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PERSONAL INJURY • CRIMINAL DEFENSE • WORKERS COMPENSATION • CIVIL LITIGATION

April 3, 2014

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APR - 8 2014

S.C. Supreme Court

Daniel E. Shearhouse, Clerk of Court
The Supreme Court of South Carolina
1231 Gervais Street
Columbia SC 29201

Re: Supplement to Appendix
Jimmy Lee Williams v. The State – Appellate Case No. 2013-001577

Dear Mr. Shearhouse:

Enclosed please find for filing an original and 1 (one) bound copy of the *Petitioner's Supplement to Appendix* and *Certificate of Service*.

By copy of this correspondence, I am serving Assistant Attorney General Joshua L. Thomas of the SC Attorney General's Office, a copy of same.

Should you have any questions, please feel free to contact me.

Sincerely,

THE MOBLEY LAW FIRM, P.A.

John Mobley, Esquire

JM/clh

Enclosures

cc: Joshua L. Thomas, Assistant Attorney General

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APR - 8 2014

S.C. Supreme Court

Appeal from Horry County

Honorable Larry B. Hyman, Jr., Circuit Court Judge

APPELLATE CASE NO. 2013-001577

JIMMY LEE WILLIAMS,

PETITIONER,

v.

THE STATE,

RESPONDENT.

PETITIONER'S SUPPLEMENT TO APPENDIX

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ATTORNEY FOR THE PETITIONER

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1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2 COUNTY OF HORRY) INDICTMENT NO. 08-GS-26-1689
INDICTMENT NO. 08-GS-26-1690

3
4 THE STATE OF SOUTH CAROLINA,)
5 PLAINTIFF,)

6 -VS-)

7 JIMMY LEE WILLIAMS &)
8 ANTHONY QUENTIN SCOTT,)
9 DEFENDANTS.)

TRANSCRIPT OF RECORD

10 Monday, Wednesday
11 Thursday & Friday
12 Nov. 10, 12, 13 & 14,
2008, Conway, S. C.

13 B E F O R E:.

14 HONORABLE EDWARD B. COTTINGHAM, JUDGE AND A JURY

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

16 LAWRENCE R. FILIBERTO, ESQUIRE
17 AND
18 GEORGE HENRY DEBUSK, JR., ESQUIRE
Assistant Solicitors, Fifteenth Judicial Circuit
Attorneys for the State

19 PAUL TAYLOR, ESQUIRE
20 Attorney for the Defendant
Jimmy Lee Williams
21 AND
22 CHARLES DAVID BARR, ESQUIRE
Attorney for the Defendant
Anthony Quentin Scott

23
24
25 LINDA W. MCCALL
OFFICIAL REPORTER

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MONDAY, NOVEMBER 10, 2008

(The Court convenes the trial of this case with all parties present in the courtroom.)

REMARKS OF THE COURT

THE COURT: Good morning, ladies and gentlemen. Please be seated.

Ladies and gentlemen of the jury panel, ah, I'm sure Judge Baxley welcomed all of you to a term of General Sessions Court. Let me join in that understanding that all of you are here at considerable inconvenience to your family, to your personal lives and to your daily pursuits but I tell you that, ah, your services in this term of court are absolutely required by we say, and properly so, that an individual shall not be deprived of his or her liberty, not for one day, until and unless twelve folks have found him guilty beyond a reasonable doubt.

That concept protects your liberty. With equal importance it protects mine.

By way of introduction, I'm Judge Cottingham from Bennettsville, South Carolina. During the past twenty-five years I've been here on many occasions and always look forward to being here.

This young fellow to my left is my law clerk, Timothy Griffith. I've always referred to him as my law clerk but after he passed the Bar last Friday he said I could call him counselor at law. So, if you see him, this is my counselor at law. He was my

1 law clerk.

2 But, anyway, I'm glad to have Timothy and so glad that he, ah,
3 and congratulate him publicly now on having passed the Bar.
4 Timothy will be with me, of course, during the rest of the year.

5 Now, in a moment, we are going to select twelve jurors and two
6 alternates to try these cases. Inasmuch as tomorrow is a holiday,
7 the fourteen folks selected will be requested to come back here at
8 9:30 Wednesday morning, the day after. We will not, of course, be
9 working on the Veteran's Holiday.

10 Alright, Solicitor, call your case, please.

11 MR. FILIBERTO: Your Honor, the State would call the case,
12 State of South Carolina vs. Anthony Quentin Scott and Jimmy Lee
13 Williams.

14 THE COURT: Alright.

15 Both are indicted for murder?

16 MR. FILIBERTO: That's correct, sir.

17 THE COURT: And how now represents the defendant Jimmy Lee
18 Williams?

19 MR. TAYLOR: I do, Your Honor.

20 THE COURT: Would you introduce yourself for the record?

21 MR. TAYLOR: Yes, sir, Your Honor.

22 My name is Paul Taylor, an attorney here in Conway, at 4th
23 Avenue.

24 THE COURT: Is the defendant Jimmy Lee Williams ready for
25 trial?

JURY VOIR DIRE

10

1 MR. TAYLOR: He is, Your Honor.

2 THE COURT: For the record, who represents Anthony Quentin
3 Scott?

4 MR. BARR: Judge, I represent Mr. Scott.

5 THE COURT: Identify yourself for the record.

6 MR. BARR: Yes, sir.

7 Ladies and gentlemen, my name is Charles David Barr. I
8 practice law in Kingstree, South Carolina. I practice under the
9 firm name of Barr and Barr. I practice with my brother Verdell.
10 Our office is at located at 292 West Main Street in Kingstree.

11 I represent Mr. Anthony Quentin Scott.

12 THE COURT: Are you ready for trial?

13 MR. BARR: Yes, sir, Judge.

14 JURY VOIR DIRE

15 THE COURT: Alright.

16 Ladies and gentlemen of the jury, the State of South Carolina
17 has called the case of Jimmy Lee Williams who is indicated for
18 murder.

19 The State has called - - the State has called the case against
20 Anthony Quentin Scott who stands indicted for murder.

21 To these indictments both defendants specifically plead not
22 guilty thereby placing the burden of proof upon the State of South
23 Carolina of proving them guilty if they can to your satisfactions
24 beyond a reasonable doubt unanimously.

25 Now, at the outset I tell you that these defendants and all

JURY VOIR DIRE

1 defendants in South Carolina come to court based upon an
2 indictment. The allegations in these indictments is no evidence
3 whatsoever. These are just simply the allegations that the State
4 must prove to your satisfaction beyond a reasonable doubt, these
5 defendants having specifically pled not guilty to these
6 indictments.

7 Now, ladies and gentlemen, I'm about to ask of you certain
8 questions concerning these two cases. There are no wrong answers
9 for you to give. I'm simply trying to determine whether or not you
10 have any knowledge concerning the facts and circumstances of this
11 case or if any of you have formed or expressed an opinion
12 concerning these cases.

13 I tell you from the outset that there's nothing wrong with you
14 having viewed, perhaps, or listened to anything about these cases
15 but my interest is whether or not you have formed or expressed an
16 opinion and whether or not you may have some bias either against
17 the State of South Carolina or the defendants.

18 My inquiry is to determine, and I'm sure that you - - that you
19 will. I want twelve jurors who can say upon their oath, "Judge,
20 I have no bias or interest in the case. I will base my verdict on
21 the law and evidence heard in this courtroom and from no other
22 place."

23 Now, I'm going to read to you the allegations in these
24 indictments as to both defendants, and they are allegations only.
25 I read you these allegations so that you can respond appropriately

1 to my following questions.

2 The allegations are as against Anthony Quentin Scott did in
3 Horry County on or about March 8th of 2007 willfully, feloniously
4 and intentionally kill the victim, Efrain Rosado, with malice
5 aforethought, either expressed or implied, by means of gunshot and
6 that the victim did die as a proximate result thereof on March 8,
7 2007.

8 The allegations are as against Jimmy Lee Williams are similar
9 in that it alleges that Jimmy Lee Williams did in Horry County on
10 or about the same date, March 8, 2007, willfully, feloniously and
11 intentionally kill the victim, Efrain Rosado, with malice
12 aforethought, either expressed or implied, by means of gunshot and
13 the victim did die as a proximate result thereof on the same date;
14 to-wit: March 8th of 2007.

15 Now, this is a case where the jury will not be sequestered and
16 this is a case that we will conclude, certainly, by the end of this
17 week.

18 Now, my first inquiry is are any of you related by blood or
19 marriage by Anthony Quentin Scott. If so, please stand.

20 Do any of you have any close personal relationships with
21 Anthony Quentin Scott as a neighbor, close friend of his family,
22 co-worker, church member? How many of you in this panel know
23 Anthony Quentin Scott in any capacity whatsoever? Please stand.

24 Yes, ma'am. May I have your name?

25 MS. JOHNSON: I know his mom.

JURY VOIR DIRE

1 THE COURT: Ma'am?

2 MS. JOHNSON: I know his mom. I work with her. I know his
3 mom.

4 THE COURT: Ma'am?

5 MS. JOHNSON: I know his mom, and I've worked with her about
6 five years.

7 THE COURT: Are y'all close friends?

8 MS. JOHNSON: I'm her co-worker.

9 THE COURT: Co-worker with her?

10 MS. JOHNSON: Yes, sir.

11 THE COURT: Would that knowledge impact on your ability to
12 be a fair juror in this case?

13 MS. JOHNSON: Yeah, because I know her. You know what I
14 mean? Just as a worker we were close.

15 THE COURT: Close friends?

16 MS. JOHNSON: I know her, and I know her kids as they growing
17 up for five years.

18 THE COURT: And you are saying that that would impact on
19 your ability to be a fair juror in this case?

20 MS. JOHNSON: Yes. I rather not to.

21 THE COURT: I would excuse you for this case.

22 Thank you.

23 COURT REPORTER: Your Honor, I need her name and number.

24 THE COURT: May I have your name, please?

25 MS. JOHNSON: My name is Sandy Johnson.

1 THE COURT: And your juror number?

2 MS. JOHNSON: 204.

3 THE COURT: Alright. You may be seated. Thank you.

4 Now, with reference to Jimmy Lee Williams, are any of you
5 related by blood or connected by marriage with Jimmy Lee Williams?
6 If so, please stand.

7 Do any of you have any close relationships with Jimmy Lee
8 Williams or - - or his family such as friend, neighbor, co-worker,
9 church membership, anything?

10 How many of you know Jimmy Lee Williams in any capacity
11 whatsoever, please stand?

12 The victim in this case is Efrain Rosado, R-o-s-a-d-o. Am I
13 pronouncing it correctly, Rosado?

14 MR. FILIBERTO: That's correct, Your Honor.

15 THE COURT: Are any of you related by blood or connected
16 with the deceased Efrain Rosado? Do any of you have any close
17 personal relationships previously with this deceased or his family?
18 If so, please stand.

19 How many of you know Efrain Rosado or any member of his
20 family? If so, please stand.

21 This allegedly - - this incident occurred on March 8, 2007.

22 Would any of you have seen anything on the tv about or read
23 anything in the paper about it? That would not necessarily
24 disqualify you but I would need to make further inquiry. Any of
25 you read or heard anything about this case?

1 Have any of you for any reason formed or expressed an opinion
2 with reference to any issue in this case or to the guilt of anyone?

3 Now, this case is allegations of murder, and I'm going to ask
4 of you is anyone aware or conscious of any bias or prejudice for or
5 against the State or for or against the defendant. In that
6 connection let me tell you what I mean.

7 Some years ago I was trying a young man for felony DUI, it
8 having been alleged that while drunk driving he killed a young
9 girl. I asked the question, "Does anybody have any biases or
10 prejudices as for or against the defendant?"

11 A lady got up and said, "Judge, I can't be fair to him. My
12 daughter was killed by a drunk driver, and I just can't be fair to
13 somebody having been charged with that."

14 And, of course, I dismissed her, and I appreciated her
15 concern.

16 I then asked the same panel, "Any of you have any bias or
17 prejudice against the State of South Carolina or the Solicitor's
18 Office?"

19 A gentleman got up in the back corner and said, "Judge, I
20 can't be fair to them." He said, "They tried my son three times
21 for a similar event prior to a jury finding him not guilty. I
22 can't be fair to the State."

23 And so it is that I ask of you this question. Do any of you
24 have such biases or prejudices for any reason that you feel that
25 you can't be fair to the State of South Carolina and equally fair

1 to these defendants on charge for murder for which they have pled
2 not guilty? Anybody?

3 Come forward, please. Let's discuss it privately. Cut this
4 off.

5 First, for the record, may I have your name, sir?

6 MR. GEATZ: Yes. Norman Geatz.

7 THE COURT: May I have your juror number?

8 MR. GEATZ: 135.

9 THE COURT: 135.

10 Now, what would you tell me?

11 MR. GEATZ: Back in 1986 I was charged with this same
12 crime. Went through six weeks of court.

13 THE COURT: And that - - that relieves you what, what
14 position?

15 MR. GEATZ: With what happened to me, I wasn't anywhere
16 near what happened that they arrested me for, and the cops called
17 me a liar. The prosecutors did the same thing.

18 THE COURT: So, you're saying you can't be fair to them.

19 MR. GEATZ: Not for this one.

20 THE COURT: I'm going to excuse you for this case. Thank
21 you, sir.

22 Now, you'll remain because you may be selected for some other
23 case this week.

24 Alright, sir.

25 Does anybody else have any reason whatever to feel that they

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1 cannot be fair if selected in the trial of this case?

2 Yes, ma'am, come forward, please.

3 Gentlemen, you may join me.

4 May I have your name?

5 MS. LANE: Madeline Lane.

6 THE COURT: May I have your juror number?

7 MS. LANE: 231.

8 THE COURT: You whisper to me a little bit.

9 MS. LANE: I was a victim - - I served on a murder trial
10 before, and I can't do it again.

11 THE COURT: You can't serve on a murder case?

12 MS. LANE: Not again.

13 THE COURT: I'm going to excuse her for both sides.

14 Thank you, ma'am.

15 MS. LANE: Okay.

16 THE COURT: Anyone else?

17 Now, ladies and gentlemen, is there anyone among you who
18 cannot give both the State of South Carolina and these two
19 defendants a fair trial if selected?

20 Alright. The State of South Carolina is represented by the
21 Solicitor's Office. Do any of you have any close friends or
22 relatives working with the Solicitor's Office?

23 Have any of you been a victim or a witness for the Solicitor's
24 Office within the past year, please stand?

25 The - - yes, ma'am, come forward. Come forward, please.

1 We can be on the record here.

2 May I have your name?

3 MS. LINTA: Cynthia Linta.

4 THE COURT: And juror number?

5 MS. LINTA: 244.

6 THE COURT: And what is your response, please?

7 MS. LINTA: I just didn't know if it would be a conflict.

8 I do know Greg Hembree very well. He's a good friend of mine.

9 Would that be a conflict?

10 THE COURT: Well, his office is prosecuting this - - this
11 case. The question is will the fact that you know the Solicitor
12 who's office is prosecuting that case, will that impact on your
13 ability to be fair to these defendants?

14 MS. LINTA: I don't think so. I think I can still be fair
15 but I wanted to disclose that.

16 THE COURT: That's fine. You say you are a friend of Greg
17 Hembree.

18 MS. LINTA: I know him.

19 THE COURT: Well, his office is prosecuting. He's not one
20 of these attorneys in this case though his deputies are.

21 If you telling me under your oath that you can set that aside
22 and base your verdict on the law and evidence in this case, I find
23 you qualified, and that's what you're saying.

24 MS. LINTA: Yes, sir.

25 THE COURT: I thank you for calling that to my attention.

1 MS. LINTA: Thank you.

2 THE COURT: Now, the defendant is represented by Mr. Paul
3 Taylor, the defendant Williams. Are any of you clients of Mr.
4 Taylor or have you been in the immediate past?

5 You may be seated.

6 Mr. Charles Barr of the Kingstree Bar represents the defendant
7 Scott. Any of you clients of this gentleman or have you been in
8 the immediate past?

9 Alright.

10 Now, come forward, counsel only.

11 Is there any question about those I've dismissed for cause?

12 MR. TAYLOR: No, sir.

13 MR. BARR: No, sir.

14 MR. FILIBERTO: No, sir.

15 THE COURT: Let the record reflect that no - - no - - no
16 contest regarding those I have dismissed for cause.

17 Now, any other questions required by the State?

18 MR. FILIBERTO: None by the State.

19 THE COURT: Sir.

20 MR. FILIBERTO: None by the State.

21 THE COURT: How about for the defendant? First let me say
22 the defendant Williams?

23 MR. BARR: Your Honor, I've got requests for questions.

24 THE COURT: Let me see. I've probably covered them but
25 we'll see.

1 MR. BARR: You haven't covered them all.

2 THE COURT: Alright. Let's see.

3 Which ones you think I have not covered, Mr. Barr?

4 MR. BARR: I don't think you covered number one.

5 THE COURT: I will do number four. I see what you want.
6 I'll do it in a general sort of way.

7 Now, ladies and gentlemen, let me ask you this.

8 Has any member of this jury panel either been a victim of a
9 violent crime or had a close personal family member as a victim
10 other than those who've come forward before? Anybody else have -
11 - just please stand? If anybody has been a victim of a violent
12 crime or a close member of your family been a victim?

13 Yes, ma'am, come forward, please.

14 Gentlemen, you may go back to your desk.

15 Good morning. May I have your name, please?

16 MS. MANNING: Lorraine Manning.

17 THE COURT: And your juror number?

18 MS. MANNING: 2-5-3.

19 THE COURT: And what is your response with reference to
20 violent crimes?

21 MS. MANNING: My son was attacked and stayed in the hospital
22 a very long time.

23 THE COURT: How long ago was that?

24 MS. MANNING: Nine years ago.

25 THE COURT: Ma'am?

JURY VOIR DIRE

1 MS. MANNING: Nine years ago.

2 THE COURT: Would that affect your ability to be fair in
3 this case where the allegations are murder?

4 MS. MANNING: I think so.

5 THE COURT: You think it - - I will excuse you.

6 Thank you. That's what I needed to know.

7 Alright. Anyone else?

8 Those that I have excused from this case, of course, will
9 remain in the panel for some other cases either civil or criminal
10 that may be called.

11 Do any of you, this is for my information, really, have any
12 close personal friends working in law enforcement? If so, please
13 stand. Close personal friends or family members for that matter?

14 Okay. We'll start with this gentleman to my left. May I have
15 your name?

16 MR. MISHOE: Bobby Mishoe.

17 THE COURT: And what is your response?

18 MR. MISHOE: My first cousin is an Horry County Police
19 Officer.

20 THE COURT: Your first cousin is an Horry County Police?

21 Is this a city or Horry County case?

22 Pardon me?

23 MR. FILIBERTO: It's a county case, Your Honor.

24 THE COURT: Sir?

25 MR. FILIBERTO: Your Honor, this is a county case.

1 THE COURT: Horry County?

2 MR. FILIBERTO: Yes, sir.

3 THE COURT: And your first cousin is an Horry County?

4 MR. MISHOE: Yes, sir.

5 THE COURT: Would that impact on your ability to be a fair
6 juror?

7 MR. MISHOE: No, sir.

8 THE COURT: What position does your first cousin hold?

9 MR. MISHOE: I haven't asked him.

10 THE COURT: Sir?

11 MR. MISHOE: You mean what is his title?

12 THE COURT: What position does he hold? Sir?

13 MR. MISHOE: He's a - - he's just - - he's in the car. I'm
14 not sure what his position is.

15 THE COURT: You are satisfied, now, that - - this is an
16 Horry County case but you are satisfied that the fact that your
17 first cousin works for them would not impact on your ability to be
18 a fair juror?

19 MR. MISHOE: Yes, sir.

20 THE COURT: I think so, too.

21 Yes, sir, your name?

22 MR. GRANTON: My name is Michael Granton.

23 THE COURT: And your response?

24 MR. GRANTON: I'm actually a retired career law enforcement
25 officer from New York City, and a lot of my personal friends are

JURY VOIR DIRE

23

1 police officers.

2 THE COURT: Here?

3 MR. GRANTON: No, not here in Horry County. In New York
4 City.

5 THE COURT: Okay.

6 This is a murder case where the pled - - the defendants have
7 pled not guilty. Would the fact that you have been a former
8 police officer affect your ability to be fair in this case?

9 MR. GRANTON: No, Your Honor, I don't believe it will.

10 THE COURT: You are saying to me under your oath as a
11 juror, you will base your verdict on the law and evidence in this
12 case?

13 MR. GRANTON: Yes, sir.

14 THE COURT: You're qualified if selected.

15 Thank you, sir. Have a seat.

16 May I have your name, please?

17 MS. KEENE: Carmaletia Keene.

18 THE COURT: Yes, ma'am. You - - -

19 MS. DEFEO: Michelle Defeo.

20 THE COURT: And what is your response?

21 MS. DEFEO: I have a close family friend and I - - -

22 THE COURT: Ma'am?

23 MS. DEFEO: I have a close family friend, and I drove her
24 to the Horry County Detention Center.

25 THE COURT: Horry what?

JURY VOIR DIRE

24

1 MS. DEFEO: Horry County Detention Center.

2 THE COURT: Would that affect your ability to be a fair
3 juror in this case?

4 MS. DEFEO: No.

5 THE COURT: Thank you. Be seated?

6 MR. BARR: What was her number, Judge?

7 THE COURT: May I have your juror number?

8 MS. DEFEO: I'm 94.

9 THE COURT: 94.

10 At the back, your name, please?

11 MS. KEENE: Carmaletia Keene, Juror #217.

12 THE COURT: Yes, ma'am?

13 MS. KEENE: I have a cousin that's a deputy in DeKalb
14 County, Georgia.

15 THE COURT: Does that affect your ability to be a fair
16 juror in this case?

17 MS. KEENE: No.

18 THE COURT: I wouldn't think so. Thank you, but I thank
19 you for responding.

20 Yes, sir, your name and jury number?

21 MR. MOSS: Jay Moss, 279.

22 THE COURT: Yes, sir.

23 MR. MOSS: Ah, close personal friends to Sheriff Thompson.

24 THE COURT: Sheriff Thompson?

25 Would that - - would the fact that you know or like Sheriff

1 Thompson affect your ability to be a fair juror in this case?

2 MR. MOSS: No, sir.

3 THE COURT: I think not.

4 Thank you, though.

5 Your name, sir?

6 MR. AWALT: Gary Awalt, 19.

7 THE COURT: Yes, sir.

8 MR. AWALT: The gentleman seated to my left.

9 THE COURT: Who is that?

10 The one seated here?

11 Would that affect your ability to be a fair juror?

12 MR. AWALT: No, sir.

13 THE COURT: Thank you.

14 Yes, sir.

15 MS. BENEDETTO: Denise Benedetto, #27. My husband is a
16 retired police lieutenant from New Jersey.

17 THE COURT: Would that affect your ability to be a fair
18 juror in this case?

19 MS. BENEDETTO: Not at all.

20 THE COURT: I think not.

21 Yes, sir?

22 MR. HORTON: Daniel Horton, Juror #189.

23 I've got a brother-in-law who is a state trooper, my sister's
24 husband, and he's a patrol officer. My wife is Judy Edwards of
25 the Horry County.

1 THE COURT: Would any of this affect your ability to be a
2 fair juror in this case?

3 MR. HORTON: No, sir.

4 THE COURT: Now, gentlemen, let me ask you one more time.
5 The counsel for the State and the defendant desire from your number
6 twelve jurors who have no biases or prejudices for any reasons,
7 twelve jurors who can say upon their oath, "Judge, if I am
8 selected, my verdict is going to be on the law and evidence heard
9 in this case and for no other reason."

10 Now, if any of you have any reason to suggest that you could
11 not be a fair juror if selected in the trial of these two cases,
12 please stand and I'll dismiss you.

13 Alright, sir.

14 Any further questions from the State?

15 MR. FILIBERTO: Nothing from the State, Your Honor.

16 THE COURT: Counsel for the defendant, Williams?

17 MR. TAYLOR: Nothing, Your Honor.

18 THE COURT: Counsel for the defendant, Scott?

19 MR. BARR: Judge, number eight on our requests.

20 THE COURT: That's too broad. I'll ask if anybody - - any
21 member of your family been employed in the last five years in any
22 law enforcement capacity or any probation department or any
23 investigative unit, parole board. Does that answer your question
24 sufficiently, Mr. Barr?

25 MR. BARR: Ah, may we approach, Judge?

1 THE COURT: Yes, sir.

2 (Bench conference held off the record and in the presence of
3 the jury panel but outside the hearing of the jury panel.)

4 THE COURT: I will ask this.

5 Any of you or any member of your family employed or have been
6 in the last five years in any type of agency dealing with law
7 enforcement be it probation, anything?

8 THE COURT: Alright. Both of y'all have already stood.
9 So, that's fine.

10 You didn't stand before. What's your name?

11 MS. LESANE: Reva Lesane.

12 THE COURT: And what is your response?

13 MS. LESANE: I've got a nephew that's just last week - - -

14 THE COURT: What's your name?

15 MS. LESANE: Reva Lesane.

16 THE COURT: And jury number?

17 MS. LESANE: 240.

18 THE COURT: Would that impact on your ability to be fair in
19 this jury?

20 I think not.

21 Give me your response again, please.

22 MS. LESANE: Oh, I have a nephew who just got out of jail
23 last week on Wednesday from J. Reuben.

24 THE COURT: I see. Not employed. Just got out of jail.

25 MS. LESANE: Well, he was working but he - - -

1 THE COURT: I understand. Okay. Alright.

2 Alright, sir.

3 The record will reflect that on voir dire the question asked
4 whether any member of the jury panel or any member of their family
5 by blood or marriage is now employed or within the past five years
6 has been employed by the State of South Carolina. I conclude that
7 that question is overly broad and that that might include school
8 teachers, employment people or anywhere else but I have asked for
9 the record any body for the past five years been associated in any
10 capacity with any law enforcement agency and conclude that that is
11 proper.

12 The final question, though, again, one more time is this is an
13 indictment for murder to which both defendants have pled not
14 guilty. My inquiry is such that I just want to make sure that
15 there is nobody in here who cannot give both the State of South
16 Carolina a fair trial.

17 ~~I want to make sure that any juror in this courtroom can say~~
18 to me and you have said, "I will base my verdict on the law and
19 evidence in this case. I have no bias or prejudice for or against
20 the State or the defendants."

21 And you have indicated that you can, and I thank you for that.

22 I have excused those who for some reason feel like that they
23 cannot be fair and impartial.

24 Is the State now ready to select the jurors?

25 MR. FILIBERTO: The State is ready to proceed, Your Honor.

1 THE COURT: The State will have ten strikes. The - - Mr.
2 Williams will have ten strikes, and Mr. Scott will have ten
3 strikes.

4 MR. FILIBERTO: Your Honor, may we approach?

5 THE COURT: Yes, sir.

6 (Bench conference held off the record and in the presence of
7 the jury panel but outside the hearing of the jury panel.)

8 THE COURT: Ladies and gentlemen, there are some witnesses
9 that may be called from the State or the defendants. I'm going to
10 make just a general inquiry. Read them three at a time.

11 MR. FILIBERTO: Tim Troxel, Brad Townsend, Robert Deal.

12 THE COURT: Any of you related by blood or marriage or have
13 any special connection with those three?

14 Yes, sir. What's your connection?

15 MR. MOORE: I work with Child Protective Services. A lot
16 of my cases are referred or have been referred to Horry County

~~17 Police on occasion, and I have~~

18 THE COURT: I accept that as information. Thank you.

19 COURT REPORTER: I need a name and number, Your Honor?

20 THE COURT: May I have your name and number?

21 MR. MOORE: Edward Moore, 276.

22 THE COURT: Thank you, sir.

23 Yes, ma'am. Name and number.

24 MS. DEFEO: Michelle Defeo, 94. I - - I know Tim Troxel.

25 THE COURT: Ma'am?

1 MS. DEFEO: I know Tim Troxel.

2 THE COURT: Just know him?

3 MS. DEFEO: He's my brother's best friend.

4 THE COURT: Alright. I accept that as information.
5 Call the rest of them.

6 MR. BARR: Judge, now, what were the three names?

7 MR. FILIBERTO: The first three I read were Tim Troxel,
8 Brad Townsend and Robert Deal.

9 The next three would be Marnaquais Tumer, Rudy Carl Toomer and
10 Darius Orange.

11 THE COURT: Same inquiry. Anybody know these are have any
12 close personal relationships with any of these three witnesses?

13 This is for my information. None.

14 Go ahead.

15 MR. FILIBERTO: The next three would be Steve Clark,
16 Kenneth Whitler and Maryann Shehan.

17 THE COURT: Anybody?

18 Alright, sir. Go ahead.

19 MR. FILIBERTO: The last two are Fred Rash and Dr. Edward
20 Proctor.

21 THE COURT: Anybody clients of Dr. Edward Proctor?

22 Yes, sir, your name and number, please?

23 MR. WAKEFIELD: 397, Collins Wakefield.

24 THE COURT: And your response?

25 MR. WAKEFIELD: Dr. Proctor is a close friend, real close

JURY SELECTION

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1 friend.

2 THE COURT: Alright, sir. I accept that as information.
3 Your name and number, please?

4 MR. DALLIS: Bill Dallis, #86.

5 Steve Clark. I have a Steve Clark that works with me but I
6 don't know if that's the same one.

7 THE COURT: Alright, sir.

8 Alright. Thank you.

9 We now ready?

10 MR. Barr, are we ready, Mr. Taylor?

11 MR. TAYLOR: Yes, sir.

12 MR. BARR: Yes, sir, Judge.

13 THE COURT: Alright, sir.

14 Madame Clerk, please call the names.

15 JURY SELECTION

16 CLERK OF COURT: When I call your names, please come up

17 here. Stand right here and, um, I'll ask the State and I'll ask
18 the defense if they accept you.

19 Please bring your belongings with you.

20 CLERK OF COURT: 396, Rhonda Wainright.

21 What says the State?

22 MR. FILIBERTO: Please present the juror.

23 CLERK OF COURT: The defense?

24 THE COURT: We'll deal with Mr. Taylor first and then Mr.
25 Barr.

1 Mr. Taylor?

2 MR. TAYLOR: Court's indulgence, Your Honor.

3 Please present the juror.

4 CLERK OF COURT: Mr. Barr?

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

7 CLERK OF COURT: You're excused from this particular case.

8 #152, Michael Granton.

9 What says the State?

10 MR. FILIBERTO: Please present the juror.

11 CLERK OF COURT: What say the defense?

12 MR. TAYLOR: Please excuse the juror.

13 CLERK OF COURT: You're excused from this particular case.

14 163, Cynthia Hancock.

15 What say the State?

16 MR. FILIBERTO: Please present the juror.

17 CLERK OF COURT: What say the defense?

18 MR. TAYLOR: Please present the juror.

19 MR. BARR: Swear the juror.

20 CLERK OF COURT: Have a seat in the jury box, please.

21 #254, Barry Marion.

22 What say the State?

23 MR. FILIBERTO: Please present the juror.

24 CLERK OF COURT: Mr. Taylor?

25 MR. TAYLOR: Please present the juror.

1 CLERK OF COURT: Mr. Barr?

2 MR. BARR: Please excuse the juror from the trial of this
3 particular case.

4 CLERK OF COURT: You're excused from this particular case.
5 230, Bruce Lamont.

6 What say the State?

7 MR. FILIBERTO: Please present the juror.

8 CLERK OF COURT: Mr. Taylor?

9 MR. FILIBERTO: Please excuse the juror.

10 CLERK OF COURT: You're excused from this particular case.
11 192, Christopher Hudson.

12 What say the State?

13 MR. FILIBERTO: Please present the juror.

14 CLERK OF COURT: Mr. Taylor?

15 MR. TAYLOR: Please excuse him.

16 CLERK OF COURT: You're excused from this particular case.

17 ~~19, Gary Awalt.~~

18 MR. FILIBERTO: What number was that?

19 CLERK OF COURT: Number 19.

20 What say the State?

21 MR. FILIBERTO: Please present the juror.

22 CLERK OF COURT: Mr. Taylor?

23 MR. TAYLOR: Please present the juror.

24 CLERK OF COURT: Mr. Barr?

25 MR. BARR: Court's indulgence.

1 Seat the juror, please.

2 CLERK OF COURT: Have a seat in the jury box, please.
3 194, Ethel Hunt.

4 What say the State?

5 MR. FILIBERTO: Please present the juror.

6 CLERK OF COURT: Mr. Taylor?

7 MR. TAYLOR: Court's indulgence.

8 Please present the juror.

9 CLERK OF COURT: Mr. Barr?

10 MR. BARR: Swear this witness.

11 CLERK OF COURT: Beg your pardon?

12 MR. BARR: Swear her.

13 CLERK OF COURT: Have a seat in the jury box, please.
14 51, Karen Buffo.

15 What say the State?

16 MR. FILIBERTO: Please present the juror.

17 CLERK OF COURT: The defense, Mr. Taylor?

18 MR. TAYLOR: Court's indulgence.

19 Please excuse this juror, Your Honor.

20 CLERK OF COURT: You're excused from this particular case.
21 189, Daniel Horton.

22 What say the State?

23 MR. FILIBERTO: Please present the juror.

24 CLERK OF COURT: What says the defense, Mr. Taylor?

25 MR. TAYLOR: Please seat the juror, please.

JURY SELECTION

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1 CLERK OF COURT: Mr. Barr?

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

3 CLERK OF COURT: You're excused from this particular case.

4 90, Ricky Davis.

5 What say the State?

6 MR. FILIBERTO: Please excuse this juror.

7 CLERK OF COURT: You've been excused from this particular

8 case.

9 411, Christopher Williams.

10 What say the State?

11 MR. FILIBERTO: Please seat the juror.

12 CLERK OF COURT: The defense?

13 MR. TAYLOR: Please swear the juror.

14 CLERK OF COURT: Mr. Barr?

15 MR. BARR: Excuse the juror.

16 CLERK OF COURT: You're excused from this particular case.

17 127, Stacey Archer.

18 What say the State?

19 MR. FILIBERTO: Please present the juror. Please present

20 the juror.

21 CLERK OF COURT: What say the defense, Mr. Taylor?

22 MR. TAYLOR: Please excuse the juror.

23 CLERK OF COURT: You're excused from this particular case.

24 138, Mary Gilleland.

25 What say the State?

1 MR. FILIBERTO: Please present the juror.
2 CLERK OF COURT: What say the defense, Mr. Taylor?
3 MR. TAYLOR: Please excuse the juror.
4 CLERK OF COURT: You're excused from this particular case.
5 246, Carl Long.
6 What say the State?
7 MR. FILIBERTO: Please present the juror.
8 CLERK OF COURT: The defense?
9 MR. TAYLOR: I'm sorry. Can I have his number again?
10 CLERK OF COURT: 246..
11 MR. TAYLOR: Thank you.
12 Please - - please swear the juror.
13 MR. BARR: Seat the juror.
14 CLERK OF COURT: Have a seat in the jury box, please.
15 361, Norwood Steele.
16 What say the State?
17 MR. FILIBERTO: Please present the juror.
18 CLERK OF COURT: The defense?
19 MR. TAYLOR: Please present the juror.
20 MR. BARR: Swear him.
21 CLERK OF COURT: Have a seat in the jury box, please.
22 414, Irma Wilson.
23 What say the State?
24 MR. FILIBERTO: Please excuse this juror.
25 CLERK OF COURT: You're excused from this particular case.

JURY SELECTION

1 27, Denise Benedetto.

2 What say the State?

3 MR. FILIBERTO: I'm sorry. What's the number?

4 Please present the juror.

5 MR. TAYLOR: Excuse the juror.

6 CLERK OF COURT: You're excused from this particular case.

7 THE COURT: What juror was that, please?

8 CLERK OF COURT: That was 27.

9 261, Redana Mcclouth.

10 MR. FILIBERTO: I apologize. The number?

11 CLERK OF COURT: 261.

12 What say the State?

13 MR. FILIBERTO: Please present the juror.

14 CLERK OF COURT: The defense?

15 MR. TAYLOR: Court's indulgence.

16 Please seat the juror.

17 CLERK OF COURT: Mr. Barr?

18 MR. BARR: Seat the juror, please.

19 CLERK OF COURT: Have a seat in the jury box, please.

20 74, Jeralyn Corey.

21 What say the State?

22 MR. FILIBERTO: Please present the juror.

23 CLERK OF COURT: The defense, Mr. Taylor?

24 MR. TAYLOR: Madame Clerk, was that #70?

25 CLERK OF COURT: 74.

JURY SELECTION

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1 Please seat the juror.

2 CLERK OF COURT: Mr. Barr?

3 MR. BARR: I have the juror was transferred.

4 CLERK OF COURT: Sir?

5 MR. BARR: Was this juror transferred?

6 CLERK OF COURT: I don't have that information.

7 MR. BARR: Seat the juror.

8 CLERK OF COURT: Have a seat in the jury box, please.

9 208, Rickey Jones.

10 What say the State?

11 MR. FILIBERTO: Please present the juror.

12 CLERK OF COURT: What say the defense, Mr. Taylor?

13 MR. TAYLOR: Please seat the juror.

14 CLERK OF COURT: Mr. Barr?

15 MR. BARR: Swear the juror, please.

16 CLERK OF COURT: Beg your pardon?

17 MR. BARR: Swear him.

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

19 218, Georgia Kenny.

20 What say the State?

21 MR. FILIBERTO: Please present the juror.

22 CLERK OF COURT: The defense, Mr. Taylor?

23 MR. TAYLOR: Please present the juror.

24 CLERK OF COURT: Mr. Barr?

25 MR. TAYLOR: Court's indulgence, Your Honor.

JURY SELECTION

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1 MR. BARR: Excuse the juror from this trial.

2 CLERK OF COURT: You're excused from the case.

3 397, Collins Wakefield.

4 What say the State?

5 MR. FILIBERTO: Please present the juror.

6 CLERK OF COURT: The defense, Mr. Taylor?

7 MR. TAYLOR: I'd asked he be excused.

8 CLERK OF COURT: You're excused from this trial.

9 323, Antonio Rivera.

10 What say the State?

11 MR. FILIBERTO: Please present the juror.

12 CLERK OF COURT: The defense, Mr. Taylor?

13 MR. TAYLOR: Please present the juror.

14 CLERK OF COURT: Mr. Barr?

15 MR. BARR: Excuse the juror from the trial of this
16 particular case.

17 CLERK OF COURT: You're excused from this particular case.

18 406, Ronald Wentzel.

19 What say the State?

20 MR. FILIBERTO: Please present the juror.

21 CLERK OF COURT: What say the defense, Mr. Taylor?

22 MR. TAYLOR: Please present the juror.

23 CLERK OF COURT: Mr. Barr?

24 MR. BARR: Please swear the juror.

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

1 43, Brenda Brads.

2 What say the State?

3 MR. FILIBERTO: Please present the juror.

4 CLERK OF COURT: The defense, Mr. Taylor?

5 MR. TAYLOR: Please excuse the juror.

6 CLERK OF COURT: You're excused from this particular case.

7 359, Jackilyn Stavrakis.

8 What say the State?

9 MR. FILIBERTO: Please present the juror.

10 CLERK OF COURT: What say the defense, Mr. Taylor?

11 MR. TAYLOR: Please present the juror.

12 CLERK OF COURT: Mr. Barr?

13 MR. BARR: Seat the juror, please.

14 CLERK OF COURT: Have a seat in the jury box, please.

15 409, Linda Whiteside.

16 What say the State?

17 ~~MR. FILIBERTO: Please present the juror.~~

18 CLERK OF COURT: What say the defense, Mr. Taylor?

19 MR. TAYLOR: Please present the juror.

20 CLERK OF COURT: Mr. Barr?

21 MR. BARR: Swear Ms. Whiteside.

22 CLERK OF COURT: Have a seat in the jury box, please.

23 279, Jay Moss.

24 What say the State?

25 MR. FILIBERTO: Please present the juror.

JURY SELECTION

1 CLERK OF COURT: What say the defense, Mr. Taylor?

2 MR. TAYLOR: Please present the juror.

3 CLERK OF COURT: Mr. Barr?

4 MR. BARR: Excuse the juror from the trial of this case,
5 please.

6 CLERK OF COURT: You're excused from this particular case.
7 421, William Wright.

8 MR. BARR: What's that number again, Madame Clerk?

9 CLERK OF COURT: 421.

10 MR. BARR: 421. Okay.

11 What say the State?

12 MR. FILIBERTO: Present the juror, please.

13 CLERK OF COURT: What say the defense, Mr. Taylor?

14 MR. TAYLOR: Please present the juror.

15 CLERK OF COURT: Mr. Barr.

16 MR. BARR: Seat the juror, please.

17 CLERK OF COURT: Have a seat in the jury box, please.

18 THE COURT: Alright.

19 That will constitute the jury. We're going to select two
20 alternates. Strikes are two on each for each juror.

21 CLERK OF COURT: 115, John Farrelly.

22 What say the State?

23 MR. FILIBERTO: Please present the juror.

24 CLERK OF COURT: The defense, Mr. Taylor?

25 MR. TAYLOR: Please excuse the juror.

JURY SELECTION

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1 CLERK OF COURT: You're excused from this particular case.
2 86, William Dallas.
3 What say the State?
4 MR. FILIBERTO: Please excuse this juror.
5 CLERK OF COURT: You're excused from this particular case.
6 50, Stephen Brunson.
7 What say the State?
8 MR. FILIBERTO: Please present the juror.
9 CLERK OF COURT: The defense, Mr. Taylor?
10 MR. TAYLOR: Court's indulgence.
11 MR. BARR: Excuse the juror from the trial of this case,
12 please.
13 CLERK OF COURT: You're excused from this particular case.
14 *18, Charles Avery.
15 What say the State?
16 MR. FILIBERTO: Please present the juror.
17 CLERK OF COURT: The defense, Mr. Taylor?
18 MR. TAYLOR: Please present the juror.
19 CLERK OF COURT: Mr. Barr?
20 MR. BARR: Seat the juror, please.
21 CLERK OF COURT: Have a seat in the jury box, please.
22 THE COURT: Alright. We will now select juror number two.
23 CLERK OF COURT: 15, Kenneth Ashworth.
24 What say the State?
25 MR. FILIBERTO: Please present the juror.

REMARKS OF THE COURT

1 CLERK OF COURT: The defense, Mr. Taylor?

2 MR. TAYLOR: Please present the juror.

3 CLERK OF COURT: Mr. Barr?

4 MR. BARR: Please excuse the juror from the trial of this
5 particular case.

6 CLERK OF COURT: You're excused from this particular case.
7 357, Jeri Stalvey.

8 What say the State?

9 MR. FILIBERTO: Please present the juror.

10 CLERK OF COURT: What say the defense, Mr. Taylor?

11 MR. TAYLOR: Please present the juror, Your Honor.

12 CLERK OF COURT: Mr. Barr?

13 MR. BARR: Seat her, please.

14 CLERK OF COURT: Have a seat in the jury box, please.

15 THE COURT: Alright. That's twelve jurors and two
16 alternates.

17 Any motions concerning the composition of the jury? What say
18 the State?

19 MR. FILIBERTO: Nothing from the State, Your Honor.

20 THE COURT: What says Mr. Taylor?

21 MR. TAYLOR: Nothing, Your Honor.

22 THE COURT: What says Mr. Barr?

23 MR. BARR: No, sir, Judge.

REMARKS OF THE COURT

24 THE COURT: Ladies and gentlemen, you, of course, now will
25

1 constitute the jury in this case. The two alternates will always
2 sit in that seat. Upon your return on Monday - - Wednesday
3 morning I will designate the foreperson who will sit where you sit.
4 The rest of you may sit as you choose.

5 Now, we going start, obviously, tomorrow is a holiday, and the
6 courts recess as the courthouse. We'll start at 9:30 promptly
7 Wednesday morning.

8 In just a moment the Bailiff will show you your jury room.
9 When you return Wednesday morning, come to this jury room. Tell
10 the folks that you are a juror in this case and they will permit
11 you to come back to the secured area and proceed to the jury room.

12 You, please, will show them where it is.

13 Do not discuss this case anyone. Permit no one to discuss it
14 with you. Do not make any inquiries. Do not even discuss it
15 yourself.

16 In that regard, during the trial of the case, you must not
17 discuss the case among yourselves at any time until I have given
18 you the case for your deliberations.

19 Now, I'm going to send you to the jury room. If anybody has
20 any further questions, give it - - let the Bailiff know, and I'll
21 call you out here and answer them for you.

22 Other than that, after going to the jury room, you are
23 excused. Be back promptly, now, at 9:30 Wednesday morning. We
24 cannot start without all of you.

25 So, if you're late, you're not inconveniencing me,

REMARKS OF THE COURT

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1 necessarily, but you are inconveniencing your thirteen other
2 jurors. So, please be on time.

3 Have some coffee and donuts or ham biscuits for this jury on
4 Wednesday morning.

5 We'll have some refreshments for you. You are excused.

6 (Jury is released for the day to return Wednesday morning at
7 9:00 a.m. and departs the courtroom 12:49 p.m.)

8 THE COURT: What, ah, Madame Clerk, what instructions do we
9 have for the rest of the panel? Return Wednesday morning to the
10 jury room?

11 Tonight? You don't know for sure? Do you have any set
12 criminal cases? No civil.

13 My instructions are to ask that you respectfully call back
14 after 6:00 tonight for further instructions. You are now excused.
15 Please call in after six.

16 (The remaining jury panel is released to call in after 6:00
17 p.m. tonight and departs the courtroom.)

18 THE COURT: Alright. Gentlemen - - -

19 (The Court recesses the trial of this case until Wednesday at
20 9:30 a.m.)

WEDNESDAY, NOVEMBER 12, 2008

(The Court commences the trial of this case with all parties present in the courtroom.)

MOTIONS AND RULING OF THE COURT

THE COURT: What motions are concerns do we have prior to the jury coming out. I understand there may be one question on premarked exhibits.

What issues do you have, Mr. Taylor?

MR. TAYLOR: I've got a couple of motions I need to make, Your Honor. I beg the Court's indulgence.

THE COURT: The gentleman - - for the class' information, the gentleman on the right is Mr. Paul Taylor who represents the defendant Williams.

Mr. Barr of the Kingstree Bar represents the defendant Scott.

What - - what - - what's - - what matters do you have?

MR. TAYLOR: Your Honor, I just have a couple of motions, ah, beginning, Your Honor, I would move to sequester all witnesses concerning this case. On the State's side if there are any officers over there are witnesses, I'd move to sequester and have all witnesses concerning this matter outside the courtroom.

THE COURT: We will sequester all witnesses for the State and the defense. Obviously, the investigating officer would remain in the courtroom. So, let's make room for sequester of all witnesses.

Next?

1 MR. TAYLOR: Your Honor, regarding the investigating
2 officer, if he's going to testify, I'd ask that he be testifying
3 first. Otherwise, the whole purpose behind my motion to sequester
4 is - - -

5 THE COURT: No, sir. I - - I decline to tell the State of
6 South Carolina the order in which they're going to call their
7 witnesses. That would be totally improper.

8 MR. TAYLOR: Yes, sir.

9 THE COURT: I decline to do that.

10 What else?

11 They may or may not choose to.

12 MR. TAYLOR: Your Honor, my second motion is to suppress
13 certain photographs concerning this case. I do not know if the
14 State is going to call, excuse me, introduce these exhibits out of
15 the ones that they have over there but just out of the abundance of
16 precaution, I would move to suppress any statement or any - - not
17 statements, any photographs of the crime scene where there is
18 pictures of the victim.

19 THE COURT: Well, I'd have to take a look - - what's your
20 position on that? Can - - can that position be established by
21 evidence other than the necessity of pictures?

22 MR. FILIBERTO: Some photographs - - actually photographs
23 where the victim is present?

24 MR. TAYLOR: No. The crime scene photographs of any type
25 of the injuries themselves. In other words, the bullet wound.

1 Photographs of the blood pools.

2 THE COURT: I have excluded the bullet wound because as I
3 understand there is ample testimony as to that but I have not
4 excluded anything else.

5 Do you have any pictures?

6 MR. FILIBERTO: Some of the State's photographs do have,
7 I mean, there was a lot of blood at the scene, Your Honor, and they
8 do have blood.

9 THE COURT: I'm not going - - I'm not going to deny that.
10 I'll deny the actual picture of the victim with the bullet in his
11 forehead. I think that's prejudicial.

12 MR. TAYLOR: Yes, sir.

13 We discussed that in chambers. I just wanted to put it in
14 the record in case in case that's coming in.

15 THE COURT: That picture will not come in. Otherwise, I
16 will permit these others to come in. They are not prejudicial.

17 MR. FILIBERTO: Thank you, Your Honor.

18 THE COURT: Alright. What else?

19 MR. TAYLOR: Your Honor, there was also some photographs and
20 I do not think throughout this trial they may be introduced. They
21 may not but at the time of the day - - in other words, photographs
22 of my client's house where he's living, they have nothing to do
23 with this case. I'd move to suppress those.

24 Specifically, Your Honor, there were photographs of the inside
25 of the house, the kitchen, the laundry room.

MOTIONS AND RULING OF THE COURT

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1 THE COURT: You going to use those? They got to be
2 relevant, of course.

3 MR. FILIBERTO: And, Your Honor, at this point we don't
4 intend to. However, you know, the State would reserve the right to
5 request that.

6 THE COURT: I'll - - then I'll rule on that at the time.
7 I'll rule on it at that time.

8 MR. FILIBERTO: Thank you, Your Honor.

9 MR. TAYLOR: Thank you, Your Honor.

10 THE COURT: I don't see any prejudice to it but it's got to
11 be relevant to any issue in the case.

12 MR. FILIBERTO: Yes, sir.

13 THE COURT: What next?

14 MR. TAYLOR: Your Honor, I'm just trying to save time.

15 THE COURT: I understand.

16 MR. TAYLOR: Since we only have a short amount of time for
17 this case.

18 And - - and, Your Honor, there were statements made by Darius
19 Orange and Tina Scott. Those CD's were provided to me on Thursday
20 of last week. I tried to get those transcribed by today. I've
21 been informed that somebody is going to pick them up but the court
22 reporter that was transcribing them was unable to get it done
23 before this morning.

24 THE COURT: I don't understand that. We had a meeting on
25 this on Monday, and they were only ten minutes. Mrs. McCall could

1 have done it in five minutes.

2 MR. TAYLOR: Yes, sir.

3 THE COURT: So, what? What you want to do about it?

4 MR. TAYLOR: I want to exclude them, Your Honor.

5 THE COURT: No, I'm not going to exclude them.

6 MR. TAYLOR: Your Honor, I was given them Thursday after - -
7 Thursday of last week. This case is a year and a half old. I
8 tried to have them transcribed as the Court is aware. I gave them
9 to the court reporter that is used by this Court on a regular
10 basis, and it was told specifically to - - -

11 THE COURT: They relate to what witness?

12 MR. TAYLOR: They relate to Darius Orange and Tina Scott.
13 These two names were nowhere listed in my discovery throughout this
14 entire case that's a year and a half old. They're were given to me
15 on Thursday.

16 THE COURT: At what point in the trial are you going to
17 call those two witnesses?

18 MR. FILIBERTO: Actually, right now the State's intention
19 is to only call one of those, one of them. It would be today.

20 THE COURT: Well, what - - Fran, your Deputy Solicitor, was
21 making arrangements on Monday morning to have them prepared. What
22 happened?

23 MR. FILIBERTO: I have no idea, Your Honor. I wasn't
24 involved in the - - it was Mr. Taylor's - - it was his dealing with
25 the company that was going to prepare the transcript.

1 THE COURT: Here's what I'll do. You've seen the videos.
2 You have all of them?

3 MR. TAYLOR: Yes, sir. I have them in my case.

4 THE COURT: Okay.

5 MR. TAYLOR: I had them on Monday.

6 THE COURT: After the transcripts get here and assuming
7 they have testified, I will call them back up and permit you to
8 cross examine them if you determine there's something else that you
9 needed.

10 MR. TAYLOR: Yes, sir.

11 THE COURT: Will that protect your interests?

12 MR. TAYLOR: That will protect them, Your Honor.

13 Thank you.

14 THE COURT: Then, I'll call them back as a Court's witness
15 and you can cross examine them again. Okay, but we going forward.

16 Alright. What next?

17 Is somebody trying to get them here to you, now?

18 MR. TAYLOR: Somebody is going to pick them up. My office
19 called this morning. I was suppose to provide them to Mr. Barr as
20 well. I was unable to do so, have been unable to even review them
21 since Monday because I gave them to the court reporter.

22 THE COURT: Mr. Barr, you understand, too, as I address
23 him, please interrupt me now if you have any questions. If - - if
24 you needed these transcripts, these videos, I'll call that
25 particular witness back up for your cross examination. You

1 understand that?

2 MR. BARR: Yes, sir. I'm satisfied with that.

3 THE COURT: Alright. Good.

4 MR. TAYLOR: That's all of my motions, Your Honor. Mr. Barr
5 may have some.

6 THE COURT: Mr. Barr, I understand you had a motion?

7 MR. BARR: No, sir.

8 THE COURT: Well, there was some - - some - - my court
9 reporter said there was some, ah, concern about an alleged drawing
10 of the scene not to scale.

11 MR. BARR: There - - there - - there is - - of course,
12 it's not my motion because it's not my exhibit but, ah, ah - - -

13 THE COURT: It was your motion to exclude, was it not?

14 MR. BARR: Well, it was my motion to not allow it to come
15 into evidence at this particular time. I think depending on the
16 nature of what's actually depicted in the, ah, in the exhibit, I
17 think at some time it may be - - be unobjectionable but right now
18 there's nothing in - - -

19 THE COURT: Okay. Then, generally, I'll let it in even
20 though it's not drawn to scale if it will help the - - if at that
21 time there is an objection assuming it's introduced, I'll deal with
22 it.

23 MR. BARR: Yes, sir.

24 Judge, by that time, the State may already have put everything
25 they need to put up, and we may not even have an objection to it.

