

**RECEIVED**

**Jul 27 2026**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Hampton County

Honorable The Hon. Dale E Van Slambrook, Circuit Court Judge

---

JAMES A. GARDNER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-000653

---

APPENDIX

---

W. CHANDLER NORVILLE  
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

DANIELLE E. DIXON  
Assistant Attorney General  
PO Box 11549  
Columbia, SC 29211  
(803)734-3970

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

**VOLUME I OF II**

**PAGES 1-500**

## INDEX

|                                                                    |     |
|--------------------------------------------------------------------|-----|
| INDEX .....                                                        | i   |
| <b>TRIAL TRANSCRIPT DATED FEBRUARY 2-4, 2015.</b> .....            | 1   |
| <i>ANDERS</i> BRIEF OF APPELLANT .....                             | 405 |
| DIRECT APPEAL REMITTITUR.....                                      | 406 |
| APPLICATION FOR POST-CONVICTION RELIEF .....                       | 408 |
| <i>PRO SE</i> MOTION IN SUPPORT OF APPLICATION FOR PCR.....        | 431 |
| RETURN AND PARTIAL MOTION TO DISMISS .....                         | 455 |
| ORDER OF DISMISSAL.....                                            | 464 |
| <i>GARDNER V. STATE</i> , UNPUBLISHED OPINION NO. 2024-UP-066..... | 477 |
| REMITTITUR .....                                                   | 479 |
| AMENDED APPLICATION FOR PCR.....                                   | 480 |
| <b>PCR HEARING TRANSCRIPT DATED NOVEMBER 13, 2025</b> .....        | 483 |
| ORDER OF DISMISSAL.....                                            | 536 |
| INDICTMENTS .....                                                  | 553 |

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| State of South Carolina | ) | Court of General Sessions         |
|                         | ) | 14 <sup>th</sup> Judicial Circuit |
| County of Hampton       | ) | Case No. 2013-GS-25-00073         |
|                         | ) | Case No. 2013-GS-25-00075         |
|                         | ) | Case No. 2013-GS-25-00079         |
|                         | ) | Case No. 2013-GS-25-00080         |

State of South Carolina,

Plaintiff,

-vs-

James Gardner,

Defendant.

Transcript of Record

February 2-4, 2015  
Hampton, South Carolina

B E F O R E:

The Honorable Perry M. Buckner, Judge; and a jury

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

Tameaka Legette, Esquire  
Attorney for the Plaintiff

Cory Fleming, Esquire  
Attorney for the Defendant

Krystal J. Smith  
Court Reporter

|    | <u>I N D E X</u>                |                    |
|----|---------------------------------|--------------------|
|    | <u>WITNESS/DESCRIPTION</u>      | <u>PAGE NUMBER</u> |
| 3  | <u>FEBRUARY 2, 2015</u>         |                    |
| 4  | Jackson v. Denno.....           | 9                  |
| 5  | Luis Hernandez                  |                    |
| 6  | Direct by Ms. Legette.....      | 14                 |
| 7  | Cross by Mr. Fleming.....       | 18                 |
| 8  | Direct by the Court.....        | 20                 |
| 9  | Tyrone Smith                    |                    |
| 10 | Direct by Ms. Legette.....      | 22                 |
| 11 | Cross by Mr. Fleming.....       | 27                 |
| 12 | Wendell Johnson                 |                    |
| 13 | Direct by Mr. Fleming.....      | 31                 |
| 14 | Cross by Ms. Legette.....       | 34                 |
| 15 | Ruling on Jackson v. Denno..... | 39                 |
| 16 | Jury Voir Dire.....             | 44                 |
| 17 | Jury Seated.....                | 68                 |
| 18 | Pre-Trial Motions.....          | 84                 |
| 19 | <u>FEBRUARY 3, 2015</u>         |                    |
| 20 | Jury Sworn.....                 | 97                 |
| 21 | Opening Statements              |                    |
| 22 | Ms. Legette.....                | 113                |
| 23 | Mr. Fleming.....                | 116                |
| 24 | Aimee Simmons                   |                    |
| 25 | Direct by Ms. Legette.....      | 122                |

| 1  | <u>I N D E X</u>             |                    |
|----|------------------------------|--------------------|
| 2  | <u>WITNESS/DESCRIPTION</u>   | <u>PAGE NUMBER</u> |
| 3  | Mae Francis Smith            |                    |
| 4  | Direct by Ms. Legette.....   | 128                |
| 5  | Cross by Mr. Fleming.....    | 140                |
| 6  | Mary Etta Montouth           |                    |
| 7  | Direct by Ms. Legette.....   | 144                |
| 8  | Cross by Mr. Fleming.....    | 170                |
| 9  | Redirect by Ms. Legette..... | 172                |
| 10 | Leroy Davis                  |                    |
| 11 | Direct by Ms. Legette.....   | 177                |
| 12 | Bessie Grimes                |                    |
| 13 | Direct by Ms. Legette.....   | 183                |
| 14 | Mariam Walden                |                    |
| 15 | Direct by Ms. Legette.....   | 190                |
| 16 | Cross by Mr. Fleming.....    | 206                |
| 17 | Redirect by Ms. Legette..... | 208                |
| 18 | Recross by Mr. Fleming.....  | 208                |
| 19 | Ranata Louise Ford           |                    |
| 20 | Direct by Ms. Legette.....   | 210                |
| 21 | Dorothy Washington           |                    |
| 22 | Direct by Ms. Legette.....   | 218                |
| 23 | Cross by Mr. Fleming.....    | 224                |
| 24 |                              |                    |
| 25 |                              |                    |

|    |                              |                    |
|----|------------------------------|--------------------|
| 1  | <u>I N D E X</u>             |                    |
| 2  | <u>WITNESS/DESCRIPTION</u>   | <u>PAGE NUMBER</u> |
| 3  | Abner Rosier                 |                    |
| 4  | Direct by Ms. Legette.....   | 229                |
| 5  | Cross by Mr. Fleming.....    | 241                |
| 6  | Redirect by Ms. Legette..... | 247                |
| 7  | Luis Hernandez               |                    |
| 8  | Direct by Ms. Legette.....   | 250                |
| 9  | Cross by Mr. Fleming.....    | 265                |
| 10 | Bobby Anderson               |                    |
| 11 | Direct by Ms. Legette.....   | 276                |
| 12 | Cross by Mr. Fleming.....    | 292                |
| 13 | Tyrone Smith                 |                    |
| 14 | Direct by Ms. Legette.....   | 296                |
| 15 | Cross by Mr. Fleming.....    | 310                |
| 16 | State Rests.....             | 316                |
| 17 | Stipulation.....             | 316                |
| 18 | Motions.....                 | 318                |
| 19 | Defendant's Rights.....      | 324                |
| 20 | Defense Rests.....           | 329                |
| 21 | <u>FEBRUARY 4, 2015</u>      |                    |
| 22 | Closing Arguments            |                    |
| 23 | Ms. Legette.....             | 333                |
| 24 | Mr. Fleming.....             | 348                |
| 25 | Charge on the Law.....       | 354                |

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

| <u>WITNESS/DESCRIPTION</u>        | <u>PAGE NUMBER</u> |
|-----------------------------------|--------------------|
| Jury Note.....                    | 381                |
| Verdict.....                      | 384                |
| Jury Polled.....                  | 385                |
| Motions.....                      | 392                |
| Sentence.....                     | 401                |
| Court Reporter Certification..... | 404                |

|    | <u>E X H I B I T S</u>       |                          |            |            |
|----|------------------------------|--------------------------|------------|------------|
|    | <u>NO.</u>                   | <u>DESCRIPTION</u>       | <u>ID.</u> | <u>EV.</u> |
| 3  | S-1                          | CD of 9-1-1 Call         |            | 126        |
| 4  |                              | (NOT TRANSCRIBED HEREIN) |            |            |
| 5  | S-2                          | Color Photograph         |            | 130        |
| 6  | S-3                          | Color Photograph         |            | 151        |
| 7  | S-4                          | Color Photograph         |            | 151        |
| 8  | S-5                          | Large Aerial Photograph  |            | 154        |
| 9  | S-6                          | NONE PRESENTED           |            |            |
| 10 | S-7                          | Large Diagram            |            | 168        |
| 11 | S-8                          | X-ray                    |            | 204        |
| 12 | S-9                          | X-ray                    |            | 204        |
| 13 | S-10                         | Rifle in Box             | 261        | 302        |
| 14 | S-11                         | Rifle in Box             | 264        | 302        |
| 15 | S-12                         | Color Photograph         |            | 287        |
| 16 | S-13                         | Color Photograph         |            | 287        |
| 17 | S-14                         | Color Photograph         |            | 287        |
| 18 | S-15                         | Color Photograph         |            | 287        |
| 19 | S-16                         | Color Photograph         |            | 287        |
| 20 | S-17                         | Color Photograph         |            | 287        |
| 21 | S-18                         | Color Photograph         |            | 287        |
| 22 | S-19                         | Color Photograph         |            | 287        |
| 23 | S-20                         | Color Photograph         |            | 287        |
| 24 | S-21                         | Color Photograph         |            | 287        |
| 25 | (continued on the next page) |                          |            |            |

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

E X H I B I T S

| <u>NO.</u> | <u>DESCRIPTION</u>                        | <u>ID.</u> | <u>EV.</u> |
|------------|-------------------------------------------|------------|------------|
| S-22       | DVD/Defendant's Statement (Redacted)      |            | 307        |
|            | (NOT TRANSCRIBED HEREIN)                  |            |            |
| C-1        | DVD of Defendant's Statement (Unredacted) |            | 12         |
|            | (NOT TRANSCRIBED HEREIN)                  |            |            |
| C-2        | Foreperson Note                           |            | 79         |

1 FEBRUARY 2, 2015

2 (WHEREAS this matter was scheduled for a trial, the  
3 defendant appeared along with his counsel of record. The  
4 hearing began at 12:16 p.m. The jury panel is not  
5 present in the courtroom.)

6 MS. LEGETTE: Your Honor, the State is ready to proceed.

7 THE COURT: All right. Call the case for the record.

8 Mr. Fleming, is your client present with you?

9 MR. FLEMING: He is, Your Honor.

10 THE COURT: All right. Call the case, Solicitor.

11 MS. LEGETTE: Thank you, Your Honor. The State is ready  
12 to proceed in Indictment Number 2013-GS-25-073 for attempted  
13 murder, 2013-GS-25-075, attempted murder, 2013-GS-25-079  
14 attempted murder, 2013-GS-25-080, possession of a weapon  
15 during the commission of a violent crime, and 2014-GS-25-374  
16 for pointing and presenting a firearm.

17 THE COURT: Three attempted murders, possession of a  
18 weapon during the commission of a violent crime, and pointing  
19 and presenting a firearm, Solicitor?

20 MS. LEGETTE: That's correct, Your Honor.

21 THE COURT: Very well. I understand from Mr. Fleming  
22 that he is requesting a Jackson Denno hearing. Is that  
23 correct?

24 MR. FLEMING: Yes, Your Honor.

25 THE COURT: On behalf of your client?

1 MR. FLEMING: That is correct.

2 THE COURT: For the record, Ms. Smith, my new court  
3 reporter, and for the defendant's knowledge, whenever evidence  
4 is going to be introduced that was allegedly obtained by any  
5 conduct that might be potentially violative of the defendant's  
6 constitutional rights, the defendant is entitled to have the  
7 judge conduct an in-camera evidentiary hearing at the  
8 threshold point to establish the circumstances under which it  
9 was gained.

10 It is the rule of our law in criminal cases that a  
11 defendant is entitled to an evidentiary -- independent  
12 evidentiary hearing to determine the voluntariness of any  
13 statement made by the defendant prior to the submission of any  
14 statement to any jury.

15 In addition, although a Jackson Denno hearing is not  
16 automatically required, whenever it's requested, I always  
17 point this out before we begin. There is certainly a  
18 distinction between an in-camera hearing to determine if an  
19 individual was in custody and entitled to Miranda warnings and  
20 a Jackson Denno hearing to determine whether a confession or a  
21 statement was voluntary.

22 It is my understanding that there is no Miranda issue.  
23 Is that right, Solicitor?

24 MS. LEGETTE: Your Honor --

25 THE COURT: To your knowledge, yes or no, Solicitor?

1 MS. LEGETTE: To my knowledge, no, Your Honor, there is  
2 none.

3 THE COURT: Is that correct, Mr. Fleming? This is a  
4 question of voluntariness?

5 MR. FLEMING: This is a question of voluntariness.

6 THE COURT: And not a Miranda issue?

7 MR. FLEMING: And not a Miranda issue.

8 THE COURT: Very well. All right. Solicitor, we have  
9 now hooked up the screen. The defendant is present. I have  
10 not seen any of this other than I've been told by Mr. Fleming  
11 and you that it would benefit the Court if I looked at the  
12 video of this first. Is that correct?

13 MS. LEGETTE: Well, Your Honor, I believe you -- in  
14 conjunction with testimony --

15 THE COURT: Did you not just tell me that in chambers,  
16 Solicitor?

17 MS. LEGETTE: Yes, Your Honor.

18 THE COURT: All right.

19 MS. LEGETTE: I thought we'd do it in conjunction with  
20 the actual testimony of the officer, who can look at it first,  
21 Your Honor, to determine the --

22 THE COURT: You told me you thought it would save time.

23 MS. LEGETTE: It may, Your Honor.

24 THE COURT: So let's look at it.

25 MS. LEGETTE: Yes, Your Honor.

1 THE COURT: If you're ready.

2 MS. LEGETTE: Yes, Your Honor.

3 THE COURT: Any objection, Mr. Fleming?

4 MR. FLEMING: No, Your Honor. I actually concur with  
5 that.

6 THE COURT: Dim the lights, please, Madam Clerk.

7 (WHEREUPON, there was a pause in the proceedings as an  
8 attempt was made to play the video marked as Court's  
9 Exhibit Number 1 in open court.)

10 THE COURT: Counsel, approach.

11 (WHEREUPON, a bench conference was held off the record,  
12 after which the proceedings resumed as follows.)

13 THE COURT: Solicitor?

14 MS. LEGETTE: Yes, sir. I'm bringing it, Your Honor.

15 THE COURT: Hold on a second, Solicitor. Mr. Fleming, I  
16 understand that the clerk's screen for the jury will not show  
17 the video of the subject matter of your request for a hearing.  
18 It is my understanding you have no objection on behalf of the  
19 defendant to the solicitor bringing their laptop up to the  
20 bench and my viewing it on the laptop, which I'm more than  
21 willing to let her.

22 I understand you've seen it, and so has the solicitor.  
23 I'm more than willing to let both of y'all also stand behind  
24 me, but my understanding is you don't need to because you've  
25 already looked at it several times, as had the solicitor, but

1 that you have no objection to my seeing it that way so we can  
2 move forward. Is that correct?

3 MR. FLEMING: That is correct, Your Honor.

4 THE COURT: Okay. Bring it up, Solicitor.

5 (WHEREUPON, there was a pause in the proceedings, after  
6 which the proceedings resumed as follows.)

7 THE COURT: It is now my understanding that the solicitor  
8 cannot get their laptop to show the video. So she's given the  
9 disk to my law clerk in order to see if it can be viewed on my  
10 law clerk's laptop. Any objection?

11 MR. FLEMING: No, sir.

12 (WHEREUPON, the video was played for the Court. NOT  
13 TRANSCRIBED HEREIN. Following the video, the proceedings  
14 resumed as follows.)

15 THE COURT: Do you have a copy that we can make this part  
16 of the record for the purposes of this hearing?

17 MS. LEGETTE: Yes, Your Honor.

18 THE COURT: Well, make a copy and I'll give it to the  
19 court reporter. Any objections to substituting a copy and my  
20 giving what I viewed back?

21 MR. FLEMING: No objection, Your Honor.

22 THE COURT: All right. It will be Court's Exhibit Number  
23 1, which I viewed on my law clerk's laptop computer, and I'm  
24 taking -- and he's taking the disk out and he's going to hand  
25 it to you, and please provide the court reporter with a copy

1 of, without objection, Court's Exhibit Number 1 without  
2 objection.

3 (WHEREUPON, Court's Exhibit Number 1, the unredacted  
4 statement of the defendant, was admitted.)

5 THE COURT: Call your first witness, Solicitor.

6 MS. LEGETTE: Thank you, Your Honor. The State calls Mr.  
7 Luis Hernandez.

8 THE COURT: Come get your tape, Solicitor, and give a  
9 copy to my court reporter. You already got one made?

10 MS. LEGETTE: We're going to make it, Your Honor. We  
11 have -- we have several, but they have different people on it.

12 THE COURT: Go have somebody make it.

13 MS. LEGETTE: Yes, Your Honor.

14 THE CLERK: Do you swear to tell the truth, the whole  
15 truth, and nothing but the truth, so help you God?

16 THE WITNESS: I do.

17 THE COURT: Have a seat for me.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: State your full name and spell your last name  
20 for the court reporter. Adjust that microphone down if you  
21 need to to your height.

22 THE WITNESS: Luis Hernandez, H-e-r-n-a-n-d-e-z.

23 THE COURT: Your witness, counsel.

24 MS. LEGETTE: Thank you, Your Honor.

25 LUIS HERNANDEZ, being first duly  
26

LUIS HERNANDEZ - DIRECT BY MS. LEGETTE

1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 Q: Mr. Hernandez, were you involved in a case which occurred  
4 on or about January 26<sup>th</sup>, 2013?

5 A: I was.

6 Q: And can you tell us at what location you arrived on that  
7 particular day?

8 A: It was on Pine -- Pine Hill Road coming from the west end  
9 to the east end.

10 Q: Okay. And what particular city was that in?

11 A: Varnville.

12 Q: All right. And what particular location did you arrive  
13 at specifically?

14 A: Excuse me?

15 Q: What location did you arrive at specifically?

16 A: Directly across the street to the house.

17 Q: Okay. And while you were at this house, did anything  
18 occur? Any incidents?

19 A: Yes, ma'am.

20 Q: Just briefly tell us about the incident?

21 A: Okay. My first approach was I noticed two females  
22 running towards the east side of town as I approached from the  
23 west side of town. I immediately saw the defendant carrying  
24 two firearms, two long rifles. He was coming up from the  
25 right-hand side of the house and was carrying them coming

LUIS HERNANDEZ - DIRECT BY MS. LEGETTE

1 towards the side.

2 Q: And after you saw the defendant, did a shooting occur  
3 after that?

4 A: A shooting did occur after that, ma'am.

5 Q: Okay. And did the shooting involve any officers?

6 A: Yes, it did.

7 Q: All right. And once the shooting -- did the shooting end  
8 at some point?

9 A: Yes, it did.

10 Q: And did the shooting end with Mr. Gardner being taken  
11 into custody?

12 A: Yes, ma'am.

13 Q: Okay. Tell us about him being taken into custody?

14 A: Well, he was taken into custody. He was on the ground.  
15 Officer Rosier, which was my partner, told him to drop the  
16 weapon and -- and roll away from it.

17 Q: Mm-hmm.

18 A: Which he complied. I, at that point, had my partner  
19 cover me as I approached. I cuffed him. I put him up on -- I  
20 searched his rear -- the back side of him. I asked him to get  
21 on his knees and to stand up.

22 Q: And while you were asking him to get on his knees and  
23 stand up, did you say anything to him?

24 A: Yes, ma'am.

25 Q: What did you tell him?

## LUIS HERNANDEZ - DIRECT BY MS. LEGETTE

1 A: I asked him are you hurt in any kind of way.

2 Q: Okay. Did you also give him his Miranda warnings?

3 A: I sure did, ma'am.

4 Q: Can you give us -- can you tell us how you went about  
5 giving him his Miranda warnings?

6 A: I recited it to him.

7 Q: I'm sorry?

8 A: I recited it to him.

9 Q: You recited it to him? Did you also have any item with  
10 you to assist you with the recitation?

11 A: No, ma'am. I happen to know it by memory.

12 Q: Okay. So demonstrate for us now how you recited the  
13 Miranda warning to Mr. Gardner?

14 A: You have --

15 THE COURT: Counsel, approach.

16 (WHEREUPON, a bench conference was held off the record,  
17 after which the proceedings continued as follows.)

18 THE COURT: Step back.

19 BY MS. LEGETTE:

20 Q: Mr. Hernandez, once you had given him his Miranda  
21 warning, did he appear to understand his Miranda warning?

22 A: Yes, ma'am.

23 Q: What made you believe he understood?

24 A: He looked at me. He smiled. He shook his head.

25 Q: Okay. And thereafter, what was done with Mr. Gardner?

## LUIS HERNANDEZ - DIRECT BY MS. LEGETTE

1 A: He was -- again, he was searched for further weapons and  
2 escorted to my vehicle.

3 Q: Okay. And once he got in your vehicle, did he go  
4 anyplace else?

5 A: Yes, ma'am.

6 Q: Where did he go?

7 A: The Varnville Police Headquarters.

8 Q: Okay. And once he got to the Varnville Police  
9 Department, did you remain with him?

10 A: Yes, ma'am.

11 Q: What happened next?

12 A: I witnessed the -- Chief Smith interview him, and I just  
13 stood guard.

14 Q: Okay. And at some point during the interview with Chief  
15 Smith, did Chief Smith again refer to the Miranda warning?

16 A: Yes, ma'am.

17 Q: Okay. And did Mr. Gardner at that time appear to  
18 understand the Miranda warning?

19 A: Absolutely, ma'am.

20 Q: Did he appear to waive his Miranda warning?

21 A: Yes, ma'am.

22 Q: Did he give a statement?

23 A: Yes, ma'am.

24 Q: Okay.

25 MS. LEGETTE: I have no further questions of this

## LUIS HERNANDEZ - CROSS BY MR. FLEMING

1 witness, Your Honor.

2 THE COURT: Cross-examination?

3 CROSS-EXAMINATION

4 BY MR. FLEMING:

5 Q: Mr. Hernandez, my name is Cory Fleming. Quickly, when  
6 you were speaking with Mr. Gardner, did you notice a strong  
7 smell of alcohol on his body or presence?

8 A: No.

9 Q: No? Not at all?

10 A: No, sir.

11 Q: Okay. Did you -- were you present when the chief asked  
12 him about whether or not he consumed alcohol?

13 A: Yes.

14 Q: All right. Did you hear the response that he drank an  
15 entire bottle of Crown? I think he called it Crown Vic, but I  
16 assume that's Crown Royal.

17 A: Yes, I heard that.

18 Q: And some more than that; right?

19 A: Yes, sir. I did hear him say that.

20 Q: Wasn't there, in fact, a bottle found in that area during  
21 your search?

22 A: Yes, sir, there was.

23 Q: Okay. But yet, you do -- you didn't even smell any  
24 alcohol on him?

25 A: No, sir, I did not.

## LUIS HERNANDEZ - CROSS BY MR. FLEMING

1 Q: Okay. You -- did you notice that his eyes were bloodshot  
2 and glassy?

3 A: No, sir.

4 Q: You didn't?

5 A: They were --

6 Q: None?

7 A: His eyes was clear.

8 Q: Okay. Do you have any -- did you have any opinion or  
9 belief that he was under the influence of alcohol?

10 A: No, sir.

11 Q: Okay. Are you trained in DUI detection?

12 A: Yes, sir.

13 Q: Okay. And yet, this is the one time you say there's no  
14 strong odor of alcohol?

15 A: It was no strong alcohol. He didn't appear to be  
16 intoxicated in any kind of way.

17 Q: Okay. Then why -- what -- did you talk to the chief then  
18 about why he was asking him about drinking?

19 A: No, sir, I did not.

20 Q: Did you think it was odd that the chief would ask him  
21 about that then?

22 A: No.

23 Q: Not at all?

24 A: No. The chief was conducting his own investigation.

25 Q: Okay. But you heard it?

## LUIS HERNANDEZ - CROSS BY MR. FLEMING

1 A: Yes, sir.

2 Q: And you didn't say, Chief, he doesn't smell like alcohol  
3 to me?

4 A: No, I did not.

5 Q: Okay. So you just didn't smell anything?

6 A: That is correct.

7 MR. FLEMING: I have no more questions, Your Honor.

8 THE COURT: Redirect?

9 MS. LEGETTE: None, Your Honor.

10 THE COURT: Please step down.

11 THE WITNESS: Yes, sir.

12 DIRECT EXAMINATION BY THE COURT

13 THE COURT: Did you -- before this defendant gave any  
14 statement -- you were present when he gave the statement --

15 THE WITNESS: Yes, sir.

16 THE COURT: -- that I just viewed?

17 THE WITNESS: Yes, sir.

18 THE COURT: Did you promise him anything?

19 THE WITNESS: No, sir.

20 THE COURT: Did you threaten him in any way before he  
21 gave a statement?

22 THE WITNESS: No, sir.

23 THE COURT: Did you give him any hope of any type of  
24 leniency if he gave a statement?

25 THE WITNESS: No, sir.

## LUIS HERNANDEZ - DIRECT BY THE COURT

1 THE COURT: Did you see anyone else make any type of  
2 inducement to him to give a statement?

3 THE WITNESS: No, sir.

4 THE COURT: Did you hear anyone else try to induce the  
5 defendant to give a statement?

6 THE WITNESS: No, sir.

7 THE COURT: Was it your opinion that the defendant  
8 understood the Miranda warnings which you gave to him?

9 THE WITNESS: Yes, sir.

10 THE COURT: Did he have any trouble, in your opinion,  
11 understanding what you told him?

12 THE WITNESS: No, sir.

13 THE COURT: All right. Any additional questions from  
14 counsel for the State in light of the Court's questions?

15 MS. LEGETTE: No, Your Honor.

16 THE COURT: Any additional questions from counsel for the  
17 defendant in light of the Court's questions?

18 MR. FLEMING: No, sir.

19 THE COURT: You may step down.

20 THE WITNESS: Thank you, sir.

21 THE COURT: Call your next witness.

22 MS. LEGETTE: The State calls Chief Tyrone Smith.

23 THE COURT: Please come around to be sworn by the clerk.

24 THE CLERK: Do you swear to tell the truth, the whole  
25 truth, and nothing but the truth, so help you God?

26

## TYRONE SMITH - DIRECT BY MS. LEGETTE

1 THE WITNESS: Yes, ma'am.

2 THE COURT: Have a seat right there. Adjust the  
3 microphone.

4 THE WITNESS: Yes, sir.

5 THE COURT: State your full name. Spell your last name  
6 for the court reporter.

7 THE WITNESS: Tyrone Smith. S-m-i-t-h.

8 MS. LEGETTE: May it please the Court?

9 THE COURT: Proceed.

10 TYRONE SMITH, being first duly sworn,  
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MS. LEGETTE:

14 Q: Chief Smith, were you working for the Varnville Police  
15 Department on January 26<sup>th</sup>, 2013?

16 A: Yes, ma'am.

17 Q: And did you -- did you encounter Mr. James Gardner that  
18 particular day?

19 A: Yes, ma'am.

20 Q: And what was -- why did you encounter him on this  
21 particular day?

22 A: I overheard on the radio about a shooting incident on  
23 Mill Pond Road.

24 Q: Mm-hmm.

25 A: I went to the -- or I rode to the shooting, but pretty

## TYRONE SMITH - DIRECT BY MS. LEGETTE

1 much after the shooting, he was transferred to the office by  
2 Mr. Hernandez. I followed Mr. Hernandez to the office and I  
3 interviewed -- I interviewed Mr. Gardner.

4 Q: Were you aware of whether or not Mr. Gardner had received  
5 his Miranda warnings?

6 A: Yes, ma'am. Once myself and Hernandez got to the police  
7 department, Hernandez advised me that he had read him his  
8 Miranda.

9 Q: Okay. And thereafter, did you interview Mr. Gardner?

10 A: Yes, ma'am.

11 Q: And during that particular interview, were you aware of  
12 whether or not Mr. Gardner understood his Miranda warnings?

13 A: Yes, ma'am.

14 Q: Did you -- did you inquire of him whether he understood?

15 A: I asked him was he read his Miranda, and he said yes or  
16 he nodded. And I asked him did he understand, and he said  
17 yes.

18 Q: And thereafter, did Mr. Gardner waive his Miranda  
19 warnings?

20 A: Yes, ma'am.

21 Q: And during the interview, did he make a statement?

22 A: Yes, ma'am.

23 Q: And during the interview, did you notice whether or not  
24 he appeared to be under the influence of any alcohol?

25 A: No, ma'am. Mr. Gardner did not appear to be under the

## TYRONE SMITH - DIRECT BY MS. LEGETTE

1 influence of any alcohol.

2 Q: Why did you ask Mr. Gardner had he had anything to drink?

3 A: Well, when I interview somebody in the office, from  
4 coming back and forth to court, it always appears the judge  
5 asks are you under the influence of any alcohol or drugs that  
6 might impair your thinking, and I always ask anybody I  
7 interview that question.

8 Q: And that's why you asked Mr. Gardner that question?

9 A: Yes, ma'am.

10 Q: All right. So he did not appear to be drunk?

11 A: No, ma'am.

12 Q: Have you ever dealt with any persons who had been  
13 intoxicated before?

14 A: Yes, ma'am.

15 Q: How long have you been in law enforcement?

16 A: Twenty-four years.

17 Q: And during that period of time, how many people would you  
18 say you have encountered who were under the influence of  
19 alcohol?

20 A: Besides being in law enforcement, I had -- I have  
21 firsthand experience with alcoholism. My daddy was an  
22 alcoholic.

23 Q: And based thereon in your experience both in life and as  
24 a law enforcement officer, did Mr. Gardner appear to be under  
25 the influence of alcohol?

## TYRONE SMITH - DIRECT BY MS. LEGETTE

1 A: No, ma'am. Honestly, he didn't appear to be under the  
2 influence of alcohol. When I asked him that question, he just  
3 said he had a few drinks.

4 Q: And based on him saying he appeared as if he had some  
5 drinks -- well, the drinks that he had, would they have  
6 appeared to impair his ability to understand what he was  
7 saying?

8 A: No, ma'am. No, ma'am.

9 Q: Now, you said he made a statement?

10 A: Yes, ma'am.

11 Q: Did you promise him anything to get him to make a  
12 statement?

13 A: No, ma'am. He volunteered a statement. I had to slow  
14 him down and ask him was he -- you know, had Hernandez read  
15 you your Miranda warnings and he said yes, and then he went on  
16 with his statement.

17 Q: Okay. Did you ever threaten him in any way?

18 A: No, ma'am. No, ma'am.

19 Q: Was he ever coerced?

20 A: No, ma'am.

21 Q: Did anyone offer him any rewards to get him to make a  
22 statement?

23 A: No, ma'am.

24 Q: Did he -- did his responses to your questions seem to be  
25 rational responses?

## TYRONE SMITH - DIRECT BY MS. LEGETTE

1 A: They was honest. He was -- he was angry. He was angry.  
2 He was telling that.

3 Q: Did he ever decide that he wanted to stop talking to you  
4 and ask for a lawyer?

5 A: No, ma'am.

6 Q: If -- let's go back to this. If he had appeared to be  
7 under the influence of alcohol, what would you have done?

8 A: I wouldn't have talked to him.

9 Q: You wouldn't?

10 A: I would've transported him to the county detention center  
11 and picked him up that Sunday morning.

12 Q: Now, to the best of your knowledge, was his statement --  
13 Mr. Gardner's statement freely and voluntarily given?

14 A: Oh, yes, ma'am.

15 Q: Did anyone that -- who else was in the interview with  
16 you?

17 A: Myself and Mr. Luis.

18 Q: Did Mr. Luis or anyone else make any threats or coercion  
19 towards him?

20 THE COURT: Hold on. For the record, when you say Mr.  
21 Luis, are we referring to Mr. Hernandez?

22 THE WITNESS: Yes, sir. My bad. Yes, sir. Mr. Luis  
23 Hernandez.

24 BY MS. LEGETTE:

25 Q: Did anyone else threaten him in any way to try to get him

## TYRONE SMITH - DIRECT BY MS. LEGETTE

1 to make a statement?

2 A: No, ma'am.

3 Q: So to the best of your knowledge, the statement was  
4 freely and voluntarily given?

5 A: Yes, ma'am.

6 MS. LEGETTE: Thank you, Your Honor. I have no further  
7 questions.

8 THE COURT: Cross-examination?

9 MR. FLEMING: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. FLEMING:

12 Q: Mr. Smith, you just testified that he said he had a few  
13 drinks, but in truth what he said was he had an entire bottle  
14 of Crown Vic, didn't he?

15 A: We found a bottle of Crown Vic. They found it on the  
16 scene. He stated he had a few drinks, and I told him that we  
17 found a bottle, and I said, yeah, I drunk that and more.

18 Q: Drunk the bottle and more?

19 A: That's what he said.

20 Q: Okay. And did he smell -- did he have an odor of alcohol  
21 about him?

22 A: No, sir.

23 Q: No odor of alcohol?

24 A: He didn't.

25 Q: Okay. So he indicates that he drank an entire bottle of

## TYRONE SMITH - CROSS BY MR. FLEMING

1 liquor. You say he doesn't have an odor of alcohol. What  
2 about his eyes? Were they bloodshot? I can't see on the  
3 video.

4 A: He was angry.

5 Q: Uh-huh.

6 A: And his eyes looked like they look today. He look like  
7 he got red eyes.

8 Q: So you -- so they were red, but you think they were  
9 related to just his general --

10 A: I did not smell any alcohol --

11 Q: Okay.

12 A: -- on him, sir.

13 Q: Okay. So you don't believe he was under the influence;  
14 correct?

15 A: I -- he stated he had a few drinks. He stated he had a  
16 few drinks. I do not believe he was -- he was drunk.

17 Q: Okay. You don't doubt that he had a few drinks though?

18 A: That's what he said, but I know he wasn't drunk.

19 Q: I mean -- okay. You just testified you -- he was giving  
20 you statements, he was being honest.

21 A: He was being honest.

22 Q: Then why would he lie about drinking an entire bottle of  
23 liquor?

24 A: Remember, he said I had a few drinks. When I say I found  
25 a bottle --

## TYRONE SMITH - CROSS BY MR. FLEMING

1 Q: Okay.

2 A: -- he stated that.

3 Q: I'll let the video, whatever it says --

4 A: Yes, sir. Yes, sir.

5 Q: All right. You -- you had a conversation with the

6 alleged victim in this case, Ms. Mariam; correct? Walden?

7 A: Yes, I did.

8 Q: And did she tell you that James was drunk on Crown Royal  
9 when this happened?

10 A: I -- I don't recall that. I don't remember that.

11 Q: Did you make a report in this case?

12 A: It's a video I did of Mariam.

13 Q: Mm-hmm.

14 A: But I --

15 Q: And did you make any notes about her statements? The  
16 victim's statements in this case?

17 A: It could be, if you got them.

18 Q: Would you agree that Ms. Mariam, who has known him for a  
19 decade, would know what he is when he's drunk? Wouldn't you  
20 think she'd know if he's drunk?

21 A: You can ask her that, but I know a drunk. He didn't  
22 appear drunk to me.

23 Q: Okay. You didn't take him for a breathalyzer and a blood  
24 test or anything like that, did you?

25 A: Once again, I didn't smell any alcohol on him. So no,

1 sir.

2 MR. FLEMING: That's all the questions I have.

3 THE COURT: Redirect?

4 MS. LEGETTE: None, Your Honor.

5 THE COURT: You may step down. Thank you, sir. Call  
6 your next witness.

7 MS. LEGETTE: The State rests.

8 THE COURT: Mr. Fleming, do you wish to present evidence  
9 for the purposes of this hearing?

10 MR. FLEMING: Yes, Your Honor. I have one gentleman by  
11 the name of Wendell Johnson who I have subpoenaed. He's right  
12 here. I'd ask that he come forward and be sworn.

13 THE COURT: Mr. Johnson, come forward to be sworn by the  
14 Clerk of Court.

15 THE CLERK: Place your left hand on the Bible and raise  
16 your right hand. Do you swear to tell the truth, the whole  
17 truth, and nothing but the truth, so help you God?

18 THE WITNESS: Yes, sir.

19 THE COURT: Have a seat right here for me. Pull the  
20 chair up. Adjust the microphone. State your full name and  
21 spell your last name for the court reporter, please.

22 THE WITNESS: My name is Wendell Johnson, J-o-h-n-s-o-n.

23 THE COURT: Your witness, counsel, for direct  
24 examination. You don't have to get right on top of it, but  
25 speak up.

## WENDELL JOHNSON - DIRECT BY MR. FLEMING

1 WENDELL JOHNSON, being first duly sworn,  
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. FLEMING:

5 Q: Mr. Johnson, where do you live right now? You don't have  
6 to give the address, just where?

7 A: Fairfax.

8 Q: Okay. Where do you work?

9 A: Savannah River site. Sentera [phonetic].

10 Q: Towards Augusta?

11 A: Yes, sir.

12 Q: All right. What do you do there?

13 A: Security police officer.

14 Q: Did you say police officer?

15 A: Security police officer.

16 Q: Okay. With Wackenhut?

17 A: It's now Sentera [phonetic], formerly Wackenhut.

18 Q: Okay. I think anybody that's been through the bomb plant  
19 knows what you're talking about. I've called you today  
20 because you've been identified as a witness. I want to ask  
21 you do you remember the particular day that this incident  
22 occurred? The solicitor has indicated January 26<sup>th</sup>, 2013. Do  
23 you remember that day?

24 A: Yes, sir.

25 Q: Okay. Had you seen Mr. Gardner that day?

## WENDELL JOHNSON - DIRECT BY MR. FLEMING

1 A: Yes, sir.

2 Q: Okay. Did -- how do you know Mr. Gardner?

3 A: Through my -- my girlfriend and her family.

4 Q: Okay. Are you particular friends with Mr. Gardner?

5 A: We don't hang out or nothing like that, but, you know,  
6 when I seen him, you know, we might talk or whatever.

7 Q: Okay. Since this incident, have you even talked to Mr.  
8 Gardner?

9 A: No, sir.

10 Q: Okay. I want to ask you specifically what -- did you see  
11 Mr. Gardner around noontime that day?

12 A: Well, I seen him. He came over to a friend's house,  
13 maybe a little bit before noon, and he had a problem with the  
14 door -- the door closing, and me and him worked on it for a  
15 while.

16 Q: You and your friend or you and Mr. Gardner?

17 A: Me and Mr. Gardner --

18 Q: Okay.

19 A: -- worked on it. It was my friend's house and we worked  
20 on the door for a while. And then, you know, he hung around a  
21 little while and I'd say he left sometime after noon or one  
22 maybe.

23 Q: Okay.

24 A: Sometime after noon.

25 Q: Who is your friend?

## WENDELL JOHNSON - DIRECT BY MR. FLEMING

1 A: Jolanda Gregg.

2 Q: Okay. And at some point did -- tell me what you did.

3 Did you give him anything?

4 A: Yes, sir.

5 Q: What did you give him?

6 A: I gave him some alcohol. He'd been -- he was asking, you

7 know, did they have anything to drink.

8 Q: Mm-hmm.

9 A: And after he got through working on the door, I had some

10 in my trunk of my car and I told him he could have that.

11 Q: Okay. What kind of alcohol?

12 A: Crown Royal.

13 Q: Okay. He took -- was it a bottle?

14 A: Yes, sir.

15 Q: Hold up with your hands -- the bottle. Show them what it

16 looked like.

17 A: Maybe about a pint.

18 Q: All right. A pint?

19 A: Yeah. Something like that.

20 Q: You're holding your hands up about --

21 A: About like that.

22 Q: -- eight inches? Seven inches?

23 A: Can't say. I'd say maybe a pint.

24 Q: A pint? Okay. And then he left?

25 A: He put it in -- he put it in the toolbox in the back of

## WENDELL JOHNSON - DIRECT BY MR. FLEMING

1 his truck.

2 Q: Okay. And then what happened?

3 A: Then he left.

4 Q: Okay. Is that the last time you saw him that day?

5 A: Yes, sir.

6 Q: Okay.

7 MR. FLEMING: Your Honor, that's all the questions I  
8 have.

9 THE COURT: Cross-examination?

10 CROSS-EXAMINATION

11 Q: Mr. Johnson, good afternoon, sir. The bottle of Crown  
12 Royal that you gave to Mr. Gardner, was it open when you gave  
13 it to him?

14 A: Really I can't say. I don't remember.

15 Q: So it could have been open or it could have been closed?

16 A: Right.

17 Q: Okay. Did you see him drink any out of it?

18 A: No, ma'am.

19 Q: Okay. Thank you.

20 MS. LEGETTE: I have no further questions.

21 THE COURT: Redirect?

22 MR. FLEMING: Nothing further, Your Honor.

23 THE COURT: As to this witness, may he be excused?

24 MR. FLEMING: Yes, Your Honor.

25 THE COURT: Solicitor, any objection?

26

1 MS. LEGETTE: No, Your Honor.

2 THE COURT: You may step down and you are excused, Mr.  
3 Johnson.

4 MR. FLEMING: Your Honor, may I adjust that? For  
5 purposes of this hearing, may I get his phone number?

6 THE COURT: You subpoenaed him?

7 MR. FLEMING: Yes, Your Honor.

8 THE COURT: All right. You're still under subpoena.  
9 You'll have to talk to Mr. Fleming because he is not willing  
10 to release you from his subpoena. So check with him before  
11 you leave the courtroom as to when you will need, if at all,  
12 to return.

13 MR. FLEMING: Thank you, Your Honor.

14 THE COURT: You may step down.

15 THE WITNESS: Okay.

16 THE COURT: Call your next witness, Mr. Fleming.

17 MR. FLEMING: Your Honor, if I may put on the record  
18 first, if you'll hear me out? I attempted to subpoena a  
19 gentleman by the name of Kendrick Williams. We -- at the same  
20 time that we subpoenaed Mr. Johnson. We searched for Kendrick  
21 Williams. I am sorry to report that we were unable to locate  
22 him despite talking with law enforcement and other people, and  
23 I needed to put on the record that we did attempt to subpoena  
24 Kendrick Williams. I have not spoken to him, nor know what he  
25 would say, but I want it very clear that I have done that.

1 THE COURT: You're welcome.

2 MR. FLEMING: Thank you, sir. May I have one moment to  
3 speak with my client to determine whether or not I'll present  
4 anymore testimony?

5 THE COURT: Yes, sir.

6 MR. FLEMING: All right.

7 (WHEREUPON, there was a pause in the proceedings, after  
8 which the proceedings resumed as follows.)

9 MR. FLEMING: I have nothing further then, Your Honor.

10 THE COURT: You're welcome. Any reply from the State of  
11 South Carolina?

12 MS. LEGETTE: None, Your Honor.

13 THE COURT: Counsel, approach.

14 (WHEREUPON, a bench conference was held off the record,  
15 after which the proceedings resumed as follows.)

16 THE COURT: Step back. Solicitor?

17 MS. LEGETTE: Thank you, Your Honor. Your Honor, out of  
18 an abundance of caution and to protect Mr. Gardner's rights to  
19 remain silent under a 404(b), we have redacted the actual  
20 video confession that Mr. Gardner allegedly made, and we have  
21 that available for the Court to provide at the appropriate  
22 time, Your Honor, either at this hearing as a Court's exhibit  
23 or, in addition, during the trial itself. We have redacted --

24 THE COURT: What you asked me to review is not redacted?

25 MS. LEGETTE: That is correct, Your Honor.

1 THE COURT: All right.

2 MS. LEGETTE: And we have redacted --

3 THE COURT: And what you intend to introduce, if I  
4 approve it, would be a redacted version that does not allow  
5 the defendant to make any statement concerning any prior  
6 criminal offense?

7 MS. LEGETTE: That is correct, Your Honor.

8 THE COURT: Are you -- have you seen the redacted  
9 version?

10 MR. FLEMING: I have seen it. I've viewed the entire  
11 videotape, along with a transcript, an actual dictated  
12 transcript along with it, and I have agreed that the  
13 particularly violative information has been redacted and it  
14 appears to me to be clear.

15 THE COURT: So you're satisfied with the redaction?

16 MR. FLEMING: I am, sir.

17 THE COURT: Very well. All right. Anything further  
18 evidence-wise for purposes of Jackson Denno from the State?

19 MS. LEGETTE: No, Your Honor.

20 THE COURT: From the defendant?

21 MR. FLEMING: No, sir.

22 THE COURT: All right. First of all, I want to -- as I  
23 told you, I always begin a Jackson Denno hearing by  
24 delineating the difference between a hearing that can contain  
25 both, but Mr. Fleming advised me since there is a distinction

1 between an in-camera hearing to determine if an individual was  
2 in custody and therefore entitled to Miranda warnings and a  
3 Jackson Denno hearing to determine whether a confession or a  
4 statement was voluntary.

5 Mr. Fleming advised me that there is no issue concerning  
6 custodial interrogation or an issue with Miranda warnings,  
7 even though there's been testimony on both the Court's Exhibit  
8 Number 1, as well as testimony from the witnesses concerning  
9 the fact that Miranda warnings were given. There is, however,  
10 according to Mr. Fleming, an issue concerning voluntariness,  
11 which was the reason he asked for this hearing on behalf of  
12 his client.

13 In making a determination as to voluntariness, a Court  
14 should examine the totality of the circumstances surrounding  
15 the utterance to determine whether or not the State has met  
16 its burden of proof so as to warrant admission of the  
17 confession into evidence. Of course, the ultimate decision as  
18 to whether any confession is made is up to a jury, which I  
19 will charge the jury.

20 The State's burden in part by a preponderance of the  
21 evidence during a Jackson Denno hearing is to prove that the  
22 statement was voluntary and that it was, if necessary, not  
23 taken in violation of Miranda, which is not an issue here.

24 I have carefully listened to the evidence in this case,  
25 and I have examined the unredacted -- which is now Court's

1 Exhibit Number 1. Have you given it to the court reporter?

2 MS. LEGETTE: Your Honor, I had it. I just simply have  
3 put it on top of this table. There it is. Your Honor, I'm  
4 now handing it to the court reporter.

5 THE COURT: Without objection, Mr. Fleming?

6 MR. FLEMING: Without objection.

7 THE COURT: All right. That's Court's Exhibit Number 1  
8 for purposes of Jackson Denno hearing without objection.

9 Now, let the record reflect that although not an issue,  
10 it appears that before any alleged statement was obtained from  
11 the defendant, the defendant was advised of his rights under  
12 the Fifth and Sixth Amendments to the Constitution of the  
13 United States, and the defendant was advised of his  
14 constitutional safeguards required by Miranda versus Arizona.  
15 It appears that the defendant waived his rights under the  
16 Fifth and Sixth Amendments of the Constitution and the  
17 constitutional safeguards required by Miranda versus Arizona.

18 From the testimony that I have listened to and the  
19 evidence that I have reviewed, the alleged statement taken  
20 from the defendant was freely and voluntarily given without  
21 duress, without coercion, without undue influence, without  
22 reward, without promise or hope of reward, without promise of  
23 leniency, without threat of injury or without compulsion or  
24 inducement of any kind, and that such statement was the  
25 voluntary product of the free and unconstrained will of the

1 defendant.

2 I make all of my findings in this case by a preponderance  
3 of the evidence. I certainly think it is important that the  
4 tape be redacted to protect the defendant's constitutional  
5 rights. I therefore find that a redacted tape, which Mr.  
6 Fleming is in agreement to since he has reviewed the  
7 transcript, is admissible into evidence in the trial of this  
8 case. And all of these conclusions I make by a preponderance  
9 of the evidence based on the evidence that was presented to me  
10 during this Jackson Denno hearing.

11 Now, counsel, I'm going to ask you if you would to give  
12 me a transcript of the redacted portion and certify that the  
13 transcript I'm given is exactly what's on the redacted tape,  
14 that the jury will not see what has been admitted for purposes  
15 of the Jackson Denno hearing, which I've referred to as  
16 Court's Exhibit Number 1.

17 MS. LEGETTE: Your Honor, I have it.

18 THE COURT: Show it to Mr. Fleming. Is that what you  
19 reviewed?

20 MR. FLEMING: This is just what has been redacted and --

21 THE COURT: And there is also a full transcript?

22 MR. FLEMING: That's correct.

23 MS. LEGETTE: Yes, Your Honor.

24 THE COURT: If you'll hand that that to the court -- I  
25 mean to the clerk. Okay. It is my understanding now that the

1 redacted portion only is to be admitted into evidence in the  
2 trial of this case; is that correct, Solicitor?

3 MS. LEGETTE: That's -- that's correct.

4 THE COURT: Is that correct, Mr. Fleming, in light of my  
5 ruling?

6 MR. FLEMING: Yes, sir.

7 THE COURT: All right. In order that the clerk and the  
8 court reporter and the people present, as well as my lawyers  
9 and the defendant, can get lunch -- it's now twelve minutes  
10 after one. This court is in recess until two o'clock. The  
11 jury is coming back in at two; right, Melinda?

12 THE CLERK: Yes, sir.

13 THE COURT: The court is in recess until two o'clock.  
14 Thank you very much.

15 (WHEREUPON, there was a break in the proceedings from  
16 1:12 p.m. until 2:23 p.m.)

17 (WHEREUPON, general jury qualification was held off the  
18 record.)

19 (WHEREUPON, the proceedings resumed at 3:52 p.m.)

20 THE COURT: Is the State ready to proceed?

21 MS. LEGETTE: Yes, Your Honor.

22 THE COURT: Is the defendant ready to proceed?

23 MR. FLEMING: Yes, Your Honor.

24 THE COURT: Call your case, Solicitor.

25 MS. LEGETTE: Thank you, Your Honor. The State is ready

1 to proceed in the case of State versus James Gardner,  
2 Indictment Number 2013-GS-25-0073 for attempted murder, in  
3 Indictment Number 2013-GS-25-0075 for attempted murder, in  
4 Indictment Number 2013-GS-25-0079 for attempted murder, and  
5 Indictment 2013-GS-25-0080, possession of a weapon during the  
6 commission of a violent crime, and Indictment 2014-GS-25-  
7 00374, pointing and presenting a firearm at a person.

8 Your Honor, the defendant, Mr. Gardner, has pled not  
9 guilty. This is a trial. I will pass up the indictments at  
10 this time.

11 THE COURT: Very well. All right. Ladies and gentlemen  
12 of the jury panel, do we have everybody in the courtroom?  
13 Anybody still in the rest room? Outside? Check the halls.

14 THE BAILIFF: I believe we've got everybody, Your Honor.

15 THE COURT: All right. Ladies and gentlemen, the State  
16 of South Carolina has called the case of the State of South  
17 Carolina versus James Gardner for trial. Mr. Gardner is  
18 charged by these pieces of paper which I hold in my hand which  
19 we call indictments. He is charged with three counts of the  
20 offense of attempted murder, possession of a weapon during the  
21 commission of a violent crime, and pointing and presenting a  
22 firearm at a person.

23 These indictments are merely the documents by which this  
24 case is brought into the court. It is not in any sense  
25 evidence of the allegations contained in the indictment, and I

1 need to tell you a little bit about the allegations in order  
2 to determine your impartiality to serve as a juror in the  
3 trial of the case.

4 To these indictments, the defendant has pled not guilty.  
5 That places the burden on the State of South Carolina to prove  
6 each and every element of the offenses for which the defendant  
7 is charged beyond a reasonable doubt, and it will be your  
8 duty, ladies and gentlemen, to determine whether or not the  
9 State has met that burden.

10 First of all, ladies and gentlemen, I'd like for you to  
11 meet the lawyers that are going to be trying this case. I'm  
12 going to ask that they stand, face my jury panel, introduce  
13 yourself. If you've got people seated at the table with you,  
14 introduce who they are, have them face my jury panel. In the  
15 case of defense counsel, also have your client stand, face my  
16 jury panel, and introduce your client. Beginning with counsel  
17 for the State of South Carolina.

18 MS. LEGETTE: Thank you, Your Honor. Good afternoon. I  
19 am Tameaka Legette and I am an assistant solicitor here in  
20 Hampton County. I also work in Allendale County and Colleton  
21 County. Additionally, this week Mr. Bruce Davis will be  
22 assisting me as one of our investigators, along with Mr.  
23 Donnie Hutto, one of our investigators who will also be  
24 assisting me. Seated here with me is Chief Tyrone Smith of  
25 the Varnville Police Department, who will be a witness in this

1 case. Thank you.

2 THE COURT: Counsel for the defendant.

3 MR. FLEMING: Thank you, Judge. My name is Cory Fleming.  
4 I live in Beaufort. I practice law in this circuit. Like the  
5 judge said, all five counties. This is my client, James  
6 Gardner, from right here in town.

7 THE COURT: He lives here in Hampton?

8 MR. FLEMING: Varnville.

9 THE COURT: Varnville. Very well. Thank you. Please be  
10 seated.

11 All right. Ladies and gentlemen, my first question to  
12 you -- and I remind you you're under oath. Is any member of  
13 my jury panel related by blood, connected by marriage or a  
14 close personal friend of Mr. James Gardner of Varnville, South  
15 Carolina, whom you have just met? If so, please stand at this  
16 time.

17 (WHEREUPON, no one stood.)

18 THE COURT: Let the record reflect no one is standing.  
19 Now, you've met counsel for the State of South Carolina,  
20 Assistant Solicitor Tameaka Legette. Is any member of my jury  
21 panel related by blood, connected by marriage or a close  
22 personal friend of counsel for the State of South Carolina,  
23 Tameaka Legette? If so, please stand at this time.

24 (WHEREUPON, no one stood.)

25 THE COURT: Let the record reflect no one is standing.

1 Has any member of my jury panel ever been represented in the  
2 past or currently represented by counsel for the State of  
3 South Carolina in this case, Tameaka Legette? If so, please  
4 stand at this time.

5 (WHEREUPON, no one stood.)

6 THE COURT: Let the record reflect no one is standing.  
7 You've also met counsel for the defendant, Mr. Cory Fleming.  
8 His office is in Beaufort, South Carolina, with the firm of  
9 Moss and Kuhn. Is any member of my jury panel related by  
10 blood, connected by marriage or a close personal friend of  
11 counsel for the defendant, Mr. Cory Fleming? If so, please  
12 stand at this time.

13 (WHEREUPON, no one stood.)

14 THE COURT: Let the record reflect no one is standing.  
15 Any member of my jury panel ever been represented in the past  
16 or currently represented by counsel for the defendant, Mr.  
17 Cory Fleming? If so, please stand at this time.

18 (WHEREUPON, no one stood.)

19 THE COURT: Let the record reflect no one is standing.  
20 Any member of my jury panel related by blood or connected by  
21 marriage to anyone employed by the Fourteenth Judicial Circuit  
22 Solicitor's Office, the South Carolina Attorney General's  
23 Office, or any prosecuting agency? If so, please stand at  
24 this time.

25 (WHEREUPON, no one stood.)

1           THE COURT: Let the record reflect no one is standing.  
2 Now, ladies and gentlemen, I've told you that I would tell you  
3 a little bit about the allegations, and that's all they are.  
4 You must base your decision, if you are selected as a juror in  
5 the trial of this case, on evidence introduced during the  
6 trial of this case when both sides are present with the right  
7 of cross-examination. In Indictment -- but I need to tell you  
8 a little bit about the allegations in order to determine if  
9 you know anything about this case.

10           In Indictment 2013 at 73 charging Mr. Gardner with  
11 attempted murder, it is alleged in this indictment that this  
12 offense occurred in Hampton County on or about January the  
13 26<sup>th</sup>, 2013. That the defendant with malice aforethought  
14 accompanied by a present ability to complete the act did  
15 attempt to commit an unlawful act of violent injury to Major  
16 Bobby Anderson. It is alleged the defendant shot at the  
17 victim with a .22 rifle.

18           Those are just allegations in the indictment. I ask is  
19 there any member of my jury panel who has read about, heard  
20 about or know anything whatsoever about the facts which are  
21 alleged in that indictment? If so, please stand at this time.

22           (WHEREUPON, no one stood.)

23           THE COURT: Let the record reflect no one is standing.  
24 Indictment 2013 at 75 charges the defendant, James Gardner,  
25 with the offense of attempted murder. It alleges that this

1 offense occurred in Hampton County on or about January 26<sup>th</sup>,  
2 2013. That the defendant James Gardner with the intent to  
3 kill did attempt to kill the victim, Mariam -- that's M-a-r-i-  
4 a-m, Krystal -- Walden, W-a-l-d-e-n, with malice aforethought,  
5 either express or implied. As alleged, the defendant did  
6 shoot at the victim with a firearm, striking her in the upper  
7 leg.

8 Has any member of my jury panel read about, heard about  
9 or know anything whatsoever about the allegations which are in  
10 that indictment? If so, please stand at this time.

11 (WHEREUPON, one person stood.)

12 THE COURT: Yes, ma'am, if you'll come forward, please,  
13 ma'am.

14 (WHEREUPON, a bench conference is held with the juror and  
15 all counsel in the presence of the jury panel but out of  
16 the hearing of the jury panel as follows.)

17 THE COURT: Your name and jury number, please? Talk to  
18 me, not them.

19 JUROR NUMBER 147: Annie Smith, 147.

20 THE COURT: Counsel, this is Juror 147, Annie Smith. Ms.  
21 Smith, you need to look over here now so the court reporter  
22 can see you when you're talking and not at them.

23 JUROR NUMBER 147: Okay.

24 THE COURT: Okay. Ms. Smith, I asked if you had read  
25 about, heard about or know anything about on your own

1 knowledge about the facts which are alleged in this  
2 indictment, which is an indictment for attempted murder  
3 involving Mariam Walden, and you stood. Could you tell me why  
4 you stood?

5 JUROR NUMBER 147: Well, I heard about it.

6 THE COURT: You heard about it?

7 JUROR NUMBER 147: Mm-hmm.

8 THE COURT: Who did you hear about it from?

9 JUROR NUMBER 147: Just somebody in the community  
10 talking.

11 THE COURT: Somebody you don't know who told you about  
12 it?

13 JUROR NUMBER 147: Mm-hmm.

14 THE COURT: The fact that you heard something in the  
15 community, would that in any way keep you from giving the  
16 defendant or the State of South Carolina a fair and an  
17 impartial trial?

18 JUROR NUMBER 147: No.

19 THE COURT: Can you put aside anything you've heard in  
20 the community about this and decide this case solely upon the  
21 evidence in this case and not on anything you may have heard  
22 in the community about this?

23 JUROR NUMBER 147: Yes.

24 THE COURT: Do you recall anything that you did hear  
25 about it?

1 JUROR NUMBER 147: Only, sir, that she got shot.

2 THE COURT: You just heard that she got shot and that's  
3 all you remember?

4 JUROR NUMBER 147: And about the man, who he was, but I  
5 didn't know him or who he was.

6 THE COURT: You heard a name?

7 JUROR NUMBER 147: No.

8 THE COURT: You did not hear a name?

9 JUROR NUMBER 147: No.

10 THE COURT: You just heard a man shot this person, right?

11 JUROR NUMBER 147: They're saying that was her sister's  
12 friend.

13 THE COURT: It was what?

14 JUROR NUMBER 147: They said it was her sister's friend  
15 that shot her.

16 THE COURT: Her sister's friend?

17 JUROR NUMBER 147: Mm-hmm.

18 THE COURT: Can you put aside any of that information and  
19 decide this case solely upon the evidence in this case and not  
20 on anything you heard?

21 JUROR NUMBER 147: Yes, sir.

22 THE COURT: Thank you very much. You may return to your  
23 seat.

24 (WHEREUPON, the bench conference ended, after which the  
25 proceedings resumed as follows.)

1 THE COURT: Juror Number 147 is going to remain with us  
2 at this time. May the record reflect no one else has come  
3 forward in response to my last question other than Juror 147.

4 Next is Indictment 2013 at 79, the State versus James  
5 Gardner, indictment for attempted murder. It alleges that it  
6 occurred in Hampton County, South Carolina, on or about  
7 January 26<sup>th</sup>, 2013. It alleges the defendant, James Gardner,  
8 with the intent to kill did attempt to kill the victim, Mary  
9 Etta Montouth, M-o-n-t-o-u-t-h, and it's M-a-r-y, E-t-t-a is  
10 the middle name, with malice aforethought either express or  
11 implied. It is alleged the defendant did shoot at the victim  
12 with a firearm.

13 Has any member of my jury panel heard about, read about  
14 or know anything whatsoever about the facts which are alleged  
15 in that indictment? If so, please stand at this time.

16 (WHEREUPON, no one stood.)

17 THE COURT: Now, I realize Juror 147, Ms. Smith, you've  
18 already told me about what you heard. Is that correct?

19 JUROR NUMBER 147: Yes, sir.

20 THE COURT: Does it apply to this indictment too?

21 JUROR NUMBER 147: Yes, sir.

22 THE COURT: Or you don't know which one it applies to?  
23 Ms. Smith, stand up for me, please. Does it apply to this  
24 indictment too?

25 JUROR NUMBER 147: Yes, sir.

1 THE COURT: All right. And the same question I asked  
2 you. Can you put aside anything you may have heard and decide  
3 this case, including this indictment, solely upon the evidence  
4 in this case?

5 JUROR NUMBER 147: Yes, sir.

6 THE COURT: Thank you, ma'am. You may be seated. Anyone  
7 else read about, heard about or know anything whatsoever about  
8 the facts which are alleged in this last attempted murder  
9 indictment which involves alleged victim Mary Etta Montouth?  
10 If so, please stand at this time.

11 (WHEREUPON, no one stood.)

12 THE COURT: Let the record reflect no one is standing.  
13 Next, I've been handed Indictment 2013 at 80, indictment for  
14 possession of a weapon during the commission of a violent  
15 crime, State versus James Gardner. It's alleged in this  
16 indictment that this occurred in Hampton County, South  
17 Carolina, on or about January 26<sup>th</sup>, 2013. It is alleged the  
18 defendant did possess a firearm or visibly display what  
19 appeared to be a firearm during the commission of or attempted  
20 commission of a violent crime, the alleged violent crime being  
21 attempted murder.

22 Has any member of my jury panel read about, heard about  
23 or know anything whatsoever about the facts which are alleged  
24 in this indictment for possession of a weapon during the  
25 commission of a violent crime? If so, please stand at this

1 time.

2 (WHEREUPON, no one stood.)

3 THE COURT: Let the record reflect no one is standing.  
4 Finally, I've been handed Indictment 2014 at 374, the State  
5 versus James Gardner, indictment for pointing and presenting a  
6 firearm at a person. In this indictment, it is alleged that  
7 it occurred in Hampton County on or about January 26<sup>th</sup>, 2013.  
8 It is alleged -- there are four counts of this indictment.

9 It is alleged that the defendant, James Gardner, did  
10 point or present a firearm at Major Bobby Anderson on that  
11 date, January 26<sup>th</sup>, 2013, and that he pointed or presented a  
12 firearm at Lieutenant Dorothy "Dot" Washington on that date,  
13 that he pointed or presented a firearm at Luis Hernandez on  
14 that date, and that he pointed or presented a firearm at  
15 Sergeant Abner H. Rosier, R-o-s-i-e-r, on that date.

16 So it's four counts of the same offense, pointing and  
17 presenting a firearm at a person. There are four different  
18 allegations as to the person.

19 Is there any member of my jury panel which has read  
20 about, heard about or know anything whatsoever about the facts  
21 which are alleged in that indictment? If so, please stand at  
22 this time.

23 (WHEREUPON, no one stood.)

24 THE COURT: Let the record reflect no one is standing.  
25 All right. Ladies and gentlemen, I'm advised that the

1 potential witnesses in the trial of this case will be as  
2 follows. If they are present in the courtroom, when I call  
3 your name, please stand and face my jury panel so they can see  
4 a face with the name. I will give you a hometown with the  
5 person's name or at least where they may be employed to help  
6 you, ladies and gentlemen.

7 I've got about 25 names to call out, and then I'm going  
8 to ask you about your relationship by blood, marriage or  
9 friendship to any of these people. So please listen  
10 carefully.

11 Tyrone Smith, Chief of Police, Varnville Police  
12 Department. Turn around so they can see you, Tyrone. This is  
13 Chief of Police of Varnville Police Department. Thank you.  
14 Please be seated.

15 Bobby Anderson, Varnville Police Department. Thank you.  
16 You may be seated.

17 Marion Chambers, Varnville Police Department. Is he  
18 here?

19 CHIEF SMITH: No, sir.

20 MS. LEGETTE: No, sir.

21 THE COURT: Officer Michael Smith, Varnville Police  
22 Department. Sergeant Abner Rosier, Hampton Police Department.  
23 Luis Hernandez, formerly of the Hampton Police Department, now  
24 Tampa, Florida. Thank you, Mr. Hernandez. You may be seated.

25 Lieutenant Dorothy "Dot" Washington, Hampton County

1 Sheriff's Office. Thank you. You may be seated.

2 Deputy Will Rivers, Hampton County Sheriff's Office.

3 Thank you. You may be seated.

4 Mariam Walden, Varnville, South Carolina. Standing in  
5 the back to your left, ladies and gentlemen, this is Mariam  
6 Walden, Varnville. Thank you. You may be seated.

7 Mary Etta Montouth, standing in the back, Varnville,  
8 South Carolina, ladies and gentlemen. Thank you. You may be  
9 seated.

10 Aimee Simmons, Hampton County 9-1-1 Dispatch. Patricia  
11 Stephens, Hampton County 9-1-1 Dispatch. Ranata Louise Ford,  
12 Hampton County EMS.

13 Bessie Grimes, Varnville, South Carolina. Leroy Davis,  
14 Hampton, South Carolina. Mae Francis Smith, Varnville, South  
15 Carolina.

16 Captain Anthony Russell, Hampton County Sheriff's Office.  
17 Dr. Edward Warren, Hampton Regional Medical Center. Michelle  
18 Eichenmiller, E-i-c-h-e-n-m-i-l-l-e-r, South Carolina Law  
19 Enforcement Division, SLED. Amy Stephens, South Carolina Law  
20 Enforcement Division, SLED. Steve Bazzle, Fourteenth Judicial  
21 Circuit Solicitor's Office.

22 James Gardner. Mr. Gardner, please stand and face my  
23 jury panel. Varnville, South Carolina. Thank you. Please be  
24 seated. Wendell Johnson, Fairfax, South Carolina. Kendrick  
25 Williams. Is Kendrick Williams in the courtroom? Kendrick

1 Williams? It doesn't appear he is present.

2 Any additional witnesses from the State?

3 MS. LEGETTE: No, Your Honor.

4 THE COURT: Any additional witnesses from the defendant?

5 MR. FLEMING: No, sir.

6 THE COURT: Is any member of my jury panel related by  
7 blood, connected by marriage or a close personal friend of any  
8 of the potential witnesses in the trial of this case whose  
9 names I have just called? If so, please stand at this time.

10 (WHEREUPON, several people stood.)

11 THE COURT: Please remain standing. All right. Sir, I'm  
12 going to start with you. She'll pass the microphone to you.  
13 Begin by giving me your name and juror number, if you know  
14 your number.

15 JUROR NUMBER 4: My name is Daniel Anderson, Juror Number  
16 4.

17 THE COURT: Counsel, this is Juror Number 4, Daniel  
18 Anderson III. Listen to me carefully, Mr. Anderson. I want a  
19 yes or no. Are you related by blood to any of the potential  
20 witnesses? Yes or no?

21 JUROR NUMBER 4: No, sir.

22 THE COURT: Are you connected by marriage to any of the  
23 potential witnesses?

24 JUROR NUMBER 4: Yes, sir.

25 THE COURT: What witnesses by marriage are you connected

1 to and how so?

2 JUROR NUMBER 4: My cousin is married to Chief Smith's  
3 brother.

4 THE COURT: Your -- what cousin?

5 JUROR NUMBER 4: First cousin.

6 THE COURT: Your first cousin is married to Chief Smith's  
7 brother?

8 JUROR NUMBER 4: Yes.

9 THE COURT: All right. Chief Smith's brother is not a  
10 witness in this case, but you're standing because Chief Smith  
11 is a potential witness; is that right?

12 JUROR NUMBER 4: Yes, sir.

13 THE COURT: The fact that your cousin is married to Chief  
14 Smith's brother, would that in any way affect your ability to  
15 give the State of South Carolina or the defendant in this case  
16 a fair and an impartial trial?

17 JUROR NUMBER 4: No, sir.

18 THE COURT: Thank you. Pass the microphone. You may be  
19 seated. Yes, sir? Your name and juror number, please?

20 JUROR NUMBER 40: Dexter Farmer, Juror Number 40.

21 THE COURT: Let me check your number. Counsel, this is  
22 Juror 40, Dexter Farmer. Mr. Farmer, are you -- yes or no.  
23 Are you related by blood to any of the potential witnesses?

24 JUROR NUMBER 40: No, sir.

25 THE COURT: Are you connected by marriage to any of the

1 potential witnesses?

2 JUROR NUMBER 40: No, sir.

3 THE COURT: Are you a close personal friend of any of the  
4 potential witnesses?

5 JUROR NUMBER 40: Yes, sir.

6 THE COURT: What witness?

7 JUROR NUMBER 40: Officer Michael Smith, Varnville Police  
8 Department.

9 THE COURT: So Officer Michael Smith with the Varnville  
10 Police Department is the sole reason you stood because you're  
11 friends with him?

12 JUROR NUMBER 40: That's correct.

13 THE COURT: The fact -- how long have you known Officer  
14 Smith?

15 JUROR NUMBER 40: About four years.

16 THE COURT: How long?

17 JUROR NUMBER 40: Four years.

18 THE COURT: Four years? The fact that you're close  
19 personal friends with Officer Michael Smith, Varnville Police  
20 Department, who is a potential witness in the trial of this  
21 case, would your relationship with Officer Smith in any way  
22 prevent you from giving the State of South Carolina or the  
23 defendant in this case, James Gardner, a fair and an impartial  
24 trial?

25 JUROR NUMBER 40: No, sir.

1 THE COURT: Is that the sole reason you stood?

2 JUROR NUMBER 40: Yes, sir.

3 THE COURT: Thank you, Mr. Farmer. You may be seated.  
4 Pass the microphone to Mr. Padgett. Danny, give it to the  
5 lady in the back. I need your name and juror number, please.

6 JUROR NUMBER 12: Rosella Brown, Juror Number 12.

7 THE COURT: Hold on one second. Counsel, this is Juror  
8 Number 12, Rosella Brown. Ms. Brown, are you connected by  
9 blood to any of the potential witnesses in the trial of this  
10 case? Yes or no?

11 JUROR NUMBER 12: No, sir.

12 THE COURT: Are you connected by marriage to any of the  
13 potential witnesses in the trial of this case?

14 JUROR NUMBER 12: No, sir.

15 THE COURT: Are you a close personal friend of any of the  
16 potential witnesses in the trial of this case?

17 JUROR NUMBER 12: Yes, sir.

18 THE COURT: And who is that?

19 JUROR NUMBER 12: Anthony Russell, sir.

20 THE COURT: Anthony -- Captain Anthony Russell with the  
21 Hampton County Sheriff's Office?

22 JUROR NUMBER 12: Yes, sir. We attend the same church  
23 and we know one another.

24 THE COURT: All right. So you go to the same church and  
25 you know him?

1 JUROR NUMBER 12: Yes, sir.

2 THE COURT: Is that right?

3 JUROR NUMBER 12: Yes, sir.

4 THE COURT: How long have you known him?

5 JUROR NUMBER 12: All of his life.

6 THE COURT: All right. The fact that you attend the same  
7 church and you've known him all his life, would that in any  
8 way affect your ability to give the State of South Carolina or  
9 the defendant in this case, James Gardner, a fair and an  
10 impartial trial?

