locating, myself, Sergeant Hogsed, and
13 Deputy Davis, he searched the passenger side, I searched the
14 passenger backside, the driver's rear and Sergeant Hogsed
15 did the front driver's side area.

16 Q Was there anything recovered?

17 A Each one of us located a spent shell casing .40 caliber
18 inside the vehicle.

19 Q Do you remember where in the vehicle they were found?

20 A Davis worked the passenger side. The passenger front
21 area he located one. I located one in just I guess where
22 the passenger seat would sit, back floor area, and then
23 underneath the driver's seat is where Sergeant Hogsed
24 located his, and then all were fully documented.

25 Q And those were all .40 caliber?

Robert Talanges - Direct examination
by Solicitor Gray

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

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

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

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

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

18 Q Were those submitted for analysis?

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

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

24 A That's correct.

25 Q Thank you.

Robert Talanges - Direct examination
by Solicitor Gray

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

3 THE COURT: Objections?

4 MR. POOLE: None.

5 MR. BROWN: No objection, Your Honor.

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

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

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

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

14 THE COURT: Mr. Poole.

15 CROSS-EXAMINATION

16 BY MR. POOLE:

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

19 A Yes, sir.

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

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

Robert Talanges - Cross-examination
by Mr. Poole

1 to be at the passenger rear area, seat area, in the floor.

2 Q Thank you.

3 THE COURT: Mr. Brown, any questions?

4 CROSS-EXAMINATION

5 BY MR. BROWN:

6 Q And one of the casings was a Winchester .40 caliber?

7 A Yes, sir, Winchester was one of the brands.

8 Q And it wasn't a I Smith & Wesson .40 caliber?

9 A The I Star I was not found in the car, but a CBC and
10 Blazer were.

11 Q Okay. And the Blazer is not the same thing as a R-P
12 9-millimeter Luger shell casing either, correct?

13 A R-P 9-millimeter Luger would be a smaller shell casing.

14 Q Totally different?

15 A Totally different.

16 Q You also noted that there was a -- beg the Court's,
17 Court's indulgence.

18 THE COURT: Yes, sir.

19 (Pause.)

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

22 THE COURT: Redirect?

23 SOLICITOR GRAY: No redirect, Your Honor.

24 THE COURT: You may step down.

25 The State may call its next witness.

Barbara Waddell - Direct examination
by Solicitor Gray

1 SOLICITOR GRAY: State calls Barbara Waddell.

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

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

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

8 WITNESS: Barbara Waddell.

9 THE COURT: Mr. Gray, your witness.

10 SOLICITOR GRAY: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY SOLICITOR GRAY:

13 Q Ms. Waddell, where do you work?

14 A Southeastern Converters.

15 Q Where is that located?

16 A Mt. Pleasant Road.

17 Q Is that anywhere near Burns Road?

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

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

22 A We do automotive recycling.

23 Q Do you have any type of security system?

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

Barbara Waddell - Direct examination
by Solicitor Gray

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

Barbara Waddell - Direct examination
by Solicitor Gray

- 1 A Yes, sir.
- 2 Q Now, at the request of law enforcement, did you find
- 3 any tape or images regarding a potential shooting near your
- 4 business at Mt. Pleasant and Burns Road?
- 5 A Yes, sir.
- 6 Q Did you view that evidence?
- 7 A Yes, sir.
- 8 Q Did you record -- did you turn it over to anybody at
- 9 the Sheriff's Department?
- 10 A Yes, sir.
- 11 Q Who was that?
- 12 A Detective Lorin Williams.
- 13 Q Now, you viewed it before then.
- 14 Have you reviewed it, viewed it again since then?
- 15 A No, sir.
- 16 Q Okay. But the DVD you turned over, you gave to
- 17 Detective Lorin Williams?
- 18 A Yes, sir, I, I apologize. I have, I have since looked
- 19 at the recording in your presence, but at our business we
- 20 have not.
- 21 Q All right. And the one you looked at, is that a fair
- 22 representation of what you gave to Lorin Williams?
- 23 A Yes, sir.
- 24 Q There have been no alterations---
- 25 A No, sir.

Barbara Waddell - Direct examination
by Solicitor Gray

1 Q ---to it?

2 No deletions?

3 A No, sir.

4 Q Thank you.

5 At this time we move State's Exhibit No. 28 into
6 evidence.

7 MR. POOLE: No objection, Your Honor.

8 MR. BROWN: No objection, Your Honor.

9 THE COURT: Without objection it will be received into
10 evidence as it's marked.

11 (WHEREUPON, State's Exhibit No. 28 was received into
12 evidence at this time.)

13 Q I have no further questions, ma'am. Please answer any
14 questions Mr. Poole or Mr. Brown may have.

15 MR. POOLE: No questions, Your Honor.

16 THE COURT: Mr. Brown.

17 MR. BROWN: No questions, Your Honor.

18 THE COURT: Ma'am, you may step down.

19 Do you wish to have the witness excused?

20 SOLICITOR GRAY: Yes, sir.

21 THE COURT: Any objections?

22 MR. BROWN: No objection, Your Honor.

23 THE COURT: ma'am, you're free to go if you'd like.

24 WITNESS: Thank you.

25 THE COURT: Thank you very much.

1 You may call your next witness.

2 SOLICITOR GRAY: May we approach, Your Honor?

3 THE COURT: Certainly.

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

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

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

13 You may retire.

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

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

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

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

20 SOLICITOR GRAY: Yes, sir, Your Honor.

21 THE COURT: Defense ready?

22 MR. POOLE: Yes, sir.

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

24 MR. BROWN: We are, Your Honor.

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

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

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

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

7 SOLICITOR GRAY: That's correct, Your Honor.

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

9 SOLICITOR GRAY: Thank you.

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

12 SOLICITOR GRAY: That's the entirety.

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

14 SOLICITOR GRAY: Yes, sir.

15 THE COURT: All right.

16 SOLICITOR GRAY: May we approach, Your Honor?

17 THE COURT: You may.

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

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

23 Thank you very much.

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

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

3 Court will be in recess briefly.

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

5 THE COURT: All right. Bring the jury in.

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

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

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

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

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

4 Thank you very much.

5 You're free to go.

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

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

10 SOLICITOR GRAY: Thank you.

11

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

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1 Thursday, May 12th, 2011

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3 SOLICITOR GRAY: Your Honor, may we approach?

4 THE COURT: Yes, you may.

5 Gentlemen.

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

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

9 SOLICITOR GRAY: Yes, sir. Yes, sir.

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

11 MR. POOLE: Yes, sir.

12 THE COURT: Mr. Brown.

13 MR. BROWN: Yes, sir.

14 THE COURT: Bring the jury in.

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

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

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

21 (No response.)

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

25 At this time the State may call its next witness.

Nikki Perry - Direct examination
by Solicitor Tailor

1 SOLICITOR TAILOR: State calls Nikki Perry.

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

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

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

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

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

10 DIRECT EXAMINATION

11 BY SOLICITOR TAILOR:

12 Q Ma'am, where do you work?

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

15 Q And where are your duties there?

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

19 Q Okay. And what, what does that entail?

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

Nikki Perry - Direct examination
by Solicitor Tailor

1 number for each item submitted.

2 Q So, when the evidence comes to you, is it in a certain
3 form?

4 A The evidence will come in unsealed to us in our
5 department.

6 Q Okay. And then do you open it when it comes to you?

7 A I do not open up evidence.

8 Q Okay. I'm gonna hand you what's been marked as State's
9 Exhibit No. 20, 21, 22, 23, 24, 25, 26, and 27.

10 Do you recognize those items?

11 A I recognize that our SLED lab number is written on the
12 outside of the envelopes, which is L09-04116.

13 Q So, would all items that came in reference to this case
14 be under that SLED lab number?

15 A Yes, ma'am, they would.

16 Q Okay. And do all those SLED numbers match on those
17 items?

18 A Yes, ma'am, they do.

19 Q Ms. Perry, there's, there's tape on the top of those
20 packages. It says SLED on it I believe.

21 Did you put that tape on those packages?

22 A No, I did not.

23 Q Would, would the technician who received the items have
24 put that tape on there?

25 A When it comes into the evidence control department, we

Nikki Perry - Direct examination
by Solicitor Tailor

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

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

8 A Not by my department.

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

11 THE COURT: Mr. Poole, your witness.

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

13 THE COURT: Mr. Brown.

14 CROSS-EXAMINATION

15 BY MR. BROWN:

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

18 A No, sir, I did not.

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

21 A I do not.

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

23 THE COURT: Redirect.

24 REDIRECT EXAMINATION

25 BY SOLICITOR TAILOR:

Nikki Perry - Redirect examination
By Solicitor Tailor

1 Q Ms. Perry, all you did do was assign the SLED number,
2 correct?

3 A That is correct.

4 SOLICITOR TAILOR: No further questions.

5 THE COURT: Anything further, Mr. Poole or Mr. Brown?

6 MR. POOLE: No, sir.

7 MR. BROWN: No, Your Honor.

8 THE COURT: All right, ma'am. You may step down.

9 Thank you very much.

10 WITNESS: Thank you.

11 THE COURT: I assume that you'd like the witness
12 excused when she's ready to go, is that correct?

13 SOLICITOR TAILOR: Yes, Your Honor.

14 SOLICITOR GRAY: Yes, Your Honor.

15 THE COURT: Any objections?

16 MR. POOLE: No, sir.

17 MR. BROWN: No, Your Honor.

18 THE COURT: You're free to go, ma'am, when you're ready
19 to go.

20 You may call your next witness.

21 SOLICITOR TAILOR: Ila Simmons.

22 THE COURT: Come forward, please, sir, and be sworn.

23 SOLICITOR TAILOR: Beg your pardon, Your Honor. It's
24 Lisa McReynolds.

25 THE COURT: Okay. All right. Ma'am, if you'll come

Lisa McReynolds - Direct examination
by Solicitor Tailor

1 forward to my left to be sworn please.

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

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

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

8 THE COURT: Ms. Tailor, your witness.

9 DIRECT EXAMINATION

10 BY SOLICITOR TAILOR:

11 Q Ma'am, where do you work?

12 A South Carolina Law Enforcement also known as SLED.

13 Q Okay. And what do you do there?

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

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

18 A Yes, ma'am.

19 Q And what is gunshot residue?

20 Would you---

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

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

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

Lisa McReynolds - Direct examination
by Solicitor Tailor

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

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

6 A It is everything that's in the system that was
7 submitted for that case. It's just that usually the
8 submitting documents. Sometimes the incident report.

9 That's usually the main paperwork, and then when I open the
10 GSR kit, there's a GSR information form inside that. I make
11 sure all the correct information is on that form, and I fill
12 out a data sheet for that.

