

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM DORCHESTER COUNTY MAY 05 2014

Edgar W. Dickson, Circuit Court Judge SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MELVIN HAYNES,

APPELLANT

APPELLATE CASE NO. 2013-000438

RECORD ON APPEAL

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 2 COUNTY OF DORCHESTER) COURT OF GENERAL SESSIONS
 2009 GS 18 1182

3

4 STATE OF SOUTH CAROLINA)

5)

6 versus) TRANSCRIPT OF RECORD

7)

8 MELVIN HAYNES)

9 Defendant)

10 St. George, South Carolina
 11 December 6-9, 2011
 April 5, 2012

12

13 B E F O R E :

14 HONORABLE EDGAR W. DICKSON, Judge

15

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25

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1 THE COURT: Is the State ready to proceed?

2 SOLICITOR: State's ready, Your Honor.

3 THE COURT: Is the Defense ready to proceed?

4 MR. MESSERVY: Yes, sir.

5 THE COURT: All right. The strikes are five and
6 five.

7 CLERK: When I call your names, please come forward
8 and turn and face the back of the Courtroom.

9 Juror Number 74, Marvin Johnson, Junior.

10 (Juror coming forward)

11 CLERK: What says the State?

12 SOLICITOR: Please present him.

13 CLERK: What says the Defense?

14 MR. MESSERVY: Please swear the juror.

15 CLERK: Have a seat in the jury box.

16 (Whereupon, the balance of the jury was drawn in the
17 same fashion, as follows:

18 Juror Number 28, Marylon Cox, excused by the Defense

19 Juror Number 126, Christopher Slempa, seated

20 Juror Number 146, Thomas Walker, excused by the

21 State

22 Juror Number 10, Jacquelyn Atkinson, excused by the

23 Defense

24 Juror Number 23, Stephen Chellis, seated

25 Juror Number 15, Raymond Breazeale, seated

1 Juror Number 78, Roxann King, seated
2 Juror Number 139, Brenda Taylor, seated
3 Juror Number 4, Teresa Adams, seated
4 Juror Number 98, Billie Okey, seated
5 Juror Number 155, Christopher Wren, excused by the
6 Defense
7 Juror Number 81, Katrina Ladson, excused by the
8 State
9 Juror Number 37, Cameron Egger, seated
10 Juror Number 145, Teresa Walker, excused by the De-
11 fense
12 Juror Number 157, Judy Young, seated
13 Juror Number 2, Dwayne Acosta, excused by the State
14 Juror Number 19, Lionel Cantrell, excused by the
15 State
16 Juror Number 51, Susan Goodwin, seated
17 Juror Number 103, Mark Pyles, seated
18 THE COURT: That's the jury. Now we're going to
19 pick the first alternate.)
20 CLERK: Juror Number 65, Jeffrey Hill.
21 (Mr. Hill selected as First Alternate)
22 THE COURT: We're now picking the second alternate.
23 CLERK: Juror 102, Beth Preston.
24 (Ms. Preston excused by the Defense)
25 CLERK: Juror 94, Larae Moorner.

1 MR. MESSERVY: Still one and one?
2 THE COURT: Still one and one.
3 (Ms. Moorer excused by the State)
4 CLERK: Juror 63, Susan Henderson.
5 (Ms. Henderson excused by the Defense)
6 THE COURT: May I see you all one second?
7 (Colloquy at the bench off the record between coun-
8 sel and the Court)
9 THE COURT: I'm going to let you rephrase it since
10 you've used one of your strikes.
11 MR. MESERVY: One and one.
12 (Further colloquy)
13 THE COURT: You all selected Mr. Hill and then you
14 started doing the second alternate. Okay, go ahead.
15 Five and five, and two and one on the alternates.
16 Thank you, Ms. Henderson.
17 CLERK: Juror Number 7, Gregory Apted.
18 (Mr. Apted seated as second alternate)
19 THE COURT: We'll select alternate number three, and
20 I stand corrected -- it will be two and one.
21 CLERK: Juaror Number 133, Rosemary Snedecker.
22 (Ms. Snedecker seated as third alternate)
23 THE COURT: All right, is there anything from the
24 State regarding jury selection?
25 SOLICITOR: No, sir.

1 THE COURT: Any issues from the Defendant regarding
2 jury selection?

3 MR. MESSERVY: Just a moment, please.

4 THE COURT: Okay.

5 (Brief pause in proceeding)

6 MR. MESSERVY: Yes, sir, Your Honor.

7 THE COURT: All right, would you take the selected
8 jurors back in the jury room for a moment, and, ladies
9 and gentlemen, we have some issues that we've got to take
10 up before you can be excused, but I'm going to have you
11 step out of the Courtroom while we take those issues up
12 with the attorneys. They can just go out in the hallway,
13 and that will be fine.

14 (Jurors all excused from the Courtroom)

15 THE COURT: All right, Mr. Messervy. Let me hear
16 from you, please.

17 MR. MESSERVY: Yes, sir, Your Honor. The jury pool
18 is overwhelmingly white. I counted up fifty or fifty-two
19 whites and less than ten blacks.

20 The prosecution has struck three blacks and three
21 whites. He struck approximately forty percent of the
22 black jurors.

23 Therefore, I would ask him to explain the nature of
24 his reasons for striking them.

25 THE COURT: All right, Solicitor.

1 MR. MESSERVY: Since my client is black, I would ask
2 for an explanation.

3 SOLICITOR: I'll be glad to, Your Honor. I used
4 four of my strikes in picking the jury and one strike in
5 picking an alternate.

6 The first person I struck, Number 146, is from
7 Ridgeville, the same home town as the incident occurred,
8 a white male. I'll say why I struck each one.

9 As to the alternate juror, Number 94, is a black
10 female, from Ridgeville, if you will notice. I struck
11 everyone from Ridgeville because of their coming from
12 Ridgeville, the same home town as where the incident oc-
13 curred, and where Defendant lived. Two strikes on that.

14 Juror Number 2 and Juror Number 19, a black male and
15 a white male, I just struck right behind each other.
16 Both of them have CDV arrests on their record. I be-
17 lieve they were the only jurors who had CDV arrests. A
18 CDV arrest means there was some kind of violent situation
19 there, and this case involved a violent crime.

20 THE COURT: That was Juror Number 2 and Number 19?

21 SOLICITOR: Numbers 2 and 19. One was black and one
22 was white.

23 So these are totally race-neutral, and then, finally,
24 my final strike was a black female, Number 81, and she
25 stated she worked for, I believe, a home for seniors and

1 that she takes care of the elderly and everything. In
2 this case, we have an elderly gentleman who is disabled.
3 We felt she would be sympathetic to an older Defendant
4 that was disabled.

5 There will be medical testimony on the record and
6 she would know about medicines and all those things, and
7 she would be sympathetic. That's why we struck her.

8 Those would be the reasons for striking all jurors
9 that we struck.

10 THE COURT: Yes, sir.

11 MR. MESSERVY: First of all, I would point out that
12 he used records which he has available. I asked him on
13 yesterday for the rap sheets and he used the rap sheets
14 for striking, and that might have been of benefit to me.

15 Therefore, in the discovery he should give the rap
16 sheets to the Defense. He has the rap sheets, and I had
17 asked for them.

18 He also, I believe, accepted nurses. Number 98, I
19 believe, Ms. Okey, is a cardiac RN. Now, if anybody knows
20 anything about -- she's white -- and if anybody knows
21 anything about medical issues and medicines and old peo-
22 ple, it's nurses, cardiac nurses. That, to me, is not
23 sufficient to -- with the amount that he struck, he could
24 have struck her too.

25 She was number eight and he was choosing number 11

1 -- we were choosing number 11 when he struck her, and it
2 is not a race neutral reason, Your Honor.

3 THE COURT: Would you go back over the last part of
4 that?

5 MR. MESSERVY: He said he struck her, unless I'm mis-
6 quoting him, because she knew a lot about old people and
7 a lot about drugs and all, and Number 98 he let on there
8 who is a cardiac RN. If anyone would know anything about
9 drugs, it would be a cardiac RN.

10 So I -- and this person is -- I remember she had a
11 high school education, the Cardiac RN, and her training,
12 and I submit that would not be a racially neutral reason.

13 THE COURT: All right.

14 MR. MESSERVY: I believe there were others who were
15 struck -- Brenda Taylor who is Number 39 was a retired
16 DHEC RN, and then Number 133, Rosemary Snedeker, worked
17 at Hospice as a Certified Nursing Assistant. She is
18 also white.

19 THE COURT: All right. Anything else?

20 MR. MESSERVY: No, Your Honor. I could take some
21 more time, but I think that's sufficient.

22 THE COURT: Ms. Snedeker was the third alternate.

23 MR. MESSERVY: Yes, sir, and she was someone who did
24 not need to be struck or we would have the same problem
25 there as with the others.

1 But I would say that all of those reasons are pre-
2 tentual.

3 THE COURT: All right. Anything from you, Solici-
4 tor? Anything in response?

5 SOLICITOR: Yes, Your Honor. As far as the rap
6 sheet situation, we are not required to provide him with
7 that. He can actually pay and have raps run, so that is
8 a discovery issue that has nothing to do with Battson.

9 As far as Number 133, she's a Certified Nursing
10 Assistant, works in Hospice with people of all ages, and
11 that is different from someone who -- here we have --
12 Number 81 said she worked at a home for the elderly and
13 delivered meals to them.

14 That was the difference between the two. As far as
15 the other RN, as I mentioned before, it was the ultimate
16 reason I stated first, she would have sympathy for older
17 people.

18 I think there was one RN who was a cardiac nurse,
19 that doesn't necessarily specify her, you know, as to
20 old people, and Juror 81 that I struck, I think she
21 said she was in graduate school.

22 THE COURT: All right.

23 MR. MESSERVY: Your Honor, could I -- just briefly?

24 THE COURT: All right.

25 MR. MESSERVY: Cardiac nurses don't have a lot of

1 twenty-two year olds, but they do hav a lot of sixty-
2 five year olds, I will tell you. Cardiac nurses primar-
3 ily deal with older people.

4 THE COURT: The State has provided to the Court's
5 satisfaction race-neutral reasons that I believe are
6 plausible, and so I am going to deny your Battson motion
7 as presented, but I will note your objection to my ruling
8 for the record, Mr. Messervy.

9 Okay? Now, before I bring the jury back in here,
10 we are going to tell them to come back at ten in the morn-
11 ing, is that correct?

12 SOLICITOR: Yes, Your Honor.

13 THE COURT: Let me suggest since I have a summary
14 judgment motion and another thing at nine thirty and there
15 is a chance it might go over, I'll tell them ten thirty.
16 Okay?

17 SOLICITOR: Yes, sir.

18 THE COURT: So I will excuse them and bring them
19 back in the morning to begin the case.

20 Okay, bring them in.

21 (Selected jury panel and other jurors brought into
22 the Courtroom)

23 THE COURT: Thank you, ladies and gentlemen, for
24 being willing to serve as jurors. We only have one trial
25 that is scheduled for this week, and the jury **has been**

1 MR. MESSERVY: He doesn't, you know, but they don't
2 need it, Your Honor, and it's prejudicial.

3 SOLICITOR: It's required by law.

4 THE COURT: Mr. Messervy, I understand your -- if
5 this was a civil case about auto accidents, you know, he
6 wouldn't get insurance in, but I believe Mr. Lee can
7 testify as to why he was seeking the car to be repo'd,
8 the car or truck or whatever it was.

9 So I'm going to deny your motion to exclude any
10 evidence regarding insurance coverage. He can testify
11 to that. Okay?

12 MR. MESSERVY: All right. I want to -- under the

13 . . .

14 THE COURT: You've got something about immunity from
15 prosecution?

16 MR. MESSERVY: Yes, sir.

17 THE COURT: What's that?

18 MR. MESSERVY: He was defending himself at this
19 time, and this is being raised also in Beaufort, Your
20 Honor, with another vehicle where the repo man shot the
21 person.

22 THE COURT: All right.

23 MR. MESSERVAS: He was -- it was decided that the
24 place of business is where business is conducted.

25 In a shrimp case that I learned about today that

1 Mr. Savage handled, the guy's place of business was on
2 the side of the road where he was selling shrimp, and he
3 received immunity from prosecution for his actions.

4 In this particular case, the repo man testified he
5 was there on business, business with the truck and the
6 Defendant. Therefore, if the Defendant had the right to
7 defend himself under the immunity doctrine by using some
8 force to try to prevent them from taking his car . .

9 THE COURT: All right, sir.

10 MR. MESSERVY: This is new law, Your Honor, and
11 I understand that. There is no case I found on that.

12 THE COURT: I understand.

13 SOLICITOR: I would just say, Your Honor, obviously
14 it wasn't his place of business. It was his home. He
15 wasn't conducting business there. He was trying to keep,
16 according to his testimony, someone from stealing his ve-
17 hicle, if that's what he thought they were doing, and he
18 wasn't protecting his person.

19 According to his testimony last time, they were
20 going down the road, driving away, so I don't see how he
21 was protecting his business or his home or his person.
22 He was protecting personal property.

23 That's what he testified to, and as you charged the
24 jury last time, he has no right to use violence to pro-
25 tect personal property.

1 He testified he never even saw the people; that
2 they were in the vehicle; at no time was he threatened.
3 The victim had been shot in the back of the head as he
4 was driving away from and not facing the Defendant in
5 this case.

6 So, I mean, it is just a stretch of the law to say
7 that he's entitled to the Castle Doctrine because some-
8 one else was trying to conduct business on his property.

9 MR. MESSERVY: I believe the law says place of bus-
10 iness.

11 SOLICITOR: Yeah, of the person who is trying to
12 claim the Castle Doctrine.

13 THE COURT: Okay. Mr. Justis and Mr. Messervy, the
14 Code Section reads that it is a person's home, an occu-
15 pied vehicle, and that person's place of business, the
16 person's place of business. Okay?

17 Additionally, it appears to me that the Castle Doc-
18 trine does not apply. The vehicle was not occupied and
19 they were not trying to enter anyone's home, and he was
20 not in fear of any great bodily injury.

21 I'm going to deny your motion. Okay?

22 MR. MESSERVY: If you would note my objection.

23 THE COURT: Yes, sir.

24 MR. MESSERVY: Your Honor, as the case plays out, I
25 may renew my motion.

1 THE COURT: That's fine. I will preserve your objec-
2 tion to my ruling for the record.

3 Anything else?

4 MR. MESSERVY: I'd like the opportunity to sit there
5 and have the opportunity the rest of the day, if nothing
6 else -- you know, I -- to look at this and look at the
7 standards, where they were shot, and that type of stuff.
8 So I would request a continuance at least until tomorrow.

9 THE COURT: Well, she's not going to testify today,
10 so you'll have time this evening.

11 Okay, what else?

12 MR. MESSERVY: Well, Your Honor, could I have a few
13 minutes? Would you send the jury to lunch and then let
14 us start after lunch?

15 THE COURT: No, sir. What I would like to do is go
16 ahead and bring the jury in. I'm going to bring them in
17 and swear them in.

18 I'm going to charge them, you can open, and then we
19 will break for lunch.

20 MR. MESSERVY: But I may not -- my opening may de-
21 pend on what that shows.

22 SOLICITOR: The only other thing I would ask is that
23 we took his written statement, and as to a Jackson v.
24 Denno hearing -- I don't know if he's going to waive
25 that.

1 THE COURT: You may call your first witness.
2 SOLICITOR: Thank you, Your Honor. May it please
3 the Court?
4 THE COURT: Yes, sir.
5 SOLICITOR: At this time the State calls Paul Lee.
6 PAUL LEE, being duly
7 sworn, testified as follows:
8 CLERK: Please have a seat on the witness stand and
9 state your name for the record.
10 WITNESS: Paul David Lee.
11 CLERK: Thank you.
12 THE COURT: Your witness, Mr. Justis.
13 DIRECT EXAMINATION
14 BY SOLICITOR:
15 Q. Mr. Lee, where do you work?
16 A. Carolina Car Credit.
17 Q. And did you have an opportunity to manage an account
18 on a car loan for Mr. Melvin Haynes?
19 A. Yes, sir, I did.
20 Q. And are you prepared to testify about that account
21 today?
22 A. Yes, sir.
23 Q. Before we get into that, let's find out a little
24 bit more about you.
25 What is your title?

MR. LEE ON DIRECT

1 A. I'm a branch manager.

2 Q. What are some of the duties you have as a branch
3 manager?

4 A. To oversee accounts and make decisions as far as
5 what the next step would be in handling accounts, to
6 make new loans, approve loans, look at applications for
7 loans -- loans applications, stuff like that.

8 Q. And when people become delinquent in their car pay-
9 ments, what are some of the things that you do?

10 A. When they become delinquent?

11 Q. Correct.

12 A. Well, we have to send them a default letter to make
13 sure they understand they are in default, and then we
14 try and get in touch with them and we call them on the
15 phone to talk with them about past due payments.

16 MR. MESSERVY: I'm sorry. I'm a little hard of
17 hearing so if you could speak up a little bit, please.

18 WITNESS: I'm sorry.

19 THE COURT: You may want to pull that microphone a
20 little bit closer to you.

21 WITNESS: Yes, sir. I'm sorry.

22 BY SOLICITOR:

23 Q. All right, sir.

24 A. We call -- the first attempt when they are delin-
25 quent is to call them and talk to them and try to come

MR. LEE ON DIRECT

1 to a resolution with them.

2 Q. Okay, and how delinquent can they get before you do
3 something about it?

4 A. Most of our contracts have a ten day grace period.
5 That means that they can pay it -- we still, even if are
6 five days late, we can call them just as a courtesy.

7 When they become eleven days late they are actually
8 starting to be in default, and that is when a default
9 letter is to be sent, telling them they are past their
10 ten day grace period.

11 Q. And what other issues are of concern to you if they
12 -- if this person or this individual has this loan and
13 are past due in payments to your company?

14 What other items other than the delinquent payments
15 concern you about the account?

16 A. Their ability to repay that loan, the address, then
17 insurance -- make sure the car was insured at all times.
18 To make sure our company is protected.

19 Q. And why would it be important to make sure the ve-
20 hicle was insured when someone has a car loan?

21 A. You have to have insurance in order to drive a car
22 in this State -- you have to have insurance on the car;
23 and that's one thing.

24 But if you have a lien against the car, you have to
25 have confidence that you are protected so if the person

MR. LEE ON DIRECT

1 was to wreck the car there would be insurance covering
2 the car to secure the loan, to cover the collateral for
3 the loan.

4 Q. All right.

5 A. Because in most cases if you are in default on the
6 loan, then the insurance has lapsed, and if the car is
7 totalled we have no means to get back the money.

8 Q. And when someone goes into default and you need to
9 rectify that situation, what recourse do you have?

10 A. We can proceed to take the collateral back, to re-
11 possess the car.

12 Q. Is that the first option when you are looking at an
13 account that is delinquent?

14 A. We always call and try to make arrangements with a
15 customer. There are several tools that we can use if
16 they get behind.

17 We have deferments where we can defer a payment that
18 is past due. If their status has changed, their income
19 has changed, then we can have the customer come in and
20 sit down and take a collection application. We can refi-
21 nance the loan to maybe help lower payments or make them
22 correct.

23 There are several tools we can use that would -- a
24 repossession is the last thing we want to do because it
25 is a loss to our company.

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1 When you lend the money for the person to buy the
2 car, you advance the money. You want to get back those
3 payments.

4 If you repossess it, the car depreciates because
5 of the amount of miles and condition of the car. It be-
6 comes fifty percent of the balance in some cases.

7 So it is real difficult to make that final decision
8 that you are going to take the car back because the com-
9 pany is going to lose money.

10 Q. And when did you start working at Carolina Car Cre-
11 dit, or when did you first come in contact with them?

12 A. It would be December of '08 -- I think it was pretty
13 much the end of the year or the first week of January
14 of '09.

15 Q. And when you did take over as branch manager did you
16 have the opportunity to come in contact with an account
17 belonging to a Melvin Haynes?

18 A. Yes, sir.

19 Q. And when you came in contact with that account, did
20 you view that account and what was your observation
21 about that account?

22 A. As we started working the account, we talked with
23 him a few times and communicated with him about the pay-
24 ments and received payments, and we pulled the file and
25 started . .

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1 MR. MESSERVY: Your Honor, I would object to him
2 saying we. I want to know what it is that he did.

3 Your Honor, he can't testify as to what somebody
4 else did or their observations.

5 THE COURT: I'm going to overrule the objection and
6 let him answer, but you need to tell us what you know
7 yourself.

8 WITNESS: Okay. Can you repeat the question?

9 THE COURT: You may continue. Repeat your question
10 for him.

11 BY SOLICITOR:

12 Q. Yeah, what did you do with the account when you
13 opened up the account or looked at that account?

14 Was the loan already established?

15 A. Me, as the branch manager, I'm going to look at
16 accounts that are more delinquent because in my exper-
17 ience in time I might have to make a decision on those
18 accounts.

19 So I started making phone calls to try to get in
20 touch with him. You know, I started looking at the file
21 and stuff to see if I could find out where he was at and
22 communicate with him.

23 And I found out there was no insurance on the ve-
24 hicle. That was one thing we found. We discovered it was
25 terminated. That was one thing we found.

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1 Another thing we found was that there was -- during
2 the course of working the account we found that there
3 was a discrepancy in where the customer may live, or
4 there seemed to be a discrepancy in where he lived.

5 The customer's account said he lived in Texas but
6 we believed that he lived in South Carolina because we
7 were receiving payments and on the envelope or package
8 they came in was postmarked Ridgeville, South Carolina.

9 Q. And what did you show as his home address?

10 A. Texas.

11 Q. Mr. Lee, I'm showing you what's been marked as
12 State's Exhibit for identification purposes Number 6.

13 SOLICITOR: May I approach the witness, Your Honor?

14 THE COURT: Yes.

15 BY SOLICITOR:

16 Q. Look at this document and tell us what that is.

17 A. This is an insurance termination that is for cov-
18 erage on that vehicle, saying he no longer had insurance
19 on it. An insurance termination of lienholder coverage
20 on the vehicle of Mr. Haynes, saying he no longer had
21 any insurance at all.

22 Q. And what is the effective date of that letter of
23 termination?

24 A. The termination was effective July 8th of 2008.

25 Q. And was that in this file when you opened the file?

MR. LEE ON DIRECT

1 A. Yes, sir.

2 SOLICITOR: Your Honor, the State would offer
3 State's Exhibit Number 6 in evidence.

4 THE COURT: Any objection?

5 MR. MESSERVY: Your Honor, in this case is he test-
6 fying under the Business Records Act?

7 SOLICITOR: Yes, sir.

8 MR. MESSERVY: All right, sir. Just for the record,
9 the Defense's position would be that he knows nothing
10 about it because he wasn't there.

11 THE COURT: He said he saw it when he was reviewing
12 the file.

13 MR. MESSERVY: All right, sir.

14 THE COURT: Okay, sir. State's Exhibit 6 is in evi-
15 dence.

16 (Termination of insurance letter admitted in evi-
17 dence as State's Exhibit 6)

18 SOLICITOR: Thank you, sir.

19 BY SOLICITOR:

20 Q. When you received this document or saw this document
21 about the termination of insurance, did you find anything
22 else in the file to lead you to believe that it was in-
23 sured subsequently?

24 A. No.

25 Q. Did you have an opportunity to speak with the

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1 Defendant, and did he tell you it was insured, or did
2 he provide you with any evidence that it was insured?

3 A. He did not provide proof of coverage. I asked him
4 on several occasion to have a policy faxed to us.

5 Q. All right.

6 A. Normally what we do is tell him we are showing he
7 has no insurance on the car, and for them to contact
8 their agent and here is our fax number, and ask them to
9 fax over the proof of insurance, or if you wish we can
10 call them and do this all by phone, but we need to take
11 the steps to have the proof of insurance faxed over to
12 us, or I will help you to do this. We can verify the
13 coverage over the phone.

14 Q. And from the time you arrived there, at Carolina
15 Car Credit, and I would say June 28th, 2009, did you re-
16 ceive any kind of verification of insurance on the ve-
17 hicle?

18 A. No, sir, I did not.

19 Q. You also testified that payments you had received
20 had a different address, is that
21 correct?

22 A. A different address?

23 Q. Different than where you had information that he
24 lived?

25 A. Yeah. Well, we were told he was living in Texas,

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1 or that's what he told us when we were talking with him,
2 that he lived in Texas, but, like I said, the actual
3 postmark on payments received was Ridgeville, South
4 Carolina.

5 So he originally had lived in Ridgeville but he had
6 made us think -- he kept saying he lived in Texas, and
7 that he would provide insurance.

8 Q. Mr. Lee, I'm showing you what's been marked as
9 State's Exhibit Number 7 and State's Exhibit Number 31.
10 Do you recognize these items?

11 A. Yes, sir.

12 Q. What are those?

13 A. This is a copy of a priority mail envelope that was
14 from Mr. Haynes to Carolina Car Credit which included
15 payments.

16 Q. Okay, and Number 7 -- what about Number 31?

17 A. That is an express mail envelope for payments sent
18 to us.

19 Q. Do you recognize those as copy of envelopes that
20 are in the file?

21 A. Yes, sir.

22 SOLICITOR: At this time, Your Honor, the State
23 would offer State's Exhibits 7 and 31 into evidence.

24 THE COURT: Any objection?

25 MR. MESSERVY: No objection.

MR. LEE ON DIRECT

1 THE COURT: They're admitted.

2 (Copies of envelopes admitted without objection as
3 State's Exhibits 7 and 31)

4 BY SOLICITOR:

5 Q. Can you tell me what the return address is on both
6 of those envelopes?

7 A. It is Avenue, Dallas, Texas, 75211, and
8 it is U.S. Postal pay Ravenel, South Carolina.

9 Q. And what is the name on those of the person sending
10 them?

11 A. It was sent by Melvin Haynes to Carolina Car Cre-
12 dit.

13 Q. And those are envelopes that were sent to you?

14 A. Yes, by Melvin Haynes to Carolina Car Credit.

15 Q. Do they both have the same return address?

16 A. Yes, sir.

17 Q. Thank you.

18 SOLICITOR: May I have a moment?

19 THE COURT: Yes, sir.

20 (Brief pause in proceeding)

21 BY SOLICITOR:

22 Q. Now, is there anything else you have to do before
23 you repossess a vehicle as a credit company? What steps
24 do you have to take before you do that?

25 A. After -- then after the grace period we have to

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1 -- after they are given their grace period, we have to
2 send a letter of default or right to cure letter, and
3 that is for twenty days.

4 Then during those twenty days we constantly work
5 on the account, trying to make arrangements to make some
6 resolution on the account during that process.

7 After that twenty days if we have not gotten any
8 response in a positive way from the customer, then we
9 will make a decision as to whether we should take the
10 car back.

11 Q. Did you mention a right to cure letter?

12 A. Yes. Default letter.

13 Q. And on this default letter, does it have like a due
14 date?

15 A. Yes, you have to allow the customer twenty days to
16 correct the default, to right the default.

17 Q. Okay, and how do you normally send these letters?

18 A. It is not required to be sent certified. You can
19 send it ordinary mail. We choose to do both.

20 Q. I'm showing you what has been marked as State's Ex-
21 hibit Number 5. Do you recognize this document?

22 A. I do.

23 Q. What is that?

24 A. It is a default letter, and it states that the bal-
25 ance on the loan is (inaudible); that it's past due for

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1 One Thousand Five Hundred Eighty-seven Dollars and Eight
2 Cent.

3 It says -- it's dated April 22nd, and at that point
4 the account was past due -- the next payment that was due
5 based on the contractual agreement was December 15th of
6 2008.

7 It shows a pay-off amount, and he had until -- the
8 letter also says that he has until -- it says the last
9 day to make payment of May 20th of 2009.

10 Q. Does it say an amount on there he would have to pay
11 on the loan?

12 A. One Thousand Five Hundred Eighty-seven Dollars and
13 Eight Cent.

14 Q. And is that the letter that you sent to Melvin
15 Haynes?

16 A. Yes, sir.

17 SOLICITOR: At this time, Your Honor, the State
18 would move to admit State's Exhibit Number 5 in evidence.

19 THE COURT: Any objection?

20 MR. MESSERVY: I would have a question on it for
21 him before I accept or not.

22 THE COURT: All right.

23 CROSS EXAMINATION

24 BY MR. MESSERVY:

25 Q. Did you mail the letter?

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1 A. Personally take it to the Post Office?

2 Q. Yes, sir.

3 A. No, sir, I did not.

4 MR. MESSERVY: I object.

5 THE COURT: You can ask him about the mailing of it.

6 DIRECT EXAMINATION CONTINUED

7 BY SOLICITOR:

8 Q. Can you explain to the Court how the letter was sent
9 out and who sent it out?

10 A. Yes, sir. Each person at the office has certain re-
11 sponsibilities. They have to do certain stuff, so we
12 have people who review the accounts once they go past
13 due.

14 Once they do that, the CSR -- customer service rep
15 -- will then send those letters out automatically because
16 it is part of the contract.

17 So it is a job responsibility -- job duty responsi-
18 bility.

19 Q. And you have persons who do that?

20 A. Yes.

21 THE COURT: State's Exhibit Number 5 is in evidence,
22 and your objection is noted.

23 Thank you, sir.

24 BY SOLICITOR:

25 Q. Now, you've mentioned that you send these default

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1 letters by certified mail and also by regular mail. Is
2 that correct?

3 A. Yes, sir.

4 Q. And did you do that in this case?

5 A. Yes, sir.

6 MR. MESSERVY: Your Honor, he did not do that.

7 SOLICITOR: I just want to ask him what the standard
8 practice is.

9 THE COURT: You can ask him what the standard prac-
10 tice is.

11 BY SOLICITOR:

12 Q. What is your standard practice . .

13 A. It is my testimony that it is standard practice for
14 us to do that, in all cases, period.

15 Q. And what, if anything, do you know about this par-
16 ticular case -- in the Melvin Haynes' case?

17 A. It is standard practice is all I can say. I didn't
18 personally take it there.

19 MR. MESSERVY: But do you know who it was that did
20 it?

21 WITNESS: It is standard practice is all I can say.
22 I didn't personally take it but I do have the actual en-
23 velope that shows it went to the Post Office, the original
24 envelope, if that makes any difference.

25 MR. MESSERVY: Your Honor, that's not what I asked.

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1 He hasn't bothered to answer.

2 THE COURT: You will have an opportunity to ask him
3 about that.

4 Please continue.

5 SOLICITOR: Thank you, Your Honor.

6 BY SOLICITOR:

7 Q. Have you ever talked to him?

8 A. Yes, sir, I have. I've had several conversations
9 with him.

10 Q. What about after this right to cure letter went out
11 which according to the date on there was the 22nd of
12 July?

13 Did you have any conversations with him after that?

14 A. I had several conversations with him, yes. During
15 the process, we had several conversations, and it was al-
16 ways about the same thing.

17 Our company wants to work with you so please come
18 in and sit down with me and give us your proof of insur-
19 ance and clear up this address issue.

20 That we can work out the payments with you but you
21 need to come in and sit down and talk to me. The insur-
22 ance is a mandatory thing to protect our collateral which
23 is in jeopardy.