11 JUROR NUMBER 12: No, sir.

12 THE COURT: It would not?

13 JUROR NUMBER 12: No, sir.

14 THE COURT: Thank you. You may be seated.

15 JUROR NUMBER 12: Thank you.

16 THE COURT: Let the record reflect no one else is  
17 standing in response to my questions concerning all the  
18 potential witnesses in the trial of this case.

19 Has any member of my jury panel formed any opinion about  
20 the facts which are alleged in this case? If so, please stand  
21 at this time.

22 (WHEREUPON, no one stood.)

23 THE COURT: Let the record reflect no one is standing.  
24 Has any member of my jury panel formed any opinion about the  
25 alleged guilt or innocence of the defendant in this case,

1 James Gardner? If so, please stand at this time.

2 (WHEREUPON, no one stood.)

3 THE COURT: Let the record reflect no one is standing in  
4 response to my last two questions. Is any member of my jury  
5 panel or their spouse employed by any law enforcement agency?  
6 If so, please stand at this time.

7 (WHEREUPON, one person stood.)

8 THE COURT: Yes, ma'am? Your -- he's bringing it to  
9 you. I'm going to need your name and your juror number,  
10 please.

11 JUROR NUMBER 129: Kaitlin Rainwater.

12 THE COURT: Hold on one second. Let me get my list.  
13 Somehow -- I don't how I could possibly lose it. There we go.  
14 It's underneath all my papers. Yes, ma'am? Your name?

15 JUROR NUMBER 129: Kaitlin Rainwater, Juror 129, and I  
16 work for FCI Estill.

17 THE COURT: Hold on one second. Let me check your  
18 number. Counsel, this is 129, Ms. Kaitlin Rainwater. Is that  
19 right?

20 JUROR NUMBER 129: Correct.

21 THE COURT: All right. Now, I asked whether you or your  
22 spouse was employed by a law enforcement agency. Are you  
23 employed?

24 JUROR NUMBER 129: I work for FCI Estill.

25 THE COURT: For who?

1 JUROR NUMBER 129: FCI Estill.

2 THE COURT: All right.

3 JUROR NUMBER 129: Federal Correctional Institution in  
4 Estill.

5 THE COURT: The fact that you're employed with a law  
6 enforcement agency, would that in any way affect your ability  
7 to give the defendant in this case or the State in this case a  
8 fair and an impartial trial?

9 JUROR NUMBER 129: No, sir.

10 THE COURT: All right. Now, are you married?

11 JUROR NUMBER 129: Yes, sir.

12 THE COURT: Is your husband employed with a law  
13 enforcement agency?

14 JUROR NUMBER 129: He works for SCDNR, but he has a law  
15 enforcement commission.

16 THE COURT: All right. The fact that your husband is  
17 with DNR, would that in any way affect your ability to give  
18 the State or the defendant in this case a fair and an  
19 impartial trial?

20 JUROR NUMBER 129: No, sir.

21 THE COURT: Thank you very much, Ms. Rainwater. You may  
22 be seated. Anyone else? Let the record reflect no one else  
23 is standing in response to my last question about a juror or a  
24 member -- or their spouse being employed or a member of any  
25 law enforcement agency.

1           Has any member of my jury ever been employed in the past  
2 by a civilian or military law enforcement agency? If so,  
3 please stand at this time.

4           (WHEREUPON, no one stood.)

5           THE COURT: Let the record reflect that no one is  
6 standing. Is any member of my jury panel a member of or a  
7 contributor to any group which has its primary concern the  
8 promotion of law enforcement or victim's rights? These groups  
9 would include but not be limited to MADD, SADD, CAVE or CADRE.  
10 If you are a member of or a contributor to any group which has  
11 as its primary concern the promotion of law enforcement or  
12 victim's rights such as the examples I gave, please stand at  
13 this time.

14           (WHEREUPON, no one stood.)

15           THE COURT: Let the record reflect no one is standing.  
16 Does any member of my jury panel have any business, political,  
17 social or business association with Randolph Murdaugh III or  
18 Alex Murdaugh? If so, please stand at this time.

19           (WHEREUPON, two people stood.)

20           THE COURT: Both of you work in the law firm; is that  
21 correct? Identify -- we'll start, ma'am, with the one on my  
22 far left. Would you -- he's going to pass you the microphone.  
23 Give me your name and number.

24           JUROR NUMBER 77: I'm Kristi Jarrell, Juror Number 77.

25           THE COURT: 77? Counsel, this is Juror Number 77, Kristi

1 Jarrell. Ms. Jarrell, you're standing because of your  
2 employment? You have to say yes or no. You can't shake your  
3 head.

4 JUROR NUMBER 77: Yes, sir.

5 THE COURT: Hold the microphone up.

6 JUROR NUMBER 77: Yes, sir.

7 THE COURT: All right. And where are you employed?

8 JUROR NUMBER 77: At the Murdaugh firm.

9 THE COURT: Do you work for either Randolph Murdaugh or  
10 Alec Murdaugh or you work for the firm?

11 JUROR NUMBER 77: I work for Alec Murdaugh.

12 THE COURT: You work for Alec Murdaugh? All right. Is  
13 that the sole reason you stood or do you have any other  
14 relationship, religious, political, social or business, with  
15 the Murdaughs?

16 JUROR NUMBER 77: No, sir.

17 THE COURT: The fact that you have a relationship with  
18 the Murdaughs through the law firm, would that in any way  
19 prevent you from giving the State or the defendant, John  
20 [verbatim] Gardner, a fair and an impartial trial?

21 JUROR NUMBER 77: No, sir.

22 THE COURT: Pass the microphone and be seated. Yes,  
23 ma'am? Your name and juror number, please.

24 JUROR NUMBER 102: Jessica Mattie, Number 102.

25 THE COURT: Counsel, this is Juror Number 102, and it's

1 listed as Jessica Mattie. Miss Mattie, are you standing  
2 because of your employment?

3 JUROR NUMBER 102: Yes.

4 THE COURT: Where do you work?

5 JUROR NUMBER 102: At the Murdaugh firm.

6 THE COURT: Who do you work for there?

7 JUROR NUMBER 102: I work for Lee Cope.

8 THE COURT: You work for Mr. Cope? Do you have any other  
9 relationship, political, social or business, with Randolph  
10 Murdaugh III or Alex Murdaugh other than the fact that you  
11 work for Lee Cope in the law firm and they're both affiliated  
12 with it?

13 JUROR NUMBER 102: I have helped with files at both of  
14 their offices.

15 THE COURT: I can't -- hold the microphone. I can't hear  
16 you.

17 JUROR NUMBER 102: I'm sorry. I have worked on files at  
18 both of those.

19 THE COURT: But you've done it through your employment?

20 JUROR NUMBER 102: Correct.

21 THE COURT: Do you have any knowledge about this case?

22 JUROR NUMBER 102: No, sir.

23 THE COURT: The fact that you work for the firm and that  
24 you've done work for either Randolph Murdaugh III or Alec  
25 Murdaugh, would that in any way affect your ability to give

1 the State of South Carolina or the defendant in this case a  
2 fair and an impartial trial?

3 JUROR NUMBER 102: No, sir.

4 THE COURT: Thank you. You may be seated. Has any  
5 member of my jury panel ever been the victim of a crime? If  
6 so, please stand at this time.

7 (WHEREUPON, no one stood.)

8 THE COURT: Let the record reflect no one is standing.  
9 Is any member of my jury panel more likely to believe the  
10 testimony of a police officer than any other witness? If so,  
11 please stand at this time.

12 (WHEREUPON, no one stood.)

13 THE COURT: Let the record reflect no one is standing.  
14 Is any member of my jury panel formerly a member of the grand  
15 jury which found the indictments in this case? If so, please  
16 stand at this time.

17 (WHEREUPON, no one stood.)

18 THE COURT: Let the record reflect no one is standing.  
19 Any member of my jury panel related by blood, connected by  
20 marriage to any person who is alleged to be a victim in this  
21 case? That would be Major Bobby Anderson, Mariam Walden, Mary  
22 Etta Montouth, Dorothy "Dot" Washington, Luis Hernandez, Abner  
23 Rosier. If so, please stand at this time.

24 (WHEREUPON, no one stood.)

25 THE COURT: Let the record reflect no one is standing.

1 Does any member of my jury panel know of any reason whatsoever  
2 why they can't give the State of South Carolina or the  
3 defendant in this case, James Gardner, a fair and an impartial  
4 trial? If so, please stand at this time.

5 (WHEREUPON, no one stood.)

6 THE COURT: Let the record reflect no one is standing.  
7 Any additional voir dire from the State?

8 MS. LEGETTE: May we approach, Your Honor?

9 THE COURT: Counsel, approach.

10 (WHEREUPON, a bench conference was held off the record in  
11 the presence of the jury panel but out of the hearing of  
12 the jury panel, after which the proceedings resumed as  
13 follows.)

14 THE COURT: Any additional voir dire from the State of  
15 South Carolina?

16 MS. LEGETTE: No, sir, Your Honor.

17 THE COURT: Any additional voir dire from the defendant?

18 MR. FLEMING: No, sir.

19 THE COURT: Madam Clerk, the State handed me another --  
20 it's an amended indictment. It has -- and both sides agree  
21 that I published sufficient allegations in the indictments.  
22 It's Indictment 2013 at 73, which was amended. It's been  
23 true-billed by the grand jury. So I want you to be aware of  
24 it.

25 Mr. Fleming, you do not wish me to publish any of the

1 terms of the amended indictment on behalf of the defendant to  
2 the jury; is that correct?

3 MR. FLEMING: That is correct.

4 THE COURT: And, Solicitor, you do not wish me to publish  
5 any of the terms of the amended indictment to the jury; is  
6 that correct?

7 MS. LEGETTE: That is correct, Your Honor.

8 THE COURT: All right. It's the same offense, attempted  
9 murder, and it involves the alleged victim, Major Bobby  
10 Anderson, but it is amended by the State with the same  
11 indictment number, and both sides were aware of this prior to  
12 today, but they just handed me the correct indictment.

13 All right. It's my understanding the strikes are five  
14 and five, and we'll be drawing three alternates, one and one  
15 on each alternate. Is that correct from the State?

16 MS. LEGETTE: Yes, Your Honor.

17 THE COURT: Is that correct from the defendant?

18 MR. FLEMING: Yes, sir.

19 THE COURT: Madam Clerk, strikes are five and five, three  
20 alternates, one and one on the alternates. Would you through  
21 your computer select a potential jury to be called out at  
22 random?

23 THE CLERK: Yes, sir.

24 (WHEREUPON, there was a pause in the proceedings, after  
25 which the proceedings resumed as follows.)

1 THE CLERK: Are you ready, Judge?

2 THE COURT: I'm ready.

3 THE CLERK: Do you want them to come forward or stand in  
4 place?

5 THE COURT: I want them to come up here and turn around  
6 and face the courtroom so they can exercise their strikes.

7 THE CLERK: When I call your name, please come forward.  
8 Number 140, Alice Scott.

9 (WHEREUPON, a black female came forward.)

10 THE CLERK: What says the State?

11 MS. LEGETTE: Please present the juror.

12 THE CLERK: What says the defense?

13 MR. FLEMING: Please swear the juror.

14 THE CLERK: Okay. Ms. Scott, you can have a seat in the  
15 jury box.

16 THE COURT: He's going to show you where to sit.

17 THE CLERK: Number 39, Harold Ennis.

18 (WHEREUPON, a black male came forward.)

19 THE CLERK: What says the State?

20 MS. LEGETTE: Please present the juror.

21 THE CLERK: What says the defense?

22 MR. FLEMING: Please swear the juror.

23 THE CLERK: You can have a seat, Mr. Ennis. Number 68,  
24 Edward Hazel.

25 (WHEREUPON, a white male came forward.)

1 THE CLERK: What says the State?

2 MS. LEGETTE: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. FLEMING: Please swear the juror.

5 THE CLERK: Have a seat. Number 67, Johnny Hayes.

6 (WHEREUPON, a black male came forward.)

7 THE CLERK: What says the State?

8 MS. LEGETTE: Please excuse the juror from the trial of  
9 this case.

10 THE CLERK: You can have a seat. Number 169, Annette  
11 Williams.

12 (WHEREUPON, a black female came forward.)

13 THE CLERK: What says the State?

14 MS. LEGETTE: Please present the juror.

15 THE CLERK: What says the defense?

16 MR. FLEMING: Please swear the juror.

17 THE CLERK: Number 57, Earline Granger.

18 (WHEREUPON, a black female came forward.)

19 THE CLERK: What says the State?

20 MS. LEGETTE: Please present the juror.

21 THE CLERK: What says the defense?

22 MR. FLEMING: Please swear the juror.

23 THE CLERK: You can have a seat. Number 16, Londel  
24 Burison.

25 (WHEREUPON, a black male came forward.)

1 THE CLERK: What says the State?

2 MS. LEGETTE: Please excuse the juror from the trial of  
3 this case.

4 THE CLERK: Number 164, Michael Weiss.

5 (WHEREUPON, a white male came forward.)

6 THE CLERK: What says the State?

7 MS. LEGETTE: Please present the juror.

8 THE CLERK: What says the defense?

9 MR. FLEMING: Please excuse this juror.

10 THE CLERK: Number 153, Lillette Speaks.

11 (WHEREUPON, a black female came forward.)

12 THE CLERK: What says the State?

13 MS. LEGETTE: Please present the juror.

14 THE CLERK: What says the defense?

15 MR. FLEMING: Please swear the juror.

16 THE CLERK: Number 8, Debra Bishop-Phillips.

17 (WHEREUPON, a white female came forward.)

18 THE CLERK: What says the State?

19 MS. LEGETTE: Please present the juror.

20 THE CLERK: What says the defense?

21 MR. FLEMING: Please excuse the juror.

22 THE CLERK: Number 108, Brittany Miller.

23 (WHEREUPON, a black female came forward.)

24 THE CLERK: What says the State?

25 MS. LEGETTE: Please present the juror.

1 THE CLERK: What says the defense?  
2 MR. FLEMING: Please swear the juror.  
3 THE CLERK: Number 37, Hesikiah Elliott.  
4 (WHEREUPON, a black male came forward.)  
5 THE CLERK: What says the State?  
6 THE COURT: What say the State?  
7 MS. LEGETTE: Please present the juror.  
8 THE CLERK: What says the defense?  
9 MR. FLEMING: Please swear the juror.  
10 THE CLERK: Number 128, Patricia Pringle.  
11 (WHEREUPON, a black female came forward.)  
12 THE CLERK: What says the State?  
13 MS. LEGETTE: Please present the juror.  
14 THE CLERK: What says the defense?  
15 MR. FLEMING: Please swear the juror.  
16 THE CLERK: Number 91, Tommy King.  
17 (WHEREUPON, a white male came forward.)  
18 THE CLERK: What says the State?  
19 MS. LEGETTE: Please present the juror.  
20 THE CLERK: What says the defense?  
21 MR. FLEMING: Please excuse the juror.  
22 THE CLERK: Number 95, Detra Loadholt.  
23 (WHEREUPON, a white female came forward.)  
24 THE CLERK: What says the State?  
25 MS. LEGETTE: Please present the juror.

1 THE CLERK: What says the defense?  
2 MR. FLEMING: Please excuse the juror.  
3 THE CLERK: Number 175, Marilyn Young.  
4 (WHEREUPON, a black female came forward.)  
5 THE CLERK: What says the State?  
6 MS. LEGETTE: Please present the juror.  
7 THE CLERK: What says the defense?  
8 MR. FLEMING: Please swear -- please swear the juror.  
9 THE CLERK: Number 159, Rhonda Terry.  
10 (WHEREUPON, a white female came forward.)  
11 THE CLERK: What says the State?  
12 MS. LEGETTE: Please present the juror.  
13 THE CLERK: What says the defense?  
14 MR. FLEMING: Please excuse the juror.  
15 THE COURT: Mr. Fleming?  
16 MR. FLEMING: Yes, sir?  
17 THE COURT: That's five.  
18 MR. FLEMING: Yes, sir.  
19 THE CLERK: Number 69, David Heyward.  
20 (WHEREUPON, a black male came forward.)  
21 THE CLERK: What says the State?  
22 MS. LEGETTE: Please present the juror.  
23 THE CLERK: Does the defense have cause for strike?  
24 MR. FLEMING: Please swear the juror.  
25 THE CLERK: Number 130, Joyce Reese.

1 (WHEREUPON, a black female came forward.)  
2 THE CLERK: What says the State?  
3 MS. LEGETTE: Please present the juror.  
4 THE CLERK: Does the defense have cause for strike?  
5 MR. FLEMING: Please swear the juror.  
6 THE CLERK: Alternate one?  
7 THE COURT: Alternate number one.  
8 THE CLERK: Number 156, Hunter Stanley.  
9 (WHEREUPON, a white male came forward.)  
10 THE CLERK: What says the State?  
11 MS. LEGETTE: Please present the juror.  
12 THE CLERK: What says the defense?  
13 MR. FLEMING: Please excuse the juror.  
14 THE CLERK: Number 54, James L. Gordon.  
15 (WHEREUPON, a black male came forward.)  
16 THE CLERK: What says the State?  
17 MS. LEGETTE: Please present the juror.  
18 THE CLERK: Does the defense have cause for strike?  
19 MR. FLEMING: Please swear the juror.  
20 THE COURT: Mr. Gordon, you're my alternate number one.  
21 Thank you. Have a seat in the jury box.  
22 THE CLERK: Number 12, Rosella Brown.  
23 (WHEREUPON, a black female came forward.)  
24 THE CLERK: What says the State?  
25 MS. LEGETTE: Please present the juror.

1 THE CLERK: What says the defense?

2 MR. FLEMING: Please excuse the juror.

3 THE CLERK: Number 4, Daniel Anderson.

4 (WHEREUPON, a black male came forward.)

5 THE CLERK: What says the State?

6 MS. LEGETTE: Please present the juror.

7 THE CLERK: Does the defense --

8 THE COURT: Mr. Anderson, you're my alternate number two.

9 Have a seat in the jury box for me.

10 THE CLERK: Number 25, Tony Daniels.

11 (WHEREUPON, a black male came forward.)

12 THE CLERK: What says the State?

13 MS. LEGETTE: Please present the juror.

14 THE CLERK: What says the defense?

15 MR. FLEMING: Please swear the juror.

16 THE COURT: Mr. Daniels, you're my alternate number

17 three. Are there any matters of law pertaining to the

18 selection of the jury that need to be decided before the jury

19 is sworn from the State of South Carolina?

20 MS. LEGETTE: I beg the Court's indulgence. None, Your

21 Honor.

22 THE COURT: From the defendant?

23 MR. FLEMING: Yes, Your Honor.

24 THE COURT: Counsel, approach.

25 (WHEREUPON, a bench conference was held off the record in

1           the presence of the jury but out of the hearing of the  
2           jury, after which the proceedings resumed as follows.)

3           THE COURT: Once again, Mr. Fleming, I ask are there any  
4 matters of law pertaining to the selection of the jury that  
5 need to be decided before the jury is sworn from the  
6 defendant?

7           MR. FLEMING: No, sir.

8           THE COURT: Very well. None from the State; is that  
9 correct?

10          MS. LEGETTE: That's correct, Your Honor.

11          THE COURT: All right. Ladies and gentlemen that are on  
12 the panel, I want you to do a little work this afternoon. I  
13 know it's ten minutes to five and I'm not going to work you  
14 late. I'm going to get you home. I promised you I'd be  
15 mindful of your time.

16          Now, other than my three alternates -- and you know who  
17 you are. I identified each one of you as you got seated. Mr.  
18 Gordon is alternate number one, Mr. Anderson is alternate  
19 number two and, Mr. Daniels, you're alternate number three.

20          Other than my alternates, any of you are eligible to be  
21 foreperson. I'm going to send you to your jury room. Do not  
22 discuss this case. You have not heard any evidence in this  
23 case; so it would be improper for you to discuss it. I want  
24 you to select the foreperson. Any of the twelve of you can be  
25 foreperson.

1           Let me tell you the duties of a foreperson. The  
2 foreperson presides in the jury room, just like the  
3 chairperson of a committee. It's the foreperson's job to see  
4 that each and every member of the jury has a full and fair  
5 opportunity to voice their opinions in the jury room once  
6 deliberations begin.

7           The foreperson also writes the jury's verdict. And  
8 whatever -- I'll prepare a verdict form with my law clerk for  
9 you, and whatever you write on my verdict form you'll also  
10 write on the indictments. So the foreperson writes the  
11 verdict for the jury.

12          The foreperson also is the spokesperson for the jury out  
13 here in the courtroom, should that need arise during the trial  
14 of the case. Any of the twelve of you can be elected  
15 foreperson. I want you -- when you go to your jury room,  
16 they're going to give you a pad and a piece of paper. I want  
17 you to elect a foreperson. When you've done so, knock on your  
18 jury room door, give the paper to my bailiff, he'll bring it  
19 out, and then I'll bring you back out into the courtroom.

20          While you're in the jury room, other than electing a  
21 foreperson, talk about the weather, talk about sports, but do  
22 not talk about this case. You have not heard any evidence.  
23 And I'll be back with you just as soon as you complete your  
24 work. Please retire with my bailiff to the jury room.

25          Now, my alternates, you're just as important as a member

1 of the jury. You will be with the jury at all times  
2 throughout the trial of the case. If some juror becomes ill  
3 or for some legal reason cannot continue to serve, you will be  
4 with them. You are not eligible to be foreperson, but you  
5 will be with the jury. So you will go with the jury.

6 Danny, if you'll take the jury for me, please. If you'll  
7 go with Mr. Padgett, ladies and gentlemen.

8 (WHEREUPON, the jury exited the courtroom at 4:53 p.m.)

9 THE COURT: All right. Ladies and gentlemen who were not  
10 selected as jurors, I see that smile on your face out there,  
11 ladies and gentlemen. Melinda, do they already have the call-  
12 back number?

13 THE CLERK: No, sir.

14 THE COURT: They have to get it from the bailiff before  
15 they leave?

16 THE CLERK: They have to get it from the security desk  
17 downstairs.

18 THE COURT: From the security desk?

19 THE CLERK: Yes, sir. Where they go out, they have a  
20 security desk.

21 THE COURT: What's the number?

22 THE CLERK: It's 914-2257. I was waiting for her to  
23 confirm it while I was saying it.

24 THE COURT: 914?

25 THE CLERK: 2257.

1           THE COURT: All right. Ladies and gentlemen, the call-  
2 back number here is 914-2257. I don't expect you to remember  
3 that. Downstairs at the security desk, they will give you a  
4 piece of paper with that number on it.

5           I want you to call that number, ladies and gentlemen,  
6 after six o'clock. All right? Tonight. There will be taped  
7 instructions when I might need you. It might tell you to call  
8 back tomorrow night. It might tell you to be back in the  
9 courtroom at ten o'clock in the morning, two o'clock tomorrow  
10 afternoon. I don't know. We're going to be working while  
11 you're gone.

12          But I told you I'd be mindful of your time. If I do ask  
13 you to return, you report to the area of the courtroom you're  
14 seated in now and be on time. If one of you is late, all the  
15 rest of us have to sit and wait until everybody is present.  
16 If anybody needs transportation, you let my deputy back there  
17 know. I'll provide transportation to get you here on time so  
18 everybody doesn't have to wait.

19          Any questions about the call-back? Do not call the  
20 number prior to six o'clock because we'll be working up until  
21 then, and I want you to have up-to-date information. If the  
22 line is busy, there's one message for all jurors. Just keep  
23 calling until you get through. They will give you the number  
24 downstairs at the security desk. Do not leave without getting  
25 the number, and call the number after six o'clock. Are there

1 any questions from any of my jurors about the call-back  
2 procedure?

3 Seeing none, thank you for your patience. You now are  
4 excused for the day. Call the number after six o'clock.

5 (WHEREUPON, the jury panel was released and exited the  
6 courtroom at 4:56 p.m.)

7 THE COURT: All right. Counsel, I've been handed a note.  
8 The jury has chosen Harold Ennis, who is Juror Number 39, as  
9 foreperson of the jury. Any objection to making the jurors'  
10 note a Court's exhibit from the State?

11 MS. LEGETTE: None, Your Honor.

12 THE COURT: From the defendant?

13 MR. FLEMING: No, sir.

14 THE COURT: Hand that to my court reporter and let her  
15 mark it. That will be Court's Exhibit Number 1?

16 THE COURT REPORTER: Two.

17 THE COURT: Court's Exhibit Number 2. I forgot we had  
18 the tape from the Jackson Denno hearing. It will be Court's  
19 Exhibit Number 2 without objection.

20 (WHEREUPON, the jury foreperson note is marked and  
21 admitted as Court's Exhibit Number 2.)

22 THE COURT: All right. Let's bring the jury back and  
23 excuse them, and then I'll hear the motions. Bring us the  
24 jury, please.

25 (WHEREUPON, the jury entered the courtroom at 4:58 p.m.)

1           THE COURT: Mr. Ennis, congratulations on your election  
2 as foreperson of the jury. That will be your seat.

3           THE FOREMAN: Thank you, sir.

4           THE COURT: Thank you.

5           THE FOREMAN: Yes, sir.

6           THE COURT: Please be seated.

7           THE FOREMAN: Yes, sir.

8           THE COURT: Now, ladies and gentlemen, I told you I'd be  
9 mindful of your time. I know it's five o'clock, but I'm going  
10 to work tomorrow. I want everybody here before 9:30 in the  
11 morning. Don't come to the courtroom. Report to your jury  
12 room.

13          THE FOREMAN: All right, sir.

14          THE COURT: Go straight to your jury room. Be here  
15 before 9:30.

16          THE FOREMAN: Yes, sir.

17          THE COURT: I want to start at 9:30; so you need to be  
18 here no later than 9:15 in the morning. I know things can  
19 happen. If anything happens, you call the Clerk's Office. If  
20 you're held up, we need to know. That's why I got alternate  
21 jurors because I can promise you I'm going to put the train on  
22 the track tomorrow and it's going to roll, and the lawyers  
23 know that. So please be here in your jury room by 9:15 so we  
24 can start at 9:30, and we can get some work done tomorrow.

25          Now, I don't know whether there will be anything on the

1 radio, in the newspaper or on television about this case.  
2 Please do not read such, watch such or listen to such. You  
3 must decide this case solely and only on the evidence which is  
4 presented during the trial of this case when both sides are  
5 present with the right of cross-examination.

6 It's improper for you to try to do any kind of research  
7 about the case. So if you've got a smart phone or a computer,  
8 don't try to look up any witness or any person or any lawyer  
9 involved in the case. Even if you think that information  
10 would help you decide the case, it's improper.

11 You must decide this case only and solely on the evidence  
12 that's going to be presented during the trial of the case.  
13 Both sides have absolute right to know exactly what  
14 information you're basing your decision on. So please don't  
15 try to use your smart phone or computer. Don't go to  
16 LinkedIn, MySpace, YouTube. Please don't use Twitter. Please  
17 don't go to any social networking site to try to do any  
18 research about this case. It would be improper for you to do  
19 so.

20 Now, in the morning, we're going to start the trial. I'm  
21 not swearing you tonight. We'll swear you as the jury in the  
22 morning. My alternates are going to be with you at all times  
23 because I don't know when I might need you. So you're going  
24 to be with the jury throughout the trial of the case.

25 In the morning, we'll -- we're going to start at 9:30.

1 If anybody needs transportation, you let Mr. Padgett know  
2 before you leave this courtroom. I'll provide transportation  
3 because if one of you is late, everybody has to sit and wait  
4 when we don't know about a juror; so be on time. And believe  
5 me, I'll be sending law enforcement out if you're not here to  
6 check on you.

7 Now, I know people are curious. Somebody might walk up  
8 to you and say, oh, you're on the jury, what's going on? You  
9 tell them you can't talk about it. First of all, you haven't  
10 heard any evidence, but it's improper for you to discuss it  
11 with anybody. If somebody persists in trying to talk to you  
12 about your jury service, you get their name and you give it to  
13 me, and I promise you that person won't bother you anymore,  
14 ladies and gentlemen, because I'll handle that problem for  
15 you.

16 So please do not discuss this case with anybody, not even  
17 a member of your own family. I ask you to listen to those  
18 instructions carefully and just not discuss the case with  
19 anyone until I ask you to discuss it only in your jury room  
20 with your fellow jurors when I tell you to start your  
21 deliberations in the case, which will be later on in the trial  
22 of this case.

23 Now, I want to thank you for your patience. I know it  
24 took a while to do the roll call and to do jury qualification  
25 and jury selection. I look forward to seeing each and every

1 one of you in your jury room prior to 9:30 in the morning.  
2 You may leave the courtroom at this time, if you'll follow Mr.  
3 Padgett.

4 (WHEREUPON, the jury exited the courtroom at 5:04 p.m.)  
5 (WHEREUPON, Juror Number 57 stopped to speak with the  
6 Court.)

7 THE COURT: Hold on one second. I've got to notify both  
8 sides. Counsel, approach. You stay right here though.  
9 What's your name, ma'am?

10 JUROR NUMBER 57: Earline Granger.

11 THE COURT: And your number?

12 JUROR NUMBER 57: 57.

13 THE COURT: Counsel, this is Juror Number 57, Earline  
14 Granger. Ms. Granger asked me whether she could get off this  
15 jury for religious reasons, and I told her no, she could not.  
16 Obviously, regardless of religion, I asked all those questions  
17 during qualification.

18 (WHEREUPON, a bench conference was held off the record,  
19 after which the proceedings continued as follows.)

20 THE COURT: Ms. Granger, do you think you can follow the  
21 evidence in this case and decide this case based on the  
22 evidence?

23 JUROR NUMBER 57: No.

24 THE COURT: You do not? Why didn't you tell me that when  
25 I was asking the questions?

1 JUROR NUMBER 57: I didn't understand certain things,  
2 sir.

3 THE COURT: Well, I'm not going to excuse you from jury  
4 service. So you be back here in the morning with the rest of  
5 the jury and I'll deal with that first thing in the morning.

6 JUROR NUMBER 57: Yes, sir. Thank you. Have a good  
7 night.

8 (WHEREUPON, the juror exited the courtroom.)

9 (WHEREUPON, a bench conference was held off the record,  
10 after which the proceedings continued as follows.)

11 THE COURT: All right. Both the State and the defendant  
12 have motions they wish me to hear prior to swearing the jury,  
13 and I'll make a record that both agree -- I have a juror as  
14 they were leaving say for religious reasons she didn't want to  
15 serve on the jury. That's Juror Number 57. And both sides  
16 agree to use alternate number 1 in the morning, but I'm going  
17 to require the juror to stay here. Is that correct from the  
18 State?

19 MS. LEGETTE: That's correct, Your Honor.

20 THE COURT: Is that correct from the defendant?

21 MR. FLEMING: Yes, sir.

22 THE COURT: All right. The defendant has a motion to  
23 change venue. The State has a motion to prohibit the  
24 dissemination of material. Who wants to be heard first? All  
25 right. Mr. Fleming, your motion to change venue.

1           Let me say before you begin -- Mr. Fleming earlier in  
2 this trial asked for a Jackson Denno hearing for his client,  
3 Mr. Gardner, on the issue of voluntariness. Mr. Fleming was  
4 certainly entitled on behalf of his client to have the Court  
5 conduct an in-camera evidentiary hearing to determine the  
6 voluntariness of any statement by a preponderance of the  
7 evidence.

8           I didn't say this at the time because I felt that Mr.  
9 Fleming, as well as Ms. Legette, were aware from my pre-trial  
10 conferences, but in making the determination of voluntariness,  
11 the judge should examine, as I said during the hearing, the  
12 totality of the circumstances surrounding the utterance to  
13 determine whether the State has met its burden of proof so as  
14 to warrant admission of the confession or statement, although  
15 the jury makes the final determination as to whether a  
16 statement was made and if it was voluntary.

17           As I understand it, Mr. Fleming said there was no  
18 contention that Miranda was not followed and that he based his  
19 argument on the fact that the confession was not voluntary  
20 because, as he asked questions, he believed the defendant was  
21 intoxicated. I wanted to point out that I did research on the  
22 issue just to confirm what I thought.

23           One is Mr. Fleming is aware of the Saxon case, which is  
24 found at 261 S.C. 523, which is a 1973 case which says proof  
25 of intoxication short of rendering the accused unconscious --

1 what he's saying goes to the weight and credibility to be  
2 accorded, but does not require that the confession be excluded  
3 from evidence.

4 There's also an excellent article about this in the  
5 American Jurisprudence. You'll find it at 29 AmJur 2d under  
6 Evidence, Section 5-77.

7 There is also a case entitled State versus White, and  
8 State versus White is found at 311 S.C. 289. It's a 1993  
9 case. It states that proof of intoxication does not render a  
10 statement inadmissible as a matter of law. The fact that even  
11 if a defendant is under prescribed medication -- and in that  
12 case was strapped to his bed -- that it is only a circumstance  
13 that the trial court was to consider in determining  
14 voluntariness.

15 Obviously, the Court needed to hear evidence on the level  
16 of intoxication, which I did, but I wanted to point that out  
17 because that had been researched thoroughly in making my  
18 decision, and I wanted to point it out.

19 All right. Mr. Fleming, let me hold -- let me get your  
20 motion out. Now, your motion to change venue, I'm happy to  
21 hear from you.

22 MR. FLEMING: Thank you, Your Honor. Notwithstanding the  
23 -- the jury selection process that we just participated in, my  
24 client is adamant that he is unable to receive a fair trial in  
25 Hampton County. He has authorized me to provide the following

1 information to the Court on his behalf in support of his  
2 motion.

3 Mr. Gardner indicates that he used to work for Alec and  
4 Randolph Murdaugh III, who, was the Court knows, are both  
5 assistant solicitors. He worked for them in a capacity -- a  
6 private capacity as a handyman, gardener, that type of stuff.

7 During that -- during that, he indicates -- he has  
8 authorized me to tell the Court he believes that a gentleman  
9 by the name of Adonis -- what's his last name?

10 THE DEFENDANT: Coker.

11 MR. FLEMING: Coker? Adonis Coker is also very good  
12 friends or acquaintances with both of the Murdaugh gentlemen.  
13 He feels because of the deep and long-lasting relationship  
14 that both of these Murdaugh gentlemen have with the community  
15 at large in Hampton, along with their life-long association  
16 with law enforcement, that in some way -- in some way that  
17 will affect his right to a fair and impartial jury.

18 I have certainly done the research with regards to this.  
19 It appears to me that the Supreme Court has advised litigants  
20 and lawyers and judges that the best process is to ask the  
21 jury in voir dire, which we did, and there were certainly some  
22 people associated, but I am unaware of any of those people  
23 sitting on this jury panel. However, I have -- for purposes  
24 of the record, we had filed this motion prior to jury  
25 selection.

1 I am arguing this on behalf of my client, and that is his  
2 belief that there is no way that he can get a fair and  
3 impartial jury. I do not have any other witnesses to proffer  
4 for the proposition that he cannot get a fair and impartial  
5 jury. If you give me a moment, I will ask my client if he  
6 wishes to testify on this matter.

7 (WHEREUPON, there is a pause in the proceedings.)

8 MR. FLEMING: My client indicates he does not wish to  
9 testify. However, he has now at this moment implicated also  
10 that a grounds for his motion is that law enforcement is in  
11 some way related to the victims. I -- I don't know what -- I  
12 don't really know what that means. I mean I know what that  
13 means, but I don't know how that affects the empanelling of  
14 the jury.

15 THE COURT: Very well. Solicitor, let me hear from you  
16 on this motion.

17 MS. LEGETTE: Thank you, Your Honor. Your Honor, the  
18 State would respectfully object to the motion for the change  
19 of venue. Your Honor, I believe the better practice, as  
20 indicated by Mr. Fleming himself, is to simply ask the jury  
21 under State v. Manning. Additionally, Your Honor, State  
22 versus Avery.

23 These cases indicate that the better practice is to  
24 inquire of the jury as to whether or not there has been pre-  
25 trial publicity and whether or not the persons who indicated

1 they knew about the case or had heard or read about the case  
2 could, in fact, be fair and impartial. The one juror who  
3 indicated that she had heard something about it, you did  
4 inquire of her off the record, Your Honor, and she indicated  
5 that she could be fair and impartial despite having heard  
6 about what the allegations in this matter were.

7 Your Honor, in addition to that particular individual,  
8 several questions during voir dire that Mr. Fleming passed to  
9 the Court were asked of the jury whether or not people were  
10 familiar with or had close personal ties to the Murdaugh firm  
11 or to Mr. Alec Murdaugh or to Mr. Randolph Murdaugh and, Your  
12 Honor, I do believe at that point no one stood.

13 And so at this point, Your Honor, the State would  
14 respectfully ask the Court to deny the motion for change of  
15 venue. We believe the jury as has been seated, Your Honor, is  
16 a fair and impartial jury, and that Mr. Gardner can get a fair  
17 and impartial trial here without a change of venue. These  
18 jurors have all indicated by their silence that they have not  
19 heard, read or know anything about this case or -- nor are  
20 they close personal friends with Mr. Murdaugh or Mr. Murdaugh.  
21 Thank you.

22 THE COURT: Mr. Fleming, as you know, change of venue in  
23 criminal cases is governed by Code Section 17-21-80, which  
24 states that the circuit court has power to change venue in a  
25 pending criminal case. The statute requires an affidavit from

1 the moving party as to why a fair and impartial trial -- and  
2 we certainly gave your client an opportunity to testify during  
3 this hearing -- cannot be had.

4 The mere allegation is that he believes that he can't get  
5 a fair and impartial trial in Hampton County where the  
6 prosecution was commenced, but there is no affidavit or sworn  
7 testimony supporting the motion. Every case for change of  
8 venue in a criminal case involves some type of alleged  
9 prejudicial, usually pre-trial publicity or relationship.

10 Here, I hear from you that he argues that the  
11 relationship between Mr. Alec Murdaugh and his father and the  
12 fact that your client was employed by them. There is no  
13 evidence before this Court that either one of them are  
14 involved in the prosecution of this case, and I haven't heard  
15 any. Even if there is a relationship between Murdaugh and --  
16 I'm very aware that there are members of law enforcement who  
17 are alleged to be victims.

18 I asked the jury about that -- victims of offenses for  
19 which the defendant is charged. That in and of itself is not  
20 a sufficient basis to change venue because law enforcement has  
21 the same rights as any other victim if they are the victim of  
22 a crime.

23 So there's been no showing that the Murdaugh family has  
24 influenced any potential jurors or in any way was involved in  
25 the prosecution of this case or the fact that law enforcement

1 are victims would be in and of itself insufficient reason for  
2 the Court to be convinced that the defendant could not get a  
3 fair and impartial trial. Therefore, your motion to change  
4 venue at this stage is respectfully denied.

5 Solicitor, I understand that you now have a motion. I'll  
6 be happy to hear it.

7 MS. LEGETTE: Thank you, Your Honor. Your Honor, the  
8 State is at this point seeking to protect personal health  
9 records of Ms. Mariam Walden.

10 Your Honor, basically, Ms. Mariam Walden is the victim in  
11 this matter, and she did receive medical treatment. And based  
12 on her having received that medical treatment, there were  
13 medical records generated, including x-rays, including a  
14 medical record file from EMS, as well as from the Hampton  
15 Regional Medical Center, as well as from the Medical  
16 University of South Carolina.

17 We would ask the Court respectfully to simply prohibit  
18 Mr. Fleming from disseminating any of that material to his  
19 client at the -- at the case's resolution, Your Honor. So --

20 THE COURT: You've provided the information to him with  
21 the understanding that it be used to protect the interest of  
22 his client, but you want it returned and not disseminated when  
23 the case is concluded?

24 MS. LEGETTE: Yes, Your Honor.

25 THE COURT: Is that correct, Mr. Fleming? You have it?

1           MR. FLEMING: I -- Your Honor, when the information was  
2 provided to me well within the time necessary to prepare, the  
3 solicitor made it known of her intentions to file this motion.  
4 As a result and as an officer of the court, I indicated I  
5 would not share that information with my client until such  
6 time as the Court either agreed that we could or not. I have  
7 not shared it.

8           THE COURT: Is there any dispute about the injury to this  
9 victim from the defendant? Not whether defendant committed  
10 the offense obviously, but whether or not the victim actually  
11 sustained an injury requiring medical treatment?

12           MR. FLEMING: I don't believe there is. I have spoken  
13 with my client about the consenting to this motion, and he has  
14 agreed. He said he doesn't need this information.

15           THE COURT: I see. In that case then -- thank you, Mr.  
16 Fleming.

17           MR. FLEMING: Yes, sir.

18           THE COURT: The motion is granted. I see no reason to  
19 disseminate information. You know, the Victim's Bill of  
20 Rights states that a victim has the right to be reasonably  
21 protected from the accused or from any person acting through  
22 the judicial process.

23           So based on the Victim's Bill of Rights, which is found  
24 in the South Carolina Constitution, it's Article I, Section  
25 24, Section (a)(6), I believe the victim's personal

1 information, unless relevant to the defense of the victim,  
2 should not be disclosed to the defendant.

3 Although, Mr. Fleming, we certainly will provide it to  
4 you for your use if you feel you need it to protect the  
5 interest of your client during the trial of the case, but  
6 otherwise it will not be disseminated for further use. So the  
7 motion is granted.

8 Any further motions from the State?

9 MS. LEGETTE: None, Your Honor.

10 THE COURT: From the defendant?

11 MR. FLEMING: No, sir.

12 MS. LEGETTE: Sequestration --

13 THE COURT: All right, counsel.

14 MR. FLEMING: We disagreed.

15 THE COURT: Hold on. Don't start talking to one another  
16 when I'm trying to talk with you. Okay?

17 MS. LEGETTE: Yes, Your Honor.

18 THE COURT: Just common courtesy.

19 MS. LEGETTE: Yes, sir.

20 THE COURT: I'm going to expect you to be here prior to  
21 9:30 in the morning. I'm going to expect you to have any  
22 requests to charge in this case submitted to my law clerk no  
23 later than twelve noon tomorrow, if you have any requests.

24 I realize we haven't taken up evidence and, if something  
25 comes up that you haven't anticipated, I'll take that request

1 later. However, if you have any requests, I want them  
2 submitted to my law clerk because we'll be working on it  
3 overnight tomorrow night, and I would prefer you get it to me  
4 by lunchtime so we can work tomorrow night in my office on  
5 that.

6 I'll expect you to be ready to start no later than 9:30  
7 in the morning, and please be here prior to 9:30 so we can  
8 begin on time. This Court stands adjourned until 9:30 a.m.  
9 tomorrow morning.

10 (WHEREUPON, the proceedings adjourned for the day at 5:22  
11 p.m.)

12 FEBRUARY 3, 2015

13 (WHEREUPON, the proceedings resumed at 9:31 a.m.)

14 THE COURT: All right. First of all, I want to welcome  
15 my students from the 9<sup>th</sup> through the 12<sup>th</sup> grades with the JAG  
16 program at Wade Hampton High School. Ms. Sanders, where are  
17 you? Welcome to you. Pleasure to have you and your students.

18 I also want to welcome the North District Middle School  
19 students, 7<sup>th</sup> and 8<sup>th</sup> grade with Ms. Connell. Ms. Connell,  
20 where are you? Welcome to you. Pleasure to have you.

21 Now, we're in General Sessions court and obviously I want  
22 y'all to understand we treat this like church. That means you  
23 act accordingly, respectfully.

24 Now, this is a very important day. We're starting a  
25 trial, the State of South Carolina versus James Gardner, and

1 the parties are present. So I'll expect you to act  
2 accordingly. We don't allow talking in the courtroom. We  
3 want you to come and observe and be able to listen, but we  
4 expect you to keep quiet so the court reporter, who will be  
5 taking down everything that's said, can do her job.

6 What I have this morning is the State is represented by  
7 Tameaka Legette, this young lady seated right here. She's  
8 standing up for you. She represents the State of South  
9 Carolina. The defendant is represented by Mr. Cory Fleming.  
10 Cory, stand up so they can see you.

11 MR. FLEMING: Good morning.

12 THE COURT: He's the defense attorney. The other people  
13 at the table are law enforcement officers or investigators for  
14 the State. The defendant is seated by his attorney, Mr.  
15 Fleming, Mr. Gardner.

16 We're getting ready -- we've already selected a jury and  
17 heard pre-trial motions, and we're getting ready to start this  
18 case. In just a few moments, you'll be listening to opening  
19 statements by the attorneys. Thank you for coming. Thank you  
20 for listening, and I expect you to act accordingly.

21 I understand that you might have to leave. Please do so  
22 quietly if we're in the middle of trial. The court reporter  
23 has to take down every word that's said. We only allow one  
24 person to talk at a time in the courtroom. And if the court  
25 reporter can't hear because people are moving around and

1 talking, the court reporter can't do her job. So please be  
2 respectful of that while you're here.

3 Welcome to each and every one of you. If I have time,  
4 I'll try to answer some questions for you, but today is a very  
5 busy day. We've got a number of witnesses to get up today in  
6 order to try to complete our work this week. So I may not  
7 have time to do that, but we hope your observation of our  
8 trial will be an excellent learning experience for you.

9 My name is Perry Buckner. I'm a circuit court judge.  
10 There are two of us that reside in our circuit. I live over  
11 in Colleton County. I hold court all over the state. I've  
12 been a judge for the past 15 years. I practiced law for 25  
13 years before I got elected to the bench. I graduated from  
14 Walterboro High School and Wofford College and the University  
15 of South Carolina Law School.

16 And I hope that you'll have a chance to see our  
17 government and our democracy in action this morning. So  
18 welcome to each and every one of you.

19 Is the State ready to proceed?

20 MS. LEGETTE: Yes, Your Honor.

21 THE COURT: Is the defendant ready to proceed?

22 MR. FLEMING: Yes, sir.

23 THE COURT: Very well. Bring us the jury, please.

24 Counsel, I'm going to put on the record you both agreed to  
25 excuse the juror and use the first alternate. Is that correct

1 from the State?

2 MS. LEGETTE: That's correct, Your Honor.

3 THE COURT: Correct from the defendant, Mr. Fleming?

4 MR. FLEMING: Yes, Your Honor.

5 (WHEREUPON, the jury entered the courtroom at 9:34 a.m.)

6 THE COURT: Ms. Granger, I'm excusing you from service on  
7 this jury, but I am not excusing you from jury service.

8 You'll be with me while court is in session this week. Have a  
9 seat in the courtroom with me.

10 JUROR NUMBER 57: Thank you.

11 THE COURT: Mr. Gordon, are you ready? Mr. Gordon,  
12 you're my first alternate. I've excused Ms. Granger. The  
13 parties have agreed to that. So I'm going to ask you to come  
14 down and sit by my foreperson. You're now on the jury. I  
15 told you that if something happened that we would be using  
16 alternates; so you're now on the jury.

17 All right. Madam Clerk, would you please swear the jury?

18 THE CLERK: Yes, sir. Would you stand and raise your  
19 right hand, please?

20 (WHEREUPON, the jury complied.)

21 THE CLERK: Do you solemnly swear or affirm that you  
22 shall well and truly try and a true deliverance make between  
23 the State of South Carolina and the accused at the bar, and a  
24 true verdict give according to the evidence, so help you God?

25 THE JURY: I do.

1 THE CLERK: You can have a seat.

2 (WHEREUPON, the jury complied.)

3 THE COURT: All right. I previously appointed Mr. Ennis  
4 as your -- excuse all that static -- foreperson of the jury.  
5 Let me go over a couple of things with you, ladies and  
6 gentlemen, so you'll have a better understanding of what may  
7 be happening from time to time.

8 First of all, while you are on the jury -- you've been  
9 sworn now -- I'm going to ask you not to discuss the case with  
10 anyone, including your other jurors, until I authorize you.  
11 And there will come a time when I will tell you you can  
12 discuss it, but not until you've heard all the evidence in the  
13 case.

14 I'm going to ask you not to read or listen to or watch  
15 any news reports about the case. As I told you last night,  
16 you must decide this case based on the evidence presented, and  
17 both sides have the absolute right to know exactly what  
18 information you're deciding the case on, and that's the  
19 evidence.

20 I'm going to ask you not to use a computer or a cellular  
21 phone or any other electronic device with communication  
22 capability while in attendance here as a juror or during your  
23 deliberations. I'm going to ask you please not to try to use  
24 any electronic device with communication capability to obtain  
25 or disclose information about the case, and that includes any

1 information about a witness or a party or an attorney or a  
2 court officer or news account of the case or any information  
3 collected through any type of juror research on any topic that  
4 is offered or testimony offered by a witness.

5 Even though you might think that it would help you decide  
6 the case, any information you try to collect through any juror  
7 research is prohibited. So please do not try to do that.  
8 Don't go to your smart phone. Don't go to your computer and  
9 try to check on something that you think the parties failed to  
10 do or that the Court failed to tell you.

11 You may not communicate with anyone about this case on  
12 your cell phone or through email, Blackberry, iPhone, text  
13 messaging or Twitter, through any blog or website, through any  
14 Internet chat room or by way of any other social networking  
15 website, which includes Facebook, MySpace, LinkedIn or  
16 YouTube.

17 All of that is prohibited while you're on a jury. We  
18 have strict rules about that. Thank you very much for  
19 complying with that.

20 Now, before we begin this trial, I want to tell you that  
21 this trial -- and I've got a lot of young people here from the  
22 high school and middle school, and this will be true for them  
23 too. This trial probably will be different from what you on  
24 the jury or from what they might expect. You know, most  
25 people do not have the chance to attend an actual court

1 session as each of you on the jury are doing and my young  
2 people are this morning, and many people think from watching  
3 television or going to a movie or reading in a book that  
4 trials are always full of high drama and intense action and  
5 riveting and entertaining circumstances.

6       While all of those things may be true at times, an actual  
7 trial, unlike a television show, a movie or even a book, is  
8 not for entertainment. An actual trial, ladies and gentlemen,  
9 is a fundamental part of our democracy. It is a search for  
10 the truth in an effort to make sure that justice is done  
11 between the parties before the court.

12       Searching for the truth and trying to make sure that  
13 justice is done is often slow. It is often repetitive. It is  
14 often deliberate. It is the exact opposite of what you  
15 probably have seen on television or read in a book or seen in  
16 a movie, which is designed to entertain you.

17       This courtroom, ladies and gentlemen, is a place of  
18 honor. It is dedicated to the protection and the preservation  
19 of citizens' rights through what many people have called the  
20 greatest justice system in the world.

21       The attorneys that are going to appear before you are  
22 advocates for the parties they represent, the State of South  
23 Carolina and the defendant, James Gardner. However, first and  
24 foremost, the attorneys are officers of this court and, as  
25 officers of this court, they took an oath and in that oath

1 each of the attorneys, along with myself, swore to uphold the  
2 integrity, they swore to uphold the fairness of our judicial  
3 system.

4         So the attorneys are here to help you in the search for  
5 the truth. You should expect the attorneys to be  
6 professional, you should expect them to be competent, and you  
7 should expect them to be ethical in the representation of  
8 their client's interest.

9         Now, I want to remind each of you on the jury that you  
10 have now taken an oath, just like the attorneys and I did.  
11 And in that oath, you said you would try this case and you  
12 would reach a fair and a just verdict. So you also as members  
13 of the jury are expected to be professional, to be reasonable,  
14 and to be ethical in the discharge of your duty as jurors.

15         Before we even start the trial, ladies and gentlemen, I  
16 want to thank you for accepting this important responsibility  
17 of jury service. I want to thank you, ladies and gentlemen.  
18 By serving on the jury, I want to thank you for your  
19 contribution to our justice system. Without you, ladies and  
20 gentlemen of the jury, justice cannot be accomplished in a  
21 courtroom, and I thank you for that service.

22         All right, ladies and gentlemen and Mr. Foreman, the case  
23 we're about to try is the case of the State of South Carolina  
24 versus James Gardner. Mr. Gardner, as I told you yesterday  
25 when I asked you questions about your impartiality to serve as

1 a juror on this case, is charged by these pieces of paper  
2 which I hold in my hand which are called indictments. The  
3 indictments are filed with this court.

4 Mr. Gardner is charged with: the offense of attempted  
5 murder, three counts; possession of a weapon during the  
6 commission of a violent crime, the violent crime being alleged  
7 to be attempted murder; and pointing and presenting a firearm,  
8 and there are four counts in that indictment with different  
9 individuals in there that I went over with you yesterday.

10 Now, first of all, as I told you, don't worry about the  
11 elements of the crimes. I will explain that to you in my  
12 charge to you on the law at the conclusion of the case. I  
13 haven't heard any evidence in this case, just as you haven't.  
14 I don't know anything about the evidence in this case other  
15 than the motions that I may have heard before the trial began,  
16 but I know nothing about the sworn testimony, just as you  
17 don't.

18 That's so I'll have an open mind and you will have an  
19 open mind. So I'll explain the elements of the offenses of  
20 attempted murder, pointing and presenting a firearm, and  
21 possession of a weapon during the commission of a violent  
22 crime in my charge to you on the law at the conclusion of the  
23 case.

24 You should understand now that the indictments, even  
25 though they have filed them in this trial, they're simply the

1 charges by which the case is brought into this court. And the  
2 indictments are not in any sense evidence of any of the  
3 allegations contained in the indictments, which I read to you  
4 yesterday in order to determine your impartiality to serve as a  
5 juror.

6 Now, the defendant has pled not guilty to each of these  
7 indictments. The State of South Carolina, therefore, has the  
8 burden of proving each of the elements of the offenses of the  
9 indictments beyond a reasonable doubt.

10 And it will be your duty, ladies and gentlemen, to decide  
11 whether or not the State has met that burden. It is your  
12 solemn responsibility as a juror to determine the guilt or the  
13 innocence of the defendant, but your verdict must be based  
14 solely and only on the evidence as it is presented to you in  
15 this trial and on the law as I instruct it to you to be during  
16 this trial and in my charge to you on the law at the  
17 conclusion of the trial.

18 Now, in just a minute, the assistant solicitor will make  
19 what is called an opening statement in which she will explain  
20 to you the issues in this case or at least what she contends  
21 to be the issues in this case. And following that, the  
22 attorney for the defendant will make an opening statement.

23 Now, I want you to listen to the attorneys. I talked  
24 about to you the oath they took and the oath you took, but the  
25 attorneys are advocates for the parties they represent, the

1 State and the defendant, and what the attorneys tell you in  
2 opening statement, what the attorneys argue to you in their  
3 closing argument, what the attorneys suggest to you by  
4 questions they ask is not evidence in this case. The  
5 attorneys aren't sworn witnesses. They are advocates for  
6 their respective clients.

7       So when they stand up to tell you what their opinion of  
8 the issues in the case are, it's only their contention as to  
9 what the issues are or what you should focus on because  
10 they're being an advocate for their client. And although I  
11 want you to listen to the attorneys, I remind you that you  
12 must base your decision solely and only on the evidence which  
13 is presented during the trial of this case.

14       Now, what is evidence? The evidence in this case will be  
15 presented by -- you notice this on the side of the courtroom  
16 in closest proximity to you -- sworn witnesses from this  
17 witness stand, who will take this witness stand and take an  
18 oath.

19       Evidence may also take the form of an exhibit. That  
20 might be a photograph or a model, and you will hear me say as  
21 to any exhibit -- because the attorneys know they can't show  
22 it to you until I rule as a matter of law whether or not it's  
23 admissible into evidence. So you will hear me say Exhibit  
24 Number 1 is in evidence, and that means it's available to you  
25 to consider as to the exhibit, such as a photograph or a model

1 or something like that.

2       So evidence can be sworn testimony. It can be exhibits.  
3 Evidence may also take the form of a stipulation, an agreement  
4 between the lawyers on behalf of their parties that a fact is  
5 true. That is what evidence is, ladies and gentlemen. Sworn  
6 testimony, exhibits, and possibly a stipulation or an  
7 agreement.

8       Now, in the consideration of this evidence by you, the  
9 jury, you should remember that under the Constitution of the  
10 State of South Carolina you and you twelve jurors alone --  
11 I've already used my first alternate. Happy to have you now,  
12 Mr. Gordon. You are the sole judges, ladies and gentlemen, of  
13 the facts in this case based on the evidence that's going to  
14 be presented during the trial of this case.

15       And the same law that makes you, the jury, the sole  
16 judges of the facts makes me, the presiding judge, the sole  
17 judge of the law. I cannot invade your province. I cannot  
18 tell you what the facts are or make any comment to you about  
19 the facts in this case, and you should not invade my province  
20 and differ with me about what the law is.

21       Everything that I say during the course of this trial is  
22 taken down by my court reporter right here and, if I make a  
23 mistake as to the law to the detriment of either party, they  
24 can appeal the case to an appellate court. And if the  
25 appellate court agrees that I've made a mistake on the law,

1 they'll reverse the case and send it back for a new trial. So  
2 don't you on the jury worry about whether or not I've told you  
3 the law correctly or not. That is somebody else's worry.  
4 That is not your concern.

5 Your job as a juror is to take the law as I give it to  
6 you and apply it to the facts based on the evidence that you  
7 find them to be, and that means testimony from the witness  
8 stand, any exhibits that may be introduced into evidence by  
9 either party or any stipulation that may occur during the  
10 trial of the case. And after doing that, you will then as a  
11 jury render your verdict, a true, a just verdict under that  
12 solemn oath which each of you just took from the Clerk of  
13 Court of Hampton County.

14 Now, from time to time during the trial of this case,  
15 you're going to probably hear one of the lawyers say something  
16 like, Your Honor, I believe we have a question of law, or,  
17 Your Honor, we have a matter we want to discuss with you, or  
18 you might see me say, counsel, approach the bench. You're  
19 going to see me take up something at sidebar, and you're going  
20 to hear us talking real quiet and you're going to think what  
21 are they doing over there?

22 Well, let me explain it to you right now so you'll know.  
23 We're not trying to hide anything from you. I might even ask  
24 you to step to your jury room and excuse you from the  
25 courtroom while I take up a matter of law. The reason for

1 this is just what I told you. You're the sole judges of the  
2 facts. I'm the sole judge of the law, and sometimes when I'm  
3 discussing a matter of law with the attorneys, by necessity I  
4 have to make a comment to them about the facts in the case in  
5 order to make a ruling on whether or not a particular piece of  
6 law applies to this case.

7 Now, I can't make any comment about the facts in your  
8 presence. So the custom in this state is when such  
9 discussions take place, they take place out of your earshot.  
10 I'll try not to send you to the jury room because it takes  
11 longer, but if I have to, I will in order to make sure that  
12 you will not be influenced by anything that I might say or do  
13 in ruling on whether or not a particular piece of law applies  
14 to this case.

15 Because as I told you and I'm going to tell you again  
16 that you, ladies and gentlemen, the jury, you alone are the  
17 sole judges of the facts in this matter. And if you should  
18 gather from anything that I might say or do during the course  
19 of this trial that I have any opinion as to the facts in this  
20 case, please erase that from your mind because, as I've said,  
21 you and you alone are the sole judges of the facts.

22 Now, I'm asked this frequently, ladies and gentlemen.  
23 How will I know what the true facts are as a juror? Well, in  
24 determining what the true facts are, ladies and gentlemen,  
25 part of your job will be that you will have to pass upon the

1 credibility, which simply means the believability of the  
2 witnesses who are going to testify during the trial of this  
3 case.

4       It will be my responsibility to rule as a matter of law  
5 as to whether certain testimony is admissible at all or not,  
6 but once I've allowed it into evidence, whether or not you  
7 believe the testimony as a juror is entirely a matter for you,  
8 the jury, to determine.

9       And in passing upon the credibility or the believability  
10 of the witnesses, you as a jury have the right to take into  
11 consideration: the interest, if any, of the witness; the bias,  
12 if any, of any witness; the prejudice, if any, of any witness;  
13 the opportunity for the witness to have observed the things  
14 about which he or she might testify. You can even take into  
15 consideration what we call the demeanor of the witness, the  
16 appearance of the witness while the witness is on the witness  
17 stand.

18       Anything that is in evidence, ladies and gentlemen of the  
19 jury, you as a jury have the right to consider. And that  
20 means, Mr. Foreman, and that means, ladies and gentlemen, that  
21 it is your duty under your sworn obligation from the oath you  
22 took as jurors to pay close attention to the witnesses, to  
23 observe the witnesses, to listen to the witnesses.

24       Don't let your thoughts wander, and give strict attention  
25 to the testimony from the witnesses in this case so that at

1 the conclusion of all the testimony and after the closing  
2 arguments by the advocates, the attorneys for each side, and  
3 my charge to you on the law that applies to this case, you  
4 will have done -- by listening and observing, you will have  
5 put yourself in a position to determine what the true facts of  
6 this case are and to apply the law as I charge it to you to be  
7 to the facts that you find to be based on evidence introduced  
8 during the trial of the case, and thus render a just verdict.

9 And you must not consider anything that you may have read  
10 or heard about this case outside of the courtroom, whether  
11 before or during this trial. And until this case is submitted  
12 to you, you must not discuss it with anyone, not even a member  
13 of your own family, and after I submit it to you, you should  
14 discuss it only in your jury room with your fellow jurors.

15 Why do we emphasize that? Because it might be the very  
16 last thing that affects your opinion about the case. So it's  
17 important that each of you keep an open mind and not decide  
18 the case until the entire matter has been submitted to you  
19 under my instructions. So please do not engage in any  
20 discussion or what we call premature deliberations until I  
21 instruct you to discuss it and deliberate after the entire  
22 matter has been submitted to you.

23 Now, it will be your added duty, Mr. Foreman, to preside  
24 in the jury room. Make sure that each and every member of my  
25 jury has a full and fair opportunity to voice their opinions

1 in the jury room once deliberations begin. You will also be  
2 the jury's spokesperson here in the courtroom, and I will  
3 prepare a verdict form for you, and in my charge on the law, I  
4 will -- I will instruct you about how to fill it out.

5 Now, my law clerk's job, Thomas Crouch's, is whatever you  
6 write that on verdict form that I'm going to prepare for you,  
7 he's going to want to see you before you leave after this  
8 trial because you've got to write the same words on these  
9 indictments -- there are five of them -- and sign your name  
10 and date it that you write on the verdict form, and he knows  
11 that's his job to come see you, Mr. Ennis, before you leave so  
12 that whatever you write on the verdict form is also written on  
13 the indictments.

14 But I'll give you instructions in my charge to you on the  
15 law as to how to fill out and explain the verdict form so that  
16 the jury will be aware and you will be the person that will  
17 write on the verdict form for the entire jury. Of course,  
18 your verdict must be unanimous.

19 Now, ladies and gentlemen, we have some people in this  
20 courtroom who don't talk as loud as I do, and that makes it  
21 hard. If you can't hear, just like Krystal can't hear, she's  
22 looking at me right now. If she can't hear, she's going to  
23 look me and go --

24 (WHEREUPON, the Court gestured.)

25 THE COURT: Just like you did yesterday; right, Krystal?

1 If a member of my jury can't hear, raise your hand. I want  
2 you to be able to hear at all times. Believe me, I can turn  
3 it up. All right? We've got microphones everywhere.

4 If an exhibit is admitted into evidence -- lawyers are  
5 famous for this. They -- they like -- you see they've got  
6 their files. They keep their computers and they've got  
7 notebooks and they've got -- they love to turn their back to  
8 the court reporter and go back to their desk and they try to  
9 ask questions with their back to the court reporter. The  
10 reason she's sitting right there, you notice she can see my  
11 mouth when I'm speaking. She can see the witness.

12 When they go back to their table and they turn their back  
13 and they walk over to your bench, she can't see them. So if  
14 they have an exhibit and I admit one into evidence and they  
15 want to show it to you because they're just doing their job,  
16 but it might be that you can't see the exhibit. If you can't  
17 see it an exhibit, raise your hand.

18 I'll be watching every one of you throughout the trial of  
19 this case. If you can't hear or you can't see, raise your  
20 hand. I want to make sure my jurors can hear and see at all  
21 times.

22 Now, we do not allow jurors normally to ask questions in  
23 the courtroom. However, if a member of the jury has a  
24 question, here's the procedure we have to follow. If you're  
25 not already in your jury room, you'll have to go to your jury

1 room. The foreman will write the question on a piece of  
2 paper. He'll give it to my bailiff, who will bring it out to  
3 me. I then have to rule as a matter of law whether or not the  
4 question can or cannot be answered, just as I would any  
5 questions asked by either one of the attorneys during the  
6 trial of the case.

7 I've tried it both ways, ladies and gentlemen, and I'm  
8 going to ask that you do not take written notes. Now, you're  
9 going to see me up here writing, but the reason I've asked my  
10 jury not to take written notes -- I found that if a juror  
11 makes a mistake in the written notes, the notes can be harmful  
12 rather than helpful once your deliberations begin.

13 So I'm going to ask you not to take written notes. The  
14 time-tested system is to listen and listen carefully to the  
15 evidence that's going to be presented to you during the trial  
16 of this case.

17 Now, I do not intend that you should construe what I've  
18 just said to you as a charge on the law in this case because  
19 it's not that. I will charge you the law that applies to this  
20 case at the conclusion of the trial. There's no way for me to  
21 know until I hear the evidence like you what law applies to  
22 this case.

23 This has been merely an attempt on my part to try to  
24 briefly explain to you some of the procedure that we follow in  
25 the trial of a case so that you as a member of the jury will

1 have a better understanding as to what may be happening from  
2 time to time. We have rules for everything. We have rules on  
3 who presents evidence first, who gives the opening statement  
4 first, who gives closing argument first, what evidence -- we  
5 have rules of evidence. What evidence can be admitted, what  
6 evidence cannot, and we're going to follow those rules, and  
7 it's my job to enforce them in this trial.

8 But I want you to have a better understanding of how  
9 we're proceeding because we're going to be adhering to the  
10 rules, and I want you to know enough about them that you'll  
11 have an understanding of what may be happening from time to  
12 time. And that's the reason I wanted to give you a little bit  
13 of an outline of your role and how we're going to proceed.

14 Nevertheless, in order to preserve everyone's rights,  
15 I'll give the parties an opportunity to take exception or  
16 objection to anything I have said to you during my remarks.  
17 Any exceptions or objections from the State of South Carolina?

18 MS. LEGETTE: None from the State, Your Honor.

19 THE COURT: From the defendant?

20 MR. FLEMING: No, sir.

21 THE COURT: Ladies and gentlemen of the jury, we will now  
22 begin the trial of the case. Please give Ms. Legette your  
23 careful attention.

24 OPENING STATEMENT ON BEHALF OF THE STATE

25 MS. LEGETTE: Thank you, Your Honor. May it please the

1 Court. Mr. Fleming. Ladies and gentlemen, good morning.

2 THE JURY: Good morning.

3 MS. LEGETTE: A time to kill. A time to kill. On  
4 January 26<sup>th</sup>, 2013, James Gardner was a man on a mission, and  
5 that mission was kill and destroy.

6 Now, so you know where we're going, let's take a ride, a  
7 virtual ride. We're going to leave the courthouse. At the  
8 red light, we're going to go down towards Varnville. We're  
9 going to pass the high school on the left. We're going to  
10 pass several other things. We're going to also pass -- let's  
11 see -- Family Dollar and -- or not Family Dollar. There is  
12 Goody's. Goody's, and we're going to pass Fred's. We're  
13 going to pass Dollar General.

14 We'll get to the red light in Varnville. We're going to  
15 hook a left like we're going to Walterboro. We'll get down  
16 the main street in Varnville and we're going to pass the post  
17 office. We get past the post office, there's a church on your  
18 right-hand side, a United Methodist church. There's a brick  
19 house right there, and the corner of that street is Pine  
20 Street. We're going to take a right. And on Pine Street, you  
21 go down a little ways and you hook a quick left.

22 That's Mill Pond Road. Mill Pond Road is the location  
23 where James Gardner lived for several years with his  
24 girlfriend, Mary Etta Montouth. Her sister, Mariam Walden,  
25 also lived there.

1 But on January 26<sup>th</sup>, 2013, James Gardner had decided it  
2 was a time to kill. He had also decided that January 26<sup>th</sup>,  
3 2013, was a good day to die.

4 Now, James Gardner was a man enraged with jealousy. Mary  
5 Etta Montouth didn't come home soon enough, and because she  
6 didn't come home soon enough, he got angry and he decided it  
7 was time to kill Mary Etta Montouth, it was time to kill her  
8 smiling sister, Mariam Walden, and it was time to take his own  
9 life, and he went about doing just that. His mission? Kill  
10 and destroy.

11 And when the police showed up, James hadn't yet completed  
12 his mission. He decided, well, it's a good day to die, and  
13 James got into a shootout with the police. He opened fire on  
14 the police and forced them to shoot back at him. Thankfully,  
15 James is here among us and so are the police.

16 Ladies and gentlemen, for his crimes on January 26<sup>th</sup>,  
17 2013, James Gardner's mission date to kill and destroy, he has  
18 been charged with attempted murder of Mariam Walden, his  
19 girlfriend's sister. He's been charged with attempted murder  
20 of Mary Etta Montouth, his girlfriend for many years. And  
21 he's been charged with the attempted murder of Major Bobby  
22 Anderson of the Varnville Police Department.

23 He's also been charged with possessing a weapon during  
24 the commission of those violent crimes, and also pointing and  
25 presenting a firearm at Luis Hernandez, formerly of the

1 Hampton Police Department, pointing and presenting a firearm  
2 at Abner Rosier of the Hampton Police Department, and pointing  
3 and presenting a firearm at Lieutenant Dot Washington of the  
4 Hampton County Sheriff's Office, and pointing and presenting a  
5 firearm at Major Bobby Anderson of the Varnville Police  
6 Department.

7 And, ladies and gentlemen, when all of the evidence is  
8 in, I'll come back before you and I will ask you to render a  
9 just verdict and I will ask you to find James Gardner guilty  
10 of those crimes, of attempted murder, possessing a weapon  
11 during a violent crime, and pointing and presenting a firearm  
12 at those officers. Thank you.

13 THE COURT: Mr. Fleming.

14 MR. FLEMING: May it please the Court, Your Honor.

15 THE COURT: Proceed.

16 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

17 MR. FLEMING: Ms. Legette, thank you. Good morning.

18 THE JURY: Good morning.

19 MR. FLEMING: I've introduced myself already. I'm Cory  
20 Fleming from Beaufort. I lived and worked here in Hampton  
21 County 20-something years ago. Excuse me. I've got a little  
22 bronchitis and my voice is already going and it's bad now. So  
23 I really do apologize.

24 When I sat there, I worked with many of these people. I  
25 sat at this table prosecuting people. I enjoyed my time here

1 in Hampton. I loved it dearly. I worked for Mr. Buster and  
2 Mr. Randolph. I learned a lot while I was here.

3 And one of the most important things that I learned is  
4 that I have a duty and a responsibility to represent everybody  
5 accused of a crime. Everybody. Somebody you know, somebody  
6 he knows, anybody. And I have the duty and responsibility to  
7 represent James because he has been accused of a crime here,  
8 and he didn't commit the crime he's accused of. James didn't  
9 attempt to murder any of these folks.

10 You're going to hear evidence from people that the  
11 solicitor hasn't quite told you about, but what I think you're  
12 going to hear very clearly is James had every opportunity in  
13 the world if he intended to murder somebody that he could have  
14 done it. Every opportunity in the world, but he could have  
15 done it and he didn't.

16 They're going to present to you testimony that -- or a  
17 videotape about James on the video about things that James  
18 said to Chief Smith, and I want you to remember something.  
19 The evidence is going to show that when James was talking to  
20 the police, he was drunk. He had drunk a bottle of Crown  
21 Royal and he was drunk talking.

22 And I don't know about y'all, but I have said things when  
23 I was drunk that I didn't mean. I've made lots of apologies  
24 in my life to people I love, people I care for, because I said  
25 things when I was drunk that I didn't mean. Now, thank the

1 Lord I wasn't sitting in front of a police officer when I was  
2 saying them because I'd have a lot of explaining to do.