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

15 Do you compare it to the actual kit itself?

16 A The GSR information form is inside the kit.

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

19 A Yes, ma'am.

20 Q What items should be inside of a complete kit?

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

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

25 Do you recognize these?

Lisa McReynolds - Direct examination
by Solicitor Tailor

- 1 A May I open them?
- 2 They're open.
- 3 Q They are open.
- 4 A Yes, I do. On 33, there is a evidence label with a lab
5 number on it, the item number, the date I opened it, and my
6 initials.
- 7 Q Okay. And with, with that kit, was that kit complete
8 when it came to you?
- 9 A Yes, it was.
- 10 what is marked as Evidence 34 also has the lab number,
11 Item Number 13, the date I open it, and my initials.
- 12 Q And was that kit complete when you opened it?
- 13 A Yes, it was.
- 14 Q And could you please tell us who was that kit for?
- 15 A This kit was on Crossley.
- 16 Q And the previous kit that you just said was complete,
17 who was that one for?
- 18 A Cathcart. And the Item Marked Number 35 is from
19 Reeder. It also had the lab number, Item Number 10, the
20 date I opened it, and my initials.
- 21 Q And was that kit complete?
- 22 A Yes, ma'am, it was.
- 23 Q Okay. When you say the date you opened it, would
24 anyone have opened that kit before you at SLED?
- 25 A No, I make sure it is sealed when I open it.

Lisa McReynolds - Direct examination
by Solicitor Tailor

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

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

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

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

13 Do you mark any of that?

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

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

19 A I will have to check my notes.

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

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

Lisa McReynolds - Direct examination
by Solicitor Tailor

1 subjects?

2 A Yes, ma'am, they're on the information form and it has
3 to be within six hours of the incident.

4 Q And were these kits all within six hours?

5 A Yes, ma'am, they were.

6 Q Why is it six hours?

7 A The analyst probably could answer that better than I
8 can.

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

11 MR. POOLE: No questions here.

12 THE COURT: Mr. Brown.

13 MR. BROWN: Very briefly, Your Honor.

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. BROWN:

17 Q And you are the first person that opened these GSR kits
18 which have been labeled State's Exhibit 33, 34, and 35?

19 A Yes, sir.

20 Q And on the, the day, you said how many hours?

21 A Six.

22 Q On the day in which you examined those, did you examine
23 any other GSR kits?

24 A For this case?

25 Q Yes.

Lisa McReynolds - Cross-examination
by Mr. Brown

1 Q And who were they associated with?

2 A The names on those kits, last name was Miller, Geter,
3 and Geter. Dwight Geter and Duncan Geter.

4 Q And Miller, what's the first name on that one?

5 A Bryant.

6 Q All right. I'm showing you what's been marked as
7 State's Exhibit 36, 37, and 38.

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

10 A Okay.

11 THE COURT: Yes, sir.

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

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

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

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

19 MR. POOLE: No, sir.

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

22 You may proceed, Mr. Brown.

23 Q And based upon what we've heard, based upon your p
24 testimony---

25 THE COURT: Just one second.

Lisa McReynolds - Cross-examination
by Mr. Brown

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

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

5 SOLICITOR GRAY: Yes, sir, they were.

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

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

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

11 THE COURT: Yes, you may.

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

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

18 Q Just very briefly.

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

21 A Two, three, and four?

22 Q Yes.

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

Lisa McReynolds - Cross-examination
by Mr. Brown

1 Q Okay. And you were the person that originally handled
2 that particular item first?

3 A I'm first on that one, yes, sir. And No. 3 also has
4 the lab number, the date I opened it, and my initials.

5 Item Number 4 has the lab number, the day I opened it,
6 and my initials.

7 Q Okay. And, in particular as relates to what's been
8 marked as Items 2, 3, and 4, No. 4 is for who?

9 A Dwight Geter.

10 Q No. 3.

11 A Duncan Geter.

12 Q And No. 2.

13 A Bryant Miller.

14 Q Thank you.

15 That's all the questions I have.

16 THE COURT: Redirect?

17 SOLICITOR TAILOR: No, Your Honor.

18 THE COURT: Ma'am, you may step down.

19 WITNESS: Thank you.

20 THE COURT: I assume there's no objection to this
21 witness being excused when she's ready to go?

22 State?

23 SOLICITOR GRAY: Yes, sir, no objection.

24 THE COURT: Anything?

25 MR. POOLE: No, sir, no objection.

Ila Simmons - Direct examination
by Solicitor Tailor

1 MR. BROWN: No, sir.

2 THE COURT: You're free to go when you like, ma'am.

3 WITNESS: Thank you.

4 THE COURT: You may call the, your next witness.

5 SOLICITOR TAILOR: Ila Simmons.

6 THE COURT: Come forward please to be sworn.

7 ILA SIMMONS, having been first duly
8 sworn, testified as follows:

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

11 WITNESS: My name is Ila Simmons.

12 THE COURT: Your witness, Ms. Tailor.

13 DIRECT EXAMINATION

14 BY SOLICITOR TAILOR:

15 Q And, ma'am, where do you work?

16 A At the South Carolina Law Enforcement Division in the
17 forensics laboratory trace evidence department.

18 Q And what is your title there?

19 A I'm a forensic chemist.

20 Q And for how long have you been a forensic chemist?

21 A Eleven years.

22 Q And while there, what are your duties and
23 qualifications?

24 A In the trace evidence department, we analyze gunshot
25 residue, gun powder residue. We perform fiber comparisons,

Ila Simmons - Direct examination
by Solicitor Tailor

1 paint comparisons. We also analyze glass and arson
2 explosives.

3 Q And what is gunshot residue testing?

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

8 Q Ma'am, what is your educational background?

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

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

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

Ila Simmons - Direct examination
by Solicitor Tailor

1 Q And have you testified previously in the field of
2 gunshot residue testing?

3 A Yes, ma'am, over 200 times in the federal and state and
4 civil courts in South Carolina.

5 SOLICITOR TAILOR: Your Honor, at this time the State
6 would like to move to qualify Ms. Simmons as an expert in
7 the field of firearms identification and GSR testing.

8 THE COURT: Any objections?

9 MR. POOLE: No, sir.

10 MR. BROWN: No objection, Your Honor.

11 WITNESS: Ma'am, I am not in firearms identification.

12 SOLICITOR TAILOR: I'm sorry. Just GSR testing only,
13 Your Honor.

14 THE COURT: All right. I assume no objections to that
15 destination?

16 MR. POOLE: That's correct.

17 THE COURT: Ladies and gentlemen of the jury, let me
18 explain briefly what we're doing here.

19 Generally, under the rules of evidence that govern the
20 introduction of testimony in our courts, witnesses are not
21 allowed to express their opinions concerning matters. An
22 exception to that general rule is made for a witness who,
23 that's been designated as an expert within some profession
24 or field or science. For those witnesses that are
25 designated as experts within a certain field, they are

Ila Simmons - Direct examination
by Solicitor Tailor

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

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

13 Ms. Tailor, you may proceed.

14 SOLICITOR TAILOR: Thank you, Your Honor.

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

17 A Yes, sir.

18 Q And you said what that is.

19 Could you explain that to us one more time please?

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

Ila Simmons - Direct examination
by Solicitor Tailor

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

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

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

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

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

14 Why is there a six hour window?

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

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

Ila Simmons - Direct examination
by Solicitor Taylor

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

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

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

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

9 Do you recognize these?

10 A Yes, ma'am, I do.

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

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

18 Q Did you do testing on these items?

19 A Yes, ma'am.

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

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

Ila Simmons - Direct examination
by Solicitor Tailor

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

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

10 Q Okay. Was there anything present on these kits?

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

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

14 A Okay.

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

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

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

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

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

Ila Simmons - Direct examination
by Solicitor Tailor

1 Rashawn Reeder?

2 A Yes, ma'am, that's correct.

3 Q When you say -- I think I heard you say that some where
4 consistent and some you found particles.

5 What is the difference between those, those findings?

6 A Well, I found, on, on some, I found gunshot residue,
7 and on some I found round lead particles. Gunshot residue
8 is when we find the three elements that we're looking for.
9 We find lead. We find barium and antimony all together in
10 one round particle.

11 Being that most of the gunshot residue that comes out of the
12 gun is lead, because we're not only getting lead from the
13 primer mixture, we're also getting it from the projectile if
14 it breaks down coming through the barrel. About 98 percent
15 of it is lead. When you generally find more, found lead
16 then we do the actual gunshot residue particles. And we
17 found round lead on the, the back of Mr. Reeder's hand and
18 on the palms of Mr. Cathcart's hands.

19 Q And what is that consistent with, in your opinion?

20 A It is consistent with someone either handling a firearm
21 after its been discharged, discharging a firearm, or being
22 in very close proximity to the firearm when it is
23 discharged.

24 Q So, you're saying the residue finding versus particle
25 finding, which one is more precise or is---

Ila Simmons - Direct examination
by Solicitor Tailor

1 A The gunshot residue is actually all three elements that
2 we're looking for in one particle, and the round lead is
3 just one of the elements that we're looking for.

4 Q Okay. To help the jury better understand, if you
5 could, please come and show us cause I think you said some
6 were on the palm, some were on the back of the hands.

7 A Okay.

8 Q If you could please come and show the jury what you
9 found on the palms on both Mr. Cathcart---

10 THE COURT: The witness may step down---

11 WITNESS: Okay.

12 THE COURT: ---to the, the viewer.

13 (Witness comes down from the stand.)

14 A All right. I'm not exactly sure what you're asking
15 though.

16 what would you like me to do?

17 Q Just if -- for -- let's start with Mr. Cathcart.

18 A Okay.

19 Q I'm looking at the---

20 Q Okay.

21 A Okay. I found---

22 Q On his right-hand---

23 A Yes, ma'am.

24 Q ---what did you find on the, on his palm?

25 A Okay. You want me to write the numbers down and

Ila Simmons - Direct examination
by Solicitor Tailor

1 then---

2 Q Yes, please.

3 A I have to try and make sure I get the correct spelling.

4 A Okay. And that was Mr. Cathcart's results.

5 Q Okay. And what time period -- do you know when the kit
6 was taken?

7 A Let me check my notes very quickly.

8 Mr. Cathcart's kit was collected at about 5:50 a.m. on
9 looks like March 14th of 2009, and the incident occurred
10 approximately at 4:00 a.m. on the same date. So, about,
11 about approximately two hours or so after the incident.

12 Q Could you jot down the same things in the same manner
13 of what you found on Mr. Reeder?

14 A Okay.

15 Q So, in looking at this, it looks like Mr. Cathcart and
16 Mr. Reeder both had some, some manner of gunshot residue or
17 particles on their palms only?

