

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Kristi Harrington, Circuit Court Judge

Case Nos.: 2010GS1008190 and 2010GS1008191
Appellate Case No.: 2012-213248

THE STATE OF SOUTH CAROLINA Respondent,

v.

DENORRIS HALL Appellant.

RECORD ON APPEAL – VOLUME II

Tiffany F. Hendricks, S.C. Bar No.: 70678
SOWELL GRAY STEPP & LAFFITTE, LLC
1310 Gadsden Street (29201)
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
thendricks@sowellgray.com

—and—

Robert M. Dudek (Second Counsel)
Chief Appellate Defender
S.C. COMMISSION ON INDIGENT DEFENSE
1330 Lady Street, Ste. 401
Columbia, South Carolina 29201
(803) 734-1330
rdudek@sccid.sc.gov

Attorneys for Appellant

Alan Wilson
Attorney General

Christina J. Catoe, S.C. Bar No. 73562
Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
Rembert C. Dennis Building
1000 Assembly Street, Room 519
Columbia, South Carolina 29201
(803) 734-3970
ccatoe@scag.gov

Scarlett Anne Wilson
Solicitor, Ninth Judicial Circuit
101 Meeting Street, Suite 400
Charleston, SC 29401-2214
(843) 958-1900

Attorneys for Respondent

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT

STATE'S EXHIBIT #1 (ADVISEMENT OF RIGHTS FORM)

STATE'S EXHIBIT #2 (STATEMENT OF DEFENDANT)

STATE'S EXHIBIT #3 (MAP)

STATE'S EXHIBIT #4 (MAP)

STATE'S EXHIBIT #5 (CD)

STATE'S EXHIBIT #6 (CD)

STATE'S EXHIBIT #7 (SHELL CASINGS)

STATE'S EXHIBITS 8-12 (PHOTOGRAPHS)

STATE'S EXHIBITS 24-43 (PHOTOGRAPHS)

TESTIMONY OF JAMES HILL

1 I do answer questions or give a statement anything I say can
2 and will be used against me in a court of law." Same thing
3 with the initials. "I have the right to consult with a
4 lawyer of my choice before I answer questions or give a
5 statement and also have him/her present while I'm being
6 questioned." Same thing with the initials again. "If I
7 wish to talk to a lawyer or have him/her present but I am
8 unable to afford to hire a lawyer one will be appointed to
9 represent me free of charge." Same thing again with the
10 initials. "If you decide to answer questions or give a
11 statement without having a lawyer present representing you I
12 have the absolute right during the interview to stop
13 answering questions and remain silent." Same thing. And
14 then there's a sentence that follows that sentence, it says,
15 "I fully understand each of those rights explained to me."
16 They sign, I sign and a witness signs. The bottom portion
17 of the statement is saying, "Having these right in mind I
18 wish to waive these rights and answer questions. No
19 threats, force or promises of any kind have been made to me
20 by anyone to cause me to waive these rights and/or answer
21 questions." And, of course, they acknowledge and we sign as
22 witnesses this date and time.

23 Q. Okay. So while you were doing that did Mr. Hall appear
24 at all confused, impaired or intoxicated, anything like
25 that?

TESTIMONY OF JAMES HILL

1 A. No, sir.

2 Q. Did he appear to understand what was going on and did
3 he sign, in fact, acknowledging that he knew his rights?

4 A. Yes, sir.

5 Q. And did he also voluntarily agree to speak with North
6 Charleston Police Department waiving those rights?

7 A. Yes, sir.

8 MR. WHETMORE: Your Honor, at this point I would like
9 to admit State's Exhibit Number 1 for purposes of this
10 trial.

11 THE COURT: Any objection.

12 MR. GRIMES: Not to State's 1.

13 THE COURT: State's 1 into evidence without objection.

14 (The Miranda form was received as State's 1.)

15 MR. WHETMORE: Officer, if you would answer any
16 questions, please, from the defense.

17 THE COURT: Mr. Grimes?

18 MR. GRIMES: That you, Your Honor. May it please the
19 Court?

20 CROSS EXAMINATION

21 BY MR. GRIMES:

22 Q. Good afternoon, Sergeant Hill.

23 A. How are you doing, Mr. Grimes?

24 Q. Pretty good. How are you doing today?

25 A. Good, sir.

TESTIMONY OF JAMES HILL

1 Q. I'm going to ask you a few questions about Mr. Smith's
2 statement. You were in there with Detective Jourdan?

3 A. Correct.

4 Q. And initially you said Mr. Smith lied to you, he said
5 he had no involvement in this matter?

6 A. Correct.

7 Q. And after you confronted him with some photographs he
8 changed his story.

9 A. Yes, sir.

10 Q. I believe you said he was truthful with you then?

11 A. Yes, sir.

12 Q. Do you have a copy of the statement up there?

13 A. I do not, no, sir.

14 Q. Thank you, Sergeant Hill. And again, I think you said
15 he was truthful after you confronted him with the pictures.

16 A. Yes, sir.

17 Q. And he told you that he didn't know the make or model
18 of the gun.

19 A. Can you give me a second to review the statement
20 because I don't remember.

21 Q. I think maybe on page six.

22 A. Yes. Detective Jourdan asked him, "Do you know the
23 make and model of the gun?" And he said, "No."

24 Q. And Detective Jourdan asked him if the gun was
25 automatic or a revolver.

TESTIMONY OF JAMES HILL

- 1 A. She did ask him.
- 2 Q. And he said it was automatic.
- 3 A. Correct.
- 4 Q. And then you said, "Automatic is the kind of guns that
5 would leave shell casings."
- 6 A. Yes, sir. They expel shell casings, or eject shell
7 casings.
- 8 Q. Turning to page eight. And Detective Jourdan asked him
9 if Mr. Smith and Mr. Hall had plans to rob the man.
- 10 A. Talking about the third question down?
- 11 Q. Yes, sir.
- 12 A. Yes, sir. She said, "Did you and D. J. plan to rob the
13 man?" And the answer is "No."
- 14 Q. Then she asked him about whether the man had a bag?
- 15 A. Talking about the question, "What was in the bag?"
- 16 Q. Yes, sir.
- 17 A. His response was "beer."
- 18 Q. And did he -- later on did he explain why he shot the
19 man?
- 20 A. It just says -- Detective Jourdan's question was, "Was
21 D. J. arguing with the man? No. The man kept getting
22 closer to me, he made me uneasy. I started thinking D. J.
23 was setting me up to be robbed or the man was going to do
24 something to me and D. J."
- 25 Q. Okay. Now, when you talk with suspects you don't make

TESTIMONY OF JAMES HILL

1 them any promises or anything, do you?

2 A. No, sir, I do not.

3 Q. But you do tell them sometimes that telling the truth
4 is helpful and is good for them.

5 A. Yes, sir, I do.

6 MR. GRIMES: Thank you, no further questions.

7 THE COURT: Mr. Whetmore?

8 REDIRECT EXAMINATION

9 BY MR. WHETMORE:

10 Q. Officer, just very briefly. You indicated you believe
11 that Mr. Smith was being more truthful with you after you
12 confronted him with the photographs?

13 A. Yes, sir.

14 Q. At that time and even to this day is there any way to
15 tell if he was being one hundred percent truthful to every
16 detail?

17 A. No, sir.

18 Q. Initially did he deny any involvement?

19 A. Yes, sir, he did.

20 Q. But when confronted with the pictures he told a version
21 that was closer to it.

22 A. Yes, sir. He told us what his version of the truth is,
23 yes, sir.

24 Q. And obviously you weren't here today to hear him
25 testify.

TESTIMONY OF JAMES HILL

1 A. I did not, no, sir.

2 MR. WHETMORE: No further questions.

3 THE COURT: Mr. Grimes?

4 RECROSS EXAMINATION

5 BY MR. GRIMES:

6 Q. I believe Mr. Whetmore asked you something to the
7 affect you can't tell Mr. Smith is telling you the truth in
8 every detail, can you?

9 A. No, sir.

10 Q. So you don't know if he told you the hundred percent
11 truth in your statement.

12 A. The only truths and untruths I can say are accurate are
13 based on what evidence we collected.

14 Q. Okay. And you can't say he told the jury the truth.

15 A. I don't know what he told the jury, I wasn't here.

16 Q. And the evidence you did collect were two shell
17 casings.

18 A. The video footage, and -- I don't have a full printout
19 of all the evidence that was collected.

20 Q. Well, you did collect two shell casings, correct?

21 A. Yes, sir.

22 Q. And they were .25 caliber.

23 A. I didn't collect them, I located them and had crime
24 scene collect them, yes, sir.

25 Q. And there's a photograph of someone shooting, correct?

TESTIMONY OF JAMES HILL

1 A. There are multiple still shots, yes, sir.

2 Q. Well, one is obviously of someone in the shooting
3 motion.

4 A. Yes, sir.

5 Q. And Mr. Smith told you that was him.

6 A. Correct, I believe so. I'll have to look through the
7 statement real quick. He didn't say exactly who he was
8 shooting, he just said he was pointing. Then she asked,
9 "What are you pointing at in photo number five?" And he
10 said, "A gun." So photo number five is him. And then she
11 asked, "Did you shoot the man," on page seven, and he says,
12 "Yes."

13 Q. And if you had wanted to you could have collected his
14 jail calls from the Charleston County Detention Center and
15 listened to those, correct?

16 A. That would be up to Detective Evans, he's the case
17 agent on it.

18 Q. Well, someone could have if they wanted to, correct?

19 A. I guess if he chose to they could have.

20 Q. And could have listened to what telling he was telling
21 his mother.

22 MR. WHETMORE: Objection. This is outside the scope of
23 recross.

24 THE COURT: Mr. Grimes?

25 MR. GRIMES: I think Mr. Whetmore allowed that when he

TESTIMONY OF JAMES HILL

1 asked him many times whether he could tell whether Smith was
2 telling the truth and he might be telling the truth here or
3 there.

4 THE COURT: Sustained. Move on.

5 Q. And you didn't collect any calls from the jail, did
6 you?

7 MR. WHETMORE: Judge, I believe you just ruled on that.

8 THE COURT: It's a different question, I'll allow him
9 to ask that.

10 A. No, sir, we did not to my knowledge. You would have to
11 ask Detective Evans.

12 MR. GRIMES: All right. Thank you.

13 THE COURT: You may step down, thank you. Call your
14 next witness.

15 MR. YOUNG: State calls Detective Mark Evans.

16 The witness, MARK EVANS, was first duly sworn
17 and testified as follows, on:

18 THE CLERK: Please state your full name and spell your
19 last name for the record.

20 THE WITNESS: Mark Lane Evans, Jr. E-v-a-n-s.

21 DIRECT EXAMINATION

22 BY MR. YOUNG:

23 Q. Good afternoon, Detective Evans.

24 A. Good afternoon.

25 Q. Can you tell the jury where you work?

TESTIMONY OF MARK EVANS

1 A. North Charleston Police Department.

2 Q. How long have you worked there?

3 A. I've been with the North Charleston Police Department
4 for four years.

5 Q. Is that Charleston County?

6 A. Yes, sir.

7 Q. And what are your duties at the North Charleston Police
8 Department?

9 A. I'm currently assigned to the detective bureau for
10 violent crimes.

11 Q. What were your duties back in September 2010?

12 A. I was an investigator with the violent crime unit,
13 persons unit.

14 Q. Can you tell us, were you working the early hours on
15 September 13, 2010?

16 A. I was not working, I was on call-out status.

17 Q. Explain to the jury what call out status means?

18 A. On the times that we don't have complete coverage we
19 are on what's called call-out. If an incident occurs in
20 which supervisors on the road believe a detective is needed
21 we are notified and respond.

22 Q. Did you receive a call in the early morning of
23 September 13th?

24 A. I did.

25 Q. Approximately what time would you say?

TESTIMONY OF MARK EVANS

- 1 A. I believe it was around 3:00 a.m.
- 2 Q. What was this in reference to?
- 3 A. A shooting that occurred at Spruill and McMillan.
- 4 Q. Spruill and McMillan, are those streets?
- 5 A. Yes, sir.
- 6 Q. Is that in Charleston County?
- 7 A. It is.
- 8 Q. And did you respond to Spruill and McMillan?
- 9 A. I responded to the area but was diverted to another
- 10 call.
- 11 Q. After that other call did you then respond to Spruill
- 12 an McMillan?
- 13 A. I did, at 7:00 a.m that morning.
- 14 Q. Tell us what you observed when you arrived at Spruill
- 15 an McMillan. Tell us the general area and what you
- 16 observed.
- 17 A. We arrived, I met with Sergeant Spears and Detective
- 18 Cook. We began to canvas the area, unfortunately there was
- 19 heavy traffic in the roadway, we did not get traffic
- 20 stopped. We were looking for any signs of evidence of
- 21 people fleeing. We did note that the South Carolina Federal
- 22 Credit Union had several exterior cameras.
- 23 Q. Noting of these cameras, did you make an effort to
- 24 recover any videos?
- 25 A. We did. We contacted Brett Cole at the South Carolina

TESTIMONY OF MARK EVANS

1 Federal Credit Union.

2 MR. YOUNG: May I approach the witness, Judge?

3 THE COURT: Yes, you may.

4 Q. Ask the witness to step down for a minute and like him
5 to review this map.

6 A. (The witness complied.)

7 Q. Detective Evans, I'm going to show you what's been
8 marked and admitted as State's 4. Can you tell the jury
9 please what we are looking at here?

10 A. This is McMillan Avenue, Spruill Avenue.

11 Q. And when you respond to the scene, what was -- is this
12 the general area of the scene, or can you kind of point to
13 the specific area of the scene?

14 A. We met -- there's a school just up above here, we met
15 at the parking lot, we walked from that location down to the
16 corner of Spruill and McMillan and then back from that
17 corner all the way back to Verde Street looking for a blood
18 trail or anything of that nature.

19 Q. And why Verde Street?

20 A. Verde was where the victim had returned.

21 Q. What is this area right here?

22 A. That's the South Carolina Federal Credit Union.

23 Q. And this is where you noticed there was cameras?

24 A. Yes, sir.

25 Q. And what is this over here, do you know?

TESTIMONY OF MARK EVANS

- 1 A. It was formally Three Dollar Lounge, and it was bought
2 and is another bar.
- 3 Q. Where are these right here?
- 4 A. Those are railroad tracks.
- 5 Q. Do you know what apartment complex this is over here?
- 6 A. Saint Charles Place Apartments.
- 7 Q. Okay. Thank you. Who did you speak with at the credit
8 union about the video?
- 9 A. Brett Cole.
- 10 Q. Did you have an opportunity to review the video?
- 11 A. I did.
- 12 Q. Can you tell the jury briefly what you saw on the
13 video?
- 14 A. We recovered five videos, four exterior and one ATM. I
15 review what I noted as camera one and three, both of those
16 showed male subjects coming through the parking lot both
17 approaching McMillan and then coming back from McMillan.
18 Camera had no video, it was the actual wrong date. Camera
19 four was the video that showed the area of Spruill and the
20 entrance to South Carolina Federal, we reviewed that video
21 and you could see what appeared to be a subject pointing a
22 gun at another subject.
- 23 Q. Could you see all the subjects at the same time?
- 24 A. At one point in the video you could see a male subject
25 crossing the street, then return and then two males running

TESTIMONY OF MARK EVANS

- 1 away.
- 2 Q. Could you see in that video if both of them had guns?
- 3 A. You could not.
- 4 Q. Was there a tree blocking some of that footage?
- 5 A. There was, yes, and the movement of the cameras.
- 6 Q. Could you ID the men in the video?
- 7 A. Could not.
- 8 Q. Had the victim at this point ID'd the men in the video?
- 9 A. He had not.
- 10 Q. So at this point do you know who these subjects are?
- 11 A. No clue.
- 12 Q. And that was September 13, 2010?
- 13 A. Yes, sir.
- 14 Q. Take us to the next step in the case.
- 15 A. We began to follow up on investigative leads, as leads
- 16 came in we would follow up on those.
- 17 Q. Tell us about, did you receive a lead on September
- 18 16th?
- 19 A. We did. We received a lead that -- or information --
- 20 MR. GRIMES: Objection. I believe it calls for hearsay
- 21 and the confrontation clause.
- 22 THE COURT: Rephrase your question.
- 23 Q. How did you come to the subject, Denorris Hall?
- 24 A. Detective Patrick received a phone call.
- 25 Q. Did you speak to Denorris Hall?

TESTIMONY OF MARK EVANS

- 1 A. We attempted to locate Mr. Hall on the 16th. We went
2 to his apartment at Saint Charles Place, we then went to his
3 residence on Allwood Street where we met with his
4 stepfather, his stepfather provided us with Mr. Hall's phone
5 number and Detective Patrick made phone contact with Mr.
6 Hall and arranged a meeting for the following day.
- 7 Q. Do a lot of police leads come from people calling in?
- 8 A. Yes, sir.
- 9 Q. Were you the lead detective in this case?
- 10 A. Yes, sir.
- 11 Q. So the day after would be September 17th, is that the
12 date that you spoke to Mr. Hall?
- 13 A. I believe so, yes, sir.
- 14 Q. Detective Evans, is Saint Charles Place near the scene
15 of the shooting?
- 16 A. It backs up directly to it. And actually if you were
17 to look at the map the area of McMillan running down towards
18 Verde, that fence actually crosses into Saint Charles Place
19 Apartments. Excuse me, it's Spruill Avenue, not McMillan.
- 20 Q. Spruill.
- 21 A. Yes, sir, I apologize.
- 22 Q. And on the 17th you were able to speak with Denorris
23 Hall?
- 24 A. We were.
- 25 MR. YOUNG: Approach the witness, Judge?

TESTIMONY OF MARK EVANS

1 THE COURT: You may.

2 Q. Detective Evans, I'm going to show you what's been
3 marked State's 2. Give me one second, apologize: Show you
4 what's been marked as State's 2. Do you recognize what this
5 is?

6 A. Yes. It's the statement provided by Mr. Hall.

7 Q. You spoke to him on the 17th of September?

8 A. Yes, sir.

9 Q. Now, did you give a statement to him alone or was
10 somebody with you?

11 A. When I obtained the written statement I was in the room
12 there by myself, myself and Mr. Hall.

13 Q. Okay. Prior to that, was he read his Miranda rights?

14 A. He was.

15 Q. Who read him those?

16 A. Sergeant Hill.

17 Q. And then did Sergeant Hill leave the room?

18 A. He did.

19 Q. Did he seem to understand his rights?

20 A. Yes, sir.

21 Q. Prior to the defendant giving that statement, did you
22 threaten him at all?

23 A. No, sir.

24 Q. Did you coerce him in any way to give a statement?

25 A. No, sir.

TESTIMONY OF MARK EVANS

1 Q. Promise him anything?

2 A. No, sir.

3 Q. Did anything about the defendant's conduct indicate to
4 you that he didn't understand what was going on?

5 A. He appeared to know exactly what was going on.

6 Q. So that statement was freely and voluntarily given to
7 the best of your knowledge?

8 A. Yes, sir.

9 MR. YOUNG: Judge, at this point ask to admit State's 2
10 into evidence.

11 MR. GRIMES: We would object based upon the 4th
12 Amendment and Missouri vs. Seibert.

13 THE COURT: Okay. State's 2 admitted into evidence.

14 (The statement was received as State's 2.

15 Q. Is that your signature at the bottom of each one of
16 those pages?

17 A. Yes, sir.

18 Q. Is that the defendant's signature beside yours as well?

19 A. Yes, sir.

20 MR. YOUNG: Judge, ask to publish the statement.

21 THE COURT: You may.

22 Q. Detective Evans, I'm going to ask you at this point to
23 read to the jury the statement that Denorris gave you that
24 day.

25 A. Yes, sir.

TESTIMONY OF MARK EVANS

1 Q. Please start at the beginning and go through it.

2 A. The top of the form, North Charleston Police
3 Department, the defendant's statement. Statement of
4 Denorris Hall, home address 7604 Allwood avenue. His home
5 phone number 530-0760. Employer was left blank, business
6 address was left blank, business phone number left blank,
7 occupation left blank. Then states this statement is given
8 9/17/2010 at 11:32, 2500 City Hall Lane. This statement is
9 being written by Detective M. Evans on behalf of Denorris
10 Hall. "We were walking to Three Dollar, Smitty -- excuse
11 me, Smitty was talking about he was going to rob him, a guy
12 who had robbed him a couple of months ago. We walking and
13 saw the guy walking on the sidewalk. This was not the guy
14 who robbed him. I asked the guy for a cigarette and then I
15 took it from him -- or excuse me -- I took it from the man.
16 Smith got the cigarette, then he followed the guy across the
17 street and asked what he had in the bag. I came up behind
18 him to ask -- excuse me -- to find out what was going on.
19 The guy started running and Smith started shooting as he was
20 running away from the guy. We went back through the bank
21 and I went home, Smith ran another way in Saint Charles
22 Place. I don't know where he went but I went home." This
23 part of the statement will be conducted in question and
24 answer form with Detective M. Evans asking the question. Q.
25 Which way did you walk to Three Dollar Lounge? A. Through

TESTIMONY OF MARK EVANS

1 the bank. Q. Who walked into the parking lot first? A. I
2 don't remember. I made have been a little in front of him.
3 Q. Where did you ask the man for a cigarette at? A. On the
4 sidewalk just down from the bank by the fence. Q. Why did
5 Smitty follow the man? A. He wanted to see what was in the
6 bag. Q. Did you follow Smitty across the street? A. Yes.
7 Q. Where were you standing when the first shot was fired?
8 A. I was in the street coming back to the sidewalk. Q. What
9 did you see when you heard the shot? A. I saw Smitty
10 running away shooting the gun Q. What were you wearing the
11 night of the incident? A. Navy blue cargoes, black shirt,
12 black shoes and maybe a navy blue hat. Q. What was Smitty
13 wearing? A. Black pants with red stitching, black shirt,
14 red and black. Q. Continue. A. NBA socks, black socks,
15 black shoes. Q. Who is Smitty? A. Herman Smith, he's 19
16 years old. Q. What is your relationship with Herman? A.
17 Somewhat of a close friend who I talk to weekly. Q. How did
18 you know Smith? A. I met him at a club through a friend.
19 Q. After the shooting started what happened? A. He started
20 to run through the parking lot and I followed. Once we got
21 to Saint Charles Place I went to one gate and he went to
22 another. Q. After entering Saint Charles Place did you meet
23 with Smith? A. No. Q. Have you talked to Smith since? A.
24 No. He has not come around and I have not called him. Q.
25 Can you describe the gun you saw? A. Chrome with a pink

TESTIMONY OF MARK EVANS

1 handle, it was small. Q. Do you know who the gun belonged
2 to? A. No, it was my first time seeing it. Q. Do you know
3 where the gun is now? A. No, sir. I know he had it while
4 we were running. Q. How long have you known Smith? A.
5 About a year. Q. Where does Smith live? A. I think in
6 Hollywood or West Ashley, I don't know the address. I could
7 take you to one of -- I could take you to the one in West
8 Ashley. Q. Who does he stay with in West Ashley? A. His
9 momma. Q. Who does he stay with in Hollywood? A. That
10 where his daddy stays. Q. What does Smith drive? A. A
11 white Crown Vic. Q. What is Smith's phone number?
12 425-1902. Q. What did Smith want to see -- excuse me, why
13 did Smith want to see the man's bag? A. I guess he thought
14 it was liquor or something because the bag was black. Q.
15 What do you think his intentions were once he saw the bag?
16 A. He was going to take it. Q. Was the gun out when he was
17 asking what was in the bag? A. Yeah, it was out. At the
18 bottom it states this is my statement and the answers I
19 provided. End statement. Then I signed it and Mr. Hall
20 signed it.
21 Q. Thank you. That's the statement that Denorris Hall
22 gave you on September 17th?
23 A. It is.
24 Q. Is Denorris Hall in this courtroom?
25 A. Yes, sir.

TESTIMONY OF MARK EVANS

1 Q. Where is he seated?

2 A. Seated to the left of Mr. Grimes.

3 Q. Now, Detective Evans, as lead detective on this case,
4 why did you not show a lineup or a six pack to the victim at
5 all?

6 A. The victim was in the hospital for several days, by the
7 time the victim was released from the hospital we had
8 already had Mr. Hall and Mr. Smith in custody and I believe
9 the victim returned back to Maryland or left the area.

10 Q. Who was arrested first in this case?

11 A. Mr. Hall.

12 Q. When you were given -- or when you were taking the
13 statement from Mr. Hall, was he handcuffed?

14 A. He was not.

15 Q. Was this freely and voluntarily given to you?

16 A. Yes, sir.

17 MR. YOUNG: Please answer any questions defense counsel
18 may have.

19 THE COURT: Mr. Grimes?

20 MR. GRIMES: Thank you, Your Honor.

21 CROSS EXAMINATION

22 BY MR. GRIMES:

23 Q. Good afternoon, Detective Evans.

24 A. Goods afternoon.

25 Q. How are you doing today?

TESTIMONY OF MARK EVANS

1 A. (Nodded.)

2 Q. I understand from testimony that you are the case agent
3 on this case?

4 A. Yes, sir.

5 Q. What are the duties of the case agent?

6 A. To gather all of the information taken by all the
7 investigators and put the case together.

8 Q. And how do you go about doing that?

9 A. We begin the investigation, any statements that are
10 taken are given to me, I review all the information that
11 comes in.

12 Q. For example, if Officer Ryder walks the scene looking
13 for shell casings and writes a report, do you get that
14 information?

15 A. The supplement reports are all on our computer system.

16 Q. And as case agent do you review them?

17 A. Yes, on occasion.

18 Q. And if Detective Patrick takes a statement from the
19 victim, do you review that statement?

20 A. I would have reviewed that statement, yes, sir.

21 Q. Okay. And so is it fair say you are sort of in charge
22 of gathering all the evidence you can to make a case to give
23 to the solicitor?

24 A. My gathering all the information to make a case and
25 give it to the solicitor, was that the question?

TESTIMONY OF MARK EVANS

1 Q. Yes, sir.

2 A. Yes.

3 Q. For example, if you needed something fingerprinted you
4 might send it to the crime scene officer to ask them to have
5 it fingerprinted?

6 A. Yes, sir.

7 Q. If you needed drugs weighed out or tested you would
8 have it sent to SLED?

9 A. Yes, sir.

10 Q. If you needed DNA done you would have that sent to
11 SLED?

12 A. Yes, sir.

13 Q. And I think Detective Hill sort of testified that if
14 you wanted to get jail tape that would be your call and not
15 his call.

16 MR. YOUNG: Objection.

17 THE COURT: What's the basis?

18 MR. YOUNG: Pitting witnesses.

19 THE COURT: Sustained. Rephrase your question, Mr.
20 Grimes.

21 Q. If you wanted to get other evidence such as jail tapes
22 that would be your call?

23 A. Yes.

24 Q. Now, I wanted to ask you a few questions about the
25 types of evidence out there. All right. For example, we've

TESTIMONY OF MARK EVANS

1 heard about video evidence, I think we probably agree video
2 evidence can be very powerful evidence.

3 A. I agree.

4 Q. The type of evidence is forensic evidence and that can
5 be very powerful too, correct?

6 A. I would agree.

7 Q. And that would include some fingerprints?

8 A. Yes.

9 Q. DNA?

10 A. Yes.

11 Q. Shoe prints, tire marks.

12 A. Yes.

13 Q. And I think you said you were looking for evidence at
14 the scene such as blood that could show something and that
15 could be important to the case too, correct?

16 A. Yes, sir.

17 Q. And then another type of evidence would be witnesses.

18 A. Yes.

19 Q. Could be a witness like Mr. Thomas?

20 A. Yes.

21 Q. Could be a bouncer from Three Dollar?

22 A. Yes.

23 Q. Could be a EMS worker?

24 A. Yes.

25 Q. And then I guess eye witnesses, I want to ask a few

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1 questions about those. Okay?

2 A. Sure.

3 Q. North Charleston has a policy relating to how
4 eyewitnesses make identifications, correct?

5 A. I believe so, yes.

6 Q. Are you familiar with that policy?

7 A. I've read it.

8 Q. And one reason for those policies is to insure that the
9 identifications made by witnesses are free from suggestive
10 influences, correct?

11 A. Yes.

12 Q. Because suggestive influence can lead to a witness
13 picking out an innocent person.

14 A. Yes.

15 Q. And when you do eyewitness identifications they can be
16 done in several ways, correct?

17 A. Are you referring to like a show-up identification?

18 Q. That would be one of the ways, yes, sir. You have
19 photographic lineups, correct?

20 A. Yes, sir.

21 Q. And there are two types of photographic lineups that
22 the police use.

23 A. Yes, sir.

24 Q. One is what they call a simultaneous where you have,
25 like Mr. Young stated, a six-pack where you have six people

TESTIMONY OF MARK EVANS

1 and you show that to a witness and see if he can identify
2 somebody, correct?

3 A. We do not use those.

4 Q. But that is -- some police departments use those,
5 correct?

6 A. Some agencies, yes, sir.

7 Q. And the type that you use now is called a simultaneous
8 lineup where maybe you show a picture of one person and ask
9 if they can make an identification and flip over and show
10 another person.

11 A. Six photographs, yes, sir.

12 Q. Then you have a show-up identification.

13 A. Yes, sir.

14 Q. And that's used sometimes.

15 A. Yes, sir.

16 Q. And sometimes I don't think North Charleston uses it
17 but may have physical lineups you see sometimes in
18 commercials or TV shows.

19 A. No, we don't use those.

20 Q. But that is an option at times.

21 A. I don't know of any agency that uses those.

22 Q. And then we bring someone into court and have someone
23 identify them there, correct?

24 A. Yes, sir.

25 Q. And that would be sort of the equivalent to a show-up

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1 identification, wouldn't it?