3 But drunk talk don't mean anything but drunk talk. What  
4 matters in this case is the evidence, and the evidence will  
5 show you that James didn't intend to murder anybody. I want  
6 you to pay close attention to the physical evidence in this  
7 case because the physical evidence should be able to show you  
8 that.

9 I have a duty and a responsibility to represent my client  
10 and the citizenry as a whole when they get in trouble, but the  
11 government has a responsibility to properly investigate the  
12 case, to properly, legally, honestly and competently collect  
13 evidence, to document, to write down so everybody in the world  
14 can see where that evidence went, what's happened to that  
15 evidence, where is it, ultimately so they can bring it in this  
16 courtroom so you have all the facts, all the evidence.

17 That's their duty and responsibility, and you as  
18 representatives of this county have to hold them to that duty  
19 because when a person is accused, a document -- the greatest  
20 document besides the Bible to ever be written is our  
21 Constitution because it is the thing that guarantees everybody  
22 in this courtroom freedom.

23 And one of the first things it says is that anytime the  
24 government accuses you of something, you are presumed  
25 innocent. James is innocent. He's sitting right there

1 innocent because that document, that glorious Constitution,  
2 says he is.

3 But then the Constitution goes on to say something else  
4 very important. It says James doesn't have to prove a thing,  
5 I don't have to prove a thing, and nobody accused by the  
6 government has to prove themselves innocent. This table, this  
7 government, these people bear that burden of proof. They've  
8 got to prove it with evidence, properly collected, properly  
9 preserved, properly tested evidence.

10 And they have to prove every element, as the judge told  
11 you. Remember the judge said he's going to give you the  
12 elements of these allegations at the end of the case. He's  
13 going to list those for you, and they have to prove each one  
14 of them. And if they don't prove one of them, then your  
15 verdict is not guilty.

16 And they have to prove, for instance, that he intended to  
17 murder these people, and I do not believe that they will ever  
18 prove that because of what -- another reason, and it's the  
19 third thing that the Constitution tells us. That when they  
20 prove this case, they have to do it beyond every reasonable  
21 doubt.

22 Now, in civil court, you know, if you're in a car wreck  
23 and you have to file a lawsuit, let's say you hurt your leg  
24 and you have to file a lawsuit, you've got to prove -- you've  
25 just got to prove a little bit. You've got to tip the scales

1 just a little bit because that's called preponderance of the  
2 evidence.

3       We're not in civil court. This is criminal court, and  
4 they've got to prove beyond every reasonable doubt. Now,  
5 that's a difficult concept to understand, and I've been doing  
6 it 20 years and I still have trouble sometimes understanding  
7 it, but our Supreme Court has given us some guidance on what  
8 reasonable doubt means.

9       So when they have to prove a case beyond every reasonable  
10 doubt, they have to prove the case -- and the Supreme Court  
11 said that a reasonable doubt is the kind of doubt that would  
12 cause reasonable people to hesitate to act in their everyday  
13 affairs. Now, that's a long sentence and I was thinking about  
14 it, and a lawyer much smarter than me explained it to me, and  
15 I'll try to do that today.

16       Let's say, for instance -- and I have this thing.  
17 Everybody has had Tylenol, unless you're allergic to it.  
18 Everybody's had Tylenol. There's a hundred tablets in this  
19 Tylenol bottle right here. One hundred tablets. What if I  
20 told you that 99 of these tablets was Tylenol and one of them  
21 is cyanide, and if you touch your tongue with it, you're dead?

22       And then you came to me and you said, you know, man, I've  
23 got a headache. Oh, man, it's killing me. You got anything  
24 for it? If I gave you that bottle, you would hesitate to take  
25 a pill out of this bottle because even though you're 99

1 percent sure, 99 out of a 100 you're going to be just fine,  
2 that one percent is reasonable doubt.

3 And that is how they have to prove this case, and they  
4 will not. When you return from your deliberations in the jury  
5 room and you bring out that verdict form, I believe -- I am  
6 confident that you're going to realize that the government  
7 didn't prove this case beyond that reasonable doubt, and that  
8 true, fair, and just verdict is not guilty. Thank you, folks.

9 THE COURT: Call your first witness.

10 MS. LEGETTE: Thank you, Your Honor. The State calls  
11 Aimee Simmons.

12 THE CLERK: Come this way.

13 THE WITNESS: Okay.

14 THE CLERK: You just need to be sworn. Place your left  
15 hand on the Bible and raise your right hand. Do you swear to  
16 tell the truth, the whole truth, and nothing but the truth, so  
17 help you God?

18 THE WITNESS: Yes, ma'am.

19 THE COURT: Have a seat and make yourself comfortable.  
20 Adjust that chair to your height. You don't have to get right  
21 on top of it, Ms. Simmons, but just close enough and speak up  
22 just to amplify your voice.

23 THE WITNESS: Okay.

24 THE COURT: Would you begin by stating your full name and  
25 spelling your last name for my court reporter?

AIMEE SIMMONS - DIRECT BY MS. LEGETTE

1 THE WITNESS: Aimee Simmons. Last name S-i-m-m-o-n-s.

2 THE COURT: Your witness, counsel, direct examination.

3 MS. LEGETTE: Thank you, Your Honor.

4 AIMEE SIMMONS, being first duly  
5 sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. LEGETTE:

8 Q: Good morning, Ms. Simmons.

9 A: Good morning.

10 Q: Ma'am, where do you work?

11 A: Hampton County 9-1-1 Dispatch Center.

12 Q: And how long have you worked at the Hampton County 9-1-1  
13 Dispatch Center?

14 A: About twelve years.

15 Q: And what are your duties at --

16 A: Answering 9-1-1 calls, dispatching out for appropriate  
17 agencies, such as law enforcement, EMS, fire to anyone in need  
18 of help, whichever agency or whatever kind of emergency  
19 they're having.

20 Q: Okay. And were you working for the Hampton County  
21 Dispatch Center on or about January 26<sup>th</sup>, 2013?

22 A: Yes, ma'am.

23 Q: Were you working in the afternoon that day?

24 A: I -- my shifts are 7 a.m. to 7 p.m., so yes.

25 Q: Okay. Did you receive any call for assistance in

## AIMEE SIMMONS - DIRECT BY MS. LEGETTE

1 Varnville?

2 A: Yes.

3 Q: And what was the caller calling to report?

4 MR. FLEMING: Objection, Your Honor.

5 THE COURT: Grounds?

6 MR. FLEMING: It's hearsay.

7 THE COURT: Counsel, approach at sidebar.

8 (WHEREUPON, a bench conference was held off the record in  
9 the presence of the jury but out of the hearing of the  
10 jury, after which the proceedings resumed as follows.)

11 THE COURT: Let the record reflect the objection is on  
12 grounds of hearsay. I'm deferring my ruling until I see the  
13 proper groundwork. The State wants to proceed under Rules of  
14 Evidence 803(6). Proceed so that I can make a determination  
15 as to whether or not it applies in order to rule on the matter  
16 raised by counsel for the defendant.

17 MS. LEGETTE: Thank you, Your Honor.

18 BY MS. LEGETTE:

19 Q: Ms. Simmons, let's go back. You said that you got a call  
20 on that day?

21 A: Yes.

22 Q: And did the caller identify themselves?

23 A: I do not believe so.

24 Q: Okay. Did the caller need assistance?

25 A: Yes.

AIMEE SIMMONS - DIRECT BY MS. LEGETTE

1 Q: And what was your response?

2 A: I just began doing my usual protocol of asking questions,  
3 getting the information I needed from her, and dispatching --  
4 or giving it to my partner that I was working with that was  
5 actually working the law enforcement radio so that she could  
6 dispatch the appropriate agencies.

7 Q: And did the caller appear to have a situation or  
8 emergency?

9 A: Yes.

10 Q: Okay. And so at 9-1-1, you typically make a  
11 contemporaneous recording?

12 A: Yes.

13 Q: And what does that mean exactly?

14 A: Basically, all of our phone calls, all of our radio  
15 traffics are recorded and kept for a certain length of time  
16 for purposes that may arise later on.

17 Q: And they're kept in the ordinary course of business?

18 A: Yes.

19 Q: And this -- this particular call that you took on January  
20 26<sup>th</sup>, 2013, was a recording made in this case?

21 A: Yes.

22 Q: And at our request, have you previously reviewed that  
23 recording to make certain that it's accurate?

24 A: Yes.

25 Q: And is that particular recording a fair and accurate

AIMEE SIMMONS - DIRECT BY MS. LEGETTE

1 reflection of the calls you took on January 26<sup>th</sup>, 2013?

2 A: Yes.

3 MS. LEGETTE: I beg the Court's indulgence.

4 Q: Now, Ms. Simmons, I'll hand you momentarily what's been  
5 previously marked State's Exhibit Number 1. I want you to  
6 take a moment and tell me if you recognize this item.

7 MS. LEGETTE: May I approach the witness, Your Honor?

8 THE COURT: You may.

9 BY MS. LEGETTE:

10 A: Yes. I do recognize this.

11 Q: And what is State's Exhibit Number 1?

12 A: This is the 9-1-1 call that I took on that day.

13 Q: And at my request, have you previously reviewed that  
14 recording for accuracy?

15 A: Yes.

16 Q: And is it a fair and accurate reflection of the call you  
17 took January 26<sup>th</sup>, 2013?

18 A: Yes.

19 Q: And at my request, have you also initialed it --

20 A: Yes.

21 Q: -- so you can recognize it?

22 MS. LEGETTE: At this time, Your Honor, I would offer  
23 State's Exhibit 1 for admission into evidence.

24 THE COURT: As to State's Exhibit 1, Mr. Fleming?

25 MR. FLEMING: I just renew my objection.

AIMEE SIMMONS - DIRECT BY MS. LEGETTE

1 THE COURT: Let the record reflect that the objection is  
2 overruled on the basis of the Rules of Evidence 803(6),  
3 records of regularly conducted activity, which provides, as  
4 counsel knows, an exception to the hearsay rule even though  
5 the declarant is available as a witness under 803.

6 State's Exhibit Number 1 is admitted into evidence in the  
7 trial of this case over objection. You may proceed and  
8 publish to the jury. Ladies and gentlemen, State's Exhibit 1  
9 is now in evidence.

10 MS. LEGETTE: Thank you, Your Honor. May I approach the  
11 witness?

12 THE COURT: You may.

13 MS. LEGETTE: Thank you.

14 THE WITNESS: Mm-hmm.

15 (WHEREUPON, State's Exhibit Number 1, the 9-1-1 tape, is  
16 admitted into evidence and then published to the jury by  
17 being played in open court. NOT TRANSCRIBED HEREIN.

18 After completion of the tape, the proceedings resumed as  
19 follows.)

20 BY MS. LEGETTE:

21 Q: Ms. Simmons, is that an accurate reflection of the 9-1-1  
22 call you took on January 26<sup>th</sup>, 2013?

23 A: Yes, ma'am.

24 MS. LEGETTE: Thank you, Ms. Simmons. Answer any  
25 questions from the defense.

1 THE COURT: Just a minute, counsel. The tape goes to my  
2 court reporter.

3 MS. LEGETTE: Thank you, Your Honor.

4 THE COURT: Cross-examination?

5 MR. FLEMING: I have no questions, Your Honor. Thank  
6 you.

7 THE COURT: As to this witness, Solicitor, may she be  
8 excused?

9 MS. LEGETTE: Yes, Your Honor.

10 THE COURT: Any objection, Mr. Fleming?

11 MR. FLEMING: No objection.

12 THE COURT: Ms. Simmons, you may step down from the  
13 witness stand and you are --

14 THE WITNESS: Okay.

15 THE COURT: -- excused from the trial of this case.

16 THE WITNESS: Thank you.

17 THE COURT: Call your next witness.

18 MS. LEGETTE: Thank you, Your Honor. The State calls Ms.  
19 Mae Etta Smith. I'm sorry. Ms. Mae Francis Smith.

20 THE CLERK: Come over here to be sworn. Place your left  
21 hand on the Bible and raise your right hand. Do you swear to  
22 tell the truth, the whole truth, and nothing but the truth, so  
23 help you God?

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Have a seat and make yourself comfortable.

MAE FRANCIS SMITH - DIRECT BY MS. LEGETTE

1 Pull that chair up to the microphone. I want you to use that  
2 to amplify your voice. State your full name and spell your  
3 last name for my court reporter.

4 THE WITNESS: My name is Mae Francis Smith, S-m-i-t-h.

5 THE COURT: Your witness, counsel, direct examination.

6 MS. LEGETTE: Thank you, Your Honor.

7 MAE FRANCIS SMITH, being first duly  
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. LEGETTE:

11 Q: Ms. Smith, where are you from?

12 A: Varnville, South Carolina.

13 Q: Okay. And can you tell us where you live?

14 A: At [REDACTED] Lawton Street.

15 Q: And is that in the town of Varnville?

16 A: Varnville. Right in the town of Varnville.

17 Q: Can you kind of describe for us where you live in that  
18 particular area?

19 A: Well --

20 Q: What streets is it near?

21 A: It's near Pine Street.

22 Q: Okay. Any other streets by it?

23 A: If you go 63, turn on Pine, go down Pine, turn on Mill  
24 Pond, and I live right kind of off a dirt road off of Mill  
25 Pond.

## MAE FRANCIS SMITH - DIRECT BY MS. LEGETTE

1 Q: Okay.

2 MS. LEGETTE: I beg the Court's indulgence.

3 Q: Are you familiar with an aerial photo of that particular  
4 location? Or an aerial view of your house and the location  
5 where you live?

6 A: Yes.

7 MS. LEGETTE: Your Honor, at this time, may I approach  
8 the witness?

9 BY MS. LEGETTE:

10 Q: But, Ms. Mae Francis, before I approach you, I'm going to  
11 hand you now what's been previously marked for ID as State's  
12 Exhibit Number 2. Take a moment and tell me if you recognize  
13 this?

14 MS. LEGETTE: May I approach the witness, Your Honor?

15 THE COURT: You may.

16 BY MS. LEGETTE:

17 A: Okay.

18 Q: Do you recognize State's Exhibit 2?

19 A: Yes.

20 Q: And what is State's Exhibit 2?

21 A: It's my house, the church next door, the street in front  
22 of my -- the dirt road in front of my house carrying you out  
23 to Mill Pond Road.

24 Q: So it's an actual -- I mean it's an aerial view of your  
25 particular house and the location where you live?

## MAE FRANCIS SMITH - DIRECT BY MS. LEGETTE

1 A: Right.

2 Q: And is it a fair and accurate reflection of the area  
3 where you live?

4 A: Yes.

5 MS. LEGETTE: Your Honor, at this time, I would offer  
6 State's Exhibit 2 for admission into evidence.

7 THE COURT: As to State's 2?

8 MR. FLEMING: No objection.

9 THE COURT: Ladies and gentlemen of the jury, State's  
10 Exhibit Number 2 will be admitted into evidence in the trial  
11 of this case without objection. You may publish it to the  
12 jury.

13 MS. LEGETTE: Thank you, Your Honor. May I approach the  
14 witness?

15 THE COURT: You may.

16 (WHEREUPON, State's Exhibit Number 2, an aerial color  
17 photograph, was admitted into evidence.)

18 MS. LEGETTE: Madam Clerk, I may need the actual screen  
19 to --

20 THE CLERK: Okay.

21 MS. LEGETTE: -- be able to show the witness.

22 (WHEREUPON, State's Exhibit Number 2 was displayed on a  
23 large screen in open court.)

24 BY MS. LEGETTE:

25 Q: Ms. Mae Francis, when this comes up, I want to direct

MAE FRANCIS SMITH - DIRECT BY MS. LEGETTE

1 your attention to the screen over at your right. All right.

2 Ms. Mae Francis, can you kind of tell us where in here --

3 where in this particular photograph, this aerial photograph on

4 State's Exhibit 2, where you live? And I have a red marker.

5 MS. LEGETTE: May I approach the witness, Your Honor --

6 THE COURT: You may.

7 MS. LEGETTE: -- to give her the red marker?

8 BY MS. LEGETTE:

9 Q: You can just press this button right here. Just point to

10 it. Tell us where you live on this particular -- State's

11 Exhibit 2 aerial photo? Press the red button. Yes, ma'am.

12 (WHEREUPON, the witness complied.)

13 Q: So now that's where you live?

14 A: Yes.

15 Q: Okay. Now, Ms. Mae Francis, in relationship -- do you

16 know a woman named Mary Etta Montouth?

17 A: Yes.

18 Q: You can stop pointing now. All right. You know Mary

19 Etta Montouth?

20 A: Yes.

21 Q: Do you know Mariam Walden?

22 A: Yes.

23 Q: And how do you know Mary Etta Montouth and Mariam Walden?

24 A: Well, we are all family and we're family and friends.

25 Q: Okay. Now, do you know a man named James Gardner?

## MAE FRANCIS SMITH - DIRECT BY MS. LEGETTE

1 A: Yes.

2 Q: And how long would you say you've known Mr. Gardner?

3 A: I'll say about eight years. I guess about eight or nine  
4 years.

5 Q: Okay. And is Mr. Gardner present in court today?

6 A: Yes.

7 Q: Can you point him out for the court, please?

8 A: Right there.

9 Q: Can you describe what he's wearing?

10 A: He's wearing a blue shirt and a tie.

11 MS. LEGETTE: Let the record reflect the witness has  
12 indicated Mr. James Gardner.

13 BY MS. LEGETTE:

14 Q: Now, Ms. Mae Etta -- I'm sorry. Ms. Mae Francis, I keep  
15 missing your name. Where in relationship -- do you know where  
16 Mary Etta Montouth lived?

17 A: Yes.

18 Q: Okay. Let's go back to January 26<sup>th</sup>, 2013. Who lived  
19 with Mary Etta Montouth?

20 A: What did you say?

21 Q: Who lived with Mary Etta Montouth in January of 2013?

22 A: Mr. Gardner and Ms. Walden.

23 Q: Okay. Can you tell us on this particular location does  
24 anyone else's residence in here stand out to you on State's  
25 Exhibit 2 in relationship to your house?

MAE FRANCIS SMITH - DIRECT BY MS. LEGETTE

1 A: I recognize the church. Coming from the church and going  
2 back this way --

3 Q: Can you point to it, ma'am?

4 THE COURT: What are you asking her to point to?

5 MS. LEGETTE: I'm sorry.

6 BY MS. LEGETTE:

7 Q: Can you point to the church and the area that you  
8 recognize on this particular aerial photo on State's Exhibit  
9 2?

10 A: That's the church.

11 Q: Okay.

12 A: That's the road in front of me.

13 Q: And what road is that?

14 A: Lawton Street.

15 Q: Okay. And what road are you pointing to now?

16 A: Mill Pond Road.

17 Q: Okay.

18 A: This is the barber shop.

19 Q: All right.

20 A: And I can't see from here what that is, but next to the  
21 barber shop is a house.

22 Q: Okay. And what is next to the house in your memory?

23 A: It's the -- where Ms. Montouth and those live at.

24 Q: Okay. So they live next to the house that's beside the  
25 barber shop?

## MAE FRANCIS SMITH - DIRECT BY MS. LEGETTE

1 A: Right.

2 Q: Okay. And you said earlier -- who lives there with Ms.  
3 Mary Etta Montouth?

4 A: Ms. Walden and Mr. Gardner was living there.

5 Q: Okay. All right. Thank you. We're done with State's  
6 Exhibit Number 2, Ms. Walden [verbatim].

7 MS. LEGETTE: You can bring the lights up, Madam Clerk.  
8 May I approach the witness, Your Honor?

9 THE COURT: You may.

10 BY MS. LEGETTE:

11 Q: Now, Ms. Mae Francis, let's talk about January 26<sup>th</sup>, 2013.  
12 Do you recall that day?

13 A: Somewhat.

14 Q: Yes, ma'am. Okay. Did you see Ms. Mary Etta Montouth or  
15 Ms. Mariam Walden that day?

16 A: Yes.

17 Q: Can you tell us what happened when you saw them?

18 A: Well, Ms. Walden came and visited me.

19 Q: Okay. At your house?

20 A: At my house.

21 Q: Yes, ma'am.

22 A: And a little while later, Ms. Montouth came to the house.

23 Q: Okay. And what were you doing at the house that day?

24 A: In the kitchen cooking.

25 Q: And were you cooking for a particular occasion or just

## MAE FRANCIS SMITH - DIRECT BY MS. LEGETTE

- 1 cooking?
- 2 A: I usually does my Sunday dinner on Saturday.
- 3 Q: Okay. So that was a Saturday?
- 4 A: Yes.
- 5 Q: All right. So you were visiting with Ms. Mariam?
- 6 A: Huh?
- 7 Q: Were you visiting with Ms. Mariam at that time?
- 8 A: Yes.
- 9 Q: Okay. And so at some point you said Ms. Mary Etta came
- 10 over?
- 11 A: Yes.
- 12 Q: All right. And did anything happen while Ms. Mary Etta
- 13 was there?
- 14 A: Mr. Gardner came also.
- 15 Q: Okay. Let's go back to that day. Kind of describe
- 16 what's happening when you see Ms. Mary Etta come over?
- 17 A: She came and knocked. Mariam went to the door and went
- 18 outside on the bench that's right there and was talking with
- 19 her.
- 20 Q: Okay. And did Mr. James Gardner come with Ms. Mary Etta?
- 21 A: He came behind her.
- 22 Q: Okay. Can you explain how Mr. Gardner came?
- 23 A: He came around the opposite side of my house in his
- 24 truck.
- 25 Q: Okay.

## MAE FRANCIS SMITH - DIRECT BY MS. LEGETTE

1 A: In his truck.

2 Q: Okay. Did you see him sitting outside?

3 A: Yeah. He was sitting outside in the truck.

4 Q: All right. Did you notice anything while all this was

5 going on?

6 A: I just noticed that he was looking at Mary Etta and

7 Mariam in their conversation.

8 Q: Okay. And did he say anything? Did he speak to anyone?

9 A: No.

10 Q: And so what did he --

11 A: I didn't hear him speak to anyone.

12 Q: Okay. Did anything about it -- how did -- why do you

13 remember it?

14 A: I remember it because that was the day, you know, when

15 Mariam got shot and everything. It was -- you know, I

16 remember some of it.

17 Q: Okay. Did you notice Mr. James when he was sitting there

18 watching Ms. Mariam -- Ms. Mariam and Ms. Mary Etta?

19 A: What you say?

20 Q: Did you notice Mr. James while he was sitting there

21 watching Ms. Mariam and Ms. Mary Etta?

22 A: Yes.

23 Q: Kind of describe him for us?

24 A: Well, he was, like, looking, just looking, like -- I

25 don't know. I never seen him look like that before.

## MAE FRANCIS SMITH - DIRECT BY MS. LEGETTE

1 Q: So you had seen him before?

2 A: Yeah. I seen -- yeah, I seen him before.

3 Q: And you said he had never looked like that before?

4 A: No.

5 Q: Can you describe it as any particular --

6 A: It was -- it was just his eyes. I noticed his eyes  
7 because, like I said, he was sitting in the truck just looking  
8 at them, and I'm like -- well, you know, it was just his eyes.

9 Q: Did it seem odd to you?

10 A: Well --

11 Q: You said you had never seen him like that before.

12 A: Well, yeah. I -- yes.

13 Q: Okay.

14 MS. LEGETTE: I beg the Court's indulgence.

15 BY MS. LEGETTE:

16 Q: Now, Ms. Mae Francis, at some point, you said you saw Mr.  
17 James sitting there watching Ms. Mary Etta and Ms. Mariam.  
18 Does Ms. Mary Etta ever leave your house?

19 A: Did she ever leave?

20 Q: Yes, sir. Yes, ma'am.

21 A: Yeah, she left.

22 Q: And can you describe how she left, what circumstances she  
23 left under?

24 A: She left and --

25 Q: Did she --

## MAE FRANCIS SMITH - DIRECT BY MS. LEGETTE

1 A: -- she headed back out towards the road. She went all  
2 the way down to the stop sign. She didn't cut across or  
3 anything. She went to the stop sign to the end of Lawton  
4 Street.

5 Q: Yes, ma'am.

6 A: At that sign, she made a left and went back down Mill  
7 Pond Road to home.

8 Q: And was she walking or driving?

9 A: She was walking.

10 Q: Okay. And so when Ms. Mary Etta left, did anyone else  
11 leave?

12 A: Mr. James left behind her.

13 Q: And how was he -- how did he leave? Did he drive or did  
14 he walk?

15 A: He was driving.

16 Q: Okay. And can you describe the scene when they were  
17 leaving together, what you saw?

18 A: Well, I seen by the time she got to the stop sign, he was  
19 behind her and he stopped at the sign, and they -- she turned  
20 and he turned and they went down the street.

21 Q: So was he, like, following her in the truck?

22 A: Yes.

23 Q: Okay. Now, at some point thereafter, did you learn --  
24 did Ms. Mariam Walden -- did she ever stay there with you?

25 A: She -- we talked a little bit and she said that she

## MAE FRANCIS SMITH - DIRECT BY MS. LEGETTE

1 needed to --

2 MR. FLEMING: Objection.

3 MS. LEGETTE: Don't tell me what she said.

4 THE COURT: Just a moment. Yes, sir?

5 MR. FLEMING: She's getting ready to talk about what  
6 someone told her.

7 THE COURT: Don't refer to what someone else said. That  
8 objection is sustained. Just tell us what you know of your  
9 own personal knowledge and not what someone else said. Ask a  
10 question, counsel, direct examination.

11 MS. LEGETTE: Yes, Your Honor.

12 BY MS. LEGETTE:

13 Q: Ms. Mae Francis, you said that Ms. Mariam was at your  
14 house and at some point did she leave?

15 A: Yes.

16 Q: And so did you know where she was headed at that point?

17 A: Home.

18 Q: Okay. Now, at some point did you see Ms. Mariam later on  
19 that day?

20 A: Yes.

21 Q: Okay. And tell me the circumstances when you saw Ms.  
22 Mariam again?

23 A: She was in the back of the EMS truck.

24 Q: And did you learn what had happened to her?

25 MR. FLEMING: Again --

MAE FRANCIS SMITH - DIRECT BY MS. LEGETTE

1 Q: Don't tell me what she said.

2 THE COURT: Counsel, don't elicit what somebody else told  
3 her by your question. That objection is sustained. Rephrase  
4 the question.

5 MS. LEGETTE: Thank you, Your Honor.

6 BY MS. LEGETTE:

7 Q: And you said you saw Ms. Mariam?

8 A: I seen her in the back of the EMS truck.

9 Q: What was wrong with her? Why was she in the EMS truck?

10 A: Because she was shot.

11 Q: Okay. Now, Ms. Mae Francis, what county is your -- is  
12 your house in?

13 A: Hampton.

14 MS. LEGETTE: I beg the Court's indulgence. Ms. Mae --  
15 Ms. Mae Etta, I have no further -- I'm sorry. Ms. Mae  
16 Francis, I have no further questions. Answer any questions  
17 from the defense, please.

18 THE COURT: The court reporter, counsel.

19 MS. LEGETTE: Yes, Your Honor.

20 THE COURT: We're waiting on you, counsel. Cross-  
21 examination?

22 MR. FLEMING: May it please the Court, Your Honor. Thank  
23 you.

24 CROSS-EXAMINATION

25 BY MR. FLEMING:

## MAE FRANCIS SMITH - CROSS BY MR. FLEMING

1 Q: Can I get this right? Your last name is Smith, not  
2 Francis; right?

3 A: Yes.

4 Q: Okay. So Mae Francis is a full name, so to speak?

5 A: Yes.

6 Q: Okay. I'm going to call you Ms. Smith; okay? I've got  
7 really brief questions for you. I was provided a copy of an  
8 interview that you gave on January the 16<sup>th</sup>, about -- what --  
9 two weeks ago?

10 A: Yes.

11 Q: Do you remember giving that interview?

12 A: Yes.

13 Q: Okay. And that interview was to this man right here?

14 A: Yes.

15 Q: Okay. Donnie Hutto? And he works at the Solicitor's  
16 Office; right?

17 A: Yes.

18 Q: Okay. I've never seen a copy of any other statement you  
19 gave. Is this the first time you were interviewed by the --  
20 by the government?

21 A: Yes.

22 Q: Okay. So this happened in 2013 -- January 26<sup>th</sup> of 2013;  
23 right?

24 A: Yes.

25 Q: Okay. And you were interviewed January the 16<sup>th</sup> of 2015?

## MAE FRANCIS SMITH - CROSS BY MR. FLEMING

1 A: Yes.

2 Q: So that's two years later?

3 A: Yes.

4 Q: Okay. So for two years nobody at the police station ever  
5 interviewed you?

6 A: I don't remember. I don't think so.

7 Q: Okay. You would have -- you would have been happy to  
8 talk to them, wouldn't you?

9 A: Yes.

10 Q: Okay. And you haven't moved anywhere, have you?

11 A: No.

12 Q: Okay. So you've been right there; right?

13 A: Yes.

14 THE COURT: You have to say yes or no.

15 A: Yes.

16 Q: Okay. Is everything that you told Mr. Hutto in your  
17 statement -- do you -- was everything true?

18 A: Yes.

19 Q: I'm going to assume it was. And so in your statement you  
20 did not ever say that you saw James Gardner with a gun, did  
21 you?

22 A: No.

23 Q: Okay. Before Ms. Montouth came to your house, you were  
24 sitting there with Ms. Walden -- Mariam Walden; right?

25 A: Yes.

MAE FRANCIS SMITH - CROSS BY MR. FLEMING

1 Q: Both of you just -- you cooking, relaxing like folks do,  
2 just talking, what have you?

3 A: Yes.

4 Q: Okay. Nothing out of the ordinary?

5 A: No.

6 Q: Okay. And then Ms. Montouth came?

7 A: Yes.

8 Q: Right? And I've looked at your statement. Before Ms.  
9 Montouth came, you never heard any gunshot, did you?

10 A: No.

11 Q: Okay. Okay. And when Ms. Montouth got there, she never  
12 told you about a gunshot, did she?

13 A: No.

14 Q: Okay.

15 MR. FLEMING: All right. That's all the questions I  
16 have, Judge.

17 THE COURT: Redirect?

18 MS. LEGETTE: None, Your Honor.

19 THE COURT: As to this witness?

20 MS. LEGETTE: We ask that she be excused, Your Honor.

21 THE COURT: Do you have any objection, counsel?

22 MR. FLEMING: No objection.

23 THE COURT: Ms. Smith, you may step down from the witness  
24 stand and you are excused from the trial of this case.

25 THE WITNESS: Okay. Thank you.

MARY ETTA MONTOUTH - DIRECT BY MS. LEGETTE

1 THE COURT: Thank you. You may leave the courtroom.

2 Call your next witness.

3 MS. LEGETTE: Thank you, Your Honor. The State calls Ms.  
4 Mary Etta Montouth.

5 THE CLERK: Please place your left hand on the Bible and  
6 raise your right hand. Do you swear to tell the truth, the  
7 whole truth, and nothing but the truth, so help you God?

8 THE WITNESS: Yes.

9 THE CLERK: Thank you. Have a seat.

10 THE COURT: Make yourself comfortable, Ms. Montouth, in  
11 that chair. Pull that microphone up to you after you sit down  
12 and get comfortable. I want you to use it. It's going to  
13 amplify your voice. State your full name and spell your last  
14 name for my court reporter.

15 THE WITNESS: Mary Etta Montouth, M-o-n-t-o-u-t-h.

16 THE COURT: Very good. Speak up so the people at the end  
17 of the jury can hear you. Your witness, counsel, direct  
18 examination.

19 MS. LEGETTE: Thank you, Your Honor.

20 MARY ETTA MONTOUTH, being first duly  
21 sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. LEGETTE:

24 Q: Good morning, Ms. Montouth.

25 A: Good morning.

## MARY ETTA MONTOUTH - DIRECT BY MS. LEGETTE

- 1 Q: Ms. Montouth, where are you from?
- 2 A: Varnville, South Carolina.
- 3 Q: And how long have you lived there in Varnville?
- 4 A: Basically, all of my life. My father was in the Navy; so
- 5 we lived a couple of years in Charleston, South Carolina, and
- 6 Athens, Georgia.
- 7 Q: Okay. So you've been here your whole life basically?
- 8 A: Basically.
- 9 Q: Do you have any brothers and sisters?
- 10 A: Yes. I have one brother and three sisters now.
- 11 Q: Okay. And is one of your sisters present in court today?
- 12 A: Yes.
- 13 Q: And can you point her out, please?
- 14 A: Mariam Walden.
- 15 Q: And what does she have on?
- 16 A: Black sweater with a beige scarf.
- 17 Q: Okay. Now, Ms. Montouth, where do you work?
- 18 A: At Ridgeland Correctional Institution.
- 19 Q: And what do you do at Ridgeland Correctional Institution?
- 20 A: I'm the inmate grievance coordinator.
- 21 Q: Okay. And how long have you worked at the Ridgeland
- 22 Correctional Center?
- 23 A: Nineteen years.
- 24 Q: Did you ever have any other jobs?
- 25 A: I worked at Westinghouse.

## MARY ETTA MONTOUTH - DIRECT BY MS. LEGETTE

- 1 Q: Okay. Now, can you tell us your address?
- 2 A: [REDACTED] Mill Pond Road.
- 3 Q: And how long have you lived at that address?
- 4 A: Basically, all my life.
- 5 Q: And is that in Hampton or Varnville town?
- 6 A: It's in Varnville, Hampton County.
- 7 Q: Okay. Now -- so you live in Hampton County?
- 8 A: Yes.
- 9 Q: Who else lives with you?
- 10 A: My sister, Mariam, and at the time, James Gardner.
- 11 Q: Okay. So at the time, you said James Gardner and -- was
- 12 that back in January 2013?
- 13 A: Yes.
- 14 Q: Now, James Gardner -- do you know James Gardner?
- 15 A: Yes.
- 16 Q: How long have you known James Gardner?
- 17 A: I guess about -- about 20 years I would say.
- 18 Q: Okay. And let's talk about him. Is James Gardner
- 19 present in court today?
- 20 A: Yes, he is.
- 21 Q: Will you point him out for the Court, please?
- 22 A: Right there.
- 23 Q: And can you tell me what he's wearing?
- 24 A: A blue shirt with a blue and gray tie.
- 25 Q: All right.

## MARY ETTA MONTOUTH - DIRECT BY MS. LEGETTE

1 MS. LEGETTE: And let the record reflect the witness has  
2 indicated James Gardner.

3 BY MS. LEGETTE:

4 Q: Now, Ms. Montouth, you said that you know James Gardner.  
5 In what capacity do you know James Gardner?

6 A: Well, okay, I met James when he came home with Billy  
7 Rates [phonetic] and I don't remember what year it was. And  
8 then --

9 Q: Did y'all begin dating?

10 A: We -- yes. We talked briefly.

11 Q: Okay.

12 A: And then we lost track of one another.

13 Q: Okay.

14 A: At Willie Rate's trial sermon, I met James again.

15 Q: Okay.

16 A: And we started talking from there.

17 Q: All right. So how long would you say -- you said  
18 talking. You mean as in going together?

19 Girlfriend/boyfriend?

20 A: Yes.

21 Q: And how long would you say that you and James Gardner  
22 were boyfriend and girlfriend?

23 A: Between -- about eight years.

24 Q: Eight years?

25 A: Mm-hmm.

## MARY ETTA MONTOUTH - DIRECT BY MS. LEGETTE

- 1 Q: And at some point did Mr. Gardner -- did y'all live  
2 together?
- 3 A: Yes.
- 4 Q: And was it as boyfriend and girlfriend or roommates?
- 5 A: Yes.
- 6 Q: Which one?
- 7 A: Boyfriend and girlfriend.
- 8 Q: Okay. And did anyone else live with you during this  
9 period of time?
- 10 A: My sister, Mariam.
- 11 Q: Okay. And where did you live during this period of time?
- 12 A: [REDACTED] Mill Pond Road.
- 13 Q: And that's in Hampton County?
- 14 A: In Hampton County, yes.
- 15 Q: All right. And now, Ms. Mary Etta -- I'm sorry, Ms.  
16 Montouth. I'll just keep it simple. Ms. Montouth, do you  
17 have any children?
- 18 A: Yes. One son.
- 19 Q: One son? Okay. And what is his name?
- 20 A: Adonis.
- 21 Q: Okay. Do you and Mr. James have any kids together?
- 22 A: No.
- 23 Q: All right. So where is Mr. James Gardner from?
- 24 A: Holly Hill.
- 25 Q: Holly Hill, South Carolina?

## MARY ETTA MONTOUTH - DIRECT BY MS. LEGETTE

1 A: Yes.

2 Q: All right. So he moved here and moved in with you?

3 A: Yes.

4 Q: All right. Now, who owns the house at [REDACTED] Mill Pond  
5 Road?

6 A: I do.

7 Q: All right. So now, Ms. Montouth, I want to turn your  
8 attention -- well, before we go there, are you familiar with a  
9 -- the house? You're familiar with the house where you live,  
10 of course?

11 A: Yes.

12 Q: All right. I want to hand you in a moment what's been  
13 previously marked as State's Exhibit Number 3 and 4. Take a  
14 moment and tell me if you recognize these items.

15 MS. LEGETTE: May I approach the witness, Your Honor?

16 THE COURT: You may.

17 BY MS. LEGETTE:

18 Q: Ms. Montouth, I will hand you now what's been previously  
19 marked State's 3 and 4. Take a moment and tell me if you  
20 recognize these items.

21 A: Yes. It's the house.

22 Q: Okay. Are State's Exhibits 3 and 4 a fair and accurate  
23 reflection of the house located at --

24 THE COURT: Ask her to identify which is which. You  
25 handed her two exhibits.

## MARY ETTA MONTOUTH - DIRECT BY MS. LEGETTE

1 MS. LEGETTE: Yes, Your Honor.

2 BY MS. LEGETTE:

3 Q: I'm sorry, Ms. Montouth. What is State's Exhibit Number  
4 3?

5 A: The front and side view of the house.

6 Q: Okay. And what is State's Exhibit Number 4?

7 A: The front of the house.

8 Q: Okay. And are State's Exhibits 3 and 4 fair -- well,  
9 let's start with State's Exhibit 3. Is it a fair and accurate  
10 reflection of the front view and side view of the house?

11 A: Yes.

12 Q: And is State's Exhibit Number 4 an accurate reflection of  
13 the front of the house?

14 A: Yes.

15 Q: And are they changed or altered in any way?

16 A: No. Well -- no, but -- except I have two different  
17 chairs on the porch now.

18 Q: Okay.

19 MS. LEGETTE: Your Honor, at this time, I would offer  
20 State's Exhibits 3 and 4 for admission into evidence.

21 THE COURT: As to State's 3 and 4?

22 MR. FLEMING: Without objection.

23 THE COURT: Ladies and gentlemen of the jury, State's  
24 Exhibits Numbers 3 and 4 will be admitted into evidence in the  
25 trial of this case without objection. State's 3 and 4 in

MARY ETTA MONTOUTH - DIRECT BY MS. LEGETTE

1 evidence. You may publish to the jury. Proceed.

2 (WHEREUPON, State's Exhibit Number 3 and State's Exhibit  
3 Number 4, both color photographs, were admitted into  
4 evidence.)

5 MS. LEGETTE: Thank you, Your Honor. May I approach the  
6 witness?

7 THE COURT: You may.

8 BY MS. LEGETTE:

9 Q: Ms. Montouth, we're going to focus for this particular  
10 point on State's Exhibit Number 3. I'll focus your attention,  
11 Ms. Montouth, to the screen at your right. This is State's  
12 Exhibit Number 3. What are we looking at?

13 A: Okay. The front and side view of the house.

14 Q: And this is the house that you live at?

15 A: Yes.

16 Q: Okay. And what is the house number?

17 A: [REDACTED] Mill Pond Road.

18 Q: Okay. Thank you. Now, Ms. Montouth, are you also  
19 familiar with a -- the area where you live on that street at  
20 Mill Pond Road?

21 A: Yes.

22 Q: What else is around that area?

23 A: Okay. At the house there on the left is my aunt's house,  
24 and on the right would be the brick house that's next to the  
25 barber shop.

## MARY ETTA MONTOUTH - DIRECT BY MS. LEGETTE

1 Q: In this area on the right at State's Exhibit 3?

2 A: Yes.

3 Q: Okay. And you said your aunt. Where does your aunt  
4 live?

5 A: On the left.

6 Q: Over on this side?

7 A: Yes.

8 Q: And who is your aunt?

9 A: Ellen Coker. She and her husband, Mr. Willie Coker, and  
10 Ellen Coker live here.

11 Q: All right. Now -- so is there anything else in  
12 relationship to your house on Mill Pond Road? Do you know a  
13 woman named Mae Francis Smith?

14 A: Yes. Mae Francis lives down the street from me.

15 Q: Okay. All right. And you said Brother's Barber Shop is  
16 on the other side of this red brick house here?

17 A: Yes.

18 Q: Now, Ms. Montouth, are you familiar with an aerial view  
19 of that area?

20 A: Yes.

21 THE COURT: Can we raise the lights or do you need them  
22 down?

23 MS. LEGETTE: We can raise the lights, Your Honor. Raise  
24 the lights, Madam Clerk.

25 THE COURT: Madam Clerk, raise the lights back up. As to

MARY ETTA MONTOUTH - DIRECT BY MS. LEGETTE

1 State's 4, do you intend to publish that before we raise the  
2 lights?

3 MS. LEGETTE: No, Your Honor, not at this time.

4 THE COURT: Very well. Leave the lights up. Proceed.

5 MS. LEGETTE: Thank you.

6 BY MS. LEGETTE:

7 Q: Ms. Montouth, momentarily, I will hand you what's been  
8 previously marked as State's Exhibit 5. Please take a moment  
9 and tell me if you recognize this Exhibit Number 5.

10 MS. LEGETTE: May I approach the witness, Your Honor?

11 THE COURT: You may. Ask a question, counsel.

12 BY MS. LEGETTE:

13 Q: Ms. Montouth, do you recognize State's Exhibit Number 5?

14 A: Yes.

15 Q: And what is State's Exhibit Number 5?

16 A: Okay. It's a view of the houses surrounding [REDACTED] Mill  
17 Pond Road, my house.

18 Q: Okay. And is State's Exhibit Number 5 a fair and  
19 accurate reflection of the location and aerial view of your  
20 house and the houses in the surrounding area at that location?

21 A: Yes.

22 Q: Has it been changed or altered or anything like that?

23 A: No.

24 Q: Okay.

25 MS. LEGETTE: At this time, Your Honor, I would offer for

MARY ETTA MONTOUTH - DIRECT BY MS. LEGETTE

1 admission into evidence State's Exhibit Number 5.

2 THE COURT: As to State's 5, Mr. Fleming?

3 MR. FLEMING: No objection.

4 THE COURT: Mr. Fleming, you may come around outside of  
5 the railing so you can see what's being shown to the jury.  
6 State's Exhibit Number 5 will be admitted into evidence in the  
7 trial of this case without objection.

8 (WHEREUPON, State's Exhibit Number 5, a large aerial  
9 photograph, was admitted into evidence.)

10 MS. LEGETTE: Your Honor, may the witness step down so  
11 she can show us what she is looking at on State's Exhibit  
12 Number 5?

13 THE COURT: All right.

14 MS. LEGETTE: I have a microphone for her, Your Honor.

15 THE COURT: Where is it?

16 MS. LEGETTE: Right here.

17 THE COURT: All right. Watch your step for me, please,  
18 Ms. Montouth.

19 (WHEREUPON, the witness left the witness stand. State's  
20 Exhibit Number 5 was placed on an easel in front of the  
21 jury.)

22 THE COURT: Now, Ms. Montouth, you've got your back to my  
23 court reporter. She's got to hear you.

24 THE WITNESS: Okay.

25 THE COURT: So you've got to use the microphone, and the

MARY ETTA MONTOUTH - DIRECT BY MS. LEGETTE

1 jury has got to be able to see the exhibit. Mr. Fleming, can  
2 you see?

3 MR. FLEMING: No, sir. I might need to come on this  
4 side.

5 THE COURT: Come over here.

6 MR. FLEMING: Thank you, Judge.

7 BY MS. LEGETTE:

8 Q: All right. Hold it up to your mouth, Ms. Montouth.

9 A: Okay.

10 Q: All right. Ms. Montouth, can you tell us what we're  
11 looking at in this particular photograph?

12 A: Yes. Okay. Right here, this is the barber shop.

13 Q: Okay.

14 A: That's the barber shop.

15 Q: Okay.

16 A: That's my house.

17 Q: Yes, ma'am.

18 A: That's my aunt's house.

19 Q: Oh, that's the -- is that the brick house?

20 A: That's the barber shop right there.

21 Q: Yes, ma'am.

22 A: That's the brick house.

23 Q: Okay.

24 A: And that's my house.

25 Q: And where did you say is your aunt's house?

## MARY ETTA MONTOUTH - DIRECT BY MS. LEGETTE

1 A: Okay. Right here.

2 Q: All right. And what's the road here we're looking at?

3 A: This is Mill Pond Road.

4 Q: All right. Okay. You can have a seat back on the  
5 witness stand.

6 A: Okay.

7 (WHEREUPON, the witness complied.)

8 Q: Thank you, ma'am. So now, Ms. Montouth, you lived in  
9 that house with your sister and Mr. James Gardner?

10 A: Yes.

11 Q: And how long would you say y'all lived there together?

12 A: Okay. James -- well, I basically lived there all my  
13 life. Mariam -- well, Mariam worked and lived in Orangeburg  
14 for a period of time. Okay. And then James lived -- came and  
15 lived at the house first with me, and then Mariam came back  
16 home. Okay. So we basically -- Mariam, James, and I lived  
17 together for about seven years.

18 Q: Okay. So now, Ms. Montouth, let's go back to January  
19 26<sup>th</sup>, 2013. Do you recall that particular day?

20 A: Yes.

21 Q: Can you tell us about that day? Just take us back to  
22 that day and tell us what happened.

23 A: Okay. On January 26<sup>th</sup>, well, I told James that -- well, I  
24 work at Ridgeland Correctional Institution and I am a member  
25 of the South Carolina Correctional Association, Ridgeland's

MARY ETTA MONTOUTH - DIRECT BY MS. LEGETTE

1 chapter, and our chapter had adopted a highway. So I told  
2 James that I had to go help clean up the highway and I  
3 shouldn't be gone too long because if everyone comes, I should  
4 be back home by twelve or one.

5 As would turn out, only three of us showed up to clean up  
6 the highway; so it took longer than what I anticipated.  
7 Another person came later on.

8 So I wanted to go to my grandson's basketball game that  
9 night, and I told James -- I said, well, I want to go to  
10 Little Adonis' basketball game in Bluffton. So I -- I got  
11 home -- well, I left and I told him -- I said, well, I've got  
12 to go. It was like three -- three thirty. I said I've got to  
13 go because I want to go to my grandson's basketball game.  
14 We'd almost finished the road; so they told me, okay, I could  
15 go and they'd finish.

16 So when I got home, it was no one there. So I went in  
17 and I was just -- I sat down for a few moments. I said, well,  
18 let me get up and get ready. So James came in as I was  
19 sitting down, and I noticed he had a pint of Crown Royal and  
20 he had drank a portion of it.

21 And he came in and said, bitch, I'm going to kill you.  
22 I'm going to kill you and I'm going to kill myself. And I  
23 said, well, why? What is going on, James? I said, you know  
24 where I was. You knew that I wanted to clean up the road, and  
25 I asked you if you wanted to come with us and you told me no.

## MARY ETTA MONTOUTH - DIRECT BY MS. LEGETTE

1           You've been out fucking. You've been fucking all day.

2 I'm going to kill you, bitch. I'm going to kill you, bitch.

3           THE DEFENDANT: (Laughter)

4           MR. FLEMING: (To defendant) Please.

5 BY MS. LEGETTE:

6 A: So I said, James -- I said, I still have some bags in my  
7 car left over from where we were cleaning up. I said, come  
8 on, I'll show you the bags. So we were going outside. I was  
9 looking in my car to get the bags, and he went to his truck to  
10 get the rifle. And when I saw he had the rifle, I ran around  
11 to the front of the house.

12           And he was telling me, come back inside. Come in the  
13 room. I'm going to kill you, bitch. I'm going to kill you,  
14 bitch. And we're standing in front of the house about three  
15 feet apart, and when I knew he was going to shoot me, I just  
16 straightened up and I looked him dead in his eyes and the gun  
17 shot and it missed my arm.

18           I don't know what happened to me. Something happened to  
19 me. I just started -- well, no. Before that, he started  
20 trying to pull me back. After he shot at me, he tried to pull  
21 me back into the house, and I fought him off.

22           And in the meantime, no one was around. No -- it was  
23 like it was deserted. And then Yolanda Grant passed by. She  
24 was -- she was driving kind of fast, and I learned later she  
25 said she knew something was wrong, but she was taking her son

## MARY ETTA MONTOUTH - DIRECT BY MS. LEGETTE

1 --

2 MR. FLEMING: Your Honor --

3 A: -- to practice.

4 THE COURT: Don't refer to what --

5 THE WITNESS: Okay.

6 THE COURT: -- someone else said.

7 THE WITNESS: All right.

8 THE COURT: Objection sustained.

9 BY MS. LEGETTE:

10 A: So after James -- after he couldn't pull me in the house,  
11 I just started walking up the street. I saw someone on Ms.  
12 Maggie's porch, and I started walking up the street and he  
13 said, I'll shoot you in the back. I'll shoot you in the back.  
14 I didn't stop walking because I know God had intervened  
15 because I had been praying.

16 But anyway, I just started walking up the street and, as  
17 I got up the street, I saw some people in Mae Francis' yard.  
18 So I just walked over there, and James had gotten in his truck  
19 and he was following me. I didn't tell them what was going  
20 on. I just kind of sat down. Mariam and Mae Francis came  
21 out.

22 So Mariam said, what's wrong with you? I didn't say  
23 anything. I was so scared. James came around.

24 (WHEREUPON, the witness knocked over the microphone.)

25 THE COURT: Pull that back down for me, Madam Clerk,

## MARY ETTA MONTOUTH - DIRECT BY MS. LEGETTE

1 right there.

2 BY MS. LEGETTE:

3 A: James sped around Mae Francis' house almost making a dent  
4 in her yard. So he just set there looking at me, and Mariam  
5 knew something. She said, well --

6 Q: Don't tell me what Mariam said.

7 A: Okay. So then Mariam said, well, you want to ride with  
8 me back down to the house. I said no. I said I'm going to  
9 walk. James told me to come on and get in the truck with him.  
10 I said no, I'm going to walk.

11 I was thinking if I guess another presence was in the  
12 house, nothing would happen. I don't know. It was just like  
13 I wasn't even there. I guess I was so frightened.

14 So then Mariam had washed clothes that -- her clothes.  
15 So she was -- had drove in the yard and she was taking her  
16 clothes in. James drove around the back. So I sat on the  
17 porch. I said, well, Lord. So then I saw James with the  
18 shotgun like this, and he came around the front of the house  
19 and went around on the side where Mariam was taking in the  
20 clothes, and I thought that he did not see me. So I said I  
21 could get away and get some help.

22 So I could hardly move. I was so afraid. But anyway, at  
23 first, I went past my aunt's house. I said, well, he could  
24 see me if I go there. So I went to the next house, which is a  
25 trailer, and Ethel Scott lives there. So I went on the side

MARY ETTA MONTOUTH - DIRECT BY MS. LEGETTE

1 of Ethel's house for a moment.

2           Then I heard the gunshot and I dropped to my knees  
3 because I thought, oh God, James done killed my sister. Then  
4 something just told me to go to the church. I said I can't go  
5 through these woods because a snake is going to bite me. So I  
6 looked to see where James' truck was. I saw the truck. So I  
7 said, well, maybe I can make it to the dirt road, which is  
8 Smoaks Lane, a little further down.

9           So I did, and I started waving my hands. I was halfway  
10 down the road and I saw a truck came out and another car was  
11 behind it. So I started waving my hands to try to get that  
12 person's attention. It was Leroy Davis, but he said he didn't  
13 recognize me.

14 Q:    Don't tell us what he said.

15 A:    So anyway, he went on, and then Bessie Grimes -- she said  
16 she --

17 Q:    Don't --

18 A:    She -- she came toward me. I got in the car. I said  
19 he's trying to kill us. He's trying to kill us. So Bessie  
20 said call 9-1-1. So I did and I told them. I said he's  
21 trying to kill us. Somebody is trying to kill us.

22           So then I got in the car. She said come on. So we drove  
23 up -- we call it Little Archie's Road, and by then the police  
24 and everyone was there, and all I could hear was the shot --  
25 the shot. And Mariam was -- they brought Mariam to get in the

MARY ETTA MONTOUTH - DIRECT BY MS. LEGETTE

1 ambulance, and she was hollering. She wanted to know where I  
2 was. So Louise Rates drove up and she said --

3 Q: Don't tell us what anyone said, but --

4 A: And anyway, that was basically it.

5 Q: Okay. So, Ms. Montouth, let's go back. You said that  
6 you sat on the porch at one point?

7 A: Yeah.

8 Q: Okay. Now, you said that Mr. Gardner told you he was  
9 going to kill you?

10 A: Yes.

11 Q: And at that point --

12 MR. FLEMING: I'm going to object to the leading of the  
13 witness, and ask --

14 THE COURT: Direct examination, counsel. Objection  
15 sustained. Ask direct questions.

16 BY MS. LEGETTE:

17 Q: Ms. Montouth, what did Mr. Gardner say and do?

18 A: I'm going to kill you, bitch, and I'm going to kill  
19 myself.

20 Q: And at that point, did he do anything in the affirmative  
21 to let you know that he was going to?

22 A: Yes. He shot the gun. We were about three feet apart  
23 and I know the gun just missed and went past my arm. It,  
24 like, brushed the hair on my arm.

25 Q: Okay. Now, you said that -- after that, you said that

## MARY ETTA MONTOUTH - DIRECT BY MS. LEGETTE

1 you kept walking?

2 A: Yes.

3 Q: And he told you -- what did he tell you at that point?

4 A: Turn around. Come on in this room. I'm going to kill  
5 you, bitch. I'm going to kill you and I'm going to kill  
6 myself.

7 Q: And did you think he would?

8 A: Yes.

9 Q: Okay. Now, at some point you went down to Ms. Mae  
10 Francis' house?

11 A: Yes.

12 Q: All right. And when you came back, when you left Ms. Mae  
13 Francis' house, you said that Mr. James came to that house  
14 too?

15 A: Yes.

16 Q: What was he doing while you were at that house?

17 A: He parked in the back. He got the gun, came around the  
18 side of the house, went and came to the front of the house. I  
19 was sitting on the porch. I didn't go inside. I -- I said he  
20 didn't see me. He thought I went in the house. I thought he  
21 was going -- he -- I said he must have thought I went in the  
22 house. So he went around the house and when he went around  
23 the house, I said I could get away and get some help.

24 Q: Okay. But let's go back. Before we get back to your  
25 house.

## MARY ETTA MONTOUTH - DIRECT BY MS. LEGETTE

- 1 A: All right.
- 2 Q: You're down at Ms. Mae Francis' house at this point?
- 3 A: I walked back to the house.
- 4 Q: Okay.
- 5 A: To my house.
- 6 Q: Yes, ma'am. But let's go back to where you were at Ms.
- 7 Mae Francis' house, where you went to get help.
- 8 A: Yes.
- 9 Q: All right. And you were talking to Ms. Mariam?
- 10 A: Yes.
- 11 Q: Did James come to that house?
- 12 A: Yes.
- 13 Q: What happened at that house when Mr. James Gardner came
- 14 to that house?
- 15 A: He just sat in the truck and looked at us. He was
- 16 looking at me saying I dare you, I dare you. You know, he was
- 17 giving me that look like I dare you to say anything, you know,
- 18 and I didn't want anyone else to get hurt. I -- I was just
- 19 thinking -- I said, Lord, I don't know what this man is going
- 20 to do.
- 21 Q: Okay. And so after you -- did you leave that house?
- 22 A: Yes.
- 23 Q: All right. And you went back home?
- 24 A: Yes.
- 25 Q: You sat on the porch, you said?

## MARY ETTA MONTOUTH - DIRECT BY MS. LEGETTE

1 A: Yes.

2 Q: I'm going to hand -- I'm going to show you now what's  
3 been previously entered into evidence as State's Exhibit  
4 Number 4.

5 MS. LEGETTE: At this time, I want to publish State's  
6 Exhibit Number 4, Your Honor.

7 THE COURT: You may.

8 MS. LEGETTE: Thank you, Your Honor.

9 THE COURT: It's in evidence.

10 MS. LEGETTE: Yes. Can you bring down the screen, Madam  
11 Clerk?

12 BY MS. LEGETTE:

13 Q: Ms. Montouth, I direct your attention to the screen at  
14 your right.

15 A: Yes.

16 Q: Is this where you were sitting?

17 A: I was sitting over on the long chair, yes.

18 Q: On the long chair?

19 A: Mm-hmm.

20 Q: All right. And at some point, you said Mr. Gardner came  
21 back around?

22 A: Yes. He came around. It would be on the left side of  
23 the house --

24 Q: Mm-hmm.

25 A: -- and came around in front. I don't think he saw me.

## MARY ETTA MONTOUTH - DIRECT BY MS. LEGETTE

1 Q: Okay.

2 A: You know, he had the gun and it was like -- it was just  
3 like he had lost it or something. I don't know. But anyway,  
4 he went around on the right side of the house.

5 Q: Mm-hmm.

6 A: And when he did that, when he got out of view, I jumped  
7 up and I said I can get some help. I started -- and something  
8 just said go to the church.

9 Q: Okay. And what church is that? I'm sorry to cut you  
10 off.

11 A: Okay. Blunt Chapel CME Church.

12 Q: And why were you going to that particular location?

13 A: Because I knew they were having a function there.

14 Q: Okay.

15 A: That day.

16 Q: Thank you.

17 MS. LEGETTE: You can pull the lights up, Madam Clerk.

18 BY MS. LEGETTE:

19 Q: And now, Ms. Montouth, you said that you were going to  
20 that church?

21 A: Yes.

22 Q: And what -- did you ever go to a street to get to that  
23 particular location?

24 A: Down Smoaks Lane.

25 Q: All right. Now, Ms. Montouth, are you familiar with a

MARY ETTA MONTOUTH - DIRECT BY MS. LEGETTE

1 crime scene diagram or a diagram of the location you're  
2 talking about with Smoaks Lane and your house?

3 A: Yes.

4 Q: Ms. Montouth, I will hand you in a moment what is  
5 previously marked as State's Exhibit Number 7. I want you to  
6 take a moment and tell me if you recognize State's Exhibit  
7 Number 7.

8 MS. LEGETTE: May I approach the witness, Your Honor?

9 THE COURT: You may.

10 BY MS. LEGETTE:

11 A: Yes.

12 Q: You recognize State's Exhibit Number 7?

13 A: Yes.

14 Q: What is State's Exhibit Number 7, Ms. Montouth?

15 A: Okay. It is a view of Mill Pond Road, Smoaks Road, the  
16 lane -- Smoaks Lane that I took.

17 Q: And is it a fair and accurate representation or  
18 reflection of that area?

19 A: Yes.

20 MS. LEGETTE: Your Honor, at this time, I would offer  
21 State's Exhibit Number 7 for admission into evidence.

22 THE COURT: As to State's 7, Mr. Fleming?

23 MR. FLEMING: No objection.

24 THE COURT: State's Exhibit Number 7 will be admitted  
25 into evidence without objection. State's 7 in evidence.

MARY ETTA MONTOUTH - DIRECT BY MS. LEGETTE

1 (WHEREUPON, State's Exhibit Number 7, a large diagram,  
2 was admitted into evidence.)

3 BY MS. LEGETTE:

4 Q: Ms. Montouth, I will ask you at this time to step down --  
5 (WHEREUPON, the witness complied.)

6 MS. LEGETTE: Your Honor, I have a microphone for her.

7 Q: And describe for us --

8 THE COURT: Just a moment, ma'am. You may come around,  
9 Mr. Fleming, so you can see. Watch your step on the stairs  
10 for me.

11 (WHEREUPON, State's Exhibit Number 7 was placed on an  
12 easel before the jury.)

13 BY MS. LEGETTE:

14 Q: All right. Ms. Montouth, can you tell us what we're  
15 looking at on State's Exhibit Number 7?

16 A: Yes.

17 THE COURT: Can everyone on the jury see?

18 BY MS. LEGETTE:

19 Q: What are we seeing?

20 A: This is Mill Pond Road. This is in the front of my  
21 house. The barber shop, the house next to the barber shop, my  
22 house, and my aunt's house, and this trailer.

23 Q: Okay.

24 A: Okay. All right. This is Smoaks Lane.

25 Q: All right.

## MARY ETTA MONTOUTH - DIRECT BY MS. LEGETTE

1 A: Okay. I came out. Well, I came through the driveway and  
2 came -- went -- well, went behind Aunt Ethel's house. Okay.  
3 And I was wondering what to do.

4 Q: You mentioned earlier that there were trees in the area?

5 A: Yes.

6 Q: Where are those trees?

7 A: In the back.

8 Q: Okay.

9 A: In the back of the houses, like, a small area.

10 Q: Okay. All right. So what did you do?

11 A: Okay. I went behind Ethel's trailer and I was wondering  
12 what to do now because I was sure James was going to come to  
13 look for me to find me. So I stood right there for a while at  
14 the side of her house wondering what to do, and I peeked  
15 around the house because you can see all back here and see the  
16 back of my house. I saw James' truck. I saw him. The truck  
17 had not moved. So I said, well, okay, I can go to the church.

18 I went down Smoaks Lane. The church is back over here.  
19 Okay. And I saw two vehicles coming out. The first one was a  
20 black SUV or a truck or something, and I was waving my hands  
21 to try to get their attention, but they didn't stop. The next  
22 car stopped. It was Ms. Grimes. So she came. She said,  
23 what's going on?

24 Q: Don't tell us what she said, but --

25 A: So anyway, I got in the -- I stopped her. I said

MARY ETTA MONTOUTH - DIRECT BY MS. LEGETTE

1 somebody is trying to kill us. He's trying to kill us. She  
2 said call 9-1-1. I said James. So she said get in and call  
3 9-1-1. So I did, and we went down, got on Pine, and by the  
4 time we came around, the cops and everybody was there.

5 But while I was here, I heard a gunshot and I thought he  
6 had killed my sister. So, of course, that upset me. I  
7 dropped down. I didn't know what to do.

8 Q: Okay. All right. Thank you, Ms. Montouth. You can have  
9 a seat back on the witness stand.

10 (WHEREUPON, the witness complied.)

11 THE COURT: Exhibits to the court reporter.

12 MS. LEGETTE: Yes, Your Honor. I beg the Court's  
13 indulgence. Ms. Montouth, thank you. I have no further  
14 questions, ma'am. Please answer any questions from the  
15 defense.

16 THE COURT: Do you have all of the exhibits, Krystal?

17 THE COURT REPORTER: Yes, sir.

18 THE COURT: You may proceed, counsel.

19 MS. LEGETTE: Yes, Your Honor.

20 THE COURT: Cross-examination?

21 MR. FLEMING: Thank you, sir.

22 CROSS-EXAMINATION

23 BY MR. FLEMING:

24 Q: Ms. Montouth, I think one of the first things that you  
25 said was that James was drinking Crown Royal?

## MARY ETTA MONTOUTH - CROSS BY MR. FLEMING

- 1 A: Yes.
- 2 Q: Okay. You actually saw the bottle?
- 3 A: Yes.
- 4 Q: Okay. Then an important thing I think you told us was
- 5 that James was three feet apart from you?
- 6 A: Yes, when he shot.
- 7 Q: Okay.
- 8 A: When the gun went off.
- 9 Q: And you called it a shotgun?
- 10 A: It was, as far as I know.
- 11 Q: Okay. And so he was three feet from you?
- 12 A: Yes.
- 13 Q: And the gun went off?
- 14 A: Yes.
- 15 Q: Okay. But it didn't hit you?
- 16 A: Exactly. Well, it did not hit me.
- 17 Q: It didn't hit you?
- 18 A: Uh-uh.
- 19 Q: And he didn't shoot at you again?
- 20 A: No, he didn't.
- 21 Q: Okay. Then from there, you went to Ms. Smith's house?
- 22 A: Yes.
- 23 Q: Okay. And that's where your sister, Mariam, was?
- 24 A: Yes.
- 25 Q: And that's where Ms. Smith was?

## MARY ETTA MONTOUTH - CROSS BY MR. FLEMING

1 A: Yes.

2 Q: But you didn't tell them what happened?

3 A: I did not.

4 Q: Okay. And then from there, you went back to the house?

5 A: I did.

6 Q: Okay. And then on you went to the church?

7 A: Yes.

8 Q: All right.

9 MR. FLEMING: That's all the questions I have. Thank  
10 you.

11 THE WITNESS: Thank you.

12 THE COURT: Redirect?

13 REDIRECT EXAMINATION

14 BY MS. LEGETTE:

15 Q: Ms. Montouth, Mr. Fleming asked you about the Crown  
16 Royal?

17 A: Yes.

18 Q: You said you've been dating Mr. Gardner how long?

19 A: About eight years.

20 Q: How long -- had you ever seen him drink before?

21 A: Yes.

22 MR. FLEMING: Your Honor, I don't believe --

23 THE COURT: Grounds?

24 MR. FLEMING: May I approach?

25 THE COURT: Counsel, approach.

## MARY ETTA MONTOUTH - REDIRECT BY MS. LEGETTE

1 (WHEREUPON, a bench conference was held off the record in  
2 the presence of the jury but out of the hearing of the  
3 jury, after which the proceedings resumed as follows.)

4 THE COURT: Objection overruled. Proceed. Proceed.

5 MS. LEGETTE: Thank you, Your Honor.

6 BY MS. LEGETTE:

7 Q: Ms. Montouth, you said that -- you told Mr. Fleming that  
8 you saw Mr. Gardner drinking a -- he had, like, a portion --

9 A: Right.

10 Q: -- of some Crown Royal?

11 A: Right.

12 Q: Can you tell us how much that portion might have been?

13 A: (Gesturing) Probably about that much.

14 Q: About that much?

15 A: Mm-hmm. About like that.

16 Q: And you said you've seen him over the years --

17 A: Yes.

18 Q: -- drink? Did he drink more than that typically?

19 A: Yes. James would drink until he passed out.

20 Q: Okay. On this particular day, did he appear to be in  
21 that kind of state?

22 A: No.

23 Q: All right. So when you said he was -- he had drunk this  
24 much of a bottle of Crown Royal, did that appear to be a lot  
25 to you?

## MARY ETTA MONTOUTH - REDIRECT BY MS. LEGETTE

1 A: Not for him.

2 Q: Not for him?

3 A: No.

4 Q: Okay. And did you -- the things that he said to you, did  
5 you believe him?

6 A: Yes. Yes. I guess I've been in a abusive relationship  
7 with James --

8 MR. FLEMING: Your Honor --

9 A: -- all this time.

10 MR. FLEMING: I have a matter of law to take up outside  
11 the presence --

12 THE COURT: Counsel, approach.

13 (WHEREUPON, a bench conference was held off the record in  
14 the presence of the jury but out of the hearing of the  
15 jury, after which the proceedings resumed as follows.)

16 THE COURT: My understanding is the objection is  
17 withdrawn. Is that correct, counsel?

18 MR. FLEMING: Yes, sir.

19 THE COURT: Very well. Recross, limited to redirect?  
20 Take a seat, Ms. Legette.

21 MR. FLEMING: I have nothing further, sir.

22 THE COURT: Very well. Ms. Montouth, you may step down  
23 from the witness stand. Watch it very carefully. Mr. Padgett  
24 will help you on that step.

25 Ladies and gentlemen of the jury, I'm going to take my

1 midmorning break at this point. They'll get you -- if you  
2 need to have something to drink, they'll get it for you.

3 Please do not discuss the case. You have not heard all  
4 the evidence in the case, and it would be improper for you to  
5 discuss it. I'll be back with you in jury a moment. You may  
6 retire to your jury room at this time.

7 (WHEREUPON, the jury exited the courtroom at 11:32 a.m.)

8 THE COURT: Let the record reflect, please, Madam Court  
9 Reporter, counsel withdrew any objection to any reference that  
10 the witness made unsolicited to an abusive relationship in the  
11 past.

12 Earlier, counsel objected to the fact that he did not  
13 want the solicitor on redirect to bring up any more questions  
14 concerning the witness' observation of the defendant's degree  
15 of sobriety. I reminded counsel there had been evidence  
16 introduced in this case, both by the defendant and the State,  
17 concerning a bottle of Crown Royal, a portion of a bottle of  
18 Crown Royal, described at one point as being a pint of Crown  
19 Royal. So I felt -- and there had been some -- a question  
20 asked about did you see the bottle on cross-examination by the  
21 defense.

22 Because of that, I overruled the defendant's objection  
23 and allowed the State to ask how much was in the bottle and  
24 what the witness observed, and I wanted there to be a record  
25 of that. Both counsel for the defendant and myself agreed

1 that the utterance by the witness concerning a previous  
2 abusive relationship is not admissible, but counsel did not  
3 want a curative instruction, which I offered to him, and  
4 decided to withdraw his objection since it was not solicited  
5 by the State.

6 We'll now take our midmorning break. All right. Ladies  
7 and gentlemen, my students out there, we're going to take our  
8 one and only break. I understand some of you have to leave by  
9 twelve. So if you have to leave by twelve, it would be better  
10 for those that have to leave to leave during my break rather  
11 than while the trial is going on.

12 Thank you very much. We'll take ten minutes at this  
13 point.

14 (WHEREUPON, there was a break in the proceedings from  
15 11:37 a.m. until 11:55 a.m., after which the proceedings  
16 resumed as follows.)

17 THE COURT: Bring us the jury, please.

18 (WHEREUPON, the jury entered the courtroom at 11:56 a.m.)

19 THE COURT: All right. Ladies and gentlemen of the jury,  
20 we'll now continue with the testimony in the trial of this  
21 case. Ms. Legette, you may call your next witness.

22 MS. LEGETTE: Thank you, Your Honor. The State calls  
23 Leroy Davis.

24 THE CLERK: Place your left hand on the Bible and raise  
25 your right hand. Do you swear to tell the truth, the whole

LEROY DAVIS - DIRECT BY MS. LEGETTE

1 truth, and nothing but the truth, so help you God?

2 THE WITNESS: I do.

3 THE COURT: Have a seat on the witness stand for me,  
4 please, sir. Pull that chair out and adjust that microphone  
5 to your height. It's going to amplify your voice. Speak up  
6 so everybody on the jury can hear you, please, sir. State  
7 your full name and spell your last name for the court  
8 reporter.

9 THE WITNESS: Leroy Davis, D-a-v-i-s.

10 THE COURT: Your witness, counsel.

11 MS. LEGETTE: Thank you, Your Honor.

12 LEROY DAVIS, being first duly sworn,  
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MS. LEGETTE:

16 Q: Good morning, Mr. Davis.

17 A: Good morning.

18 Q: Mr. Davis, where are you from?

19 A: Hampton.

20 Q: Okay. And you live in Hampton County?

21 A: Yes, I do.

22 Q: All right. And, Mr. Davis, what do you do for a living?

23 A: I used to -- nothing now. I'm retired. Closed the plant  
24 down.

25 Q: Okay. So you worked at the plant?

## LEROY DAVIS - DIRECT BY MS. LEGETTE

1 A: Yes.

2 Q: Okay. Now, do you know Mary Etta Montouth?

3 A: Yes, I do.

4 Q: And how long have you known her?

5 A: All my life.

6 Q: And how would you describe your -- your knowledge of Ms.  
7 Mary Etta Montouth? Well, I mean is she related to you?