18 A Yes, ma'am, that's correct.

19 Q Now, when you, when you test these items -- you may
20 return to your seat.

21 A Okay.

22 (Witness returns to the stand.)

23 Q Now, when you do the testing to, once you locate
24 particles and or residue, is there some sort of level that
25 triggers that this is actually residue or particles?

Ila Simmons - Direct examination
by Solicitor Tailor

1 Is there, is there a threshold of some sort?

2 A Yes, on the -- when we're, when we're determining how
3 many or how, what concentration is of our metals, we have
4 certain threshold levels that we set up that we've
5 established by shooting different types of weapons and
6 determining what levels someone would have in a scientific
7 setting. So, we do. We have levels of approximately -- the
8 lead, barium, and antimony, the lead is approximately 170
9 counts. The barium is about 170 counts. And the antimony
10 would be 17 counts.

11 Q And would this be the lowest levels that you would --
12 if you got anything lower than that, would you give it a
13 positive result?

14 A No, ma'am, that -- those are our minimum threshold
15 levels for us to say that some, that is, you know, that
16 something is going on, that there could possibly be gunshot
17 residue present.

18 Q And what were the levels found on Cathcart?

19 A On the right palm, it was 19 counts of antimony and 214
20 counts of lead, and on the left palm, 19 counts of antimony
21 and 325 counts of lead.

22 Q And you said the thresholds are?

23 A 17, 170, and 170 of antimony, then lead, then barium
24 respectively.

25 Q Okay. What about on Mr. Reeder?

Ila Simmons - Direct examination
by Solicitor Tailor

1 A On the right palm, we found 21 counts of antimony, 284
2 counts of lead, 206 counts of barium, and on the left palm
3 we found 18 counts of antimony, 308 counts of lead, and 650
4 counts of barium.

5 Q Six hundred and --?

6 A Fifty.

7 Q Are my numbers up here correct?

8 A Yes, ma'am, they appear to be.

9 Q Okay. And the reason that Mr. Reeder has three numbers
10 and Cathcart only has two numbers, is that because you found
11 residue on one and then---

12 A Well, actually---

13 Q ---you found---

14 A ---on Mr. Cathcart, the, on the left palm, I didn't
15 give you the barium count. I'm sorry. That was my, my
16 error. On his left palm it was 402, and on his right palm
17 it was a negative number. He did not have barium. But our
18 threshold levels, if we have two of the three, they're, they
19 also meet our threshold level.

20 Q Okay. Now, are these -- what are these numbers, when
21 you have levels of this, this number, what does that tell
22 you in your opinion?

23 A That this can be consistent with someone having handled
24 a firearm that's been discharged or having fired a firearm
25 that, and somehow the gunshot residue -- we generally

Ila Simmons - Direct examination
by Solicitor Tailor

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

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

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

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

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

21 A Yes, ma'am, it can.

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

Ila Simmons - Direct examination
by Solicitor Tailor

1 condition that they were taken from this subject?

2 A They're preserved. We have taken kits and done
3 laboratory testing, we'll let someone shoot a gun in the
4 laboratory and then we'll take a kit from them, and we've
5 let it sit six months, a year, and gone back and analyzed
6 them, and we'll have two kits that were taken exactly the
7 same time from one hand, and then the other, and they'll be,
8 these numbers will be congruent with another. It doesn't
9 change over a year.

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

12 THE COURT: Mr. Poole, your witness.

13 MR. POOLE: Thank you.

14 CROSS-EXAMINATION

15 BY MR. POOLE:

16 Q Good morning, Ms. Simmons.

17 A Good morning.

18 Q During the course of your testimony, you mentioned, in
19 the very beginning and then toward the end of your
20 testimony, that gunshot residue can be present on a person's
21 hands if they handled, discharged, or were in close
22 proximity of a firearm that had been fired.

23 A Yes, sir.

24 Q Is that true?

25 A Yes, sir.

Ila Simmons - Cross-examination
by Mr. Poole

1 Q And I think that you testified that the proximity could
2 extend up to six feet --

3 A Yes, sir.

4 Q -- of the discharging of a---

5 A On a, on a handgun yes, sir.

6 Q ---firearm?

7 Okay. And it was your further testimony that it's
8 typical that one who fires a firearm to see residue on the
9 palm and on the back?

10 A Yes, sir.

11 Q Is that true?

12 A Yes, sir, that's correct.

13 Q Okay. How does it come to be that the residue gets on
14 the back of a hand?

15 A Because when the gun is fired, the gunshot residue
16 comes out in a cone shape cloud. As it meets the air
17 resistance, as it's coming out of the gun, it's very light,
18 it's microscopic. So, it will -- the resistance and just
19 the atmosphere will cause the gunshot residue to wrap some
20 back on the hands of the person firing the gun.

21 Q Okay. So, because of that fact, if you see it on the
22 palm and the back of the hand --

23 A Uh-huh. (Affirmative).

24 Q -- then that is more persuasive, persuasive evidence
25 that that individual discharged the firearm?

Ila Simmons - Cross-examination
by Mr. Poole

1 A It's more consistent than finding it just on the palms
2 of the hands, yes, sir.

3 Q Okay. And isn't it true you -- well, you've already
4 testified that gunshot residue or lead particles, which is
5 part of the gunshot residue, right?

6 A Yes, sir, it's a component, yes, sir.

7 Q Could be picked up just by being in close proximity to
8 the discharging of a firearm?

9 A Yes, sir.

10 Q It's not conclusive that the person who had the GSR or
11 lead particles in their palm was the one who discharged the
12 firearm?

13 A That's correct.

14 Q Is that correct?

15 A Yes, sir.

16 Q Okay. And could it not be the case that one could pick
17 up GSR from touching a surface that was near the discharging
18 of a firearm?

19 A Yes, sir.

20 Q So, the presence of GSR on a person's palms could be
21 explained in several ways other than actually discharging a
22 firearm?

23 A Yes, sir.

24 Q Is that true?

25 A It can.

Ila Simmons - Cross-examination
by Mr. Poole

1 Q Okay. Did you analyze the contents of a kit from a
2 Bryant Miller?

3 A Yes, sir, I did.

4 Q And did you analyze the contents of a kit from Duncan
5 Geter?

6 A Yes, sir.

7 Q And one Dwight Geter?

8 A Yes, sir, I did.

9 Q Thank you, Ms. Simmons.

10 THE COURT: Mr. Brown, your witness.

11 MR. BROWN: Very briefly.

12 CROSS-EXAMINATION

13 BY MR. BROWN:

14 Q The last thing that you said was typically if there
15 were some form of firearm that's being held was typically
16 found on the backs of a person?

17 A If someone discharges a firearm, we expect to find
18 gunshot residue, residue on the back of the hand as well as
19 the palms of the hand unless it is removed in some way. And
20 as I was saying, it has the consistency of salt. So, it can
21 be removed easily.

22 Q Okay. From Mr. Reeder, the right back, you indicated
23 through your analysis, there was no residue---

24 A That's correct.

25 Q ---present based upon barium, antimony, and lead

Ila Simmons - Cross-examination
by Mr. Brown

1 particulants---

2 A Yes, sir.

3 Q ---through your typical analysis?

4 A Yes, sir.

5 Q And as relates to his left back, same situation?

6 A Yes, sir, that's correct.

7 Q In the fall -- Mr. Poole's question -- I mean obviously
8 you didn't conduct the actual gunshot residue analysis?

9 A I conducted, I conducted the analysis. I didn't
10 collect the kit.

11 Q Didn't collect the kit?

12 A Yes, sir.

13 Q So, you don't know from what areas potentially, besides
14 what you have before you, that was described to you in terms
15 of the information that was collected, you don't know
16 exactly how that was collected.

17 A No, sir, I do not.

18 Q And would you agree with me, based upon the potentials
19 of collecting, that information could be taken, taken
20 directly from a wound area?

21 A It has been before, yes, sir, we received it, but
22 generally if someone takes something from a wound, they'll
23 write on it that this is collected from, from a wound.

24 Q Okay. Is it possible that if the person touches, with
25 the inside of the hand, an area that has gunshot residue,

Ila Simmons - Cross-examination
by Mr. Brown

1 they can have that on their palms?

2 A Yes, sir, it can be transferred.

3 Q And it could have various levels of concentration
4 involved?

5 A Yes, sir.

6 Q And, so, your numbers up here, whether they're high or
7 low, really can't tell exactly the nature of how these
8 various particulants came into play?

9 A No, they can not.

10 Q And you also had a chance, based upon Mr. Poole's
11 question, to analyze GR, G, GSR kits for Bryant Antonio
12 Miller?

13 A Yes, sir.

14 Q As well as, besides Mr. Crossley, Dwight Geter?

15 A Yes, sir.

16 Q And you also had a chance to analyze a GSR kit
17 involving Mr. Duncan Geter?

18 A Yes, sir, I did.

19 Q If I could have you bring your information---

20 A Uh-huh. (Affirmative).

21 Q ---as it relates to the type of analysis you did for
22 all three of those individuals, and place that upon the
23 screen for me?

24 A I certainly can.

25 (Witness comes down from the stand.)

Ila Simmons - Cross-examination
by Mr. Brown

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

Ila Simmons - Cross-examination
by Mr. Brown

1 consistent with gunshot residue.

2 Q And, again, you're not a firearms expert. So, you, you
3 couldn't differentiate between a more powerful caliber type
4 of handgun or the particular make or model for the
5 particular discharge of the various particulants, barium,
6 antimony, and lead?

7 A No, sir, with the different types of ammunition, a
8 larger caliber handgun will generally just produce more
9 gunshot residue. Federal, Remington, all of these different
10 companies use the same types of primers and the same types
11 of gun powder. So, you can't really differentiate one from
12 the other.

13 Q And a smaller caliber may have a different type of
14 indication in terms of the particulants so even the amount
15 of residue that you could find?

16 A Yes, sir.

17 Q You agree with that?

18 A Yes, sir.

19 Q For Mr. Dwight Geter, based upon your previous
20 statement typically in terms of how you would find gunshot
21 residue, especially in a person handling the gun, you found
22 particulants on the left back?

23 A On Dwight Geter, I found it on the right palm, the left
24 palm, and the left back, I found metals that are associated
25 with gunshot residue. That means that, with Mr. Miller, we

Ila Simmons - Cross-examination
by Mr. Brown

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

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

6 A Yes, sir.

7 Q ---back?

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

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

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

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

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

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

20 THE COURT: Redirect.

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

22 Should we leave the lights down?

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

24 THE COURT: All right. Thank you.

25 You may proceed.

Ila Simmons - Redirect examination
by Solicitor Tailor

1 REDIRECT EXAMINATION

2 BY SOLICITOR TAILOR:

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

5 A Yes, ma'am, I did.

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

8 A Yes, ma'am. On Mr. Miller, the levels of antimony was
9 46, the level of lead was 840, and the level of barium was
10 957. On the back of the right-hand, antimony was 28, lead
11 was 458, and the barium was 295.