REMARKS OF THE COURT

1 THE COURT: Alright, sir. Then if you, I'll deal with it
2 at the time.

3 That suit you, Mr. Taylor?

4 MR. TAYLOR: Yes, sir, Your Honor.

5 THE COURT: Alright.

6 The - - both defendants are in court properly attired now. So
7 we can proceed.

8 Bring the jury in, please.

9 Did you notify Mr. Steele - - did somebody notify Mr. Steele
10 that I have designated him as Foreperson.

11 COURT REPORTER: Your Honor, I was advised by the Bailiff
12 that she was doing that.

13 THE COURT: Okay.

14 Gentlemen, Mr. Steele has ben designated as Foreperson of this
15 jury.

16 (The jury returns to the courtroom at 9:53 a.m.)

REMARKS OF THE COURT

17 THE COURT: Mr. Steele, I have designated you as Foreperson
18 of this jury, and you will at all times occupy the Foreman's chair.
19 The two alternates will at all times occupy those two chairs.
20 The rest of you may sit as you choose.

21 Swear the jury for me, please.

22 (The Clerk of Court swears the jury.)

23 THE COURT: Mr. Foreman, ladies and gentlemen, as a
24 threshold matter, we are honored this morning to have with us the
25

1 twelfth grade of the Academy for Tech and Academics, and they are
2 accompanied by their instructors Mrs. Sandra James and Mr. Dave
3 Wilson.

4 Will those - - two please stand for me, please.

5 We want to thank all of you for being here today, and as I've
6 indicated at the morning break around eleven or eleven-thirty, I'll
7 talk to all of you in my chambers.

8 Thank you. Be seated.

9 Mr. Foreman and ladies and gentlemen, we are beginning to try
10 the case of The State vs. Anthony Quentin Scott charged with murder
11 and the case of The State vs. Jimmy Lee Williams charged with
12 murder, and to these indictments, these defendants specifically
13 plead not guilty.

14 Now, the allegations which I read to you on Monday are simply
15 allegations and they must be proved beyond a reasonable doubt.
16 These allegations are not evidence. Evidence comes from this
17 witness stand from the lips of the sworn witnesses and from such
18 other matters as may be introduced during the trial of this case.

19 Recognizing that for many of you this may be your first
20 opportunity to serve in a criminal court, first off let me say it
21 is a fundamental part of our system of jurisprudence that these
22 defendants and every defendant walks through the portals of this
23 courtroom under the presumption of innocence, and that presumption
24 remains with them from the moment of their arraignment throughout
25 the trial until and unless you, the jury, unanimously have found

1 them guilty beyond a reasonable doubt.

2 These defendants and no defendants have to prove anything.
3 The State has to prove them guilty to your satisfaction unanimously
4 beyond a reasonable doubt.

5 Now, we'll begin with the State of South Carolina through the
6 Deputy Solicitors making to you an opening statement as to what
7 they say their position is. This is a kind of a guideline to help
8 you follow the introduction of evidence.

9 Following that, Mr. Taylor representing Williams and Mr. Barr
10 representing the defendant Scott will make a similar statement to
11 you with regards to their positions.

12 Following that, we will take testimony from various witnesses
13 and at the conclusion of the witnesses' testimony, I will charge
14 you the law, and we will have final arguments of counsel for the
15 State and the defendants, and it is at that time that I will
16 discharge you to go to the jury room to begin your deliberations.

17 Now, in that connection, you must not discuss this case with
18 anyone. Let no one discuss it with you, and under our system you
19 must not even discuss it among yourselves until I have given you
20 the case for your deliberation.

21 And the reason for that is obvious. You should not begin
22 your deliberation until you've heard all of the witnesses and the
23 appropriate instructions in the law.

24 Mr. Foreman, of course, I will keep you fully advised as to
25 your duties as we go about and even when you are in your

1 deliberations, there will be pencil and paper provided, and if
2 anybody has any question about what the law is, write it down and
3 come out, and I'll talk to you.

4 But in that connection, I tell you that you twelve alone are
5 the sole and only finders of the facts in this case. I am not
6 entitled to a factual opinion, and I have none.

7 Sometimes jurors say, "Well, Judge, I don't know a thing about
8 this case. How are we to determine what the facts are?"

9 Well, that's the purpose of a trial. You will observe and
10 consider the testimony of every witness who testifies. You are
11 the sole judges of their credibility and believability. You
12 didn't leave your common sense on the streets of Conway, South
13 Carolina when you came into this courtroom.

14 And we all know that when folks tell us things, we size them
15 up, and we use certain tools. We decide whether we want to believe
16 some of it, none of it or all of it, and you can do the same thing
17 here.

18 We always ask ourselves, "Hey, did this person have some
19 reason or cause to tell me one way or the other?"

20 In other words, did they know what they were talking about or
21 are they lying or telling the truth?

22 These are tools that you use, and I tell you again that you
23 and you alone are the sole and only judges of the credibility and
24 believability of any witness who testifies.

25 Now, at the conclusion of the witnesses' testimony I will be

back with you with some definite instructions on the law, and at time I'll give you the case for your consideration, and you determine the facts as you find them to be. Apply it to the law of the case as I give it to you and, thereafter, reach your verdict.

Verdict comes from the word - - Latin word verdicto meaning to speak the truth.

Opening statement for the State.

OPENING STATEMENT BY MR. FILIBERTO

MR. FILIBERTO: Thank you, Your Honor.

If it please the Court?

Good morning.

As the judge indicated, your service is very important here. The jury is really the only way that the defendants in this case, Jimmy Lee Williams and Anthony Quentin Scott, and the State of South Carolina can get a fair trial.

As the judge indicated, the roles are very clear. The jury is the finder of the facts. Now, it would be great if we could present evidence that gave you everything in a snapshot and you could just take a quick look at it and understand. That's not really how that's able to be done.

What you'll have to do is stay focused, and you're going to pick up a lot of little pieces and somewhat like assembling a little bit of a puzzle.

And I ask you to do - - stay focused and watch that and do that.

1 As His Honor indicated, he's going to tell you what the law
2 is, and that's the law that you'll be applying to the facts as you
3 deliberate.

4 The attorneys, Mr. Barr and Mr. Taylor, Mr. DeBusk and myself
5 will present evidence. We will at some point make arguments; that
6 is, tell you what we believe the evidence indicates but,
7 ultimately, the decision will be yours.

8 The defendants in this case, Efrain Rosado - - are charged in
9 the murder of Efrain Rosado. You're going to hear witnesses in
10 this trial refer to him by another name that he went by, and that
11 was Czar so that you don't get confused about that.

12 Efrain Rosado today would have been thirty-five years old, was
13 shot and killed and, ultimately, and we're going to try and
14 determine responsibility for that act today.

15 The charge here is murder. Now, the judge will give you the
16 law. So if anything that I say in anyway confuses you, between
17 what I say and what the Judge says, obviously, His Honor is the - -
18 he will give you the law but murder is the killing of a person with
19 malice aforethought expressed or implied.

20 Now, the first parts of that are pretty straight forward, the
21 killing of another person.

22 Malice aforethought, malice is an intent to cause harm at the
23 time that the harm is inflicted, the fatal blow is inflicted. It
24 doesn't have to be thought about for weeks or days or even minutes.
25 It can be formed right in the instance that the fatal blow is

1 struck. Dealing with aforethought, we don't need to have it for
2 days or kind of a calculated plan.

3 I ask you to as the Judge gives you the law at the end of the
4 trial to remember that as we - - as we - - as we present our
5 evidence and ask you to consider that at the end.

6 The end of the evidence we'll get a chance to speak with you
7 again, and at that point we'll try and see if we can sum things up
8 for you.

9 Thank you.

10 THE COURT: How do we do this? Are you going to be
11 proceeding first, Mr. Taylor?

12 MR. TAYLOR: I believe so, Your Honor.

13 THE COURT: Alright.

14 MR. TAYLOR: May it please the Court?

15 OPENING STATEMENT BY MR. TAYLOR

16 MR. TAYLOR: Good morning, ladies and gentlemen of the jury.

17 This is a murder case as you've been told. This is a
18 different murder case than what normally comes to court here, and
19 it's a different murder case from one which I've ever tried.

20 The evidence here is going to show that my client was actually
21 the victim in this and that the deceased actually brought about the
22 cause for which brought about his demise.

23 These parties knew one another, and there are witnesses here
24 and the evidence is going to show that. It's going to show they
25 knew each other for about three or four years. The co-defendant

1 also was familiar with these people who lived out in Juniper Bay in
2 a small - - small, close-knit community. My client actually lived
3 right there close by to where the deceased resided.

4 As I said, they'd been friends for quite some time, and this
5 matter really came about once my client got a phone call. Again,
6 they were friends.

7 And the State's going to present evidence that shows that
8 there was phone calls going back and forth but there's also going
9 to be plenty of witnesses that are going to say that that was not
10 uncommon, that these parties were pretty much around one another on
11 a daily basis, and they were friends. They were close friends.
12 They were more than just regular friends, more than just
13 acquaintances.

14 The evidence is going to show that my client went to a party,
15 was at that party that the deceased had been at earlier. The
16 deceased called him and accused him of something which as a friend
17 and being as close as they were wanted to explain himself.

18 He goes around the corner to the deceased's house. Once he
19 shows up, the deceased comes around the corner firing a pistol at
20 him.

21 The evidence is going to show that at the time the deceased
22 was shot that he had a pistol right next to him, that there was
23 empty brass casings that had been ejected right around him, that my
24 client had been enticed to come to this area, come to where he was,
25 basically, to be executed.

1 The deceased thought that my client broke into his house,
2 stole some drugs. Now, again, my client may not be the most
3 picture-perfect person in South Carolina. He may, they're going
4 to try and show him to be this - - this malice aforethought murder
5 and that he went over there with the intent to kill the deceased,
6 Mr. Efrain. That's not the situation.

7 And the evidence once you see all it is going to show that if
8 you're going to kill somebody, you don't call them and say, "Hey,
9 I'm coming to kill you."

10 And that's what happened here. He got a phone call. He said,
11 the deceased said to my client, "You broke into my house. I know
12 you broke into my house."

13 You're going to see that the investigating detective even says
14 in his statement in discussing this matter with my - - with my
15 client that even if I was in your position, if I was in your
16 position, I would have confronted my friend. I would have
17 confronted my friend to try to explain what happened and explain
18 that I did not do what is being alleged against me. Their own
19 investigating detective is going to say that.

20 So, not unreasonable for my client who is a baseball's throw
21 away from where the deceased resided to leave. The quick telephone
22 call. You'll see that it was under five minutes. Goes over to
23 the deceased to be shot at.

24 The deceased was waiting for him, waiting for him around the
25 corner of his house. As my client pulls in starts firing at him.

1 My client fires back. That is not murder under our law. That
2 is self-defense.

3 It is a fundamental principal of our state and almost every
4 other state in the country that if somebody fires at you with
5 another firearm you have the right to defend yourself.

6 That is what my client did here. That is why my client is on
7 trial. He is not guilty of murder. He is not guilty of anything.

8 Now, they're going to try and show him that he was a drug
9 dealer, that, you know, maybe this was a drug deal that was going
10 bad. Now, my client may have smoked some marijuana but all of the
11 State's witnesses smoke marijuana. They got drug convictions
12 which is going to be brought out. It's going to be shown. All of
13 their witnesses are shady.

14 There is going to be inconsistencies. The State's witnesses
15 have lied. They lied to the investigating detective upon being
16 interviewed. Nobody has a consistent statement.

17 The only thing that's consistent is what my client has said
18 from the day that he got arrested. He made a statement. He didn't
19 try and hide it. Whenever the investigating officer said, "What
20 happened?", he said, "This is what I did."

21 He came right out and said, "This is what I did."

22 He explained it, and you're going to see a photograph in a
23 little while through the State that shows where the deceased was
24 killed, where he was actually shot and outside of his house.

25 If a person's going to kill somebody and the evidence is going

1 to show this is what happened, if a person's going to kill
2 somebody, they don't call them up and say, "Hey, I'm on the way
3 over there to kill you."

4 They don't do it that way. They certainly don't do it.

5 And the deceased, again, I've said it ten times. I'm going to
6 say it a hundred times throughout this. He was waiting to execute
7 my client.

8 My client didn't even have a chance to get out of his car
9 before he started getting shot at. He fired back. He had a gun in
10 the car.

11 Lots of people have guns in their cars. That is another one
12 of our rights in this country that you can carry a gun. It's not
13 illegal to carry a gun if it's in your car.

14 And I hope after you see all of the evidence, the State's case
15 has got more holes in it than Swiss cheese. This is not a solid
16 slam-dunk case for them. It's actually my client - - it may
17 infuriate everybody, and I'm sorry that the deceased's family has
18 lost a family member but it'd be even worse for my client's family
19 to lose him over something that he didn't bring about and he was
20 defending himself the entire time.

21 I hope that you find him not guilty after you hear all of the
22 evidence, and I believe that you will.

23 Thank you.

24 THE COURT: Thank you, Mr. Taylor.

25 Mr. Barr.

1 MR. BARR: Thank you, Judge.

2 OPENING STATEMENT BY MR. BARR

3 MR. BARR: Mr. Foreman, ladies and gentlemen, I introduced
4 myself to you the day we had jury selection but I'm going to take
5 this opportunity to do it again. I'm Charles David Barr, and I
6 practice law in Kingstree. I've been practicing over there for
7 quite a few years, now, and, Judge Cottingham, I don't want to say
8 how many but, ah, but, ah, let me tell you this. I'd like to just
9 associate myself with the preliminary remarks that have been made
10 by the trial judge.

11 Judge Cottingham is an excellent trial judge, and he has given
12 you some excellent preliminary instructions concerning your duties
13 and your responsibilities as it relates to jurors in this case.

14 Now, ah, the, ah, the first thing I want to say is, you know,
15 when you came to court and you were qualified as jurors, if you
16 noticed from the time you got here, lawyers were huddling and - -
17 and - - and - - and - - and - - and writing things down and making
18 notes and even yesterday or on Monday when - - when you were
19 selected as jurors you - - you probably saw, ah, ah, me and the
20 other defense counsel collaborating.

21 What we try to do, what we try to do, we try to make certain
22 that - - that we've got twelve people who are impartial, twelve
23 people who don't have an ax to grind, twelve people who don't have
24 a dog in the fight to sit as jurors and to come back in a trial
25 after they've heard all of the evidence and after they've gotten

1 the law as His Honor has instructed you that will do what the law
2 says.

3 Now, I've found over the years that that's not necessarily an
4 easy thing for people to do because sometimes people come to jury
5 service with preconceived notions about what the law ought to be
6 and you can tell them all day what the law is. That doesn't make
7 any difference.

8 What we're talking about is twelve people that will listen to
9 the oath that His Honor gave you when you were first sworn and do
10 what that oath says.

11 So, in spite of what you may have seen, I assure you that
12 we're not trying to keep secret notes on you. What we're trying to
13 do is make certain that - - and what we tried to do is make certain
14 that we've got twelve people that will come back at the end of the
15 day, that's after the trial is over, with a verdict that speaks the
16 truth based on the law and the evidence.

17 Now, ah, His Honor indicated to you at the beginning of his
18 opening remarks that, perhaps, some of you may have not served on
19 a jury before. I don't know. I practice law quite a bit here in
20 Horry County but I - - I don't know whether or not you've served on
21 a jury but take this from me.

22 Anytime a defense lawyer or any other kind of lawyer stands up
23 and talks to a jury, they have to presume that the jurors are
24 unacquainted with the law. Otherwise, you get in a whole lot of
25 trouble. Every case is a new case, and every case is different.

1 And I would submit to you that with respect to this particular
2 case, your duties and responsibilities are the same but the case is
3 different. You've never seen one like this.

4 And I'm going to tell you this much as well. I'm not going
5 to tell you what this case is about because I'm not sure I know
6 myself.

7 I learned a long time ago. You don't promise jurors what will
8 develop in a criminal case or any other kind of case because you
9 don't know but, now, that doesn't concern me because that's not my
10 responsibility.

11 Now, here's the first thing that we have to look at when we
12 talk about whether or not you can follow instructions.

13 His Honor told you just a few minutes ago. He said, "These
14 two men sitting over here; that is, Anthony Scott and Mr. Williams,
15 are presumed innocent."

16 And that presumption of innocence is not just something that
17 somebody - - that I came up and dreamed up with my - - with my
18 brother in our law firm. The presumption of innocence is a
19 substantial right. It's part of due process. It's what any person
20 that's charged with a criminal offense, they're entitled to that
21 presumption of innocence.

22 So, right now in terms of a meaningful rule, these two young
23 men are presumed innocent right now. That - - that - - that's the
24 first thing with respect to your duties and your responsibilities -
25 - presumption of innocence.

1 Burden of proof, burden of proof is on this table right here.
2 These are the prosecutors. Anytime a person is charged with an
3 indictable offense in South Carolina, they're entitled to a jury
4 trial if they want one, and somebody got to prosecute the case and
5 represent the State of South Carolina, and that's what these
6 gentlemen are. They're the prosecutors.

7 His Honor instructed you in the opening remarks that an
8 indictment, that is a piece of paper, the process by which this
9 case comes before you. It has no evidentiary value. It is merely
10 procedure or the process that's use to get the case in front of
11 you. It has no evidentiary value.

12 So that indictment which charges these two young men with
13 murder is a processing paper.

14 It is the burden of responsibility of the State of South
15 Carolina represented by these prosecutors and whoever they decide
16 to call as witnesses to prove to you the defendants' guilt beyond
17 a reasonable doubt. That's what they're charged with.

18 And the standard of proof is beyond a reasonable doubt. We
19 going to talk about that a little bit later on, beyond a reasonable
20 doubt. Generally, the kind of doubt that would cause a person to
21 hesitate to act.

22 Now, what are we saying? Presumption of innocence, burden of
23 proof. The defendants don't have to prove anything. They don't
24 even have to be in court. They could have been tried in their
25 absence if they wasn't here. So where does that leave you?

1 Now, I noticed, and I'm sure that this is the first case that
2 I've tried with these prosecutors but I noticed that the statement
3 was made to you at the end.

4 He said, "Well, look. At the end of the day, you'll have to
5 make a decision."

6 Now, if there's one thing, ladies and gentlemen, that I don't
7 want you to do in terms of how you approach your jury service in
8 this case, sure, you're the trier of facts, and you have to listen
9 to the evidence, and you have to decide whether or not the
10 prosecution has proven to you the offense of murder.

11 And His Honor will instruct you at the appropriate time that
12 any criminal defense, be it common law, statutory or whatever it
13 is, it is composed of what we call elements, and the elements are
14 the component parts that make up the offense.

15 In the case of murder, you've already been introduced to the
16 concept. Murder is the unlawful killing, unlawful killing, not
17 just killing. It's an unlawful killing, an unlawful killing.

18 So, if you've heard some conversation or heard some opening
19 remarks concerning self-defense, that may very well be an issue in
20 this case. I don't know.

21 But it's the unlawful killing. You can have a homicide or a
22 killing and it be justifiable. That's why the law says that it's
23 an unlawful killing of a person, not a fly, but a person with
24 malice aforethought.

25 His Honor will instruct you concerning the offense of malice

1 afore - - what malice aforethought is whether it's implied or
2 expressed or whatever but he will instruct you at the appropriate
3 time concerning the concept of malice aforethought.

4 So, you've got several things there that have to be proved,
5 and each of one of them have to be proven to you by a standard we
6 call beyond a reasonable doubt.

7 Any one that's not proven beyond a reasonable doubt His Honor
8 will instruct you and I'm sure he will at the end of this trial
9 that if you don't find that the prosecution has convinced you
10 beyond a reasonable doubt, and, ladies and gentlemen, in order to
11 find the defendant guilty of murder, I assure you that you'll have
12 to find that they have convinced you beyond a reasonable doubt that
13 there is proof, ample proof on each element to the offense of
14 murder that person committed the offense.

15 Now, before I sit down I represent Mr. Scott. That's this
16 young man here, and I tell you this. I take my job very
17 seriously. My job and my responsibility is to represent him.

18 Now, I don't know what the evidence is going to show as it
19 relates to Mr. Scott but I'm waiting for it. I'm waiting for it
20 because, see, he's entitled to due process as well, and you're not
21 going to hear that Mr. Scott shot at anybody but he's here charged
22 with murder. So where does that put him? It puts the
23 responsibility on the prosecution to establish that he committed
24 the offense of murder and beyond a reasonable doubt.

25 Now, I'm not going to give the State ideas. As I've said, I

1 don't know how they intend to do that but I assure you that in
2 South Carolina as in any other state in addition to rules of law
3 concerning substantive matters, we have Rules of Evidence. When
4 I say Rules of Evidence, I'm talking about rules that apply to
5 testimony that might come from testimonial evidence that comes from
6 these witnesses as they take the witness stand. It might be
7 demonstrative evidence. It might be something that these officers
8 or these, ah, ah, ah, prosecutors will bring to show you to
9 demonstrate something. I don't - - it might be documents. I don't
10 know what it's going to be but I assure you that with respect to
11 the Rules of Evidence one of my responsibilities is to make sure
12 those Rules of Evidence comply with as it relates to presenting
13 evidence to you that you all can consider.

14 Last thing before I sit down, the prosecutor said, well, at
15 the end of the day. In essence, I'm paraphrasing, you'll have to
16 make a decision about the defendant's guilt or innocence.

17 Well, guess what? There - - there is a different way to - -
18 to look at that. Oh, you'll have to make a decision but, ladies
19 and gentlemen, your decision will be whether to involve deciding
20 whether or not the prosecution has met it's burden of proof.

21 I learned a long time ago that when it comes to matters in the
22 courtroom sometime we leave out of here almost blind-sided because
23 deep in our hearts we know that something went wrong, and we just
24 don't know what it is.

25 But that's not our charge in this case, and your charge is not

OPENING STATEMENT BY MR. BARR

1 that. Your charge is to decide whether or not the prosecution has
2 prove the defendant's guilt. Is he guilty? Once the prosecution
3 has proven his guilt, then the law says he's guilty. Sure he is
4 but it requires proof.

5 So, don't let the prosecution shift the burden of the
6 responsibility in a criminal case to you. You decide whether or
7 not they've presented evidence that convinces you beyond a
8 reasonable doubt, and once you've done that, you've discharged your
9 responsibility.

10 So, you're not the one. Your decision, even though it might
11 be great, your decision is to decide whether or not the case has
12 been proved, and if you're not convinced beyond a reasonable doubt
13 that it's been proved, then His Honor will instruct you that your
14 charge is to find the defendant not guilty.

15 Let me thank you on behalf of Mr. Scott. I realize there are
16 some other things that some of you might want to be doing today but
17 you're here for jury service, and we thank you.

18 THE COURT: Thank you, Mr. Barr, and thank you, Mr. Taylor.
19 Gentlemen, thank you.

20 Call your first witness.

21 MR. FILIBERTO: Thank you.

22 The State calls Fred Rash.

23 MR. TAYLOR: Your Honor, may I approach?

24 THE COURT: Yes, sir.

25 (Bench conference held off the record and in the presence of

the jury but outside the hearing of the jury.)

(The witness takes the witness stand.)

OFFICER FREDERICK ARTHUR RASH, being duly sworn, testifies as follows:

CLERK OF COURT: Please state your full name and spell your last name.

OFFICER RASH: My full name is Frederick Arthur Rash. My last name is spelled R-a-s-h.

DIRECT EXAMINATION BY MR. TAYLOR:

Q. Officer Rash, where are you currently employed?

A. With the Horry County Police Department.

Q. And how long have you been so employed?

A. Approximately two years and ten months.

Q. What are your primary duties?

A. Patrol Officer in the Central Precinct of Horry County.

Q. And were you working in that capacity during the evening hours of March 8, 2007?

A. I was.

Q. Did you receive a call related to the matter that brings us all here today?

A. I did receive a call for a possible injured person.

Q. What time did that call come in?

~~Copy~~ A. Approximately 10:30 in the evening, the occurrence it was estimated. Dispatch time was actually ^{10:55} 22:55 when I received it across Dispatch.

1 Q. Where were you, ah, where were you directed to go?

2 A. I was directed to go to 5151 Craig Street.

3 Q. I show you what's been marked for identification as State's
4 #2. Do you recognize that?

5 A. It appears to be the aerial view of Miracle Lane and Bottle
6 Branch intersection.

7 Q. Is that, ah, where you responded that night?

8 A. Ah, yes, two separate areas right there. The first one would
9 be the complainant's area, and the second area would be where I
10 found the victim.

11 Q. Does this fairly and accurately depict that area as you recall
12 it to be?

13 A. Yes, sir.

14 MR. FILIBERTO: The State would move to have State's #2
15 moved into evidence.

16 THE COURT: You've seen this document?

17 MR. TAYLOR: I have previously.

18 No objection.

19 THE COURT: Without objection.

20 Mr. Foreman, these matters that I am introducing into evidence
21 will be with you in the jury room with you during your
22 deliberations, and, of course, if you care to, you may publish it
23 during the presentation.

24 (The Court Reporter accepts State's Exhibit #2 into evidence.)

25 Q. I'm going to return this to you and ask you to use this and

1 mark where you initially responded to.

2 (Witness marks exhibit.)

3 Q. Officer Rash, what happened when you initially arrived at this
4 initial address?

5 A. When I initially arrived, a small group of subjects came out
6 of the home and said that Czar was down the street - - -

7 MR. BARR: Objection, Judge. Hearsay.

8 THE COURT: Sure it is hearsay.

9 He can say what they did as a result of that. That's
10 hearsay.

11 Q. Did they give you information that directed you to another
12 location?

13 A. They did.

14 Q. What was that other location?

15 A. They directed me to - - down the road to 5181 Miracle Lane.

16 Q. Is that address located in Horry County?.

17 A. It is, the Conway section.

18 Q. I'm going to again approach and ask you to mark the area where
19 you found the victim.

20 (The witness marks the exhibit.)

21 THE COURT: You, of course, may publish that if you choose
22 to.

23 MR. FILIBERTO: Yes, sir.

24 Q. Officer Rash, upon your arrival at the scene what if anything
25 did you observe?

1 A. I observed the victim sitting on his rear end, um, at the
2 time, and as I approached the victim, I asked him, number one, if
3 he needed help. What had happened and who did it?

4 And to all which he answered, "No, no, no."

5 And fell over on his back. I observed pools of blood,
6 approximately, I'd say ten to fifteen feet away and a weapon in the
7 area. When I started to look around and saw that, the main reason
8 being that allegedly, um, this had something to do with his dogs.

9 Um, my concern with the protective sweep to call EMS in. I
10 notified my supervisor, and my supervisor was in route. I notified
11 EMS to come there as quickly as possible through ten codes which
12 they did respond due to the fact that it appeared that the victim
13 had a gunshot wound to his temple.

14 Q. I show you what's been premarked as State's #1 for
15 identification. Do you recognize that?

16 A. It appears to be an aerial lay-out of the crime scene and the
17 small area of trailers that surrounded the Miracle Lane area.

18 Q. Does that fairly and accurately depict the scene?

19 A. Yes, it did.

20 THE COURT: Is that produced to scale or not?

21 MR. FILIBERTO: It is not to scale, Your Honor.

22 THE COURT: That's fine.

23 Q. Officer Rash, I'm just going to - - there's a dot where you
24 found the victim when you first arrived.

25 MR. FILIBERTO: The State moves to have State's #1

1 introduced into evidence.

2 THE COURT: It is admitted.

3 MR. BARR: Your Honor, we don't think that at this time
4 the proper foundation has been laid for everything that's in that
5 exhibit, and that - - -

6 THE COURT: Well, we can address that, and he - - I have -
7 - I see the exhibit. He says it properly shows the area though
8 it's not to scale. I would conclude that the exhibit there with
9 his testimony will help the jury understand what occurred.

10 MR. BARR: Your Honor, this is primarily what I'm
11 concerned with, all of this information here that's included in the
12 exhibit.

13 THE COURT: No, sir. Would not - - you're going to have -
14 - you're going to have to white that out before you introduce it
15 because that's testimony, and that comes from the stand.

16 I'll let you show it but that - - that bottom part is not
17 going to be admitted to go to the jury room. You can do that by
18 testimony.

19 I will let the exhibit showing the relation of the various
20 buildings in. You understand?

21 MR. FILIBERTO: Yes, sir.

22 THE COURT: Alright.

23 Just before it goes to the jury room, delete that. That
24 would be subject to testimony.

25 MR. BARR: Thank you, Judge.

1 THE COURT: Objection sustained as to the written part of
2 the exhibit. I am going to let the exhibit itself go in.

3 How about you, Mr. Taylor?

4 MR. TAYLOR: Thank you, Your Honor.

5 Of course, Your Honor, in addition to the written statements
6 at the bottom there are also a lot of items that are depicted at
7 the very top. Again, I concur with Mr. Barr. There's been no
8 foundation laid to address all of these.

9 THE COURT: Well, let me see. Before I let it in, I'll
10 see what the testimony is.

11 MR. TAYLOR: Okay, Your Honor.

12 THE COURT: And if there's no testimony as to any of those
13 exhibits, I won't let it in the jury room.

14 MR. TAYLOR: Thank you, Your Honor.

15 THE COURT: Go ahead.

16 (State's Exhibit #1 is admitted into evidence and accepted by
17 the Court Reporter subject to the removal of written information as
18 addressed by the Court.)

19 MR. FILIBERTO: With the Court's permission I can publish
20 this?

21 THE COURT: Yes, sir, you can.

22 MR. BARR: Your Honor, just - - just as to the objection,
23 he's publishing with the notes on it that are not in evidence. He
24 hasn't separated the, ah - - -

25 THE COURT: Well, they can't see that from here. I'll have

1 that stuff whited out before it goes to the jury room.

2 MR. FILIBERTO: Your Honor, I'd ask that provided we don't
3 lay a foundation for the other parts later.

4 THE COURT: I understand.

5 MR. TAYLOR: Your Honor, on behalf of Mr. Williams, um, I
6 would object as well to the writing at the bottom. I'm just as far
7 away from that depiction as the jury is, and I can read every word
8 on the bottom of that page.

9 THE COURT: Put a piece of paper and glue it over - - put
10 a piece of paper on it and tape it and take it out.

11 (The written information is covered as directed by the Court.)

12 THE COURT: Mr. Foreman, ladies and gentlemen, let me
13 assure you that nobody's trying to hide from you in fairness to the
14 defense anything that you're entitled to see but there's a lot of
15 writings on that that based on evidence to be introduced, and that
16 evidence is not yet introduced, and, consequently, temporarily, I'm
17 going to white it out.

18 If later I conclude that there is evidence supporting that
19 picture, I'm going to let it in.

20 Alright, sir. You may proceed now. Thank you.

21 MR. FILIBERTO: Is that adequate, Your Honor?

22 THE COURT: That take care of you, Mr. Taylor?

23 MR. TAYLOR: Yes, sir, Your Honor.

24 THE COURT: Alright.

25 Mr. Barr?

1 MR. BARR: Thank you, Judge.

2 THE COURT: Alright, sir. Go ahead.

3 MR. FILIBERTO: Your Honor, I'd request permission for the
4 witness to leave the stand.

5 THE COURT: Yes, sir. You may do that.

6 (The witness stands before the jury box.)

7 THE COURT: You may proceed.

8 MR. FILIBERTO: Thank you, Judge.

9 Q. I'm going to ask you to point out for the jury just where you
10 entered the scene from.

11 A. I entered the scene from Miracle Lane between the trailers
12 from my car of approximately in this area right here.

13 Q. And, again, if you'd point out to the jury where you marked -
14 - where you found the victim lying upon your arrival.

15 A. I found the victim to my left and in front of the vehicle.
16 I'd say approximately ten to fifteen yards from the other area that
17 was discussed.

18 Q. You can go back to the stand.

19 (The witness resumes his seat in the witness seat.)

20 Q. And, again, the victim was conscious when you arrived?

21 A. He was.

22 THE COURT: Are all the jurors able to see?

23 JUROR: No, sir.

24 THE COURT: One of the jurors indicated he couldn't see.
25 Which one was that?

1 Q. Officer Rash, can you come back down, please?

2 (The witness stands before the jury panel.)

3 Q. Will you, please, again, just - - just demonstrate for the
4 jury where you pulled in from?

5 A. I came in off of Miracle Lane, went up towards the trailers
6 where the victim was found and parked my car in this area here
7 which was just back and to the right of the victim or the left of
8 myself.

9 Q. And, again, the red dot?

10 A. The red dot indicates where I located the victim and talked to
11 him.

12 Q. Thank you. Please be seated.

13 (The witness resumes seat in the witness box.)

14 Q. Once again, ah, the victim was conscious when you arrived?

15 A. He was.

16 Q. Now, you indicated you asked him some questions.

17 A. I asked him three questions, um, which I normally do to
18 ascertain the situation which was if he was hurt, he needed as EMS
19 and as well as who did this to you because he answered.

20 When I asked him, I said, "Are you hurt?"

21 He said, "No."

22 I said, "Do you need EMS?"

23 He said, "NO."

24 And then that's when I realized there was a hole approximately
25 in this area of his forehead, and I said, "Who did this to you?"

1 And he said, "No."

2 And at that point he started posturing and fell over on his
3 back.

4 Q. In your opinion, did he lose consciousness at that point?

5 A. Ah, he continued to posture. At that point I don't know what
6 kind of consciousness he had or if he had quit breathing. I'm not
7 medically trained for that.

8 Q. And, again, after that occurred, what were your actions?

9 A. My action at that time was to do a protective sweep of the
10 area so I could get the EMS in there to try to save his life at the
11 time, notify my supervisors and preserve the crime scene.

12 Q. Now, were you present on the scene when EMS arrived?

13 A. I was.

14 Q. What actions did they take?

15 A. They entered the crime scene with as minimal personnel as
16 possible, loaded him up and left him from the area as quickly as
17 possible.

18 Q. Do you know where they transported him to?

19 A. I do not know the exact location.

20 Q. What other duties did you perform related to this
21 investigation?

22 A. I secured the crime scene, the inter-crime scene at that time
23 until my back-up could arrive to set up a perimeter in the area,
24 too, for the safety of the community.

25 MR. FILIBERTO: Your Honor, I'm going to publish to the

1 jury at this time.

2 THE COURT: Yes, sir.

3 Q. Please answer any questions the defense counsel has.

4 THE COURT: I'm going to admit that sketch subject to, ah,
5 my position and the record will reflect that.

6 CROSS EXAMINATION BY MR. TAYLOR:

7 Q. Officer Rash, can I ask you to step down, please?

8 A. Yes, sir.

9 (Witness stands before the jury panel.)

10 Q. Officer Rash, you testified before that you parked here and
11 found the deceased here.

12 A. That's approximately.

13 Q. Okay.

14 Um, how many - - what else you found in this area that's
15 marked here that looks to be a pistol?

16 A. I did observe a pistol in the area after the protective sweep
17 was done. Also in this area there - - there were numerous dogs
18 that had nothing to do aside from my safety at that time and EMS's.

19 I also observed a pool of blood, um, a area in the ground
20 because of the sandy nature of the ground that had appeared to have
21 been disturbed. It looked like some personal items unknown as to
22 who they belonged to, ah, in the area.

23 Q. And the blood was - - was some fresh blood?

24 A. Yes, that's what it appeared to me.

25 Q. Alright.

1 And did - - you say you roped off the area. Tell me where you
2 roped exactly to the jury?

3 A. My initial perimeter was set up around the victim from here
4 around my car and back over to the trailer area.

5 Q. Okay.

6 A. I can't remember if it went - - if it went to the fence line
7 or if went to this other trailer.

8 Q. Alright.

9 A. I'm trying to find the location on here.

10 Q. Other than this area where you roped off, where else did you
11 observe regarding this case?

12 A. As far as the protective sweep, I walked outside the area back
13 and forth and also around my, at the time, my binoculars and what
14 I use to sight a large field in the back to make sure I didn't have
15 an active shooter in that area back there.

16 Q. Alright.

17 What about over behind these - - these trailers?

18 A. I - - I did not secure any of that area until the backup came.

19 Q. Alright.

20 What about this trailer here?

21 A. No. Nothing of that sort was secured until my backup could
22 get there and cover the area.

23 Q. Okay.

24 Did you, ah, touch this firearm in any manner?

25 A. No.

1 Q. Okay.

2 Did you observe any empty shell casings, brass from discharge

3 - - -

4 A. There were - - there were numerous shell casings in the area.

5 Q. How many do you think there were?

6 A. All together that I saw that night?

7 Q. Uh-huh.

8 In this - - no. How many did you - - in this - - in this
9 area where the firearm was found?

10 A. Three obviously right away that I - - that I saw. Now,
11 whether they came from that weapon I can't actually say.

12 Q. Did you touch them?

13 A. No.

14 Q. And did they look like they had been freshly shot?

15 A. I'm not qualified to say that.

16 Q. Okay. Alright.

17 Now, as far as these others items that are listed here, you
18 have no idea, no information regarding those?

19 A. No. I can't ascertain any - - any of the other, ah, police
20 vehicles at the time. Like you said. This isn't to scale. The
21 way the road is laid out to actually come in, I mean - - I mean you
22 almost have to be on top of each other. That could have been
23 somebody else's car there.

24 Like I said, I called for backup to set up an outer perimeter.
25 Once I secured it for a protective sweep, then my concern at the

1 time was everybody's safety.

2 Q. Okay.

3 And these other four trailers that are shown here, was anybody
4 residing in those four trailers?

5 A. I know of nobody in these three. I believe there was a
6 subject that tried to come home later in the evening to the last
7 trailer here on the right.

8 Q. Okay.

9 Did you speak to that individual?

10 A. I - - I may have that evening. I - - there was something - -

11 -

12 Q. Okay, but that person was not home. They came in after this?

13 A. Correct.

14 Q. And, again, these three were unresided. Nobody resided in
15 those?

16 A. Correct.

17 Q. Okay.

18 So, again - - -

19 A. That I'm aware of.

20 Q. That you're aware of.

21 So, there was no other witnesses other than the deceased and -
22 - that you're aware of?

23 A. That - - that I'm aware of, no. No other witnesses.

24 Q. Please answer any questions Mr. Barr would have or the Court.

25 OFFICER RASH: Mr. Barr, would you like for me to sit down.

1 MR. BARR: Have a seat. Sit down.

2 CROSS EXAMINATION BY MR. BARR:

3 Q. State - - state your last name for me again, please.

4 A. Rash.

5 Q. R-a-s-h?

6 A. Yes, sir.

7 Q. And as far as you know, you were the first law enforcement
8 officer that arrived, ah, at the scene of what you described to be
9 a homicide case?

10 A. That - - that's what I believe.

11 Q. And, um, did you at anytime record the exact time that you
12 arrived?

13 ^{Second} *A. Dispatch recorded me arriving at 23:04 hours which would be
14 11:04 p.m., and that would have actually been at 5151 Craig Street.

15 That's the location that was given for the complainant. At the
16 time we didn't know we had a crime scene.

17 Q. 51?

18 A. 51 Craig Street - -

19 Q. Okay.

20 A. - - was what had come over my radio.

21 Q. Now, ah, tell me. When the - - when the, ah, when the
22 dispatcher dispatched you to some trouble - -

23 A. An injured person.

24 Q. - - you went to 51 Craig Street.

25 A. Yes, sir.

1 Q. Now, this is not 51 Craig Street, is it?

2 A. No, it's not.

3 Q. You know what the next question is.

4 How was it you got from here? How was it you got from 51
5 Craig Street to this location?

6 A. The - - the subjects in the home pointed down the street and
7 said that he was down there on the left down by all the dogs back
8 by that trailer.

9 Q. Subjects?

10 A. I didn't know their names at the time. When they ran towards
11 my vehicle and said, "Czar is bleeding in the yard. You need to go
12 to his house."

13 Q. Now, you said, "When they" Can you identify or have you
14 subsequently identified any of the people that sent you to this
15 location?

16 A. I have not but another officer, and I can't say exactly which
17 one because I don't know, identified them later as, um, being, I
18 believe, a Mr. Toomer that had called it in as the complainant by
19 Dispatch.

20 Q. Well, I - - well, probably, that officer will probably testify
21 but right now what I'm trying to determine is exactly whether,
22 first of all, you can identify the person or persons that you spoke
23 with that led you to this location and, secondly, whether or not
24 you've taken a statement from them at the time?

25 A. No, I did not.

1 I was locked in the crime scene once I got there.

2 Q. So, then, ah, in terms of the best way that you could
3 characterize what transpired, ah, some people came out of the house
4 on Craig Street and, ah, and told you to go where?

5 A. Down the road to Czar's house. I told them I didn't know
6 where Czar lived, and they said, "He's down there by all the
7 trailers with the dogs."

8 And I am familiar with the dogs being in the back.

9 Q. So, there are a bunch of trailers down there?

10 A. Uh-huh.

11 Q. And, ah, in fact, there are about five of them?

12 A. Five, at that time there were five.

13 Q. And, um, from - - from Craig Street to this location is - - is
14 probably what? About, ah, about, ah, fifty yards would you say
15 down - - down to Miracle Street?

16 A. When you go - - Miracle Lane. It's probably more than fifty
17 yards.

18 Q. Seventy-five to a hundred?

19 A. At minimum, yes, sir.

20 Q. Okay.

21 A. And as the way the crow flies, it may be a hundred and fifty
22 from the victim to that residence.

23 Q. But - - but, then, you have to turn off of Miracle Lane.

24 A. Miracle Lane.

25 Q. And go up into where - - where these, ah, ah, how did you know

1 how to get up in there?

2 A. Because I'd been in the area in the past.

3 Q. So, then, what, specifically, or do you recall so that
4 whatever they told you?

5 A. He'd been attacked by dogs is what they believed.

6 Q. So, then, are you saying you - when you went - - how I'm
7 trying to find out is how you got up in here. It took me I don't
8 know how long to get in here.

9 Now, you, ah, you were told to go to the person's house where
10 the dogs are?

11 A. Yeah.

12 Q. And you, based on - -

13 A. Past experience.

14 Q. - - past experience. You had, ah, you knew where the dogs
15 were.

16 A. No, I didn't know exactly where they were at the time because
17 they use to be in that front trailer, and then that front trailer
18 was vacated, left alone and all the dogs had moved to the back
19 which through normal routine patrol process, I ride the area and
20 take notes of anywhere where they keep dogs, large amounts of dogs
21 for an officer safety issue and for barking dog complaints.

22 Q. So, you're so much familiar - - -

23 MR. FILIBERTO: Object, Your Honor.

24 Q. - - with this neighborhood?

25 A. With this neighborhood, yes, sir.

1 Q. Had a rough territory in here.

2 A. Ah, the - - potentially, anywhere in this county, sir.

3 Q. Well, well, but you said that you're familiar with it.
4 You've gone there a few times.

5 A. I'm familiar with it.

6 Q. Barking dog complaints, and you probably had quite a few other
7 complaints coming out of there that you've been up in there for,
8 haven't you?

9 A. For the area of Miracle Lane, Bottle Branch?

10 Q. Yeah, yeah.

11 A. Yeah, for the Miracle Lane Mobile Home Park across the street.

12 Q. Ah, ah, I - - I've just got three - - I think three more
13 questions. Then I'm going to sit down and I'll be through.

14 You don't know the identify of the person or persons that you
15 spoke with that sent you from 51 Craig Street to this 5181 Miracle
16 Lane? Is that correct?

17 A. Correct.

18 Q. But you do believe that whoever it was that spoke to you that
19 they have subsequently given a statement to another officer with
20 the Horry County Sheriff's Department?

21 A. That's my understanding is somehow or other we ascertained
22 that person's name, um, either through Dispatch the caller - -

23 Q. Yes, sir.

24 A. - - who called this in, okay, or through an officer that went
25 down there to locate and identify the person that spoke with me

1 initially.

2 I can't ascertain that. I did not do that. Once I got to the
3 crime scene, I was locked in under that log. I'm not allowed to
4 leave. I have to secure the area.

5 Q. Ah, you didn't, ah, have - - have an occasion to go in that
6 mobile home?

7 A. No, sir.

8 Q. And did you inspect the outside of the mobile home?

9 A. Did a protective sweep of the outside, and, like I said.
10 There's a large field in the back. If you view the area, there's
11 a large field in the back. Considering that it was a wound to the
12 head - -

13 Q. Yes, sir.

14 A. - - my concern at the time, my thing was to make sure I don't
15 have an active shooter before I call EMS in there to move a victim.

16 Q. I see.

17 Ah, so - - so you didn't - - you didn't - - you don't recall
18 noticing whether or not the residence appeared to you to have been
19 burglarized or - - -

20 A. No, sir.

21 Q. You didn't look in it?

22 A. I didn't look for that. I looked for people and movement in
23 the bushes and the field.

24 Q. You looked for people in the bushes and the field.

25 So, in other words, going into that area, ah, if - - if - - if

1 - - if - - if - - if somebody wanted to do you some harm if they
2 had a gun, this was dangerous situation to rush into. You got - -
3 you got to kind of survey the area and make sure, ah, ah, ah, that
4 - - that there's nobody back in those bushes by the ditch, and, ah,
5 there are a whole lot of places for people to hide in around there.
6 Is that - - is that right?

7 A. After an incident like that?

8 Q. Yes, uh-huh.

9 A. After that incident, I did take precautions for that, yes.

10 Q. And you took precautions because based on the environment, you
11 were concerned about it?

12 A. Based on the incident that I had just - -

13 Q. Right.

14 A. - - yeah, based on the incident.

15 Q. Thank you, Mr. Rash.

16 THE COURT: Anything further of this witness?

17 MR. FILIBERTO: Just briefly, Your Honor.

18 REDIRECT EXAMINATION BY MR. FILIBERTO:

19 Q. Officer Rash, you indicated that there were several shell
20 casings on the ground?

21 A. Yes, sir.

22 Q. Were they in any close proximity to where you found the
23 weapon?

24 A. Ah, some were near the weapon and through the evening and the
25 course of the perimeter search for evidence, numerous ones were

1 found all over that area.

2 Q. So, the -- did you conclude, then, that gunfire went on there
3 fairly regularly?

4 A. Yes, sir.

5 Q. Now --

6 MR. BARR: Object and move to strike.

7 I think that's, first of all --

8 THE COURT: I sustain that. That would be pure
9 speculation. He doesn't know that.

10 Go ahead to something else.

11 Q. Again, you indicated that shells were -- were not necessarily
12 right by the pistol. They were in other areas as well?

13 A. Correct. They were strewn along the driveway and through the
14 dirt. As you kicked the dirt up, you'd find shell casings in the
15 dirt.

16 Q. Can you approximate where you turned off Miracle Lane into the
17 area where the crime scene is roughly how many yards it is to
18 travel?

19 A. I would say it's approximately fifty yards which would be a
20 hundred and fifty feet, somewhere in that range between one hundred
21 and one hundred and fifty. Without having an actual measurement,
22 it would be a little bit harder.

23 Q. So, not that much space, then?

24 A. No.

25 It's between seventy-five and a hundred yards from Miracle

1 Lane I'd say to where I located the victim.

2 Q. Your perspective - - protective sweep, it didn't reveal any
3 danger? You didn't determine there was any danger there?

4 A. No. The only - - the only danger would have been if a dog
5 had gotten out of its pen - - that I observed.

6 Q. Thank you.

7 THE COURT: Alright, sir. You may come down.

8 MR. FILIBERTO: May I request that this witness be excused
9 from his subpoena?

10 THE COURT: Yes, sir.

11 You are excused from your subpoena.

12 OFFICER RASH: Thank you, Your Honor.

13 (The witness leaves the witness stand.)

14 THE COURT: Call your next witness.

15 MR. FILIBERTO: The State calls Robert Deal.

16 (The witness takes the witness stand.)

17 OFFICER ROBERT DAVID DEAL, JR., being
18 duly sworn, testifies as follows:

19 CLERK OF COURT: Please state your full name and spell your
20 last name.

21 OFFICER DEAL: Robert David Deal, Jr. D-e-a-l.

22 DIRECT EXAMINATION BY MR. FILIBERTO:

23 Q. Officer Deal, where are you currently employed?

24 A. I'm employed with the Horry County Police Department in the
25 Crime Scene Section.

1 Q. How long have you been so employed?

2 A. I've been employed with the Horry County Police Department a
3 little over seven years.

4 Q. And you received specific training related to Crime Scene?

5 A. Yes, I have. Over the last two and a half years, I've had
6 six months training, um, provided by the FBI along with Ron Smith
7 and Associates and other companies and training like South Carolina
8 Police Academy.

9 Q. Please explain to the jury, generally, the responsibilities of
10 a Crime Scene Investigator.

11 A. Currently, we're tasked with processing scenes ranging from
12 suicides, shootings, homicides, natural deaths, ah, suspicious
13 deemed by the coroner's office.

14 In addition, we're tasked with processing burglaries, ah, any
15 crime that might have evidence that needs to be processed and
16 examined, ah, more thoroughly than a patrol officer would do to
17 help, um, come to a resolution.

18 Q. Now, did you receive a call on March 8, 2007, related to this
19 incident?

20 A. Yes, I did. At ^{11:25} 23:25, roughly, 11:25 in the evening, I
21 received a phone call from my supervisor, Specialist Peter Cestare,
22 reference to a shooting that took place at 5181 Miracle Lane in
23 Conway, ah, where a shooting take - - took place with the victim
24 being airlifted out.

25 Q. Please describe the scene for the jury at the time you

1 arrived.

2 A. I arrived on location, roughly, about 12:10, ah, that morning.
3 The temperature was, roughly, in the high thirties. It was a light
4 dew still present on the ground. It was dark, clear skies.

5 I - - when I arrived on the scene, ah, I spoke with Officer
6 Fred Rash, along with Detective Tim Troxel who, ah, kind of gave
7 me some background on what had taken place and that, indeed, the
8 victim had been airlifted to New Hanover Regional Medical Center.

9 I performed an initial walk-through of the scene with
10 Detective Tim Troxel, ah, where we saw a large burn pot off to the
11 side of the residence and then a conglomeration of several small
12 and large blood pools and a handgun and some miscellaneous clothing
13 items and cell phone in the scene.

14 Q. In addition to locating that - - those items, did you do
15 anything else?

16 A. Um, measurements and photographs of the scene. Um, I
17 collected several items of evidential value, ah, being, ah, blood
18 swabs for DNA analysis.

19 We al - - I also collected, ah, the clothing items, ah, that
20 were belonging to the victim that EMS had left behind.

21 In addition, I collected, ah, several cell phones that were
22 also found in the on position and during the processing of the
23 scene were being phoned.

24 During the examination and collection of the evidence I also
25 recovered a High Point Model CF 380, ah, 380 caliber handgun then

1 the scene that contained, ah, four live cartridges in the magazine
2 and one live cartridge in the chamber.

3 Q. I show you what's already in evidence as State's #1. Did you
4 prepare this sketch?

5 A. Yes, I did.

6 MR. FILIBERTO: Again, I'd ask if he could come down and
7 stand, please, Your Honor?

8 THE COURT: You may do so.

9 Gentlemen, you may go around if you care to. I've seen the
10 sketch.

11 (The witness stands before the jury box.)

12 Q. Investigator Deal, please stay fairly close to this microphone
13 and speak up for the court reporter.

14 During your investigation, were you able to determine where
15 the victim lived?

16 A. Yes, I was. I was informed that the victim lived at 5181
17 Miracle Lane. Through Detective Troxel's investigation he advised
18 me that the victim lived there.

19 Q. Again, this area that's marked on your sketch?

20 A. Yes, it is.

21 Q. Now, you recall Miracle Lane. Is it a paved road?

22 A. Ah, if I remember correctly, yes, it was.

23 Ah, the residence was located off of a dirt road. Ah, it was
24 inside of what was considered to be a mobile home park. Coming
25 off of Miracle Lane, it was nothing but, ah, loose sand material,

1 dirt and, ah, grass.

2 Q. Now, according to your sketch, you made several marks toward
3 the top here with numbers. What does that correlate to?

4 A. Those items are reference to the evidence that I collected and
5 their rough estimate of where they were located within the scene.

6 Q. And, if you would again, please summarize for the jury the
7 physical evidence that you took.

8 INVESTIGATOR DEAL: Your Honor, may I approach?

9 MR. FILIBERTO: Sure, please come over.

10 A. The handgun that I found in the scene - - the handgun that I
11 found in the scene is in this general area. These large
12 circle type objects correlates the blood pools that I found in
13 the scene.

14 In addition, the numbers are corresponding that don't have an
15 object relating to them are either cell phones or spent cartridges
16 that I also recovered in the scene, um, that were also 380 caliber.

17 This is the burnt pile that was beside the residence along
18 with the victim's vehicle behind the residence.

19 Q. You indicated that you collected 380 caliber shell casings.
20 Did you collect, ah, shell casings that were of another caliber?

21 A. Ah, there were some miscellaneous calibers, ah, long gun
22 calibers within this crime scene that were collected and deemed of
23 no evidential value at that time, ah, due to the fact of their wear
24 and aging of the cartridge casings.

25 In addition, there were some other cartridges found out by the

1 road that were also collected but deemed of no evidential value due
2 to the fact of their aging, ah, of the cartridge casing.

3 Q. Please return to your seat.

4 (The witness returns to the witness stand.)

5 Q. Let me show you what's been marked for identification as
6 State's #4, #5, #6 and #7 and ask you to go through those and see
7 if you recognize those.

8 A. State's Exhibit #4 I do recognize. It's a photograph I took
9 of the victim's residence that also incorporates the burn pile
10 along with the privacy fence that, ah, along with the house.

11 State's Exhibit #5, um, I do recognize it. It's a photograph
12 of the victim's jacket that I collected. Ah, it also contains a
13 large amount of blood on the jacket itself which was swabbed and
14 sent to SLED for analysis.

15 State's Exhibit #6, yes, I recognize it's a photograph I took.
16 It's just a general, overall photograph of the scene as I saw when
17 I approached and did my initial walk-through. It incorporates the
18 burn pile, the victim's jacket along with some dog houses that were
19 also located behind the victim's residence.

20 State's Exhibit #7, I also recognize as being a photograph I
21 took that morning. Ah, it's of the back of the victim's residence
22 showing the privacy fence and general photograph.

23 Q. Do they fairly and accurately depict the scene as it was the
24 night you arrived there?

25 A. Yes, it does.

1 MR. FILIBERTO: The State would move to have State's #4,
2 #5, #6 and #7 into evidence.

3 THE COURT: You gentlemen have previously seen these
4 photograph?

5 MR. TAYLOR: If I could just one more time see them, Your
6 Honor, just to make sure.

7 No objection, Your Honor.

8 THE COURT: Without objection, they are introduced into
9 evidence.

10 (The Court Reporter accepts photographs State's Exhibits #4,
11 #5, #6 and #7 into evidence.)