8 A: Yes.

9 Q: Okay.

10 A: Yes, we are related.

11 Q: All right. Now, Mr. Davis, I want to turn your attention  
12 to January 26<sup>th</sup>, 2013. Do you recall that day?

13 A: Yes, ma'am, I do.

14 Q: Now, what were you doing on that day?

15 A: I was at Blunt Chapel Christian Methodist Episcopal  
16 Church. Yvonne Smith was there and I and Sister Bessie  
17 Grimes. There was a funeral. We just had a funeral and we  
18 was closing up the church. We was standing out in the yard  
19 talking.

20 Q: Okay. And did anything unusual happen while you were out  
21 there in the yard talking or right after you left?

22 A: Yes. I got in my truck and I was getting ready to leave.  
23 I turned down right on Smoak Lane and hit Pine Street. When I  
24 turned down, I seen a lady coming down -- coming down --  
25 coming down Smoak Lane, and she was waving her hands like

## LEROY DAVIS - DIRECT BY MS. LEGETTE

1 this. She was waving her hands like she was trying to get  
2 attention and I said -- and I looked and I should have  
3 recognized her, but I didn't.

4 And I said, who is this lady? I said I'm not stopping to  
5 give no woman no ride today. If I picked this woman up, my  
6 wife was going to be made with me. I said -- I said Bessie is  
7 behind me. I be talking to myself.

8 Q: Yes, sir.

9 A: I said Bessie behind me. She'll -- she'll pick her up.  
10 So I made a left turn, but what I did -- I drove slow to see  
11 what Bessie was going to do.

12 Q: Okay.

13 A: And Bessie went across and she picked her up. She went  
14 in and I couldn't see her because all of the woods, you know,  
15 where the road go down in.

16 Q: Okay.

17 A: And so I stopped and waited. I got to Childers Corner.  
18 That's 63 and Pine crossing one another. We call it Childers  
19 Corner. So I stopped there and waited because it was taking  
20 too long to back back out. So I got on my phone to call  
21 Bessie and I couldn't get her because she was -- I went back  
22 to talk with her and she said, yeah, I called 9-1-1. And so I  
23 turned around and so if I turn around, I saw Bessie backed  
24 out.

25 Q: Okay.

## LEROY DAVIS - DIRECT BY MS. LEGETTE

1 A: I said something wrong. Why they backing out that road?  
2 And came and they went up another road. And then that's when  
3 I tried to call and I turned around and came back where they  
4 was at there because, like I said, the Lord didn't mean for me  
5 to ride. I should have recognized her, my cousin, because  
6 I've known her all my life because I'd have picked her up.  
7 I'd have went to the house. So it wasn't meant for me to go  
8 there. It wasn't meant for me to pick her up. That's all I  
9 can say.

10 Q: Yes, sir. All right. So when you went -- you said you  
11 went back to Ms. Bessie and Ms. Montouth in the car?

12 A: Yes. They was parked on the side road right by Brother's  
13 Barber Shop.

14 Q: Okay. And did you notice Ms. Montouth in the car?

15 A: Yes, I did.

16 Q: Can you describe her -- I guess how she was acting and  
17 her demeanor?

18 A: She was -- she was real nervous. She couldn't hardly --  
19 she couldn't hardly talk. She was concerned about her sister.  
20 She said her sister was there in the house and she asked me --  
21 she said why you didn't stop when I --

22 MR. FLEMING: Your Honor --

23 Q: Don't tell me what --

24 THE COURT: Just a moment. Yes, sir?

25 MR. FLEMING: I would object to the hearsay.

LEROY DAVIS - DIRECT BY MS. LEGETTE

1 THE COURT: Don't refer to what someone else said, just  
2 what you know of your own personal knowledge, not what another  
3 individual said or related to you. The objection is  
4 sustained. Ask a question, counsel.

5 BY MS. LEGETTE:

6 Q: Now, Mr. Davis, can you describe how she was acting or  
7 how -- what her demeanor was like? You said she was shaking?

8 A: She was very nervous. I could tell the tremble in her  
9 voice. She was very nervous. She was shaking too.

10 Q: Okay. All right. And at this point, you were standing  
11 there talking to her. At some point, did she -- did they  
12 leave the area?

13 A: Not at that -- no. They were still there in the car. I  
14 left and walked off and was trying to go, but I couldn't go  
15 but so far because the officers had the road blocked. I  
16 couldn't go.

17 Q: Okay.

18 MS. LEGETTE: I beg the Court's indulgence.

19 Q: And, Mr. Davis, one final question. What -- what county  
20 did this happen in?

21 A: What county? In Hampton County.

22 Q: In Hampton County? Okay.

23 MS. LEGETTE: Thank you. I have no further questions.

24 THE COURT: Cross-examination?

25 MR. FLEMING: I have no questions, Your Honor.

1 THE COURT: As to this witness, Solicitor?

2 MS. LEGETTE: We ask that he be excused, Your Honor.

3 THE COURT: Any objection?

4 MR. FLEMING: No, sir.

5 THE COURT: Mr. Davis, you may step down from the witness  
6 stand and you are excused from the trial of this case. You  
7 may leave the courtroom.

8 THE WITNESS: Thank you, sir.

9 THE COURT: Call your next witness.

10 MS. LEGETTE: Thank you, Your Honor. The State calls Ms.  
11 Bessie Grimes.

12 THE CLERK: Place your left hand on the Bible and raise  
13 your right hand. Do you swear to tell the truth, the whole  
14 truth, and nothing but the truth, so help you God?

15 THE WITNESS: I do.

16 THE CLERK: You can have a seat.

17 THE COURT: Watch your step. Have a seat for me. Pull  
18 that chair up. She's going to -- the clerk is going to turn  
19 the microphone for you. It's going to amplify your voice. So  
20 I want you to speak up so everybody can hear you. State your  
21 full name and spell your last name.

22 THE WITNESS: My name is Bessie W. Grimes, G-r-i-m-e-s.

23 THE COURT: Your witness, counsel.

24 MS. LEGETTE: Thank you, Your Honor.

25 BESSIE GRIMES, being first duly

## BESSIE GRIMES - DIRECT BY MS. LEGETTE

1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. LEGETTE:

4 Q: Good morning -- or good afternoon, Ms. Grimes.

5 A: Good afternoon.

6 Q: Ma'am, where are you from?

7 A: I'm from Varnville, South Carolina.

8 Q: Okay. And what do you do for a living?

9 A: I'm retired.

10 Q: And where did you retire from?

11 A: Nevamar Plant, Hampton.

12 Q: Okay. Do you know Mary Etta Montouth?

13 A: Yes, I do.

14 Q: And do you know Mr. Leroy Davis?

15 A: Yes, I do.

16 Q: I'm going to turn your attention back to January 26<sup>th</sup>,  
17 2013. Do you recall that particular day?

18 A: Yes.

19 Q: Did anything strange or unusual happen on that day?

20 A: Well, I was at a funeral at my church, Blunt Chapel CME  
21 Church.

22 Q: Okay.

23 A: And I -- as I was leaving, I saw Ms. Mary Etta coming  
24 down the long dirt road --

25 Q: Yes, ma'am.

## BESSIE GRIMES - DIRECT BY MS. LEGETTE

1 A: -- and she was waving -- waving her hand like she was  
2 trying to stop somebody.

3 Q: Okay.

4 A: So --

5 Q: Was she running or walking?

6 A: She was running.

7 Q: Okay.

8 A: And when I realized it was her, I went on across down the  
9 road to see what was going on.

10 Q: What road is this?

11 A: This is Smoak Lane.

12 Q: Smoaks Lane? Okay.

13 A: So when I got to her, she was all hysterical and, you  
14 know, she was crying. And I said, well, what's the matter,  
15 and she said he's trying to kill me.

16 MR. FLEMING: Again, Your Honor.

17 MS. LEGETTE: Your Honor, I --

18 THE COURT: Please don't refer to what anyone else said.

19 MS. LEGETTE: May we approach, Your Honor?

20 THE COURT: You may.

21 (WHEREUPON, a bench conference was held off the record in  
22 the presence of the jury but out of the hearing of the  
23 jury, after which the proceedings resumed as follows.)

24 BY MS. LEGETTE:

25 Q: So, Ms. Grimes, you said that you saw Ms. Mary Etta?

## BESSIE GRIMES - DIRECT BY MS. LEGETTE

- 1 A: Yes.
- 2 Q: Okay. And so when you saw her, what did you do?
- 3 A: I stopped.
- 4 Q: Okay. And what did she do at this point? Don't tell me
- 5 what she said, but what did she do?
- 6 A: I asked her what was the matter and she told me.
- 7 Q: Don't tell me, but she told you?
- 8 A: Yeah.
- 9 Q: Okay. And what --
- 10 A: So I told her to get in the car.
- 11 Q: Yes, ma'am.
- 12 A: So I asked her did she call 9-1-1.
- 13 Q: And at that point, did she call?
- 14 A: I gave her my phone.
- 15 Q: Okay.
- 16 A: And she called.
- 17 Q: Did she call 9-1-1?
- 18 A: Yes.
- 19 Q: All right. And so what else did -- what else happened
- 20 that day?
- 21 A: Well, I proceeded not to going down the dirt road. I
- 22 backed straight out to the main road.
- 23 Q: Yes, ma'am.
- 24 A: And then I proceeded to go down the street by the barber
- 25 shop.

## BESSIE GRIMES - DIRECT BY MS. LEGETTE

1 Q: Mm-hmm.

2 A: And as I got there, there was an officer standing there  
3 and he said, ma'am, you can't go that way, which would have  
4 been right.

5 Q: Yes, ma'am.

6 A: And I told him I had one of the victims in there. So he  
7 told me to go the other way.

8 Q: And what did you do?

9 A: I went the other way, and I pulled up in front of Eula C.  
10 Green's [phonetic] door. That's where I stopped at.

11 Q: And did anything else happen when you got to Eula C. --  
12 you said Eula C. Green?

13 A: Eula C. Green.

14 Q: Did anything else happen when you got to that location?

15 A: Well, after we got to that location, I heard a shot.  
16 Then I heard several shots.

17 Q: Okay. And so at this point, is Ms. Mary Etta Montouth  
18 still in the car with you?

19 A: Yes, she was.

20 Q: How did she react to hearing those? Did she hear the  
21 shots?

22 A: Yes, she did.

23 Q: What was her reaction?

24 A: She was real upset.

25 Q: So you heard the shots?

## BESSIE GRIMES - DIRECT BY MS. LEGETTE

- 1 A: Yes.
- 2 Q: And what, if anything, did you do next?
- 3 A: Well, after it ceased down, I asked her did she want to
- 4 go down there.
- 5 Q: Did y'all go down there?
- 6 A: Not right at the moment.
- 7 Q: Okay. So where is down there? You keep talking -- you
- 8 say down there. Where is down there?
- 9 A: Where the accident occurred at.
- 10 Q: Where the incident occurred?
- 11 A: Mm-hmm.
- 12 Q: Okay. And so did you go at any time?
- 13 A: Yeah.
- 14 Q: Tell us about that?
- 15 A: A little bit later, I asked her again, and she said she
- 16 wanted to go.
- 17 Q: So did you go?
- 18 A: Yes. But I didn't go back the route I came.
- 19 Q: All right. And at some point, did you see anyone else?
- 20 A: When I got back to the side of the road by the barber
- 21 shop, I asked did she want to go see about her sister.
- 22 Q: And did you go -- did she go see about her sister?
- 23 A: She said no.
- 24 Q: Did you go see about her sister?
- 25 A: I went.

## BESSIE GRIMES - DIRECT BY MS. LEGETTE

- 1 Q: All right. And --
- 2 A: When I got there, I saw them putting her sister in the  
3 EMS.
- 4 Q: Okay.
- 5 A: And she was asking about --
- 6 Q: Don't tell me what she said.
- 7 A: -- her sister.
- 8 Q: Don't tell me what she said. How did she act? Her  
9 sister?
- 10 A: Her sister was upset because she didn't know where Ms.  
11 Mary Etta was.
- 12 Q: Okay. So now at some point, did you go back to where Ms.  
13 Mary Etta was?
- 14 A: Yes, I did.
- 15 Q: And did you tell her anything?
- 16 A: Yes.
- 17 Q: What did you tell her?
- 18 A: I told that I saw her sister and she was worried about  
19 her.
- 20 Q: Okay.
- 21 A: And I told her that I had her in my car.
- 22 Q: Okay. So did they calm down? Either one of them?
- 23 A: Not right at the moment.
- 24 Q: Okay. So did anything else happen this day unusual?
- 25 A: Not that I can recall.

BESSIE GRIMES - DIRECT BY MS. LEGETTE

1 Q: Okay. So at some point, did Ms. Mary Etta get out of  
2 your car?

3 A: Yes.

4 Q: And how did that happen?

5 A: Well, she finally wanted to make a phone call.

6 Q: Okay.

7 A: So she got out.

8 Q: All right. And then what did you do?

9 A: She told me I could go if I wanted to.

10 Q: And did you?

11 A: Yes, I did.

12 Q: Okay.

13 MS. LEGETTE: I beg the Court's indulgence. I have no  
14 further questions, Ms. Grimes. Answer any questions from Mr.  
15 -- from the defense.

16 THE COURT: Cross-examination?

17 MR. FLEMING: I have no questions.

18 THE COURT: As to this witness, Solicitor?

19 MS. LEGETTE: We ask that she be excused, Your Honor.

20 THE COURT: Any objection, Mr. Fleming?

21 MR. FLEMING: No, sir.

22 THE COURT: Very well. Ms. Grimes, you may step down  
23 from the witness stand and you are excused from the trial of  
24 this case. You may leave the courtroom at this time. Call  
25 your next witness.

MARIAM WALDEN - DIRECT BY MS. LEGETTE

1 MS. LEGETTE: Thank you, Your Honor. The State calls  
2 Mariam Walden.

3 THE CLERK: Place your left hand on the Bible and raise  
4 your right hand. Do you swear to tell the truth, the whole  
5 truth, and nothing but the truth, so help you God?

6 THE WITNESS: Yes, ma'am.

7 THE COURT: Be careful on the step there, Ms. Walden.  
8 Have a seat. Pull your chair up. I need you to speak up,  
9 ma'am, so everybody can hear you on the jury and the court  
10 reporter can hear you. Begin by stating your full name and  
11 spelling your last name for me.

12 THE WITNESS: My name is Mariam Walden. Last name is W-  
13 a-l-d-e-n.

14 THE COURT: Would you spell your first name for me too,  
15 please?

16 THE WITNESS: Mariam, M-a-r-i-a-m.

17 THE COURT: Very well. Proceed, counsel, direct  
18 examination.

19 MS. LEGETTE: Thank you, Your Honor.

20 MARIAM WALDEN, being first duly  
21 sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. LEGETTE:

24 Q: Ms. Walden, where are you from?

25 A: I'm from Varnville, South Carolina.

## MARIAM WALDEN - DIRECT BY MS. LEGETTE

1 Q: And, Ms. Walden, where do you work?

2 A: I work at Claflin University in Orangeburg, South  
3 Carolina.

4 Q: And how long have you worked at Claflin?

5 A: Forty years.

6 Q: How many?

7 A: Forty.

8 Q: Okay. All right. Ms. Walden, I need you to speak into  
9 the microphone -- okay? -- so we can all hear you. All right  
10 right?

11 A: All right.

12 Q: Okay. So, Ms. -- Ms. Walden, do you know Mary Etta  
13 Montouth?

14 A: Yes, ma'am.

15 Q: How do you know her?

16 A: She's my older sister.

17 Q: All right. And do you know James Gardner?

18 A: I do.

19 Q: And how do you know him?

20 A: As her boyfriend.

21 Q: And is Mr. Gardner present in court today?

22 A: Yes, he is.

23 Q: Can you point him out, please?

24 A: Yes, ma'am.

25 Q: Will you do that?

## MARIAM WALDEN - DIRECT BY MS. LEGETTE

1 A: That's he --

2 Q: And --

3 A: -- with the blue shirt on with the blue and gray tie with  
4 glasses on.

5 Q: Thank you.

6 A: All right.

7 MS. LEGETTE: Let the record reflect the witness has  
8 indicated James Gardner.

9 BY MS. LEGETTE:

10 Q: Now, Ms. Walden, how long have you known James Gardner  
11 approximately?

12 A: About five -- six years.

13 Q: Okay. And how did you come to know him?

14 A: As my sister's boyfriend.

15 Q: Okay. And at some point -- where do you live now?

16 A: I'm living at home now, but previously I lived in  
17 Columbia and Orangeburg.

18 Q: Okay.

19 A: Mm-hmm.

20 Q: And at some point, have you in the past lived with your  
21 sister?

22 A: Yes, ma'am, all of my life prior.

23 Q: I'm sorry. I made a -- that was a bad question. Have  
24 you ever lived in Varnville at [REDACTED] Mill Pond Road?

25 A: Yes.

## MARIAM WALDEN - DIRECT BY MS. LEGETTE

1 Q: Okay. And who lived there with you?

2 A: My sister and Mr. Gardner at the time.

3 Q: Okay. And your sister is Ms. Mary Etta Montouth?

4 A: Yes, ma'am.

5 Q: Okay. Now, what county is [REDACTED] Mill Pond Road located in?

6 A: Hampton.

7 Q: Now, Ms. Walden, I want to turn your attention to January  
8 26<sup>th</sup>, 2013. Do you recall that day?

9 A: Yes, ma'am.

10 Q: Can you take us back to that day and tell us about that  
11 day?

12 A: Yes, ma'am.

13 Q: Tell us what happened? What were you doing that day?

14 A: Well, it was a Saturday. My sister -- well, we do things  
15 on Saturday. I do my laundry, and that Saturday she was going  
16 to pick up trash on the highway.

17 Q: Okay.

18 A: Mm-hmm. And I washed my clothes and I put them out on  
19 the line. Well, actually, not the line. There's a fence  
20 right there.

21 Q: Okay.

22 A: And I had put them out there in the sun to dry. And  
23 after that, I went up to my cousin's house, Mae Francis.

24 Q: Okay.

25 A: Mm-hmm.

## MARIAM WALDEN - DIRECT BY MS. LEGETTE

- 1 Q: All right. And how -- about how far away would you say  
2 Mae Francis lives from you approximately?
- 3 A: Our house and my brother's house next door and then the  
4 barber shop. I don't know how to measure, but feet?
- 5 Q: You could walk down there?
- 6 A: Oh, yeah, easily.
- 7 Q: Okay. So you could walk there?
- 8 A: Mm-hmm.
- 9 Q: All right. So when you go to your cousin Ms. Mae  
10 Francis' house, what do you do there?
- 11 A: Talk. Eat.
- 12 Q: Okay.
- 13 A: Mess around, you know.
- 14 Q: All right. At some point, did you see -- you said Ms.  
15 Mary Etta Montouth went to pick up trash?
- 16 A: Yes.
- 17 Q: All right. So was she home when you left to go to Ms.  
18 Mary Etta -- I mean Ms. Francis -- Ms. Mae Francis Smith's  
19 house?
- 20 A: No.
- 21 Q: All right. Did you see Mr. Gardner before you left home  
22 that morning?
- 23 A: Mm-hmm.
- 24 Q: Okay.
- 25 THE COURT: You can't --

## MARIAM WALDEN - DIRECT BY MS. LEGETTE

1 MS. LEGETTE: Don't say --

2 THE COURT: Hold on. You've got to say yes or no. Don't  
3 mm-hmm, uh-uh.

4 THE WITNESS: Okay.

5 THE COURT: The court reporter has got to be able to take  
6 down your answer.

7 THE WITNESS: All right.

8 THE COURT: What was your last answer?

9 THE WITNESS: Yes.

10 THE COURT: All right.

11 BY MS. LEGETTE:

12 Q: So you saw Mr. Gardner that day?

13 A: Yes.

14 Q: All right. And when you left home, was he at home or do  
15 you know where he was? Do you remember? It's okay if you  
16 don't remember.

17 A: I don't know. I don't remember --

18 Q: All right.

19 A: -- whether he was there when I left precisely. I don't  
20 know.

21 Q: Okay. So you went down to Ms. Mae Francis Smith's house?

22 A: Yes.

23 Q: And at some point, did you see Ms. Mary Etta Montouth  
24 again?

25 A: Yes.

## MARIAM WALDEN - DIRECT BY MS. LEGETTE

1 Q: Tell us about when you saw her again?

2 A: In the afternoon -- I don't know what time it was, but

3 she -- she came. She was walking toward the house and --

4 Q: Toward what house?

5 A: Mae Francis' house.

6 Q: Okay.

7 A: So I went out. She said are you going with me to the

8 game. I'm sorry.

9 Q: Yes. Don't tell --

10 A: So we talked.

11 Q: Yes, ma'am.

12 A: And --

13 Q: Talked about what?

14 A: Going to a basketball game of my nephew, her grandson.

15 Q: Okay.

16 A: In Bluffton. And I said, well, did I say I was going to

17 the game? You know, we were talking. And she said, well --

18 Q: Don't tell us what she said, but --

19 A: Okay. Then she turned around and she just -- she started

20 to leave.

21 Q: Okay.

22 A: Mm-hmm.

23 Q: At some point, did someone else show up while she was

24 there talking to you?

25 A: Yes.

## MARIAM WALDEN - DIRECT BY MS. LEGETTE

1 Q: Who showed up?

2 A: Mr. James Gardner in his -- in his truck, and he was  
3 following behind her.

4 Q: Okay.

5 A: He was riding beside her slowly. As she walked, he kept  
6 pace with her.

7 Q: Okay. And did he come to the house with her or --

8 A: To Ms. Mae Francis'?

9 Q: Yes.

10 A: Yes, he did.

11 Q: Okay. And so what happened when he got there? Do you  
12 remember?

13 A: Yes. He -- he didn't say anything to -- to us, but I  
14 talked to my sister. Mm-hmm. And we discussed, like I said,  
15 the game.

16 Q: Yes, ma'am.

17 A: And --

18 Q: And Mr. James -- what was he doing at this point?

19 A: He was just sitting in the car and, you know, just -- he  
20 had a -- just looking real strange at us. He didn't say  
21 anything, but he was just looking.

22 Q: Just looking?

23 A: Mm-hmm.

24 Q: Okay. And so you said at some point -- then you said Ms.  
25 Mary Etta Montouth left?

## MARIAM WALDEN - DIRECT BY MS. LEGETTE

1 A: She did.

2 Q: Okay. Did you leave with her or how did that happen?

3 A: She left before me.

4 Q: All right.

5 A: And --

6 Q: What about Mr. Gardner? What did he do?

7 A: When she started walking, he got in his car and he rode

8 right -- as she walked, he was driving right beside her.

9 Q: Okay. And at some point, did you decide to leave Ms. Mae

10 Francis' house?

11 A: I did, because I noticed that she was -- she was -- she

12 wasn't acting herself, you know, and she was kind of upset.

13 Even though she didn't -- she didn't say she was, but I could

14 tell. And so I said to Mae Francis -- I said, you know what?

15 I said I need to go home. I said because my sister's not

16 acting right. I said she just doesn't seem right. I said

17 maybe I need to go to the game with her, you know, and I said

18 maybe I'll just go to the game with her because she's kind of

19 upset. So at that point, I got in my car and I started

20 driving home and I passed her and I said get in the car and

21 ride with me home, but she didn't.

22 Q: Okay. All right. So did you go home?

23 A: I did.

24 Q: And when you got home, what did you do?

25 A: I started to take in -- to take in my clothes.

## MARIAM WALDEN - DIRECT BY MS. LEGETTE

1 Q: Mm-hmm.

2 A: And then when I got back in the house, Mr. James came in,  
3 and he was looking through a cabinet and then he -- I said  
4 what are you looking for. He said I got a drink here or  
5 something. But he -- then he just kind of, like, closed the  
6 cabinet and went on out. And then I just stayed in the house  
7 and I started folding up my clothes and everything.

8 So a couple of -- a couple of minutes later, he came in.  
9 He had two rifles in his hand, and he looked at me and he said  
10 I'm going to kill you, bitch. I'm going to kill all y'all  
11 bitches today. And I looked at him and I said surely you  
12 jest. I said surely you're just kidding. He said no, I'm  
13 not.

14 So I was in the kitchen and there's a counter here.  
15 There's a table here, the stove, and the deep freezer. So I  
16 was standing over by the stove, and I have rheumatoid  
17 arthritis. I've had knee replacements. Ordinarily, I  
18 couldn't do what I did on that day. I fell to my knees. I  
19 threw my hands up and I just started calling the name of  
20 Jesus. I said Jesus, Jesus, Jesus.

21 I heard the gun click. Nothing. And I just kept calling  
22 the name of Jesus and I closed my eyes. I heard it click  
23 again. When I opened my eyes again, he -- I'm going to kill  
24 myself. I'm going to kill myself. And I just said no, no,  
25 no, no, no.

## MARIAM WALDEN - DIRECT BY MS. LEGETTE

1           So he got -- he was agitated. So he ran out the back  
2 door. So that's when I made the 9-1-1 call. At that point, I  
3 called 9-1-1. I talked to the operator, and I was -- I  
4 thought he had killed my sister. So I went out of the house  
5 to look for her because at that point I kept yelling for her  
6 and I had not seen her.

7 Q: Were you still on the phone with 9-1-1 at this point?

8 A: I guess. I don't remember. I don't fully remember.

9 Q: Yes, ma'am.

10 A: Yes, ma'am. Yes, ma'am. I guess I was.

11 Q: Yes, ma'am.

12 A: So I went out of the house and as I came out of the back  
13 door, he ran from around the house and he had a gun and he --  
14 he shot me, and I didn't stop running. I just kept running  
15 and I saw Miss Dot and Police Chief Smith. He said come on.  
16 He said I got you, come on, come on. So I ran to him and Ms.  
17 Dot. And I was shot, but -- and I kept on.

18           And then after they got me in the ambulance and started  
19 attending to me, Bessie came up and she said that --

20 Q: Don't tell me what she said, but --

21 A: Okay. But that's when I discovered my sister was there  
22 -- was -- was okay.

23 Q: Okay.

24 A: That she had not been shot.

25 Q: And at some point, you said you were in the ambulance?

## MARIAM WALDEN - DIRECT BY MS. LEGETTE

1 A: Mm-hmm.

2 Q: While you were in the ambulance, did they take you  
3 anywhere?

4 A: No. They just -- I had on some jogging pants. They cut  
5 the pants off my leg. They took my vitals and, you know, kind  
6 of like patched my leg and looked at it.

7 Q: Yes, ma'am.

8 THE COURT: You've got to speak up, ma'am.

9 THE WITNESS: Okay.

10 BY MS. LEGETTE:

11 A: They looked at my wound and patched it up and took my  
12 vitals and then just asked me to lay down and be calm.

13 Q: Yes, ma'am. Did you ever go to the hospital?

14 A: I did.

15 Q: Which hospital did you go to?

16 A: I first went to Hampton Regional Medical Center.

17 Q: Okay.

18 A: And I was in the room there, and I saw -- several doctors  
19 saw me and --

20 Q: Did they take any x-rays or CAT scans of you?

21 A: Yes. I had all kind of x-rays, all kind of doctors. And  
22 they said that they were going to send me to MUSC because --  
23 because I had --

24 Q: I need you to speak up, please.

25 A: Okay. They were going to send me to MUSC in Charleston.

MARIAM WALDEN - DIRECT BY MS. LEGETTE

1 I needed to go to Charleston because I had a wound and it was  
2 a trauma wound or something, and they didn't want to cut my  
3 thigh because they thought they would have damaged my muscle  
4 in the thigh.

5 Q: Okay.

6 A: At that point, it was decided that I should go to  
7 Charleston to have a trauma unit look at the wound.

8 Q: And did you go to Charleston?

9 A: I did. I was transported by ambulance to MUSC, and we  
10 arrived there. My aunt rode with me, and got to the trauma  
11 unit and was examined and x-rayed, the whole body x-rays  
12 again. Talked to policemen, clergy, doctors, nurses. And  
13 they cleaned my wound and they kept me there for a little  
14 while. And I was told that since it was -- the bullet was not  
15 made of lead that I probably -- it probably would work itself  
16 out of my thigh, and I didn't have any kind of surgery or  
17 anything in that there was no chance of me getting lead  
18 poisoning because bullets now are made out of steel.

19 Q: Yes, ma'am.

20 A: And that it would probably work itself out. So I stayed  
21 overnight, and later that day my cousin and her brother came  
22 and picked me up and they brought me on back.

23 Q: So that -- so at MUSC, they didn't take out the bullet?

24 A: No, ma'am.

25 Q: Okay. Now, you testified earlier about getting x-rayed.

MARIAM WALDEN - DIRECT BY MS. LEGETTE

1 Ms. Walden, you said you got x-rayed. They x-rayed you?

2 A: Yes, ma'am.

3 Q: And I hand you now what's been previously marked as  
4 State's Exhibits 8 and 9. Take a moment and tell me if you  
5 recognize these items.

6 MS. LEGETTE: May I approach the witness, Your Honor?

7 THE COURT: You may.

8 BY MS. LEGETTE:

9 A: Yes, ma'am.

10 Q: Do you recognize State's Exhibits 8 and 9?

11 A: Yes, ma'am.

12 Q: And what are State's Exhibits 8 and 9?

13 A: X-rays of the bullet, and I can tell they're mine because  
14 I have two knee replacements, two joint replacements on my  
15 knees.

16 Q: And, Ms. Walden, are State's Exhibits 8 and 9 a fair and  
17 accurate representation of the x-rays taken of you at the --  
18 where were those taken?

19 A: Hampton.

20 Q: At the Hampton Regional Medical Center?

21 A: They are. Yes, ma'am.

22 Q: They are?

23 A: Yes, ma'am.

24 Q: Have they been changed or altered in any way?

25 A: I'm sorry?

MARIAM WALDEN - DIRECT BY MS. LEGETTE

1 Q: Have they been changed or altered in any way?

2 A: No, ma'am.

3 MS. LEGETTE: At this time, Your Honor, I would offer  
4 State's Exhibits 8 and 9 for admission into evidence.

5 THE COURT: Any objection?

6 MR. FLEMING: I would object, Your Honor. I believe --

7 THE COURT: Counsel, approach.

8 (WHEREUPON, a bench conference was held off the record in  
9 the presence of the jury but out of the hearing of the  
10 jury, after which the proceedings resumed as follows.)

11 THE COURT: Objection is withdrawn by counsel for the  
12 defendant. State's Exhibits 8 and 9 are to be admitted into  
13 evidence. Per the Court's instructions in a bench conference,  
14 8 and 9 are now in evidence. Solicitor, please abide by the  
15 Court's instructions at the bench.

16 MS. LEGETTE: Thank you, Your Honor.

17 (WHEREUPON, State's Exhibit Number 8 and State's Exhibit  
18 Number 9, both x-rays, were admitted into evidence.)

19 BY MS. LEGETTE:

20 Q: Now, Ms. Walden, you indicated earlier that when you  
21 were at the hospital at MUSC, the bullet was never taken out?

22 A: Right. Yes, ma'am.

23 Q: And were you able to feel the bullet inside you or --

24 A: Yes, ma'am.

25 Q: Okay. And at some point, did you have any pain

## MARIAM WALDEN - DIRECT BY MS. LEGETTE

1 associated with the wound?

2 A: Yes, ma'am.

3 Q: How long did the pain last?

4 A: About a year. More -- a year. A year and a month or  
5 two. I could feel it.

6 Q: Okay.

7 A: Yes, ma'am.

8 Q: And to your knowledge, did it ever stop hurting?

9 A: It did. After that period, in the area around it was  
10 still kind of, like, sore to touch. It wasn't as tender.

11 Q: Yes, ma'am.

12 A: But I could still feel -- feel where the bullet was.

13 Q: All right. Can you still feel the bullet or where the  
14 bullet is?

15 A: No, ma'am. Not now.

16 Q: Okay.

17 MS. LEGETTE: I beg the Court's indulgence.

18 BY MS. LEGETTE:

19 Q: Now, Ms. Walden, let's go back to the house. When you  
20 said that you were in the house and --

21 A: Yes, ma'am.

22 Q: -- you said Mr. -- what did Mr. -- what did Mr. Gardner  
23 say to you while you were in the house and he pulled the two  
24 guns out?

25 A: He told me he was going to kill me.

## MARIAM WALDEN - DIRECT BY MS. LEGETTE

1 Q: Did you believe him?

2 A: Yes, ma'am.

3 Q: Okay.

4 MS. LEGETTE: I have no further questions. Answer any  
5 questions Mr. Gardner -- of Mr. Fleming, please.

6 THE COURT: Cross-examination?

7 MR. FLEMING: Just real briefly.

8 CROSS-EXAMINATION

9 BY MR. FLEMING:

10 Q: I think you -- you -- did you say you spent the night in  
11 the hospital or were you released the same day later that  
12 night?

13 A: Yeah. No. The morning -- the next morning.

14 Q: The next morning?

15 A: Yes.

16 Q: Okay. All right. But -- I got you. I understand. You  
17 had given a previous statement that said you went to your  
18 family's house in Charleston. You don't remember giving a  
19 statement to the chief? It could have -- you could have just  
20 meant that it was early in the morning?

21 A: Yes. It was --

22 Q: Because the records I don't think say that.

23 A: It was the next day. I mean you know what I'm saying.  
24 It was -- I stayed in the hospital overnight.

25 Q: Okay. That's fine. That's fine. I think you said that

## MARIAM WALDEN - CROSS BY MR. FLEMING

- 1 Mr. Gardner had a -- had a rifle?
- 2 A: Yes.
- 3 Q: Right?
- 4 A: He had two.
- 5 Q: He had two? And that when you were in the house, you
- 6 didn't -- you didn't run. You actually got down on your
- 7 knees?
- 8 A: Yes, I did.
- 9 Q: Okay. And although he said he was going to kill you, he
- 10 didn't kill you at that time?
- 11 A: Well, he --
- 12 Q: At that time?
- 13 A: At that time.
- 14 Q: Okay. You do indicate that you got shot in the leg?
- 15 A: Yes, sir.
- 16 Q: Okay. And you were running?
- 17 A: Yes, sir.
- 18 Q: All right. And -- but you didn't get shoot -- shot
- 19 anywhere else?
- 20 A: No, sir.
- 21 Q: Okay. And you just kept running?
- 22 A: Yes, sir.
- 23 Q: All right.
- 24 MR. FLEMING: That's all the questions I have, Judge.
- 25 THE COURT: Redirect?

## MARIAM WALDEN - REDIRECT BY MS. LEGETTE

1 MS. LEGETTE: Briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. LEGETTE:

4 Q: Ms. Walden, when he told you he would kill you, did he do  
5 anything with the gun?

6 A: He shot -- I mean he clicked, you know, the gun's --

7 Q: He pulled the trigger?

8 A: Yeah. Yes, ma'am. Yes, ma'am.

9 Q: Did it go off?

10 A: No, ma'am. It clicked two times.

11 Q: Okay. Thank you.

12 MS. LEGETTE: No further questions.

13 THE COURT: Recross limited to redirect?

14 RECROSS-EXAMINATION

15 BY MR. FLEMING:

16 Q: When it clicked, you indicated he was trying to kill  
17 himself?

18 A: No, sir. I -- there were two shots at me, two -- twice,  
19 and then he tried to kill himself.

20 Q: So there were three clicks?

21 A: Yeah. I think. Yes, sir.

22 Q: All right.

23 A: I know there were two clicks.

24 Q: Were there two or were there three?

25 A: Two.

## MARIAM WALDEN - RECROSS BY MR. FLEMING

1 Q: There were two?

2 A: Yes.

3 Q: So there was --

4 A: Two clicks.

5 Q: -- one click to kill himself and one click to kill you?

6 A: Yes, sir. Yes, sir.

7 Q: Okay.

8 A: I don't know. I can't remember that well again. I know  
9 -- well, I know there were two -- two clicks. Two clicks at  
10 me. I know there were. And he tried -- and when I opened my  
11 eyes, I know he -- there was -- he had a gun up under his --  
12 hisself.

13 Q: Not pointed at you, but pointed to his chin?

14 A: Yes. Yes.

15 Q: That's all the questions I have. Thank you.

16 A: Okay.

17 THE COURT: As to this witness, I assume she's going to  
18 remain with us?

19 MS. LEGETTE: Yes, Your Honor. She'll remain with us.

20 THE COURT: You may step down. Call your next witness.

21 MS. LEGETTE: Thank you, Your Honor. The State calls  
22 Ranata Louise Ford.

23 THE CLERK: Place your left hand on the Bible and raise  
24 your right hand. Do you swear to tell the truth, the whole  
25 truth, and nothing but the truth, so help you God?

## RANATA LOUISE FORD - DIRECT BY MS. LEGETTE

1 THE WITNESS: Yes, ma'am.

2 THE CLERK: Have a seat.

3 THE COURT: Ms. Ford, have a seat on the witness stand.

4 Melinda is going to turn the microphone this way. It will  
5 amplify your voice and I want you to use it so everybody on  
6 the jury can hear you and the people can hear you. You have  
7 to speak up for me. State your full name and spell your last  
8 name for my court reporter.

9 THE WITNESS: My name is Ranata Louise Ford. Last name  
10 is F-o-r-d.

11 THE COURT: Your witness, counsel.

12 MS. LEGETTE: Thank you, Your Honor.

13 RANATA LOUISE FORD, being first duly  
14 sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. LEGETTE:

17 Q: Ms. Ford, where do you work?

18 A: Hampton County EMS.

19 Q: And what do you do at the Hampton County EMS?

20 A: I'm a supervisor paramedic.

21 Q: Okay. And how long have you been a paramedic?

22 A: I've been a paramedic since October of 2007.

23 Q: Can you explain your education and training and  
24 experience as it relates to becoming a paramedic?

25 A: As a paramedic, I had to become an EMT basic first and,

RANATA LOUISE FORD - DIRECT BY MS. LEGETTE

1 once I got my EMT basic, I started my paramedic in the  
2 beginning of January 2007 -- yeah, 2007. I had to go and do  
3 1,100 hours of training. That's dealing with clinical time,  
4 ride-alongs, as in went through twelve-hour ride-alongs. It  
5 was 260 hours not on duty, 255 hours at the hospital, like  
6 MUSC, doing rotations like -- let's see -- One West has a  
7 trauma center, the psych ward, the NICU, and I have to go and  
8 be certified in ACMS. That's advanced cardiac life support,  
9 basic cardiac life support, and pediatric life support.

10 Q: Now, Ms. Ford, how many levels of EMTs or emergency  
11 medical personnel are there?

12 A: There's a total of three.

13 Q: And what level is -- if you could, explain for us the  
14 hierarchy and how they rank.

15 A: When it comes to EMS, the first level is EMT basic. The  
16 EMT basic has to have approximately 200 hours of class time.  
17 They are -- they are trained in basic life support. It's just  
18 the first responders. The main thing is with CPR, being  
19 controlled.

20 The next level is EMT intermediate. EMT intermediate is  
21 almost exactly like the basic, but the only difference is they  
22 are more aggressive when it comes to airway management and  
23 trauma. They can go and start IVs and, just recently, the  
24 intermediates are being trained as advanced so they can go and  
25 give first line cardiac drugs.

## RANATA LOUISE FORD - DIRECT BY MS. LEGETTE

1 Q: And then the paramedic?

2 A: A paramedic -- we're responsible for the whole truck. We  
3 are responsible to make sure everything is on the truck,  
4 dealing with a cardiac monitor, the oxygen, and all the drugs.  
5 As a paramedic, I have to go and keep a current advanced  
6 cardiac life support license. I also have to go and be  
7 trained in pediatric advanced life support, CPR trained, and  
8 keep my national registry.

9 Q: And you testified earlier that you are a paramedic  
10 supervisor. Is there any other difference by being a  
11 supervisor?

12 A: With the supervisor, I have to go make sure all the  
13 trucks run appropriately. I'm responsible for -- even though  
14 currently I'm only responsible for three trucks and two truck  
15 -- I mean two crew members on each truck, as a supervisor I'm  
16 in charge of a total of 18 people. So even though, like,  
17 today is my shift, no matter what day it is, if someone needs  
18 help, I'm responsible. The day they run on the truck, I'm the  
19 supply officer, so I order the supplies. I'm the effective  
20 control officer at EMS, so it's a lot of responsibilities I'm  
21 currently responsible for.

22 Q: Now, you said you've been a paramedic since 2007, and you  
23 also were involved in emergency medical services before that;  
24 correct?

25 A: I got my EMT in 2002.

RANATA LOUISE FORD - DIRECT BY MS. LEGETTE

1 Q: All right. So how many patients over the years would you  
2 say you've treated?

3 A: Through the 9-1-1 system, since 2006, approximately  
4 3,400.

5 Q: And of those 3,400 people that you've treated, have any  
6 of those people ever had a gunshot wound?

7 A: Yes.

8 Q: About how many would you say?

9 A: Between 25 and 30 of them.

10 Q: And, Ms. Ford, have you ever been qualified as an expert  
11 in the field of emergency medical services in the past?

12 A: Yes, I have.

13 Q: How many times?

14 A: Twice.

15 Q: And how many times have you testified in court?

16 A: Once.

17 Q: Okay.

18 MS. LEGETTE: At this time, Your Honor, I would offer Ms.  
19 Ranata Ford as an expert in the field of emergency medical  
20 services.

21 THE COURT: Any objection as to qualifications?

22 MR. FLEMING: Not to that particular field. No, sir.

23 THE COURT: Ladies and gentlemen, you have -- counsel,  
24 approach.

25 (WHEREUPON, a bench conference was held off the record in

RANATA LOUISE FORD - DIRECT BY MS. LEGETTE

1 the presence of the jury but out of the hearing of the  
2 jury, after which the proceedings resumed as follows.)

3 MS. LEGETTE: Your Honor, at this time, I would offer Ms.  
4 Ranata Ford as an expert in the field -- in the area of  
5 paramedic and treatment of gunshot wounds.

6 THE COURT: Any objection as to qualifications?

7 MR. FLEMING: No, sir. Other than -- treatment is  
8 different than diagnosis.

9 THE COURT: Counsel, this is a word game. Counsel,  
10 approach.

11 (WHEREUPON, a bench conference was held off the record in  
12 the presence of the jury but out of the hearing of the  
13 jury, after which the proceedings resumed as follows.)

14 THE COURT: Step back.

15 MS. LEGETTE: At this time, Your Honor, I would offer Ms.  
16 Louise -- Ms. Ranata Louise Ford as an expert in the field of  
17 a paramedic.

18 THE COURT: Any objection as to qualifications?

19 MR. FLEMING: No, sir.

20 THE COURT: Ladies and gentlemen, you're about to hear  
21 the testimony of a witness who claims to have special  
22 knowledge, skill, training or experience or education in the  
23 field of being a paramedic.

24 And normally the law does not permit witnesses to get on  
25 the witness stand and give opinion testimony. The exception

RANATA LOUISE FORD - DIRECT BY MS. LEGETTE

1 to that rule is for those witnesses who we call expert  
2 witnesses who are permitted to give an opinion as to matters  
3 in which they claim to be so skilled; in this case, in the  
4 field of being a paramedic.

5 In determining the weight to be given to any such opinion  
6 testimony, you should consider the qualifications and the  
7 credibility or believability of the expert and the reasons  
8 given for his or her opinion. You are not bound by any such  
9 opinion. You give it the weight, if any, to which you deem it  
10 should be entitled.

11 All right. Without objection, in the field of being a  
12 paramedic. Solicitor, proceed.

13 MS. LEGETTE: Thank you, Your Honor.

14 BY MS. LEGETTE:

15 Q: Ms. Ford, I want to turn your attention now to January  
16 26<sup>th</sup>, 2013. Do you recall that day?

17 A: Yes, I do.

18 Q: And were you on duty as a paramedic that day?

19 A: Yes, I was.

20 Q: And being on duty, were you -- did you get a call for  
21 assistance or were you called out to any location in Hampton  
22 County?

23 A: Dispatch went and toned us out to that location on Mill  
24 Pond Road and, once the scene was clear, me and my partner  
25 arrived.

RANATA LOUISE FORD - DIRECT BY MS. LEGETTE

1 Q: And what did you do upon arrival?

2 A: The first thing I do when I get to any scene is to go and  
3 identify who my possible patients are so I can go and start my  
4 treatment. It depends on how many people that's injured on  
5 the scene is when I go determine if I need additional  
6 resources, like the helicopter or even another -- I'm sorry --  
7 another ambulance to come in the area.

8 Q: And what did you determine about this scene?

9 A: When I got on the scene, it was only one patient.

10 Q: Okay. And at that point, did you treat the patient or  
11 what did you do?

12 A: When I first got there, I did find the victim. She was  
13 very hysterical. She wouldn't let me treat her at first  
14 because she was worried about where her sister was. And once  
15 we went and located her sister, she calmed down a little bit.  
16 She still was upset, and she let me go and take her to the  
17 ambulance to go and start my patient assessment.

18 She went and had a gunshot puncture wound to the right  
19 leg on the outside. It had minimal bleeding. Even though it  
20 had minimal bleeding, I still went and put a four by four to  
21 go and stop the bleeding that was there and to protect the  
22 wound from possible infection overall.

23 And once I got her stabilized and went and did up her  
24 wound, I took my baseline vitals. I put the patient on a  
25 cardiac monitor to go and monitor her hemodynamically, and

RANATA LOUISE FORD - DIRECT BY MS. LEGETTE

1 also started an IV just in case.

2 Q: Okay.

3 A: Pain control or if her blood pressure dropped.

4 Q: Okay. And once you did all these things, did you do  
5 anything else for her?

6 A: That's all. Just wound care, monitor her heart, monitor  
7 her vital signs, and start an IV, and transport her to the  
8 hospital.

9 Q: Okay. And when you transported her to the hospital, did  
10 you leave her there?

11 A: To the hospital, yes.

12 MS. LEGETTE: I beg the Court's indulgence. I have no  
13 further questions, Ms. Ford. Answer any questions from the  
14 defense, please.

15 THE COURT: Cross-examination?

16 MR. FLEMING: I don't have any questions.

17 THE COURT: As to this witness, Solicitor?

18 MS. LEGETTE: We ask that she be excused, Your Honor.

19 THE COURT: Any objection?

20 MR. FLEMING: No, sir.

21 THE COURT: Ms. Ford, you may step down and you are  
22 excused from the trial of this case. You may leave the  
23 courtroom at this time. Call your next witness.

24 MS. LEGETTE: The State calls Lieutenant Dorothy "Dot"  
25 Washington.

DOROTHY WASHINGTON - DIRECT BY MS.LEGETTE

1 THE CLERK: Do you swear to tell the truth, the whole  
2 truth, and nothing but the truth, so help you God?

3 THE WITNESS: I do.

4 THE CLERK: Have a seat.

5 THE COURT: Watch your step, Ms. Washington.

6 THE WITNESS: Thank you.

7 THE COURT: Have a seat up on the witness stand. Melinda  
8 is going to adjust it. You can pull that microphone up or  
9 down because you need to use it. I want you to speak into it.  
10 It's going to amplify your voice. State your full name.  
11 Spell your last name for the court reporter.

12 THE WITNESS: Yes, sir. Dorothy H. Washington. W-a-s-h-  
13 i-n-g-t-o-n.

14 THE COURT: Your witness, counsel.

15 MS. LEGETTE: Thank you, Your Honor.

16 DOROTHY "DOT" WASHINGTON, being first  
17 duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. LEGETTE:

20 Q: Good afternoon, Ms. Washington.

21 A: Good afternoon.

22 Q: Ma'am, where do you work?

23 A: Hampton County Sheriff's Office.

24 Q: And what do you do at the Hampton County Sheriff's  
25 Office?

## DOROTHY WASHINGTON - DIRECT BY MS.LEGETTE

1 A: I'm the victim advocate.

2 Q: And what is your rank?

3 A: Lieutenant.

4 Q: So you're Lieutenant Washington?

5 A: Yes, sir. Yes, ma'am.

6 Q: Do you also have a nickname?

7 A: Dot.

8 Q: Okay. All right. So if I call you Miss Dot, that's  
9 okay?

10 A: That's fine. Dot would be good.

11 Q: All right. Now, Miss Dot, how long have you worked for  
12 the Hampton County Sheriff's Office?

13 A: Thirty-two years.

14 Q: And in that period of time, what have you done at the  
15 Hampton County Sheriff's Office?

16 A: I started out as secretary, moved to detective, and then  
17 went out on the road as a patrol, and now I'm victim advocate.

18 Q: Okay. And you live in Hampton County?

19 A: Yes.

20 Q: All right. And let's see -- were you working for the  
21 Hampton County Sheriff's Office January 26<sup>th</sup>, 2013?

22 A: I was.

23 Q: Do you recall that day?

24 A: I do.

25 Q: Did anything unusual happen that particular day?

## DOROTHY WASHINGTON - DIRECT BY MS.LEGETTE

1 A: Yes.

2 Q: Can you tell us about it?

3 A: Yes, ma'am. I was out working a funeral service with the  
4 sheriff and, as I was leaving the burying ground, I was headed  
5 towards the town of Varnville on Mill Pond Road.

6 Q: Yes, ma'am.

7 A: And I heard dispatch give out a call, man with a gun.

8 Q: Okay. And what county is this location in?

9 A: Hampton.

10 Q: So when you heard this call went out with man with a gun,  
11 what was your response?

12 A: Wow, I'm on Mill Pond Road. I can't be too far from the  
13 incident.

14 Q: Okay. So did you respond to the incident location?

15 A: I did.

16 Q: Tell us what happened when you arrived?

17 A: I met Lieutenant Anderson with the Varnville Police  
18 Department. He was coming south. I was going north, and I  
19 stopped to ask him did you see the subject, and he said no.  
20 By this time, I think Hampton Police Department was also on  
21 the scene, and they said they saw the man and were --

22 MR. FLEMING: Your Honor --

23 THE WITNESS: Okay.

24 MR. FLEMING: She's --

25 THE COURT: Don't refer to what someone else said.

## DOROTHY WASHINGTON - DIRECT BY MS.LEGETTE

1 THE WITNESS: Okay.

2 THE COURT: That objection is sustained. Keep it to what  
3 you saw with your own eyes and what you smelled with your nose  
4 and not what someone else said. Your own personal knowledge  
5 and not the statements of others.

6 THE WITNESS: Okay.

7 THE COURT: Ask a question, counsel.

8 MS. LEGETTE: Yes, Your Honor.

9 BY MS. LEGETTE:

10 Q: Miss Dot, what did you see when you got on Mill Pond  
11 Road?

12 A: As I approached the subject, I turned around and --

13 Q: You said subject. What is subject?

14 A: The gentleman sitting to my right.

15 Q: Okay. What is he wearing?

16 A: Blue shirt.

17 Q: Yes, ma'am. Okay. But you saw him?

18 A: I did.

19 Q: Okay.

20 A: I turned around. I paralleled my patrol car to him -- to  
21 my right of him.

22 Q: Okay.

23 A: And by this time, Officer Anderson was coming to my left.  
24 I jumped out of my patrol car and I yelled drop your weapon.

25 Q: So you said he had -- so he had a gun in his hand?

## DOROTHY WASHINGTON - DIRECT BY MS.LEGETTE

1 A: Yes.

2 Q: Okay. What kind of gun? Could you determine what kind  
3 of gun it was?

4 A: The only thing I know it was a long, brown gun.

5 Q: Okay. So he had a long, brown gun in his hand?

6 A: Yes.

7 Q: All right. So what happens?

8 A: I asked him to drop his weapon and, by this time, he lift  
9 the weapon up towards me. I reached down under my seat to get  
10 my weapon. I wasn't wearing a weapon at that time. I reached  
11 down under my seat to get my weapon to draw down on him, but  
12 my weapon wasn't there. So I jumped out of my car and I got  
13 in the apex of my patrol car to shield myself from him. And  
14 by this time, I could hear other officers on the scene, and I  
15 stayed there.

16 And when I thought it was safe, as the other officer was  
17 moving away from me, I left the apex of my patrol car and went  
18 around to the back and I stayed there for a minute until I  
19 could see some people walking down the road and I advised them  
20 to go back. And by this time, I saw Chief Tyrone Smith with  
21 the victim, and I ran towards them.

22 Q: Okay. Let's go back, Miss Dot. You said that you told  
23 the subject to drop his weapon?

24 A: I did.

25 Q: And what did he do at this point?

## DOROTHY WASHINGTON - DIRECT BY MS.LEGETTE

1 A: Well, when I advised him to drop his weapon --

2 Q: Yes, ma'am.

3 A: -- the weapon came up in my direction.

4 Q: So he pointed the gun at you?

5 A: Yes, he did.

6 MR. FLEMING: Objection. Leading.

7 THE COURT: Sustained. Rephrase the question, counsel.

8 Don't ask questions that suggest a yes or no answer.

9 BY MS. LEGETTE:

10 Q: When you told him to drop the weapon, what did he do  
11 next?

12 A: Pointed the weapon towards me in my direction.

13 Q: And at this point, what did you think? What did you  
14 think at this point?

15 A: That he would shoot me.

16 Q: Now, you said you got down in the --

17 A: Apex.

18 Q: What is the apex?

19 A: It's between the door and the inside of the vehicle.

20 Q: Okay. And how do you -- do you know how to spell that?

21 A-p-e-c? Apec? [verbatim]

22 A: I'm thinking. Yes.

23 Q: Okay. All right. So you got down. Why did you get  
24 down?

25 A: Because there was a man with a weapon and I did not have

## DOROTHY WASHINGTON - DIRECT BY MS.LEGETTE

1 on a vest.

2 Q: Okay.

3 A: So, you know, I wanted to protect myself.

4 Q: All right. Now, you said at some point you got -- you  
5 -- when you -- you said you ran to Tyrone Smith?

6 A: I did.

7 Q: Okay. And when you got to Tyrone Smith, was anyone there  
8 with him?

9 A: The victim.

10 Q: All right. And what was her demeanor like?

11 A: She was very upset, very.

12 Q: Okay. And do you know which victim this was? Do you  
13 recall her name?

14 A: I get the two sisters -- Mary Etta and Mariam. This was  
15 Ms. Mariam I think.

16 Q: Okay. All right.

17 MR. LEGETTE: I beg the Court's indulgence. I have no  
18 further questions, Miss Dot. Please answer any questions from  
19 the defense.

20 THE COURT: Cross-examination?

21 MR. FLEMING: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. FLEMING:

24 Q: Ms. Washington, when you were trained as a law  
25 enforcement officer -- you indicated you have been doing it

## DOROTHY WASHINGTON - CROSS BY MR. FLEMING

1 for 32 years?

2 A: Yes.

3 Q: I'm sure you went to training classes and they talked to  
4 you about making reports and things like that, didn't they?

5 A: Yes.

6 Q: Okay. And they told you how important it was to put down  
7 everything that you witnessed into a written form. That's why  
8 you write reports; right?

9 A: Yes.

10 Q: Because it might be two years before you get to court?

11 A: Yes.

12 Q: And so you'd have when all of memory is fresh in your  
13 recollection, it would be written down that you could refer  
14 to?

15 A: Yes.

16 Q: Or that anybody else could refer to; right?

17 A: Yes.

18 Q: Or you could provide the prosecutor and they could refer  
19 to it; right?

20 A: Yes.

21 Q: Okay. And I think in those classes at the criminal  
22 justice academy they talk to you about putting all of the  
23 important facts; right?

24 A: Yes.

25 Q: Okay. Best you can remember?

## DOROTHY WASHINGTON - CROSS BY MR. FLEMING

1 A: Yes.

2 Q: Okay. Now, here's my problem. I've been provided two  
3 police reports, but I've not seen one that was written by you.  
4 Did you make a report?

5 A: No.

6 Q: Okay. Did you participate in the collection of any  
7 evidence?

8 A: No.

9 Q: Did you participate in just securing any of the evidence?

10 A: No.

11 Q: Okay. You did not testify -- well, you didn't write in  
12 your report because you didn't make one, but you didn't  
13 testify that he shot at you, did he?

14 A: No.

15 Q: Okay.

16 MR. FLEMING: That's all the questions I have, Judge.  
17 Thank you.

18 THE COURT: Redirect?

19 MS. LEGETTE: None, Your Honor.

20 THE COURT: As to the witness?

21 MS. LEGETTE: We ask that she be excused.

22 THE COURT: Any objection, Mr. Fleming?

23 MR. FLEMING: No, sir.

24 THE COURT: Very well. Ms. Washington, you may step down  
25 and you are excused from the trial of this case. You may

1 leave the courtroom at this time.

2 THE WITNESS: Thank you, Judge.

3 THE COURT: Counsel, approach.

4 (WHEREUPON, a bench conference was held off the record in  
5 the presence of the jury but out of the hearing of the  
6 jury, after which the proceedings resumed as follows.)

7 THE COURT: All right. Mr. Foreman and ladies and  
8 gentlemen of the jury, we're going to stop at this point for  
9 your lunch break. I'm going ask you to -- you can leave, of  
10 course, and get lunch and come back. We're not going to start  
11 back until 2:15. So I'm going to give you an hour and 20  
12 minutes to make sure everybody has sufficient time to get  
13 lunch.

14 Over the lunch break, please do not discuss this case  
15 with anybody or amongst yourselves. Be back in your jury room  
16 prior to 2:15 because I'd like to start at 2:15 so I can get  
17 you home in a timely fashion. So please be back in your jury  
18 room by 2:15. You may retire at this time for your lunch  
19 break.

20 (WHEREUPON, the jury exited the courtroom at 12:55 p.m.)

21 THE COURT: Ms. Sanders, this is my lunch break, and Ms.  
22 Connell, but if any of your students have a question they'd  
23 like to ask me, I've got about five minutes, I'll take it.  
24 Anybody got a question, Ms. Sanders and Ms. Connell, from  
25 either one of your groups?

1 Don't be bashful. Now is the time to ask me one.

2 Hearing no -- seeing no hands and hearing none, I want to  
3 thank you for being well-behaved in the courtroom. We're  
4 going to take our lunch break now. We're not going to start  
5 back until 2:15.

6 I'd like to see counsel in my chambers. We're in recess  
7 until 2:15.

8 (WHEREUPON, there was a break in the proceedings from  
9 12:56 p.m. until 2:22 p.m., after which the proceedings  
10 resumed as follows.)

11 THE COURT: Is the State ready to proceed?

12 MS. LEGETTE: Yes, Your Honor.

13 THE COURT: Is the defendant ready to proceed?

14 MR. FLEMING: Yes, sir.

15 THE COURT: Bring us the jury. Mr. Davis and Mr. Hutto,  
16 y'all come on up here to the bench for a second.

17 (WHEREUPON, the jury entered the courtroom at 2:23 p.m.)

18 THE COURT: All right. Ladies and gentlemen of the jury,  
19 we'll now continue with the testimony in the trial of this  
20 case. Solicitor, you may call your next witness.

21 MS. LEGETTE: Thank you, Your Honor. The State calls  
22 Abner -- Officer Abner Rosier.

23 THE COURT: Abner Rosier. Be sworn by the clerk, please.

24 THE CLERK: Do you swear to tell the truth, the whole  
25 truth, and nothing but the truth, so help you God?

26

## ABNER ROSIER - DIRECT BY MS. LEGETTE

1 THE WITNESS: Yes, sir.

2 THE COURT: Good afternoon. Have a seat for me. Make  
3 yourself comfortable. Melinda is going to adjust that  
4 microphone. I want you to use it. It's going to amplify your  
5 voice. Begin by stating your full name and spelling your last  
6 name for the court reporter, and speak up for me.

7 THE WITNESS: Abner Hasting Rosier. Last name is spelled  
8 R-o-s-i-e-r.

9 THE COURT: Very good. I think we can hear you, Mr.  
10 Rosier. Your witness, Counsel.

11 MS. LEGETTE: Thank you, Your Honor.

12 ABNER ROSIER, being first duly sworn,  
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MS. LEGETTE:

16 Q: Good afternoon, sir.

17 A: Good afternoon.

18 Q: Now, Mr. Rosier, where do you work?

19 A: Hampton Police Department.

20 Q: And what is your rank?

21 A: Sergeant.

22 Q: Okay. And how long have you worked for the Hampton  
23 Police Department?

24 A: A little over three years now.

25 Q: Do you have any other law enforcement experience?

ABNER ROSIER - DIRECT BY MS. LEGETTE

- 1 A: Almost 15 years.
- 2 Q: Okay. And were you working for the Hampton Police  
3 Department in January 2013?
- 4 A: Yes, ma'am.
- 5 Q: Did -- were you working specifically January 26<sup>th</sup>, 2013?
- 6 A: Yes, ma'am.
- 7 Q: What were you doing that day?
- 8 A: It was a normal day. We was doing a traffic checkpoint  
9 whenever we got the call.
- 10 Q: What kind of call -- who is we?
- 11 A: Varnville got the police to call from 9-1-1 dispatch, and  
12 we went to assist them on the call.
- 13 Q: You said we. Who is we?
- 14 A: Lieutenant Hernandez.
- 15 Q: Okay. So Lieutenant Hernandez and you?
- 16 A: Yes, ma'am.
- 17 Q: What were y'all doing?
- 18 A: We had a road check --
- 19 Q: Okay.
- 20 A: -- in the Town of Hampton.
- 21 Q: In the Town of Hampton? Okay. All right. So at some  
22 point you said that you got a call?
- 23 A: Yes, ma'am.
- 24 Q: Tell us about that call. What did you hear?
- 25 A: I don't recall exactly what was said, but it came out

ABNER ROSIER - DIRECT BY MS. LEGETTE

1 that -- with a gun, and I knew that Varnville had one officer;  
2 so we went to back him up.

3 Q: So you went to back him up. And who was that officer  
4 that Varnville had?

5 A: Major Anderson, Varnville Police Department.

6 Q: Okay. And so when you heard this call, knowing that  
7 Major Anderson was working alone, what did you do?

8 A: We advised over the radio that we was en route to him,  
9 and then we responded.

10 Q: And where did you respond? Do you recall?

11 A: Mill Pond Road in Varnville.

12 Q: Okay. And when you got to Mill Pond Road -- are you  
13 familiar with the area?

14 A: Yes.

15 Q: Can you kind of describe what was on Mill Pond Road?

16 A: There's a few houses. Once you get a little bit further  
17 out of town, it starts getting wooded area, maybe a field.  
18 There's usually a couple houses out that road.

19 Q: Okay. And are you familiar with a crime scene diagram of  
20 the area?

21 A: Yes.

22 MS. LEGETTE: May I approach, Your Honor?

23 THE COURT: You may.

24 BY MS. LEGETTE:

25 Q: Sergeant Rosier, I'm going to hand you what's been

ABNER ROSIER - DIRECT BY MS. LEGETTE

1 already entered into evidence as State's Exhibit 7. I want  
2 you to take a moment and tell me if you recognize this item.

3 MS. LEGETTE: May I approach the witness, Your Honor?

4 THE COURT: You may.

5 BY MS. LEGETTE:

6 A: Yes. Yes, ma'am. This is the crime scene.

7 Q: Okay. And State's Exhibit 7, you say you recognize it?  
8 You recognize it?

9 A: Yes, ma'am.

10 Q: And what is State's Exhibit Number 7?

11 A: It's a sketch of the crime scene.

12 Q: Okay. And is it a fair and accurate representation of  
13 the actual crime scene on Mill Pond Road?

14 A: Yes, ma'am.

15 Q: Thank you.

16 MS. LEGETTE: Your Honor, may I publish with the witness  
17 so he can tell us what -- may I publish -- may he come down,  
18 Your Honor?

19 THE COURT: You may step -- just a moment. Mr. Fleming,  
20 if you want to come around so you can see?

21 MR. FLEMING: Thank you, sir.

22 THE COURT: Hold on a moment.

23 THE WITNESS: Yes, sir.

24 MS. LEGETTE: May he come down, Your Honor?

25 THE COURT: You may step down.

## ABNER ROSIER - DIRECT BY MS. LEGETTE

1 (WHEREUPON, the witness complied. State's Exhibit Number  
2 7 was placed on an easel in front of the jury.)

3 MS. LEGETTE: Sergeant Rosier, I have a microphone here.  
4 If you can, attach this to your body.

5 THE COURT: Now, Sergeant, my jury has got to see.

6 THE WITNESS: Yes, sir.

7 THE COURT: And he's got to be able to see and I've got  
8 to be able to see.

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: And you've got your back to my court reporter  
11 so you've got to use that mic so she can understand what  
12 you're saying. I know it's hard.

13 THE WITNESS: Yes, sir.

14 THE COURT: But we've got to make sure that --

15 THE WITNESS: Maybe I can step back.

16 THE COURT: -- that everybody -- can everybody on the jury  
17 see the board?

18 THE JURY: Yes, sir.

19 BY MS. LEGETTE:

20 Q: Sergeant Rosier, make sure that everybody can see you.  
21 You're standing in the -- come back. Can you tell us -- so  
22 you responded to Mill Pond Road?

23 A: Yes, ma'am.

24 Q: All right. And what did you find when you got to Mill  
25 Pond Road?

ABNER ROSIER - DIRECT BY MS. LEGETTE

1 A: Okay. I'm going to start from where I came in to Mill  
2 Pond Road.

3 Q: That's fine. That's fine.

4 A: I came in from the Town of Hampton direction, which is on  
5 -- I think this is 5, and responded down this way.

6 Q: Okay.

7 A: When I got --

8 Q: Going this way?

9 A: This direction here.

10 Q: Mill Pond Road is here? Okay.

11 A: That's the way I came to the scene.

12 Q: Okay.

13 A: When I arrived, in this area I seen Major Anderson parked  
14 down in this area right here.

15 Q: Can you write Major Anderson or just Anderson?

16 A: If I can get it to write, yeah.

17 Q: Okay.

18 A: When he got the call, he spotted the suspect down here.  
19 He called the radio that he had a possible suspect in sight.  
20 So when I got down there, I seen -- I headed to him to this  
21 area. And when I got in this area here, he -- he said it  
22 wasn't the guy.

23 Q: Okay.

24 A: As I passed the houses, which is the house where the  
25 suspect was at, I seen two ladies walking beside the house.

ABNER ROSIER - DIRECT BY MS. LEGETTE

1 When I passed it, Major Anderson said it's not the suspect. I  
2 turned around down here and went back --

3 Q: Okay.

4 A: -- towards the crime scene. When I got in front of the  
5 residence where the crime scene -- where it had took place at,  
6 I saw the suspect walking with the two rifles.

7 Q: All right.

8 A: He was walking. There's a chain-link fence right in  
9 front of the house, and then there's a small area of grass  
10 between the house and the chain-link fence with the chain-link  
11 almost on the road. He was walking in this direction back  
12 towards where Major Anderson was with the two rifles like  
13 this, down like that. I stopped in about this area. He was  
14 standing right here maybe.

15 Q: Put an X mark.

16 A: He was there and my car was right here.

17 THE COURT: Now, let the record reflect that the witness  
18 has drawn an arrow for the direction that he came in from, he  
19 has written Anderson for the location of Anderson, and he's  
20 put two dots on the exhibit to illustrate what he just  
21 testified to, so the record is clear. Go ahead.

22 THE WITNESS: Okay.

23 BY MS. LEGETTE:

24 A: I exited my vehicle, which I was facing back towards that  
25 direction at this time.

ABNER ROSIER - DIRECT BY MS. LEGETTE

1 Q: And was that pointing out of Mill Pond Road?

2 A: Back towards Pine Street.

3 Q: Thank you.

4 A: This is Pine Street. When I got out, I turned to the  
5 back pointed towards the direction of the suspect with my  
6 weapon and ordered him to drop the rifles and, when I did  
7 that, he turned around and faced me and he dropped one and was  
8 going towards pointing it towards me.

9 I moved my vehicle because I wasn't having any cover. I  
10 turned my vehicle around and came back and that's when  
11 Lieutenant Hernandez was behind my patrol car where I moved  
12 it.

13 Q: Okay.

14 A: So he was on the scene with me at the same time.

15 Q: Okay.

16 A: When I turned around and came back, that's when the  
17 suspect was walking around the back of the house.

18 Q: All right. So as he was walking around the back of the  
19 house, what did you next do?

20 A: When he went around this way right here and went to the  
21 back somewhere --

22 MS. LEGETTE: Let the record reflect the witness has  
23 indicated the -- and I'm marking on the exhibit the defendant  
24 has went around to the back of the house on the exhibit.

25 BY MS. LEGETTE:

ABNER ROSIER - DIRECT BY MS. LEGETTE

1 A: Yes, ma'am. And I told Lieutenant Hernandez, who was  
2 with me at my vehicle at this time -- I said let's not go  
3 around the same house he's at because we didn't want to go  
4 around the corner and be on top of each other. So we went  
5 around this house.

6 Q: All right.

7 A: We went from -- from our cars around here and stationed  
8 right there.

9 MS. LEGETTE: Let the record reflect the witness has  
10 indicated by marking on the exhibit that he has marked around  
11 the other house on the exhibit.

12 BY MS. LEGETTE:

13 A: Which is the house to the right of the residence if  
14 you're looking at from the road.

15 Q: Okay. Very good.

16 A: And once we were standing in the back, I could see across  
17 the back yards. I saw the suspect right here, and there's a  
18 table that was right here with an air conditioner on it, if I  
19 recall what it was. He was standing there. There was a tree  
20 here, and then there's a shed.

21 At that time, he leveled off his rifle in the opposite  
22 direction of me. I couldn't see who he was pointing towards,  
23 but I heard him say I got you now. I don't remember if he  
24 said you son of a bitch or you motherfucker, but he said I got  
25 you now. I don't remember exactly which, but he did. I took

ABNER ROSIER - DIRECT BY MS. LEGETTE

1 it upon myself to try to get closer because it looked like he  
2 was about to start shooting. And then at that time, he went  
3 out of my sight and gunshots started.

4 Q: Okay. And is that the extent of your involvement in this  
5 case?

6 A: No, ma'am. I got -- there's a -- between the two  
7 properties, there's a chain-link fence between the house that  
8 he was at and the house I was at. There's a cinder-block wall  
9 right here. I lined up on the cinder-block wall with  
10 Lieutenant Hernandez while the shots were being fired from  
11 this general area.

12 During the shooting there, another shot started coming  
13 out from behind the trees over in this area. There's an open  
14 field back here. I later found out it was Major Anderson  
15 shooting and the suspect shooting and --

16 MR. FLEMING: Objection.

17 THE COURT: Don't testify to what someone else told you.

18 THE WITNESS: All right.

19 THE COURT: Just what you saw of your own personal  
20 knowledge.

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: Objection sustained.

23 BY MS. LEGETTE:

24 A: And so I didn't see who was shooting. I just know there  
25 was three different people shooting. I could hear three

ABNER ROSIER - DIRECT BY MS. LEGETTE

1 different weapons. When we was on the wall --

2 Q: You said we? Who was on the wall with you?

3 A: Me and Lieutenant Hernandez.

4 Q: Okay.

5 A: We was on the wall. The shots stopped. Deputy Will, who  
6 was beside us, yelled the suspect is down. The suspect is  
7 down. When he yelled he was down, I said where is he at? He  
8 said he's behind the shed, which is this shed right here.