12 Q I missed that first number.

13 A Oh, 28. And on the left palm, the antimony, the first
14 number is 85. The second was 1,796, that's for lead, and
15 then the barium would be 600. On the back of the left-hand,
16 the first number is 51. The lead is 818, and the barium is
17 76.

18 Q And, again, consistent versus associated---

19 A Yes.

20 Q ---which would?

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

Ila Simmons - Redirect examination
by Solicitor Tailor

1 when it was discharged, even on the muzzle end of the gun.

2 That is a possibility here---

3 Q Okay.

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

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

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

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

12 A Well---

13 Q What is the difference there?

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

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

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

Ila Simmons - Redirect examination
by Solicitor Tailor

1 that.

2 Q So, you said on the left back?

3 A Left back, yes, ma'am, round lead particles were found.

4 Q Round lead particles?

5 A Yes, ma'am, I'm sorry about that.

6 Q Do you have the levels that were found there?

7 A Yes, ma'am, the antimony is 19, the lead is 674, and
8 the barium is 171.

9 Q 171?

10 A Yes, ma'am.

11 Q So, in your opinion, if Mr. Reeder did have a gun,
12 where would that have been?

13 A I'm sorry. Where would the gun have been?

14 Q Which hand would that have been in?

15 A I, I can't say for certain. It depends upon how the
16 gun's being held, and they're other variables that come into
17 play.

18 Q Is that it likely that it was in his left-hand?

19 A That is a possibility and somehow also the right palm
20 had gunshot residue on it too. So, it must of made contact
21 with the gun at some time.

22 Q And you stated that gunshot residue was transferred on
23 to the hands or, or palms or any parts by touching possibly
24 a gunshot wound.

25 A Yes.

Ila Simmons - Redirect examination
by Solicitor Tailor

1 Q In your opinion, is it likely -- can you tell, off of
2 these levels, if it was from contact or if it was from the
3 actual discharge of a weapon?

4 A No, ma'am, I can't necessarily say. It depends upon
5 how much of the gunshot residue is present on the object
6 that someone touches. If there's a tremendous amount of
7 gunshot residue like on a, a gun that's been discharged,
8 then someone could have transferred that amount of gunshot
9 residue on to their hands.

10 Q But it is likely that this gunshot residue in those
11 levels could of also come not just from touching the wound,
12 but from firing a weapon or being around a weapon?

13 A Yes, that is possible.

14 Q And what direction does gunshot residue go?

15 A Gunshot residue goes toward a target like the
16 projectile will follow, but will also, some will come out
17 and be swept back with the air. So, it comes back in a cone
18 shape cloud.

19 Q So, is there more residue in the front than there is in
20 the---

21 A Yes, ma'am.

22 Q ---back?

23 A There's -- about 98 percent of gunshot residue goes out
24 away from the muzzle. Only two percent would wrap back on
25 the hand of someone shooting a gun.

Ila Simmons - Redirect examination
by Solicitor Tailor

1 Q Please answer any other questions.

2 THE COURT: Mr. Poole -- let me check with Mr. Poole.

3 Any questions?

4 MR. POOLE: No questions.

5 THE COURT: All right. Mr. Brown.

6 RE CROSS EXAMINATION

7 BY MR. BROWN:

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

11 A projectile could also have those particulants,
12 correct?

13 A Yes, sir, they can.

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

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

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

21 A No, sir.

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

Ila Simmons - Recross examination
by Mr. Brown

1 A If---

2 Q -- from being shot?

3 A Yes, sir, if someone is shot, about 65 percent of the,
4 the gunshot residue kits we get from persons who have
5 sustained a gunshot wound will have gunshot residue on their
6 hands even if they have never fired a gun.

7 Q And, in particular, if you were shot in your left wrist
8 or left palm, would you not indeed, if that was the area of
9 source of even taking a GSR kit from the left palm or left
10 back, would you not have numbers?

11 A Yes, you could.

12 Q More than likely?

13 A Yes, sir, you could.

14 Q Thank you. That's all the questions I have.

15 THE COURT: Anything further from the State?

16 SOLICITOR TAILOR: No, Your Honor.

17 THE COURT: You may step down, ma'am.

18 I assume you wish to have the witness excused.

19 Any objections from the State?

20 SOLICITOR TAILOR: No, Your Honor.

21 THE COURT: Any from the defense?

22 MR. POOLE: No, sir.

23 THE COURT: Mr. Brown.

24 MR. BROWN: None, Your Honor.

25 THE COURT: You're free to go if you'd like, ma'am.

Kenneth Whitler - Direct examination
by Solicitor Tailor

1 State may call its next witness.

2 SOLICITOR TAILOR: Kenneth Whitler.

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

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

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

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

10 THE COURT: Ms. Tailor, your witness.

11 DIRECT EXAMINATION

12 BY SOLICITOR TAILOR:

13 Q Mr. Whitler, where do you work?

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

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

19 A Since 1997.

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

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

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by Solicitor Tailor

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

3 Q And what is your educational background?

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

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

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

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

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

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

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

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

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

15 A Yes, I have.

16 Q How many times?

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

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

22 THE COURT: Any objections?

23 MR. POOLE: No, sir.

24 MR. BROWN: None, Your Honor.

25 THE COURT: All right. Without objection then, the

Kenneth Whitler - Direct examination
by Solicitor Tailor

1 witness will be qualified as an expert in that field.

2 You may proceed.

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

5 Do you recognize these?

6 A Yes, I do.

7 Q Were these items that you did some testing on?

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

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

15 A Yes, they do.

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

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

Kenneth Whitler - Direct examination
by Solicitor Tailor

1 Q In this case, did anything go to latent fingerprints?

2 A I wouldn't have -- I wouldn't know at that point, that
3 point.

4 Q So, once the items came to you, what do you do?

5 A When, for example, these items came, they were in a
6 sealed envelope. I would open the envelope, determine
7 what's inside, and whether it's a cartridge case, bullet, or
8 what have you, write it up, and then, if there's a firearm
9 to compare, I would test fire the firearm, and then compare
10 the test fired bullets and cartridge cases to whatever
11 bullet or cartridge cases were submitted.

12 In this instance, there was no gun submitted. So, I
13 basically grouped all the cartridge cases together, grouped
14 all the bullets together, and then I inner compared
15 cartridge cases to cartridge cases and the bullets to the
16 bullets.

17 Q So, in this case, you had bullets and cartridges, is
18 that---

19 A Cartridge cases, yes.

20 Q Okay. And what are -- what is a cartridge case?

21 A A cartridge case is mainly the, the brass part or the
22 part that holds the bullet, and it also holds the gun powder
23 and the primer. When the cartridge is fired, the bullet is
24 expelled from the gun down the barrel. The cartridge case
25 is the part that's left in the gun or ejected on to the

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1 ground.

2 Q When do they -- where do they usually eject?

3 A It depends on many factors where they -- they generally
4 will come out of the gun. The gun will have what is known
5 as an ejection port, and on most pistols that's on the
6 right-hand side. So, most of the time the cartridge cases
7 will come out and to the right slightly. But that's no
8 guarantee that they will be found to the right of wherever
9 the shooter was. It depends on how you're holding the gun.

10 If you're holding it perfectly vertical, they may go to
11 the right. If you do like you see on television, the hero
12 turns it sideways, they can go to the left. So -- and then
13 that's other factors like, when they hit the ground, do they
14 bounce and roll ten or fifteen feet somewhere else. So, all
15 that you can be certain is that the gun did eject a
16 cartridge case.

17 Q Does a cartridge hold multiple bullets or is it each
18 time the bullet fired there's one cartridge that's expelled?

19 A Most cartridges are, generally only have one projectile
20 in them. There are some speciality cartridges that will
21 have multiple bullets in one cartridge case.

22 Q In this case, what type of testing did you do?

23 A I did a microscopic comparison of the cartridge cases
24 that were submitted. I took the cartridge cases, put them
25 on the microscope, which is the comparison microscope, which

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by Solicitor Tailor

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

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

13 Q Which cartridge cases did you test?

14 Could you tell us which numbers?

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

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

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

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

Kenneth Whitler - Direct examination
by Solicitor Tailor

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

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

9 Q Did you find any matches?

10 A Yes, I did.

11 Q What, what items matched?

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

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

Kenneth Whitler - Direct examination
by Solicitor Tailor

1 other firearm.

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

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

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

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

Kenneth Whitler - Direct examination
by Solicitor Tailor

1 different rifling characteristics.

2 So---

3 Q So---

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

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

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

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by Solicitor Tailor

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

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

7 A Yes, ma'am.

8 Q But you said up to how many?

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

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

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

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

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

Kenneth Whitler - Direct examination
by Solicitor Tailor

1 weapons.

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

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

10 Q One final question.

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

15 A The cartridge cases?

16 Q The cases.

17 You said the cases are expelled?

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

Kenneth Whitler - Direct examination
by Solicitor Tailor

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

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

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

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

11 A Yes.

12 Q And for a 9-millimeter?

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

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

20 THE COURT: Mr. Poole, your witness.

21 MR. POOLE: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. POOLE:

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

Kenneth Whitler - Cross-examination
by Mr. Poole

- 1 A Okay, sir.
- 2 Q Okay. So, you had, in your possession, and you did
- 3 your testing and analysis of 11 shell casings?
- 4 A That's correct. Well, 11 40 S&W cartridge cases, and
- 5 then, like I said, there was a 9-millimeter cartridge case
- 6 also submitted that had been fired.
- 7 Q Okay. All right. Let's stay with the 11 S&W.
- 8 A Okay, sir.
- 9 Q The .40 caliber?
- 10 A That's correct.
- 11 Q Right.
- 12 Five of those were fired by one gun?
- 13 A That's correct.
- 14 Q A particular gun.
- 15 Five of those were fired in another gun?
- 16 A That's correct.
- 17 Q But a .40 caliber nonetheless, right?
- 18 A Yes, sir.
- 19 Q Both, both were fired?
- 20 A Both were .40 S&W caliber pistols.
- 21 Q Okay.
- 22 A Or could fire that cartridge.
- 23 Q And then you testified that there was another casing
- 24 that could be fired, could of possibly have been fired from
- 25 a third gun?