2 A. Could be, yes, sir.

3 Q. And when you use show-up identifications North
4 Charleston has several precautions that officers are
5 supposed to follow in doing those, correct?

6 A. We try to, yes, sir.

7 Q. I mean, there are -- North Charleston has a firm policy
8 on that, correct?

9 A. Yes, sir.

10 Q. And you said you are familiar with that policy.

11 A. I've reviewed it, may not know it word for word, sir.

12 Q. But one thing they like to do is have an administrative
13 officer come out to the scene, correct, for show-up
14 identifications?

15 A. The administrating officer come to the scene?

16 Q. To help the show-up.

17 A. I'm not understanding your question. The person with
18 the witness would have to come to the scene, yes.

19 Q. And that's I think -- in the North Charleston policy
20 that's labeled the administrative officer.

21 A. Yes, sir.

22 Q. And that's I guess -- the show-up identification is if
23 I got robbed and said a white male about six-five robbed me,
24 brown hair and you caught someone six-give, brown hair about
25 two blocks away within a minute's time, you might bring me

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1 over there to see is this the guy. Is that kind of how a
2 show-up works?

3 A. Yes. We have a form that we go over with them.

4 Q. And that form you're talking about is another
5 precaution that you use, correct?

6 A. Yes, sir.

7 Q. And that form tells them maybe that it's just as
8 important to clear an innocent person than pick out a guilty
9 person, correct?

10 A. Yes, sir.

11 Q. And it's also a -- I think an officer has a duty not to
12 give any hints to the person, to the witness like you may be
13 picking out the right person; isn't that correct?

14 A. Correct. We do not give any hints to anybody.

15 Q. For example, if a suspect was in handcuffs you would
16 remove them and take the handcuffs off, correct?

17 A. Pending safety issues if it could be done, yes.

18 Q. Assuming no safety issues, not a threat to the
19 officers.

20 MR. YOUNG: Objection, speculation.

21 THE COURT: Overruled.

22 Q. Assuming no safety threats to the officers the
23 handcuffs would be off during a show-up identification.

24 A. Yes.

25 Q. It's also a procedure not having a witness see a person

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1 be taken out of the police car, correct?

2 A. Yes, sir, we try to do that.

3 Q. And you also want to make sure the person fits the
4 general description.

5 A. Yes, sir.

6 Q. Now, I want to ask you about reliability of witnesses
7 to a degree. Okay?

8 A. Sure.

9 Q. And you've had personal experience where eyewitnesses
10 made mistakes, correct?

11 A. Eyewitnesses do make a mistake.

12 Q. And I think we've had one case where --

13 MR. YOUNG: Objection, relevance.

14 THE COURT: Mr. Grimes, do you wish to approach?

15 MR. GRIMES: No, Your Honor. I think it is relevant to
16 identification which is an issue in the case.

17 THE COURT: All right, sir. Sustained.

18 Q. Are you familiar with the case of -- of Paris Austin's
19 case?

20 THE COURT: I sustained his objection.

21 MR. GRIMES: I thought I asked a different question.

22 Q. And you've read literature where people who have been
23 wrongly convicted because of mistaken eyewitness testimony,
24 correct?

25 A. I don't believe I've read any literature on that.

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1 Q. Okay. You're not familiar with a department of
2 justices eyewitness evidence, a guide for law enforcement?

3 A. I don't recall reading it. If I have I don't recall
4 what it says.

5 Q. If I provided you a copy of that, would that refresh
6 your memory as to whether you've ever seen it or read it?

7 A. Of course. I don't believe I've ever read that.

8 Q. Okay. Are you familiar with the Innocent Project?

9 A. I've seen things on that, yes.

10 MR. YOUNG: Objection, Judge. Can we approach?

11 THE COURT: You may.

12 (The following side bar was reported.)

13 MR. YOUNG: I understand what he's trying to do but I
14 don't think this is relevant to start talking about this
15 Innocent Project and these documents and federal stuff.

16 THE COURT: What's the relevance?

17 MR. GRIMES: I think Mr. Young said and the Court said
18 my remedy for identification is cross-examination.

19 THE COURT: It's cross-examination of the person making
20 the ID.

21 MR. GRIMES: I think it would be cross-examination --

22 THE COURT: Mr. Grimes, you may inquire but you
23 haven't -- I mean, we could be here all day if you ask
24 him -- do you even know if he's had any training? I mean,
25 what are you trying to get at? I'm just saying.

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1 MR. GRIMES: I recall testimony from Dr. Butcher from
2 another trial, that guy was sent to every law enforcement
3 agency in the country, it's published by the Department of
4 Justice from 1999, that one goes a little bit. I had three
5 short chapters on this personal experience literature and
6 the Innocent Project to show that eyewitnesses can make
7 mistakes because of stress and every precaution needs to be
8 taken. And this is relevant here because I don't think any
9 precautions were taken and Mr. Thomas's testimony is a
10 crucial part of the case and I can sort of impeach his
11 testimony through Detective Evans by showing how the
12 procedure used in this case wasn't the best procedure.

13 THE COURT: Did Detective Evans have anything to do
14 with the ID?

15 MR. GRIMES: I don't know. I mean, I think --

16 THE COURT: You understand what my concern is, Mr.
17 Grimes? There has been no recent involvement with the ID of
18 the victim of your client.

19 MR. GRIMES: I understand that.

20 THE COURT: So while I understand what you're trying to
21 do it's not appropriate in this case because he doesn't know
22 that there's any clue that your client was ID'd by the
23 victim. He was sitting here, right?

24 MR. GRIMES: Yeah.

25 THE COURT: Yes. Okay.

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1 MR. GRIMES: And I think it's relevant --

2 THE COURT: Well, I don't know that he's had any
3 training which he can testify as to what I mean.

4 MR. GRIMES: Well, I don't think he needs training to
5 hear or read a newspaper story where someone has been
6 wrongfully convicted.

7 THE COURT: I'm going to give you a little bit of
8 leeway, Mr. Grimes.

9 (End of side bar.)

10 MR. GRIMES: Thank you, Your Honor.

11 BY MR. GRIMES:

12 Q. Now, you said you're familiar with the Innocent
13 Project?

14 A. Just what I believe I've seen on TV.

15 Q. And in summary, it's where they have sort of used DNA
16 evidence to clear people that have been wrongfully
17 convicted.

18 A. Yeah.

19 Q. And a large part of those wrongful convictions is based
20 on eyewitness testimony, correct?

21 A. I couldn't answer that.

22 Q. Now, I'm going to ask you about whether if you know any
23 precautions were taken in this case about identification of
24 Mr. Hall.

25 MR. YOUNG: Objection, Judge, I don't think that's

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1 relevant.

2 THE COURT: He can answer that question.

3 Q. Do you know if anyone read Mr. Thomas any type of
4 admonition before they asked him the question or before this
5 trial started about making identifications?

6 A. I can only speak for myself and I did not.

7 Q. Do you know if anyone gave him any warnings or anything
8 about the likely -- excuse me -- do you know the general
9 description that Mr. Thomas gave on the night of the
10 incident, how specifically that matches to Mr. Hall?

11 A. Can you ask that question again, sir?

12 Q. Did he give any specific details about the people who
13 were involved in this incident that match up with -- or
14 about the person who shot him that match up with Mr. Hall?

15 A. As far as he gave -- I believe he gave the responding
16 officers, I would have to see the incident report, but I'm
17 sure he gave the responding officers some type of
18 description, plus he gave Detective Patrick a little bit of
19 a description. I don't -- I would assume that it would have
20 matched up with Mr. Hall or been generally consistent with
21 Mr. Hall.

22 Q. Would a description of a young black male being the
23 general description match up with Mr. Hall?

24 A. Is that the description that was provided?

25 Q. Let show you the first two pages of the incident

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1 report.

2 A. Yes, sir. Oh, this isn't the --

3 Q. The narrative, I believe.

4 A. Unfortunately -- just to clarify. When officers enter
5 information into the narrative they also put it here in the
6 suspect block, sometimes they will put the physical
7 description of the subject in that block and may not fairly
8 or completely explain it out in the narrative. But it's
9 sometimes up in that block, unfortunately this one has been
10 changed so I couldn't answer that question truthfully.

11 Q. But in the narrative portion is there any specific
12 description or feature that matches up with Mr. Hall?

13 A. Young black male, dark skin, short hair. In a very
14 general way, yes, sir.

15 Q. A very general way?

16 A. Yes, sir.

17 Q. And would it be fair to sort of compare someone being
18 in the police car or being in handcuffs at show-up
19 identification to someone who is sitting at defense counsel
20 table for in-court identification?

21 MR. YOUNG: Objection, speculation.

22 THE COURT: Overruled as to speculation. You may
23 answer.

24 A. I don't believe so.

25 Q. Now, it's fair to say your theory of the case wasn't

TESTIMONY OF MARK EVANS

1 that there was one shooter and one gun, correct?

2 A. Based on the statement that I had originally, yes, sir.

3 Q. Okay. And you swore out statements under oath to that
4 affect?

5 A. Yes, sir.

6 Q. So your arrest warrant for Mr. Hall talks about Mr.
7 Smith being the shooter, correct?

8 A. Yes.

9 Q. And him having the gun.

10 A. Yes, sir.

11 Q. And the search warrants that you obtained in this case,
12 talk about Mr. Smith being the shooter.

13 A. Yes, sir.

14 Q. And that was under oath to a judge, correct?

15 A. Yes, sir.

16 Q. And I believe now -- I guess new information in this
17 case would be Mr. Thomas's testimony, is that one piece of
18 new evidence as it being two shooters?

19 A. The information that I -- no, sir. I originally had
20 received information about Mr. Smith.

21 Q. Okay. But is your theory of the case now that there
22 was just one shooter and one gun?

23 A. At this -- it depends. The victim is saying something
24 different now, yes, sir.

25 Q. Because originally he said one shooter and one gun.

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1 A. He advised that he saw one gun, yes, sir.

2 Q. And Detective Patrick is the one who took his
3 statement?

4 A. Yes.

5 Q. And that was on September 21, 2010?

6 A. Yes.

7 Q. And in those two years did you ever try to interview
8 Mr. Thomas again?

9 A. I did not.

10 Q. Conduct any followups?

11 A. I did not.

12 Q. No phone calls?

13 A. No, sir.

14 Q. No emails?

15 A. No, sir.

16 Q. Now, I believe you testified you didn't show him any
17 photographic lineup in this case because he was in the
18 hospital and had sort of moved out of town.

19 A. Yes, sir.

20 Q. But he was in the hospital on September 20th, correct,
21 on the 21st when Detective Patrick interviewed him?

22 A. Sure, yes, sir.

23 Q. And you -- Detective Patrick or you didn't take that
24 opportunity to show him any lineups?

25 A. No, I did not.

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- 1 Q. You did ask Mr. Hall to sort of pick out Mr. Smith in
2 the photographic lineup, correct?
- 3 A. Yes, sir, from a single photo.
- 4 Q. And Mr. Smith is six feet tall?
- 5 A. I guess you could say that.
- 6 Q. You said that on your arrest warrant, correct?
- 7 A. I'd have to see it and that was based off of DMV
8 information.
- 9 Q. Well, before you've seen Mr. Smith in the courtroom,
10 would that sound right?
- 11 A. Yes, sir.
- 12 Q. And Mr. Hall is -- I think the arrest warrant says
13 five-eight and I think the incident report -- let me
14 doublecheck -- says five-six?
- 15 A. That's what I saw here, yes, sir.
- 16 Q. Somewhere between five-six and five-eight?
- 17 A. Yes, sir.
- 18 Q. And Mr. Thomas's statement said it was a taller person
19 who had the gun?
- 20 A. I don't have Mr. Thomas's statement.
- 21 Q. If I showed you a statement would that refresh your
22 memory to see who was taller or shorter?
- 23 A. I can read the statement and tell you what the
24 statement says, yes, sir. It says that based on the
25 statement, "The second guy came up and I started wrestling

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1 away from the first guy and the second guy which was shorter
2 than the first guy." So yes, I would assume the first guy
3 would be taller than the second guy.

4 MR. GRIMES: Can I have one moment, Your Honor?

5 THE COURT: Take all the time you need, Mr. Grimes.

6 (Break in proceedings.)

7 Q. I wanted to ask you a few questions about Mr. Hall's
8 statement. Assuming you interviewed him, he was cooperative
9 with you, wasn't he?

10 A. Yes, sir.

11 Q. And he gave you a DNA sample, correct?

12 A. I would have to see the evidence. I don't recall and I
13 don't recall having that noted in my -- yes. It shows here
14 that he provided me with a buccal swab.

15 Q. And SLED can test the DNA on various small amounts in
16 very sensitive areas, correct?

17 A. I believe so, yes.

18 Q. For example, you can leave -- when doing tests they
19 wear gloves in the lab, correct?

20 A. I can't tell you how they do their analysis.

21 Q. You familiar with what they call touch DNA?

22 A. I used it, yes, sir.

23 Q. And that's even -- science now is so far advanced you
24 can provide DNA just by touching something, correct?

25 A. That's my understanding?

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1 Q. And if you are wrestling around with somebody and put
2 your hand in his pocket there could be DNA left in the
3 pocket, correct?

4 A. Yes.

5 Q. And if you had Mr. Hall's DNA to do any testing on it
6 to see if you could find his DNA on Mr. Thomas' clothes if
7 you had wanted to, correct?

8 A. I don't believe we collected Mr. Thomas' clothes.

9 Q. They were obviously somewhere, weren't they?

10 A. More likely than not thrown away, I'm making an
11 assumption. I don't know that the North Charleston Police
12 Department collected them on the night of the shooting.

13 Q. Do you know if MUSC collected them?

14 A. If MUSC collected them they would have turned them over
15 to the North Charleston Police Department.

16 Q. And did you ever find the bag that had the beer --

17 A. No.

18 Q. -- Mr. Thomas was carrying?

19 A. No, sir.

20 Q. And I'm going to ask you a few questions about the
21 scene of the shooting if you don't mind stepping down.

22 A. (Witness complies.)

23 Q. Now, you said you walked this area looking for anything
24 including blood marks or shell casings.

25 A. Yes, sir.

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- 1 Q. And Mr. Thomas, he lived at Verizon Villages?
- 2 A. I believe that's the name of it.
- 3 Q. And Verde Street would be further down here?
- 4 A. Yes.
- 5 Q. And that sort of runs between Rivers Avenue and Spruill
- 6 Avenue?
- 7 A. Yes.
- 8 Q. Did you ever check over here for shell casings or --
- 9 A. I did not.
- 10 Q. -- any blood marks or anything?
- 11 A. I did not.
- 12 Q. Now, I think this is Pete's Social Club or --
- 13 A. I can't remember what the name of it is, yes, sir. I
- 14 believe it is Pete and Rita's.
- 15 Q. Now it's like Boozers?
- 16 A. Yes, sir, I believe so.
- 17 Q. But it used to be Three Dollar Lounge right here?
- 18 A. I think so.
- 19 Q. And this is where Mr. Thomas went to make a 911 call?
- 20 A. That's what I was told, yes, sir.
- 21 Q. And on the 911 tape you hear another person giving help
- 22 talking and telling the police some information about who
- 23 the people were, right?
- 24 A. I believe so, yes.
- 25 Q. And that person's name was Michael Williams?

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- 1 A. I don't know his name.
- 2 Q. Do you know if any officers ever went here to look for
3 witnesses?
- 4 A. Again I did not respond right to the scene. I did not
5 show up to the scene until 7:00 that morning so I don't know
6 when officers would have went there, if any officers went
7 there.
- 8 Q. Well, as the case agent in charge you try to gather all
9 the evidence you can, correct?
- 10 A. Yes, sir.
- 11 Q. Did you ever go back yourself the next night --
- 12 A. No, sir, I did not.
- 13 Q. -- to talk to anybody there?
- 14 A. No, sir.
- 15 Q. Okay. All right. Thank you. Last question I have
16 regarding Mr. Hall's statement, he doesn't admit to having a
17 gun, does he?
- 18 A. No, sir.
- 19 Q. Doesn't admit to shooting anybody?
- 20 A. No, sir.
- 21 Q. Doesn't admit trying to rob Mr. Thomas?
- 22 A. I believe that is a matter of opinion.
- 23 Q. Did he say anything about he put his hand in his
24 pocket?
- 25 A. He didn't say that he did that.

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1 Q. That he tried to grab his bag or take his bag?

2 A. He did not say that.

3 Q. I guess at the most he said he took a cigarette from
4 him?

5 A. He took a cigarette from him, yes, sir.

6 Q. And he gave a statement saying that he saw Mr. Smith
7 sort of running and shooting, correct?

8 A. Yes, sir.

9 Q. And that's what's on the videotape, correct?

10 A. Yes. You see that, yes, sir.

11 MR. GRIMES: May I have one moment, Your Honor?

12 THE COURT: Take all the time you need, Mr. Grimes.

13 (Break in proceedings.)

14 MR. GRIMES: Thank you, Detective Evans.

15 THE COURT: Ladies and gentlemen, we're going to take
16 our mid-afternoon break. Please do not begin your
17 deliberations, do not discuss this case amongst yourselves.
18 We're going to take about 15 minutes. Stay seated,
19 Detective Evans. Please rise for the jury.

20 (The jury left the courtroom.)

21 THE COURT: Thank you, be seated. Detective Evans,
22 step down but remember the rule has been invoked so do not
23 discuss your testimony with anyone, do you understand?

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Thank you. 15 minutes.

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1 (A brief recess was taken.)

2 THE COURT: Detective Evans, did you discuss this case
3 with anyone?

4 THE WITNESS: No, ma'am.

5 THE COURT: All right. Thank you. Let's bring in the
6 jury.

7 (The jury returned to the courtroom.)

8 THE COURT: Thank you, be seated. Mr. Young, your
9 witness.

10 REDIRECT EXAMINATION

11 BY MR. YOUNG:

12 Q. Detective Evans, Mr. Grimes was talking to you about
13 the description -- the initial description of the suspects.

14 A. Yes.

15 Q. Do you remember that off the top of your head or if you
16 looked at your report would that refresh your memory?

17 A. If I looked at the report that would refresh my memory.

18 Q. On the underlined part should have the description, if
19 you read that to yourself.

20 A. Yes.

21 Q. Tell me what the initial description of the suspects
22 were.

23 A. Two young black males, dark skin, short hair cut.

24 Q. Was there something else in there? Do you need to look
25 at it again?

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- 1 A. Yes, sir. I believe I missed it. Excuse me, thin and
2 had short hair.
- 3 Q. So say that again.
- 4 A. Two young black males, thin.
- 5 Q. Two young black males.
- 6 A. Yes, sir.
- 7 Q. Go ahead.
- 8 A. Thin.
- 9 Q. Okay.
- 10 A. Short hair.
- 11 Q. Okay. So that's multiple adjectives describing the two
12 black males, thin, short hair, dark skin?
- 13 A. Yes.
- 14 Q. That coupled with the statement that Hall gives, is
15 that why you arrested Defendant Hall?
- 16 A. Yes.
- 17 Q. At that point Defendant Hall says not me and points his
18 finger at Smith; isn't that right?
- 19 A. Yes.
- 20 Q. Now, a moment ago in talking to Mr. Grimes you said the
21 victim said there was one shooter, do you remember saying
22 that?
- 23 A. I don't remember saying that the victim said there was
24 one shooter. I believe I said he said that there was one
25 gun or he observed one gun.

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1 Q. You said one gun and you said one shooter, let me make
2 sure this was clear. I'm going to ask you to look at the
3 victim's statement that's been marked Defendant's 1 and ask
4 you to read through that statement one time. Does the
5 victim in that statement say anything about one shooter?

6 A. No, sir.

7 Q. Okay. So earlier when you stated that there was one
8 shooter, did you misinterpret what the statement said?

9 A. I believe so, then yes. If I said there was one
10 shooter, yes, sir.

11 Q. Because the victim doesn't say that, does he?

12 A. No, sir.

13 MR. GRIMES: Objection, leading.

14 THE COURT: Overruled.

15 Q. What does the victim advise when he talks about the gun
16 in that statement? How many guns did he see?

17 A. One.

18 Q. So he saw one gun, didn't say anything about the number
19 of shooters.

20 A. No.

21 Q. No as in?

22 A. No, he does not say the number of shooters.

23 Q. Does he describe the color of the gun?

24 A. Yes.

25 Q. Okay. And what color of the gun do you remember him

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1 describing?

2 A. Small and silver.

3 Q. And the gun that he describes, the one that he sees, is
4 that the person that's close to him or farther away?

5 A. He describes it as being the one closest to him.

6 Q. And is this the guy who asked him for a cigarette?

7 A. In his statement he says it's the guy who asked him for
8 a cigarette.

9 Q. So the close one asked him for a cigarette and the
10 silver gun is the one he saw.

11 MR. GRIMES: Objection, leading.

12 THE COURT: Rephrase your question.

13 MR. YOUNG: I'll strike that, Judge.

14 Q. Is it possible that the black male that was farther
15 away with the black gun at night would have been tough to
16 see that gun versus a silver gun?

17 A. Yes, sir.

18 Q. Now, let's talk about this buccal swab taken from the
19 defendant. Sometimes when you test a buccal swab of a
20 defendant to a gun, can you test DNA on a gun for the
21 defendant?

22 A. On a gun, yes, sir.

23 Q. But in this case do we have a gun?

24 A. No, sir.

25 Q. And why is that?

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1 A. We were unable to locate it.

2 Q. The defendant just didn't hand it to you. Was it in a
3 ditch somewhere?

4 MR. GRIMES: Objection, mischaracterizes the testimony.

5 THE COURT: Rephrase your question, Mr. Young.

6 Q. Did you ever find a gun in this case?

7 A. No, sir, we were unable to locate it.

8 Q. Can you compare found shell casings at the scene to a
9 gun that you don't have in evidence?

10 A. No.

11 MR. YOUNG: Court's indulgence for a moment.

12 THE COURT: Take your time.

13 (Break in proceedings.)

14 MR. YOUNG: No further questions, Judge.

15 THE COURT: Recross-examination?

16 RECROSS EXAMINATION

17 BY MR. GRIMES:

18 Q. Mr. Thomas' statement talks about him seeing one gun,
19 correct?

20 A. Yes.

21 Q. Him hearing two shots?

22 A. Yes.

23 Q. He suffered two gunshot wounds.

24 A. Yes.

25 Q. Mr. Smith has admitted to shooting the gun.

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- 1 A. Shooting a gun, yes.
- 2 Q. Mr. Hall has denied shooting the gun.
- 3 A. Yes.
- 4 Q. You swore out a warrant for Mr. Smith and Mr. Hall
- 5 where you alleged under oath it was one gun and one shooter,
- 6 correct?
- 7 A. That was based on the statement provided by Mr. Hall.
- 8 Q. And Mr. Smith too, correct?
- 9 A. Mr. Smith's warrant was signed and obtained prior to
- 10 him being interviewed, so it was based solely on the
- 11 statement provided by Mr. Hall.
- 12 Q. And when you swear under oath for an arrest warrant for
- 13 somebody you're telling the judge you're giving them the
- 14 truth?
- 15 A. Yes.
- 16 Q. And you wouldn't swear out a false warrant.
- 17 A. No.
- 18 Q. If you didn't believe Mr. Hall you wouldn't have sworn
- 19 out a warrant for Mr. Smith, would you?
- 20 A. No.
- 21 Q. And you did swear out a warrant for Mr. Smith.
- 22 A. Yes.
- 23 MR. YOUNG: Objection, asked and answered.
- 24 THE COURT: He may answer.
- 25 A. Yes.

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1 Q. And in that warrant you said Mr. Smith was the shooter?

2 A. Yes.

3 Q. And you read Mr. Hall -- first Mr. Hall gave a
4 statement before he is arrested, correct?

5 A. Yes.

6 Q. And after he gave a statement -- and when he was
7 taken -- when you obtained that statement he was very
8 cooperative with you, correct?

9 A. Yes.

10 Q. And then you arrested him after his statement.

11 A. Yes.

12 Q. The next day, or that day you swear out a warrant for
13 Mr. Smith.

14 A. I believe so, yes.

15 Q. And he turned himself in the next day, correct?

16 A. I don't know what day he turned himself in.

17 Q. But he was -- the warrant was served on him the next
18 day.

19 A. Again I can't answer that, I don't know when the
20 warrant was served on him.

21 Q. We're very familiar with warrants, correct?

22 A. What's that, sir?

23 Q. We're very familiar with how warrants are sworn out,
24 correct?

25 A. Yes.

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1 Q. And there's a place on there where a warrant is served
2 on somebody.

3 A. Yes.

4 Q. If I showed you that, would that refresh your memory?

5 A. Yes. It appears that he did turn himself in on the
6 18th.

7 Q. And then Detectives Jourdan and Detective Hill
8 interviewed him to obtain a statement from him --

9 A. Yes.

10 Q. -- where he admitted being the shooter.

11 A. From what the statement says, yes.

12 Q. And I believe September 20th you obtained a search
13 warrant for his residence in Goose Creek, I believe?

14 A. I don't know the date of that but we did do a search
15 warrant in Goose Creek, yes.

16 MR. YOUNG: Objection, Judge.

17 THE COURT: What's the basis?

18 MR. YOUNG: Outside the scope of redirect -- recross.

19 THE COURT: Sustained.

20 Q. And you gave a statement on September 20th after you
21 received Mr. Smith's statement where you alleged he was the
22 shooter, correct?

23 A. I gave a statement?

24 Q. You swore out an affidavit in front of the judge on
25 September 20th where you said that Mr. Smith was the

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1 shooter.

2 A. Yes.

3 Q. And when Detective Patrick interviewed Mr. Thomas there
4 was nothing he said that was inconsistent with that, is
5 there?

6 A. Mr. Thomas said that he was --

7 Q. He said the first guy that came up to him was the one
8 that asked for a cigarette and had the small silver gun,
9 correct?

10 A. Yes.

11 Q. And he said the first guy was the taller person, right?

12 A. Yes.

13 Q. And Mr. Smith is taller than Mr. Hall.

14 A. Yes.

15 Q. And he said the second guy, according to Mr. Thomas, is
16 the guy with the gun to shoot him?

17 A. That the second guy was agging the first guy on to
18 shoot him, is that --

19 Q. The guy with the gun to shoot Mr. Thomas.

20 A. Yes, that's what's in his statement.

21 Q. Mr. Thomas never said he saw the second guy or the
22 shorter guy with a gun, did he?

23 A. The second guy he said he did not see with a gun, yes.

24 Q. He never alleged the second guy is the one who shot
25 him.

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1 A. He never said that the second guy did not either.

2 Q. In the last sentence he talks about "the guy who shot
3 me," he's talking about one person, correct?

4 A. You can assume that, yes.

5 Q. And there being one person, one shooter is consistent
6 with Mr. Hall's statement, Mr. Smith's statement, the arrest
7 warrants you signed under oath and the search warrant you
8 signed under oath, correct?

9 A. Can you repeat that question one more time?

10 Q. The theory of there being just one gun and one shooter
11 is consistent with Mr. Hall's statement, Mr. Smith's
12 statement, the arrest warrant that you issued for Mr. Hall
13 and Mr. Smith under oath and the search warrant that you
14 obtained under oath.

15 MR. YOUNG: Objection.

16 THE COURT: What's the basis?

17 MR. YOUNG: Stating facts not in evidence.

18 THE COURT: Counsel approach.

19 (The following side bar was reported.)

20 MR. YOUNG: I object. I think that characterizes the
21 Smith statement as saying that he's saying there's one
22 shooter, that's not what's in the statement. He asked Smith
23 did you shoot and he said yes, but to say there's one
24 shooter is wrong, that's mischaracterizing fact not in
25 evidence.

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1 MR. GRIMES: I think the statement is saying -- didn't
2 say he had a gun, D. J. the statement to the police was
3 saying Denorris didn't have gun.

4 THE COURT: Said that statement was what?

5 MR. GRIMES: That Denorris did not have a gun.

6 THE COURT: Okay.

7 MR. GRIMES: And he thought Denorris was trying to set
8 him up and do something and that's why he shot him. Mr.
9 Young is mischaracterizing testimony.

10 MR. YOUNG: I'm not mischaracterizing testimony.

11 THE COURT: Please don't argue. So you object --
12 objection is to?

13 MR. YOUNG: His stating facts that are not in evidence
14 is my objection.

15 THE COURT: Okay. Could you do me a favor? I'm going
16 to ask you not -- and what you've asked, I think if you
17 could, could you break it down into step by step as to
18 what -- do you mind doing that --

19 MR. GRIMES: I don't mind.

20 THE COURT: -- for me?

21 MR. GRIMES: No, I don't mind.

22 THE COURT: All right. Thank you.

23 (End of side bar.)

24 THE COURT: Mr. Grimes, if you wouldn't mind rephrasing
25 your question.

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1 MR. GRIMES: Thank you, Your Honor.

2 BY MR. GRIMES:

3 Q. I forget where I was at. Mr. Thomas' statement is
4 consistent with Mr. Hall's statement that Mr. Hall did not
5 shoot him, correct?

6 A. No, sir.

7 Q. Mr. Hall is the shorter one, correct?

8 A. Yes, sir.

9 Q. And he says the taller guy had the gun.

10 A. Yes, sir.

11 Q. And --

12 MR. YOUNG: Judge, I would object on outside of
13 redirect -- outside the scope of redirect.

14 THE COURT: Overruled.

15 Q. And Mr. Thomas' statement is consistent with Mr.
16 Smith's statement that Mr. Smith was the shooter.

17 A. No, sir.

18 Q. Mr. Smith's statement -- he admitted shooting a gun,
19 correct?

20 A. Yes.

21 Q. He never said anything about Denorris having a gun, did
22 he?

23 A. No.

24 Q. And he admitted to shooting and there's pictures and
25 Mr. Smith identified himself pointing a gun and shooting,

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1 correct?