12 THE COURT: You wish to publish now or later?

13 Q. And you indicated at the crime scene you located a weapon?

14 A. That is correct.

15 Um, inside the scene I recovered a High Point Model CF 380,
16 ah, 380 caliber, serial no. was Pappa 828136. Um, it was inside
17 the crime scene. It contained blood on the slide and on the grip
18 of the firearm where someone would hold it.

19 In addition, inside the magazine were four live 380, ah,
20 caliber cartridges head stamped with an asterisk, I, and then
21 another asterisk along with one live cartridge in the chamber.

22 Q. I show you State's #8 and #9 for identification purposes. Do
23 you recognize those?

24 A. State's Exhibit #8 I do recognize as a photograph I took of
25 Item #13 which is the High Point Model CF 380 that I collected as

1 evidence.

2 And State's Exhibit #9 I do recognize as the general
3 photograph I took of the High Point CF 380 that was recovered in
4 the scene prior to it being tagged as evidence.

5 Q. Do those photographs fairly and accurately depict the weapon
6 as you located that evening?

7 A. Yes, they do.

8 MR. FILIBERTO: The State would move to have State's #8
9 and #9 entered into evidence.

10 MR. TAYLOR: No objection, Your Honor.

11 MR. BARR: No objection.

12 THE COURT: Gentlemen, you've seen these.
13 Without objection.

14 (The Court Reporter accepts State's Exhibit #8 and #9 into
15 evidence.)

16 THE COURT: Mr. Foreman, ladies and gentlemen, in order to
17 save time some of these pictures were introduced Monday after
18 consent of the attorneys for the defendants.

19 This was done in order to save some time.

20 MR. FILIBERTO: Thank you.

21 THE COURT: At any time, Solicitor, you propose to
22 introduce anything that has not been seen by them, let me know.

23 MR. FILIBERTO: I will, sir.

24 Q. Investigator Deal, other than photographing the weapon, did
25 you do anything else with it?

1 A. Yes, I did.

2 Once I had gotten the weapon back to the lab, I also swabbed
3 a slide to get a sample of the blood that was on the firearm to
4 compare it to the victim's DNA and any other DNA that was provided
5 to me, ah, to transport to the South Carolina Law Enforcement for
6 forensic examination to determine whose blood it was.

7 Q. Investigator Deal, did you bring the blood swabs that you took
8 with you this morning?

9 A. Yes, I did.

10 MR. FILIBERTO: Court's indulgence just one minute, Your
11 Honor.

12 Your Honor, permission for Investigator Deal to just come down
13 and locate those blood swabs for us?

14 THE COURT: Yes, sir.

15 MR. FILIBERTO: Your Honor, if we could approach?

16 (Bench conference held off record and in the presence of the
17 jury but outside the hearing of the jury.)

18 Q. Investigator Deal, I show you what's been marked for
19 identification as State's #21. Do you recognize that?

20 A. Yes, I do. Those are the DNA swabs that I had collected from
21 the scene during my processing.

22 Q. Are you able to identify in that package specifically the
23 swabs taken from the 380 High Point?

24 A. Yes, I am.

25 It is located within the package between items labeled as DNA

1 22 Winchester Stock and DNA blood swab #4 within the package.

2 Q. Now, when you took those blood swabs, did you package them?

3 A. Yes, I did.

4 I collected the swabs using two cotton swabs with sterile
5 water. I swabbed the slide collecting a sample of the blood from
6 the slide of the firearm, placed it within the DNA carton, sealed
7 it up with evidence tape and sealed it within a heat sealed
8 envelope to be prepared to go to SLED.

9 Q. And while that - - those blood swabs were in your custody and
10 control, did you change or alter them in anyway?

11 A. No, I did not.

12 (Court Reporter accepts State's Exhibit #21 for I.D.)

13 Q. Investigator Deal, after you concluded your onsite
14 investigation, what did you do next?

15 A. After I finished processing the scene I was then requested to
16 go to New Hanover Medical, ah, Center in Wilmington, North Carolina
17 where I then was able to process the victim for DNA.

18 Also, I took a Gunshot Residue Kit of the victim's hands and
19 also additional photographs.

20 The victim had already been through medical treatment. I was
21 not, um, not able to get a clear picture or photograph of the wound
22 had sustained. I was informed by medical staff that he did have a
23 wound to his head that consisted of a gunshot wound.

24 Q. So, what time did you arrive in New Hanover?

25 A. I left Horry County, roughly, around 4:30 in the morning. Ah,

1 don't know exactly what time I arrived in New Hanover but I
2 departed New Hanover at 6:00 that morning.

3 Q. And this would be on March 9, 2007?

4 A. March the 8th. I'm sorry, you're correct, sir. The 9th.

5 Q. Thank you.

6 So, the condition of the victim at the time you arrived there
7 was what?

8 A. The condition of the victim, it had been altered from the
9 original state from the scene. He had received, ah, medical
10 treatment, ah, along with, ah, ah, numerous medications and was
11 unable to, ah, speak or give any statements to me at that time.

12 Q. Now, you indicated you, ah, swabbed the victim's hands for
13 gunshot residue. What is that?

14 A. Ah, the Gunshot Residue Kit is a two-part collection. Ah, the
15 first part is you take a sem applicator which is basically just
16 nothing other than some double-sided tape on a, ah, cylinder, and,
17 basically, we dab the hand picking up any loose particles of gun
18 powder that would be inside of the gun casing that is part of the
19 bullet or ammunition that was inside of the firearm.

20 Once I collected the sem applicator, I then collected a what
21 we call a wet, um, collection. It is using a sterile cotton swab
22 and a low grade of nitric acid. We moisten the swab and then we
23 swab the hands using those Q-tips and then place them inside a
24 sterile plastic container which is then sealed up and then sent to
25 SLED for examination for any type of gunshot residue that may be

1 present from firing firearms?

2 Q. And what did you do with the Gunshot Residue Kit that you
3 collected?

4 A. After I collected it, it along with other evidence items went
5 to SLED for processing.

6 Q. Specifically as it relates to the gunshot residue, what was
7 the result of that test?

8 A. SLED deemed that it was not - - -

9 MR. BARR: Objection, Your Honor.

10 THE COURT: What's your objection?

11 MR. BARR: Your Honor, I think he - - he's about to
12 testify to something that he's not competent to testify. He's
13 testifying as to the result of the examination - - from the
14 forensic examination at SLED.

15 THE COURT: What's your question?

16 MR. FILIBERTO: My question is, "Did he receive a report
17 back from SLED related to the gunshot residue taken?"

18 THE COURT: I will permit that report.

19 Proceed.

20 MR. FILIBERTO: Your Honor, may I proceed?

21 THE COURT: Yes, sir.

22 MR. FILIBERTO: Yes, sir.

23 A. I was advised that the GSR Kit was not tested due to the fact
24 that it was outside the scope of the time frame.

25 THE COURT: I'm not - - no, I'm only permitting him to

1 testify as to what the report shows. I will permit that.

2 Go ahead.

3 Q. Ah, again, so to your knowledge, the Gunshot Residue Kit was
4 tested or not?

5 A. It was not tested.

6 Q. And the reason indicated to you that they did not test that,
7 it was what?

8 A. Ah, due to the fact that he had received medical treatment and
9 that there was a period three to six hours, ah, between the
10 incident and the time it was collected.

11 Q. So, that length of time would have impacted - - to your
12 knowledge, your training, would that length of time impacted their
13 ability to get an accurate reading?

14 A. Yes.

15 THE COURT: The report is showing even though it's a report
16 made by somebody else that because of the time lapse, it was
17 inappropriate to get an accurate reading.

18 MR. FILIBERTO: That's correct, Your Honor, as I
19 understand it, Your Honor.

20 Q. Investigator Deal, did you eventually receive information
21 regarding a change in the victim's condition?

22 A. Yes, I did.

23 I was notified by Chief Deputy Coroner Tamara Willard that the
24 victim had passed away and that a autopsy was requested and would
25 be performed, um, I believe on the 13th of that week of March.

1 Q. Where was that to be performed?

2 A. The autopsy was performed at Grand Strand Regional Medical
3 Center with Forensic Pathologist Dr. Edward Proctor presiding.

4 Q. Did you attend that autopsy?

5 A. Yes, I did.

6 The autopsy was at 3:00 that afternoon. Myself along with
7 Chief Deputy Coroner Tamara Willard who was the, ah, coroner
8 through this case attended the autopsy.

9 There in the autopsy, um, I took general photographs of the
10 victim to include photographs of the medical, um, items that were
11 left by New Hanover Medical Center, ah, after their treatment along
12 with photographs of the wound to his head.

13 In addition, I was able to collect a projectile that Dr.
14 Proctor had recovered from his head, ah, along with several x-rays
15 and blood that was available for us.

16 MR. FILIBERTO: Your Honor, I'm just going to ask the
17 witness to step down and recover those.

18 THE COURT: Alright, sir.

19 You may come down.

20 Q. Investigator Deal, I'm going to show you what's been premarked
21 as State's #22 for identification purposes. Do you recognize it?

22 A. State's Exhibit #22, yes, I do. It's the packaging along with
23 the projectile, ah, that was collected from the victim during his
24 autopsy on the 13th.

25 Q. And when that was collected, what did you do with it?

1 A. Once I collected it, we cleaned it and photographed it during
2 the autopsy. I packaged it in the brown box, labeled it, sealed
3 it with evidence tape, ah, to also be transported to SLED for
4 examination.

5 Q. And while that was in your care and custody, did you alter it
6 in any fashion?

7 A. The only thing I did was clean it once it was removed from the
8 victim's, ah, skull.

9 (The Court Reporter accepts State's Exhibit #22 for
10 identification.)

11 Q. Investigator Deal, did you recover any clothing worn by the
12 victim?

13 A. Yes, I did.

14 During my time at New Hanover Medical we were able to retrieve
15 the clothing along with some clothing items that Patrol had also
16 turned into evidence. It consisted of his jeans, his shirt and I
17 believe his socks and shoes.

18 Q. I'll show you what's been marked as State's #23 for
19 identification. Do you recognize that?

20 A. State's #23, yes. They're the pants that were submitted into
21 evidence in reference to this case that I packaged up, ah, for - -
22 in reference to this case.

23 Q. Did you examine those parts as a part of your investigation?

24 A. Yes, I did.

25 During the examination of the pants, I found large amounts of

1 blood and sand material adhered to the jeans along with several
2 holes.

3 During the inspection of some of the holes in the jeans and
4 with nature to the victim's wounds, I was able to see that there
5 were two holes that would resemble projectile entrance and exit
6 through the jeans.

7 Q. Let's go back - - let's go back to the autopsy.

8 During the autopsy you indicated - - you clearly indicated the
9 head wound. Ah, did you see anything else that - - that led you
10 to believe there was more than one wound?

11 A. Ah, the victim also sustained what appeared to be an entrance
12 wound to his right, I believe, ankle area. During an examination
13 which I was informed by was not a total entrance wound with an
14 exit. It was more of a entrance, exit without actually going all
15 the way through the tissue.

16 Dr. Proctor said that he would do some examination - - -

17 THE COURT: Let's wait a minute, now. Let's have Dr.
18 Proctor testify as to that, please.

19 He can tell what he observed but insofar as that additional
20 testimony, that would be for the doctor to say.

21 Q. Are the victim's pants in the same condition as when you
22 received them?

23 A. Yes, they are.

24 MR. FILIBERTO: The State would move Exhibit #23 into
25 evidence.

1 THE COURT: Alright, sir.

2 MR. TAYLOR: No objection.

3 MR. BARR: No objection.

4 THE COURT: Without objection.

5 (The Court Reporter accepts State's Exhibit #23 into
6 evidence.)

7 Q. Investigator Deal, as part of your investigation did you
8 execute a search warrant on a white 1993 Ford Escort?

9 A. Yes, I did.

10 Q. Where did you perform that search?

11 A. The search warrant was performed, um, at the Horry County
12 Police Department impound yard, ah, underneath our bays where we
13 process our vehicles.

14 Under the search warrant given to me by Detective Tim Troxel,
15 we processed the vehicle looking for evidential items. During
16 that search, ah, I was able to recover "one spent 22 caliber"
17 cartridge casing from the passenger area of the vehicle front.

18 Q. That's - - we'll get to that.

19 I'm going to show you what has been premarked as State's #10,
20 #11, #13, #18 and #19. See if you recognize those.

21 A. State's Exhibit #18 I recognize as my photograph taken, ah,
22 during the vehicle processing. It is the full side of the driver's
23 side of the vehicle.

24 State's Exhibit #19 is a photograph of the interior door panel
25 of the driver's side, ah, front.

1 State's Exhibit #13 is a photograph I took during processing
2 of the passenger side front quarter panel area of the vehicle.

3 State's Exhibit #11 is a photograph I took of the rear of the
4 vehicle.

5 And State's Exhibit #10 is a photograph I took of the front of
6 the vehicle.

7 Q. And those photographs fairly and accurately depict the
8 condition of the vehicle when you executed the search warrant?

9 A. Yes, they do.

10 Q. Thank you.

11 MR. FILIBERTO: Your Honor, the State would move to have
12 State's #10, #11, #13 and #18 into evidence.

13 THE COURT: They are introduced. Go ahead. They've seen
14 them.

15 MR. FILIBERTO: And #19. Thank you.

16 (The Court Reporter accepts State's Exhibits #10, #11, #13,
17 #18 and #19 into evidence.)

18 MR. FILIBERTO: Permission to publish to the jury.

19 THE COURT: You may do so.

20 Q. And when you executed your search warrant, did you recover - -
21 you started to talk about it before. Did you recover any items of
22 evidentiary value?

23 A. Yes, I did.

24 Um, as I would saying, I recovered a spent 22 caliber
25 cartridge casing. It was on the passenger front floorboard area

1 between the seat and the door jam.

2 In addition, I found another spent 22 cartridge, ah, caliber
3 cartridge casing on the back seat of the vehicle along with a
4 digital scale inside of a black sock within the trunk area.

5 MR. FILIBERTO: Court's indulgence, Your Honor.

6 Q. I show you what's been premarked as State's Exhibit #24 and
7 #25 for identification. Do you recognize those?

8 A. State's Exhibit #24 is item #3, a spent 22 cartridge - - the
9 box that I labeled as spent 22 caliber cartridge, Remington, and
10 the cartridge that I collected out of the back seat.

11 State's Exhibit #25 is the box and cartridge casing that I
12 labeled spent 22 cartridge, Remington, ah, #1 which would be from
13 the front passenger, ah, floorboard between the seat and door jam.

14 Q. Upon collecting that evidence, what did you do with it?

15 A. I placed the items into the brown cartridge boxes, sealed it
16 with evidence tape and then heat sealed it to transport to SLED for
17 examination.

18 Q. And while those were in your care and custody, did you change
19 or alter them in any way?

20 A. No, I did not.

21 MR. FILIBERTO: At this time the State would move State's
22 #24 and #25 into evidence.

23 MR. TAYLOR: No objection, Your Honor.

24 MR. BARR: No objection, Your Honor.

25 THE COURT: Without objection.

1 MR. FILIBERTO: Thank you, Your Honor.

2 (The Court Reporter accepts State's Exhibit #24 and #25 into
3 evidence.)

4 Q. At this time I'm going to hand you up what's been premarked as
5 State's #12, #14, #15 and #17 and ask you if you identify those.

6 A. State's Exhibit #12 is a photograph I took of the cartridge
7 casing 22 caliber that was located on the back seat of the Escort.

8 State's Exhibit #14 is a photograph I took of the spent 22
9 caliber cartridge casing that was on the floorboard between the
10 passenger seat and the door jam.

11 State's Exhibit #15 is a photograph with my evidence #3
12 placard viewing of the spent 22 caliber cartridge casing on the
13 back seat of the Escort.

14 And State's Exhibit #17 is a photograph of a spent cartridge
15 collected - - 22 caliber cartridge casing collected between the
16 passenger seat front and the door jam.

17 Q. Investigator Deal, do those photographs accurately portray
18 where you found the evidence when you execute the search warrant on
19 the '93 Ford Escort?

20 A. Yes, they do.

21 MR. FILIBERTO: The State would move them into evidence at
22 this time.

23 THE COURT: They've seen those. They are introduced.

24 MR. FILIBERTO: #12, #14, #15 and #17.

25 MR. BARR: Your Honor, there is one issue.

1 THE COURT: Sir?

2 MR. BARR: I don't think a proper foundation has been
3 made, yet, and, of course, I'm not real happy but at the
4 appropriate time we probably won't have an objection but at this
5 point, ah, I don't believe that they would be admissible.

6 He's referring to that these are the photographs of the spent
7 shell cartridges that were taken from the back of a vehicle, and at
8 this point we've had no evidence concerning - - -

9 THE COURT: What you say about that, Solicitor?

10 MR. FILIBERTO: I'm not sure what the objection is, sir.

11 MR. BARR: The irrelevancy. They are irrelevant because
12 there's been no foundation laid for them.

13 THE COURT: He says you've had no testimony supporting that
14 other picture where the cartridge was taken from the back of an
15 automobile.

16 MR. BARR: Your Honor, we don't know anything about the
17 vehicle, where it came from, why it was - - -

18 THE COURT: Well, that - - that's fine but address the - -
19 -

20 MR. FILIBERTO: I'll address it.

21 THE COURT: Okay.

22 Q. Investigator Deal, when you initially went to the crime scene
23 - - I'll strike that.

24 Are you aware how the police department came into custody and
25 control of the 1993 Ford Escort.

1 A. I was informed by Detective Tim Troxel during his
2 investigation that they had seized the Escort as part of their
3 investigation and requested that our section process it for
4 firearms related or blood DNA relate evidence.

5 Q. And you were - - and were you made aware of what the
6 connection of the 1993 Ford Escort to this case?

7 A. I was told by Detective Tim Troxel it belonged to the
8 suspects.

9 Q. Thank you.

10 THE COURT: His question is do you have - - you are
11 purporting to introduce pictures showing some cartridges from the
12 back seat. He wants to hear some testify as to who took that
13 picture if any.

14 MR. FILIBERTO: I thought - - I thought the witness
15 testified to that. I'll ask that question again.

16 THE COURT: I did, too, but Mr. Barr has raised some
17 questions. So, do it again.

18 Q. These photographs, do you know who took them?

19 A. Yes, sir, I did.

20 Q. And you took them while you were executing the search warrant?

21 A. That is correct.

22 THE COURT: Ask him specifically about the question that
23 Mr. Barr raises about the one in the back seat. Did he take that
24 one and does that - - does that depict where the cartridges were?

25 A. The cartridge casing collected from the back seat and

1 photograph - - I did photograph that cartridge casing and it is an
2 accurate depiction of where it was.

3 THE COURT: Does that answer - - does that relate to your
4 objection, Mr. Barr?

5 MR. BARR: Judge, it does relate to the objection but it's
6 an inconsequential matter. For the record I just want to make
7 sure the record is clean, and, quite frankly, there's been no
8 foundation laid concerning the connection of the cartridges to any
9 gun or - - -

10 THE COURT: Well, I understand.

11 MR. BARR: Yes, sir.

12 THE COURT: I'm permitting it now just to show where the
13 cartridges were found.

14 MR. BARR: Alright, sir.

15 THE COURT: They can connect that as they choose to but I'm
16 going to let it in that these cartridges were by his testimony
17 found at the place where the pictures depict.

18 He can tie up or whatever he needs at a later date.

19 MR. FILIBERTO: We will, sir, Your Honor. Thank you.

20 (The Court Reporter accepts State's Exhibit #12, #14, #15 and
21 #17 into evidence.)

22 Q. Investigator Deal, as a part of your examination, did you look
23 over the exterior of the white Ford Escort?

24 A. Yes, I did, and in all vehicle searches, I always do an
25 exterior, ah, search and examination of the vehicle. We always

1 document odometer readings, the gas - - how much gas is in the
2 vehicle, if the windows are up and down in our - - during our
3 examination.

4 We also do, ah, an examination of the damages (a) that might
5 be related to that actual incident that we are investigating along
6 with any damages possibly from other occurrences.

7 During my examination of that vehicle I found some damage but
8 nothing to, ah, consistent with any type of firearms or, ah,
9 damage, or damage consistent with blood.

10 THE COURT: For the edification of the school folks, at the
11 conclusion of the direct testimony we're going to take the morning
12 break, and then we'll have cross examination after the break.

13 You may proceed.

14 MR. FILIBERTO: Thank you, Your Honor.

15 Q. So, again, your examination of the outside of the vehicle
16 revealed nothing consistent with, ah, with having been hit with a
17 gun - - with a bullet?

18 A. That is correct.

19 Q. Investigator, did you recover any other weapons related to
20 this investigation?

21 A. Ah, during investigation a, ah, Winchester Model 190 22
22 caliber long rifle was transferred to me through the custody of the
23 evidence section that was collected by Detective Brad Townsend
24 during his investigation.

25 That firearm was transferred to me for packaging and also

1 transferred to SLED for examination.

2 THE COURT: I don't think - - I don't think - - we don't
3 need to open it, do we? You need to open the package.

4 MR. BARR: Well, Judge, I think it should be opened to
5 expose whatever is in it. The evidence right now would not even
6 be relevant.

7 THE COURT: Alright. Go ahead.

8 MR. FILIBERTO: Your Honor, actually, I think the State -

9 - -

10 THE COURT: Do you know what's in - - testimony as to
11 what's in the box. If he wants to open it.

12 Q. I show you what's been marked for identification as State's
13 #16. Do you recognize it?

14 A. State Exhibit #16, yes, I do. It's the box that I labeled in
15 reference to this case, Winchester Model 190 22 long rifle, Serial
16 No. B as in boy, 1766180 transferred to me and packaged for SLED
17 and transported by me to SLED.

18 Q. And who did you receive it from?

19 A. I received it from the evidence section underneath the control
20 of Detective Brad Townsend.

21 Q. And while you received the 22 rifle while it was in your
22 possession, care and custody, did you change it or alternate it at
23 all?

24 A. I did not alter or change it, no, sir.

25 MR. FILIBERTO: The State would move State's #16 into

1 evidence, Your Honor.

2 MR. BARR: We'd object to the admission of this evidence
3 at this time.

4 Again, there's no foundation laid. There's nothing to even
5 indicate that - - -

6 MR. FILIBERTO: The State withdraws the request, Your
7 Honor.

8 THE COURT: Sir?

9 MR. FILIBERTO: We're going to withdraw our request to
10 move it into evidence at this time.

11 THE COURT: Okay.

12 *Not in evidence* (The Court Reporter accepts for identification only State's
13 Exhibit #16.)

14 THE COURT: He's not questioning the contents of the box.
15 He's questioning the foundation as to how it came about and from
16 where.

17 Q. Investigator Deal, to be clear. You indicated you collected
18 DNA swabs from a High Point pistol. Is that correct?

19 A. That is correct.

20 Q. And you collected this 22 caliber rifle. Is that correct?

21 A. That's correct.

22 Q. And as you just recently testified, ah, you were able to
23 collect some spent 22 shell casings. Is that correct?

24 A. That is correct.

25 Q. And what did you do with that evidence?

1 A. Packaged the evidence for transport to SLED for examination.

2 Q. And the condition of that evidence when you delivered it?

3 A. Ah, the evidence was packaged and sealed with my signatures on
4 them and was turned over to evidence intake at SLED.

5 Q. And that includes, just to be clear, the projectile that was
6 recovered at the autopsy?

7 A. That is correct.

8 Q. And, again, while those items were in your care and custody,
9 you didn't alter them in any way?

10 A. No, sir.

11 MR. FILIBERTO: Please answer any questions defense
12 counsel may have.

13 THE COURT: Alright.

14 Let's take the break. You've been here very patiently.
15 We're going have about a fifteen minute break, and then I'll call
16 you back and you can have your cross examination at that time.

17 Mr. Bailiff, bring the - - bring that young group around to my
18 office.

19 (The jury retires to the jury room at 11:39 a.m.

20 The Court recesses the trial of this case for a short break
21 and thereafter resumes the trial of this case.)

22 THE COURT: Be seated, please.

23 Are we ready, gentlemen, for cross examination? Anything we
24 need to discuss before I bring the jury in?

25 MR. TAYLOR: Nothing from us, Judge.

1 THE COURT: Bring the jury in, please.

2 (The jury returns to the courtroom at 12:11 p.m.)

3 THE COURT: Alright, sir.

4 The jury is present. You may have your cross examination.

5 Mr. Taylor, I believe you're first.

6 MR. TAYLOR: Yes, sir, Your Honor..

7 CROSS EXAMINATION BY MR. TAYLOR:

8 Q. Good afternoon, Mr. Deal.

9 A. Good afternoon.

10 Q. Mr. Deal, when you arrived at 12:10 a.m. the night in question
11 and it was in the high thirties, were you alone or did you have
12 somebody else assisting you with the crime scene?

13 A. I was alone.

14 Q. Okay.

15 And - - I'm going to ask you step down so you can answer some
16 questions regarding the scene.

17 (The witness stands before the jury panel.)

18 Q. Where did you park that night?

19 A. My vehicle was located right here after my initial walk-
20 through of the scene.

21 Q. Okay.

22 And tell me whenever you got there and tell me where you went
23 as far as examining the scene.

24 A. Well, I originally came, ah, to the scene. I was parked out
25 on the highway.

1 Q. Okay.

2 A. Officer Rash was already up here from his initial response.
3 I along with Detective Troxel scanned through this area leading up
4 into the scene.

5 Q. Let me ask you a questions.

6 A. Okay.

7 Q. When you scanned from where my hand is here to here, did you
8 find any shells as far as being empty brass from discharged rounds?
9 From here, not from here, not from the street but from this trailer
10 forward?

11 A. Between this area and this area? No, um, spent brass was
12 found.

13 Q. Okay.

14 Going from that same area forward, where exactly did you find
15 brass?

16 A. All the spent brass was located within, ah, the crime scene.

17 Q. Okay.

18 Did you find - - did you - - tell me where else did you look.

19 A. During - - during my survey, I also proceeded between the
20 trailers doing my measurements, um, all throughout this area and
21 behind these trailers.

22 Q. In your measurements did you measure - - tell me exactly what
23 you measured.

24 A. The measurements I took were between the trailers to get the
25 distance between the two.

1 Q. Okay.

2 A. Ah, also, I took a measurement from actually Miracle Lane all
3 the way up toward approximately where the main, primary scene was
4 located.

5 In addition, I took a measurement from the victim's from
6 corner of his residence down to Miracle Lane.

7 Q. And when did you start taking photographs?

8 A. I initially started taking photographs as soon as I started
9 walking in.

10 Q. Okay.

11 And from here forward tell me exactly what you found - - what
12 you took photographs of.

13 A. From Miracle Lane up to the crime scene I did not find any
14 evidential. I just photographed the general area.

15 Q. Okay.

16 How many brass casings did you find up here next to the
17 firearm that was found?

18 A. Without referring to my notes I believe I found three, ah, two
19 spent 380 cartridges.

20 Q. Let's refer to your notes to make sure that you're correct.

21 A. Yes, sir.

22 Yes, two spent 380 cartridges.

23 Q. And when you found the firearm itself, you said it had blood
24 on it in your previous testimony?

25 A. That is correct.

1 Q. And you took DNA from that?

2 A. That is correct.

3 Q. And that DNA did in fact match up with the deceased?

4 A. The SLED report from the DNA Forensic Section did indicate
5 that the blood did belong to the victim.

6 Q. Okay.

7 And did you take fingerprints from the gun?

8 A. Ah, the gun was not fingerprinted. It was sent, ah, to, ah,
9 SLED for examination?

10 Q. Okay.

11 Why did you not fingerprint the gun?

12 A. Ah, on the gun itself was a layer of dew.

13 Q. Okay.

14 A. And with my background in forensics and also latent prints,
15 ah, the dew was a barrier for recovering fingerprints at that time.

16 Q. Again, in this situation in your experience in the two and a
17 half years you've been doing this, you had no doubt that this was,
18 in fact, the deceased's gun?

19 A. Ah - - -

20 Q. Given the fact that the blood was on the gun, his blood?

21 A. I can only go by what I found at the scene. I can't make any
22 type of speculation that it would belong to the victim.

23 Q. Right. Whenever you make - - whenever you come to a crime
24 scene, you do make a speculation as far as what you believe
25 happened in your report. That is, in fact, your job as crime

1 scene.

2 Q. I was not informed during that of the processing that the
3 firearm did belong to the victim.

4 Q. Alright.

5 And what is your position as far as this firearm? Do you
6 believe that it belonged to the victim?

7 A. During my collection, I - - I consider it a piece of evidence.
8 I don't - - I don't have all of the information at the time.

9 Q. Do you have all the information concerning this case at this
10 point?

11 A. Ah, at the end - - at the end of the investigation, yes, I was
12 informed that the firearm did belong to the victim.

13 Q. It was his gun?

14 A. Yes.

15 Q. Now, the casings, the shell casings, the 380, you said that
16 the magazine for the pistol, it had I believe you testified to four
17 rounds that was found in this - - in this firearm.

18 A. There were four rounds in the magazine and one in the chamber.

19 Q. There was a total of five in the gun, and you said there were
20 two rounds that were spent?

21 A. That's correct.

22 Q. And this gun only holds seven rounds, correct?

23 A. You'd have to ask a firearms examiner.

24 Q. Okay.

25 But, I mean, you handle firearms. You handle this type of

1 firearm on a regular basis?

2 A. Ah, I have had several - -

3 Q. You see a lot of High Points?

4 A. - - High Points, that's correct.

5 Q. And 380 High Point in your experience does hold seven rounds,
6 correct?

7 A. It all depends if it's a compact or full-size.

8 I didn't get a round count that evening.

9 Q. Okay.

10 And was this a compact model or was it a full-size model?

11 A. All I know it was a CF, a Model CF.

12 Q. Which would be a compact?

13 A. I - - I wouldn't - - -

14 Q. C for compact?

15 A. I'd have to relay that to a firearms examiner.

16 Q. Alright. Now, the casings, did you have those casings matched
17 up to the firearm?

18 A. I sent them off to SLED for examination.

19 Q. And those casings did match that firearm, correct?

20 A. I'd have to refer that back.

21 Q. Again, refer to your notes.

22 MR. FILIBERTO: Your Honor, we'd object to this and, ah,
23 believe that this comparison needs to be done by the SLED analyst.

24 MR. TAYLOR: Your Honor, he testified earlier for the State
25 as to what was reported in SLED's report concerning the gunshot

1 residue, whether, in fact, it was testable or not.

2 THE COURT: I will permit the testimony.

3 There was some testimony about this in direct.

4 Go ahead.

5 A. Per the SLED report that was presented, and the examiner was
6 Kenneth Whitler - - -

7 THE COURT: Is that witness - - is that gentleman going to
8 testify?

9 Well, let's go ahead and get it.

10 MR. FILIBERTO: It's the State's intention to call that
11 witness, Your Honor.

12 THE COURT: Alright. Go ahead.

13 MR. TAYLOR: Your Honor, I just want to know whether or not
14 the shell casings matched the gun.

15 THE COURT: I understand. Go ahead.

16 MR. TAYLOR: Okay.

17 Q. Did the shell casings match the gun?

18 A. Ah, in his results, test cartridge casings from item #17 were
19 microscopically compared to item 19 and 20 which were the cartridge
20 casings. It is concluded the items 19 and 20 were fired by item
21 17, the pistol.

22 Q. Okay.

23 In layman's terms they were the cartridges fired from this
24 gun?

25 A. That's correct.

1 Q. Okay.

2 Now, there was some testimony earlier, and I need to ask you
3 about this, where the blood was found. Can you tell me exactly
4 where you found the blood?

5 A. Throughout the scene there were several blood pools and, ah,
6 blood patterns. I had two, ah, areas in this area within my area
7 all these objects that are like circles are the other indications
8 of blood patterns or blood pools in that area.

9 Q. And did you check to see in this direction or any direction if
10 there was rounds that were found from that - - these firearm
11 casings?

12 A. During an examination of the scene all around there were no
13 projectiles recovered.

14 Q. Okay.

15 But it is dark?

16 A. That is correct.

17 Q. Okay.

18 Now, what is on the other side of the road over here?

19 A. I - - I respectfully - - I can't recall.

20 Q. Don't remember.

21 Okay.

22 Now, it is dark that night, and you're here in the middle of
23 the night?

24 A. Yes, sir.

25 Q. Did you go back to the scene in the daylight to examine it the

1 next day?

2 A. Did I, no, sir.

3 Q. Why did you not do that?

4 A. I was in transition from New Hanover and getting sleep.

5 Q. Okay.

6 After you got some sleep the next day, did you go back to the
7 scene to see if you could find anymore evidence concerning this
8 case?

9 A. No.

10 Q. And why did you not do that?

11 A. I - - I was processing this scene and working several others.
12 I did not go back.

13 Q. But this is a murder scene, and you initially saw you believe
14 saw it at night. You couldn't possibly have seen all of the
15 evidence. That's correct?

16 A. At the initial time it was not a murder scene.

17 Q. Well, somebody - - there was a shooting, and somebody was in
18 critical condition?

19 A. That's correct.

20 Q. Alright.

21 So, why didn't you go back at any time after that during the
22 daylight to examine to see maybe if you could find, um, bullet
23 casings?

24 A. Because during my examination of the residence - - the
25 residence and the property itself, I did not see an indication of

1 any projectiles, holes in sides with flashlights and flood lamps
2 that I had in my vehicle.

3 Q. Alright.

4 But a 380 is a very small round being about the head of just
5 the tip of my pinkie finger, correct? You're familiar with that
6 round?

7 A. Yes, sir.

8 Q. Okay.

9 And given that it's 12:30, 1:00 at night at this point, you
10 would agree that it's possible -- there's a possibility that you
11 couldn't see the round given that circumstance in which you were
12 looking?

13 A. A projectile on the ground, that's correct.

14 Q. Okay.

15 But, now, in the daylight hours you would have been able to
16 see this and examine the scene much more thoroughly?

17 A. Possibly.

18 Q. Okay.

19 So, you really didn't do as most thorough a job here in doing
20 the crime scene as you possibly could, did you?

21 A. Yes, sir, I did.

22 Q. So, then, again, my same question. Why didn't you come in the
23 daylight to see if you could find something whenever you could
24 possibly see better?

25 A. Because when I cleared this scene, I felt due to that my

1 abilities that I had processed the scene the best that I could.

2 Q. But you can't see in the dark, can you?

3 A. No, sir.

4 Q. So, but you can see now in the daylight - - much better?

5 A. Much better.

6 Q. So, again, my question is you didn't do a thorough a job as
7 you could by not going in the daylight to see if there was other
8 evidence, other holes in this trailer, maybe in the ground, shots
9 fired in this direction where you would have been able to see it
10 during the daylight hours. You didn't do that, did you?

11 A. Did I go back out in the daylight? No, I did not.

12 Q. Now, you were there during the pathologist's autopsy?

13 A. That's right.

14 Q. Given that you were there, the entry wound was on the right
15 side of the head right above the right eye, correct?

16 A. I'd have to refer back to my notes.

17 Q. Please refer back to your notes if you cannot answer a
18 question.

19 A. That is correct, the right temple.

20 Q. Okay.

21 And the bullet was actually found when removed it was found in
22 the left section of the brain, correct?

23 A. I believe so, yes, sir.

24 Q. Okay.

25 So, then, if the deceased was standing here, then the bullet

1 had to be fired from this direction, correct, to go from the right
2 side to the left it would have been going at that angle?

3 A. That's outside - - that's outside of my expertise.

4 Q. Let's go back to what your expertise is. You do crime scene,
5 correct?

6 A. That is correct.

7 Q. Okay.

8 And what exactly is your job with crime scene?

9 A. My crime scene is to go out and collect physical evidence, to
10 reconstruct the crime scene.

11 Q. Okay.

12 And in reconstructing the crime scene, you can tell,
13 basically, your story in telling at trial what happened and,
14 basically, to give us synopsis about how these events portrayed.
15 Correct?

16 A. That is correct.

17 Q. Okay.

18 So, that anytime I ask you the question as to what happened
19 here, why do you evade me?

20 A. I'm not evading you.

21 Q. Okay.

22 Well, I just asked you if the fire - - if the shot was fired
23 in this direction and hit the right side of the head where he was
24 standing and the bullet ended up in the left-side of his brain,
25 then the shot had to be fired at this angle, correct?

1 A. I can't say that because I don't know where he was standing
2 at.

3 Q. Okay.

4 But the body was found here, correct?

5 A. Ah, the body was not at the scene when I arrived.

6 Q. Okay.

7 But you saw the blood pool and the evidence and I'm assuming
8 you asked somebody as to where the body was found?

9 A. When I arrived on scene, Officer Rash said the body of the
10 victim was found in this general area right here.

11 Q. Okay, and that's where the red dot is?

12 A. I believe so.

13 Q. Okay.

14 So, again, if the body is found here and the blood is all
15 here, it's consistent that the body would have been in this area
16 the entire time, correct?

17 A. It's possible.

18 Q. Okay.

19 So, there's a bullet wound in this guy's head and there's no
20 blood on this side of the place. There's no blood on this side of
21 the place. There's no blood here but there's blood here. So,
22 therefore, he would have had to have been there given your
23 experience in crime scene?

24 A. In that general area, correct.

25 Q. Okay.

1 So, again, if the round is hitting him here in the forehead
2 given that this is where he's at and the bullet is found in the
3 back left section, then the bullet had to have been fired in this
4 direction, correct?

5 A. That's incorrect.

6 Q. And why not?

7 A. If you were like - - if you were placing him in this general
8 area as I understand correctly.

9 Q. Correct.

10 A. Depending on his body turn, you have any area where he could
11 have been shot from.

12 Q. Okay.

13 Where did you find the shell casings in relation to the body?

14 A. Can I refer to my notes?

15 Q. Correct.

16 A. And which shell casings are you referring to?

17 Q. 380.

18 Which numbers?

19 A. 12 and 11.

20 Q. If the gun fires, when fired, the shell is ejected, correct?

21 A. That is correct.

22 Q. And when the shell is ejected, it flies to the right, correct?

23 A. I have to refer to the firearms examiner.

24 Q. Okay.

25 Um, Court's indulgence, Your Honor.

1 Would you agree that that is the left side of this pistol?

2 A. I agree.

3 Q. And would you agree that on the other side of this pistol is
4 an ejection port?

5 A. That is correct.

6 Q. Okay.

7 Now, when that pistol is fired, it ejects a shell, correct?

8 A. That is correct.

9 Q. And when it ejects a shell, what is the average distance for
10 which it is ejected?

11 A. It depends on the make and manufacturer.

12 Q. What is the average?

13 A. I'd have to refer to firearms again.

14 Q. Okay.

15 Well, you are a Crime Scene Specialist, correct?

16 A. That is correct.

17 Q. So, your job is to know these informations?

18 THE COURT: No, he's not a firearms expert, now. He's not
19 been qualified as a firearms expert.

20 MR. TAYLOR: Okay.

21 Q. Alright.

22 You are a Crime Scene Specialist?

23 A. That's correct.

24 Q. And your job, then, is to evaluate a crime scene, correct?

25 A. That's correct.

1 Q. And in looking at a crime scene, your job is to make a
2 determination as to the evidence that is presented to you, correct?

3 A. That is correct.

4 Q. Okay.

5 Now, given that, the gun ejects around to the right.
6 Naturally, where the gun is found the shells are going to be to the
7 right, correct?

8 A. Depends on where the gentleman was standing.

9 Q. Okay.

10 The pistol was found here but the shells are all to the left
11 of the pistol but the pistol ejects right. Correct?

12 A. That's correct.

13 Q. So, that means it would be impossible it were being fired in
14 this general direction being away from the street. That would be
15 virtually impossible, wouldn't it?

16 A. No, sir.

17 Q. Okay.

18 Well, the gun doesn't eject to the left. You testified to
19 that.

20 A. That's correct.

21 Q. So, if the gun ejects to the right but the shells were found
22 to the left of the gun, then how is it impossible for what I'm
23 asking?

24 A. Because where the gun was found we do not know exactly if the
25 victim placed in that position or if it was dropped or anything

1 like that. I can't speculate on exactly how the firearm was placed
2 on the ground.

3 Q. So, you really don't know what happened that night, do you?

4 A. All I know is what I collected from the scene - -

5 Q. Uh, huh.

6 A. - - the items that I collected.

7 Q. And those items that you collected were the deceased's
8 firearm?

9 A. That's correct.

10 Q. Two spent rounds from his gun - -

11 A. Casings.

12 Q. - - well, spent rounds, brass, his gun but you really have no
13 idea what happened that night, do you?

14 A. The only thing I can infer is the shooting.

15 Q. Okay.

16 Now, tell me about 5181 Miracle Lane. That belongs to the
17 defendant?

18 A. That's where I - -

19 Q. Excuse me, the deceased?

20 A. - - that's what I was informed, yes, sir.

21 Q. Okay.

22 Now, there was also another round found up here which was a
23 270. Are you familiar with that kind of casing?

24 A. Yes, sir.

25 Q. Okay.

1 Tell me about that kind of casing.

2 A. It's a rifle.

3 Q. It's a rifle. Usually - - usually, deer round used for
4 hunts?

5 A. Yes.

6 Q. Tell me about the round. Tell me what it looked like.

7 A. Ah, without a photograph of it, all the - - all the other
8 spent cartridges like I testified to earlier - -

9 Q. Uh-huh.

10 A. - - appeared to be older, corroded and did not appear to be
11 part of this scene.

12 Q. Well, you told me that there's only two casings. I asked you
13 specifically how many casings you found, and you said that there
14 was only two, and now I'm asking about the rifle round that you
15 said. That makes three but now you're saying that there's more
16 rounds but none of these are listed as being extra casings.

17 A. Yes, they are.

18 Q. Okay.

19 Which one of these were extra - - extra casings other than the
20 two spent 380 rounds and the 270?

21 A. May I refer back to my notes?

22 Q. Please, sir.

23 A. Item #17 was the 270.

24 Q. So, there's only three - - three spent casings there?

25 A. From what you asked me to describe earlier from Miracle Lane

1 up - -

2 Q. Uh-huh. Only three?

3 A. - - only three.

4 Q. Okay.

5 And what did you do with the 270 casing?

6 A. I collected it into evidence.

7 Q. And where is it today?

8 A. It is in the evidence.

9 Q. Okay.

10 And did you have it tested?

11 A. No, I did not.

12 Q. Why?

13 A. Because the two firearms that I had - -

14 Q. Uh-huh.

15 A. - - were not 270's.

16 Q. Okay.

17 And so why didn't you test this casing to see if it had been
18 fired recently?

19 A. I'd have to refer that back to firearms to see if that's
20 possible but due to corrosion and it's state it was my decision not
21 to send it off.

22 Q. Okay.

23 But you, again, as you testified, you're not a firearms
24 expert, are you?

25 A. No, sir.

1 Q. Okay.

2 So, you have no ability at looking at that round to determine
3 if it's an old round, if it's a year old, a month old or a week old
4 or a day old, do you?

5 A. That's correct - - depending.

6 Q. Okay. It's definitely depending.

7 What about this house? Did you search this house, 5181
8 Miracle Lane?

9 A. 5181 was searched by the detectives.

10 Q. Okay.

11 And what did they find?

12 A. You'd have to refer to the detectives?

13 Q. It's not in your report anywhere?

14 A. No, sir.

15 Q. Okay.

16 But you didn't go inside the house and take a look?

17 A. That is correct.

18 Q. Why not?

19 A. Because the residence was being searched by the detectives as
20 I was doing the scene.

21 Q. Okay.

22 But they're not crime scene, right?

23 A. No, they're not.

24 Q. Okay.

25 So, why didn't you as a Crime Scene Investigator go into this

1 home to see if there was anything related to this incident?

2 A. Because at their direction, I was tasked with processing the
3 scene, and they were handling the residences.

4 Q. Are they trained to do crime scene?

5 A. They are trained in some crime scene collection, yes, sir.

6 Q. But they're not as trained as you are?

7 A. No, they're not.

8 Q. And that's specifically why you were called?

9 A. Yes, sir.

10 Q. So, again, you don't go inside the deceased's home. You
11 don't go back to the scene during the daylight, and you're not
12 really sure about what happened to this. Do you have any
13 conclusion as to anything concerning other than the fact that you
14 found a gun, blood, some clothing and some spent rounds?

15 A. I can - - I'm not going to draw my own conclusions. All I
16 know is that there was a shooting there.

17 Q. Okay.

18 But you're not able to determine that my client conducted the
19 shooting, did you?

20 A. No, sir.

21 Q. Alright.

22 I have no further questions. Please answer any that Mr. Barr
23 may have for you or the State.

24 THE COURT: Mr. Barr, do you have any questions?

25 MR. BARR: Just a few, Judge.

1 CROSS EXAMINATION BY MR. BARR:

2 Q. Officer Deal, you, ah, you, ah, ah, indicated that, ah, am I'm
3 going to if you don't mind, I'm going to take this down.

4 You indicated that you found, ah, several shell casings, ah,
5 at least one of which you - - you did not collect and send to SLED
6 to be analyzed?

7 A. All the casings were collected. The only casings that were
8 sent to SLED for examination were casings that were relevant to the
9 weapons that we had in our possession.

10 Q. So, now, if I understand you correctly, you went to a crime
11 scene or at least where you believed a crime had been committed
12 and, um, you collected evidence. Would it be fair to say that at
13 that point during the course of your investigation it would have
14 been your responsibility to collect any item that appeared to you
15 that could have been associated with the shooting?

16 A. Yes, sir, and I did.

17 Q. And, ah, altogether how many spent shell cartridges did you
18 find at that location?

19 A. From Miracle Lane all the way into the scene - -

20 Q. Yes.

21 A. - - there was a total of four.

22 Q. And there were no others that you saw that you did not
23 collect?

24 A. That I saw, that's correct.

25 Q. So, you only saw four, um, shell cartridges?

1 A. Casings, that's correct.

2 Q. One 270?

3 A. That's correct.

4 Q. And the other three?

5 A. There were two 380's and then one CBC 357.

6 Q. 357?

7 A. Yes, sir.

8 Q. Like a Magnum 357?

9 A. All I can say is a 357 caliber.

10 Q. Ah, when was the decision made not to send the 357 and the 370
11 to SLED to be analyzed?

12 A. The decision on the items to go to SLED to be analyzed is a
13 joint decision between myself, the detective, the lead detective
14 and my supervisor, and it was decided that since we had a 380 that
15 we felt was part of the scene and also a 22 that was a part of the
16 scene, it was deemed that the 357 cartridge casing that we found
17 and the 270 rifle cartridge casing that we found did not play in
18 those two weapons, and it was decided that we would only send the
19 22 caliber cartridge casings that we recovered during our
20 investigation and the 380.

21 Q. Now, of course, your responsibility is to collect evidence for
22 forensic examination. Is that right?

23 A. That is correct.

24 Q. Now, as far as the decisions that were made to the extent that
25 you had some involvement in - - in that decision as to what to

1 select to send, would you not agree that to the extent that you had
2 some involvement that decision would have been made along the lines
3 of, ah, somebody's theory of this case, wouldn't it?

4 A. It would be made on the information that was provided to me by
5 the detective, the lead detective.

6 Q. And that theory was at that point that there were only two
7 guns involved. Isn't that true?

8 A. That is correct.

9 Q. Now, would you not agree that with respect to what you know
10 about this scene there very well could have been other guns
11 involved, could not they have been?

12 A. There could have been other weapons involved, correct, due to
13 the fact to finding this casing but the information was provided by
14 the lead detective inferred that the only two calibers that we were
15 investigating at the time was the 380 which we found in the scene
16 and the 22 rifle that they had collected during their
17 investigation.

18 Q. Well, now, what - - what - - what would have happened if I had
19 snuck by there that night and took a shot at the - - -

20 MR. FILIBERTO: Objection, Your Honor.

21 THE COURT: Wait a minute, now. I sustain that objection.

22 MR. BARR: I - - I'll rephrase the question .

23 THE COURT: That's too much speculation.

24 MR. BARR: Yes, sir. I'll rephrase the question.

25 THE COURT: Alright, sir.

1 Q. Now, you don't deny that with respect to this shooting there
2 very well may have been more than one gun involved? Could that
3 have been?

4 A. There's unlimited possibilities.

5 Q. And with respect to whether or not or what was the forensic
6 value of other evidence that you found, you found other evidence
7 there that you made the decision not to have examined based on, ah,
8 something you and some other investigator decided subsequent to the
9 fact, didn't you?

10 A. The evidence that we chose not to send off had nothing to
11 compare to and - - and - - in our evidence.

12 Q. Well - - -

13 A. We did not have a 270 rifle to send with it to compare to. We
14 didn't have a 357 revolver to compare to. We had a 380 semi-auto
15 and we had a 22 long rifle.

16 Q. Well, you're assuming, would you not agree that, ah, you're
17 suggesting that there would be some importance to comparing the
18 spent shells to the guns that you had in your possession? would
19 you not agree that with respect to whether or not those other spent
20 shells were in some way related to this shooting, that could very
21 well have been important, too?

22 A. That's the reason why they were collected as evidence.

23 Q. But not sent for examination?

24 A. That's correct.

25 Q. Now, forensics, of course, you're not qualified to examine an

1 item forensically, are you?

2 A. Not the firearms, that's correct.

3 Q. And even spent cartridges, you're not qualified to examine
4 those either forensically, are you?

5 A. For comparison or just to look at them?

6 Q. Just to determine whether or not, ah, how long it's been that
7 a shell casing that the shell was fired? You can't make that
8 determination, can you?

9 A. That would fall underneath the examiners, that's correct.

10 Q. Yes, sir.

11 So, now, in terms of determining whether or not the other
12 shell casings that you found in order to know whether or not they
13 had been fired recently, the only way to have known that
14 scientifically would have been to send them to SLED?

15 A. That's correct.

16 Q. And you didn't do that?

17 A. No, sir.

18 Q. The ground, I believe you testified, was sandy and soft. It's
19 kind of up on a hill.

20 A. That's correct.

21 Q. And, ah, of course, ah, I - - I notice you hadn't indicated it
22 but did you collect the victim's shoes?

23 A. The shoes were collected at the sight?

24 Q. And were they sent to SLED for forensic examination?

25 A. What type of forensic examination are you referring to?

1 Q. Well, that they could have been sent to the Trace Department.
2 They could have been sent, ah, ah, ah, ah, to, ah, to determine
3 whether or not they contained fiber or - - or any - - any other.
4 You're familiar with all the different departments that they have
5 at SLED whereby they examine items forensically to find things that
6 you and I can't see.

7 A. That's correct.

8 Q. So, now, were these shoes sent to SLED for forensic
9 examination?

10 A. They were not sent to SLED because we did our own examination
11 of the shoes for evidential items, for fibers, for sand, for
12 numerous things.

13 Q. Well, who in your department is qualified to come to this
14 courtroom and qualify as an expert in the area of forensics to give
15 their opinion regarding, ah, fibers on a shoe?

16 A. Depends if you're questioning the examination of the fiber or
17 the collection of the fiber.

18 Q. I - - I - - I'm not questioning the collection because you may
19 not even be able to see it.

20 THE COURT: Let me ask you this. Before we waste time with
21 this, are the shoes important in your investigation here?

22 MR. BARR: Yes, sir, Judge. I would certainly think that
23 they would be.

24 THE COURT: Well, go ahead if you think they're going to be
25 relevant in any way but we - - we got a lot of questions about the

1 shoes here. Now, if you tell me as an Officer of the Court that
2 that may be relevant, you may proceed.

3 MR. BARR: Your Honor, not only those shoes but other
4 shoes.

5 Q. Did you examine the scene for footprints?

6 A. I - - I searched through the scene for footwear and tire wear
7 impressions.

8 Q. Okay.

9 And, ah, do you have some photographs of any, ah, ah, ah,
10 footprints or tire wears or - - or specifically footprints?

11 A. The footwear that was present on the scene was that of the
12 officers that were working the scene. The tire wear impressions
13 that were present on the scene were a mixture of cross vehicles
14 which being, ah, overlaying impressions from patrol cars that were
15 in the scene, the ambulance that was in the scene, ah, a multitude
16 of vehicles.

17 Q. You catalogued these items that you found them?

18 A. There were no tire wear impressions or shoe wear impressions
19 taken from the scene.

20 Q. So, you - - you - - you ignored them?

21 A. No, sir.

22 Q. Well, did you take a picture of - - of the foot wear?

23 A. There were no tire wear or shoe wear impressions taken from
24 the scene because there were no tire wear or footwear impressions
25 of any evidential value that would be able to be used for

1 identification.

2 Q. Did you look for any?

3 A. Yes, sir, I did.

4 Q. And, ah, certainly, ah, I - - I guess you would have
5 considered that something very important?

6 A. Yes, sir. That's one of the first things we do.

7 Q. And did you write it in your report?

8 A. That I surveyed for tire wear and footwear impressions?

9 Q. As to footwear?

10 A. I did not document it in my report.

11 Q. Why not?

12 A. Because I didn't find any that were of any evidential value.

13 Q. Did you write anywhere in your report, ah, "Did not find any
14 footprints of evidential value."?

15 You didn't write that, did you?

16 MR. FILIBERTO: I object to that. Asked and answered.

17 THE COURT: I'll let him answer it one more time.

18 A. I did not document it in my report, no, sir.

19 Q. Now, inasmuch as you didn't document it in your report, you
20 would agree that you're required to give a complete report? I
21 mean, that's what you're required to do. That's what your job
22 requires.

23 A. My job requires me to write a report on my findings. That's
24 correct.

25 Q. And your findings in this case with respect to the victim's

1 shoes and his footprints or with respect to any other person, human
2 personality that may have been present at the time that he was
3 shot, your report does not say that you did not find any footprints
4 of evidentiary value.

5 A. My report indicates my findings.

6 Q. Alright, sir.

7 Ah, now just - - just so that we can be clear on - - on - - on
8 the, ah, fingerprints, talking about on the handgun.

9 A. Okay.

10 Q. Ah, well, you - - you made an effort to, ah, to examine the
11 victim's hands for gunpowder residue?

12 A. That's correct.

13 Q. And I think you indicated on direct examination that - - that
14 you discovered that due to the lapse of time and the conditions,
15 ah, you - - you were not even to collect or even to test to see
16 whether or not there was gunpowder residue on the victim's hands?