Kenneth Whitler - Cross-examination
by Mr. Poole

1 A Let's -- let me see if I can make it a little simpler.

2 Q Okay.

3 A Let's say gun number one --

4 Q Uh-huh. (Affirmative).

5 A -- fired five cartridge, of the cartridge cases.

6 Q Okay.

7 A Gun number two fired another five cartridge cases.

8 Q Okay.

9 A The left -- the one remaining cartridge case could have
10 been fired, had the same class characteristics as the five
11 cartridge cases fired by the first gun, but they were
12 different class characteristics than from the five cartridge
13 cases fired by gun number two. So, we can say that although
14 there wasn't enough characteristics to say gun number one
15 fired that sixth, that eleventh cartridge case, we have to
16 say it could have been fired by that gun. But because the
17 class characteristics were different --

18 Q Uh-huh. (Affirmative).

19 A -- it couldn't have been fired by gun number two that
20 fired the second group of five cartridge cases.

21 Q Okay.

22 A Because the class differences.

23 Q Okay. Does that open the possibility for a third gun?

24 A Yes, sir, when we say consistent, it -- many times if a
25 cartridge case or a bullet doesn't mark well, it very well

Kenneth Whitler - Cross-examination
by Mr. Poole

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

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

8 Q I see.

9 A ---or firearm that produces similar marks.

10 Q Okay.

11 A So---

12 Q All right.

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

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

18 A That would---

19 Q ---brings into picture another gun?

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

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

24 A I can be---

25 Q In your experience.

Kenneth Whitler - Cross-examination
by Mr. Poole

1 A It can be done, but when it does it, because there's
2 been actually people who have mixed up their ammunition,
3 when it, when it does happen, the cartridge case is, is
4 deformed. It's really expanded. It doesn't look like a
5 normal 9-millimeter, which was not the case here.

6 Q Okay.

7 A Whatever fired this gun, it was in the properly
8 chambered firearm.

9 Q Okay.

10 A So, I mean and you have to work to -- in firearms, you
11 can almost make anything, anything do anything if you do
12 some wierd things. We've had people put tape around small
13 cartridges to make them big enough to fit in big chambers,
14 and -- but if you try to -- in this case, the cartridge case
15 was very consistent with being fired in a 9-millimeter
16 pistol. Not something because, like I said, if it had been
17 fired in a .40, the cartridge case would of been super
18 expanded and it would be very noticeable.

19 Q Okay. All right. So, in this case then, the, the
20 existence of this 9-millimeter shell casing indicates that
21 there were at least three guns involved?

22 A That's correct.

23 Q Is that right?

24 A That's correct.

25 Q Okay. That's all I have. Thank you.

Kenneth Whitler - Cross-examination
by Mr. Poole

1 MR. BROWN: No questions, Your Honor.

2 THE COURT: Anything on redirect?

3 SOLICITOR TAILOR: No, Your Honor.

4 THE COURT: You may step down, sir.

5 THE COURT: Any objection to the witness being excused
6 from the State?

7 SOLICITOR GRAY: No, sir.

8 THE COURT: Defense?

9 MR. POOLE: No, sir.

10 MR. BROWN: No, sir.

11 THE COURT: You're free to go if you'd like, sir.

12 All right. Ladies and gentlemen of the jury, we've
13 been going for about an hour and a half. It's time we would
14 take a break.

15 I'm gonna ask you to step back to the jury room, and,
16 again, don't begin any discussions concerning this case
17 until I've advised you to do so. You may retire.

18 Thank you very much.

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

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

23 Thank you.

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

25 THE COURT: State ready to proceed?

1 SOLICITOR TAILOR: Yes, sir, Your Honor.

2 THE COURT: Defense ready, Mr. Poole?

3 MR. POOLE: Yes, sir.

4 THE COURT: Mr. Brown.

5 MR. POOLE: Yes, Your Honor.

6 THE COURT: Bring the jury in.

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

9 THE COURT: All right. The record will reflect the
10 jury's return to the courtroom.

11 At this time the State may call its next witness.

12 SOLICITOR TAILOR: State calls Doctor Wren.

13 THE COURT: Sir, come forward to my left and be sworn
14 please.

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

17 THE COURT: Have a seat, please, and once you're
18 seated, state your name.

19 WITNESS: My name's John David Wren.

20 THE COURT: Ms. Tailor, your witness.

21 DIRECT EXAMINATION

22 BY SOLICITOR TAILOR:

23 Q Doctor Wren, what is your occupation and profession?

24 A I'm a medical doctor with a specialty in pathology.

25 Q And what education and qualifications do you have that

David Wren - Direct examination
by Solicitor Tailor

1 allows you to do what you do?

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

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

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

David Wren - Direct examination
by solicitor Tailor

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

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

6 THE COURT: Any objection?

7 MR. POOLE: No objection, Your Honor.

8 MR. BROWN: None, Your Honor.

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

11 You may proceed, Ms. Tailor.

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

14 A Yes, I did a complete autopsy on a black male
15 identified by the Coroner's Office as Duncan Lamar Geter,
16 and the Spartanburg Regional Medical Center autopsy on March
17 the 14th, 2009, beginning that autopsy at approximately
18 10:45 a.m.

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

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

David Wren - Direct examination
by Solicitor Tailor

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

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

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

10 Q And what were your findings with Duncan Geter?

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

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

David Wren - Direct examination
by Solicitor Tailor

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

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

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

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

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

David Wren - Direct examination
by Solicitor Tailor

1 secondary to a distant gunshot wound to the neck.

2 Q And with a wound of this sort, how long would it have
3 taken from the time of impact to the time of death?

4 A Well, he probably would of lost consciousness
5 relatively quickly. When someone stops breathing -- well,
6 let me go back.

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

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

17 THE COURT: Mr. Poole, your witness.

18 MR. POOLE: No questions here, Your Honor.

19 THE COURT: Mr. Brown.

20 MR. BROWN: No questions, Your Honor.

21 THE COURT: Sir, you may step down.

22 Any objection to the witness being excused from the
23 State?

24 SOLICITOR TAILOR: No, Your Honor.

25 THE COURT: Any from the defense?

1 MR. POOLE: No, sir.

2 MR. BROWN: None, Your Honor.

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

5 SOLICITOR GRAY: State rests, Your Honor.

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

12 You may retire.

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

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

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

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

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

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

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

22 THE COURT: Mr. Brown.

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

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

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

10 The intent, malice aforethought---

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

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

16 THE COURT: Uh-huh. (Affirmative).

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

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

1 SOLICITOR GRAY: Thank you, Your Honor.

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

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

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

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

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

1 actual shooting occurred.

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

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

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

19 THE COURT: All right. Anything further?

20 MR. POOLE: No, sir.

21 THE COURT: Mr. Brown.

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

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

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

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

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

24 MR. POOLE: No, sir.

25 MR. BROWN: None, Your Honor---

1 THE COURT: All right.

2 MR. BROWN: ---at this time.

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

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

8 THE COURT: You can be seated.

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

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

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

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

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

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

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

1 in this case.

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

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

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

16 DEFENDANT CATHCART: Yes, sir.

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

19 DEFENDANT REEDER: Yes, sir.

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

22 DEFENDANT CATHCART: No, sir.

23 THE COURT: Mr. Reeder?

24 DEFENDANT REEDER: No, sir.

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

1 time in which to discuss your decision with your lawyer?

2 DEFENDANT CATHCART: Yes, sir.

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

5 DEFENDANT CATHCART: No, sir.

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

8 DEFENDANT REEDER: Yes, sir.

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

11 DEFENDANT REEDER: No.

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

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

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

18 DEFENDANT REEDER: Oh, no, sir.

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

21 DEFENDANT REEDER: Yes, sir.

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

24 DEFENDANT REEDER: No, sir.

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

1 DEFENDANT REEDER: No, Your Honor.

2 THE COURT: All right. Thank you very much.

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

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

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

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

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

14 SOLICITOR GRAY: Accomplice liability, Your Honor.

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

17 SOLICITOR GRAY: Yes, sir.

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

19 SOLICITOR GRAY: Yes, sir, Your Honor.

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

22 MR. POOLE: Your Honor?

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

1 MR. POOLE: Okay.

2 THE COURT: All right.

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

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

11 MR. POOLE: Well---

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

18 Yes, sir, Mr. Brown.

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

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

23 MR. BROWN: Yes, sir.

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

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

1 break?

2 SOLICITOR GRAY: No, sir.

3 THE COURT: Ready to go forward?

4 Defense ready?

5 MR. POOLE: Yes, sir.

6 THE COURT: Bring the jury in.

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

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

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

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

18 MR. POOLE: That's correct.

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

21 MR. BROWN: Thank you, Your Honor.

22 I'd like to recall Officer Talanges.

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

Robert Talanges - Direct examination
by Mr. Brown

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

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

4 DIRECT EXAMINATION

5 BY MR. BROWN:

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

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

9 A Yes, sir.

10 Q Are you familiar with this?

11 A Oh, yes, I am.

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

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

15 Q And are those your initials?

16 A Yes, they are.

17 Q R.C.T.?

18 A Correct.

19 Q You circled that, this is your document?

20 A Yes, it is.

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

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

25 Q Thank you, officer.

Robert Talanges - Direct examination
by Mr. Brown

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

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

8 It's A, B, C, D?

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

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

17 A Sims Road, correct.

18 Q Is that close to Burns Road?

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

22 Q 512 feet?

23 A Yes.

24 Q It's not close?

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

Robert Talanges - Direct examination
by Mr. Brown

1 courtroom?

2 A A lot further than that.

3 Q All right. And approximation of Mt. Pleasant Road and
4 Sims Road, what's Item Number Seven?

5 A Item Number Seven, large blood spot was marked by
6 officer Tim Davis at the, prior to the bad weather coming
7 in.

8 Q And you have direct knowledge of that blood spot being
9 there?

10 A Yes, sir, it was photographed. He marked it with some
11 kind of a cover, actually a paper bag he had marked it and
12 covered it to try to preserve it.

13 Q Okay. And do you know if any testing was done on that?

14 A I do not know.

15 Q All right. And Item Number Six, again, I guess almost
16 in the center of Sims Road and well in-between Sims Road and
17 Burns Road, what is that item?

18 A We, we located it as tissue, biological matter, but
19 we -- appeared to be some type of maybe vomit or something
20 of that nature that we looked at while we were there.

21 Q All right. And that is not close, according to what
22 you just stated, to Mt. Pleasant and Burns Road?

23 A You're looking -- Mt. Pleasant and Burns Road, it was
24 383 feet is what measured from the location of, from C,
25 which is on the diagram, to Number Six.

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VOLUME II OF II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Roger L. Couch, Circuit Court Judge

NO DEFENDANT'S BRIEF
No Respondent's Brief Filed

THE STATE,

RESPONDENT,

V.