9 Q: Okay.

10 A: I said, well, I'm moving in to try to apprehend the  
11 suspect. Me and Lieutenant Hernandez went across the gated  
12 fence. We went and lined up on this wall. Lieutenant -- or  
13 Deputy Will Rivers then said that the suspect was moving --

14 Q: Don't tell us what he said, but --

15 A: But he told me --

16 Q: Okay.

17 A: -- that he was starting to move and I said where is he  
18 and he's still on the same spot and I asked him where he was  
19 at and he said the same spot. So we lined up on the wall. I  
20 got a visual of him around the wall. I got out, drew my  
21 weapon on him again, and told him to roll away from the  
22 weapon, and he rolled two or three times from the weapon.  
23 Lieutenant Hernandez went in and cuffed him while I covered  
24 him with my weapon, and then I searched the suspect after he  
25 was handcuffed. And then Lieutenant Hernandez checked the

ABNER ROSIER - DIRECT BY MS. LEGETTE

1     weapon and gave it to Lieutenant Anderson.

2     Q:     Okay.  You can go ahead and have a seat back up on the  
3     witness stand.  Thank you.

4             (WHEREUPON, the witness complied.)

5     Q:     Now, Sergeant Rosier, you said that Mr. Gardner or the  
6     suspect was taken into custody?

7     A:     Yes, ma'am.

8     Q:     Is the man -- you said that he had someone -- that he  
9     presented the gun to you when you first told him --

10            MR. FLEMING:  Again, I would object to the leading nature  
11     of the questions.

12            THE COURT:  Sustained.  Direct examination, Counsel.

13            MS. LEGETTE:  Thank you, Your Honor.

14     BY MS. LEGETTE:

15     Q:     Sergeant Rosier, when you arrived at the scene and told  
16     the suspect to put the gun down, what did he do?

17     A:     He turned and threw one down and appeared like he was  
18     about to point the weapon towards us.

19     Q:     Okay.  Now, after he was taken into custody, who actually  
20     handcuffed him?  Do you remember?

21     A:     Can I look at my report?

22     Q:     That's fine if you need to refresh your memory.

23     A:     I think I know, but I just want to be right on it.

24     Lieutenant Hernandez cuffed the subject while I covered him.

25     Q:     Okay.  And at some point, did Lieutenant Hernandez say

## ABNER ROSIER - DIRECT BY MS. LEGETTE

1 anything to him?

2 A: We actually both of us was making sure that he wasn't  
3 injured.

4 Q: Okay. And was there any Miranda rights read to him?

5 A: The Miranda rights were read after he was secured and  
6 checked.

7 Q: And you actually heard them given to him?

8 A: Yes.

9 Q: Okay. And who did the Miranda warning?

10 A: If I recall, Lieutenant Hernandez read the rights, and it  
11 was a card from Deputy Rivers.

12 Q: Okay.

13 A: A Miranda card.

14 MS. LEGETTE: I have no further questions. Please answer  
15 any questions from the defense.

16 THE WITNESS: Yes, ma'am.

17 THE COURT: Cross-examination?

18 MR. FLEMING: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. FLEMING:

21 Q: Mr. Rosier, Mr. Gardner didn't shoot at you, did he?

22 A: No, sir.

23 Q: He didn't say he was going to shoot at you, did he?

24 A: No, sir.

25 Q: Okay. Did you secure any shell casings?

## ABNER ROSIER - CROSS BY MR. FLEMING

1 A: No, sir.

2 Q: You were able to determine that Mr. Gardner was not shot?

3 A: Yes, sir.

4 Q: He laid on the ground and you told him to roll?

5 A: I asked him to roll away from the weapon.

6 Q: Okay. And he complied?

7 A: He did comply.

8 Q: Okay. You -- I've been through this with some other  
9 officers. I'll do it with you because you've already  
10 referenced the fact that you have a police report; right?

11 A: Yes, sir.

12 Q: And did you receive training at the criminal justice  
13 academy?

14 A: Yes, sir.

15 Q: Okay. How long ago was that?

16 A: 2000 to 2001.

17 Q: Okay. And one of the things they teach you about is  
18 note-taking?

19 A: Yes, sir.

20 Q: There's a specific class on it?

21 A: Well, that's more an FTO program --

22 Q: I got you.

23 A: -- back at the police department.

24 Q: I got you. And what they tell you is that you need to  
25 put down the important information at around the time that it

## ABNER ROSIER - CROSS BY MR. FLEMING

1 all happens?

2 A: Yes, sir.

3 Q: Because it might be two years before you're in court?

4 A: Yes, sir.

5 Q: Right? And did you do that?

6 A: I did a report the same day.

7 Q: Okay. Good. So you wrote all the important stuff down  
8 that day?

9 (WHEREUPON, no verbal response.)

10 Q: Okay.

11 THE COURT: You have to say yes or no.

12 THE WITNESS: Yes, sir.

13 BY MR. FLEMING:

14 Q: Okay. Look at your report for me. Okay. I've been  
15 handed -- I've been given a copy of your report.

16 A: Mm-hmm.

17 Q: And it appears to me -- and the report that I have -- may  
18 I look at your report to make sure I have the same one?

19 A: That's fine with me, sir.

20 Q: Okay.

21 MR. FLEMING: May I look at it, Judge?

22 THE COURT: You may. You may approach.

23 BY MR. FLEMING:

24 Q: All right. Okay. Great. There you go. Thank you. I'm  
25 looking at your report and it -- and it states that when you

ABNER ROSIER - CROSS BY MR. FLEMING

1 ordered Mr. Gardner to drop his gun, he said shoot me, go  
2 ahead and shoot me, you M-F'ers, I want to die.

3 A: It's in my report.

4 Q: Isn't that what you wrote in your report?

5 A: Yes, sir.

6 Q: At the time -- the day that this happened, you wrote that  
7 down there?

8 A: Yes, sir.

9 Q: Okay. The second page of your report, you don't -- you  
10 don't say anything about anything else that Mr. Gardner says,  
11 do you?

12 A: It doesn't look that way, no.

13 Q: Okay. And the third page of your report, you don't  
14 mention anything in your report about what Mr. Gardner said,  
15 do you?

16 A: No, sir.

17 Q: Okay. So in your report, the only thing that you claim  
18 that Mr. Gardner said was shoot me, you M-F'ers, I want to  
19 die?

20 A: Yes, sir.

21 Q: Okay. But today, you testified to something different,  
22 didn't you? You test -- didn't you?

23 A: I testified -- I'm trying to read over real quick to make  
24 sure that I --

25 Q: Take all the time you need, please.

## ABNER ROSIER - CROSS BY MR. FLEMING

1 (WHEREUPON, there is a pause in the proceedings.)

2 A: You're right, sir. I didn't put that in there.

3 Q: You did not put in there what you testified today, which  
4 was that Mr. Gardner said I got you now?

5 A: Yes.

6 Q: That's something you should have wrote in your report,  
7 isn't it?

8 A: It probably was. It was a mistake on my part.

9 Q: Or you're just not remembering correctly?

10 A: No. I remember. It was the first shoot-out I've ever  
11 been in. I think I remember what was said.

12 Q: All right. Let me ask you this question. What is that  
13 thing you're wearing on your thing right there?

14 A: This?

15 Q: Mm-hmm.

16 A: A mic.

17 Q: Do you have a body mic?

18 A: No.

19 Q: Do you -- do you have a video camera?

20 A: I had one. I don't have it on me, but I do.

21 Q: Okay. Describe what that is for me?

22 A: A mic for the camera in the car.

23 Q: Okay. It's a microphone?

24 A: It's a mic. It doesn't have a camera. It's a mic that  
25 goes with the camera in the car system.

## ABNER ROSIER - CROSS BY MR. FLEMING

1 Q: Okay. It's sort of like the one that she gave you just  
2 now?

3 A: It's similar. It doesn't look just like it, but it's  
4 similar.

5 Q: Okay. So it's a remote control, so to speak?

6 A: Yes.

7 Q: So you wear it on you?

8 A: Mm-hmm.

9 Q: And there's a videotaping system in your car; correct?

10 (WHEREPON, no verbal response.)

11 THE COURT: You have to say yes or no.

12 A: Yes, sir.

13 Q: Okay. And that videotaping system has an automatic  
14 feature, doesn't it? Where the blue lights come on, the video  
15 comes on?

16 A: It does.

17 Q: It does? And you had your blue lights responding this  
18 day?

19 A: Yes, sir.

20 Q: And so your video camera was on, wasn't it?

21 A: Yes, sir.

22 Q: And when your video camera is running, your microphone is  
23 running, isn't it?

24 A: Yes, sir.

25 Q: Okay. Can you show this jury or let this jury hear that

## ABNER ROSIER - CROSS BY MR. FLEMING

1 video --

2 A: No, sir.

3 Q: -- or that audio?

4 A: No, sir.

5 Q: You can't, can you?

6 A: No, sir.

7 Q: That's because y'all erased it, didn't you?

8 A: I didn't erase it.

9 Q: Somebody erased it, didn't they?

10 A: I can't answer that. I don't know. It's not with me  
11 now.

12 Q: You don't have it?

13 A: I don't have it.

14 Q: Which means this jury doesn't have it?

15 A: That's right.

16 MR. FLEMING: I don't have any more questions, Judge.

17 THE COURT: Redirect?

18 MR. LEGETTE: Thank you, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. LEGETTE:

21 Q: Sergeant Rosier, what did the defendant say?

22 A: At what point?

23 Q: Well, the part that Mr. Fleming wanted to make -- talk to  
24 you about. He asked you -- the part where --

25 A: Where he was in the back yard?

ABNER ROSIER - REDIRECT BY MS. LEGETTE

1 Q: Yes, that part.

2 A: At the back yard right before the shooting started, he  
3 leveled off his gun and pointed it in the opposite direction  
4 of me and said I got you now, you -- I don't know if he said  
5 son of a bitch or motherfucker, but it was --

6 Q: Okay.

7 A: -- bad words.

8 Q: All right. And are you misremembering it?

9 A: I'm not misremembering it. That's what I remember.

10 Q: Okay. And the part where he brought out where Mr.  
11 Gardner said shoot me, I want to die, tell us about that?

12 A: When we first got to the scene, whenever I asked him to  
13 drop the weapons, he said shoot me now, you motherfucker, I  
14 want to die, if I don't -- I don't know the exact words, but  
15 something.

16 Q: Okay. So he said that too?

17 A: Yes.

18 Q: And you wrote that part down?

19 A: I wrote that part down.

20 Q: Okay. Were you wearing a vest that day?

21 A: Yes.

22 Q: Okay.

23 MR. LEGETTE: I have no further questions.

24 THE COURT: Recross limited to redirect?

25 MR. FLEMING: I have nothing further, Judge.

## LUIS HERNANDEZ - DIRECT BY MS. LEGETTE

1 THE COURT: As to this witness, Solicitor?

2 MS. LEGETTE: We ask that he be excused, Your Honor.

3 THE COURT: Any objection, Mr. Fleming?

4 MR. FLEMING: No, sir.

5 THE COURT: Sergeant Rosier, you are excused from the  
6 trial of this case and you can leave the courtroom at this  
7 time.

8 THE WITNESS: Thank you, sir.

9 THE COURT: Thank you. Call your next witness.

10 MS. LEGETTE: Thank you, Your Honor. The State calls  
11 Luis Hernandez.

12 THE CLERK: Do you swear to tell the truth, the whole  
13 truth, and nothing but the truth, so help you God?

14 THE WITNESS: I do.

15 THE COURT: Make yourself comfortable, Mr. Hernandez.

16 THE WITNESS: Yes, sir.

17 THE COURT: Pull up the chair. Adjust the microphone.  
18 You can pull it down. You pull it to your height so you can  
19 use it to amplify your voice. State your full name and spell  
20 your last name for the court reporter.

21 THE WITNESS: Luis -- last name is Hernandez, H-e-r-n-a-  
22 n-d-e-z.

23 THE COURT: Your witness, Counsel.

24 MS. LEGETTE: Thank you, Your Honor.

25 LUIS HERNANDEZ, being first duly

## LUIS HERNANDEZ - DIRECT BY MS. LEGETTE

1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. LEGETTE:

4 Q: Mr. Hernandez, what do you do for a living?

5 A: I am presently retired.

6 Q: Okay. And what are you retired from?

7 A: The police department.

8 Q: Okay. And where -- where are you living now?

9 A: I'm living in Port Richey, Florida.

10 Q: Okay. And at some point in the past, have you worked for  
11 the Hampton Police Department?

12 A: I did.

13 Q: And did you retire from there?

14 A: Yes.

15 Q: And how long did you work for the Hampton Police  
16 Department?

17 A: I worked five years for them, and for the New York City  
18 Police Department I worked 35 years, a total of 40 years in  
19 total.

20 Q: Okay. And how did you get here today?

21 A: I drove.

22 Q: And where did you drive from?

23 A: Florida.

24 Q: Okay. All right. Now, what was your rank at the Hampton  
25 Police Department?

## LUIS HERNANDEZ - DIRECT BY MS. LEGETTE

1 A: Lieutenant.

2 Q: So can I call you Lieutenant?

3 A: If you like.

4 Q: Okay. So, Lieutenant, were you working for the Hampton  
5 Police Department on or about January 26<sup>th</sup>, 2013?

6 A: I was, ma'am.

7 Q: Can you tell us what happened that particular day?

8 A: Yes. On January the 26<sup>th</sup>, at approximately 3:30 in the  
9 afternoon, I was conducting a road check. A road check is  
10 where we check the roads for motorists for driver's license,  
11 registration, show us ID cards, and more or less talk -- talk  
12 to the public.

13 Approximately about that time, we received a radio call  
14 that shots had been fired in Varnville. They gave us the  
15 address over the air, and right away we responded to that  
16 location.

17 Q: Okay. And you said we. Who was we?

18 A: Officer Abner was my partner at the time. He was a  
19 sergeant.

20 Q: Okay. So you responded to a location?

21 A: Correct, ma'am.

22 Q: Can you tell us what you found when you arrived?

23 A: When I arrived, what I witnessed at first was two females  
24 running from the residence at [REDACTED], and coming down the  
25 driveway was the defendant holding two guns, one on his right

## LUIS HERNANDEZ - DIRECT BY MS. LEGETTE

1 and one on his left. They were long guns, rifles.

2 Q: Okay. And when you saw -- when you saw the defendant  
3 with these two long guns, what was your response? What did  
4 you do?

5 A: Well, I -- it so happens I almost passed the home. So I  
6 had to put the car back in reverse. I countered the vehicle  
7 with the -- with the rear facing into the traffic for a little  
8 -- to create distance between him and myself. I exited the  
9 vehicle and at that time, the defendant was already pointing a  
10 weapon at our -- in our direction.

11 Q: Okay. So let me make sure I understand you. You turned  
12 around?

13 A: No. I countered the car a little. In other words, I  
14 went in reverse --

15 Q: Okay.

16 A: -- and the rear-end of the car was facing the traffic.  
17 The front was facing inside the traffic. In other words, it  
18 was sideways -- almost sideways.

19 Q: Okay. All right. And so at some point you said that you  
20 saw the defendant?

21 A: I saw the defendant, yes.

22 Q: Okay. And what did he have in his hands?

23 A: At the first I saw him, he had two -- two rifles.

24 Q: Okay.

25 A: By the time I got in my own position, he already had put

## LUIS HERNANDEZ - DIRECT BY MS. LEGETTE

1 one rifle down or dropped one, whatever he did, and he had one  
2 rifle aimed at our -- in our direction.

3 Q: Okay. And who is our direction?

4 A: At Officer Abner at the time and myself.

5 Q: Okay. So he was pointing his gun at both of you?

6 A: Yes.

7 MR. FLEMING: Objection. Again --

8 THE COURT: Hearsay?

9 MR. FLEMING: No. She just -- she's giving him the  
10 answer. She's leading.

11 THE COURT: I didn't hear your question; so let me hear  
12 the question again, and I'll rule on it.

13 BY MS. LEGETTE:

14 Q: So when you got to the location, what was the defendant  
15 doing?

16 MR. FLEMING: That's fine.

17 THE COURT: That's fine.

18 BY MS. LEGETTE:

19 A: When I first saw him, he was carrying the two guns, but  
20 in our direction.

21 Q: Okay. And so at some point, you said he was -- what was  
22 he doing with the guns?

23 A: When I got out of -- by the time I got out of my vehicle,  
24 he was aiming his weapon at us.

25 Q: And who is us?

## LUIS HERNANDEZ - DIRECT BY MS. LEGETTE

1 A: It was myself and Officer -- and Sergeant Abner.

2 Q: Okay. So when the defendant does this, what do you do?

3 A: I -- what I did was I went for my duty weapon and I  
4 clearly aimed it at him, and I was going to fire.

5 Q: All right. And so you said you were going to fire. Did  
6 you not fire?

7 A: No, ma'am, I did not.

8 Q: Why didn't you?

9 A: The home across directly at his back were three little  
10 children. There was a female, probably of the age of 16 to  
11 17, another little female approximately ten to twelve, and a  
12 little boy approximately four to five years old. I made the  
13 -- I made the decision not to fire and to hold the line  
14 because if I would have missed my round, that round would have  
15 -- definitely would have gone through the window.

16 Q: So they were in a house?

17 A: They were in a house.

18 Q: Okay. All right. So at this point, you decided not to  
19 fire?

20 A: I did not fire.

21 Q: And what did you do?

22 A: Well, the next thing I heard was a click.

23 Q: Okay.

24 A: Because his gun misfired.

25 Q: And whose gun was it?

## LUIS HERNANDEZ - DIRECT BY MS. LEGETTE

1 A: The defendant's weapon misfired.

2 Q: All right. Were you wearing a vest that day?

3 A: No, I was not.

4 Q: All right. So once the gun misfires, what do you do  
5 next?

6 A: Well, we -- we thought he was running towards us, but  
7 instead he made a U-turn, he grabbed the second weapon from  
8 the ground, and ran toward the back of the house.

9 Q: Okay.

10 A: What I did was we went to the opposite side of the house,  
11 which is a house and a half over, and ran that direction to  
12 the back -- to the back door of the house that he was -- that  
13 he was running to.

14 Q: All right. Now, during this period of time, did anything  
15 else happen while he's at the back of the house?

16 A: When he was at the back, yes, sir. Yes, ma'am. There  
17 was a lot of gunfire going back. Some shots were fired.  
18 Later on, he was firing at somebody else.

19 Q: Okay. Did you ever notice any other officers in the  
20 area?

21 A: Yes, ma'am.

22 Q: Who were the other officers in the area?

23 A: Officer Reed, Officer Rivers, who happened to be at the  
24 rear-end, and Officer Anderson, which was Assistant Chief  
25 Anderson.

## LUIS HERNANDEZ - DIRECT BY MS. LEGETTE

1 Q: Okay. Are you aware of who was doing the firing when you  
2 say you heard the shots?

3 A: I had an idea who was doing the firing. They were  
4 exchanging gunfire.

5 Q: Okay. All right. So during this exchange of gunfire,  
6 what are you doing?

7 A: We were running towards the back of the house.

8 Q: Okay. Now, at some point, does the gunfire stop?

9 A: Yes, ma'am.

10 Q: Tell us about the gunfire when it ceased?

11 A: Okay. Once it ceased, Officer Rivers came out clearly on  
12 the radio. He said the suspect is down.

13 Q: Don't -- okay.

14 A: Do you want me to stop?

15 Q: Well, just what did you learn?

16 A: Okay. That the suspect --

17 Q: That was -- okay.

18 A: The suspect was down.

19 Q: Okay.

20 A: And later on as we were making -- definitely the end  
21 approach, they again on the radio stated that he was still  
22 moving.

23 Q: Okay.

24 A: We made the decision to apprehend him at that time, and  
25 we went -- we went to apprehend him.

## LUIS HERNANDEZ - DIRECT BY MS. LEGETTE

1 Q: So you say you went to apprehend him. Does that mean --  
2 what does that mean apprehend?

3 A: That means that we went to approach him, to grab him, to  
4 cuff him, and place him under arrest.

5 Q: Okay. And were you able to place him under arrest?

6 A: Yes, ma'am, I was.

7 Q: Now, tell us about placing him under arrest?

8 A: Well, the first thing about the defendant that we wanted  
9 to know if he was clearly away from the weapons. My partner,  
10 again Mr. Rosier, Police Officer Rosier, stated he had to roll  
11 away from the gun. All right. We knew that he had two guns  
12 because we clearly saw them, but he was saying that he had  
13 only one. So we kind of concentrated on -- I concentrated on  
14 that.

15 We rolled him away from the weapon. I asked my partner  
16 to cover me while I secure him. I placed my foot -- my knee  
17 on his back. I cuffed him. At this time, I put him on his  
18 knees. Okay? I searched his rear to make sure that there was  
19 no handgun or a knife or anything like that. And then I  
20 brought him to his feet. As I held him there, then my partner  
21 gave him a final search for weapons. We looked everywhere  
22 that we possibly can.

23 Q: Okay. And at some point, was he -- so he was handcuffed?

24 A: Yes, ma'am, he was.

25 Q: Did you talk to him? Did you say anything?

## LUIS HERNANDEZ - DIRECT BY MS. LEGETTE

1 A: Yes.

2 Q: What did you tell him?

3 A: I first asked him are you hurt in any kind of way.

4 Q: Was he hurt?

5 A: No.

6 Q: Okay. And did you tell him his Miranda warnings?

7 A: Absolutely, ma'am. I read -- read him his Miranda rights  
8 and told him he does not have to talk to me if he doesn't want  
9 to.

10 Q: Okay. And how did you go about reading those Miranda  
11 rights?

12 A: I read it to him by memory.

13 Q: Okay. And did he appear to understand his Miranda  
14 warnings?

15 A: Yes, ma'am.

16 Q: What type things did you tell him in the Miranda?

17 A: Okay. I told him he had the right to remain silent.

18 Q: Mm-hmm.

19 A: He does not have to speak to me. That he could stop this  
20 at any time that he wanted to. If he does decide to speak to  
21 us or any of law enforcement, that if cannot afford one, one  
22 would be appointed to him at any given time.

23 Q: One what? An attorney?

24 A: An attorney.

25 Q: Okay. So once you had told Mr. Gardner his Miranda

## LUIS HERNANDEZ - DIRECT BY MS. LEGETTE

1 rights, what was his response?

2 A: He smiled at me and told me he should have shot me.

3 MR. FLEMING: Hold up.

4 Q: I'm sorry?

5 A: He told me at that time --

6 MR. FLEMING: Objection. Objection. Objection.

7 THE COURT: Counsel, approach.

8 (WHEREUPON, a bench conference was held off the record in  
9 the presence of the jury but out of the hearing of the  
10 jury, after which the proceedings resumed as follows.)

11 THE COURT: Step back. You want instruction, Counsel?

12 MR. FLEMING: No, sir.

13 THE COURT: All right. Is the objection withdrawn?

14 MR. FLEMING: Yes, sir.

15 THE COURT: Proceed, Solicitor. Consistent with the  
16 conference we had at the bench, the objection is withdrawn.

17 MS. LEGETTE: Yes, sir, Your Honor.

18 BY MS. LEGETTE:

19 Q: Mr. Hernandez, you testified earlier that he smiled at  
20 you when you gave him the Miranda?

21 A: Yes, he did.

22 Q: Okay. Was he taken into custody at that point?

23 A: Yes, ma'am.

24 Q: And what car was he put into?

25 A: Mine.

## LUIS HERNANDEZ - DIRECT BY MS. LEGETTE

- 1 Q: And where did he go from there?
- 2 A: Varnville Police Headquarters.
- 3 Q: And was he -- subsequently, did he talk to the police?
- 4 A: Yes, he talked with the police.
- 5 Q: And were you present when he talked to the police?
- 6 A: Yes, ma'am, I was.
- 7 Q: And who did he talk to?
- 8 A: He talked to Chief Smith.
- 9 Q: And you were present?
- 10 A: I was present.
- 11 Q: All right. Now, Lieutenant Hernandez, at some point
- 12 while you were at the house, was any evidence collected?
- 13 A: Yes, ma'am.
- 14 Q: All right. What evidence was collected?
- 15 A: Two rifles.
- 16 Q: And who collected those rifles?
- 17 A: I did.
- 18 Q: Tell us where you found the first rifle?
- 19 A: The first rifle was near him, approximately three feet
- 20 away after I cuffed him. The second rifle was collected in
- 21 the back of a pickup truck on the bed of the pickup truck.
- 22 Q: All right. And when you collected these rifles, what did
- 23 you do with them?
- 24 A: I gave them to Assistant Chief Anderson.
- 25 Q: Okay. That's Major Anderson?

## LUIS HERNANDEZ - DIRECT BY MS. LEGETTE

1 A: Yes.

2 MS. LEGETTE: I beg the Court's indulgence for a moment.

3 THE COURT: Counsel?

4 MS. LEGETTE: Approach?

5 THE COURT: Counsel, do you want to step out?

6 MR. FLEMING: No, sir. I'm just looking at the side of  
7 the box. I'll just come here to do it and leave those here.

8 Okay. Okay.

9 BY MS. LEGETTE:

10 Q: Lieutenant Hernandez --

11 A: Ma'am?

12 Q: I'm going to hand you what's been previously marked as  
13 State's Exhibit Number 10. I want you to take a moment and  
14 tell me if you recognize this item.

15 MS. LEGETTE: Your Honor, may I approach the witness?

16 THE COURT: Yeah. Mr. Hernandez, that's not in evidence.  
17 Look at the box without exposing it to the jury. Do you  
18 understand?

19 THE WITNESS: Yes, sir.

20 THE COURT: Very well.

21 BY MS. LEGETTE:

22 Q: What is State's Exhibit Number 10?

23 A: It's a rifle.

24 Q: And is that rifle one of the rifles you collected that  
25 day?

## LUIS HERNANDEZ - DIRECT BY MS. LEGETTE

1 A: Yes, ma'am.

2 Q: And has that rifle been changed or altered in any way?

3 A: No, ma'am.

4 MS. LEGETTE: At this time, Your Honor, I would move for  
5 admission of State's Exhibit Number 10 into evidence.

6 THE COURT: As to State's 10?

7 MR. FLEMING: I would object.

8 THE COURT: Counsel, approach.

9 (WHEREUPON, a bench conference was held off the record in  
10 the presence of the jury but out of the hearing of the  
11 jury, after which the proceedings resumed as follows.)

12 THE COURT: Mr. Fleming, I'm going to permit the witness  
13 to step out to examine the contents of the box in light of  
14 what we discussed at the bench.

15 MR. FLEMING: Yes, sir. Thank you.

16 MS. LEGETTE: Your Honor, may he take both? There are  
17 two. May he take both, Your Honor? There are two of them.

18 THE COURT: Yes.

19 MS. LEGETTE: Mr. Fleming --

20 THE COURT: Mr. Fleming, any objection to him taking both  
21 boxes?

22 MR. FLEMING: No, sir. Absolutely not.

23 THE COURT: What's the number of the other box?

24 MS. LEGETTE: It's 11, Your Honor.

25 THE COURT: Okay.

## LUIS HERNANDEZ - DIRECT BY MS. LEGETTE

1 (WHEREUPON, there was a pause in the proceedings during  
2 which the witness left the courtroom with State's Exhibit  
3 Number 10 and State's Exhibit Number 11. After his  
4 return to the courtroom, the proceedings resumed as  
5 follows.)

6 THE COURT: Ask a question, Solicitor, direct  
7 examination.

8 MS. LEGETTE: Thank you, Your Honor.

9 THE COURT: Let the record reflect without objection this  
10 witness was permitted to take two cardboard boxes, which would  
11 be proposed State's Exhibits 10 and 11, outside the courtroom  
12 outside the presence of the jury to examine the contents of  
13 the boxes, and has now returned the boxes with the contents to  
14 the courtroom without exposing the contents to the jury.  
15 Proceed.

16 MS. LEGETTE: Thank you, Your Honor.

17 BY MS. LEGETTE:

18 Q: Lieutenant Hernandez, you examined State's Exhibit Number  
19 10. Is it -- what is State's Exhibit Number 10?

20 A: A rifle.

21 Q: And is that rifle one that you collected?

22 A: Yes.

23 Q: And has it been changed or altered in any way?

24 A: No.

25 Q: And when you last saw that rifle, who did you give it to?

## LUIS HERNANDEZ - DIRECT BY MS. LEGETTE

- 1 A: I gave it to Assistant Chief Anderson.
- 2 Q: Okay. Now with regards to State's Exhibit Number 11,  
3 what -- do you recognize State's Exhibit Number 11?
- 4 A: Yes.
- 5 Q: And what is State's Exhibit Number 11?
- 6 A: Another rifle.
- 7 Q: And is State's Exhibit Number 11 the rifle that you  
8 collected at the scene --
- 9 A: Yes.
- 10 Q: -- on January 26<sup>th</sup>, 2013?
- 11 A: Yes.
- 12 Q: Has it been changed or altered in any way?
- 13 A: No.
- 14 Q: And when you collected -- did you collect State's Exhibit  
15 Number 11?
- 16 A: Yes.
- 17 Q: And upon collecting it, what did you do with it?
- 18 A: I unloaded it and I gave it over -- I handed it over to  
19 Officer Anderson.
- 20 Q: Okay. And is that who you have been referring to as  
21 Assistant Chief Anderson?
- 22 A: Assistant Chief Anderson. I'm sorry. Yes.
- 23 Q: Okay. Or Major Anderson?
- 24 A: Yes. Or Major Anderson a lot of times.
- 25 Q: All right. And has it been altered or changed in any

LUIS HERNANDEZ - DIRECT BY MS. LEGETTE

1 way?

2 A: No, ma'am.

3 MS. LEGETTE: I have no further questions. Please answer  
4 any questions from Mr. Fleming.

5 THE COURT: My understanding is you're not offering 10  
6 and 11 at this time?

7 MS. LEGETTE: That's correct, Your Honor.

8 THE COURT: Very well. Cross-examination?

9 MR. FLEMING: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. FLEMING:

12 Q: Forty years law enforcement?

13 A: Yes, sir.

14 Q: I assume in New York they teach you the same law  
15 enforcement techniques as they teach down here; right?

16 A: Pretty much.

17 Q: Pretty much. You sound like a guy who is very  
18 particular.

19 A: I am.

20 Q: You like to get things right? Is that fair?

21 A: It's fair.

22 Q: And you like to be precise?

23 A: I try.

24 Q: All right. And it sounds like you're a stickler for  
25 details?

## LUIS HERNANDEZ - CROSS BY MR. FLEMING

1 A: I try.

2 Q: Okay. In New York -- because I know they do it here. In  
3 New York -- the jury is going to get sick of this, but I'm  
4 going to ask you the same question. You -- you're taught  
5 about the importance of note-taking, aren't you?

6 A: Yes.

7 Q: You're taught that your memory is best the day it  
8 happens; right?

9 A: That is true.

10 Q: I mean that's common sense, isn't it?

11 A: That's true.

12 Q: You are taught that it is important to sit down at your  
13 computer, typewriter, with your notepad, whatever it is, to  
14 write down all those important facts?

15 A: Yes.

16 Q: Right? I mean there's some things you don't put in, but  
17 there's certain facts that you put in there?

18 A: Yes.

19 Q: All right. And to a particular and precise guy like you,  
20 that really means something, doesn't it?

21 A: Yes.

22 Q: And did you secure any shell casings by the way?

23 A: No.

24 Q: At all?

25 A: No.

## LUIS HERNANDEZ - CROSS BY MR. FLEMING

1 Q: Okay. And Mr. Gardner wasn't shot. You've already told  
2 us about that?

3 A: Yes.

4 Q: Okay. He was laying on the ground and voluntarily rolled  
5 away from the weapon?

6 A: Yes.

7 Q: Okay. And you indicate that you -- you located two  
8 rifles in two different spots?

9 A: Yes.

10 Q: You indicated in the exhibits that you were asked to look  
11 at -- that the solicitor asked you if they had been altered in  
12 any way, but how do you really know? I mean were they in your  
13 possession for the last two years?

14 A: No.

15 Q: Okay. Do you know where they were kept?

16 A: Yes.

17 Q: Where were they kept?

18 A: At Varnville Police Department.

19 Q: Where in the Varnville Police Department?

20 A: In the vault.

21 Q: And how do you know they were kept there the whole time?

22 A: That's their procedure.

23 Q: Other than their procedure, how do you know?

24 A: I don't.

25 Q: You don't know? Do you know if they were sent anywhere?

## LUIS HERNANDEZ - CROSS BY MR. FLEMING

- 1 A: No, I do not, sir.
- 2 Q: Okay. So when you say you don't know if they're in the  
3 same condition or not, you just assume they're not. They  
4 don't look like they are?
- 5 A: That would be fair to say.
- 6 Q: Okay. You don't know if they've been loaded or unloaded  
7 or anything like that?
- 8 A: I know they have been unloaded.
- 9 Q: You don't know if they've been fired, if they've been --  
10 do you?
- 11 A: No.
- 12 Q: No, not --
- 13 A: Not after the incident, no. I wouldn't know.
- 14 Q: You would not know? Okay. So when you say you don't  
15 know if they've been altered, you're just assuming they  
16 haven't been altered?
- 17 A: That would be fair to say.
- 18 Q: Okay. So y'all were -- where were -- where was Mr. -- or  
19 is Sergeant Rosier?
- 20 A: Yes, sir.
- 21 Q: Where was Sergeant Rosier? Was he near you?
- 22 A: Yes.
- 23 Q: So y'all were basically in the same area?
- 24 A: Yes.
- 25 Q: Were y'all about the same distance from -- from Mr.

## LUIS HERNANDEZ - CROSS BY MR. FLEMING

1 Gardner roughly?

2 A: Yes. I would say so.

3 Q: Okay. All right. And -- all right. Do you have a copy  
4 of your report?

5 A: Not with me, no.

6 Q: You don't? So you're going completely off memory?

7 A: Pretty much.

8 Q: Okay. Did you --

9 A: I mean I -- I have seen it. I have read it.

10 Q: When's the last time you read it?

11 A: Yesterday.

12 Q: Okay. I mean I'll be happy to show you, but I'll have to  
13 read it with you. Is that okay?

14 A: Yeah.

15 THE COURT: Would it help refresh your memory?

16 BY MR. FLEMING:

17 Q: I'm going to ask you some questions about your report.

18 A: Okay.

19 Q: The solicitor was kind enough to hand me --

20 THE COURT: You may approach, Mr. Fleming.

21 MR. FLEMING: I'm sorry, Judge.

22 THE COURT: And you can step back. You're blocking the  
23 jury's view. Give him a copy of the report and ask a  
24 question.

25 MR. FLEMING: Thank you, Judge.

## LUIS HERNANDEZ - CROSS BY MR. FLEMING

- 1 BY MR. FLEMING:
- 2 Q: Is that a copy of your report?
- 3 A: Yes. This is Officer -- this is Sergeant Abner's report.
- 4 Q: Okay. And then on page 3, it starts with supplement one?
- 5 A: Yes, sir.
- 6 Q: Okay. And you see it? And it says Lieutenant Luis
- 7 Hernandez?
- 8 A: Yes, sir.
- 9 Q: So this is your report as well?
- 10 A: Yes.
- 11 Q: Okay. And in your report, you were responsible for
- 12 writing that portion; right?
- 13 A: Yes.
- 14 Q: And it is the -- it is the first page and then two lines
- 15 of the second page; right?
- 16 A: Yes.
- 17 Q: All right. Have you flipped it over to see the back? Do
- 18 you see those two lines?
- 19 A: Mm-hmm. Yes, sir.
- 20 Q: Is that the entire report?
- 21 A: That's my entire report.
- 22 Q: Okay. You have not made any other report?
- 23 A: No, I have not.
- 24 Q: Okay. And in this report -- when did you write it?
- 25 A: I wrote it the next following day. I wrote this on the

## LUIS HERNANDEZ - CROSS BY MR. FLEMING

1 27<sup>th</sup> at eight o'clock in the morning.

2 Q: Okay. So first thing in the morning when you got to the  
3 office, you sat down and wrote this report?

4 A: Yes, sir.

5 Q: Okay. Within 24 hours of this entire event?

6 A: Yes.

7 Q: Okay. And in this report, the only thing that you claim  
8 that Mr. Gardner said was -- with quotation marks in your  
9 report, it says go ahead and shoot me. Shoot me, you M-F'ers,  
10 shoot me. I want to die; is that correct?

11 A: That's correct.

12 Q: And that is the only thing in your -- your report that  
13 you say Mr. Gardner said; correct?

14 A: Okay.

15 Q: Is that correct?

16 A: Yes, it is.

17 Q: Okay. And you put nothing else in there?

18 A: Nothing else in there.

19 Q: Within 24 hours after this event?

20 A: Nothing else.

21 Q: Okay. Go back up just -- all right. You -- the next  
22 line right after that, you talk about you couldn't fire your  
23 weapon because of the people in the house; correct?

24 A: Yes.

25 Q: All right. And then -- then you say Officer Rosier

## LUIS HERNANDEZ - CROSS BY MR. FLEMING

1 ordered the suspect to drop his weapon; correct?

2 A: Yes.

3 Q: The suspect refused the order. Instead, suspect picked  
4 up his other rifle and went to the rear of the house.

5 A: Right.

6 Q: Is that correct?

7 A: That is correct.

8 Q: You know what I don't see?

9 A: What don't you see?

10 Q: The click. You testified to this jury --

11 A: I did.

12 Q: You testified to this jury that the man pulled the  
13 trigger at you?

14 A: Yes, he did.

15 Q: You -- you told this jury that the man pointed a gun and  
16 pulled the trigger?

17 A: I did.

18 Q: Today, you testified?

19 A: I just did.

20 Q: And 24 hours after this happened, you don't even put it  
21 in your report?

22 MS. LEGETTE: Objection, Your Honor. I believe he's  
23 badgering the witness.

24 THE COURT: I'm sorry, Counsel. Grounds?

25 MS. LEGETTE: I believe he's badgering the witness, Your

## LUIS HERNANDEZ - CROSS BY MR. FLEMING

1 Honor, and he's being argumentative as well.

2 THE COURT: All right. Counsel, it's cross-examination.  
3 Ask one question at a time, Counsel, and proceed. Objection  
4 is overruled.

5 BY MR. FLEMING:

6 Q: Twenty-four hours after this event, you did not put that  
7 in your report?

8 A: I did not put it in my report.

9 Q: That is not a small fact, is it?

10 A: No. I would say -- I would say that that's a -- that's a  
11 failure that I -- a failure.

12 Q: And two years later, for the first time --

13 A: Not the first time.

14 Q: Did you tell the solicitor that?

15 A: Yes.

16 Q: When did you tell the solicitor that?

17 A: I don't remember.

18 MR. FLEMING: Your Honor, I have a matter to take up  
19 outside the presence -- or may we approach?

20 THE COURT: Counsel, approach.

21 (WHEREUPON, a bench conference was held off the record in  
22 the presence of the jury but out of the hearing of the  
23 jury, after which the proceedings resumed as follows.)

24 THE COURT: My understanding, Mr. Fleming, is the  
25 objection is withdrawn --

## LUIS HERNANDEZ - CROSS BY MR. FLEMING

1 MR. FLEMING: That is --

2 THE COURT: -- in light of the solicitor's statement?

3 MR. FLEMING: That is correct, sir.

4 THE COURT: Anything further?

5 MR. FLEMING: I have one more matter.

6 THE COURT: Yes, sir.

7 MR. FLEMING: One more matter.

8 BY MR. FLEMING:

9 Q: Mr. Hernandez, you indicated to this jury and to us that  
10 you read James Gardner his Miranda warnings. Excuse me. You  
11 told him his Miranda warnings?

12 A: Yes, sir.

13 Q: And you testified that you knew it from memory?

14 A: Yes.

15 Q: Okay. And so you didn't read it from a card that Will  
16 Rivers had, did you?

17 A: He showed it me.

18 Q: I'm sorry?

19 A: I had it. I did have it. He showed it to me.

20 Q: Okay. So you didn't do it from memory or you did?

21 A: No. I did it by memory.

22 Q: Okay. So there was a card, but you didn't read it?

23 A: Exactly.

24 Q: I gotcha. Okay. When you were speaking with Mr.

25 Gardner, isn't it true that you could tell an odor of alcohol

## LUIS HERNANDEZ - CROSS BY MR. FLEMING

1 about his person?

2 A: No, that's not true.

3 Q: You didn't smell alcohol like somebody had been drinking  
4 Crown Royal?

5 A: No, sir, I did not.

6 Q: Nothing?

7 A: Nothing.

8 Q: Were you paying any attention to that?

9 A: Absolutely.

10 Q: Okay. So he -- as far as you're concerned, he didn't  
11 smell like alcohol?

12 A: That is correct.

13 Q: All right.

14 MR. FLEMING: That's all the questions I have.

15 THE COURT: Redirect?

16 MS. LEGETTE: None, Your Honor.

17 THE COURT: Very well. As to this witness?

18 MS. LEGETTE: We ask that he be excused, Your Honor.

19 THE COURT: Any objection, Mr. Fleming?

20 MR. FLEMING: No, sir.

21 THE COURT: Mr. Hernandez, you may step down from the  
22 trial of this case and you're excused from the courtroom.

23 THE WITNESS: Thank you, sir.

24 THE COURT: Call your next witness.

25 MS. LEGETTE: The State calls Major Bobby Anderson.

## BOBBY ANDERSON - DIRECT BY MS. LEGETTE

1 THE COURT: Bobby Anderson.

2 THE CLERK: Place your left hand on the Bible and raise  
3 your right hand. Do you swear to tell the truth, the whole  
4 truth, and nothing but the truth, so help you God?

5 THE WITNESS: I do.

6 THE CLERK: Take a seat.

7 THE COURT: Good afternoon.

8 THE WITNESS: How you doing?

9 THE COURT: Have a seat. I'm fine. Pull that chair up.  
10 Let Melinda switch the microphone over to you. Use that for  
11 me. Adjust it. State your full name and spell your last name  
12 for the court reporter.

13 THE WITNESS: Bobby Anderson, A-n-d-e-r-s-o-n.

14 THE COURT: Your witness, Counsel, direct examination.

15 MS. LEGETTE: Thank you, Your Honor.

16 BOBBY ANDERSON, being first duly  
17 sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. LEGETTE:

20 Q: Major Anderson, where do you work, sir?

21 A: The Varnville Police Department.

22 Q: And what is your current rank?

23 A: Assistant Chief.

24 Q: Okay. At some point, were you Major Anderson?

25 A: Yes, ma'am.

BOBBY ANDERSON - DIRECT BY MS. LEGETTE

1 Q: Okay. And how long have you worked for the Varnville  
2 Police Department?

3 A: Sixteen years.

4 Q: And what are your duties at the Varnville Police  
5 Department?

6 A: To serve and protect the citizens of Varnville.

7 Q: Okay. And do you any other law enforcement experience?

8 A: Yes, ma'am. Two years with the Hampton County Sheriff's  
9 Office.

10 Q: Now, Major Anderson, were you working for the Hampton  
11 County Sheriff's Office on or about January 26<sup>th</sup>, 2013?

12 A: Varnville PD.

13 Q: I'm sorry. Yes. I apologize. Were you working for the  
14 Varnville Police Department on or about January 26<sup>th</sup>, 2013?

15 A: Yes, ma'am.

16 Q: Do you recall that day?

17 A: I do.

18 Q: Can you tell us about January 26<sup>th</sup>, 2013? Can you hear  
19 me?

20 A: Yes, ma'am.

21 Q: Okay.

22 A: I responded to a call at [REDACTED] Mill Pond Road where the  
23 dispatcher told me there was a man with two rifles threatening  
24 to shoot two women. When I got to the call, I actually passed  
25 the call. There was a man fitting the description about 200

BOBBY ANDERSON - DIRECT BY MS. LEGETTE

1 yards down the road wearing camo pants. That's what dispatch  
2 told me that the suspect had on. I got there; that wasn't the  
3 guy.

4 Deputy Washington pulled up beside me. She was coming  
5 from a funeral off-duty. At that time, we heard the Hampton  
6 officer saying he's behind us. He's back at the house. We  
7 turned around. I followed Deputy Washington. As we pulled up  
8 to the house, I saw James Gardner pointing one of the weapons  
9 at the two Hampton officers. When Deputy Washington stepped  
10 out, he pointed at her and said shoot me, mother F'ers, shoot  
11 me.

12 At that time, he walked to the back of the house. I went  
13 around the neighbor's house. He was standing at the back of  
14 his truck. I told him to drop his weapons. He laid one in  
15 the back of the truck. There was an old picnic table right  
16 off from the truck. He walked up behind it. It had an old  
17 air conditioner on it. He kneeled down behind it and said  
18 I've got you, mother F'er. He aimed.

19 Shots were exchanged. He rolled to his right. He ran  
20 behind -- there was an old shed. More shots were fired. And  
21 then I heard a shot coming from a distance. Then I heard  
22 somebody say he's down.

23 So I ran over to the shed. At that time, the two Hampton  
24 officers were putting the cuffs on him, and I also saw Deputy  
25 Will Rivers had came up by that time. He was the one

BOBBY ANDERSON - DIRECT BY MS. LEGETTE

1 shooting. I didn't know it at the time, but he was the one  
2 shooting from a distance.

3 Q: Okay. And so, Major -- well, Assistant Chief Anderson,  
4 you testified that Mr. Gardner aimed. Who did he aim at?

5 A: Me. He got in a prone position and said I've got you,  
6 mother F'er.

7 Q: And who was he talking to at that point?

8 A: Me.

9 Q: Okay. And what is a prone position?

10 A: Down on one knee, taking cover, which he took cover  
11 behind the air conditioner on the picnic table.

12 Q: All right. Now, are you familiar with a crime scene  
13 diagram or a crime scene sketch of this area?

14 A: I am.

15 Q: Okay.

16 THE COURT: It's in evidence, isn't it, Solicitor?

17 MS. LEGETTE: Yes, Your Honor.

18 THE COURT: So you don't need to go back.

19 MS. LEGETTE: Thank you, Your Honor.

20 BY MS. LEGETTE:

21 Q: Major Anderson -- or Assistant Chief Anderson, I'm going  
22 to show you what's been previously entered into evidence as  
23 State's Exhibit Number 7. Take a moment and tell me if you  
24 recognize this item.

25 MS. LEGETTE: May I approach the witness, Your Honor?

## BOBBY ANDERSON - DIRECT BY MS. LEGETTE

1 THE COURT: You may.

2 BY MS. LEGETTE:

3 A: I do.

4 Q: And what is State's Exhibit Number 7? What is it?

5 A: A scene of the -- I mean of the crime scene.

6 Q: Okay. So it's a sketch of the --

7 A: A map of the crime scene. Yes, ma'am.

8 Q: All right. And is it a fair and accurate reflection of  
9 the crime scene from January 26<sup>th</sup>, 2013?

10 A: It is.

11 Q: Okay.

12 MS. LEGETTE: At this time, Your Honor, I would ask Major  
13 Anderson to come down and kind of show us where he was in  
14 location.

15 THE COURT: Mr. Fleming, you may come around. Hold on  
16 one second, Mr. Anderson. Let her get set up. You'll have  
17 your back to my court reporter.

18 THE WITNESS: Yes, sir.

19 THE COURT: She's going to give you a microphone once she  
20 gets her easel set up and I get defense counsel over here.  
21 Please remember that the jury needs to be able to see the  
22 exhibit and the court reporter needs to be able to hear you  
23 once you turn your back to her.

24 THE WITNESS: Yes, sir.

25 THE COURT: You may step down.

## BOBBY ANDERSON - DIRECT BY MS. LEGETTE

1 (WHEREUPON, the witness complied.)

2 THE COURT: Put it on the easel for him.

3 MS. LEGETTE: I'll give you a microphone, Major Anderson.  
4 Put that in your pocket and pin that to your shirt.

5 THE WITNESS: I'll hold it.

6 BY MS. LEGETTE:

7 Q: Okay. Major Anderson, this is State's Exhibit Number 7.  
8 Make sure everybody can see. Now, Major Anderson -- or  
9 Assistant Chief Anderson, please tell us in location to  
10 State's Exhibit Number 7 what area you were in. And I have a  
11 blue pen here for you to be able to mark if you need to mark.

12 A: From where the guy was standing --

13 Q: Yes.

14 A: -- down the road?

15 Q: That would be fine.

16 A: This is where the guy was standing in the camo pants  
17 right before you get to Smoak Lane. That's where I met Deputy  
18 Washington.

19 Q: Okay.

20 A: The two Hampton officers were -- all right. This is the  
21 suspect's house? Yeah. They were here and here. We turned  
22 around. Deputy Washington's car was here. I pulled up right  
23 behind her there.

24 Q: Okay. And so once you got to the suspect's house, what  
25 did you -- at this point, what did you see?

BOBBY ANDERSON - DIRECT BY MS. LEGETTE

1 A: He was pointing the weapon at Deputy Washington at that  
2 point.

3 Q: Okay. And so once he pointed the weapon at her, did you  
4 manage to talk to him or --

5 A: No. At that time, he just -- it wasn't but a second he  
6 turned and went walking to the back of the house.

7 Q: Okay. And at some point, you engaged with the suspect?

8 A: I jumped out the car, went around actually this house  
9 right -- which one is the house? No, this house. I got out  
10 and went to this house.

11 Q: Okay. So why did you go to --

12 A: It wasn't that far apart.

13 MS. LEGETTE: Let the record reflect the witness has  
14 indicated the fifth house on the exhibit.

15 Q: Why did you go to that location?

16 A: Just to take cover to get around because I saw -- this is  
17 the house -- yeah, he walked right here. Yeah.

18 Q: And at this point, he's --

19 A: He walked from here to here.

20 Q: Okay. So he walked from one part of the house to the  
21 next part?

22 A: The front yard to the back.

23 Q: Okay. And so at this point, does he still have the  
24 firearms?

25 A: Yes, ma'am.

## BOBBY ANDERSON - DIRECT BY MS. LEGETTE

1 Q: Okay. And so at this point, you were taking cover at the  
2 other house?

3 A: Yeah. These houses are a lot closer together.

4 Q: Okay.

5 A: They're not that spread out. They were within feet.

6 Q: All right. So you were --

7 A: It's a lot closer than this.

8 Q: So you go to the last house on this particular --

9 A: Yeah.

10 Q: On State's Exhibit Number 7?

11 A: Right there. Yes, ma'am. It was a trailer.

12 Q: All right.

13 MS. LEGETTE: Let the record reflect the witness has  
14 indicated the trailer in blue ink.

15 Q: So when you get behind this particular location, what are  
16 you doing?

17 A: As soon as I rounded the house, I told him to drop his  
18 weapons.

19 Q: Okay. Did he?

20 A: He laid one in the back of the truck. That's when he  
21 turned around and said I've got you --

22 Q: All right.

23 A: -- mother.

24 Q: So at this point when he says that, does he -- what does  
25 he do?

**BOBBY ANDERSON - DIRECT BY MS. LEGETTE**

1 A: He gets down. There's a table and an air conditioner on  
2 it. He gets on one knee and props behind it.

3 Q: Okay. And so --

4 A: And I didn't fire until he did.

5 Q: Okay. So once he fired, then you fired?

6 A: We actually fired at the same time. I pulled the trigger  
7 and I saw his muzzle blast as I fired.

8 Q: Okay. And so at some point, you continued to fire?

9 A: Yes, ma'am.

10 Q: And what is he doing?

11 A: After we shoot here, I move over here. He rolls -- I  
12 think that's the picnic table. He rolls and runs right here  
13 behind this shed. That's where more shots were fired back and  
14 forth.

15 Q: Okay. So you were firing shots back and forth at each  
16 other?

17 A: Yes.

18 Q: All right. Was anyone else in the area assisting you?

19 A: At that time, Deputy Rivers had come up.

20 Q: Were you aware of his location at the time?

21 A: No, not at the time.

22 Q: You weren't aware of his location?

23 A: I didn't know who it was or where it was.

24 Q: Did you hear the gunshots?

25 A: I heard other gunshots.

BOBBY ANDERSON - DIRECT BY MS. LEGETTE

1 Q: Okay. So at this point, you're firing and who else is  
2 firing?

3 A: Deputy Rivers.

4 Q: Okay. So is the suspect firing?

5 A: Yes.

6 Q: All right. And at some point, is he taken into custody  
7 or does the gunfire stop?

8 A: I hear somebody say he's down.

9 Q: Okay.

10 A: Which was Deputy Rivers. I didn't know it at the time.

11 Q: And once you hear that he's down, did you -- what did you  
12 do?

13 A: Yeah. I ran over to the shed.

14 Q: Okay. And that -- did you learn whether he was down or  
15 not?

16 A: Yeah. I saw the Hampton officers cuffing him.

17 Q: Okay. Now -- thank you. You can take a seat back on the  
18 stand.

19 (WHEREUPON, the witness complied.)

20 THE COURT: Proceed.

21 MS. LEGETTE: Thank you, Your Honor.

22 BY MS. LEGETTE:

23 Q: Assistant Chief Anderson, so after everything is over,  
24 you see Mr. -- the suspect. Is he present in court today?

25 A: Yes, ma'am.

**BOBBY ANDERSON - DIRECT BY MS. LEGETTE**

1 Q: Can you point him out for the Court, please?

2 A: James Gardner.

3 Q: All right. And what is he wearing?

4 A: Blue shirt, a blue and gray tie.

5 MS. LEGETTE: Let the record reflect the witness has  
6 indicated the defendant, James Gardner.

7 Q: Now, are you familiar with the actual -- pictures of the  
8 actual scene itself?

9 A: Yes, ma'am.

10 Q: Assistant Chief Anderson, I'm going to hand you what have  
11 been previously marked for identification as State's Exhibits  
12 12 through 21. Take a moment and tell me if you recognize  
13 these items.

14 MS. LEGETTE: May I approach the witness, Your Honor?

15 THE COURT: You may.

16 BY MS. LEGETTE:

17 A: I do.

18 Q: And what are State's Exhibits 12 through 21?

19 A: Pictures of the crime scene.

20 Q: And are State's Exhibits 12 through 21 a fair and  
21 accurate representation of the incident location?

22 A: Yes, ma'am.

23 Q: Have they been changed or altered in any way?

24 A: No, ma'am.

25 MS. LEGETTE: At this time, Your Honor, I would offer

**BOBBY ANDERSON - DIRECT BY MS. LEGETTE**

1 State's Exhibits 12 through 21 into evidence.

2 THE COURT: Mr. Fleming, as to State's 12, 13, 14, 15,  
3 16, 17, 18, 19, 20, and 21?

4 MR. FLEMING: No objection, Your Honor.

5 THE COURT: Ladies and gentlemen of the jury, State's  
6 Exhibits 12 through 21 inclusive will be admitted into  
7 evidence in the trial of this case without objection. You may  
8 publish to the jury, Solicitor.

9 MS. LEGETTE: Thank you, Your Honor.

10 (WHEREUPON, State's Exhibits 12 through 21, all color  
11 photographs, were admitted into evidence.)

12 MS. LEGETTE: Madam Clerk, may we use the screen, please?  
13 May I approach the witness, Your Honor?

14 THE COURT: You may.

15 MS. LEGETTE: Thank you.

16 THE COURT: You've got to set your equipment up,  
17 Solicitor.

18 BY MS. LEGETTE:

19 Q: Major Anderson, in State's Exhibit Number 12, what we're  
20 seeing on the screen to your right, what are we seeing in this  
21 particular -- this particular picture?

22 A: Where the truck is down the road, that's where the guy in  
23 the camo pants was standing that wasn't the suspect --

24 Q: Okay.

25 A: -- that day.

## BOBBY ANDERSON - DIRECT BY MS. LEGETTE

1 Q: All right. And State's Exhibit Number 13, which is now  
2 on the screen to your right, what are we seeing in State's  
3 Exhibit Number 13?

4 A: That's just the front of the house where he was standing  
5 when he was pointing the weapon at the two Hampton officers  
6 and Deputy Washington.

7 Q: Okay. And State's Exhibit Number 14?

8 A: That's where the truck was parked. That's the back of  
9 his residence.

10 Q: Okay. And State's Exhibit Number 15?

11 A: That's the picnic table. It was a little bit further to  
12 the right that day.

13 Q: And that's the picnic table? What was he doing behind  
14 that picnic table?

15 A: It had an old air conditioner on it. That's the one he  
16 dropped down and aimed at -- pointed the rifle at me.

17 Q: And State's Exhibit Number 16?

18 A: That's the picnic table also.

19 Q: And is there anything else about this picture?

20 A: Yeah, the brown trailer.

21 Q: Yes.

22 A: Yeah. The tree and the white door on the trailer.

23 Q: Yes.

24 A: That's where I was when the shots were first fired.

25 Q: Okay. So you were in this area?

## BOBBY ANDERSON - DIRECT BY MS. LEGETTE

- 1 A: Yes, ma'am, right somewhere in there.
- 2 Q: Okay. And then State's Exhibit Number 18? What are we  
3 seeing in State's Exhibit Number 18?
- 4 A: That's the view from the edge of the shed. That's still  
5 where I was standing.
- 6 Q: Are you at the shed or are you at the trailer?
- 7 A: No. I'm back at the trailer. He's where the picture was  
8 taken from.
- 9 Q: He's in this area?
- 10 A: Yes, ma'am. There's an old shed right there.
- 11 Q: Okay. And turn your attention now to State's Exhibit  
12 Number 21.
- 13 A: That's the shed.
- 14 Q: Okay. And who was in this area?
- 15 A: See where the bricks are?
- 16 Q: Right here?
- 17 A: Yeah. That's where he -- that's where that picture --  
18 the last picture was taken from.
- 19 Q: All right. And so he was standing in this area?
- 20 A: Yes, ma'am.
- 21 MS. LEGETTE: Madam Clerk, you can bring the lights up.  
22 Thank you.
- 23 BY MS. LEGETTE:
- 24 Q: Now, Major Anderson, once you -- or Assistant Chief  
25 Anderson, at some point he was taken into custody? The

## BOBBY ANDERSON - DIRECT BY MS. LEGETTE

1 suspect was?

2 A: Yes, ma'am.

3 Q: And did you collect -- or was any guns turned over to  
4 you?

5 A: Yes, ma'am.

6 Q: All right. And how did you come to have these guns in  
7 your possession?

8 A: Lieutenant Hernandez gave them to me.

9 Q: All right. And can you -- was this on the day of the  
10 incident, January 26<sup>th</sup>, 2013?

11 A: It was right afterwards within minutes.

12 Q: Okay. And what did you do with the guns once you took  
13 them into your custody?

14 A: I took them to the office, tagged them, put them into  
15 evidence.

16 Q: And did you turn them over to anyone?

17 A: Yeah, to the chief.

18 Q: Okay. I'm going to hand you in a moment what have been  
19 marked as State's Exhibits Number 10 and 11.

20 MS. LEGETTE: And if he could step outside, Your Honor,  
21 to look at the items?

22 THE COURT: Any objection to him stepping outside to view  
23 the contents?

24 MR. FLEMING: No objection.

25 THE COURT: All right.

## BOBBY ANDERSON - DIRECT BY MS. LEGETTE

1 BY MS. LEGETTE:

2 Q: And tell me if you recognize these items.

3 THE COURT: Without objection, you'll have to step  
4 outside with the boxes and look at the contents, put it back  
5 in, bring the boxes back in with you, all without showing it  
6 to the jury.

7 THE WITNESS: Yes, sir.

8 MS. LEGETTE: Can he step down, Your Honor?

9 THE COURT: You may. Without objection. Ms. Legette?

10 MS. LEGETTE: Yes, Your Honor?

11 THE COURT: Give my photographs to the court reporter.  
12 Make sure it's 12 through 21.

13 (WHEREUPON, there was a pause in the proceedings for the  
14 witness to leave the courtroom. When he returned, the  
15 proceedings resumed as follows.)

16 BY MS. LEGETTE:

17 Q: Assistant Chief Anderson, do you recognize State's  
18 Exhibits 10 and 11?

19 A: Yes, ma'am.

20 Q: And what are State's Exhibits 10 and 11?

21 A: The rifles that James Gardner had that day.

22 Q: And how are you able to recognize them?

23 A: Because I collected them. I saw them.

24 Q: Okay. But they are the items that you collected from  
25 him?

## BOBBY ANDERSON - DIRECT BY MS. LEGETTE

1 A: That day, yes, ma'am.

2 Q: And who did you collect them from?

3 A: Lieutenant Hernandez.

4 Q: Okay. To whom did you turn them over?

5 A: Chief Smith.

6 Q: Okay. And where have they been since you turned them  
7 over to Chief Smith?

8 A: In the evidence locker, the safe.

9 MS. LEGETTE: I have no further questions, Lieutenant.  
10 I'm sorry, Assistant Chief. Answer any questions from the  
11 defense.

12 THE COURT: Cross-examination?

13 MR. FLEMING: Thank you, Judge.

14 CROSS-EXAMINATION

15 BY MR. FLEMING:

16 Q: Excuse me. I'm sorry. Mr. Anderson, I know you  
17 testified about collecting the two rifles?

18 A: Yes, sir.

19 Q: Did you collect any shell casings?

20 A: Yes, sir.

21 Q: What shell casings were there?

22 A: What or --

23 Q: What did you collect?

24 A: .22 caliber rifle shells.

25 Q: Where did you collect them?

## BOBBY ANDERSON - CROSS BY MR. FLEMING

1 A: It's on the evidence bags. I don't know. I'd have to  
2 look.

3 Q: But you don't know where they are -- where you collected  
4 them from?

5 A: All over the yard. I mean I wrote it down on the bags as  
6 I tagged them, but no, I don't remember right now.

7 Q: Okay. Did you do a written chain of custody?

8 THE COURT: Rephrase your question, please.

9 Q: I said did you do a written chain of custody?

10 A: No, sir.

11 Q: All right. Did you write a report about the events that  
12 occurred this day?

13 A: Yes, sir.

14 Q: Okay. Is it the report that I've been -- do you have  
15 that with you?

16 A: It should be the same report.

17 Q: Okay.

18 A: Eleven -- 1-1-0-4 at the top. Case number to the right-  
19 hand.

20 MR. FLEMING: May I approach the witness and look?

21 THE COURT: You may.

22 MR. FLEMING: Thank you. Let me see.

23 THE COURT: You've got to ask a question out loud and get  
24 an answer out loud. Proceed, Counsel. The court reporter has  
25 got to be able to take down any discussion.

**BOBBY ANDERSON - CROSS BY MR. FLEMING**

1 MR. FLEMING: May I have a five-minute break? Because  
2 the report I have doesn't --

3 THE COURT: All right. Go ahead and make a copy.

4 MR. FLEMING: I'm sorry.

5 THE COURT: Ladies and gentlemen, we'll take our  
6 midafternoon break at this point. Please do not discuss the  
7 case. I'll be right back with you in just a moment. I'll let  
8 you stretch your legs and use the rest room. Please retire to  
9 your jury room.

10 (WHEREUPON, the jury exited the courtroom at 3:40 p.m.)

11 THE COURT: All right. Counsel, we'll take a few minutes  
12 for our afternoon break at this time. After you've had a  
13 chance to review it, I want to see both of you in my chambers.  
14 The witness has been instructed he can't discuss his testimony  
15 with anybody during the break.

16 (WHEREUPON, there was a break in the proceedings from  
17 3:41 p.m. until 4:03 p.m., after which the proceedings  
18 resumed as follows.)

19 THE COURT: Is the State ready to proceed?

20 MS. LEGETTE: Yes, Your Honor.

21 THE COURT: The defendant? Are you now ready to proceed?

22 MR. FLEMING: Yes, sir.

23 THE COURT: Bring us the jury, please. Any more direct  
24 examination of this witness, Counsel? Ms. Legette?

25 MS. LEGETTE: No, Your Honor. Not from the State, Your

## BOBBY ANDERSON - CROSS BY MR. FLEMING

1 Honor.

2 (WHEREUPON, the jury entered the courtroom at 4:03 p.m.)

3 THE COURT: All right. Mr. Foreman and ladies and  
4 gentlemen of the jury, we'll now continue with the testimony  
5 in the trial of this case. Cross-examination?

6 MR. FLEMING: I have no further questions. I thought I  
7 heard something.

8 THE COURT: I thought I heard something too.

9 MR. FLEMING: I have no further questions.

10 THE COURT: No questions? As to this witness, Solicitor?

11 MS. LEGETTE: We ask that he be excused, Your Honor.

12 THE COURT: Any objection, Mr. Fleming?

13 MR. FLEMING: No objection.

14 THE COURT: Mr. Anderson, you may step down from the  
15 witness stand and you are excused from the trial of this case.  
16 Call your next witness.

17 MS. LEGETTE: Thank you, Your Honor. The State calls  
18 Chief Tyrone Smith.

19 THE CLERK: Do you swear to tell the truth, the whole  
20 truth, and nothing but the truth, so help you God?

21 THE WITNESS: I do.

22 THE COURT: Chief Smith, have a seat. Pull up your  
23 chair.

24 THE WITNESS: Yes, sir.

25 THE COURT: State your full name and spell your last name

## TYRONE SMITH - DIRECT BY MS. LEGETTE

1 for the court reporter.

2 THE WITNESS: Tyrone Smith, S-m-i-t-h.

3 THE COURT: Your witness, Counsel.

4 MS. LEGETTE: Thank you, Your Honor.

5 TYRONE SMITH, being first duly sworn,  
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MS. LEGETTE:

9 Q: Chief Smith, where do you work?

10 A: Varnville Police Department.

11 Q: And how long have you worked at the Varnville Police  
12 Department?

13 A: About 16 years.

14 Q: And how long have you been -- well, what are your duties  
15 currently?

16 A: Currently, as chief of police.

17 Q: And how long have you been chief?

18 A: About 14 years.

19 Q: What are your duties as chief of police?

20 A: I supervise a five-man department. Also, I write  
21 policies, work along with the council, also make sure that  
22 officers are doing their job, stuff like that.

23 Q: Okay. Were you working for the Varnville Police  
24 Department on or about January 26<sup>th</sup>, 2013?

25 A: Yes, ma'am.

## TYRONE SMITH - DIRECT BY MS. LEGETTE

1 Q: And do you recall that day?

2 A: Yes, ma'am.

3 Q: Did anything unusual happen in the Town of Varnville that  
4 day?

5 A: We had an incident on [REDACTED] Mill Pond Road, which was a man  
6 with a weapon. Major Anderson responded to the call. I heard  
7 the call and I also responded.

8 Q: And what did you find when you responded to [REDACTED] Mill Pond  
9 Road?

10 A: When I arrived at [REDACTED] Mill Pond Road, when I drove down  
11 the road, I seen Mariam. She was running. I stopped my car,  
12 put it in park. She ran toward my vehicle. She was screaming  
13 and yelling that she was shot.

14 Q: And what did you do as a result of her screaming and  
15 yelling?

16 A: I opened -- opened up my back door and advised her to get  
17 inside of my car.

18 Q: Okay.

19 A: At that time, Lieutenant Washington -- she came up from  
20 the rear of my car. I was standing in -- after I got her into  
21 the back seat, I was standing by the door. Lieutenant  
22 Washington came around my car to my front fender.

23 I seen the defendant there, Mr. James Gardner. He  
24 pointed a rifle. He pointed it toward Lieutenant Washington.  
25 I told her then get behind my vehicle.

## TYRONE SMITH - DIRECT BY MS. LEGETTE

1 Q: Okay. And so after this happens, what do you do next?

2 A: After that happened, we got Ms. Mariam in my car, which I  
3 think I was parked between the barber shop and the brick  
4 house.

5 Q: Okay.

6 A: I advised dispatch that we had her, a gunshot victim.

7 Q: Okay.

8 A: Once EMS got on the scene and she was with EMS, she was  
9 later transported down to EMS.

10 Q: So once Ms. Mariam Walden is transported by EMS, does  
11 anything else occur?

12 A: Yes, ma'am. Myself and the other officers -- at that  
13 time, the defendant was in custody. Myself and the other  
14 officers, we looked around the area for Ms. Mary Etta.  
15 Someone called back later and stated that she was down there  
16 at the EMS with her sister.

17 Q: Okay.

18 A: At that time, I told Lieutenant Hernandez to meet me at  
19 the office. He transported the defendant to the Varnville  
20 Police Department, and I met them at the police department.

21 Q: Okay. Now, prior to talking about you meeting Mr.  
22 Gardner at the police department, was any evidence ever turned  
23 over to you in this case?

24 A: Oh, yes, ma'am.

25 Q: Specifically, any guns?

## TYRONE SMITH - DIRECT BY MS. LEGETTE

1 A: Yes, ma'am.

2 Q: Tell us about that. Who turned any guns over to you?

3 A: Afterwards, Major Bobby Anderson turned the guns over to  
4 me.

5 Q: I'm sorry. Could you repeat that?

6 A: Major Bobby Anderson turned the guns over to me.

7 Q: Okay. And so once Major Anderson -- what kind of guns  
8 were they?

9 A: It was a Marlin .22 rifle.

10 Q: Was it more than one or was it just one?

11 A: It was two Marlin .22s.

12 Q: Okay. And what kind of guns are these?

13 A: They are .22 rifles.

14 Q: Okay. Upon receiving these two rifles from Major  
15 Anderson, what did you do with them?

16 A: Major Anderson turned those over to me. Lieutenant  
17 Michael Smith is our evidence custodian. He wasn't there at  
18 the time. I secured the guns in my office, and I called  
19 Lieutenant Smith that Sunday morning and I -- he opened the  
20 vault and I placed them into the vault.

21 Q: So you placed them in a vault yourself?

22 A: Yes, ma'am.

23 Q: Okay. Chief, I'm going to hand you what have been  
24 previously marked as State's Exhibits 10 and 11. I need you  
25 to take a moment and tell me if you recognize these items.

TYRONE SMITH - DIRECT BY MS. LEGETTE

1 And if you could, step outside to look.

2 THE COURT: Any objection to him stepping outside?

3 MR. FLEMING: No, sir.

4 THE COURT: All right. Chief, you understand what to do?

5 THE WITNESS: Yes, sir.

6 (WHEREUPON, there was a pause in the proceedings while  
7 the witness left the courtroom. Upon his return to the  
8 courtroom, the proceedings resumed as follows.)

9 BY MS. LEGETTE:

10 Q: Thank you. Chief Smith, do you recognize State's  
11 Exhibits 10 and 11?

12 A: Yes, ma'am.

13 Q: What are State's Exhibits 10 and 11?

14 A: Those are the two Marlin .22 rifles that Major Anderson  
15 gave me.

16 Q: And what, if anything -- how are you -- well, have they  
17 been changed or altered in any way?

18 A: The only difference on the guns is when Major Anderson  
19 gave them to me, he did -- he did have them tagged.

20 Q: Yes.

21 A: We sent the guns to SLED and today they are not tagged.

22 Q: Okay. And so where have these guns been since Major  
23 Anderson turned them over to you?

24 A: Put in the evidence room.

25 Q: Now, you mentioned SLED. That they were taken to SLED.

## TYRONE SMITH - DIRECT BY MS. LEGETTE

1 Who took them to SLED?

2 A: Sergeant Marion Chambers.

3 Q: And then were they returned to you?

4 A: Yes, ma'am.

5 Q: And who did Sergeant Marion Chambers turn them over to?

6 A: She turned them back over to me.

7 Q: And when Sergeant Marion Chambers turned them over to  
8 you, what did you do with them?

9 A: Once again, like I stated, Lieutenant Smith is the  
10 custodian. He works Monday through Friday. He's SRO at the  
11 high school. So once he brought the guns back, I called  
12 Lieutenant Smith. He came up to the Varnville Police  
13 Department and opened up the vault. I placed them back into  
14 the vault.

15 Q: Thank you.

16 MS. LEGETTE: At this point, Your Honor, I would offer  
17 State's Exhibits 10 and 11 for admission into evidence.

18 THE COURT: As to 10 and 11?

19 MR. FLEMING: Without objection.

20 THE COURT: Ladies and gentlemen of the jury, State's  
21 Exhibits Numbers 10 and 11 will be admitted into evidence in  
22 the trial of this case without objection. Counsel, have the  
23 weapons been secured?