24 Please come in and let's do the right thing to work
25 this out and make it happen.

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1 Q. Did he ever come in and talk with you?

2 A. No, sir.

3 Q. Did he ever provide you with proof of insurance?

4 A. No, sir.

5 Q. Did he ever talk to you about the address issue?

6 A. No, sir.

7 Q. Did he ever send in any payments?

8 A. Yes, sir, he did send in payments.

9 Q. And do you have records to show when he sent the
10 payments?

11 A. I do.

12 Q. And when -- to your knowledge when did he send in
13 payments?

14 A. Do you want the total history or . .

15 Q. Since the early part of 2009 when you came.

16 A. We received a payment in June -- June 25th, 2009.

17 We received a payment in April of 2009; March of '09 and
18 January of '09.

19 Q. Was he still behind in his payments?

20 A. Yes, sir. When the right to cure or default let-
21 ter was sent out, it was Fifteen Hundred Eighty-seven
22 Dollars past due.

23 There was no payment made in April or May, so when
24 we received two payments in June it still left an amount
25 then past due, the same amount past due because two more

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1 payments would have come due.

2 So it was still Fifteen Hundred and Eighty-seven
3 Dollars past due after those payments were credited to
4 the account.

5 Q. I'm showing you what has been marked as State's Ex-
6 hibit Number 30, a transcript of a recording that was
7 taken off of Mr. Melvin Haynes' phone.

8 A. Yes, sir.

9 Q. Do you remember making that phone call and leaving
10 that message on Mr. Haynes' phone?

11 A. Yes, sir.

12 Q. Is that transcript a fair and accurate representa-
13 tion of what you said that day?

14 A. Yes, sir. I would say yes.

15 SOLICITOR: At this time, Your Honor, the State
16 would offer State's Exhibit 30 into evidence.

17 THE COURT: Any objection.

18 MR. MESSERVY: No objection, Your Honor.

19 THE COURT: State's Exhibit admitted.

20 (Transcription of Mr. Lee's call to the Defendant
21 admitted without objection as State's Exhibit 30)

22 BY SOLICITOR:

23 Q. Would you please read that message?

24 A. Hey, Melvin, it's Paul Lee. Give me a call. My
25 -- how about giving me a call. My phone number is

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1 843 (inaudible). I received the package that you
2 mailed me today. I appreciate it. I've got a deal of
3 a lifetime for you but I need you to call me, so please
4 call me right away. Thanks.

5 Q. And do you remember what date it was that you left
6 that message?

7 A. No. I can't say a specific date because we re-
8 ceived more than one package or envelope, one in April
9 and one in June.

10 So it would have been in the course of that trying
11 to work with him because we really and truly wanted to
12 get that account right.

13 Q. Is it your testimony that the message was left fol-
14 lowing receipt of one of the packages from Mr. Haynes?

15 A. Yes, sir.

16 Q. And did -- to your knowledge, since you can't say
17 exactly when that message was left, are you saying that
18 you called him?

19 A. Oh, yes, we talked to each other, and the conver-
20 sation would happen every single time -- where do you
21 have insurance; where are you living at; when are you
22 going to make a payment; how are you going to work with
23 us on this contract.

24 Q. And after those conversations with Mr. Haynes, the
25 several conversations you had with him, did he ever

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1 provide you anything?

2 A. No.

3 Q. Did he ever clear up the address situation?

4 A. No.

5 Q. And did he ever become current on his account?

6 A. No, sir.

7 Q. At what point did you make a determination to try
8 to repossess the car?

9 A. After those conversations and there being no insur-
10 ance on the car, the address situation, and the account
11 going the way it went with regular payments not being
12 made, we said, hey, you know, we've got to do this.

13 We have to try to protect our asset by obtaining
14 the vehicle.

15 Q. How did you go about doing that?

16 A. We use different -- several different repossession
17 agents, and we call them to let them know what's going
18 on. We give them paperwork that they can use, and at
19 that point they go and get the vehicle.

20 Q. And is that what you did in this case?

21 A. Yes, sir.

22 Q. And who did you contact in an attempt to repossess
23 the vehicle?

24 A. At that period of time I had two -- I mean, I use
25 an agent for a couple of weeks and then I switch to

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1 another agent if I don't get results quickly, especially
2 when the collateral is in jeopardy, but we found one who
3 got it after three different companies.

4 Q. And what company finally got it?

5 A. (Inaudible) Mr. John Davis.

6 Q. Okay, and is there any kind of paper work that was
7 given to Mr. Davis on the repossession?

8 A. Yes.

9 Q. I mean, how does he know where to go and what he's
10 looking for?

11 A. He would have had to have the proper paperwork. He
12 would have to have a copy of the right to cure or the
13 default. He would have to have a copy of the title to
14 show the vehicle he was trying to repossess.

15 It varies. You know, maybe we just run a copy of
16 the application, original proof of income, and several
17 things they may ask for at the time.

18 Sometimes they only ask for the basics when they
19 get started and then they need more information if they
20 have a problem finding it. They may do their own skip-
21 tracing.

22 Q. What is skip-tracing all about?

23 A. You know, sometimes you can have access to a motor
24 vehicle and it shows up in the records of the Court, and
25 it just tells you if the tag is current or whether the

MR. LEE ON DIRECT

1 tag has expired, and what address and what name is at-
2 tached to that car.

3 SOLICITOR: Beg the Court's indulgence.

4 THE COURT: Yes, sir.

5 (Brief pause in the proceeding)

6 SOLICITOR: Thank you.

7 BY SOLICITOR:

8 Q. One last question, Mr. Lee.

9 A. Okay.

10 Q. At any time did you have a deal with Mr. Haynes
11 that he didn't have to turn this vehicle back in?

12 A. No, sir.

13 Q. To your company? You would not pick it up?

14 A. No, sir. As a matter of fact, a specific thing
15 would be that we would not stop the repossession order
16 until all these things were done. We would not remove
17 it until those things were done.

18 Not only did we need him to come into the office,
19 but he would have to bring proof of insurance and correct
20 the address issue, but make some resolution as to the
21 balance that was due.

22 Those things would require that the customer come
23 in.

24 Q. Did he ever report to the office?

25 A. No.

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1 Q. Thank you. No further questions.

2 Please answer any questions Mr. Messervy may have
3 for you.

4 THE COURT: All right. Mr. Messervy, your witness.

5 CROSS EXAMINATION

6 BY MR. MESSERVY:

7 Q. Mr. Lee, let me ask you this. You don't really
8 know anything about this case before June -- I mean, be-
9 fore January?

10 A. That's right, when I started.

11 Q. And I think that was early in the year of 2009?

12 A. I can't say exactly what date it was.

13 Q. But somewhere around the first of the year or the
14 last part of December?

15 A. I believe so.

16 Q. That's fine. And what did you do before this, Mr.
17 Lee?

18 A. I worked for a company called -- well, it had sev-
19 eral names because it was bought and sold several times,
20 but I started with the company -- I worked for the com-
21 pany for twenty years.

22 I started there in 1988 and it was called Transouth,
23 and then it was sold to (inaudible) Associates, and then
24 City Financial Auto, and they closed the auto division
25 in December of 2008.

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- 1 I believe that's all the names.
- 2 Q. All right, and who owns your company?
- 3 A. It is Carolina Corporate LLC, a gentleman named
- 4 J. C. Dangerfield.
- 5 Q. Is it financed by Johnny Dangerfield, like Johnny
- 6 Dangerfield Suzuki?
- 7 A. I think he owned it at one time.
- 8 Q. At one time -- who owns it now?
- 9 A. I think there's a new Suzuki dealership around now,
- 10 another dealership.
- 11 Q. Is that your company?
- 12 A. I work for Carolina Corporate, which is a loan com-
- 13 pany.
- 14 Q. Well, what about who owns it?
- 15 A. I guess he owns it.
- 16 Q. Johnny Dangerfield?
- 17 A. Yes.
- 18 Q. Mr. Lee, one of the things -- you said you worked
- 19 for Transouth?
- 20 A. Yes, sir.
- 21 Q. And paperwork is important?
- 22 A. Yes, it is, absolutely.
- 23 Q. How many -- since you are the keeper of the records,
- 24 how many letters have been sent out to Mr. Haynes about
- 25 his insurance?

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1 A. We don't have a notice of termination from the --
2 we don't supply them with insurance. If you were to go
3 to State Farm and State Farm will have you sign and
4 issue a policy. Then if your policy cancels, they do
5 what they legally have to do, and we get a copy of the
6 termination notice on it.

7 At that point, we know that the car has no insur-
8 ance on it.

9 Q. Okay, but you didn't . .

10 A. We make a personal communication with the . .

11 Q. That didn't bother you on June 6th, did it?

12 A. We make a personal communication by phone to the
13 . .

14 Q. But you don't know whether anybody made a personal
15 communication, do you?

16 A. Yes, sir, I do.

17 Q. There is no -- you weren't there and there was no
18 notification you know of?

19 A. I made the notification that there was no insurance
20 when I was there.

21 Q. When? Did you make a notation of it?

22 A. There is no -- we don't write out everything we say
23 in the course of a conversation, but there are internal
24 notes.

25 Q. Is it important to you?

MR. LEE ON CROSS

1 A. I have been doing this a long time, and there are
2 standards of operation, standard questions we ask every
3 time we make a call.

4 It is, you know, where are you living at now, and
5 things that we always ask.

6 Q. Okay. Did you make a note that you called him on
7 June 5th?

8 A. Generally we make a comment that we called the resi-
9 dence and left a message or something like that.

10 Q. How many times do your records reflect that you
11 called?

12 A. Me personally? Because you said . .

13 Q. Do you have the business records?

14 A. File..

15 Q. That you personally called.

16 A. Let's see. Beginning in January of '09?

17 Q. Yes, sir, when you went to work there?

18 A. Um, I made a note on January 7th that I had spoken
19 with the customer several times. Last contact was Feb-
20 ruary third; promised to pay by the fifth; no payment.

21 So I had left two messages in the last two days; no
22 contact. The 5th of May . .

23 Q. There is no mention about insurance there?

24 A. Promised to pay on Friday ..

25 Q. That's it?

MR. LEE ON CROSS

1 A. . .

2 Q. I'm just asking you about the insurance.

3 A. Can I clarify something?

4 Q. Yes, sir, that's what I want. I asked about insur-
5 ance . . .

6 A. Let's go back and go through the records on the in-
7 surance. I know there's a note with reference to that.

8 Q. Okay.

9 A. Called insurance company. No insurance since '08.

10 SOLICITOR: Objection, Your Honor.

11 MR. MESSERVY: Your Honor, I'm trying to read off
12 this record. That's the only thing I want to know, you
13 know, is about the insurance.

14 THE COURT: You can look at them if you need to.

15 MR. MESSERVY: Thank you.

16 THE COURT: All right, you can answer the question,
17 Mr. Lee.

18 A. So it does show there was no insurance on the ac-
19 count.

20 BY MR. MESSERVY:

21 Q. And you . .

22 A. You have to make sure you ask that same question,
23 every time, and especially when there is no insurance on
24 the vehicle.

25 In the business, you make sure you ask about payments,

MR. LEE ON CROSS

1 ask about address, insurance -- how can we contact you.

2 Q. All right. How did you know there was no insurance
3 on the vehicle?

4 A. Well, we had a termination letter and we called the
5 insurance company to confirm the termination. It was
6 confirmed.

7 Q. You called in March before you got the termination
8 letter?

9 A. That was March of '08 that they got the termination
10 letter.

11 Q. But nobody had called before that?

12 A. I can't testify to that.

13 Q. But does it show up in the business records that
14 anybody did?

15 A. There are notations of calls but no details are
16 there. They do not record the conversations.

17 Q. I understand that.

18 A. Making detailed notes are not a part of the busi-
19 ness they do.

20 Q. All right.

21 A. I do not see anything that -- anything about a dis-
22 cussion about insurance, no.

23 (Brief pause in proceeding)

24 BY MR. MESSERVY:

25 Q. So you cannot provide a satisfactory answer or your

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1 people were just sloppy.

2 A. I disagree there. There is a copy . .

3 Q. Reading there from your notes, are you able to say
4 that . .

5 A. I can only testify as to what I did.

6 Q. Do the records reflect that you told him?

7 A. I called to his attention that there was no insur-
8 ance on the vehicle, and to please provide us with a
9 copy -- that's what I can testify to.

10 Q. So you just asked him to provide a copy of his in-
11 surance?

12 A. Yes. I told him I've got to have it.

13 Q. And when is the next time that you mentioned in-
14 surance to him?

15 A. You want to know about every conversation I had
16 with him?

17 Q. Yes, about insurance, on the record.

18 A. I don't have a detailed record of it, but I did do
19 so. I asked him in every conversation I had with him.
20 Yes, I did.

21 Q. All right, sir. Now, in your letter that you wrote
22 to him, you said that he had twenty days to cure the de-
23 fault?

24 A. Yes, sir.

25 Q. And you made a decision to repossess?

MR. LEE ON CROSS

1 A. I did.

2 Q. Do you mention insurance in this letter?

3 A. No, this is not a handwritten letter. This is a
4 standardized letter approved by a software company that
5 fulfills the obligation to the State.

6 We don't write these letters but it is our standard
7 default letter. Yes, it spells out what is past due and
8 all that automatically, and that way there is no mistake
9 about it by the company.

10 Q. And so this is truly accurate?

11 A. It should be truly accurate.

12 MR. MESSERVY: And I believe this is marked for
13 identification.

14 SOLICITOR: I believe it was admitted, Your Honor.

15 THE COURT: Is that already in?

16 SOLICITOR: I have no objection to admitting it if
17 it has not already been admitted.

18 REPORTER: State's Exhibit 5.

19 THE COURT: And there is no objection to that?

20 SOLICITOR: Absolutely not.

21 MR. MESSERVY: No, sir.

22 BY MR. MESSERVY:

23 Q. And this is the default letter. Is that correct,
24 sir?

25 A. Yes, sir.

MR. LEE ON CROSS

1 Q. Do you -- are you a regulated business?

2 A. . .

3 Q. I mean, any state regulation or the feds?

4 A. We have to file -- we have to file for a business
5 license, but I don't handle that part of it.

6 Q. Do you have any . .

7 A. We file -- let me try to explain this for everybody.

8 We are a finance company who finances car loans. Okay?

9 So the seller who sells the car to the customer will

10 have us look at the loan to buy it, and we then check

11 with the dealership they buy the car from and pay them

12 for it. We buy the account.

13 So we then become partners with the customer, so

14 as long as that dealership filed an actual rate sche-

15 dule showing interest rates and stuff like that, we just

16 have to have a business license; maintain a license.

17 Q. So there is no regulation? No agency that regulates
18 you?

19 A. Well, they can come in any time they want. I mean,

20 . .

21 Q. That's what I'm asking. Are you regulated?

22 A. To my knowledge, I've never had anyone from the

23 State come in. We have a company that we report intern-

24 ally to, and it is regulated by the State.

25 Q. Okay. In this particular case, it is very important

MR. LEE ON CROSS

1 for you to keep accurate records?

2 A. To the best of our ability, yes, sir. In all cases
3 we do the best we can to do the right thing for the com-
4 pany and the customer.

5 Q. And when was this certified letter received by
6 Melvin Haynes?

7 A. We -- a certified letter was attempted to be de-
8 livered . .

9 Q. Was it received and signed for by Melvin Haynes?
10 No, sir, was it received by him?

11 A. . .

12 SOLICITOR: Objection, Your Honor.

13 THE COURT: If he has reports, I'll allow him to
14 respond to the question. Okay?

15 A. It was not signed for, the certified copy was not
16 signed for, but the ordinary mail never returned as
17 undeliverable.

18 So the certified one came back undeliverable, no
19 forwarding address. The regular-mail letter never came
20 back.

21 Q. All right, and do you have a copy of the regular
22 mail?

23 A. . .

24 Q. Well, if you don't know, it must have gotten there,
25 but were you able to . .

MR. LEE ON CROSS

1 A. We assumed the regular mail one was delivered. We
2 sent the regular mail to his home address.

3 Q. But you have no record of that?

4 A. No.

5 Q. Why?

6 A. It was computer generated where we printed the let-
7 ter -- the system generated that, but I personally did
8 not address the envelope.

9 Q. All right. Is this the letter that you printed?

10 A. It is the letter that was printed by the system,
11 yes.

12 Q. And you said you didn't have a copy of the letter?

13 A. When we send it certified we have a copy for the
14 file and a copy of the letter is sent to the customer's
15 home address, sufficient to show that we attempted to
16 make the contact.

17 Q. Okay.

18 A. So we don't need to make multiple copies of the
19 same document just to say we have it. We just make a
20 copy and send it and we have a copy in the file of what
21 was sent to the addresses.

22 Q. I call your attention to 5 -- State's Exhibit 5, and
23 what is the address that was sent to?

24 A. The letter is going to print out because it is a
25 standard letter with the address that is on the system,

MR. LEE ON CROSS

1 which is the (inaudible) Street in Dallas, Texas.

2 The certified letter was mailed to Jill Drive.

3 Q. And we already know that he never got the certified
4 letter?

5 A. I can't testify to what he did.

6 Q. But he didn't sign for that?

7 A. He did not sign for that.

8 Q. He did not sign for that. Do you know -- excuse me.
9 Let me ask you this.

10 Do you know that -- it looks like a B. Clawson?

11 A. That is exactly right.

12 Q. And who is B. Clawson?

13 A. If I can explain something?

14 Q. Yes, sir, I'm going to let you explain.

15 A. B. Clawson is an employee of the dealership who
16 picks up letters for the bank and picks up and delivers
17 stuff. She is a general person at the dealership.

18 Q. All right. She signed for the letter?

19 A. . . .

20 Q. As receiving the letter?

21 A. Right. When we send something certified we get a
22 stamped copy by the post office showing the date it was
23 sent.

24 Okay, the post office then attempts to deliver and
25 they . . .

MR. LEE ON CROSS

1 Q. I don't want to know what the post office does or
2 what they do.

3 MR. MESSERVY: This speaks for itself, Your Honor.

4 THE COURT: Well, you can let him explain how B.
5 Clawson -- that she works for the company and how she
6 ended up with it. Okay.

7 MR. MESSERVY: Unless he saw her do it, I don't know
8 how he can . . .

9 THE COURT: I'm going to let him explain how B.
10 Clawson's name got on there. Okay?

11 MR. MESSERVY: Would Your Honor note my objection
12 to that?

13 THE COURT: Yes, sir, I will note your objection on
14 the record, and it will continue as long as he testifies
15 about it.

16 Thank you, sir. Go ahead.

17 BY MR. MESSERVY:

18 Q. All right.

19 A. In addition to the copy of the certified letter, we
20 have a receipt so we can match the letter up with the
21 receipt. Make sure it's with the right letter.

22 The post office attempts to deliver it to the home
23 and the date is on the front, the dates they attempt to
24 deliver it. They make normally three attempts, and at
25 that point of it's not delivered they put a note in our
132

MR. LEE ON CROSS

1 box, and that note tells her we have a returned certi-
2 fied mail letter that couldn't be delivered.

3 Q. Okay.

4 A. So Ms. Clawson -- okay -- she goes to the post of-
5 fice and she sees that in our box, and she takes the
6 receipt to the counter and gets the returned letter from
7 the post office.

8 So in this case, since the letter wasn't delivered,
9 she signed for it. She signed as receiving the letter
10 and was given the letter.

11 Q. Well, it looks like it was signed like somebody had
12 received it?

13 A. No, sir.

14 Q. That's what it looks like.

15 A. She signed as receiving it. That's what the post
16 office has her do if it is returned to sender, marked as
17 unclaimed, unable to deliver.

18 Q. But she signed as having received it?

19 A. Yes, she signed for the sender which was Carolina
20 Car Credit.

21 Q. And what date was it returned?

22 A. It was attempted to be delivered on April
23 29rd, April 29th, . .

24 Q. What date was it returned to you?

25 A. May the 12th is when it was stamped and had her

MR. LEE ON CROSS

1 signature.

2 Q. So it was returned to Ms. Clawson on May 12th?

3 A. Right.

4 Q. And for all you know the computer-generated letter
5 went to Texas. Am I correct?

6 A. Whatever that address is.

7 Q. But you said it was a computer-generated letter?

8 A. We generate a letter -- we go in and select the let-
9 ter. It automatically comes out on the system. At that
10 point, we make the necessary copies; see if there is more
11 than one address.

12 Our practice is to send it to each known address.

13 Q. But if there is not more than one address . .

14 A. In this case, we sent it certified and because we
15 believed him to be back here in South Carolina, trying
16 to obtain a signature and confirmation.

17 Q. The letter here . .

18 A. Right.

19 Q. . . went to the address in Texas? You made a sub-
20 stantial effort on the certified letter?

21 A. This letter was addressed there and it's still un-
22 opened.

23 Q. I understand that.

24 A. Would you like to open it and compare the address
25 on it? I mean, . .

MR. LEE ON CROSS

1 Q. All I'm asking is -- you sent the letter -- the
2 letter that you said didn't come back, that was sent ac-
3 cording to your records to Texas?

4 A. No, the . .

5 Q. You testified . .

6 (Counsel and witness speaking at the same time)

7 A. The ordinary mail also went there.

8 Q. So the ordinary mail would have gone to Texas?

9 A. Right.

10 Q. All right. Now, when you have -- let me ask you
11 this question.

12 What happens when insurance is cancelled in this
13 State?

14 A. . .

15 SOLICITOR: Objection.

16 A. I can't testify to that.

17 BY MR. MESSERVY:

18 Q. Is there any penalty on someone who doesn't have
19 insurance or whose insurance is cancelled?

20 A. As far as telling you right now what South Carolina
21 Highway Department regulations are, I cannot do that.

22 Q. All right. Do you know whether or not if you have
23 cancelled insurance they suspend your license?

24 A. I know there would be a penalty. Yes, sir.

25 Q. All right. If you don't have insurance. Now, what

MR. LEE ON CROSS

1 kind of car was this?

2 A. It's a truck, I believe.

3 Q. A truck. I'm sorry.

4 A. Yeah. It was a 1987 Chevrolet Silverado Truck.

5 Q. And how much did you originally lend on it?

6 A. The amount financed was Nine Thousand Four Hun-
7 dred Eighty-nine Dollars and Ninety-five Cent.

8 Q. And at the time of the pick-up, what was the amount
9 still owed on the truck?

10 A. I show Seven Thousand Three Hundred Thirty-two and
11 Sixteen Cent.

12 Q. I'm sorry. I thought it was Seven Thousand Seven
13 Hundred . .

14 A. I show Seven Thousand Three Hundred Thirty-two Dol-
15 lars and Sixteen Cents. That's after these payments were
16 posted.

17 Seven Thousand Seven Hundred prior to the payments
18 being posted.

19 Q. How much were the payments? I believe two payments?

20 A. They were separate payments posted, Three Eighty-
21 seven and Three Eighty-seven.

22 Q. Now, you use a number of different people, is that
23 correct, to pick up cars?

24 A. Yes, sir.

25 Q. And what do you usually give them to do the

MR. LEE ON CROSS

1 repossession?

2 A. There is a range.

3 Q. No, I mean what -- you usually give them a copy of
4 this letter?

5 A. Yes. Well, if they ask for anything we give it to
6 them.

7 Q. What did they ask for this time?

8 A. I don't have that. Just standard stuff.

9 Q. Standard stuff?

10 A. Yes.

11 Q. Which would be . .

12 A. Which would be a copy of the default letter, maybe
13 a copy of the title, maybe the application or something
14 like that.

15 That would be standard.

16 Q. Okay. And that was what was given here?

17 A. I would think so.

18 Q. Well, there no question you wouldn't expect him
19 to go to wherever it is in Texas?

20 A. No. That's the reason we hire someone locally who
21 will skip trace and network. So if in his skip-trace
22 he determined the guy lived in Texas, he would work with
23 another agent, a recovery agent, in that State, and ask
24 them to verify an address and see if the car was there,
25 and send them the paperwork to try to repossess the car

MR. LEE ON CROSS

1 at that point.

2 Q. Do you know if he did that?

3 A. No, I do not.

4 Q. And did he inform you of that?

5 A. I don't believe so.

6 Q. Well, do you have any note that he had informed you
7 he had to pay extra on this?

8 A. As far as skip-tracing time?

9 Q. Yes.

10 A. No. We would always sit down and discuss the time
11 line schedule, as far as what time was spent on each of
12 the pickups, on each account, yeah.

13 Q. And did you see anything with regard to his calling
14 and saying he was living in Texas not in the Tri-County?

15 A. Him particularly saying that?

16 Q. Yes, or anything? Any county?

17 A. Any county? I did have a conversation back in May
18 -- on May 7 of '09 -- with a guy who ran another company
19 who said he got in touch with the landlord and found out
20 he moved to Summerville, and at no point we had no fur-
21 ther relationship.

22 Q. But there is no question but that he lived on Jill
23 Lane?

24 A. We had a good idea he was there.

25 Q. And he had written you a check or money order and

MR. LEE ON CROSS

1 all that had -- the account listed Texas but the money
2 orders came from Ridgeville. Is that right?

3 A. Give me one second, please, to look.

4 (Brief pause)

5 I thought it was here somewhere. Do you have a copy
6 of this? The money orders I think is what you're asking.
7 Here it is. This is a copy of an actual money order of
8 Melvin Haynes and the return address on the actual money
9 order itself is the Texas address.

10 Q. But they were mailed from South Carolina?

11 A. The location was Ravenel. I stand corrected on
12 that. I apologize.

13 Q. All right.

14 MR. MESSERVY: Your Honor, could we take a ten
15 minute break at this time. I may not have any more
16 questions for him.

17 THE COURT: Would you approach briefly?

18 (Conference at the bench between counsel and the
19 Court off the record)

20 THE COURT: All right, we'll take a short break
21 then, Mr. Messervy.

22 MR. MESSERVY: Thank you.

23

24

25

1 THE COURT: I'm going to let the jury take a short
2 break. All right, ladies and gentlemen, we are going
3 to take a short break and then we're coming back in here
4 to continue with the testimony.

5 You cannot talk about this case. You've only heard
6 from one witness so far, so go back in there and we will
7 bring you back out here in just a second.

8 Okay? Thank you.

9 (Jury excused from Courtroom)

10 THE COURT: All right, we'll be in recess for about
11 five minutes.

12 Mr. Messervy, are you finished with the witness?

13 MR. MESSERVY: I may have a few more brief questions,
14 Your Honor.

15 THE COURT: All right, you can finish up when we
16 come back.

17 MR. MESSERVY: Thank you.

18 (Whereupon, the Court took a brief recess, after
19 which the case was continued)

20 THE COURT: Bring the jury back in.

21 (Jury returned to Courtroom)

22 THE COURT: Mr. Messervy.

23 MR. MESSERVY: I don't have any more questions,
24 Your Honor.

25 THE COURT: All right, anything on Redirect?

MR. LEE ON REDIRECT

1 SOLICITOR: Yes, sir.

2 REDIRECT EXAMINATION

3 BY SOLICITOR:

4 Q. Mr. Lee, I'm showing you what's been marked as
5 State's Exhibit Number 9. Do you recognize this?

6 A. It's a personal money order.

7 Q. That is a personal money order you received from
8 Mr. Haynes?

9 A. Yes, sir.

10 SOLICITOR: Your Honor, at this time the State
11 would move State's Exhibit 9 into evidence.

12 THE COURT: Any objection?

13 MR. MESSERVY: No, sir.

14 THE COURT: State's Exhibit 9 in evidence.

15 (Money order admitted in evidence without objection
16 as State's Exhibit 9)

17 SOLICITOR: No further questions, Your Honor.

18 THE COURT: Anything on Recross?

19 MR. MESSERVY: No, Your Honor.

20 THE COURT: Okay.

21 MR. MESSERVY: We may or may not wish to recall him
22 briefly.

23 THE COURT: Get him to give you his . .

24 MR. MESSERVY: We have a number for him if he de-
25 cide to recall him.

1 THE COURT: Okay, you may step down, and we will
2 call you if you are needed further.

3 Thank you, sir.

4 (Witness excused from stand)

5 THE COURT: Mr. Justis, call your next witness,
6 please, sir.

7 SOLICITOR: We'd call Johnny Davis.

8 JOHNNY DAVIS, being duly
9 sworn, testified as follows:

10 CLERK: State your name for the record.

11 WITNESS: Johnny Davis.

12 THE COURT: Mr. Justis, your witness.

13 DIRECT EXAMINATION

14 BY SOLICITOR:

15 SOLICITOR: Thank you, Your Honor. May it please
16 the Court?

17 THE COURT: Yes, sir.

18 Q. How you doing, Mr. Davis?

19 A. Okay.

20 Q. Before we get very far into this, let's talk a lit-
21 tle bit about yourself.

22 How old are you?

23 A. Thirty-two.

24 Q. Are you married?

25 A. Yes.

MR. J. DAVIS ON DIRECT

1 Q. Do you have any children?

2 A. Two boys.

3 Q. How old are they?

4 A. Eight and six.

5 Q. What do you do for a living?

6 A. I'm a recovery agent.

7 Q. And what did you do before you were a recovery
8 agent?

9 A. An electrician.

10 Q. How long were you an electrician?

11 A. About twelve years. Twelve or thirteen years.

12 Q. And how long have you been in the recovery busi-
13 ness? When did you get in the recovery business?

14 A. When the economy started getting bad and business
15 started slacking down.

16 Q. Okay, and can you tell us how you got into the re-
17 covery business?

18 A. My neighbor had a car dealership and he told me he
19 was always looking for someone to do like maintenance
20 on vehicles and what not just because I lived next door.

21 And one day he asked if I'd be interested in pick-
22 ing up a vehicle for him that somebody wasn't paying him
23 for. I said sure.

24 So he handed me a key and I went and picked it up,
25 and it was a fairly easy job and there was good money in

MR. J. DAVIS ON DIRECT

1 it. The economy was getting bad, and so I just kept on
2 with it.

3 Q. All right, sir. So it was a way of earning money
4 for your family?

5 A. Yes, sir.

6 Q. And you have two small children?

7 A. Yes, sir.

8 Q. And let's turn your attention to 2009. More speci-
9 fically around June of 2009. Did you have an opportuni-
10 ty to receive a repossession order from Carolina Car
11 Credit?

12 Did they contact you about that?

13 Q. Yes, sir, at various times.

14 Q. Did you happen to receive one for a truck of a
15 Melvin Haynes?

16 A. Yes, sir.

17 Q. And what kind of information did you receive con-
18 cerning that repossession?

19 A. He just called me one day and said he had a few
20 orders that he needed me to go over; that my company had
21 done a very good job for him.

22 So I went in there and met with him and picked up a
23 few orders.

24 Q. Okay. What kind of information did you get from
25 him?

MR. J. DAVIS ON DIRECT

1 A. Just the standard right to cure letter, credit ap,
2 and copy of the title.

3 Q. And turning your attention to June 28, 2009. Do
4 you remember that day?

5 A. Yes, sir.

6 Q. What were you doing that day?

7 A. I had a friend of mine who lived off of Main Road,
8 and his vehicle had broke down. He asked me would I tow
9 it for him, and I had the rolo so I agreed I'd tow it
10 for him. My brother was with me.