DARIUS CATHCART,

APPELLANT

RECORD ON APPEAL

KATHRINE H. HUDGINS
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

JOHN W. MCINTOSH
Chief Deputy Attorney General

Attorney for Appellant

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

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BARRY BARNETTE
Solicitor, Seventh Judicial Circuit
Spartanburg County Courthouse
180 Magnolia Street, 3rd Floor
Spartanburg, SC 29306-2335
(864) 596-2575

Attorneys for Respondent

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SC Court of Appeals

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Robert Talanges - Direct examination
by Mr. Brown

1 Q And, again, there was no type of testing done?

2 A Not that I know of.

3 Q All right. And those were fresh items, you would agree
4 with me, from the evening in which or the morning in which
5 these events transpired?

6 A Those are items that we located that, that morning or
7 that, for this, in this incident area.

8 Q Okay. And based upon this, did you issue any search
9 warrants in terms of this information?

10 A No, I never, never had done any search warrants or
11 anything of any nature.

12 Q Did you seek any arrest warrants in this case?

13 A No, sir, did not.

14 Q Who sought the arrest warrants in this case?

15 A The arrest warrant would of been done by the lead
16 investigator.

17 Q Who was that?

18 A I believe Lorin Williams.

19 Q Okay. Investigator Williams sitting here?

20 A Yes, I believe it was.

21 MR. BROWN: Okay. Your Honor, I ask that this be
22 admitted into evidence.

23 THE COURT: Any objection?

24 SOLICITOR GRAY: No objection, Your Honor.

25 THE COURT: Mr. Poole.

Robert Talanges - Direct examination
by Mr. Brown

1 MR. POOLE: No, sir. No, sir.

2 THE COURT: Okay. It will be admitted and marked as a
3 Defense Exhibit.

4 (WHEREUPON, Defendant's Exhibit No. 5 was received into
5 evidence at this time.)

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

7 THE COURT: Mr. Poole, any questions of this witness?

8 MR. POOLE: Just one minute, Your Honor.

9 (Pause.)

10 THE COURT: Mr. Brown, do you wish to re-open your
11 examination?

12 MR. BROWN: Yes, sir, after conferring---

13 THE COURT: Any objection from the State to allow Mr.
14 Brown to ask additional questions?

15 SOLICITOR GRAY: No, sir.

16 THE COURT: You may proceed.

17 Q Also, because you were, from the outset, involved in
18 the case---

19 A (Witness nods affirmatively.)

20 Q ---you went and photographed various items associated
21 with this case?

22 A At the Sims or the Mt. Pleasant area, yes, I took
23 photographs.

24 Q Okay. Any other place that you responded to in the
25 course of this investigation

Robert Talanges - Direct examination
by Mr. Brown

1 A Been to Mary Black, excuse me, went to Spartanburg
2 Regional first of all.

3 Q Okay. Well, let me ask you about Regional
4 specifically.

5 Who was located at Spartanburg Regional when you went
6 there?

7 A When I first responded, we had Mr. Reeder and
8 Mr., the---

9 Q Cathcart.

10 A Cathcart, yes.

11 Q Would you agree or disagree with me that Mr. Reeder had
12 a gunshot wound to his wrist?

13 A Yeah, I know he had a gunshot wound to his left, left
14 arm area.

15 Q Okay. Would you agree or disagree that it was to his
16 wrist area?

17 A I'd have to look at the photographs, but I know he did
18 have a gunshot wound.

19 Q All right. On his left.

20 Would you agree or disagree that Mr. Cathcart was also
21 shot?

22 A Per the photos, it probably showed a graze.

23 Q Okay. And the graze, do you know if it produced any
24 biological blood at the hospital?

25 A Not that I know of.

Robert Talanges - Direct examination
by Mr. Brown

1 Q Well, in particular, can you say if Mr. Reeder touched
2 his wound with his right-hand---

3 A Can not.

4 Q ---or not?

5 A No.

6 Q And can you say if Mr. Cathcart also touched his grazed
7 or wound about his body?

8 A Can not say that.

9 Q From a, from a gunshot?

10 A I can not say.

11 Q You can't say that, can you?

12 A No, sir.

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

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

16 SOLICITOR GRAY: Yes, sir, just briefly.

17 CROSS-EXAMINATION

18 BY SOLICITOR GRAY:

19 Q What was the condition in that area that day?

20 What was, what was the weather like?

21 A We had a lot of rain. It pretty much was a rainy rainy
22 early morning.

23 Q Downpour that day?

24 A Yes, sir.

25 Q Difficult to collect the blood or anything else?

Robert Talanges - Cross-examination
by Solicitor Gray

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

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

6 A On the blood?

7 Q Yes, sir.

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

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

12 A Do not.

13 Q It could of been something else?

14 A That's correct.

15 Q Along with the unknown biological material?

16 A Correct.

17 Q Thank you, sir.

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

19 A No diagram, no diagram is ever to scale.

20 Q Thank you, sir.

21 No further questions, Your Honor.

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

24 MR. POOLE: No, sir.

25 MR. BROWN: None, Your Honor.

1 THE COURT: You may step down.

2 Does the defense wish to call any other witnesses?

3 MR. BROWN: No, Your Honor.

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

6 SOLICITOR GRAY: No, sir, Your Honor.

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

14 You may retire to the jury room.

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

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

19 SOLICITOR GRAY: No, sir, Your Honor.

20 THE COURT: Defense?

21 MR. POOLE: No, sir.

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

24 Again, Mr. Poole.

25 MR. POOLE: Yes, sir, Your Honor.

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

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

7 You understand that?

8 MR. POOLE: Yes, sir.

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

11 MR. POOLE: Yes, sir.

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

14 MR. POOLE: Okay.

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

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

19 THE COURT: Well, I got---

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

22 THE COURT: Yes, sir.

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

1 you, at least, charge mutual combat.

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

4 MR. BROWN: Your Honor.

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

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

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

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

24 THE COURT: So, you wish to charge self-defense?
25 All right. State want to be heard on that one?

1 SOLICITOR GRAY: Yes, sir, Your Honor.

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

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

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

18 MR. BROWN: Well---

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

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

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

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

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

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

21 SOLICITOR GRAY: Yes, sir.

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

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

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

3 SOLICITOR GRAY: Yes, sir.

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

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

10 THE COURT: No doubt about that.

11 SOLICITOR GRAY: The substance---

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

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

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

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

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

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

5 SOLICITOR GRAY: Yes, sir, I understand that.

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

8 SOLICITOR GRAY: Yes, sir.

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

11 SOLICITOR GRAY: No, sir.

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

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

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

20 SOLICITOR GRAY: Yes, sir.

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

23 SOLICITOR GRAY: Yes, sir.

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

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

7 SOLICITOR GRAY: That's true, Your Honor.

8 THE COURT: Nothing in regard to that point.

9 SOLICITOR GRAY: I, I understand that.

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

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

17 THE COURT: Well---

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

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

22 SOLICITOR GRAY: Yes, sir.

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

25 MR. BROWN: No, Your Honor.

1 MR. POOLE: No, sir.

2 THE COURT: All right. It's gonna take me a few
3 minutes to work that out. So, we're gonna take a recess.
4 Court will be in recess for about 15 minutes.

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

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

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

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

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

23 THE COURT: Okay. That will be fine.

24 Are you ready to proceed?

25 MR. POOLE: Yes, sir.

1 THE COURT: State ready to proceed with closing
2 argument?

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

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

6 SOLICITOR GRAY: Yes, sir.

7 MR. BROWN: Your Honor, can we approach?

8 THE COURT: You may.

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

11 SOLICITOR GRAY: Apologize for the delay.

12 THE COURT: Are you, are you ready now?

13 SOLICITOR GRAY: Yes, sir, Your Honor.

14 THE COURT: Defense ready?

15 MR. POOLE: Yes, sir.

16 MR. BROWN: Yes, sir.

17 THE COURT: Let's bring the jury in.

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

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

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

1 first for the defense.

2 MR. POOLE: That's correct.

3 THE COURT: You may proceed.

4 MR. POOLE: Thank you, Your Honor.

5 May it please the Court?

6 THE COURT: Yes, sir.

7 MR. POOLE: Good afternoon.

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

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

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

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

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

10 They haven't. They have not.

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

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

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

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

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

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

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

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

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

10 All right. That's his testimony.

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

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

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

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

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

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

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

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

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

3 Where do you know what really happened?

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

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

9 How many guns in the console?

10 I don't know.

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

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

17 Where are we?

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

19 We just don't know.

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

1 guilty.

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

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

12 What was found at the scene?

13 .40 caliber shell casings and one 9-millimeter Luger
14 spent casing.

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

19 Now, today, we heard the evidence from the SLED man,
20 Mr. Whitler. He stated that, and let me make sure that I
21 say this right, correctly, that there were, there was one
22 .40 caliber gun, another .40 caliber gun, and there was a
23 9-millimeter Luger, and there were at least three guns
24 involved.

25 As far as other scientific evidence is concerned, we

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

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

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

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

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

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

2 THE COURT: Mr. Brown.

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

5 THE COURT: Yes, sir.

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

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

17 And how do you ascertain that?

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

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

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

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

9 Let me think about it.

10 Could it have happened or did it?

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

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

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

1 family.

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

5 why haven't we heard from Marty?

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

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

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

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

25 why?

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

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

13 why?

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

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

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

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

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

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

4 No.

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

7 No.

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

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

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

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

20 Was he at the Waffle House?

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

24 I submit to you that's possible.

25 Does that cause you to potentially pause, to hesitate

1 to think, hum, could it have happened?

2 I submit to you that it should potentially.

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

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

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

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

1 indication.

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

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

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

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

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

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

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

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

16 If they are trying to point any type of information
17 towards Mr. Reeder, that involves a very powerful weapon, a
18 .40 caliber. Again, no gunshot residue on the one hand.
19 Obviously shot in the other hand where the residue was
20 found.

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

1 gentlemen, because, again, you have not heard anyone come
2 into this courtroom and say that Mr. Reeder had something
3 against this side and Mr. Reeder was involved in the
4 altercation. Mr. Reeder knew any of these people.

5 Mr. Reeder had a reason to be upset and wanted to fight.

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

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

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

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

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

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

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

14 Think about it.

15 What could have occurred?

16 Think about the angles of the cars.

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

21 We don't know that, do we?

22 That's something to think about.

23 Could anyone be upset on this side?

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

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

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

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

11 Is a question involved?

12 What transpired after they came up the road?

13 Once again, we don't know.

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

22 What has not been presented here?

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

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

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

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

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

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

24 I don't think a gun blast evidence would have help
25 this case out?

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

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

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

12 THE COURT: Mr. Gray.

13 SOLICITOR GRAY: Thank you, Your Honor.

14 THE COURT: Yes, sir.

15 SOLICITOR GRAY: Mr. Brown, Mr. Poole.

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

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

20 And you know who can clear this whole situation up?
21 Duncan.

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

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

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

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

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

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

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

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

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

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

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

12 SLED told you two .40 caliber handguns at a minimum.
13 Mr. Miller told you I had a .40 caliber handgun. The other
14 .40 caliber handgun, obviously in the car they were driving,
15 riding.