2 A. Yes.

3 Q. And Mr. Thomas' statement is consistent with the arrest
4 warrant you swore out for Mr. Hall when you said that Mr.
5 Smith had the gun and Mr. Smith is the shooter.

6 A. The warrant I swore out was on Mr. Hall based on Mr.
7 Hall's statement prior to having Mr. Thomas' statement.

8 Q. Okay.

9 A. Mr. Thomas' statement, if I can explain --

10 Q. Was given on --

11 A. The 21st.

12 Q. The 21st?

13 A. In his statement, which I'm reviewing now, and he
14 states that the person who came up and asked him for a
15 cigarette, which is consistent with what Mr. Hall said --

16 Q. Yeah.

17 A. -- was the person who had the gun, and Mr. Hall states
18 that he came up and asked for the cigarette.

19 Q. And he said that the person who came up to him was
20 taller, correct?

21 A. Yes.

22 Q. In Mr. Hall's statement he said Smith must have got the
23 cigarette, correct?

24 A. No, sir. Mr. Hall's statement states he walked up to
25 him, got a cigarette, handed the cigarette to Mr. Smith for

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1 Mr. Smith to the light the cigarette.

2 Q. Like I said, he said Mr. Smith had the cigarette and
3 got the cigarette.

4 A. After Mr. Hall asked for it, yes.

5 Q. And then he says, "Mr. Smith's started to follow the
6 man."

7 A. Yes.

8 Q. And all this happened in one or two minutes, correct?
9 The time frame of this incident happened all in one or two
10 minutes?

11 A. It appeared to actually be shorter than that, but yeah,
12 I would say maybe a minute.

13 Q. Okay. But based on Mr. Hall's statement you swore out
14 a warrant for Mr. Smith, correct?

15 A. Yes.

16 Q. And that was based solely on Mr. Hall's statement?

17 A. Yes.

18 Q. And in that warrant where you swore to tell the judge
19 the truth you said Mr. Smith was the shooter.

20 A. Yes.

21 Q. And then after you received Mr. Smith's statement you
22 swore out an additional statement under oath, correct?

23 A. Yes, and that was prior to Mr. Thomas' statement.

24 Q. Yeah. On the day before, correct?

25 A. Yes.

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1 Q. And since you received Mr. Thomas' statement you
2 haven't done any supplemental reports, have you?

3 A. No, sir.

4 Q. You haven't changed your theory of the case in any way
5 until today, until since on redirect when Mr. Young
6 impeached you and tried to correct you.

7 A. I'm not following your question, sir.

8 MR. GRIMES: May I have one moment, Your Honor?

9 THE COURT: You may.

10 (Break in proceedings.)

11 MR. GRIMES: Thank you, Detective Evans.

12 THE COURT: You may step down. Thank you. Call your
13 next witness.

14 MR. WHETMORE: State calls Andrew Coker.

15 The witness, ROBERT ANDREW COKER, was first
16 duly sworn and testified as follows, on:

17 THE CLERK: If you'll state your full name and spell
18 your last name for the record.

19 THE WITNESS: Robert Andrew Coker, C-o-k-e-r.

20 DIRECT EXAMINATION

21 BY MR. WHETMORE:

22 Q. Officer Coker, how long you been in law enforcement?

23 A. 21 and a half years.

24 Q. Is all that time with North Charleston or anywhere
25 else?

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1 A. Yes, North Charleston.

2 Q. Tell me briefly about your training and about your
3 experience.

4 A. In late 1991 I attended the police academy, graduated
5 February of '92. Since then I have been to numerous
6 advanced training courses including accident reconstruction,
7 latent fingerprint examination and crime scene
8 investigation.

9 Q. Okay. What are your duties and responsibilities
10 currently?

11 A. I'm currently assigned to the forensic investigation
12 unit conducting crime scene investigations, also latent
13 print examinations.

14 Q. And were you doing that job in September of 2010?

15 A. Yes, I was.

16 Q. Did you have occasion to respond to the area of Spruill
17 and McMillan where this case took place?

18 A. Yes, I did.

19 Q. And that location is within Charleston County?

20 A. Yes, it is.

21 Q. Now, why did you go there?

22 A. I responded to Spruill I believe it was September 13th
23 of 2010 in reference to recovering evidence that had been
24 located by several investigators.

25 Q. Who did you meet when you went to the location?

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1 A. When I arrived at the scene I met with Lieutenant Perry
2 and with Sergeant James Hill.

3 Q. What were you asked to do?

4 A. I was asked to photograph and recover some shell
5 casings that had been found in the roadway.

6 MR. WHETMORE: If I may approach the witness, Your
7 Honor?

8 THE COURT: You may.

9 Q. I'm going to show you what's been marked as State's
10 Number 7. Take a look at that evidence and see if you can
11 tell what it is.

12 A. It's a bag labeled case number, type of offense, shell
13 casings and signed by me.

14 Q. Based on the packaging and any kind of documentation,
15 can you tell if those are the shell casings that you
16 recovered from the scene?

17 A. Yes. The label outside was written by me and the
18 handwriting on the boxes themselves containing the shell
19 casings were written by me.

20 Q. And you can tell -- how can you tell those are the
21 shell casings that were recovered in this particular case?

22 A. Upon me collecting them I started a chain of custody on
23 them, I packaged them myself and I submitted them to the
24 evidence locker with the chain of custody which remains with
25 the item.

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1 Q. And those are specific to this particular case?

2 A. Yes, they are.

3 Q. And could not get mixed with any other cases?

4 A. No.

5 Q. If you would -- get you just to show us on this large
6 map if you can where exactly you found those shell casings.

7 If you could hop down real quick and take a look at these.

8 Can you tell precisely where it is that you found these
9 shell casings?

10 A. This is Spruill Avenue right here, McMillan crosses,
11 this would be -- I think this is the bank on the corner.

12 Q. The credit union?

13 A. Yeah, South Carolina Federal Credit Union, I believe.

14 And the shell casings were found right in this area right
15 here.

16 Q. Okay. In the roadway?

17 A. One was in the roadway, one was on the roadside, I
18 believe.

19 Q. So right in this area right here; is that correct?

20 A. Yes.

21 Q. You can go ahead and have a seat, if you would.

22 A. (Witness complies.)

23 Q. Did you have a chance to do anything else besides
24 collecting those shell casings?

25 A. On the 17th I responded to an apartment nearby and

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1 assisted in the service of a search warrant. Aside from
2 that no, I had no other involvement.

3 Q. On that day when you first went there, September 13th,
4 you recovered the shell casings, were you able to determine
5 what kind of caliber?

6 A. Just by general appearance, they were listed as a .25
7 caliber.

8 Q. .25 caliber?

9 A. Yes.

10 Q. Is that a common shell casing that you find commonly?

11 A. Typically, no, I find larger shell casings. Personally
12 I find larger shell casings, typically .9 millimeter, .38
13 caliber and above.

14 Q. So it's fairly unusual for you to find casings of that
15 caliber.

16 A. Yes.

17 MR. GRIMES: Objection, leading.

18 THE COURT: Overruled.

19 Q. That day, September 13th, did you take any photographs
20 at the scene?

21 A. Yes, I did.

22 Q. I'm going to show you what's been marked as State's 24
23 through State's 43. Take a look at those and see if you can
24 identify those.

25 A. Yes. These are the photos that I took on the 13th of

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1 September, 2010.

2 Q. Do they fairly and accurately represent the way the
3 scene looked that day when you're taking the pictures?

4 A. Yes.

5 MR. WHETMORE: At this time I would like to admit them
6 in evidence, Your Honor.

7 THE COURT: And what's 's the number?

8 MR. WHETMORE: State's number 24 through 43, I believe.

9 THE COURT: Any objection?

10 MR. GRIMES: I would like the see the pictures first.

11 MR. WHETMORE: I'm sorry, Judge, I thought they already
12 got a copy of these. Do you have any objection to these?

13 MR. GRIMES: No, sir.

14 THE COURT: All right, sir. State's 24 through 43
15 admitted into evidence without objection. You may publish,
16 Mr. Whetmore.

17 (The photographs were received as State's 24
18 through 43.

19 Q. State's 24. I'm just going to show you these pictures
20 and if you could just tell us what it was, maybe why it was
21 significant to take a picture in your mind.

22 A. That was the area that I received information from
23 where the incident had occurred, a shooting incident had
24 occurred.

25 Q. So that's just a picture of the credit union the day

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1 after the shooting?

2 A. That's correct.

3 Q. Number 25?

4 A. That's another view of the same parking lot from a
5 different angle.

6 Q. And this is 26. Is this --

7 A. Again, the same parking lot, I'm just turning the
8 camera panning -- getting a panoramic photo of the area.

9 Q. Okay. This is getting toward the good stuff here, this
10 is Number 27.

11 A. This is the entryway from Spruill Avenue into the
12 parking lot of the credit union.

13 Q. What are those police cars doing there?

14 A. The police cars are blocking the roadway, one is parked
15 in the median and one is blocking the roadway because of the
16 location of a shell casing that was found being in the
17 roadway.

18 Q. Does that picture show where the shell casings were
19 found?

20 A. Lieutenant Perry is in the photo and a few feet away
21 from him is the marker I placed indicating the location of
22 one of the shell casings that was located.

23 Q. So is this marker the marker you were talking about?

24 A. Yes.

25 Q. Now 28, is this a different view or version?

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1 A. Yes, just a little further to the right. And it also
2 incorporates a second marker.

3 Q. Is this the second marker?

4 A. Yes, I believe so.

5 Q. That's where you found the two shell casings?

6 A. Yes, sir.

7 Q. This is State's number 29.

8 A. Again, a different angle of the same location.

9 Q. Same area?

10 A. Yes.

11 Q. It's the same two shell casings?

12 A. Yes, sir.

13 Q. State's Number 30.

14 A. A closer view from the same angle.

15 Q. That's one and two, that's the two shell casings,
16 right?

17 A. That's correct.

18 Q. 31, State's 31?

19 A. Again, a different view from the same angle.

20 Q. Can you tell who that officer is on the picture?

21 A. That is Sergeant James Hill.

22 Q. So Perry and Hill were the two who were there when you
23 responded.

24 A. Yes, sir.

25 Q. And 32, this shows a little closer view it looks like.

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- 1 A. Yes, sir. That's a little closer photo of item number
2 one, the shell casing.
- 3 Q. 33 appears to zoom in; is that correct?
- 4 A. Yes, sir.
- 5 Q. 34 we're up on top of it. So this is number one shell
6 casing.
- 7 A. Yes, sir. That's a 90 degree angle view directly
8 overhead, a scale photo of the -- one of the recovered shell
9 casings.
- 10 Q. .25 caliber?
- 11 A. Yes.
- 12 Q. And then 35 appears to be a second one.
- 13 A. That's correct.
- 14 Q. Okay. 36 zooming in, is that correct, same shell
15 casing?
- 16 A. Yes.
- 17 Q. And 37, that's right on top of it.
- 18 A. Yes, sir, again was directly overhead.
- 19 Q. Okay. That's the second shell casing.
- 20 A. That's correct.
- 21 Q. Also .25 caliber.
- 22 A. Yes.
- 23 Q. These others are admitted, I'm not going to ask you to
24 look at these -- the same views, I think we pretty well
25 covered that.

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1 MR. WHETMORE: Your Honor, at this time I would also
2 like to admit State's Number 7 which are identified as the
3 two shell casings.

4 THE COURT: Any objection?

5 MR. GRIMES: I don't believe they have a complete
6 chain of custody.

7 Q. You testified you picked up, recovered them --

8 THE COURT: Counsel, approach or we can take that up
9 outside the presence after the witness if finished
10 testifying. Your preference, Mr. Whetmore?

11 Q. Besides collecting those .25 caliber shell casings and
12 taking those photographs, did you take any other action that
13 particular day?

14 A. I just assisted searching the area for evidence and we
15 located no additional evidence at that scene.

16 Q. Give me an idea about what time of the day you
17 responded to this location.

18 A. About 5:30 in the afternoon.

19 Q. 5:30 in the afternoon?

20 A. Yes.

21 Q. Are you aware the shooting happened approximately two
22 in the morning?

23 A. Yes. I was informed that it was an incident that
24 occurred the previous night, yes, sir.

25 Q. The area where that road and that parking lot are, is

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1 that a fairly high traffic area?

2 A. Fairly much so, yes, sir.

3 Q. Is it at all possible that evidence could have been
4 moved or lost or anything like that?

5 A. It's very possible.

6 Q. What you found was simply the two .25 caliber shell
7 casings.

8 A. That's correct.

9 MR. WHETMORE: I have no further questions.

10 THE COURT: Mr. Grimes?

11 MR. GRIMES: No questions.

12 THE COURT: All right. May this witness step down?

13 Any objection to him being released?

14 MR. WHETMORE: No, Your Honor.

15 MR. GRIMES: No, Your Honor.

16 THE COURT: You may step down. Thank you. Call your
17 next witness.

18 MR. YOUNG: May I approach for a quick side bar?

19 THE COURT: You may.

20 (Side bar conference.)

21 MR. WHETMORE: Judge, I don't want to rest until we get
22 your ruling on the shell casings if you rule there needing
23 to be somebody else that we have to call in, but I'll argue
24 that.

25 THE COURT: Do you have witnesses?

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1 MR. GRIMES: I think so.

2 THE COURT: You do?

3 MR. GRIMES: Yes.

4 THE COURT: Do you have witnesses ready?

5 MS. EHRLICK: I would have to check in the lobby first.

6 THE COURT: Because you're done then, right?

7 MR. YOUNG: We're done if we don't need anybody else
8 for this chain.

9 MS. EHRLICK: I think he needs to make his directed
10 verdict motions.

11 THE COURT: We can do that.

12 MS. EHRLICK: I can go check outside.

13 THE COURT: Can you tell me why you don't think there
14 was a chain?

15 MR. GRIMES: I believe he said the casings were taken
16 to the evidence locker and we have no one from evidence
17 saying it has been taken anywhere, so I don't know if it's
18 ever been tested or anything like that.

19 THE COURT: Well, that doesn't mean anything with the
20 chain. Tell me where the chain is.

21 MR. WHETMORE: He's arguing that it's a unique shell
22 casing and that he can identify what he found based on the
23 package, it's not something that he can't identify. He can
24 identify it, it's a unique package from the evidence that he
25 collected, not just that -- we're not offering any testing

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1 results so there is no real chain issue in my mind.

2 THE COURT: Okay. I'm going to allow it over your
3 objection because it's not fungible. He testified that he
4 picked it up.

5 MS. EHRLICK: They are both out there.

6 THE COURT: Okay. Can we do this, can I reserve all
7 motions and can we at least get a couple of your witnesses
8 up?

9 MR. YOUNG: Judge, respectfully to be honest I'm going
10 to have an objection I think to family members testifying
11 and I can tell you more about them, but I don't want to do
12 it here in front of the jury.

13 THE COURT: Are those what you're going to present?

14 MR. GRIMES: Yeah.

15 THE COURT: Who else do you have?

16 MR. GRIMES: Detective Patrick.

17 THE COURT: And that's it?

18 MR. GRIMES: And maybe our client.

19 THE COURT: Okay.

20 MS. EHRLICK: I don't think we can make a decision on
21 our client until we know how the others do.

22 THE COURT: Okay. All right. Are you calling any
23 witnesses?

24 MS. EHRLICK: (Shook head.)

25 THE COURT: All right. Step down.

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1 (End of side bar.)

2 THE COURT: State's 7 into evidence over defendant's
3 objection.

4 (The shell casings were received as State's 7.)

5 THE COURT: Mr. Young?

6 MR. YOUNG: Judge, at this time the State rests.

7 THE COURT: Ladies and gentlemen, that signifies to the
8 Court there's a matter of law that I must take up outside of
9 your presence. Do not begin your deliberations, do not
10 discuss this case amongst yourselves. Please rise for the
11 jury. We'll receive you back momentarily.

12 (The jury left the courtroom.)

13 THE COURT: Be seated. The State has rested. Mr.
14 Grimes, any motions or matters?

15 MR. GRIMES: Yes, Your Honor. At this time we move for
16 a motion for a directed verdict on both counts. I don't
17 believe the State met its burden in this case. We have
18 conflicted testimony in some ways which normally would go up
19 to the jury, in this case I think there's several unique
20 factors that would prevent it from going to the jury.
21 First, Mr. Thomas' identification of the defendant provided
22 at the last minute and according to his inconsistent
23 statement. The other key piece of evidence against Mr. Hall
24 is Mr. Smith's testimony, he's just not a credible witness,
25 he's all over the place giving statements. And we have

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1 Mr. Hall's testimony, basically the statement in that he
2 denies doing anything, just sort of being there, mere
3 presence. The State has not produced sufficient evidence
4 that would overcome a mere presence argument at this point
5 and therefore we ask the Court to dismiss the charges.
6 Thank you.

7 THE COURT: Mr. Young, if you would address each
8 indictment and go through each of the elements starting
9 first with armed robbery and tell me the elements that have
10 been met.

11 MR. YOUNG: Judge, as to the attempted armed robbery is
12 the testimony from the victim, that he was -- the items were
13 attempted to be taken from him, that he had a gun pointed at
14 him. That would satisfy the attempt to taking and carrying
15 away personal property while armed with a weapon at that
16 point, you know, that's what the victim said, additionally
17 had a co-defendant said that as well, that's two separate
18 people. With regards to the attempted murder, the attempted
19 killing of another person with malice, these guys go out,
20 through the testimony from the victim he talks to you
21 about and what the co-defendant tells you that Mr. Hall has
22 a weapon and that he fired the weapon, that's the attempted
23 killing of another person. Furthermore the victim states
24 and he ID's this defendant as one of the shooters. Judge,
25 the evidence viewed in the light most favorable to the State

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1 we ask you to deny the motion for a directed verdict and
2 send this case to the jury.

3 THE COURT: Mr. Grimes?

4 MR. GRIMES: Nothing further, Your Honor.

5 THE COURT: All right, sir. Based upon the testimony
6 that I have heard I am denying your motion for a directed
7 verdict under Rule 19. I am concerned not as to the weight
8 of the evidence but merely as to the existence or
9 nonexistence. Based upon the testimony that has been
10 presented the State has met the burden of the motion for a
11 directed verdict, and note your exception for the record,
12 Mr. Grimes. Any other motions or matters?

13 MR. YOUNG: Judge, I do have a matter depending on who
14 the defense calls --

15 THE COURT: All right, sir. Hold on one second, I've
16 got to do this in order to keep it straight. Mr. Grimes, do
17 you have any other motions or matters?

18 MR. GRIMES: No, Your Honor.

19 THE COURT: All right. And I understand that you have
20 some witnesses that are going to testify here this
21 afternoon?

22 MR. GRIMES: Yes, Your Honor.

23 THE COURT: And who are those witnesses?

24 MR. GRIMES: Regina Lee and Lolita Brown.

25 THE COURT: Are those the witnesses you are objecting

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1 to, Mr. Young?

2 MR. YOUNG: Those are two of the witnesses we're
3 objecting to.

4 THE COURT: And the basis of your objection is?

5 MR. YOUNG: Looking at the Rules of Evidence of South
6 Carolina 404A, additionally under Rule 405, these are
7 strictly character witnesses, these witnesses were not at
8 the scene. I believe under the rules that these witnesses
9 may be coming to talk about relevant character traits, in
10 this case that will be peacefulness, but if these witnesses
11 get up here and start talking about how great of a guy he is
12 and how he helps around the house and how good of a
13 schoolboy he is, our position, Judge is that, A, that's not
14 acceptable and certainly should not be allowed; B, that that
15 opens the door and I think we can talk about certain other
16 things such as why he was brought in the police station in
17 the first place if they are saying what a good guy he is.
18 But again, I think just reputation and opinion evidence and
19 relevant character traits is the only thing that these
20 witnesses are allowed to talk about under the rules and, you
21 know, that's why I'd object to be those witnesses just being
22 character witnesses saying how good a guy he is, I don't
23 think that's appropriate.

24 THE COURT: Mr. Grimes?

25 MR. GRIMES: Obviously character is an issue Mr. Hall

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1 can raise. Obviously Mr. Hall can raise character as a
2 defense as well as established case law and rules, I don't
3 think strictly just peacefulness. And if the State has a
4 good faith basis for asking something else, that poses
5 character and is relevant to his character then I think they
6 are allowed to ask it. But just to make up stuff about
7 attempted rape or something, they have to have some basis
8 for that otherwise I don't think it's relevant under
9 probably Rule 404B.

10 THE COURT: Well, Mr. Grimes and Mr. Young, you both
11 follow the rules of evidence so make the appropriate
12 objections at the appropriate time. Thank you. Let's place
13 Mr. Hall under oath. Please stand.

14 (The defendant was sworn.)

15 THE COURT: Mr. Hall, did you hear what the clerk just
16 said to you?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Do you have trouble hearing?

19 THE DEFENDANT: No, ma'am. I just didn't hear him at
20 first but I heard him the second time.

21 THE COURT: At this time I am going to explain to you
22 certain of your rights. If you do not understand anything
23 that I say please let me know and if you need me to explain
24 anything in more details please let me know, do you
25 understand?

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: We've reached the stage of the trial where
3 you may present your defense. You have the right to claim
4 the protections given to you by the 5th Amendment to the
5 Constitution of the United States. This amendment states in
6 part that no person shall be compelled in any criminal case
7 to be a witness against himself, that means that you cannot
8 be required to testify in this case. You have the right to
9 testify on your own behalf, however no one can make you
10 testify. This is a personal right and no one can waive this
11 right except for you, do you understand that?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: If you decide to testify you will be
14 subject to the same rules that govern other witnesses and
15 maybe examined and cross-examined on any relevant issue in
16 this case. If you have any convictions involving dishonesty
17 or false statement or for crimes punishable by imprisonment
18 for more than a year and I determine that the probative
19 value of admitting this evidence outweighs its prejudicial
20 affect to you, the solicitor will be able to introduce your
21 record and attack your credibility, do you understand?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: If you decide to testify this decision on
24 your part must be freely and voluntarily and intelligently
25 made with the knowledge of the protections given to you by

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1 the 5th Amendment and the consequences of your decision to
2 testify. If you decide not to testify I will instruct the
3 jurors that they cannot give the fact that you did not
4 testify any consideration whatsoever, and that there is to
5 be absolutely no prejudice to you because you did not
6 testify. It is left entirely up to you whether or not you
7 testify. You may talk with your attorneys, your friends,
8 your family members or anyone else but the final decision is
9 left entirely up to you. Do you understand what I have
10 explained to you?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Do you have any questions about what I've
13 explained to you?

14 THE DEFENDANT: You saying before I make my decision --
15 you say before I make my decision on whether I want to
16 testify I can talk to my attorney first?

17 THE COURT: Yes. Have you discussed with your
18 attorneys whether or not you're going to testify?

19 THE DEFENDANT: Not yet.

20 THE COURT: All right. I will allow you -- what
21 scheduling wise is probably going to happen is we're going
22 to have your two witnesses testify and then Detective
23 Patrick can't be here until the morning so we will probably
24 break for the evening to allow you time to speak with your
25 attorney. All right?

TESTIMONY OF REGINA LEE

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Thank you. You may have a seat. Are your
3 witnesses here ready to go?

4 MR. GRIMES: Yes, Your Honor.

5 THE COURT: All right. Anything before we bring in the
6 jury? Bring in the jury.

7 (The jury returned to the courtroom.)

8 THE COURT: Thank you, be seated. Mr. Grimes, call
9 your first witness.

10 MR. GRIMES: Thank you, Your Honor. We call Regina
11 Lee.

12 The witness, REGINA LEE, was first duly sworn
13 and testified as follows, on:

14 THE CLERK: State your full name and then spell your
15 last name for the record.

16 THE WITNESS: Yeah, Regina Key Lee, L-e-e.

17 THE COURT: Mr. Grimes?

18 DIRECT EXAMINATION

19 BY MR. GRIMES:-

20 Q. Morning, Ms. Lee. I mean, good afternoon, Ms. Lee.

21 A. Goods afternoon, sir.

22 Q. How are you doing today?

23 A. I'm doing pretty good, thank you for asking.

24 Q. Let me ask you, are you related to Denorris?

25 A. Yes, I am.

TESTIMONY OF REGINA LEE

1 Q. And what is your relationship to him?

2 A. I am his mother.

3 Q. And how old is Denorris?

4 A. 20.

5 Q. And how old was he in 2010?

6 A. 18.

7 Q. Now, I want start out by asking you a few questions
8 about your background.

9 A. Okay.

10 Q. First I may violate one of the jurors rules on
11 qualifications on Monday, but how old are you?

12 A. 47.

13 Q. And where are you from?

14 A. Charleston.

15 Q. And where did you go to high school at?

16 A. Burke High School.

17 Q. And when did you graduate from there?

18 A. 1983.

19 Q. And after you graduated from Burke High School where
20 did you go to school at?

21 A. Vorhees College.

22 Q. And did you graduate from there?

23 A. Yes, sir.

24 Q. When did you graduate from there?

25 A. 1987.

TESTIMONY OF REGINA LEE

1 Q. And what was your major at Vorhees?

2 A. Sociology and minored in criminal justice.

3 Q. An tell the jury where Vorhees is at?

4 A. About 87 miles away from here in Denmark, South
5 Carolina.

6 Q. And after you graduated from Vorhees College, where did
7 you start work? What was your first job?

8 A. I worked -- my first job was the disabilities board of
9 Charleston County.

10 Q. And what did you do at the disabilities board?

11 A. Right now?

12 Q. Or back then.

13 A. Back then I was in direct care support where I worked
14 within the homes with the individuals with special needs.

15 Q. And tell the jury a little bit about what you would do
16 back then.

17 A. Personal care, assisting the individuals with daily
18 living skills, pretty much the things that we take for
19 granted every day; brushing their teeth, washing their face,
20 learning how to do simple chores and tasks.

21 Q. And do you still work there?

22 A. Yes, I do.

23 Q. And how long have you worked there?

24 A. This will be 25 years. Since '87, that makes 25 if my
25 math is right.

TESTIMONY OF REGINA LEE

1 Q. About 25 years?

2 A. Yes, sir.

3 Q. And what are you duties there now?

4 A. I'm a program director. I'm responsible for 29
5 residential facilities, I have six coordinators under me
6 where -- and the facilities are within the Charleston area.

7 Q. And as the coordinator kind of explain to the jury what
8 your day-to-day activities are, day-to-day duties are.

9 A. I'm responsible for like I said earlier, the 29 homes
10 where individuals live. I have six coordinators under me
11 that they coordinate the facility. I'm just the program
12 director, I make sure everything is done and I make sure
13 that they -- that the coordinators are abiding by their
14 regulations and the rules.

15 Q. Now I want to ask you some questions about your
16 personal life okay. Have you been married?

17 A. Yes.

18 Q. And who were you first married to?

19 A. Denorris Hall, Sr.

20 Q. And I take it that is Denorris's father?

21 A. Yes.

22 Q. And how long were you married to him for?

23 A. About 10 years.

24 Q. And are you still married to him?

25 A. No, sir.

TESTIMONY OF REGINA LEE

- 1 Q. Did you have any -- prior to Denorris, did you have any
2 children with him?
- 3 A. One, I have a daughter.
- 4 Q. And where did you and Denorris, Sr. meet at?
- 5 A. At the Hardees on the corner of Calhoun and King.
- 6 Q. And how did you guys come to meet?
- 7 A. He had missed his flight to B station in Germany and I
8 was sitting there at the Hardees and we started talking.
- 9 Q. And you said stationed in Germany, I take it he was in
10 the military?
- 11 A. Yes, sir.
- 12 Q. Are you married now?
- 13 A. Yes, sir.
- 14 Q. Who are you married to?
- 15 A. His name is Kevin Lee.
- 16 Q. And is that Denorris' stepfather?
- 17 A. Yes, sir.
- 18 Q. And where does Denorris' father live at?
- 19 A. I didn't hear you.
- 20 Q. Where does Denorris' father live at?
- 21 A. A small town called Clio, Alabama.
- 22 Q. Is that where he's from?
- 23 A. Yes, that's where his father is from.
- 24 Q. And do you attend church anywhere?
- 25 A. Yes, I do.

TESTIMONY OF REGINA LEE

- 1 Q. Where at?
- 2 A. It's called Power by the Word Ministries off of
- 3 Montague Avenue.
- 4 Q. How long have you been going to church there?
- 5 A. About four years, about four years there.
- 6 Q. And did you go to church anywhere before that?
- 7 A. Yes, sir.
- 8 Q. An where did go to church at?
- 9 A. That was Tabernacle Baptist Church downtown off of
- 10 Gordon Street.
- 11 Q. And does Denorris have any half brothers or half
- 12 sisters?
- 13 A. Yes, by his father.
- 14 Q. And how many half brothers does he have?
- 15 A. Well, he doesn't have any half brother, he has sisters,
- 16 he's the only boy. Oh, and then he has my son, I'm sorry.
- 17 Q. Do you drink?
- 18 A. No, sir.
- 19 Q. Do you use drugs?
- 20 A. No.
- 21 Q. Let me ask you a question, have you ever been arrested
- 22 for anything or given a ticket for anything apart from
- 23 routine speeding tickets?
- 24 A. When I was younger and it was expunged.
- 25 Q. What was that?