11 Q. Okay.

12 A. And when I dropped it off, I had to come back home
13 because I lived toward Summerville. So I took the cut-
14 through road to get you to 17, which will run you down to
15 61 to where I live.

16 So I figured I would kill two birds with one stone
17 and go by to see if the car was there. I thought I could
18 do the tow if the car was there, not planning on it being
19 there, but when I started approaching his house I saw a
20 silhouette of a truck parked in the back of his house.

21 So I passed the house and turned back down the
22 driveway after I got my boom down, and as I backed down
23 the driveway I noticed the truck and looked down under-
24 neath it to verify again it was the right vehicle.

25 That's when Melvin Haynes came out of the house.

MR. J. DAVIS ON DIRECT

1 Q. Showing you what's been marked as State's Exhibit
2 10, . .

3 A. Yes, sir.

4 Q. Do you recognize that?

5 A. Well, I mean, that's his home.

6 MR. MESSERVY: No objection.

7 BY SOLICITOR:

8 Q. Is that the home that you pulled into that day?

9 A. Yes, sir.

10 Q. Now, you mentioned your brother was with you?

11 A. Yes.

12 Q. What is your brother's name?

13 A. Robert Davis.

14 Q. And where is this house located?

15 A. Off of Club House Road.

16 Q. Is that in Dorchester County?

17 A. Yes, sir.

18 Q. Now, when you pulled in the driveway, tell the jury
19 a little bit of what was actually there?

20 A. Well, it's not really a driveway. It has got a
21 road, which is Jill Drive, which runs to the left side
22 of his home. It's a little, small dirt road, and he
23 was parked in the back.

24 I guess there is room enough for him to pull down
25 the dirt road and park his truck.

MR. J. DAVIS ON DIRECT

1 Q. Okay.

2 A. And I just pulled down the dirt road and backed up
3 to his truck.

4 Q. Okay, and point out to the jury how you did that?

5 A. You mean how I got up to the truck?

6 Q. When you were back there and getting to the truck.
7 When you were pulling back . . .

8 A. I went down the road and I passed his house. That
9 way I was able to get the back end of my truck toward
10 the back of his truck.

11 That's when I maneuvered back, looking out the mir-
12 rors and over my shoulder, and I had the boom under his
13 back tires.

14 Q. At what point did your brother get out of the car?

15 A. I don't know if it was at the same time I was back-
16 ing up or if he jumped out before I got underneath the
17 wheels.

18 At some point there is when he got out of the truck
19 there. I don't really know.

20 Q. To verify the boom? I believe you testified before
21 he went to verify the boom?

22 A. Yeah.

23 Q. And after you finished backing up, what happened
24 then? Or as you were backing up what happened?

25 A. I hear a noise.

MR. J. DAVIS ON DIRECT

1 Q. And what kind of noise did you hear?

2 A. I didn't know if it was my truck or not because,
3 see, you have to be perfectly backed underneath the ve-
4 hicle because sometimes you can hit exhaust pipes or the
5 bumper, knock something down.

6 It was a banging noise so I assume I may have backed
7 into the truck versus hitting the tires, the rubber part
8 of the tires.

9 Q. Okay.

10 A. And I went to see if there was damage to the truck
11 and it wasn't until I knew what it was -- when my brother
12 had started running and he was hollaring, he's shooting,
13 he's shooting.

14 Q. And when you backed it up, were you to the back of
15 his truck or to the front of his truck?

16 A. The back of his truck.

17 Q. So your back to his back?

18 A. Correct.

19 Q. And you hear a noise?

20 A. I hear a boom and the next thing I knew shortly af-
21 ter the boom is when my brother jumped in the front seat
22 there.

23 Q. Okay. After your brother jumped in the front seat,
24 what did you do?

25 A. I looked over my shoulder. My brother kept saying,

MR. J. DAVIS ON DIRECT

1 he's shooting, and I looked over my shoulder and in the
2 mirror and I see him with a gun.

3 Q. When you looked in the mirror and back over your
4 shoulder, what did you see?

5 A. I saw Melvin Haynes standing there in the doorway.
6 He was standing there in the doorway holding a gun.

7 Q. And what was he wearing?

8 A. Nothing.

9 Q. And what did he have in his hands?

10 A. A shotgun.

11 Q. Did he have anything else in his hands?

12 A. Some shells.

13 Q. Anything else? Glasses, hat?

14 A. I don't -- no, sir, from what I could tell.

15 Q. I show you what's been marked as State's Exhibit
16 Number 1. Do you recognize that?

17 A. That was the gun Melvin Haynes had.

18 Q. Is that the gun he was handling that day?

19 A. Yes, sir.

20 Q. So you heard a noise and you saw a man, naked, with
21 a gun?

22 A. Yes.

23 Q. And what did you do at that time? What happened
24 then?

25 A. I tried to calm down and drive out the driveway.

MR. J. DAVIS ON DIRECT

1 Then he just pointed the gun at me and that's when he
2 pulled the trigger.

3 I left. I got out of there.

4 Q. And were you hit?

5 A. At the time I didn't know I was hit until I got down
6 the road and realized my window was blasting out on me,
7 I guess from my window being and the glass was blowing.

8 Then my brother started freaking out and told me I
9 was shot. I looked and saw blood inside the cab.

10 Q. Okay.

11 A. I mean, I didn't -- You have to be there to under-
12 stand what you went through.

13 Q. I show you what's marked as State's Exhibit 13. Do
14 you recognize that?

15 A. Yes, sir.

16 Q. What is it?

17 A. My truck. A picture of my truck.

18 Q. Is that a fair and accurate representation of the
19 way your truck looked like after this incident?

20 A. Yes, sir.

21 SOLICITOR: At this time, the State would offer
22 State's Exhibit Number 13.

23 THE COURT: Any objection?

24 MR. MESSERVY: No objection.

25 THE COURT: State's 13 in evidence.

MR. J. DAVIS ON DIRECT

1 (Photograph of truck entered in evidence without
2 objection as State's Exhibit 13)

3 SOLICITOR: Your Honor, at this time the State would
4 ask to publish the photograph to the jury, Number 13.

5 THE COURT: Okay.

6 BY SOLICITOR:

7 Q. Mr. Davis, could you point out where your vehicle
8 was hit?

9 A. Right in the head rest and this side of the cab.
10 This very end.

11 Q. Okay, and what do you mean by that circle you draw?
12 What is that?

13 A. That is my windshield where it was shot. On the
14 side -- I guess, on the middle part of the truck.

15 Q. And that is your tow truck. Correct?

16 A. Correct.

17 Q. And did you have the lights flashing or on top like
18 a police vehicle?

19 A. No, sir, we didn't.

20 Q. What about the sign you have on the back of it?

21 A. Recovery truck -- when people see a truck that has
22 recovery truck on it, that means it is for repossession
23 of a vehicle.

24 MR. MESSERVY: Objection.

25 THE COURT: Okay.

MR. J. DAVIS ON DIRECT

1 MR. MESSERVY: What other people know is immaterial,
2 Your Honor.

3 THE COURT: I sustain the objection. Okay?

4 All right, sir.

5 BY SOLICITOR:

6 Q. And what is -- as you look to the right of that
7 recovery sign on the picture underneath the red light,
8 what is that?

9 A. That's the dealership sign on the truck of it
10 being a commercial vehicle.

11 Q. Okay. How long had you had that truck?

12 A. I'd say about thirty days.

13 Q. So not that long?

14 A. Yes, sir.

15 Q. And are the windows tinted?

16 A. Correct.

17 Q. Did you tint them?

18 A. No.

19 Q. You purchased it that way?

20 A. Yes, sir.

21 Q. All right. Now, when you -- after you got shot,
22 you stated you left the driveway?

23 A. Yes, sir.

24 Q. You took off?

25 A. Yes.

MR. J. DAVIS ON DIRECT

1 Q. Did you actually hook up to the Defendant's truck?

2 Were you actually hooked up?

3 A. Yes, sir. I hadn't lifted it but I was hooked up
4 to it.

5 Q. Okay. What did you do or where did you go from that
6 point?

7 A. I went straight and turned left off of his driveway,
8 onto the road, and then maybe a hundred yards or seventy-
9 five yards and make a left off of Main Road.

10 So I made two lefts, immediate lefts.

11 Q. What's the name of that road?

12 A. (Inaudible)

13 Q. Did you immediately call the police at that time?

14 A. Yes, sir. After getting out on the road and trying
15 to get away from him, the gunshots and all that was going
16 on.

17 Q. And as a result of that phone call, what did you
18 do? What did you do after you made that phone call to
19 the police?

20 A. I just spoke to the dispatcher, and the dispatcher
21 advised me we're on the way and told me I needed to
22 stop. I said, I hate to stop now. I mean, I just got
23 shot and I don't know if somebody is following behind
24 me.

25 Q. Okay.

MR. J. DAVIS ON DIRECT

1 A. And I finally ended up stopping.

2 Q. You stopped after making that phone call?

3 A. Correct.

4 Q. And then what happened after that, after you had
5 stopped?

6 A. A gentleman pulled up to assist me, and he also
7 called nine one one.

8 Q. Okay, just a regular . . .

9 A. Just a bystander. I don't know who he was -- don't
10 know his name.

11 Q. Did the police ever arrive?

12 A. Yes, sir.

13 Q. When the police arrived, what did they do? What did
14 they do?

15 A. They took all my notes and called EMS, and I was
16 with EMS until we left.

17 Q. EMS responded to the scene?

18 A. Yes, sir.

19 Q. Were any pictures taken of you at the scene?

20 A. There were some pictures taken.

21 Q. Showing you what's been marked as State's Exhibit
22 19 and 20, do you recognize what's in this photo?

23 A. That's me.

24 Q. Is this a fair representation of what you looked
25 like at that time?

MR. J. DAVIS ON DIRECT

1 A. Yes, sir.

2 SOLICITOR: At this time the State would offer
3 State's Exhibits 19 and 20 in evidence.

4 THE COURT: Any objection?

5 MR. MESSERVY: No objection.

6 THE COURT: State's Exhibits 19 and 20 are admitted
7 into evidence.

8 (Photographs admitted without objection as State's
9 Exhibits 19 and 20 in evidence)

10 SOLICITOR: At this time, Your Honor, the State
11 would publish to the jury State's 19 and 20.

12 THE COURT: All right.

13 SOLICITOR:

14 Q. Would you explain to the jury where you were
15 injured in that picture?

16 A. My face, head, nose, ear and my back.

17 Q. What is that dark area kind of on your chin?

18 A. That's where a chunk of the pellets had went in my
19 jaw.

20 Q. Was that place there before this incident?

21 A. No.

22 Q. Okay.

23 A. And also it got me in the eyes.

24 Q. Looking at State's Exhibit 20, what are all those
25 marks on your arms and your shoulder? Your back?

MR. J. DAVIS ON DIRECT

1 A. Bullet holes.

2 Q. Did you discover how many rounds it was that hit
3 you?

4 A. Not at the time.

5 Q. Okay.

6 A. I was aware when they came out and -- I mean, after
7 he shot me, being shot with a shotgun, I wasn't a hun-
8 dred percent sure.

9 Q. Did you find out at a later time how many times you
10 were shot and where you were shot?

11 A. Yes, sir.

12 Q. And when EMS transported you, where did they
13 transport you to?

14 A. MUSC downtown.

15 Q. How did they transport you?

16 A. By ambulance.

17 Q. Were you just sitting in the ambulance?

18 A. No, I was on a stretcher.

19 Q. Did they have you bandaged up or anything?

20 A. Yes, they had me with IVs and the other procedures
21 they use.

22 Q. And were you met by anyone at the hospital?

23 A. My parents and my wife and two kids.

24 Q. How old were the children when this happened? How
25 old were you children at the time?

MR. J. DAVIS ON DIRECT

1 A. Three and five.

2 Q. Did you spend the night at the hospital?

3 A. No, I only stayed for a while.

4 Q. And what kind of -- did you have any kind of sur-
5 geries?

6 A. I am currently still going through surgeries. The
7 hospital said it was too involved in taking them out or
8 trying to go in there and take them all out, so I have to
9 wait until they force themselves closer to the skin be-
10 fore they will go in there and surgically remove them.

11 Q. And how do they surgically remove them?

12 A. They numb you with needles and then they score you
13 with a knife, take tweezers and then remove them. It's
14 a real painful procedure.

15 Q. And how many times have you had this procedure?

16 A. Three.

17 Q. And do you still have some particles under your
18 skin?

19 A. Yes, sir.

20 Q. And where are those particles?

21 A. In my shoulder and I have some in my jaw.

22 Q. Okay.

23 A. They are just in various places. It's getting to
24 the point now where I could take my shirt off and you
25 could see the black places where the bullets are getting

MR. J. DAVIS ON DIRECT

1 closer to the skin.

2 When I called him, he said to let them get a little
3 further out because they didn't want to get just four or
4 five. They want to get a pretty good bit next time they
5 do surgery.

6 Q. Do they ever like come out on their own?

7 A. Yes, sir.

8 Q. How does that happen?

9 A. You just -- like when it first happened and I was
10 in the shower the hot water and everything would force
11 some of them out. They will come out and be on the
12 floor of the shower.

13 Q. I bet your wife wasn't too happy about that?

14 A. . .

15 Q. I want to show you one other thing. This is State's
16 Exhibit 14. Do you recognize that?

17 A. Yes, sir.

18 Q. And what is that?

19 A. It's my truck, sir. A picture of where he shot at
20 my head.

21 Q. Is that a fair and accurate representation of how
22 that looked back then?

23 A. Yes, sir.

24 SOLICITOR: The State would offer State's Exhibit
25 14 in evidence.

MR. J. DAVIS ON DIRECT

1 THE COURT: Any objection?

2 MR. MESSERVY: No objection.

3 THE COURT: State's Exhibit 14 in evidence.

4 (Photograph admitted in evidence without objection
5 as State's Exhibit 14)

6 THE COURT: All right, sir.

7 BY SOLICITOR:

8 Q. What part of the window is that?

9 A. Where my head would be in the driver's seat.

10 Q. And what's that grey thing you see there is the
11 hole?

12 A. My head rest for my head.

13 Q. Let's go back to the nine one one call that you
14 mentioned.

15 You mentioned earlier that you believe your brother
16 made a phone call to nine one one?

17 A. Yes, sir.

18 Q. And did you have an opportunity prior to coming to-
19 day to listen to that nine one one call?

20 A. Yes, sir.

21 Q. And I show you State's Exhibit 29. Have you seen
22 this previously?

23 A. Yes, sir.

24 Q. Is that what you listened to previously?

25 A. Yes, sir.

MR. J. DAVIS ON DIRECT

1 Q. And is the nine one one call a fair and accurate
2 representation of the call made that day to nine one
3 one?

4 A. Yes, sir.

5 SOLICITOR: Your Honor, at this time the State would
6 offer State's Exhibit 29 in evidence.

7 THE COURT: Any objection?

8 MR. MESSERVY: Your Honor, I would object to this.

9 THE COURT: I believe Mr. Davis testified he had lis-
10 tened to it and it was a fair and accurate representation
11 of the nine eleven call.

12 All right, sir. I'll note your objection but it
13 is admitted in evidence.

14 (Transcript of nine one one call admitted over ob-
15 jection from Defense into evidence as State's Exhibit
16 29 together with tape of call)

17 THE COURT: All right, sir.

18 SOLICITOR: Permission to publish State's Exhibit 29,
19 Your Honor.

20 THE COURT: All right, I'll allow you to publish it
21 and I will note for the record Mr. Messervy's objection
22 which is continuing.

23 SOLICITOR: Thank you, sir.

24 (Nine one one tape played for the jury by the Soli-
25 citor)

MR. J. DAVIS ON DIRECT

1 BY SOLICITOR:

2 Q. Mr. Davis, do you see the man in the Courtroom that
3 shot you that day?

4 A. Yes, sir.

5 Q. Would you point him out to us, please, and to the
6 jury?

7 A. He's in the long sleeved shirt there.

8 SOLICITOR: Please let the record reflect the wit-
9 ness has identified Melvin Haynes.

10 THE COURT: The record will so reflect.

11 SOLICITOR: No further questions.

12 THE COURT: Any questions of the witness, Mr.
13 Messervy?

14 MR. MESSERVY: Just a few, Your Honor.

15 CROSS EXAMINATION

16 BY MR. MESSERVY:

17 Q. If you would take a moment and look at this drawing.
18 This is Jill Drive. Right?

19 A. Right.

20 Q. And this is the house of Melvin Haynes, not to scale
21 or anything?

22 A. All right.

23 Q. What else do you remember about the area there?

24 A. (Inaudible)

25 REPORTER: Would you speak louder?

MR. J. DAVIS ON CROSS

1 THE COURT: I need both of you to speak up a little
2 louder. She has to continue to take down what you say.
3 Thank you.

4 A. This is the driveway and where I pulled in.

5 Q. And that would be where the truck was parked?

6 A. Right about here. I'm not really -- about there.

7 Q. All right, sir. Where did you back up? That would
8 be the front of the vehicle?

9 A. Yes, sir.

10 Q. All right, sir, and where did you back up to?

11 A. I came in -- like I said, I came in here and passed
12 it and turned around.

13 Q. All right, sir, and how long is your truck?

14 A. It's a long truck, about twenty-five foot.

15 Q. Twenty-five foot?

16 A. Yes, sir. Twenty to twenty-five foot.

17 Q. Twenty to twenty-five foot?

18 A. Yes, sir.

19 Q. So would you draw in the truck?

20 A. You mean turning in and coming this way? You want
21 me to draw it . .

22 Q. No, just draw it about where you put it.

23 A. . .

24 Q. And where was Mr. Haynes' truck?

25 A. About there.

MR. J. DAVIS ON CROSS

1 Q. So he was all the way back there?

2 A. What do you mean by all the way back there? I mean,

3 I saw . .

4 Q. You could see him back there, is that correct?

5 A. Yes.

6 Q. Would you put the truck there?

7 A. . .

8 Q. Now, and when you left, where did you go?

9 A. When . .

10 Q. You'd been shot?

11 A. I'd been shot and he was still there.

12 Q. So you went back toward 17 or 17 A, is that cor-
13 rect?

14 A. Yes, sir.

15 Q. Now, I believe in previous testimony you said that
16 there was a stop? Am I correct?

17 A. No, sir, I said I sped up but I didn't stop.

18 Q. All right.

19 A. Me and my brother both testified to that.

20 Q. Okay. Now, you didn't get out of the truck?

21 A. No, sir.

22 Q. And did you know of your own knowledge how many
23 times the truck was shot?

24 A. To my knowledge?

25 Q. Yes, sir.

MR. J. DAVIS ON CROSS

1 A. Just once.

2 Q. All right. Now, do you remember testifying on
3 August 24th of last year in this Courtroom?

4 A. Yes, sir.

5 Q. All right. I asked you at that time, page 30, line
6 15, you sure you were only shot one time.

7 A. I'm sure . . .

8 Q. Is it possible you were only shot one time?

9 A. I'm sure I was shot at only one time.

10 Q. But you were shot one time?

11 A. I was shot one time.

12 Q. And is that your testimony now? The truck was shot
13 one time?

14 A. (Inaudible)

15 THE COURT: Mr. Witness, you need to speak up.
16 Okay?

17 WITNESS: Okay.

18 BY MR. MESSERVY:

19 Q. How many times were you shot or was your truck shot
20 at?

21 A. To my knowledge, just one time.

22 Q. All right. Now, I want to hand this up to you.

23 MR. MESSERVY: Your Honor, I have a photocopy of a
24 transcript but the pages weren't numbered.

25 THE COURT: Do you have a copy for the witness?

MR. J. DAVIS ON CROSS

1 MR. MESSERVY: Yes, sir.

2 BY MR. MESSERVY:

3 Q. Now, would you read from line 15 what you said back
4 then?

5 A. All right.

6 Q. That is the question.

7 A. The question -- all right. (Portion inaudible) He
8 shot the truck one time.

9 Q. Just read what it says.

10 A. He shot the truck one time. He shot twice, right?
11 To my knowledge he shot twice.

12 Q. So it was your knowledge back then that he shot
13 twice. Correct?

14 A. Shot twice but shot the truck one time.

15 Q. Read your answer.

16 A. Shot -- he shot at the truck twice but then he shot
17 the truck once.

18 Q. The question was, was there a hit to the truck, and
19 the answer, he shot the truck one time. When he shot the
20 truck the second time, he shot twice? To my knowledge,
21 yes, he shot twice.

22 A. . .

23 SOLICITOR: Your Honor, if he would make sure they
24 are looking at the same lines.

25 BY MR. MESSERVY:

MR. J. DAVIS ON CROSS

1 Q. All right. Question, but you own the truck. Was
2 there damages to the truck? He shot . .

3 THE COURT: Is this the answer to the question?

4 Q. He shot the truck one time and then he shot the
5 truck a second time.

6 He shot twice, right? To my knowledge, yes, he did.

7 Is that what you testified to earlier in the case?

8 A. Yes, sir.

9 Q. Okay. Now, you now say he only shot the truck one
10 time?

11 A. When you asked the question the first time it was an
12 entirely different situation. He shot twice, but he shot
13 at the truck once.

14 I was trying to explain he shot one time at the
15 truck but he shot a second time toward the truck. He hit the
16 truck once.

17 I didn't see where he shot the second time but I did
18 hear the noise. I can't testify where he shot. All I
19 can do is testify he shot me in my back while my back was
20 turned to leave.

21 Q. What happened -- all right, you were sitting in the
22 truck. Correct?

23 A. . .

24 Q. How long did you sit there in the truck?

25 A. No more than four or five seconds.

MR. J. DAVIS ON CROSS

1 Q. Okay. Then you gunned it to leave?

2 A. Correct.

3 Q. All right, and in that four to five seconds you
4 backed up, hooked up the car, had your brother go out-
5 side, reposition, get back in the truck.

6 Mr. Haynes comes outs and shoots and you take off.

7 Correct?

8 A. No, sir, it didn't happen like that.

9 Q. Tell me how it happened.

10 A. It didn't get to that point until -- normally in a
11 repossession, I will back up and my brother gets out and
12 verifies it's the right vehicle. I then continue to fin-
13 ish picking up the truck.

14 I get out, put my strap on. He puts his strap on,
15 and we knock on the door to let the debtor get the oppor-
16 tunity to get personal knowledge.

17 We never got to that. We never got back out before
18 he commenced the shooting.

19 Q. Now, did you ever let Mr. Haynes know you were there
20 to get his truck?

21 A. No. I can demonstrate and show you why we didn't go
22 to the door. It's not like you are thinking, where you
23 have to get out and chain it up and all of that. It's
24 not like that.

25 Q. It's just grab the tires and lift it up. Right?

MR. J. DAVIS ON CROSS

- 1 A. Correct, but sometimes you have to get out and
2 strap it before you drag it down the road.
- 3 Q. But you had backed it up so you could strap it up.
4 Right?
- 5 A. We have to strap it for safety.
- 6 Q. At that point you were in a position to drive off,
7 is that right?
- 8 A. We did drive off when we had to. (Portion not
9 audible)
- 10 Q. Now, by the way, you had his application for credit,
11 is that right?
- 12 A. No, sir. I said a credit ap which means it's a
13 form he filled out to apply for credit. It has refer-
14 ences and such..
- 15 Q. Something he filled out?
- 16 A. Yes, sir.
- 17 Q. Now, tell me about the truck. Is the truck just
18 like a normal truck, except for the attachment?
- 19 A. It has a seat for a passenger, and you can have
20 a 150, you can have a 250, and you can have to 450. The
21 kind of truck I have is a 350. I have other trucks as
22 well. Bigger trucks.
- 23 Q. But is this like a normal truck. Was it a loud
24 truck?
- 25 A. You can hear a diesel engine. Clack, clack, clack,

MR. J. DAVIS ON CROSS

1 clack, clack.

2 Q. And when you take off the noise gets louder?

3 A. I would say so.

4 Q. How far away from the house was it?

5 A. Between twenty-five and thirty feet, I'd say, where
6 I got behind him. He was in the back door area.

7 Q. Well, how far from the house was it?

8 A. About ten feet. The truck was parallel to the
9 house.

10 Q. So you were only ten feet from his house?

11 A. Roughly. I can't say exactly.

12 Q. So you were very close, and assuming that . .

13 A. I mean, the passenger side of my truck and I can't
14 say exactly how far away it was. How far the truck was.

15 Q. All I'm saying is you were very close, between you
16 and him. It's about thirty feet from his door?

17 A. About that.

18 Q. His car would be thirty feet or so away?

19 A. Again, I wasn't looking at the front of his truck.
20 I was looking at the back of his truck. I wasn't look-
21 ing at his door. All I was looking at was the back of his
22 truck where I needed to hook up.

23 Q. Now, you don't have any problems . .

24 A. I don't have any . .

25 (Witness and Counsel speaking at the same time)

MR. J. DAVIS ON CROSS

1 Q. Did you notice anything else in the yard?

2 A. I saw the grass.

3 Q. Is there any chance there was a line over here of
4 bushes?

5 A. I didn't notice that.

6 Q. Now, how far away from the truck wheels were you?

7 A. From my truck to the wheels?

8 Q. Yeah.

9 A. Oh, probably three and a half to four foot -- some-
10 thing like that.

11 Q. You're close there to -- I mean, at this point, you
12 have the back of the truck being halfway to the house.

13 A. Yes, sir.

14 Q. Is that . . .

15 A. Yes, sir. All right.

16 Q. Not back here but you're talking about the truck
17 here -- correct?

18 A. Correct.

19 Q. So another twenty feet -- so you are very close to
20 Jill Drive, aren't you?

21 A. Say again?

22 Q. You are . . .

23 A. When I back up, the back of my truck is to the back
24 of that truck, which is parallel to the house.

25 I mean, I can't remember all the . . .

MR. J. DAVIS ON CROSS

1 Q. Twelve or fourteen feet?

2 A. Something like that.

3 (Counsel and witness speaking at the same time)

4 BY MR. MESSERVY:

5 Q. Now, when you lifted up the truck, how far did you
6 lift up the truck? How high?

7 A. Again, I can't answer that.

8 Q. All right.

9 A. There is no way I can tell you. I normally will . .

10 Q. Did you . .

11 A. I can't tell you that. Normally, I get the wheels
12 up well off the ground so it won't drag the ground, but
13 I can't tell you that. He came out so quick.

14 Q. But it obviously wasn't dragging the ground, was
15 it?

16 A. No, but it wasn't far up.

17 Q. Now, when you saw Mr. Haynes out there, what did
18 you do as far as your position in the truck?

19 A. I looked in my rear view mirror to see back behind
20 me and whether it was an inch off the ground or nearly
21 dragging the ground, I don't know.

22 Now, when I was leaving I was afraid to slow down
23 but I eventually picked the truck up.

24 Q. When you saw Mr. Haynes, as far as your position in
25 the truck, what did you do?

MR. J. DAVIS ON CROSS

1 A. I looked in my mirror and see him racking a gun,
2 and then he throw it up like that, and I leaned into
3 the center console to brace for impact.

4 When he pulled the trigger is when I . . .

5 Q. So you leaned into the center console?

6 A. Correct.

7 Q. And how far were you leaning into the center con-
8 sole?

9 A. Well, I mean, the center console is right there.

10 The center console is right there next to me.

11 If you position yourself in the truck, the center
12 console is next to you.

13 Q. Okay.

14 A. Right at your elbow.

15 Q. So you were leaning -- you were scared then, right?

16 A. I was leaning in, looking out that mirrow, so I
17 was scared. I was looking out that mirror.

18 Q. Okay.

19 A. I mean, I didn't know if he was just bluffing me or
20 what. I was watching him.

21 Q. Now, from that particular location, when you looked
22 back, those windows in the back are extremely dark, are
23 they not?

24 A. Not to me it was not. To you looking in, it might
25 be.

MR. J. DAVIS ON CROSS

1 Q. But Mr. Haynes couldn't see in the truck, could he?

2 A. My windows was down. He heard me hollaring. He
3 acknowledged me telling him I'm dropping it because he
4 replied.

5 Q. Well, . .

6 A. He knew I was in the truck or someone was operating
7 the truck. It wasn't driving itself.

8 Q. There was no damage except for the window. Is that
9 correct? Except for the spray?

10 A. There was damage all over the truck.

11 Q. Well, . .

12 A. I mean, you just gotta look. It's all over it.

13 Q. I'm talking particularly about . .

14 A. It was a -- that truck was seven years old at the
15 time. I mean, . .

16 Q. Okay, but I mean from the shotgun shell there was
17 no damage?

18 A. Say that again? Where he shot me in the head?
19 That's the damages.

20 Q. Well, your brother was in the truck at the time you
21 got shot?

22 A. He got getting in the truck as he was shooting.
23 I thought he had shot at my brother.

24 (Brief pause in proceeding)

25 BY MR. MESSERVY:

MR. J. DAVIS ON CROSS

1 Q. Mr. Davis, do you remember testifying on August 24,
2 2011?

3 A. Yes.

4 Q. All right.

5 THE COURT: Mr. Messervy, what page and line are you
6 looking at, sir?

7 MR. MESSERVY: Page 45.

8 THE COURT: Page 45?

9 MR. MESSERVY: Yes, sir.

10 BY MR. MESSERVY:

11 Q. Looking at line 18. Question, and then he hollared
12 -- he said, he's shooting; he's got a gun, and that's
13 when I looked over my shoulder to see him racking a gun.

14 All right, so after he's already been in the truck
15 you heard your brother say -- uh huh, that's before I
16 heard the noise. I heard -- I mean, after you heard the
17 noise is when your brother jumped in the truck. Correct?
18 All right, and why -- I'm sitting in the driver's seat;
19 your brother is over there.

20 So how are you -- how do you look back?

21 A. Can I read that?

22 Q. Huh?

23 A. Can I read that? Do you mind if I read that?

24 Q. Yes, sir, I'm sorry. I want you to.

25 A. Question, all right, so after he already been in

MR. J. DAVIS ON CROSS

1 . .

2 Q. Just start right here.

3 A. All right, so after he already been in the truck --
4 that's what you asked me?

5 Q. Yes, sir.

6 A. And I said, huh. Well, that's before you heard the
7 noise? I heard -- I mean, after you heard the noise
8 and then your brother jumped in the truck. Correct?

9 All right, while you say you were sitting in the
10 truck, the driver's seat, your brother indicates -- so
11 how do you look back? Did you look back this way or did
12 you look back this way? Indicating.

13 I would have looked this way at my truck. You can
14 see from the pictures it's got big mirrors in the truck.

15 I mean, what are you trying to get at? Let me help
16 you . .

17 Q. The truck has big mirrors so you can look at the
18 wheels. All right, sir, and how -- when you yelled, I'm
19 going to drop -- I'm dropping the truck, was this substan-
20 tially what the truck looked like after it was shot?

21 A. You were asking me if my brother had got in the
22 truck. You weren't asking me about the lift and the
23 mirrors.

24 That's what I -- are you trying to trick me into
25 saying something? I'm telling you how it was. I done

MR. J. DAVIS ON CROSS

1 told you how it was.