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

17 Cause it was a plan. Mr. Cathcart was the driver.

18 Mr. Reeder was the shooter.

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

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

21 It's two men with two highest numbers are the shooters.

22 It's plain and simple. They are the ones who are the
23 shooters. Mr. Reeder stuck his left arm out the window.
24 When he pulled up, started shooting.

25 How else does his left arm get injured?

1 He's in the passenger side of the car.

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

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

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

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

20 But he didn't do that, did he?

21 why would he do that?

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

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

3 There's no eye witness to the shooting?

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

6 There's no eye witness to the shooting?

7 There's Duncan Geter.

8 There's no eye witness to the shooting?

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

10 There's no eye witness to the shooting?

11 There's this blown up burned car that still had three
12 .40 caliber shells in it.

13 There's no eye witness to the shooting?

14 That's what they want you to believe.

15 All of this says there is.

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

21 Don't give them the benefit of the doubt. Don't ~~give~~
22 them that reasonable doubt cause we know, this evidence
23 shows, beyond a reasonable doubt, through their ~~statemen~~ts,
24 through their injuries, through the GSR and the video, ~~what~~
25 happened.

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

3 This is the eye witness to the shooting.

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

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

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

19 I'm gonna start off with the indictments that apply to
20 Mr. Cathcart. The first indictment is in Case Number
21 2010-GS-42-2874. Excuse me. That indictment is for assault
22 with intent to kill.

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

1 injury to the person of another with malice aforethought
2 accompanied by a present ability to complete the act. To
3 wit, by shooting into the victim, Dwight Jamar Geter's
4 vehicle, with a gun. All in violation of the common law of
5 the State of South Carolina and Code Section 17-25-30, of
6 the Code of Laws of South Carolina, 1976, as amended,
7 against the peace and dignity of the State and contrary to
8 the statute in such case made and provided, and as we go
9 through these, I'll point to you that the victims in these
10 cases are all different victims depending on what the State
11 alleges occurred in the different charges.

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

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

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

3 The indictment states that Darius Tavarious Cathcart
4 did, in Spartanburg County, on or about March 14th, 2009,
5 feloniously, willfully, and with malice aforethought kill
6 Duncan Geter by shooting him with a gun, and he died as a
7 proximate result thereof all in violation of Section 16-3-10
8 and 20 of the South Carolina Code of Laws, 1976, as amended,
9 against the peace and dignity of the State and contrary to
10 the statute in such case made and provided.

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

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

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

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

8 That's the first indictment against Mr. Reeder.

9 The second indictment is in Case Number
10 2010-GS-42-2928. It's for assault and battery with the
11 intent to kill.

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

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

23 This indictment against Mr. Reeder states that Rashawn
24 Lamar Reeder did, in Spartanburg County, on or about March
25 14, 2009, felonious, willfully, and with malice aforethought

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

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

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

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

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

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

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

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

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

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

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

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

1 the defendant's guilt beyond a reasonable doubt.

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

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

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

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

25 Now, proof beyond a reasonable doubt is that kind of

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

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

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

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

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

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

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

1 you determine the facts in this case. Excuse me.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 you in your deliberations.

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

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

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

25 Prior knowledge that a crime is going to be committed

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 To show that the person being defended had the right of

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

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

13 Sir, I'm gonna ask you your name?

14 (Juror points.)

15 THE COURT: Yes, sir.

16 JUROR: Nathan.

17 THE COURT: Last name?

18 JUROR: Mims.

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

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

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

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

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

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

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

25 Mr. Foreman, don't allow any deliberations or

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

3 You may retire.

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

6 THE COURT: Any objections to the charge from the
7 state?

8 SOLICITOR GRAY: No, sir, Your Honor.

9 THE COURT: Defense, Mr. Poole?

10 MR. POOLE: No, sir.

11 THE COURT: Mr. Brown.

12 MR. BROWN: No, Your Honor.

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

18 (Pause.)

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

21 (All parties nod affirmatively.)

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

24 (Pause.)

25 THE COURT: All right. Any objections, ladies,

1 gentlemen?

2 SOLICITOR GRAY: No, sir.

3 MR. POOLE: No, sir.

4 MR. BROWN: No, sir.

5 THE COURT: All right. Bring them in.

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

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

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

12 BAILIFF: Yes, sir.

13 THE COURT: Thank you.

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

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

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

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

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

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

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

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

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

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

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

10 You understand?

11 (Jurors nod affirmatively.)

12 THE COURT: You may retire and begin your
13 deliberations.

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

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

19 SOLICITOR GRAY: No, sir, Your Honor.

20 THE COURT: Any from the defense?

21 MR. POOLE: No, sir.

22 MR. BROWN: None, Your Honor.

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

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

1 returned with a question at 2:51.)

2 THE COURT: Ask the attorneys to approach.

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

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

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

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

9 I've received a question from the jury. The question
10 is is the defense pleading not guilty because of
11 self-defense. We are unclear.

12 It's a little bit of a confusing situation, but I'll
13 try to clear it up as best I can.

14 As I indicated to you, the defendant is always presumed
15 to be innocent in the case until such time as that
16 presumption has been removed from the defendant by evidence
17 that satisfies you of the defendant's guilt beyond a
18 reasonable doubt. So, when you say the defendant's pleading
19 not guilty, the defendant has pled not guilty to the
20 indictments. But that -- there, there is no burden of proof
21 that goes with that plea. Defendants are presumed, under
22 the law, to be not guilty. So, that's -- it's just simply
23 that is a presumption under the law.

24 Now, when I charged you concerning self-defense, I'll
25 go back over the beginning of the charge, and if you'll

1 listen carefully maybe you'll understand the distinction
2 here.

3 The defendant has raised the defense of self-defense.
4 Self-defense is a complete defense if it is established.
5 You must -- if it, if it is established, you must find the
6 defendant not guilty. But now, the burden of proof in the
7 criminal case is always upon the State. So, the State has
8 the burden of disproving self-defense by proof beyond a
9 reasonable doubt.

10 So, when you start talking about burden of proofs, the
11 burden of proof is always upon the State at all times and in
12 the case of self-defense, the burden is upon the State to
13 prove that, that the defense of self-defense does not exist.
14 So, that's -- does that answer the question as to the
15 relative burden of proof, Mr. Foreman?

16 FOREMAN: I believe so. I believe what we were unclear
17 as to is that, whether or not the defense was raising the
18 defense of self-defense.

19 THE COURT: Well, through the, through the facts, and,
20 of course, in the closing argument the defense argued
21 self-defense.

22 FOREMAN: Okay.

23 THE COURT: And, of course, they've, they've raised
24 that defense. But there's -- they don't plead not guilty,
25 not the -- not guilty plea simply means they're pleading

1 what they're presumed, that they are not guilty. And, of
2 course, self-defense is a complete defense if it, if that,
3 if you find that it exist. But it's the State prove, burden
4 to disprove that defense beyond a reasonable doubt.

5 So, I hope that clears it up. It's a little bit
6 unusual. But as I told you, the defendant never has a
7 burden of proof in the case. The defendant has no burden of
8 proof at all. They're presumed to be innocent at the
9 beginning of the trial, throughout the trial, and into your
10 deliberations until you find that person not guilty, find
11 that person guilty by proof beyond a reasonable doubt should
12 you find them that way.

13 Does that answer the question?

14 FOREMAN: Yes, I believe---

15 THE COURT: It's semantics.

16 FOREMAN: Our question was not properly --

17 THE COURT: Okay.

18 FOREMAN: I didn't write it properly.

19 THE COURT: Now, if the jury would like for me to
20 recharge the defense of self-defense I can do that. But I
21 don't -- I didn't take your question as being, you being
22 confused by that, that. You simply wanted to know perhaps
23 who has the burden of proof or who is pleading what. And,
24 again, in this case, the defendant has pled not guilty.
25 They can plead not guilty because they're presumed to be not

1 guilty, and, of course, by the facts, you have the right to
2 find them either guilty or not guilty. Again, to find
3 someone guilty, it must be beyond a reasonable doubt.

4 You may retire and resume your deliberations.

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

7 THE COURT: Any objections to my response from the
8 inquiry from the State?

9 SOLICITOR GRAY: No, sir.

10 THE COURT: Any from defense?

11 MR. POOLE: No, sir.

12 MR. BROWN: None, Your Honor.

13 THE COURT: All right. The question from the jury will
14 be made a Court's Exhibit and part of the record.

15 (WHEREUPON, the note from the jury was marked as
16 Court's Exhibit No. 1 for identifications purposes only at
17 this time.)

18 THE COURT: We'll remain in recess until such time as a
19 verdict has been reached.

20 (WHEREUPON, the jury began deliberations again at 2:51
21 and returned with a verdict at 3:13.)

22 THE COURT: I'm informed a verdict has been reached.
23 Is the State ready to receive the verdict?

24 SOLICITOR GRAY: Yes, sir, Your Honor.

25 THE COURT: Defense ready?

1 MR. POOLE: Yes, sir.

2 MR. BROWN: Yes, sir.

3 THE COURT: Let me caution all that are present that
4 any reaction from the Court to the verdict would be
5 considered to be contempt of Court. If you have any
6 problems in controlling your emotions, leave the courtroom
7 now. They want -- you won't have to deal with that.
8 Otherwise, I will expect, expect everyone to accept the
9 verdict quietly and with proper composure.

10 Bring the jury in.

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

13 THE COURT: Mr. Foreman, I've been informed that a
14 verdict's been reached.

15 Is that true?

16 FOREMAN: Yes.

17 THE COURT: Pass the forms to the bailiff please.

18 Thank you.

19 (Foreman complies.)

20 THE COURT: All right. In the case of the State of
21 South Carolina versus Darius Tavarious Cathcart, Case
22 Numbers 2010-GS-42-2874, 75, and 76, as to Indictment
23 2010-GS-42-2874, with assault and battery, assault with
24 intent to kill, we, the jury, unanimously find the
25 defendant, Darius Tavarious Cathcart, guilty.

1 As to Indictment Number 2010-GS-42-2875 for murder, we,
2 the jury, unanimously find the defendant, Darius Tavarious
3 Cathcart, guilty.