17 A. That's correct. Due to the lapse of time and medical
18 treatment, that's correct.

19 Q. Now, the clothing that you indicated that you, ah, that you
20 collected at the scene that you thought was relevant to whatever
21 transpired here that nobody really knows, ah, was sent to SLED and
22 analyzed.

23 A. The item of clothing from the scene was his jacket, and no,
24 it was not sent to SLED. A DNA swab of the blood that was on the
25 jacket was sent to SLED.

1 Q. Did he have trousers on?

2 A. He wasn't at the scene.

3 Q. Pardon me?

4 A. He wasn't at the scene.

5 Q. No, I mean the alleged victim. The victim did?

6 A. Yes, he did have trousers.

7 Q. And the trousers were sent to be analyzed?

8 A. No, sir, they weren't.

9 Q. They were not.

10 A. No, sir.

11 Q. Did I not here you testify earlier that you found some item of
12 clothing that you thought had what appeared to you that could have
13 been bullet holes?

14 A. That was the victim's trousers that were collected by a patrol
15 officer that were then submitted into evidence and transferred to
16 my custody.

17 Q. And why were they transferred to your custody?

18 A. Because it was my case.

19 Any items of evidence that are collected in reference to this
20 case were transferred to my custody and care.

21 Q. And when it was transferred to your custody and care, do you
22 not agree that with respect to making a determination as to whether
23 or not it has forensic value, ordinarily, you send those items to
24 SLED to be examined, do you not?

25 A. It depends on what type of examination you're looking for.

1 Q. Well, now, when you say what type of examination that you're
2 looking for, ah, ah, you don't deny that with respect to forensic
3 examination, forensic material you can't even see it most of the
4 time.

5 A. Well.

6 Q. You can't look for it, can you?

7 A. Yes, sir, I can.

8 Q. But you didn't - - you didn't send those trousers to SLED, did
9 you, you say? To be examined?

10 A. No, because we examined them ourselves.

11 Q. Did they have bullet holes in them?

12 A. They had holes in them that resembled projectiles, that is
13 correct.

14 Q. They had holes that did what, now?

15 A. Resembled projectiles.

16 Q. Resembled?

17 Now, of course, you don't deny that, ah, with respect to this
18 resemblance, scientifically, it's quite easily and this jury can
19 very easily know today whether or not the holes in those clothing
20 whether or not they were made by bullets, could they not? Could
21 that not have been done?

22 A. I don't know. I don't know the full capabilities of every
23 examiner at the South Carolina Law Enforcement Division.

24 Q. Are you telling the ladies and gentlemen of this jury that
25 even though you're an investigator - - how - - how much experience

1 you say you've got?

2 A. I've got two and a half years of processing crime scenes.

3 Q. And you don't know whether or not the forensic lab in Columbia
4 has the potential to look at fiber?

5 THE COURT: No, sir, now.

6 A. That's not what you asked.

7 THE COURT: He can - - he is not qualified in forensics.
8 He doesn't know what their capabilities are. He's entitled as a
9 Crime Scene Investigator to give his opinion. As to what these
10 holes represent, the ultimate decision is for the jury to determine
11 from the testimony.

12 MR. BARR: Your Honor, our - - our - - our point is simply
13 this. With respect to whether or not the holes were made by a
14 gunshot - - -

15 MR. FILIBERTO: Judge, that's not even a question.

16 THE COURT: I understand.

17 I'm going to let the jury make the determination. They've
18 heard his testimony, and let them make the determination. They can
19 accept it, reject it in whole or in part.

20 Q. Where are the clothes now?

21 THE COURT: But he is not forensic man. He doesn't know
22 their capabilities. He's a Crime Scene Investigator. He is
23 entitled to give his opinion as to what those holes represent.
24 The ultimate decision as to accept it or not belongs to the jury.

25 Now, we've heard enough on that question, Mr. Barr. Let's

1 move on.

2 MR. BARR: Thank you, Judge.

3 Q. Where are the clothes now?

4 A. The victim's pants are Exhibit #23, and the rest of his
5 clothing is in the courtroom.

6 Q. Um, you've gotten the report back from, ah, Dr. Proctor. Of
7 course, I think you were present at the time the autopsy was done.

8 A. I was present for the autopsy but, no, I do not have the
9 Pathologist's report.

10 Q. And with respect to what you observed while you were present
11 at the time the, ah, Dr. Proctor did the autopsy, how many items
12 of, ah, of, ah, how many bullets were removed from the body?

13 A. They retrieved one projectile.

14 Q. One projectile.

15 Thank you.

16 MR. BARR: I have no further questions.

17 MR. FILIBERTO: Your Honor, just briefly.

18 REDIRECT EXAMINATION BY MR. FILIBERTO:

19 Q. You were asked on cross examination, Investigator Deal,
20 several questions regarding entry point of the, ah, head wound, the
21 projectile was recovered, what side. From your understanding of
22 the facts and examination of the crime scene are you able to give
23 any opinion as to whether or not the victim in this matter was
24 facing toward Miracle Lane or in some other direction?

25 A. No, sir.

1 Q. And we talked a good bit about the shell casings that were
2 recovered at the scene. You indicated that a 357, ah, caliber
3 shell casing was recovered. Where was that recovered from?

4 A. It was up on the roadway, ah, on Miracle Lane leading into,
5 ah, the dirt road leading into the victim's residence.

6 Q. Was that, ah, did that shell casing appear to you to be
7 weathered?

8 A. It appeared to be weathered, that's correct.

9 Q. There was some questioning regarding whether or not you sent
10 all of the shell casings up to have them examined. What is the
11 purpose of sending the shell casings - - what evidentiary analysis
12 are you seeking from SLED when you would - - when you would send
13 shell casings up to them?

14 A. During my three week training at SLED on their capabilities
15 during my initiation - - my initial training into crime scene, the
16 firearms department gave me a brief rundown of what their
17 capabilities were of ballistics. The reason for us to send the
18 casings was to compare to the firing pin impression of the weapons
19 that we had in our possession. Also, possible extractor markings.
20 A projectile, um, we send it off for a possible (unintelligible)
21 groups, comparison to the barrels of the weapons that we had in our
22 possession.

23 Q. Now, you - - you collected a 22 caliber rifle and a 380 High
24 Point handgun. Is that correct?

25 A. That is correct.

1 Q. You didn't collect any other weapons?

2 A. No, sir.

3 Q. Didn't collect a 270?

4 A. No, sir.

5 Q. Or a 357?

6 A. No, sir.

7 Q. You had no weapons to compare them to?

8 A. No, sir.

9 Q. There's some questioning regarding whether or not you forensic
10 or did a crime scene processing of the victim's home in this case.
11 From the scene did you determine anything or become aware of
12 anything that would have led you to believe that the crime scene
13 extended beyond where you examined and into that home?

14 A. No, sir.

15 The detectives did a inspection and examination of the
16 victim's residence, reported to me their findings and I didn't see
17 from their examination that the scene extended inside of his
18 residence.

19 MR. FILIBERTO: Court's indulgence just one second?

20 That's all I have.

21 THE COURT: Alright, sir.

22 You may come down.

23 MR. BARR: Judge, I have one additional question.

24 THE COURT: Okay. Go ahead.

1 RE-CROSS EXAMINATION BY MR. BARR:

2 Q. Do you know where the man was shot?

3 A. Within the scene?

4 Q. Do you know where he was shot?

5 A. No, sir, I do not.

6 I do know he wasn't shot inside the house because there was no
7 blood from what the detectives told me.

8 Q. There was no blood there.

9 But do you know - - you don't know where he was shot?

10 A. No, sir.

11 Q. And would you not agree that, ah - - the area where you found
12 the blood, ah, was in close proximity to where you found the body?

13 A. I didn't find the body.

14 Q. Or where his body was found? You know where his body was
15 found. You know where it was found, right?

16 A. I just want to make sure I address your question correctly.

17 The blood was in the general area where the victim was found
18 by the initial responding officer, and from the information that
19 the detectives gave to me, it was in the same area of where the
20 altercation took place.

21 Q. But based on what your responsibility was as a Crime Scene
22 Investigator, CSI, would you not agree that with respect to your
23 not searching the house, ah, you simply do not know whether he was
24 shot in the house, shot outside, shot out there in front the
25 courtroom? You don't know where he was shot?

1 A. I have - - -

2 Q. All you know is you found blood at the scene?

3 A. I have no evidence from what the detectives told me during
4 their examination of his residence to indicate that he was shot
5 inside of his residence. All the evidence, the indicators I had
6 was that he was shot outside in those blood areas. Do, I know
7 exactly where in that area? No, I do not.

8 Q. And you don't know that he was shot in that area, do you?

9 A. All I know is is that he was found there. That is correct.
10 And the information that the detectives had gathered during their
11 investigation showed that he was shot there.

12 THE COURT: Does that conclude your one question, Mr. Barr?

13 MR. BARR: Judge, I'm sorrow. It spilled over into more
14 than one.

15 THE COURT: Are you through now?

16 MR. BARR: Yes.

17 THE COURT: That's fine.

18 MR. BARR: Yes, sir.

19 THE COURT: Alright. You may come down.

20 Thank you.

21 (The witness leaves the witness stand.)

22 THE COURT: Alright. Mr. Foreman, ladies and gentlemen,
23 it's 1:00. Let's take a break. Please be back in your jury room
24 ready to go at 2:30. That will give you an hour and a half to go
25 to lunch and be back in time.

1 Please be back, all four - - all of you on time so that we can
2 start this case. We'll run until about 5:00, 5:30 this afternoon
3 and quit at that time and come back in the morning at 9:30.

4 So, have a nice lunch. Remember. Don't discuss this case
5 with anyone. Let no one discuss it with you. Make no independent
6 inquiry. It is totally wrong for you to start discussing this case
7 until you've heard all of the testimony.

8 Thank you.

9 Have a nice lunch.

10 (The jury is released for lunch to return at 2:30 p.m.)

11 THE COURT: Alright.

12 We are in recess until 2:30.

13 (The Court recesses the trial of this case for lunch and
14 reconvenes the trial of this case at 2:35 p.m.)

15 THE COURT: Good afternoon. Be seated, please.

16 Are we ready, Solicitor?

17 MR. FILIBERTO: Yes, sir, Your Honor.

18 THE COURT: Alright, sir.

19 Have the witness resume the witness stand.

20 Had we concluded - - we had concluded. Be calling your next
21 witness, please.

22 Bring the jury in.

23 Get your next witness ready.

24 (The jury returns to the courtroom at 2:36 p.m.)

25 THE COURT: Good afternoon, Mr. Foreman, ladies and

1 gentlemen.

2 Call your next witness, please.

3 MR. FILIBERTO: Thank you.

4 The State calls Maryann Shehan.

5 (The witness takes the witness stand.)

6 MARYANN SHEHAN, being duly sworn,
7 testifies as follows:

8 CLERK OF COURT: Please state your name and spell your last
9 for the record.

10 MS. SHEHAN: My name is Maryann Shehan, S-h-e-h-a-n.

11 DIRECT EXAMINATION BY MR. FILIBERTO:

12 Q. Thank you, Ms. Shehan.

13 Ms. Shehan, where are you currently employed?

14 A. I am currently employed at the South Carolina Law Enforcement
15 Division commonly known as SLED.

16 Q. And how long have you been employed there?

17 A. Approximately two and a half years.

18 Q. What is your job at SLED?

19 A. I am assigned to Serology and DNA Department at SLED. I
20 receive evidence and compare that evidence to known standards.

21 Q. Why don't you share for the Court your educational background?

22 A. I received a Bachelor of Science in integrated science and
23 technology with a concentration in biotechnology from James Madison
24 University in Harrisonburg, Virginia.

25 Q. Do you have any prior experience in working at laboratories?

1 A. Yes. I worked at Morgan Selmark which is a private forensic
2 DNA lab as a DNA analyst.

3 Q. What specialized training have you had in the area of
4 forensics?

5 A. Well, I received training at my previous employment at Morgan
6 Selmark as - - as well as I'm a court qualified analyst. I also
7 received outside training in specific procedures and processes we
8 use at SLED.

9 THE COURT: You propose to qualify her in what area?

10 MR. FILIBERTO: In forensic serology and DNA analysis.

11 THE COURT: I find that she's qualified in those areas.
12 Proceed.

13 MR. FILIBERTO: Thank you, Your Honor.

14 Q. Ms. Shehan, what is DNA? We've all heard of it. What is DAN?

15 A. DNA stands for deoxyribonucleic acid. It's a chemical found
16 in virtually all the cells of our body except for the red bloods.

17 These are, basically, our genetic blueprint. It tells us our
18 hair color, eye color and height, and it's also responsible for
19 passing on traits from generation to generation. We get half of
20 our DNA from our mother and half from our father. With the
21 exception of identical twins, no two people have the same DNA.

22 In forensic science we are interested in the portions of DNA
23 that vary from individuals.

24 Um, we test fifteen different locations and a combination of
25 the results of these locations combined make up the DNA profile.

1 Q. And what is forensic serology?

2 A. Forensic serology is the characterization and identification
3 of biology fluids such as semen, saliva and blood.

4 Q. And with respect to this case did you receive evidence,
5 specifically, blood swabs from a 380 High Point?

6 A. Yes, I did.

7 Q. I show you what's been marked as State's #21. Do you
8 recognize that?

9 A. Yes. It has my initials and date and also our lab case number
10 on the packaging.

11 Q. Does that include the blood swabs that you, ah, you received?

12 A. Yes, sir, it does.

13 Q. While that evidence was in your care and custody, did you
14 change or alter it in any way?

15 A. No, I did not.

16 Q. With respect to the blood swabs taken from the 380 High Point
17 pistol did you perform tests on - - on that blood?

18 A. Yes. I performed serology as well as DNA analysis on that
19 swab.

20 Q. And would you please share for the jury what the results of
21 that testing was?

22 A. I took our Item #7, the swabs from the High Point slide.
23 Blood was indicated, and the DNA profile developed from Item #7
24 matches the DNA profile of Efrain Rasodo.

25 The probability of randomly selecting an unrelated individual

1 having a DNA profile matching this item is approximately one in 3.3
2 quadrillion.

3 Q. 3.3 quadrillion, that's a big number.

4 Do you know what the current, approximately, what the current
5 population of the planet is?

6 A. It's approximately six and half billion.

7 Q. So, that would be a much smaller number?

8 A. The world population?

9 Q. The population of the planet.

10 A. Yes, yes, it is a much smaller number.

11 Q. I have nothing further.

12 Please answer any questions defense counsel have.

13 MR. TAYLOR: I have no questions, Judge.

14 MR. BARR: Might I inquire as to whether or not this
15 witness has testified in courts in this state giving her opinion in
16 the area of DNA analysis?

17 THE COURT: You may make the inquiry. I have qualified her
18 as an expert. You may ask the question if you care to.

19 MR. BARR: Yes, sir. I understand you've qualified her
20 but we - - defense did not get an opportunity to - - -

21 THE COURT: I'll let you ask her that question but I have
22 found her qualified. She's been qualified in my court on several
23 occasions.

24 MR. BARR: Yes, sir.

25 THE COURT: But you may make any edification you want. You

1 may questions about her qualifications. Go ahead.

2 CROSS EXAMINATION BY MR. BARR:

3 Q. Have you testified in state court or federal court before in
4 giving your opinion about DNA analysis?

5 A. Yes, I have.

6 Q. Approximately how many times?

7 A. This is my fourth time.

8 Q. Fourth time?

9 A. Uh-huh.

10 Q. Thank you.

11 THE COURT: Any further questions?

12 MR. FILIBERTO: None from the State, Your Honor.

13 THE COURT: You may come down.

14 MR. FILIBERTO: Your Honor, we'd ask that this witness be
15 released from her subpoena.

16 THE COURT: She will be. Yes, sir.

17 MR. FILIBERTO: Thank you.

18 (The witness leaves the witness stand.)

19 THE COURT: We're glad to have you here.

20 MS. SHEHAN: Thank you, Your Honor.

21 THE COURT: The record will reflect that I have
22 specifically qualified her as an expert in these areas.

23 As in all expert testimony the jury may accept or reject any
24 or in part. I will explain - - define for them the expert
25 testimony during the charge.

1 Call your next witness.

2 MR. FILIBERTO: Thank you.

3 The State calls Rudy Carl Tummer.

4 (The witness takes the witness stand.)

5 RUDY CARL TOOMER, being duly sworn,
6 testifies as follows:

7 CLERK OF COURT: Please state your name for the record.

8 MR. TOOMER: Rudy Carl Toomer. Toomer, T-o-o-m-e-r.

9 DIRECT EXAMINATION BY MR. FILIBERTO:

10 Q. Good afternoon, Mr. Toomer.

11 Mr. Toomer, where do you currently live?

12 A. I live in Conway, Juniper Bay area.

13 Q. What would that address be?

14 A. 5151 Craig Street.

15 Q. And how long have you lived there?

16 A. Ever since 2000, the last part of 2000.

17 Q. Mr. Toomer, do you know the defendants in this case, Jimmy Lee
18 Williams and Anthony Quentin Scott?

19 A. Yes, I do.

20 Q. How do you know them?

21 A. Next door neighbors and friends.

22 Q. You consider them your friends? You consider them your
23 friends?

24 A. Sir?

25 Q. You consider them your friends?

1 A. Yes.

2 Q. Did you know the victim in this case, Efrain Rosado?
3 Sometimes he's referred to as Czar?

4 A. Yes. Yes, I did.

5 Q. How long did you know him?

6 A. I probably knew Czar about eight years, nine years - - eight
7 to nine years.

8 Q. And what kind of relationship did you have with him?

9 A. Just, basically, friends. Knew him by the cousin. That's how
10 I met him through his cousin.

11 Q. Now, to your knowledge, did the victim and the defendants know
12 each other?

13 A. Yeah, they were good friends. They were.

14 Q. And they spent time together?

15 A. Yeah.

16 Q. Before we get into what happened that night, I'm going to talk
17 a little bit about you. Ask you a few questions.

18 Have you ever been convicted of a crime?

19 A. Have I who?

20 Q. A crime, have you ever been convicted of anything?

21 A. Nope.

22 Q. Anything - - repeat that question. Anything to do with
23 checks?

24 MR. TAYLOR: Your Honor, I object. Asked and answered.

25 THE COURT: No, sir. He's obviously - - I'll let him cross

1 examine him on that issue. He's entitled to do that based on his
2 response.

3 You may cross examine him on any prior record.

4 Q. You don't have any drug - - do you have any drug convictions?

5 A. No drug convictions.

6 Q. Okay.

7 Would the fact that you've had some past problems with the law
8 impact your testimony today? Will it keep you from giving honest
9 testimony today?

10 A. No.

11 Q. Okay.

12 Back to the night of March 8, 2007, the night of this
13 incident, were you home?

14 A. I was home, yeah.

15 Q. What were you doing? Do you remember?

16 A. Ah, that evening was just regular normally playing cards and
17 that's about it.

18 Q. Okay.

19 Do you remember who else was at your home?

20 A. My two daughters. One of them was braiding somebody's hair.
21 There were probably about five or six people there.

22 Q. Did the defendants stop by your home that night?

23 A. Yes.

24 Q. Do you know why?

25 A. Um, I don't know. I guess he just usually stopped by and

1 they're friends of my daughters. They were friends of my
2 daughters.

3 Q. Now, do you remember what particularly defendant Jimmy Lee
4 Williams was doing when he got to your house?

5 A. Well, they didn't stay long. Just kind of basically walked
6 in. Before they got completely all the way in the house good,
7 probably got about half way the living room and turned around and
8 left.

9 Q. Do you recall whether or not defendant Williams was using a
10 phone?

11 A. Yeah. The phone rang when he was walking in the door.

12 Q. Did you overhear any of his conversation?

13 A. No. It was just, like, "Hello," and he was steady walking
14 and, um, and he just said, "Well, Czar, you don't play me like
15 that," and he said, "Come on. Quick. Let's go."

16 And they left.

17 Q. How did he sound to you. If you know, how did he sound to you
18 while he was talking?

19 A. Like normal. I mean, those guys went through stuff like that
20 all the time. I mean, cut the fool or whatnot.

21 Q. So, after he finished that phone conversation, what happened?

22 A. Well, we kind of basically kept on doing what we was doing and
23 --

24 Q. But the defendants, did they stay?

25 A. No, they was gone. They didn't - - - -

1 Q. Did you happen to see where they went?

2 A. No.

3 Q. Sometime later on that evening, did you receive any unusual
4 phone calls?

5 A. Yeah.

6 Q. Tell the jury about those phone calls.

7 A. Well, I got the first phone call - - -

8 THE COURT: You - - you going into a conversation with some
9 unknown person? Isn't that hearsay?

10 MR. TAYLOR: It is, Your Honor. I was just about to
11 object.

12 THE COURT: Sir?

13 MR. TAYLOR: I was just about to object as soon as he was
14 going to answer.

15 MR. FILIBERTO: Your Honor, if he - - -

16 THE COURT: He can say he had a telephone conversation but
17 the contents of that conversation has got to be with whoever
18 allegedly said it.

19 Q. Who - - who did you receive - - who did you receive a call
20 from that night? Do you remember?

21 A. I received a phone call from, um, my next-door neighbor from
22 behind me, Miss Steele.

23 MR. TAYLOR: Your Honor, I'm going to object to hearsay if
24 he's going to testify to what his neighbor said.

25 THE COURT: Well, I'm not going to let that come in. I'm

1 going to permit him to say who he received a telephone conversation
2 from.

3 Q. Okay.

4 Who else did you receive a call from that night?

5 A. And then I received a phone call, about three phone calls from
6 a fellow name Teavers.

7 COURT REPORTER: I'm sorry. I didn't understand his name?

8 Q. What was Teavers' last name?

9 COURT REPORTER: Well, what was his name? I didn't
10 understand his name.

11 Q. Teavers.

12 A. That's all I know, Teavers.

13 Q. Okay.

14 In response to those calls, did you do anything? Did the
15 people calling you ask you to do anything?

16 A. Well, they - - they said that Czar had wanted to talk to me
17 and to come. That Czar said come and talk to him. He was in the
18 back yard.

19 THE COURT: Wait a minute, now. I'm not going to permit a
20 testimony from an unknown individual.

21 MR. FILIBERTO: I tried to stop - - -

22 THE COURT: I'll permit him to say what he did in response
23 to his call.

24 Q. What did you do in response to those phone calls?

25 A. Actually, I didn't do anything because he just wanted to talk

1 to me and I was busy.

2 Q. Did you later on that evening - - -

3 MR. TAYLOR: Objection, Your Honor. He's leading the
4 witness.

5 THE COURT: No, sir. I'm going to permit this. This
6 witness is a little recalcitrant and I'm going to permit this.

7 Q. At some point during that evening did you go over to Czar's
8 house?

9 A. Yeah. After I got through doing what I had to do.

10 Q. What did you see when you got there?

11 A. Well, I saw Czar. He was - - he was trying to get up and he
12 wasn't talking but he kept trying to get up, and he kept falling
13 down, and, um, I just looked, and I said, "Well, Czar, is that
14 you?"

15 And then I recognized that was him, and I went over - - I went
16 towards him because I was going to - - all I could see was blood.
17 So, I was going to pick him up and rush him to the hospital. When
18 I got to him, it was just, like, no, you can't do that. You got to
19 call the rescue squad.

20 Q. What did you do next, sir?

21 A. I went back to my house and got my phone and I called the
22 rescue squad.

23 Q. Were you able to give them an address for Czar's house?

24 A. I gave them the address to my house because I didn't know the
25 address to his house.

1 MR. TAYLOR: Your Honor, can I approach?

2 THE COURT: Sir?

3 MR. TAYLOR: Can I approach?

4 May I approach?

5 THE COURT: Yes.

6 (Bench conference held off the record in the presence of the
7 jury but outside the hearing of the jury.)

8 THE COURT: Proceed.

9 MR. FILIBERTO: Thank you, Your Honor.

10 THE COURT: Thank you, Mr. Taylor.

11 MR. TAYLOR: Yes, sir, Your Honor.

12 Q. So, again, just to revisit. You contacted the police?

13 A. Yes. I called 911.

14 Q. After that call, did the defendants have occasion to come back
15 to your house?

16 A. They - - they came back. They came back but I wasn't - - I
17 wasn't in the house. I was standing outside the road waiting on
18 the, um, the rescue squad and police to come.

19 Q. Were they standing around with you or did they go in the
20 house?

21 A. They went straight in the house. They didn't - - -

22 Q. Okay.

23 Mr. Toomer, do you know if - - if Czar owned a gun?

24 MR. TAYLOR: Objection, Your Honor. That would be
25 speculation.

1 THE COURT: Well, no. I don't know whether it is or not.
2 He can say he did or doesn't know. That's no speculation. He can
3 say yes or no.

4 Answer the question.

5 A. He had a gun, yes. He had several guns.

6 Q. Particularly with - - do you know if he had a pistol?

7 A. Yes, he did.

8 Q. Were you ever at his home when he was firing that pistol?

9 A. No. I was at his cousin when I first ever saw him when he was
10 firing it. It was - - he was practicing, and, um, I noticed how
11 loud it was, and I knew when he was practicing it not from the
12 house.

13 I said, "Czar's shooting that gun."

14 You know, like that.

15 Q. Now, do you believe if Czar had shot that pistol, you would
16 have heard it at your house?

17 MR. BARR: Objection, Your Honor.

18 THE COURT: What's your objection? He just asked him could
19 he have heard it if he shot it from his house. He can answer yes
20 or no.

21 MR. BARR: He's asking whether or not he believed - - -

22 THE COURT: Well, he meant could he hear it or not. It's
23 not what he believed. The question is whether or not he could
24 have heard it.

25 You may answer that - - ask that question. Not what he

believed but could he have heard it or not. He can say yes or no.

Q. If Czar shot that gun at his house, would you have heard it at yours?

MR. TAYLOR: Your Honor, I would object to that.

A. I would have sure - - felt sure I would have heard it.

THE COURT: Sir?

MR. TAYLOR: I object to that question as well. The reason is a shot was fired in that area. There's no possible way that he sitting in house could possibly tell where it came from.

THE COURT: Well, I'll - - let him answer the question. I'll let the jury make that determination.

Ask it again, please, and let the jury decide whether or not he could have heard it.

Ask him again, so he can answer.

Q. If you can answer this, if Czar shot a gun at his house, would you have heard it at yours?

A. Every time he did, I heard it.

Q. Thank you.

On the night of this incident, March 8th of 2007, did you hear any gun fired?

A. I didn't hear any gun fire, not any.

Q. Okay.

Thank you.

Please answer any questions the defense attorneys have.

THE COURT: Alright, sir, Mr. Taylor.

1 MR. TAYLOR: Thank you, Your Honor.

2 CROSS EXAMINATION BY MR. TAYLOR:

3 Q. Good afternoon, sir.

4 You gave an interview to Detective Steve Clark regarding this
5 case on March 9, 2007, didn't you?

6 During that interview you testified or gave a statement that
7 you really didn't understand what happened.

8 You really don't know what happened, do you?

9 THE COURT: Wait a minute, now. Let him answer, now. He
10 started to answer.

11 MR. TAYLOR: I'm sorry, Your Honor. I didn't hear him.

12 A. No, I didn't know what happened.

13 Q. Okay.

14 Now, you're aware that Czar was shot that night?

15 A. I was aware - - what - - I did finally go up there and I saw
16 him. I was aware of it.

17 Q. Alright.

18 And you also testified during your interview that Czar and my
19 client, Mr. Williams, were very close friends.

20 A. Yes.

21 Q. And you testified that they may have had some bickering but
22 they were close friends. That's your testimony. Correct?

23 A. Yes.

24 Q. And, again, not everybody's perfect but there are bickering
25 between friends?

1 A. I guess so.

2 Q. You have several friends yourself?

3 A. I have a lot of good friends, yes, I do.

4 Q. And throughout all of those good friends, you've had bickering
5 differences between them, correct?

6 A. Yes, I have a difference - - -

7 Q. They're still your friends, right?

8 A. Yeah.

9 Q. Now, who all was at your house that night?

10 A. My two daughters, um, brother-in-law, and like I said. A
11 couple of people was there. One of them my daughter was braiding
12 his hair.

13 Q. Teavers was there, right? Teavers?

14 A. Teavers was not there at the time.

15 Q. Was not there at what time?

16 A. When, um - - -

17 Q. He was there that night, wasn't he?

18 A. Teavers came later on I think.

19 Q. After my client left.

20 He came after my client - - -

21 A. I don't even remember Teavers even there.

22 Q. So, Teavers was not there?

23 A. I don't remember him being there.

24 Q. Okay. How about D?

25 A. I don't even remember D being there.

1 Q. Okay.

2 Would you be surprised if both of them are making statements
3 saying otherwise?

4 A. I - - I - - well, I mean - -

5 THE COURT: Let's don't put one witness against another.

6 A. - - I wouldn't be surprised.

7 Q. Alright.

8 What do you know about this case?

9 A. All I know is that I got a phone call from Deal and then a
10 phone call, three phone calls from Teavers saying that Czar wanted
11 to talk to me and - - -

12 Q. No, no. Don't tell me what everybody else. Tell me what you
13 personally know about this case.

14 A. I don't have no idea. I don't have nothing. The only thing
15 I know is when the last - - when I finished with everything I did,
16 I left and went up there to see what he wanted.

17 Q. Okay.

18 And that's all you know about this case?

19 A. That's the only thing I know about the case.

20 Q. And that's why you're here today?

21 A. That's why I'm here today.

22 Q. Okay.

23 MR. TAYLOR: Court's indulgence, Your Honor.

24 Thank you, Your Honor. Your Honor, I have no further
25 questions.

1 THE COURT: Alright, sir.

2 Mr. Barr, do you have any questions?

3 CROSS EXAMINATION BY MR. BARR:

4 Q. Mr. Toomer, you, ah, you indicated that on, ah, March 8, 2007,
5 you had an occasion to see and I'm talking about the first time
6 that you ever laid eyes on Anthony Scott, approximately what time
7 was it?

8 A. That evening, I don't know. It could have been four or four-
9 thirty, maybe, I don't know.

10 Q. In the afternoon?

11 A. It was in the afternoon.

12 Q. And where was he when you saw him?

13 A. At my house. He came at my house.

14 Q. And when he came to your house, ah, did he come into your
15 house?

16 A. Yeah.

17 Q. And, ah, did he sit down?

18 A. No.

19 Q. Didn't sit down?

20 A. No.

21 Q. And, ah, did you talk with you in the house?

22 A. No.

23 Q. And he left?

24 A. Yeah.

25 Q. And you saw him when he came in and saw him when he left?

1 A. Uh-huh.

2 Q. And, ah, did you have occasion to see him again on that same
3 day?

4 A. I know they came back but, I mean, I wasn't really paying
5 attention when - - -

6 Q. Now, when you say "they", I'm only talking about this man
7 right here. Did you say you knew him, you know him, Anthony
8 Quentin Scott?

9 A. Yeah. He came back but I - - -

10 Q. He came back. What time was it when he came back?

11 A. I have no idea. I was waiting on, the, um, rescue squad.

12 Q. You were waiting for the rescue squad when he came back to
13 your house?

14 A. Yeah, I'm quite sure I was.

15 Q. When he came back to your house, did he come inside?

16 A. Yep, they went inside.

17 Q. And, ah, you saw him go inside your house?

18 A. Yeah.

19 Q. And did you see him leave?

20 A. I can't say if I saw him left or not because I wasn't really
21 paying attention. I was really busy on trying to get the rescue
22 squad.

23 Q. He didn't spend the night at your house, did he?

24 A. No.

25 Q. So, he left at some point.

1 A. He left at some - - yeah, he left at some point.

2 Q. Right.

3 Are you saying that you don't know when he left?

4 A. No.

5 Q. You - - so you don't know how long he stayed there?

6 A. No.

7 Q. Well, that's - - when you called the EMS, 911 or rescue,
8 whoever you said.

9 A. Uh-huh.

10 Q. Where did you go?

11 A. Outside the road.

12 Q. Outside where now?

13 A. Right side the road.

14 Generally - - I - - I'm right beside Miracle Lane highway
15 waiting on the rescue squad so I can guide them.

16 Q. And do you have a recollection as you were outside, ah, on the
17 road whether or not Anthony Quentin Scott was in your house or
18 outside?

19 A. Would you repeat the question?

20 Q. Do you have a recollection while you were waiting outside at
21 the road whether Anthony Quentin Scott was in your house or
22 outside?

23 A. It wasn't outside.

24 Q. Wasn't outside?

25 A. No.

1 Q. Was he still at your house then?

2 A. Like I said, I can't say because I was - - I wasn't really
3 paying attention to who was coming in or out at this point. At
4 this point I was trying to call the rescue squad, and I called them
5 several times. I mean, because it didn't look like they was
6 getting there fast enough, and I wasn't paying attention to
7 whatever was going on. I was basically paying - - my mind was on
8 Czar getting him help. It wasn't on anything at that point. When
9 I went up there it was - - my mind was on just getting him help.
10 That's all my mind was on, and whoever passed by or came in or
11 whatever, I mean, I wasn't talking to them. I wasn't paying any
12 attention to them. It was just me trying to get help for him.

13 Q. Why were you trying to get him help?

14 A. Huh?

15 Q. Why were you trying to get him help?

16 A. Because he needed help.

17 Q. How do you know?

18 A. Because his head was bloodied up.

19 Q. So, you saw him?

20 A. Yes.

21 Q. And, ah, we know at some point you had several phone calls
22 and, ah, you indicated I believe you got perhaps one from one
23 individual, three from another?

24 A. Yes.

25 Q. And, ah, subsequent to the time that you got the very last

1 phone call, how long did you wait before you went to Czar's house?

2 A. Whenever I finished what I was doing. It probably been
3 fifteen minutes. It could have been twenty minutes.

4 I mean, just somebody wanting to talk to me, I mean it's not.
5 like I got to drop and just do what I got to do. I mean, I'm
6 thinking he just want to shoot the breeze or, um, he had some stuff
7 - - something he had borrowed from me, and I felt like that may be
8 what he wanted to give me or whatever and that's why I can go up
9 there anytime. And so when I finished what I had to do, I went on
10 up there.

11 Q. So, then, after you got this last phone call, ah, from, ah,
12 the individual that called you three times, ah, then, incidentally,
13 and I'm not interested in you telling me what was said but you did
14 get a phone call from Teavers?

15 A. Yes.

16 Q. And was he the last person that called you?

17 A. He's the last one that called me.

18 Q. And, ah, after you got this phone call whatever he told you,
19 ah, you waited fifteen or twenty minutes before you left home and
20 went to Czar's house?

21 A. Approximately probably.

22 Q. Alright.

23 Now, was Czar at your house at all that day?

24 A. Czar was at the house earlier around about maybe four¹⁷.

25 Q. And he - - -

1 A. He was leaving. Time I got there good, he left.

2 Q. You didn't know where he was going, do you?

3 A. He said he was going home and - - -

4 Q. Don't tell me what he said but - - -

5 A. I have no idea where he left. He just say he was going home.
6 He be back. That's what he said.

7 Q. Well, now, you wasn't in the house when he left, was you?

8 A. Yes, I was - - I was in the house when he left. Time I got
9 there.

10 Q. When he left your house?

11 A. Yeah, he left.

12 Q. What time you get off from work?

13 A. I probably got there around four, 4:15.

14 Q. And did - - you did work that day?

15 A. Yes, I did.

16 Q. And where did you work?

17 A. I worked out in Dunes.

18 Q. Laying bricks?

19 A. Yes.

20 Q. And you recall speaking with the decedent, Czar, and he left
21 your house?

22 A. Uh-huh.

23 Q. And never returned?

24 A. No.

25 Q. Do you know what kind of work he did? Do you know what kind

1 of work he did?

2 A. No.

3 Q. Have you known him to work?

4 A. No, because I worked in the daytime and I don't know if he
5 worked or not. I have no idea. He didn't ever say if he worked or
6 not. I never asked. I mean, I assumed he worked.

7 Q. After you got this - - the three phone calls and the one phone
8 call that you waited the fifteen or twenty minutes before you went
9 to Czar's house, ah, did anybody go with you?

10 A. No.

11 Q. Had you been to Czar's house at all earlier that day?

12 A. No.

13 Q. Hadn't been there?

14 A. No.

15 Q. You own a gun?

16 A. Huh?

17 Q. Do you own a gun?

18 A. Did I what?

19 Q. Do you own a gun?

20 A. No, I don't.

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

22 THE COURT: You may come down.

23 MR. TOOMER: Huh?

24 THE COURT: Come down.

25 (The witness leaves the witness stand.)

1 MR. BARR: Your Honor, this witness is under subpoena.

2 THE COURT: Yes, sir.

3 You want to keep him under subpoena?

4 MR. BARR: Yes, sir.

5 THE COURT: Alright.

6 Stay with us, please.

7 MR. TOOMER: I can go back?

8 THE COURT: Yes, sir. Go back - - go on back outside.

9 MR. FILIBERTO: The State calls Darius Orange.

10 (The witness takes the witness stand.)

11 DARIUS GIBSON ORANGE, being duly sworn,
12 testifies as follows:

13 CLERK OF COURT: State your full name for the record and
14 spell your last name.

15 MR. ORANGE: Darius Gibson Orange, O-r-a-n-g-e.

16 DIRECT EXAMINATION BY MR. FILIBERTO:

17 Q. Mr. Orange, where do you live?

18 A. Juniper Road, Hampton Road.

19 Q. You need to speak up.

20 A. Hampton Road.

21 Q. Mr. Orange, you know the defendants in this case, Jimmy Lee
22 Williams and Anthony Scott?

23 A. Yes, sir.

24 Q. How long have you known them?

25 A. Well, I moved out there, like six months.

1 Q. Six months ago?

2 A. No, when I first moved out there. I meant before everything
3 happened.

4 Q. Okay.

5 A. I knew them about six months.

6 Q. Mr. Orange, did you consider them friends?

7 A. I knew them, yes.

8 Q. What about the victim? Did you know him, Czar, Efrain Rosado?

9 A. Yes.

10 Q. How long did you know him?

11 A. Same time I met them when I moved out there.

12 Q. And what kind of relationship did you have with him?

13 A. Just friends.

14 Q. On the evening of March 8, 2007, did you spend anytime at Rudy
15 Toomer's house?

16 A. Yes, sir.

17 Q. What were you doing?

18 A. Playing cards when I got off work.

19 Q. You remember who else was present?

20 A. Yes, sir. My nephew, Bryan, Teavers and Pookey, Little Rudy
21 and Rudy.

22 Q. While you were there, do you know if the defendants ever
23 showed up?

24 A. Yes, sir, they came.

25 Q. And did you notice if Jimmy Lee Williams was doing anything

1 when he arrived?

2 A. They came in and sat down for about a minute or two. Then he
3 was on the phone and he was talking to somebody on the phone. The
4 he told Quentin, "Let's go."

5 Q. How did he sound?

6 A. Like he was upset with somebody on the phone. I don't know
7 who it was.

8 Q. When they left, did you happen to notice whether or not they
9 were carrying any weapons?

10 A. No, sir. I couldn't see from where I was at.

11 Q. After they left did you take time to look where they were
12 going?

13 A. They headed down next - - next to Czar's house but I didn't
14 ever see if they went there or not. I seen a brake light.

15 Q. How did you see that?

16 A. Out the window.

17 Q. You looked out the window?

18 A. Yeah.

19 Q. When they left was it light or dark?

20 A. Dark.

21 Q. And you know where Czar lived, correct?

22 A. Yes, sir.

23 Q. And when you were watching them head over there, do you know
24 if they stopped?

25 A. No, sir. Like I say. I just seen brake lights but I didn't

1 never see if they turn in or whatever!

2 Q. What about the brake lights? Did you see them come on?

3 A. Yes.

4 Q. After the defendants left, how much longer did you stay at the
5 Toomer home?

6 A. I was there another thirty minutes. We was still playing
7 cards.

8 Q. Why did you leave?

9 A. Because, ah, like I say. I was trying to call Czar so he
10 could come back up to play cards. He never answered the phone a
11 couple of times. So, I just - - that's when I went down there, me
12 and Teavers. That's when I found him.

13 Q. So, you actually went to Czar's home?

14 A. Yeah. When I couldn't get no answer.

15 Q. What did you see?

16 A. Him laying out there on the ground with dirt on his face.

17 Q. Did you attempt to speak to him?

18 A. No, sir.

19 Q. What did you do after you saw him?

20 A. Got back in the truck and went to Rudy's to tell Rudy.

21 Q. What did you - - what did you tell him?

22 A. I told him to go down there and check on Czar.

23 Q. Did you tell him that he was injured?

24 A. No, sir. I just told him to go down there.

25 Q. Why didn't you call 911?

1 A. I was shocked, and when me and Teavers seen it, we just went
2 back to get some help.

3 Q. Knowing everything that you know today, do you wish you would
4 have called 911?

5 A. Sir?

6 Q. Knowing what you know today, do you wish you would have called
7 911?

8 A. Yes, sir.

9 Q. Please answer any questions defense counsel has.

10 CROSS EXAMINATION BY MR. TAYLOR:

11 Q. Hello, Mr. Orange. How you doing?

12 A. Fine, sir.

13 MR. TAYLOR: Court's indulgence, Your Honor.

14 Q. You live in this Juniper Bay area?

15 A. Yes.

16 Q. And you're very familiar with this area?

17 A. Yes, sir.

18 Q. You're very familiar with this trailer park that is right
19 above, um, the name of the road, Miracle Lane?

20 A. Yes, sir.

21 Q. I forgot the name of the road.

22 Alright.

23 And you're very familiar with Mr. Toomer's house is?

24 A. Yes, sir.

25 Q. Go there on a regular basis? He's a friend of yours.

1 A. That's my brother-in-law, yes, sir.

2 Q. Brother-in-law. Okay. So you really know where his house is?

3 A. Yeah.

4 Q. And you were friends also with Czar?

5 A. Yes.

6 Q. And you know where his house is?

7 A. Yes, sir.

8 Q. Been to his house on a regular basis?

9 A. Well, a couple of times, yes, sir.

10 Q. Okay.

11 Now, from this location, I'll have you look at State's Exhibit
12 #2 that's been admitted into evidence, Mr. Toomer's house, okay?
13 Now, how would you be able to see from his house all the way over
14 to Czar's house?

15 A. See, I can see from the window. You can see the road all the
16 way down.

17 Q. You can see the road all the way down?

18 A. Yeah.

19 Q. Okay.

20 Now, that night you were playing cards, right?

21 A. Yes, sir.

22 Q. Okay.

23 And you were sitting down with a bunch of people playing
24 cards, and then my client came into the room and was in there for
25 a couple of minutes on the phone and then left?

1 A. Yes, sir.

2 Q. Okay.

3 A. Do you go to the window and watch everybody that comes and
4 goes from that house and watch where they go as soon as they leave
5 or do you sit down and play cards with the people that you're
6 playing cards with?

7 A. No, sir. I sit down and play cards.

8 Q. Okay.

9 So, you really didn't look out the window, did you?

10 A. Yes, sir, because to see Czar was my point. I just look out
11 the window to see he went down that way.

12 Q. I'm sorry.

13 A. I looked out the window to see he went down that way.

14 Q. Okay.

15 And why did you look to see if he went down that way?

16 A. I just looked. I mean - - -

17 Q. Now, you said to the statement to the detective involved in
18 this case that you didn't know who my client was on the phone with.
19 That's correct, right?

20 A. Yes, sir.

21 Q. And my client was in and out.

22 A. He only came in one time when I was there.

23 Q. Alright.

24 But I mean he was in and out. He only stayed a couple of
25 minutes, correct?

1 A. Oh, yeah.

2 Q. Right.

3 And while he was in there on the phone you have, again, no
4 idea who he was on the phone with?

5 A. No, sir.

6 Q. Now, at some point during this night you went with Teavers who
7 is also a friends of yours, right?

8 A. Yes, sir.

9 Q. You went with Teavers to his mother's house?

10 A. Yeah.

11 Q. And you went over there because Teavers' dog gout out and the
12 neighbor had the dog, right?

13 A. Yeah.

14 Q. Then, later on you and Teavers went by Czar's house, right?

15 A. Yes, sir.

16 Q. Okay.

17 Well, my question is that if you went with Teavers to his
18 mother's house, then how can you be anywhere near to see my client
19 leave in the car since Teavers said that you and him left before my
20 client left?

21 A. No, that - - no.

22 Q. No, that's not true?

23 A. I'm thinking that was after - -

24 Q. He was just lying.

25 A. - - I'm thinking that was after.

1 Q. Teavers is lying or you're lying?

2 A. No, I'm thinking that that was after this.

3 MR. FILIBERTO: Your Honor, he's pitting the witnesses.

4 A. I mean, I can't remember when - - -

5 Q. You can't remember?

6 A. No, sir.

7 Q. And you really don't remember what happened that night, do
8 you?

9 A. Well - - -

10 Q. You really don't, do you?

11 A. Pretty much, I mean, no.

12 Q. Pretty much. You really don't remember what happened that
13 night, do you? A year and half ago. You don't know, do you?

14 A. It's been a while. I can't recollect.

15 Q. Yes or no. You don't remember, do you?

16 A. Not exactly.

17 Q. Exactly, yes or no? Do you remember?

18 A. Not exactly.

19 Q. Do you remember what happened that night?

20 A. Not exactly, no.

21 Q. Okay.

22 Somebody's dead. My client's on trial, and you're on the
23 stand and you have no idea about anything on this case, do you?

24 Yes or no.

25 A. No, sir.

1 Q. No, sir? No, sir being you don't know anything, do you?

2 A. I mean I don't know what happened, no, sir.

3 Q. Look at this jury and you can tell them that you know nothing
4 about this case, don't you?

5 A. I don't know exactly what happened, no, sir.

6 Q. Okay.

7 And you're not really sure why my client was on the phone with
8 anybody, do you?

9 A. No, sir, I don't.

10 Q. Okay.

11 And you went down to Czar's house with Teavers, okay?

12 A. Yes.

13 Q. And my client wasn't there, was he?

14 A. No, sir.

15 Q. Okay.

16 How long do you think you were at Rudy's house?

17 A. About thirty minutes.

18 Q. Okay.

19 You were pretty much in and out of there just the same,
20 correct?

21 A. Well, no.

22 Q. Thirty minutes?

23 A. Yeah.

24 Q. Were you drinking that night?

25 A. No, sir.

1 Q. You didn't have anything to drink.

2 You use any drugs?

3 A. No, sir.

4 Q. Alright.

5 MR. TAYLOR: Court's indulgence, Your Honor.

6 Your Honor, I have no further questions.

7 Q. Please answer any Mr. Barr has.

8 Thank you.

9 THE COURT: You have any questions, Mr. Barr?

10 MR. BARR: Yes, I've got some, Judge.

11 CROSS EXAMINATION BY MR. BARR:

12 Q. Mr., um, Orange, that's right?

13 A. Yes, sir.

14 Q. Are you employed?

15 A. Yes, sir.

16 Q. Where do you work?

17 A. Fowler Motors.

18 Q. And, ah, what time did you arrive at Mr. Rudy Toomer's house
19 on the 8th of March, 2007?

20 A. Anywhere between 6:30.

21 Q. In the afternoon?

22 A. Yes, sir, because I get off at 5:30.

23 Q. And he was - - was he there when you got there?

24 A. Rudy?

25 Q. Yes, sir.

1 A. Yes, sir.

2 Q. And did you have a conversation with him?

3 A. We start playing cards together.

4 Q. Playing cards?

5 A. Yes, sir.

6 Q. Now, you indicated that you didn't see - - during the time
7 that you were there you didn't see anybody with any weapons?

8 A. No, sir, I didn't.

9 Q. And you were there at the time when Anthony Quentin Scott was
10 there?

11 A. Yes, sir.

12 Q. Alright.

13 Now, ah, ah - - when you went to Czar's house, ah, why did you
14 go there?

15 A. Like I said. I called him and he didn't answer the phone. I
16 was calling to see he coming back down to play cards with us but I
17 didn't get no answer.

18 Q. You called - - you said he called you - - -

19 A. I called him to see he's coming back down to play some cards.
20 When I - - I didn't get no answer from him - - -

21 Q. So, you saw Czar at Rudy Toomer's house?

22 A. Yes, sir. He was there earlier.

23 Q. And - - and y'all talked to each other?

24 A. Well, we was just talking to Rudy. I didn't talk to him.

25 Q. And what time was it when he left Rudy's house?

1 A. I'm not sure. 7:00, 7:30, I'm not sure, sir, about 7:00,
2 7:30.

3 Q. But from the time you got there playing cards with him until
4 the time, ah, you got concerned about him, do you know how much
5 time transpired?

6 A. No, sir.

7 Q. But at some point you got concerned because he - - you said he
8 had told you he was coming back to play more cards?

9 A. Yes, sir.

10 Q. And he didn't come back?

11 A. Yes, sir.

12 Q. And you got concerned about him?

13 A. Yeah.

14 Q. And, ah, did you get a phone call from anybody?

15 A. No, sir.

16 Q. You - - did you call anybody else?

17 A. No, sir.

18 Q. You did not call Rudy Toomer from Czar's house?

19 A. No, sir, not me.

20 Q. You were - -

21 A. Teavers.

22 Q. - - with Teavers.

23 A. Yes, sir.

24 Q. Did Teavers call?

25 A. Yes, sir. I believe Teavers called.

1 Q. He did call? How many times?

2 A. One, I guess.

3 Q. One time, you guess? Well, do you know?

4 A. I mean, he called. I'm not - - he said - - -

5 Q. How did you know he called him?

6 A. He say he was going to call Rudy. I said, "Well, let's go
7 back and tell Rudy."

8 Q. Well, then, now, you and Teavers were in the truck together?

9 A. Yes, sir.

10 Q. And y'all were conversating with each other?

11 Pardon?

12 You were conversating with each other, weren't you?

13 A. I meant - - yes, sir.

14 Q. And y'all just saw something that scared you half to death.

15 A. Yes, sir.

16 Q. You saw a man laid out there, ah, ah, he appeared to you to
17 have been injured?

18 A. Yes, sir.

19 Q. Seriously.

20 Now, you said you didn't call Rudy? Teavers called him?

21 A. Yeah.

22 Q. Now, did you get out of your vehicle?

23 A. I got out and just looked and got back in the truck. Went
24 back to Rudy house.

25 Q. And left him there?

1 A. To go get help, yes, sir.

2 Q. You were going to get help?

3 A. Yes, sir.

4 Q. Who did you get the help from?

5 A. I went and told Rudy to come back up there.

6 Q. You told Rudy to come back and help?

7 A. Yes, sir.

8 Q. Well, now, ah, Rudy, ah, what was Rudy doing when you went
9 back to the house?

10 A. He was still playing cards.

11 Q. So, Rudy was playing cards, and you told Rudy that you just
12 found a friend of y'all, Czar, laying on the ground, shaking with
13 blood on him.

14 A. Yes, sir.

15 Q. How long did Rudy sit there and play cards before he went down
16 and checked on Czar?

17 A. About ten or fifteen minutes.

18 Q. Ten or fifteen minutes?

19 A. He was getting dressed.

20 Q. Getting dressed?

21 A. I mean, putting on a coat and stuff, you know, finishing up
22 his hand. I meant - - -

23 Q. It took him ten or fifteen minutes? I know you told him how
24 serious it was.

25 A. I just told him to go down and check on Czar. Like I said.

1 Q. And he waited ten or fifteen minutes?

2 A. Yes, sir.

3 Q. Check - - to check - - before he went to check on Czar?

4 A. Yes, sir.

5 Q. How - - let me see, now.

6 Czar left Rudy's house where you, Pookey, Little Rudy, Bryan
7 and Teavers were playing cards?

8 A. Yes, sir.

9 Q. And he went to his house?

10 A. Yes, sir.

11 Q. And how do you know he was going on to his house?

12 A. He said he was going home. He be back.

13 Q. And sometime after he left, Quentin came by?

14 A. Quentin and Jimmy, yes, sir.

15 Q. After he went back home, when I say "he" I'm talking about
16 Czar.

17 A. Yes, sir.

18 Q. How long did you wait before you called him to see what
19 happened to him?

20 A. I'd say over thirty minutes.

21 Q. About thirty minutes. And where was Mr. Toomer during these
22 thirty minutes?

23 A. He was still there playing cards, in the house playing cards.

24 Q. And where was his daughters?

25 A. In the house.

1 Q. Both of them?

2 A. Yes.

3 Q. Neither one of them went to see their boyfriend in Conway?

4 A. I can't recall.

5 Q. Well, did they go or you don't remember?

6 A. I remember they was there, both of them.

7 Q. You remember them being at home?

8 A. Yes, sir.

9 Q. And not leaving?

10 A. I don't remember them leaving.

11 Q. Well, ah, you say - - you say that Anthony came into the
12 house. Did he sit down when he came in the house?

13 A. Yes, he sat down.

14 Q. Where did he sit down? Where did he sit?

15 A. Right beside the door.

16 Q. And how long did he stay seated?

17 A. Ain't been there about a minute or two?

18 Q. A minute or two, and you saw him while he was there?

19 A. Yes.

20 Q. Do you know whether or not he ever came back to Rudy's house?

21 A. I don't know. I wasn't there.

22 Q. You left?

23 A. Yes, sir.

24 Q. Um - - -

25 THE COURT: You have some further questions, Mr. Barr?

1 MR. BARR: Yes, sir. Court's indulgence, Your Honor, just
2 a second.

3 Q. Ah, now, Mr. Orange?

4 A. Yes, sir.

5 Q. You, ah, you do have - - do you recall talking to one of the
6 Horry County deputies, and I'm talking about specifically a Mr. Ken
7 Davis?

8 A. Yes, sir.

9 Q. Do you remember that interview that you had with him?

10 A. Yes, sir.

11 Q. And you gave him a statement on that day, didn't you?

12 A. Yes, sir.

13 Q. And, ah, he asked you at the end of that statement whether or
14 not you knew anything else about this incident involving Czar that
15 you hadn't told him about. Do you remember him asking you that?