2 Q. Okay.

3 A. All I know is that that man came out the door with
4 that shotgun and I would have left that truck.

5 Ain't no truck in the world worth getting shot, with
6 my two kids.

7 I mean, . . .

8 Q. All right, sir. Now, you are at the trial on the
9 28th?

10 A. I believe so.

11 Q. And then on the 29th we had a bond hearing. Cor-
12 rect?

13 A. I believe so.

14 Q. And that was on a Sunday, right?

15 A. I'm not sure.

16 Q. Okay.

17 THE COURT: Mr. Messervy, what's the relevance?

18 MR. MESSERVY: Well, I'm about to get to it, Your
19 Honor.

20 THE COURT: Well, come up and tell me what it is.

21 (Conference at the bench between counsel and the
22 Court off the record)

23 THE COURT: Ladies and gentlemen, we're about to
24 take a quick -- I promise you -- a quick five minute
25 break.

MR. J. DAVIS ON CROSS

1 I'm going to ask you all to go back in the jury
2 room. You cannot talk about anything you've heard so
3 far.

4 We all probably need a break and this is a good
5 time for it.

6 Thank you.

7 (Jury excused from Courtroom)

8 THE COURT: If you all would talk about the point
9 you are trying to get at . .

10 I mean, I assume you are wanting to impeach him.

11 MR. MESSERVY: Yes, sir. The next day at the bond
12 hearing he had copies of the money order and all. I want
13 to know where he got the money order and all.

14 SOLICITOR: All he has to do is ask him if the next
15 day he had a copy of the money order.

16 THE COURT: If he says not then you can't impeach
17 him.

18 MR. MESSERVY: Thank you.

19 THE COURT: If he says yes, you can ask him where he
20 got it from.

21 MR. MESSERVY: Yes, sir.

22 (Whereupon, the Court took a brief recess and the
23 matter then resumed)

24 THE COURT: All right, would you bring the jury in,
25 please?

MR. J. DAVIS ON CROSS

1 MR. MESSERVY: They are not going to qualify Ms.
2 Zenson for anything outside of the normal police officer.
3 Is that correct?

4 SOLICITOR: I'm not going to qualify her as any-
5 thing.

6 MR. MESSERVY: The only thing she's going to say is
7 what she picked up?

8 SOLICITOR: What she collected, the pictures she
9 took, what she discovered.

10 THE COURT: All right, I'm ready to bring the jury
11 back in. Okay?

12 Bring them back in.

13 (Jury returned to the Courtroom)

14 (Witness Johnny Davis resumed the witness stand)

15 THE COURT: We will continue with the testimony.

16 Mr. Messervy.

17 CROSS EXAMINATION CONTINUED

18 BY MR. MESSERVY:

19 Q. Did you have a copy of -- did you get copies of the
20 money order?

21 A. Yes, sir.

22 Q. When?

23 A. Right after the shooting.

24 Q. How and when did you get them?

25 A. I can't remember. It was three years ago.

MR. J. DAVIS ON CROSS

1 Q. I'm just asking you if the next day at the bond
2 hearing you had copies of them?

3 A. Before I went I notified Paul Lee about what hap-
4 pened to see if he wanted to come with me, and that's
5 when I got all the paperwork I thought we'd need.

6 MR. MESSERVY: No further questions at this time.

7 THE COURT: All right. Any Redirect?

8 SOLICITOR: Nothing on Redirect.

9 THE COURT: Counsel has told the Court that the next
10 witness would be fairly long. As it is now after four
11 o'clock and rather than to keep you all late with a long
12 witness, what I'm going to do is let you all go home
13 for the evening and come back at nine thirty in the morn-
14 ing.

15 I say again, you have not heard all the testimony
16 in the case, so you cannot talk about the case. You can-
17 not talk with anyone about the case.

18 You cannot do any investigation. I'll see you all
19 in the morning at nine thirty.

20 (Jury was excused for the evening. Court stood in
21 recess until December 8, 2011, when the case resumed)

22 THE COURT: Yesterday when State's Exhibit Number:
23 10 was shown, the photograph of the Defendant's house,
24 it was identified, and Mr. Messervy said no objection.
25 Did you all want that to be in evidence?

1 SOLICITOR: Yes, sir.

2 THE COURT: All right. I just wanted to clear up
3 on the record that State's Exhibit 10 is in evidence.
4 Okay.

5 MR. MESSERVY: Also, yesterday in my Cross Examina-
6 tion we used this, and I would like to introduce it.

7 It has been marked -- I have had Ms. Harry Dot mark
8 it as Defense Exhibit 3.

9 SOLICITOR: No objection.

10 THE COURT: All right, State's Exhibit 2 is the dia-
11 gram -- sorry -- Defense Exhibit 2.

12 MR. MESSERVY: Thank you.

13 (Diagram admitted without objection as Defense Ex-
14 hibit 2)

15 THE COURT: Anything else?

16 MR. MESSERVY: Yes, sir.

17 THE COURT: All right, sir.

18 MR. MESSERVY: I would ask that the record reflect
19 that I went out there yesterday and all I could do was
20 observe the place.

21 Once again, I raise an objection that I could not
22 observe or have a chance to test the stuff, and I want
23 that in for the record.

24 It was almost pitch black -- well not almost, but
25 it was so dark you couldn't see. Everyone had the

1 lights on.

2 I point this out to you because -- I don't want to
3 and it's the worst thing I could possibly say, but I
4 just got a call this morning that my -- that I won't
5 have a dog this afternoon.

6 THE COURT: I'm sorry about that.

7 MR. MESSERVY: So I would ask for a continuance,
8 not because of hysteria or -- this dog has been with us
9 for twelve years but I think I'll be able to carry on,
10 as far as I know.

11 THE COURT: All right, sir. I'm sorry about that,
12 sir, and I'm assuming you are -- part of this is your
13 continuing motion for a continuance.

14 MR. MESSERVY: Yes, sir.

15 THE COURT: And for reasons I stated earlier, I'm
16 going to proceed with the trial. I deny the motion,
17 and I will note your objection to my ruling on the re-
18 cord.

19 MR. MESSERVY: Thank you.

20 THE COURT: Anything from the State?

21 SOLICITOR: No, sir.

22 THE COURT: Is the Defense ready to proceed?

23 MR. MESSERVY: Oh, yes, sir.

24 THE COURT: All right, bring the jury in, please,
25 sir.

1 (Jury returned to Courtroom)

2 THE COURT: All right, sir.

3 SOLICITOR: The State would call Robert Davis to
4 the stand.

5 ROBERT DAVIS, being duly
6 sworn, testified as follows:

7 CLERK: Please state your name for the record.

8 WITNESS: Robert Davis.

9 THE COURT: We need you to make sure we hear you
10 when you talk. Okay?

11 WITNESS: Yes, sir.

12 THE COURT: Thank you, sir.

13 Your witness, Mr. Justis.

14 DIRECT EXAMINATION

15 BY SOLICITOR:

16 Q. Mr. Davis, where do you live?

17 A. With my brother.

18 Q. Is he an older brother or young brother?

19 A. My older brother.

20 Q. And have you been incarcerated?

21 A. Yes, sir.

22 Q. Why are you locked up?

23 A. I got locked up because I committed a crime.

24 Q. When did that happen?

25 A. A year ago.

MR. R. DAVIS: ON DIRECT

1 Q. What was the crime?

2 A. Burglary.

3 Q. And can you give us a date that happened?

4 A. December 20th.

5 Q. Of '09?

6 A. Yes, sir.

7 Q. So after the incident where your brother got shot?

8 A. Yes.

9 THE COURT: Just a second. You need to speak up a
10 little bit. Speak into that microphone.

11 Thank you.

12 BY SOLICITOR:

13 Q. Had you ever been arrested before that?

14 A. Yes.

15 Q. Were you convicted in 2003 for malicious injury to
16 personal property?

17 A. Yes, I was.

18 Q. And breaking in a coin-operated machine?

19 A. Yes.

20 Q. And in 2007 were you convicted of CDV?

21 A. Yes, I was.

22 Q. And simple assault?

23 A. Yes.

24 Q. So do you have a drinking problem?

25 A. Yes.

MR. R. DAVIS ON DIRECT

1 Q. And is that the main reason you got into all of this
2 trouble?

3 A. It is.

4 Q. And I would call your attention to June 28 of 2009.
5 Where were you working on that date?

6 A. For my brother in repossessions.

7 Q. And where did you all go?

8 A. To Melvin Haynes' address.

9 Q. Do you remember whether that was on Drive,
10 Drive?

11 A. Yes.

12 Q. And take us through what happened when you got there
13 and pulled up to the house?

14 What happened after you all pulled up to the house?

15 A. We pulled up and my brother had said, there's the
16 truck, and he backed up and I got out there to make sure
17 it really was the truck. He had given me the vin num-
18 ber, serial number.

19 REPORTER: I'm sorry.

20 BY SOLICITOR:

21 Q. You were checking the vin number?

22 A. Yes, checking the vin number.

23 Q. All right.

24 A. And as I was checking, I got out of the tow truck
25 and proceeded over to the truck.

MR. R. DAVIS ON DIRECT

1 Q. Let me stop you real quick. You can continue.

2 A. When I proceeded over to the truck I seen the back
3 door open.

4 Q. Okay.

5 A. Here's my brother's truck and his truck.

6 Q. So he backs his truck up to the Defendant's truck?

7 A. Yes.

8 Q. It's kind of hard to draw on that. Where were you
9 when you first saw Mr. Haynes?

10 A. I was right here.

11 Q. Near the passenger side of Mr. Haynes' truck?

12 A. Yes.

13 Q. And what was Mr. Haynes doing when you first saw
14 him?

15 A. When I was hooking up to the tire he come out the
16 back door and was standing by the back door with no
17 clothes on with a side arm.

18 Then he pointed it at me and he fired but the first
19 time he fired it clicked. That's all it did.

20 And as he did that I come running on this side and
21 by the time I was past the tires I waved my hands up in
22 the air, like don't shoot, and he reloaded, and he fired
23 toward me and hit me in the arm and hit me on my face.

24 SOLICITOR: Let me get these marked.

25 Reporter: State's 21 and 22.

MR. R. DAVIS ON DIRECT

1 BY SOLICITOR:

2 Q. Now, is this a fair and accurate representation of
3 your injuries that day?

4 A. Yes.

5 SOLICITOR: I would move to admit these in evidence
6 at this time.

7 THE COURT: It's two of them, 21 and 22?

8 SOLICITOR: Yes, sir.

9 THE COURT: Any objection from Defense?

10 MR. MESSERVY: No, sir.

11 THE COURT: All right. State's 21 and 22 are admit-
12 ted without objection.

13 All right, sir.

14 BY SOLICITOR:

15 Q. Was that from the first shot?

16 A. Yes.

17 Q. What happened after that?

18 A. We kept telling him that we would drop the truck.

19 Q. Who said that?

20 A. My brother told him that he was going to drop the
21 truck, and by the time -- I was telling him, I'm hit, and
22 by the time I got up he reloaded again. Then he fired
23 and hit my brother. I ran to get in the truck, and we
24 took off and left.

25 My brother was dragging the truck.

MR. R. DAVIS ON DIRECT

1 Q. So he shot three times. The first time there was a
2 click, you said, and then the second time he hit you and
3 then he hit your brother the third time, but he pulled the
4 trigger three times?

5 A. Right.

6 Q. And you were shot in your face and your arm as is
7 shown in these photographs?

8 A. Yes, sir.

9 THE COURT: And that's 21 and 22?

10 SOLICITOR: Yes, sir.

11 BY SOLICITOR:

12 Q. How were you positioned when you got shot?

13 A. I had my arms straight up.

14 Q. And you were on the other side of the truck?

15 A. Yes, sir.

16 Q. About how high does the truck come up?

17 A. About four feet.

18 Q. And you are about six foot? Six foot two?

19 A. It came up to my waist, yeah.

20 Q. So you ran back to the truck and he shot at your
21 brother?

22 A. Yes.

23 Q. What happened then?

24 A. I opened the door as he fired and I jumped in, and
25 we left.

MR. R. DAVIS ON DIRECT

1 Q. Okay.

2 A. We left in a hurry.

3 Q. And did you call nine one one?

4 A. My brother called -- I called nine one one and my
5 brother did the talking. It was back and forth.

6 Q. All right. Please answer questions that the Defense
7 may have.

8 A. Yes, sir.

9 THE COURT: Mr. Messervy, your witness.

10 CROSS EXAMINATION

11 BY MR. MESSERVY:

12 Q. When you saw Mr. Haynes with the gun, what did you
13 do?

14 A. I held up my hands.

15 Q. And you were hit in your hand?

16 A. And my face.

17 Q. Now, you said before something hit you on the nose?
18 Are you sure that didn't happen when you were in the
19 truck?

20 A. No, I wasn't in the truck when he fired that shot.

21 Q. Okay, and when it hit you, you had it like this?

22 A. Like that.

23 Q. And where were there bullet wounds?

24 A. My left arm.

25 Q. If your arm is up like that -- folded like that?

MR. R. DAVIS ON CROSS

1 A. Like that.

2 Q. That would have been above your face then and it
3 wouldn't have affected your nose?

4 A. Here and here, I mean.

5 Q. If your arm was still folded -- were you hit on both
6 sides of your arm or there in the center?

7 A. . . .

8 Q. So if you held your arm like this . .

9 A. I wasn't holding my arm like that.

10 Q. But it's right here in the center, is that correct?

11 A. Not exactly lined up. I had my arm like that.

12 Q. Okay, but you were waving your arms . .

13 A. I wasn't doing that the whole time.

14 Q. But were you holding your arm up like that?

15 A. Like that.

16 Q. You got shot here, here, here -- on the inside and
17 on the outside?

18 A. Yes.

19 Q. So right in the crack of your arm if you're bending
20 your arm. Am I correct?

21 A. . .

22 Q. You should have had -- it should have been on the
23 outside of your arm, not on the inside. Correct?

24 A. No, I'm not holding my arm, cupping it like that.

25 It was up in the air like that.

MR. R. DAVIS ON CROSS

1 Q. But it was all on the inside of your arm as you were
2 holding it up?

3 A. Uh hm.

4 Q. And that's the only place you got hit with a shot?

5 A. You saw it right there. Other than that, no.

6 Q. All right. Now, who was outside the truck?

7 A. I was.

8 Q. You were the only one outside?

9 A. My brother was sitting in the truck moving the arm.

10 Q. Did he get outside of the truck?

11 A. Did he? No.

12 Q. Never did?

13 A. No.

14 Q. All right, sir, and how were the windows?

15 A. I believe his was down and my side was up.

16 MR. MESSERVY: One minute, Your Honor.

17 (Brief pause in proceeding)

18 BY MR. MESSERVY:

19 Q. The last time -- okay. Now, who did you work for?

20 A. I worked for my brother.

21 Q. That's a repo business?

22 A. Yes.

23 Q. And what kind of truck were you all driving?

24 A. An F-450, 2000 model.

25 Q. A real loud truck, isn't it?

MR. R. DAVIS ON CROSS

1 A. It's a truck.

2 Q. But it's a real loud truck?

3 A. I don't know what you would call real loud. It is
4 a truck.

5 Q. All right, sir. Now, what kind of truck is it? Is
6 it just a regular truck?

7 A. Yes, it's (inaudible)

8 Q. Just a regular truck?

9 A. Kind of wide and it has all the lights on it. An
10 average person could tell what kind of truck it was.

11 Q. Am I correct to say they call it a snatch truck?

12 A. Yes.

13 Q. How does that work?

14 A. Basically you back up to a vehicle and mash a couple
15 of buttons and bring the arm down on it; you wrap the
16 tires and you pick it up and go from there.

17 Q. How long does it take you to do that?

18 A. Me? My brother backs up and I can hook it up within
19 twenty or thirty seconds and be ready to go.

20 Q. I'm going to hand you a transcript of the time you
21 testified previously. Would you refer to page six of the
22 transcript?

23 A. Okay.

24 Q. I believe you told me . .

25 THE COURT: What line, please?

MR. R. DAVIS ON CROSS

1 MR. MESSERVY: Line three is the question.

2 BY MR. MESSERVY:

3 Q. I believe you told me . . .

4 THE COURT: Is this for impeachment?

5 MR. MESSERVY: I want to repeat the question to
6 which he said something different.

7 THE COURT: You're going over what he said last time?

8 MR. MESSERVY: Yes, sir.

9 Q. All right.

10 THE COURT: Would you approach?

11 (Conference at the bench between counsel and the
12 Court off the record)

13 Q. I believe I asked you if you were professionals, and
14 you said you were professionals?

15 A. My brother was. I think I did a pretty good job
16 for him.

17 Q. And the last time, line 13, and I think you got some
18 rickashays, I believe. Question, I think you got some
19 rickashays, I believe -- I was hit a few times in the
20 arm. Correct?

21 A. It's what it says there.

22 Q. Line 13 to line 16. Okay.

23 A. Uh hm.

24 Q. I believe you just said you had a chance to talk to
25 him. Correct?

MR. R. DAVIS ON CROSS

1 A. It wasn't really -- we couldn't really say that
2 much. Like I said before, there wasn't that much talk-
3 ing there.

4 Q. Okay. Same page, page six, you are saying he wasn't
5 wearing any glasses, he was buck naked.

6 And did you talk to him any? No, I didn't get a
7 chance.

8 So now you had a chance but you didn't get to say
9 too much. Right?

10 A. He had a gun and he pointed it at me, and I had no
11 time to talk. We had to leave. We're not going to sit
12 around and have a conversation with a man holding a gun
13 to your face or your body or anything. You get away
14 from him.

15 Q. Page seven, at the time the truck was on, am I cor-
16 rect? Correct. And the truck makes a lot of noise?
17 Yes, sir.

18 Now, you said it made -- now you're saying it made
19 an awful noise, but at the time -- now you're saying it
20 made a lot of noise?

21 A. When you're pulling up it makes a lot of noise, like
22 I said. I mean, when you're in a regular idle it's going
23 to make noise but not as loud then.

24 Q. All right then. You said you were still hooking up
25 the truck. Correct?

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1 A. Yeah.

2 Q. All right. Right after that, page 12, the truck had
3 been hooked up to the car; it was ready to go? Yeah,
4 I was still strapping it on when he came out.

5 Well, you didn't have to strap it, did you? Yeah.

6 Then you rolled on down the road?

7 A. Yeah.

8 Q. I believe at that time you told me all the windows
9 were rolled up. Correct?

10 A. Yeah. That was two and a half years ago, I mean.

11 Q. So you would remember -- you now remember different
12 than that?

13 A. . .

14 Q. Then you said, uh huh, and I said you're going to
15 have to say yes or no. Okay. Yes. Am I correct?

16 To the question all the windows were rolled up?

17 A. Yes.

18 Q. All right. Page seven, line 22, all right, at that
19 time I believe you told me all the windows were rolled
20 up in the truck. Uh huh -- you're going to have to say
21 yes -- you answered yes.

22 Is that what you said under oath last time?

23 A. Yes. That's what I said the last time.

24 Q. All right, sir. Now, I also read in at that time
25 from your record.

MR. R. DAVIS ON CROSS

1 A. . .

2 THE COURT: I would ask you again to approach?

3 (Conference at the bench between counsel and the
4 Court off the record)

5 BY MR. MESSERVY:

6 Q. Had you ever met Mr. Haynes before?

7 A. The day this all happened is the only day I met
8 him.

9 Q. All right. Now, you are in for burglary, is that
10 correct?

11 A. Yes.

12 Q. Now, I believe you said that -- what happened during
13 that burglary back then?

14 A. . .

15 SOLICITOR: Your Honor, . .

16 MR. MESSERVY: This is important, Your Honor, be-
17 cause it is very much of an impeachment thing on what he
18 said and what is actual truth.

19 THE COURT: Ladies and gentlemen, I told you there
20 would be these times when we'd need to talk and this is
21 one of the times we need to talk without you all in here.

22 I'm going to excuse you all and let you go back to
23 your jury room for a second.

24 Again, remember that you can't talk about the case
25 so far. Thank you.

MR. R. DAVIS ON CROSS

1 (Jury excused from Courtroom)

2 THE COURT: Mr. Messervy, you just want him to tell
3 what happened the last time?

4 Is what what you're asking him to do?

5 MR. MESSERVY: What -- I want what his story is on
6 what happened on the conviction for the burglary.

7 THE COURT: Okay.

8 MR. MESSERVY: I have a transcript from last time
9 and I . . .

10 THE COURT: I understand that.

11 MR. MESSERVY: And the truth is critical.

12 THE COURT: Mr. Justis, he cross examined him on
13 that last time. Okay?

14 SOLICITOR: It's irrelevant. I brought it out on
15 Direct about the conviction.

16 THE COURT: It actually came out on Cross last time.

17 SOLICITOR: Your Honor, he brought out his record on
18 Direct, just to refresh everyone's memory.

19 THE COURT: Okay.

20 SOLICITOR: His record was brought out on Direct and
21 to go into the details incident -- I started talking about
22 the incident on Cross Examination and he ended up object-
23 ing.

24 THE COURT: Right.

25 SOLICITOR: Here, to go into the details of the crime

MR. R. DAVIS ON CROSS

1 is a collateral matter. He's not allowed to do that.
2 Regardless, he has to take his answer. You testified
3 last time, bang, bang, bang. Whether he said yes or no,
4 his answer is his answer.

5 On a collateral matter -- he can't bring in extrin-
6 sic evidence to prove or disprove.

7 THE COURT: I understand that. I understand that,
8 but I -- that's what I want to make sure Mr. Messervy
9 understands before he goes into this.

10 Whatever he testifies as to what happened, that's
11 it. You do understand that?

12 MR. MESSERVY: May we approach?

13 THE COURT: Yes, sir.

14 (Conference at the bench between counsel and the
15 Court off the record)

16 SOLICITOR: We're right here. I don't know why we
17 have to approach.

18 THE COURT: You are welcome to come up here, if
19 she can hear you. Come on up here.

20 (Conference at the bench not audible on the record)

21 THE COURT: When he testifies as to what happened,
22 that is what happened.

23 SOLICITOR: That's extrinsic . .

24 THE COURT: I mean, if you want to ask him what hap-
25 pened, I'll let you ask him what happened, you have to

MR. R. DAVIS ON CROSS

1 take what he answers.

2 MR. MESSERVY: The last time I did not have a chance
3 to ask him or go into this. This was beforehand and I
4 did not know what he was convicted of; did not have time
5 to do the research.

6 The last time he said that he was walking home and
7 saw an open garage and went in there and got a beer and
8 somebody held a gun on him.

9 I want to put that into the record.

10 THE COURT: All right. Anything else?

11 MR. MESSERVY: I drank a couple of beers -- this is
12 what the statement says that he gave to Sergeant Guyer
13 as dictated by Robert Davis.

14 I drank a couple of beers with friends out in the
15 yard at my house. I was feeling bad because my girl-
16 friend left me and how screwed up my life was, and I
17 thought I would do something to make my life a little
18 better.

19 I wanted to get ~~gifts~~ for my family but I didn't have a
20 job or any money. I saw the house on Queen Street and it
21 had a garage. I saw an air conditioning unit and pulled
22 the unit out of the garage window and sat it on the
23 ground.

24 I went through the window the AC unit was in and
25 then when I got inside I saw a bunch of clothes in baskets

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1 and plastic containers. I needed some clothes, so I
2 picked out the ones I wanted.

3 There was a stereo on the floor, and I put it in one
4 of the plastic containers and finished getting what I
5 wanted and climbed back out the garage window.

6 I heard someone coming and I ran and made my way to
7 -- I ran toward Vance Lane and made my way to the wood
8 line and to my house.

9 I'm so sorry for what I done. I want to get help
10 for myself. I been staying sober and trying to do the
11 right thing. I have a disease and am truly sorry.

12 So what I am saying is that if he reiterates that,
13 what he said the last time, I am allowed to show that he
14 has previously made a different statement.

15 THE COURT: Well, it . .

16 MR. MESSERVY: And it may go to a collateral matter
17 but it is before the Court and it has to go towards his
18 truthfulness.

19 THE COURT: Anything else from the State?

20 SOLICITOR: No, sir.

21 THE COURT: Mr. Messervy, we have on the record that
22 he has been convicted of burglary. Okay?

23 You can ask him about it but you're not going to be
24 able to put in collateral matters. As it stands right
25 now, the jury is aware that he has been convicted and

MR. R. DAVIS ON CROSS

1 they can take whatever they want to from it.

2 I cannot tell you that it would help you one way or
3 the other to even put that in.

4 MR. MESSERVY: I understand, sir, but I . . .

5 THE COURT: Okay, but as far as allowing you to go
6 forward with a collateral matter, I will not allow you
7 to do that.

8 MR. MESSERVY: All right.

9 THE COURT: I will note your objection on the re-
10 cord.

11 Anything else to address before we bring the jury
12 back?

13 MR. MESSERVY: No, sir.

14 THE COURT: Are you ready to continue with your Cross
15 Examination?

16 MR. MESSERVY: Yes, sir.

17 THE COURT: All right, bring the jury back in.

18 Thank you, Mr. Davis, for your patience.

19 (Jury returned to the Courtroom)

20 THE COURT: Thank you all. You're doing fine.

21 We're ready to continue with the Cross Examination.

22 Mr. Messervy?

23 CROSS EXAMINATION CONTINUED

24 BY MR. MESSERVY:

25 Q. Page eight, again you were asked about whether all

MR. R. DAVIS ON CROSS

1 the windows were rolled up on the tow truck, and you
2 said yes, and that's line ten?

3 A. Yes.

4 Q. Let me put this back up on the board. Mr. Davis,
5 would you please approach?

6 A. . .

7 Q. I'm going to hand you this marker, and basically
8 draw the back of the house. Am I correct?

9 A. All right.

10 Q. All right, and would you put on there where the back
11 door was?

12 A. Yes, sir.

13 Q. Use the red marker.

14 A. Okay.

15 Q. On this side is where the trucks were, but that is
16 where the back door of the house was?

17 A. Yes. The door was right here. The trucks . .

18 THE COURT: Mr. Davis, I know your back is turned
19 to the Court Reporter, but you need to speak up so she
20 can hear you as well, if you don't mind.

21 WITNESS: I'm sorry.

22 THE COURT: That's okay. Thank you, sir.

23 BY MR. MESSERVY:

24 Q. Do you mind if I mark on this right here? That is
25 approximately where it was.

MR. R. DAVIS ON CROSS

1 When you were backed -- when you were fixing the car,
2 am I correct that -- this is Jill Road out here. Is
3 that correct?

4 A. Yes, sir.

5 Q. And where was the truck belonging to Mr. Haynes, the
6 subject of the repo?

7 A. Here.

8 Q. And where was the truck belonging to your brother?

9 A. Here.

10 Q. Put a T for truck -- put F here for the front of
11 Mr. Haynes' truck.

12 A. That would be the front.

13 Q. And this would be your truck, the back, correct?

14 Back of your truck?

15 A. Yes.

16 Q. All right. Now, how far apart were the two trucks?

17 A. Not really far. Three or four feet, I'd say.

18 Q. Now, so you were aware -- put an X where you first
19 saw Mr. Haynes.

20 A. . . .

21 Q. Now, Mr. Haynes was here and he never came down the
22 steps, did he?

23 A. No.

24 Q. So he was standing on -- I believe the steps were
25 broken, am I correct?

MR. R. DAVIS ON ROSS

1 A. I don't know.

2 Q. And where did you go?

3 A. I was right here looking up at the strap.

4 Q. Okay.

5 A. Looking at the strap and the tires, stuff like that,
6 when he came out and mumbled some gibberish with the shot-
7 gun in his hands. I didn't understand what he was saying
8 but he pointed the shotgun in his hand at me and nothing
9 happened when he clicked.

10 I ran around toward his side to the other side of
11 the vehicle, and by then he was already loading up the
12 shell and he shot.

13 Before he shot I yelled, don't shoot, and I was
14 shot. I hit the ground right there and I got up and I
15 told my brother he had hit me, and by the time I got up
16 and about the time I made it to the passenger side of my
17 brother's truck he had already loaded another one and he
18 fired another one.

19 He had loaded and fired another one and hit my bro-
20 ther, and I was holding on the door, and my brother took
21 off as I was getting ready to climb in the door and I
22 jumped in the truck.

23 Q. Okay, and your brother never got out of the truck?

24 A. No.

25 Q. Now, was there . . .

MR. R. DAVIS ON CROSS

1 A. Sometimes he will get out and sometimes he's not
2 really needed.

3 Q. I believe the last time you said he let you go out
4 and do it yourself?

5 A. Yes. Sometimes he did.

6 Q. And so then . . .

7 A. Sometimes he would get out of the truck and some-
8 times he'd let me do it by myself. He trusted me to lock
9 the tires up.

10 Q. All right, sir. You didn't expect something like
11 this to happen?

12 A. . .

13 THE COURT: Are you through with the diagram?

14 MR. MESSERVY: No, sir.

15 THE COURT: Okay, I was going to have him sit back
16 down if you were.

17 BY MR. MESSERVY:

18 Q. Are there any other -- I believe there was a stump
19 out there. Am I correct?

20 A. There might have been. I don't know.

21 They are probably out there.

22 Q. Did you see a stump?

23 A. I didn't see a stump.

24 Q. So you don't know any other features out there?

25 All of this was clear?

MR. R. DAVIS ON CROSS

1 A. I know it was all clear back here where we backed
2 up but not this area.

3 Q. Well, which area was clear?

4 A. . .

5 Q. The other side of this truck was clear and the house
6 was on there?

7 A. Yes.

8 Q. What about in the back?

9 A. I don't know about this area right there. This
10 was clear but not all of this.

11 Q. It wasn't all clear?

12 A. There was a wooded area back there, but this was
13 clear by the road.

14 Q. It was clear going out that road?

15 A. Yes, sir.

16 Q. All right, sir. You can have a seat.

17 A. . .

18 THE COURT: Thank you, sir. Get comfortable again.

19 BY MR. MESSERVY:

20 Q. How far were you standing from the Defendant when he
21 pointed the gun at you?

22 A. About ten feet, twelve feet. Something like that.

23 Q. All right, sir, and when he shot the second shot, how
24 far away?

25 A. Roughly twenty feet.

MR. R. DAVIS ON CROSS

1 Q. By the way, have you gone over the transcript?

2 A. No, sir. I didn't receive one until just now.

3 Q. This happened in the afternoon?

4 A. I don't remember exactly what time.

5 Q. Now, how far from where your brother was in the car
6 was Mr. Haynes?

7 A. Twenty, twenty-five, thirty feet.

8 Q. About twenty-five feet?

9 A. I guess.

10 Q. Now, your brother was in the car the whole time?

11 A. Uh hm. Yes.

12 Q. Never got out the car?

13 A. No.

14 Q. Turn to page 32, line 20. Starting at line 18.

15 Is that different from what you just said?

16 A. (inaudible)

17 REPORTER: I'm sorry. I can't hear him.

18 THE COURT: He's just reading it over right now.

19 A. I say I heard my brother say that he would drop the
20 car-- don't shoot.

21 Q. Okay, and what does the next line say?

22 A. About the time he did that, he went click on me and
23 my brother ran to the truck (portion inaudible) and it
24 hit me.