4 As to Indictment Number 2009-GS-42-2876 for assault and
5 battery with intent to kill, we, the jury, unanimously find
6 the defendant, Darius Tavarious Cathcart, guilty.

7 Signed by the foreman, May 12th, 2011.

8 In the case of the State of South Carolina versus
9 Rashawn Lamar Reeder, Cases Number 2010-GS-42-2926, 2927,
10 and 2928, as to Indictment Number 2010-GS-42-2926 for
11 assault with intent to kill, we, the jury, unanimously find
12 the defendant, Rashawn Lamar Reeder, guilty.

13 As to Indictment Number 2010-GS-42-2927 for murder, we,
14 the jury, unanimously find the defendant, Rashawn Lamar
15 Reeder, guilty.

16 As to Indictment Number 2009-GS-42-2928, assault and
17 battery with intent to kill, we, the jury, unanimously,
18 unanimously find the defendant, Rashawn Lamar Reeder,
19 guilty.

20 Signed by the foreman, dated May 12th, 2011.

21 Madam Clerk, please inquire of the jury if this is
22 still their verdict.

23 CLERK: Ladies and gentlemen of the jury, if this is
24 your verdict and still your verdict, if so, please raise
25 your right-hand.

1 (WHEREUPON, all jurors raise their hands at this time.)

2 THE COURT: Thank you.

3 Anything further from the State before I release the
4 jury?

5 SOLICITOR GRAY: No, sir, Your Honor.

6 THE COURT: Anything further from the defense?

7 MR. POOLE: Could Your Honor poll the jury?

8 THE COURT: Is that being requested by both defendants?

9 MR. BROWN: Yes, sir, Your Honor.

10 THE COURT: Madam Clerk, if you would please, poll the,
11 the jury.

12 (WHEREUPON, the jury was polled at this and all jurors
13 responded in the affirmative that this is their verdict and
14 remains their verdict at this time.)

15 THE COURT: Thank you, Madam Clerk.

16 Anything further from the defense before I release the
17 jury?

18 MR. POOLE: No, sir.

19 THE COURT: Mr. Brown?

20 MR. BROWN: No, Your Honor.

21 THE COURT: All right.

22 (WHEREUPON, the jury was dismissed at this time.)

23 THE COURT: All right. Anything from the defense
24 before we pass sentence?

25 MR. POOLE: Your Honor, at this time I would renew our

1 previous motion for directed verdict and make, move for a
2 new trial. The -- this motion is based upon the motions
3 that were made pretrial, during the trial, and after the
4 verdict. We would move for a new trial on those grounds.

5 THE COURT: Mr. Brown, any further motions?

6 MR. BROWN: Your Honor, I would also renew my previous
7 motions and move for a directed verdict and clearly I would
8 ask for a new trial in light of what I, what was before the
9 Court in terms of any lack of, of evidence against
10 Mr. Rashawn Reeder.

11 THE COURT: All right. Motions are considered by the
12 Court. Motions will be denied.

13 Now, are you ready to proceed with sentencing?

14 MR. POOLE: Yes, sir.

15 THE COURT: Have you signed the documents?

16 MR. BROWN: Your Honor, I don't know if either one of
17 them are in the mind set to sign the documents at this time.
18 It may be at the Court's direction.

19 THE COURT: I'm directing them to sign the documents.

20 DEFENDANT REEDER: What it is I'm signing?

21 THE COURT: Beg your pardon?

22 DEFENDANT REEDER: What is it I'm signing?

23 THE COURT: Talk to your lawyer. He can give you legal
24 advice.

25 DEFENDANT REEDER: I'm not signing the papers, Your

1 Honor.

2 THE COURT: Is he refusing to sign the documents?

3 DEFENDANT REEDER: No, I ain't refusing to sign. I
4 don't know what I'm signing.

5 THE COURT: All right. I told you to talk to your
6 lawyer. Talk to your lawyer about the documents.

7 DEFENDANT REEDER: I mean I been lied to the whole
8 time.

9 How do I know what I'm signing?

10 THE COURT: well, you might try reading it.

11 (Pause.)

12 THE COURT: All right. Mr. Poole, if you'll approach
13 with Mr. Cathcart first.

14 MR. POOLE: Certainly.

15 THE COURT: Mr. Cathcart, if you'll step around right
16 here in front of the microphone please, sir.

17 (Defendant Cathcart complies.)

18 THE COURT: Thank you.

19 All right. Mr. Cathcart, you have been convicted by a
20 jury of your peers of the offense of murder, assault and
21 battery with intent to kill, and assault with intent to
22 kill. At this point in time, I'll be happy to hear from you
23 or your attorney concerning sentencing.

24 I'll begin with Mr. Poole.

25 MR. POOLE: May it please the Court, Your Honor.

1 THE COURT: Yes, sir.

2 MR. POOLE: Your Honor, Darius Cathcart, he's 25 years
3 of age. He's been a life long resident of Spartanburg
4 County. He's a graduate of Dorman High School. He -- he's
5 worked during his young life. His last employment or next
6 to his last employment was like in shipping and receiving at
7 Martex. I think that's a facility over on 295, and he's the
8 father of one child who is one year old.

9 During the course of this trial, he has had support
10 from family and friends who are behind me and to the Court's
11 right. And his mother is here. His sister is here. I've
12 known the, a sister of Darius for a few years and I got to
13 know some of the members of the family by briefly speaking
14 to them this week and before about Darius, Darius' cases.

15 They're good folks, and, and this is certainly an
16 unfortunate and awful situation where there has been loss of
17 life and some bodily injury, and I'd ask the Court to take
18 into consideration, in passing sentence, that there was an
19 element of things that should not exist but do, and that is
20 youth with guns, and who knows what else is out there in the
21 street. And that was not a point in time when Mr. Cathcart
22 felt that he was not, to a certain extent, a victim also.
23 That's the best way I can state it.

24 I would ask the Court not to penalize him for the fact
25 that he exercised his right to a jury trial. The Court has

1 the ability to give a certain lower sentences in these
2 cases, and the Court also has the ability to run them
3 concurrent. I would ask, on his behalf, that you do so.

4 THE COURT: All right. Mr. Cathcart, is there anything
5 that you'd like to say to the Court at this point in time?

6 DEFENDANT CATHCART: Yes, sir.

7 THE COURT: Yes, sir.

8 DEFENDANT CATHCART: Well, I feel like this trial, it
9 just snuck up on me because I had, I had another attorney
10 and I was assigned him, and I done spoke with this guy, and
11 the detective over my, over the whole case. And they
12 already know what happened, but they tell me we can't use
13 this. They know the person that was actually involved. But
14 since I told Turnipseed I ain't want to talk to them no more
15 cause I want to put nothing on paper, they told me they
16 gonna go ahead and charge me with murder, and they already
17 know. They done talked to the victim, but they refused. I
18 mean they wasn't being honest about the whole thing.

19 THE COURT: Any of the family members wish to speak?

20 MR. POOLE: Your Honor, I think his mother would like
21 to be heard.

22 THE COURT: Come forward please, ma'am.

23 Yes, ma'am, your name?

24 MRS. CATHCART: Patricia Cathcart.

25 THE COURT: Yes, ma'am.

1 MRS. CATHCART: I'm -- Darius is my son, and he has
2 been working with this detective doing what he could do for
3 Mr. Turnipseed, and he was dismissed. They would promise
4 him things for his cooperation, and he cooperated with them
5 the best of his ability.

6 And when they would make promises, when they came down
7 to deliver these promises to him for his cooperation, next
8 thing we know the attorney was taken off the case because I
9 simply asked the attorney why y'all making promises to my
10 son and having him to work with y'all when y'all know y'all
11 gonna use these evidence against him.

12 Later on, when I asked Mr. Turnipseed this, he was
13 taken off my son's case, and he was appointed to Mr. Poole.
14 And I just felt like that somebody cooperate and they trust
15 you to do what you say -- they ask him to take polygraph, he
16 did that. Everything they have asked him to do he have said
17 something, and he have done so, and in the midst of it, they
18 turned their backs on him and he sits there like he never
19 done anything when they know they laid this stuff down.

20 We brought witnesses that could testify for my son. He
21 would not talk to these people. Mr. Turnipseed would not
22 talk to these people. These people was willing to come and
23 talk. They said they did not need these people or they said
24 we, we couldn't get their numbers. The people actually --
25 we brought them to them. They never did this.

1 I just felt like my son, I was not there that night. I
2 don't know. But I know my son wouldn't of intentionally --
3 he wouldn't have hurt her son, and I feel bad for her family
4 cause she lost their son. And now my son get the rest of
5 his life. I done lost my son as well.

6 But my son felt like he had a fighting chance working
7 with these people that promised him and only lied to him and
8 that's not right. When you give your word, your word should
9 be your bond not he give his word and try to help himself
10 and help his case for it to be used against him later on
11 which was what---

12 THE COURT: Ma'am, ma'am, ma'am, you need to address
13 me.

14 MRS. CATHCART: Okay. Which was what happen.

15 THE COURT: And I'm here to hear about sentencing.

16 MRS. CATHCART: Okay.

17 THE COURT: And I don't know if you want to talk about
18 sentencing.

19 MRS. CATHCART: And I just---

20 THE COURT: Let me talk for a second.

21 MRS. CATHCART: Okay.

22 THE COURT: I don't know if you want to talk about that
23 or not.

24 MRS. CATHCART: Yes.

25 THE COURT: But this is your opportunity to do so.

1 MRS. CATHCART: Yes, Your Honor.

2 THE COURT: Go ahead.

3 MRS. CATHCART: Your Honor, I'm just saying -- I'm just
4 upset cause my son life is on the line. I just would like
5 for you to consider that he has a child, and this is my only
6 son. And I would like to see my son again, and I just,
7 would just ask would you have mercy on him and his life.

8 THE COURT: Thank you, ma'am. You can be seated.

9 MRS. CATHCART: And I love you, son.

10 DEFENDANT CATHCART: Love you too.

11 THE COURT: Mr. Cathcart, you indicated you wanted to
12 say something else.

13 DEFENDANT CATHCART: Yes, sir, I ask you do this. This
14 whole thing, they already knew who this third person was.
15 It was a third person in my car that already knew cause they
16 told me, since I ain't want to cooperate, I ain't want to
17 talk to them no more cause they kept making promises. Now
18 they tell me we shouldn't use the third party. It's not
19 like it just now came up. They knew that thing since 2009.

20 They already know. They know who this dude was. The
21 detective told me, he said, I'm pretty -- I know he was
22 involved. I heard and he said that I'm pretty sure this guy
23 got six unsolved homicides, and, again, I got statements.
24 The statements, people done wrote me statements that said
25 that this guy told them, but he still didn't want to use