16 A. Yes, sir.

17 Q. And you told him that you did not know anything else other
18 than what you had told him in the statement?

19 A. Yes, sir.

20 Q. That's it, sir. I have nothing further.

21 THE COURT: Alright.

22 REDIRECT EXAMINATION BY MR. FILIBERTO:

23 Q. Just briefly, Mr. Orange. So, we're clear.

24 You were at the Toomer residence when Jimmy Lee Williams and
25 Anthony Quentin Scott arrived?

1 A. Yes, sir.

2 Q. On March 8, 2007?

3 A. Yes, sir.

4 Q. And you - - did you or did you not overhear Jimmy Lee Williams
5 speaking on the phone?

6 A. Yes, sir, I heard him on the phone, yes, sir.

7 Q. And how did he sound?

8 A. Like I said. He sounded like he was upset.

9 Q. So we're - - again, so we're clear, when they left did you
10 watch where they went?

11 A. They went towards down next to Czar house.

12 Q. And what did you notice when they pulled in front of Czar's
13 house?

14 A. I seen brake lights come on.

15 MR. FILIBERTO: Nothing further. Thank you.

16 THE COURT: Alright, sir.

17 You may come down. Thank you.

18 Come down.

19 (The witness leaves the witness stand.)

20 MR. FILIBERTO: Marnaquais Tumer.

21 (The witness takes the witness stand.)

22 MARNAQUAIS TUMER, being duly sworn,
23 testifies as follows:

24 CLERK OF COURT: State your full name and spell your full
25 name.

1 MS. TUMER: Marnaquais Tumer, M-a-r-n-a-q-u-a-i-s. My last
2 name, too? T-u-m-e-r.

3 DIRECT EXAMINATION BY MR. FILIBERTO:

4 Q. Ms. Tumer, do you know the defendants in this case, Jimmy Lee
5 Williams and Anthony Scott?

6 A. Yes.

7 Q. How do you know them?

8 A. Um, Quentin use to live next door to me, and Jimmy would be at
9 my house a lot.

10 MR. TAYLOR: Your Honor, I'd just ask that she speak up a
11 little bit. I can't hear her.

12 THE COURT: Speak a little louder, please.

13 A. Mr. Scott use to live next door to me, and Jimmy use to be at
14 my house a lot.

15 THE COURT: That's a lot better. Thank you.

16 MS. TUMER: Thank you.

17 Q. And did you know Czar?

18 A. Yes, sir.

19 Q. And how did you know him?

20 A. He was a friend of ours. He use to come over a lot.

21 Q. And do you know if the defendants knew the victim, knew - -
22 knew Czar?

23 A. Um, I think they all use to be like friends or associates,
24 something like that.

25 Q. So, they spent time together?

1 A. Yes, sir.

2 Q. Now, were you home on the night of March 8, 2007?

3 A. Yes, sir.

4 Q. Do you recall whether or not the defendants, Jimmy Lee
5 Williams and Anthony Scott came by your house?

6 A. Yes, sir.

7 Q. Did you see them when they arrived?

8 A. Yes, sir.

9 Q. Do you recall - - do you recall what kind of - - how they
10 arrived? Were they driving?

11 A. Um, yes, sir.

12 Q. Do you recall what kind of - - what the vehicle looked like,
13 what kind of vehicle it was?

14 A. It was a white Escort.

15 Q. I'll show you what's in evidence as State's #13. Do you
16 recognize that?

17 A. Yes, sir.

18 Q. What is that?

19 A. Um, it's the car they were driving.

20 Q. Okay.

21 MR. BARR: Your Honor, I'm going - - I'm going - - I'm
22 going to have to object - - I'm going to ask that the witness be
23 instructed that we keep using the pronoun "they, them, they, them".
24 This defendant is Quentin - - Quentin Anthony Scott, and it's
25 confusing - - -

1 THE COURT: Just verify it in each case.

2 Q. Did - - the vehicle, the white Escort when it arrived, who was
3 in it?

4 A. Um, Quentin and Jimmy.

5 Q. Thank you.

6 You know why the defendants stopped at your house that night?

7 A. No, not really. I use to - - I mean, both of them use to come
8 over a lot. So, it could have been, you know, maybe they was just
9 there visiting.

10 Q. Do you recall who else was there that night?

11 A. Uh-huh. Um, me and my little sister, my daddy, um, I think
12 my uncle D and Teavers was there also.

13 Q. Did you notice if the defendant Jimmy Lee Williams was doing
14 anything when he got there?

15 A. No, sir.

16 Q. Did you notice if he was speaking to anybody?

17 A. Oh, yes, sir. He was on the phone.

18 Q. Did you overhear any of that conversation?

19 A. Yes, sir.

20 Q. Did you have an occasion to hear or to listen to - - -

21 MR. TAYLOR: Your Honor, I'm going to have to object. All
22 of these questions are leading to draw a yes or no answers.
23 Basically, he's spoon-feeding the witness as to what she's going to
24 say.

25 THE COURT: No, sir. I think not.

1 MR. FILIBERTO: I strongly disagree.

2 THE COURT: No, this is appropriate. Go ahead.

3 Just make sure, now, the only testimony I'm going to permit
4 here is what - - if the defendant said anything, if any, that she
5 can testify to that but whoever else was on the line, you got to
6 bring him into the courtroom.

7 MR. FILIBERTO: Okay.

8 Q. Do you recall what the defendant Jimmy Lee Williams said while
9 he was on the phone?

10 A. Um, I didn't hear all of it but I heard, like, um, kind of
11 like the last part of the conversation.

12 Q. And what was that?

13 A. Um, he said something to the point, um, "I don't appreciate
14 the way you talking to me, and, matter of fact, I might come down
15 there right now."

16 Q. How did his tone of voice appear to you?

17 A. Um, it seemed like he was upset with someone.

18 Q. At the time that they left your home - - I sorry. What did
19 they do next?

20 A. They left.

21 Q. At the time they left, did you have occasion to observe
22 whether or not either of them were carrying any weapons?

23 A. Uh-huh, no, sir. I didn't see any weapons.

24 Q. Now, what - - what went on at your house after they left?

25 A. Um, I don't really remember but I think they were playing

1 cards that night. So I think that's what we started back doing.

2 Q. Your dad there with you that night?

3 A. Yes, sir.

4 Q. Do you know if he received any phone calls?

5 A. Not that I heard but he did. He told me he received some but
6 I didn't hear any.

7 Q. Did your dad have occasion to leave your house a little later
8 on that evening?

9 A. Uh-huh, yes, sir.

10 Q. Do you know where he went?

11 A. He went down to Czar's house.

12 Q. How long was he gone?

13 A. Um, probably about - - it was only a couple of minutes because
14 he, ah, he came back, and he told us that, um, Czar was down there
15 hurt.

16 Q. Do you know what he did next?

17 A. Um, he got his phone, and he called 911.

18 Q. Now, a little later on did, ah, did the defendants Jimmy Lee
19 Williams and Anthony Quentin Scott return to your house?

20 A. Yes, sir.

21 Q. And what, if anything, did you notice about them at that time?

22 A. Um, they were carrying guns.

23 Q. Can you describe, generally, the guns you saw?

24 A. One I seen was like, it was like a shotgun or something like
25 and then, like, the other one was smaller, much smaller than the

1 shotgun.

2 Q. Now, this is after your father had already called 911, is that
3 correct?

4 A. Yes, sir.

5 Q. Was there any discussion going on amongst everybody?

6 A. Yeah. We were wondering what happened to Czar because he was
7 down there hurt.

8 Q. And did the defendants Jimmy Lee Williams and Anthony Quentin
9 Scott participate in that discussion?

10 A. Um, when they came to my house I was like, "Well, Czar is down
11 there hurt." I was like, "Y'all not going to go down there and
12 check on him?"

13 And then, Jimmy, he was like, "F Czar."

14 Q. He didn't use the letter. He used the full word?

15 A. Uh-huh.

16 Q. How did he sound to you?

17 A. Um, I wouldn't say mad but kind of like - - like he didn't
18 care.

19 Q. Later on that night did the - - the police arrive at your
20 home?

21 A. Yes, sir.

22 Q. Did they request that you give a statement to them?

23 A. Yes, sir.

24 Q. Where - - where did that interview take place?

25 A. I guess it was at one of the police stations over by the post

1 office.

2 Q. Okay.

3 You remember what time that interview took place?

4 A. It was quite early in the morning, maybe about two, three
5 o'clock in the morning, something like that.

6 Q. Now, after you completed that initial interview, what
7 happened?

8 A. I went back home.

9 Q. And when you were home, did you receive a phone call?

10 A. Um, well, my dad did, and then he gave the phone to me. He
11 said - - I guess they were asking to speak to me.

12 Q. Who was on the phone?

13 A. Um, Jimmy and his mom.

14 Q. Tell the jury the conversation?

15 A. They were asking about, um, what I - - -

16 MR. TAYLOR: Objection.

17 THE COURT: Wait a minute, now. There you go. We can't
18 permit that conversation with somebody else on the phone. You got
19 to bring them in here so they can confront them.

20 Q. Specifically, with respect to defendant Williams - - -

21 THE COURT: Anything she can testify to anything the
22 defendant Williams may or may not have said, yes.

23 Q. Specifically, with respect to defendant Jimmy Lee Williams,
24 would you please share what he said on the phone?

25 A. Um, he was asking what I told the cops.

1 Q. And what did you tell him? And how did you respond?

2 A. I told him I didn't say anything because I didn't.

3 Q. And - - and did he make another comment?

4 A. Yeah. He was like, "Well, good."

5 Q. Thank you.

6 Now, sometime later on that morning did you have an occasion
7 to call the police again?

8 A. Um, yeah, it was after I went to work?

9 Q. Why did you call them?

10 A. Because I, um, I didn't tell them the truth, like, the first
11 time I went to the police station. I told them I didn't know
12 anything, and then I thought about it, and I decided that the right
13 thing was to tell them what I knew.

14 Q. And what happened after you called the police station.

15 A. Um, they came and got me from my job.

16 Q. Where did they bring you?

17 A. Back to that same police station over by the post office.

18 Q. During the second interview what new information did you give
19 the police?

20 A. Um, I told them about what I did and that was about seeing the
21 guns and about Jimmy and Quentin and stuff.

22 Q. During that second interview were you able to give the police
23 some indication of where they might be able to find the defendants
24 Jimmy Lee Williams and Anthony Quentin Scott?

25 A. Yes, sir.

1 Q. And where was that?

2 A. Um, at Jimmy's mom's house.

3 Q. I have no further questions. Please answer any questions the
4 defense has.

5 CROSS EXAMINATION BY MR. TAYLOR:

6 Q. Good afternoon, Ms. Tumer. How you doing?

7 A. Fine.

8 Q. Ms. Tumer, you got a problem with telling the truth, don't
9 you?

10 A. No.

11 Q. No?

12 Well, law enforcement officers come and talk to you concerning
13 a shooting and you lie to them, didn't you?

14 A. Um, well, at first I told them I didn't know anything?

15 Q. You lied to them, didn't you? They asked you what happened,
16 and you lied? Yes or no?

17 A. Um - - -

18 Q. You lied to them, didn't you?

19 THE COURT: Let her answer. You don't answer for her. Let
20 her answer?

21 MR. TAYLOR: Yes, sir, Your Honor.

22 A. Yes.

23 Q. Okay.

24 Why'd you do that?

25 A. Because I was afraid.

1 Q. Okay, and that's because your father and your sister both had
2 some potential bench warrants out for them, didn't they? Your
3 father hadn't paid some money he was suppose to pay - -

4 A. No.

5 Q. - - to the court.

6 A. It was because I was afraid of them - -

7 Q. Okay.

8 A. - - finding out that I told.

9 Q. Alright.

10 So, why did you explain to Officer Steve Clark that's why you
11 lied?

12 A. Because my daddy when I told them they wanted to him, he said,
13 "Well, I have tickets."

14 And that's why I told them that.

15 Q. So, you really told them what they wanted to hear to make sure
16 you and your family were taken care of. Right?

17 A. No, I told them the truth.

18 Q. Okay.

19 But, again, you have a history of not telling the truth, don't
20 you?

21 A. No.

22 Q. When directly questioned by law enforcement, this officer over
23 here from the Horry County Police Department you lied to him
24 concerning a murder case, and you lied to him?

25 A. Yeah, because I was scared.

1 Q. Okay.

2 Scared of what? Maybe you were involved somehow?

3 A. No. Maybe they would find out and do things.

4 Q. Maybe they would find out and do things to you, that law
5 enforcement would do things to you?

6 A. No, um - - -

7 Q. That they would find out the truth?

8 THE COURT: Wait a minute, now. You didn't let her answer,
9 now.

10 Go ahead. What did you start to say, ma'am?

11 A. The defendants.

12 Q. Okay.

13 But you have a history other than prior to this of not telling
14 the truth, correct?

15 A. Not that I recall.

16 Q. No?

17 Actually, you consider taking somebody else's property a crime
18 of dishonesty?

19 A. Um, yes.

20 Q. Okay.

21 So, when you go into a store and shoplift, that's a crime of
22 moral turpitude.

23 A. It is. I did.

24 Q. Okay.

25 And you were charged and convicted of this back in September

1 of '04, weren't you?

2 A. I believe that I pleaded guilty because it was, like, a couple
3 of days from my birthday, and I didn't want to be in there.

4 Q. So, you just pled guilty because it was your birthday?

5 A. Uh-huh.

6 Q. Now, let's talk about your statement here.

7 THE COURT: Mr. Foreman, and ladies and gentlemen, when a
8 witness is on the stand and a prior record comes out, you can if
9 you choose use that as to her credibility and believability but for
10 no other purpose, and that's solely in your discretion but somebody
11 with a prior record you may if you choose take that into
12 consideration in whether or not you wish to believe some or all or
13 none of her testimony.

14 You may proceed.

15 MR. TAYLOR: Thank you, Your Honor.

16 Q. Now, you testified that my client was on the phone with
17 somebody?

18 A. Um, no.

19 Q. Okay.

20 And how long was he at your house the first time that he was
21 there, and my client being Mr. Williams in the blue shirt?

22 A. I don't rightly remember. It was a long time ago.

23 THE COURT: Wait a minute. You were signaling me for
24 something. What is it?

25 BAILIFF: I'm sorry, sir. The jury has let me know that they

1 can't hear her.

2 THE COURT: Which jury can't hear.

3 BAILIFF: All of them.

4 THE COURT: Please talk a little louder.

5 Thank you for calling that to my attention.

6 Talk - - make sure that all of them can hear you, please.

7 MS. TUMER: Okay.

8 Q. Ma'am, if you'll pull that microphone a little closer to you
9 and speak right into the microphone.

10 A. Okay.

11 Q. Now, my client - - back to what I was saying. My client comes
12 to your house. How long was he there the first time that he's
13 there?

14 A. Um, it was only a couple of minutes.

15 Q. Okay, and you have no idea who he was on the phone with?

16 A. No, sir.

17 Q. Okay.

18 And you said something about, "Why are you coming at me like
19 that?"

20 Is that what you testified to?

21 A. Yes, sir.

22 Q. Okay.

23 And if you were in similar circumstances where somebody was
24 making allegation against you that was untrue, would you be upset
25 by it?

1 A. Can you say that again?

2 Q. If somebody accused you of doing something that you didn't do,
3 would you be upset by that accusation?

4 A. Yes.

5 Q. Okay.

6 Would you go kill somebody because of it?

7 THE COURT: Wait a minute, now. That's going to far, now.

8 Go ahead.

9 Not going to ask her to respond to that.

10 MR. TAYLOR: Okay.

11 Q. So, again, what made you tell the truth the second time?

12 A. Because I thought it was the right thing to do.

13 Q. Okay.

14 And what was the truth?

15 A. Excuse me?

16 Q. What was the truth?

17 A. Um, I just told them what I knew.

18 Q. Okay.

19 Now, you said my client came back being Mr. Williams came back
20 to the house. He doesn't make any statements to you, then, does
21 he?

22 A. No, sir.

23 Q. So, you have no idea what happened?

24 A. I don't understand.

25 Q. You have no idea what happened down there this night other

1 than the fact that you had a five minute conversation - - -

2 A. You mean did I see it? No, I didn't see it.

3 Q. Okay.

4 Alright.

5 Now, there's been prior testimony to you concerning Mr. Czar
6 having firearms. Do you know him to possess firearms?

7 A. No.

8 Q. Okay.

9 So, you've never seen him with a firearm at all?

10 A. No.

11 Q. Okay.

12 What time of work does he do? What does he do for a living?

13 A. I have no idea.

14 Q. Okay.

15 How long have you known Czar?

16 A. Um, I just knew him from him coming to my house to see my
17 father and play cards with us and stuff. I didn't really - - -

18 Q. But, I mean, how long have you known him?

19 A. It was probably like a year or a year and a half.

20 Q. Alright.

21 How long have you known Mr. Williams?

22 A. Not that long.

23 Q. Alright. How long?

24 A. Maybe, like, a couple of months.

25 Q. Okay.

1 A. Before it happened.

2 Q. And did you ever have an occasion while you were at your
3 father's house that Czar and my client were both at his house at
4 the same time?

5 A. Yes, sir.

6 Q. And they were actually friends, weren't they?

7 A. Um, yes, sir, they were associating, things like that.

8 Q. And they were pretty good friends, weren't they?

9 A. I think so.

10 Q. Okay.

11 Never had any problems before this, did they?

12 A. Not that I've - - not that I saw.

13 Q. Okay.

14 Alright. Thank you.

15 Answer any questions Mr. Barr has.

16 THE COURT: May this witness - - Mr. Barr, you have some
17 questions? Excuse me.

18 MR. BARR: Yes, sir, Judge.

19 CROSS EXAMINATION BY MR. BARR:

20 Q. Ah, Ms. - - what's your last name, please?

21 A. Tumer.

22 Q. And you're not married?

23 A. Yes, sir.

24 Q. And you're Rudy's daughter?

25 A. Yes, sir.

1 Q. Are you called Pookey or something?

2 A. Yes, sir.

3 Q. You told the ladies and gentlemen of this jury earlier that
4 you saw Anthony Scott, ah, subsequent to the time that you found
5 out that Czar had been injured, you said you saw them at your
6 house. Is that correct?

7 A. Does that mean after?

8 Q. Yes, ma'am.

9 A. Yes, sir.

10 Q. Alright.

11 Now, ah, I want you to tell us if you would please, at the
12 time that you claim that you saw him at your house give us the
13 names of the individuals that were at your house.

14 A. Um, it was me, my dad, my little sister, and then them two
15 came over.

16 Q. You, your father, your sister, just the three of you?

17 A. Yes, sir.

18 Q. And, ah, where was Bryan?

19 A. Bryan, I think he had walked home.

20 Q. You think he walked home?

21 A. Uh-huh, yes.

22 Q. You sure that he wasn't at the house?

23 A. Not that I recall.

24 Q. Are you saying that he could have been there and you just
25 don't recall or you just don't have a recollection?

1 A. Yes, that's what I'm saying.

2 Q. Ma'am?

3 A. Yes.

4 Q. Ah, now, are you sure that, ah, when Quentin came to your
5 house the second time there were no other people there other than
6 your three family members?

7 A. That's all I remember. I don't remember anybody else being
8 there.

9 Q. And you said that Quentin came into the house along with
10 Jimmy?

11 A. Yes, sir.

12 Q. Do you have a doorbell?

13 A. No, sir.

14 Q. They knock on the door?

15 A. Um, I think we were already standing at the door waiting on
16 the ambulance.

17 Q. And when Quentin came to you, who was with him?

18 A. Jimmy.

19 Q. When they arrived at your house, you said you saw weapons.
20 Now, did you see Quentin with a weapon?

21 A. Yes.

22 Q. Describe it.

23 A. It was the long one, the shotgun looking one.

24 Q. Pardon me?

25 A. The long one.

1 Q. How long? Show us how long. Just take your arms and show us
2 like that.

3 A. Maybe, it was a long time ago. I don't really remember how
4 long it was.

5 Q. Well, you say you saw it?

6 A. I did.

7 Q. Now, take your hands out of your pocket and I want you to hold
8 up your hands so we can all see them, especially the twelve people
9 on this jury, and I want you to show them the length of the gun you
10 say that you saw Quentin have by - - -

11 A. Maybe like this.

12 Q. That was the length of the gun.

13 Put your hands but up?

14 A. Maybe, it was a long time ago. I would say something like
15 this.

16 Q. Maybe it was shorter?

17 A. No. Maybe it was like this.

18 Q. And - - and you - - and when you saw that gun that you just
19 described, ah, which was probably you say about two feet long.
20 Would you agree with that?

21 A. If this is what two feet is. I guess something like that.

22 Q. About two feet, maybe two and a half feet long.

23 Now, I'm sure that at some point - - of course, you don't deny
24 that you lied to the police when you talked to them the first time?

25 A. No, I don't deny it.

1 Q. You did that?

2 A. Uh-huh.

3 Q. And, of course, you talked with them the second time and at
4 which time, according to you, you decided to tell them the truth
5 and not to lie to them again. Is that correct?

6 A. Yes, sir.

7 Q. Now, I know that they must have asked you whether you saw
8 Quentin with a gun and you must have told them yes.

9 A. I think so.

10 Q. You think so? Now, you must agree that that would have been
11 something very important? I mean, after all, you - - you wanted
12 them to know, ah, because you were trying to point your finger at
13 Quentin and that's why you told them this, ah, story about him
14 having a gun, didn't you?

15 A. No. I wasn't trying to point my finger at anyone. It was
16 just a murder or somebody got shot, and I just told them everything
17 I knew.

18 Q. Well, that - - but now, you didn't know - - you certainly
19 didn't know, ah, well, maybe you did. Where was your father at the
20 time?

21 A. At what time?

22 Q. At the time that you, ah, that, ah, that you claim that you
23 saw Quentin with this gun?

24 A. He was probably standing outside waiting on the cops, I mean,
25 the ambulance because it was after he had found the body.

1 Q. Where was he prior to that time? He disappeared, didn't he?

2 A. What time?

3 Q. Prior to the time that, ah, that you say that Quentin came to
4 your house.

5 A. You mean when he went - - -

6 Q. In fact, y'all couldn't find him, could you?

7 A. I wasn't looking for him. He got a phone call, and he went
8 off down the road.

9 Q. Well, he got gone somehow, and you were all looking for him.
10 In fact, you told him that you thought the police suspected him,
11 didn't you?

12 A. No, because he called the ambulance.

13 Q. You didn't - - you deny telling your daddy, "Look, you better
14 come back home because they think that you did something."?

15 A. Oh, yeah. When I went to the police station, I did call my
16 dad. I tried to get in touch with him.

17 Q. You tried to get in touch with him?

18 A. Uh-huh.

19 Q. And the reason you were trying to get in touch with him is
20 because he done came up missing, wasn't it?

21 A. Yes, sir.

22 Q. Now, I know that the police officers asked you to describe for
23 them this gun that you claim today that you saw Quentin Scott with.
24 Did they not ask you to do that?

25 A. I think so.

1 Q. And I know that inasmuch as you are telling the truth today,
2 ah, you're going to tell the ladies and gentlemen of the jury
3 whether or not you told those police officers the same thing that
4 you just told us a few minutes ago regarding the description of the
5 gun.

6 Did you tell them the same thing?

7 A. Yes, sir.

8 Q. And in addition to telling them the gun was about two and a
9 half feet long, was there any other characteristics of that gun
10 that you described to the police?

11 A. No. I just told them that it was about that long and it was
12 hanging out of the bottom of his coat.

13 Q. Hanging out of the bottom of his coat?

14 A. Uh-huh.

15 Q. Did he have his hand over it?

16 A. I'm not sure.

17 Q. Well, if it just wasn't in suspended animation just hanging
18 out of his coat, was it?

19 A. I'm not sure if he was holding it like this or like this or
20 I'm not sure.

21 Q. You're not sure.

22 A. No.

23 Q. Is your memory got bad or you just don't - - -

24 A. It's been a long time. I don't recollect.

25 Q. But, of course, it wasn't a long time when you talked to the

1 police. They came and talked to you that same night. They spoke
2 to you on March 8th of 2007, didn't they? It wasn't no long time
3 then.

4 A. I don't remember what day it was but I remember I talked to
5 them. I think it was like the next day.

6 Q. The next day.

7 A. I think right after it happened the next morning.

8 Q. And by that afternoon you changed your story, didn't you?

9 A. No.

10 Q. You changed it the same - - you gave two different statements
11 the same day.

12 A. It was, yeah, it was in the same day.

13 Q. So, you changed your story within a twenty-four hour period?

14 A. Yeah, yes, sir.

15 Q. Now, you don't know of any reason the police would have had
16 not to write down in their report the exact description of this gun
17 that you gave them, do you - - I mean, unless you just kind of made
18 it up and just decided - - -

19 MR. FILIBERTO: Your Honor, I object. That calls for
20 speculation.

21 THE COURT: I - - I sustain that.

22 MR. BARR: Your Honor, it's cross examination.

23 THE COURT: I know it but don't speculate. Just ask a
24 question.

25 Q. Well, I - - do you know of any reason why they would have not

1 written down in their report, the one you gave it?

2 A. No.

3 Q. Now, you said you saw Quentin with that gun that you just
4 described. Did you also see Jimmy with a gun?

5 A. Yeah.

6 Q. Describe that gun, please, ma'am.

7 A. It was shorter.

8 Q. It was shorter?

9 A. Uh-huh.

10 Q. Well, put your hands up again to show me how - - how short or
11 long it was.

12 A. I didn't really see the length of it. I just know it was
13 shorter than the long one.

14 Q. Well, you didn't see the length of it but you know it was
15 shorter?

16 A. Uh-huh.

17 Q. How did you know that?

18 A. Because I saw some of it but I didn't see all of it. So I
19 don't know the length of it.

20 Q. All right.

21 Where did you see it?

22 A. Um, it was kind of under his coat.

23 Q. Kind of under his coat?

24 A. Uh-huh.

25 Q. Now, I'm not, ah, you - - you see this box here? You don't

1 know what's in this box, do you?

2 A. No.

3 Q. It shows - - on the exterior of the box it shows a gun on the
4 back of it. You see it?

5 A. Ah, now I can see, yeah.

6 Q. Can you see that?

7 A. Uh-huh.

8 Q. Now, the gun that you claim that you saw Quentin with wasn't
9 nearly this long?

10 A. Like I said. It was a long time ago.

11 Q. A long time ago?

12 A. Yeah?

13 Q. Well, I mean, this kind of gun - - you - - I mean, if it was
14 as long as this gun on this picture here, it would have been
15 sticking out down under his coat hanging way down there. Ah, you -
16 - you could just - - wouldn't be no way to conceal that, would it?

17 A. I did say it was hanging out of his coat.

18 Q. I mean it would be sticking way down.

19 What kind of coat did he have on?

20 A. Um, I don't remember.

21 Q. You don't remember?

22 A. No, sir.

23 Q. And the gun that you said that you saw Jimmy with was the
24 shorter gun?

25 A. It was shorter than that one.

1 Q. It was sticking out of a coat, too?

2 A. No. I saw it under his coat.

3 Q. Under his coat?

4 Was he holding his gun with his hand?

5 A. Um, I don't really remember. I know I just saw it and it was
6 there.

7 MR. BARR: Court's indulgence just a second, Judge.

8 Q. Now, Miss - - Miss Tumer, at the time that Quentin supposedly
9 had this gun your father was present as well, wasn't he?

10 A. Yes, sir.

11 Q. Now, I - - I - - I know that you and your father at some point
12 you discussed this case from the time that this incident happened
13 on the 8th of March of 2007 until this day, you all have talked
14 about it. You haven't talked about it?

15 A. Not really.

16 Q. You haven't talked about it?

17 A. No. I haven't been around much.

18 Q. Haven't been around?

19 So, March of 2007, until today notwithstanding this young
20 man's death, you and your father had never - - -

21 A. I didn't say we've never. I said we haven't that much because
22 I haven't been around. We've discussed it like quite a bit in the
23 last two weeks but before that.

24 Q. Quite a bit in the past two weeks you all have discussed it?

25 A. Yes, sir.

1 Q. And what were you doing in so much discussion of it in the
2 past two weeks?

3 A. Because we were told that the trial was coming up.

4 Q. So, then, you and your father started having discussions about
5 this case?

6 A. No, it just brought back, you know, what happened, and we were
7 talking about it again.

8 Q. Now, during these discussions that you had with your father,
9 did he ever - - did y'all ever talk about whether or not when you
10 claim Quentin came back to your house on that night he had a
11 weapon?

12 A. No.

13 Q. The subject never came up?

14 A. No. My daddy say he didn't see the gun.

15 Q. He told you that?

16 A. Uh-huh.

17 Q. But you told him you saw a gun?

18 A. Uh-huh.

19 Q. Now, you also discussed it with your sister, didn't you?

20 A. Um, when it first happened I did but not lately because she -
21 - she lives in Florida now.

22 Q. Well, you - - you discussed it with her, didn't you, about the
23 gun, didn't you?

24 A. Uh-huh.

25 Q. In fact, she - - she claims that she saw just the opposite of

1 what you saw, didn't she? Didn't she?

2 A. Um, I don't remember what she saw.

3 THE COURT: Let's don't pit one witness against another.

4 You can call that witness and take her testimony if you desire
5 to.

6 Q. You did - - you did talk with her about it?

7 A. When it first happened but not lately.

8 Q. Not lately.

9 A. But I did talk with her about it when it first happened but,
10 you know, it was a long time ago. I don't really remember what she
11 saw.

12 Q. She's in Florida now, you say?

13 A. Yes, sir.

14 Q. She doesn't know about this trial?

15 A. Yes, sir.

16 Q. She knows about it?

17 A. Yes, sir.

18 Q. I mean, you told her that the trial was coming up.

19 A. Yes, sir.

20 Q. And she gave a statement, too, didn't she?

21 A. Yes, sir.

22 Q. Just like you did?

23 A. Yes, sir.

24 Q. Now, Miss, ah, Miss Tumer, I'm going to show you now a copy of
25 the statement that was given to me by the prosecution which is your

1 statement.

2 MR. FILIBERTO: Your Honor, if he'd clarify whose
3 statement that is, please.

4 THE COURT: Give him the date and the author of it, please.

5 MR. BARR: This is the second interview.

6 MR. FILIBERTO: Of this witness?

7 MR. BARR: Yes, sir.

8 Q. I'm going to show you a copy of this statement. It's - - it's
9 not numbered by page but I think it's the third page.

10 I'm going to ask that you take a look at it and just
11 familiarize yourself with it because I'm getting ready to ask you
12 something about this. If you would, I'm referring to that
13 particular portion right there.

14 This portion is what I'm referring to right now.

15 A. All right.

16 Q. Now, you do recalling giving this statement, don't you, the
17 second statement? The one you now said you told the truth on?

18 A. Yes.

19 Q. You remember giving that statement?

20 A. Yes.

21 Q. Now, did not you say that then when my daddy started out of
22 the room, he eased it behind him. That's shows or that's how my
23 daddy didn't see it. Ah, he didn't know that Jimmy had a gun at
24 the time but Rudy told me later that Jimmy had one, too.

25 Now, you made that statement, didn't you?

1 A. I guess so.

2 Q. Ah, on this situation that you claim, ah, did you ever see
3 Quentin with a gun prior to the time that you claim that he came
4 into your house?

5 A. No, sir.

6 Q. And the gun that you claim that he had when he came back to
7 your house, I think this was after you found out that Czar had been
8 shot?

9 A. Yes, sir.

10 Q. Now, you don't know - - do you know where Anthony was coming
11 from when he came to your house the second time?

12 A. No, sir.

13 Q. Do you know whether or not Anthony ever went to Czar's house
14 at all?

15 A. No, sir.

16 Q. Ma'am?

17 A. No, sir.

18 Q. Thank you, ma'am. I have no further questions.

19 THE COURT: All right, sir.

20 Any further questions for this witness?

21 MR. FILIBERTO: Yes, sir, I do.

22 THE COURT: Go ahead.

23 We'll take a short break after the conclusion of this witness.

24 MR. FILIBERTO: I just want to review a few things. It
25 won't be too long.

1 REDIRECT EXAMINATION BY MR. FILIBERTO:

2 Q. The first time on the evening of March 8th that the defendants
3 Jimmy Lee Williams and Anthony Quentin Scott arrived at your house,
4 did they arrive together or separately?

5 A. I'm not really certain if they came together. I just know
6 both of them were over there. Um, I remember when the car pulled
7 up. I think I was coming back from the store, and the car pulled
8 up in the yard but I - - I really don't remember if they both got
9 out of the same car.

10 Q. A few minutes later you said they left. Is that correct?

11 A. Yes, sir.

12 Q. Did they leave together?

13 A. Yes, sir.

14 Q. Later on that night, did they - - they came back. Is that
15 correct?

16 A. Yes, sir.

17 Q. Were they together then?

18 A. Yes, sir.

19 Q. And did they sometime later leave?

20 A. Yes, sir, together.

21 Q. Did they leave together?

22 A. Yes, sir.

23 Q. Court's indulgence just one moment.

24 MR. FILIBERTO: May we open this box?

25 THE COURT: You may open it, yes.

1 Since it's been the subject of cross examination, you may open
2 it.

3 MR. BARR: Your Honor, may we approach?

4 THE COURT: Yes, sir.

5 (Bench conference held off the record and in the presence of
6 the jury but outside the hearing of the jury.)

7 MR. FILIBERTO: The gun is not in evidence yet, Your
8 Honor.

9 THE COURT: Sir?

10 MR. FILIBERTO: The gun is not in evidence.

11 THE COURT: I understand that but there's been some
12 testimony about it, and I'm going to permit it. You can get it in
13 later.

14 I recognize that that gun is not in evidence.

15 Defense counsel showed it to the defendant, I mean to this
16 witness and expressed to her some further questions about the size
17 of it. In fairness to the process I'm going to let them see the
18 actual gun so that they won't be looking at the box recognizing it
19 is not in evidence but it's been a matter of considerable question.

20 MR. BARR: Your Honor, I just want to make sure - - I just
21 want to make sure that I make my record.

22 THE COURT: Yes, sir.

23 MR. BARR: That with respect to the gun, we talked about
24 the questions that I asked I specifically asked about the
25 photograph on the back of the box, and - - -

1 THE COURT: I understand but you were specifically
2 referring to the instrument within that box. So, I think in
3 fairness to the jury, they entitled to see what's in the box since
4 you refer to a photograph on the outside of it, and I'm going to
5 permit the jury to - - all I'm doing is permit them to see what the
6 weapon is in fact, not some picture of it.

7 MR. BARR: Your Honor, of course, you know, you'd almost
8 have to take a leap of faith to take what we talked about as far as
9 the picture on the back of the box and what is, in fact, inside the
10 box.

11 THE COURT: I don't have to have a leap of faith. You
12 cross examined her extensively on the size and length of the
13 purported weapon. I'm going to let them see the weapon.

14 Go ahead.

15 MR. FILIBERTO: Thank you, Your Honor. Just a minute.

16 THE COURT: Now, we understand at this point in time it's
17 not in evidence.

18 MR. FILIBERTO: I understand, Your Honor.

19 THE COURT: But there's been some sufficient conversation
20 about it.

21 MR. BARR: Your Honor, just a matter for the record. If
22 it's not in evidence - - if it's not in evidence, then what is the
23 relevance?

24 THE COURT: Because you asked about it at length. That's
25 what the relevance of it.

1 I'm going to let the jury see what's in the box because you
2 kept talking about the size of it based on some picture. I'm
3 going to let them see not the picture but what - - the weapon
4 itself.

5 MR. BARR: I just want to make sure that I'm covered on
6 the record.

7 THE COURT: You covered on the record.

8 MR. BARR: Yes, sir.

9 THE COURT: But the jury can give it such weight as they
10 determine it should receive.

11 I recognize at this point it is not in evidence but I assume
12 that you'll be putting it in evidence.

13 MR. FILIBERTO: It's our intention that we will, Your
14 Honor.

15 THE COURT: But since it's been the subject of cross
16 examination, I'm going to let it in.

17 MR. FILIBERTO: Thank you, Your Honor.

18 MR. BARR: Your Honor, just to make sure we'll clear.

19 Now, this gun is supposedly the weapon used, ah, by the person
20 that supposedly shot Czar. There is no allegation, there's no
21 contention and the State doesn't even claim - - -

22 THE COURT: I'm going to let at this time just to show the
23 actual length of that weapon, and they'll have to put in evidence
24 if they can later.

25 But let it be clear. I'm just going to let them see the

1 actual length of the weapon and not some picture of it.

2 MR. BARR: Well, Judge, the weapon that they're referring
3 to is a weapon that they claim that he had, not the - - -

4 THE COURT: I - - that's a matter of evidence for them.
5 The only thing that I'm doing is letting them see what's in that
6 box because you kept referring to it.

7 Beyond that, we'll see where the evidence goes.

8 Now, just limit your further examination to letting the jury
9 see that weapon and only as to the size of it.

10 Now, have you examined to make sure there's no bullets in it?

11 MR. DEBUSK: Yes. Yes, Your Honor.

12 THE COURT: I always have one rule when weapons are
13 displayed in my court, and that's to make sure they're pointed
14 toward the lawyers and not the jury.

15 MR. TAYLOR: Judge, would that be the State's attorneys?

16 THE COURT: Both.

17 MR. TAYLOR: Yes, sir.

18 THE COURT: I said plural attorneys.

19 Q. Let me show you what's been marked for identification as
20 State's #16. Is this - - do you recognize this?

21 A. Yes, sir.

22 Q. What do you recognize it to be?

23 A. It looks like the one that Quentin had?

24 Q. Is this the length that you recall?

25 A. Yes, sir.

1 MR. BARR: Judge, note my objection to this testimony.

2 THE COURT: Your objection noted. You may cross examine
3 her on that issue, only as to the length of the weapon and the
4 description of it, and that's the only purpose I permitted it in
5 the record. It's not in evidence at this time.

6 And that - - that examination then is subject to you tying
7 that weapon up - -

8 MR. FILIBERTO: Thank you, Your Honor.

9 THE COURT: - - if you can.

10 Q. Miss Tumer, after the ambulance arrived to attend to the
11 victim in this case, do you - - did you go over towards Czar's
12 house at all?

13 A. Yes, sir.

14 Q. What did you see?

15 A. I think I got there right when the ambulance did, and they
16 were putting him on a gurney and putting him in the back of the
17 ambulance by the time I got there.

18 Q. Did you then return home?

19 A. Yes, sir.

20 Q. What did you do when you came back home?

21 A. When I went in there, and I told my daddy what I saw of him
22 down there and that they were taking him, and then I think it was
23 a short time afterward, um, one of the cops came and - -

24 THE COURT: Let's don't get into any third party
25 conversation, now.

1 A. - - took me to the police station.

2 Q. Was it before or after you walked down to Czar's house that -
3 - that the defendants Jimmy Lee Williams and Anthony Quentin Scott
4 returned to your house - - if you remember?

5 A. I don't really remember but I want to say it was before but
6 I'm not sure.

7 Q. Now, I'm going to - - if I show you a copy of your transcript
8 of your interview with the police, would that refresh your memory?

9 A. Yes, sir.

10 MR. BARR: Your Honor, I'm -- I'm going to object.

11 The witness was impeached on the limited issue of her saying
12 that, ah, that the, ah, that her father told her he had not seen
13 the gun. That's what we impeached her on.

14 THE COURT: No. I think you impeached her on the whole
15 statement. I didn't understand that you impeached her on a narrow
16 issue. You asked her was this her statement. Was it true and
17 did she lie? And this, that and the other.

18 MR. BARR: Your Honor - - -

19 THE COURT: I don't need that, sir. I'm going to permit -
20 - I don't need it. I'm going to permit your inquiry on this
21 because you the one, and properly so, veracity on her statement.

22 MR. BARR: I showed her a portion of the statement and I
23 draw the line in showing her the total - - -

24 THE COURT: That permits him to show the other portion
25 under our rules. You just can't take a part of a statement for

1 your own purposes without giving the other side the same
2 opportunity, and if he tries to do it, I'll give you that same
3 privilege. You just can't use a portion of a statement.

4 Go ahead.

5 MR. FILIBERTO: Thank you, Your Honor.

6 THE COURT: Now, this is further direct. So, limit your
7 cross examination - - limit this examination.

8 MR. FILIBERTO: Yes, sir.

9 Q. Having - - having looked over the transcript of your
10 statement, do you recall now whether or not - -

11 A. Yes.

12 Q. - - the defendants returned to your house after you or before
13 you went to Czar's house?

14 A. Yes, sir. It was after I came back from Czar's house.

15 Q. And what did you observe at that point?

16 A. Um, them two, they came in and they had the gun.

17 Q. Did you participate in or overhear a conversation without
18 saying what was said amongst the people who were in your house?

19 A. I - - -

20 THE COURT: No, sir. I'm going to sustain that, now.
21 That's beyond the scope of his direct - - his cross examination.

22 MR. FILIBERTO: Yes, sir.

23 THE COURT: I'm not going to permit it.

24 That's the beyond the scope of his cross.

25 MR. FILIBERTO: Court's indulgence.

1 Nothing further, Your Honor.

2 THE COURT: Anybody have any further questions on this
3 issue?

4 MR. TAYLOR: I've just got one quick question, Your Honor.

5 THE COURT: All right.

6 RE-CROSS EXAMINATION BY MR. TAYLOR:

7 Q. Miss Tumer, you testified earlier when Mr. Barr was asking
8 some questions that the gun - - the gun was about this long?

9 A. Yes, sir.

10 Q. Okay.

11 Now, whenever you gave your second statement to the detective,
12 you, in fact, told the detective that the gun you saw was, in fact,
13 a sawed-off shotgun. Correct?

14 A. No. I didn't tell him it was a sawed-off shotgun I don't
15 think. I just told him it looked like a shotgun.

16 Q. This is the second statement. It says here, let me show you.

17 "Approximately 7:45, March 9, 2007, received a call from you
18 stating that she had not told us everything and that she wanted us
19 go back and pick her up from work."

20 Is that true?

21 A. Yes, sir.

22 Q. Okay.

23 Here, underlined section, and if I mispronounce your name, I
24 apologize.

25 A. Marnaquais.

1 Q. Marnaquais?

2 "Marnaquais stated when she returned. Saw Jimmy in possession
3 of a long gun she presumes was a sawed-off shotgun."

4 Does that gun look like a sawed-off shotgun?

5 A. I don't know what a sawed-off shotgun looks like.

6 Q. Well, if you don't know what a sawed-off shotgun looks like,
7 then why would you tell the detective it was a sawed-off shotgun?

8 A. I said it looked like a shotgun. I don't remember telling him
9 it was sawed off.

10 Q. So, this detective then in all the years of experience, he
11 completely mis-spoke?

12 A. I said I don't remember telling that.

13 Q. But you could have told him it was a sawed-off shotgun,
14 couldn't you?

15 A. I could have but I don't really know what a sawed-off shotgun
16 looks like.

17 Q. A sawed-off shotgun looks a lot different than that gun,
18 doesn't it?

19 A. I don't know what one looks like. So I couldn't tell you.

20 THE COURT: Now, she's answered that question for you three
21 times, Mr. Taylor.

22 MR. TAYLOR: Yes, sir, Your Honor.

23 THE COURT: All right, sir.

24 Q. Now, I had a last question, and you're saying that my client
25 had the sawed-off shotgun but you testified earlier that his co-

1 defendant had the long gun. Which one is it?

2 A. Um - - -

3 Q. You're really not sure, are you?

4 THE COURT: No, wait a minute. You didn't give her a
5 chance to answer.

6 MR. TAYLOR: Okay.

7 Okay, Your Honor.

8 THE COURT: No, sir. You asked her which one it is and
9 she started to say, and you stopped her.

10 MR. TAYLOR: Okay. Okay.

11 THE COURT: Ask her the question again.

12 He wants to know which one. If you know, say so. If you
13 don't, say so.

14 Which one had the gun?

15 A. It was Quentin.

16 Q. It was Quentin?

17 A. Uh-huh.

18 Q. You sure about that?

19 A. Yes.

20 THE COURT: All right, sir.

21 MR. FILIBERTO: Your Honor, could I just ask the Court to
22 inquire of defense counsel which documents he was reading from?

23 THE COURT: Sir?

24 MR. FILIBERTO: Which documents?

25 MR. TAYLOR: This was from the discovery I received, Your

1 Honor, from the detective.

2 THE COURT: Which one was that one? Was that the first or
3 second statement?

4 MR. TAYLOR: This was from the second statement, Your Honor.

5 MR. FILIBERTO: Thank you.

6 THE COURT: All right.

7 That concludes the questions?

8 MR. FILIBERTO: Just to be clear. That was not a
9 statement from the witness. This was a statement from the police
10 report.

11 THE COURT: Clarify that, now. What?

12 MR. FILIBERTO: It's just that - - Your Honor, I just want
13 to clarify for the record that defense counsel was using the police
14 officer's report and not the witness' statement.

15 THE COURT: Okay.

16 So, it's not - - you agree that that was - - that report does
17 not contain the witness' statement?

18 MR. TAYLOR: Well, I would disagree with that.

19 THE COURT: Well, now, you asked her specifically did she
20 contradict that statement, and that statement was not her
21 statement.

22 MR. TAYLOR: And that's what I asked her, Your Honor. I
23 asked her if she - - -

24 THE COURT: Well, she - - she - - you heard what she said
25 but you purported - - I'm sure it's a mistake but you purported to

1 cross examine her on a statement that she allegedly made, and she
2 didn't make that statement. That's a police report.

3 MR. TAYLOR: Your Honor, I asked her specifically that on
4 7:45 on March 9th, she went back on her second statement and she
5 spoke to the police officer.

6 THE COURT: You purported to show that document as her
7 statement, and it's not her statement.

8 MR. TAYLOR: I asked her - - well, it's not her statement
9 but she made the statement concerning that.

10 THE COURT: Well, the jury will understand what she said.
11 Have a seat.

12 MR. TAYLOR: All right.

13 THE COURT: All right. We're going to take a very short
14 break. I know you've been here since 2:30. I'm going to be
15 calling you back very shortly. We going to work until about 5:30
16 and quit for the day.

17 So, take just a very short break. Let's don't take a smoke
18 break, please.

19 We're going to be in recess for about - - no more than fifteen
20 minutes.

21 MR. FILIBERTO: Thank you, Your Honor.

22 (The jury retires to the jury room at 4:30 p.m.)

23 MR. FILIBERTO: Your Honor, can this witness be excused.

24 THE COURT: Yes, sir, unless anybody wants to hold her.
25 She's excused from her subpoena without objection.

1 (The witness leaves the witness stand.)

2 THE COURT: Be back in fifteen minutes.

3 (The Court recesses the trial of this case for a short break
4 and thereafter reconvenes the trial of this case.)

5 THE COURT: Thank you. Be seated.

6 Are we ready to resume?

7 MR. FILIBERTO: Yes, Your Honor

8 May we approach?

9 THE COURT: Yes, sir.

10 (Bench conference held off the record and outside the presence
11 of the jury.)

12 THE COURT: Bring the jury in.

13 For scheduling purposes, how many witnesses you got tomorrow?

14 MR. FILIBERTO: At this point we have potentially three
15 and, possibly, some rebuttal witnesses.

16 (The jury returns to the courtroom at 4:49 p.m.)

17 THE COURT: The State advises that they only have one other
18 witness tonight. The remaining witnesses will be here tomorrow.
19 So, we'll have one other witness tonight, and then we'll recess
20 until tomorrow.

21 You may call your last witness for the day.

22 MR. FILIBERTO: Thank you.

23 The State calls Brad Townsend, please.

24 (The witness takes the witness stand.)

1 DETECTIVE JOHN BRADLEY TOWNSEND, being
2 duly sworn, testifies as follows:

3 CLERK OF COURT: State your full name and spell your last
4 name for the record.

5 DETECTIVE TOWNSEND: Detective John Bradley Townsend, T-o-
6 w-n-s-e-n-d.

7 DIRECT EXAMINATION BY MR. FILIBERTO:

8 Q. Detective Townsend, where are you currently employed?

9 A. Horry County - - Horry County Police Department.

10 Q. And how long have you been so employed?

11 A. Ah, seven years.

12 Q. And what are your primary responsibilities?

13 A. Right now detective investigating violent crimes.

14 Q. Were you employed back in that capacity on March 8th of 2007?

15 A. Yes, sir.

16 Q. And were you assigned duties that brings you here today?

17 A. Yes, sir.

18 Q. What's a general description of your duties?

19 A. Like I said. Investigating different crimes, violent crimes,
20 homicides.

21 Q. Just specifically with this case.

22 A. Specifically with this case? Assault and battery with the
23 intent to kill.

24 Q. And to your knowledge did that charge change later?

25 A. No, sir. Not - - not to my knowledge. It was ABWIK,

1 assault and battery with the intent to kill.

2 Q. The defendants - - are you aware with what the defendants are
3 charged with here today?

4 A. Apparently not.

5 Q. Okay.

6 THE COURT: What was that response?

7 DETECTIVE TOWNSEND: No, sir.

8 I said, "Apparently not," but, no, sir.

9 Q. During the course of your investigation did you have occasion
10 to travel to 5419 Hendricks Short Cut Road in Conway?

11 A. Yes, sir.

12 Q. If you - - if you can - - if you know, whose residence was
13 that?

14 A. That was Jimmy's - - Jimmy Williams' mother's residence.

15 Q. What did you do upon your arrival at that residence?

16 A. Well, we were told to locate the suspects at the time, the
17 defendants in this case, and we were waiting upon a search warrant
18 at which time we were told that a search warrant was not going to
19 be taken, that a consent to search would be - - would be sought.

20 So, we knocked on the door. Ah, Jimmy's mother answered, and
21 I forget her name, um, but she was identified as being Jimmy's
22 mother. She answered, and we asked if, in fact, her son was
23 inside, inside the residence, and she said, yes, he was, and we had
24 her step outside, and we called to him, and he came to the door and
25 we brought - - having both suspects being brought outside. Jimmy's

1 mother gave us the consent to search, um, her residence which took
2 the place of the search warrant at the time.

3 Q. While you were performing that search, do you know what, ah,
4 what happened with the defendants?

5 A. They were - - they were arrested. They were taken into
6 custody and taken to the police department.

7 Q. Now, while you were - - did you go with them or did you remain
8 on scene?

9 A. I remained on scene.

10 Q. While you were there, did you receive a call related to this
11 investigation?

12 A. I - - I did. That would have been from Detective Steve
13 Clark.

14 Q. And in response to that call what did you do?

15 A. I searched for a, ah, a long rifle, a specific - - specific
16 gun and ended up searching the wood line where the long rifle, a 22
17 long rifle was recovered.

18 Q. And in proximity to the residence that you were searching?

19 A. Yes, sir. Behind it.

20 Q. I show you's what's been marked for identification as State's
21 #3 and see if you recognize it?

22 A. Yes, sir.

23 Q. What does it represent?

24 A. It appears to be the long - - long gun, the rifle that I found
25 behind the residence in the wood line.

Q. Does it fairly and accurately depict the rifle that you - - as you came across it?

A. Yes, sir, as I remember it, it does.

MR. FILIBERTO: Your Honor, the State would move to admit State's #3 into evidence.

MR. TAYLOR: No objection.

MR. BARR: No objection.

THE COURT: All right, sir. Without objection.

(The Court Reporter accepts State's Exhibit #3 into evidence.)

MR. FILIBERTO: Permission to publish to the jury.

Q. I'm going to show you what's been marked as State's #16 for identification. Do you recognize it?

A. Yes, sir. That's the rifle that I recovered from the wood line.

Q. Is it in substantially the same condition as when you recovered it?

A. Yes, sir.

Q. While it was in your care and custody, did you do anything to change or alter it?

A. The only thing we did was make it safe before we actually packaged it for evidence but after that it was - - -

Q. And what did you do with it then?

A. Packaged it for evidence and placed - - turned it into the evidence section at the police department.

Q. Thank you.

1 MR. FILIBERTO: Your Honor, at this point the State would
2 move to have State's #16 moved into evidence.

3 THE COURT: Mr. - - yes, sir.

4 MR. BARR: Judge, quite frankly, the foundation still
5 hasn't been laid for that gun to come into evidence, and I would
6 object to it.

7 THE COURT: Well, at this point I'm permitting it to come
8 in only and only as a weapon that he found allegedly at that time
9 and place but it hasn't been tied into anything else.

10 MR. FILIBERTO: Yes, sir.

11 THE COURT: I'm admitting it only that he found this weapon
12 as he says he did, and that's for the jury to determine but for
13 that purpose only.

14 MR. FILIBERTO: Yes, sir.

15 (The Court Reporter accepts State's Exhibit #16 into
16 evidence.)

17 THE COURT: At this time.

18 All right.

19 The caliber hasn't been identified, has it?

20 Solicitor.

21 MR. FILIBERTO: Sir?

22 THE COURT: Has he identified the caliber or the make or
23 anything?

24 MR. FILIBERTO: Your Honor, if Your Honor will, we'll have
25 the firearms expert who can do that tomorrow.

1 THE COURT: All right, sir.

2 Q. That's all I have. Please answer any questions defense
3 counsel may have.

4 A. Okay.

5 THE COURT: Mr. Taylor.

6 MR. TAYLOR: Thank you, Your Honor.

7 CROSS EXAMINATION BY MR. TAYLOR:

8 Q. Good afternoon, Detective Townsend.

9 A. Good afternoon.

10 Q. You testified my client came to the door whenever you knocked
11 on the front door?

12 A. His mother came to the door first, right.

13 Q. And throughout that incident everybody cooperated with you?

14 A. Yes, sir.

15 Q. Everybody came outside?

16 A. Yes, sir.

17 Q. You didn't have chase my client through the woods?

18 A. No, sir.

19 Q. Didn't have to chase him through the woods?

20 A. No, sir.

21 Q. Okay.

22 Everybody cooperated?

23 A. Yes, sir.

24 Q. Is that the length of your involvement in this case was just
25 at that house?

1 A. Ah, we did a few interviews prior. I assisted Detective
2 Clark with a few interviews?

3 Q. Who did you interview?

4 A. Ah, Marqu - - Marqu - - -

5 Q. Marnaquais?

6 A. Marnaquais.

7 Q. Which interview did you do with her?

8 A. From my knowledge it was the second one.

9 Q. The second one? Okay.

10 And this is whenever she came clean with you and told you what
11 allegedly from her version of what really happened?

12 A. Right. This was the morning we picked her up from McDonald's
13 when she called us.

14 Q. Okay.

15 So, you would have then spoken with her concerning what type
16 of firearm she saw, ah, whenever my client allegedly came back to
17 the house?