25 Q. All right, so he was outside the truck. Am I

MR. J. DAVIS ON CROSS

1 correct?

2 A. That's what this says.

3 Q. All right. Why was he outside of the truck?

4 A. I guess to check to see if I had everything hooked
5 up correctly.

6 Q. Wasn't he helping you strap the truck?

7 A. Probably to come and check.

8 Q. So he had walked all the way back to the truck to
9 check the tires? Am I correct?

10 A. That's what you can say, but it all happened like
11 a couple of years ago, I mean.

12 Q. But this reflects your testimony given earlier and
13 closer to the incident. Correct?

14 A. Yes.

15 Q. All right, sir. That's what you said approximately
16 August 25th, is that correct?

17 A. Yes, sir.

18 THE COURT: Any further questions?

19 BY MR. MESSERVY:

20 Q. Do you remember giving a statement to the police of
21 what happened?

22 A. Yes.

23 Q. Let me hand you this statement. Is that what you
24 wrote?

25 A. Yes.

MR. R. DAVIS ON CROSS

1 MR. MESSERVY: I'd like this entered into evidence.

2 SOLICITOR: Objection. He has the witness on the
3 stand. He can ask him about it.

4 BY MR. MESSERVY:

5 Q. Would you please read the statement?

6 A. . .

7 SOLICITOR: Objection, Your Honor. It's not in evi-
8 dence.

9 MR. MESSERVY: I'm ask him if that's what he said
10 at that time.

11 THE COURT: Mr. Messervy, if you want to ask him
12 specific questions about it, go ahead and ask him.

13 Just ask him the questions.

14 BY MR. MESSERVY:

15 Q. Did you say we hooked up the truck at Melvin Haynes'
16 house?

17 A. Yeah. I always said me and him together because it
18 was a job, you know.

19 Q. We hooked up the truck?

20 A. That's what I said.

21 Q. Did you say at a previous time that we just went
22 over that he had come back to help you hook up the truck?

23 A. He might have come to check and see if it was done
24 right, but I'm not sure. I can't answer whether he did
25 or not because we was in a hurry that day. We hadn't

MR. R. DAVIS ON CROSS

1 planned on going out there that day, or to face a man
2 with a gun.

3 Q. I mean, before that.

4 A. Could you repeat the question again?

5 Q. Did not you and he combine to hook up the truck?

6 A. I hooked -- he backed up and I hooked the tires up,
7 one tire at a time, and I had to go around on the other
8 side and hook up the other tire -- you know, hook the
9 straps up to the tires, and if you don't hook the straps
10 up to the tires, as you go down the road, like I said,
11 it will jump off and hurt somebody.

12 Q. Okay. So he came back there, correct, and he was
13 out of the truck?

14 A. I don't really remember him coming out of the truck
15 and checking. As soon as he backed up I got out of the
16 truck so we could do it in a hurry; get it and go. He
17 said, come on, we're in a hurry, and I strapped up that
18 back tire, and the man come out with the shotgun.

19 Q. All right.

20 A. He may have come back to check it.

21 Q. Nothing further at this time.

22 MR. MESSERVY: I may wish to recall him, Your Honor,
23 at a later time.

24 THE COURT: All right.

25 SOLICITOR: One question, Your Honor.

MR. R. DAVIS ON REDIRECT

1 THE COURT: All right.

2 REDIRECT EXAMINATION

3 BY SOLICITOR:

4 Q. Are you one hundred percent certain whether your
5 brother got out of the truck out there?

6 A. No. I mean, it all happened so fast. I can only
7 really remember the real important stuff, like the gun
8 in my face, him shooting, and getting gone.

9 Q. And when you say your brother was operating the con-
10 trols when you got out of the truck?

11 A. He was operating the controls and, like I said, be-
12 fore, I got out and we worked together. Sometimes he
13 would check.

14 When I first started working with him, he always
15 would go behind me in hooking up the truck so there wasn't
16 no mistake in hooking up the truck. After I got a little
17 better, sometimes he didn't.

18 He wanted to hurry up and get the truck. I think
19 he had something to do that day with his wife and kids,
20 and we went out there and I hooked it up. When you try
21 to do things faster, sometimes things happen.

22 Q. No further questions.

23 THE COURT: Anything on Recross.

24 MR. MESSERVY: Yes, sir.

25 RECROSS EXAMINATION

MR. R. DAVIS ON RECROSS

1 BY MR. MESSERVY:

2 Q. Did Melvin Haynes ever say anything to you

3 A. . .

4 THE COURT: Mr. Messervy, you're going over what he
5 asked him on Redirect.

6 MR. MESSERVY: Yes, sir.

7 THE COURT: Okay.

8 Q. Did Melvin Haynes ever say anything to you?

9 A. . .

10 SOLICITOR: Objection, Your Honor.

11 THE COURT: That was not gone into on Redirect.

12 MR. MESSERVY: That's the only question I have.

13 THE COURT: Okay, I'll let you answer that.

14 A. Like I say, he was mumbling some gibberish when he
15 opened up the door with the gun.

16 Q. All right.

17 A. Something like ain't nobody coming to take the car
18 from me. Something . .

19 THE COURT: That's enough. All right, you can step
20 down. That was not covered on Redirect.

21 (Witness excused from the stand)

22 THE COURT: Thank you, Mr. Davis. I appreciate it.

23 All right, Mr. Justis, you can call the next witness,
24 or Mr. Austin.

25 SOLICITOR: May it please the Court.

1 MR. MESSERVY: If I need to, I can call him back.

2 THE COURT: Let him go on back there. Thank you.

3 All right, Mr. Austin.

4 SOLICITOR: The State would call Steve Morelli.

5 CLERK: State your full name.

6 WITNESS: Steve Morelli.

7 STEVE MORELLI, being duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY SOLICITOR:

11 THE COURT: Mr. Austin, your witness.

12 MR. MESSERVY: Your Honor, excuse me. I neglected
13 to put that drawing in evidence.

14 SOLICITOR: No objection.

15 THE COURT: All right.

16 (Drawing admitted as a Defendant's Exhibit without
17 objection)

18 THE COURT: Mr. Austin.

19 Q. Officer Morelli, are you prepared to testify today
20 in the case of the State versus Melvin Haynes?

21 A. Yes, sir.

22 Q. Let's go over some background information. You say
23 your name is Steve Morelli, and where are you employed,
24 sir? What do you do for a living?

25 A. I'm employed by the Dorchester County Sheriff's

MR. MORELLI ON DIRECT

1 Office.

2 Q. And in what capacity do you work there?

3 A. Right now I'm the duty officer, desk sergeant.

4 Q. Back in June of 2009, in what capacity were you
5 working then?

6 A. I was an investigator with the Criminal Investiga-
7 tion Division of the Dorchester County Sheriff's Office.

8 Q. And in your employment, what training do you have?

9 A. I've been employed by Dorchester County for nine
10 years, and previous to that I was with the Sangaree Po-
11 lice Department for three and a half years.

12 Q. Let me call your attention to June 28, 2009. Did
13 you investigate a shooting that day?

14 A. Yes, sir, I did.

15 Q. Where did that shooting take place?

16 A. At Drive in Ridgeville, South Carolina.

17 Q. And who was the primary suspect in that shooting?

18 A. Melvin Haynes.

19 Q. And what time did that take place?

20 A. I believe the call originally came in at three ten
21 that afternoon.

22 Q. All right, and at what address did you say that oc-
23 curred?

24 A. At Drive, Ridgeville, which is Dorchester
25 County.

MR. MORELLI ON DIRECT

1 Q. And do you know who lives there?

2 A. Yes, sir.

3 Q. Who is that?

4 A. Melvin Haynes.

5 Q. Did you have an opportunity to talk to Mr. Haynes
6 that day?

7 A. Yes, sir, I did.

8 Q. What time did he come in and talk to you?

9 A. At approximately five that afternoon.

10 Q. And do you know how long he had been waiting to
11 talk to you?

12 A. I have no idea. As soon as I found out that he
13 was in the lobby of the Sheriff's Office I proceeded
14 from my office to the police department to speak with
15 him.

16 Q. And did he provide you with a statement?

17 A. Yes, sir, he did.

18 Q. And did you have an opportunity to advise him of
19 his Miranda Rights?

20 A. Yes, sir, I did.

21 Q. Did he waive those rights?

22 A. Yes, sir, he did.

23 Q. Did it seem like he understood what you were tell-
24 ing him?

25 A. Yes, sir.

MR. MORELLI ON DIRECT

1 Q. And what did he tell you happened?

2 A. He told me that he was laying in bed and he woke up
3 and he got up. He heard a noise in the back yard.

4 There were some people in his back yard and he went
5 to the back door with a shotgun, and that he shot at the
6 truck to scare them.

7 Q. Did he say he actually shot anybody?

8 A. At this time he said he shot at the truck. I don't
9 recall him telling me he actually hit the driver. I be-
10 lieve I'm the one who told him that.

11 Q. Was he surprised by that?

12 A. He seemed to be at the time.

13 Q. Did he actually write a statement, or who wrote the
14 statement?

15 A. I wrote it for him.

16 Q. Why did you do that?

17 A. Because he asked me to do that.

18 Q. Is that a pretty common practice in taking a state-
19 ment?

20 A. It is.

21 Q. Okay, and did he have an opportunity -- did you give
22 him an opportunity to read it? To read what you wrote?

23 A. Yes, sir. We actually read his statement back over
24 together, and there was a line in the statement that he
25 did not want, so I scratched it out and he initialled

MR. MORELLI ON DIRECT

1 that.

2 Q. And did he ultimately approve the statement?

3 A. Yes, sir.

4 Q. And after all the information was gathered, did you
5 end up charging him with this crime?

6 A. Yes, sir, I did.

7 Q. And you got a warrant for his arrest?

8 A. Yes, sir, I did.

9 Q. All right. Did he say anything about the gun that
10 he used?

11 A. He did state that the shotgun that he used, it was
12 loaded with birdshot.

13 Q. And did he have other options available to him?

14 A. He said that the individual was a lucky man because
15 he could have grabbed the rounds of buckshot.

16 Q. Please answer any questions Mr. Messervy may have
17 for you.

18 THE COURT: Yes, sir.

19 MR. MESSERVY: May it please the Court?

20 THE COURT: Yes, sir.

21 CROSS EXAMINATION

22 BY MR. MESSERVY:

23 Q. Where did you get your information on the credit
24 company, the car credit company?

25 A. The finance company?

MR. MORELLI ON CROSS

1 Q. The finance company.

2 A. The finance company was . .

3 Q. Let's talk about it. First of all, where did you
4 request it?

5 A. I requested the paperwork from the victim that
6 night that he had to go and get the vehicle. I then re-
7 quested it from the finance company that following morn-
8 ing.

9 Q. When did you get it?

10 A. I got it -- I got all of the information, including
11 the whole financial file, on July the 14th.

12 Q. Okay, and on July 14th did you actually call and
13 they provided it?

14 A. I believe I did call and remind them, and then I
15 ended up sending him, you know, the finance company, a
16 subpoena.

17 Q. Did Mr. Davis tell you anything about what he felt,
18 or did he mention to you anything about him calling Mr.
19 Haynes ahead of time?

20 A. Mr. Davis stated that -- later that night after he
21 got home from the hospital and I spoke to him on the
22 phone, that it should have been easier.

23 Q. Okay.

24 A. That Mr. Haynes had been spoken to earlier that
25 week.

MR. MORELLI ON CROSS

1 Q. By who?

2 A. I believe he said he had talked to him. I believe
3 that's in my notes.

4 Q. Mr. Haynes said -- Mr. Davis said when he spoke to
5 you that he had already talked to him and it should have
6 been an easy repo?

7 A. He said it should have been an easy repo because
8 Mr. Haynes had already been spoken to that week.

9 Q. All right. Would you look on your notes, three of
10 four?

11 A. Yes, sir. Three of four or two of four?

12 Q. Page three of four on July 14th.

13 A. Yes, sir.

14 Q. It says you still did not have -- am I correct you
15 still did not have the information from the towing com-
16 pany?

17 A. From the towing company or finance company?

18 Q. All right.

19 A. I mean, . .

20 Q. Well, it says at that time back from the finance
21 company.

22 A. Correct, and from the Solicitor's Office. As well
23 as from the Solicitor's Office.

24 Q. But you still didn't have anything from the towing
25 company?

MR. MORELLI ON CROSS

1 A. I did not see any paperwork that was given to the
2 tow company. Unless the finance company only gave the
3 tow company a copy of the letter and certified mail re-
4 ceipt.

5 Q. Did Melvin Haynes tell you that he knew it was a
6 repossession?

7 A. He never stated he knew it was a repossession.

8 Q. Did he say to you he thought someone was stealing
9 his truck?

10 A. Mr. Haynes stated that he did not know who was in
11 the back yard.

12 Q. But they were taking his car?

13 A. Yes.

14 Q. I don't believe I have anything further.

15 THE COURT: Yes, sir. Anything on Redirect?

16 SOLICITOR: Nothing further.

17 THE COURT: You can step down.

18 WITNESS: Thank you, Your Honor.

19 THE COURT: I appreciate it.

20 (Witness excused from stand)

21 THE COURT: You need to take a break? Ladies and
22 gentlemen, the next witness is going to be a fairly long
23 witness.

24 I'm going to let you all take about a ten minute
25 break, take a restroom break, get something to drink or

SGT. ZENSEN ON DIRECT

1 gunshot reconstruction, . .

2 MR. MESSERVY: May we approach?

3 (Conference at the bench between counsel and the
4 Court off the record)

5 THE COURT: Okay.

6 BY SOLICITOR:

7 Q. You may continue.

8 A. I received training as well with the Dorchester
9 County Sheriff's Office.

10 Q. Is that pretty much the training you have received
11 in law enforcement?

12 A. I'm a latent examiner with the Dorchester County
13 Sheriff's Office. I handle all the fingerprints and
14 examine them.

15 Q. Is that the extent of your training in law enforce-
16 ment?

17 A. No, we have done various home site reconstruction
18 seminars. I am currently Vice President of the IAI Chap-
19 ter for South Carolina, the International Association
20 for Identification.

21 Q. Thank you. Let's go to June 28, 2009. Were you
22 working that day?

23 A. I was on call. It was a Sunday and we take calls so
24 I was on call that day.

25 Q. And did you have an opportunity to process a scene

SGT. ZENSEN ON DIRECT

1 on that day? Respond to a call on that day?

2 A. Yes, I did.

3 Q. Where did you respond?

4 A. Club House Road.

5 Q. Is that located in Dorchester County?

6 A. Yes, it is.

7 Q. And when you got to the scene what did you observe
8 there?

9 A. A white tow truck towing a maroon or red in color
10 Chevy truck.

11 Q. And were you briefed when you arrived on the scene
12 by other officers?

13 A. Yes, I was.

14 Q. And when you arrived, what was the first thing you
15 did?

16 A. I met with Lieutenant Barnhill and Deputy Alger on
17 the outside of the vehicle. The tow truck had been in-
18 volved in a shooting.

19 Q. Okay. What else did you do at that scene?

20 A. I took measurements of the back glass and where the
21 actual impact from the gunshot hit and also photographed
22 the shirt that was left by the victim.

23 Q. At this time I'm showing you two photographs, State's
24 Exhibits 12 and 18. Do you recognize those photographs?

25 A. Yes. Those are photographs I took at the scene.

SGT. ZENSEN ON DIRECT

1 Q. And what do they show?

2 A. A white in color tow truck and a maroon in color
3 truck it was towing.

4 SOLICITOR: At this time, the State would offer
5 State's Exhibits 12 and 18 in evidence.

6 THE COURT: Any objection.

7 MR. MESSERVY: No objection.

8 THE COURT: State's Exhibits 12 and 18 are in evi-
9 dence.

10 (State's Exhibits 12 and 18 admitted without objec-
11 tion, being photographs of tow truck and truck being
12 towed)

13 BY SOLICITOR:

14 Q. Did you take any pictures of the inside of the ve-
15 hicle?

16 A. Yes, I did.

17 Q. What did you observe when you looked on the inside
18 of the white tow truck?

19 A. Inside the white tow truck there were obviously
20 glass fragmentation. There was also some wadding beside
21 the seat.

22 Q. Showing you what's been marked as State's Exhibits
23 15 and 16, do you recognize those?

24 A. Yes, I do.

25 Q. And what are they?

SGT. ZENSEN ON DIRECT

1 A. They are photographs from inside of the tow truck
2 vehicle. One shows the fragments inside of it, and the
3 other is of the headrest and part of the shoulder rest.

4 Q. And are they fair and accurate representations of
5 what you saw that day?

6 A. Yes.

7 SOLICITOR: Your Honor, at this time the State would
8 move State's 15 and 16 into evidence.

9 THE COURT: Any objection?

10 MR. MESSERVY: No objection.

11 THE COURT: State's Exhibits 15 and 16 are in evi-
12 dence.

13 (Photographs inside cab of tow truck entered without
14 objection as State's Exhibits 15 and 16)

15 BY SOLICITOR:

16 Q. Showing you State's Exhibit 15, can you explain to
17 the jury what is shown in that picture?

18 A. In this section here, you are actually looking at
19 glass fragments from the damage that occurred here in be-
20 tween the headrest and the actual frame or body of the
21 truck.

22 Q. And back to State's Exhibit 16?

23 A. This is damage that occurred from the gunshot it-
24 self, and this is my scale here showing the depiction of
25 the actual pellet.

SGT. ZENSEN ON DIRECT

1 Q. And what are these things that appear at the bot-
2 tom?

3 A. These here would be pellets that came in the gunshot
4 that was shot in the back window.

5 Q. And did they come from the back side of that head-
6 rest or the side?

7 A. They came from the back inside the cab, from the back
8 to inside the cab.

9 Q. And they came all the way through the headrest, or
10 penetrated all the way through the headrest?

11 A. Yes, sir, they did.

12 Q. All right.

13 SOLICITOR: Beg the Court's indulgence.

14 THE COURT: Yes, sir.

15 (Brief pause in proceeding)

16 BY SOLICITOR:

17 Q. I show you State's Exhibit 17. Do you recognize
18 this photograph?

19 A. Yes, I do.

20 Q. And what is that?

21 A. That is the picture of the wadding on the driver's
22 side.

23 SOLICITOR: At this time, we would move State's Ex-
24 hibit 17 into evidence.

25 THE COURT: Any objection? Admitted without objection.

SGT. ZENSEN ON DIRECT

1 BY THE SOLICITOR:

2 Q. Showing you State's Exhibit 17, would you explain
3 to the jury what they are seeing in that picture?

4 A. Yes, sir. That is a magnification of the wadding
5 that was there in the cab of the tow truck from the shot.

6 Q. And would you please explain to the jury what the
7 wadding is?

8 A. Yes, wadding is -- the shotgun shell is kind of
9 this, and it has the primer and the striking pin and
10 then above that is the wadding.

11 Once the shot is fired, it causes like a little
12 explosion which sends the wadding out and when the wad-
13 ding comes out the buckshot -- or it's birdshot in this
14 one -- the birdshot comes out of the actual shell.

15 Q. And that wadding was found where?

16 A. In the driver's side seat.

17 Q. Finally, I'm showing you what has been marked as
18 State's Exhibit 13. Do you recognize that?

19 A. Yes, that is the actual damage that was caused from
20 the gunshot, where the load went through the window.

21 Q. And the hole in the glass, were you able to take a
22 measurement of that hole?

23 A. In this area here is where pellets were disbursed
24 out. This was the damage from that.

25 Q. And did you take measurements?

SGT. ZENSEN ON DIRECT

1 A. Yes.

2 Q. And can you tell the jury the size of that hole
3 or the diameter?

4 A. Yes. The longer ones were down here and they come
5 across from -- they are pellets coming across and then
6 they will go forward.

7 It would have been -- if you measured it out it -- it
8 would be eleven pellets, and the first one you can see is
9 in this area -- it's going to be eight to nine coming
10 down to here in inches.

11 Q. So the hole would be about nine inches?

12 A. Height-wise it would be. The hole itself?

13 Q. Well, the hole itself and then the pellet marks.

14 A. The hole itself would be about seven inches -- would
15 be the hole in height and nine across the bottom.

16 If you count -- if you want to count where the pel-
17 lets are, starting from over here and going across, it
18 would be about eleven.

19 Q. And is this the only location that you responded to
20 that day?

21 A. No.

22 Q. What other location did you respond to?

23 A. To Drive, where the shooting actually took
24 place.

25 Q. And is that located in Dorchester County?

SGT. ZENSEN ON DIRECT

1 A. It is, off Club House Road.

2 Q. I'm showing you what's marked as State's -- what is
3 actually in evidence as State's Exhibit 10. Do you
4 recognize that?

5 A. Yes, sir.

6 Q. Do you recognize that house?

7 A. Yes.

8 Q. What house is that?

9 A. At Drive.

10 Q. Is that the house you responded to?

11 A. It is.

12 Q. You responded to the house after you responded to
13 the vehicle?

14 A. I did. That is correct.

15 Q. When you responded to the house, explain to the jury
16 what you did?

17 A. I just photographed the outside of the residence,
18 awaiting a search warrant that a Detective brought to me,
19 and then after that I started photographing the actual
20 yard where the shooting occurred.

21 Q. You photographed the outside of the house and then
22 did you go inside the house?

23 A. Yes, I did.

24 Q. And when you went inside the house, what is your
25 normal procedure, or what did you do that day?

SGT. ZENSEN ON DIRECT

1 A. When we went inside the residence, we -- at that
2 time, we . .

3 Q. What did you do when you first went inside the
4 house?

5 A. We -- at that point the scope of the search warrant
6 was a shotgun.

7 Q. And did you locate a shotgun?

8 A. Yes, I did.

9 Q. Where did you locate the shotgun?

10 A. We entered the master bedroom in the residence which
11 was at the very back of the residence to what would have
12 been left of the front door and to the right of the back
13 door.

14 Q. And did you notice any weapons like a shotgun or
15 rifle or any ammunition by the back door?

16 A. Not by the back door. (Portion inaudible)

17 Q. Did you locate any ammo period?

18 A. There was ammo in the master bedroom.

19 Q. And was that the only ammo found, or the only type
20 of ammo found?

21 A. We found birdshot.

22 Q. Did you locate any buckshot within the house?

23 A. We did not.

24 Q. How many weapons -- how many rifles, shotguns did
25 you see in the house?

230

SGT. ZENSEN ON DIRECT

1 A. Two long guns, a shotgun. (Portion inaudible)

2 Q. I show you what's been marked as State's Exhibit
3 Number 1. Do you recognize this?

4 A. Yes, I do.

5 Q. What is it?

6 A. That was the shotgun that was found.

7 SOLICITOR: At this time, Your Honor, the State
8 would offer State's Exhibit 1 into evidence.

9 THE COURT: Any objection?

10 MR. MESSERVY: No objection.

11 THE COURT: State's Exhibit 1 admitted.

12 (Shotgun admitted without objection as State's
13 Exhibit 1 in evidence)

14 BY SOLICITOR:

15 Q. What gauge shotgun is this?

16 A. A twelve gauge shotgun.

17 SOLICITOR: May I approach the witness, Your Honor?

18 THE COURT: Yes.

19 Q. Would you demonstrate how you would load this shot-
20 gun?

21 A. Yes. (Portion not audible; witness speaking before
22 jury)

23 Q. How would you place a round in it?

24 A. (Inaudible)

25 Q. And at that point is it ready to fire?

SGT. ZENSEN ON DIRECT

1 A. Yes, when you (inaudible portion)

2 Q. Take your seat.

3 SOLICITOR: Beg the Court's indulgence.

4 (Brief pause in proceeding)

5 BY SOLICITOR:

6 Q. At this time I show you what's been marked as State's
7 Exhibit Numbers 23, 24, 25 and 26. Do you
8 recognize those?

9 A. Yes, I do.

10 Q. Are those pictures that you took on that day?

11 A. Yes, they are.

12 Q. Are they fair and accurate representations of what
13 you saw that day?

14 A. Yes, they are.

15 SOLICITOR: Your Honor, at this time the State would
16 offer State's Exhibits 23, 24, 25 and 26 in evidence.

17 THE COURT: Any objection?

18 MR. MESSERVY: No objection.

19 THE COURT: State's Exhibits 23, 24, 25 and 26 are
20 admitted.

21 (Photographs taken inside residence admitted with-
22 out objection as State's Exhibits 23, 24, 25, 26 in evi-
23 dence)

24 BY SOLICITOR:

25 Q. Would you tell the jury what are shown in State's 23?

SGT. ZENSEN ON DIRECT

1 A. State's Exhibit 23 shows the guns that were found in
2 the master bedroom. Exhibit 24 shows the shells that
3 were located on the nightstand in the master bedroom.

4 Q. Where was the shotgun?

5 A. On the floor in the bedroom?

6 Q. The master bedroom?

7 A. Yes, sir.

8 Q. And that was not by the back door?

9 A. No, it wasn't.

10 Q. And State's Exhibit 24 is also in the master bed-
11 room?

12 A. Yes.

13 Q. And they were on the table there as shown in that
14 picture?

15 A. Yes, sir.

16 Q. And there was a box of ammo right there?

17 A. Yes, sir.

18 Q. Right by the bed?

19 A. Yes, sir.

20 Q. What is shown in State's Exhibit 25?

21 A. That is a shell that was on the floor in the master
22 bedroom. (Portion inaudible)

23 Q. And what is shown in State's Exhibit 26?

24 A. A shell that we found outside the back door on the
25 steps.

SGT. ZENSEN ON DIRECT

1 (TRANSCRIPTION NOTE: Vibration in microphone makes
2 witness' voice difficult to understand.)

3 BY SOLICITOR:

4 Q. And did you collect this gun?

5 A. Yes, I did.

6 Q. What evidence did you collect outside?

7 A. I collected the one shotgun shell.

8 Q. Where did you collect that from?

9 A. By the back door.

10 Q. Showing you State's Exhibit 11, do you recognize
11 that?

12 A. That's a picture by the back door.

13 Q. And is that a fair and accurate representation of
14 the back door of the house that night?

15 A. Yes.

16 SOLICITOR: I would move State's Exhibit 11 into
17 evidence.

18 THE COURT: Any objection?

19 MR. MESSERVY: No objection.

20 THE COURT: Admitted without objection, State's
21 Exhibit 11.

22 (Photograph admitted without objection as State's
23 Exhibit 11 in evidence)

24 Q. Would you point out on that picture approximately
25 where you located the shotgun shell?

1 THE COURT: Mr. Messervy.

2 MR. MESSERVY: Call Melvin Haynes to the stand
3 at this time.

4 THE COURT: All right. Come up and be sworn,
5 please, sir.

6 MELVIN HAYNES, being duly
7 sworn, testified as follows:

8 CLERK: State your name for the record.

9 WITNESS: Melvin Haynes.

10 THE COURT: All right, Mr. Haynes, and please talk
11 loud for us, sir.

12 DIRECT EXAMINATION

13 BY MR. MESSERVY:

14 Q. Your name is Melvin Haynes?

15 A. Yes, sir.

16 Q. Tell me a little bit about yourself. How old are
17 you?

18 A. I'll be fifty-two on March 17th. I'm fifty-one
19 now.

20 Q. And how far did you go in school?

21 A. Tenth grade.

22 Q. And what did you do after school?

23 A. I went to the military.

24 Q. You served how long in the military?

25 A. About ten months.

DEFENDANT ON DIRECT

1 Q. Ten months?

2 A. Yes, sir.

3 Q. But it could have been less?

4 A. Could have been. That was a long time ago.

5 Q. All right. After you served in the military and
6 you got out, what kind of discharge did you receive?

7 A. Honorable discharge.

8 Q. All right, sir, and at that time were they asking a
9 lot of the others if they wanted to leave?

10 A. They asked questions -- asked if you wanted to leave
11 and asked questions. There was a lot of down-sizing and
12 stuff like that.

13 Q. All right.

14 A. You get a choice.

15 Q. They wanted an all-volunteer army at that time, is
16 that right?

17 A. Yes, sir.

18 Q. Now, what kind of work do you do?

19 A. Cement and carpentry work.

20 Q. You said carpentry work?

21 A. Form carpenter. Cement finishing.

22 Q. You've done this since you've been out of the ser-
23 vice?

24 A. Do that everyday.

25 Q. And where have you worked?

DEFENDANT ON DIRECT

1 A. Worked for Daniel, Yurgin, M. B. Kahn, Lucas -- you
2 know, in the construction industry.

3 Q. Okay.

4 A. When one job finished for a company, you go on to
5 a different company on another job. You know, stuff like
6 that, so it wasn't no special company or nothing.

7 Q. And where do you live now?

8 A. At Drive.

9 Q. How long have you lived there?

10 A. Probably like thirty years now. There was a time the
11 number changed from to because, you know, it's a
12 rural area.

13 Q. Okay, and did you have an occasion at one point to
14 move to Texas?

15 A. Yes, sir.

16 Q. And did you take that as your address at one time?

17 A. Yes, sir, because I was there with my family for
18 a while. My family's place.

19 Q. Now, where was it in Texas?

20 A. It was Avenue in Dallas, Texas.

21 Q. But you always used your home address, is that cor-
22 rect?

23 A. Yes, that was my home address.

24 Q. Now, did you have occasion to leave Texas and come
25 back to South Carolina?

DEFENDANT ON DIRECT

1 A. Yes, sir.

2 Q. Do you remember about when that was?

3 A. I came back from Dallas -- I was working -- had
4 started working for M. B. Kahn and I got hurt. I had
5 start working for M. B. Kahn and I got hurt in November.
6 I only worked for like three months before I got hurt.

7 Q. What were you doing there?

8 A. At M. B. Kahn?

9 Q. Yes.

10 A. Cement finishing and form work.

11 Q. All right, sir, and were you working full time back
12 then?

13 A. Yes, sir.

14 Q. And did you work any overtime?

15 A. Yes, sir, I did some overtime when they put me on
16 it.

17 Q. And have you always worked?

18 A. Yes, sir, all my life.

19 Q. All right, and you said you got injured?

20 A. Yes.

21 Q. What happened in the injury?

22 A. I was on a wall. What happened, I had some holes
23 to finish in a wall, and I was using a big mortar hammer,
24 and what happened is I locked into a big piece of steel
25 and it had a spin and it threw me off the wall.