TESTIMONY OF REGINA LEE

- 1 A. Shoplifting.
- 2 Q. And how old were you when that happened?
- 3 A. I think I was 16.
- 4 Q. Now I want to ask you a few questions about Denorris'
- 5 background. Where was he born at?
- 6 A. Right here in Charleston.
- 7 Q. And where did he go to school at?
- 8 A. Pepperhill Elementary, Alice Birney, Garrett, and it's
- 9 the school on Bonds Avenue, I can't think of the name real
- 10 quick.
- 11 Q. And did Denorris ever have any jobs?
- 12 A. Jobs?
- 13 Q. Yeah, working anywhere?
- 14 A. Yes, sir.
- 15 Q. And where was he working at? What kind of jobs did he
- 16 have and what kinds of work did he do?
- 17 A. When he was younger he did the grass cutting, after he
- 18 did that he worked at Harris Teeter, McDonalds.
- 19 MR. YOUNG: Objection, I would object under 404A.
- 20 THE COURT: All right. Counsel approach.
- 21 (Side bar conference.)
- 22 THE COURT: Overruled. Mr. Grimes.
- 23 BY MR. GRIMES:
- 24 Q. I was asking you what kinds of work history and jobs
- 25 Denorris had.

TESTIMONY OF REGINA LEE

1 A. He worked at Harris Teeter, McDonalds and he did -- oh,
2 there's a motorcycle, a go-cart place right in front of the
3 subdivision, he worked there. And when he was younger he
4 used to take the lawn mower out and do people's yards in the
5 neighborhood.

6 Q. Okay. And I asked you a little about his education. I
7 think you said he went to school in North Charleston, a
8 couple high schools.

9 A. Yes, sir.

10 Q. And from my understanding he did not graduate from high
11 school?

12 A. No, he did not.

13 Q. Did he ever get any further education?

14 A. Yes, sir. He received his GED back in July of this
15 year.

16 Q. This year or 2011?

17 A. Wait a minute, yeah, 2011, I'm sorry. Yes, 2011.

18 Q. After he received his GED did he continue his
19 education?

20 A. Yes. He was enrolled at the aviation school in
21 Alabama.

22 Q. And was he living with his father at the time?

23 A. Yes, sir.

24 Q. Did he eventually come back to Charleston?

25 A. Yes, sir.

TESTIMONY OF REGINA LEE

1 Q. And when he came back to Charleston did he continue his
2 education here?

3 A. Yes, he did. He enrolled in Trident Tech. in Monks
4 Corner because that was the only place that had the aviation
5 curriculum.

6 Q. Do you know why he left Alabama to come back to
7 Charleston?

8 A. He wanted to come home.

9 Q. Now, I want to ask you a few questions about Herman
10 Smith. Do you know who that is?

11 A. Only by name and what I've -- you know, that's it. I
12 don't know him personally, no, sir.

13 MR. YOUNG: I object under 404A again.

14 THE COURT: All right, sir. You're objecting to the
15 last statement or --

16 MR. YOUNG: On things to -- can we approach, Your
17 Honor?

18 THE COURT: Well, let him ask his next question.

19 Q. You said you knew Mr. Smith only by name.

20 A. Yes, sir.

21 Q. Do you know if he ever -- how often -- do you know when
22 Mr. Hall met Mr. Smith?

23 A. No, sir.

24 Q. Do you know if Mr. Smith ever picked him up from
25 school?

TESTIMONY OF REGINA LEE

1 A. Yes, sir.

2 Q. What were the circumstances of that?

3 A. He picked him up early because Denorris --

4 MR. YOUNG: Objection, Judge relevance.

5 THE COURT: Approach.

6 (Side bar.)

7 THE COURT: What does that have to do --

8 MR. GRIMES: Shows Mr. Smith is the ring leader of all
9 of this. It is our theory he's the wrong person and sort of
10 manipulating Mr. Hall.

11 THE COURT: By picking him up from school?

12 MR. GRIMES: By picking him up before school was
13 getting out, I guess.

14 THE COURT: Picking him up early.

15 MR. YOUNG: That's not relevant to this case, Judge.
16 This witness is going talk about school getting out.

17 THE COURT: We're getting far off on this on you
18 picking him up from school. Sustained. Thank you.

19 (End of side bar.)

20 Q. Do you know what kind of influence Mr. Smith had on
21 Denorris? Of your own personal knowledge do you know what
22 kind of influence --

23 MR. YOUNG: Objection, Judge.

24 THE COURT: Sustained.

25 Q. I want to ask you a few questions about September 13,

TESTIMONY OF REGINA LEE

1 2010, the night of this incident. Was Denorris living with
2 you at that time?

3 A. No, sir.

4 Q. And how long had he been moved out?

5 A. I think it was about two to three months.

6 Q. And who was he living with?

7 A. He's a friend of the family but they call him Cousin,
8 but he was a friend of the family.

9 Q. And why did Denorris move out?

10 A. He wanted to move out, there was no particular reason.
11 He felt like he was old enough and he was ready to move out.

12 Q. And do you know where Denorris was that night?

13 A. No, sir.

14 Q. Let me just ask you one last question. Based upon what
15 you know of Denorris and living with him and his reputation,
16 do you think he's the kind of person to go out there and try
17 to rob somebody?

18 A. No.

19 Q. Or kill anybody?

20 A. No.

21 Q. Now, obviously you are his mother and you love him.

22 A. Yes.

23 Q. Now, are you saying that just because of a mother's
24 love or say that because unbiased -- trying to be as
25 unbiased as you can?

TESTIMONY OF REGINA LEE

1 A. It's the truth, that's how I feel.

2 MR. GRIMES: Thank you. Please answer any questions

3 Mr. Young may have.

4 CROSS EXAMINATION

5 BY MR. YOUNG:

6 Q. Good afternoon, Ms. Lee.

7 A. Good afternoon, sir.

8 Q. Do you know who your son hangs out with? Who is your
9 son's close friends? If you were to say he had a few close
10 friends who would they be?

11 A. You want me to give you their names?

12 Q. Yes, ma'am.

13 A. I would say that Nicholas Richard, Keron Keith.

14 Q. Would you say Herman Smith is one of those people?

15 A. No, I did not say that, sir.

16 Q. I was asking the question.

17 A. No, sir. Oh, you're asking me?

18 Q. Would you say he's one of them?

19 A. No, sir. Because he was not one that regulated my
20 house.

21 Q. Okay. And you talked about Denorris moving out. How
22 old was he when he moved out?

23 A. 18.

24 Q. 18?

25 A. Huh-uh.

TESTIMONY OF REGINA LEE

1 Q. Was this -- tell me about that process. Did you all
2 have a moving truck come and move him out, or how did that
3 work?

4 A. No, there was no moving truck. He just -- no, there
5 was no moving truck, sir. He just said, "Mom, I want to,
6 you know, I feel like I'm ready to move out," so, you know.
7 And as a mother I gave him, you know, these are the things,
8 you know, moving out responsibilities and I went through the
9 list. But no, there was no moving truck, sir.

10 Q. Yes, ma'am. Where did he move to, do you know?

11 A. He moved with the person that they called Cousin or
12 Friend, which is a family friend.

13 Q. Where did you say the friend lived?

14 A. He lived off of McMillan.

15 Q. McMillan?

16 A. Yes, sir.

17 Q. And after he moved -- after he moved out, that was --
18 he moved out, was that prior to September 2010?

19 A. Right, September, yes.

20 Q. Would it be fair to say then July or August of 2010,
21 was that about the time?

22 A. Yes. I guess a guesstimation would be about that time,
23 I don't know exactly the date and time.

24 Q. Would it be fair to say you lost a little bit of
25 contact with him when he moved out or did he call you every

TESTIMONY OF REGINA LEE

- 1 day or --
- 2 A. Oh yeah, he called, we communicated. He called to see
3 how I was doing.
- 4 Q. By him not living with you it's fair to say that you
5 didn't see him as much.
- 6 A. No, sir. I didn't see him as much, no, sir.
- 7 Q. Just as if anybody would move out from their parents'
8 house you wouldn't see their parents as much, right? For
9 example if you moved out of our parent's house you wouldn't
10 see your parents as much, probably talk to them a little
11 less?
- 12 A. Well, I talked to him on a regular -- like he would
13 call me, but to say that visit, no, sir. Because of my
14 jobs, you know, my jobs' hours there's times that I'm just
15 not there.
- 16 Q. Yes, ma'am.
- 17 A. Yes, sir.
- 18 Q. Did he complete high school when he was living with
19 you?
- 20 A. No, sir.
- 21 Q. Okay. Why not?
- 22 A. He didn't want to go to school.
- 23 Q. Why is that?
- 24 A. He just didn't want to go, sir. I mean --
- 25 Q. What did he do all day?

TESTIMONY OF REGINA LEE

- 1 A. What did he do all day?
- 2 Q. Yes, ma'am.
- 3 A. Well, when he was with me looking for jobs.
- 4 Q. What about when he was not with you?
- 5 A. He should have been looking for jobs. I mean, I can't
- 6 give an account for what he was doing when he was not with
- 7 me, sir.
- 8 Q. Was he just sitting around?
- 9 A. Not in my house, sir.
- 10 Q. Not when you were with him?
- 11 A. I said not in my house.
- 12 Q. Not in your house? Yes, ma'am. So this aviation
- 13 school, he wasn't pursuing that when he dropped out of high
- 14 school, right?
- 15 A. That was -- the aviation school came when he left and
- 16 went to Alabama.
- 17 Q. And that was --
- 18 A. After he received his GED.
- 19 Q. Yes, ma'am.
- 20 A. Yes, sir.
- 21 Q. And the aviation school was after he was charged with
- 22 attempted murder and attempted armed robbery, right?
- 23 A. Yes, sir.
- 24 Q. And the GED was after he was charged with attempted
- 25 murder and attempted armed robbery.

TESTIMONY OF REGINA LEE

1 A. Yes, sir. Yes, sir.

2 Q. You said Denorris worked at McDonalds and Harris
3 Teeter.

4 A. Yes, sir.

5 Q. What happened with those jobs? Why did those jobs
6 terminate?

7 A. I don't know why he was terminated or why he left
8 Harris Teeter. McDonalds is when -- he left McDonalds
9 during the time when he was supposed to meet with the
10 solicitor and his attorney and that's when he left both the
11 school and the McDonalds.

12 Q. Okay. And you know I'm a solicitor obviously.

13 A. No, I did not know.

14 Q. Would you believe me if I told you I was the solicitor
15 on his case?

16 A. If that's what you say, yes, sir.

17 Q. Yes, ma'am. And -- okay. Moving back to his school.
18 When you said he just didn't want to go, how old was he
19 then?

20 A. 16 -- no, he had to have been about 17.

21 Q. 17?

22 A. Yes, 17.

23 Q. So at least a year he wasn't going to school and was
24 looking for a job when he was with you, and when he was not
25 with you you're not sure what he was doing.

TESTIMONY OF REGINA LEE

1 A. Yes, sir.

2 Q. And were you with him most evenings or were you with
3 him mostly during the day, or how would you describe your
4 relationship with him? Were you with him during the day
5 most of the time and not the evenings, or did you guys spend
6 all of the evenings together and not the day?

7 A. It would not be all the time, no, sir.

8 Q. Yes, ma'am.

9 A. No, sir.

10 Q. And let me rephrase this question, maybe I'm just not
11 being clear. Were you with him more during the daytime or
12 more with him during the nighttime?

13 A. At night, sir.

14 Q. You were with him more during the nighttime?

15 A. When he was with me, yeah, at night when I get home,
16 yes, sir.

17 Q. What about around 2:00 a.m. most nights, were you with
18 him then?

19 A. At 2:00 a.m. in the morning, sir, I'm in bed.

20 Q. You're in bed?

21 A. Yes.

22 Q. So you're not really sure what he was doing September
23 13th at 2:00 a.m.

24 A. He was not living with me, sir.

25 Q. So you don't know if he shot or robbed or didn't shoot

TESTIMONY OF REGINA LEE

- 1 and robbed, you don't know that, do you?
- 2 A. I was not there, no, sir.
- 3 Q. Have you seen Denorris' small silver gun?
- 4 A. No, sir.
- 5 Q. You haven't seen it?
- 6 A. No, sir.
- 7 Q. How many guns does he own?
- 8 A. I don't know that he owned any, sir.
- 9 Q. Did he ever have any guns with you at your house?
- 10 A. No, sir.
- 11 Q. Have you ever seen him have a gun?
- 12 A. No, sir.
- 13 Q. And obviously as Mr. Grimes said you love your son,
- 14 right?
- 15 A. Yes, I do.
- 16 Q. And you'd do anything to protect him?
- 17 A. No, sir.
- 18 Q. You wouldn't come in here to protect him?
- 19 A. I will not lie, sir.
- 20 Q. And that's not the question, I was just asking, you
- 21 would want to protect you son, right? Do you want to
- 22 protect your son?
- 23 A. I need a little bit more clarity with that question.
- 24 Q. Your son that you love, would you want to protect him
- 25 through bad things, through good things, you want to protect

TESTIMONY OF REGINA LEE

1 you son? Not trying to be tricky, just asking.

2 A. I love my son but I will not lie, sir.

3 Q. Okay. So just like you said though, you don't know
4 what happened on September 13th.

5 A. No, I don't, no, sir, only when the officer called me,
6 that's it.

7 Q. And you don't know if he put a gun to that guy's back.

8 A. No, sir.

9 Q. And you don't know if he shot him.

10 A. No, sir.

11 Q. And you don't know if he tried to rob him.

12 A. No, sir.

13 Q. And you don't know if he did that because he was bored.

14 A. No, sir.

15 MR. YOUNG: Court's indulgence, Judge.

16 THE COURT: Take your time.

17 (Break in proceedings.)

18 MR. YOUNG: No further questions.

19 THE COURT: Mr. Grimes?

20 MR. GRIMES: May I have one moment, Your Honor?

21 THE COURT: You may.

22 MR. GRIMES: We have no further questions.

23 THE COURT: Ms. Lee, you may step down. Thank you.

24 Call your next witness.

25 MR. GRIMES: I call Ms. Brown.

TESTIMONY OF LOLITA BROWN

1 The witness, LOLITA BROWN, was first duly sworn
2 and testified as follows, on:

3 THE CLERK: Speak into this mic. and state your full
4 name and then spell your last name for the record.

5 THE WITNESS: My name is Lolita Patrice Brown, last
6 name B-r-o-w-n.

7 BY MR. GRIMES:

8 Q. Good afternoon, Ms. Brown.

9 A. Hi, how are you?

10 Q. You doing okay?

11 A. I'm fine.

12 Q. Let me ask you a few questions. How do you know
13 Denorris?

14 A. Denorris is my God-child.

15 Q. And how long have you known his mother?

16 A. 31 years.

17 Q. You guys go to high school together?

18 A. Yes.

19 Q. And how would you describe your relationship with Ms.
20 Lee?

21 A. We're best of friends.

22 Q. Now, let me ask you a few questions about your work.
23 Where do you work at?

24 A. I work for the Disability Board of Charleston County.

25 Q. And how can you worked there?

TESTIMONY OF LOLITA BROWN

- 1 A. 15, going on 16 years.
- 2 Q. And what are your duties at the disability board?
- 3 A. I provide care for mentally ill and challenged adults
- 4 and I manage homes for them.
- 5 Q. And do you have any other jobs or occupations?
- 6 A. Not at this time. I'm a pastor, a full-time pastor.
- 7 Q. And where are you a full time pastor at?
- 8 A. At Power by the Word Worship Center in North
- 9 Charleston.
- 10 Q. And what are some of your pastoral duties?
- 11 A. I counsel adults and young adults and older people, go
- 12 to visit the nursing homes, the hospital, some of everything
- 13 underneath the umbrella of a pastor.
- 14 Q. And I'll just ask you a quick question I know that will
- 15 probably come up later on. What is your opinion on somebody
- 16 who tells lies? Are you the type person who would lie?
- 17 A. No, I won't.
- 18 Q. Why is that?
- 19 A. Because it's not in me to lie and not good, it's not a
- 20 good thing. A lie is a liar and it's not good to be a liar.
- 21 Q. Okay. And did you put your hand on the Bible today?
- 22 A. Uh-huh.
- 23 Q. Now, I want to ask you just a few more questions about
- 24 your background in a little more detail. How old are you?
- 25 A. I'm 48.

TESTIMONY OF LOLITA BROWN

1 Q. Where did go to high school at?

2 A. Burke High School.

3 Q. And did you graduate from there?

4 A. No. I went through a side course when I got out of
5 high school, I didn't finish but I went to complete my high
6 school.

7 Q. And you did get at diploma?

8 A. Uh-huh.

9 THE COURT: Is that a yes?

10 A. Yes, ma'am.

11 THE COURT: I need you to say yes or no so that she can
12 write it down. Thank you.

13 A. Yes.

14 Q. And after you got your diploma, did you continue your
15 education?

16 A. I did.

17 Q. And could you tell the jury a little bit about what you
18 studied?

19 A. I studied cosmetology and also went to Trident Tech.
20 for human resources.

21 Q. And how long were you at Trident Tech. for?

22 A. For one year and a half.

23 Q. And you finished that --

24 A. No.

25 Q. -- human services program?

TESTIMONY OF LOLITA BROWN

- 1 A. No.
- 2 Q. And you finished your cosmetology program?
- 3 A. I did.
- 4 Q. And how long was that for?
- 5 A. About almost two years, almost two years.
- 6 Q. Now I want to ask you a few questions about your work
- 7 history. Okay?
- 8 A. Uh-huh.
- 9 Q. What kind of jobs have you had in the past?
- 10 A. I've done cooking, also in another agency, I used to
- 11 work for Dorchester County Agency Disability Board also.
- 12 Q. And I think you said you started cooking and working
- 13 for Dorchester County?
- 14 A. Uh-huh.
- 15 THE COURT: Is that a yes?
- 16 A. Yes. I'm sorry, yes.
- 17 Q. And then you got a job at Charleston County
- 18 Disabilities Board?
- 19 A. Yes.
- 20 Q. And what are your duties? I think -- I did ask it,
- 21 but --
- 22 A. Yes.
- 23 Q. All right, I'll skip that. When did you retain your
- 24 pastoral license?
- 25 A. Well, I was a youth pastor first and I had that license

TESTIMONY OF LOLITA BROWN

1 for four years, and I've had my pastoral license for six
2 years.

3 Q. And what do you do to get your pastoral license?

4 A. We go to different seminars, go to different classes.
5 We go on different events to see how to handle and talk to
6 people in stressful times and needful times.

7 Q. And where are you a pastor at?

8 A. At Power by the Word Worship Center in North
9 Charleston.

10 Q. And how long have you known Denorris?

11 A. Before Denorris was born.

12 Q. And how active have you been in his life?

13 A. From the day he's been born.

14 Q. And what kind of activities would you do with him?

15 A. Denorris would help me around the church when he got --

16 MR. YOUNG: Objection, 404A.

17 THE COURT: Overruled.

18 Q. And how would he help you around the church?

19 A. He would do some cleanings and help me with the young
20 adult and the little youth, have different activities for
21 the youth and he would intervene there with me with that,
22 some cleaning.

23 Q. Was he involved in the choir or any other programs?

24 A. He used to play the drums with them.

25 Q. Okay. Now, you weren't with him -- let me ask you a

TESTIMONY OF LOLITA BROWN

1 little bit about the day of the incident. You weren't with
2 him on September 13, 2010?

3 A. No, I wasn't.

4 Q. And he wasn't living with you, was he?

5 A. No, he wasn't.

6 Q. And you don't know where he was at that night, do you?

7 A. No.

8 Q. Or what he was doing?

9 A. No.

10 Q. Do you have an opinion on whether Denorris is the type
11 of person who would rob somebody?

12 A. No. This is out of character, this is not even his
13 character.

14 Q. Do you have an opinion whether he would be the type of
15 person that would shoot somebody?

16 A. No, I don't believe he would.

17 MR. GRIMES: Thank you. Please answer any questions
18 Mr. Young may have for you.

19 MR. YOUNG: Judge, may we approach?

20 THE COURT: You may.

21 (Bench conference.)

22 MR. YOUNG: I pulled his juvenile record.

23 THE COURT: Okay.

24 MR. YOUNG: And with her talking about a good kid
25 growing up, how he wouldn't shoot anybody, he is a peaceful.

TESTIMONY OF LOLITA BROWN

1 person, those are opening the door for her to be impeached
2 on something like that.

3 MR. GRIMES: I think you have to have a family court
4 order to pull a juvenile's court record, I think those are
5 sealed -- I don't know how he's obtained that first of all,
6 I think there is a statute on that.

7 THE COURT: How did you get this?

8 MR. YOUNG: My investigator pulled it. She has
9 absolutely opened the door, Judge.

10 THE COURT: I'm sorry?

11 MR. YOUNG: She's opened the door to character.

12 THE COURT: Do you have a certified copy of these
13 convictions?

14 MR. YOUNG: I don't think these are convictions when I
15 looked at his stuff.

16 MR. WHETMORE: Adjudications.

17 THE COURT: Adjudications. Do you have --

18 MR. YOUNG: Certified copy, not a certified copy but a
19 lot of them are -- like if you read some of them they'll say
20 like can I see it real quick?

21 THE COURT: Uh-huh.

22 MR. YOUNG: Prosecutor dismissed, suspended on
23 probation, that kind of stuff so I don't have the certified
24 copies. But you got three years.

25 THE COURT: What makes it any different from an adult

TESTIMONY OF LOLITA BROWN

1 conviction?

2 MR. YOUNG: What makes these different is he was just
3 young, they're juvenile.

4 THE COURT: Right. And wouldn't you have to have --
5 you can't just waive the paper, you have to have it
6 certified.

7 MR. YOUNG: I'm trying to put convictions in evidence
8 because I think if she's talking about his character I think
9 I can use that to impeach -- not put that in evidence, I
10 just want to use that for impeachment purposes, not for
11 substantive evidence.

12 MR. GRIMES: First, I think they're sealed, I don't
13 think -- I don't know how he obtained it first, and second
14 he never provided them to me, I never got updated rap
15 sheets.

16 THE COURT: It's cross. Here is my concern, the fact
17 that it is a juvenile record.

18 MR. YOUNG: I mean --

19 MR. WHETMORE: My argument would be that his defense
20 has brought up his childhood, his rosy childhood and we have
21 every right to say, no, it wasn't so good. And this is
22 where charges -- now, if he didn't want this to come out he
23 shouldn't have brought out what a good guy he was growing
24 up.

25 MR. YOUNG: I'm not going to get into the facts, I

TESTIMONY OF LOLITA BROWN

1 don't think I'm allowed to do that, but question her, are
2 you aware of this, are you aware of this.

3 MR. WHETMORE: The way we got this is the --

4 MR. YOUNG: Our office prosecuted this.

5 MR. WHETMORE: We got this because our office
6 prosecuted him as a juvenile.

7 THE COURT: Okay. I'll be happy to hear from you.

8 MR. GRIMES: Okay. They are sealed, they need a family
9 court order to unseal them. Second --

10 THE COURT: What's the purpose of family court being
11 sealed? What's the purpose of those records being sealed?

12 MR. GRIMES: To protect minors.

13 THE COURT: To protect the minors. What's the purpose
14 of family court?

15 MR. GRIMES: To rehabilitate the minor. And so that's
16 my understanding of why the records are sealed so that
17 juvenile can get a chance at rehabilitation and a fresh
18 start once he's turned it around.

19 THE COURT: So help me out, you can't use that as a
20 sword and shield, Mr. Grimes.

21 MR. GRIMES: Well, I understand that. But there are
22 certain procedures that follow -- they have to follow them.
23 Second, they never provided this to us.

24 MR. YOUNG: We did.

25 THE COURT: But it's your client's record.

TESTIMONY OF LOLITA BROWN

1 MS. EHRLICK: That rap sheet is run through DJJ, it
2 wasn't the solicitor's office that has direct access to DJJ.

3 MR. YOUNG: We prosecuted them.

4 THE COURT: You just pulled that today. All right.

5 MR. GRIMES: I mean, I'm not sure this witness even
6 testified that much about his prior care. She said he
7 played the drums, the church activities there. I didn't go
8 into --

9 THE COURT: That he's a choir boy and now you're going
10 to -- what is fundamentally impaired with -- I'm majorly
11 concerned about how you got these records, that's my major
12 concern.

13 MR. YOUNG: Judge, I don't think they were hard to get,
14 I think our office --

15 THE COURT: They are not hard for you to get because
16 you are the State, you are the government.

17 MR. YOUNG: But --

18 THE COURT: It's not hard for you to get it.

19 MR. YOUNG: Respectfully, even if it was hard for me to
20 get it I got it and if he's saying he's a good guy we can
21 say not a good guy, that's the way the rules work.

22 MR. GRIMES: I mean, I'm not sure what.

23 MS. EHRLICK: Your Honor, I'll just tell you that when
24 I tried to get somebody else's juvenile record they had to
25 get a court order to get them.

TESTIMONY OF LOLITA BROWN

1 THE COURT: Tell me what you're going to ask her.

2 MR. YOUNG: Going to ask her "You talked about him
3 being a good boy in the choir, helping out in the church,
4 right, you know, whatever. Were you aware that he had
5 probation violations in a class three misdemeanor? Were you
6 aware of a simple larceny, petty larceny? Were you aware of
7 this, aware of this, aware of this?" And then I can
8 inquire -- I'm not going to put it in evidence, not going to
9 get into substantive what exactly happened but I can inquire
10 about that. He opened the door, Judge, I believe that.

11 THE COURT: Okay. Do you need a minute to -- I'll give
12 you just a minute. Okay.

13 MR. GRIMES: Okay.

14 MR. YOUNG: Judge, I have one more issue as well. She
15 said that she never lied. Okay. I think her rap sheet, got
16 a conviction for a shoplifting in '83, but that's lying,
17 that's a voracity crime, an additional charge for fraud.
18 But for her to get up there and say, "I'm completely honest,
19 never done anything non-honest," this opens the door to her
20 conviction as well.

21 MR. GRIMES: Never said she never did anything, she
22 said, "I always tell the truth," is what she said.

23 THE COURT: I'm going to allow the conviction. You
24 asked about -- give me just a minute.

25 MR. YOUNG: And the arrest, Judge?

TESTIMONY OF LOLITA BROWN

1 THE COURT: You can ask her about it.

2 (Break in side bar proceedings.)

3 THE COURT: All right. I can find no case that says
4 there's a direct prohibition that the State has an interest
5 in cross examining, okay, that's what basically the
6 proposition is. My concern is how you got the records. And
7 so I'm going to allow you to inquire but you cannot give
8 specifics, you cannot even talk about the specific case.

9 MR. YOUNG: Yes, ma'am.

10 THE COURT: I'll note your exception for the record
11 because I note you don't think that that's the case, right?

12 MS. EHRLICK: Your Honor, we use that under Title 63
13 that portion of it covers there's a court order that's
14 required.

15 THE COURT: Child confidentiality in Sparkman was
16 contemplated and that is the reason for the confidentiality
17 is to protect the child. Once the child has shown
18 rehabilitation I argue that you have indicated that because
19 he's on trial that that waivers the confidentiality. All
20 right.

21 MR. YOUNG: Thank you, Judge.

22 THE COURT: That's my position. And it is noted in
23 Title 61.

24 MR. GRIMES: Just for the record, I think --

25 THE COURT: 63.

TESTIMONY OF LOLITA BROWN

1 MR. GRIMES: I think Sparkman is -- from what I saw
2 that was the confrontation clause where the defendant wanted
3 to cross the child as a witness.

4 THE COURT: Well, what you've done is you've placed --
5 are you all listening?

6 MR. YOUNG: Yes, ma'am, I'm listening to you.

7 THE COURT: What you've done is placed the character --
8 you placed the character of the defendant in shield.

9 MR. GRIMES: Yeah, I think that's correct. And based
10 on these arguments clear and convincing evidence under 404B
11 to show this --

12 THE COURT: I'm limiting --

13 MR. GRIMES: I just wanted to --

14 THE COURT: -- what he asks. You have presented that,
15 it's all good stuff, I'm letting the State present it.

16 MR. GRIMES: I guess I was inquiring how you
17 eliminated -- you said he could ask about --

18 THE COURT: He cannot ask about specific charges.

19 MR. YOUNG: Are you aware in '07 he was --

20 THE COURT: He was involved with --

21 MR. YOUNG: -- a simple assault and battery charge.

22 THE COURT: No facts about the case.

23 MR. YOUNG: In 2007 you're aware he was charged with --

24 THE COURT: No department of juvenile justice on this
25 date.

TESTIMONY OF LOLITA BROWN

1 MR. YOUNG: With the charges.

2 THE COURT: I'm sorry.

3 MR. YOUNG: I said I can say what the charge is, right?

4 THE COURT: No, you do not get -- I'm not letting you.

5 My concern is, Mr. Young, is how you got those records.

6 MR. YOUNG: I asked Sherry, they were run by our

7 juvenile investigator, just a rap sheet.

8 THE COURT: Mr. Grimes, that's how I'm solving the

9 issue.

10 MR. GRIMES: I just want to make sure.

11 MR. YOUNG: Just to be sure, I can say in 2007 are you

12 aware he has a simple assault and battery charge?

13 THE COURT: No. In 2007 he was involved with the

14 department of juvenile justice.

15 MR. YOUNG: So I can say that for every month and year

16 he was involved in?

17 THE COURT: I don't know what these are.

18 MR. YOUNG: The month and the year where the charges

19 were, it wasn't one time.

20 THE COURT: All right. We're breaking.

21 (End of side bar.)