18 A. Right.

19 Q. On the second occasion?

20 A. Right.

21 Q. And she told you that it was a sawed-off shotgun didn't she?

22 A. She - -

23 Q. As it had in your report?

24 A. - - she said she presumed it to be.

25 Q. Presumed it to be a sawed-off shotgun?

1 A. Yes, sir.

2 Q. Okay.

3 Is that firearm that was just shown to you, is that a sawed-
4 off shotgun?

5 A. No.

6 Q. Okay.

7 But she specifically told you that it was a sawed-off shotgun?

8 A. That - - that she presumed it to be.

9 Q. Okay.

10 Thank you. I have no further - - well, who else did you, ah,
11 interview?

12 A. There was a few other people, ah - - -

13 Q. Do you remember? Do you recall who they were?

14 A. Not right - - if I had my investigation, I could tell you the
15 names for sure but, ah, they ended up not having any bearing on -
16 - on the case.

17 Q. All right.

18 Okay. Thank you.

19 THE COURT: Mr. Barr.

20 CROSS EXAMINATION BY MR. BARR:

21 Q. Mr. Townsend?

22 A. Yes, sir.

23 Q. State's Exhibit number - - photographs.

24 Thank you.

25 State's Exhibit #10 - - #3, I'm sorry.

1 Um, you, ah, you found that in the woods?

2 A. Yes, sir.

3 Q. And I would assume that with respect to y'all going into the
4 woods and finding that you had some help?

5 A. There were some other detectives out there that helped search
6 the wood line, yes, sir.

7 Q. All right.

8 And you were searching the wood line for what?

9 A. The weapon.

10 Q. And what made you think the weapon was in the weapon was in
11 the wood line?

12 A. I had received a telephone call from Detective Steve Clark - -
13 that asked me to look at the wood line for a specific weapon.

14 MR. FILIBERTO: We would object to any hearsay at this
15 point, Your Honor.

16 THE COURT: I would permit - - I accept it only as a basis
17 for him checking the wood line.

18 Q. Steve Clark, you said?

19 A. Detective Clark, yes, sir.

20 Q. Now, after you found this, ah, this rifle, it's a 22 rifle?

21 A. Yes, sir.

22 Q. Ah, I believe if I'm not mistaken, you've already identified
23 what's the rifle that's in this box, you've already identified that
24 as this rifle?

25 A. It appears - - -

1 Q. This rifle I'm talking about, State's Exhibit #3.

2 A. It appears to be that rifle.

3 As long as the serial numbers match up on the evidence sheet
4 that we collected, then that's the rifle.

5 Q. Now, of course, you don't have to tell me what he said but you
6 don't know, ah, in terms of how, ah, Officer Clark, Investigator
7 Clark was able to direct you to this particular site, you don't
8 know how he came across this information?

9 A. Well, he didn't direct me to a specific site. He said check
10 the - - the wood line which that, you know.

11 Q. He told you to go look in the woods for the gun?

12 A. Right.

13 Q. Now, what I'm saying to you is you certainly don't know how he
14 came by that information?

15 A. Apparently, somebody told him.

16 Q. Well, but what I'm saying is you don't know how he came by
17 that?

18 A. No, sir.

19 Q. He knows?

20 A. Yes, sir.

21 Q. Thank you.

22 I have nothing further.

23 THE COURT: All right, sir.

24 Any further redirect?

25 MR. FILIBERTO: No, sir, Your Honor.

1 THE COURT: You may come down, Officer.

2 DETECTIVE TOWNSEND: Thank you, Your Honor.

3 THE COURT: All right.

4 MR. FILIBERTO: May this officer be released from his
5 subpoena, Your Honor.

6 THE COURT: Yes. Just remain in the courtroom for just a
7 moment.

8 (The witness leaves the witness stand.)

9 THE COURT: All right, sir. Is that all of your witnesses
10 now.

11 MR. FILIBERTO: For this evening, Your Honor.

12 THE COURT: All right, sir.

13 Mr. Foreman, ladies and gentlemen, I'm going to excuse you for
14 the evening.

15 Please remember my admonitions. Please don't discuss the
16 case. Permit no one to discuss it with you. Do not discuss it
17 among yourselves.

18 Please be here promptly at 9:30 in the morning, and we'll
19 start to finish the trial of this case.

20 Okay.

21 (The jury is released for the day and departs the courtroom
22 with instructions to return at 9:30 a.m. on Thursday.)

23 And, Mr. Alternate, I want to see you a minute.

24 I want to talk to the alternate.

25 Mr. Alternate?

1 (The Court addresses the alternate off the record.)

2 THE COURT: We are off the record.

3 All right. We are in recess until 9:30 in the morning.

4 (The Court adjourns the trial of this case for the day to
5 reconvene on Thursday at 9:30 a.m.)

THURSDAY, NOVEMBER 13, 2008

(The Court reconvenes the trial of this case with all parties present in the courtroom at 9:39 a.m.)

THE COURT: Good morning, ladies and gentlemen. Please be seated.

Hello.

All right, sir.

The State ready to proceed?

MR. FILIBERTO: Yes, Your Honor.

THE COURT: Defendants ready?

MR. TAYLOR: Yes, sir, Your Honor.

THE COURT: Let the record reflect that all parties are ready to proceed, that the defendants' are in the courtroom.

Have your first witness ready, now.

MR. FILIBERTO: Yes, sir. He's present in the courtroom.

(The jury returns to the courtroom at 9:40 a.m.)

THE COURT: Good morning, Mr. Foreman, ladies and gentlemen.

All right, sir. You may call your first witness.

MR. FILIBERTO: Thank you.

The State calls Dr. Edward Proctor.

(The witness takes the witness stand.)

DR. EDWARD LEROY PROCTOR, JR., being duly sworn, testifies as follows:

CLERK OF COURT: State your full name and spell your last

1 name for the record.

2 DR. PROCTOR: Yes, sir.

3 I am Edward Leroy Proctor, Jr., and that's P-r-o-c-t-o-r.

4 DIRECT EXAMINATION BY MR. FILIBERTO:

5 Q. Good morning, Dr. Proctor.

6 Dr. Proctor, you're currently a licenced medical doctor?

7 A. Yes, sir.

8 Q. In what states are you authorized to practice?

9 A. I have a license to practice medicine in the states of South
10 Carolina and North Carolina.

11 Q. How long have you been licensed to practice in your
12 profession?

13 A. Approximately thirty years.

14 Q. Tell the Court where you received your medical training.

15 A. Yes, sir.

16 I received my medical training. I got my MD Degree from the
17 Medical University of South Carolina in 1978 and did all of my
18 residency training in pathology at Walter Reed Army Medical Center
19 in Washington, D. C.

20 Q. What, if any, certifications do you hold?

21 A. I am board certified for the practice of Anatomic Pathology,
22 Clinical Pathology and I am sub-specialty certified for the
23 practice of Forensic Pathology.

24 THE COURT: Qualifications admitted by the doctor?

25 MR. TAYLOR: No objection, Your Honor.

1 MR. BARR: Yes, sir.

2 THE COURT: Qualifications are admitted. He's testified in
3 my court on many occasions.

4 Good to have you.

5 DR. PROCTOR: Nice to see you, sir.

6 MR. FILIBERTO: For the record, then, this witness is
7 entered as an expert in Forensic Pathology?

8 THE COURT: Yes, sir.

9 MR. FILIBERTO: Thank you.

10 Q. Dr. Proctor, would you explain to the jury what Forensic
11 Pathology involves?

12 A. Yes, sir.

13 As a Forensic Pathologist, I am called upon for the medical
14 legal investigation of a death, that being a case under suspicious
15 or unusual circumstances. In the state of South Carolina it's
16 usually investigated by law enforcement and the coroner, and at the
17 request of the coroner's office I will then perform a forensic
18 examination which includes a complete external examination.
19 autopsy, microscopic examination of organs and tissues as needed,
20 toxicology and then with my information and the information from
21 the investigating authorities we, ah, determine the cause and
22 manner of death.

23 Q. And did you have an occasion to perform an autopsy on the
24 victim in this case, Efrain Rasodo?

25 A. Yes, sir, I did.

1 Q. Where did that take place?

2 A. Ah, I performed the autopsy on Mr. Rasodo at Grand Strand
3 Regional Medical Center in Myrtle Beach.

4 Q. Dr. Proctor, was there any evidence of external injuries to
5 the victim?

6 A. My examination revealed two distinct, ah, external injuries,
7 one being evidence of a gunshot wound that was received in the head
8 and the second being a grazing type wound to the lower left leg.

9 Of course, on top of that there was evidence of surgical
10 intervention with suture lines and that -- that type.

11 Q. Dr. Proctor, with respect to the leg wound, do you have an
12 opinion as to what caused it?

13 A. Ah, the leg wound was a what we describe as a grazing type
14 wound. It appeared to have been caused by a projectile fired from
15 some sort of weapon. Ah, we -- we inspected the wound. Took
16 radiographs to make sure there was no projectile remaining in the
17 leg but it was a superficial grazing type wound.

18 Q. Doctor, I show you what's been marked as State's #23 already
19 in evidence. They are the pants that were worn by the victim the
20 night that he was injured. I want to show you that matter. Do
21 you see anything that would have been consistent with that grazing
22 wound?

23 A. Looking at this pair of pants I see in close proximity two
24 defects in the material here which are certainly consistent with
25 what would occur as a projectile passing through, in and then out.

1 Q. Thank you.

2 Dr. Proctor, with respect to the head wound, were you able to
3 retrieve any items of evidential value?

4 A. Examination of the head wound at the time of autopsy, ah, we
5 did recover a flattened projectile that was transferred directly to
6 the, um, Horry County crime scene officers.

7 Q. Dr. Proctor, during your examination, were you able to
8 determine an angle of trajectory from where the wound - - where
9 that projectile entered the skull and the direction it traveled?

10 A. Yes, sir, I was.

11 Q. Did you prepare a model to illustrate that - - that angle?

12 A. Yes, sir.

13 Q. I'm going to show you what's been marked as State's #26.

14 THE COURT: Doctor, in your opinion, will this model help
15 the jury understand your testimony.

16 DR. PROCTOR: Yes, sir.

17 Q. Doctor, is that the model we prepare this morning?

18 A. Yes, sir, it is.

19 Q. Does the rod that is entered into the - - the head fairly and
20 accurately depict the angle of entry - -

21 A. Yes, sir.

22 Q. - - and trajectory?

23 A. It does.

24 Q. And, Dr. Proctor, who put that rod in there?

25 A. Okay.

1 I was asked this morning by Mr. Filiberto if I could prepare
2 this model to illustrate the trajectory of this wound. So, I took
3 this ballistic rod as we call it to trace the path of the
4 projectile which entered this man's head above the right eyebrow,
5 passed in an anterior, posterior, slightly superior right to left
6 direction on the victim, and this accurately illustrates it coming
7 in above the eyebrow from right to left posterior, slightly
8 superior.

9 Q. Yes, sir.

10 MR. FILIBERTO: At this time the State would move to have
11 State's #26 into evidence.

12 MR. TAYLOR: No objection, Your Honor.

13 THE COURT: Without objection.

14 MR. FILIBERTO: Thank you.

15 (The Court Reporter accepts State's Exhibit #26 into
16 evidence.)

17 THE COURT: I have permitted that into evidence, now.

18 Of course, if you have further testimony about it, you may
19 keep it with the witness.

20 Q. Dr. Proctor, with an injury like this do you have an opinion
21 as to whether or not the victim would have been mobile after he was
22 shot?

23 A. This is a - - a very serious injury which in most cases
24 results in death. Ah, mobility, of course, I don't practice
25 clinical medicine but as, ah, the brain swells, of course, there is

1 very little mobility after that.

2 The time frame from the wound occurring until the victim will
3 be become incapacitated could certainly be from a few seconds to a
4 few minutes. I - - you know, I just can't quantitate it but it is
5 possible that he could have been mobile.

6 Q. Dr. Proctor, based on your autopsy within the bounds of
7 reasonable medical certainty have you formed an expert opinion
8 concerning the cause of death of Efrain Rasodo?

9 A. Yes, sir.

10 Q. Would you please share that with the jury?

11 A. Ah, Mr. Rasodo died as a result of this gunshot wound.

12 The projectile entered his brain, caused extensive damage to
13 the right side of his brain as well as multiple fractures of the
14 skull and bessera (spelled phonetically) skull surrounding the
15 cranial cavity and, ah, so the cause of death was massive trauma to
16 the brain occurring as a result of a gunshot wound.

17 Q. Thank you, Dr. Proctor. Please answer any questions defense
18 counsel may have.

19 A. Yes, sir.

20 THE COURT: Mr. Taylor?

21 MR. TAYLOR: Very briefly, Your Honor.

22 CROSS EXAMINATION BY MR. TAYLOR:

23 Q. Good morning, sir.

24 A. Good morning.

25 Q. Some quick questions, sir.

1 Sir, I know you haven't seen this before but this is a crime
2 scene, a graph of what happened during the incident location. Make
3 sure you can see it.

4 Can you see it from where you're sitting?

5 A. I can see it, yes, sir.

6 Q. This right here in the crime scene is where the body was found
7 and here is where the firearm was found at the location as well as
8 empty shell casings that were fired and ejected to the right
9 consistent to the gun that has an injection port on the right.

10 Now, he's found here. Given the angle of trajectory in this
11 model, would it be consistent that he would have had to have been
12 standing in this direction and bullets coming from this direction,
13 ah, given the angle which you found in the body?

14 A. Given the angle from where - - which I found - - -

15 MR. FILIBERTO: Your Honor, I'm going to object. This
16 would call for speculation on the part of Dr. Proctor.

17 MR. TAYLOR: Your Honor, my question and the reason behind
18 me asking this question - - -

19 THE COURT: What is the question?

20 MR. TAYLOR: Is the angle from which he's got this rod in
21 this model, and I just want to see where the angle was coming from
22 and where the body was from.

23 THE COURT: I can let him answer if he knows, certainly.

24 A. To give you an honest answer to that question, I don't know.
25 If the man was mobile at all after the gunshot wound, he could

1 have moved from the site in which he was shot. Ah, I can testify
2 with absolute certainty as to the angle of penetration into the
3 head but in terms of position of the body and casings, you know,
4 any - - any position in which this man was in that would have
5 afforded that angle could have been just about anything. I can't
6 be more specific than that.

7 Q. Okay.

8 And, again, the mobility you testified that you're not real
9 sure about the mobility after a gunshot wound such as this?

10 A. I - - I - - mobility is variable from person to person. It
11 could have been a few seconds to a few minutes. I just - - I
12 can't be more specific.

13 Q. I have no further questions. Please answer any Mr. Barr may
14 have.

15 A. Yes, sir.

16 Q. Thank you.

17 THE COURT: Mr. Barr?

18 MR. BARR: Judge, I just want to say - - -

19 CROSS EXAMINATION BY MR. BARR:

20 Q. Dr. Proctor, do you remember the case of the missing organs -
21 - about fifteen years ago?

22 A. I remember that very well, Mr. Barr. I sure do.

23 Q. I think I represented Rogers Funeral Home.

24 A. Ah, you did.

25 Q. You look well. Life has treated you good.

DR. PROCTOR - CROSS EXAMINATION BY MR. BARR

1 A. Same to you, sir.

2 Q. Thank you.

3 I have nothing further.

4 THE COURT: All right, sir.

5 Anything further from the State?

6 MR. FILIBERTO: No, sir, Judge.

7 THE COURT: Doctor, you are now excused from your subpoena,
8 and we thank you for your appearance.

9 DR. PROCTOR: Thank you, Your Honor.

10 THE COURT: Good to see you again.

11 DR. PROCTOR: Nice to see you, too.

12 THE COURT: And I join in Mr. Barr. You do look well.

13 DR. PROCTOR: A little bit too well. I'd like to get rid of
14 a little bit of it.

15 THE COURT: Join the crowd.

16 DR. PROCTOR: Thank you, sir.

17 (The witness leaves the witness stand.)

18 THE COURT: Next witness.

19 MR. FILIBERTO: Your Honor, may we approach the Bench?
20 May we approach?

21 THE COURT: Yes, sir.

22 (Bench conference held off the record and in the presence of
23 the jury but outside the hearing of the jury.)

24 THE COURT: The last witness to be called is arriving from
25 Columbia. Because of the weather they're saying he may not quite

1 be here yet but we checking to see but he'll be the last witness
2 for the State.

3 MR. FILIBERTO: He's about two miles away. He'll be here
4 in about ten minutes.

5 THE COURT: All right. I'll let the jury go to the jury
6 room until he gets here.

7 MR. FILIBERTO: Thank you, sir.

8 THE COURT: I'll let you go the jury just a moment.
9 We are in recess of this case.

10 (The Court recesses the trial of this case briefly and
11 thereafter resumes the trial of this case.)

12 THE COURT: Tell the jury to come on. Let's come to order
13 please. Our witness is here. Have him come in the courtroom,
14 please.

15 MR. FILIBERTO: Thank you, sir.

16 (The jury returns to the courtroom at 9:55 a.m.)

17 THE COURT: All right, sir. The jury is present, Call
18 your witness, please.

19 MR. FILIBERTO: Thank you.

20 The State would call Kenneth Whitler.

21 (The witness takes the witness stand.)

22 KENNETH H. WHITLER, being duly sworn,
23 testifies as follows:

24 CLERK OF COURT: Please state your name for the record and
25 spell your last.

1 MR. WHITLER: My name is Kenneth H. Whitler, and the last
2 name is spelled W-h-I-t-l-e-r.

3 DIRECT EXAMINATION BY MR. FILIBERTO:

4 Q. Mr. Whitler, where are you currently employed?

5 A. I'm employed by the South Carolina Law Enforcement Division.
6 That's also known as SLED.

7 I'm in the Forensic Services Division in the Firearms
8 Department of the Laboratory.

9 Q. What capacity do you serve there?

10 A. I am a Firearms Tool Mark Examiner.

11 Q. How long have you been employed in that capacity?

12 A. I've been employed by SLED since 1997.

13 Q. Mr. Whitler, would you please summarize for the Court your
14 educational and professional training?

15 A. I have graduate and undergraduate degrees from the University
16 of South Carolina. I also was qualified as a Firearms Tool Mark
17 Examiner when I was employed by the FBI Laboratory in 1991.

18 In 1997 I retired and came to SLED doing basically the same
19 job as a Firearms Tool Mark Examiner.

20 Q. Are you a member of any specialized professional groups or
21 associations related to your field of expertise?

22 A. Yes, I am. I am a member of the Association of the Firearms
23 and Tool Mark Examiners.

24 Q. Now, have you previously been qualified as an expert in a
25 court of law in the field of firearms identification?

1 A. Yes, sir, approximately two hundred times in various state,
2 federal and territorial courts.

3 MR. FILIBERTO: The State would move to have this witness
4 qualified as an expert in the field of firearms identification.

5 MR. TAYLOR: No objection, Your Honor.

6 THE COURT: I find him qualified.

7 MR. FILIBERTO: Thank you, Your Honor.

8 Q. Mr. Whitler, would you please explain to the jury generally
9 what firearms identification involves?

10 A. Firearms identification is the microscopic marks on ammunition
11 components such as bullets and cartridge cases for the purpose of
12 associating those components with other fired components or with a
13 specific firearm.

14 For example, if you have a bullet, you're trying to determine
15 if the bullet is fired by a particular firearm. If no firearm is
16 submitted, then, you're - - you know, you have multiple bullets,
17 then you try to determine if the bullets were fired by the same
18 firearm or the cartridge cases were fired by the same firearm.

19 Q. And did you have occasion to examine any evidence related to
20 this case?

21 A. Yes, sir, I did.

22 Q. Where did that examination take place?

23 A. In the SLED Laboratory in Columbia.

24 Q. I show you what's been marked and is in evidence as State's
25 Exhibit #24 and #25 and see if you recognize them.

1 A. Yes, I do.

2 Q. And how do you recognize them?

3 A. Well, they're in heat-sealed plastic bags that I sealed, and,
4 also, my marks are on the evidence.

5 Q. What are they?

6 A. State's Exhibit #24 and State's Exhibit #25 are - - each
7 contain one fired 22, ah, fired cartridge case.

8 Q. And when you received them, what condition were they in?

9 A. I received them in a sealed container.

10 Q. And you opened that container?

11 A. I opened the container, and after I conducted my examination,
12 I - - I resealed the packaging and it was returned to the
13 contributor.

14 Q. Other than testing you didn't change or alter them in any way?

15 A. The only thing we do to them is we mark each piece of evidence
16 if it's possible with our initials and the case number and the item
17 number so that you can keep them separated during the examination
18 process.

19 Q. And they are already in evidence.

20 I show you what's been marked as State's #22 for
21 identification and see if you recognize that.

22 A. Yes, I do.

23 Q. How do you recognize that?

24 A. Again, it's in a heat-sealed plastic containers, bags that I
25 have initialed. Also, my marks are on the bullet, and it is - - it

1 does contain one fired bullet.

2 Q. When you received, what - - how did you receive that?

3 A. It was also in a sealed container.

4 Our laboratory policy that all evidence has to come in before
5 it's accepted for examination, it has to be sealed before it moves
6 or even comes into the building - - I mean as far as being accepted
7 for examination.

8 Q. Now, with - - with respect to the shell casings, State's #24
9 and #25, what examinations did you perform on those?

10 A. The cartridge cases I microscopically compared to test
11 cartridge cases from a firearm that was submitted and determine
12 that they were fired by the firearm that was submitted.

13 Q. Again, no question that those casings were fired by that 22 -
14 - the rifle or the firearm?

15 A. That's correct.

16 Q. I show you what's been marked as State's #16 - - sorry,
17 State's #16. Do you recognize that?

18 A. Yes, I do.

19 Q. How do you recognize that?

20 A. It has my initials and the case number and the item number on
21 it.

22 Q. What is it?

23 A. It is a 22 - - a Winchester 22 Long long rifle caliber rifle
24 that shoots 22 rim fire cartridges.

25 Q. Did you do an examination on it?

1 A. Yes, I did. I test-fired it. Obtained test-fired cartridge
2 cases and bullets from it and microscopically compared them to the
3 bullets and cartridge cases that were submitted.

4 Q. And the result of the tests?

5 A. The results were the cartridge cases as I said before were
6 fired by that particular rifle.

7 The bullet was damaged, and there weren't sufficient agreement
8 of the marks that were left on it to enable me to say that that
9 bullet was fired by that particular firearm. It had similar
10 rifling characteristics and could have been fired by that firearm
11 or another rifle with similar rifling characteristics.

12 Q. And the reason you were unable to conclusively match it?

13 A. It's probably a combination of - - of bullet damage, and some
14 bullets don't mark well. Some rifles don't particularly mark that
15 well. Some do but in this case we have a 22 bullet with - - that
16 is damaged, also. So, it doesn't help it.

17 Q. So, while you are not able to conclusively match it, are you
18 able to conclusively exclude it?

19 A. No. As I said before, it has similar rifling characteristics.
20 I mean, the - - the width of the rifling are the same as on the
21 test-fired bullets from the rifle which means that that bullet
22 could have come from that rifle or it could have been from any
23 other rifle that has similar rifling characteristics.

24 MR. FILIBERTO: Your Honor, at this time the State would
25 move State's #22 into evidence.

1 THE COURT: Yes, sir. I will permit it.

2 MR. TAYLOR: No objection.

3 MR. BARR: I object, Your Honor.

4 THE COURT: Sir?

5 MR. BARR: I object.

6 THE COURT: What's your basis?

7 MR. BARR: The chain of custody.

8 THE COURT: Sir?

9 MR. BARR: Chain of custody.

10 THE COURT: What's your answer to that?

11 MR. FILIBERTO: I think the chain has been exclusively - -

12 -

13 THE COURT: Put it in the record. I think so, too, but
14 you need to recite it for the record. He questions your chain of
15 custody. I want you to put it in the record for me.

16 MR. FILIBERTO: Dr. Proctor testified that he recovered
17 the projectile from the victim's skull and relinquished it to
18 Investigator Deal who sealed it, put it into evidence and delivered
19 it in a sealed container to SLED. That sealed container was then
20 delivered to Mr. Whitler for purposes of his examination

21 He's testified that that was - - everybody along has testified
22 that that was the item and that they didn't change or alter it in
23 any way.

24 MR. BARR: How did it get back from Columbia?

25 THE COURT: I don't know that that is necessary. There is

1 - - there is a sufficient chain here. I don't think we need to
2 show how it was transported.

3 Obviously, it was but the testimony. It's in the same
4 condition. It's not been changed. I think that's sufficient.

5 MR. FILIBERTO: Your Honor, this witness has testified he
6 marked it, and the container was sealed.

7 THE COURT: There is sufficient chain in my view.

8 Objection overruled, respectfully.

9 MR. FILIBERTO: Respectfully.

10 (The Court Reporter accepts State's Exhibit #22 into
11 evidence.)

12 MR. FILIBERTO: I'll publish this to the jury, please.

13 Q. Mr. Whitler, are you familiar with all types of firearms?

14 A. I have some knowledge of a wide variety, yes, sir.

15 Q. Did you examine a 380 High Point pistol as it related to this?

16 A. Yes, sir, I did.

17 Q. How would you - - what type of pistol - - how would you
18 describe that pistol? What kind of pistol is it?

19 A. It was a High Point 380 auto-caliber pistol, Model CF 380. It
20 came with one magazine and five unfired 380 auto cartridges with
21 it.

22 Q. The - - explain to the jury if a loaded magazine was put into
23 that weapon and you pulled the trigger, what would happen?

24 A. To load a pistol, you have to first put a cartridge in the
25 chamber. If you just take the pistol and the slide is forearm and

1 just put the magazine full of ammunition and pull the trigger,
2 nothing will happen. What you have to do is put the magazine in,
3 pull the slot to the rear and then let it go forward, and as it
4 goes forward, it will take a cartridge out of the magazine and put
5 it in the chamber, and at this point you have one round in the
6 chamber and several rounds - - whatever's left in the magazine.

7 When you pull the trigger, the cartridge that's in the chamber
8 will be discharged. The bullet goes out the barrel. The slide
9 will go to the rear due to the recoil of the cartridge going off,
10 and when it goes to the rear it does basically two things. It
11 ejects the fired cartridge case. Ah, when it gets all the way to
12 the rear, then there is a spring inside the pistol that as the
13 slide goes to the rear it compresses the spring. The way that it
14 gets to the rear-most position and has thrown the fired cartridge
15 case out, that spring tension takes over, pushes the slide back
16 forward, and when it goes forward, it picks up a new cartridge and
17 loads it into the chamber. Then you're ready to pull the trigger
18 again.

19 And this will continue until you're able to pull the trigger
20 and fire just by - - and make the gun fire merely by pulling the
21 trigger until the gun runs out of ammunition and you quit pulling
22 the trigger.

23 Q. So, you don't have to keep pulling the slide back for every
24 one?

25 A. No, the slide is - - is operated by recoil from the cartridge

THE STATE RESTS

1 going off. It makes the slide go to the rear. If the slide goes
2 to the rear, it compresses a spring, and when all the gas pressure
3 has been dissipated, when the slide gets all the way to the rear
4 the spring is at it's full compression, and now it starts exerting
5 force and slams or pushes the slide forward, and, like I said. It
6 picks up a new cartridge, loads it into the chamber and shuts the
7 - - the slide shuts the pistol up so that it's ready to fire again.

8 MR. FILIBERTO: Court's indulgence.

9 Q. Please answer any questions defense counsel may have.

10 MR. TAYLOR: I have no questions, Your Honor.

11 MR. BARR: Nothing, Your Honor.

12 THE COURT: You may come down. Thank you.

13 MR. FILIBERTO: Your Honor, may I request that he be
14 excused from his subpoena?

15 THE COURT: Yes, sir.

16 You are now excused. Careful with the bad weather going back.

17 MR. WHITLER: Thank you.

18 (The witness leaves the witness stand.)

19 MR. FILIBERTO: Court's indulgence one minute.

20 THE COURT: All right, sir.

21 MR. FILIBERTO: I'll check with the Court Reporter one
22 second.

23 THE COURT: Yes, sir.

24 THE STATE RESTS

25 MR. FILIBERTO: Your Honor, at this time subject to

possible rebuttal witnesses, the State would rest.

THE COURT: Subject to what?

MR. FILIBERTO: Possible rebuttal witnesses.

THE COURT: Sure, but the State rests in chief?

MR. FILIBERTO: Yes, sir.

THE COURT: All right.

I'm going to let you go to the jury room just a moment. I'll be calling you back very shortly.

Thank you.

(The jury retires to the jury room at 10:19 a.m.)

MOTIONS AND RULING OF THE COURT

THE COURT: All right. Any motions? What say, Mr. Taylor?

MR. TAYLOR: Yes, sir, Your Honor.

Your Honor, at this time I would move for a directed verdict based on my client Mr. Williams. I do not believe that the State has proven their case beyond a reasonable doubt so that it can go to the jury.

Beginning with this case, Your Honor, it was Mr. Rash. He has in no way connected with this case in any way. The only thing he knows about this case is that he found the body. He spoke with that person. He found the gun. He found some shell casings but that's it. He has no statements from anybody that links my client with this case in any way, shape or form.

So, moving past him, the next witness was, ah, the crime scene investigator, Robert Deal. Your Honor, I could go on hours and

MOTIONS AND RULING OF THE COURT

1 hours about Mr. Deal's involvement in this case but, again, there
2 was nothing from Mr. Deal's standpoint that linked my client to
3 this crime.

4 THE COURT: Tell me about Ms. Orange's testimony.

5 MR. TAYLOR: Mr. Orange specifically - - -

6 THE COURT: Mrs.

7 MR. TAYLOR: Specifically, he testified - - -

8 THE COURT: No, the lady.

9 MR. TAYLOR: Mr. Orange said he knew nothing about the case.

10 Moving to Mrs. or Miss Tumer, she testified - - well, it was
11 shown through her testimony she made one statement. She lied.
12 Then she came and made another statement but that was a self-
13 serving statement because she had family members that had legal
14 problems, and she testified to that.

15 THE COURT: Well, that's for the jury to determine which
16 one to believe but go ahead.

17 MR. TAYLOR: Yes, sir.

18 Now, ah - - -

19 THE COURT: I accept the fact that she made opposite
20 statements.

21 MR. TAYLOR: Yes, sir.

22 THE COURT: But that's for the jury to determine which one
23 to believe.

24 MR. TAYLOR: But in her statement there's nothing really
25 that she sees that links my client to this case other than she

1 knows that my client and Mr. Efrain Rasodo were friends. There
2 was nothing else other than that.

3 She couldn't testify who my client was on the phone with, and
4 the second time that she is there, well, she testified to the gun,
5 Your Honor, but that gun was never introduced into evidence. I
6 don't think it can go to the jury. It was marked for
7 identification purposes only, and it's never been admitted into
8 evidence.

9 THE COURT: Well.

10 MR. FILIBERTO: Your Honor, I disagree. It is in
11 evidence.

12 THE COURT: It is. I think it is in evidence, too.

13 MR. TAYLOR: How is it in evidence? It was marked for
14 identification purposes but they never admitted it into evidence.

15 MR. FILIBERTO: Your Honor admitted it yesterday.

16 THE COURT: Sir?

17 MR. FILIBERTO: Your Honor admitted it yesterday.

18 MR. TAYLOR: It was admitted?

19 THE COURT: Yes, sir.

20 MR. TAYLOR: Now, Detective Brad Townsend, he testified,
21 Your Honor, but there's nothing that links my client either that I
22 see. I don't see where he linked my client to this crime.

23 Dr. Edward Proctor, he testified how the individual came to
24 his demise, and Kenneth Whitler testified, you know, for the State
25 that the shell casings matched the gun.

1 THE COURT: Well, let me ask you this.

2 This lady testified that both these defendants were at her
3 house.

4 MR. TAYLOR: Yes, sir.

5 THE COURT: One of them had a weapon. She was little
6 nebulas on identification but upon being shown that weapon, she
7 said that was the weapon, and the weapon that she says they had
8 well may be the weapon that was found in one of them's mother's
9 house or wood lines thereabout.

10 MR. TAYLOR: Your Honor, in her case, I think in her case I
11 think that she would have identified any weapon. She knows nothing
12 about weapons.

13 THE COURT: The jury may well say - - may well contend that
14 but that's what's she's saying for the jury's benefit.

15 She identified that weapon, and that weapon was found at one
16 of their relative's house, and that weapon was identified that the
17 fatal bullet could have come from but let me ask the State. What
18 do you say about this whole issue?

19 MR. FILIBERTO: As respect to the Directed Verdict Motion,
20 Your Honor?

21 THE COURT: Yes, sir.

22 You need to be on the record as to your position.

23 MR. FILIBERTO: I believe the State has more than - - than
24 met its burden to survive a Directed Verdict Motion, Your Honor.

25 We've established that the defendants were, particularly,

1 defendant Williams was on the phone with the victim in an angry
2 tone. That he left. He drove over. We have eyewitness
3 testimony that the car was driven over. The brake lights came on
4 in front of his home. That the defendants later both came back to
5 Mr. Toomer's house both arm, and when the conversation turned to
6 the victim, defendant Williams' response was in a nasty way. F-u-
7 c-k Czar, and left.

8 When Ms. Tumer returned from her interview, her initial
9 interview with police, defendant Williams actually called her and
10 said, "What did you tell the cops?"

11 She said, "Nothing."

12 And he said, "Good."

13 The, ah, when, um, the, ah, police located the 22 rifle, it
14 was tested and clearly found to be the one that fired the 22
15 cartridges recovered from the defendant's vehicle during a search
16 warrant, and a, while not a conclusive match, a likely match to the
17 projectile that was recovered from the victim's brain.

18 THE COURT: As I remember, the cartridges found in the
19 defendant's car by that expert's testimony came from that weapon.

20 MR. FILIBERTO: An exact match, Your Honor.

21 THE COURT: That's my understanding.

22 What say you, Mr. Barr?

23 MR. BARR: Judge, my situation is a little bit different.

24 Quite frankly, starting with the, ah, with the, ah, with the
25 gun, ah, I - - I - - I don't see and according to my notes, the gun

1 is not in evidence.

2 THE COURT: No, sir. There's no question about it. Let's
3 get that straight.

4 Ms. McCall, what - - what does your reflect as to the gun in
5 evidence?

6 COURT REPORTER: Your Honor, my records reflect that was it
7 admitted during the testimony of Officer Brad Townsend.

8 THE COURT: And what is it?

9 COURT REPORTER: State's Exhibit #16 which is the gun was
10 introduced with Officer Brad Townsend.

11 Let me be sure I'm correct on that.

12 Yes, sir. The gun was offered and was entered into evidence
13 at that time.

14 THE COURT: And what number does it bear?

15 COURT REPORTER: State's Exhibit #16.

16 It was offered for identification but at that testimony it was
17 then entered into evidence.

18 THE COURT: That's what the record reflects.

19 Mr. Barr, there's no question the gun is in evidence.

20 MR. BARR: Your Honor, I'm still waiting to hear who found
21 the gun and how they got it, and there's no testimony from anybody
22 concerning where the gun came from other than it came, ah, from
23 somewhere - - the officer testified - - Mr. Townsend testified,
24 "Well, I got a phone call from somebody, and they told me to go
25 look in the edge of the woods."

1 THE COURT: And they found it.

2 MR. BARR: And he went and looked in the edge of the
3 woods.

4 Now, as to whether or not, again, from an evidentiary
5 standpoint but be that as it may, if the record says that it's in,
6 then I'm not going argue against the record. I think our position
7 is stated on the record.

8 However, as it relates to a Motion for a Directed Verdict at
9 the end of the State's case, the evidence is clear, and the Rule is
10 clear in South Carolina. The Prosecution is required to at least
11 present some evidence from which this jury may conclude that the
12 defendant, and I'm only concerned about in this case Mr. Scott, did
13 in fact commit the offense of murder, not the weight of the
14 evidence, not the quantity of the evidence but some evidence.

15 Now, initially, this case was, at least, from our perspective
16 I expected it to be something along the lines of the hands of one
17 is the hands of all.

18 THE COURT: Well, it is.

19 MR. BARR: Well, Judge, I think, then, that there has to
20 be some kind of evidence of aiding and abetting.

21 THE COURT: There is. There's testimony by the lady
22 witness that both of them came and both of them were armed.

23 MR. BARR: Your Honor.

24 THE COURT: Now, that's clear.

25 MR. BARR: The testimony that they were armed came after

1 they supposedly left the house the first time.

2 THE COURT: I understand.

3 MR. BARR: There's no testimony that - - there's no
4 testimony that this young man, Quentin Scott, did anything to aid
5 or abet - - and, of course, my - - my understanding of the Court's
6 reasoning from a circumstantial evidence standpoint, ah, of course
7 - - -

8 THE COURT: It's a circumstantial evidence case. There's
9 no question about that.

10 MR. BARR: Well, Your Honor, even as a circumstantial
11 evidence case, you know, and I intend to ask the Judge for a charge
12 on mere presence because, quite frankly, other than being merely
13 present, the - - -

14 THE COURT: You may or may not get that charge. I've got
15 a note here on my notations to consider that. I'm not saying
16 either way.

17 MR. BARR: Well, but, Judge, I would just have to lay down
18 and ask the Prosecution to show me what evidence they've presented
19 from which this jury might reasonably conclude - -

20 THE COURT: I'm going to ask Mr. Larry to do that right now
21 for the record.

22 MR. BARR: - - that - - that this defendant aided or
23 abetted in some way.

24 Now, Your Honor, when you look at this issue, ah, ah,
25 logically, ah, there is nothing to indicate that Mr. Scott was even

1 present at the time that the alleged shooting took place.

2 THE COURT: Well, let's stop right there and let counsel
3 for the State tell you what the evidence shows as to his presence.

4 MR. FILIBERTO: Thank you, Your Honor.

5 Your Honor, we have clear testimonial evidence that both
6 defendants arrived at the Toomer residence, and that when defendant
7 Williams was angry and left and went over, and there was testimony
8 that they both left together in defendant Williams' car and drove
9 over to the victim's house where the brake lights were seen coming
10 on.

11 Later, both defendants returned from where ever they were and
12 came into the house and were both armed. As a matter of fact,
13 defendant Scott, according to Ms. Tumer, was the one carrying what
14 we ultimately have concluded was the rifle that shot - - that
15 expelled the 22 casing found in the car and very likely shot the
16 projectile that killed the victim.

17 They left, subsequently, left together. They were arrested
18 together at the Williams residence, Williams' mother's residence,
19 and the police through their investigation went and searched the
20 wood line and recovered what we believe now to be - - that we can
21 make a compelling case that was the murder weapon.

22 THE COURT: Clearly, that's the testimony that that witness
23 - - it's for the jury to determine but that witness said that your
24 client had the weapon which circumstantially indicates was the
25 cause of death, clearly.

1 MR. BARR: Your Honor, I could have came there with a
2 weapon. I could have gotten a weapon from somebody.

3 There has to be - - -

4 THE COURT: Argue that to the jury.

5 You're missing the point that the testimony, if believed, is
6 that your client had - - had the weapon and caused the death.

7 I mean, you can't say it didn't - - the testimony is there.

8 Now, I agree with you that her testimony is subject to some
9 consideration by the jury but they are the finders of the facts.

10 MR. BARR: Your Honor, not - - not even considering the
11 credibility of this witness, the mere fact that assuming that she
12 said was true, the mere fact that at some point he had a weapon in
13 his possession that was identified as a weapon that killed
14 somebody, the law says murder, the unlawful killing of a person
15 with malice aforethought.

16 And, Your Honor, we would submit that there is - - there is no
17 evidence even if you were in possession - - -

18 THE COURT: I can show you a plethora of cases that show
19 use of a deadly weapon is a basis for malice. That's clear, Mr.
20 Barr.

21 MR. BARR: Your Honor, there is no - - the incident
22 supposedly took place, ah, down off of Miracle Avenue. That's not
23 the crime. Where this person claimed that she saw this person
24 with a weapon was at her residence on, ah, Craig.

25 Now, if the murder took place, it took place according to the

1 exhibits that they are showing - - -

2 THE COURT: You can't escape that believe it or not there
3 is testimony in this record that your client had the weapon that's
4 said to be the deadly weapon, and he had it immediately after that
5 incident occurred, and that takes it to the jury.

6 Now, there's some circumstantial evidence, and your argument
7 is well put to argue before the jury but not for a directed
8 verdict.

9 There is evidence, and it's primarily circumstantial,
10 admitted, but there is sufficient evidence to go forward with the
11 trial of this case, and, I, therefore, one, respectfully deny your
12 motion, counsel, and, two, and respectfully deny your motion, Mr.
13 Barr, on behalf, respectfully, the defendants Williams and Scott.

14 Now, we'll take a few minutes to get y'all to get ready.

15 First, I need to know from you, Mr. Taylor, does your client
16 desire to testify?

17 MR. TAYLOR: Your Honor, I need to confer with my client.

18 THE COURT: Okay.

19 I want to talk to him, and have both of them stand.

20 Mr. Barr, have your client stand, too.

21 Stand up, gentlemen.

22 (The defendants with their counsel stand before the Court.)

23 THE COURT: And, Mr. Barr, let me ask you.

24 Does your client desire to testify?

25 MR. BARR: Your Honor, my client has been advised of his

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right to testify. He's also been advised that you will poll him now as to his right to testify. However, we have not reached a conclusion.

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THE COURT: All right, sir.

Well, the time's going to come very shortly but let me speak to Mr. Williams and Mr. Scott.

If there's any question about what I say, please let me know.

You are at that stage of this trial where you have the right, both of you, to put up any witnesses that you desire. You equally have the right to testify under oath subject to cross examination by the State's attorneys.

Do you understand, Mr. Williams, you have the absolute right to testify?

MR. WILLIAMS: Yes, sir.

THE COURT: Do you understand that, Mr. Scott?

MR. SCOTT: Yes, sir.

THE COURT: Equally important, I have already instructed the attorneys that you are presumed innocent, and that presumption of innocence remains with you throughout the trial and until the jury has found you guilty beyond a reasonable doubt.

I have previously testified and will again testify that you don't have to prove a thing. The burden of proof is upon the State of South Carolina.

However, you have the right to testify if you choose.

1 You understand that, Mr. Williams?

2 MR. WILLIAMS: Yes, sir.

3 THE COURT: You have the absolute right not to testify.

4 In the event that it is your decision not to testify, I would
5 charge the jury that that is your absolute right as it is mine and
6 as it is theirs, and the fact that you did not testify could not in
7 any way be used against you.

8 You understand?

9 MR. WILLIAMS: Yes, sir.

10 THE COURT: Obviously, you will discuss this important
11 issue with your attorney, Mr. Taylor, but the final opinion as to
12 whether you testify or not rests with you.

13 Do you understand?

14 MR. WILLIAMS: Yes, sir.

15 THE COURT: You will not be heard later to say that you did
16 not testify because your attorney wouldn't let you. That's your
17 choice.

18 You understand?

19 MR. WILLIAMS: Yes, sir.

20 THE COURT: Do you have any questions about what I've said
21 to you?

22 MR. WILLIAMS: No, sir.

23 THE COURT: If you have any questions, please ask me now.
24 You would not offend me by asking that.

25 You understand?

1 MR. WILLIAMS: Yes, sir.

2 THE COURT: With you, Mr. Scott, the same thing that I told
3 Mr. Williams.

4 You are presumed innocent. You don't have to prove a thing.
5 The State's got to prove you guilty beyond a reasonable doubt.

6 Having said that, if you care to, you may put up any witnesses
7 that you desire to.

8 Do you understand that?

9 MR. SCOTT: Yes, sir.

10 THE COURT: You would have the absolute right to testify
11 under oath subject to cross examination by the State's attorneys.

12 Do you understand that?

13 MR. SCOTT: Yes, sir.

14 THE COURT: If, and I say that advisedly, if you elected
15 not to testify, I would charge the jury that the fact that you did
16 not testify could not, must not be used against you in any way. I
17 would go further than that and tell the jury as to both of you.
18 The fact that you did not testify if that be the case cannot even
19 enter into their deliberations in the jury room.

20 Do you understand that?

21 MR. SCOTT: Yes, sir.

22 THE COURT: Now, obviously, you would want to discuss with
23 your distinguished attorney, Mr. Barr, the question as whether you
24 testify or not but listen carefully. The ultimate decision rests
25 with you.

1 Do you understand that?

2 MR. SCOTT: Yes, sir.

3 THE COURT: You will not be heard later to say, "I wanted
4 to testify but my lawyer wouldn't let me."

5 Or, vice versa, whichever way it is. Do you understand? The
6 final decision, and I want to emphasize this to Williams and to
7 Scott, the final decision to testify or not to testify rests with
8 you.

9 You understand that, Mr. Scott?

10 MR. SCOTT: Yes, sir.

11 THE COURT: Any questions? If you have any questions,
12 please ask me?

13 MR. SCOTT: I don't.

14 THE COURT: Do you have any further questions?

15 MR. SCOTT: No, sir.

16 THE COURT: All right. We'll take a very short break and
17 let you talk to the lawyers.

18 MR. TAYLOR: We're in recess, Your Honor?

19 THE COURT: Sir? Yes, we'll be in a fifteen minute break.
20 Thank you.

21 (The Court recesses this case for a short break and thereafter
22 reconvenes the trial of this case.)

23 DEFENDANTS ELECT NOT TO TESTIFY

24 THE COURT: All right, sir.

25 Mr. Taylor, what's the position of the defendant Williams?

1 MR. TAYLOR: Your Honor, after speaking with my client at
2 length, he informed me he did not wish to take the stand and
3 testify.

4 THE COURT: Okay.

5 And what is the position of the defendant Scott, Mr. Barr?

6 MR. BARR: Judge, the defendant Scott has elected not to
7 testify.

8 THE COURT: And this is their - - Mr. Williams, this is
9 your decision to not testify?

10 MR. WILLIAMS: Yes, sir.

11 THE COURT: And Mr. Scott?

12 MR. SCOTT: Yes, sir.

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14 THE COURT: Now, with reference to the charge, any requests
15 to charge?

16 MR. TAYLOR: Yes, sir, Your Honor. I'd ask that you, ah,
17 give the self-defense charge given the circumstances surrounding
18 this case.

19 THE COURT: There's element of self-defense here.

20 There's no testimony about self-defense.

21 MR. TAYLOR: I understand.

22 THE COURT: There's no - - seems like to me it's murder or
23 nothing. I may be wrong.

24 What's your position?

25 MR. FILIBERTO: The State's position is there's been no

1 evidence of any claim, ah, action based on self-defense.

2 THE COURT: No, there's no testimony there about it.

3 Mr. Barr?

4 MR. BARR: Your Honor, in this defendant's close I do
5 intend to argue and I think we're entitled to argue ourselves that
6 if - - if - - if - - -

7 THE COURT: There is absolutely no - - the defense has put
8 up absolutely no testimony regarding any issue in the four elements
9 of self-defense. So, you can't argue self-defense when there's
10 no testimony in the record about it.

11 MR. BARR: Your Honor.

12 THE COURT: Not - - not, Mr. Barr, I'll hear from you - -

13 MR. BARR: All right.

14 THE COURT: - - but we not going to argue self-defense.

15 I'll be glad to hear your position for the record.

16 MR. BARR: My position for the record is that in an
17 opening statement that was made by counsel for, ah, for, ah, Mr.
18 Williams he outlined for the jury a scenario whereby a shooting
19 occurred - - -

20 THE COURT: How many times have you heard that the
21 statements of lawyers is not evidence?

22 MR. BARR: Well, Judge, I've heard that the statements of
23 lawyers is not evidence but there - - but the, ah, but - - -

24 THE COURT: No. Mr. Barr, you've got to prove not beyond
25 a reasonable doubt but our courts always said you've got to put

1 some evidence in of self-defense, that you had no excuse except the
2 action that you did, that a reasonable person would have done the
3 same thing, that there was no attempt to escape under the
4 circumstances. There's nothing in there that - - you've got to
5 have some evidence of the four elements of self-defense, and it's
6 just not here. No.

7 MR. BARR: Your Honor, with respect to our argument,
8 assuming, then, that we're not allowed to argue self-defense, I
9 think the case law clearly, ah, ah, indicates that in a situation
10 where, ah, in opening statements there are certain matters that are
11 admitted - -

12 THE COURT: That's simply not the law, sir.

13 MR. BARR: - - in opening statements where a matter is
14 admitted in opening statements, Your Honor.

15 THE COURT: No, sir.

16 Mr. Barr, you have got to put some evidence in the record as
17 to the elements in order to prevail including whether or not your
18 actions were reasonable under circumstances and where a reasonable
19 person would have thought the same thing.

20 You've got to show that there was no probability of escape
21 unless you were on your own premises.

22 MR. BARR: Judge, with all due respect, our position is
23 different from Williams' position. The only thing that I'm
24 saying is that this jury has already heard a theory of the case
25 whereby this defendant has admitted to the fact - - -

1 THE COURT: Well, then, that jury is going to well wonder
2 why - - why wasn't there evidence put up as to that theory but you
3 just can't recite a theory to the judge, I mean to the jury, put up
4 no evidence on that and then haul off and want to claim self-
5 defense. There's no way in the world you can do that.

6 You've got a charge on murder. You've got a charge on
7 circumstantial evidence. You've got a charge on expert witnesses.
8 What other witness do you have? What other charge do you have?

9 MR. TAYLOR: Your Honor, if I can confer with my client,
10 this may change my client's position on whether he wants to testify
11 if I could confer with him for five minutes?

12 THE COURT: I'll permit that. This is a serious case.
13 This is a murder case, and if you thought based on your not putting
14 up any testimony I was going to let you argue self-defense under
15 the posture of this case at this time, you are sadly mistaken.

16 I would not based on my ruling, I could do it, I could deprive
17 you of doing it but I'm not going to do that. This is a murder
18 case.

19 And if you thought that, in fairness to you, I'd let you put
20 up some testimony but you got to have some testimony if you going
21 to argue self-defense.

22 MR. BARR: Your Honor, even if we don't argue self-
23 defense, the only thing that I'm saying is that a situation where
24 there are facts that are admitted in the opening statement, my
25 understanding - - -

1 THE COURT: Mr. Barr, let's don't argue - - let's don't
2 discuss this anymore. I'm telling you that statements from an
3 attorney in arguing to the jury is not evidence. I'm telling you
4 further, and I say so respectfully.

5 MR. BARR: Yes, sir.

6 THE COURT: There is no evidence in this record that this
7 killing by whoever did it was in self-defense.

8 Somebody killed this unfortunate man, victim, and there's not
9 one iota of testimony that it was done in self-defense.

10 So, I respectfully say to you that I'm not going to argue
11 that, not going to permit any inference from it.

12 The only question is as I understand it for the jury is who
13 did it.

14 MR. BARR: Well, Judge, if I might just for the record be
15 clear?

16 THE COURT: Yes, sir.

17 MR. BARR: Assuming that we don't argue self-defense, the
18 only thing that I'm saying that we can argue is that with respect
19 to those issues of fact that were admitted in opening statement.

20 THE COURT: Who admitted them? The defense never - - the
21 State of South Carolina never admitted it.

22 MR. BARR: Well, as it relates to this defendant - - -

23 THE COURT: You can't admit - - defense counsel can't
24 admit things in opposition to the - - -

25 MR. BARR: Your Honor, he admitted that there was a

1 shooting.

2 THE COURT: Sure.

3 MR. BARR: He admitted that he was shooting, and aside
4 from arguing the issue of self-defense, I think that in closing
5 arguments I could certainly refer back to the opening statements
6 whereby a defendant admitted doing certain things. That's all I'm
7 saying.

8 THE COURT: No, sir.

9 MR. BARR: I'm not saying that we - - -

10 THE COURT: If there's no testimony about it I'm not going
11 to permit it.

12 The only question is whether or not these two young men
13 together or separately fired the fatal bullet.

14 Admittedly, it's a circumstantial case but it's for the jury
15 to determine.

16 In that connection in ruling on a case involving
17 circumstantial evidence I will refer you to State vs. Littlejohn,
18 228 SC 324 cited in 328 89 SC 2nd 924.

19 And, of course, the jury has a greater responsibility in
20 deciding circumstantial evidence than I do at the directed verdict
21 stage but I say to you there are circumstances upon which a jury
22 could find that these two young men acting jointly or severally
23 fired the fatal bullet that killed the deceased.

24 Now, the question is have they proved that they fired it but
25 that's the only question, and that's the only evidence in this

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1 case.

2 And it's - - it's circumstantial but that's what it is.

3 Now, what you say, Mr. Taylor? If y'all want to confer
4 further, I'll give you that opportunity.

5 MR. TAYLOR: I've spoken with my client, and he can put it
6 on the record. He has maintained his position. He does not want
7 to testify.

8 THE COURT: Okay.

9 How about you, Mr. Barr?

10 Now, I want it clear. I'm going to call you down if you start
11 arguing self-defense. The only argument I see - - -

12 MR. TAYLOR: I'm well aware of that, Your Honor.

13 THE COURT: Okay.

14 I want Mr. Barr well aware of it. I don't like to call
15 lawyers down in arguments but I will if you try it in this case
16 because it's not there.

17 MR. TAYLOR: Your Honor, I'm not going to say anything in my
18 closing statement - - -

19 THE COURT: Well, I have a responsibility as you - -

20 MR. TAYLOR: I understand.

21 THE COURT: - - to argue what's in the record, not what you
22 said to the jury.

23 MR. TAYLOR: And I'm not going to say anything in front of
24 the jury which interrupts my closing argument. I'm very careful
25 with what I say.

1 THE COURT: All right, sir.

2 Mr. Barr, you understand that?

3 MR. BARR: Your Honor, I understand it, and, of course, I
4 want to make sure that we're clear on it.

5 With respect to the closing argument and, ah, that is in terms
6 of arguing evidence, I just don't see how this defendant could be
7 precluded from at least saying, "Well, ladies and gentlemen, you
8 heard in the opening statement."

9 THE COURT: No, Mr. Barr.

10 MR. BARR: And that would be for the jury.

11 THE COURT: No, Mr. Barr, it's not - - no, please don't
12 argue with me. You keep referring to the opening statement.
13 That is not evidence, and it can't come in.