DEFENDANT ON DIRECT

1 Q. How far did you fall?

2 A. It been about eight feet.

3 Q. And what happened then?

4 A. Well, they -- I went to the hospital and I haven't
5 worked since that day.

6 Q. All right, and have you been constantly treated by
7 doctors since then?

8 A. Yes, constantly. It's a regular thing.

9 Q. And this was under workmen's comp, correct?

10 A. Yes, sir.

11 Q. Okay. Now, during this time -- well, what actually
12 was wrong with you?

13 A. Well, I had -- my shoulders, my two shoulders and my
14 back. I had ruptured disks in the back.

15 Q. And you had procedures on them?

16 A. Yes, sir.

17 Q. Are you -- do you expect to have additional proced-
18 ures on them?

19 A. Well, I got one coming up on -- this month, I guess.

20 Q. And are you on any kind of medication?

21 A. I'm on four different medicines.

22 Q. I'm going to show you this medical record. Can you
23 read this medication for us?

24 A. . .

25 Q. Read the names of the medication.

DEFENDANT ON DIRECT

1 A. I don't . . .

2 SOLICITOR: I would object . . .

3 THE COURT: Hold on just one second, Mr. Haynes.

4 SOLICITOR: I would ask to see what he is referring
5 to.

6 (Brief pause)

7 SOLICITOR: Your Honor, I would object. I don't
8 know if he's taking this now or what this came from.

9 THE COURT: Mr. Messervy, he can just testify to
10 what he's taking.

11 MR. MESSERVY: I thought it would be of benefit to
12 him to have it.

13 BY MR. MESSERVY:

14 Q. What medications are you taking? Are you still tak-
15 ing medication for your back?

16 A. Yes, sir.

17 Q. What are they?

18 A. (inaudible), Hydrocodine and several things --
19 several other kinds.

20 Q. Were these all prescribed?

21 A. Yes, sir.

22 Q. And how do they affect you?

23 A. They help with the pain and make me sleep, stuff
24 like that.

25 Q. All right.

DEFENDANT ON DIRECT

- 1 A. (Portion inaudible)
- 2 Q. Did you take one this morning?
- 3 A. No, sir, I didn't take one this morning.
- 4 Q. And are you in pain at the present time?
- 5 A. Yes, sir.
- 6 Q. Now, do you walk with a cane?
- 7 A. Yes, sir.
- 8 Q. Every day?
- 9 A. Every day.
- 10 Q. Have you -- did you walk with a cane before this
- 11 accident?
- 12 A. No, sir.
- 13 Q. All right. Now, on the -- you live at
- 14 Lane, you said?
- 15 A. Yes, sir.
- 16 Q. Who lives near you?
- 17 A. I live by my brother.
- 18 Q. And who is your other neighbor?
- 19 A. My mother, my sister.
- 20 Q. One lives on one side and the other -- in front of
- 21 you and on one side of you?
- 22 A. Yes, sir.
- 23 Q. Okay, and in your area, what is across the street?
- 24 A. Woods.
- 25 Q. Is that owned by Westvaco?

DEFENDANT ON DIRECT

1 A. I think so but I don't know.

2 Q. Now, calling your attention to June 28, where were
3 you then at about two thirty in the afternoon?

4 A. I had been in the shower and at the time I was lay-
5 ing across the bed and fell asleep.

6 Q. And in what state of dress were you?

7 A. I was naked, just coming from the shower, when I lay
8 down.

9 Q. And what did you hear?

10 A. I hear . .

11 Q. You were in your bedroom?

12 A. Yes, sir.

13 Q. Let me put this here and put a pointer here. Do
14 you see this?

15 A. Uh hm.

16 Q. I would ask you to point out to me what area your
17 bedroom was in?

18 A. . .

19 Q. This is the house and the street.

20 A. Right there.

21 Q. This is your room here?

22 A. Yes.

23 Q. Where I'm pointing?

24 A. Yes, sir.

25 Q. And do you have an airconditioner right there in the

DEFENDANT ON DIRECT

1 window?

2 A. Yes, sir.

3 Q. And in that -- was the air conditioner on during
4 that day?

5 A. Yes, sir.

6 Q. This was June?

7 A. It was June.

8 Q. Now, is this a new air conditioner or an old air
9 conditioner?

10 A. It's old.

11 Q. Does it -- is it very quiet?

12 A. No, it's not too quiet.

13 Q. But it works?

14 A. It works.

15 Q. All right, sir, and did you happen to hear a noise
16 at that time?

17 A. Yes, sir.

18 Q. What kind of noise?

19 A. I hear a noise outside, and I got up to see what
20 it was and I looked out the back door. It was a truck,
21 and I didn't know who it was at the time or what it was
22 that was out there.

23 Q. All right, did you even know when you got up that
24 it was a truck?

25 A. No, I didn't know it was a truck.

DEFENDANT ON DIRECT

1 Q. And when did you first realize it was a truck
2 out there?

3 A. When I went to the back door.

4 Q. What did you have with you, if anything, while you
5 were going from the bedroom to the back door of the
6 house?

7 A. I had nothing.

8 Q. All right.

9 A. Nothing.

10 Q. Okay, and when you opened the door what did you
11 observe?

12 A. That he was -- whoever was back there was hooking
13 up to my truck.

14 Q. All right.

15 A. The truck was hooking up to my truck.

16 Q. All right, sir, and was there anybody outside?

17 A. No one.

18 Q. No one?

19 A. No, sir. Nobody was outside.

20 Q. And did you know who was in the truck?

21 A. I had never seen these guys before.

22 Q. And did you do anything? Just a minute. Now, first
23 of all, when you opened the door, did you have a gun?

24 A. No, sir.

25 Q. Where do you keep a gun at or where did you keep a

DEFENDANT ON DIRECT

1 gun at that time?

2 A. Right beside the door.

3 Q. What kind of gun?

4 A. A twelve gauge shotgun.

5 Q. Okay, and why do you keep it there?

6 A. Because of squirrels and stuff like that. I'm al-
7 ways shooting squirrels out the pecan tree.

8 Q. All right.

9 A. Where is the pecan tree on there?

10 A. Right here.

11 Q. Here?

12 A. Right here.

13 Q. That's the pecan tree?

14 A. Yes.

15 Q. And did you sometimes grab your gun and run out-
16 side and shoot at them?

17 A. Yes, sir.

18 Q. And is that why there were shells all over the yard?

19 A. There were shells in the yard, yes.

20 Q. Okay. Now, at that time, where was the truck?

21 A. Here.

22 Q. Here?

23 A. Uh hm.

24 Q. And the scale is one inch equals -- one inch on that
25 board equals four feet, right?

DEFENDANT ON DIRECT

- 1 A. Uh hm.
- 2 Q. And your truck was how long?
- 3 A. . .
- 4 Q. Twenty feet. Is that about correct?
- 5 A. Yes, sir.
- 6 Q. So this scale would be a shade less than five inches
- 7 here, and this is your truck?
- 8 A. Here.
- 9 Q. Okay, and is that where you normally parked?
- 10 A. Yes, sir, all the time right there.
- 11 Q. Let me call your attention to this picture here. It
- 12 is -- on that side -- are you saying that your truck
- 13 was about right here?
- 14 A. Yes.
- 15 Q. Backed up to the bushes?
- 16 A. Pulled to the bushes.
- 17 Q. Is that where you pulled in?
- 18 A. Where I always pulled in.
- 19 Q. All right, sir. Now, this is another twenty foot
- 20 on this side here.
- 21 What about the other truck?
- 22 A. The other truck was backed up there.
- 23 Q. Here?
- 24 A. Yes, sir.
- 25 Q. And there was a place between the two trucks?

DEFENDANT ON DIRECT

1 A. Yes, sir.

2 Q. Would you estimate the space between the trucks?

3 A. Two foot, if that much.

4 Q. All right. Now, how far was your truck from --
5 where were you at?

6 A. I was at the back door. I was back over here and
7 they had already pulled -- the truck was already moved.

8 Q. And when you opened the door?

9 A. Yes.

10 Q. But at the time you saw the truck, were all the
11 windows up?

12 A. Yes, sir. The windows was up. I couldn't see nobody
13 in that truck.

14 Q. Okay.

15 A. I ain't never seen him. The first time I seen him
16 was when I seen him in Court here the first time I came
17 to Court. I ain't never seen that man before.

18 Q. All right. Had he called you?

19 A. He ain't never called me. Never have. Nobody called
20 me.

21 Q. You are saying the people who repo'd the truck never
22 called you?

23 A. No. I had talked to Mr. Lee, yes, before.

24 Q. Okay.

25 A. I had talked to him before.

DEFENDANT ON DIRECT

1 Q. Now, once you see the vehicle backed to the truck,

2 . .

3 A. Yes, sir.

4 Q. . . what did you think at that time?

5 A. I thought somebody was stealing my truck. I thought

6 somebody was stealing my truck.

7 Q. Now, all the windows were blacked out?

8 A. Yes, sir.

9 Q. And how many shells did you have?

10 A. I only had one shell. I had one shell and I had

11 numerous kind of shells on the table, but I only shot

12 one time -- once at that truck. Once.

13 I never shot no more. This man said I hold the

14 gun on him. He said I hold the gun on him and shot a

15 shot. I never . .

16 Q. You're going to have to answer the questions, Melvin,

17 as I ask them.

18 Now, so you were looking out at the truck, and it

19 was about here when you first saw it?

20 A. Yeah.

21 Q. And it was backing up in that direction and beginning

22 to move in that direction?

23 A. Like I say, it was backed up to the truck and my

24 truck was starting to go backwards.

25 Q. Your car was close to you?

DEFENDANT ON DIRECT

- 1 A. Yes, sir.
- 2 Q. Closer to you?
- 3 A. Yes, sir.
- 4 Q. And did you say anything to you or did they say
- 5 anything to you?
- 6 A. I didn't see nobody. I was -- I didn't see nobody.
- 7 Q. And at the time did you have your glasses on?
- 8 A. No, sir.
- 9 Q. Are they prescription glasses?
- 10 A. Yes, sir.
- 11 Q. And are they both for distance and up close?
- 12 A. Yes, sir.
- 13 Q. And this was three o'clock, and your house faces --
- 14 the back of your house faces west. Am I correct?
- 15 A. Say again?
- 16 Q. The back of your house faces west?
- 17 A. Yes, the back of my house.
- 18 Q. So was the sun in your eyes?
- 19 A. Yes, sir.
- 20 Q. Okay. Now, what happened the minute they started
- 21 to pull off?
- 22 A. The truck started to pull off.
- 23 Q. And I believe you said you couldn't see anybody?
- 24 A. I couldn't see nobody, but I hollared -- I was hol-
- 25 laring stop.

DEFENDANT ON DIRECT

1 Q. And then . .

2 A. I shot at the truck.

3 Q. Why did you shoot at the truck?

4 A. Because I thought someone was stealing my car.

5 Q. All right, and did you feel secure in that?

6 A. No, I didn't know who they were. I didn't know who
7 they were.

8 Q. What kind of noise was there?

9 A. There was a lot of noise. The truck made a loud
10 noise.

11 Q. All right, and is that when the . .

12 A. I didn't know who it was. All they had to do was
13 like (witness knocking with fist). I could accept then
14 what they was doing.

15 Q. Did anybody tell you they were going to repossess
16 your truck?

17 A. No. I had receipts for money order I sent to Mr.
18 Lee.

19 Q. All right, sir. Has -- did you have insurance at
20 that time?

21 A. Yes, sir.

22 Q. And did Mr. Lee ever talk to you about insurance?

23 A. No, sir.

24 Q. All right. Now, after you shot --how many times
25 did you shoot?

DEFENDANT ON DIRECT

- 1 A. One time.
- 2 Q. All right, and after you shot what did you do?
- 3 A. After I shot I went back in the house and that's
- 4 when I called my brother.
- 5 Q. Why did you call your brother?
- 6 A. To tell him somebody stole my truck outside; that
- 7 I shot at the truck. I needed to tell the police about
- 8 it.
- 9 Q. Did you make a report?
- 10 A. Right.
- 11 Q. Now, it was a while before you could get there, is
- 12 that correct?
- 13 A. A while before I could get there.
- 14 Q. And your brother is here in the audience?
- 15 A. Yes, sir.
- 16 Q. And did he come and get you and then drove you to
- 17 the police?
- 18 A. Yes, sir, in Dorchester County.
- 19 Q. And you got there about when?
- 20 A. I got there probably about -- a little after three
- 21 -- about four or something like that.
- 22 Q. All right.
- 23 A. A little before that. I was there for a while.
- 24 Q. But you went there as fast as you could?
- 25 A. Yes, sir.

DEFENDANT ON DIRECT

1 Q. All right.

2 A. I didn't have nothing to drive.

3 Q. That's why you had to call your brother because you
4 didn't have anything to drive?

5 A. Right.

6 Q. What do you use this car for?

7 A. Truck.

8 Q. What do you use it for?

9 A. To go to the doctor and stuff, and to do stuff for
10 my mother.

11 Q. How old is your mother?

12 A. She's eighty-nine.

13 Q. Eighty-nine?

14 A. Yeah, eighty-nine.

15 Q. Is she kind of feeble?

16 A. Yes, she can hardly walk.

17 Q. Is that why she's not here today?

18 A. That's why she's not here today.

19 Q. And are you trying to take care of her?

20 A. Yes, sir.

21 Q. Did you ever see -- well, let me ask you something.

22 How often did you go to the door naked?

23 A. How often do I go to the door naked?

24 Q. Yes.

25 A. I'm in the country and ain't nobody around the place.

DEFENDANT ON DIRECT

1 I do that all the time.

2 Q. And how often do you go without your glasses?

3 A. All the time.

4 Q. And the -- when you went to the police, who did you
5 talk to?

6 A. The first one I talked to?

7 Q. Yeah, who was the first one you talked to?

8 A. Detective Morelli.

9 Q. And what did you : .

10 A. The gentleman right there.

11 Q. And what did you say to them?

12 A. Well, I had called them and tell them that, you
13 know, that I was coming, and they took me in the back
14 there. It was a while before they come and get me and
15 then they took me in the back.

16 Q. All right, and you knew Detective Morelli, is that
17 correct?

18 A. Yes, sir.

19 Q. How did you know Detective Morelli?

20 A. Because I had two prior break-ins.

21 Q. And you had given them the facts to substantiate
22 those break-ins?

23 A. Yeah, and they never could find -- they ain't never
24 recover my stuff, and they say . .

25 Q. Don't bother with that.

DEFENDANT ON DIRECT

1 A. Okay.

2 Q. But you saw him or talked to him before when you
3 had your stuff stolen?

4 A. When my stuff was stolen, yeah.

5 Q. Now, did you ever -- in May where were you living?

6 A. In May?

7 Q. Yes, sir.

8 A. Texas.

9 Q. What did you go to Texas for?

10 A. To visit.

11 Q. And when did you come back?

12 A. Oh, I'm not sure. Around the end of June.

13 Q. June?

14 A. Or beginning of July. It's been a long time.

15 Q. Well, this happened on June 28th, so it couldn't
16 have been in July.

17 A. Right. Well, must be June.

18 Q. How long had you been back before this happened?

19 A. Probably two months or something like that.

20 Q. So were you there during this?

21 A. Was I where?

22 Q. At your house on Jill Lane?

23 A. Yeah, I had come back before that. I had come back
24 before. I mean, I always be back and forth.

25 I know I was lying there.

DEFENDANT ON DIRECT

1 Q. All right, sir. Did you ever get any kind of noti-
2 fication from Mr. Lee about the repossession of your
3 truck?

4 A. No, sir.

5 Q. Was anyone at your house prior to that?

6 A. No, sir.

7 Q. Do you know who it was that signed the letter --
8 that signed the return receipt for the letter?

9 A. I don't know.

10 Q. Okay, because you never saw it?

11 A. I never saw it.

12 Q. Now, did you ever get a call from them?

13 A. No, I didn't.

14 Q. Now, did there come a time when you and Mr. Lee
15 talked?

16 A. Yes.

17 Q. Where was that?

18 A. . .

19 Q. How much before the shooting was that?

20 A. A while. Four or five days or something like that.
21 Sometime in that category.

22 Q. And you don't keep records of these things?

23 A. No, sir.

24 Q. All right. Well, what did he tell you at that time?

25 A. He told me to send him two payments, and I send

DEFENDANT ON DIRECT

1 in two payments, and a few days later is when they come.

2 I send in two payments and did what he told me at the
3 time, and he said, that's good; thank you.

4 I did what he said to do. I send in money orders
5 to him, and I guess he confirmed it and said, that's good;
6 thank you.

7 It was all clear.

8 Q. So also -- did you on occasion have an opportunity
9 to listen to the telephone call from Mr. Lee?

10 A. I know he called.

11 Q. Did he leave a message for you?

12 A. He said he leave a message for me, but everything
13 was clear, everything was fine.

14 Q. Am I correct that he left this message on your phone,
15 Hey, Melvin, call me. My phone number is such and such.

16 I received that package you sent and I appreciate it.

17 I've got the deal of a lifetime for you but I need you to
18 call me. Call me right away.

19 What point did you think it was at that time?

20 A. At what point?

21 Q. What did you think at that time?

22 A. I thought everything was clear.

23 Q. And you never received a repossession notice?

24 A. No, sir.

25 Q. And you had done what you told Mr. Lee what you

DEFENDANT ON DIRECT

1 told him you would do and what he asked for?

2 A. Yes, I sent the two payments to him.

3 Q. Okay, and at any time between the time you received
4 the call from Mr. Lee and these people came to our house
5 and did what you thought was stealing the car or repos-
6 sessed the car, did you call Mr. Lee?

7 A. Did I call him?

8 Q. Yes.

9 A. After it happened?

10 Q. Yeah.

11 A. No.

12 Q. No, no, not after the incident. After you got the
13 telephone call, . . .

14 A. No, sir.

15 Q. When do you think you got that telephone call, if
16 this happened on June 28th?

17 When do you think you got the telephone call?

18 This happened on a Sunday.

19 A. I don't know.

20 Q. I mean, the one that was left on your phone.

21 A. I can't say.

22 Q. But you did talk to Mr. Lee and made this payment
23 after you received it?

24 A. Right.

25 Q. And he never told you at any time that your car

DEFENDANT ON DIRECT

1 was going to be repossessed?

2 A. No.

3 MR. MESSERVY: One second, Your Honor.

4 THE COURT: Okay.

5 BY MR. MESSERVY:

6 Q. Mr. Haynes, did you ever receive a notice to cure?

7 A. No.

8 Q. Did you ever receive a notice that your license
9 had been suspended for failure to keep insurance on
10 the car?

11 A. No, I didn't.

12 Q. Have you ever been charged with that?

13 A. No.

14 Q. Did you, at my request, run a driver record to date?

15 A. Yes, sir.

16 Q. And there was nothing about insurance on that driv-
17 ing record?

18 A. No, sir. Nothing on the driver record.

19 Q. All right. No further questions.

20 THE COURT: All right. Mr. Justis, your witness.

21 SOLICITOR: Thank you. May it please the Court?

22 CROSS EXAMINATION

23 BY SOLICITOR:

24 Q. Good afternoon, Mr. Haynes.

25 A. Good afternoon, sir.

DEFENDANT ON CROSS

1 Q. Okay. Well, isn't it true in some of the medical
2 reports you had pain so that you couldn't stand it?

3 A. Yeah, I hurt in my back, tremendous pain in my back
4 as everybody knows who has back trouble, and I been doing
5 this a long time.

6 I had no other choice. I mean, it was...

7 Q. How far is the driving distance you would travel
8 in a taxi?

9 A. When I start driving I continue and stop and con-
10 tinue and stop. Maybe twenty-five miles.

11 Q. Who would pay for your plane tickets?

12 A. What plane tickets? I couldn't pay for no plane
13 tickets.

14 Q. Who was making your car payments?

15 A. I pay for my car payment out of worker's comp.

16 Q. Well, not according to Mr. Lee.

17 A. Mr. Lee said a whole lot of stuff. I was right here
18 when he was up there, and that's the thing. Mr. Lee sat
19 there and told all this stuff, but some of it was untrue.
20 They're not going to let me keep no truck and not have
21 insurance and stuff like that.

22 They're not going to do that. That was untrue.

23 Q. Mr. Lee is not going to let you?

24 A. . .

25 Q. What you're testifying to is Mr. Lee is not going

DEFENDANT ON CROSS

1 to let you drive . .

2 A. He is . .

3 THE COURT: Let him finish the question and then you
4 complete your answer before there is another question.

5 BY SOLICITOR:

6 Q. So your testimony would be that Mr. Lee is not going
7 to let you drive the truck . .

8 A. Mr. Lee is not.

9 Q. . . without insurance?

10 A. Right.

11 Q. Mr. Lee would not let you drive an uninsured truck
12 around town, but he would just come and get it from
13 you?

14 A. Yes. Ain't no company going to let you drive no
15 truck or car around with no insurance, and especially if
16 they got a lien on it.

17 Q. Right, and that's just common sense?

18 A. That's true.

19 Q. And that's what they're supposed to do?

20 A. It wasn't because of no insurance because I had in-
21 surance. Mr. Lee knew that.

22 Q. Did you ever provide Mr. Lee with the insurance?

23 A. Did I -- I bought a truck and he knew I had insur-
24 ance.

25 Q. Why did they repo it?

DEFENDANT ON CROSS

1 A. That's what you have to ask him. I been with State
2 Farm. I had insurance when I bought the truck and he
3 knew that.

4 Q. Did you say you used State Farm? Who did you use?

5 A. State Farm.

6 Q. Who was the agent you got it from?

7 A. Who did I get my insurance from?

8 Q. Yes. Where did you go to get it?

9 A. Where did I get my insurance from?

10 Q. Right.

11 A. It was off of -- behind Trident Hospital off of
12 Highway 17 there.

13 Q. So it wasn't the Burrell or the Singleton Agency in
14 Moncks Corner?

15 A. At first I had insurance with them but I switched
16 over from them. When I bought that truck I switched over
17 from them.

18 Me and my girl had it together.

19 Q. You bought the truck in February of 2008, is that
20 correct?

21 A. I can't answer that.

22 Q. Would it help you to refresh your memory if I showed
23 you the contract?

24 A. You can show me but I just can't remember.

25 Q. Does this help you remember?

DEFENDANT ON CROSS

1 A. . .

2 SOLICITOR: Let me have this marked.

3 BY SOLICITOR:

4 Q. Let me show you State's Exhibit 33, Mr. Haynes.

5 Look at that and see if that refreshes your memory as
6 to the date you bought the truck?

7 A. It says February of '08.

8 Q. Does that seem about right?

9 A. . .

10 Q. Do you think that would be accurate?

11 A. I couldn't say.

12 Q. And according to this, the Farrell-Singleton Agency
13 cancelled your insurance five months later?

14 A. Yeah.

15 Q. All right, the Farrell-Singleton Agency. According
16 to that document, they had insurance on the truck you pur-
17 chased in 2008?

18 A. yes.

19 Q. Then in July of 2008 they cancelled your insurance?

20 A. I switch to another insurance company.

21 Q. You didn't have insurance with them?

22 A. Yes, I had insurance with them but I went to the
23 place behind Trident and . . .

24 Q. And they cancelled . . .

25 Q. I had insurance with them when I first bought the

DEFENDANT ON CROSS

1 truck but I . .

2 Q. You didn't have insurance . .

3 A. Yes, I had insurance with them but I . .

4 (Counsel and witness speaking at the same time)

5 BY SOLICITOR:

6 Q. When you bought the truck . .

7 A. I told you I had insurance when I bought the truck
8 in the place in Moncks Corner, South Carolina.

9 Q. And then you changed it after they cancelled you?

10 A. No. I changed it over. Me and my girlfriend went
11 and got insurance together.

12 Q. Who did you change it over to?

13 A. State Farm.

14 Q. But you never told Mr. Lee that?

15 A. Mr. Lee never ask me who had I changed to.

16 Q. Did you ever provide anything about it to Mr. Lee?

17 A. No, he never ask me that. You can call State Farm
18 and they tell you I got insurance.

19 Q. Did you tell Mr. Lee that?

20 A. No, I never told Mr. Lee that.

21 Q. All right. So you hurt your back and you testified
22 to that?

23 A. Right.

24 Q. In November of 2008 you hurt your back, and this in-
25 cident happened in June of 2009, right?

DEFENDANT ON CROSS

1 A. Right.

2 Q. Some seven months later?

3 A. Right.

4 Q. And during that seven months, you experienced prob-
5 lems with your back. Right?

6 A. Right.

7 Q. And you went to multiple doctors for that?

8 A. Yes, I did.

9 Q. And do you remember going to see a doctor in April.

10 A. If you'll give me the doctor's name, I can answer
11 that.

12 Q. Dr. Nolan.

13 A. Yes.

14 Q. And do you remember when he saw you?

15 A. I couldn't tell you that.

16 Q. But you remember Dr. Nolan?

17 A. I remember Dr. Nolan, yes, but I couldn't tell you
18 what date it was.

19 Q. Could you explain why he would say that in his re-
20 port that you were on no medication?

21 A. Why he say I was on no medication?

22 Q. Yes, sir.

23 A. I couldn't explain that. I'm not sure what you're
24 talking about.

25 Q. What about -- is it your testimony that you were taking

DEFENDANT ON CROSS

1 hydrocodine?

2 A. Yes.

3 Q. How long do you think you were taking it?

4 A. A while. It was a while.

5 Q. When did you start taking it?

6 A. . .

7 Q. Was it before this incident?

8 A. It was before the incident.

9 Q. Are you still taking it?

10 A. Yes, sir. I got some thing that are permanent.

11 Q. I'm not a pharmacist.

12 A. I understand.

13 Q. I try to stay away from pain pills.

14 A. Yes, sir.

15 Q. Now, when you purchased the truck, you had been liv-
16 ing here?

17 A. Yes.

18 Q. But you were back and forth to Dallas, Texas?

19 A. Yes, sir.

20 Q. Now, back in March, I believe -- in June of 2009,
21 there were some packages you sent to him with envelopes
22 that had a Texas return address?

23 A. Right.

24 Q. Where were you when you mailed those?

25 A. Well, if I sent them from Ravenel I still put my

DEFENDANT ON CROSS

1 Texas address. It ain't had nothing to do with that.

2 Q. You don't use the Jill Drive address?

3 A. . .

4 Q. You always use the Dallas, Texas, address?

5 A. No, I use Jill Drive.

6 Q. Well, what's the reason you used that on these en-
7 velopes?

8 A. I just use it.

9 Q. You just felt like using that address at the time?

10 A. . .

11 Q. But you weren't in Dallas, Texas, when you mailed
12 them?

13 A. What was that?

14 Q. You just testified you weren't in Dallas, Texas,
15 when you mailed them?

16 A. No, I couldn't tell you what day -- I don't remem-
17 ber that, now. It's been a long time. I couldn't re-
18 member what days.

19 Q. Well, I mean, . .

20 A. I couldn't tell you if I was in Dallas or not. I
21 couldn't say that.

22 Q. Well, the postmark says South Carolina. Does that :
23 mean you were in South Carolina?

24 A. It could be.

25 Q. Does that make sense?

DEFENDANT ON CROSS

1 A. Yeah, it makes sense.

2 Q. Now, how many times did you talk with Mr. Lee about
3 your truck payments?

4 A. How many times?

5 Q. Yes.

6 A. I talk with Mr. Lee once.

7 Q. Only once?

8 A. Once.

9 Q. And was that in person or by phone?

10 A. I never met Mr. Lee until I see Mr. Lee here. I
11 ain't never seen that man before in my life. Ain't never,
12 ever seen him before.

13 Q. And I think you testified that he told you that if
14 you sent him two payments everything was good?

15 A. Yes, sir.

16 Q. And then you also testified he left that message on
17 your answer machine?

18 A. Right.

19 Q. According to you, if you sent the two payments it
20 would be good, and you sent the two payments in these en-
21 velopes?

22 A. I couldn't say it was one of them.

23 Q. Right.

24 A. I couldn't say that.

25 Q. But you . .

DEFENDANT ON CROSS

1 A. I mailed it in.

2 Q. This says June 24th . .

3 A. Well, that must be one of them.

4 Q. Four days before the incident?

5 A. Well, yes. That was one.

6 Q. And you testified that Mr. Lee called and left a
7 message on your answering machine?

8 A. Right. I said he left that message on my answering
9 machine?

10 Q. You said he called?

11 A. He called me. He called me and told me thanks for
12 the stuff I sent, the number on the money orders he ask
13 me for, and I give him the number of the money orders.

14 When you give somebody the numbers off the money or-
15 ders they can verify that you bought the money order;
16 that the money order was bought.

17 He call me back to thank me.

18 Q. Okay, so you talked to him twice if you gave him
19 the money order numbers?

20 A. I received his answer on the machine. He called to
21 say thank you and everything was good.

22 Q. You talked to him twice. You talked to him when he
23 asked for the numbers and then you talked to him again
24 and gave him the numbers?

25 A. What I'm saying is that he called me the first time.

DEFENDANT ON CROSS

1 Right? When he called me I had to go purchase the money
2 order. I had to give him the number off the money order
3 after I purchase the money order.

4 The place where I bought the money order at, they
5 would verify that I purchase it, and I put them in the
6 mail.

7 Q. Okay, so you talked to him twice?

8 A. . .

9 Q. And then he left this message to call him after you
10 sent the money orders in?

11 A. Yes, that's what that message said.

12 Q. After you sent the payments he said he received the
13 package and to call him?

14 A. That's what that message said.

15 Q. After you sent the money orders in?

16 A. Yes.

17 Q. You had sent the payments?

18 A. Right.

19 Q. And I assume you called him back to say you mailed
20 the two money orders?

21 A. Right.

22 Q. I appreciate it; I have the deal of a lifetime for
23 you; call me.

24 It's your testimony you already had a deal before
25 this call?

DEFENDANT ON CROSS

1 A. Yes.

2 Q. You say you had a deal with him before this message?

3 A. Right.

4 Q. So you didn't take it like we've got a deal but you
5 have to call me?

6 A. No, I didn't take it like that.

7 Q. You didn't take it like that?

8 A. No.

9 Q. So you didn't call him? You just ignored it?

10 A. Say again.

11 Q. You got that message but you did not call him?

12 A. Right. I had talked with him before, so I didn't call.

13 Q. But you never called after that? Never talked to him?

14 A. I ain't never seen this man until court.

15 Q. When you made those two payments they were past due,
16 is that right?

17 A. No, it wasn't exactly past due.

18 Q. And after those payments you were past due?

19 A. No, I really wasn't past due. The thing was that I
20 will get them two payments to him -- was like two payments
21 back.

22 I got two \$287 payments and sent it to him. I
23 send the payments.

24 Q. But you were still two months behind?

25 A. No, I couldn't say that because I didn't know I was.

DEFENDANT ON CROSS

1 Q. It is your testimony today when you paid those two
2 payemnts you weren't behind?

3 A. I wasn't.

4 Q. At your prior hearing, did you testify you were
5 about two months behind?

6 A. I just told you just now. I just told you I mailed
7 the two payments of \$287 each. Yes, I said that, and
8 that's what I'm telling you now.

9 Q. Let's talk about June 28, 2009. Do you remember
10 that day?

11 A. Yes, sir.

12 Q. You say you were sleeping when the tow truck came,
13 and I believe you testified that you -- by the way, is
14 there a window in your bedroom?