22 THE COURT: Ladies and gentlemen, I tried to handle it

23 at the bench, I'm sorry, there is just a matter of law that

24 I've got to take up outside of your presence. Do not begin

25 your deliberations, do not discuss this case amongst

TESTIMONY OF LOLITA BROWN

1 yourselves. It is 5:15, I was hoping to go to at least
2 finish this witness but I would have to keep you past 6:00
3 p.m. so we're going to go ahead and let you go for the
4 evening. Please leave your note pads and pick them up.
5 Please remember all of my admonitions for the evening,
6 please be back -- there's a matter unrelated to this case
7 that I have to take up in the morning so please be back at
8 9:30 and we will begin promptly once all 12 of you are here
9 All right, sir. Have a wonderful afternoon. Thank you.

10 (The jury left the courtroom.)

11 THE COURT: Thank you, be seated. Ms. Lee, we're going
12 to have to break for the evening.

13 THE WITNESS: Ms. Brown.

14 THE COURT: Ms. Brown, I'm sorry.

15 THE WITNESS: That's okay.

16 THE COURT: Ms. Brown, we're going to break for the
17 evening so that puts you in a position that you are going to
18 have to come back in the morning.

19 THE WITNESS: Yes, ma'am.

20 THE COURT: And it also puts you in a position the,
21 rule of sequestration has been invoked, do you know what
22 that means?

23 THE WITNESS: No, I don't.

24 THE COURT: What that means is you can't talk about
25 your testimony with anybody.

TESTIMONY OF LOLITA BROWN

1 THE WITNESS: Yes, ma'am.

2 THE COURT: And I understand that you have testified
3 that you are involved as a God-parent and that you
4 apparently work with the defendant's mom.

5 THE WITNESS: Yes, ma'am.

6 THE COURT: So you cannot talk about -- and I think
7 it's just out of an abundance of caution that you just not
8 talk to her until after your testimony.

9 THE WITNESS: Yes, ma'am.

10 THE COURT: Can you do that for me?

11 THE WITNESS: Yes, ma'am.

12 THE COURT: And the first question I'm going to ask you
13 in the morning when you are under oath is if you complied
14 with my instructions just so you are prepared.

15 THE WITNESS: Yes, ma'am.

16 THE COURT: Do you have any questions?

17 THE WITNESS: No, ma'am.

18 THE COURT: And just as you can't talk to Mrs. Lee you
19 can't talk to the attorneys for the State or for the
20 defendant either.

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Any questions about that?

23 THE WITNESS: No, ma'am.

24 THE COURT: We'll start back if you can be here at 9:30
25 in the morning.

TESTIMONY OF LOLITA BROWN

1 THE WITNESS: Yes, ma'am.

2 THE COURT: We're using that clock so just adjust your
3 time piece accordingly. Okay?

4 THE WITNESS: Yes, ma'am.

5 THE COURT: Thank you, you are excused. All right,
6 Mr. Young and Mr. Grimes, I'm going to give you the evening
7 hour to review. And I have a matter that was scheduled
8 before so I just need you as close to 9:30 to be here. Over
9 the evening hour if you have any additional information to
10 present to the Court I will happy to hear from you. All
11 right.

12 MR. GRIMES: Just if I could get a copy of the document
13 that they obtained that they want to question Mrs. Brown on
14 I appreciate it.

15 MR. YOUNG: Are they up there still, Your Honor?

16 THE COURT: I have copies you have given me. Do you
17 need those?

18 MR. YOUNG: I believe I have another copy here. We
19 have a copy, Judge.

20 THE COURT: Thank you. Make sure Mr. Grimes has a
21 copy.

22 MR. YOUNG: Yes, Your Honor.

23 THE COURT: Is there anything before we break for the
24 day?

25 MR. YOUNG: Not from the State, Judge.

TESTIMONY OF LOLITA BROWN

1 THE COURT: Mr. Grimes?

2 MR. GRIMES: Nothing further, Your Honor.

3 THE COURT: Please be back here at 9:30. Thank you.

4 (Whereupon court adjourned for the evening and

5 resumed at 9:30 a.m. on October 17, 2012.

6 THE COURT: Mr. Young, if the defendant were an adult
7 which of the adjudications would be admissible to impeach
8 him under our rules?

9 MR. YOUNG: Judge, the ones that I have under the rules
10 would be a larceny we have in '08, an assault and battery in
11 '08 both of which could we prosecuted as an adult. Assault
12 and battery by student upon a school employee in '08, also
13 in '08 threatening the life of a family -- of a person or
14 family of a public official, that's also in '08, all of
15 those prosecuted as an adult. Another assault and battery
16 in '07, there's a disturbing schools as well in '07.

17 THE COURT: That carries up to three years; isn't that
18 correct, Mr. Young?

19 MR. YOUNG: Which one is that, Judge?

20 THE COURT: The disturbing schools.

21 MR. YOUNG: I'll have to check real quick, just a
22 moment.

23 MS. EHRLICK: Your Honor, I believe 90 days.

24 THE COURT: 90 days?

25 MS. EHRLICK: I believe so.

TESTIMONY OF LOLITA BROWN

1 THE COURT: There is some sort of offense that carries
2 up to three years, the potential, correct, of disturbing
3 schools, or is that the carrying of a weapon?

4 MR. WHETMORE: Judge, disturbing school is not more
5 than 90 days.

6 THE COURT: So would that will be admissible? A 90 day
7 offense would not be admissible as a conviction for an
8 adult, would it?

9 MR. YOUNG: That I believe as an adult, I mean that's
10 the --

11 THE COURT: No, no, no, I'm sorry, I wasn't clear.
12 Assuming that Mr. Hall was an adult which of these offenses
13 would be admissible or able to use as impeachments if he
14 were an adult, not that these were adult charges.

15 MR. YOUNG: Right, if he were an adult.

16 THE COURT: Definitely the larceny.

17 MR. YOUNG: Definitely the larceny. Certainly all
18 these assault and batteries, these are charges that are
19 raising character --

20 THE COURT: Okay. No. Once again you're not
21 understanding my question. Which of these if he were an
22 adult unrelated to the character issue, Mr. Young, would be
23 admissible to use as impeachment?

24 MR. WHETMORE: Judge, as if he was testifying?

25 THE COURT: Correct. Thank you, Mr. Whetmore.

TESTIMONY OF LOLITA BROWN

1 MR. YOUNG: Certainly the larceny.

2 THE COURT: Certainly the larceny.

3 MR. YOUNG: I think the assault and battery by student
4 on a school employee carries over a year.

5 THE COURT: Do you agree, Ms. Ehrlick?

6 MS. EHRLICK: Your Honor --

7 THE COURT: And I'm assuming, Ms. Ehrlick, you have
8 some expertise in the area of juvenile family law?

9 MS. EHRLICK: Your Honor, I did family court for three
10 years. As far as the petty larceny it was dismissed, he was
11 not adjudicated delinquent on that charge. I think had he
12 been adjudicated delinquent they would be able to use that
13 to impeach him because it's a crime of dishonesty.

14 THE COURT: So the petty larceny was dismissed?

15 MS. EHRLICK: It says it was dismissed on January 22,
16 2009.

17 THE COURT: All right.

18 MR. YOUNG: The petty larceny was dismissed in '08.
19 But I will tell you I did some research and talked to some
20 people in family court. I have here my end where he's pled
21 to -- all adjudicated, there's an ABHAN which as we know is
22 zero to 10. Assault and battery on school personnel.

23 THE COURT: Where is that ABHAN?

24 MR. YOUNG: I don't have it on the sheet, Your Honor,
25 but pulling his juvenile record from family court that he

TESTIMONY OF LOLITA BROWN

1 pled to there I got these -- I'm going to pass them up to
2 the Court in a moment -- additionally the threatening the
3 life of a public official also he's pled to. Aggravated --
4 or assault and battery of a high and aggravated, that's
5 another one, and a disturbing school, these are all guilty
6 pleas. And Judge, I can pass up -- I don't have a copy for
7 defense counsel, I just got these. If I may approach.

8 THE COURT: The disturbing school in '08 he pled to, or
9 the disturbing school in '07, the disturbing school in '08
10 appears that he was dismissed.

11 MR. YOUNG: I have that in '08, the one I have that he
12 pled to.

13 THE COURT: Is an offense that was committed November
14 of 2007, that he was prosecuted March of 2008.

15 MR. YOUNG: Okay.

16 THE COURT: It's also in October '08, that was
17 dismissed in January of '09.

18 MR. YOUNG: The first one you spoke of, Judge --

19 THE COURT: Okay.

20 MR. YOUNG: -- is the one that he pled to.

21 THE COURT: So you evidently have a list of convictions
22 that it's not --

23 MR. YOUNG: I'm not sure that everything is showing up
24 on the rap sheet that we passed up. I pulled the actual
25 petitions where he pled, got the --

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1 THE COURT: Let me see those.

2 MR. YOUNG: Certainly, Judge.

3 THE COURT: So Mr. Young, let's do it this way, and
4 Mr. Whetmore you are clear as to what I am asking.

5 MR. WHETMORE: Yes.

6 THE COURT: So can you ask Mr. Young, the two of you
7 tell me what it is that if he were testifying you would
8 introduce to impeach him.

9 MR. WHETMORE: We were just discussing, pretend he
10 takes the stand, what could be used against him?

11 THE COURT: Correct.

12 MR. WHETMORE: And obviously that's not what we're
13 trying to do but I understand what you're asking us to do.
14 Judge, there's a 2004 manufacture of weapons designed to
15 cause fire, fire bombs. I don't know that I have ever seen
16 that charge, I don't know what it carries to be honest with
17 you.

18 THE COURT: Ms. Ehrlick, do you know what that carries?

19 MS. EHRLICK: I don't, Your Honor, but it says it was
20 diverted to arbitration which means that is -- he would --
21 it's like PTI and would not have been convicted of that
22 charge.

23 THE COURT: So we would agree that that would be the
24 first contact that he had with family court it was 2004; is
25 that correct?

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1 MR. YOUNG: Looks like '04.

2 MR. WHETMORE: And Judge, the next thing, 2006 assault
3 and battery upon a school employee, that was dismissed.

4 THE COURT: All right, sir.

5 MR. WHETMORE: Obviously we would want to offer that as
6 character, but if he was taking the stand that would not be
7 used I wouldn't think unless he opened the door or
8 something. 2007 simple assault and battery and a disturbing
9 schools. The simple assault and battery I would assume
10 would be a 30 day offense, the disturbing schools we know
11 now is a 90 day offense. If he was testifying I wouldn't
12 imagine those could be used again unless he opened the door.
13 2007 assault and battery, disturbing schools, the assault
14 and battery was dismissed and the disturbing schools was a
15 commitment. Again, 30 day united offense, if he's being
16 impeached on the stand I would assume those couldn't be
17 used. 2008 threatening the life of a public employee. That
18 was a conviction, a commitment, I would argue that could be
19 used.

20 THE COURT: 2008 threatening the life?

21 MR. WHETMORE: Yes, ma'am. Again in 2008 a disturbing
22 schools, 90 day offense, dismissed. 2008 assault and
23 battery upon a school employee, that was a conviction, a
24 commitment, I would argue that could be used to impeach him
25 if he was testifying. There's also a 2008 simple assault

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1 and battery, typically a 30 day offense, that was a
2 conviction. 2008 larceny, that was dismissed, and a 2009
3 probation violation. That's what is on his juvenile rap
4 sheet. Obviously he has an adult rap sheet, too.

5 THE COURT: And what's on his adult rap sheet?

6 MR. YOUNG: Judge, he has a 2010 arrest for entry on
7 lands after notice, no disposition. 2010 possession of
8 marijuana, conviction there. And then this shooting, an
9 attempted armed robbery next arrest I have, then a 2011
10 failure to appear after release. Those are the charges and
11 convictions I have.

12 THE COURT: All right. And Mr. Young, now, what is it
13 that you wish to inquire of Ms. Brown?

14 MR. YOUNG: Thank you, Judge. Certainly our argument
15 starts I think yesterday was addressed that we weren't
16 allowed to have get the juvenile records. I think looking a
17 the code, 63-19-2030 also is listed is the solicitor's
18 office, that we're allowed to be -- or rather get the
19 records without a court order, we've obviously got them,
20 that's not a problem. Moving on to why and what we want to
21 get in to. She's opened the door saying that she's always
22 telling the truth, that he's not the kind of guy that would
23 commit an attempted armed robbery or attempted murder,
24 they've gone to church together. Additionally through the
25 mom she has told us about how he was a great student, had

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1 been in school, all of these are points of what his good
2 character is. We as the State under Rules of Evidence
3 404A.1 should be allowed to paint the full picture for the
4 jury, if not that's injustice, we can't let them say how
5 great of a guy he is and then us not be able to respond.
6 The rule provides for us to respond through -- under 405A,
7 specific instances of conduct, those specific instances are
8 what I passed up to you. He's had a rap sheet since '04 and
9 for them to paint him as a choirboy and then not allow us to
10 counteract that and show -- paint the full picture, that
11 just doesn't seem right, Judge. So under the rules of
12 evidence, 404A.1, and then through getting specific
13 instances 405A, we should be able to talk to him or ask her
14 if she -- and I don't want to get into the facts of those
15 arrests and I agree that we shouldn't be doing that, but I
16 want to ask her if she's telling me that he is going to
17 church and he's not the kind of guy who would do this, "are
18 you aware that in '07, you know, that he was convicted of
19 assault and battery? Are you aware in '08 he was arrested
20 for threatening the life of a public official?" Those are
21 questions that show either A, she doesn't know him, or B if
22 she does she's lying. So that's why we should be able to
23 inquire into character evidence. Additionally, Judge,
24 looking at the jury charges -- I know we're not addressing
25 that but they want a charge about good character that we

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1 certainly have an objection to say that good character --

2 THE COURT: We're not there and I haven't made a
3 determination of whether or not, that's just a charge that
4 was submitted.

5 MR. YOUNG: And I agree, Judge, I'm not addressing
6 that, if I could have just a moment to tell you why I
7 brought it up. They want to say in the jury charge that
8 good character is evidence that he's not guilty of this
9 crime so they are making this a massive issue about
10 character and for us to not be able to respond to that and
11 report, A, that's not exactly correct, he's not a choirboy,
12 he's been in trouble since '04 and we should be able to talk
13 about that. Again, I don't want to get into all the details
14 about it, but I do think that we are allowed under the rules
15 of evidence to ask her are you aware of this and she can
16 respond yes or no and that's fine but our job is done.
17 Because either, A, she doesn't know him and she isn't aware,
18 or B, she does know him and she's up there lying for him.

19 THE COURT: Ms. Ehrlick, is this your argument?

20 MS. EHRLICK: Your Honor, I'm going to argue part of it
21 and then I think Mr. Grimes is going to argue the character
22 evidence issue. I did research the juvenile records and I
23 did look at 63-19-2030 and Mr. Young is correct that he
24 would not need a court for purposes of -- for criminal
25 justice purposes to get access to his record. Specifically

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1 about the charges that they wish to introduce, the question
2 that you asked about whether or not he could impeach this
3 gentleman on the charges, I think the assault and battery on
4 school personnel would be appropriate. The threatening the
5 life of a public official, I don't know what statute he was
6 charged under but I think one of those is a felony and the
7 other is a 30 day misdemeanor. So depending on what he pled
8 to I can't say for sure what our position would be on that
9 because we don't have access to the records that they do.
10 My concern specifically about the juvenile rap sheet is that
11 if they do have access to it they didn't ever give it to us.
12 They knew character was going to be an issue that Mr. Grimes
13 was going to raise and for them to know -- I think normally
14 would have had a pretrial hearing before openings about the
15 admissibility of the crimes, they had access to it, they
16 didn't turn it over, they waited until this particular
17 witness got up on the stand. His mother testified earlier,
18 she would have been with him at these juvenile hearings and
19 I think that when they made their good fuss yesterday
20 objecting to the character evidence they should have raised
21 the issue of the juvenile adjudications at that time.

22 THE COURT: Ms. Ehrlick, you agree that the rules
23 provide for impeachment of Mr. Hall by his juvenile record.

24 MS. EHRLICK: I do, yes, completely.

25 THE COURT: So at a minimum that should have put Mr.

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1 Hall on notice that perhaps his juvenile record would be an
2 issue at some point?

3 MS. EHRLICK: I think it would put him on notice, I
4 don't know if he has a clear -- he would have had a clear
5 understanding. Having done juvenile work I think they
6 automatically assume that once they are 18 that their record
7 is sealed and that nobody would know about it. Perhaps
8 there should have been more conversations by us with him
9 about the record but I think the State should have also that
10 duty at the beginning to say, "We have this juvenile rap
11 sheet, we intend on using it if he testifies or if somebody
12 else testifies we may bring it up."

13 THE COURT: All right. Mr. Grimes?

14 MR. GRIMES: Thank you, Your Honor. Again, I apologize
15 for being late to court today.

16 THE COURT: Thank you.

17 MR. GRIMES: And I agree with a lot of what Mr. Young
18 says in principle but when we apply it to this case I think
19 he's a little off base in carefully listening to the
20 testimony that was offered. In listening to Mr. Young's
21 opening statement he certainly put Mr. Hall's character in
22 evidence saying he was lazy, laying around texting girls,
23 out there preying on people, perhaps I should have objected
24 to that, I didn't, it was opening statements, not evidence.
25 We did introduce evidence that he was working and to

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1 counteract Mr. Young's allegations that he's lazy. We did
2 not introduce any evidence showing that he was an honest
3 employee, that he was honest, flu of those, just that he had
4 worked as a youngster. We introduced evidence he went to
5 school, general background evidence, also evidence of his
6 schooling. But his mother testified that he did not finish
7 school, it came through the officers that the last grade he
8 completed was the 10th grade. Mr. Young asked why he didn't
9 finish school several times and she said he didn't want to
10 go to school, he could have asked then some kind of question
11 about was it because he was getting in trouble at school or
12 was he expelled from school but he waived that opportunity
13 when he had it. But significantly his mother never
14 testified, "Well, he was an A student, he was perfect in
15 school, or he never got in fights in school or he was always
16 on best behavior." They testified he went to church, played
17 the drums at church, volunteered at church where his
18 God-mother is, it's a family church. That's what a lot of
19 young men do. Again, neither one of the witnesses testified
20 that Mr. Hall had a reputation for being peaceful, for being
21 honest, for being trustworthy, for being nonviolent. What
22 they testified is that in their opinion he was not the type
23 of person who would go out and do an attempted armed robbery
24 or try to kill somebody. Now, if there was an allegation of
25 Mr. Hall having the weapon to show that he is violent and he

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1 may have tried to kill somebody I think that would be
2 appropriate, but an assault and battery at school is just
3 probably a fistfight between kids that. You know, simple
4 larceny is far removed from, you know, attempted armed
5 robbery. There's no allegation that he had any knives at
6 school, weapons at school, not sure what this manufacture,
7 possession article designed to cause North Charleston PD
8 to -- I'm not sure on the November 29th, 2004 arrest for it
9 looks like weapons.

10 THE COURT: Was that the one that was dismissed, Mr.
11 Young?

12 MR. YOUNG: That was diverted, I believe.

13 MR. GRIMES: It was diverted to arbitration, Your
14 Honor.

15 MR. WHETMORE: It was diverted to arbitration by the
16 solicitor's office. So possession of like a fire bomb,
17 manufacturing a fire bomb.

18 MR. GRIMES: And for all we know it may have been a
19 firecracker. I mean, my personal experience, I had one case
20 like that where a student had put together a bunch of
21 firecrackers, that was foolish. But I think, you know, we
22 never said he was a choirboy, that he was perfectly behaved
23 and that he had followed all the laws, his mother didn't
24 testify that "I've never seen him with drugs or guns." I
25 think they asked on cross if he bought weapons in the house

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1 and she said she had never seen a weapon. His mother
2 testified, you know, that he had moved out and didn't know
3 where he was at two in the morning and said it was very
4 possible he may have done this or she doesn't know what he
5 did, you know. She can't say because she wasn't there. So
6 as to the facts of the case she gave no opinion --

7 THE COURT: Well, I'm not concerned about the mother,
8 she's already testified and off the stand, I'm concerned
9 about Ms. Brown.

10 MR. GRIMES: Ms. Brown, you know, she -- I don't think
11 she testified too much about his school. She testified
12 about his involvement in the church, playing drums. Then I
13 asked her again does she have an opinion on whether he was
14 the type of person to commit these type of crimes, she said
15 no, totally out of character. We didn't ask her anything
16 again about how he behaved at school, how he was at work,
17 did he always follow the rules or anything like that. If we
18 had asked stuff like that I think Mr. Young would be correct
19 and he would be entitled to ask those questions. And if the
20 Court is inclined to go into it I think -- I'm not sure if
21 I have -- there's a 6th Circuit Case where the Court
22 suggested an appropriate remedy -- if I may approach and
23 hand it up?

24 THE COURT: You may. What's the appropriate remedy in
25 your opinion, Mr. Grimes?

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1 MR. GRIMES: Well, one precaution the Court could take
2 would be to have the witness examined in-camera to see if
3 she knows the stuff, because if this stuff is family court
4 she may not even know about it because it's confidential.

5 THE COURT: And this is United States of America vs.
6 Reece. Is there any other alternative given, Mr. Grimes, or
7 is that -- was it in-camera?

8 MR. GRIMES: I just think it was one thing to avoid,
9 you know -- if the witness knew nothing about it for
10 whatever reason then the Court may say, well, you just can't
11 go ask about it otherwise just put sort of a red herring and
12 make it overly prejudicial to the defendant, and that was
13 sort of one precaution I think the Court suggested. I don't
14 think it was followed in that case or trial counsel had ever
15 raised that issue below so it would be dicta, but it
16 suggested that the Court may and that may be something the
17 Court may want to entertain here to see what Ms. Brown
18 actually knows or doesn't know. Thank you, Your Honor.

19 THE COURT: All right. Mr. Grimes, the concern -- and
20 we addressed the concern -- my first concern yesterday was
21 whether or not the State could even be in possession of
22 those records and we have determined that they are an
23 appropriate body to have the records. Also that the rules
24 provide for impeachment of your client by his juvenile
25 record so the fact that those could be an issue at any point

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1 in this case, because as Ms. Ehrlick stated this was an
2 issue of character and everyone knew that this would be an
3 issue of character. You inquired of Ms. Brown how active
4 have you been in Mr. Hall's life and she indicated since
5 before he was even born. You inquired as to how -- if it
6 was her opinion that he could have committed these offenses
7 and she -- her response in essence was this is out of his
8 character. So clearly the Court feels that his criminal
9 history is relevant and to inquire as to what her
10 understanding of his character is. Based upon that I'm
11 going allow the following -- and this is why because I want
12 to be very careful, just because he is a juvenile I don't
13 want all of the issues to come forward, just because he's a
14 juvenile we will -- in my opinion the proper format is to
15 follow as if he were an adult and he were taking the stand
16 and what offenses would be used to impeach. What I will
17 allow as to the 2004 is a question, "Were you aware that he
18 was involved with the juvenile court?" And whatever the
19 response is you may not inquire as to the offense or
20 indicate that there was an adjudication or a conviction.
21 Any questions, Mr. Young?

22 MR. YOUNG: If you just want to keep it at that I'll do
23 it.

24 THE COURT: You may inquire as to whether or not she
25 was aware as to the 2008 threatening the life, that he was

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1 adjudicated delinquent to threatening the life of a public
2 official. You may inquire as to the 2008 assault and
3 battery on a school employee. It is my understanding that
4 all of the other offenses would not be admissible -- would
5 not be -- either they carry -- they would not be able to be
6 used as impeachment offenses, is that your understanding,
7 Mr. Young?

8 MR. YOUNG: Judge, I'd ask -- the larceny?

9 THE COURT: My understanding it was dismissed.

10 MR. YOUNG: It was dismissed, certainly I think a
11 specific instance, though, would be our argument.

12 THE COURT: I'm going to give Mr. Hall the benefit of
13 the doubt and assume that it was dismissed for a reason. I
14 can't -- we can't -- I'm not going to open that unless you
15 can tell me why it was dismissed, I think that we're going
16 far afield on the purpose of character.

17 MR. YOUNG: I don't have why it was dismissed. I do
18 have a question on the '08 threatening the life and assault
19 and battery by a student on a school employee, am I allowed
20 to talk about the incident at all? I mean, can I bring that
21 issue, "Are you aware that -- here's what happened in the
22 incident in '08?"

23 THE COURT: No.

24 MR. YOUNG: I can just talk, "Are you aware that he was
25 convicted on this offense in '08."

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1 THE COURT: And it is not a conviction. He was
2 adjudicated delinquent on the criminal charge of threatening
3 the life and then a separate on the 2008, and I didn't write
4 down dates because I had the rap sheet and now you have
5 given me something else. So you may use that specific date
6 that he was adjudicated delinquent on the criminal charge
7 of.

8 MR. YOUNG: And then the '04, "Are you aware that he
9 was involved with juvenile court in the '04?"

10 THE COURT: Correct.

11 MR. YOUNG: And then leave it at that.

12 THE COURT: Leave it at that. No mention of the
13 offense or that it was diverted.

14 MR. YOUNG: And as far as his adult record we talked
15 about -- she has again put his character in evidence, I'd
16 ask, Judge, for his adult record. We actually talked about
17 the conviction for the marijuana, I think that's appropriate
18 under the rules as well. We're asking about specific
19 instances that she knows about. I'd ask for the 2010
20 possession of marijuana come in as well, conviction.

21 THE COURT: And that was a conviction?

22 MR. YOUNG: That was a conviction.

23 THE COURT: I will allow that one. And Mr. Young, just
24 so we're clear, this is not a fishing expedition, those
25 are -- I'm narrowly limiting your inquiry to those specific

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1 instances of conduct.

2 MR. YOUNG: And Judge, one more point. I know you've
3 ruled on this yesterday, I want to make sure about Ms.
4 Brown's record, she does have that conviction. She said she
5 always tells the truth, never lies, she does have a
6 conviction for stealing, shoplifting, also has an arrest for
7 fraudulent check, and I know you ruled on yesterday to
8 inquire about that as well since she put her character
9 evidence up as well.

10 THE COURT: Right. Mr. Grimes, based upon my ruling I
11 am going to allow you a few minutes to speak with your
12 client.

13 MS. EHRLICK: Your Honor, the only thing I was going to
14 ask is if we can look at the adjudication paperwork for the
15 threatening the life of a public official to see if it was a
16 misdemeanor or a felony, because I think that may impact
17 whether it's relevant, whether or not they would be allowed
18 to use it to impeach him.

19 THE COURT: Well, there's a difference -- my initial is
20 I wanted to comb through the difference on what would be
21 impeachable and what could be used and so my ruling for Ms.
22 Brown may be different if Mr. Hall takes the stand.

23 MS. EHRLICK: So can we look at that adjudication
24 paperwork?

25 THE COURT: Let's go ahead and do that because I think

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1 you two need to use this to also advise your client about
2 his decision to testify. Mr. Young, any objection to
3 allowing Ms. Ehrlick to take that paperwork back with her
4 to -- while she is --

5 MR. YOUNG: I have one copy of that, I can make her
6 another copy, that might be easier for us. We'd like to
7 hold onto that but can I make her a copy, take five, ten
8 minutes.

9 MS. EHRLICK: I don't care how we get a copy if you
10 guys want to copy it for us.

11 (Break in proceedings.)

12 THE COURT: Before we bring in the jury from the State?

13 MR. YOUNG: No, Your Honor.

14 THE COURT: From the defendant?

15 MR. GRIMES: No, Your Honor.

16 THE COURT: Ms. Brown, if you'll come forward and take
17 your seat in the witness stand for me. Thank you. Good
18 morning, Ms. Brown, I remind that you are still under oath.
19 Do you remember the oath that you took yesterday?

20 THE WITNESS: Yes, ma'am.

21 THE COURT: And you remember what I told you my first
22 question for you would this morning?

23 THE WITNESS: Yes, ma'am. If I spoke to anyone
24 concerning the case.

25 THE COURT: And your answer to that question is?

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1 THE WITNESS: No.

2 THE COURT: All right. Thank you. Let's bring in the
3 jury.

4 (The jury returned to the courtroom.)

5 MR. GRIMES: May we approach?

6 (Bench conference.)

7 MR. GRIMES: I just wondered do we need to renew our
8 objections during the questions or is it the questions will
9 be coming out and nothing will have changed?

10 THE COURT: I think you need to preserve your
11 objection. When Mr. Young asks the question that you are
12 objecting to that you need to object.

13 MR. GRIMES: Okay. Continuing objection.

14 THE COURT: You can do that if you want to. All right.

15 MR. GRIMES: Thank you.

16 End of bench conference.)

17 THE COURT: Morning, ladies and gentlemen. Mr. Young,
18 your witness.

19 MR. YOUNG: Thank you, Judge.

20 CROSS EXAMINATION

21 BY MR. YOUNG:

22 Q. Morning, Ms. Brown.

23 A. Morning.

24 Q. What was your maiden name?

25 A. Seabrook.

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- 1 Q. Seabrook?
- 2 A. Uh-huh.
- 3 THE COURT: Is that a yes?
- 4 A. Yes.
- 5 THE COURT: Thank you.
- 6 Q. And now you're Ms. Brown?
- 7 A. Yes.
- 8 Q. Okay. When did you get married or change your name?
- 9 A. 2000.
- 10 Q. 2000?
- 11 A. Uh-huh.
- 12 Q. Did you get married?
- 13 A. Uh-huh.
- 14 THE COURT: Is that a yes?
- 15 A. Yes.
- 16 THE COURT: Thank you.
- 17 Q. And you talked about yesterday your relationship with
- 18 the defendant.
- 19 A. Yes.
- 20 Q. Can you tell the jury what that is again, what your
- 21 relationship with him is?
- 22 A. His God-mother.
- 23 Q. You're his God-mother?
- 24 A. Yes.
- 25 Q. Was does that mean to you when you're somebody's

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1 God-mother?