14 Now, I will grant you even though you rested an opportunity to
15 if you chose to to put some testimony in this record.

16 His opening statement is not evidence, and there's certainly
17 not - - the State of South Carolina is not bound by a defendant's
18 admission. He can admit anything the world.

19 Now, let's be clear, Mr. Barr. You're protected for the
20 record. You are asking me to permit you to argue self-defense.

21 MR. BARR: No, sir. I'm not asking to be permitted to
22 argue self-defense.

23 THE COURT: What are you asking me?

24 MR. BARR: The only thing that I'm asking you to permit me
25 to do is refer to the limited statement that was made in opening

1 statements - - -

2 THE COURT: No, sir.

3 I will permit you to refer to anything that's in the record.
4 I will not permit you to refer to his opening statement because
5 it's not in the record, and it's not part of the record. It's not
6 evidence.

7 Why, if I permitted you to do that, a co-defendant could get
8 up and want to admit anything in the world for the benefit of
9 himself and the co-defendant without even discussing it with the
10 State. Obviously, that's a ridiculous proposition.

11 The question is have they proved beyond a reasonable doubt
12 that these two defendants or any one of them murdered this young
13 man. That's the question. No self-defense.

14 You understand that?

15 MR. TAYLOR: Clearly, Your Honor.

16 THE COURT: I wouldn't want to embarrass - - I'm would not
17 embarrass anybody but I'm not going to let you argue it to the
18 jury.

19 Now, are you clear now with that, Mr. Barr?

20 MR. BARR: Yes, sir.

21 THE COURT: All right.

22 And you cannot argue what he said.

23 MR. BARR: Yes, sir.

24 Judge, I just - - I just want to make sure that I'm covered in
25 the record as to our position that that's what our limited

1 argument. We would not be arguing self-defense.

2 THE COURT: Correct.

3 MR. BARR: Our limited argument would - - would just be to
4 remind the jury regarding those statements that were made, and I
5 think that, ah - - -

6 THE COURT: Not, no, sir. No, sir. You're trying to get
7 in his statements, and they are not evidence, now.

8 I'm going to tell you one - - you're an intelligent
9 individual. You cannot argue what he's trying to admit which is
10 not in the record, clearly.

11 Now, don't put me in the position having to take further
12 action here because I'm telling you.

13 What's the position of the State?

14 MR. FILIBERTO: Your Honor, obviously, we agree with the
15 Court. There's been no evidence of self-defense regardless of
16 what Mr. Taylor indicated during his opening argument. That's not
17 evidence, and there's no basis. We're not - - we're not even
18 considering - -

19 THE COURT: Okay.

20 MR. FILIBERTO: - - defending against that in our closing.

21 THE COURT: All right.

22 Well, and that's another good reason as my Law Clerk suggests.
23 In arguing - - in attempting to argue self-defense on his
24 statements, you are depriving the State of South Carolina of the
25 opportunity of cross examining on that issue, and you know good and

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1 well they would have a right to cross examine on the issue of self-
2 defense.

3 So, you just can't take some unsolicited statement by defense
4 counsel and use that as a basis to argue your case. You've got to
5 have a record.

6 MR. BARR: Your Honor, I don't want to argue self-defense,
7 per se, and that's not - - self-defense is an affirmative defense.
8 We're not seeking to argue self-defense but with respect to those
9 statements that were made in opening statement - - -

10 THE COURT: No, sir. I'm going to tell you one more time.

11 MR. BARR: Yes, sir. Judge, I'm not arguing - - -

12 THE COURT: I'm going to tell you, Mr. Barr.

13 MR. BARR: Yes, sir.

14 THE COURT: The record is going to reflect. I'm going to
15 find you in contempt of court and I don't want to do that but I'm
16 telling you and I've told you. You cannot argue what he said
17 because there's no evidence of it.

18 Now, I want that clear.

19 You keep coming back to it but I want it clear. You cannot
20 argue anything about self-defense that's not in the record.

21 The only question here. Have they proven who fired the fatal
22 bullet and was it the hand of one and hand of all, if any?

23 The question is - - you understand that?

24 MR. TAYLOR: Yes, sir, Your Honor.

25 THE COURT: Mr. Barr, you've been in my court many times.

1 MR. BARR: Many times, Judge.

2 THE COURT: And I respect you as an attorney.

3 MR. BARR: Thank you, sir.

4 THE COURT: But do not, do not deviate from my instruction,
5 and I'm just as clear as I can be.

6 MR. BARR: Your Honor, I will not get in a situation where
7 you will - - -

8 THE COURT: You cannot argue what he said.

9 MR. BARR: Yes, sir.

10 Our position has been established on the record, and that's
11 sufficient.

12 THE COURT: Well, you're clear on the record.

13 MR. BARR: Yes, sir.

14 THE COURT: All right. Are there any other instructions?

15 MR. TAYLOR: Your Honor, just to be clear, what instructions
16 have you got so far?

17 THE COURT: I'm going to order your general instructions,
18 of course: Burden of proof, credibility of the, ah, witnesses,
19 and I'm going to instruct on the charge of murder with malice
20 aforethought.

21 I'm going to charge under the law with regards to
22 circumstantial evidence. I'm going to charge the law as to
23 expert witness.

24 And I'm going to charge in fairness to Mr. - - I'm going to
25 charge mere presence.

1 MR. TAYLOR: I just wanted to be sure, Your Honor.

2 THE COURT: Let's take a - - anything further, Mr. Barr?

3 MR. BARR: Yes, sir. Criminal intent.

4 THE COURT: Sir?

5 MR. BARR: Criminal intent.

6 THE COURT: No, sir. I'm not going to require - - -

7 MR. FILIBERTO: Your Honor, that would fly in the face of
8 the hand of one is the hand of all instruction.

9 THE COURT: No, sir. I - - I don't see criminal intent
10 here. I will - - I respectfully decline.

11 All right. Let's take a short break while I prepare the
12 charge.

13 (The Court recesses the trial of this case for another break
14 and thereafter reconvenes the trial of this case.)

15 THE COURT: Let's come to order.

16 Gentlemen, do you wish to bring the jury out and rest and call
17 them back out again or are you satisfied that we've heard the
18 motions and you can just save some time on resting when the jury
19 comes?

20 What you say, Mr. Taylor?

21 MR. TAYLOR: Your Honor, I'm fine with - - with resting now
22 and bring the jury back in and have them charged and then go from
23 there.

24 THE COURT: Do what, now?

25 MR. TAYLOR: Have the jury come back in and charge them and

1 go from there.

2 THE COURT: Well, yes. I'm going to bring them in and let
3 you rest in front of the jury.

4 MR. TAYLOR: Well, that's fine.

5 THE COURT: And then go forward.

6 How about you, Mr. Barr?

7 MR. BARR: That's perfectly all right with me, Judge.

8 THE COURT: All right.

9 Mr. Barr, as you know, and Mr. Taylor, too, it's been my
10 policy in the past to go ahead and charge the jury prior to
11 arguments.

12 MR. TAYLOR: Your Honor, I was going to ask that you do it
13 anyway. So, that's - - -

14 THE COURT: You have any objection to that, Mr. Barr?

15 MR. BARR: No, sir.

16 THE COURT: The jury has told me in the past they wish we'd
17 have done that. They could have followed your arguments better - -

18 MR. TAYLOR: Yes, sir.

19 THE COURT: - - on what the law is.

20 Now, so there'll be no question about it, obviously, I'm going
21 to charge reasonable doubt, circumstantial evidence, credibility of
22 the witnesses, the fact that they are the sole and only finders of
23 the facts.

24 I will charge the law with murder with reference, of course,
25 to manslaughter, and I will charge expert witnesses, and, Mr. Barr,

1 I propose to charge mere presence.

2 I respectfully decline to charge intent in this case but
3 you're protected for the record.

4 One further thing, there will be no reference to your opening
5 statement because it's not in the record. There will be no
6 reference to self-defense.

7 The sole question for this jury is whether or not the State
8 has proven beyond a reasonable doubt that either one or two of
9 these defendants have committed this action. Let there be no
10 question about that.

11 Bring the jury in.

12 MR. BARR: Your Honor, before we - - -

13 THE COURT: Yes, sir.

14 One minute, hold on.

15 Yes, sir.

16 MR. BARR: You think there's anything in the record that
17 would support a charge of accessory after the fact?

18 THE COURT: No, sir.

19 MR. BARR: Thank you.

20 Your Honor, note that we are requesting that charge.

21 THE COURT: I understand but I just don't see any factual
22 basis for that.

23 No, it's clear. Have they proved they did it or not? That's
24 clear.

25 And it's clearly circumstantial evidence case, and I refer to

1 what case was cited in that case about my responsibility. I'm not
2 concerned with the weight of the circumstantial evidence in a
3 motion. I'm concerned only with whether or not any exists.

4 (The jury returns to the courtroom at 11:29 a.m.)

5 THE DEFENDANTS REST

6 THE COURT: The jury is present.

7 The - - at the conclusion of the hearing a moment ago, the
8 State of South Carolina concluded their presentation.

9 What now says the defendant Williams?

10 MR. TAYLOR: We rest, Your Honor.

11 THE COURT: The defendant Williams - -

12 MR. BARR: The defendant rests, Judge.

13 THE COURT: - - and the defendant Scott rests.

14 All right.

15 CHARGE OF THE COURT

16 THE COURT: Ladies and gentlemen, we are at that stage,
17 now, where I'm going to give you the charge in this case after
18 which we'll have summations for the counsel for the - - first for
19 the State and then for the defense.

20 As I told you earlier, every defendant comes into court under
21 a presumption of innocence, and any defendant in South Carolina and
22 these defendants don't have to prove a thing. The State has the
23 burden of proving beyond a reasonable doubt.

24 Now, we are at that stage of the case where the defendants if
25 they chose to could put up any witnesses they cared to. In

1 addition to that, we are at that stage where if they chose to they
2 could testify in their own behalf.

3 Now, it is their constitutional right not to testify as it is
4 your right and as it is my right. The fact that a defendant does
5 not testify in his own behalf does not and cannot raise any
6 inference against him.

7 Now, Mr. Foreman, during your deliberations, you must not even
8 permit that fact to weigh into your discussions as to whether they
9 testified or not. They are presumed innocent, and they have rested
10 and put the burden of proof upon the State of South Carolina of
11 proving them or, individually, him guilty beyond a reasonable
12 doubt.

13 Now, Mr. Foreman, and ladies and gentlemen, as you are well
14 aware, upon these two indictments the defendant Scott and the
15 defendant Williams is indicted for murder upon these two
16 indictments.

17 As I told you before, these indictments are not evidence.
18 These are simply allegations that the State must prove, and to both
19 of these indictments both of these defendants have pled not guilty.

20 Now, as to these indictments, as I've indicated, the defendant
21 have both pled not guilty which places upon the State the burden of
22 proving the defendants guilty.

23 I charge you that a person charged with committing an offense
24 in South Carolina is never, ever required to prove himself
25 innocent. I charge you that it is a vital, important rule of law

1 of evidence that a defendant in a criminal case no matter how
2 serious or great may be the offense with which he's charged must
3 always be presumed innocent until his guilt has been proven beyond
4 a reasonable doubt.

5 I continue to emphasize that this presumption of innocence
6 remains with the defendant at all times from the moment of his
7 arraignment throughout the trial until you, the jury, have upon the
8 testimony and evidence presented reached a verdict of guilty beyond
9 a reasonable doubt. For it is the solemn duty of the jury if not
10 clearly convinced of their guilt or individually guilt beyond every
11 reasonable doubt to acquit these defendants.

12 And so I emphasize to you that the burden of proof is upon the
13 State of South Carolina.

14 Now, as I've said to you, let's discuss reasonable doubt.

15 The State has the burden of proving the defendant guilty
16 beyond a reasonable doubt. Some of you may have served as jurors
17 in civil cases where you were told it is only necessary to prove
18 that a fact is more likely true than not in a civil case. The
19 State's proof must be more powerful than that. It must be, again,
20 beyond a reasonable doubt.

21 Now, Mr. Foreman, and ladies and gentlemen, proof beyond a
22 reasonable doubt is proof that leaves you firmly convinced of the
23 defendant's guilt. There are very few things in this wide world
24 that we know with absolute certainty, and in criminal cases the law
25 does not require proof that overcomes every possible doubt.

1 Based on your consideration of the evidence if you are
2 convinced that the defendant is guilty of the crime charged, you
3 must find him guilty. If on the other hand, you think there is a
4 real possibility that he or they is not guilty, you must give them
5 the benefit of the doubt and find them or them or him not guilty.

6 Now, ladies and gentlemen of the jury, I charge you that under
7 the Constitution and laws of South Carolina, you twelve are the
8 sole and only finders of the facts in this case. I as trial judge
9 am not entitled to a finding of fact.

10 In that connection I charge you that if any ruling, mannerism
11 or statements of mine might tend to indicate to any of you twelve
12 how I feel about any factual situation between these litigants,
13 please disregard that. I am not entitled to a factual opinion, and
14 I have none. You twelve are the only people on the face of this
15 earth that can make the decision as to what the facts are in this
16 case.

17 In the beginning of the case, and I emphasize again to you,
18 you are the judges, the sole judges, of the credibility meaning the
19 believability of every witness who has testified in this case.

20 We all use different tools in deciding whether or not someone
21 is telling the truth, and you bring these same tools in the court
22 in your life's experiences.

23 You know, we ask ourselves sometimes, "Hey, how did they know
24 what they talking about? Do they know what they talking about?
25 How did they come to know what they talking about?"

1 Is there some reason that they are biased and prejudiced? Is
2 there some - - is there some way or some reason they might not be
3 telling me the truth?"

4 And in that connection you can believe all of what a witness
5 says or none. You can believe a small portion and disregard the
6 larger or the other way around.

7 In judging credibility, you have but one single thing to do,
8 find the truth in judging credibility. Find the truth and apply
9 the truth to the facts as you find them to be.

10 Now, most certainly, you do not determine the matter of
11 credibility or believability by counting the witnesses who may have
12 testified for one side or the other. As I've said and I emphasize
13 again, throughout this entire process you have but one single
14 objective, and that is to seek the truth.

15 All of these things you will consider bearing in mind that you
16 must give the benefit - - give the defendants the benefit of every
17 reasonable doubt.

18 Now, Mr. Foreman, by the same constitution that makes unto you
19 and your distinguished jury the sole and only finders of the facts,
20 that august constitution makes unto me the sole instructor in the
21 law, and whether you agree or disagree with what the law ought to
22 be, under your oath you are required to accept the law as I give it
23 to you remembering that you take the facts as you find them to be
24 and apply those facts to the law as I charge it to you in reaching
25 that verdict.

CHARGE OF THE COURT

1 You or I should not be concerned about what the law is or
2 ought to be but what the law is and the law as I charge it to you.

3 Now, it becomes necessary for me to charge you with the law
4 and definition of murder. These two defendants are charged in this
5 indictment with murder to which they have specifically pled not
6 guilty.

7 What is murder by definition? Murder may be define as the
8 willful, felonious killing of a human being by a human being with
9 malice aforethought.

10 To convict an individual of murder, the State must first prove
11 not only that the defendant or defendants killed the deceased but
12 must further prove beyond a reasonable doubt that the killing was
13 done with malice aforethought. The first proof - - and that proof
14 must be beyond a reasonable doubt.

15 Let me define malice for you.

16 Malice is a word suggesting wickedness, hatred and a
17 determination to do what one knows to be wrong with just cause,
18 excuse or legal provocation.

19 Malice need not be in the mind of the one doing the killing
20 any particular time before the act of killing to render the killing
21 murder. It must be present in the mind of the one doing the
22 killing any length of time before the act. Then its presence
23 would be sufficient to render the killing murder.

24 Malice is said to be expressed when there is manifested a
25 violent, deliberate intention unlawfully to take away the life of

1 another human being.

2 Malice may be implied where one intentionally and deliberately
3 does an unlawful act which he then knows to be wrong and in
4 violation of his or her duty to another.

5 Malice may be implied when no excuse or legal provocation for
6 the killing appears and when the circumstances attending the
7 killing show an abandoned heart, a malignant heart fatally intent
8 upon mischief.

9 Such implications or inferences are not conclusive, and the
10 jury depending upon their view of the evidence may accept or reject
11 the same.

12 The law says that if one intentionally kills another with a
13 deadly weapon or a dangerous instrumentality, the implication of
14 malice may arise.

15 If facts are proven beyond a reasonable doubt to raise an
16 inference of malice to your satisfaction, that inference would
17 simply be an evidentiary fact to be taken into consideration by
18 you, the jury, along with all the other evidence in the case, and
19 you may give it such weight as you determine it should receive.

20 In other words, the inference of malice from the use of a
21 deadly weapon is simply an evidentiary fact to be taken into
22 consideration by you, the jury.

23 The law says if one intentionally kills another in the
24 commission of a felony the implication of malice may arise. Again,
25 it's for you to determine under all the facts and circumstances

1 where malice exists.

2 The State of South Carolina must prove beyond a reasonable
3 doubt that one or both of these defendants fired the fatal bullet,
4 and they must prove that it was done with malice aforethought in
5 order to convict of murder.

6 Now, there are two types of evidence which are generally
7 present during a trial: Direct evidence and circumstantial
8 evidence.

9 Direct evidence is the testimony of a person who asserts or
10 claims to have actual knowledge of a fact such as an eyewitness.

11 Circumstantial evidence is proof of a chain of facts and
12 circumstances indicating the existence of a fact.

13 The law makes no absolutely no distinction between the weight
14 or value to be given to either direct or circumstantial evidence
15 nor is a greater degree of certainty required of circumstantial
16 evidence than of direct evidence. You must weigh all of the
17 evidence in the case.

18 After weighing and considering all of the evidence if you are
19 not convinced of the guilt of the defendant beyond a reasonable
20 doubt, you must find him not guilty.

21 I have in the trial of this case found several witnesses to be
22 expert witnesses, and in that regard I charge you as follows.

23 Witnesses who by training, education or experience are
24 considered as experts in a particular field, and these witnesses
25 may give an opinion in that field based upon the facts of the

1 matter and their opinion.

2 An expert's conclusions and opinions constitute evidence to be
3 considered by you in connection with all the other evidence in the
4 case. You, the jury, may give that testimony such weight as you in
5 your experience and discretion deem appropriate.

6 Now, Mr. Foreman, and ladies and gentlemen, I charge you that
7 it is the law of this state that if a criminal crime is committed
8 by two or more persons who are acting together in the commission of
9 that offense, the act of one is the act of both.

10 By way of illustration and illustration only, two people can
11 be guilty of killing another, of murder, when only one of the two
12 had the weapon and one shot fired. If both are acting together
13 assisting each other in the commission of the offense, the law says
14 that under those circumstances the act of one is the act of all.
15 It is sometimes said that the hand of one is the hand of all.

16 I charge you that if several persons agree or conspire to
17 commit a crime, each of the persons is criminally responsible for
18 the act of his associates or confederates which are done in
19 furtherance or in prosecution of a common purpose for which they
20 are combined.

21 The common purpose may not have included - - the common
22 purpose may not have included or may have not been involved in the
23 killing and the murder of anyone but if in executing this common
24 design and purpose and if it were unlawful in the execution of the
25 common purpose a homicide is committed by one of the confederates,

1 then it is said that the hand of one is the hand of all regardless
2 of who may have fired the fatal shot.

3 As all other issues of the case, they must prove, the State
4 must prove beyond a reasonable doubt that the hand of one is the
5 hand of all and that they were acting together in the common
6 purpose to commit murder, and that, again, as for all other issues
7 are for you to decide.

8 Now, I charge you, Mr. Foreman, that mere presence at a scene
9 is not sufficient to prove someone guilty of a crime. A
10 defendant's presence where a crime is being committed or mere
11 association with a person who commits a crime does not make that
12 defendant an accomplice or aider and abettor of the person
13 committing the crime.

14 The burden is on the State to prove every element of the crime
15 charged. If you find after reviewing all of the evidence that the
16 State has proved that the defendant was only present or one of them
17 at the scene of the crime and that they have not proved beyond a
18 reasonable doubt any other participation, then you must prove the
19 defendant not guilty.

20 Mere presence, of course, is not a basis for a conviction of
21 anyone absent any other testimony.

22 Now, Mr. Foreman, and ladies and gentlemen, you have been
23 selected as fair impartial jurors sworn to impartially try and
24 determine the facts of this case, and when you comply with your
25 oath to do so, then no one will have a right to criticize your

1 verdict, and you would have fully discharged your duty as jurors.

2 You must not be influenced by opinions or expressions of
3 opinions, if any, which you may have heard on the outside but you
4 are to decide this case according to the testimony that you have
5 heard from the lips of the sworn witnesses along with such other
6 evidence that has been introduced.

7 In this case the State alleges that acting together these two
8 defendants killed the deceased. They specifically deny that. The
9 question in this case does the State prove beyond a reasonable
10 doubt their theory of the death of this deceased.

11 Before we proceed, I'm going to let you go the jury room just
12 a minute. I want you to take some lunch requests. I'm going to
13 order lunch for you at the State's expense.

14 As soon as you come back we'll have final arguments and then
15 you can begin your deliberations.

16 Please take their requests for lunch.

17 Let you go to the jury room just a moment.

18 (The jury retires to the jury room at 11:51 a.m.)

19 THE COURT: All right.

20 For the State, any additions or exceptions to the charge?

21 MR. FILIBERTO: No, sir, Your Honor,

22 THE COURT: For the defense Williams, any exceptions or
23 additions to the charge?

24 MR. TAYLOR: None, Your Honor.

25 THE COURT: For the defense Scott, any exceptions or

1 additions to the charge, Mr. Barr?

2 MR. BARR: The only exception, Judge, is the one we've put
3 on the record.

4 THE COURT: Which one was that?

5 MR. BARR: Regarding criminal intent.

6 THE COURT: No, sir. The record will reflect that you
7 have requested that but I specifically deny it.

8 Now, of course, they did not put up any testimony. So the
9 State will move first. Will there be one or two closing arguments
10 for the State?

11 MR. FILIBERTO: One, Your Honor.

12 THE COURT: All right, sir.

13 And how do y'all - - who goes first here?

14 MR. TAYLOR: Your Honor, I've gone first every time, I
15 think, and I - - -

16 THE COURT: That's right. Mr. Barr will conclude.

17 All right. As soon as we conclude and I'll order food for
18 counsel, too, here.

19 Let's be in recess for about ten minutes while we're taking
20 the jury's requests for lunch.

21 All right. We are in recess.

22 MR. TAYLOR: Thank you, Your Honor.

23 THE COURT: The record will reflect that there are no
24 exceptions or additions to the charge by State or the defendants.

25 (The Court recesses the trial of this case for a short break

1 and thereafter resumes the trial of this case.)

2 THE COURT: At the conclusion of your summation, I'll be
3 back with some short remarks for the jury that whatever the verdict
4 is it must be the unanimous verdict of all twelve of them.

5 If there's nothing further, are we ready for final closing?

6 MR. TAYLOR: I'm ready, Your Honor.

7 THE COURT: Bring the jury in, please.

8 (The jury returns to the courtroom at 12:03 p.m.)

9 THE COURT: All right, sir. The State will have the first
10 summation.

11 MR. FILIBERTO: Thank you, Your Honor.

12 SUMMATION BY MR. FILIBERTO

13 MR. FILIBERTO: Ladies and gentlemen, death came looking
14 for Efrain Rasodo on the night of March 8, 2007. He was at his
15 own home. It came looking for him, and it blind-sided him.

16 I indicated during my opening remarks we were going to have to
17 give you, really, a snapshot, that gives you all the information
18 that you need here, a lot of puzzle pieces that ultimately have to
19 be assembled.

20 And His Honor has already instructed you about circumstantial
21 evidence, and a good amount of the State's case here is
22 circumstantial.

23 If I could give you an analogy it would be that you open your
24 front door and everything is wet and there's puddles all over the
25 place. You probably don't need to see it raining to know it had

1 rained. And that's really looking at the circumstances and
2 putting that piece together.

3 Let's talk about some of those pieces.

4 Both defendants arrived at the home of Rudy Toomer on that
5 night. There's clear testimony from several people that the
6 defendant Jimmy Williams was on the phone and that he sounded
7 angry, that he said, "Czar, how you coming at me like that. I'm
8 coming over there.

9 Come on, Quentin."

10 There's clear testimony from Darius Orange that they got in
11 the defendant's white Escort, that they drove down and as they
12 pulled in front of Czar's house, the brake light went on.

13 Thinking about Mr. Orange, he indicated he was playing cards.
14 Why did he get up and look out the window? Your Honor, he didn't
15 say this. He seemed reluctant but I would argue to you that he
16 knew that Jimmy was mad, that those guys were going over there and
17 that there could be trouble, and that's why he looked out that
18 window and wanted to watch that car go over there.

19 You've heard testimony that later both defendants came back to
20 the Toomer residence and that they were armed and that defendant
21 Scott was holding what was identified as a 22 long rifle that's in
22 evidence. They were both carrying weapons.

23 You also heard testimony that conversation turned to the fact
24 that Czar was hurt because when they arrived, it was after Rudy
25 Toomer had walked up there, seen him and came back and called the

1 ambulance.

2 When he - - when the defendants came back and then went in the
3 house, several people were talking about the fact that Czar was
4 injured. What was Jimmy Lee Williams' response?

5 "F Czar," and, again, he didn't use the letter.

6 Now - - after his outburst, they left together.

7 We had testimony from Rudy Toomer's daughter, Marnaquais. In
8 that testimony, clearly, she at one point was brought down to the
9 police station to give her statement, and she, clearly, didn't give
10 a complete statement.

11 She did testify that after she left at some point she received
12 a phone call and that it was defendant Williams inquiring, "What
13 did you tell the police? What did you tell the cops?"

14 She said, "Nothing."

15 He said, "Good."

16 The next morning a few hours later she'd gone to work at
17 McDonald's. She called back to the police and said, "You know, you
18 need to come get me. I need to give another statement. I can tell
19 you everything."

20 And that's when she gave all the information.

21 She was asked on the stand why she didn't give them all the
22 information the first time, and it was her testimony that she was
23 afraid. She was afraid of both the defendants. Afraid - - afraid
24 that - - afraid of both of the defendants.

25 As a result of the information she gave the police, they were

1 ultimately able to go find the defendants at Jimmy Lee Williams'
2 mother's house. They were both taken into custody at that time.

3 The investigation led the police to go into the wood line
4 behind Jimmy Lee Williams' mother's house and recover a 22 caliber
5 rifle, the rifle that is in evidence and that is very likely the
6 rifle that fired the fatal shot.

7 You heard testimony from Dr. Proctor that the victim Efrain
8 Rasodo had two wounds, one to the head and one to the leg. When
9 the police executed a search warrant on Jimmy Lee Williams' white
10 Ford Escort, they recovered two shell casings. They're in evidence
11 also. You heard expert testimony that matched those two shell
12 casings to that 22 rifle, and, again, the projectile that was
13 recovered from the victim at the autopsy, although damaged enough
14 that it couldn't be a conclusive match, is a likely match to having
15 been fired from that rifle.

16 Dr. Proctor talked about the angle of the entry wound from
17 the - - from the front corner of the head across the back. He
18 wasn't even looking in the direction when that bullet came at him
19 and killed him, truly blind-sided.

20 Dr. Proctor also testified that the victim in this case may
21 have been able to move around at least for a few minutes, and
22 there's been some testimony about the presence of the 380 High
23 Point pistol that very likely belonged to the victim.

24 Again, this gun is in evidence, and it will show you that,
25 clearly, he may have grabbed at this gun after he was wounded.

1 It's clearly covered in blood, blood on the slide. He may have
2 tried to rack it.

3 There's testimony of shell casings recovered at the scene.
4 We don't know when they were fired. Mr. Toomer testified he didn't
5 hear any gunfire that night and that he usually did.

6 Efrain Rasodo was at his own home. He knew the defendants.
7 As a matter of fact, all of the fact witnesses, Marnaquais Tumer,
8 Rudy Toomer, Darius Orange, they all considered the defendants
9 friends. They considered the victim a friend.

10 To refer to something said earlier at the beginning of this
11 trial, they didn't have any dog in this fight. They had no reason
12 to lie. They came here, and they testified against people that
13 they admitted on the stand were there friends.

14 Death came looking for Efrain Rasodo that night. It came to
15 him at his house and blind-sided him.

16 The evidence clearly shows that the defendants were angry.
17 They went over there to confront him. They came back. They were
18 both armed with a gun that clearly fired projectile casings that
19 were recovered from the defendant's car and that very likely fired
20 the fatal projectile that killed the victim in this case.

21 The defendants in this case, I believe the State has clearly
22 shown the defendants in this case are the responsible parties, and
23 I ask you when you go to the jury room you consider all these
24 pieces and put them together circumstantial or not, and I ask you
25 to find a verdict of guilty so that these defendants know that

1 there's a cost for that kind of behavior, that you don't get - -
2 you don't resolve your differences with a weapon and shooting an
3 innocent person.

4 Thank you.

5 THE COURT: Thank you.

6 Mr. Paul Taylor.

7 MR. TAYLOR: Thank you, Your Honor.

8 SUMMATION BY MR. TAYLOR

9 MR. TAYLOR: Ladies and gentlemen of the jury, I want to
10 thank you for being here today.

11 Before I get started in defending my client I want to thank
12 you again for taking a week out of your life to be here, and before
13 we get into this case, we need to talk about that.

14 That's a - - what - - your duty here I think is one of the
15 most important things a U. S. citizen can do other than going and
16 serving in the military and fighting for this country, and the
17 reason behind that is because you have taken a first-hand look
18 today that to see exactly why people serve in the military, why we
19 do what we do, and you have taken part in our judicial system which
20 most people in our society don't do. They take it for granted.
21 They take up their day-to-day life and they go through, and they
22 take those - - those freedoms for which our country was originally
23 created for, those freedoms that nobody had before and - - and now
24 you've got that first-hand perspective on it.

25 Now, getting to this case and your service here today, you

1 took an oath, and you took an oath to be impartial, and in taking
2 that oath, you can't look at the State and automatically say,
3 "Well, I'm going in the State's favor," because the State is the
4 State, and they have - - their word is better or more important
5 than the defendant's word. Neither can you take the defendant's
6 word and rule that it is more important than the State's word.

7 What you have to listen to here today and what you have to
8 make a decision on is not what I say, not what Mr. Barr says, not
9 what the State says but with the evidence that has been presented
10 to you since Wednesday morning.

11 Now, you saw the first, ah, first State's witness was Officer
12 Rash all the way up until the last, ah, SLED Officer testified.
13 That is the only evidence that you can look at.

14 My word does not count, and their word does not count. It's
15 just the evidence, and whether you like it or not, whether you
16 confirm or disbelieve what the State has, you have to look at that
17 evidence to make your decision, and you can't use your personal,
18 you have to the same as me representing my client. I have to take
19 completely all personal feelings and move them aside. You have to
20 do the same.

21 And whether you like it or not that was the oath you took the
22 same as the oath that I took when I stood before the Supreme Court
23 and said I'm going to do what I do.

24 Now, let's look and dissect like an onion this case, and it's
25 not as simple as what the State has said.

1 It is a puzzle, and you have to look at the puzzle and try and
2 put it together once you look at all the evidence, and I tell you
3 that this puzzle has not been put together. This puzzle is the
4 same way it was when it was first presented to you and it was on
5 the floor in a thousand pieces.

6 Looking back at the first officer, Officer Rash, now Officer
7 Rash was the first officer that was on the scene, and I say to you
8 that he - - yes, he found Mr. Rasodo. Mr. Rasodo later succumbed
9 to the wounds that he said but nothing that Mr. Rash said or
10 testified to proves that my client, Mr. Williams, killed Mr.
11 Rasodo.

12 It's been testified to that my client was good friends with
13 Mr. Rasodo. They had known each other for three to four years and
14 that they were very good friends.

15 The first question that you have to ask yourself is why would
16 good friends - - why would one another kill the other, and you have
17 to ask that question. That is an important question because you
18 got to have a reason.

19 Now, second officer that testified was Robert Deal who is
20 still present in the courtroom. He is Crime Scene Investigator,
21 and as you testified, you have to - - or as he testified you have
22 to look at his credibility the same as every witness that
23 testified.

24 And his credibility, he may be a great person but the crime
25 scene analysis at this scene I'd say was - - was flawed. He went

1 there at night. It's 39 degrees, upper thirties, he said whereas
2 most people are going to want to get in and out. It's freezing.
3 It's cold. I'm going to want to do my job as quick as possible.
4 Get back in my warm car and get back in my warm bed. It's now
5 12:30 at night, and he is outside. It's dark. The same as
6 turning all the lights off in this room and trying to see what is
7 on the floor.

8 Imagine you have a flashlight, and you're going around trying
9 to find any evidence of a crime scene, and it's as simple as that.

10 Turn the lights off and try and find stuff on this.

11 I could throw my pen on the other side of the room, and you
12 would not be able to see that it was even there.

13 Now, this is a murder case. I don't know of another case
14 that is more important than that, and he doesn't take the time
15 during the daylight hours during the next couple of days to come
16 back and revisit the scene.

17 I think that that is a fundamental flaw in his case because he
18 can't really tell you what happened. He can't walk through a
19 scene at 12:30 at night and look through it real quickly and tell
20 you what truly happened. He can't even tell you about the
21 trajectory of the bullet. He can't tell you how the casings got
22 on the ground. He can't tell you about the gun.

23 I asked him several questions, and he was evasive. You need
24 to take his credibility regarding that. Why is he evasive? Why
25 does he not want to answer my questions?

SUMMATION BY MR. TAYLOR

1 I think if he's a crime scene specialist, he's going to want
2 to answer my questions to tell you as a jury what really happened
3 that night.

4 And credibility is everything. You have to look at the
5 credibility of every single witness, and that goes directly to his
6 credibility. Why does he not want to do that?

7 Why does he not go and search the, ah, Mr. Rasodo's house?

8 There was another casing that was on the ground, 270. That's
9 a caliber of a bullet. That's a high powered rifle bullet as he
10 testified to.

11 You heard testimony from a subsequent witness that Mr. Rasodo
12 had four guns in his house: a 22, a rifle and a pistol, and I
13 cannot remember what the other one was but he had four guns.

14 Nobody ever found those other three guns. Nobody ever asked
15 where they were. Why?

16 He sends detectives into the house but you never heard from
17 those detectives.

18 He testified that he's a crime scene specialist. So that
19 means for the past two and a half years doing that job when there's
20 a crime scene, he's the one that's called. He's the one that's
21 specialized and trained to go out there and deal with the
22 situation. Otherwise, everybody could do it. Mr. Rash could have
23 done it. He was the first officer on the scene. He secured the
24 crime scene, and he says, and this is important, that he only
25 allowed limited access to EMS because he didn't want to disturb the

1 crime scene. So that means that only crime scene could really
2 establish what happened there and make a depiction here. That's
3 their job. Their job is to tell you what happened.

4 "I saw the scene. I evaluated the evidence found, and I
5 confirmed that this is what happened that night."

6 He never did that. He never told you what happened.

7 He can't even tell you about the shell casings on the ground.
8 He didn't test the 270's. Why not? Why would he make that
9 decision? Why would he make that determination? Because he - -
10 why would he have the power to make that determination? Maybe
11 because it's not in his best interest to do so.

12 So, we've got this house. We've got guns. Don't know what
13 happened that night.

14 I tell you that it hasn't been shown what happened that night.
15 Nobody knows what happened that night.

16 The only person that really - - the only person that can't
17 testify is Mr. Rasodo. He's not here. He's not able to testify.
18 He is the only person that really knew what happened.

19 So, Mr. Deal can't tell you what happened even though he's
20 trained in that area. Maybe he just doesn't want to tell you what
21 happened because, again, it's not in his interest. His interest
22 is to put people in prison.

23 Now, there was Ms. Shehan next. Ms. Shehan was the next
24 witness to testify, and she testified that the blood that was on
25 the pistol, the 380 High Point which is in front of you, this blood

SUMMATION BY MR. TAYLOR

1 was Efrain Rasodo's blood.

2 It's important that most people don't walk around in their
3 yard carrying a pistol. That's just not normal behavior. It's
4 not lawful behavior. You're walking around in your yard at 10:00
5 at night, between 10:00 and 11:00 at night with a gun. Empty shell
6 casings on the ground. That is not normal, lawful behavior.

7 MR. FILIBERTO: Objection.

8 The State would object to the defendant's characterization
9 that it's unlawful to carry a gun in one's yard. I believe that
10 that's an incorrect statement of the law.

11 MR. TAYLOR: Your Honor, I think it's maybe legal to carry
12 a gun in the yard but it's not legal to fire it in your yard.

13 THE COURT: Well, that's - - your position - - what was
14 your statement to the jury?

15 MR. TAYLOR: That's it's not lawful behavior to carry this
16 gun around with the shell casings on the ground and about the
17 victim. It's not lawful behavior, Your Honor.

18 MR. FILIBERTO: Your Honor, again, he's within the county.
19 It's legal.

20 THE COURT: It's not unlawful to have your weapon on your
21 own premises.

22 MR. TAYLOR: Okay, Your Honor.

23 You have to make that determination. The Judge has told you
24 what it is. You make the determination based on the facts as given
25 to you.

1 Now, Rudy Tumer, Rudy Carl Tumer got on the stand next, and I
2 really don't know why he was here. He got on the stand and started
3 to testify but whenever I cross examined him, he didn't know why he
4 was here. He said he didn't have any information regarding this
5 case. I, therefore, don't know how he's pertinent for you to
6 determine whether or not my client did or didn't do something. He
7 was useless.

8 You have to look at his credibility and his appearance in
9 making that determination whether you like it or not, you have to
10 look at that and determine his credibility.

11 Darius Orange got on the stand next, basically, testified to
12 the same thing. He didn't know anything about this case. He
13 specifically said, "I don't know anything about this case,"
14 although he testified that he sees my client driving down the road.

15 You have to determine whether or not that's credibility either
16 given the fact that he says he didn't know anything about the case.
17 I think that's very pertinent.

18 Now, let's talk about that. He sees my client driving down
19 the road but he doesn't know who my client is talking to whenever
20 he comes in for a short minute but he sees that's he going down the
21 road to Rasodo's house, Mr. Rasodo, but it's been testified to
22 they're very good friends, very good friends.

23 If they're very good friends, then why is he going to go down
24 there to murder him? I'd say that he wasn't. I'd say that he
25 didn't have that intent. He didn't have that malice aforethought.

1 He didn't have the intent to commit murder. He didn't do it. Did
2 not have that malice.

3 Now, Marnaquais Tumer got up next, and she testified - - and,
4 again, going to her credibility, I don't think that she has any
5 credibility either.

6 She testified, sort of gave the law enforcement officers the
7 first statement, and she lied. Well, if she lied there, why is she
8 not lying here? She had something to gain from this case. Her
9 father had pending charges. There was other testimony - -
10 testimony shows evidence that she had a reason to give them what
11 she wanted in order to make sure that she didn't get in trouble,
12 her family didn't get in trouble.

13 So, her sister had some legal issues as well.

14 Now, Brad Townsend got on the stand. He didn't even know why
15 he was here. He didn't even know what my client was charged with,
16 why he was being brought to court. I think that speaks for itself.

17 Dr. Proctor got here. I didn't cross examine him. He
18 testified that Mr. Rasodo was shot. That was not controverted by
19 anybody. He was shot. He was killed.

20 Um, as you can see, blood was on his gun. Blood was in his
21 yard. There was spent casings around him, 270, 380 from his gun.

22 Now, let's go through your duties here again. You took an
23 oath to do your job same as I took an oath to do mine.

24 The judge charged you on what the law was. Let's go back
25 through that.

1 My client didn't testify. He doesn't even have to be here.
2 You can't hold that against him in any way. He has that right.
3 That is one of our fundamental constitutional rights.

4 He's presumed to be innocent as well as his co-defendant.
5 The burden is completely on the State, and the State has to prove
6 beyond a reasonable doubt which the judge told you what reasonable
7 doubt is is it has to give you some doubts that a reasonable person
8 would hesitate to act.

9 And you go back there in your jury chamber and you make your
10 decision over lunch, and you discuss this case. If there's any
11 doubt that you have over whether my client did this or did not, if
12 you have doubt, you have to come back with not guilty because if
13 you have that doubt, then that is reasonable doubt.

14 You may not like it. You may not like it at all. You may
15 hate it but that is the oath that you took, the same as the oath
16 that I took, the same as the oath that the Solicitors took to do
17 their job, and you have to abide by that oath.

18 Again, you may not like it but that's our law, and that's why
19 we have this jury system here today.

20 My client, as I said, is presumed innocent, and the burden,
21 again, is completely on the State, not on my client at all.

22 Now, if you have that doubt, as the judge testified, you have
23 to give my client the benefit of that doubt which means that you
24 have to rule not guilty.

25 You are the finders of the fact meaning that you look and you

SUMMATION BY MR. TAYLOR

1 and you alone deal with the evidence that was presented to you.
2 You have to look at only the evidence, not what the - - what the
3 State has said and what I have said but just on the evidence.
4 What we say is unimportant. It's just the evidence which is before
5 you. You've seen it. It's been presented to you. It's been
6 published to you throughout this case. That is the only thing
7 you can use as your determining factor in making a ruling of guilty
8 or not guilty.

9 Again, in doing so, you have to look at the credibility of the
10 people that have been presented to you, and I would state to you
11 that the State has not met that burden of guilty beyond reasonable
12 doubt given the witnesses that are given to you. They are not
13 credible, most of them. Most of them have been useless. They - -
14 some of them have not done their job that really - - to tell you
15 what really happened.

16 You have to accept this law as given to you as the judge
17 testified, and you can't - - you cannot disagree with it. That is
18 your duty to do so, and whether you like it or not you have to.

19 And you can only take into account what the judge has told
20 you, not what I have told you, not what the State has told you, not
21 what Mr. Barr is going to tell you.

22 You have to determine whether or not there was a murder here
23 that was proven to you beyond a reasonable doubt that my client did
24 this. You have to show some - - it has to be shown some
25 willfulness, felonious killing of a human by another with malice

1 aforethought, and I state to you. That's not been proven that my
2 client did that. There's been nothing, really, that's linked my
3 client to this case other than the fact that one of the witnesses
4 says that he doesn't know this - - know anything about this case
5 saw my client's brake lights going down the street. That's it.

6 Now, there's been no direct evidence, and there's only been
7 circumstantial evidence given to you.

8 Circumstantial evidence, as the judge has told you, is just as
9 great as direct evidence but, again, circumstantial evidence that
10 has been presented to you, I would state does not rise to the level
11 of guilt beyond a reasonable doubt that prove that Mr. Williams did
12 anything that would cause him to be found guilty for murder.

13 Now, there was mere presence, and, again, mere presence of
14 anything is not enough to prove guilt. The only mere presence that
15 has been shown that my client was anywhere close to Mr. Rasodo for
16 anything is the statement made by Mr. Orange that he saw my
17 client's brake lights, but, again, he doesn't know anything about
18 this case.

19 You have to be impartial in this case meaning as it's stated.
20 You can't lean in favor of the State. You can't lean in favor the
21 defense. You have to make a decision, again, based on specifically
22 what was given to you in the evidence that came in with Mr. Rash
23 and ended with the State's last witness.

24 I don't feel that the State has met their burden of proof.
25 I understand that there is somebody that has died. Somebody has

1 been killed. That is stated clearly, and you're going to want
2 somebody to pay for that. You're going to want somebody to pay.
3 The family's going to want somebody to pay but you cannot unless
4 shown beyond a reasonable doubt that my client did it, you cannot
5 punish somebody just to make that right because that does not make
6 that right. What that does is create just as a bad of an event of
7 the killing of Mr. Rasodo.

8 As you go back take that into consideration, and as your final
9 thought whenever you're determining whether to find guilt or not
10 guilt regarding Mr. Williams, think about that. Think about that.
11 What is worse? The fact that somebody has been killed or the fact
12 that we have punished somebody just because somebody has been
13 killed.

14 That is not our system. That is not why our men and women
15 fight for our country. That is not why we have the system that we
16 have. This system has been lasting for the last two hundred
17 years. I think it will last forever.

18 It is the best system in the world although people complain
19 about it. It may not be completely perfect but I'd say that
20 nothing is perfect but I'd say that it is the best system that we
21 have in the world. It is better than anything else.

22 And I hope that you maintain that when you go back in your
23 room and you do make your determination because if you go back
24 there and make the determination that Mr. Williams or his co-
25 defendant Mr. Scott should be found guilty just because somebody

1 died, just because somebody was murdered, then that does away with
2 our system. That erodes it.

3 And if it erodes it here, then it will continue to erode it,
4 and then, eventually, we will not have the system that we have.

5 Your job here is just as important as if I handed you an M16
6 and said, "Jump out of this plane and fight for your country."

7 Because this is a fundamental principal behind how we are, how
8 we live is that everybody in this country is entitled to the right
9 to a trial.

10 Now, throughout this trial I have been aggressive with the
11 witnesses. I may have come across as arrogant to you. All of
12 those things I have been called numerous times, and I understand
13 that. That is maybe a flaw for me. I know it is a flaw in some
14 regard. Told my wife on a regular basis about it what my flaws
15 are but I would ask you not to take that into consideration
16 regarding the guilt or innocence of Mr. Williams.

17 What I do in this courtroom is on me, not on Mr. Williams, and
18 I would ask that any action that I've taken, maybe cutting a
19 witness off, maybe being hard on a witness, maybe doing what you
20 would think attorneys do has on bearing on Mr. Williams at all.

21 Whether you like anybody in this courtroom, you have to block
22 that out in your mind in making a determination.

23 The only thing you can look at is the evidence presented from
24 the first witness to the last and the evidence as presented to you
25 that has been handed to you and published up there.

1 I would state that the puzzle has not been put together as the
2 State started when the State portrayed this case as a puzzle. It's
3 not a puzzle, and it certainly has not been put together.

4 And I would ask that whenever you go back and deliberate and
5 you look at all those pieces as the State has said that they are
6 being the evidence in this case, it does not rise to the level of
7 proving that my client is guilty beyond a reasonable doubt, and I
8 would ask that you return a ruling of not guilty.

9 And, again, as I stated before, I'd ask that you not go back
10 there to punish anybody to make the family feel better or to make
11 it right that somebody was killed because that is not your job.

12 You took that oath and that is a serious oath.

13 Thank you.

14 I hope that you return a verdict of not guilty.

15 THE COURT: Mr. Barr.

16 MR. BARR: Thank you, Judge.

17 SUMMATION BY MR. BARR

18 MR. BARR: Mr. Foreman, ladies and gentlemen, um, when - -
19 when I spoke to you initially, of course, it was from the first
20 time and with respect to this process, it was at a time when the
21 lawyers get to come before you and tell you what the theory of
22 their case is, and, of course, if you - - if you would just stop
23 and think for a second and reflect back to that time, one of the
24 first things that I said to you was I learned a long time ago never
25 to make promises to a jury about what the evidence is going to

1 show. Never make promises to a jury about what the evidence is
2 going to show.

3 Now, you know, sometimes being a trial lawyer is like a person
4 of faith. Sometimes you have to wait on things. You don't know
5 how they going to work out but if you wait on it, it will be worked
6 out. It might be worked out in a way that you have no idea that
7 it's going to come that way but it will be worked out.

8 Now, I don't tell the jury what the evidence is going to show
9 as I said because I like to wait.

10 Now, I want to talk to you about something right now and - -
11 and - - and I really want to talk to you about one of the things
12 that qualify you to act as jurors in this case. It is something
13 that's already been alluded to by our able trial judge several
14 times, and I tell you that it is the one thing that I have put my
15 finger on anything that most qualify you as jurors. It's the one
16 characteristic that you have. It's the one thing that enables you
17 to sit and judge better than anything else, and that is common
18 sense. That's common sense.

19 His Honor has already told you that when you came to jury
20 service, you didn't put your common sense down somewhere. You
21 brought it to this jury service.

22 Now, that having been said, let me tell you something.

23 We didn't just start working on this case yesterday, the
24 lawyers in this case. We knew what this case was about, and I
25 knew what it was about when I came before you and told you that I

SUMMATION BY MR. BARR

1 wasn't going to try to tell you what the evidence is going to show
2 because I knew right then that the Prosecution, the Prosecution's
3 theory was that Jimmy Williams shot Efrain Rasodo. I knew that.

4 And I knew that their theory was that Anthony Scott should
5 also be held responsible because he aided and abetted him. His
6 Honor has already instructed you on what we call the hand of one is
7 the hand of all. I knew that.

8 But what I also knew was that Anthony Scott did not assist
9 anybody in shooting and killing anybody.

10 His Honor instructed you, ah, in his, ah, instructions
11 regarding when he gave you the definition of murder and he started
12 to talk about malice and the killing, and killing requires shooting
13 somebody. In this case that's what's required.

14 And if you remember his words were, and I paraphrase, the man
15 holding the gun. Oh, you got to shoot somebody if death was
16 caused by shooting. You got to shoot.

17 The State's theory was that was Jimmy Williams, and I'm going
18 to tell you why.

19 If you recall, in this particular case the State started by
20 trying to establish a motive. In order to try to establish a
21 motive, the witnesses that you heard testified to what they
22 considered an argument between the deceased and Jimmy Williams.

23 Let me tell you something. People don't go out and shoot
24 people for nothing. What is the motive?

25 So, the State said that, "Well, look, we'll start this thing

1 by showing you that Jimmy Williams had a motive. He was arguing
2 with Mr. Rasodo."

3 And all of the - - all of the witnesses confirmed it that
4 there was an argument.

5 Now, the one thing that I kept puzzling me was how were they
6 going to try Anthony Scott.

7 Now, if you remember the testimony, the witnesses said after
8 Jimmy Williams got through arguing with Mr. Rasodo, he said, "Come
9 on."

10 And that's what he said to Anthony Scott.

11 Now, ladies and gentlemen, I want you to think about this
12 aiding and abetting, and I'm going to talk about it a little bit
13 more later on in terms of the definition of it. This hand of one
14 is the hand of all.

15 Now, does getting up and going with somebody aiding and
16 abetting? Do you remember what His Honor instructed you on the
17 law of mere presence? Well, that's what - - that's what that
18 instruction was for, mere presence. Now, does that in and of
19 itself constitute the hand of one? If Jimmy Williams killed
20 Efrain Rasodo, does that act in and of itself?

21 Now, I'm going to talk about circumstantial evidence but what
22 I was looking for is what would they say that Anthony Scott did
23 other than mere presence?

24 Well, if you remember the testimony, the State placed on the
25 witness stand several witnesses, ah, and, ah, you are absolutely

1 right, Mr. Filiberto. I said that, ah, when we were qualifying
2 jurors that what we were looking for was a juror that could be
3 impartial and one that don't have a dog in the fight. I'll stand
4 by that when it comes to these witnesses but there's one person
5 that seemed to have had a dog in the fight, and that was one that
6 everybody knows lied. She admitted on the witness stand that she
7 is a liar. Not only is she a liar, she is a thief. She's got
8 larceny in her heart and she doesn't mind lying.

9 People don't lie for nothing. They don't lie for nothing.

10 Then what was the reason why Miss Tumer would come into this
11 courtroom and tell a lie? We know she - - we know she lied.
12 Miraculously, when she gave a second statement, in that statement
13 she claims that she saw Anthony Scott with a gun when he came to
14 the house on the second occasion.

15 Now, what happened between the time that she claimed that she
16 saw him the second time? Well, according to her, if you can
17 believe anything she said, she talked about the gun, and, you know,
18 it amazes me. You remember. I had her on this witness stand, and
19 I asked her. I said, "Show me the length of the gun," and she got
20 her hands up about like that. She got her hands up about like
21 that.

22 Now, if I'm incorrect on the distance that I have, I want you
23 to recall it as you saw it.

24 And, then, if you remember. This gun whenever the gun it was
25 taken out of this box, she said, "Oh, well, that's it."

1 Now, ladies and gentlemen, this gun is in evidence. You'll
2 have an opportunity to go back there and take it to your jury room.
3 Quite frankly, I'm not even sure that it is the weapon that was
4 used to kill Efrain Rasodo because there's been no proof of that.

5 The only way that could have been proven if the Prosecution
6 brought somebody that could sit on this witness stand that's
7 qualified as an expert to give their opinion.

8 His Honor has already charged you on the qualification of an
9 expert. They don't necessarily have to limit their testimony to
10 the facts. They're going to give their opinion.

11 And the only expert that appeared in this courtroom that was
12 qualified to say anything about any bullets that came from that gun
13 said, "Look, it could have come from the gun."

14 Mr. Filiberto, it was reasonable to believe it came from this
15 gun. He said, "It could have come from this gun."

16 So, we don't' even know that the projectile that killed Efrain
17 Rasodo came from that gun to the extent that that gun has any
18 relation to this case.

19 But, now, if you recall the testimony, Miss Tumer said she got
20 a phone call. Well, who did she get it from? Jimmy Williams.

21 She said she had a conversation with Jimmy Williams, and Jimmy
22 Williams said, "Look, what did you tell?"

23 She said, "Well, I hadn't - - I hadn't said anything."

24 And the next thing she done called the police and, "I told you
25 a lie."

1 And one of the things that she flip-flopped on was, "I did.
2 I saw Anthony Scott with a gun."

3 Ladies and gentlemen, if you look at the testimony in this
4 case, the Prosecution's theory, well, when Jimmy Williams along
5 with Anthony Scott, and, granted, there has been no testimony
6 regarding anything that happened between Jimmy Williams and Anthony
7 Scott from the time they left Mr. Toomer's house, Rudy Toomer's
8 house.

9 We don't even know what - - we don't even know the testimony
10 was, "Did they come there together?"

11 "We don't know. All we know is they left there together."

12 Because I'm still looking for the aiding and abetting. I'm
13 still looking for the aiding and abetting, and it's not there.
14 They left, and you haven't heard anything about any testimony about
15 Anthony Scott from the time they supposedly left.

16 Now, this witness that came to court, Mr. Orange, and, quite
17 frankly, His Honor has already gave you your instructions regarding
18 credibility of witnesses. I don't - - I don't put a whole lot of
19 stock in - - in - - of course, that's up to you in the testimony.