15 A. Yes, sir.

16 Q. And what side of the house is the bedroom on or the
17 window in the bedroom?

18 A. . .

19 Q. Does it face the back of the house?

20 A. The back of the house, the side of the house.

21 The back and the side, where the tow truck was at.

22 Q. So it's two windows?

23 A. Yes, sir.

24 Q. And I think you testified when you heard the noise
25 -- did you look out the window?

DEFENDANT ON CROSS

1 A. No, sir.

2 Q. What did you do?

3 A. I walked through the hallway -- again, I walked
4 through the hallway to the back door.

5 Q. And where is the bedroom in relation to the back
6 door?

7 A. . . .

8 Q. Look at this -- let's use this drawing right here.
9 This is the back door?

10 A. Right.

11 Q. So is the bedroom around on this side of the house
12 or this side?

13 A. This side. There.

14 Q. Okay. We could put it there?

15 A. Yes.

16 Q. And where was the air conditioner?

17 A. This window.

18 Q. Okay, and the truck is back here?

19 A. Uh hm.

20 Q. Stealing your vehicle, you think?

21 A. Uh hm.

22 Q. You are here?

23 A. Yes, sir.

24 Q. And you come walking all the way through the house
25 there?

DEFENDANT ON CROSS

1 A. Right.

2 Q. When you hear the noise you walk all the way through
3 the house?

4 A. Yeah.

5 Q. Okay, and . .

6 A. I came this way and here's the kitchen.

7 Q. Right, and you've got your cane with you?

8 A. . .

9 Q. You can't walk without your cane?

10 A. I didn't have the cane with me, sir. I didn't
11 have the cane. I walked to the back door and opened up
12 the door.

13 Q. All right, and -- but you had your glasses on?

14 A. No, sir, I didn't have them on.

15 Q. That's right. You testified that all the time you
16 go outside naked without your glasses?

17 A. That I go outside? No, sir, I did not say I go naked
18 outside to shoot at no squirrels. I say I go to my door
19 like that living out in the country. Nobody there or
20 nothing.

21 Q. And you testified the gun was located on a table by
22 your bed?

23 A. No, I did not say the gun was on the table. The
24 shells was on the table. The gun was laying beside the
25 table.

DEFENDANT ON CROSS

1 Q. The gun was . . .

2 A. The shells was on the table. Squirrel shots on top
3 of the table. Squirrels or rats or whatever, birdshot.
4 That was on the table.

5 Q. And you grabbed shells from the table?

6 A. I grab one shell -- I shot once.

7 Q. When you grabbed the gun, how many shells did you
8 have?

9 A. I had one shell.

10 Q. You left the other shells on the table, is that
11 right?

12 A. I shot once.

13 Q. According to you, you shot only one shot and you
14 left the other shells there.

15 After you shot, or after this incident happened,
16 what did you do with the shotgun?

17 A. What did I do with the shotgun?

18 Q. Yes.

19 A. I took the shotgun to the back. I put it in that
20 room right there. Put it on the light nightstand, after
21 I went down that hallway.

22 Q. Next to the twenty-two?

23 A. Yes, sir.

24 Q. Okay. Is that where you normally keep it?

25 A. No, sir.

DEFENDANT ON CROSS

1 Q. Where did you keep it?

2 A. I keep it next to the bed and the night table. I
3 told you that.

4 Q. All the time?

5 A. Yes, sir, yes, sir.

6 Q. Why did you take it to the bedroom?

7 A. I took it back there. No special reason I took it
8 and put it there.

9 Q. You walked in the door and sat it down?

10 A. I went in there and put it down. I was stressed out
11 anyway.

12 Q. What about the shells that were on the table next
13 to the bed?

14 A. . .

15 Q. Ms. Zensen testified she found all the shells in
16 the bedroom. Did you pick up those shells with the gun
17 also?

18 A. You talking about before I went to the door?

19 Q. All the shells that were on the table right next to
20 the shotgun?

21 A. I leave them in the room.

22 Q. You left them there when you went to the door?

23 A. Right.

24 Q. And the sun was in your eyes when you came out?

25 A. Yes, sir.

DEFENDANT ON CROSS

1 Q. So it was pretty hard to see out there?

2 A. Right.

3 Q. But yet you took a shotgun, and was the shotgun
4 loaded?

5 A. No, I loaded it.

6 Q. You had to load it, right?

7 A. Say again.

8 Q. You had to load the shotgun?

9 A. Yes.

10 Q. And you took the one shell you had in your hand?

11 A. Yes, sir. Took it from the table there.

12 Q. You had it in your hand?

13 A. Had it in my hand, yes, sir.

14 Q. And you go outside . .

15 A. I didn't go outside. I stood in the door.

16 Q. You're standing in the doorway looking out the door?

17 A. Uh hm.

18 Q. So you're standing in the doorway . .

19 A. In the doorway.

20 Q. You're standing in the doorway?

21 A. Right.

22 Q. And you are holding the shotgun and you open the
23 gun?

24 A. The only way you can get a shell in is to open it
25 up.

DEFENDANT ON CROSS

1 Q. Okay.

2 A. You can't do it from the opposite end.

3 Q. Right, and you can see to load the gun?

4 A. I'm not that blind that I can't put a shell in the
5 gun.

6 Q. You've loaded the shotgun probably thousands of
7 times?

8 A. Yeah. All you've got to do is look in the yard to
9 see I loaded the gun. Shells all over the yard.

10 Q. Did you buy this gun or was it handed down to you?

11 A. No, I bought that gun because I'm a huntsman. I
12 bought it.

13 Q. Did you buy it new or . . .

14 A. I bought that gun from the pawn shop.

15 Q. Okay. How long had you had that gun?

16 A. Many years.

17 Q. So you had shot it many times?

18 A. Right.

19 Q. You could shot it blind-folded?

20 A. Say again.

21 Q. You could shoot that gun blind-folded?

22 A. No, I couldn't say I could shoot the gun blind-
23 folded. I'd be like an idiot to tell you that.

24 Q. So you put the shell in and then cocked it back and
25 aimed at the truck?

DEFENDANT ON CROSS

1 A. No, no, no. I hollared, hey, hey, hey. I didn't
2 just pull the gun up and fire. No, I did not do that.

3 Q. All right.

4 A. No.

5 Q. And what are they doing?

6 A. Who they? They who? I mean, I never see these guys
7 before. I never seen these guys before. I ain't never
8 seen these guys before.

9 Q. Who are you yelling at then?

10 A. I hollared -- I didn't know who was out there but I
11 wanted them to put my truck down. I know somebody was in
12 the truck.

13 Q. You can't see through the window?

14 A. No, sir. They was dark.

15 Q. Could you see the big white writing?

16 A. No, I didn't see no writing on that truck.

17 Q. You are telling me you didn't see any writing on
18 the truck?

19 A. I couldn't see no writing on that truck.

20 Q. And so it is already hooked up to your truck and
21 had your truck a little bit up?

22 A. They had my truck pulling out.

23 Q. They are driving off?

24 A. That's right.

25 Q. And when they were driving off, you were yelling

DEFENDANT ON CROSS

1 hey, hey, hey?

2 A. Yes.

3 Q. So they aren't a threat to you any more, are they?

4 A. What you mean?

5 Q. They weren't an actual threat to you? I mean, they
6 aren't coming at you or anything?

7 A. How can they be coming at me when they're pulling
8 off?

9 Q. Yes, sir. They are going away?

10 A. Yes, they're going. I couldn't see . .

11 Q. They went on down the road?

12 A. No, they're not going down the road. They were
13 still in my yard trying to go out the yard.

14 Q. Trying to go out your yard, your back yard?

15 A. Right.

16 Q. And so they're driving away and they are not a
17 threat to you any more?

18 A. No, but they had my truck. I can't say that.

19 Q. You can't even see them so you don't know if it's
20 just one person, or could be a big person or a little
21 small person; you've got no idea who was in that truck.
22 Is that correct?

23 A. I had no idea.

24 Q. You yell, hey, hey, hey, and what do you do?

25 A. . .

DEFENDANT ON CROSS

- 1 Q. You yell, hey, hey, hey; you've got a loaded weapon?
- 2 A. And I shot at the truck.
- 3 Q. You aim at the truck. Right?
- 4 A. Yes, sir.
- 5 Q. Surely you wouldn't shoot at a person?
- 6 A. No, I didn't know who it was, and why would I want
- 7 to kill a man?
- 8 Q. Maybe because they're stealing your truck?
- 9 A. No, no, no, man. Trust me. I would never do that.
- 10 Let me tell you something. I wouldn't kill no man. I
- 11 am sorry I did that. I wouldn't have a reason to kill
- 12 a man.
- 13 Q. You wouldn't hurt nobody?
- 14 A. I wouldn't have no reason to do that. Why would I
- 15 want to kill him?
- 16 Q. You wouldn't want to hurt anyone, would you?
- 17 A. No, I would not.
- 18 Q. All right, so you fired a shot and what happened
- 19 when you fired the shot?
- 20 A. I . . .
- 21 Q. Did he turn around and look back at you?
- 22 A. No.
- 23 Q. So he kept on going?
- 24 A. Yes.
- 25 Q. Okay, and I think you testified you went back in the

DEFENDANT ON CROSS

1 house?

2 A. Right.

3 Q. That's when you put the gun down?

4 A. Right.

5 Q. And what did you do with the shell you took out of
6 the gun?

7 A. The shell kicks out and I picked the shell up off
8 the ground when it kicks out of the gun.

9 Q. Once you shot, you opened the gun back up?

10 A. Yes.

11 Q. And you . . .

12 A. The shell kick out. The shell kick out.

13 Q. So you pick it back up and put it in the bedroom?

14 A. Right.

15 Q. All right, what did you do at that point?

16 A. Called -- that's when I went and called you.

17 Q. You called?

18 A. Yes, sir.

19 Q. And you called your brother?

20 A. Yes, sir.

21 Q. And how long did it take your brother to get
22 there?

23 A. Probably about twenty-five minutes. Something like
24 that.

25 Q. Okay.

DEFENDANT ON CROSS

1 Q. Okay.

2 A. Because he had to come from Summerville.

3 Q. And then he had to take you -- you had to go back
4 to Summerville, right?

5 A. Right. He had to come get me. I didn't have no-
6 thing else to drive. That's the only way I could get there.

7 Q. Twenty-five minutes each way?

8 A. Right. Something like that.

9 Q. Okay, so twenty or twenty-five minutes?

10 A. The trip back probably took a little bit longer.

11 Q. Why is that?

12 A. The police department is not in his front yard or
13 back yard.

14 Q. Right.

15 A. That's what I try to tell them.

16 Q. So it might be forty minutes to get to the police
17 department. Is that right?

18 A. It won't take that long. It won't take that long,
19 no.

20 Q. So when you went to the Sheriff's Department you ob-
21 viously told somebody when you walked in the door that
22 you wanted to talk to someone. Correct?

23 A. Yes, I wanted to talk to a officer.

24 Q. Okay, and Officer Morelli spoke to you that day?

25 A. Yes, in an hour or so. An hour or so later.

DEFENDANT ON CROSS

1 Q. So you say you had to sit at the Sheriff's Depart-
2 ment an hour before anyone talked to you?

3 A. Yeah, something like that. An hour or so -- I sit
4 right there in the office right there.

5 Q. You had to wait on them to come and talk to you?

6 A. Yes, I did. That's what I had to do.

7 Q. Did you -- when you first walked in, did you tell
8 the people what you wanted to say?

9 A. Yeah.

10 Q. I just shot a truck that was trying to steal my
11 truck?

12 A. Yeah, I sure did.

13 Q. Did you make a report?

14 A. Yes, sir.

15 Q. Somebody was trying to steal my truck and I shot at
16 it?

17 A. I sure did.

18 Q. By the way, when those people were stealing your
19 truck, they didn't try to get in your house, did they?

20 A. They didn't try to get in my house?

21 Q. Yes.

22 A. No, I didn't even see these people so how could
23 they try to get in my house?

24 Q. So what they did was take your truck from your
25 yard?

DEFENDANT ON CROSS

1 They were taking your truck from your yard, is that
2 right?

3 A. Yes. That's why I thought someone was stealing my
4 truck.

5 Q. Okay. I believe you testified under oath that if
6 they had knocked on the door, you would have . .

7 A. Yes, if they -- common sense. Common sense, you
8 know. If they just knock on the door I can show them
9 this receipt.

10 Q. All right.

11 A. If they just knock on the door.

12 Q. Why would you show them a receipt?

13 A. Why would they come and steal my truck? They could
14 have let me know. That's all they have to do, and I
15 would show them -- either knock on the door or else to
16 bring a police officer. That's the proper procedure.

17 Q. The proper procedure when repossessing a truck is to
18 knock on the door and let you know?

19 A. Well, all he had to do was come and knock on the
20 door. All this could have been prevented.

21 Q. Why knock on the door and say I'm going to steal
22 your truck?

23 A. Nobody is going to say that. They're not going to
24 knock on the door and tell me they're stealing my truck.
25 That is really . .

DEFENDANT ON CROSS

1 Q. Well, isn't it also possible that nobody is going to
2 -- isn't it also common sense that people don't show up
3 at three o'clock on a Sunday afternoon if they are in-
4 tending to steal it?

5 A. . .

6 Q. Isn't that common sense?

7 A. Yeah, that's true. That's true, but I was not back
8 on my payments so they had no right to come and mess with
9 my truck.

10 Q. Well, you just testified you were behind a couple of
11 months back?

12 A. I didn't tell you I was no couple of months. I
13 tell you I was two months and I mail those two payments.
14 That's all I was. Those two payments. I sent two Three
15 Hundred Eighty-seven Dollars.

16 Q. Now, why didn't you call the cops?

17 A. What now? Why didn't I do what?

18 Q. Why didn't you call the cops?

19 A. Why didn't I call them? I called him to take me to
20 the police department.

21 Q. Why didn't you call the police?

22 A. I can't say that. I was on my way down there. I
23 was going down there.

24 Q. You didn't call and say someone is stealing my truck?

25 A. No, I went to them.

DEFENDANT ON CROSS

1 Q. And you told them you shot at somebody. Right?

2 A. Right.

3 Q. You shot one time?

4 A. Right.

5 Q. Did you tell Officer Morelli that he was a lucky

6 man? Did you make that statement?

7 A. I said that if I had buckshot or something or if I
8 grab my automatic or something like that, something could
9 have happened -- things could happen.

10 But I wasn't do that. I know that was birdshot. I
11 wasn't trying to kill nobody.

12 Q. But you did say he was a lucky man that you didn't
13 use the buckshot?

14 A. I said that.

15 Q. I think you testified that -- one second, please.

16 All right, Mr. Haynes. It was your testimony you
17 only shot one time. Is that correct?

18 A. One time.

19 Q. And you say you shot at the truck?

20 A. Yes.

21 Q. Thank you. No further questions.

22 THE COURT: Any Redirect?

23 MR. MESSERVY: Yes, sir.

24 THE COURT: All right, we're going to take a short
25 break first. Okay?

1 among yourselves.

2 (Jury excused from Courtroom for the evening)

3 THE COURT: You want to renew your motion for a
4 directed verdict at this time?

5 MR. MESSERVY: Yes, sir. I would renew all my mo-
6 tions made previously as well, Your Honor, on everything
7 I've asked for in the case.

8 THE COURT: All right, sir. Mr. Messervy, my rul-
9 ings would be the same. I deny your motion for directed
10 verdict and your earlier motions for continuance.

11 All right. Let's go over -- the only -- you all
12 remember my charge from last time. What I am planning on
13 doing is charging the same thing, in addition to the
14 lesser included offense of assault and battery of a high
15 and aggravated nature.

16 MR. MESSERVY: Your Honor, might I add one other
17 thing, and I had not prepared for this, but would you
18 consider simple assault and battery?

19 THE COURT: Mr. Justis, anything?

20 SOLICITOR: I would object to that, Your Honor. I
21 mean, from the evidence the victim was shot with a shot-
22 gun which amounts to more than a simple assault.

23 It is either an ABHAN or ABWIK, Your Honor.

24 THE COURT: It occurs to me that all the testimony
25 -- he's even admitted he fired a shotgun, so I will look

1 it over, but I am disinclined to charge simple assault and
2 battery.

3 I will read the statute and what I'd like to do is
4 -- I'm sorry. Anything?

5 SOLICITOR: I would just say I would object to the
6 charge of assault and battery of a high and aggravated
7 nature.

8 THE COURT: I understand.

9 The jury is going to come in at ten. I ask that
10 you be here at nine thirty so we can look over anything
11 we need to go over.

12 Okay, I'll see you all in the morning.

13 (Whereupon, the Court stood in recess until Decem-
14 ber 9, 2011)

15 THE COURT: Make sure we've got all the Exhibits
16 here and ready.

17 We'll go over the requests to charge. Mr. Messervy,
18 you've given me a whole stack of them, most of which I
19 think I already have.

20 I'm going to go through yours and tell you which
21 ones I think I already charge.

22 So -- reasonable doubt is here, presumption of in-
23 nocence.

24 Assault and battery with intent to kill, malice,
25 implied malice, assault and battery, malice, implied

1 malice. Okay.

2 MR. MESSERVY: Would you state them by number so I
3 can keep up with what you've discussed?

4 THE COURT: I'll start with your charge. Number
5 one, reasonable doubt. Number two, presumption of inno-
6 cence. Number five, implied malice.

7 MR. MESSERVY: Yes, sir.

8 THE COURT: Number 6, assault and battery with in-
9 tent to kill.

10 Number 8, malice.

11 Number 9, implied malice.

12 Number 10, aforethought.

13 Number 11, (inaudible).

14 Number 12, assault and battery of a high and aggra-
15 vated nature.

16 Number 16, circumstantial evidence.

17 Number 18, criminal intent.

18 Number ...

19 MR. MESSERVY: Fifteen.

20 THE COURT: Some are in my regular charge, but Num-
21 ber 15 -- you requested a charge on accident. My view
22 from the evidence is that there is no reason to charge
23 that, no reason to charge accident.

24 Okay. I'm not charging it and I will note your ob-
25 jection.

1 Your request to charge number 14, self defense.

2 I don't believe there is an testimony in the record

3 to justify a charge of self defense. I will again note

4 your objection to my failure to charge self defense.

5 Then with regard to your request to charge number

6 13, mistake of fact -- reading it, the Defendant must

7 have been honestly mistaken after reasonable diligence

8 to determine the truth.

9 MR. MESSERVY: Yes, sir.

10 THE COURT: I do not find that situation applies in

11 the case, so I'm not going to charge mistake of fact or

12 law.

13 I will note your objection to my ruling on that.

14 Your requests to charge numbers 16 and 17 because

15 -- I don't know whether it's 16 or 17, but I think it's

16 17. Simple assault and battery.

17 Simple assault and battery has all the elements

18 of assault and battery of a high and aggravated nature

19 except circumstances of aggravation.

20 I believe there were circumstances of aggravation,

21 the shooting of a shotgun, and I'm not going to charge

22 that.

23 MR. MESSERVY: May I speak?

24 THE COURT: Yes, sir.

25 MR. MESSERVY: I understand what you said, but we

1 would like to say there is no evidence he fired at a
2 person. The evidence is he fired at a truck.

3 THE COURT: He shot in the window behind the driver's
4 seat. There is no evidence he shot at a person, but the
5 headrest was covered in pellets, so I think that means he
6 shot at a person.

7 I understand his testimony is that he just shot at
8 the truck.

9 MR. MESSERVY: Yes, sir.

10 THE COURT: I understand that but simple assault
11 and battery says except circumstances of aggravation,
12 and I believe that shows there were circumstances of ag-
13 gravation shown by the testimony.

14 MR. MESSERVY: Well, Your Honor, . . .

15 THE COURT: I'm not going to charge simple assault.

16 MR. MESSERVY: Your Honor, if I may?

17 THE COURT: Yes, sir.

18 MR. MESSERVY: I understand what you are saying and
19 I'm not arguing with the Court, but I would ask that you
20 note my objection for the record.

21 THE COURT: Yes, sir, I'm going to note your objec-
22 tion although all of this is on the record.

23 So I will note your objection to my failure to
24 charge that, and if it becomes necessary . . .

25 MR. MESSERVY: I mean, rather than argue, I would

1 Evidence of the character of the assault, the char-
2 acter of the instrument used, the manner in which it was
3 used, the purpose to be accomplished and the resulting
4 wounds or injuries may be used in considering the intent
5 with which the assault was committed.

6 Intent may be inferred when it is demonstrated that
7 a defendant voluntarily and wilfully commits an act, the
8 natural tendency of which is to destroy another's life.

9 If you find that the Defendant has not proven that
10 the Defendant is guilty of assault and battery with in-
11 tent to kill, then you must determine whether the State
12 has proven the Defendant is guilty of assault and battery
13 of a high and aggravated nature.

14 Assault and battery of a high and aggravated nature
15 includes all the elements of assault and battery with in-
16 tent to kill except malice aforethought.

17 In addition, the State must prove beyond a reason-
18 able doubt aggravating circumstances. Circumstances of
19 aggravation include the use of a deadly weapon, the in-
20 tent to commit a felony, infliction of serious bodily
21 injury, a great disparity between the ages and physical
22 conditions of the parties, the resistance of lawful au-
23 thority.

24 These are only examples of circumstances of aggra-
25 vation.

1 CLERK: State of South Carolina versus Melvin Haynes,
2 Indictment Number 2009 GS 18 1182, we, the jury, unani-
3 mously find the Defendant, as to the charge of assault and
4 battery with intent to kill, guilty.

5 Signed by the Forelady, on December 9, 2011.

6 THE COURT: Thank you, maam.

7 MR. MESSERVY: Would you please pole the jury?

8 THE COURT: Ladies and gentlemen, I am now going to
9 pole you regarding your verdict, and when I call your
10 name if you would please stand and let me ask you a
11 couple of questions. Okay?

12 Marvin Johnson -- Mr. Johnson, the verdict just read,
13 is that your verdict?

14 JUROR: Yes, sir.

15 THE COURT: Okay, and is it still your verdict?

16 JUROR: Yes, sir.

17 THE COURT: Thank you, sir.

18 (Whereupon, each juror was polled individually by
19 the Court, and each indicated that it was and still is
20 their verdict)

21 Thank you. Anything further?

22 MR. MESSERVY: Nothing at this time.

23 (Jurors were excused by the Court)

24 THE COURT: I appreciate your service. I know it's
25 not something everybody wants to do. I know it's been

1 time consuming and difficult.

2 In behalf of the State and County, I appreciate your
3 being here.

4 (Jurors leaving Courtroom)

5 THE COURT: Mr. Messervy.

6 MR. MESSERVY: Yes, sir, Your Honor. First of all,
7 I would like to make a motion for directed verdict.
8 Well, first of all, I would like to renew all of my pre-
9 vious motions.

10 THE COURT: All right, sir.

11 MR. MESSERVY: I would move for a directed verdict
12 because from all the facts taken together there was no
13 way the jury could reach that verdict, and they should
14 have found my client not guilty.

15 THE COURT: Yes, sir. Mr. Justis, do you want to say
16 anything? You don't have to.

17 SOLICITOR: No, sir.

18 THE COURT: Mr. Messervy, you have renewed all of
19 your earlier motions, and all of them are on the record.
20 I am again maintaining my earlier decisions. You have
21 protected your client and have all your objections to my
22 rulings preserved.

23 But I am maintaining my rulings as to all your re-
24 quests for continuance and your first motion for directed
25 verdict, your motion for directed verdict at this time,

1 and I believe there were enough facts in evidence from
2 which the jury could find beyond a reasonable doubt your
3 client guilty of the crime he was charged with.

4 I'm going to deny your directed verdict motion. I
5 will note your objections to my ruling so it can again be
6 on the record. Those are preserved on the record.

7 Anything else?

8 MR. MESSERVY: Not at this time.

9 THE COURT: Okay.

10 MR. MESSERVY: I will like to have ten days to have
11 -- to have a chance to file motions.

12 THE COURT: All right, sir. I will allow you ten
13 days from today's date in which to do that. Okay?

14 All right, are we ready to go forward?

15 SOLICITOR: Yes, Your Honor, the State is ready to
16 proceed.

17 THE COURT: Okay.

18 SOLICITOR: May I approach, Your Honor?

19 THE COURT: Yes, sir.

20 SOLICITOR: Your Honor, obviously Mr. Davis would
21 like to be heard.

22 THE COURT: Yes, sir.

23 MR. DAVIS: Your Honor, I am sorry this thing hap-
24 pened. My life and that of my family and my two kids
25 have been greatly affected by this.

1 MR. MESSERVY: I think it was in '83. Petit larceny
2 or something.

3 SOLICITOR: I believe he had something magistrate's
4 level.

5 THE COURT: All right.

6 SOLICITOR: Over twenty-five years ago, I believe.

7 THE COURT: Okay. So no appreciable record?

8 SOLICITOR: Correct.

9 THE COURT: All right, I'm going to take a second,
10 and I'll be right back out.

11 (Brief recess until the matter resumed)

12 THE COURT: Mr. Haynes, . . .

13 MR. MESSERVY: May we approach?

14 THE COURT: That would be fine. You all come on up.

15 Mr. Haynes, this matter has gone to the jury and
16 the jury has after hearing all the evidence made its de-
17 termination that you are guilty of the crime which you
18 were charged with, assault and battery with intent to
19 kill.

20 As a result of that, it is my duty to sentence you,
21 and my sentence is that you are sentenced to the Depart-
22 ment of Corrections for a period of twenty years.

23 Good luck to you.

24 Thank you, sir. We'll be in recess.

25 SOLICITOR: Your Honor, I would just ask that Mr.

1 Davis' brother and the Defendant not be housed in the
2 same facility.

3 THE COURT: All right, sir. You all need to make
4 sure of that, and I'll make a note that Mr. Robert Davis
5 is not to be housed in the same correctional institution
6 as Mr. Melvin Haynes.

7 Thank you.

8 (End of Trial Transcript)

9 (The matter came back before the Court for hearing
10 on April 5, 2012)

11 THE COURT: All right, Mr. Messervy.

12 MR. MESSERVY: Thank you, Your Honor. This is the
13 case of the State against Melvin Haynes, and we are here
14 . . .

15 REPORTER: Could I have the Indictment Number
16 on the case?

17 MR. MESSERVY: Excuse me. I'm sorry. This is the
18 State versus Melvin Haynes, and I'm looking for the Num-
19 ber.

20 SOLICITOR: It's 2009 GS 18 1182.

21 MR. MESSERVY: Thank you. Mr. Haynes at the last
22 Term of Court was found guilty of assault and battery
23 with intent to kill, and you gave him thirty years with
24 the opportunity to have ten days in which to file our
25 motions.

1 I did that within the ten days as per our agreement
2 and we are here to hear the motions now.

3 There are two primary motions because I assume, Your
4 Honor, we heard the legal motions the last time and you
5 reiterated your ruling at the same time.

6 The two motions that we have are, one, for a reduced
7 sentence, and, two, in your Order there wasn't any credit
8 for jail time reflected, and he did spend two days in
9 jail prior to this. I would ask Your Honor to modify the
10 Order.

11 THE COURT: I'll be happy to do that. That was an
12 oversight on my part.

13 MR. MESSERVY: I don't doubt it, Your Honor.

14 THE COURT: As far as that goes, I will be happy to
15 have the Order reflect that.

16 So we'll go to your motion to reconsider the sen-
17 tence.

18 MR. MESSERVY: Yes, sir.

19 THE COURT: Go ahead, sir.

20 MR. MESSERVY: Your Honor, I'd like to call a few
21 people to the stand to have them talk. The first would
22 be Sandra Haynes. Would Sandra Haynes please come up?

23 To make this go a little faster, Your Honor, if I
24 could have them all come up?

25 (Mr. Messervy calling names)

1 Would you just have a seat up here? That's fine.

2 This is Ms. Sandra Haynes. Ms. Haynes is the sis-
3 ter -- sister-in-law of Melvin Haynes.

4 Ms. Haynes, if you would please speak to the Court?

5 MS. SANDRA HAYNES: Yes, sir. (Inaudible)

6 THE COURT: Ms. Haynes, I need you to slide down a
7 little bit and speak into the microphone. Ms. Harry Dot
8 is trying to take down everything you say. Okay?

9 Thank you.

10 MS. SANDRA HAYNES: My name is Sandra Haynes, . .

11 THE COURT: Speak directly into the microphone.

12 Thank you, maam.

13 MS. SANDRA HAYNES: Thank you, sir. I'm Sandra Haynes
14 and I am the sister-in-law of Melvin Haynes. I've been
15 married in this family for thirty-nine years.

16 I would like to speak on behalf of this family to
17 say that this family is truly sorry for what has happened
18 to the young man that was injured because we love our
19 family and we are sure that his family loves him too.
20 It is the greatest regret on our part, but we are asking
21 you today on behalf of the Defendant to give Melvin some
22 slack because our whole family have not been living that
23 long and it is like a lifetime for the Defendant. It may
24 be that he doesn't have this kind of time ahead of him.

25 He has been a good person, and his family really

1 loves him. Therefore, we are -- when my husband was sick
2 he came and bought groceries for us. Judge, he's been
3 good to us. We miss him and we love him. We need him at
4 home. He has been assisting our mother-in-law and every-
5 body else has moved away. Other brothers have. My hus-
6 band is the oldest brother and then he has another bro-
7 ther and two . . .

8 THE COURT: Melvin has.

9 MS. SANDRA HAYNES: Yes, sir. He is a good father
10 to his girls. They call him Daddle, and he is just that
11 good kind of guy.

12 He had gone through a lot before all of this happened
13 to him. We have even helped him ourselves by fixing up
14 an old car in our back yard because he had been injured
15 on the job and didn't have a job. He was going through
16 some rough times.

17 I don't know -- a lot of times people go through
18 certain things and, you know, everything comes around at
19 the same time, and I guess he just got too emotional about
20 losing his truck, because no truck is worth what happened.
21 A lot of times things happen too quick for you, and we'd
22 just ask you to have mercy for him.

23 That's all I have to say.

24 THE COURT: Thank you. I appreciate you coming here
25 and I do understand.

1 Would you identify yourself for the record, please,
2 sir?

3 MR. GATHERS: Shawn Gathers.

4 THE COURT: Are you related?

5 MR. GATHERS: Nephew.

6 THE COURT: Yes, sir, let me hear from you.

7 MR. GATHERS: Yes, sir. I do want to say that I too
8 apologize to him and his family for what happened to you.
9 Truly, in behalf of my family, I am sorry.

10 Mr. Melvin is my uncle, and he is the backbone of
11 my success. When I was in mortuary school he was the one
12 who helped me study to pass my national board exams. He
13 would come up to Greenwood, South Carolina, and help me
14 in every way and support me.

15 We did class projects, etcetera. He is the man who
16 taught me how to tie a tie, how to worship, how to con-
17 duct myself, how to carry myself as a man.

18 He pretty much is the backbone of my success. He had
19 love for my family and he was there to support me and my
20 family.

21 I ask you, Judge, to please have mercy on him. He
22 is a good man, a man among men. I just ask that you do
23 have mercy. His daughters love him, his sister loves him,
24 and his mother really, really needs him. Please do have
25 mercy.

1 THE COURT: Yes, sir, I appreciate it, and I appre-
2 ciate your coming.

3 MR. MESSERVY: This would be Ms. Debra Wiles.

4 THE COURT: Yes, maam. How are you related? How
5 are you?

6 MS. WILES: I'm his baby sister.

7 THE COURT: Okay.

8 MS. WILES: I want to say I'm sorry to this family
9 for what has happened. I'm sorry.

10 We picked Melvin up from the jail. I'm forty-four
11 years old, and I have never seen Melvin cry. Melvin said
12 if I had known this man had got shot we wouldn't be talk-
13 ing right now. Melvin said he didn't think the consequences
14 would have been like this, which he didn't ever think it
15 would happen like this or that he'd be incarcerated.