24 MS. LEGETTE: Your Honor, I have not seen any of the  
25 investigators, but prior to --

## TYRONE SMITH - DIRECT BY MS. LEGETTE

1 THE COURT: Chief, would you see that one of your people  
2 get locks so that the weapons can be secured?

3 THE WITNESS: Yes, sir.

4 THE COURT: You can help?

5 THE WITNESS: Yes, sir.

6 THE COURT: You may proceed.

7 MS. LEGETTE: Thank you, Your Honor.

8 THE COURT: I understand that they will not go to the  
9 jury until they are secured. Do you understand that?

10 MS. LEGETTE: Yes, Your Honor.

11 THE COURT: They're into evidence without objection.

12 MS. LEGETTE: Thank you, Your Honor.

13 (WHEREUPON, State's Exhibit Number 10 and State's Exhibit  
14 Number 11, two rifles, each in a separate box, were  
15 admitted into evidence.)

16 MS. LEGETTE: May I publish, Your Honor?

17 THE COURT: You may.

18 BY MS. LEGETTE:

19 Q: Chief Smith, I'm going to hand you now what's been  
20 entered into evidence as State's Exhibit 10. Please --

21 MS. LEGETTE: May I approach, Your Honor?

22 THE COURT: You may.

23 BY MS. LEGETTE:

24 Q: Please show us the item in State's Exhibit Number 10.

25 THE WITNESS: Can I take it out of the box?

## TYRONE SMITH - DIRECT BY MS. LEGETTE

1 THE COURT: You can take it out.

2 A: This is a Marlin .22 rifle. This is a rifle that Major  
3 Anderson give me that Saturday night.

4 Q: Okay. You can place State's Exhibit 10 back in the box  
5 from which it came.

6 (WHEREUPON, the witness complied.)

7 Q: And I'm going to now hand you State's Exhibit Number 11.

8 MS. LEGETTE: May I approach, Your Honor?

9 THE COURT: You may.

10 BY MS. LEGETTE:

11 A: This is also a Marlin .22 rifle that Major Anderson give  
12 to me that Saturday night.

13 Q: Okay. Thank you. Chief Smith, are you familiar with  
14 Marlin .22 rifles?

15 A: Am I familiar with a Marlin .22 rifle?

16 Q: Yes.

17 A: No, ma'am.

18 Q: Okay. Now, Chief, you said earlier that you met with Mr.  
19 -- well, let me ask you this question. Once Mr. Gardner was  
20 taken into custody, what happened to him?

21 A: Once he was taken into custody, he was brought to the  
22 Varnville Police Department by Lieutenant Hernandez of the  
23 Hampton Police Department.

24 Q: Yes. Okay. And at some point, did you ever have a  
25 chance to talk to him?

TYRONE SMITH - DIRECT BY MS. LEGETTE

1 A: Yes, ma'am. When he got to the police department, we  
2 went inside my office and I asked him was he -- did Lieutenant  
3 Hernandez read him his Miranda. He stated yes. And I  
4 interviewed -- I interviewed the defendant.

5 Q: Okay. Now, you said that you actually interviewed him?

6 A: Yes, ma'am.

7 Q: Now, prior to interviewing him, you said that you made  
8 sure he was familiar with his Miranda warnings?

9 A: Yes. I asked him. Yes, ma'am.

10 Q: Had you been told by anyone that his Miranda warnings had  
11 been given to him?

12 A: Yes, ma'am. As a matter of fact, I got in my car and Mr.  
13 Luis Hernandez and myself went to the office. Luis advised me  
14 that he had read him his Miranda rights.

15 Q: Okay. Now, did Mr. Gardner make a statement to you that  
16 day?

17 A: Yes, ma'am.

18 Q: And let's talk about that. Did you ever try to threaten  
19 Mr. Gardner to make a statement?

20 A: No, ma'am.

21 Q: Did you ever try to coerce Mr. Gardner into making a  
22 statement?

23 A: No.

24 Q: Did you ever promise Mr. Gardner anything to get him to  
25 talk to you?

## TYRONE SMITH - DIRECT BY MS. LEGETTE

1 A: No, ma'am.

2 Q: Did you ever hold out any -- offer him a reward to get  
3 him to talk to you?

4 A: No, ma'am.

5 Q: Were any threats ever made to get Mr. Gardner to talk to  
6 you?

7 A: No, ma'am.

8 Q: And did Mr. Gardner talk to you freely and voluntarily?

9 A: Yes.

10 Q: Was it of his own free will?

11 A: Yes.

12 Q: Now, Chief, are you familiar with people who have been  
13 perhaps, like, under the influence of alcohol?

14 A: Yes.

15 Q: Did Mr. Gardner appear to be under the influence of  
16 alcohol?

17 A: Mr. Gardner did not appear to be under the influence of  
18 any alcohol.

19 Q: Did he appear to have any mental incapacity that would  
20 cause him not to be able to understand the conversation that  
21 you were having with him?

22 A: No, ma'am. He understood.

23 Q: Okay. At any time, did Mr. Gardner ever decide to stop  
24 talking to you?

25 A: No, ma'am.

## TYRONE SMITH - DIRECT BY MS. LEGETTE

1 Q: At any point, did he ever ask for an attorney and want to  
2 stop communication?

3 A: No, ma'am.

4 Q: Now, Chief, if Mr. Gardner had appeared to be under the  
5 influence of alcohol, what would you have done?

6 A: I would have transported him to the Hampton County  
7 Detention Center, and I would have picked him up that Sunday  
8 morning.

9 Q: And why would you have done that?

10 A: Because it's the right thing to do. I have a history. I  
11 got a soft spot in my heart for someone that's drunk.

12 Q: Okay.

13 A: So if he --

14 Q: So was Mr. Gardner drunk that day? Did he appear to be?

15 A: No, ma'am. If he was drunk, I wouldn't have talked to  
16 him.

17 Q: Now, once you talked to Mr. Gardner, did you record the  
18 statement in any way?

19 A: Yes, ma'am. A video recording.

20 Q: Video recording? And I'm going to hand you now what's  
21 been previously marked for identification as State's Exhibit  
22 Number 22. I want you to take a moment and tell me if you  
23 recognize this.

24 MS. LEGETTE: Your Honor, may I approach the witness?

25 THE COURT: You may.

## TYRONE SMITH - DIRECT BY MS. LEGETTE

1 BY MS. LEGETTE:

2 Q: Chief, I hand you now what's been previously marked for  
3 identification only as State's Exhibit Number 22. Do you  
4 recognize State's Exhibit 22?

5 A: Yes, I do.

6 Q: And what is State's Exhibit 22?

7 A: It's a redacted copy of an interview I did with Mr. James  
8 Gardner.

9 Q: Okay. And is State's Exhibit Number 22 a fair and  
10 accurate reflection of the interview you did with Mr. James  
11 Gardner?

12 A: Yes, it is.

13 MS. LEGETTE: And at this point, Your Honor, I would  
14 offer State's Exhibit Number 22 for admission into evidence.

15 THE COURT: Subject to the earlier ruling of the Court.

16 MR. FLEMING: Thank you, Your Honor.

17 (WHEREUPON, State's Exhibit Number 22, a video-recorded  
18 interview of the defendant, was admitted into evidence.)

19 MS. LEGETTE: May I approach the witness, Your Honor?

20 THE COURT: You may.

21 MS. LEGETTE: Is it in evidence, Your Honor?

22 THE COURT: State's 22 will be admitted into evidence  
23 subject to my earlier ruling.

24 MS. LEGETTE: Thank you, Your Honor.

25 THE COURT: You may publish to the jury.

## TYRONE SMITH - DIRECT BY MS. LEGETTE

1 BY MS. LEGETTE:

2 Q: Chief, just briefly, when you were talking -- or prior to  
3 talking to Mr. Gardner, how was he able to get into your  
4 office? Did he walk into your office?

5 A: Yes, ma'am.

6 Q: Was he able to walk on his own?

7 A: He walked out of Lieutenant's Hernandez's car and walked  
8 into the office on his own.

9 THE COURT: Counsel, approach.

10 (WHEREUPON, a bench conference was held off the record in  
11 the presence of the jury but out of the hearing of the  
12 jury, after which the proceedings resumed as follows.)

13 THE COURT: Let the record reflect that State's Exhibit  
14 22, according to defense counsel, is consistent with the  
15 ruling that the Court made concerning the admissibility of  
16 State's 22.

17 MS. LEGETTE: Madam Clerk, could you please turn the  
18 lights down?

19 (WHEREUPON, State's Exhibit Number 22 is played in open  
20 court before the jury. NOT TRANSCRIBED HEREIN. After  
21 completion of the video, the proceedings resumed as  
22 follows.)

23 BY MS. LEGETTE:

24 Q: Chief, after -- after you concluded the interview with  
25 Mr. Gardner on January 26<sup>th</sup>, 2013, did you attempt to collect

## TYRONE SMITH - DIRECT BY MS. LEGETTE

1 any other evidence from Mr. Gardner?

2 A: Yes, ma'am.

3 Q: What did you attempt to collect?

4 A: I called Captain Russell at the Hampton County Sheriff's  
5 Office. He came down to the office and he attempted a GSR  
6 kit.

7 Q: Okay. And what happened when he attempted the GSR kit?

8 A: Mr. Gardner got upset with Captain Russell and he  
9 refused.

10 Q: Okay. And what is a -- what is a GSR?

11 A: It's to collect gunshot residue off of a subject.

12 Q: Okay. And so when you take a GSR kit, what do you do with  
13 it after you take it?

14 A: We take it to SLED.

15 Q: Okay. All right. So you're saying that no GSR kit was  
16 collected?

17 A: No, ma'am.

18 Q: Okay. And then after he would not allow Captain Russell  
19 to collect it, did you try?

20 A: Yes, ma'am.

21 Q: And what happened?

22 A: He still -- he still refused.

23 Q: I noticed in your report -- did you make a report?

24 A: Yes, I did. I did that report the next morning, and in  
25 that report I did -- I made an error. I type too fast. In

## TYRONE SMITH - DIRECT BY MS. LEGETTE

1 the report, I think I stated I attempted to collect the GSR  
2 kit, but I should have put I attempted to collect a GSR kit  
3 and the subject refused.

4 MS. LEGETTE: I beg the Court's indulgence.

5 Q: Chief, how does a person -- you said GSR. How does a  
6 person get GSR on their hands?

7 A: From firing a weapon -- firing a firearm.

8 Q: Okay. Thank you.

9 MS. LEGETTE: I have no further questions. Answer any  
10 questions from the defense, please.

11 THE COURT: Cross-examination?

12 MR. FLEMING: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. FLEMING:

15 Q: Hey, Chief. You said when you came to the scene you saw  
16 one lady running?

17 A: I saw Ms. --

18 Q: Towards you?

19 A: Yes.

20 THE COURT: Hold on one second. Let him finish before  
21 you ask another question. Go ahead.

22 A: I saw the sister running down the highway, Mill Pond  
23 Road.

24 Q: Okay. And she got into your car?

25 A: I stopped the car and put it in park --

## TYRONE SMITH - CROSS BY MR. FLEMING

1 Q: Yeah.

2 A: -- and advised her to get in -- get in my back seat.

3 Q: Okay. And what was she wearing?

4 A: She was wearing -- if I'm not mistaken, I think it was  
5 burgundy sweatpants because, you know, she had a dark spot.

6 You could tell a blood stain on her -- on her hip.

7 Q: All right. But you didn't get -- you didn't see her get  
8 shot?

9 A: No, sir. She had run down the road screaming that he  
10 shot me.

11 Q: Okay. All right. After everything was calmed down and  
12 everybody was in custody and everything was done -- okay? --  
13 and you looked around, you realized -- you found out that some  
14 of your officers were involved? Bobby Anderson was involved  
15 in a shooting; right?

16 A: Yes, sir.

17 Q: All right. And is it commonplace for you to investigate  
18 your own officers in those circumstances?

19 A: No, sir.

20 Q: Did you contemplate or did you ever think about asking  
21 another law enforcement agency to do the investigation?

22 A: Yes, sir.

23 Q: But you decided not to do that?

24 A: No, sir. I called -- I did. I called Shawn Hodge from  
25 SLED.

## TYRONE SMITH - CROSS BY MR. FLEMING

1 Q: Okay. Did SLED do an investigation?

2 A: No, sir. He asked me was anybody hit.

3 Q: I didn't -- I didn't ask you what he said.

4 A: Okay.

5 Q: Just did he do an investigation?

6 A: No, he didn't.

7 Q: Okay. Did you ask -- all right. So you called SLED, and  
8 I know Shawn.

9 A: I called Shawn.

10 Q: All right. You called Shawn, and they didn't do that  
11 part of the investigation. Did you call for a crime scene  
12 investigator?

13 A: Once again, I called Shawn. You don't understand what he  
14 said.

15 Q: I --

16 A: I called Shawn.

17 Q: To do any kind of crime scene? Shawn is not a crime  
18 scene investigator, is he?

19 A: You want me to tell you what Shawn -- what we talked  
20 about?

21 THE COURT: Would you respond to the question?

22 A: I called Shawn and told him what we had.

23 Q: Mm-hmm.

24 A: And he asked me was anyone hit.

25 Q: Mm-hmm.

## TYRONE SMITH - CROSS BY MR. FLEMING

1 A: I stated -- I stated no, and he said I probably didn't  
2 need SLED.

3 Q: Okay.

4 A: I didn't call -- I didn't call for a crime scene  
5 investigator.

6 Q: Okay. Have you worked in the past when the scientists  
7 from the SLED lab come down to collect evidence? You've seen  
8 those cases before?

9 A: Yes, sir.

10 Q: Right? They have a fingerprints team; right?

11 A: Yes, sir.

12 Q: And they've got a DNA team; right?

13 A: Yes, sir.

14 Q: And they're got a trace evidence team; right?

15 A: Yes, sir.

16 Q: And a blood spatter team?

17 A: Yes, sir.

18 Q: And they have a footprint analysis team?

19 A: Yes, sir.

20 Q: And some of them do multiple things at one time, but they  
21 have a team for all of that, don't they?

22 A: Yes, sir.

23 Q: Okay. And as the chief of police for Varnville, haven't  
24 you had an occasion in a serious case to call those crime  
25 scene investigators and get them involved?

## TYRONE SMITH - CROSS BY MR. FLEMING

1 A: Yes, sir.

2 Q: Okay. But you didn't do it in this case?

3 A: No, sir.

4 Q: Okay. Did you request that any fingerprints be taken  
5 from the weapons that y'all found?

6 A: No, sir.

7 Q: Okay. Did you request to do any DNA testing on any of  
8 the evidence found?

9 A: No, sir.

10 Q: All right. Now, you indicate that in your opinion, Mr.  
11 Gardner wasn't intoxicated, but you know, didn't you, that Ms.  
12 Montouth said he was drinking Crown Royal?

13 A: No, I didn't.

14 Q: You didn't know that?

15 A: I know that today. I didn't talk to her until after he  
16 was in custody. So at the time, no, I did not.

17 Q: But you know that now?

18 A: Yeah.

19 Q: And she told you that on the 2<sup>nd</sup> of February in her  
20 statement, didn't she?

21 A: Well, it wasn't that day the incident happened.

22 Q: I understand that, but about five --

23 A: February 2<sup>nd</sup>.

24 Q: Five days later she told you? Okay. And you asked Mr.  
25 Gardner in that statement what he had been drinking?

## TYRONE SMITH - CROSS BY MR. FLEMING

- 1 A: Yes, sir.
- 2 Q: And you referenced the Crown Royal bottle you found?
- 3 A: Yes, sir.
- 4 Q: Okay. And he said he drank all that and more?
- 5 A: Well --
- 6 Q: I just heard it. Isn't that what he said?
- 7 A: Are you asking me?
- 8 Q: Yeah.
- 9 A: You're referring back to Ms. Montouth before. She said
- 10 he drank about that much, and it was in the back of the truck.
- 11 Q: Okay. Did --
- 12 A: He said that on the tape.
- 13 Q: He said he drank the whole bottle?
- 14 A: That's what he said.
- 15 Q: And more?
- 16 A: That's what he said.
- 17 Q: Okay. You didn't get a -- you didn't take him to get a
- 18 breathalyzer, did you?
- 19 A: I didn't smell alcohol on him.
- 20 Q: I'm sorry?
- 21 A: I didn't smell alcohol on him.
- 22 Q: Okay. You didn't smell anything?
- 23 A: I didn't smell any alcohol on him. I didn't.
- 24 Q: All right. Do you do written chains of custody?
- 25 A: Yes, sir.

## TYRONE SMITH - CROSS BY MR. FLEMING

1 Q: All right. Did you do one in this case?

2 A: No, sir.

3 MR. FLEMING: That's all the questions I have, Judge.

4 THE COURT: Redirect?

5 MS. LEGETTE: None, Your Honor.

6 THE COURT: Chief, you may step down. Call your next  
7 witness.

8 MS. LEGETTE: Your Honor, at this time, the State rests  
9 except for the stipulation that we have. Can we approach?

10 THE COURT: Yes, you may.

11 (WHEREUPON, a bench conference was held off the record in  
12 the presence of the jury but out of the hearing of the  
13 jury, after which the proceedings resumed as follows.)

14 THE COURT: Step back. Bear with me, Mister Foreman and  
15 ladies and gentlemen of the jury. I've got a couple matters  
16 of law that I'm taking up. I'll be with you in just one  
17 second.

18 THE FOREMAN: All right.

19 THE COURT: I'm aware you're here.

20 THE FOREMAN: Yes, sir. We're with you.

21 THE COURT: Solicitor, I understand that the parties have  
22 a stipulation they wish to publish for the jury.

23 MS. LEGETTE: Yes, Your Honor. With regards to State's  
24 Exhibits 10 and 11 now entered into evidence, the two Marlin  
25 rifles testified to previously, the State and the defense have

1 agreed by stipulation that both guns were in good working  
2 order on the date of January 26<sup>th</sup>, 2013.

3 THE COURT: Is that correct, Mr. Fleming?

4 MR. FLEMING: We so stipulate. Yes, sir.

5 THE COURT: Ladies and gentlemen, you would take that  
6 stipulation as a fact which has been proved in this case.  
7 Very well. With that stipulation, Solicitor, what is the  
8 State's position on additional evidence?

9 MS. LEGETTE: Your Honor, the State rests at this time.

10 THE COURT: Very well. Mr. Fleming, are there some  
11 matters of law that I need to take up at this time?

12 MR. FLEMING: Yes, Your Honor.

13 THE COURT: Very well. Mr. Foreman and ladies and  
14 gentlemen of the jury, I'm going to ask you, if you would, if  
15 you would step to your jury room. I need to take up a matter  
16 of law. It won't be long. Please do not discuss the case.  
17 You have not heard all the evidence or heard the arguments and  
18 my charge.

19 THE FOREMAN: Thank you, sir.

20 (WHEREUPON, the jury exited the courtroom at 4:42 p.m.)

21 THE COURT: Chief, you know what I'm going to ask you,  
22 don't you?

23 CHIEF SMITH: Yes, sir.

24 (WHEREUPON, arrangements were made to have State's

25 Exhibits Number 10 and 11 locked with gun locks prior to

1 going back to the jury room.)

2 THE COURT: Mr. Fleming, so you know, I'm having State's  
3 10 and 11 -- I'm putting gun locks on both of the weapons that  
4 are in evidence. I do not believe in sending a weapon that  
5 isn't locked to the jury and, since it's now in evidence,  
6 that's exactly what I've asked them to do. I assume without  
7 objection that he can remove them in order to get them from  
8 the courtroom? Without objection?

9 MR. FLEMING: That is correct, sir.

10 THE COURT: No objection from the State as well?

11 MS. LEGETTE: That's correct, Your Honor.

12 THE COURT: All right. Mr. Fleming, are there any  
13 motions at the close of the State's case?

14 MR. FLEMING: Your Honor, I would renew all of my  
15 previous motions that I raised, both in limine and during the  
16 trial of the case, and specifically with regard to the  
17 admission of my client's statement, as we have challenged the  
18 voluntariness of it. Notwithstanding your ruling, I would  
19 still renew that motion, as I did contemporaneously with the  
20 admission of it with the jury.

21 THE COURT: And of course, as you know, I pointed out  
22 that during the Jackson Denno hearing that you requested that  
23 I felt there was -- I'm going to charge the jury, as you know,  
24 whether or not there was a statement is entirely up to them,  
25 and whether or not it was voluntary is entirely up to them.

1           But I think there was sufficient evidence by a  
2 preponderance of the evidence to admit the statement into  
3 evidence and, therefore, I decline to change my ruling in any  
4 way on the admissibility of the statement. Is there anything  
5 else at the close of the State's case on behalf of the  
6 defendant before I ask you to come forward with your client  
7 and be sworn?

8           MR. FLEMING: Yes, Your Honor. At this time, I would  
9 move for a directed verdict on each and every indictment that  
10 the State has presented.

11          THE COURT: All right. Let's stop right here.  
12 Solicitor, it's my understanding that the State has decided  
13 not to proceed on one of the indictments; is that correct?

14          MS. LEGETTE: That is correct, Your Honor.

15          THE COURT: And that would be Indictment 2014 at 374,  
16 which was the indictment for pointing and presenting firearms?

17          MS. LEGETTE: That is correct, Your Honor.

18          THE COURT: And you're going to nolle pros the  
19 indictment?

20          MS. LEGETTE: That's correct, Your Honor.

21          THE COURT: Madam Clerk, I hand the indictment to you.  
22 The State has elected not to proceed on that indictment. Mr.  
23 Fleming, that now leaves us with three attempted murder  
24 indictments and possession of a weapon during the commission  
25 of a violent crime. I'll be happy to hear from you now since

1 there are now -- no longer five, but four indictments. The  
2 State has elected not to proceed and is nolle prosequing the  
3 indictment that I just referred to.

4 MR. FLEMING: Your Honor, I would again move for a  
5 directed verdict with regard to the remaining indictments, the  
6 three attempted murder charges and the --

7 THE COURT: Possession of a weapon --

8 MR. FLEMING: -- possession of a weapon --

9 THE COURT: -- during the commission of a violent crime?

10 MR. FLEMING: Yes, sir. I would simply state that the --  
11 in the light most favorable to the State, they have failed to  
12 present sufficient evidence to send the case to the jury.

13 THE COURT: Very well. Solicitor, do you --

14 (WHEREUPON, State's Exhibits 10 and 11 were brought into  
15 the courtroom.)

16 THE COURT: You've got them locked? You got them in  
17 there? You got the keys?

18 CHIEF SMITH: Michael Smith does.

19 THE COURT: If you'll give those back to the court  
20 reporter? Thank you very much for taking care of that because  
21 I do not want those going in the jury room without locks.

22 Let the record reflect that the chief of the Varnville  
23 Police Department has secured State's Exhibits 10 and 11 with  
24 locks and, according to my bailiff, one of my bailiffs or an  
25 officer has the key to the locks, which will not be sent into

1 the jury room.

2 Does the State wish to be heard on defendant's motion for  
3 a directed verdict?

4 MS. LEGETTE: Yes, Your Honor.

5 THE COURT: I'm happy to hear from you.

6 MS. LEGETTE: Thank you, Your Honor. With regards to the  
7 attempted murder indictments, Your Honor, the State submits  
8 that the evidence in this case was -- along with the statement  
9 of the defendant himself indicating his intent to kill the  
10 victims, he intended to kill both Mariam Walden, as well as  
11 Mary Etta Montouth. He testified -- his statement testified  
12 to such.

13 In addition, both Ms. Mary Etta Montouth and Ms. Mariam  
14 Walden indicated that he held the gun on them, he shot at  
15 them, and he pulled the trigger in an intent to kill them. In  
16 addition, Ms. Mariam Walden testified that Mr. Gardner told  
17 her that he was going to kill her. Over her argument, he even  
18 pulled the trigger she tells the Court.

19 Additionally, Ms. Mary Etta Montouth testified that Mr.  
20 Gardner told her that he also -- that he was going to kill her  
21 as well, and that he would even shoot her in the back. And  
22 this is after having shot at her while she was trying to get  
23 out of the house.

24 With regards to Detective -- not detective -- Assistant  
25 Chief Bobby Anderson, Your Honor, Mr. Gardner's malice itself

1 -- attempted murder is the intent to kill with malice  
2 aforethought, either express or implied, and Mr. Gardner's  
3 actions themselves, though express in their -- in his actions,  
4 they are also implied through a -- a willful disregard for  
5 human life or a reckless disregard for human life showing  
6 malice, ill will, and evil towards Major Anderson when he told  
7 him I've got you now, M-F. In addition, there was another  
8 officer who testified that he heard him say -- heard the  
9 defendant say I've got you now.

10       Thereafter, Your Honor, we believe that the State has  
11 proven its case with regards to the attempted murders of Mr.  
12 James Gardner of the victim Ms. Mary Etta Montouth, Ms. Mariam  
13 Walden, and Assistant Chief Bobby Anderson.

14       With regards to the possession of a weapon during the  
15 commission of a violent crime, the statute itself indicates  
16 that attempted murder is a violent crime, and we have guns  
17 here that were taken off of the defendant that were identified  
18 as having been in the hands of the defendant and having been  
19 collected from the crime scene itself.

20       And thereafter, Your Honor, we submit that the State has  
21 proven its case with regards to the possession of a weapon  
22 during the commission of a violent crime as well, and we ask  
23 the Court to deny the defense motion to direct verdicts at  
24 this time in the case. Thank you.

25       THE COURT: Very well. Obviously, the standard that I'm

1 required to apply at the close of the State's case, Mr.  
2 Fleming, your motion for directed verdict is respectfully  
3 denied.

4 Mr. Fleming, I told you I'd give you a moment if you need  
5 it with your client --

6 MR. FLEMING: Yes, sir.

7 THE COURT: -- because I'm ready to proceed. However, I  
8 want to give you time to discuss with your client what I'm  
9 going to do next so he'll understand.

10 MR. FLEMING: Yes, sir.

11 (WHEREUPON, there was a pause in the proceedings, after  
12 which the proceedings resumed as follows.)

13 THE COURT: All right. Mr. Fleming, have you had time to  
14 talk to your client?

15 MR. FLEMING: Yes, Your Honor. We are --

16 THE COURT: Would you and your client please come forward  
17 to the microphone?

18 (WHEREUPON, the defendant and his counsel complied.)

19 THE COURT: Madam Clerk, would you swear Mr. Gardner,  
20 please?

21 THE CLERK: Place your left hand on the Bible and raise  
22 your right hand. Do you swear to tell the truth, the whole  
23 truth, and nothing but the truth, so help you God?

24 THE DEFENDANT: I do.

25 THE COURT: All right. Mr. Gardner, at this time, I'm

1 going to explain to you certain of your rights. If you do not  
2 understand anything that I say, please let me know.

3 THE DEFENDANT: Okay.

4 THE COURT: If you want me to explain anything in further  
5 detail, let me know. Do you understand?

6 THE DEFENDANT: Right.

7 THE COURT: We've now reached the stage of the trial  
8 where you may present your defense. You have the right to  
9 testify on your own behalf. However, no one, not this Court,  
10 no one can make you testify.

11 In the event you have a record for any conviction  
12 involving dishonesty or false statement or for a crime  
13 punishable by imprisonment of more than one year, and this  
14 Court determines that the probative value substantially  
15 outweighs its prejudicial effect to you, the solicitor could  
16 try to introduce your record for impeachment purposes solely  
17 for the purpose to attack your credibility or your  
18 believability.

19 However, I'm advised that although you have a record --  
20 Solicitor, you tell me it is not your intention to use the  
21 record because the record is more than ten years old?

22 MS. LEGETTE: That is correct, Your Honor.

23 THE COURT: Is that your understanding, Mr. Fleming?

24 THE DEFENDANT: Yes, it is.

25 MR. FLEMING: Yes, sir.

1           THE COURT: Now, Mr. Gardner, if you elect not to take  
2 the witness stand, I'm going to charge the jury that they are  
3 not to give the fact that you did not testify any  
4 consideration whatsoever, and there is to be absolutely no  
5 legal prejudice to you because you did not testify. You have  
6 the constitutional right to remain silent. The burden of  
7 proof is on the State of South Carolina to prove your guilt  
8 beyond a reasonable doubt.

9           The decision as to whether or not you testify will be  
10 left entirely up to you. You can talk to your attorney, but  
11 it is not your attorney's decision. You can -- it is your  
12 decision and only yours, and no one can make you testify. Do  
13 you understand what I've just told you?

14          THE DEFENDANT: Yes, sir, Your Honor.

15          THE COURT: Very well. Have you had sufficient time to  
16 talk to your lawyer about this?

17          THE DEFENDANT: Yes, sir.

18          THE COURT: What is your decision, Mr. Gardner, as to  
19 whether or not you wish to testify in the trial of this case?

20          THE DEFENDANT: I wish not to testify.

21          THE COURT: You do not want to testify?

22          THE DEFENDANT: Right.

23          THE COURT: Is that your decision?

24          THE DEFENDANT: That's my decision.

25          THE COURT: And no one forced you into that decision?

1 THE DEFENDANT: No one.

2 THE COURT: No one promised you anything in order to  
3 reach that decision?

4 THE DEFENDANT: They didn't.

5 THE COURT: And no one threatened you in reaching that  
6 decision?

7 THE DEFENDANT: No, they didn't.

8 THE COURT: And it is entirely your decision; is that  
9 correct?

10 THE DEFENDANT: It's my decision. Yes, sir.

11 THE COURT: And your decision is not to testify?

12 THE DEFENDANT: Right.

13 THE COURT: Very well. Thank you. You and your lawyer  
14 may return to your seat.

15 (WHEREUPON, the defendant and his counsel complied.)

16 THE COURT: Mr. Fleming, does the State intend to  
17 introduce any evidence -- not State. I'm sorry. Does the  
18 defense intend to introduce any evidence when I call the jury  
19 back into the courtroom?

20 MR. FLEMING: We do not.

21 THE COURT: Very well. So we have concluded with the  
22 evidence and you will rest when I call the jury back?

23 MR. FLEMING: Yes, Your Honor.

24 THE COURT: All right. I'm going to need -- because of  
25 your request to charge and the solicitor's, I'm going to need

1 to see both of you in my chambers briefly when we finish, and  
2 I'm going to have my law clerk print out a proposed verdict  
3 form.

4 It would be my intention, since all the evidence is in,  
5 not to try to do it tonight and keep the jury here so late,  
6 but start back first thing in the morning. Both of you  
7 understand? That way you'll have time to prepare your closing  
8 arguments.

9 If the defendant elects not to present evidence,  
10 Solicitor, the defendant will have final argument in this  
11 matter. Mr. Fleming, how long do you think you'll need?  
12 Because I'm trying to plan for the jury and for all the non-  
13 jury matters that I need to take up with Mr. Knight once this  
14 trial is completed.

15 MR. FLEMING: I would hope no more than 20 minutes.

16 THE COURT: You'd need -- you can have as much as you  
17 want, but 20 should be sufficient?

18 MR. FLEMING: Yes, sir.

19 THE COURT: Solicitor, can you do your argument in 20  
20 minutes?

21 MS. LEGETTE: No, sir, Your Honor.

22 THE COURT: How long do you need?

23 MS. LEGETTE: About 30.

24 THE COURT: About 30?

25 MS. LEGETTE: Yes, sir.

1 THE COURT: All right. You'll get 30 if you need it, Mr.  
2 Fleming.

3 MR. FLEMING: Thank you, sir.

4 THE COURT: All right. When you have reached 25 minutes,  
5 Solicitor, you will get the familiar --

6 (WHEREUPON, the Court knocked on the bench four times.)

7 THE COURT: -- to let you know to wrap it up.

8 MS. LEGETTE: Yes, sir.

9 THE COURT: In my Sunday School class, Solicitor -- I  
10 tell my lawyers this each time. I teach a class called a  
11 Wesley Bible class, and they know far more about the Bible  
12 than I do, and I have to -- because everybody in that class  
13 has been in the class for many years, and I have to stay up on  
14 Saturday night until one and two o'clock in the morning to  
15 prepare for teaching that class, but I've learned if I go past  
16 17 minutes, I lose my class, even though they know the subject  
17 matter well.

18 I remind my lawyers of that when they want additional  
19 time because it's difficult for people to listen. But I will  
20 certainly give you the 30 minutes you request.

21 All right. With that, anything further from the State?

22 MS. LEGETTE: No, sir, Your Honor.

23 THE COURT: From the defendant before I bring the jury  
24 out?

25 MR. FLEMING: No, sir.

1 THE COURT: Very well. Bring us the jury, please.

2 (WHEREUPON, the jury entered the courtroom at 4:57 p.m.)

3 THE COURT: Mr. Foreman, ladies and gentlemen of the  
4 jury, you've heard the evidence from the State of South  
5 Carolina. We'll now hear from the defendant. Mr. Fleming,  
6 you may call your first witness.

7 MR. FLEMING: The defense rests, Your Honor.

8 THE COURT: Very well. Ladies and gentlemen, you've  
9 heard all the evidence in this case. Because it's five  
10 o'clock and because I've still got the arguments of both sides  
11 and my charge and because I promised you I'd be mindful of  
12 your time, I'm going to complete the trial of this case in the  
13 morning.

14 Over the overnight recess, please don't watch any -- I  
15 don't know if there'll be anything on radio or television or  
16 in the newspaper, but please don't read such, watch such,  
17 listen to such, or discuss this case with anyone. You have  
18 not heard the final arguments. You have not heard my charge  
19 on the law, both of which will occur in the morning.

20 I'm going to let you sleep a little bit later in the  
21 morning. I want you to be in your jury room by 9:45 in the  
22 morning, but we're going to start at ten o'clock. So please  
23 be here by 9:45 so we can start at ten o'clock in the morning.

24 Anybody got any problems with transportation? Everybody  
25 okay? Are they taking good care of you back there?

1 THE FOREMAN: Yes, sir.

2 THE COURT: All right. I just want to make sure they're  
3 taking good care of you. Please be in your jury room no later  
4 than 9:45 in the morning. I hope everybody has a pleasant  
5 evening. I will see you in the morning. You may leave the  
6 courtroom at this time. Everyone else remain seated while the  
7 jury is leaving.

8 (WHEREUPON, the jury exited the courtroom at 5:00 p.m.)

9 THE COURT: All right. Counsel, you both have submitted  
10 requests to charge to me, and I want to go over -- so you can  
11 prepare your closing arguments tonight -- with you things  
12 about the charge, as well as let you review a proposed verdict  
13 form to see if it's satisfactory with both of you.

14 And rather than keep you any later because it's after  
15 five o'clock now, we'll do that in chambers at this time.  
16 Court is in recess until 10 a.m. tomorrow morning.

17 (WHEREUPON, the proceedings adjourned for the day at 5:01  
18 p.m.)

19 FEBRUARY 4, 2015

20 (WHEREUPON, the proceedings resumed at 10:21 a.m.)

21 THE COURT: Counsel, approach.

22 (WHEREUPON, a bench conference was held off the record,  
23 after which the proceedings resumed as follows.)

24 THE COURT: All right. Tameaka argues first.

25 MS. LEGETTE: Yes, sir.

1 THE COURT: You argue last because you didn't present any  
2 evidence. Are y'all ready to go?

3 MR. FLEMING: Yes, sir.

4 MS. LEGETTE: We need to get the screen down, Your Honor.

5 (WHEREUPON, there was a pause in the proceedings.)

6 THE COURT: Take a seat, Mr. Fleming. All right. Let  
7 the record reflect that I had a charge conference with the  
8 lawyers last night. I went over my entire charge with the  
9 lawyers.

10 I also went over the verdict form and, pursuant to  
11 discussions I had with them, although we've had a computer  
12 problem this morning, we have just -- they have just reviewed  
13 the verdict form and both were in agreement with the verdict  
14 form.

15 My law clerk has all four indictments. Is what I stated  
16 accurate insofar as the State is concerned? You agree to the  
17 verdict form and you understand everything I'm going to  
18 charge?

19 MS. LEGETTE: Yes, Your Honor.

20 THE COURT: How about for the defendant?

21 MR. FLEMING: Yes, sir.

22 THE COURT: Because the State has nolle prossed one of  
23 the indictments, only four indictments go to the jury, three  
24 for attempted murder, one for possession of a weapon during  
25 the commission of a violent crime. And the verdict form will

1 reflect only verdicts for the four charges that are being  
2 submitted to the jury.

3 Because the defendant did not present any evidence, the  
4 defendant will have final argument. I've advised -- and the  
5 State will argue first. Ms. Legette has asked for 30 minutes.  
6 If you go 25, when you're five minutes from what you've asked  
7 for, you will get the familiar --

8 (WHEREUPON, the Court knocked on the bench three times.)

9 THE COURT: -- to let you know to wrap it on up. I don't  
10 send my law clerk with a hook around your neck to pull you  
11 down. However, I urge my lawyers to remember that jurors do  
12 not like lengthy orations because their attention span is  
13 limited.

14 Mr. Fleming, you also have 30 minutes since the solicitor  
15 insisted on 30 minutes. If you so desire, I'll do the same  
16 for you.

17 Is the State ready to proceed?

18 MS. LEGETTE: Yes, Your Honor.

19 THE COURT: Is the defendant ready to proceed?

20 MR. FLEMING: Yes, sir.

21 THE COURT: Mr. Fleming, as I advised you, you can come  
22 outside the railing so you can view what's being shown to the  
23 jury by counsel for the State during counsel's closing  
24 argument. Bring us the jury, please.

25 (WHEREUPON, the jury entered the courtroom at 10:26 a.m.)

1           THE COURT: Because of the easel, I can't see you; so let  
2 me step down here so you can see me when I talk. And thank  
3 you for your patience this morning. We've had a computer  
4 problem and none of us could anticipate it. I still don't  
5 exactly know what the problem was. We couldn't send an email  
6 which contained the verdict form, and the reason we're  
7 starting 25 to 30 minutes behind schedule was because of  
8 computer problems.

9           I've been very mindful of the fact you were here on time  
10 and waiting. I apologize for that. We had to get the verdict  
11 form printed and that's the reason we're behind.

12           You're now going to hear the closing arguments of the  
13 attorneys, followed by my charge to you on the law. I ask  
14 that you give the attorneys your careful consideration. Ms.  
15 Legette?

16           MS. LEGETTE: Thank you, Your Honor. May it please the  
17 Court?

18           THE COURT: Proceed.

19                           CLOSING ARGUMENT ON BEHALF OF THE STATE

20           MS. LEGETTE: Mr. Fleming. Ladies and gentlemen, good  
21 morning.

22           THE JURY: Good morning.

23           MS. LEGETTE: When we first met yesterday, I told you  
24 that this case was about a man on a mission. That mission?  
25 To kill and destroy. That mission remains, but James Gardner

1 failed to complete his mission. For James Gardner, January  
2 26<sup>th</sup>, 2013, was a time to kill, a time to die, a time to  
3 destroy.

4 Now, I really probably shouldn't speak to you very long  
5 because the thing speaks for itself. It is what it is because  
6 James Gardner's words, they speak for him, but before we talk  
7 about what James Gardner said, we need to deal with some of  
8 what Mr. Fleming is going to try and mislead you with.

9 Now, I watch a lot of movies or I used to at least, and  
10 Pirates of the Caribbean is one of my favorite movies. And in  
11 one of those scenes, there was a part about some sirens, and  
12 those sirens are red herrings and the sirens were designed to  
13 keep you from listening or keep the pirates from getting where  
14 they needed to go because they'd get lulled to sleep.

15 And I believe that perhaps that may be part of the plan  
16 here is to keep you from understanding what's going on, but  
17 putting the rubber where it hits the road, what this case is  
18 truly about, it's not about police. It's about James Gardner,  
19 but I want you to know about those red herrings. So let's  
20 begin.

21 The red herrings in this case that Mr. Fleming is  
22 probably going to bring to your attention and try to mislead  
23 you -- now, DNA. Let's face it, ladies and gentlemen. You  
24 need DNA in a case where you don't know who did the crime.  
25 You don't know. It would be helpful in a rape case

1 definitely. Helpful in a burglary case? Absolutely. You  
2 don't know who did it, you need DNA.

3 We don't need DNA in this case because guess what we  
4 have? We have people who say -- six people who tell you James  
5 Gardner had guns. So there's no need for DNA.

6 No fingerprints. That's going to be another red herring  
7 he's going to throw out there at you. He asked that question  
8 yesterday of one of the officers. Well, no fingerprints, but  
9 you guess what? You only need fingerprints in a case where  
10 you don't know who committed the crime. In this case, we know  
11 who committed the crime. We have several witnesses who say  
12 James Gardner had the guns, James Gardner shot at them. So  
13 there's no need for fingerprints.

14 Even GSR. We don't have GSR, but guess what? We don't  
15 need it. Mr. Gardner wouldn't give it to us, but we don't  
16 need it because we have people who say he was shooting the  
17 gun. They saw him with the gun in his hands. They actually  
18 had to shoot back at him. We don't need it.

19 Now, ladies and gentlemen, I'll be honest with you. I  
20 live here. I get my hair done right over there at Brother's  
21 Barber Shop. Right there, I get my hair done right there,  
22 every other Saturday. I live in Varnville, and I'll just --  
23 we're going to air the dirty laundry. Yes, let's face it.  
24 The police response in this case was not the best. I'll face  
25 it.

1 I'm going to put it out there for you, but this case is  
2 not about the police. The police are just everyday people.  
3 And guess what everyday people do? Everyday people make  
4 mistakes. They also forget to include information in reports.  
5 They forget to bring their vest. They forget to bring a gun  
6 to a gunfight. They forget all types of things.

7 But, ladies and gentlemen, they also run from danger even  
8 though they're called to protect and serve. They sometimes  
9 don't call SLED. They are everyday people. They don't always  
10 keep written chains of custody. We've got to be honest.  
11 We've got to deal with it. Open up a dialog. I'm just going  
12 to tell you the truth.

13 They also -- they don't shoot a man who is shooting back  
14 at them. They fail to shoot a man who is threatening their  
15 lives. They fail to shoot James. So you know what, ladies  
16 and gentlemen? There are no perfect police officers, no  
17 perfect police forces, and if we had had a perfect police  
18 force, we would not be here today because James Gardner would  
19 have gotten his wish. They would have shot him and killed  
20 him. That's what he wanted. So they're not perfect and let's  
21 face that. They are everyday people.

22 But something they did do, they did it right. They did  
23 his Miranda and they got his confession. And that's why we're  
24 here. That is the crème de la crème. That's the basic fact  
25 here. James Gardner told you what he did, and we're going to

1 deal with James Gardner and what he said.

2 Now, ladies and gentlemen, at this point, let me tell you  
3 why he is guilty. He is guilty for several reasons. Because  
4 he said what his intentions were. Because of the things that  
5 he did. Those are the reasons why he is guilty.

6 But at the same time, what makes a guilty man? A guilty  
7 man confesses, and that's what James Gardner did. He  
8 confessed on video. You're going to have the video. Watch  
9 the video. See for yourselves. I don't have to say very much  
10 because James speaks for himself. He was on a mission. His  
11 mission? Kill and destroy.

12 What else does a guilty man do? A guilty man won't allow  
13 the police to collect GSR from his hands. What did the chief  
14 tell you? GSR is gunshot residue. It comes from firing a  
15 gun. He wouldn't let them collect that evidence. Why? He's  
16 guilty.

17 What else? A guilty man -- I don't know this, but  
18 wouldn't go quietly into the night, wouldn't just go quietly.  
19 He wanted the police to shoot him. He wanted to commit  
20 suicide by cop.

21 And what else would a guilty man tell the police?  
22 Whatever you do, I'm glorified. He's glorified. It's on the  
23 video. You don't have to take my word for what I say he said  
24 because it's on the video you will have to take. I urge you  
25 to watch it. It's here for you to watch it and see it for

1   yourself.

2           Now, ladies and gentlemen, let us deal with the law. The  
3 judge himself is going to tell you what the law is, but so we  
4 can try this case and so you'll know where we're going, I want  
5 to tell you some of what the law is. If I get it wrong, the  
6 judge himself will fix it. He, after all, is the learned  
7 trial judge. But let us deal with the facts.

8           Now, ladies and gentlemen, I'm going to tell you one more  
9 thing before we go any further. I told you this case is not  
10 about the police. Okay? It ain't about the police, but it is  
11 about James Gardner. And just so you make it easier on you, I  
12 went ahead and dismissed the indictment where he pointed a gun  
13 at the police because, like I said, it ain't about the police.  
14 It's about James Gardner. Put aside that. It's about James  
15 Gardner.

16           So now let's talk about what did James Gardner do? What  
17 did James Gardner do? Attempted murder. What is attempted  
18 murder? Attempted murder is a person with the intent to kill  
19 attempts to kill a person or victim with malice aforethought,  
20 express or implied.

21           Now, let's go through that because here's the thing. The  
22 State does not prosecute innocent men. Mr. Fleming told you  
23 his client was an innocent man, and I will admit to you he  
24 does wear a robe of righteousness. He walked in here wearing  
25 a robe of righteousness, but at the end of this case today,

1 that robe will be around his feet in tattered rags because he  
2 will no longer be wearing a robe of righteousness. It will be  
3 a robe of guilt. So let's talk about that, open up a dialog,  
4 as my brother likes to say, because if it doesn't fit, you're  
5 going to have to acquit James Gardner.

6 So -- a person. James Gardner is that person. We can  
7 check it off. It's very simple math. My dad loves math. I'm  
8 not very good at it. That's why I went to law school.

9 A person with the intent to kill. Now, let's talk about  
10 the intent because James Gardner gave you some words to help  
11 you understand in his video what his true intent was. Let's  
12 look at it. What is James Gardner's intent here?

13 He says I remember going to my truck. I come out. Mary  
14 Etta was sitting on the front porch. She disappeared. Her  
15 sister came out the back door or somewhere and I said I'm  
16 going to kill all you M-Fs. Now, I used to use that kind of  
17 language, but I don't want to offend any of you, but that's  
18 what James Gardner said. You can see it on the tape. You  
19 heard it yesterday. That's what he said. I'm going to kill  
20 all of you M-Fs.

21 What else did James Gardner say? You said -- the chief  
22 says you said Mary Etta? What's her sister's name? Mariam.  
23 And I said especially you and I threw the gun up at Mary  
24 Etta and I pulled the trigger. I don't know if it hit her or  
25 it didn't.

1           Now, ladies and gentlemen, two guns. Two guns. What is  
2 a man doing with two guns walking down the street in the  
3 middle of the day? Two guns. Not one. Two guns. Two guns.  
4 And when they tell him to put the gun down, he not only puts  
5 the gun down, he points it. And then at Mary Etta, he threwed  
6 the gun up and shot. I don't know whether I hit her or not.  
7 That's James Gardner. That's his own words. Two guns.

8           What else was James Gardner's intentions? Intent to  
9 kill. He said your intentions was to shoot both of them?  
10 Huh, to kill them. To kill them. It wasn't no shoot. Shoot  
11 to maim? Shoot her. It was to kill them. Kill and destroy.  
12 James Gardner came out to kill and to destroy. That's why he  
13 came. Those were his intentions.

14          What did he say? To kill them. That was my intention.  
15 Look at it. That was my intention. Why? I'm telling you  
16 why, Chief. I'm telling you why. And why? They made him  
17 mad. They made me mad. It made him mad. Intent to kill.  
18 Intent. He said it himself. Yeah, I wanted to shoot them.  
19 My intentions were not made if I killed myself. My intentions  
20 was to kill myself after I killed them. You dig what I'm  
21 saying?

22          The thing speaks for itself. I could sit down now. I  
23 should sit down now. Why? Because they made me mad. They  
24 made me mad. She's supposed to be home at 9:30. Her sister  
25 walking around the house all day smiling.

1           Now, ladies and gentlemen, even if you're mad with your  
2 girlfriend because she's been gone too long and you've been  
3 riding around town all day mad at the M-F, how about the  
4 smiling sister?

5           Y'all seen her. Ms. Mariam -- she does smile. She sat  
6 right there and she smiled. She smiled, and he was mad at her  
7 because she was smiling? I mean, man, come on. Come on, man.  
8 Come on. You're mad with Mary Etta and you think she's going  
9 around sleeping with other people. You're mad, and that ain't  
10 no excuse. That don't justify trying to kill Mary Etta. Not  
11 that I'm saying that, but Mariam? She's smiling. She's got  
12 rheumatoid arthritis. She can't hardly get down on her knees,  
13 and you're going to kill her?

14           Attempt to kill. Look at this. Mad as an M-F. It's on  
15 the tape. He arrived. He should have left. Oh, but get this  
16 y'all. Get this now. James Gardner is the best guy in the  
17 world. He's the best guy in the world. He's the best guy in  
18 the world now. Understand, but if he gets shitting with you,  
19 he's going to get that ass. Oh, yeah. Oh, yeah. Understand  
20 this. I'm walking around town with two guns. Oh, yes. I'm  
21 bad enough to take on the police. Oh, yes. Oh, yes. They're  
22 going to say it. James Gardner, what a man. What an evil  
23 man.

24           Malice. Let's talk about it. Mary Etta -- he told her  
25 he was going to kill her. He shot at her. Mariam -- he told

1 her he was going to kill her. He shot at her. Shot her. Oh,  
2 he got her in the leg, but his intentions was to kill her, and  
3 you know this. He said this. Mary Etta -- he shot at her.  
4 He missed her as well.

5 Assistant Chief Bobby Anderson -- let's talk about him.  
6 It's a little bit different because what he tells Bobby was,  
7 oh, I've got you now, M-F. It's one of his favorite words I  
8 think. I've got you now, and he gets down, prone, and starts  
9 busting. Oh, he didn't call it busting though. He called it  
10 popping. He called it popping. Watch the tape. It's on  
11 there.

12 Malice. What is malice? Malice is evil. It's evil.  
13 It's a wicked, depraved spirit. And evil, ladies and  
14 gentlemen, you know what evil is. No regard for human life.  
15 None whatsoever. James Gardner had no regard for human life.  
16 Not Mary Etta Montough, not Mariam Walden, and not Bobby  
17 Anderson. None of them. He had no regard.

18 He didn't even have regard for his own life. Now, misery  
19 loves company, and y'all know that. And James Gardner  
20 appeared to be a miserable man, and his intent was to make  
21 everybody else that he came in contact with miserable.

22 Malice. Evil. It can be express or implied. Express  
23 means I'm going to kill them. My intention was to shoot all  
24 of them M-Fs. I'm going to kill you, Mary Etta. You're going  
25 to die today. I've got you now, M-F'er. That's express.

1           Implied? Implied is with the use of a deadly weapon.  
2 And what is a deadly weapon? Two guns. Two .22 rifles. Two.  
3 Why did he need two rifles? Why do you need two rifles?  
4 Because you got mad, you've got a plan. You're on a mission.  
5 Kill and destroy, and that's implied. Inferred from the use  
6 of a deadly weapon.

7           Now, ladies and gentlemen, he's still the best guy in the  
8 world. He's still the best. Just don't cross him. Whatever  
9 you do, don't make him angry. He will show you.

10          Dr. David Banner, scientist. Some of y'all might  
11 remember him. He used to tell people don't make me angry.  
12 You wouldn't like me when I'm angry. James Gardner pretty  
13 much said the same thing. And when David Banner got angry, he  
14 turned into the Incredible Hulk. When James Gardner gets  
15 shitting with you, he gets your ass. And how does he do it?  
16 .22 rifles.

17          So, ladies and gentlemen, still popping. One of the  
18 officers is shooting. It's all on the tape. I put it here  
19 just to remind you. I won't worry your patience too much  
20 longer, but I want you to understand James Gardner is a  
21 dangerous man. He was a dangerous man on January 26<sup>th</sup>, 2013.  
22 His intent was to kill and to destroy.

23          And for the insurance. He wanted them to kill him rather  
24 than take his own life. He wanted them to kill him. Let them  
25 go home knowing they had killed a man.

1           Now, let's talk about James and his drinking because that  
2 was the first thing Mr. Fleming told y'all. Oh, James, James,  
3 James, James. He's just drunk. Don't mind him y'all. He's  
4 just drunk. Don't mind him. He's a senior citizen. Don't  
5 mind him. He's 65. He's on disability. Whatever he says, it  
6 was just drunk talking.

7           Now, maybe in Mr. Fleming's world you get drunk and you  
8 say things that you regret. That's what he said. He said in  
9 my world when I used to drink, yeah, I did. Mm-hmm. I said  
10 things I might have regretted, but you know what? It was the  
11 truth because a drunk mouth speak the truth, at least that's  
12 what my daddy told me. A drunk mouth speak the truth. I know  
13 when I was doing it, a drunk mouth speak the truth.

14           But let's face it, y'all. James Gardner wasn't drunk.  
15 Okay? He was not drunk. He said I ain't had that much. He  
16 calls it Crown Vic. It's Crown Royal. Who would know better  
17 than his live-in girlfriend, Mary Etta? She would know  
18 whether he was drunk or not. She's seen him before. What did  
19 she tell y'all? He had about this much, about two inches out  
20 of a Crown Royal bottle.

21           But she also said that ain't a lot for James. When James  
22 got drunk, he passed out. Y'all look at the tape. Is James  
23 passed out? He walked in there of his own volition. James is  
24 not passed out.

25           James? James has been the best evidence in this case.

1 His own words condemn him. His own words, his own actions.  
2 He knew exactly what he was doing, and he knew exactly what he  
3 was saying. He was not drunk. Mary Etta told you he wasn't  
4 drunk. Seeing him ain't like living with him. Y'all know  
5 that.

6 And guess what? Out of the abundance of the heart, the  
7 mouth speaks. Watch the video. See it for yourselves.

8 Now, moving on to the last charge we have, possession of  
9 a weapon during the commission of a violent crime. You can  
10 only deal with this indictment if you have first found James  
11 Gardner guilty of at least one attempted murder.

12 If you find him guilty of all three, then fine. You can  
13 find him guilty of this. If you find him not guilty of all  
14 three of the attempted murders, then you cannot even deal with  
15 this indictment. You just don't. It's a wash. If you find  
16 him guilty of any one of the attempted murders, you can also  
17 look at this indictment and decide whether he is guilty of  
18 this.

19 So let's go through it. Possession of a weapon during  
20 the commission of a violent crime. A person -- that's James  
21 Gardner -- visibly displays or possesses -- I'm not going to  
22 walk around here again with those guns. James Gardner was  
23 walking around downtown Varnville, [REDACTED] Mill Pond Road, with  
24 two guns, two rifles. They actually -- he shot people with  
25 them. Who told you? Mariam, Mary Etta, Bobby Anderson, Abner

1 Rosier, Luis Hernandez, they all told you about it.

2 Visibly displays or possesses a firearm. Two rifles.  
3 They're sitting right there in evidence for you, and they  
4 worked. They worked. Why they didn't actually fire? Well.

5 During the commission of a violent crime. That violent  
6 crime is attempted murder. The judge himself will tell you  
7 that attempted murder is a violent crime.

8 So, ladies and gentlemen, those are the charges we're  
9 working with, four. Attempted murder of Mary Etta Montouth,  
10 attempted murder of Mariam Walden, attempted murder of Major  
11 or Assistant Chief Bobby Anderson. Those are your charges.

12 Now, ladies and gentlemen, we're at a point now where we  
13 want to talk about why none of this happened, why James  
14 Gardner basically failed in his mission. He told you that his  
15 intent was to kill them, but he failed.

16 Mr. Fleming wanted to tell you yesterday morning that he  
17 had every opportunity to kill them. He had every opportunity  
18 to kill them, but he did not kill them. So let's talk about  
19 that. He shot at Mary Etta. He missed. He pulled the  
20 trigger on Mariam. The gun misfired. He shot at Mariam. He  
21 hit her in the thigh, the fleshy part. It worked its way out.  
22 Hurt no muscles. He told Mary Etta he was going to kill her.  
23 He told Mariam he was going to kill both of them. He told the  
24 chief his intentions were to kill them both, and his actions  
25 of opening fire on Major Bobby Anderson indicated he was

1 trying to kill him as well.

2 But, ladies and gentlemen, why it didn't happen, I can  
3 only potentially say perhaps grace and mercy. Grace and mercy  
4 is why James Gardner's not dead and why the victims are not  
5 dead. Because James Gardner has had mercy. He's had mercy at  
6 this point, but he didn't want mercy. He did not want mercy.  
7 Mercy was we can't kill him. We can't kill him. We didn't  
8 kill him.

9 But what did James Gardner say? He was, like, where you  
10 going? I'm one of the best guys in the world, but he wants to  
11 get it over with. He tells you he doesn't need mercy, he  
12 don't want mercy. And what right now is required is justice.  
13 He's had mercy. Even though he didn't want it, he's had it.  
14 He tells you it was my intentions. Whatever you're going to  
15 do, I'm glorified.

16 He has had mercy. He failed. He had every opportunity  
17 to die, but mercy, though he didn't want it. The guns worked.  
18 We found shell casings. The guns were loaded. How do we know  
19 they were loaded? Because Mariam got shot. Major Bobby  
20 Anderson said he saw the muzzle fire and he shot back.

21 He had mercy. He doesn't want it. It's time for  
22 justice, ladies and gentlemen. It's time for justice, and  
23 justice requires that you find James Gardner guilty of  
24 attempted murder of Mary Etta Montouth, Mariam Walden, and  
25 Major Bobby Anderson, and find him guilty of possession of a

1    weapon during the commission of a violent crime.

2            Because he has had his mercy. It is time for justice and  
3 I ask you for a true and just verdict, a verdict that speaks  
4 the truth. You have all the evidence before you. My time is  
5 over. I'm done. But find him guilty. The evidence -- I ask  
6 you to watch it, to look at it, and make your decision. Thank  
7 you.

8            THE COURT: Mr. Fleming?

9            MR. FLEMING: May it please the Court, Your Honor.

10          THE COURT: Proceed.

11                    CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

12          MR. FLEMING: I was thinking about this case last night,  
13 and I couldn't help but think about my grandfather. I was a  
14 very, very, very lucky young man because I got to spend a lot  
15 of time with him. He was a very simple man, a quiet man. He  
16 was a carpenter.

17          And he didn't talk much, and one of the lessons that he  
18 told me was that --

19          (WHEREUPON, there was a pause in the proceedings while  
20 the courtroom screen was raised, after which the  
21 proceedings resumed as follows.)

22          MR. FLEMING: This technology. He would not have liked  
23 that, I promise you that, but he told me that actions speaker  
24 louder than words, and that's just as true today as it's ever  
25 been.

1           And that's really what this case is about because we've  
2 all heard James' ranting and raving on that videotape. Each  
3 one of us has heard it. This and that. I'm going to do this.  
4 I'm going to do that. And that's his words, but that's talk  
5 and talk is cheap, and drunk talk is even cheaper.

6           Now, Ms. Montouth testified that she saw James drinking a  
7 bottle of -- out of a bottle of Crown Royal. She said he,  
8 when she saw him, had drunk that much. And the chief found  
9 that bottle and it was empty. And so the chief asked James  
10 about drinking because I don't know why you would ask that  
11 unless you thought that he'd been drinking. And James said,  
12 yes, I have been.

13           The solicitor in that fancy screen put up there one  
14 little snippet about how much he had to drink. She forgot to  
15 put in here this. She put in there not that much, I had some  
16 Crown Vic. That's what she put on the screen. But let's keep  
17 reading. He said -- the chief says I think I got a Crown Vic  
18 bottle -- I think that means Crown Royal -- and James says,  
19 oh, I had more than that. And the chief said you had more  
20 than that? And Gardner -- James says uh-huh. And the chief  
21 says more than that bottle? You've had that whole bottle?  
22 And Gardner says, yeah, I drunk that whole bottle and then  
23 some. Because that's where the empty bottle came from. That  
24 stuff is expensive and nobody throws that stuff down the drain  
25 I can promise you.

1           He didn't get a breathalyzer or do any of that kind of  
2 blood test because he just didn't do it because he didn't  
3 think it mattered, but it did matter because it was drunk  
4 talk. And talk is cheap, but actions speak louder than words.

5           So let's see what he was really saying with his actions,  
6 and I'll tell you why. Because the sole issue in this case is  
7 what the judge says about the law, and he will say that in  
8 order for James to be guilty, he had to intend to kill.  
9 Intend to kill. So let's think about it.

10           Ms. Montouth said that James raised the gun three feet  
11 away. I'm not going to do it to you, but that's one, two,  
12 three. That's from here to there. He raised the gun. She  
13 says a shot went off. And I didn't see a shotgun and I still  
14 haven't seen a shotgun. If it's a shotgun or a rifle, there's  
15 only one reason that you miss that shot, and the reason is  
16 because you tried not to hit her.

17           You cannot -- you cannot miss that shot. You just can't,  
18 which means he did not intend to kill Ms. Montouth. I don't  
19 know whether he scared her. I don't know whether it was an  
20 accident, but he didn't intend to kill her because if he  
21 wanted to, he could have. She wasn't running. She wasn't  
22 defending herself. She didn't have a weapon. He had all the  
23 opportunity if he intended to kill her.

24           A bunch of police officers testified that he said  
25 something. He said one thing or another, and there's a lot of

1 inconsistencies in their testimony about what he said, but the  
2 one thing they all agree that he said was I want you to shoot  
3 me. Out there in that back yard, he didn't intend to kill a  
4 police officer. He intended for a police officer to kill him.  
5 That's the exact opposite intention of this crime.

6 He even told the chief that, and the solicitor has asked  
7 you to take a look at that statement. Watch the video, and I  
8 agree because the chief says why were you shooting at the  
9 police. He said -- to the police? He said I wanted them to  
10 shoot me. So if he's popping rounds, the only reason he's  
11 doing it is so that they will shoot him. That is not intent  
12 to kill. That is intent to be killed.

13 And then Ms. Mariam. She testified and, if you'll  
14 recall, she testified about one thing on direct examination  
15 and she was -- she told you that she got on her knees. She's  
16 got the bad knees and she was on her knees and she was  
17 praying, which is just like Ms. Montouth. James is right  
18 there. If he wanted to, if he intended to kill her, that's  
19 all he had to do. She wasn't running. She wasn't moving.  
20 It's fish in a barrel. She could have done it -- I mean he  
21 could have done it right there if he had intended to kill her.

22 And so I asked her a question. I said you said you heard  
23 a click or two, and she said maybe three, but she doesn't  
24 remember. But finally -- finally, after talking with her on  
25 the stand, I said you didn't see a gun pointing at you, you

1 saw a gun pointing at himself up underneath his chin. That's  
2 a man intent on dying, not killing.

3 Now, later on she said she's -- she's -- James leaves.  
4 Instead of -- with all the time in the world to shoot her,  
5 instead of doing it, he leaves the house, and that's when  
6 apparently the police are arriving and it's getting to be  
7 chaotic outside, and she says she runs. And she's running and  
8 she gets shot in her backside on the thigh. So she's running  
9 and she doesn't see who shot her because she's running looking  
10 that way. You don't run like that.

11 She doesn't see who shot her. And none of the police  
12 officers testified that they saw him shoot her. They  
13 testified they were exchanging rounds is what they said.

14 Now, that's okay because we've got the police who can do  
15 an investigation. We can figure out because we truly don't  
16 know what bullet struck her. We truly don't know. So the  
17 police come and instead of -- see, I asked them about a crime  
18 scene investigator because a crime scene investigator --

19 Remember I said there's a footprint, latent impressions  
20 or fingerprints, blood spatter, firearms, all that stuff,  
21 because each one of these divisions have scientists that can  
22 come in and they can say -- they can come to the scene and  
23 they say, oh, see all the footprints and everything like that  
24 and tell where people were, angles, et cetera.

25 And I asked each and every one of them, each and every

1 one of them, about shell casings. Y'all remember I said did  
2 you pick up shell casings? You picked up shell casings?  
3 Because if you know anything, and I'm sure many of you do,  
4 about firearms, when I'm holding any type of firearm that  
5 ejects a shell, when I shoot it, it automatically ejects out,  
6 but no.

7 And you can tell. A scientist or a forensic expert or a  
8 firearms expert can say this particular model ejects a shell  
9 approximately two feet to the right or this particular model  
10 does it three feet or four feet. They'll know what it is if  
11 you test it properly.

12 And so you can say based on where we found the shell  
13 casing, we know that this man was standing here when he shot.  
14 And based on this shell casing, we can say this man was  
15 standing here and this man was standing here, and they can  
16 create an entire diagram to know where the shots were. And  
17 then they can compare and say, you know, this shell casing was  
18 fired by this gun, and this shell casing was fired by this  
19 gun.

20 I'm not saying that they have to do everything, but  
21 they've got to do something. Something. We don't even know  
22 where that bullet came from. Not one person came to this  
23 stand and testified about where that bullet came from.  
24 Nobody.

25 I think that one of the things we've learned is that they

1 have a lot of technology. They used the screens and they can  
2 show the stuff. They can do all the fancy things like that,  
3 and I think the thing that's shaken me to the core in this  
4 case, the thing that bothers me the most, is that there was a  
5 videotape and an audiotape that would have eliminated all  
6 doubt in this case.

7 One of the officers had a microphone and a video camera  
8 that automatically rolls, and they could have come here and  
9 they could have put it in that machine and they could have  
10 turned that thing on and they could have turned that thing on  
11 and we could have heard it, and you would know what happened.  
12 And they can't even tell you where it is.

13 They kept the other ones. They kept the ones they liked.  
14 They kept the ones that back them up. Why didn't they keep  
15 those? If that's not a reasonable doubt, I don't know what  
16 is.

17 On that verdict form, it says for each of these people,  
18 did James Gardner intend to kill Ms. Montouth? No, he didn't.  
19 Did James Gardner intend to kill Ms. Walden? No, he didn't.  
20 Did James Gardner intend to kill Mr. Anderson? No, he didn't.

21 So for each one of those, the fair and just verdict is to  
22 check that not guilty box. James didn't intend to kill  
23 anybody. He intended to be killed. Thank you, folks.

24 CHARGE ON THE LAW

25 THE COURT: All right. Mister Foreperson and ladies and

1 gentlemen of the jury, it is now my duty to charge you on the  
2 law of this case.

3       The State of South Carolina has charged the defendant,  
4 James Gardner, with: attempted murder in Indictment Number  
5 2013 at 73; with attempted murder in Indictment Number 2013 at  
6 75; with attempted murder in Indictment Number 2013 at 79; and  
7 the fourth indictment is possession of a weapon during the  
8 commission of a violent crime in Indictment Number 2013 at 80.

9       And we have several numbers in an indictment number. The  
10 year is first. GS is next. That means Court of General  
11 Sessions. And then 25 means Hampton County. And then we  
12 number them consecutively after that from the first indictment  
13 of the year to the last one. So when I use the terms 2013 and  
14 those numbers, I'm leaving out GS and 25. It just means  
15 General Sessions and Hampton County, which is the court we're  
16 in.

17       Now, I remind you, first of all, that the fact that the  
18 defendant was arrested, the fact that the defendant was  
19 charged, the fact that the defendant was indicted in this  
20 case, is not evidence in this case, nor does it create any  
21 presumption or inference of guilt. These documents I hold in  
22 my hand, these indictments, are simply the formal written  
23 instruments by which the case is brought into this court.  
24 They contain the charges made against the defendant.

25       Now, to these indictments, the defendant has pled not

1 guilty, and that plea of not guilty puts the burden on the  
2 State of South Carolina to prove the defendant guilty beyond a  
3 reasonable doubt. A person charged with committing a crime in  
4 South Carolina is never required to prove himself innocent.

5 I charge you, ladies and gentlemen of the jury, that it  
6 is an important rule of the law that the defendant in a  
7 criminal trial, no matter what the seriousness of the charge  
8 may be, will always be presumed to be innocent of the crime  
9 for which the indictment or indictments were issued unless  
10 guilt has been proven by evidence satisfying you of that guilt  
11 beyond a reasonable doubt. The presumption of innocence does  
12 not end when you begin your deliberations, but it accompanies  
13 the defendant throughout the trial until you, the jury, reach  
14 a verdict of guilt based on evidence satisfying you of that  
15 guilt beyond a reasonable doubt.

16 The presumption of innocence is not just a legal theory.  
17 It is not just a legal phrase. It is a substantial right to  
18 which every defendant is entitled unless you, the jury, are  
19 satisfied from the evidence of the defendant's guilt beyond a  
20 reasonable doubt.

21 What is a reasonable doubt in the law? A reasonable  
22 doubt is the kind of doubt that would cause a reasonable  
23 person to hesitate to act.

24 The State has the burden of proving the defendant guilty  
25 beyond a reasonable doubt. Some of you may have served as

1 jurors in the past in a civil case, like a contracts case or a  
2 wreck case, where you were told that it was only necessary to  
3 prove that a fact is more likely true than not true. We call  
4 that burden of proof in a civil case -- we call it by the  
5 greater weight or the preponderance of the evidence.

6 In a criminal case, such as the case here, the State's  
7 proof must be more than that. It must be beyond a reasonable  
8 doubt. Proof beyond a reasonable doubt is proof that leaves  
9 you, ladies and gentlemen of the jury, firmly convinced of the  
10 defendant's guilt.

11 Now, there are very few things in this world that any of  
12 us know with absolute certainty, and in criminal cases the law  
13 does not require proof that overcomes every possible doubt.  
14 If, based on your consideration of the evidence, you are  
15 firmly convinced that the defendant is guilty of the crime  
16 charged, you must find the defendant guilty. If, on the other  
17 hand, you think there is a real possibility that the defendant  
18 is not guilty, you must give the defendant the benefit of the  
19 doubt and find the defendant not guilty.

20 I remind you that, during this trial, you and I have had  
21 certain duties to perform. As the trial judge, it has been my  
22 duty and my responsibility to preside over the trial of the  
23 case, and I also have the duty to rule on the admissibility of  
24 the evidence as offered during this trial.

25 You are to consider only the competent evidence before

1 you. If there was any testimony ordered stricken from the  
2 record in this case during this trial, you must disregard that  
3 testimony. You are to consider only the testimony which has  
4 been presented from this witness stand, any exhibits which  
5 have been introduced and I have entered into evidence in this  
6 case, and any stipulations of counsel as to a fact being true.  
7 That is the body of evidence in this case.

8 I also have as a presiding judge the additional duty to  
9 charge you the law that applies to this case. As the presiding  
10 judge, as I told you at the outset of the trial, I am the sole  
11 judge of the law of the case, and it is your duty as jurors to  
12 accept and to apply the law as I now state it to you.

13 If any of you already have any idea as to what you think  
14 the law is or even what you feel the law ought to be and it  
15 does not agree with what I now tell you the law is, you must  
16 put aside or abandon any of your preconceived opinions or your  
17 preconceived ideas because each of you took an oath and in  
18 that oath you swore or affirmed that you would accept and you  
19 would apply the law exactly as I now state it to you, and that  
20 you would agree to be bound by the law as it is given to you  
21 by the Court rather than your opinion as to what you think the  
22 law is or even feel the law ought to be.

23 In every case tried in this court before a jury, the jury  
24 becomes the sole and exclusive judges of the facts in the  
25 case. A trial judge, such as myself, cannot intimate, cannot

1 state, cannot comment on or make any statement to a trial jury  
2 about the facts in a case. Since you, ladies and gentlemen of  
3 the jury, are the sole judges of the facts in this case, you  
4 are not to infer from anything that I have said during the  
5 progress of this trial in ruling upon the admissibility of  
6 evidence or otherwise, or anything that I might say to try to  
7 have made the record clear or so that's it clear for review,  
8 anything that I might have said even during the course of this  
9 instruction to you, that I have any opinion whatsoever as to  
10 the facts in this case.