2 A. To help with his upbringing, to teach him values,
3 morals, whatever the parent needs me to do.

4 Q. Yes, ma'am. And you are involved in his life?

5 A. I am, yes.

6 Q. I think yesterday you talked about you have been active
7 in his life since before he was even born.

8 A. Yes.

9 Q. And I think yesterday you talked about -- I think one
10 of the first questions asked you that you said you don't
11 lie, right?

12 A. That's right.

13 Q. Would it surprise you to know that I'm holding in my
14 hand a shoplifting conviction for Ms. Lolita Patrice
15 Seabrook?

16 A. Yes. I was 17 at that time.

17 Q. Would you say stealing, is that lying?

18 A. Well, back then I did that and I'm not ashamed to say I
19 did it and I haven't done anything since then.

20 Q. Okay. So the statement that you don't lie, that wasn't
21 completely true, right?

22 A. That wasn't a lie, you didn't ask me that question. I
23 let his lawyer know that I had that when he asked me I told
24 him I had that.

25 Q. Yesterday you told him that?

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- 1 A. You didn't ask me that yesterday.
- 2 Q. That's right, I didn't speak to you yesterday.
- 3 A. Right.
- 4 Q. But I thought you said that he asked you that,
- 5 Mr. Grimes asked you that yesterday?
- 6 A. No, he didn't ask me that yesterday. But he asked me
- 7 that, if I had a conviction.
- 8 Q. So the question is when you stated you don't lie --
- 9 A. Uh-huh.
- 10 Q. -- that actually wasn't true.
- 11 A. I don't understand what you're saying why that wouldn't
- 12 be true.
- 13 Q. Well, if you have a conviction for stealing then that's
- 14 considered untruthful, right?
- 15 A. I didn't -- nobody asked me if I had a conviction, I
- 16 don't remember hearing that because I would have said I had
- 17 that.
- 18 Q. Okay. Well, let's move on.
- 19 A. Uh-huh.
- 20 Q. And obviously yesterday you talked about that you don't
- 21 lie, right?
- 22 A. Yes.
- 23 Q. We can agree to that?
- 24 A. That's right.
- 25 Q. And then would it surprise you to know that in 2006 you

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1 have an arrest for a fraudulent check?

2 A. No, I don't remember that.

3 Q. Okay.

4 A. Okay.

5 Q. But you can agree that using a fraudulent check is not
6 telling the truth either?

7 A. No. I know exactly what you're talking about. No,
8 that wasn't a fraudulent check. What happened is I wrote a
9 check for \$38 at Piggly Wiggly and when I went back to my
10 bank I had some problems with different issues with the bank
11 and I closed that account forgetting I had a check out
12 there. That was the only check that I didn't remember I had
13 that check out there.

14 Q. So you just forgot?

15 A. Forget about that check.

16 Q. But other than those situations you are telling the
17 truth?

18 A. That's all I -- yes.

19 Q. Now, the night of September 13th you weren't -- let me
20 take a step back. What would you say that the times -- are
21 you with Denorris all day, all night, or what's the time
22 that you guys spend together?

23 A. No, I'm not with Denorris all night and all day.

24 Denorris would come to church on Sunday -- first I have the
25 first building, I have a second church building now and

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1 Denorris helped me in that building at the time as I was
2 moving in that building. They helped me move a lot of
3 things in the building, him and his brother and some other
4 people helped me clean the building out and get the building
5 ready for services. But other times I would see Denorris on
6 Sunday morning.

7 Q. So it sounds like when he is with you he certainly is
8 acting as a good boy, right? Would you say that?

9 A. Yes.

10 Q. But you're not with him at 2:00 a.m.

11 A. No, I'm not.

12 Q. So you don't know when he's roaming the streets of
13 North Charleston what he's doing, do you?

14 A. When you say roaming, what are you talking about?

15 Q. Walking around.

16 A. No.

17 Q. And you don't know what he did on September 13th, do
18 you?

19 A. No.

20 Q. Okay. Because you weren't there.

21 A. I wasn't there, no.

22 Q. And you don't go out with him late at night.

23 A. No.

24 Q. So it's fair to say he could be one way with you during
25 the day being at church and a different way at night and you

TESTIMONY OF LOLITA BROWN

- 1 wouldn't even know, would you?
- 2 A. No.
- 3 Q. Okay. Have you seen the silver gun that he owns?
- 4 A. No.
- 5 Q. You haven't seen it?
- 6 A. No. I don't know anything about a gun, no.
- 7 Q. Have you seen any other guns that he owns?
- 8 A. No.
- 9 Q. And it's fair to say you love your God-son obviously,
- 10 right?
- 11 A. I do.
- 12 Q. And do anything to protect him?
- 13 A. I won't lie for him but I love him.
- 14 Q. And I believe that you testified yesterday that you
- 15 were active in his life, right?
- 16 A. Yes.
- 17 Q. So you would know -- you know him, that's fair to say,
- 18 right? You know Denorris?
- 19 A. I know Denorris, yes.
- 20 Q. You know him. You testified that he had been to church
- 21 with you.
- 22 A. Uh-huh.
- 23 Q. And you testified -- the last question that Mr. Grimes
- 24 asked you is how he wouldn't commit these crimes.
- 25 A. Yes.

TESTIMONY OF LOLITA BROWN

1 Q. The attempted murder; isn't that right?

2 A. Yes.

3 Q. And the attempted armed robbery?

4 A. Alleged, yes.

5 Q. Okay. You're saying that he's the kind of guy that
6 wouldn't do this, right?

7 A. Yes. In my knowledge, yes.

8 Q. And you said you know him, right?

9 A. Yes.

10 Q. Okay. Would it surprise you or are you aware that in
11 2004 he was involved with the juvenile court system?

12 MR. GRIMES: Objection, Your Honor. Renew our
13 objections under Rule 404B -- 3B and 404, and Rule 405,
14 improper impeachment.

15 MR. YOUNG: Overruled based upon my previous rulings
16 and give you a continuing objection to this line of
17 questioning. Thank you.

18 MR. GRIMES: Thank you, Your Honor.

19 MR. YOUNG: Thank you, Judge.

20 Q. Ms. Brown, I'll repeat the question.

21 A. Yes.

22 Q. You stated that you know him, correct?

23 A. Yes.

24 Q. So would it surprise you to know that in 2004 he was
25 involved with the juvenile court system?

TESTIMONY OF LOLITA BROWN

1 A. It don't surprise me of that question, no. I do know
2 that.

3 Q. You did know that?

4 A. Uh-huh.

5 Q. So when you're saying he's not the kind of guy that
6 would commit an armed robbery or an attempted murder you
7 know about his involvement with the court system.

8 A. Well, I was 16 and I did something when I was 16.

9 Q. Uh-huh.

10 A. 17, I'm sorry.

11 Q. So if you knew that why would you come in here and say
12 that he's not involved with this when you know that he's
13 been involved?

14 A. These are two different entities.

15 MR. GRIMES: Objection, Your Honor. I think totally
16 he's mischaracterizing or mischaracterized Mr. Hall's
17 involvement.

18 MR. YOUNG: I'll move on, Your Honor.

19 THE COURT: All right. Sustained. Rephrase and move
20 on Mr. Young.

21 Q. And Ms. Brown, your testimony earlier was that you've
22 been with Denorris since before he was born, right?

23 A. Yes.

24 Q. Okay. And so would it surprise you -- I'm sorry, let
25 me rephrase that. You were aware -- I'm sorry, let me

TESTIMONY OF LOLITA BROWN

1 rephrase that. At the end of yesterday you stated that he's
2 not the kind of person that would be involved in attempted
3 armed robbery and attempted murder, right?

4 A. That's what I said, yes.

5 Q. So would it surprise you or are you aware that he was
6 adjudicated a delinquent on the criminal charge of threats,
7 threatening the life of a person or family of a public
8 employee on May 20th -- or, I'm sorry, March 20th, 2008?

9 A. Yes, and I went to the school with them. It didn't
10 happen that way, that was stated on the paper but it didn't
11 happen that way.

12 Q. Okay. But you're aware he was adjudicated delinquent
13 on that.

14 A. Yes.

15 Q. Okay. So you're aware of that charge as well?

16 A. I'm aware that something happened, I didn't know a
17 charge was with that but I knew something happened at the
18 school.

19 Q. And yet you continue to testify that he wouldn't do
20 this act that we're here on today.

21 A. Yes. Because it didn't happen the way the paper said
22 it happened. When I went there it didn't happen that way.

23 Q. And again talking about your testimony yesterday you
24 talked about he wouldn't be the kind of person that would
25 commit these crimes, the attempted murder and attempted

TESTIMONY OF LOLITA BROWN

1 armed robbery, right?

2 A. Yes.

3 Q. Would it surprise you to know that on October 2nd, 2008
4 he was adjudicated delinquent on the criminal charge of
5 assault, assault and battery by a student on a school
6 employee?

7 A. I don't remember that one. I don't remember knowing
8 about that one.

9 Q. When you say that one, why do you say that?

10 A. Because the other ones you just asked me about.

11 Q. So it does or does not surprise you to know about that?

12 A. It surprises me now.

13 Q. Surprises you. So maybe it's safe to say you don't
14 really know the full Denorris, do you?

15 A. I believe I do.

16 Q. Okay. And you know he's had these on his record but
17 yet you said that he's not the kind of guy that would commit
18 a crime.

19 A. I know my children but I don't know everything they
20 have done.

21 Q. You don't know everything about him and I guess that's
22 the point. And just to finish up, are you aware that Mr.
23 Hall was convicted in 2010 on a possession of marijuana
24 charge?

25 A. No.

TESTIMONY OF LOLITA BROWN

1 Q. You weren't aware of that?

2 A. No, I can't recall.

3 Q. So your testimony is you know him. Would it be fair to
4 say or characterize it that you know Denorris as one person
5 but you don't know the full Denorris?

6 A. Still going to say what I say, I know Denorris.

7 Q. But you don't know about those.

8 A. No.

9 Q. And you weren't there that night on September 13th --

10 A. No, I wasn't.

11 Q. -- when the man got shot, were you?

12 A. No, I wasn't.

13 Q. You would agree that the people who committed this
14 crime should be prosecuted.

15 A. Yes.

16 Q. And you would agree that the people who committed this
17 crime should go to jail.

18 A. Yes.

19 Q. And you agree that's kind of injustice, people get shot
20 and they can't stay out on our streets; isn't that right?

21 A. Yes.

22 MR. YOUNG: Thank you. I have no further questions.

23 THE COURT: Mr. Grimes?

24 MR. GRIMES: Thank you, Your Honor.

25 REDIRECT EXAMINATION

TESTIMONY OF LOLITA BROWN

1 BY MR. GRIMES:

2 Q. Morning, Ms. Brown.

3 A. Good morning.

4 Q. I was going to ask you a few questions about some of
5 the trouble that Denorris had in school. He didn't finish
6 high school, did he?

7 A. Not at the regular high school, he went to -- he did
8 get his high school diploma.

9 Q. And he got his GED.

10 A. Yes, he did.

11 Q. And are these adjudications that Mr. Hall had in family
12 court, do you know if any of them involved weapons?

13 A. No, never heard anything about a weapon.

14 Q. No shooting?

15 MR. YOUNG: I object, I'd ask to approach.

16 THE COURT: You may.

17 (Bench conference was held.)

18 MR. YOUNG: Judge, I objected on this. I think that
19 he's opened the door to these facts if she says she doesn't
20 know and I can talk about. One of these cases involve a
21 power drill that he put to some kid's chest trying to drill
22 a hole and to say they didn't involve weapons
23 mischaracterizes that.

24 MR. GRIMES: I didn't get any of that stuff. I mean,
25 saying a power drill, we haven't seen one thing about that.

TESTIMONY OF LOLITA BROWN

1 THE COURT: Mr. Grimes, you can't -- I thought I made
2 it clear that the solicitor couldn't do it so that we keep
3 it just the conviction and name of the charge, but now --

4 MR. GRIMES: The name of the charge kind of -- it's so
5 inflammatory it could be any number of things. I mean, I
6 can withdraw the question if that's.

7 THE COURT: We can strike. I think we're getting far
8 beyond the point, just -- if you ask that question she's
9 going to get to answer.

10 MR. GRIMES: Well, I guess I assumed since he provided
11 underlying stuff.

12 MR. YOUNG: Additionally, Judge, I think on my
13 objection one thing we talked about that called -- a weapon
14 that is the weapons charge that he was saying didn't involve
15 weapons.

16 MR. GRIMES: I said adjudications. That was an
17 adjudication, it was diverted.

18 THE COURT: It is adjudicated, the adjudication was
19 diverted, right?

20 MR. YOUNG: That's right.

21 THE COURT: If we get Mr. Grimes to -- you can withdraw
22 the question and I will strike it from the jury.

23 MR. GRIMES: Right.

24 THE COURT: I will note your exception, Mr. Young.

25 (End of bench conference.)

TESTIMONY OF LOLITA BROWN

1 THE COURT: Mr. Grimes?

2 MR. GRIMES: Your Honor, I'll withdraw that question.

3 THE COURT: Ladies and gentlemen, I have determined
4 that that question based upon the State's objection is not
5 for your conversation, you must not consider that question
6 or any implication to be drawn from that question at all so
7 please strike it from your notes. You must not discuss that
8 question in any form in the jury room. Mr. Foreman, you are
9 in charge of making sure that the question and any inference
10 that may or may not be drawn from it are not discussed in
11 the jury room. You may continue.

12 BY MR. GRIMES:

13 Q. Now, I believe you testified that you weren't aware of
14 the marijuana conviction?

15 A. That's right.

16 Q. Did Mr. Hall ever tell you about that?

17 A. No, he didn't.

18 Q. And that was when he was considered an adult.

19 A. Yes.

20 Q. And you wouldn't have been in court with him.

21 A. Would I go to court with him?

22 Q. Well, you weren't in court with him.

23 A. No.

24 MR. GRIMES: Thank you. I have no further questions,
25 Your Honor.

TESTIMONY OF SHAUN PATRICK

1 THE COURT: Mr. Young?

2 MR. YOUNG: No questions.

3 THE COURT: You may step town. Thank you. Call your
4 next witness.

5 MR. GRIMES: We call Detective Patrick.

6 THE COURT: If you need to stand at any time feel free.
7 Thank you.

8 THE WITNESS: Yes, ma'am, thank you.

9 The witness, SHAUN PATRICK, was first duly
10 sworn and testified as follows, on:

11 THE CLERK: Please state your full name and spell your
12 last name for the record.

13 THE WITNESS: Shaun patrick, P-a-t-r-i-c-k.

14 DIRECT EXAMINATION

15 BY MR. GRIMES:

16 Q. Good morning, Detective Patrick.

17 A. Morning.

18 Q. Good to see you again. Somebody said you had some back
19 surgery.

20 A. Hip.

21 Q. Hip?

22 A. Hip replacement, yes, sir.

23 Q. Are you doing all right?

24 A. So-so, I've seen better days.

25 Q. I imagine you have. Now, I want to talk to you about

TESTIMONY OF SHAUN PATRICK

1 the incident in this case, the shooting of September 13,
2 2010. Do you recall being involved in the investigation of
3 this case?

4 A. Yeah.

5 Q. Briefly tell the jury what your role was in this
6 investigation.

7 A. To assist the case agent, Detective Evans, in reference
8 to investigating the case.

9 Q. And as the case agent he's the one in charge kind of
10 any delegating who to do what and collect all the evidence
11 and get the case ready for trial.

12 A. Yes, sir.

13 Q. And I think one of your duties was to interview Mr.
14 Thomas?

15 A. Mr. Thomas?

16 Q. Yes, sir?

17 A. Yes.

18 Q. And have you had much experience interviewing witnesses
19 or obtaining statements from witnesses?

20 A. Yes. I've got experience taking statements from
21 witnesses, yes.

22 Q. And can you tell the jury a little bit about your
23 background, I guess what cases you were investigating at
24 that time? Was it violent crimes or narcotics?

25 A. Yes. During the time it was violent crimes, anything

TESTIMONY OF SHAUN PATRICK

1 involving a persons in shootings, robbery, stabbings,
2 assaults such as that.

3 Q. And so you would interview victims of crimes, people
4 who had been shot, stabbed?

5 A. Yes, I have.

6 Q. And you have interviewed people at the hospital before?

7 A. Yes.

8 Q. And when you go to interview somebody if they don't
9 appear capable that they'll give an accurate statement, do
10 you go forward with the statement or do you wait?

11 A. I usually wait if they are incapacitated.

12 Q. If someone is under the influence of medication or
13 drugs and not able to give a clear statement, would you go
14 forward with that interview?

15 A. Yeah. You could take a preliminary statement and then
16 go back and take another if need-be.

17 Q. And so if someone is groggy and they kind of give you a
18 little bit of information then you might come back a week
19 later and followup once they are recovered?

20 A. It really all depends how thorough the statement is
21 when you talk to them and take the statement.

22 Q. And if you've got a good thorough restatement, would
23 you go back for a followup interview?

24 A. Not usually, no.

25 Q. And if there was any problems with conducting an

TESTIMONY OF SHAUN PATRICK

1 interview, would you make a note of that in any supplemental
2 reports you might be preparing?

3 A. Correct.

4 Q. An did you prepare a report in this case?

5 A. A supplemental report?

6 Q. Yes.

7 A. No.

8 Q. You didn't?

9 A. No.

10 Q. If I show you something on that, would that refresh
11 your memory?

12 A. Yes. I haven't had a chance to review anything.

13 Q. I show you what's been marked Defendant's Exhibit 7.

14 Does that refresh your memory as to whether you prepared a
15 supplemental report?

16 A. Yes, I did.

17 Q. And that was about two years ago.

18 A. Yes, sir.

19 Q. And you've had a lot of cases since then.

20 A. Yes, sir.

21 Q. And I imagine with your recent surgery it probably has
22 maybe distracted you a little bit, too?

23 A. Oh yeah.

24 Q. Now, in your statement did you notice any problems in
25 taking Mr. Thomas?

TESTIMONY OF SHAUN PATRICK

1 A. I'm sorry.

2 Q. In your supplemental report, did you make any notations
3 about obtaining or having any problems obtaining a statement
4 from Mr. Thomas?

5 A. No, nothing noted.

6 Q. Okay. And when you interviewed him and took a
7 statement from him, were you able to get a full and accurate
8 report from him?

9 A. Yes. I obtained a full statement from him.

10 Q. And as far as you can tell was it accurate?

11 A. Yes, as far as I could tell.

12 Q. And based on any subsequent investigation did find out
13 it may have been inaccurate in any way?

14 A. Not to my knowledge, I can't testify to that.

15 Q. Do you ever reinterview Mr. Thomas?

16 A. I did not, no.

17 Q. Did you ever show any photographic lineups to anybody?

18 A. I did not.

19 Q. Were you asked to or were you just asked to take a
20 statement?

21 A. I don't recall if I was asked to or not but I know I
22 didn't show him any. As far as I remember I didn't show him
23 any lineups or any photographs.

24 Q. And you did interview him at MUSC?

25 A. Yes.

TESTIMONY OF SHAUN PATRICK

1 Q. And do you recall if he was under any medication at
2 that time or anything that would affect his ability to
3 recall what happened?

4 A. I do not recall, I assume so. He had just been
5 recently shot and was in the hospital so I assume he was on
6 some medication or sedation.

7 Q. And even though he was under medication he was able to
8 give a full and accurate statement?

9 A. At the time, yes.

10 Q. And you didn't note any problems of that in your
11 report, did you?

12 A. No.

13 MR. GRIMES: Thank you. Please answer any questions
14 Mr. Young may have for you.

15 THE COURT: Mr. Young?

16 MR. WHETMORE: I'm cross-examining this witness, Judge.

17 THE COURT: Thank you.

18 CROSS-EXAMINATION

19 BY MR. WHETMORE:

20 Q. Detective Patrick, again, I'm sorry for bringing you
21 here and sorry about your hip. You did interview the victim
22 at MUSC.

23 A. Yes.

24 Q. He was out of the ER at this point.

25 A. Yes, I believe so.

TESTIMONY OF SHAUN PATRICK

- 1 Q. Did you know his status?
- 2 A. I did not.
- 3 Q. When you met him he was in a bed, hospital bed?
- 4 A. Yes.
- 5 Q. He was recovering, correct?
- 6 A. Correct.
- 7 Q. Obviously probably under some pain.
- 8 A. Yes.
- 9 Q. You don't know anything about his medication.
- 10 A. No.
- 11 Q. But in your opinion just based on what you know from
- 12 dealing with people he was coherent enough to make a
- 13 statement.
- 14 A. Yes.
- 15 Q. Describe for us just how that took place.
- 16 A. As far as I recall, you know, I entered the room, spoke
- 17 to him, explained why I was there, what I was there to
- 18 investigate, then just asked him to give me an idea of what
- 19 happened briefly, went back, took a written statement, read
- 20 it back to him and made sure it was somewhat accurate to the
- 21 best of his knowledge and remembrance at that time.
- 22 Q. So it appears as though this is written by Detective
- 23 Patrick so he would have been speaking and you were taking
- 24 down what he was speaking?
- 25 A. That's correct.

TESTIMONY OF SHAUN PATRICK

1 Q. He was comfortable laying down speaking with you.

2 A. Yes.

3 Q. Didn't appear to have any problems?

4 A. No, sir.

5 Q. And you didn't do a lineup.

6 A. No.

7 Q. Correct. Do you have any reason about why you didn't
8 or why that wasn't pursued?

9 A. At that time I don't believe a suspect was developed, I
10 may be wrong in saying that. We didn't have a lot to show
11 at that time, otherwise I believe we would have.

12 Q. Do you know if after this incident the victim left the
13 area, moved out of here?

14 A. Yeah, I believe -- I think so.

15 Q. Okay. Would that have made it difficult for you to
16 have located him to do a lineup?

17 A. That's right.

18 Q. Have you had any contact with the victim since going to
19 MUSC and talking to him about what happened to him, about he
20 was shot?

21 A. I have not.

22 Q. So you haven't been involved in any of the meetings
23 that our office has had with him where he's taken the time
24 to think about this incident and discussed it.

25 A. I have not.

TESTIMONY OF SHAUN PATRICK

1 Q. Haven't taken any more statements from him, correct?

2 A. I have not.

3 Q. And certainly you were in bed recovering yourself when
4 he testified?

5 A. Right.

6 MR. WHETMORE: I don't have any further questions,
7 Judge.

8 THE COURT: Mr. Grimes?

9 MR. GRIMES: Just a couple followup questions, Your
10 Honor.

11 REDIRECT EXAMINATION

12 BY MR. GRIMES:

13 Q. You said you read -- that you took statement from -- I
14 guess you wrote the statement for Mr. Thomas and read it
15 back to him?

16 A. Yes.

17 Q. And you testified it was somewhat accurate -- to make
18 sure it was somewhat accurate.

19 A. Yes.

20 Q. And at the bottom of statement it has a section there
21 that says the statement is true and correct to the best of
22 my knowledge.

23 A. Yes.

24 Q. And not whether it is somewhat accurate.

25 A. Yeah, I guess you're right, you could say that.

TESTIMONY OF SHAUN PATRICK

1 Q. And would be important to get as many details as you
2 can about the shooters?

3 A. Uh-huh.

4 Q. Especially since a suspect hadn't been developed.

5 A. Yes. As best we can at the time under the
6 circumstances.

7 MR. GRIMES: All right. Thank you.

8 THE COURT: Recross?

9 RECROSS EXAMINATION

10 MR. WHETMORE: Thank you, Judge.

11 BY MR. WHETMORE:

12 Q. Detective Patrick, the portion that Mr. Grimes was
13 reading, that is the witness, in this case the victim,
14 saying that the statement is true.

15 A. Right.

16 Q. At that time had you done any investigation that lead
17 you to be able to determine whether it was true or not?

18 A. No.

19 Q. You're going basically on what he was saying.

20 A. Right. It was real early in the investigation so I
21 didn't have anything to say otherwise at the time when I
22 took the statement.

23 Q. And he signed it saying that he gave you a true
24 statement.

25 A. That's correct.

TESTIMONY OF SHAUN PATRICK

1 Q. How long is the statement?

2 A. I don't remember how long the statement was.

3 Q. Do you have it up there?

4 A. I do not.

5 Q. Would it surprise you that it's a page and a half?

6 A. No.

7 Q. Pretty short statement?

8 A. Yes.

9 Q. You got from him as much detail as he was able to
10 provide at the time?

11 A. That's correct.

12 Q. Given the setting?

13 A. That's correct.

14 Q. Given his injuries?

15 A. Correct.

16 MR. WHETMORE: I don't have any further questions.

17 THE COURT: May this witness be excused?

18 MR. WHETMORE: Yes, Your Honor.

19 MR. GRIMES: Yes, your Honor.

20 THE COURT: You may step down. Thank you. Call your
21 witness.

22 MR. GRIMES: We may have a matter of law or -- if we
23 could approach.

24 MR. YOUNG: All right.

25 (The following side bar was reported.)

MOTIONS

1 MR. GRIMES: Mr. Hall is not going to testify, I don't
2 know if you need to advise him.

3 THE COURT: We'll put that on the record, that you are
4 going to rest all right. Let me do that.

5 MR. YOUNG: I would love to have some time over lunch
6 to get my close together.

7 THE COURT: Do what?

8 MR. YOUNG: I would love to have --

9 THE COURT: Do you have any requests?

10 MR. YOUNG: I don't think I have any.

11 THE COURT: Are you ready for your closing?

12 MR. GRIMES: Yes, ma'am.

13 THE COURT: Are you ready.

14 MR. YOUNG: I've been working on his cross.

15 (End of side bar.)

16 THE COURT: Ladies and gentlemen, there's a matter of
17 law that I must take up outside of your presence. Do not
18 begin your deliberations, do not discuss this case while you
19 are out. Please rise for the jury.

20 (The jury left the courtroom.)

21 THE COURT: Thank you. Be seated. Mr. Hall, please
22 rise. I remind you that you're still under oath. We have
23 now reached the stage in the trial where you need to make a
24 decision whether or not you will testify. Did you have an
25 opportunity to discuss with your attorneys or with whomever

MOTIONS

1 whether or not you should testify?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Have you reached a decision?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Do you need any additional time to meet
6 with either Mr. Grimes or Ms. Ehrlick or both to make that
7 decision?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: What is your decision?

10 THE DEFENDANT: I decided not to testify.

11 THE COURT: All right. Thank you. Mr. Grimes, have
12 you had enough time to meet with your client to go over his
13 decision to testify or not testify?

14 MR. GRIMES: Yes, ma'am, we have.

15 THE COURT: All right. Thank you. Do you have any
16 additional witnesses?

17 MR. GRIMES: No, ma'am.

18 THE COURT: All right. Thank you, you may have a seat.
19 Does the State have any rebuttal witnesses?

20 MR. YOUNG: No, Your Honor.

21 THE COURT: Mr. Grimes, any motions or matters?

22 MR. GRIMES: Yes, Your Honor. We would again renew our
23 motions for a directed verdict based upon the grounds we
24 argued before, and in addition based upon the testimony of
25 two witnesses of good character, that he's not the kind of

MOTIONS

1 person that would do this. Thank you, Your Honor.

2 THE COURT: Any additional argument, Mr. Young?

3 MR. YOUNG: We rest on our previous argument, Judge.

4 THE COURT: There has been nothing presented in the
5 defendant's case that would indicate to the Court that I
6 need to change my ruling as to the motion for directed
7 verdict and stand by my original rulings on the motion for
8 directed verdict and as to all my other motions. Thank you.
9 Anything further, Mr. Grimes?

10 MR. GRIMES: Just, I guess your charges, like to go
11 over those now. Based upon Mr. Hall's statement we would
12 request a lesser-included charge of larceny since he took
13 the cigarette so that would be -- the jury may believe that
14 he took the cigarette and wasn't involved in the case and
15 therefore I believe a lesser-included charge of larceny
16 would be warranted.

17 THE COURT: Let me hear, too, from the State as to the
18 lesser-included of larceny.

19 MR. YOUNG: Judge, I don't think its appropriate in
20 this case. There's evidence of a gun, got shot, he was
21 robbed, the victim talked about that. There's no stealing,
22 they had a gun on him, had the cigarette, that was the
23 testimony from the victim so I don't think larceny is
24 appropriate.

25 THE COURT: What was the testimony of the victim, Mr.

MOTIONS

1 Grimes, as to the cigarette?

2 MR. GRIMES: I believe the victim testified he gave the
3 person the cigarette. But, you know, we look for the
4 existence of evidence, not sort of the weight and obviously
5 there's a conflict in testimony. But Mr. Hall's statement
6 which the State introduced said he took the cigarette and
7 that certainly the jury can find that was larceny.

8 THE COURT: But how -- even assuming that that --
9 wouldn't I have to look to intent? The victim gave
10 something -- the cigarette wasn't taken away, I mean, the
11 State didn't allege that a cigarette was taken.