16 And Melvin is there to support the family. Melvin
17 deserves to have therapy, not incarceration.

18 My mom -- I mean, she wanted to pray all night last
19 night. She would walk in and say, Debra, what do you
20 think is going to happen, and I'd say, I don't know; well,
21 please ask the Judge to please, please consider Melvin --
22 my mom needs Melvin. Right now she has a girl -- we live
23 like in the country and a lot of people that could come
24 to take care of her don't want to come that far. One
25 young girl came and sat on the porch and on the phone

1 most of the time. My mom can't even get out.

2 My sister has a handicapped daughter and she can't
3 be there. Melvin would be there -- my sister is back and
4 forth if Melvin isn't there. He has been there hour af-
5 ter hour during the day.

6 Your Honor, we ask you -- Melvin never been in trou-
7 ble before. We beg you (portion not audible on tape)

8 Melvin is a good guy. What he did is a once in
9 a lifetime thing. That's what happened here. In these
10 months since Melvin been arrested, I know Melvin had to
11 learn. I know he did. He had to.

12 We're begging, Your Honor, for you to please consider
13 helping him so that at some point we'll be able to see
14 him, have him come home.

15 I guarantee you Melvin will follow every rule that is
16 given. This has been a valuable lesson for Melvin. He
17 never been in trouble before. He never robbed nobody,
18 never harmed nobody before. We need Melvin. I have been
19 here for him and for my mom.

20 All I'm asking if you would please consider Melvin
21 (portion inaudible)

22 THE COURT: Thank you, maam. I appreciate your
23 coming. I'm sorry your mom can't be here. I know she
24 would like to be.

25 (Other family members speaking to the Court in

1 behalf of Defendant)

2 MR. MESSERVY: If I could ask the Court's indulgence?

3 THE COURT: Yes, sir.

4 MR. MESSERVY: We have letters and there is a bunch
5 of people here from the community that would have spoken
6 and would have repeated a lot of what was said. They are
7 standing by Melvin here.

8 They have all known Melvin to be a good man. I
9 want to play an audio now from his mother. His mother is
10 eighty-five years old, and you will see in the letters
11 and we have one from a doctor. They ask you to please let
12 him come home to take care of his momma.

13 There is one from another doctor talking about her
14 problems. She has a colostomy and Melvin changes the
15 bag and all of that.

16 She was heart broken. To this day she does not know
17 Melvin received a twenty year sentence. I will tell you
18 that, saying he told me not to tell her. They don't know
19 whether to tell her or not.

20 Thank goodness when I got there to make this video
21 she didn't ask me. I would like to play a part of it.
22 I wish you could see her.

23 You know, she's a wonderful little lady and wishes
24 she could be here today.

25 (Video played for the Court)

1 MR. MESSERVY: In this you will hear my voice ask
2 her a couple of questions. There are two, Your Honor, be-
3 cause I needed to shift to the two homes.

4 And she -- what is your mother's name? Rosalyn
5 Haynes.

6 (Video being shown)

7 THE COURT: Just for the record, Mr. Messervy, you
8 have handed some letters up, and we have letters marked
9 A through M, I believe.

10 Thank you, sir.

11 MR. MESSERVY: Your Honor, this was a hard fought
12 case, and I personally want to apologize for anything I
13 did or didn't do that in any way might have affected the
14 outcome of this case.

15 I was only trying to represent my client, and if
16 Your Honor feels in any way that I was disrespectful to
17 the Court in the way I did anything or that I did any-
18 thing wrong, I sincerely apologize.

19 THE COURT: Mr. Messervy, that was never an issue.

20 MR. MESSERVY: Your Honor, I just want you to know how
21 much I respect the Court.

22 THE COURT The Court appreciates that but that was
23 never a problem.

24 MR. MESSERVY: I did want to say a few words about
25 Melvin. First, he is a hard worker. He has always worked.

1 If you remember, he worked until his injury. He
2 fell eight feet from a scaffold.

3 I have reviewed his school record. I didn't need
4 to put in his record. I considered it and didn't put it
5 in, but Melvin dropped out in the seventh grade. At the
6 time, he took an achievement test -- I believe you taught
7 school at one time. Back then they gave achievement tests.

8 This was back when they still had levels of -- at
9 one time he was in the ^{bottom} three percentile class overall, so
10 I did wish to point that out.

11 One of the things is that you heard his momma talk
12 about is the persons dying. First of all, his sister died
13 of cancer in 2006. Melvin took care of her the final
14 months of her life.

15 He totally was responsible for her care. She had a
16 cancer that nobody in the family had had. I would point
17 out that another sister died of the same cancer, and you
18 can well imagine how much Melvin is concerned about this,
19 but they found out that she had the cancer prior to this
20 incident, and she died August third, a little over a
21 month after this.

22 So I want you to know that all of this was on his
23 mind at the time, on Melvin's mind at the time. This
24 was working on him. This was his mental state at the
25 time.

1 This is not a way to forget what he did or what he
2 is accused of having done. It is about his mental state
3 at the time.

4 Melvin always, if you remember, was honest with the
5 police. He went straight to the police and told them
6 what he did.

7 So I do wish to point out that I have talked with
8 various police officers and on numerous occasions Melvin
9 has helped the police in that area. Melvin had told me
10 that and that was confirmed in my discussions with var-
11 ious police officers.

12 Sometimes these deeds or discussions were to his de-
13 triment, and when I say to his detriment it is a small
14 community.

15 Melvin needs to take care of his mother, and prior
16 to this he was a part of taking care of his mother.

17 Melvin -- the last time Melvin was in trouble --
18 we would have been happy to confirm what it was about,
19 but we weren't trying that. I was trying this trial, but
20 the incident was in 1992. That's almost twenty now years
21 ago. (Portion not audible)

22 I would tell you that at this time the Department
23 of Corrections gives you Baclofen -- two tablets three
24 times a day -- which is a muscle relaxant they provide to
25 him while he's in the hospital.

1 To be honest with you, I didn't know what it was so
2 I called a doctor to find out what it was. I never heard
3 of it.

4 We've already established that he did serve two days
5 in jail.

6 When you sentence someone you should consider his
7 history, his record, his physical presence at the time,
8 his age. He has served the community his whole life.
9 He has no history of violence prior to this.

10 I would point out to Your Honor that once again I --
11 it is probably my mistake because I didn't bring it up,
12 and I apologize. We always bring it up as Your Honor
13 used to do when you were a lawyer -- any service in the
14 military.

15 I had thought he told me he had been in there a long
16 time. He has been in the military and from what I've been
17 able to -- Mr. Justis said he could find no record he was
18 in the military, but I find it and provided it.

19 The problem was -- he got an honorable discharge,
20 and the fact was that I don't understand how Melvin got
21 in the military, and the reason he got out was because of
22 his education level because the military was changing
23 over at that time to all volunteer type of Army. They
24 probably wouldn't even take Melvin now into the military.

25 Your Honor, when you have someone before you -- I do

1 believe in punishment. I think it is very important,
2 but in looking at what happened and the facts, this shoot-
3 ing was a mistake, I think. It doesn't -- I mean, I'm
4 not going behind the jury or say they weren't correct on
5 that. That's for another Court to decide.

6 But what I am saying is that Melvin's whole life he
7 has not done anything like this, and he got the maximum
8 sentence in this as if he had been a career criminal and
9 if he had shot the young man -- thank God it didn't happen
10 but had he broken his neck and made him a quadriplegic,
11 paralyzed for his life, he couldn't have gotten any more
12 time.

13 And I thank God as I did after the trial that the
14 victim was not -- I mean, he was hurting and I'm not deny-
15 ing that, but he was at the bond hearing--at the bond
16 hearing he spoke and the whole nine yards.

17 This is hopefully for mitigation. His family has
18 told me, Your Honor, that -- now according to the
19 guidelines he'll be about seventy when he gets out, and
20 that's if he lives that long.

21 But his family has told me they may all die before
22 he gets out, and like his momma said as well. (Portion
23 not audible)

24 His family has been here since the trial and they
25 will do what is necessary for him to have electronic

1 monitoring. Let him stay home to take care of his momma
2 and let him not be a burden to society. We have over-
3 crowded prisons. Let him stay home or next door with
4 family, and put whatever conditions you want on him, or
5 give him probation -- reduce his sentence and give him
6 probation at the end of his sentence. Melvin is not one
7 who would violate his probation.

8 Melvin didn't violate anything between the time --
9 between when this happened and the time we came to Court.
10 There were two reports but that's all there were, two
11 reports, and we would, you know -- I said before we would
12 be happy to have those come in, you know. That's what
13 people said of Melvin at the time.

14 After it happened Melvin was offered a plea but he
15 was protecting his momma. So I ask that you do that. If
16 I say anything more I'd be repeating what someone else has
17 said.

18 I appreciate the Court giving us this time to speak,
19 and I would like as a last thing for Melvin to talk to
20 you.

21 THE COURT: Okay. Mr. Haynes, how are you this morn-
22 ing?

23 DEFENDANT: I'm fine.

24 THE COURT: I'm glad to hear it.

25 DEFENDANT: I'm sorry about what happened.

1 THE COURT: I understand.

2 DEFENDANT: I didn't mean to hurt anybody. (Portion
3 not audible on tape)

4 THE COURT: Yes, sir.

5 DEFENDANT: That's all I can say, I'm sorry for what
6 happened. I mean that. Thank you.

7 MR. MESSERVY: I would just ask the Court to take
8 note of the number of people here in Court to support
9 Melvin.

10 THE COURT: Yes, sir. I know Melvin appreciates it
11 and I appreciate it. I have taken note of it.

12 Mr. Justis, do you have anything?

13 SOLICITOR: Briefly, Your Honor.

14 THE COURT: Mr. Messervy, after I hear from Mr.
15 Justis I'll let you respond. Okay. You all can sit
16 back down if you want to. I don't know how long we'll be.

17 SOLICITOR: I stand before you with Mr. Johnny Davis,
18 the victim in this case, and he would like to say a few
19 words. Then I will kind of wrap up.

20 THE COURT: Hi, Mr. Davis.

21 MR. J. DAVIS: My name is Johnny Davis.

22 THE COURT: Yes, sir. I remember both you and Mr.
23 Haynes.

24 MR. J. DAVIS: I believe in taking responsibility
25 for your actions. I too have a family. I have a wife, I

1 have a momma and two kids.

2 I don't have anything against his family members who
3 were here. I have a momma on disability as well.

4 All I was doing was trying to do my job that day.
5 I didn't make any threats or mean any harm to anyone. I
6 was working to take care of my kids.

7 I'm sorry his family has to go through this, but no-
8 body can sit here and tell me how a person shot with a
9 twelve gauge shotgun in the back and the face from fif-
10 teen feet away is meant no harm.

11 Who would take care of my kids or my family if I
12 had got killed that day? Can you imagine my kids' faces
13 when my stretcher was coming out of the ambulance?

14 I mean, I'm sorry, and I'll tell you that I believe
15 he's sorry for what happened. I'm sorry he has to go to
16 jail, but now he wants to apologize, but he doesn't want
17 to take the punishment for what he did. I think he's ar-
18 rogant or was at the time it happened. He was before the
19 trial. He wasn't there when I went through all I did.

20 He wanted a bond, and I could go on and on. I could
21 bring in a bunch of people too, and it never would have
22 -- I could bring in a bunch of character witnesses, but
23 what it amounts to is he pulled the trigger and he has
24 to take responsibility for it.

25 He came out there and, bam, bam, bam, or it would

1 never have got this far. I mean, I'm sorry, but I still
2 have to live with this the rest of my life. How can
3 somebody -- I mean, I could go on and on, but that's all
4 I will say.

5 THE COURT: All right, sir.

6 MR. J. DAVIS: I'm dealing with it. I deal with
7 pain all the time because of what this man did.

8 THE COURT: Thank you, Mr. Davis. I'm sorry you
9 had to come back down but I do appreciate it.

10 SOLICITOR: Your Honor, the character witnesses you
11 heard from today, you know, I know they love Melvin, but
12 where were they during the trial. Where were they when
13 he was sentenced that day?

14 He was here with his brother and I believe his
15 daughter -- there were two trials, and at neither trial
16 were these individuals here.

17 And there were previous occasions where he had con-
18 tact with law enforcement after this incident. He was
19 -- they were twice called out to the Club House area
20 where he lived. He was accused on two separate occasions
21 by two different family members of assaulting them. No-
22 thing ever happened with those charges.

23 So to say he's a saint is wrong, and I am sure
24 there are some who would differ with that opinion of
25 him. Some police reports would differ.

1 As far as his military record, let's talk about that.
2 First of all, he said he was in for ten years in the
3 first trial, and then when I questioned that and asked
4 where the proof was, he said he was in for three months.

5 He lied to the jury in the first trial, and that was
6 one of the reasons why they were hung, from talking to
7 some of them after the trial -- some individuals said,
8 well, he's a veteran; he's been in the military; if he
9 had meant to shoot him he would have killed him.

10 MR. MESSERVY: Your Honor, I hate to do this but we
11 don't have those members of the jury here and . . .

12 SOLICITOR: I withdraw that, but the fact remains he
13 said on the stand ten years. Then he came back several
14 months later and changed his story, under oath.

15 And this is the man according to his daughter who
16 always taught everybody to tell the truth, and I think
17 she was right. He told everybody else to tell the truth
18 but it just didn't apply to him.

19 The jury was there that day. These individuals were
20 not but the jury was there that day or that week, and
21 they heard all the testimony and they, thanks to you, had
22 the option to convict him of assault and battery with
23 intent to kill, which is what the Sheriff's Department
24 charged him with, and what he was convicted of, or a les-
25 ser included offense of assault and battery of a high

1 and aggravated nature, which is a ten year misdemeanor,
2 as you know. They had that option, but they convicted
3 him of the top charge in under an hour. Why? Because
4 they found there was malice. That's the difference be-
5 tween the two charges. The jury found there was malice
6 in his heart that day; that he came out and fired right
7 into the truck and right into Johnny Davis and fired at
8 his brother also.

9 In fact, we posed the question to the jury, if the
10 victim would have died, would this be a murder? If your
11 answer is yes, it is assault and battery with intent to
12 kill.

13 The jury came back and said yes. That's the only
14 difference between him serving a thirty year day for day
15 -- minimum sentence -- is the fact that Johnny Davis did
16 not die. He fired at the back of the skull and it caught
17 him in the back, the face and the shoulder. That's the
18 only difference.

19 You were three, Your Honor. You were there twice,
20 and you heard all the testimony twice. You gave him mul-
21 tiple opportunities to plead to a charge with less time,
22 and right before the second trial on the record he turned
23 that down. He would not accept any prison.

24 He was given more opportunities to plead than most
25 people because he went through two trials.

1 You know, we're not judging who he is. I don't doubt
2 he's done a lot of good things in his life and that he's
3 taken care of these people, but in a trial it is not what
4 kind of person he is but it's what he did that day.

5 On that day he had multiple opportunities to change
6 the course of history. He didn't have to come out with a
7 gun. He could have talked to them without a gun.

8 He came out with a gun and he pointed that gun, and
9 he pulled the trigger not once, not twice, but three
10 times. He never called the police. He didn't report to
11 the police immediately. It was three hours later.

12 So he could have changed history multiple times. It
13 was the third shot that hit Johnny Davis. If he had
14 stopped at the second shot, we wouldn't be here today.
15 He made those decisions. He made a lot of decisions that
16 day.

17 We all have elderly aunts, mothers -- as Mr. Davis
18 said -- grandmothers that we would like to take care of.
19 Everyone does, including Mr. Haynes, but that is not a
20 reason for letting him out of jail. Not reason to reduce
21 his sentence.

22 As Mr. Davis said, this was the first time he apolo-
23 gized, because he knows what his sentence is, and he is
24 trying to curry favor with the Court by randomly apolo-
25 gizing.

1 He didn't apologize when he was convicted.

2 You know, Johnny has a family and they couldn't be
3 here today. These are his two sons. They were the ones
4 who had to meet him at the hospital when they were cart-
5 ing him out of the ambulance on a stretcher. These two
6 children had to see their father bloody and bullet rid-
7 den, the day after his birthday.

8 Most people on Sunday afternoon -- they take the
9 weekend off and celebrate with their family, but he was
10 working to provide a home and food for those two children.
11 I mean, there's his two children with his wife. Very
12 easily that picture could have been the family nowadays.
13 Minus Johnny Davis.

14 These are the people that you didn't get to see in
15 Court, and what did they see? This is what they saw. A
16 hole back there right where his head was. You heard it
17 was about a nine inch by ten inch hole from a twelve
18 gauge shotgun right where his head was, shot within thirty
19 feet of the truck.

20 He was within thirty feet according to the testimony
21 when he fired that shot right into the back of that
22 truck into Johnny Davis.

23 And that's Johnny. Birdshot all in his body, glass
24 in his body, bleeding as you see on the side of this
25 face. That's what he did.

1 That's what Melvin Haynes did. That's what these
2 individuals did not get to see. I'm sure they've heard
3 a sanitized version of the facts but these are the hard
4 core facts that the jury used to make their decision.

5 Ultimately, Your Honor, the decision is up to you,
6 and you have full discretion in sentencing.

7 It is the State's position that the appropriate sen-
8 tence was given, in that Mr. Haynes had multiple oppor-
9 tunities to reduce his exposure. He chose not to, and it
10 is only now after the sentencing that he comes to apolo-
11 gize.

12 The State would just ask -- you know, if the maxi-
13 mum penalty wasn't twenty years, I would ask you for more
14 time right now, but I can't ask for any more time. We
15 think twenty is appropriate, and probably not enough.

16 It is certainly appropriate under these circumstan-
17 ces. Thank you.

18 THE COURT: Thank you. Mr. Messervy, anything fur-
19 ther?

20 MR. MESSERVY: Your Honor, just briefly.

21 Mr. Haynes spoke in the sentencing phase the last
22 time, and I distinctly remember his turning around and
23 saying, I'm sorry, and the record will have to reflect
24 that.

25 I didn't know that was an issue that he didn't say

1 he was sorry. I remember he turned to Mr. Davis and said,
2 I'm sorry. He also said, I didn't mean to shoot anyone.
3 From the time he went to the police to the end.

4 Your Honor, we do know that he was lying down and
5 he was on drugs. You know, there is nothing we can say
6 but this was a horrible thing, but it is a thing that is
7 of a very short duration in relation to twenty years,
8 Your Honor.

9 The only thing I can say is that he is genuinely
10 sorry. He has always been genuinely sorry, and I don't
11 think society would benefit from him being in jail.

12 As Your Honor well knows, the tendency is to come
13 in and -- unfortunately, it's a terrible thing but in
14 Calhoun County I saw the other day that a repo man got
15 shot there. I believe you might have read it in the news-
16 paper.

17 I just happened to see it . . .

18 THE COURT: Actually, I don't read the newspaper.

19 MR. MESSERVY: Oh, I didn't know that, but a repo
20 man did get shot by somebody.

21 He has tried to be a good man. Those other two --
22 like I said, those other two things -- Your Honor said:
23 the last time to bring them in.

24 THE COURT: All right, Mr. Messervy.

25 MR. MESSERVY: He had some problems but he tried to

1 straighten up. I would ask for as much compassion as
2 you can show.

3 THE COURT: Thank you, Mr. Messervy.

4 Ms. Harry Dot for the record has handed up the
5 Defendant's Exhibit list. There are a lot of documents
6 along with a DVD which will be Defendant's 1. It's all
7 in one.

8 Mr. Justis, you have a copy of all of that, is
9 that correct?

10 SOLICITOR: Yes.

11 THE COURT: Just for the record, I have made the
12 change in the Sentencing Order to give him credit for
13 time he served which I inadvertently left off that.

14 In regard to my decision of this reconsideration
15 motion, what I'm going to do is go back and double check
16 my notes. I will read or re-read the things that have
17 be provided, and I will get back to you gentlemen with
18 my decision.

19 Okay?

20 MR. MESSERVY: Thank you, Your Honor. Will it be
21 today or ...

22 THE COURT: No, sir, it will not be today. I don't
23 want everybody standing around waiting for it. I have to
24 go back and I've got to think about it and review my
25 notes and the record.

1 Then I will get back with my decision. I don't
2 make decisions like this quickly.

3 MR. MESSERVY: I understand. I just didn't know whe-
4 ther we should stay.

5 THE COURT: You're welcome to stay, but the decision
6 is for another day. Thank you, sir.

7 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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CAROLINA CAR CREDIT
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Moncks Comer, SC 29461
(843) 719-5115

Wednesday, April 22, 2009

MELVIN HAYNES

SI

Dallas, TX 75211

Customer #: M2008022095354
Vehicle Information: E2084, 1997, CHEVROLET, SILVERADO, 1GCEC19R9VE171408
Balance: \$7,730.95
Past Due: \$1,587.08
Next Payment Date: 12/15/2008
Payment Amount: \$387.28
Payoff: \$7,735.18
Other Chgs Balance: \$0.00
Expiration Date:
Cancellation Date:

Dear MELVIN HAYNES

You are late in making your payment(s) of the above referenced vehicle.
If you pay the AMOUNT PAST DUE (above) by the LAST DATE FOR PAYMENT, you may continue with the contract as though you were not late. If you do not pay by this date, we may exercise our rights under the law. These rights include the right to repossess any property held as collateral for this transaction and the right in many instances to hold you personally responsible for any differences between the amount the property brings in a sale and the balance due us on the credit transaction in question. IF YOU ARE LATE AGAIN IN MAKING YOUR PAYMENTS, WE MAY EXERCISE OUR OUR RIGHTS WITHOUT SENDING YOU ANOTHER NOTICE LIKE THIS ONE. If you have any questions, write or telephone the creditor promptly at 843-719-5115.

LAST DATE FOR PAYMENT MAY 20/2009

Sincerely,

Brenda Mayer
Collections Representative
Carolina Car Credit
843-719-5115

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- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Melvin Haynes

Ridgeville, SC 29472

2. Article Number

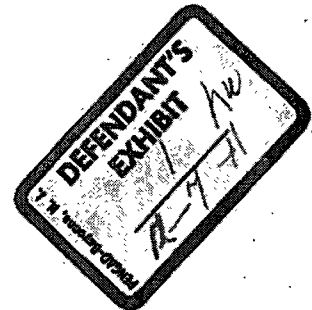
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Total Postage & Fees	\$ 5.32

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City, State, ZIP+4® *Ridgeville SC 29472*

2008 11 22 02 20 00 04 TT 8002



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B. Received by (Print Name) *B. CLAS...*

C. Date of Delivery *APR 22 2009*

D. Is delivery address with business hours? ☐ Yes ☒ No
If YES, enter delivery address below:

3. Service Type
- ☒ Certified Mail
 - ☐ Registered
 - ☐ Insured Mail
 - ☐ Return Receipt for Merchandise
 - ☐ Signature Mail
 - ☐ Return Receipt for Merchandise
 - ☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☐ Yes

12-6-11

Dorchester Cnty Clerk of Court
RANDOM STRIKE SHEET

5/5

Alt 2/1 245

JUDGE NAME : Edgar W. Dickson

TRIAL TYPE : Criminal

PANEL ID : 2009GS1801182B

COURTROOM CTR

DESCRIPTION : State vs Melvin Haynes

Sorted by: Random Nbr

Trial

- 3 Alt's.

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1 Johnson, Marvin L JR ✓	74	B	M	(✓)	(✓)	()	①
2 Cox, Marylon C	28	W	F	(✓)	①	()	②
3 Slempa, Christopher N R ✓	126	W	M	(✓)	(✓)	()	③
4 Walker, Thomas C	146	W	M	①	()	()	④
5 Atkinson, Jacqueline L	10	W	F	(✓)	②	()	⑤ Fore person
6 Chellis, Stephen M ✓	23	W	M	(✓)	(✓)	()	⑥
7 Breazeale, Raymond A ✓	15	W	M	(✓)	(✓)	()	⑦
8 King, Roxann H ✓	78	W	F	(✓)	(✓)	()	⑧
9 Taylor, Brenda H ✓	139	W	F	(✓)	(✓)	()	⑨
10 Adams, Teresa W ✓	4	W	F	(✓)	(✓)	()	⑩
11 Okey, Billie L ✓	98	W	F	(✓)	(✓)	()	⑪
12 Wren, Christopher L	155	W	M	(✓)	③	()	⑫
13 Ladson, Katrina I	81	B	F	②	()	()	⑬
14 Egger, Cameron J ✓	37	W	M	(✓)	(✓)	()	⑭
15 Walker, Teresa D	145	W	F	(✓)	④	()	⑮
16 Young, Judy R ✓	157	W	F	(✓)	(✓)	()	⑯
17 Acosta, Dwayne M	2	B	M	③	()	()	⑰
18 Cantrell, Lionel B	19	W	M	④	()	()	⑱
19 Goodwin, Susan N ✓	51	W	F	(✓)	(✓)	()	⑲
20 Pyles, Mark K ✓	103	W	M	(✓)	(✓)	()	⑳
21 Hill, Jeffery L	65	W	M	(✓)	(✓)	()	Alt ①
22 Preston, Beth A	102	W	F	(✓)	①	()	
23 Moorer, Larae S	94	B	F	①	()	()	
24 Henderson, Susan H	63	W	F	(✓)	①	()	

246

Dorchester Cnty Clerk of Court RANDOM STRIKE SHEET

JUDGE NAME : Edgar W. Dickson
 TRIAL TYPE : Criminal
 PANEL ID : 2009GS1801182B
 COURTROOM CTR

DESCRIPTION : State vs Melvin Haynes

Sorted by: Random Nbr
 Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
25 Apted, Gregory P	8	W	M	(✓)	(✓)	()	Alt (2)
26 Snedeker, Rosemary	133	W	F	(✓)	(✓)	()	Alt (3)
27 Maurice, John W	88	W	M	()	()	()	
28 Are, Melony A	9	W	F	()	()	()	
29 Seward, Leon E	121	B	M	()	()	()	
30 Clyde, Angela M	26	W	F	()	()	()	
31 Geiger, Janice S	47	W	F	()	()	()	
32 Hinks, Gary A	66	W	M	()	()	()	
33 Sanders, Robert M	115	B	M	()	()	()	
34 Browning, Mark T	18	W	M	()	()	()	
35 Luther, Linda R	85	W	F	()	()	()	
36 Shade, Harmon I	122	W	M	()	()	()	
37 Hendrix, Thomas L II	64	W	M	()	()	()	
38 Schuriknight, Joshua A	119	W	M	()	()	()	
39 Ritchie, Cynthia M	109	W	F	()	()	()	
40 Green, Felicia	54	B	F	()	()	()	
41 Charlip, Larry	22	W	M	()	()	()	
42 Tuttle, Audrea L	143	W	F	()	()	()	
43 Ervin, Laquanda T	40	B	F	()	()	()	
44 Henderson-Connell, Meliss	62	W	F	()	()	()	
45 Peele, Susan T	100	W	F	()	()	()	
46 Riduca, Santos T	108	A	M	()	()	()	

Total Number of Jurors:

46

** END OF REPORT **

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)
)
 STATE OF SOUTH CAROLINA,)
)
 vs.)
)
 MELVIN HAYNES,)
)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS
 FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2009-GS-18-1182
 Warrant # M118789

ORDER FROM MOTION
 FOR RECONSIDERATION

Cliff H. H. H.
 CLERK OF COURT
 DORCHESTER COUNTY

2013 FEB 14 AM 11:53

CERTIFIED COPY

THIS MATTER came to be heard before the Honorable Edgar W. Dickson on April 5, 2012 pursuant to a Motion for Reconsideration relative to the twenty (20) year sentence imposed upon the Defendant as a result of a conviction on the charge of Assault/Assault and Battery with Intent to Kill. Present at the hearing was the Defendant, Melvin Haynes, his attorney James H. Messervy, Esquire of Provence Messervy, LLC and the Assistant Solicitor, Glenn Justice of the First-Court Solicitor's Office. Witnesses were also presented and testified for both sides as well as the documents reviewed. At a later date the Court also reviewed the disciplinary records of the Defendant from the South Carolina Department of Corrections.

FROM THE testimony presented, and well as a review of the memoranda, case law, exhibits and arguments of counsel, I find the following facts and law, to-wit:

1. That based upon the advanced age of the Defendant, as well as his lack of a disciplinary record within the Department of Corrections for the time in which he has been incarcerated, that the Defendant's sentence should be amended and reduced to fifteen (15) years incarceration at the South Carolina Department of Corrections.

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FEB 22 2013

SC Court of Appeals

2. That the Defendant should, at the time of his initial sentencing, ^{JD}should have been given a credit of two (2) days served toward his sentence; accordingly, that credit for two (2) days time served prior to conviction is hereby given.

3. That all other Motions made by the Defendant, which were before this Court, either made at trial and thereafter, are hereby denied.

BASED UPON the above stated findings of fact and law, it is therefore

ORDERED, that the sentence imposed upon the Defendant, MELVIN HAYNES, is hereby reduced from twenty (20) years to fifteen (15) years; further, he is hereby given credit for two (2) days time served towards this amended sentence; and, further, all other Motions filed by the Defendant before this Court are hereby denied.

AND IT IS SO ORDERED!

At St. George, South Carolina

2/13, 2013.



EDGAR W. DICKSON, Circuit Court Judge
Dorchester County

WITNESSES

S Morelli

Dorchester County Sheriff

ARREST WARRANT NUMBER
M118789

Arrested: June 29, 2009

ACTION OF GRAND JURY

TRUE BILL**DATE**9/3/09 *Bridget Quinto*
Foreperson of Grand Jury
Date: September 3, 2009

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2009GS18-1182

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

September 7, 2009 TERM

THE STATE
vs.

Melvin Haynes

Indictment for

ASSAULT / ASSAULT AND BATTERY
WITH INTENT TO KILL (ABWIK)

SC Code: 16-3-620

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED-RECORDED
2009 SEP -3 PM 1:45
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

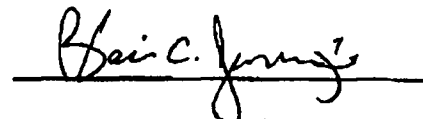
INDICTMENT
2009GS18-1182

At a Court of General Sessions, convened on September 7, 2009 the Grand Jurors of
Dorchester County present upon their oath:

ASSAULT / ASSAULT AND BATTERY WITH INTENT TO KILL (ABWIK)

That in Dorchester County, South Carolina, on or about June 28, 2009, the
Defendant, Melvin Haynes, with malice aforethought, did commit an assault and
battery upon the victim, James Johnny Platt Davis by means of shooting victim
with a shotgun. This offense in violation of Section 16-3-620 of the South
Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in
such case made and provided.


Blair C. Jennings, Solicitor

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Record on Appeal complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

May 5th, 2014



Carmen V. Ganjehsani
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Edgar W. Dickson, Circuit Court Judge

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MAY 05 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

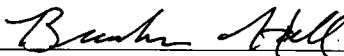
V.

MELVIN HAYNES,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 5th day of May, 2014.


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 5th day of May, 2014.


(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.