11       You are to disregard anything like that. The law does  
12 not allow me to have an opinion about the facts in this case.  
13 This is a matter that is solely for you, the jury. It is the  
14 jury's role to determine the facts in a case from the evidence  
15 presented during the trial of the case. As jurors, it becomes  
16 your job and your duty to determine the effect, the value, the  
17 weight, and ultimately the truth of the evidence that's been  
18 presented during the trial of this case.

19       Now, I instruct you and emphasize that the fact that the  
20 defendant did not testify in this case is not a factor to be  
21 considered by any of you in your deliberations and in your  
22 consideration of the guilt or the innocence of the defendant.  
23 It must not be considered by you, the jury, in any manner  
24 whatsoever. A defendant has the constitutional right to  
25 remain silent, and the assertion of your constitutional right

1 or his must not be considered by a jury in your deliberations.

2       So I repeat, under that oath which you took, you are to  
3 draw no conclusion whatsoever from the fact that the defendant  
4 did not -- in this case did not testify. The fact that the  
5 defendant did not testify should not even be discussed in your  
6 jury room.

7       The burden of proof, as I have stated to you, is on the  
8 State of South Carolina. The defendant is not required to  
9 prove his innocence. The burden of proof remains on the State  
10 to prove guilt beyond a reasonable doubt.

11       Now, there are two types of evidence that are generally  
12 presented in a trial and, like many things in the law, we have  
13 names for those two general types of evidence. We call the  
14 two general types of evidence direct evidence and  
15 circumstantial evidence.

16       Direct evidence is the testimony of a person who claims  
17 to have actual knowledge of a fact, such as an eyewitness to  
18 an event. Direct evidence is evidence which immediately  
19 establishes the main fact to be proved.

20       Circumstantial evidence, as contrasted with direct  
21 evidence, is proof of a chain of facts and circumstances  
22 indicating the existence of a fact. Circumstantial evidence  
23 is evidence which immediately establishes collateral facts  
24 from which the main fact may or may not be inferred.  
25 Circumstantial evidence is based on inference and not on

1 personal knowledge or personal observation.

2       The law makes absolutely no distinction between the  
3 weight or the value to be given to either direct evidence or  
4 circumstantial evidence. Nor is a greater degree of certainty  
5 required of circumstantial evidence than of direct evidence.

6       You, ladies and gentlemen of the jury, should weigh and  
7 consider all the evidence in this case, both direct and  
8 circumstantial. After considering and weighing all the  
9 evidence in this case, if you are not convinced of the guilt  
10 of the defendant beyond a reasonable doubt, you must find the  
11 defendant not guilty. On the other hand, after weighing and  
12 considering all the evidence in this case, both direct and  
13 circumstantial, if you are convinced of the guilt of the  
14 defendant beyond a reasonable doubt, you must find the  
15 defendant guilty.

16       Necessarily, as I told you at the outset, you're going to  
17 have to determine the credibility of the witnesses who have  
18 testified during the trial of this case. Credibility simply  
19 means believability. It becomes your duty as a juror to  
20 analyze. It becomes your duty as a juror to evaluate the  
21 evidence and determine which evidence convinces you of its  
22 truth.

23       In determining the believability of witnesses who have  
24 testified in this case, you may believe one witness over  
25 several witnesses or several witnesses over one witness. You

1 may believe a part of the testimony of a witness and reject  
2 the remaining part of the testimony of that same witness. You  
3 may believe the testimony of a witness in its entirety or you  
4 may reject the testimony of a witness in its entirety.

5       You may consider whether any witness has exhibited to you  
6 any interest, any bias, any prejudice or other motive in this  
7 case. You may also consider, as I told you at the outset, the  
8 appearance and the manner of the witness while the witness was  
9 on the witness stand. We call that the demeanor of the  
10 witness.

11       Anything that is in evidence, ladies and gentlemen of the  
12 jury, you as a jury have the right to consider in weighing and  
13 considering the credibility or the believability of the  
14 witnesses who have testified during the trial of this case.

15       Now, the rules of evidence, as I told you, normally do  
16 not allow a person to come up on the witness stand and to take  
17 the oath and say my opinion about what happened is so and so.  
18 We don't allow opinion testimony. That's one of the rules of  
19 evidence. So witnesses aren't allowed to normally give  
20 opinions or conclusions.

21       An exception to this rule, the opinion rule, exists for  
22 those witnesses we call expert witnesses. A witness who, by  
23 education and experience or training claims to have become an  
24 expert in some art, science, or profession, may give an  
25 opinion as to the subject the witness claims to be an expert

1 in if qualified by the Court, and may also give the reasons  
2 for his or her opinion.

3       You should consider any expert opinion given by a witness  
4 and, like any other evidence in this case, you give it the  
5 weight, if any, that you think it deserves. If you decide  
6 that an expert witness' opinion is not based on sufficient  
7 education and experience, or if you decide the reasons given  
8 in support of the opinion are not sound, or that the opinion  
9 is outweighed by other evidence, you may disregard the opinion  
10 entirely. An expert witness' testimony is to be given no  
11 greater weight than that of other witnesses simply because the  
12 witness is an expert.

13       Now, in this trial, you heard me use the term  
14 stipulation. I told you that that could constitute the body  
15 of evidence: sworn testimony, exhibits, and a stipulation.

16       A stipulation is an agreement; it is an admission or a  
17 concession made in a judicial proceeding, like a trial, by the  
18 parties thereto or their attorneys. Stipulations are binding  
19 upon those who make them. A stipulation is an agreement, an  
20 understanding. The Court and the jury must accept  
21 stipulations as binding upon the parties. If counsel for the  
22 parties in this case have stipulated to any fact, or any fact  
23 has been admitted by counsel, you will regard that fact as  
24 being conclusively proved as to the party or parties making  
25 the stipulation or admission.

1        Now, in order to establish criminal liability or criminal  
2 responsibility, criminal intent is required. For example --  
3 and I'm taking generally. Criminal intent is the mental state  
4 required to be proven by the State for any particular crime.  
5 Let me give you some examples generally of criminal intent.  
6 Purpose can be an example. Intent, knowledge, recklessness,  
7 or even in some cases what we call criminal negligence. Those  
8 are just examples of criminal intent.

9        Criminal intent must be proven by the State beyond a  
10 reasonable doubt. Criminal intent is always a matter that  
11 must be determined by the jury from the evidence presented  
12 during the trial of the case, from the circumstances from the  
13 evidence surrounding the situation.

14        Now, ladies and gentlemen, we know there is no way to  
15 prove intent to a mathematical certainty. We know there is no  
16 way that medical science can dissect a person's brain and  
17 determine what that person had in mind, so the law says that  
18 criminal intent may be inferred from the circumstances shown  
19 to have existed based on the evidence introduced during the  
20 trial of the case. This, ladies and gentlemen, is how you, a  
21 jury, make a determination of whether or not any element in  
22 any crime requiring a certain intent was present or criminal  
23 intent.

24        It is not necessary to establish intent by direct or  
25 positive evidence, but intent may be established by inference

1 in the same way as any other fact by taking into consideration  
2 the acts of the parties and all the facts and circumstances of  
3 the case based on evidence introduced during the trial of the  
4 case.

5 Criminal intent is a mental state. It is a conscious  
6 wrongdoing. It is up to you, ladies and gentlemen of the  
7 jury, to determine what the defendant intended to do based on  
8 the circumstances shown to have existed from evidence  
9 introduced during the trial of the case.

10 I charge you, ladies and gentlemen, that a statement  
11 alleged to have been made by the defendant has been admitted  
12 into evidence during the trial of this case. While the Court  
13 has determined as a matter of law that the statement is  
14 admissible into evidence, I instruct you that you make the  
15 ultimate decision, ladies and gentlemen of the jury, of  
16 whether or not the defendant made any statement.

17 If you conclude the defendant did make a statement, you  
18 must determine whether or not the statement was made by the  
19 defendant voluntarily and of his own free will. This means  
20 that the statement was not caused by pressure or force or fear  
21 or threats or coercion or intimidation or by hope or by a  
22 promise of leniency or for a reward of any kind, but was a  
23 free and voluntary statement.

24 In determining whether a statement is voluntary, you may  
25 consider if, based on evidence introduced during the trial of

1 the case, some factors, such as: the age of the defendant; the  
2 defendant's education or lack thereof; the defendant's mental  
3 capacity or ability; the defendant's IQ or intelligence; the  
4 defendant's background and environment; the place and length  
5 of detention; the nature of the questioning of the defendant;  
6 the advice, or lack thereof, to the defendant of his  
7 constitutional rights including, but not limited to, the right  
8 to remain silent; that any statement could be used against him  
9 in a court of law; the right to have a lawyer present; that if  
10 he could not afford a lawyer, a lawyer would be appointed to  
11 represent him without any cost; and that he could stop making  
12 a statement at any time. You as a jury must carefully  
13 consider all of the surrounding circumstances from the  
14 evidence before you decide to give any weight to an alleged  
15 statement.

16 The State has the burden of proving beyond a reasonable  
17 doubt that the statement was voluntary. If you determine it  
18 was, you may give the statement any further consideration that  
19 you deem proper. You must decide what weight, if any, should  
20 be given to the alleged statement. If you determine the  
21 statement was not the free and voluntary statement of the  
22 defendant, then you should not consider the statement.

23 Now, I charge you, ladies and gentlemen, in this case  
24 that the indictments in this case allege different offenses.  
25 I've got them right here and, Mr. Foreman, I remind you my law

1 clerk will be wanting you to sign. He's going to hold onto  
2 them, but he's going to want you to sign them whatever you put  
3 on this verdict form I prepared on the indictments, but he's  
4 going to want you to sign in the block where it says verdict  
5 by writing the words of the verdict, signing your name where  
6 it says foreperson of the petit jury, and where it says date,  
7 you date it on each one of the indictments. I'm handing those  
8 to him because he knows that's his job. Now -- so please  
9 don't leave without signing them.

10         The indictments charge different offenses against the  
11 defendant, James Gardner. The charges that I told you are  
12 three indictments for attempted murder and one indictment for  
13 possession of a weapon during the commission of a violent  
14 crime.

15         Each charge is a separate and distinct offense. You must  
16 decide each charge separately on the evidence and on the law  
17 applicable to it uninfluenced by your decision on any other  
18 charge, but there is one exception to that because of the  
19 nature of the offenses.

20         If you find the defendant guilty of any of the three  
21 attempted murder indictments, all right, then you may also  
22 find the defendant guilty of possession of a weapon during the  
23 commission of a violent crime because attempted murder I  
24 charge you is a violent crime under the laws of the State of  
25 South Carolina. If you find the defendant not guilty of all

1 three attempted murder indictments, you must find the  
2 defendant not guilty of possession of a weapon during the  
3 commission of a violent crime.

4 You will be asked to write a separate verdict on your  
5 verdict form of either guilty or not guilty for each charge,  
6 following the instructions on your verdict form, which I will  
7 go over with you in a moment.

8 I will now define the offenses for you.

9 The defendant is charged with three indictments with the  
10 offense of attempted murder. A person who, with the intent to  
11 kill, attempts to kill another person with malice  
12 aforethought, either expressed or implied, commits the offense  
13 of attempted murder under the laws of the State of South  
14 Carolina. It is a statutory offense in South Carolina.

15 An attempt is an effort to accomplish a crime which does  
16 not succeed. An attempt includes a specific intent to do a  
17 particular criminal act along with an act falling short of the  
18 act intended. The State must show more than just mere  
19 preparation and intent. There must be some overt act  
20 committed in the effort to commit the crime.

21 Intent means intending the result which actually occurs,  
22 not accidentally or involuntarily. Intent may be shown by  
23 acts and conduct of the defendant and other circumstances from  
24 which you may reasonably and naturally infer intent.

25 Malice. Malice is hatred. Malice is ill-will. Malice

1 is hostility towards another person. It is the intentional  
2 doing of a wrongful act without just cause or excuse and with  
3 the intent to inflict an injury or under circumstances that  
4 the law will infer an evil intent.

5 Now, malice aforethought does not require that malice  
6 exists for any particular time before the act is committed,  
7 but malice must exist, that evil intent, that ill will, that  
8 hostility. It must exist in the mind of the defendant just  
9 before and at the time of the act being committed. Therefore,  
10 there must be a combination of the evil intent and the act.

11 Malice aforethought may be express or inferred. These  
12 terms, express and inferred, do not mean different kinds of  
13 malice, but merely the manner in which malice may be shown to  
14 exist. That is either by direct evidence or by inference from  
15 the facts and circumstances which are proven beyond a  
16 reasonable doubt.

17 Express malice is shown when a person speaks words which  
18 express hatred or ill will for another or when the person  
19 prepared beforehand to do the act which was later  
20 accomplished; for example, lying in wait for a person or other  
21 acts of preparation going to show that the deed was within the  
22 defendant's mind would be examples of express malice.

23 Malice may also be inferred from conduct showing a total  
24 disregard for human life.

25 I charge you, ladies and gentlemen, that the defendant is

1 also charged in one indictment with the offense of possession  
2 of a weapon during the commission of or attempt to commit a  
3 violent crime. The State must prove for this offense beyond a  
4 reasonable doubt that the defendant used a firearm during the  
5 commission of a violent crime.

6 Firearm means any machine gun, automatic rifle, revolver,  
7 pistol, or any other weapon which will or is designed to or  
8 may be converted to expel a projectile.

9 In order for you to find the defendant guilty of  
10 possession of a weapon during the commission of a violent  
11 crime, you must first find the defendant guilty of either  
12 committing a violent crime or attempting to commit a violent  
13 crime. I charge you, ladies and gentlemen of the jury, that  
14 attempted murder is a violent crime under the laws of the  
15 State of South Carolina.

16 Now, Mister Foreman, I told you and the ladies and  
17 gentlemen of the jury that I would prepare a verdict form for  
18 you. First of all, I had to put a caption. It says State of  
19 South Carolina, County of Hampton, in the Court of General  
20 Sessions, which is criminal court, and I put the indictment  
21 numbers for you, all those numbers with 2013-GS-25-73, 75, 79,  
22 and 80. That's at the top and I've got the word verdict  
23 written on it.

24 And the first thing I want you to understand, pay no  
25 attention to the order in which we wrote the forms of verdict.

1 The order has no significance whatsoever. We obviously had to  
2 write one before the other. So the order has no significance.

3 Now, I've got four questions on your verdict form, and  
4 I've got instructions written before some. So let me go over  
5 it with you.

6 Question One. We, the jury, by unanimous consent, find  
7 the defendant, James Gardner, in Indictment Number 2013 at 73  
8 -- and the first form of verdict under question one is guilty  
9 of attempted murder of Major Bobby Anderson. If that be your  
10 verdict, Mr. Foreman, you would put a check on the line beside  
11 that form of verdict. Or the second form of verdict under  
12 question one is not guilty of attempted murder of Major Bobby  
13 Anderson. If that be your form of verdict, you would put a  
14 check on the line beside that form of verdict.

15 You must, ladies and gentlemen, find one form of verdict  
16 or the other. You cannot check both. So it has to be either  
17 guilty or not guilty.

18 Question Two. We, the jury, by unanimous consent, find  
19 the defendant, James Gardner, in Indictment Number 2013 at 75  
20 -- and the first form of verdict under question two, guilty of  
21 attempted murder of Mariam Walden. If that be your form of  
22 verdict, you would check on the line beside that form of  
23 verdict. Or the second form of verdict under question two is  
24 not guilty of attempted murder of Mariam Walden. If that be  
25 your form of verdict, you would check on the line beside that

1 form of verdict.

2           You must find one form of verdict or the other under  
3 question two as well. You cannot find both. Either guilty or  
4 not guilty.

5           Question Three. We, the jury, by unanimous consent, find  
6 the defendant, James Gardner, in Indictment Number 2013 at 79  
7 -- the first form of verdict is guilty of attempted murder of  
8 Mary Etta Montouth. If that be your form of verdict, you  
9 would check, Mr. Foreman, for the entire jury on the line  
10 beside that form of verdict. Or the second form of verdict  
11 under question three is not guilty of attempted murder of Mary  
12 Etta Montouth. If that be your form of verdict, you would  
13 check on the line beside that form of verdict.

14           You must find one or the other. You cannot find both.

15           All right. On the second page, I wrote some instructions  
16 for you, just what I just charged you. And the instructions  
17 are before you reach question four.

18           If you find the defendant not guilty of all three  
19 attempted murders -- I don't have all three on here. I've  
20 just got attempted murder, but it includes three in this case  
21 -- you must find the defendant not guilty in question four.  
22 That's to let you know that you cannot find a person guilty of  
23 possession of a weapon during the commission of a violent  
24 crime unless you first find a person guilty of a violent  
25 crime.

1           If you find the defendant guilty of any of the three  
2 attempted murders, there are three of them, then you have to  
3 answer question four by checking one of the blanks, either  
4 guilty or not guilty.

5           Question four reads as follows: We, the jury, by  
6 unanimous consent, find the defendant, James Gardner, in  
7 Indictment 2013 at 80 -- the first form of verdict guilty of  
8 possession of a weapon during the commission of a violent  
9 crime. If that be your form of verdict, you would check on  
10 the line beside that form of verdict, assuming, of course,  
11 that you had found the defendant guilty of a violent crime.

12           Or the next form of verdict is not guilty of possession  
13 of a weapon during the commission of a violent crime. If that  
14 be your form of verdict, you would check on the line beside  
15 that form of verdict. You must check that form of verdict if  
16 you found the defendant not guilty of all three attempted  
17 murders, which are violent crimes under the State of South  
18 Carolina.

19           When you have completed the verdict form, Mr. Foreman,  
20 you would sign your name where it says foreperson on the  
21 verdict form. I've already put in today's date, February 4<sup>th</sup>,  
22 and Hampton. You indicate your findings by checking the  
23 appropriate blanks, and you certify the findings by your  
24 signature.

25           Then when you've reached a verdict, you will knock on the

1 jury room door, inform the bailiff that you've reached a  
2 verdict, and we will bring you back out in the courtroom to  
3 read your verdict. Whatever you write on this verdict form,  
4 guilty or not guilty, you will also write on the indictments  
5 for the jury and sign your name, which my law clerk will give  
6 to you after you publish your verdict.

7 Now, ladies and gentlemen, your verdict must be  
8 unanimous. That is all twelve of you must agree on a verdict.

9 Now, Mr. Foreman and ladies and gentlemen of the jury, I  
10 have charged you on the law in order to help guide you to a  
11 fair and just result in this case. You are the sole judges of  
12 the facts in this case, and based on your determination of the  
13 facts from the evidence and the law as I have explained to you  
14 now, you're soon going to begin your deliberations.

15 You have been selected as fair and impartial jurors. You  
16 took an oath to fairly and impartially sit as jurors and try  
17 and determine the facts of this case from the evidence and,  
18 when you comply with that oath to do so, no one can criticize  
19 you. You are to decide this case though based solely on the  
20 testimony from the witness stand, any exhibits that have been  
21 introduced into evidence, and any stipulations that may have  
22 occurred during the trial, which means the evidence in this  
23 case, and on nothing else.

24 You have -- will have all of the exhibits with the  
25 exception -- do I -- what number is the exhibit that's the

1 tape? No. It's right there on your -- no. That's -- that's  
2 one from my earlier hearing. It's right there. What number  
3 is that?

4 THE COURT REPORTER: This is 1. It's 9-1-1. That one is  
5 22.

6 THE COURT: All right. Then I've got two tapes; right?

7 THE COURT REPORTER: Yes.

8 THE COURT: All right. So I have State's 22 and what was  
9 the other number, the 9-1-1?

10 THE COURT REPORTER: One.

11 THE COURT: State's 1. Obviously, if you want to view  
12 that, we have to come back into the courtroom to use the  
13 equipment to listen or view that. Otherwise, you'll have the  
14 other exhibits, such as photographs, things of that nature,  
15 with you in your jury room during your deliberations.

16 But if you want to view anything on the tape or listen to  
17 anything that's on a tape, just knock on your jury room door,  
18 inform the bailiff, we'll bring you back, and we'd be happy to  
19 set the equipment up so that you can listen to it in your jury  
20 box.

21 Now, you must decide the issues in this case without any  
22 bias or prejudice towards either party. You cannot allow  
23 yourself to be governed by prejudice for or against any  
24 person. You can't allow yourself to be governed by any public  
25 opinion or by any other arbitrary factor, such as emotion or

1 feelings. You must base your decision solely on the evidence.

2 Both the defendant and the State of South Carolina have  
3 the absolute right to expect that each of you will carefully  
4 and impartially consider all of the evidence in this case and  
5 that you will follow the law as I have instructed it to you to  
6 be in reaching your verdict in this case.

7 Now, Mr. Foreman and ladies and gentlemen of the jury,  
8 I'm going to ask you at this time if you would please retire  
9 to your jury room. Do not begin your deliberations. When it  
10 is time for you to begin your deliberations, I will have my  
11 bailiff bring the verdict form in to you, along with the  
12 exhibits that you can look at in your jury room. I'll keep  
13 the other ones out here, but you just let me know if you want  
14 to view those because I'll set that up for you out here if you  
15 let me know.

16 But do not begin your deliberations until I instruct you  
17 to do so. Please retire to your jury room. My two alternates  
18 remain with me in the courtroom, please.

19 (WHEREUPON, the jury exited the courtroom at 11:47 a.m.)

20 THE COURT: All right. Mr. Anderson and Mr. Daniels,  
21 right?

22 THE ALTERNATE JURORS: Yes, sir.

23 THE COURT: First of all, no one became ill or for some  
24 reason could not continue to serve, but I want to thank you  
25 both. I watched you during the trial, and all a judge can ask

1 of a juror is that you listen. You gave your time. You left  
2 your jobs and your family, and I want to thank you for your  
3 service.

4 Pumpkin, we're going to be mailing them a check; is that  
5 right?

6 THE DEPUTY CLERK OF COURT: That's correct.

7 THE COURT: We're going to mail you that big -- how much  
8 are we paying in Hampton now?

9 THE DEPUTY CLERK OF COURT: Twenty dollars a day.

10 THE COURT: We're going to be mailing you a check for  
11 twenty dollars a day while you've been with us. So you're  
12 going to get a whopping check for sixty dollars. We know  
13 that's inadequate, but we very much appreciate your service.  
14 This ends your responsibility now in this case, and I want to  
15 thank you and tell you this also ends your jury service this  
16 week, and now you're exempt for three years if you were to be  
17 chosen again.

18 Thank you so much for your service. You can't go back.  
19 Y'all have got all your belongings from the jury room; right?

20 THE ALTERNATE JURORS: Yes, sir.

21 THE COURT: Nobody left a coat or anything?

22 THE ALTERNATE JURORS: No, sir.

23 THE COURT: All right. Well, then you are now excused  
24 for the balance of the week. Thank you for your service. You  
25 may leave the courtroom. If you want to stay because you're

1 interested, you can have a seat in the courtroom. We'll be  
2 awaiting the jury's verdict, but if you need to leave, we  
3 understand. You may leave at this time. If you need a work  
4 excuse from serving on the jury this week, where do they need  
5 to go, Pumpkin?

6 THE DEPUTY CLERK OF COURT: Downstairs.

7 THE COURT: To what office?

8 THE DEPUTY CLERK OF COURT: Just see Deborah.

9 THE COURT: Go see Deborah in the Clerk of Court's Office  
10 and we'll be happy to provide a work excuse to you. Do you  
11 understand?

12 THE ALTERNATE JURORS: Yes, sir.

13 THE COURT: Now, sometimes people want to talk to you  
14 about your jury service. If you want to discuss it with them,  
15 you can, but it's entirely up to you. If you don't want to  
16 discuss your jury service, just say I don't want to talk about  
17 it. If the person persists, get their name, give it to me,  
18 I'll handle that problem for you, ladies and gentlemen.

19 I hope you have a great day. Thank you for your service.  
20 You may leave at this time.

21 (WHEREUPON, the alternate jurors were released at 11:49  
22 a.m.)

23 THE COURT: Any exceptions or additions to the charge  
24 from the State of South Carolina?

25 MS. LEGETTE: None, Your Honor.

1 THE COURT: From the defendant?

2 MR. FLEMING: No, sir.

3 THE COURT: I would ask that counsel come forward and go  
4 through the exhibits with the court reporter. Certify on the  
5 record you are satisfied the court reporter has all the  
6 exhibits and that you have no objection to the bailiff taking  
7 the verdict form and the exhibits into the jury room with the  
8 exception of the two tapes, which require equipment out here  
9 in order to hear and view, and telling the jury they may then  
10 commence your deliberations. Please come forward and so  
11 certify at this time.

12 (WHEREUPON, there was a pause in the proceedings as  
13 counsel checked the exhibits, after which the proceedings  
14 resumed as follows.)

15 THE COURT: All right. Solicitor, are you satisfied the  
16 court reporter has all the exhibits?

17 MS. LEGETTE: Yes, Your Honor.

18 THE COURT: Are you satisfied that two of the exhibits,  
19 Numbers 22 and 1 -- is that right?

20 MS. LEGETTE: Yes, Your Honor.

21 THE COURT: Should remain in the courtroom?

22 MS. LEGETTE: Yes, Your Honor.

23 THE COURT: Because of the equipment needed to show it?

24 MS. LEGETTE: Yes, Your Honor.

25 THE COURT: All right. And do you have any objection to

1 the bailiff taking the remaining exhibits and the verdict form  
2 into the jury and telling the jury they may now commence their  
3 deliberations?

4 MS. LEGETTE: None, Your Honor.

5 THE COURT: Mr. Fleming, on behalf of the defendant, are  
6 you satisfied that the court reporter has all the exhibits?

7 MR. FLEMING: I am, sir.

8 THE COURT: And with the exception -- and are you  
9 satisfied to keep Exhibits 1 and 22 here in the courtroom  
10 because of the equipment needed to play the exhibits?

11 MR. FLEMING: Yes, sir.

12 THE COURT: And do you have any objection to the bailiff  
13 taking the remaining exhibits, other than State's 1 and 22,  
14 into the jury, along with the verdict form, and the bailiff  
15 informing the jury they may now commence their deliberations?

16 MR. FLEMING: No objection.

17 THE COURT: Thank you very much. All right. Everything  
18 but 1 and 22, and the verdict form now go to the jury, Mr.  
19 Bailiff, and please tell the jury they may now commence their  
20 deliberations.

21 (WHEREUPON, the jury deliberations began at 11:53 a.m.)

22 Counsel, we will be at ease while we await the jury's  
23 verdict. Before we leave, I want to tell you what a  
24 professional job both of you did in this case. Of course,  
25 very appreciative of the thoroughness in which you handled the

1 case on behalf of your respective clients.

2 (WHEREUPON, there was a break in the proceedings from  
3 11:53 a.m. until 12:06 p.m., after which the proceedings  
4 resumed as follows.)

5 THE COURT: All right. Are you ready?

6 MS. LEGETTE: It's ready, Your Honor. It just has to  
7 come up. Okay. There it is.

8 THE COURT: I'm going to first ask them if that's what  
9 they want to hear, and then you can cue it up. Is the  
10 defendant ready? We still don't have the defendant.

11 MR. FLEMING: Let me go check, Judge. May I?

12 THE COURT: Sure. Although I don't want to lose you too.

13 MR. FLEMING: I won't.

14 (WHEREUPON, there was a pause in the proceedings until  
15 the defendant entered the courtroom, after which the  
16 proceedings resumed as follows.)

17 THE COURT: Bring us the jury, please.

18 (WHEREUPON, the jury entered the courtroom at 12:08 p.m.)

19 THE COURT: Mr. Foreman, it's my understanding from the  
20 bailiff that the jury wishes to view again State's Exhibit 22,  
21 which is the alleged statement of the defendant. Is that  
22 correct?

23 THE FOREMAN: Yes, sir.

24 THE COURT: We will now play State's Exhibit Number 22  
25 for the jury.

1 (WHEREUPON, State's Exhibit Number 22 was played in open  
2 court for the jury. NOT TRANSCRIBED HEREIN. After the  
3 completion of the tape, the proceedings resumed as  
4 follows.)

5 THE COURT: Mr. Foreman, does that answer the jury's  
6 request?

7 THE FOREMAN: Yes, sir. That's one of them I said.

8 THE COURT: I don't want another comment. Just yes or  
9 no.

10 THE FOREMAN: Yes, sir.

11 THE COURT: If you have any other questions, write them  
12 on a piece of paper and give it to my bailiff and send it out.

13 THE FOREMAN: All right. Thank you.

14 THE COURT: Thank you.

15 THE FOREMAN: Yes, sir. Thank you.

16 (WHEREUPON, the jury exited the courtroom at 12:18 p.m.)

17 THE COURT: Any exceptions or additions to the Court's  
18 comments to the jury from the State?

19 MS. LEGETTE: None from the State.

20 THE COURT: From the defendant?

21 MR. FLEMING: No, sir.

22 THE COURT: Very well. We will continue to be at ease  
23 while we await the jury's verdict, and I'll go back now to Mr.  
24 Plexico's stand-in and Mr. Knight, who has arrived for work.

25 (WHEREUPON, there was a break in the proceedings from

1       12:19 p.m. until 1:09 p.m., after which the proceedings  
2       resumed as follows.)

3       THE COURT: Counsel, I'm informed by the bailiff that the  
4       jury has reached a verdict. Anything from the State before we  
5       publish the verdict?

6       MS. LEGETTE: None, Your Honor.

7       THE COURT: From the defendant?

8       MR. FLEMING: No, sir.

9       THE COURT: All right. Ladies and gentlemen, I'm happy  
10      for you to remain in the courtroom. I do not allow any kind  
11      of emotional outburst when a verdict is published. The jury  
12      is due more respect than that. If you can't control your  
13      emotions, I ask you to get up and walk out now because I'll  
14      enforce that with the contempt powers of this Court if anybody  
15      -- I don't allow any clapping. I don't allow any oh-oh. No  
16      kind of emotions. So if you don't feel you can control them,  
17      please step out.

18      MS. LEGETTE: Your Honor, we have a -- my victim, Ms.  
19      Mary Etta Montouth, she stepped out and we're trying to locate  
20      her.

21      THE COURT: She wants to be in here?

22      MS. LEGETTE: I believe she does, Your Honor.

23      THE COURT: Go get her, Peggy.

24      (WHEREUPON, there was a pause in the proceedings until  
25      the victim entered the courtroom, after which the

1 proceedings resumed as follows.)

2 MS. LEGETTE: She is here now, Your Honor.

3 THE COURT: And have you explained to her?

4 (WHEREUPON, there was a pause in the proceedings.)

5 THE COURT: Counsel, approach.

6 (WHEREUPON, a bench conference was held off the record,  
7 after which the proceedings resumed as follows.)

8 THE COURT: Bring us the jury, please.

9 (WHEREUPON, the jury entered the courtroom at 1:18 p.m.)

10 THE COURT: Mr. Foreman, has the jury reached a verdict?

11 THE FOREMAN: Yes, sir.

12 THE COURT: If you would, hand it to me, please, sir.

13 Have a seat for me.

14 THE FOREMAN: All right. Thank you, sir.

15 VERDICT

16 THE COURT: Will the defendant and counsel please rise?

17 (WHEREUPON, the defendant and his counsel complied.)

18 THE COURT: The State of South Carolina versus James  
19 Gardner, Indictment Numbers 2013-73, 2013-75, 2013-79, and  
20 2013-80.

21 We, the jury, by unanimous consent, find the defendant,  
22 James Gardner, in Indictment Number 2013-73 guilty of  
23 attempted murder of Major Bobby Anderson.

24 We, the jury, by unanimous consent, find the defendant,  
25 James Gardner, in Indictment Number 2013-75 guilty of

1 attempted murder of Mariam Walden.

2 We, the jury, by unanimous consent, find the defendant,  
3 James Gardner, in Indictment Number 2013 at 79 guilty of  
4 attempted murder by Mary -- of Mary Etta Montouth.

5 We, the jury, by unanimous consent, find the defendant,  
6 James Gardner, in Indictment 2013 at 80 guilty of possession  
7 of a weapon during the commission of a violent crime.

8 Signed Harold Ennis, Foreperson, dated today, February  
9 4<sup>th</sup>, 2015.

10 Ladies and gentlemen of the jury, if that be your  
11 verdict, would you please indicate by raising your right hand  
12 as published by the Court?

13 (WHEREUPON, all jurors complied.)

14 THE COURT: Thank you. Let the record reflect twelve  
15 hands were raised. Mr. Fleming, anything further for this  
16 jury before I excuse the jury from the defendant?

17 MR. FLEMING: On behalf of my client, I would ask that we  
18 individually poll the jury.

19 THE COURT: All right. Please be seated. All right.  
20 Ladies and gentlemen, my clerk is going to call your name. As  
21 your name is called, please stand. She's going to ask you two  
22 questions. She's going to ask you was that your verdict as  
23 published by the Court, and you answer yes or no. And is that  
24 still your verdict, and you answer yes or no. Madam Clerk,  
25 please call the jury and poll the jury at the request of

1 counsel for the defendant.

2 THE DEPUTY CLERK: Alice Mae Scott. Was that your  
3 verdict and is it still your verdict?

4 THE COURT: Hold on. Let her answer the question first.  
5 Was that your verdict?

6 JUROR NUMBER 140: Yes, sir.

7 THE DEPUTY CLERK: Is it still your verdict?

8 JUROR NUMBER 140: Yes.

9 THE DEPUTY CLERK: You may be seated. Harold Ennis.

10 JUROR NUMBER 39: Yes, ma'am.

11 THE DEPUTY CLERK: Was that your verdict?

12 JUROR NUMBER 39: Yes, ma'am.

13 THE DEPUTY CLERK: Is it still your verdict?

14 JUROR NUMBER 39: Yes, ma'am.

15 THE DEPUTY CLERK: You may be seated.

16 JUROR NUMBER 39: Thank you, ma'am.

17 THE DEPUTY CLERK: Edward Hazel. Is that your verdict?

18 JUROR NUMBER 68: Yes.

19 THE DEPUTY CLERK: Is it still your verdict?

20 JUROR NUMBER 68: Yes.

21 THE DEPUTY CLERK: You may be seated. Annette Williams.

22 Is that your verdict?

23 JUROR NUMBER 169: Yes.

24 THE DEPUTY CLERK: Is it still your verdict?

25 JUROR NUMBER 169: Yes.

1 THE DEPUTY CLERK: You may be seated. Lillette Speaks.  
2 Is that your verdict?  
3 JUROR NUMBER 153: Yes.  
4 THE DEPUTY CLERK: Is it still your verdict?  
5 JUROR NUMBER 153: Yes.  
6 THE DEPUTY CLERK: You may be seated. Brittany Miller.  
7 JUROR NUMBER 108: Yes.  
8 THE DEPUTY CLERK: Is that your verdict?  
9 JUROR NUMBER 108: Yes.  
10 THE DEPUTY CLERK: Is it still your verdict?  
11 JUROR NUMBER 108: Yes.  
12 THE DEPUTY CLERK: You may be seated. Patricia Pringle.  
13 Is that your verdict?  
14 JUROR NUMBER 128: Yes.  
15 THE DEPUTY CLERK: Is it still your verdict?  
16 JUROR NUMBER 128: Yes.  
17 THE DEPUTY CLERK: You may be seated. Hesikiah Elliott.  
18 Is that your verdict?  
19 JUROR NUMBER 37: Yes.  
20 THE DEPUTY CLERK: Is it still your verdict?  
21 JUROR NUMBER 37: Yes.  
22 THE DEPUTY CLERK: You may be seated. Marilyn Young. Is  
23 that your verdict?  
24 JUROR NUMBER 175: Yes.  
25 THE DEPUTY CLERK: Is it still your verdict?

1 JUROR NUMBER 175: Yes.

2 THE DEPUTY CLERK: You may be seated. David Heyward. Is  
3 that your verdict?

4 JUROR NUMBER 69: Yes.

5 THE DEPUTY CLERK: Is it still your verdict?

6 JUROR NUMBER 69: Yes.

7 THE DEPUTY CLERK: You may be seated. Joyce Reese. Is  
8 that your verdict?

9 JUROR NUMBER 130: Yes, ma'am.

10 THE DEPUTY CLERK: Is it still your verdict?

11 JUROR NUMBER 130: Yes.

12 THE DEPUTY CLERK: You may be seated. James Gordon. Is  
13 that your verdict?

14 JUROR NUMBER 54: Yes.

15 THE DEPUTY CLERK: Is it still your verdict?

16 JUROR NUMBER 54: Yes.

17 THE DEPUTY CLERK: You may be seated.

18 THE COURT: Is that everyone?

19 THE DEPUTY CLERK: Yes, sir.

20 THE COURT: Has everyone's name on the jury been called?  
21 Anyone's name who was not called?

22 (WHEREUPON, there was no response.)

23 THE COURT: Mr. Fleming, the jury has been polled. The  
24 verdict stands. Anything further from the defendant of the  
25 jury?

1 MR. FLEMING: No, sir.

2 THE COURT: Mr. Foreman and ladies and gentlemen of the  
3 jury, I want to thank you for your service in this trial. As  
4 I told your alternates -- and by the way, Mr. Ennis, if you'll  
5 look out there, the alternates have stayed in the courtroom.  
6 They're still sitting out there.

7 THE FOREMAN: Yes, sir.

8 THE COURT: They wanted to wait to see what the verdict  
9 was because they sat all the way through the evidence in this  
10 case, and I appreciate people -- all a judge can do is ask  
11 people to give close attention. I watched you during this  
12 trial, and each of you did that.

13 So on behalf of Hampton County and this Court, I want to  
14 thank you for your service. Now, let me go over a couple of  
15 things with you.

16 First of all, if anybody needs a work excuse from serving  
17 on the jury this week, if you'll go downstairs to the Clerk's  
18 Office and see Deborah in the Clerk's Office. Right, Pumpkin?

19 THE DEPUTY CLERK: That's correct.

20 THE COURT: We'll be happy to provide a work excuse to  
21 let your employer know that you've been serving on the jury  
22 this week. We're going to be mailing you your check for your  
23 jury service. We pay the exorbitant amount of twenty dollars  
24 per day in Hampton. We'll be mailing you a check at the same  
25 address we sent you your juror summons, and it will be placed

1 in the mail to you.

2 Now, sometimes people like to talk to you about your jury  
3 service. If you want to talk to them, that's one way people  
4 sometimes feel they can learn about how the case was tried.  
5 If you want to talk to somebody, you can, but you don't have  
6 to. If you don't want to talk about your jury service or your  
7 deliberations, you certainly don't have to, and you just tell  
8 the person if they ask you about it that you don't want to  
9 talk about it. If anybody persists in trying to talk to you,  
10 you get their name and you give it to me, and I'll handle that  
11 problem for you. That person won't bother you anymore.

12 Now, ladies and gentlemen, this concludes your jury  
13 service for the entire week. So when I turn you loose today,  
14 you don't have to come back and you're exempt for three years  
15 by virtue of your service on the jury. I want to thank you  
16 for that service.

17 Now, sentencing in this case is getting ready to take  
18 place. That's the Court's province, not the jury's. I'm  
19 going to be considering the sentence and I invite you if you'd  
20 like for you to stay. You can have a seat with the alternate  
21 jurors out in the courtroom or you can stay in the jury box  
22 or, if you choose, you may leave the courtroom at this time if  
23 you don't want to stay for sentencing, but I invite you to  
24 stay if you'd like to. It's a public proceeding.

25 Thank you so much for your service. I appreciate your

1 service very much and so does Hampton County. Without you,  
2 ladies and gentlemen, as I told you at the beginning of this  
3 trial, without a jury, justice cannot be accomplished in a  
4 courtroom, and I thank you for that service.

5 For those of you that would like to leave at this time,  
6 you may stand up and leave or you may go out in the courtroom  
7 and take a seat or you may remain in the jury box, whatever  
8 you want to do.

9 (WHEREUPON, the jury was released at 1:27 p.m.)

10 THE COURT: You need to stay, Mr. Ennis. My law clerk is  
11 coming to you right now. Solicitor, have you got sentence  
12 sheets?

13 MS. LEGETTE: Yes, Your Honor. Your Honor, and also an  
14 LWOP notice. Life without parole notice has been filed in  
15 this case and served upon Mr. Fleming and his client, and I'm  
16 passing up the certified court records along with the  
17 sentencing sheets for the indictments in which he was found  
18 guilty.

19 THE COURT: Is that correct, Mr. Fleming?

20 MR. FLEMING: I've not seen what she's passed up to you.  
21 So --

22 THE COURT: She says she served it on you.

23 MR. FLEMING: She may have. I just didn't -- don't know  
24 what she's passed up.

25 THE COURT: There's an affidavit of service at the top

1 signed by Bruce Davis.

2 MR. FLEMING: That is correct. It was served on me and  
3 previous counsel, and I have been given copies of the  
4 documents that they are presenting to you, Your Honor.

5 THE COURT: Very well. Would you hand them back to my  
6 clerk, please? She'll hand them back to me.

7 (WHEREUPON, there was a pause in the proceedings, after  
8 which the proceedings resumed as follows.)

9 THE COURT: Solicitor?

10 MS. LEGETTE: Yes, Your Honor.

11 THE COURT: Mr. Fleming and your client, please come  
12 forward for sentencing.

13 MR. FLEMING: Your Honor, may I -- may I for purposes of  
14 the record renew my motions again with regard to the -- all of  
15 my evidentiary objections that were ruled upon by the Court?

16 THE COURT: You certainly may, Mr. Fleming. I don't know  
17 that -- you made it and there was no evidence presented, but I  
18 will note that you made it at the close of all the evidence  
19 since you did not put up any evidence in this case on behalf  
20 of the defendant.

21 MR. FLEMING: Yes, sir.

22 THE COURT: And for the reasons I enunciated earlier in  
23 the trial at the close of the State's case, your motions are  
24 respectfully denied.

25 MR. FLEMING: Thank you, Your Honor.

1 THE COURT: If you and your client would, come forward.

2 (WHEREUPON, the defendant and his counsel complied.)

3 THE COURT: All right. Solicitor, let me hear from you.

4 MS. LEGETTE: Your Honor, Mr. Gardner has -- I'm sorry --  
5 a previous conviction for murder out of the State of  
6 Pennsylvania, and it was -- I believe it was -- he was  
7 resentenced after he was originally sentenced, and he was I  
8 believe found guilty of voluntary manslaughter in  
9 Pennsylvania, and that was in 1975, and a subsequent  
10 conviction was in 1980 I believe. Thereafter, in 1988 he has  
11 a possession of --

12 THE COURT: Hold on a second. He was convicted of murder  
13 in 1975 and then convicted of voluntary manslaughter?

14 MS. LEGETTE: No, sir.

15 THE COURT: Or his murder conviction was reduced to  
16 voluntary manslaughter?

17 MS. LEGETTE: It was reduced, Your Honor. It was  
18 reduced. It was overturned and then he had another trial and  
19 a finding of guilt for voluntary manslaughter akin to our  
20 voluntary manslaughter statute.

21 THE COURT: And what was the sentence?

22 MS. LEGETTE: I believe he got a sentence of six to  
23 twelve years, and he had already served about five on that,  
24 and I think he had to serve six more months and he got out  
25 subsequently.

1           In 1988, he had a possession of firearm by a person  
2 convicted of a felony, and that was in Berkeley County, South  
3 Carolina, and he got a one-year probationary sentence and 250  
4 hours public service.

5           In 1991, he had a PWID cocaine in Dorchester County.  
6 That occurred on June 29<sup>th</sup>, 2000 -- I'm sorry, 1989, where he  
7 sold a quantity of crack cocaine to an undercover SLED agent,  
8 and he got an eight-year sentence for that.

9           And that's all his records, Your Honor.

10          THE COURT: Very well. Now, Solicitor, do the victims  
11 wish to be heard before I hear from Mr. Fleming and his  
12 client?

13          MS. LEGETTE: They do not, Your Honor, but Ms. Mary Etta  
14 Montouth wished me to express to the Court that she works at  
15 the Ridgeland Correctional Institute here in South Carolina,  
16 and she is concerned, not really for her safety, but I think  
17 she's more concerned for Mr. Gardner's safety if he is maybe  
18 put into a prison, especially in Ridgeland, or a prison in  
19 South Carolina because she's concerned that -- I guess because  
20 of how -- I guess because of what her job is.

21          THE COURT: You explained to her, of course, that that's  
22 a decision for the Department of Corrections and not for the  
23 Court?

24          MS. LEGETTE: Yes, sir. We will explain it to her.

25          THE COURT: I don't have any jurisdiction over where

1 somebody is housed. That's done by the Department of  
2 Corrections.

3 MS. LEGETTE: Yes, sir. Yes, sir.

4 THE COURT: I understand her concern and I appreciate it.  
5 However, that's a matter for the Department of Corrections and  
6 not the Court. I don't get to designate the location where  
7 anyone is imprisoned. That's done in federal court, but it's  
8 not done in state court. Do you understand?

9 MS. LEGETTE: Yes, Your Honor.

10 THE COURT: Did you tell her that?

11 MS. LEGETTE: We will tell her, Your Honor. We'll make  
12 sure she understands that. I told her I'd bring it to your  
13 attention, and we'll make sure she understands.

14 THE COURT: Anything else?

15 MS. LEGETTE: No, Your Honor. They do not wish to be  
16 heard.

17 THE COURT: Very well. Mr. Fleming?

18 MR. FLEMING: Your Honor, as a legal matter, the notice  
19 of intent to seek life without parole served on my client -- I  
20 would move and so argue that it did not properly inform him of  
21 the sentence as it reflects in the document that he has a  
22 murder conviction from Dorchester, South Carolina. I will  
23 concede that the documents that they presented from  
24 Pennsylvania are a true and accurate copy of what took place  
25 there, but they did not -- they did not formally notify him

1 based on that conviction.

2 To the extent that that makes any difference with regards  
3 to the sentence, I would simply say that their failure to  
4 notify him -- if they felt as such that they needed to notify  
5 him, they did not notify him properly under that document.

6 THE COURT: Exactly what was -- I heard a conviction from  
7 Berkeley County. Are you telling me they did not include a  
8 conviction in the notice from Dorchester County or she didn't  
9 include it in her recitation of his previous record?

10 MR. FLEMING: The -- Ms. Legette did not actually  
11 generate the notice of intent to seek life without parole.  
12 Kelvin Wright --

13 THE COURT: Right.

14 MR. FLEMING: -- did. In that document -- because he's  
15 the signatory on it. In that document that was served on me,  
16 they list the grounds for the notice as being a conviction in  
17 Dorchester, South Carolina.

18 THE COURT: They list that he was convicted of murder in  
19 Dorchester County, South Carolina.

20 MR. FLEMING: Yes, Your Honor. I do not believe that to  
21 be true. I --

22 THE COURT: You concede he was convicted at one point in  
23 Pennsylvania of murder, but it was reversed on appeal and  
24 ultimately convicted of voluntary manslaughter?

25 MR. FLEMING: Well, I think I need to let the document

1 speak for itself. I think it says murder, but they have  
2 degrees. I would -- I've got the documents here.

3 THE COURT: What you're saying is that the notice that  
4 you were served is incorrect as to the location of a murder  
5 conviction?

6 MR. FLEMING: Yes, sir. That's what I'm saying.

7 THE COURT: Because there was no previous conviction of  
8 murder in South Carolina?

9 MR. FLEMING: That's correct.

10 THE COURT: So regardless of what offense in  
11 Pennsylvania, whether it was voluntary manslaughter or murder  
12 second or murder third under Pennsylvania law, the murder  
13 conviction as far as the previous record is concerned was over  
14 in Pennsylvania and not South Carolina. Is that what you're  
15 arguing?

16 MR. FLEMING: Yes, sir.

17 THE COURT: And therefore, you're arguing that the LWOP  
18 notice is legally insufficient because it contains facts that  
19 are not correct?

20 MR. FLEMING: That is correct.

21 THE COURT: All right. I understand that argument.  
22 Let's go forward.

23 MR. FLEMING: Your Honor --

24 THE COURT: I'll let you have a chance to respond to  
25 that, Solicitor, if you want to. Do you want to? I think you

1 concede he was not convicted of murder in South Carolina and  
2 the notice says that he was. Isn't that true? Because you  
3 didn't recite any murder conviction in South Carolina.

4 MS. LEGETTE: It is correct, Your Honor. I'm looking at  
5 my copy of the notice of intent to seek life filed by Mr.  
6 Kelvin Wright of our office. Yes, sir. And it does say that  
7 his murder arising out of Dorchester County, South Carolina.  
8 Yes, sir.

9 THE COURT: So you agree that it is factually incorrect?

10 MS. LEGETTE: I will agree that the actual state he was  
11 convicted in was not South Carolina. Yes, sir.

12 THE COURT: Anything else you want to tell me on that  
13 argument from Mr. Fleming in response?

14 MS. LEGETTE: Your Honor, I submit to the Court that the  
15 -- I believe that the statute reads with regards to a person  
16 having a most serious offense that these -- unless -- because  
17 they'll be looking at it from a standpoint of whether or not  
18 it's classified as a most serious. Whether it's out of state  
19 or it's federal or it's in state, that it still gives a person  
20 notice by virtue of it being a most serious offense, and that  
21 he was on notice for it since it -- simply because it said a  
22 murder conviction regardless of the state because South  
23 Carolina does not make a differentiation between states or  
24 federal as long as the person has the actual conviction  
25 itself. No matter where it arises out of, they are actually

1 on notice for the conviction and that the State intends to  
2 seek a life sentence.

3 THE COURT: Very well. All right. Mr. Fleming, I'm  
4 happy to hear from you in mitigation.

5 MR. FLEMING: Your Honor, you know, I -- it's always  
6 difficult to do mitigation in -- after a guilty verdict of  
7 this magnitude. The -- I know -- I know many of the people  
8 that Mr. Gardner has known and worked for. They speak highly  
9 of him. The irony is when he says in those statements that  
10 he's a good guy, despite the jury's finding and the  
11 understanding of what they --

12 THE COURT: The jury has spoken on that guilt issue.

13 MR. FLEMING: I understand that.

14 THE COURT: And it was certainly sufficient evidence to  
15 support the jury's verdict.

16 MR. FLEMING: Yes, sir. But notwithstanding that -- that  
17 -- those actions, he has been a generous person that has  
18 helped other people and taken care of other people. I don't  
19 know whether James wants to speak or not, but I would  
20 certainly ask you to allow him to do that.

21 THE COURT: Mr. Gardner, is there anything you'd like to  
22 tell me prior to sentencing?

23 THE DEFENDANT: I'm ready to go lay down.

24 THE COURT: Mr. Fleming, is there anything further from  
25 you in mitigation?

1 MR. FLEMING: No, sir.

2 THE COURT: Solicitor, is there anything further from the  
3 State?

4 MS. LEGETTE: No, Your Honor. As to the life sentence,  
5 Your Honor, I will leave that in the Court's discretion to  
6 make whatever determination is appropriate.

7 THE COURT: I understand that. Sentencing is my  
8 department, not yours, Solicitor.

9 MS. LEGETTE: Yes, Your Honor.

10 (WHEREUPON, there was a pause in the proceedings, after  
11 which the proceedings resumed as follows.)

12 THE COURT: I will tell you both, Solicitor and Mr.  
13 Fleming, I have some concern in light of what you told me,  
14 Solicitor, and that is that you don't believe that --  
15 certainly, there was at one point in 1975 a conviction for  
16 murder. However, you said you thought it was overturned in  
17 1980 and you called it voluntary manslaughter, and Mr. Fleming  
18 says that Pennsylvania has a law that calls it a degree of  
19 murder, whether it be murder second or murder third.

20 Regardless of that, my question is whether or not the  
21 notice that was served by the State in this case -- and I  
22 realize you didn't do it, that someone else did, but the  
23 notice says that murder in South Carolina is a most serious  
24 offense, and that is based -- because if you have a prior most  
25 serious offense and you're suggesting to me that even that

1 offense was reduced in a retrial.

2       So I have some real concerns as to whether or not the  
3 intention to seek life imprisonment is proper in this case  
4 because of the fact that there was not a murder conviction in  
5 either South Carolina or Pennsylvania as a most serious  
6 offense prior thereto. And I want you to understand that  
7 because the basis for life imprisonment without parole  
8 pursuant to our statute is where an offender has a previous  
9 conviction for a most serious offense. The State then may be  
10 -- and is required to seek a sentence of life imprisonment  
11 without the possibility of parole under the statute.

12       Because you candidly have admitted to me, number one,  
13 there was no conviction because it was overturned, number two,  
14 the conviction was not in South Carolina, which is where the  
15 notice was, I have very serious concerns about whether or not  
16 the Court has the power to impose a life sentence.

17                               SENTENCE

18       THE COURT: Very well. On Indictment 2013-GS-25-00073,  
19 the State versus James Gardner, indictment for attempted  
20 murder, and 73 -- where are my indictments? Indictment 73 is  
21 attempted murder of Major Bobby Anderson. The sentence of the  
22 Court is defendant is committed to the State Department of  
23 Corrections for a term of 25 years.

24       On Indictment 2013-GS-25-00075, 75 is the attempted  
25 murder indictment of Mariam Walden. The sentence of the Court

1 is defendant is committed to the State Department of  
2 Corrections for a term of 25 years.

3 On Indictment 2013 at 79, 79 is the attempted murder  
4 charge of Mary Etta Montouth. The sentence of the Court is  
5 the defendant is committed to the State Department of  
6 Corrections for a term of 25 years.

7 Finally, on Indictment 2013-GS-25-00080, possession of a  
8 weapon during the commission of a violent crime, the sentence  
9 of the Court is the defendant is committed to the State  
10 Department of Corrections for a term of five years.

11 Sentences will run concurrent. The defendant is to be  
12 given credit for time served. That will be pursuant to South  
13 Carolina Code Section 24-13-40. That is to be calculated and  
14 applied by the State Department of Corrections.

15 The defendant is now in custody and is to be transported  
16 to the South Carolina Department of Corrections.

17 Please, if you would, my probation and parole people,  
18 please make a note if you would, if you can, to the Department  
19 of Corrections that there has been a request by the victims to  
20 the Department of Corrections that he not be incarcerated at  
21 Ridgeland since one of the victims works there. See that the  
22 Department of Corrections has that information.

23 Sheriff, would you also make sure the Department of  
24 Corrections is notified of their request? It's entirely up to  
25 the Department of Corrections. That's the reason we're

1 notifying them at your request.

2 Solicitor, I want to thank you. Mr. Fleming, thank you  
3 very much. The defendant is in custody.

4 MS. LEGETTE: Thank you, Your Honor.

5 MR. FLEMING: Thank you.

6 THE COURT: Madam Clerk, I hand you back the affidavits.  
7 They are part of the record that you handed me. I'm now  
8 handing you back the indictments. Check the sentence sheets  
9 before you hand them back to her.

10 (WHEREUPON, the proceedings ended at 1:47 p.m.)

11

12 --- END REQUESTED TRANSCRIPT ---

13

14

15

16

17

18

19

20

21

22

23

24

25

|   |                         |   |             |
|---|-------------------------|---|-------------|
| 1 | State of South Carolina | ) |             |
| 2 |                         | ) | Certificate |
| 3 | County of Florence      | ) |             |

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 403 constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of General Sessions for Hampton County, South Carolina, on the 2<sup>nd</sup> through 4<sup>th</sup> days of February, 2015.

14 I do further certify that I am neither of kin, counsel,  
15 nor interest to any party hereto.

17 S/ Krystal J. Smith

|    |                |
|----|----------------|
| 18 | Court Reporter |
|----|----------------|

|    |                          |
|----|--------------------------|
| 20 | Florence, South Carolina |
|----|--------------------------|

21 | May 19, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Hampton County

Perry M. Buckner, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**  
NOV 18 2015  
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JAMES GARDNER,

APPELLANT

APPELLATE CASE NO. 2015-000286  
\_\_\_\_\_

ANDERS BRIEF OF APPELLANT  
\_\_\_\_\_

**RECEIVED**  
NOV 18 2015  
SC OFFICE OF  
APPELLATE DEFENSE

KATHRINE H. HUDGINS  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

ATTORNEY FOR APPELLANT



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

August 05, 2016

The Honorable Mylinda D. Nettles  
PO Box 7  
Hampton SC 29924-0007

### REMITTITUR

Re: The State v. James Gardner  
Lower Court Case No. 2013GS2500073, 2013GS2500075,  
2013GS2500079, 2013GS2500080  
Appellate Case No. 2015-000286

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

The following exhibit filed in this case is being returned to you:

State's Exhibit #22 - DVD of Defendant's redacted statement

Please sign and return the enclosed copy of this letter acknowledging receipt of this item.

### Exhibit Receipt Acknowledgment

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

Enclosure

cc: James Gardner, 177263  
Alan McCrory Wilson, Esquire  
Kathrine Haggard Hudgins, Esquire  
John Benjamin Aplin, Esquire

## FORM 5

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF *Hampton* )*2017-CP-25-006*

Full name and prison number (if any) of Applicant. )

*James A. Gardner #177263* )

v. )

APPLICATION FOR

State of South Carolina )

POST-CONVICTION RELIEF )

**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention *McCormick Correction Institution*
2. Name and location of Court which imposed sentence *Hampton County Court of General Sessions*
3. Name(s) of co-defendant(s) (if any) *N/A*
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) *2013-65-25-00073* (D) *2013-65-25-00080*
  - (b) *2013-65-25-00075*
  - (c) *2013-65-25-00079*
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) *2-4-2015, 25 years.*
  - (b) *2-4-2015, 25 years.*

- (c) 2-4-2015, 25 years. (d) 2-4-2015, 5 years
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. [REDACTED] Appeal Dismissed
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. 7-20-2016
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL (SEE: MOTION IN SUPPORT)  
 (b) INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL (SEE: MOTION IN SUPPORT)  
 (c) ACTUALLY FACTUALLY LEGAL INHERENCE (SEE: MOTION IN SUPPORT)  
~~REASONABLE DOUBT INSTRUCTIONS WILL CONFIRM SUCH TRIAL TRANSCRIPT P. 356 TO 357~~
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SAME AS ABOVE  
 (b) SAME AS ABOVE (INEFFECTIVE APPELLATE COUNSEL SEE NO 6 MOTION IN SUPPORT)  
 (c) SAME AS ABOVE
12. Prior to this application have you filed with respect to this conviction: NO
- (a) any petition in a State Court under South Carolina Law? N/A  
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A  
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A  
 (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_  
 iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
- i. N/A  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_  
 iv. \_\_\_\_\_
- (c) the disposition thereof:
- i. N/A  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_

- iv. \_\_\_\_\_
- (d) the date of each such disposition:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- NO
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) This is the first Pet.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? no
  - (b) your trial, if any? yes
  - (c) your sentencing? yes
  - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
  - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
    - i. Cory H. Fleming, 1501 North Street PO Box 507, Beaufort SC. 29901
    - ii. Kathrine H. Hudgins, SCCID, PO Box 11589, Columbia SC 29211
    - iii. \_\_\_\_\_
  - (b) the proceedings at which each such attorney represented you:
    - i. Trial, sentencing.
    - ii. Direct Appeal
    - iii. \_\_\_\_\_
19. State clearly the relief you seek in filing this application:  
Reverse and remand for new trial
20. Are you now under sentence from any other court that you have not challenged?  
NO

STATE OF SOUTH CAROLINA

County of Hampton

VERIFICATION

I, James Gordon, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

James Allen Gardner

SWORN to and subscribed before me this 3rd  
day of January, 2017.

Michael Camare  
Notary Public (L.S.)

My Commission Expires: July 09, 2026

**APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

James Gardner  
I, \_\_\_\_\_, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

James Allen Gardner  
Applicant

SWORN or affirmed to and subscribed before me this

3rd day of January, 2017.  
Michael Carnese  
Notary Public

My Commission Expires: July 09, 2026

OF THE AMERICAN'S CREED  
AS AN AMERICAN CITIZEN

I James A. Gardner, Declare And Believe in the United States of America as a Government of the People, By the People, For the People; whose Just Powers are Derived from the Consent of the Governed; a Democracy in a Republic; a Sovereign Nation of many Sovereign States; (Which includes South Carolina) a Perfect Union, one and inseparable; Established upon these Principles of Freedom, Equality, Justice, and Humanity for which American Patriots Sacrificed their Lives and Fortunes.

I James A. Gardner, Therefore Believe it is my Duty to my Country And the State of South Carolina to Love it, To Support both the U.S. Constitution and South Carolina Constitution (See: Transcript Page 359 to 340), to obey the Laws and Respect the Flag, and Defend the United States and the State of South Carolina Against all Enemies, U.S. Constitution 14th Amendment, Article 14 Section 1. (CITIZENSHIP).

NOTARY PUBLIC:  
SWORN TO AND

Subscribed Before Me Michael Caruane

[Signature]  
THIS 3rd Day of January  
2017 My Commission  
Expires: July 09, 2026

SIGNATURE  
James Allen Sader  
James A. Gardner / AFFIRANT  
U.S. CITIZEN  
DATE: Jan - 3 - 2017

(AFFIDAVIT)

LEGAL MAIL  
MAIL ROOM

JAMES H. GARDNER #177263  
Applicant

-VS-

Case Number: \_\_\_\_\_

State of South Carolina  
Respondent

Motion in Support of Post  
Conviction Relief Application

Come now James A. Gardner, Applicant Prose, Before this Honorable Court on a Motion in Support of Post Conviction Relief Application. The Applicant's Post Conviction Relief Application raises Claims of "Material Fact" which entitles him to Relief S.C. Code 17-27-70(C), All Claims are Constitutional in Attention S.C. Code 17-27-20(C)(1). The Claims Should Be Fully Adjudicated in this Honorable Court, with an Evidentiary Hearing and an Adequate Fact Finding Process to Protect the Applicant's Constitutional Rights and to Fully Exhaust His Remedies in this Honorable Court. S.C. Rules Civil Procedure 56(d) "Full Adjudication" S.C. Rules Civil Procedure 12(b) "Fair Opportunity to Be Heard" S.C. Code 17-27-80. And 28 U.S.C. 2254(b)(1)(a) "Ruling on Merits of the Case", Any Decisions of this Court Shouldn't Be Contrary to 9th Cir. Established Law OR AN UNREASONABLE APPLICATION OF ANY U.S. Supreme Court Precedents, 28 U.S.C. 2254(c)(1)(2), U.S. CONST. ART. 6 Section 2 "Law of the Land, Supremacy Clause. The Applicant Request That Any Discovery Be Provided to him S.C. Code 17-27-150(A)

S.C. Rules Civil Procedure 24 (a) THROUGH 34. The Applicant Respectfully Request that this honorable Court ORDER the Respondent to Stipulate to any "Material Facts" in this case that is Supported By the Transcript and Documents. S.C. Code 17-27-80, AND 17-27-70(c), AND S.C. Rule Civil Proc. 29. The Applicant Respectfully Request that this Honorable Court Allow Applicant to Reserve His opportunity to (1) Amend this Postconviction Application, S.C. Rule Civ. Proc. 15(c), S.C. Code 17-27-90. AND (2). Allow Applicant to Reiate BACK to this ORIGINAL POST Conviction Application, with "New Discovery", S.C. Code 17-27-45 ON new Retroactive Supreme Court Precedents (Supreme Court Precedent, Mayle v. Felix, 545 U.S. 644, 125 S.Ct 2562, 162 L.Ed 2d 582). The Applicant will AT this time Respectfully Show this honorable Court the Following Constitutional Claims that's Being Raised in his POST Conviction Relief Application:

(A) TRIAL Counsel was Ineffective and Denied Applicant Due Process of Law and Denied him His Right to a Fair Trial, There was also a Breach in Communication from the very Beginning of this case. S.C. Const. ART. 1 Sec 3 (Due Process) S.C. Const. ART. 1 Sec 19. TRIAL Counsel Violated Applicant's Constitutional Rights in one or all of the Following ways, which Prejudiced case.

(1) Failure to object to the Jury Composition Because Juror: Nice Scott, is Biologically Related to alleged Victim. S.C. Const. ART. 1 Sec 19 (Denied Right A Fair Trial)

(2) Failure to Investigate Case OR Interview Witnesses AND Failed to File Motions for additional Funding to Hire

125 S.Ct. 2756, S.C. Code 17-25-45(C), And S.C. Code 16-1-120, 21 S. v. Russell, 221 F.3d 615, at 621.

(6) <sup>(B) CLAIM (INEFFECTIVE APPELLATE COUNSEL)</sup> Counsel was Ineffective for Failing to Request Jury Instructions on Lesser Included Offenses of Attempted Murder, Because the Court Denied Motion for Directed Verdict (which was definitely preserved for Appellate Review and should have been raised by Appellate Counsel) to avoid procedural default when raised on a post conviction the Appellate Brief was inadequate by not raising this claim on appeal 21 S. v. Coleman, 575 F.3d 316, at 321. 21 S. v. Frady, 456 U.S. 152, at 167-68, 71 L.Ed 2d 916, 102 S.Ct. 1584, MABARA V. U.S., 538 U.S. 500, 155 L.Ed 2d 714, at 720, 123 S.Ct. 1690. AS A RESULT OF THIS ERROR THIS PREJUDICED THE OUTCOME OF APPLICANT'S CASE AND CONFUSE AND MISLEAD THE JURY S.C. K. Evidence 403, S.C. CONST. ART 1 Sec 3 (Due Process) AND S.C. CONST. ART. 1 Sec 14. (RIGHT TO FAIR TRIAL) THE JURY INSTRUCTIONS WAS CONSTITUTIONALLY INVALID, HAD THE JURY BEEN INSTRUCTED ON (1ST) (2ND) OR (3RD) DEGREE ASSAULT THE APPLICANT MAY HAVE BEEN CONVICTED OF A LESSER OFFENSE, (SEE: pages 322 TO 323 DIRECT VERDICT motion)

(7.) Due to the Break down in Communication the Appellate Ended up going to TRIAL, He was willing to Enter a Plea to a lesser included offense for a Sentence under nine (9) YEARS

But Trial Counsel would NOT have an investigator investigate the case to show that there's evidence of a lesser included offense, as a result of such poor legal strategies, applicant ended up going to trial which subjected him to a greater sentence, Bordenkircher v. Hayes, 434 U.S. 357, 98 S.Ct. 663, 54 L.Ed.2d 604, U.S. v. Goodwin, 457 U.S. 368, 102 S.Ct. 2485, 73 L.Ed.2d 74, Blackledge v. Perry, 417 U.S. 21, 94 S.Ct. 2098, 40 L.Ed.2d 628, Hill v. Lockhart, 474 U.S. 52, 100 S.Ct. 366, 88 L.Ed.2d 203,

(C) The applicant is actually, factually and legally innocent of attempted murder because the laws of the State of South Carolina require the state to prove their case "beyond a reasonable doubt" (SEE: pages 355 to 357). IT is well established law in the State of South Carolina, the "Due Process Clause" S.C. Const. ART. I Sec 3, and the U.S. Const. 5th and 14th (Amendments), require that the prosecution in any case must prove beyond a reasonable doubt every essential element of the crime charged (SEE: pages 368 to 369). IN RE WINSHIP, 397 U.S. 358, at 364, 25 L.Ed.2d 368, 90 S.Ct. 1068, Patterson v. N.Y., 432 U.S. 197, at 215, 53 L.Ed.2d 28, 97 S.Ct. 2319. Kuhlman v. Wilson, 477 U.S. 436, 91 L.Ed.2d 364, 106 S.Ct. 3616 ("Factual Innocence"), Skretke v. Haley, 541 U.S. 386, 158 L.Ed.2d 659, 124 S.Ct. 1847 ("Actual Innocence"), Ewing v. McMackin, 799 F.2d 1143 ("Legal Innocence").

Conclusion

WHERE THE APPLICANT RESPECTFULLY PRAY THAT THIS HONORABLE COURT ACCEPT THIS MOTION IN SUPPORT OF HIS POST CONVICTION RELIEF APPLICATION AND DISCARD ANY DEFECTS S.C. CODE 17-27-70(a), AND LIBERALLY CONSTRUCT THIS APPLICATION AND GRANT APPROPRIATE RELIEF. THE APPLICANT ALSO REQUEST THAT HIS HONORABLE COURT APPOINT COUNSEL TO ASSIST HIM WITH THIS CASE. BECAUSE DUE TO THE FACT THAT APPLICANT ISN'T WELL EDUCATED WITH THE LAW HE HAS HAD TO RELY UPON THE ASSISTANCE OF FELLOW INMATES. BY APPOINTING COUNSEL, NEW COUNSEL CAN FOLLOW UP ON THE CASE. APPLICANT REQUEST A NEW TRIAL OR SENTENCE REDUCTION ON THE ATTEMPTED MURDER.

Date: JAN. 3. 2017

Respectfully Submitted  
James Allen Gardner  
 JAMES A. GARDNER

Date: JAN 3RD, 2017

ASSISTED BY:  
Marshall B. Jones  
 MARSHALL B. JONES / PARALEGAL  
 ESN: 37-1428591

AFFIDAVIT OF SERVICE

I JAMES ALLEN GARDNER, DECLARE THAT THE ABOVE IS TRUE AND CORRECT ON THIS 3RD DAY OF JAN 2017, AND HAS BEEN SENT TO THE CLERK OF THE COURT BY 2nd DAY OF THE 25th MAIL WITH SUFFICIENT POSTAGE.

AN INVESTIGATOR AND ALSO INVESTIGATE THE MEDICAL RECORDS OF ALLEGED VICTIMS TO PROPERLY ASSES THE EXTENT OF THEIR CLAIMED INJURIES. THE RADIOLOGIST DIDN'T SUBPOENAED TO TESTIFY TO THE EXTENT OF THE ALLEGED BULLET WOUND, THE APPLICANT WAS DENIED HIS SUBSTANTIAL RIGHT TO CONFRONTATION AND ALSO COMPULSORY S.C. CONST. ART. 1 SEC 14, S.C. CODE 17-23-60, MILLER V. DRETKE, 470 F.3d 354, AT 342. Bell V. Miller, 500 F.3d 179, AT 155-157, (TRIAL TRANSCRIPT PAGES: 190 TO 209, MARIAM WALDEN'S TESTIMONY)

(3) COUNSEL FAILED TO OBJECT AND FILE TIMELY MOTIONS TO OBJECT TO THE INDICTMENT BEING MULTIPLEXUS, BECAUSE THE INDICTMENT HAS SEVERAL COUNTS FOR ONE FIRE ARM. 21 S.V. MATOS, 905 F.2d 30, S.C.R. EVID 103(a)(1), S.C.P. CRIMINAL PROCEDURE 17, S.C. CODE 17-19-10 ET SEQ., 21 S.V. WEATHERS 493 F.3d 229, AT 238-239.

(4) COUNSEL WAS INEFFECTIVE FOR STIPULATING TO THE INVOLUNTARY STATEMENT MADE BY APPLICANT TO INVESTIGATORS COUNSEL SHOULD HAVE MOTIONED FOR A JACKSON DENNO HEARING, BECAUSE THE STIPULATION WAS USED WHEN THE JUDGE INSTRUCTED THE JURY (TRIAL TRANSCRIPT PAGES: 35 TO 36, AND 316 TO 319, AND 363 TO 364, AND 374) COULD HAVE REQUESTED AN IN CAMERA HEARING S.C.R. EVIDENCE 104(C).