20 Quite frankly, I don't know how you can sit down and watch a
21 man laying down on the ground dying and go back and play cards for
22 fifteen or twenty minutes. That just doesn't ring quite true.

23 And this man, Teavers, who was supposedly was with Mr. Orange,
24 somehow the Prosecution just forgot about - - I don't know where he
25 is.

1 He was the other person that was suppose to - - do you
2 remember the phone calls? Well, he got three phone calls but,
3 yet, nobody remembers. He doesn't remember anything about anybody
4 - - when Mr. Toomer got on the stand about anybody making those
5 phone calls. He didn't get them or he didn't recall.

6 Now, you just don't go on to somebody's house and you see them
7 laying - - now, notice, and, you know, the thing about witnesses
8 sometimes, you have to - - you have to let them hang themselves
9 because what I did was I got him to admit that that man was in a
10 bad state on the ground. He was scared when he looked at him
11 because he could see the man was hurt.

12 But, yet, instead of calling somebody and going to get him
13 help, he went back and told Rudy Toomer. Now, you saw Rudy
14 Toomer. He was on this witness stand. Is he the man that you go
15 to to get help for somebody that might be dying? I doubt that.

16 Moreover, supposedly, he found Rudy Toomer sitting down
17 playing cards, and he said, "Rudy said that he just - - -"

18 Now, if he were all friends and they told him that that man
19 lay down there dying, Rudy Toomer would have got up, flied out of
20 there and flied on down there just like he had wings on him.

21 There's something wrong with that.

22 He's going to sit there and play cards for fifteen more
23 minutes? No. Uh-uh.

24 If that's true, then give me some wings, and I'll fly on out
25 of here. It just doesn't work that way. Use your good common

1 sense. It does not work - - -

2 Now, I don't know who robbed because, now, keep in mind.
3 That's what this was all about. Supposedly, this argument that was
4 going on between Jimmy Williams and Efrain Rasodo, they wasn't just
5 arguing about nothing if they were arguing. But the point is you
6 don't just leave somebody on the ground.

7 And that - - they were the only two. Supposedly, they were
8 the two people that found him first.

9 Now, that take's another page out of Miss Toomer's book.

10 She said, "Well - - -" while she was on the witness stand
11 when, ah, when, ah, I asked her about the weapon. Apparently, she
12 said that her father, Rudy Toomer, didn't see it.

13 Now, how is she could get so visual and Rudy Toomer - - of
14 course, I really don't think that Rudy Toomer is able, ladies and
15 gentlemen, to handle all of these things that I'm convinced that
16 the Prosecution prepared him to get here on the witness stand. He
17 did the best thing he could do.

18 And the reason they brought him here was to come here and say,
19 "I heard Efrain Rasodo shooting his gun, and I know that his gun
20 had not - - -"

21 No foundation about what gun he was shooting. The man had
22 four or five guns but, yet, he said, "Well, no, I didn't hear a
23 gunshot."

24 That man ain't - - he ain't heard anything else either. He
25 didn't know what time of day it is. He doesn't know anything.

1 That's all he came here for, and he did that.

2 Now, he got on the witness stand and said, "Look. Yeah, well,
3 I'd heard him shooting this gun practicing."

4 Was it the 380? What kind of gun was it?

5 He don't know, and he don't care.

6 He was programed to know and care. He was programed to simply
7 state, "I heard him shoot the gun. The gunshot is loud, and I
8 didn't hear a gunshot this night because he didn't shoot a gun."

9 And the reason that he didn't want - - the reason the State
10 didn't want anybody hearing him shoot the gun is because they don't
11 want anybody thinking that, "Well, Jimmy Williams and him went down
12 there and got in a fight, and Jimmy Williams was just shooting to
13 look out for himself. Then we don't anybody to think that Efrain
14 Rasodo shot at him first."

15 That's what they're talking about, and that's what that's all
16 about. Otherwise, Rudy Toomer wouldn't haven't remembered that
17 part but he remembered that part, and he got that together.

18 Now, ladies and gentlemen, Anthony Scott aiding and abetting,
19 the State's theory. Well, Jimmy Williams because of the argument
20 shot Efrain Rasodo.

21 "We went down to his mother's house where he and Anthony Scott
22 were."

23 Again, my concern was Anthony Scott being at his mother's
24 house. Did just his presence at his mother's house, does that
25 make him guilty of anything?

1 Well, if you remember, Officer Deal, I think he was the one
2 that testified and said, "Well, I got some information that a gun,
3 a rifle was - - same rifle in that box - - out at the edge of the
4 woods by Jimmy Williams' mother's house."

5 Jimmy Williams driving the car, the spent cartridge that was
6 found that they brought you into the courtroom that they said
7 matched that weapon. The driver's side in the car that Jimmy
8 Williams was driving.

9 I still was worried. I said, "Well, how does that make
10 Anthony Scott guilty of anything even if Anthony Scott was with
11 him? Nobody said he did anything."

12 Then it dawned on me. The testimony that Miss Tumer comes
13 up with about the gun that she saw Anthony Scott with even didn't
14 even much match the physical description when I was asking her
15 about the gun that's in this box but as soon as the gun came out
16 the box, she said, "Oh, yeah, that's it."

17 Now, why in the world would Jimmy Williams call her in the
18 first place? She said they were friends.

19 I submit that maybe they're more than friends. I don't know
20 but I know one thing. What's Jimmy Williams doing calling her, and
21 what's she doing talking to Jimmy Williams? There's something
22 going on there.

23 Nobody said Anthony - - nobody said Anthony Scott called her.

24 "Well, did you tell them anything?"

25 Nobody. Use your common sense. Nobody said that.

1 Now, I don't deny and, of course, don't get me wrong. I'm not
2 suggesting that Jimmy Williams shot and killed anybody. That's not
3 my responsibility. My responsibility is this man right here, Mr.
4 Scott.

5 I want you to understand the Prosecution's theory and why
6 under the law and His Honor has already given it to you in South
7 Carolina this table hasn't met the burden of proof.

8 Talk about the puzzle, I'll admit because what the Prosecution
9 wants to do is they want you to rely in this case supposedly on
10 circumstantial evidence.

11 His Honor has already charged you on what circumstantial
12 evidence is. He got that you can have direct evidence. That's
13 when somebody is seeing something with their own eyes, and
14 sometimes maybe your eyes can fool you but when somebody sees
15 something and they're able to testify regarding their observations,
16 direct.

17 But when you don't see all of it and you have to put the
18 pieces together, now, His Honor has already instructed you that
19 even when you're relying on circumstantial evidence, they must
20 inevitably lead to one conclusion. That's the defendant's guilt.

21 And in this case the puzzle is there but all the pieces ain't
22 there, and if all the pieces ain't there, guilt beyond a reasonable
23 doubt of this man. You have to find him not guilty.

24 Presumption of innocence, presumption of innocence, what does
25 that mean?

1 Ladies and gentlemen, the presumption of innocence as I
2 indicated in my opening statement is not just some fickle right.
3 It is a substantive right that's a part of due process that any
4 person charged with a crime is entitled to. That presumption of
5 innocence exists right now as it relates to Mr. Scott. His Honor
6 will instruct you that it is only removed at such time as you in
7 your collective wisdom as twelve jurors decide that the Prosecution
8 has proven him guilty beyond a reasonable doubt.

9 That's how strong it is but irrespective of what you might
10 think now, it is the presumption if the top blew off this place
11 right now, guess what? If you find Mr. Scott, he'd be not guilty.
12 Because of the presumption of innocence he's presumed innocent.

13 Whatever you might be thinking in your mind right now as to
14 his guilt or innocence is premature because His Honor has already
15 instructed you that with respect to your deliberations, your
16 deliberations should not start until you all come together
17 collectively and decide whether or not the Prosecution has proven
18 its case and proven it by a standard beyond a reasonable doubt.

19 But there are just a couple of issues that I want to talk to,
20 ah, address, and then I'm going to go sit down.

21 Now, with respect to this case and the offense of murder, it's
22 an unlawful killing, and His Honor has already indicated to you
23 that, ladies and gentlemen, in order to convict either one of these
24 defendants of murder - - but I'm only concerned about this one.
25 That's my job - - you must find beyond a reasonable doubt that he

1 killed somebody, now, either that he did it by himself or he did it
2 vicariously, and when I say vicariously, I'm talking about that
3 somebody else did it, and he aided and abetted as an accomplice or
4 aided and abetted the other person in carrying out the act.

5 And I would suggest to you and I ask you right now. When you
6 think about it right now what evidence that you've got that Anthony
7 Scott aided and abetted anybody?

8 Now, granted, Efrain Rasodo didn't just fall down dead, and he
9 is deceased. Dr. Proctor testified to that.

10 But the issue at this point is whether or not the Prosecution
11 has proven that Anthony Scott is responsible for his death and
12 they've proven that he's responsible for his death, they must have
13 proven to you that there was a killing, and as I said, either by
14 Jimmy Williams, and if it was by Jimmy Williams, in order to
15 convict him, you must prove that he aided and abetted.

16 And on the aiding and abetting I have heard no testimony from
17 anybody other than they keep saying "they" and "them", pronouns of
18 which we are familiar with but pronouns which are insufficient
19 according to the law to convict somebody.

20 "They" and "them", the only thing that I have heard that links
21 Anthony Scott to anything, anything credible because the gun thing,
22 quite frankly, I - - that's - - I just think you ought to dismiss
23 that right out of hand because with respect to Miss, ah, Miss, ah,
24 Miss Tumer, her credibility will have to be something that you have
25 to decide. You will have to decide whether or not she was a

1 credibility, she was a believable person, and even if she was
2 believable, this gun still hasn't been connected to this offense.
3 It hasn't been connected. The only person as I said that could
4 said he didn't know.

5 But aside from all of that, I'm concerned about Anthony Scott,
6 and as I said, you will have to ask yourself about whether or not
7 Miss Tumer is believable because she is the only person that the
8 State has relied on to connect Anthony Scott to anything involving
9 the death of anybody.

10 Must be an unlawful killing with malice aforethought. Malice
11 aforethought is an element of the offense of murder, a very
12 important element just like any other element, and His Honor has
13 instructed you. Malice aforethought is not malice in the sense of
14 ill-will but malice in the sense of a malignant heart, wicked.

15 Now, His Honor was quite right. Malice can be expressed or
16 implied, and it can be implied from the use of a deadly weapon but
17 it does not dispense with malice as an element of the offense, and
18 the use of a deadly weapon does not include walking in a house with
19 a gun.

20 My goodness, I could have gone down there and shot the man.
21 There's no evidence that Anthony Scott went and shot or was even
22 present at the time he was shot if he was shot by Jimmy Williams,
23 none.

24 Ladies and gentlemen, just - - just as in any case where
25 you're called upon as jurors to make a decision, and I'd ask you in

1 this case, as His Honor has already instructed you, to keep in mind
2 that the law requires proof beyond a reasonable doubt. It does
3 not require as in a civil case where the standard of proof is the
4 greater weight of the evidence or by a preponderance of the
5 evidence. It requires guilt beyond a reasonable doubt, and it
6 requires unanimous agreement that the Prosecution has proven guilt
7 beyond a reasonable doubt of murder, the unlawful killing with
8 malice aforethought.

9 It must exist. It doesn't have to exist at the exact moment
10 but, certainly, it has to exist, at least, prior to for any
11 reasonable degree of time. That's what His Honor instructed you.

12 But you must find the defendant - - that the Prosecution at
13 this table right here has proven this guilt to you beyond a
14 reasonable doubt.

15 Now, let me just return briefly to my opening statement
16 because I suggested to you at that time. Don't get confused that
17 your responsibility is one that requires making a decision to
18 determine whether or not somebody killed somebody. That's just not
19 the case. Your conscious would never let you sleep.

20 But the standard of proof and the burden of proof is on the
21 Prosecution to prove the defendants killed, and, ladies and
22 gentlemen, if it hasn't been proved and proved by a standard beyond
23 a reasonable doubt, His Honor instructed you that the evidence
24 ought to leave you firmly convinced, not just convinced, firmly
25 convinced that the defendant's guilt has not been proven, and if

1 you're not firmly convinced, in other words, if you think this is
2 a real possibility that the defendant is innocent based on the
3 proof or lack of proof that you must find him not guilty, and even
4 if you have a doubt and you found that that doubt is a competing
5 doubt, that doubt must be resolved on behalf of the defendant, and
6 that's the law.

7 There it is. Thank you. Look at it, as I said.

8 That's one of the things that we wanted you twelve people for
9 because we believe that irrespective of what you might think that
10 you bring to this courtroom the ability to sit down and listen to
11 the facts in the case and come back with a verdict, not based on
12 whether or not somebody is deceased, but come back with a verdict
13 that - - that - - that speaks the truth based on the law and the
14 evidence, and the evidence includes the lack of evidence.

15 And I genuinely believe that you twelve people will do that,
16 and in this case find the defendant Anthony Quentin Scott not
17 guilty of murder.

18 Thank you.

19 THE COURT: Thank you, Mr. Barr.

20 Thank you, Mr. Taylor.

21 Thank you, gentlemen for the State.

22 FINAL CHARGE OF THE COURT

23 THE COURT: Now, ladies and gentlemen, just prior to
24 summation, of course, I instructed you with all the issues of law
25 in this case, and, ah, Mr. Foreman, you, of course, know that you

1 are the finders of the facts, the jury here, but if you have any
2 questions with regard to the law, there will be pencil and paper
3 provided in the jury room, please write that question down, and
4 I'll call you back out and explain to you any questions of law.

5 Now, whatever your verdict is, it must be the unanimous
6 verdict of all twelve of you. It cannot be a verdict of the
7 majority. Obviously, it would not be one of the minority.

8 In this case there are two individuals charged with murder.
9 You will consider the evidence separately as to each defendant.

10 Your verdict may be not guilty as to both defendants. It may
11 be guilty as to both defendants. It may be not guilty as to one
12 and guilty as to the other. What I'm saying to you is I make no
13 inferences at all as to what your verdict is but consider your
14 verdict separately as to each defendant.

15 And when you have reached your verdict of not guilty or guilty
16 as to each defendant, you will turn on the back and under the words
17 "verdict", Mr. Foreman, you would either write not guilty or guilty
18 and sign your name.

19 You may return to the jury room. Do not begin your
20 deliberations until the evidence comes in along with these
21 indictments, and when this indictment comes in with all the
22 evidence, you may begin your deliberation.

23 Lunch should be here very shortly. You may deliberate during
24 deliberations or you may wait and have your lunch and then do it.

25 Mr. Foreman, I'll leave that to your discretion.

1 Gentlemen, come forward and let's agree as to what's going
2 into evidence.

3 ALTERNATES SEPARATED

4 THE COURT: The alternates, Mr. Foreman, Mr. Bailiff, make
5 sure the two alternates are removed and put them in a place quietly
6 away from the jury.

7 But make sure the alternates - - where is my juror Foreman, my
8 bailiff?

9 Please bring the two - - two alternates out for me, please.

10 Mr. Moore, bring the alternates back out.

11 All right. Gentlemen, just for the record. Any other
12 exceptions or additions to the charge?

13 MR. FILIBERTO: None from the State, Your Honor.

14 THE COURT: How about it, Mr. Taylor?

15 MR. TAYLOR: None, Your Honor.

16 THE COURT: How about it, Mr. Barr?

17 MR. BARR: Nothing, Judge.

18 THE COURT: All right, sir.

19 Have somebody bring the alternates out for me.

20 Where is the other alternate?

21 (Alternates appear before the Court.)

22 THE COURT: All right.

23 I want them taken to a separate to be seated comfortably and
24 make sure they have their lunch.

25 Everybody looks healthy on the jury but I have found things

1 happen. Sometimes wrecks occur or we get notified that somebody's
2 sick or something. So, I'm going to have to keep you here.

3 I wish that our law permitted me to leave you in the jury but
4 it, unfortunately, does not.

5 But you stand by in case something happens and we need one of
6 you.

7 Thank you.

8 Mr. Foreman, you may - - your deliberations, you may begin as
9 soon as the evidence comes in.

10 Thank you.

11 And make sure the alternates are out, now.

12 Is there any question about what I said?

13 BAILIFF: No, sir.

14 THE COURT: You got a place to keep the two alternates?

15 BAILIFF: Yes, sir.

16 THE COURT: Okay.

17 ALTERNATES SEPARTED/EXHIBITS AGREED UPON

18 (The attorneys confer with the Court Reporter and agree as to
19 exhibits in evidence.)

20 THE COURT: Are there any objections as to the exhibits?

21 ALL COUNSEL: No, sir.

22 THE COURT: All right. Let them go in the jury room.

23 Tell the jury room they may begin their deliberations.

24 Give them the indictments, please. Where are the
25 indictments?

1 COURT REPORTER: They're right here, Your Honor.

2 THE COURT: Okay. Mr. Moore, are you going in with them?
3 Both of you take the exhibits in and the indictments, and tell the
4 Foreman he may begin deliberations or have lunch at his discretion.

5 Court in recess subject to the call.

6 (The Court recesses the trial of this case awaiting the advice
7 of the jury.)

8 JURY BEGINS DELIBERATIONS AT 1:10 P.M.

9 (The jury presents a question to the Court and by conference
10 with all counsel and the Court in chambers off the record, the
11 response of the Court is given to the jury.

12 The Court thereafter convenes the trial of this case to
13 respond to an additional Juror Note.)

14 THE COURT: "The jury at this time is unable to agree on a
15 verdict."

16 I'm going to give them an Allen charge and let them work until
17 about five.

18 I'm going to let y'all look at it.

19 I'm going to let them work until 5:00, and then I'll declare
20 a mistrial if necessary.

21 Okay. Bring the jury in, please.

22 Bring the defendants out, please.

23 (The defendants are present in the courtroom with counsel, and
24 the jury returns to the courtroom at 4:08 p.m.)

1 ALLEN CHARGE

2 THE COURT: Let the record reflect that the jury and the
3 two alternates are in the courtroom and that the defendants are
4 also present.

5 I have received the following communication from our
6 distinguished jury, and it is as follows:

7 "The jury at this time is unable to agree with a verdict."

8 Which I can certainly understand at this time.

9 You know, you've been deliberating only three hours, since
10 1:00 really, and this is a murder case. So, I'm going to send you
11 back and let you deliberate a while longer, certainly until 5:00.

12 And, Mr. Foreman, if at 5:00 you think there's ever any
13 possibility of reaching a unanimous verdict, I'll bring you back in
14 the morning but at that time you can tell me what your view is with
15 reference to whether or not you think a unanimous verdict might be
16 reached.

17 Let me say to you this. The only mode provided by our laws
18 for deciding questions of fact is by the verdict of a jury such as
19 you.

20 In most all cases absolute certainty cannot be obtained or
21 expected. When a matter is in dispute, it isn't always easy for
22 even two people to agree. So, when twelve people must agree, it
23 becomes, obviously, correspondingly more difficult.

24 I tell you, though, that it is very unusual for a jury to go
25 out and immediately or quickly return with a verdict. That doesn't

ALLEN CHARGE

1 happen. That is what would happen if a jury was in agreement to
2 begin with but at the same time, we usually get a unanimous verdict
3 of either not guilty or guilty.

4 So, while it is normal for jurors to disagree at first, we,
5 nevertheless, get a verdict after the jury has laid aside all
6 extraneous or outside matters and has determined to try the case on
7 its merits and on the basis of the law and evidence in this
8 courtroom heard during this trial.

9 It has been said that jury service is perhaps the highest
10 service a citizen can perform for his or her country or state
11 during peace-time, and I certainly agree with that principal.

12 However, a juror does not render good service who arbitrarily
13 says, "I know what I want to do in this case and if and when
14 everybody agrees with me, then we will write a verdict, and we will
15 not write a verdict until that time until everybody agrees with
16 me."

17 It was never intended that the verdict of the jury should be
18 the view of any one person. At the same time, I tell you that if
19 ever - - I tell you that every juror has a right to his or her own
20 opinion, and he or she should not give up that opinion merely for
21 the purpose of being in agreement.

22 However, the verdict of the jury is the coming together and
23 collective reasoning of all jurors, and that is why we have a jury.

24 It is the duty of each of you, ladies and gentlemen, to tell
25 the other how he or she feels and why he or she feels that way.

1 Since the verdict of the jury is the result of the collective
2 reasoning, it can be said that a verdict is the result of give and
3 take, and with that in mind, I tell you that if the much larger
4 number of your panel are in favor of one position, a dissenting
5 juror or juror should consider whether or not his or her position
6 or positions is a reasonable one which makes no impression upon the
7 minds of the majority.

8 In other words, if a majority of you are of one position, the
9 minority then ought to seriously ask themselves whether they can
10 reasonably doubt the correctness of the judgment of the majority.

11 Although the verdict to which agrees must, of course, always
12 be his or her own verdict, the result of his or her own convictions
13 and not a mere acquiescence in the conclusion of his or her fellows
14 jurors, yet in order to bring twelve people to a unanimous result,
15 you must examine the question submitted to you with candor and with
16 a proper regard, too, and respect for the opinions of each other.

17 You should also consider that you were selected in the same
18 manner and from the same source which any further juror would be in
19 the event of a mistrial, and there is certainly no reason for me to
20 suppose that this case will ever be presented to twelve people more
21 intelligent, impartial and dedicated than you twelve. No reason
22 for me to expect that I would ever find twelve more competent
23 jurors than you or that more clear evidence would be produced on
24 one side or the other.

25 In other words, ladies and gentlemen, a mistrial in a case is

1 an unfortunate thing for all parties. If you do not agree on a
2 verdict, it does not mean that anybody wins. It just means that
3 everybody loses. For in some future time, I or some judge just
4 like me will have to try this case with some jury just as you
5 sitting where you are now. The same participants will come, and
6 the same lawyers will basically question and probably get back the
7 same answers, and we will have to go through this entire process
8 again.

9 So, I say to you that a mistrial is unfortunate, and everybody
10 loses. It doesn't mean that everybody wins. It just means, as
11 I've indicated, we going to have to ask twelve other people to do
12 what this jury was unable to agree to.

13 In conclusion, if the State of South Carolina in this case is
14 entitled to a verdict, it is entitled to it today, not tomorrow or
15 next year. These two defendants, if they are entitled to a
16 verdict of not guilty, they are entitled to it today, not tomorrow
17 or next year.

18 And so it is I'm going to ask that you go back and resume your
19 deliberations. You've only been deliberating three hours, and
20 this is a serious case. It is a murder case.

21 And at 5:00, Mr. Foreman, I want you to send me a note. If
22 you think after further consideration that additional deliberations
23 will help, we'll come back in the morning. If at 5:00 you tell me
24 that you still feel the case will be mistried, then I'll bring you
25 back, and we'll mistry the case, and the case will be tried at some

1 later date.

2 But I want you to make every effort you can to move together
3 to reach a verdict of not guilty or guilty.

4 Now, having said that, I want to make sure that no juror is
5 asked to give up your individual heart-felt opinion be it not
6 guilty or guilty. Would not do that. That would be against your
7 oath.

8 But I do ask that you listen carefully to the positions of
9 each other and determine whether or not theirs is reasonable or
10 yours is reasonable or determine if there can be with candor and
11 under your oath a coming together to reach a verdict of not guilty
12 or guilty.

13 Now, Mr. Foreman, I'll leave it to you. If at 5:00 you tell
14 - - send me a note and say that you are hopelessly deadlocked, I
15 will mistry the case. If you and your jury think that by coming
16 back tomorrow at 9:30 and deliberating further, I will certainly do
17 that, too.

18 Now, you may now begin - - continue your deliberations, and
19 thank you so much.

20 If you have any other questions, let me know.

21 (The jury returns to the courtroom at 4:18 p.m. to continue
22 deliberations.)

23 THE COURT: All right, gentlemen. I have previously shown
24 to you the letter - - the communication with the jurors sent to me
25 and that communication is now made a part of the record.

1 (The Court Reporter accepts a Jury Question and Response of
2 the Court as Court's Exhibit #1.

3 A Jury Note is made Court's Exhibit #2.

4 THE COURT: Have the alternates go back, now.

5 Go back there and make sure those alternates are not in the
6 jury room.

7 Any exceptions or additions to the charge for the State?

8 MR. FILIBERTO: None, sir.

9 THE COURT: What says the defendant Williams?

10 MR. TAYLOR: None, Your Honor.

11 MR. BARR: None, Judge.

12 THE COURT: All right, sir.

13 We are in recess.

14 (The Court recesses the trial of this case and thereafter
15 resumes the trial of this case upon receiving an additional note
16 from the jury.)

17 THE COURT: All right.

18 Have the defendants please be seated.

19 Bring the jury in, please.

20 I'll read the note in just a minute. They've indicated they
21 are getting closer one way or the other and wish to return at 9:30
22 in the morning but I'll read the note to you.

23 (The jury returns to the courtroom at 5:03 p.m.)

24 THE COURT: Mr. Foreman, ladies and gentlemen, and
25 attorneys for the State and the defendants, I've received the

1 following communication which is as follows:

2 "The jury at this time would like to return on Friday,
3 November 14th, to further deliberate this case. We have been able
4 to progress in the same direction but feel we need to return in the
5 a.m. to further discuss and to reach a unanimous verdict."

6 Duly signed by the Foreman, Norwood Steele.

7 Mr. Steele, I thank you for that and I thank your wonderful
8 jury here to agree to come back for further deliberations to see if
9 you can reach a unanimous verdict.

10 As I've indicated, ah, a mistrial is an unfortunate thing. It
11 just means we have to go through the whole situation again, and I
12 want to emphasize to you one more time that I would not ever ask a
13 juror to give up his heartfelt opinion about not guilty or guilty
14 but only to discuss the issue with each other to see if you can
15 come together with unanimity.

16 Now, when you return at 9:30 in the morning, return to the
17 jury room. The alternates will return, too, where ever you are
18 staying.

19 Mr. Foreman, do not begin your deliberations until you have
20 communicated to me that all twelve jurors are present. You
21 understand?

22 Now, remember this. Do not discuss this case with anyone.
23 Permit no one to discuss it with you. Do not discuss it with your
24 fellow jurors except in the confines of the jury room, and the
25 reason for that is this. Whatever your verdict is, either not

ALLEN CHARGE

1 guilty or guilty, must be the unanimous verdict of all twelve of
2 you, and as you leave this evening if two or three of you are
3 discussing some issue in the case in the parking lot, you would be
4 depriving your fellow jurors of your thought process, and they are
5 entitled to that.

6 And, so, remember. The only discussion that can take place is
7 in the confines of the jury room in the presence of the Foreman and
8 the other eleven.

9 So, I'm going to excuse you, now, in just a moment, and thank
10 you for your deliberative attitude. It's a wonderful thing to see
11 a juror intent on doing their duty, and I thank you for that. It
12 just makes me understand and feel better about our jury system
13 every day.

14 It works.

15 See you in the morning at 9:30. Thank you.

16 Alternates will return.

17 (The jury and alternates are released for the day and depart
18 the courtroom with instructions to return at 9:30 a.m. on Friday.)

19 THE COURT: This, gentlemen, you may care to look at this.
20 Mr. Barr.

21 Made a Court's Exhibit.

22 (The Court Reporter accepts the Jury Note as Court's Exhibit
23 #3.)

24 THE COURT: For the State, any exceptions or additions to
25 the further charge?

1 MR. FILIBERTO: No, sir.

2 THE COURT: What say, Mr. - - -

3 MR. TAYLOR: None, Your Honor.

4 THE COURT: What say, Mr. Barr?

5 MR. BARR: None.

6 THE COURT: Let the record so reflect.

7 This court is in recess until 9:30 in the morning.

8 Please leave and leave quietly.

9 Mr. Moore, I want to make sure that that jury room is locked
10 tonight because I'm going to leave the exhibits in there. Can you
11 assure me that it be locked and under key?

12 DEPUTY OFFICER: I'll take care of it, Your Honor.

13 THE COURT: Let there be no question about it, now.

14 (The Court adjourns the trial of this case for the day to
15 resume this trial at 9:30 a.m. on Friday.)

FRIDAY, NOVEMBER 14, 2008

(The Court convenes the trial of this case with all parties present in the courtroom.

The Court indicates off record that all jurors are present with the alternates being separated from the jury. The jury will continue deliberations beginning at 9:30 a.m., and the court will be in recess awaiting advice from the jury.

JURY QUESTIONS AND RESPONSE OF THE COURT

Upon receipt of jury question, the Court discussed the question in chambers off the record with counsel, and upon agreement of counsel, the Court prepared a response to the question, all of which is made a part of the record as Court's Exhibit #4.

The Court Reporter accepted Court's Exhibit #4 into the record.

The Court thereafter reconvenes the trial of this case at 11:12 a.m. upon receiving a further jury question.)

THE COURT: Good morning, ladies and gentlemen. Please be seated.

Thank you.

Let the record reflect that all are present. The defendants are in the courtroom accompanied by their attorneys.

Gentlemen, I have received the following communication dated November 14, 2008, designed as part of the record as Court's Exhibit #5 wherein I have received the following communication from

1 the Foreman Norwood Steele; to-wit:

2 "Can we get a copy or here again about the - - the one hand,
3 two hand law that the judge read to the jury before the start of
4 deliberations?"

5 Anybody care to look at this?

6 MR. TAYLOR: No, Your Honor.

7 THE COURT: All right.

8 Mrs. McCall, make it a part of the record, please.

9 (The Court Reporter accepts the Jury Question as Court's
10 Exhibit #5.)

11 THE COURT: Bring the jury in.

12 (The jury returns to the courtroom at 11:15 a.m.)

13 CHARGE OF THE COURT

14 THE COURT: Good morning, Mr. Foreman. It's a little late
15 for me to be telling you good morning but I haven't had an
16 opportunity to speak to you.

17 Good to see all of you again, and I express to you my
18 appreciation and that of all litigates for the deliberate way in
19 which you are deciding the issues in this case.

20 You have asked that I state to you again the law regarding the
21 hand of one and the hand of all, and I propose to do that in just
22 a moment.

23 Prior to doing so, I ask that you please consider all of the
24 law, of course, in considering this law. We're talking about the
25 burden of proof, the credibility of witnesses, the fact that you

1 are the finders of fact. I charged you with the law of murder.
2 Please keep all of these in mind as you also rehear the hand of one
3 and the hand of all, and in that connection, I tell you again, Mr.
4 Foreman, if you have any questions of what the law is about any
5 issue that I have previously charged, do as you have done now. Ask
6 that I recharge you on various law - - propositions of law that I
7 restated, and I'll be delighted to do that.

8 Now, ladies and gentlemen, I charge you that it is the law of
9 this state that if a crime is committed by two or more people who
10 are acting together in the commission of an offense, the act of one
11 is the act of all, and by way of illustration and illustration
12 only, two people or more can be guilty of another - - of murder
13 when only one had a rifle or pistol or gun and only one shot was
14 fired.

15 If both are together acting together assisting each other in
16 the commission of the offense, the law says that under those
17 circumstances the act of one is the act of all even though one
18 fatal shot was fired, and it is sometimes said that the hand of one
19 is the hand of all.

20 In that connection I charge you as follows. It is that if
21 two or more combine together to commit an unlawful act and in the
22 execution of that criminal act a homicide is committed by one of
23 the actors as a probable or natural consequence of the acts done in
24 the pursuance of a common design, all present participating in the
25 unlawful undertaking are as guilty as the one who committed the

1 fatal act.

2 This must be proved beyond a reasonable doubt, and I charge
3 you that mere presence is not sufficient to convict an individual
4 under the doctrine of hand of one, the hand of all.

5 There must be the common purpose. The common purpose may not
6 have been to kill and murder but if the intended act was unlawful
7 and a homicide was the natural or probable consequence of the plan,
8 then all present participating in the unlawful common design are as
9 guilty as the slayer himself but if the killing had no connection
10 with the common purpose and did not ensue as a probable result of
11 an attempt to execute it, then the slayer alone is responsible for
12 the killing.

13 The test is whether the homicide is committed in the
14 furtherance of a plan and was a probable result of its execution.
15 Under those circumstances is the common purpose - - if there was a
16 common purpose and a murder was convicted - - a murder was
17 committed by one, then under those circumstances we say and the law
18 says that the hand of one is the hand of all in the killing or the
19 murder.

20 Now, I charge you again that there are two defendants in this
21 case charged with murder, and, of course, there is no lesser
22 included. Your verdict whatever you - - as I've indicated
23 earlier, and I tell you again, you must take the evidence
24 separately as to each indictment and write your verdict of not
25 guilty or guilty.

CHARGE OF THE COURT

1 With reference to both verdicts, both can be not guilty.
2 Both can be guilty. One may be not guilty and one may be guilty
3 remembering at all times that your proof must be - - the State's
4 proof must be beyond a reasonable doubt.

5 Now, I tell you again that you twelve are the sole and only
6 finders of the facts in the case. You are the sole and only judges
7 of the credibility and believability of all the witnesses who have
8 testified.

9 I tell you again that in your life's experiences you didn't
10 leave your common sense on the streets of Conway, South Carolina,
11 when you came into this courtroom, and you bring those senses to
12 bear in judging credibility and believability.

13 Your object in judging credibility and believability is to
14 find one single thing, just one, and that is the truth. Let your
15 verdict speak the truth.

16 You may now retire and resume your deliberations.

17 (The jury retires to the jury room at 11:22 a.m. to continue
18 deliberations.)

19 THE COURT: For the State, any exceptions or additions to
20 the charge?

21 MR. FILIBERTO: No, Your Honor.

22 THE COURT: Mr. Taylor, any exceptions or additions to the
23 charge?

24 MR. TAYLOR: No, sir.

25 THE COURT: Mr. Barr?

1 MR. BARR: No, sir, Judge.

2 THE COURT: All right.

3 The record - - the charge will stand.

4 All right. We are in recess subject to the further call of
5 the Court.

6 Thank you.

7 (The Court recesses the trial of this case awaiting advice of
8 the jury.

9 The jury advises a verdict has been reached at 11:38 a.m., and
10 the Court reconvenes the trial of this case to accept the verdict.)

11 JURY REACHES VERDICT AT 11:38 A.M.

12 THE COURT: Be seated, please. I understand we have a
13 verdict.

14 Bring the defendants in, please.

15 MR. TAYLOR: They're getting them right now, Judge.

16 (Defendants enter courtroom and are seated at the defense
17 table along with their counsel.)

18 THE COURT: Ladies and gentlemen, I understand that the
19 jury has reached a unanimous verdict. Whatever the verdict is I
20 tell you now that I will permit no outbreak or conversation from
21 anybody on either side.

22 I know that there are strong emotions on behalf of the
23 deceased family. Equally important, there are strong emotions on
24 behalf of the family of these two defendants but I will permit no
25 outbreak in this courtroom, and if it occurs, I want you to lock

VERDICT

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1 them up immediately. Let there be no question about what I've
2 said.

3 Let the record reflect that counsel are present as are two
4 defendants.

5 Bring the jury in, sir.

6 (The jury returns to the courtroom at 11:408 a.m.)

7 VERDICT

8 THE COURT: The record must reflect that the verdicts in
9 this case were handed to the Bailiff who advised me that as to one
10 verdict, the indictment was unsigned by the Foreperson. I
11 instructed the Bailiff to take the verdicts back to the jury room
12 with the instructions for the Foreman to sign the indictment which
13 had not been signed.

14 Do you agree with that, Mr. Foreman?

15 FOREMAN OF THE JURY: Yes, sir.

16 THE COURT: Mr. Foreman, have you and your distinguished
17 jury reached a unanimous verdict as to both of these indictments?
18 If so, please signify by raising your right hand.

19 (Foreman raises his right hand.)

20 THE COURT: Everybody, please, signify if this be the
21 verdict of all twelve unanimously.

22 (All twelve jurors raise right hands.)

23 THE COURT: The verdict being unanimous by the signing of
24 of the hands, Madame Bailiff accept the indictments and hand them
25 to me. Madame Clerk or Bailiff, you may hand them to me.

1 (The Court accepts the indictments from the Bailiff.)

2 THE COURT: The verdicts are now duly executed by Mr.
3 Norwood Steele. I thank you, Mr. Steele.

4 Madame Clerk, please publish the verdicts.

5 CLERK OF COURT: Indictment #08-GS-26-1689, The State vs.
6 Jimmy Lee Williams, on the charge of murder:

7 We, the jury, by unanimous consent find the defendant guilty.

8 Dated: 11/14/08. Signed by Norwood Steele.

9 Indictment #08-GS-26-1690, The State vs. Anthony Quentin
10 Scott, on the charge of murder:

11 We, the jury, by unanimous consent find the defendant guilty.

12 Dated: 11/14/08. Signed by Norwood Steele.

13 THE COURT: Thank you. Be seated.

14 Mr. Foreman, ladies and gentlemen, of course, you were the
15 finders of the facts in this case, and I have no comment to make
16 upon your finding except to say that the evidence produced in this
17 courtroom would in my opinion justify a finding of guilty as to
18 both defendants under the hand of all.

19 The testify, if believed, and you, obviously, believed it,
20 clearly indicated that both were involved in this unfortunate
21 killing of the deceased.

22 I want to say to you that none of you asked to come in this
23 court this week, and, certainly none of you asked to sit on a
24 murder case but having done that, you have done your duty under
25 your oath as citizens of this state and of the wonderful county of

1 Horry.

2 Your verdict here is going to send a message, and it's
3 appropriately, and that is this drive-by shooting has serious
4 consequences, and that's a message that's got to be sent to this
5 entire state if we are to live and raise our families in a
6 civilized society.

7 I want to thank all of you for your services, and I'll ask
8 that you go to the jury room. I'll be dismissing you in just a
9 moment.

10 Thank you.

11 Take them to the jury room.

12 (The jury retires to the jury room at 11:44 a.m.)

13 THE COURT: Let both defendants and their attorneys see the
14 verdict form, Madame Clerk. Pass it to them.

15 Both indictments have now been signed by the Foreman.

16 Are there any questions as to the sufficiency of the verdict?

17 What say Mr. Taylor?

18 MR. TAYLOR: No, sir, Your Honor.

19 THE COURT: What say Mr. Barr?

20 MR. BARR: No, sir, Judge.

21 THE COURT: All right, sir.

22 Tell the - - you may discharge the jury. Tell the Foreperson
23 that I want him to stay. I'll be with him in just a minute,
24 please.

25 DEPUTY: Yes, sir, Your Honor.

1 MOTIONS AND RULING OF THE COURT

2 THE COURT: All right, sir.

3 Anything further? If there's any motions for a new trial,
4 I'll hear them at this time. I'll never know more about what
5 occurred than later. Can I hear them now?

6 What say you, Mr. Taylor?

7 MR. TAYLOR: My client has just indicated that he would ask
8 for a new trial, Your Honor.

9 THE COURT: All right, sir.

10 Yes, sir, Mr. Barr?

11 MR. BARR: Judge, we would respectfully move for a, ah,
12 judgment in arrest of the verdict or in the alternative, a new
13 trial.

14 We certainly take the position that the jury verdict was
15 against the overwhelming weight of the evidence. Moreover,
16 clearly, apparently, the jury verdict comes as a surprise, not only
17 a surprise, but, apparently, has been affected by some
18 circumstances other than, ah, ah, the evidence in the case.

19 THE COURT: Well, what circumstances can you possibly
20 allude to, Mr. Barr?

21 MR. BARR: Ah, Your Honor, perhaps, ah, ah, over the night
22 they would have conversed with other people. They were exposed to
23 the media.

24 We left here yesterday. They said the verdict was - - it was
25 eight to four in favor of - - and of course, we didn't' know what,

1 but, Your Honor, suffice it to say we do believe that this is a
2 radical turn-around in perhaps in less than two hours.

3 THE COURT: Well, I hear what you're saying but quite
4 often, I've been on the Bench twenty-five years, and I've had
5 jurors on many occasions indicate that late in the evening they
6 cannot reach a verdict. Bring them back the next day after clear
7 heads and further conversation, and we usually - - it's been my
8 experience that I - - when a jury asks to come back the next day,
9 you going to get a verdict one way or the other ninety-nine percent
10 of the time.

11 I conclude as I've indicated to you that it was the question
12 for the jury but if they believe that that Williams had that
13 conversation over the phone and if they believed that both of them
14 were there and if they believed that bullet shells were found in
15 his car and if they believed that he hid the car - - hid the weapon
16 at his momma's house and if they believed that that was the weapon
17 that fired the fatal shot and there was evidence circumstantially
18 that indicated all of these things, then, clearly, both of them
19 under the circumstances were together, and the hand of one is the
20 hand of all.

21 So, the jury concluded that these two young men acting
22 together deliberately with malice aforethought killed that
23 unfortunate victim. Your motions are respectfully denied.

24 Have the defendants come forward.

25 (The defendants stand before the Court with their counsel.)

1 THE COURT: With regards to defendant Williams, what prior
2 record does he have?

3 MR. TAYLOR: None prior to being arrested.

4 THE COURT: Sir?

5 MR. TAYLOR: None prior to being arrested. It is my
6 understanding that he has simple assault and battery while being
7 incarcerated in J. Reuben Long Detention Center.

8 MR. FILIBERTO: That is correct, Your Honor.

9 THE COURT: With regard to defendant Scott, what prior
10 record?

11 MR. FILIBERTO: He has, I believe, two convictions for
12 unlawful carrying of a pistol.

13 THE COURT: Anything further you want to tell me, Mr.
14 Taylor, as to defendant Williams?

15 MR. TAYLOR: Your Honor, my client before you is twenty-two
16 years old, born and raised here in Horry County. His entire
17 family is here on the left side of the room. He's never been in
18 trouble before in his life.

19 Your Honor, you've heard this case. You know the facts
20 surrounding it.

21 THE COURT: Oh, I'm convinced - - yeah, I've heard it.

22 THE COURT: How about you, Mr. Barr?

23 What - - your - - -

24 MR. BARR: Your Honor, I - - you've heard this case. It's
25 part of the record. It - - of course, you sat as the trial judge

1 during the case, and you know what the facts and circumstances,
2 and, of course, the statute sets forth the penalty, and I don't see
3 the need to say anything further in mitigation.

4 THE COURT: Solicitor, you have any further comments?

5 MR. FILIBERTO: Yes, Your Honor.

6 The mother of the victim would like the opportunity to address
7 the Court at the appropriate time.

8 THE COURT: I'll hear from her at this time.

9 Let me ask you this. What is this? Is this a drug deal gone
10 bad?

11 MR. FILIBERTO: Your Honor, the evidence as I would see it
12 is that the victim in this case believed his home was burglarized
13 and some property taken. Now, it could have been contraband. We
14 don't know.

15 And that there is evidence that when at least one these
16 defendants, and Your Honor ruled on a motion in limini. So,
17 you're aware of it, that one of the defendants at least had
18 marijuana I believe in his coat pocket when he was arrested.

19 THE COURT: All right.

20 I'm hearing that defendant Williams has no prior record, a
21 young man, and the defendant Scott only has - - well, I say only
22 has, has two weapons charges.

23 I'll hear very briefly from the victim's mother. Now, I don't
24 want her to talk to the defendants. I want her to talk to me.

25 Yes, ma'am. I'll be glad to hear from you, and I - - you have

1 my deepest sympathy in your loss.

2 MR. FILIBERTO: Your Honor, also, the victim's father
3 would also like to speak.

4 THE COURT: Be glad - - they're entitled to say that but
5 you need to talk to me, now, instead of the victims, I mean,
6 defendants.

7 MS. OWENS: I will, Judge Cottingham.

8 THE COURT: Be glad to hear from you.

9 MS. OWENS: Okay. Can I go ahead?

10 THE COURT: Yes, ma'am, please.

11 MS. OWENS: Okay.

12 My name is Mary Robinson - - Mary Robinson Owens, and I'd like
13 to thank you, Judge Cottingham, for your wisdom, experience and
14 leadership in guiding this trial for my son.

15 I'd like to thank you for doing the right thing, and there is
16 no way to return my son to me, my only child that I ever had but I
17 ask you to consider the fact that my son has four children that are
18 left here, and my four grand kids need to understand that there is
19 a law.

20 One of the attorneys stated yesterday that part of what
21 happens in a democracy in America, that military folks go, and they
22 fight, and they make democracy in this country. You have guided
23 this court to the right decision.

24 I know that the other family is hurting. I even understand

1 their pain but my pain is so severe because my son will never be
2 able to talk again. I will never be able to see him again.

3 So, thank you, and I ask you to continue with your experience
4 in making sure that my son and his life is not in vain.

5 THE COURT: Be glad to hear from the father.

6 MR. RASODO: Frank Rasodo, Sr.

7 I'm - - I'm - - Judge - - -

8 THE COURT: You have to stand under our rules, please.

9 MR. RASODO: All right. I'm sorry.

10 THE COURT: I know it's difficult for you - -

11 MR. RASODO: Sorry, Your Honor.

12 THE COURT: - - but it's our rules.

13 MR. RASODO: I just wanted to say that thank you, and
14 justice was served here today.

15 I was born an only child, sir, and as fate would have it, I
16 only had one child, a son named after me.

17 Four years ago I buried my father. Two years ago I buried -
18 - two years later I buried my mother. Exactly one year to the
19 month I buried my son, my only son. That was not suppose to
20 happen. That's not the way God intended it to be.

21 Efrain was the best of me, my pride, my joy. He was so full
22 of life always laughing and smiling and so independent.

23 I remember he was so upset when his grandmother passed away.
24 She had suffered so much, and, actually, it brought us even closer.

25 We talked several times a week and planned a vacation together

1 that summer. He showed us new places to go hear in Myrtle Beach,
2 fun things to do, different eating places. He and I played
3 basketball which we enjoyed each other doing that.

4 We visited him at home before we left, and when we were
5 leaving I remember waiving out of the car and looking at him
6 through my mirror until we were out of site. He was still waiving
7 and smiling. That was the last time I saw my son. Six months
8 later he was gone, murdered.

9 Gone is the best part of me, gone are my dreams of my
10 vacations with him. Gone is the opportunity of having my son
11 there for me as I age like I was for my parents.

12 Gone is my pride and joy. He left us with four beautiful
13 grandchildren that will not have their dad for them on special
14 occasions, graduations, weddings, births but they will be loved by
15 extended family, and he will be kept in their hearts through our
16 memories.

17 This was a ruthless, senseless act.

18 A bullet to the leg could be considered self-defense. A
19 bullet in the brain is murder.

20 A large number of people in this world today think that taking
21 a life for whatever reason is all right.

22 And for - - and for that I choose to rely on the judicial
23 system for justice, and when it's all said and done, God will be
24 the judge and the jury.

25 Thank you, Judge.

1 THE COURT: Mr. Williams, defendant Williams, it's not
2 necessary but if you have anything to say, I'll be glad to hear it.

3 Defendant Scott, same thing.

4 All right. The statutory laws provide - - excuse me.

5 MR. BARR: Judge, if I might, and I - - I feel compelled,
6 ah, with respect to - - to - - and I know the issue of self-defense
7 at least as far as this trial it was never an issue in the trial
8 but, clearly, it was an issue that based on the facts of the
9 situation, this was a drug dealing case.

10 THE COURT: You had the - - I understand.

11 You had the opportunity - -

12 MR. BARR: Yes, we put - -

13 THE COURT: - - to put self-defense in, and you elected not
14 to do it.

15 MR. BARR: - - yes, we did that, Judge, and but, now, when
16 you asked a few minutes ago, you asked the Solicitor whether or not
17 drugs was involved. Everybody in the community knows, Your Honor,
18 it was involved. Everybody knows the decedent was dealing drugs,
19 and the argument was whether or not this young man, Mr. Williams,
20 had broken into his house and stole his drugs. That's what the
21 whole issue was about, and there's no use in trying to dress that
22 up or call it something it's not.

23 That's - - now, nobody likes it. It's something that we need
24 to get rid of. We ought to call a spade a spade.

25 THE COURT: Oh, I'm sure it was a drug deal. I sensed that

1 early on.

2 MR. BARR: Yes, sir.

3 SENTENCE OF THE COURT

4 THE COURT: I understand that.

5 And I see it all the time with these drive-by shootings in
6 these drug deals.

7 Young man, you need to know that the statutory laws of South
8 Carolina provide that one convicted of murder must be sentenced to
9 either thirty years - - thirty years or life imprisonment without
10 the possibility of parole.

11 Now, in your case this is a heinous crime. Y'all went by
12 there to have a confrontation with that fellow, and I don't know
13 whether you meant to kill him or not but you brought the stuff to
14 kill him with, a pistol and a gun.

15 As it were, though, the jury has found that you killed him,
16 and you did, and it was because of over drugs. I'm convinced of
17 that.

18 I've found, though, that you sentence a person to life
19 imprisonment without the possibility of parole, he becomes
20 incorrigible, and, ah, hard to keep in check because he has no hope
21 for the future, and, thus, it is in my determination when I see two
22 young men charged with murder, I very seldom give him life
23 imprisonment for this reason. I want you to, at least, at your
24 young age to have some hope to get out someday, and, consequently,
25 to behave yourself so that will happen knowing that nothing we can

1 do can ever bring back the life of the deceased.

2 Given - - you are twenty-three?

3 MR. TAYLOR: Twenty-two, Your Honor.

4 THE COURT: And how old are you, young man?

5 MR. SCOTT: Twenty-two.

6 THE COURT: Twenty-two.

7 Well, your sentence here is going to send a word to some
8 twenty-two year old folks in this state and in this county
9 specifically that this business of taking a gun and going and
10 killing somebody because they got in your face has dire
11 consequences, and this does with me.

12 It is the judgment and sentence of the Court that you, Mr.
13 Williams, be sentenced to a period of thirty years in the state
14 penitentiary.

15 Mr. Scott, it is the judgment and sentence of this Court that
16 you be confined and sentenced for a period of thirty years in the
17 state penitentiary.

18 And I'm not giving you life to give you an opportunity at
19 least to rehabilitate yourself while in prison.

20 Thank you, Mr. Barr.

21 MR. BARR: Thank you, Judge.

22 THE COURT: Thank you, Mr. Taylor.

23 All right. Thank you, so much.

24 This Court is now adjourned sine die.

25 (The Court adjourns the trial of this case and court for the

1 week.)

2 - - - END OF TRANSCRIPT - - -

GENERAL SESSIONS JURY SELECTION

1011

CASE NO: 6526 DATE: Nov. 10, 2008

PLAINTIFF: The STATE ATTORNEY: Larry Filaberto AS
George DeBuck AS

DEFENDANT: Anthony Quinton Scott ATTORNEY: Charles David Bove
Jimmy Lee Williams Paul Taylor

PRESIDING JUDGE: Edward B. Cottonham COURT REPORTER: LINDA W. MCCALL

S T R I K E S								
JUROR #	NAME	RACE	SEX	COURT	STATE	DEF	Def. Scott	Def. Taylor
396	Rhonda Wainright	C	F				X	
152	Michael Granton	C	M			X		
163	Cynthia Hancock	C	F					✓
254	Barry Marion	C	M				X	
230	Bruce Lamont	C	M			X		
192	Christopher Hudson	AA	M			X		
19	Gary Awaalt	C	M					✓
194	Ethel Hunt	C	F					✓
51	Karen Bullo	C	F			X		
189	Daniel Horton	C	M				X	
90	Ricky Davis	C	M		X			
411	Christopher Williams	C	M				X	
12	Stacey Archer	C	F			X		
138	Mary Gilleland	C	F			X		
246	Carl Long	C	M					✓
361	Norwood Steele	AA	M					✓
414	Erma Wilson	AA	F		X			
27	Denise Benedetto	C	F			X		
261	Redana McClouth	C	F					✓
74	Teralyn Corey	C	F					✓
208	Rickey Jones	C	M					✓
218	Geogia Kenny	C	F				X	
397	Collins Wakefield	C	M			X		
323	Antonie Rivera	?	M				X	
406	Ronald Wentzel	C	M					✓
43	Brenda Brads	C	F			X		
359	Jackilyn Stavrakis	C	F					✓
409	Linda Whiteside	C	F					✓
379	Jay Moss	C	M				X	
421	William Wright	AA	M					✓
<u>Alternates</u>								
115	John Farrelly	C	M			X		
86	William Dallas	C	M		X			
50	Stephen Burrison	C	M					X

18 Charles Avery

C M

15 Kenneth Ashworth

C M

257 Jerry Jeri Stalvey

C F

<u>State</u>	<u>Wm</u>	<u>Scott</u>	<u>Clay</u>
		X	✓

CERTIFICATE OF COURT REPORTER

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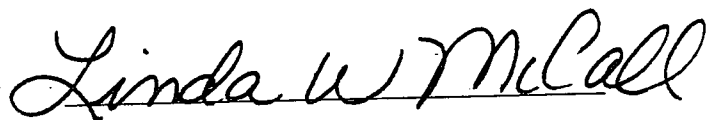
1 STATE OF SOUTH CAROLINA)

2 COUNTY OF HORRY)

3
4 I, the undersigned Linda W. McCall, Official Court
5 Reporter for South Carolina Court Administration, do hereby
6 certify that the foregoing is a true, accurate and complete
7 Transcript of Record of all the proceedings had and evidence
8 introduced in the trial of the captioned case relative to
9 appeal, in the Court of General Sessions of Horry County, South
10 Carolina.

11 I do further certify that I am neither of kin, counsel,
12 nor interest to any party hereto.

13 April 9, 2009

14 

15
16 Linda W. McCall

17 Official Reporter
18
19

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Horry County

Honorable Larry B. Hyman, Jr., Circuit Court Judge

APPELLATE CASE NO: 2013-001577

JIMMY LEE WILLIAMS,

PETITIONER,

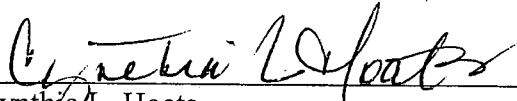
v.

THE STATE,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this the 17th day of April 2014, a copy of the *Petitioner's Supplement to Appendix* in the above-referenced case has been served upon Joshua Thomas, Esquire, of the SC Attorney General's Office, Post Office Box 11549, Columbia, South Carolina, 29211, by depositing same in the U. S. Postal Service receptacle, with sufficient postage affixed thereto.


Cynthia L. Hoats
Legal Assistant to John Mobley, Esquire
THE MOBLEY LAW FIRM, P.A.
925 Calhoun Street
Columbia SC 29201
(803) 933-0010 (telephone)
(803) 931-3044 (facsimile)

Columbia, South Carolina
April 17th, 2014.