12 MR. GRIMES: No, they didn't. But there's still
13 evidence in the record that shows the cigarette was taken
14 and that's the question, whether there's any evidence in the
15 record that would support a charge is the standard for
16 instruction on a lesser-included. There's plenty of
17 evidence Mr. Hall did not have a weapon, that it was Mr.
18 Smith that did the shooting and that Mr. Hall was merely
19 present. He does say he approached the victim, took the
20 cigarette, gave it to Mr. Smith, walked away and Mr. Smith
21 started following the victim and then Mr. Hall went back to
22 find out what going on and all of the sudden Mr. Smith
23 started shooting. So I think when he said he took the
24 cigarette that is testimony obviously but there is enough
25 there that if -- the jury can believe Mr. Hall was merely

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1 present but find that he did take the cigarette and
2 therefore he could be guilty of larceny.

3 THE COURT: I'm declining based upon the cigarette
4 issue to charge larceny based upon the victim's testimony.
5 I don't know that you can steal something that was given to
6 you. Note your exception for the record.

7 MR. GRIMES: We also request a lesser-included charge
8 of attempted strong armed robbery. I think the jury could
9 find that Mr. Hall in his statement and other evidence in
10 the case did not have a weapon, did not act in the hand of
11 one, hand of all but nevertheless did try today take
12 something from Mr. Thomas without the use of a weapon.

13 THE COURT: Mr. Young?

14 MR. YOUNG: Thank you, Judge. Attempted strong armed
15 robbery is not appropriate in this case. What we have here
16 is an attempted armed robbery where he reaches to grab the
17 wallet, the beer bottle is what Mr. Smith said the victim
18 said, the victim says he tried to reach in my pocket and
19 grab my wallet, at this point when he's doing this and
20 pulling away he said he's drawing down on him and got a gun
21 on him so it's all in one act here. We're not talking about
22 strong armed and then pointing and presenting charge, this
23 is all one act, an attempted armed robbery that therefore we
24 think that attempted strong arm is not appropriate,
25 certainly attempted armed robbery is appropriate and that's

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1 what we believe it is, Judge.

2 THE COURT: Mr. Grimes, be happy to hear from you.

3 MR. GRIMES: What we have when you look at all of the
4 evidence the State could find it was an attempted strong
5 armed robbery. We have Mr. Hall's statements saying that he
6 approached him and asked for a cigarette, the victim's
7 statement is the person grabbed his arm, went through his
8 pockets, then he sort of felt a gun to his back and that
9 could be Mr. Smith with a gun, and as Mr. Smith said on his
10 jail tapes and admitted in cross examination and in his
11 statement to the police that D. J. was not arguing with him,
12 that he just kind of freaked out whatever the reason, either
13 the man was approaching him, he thought D. J. was trying to
14 set him up and therefore he just kind of out of the blue
15 shot Mr. Thomas. And you have separate events, maybe an
16 attempted strong armed robbery gone wrong, and then Mr.
17 Smith freaking out, overreacting, however you want to
18 characterize it trying to kill Mr. Thomas by shooting at
19 him.

20 MR. YOUNG: Judge, can I respond?

21 THE COURT: You may.

22 MR. YOUNG: Even if you don't believe that the
23 defendant had a gun, which we certainly allege that he did,
24 this defendant here in front of us, Smith had a gun and he's
25 admitted he had a gun, holding the gun, he pointed it at the

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1 victim, therefore you have a hand of one, hand of all
2 situation where you are guilty of attempted armed robbery,
3 trying to steal this man's wallet when certainly one guy
4 definitely had a gun, we certainly believe it was both but
5 if for some reason they didn't believe that still an armed
6 robbery through the hand of one, hand of all.

7 THE COURT: At what point does the victim testify that
8 he saw the gun?

9 MR. YOUNG: I think the way that I understand it is
10 that the defendant I think asked him for a cigarette, he
11 gives him the cigarette, that's when this defendant reached
12 in trying to grab in his pocket and the wallet, I think the
13 defendant -- the victim is -- it's all one act -- turning to
14 kind of get away from this guy is what I understand is when
15 this defendant has that silver gun pointed at him and that's
16 when Smith said "shoot his B. a-s-s." At that point Smith
17 pulls his gun, they have two guns on him and they start
18 firing.

19 THE COURT: All right. Mr. Grimes, what is your
20 recollection of the testimony of the victim when the time
21 that this gun was first seen? Because you would agree that
22 that would be a crucial element of the distinction between
23 strong arm and armed robbery.

24 MR. GRIMES: I would agree that -- I do recall -- I
25 think I may be getting mixed up a little bit in the

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1 statement, but I think there was evidence that he was sort
2 of turning around and sort of caught a glimpse of the gun
3 and he said it was a small silver gun.

4 THE COURT: Any other charges? I'm going to need to
5 review the testimony of the victim.

6 MR. YOUNG: I would ask the hand of one charge as well.

7 THE COURT: Hold on, let's let Mr. Grimes and then I'll
8 allow you. Mr. Grimes?

9 MR. GRIMES: We would also ask for the lesser-included
10 charge of assault and battery high and aggravated nature,
11 assuming the State's position is correct about Mr. Hall
12 being the shooter. We have to infer there was malice.
13 There's no -- I think there's an inference that can be drawn
14 from the use of a weapon and perhaps some of the comments
15 that were made out there that can be equally -- it is not
16 presumptive malice and therefore assault and battery of a
17 high and aggravated nature is an appropriate charge. Also
18 assault and battery first degree because you have assault
19 and battery that caused serious bodily injury undoubtedly
20 that Mr. Thomas suffered and that's a lesser-included
21 charge. The jury could find he didn't act with malice and I
22 think both the ABHAN and assault and battery first degree
23 charges would be appropriate.

24 THE COURT: Mr. Young?

25 MR. YOUNG: Thank you, Judge. Obviously a charge of

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1 attempted murder, the facts have indicated this was an
2 attempted murder, malice certainly can be inferred with the
3 use of a deadly weapon. I can tell you as well we had a
4 doctor testify, he talked if this guy did not come to see
5 him in the ER he would have died, I'm pretty sure almost
6 verbatim was what he said, he was on his way to death and he
7 saved him. So it's certainly a very serious charge and we
8 submit that it is an attempted murder. It's certainly not
9 an ABHAN or an A and B first, we would ask you to stay with
10 the charge of attempted murder. Through the testimony
11 you've heard from the doctor as well as how these guys --
12 the whole incident went down and the victim's testimony.

13 THE COURT: All right. Mr. Grimes, anything else?

14 MR. GRIMES: Yes, Your Honor. We would ask for a
15 charge of mere presence.

16 THE COURT: It will be included.

17 MR. GRIMES: I think we --

18 THE COURT: Hand of one is also included.

19 MR. GRIMES: We would object to that charge, Your
20 Honor, on the basis the State's theory that has evolved
21 through the trial was that Mr. Hall was the principal, he
22 was the shooter, that he was the robber. Mr. Smith said he
23 stayed back, wasn't even involved in the robbery although he
24 pled to it, then he finally shot as -- kind of panicked for
25 no reason. There's no evidence it was preplanned, going out

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1 to rob anybody and they joined together for this. And given
2 the State's theory that Mr. Hall is the shooter then I think
3 that's principal by itself and the mere hand of one, hand of
4 all would not apply in this case. If the State stuck with
5 their original theory that Mr. Smith was the shooter and Mr.
6 Hall was there helping him the hand of one, hand of all
7 would apply, but they changed theories in their trial and
8 therefore I think they've lost -- they're not entitled to
9 the charge hand of one, hand of all.

10 MR. YOUNG: All right. Anything else, Mr. Grimes?

11 MR. GRIMES: I think we also had another request too
12 about the testimony of a witness provides evidence against
13 the State for personal advantage hoping for lenient
14 treatment must be examined and made by the jury in greater
15 care and testimony of an ordinary witness.

16 THE COURT: I'll mark these as Court's Exhibit 1 as to
17 the charge that were handed up. Your request to charge
18 number two is encompassed in my ordinary credibility charge.

19 MR. GRIMES: We would ask for a charge on good
20 character.

21 THE COURT: I have included not this charge of good
22 character but I have included a good character charge.

23 MR. YOUNG: Judge, I'd object to a good character
24 charge in its entirety, I don't think that's appropriate
25 here, we've showed certainly that it was a bad character.

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1 If you're going to talk about good character I think also we
2 should talk about bad character.

3 THE COURT: Your objection is noted for the record.

4 Thank you.

5 MR. GRIMES: And we also have asked for a charge of --
6 I think Ms. Ehrlick emailed it to the clerk this morning,
7 your clerk this morning an additional set of jury charges.

8 THE COURT: Yes. I have five requests of charge.

9 MR. GRIMES: We ask for a charge for identification.

10 THE COURT: Okay. I will charge identification, I am
11 not going to charge the entirety of what you have charged.

12 MR. GRIMES: Thank you, Your Honor.

13 MR. YOUNG: I think a standard charge on identification
14 is appropriate.

15 THE COURT: That's what I'm charging, Mr. Young. Thank
16 you.

17 MR. YOUNG: Okay.

18 MR. GRIMES: I think request to charge number five
19 would be appropriate.

20 MR. YOUNG: I certainly object to number five coming
21 in, I don't think that is appropriate at all. We ask you to
22 charge the standard charge.

23 THE COURT: Anything other than the ones you have --

24 MR. GRIMES: If the Court does charge on the hand of
25 one, hand of all we ask that charge number six be charged.

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1 I'll hand that up.

2 THE COURT: Mr. Young?

3 MR. YOUNG: Judge, I object to this charge. It has
4 already been covered with the mere presence charge you're
5 including and just ask for the standard charge, I don't
6 think this is appropriate.

7 THE COURT: This is encompassed in my hand of one, hand
8 of all and this will again go in Court's 1 as a packet.

9 MR. GRIMES: Your Honor, I think we would ask for a
10 limited instruction there to go over our charge about the
11 defendant's adjudications that.

12 THE COURT: It is included.

13 MR. GRIMES: Thank you, Your Honor. I don't think we
14 have any other charges apart from the ones we handed up.

15 THE COURT: State requesting any other charges?

16 MR. YOUNG: Judge, just the hand of one, hand of all,
17 we're asking that you stick to the standard charges.

18 THE COURT: And Mr. Grimes, how long do you need to
19 prepare for your closing. Are you ready?

20 MR. GRIMES: I think we're fairly ready if I could do
21 it in five minutes at the most.

22 THE COURT: Mr. Young, 15 minutes?

23 MR. YOUNG: If you're asking me, Judge, I would ask to
24 have a lunch break to take a look at it.

25 THE COURT: It's 11:15, a little early for lunch.

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1 MR. YOUNG: I certainly understand that. That's my
2 request.

3 THE COURT: All right. 15 minutes. How long are you
4 requesting, Mr. Young?

5 MR. YOUNG: Maybe 30 minutes. Judge I would -- I think
6 we ask to open on the law and then I guess Mr. Grimes would
7 close.

8 MR. GRIMES: And, Your Honor, just one other thing, we
9 would ask the State to open in full and then any reply he
10 has to anything we've argued for a couple reasons. First at
11 the public defender conference I think Judge Few kind of
12 asked -- he said he always would do that when it was
13 requested and I think it would I think -- under the
14 Constitution it violates Mr. Hall's equal protection rights
15 because you've got a similarly situated client who does not
16 put any evidence in, does not call witnesses gets last
17 closing, and we have for someone who does put in evidence
18 essentially being punished for exercising his right to
19 present a defense. So equal protection, Judge Few's
20 comments at the public defender's conference we believe the
21 State should open in full, I argue, and then the State can
22 make a reply.

23 THE COURT: Define for me what you mean open in full,
24 Mr. Grimes, so we can all be on the same page.

25 MR. GRIMES: They have to give a full closing argument,

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1 not just open on the law and say talk to you later, talk
2 about why they believe the jury should convict Mr. Hall and
3 make all of their arguments there in their initial argument.
4 And then I respond and then if I bring something up like,
5 well, why didn't they test for DNA, then he can come back
6 and say the reason I didn't test for DNA is we didn't get
7 the pants, or there was no need for us to test for DNA
8 because we had two statements and bring it up in reply. I
9 think that's essentially how it's done in federal court.

10 THE COURT: We are not in federal court, are we, Mr.
11 Grimes?

12 MR. GRIMES: But we are under the same constitution so
13 I think that's the way it should be handled.

14 THE COURT: The Constitution lets the States do what
15 they want to do, don't they, within certain --

16 MR. GRIMES: Within certain limits.

17 THE COURT: I'm sorry, Mr. Grimes, we're not here to
18 have a constitutional debate. Mr. Young?

19 MR. YOUNG: I have spoke to my cocounsel, what we would
20 like to do is have the final close, encompass it at all one
21 time, final close to not open on the law. We are entitled
22 to because they have put in evidence.

23 THE COURT: Mr. Grimes, do you object to the final
24 close?

25 MR. GRIMES: Yes, Your Honor, I think they should open

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1 in full.

2 THE COURT: And tell me, do you have a case that I can
3 review that says that they must do that?

4 MR. GRIMES: No, Your Honor.

5 THE COURT: Or some rule?

6 MR. GRIMES: No, Your Honor, I don't.

7 THE COURT: So you're waiving first close, Mr. Young?

8 MR. YOUNG: Yes, Judge, we would like final close.

9 THE COURT: So you're waiving your first close.

10 MR. YOUNG: That's right. Yes, Judge. Yes, Your
11 Honor, waiving the closing on the law part, I'm sorry.

12 (Break in proceedings.)

13 THE COURT: Based upon my review of the testimony I'm
14 declining to charge any lesser-included based upon the
15 testimony that has been presented, note your objection for
16 the record, Mr. Grimes. I have the verdict form so we'll --
17 you all can -- after I release the jury for lunch have a
18 look at the verdict forms and then I can give you an hour
19 for lunch. Let's bring in the jury.

20 (The jury returned to the courtroom.)

21 THE COURT: Thank you be seated. Mr. Grimes?

22 MR. GRIMES: At this time the defense would rest.

23 THE COURT: Ladies and gentlemen, you have now heard
24 all of the testimony that will be admitted in this case and
25 received into evidence all the exhibits that are a part of

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1 the record in this case, you will have all of the exhibits
2 that have been made a part of the record in this case in the
3 jury room with you. Ladies and gentlemen, I know it's a
4 little early but just trying to schedule as best as I can,
5 so instead of having you wait it's an appropriate time for
6 us to go ahead and take a lunch break and when you return
7 you will hear closing arguments on behalf of counsel and I
8 will instruct you on the law applicable to this case.

9 Ladies and gentlemen, I know that now you think you've heard
10 all of the evidence in this case and you may start deciding
11 some issues, you are not allowed to think about any issue or
12 decide any issues in this case. I have not instructed you
13 on the law applicable to this case so do not begin any sort
14 of deliberations either with yourselves or with anyone else.
15 You may not discuss this case with anyone and that does
16 include your fellow jurors. You will be allowed, of course,
17 to leave the courthouse and you may not do any independent
18 investigation regarding this case. Please be back in your
19 jury room at 12:30 and we will begin once all 13 of you are
20 there. Ladies and gentlemen, I know that it is a little
21 early for most of us for lunch and I apologize for that, I
22 just think it's best to allow you to go to lunch and come
23 back and we'll do closing arguments and I will instruct you
24 on the law. Have a wonderful lunch and I'll see you back.
25 Thank you. Please rise for the jury.

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1 The jury left the courtroom.)

2 THE COURT: Thank you, be seated. Come look at the
3 verdict form. Anything before we break for lunch?

4 MR. YOUNG: Not from the State, Judge.

5 MR. GRIMES: No, Your Honor.

6 THE COURT: Thank you.

7 (Break in proceedings.)

8 THE COURT: Thank you. Please be back at 12:25 so that
9 everything is in order and we can get started promptly.
10 Thank you. We're at ease.

11 (A lunch break was taken.)

12 THE COURT: Anything before we bring in the jury from
13 the State.

14 MR. YOUNG: That will special verdict form I might want
15 to address that.

16 THE COURT: We'll address it when and if it becomes
17 applicable.

18 MR. GRIMES: Thank you, Your Honor. I think you asked
19 me during the oral argument about my -- I was asking the
20 State to the open on full if I had any case law or not.

21 THE COURT: Right. I already ruled but I do appreciate
22 and I have researched the issue. I already ruled on that
23 but do appreciate getting the information.

24 MR. GRIMES: Just want to incorporate that memo for the
25 record.

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1 THE COURT: I do not have it with me.

2 MR. GRIMES: I can provide it after.

3 THE COURT: I can print it, it's in my office and I can
4 print it and that will be Court's 2.

5 MR. GRIMES: Thank you, Your Honor.

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

7 (The jury returned to the courtroom.)

8 THE COURT: Thank you, please be seated. Ladies and
9 gentlemen, as I indicated to you we've reached the stage of
10 the trial where you will hear closing arguments on behalf of
11 the parties. Just as I indicated to you in their opening
12 statements what was contained in opening statements is not
13 evidence, neither is what is contained in closing arguments,
14 it is merely the contention of the parties as to what the
15 evidence has shown. Please give your strict attention and
16 after closing arguments I will instruct you on the law
17 applicable to this case, and then you will retire to
18 consider your verdict. Mr. Young?

19 MR. YOUNG: Is defense going first, Your Honor?

20 THE COURT: Are you waiving?

21 MR. YOUNG: Yes, Your Honor.

22 THE COURT: Thank you. Mr. Grimes?

23 MR. GRIMES: Thank you, Your Honor. May it please the
24 Court?

25 THE COURT: Yes, sir.

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1 MR. GRIMES: Good afternoon, everybody. We all know
2 why we are all here, this is a very serious matter and on
3 behalf of Denorris, his mother Regina, his God-mother Ms.
4 Brown, and his attorneys, I'm here to ask you to find him
5 innocent of this charges because he was simply in the wrong
6 place at the wrong time with the wrong person. Now, in some
7 ways this case is very simple. We know what happened.
8 Mr. Thomas was walking down Spruill Avenue and got shot,
9 suffered two bullet wounds, caused a very serious injury and
10 but for the life saving efforts of doctors at MUSC he could
11 have very well passed away. And we know that Denorris did
12 not do this, that part is also very simple. And how do we
13 know that? First we have the words of Mr. Thomas, what he
14 told Detective Patrick. He told Detective Patrick that it
15 was the taller man rather than the shorter person who came
16 up to him and had the gun and asked for the cigarette. And
17 he told you it was only one gun and he heard two shots,
18 that's what he told Detective Patrick when he was
19 interviewed at MUSC. And then we heard Denorris' statement,
20 the one he told Detective Evans. And he was very
21 cooperative, and he essentially said the same thing, one
22 man, Herman Smith, with the gun, he's the one that did the
23 shooting, he's the one that tried to get the bag. And we
24 know they believed Mr. Hall, Detective Evans swore out
25 warrants for Mr. Smith based upon that, and their theory was

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1 one gun, one shooter. And Mr. Smith himself tells you that,
2 he told that to Detective Hill, Detective Jourdan when he
3 was interviewed on September 18th after his first set of
4 lies were disproven. And then in a phone call to his family
5 and friends where he had no reason to lie, wasn't trying to
6 protect any friends or do anything, he told them that he'd
7 come clean, that he was the shooter, that he thought
8 Mr. Thomas was coming at him, that he was acting in
9 self-defense, that Denorris was trying to set him up, that
10 he didn't trust Denorris, we heard all that. That's why
11 this case is so simple. We know who the guilty person is,
12 it's Herman Smith. The State, however, has complicated this
13 case by changing its theories from one gun and one shooter
14 to two shooters and two guns. Instead of investigating Mr.
15 Hall's allegations that he was merely present, and Judge
16 Harrington will charge you what that means, to be merely
17 present, the State is trying to get a conviction on Mr. Hall
18 and send him away to prison. We do not dispute, we know
19 that Denorris was out there on Spruill Avenue at 2:00 in the
20 morning, he told that to Detective Evans, he was truthful
21 and honest with Detective Evans and he told him he was going
22 to the Three Dollar Lounge as everybody heard is right there
23 sort of at that corner. And it may have been a foolish
24 decision for him to be out at 2:00 in the morning going to a
25 bar when he's 18 years old, but who of us who have been to

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1 college or high school haven't done foolish things in
2 college at a fraternity party, at a hazing or after a high
3 school football game, gone out with your buddies on done
4 something? Who of us don't have children and children make
5 mistakes and do foolish things, and sometimes they hang out
6 with the wrong people and Mr. Hall certainly was hanging out
7 with the wrong person, Mr. Smith. Now, Mr. Thomas is
8 probably the best evidence we have it was Herman Smith that
9 tried to rob and kill him. He testified he had a vivid
10 picture of what happened that night and he told Detective
11 Patrick it was the taller person. And it's undisputed that
12 Brandon is about six feet tall -- excuse me, Herman Smith is
13 about six feet tall and that Denorris is anywhere from
14 five-six to five-eight. And Mr. Thomas testified he gave a
15 statement two years ago, he was in the hospital, may have
16 not been a hundred percent right on it, you can understand
17 that. We also heard from Dr. Eriksson how the next day he
18 said he gave informed consent to Dr. Lee for the follow-up
19 surgery on the lung, or not surgery, procedure. We heard
20 from Detective Patrick. And ask yourselves, why did we have
21 to call Detective Patrick when the State has the burden of
22 proof? Why didn't the State call Detective Patrick and tell
23 you about the interview process? And Detective Patrick
24 said -- he came in and told you how he does his interview,
25 he kind of gets a preliminary, finds out what's going on and

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1 what he needs to know and gets a statement. If that person
2 is not able to give a statement either he'll come back and
3 then try to get the best he can and go from there. What he
4 testified to is that he would make some type of notes in his
5 report if the person he was interviewing was unable for any
6 reason to give a good statement, and Detective Patrick
7 testified there were no notes in his report about Mr. Thomas
8 being unable to give a statement. The State may make much
9 of it that he was in the hospital undoubtedly on some type
10 of pain medication and other medication, but we know from
11 the initial incident report, this is after Mr. Thomas was
12 able to walk back in his place, Horizon Village from Spruill
13 Avenue and talk to officers, call 911, talk to Detective
14 Patrick a week later, but the only description he could give
15 to Detective Evans said a general description, to young
16 black males who were thin with short hair. And why is he
17 only able to give that description? Very simple, he
18 testified it happened quickly, it was extremely stressful,
19 he wasn't worried about height or trying to get details, he
20 was just worried about getting away. Anyone would be
21 worried about getting away when you have someone shooting at
22 you. And the prosecutor will also argue this is more about
23 being at the wrong place at the wrong time, and he's going
24 to rely on Mr. Thomas' testimony that it was Denorris who
25 tried to rob him and was the boy who tried to shoot him.

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1 But the circumstances of this identification could show that
2 Mr. Thomas is protecting Mr. Smith or he's just not able to
3 know who did this, and when he sees the only person in the
4 courtroom who could fit the description he's going to say
5 that was him. And I was talking to Detective Evans during
6 the trial, we discussed a lot of issues concerning the
7 reliability of eyewitness' identifications. Detective Evans
8 is very honest with everybody and said that eyewitnesses can
9 make mistakes, he's had that happen in his own cases and
10 that's one reason why the Innocence Project has so many
11 exonerations. That's another reason why we read the
12 newspapers about people being released after wrongful
13 convictions, and our own common sense shows that people make
14 mistakes when they are watching stuff. I'm not sure how
15 many of you are sports fans, but if anyone kept up with the
16 lockout of referees in football may remember the
17 Packers/Seahawks and that pass interference call, the replay
18 shows a whole bunch of problems with that call. The referee
19 is right there, another one is there and neither of them
20 made the right call and even President Obama commented on
21 it. And I'm sure everyone has their own every day
22 experience where you see something you think is there and
23 it's not there and that's where the phrase your mind plays
24 tricks on you comes in. And because of some problems with
25 eyewitness identifications the North Charleston Police

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1 Department has certain procedures in place on how to conduct
2 identifications. Just because you have a show-off
3 identification that could be very suggestive. For example,
4 they arrest somebody, have them in the police car and they
5 bring the victim by and say, "Do you see the person who
6 robbed you?" And they pull the guy out of the car in
7 handcuffs and stand him right there for you, who else would
8 you pick out? That's very suggestive. So North Charleston
9 doesn't do it that way unless there is maybe some officer
10 safety issue and the guy has to be in handcuffs. And they
11 have certain precautions that they use, they give warnings
12 to the witness and have independent administrators help with
13 identification. And when they do photo lineups, they used
14 to do a six person lineup all at once, now do sequential
15 lineups, because studies have shown when you have this
16 simultaneous six person lineup people will look at it and
17 try to compare the person in that picture to the person who
18 looks -- most resembles the person who committed the crime,
19 and when you have the sequential lineup you eliminate that
20 comparison and those identifications are more reliable, and
21 you heard Detective Evans say they don't use physical
22 lineups anymore. And when I was discussing a little bit
23 more with Detective Evans about comparing show-off
24 identification out there on the street to in-court
25 identification if I recall correctly I think he initially

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1 said there was comparisons or similarities, and then when I
2 asked some follow-up questions I think he kind of
3 backtracked a little bit, but he is right, there are
4 differences. At a show-up identification there has been no
5 arrest made, someone is in detention. During an in-court
6 identification you have an arrest, you have the Court do an
7 arraignment in front of the jury as you saw. You have the
8 defendant introduce himself to the jury or through his
9 counsel. You have a jury selection and the Judge asks a lot
10 of questions about the case, whether anyone has been the
11 victim of a crime or knows the defendant. And then you have
12 opening statements where the prosecutor gets up, walks over
13 and tells everyone who should be picked out by saying this
14 person is guilty and makes a big show about it. And unlike
15 most other witnesses, South Carolina law allows the case
16 officer and the victim to be in court through all of the
17 proceedings. And a show-off of identification you are not
18 in a police car, supposed to be out of it, and in an
19 in-court identification you are at the defense table. At a
20 show-up identification you can have some police officers
21 around, in the in-court identification we have a couple of
22 deputies around, a couple lawyers around, my client. At a
23 show-up identification you have an independent
24 administrator, in-court identification you have a prosecutor
25 who is trying to get a conviction, you have his assistant

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1 with him who is doing his best to help him, you have his
2 paralegal who is helping him. You have the victim's
3 advocate who has been communicating with victim for who
4 knows how long, telling them what's going on with the case,
5 who the suspects are, what the status of the case is and you
6 have their investigator. Show-up identification you have
7 admonitions or warnings that are given or precautions that
8 are taken. In-court identification, I don't recall any
9 warnings being given by Mr. Young to the witness for Mr.
10 Young to take any precautions to ensure reliable
11 identification. At a show-up identification you generally
12 have a general description and make sure the person fits it
13 before you go grab someone off the street and have them show
14 up for the police. In this case you have the description of
15 two young black males who were thin and had short hair. And
16 when Mr. Young goes, "Mr. Thomas, do you see the person who
17 shot you in the courtroom?" Mr. Thomas in the witness chair
18 looks out about the court, there's only one person in this
19 courtroom who is even close to the description of a young
20 black male, thin with short hair, it's an easy answer (sic)
21 to have to answer, almost like an open book exam. But they
22 could have made it a multiple choice examine. They had Mr.
23 Smith in the courtroom, didn't hear any evidence or any
24 testimony that they ever showed a picture of Mr. Smith to
25 Mr. Thomas to see if he would have identified him as being

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1 the shooter. Why not? We know Mr. Smith admitted to
2 shooting, we know he's the taller one, we know that he had
3 the closer cropped hair yet they didn't call Mr. Smith until
4 after Mr. Thomas testified, never showed him, never showed
5 Mr. Thomas any photographic lineups, not even a single
6 photographic lineup. Now, I can't answer the question of
7 why Mr. Thomas seems so assured that Denorris is the person
8 who tried to rob him and shoot him, it may be a
9 psychological need for closure, it may be for two years the
10 victim's advocate or even the investigator or Mr. Whetmore
11 and Mr. Young have been telling him that Denorris is guilty
12 and that's why he testified he could have been shot by both
13 of them. Now, I'm not saying Mr. Thomas is lying and I
14 don't want anyone to think that. I think we all recognize
15 that people can have a sincere belief but be wrong, and his
16 testimony on some points illustrates this. I want to show
17 you what's been marked State's Exhibit 4. Now, on
18 cross-examination when I was talking with Mr. Thomas I was
19 asking him, "Well, where was the shooting at, where were the
20 shooters?" And he testified it was all about right here
21 where they were, and he was sort of in here, or maybe it was
22 a little bit up here, but he said it was on this side of the
23 railroad tracks. Well, we know that's incorrect, but I
24 asked him the question, I said, "Well, is there any way
25 anyone shoots here in the bank parking lot?" And he said,

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1 "No." And the video shows it was in the bank parking lot
2 where Mr. Smith was shooting at Mr. Thomas, but he seemed a
3 hundred percent certain that they were about right here.
4 It's really irrelevant where he was shot at, it's not
5 someone arguing defense accept maybe Mr. Smith and he gave
6 that up when he pled guilty, but where he shot at is really
7 irrelevant to the matter. But it just shows he has this
8 firm belief that he was shot here but he's wrong, not saying
9 he was lying about that. He has this same firm belief that
10 Denorris was the person who shot him. I think simply he is
11 wrong about that just because he's so focused on getting
12 away, he was in an extremely stressful situation, it
13 happened quickly. But yet although he testified he had a
14 vivid picture of this, he didn't really give any detailed
15 description of Denorris or Mr. Smith. Well, you know, the
16 only other description he gave was that one person was
17 taller and that's an easy description to give and that
18 person is Mr. Smith. Now I want to talk a little bit about
19 Mr. Smith. And not like Mr. Thomas, I want to be equally
20 clear that the evidence in this case shows that Mr. Smith
21 has lied to you especially about Denorris' actions on
22 September 13, 2010. I think he lied throughout his
23 testimony. The first question I asked him his response was
24 probably a lie, "Are you an honest man? Yes, I am." I
25 asked him a series of questions of what makes a honest man

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1 and he failed every one of those. Told you he wasn't a
2 convicted felon. Now, maybe because he's young and thought
3 maybe he wasn't a felon because he hadn't been sentenced
4 yet, I'm not sure, maybe give him a pass on that. But then
5 he tells you he's not on house arrest and I give him the
6 order and I say, "Are you sure about that? Do you want to
7 refresh your memory?" He had a chance read it, review it
8 and what did that order say -- excuse me, and then he still
9 said he wasn't under house arrest, we know what the order
10 said and you will have it back there, he was on house
11 arrest. Now, Mr. Young made much of it that he wasn't at
12 the hearing but his attorney was, his attorney certainly --
13 any competent attorney would tell their clients about
14 something like that but he kind of blamed it on -- Mr. Smith
15 blamed it on the bondsman, said the bondsman didn't tell me
16 this or the bondsman didn't tell me that. And how do we
17 know Mr. Smith was lying about the robbery? Well, the first
18 thing that jumped out at me was I asked him a little bit
19 about the robbery happened and when he talked to Mr. Young
20 he said "Denorris tried to snatch Mr. Thomas's bag." Well,
21 did Mr. Thomas say anything about anybody trying to snatch
22 his bag? About someone going through his pockets he talked
23 about. Now, Mr. Smith had all of these reports that you've
24 heard about and statements that have been referenced and
25 he's had two years to study this case and to get his story

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1 straight, kind of make the jigsaw puzzle fit the way Mr.
2 Young wants it to fit, that's why he changed his story from
3 him having a gun that was an automatic to a gun that was a
4 revolver. That's why he changed his story from he thought
5 D. J. was setting him up to D. J. was sort of the mastermind
6 out there planning this. But in addition to that I think
7 the limited physical evidence that we have contradicts his
8 testimony. The shell casings, for example, they're found
9 near the bank. Now, you know, over 12 hours had passed
10 since the shooting so there was probably some movement of
11 the shell casings, if those are the actual shell casings.
12 But he's saying that he is kind of standing back and they're
13 right around here shooting and he's over here shooting a
14 revolver, there should be no shell casings around here.
15 Shell casings should be over here where the shooting
16 happened. The police didn't find any shell casings here.
17 Now, perhaps the State would argue since 12 hours passed
18 they all got moved over this way. But we've heard officers
19 walking up and down this area, didn't find anything that
20 night. Now, I know it's sort of limited physical evidence
21 we have, some time passed, the shell casings are certainly
22 closer to where Mr. Smith -- we know Mr. Smith was shooting
23 than they are to where he says Ms. Hall was shooting. Now,
24 Mr. Smith, again, I want to talk a little bit more about
25 him, couple points I want to highlight about his testimony.