(5) TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO THE USE OF APPLICANT'S PRIOR CONVICTIONS BECAUSE THEY WERE BEYOND TEN (10) YEARS OLD AND WAS REMOTE S.C.R. EVIDENCE 607(b), AND HE DIDN'T INVESTIGATE THE VALIDITY OF THE PRIOR CONVICTIONS. Rompilla V. Beard, 545 U.S. 374, 162 L.ED 2d 360 (3 OF 7)

Notary Public:

Sworn to and Subscribed

Before me: Michael G. [Signature] Michael G. [Signature]

This 3<sup>rd</sup> Day of January 20 17

My Commission Expires:

July 09, 2026

Date Jan-3-2017

SIGNATURE  
James Allen Gardner  
James A. GARDNER

Date: Jan 3rd, 2017

ASSISTED BY:  
S/ Marshall B. Jones  
Marshall B. Jones, Paralegal  
EIN: 37-1928591

State of South Carolina  
County of Hampton  
Court of Common Pleas

423

James A. Gardner, #177263  
Applicant

Case no. \_\_\_\_\_

- VS -

State of South Carolina  
Respondent

Motion for Stipulation of  
"Material Facts" S.C. Code  
17-27-70(c), and 17-27-80  
And S.C.R. Civ. Proc. 29  
And Offer of Proof S.C. R. Evid. 102

Come now James A. Gardner, Applicant Prose. Before  
This Honorable Court on a Motion for Stipulation of  
"Material Facts" S.C. Code 17-27-70(c), and 17-27-80 and  
S.C.R. Civ. Proc. 29 And Offer of Proof S.C. R. Evid. 102, the  
Following Claims Raised on Post Conviction ARE supported with  
"Material Facts" and All Claims should be "Fully Adjudicated" on the merits  
As Required By S.C.R. Civ. Proc. 56(d), and 28 U.S.C. 2254(d). Please  
Review the Following:

"MATERIAL FACTS"

- (A) TRIAL COUNSEL WAS INEFFECTIVE (SEE: MOTION IN SUPPORT OF POST CONVICTION).
- (B) INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL (SEE: MOTION IN SUPPORT OF POST CONVICTION)
- (C) ACTUAL, FACTUAL, AND LEGAL INNOCENCE, (SEE: MOTION IN SUPPORT OF POST CONVICTION).

Agreements and Stipulation can be Reached in this Case Because Counsel HAS ALREADY BEEN MAKING Stipulations Which affected the OUTCOME OF APPLICANT'S CASE (SEE: TRANSCRIPT Pages 318 to 319), (SEE: TRANSCRIPT Pages 363 to 366), AND (SEE: TRANSCRIPT Page 374)

WHEREFORE, THE APPLICANT RESPECTFULLY REQUEST THAT THE ABOVE MENTION "MATERIAL FACTS" BE STIPULATED TO AND AN EVIDENTIARY OR FACT FINDING HEARING BE HELD TO GRANT APPLICANT APPROPRIATE RELIEF.

DATE: Jan. 3-2017

DATE: Jan 3rd, 2017

(2053)

Respectfully Submitted  
James A. Gordinier  
 JAMES A. GORDINIER  
 ASSISTANT  
 MARCHAL B. SANDS BAR#18941

State of South Carolina  
County of Hampton  
Court of Common Pleas

425

JAMES A. GARDNER, #177263 )

Applicant )

-VS-

Case No. \_\_\_\_\_

State of South Carolina )  
Respondent )

Motion FOR Evidentiary Hearing  
And "Cause and Prejudice" Hearing  
ON "MATERIAL FACTS" S.C. Code 17-27-70(c)  
And 17-27-80, And 17-27-90

Come now JAMES A. GARDNER, Applicant Prase, Before this honorable Court on a Motion FOR Evidentiary Hearing, And "Cause and Prejudice" Hearing ON "MATERIAL FACTS", in Case, S.C. Code 17-27-70(c), And 17-27-80 AND 17-27-90. The HEARING is necessary to RESOLVE All claims Raised in past conviction, And to Fully Absudicate the claims S.C.R. Civ. Proc. 56(c), And give Applicant AN OPPORTUNITY to Be Fairly Heard.

Wherefore, the Applicant Respectfully Pray that this Honorable Court Grant this Motion And order that a Hearing Be Held.

Date: Jan - 3 - 2017

Date: Jan 3rd, 2017

Respectfully Submitted:  
James A. Gardner  
JAMES A. GARDNER

ASSISTANT  
Marshall K. [Signature]  
MARSHALL K. [Signature]

(10F1)

State of South Carolina  
County of Hampton  
Court of Common Pleas

James A. Gardner, 177243  
 Applicant

-vs-

State of South Carolina  
 Respondent

Case No. \_\_\_\_\_

Motion for "Full Adjudication"  
of All Claims Raised on  
Post Conviction

Come now James A. Gardner, Applicant PROSE, Before  
 This Honorable Court on a Motion for "Full Adjudication"  
 of all Claims Raised on Post Conviction, Pursuant to S.C. Rules  
 of Civil Proc. 56(d), the Applicant respectfully Request that this  
 Honorable Court follow the Rule 56(d) Requirement and Fully  
 Adjudicate all Claims Raised on Applicant's PCR, S.C. Code 17-27-80

Date: Jan-3-2017

Respectfully Submitted:  
~~James A. Gardner~~  
 James A. Gardner

Assisted By:  
~~Marshall Jones~~  
 Marshall Jones

Date Jan 3rd, 2017

State of South Carolina  
County of Hampton  
Court of Common Pleas

427

James A. Gardner, 177263  
Applicant

-VS-

Case No. \_\_\_\_\_

State of South Carolina  
Respondent

Motion For Judicial Review

And Judicial Notice of any and all

Constitutional Errors

in Applicant's Case

Come now James A. Gardner, Applicant, Prose. Before  
this Honorable Court on a Motion For Judicial Review and  
Judicial Notice of any and all Constitutional Errors in Applicant's  
Case, this Motion is written pursuant to S.C.R. Evid 201. The  
Applicant has raised claims on PCR that's constitutional  
in Dementia and Entitles Him to Relief.

Wherefore, the Applicant respectfully Pray that this  
Honorable Court Conduct a Judicial Review of Applicant's Case.

Date: Jan-3-2017  
2-17-2017

(10F1)

Respectfully Submitted  
James A. Gardner  
James A. Gardner  
ASSISTED BY: Mary B. Hall

State of South Carolina  
County of Hampton  
Court of Common Pleas

James A. Gardner, 177263  
 Applicant

-VS-

Case No. \_\_\_\_\_

State of South Carolina  
 Respondent

Motion For Leave To Reserve The  
Rights To Amend Post Conviction,  
Relate Back To Original Post  
Conviction, Leave To Re-open  
Case With New Discovery, Or  
Retractive Law, Or File a  
60(b) under "Excussable Neglect"  
In Any Event That There's An  
Adverse Ruling On PCR

Come now James A. Gardner, Applicant prose. Before this Honorable Court on a Motion For Leave to Reserve the Rights to Amend Post Conviction (PCR), Relate Back to Original Post Conviction, Leave To Re-open case with New Discovery. Or Retractive Law, Or File 60(b) under "Excussable Neglect" In Any Event That There's an Adverse Ruling on PCR.

LEGAL MAIL  
 MAIL ROOM

THIS MOTION IS WRITTEN PURSUANT TO S.C. Rules Civil  
PROC. 15(A), S.C.R. CIV. PROC 15(C) "Relate Back" Mayle v.  
Felix, 545 U.S. 644, 125 S.Ct 2562, 162 L.Ed. 2d 582. S.C. Code 17-  
27-45(c) "Retrospective Law" S.C. Code 17-27-90. THE PURPOSE OF THIS  
MOTION IS TO PROTECT APPLICANT FROM WRIT ABUSE, OR THE FILING OF  
A SUCCESSIVE PCR, 17-27-90, Tilley v. State, 334 S.C. 24, 511 S.E. 2d 689,  
Schupp v. Aeto, 115 S.Ct. 851, 47 863.

Date: Jan 3-2017

Respectfully Submitted,  
~~S/James Allen Gardner~~  
James A. Gardner

Date: Jan 3rd, 2017

Assisted By:  
S/ ~~Marshall Jones~~  
Marshall Jones / Paralegal

James A. Gardner (#177263)  
 MeCI F-3  
 386 Redemption Way  
 McCormick, S.C. 29874

FILED  
 2017 JAN -9 AM 9:00  
 JUDGE JESTES  
 JAIL COUNTY, S.C.

CLERK OF THE COURT

RE: COVER LETTER

JAMES A. GARDNER V. STATE OF SOUTH CAROLINA  
 Case No. \_\_\_\_\_

Dear Clerk:

Please File and Docket the Enclosed POST CONVICTION RELIEF APPLICATION WITH MOTION IN SUPPORT S.C. Code 17-27-70(a). and Please Send ME a Clock Stamped Copy to Confirm that it has Been Filed.

Thank You For Your Assistance And Consideration in This Matter.

Date:  
Jan. 3 - 2017

Respectfully  
James Allen Gardner  
 JAMES A. GARDNER

(Cover Letter)

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON 431  
IN THE COURT OF COMMON PLEAS

James A. Gardner #177263 }  
Applicant }  
-vs- }  
State of South Carolina }  
Respondent }

Case Number. 2017-CP-25606

MOTION IN SUPPORT OF POST  
CONVICTION RELIEF APPLICATION

Come now James A. Gardner, Applicant Pro se, Before this Honorable Court on a Motion In Support of Post Conviction Relief Application. The Applicant's Post Conviction Relief Application raises claims of "Material Fact" which entitle him to relief S.C. Code 17-27-70 (c), All claims are constitutional in demention S.C. Code 17-27-20 (1)(i). The claims should be fully adjudicated in this Honorable Court, with an Evidentiary Hearing and an adequate Fact Finding Process to protect the Applicant's constitutional rights and to fully exhaust his remedies in this Honorable Court. S.C. Rules Civil Procedure 56 (d) "Fully Adjudicated" S.C. Rules Civil Procedure 12 (b) "Fair opportunity to be heard" S.C. Code 17-27-80. And 28 U.S.C. 2254 (b)(1)(4) "Ruling on merits of the case"; Any decisions of this Court shouldn't be contrary to well established Law or an unreasonable application of any U.S. Supreme Court precedents, 28 U.S.C. 2254 (e)(1)(2), U.S. Const. Art. 6 Section 2 "Law of the Land, Supremacy Clause. The Applicant request that any Discovery be provided to him, S.C. Code 17-27-150 (A) S.C. Rules Civil Procedure 26 (a) through 36.

STATE OF SOUTH CAROLINACOUNTY OF HAMPTONCOMMON PLEAS COURT

FILED

2017 JAN 13 AM 9:38

K. H. D. NETILES  
CLERK OF COURT  
HAMPTON COUNTY, S.C.James A. Gardner, 177263 }  
Applicant }

-vs-

State of South Carolina }  
Respondent }

Case No. \_\_\_\_\_

MOTION FOR "FULL ADJUDICATION"  
OF ALL CLAIMS RAISED ON POST  
CONVICTION

COME NOW James A. Gardner, Applicant Pro se, before this Honorable Court on a Motion for "Full Adjudication" on all claims raised on Post Conviction, pursuant to S.C. Rules of Civ. Proc. 56(d). The Applicant respectfully request that this Honorable Court Follow the Rule 56(d) requirement and Fully adjudicate all claims raised on Applicant's PCR, S.C. Code 17-27-80.

Dated 1-5-2017.

Respectfully Submitted

S/James Allen Gardner

James A. Gardner

bullet would, The Applicant was denied his substantial right to<sup>433</sup> confrontation and also compulsory S.C. Const. Art. I Sec. 14, S.C. Code 17-23-60, Miller v. Dretke, 420 F.3d 356, at 362. Bell v. Miller, 500 F.3d 149, at 155-157, (Trial Transcript Pages: 190 to 209, Mariam Walden's Testimony)

(3) Counsel failed to object and file timely Motions to object to the indictment being multiplicitous, Because the indictment has several counts for one fire arm. U.S. v. Matos, 905 F.2d 30, S.C.R. Evid 103 (2)(1), S.C.R. Criminal Procedure 17, S.C. Code 17-19-10 et seq. U.S. v. Weathers 493 F.3d 229, at 238-239.

(4) Counsel was ineffective for stipulating to the Involuntary Statement made by Applicant to investigators Counsel should have Motioned for a Jackson Denno Hearing, Because the stipulation was used when the Judge instructed the Jury (Trial Transcript pages: 85 to 86, and 316 to 317, and 363 to 364, and 374) Could have requested an In Camera Hearing S.C.R. Evidence 104 (c).

(5) Trial counsel was ineffective for failing to object to the use of Applicant's prior convictions because they were beyond Ten (10) years old and was remote S.C.R. Evidence 609 (b), and he didn't investigate the validity of the prior convictions. Rompilla v. Beard, 545 U.S. 374, 162 L. Ed 2d 360 125 S.Ct. 2456, S.C. Code 17-25-45 (c), and S.C. Code 16-1-120, U.S. v. Russell, 221 F.3d 615, at 621.

(B) Claim (Ineffective Appellate Counsel)

STATE OF SOUTH CAROLINACOUNTY OF HAMPTONCOURT OF COMMON PLEAS

James A. Gardner, 177263 )

Applicant )

)

)

-vs-

Case No. \_\_\_\_\_

State of South Carolina )

Respondent )

)

MOTION FOR JUDICIAL REVIEW  
AND JUDICIAL NOTICE OF ANY AND ALL  
CONSTITUTIONAL ERRORS IN  
APPLICANT'S CASE

COME NOW James A. Gardner, Applicant, Pro se, before this Honorable Court on a Motion For Judicial Review and Judicial Notice of Any and All Constitutional Errors in Applicant's case. This Motion is written pursuant to S.C.R. Evid 201. The Applicant has raised claims on PCR that's constitutional in dementation and entitle him to relief.

Wherefore, the Applicant respectfully pray that this Honorable Court conduct a Judicial Review of Applicant's case.

Dated Jan-5-2017

Respectfully Submitted  
S/James Allen Gardner  
 James A. Gardner

require the State to prove their case "Beyond a Reasonable Doubt" <sup>435</sup> (SEE: pages 355 to 357). It is well established law in the State of South Carolina, the "Due Process Clause" S.C. Const. Art. 1 Sec 3 and the U.S. Constitution 5th and 14th (Amendments), require that the prosecution in any case must prove beyond a reasonable doubt every essential element of the crime charged (SEE: pages 368 to 369). In Re Winship, 397 U.S. 358, at 364, 25 L.Ed. 2d 368, 90 S.Ct. 1068, Patterson v. N.Y., 432 U.S. 197, at 215, 53 L.Ed. 2d 28, 97 S.Ct. 2319 ("Factual Innocence"), Dretke v. Haley, 541 U.S. 386, 158 L.Ed. 2d 659, 124 S.Ct. 1847 ("Actual Innocence"), Kuhlman v. Wilson, 477 U.S. 436, 91 L.Ed. 2d 364, 106 S.Ct. 2616, Ewing v. McMackin, 799 F.2d 1143 ("Legal Innocence").

---

### CONCLUSION

---

Where the Applicant Respectfully pray that this Honorable Court accept this Motion In Support of his Post Conviction Relief Application and disregard any defects S.C. Code 17-27-70(a), and liberally construe this application and grant appropriate relief. The Applicant also request that his Honorable Court appoint counsel to assist him with this case because due to the fact that Applicant isn't well educated with the law he has had to rely upon the assistance of Fellow inmates. By appointing counsel, new counsel can follow up on the case. Applicant request a new trial or reduction in sentence on the Attempted Murder.

Dated JAN-5-2017

Respectfully Submitted  
James Allen Gardner  
James A. Gardner

Dated Jan 5-2017

~~Assisted By:~~

~~S/ [Signature]~~

~~Marshall B. Jones / Paralegal~~

~~ELN: 57-1428591~~

### AFFIDAVIT OF SERVICE

I James Allen Hedge declare that the above is true and correct. On this 5 day of JAN-2017, and has been sent to the Clerk of The Court by way of U.S. Mail.

Notary Public:

Sworn To And Subscribed

Before Me Michael Gardner, this 5<sup>th</sup> day of January 2017.

My Commission Exp: July 09 2026

Dated

S/ James A. Gardner  
James A. Gardner

Dated

[Redacted Signature Area]

The Applicant respectfully request that this Honorable Court Order<sup>437</sup> The Respondent to stipulate to any "Material Fact" in this case that's supported by the transcript and documents. S.C. Code 17-27-80, and 17-27-70 (c), and S.C. Rules Civil Proc. 29. The Applicant respectfully request that this Honorable Court allow Applicant to reserve his opportunity to (1) Amend this Post Conviction Application, S.C. Rule Civ. Proc. 15 (a), S.C. Code 17-27-90. And (2) Allow Applicant to relate back to this original Post Conviction Application, with "New Discovery"; S.C. 17-27-45 (B) on new retroactive Supreme Court precedent, (Supreme Court Precedent, Mayle v. Felix, 545 U.S. 644, 125 S.Ct. 2562, 162 L.Ed 2d 582). The Applicant will at this time respectfully show this Honorable Court the following constitutional claims that's being raised in his Post Conviction Relief Application:

Ⓐ Trial Counsel was ineffective and denied Applicant Due Process of Law and denied him his right to a fair trial, There was also a break in communication from the very beginning of this case. S.C. Const. Art. 1 Sec. 3 (Due Process) S.C. Const. Art. 14 Trial counsel violated Applicant's constitutional rights in one or all of the following ways which prejudiced case.

(1) Failed to object to Jury composition because Juror:  
is biologically related to alleged victim. S.C. Const. Art. 1 Sec. 14 (Denied right a fair trial) 140-mrs. Alice Scott

(2) Failed to investigate case or interview witnesses and failed to File Motion For Additional Funding to hire an investigator and also investigate the Medical Records of alleged victims to properly asses the extent of their claimed injuries. The Radiologists wasn't subpoenaed to testify to the extent of the alleged

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

COURT OF COMMON PLEAS

FILED

JAN 13 AM 9:38

WYLANDA D. NETTLES  
CLERK OF COURT  
HAMPTON COUNTY, S.C.James A. Gardner, 177263 )  
Applicant )

-vs-

State of South Carolina )  
Respondent )

Case No. \_\_\_\_\_

MOTION FOR LEAVE TO RESERVE THE RIGHTS  
TO AMEND POST CONVICTION, RELATE BACK  
TO RE-OPEN CASE WITH NEW DISCOVERY,  
OR RETROACTIVE LAW, OR FILE A 60(b)  
UNDER "EXCUSSABLE NEGLIGENCE" IN ANY  
EVENT THAT THERE'S AN ADVERSE  
RULING ON PCR

COME NOW James A. Gardner, Applicant Pro se, before this Honorable Court on a Motion For Leave To Reserve The Right To Amend Post Conviction (PCR), Relate Back To Original Post Conviction, Leave to Re-open case with New Discovery or Retroactive Law, or File 60(b) under "Excussable Neglect" in any event that there's an adverse Ruling on PCR.

This Motion is written pursuant to S.C.R. Civ. Proc. 15 (a), S.C.R. Civil Proc. 15 (c) "Relate Back" Mayle v. Felix, 545 U.S. 644, 125 S.Ct. 2562, 162 L.Ed. 2d 582. S.C. Code 17-27-45 (c) "Retroactive Law" S.C. Code 17-27-90. The purpose of this Motion is to protect

## COUNTY OF HAMPTON

## COMMON PLEAS COURT

FILED

2017 JAN 13 AM 9:38

KATHARINE D. NETTLES  
CLERK OF COURT  
HAMPTON COUNTY, S.C.

BY \_\_\_\_\_

James A. Gardner #177263 )

Applicant )

)

)

-vs-

)

Case No. \_\_\_\_\_

State of South Carolina )

Respondent )

MOTION FOR EVIDENTIARY HEARING  
AND "CAUSE AND PREJUDICE" HEARING  
ON "MATERIAL FACTS" S.C. CODE 17-27-  
70 (c) AND 17-27-80, AND 17-27-90

COME NOW James A. Gardner, Applicant Pro se, before this Honorable Court on a Motion For Evidentiary Hearing, and "Cause and Prejudice" Hearing on "Material Facts"; in case, S.C. Code 17-27-70 (c), and 17-27-80 and 17-27-90. The hearing is necessary to resolve all claims raised in Post Conviction. And to fully adjudicate the claims S.C.R. Civ. Proc. 56(d), and give Applicant an opportunity to be fully heard.

Wherefore, the Applicant respectfully pray that this Honorable Court grant this Motion and Order that a hearing be held.

Dated JAN-5-2017  
~~\_\_\_\_\_~~

Respectfully Submitted

James A. Gardner  
James A. Gardner

- (A) Trial counsel was ineffective (See: Motion In Support of Post Conviction)
- (B) Ineffective Assistance of Appellate Counsel (See: Motion In Support of Post Conviction).
- (C) Actual, Factual, and Legal Innocence, (See: Motion In Support of Post Conviction).

Agreement and Stipulation can be reached in this case because counsels has already bee making stipulations which affect the outcome of applicant's case (See: Transcript pages 318 to 319), (See Transcript pages 363 to 366), and (See: Transcript pages 374)

Wherefore, the Applicant respectfully request that the above mention "Material Facts" be stipulated to. And an Evidentiary Hearing or Fact Finding Hearing be held to grant Applicant appropriate relief.

Dated JAN-5-2017

Respectfully Submitted  
S/James Allen Gardner  
James A. Gardner

COUNTY OF HAMPTON  
COMMON PLEAS COURT

2017 JAN 13 AM 9:38

WILLIAM D. NETTLES  
CLERK OF COURT  
HAMPTON COUNTY, S.C.

James A. Gardner #177263

Applicant

- V5 -

State of South Carolina

Respondent

Case No. \_\_\_\_\_

MOTION FOR STIPULATION OF  
"MATERIAL FACTS" S.C. CODE  
17-27-70(c), AND 17-27-80  
AND S.C.R. CIV. PROC. 29  
AND OFFER OF PROOF S.C.R.  
EVID. 102

COME NOW James A, Gardner, Applicant Pro se, before this Honorable Court on a Motion for Stipulation of "Material Facts" S.C. Code 17-27-70 (c), and 17-27-80 and S.C.R. Civ. Proc. 29 and offer of Proof S.C.R. Evid. 102. The following claims raised on Post Conviction are supported with "Material Facts?" And all claims should be "Fully adjudicated" on the merits as required by S.C.R. Civ. Proc, 56(d), and 28 U.S.C. 2254(d).

Please review the following:

AFFIDAVIT  
OF THE AMERICAN CREED  
AS AN AMERICAN CITIZEN

I, James A. Gardner, Declare and Believe in the United States of America as a Government of The People, by The People, for The People; whose Just Powers are delivered from the consent of the Governed; a Democracy in a Republic; a Sovereign Nation of many Sovereign States; (Which includes South Carolina) a perfect union, one and inseparable; established upon those Principles of Freedom, Equality, Justice, and Humanity for which American Patriots sacrificed their lives and Fortunes,

I, James A. Gardner, therefore believe it is my duty to my Country and the State of South Carolina to love it, to support both The U.S. Constitution and South Carolina Constitution (See: Transcript Page 359 to 360). To obey the Laws and respect the Flag, and defend the United States and South Carolina against all enemies, U.S. Constitution 14th Amendment, Article 14 Section 1. (Citizenship).

Notary Public

Sworn to and

Subscribed before me

Michael Canare Michael Canare

this 5 day of January 2017

2017 My Commission

Expires July 09 2016

James Allen Gardner

James A. Gardner / Affidavit

U.S. Citizen

Dated JAN-5-2017

(6) Counsel was ineffective for failing to request <sup>443</sup> Jury Instructions on Lesser Included Offenses of Attempted Murder, Because the Court denied Motion For Direct Verdict (which was definitely preserved for Appellate Review and should have been raised by Appellate Counsel to avoid Procedural Default when raised on Post Conviction. The Appellate Brief was inadequate by not raising this claim on Appeal. U.S. v. Coleman, 575 F.3d 316, at 321. U.S. v. Frady, 556 U.S. 152, at 167-68, 71 L.Ed 2d 816, 102 S.Ct. 1584, Massaro v. U.S., 538 U.S. 500, 155 L.Ed 2d 714, at 720, 123 S.Ct. 1690). As a result of this error this prejudiced the outcome of Applicant's case and confuse and mislead the Jury S.C.R. Evidence 403, S.C. Const. Art. 1 Sec 3 (Due Process) and S.C. Const. Art. 1 Sec 14. (Right to Fair Trial) The Jury instructions was constitutionally invalid, Had the Jury been instructed on (1st) (2nd) or (3rd) Degree Assault the Applicant may have been convicted of a lesser offense. (SEE: pages 322 to 323 Direct Verdict Motion)

(7) Due to the break down in communication the Appellate ended up going to trial, He was willing to enter a plea to a lesser included offense for a lesser offense for a sentence under Nine (9) years. But trial counsel would not have an investigator investigate the case to show that there's evidence of a lesser included offense, As a result of such poor legal strategies, Applicant ended up going to trial which subjected him to a greater sentence, Bordenkircher v. Hayes, 434 U.S. 357, 98 S.Ct. 663, 54 L.Ed. 2d 604, U.S. v. Goodwin, 457 U.S. 368, 102 S.Ct. 2485, 73 L.Ed 2d. 74, Blackledge v. Perry, 417 U.S. 21, 94 S.Ct. 2098, 40 L.Ed. 2d 628, Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203,

(C) The Applicant is Actually, Factually and Legally innocent of Attempted Murder because the Laws of The State of South Carolina

(c) 2013-GS-25-00079

5. The date upon which sentence was imposed and the terms of ~~the~~ sentence:

(a) 2-4-2015, 25 Years

(b) 2-4-2015, 25 Years

(c) 2-4-2015, 25 Years

6. Check whether a finding of guilty was made:

(a) after a plea of guilty \_\_\_\_\_

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the result in each such Court to which you appealed:

i. Appeal Dismissed

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. 7-20-2016

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) \_\_\_\_\_

- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Trial Counsel (SEE: Motion in Support)
- (b) Ineffective Assistance of Appellate Counsel (SEE: Motion in Support)
- (c) Actually, Factually, Legal Innocence. (SEE: Motion in Support)
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Same As Above
- (b) Same As Above (Ineffective Appellate Counsel See No. 6 Motion in Support)
- or (c) Same As Above
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(c) the disposition thereof:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) This is the first PCR  
 (b) \_\_\_\_\_  
 (c) \_\_\_\_\_

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? No  
 (b) your trial, if any? Yes  
 (c) your sentencing? Yes  
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes  
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
No

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:  
 i. Cory H. Fleming, 1501 North Street PO Box 507, Beauford SC. 29901  
Kathrine H. Hodgins, SCCID, PO Box 11589, Columbia SC 29211  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_  
 (b) the proceedings at which each such attorney represented you:  
 i. Trial, Sentencing  
 ii. Direct Appeal  
 iii. \_\_\_\_\_

19. State clearly the relief you seek in filing this application:

Reverse and remand for new trial

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA )

County of Hampton )

VERIFICATION

I, James Gardner, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

James Allen Gardner

SWORN to and subscribed before me this 5th  
day of January 2017.

Michael Carmine Michael Carmine  
(L.S.)  
Notary Public

My Commission Expires: July 09, 2026

**APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, James Gardner, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

James Allen Gardner  
Applicant

SWORN or affirmed to and subscribed before me this

5th day of January, 2017.

Michael Capuano  
Notary Public

My Commission Expires: July 09 2026

## FORM 5

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

County of Hampton )James A. Hardner )

Full name and prison number (if any) of Applicant )

171263 )

v. )

## APPLICATION FOR

State of South Carolina )

## POST-CONVICTION RELIEF

**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional Institution.
2. Name and location of Court which imposed sentence Hampton County  
Court of General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2013-GS-25-00073
  - (b) 2013-GS-25-00075

Dated 1-5-2017

Applicant from Writ abuse, or the filing of a successive PCR, 17-27-90,  
Tilly v. State, 334 S.C. 24, 511 S.E. 2d 689. SC4MP v Deto, 115 S.Ct. 851 at 863.

JAN-5-2017

Dated [REDACTED]

Respectfully Submitted,

S/ James A. Gardner  
James A. Gardner

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

~~4A~~ LEGAL MAIL  
MAIL ROOM

11

James Gardner (#177263)  
MCC I F-3  
386 Redemption Way  
MCCormick, S.C. 29899

Clerk of Court

RE: Cover Letter

James A. Gardner v. State of South Carolina  
Case No.

Dear Clerk:

Please File and Docket the Enclosed Post-Conviction Relief Application With Motion in Support S.C. Code 17-27-70(a). And Please send me a Clock Stamped copy to confirm that it has been Filed.

Thank you for your assistance and consideration in this matter.

Dated - JAN - 5 - 2017

Respectfully  
*S/James Allen Gardner*  
James A. Gardner

(Cover Letter)

STATE OF SOUTH CAROLINA  
COUNTY OF HAMPTON

FILED  
2:52 PM  
JPC  
AUG - 9 2017

IN THE COURT OF COMMON PLEAS  
IN THE FOURTEENTH JUDICIAL  
CIRCUIT

James A. Gardner, #177263,  
Applicant,

MYLINDA D NETTLES  
CLERK OF COURT  
HAMPTON COUNTY, SC

Case No.: 2017-CP-25-0006

v.

**RETURN AND PARTIAL MOTION TO  
DISMISS**

State of South Carolina,  
Respondent.

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on January 9, 2017, and amendments filed on January 13, 2017 and May 1, 2017, would respectfully show this Court:

### **I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Hampton County Clerk of Court. In August 2013, the Hampton County Grand Jury indicted Applicant for three counts of attempted murder (2013-GS-25-0073, -0075, -0079), four counts of pointing and presenting firearms at a person (2013-GS-25-0074, -0076, -0077, -0078), and possession of a weapon during a violent crime (2013-GS-25-0080). Applicant was subsequently indicted in October 2014 for pointing and presenting firearms at a person (2014-GS-25-0374)]. All five of the pointing and presenting firearms at a person charges were subsequently dropped. Cory Fleming, Esquire, represented Applicant. Assistant Solicitor Tameaka Legette, Esquire, prosecuted the case. On February 2-4, 2015, Applicant proceeded to trial before the Honorable Perry M. Buckner. The jury found Applicant guilty as indicted. Judge Buckner sentenced Applicant to imprisonment for concurrent terms of twenty-five years for each of the three attempted murder charges and five years for possession of a weapon during a violent crime.

Applicant filed a timely notice of appeal. Katherine Hudgins, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals dismissed Applicant's appeal on July 20, 2016. State v. Gardner, Op. No. 2016-UP-369 (S.C. Ct. App. filed July 20, 2016). The remittitur was returned to the circuit court on August 5, 2016.

Attached to this Return and incorporated by reference are the records of the Hampton County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II. ALLEGATIONS

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel"
  - a. "Trial counsel was ineffective and denied Applicant due process of law and denied him his right to a fair trial. There was also a breach in communication from the very beginning of this case."
  - b. "Trial counsel violated Applicant's constitutional rights in one or all of the following ways, which prejudiced the case:"
    - i. "Failure to object to the jury composition because Juror Alice Scott is biologically related to the alleged victim."
    - ii. "Failure to investigate case or interview witnesses and failed to file motions to additional funding to hire an investigator and also investigate the medical records of alleged victims to properly assess the extent of their claimed injuries. The radiologist wasn't subpoenaed to testify to the extent of the alleged bullet wound, Applicant was denied his substantial right to confrontation and also compulsory."
    - iii. "Counsel failed to object and file timely motions to object to the indictment being multiplicitous, because the indictment has several counts for one fire arm."
    - iv. "Counsel was ineffective for stipulating to the involuntary statement made by Applicant to investigators. Counsel should have motioned for a Jackson Denno hearing because the stipulation was used when the judge instructed the jury."
    - v. "Trial counsel was ineffective for failing to object to the use of Applicant's prior convictions because they were beyond ten years old and

was remote and he didn't investigate the validity of the prior convictions."

- vi. "Due to the breakdown of communication [Applicant] ended up going to trial, he was willing to enter a plea to a lesser included offense for a sentence under nine years, but trial counsel would not hire and investigator to investigate the case to show there's evidence of a lesser included offense. As a result of such poor legal strategies, Applicant ended up going to trial which subjected him to a greater sentence."

2. "Ineffective Assistance of Appellate Counsel"

- a. "Counsel was ineffective for failing to request jury instructions on lesser included offenses of attempted murder because the court denied motion for directed verdict (which was definitely preserved for appellate review and should have been raised by appellate counsel to avoid procedural default when raised on a post-conviction. The appellate brief was inadequate by not raising this claim on appeal. As a result of this error, this prejudiced the outcome of Applicant's case and confuse and mislead the jury. The jury instructions was constitutionally invalid, had the jury been instructed on 1st, 2nd, or 3rd degree assault, Applicant may have been convicted of a lesser offense."

3. "Actually Factually Legal Innocence"

- a. "Applicant is actually, factually, and legally innocent of attempted murder because the laws of the State of South Carolina require the State to prove their case 'beyond a reasonable doubt.' It is well established law in the State of South Carolina, the 'due process clause' requires that the prosecution in any case must prove beyond a reasonable doubt every essential element of the crime charged."
- b. "Reasonable doubt instructions will confirm such."

### **III. INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL**

Respondent submits Applicant's allegations of ineffective assistance of trial counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of trial counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove

that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of trial counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### **IV. INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL**

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th

Cir. 1985).

Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Respondent contends that Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. Respondent requests an evidentiary hearing on this allegation.

#### V. ACTUAL LEGAL INNOCENCE

Respondent requests that the claim of "actually factually legal innocence" be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint;  
or

6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20.

Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). These issues are improper for post-conviction relief because they could have been raised on direct appeal and are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief.

For these reasons and pursuant to Rule 12(b)(6), SCRCP, the Court should dismiss this claim for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

## **VI. AMENDMENTS**

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments received prior to 10 days before an evidentiary hearing will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this

application. See Rule 11, SCRC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRC.

## **VII. CONCLUSION**

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of trial and appellate counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

[Signature block on following page]

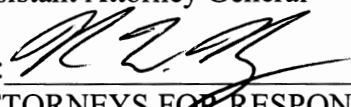
Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

RUSTON W. NEELY  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
Telephone: (803) 734-3737

August 3, 2017

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

JAMES A. GARDNER, #177263

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent,

IN THE COURT OF COMMON PLEAS

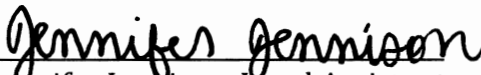
**2017-CP-25-0006**

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**James Kristian Falk, Esquire**  
**Falk Law Firm, LLC**  
**PO Box 1058**  
**Charleston, SC 29402**

DATED this the 3<sup>rd</sup> day of August, 2017.

  
 Jennifer Jennison, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA  
COUNTY OF HAMPTON

James A. Gardner, #177263,  
Applicant,

v.

State of South Carolina,  
Respondent.

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

2017-CP-25-0006

ORDER OF DISMISSAL

FILED  
301 AM/PM

APR 24 2018

MYLINDA D NETTLES  
CLERK OF C.  
HAMPTON COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief filed on January 9, 2017 by James A. Gardner (Applicant) with amendments filed on January 13, 2017 and May 1, 2017. Respondent made its Return on or about August 3, 2017. An evidentiary hearing into the matter was convened on January 29, 2018, at the Beaufort County Courthouse in Beaufort, South Carolina. Applicant was present and represented by James K. Falk, Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's Trial Counsel Cory Fleming, Esquire also testified. This Court had before it a copy of the records of the Hampton County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's trial, the PCR application, Respondent's Return, Applicant's records from the Department of Corrections and Applicant's appellate records. After reviewing the record and everything presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

#### **PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Hampton County Clerk of Court. In August 2013, the Hampton

County Grand Jury indicted Applicant for three counts of attempted murder (2013-GS-25-0073, -0075, -0079), four counts of pointing and presenting firearms at a person (2013-GS-25-0074, -0076, -0077, -0078), and possession of a weapon during a violent crime (2013-GS-25-0080). Applicant was subsequently indicted in October 2014 for pointing and presenting firearms at a person (2014-GS-25-0374)]. All five of the pointing and presenting firearms at a person charges were subsequently dismissed. Cory Fleming, Esquire, represented Applicant. Assistant Solicitor Tameaka Legette, Esquire, prosecuted the case. On February 2-4, 2015, Applicant proceeded to trial before the Honorable Perry M. Buckner. The jury found Applicant guilty as indicted. Judge Buckner sentenced Applicant to imprisonment for concurrent terms of twenty-five years for each of the three attempted murder charges and five years for possession of a weapon during a violent crime.

Applicant filed a timely notice of appeal. Katherine Hudgins, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals dismissed Applicant's appeal on July 20, 2016. State v. Gardner, Op. No. 2016-UP-369 (S.C. Ct. App. filed July 20, 2016). The remittitur was returned to the circuit court on August 5, 2016.

### ALLEGATIONS

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel"
  - a. "Trial counsel was ineffective and denied Applicant due process of law and denied him his right to a fair trial. There was also a breach in communication from the very beginning of this case."
  - b. "Trial counsel violated Applicant's constitutional rights in one or all of the following ways, which prejudiced the case:"
    - i. "Failure to object to the jury composition because Juror Alice Scott is biologically related to the alleged victim."
    - ii. "Failure to investigate case or interview witnesses and failed to file motions to additional funding to hire an investigator and also investigate

the medical records of alleged victims to properly assess the extent of their claimed injuries. The radiologist wasn't subpoenaed to testify to the extent of the alleged bullet wound, Applicant was denied his substantial right to confrontation and also compulsory."

- iii. "Counsel failed to object and file timely motions to object to the indictment being multiplicities, because the indictment has several counts for one fire arm.
  - iv. "Counsel was ineffective for stipulating to the involuntary statement made by Applicant to investigators. Counsel should have motioned for a Jackson Denno hearing because the stipulation was used when the judge instructed the jury."
  - v. "Trial counsel was ineffective for failing to object to the use of Applicant's prior convictions because they were beyond ten years old and was remote and he didn't investigate the validity of the prior convictions."
  - vi. "Due to the breakdown of communication [Applicant] ended up going to trial, he was willing to enter a plea to a lesser included offense for a sentence under nine years, but trial counsel would not hire an investigator to investigate the case to show there's evidence of a lesser included offense. As a result of such poor legal strategies, Applicant ended up going to trial which subjected him to a greater sentence."
2. "Ineffective Assistance of Appellate Counsel"
- a. "Counsel was ineffective for failing to request jury instructions on lesser included offenses of attempted murder because the court denied motion for directed verdict (which was definitely preserved for appellate review and should have been raised by appellate counsel to avoid procedural default when raised on a post-conviction. The appellate brief was inadequate by not raising this claim on appeal. As a result of this error, this prejudiced the outcome of Applicant's case and confuse and mislead the jury. The jury instructions was constitutionally invalid, had the jury been instructed on 1st, 2nd, or 3rd degree assault, Applicant may have been convicted of a lesser offense."
3. "Actually Factually Legal Innocence"
- a. "Applicant is actually, factually, and legally innocent of attempted murder because the laws of the State of South Carolina require the State to prove their case 'beyond a reasonable doubt.' It is well established law in the State of South Carolina, the 'due process clause' requires that the prosecution in any case must prove beyond a reasonable doubt every essential element of the crime charged."
  - b. "Reasonable doubt instructions will confirm such."

### SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

#### Applicant's Testimony

Applicant testified Trial Counsel was a friend of his stepson and he did not become aware of this until after he hired him. Applicant testified during a jail visit by Trial Counsel, some of

the other inmates told him they knew Trial Counsel from Wade Hampton High School where Trial Counsel had played basketball. Additionally, Applicant testified he found a picture of Trial Counsel in his stepson's room. Applicant testified he tried to fire Trial Counsel and get his money back but the trial judge told him he had to go forward with his trial. He testified after he hired Trial Counsel, Trial Counsel informed him about the statements the victim had made. Applicant testified he did not like the way Trial Counsel handled his case. He testified Trial Counsel did not interview any witnesses and did not do anything at trial. Applicant testified one of the jurors, Alice Scott, was related to the victim. When asked if he told his lawyer about Mrs. Scott, Applicant first testified he did not believe he did then testified he thought he told Trial Counsel. Applicant also testified Trial Counsel told him he could get him a deal on attempted murder but he told Trial Counsel he would not plead guilty to attempted murder. Applicant testified he told Trial Counsel he would take a plea offer for anything less than nine years.

On cross-examination, Applicant testified that besides the picture he found of Trial Counsel in his stepson's room, guys who were in jail with him told him Trial Counsel went to Wade Hampton High School and they knew Trial Counsel. Applicant testified that he asked Trial Counsel if Trial Counsel knew his stepson and Trial Counsel told him he did not know his stepson. Applicant also testified Trial Counsel came to him with a plea offer for attempted murder for nine years. Applicant testified he was in court during jury selection but did not remember if the juror, Mrs. Scott stood when asked by the trial judge whether any jury member was related to the victim.

#### Trial Counsel's Testimony

Trial Counsel testified he did not know Applicant's stepson and had never even been to Hampton, South Carolina until 1993. Trial Counsel testified he did not play basketball during

high school. Trial Counsel testified he could not conceive a notion that he would not strike a juror if that juror said they were related to a victim in a case or if his client told him that. Trial Counsel testified his trial strategy was to do everything he could to suppress the statement Applicant gave confessing to the incident while also showing Applicant did not mean to shoot anybody. Trial Counsel testified during trial he was trying to show the jury Applicant was drunk and lead them to the conclusion that this incident was a mistake. Trial Counsel testified if he would have requested a lesser included charge of attempted murder the trial judge had put that conversion on the record. Trial Counsel testified Applicant was difficult to deal with and Applicant would not talk to him at times even as he explained the evidence to him the State had. Trial Counsel testified he was able to get a plea offer of nine years at eighty-five percent which was the best the State was offering. Trial Counsel testified Applicant said he was not pleading to nine years. Trial Counsel testified he told Applicant the only way to get less than nine years was to go to trial and try for "all or nothing". Trial Counsel testified Applicant wanted to relieve him and that he received a grievance letter and fee dispute letter from the South Carolina Bar filed by Applicant. Trial Counsel testified he and Applicant went in front of trial judge and Trial Counsel said he was not asking to be relieved. Trial Counsel testified trial judge stated on the record that pursuant to the Chief Justice of South Carolina, a grievance was not enough to be relieved. Trial Counsel testified that trial judge ruled the case would not be delayed any further. Trial Counsel testified Applicant was charged with attempted murder and that assault and battery of a high and aggravated nature was a lesser included offense of attempted murder. Trial Counsel testified that the sentence for assault and battery of a high and aggravated nature was also so steep that given Applicant's advanced age, going for the "all or nothing" verdict on the attempted murder was his trial strategy.

On cross-examination, Trial Counsel testified about the facts surrounding Applicant's case. Trial Counsel testified Applicant had a long term girlfriend that Applicant considered his common law wife. He testified Applicant became increasingly upset with her because Applicant believed she was having an affair because she would leave on Saturdays and be gone for some time. Trial Counsel testified that Applicant's girlfriend had actually adopted a highway and would go clean it up on Saturdays. Trial Counsel testified Applicant had a conversation with his girlfriend's sister and ended up grabbing a rifle and shooting his girlfriend's sister in the leg. Trial Counsel testified the evidence was overwhelming in this case. Trial Counsel testified the State had an extremely thorough confession from Applicant and Applicant engaged in a shootout with the police after shooting his girlfriend's sister. Moreover, Trial Counsel testified the hardest thing to overcome was the confession because the police asked Applicant if he really wanted to kill those people and Applicant said he wanted them dead. Trial Counsel also testified he was not aware of any issue with a potential juror. Trial Counsel also testified that if Applicant's stepson who was the son of the victim, walked into the courtroom right now he would not know who Applicant's stepson was. Lastly, Trial Counsel testified it was his trial strategy to not request a lesser included charge of attempted murder as they were going for the "all or nothing" verdict.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has

failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. Applicant proceeded on only the following grounds for relief:

**Failure to object to the jury composition**

Applicant alleged Trial Counsel failed to object to the jury composition as one of the members of the jury was related to the victim. Applicant testified one of the jurors, Alice Scott, was related to the victim. When asked if he told his lawyer about Mrs. Scott, Applicant first testified I do not believe I did then testified he thought he did tell Trial Counsel. Trial Counsel also testified he was not aware of any issue with a potential juror. Trial Counsel testified that he could not conceive a notion that he would not strike a juror if that juror said they were related to a victim in a case or if his client told him that.

This Court finds Applicant has failed to present any credible evidence that Mrs. Alice Scott was related to the victim other than his own testimony. Notwithstanding Applicant's testimony, the record clearly shows the trial judge asked the jury panel during voir dire if any member was related to any of the witnesses for trial including the victim. (ROA p.55). No juror responded in the affirmative. Based on the record and Trial Counsel's testimony that he was not aware of any issue with a potential juror during voir dire, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. Applicant has failed to show the outcome of his trial would have been different had Trial Counsel struck Mrs. Scott from the jury. This Court concludes Applicant

has not met his burden of proving Trial Counsel failed to render reasonably effective assistance. Accordingly, the allegation is denied and dismissed.

**Failure to request lesser included charge**

Applicant alleged Trial Counsel was ineffective for failing to request the lesser included charge of assault and battery of a high and aggravated nature. Applicant testified Trial Counsel told him he could get him a deal on attempted murder, but he told Trial Counsel he would not plead guilty to attempted murder. Applicant testified he told Trial Counsel he would take a plea offer for anything less than nine years. Trial Counsel testified he was able to get a plea offer of nine years at eighty-five percent which was the best the State was offering. Trial Counsel testified Applicant said he would not plead guilty to nine years. Trial Counsel testified he told Applicant the only way to get less than nine years was to go to trial and try for "all or nothing." Trial Counsel testified Applicant was charged with attempted murder, and assault and battery of a high and aggravated nature would have been a lesser included offense but the sentence for it was so steep that given Applicant's age, going for the "all or nothing" verdict on the attempted murder was the trial strategy.

This Court finds Trial Counsel articulated a valid trial strategy by not requesting a lesser included charge as to avoid a compromised verdict. Trial counsel must be given leeway to make reasonable strategic decisions. Strickland v. Washington, 466 U.S. 668, 688-689 (1984). No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland, 466 U.S. at 688-689. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly

deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test - that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland - that he was prejudiced by Counsel's performance. Applicant has failed to show the outcome of his trial would have been different had Trial Counsel requested the lesser included charge of assault and battery of a high and aggravated nature. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegation is denied and dismissed.

#### **Trial Counsel's Connection to Applicant's Stepson**

Applicant alleged Trial Counsel had a conflict of interest in his representation of Applicant in that Trial Counsel was a friend of his stepson (Adonis Coker). Trial Counsel testified one of the victims in this case was Applicant's long term girlfriend whom Applicant considered his common law wife. Applicant testified Trial Counsel was a friend of his stepson (victim's son) and did not become aware of this until after he hired him. Applicant testified during a jail visit by Trial Counsel, some of the other inmates told him they knew Trial Counsel from Wade Hampton High school where he had played basketball. Additionally, Applicant

testified he found a picture of Trial Counsel in his stepson's room. Applicant testified he tried to fire Trial Counsel and get his money back but the trial judge told him he had to go forward with his trial. Trial Counsel testified he did not know Applicant's stepson and had never even been to Hampton, South Carolina until 1993. Trial Counsel testified he did not play basketball during high school. Additionally, Trial Counsel testified that if Applicant's stepson walked into the courtroom right now Trial Counsel would not know who he was.

This Court finds Applicant has failed to present any credible evidence that Trial Counsel had a conflict of interest in his case or that Trial Counsel even knew his stepson. Additionally, this Court finds Trial Counsel's testimony to be credible while finding Applicant's testimony to not be credible. Furthermore, Applicant has presented no witnesses who can substantiate this allegation. Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test –that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegation is denied and dismissed.

#### **Overwhelming Evidence**

This Court finds the evidence of Applicant's guilt was overwhelming. See Harris v. State, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008) (applicant cannot prove prejudice where there is overwhelming evidence of guilt). Trial Counsel testified the State had an extremely thorough confession from Applicant and Applicant engaged in a shootout with the police after shooting his common law wife's sister. Moreover, Trial Counsel testified the hardest thing to overcome was

the confession because the police asked Applicant if he really wanted to kill those people and Applicant said he wanted them dead. Additionally, after a review of the record there were several witnesses to the shootout with the police. This Court finds the evidence against Applicant was overwhelming. Therefore, this Court finds Applicant is unable to prove there was a reasonable probability any deficiency of Counsel would have changed the result of the proceeding. Accordingly, this Court denies and dismisses these allegations.

### CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. Refer to Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

### **IT IS THEREFORE ORDERED THAT:**

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 10 day of April, 2018.



R. LAWTON MCINTOSH  
Presiding Judge  
Fourteenth Judicial Circuit



, South Carolina

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

James A. Gardner, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2019-000192

---

Appeal From Hampton County  
R. Lawton McIntosh, Circuit Court Judge

---

Unpublished Opinion No. 2024-UP-066  
Submitted February 1, 2024 – Filed February 28, 2024

---

**REVERSED AND REMANDED**

---

Chief Appellate Defender Robert Michael Dudek, of  
Columbia, for Petitioner.

Attorney General Alan McCrory Wilson and Assistant  
Attorney General Joshua Abraham Edwards, both of  
Columbia, for Respondent.

---

**PER CURIAM:** James A. Gardner appeals the post-conviction relief (PCR) court's order denying his application for PCR. On appeal, Gardner argues the PCR court erred in (1) finding trial counsel was not ineffective for failing to request jury instructions on lesser-included offenses and (2) relying on Rule 11 of the South

Carolina Rules of Civil Procedure to limit the number of issues he could present at the PCR hearing. We reverse and remand pursuant to Rule 220(b), SCACR.

We hold the PCR court erred in limiting the number of issues Gardner could present at the PCR hearing because Rule 11 does not apply to PCR actions and thus, the PCR court should have allowed Petitioner to present his other issues. *See Wade v. State*, 348 S.C. 255, 263, 559 S.E.2d 843, 847 (2002) ("Courts treat PCR differently than traditional civil cases."); *id.* (explaining "PCR actions are the only type of case which this [c]ourt mandates appellate counsel . . . brief all arguable issues, despite counsel's belief the appeal is frivolous" and stating a "lawyer knowingly filing a frivolous claim in any other civil case violates Rule 11"); *Hiott v. State*, 381 S.C. 622, 629, 674 S.E.2d 491, 494-95 (2009) (concluding "Rule 11 . . . does not apply in PCR proceedings"); Rule 11(a) ("The written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay. . . . If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction . . ."). Accordingly, we reverse and remand for a new PCR hearing.<sup>1</sup>

**REVERSED AND REMANDED.**<sup>2</sup>

**THOMAS, MCDONALD, and VERDIN, JJ., concur.**

---

<sup>1</sup> Because we hold the PCR court improperly limited the number of issues Petitioner could present at his original PCR hearing, we decline to address whether the PCR court erred in finding trial counsel was not ineffective for failing to request jury instructions on lesser-included offenses. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not address remaining issues when disposition of a prior issue is dispositive).

<sup>2</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

CATHERINE S. HARRISON  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

March 19, 2024

The Honorable Mylinda D. Nettles  
PO Box 7  
Hampton SC 29924-0007

### REMITTITUR

Re: James A. Gardner v. State  
Lower Court Case No. 2017CP2500006  
Appellate Case No. 2019-000192

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in cursive script that reads "Catherine Harrison, deputy".

CLERK

Enclosure

cc: Robert Michael Dudek, Esquire  
Joshua Abraham Edwards, Esquire  
James A. Gardner, 177263

|                          |   |                                        |
|--------------------------|---|----------------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS           |
| COUNTY OF HAMPTON        | ) | FOR THE FOUTEENTH JUDICIAL CIRCUIT     |
|                          | ) |                                        |
|                          | ) |                                        |
| James Gardner, #177263,  | ) | Case No.: 2017-CP-25-00006             |
| Applicant,               | ) |                                        |
| v.                       | ) | <b>APPLICANT'S AMENDED APPLICATION</b> |
| State of South Carolina, | ) |                                        |
| Respondent.              | ) |                                        |
|                          | ) |                                        |

---

NOW COMES Applicant, James Gardner, amending his application filed January 9, 2017. In addition to the allegations raised in his initial application, Mr. Gardner, through PCR Counsel, submits the following:

1. Ineffective assistance of counsel for:
  - a. Failure to object to search for the truth language. (Tr. 100).
  - b. Failure to request a curative instruction regarding the mention of the relationship being abusive. (Tr. 174).
  - c. Failure to request a lesser-included offense jury instruction.
  - d. Failure to get a better plea deal.
2. Prosecutorial misconduct because there was a connection between the victim and the prosecutor.

**Conclusion**

Based upon the above, Mr. Gardner requests that this Court grant relief, vacate the convictions, and remand the case to the court of general sessions for a new trial.



Chelsey F. Marto  
Attorney at Law  
S.C. Bar No. #104191

The Law Office of Chelsey F. Marto, LLC  
P.O. Box 8795  
Columbia, SC, 29201

(864)-404-5583  
info@chelseymarto.com

**For Applicant James Gardner**

November 12, 2025

STATE OF SOUTH CAROLINA  
COUNTY OF HAMPTON

) IN THE COURT OF COMMON PLEAS  
) FOR THE FOURTEENTH JUDICIAL CIRCUIT  
)  
)

James Gardner, #177263,  
Applicant,

) Case No.: 2017-CP-25-00006  
)

v.

) Affidavit of Service by Email  
)

State of South Carolina,  
Respondent.

)  
)  
)

1. I am the attorney for Applicant in the above-captioned matter.
2. Regular communication by e-mail exists throughout the state of South Carolina and this is a proper circumstance of service by email.
3. I have this day served a copy of the Amended Application on the above-captioned matter on the following person via their AIS email address.

**Office of the Attorney General**  
**Attn: Danielle Dixon, Esquire**  
**DanielleDixon@scag.gov**

  
\_\_\_\_\_  
Attorney for Applicant

\_\_\_\_\_, 2025

1 STATE OF SOUTH CAROLINA )  
2 COUNTY OF HAMPTON ) COURT OF COMMON PLEAS NONJURY

3  
4 JAMES GARDNER, )  
5 APPLICANT, ) TRANSCRIPT  
6 vs. ) OF  
7 STATE OF SOUTH CAROLINA, ) RECORD  
8 DEFENDANT. ) 2017-CP-25-6

9  
10 November 13<sup>th</sup>, 2025

11  
12 B E F O R E:

13 THE HONORABLE DALE E. VAN SLAMBROOK, Judge.  
14

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

16 CHELSEA F. MARTO  
17 ESQ.  
Attorney for the Applicant

18 DANIELLE DIXON  
19 ASSISTANT ATTORNEY GENERAL  
20 Attorney for the State  
21  
22

23 Transcribed by Pamela E. Green,  
24 Circuit Court Reporter from  
25 WebEx and audio of Abigail Kiker,  
Circuit Court Reporter

1

I N D E X

2

WITNESSESPAGE

3

4

JAMES GARDNER

5

Direct examination by Ms. Marto

8

6

Cross-examination by Ms. Dixon

16

7

CORY FLEMING

8

Direct examination by Ms. Marto

20

9

Cross-examination by Ms. Dixon

25

10

TAMEAKA LEGETTE

11

Direct examination by Ms. Dixon

42

12

13

Closing by Ms. Marto

46

14

Closing by Ms. Dixon

47

15

Certificate

53

16

17

18

19

20

21

22

23

24

25

## P R O C E E D I N G S

1  
2  
3 THE COURT: All right. All right. And we are here  
4 for the Fourteenth Circuit post-conviction relief  
5 hearings.

6 Is everyone ready to proceed?

7 The State?

8 MS. DIXON: Yes, Your Honor.

9 THE COURT: All right. And, if you would, introduce  
10 yourself for our record.

11 MS. DIXON: May it please the Court.

12 I'm Danielle Dixon, assistant attorney general for  
13 the State of South Carolina.

14 This is -- the first case on the docket today, Your  
15 Honor, is James Gardner v. State. Docket number  
16 2017-25-0006.

17 If Mr. Gardner will come -- please come forward.

18 THE COURT: I'm sorry?

19 UNIDENTIFIED SPEAKER: He's hard of hearing.

20 MS. DIXON: Yeah.

21 MS. MARTO: Mr. Gardner, you want to sit here?

22 UNIDENTIFIED SPEAKER: They're ready for you.

23 MR. GARDNER: Huh?

24 UNIDENTIFIED SPEAKER: They're ready for you.

25 UNIDENTIFIED SPEAKER: Do you want to sit here, sir?

1 MS. MARTO: Do you want to sit here, sir?

2 UNIDENTIFIED SPEAKER: Do you want to sit down here?

3 MR. GARDNER: I can. If you want me to I can.

4 See can I get that?

5 UNIDENTIFIED SPEAKER: I'll get it. I'll get it.

6 MR. GARDNER: You'll get it?

7 UNIDENTIFIED SPEAKER: Go ahead down.

8 MR. GARDNER: All right. Thank you.

9 THE COURT: And you're Ms. Marto?

10 Is that correct?

11 MS. MARTO: Yes, Your Honor.

12 THE COURT: All right. Good morning, Ms. Marto.

13 MS. MARTO: Good morning.

14 THE COURT: Thank you.

15 Are you ready to proceed on the applicant,

16 Mr. Gardner?

17 MS. MARTO: Yes, Your Honor.

18 THE COURT: Okay.

19 All right. And I understand that there is -- some of

20 the witnesses are gonna proceed through the virtual

21 platform.

22 Is that correct?

23 MS. DIXON: That is correct, Your Honor.

24 THE COURT: Is that all set up?

25 MS. DIXON: Yes---

1 MS. MARTO: As far as we know.

2 MS. DIXON: ---as far as we know.

3 MS. MARTO: We are---

4 MS. DIXON: We tested it this morning---

5 MS. MARTO: Yeah.

6 MS. DIXON: ---and I believe it's all ready to go.

7 THE COURT: Okay.

8 MS. MARTO: I don't know---

9 THE COURT: And thank, thank y'all for that.

10 Yesterday I know that was a challenge on that.

11 You need any time to talk to him?

12 (Pause.)

13 MS. DIXON: All right. Your Honor, Mr. Gardner here  
14 today is serving a 25 year sentence. He was indicted in  
15 August of 2013 by the Hampton County Grand Jury for three  
16 counts of attempted murder, four counts of pointing and  
17 presenting a firearm, and possession of a weapon during a  
18 violent crime. Those are Indictment Numbers  
19 2013-GS-25-73, 75, 79.

20 THE COURT: All right. You need a minute?

21 MS. MARTO: Yeah, I think we need a minute, judge.

22 THE COURT: All right.

23 MS. MARTO: Sorry.

24 THE COURT: That's all right.

25 (Pause.)

1 MS. MARTO: Judge, I think we're all set.

2 THE COURT: All right.

3 MS. DIXON: Just continuing on briefly with a  
4 procedural history, he did have a trial, Your Honor, back  
5 in February of 2015. He -- the State, during the trial,  
6 did nolle pros the pointing and presenting charges and the  
7 jury found him guilty of the three counts of attempted  
8 murder and possession of a weapon.

9 He was sentenced by Judge Buckner to concurrent terms  
10 of 25 years for each attempted murder charge and five  
11 years for the weapon charge. He did file a direct appeal  
12 which was perfected by Appellate Defender Katherine Hodges  
13 who filed a brief pursuant to *Anders v. California*. It  
14 was dismissed pursuant to *Anders* and a remittitur was sent  
15 on August 5<sup>th</sup>, 2016.

16 He then timely filed this PCR application back in  
17 January of 2017 and he has previously had a hearing.  
18 Following that hearing, his application was denied and  
19 dismissed and he appealed that and the Court granted cert  
20 and the Court of Appeals basically remanded it for a new  
21 PCR hearing finding that, at that time, the PCR Court  
22 should have allowed him to present all of his claims. And  
23 so we are back today on that remand hearing.

24 This remittitur was sent March 19<sup>th</sup>, 2024. His  
25 prior PCR counsel is deceased. So, we've had Ms. Marto

1 appointed to represent him.

2 The State is ready to proceed today.

3 Ms. Marto, as I understand it, did file or at least  
4 sent me amended allegations. I think she's filed them and  
5 those are, as we understand it, ineffective assistance of  
6 counsel for failing to object to search for the truth  
7 language on Page 100 of, of the transcript during the  
8 Court's preliminary statement to the jury, failing to  
9 request a curative instruction, and that's gonna be Page  
10 174 of the transcript, and I will say Page 175 and 76 go  
11 into a little bit further of the bench conference  
12 discussion, and then failing to request a lesser included  
13 offense as a jury charge, and failing to get a better plea  
14 deal, and then they're also alleging prosecutorial  
15 misconduct based on a connection between the victim and  
16 the prosecutor.

17 We do have trial counsel virtually ready to testify  
18 as well as the solicitor ready to testify.

19 THE COURT: All right.

20 All right. Ms. Marto, you ready to go forward?

21 MS. MARTO: Yes, Your Honor.

22 THE COURT: Okay. And, and I think I already asked,  
23 but you -- you're agreeable and your client's agreeable to  
24 proceeding with the virtual format relative to some of the  
25 witnesses.

490 James Gardner - Direct examination  
By MS. Marto

1 Is that correct?

2 MS. MARTO: Yes, Your Honor.

3 THE COURT: Okay. All right. I'll be happy to hear  
4 from you.

5 MS. MARTO: Okay. We would call Mr. Gardner to the  
6 stand.

7 THE COURT: All right.

8 THE CLERK: Can I get you to raise your right-hand,  
9 sir?

10 Okay. Can I get you to raise your right-hand?

11 THE WITNESS: Right-hand.

12 JAMES GARDNER, being first duly  
13 sworn, testified as follows:

14 THE CLERK: All right. And, if you would, please  
15 state your first and last name and spell both for the  
16 record.

17 THE WITNESS: James A. Gardner. G-A-R-D-N-E-R.

18 THE COURT: All right. You can proceed.

19 MS. MARTO: Thank you, judge.

20 DIRECT EXAMINATION

21 BY MS. MARTO:

22 Q. Good morning, sir.

23 A. I can't hear you.

24 Q. If you ever can't hear me, let me know.  
25 okay?

- 1 A. I can't.
- 2 Q. You can't hear me?
- 3 Can you hear me, sir?
- 4 A. Yes.
- 5 Q. Okay.
- 6 A. I can't hear.
- 7 Q. Who were you represented by at trial?
- 8 Who represented you at your jury trial?
- 9 A. James Fosters (sic).
- 10 Q. That was your PCR hearing.
- 11 The trial---
- 12 A. Yes.
- 13 Q. ---where you were found guilty, who represented you?
- 14 A. Oh, Cory Flemings (sic).
- 15 Q. And how do you feel like he did representing you?
- 16 Did he do a good job representing you at trial or no?
- 17 A. My trial?
- 18 Q. Yeah.
- 19 A. Cory Flemings (sic).
- 20 Q. Did he do a good job?
- 21 A. No, ma'am.
- 22 Q. Do you feel like you talked with him enough?
- 23 A. Yes, he was.
- 24 Q. You talked with him enough?
- 25 A. Yeah, it wasn't good.

1 Q. It wasn't good.

2 Okay. I got you.

3 A. He railroaded me.

4 Q. What do you feel like he did wrong?

5 A. Everything.

6 Q. So, you feel like he railroaded you.

7 What do you mean---

8 A. Everything.

9 Q. ---by that?

10 A. He railroad me real bad.

11 Q. What does that mean?

12 What does it mean that you were railroaded?

13 A. He didn't do his job.

14 Q. Okay.

15 A. It was ineffective.

16 Q. So, do you feel like he should of gotten you a better  
17 plea offer?

18 A. Yes, ma'am.

19 Q. And why do you feel like that?

20 A. Cause he didn't do what he's suppose to do. I asked  
21 him how much. Like I didn't want it but he wouldn't, he  
22 wouldn't go.

23 Q. Okay. And you wanted him to ask for a lesser  
24 included jury instruction?

25 A. Yes, I wanted my money back.

1 Q. And why did you want a lesser included jury  
2 instruction?

3 A. I can't hear you.

4 Q. why did you want a lesser included jury instruction?

5 A. why did I --?

6 Q. want the jury to be charged on a lesser offense like  
7 assault?

8 A. I can't hear good. I can't.

9 Q. why did you want the jury to be charged on a lesser  
10 offense like assault instead of deciding whether you did  
11 attempted murder?

12 A. He didn't ask for it.

13 Q. Did you want him to?

14 A. Yes.

15 Q. Okay. And what difference do you think that would of  
16 made?

17 A. well, it wasn't no attempted murder.

18 Q. So, you thought you would of been found guilty of a  
19 lesser offense?

20 A. Sure. I know I would of.

21 Q. And you said there was a conflict in this case,  
22 right?

23 A. Yes, ma'am---

24 Q. Can you---

25 A. ---it was a conflict.

1 Q. ---explain what that is?

2 A. Yes, him and my stepson went to school together.  
3 They was friends. They played basketball and all  
4 together.

5 The solicitor -- my victim's aunt was a school  
6 teacher. She taught all of them at, at, at -- the  
7 prosecutor, she taught her. They, they -- she taught all  
8 of them and some of the jurors. She went to school and,  
9 and -- she was a school teacher.

10 Q. And how do you feel that that impact---

11 A. That's a conflict of interest. It should of been  
12 anyway.

13 Q. And how do you feel like that hurt you at trial?

14 A. Because they found me guilty of a charge that it  
15 wasn't. Wasn't nobody hurt.

16 Q. You feel like you wouldn't of been found guilty if it  
17 wasn't for that conflict?

18 A. Well, that's -- yes.

19 Q. Do you recall them mentioning that the relationship  
20 between you and one of the victims was abusive?

21 A. I---

22 Q. Do you remember that?

23 You don't remember that?

24 A. I can't hear. I'm --.

25 Q. Do you remember when they said the, the relationship

1 you had with one of the victims was abusive?

2 Do you remember them mentioning that?

3 A. Yeah.

4 Q. What do you feel like counsel should of done when  
5 that happened?

6 A. She, she -- was abusive?

7 I -- no, she, she, she, she said that but I, I ain't  
8 never abused her.

9 Q. Do you think that the -- your attorney should of  
10 asked for the jury to be kind of given an instruction?

11 A. Yes.

12 Q. Okay.

13 A. I can't hear nothing.

14 Q. And, in your first application, you mentioned that  
15 one of the jurors was biologically related to the alleged  
16 victim.

17 Do you---

18 A. Yeah.

19 Q. ---recall that?

20 A. Yeah, the jury -- the head of the juryman, he was  
21 a -- he was related to my victim. He was related to her.

22 Q. And how do you feel like that hurt you?

23 A. Because they, they -- all of them working for the,  
24 for the victims.

25 Q. Did you have an issue with the indictments in this

1 case?

2 A. Did I have what?

3 Q. You raised an allegation about how counsel should of  
4 objected to the indictments.

5 A. Yes, he should of. He should of. He should of asked  
6 for some -- for a lesser included offense and he didn't,  
7 you know. All he wanted was attempted murder and, and,  
8 and that, that -- the chief of police said nobody was hit,  
9 you know. So they charge me with attempted murder.

10 Q. Is there anything you wanted counsel to investigate  
11 in this case that he didn't investigate?

12 A. Well, they, they know I wasn't trying to hurt nobody,  
13 you know. I was -- I drunk -- I was drunk, you know, and  
14 they didn't, they didn't do no investigation. They didn't  
15 check my -- see if I was, you know, how much alcohol I  
16 had.

17 They found the bottle and -- but they didn't do  
18 nothing. They said -- they didn't smell nothing. I mean  
19 I think I was railroaded real bad.

20 Q. And what do you think counsel should of done with the  
21 fact that you were drunk?

22 A. Do what now?

23 Q. What do you think counsel should of done with the  
24 fact that you were drunk?

25 Did you want him to raise it as a defense?

1 Did you want him to use that to keep your statement  
2 out?

3 what did you want?

4 A. well, they should of -- they know I was -- it was  
5 drunk talk. I mean, you know, they should of wait and  
6 questioned me later, you know.

7 They found the bottle, you know, and, you know, I  
8 told them I drunk it all, you know. It was -- I forgot  
9 the name of it now. I was -- I was about 70 something  
10 years old then, seventies, 75, 65, something like that.

11 Q. Okay. Are there any other issues that you want to  
12 raise right now?

13 A. I want to --?

14 Q. Any other issues concerning ineffective assistance of  
15 counsel and prosecutorial misconduct you want to raise  
16 right now?

17 A. well, yeah.

18 Q. Okay.

19 A. I want to raise anything I can raise now. I'm 78  
20 years old. I'm, I'm, you know, tired of doing time now.

21 Q. But you wanted counsel to request an assault and  
22 battery high and aggravated charge and a first degree  
23 charge.

24 Is that correct?

25 A. I wanted -- that's indicted but I couldn't get it

1 because, you know --.

2 Q. Do you feel like counsel reviewed discovery enough  
3 with you?

4 A. Yeah.

5 Q. Is there anything else that happened at your trial  
6 that you feel like counsel should of done a better job at?

7 A. Yes, he should of did a better job.

8 Q. Okay.

9 A. A whole lot. I just can't --

10 Q. Yeah.

11 A. -- think of it now because you caught me offguard.

12 Q. Gotcha.

13 Okay. Nothing further, Your Honor.

14 THE COURT: All right. Cross-examination.

15 MS. DIXON: May it please the Court.

16 This will be brief and I'm gonna approach, judge,  
17 cause I think he's having some trouble hearing.

18 THE COURT: I understand. That's fine.

19 CROSS-EXAMINATION

20 BY MS. DIXON:

21 Q. Mr. Gardner, how are you today?

22 A. I'm fine.

23 Q. Is it okay if I -- good to hear me from here?

24 Okay. Just briefly, you said Mr. Fleming went to  
25 school with your stepson.

1 Is that correct?

2 A. Yeah, he did do that.

3 Q. Mr. Fleming went to school with your son -- stepson.

4 That's your allegation?

5 A. Ma'am?

6 Q. Did you say today that Mr. Fleming went to school

7 with your stepson?

8 A. Yes, stepson.

9 Q. where?

10 what school?

11 A. That, that was her -- that was her girlfriend's son.

12 Q. Uh-huh. (Affirmative).

13 where?

14 what school?

15 A. They went to the -- all of them went to the same

16 school.

17 Q. which?

18 what school?

19 A. Hampton.

20 Q. Hampton?

21 A. Yes.

22 Q. So, they all lived in Hampton County?

23 A. Yes, ma'am.

24 Q. Did the victims---

25 A. The solicitor and all of them --

1 Q. Did the---

2 A. -- played basketball together and all.

3 Q. Did the victims also live in Hampton County?

4 A. Uh-huh. (Affirmative).

5 Q. Okay. And that's where she was a teacher---

6 A. Yes.

7 Q. ---was Hampton County?

8 A. And, and the aunt was a school teacher. She taught  
9 all of them.

10 Q. Okay. Okay. Okay. And do you know which jurors  
11 that you think knew all these people?

12 A. Some of the jurors.

13 Q. Do you know their names?

14 A. Some of the jurors went to school with her. She was  
15 a---

16 Q. Would it surprise you that no one stood when the  
17 judge asked the jury panel---

18 A. Yeah.

19 Q. ---if anyone knew the solicitor?

20 A. Yeah, that was ineffective.

21 Q. Okay. Well, if the record reflects that no one  
22 stood, would you disagree---

23 A. I can't hear---

24 Q. ---with that?

25 A. ---too good.