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1 His attitude towards the victim was better to be safe than
2 sorry as to why he did the shooting. He said he would do
3 anything to get out of trouble. He said on telephone calls
4 that his instinct was to shoot first, think later, and he
5 was trying to throw the officers off by lying, lie to them,
6 lie to anybody. He knows the details of the gun because it
7 was his gun, he was the shooter. Well it was a .25 caliber
8 that was actually shot he knows what it was because it was
9 his gun that he threw away, or perhaps he got his girlfriend
10 to hide it for him and that's the friend who he's trying to
11 protect. And his motivation to testify seemed to be all
12 over the place. In some prior testimony he said, "Do the
13 crime you got to do the time, you know, if I get 50 so be
14 it." Well, if that's the case, why wasn't he sentenced
15 September 27th when he pled guilty and then come back here
16 and tell you what happened? Because he's looking for a
17 deal, looking for a promise. His definition of promise may
18 be something different than Mr. Young's definition of
19 promise or your definition of promise. You heard him say on
20 the jail tapes or admitted saying on the jail tapes he got
21 10 because he cooperated. He's looking for anything, time
22 served, he wouldn't turn that down, you know, kind of like
23 anyone would do that. That was his -- he acted just like he
24 didn't seem to care. And he knows his demeanor during
25 trial, I mean, he was standing up here in the witness stand.

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1 Where was he staring at the whole time and who was he trying
2 to intimidate? He was like this the whole time during his
3 trial during breaks, when walking in and out of the
4 courtroom. Why is that? Because he is trying to get back
5 at Denorris. Denorris told the truth and gave the police
6 his name. Had Denorris not told the truth and given them his
7 name he would probably still be out there in North
8 Charleston robbing and shooting people. Now he's going to
9 go up the road to go to prison for some time and trying to
10 cut out that time and if he can take Denorris down with him
11 he's going to do that. I think he said -- I'll give you one
12 thing he said, two knuckleheads causing trouble, I'll agree
13 with that, he's certainly a knucklehead. You heard a little
14 bit about Mr. Hall's character, he was going to school and
15 undoubtedly had some trouble in school. But I know I had my
16 share of trouble in school but back then they didn't call
17 the police. It was Coach Carr that coached defense for
18 Summerville and I got in a fight at school and I had to go
19 get my five licks, and I can still remember that and after
20 that no more fights in school, we took it off school
21 grounds. But, you know, after recent events at other
22 schools, you know, almost any little thing you get in
23 trouble at school. The State talks about his possession of
24 marijuana. Well, no one got up here and said Denorris was
25 an angel, said, you know, he went to school, was working,

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1 trying to further his education by going to college even
2 after this charge, lived with his father part of the time in
3 Alabama, come back here. You know, how many people in
4 college haven't smoked marijuana? President Clinton smoked
5 marijuana, or inhaled. Everyone has their feelings on that,
6 especially in the political season, but just because someone
7 has a conviction for marijuana doesn't make them someone who
8 goes out there and robs and kills people. Just because
9 someone you get in an argument at school with a teacher
10 doesn't make you a killer. And we know the State does have
11 a reasonable doubt about Mr. Thomas' testimony because if
12 they didn't they would never call Mr. Smith as a witness.
13 And why would they call an admitted liar, a convicted felon
14 to try to bolster Mr. Thomas' testimony? This goes to show
15 they will go to any extent to do anything just to get a
16 conviction, rather than seeking justice they are asking you
17 to find someone guilty based upon the testimony of a liar
18 and a felon. They agreed to make a deal with the devil
19 essentially to get a conviction on Denorris. That may work
20 in other countries but that's not how our country is founded
21 upon, it's not the State's duty just to get convictions,
22 it's to do justice. Justice would have been sending Mr.
23 Smith to prison for 50 years, not trying to send Mr. Hall to
24 prison. So I want to talk a little bit about some of the
25 Judge's jury charges a bit. The Judge is going is to tell

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1 you the State has the burden of proof, it has to convince
2 each and every one of you beyond a reasonable doubt that
3 Denorris was guilty of these offenses. Rather than
4 investigating whether Denorris was at the wrong place at the
5 wrong time with the wrong person the police just assumed he
6 was guilty because in his statement he talked about Mr.
7 Smith saying, "I'm going to go rob this guy if I see him
8 because he robbed me before." So all of a sudden we have
9 this mastery plan to go out and do robberies. Mr. Hall's
10 statement said why they were out and where they were going,
11 because of what happened. There's nothing in that statement
12 that shows he made any type of plans to go rob somebody or
13 try to kill somebody. The State's going to argue kind of
14 what Mr. Smith said, the hand of one is the hand of all.
15 Mr. Smith himself contradicts that when he's talking to his
16 family on the phone and his statement to the police. You
17 heard him admit on cross-examination that he thought D. J.
18 was trying to set him up and that he did not trust him.
19 What kind of partnership is that? What kind of plan is
20 that? That's not a conspiracy, that's two guys going out,
21 going to a club, trying to meet some girls, hanging out with
22 their friends. Denorris goes up, asks for a cigarette, gets
23 the cigarette, gives it to Mr. Smith and he starts to walk
24 away. Mr. Smith sees Ms. Thomas' bag, well, "I want a
25 cigarette and a drink, I want what's in that bag," and he

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1 starts going for the bag. Mr. Hall comes back to see what's
2 going on and the next thing you know Mr. Smith starts
3 shooting, because I think Mr. Hall said in his statement he
4 was kind of running and shooting and it's shown on video.
5 All of that is consistent with Denorris being in the wrong
6 place at the wrong time with certainly the wrong person who
7 just if someone steps at you in the wrong way gives them a
8 bad look, doesn't give them the bag starts to shoot the
9 person. That's not hand of one, hand of all, that's just
10 someone going off. Everyone has that crazy friend who does
11 something stupid and that's exactly what happened. Denorris
12 may be guilty of having stupid crazy friends but that
13 doesn't make him guilty of attempted murder or attempted
14 armed robbery. And we know he shouldn't have been out that
15 night, that's why your mom tells you nothing good happens
16 after 12:00 and unfortunately kids have to learn the lard
17 way sometimes, they go out and do foolish things, doing
18 something foolish with girls, maybe going to smoke
19 marijuana. Who knows? But there's nothing out there
20 showing that he's out there planning to rob somebody. Now,
21 we heard a lot about some search warrants that Detective
22 Evans did. And Mr. Young is asking witnesses, "Well, where
23 is the gun? How many guns did you see?" Well, don't you
24 think if they would have found some guns in these search
25 warrants they would have brought them to Court? There's no

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1 indication that Mr. Hall threw a gun away or disposed of it
2 anyway, so why wouldn't it be at his place if he was the
3 shooter? Well, it was because he wasn't the shooter and he
4 didn't have a gun, that's why there's no gun they found to
5 introduce. The State just assumes that Mr. Hall is guilty,
6 that's why they conducted no meaningful investigation after
7 they arrested Mr. Smith and got his statement, after that
8 they interviewed Mr. Thomas once, they didn't go out there
9 looking for any witnesses who may have been out there.
10 There's Detective Evans' statement that a 911 call of at
11 least one witness who was kind of helping Mr. Thomas, no one
12 got his name, number to see what he -- took a statement from
13 him. They get DNA from Denorris, he voluntarily gives it to
14 them because he's cooperating with them. And they don't get
15 the clothes? I bet if this would have been a murder case
16 they would have gotten the clothes, you don't hear those
17 excuses in those cases. Then they make up an excuse about
18 we can't contact Mr. Thomas because he moved out of town.
19 Well, when did he move? Was it the day after he got out of
20 the hospital? Was it a month after? Was it six months
21 after? Obviously they had contact with him to have him down
22 for court. We've heard about -- I think Mr. Whetmore asked
23 Detective Patrick did he sit in on all the meetings they
24 had. Why wasn't any follow-up done in the two years since
25 this happened? Because the State is just ignoring

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1 presumption of innocence, they're assuming that Denorris is
2 guilty. Just assuming the hand of one, hand of all, if you
3 don't believe he's the shooter you have to find him guilty
4 under the hand of one, hand of all because his partner
5 admitted to doing the shooting. You know, in the beginning
6 of the case Mr. Young said Mr. Hall was lazy, he was sitting
7 around the house texting girls. Don't have any text
8 messages, we know he's working, he's going to school,
9 doesn't sound like a lazy person to me. And we don't know
10 Mr. Smith's background, they didn't go into any of that with
11 him and I bet there's a reason why, and ask yourselves how
12 come they didn't go into that with Mr. Smith. And in
13 conclusion we're asking you to find Denorris innocent of
14 these charges because he did make a mistake, he went out at
15 2:00 in the morning and it was foolish going to a club when
16 he's not even old enough to get in, and he made another
17 really bad decision by hanging out with Mr. Smith. But what
18 he did not do, he did not go up to Mr. Thomas and try to rob
19 him and he did not pull a gun and try to shoot Mr. Thomas.
20 He did not shoot Mr. Thomas. It's Mr. Smith who did this,
21 we know that. Mr. Thomas knows that because he said it was
22 the taller person. Detective Evans knows that because he
23 swore out the warrants saying it was Mr. Smith who did the
24 shooting. It wasn't until I think Detective Evans said the
25 victim changed his story and Mr. Smith saw a chance to get a

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1 time cut that any allegation that Mr. Hall did the shooting
2 came up. Ladies and gentlemen, that doesn't prove anyone
3 guilty except Mr. Smith. Denorris is innocent and we would
4 ask you to return a verdict of not guilty. Thank you.

5 THE COURT: Mr. Young?

6 MR. YOUNG: Thank you, Judge. May it please the Court
7 and Mr. Grimes? Ladies and gentlemen of the jury, Mr.
8 Grimes is good at confusing the issues, isn't he?

9 MR. GRIMES: Objection, commenting up on defendant's
10 right to have an affective defense.

11 THE COURT: Ladies and gentlemen, please remember what
12 I told you at the beginning of the trial and before counsel
13 began, what is contained in closing arguments are merely
14 counsel's contention as to what the issues show. I will
15 instruct you on the law applicable to this case. Mr. Young,
16 please keep your closing arguments in narrowly tailored.
17 Thank you.

18 MR. YOUNG: Yes, Judge. What you've heard from Mr.
19 Grimes is that we've told you different stories, he said we
20 came in here and told you a different story in the opening
21 and we're going to tell you a different story now. That's
22 misleading and that's not true. We've told you from day one
23 what happened. He's accused everybody in my office of
24 misconduct, point the finger --

25 MR. GRIMES: Objection, Your Honor.

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1 MR. YOUNG: Pointing the finger --

2 THE COURT: What's your objection, Mr. Grimes?

3 MR. GRIMES: We're not accusing them of misconduct,
4 he's mischaracterizing the record.

5 THE COURT: Mr. Grimes and members of the jury, please
6 remember that what is contained in closing arguments is
7 merely counsel's contention as to what the evidence has
8 shown, what is contained in closing arguments is not
9 evidence in this case. Thank you.

10 MR. YOUNG: Thank you, Judge. Remember, ladies and
11 gentlemen, why we are here, not because of me, not because
12 of my investigators, not because of Mr. Whetmore, not
13 because of the victim's advocate, because of this man right
14 here. Because he decided to haul off at 2:00 a.m. go
15 clubbing, rob somebody and unload on him, that's why we're
16 here. Think about that. Now, at the beginning of this case
17 I told you you're going to hear two different stories about
18 the same night, stories from Mr. Thomas, the victim, who has
19 been here the whole time, he told you how he worked that
20 day, he came home. He keeps late hours, works in the food
21 and beverage industry, went to get a beer, he's a working
22 man. And you heard the other story about these two
23 knuckleheads as we heard sitting around texting girls,
24 decided to go clubbing. And ladies and gentlemen, let me
25 say that the word knuckleheads, it's an insult, it doesn't

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1 even cover -- a knucklehead is somebody who goes to the
2 store and steals a box of candy. These guy are cold and
3 they are ruthless. This guy was walking home after working
4 with a beer in his hand, this is a random person, this isn't
5 a drug deal gone bad, this isn't revenge for something else,
6 this is this guy bored out of his mind rolling around with a
7 gun in North Charleston robbing people. Knuckleheads? No,
8 that is not a knucklehead. That is a ruthless attempted
9 murder. These are the things you need to think about when
10 you go back there. You heard about how the stories collided
11 around 2:00 a.m. You've seen the evidence, the video,
12 you've heard the testimony of the co-defendant and the
13 victim and we're going to go through each piece of that and
14 show how we proved this defendant guilty. Let's first start
15 with the victim, think about what he told you. He's come
16 down here from Maryland, working, has a job, sits there and
17 tells us what he did this night. He tells you who did this,
18 this man. Think about how important that is, someone with
19 the courage to get up there on the stand and tell the truth,
20 he's gotten up there an he's told you. He told you, "He
21 shot me, he robbed me, he's the first guy that came up to
22 me." What's that video show? Did you catch it? Denorris
23 Hall through that bank first, the first guy to him. What
24 did the victim say? "The first guy to me is the one that
25 robbed me, the one that pulled that gun." Those details are

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1 so important because it puts him -- that's the guy with the
2 gun robbing Mr. Thomas and shooting at Mr. Thomas. Think
3 about that stuff. Do not discount how important that
4 victim's testimony is. He has ID'd him. And speaking of
5 ID's, couldn't be more of a purer form of ID, not talking
6 about something to a cop, he's gone straight from the crime
7 scene into the courtroom. He sees the guy with a gun right
8 at him? What does he do? He tells the cops, "There he is."
9 No identification, no cops, we're going straight to the
10 courtroom, now he's pointing, this is him, this is the guy.
11 It doesn't get more purer than that. Let's talk about
12 co-defendant Smith, another piece of evidence. What's this
13 guy do? I'm not going to bat for this guy because he's an
14 attempted murderer and attempted robber as well, no doubt
15 about it and he's pled guilty to it. Think about what he
16 told you, he wrapped up kind of lose ends in this thing,
17 he's told you whose idea was this. What were they doing?
18 He told you they were sitting around the house, told you
19 they left, they spot the man walking, spot him like a
20 predator stalking prey, it's just sickening. They spot him.
21 And whose idea was it? Hall. How do we know that, how do
22 we know that? Corroborating what Smith said on the stand.
23 Who ran through that parking lot first? Hall because he's
24 speeding to meet with that guy on Spruill Avenue. I mean,
25 that is just so important to realize that. Hall's idea is

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1 corroborated from Smith's testimony through that video.
2 What else does Smith tell us? The gun, he said Hall had a
3 silver begin. Okay. What does the victim say? Silver gun.
4 That testimony matches up. Think about that stuff. Says
5 the victim pulled away, that Hall tried to rob him and you
6 saw the video, Hall came up second through that bank. Think
7 about that. And I know in the video it's tough to see where
8 Hall goes at one point and you see Smith pulling away, but
9 Smith told you what Hall did and the victim told you what
10 Hall did, so the part of the video we couldn't see was all
11 talked about in the testimony and brought out. And think
12 about what Smith said on the stand, did he do anything to
13 minimize his role? Did he say, "No, I didn't do it." No,
14 he took responsibility. He said, "I was part of it, we were
15 two knuckleheads together." And that's what they were,
16 ladies and gentlemen, they were together, they worked
17 together on this, this is both of them involved, they both
18 had guns, they both tried to rob them and they both shot
19 him. Think about this, another piece that I left out, what
20 does the victim say? I heard somebody say shoot his --
21 excuse my language -- bitch ass. What does Smith say? "I
22 told Hall to shoot his bitch ass." I mean, that's cold,
23 that is cold. But he told you that's what he said and that
24 victim said, "I heard somebody say that." Now, why would
25 Smith say he "shoot his bitch ass" if Hall didn't have a gun

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1 drawn on him? Important details that we need to not lose
2 sight of, those are key details. Now, talking about the
3 video, and we have that video, you know, we pulled it from
4 the bank right there at the corner of Spruill and McMillan.
5 You have -- after Hall eyed the prey so to speak, spotted
6 the man is what he said, he hustled through first, Hall
7 second. Have you ever seen somebody hustle that fast to get
8 a cigarette? Think about that. Why is he hustling through
9 that parking lot? One reason, he was going up there to rob
10 that guy. They were getting ready to go to the club and
11 they were getting ready to get some money and they're going
12 to that club, and when that guy runs they unleash on him.
13 And it was Hall pulling that gun and Smith backing him up,
14 they're both firing and they're both guilty of this crime.
15 And to talk about the scene and these shell casings, they
16 found those two .25 shell casings. Why did I put those in?
17 Remember what Smith said, "I had a revolver, those don't
18 eject shells." Hall had the automatic ejecting shells, they
19 found two .25 caliber bullets at the scene, that's why I put
20 that stuff in. It's important to think about those details,
21 how one gun ejects shells and the other one doesn't, that
22 stuff adds up. And let's talk about the defendant's
23 statement. Now, why did I put that in? This statement
24 says, "I was with Smith and cut through the bank, we
25 approached a man, I asked for a cigarette," did every single

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1 thing up this point, and then the robbery and shooting and
2 then, "Hey, I didn't do that. I didn't do that, then I ran,
3 too." That' frankly insulting to your intelligence and mine
4 for him to tell us that he didn't have anything do with it
5 but he was there the whole time, totally corroborated the
6 video. He's lied to the cops about this, don't let him lie
7 to you guys. And you heard the doctor's testimony. Why did
8 I put him up? I wanted to show you guys this was a serious
9 case. Okay. The most serious. What did the doctor say?
10 "He was on his way to death, if he wouldn't have seen me he
11 would have died." So we know it doesn't get any more
12 serious than this. And frankly but for this guy being a
13 terrible shot we're sitting here on a murder case, as cold
14 blooded as it gets. This is a random guy walking down the
15 road, I mean, that just gives you chills. That is ruthless.
16 Now, let's talk about the point of the statement that Hall
17 gives, because I did everything but the corroborate the
18 shooting. But think about the part he forgot to cover up,
19 he said, "I was the guy that asked him for a cigarette," he
20 wrote that in the statement, remember that? What did the
21 victim say? "When the guy asked me for a cigarette that's
22 the guy that pulled the gun, that's the one who robbed me."
23 By his own admission that's Hall, that's right there for us.
24 He forgot to cover up that part. And then the part of the
25 statement, "I came back to see what was going on." Does

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1 that make sense? You've got to think about these details,
2 they are so important to this case, that proves that he is
3 guilty, both of them are guilty. Now, I want to address an
4 issue about height that's been brought up. I asked the
5 victim about it, I said, "Are you sure about these heights?"
6 And what I recall he said one may have been slouched over.
7 You've got think, too, if this guy is walking -- they said
8 he was walking up the curb, maybe the guy on the curb with
9 him is higher up than the guy in the street so he looks
10 taller, even though he's not the taller of the two. But the
11 bottom line is it doesn't matter, they were both there and
12 both acting in concert so it doesn't matter who was taller
13 by an inch or two or who was shorter, this is a guy with a
14 gun in his face getting robbed running away before he gets
15 killed. The crux I think, or at least one of the most
16 important parts of this case you need to think about is how
17 Hall forgot to cover up that cigarette, that cigarette part
18 in his statement, he said, "I was the one that asked for the
19 cigarette." And that victim got up here and told you it was
20 the guy that came to ask him for the cigarette. Hall who we
21 see in the video going first is the one that pulled the gun
22 and is the one who shot and is the one who tried to rob him.
23 Case closed, that's as easy and it gets, ladies and
24 gentlemen. And let's -- let me just share this, Hall
25 doesn't even have to have a gun to be guilty of this crime.

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1 You saw that Smith pled to attempted murder and attempted
2 armed robbery okay, the hand of one, ladies and gentlemen,
3 is the hand of all. Okay. But I submit to you he did have
4 a gun, that victim said he had a gun, but to be guilty of
5 both of these crimes he doesn't even have to have a gun, but
6 he did and that's what the evidence will show. Mr. Grimes
7 was talking about the character of this defendant, he talked
8 about how he went to school and was working a job. Now, I
9 don't want to -- grade completed in school, State's 1, tenth
10 grade. Obviously he's not in school so that's a
11 mischaracterization of the evidence.

12 MR. GRIMES: Objection, Your Honor.

13 THE COURT: Same admonition to the jury. Thank you.

14 MR. YOUNG: He's got a job. What does his mom say? I
15 was out there with him trying to get him a job. That's
16 mischaracterizing the evidence, he didn't have a job. And
17 you've heard when I talked to Ms. Brown about -- his
18 God-mother, when she was talking about what a good boy he
19 was, you heard what a good boy he was, you heard what I
20 crossed her on and what I talked to her about. Think about
21 that stuff. Now, looking at the law at the end of this case
22 the Judge is going to instruct you on the law of this case,
23 attempted armed robbery and attempted murder. Again,
24 attempted robbery is the taking and carrying away of the
25 goods of another with the intent to permanently deprive

JURY CHARGE

1 while armed with a weapon. Any deferences in that
2 definition by word I would have to defer to the Judge. This
3 is exactly what we have here, the attempted taking and
4 carrying away of property of another while armed with a
5 weapon, that's the attempted armed robbery. The attempted
6 murder. The intent to kill another person with malice.
7 Okay. Malice is like I said, it's an ill-will or a wicked
8 heart. Malice can be inferred through the use of a deadly
9 weapon, aka a gun, or language, "shoot his bitch ass."
10 She's also going to talk to you about reasonable doubt, and
11 I'm just going to touch on it with you real quick.
12 Reasonable doubt is not beyond all doubt, not beyond any
13 possibility. There's few things first of all in this world
14 we can say with a hundred percent certainty every day is
15 going to happen. All you have to do in this case is be
16 firmly convinced, that's what the law requires, firmly
17 convinced and you must find him guilty under the oath that
18 you took as a juror. Remember the oath you swore in?
19 Firmly convinced you must find him guilty, that's what the
20 law says, and you all took that oath and I ask you to uphold
21 it. And remember, remember, remember, please, the guy that
22 took the cigarette, Hall admitting, "that was me," that's
23 what the victim says was the guy with the gun, that's who
24 the victim said was the guy that robbed him, that's who the
25 victim said was the guy that "shot me" and that is

JURY CHARGE

1 imperative. Now, in this case we're asking for nothing less
2 than a guilty verdict. Smith has pled guilty, today is
3 Hall's day in court. Ladies and gentlemen, I submit to you
4 being bored is no excuse to roam the streets of North
5 Charleston, rob a working man and attempt to kill him and
6 that's what this man did right here. I'm going to ask you
7 to return a verdict that speaks the truth in this case, that
8 dictates and justice demands and that's a verdict of guilt.
9 Thank you.

10 THE COURT: All right. Ladies and gentlemen, we have
11 reached the stage in the trial where I will instruct you on
12 the law applicable to this case. Ladies and gentlemen, I
13 remind you that during this trial you and I have had certain
14 duties to perform. As the trial judge it is my
15 responsibility to preside over the trial of this case, and I
16 also have the duty to rule on the admissibility of the
17 evidence offered during this trial. You are to consider
18 only the competent evidence before you. If there was any
19 testimony that was ordered stricken from the record you must
20 disregard that testimony. You are to consider only the
21 testimony that has been presented from the witness stand,
22 the exhibits which have been made part of the record in this
23 case as well as the stipulations of counsel. I have the
24 additional duty to charge you the law applicable to this
25 case. As the presiding judge I am the sole judge of the law

JURY CHARGE

1 in this case, it is your duty as jurors to accept the law
2 and apply the law as I state it to you now. If you have any
3 idea as to what the law is or what the law ought to be and
4 it does not agree with what I'm about to tell you, you must
5 abandon your own idea because you are sworn to accept the
6 law and apply the law exactly as I state it to you now. In
7 every case tried in this court before a jury the jury
8 becomes the sole and exclusive judge of the facts. A trial
9 judge may not make any comment regarding the facts in this
10 case. Please do not think that anything that I have said or
11 done throughout the progress of this trial or during my
12 charge to you on the law of this case that I have any
13 opinion about the facts in this case, the law does not allow
14 me to have an opinion about the facts in this case. The
15 indictments in this case charge the defendant with attempted
16 armed robbery and attempted murder. I remind you the fact
17 that the defendant was arrested, charged and indicted in
18 this case is not evidence in this case and cannot be
19 considered by you as evidence of guilt, nor does it create
20 any presumption or inference of guilt. An indictment is
21 simply the formal written instrument which contains the
22 charge made against the defendant. It is the formal
23 document by which this case is brought into this court.
24 Just as the indictment in this case is not evidence, any
25 terminology or labels used to refer to the individuals

JURY CHARGE

1 involved in this case cannot be considered as evidence. For
2 example, the terms defendant and victim are merely formal
3 labels and may not be considered by you as evidence in this
4 case. The indictments in this case allege two different
5 offenses against the defendant. The charges are indictment
6 number one, attempted armed robbery, 2010-GS-10-8190; and
7 indictment number two, attempted murder, 2010-GS-10-8191.
8 There is no significance in the order that I have referenced
9 the above indictments, it's simply something must go first
10 when I read them to you. Each indictment charges a separate
11 and distinct offense. You must decide each indictment
12 separately on the evidence and the law applicable to it
13 uninfluenced by your decision as to any other indictment.
14 The defendant may be convicted or acquitted on any or all of
15 the offenses charged. You will be asked to write a separate
16 verdict of guilty or not guilty for each indictment. The
17 defendant has pled not guilty to each indictment. A person
18 charged with committing a criminal offense in South Carolina
19 is never required to prove himself innocent. I charge you,
20 it is an important rule of law that the defendant in a
21 criminal trial no matter what the seriousness of the charge
22 will always be presumed to be innocent of the crime to which
23 the indictment was issued unless guilt has been proven by
24 evidence satisfying you of that guilt beyond a reasonable
25 doubt. The presumption of innocence does not end when you

JURY CHARGE

1 begin your deliberations, but it accompanies the defendant
2 throughout the trial until you reach a verdict of guilt
3 based upon the evidence satisfying you of that guilt beyond
4 a reasonable doubt. The presumption of innocence is not a
5 mere legal theory, it's not just a legal phrase, it is a
6 substantial right to which every defendant is entitled
7 unless you, the jury, are satisfied from the evidence of the
8 defendant's guilt beyond a reasonable doubt. The State has
9 the burden of proving the defendant guilty beyond a
10 reasonable doubt. Some of you may have served as jurors
11 previously in civil cases where you were told that it is
12 only necessary to prove that a fact is more likely true than
13 not true such as by the greater weight or preponderance of
14 the evidence. In criminal cases the State's proof must be
15 more powerful than that, it must be beyond a reasonable
16 doubt. Proof beyond a reasonable doubt is proof that leaves
17 you firmly convinced of the defendant's guilt. There are
18 very few thing in this world that we do know with absolute
19 certainty and in criminal cases the law does not require
20 proof that overcomes every possible doubt. If based upon
21 your consideration of the evidence you are firmly convinced
22 that the defendant is guilty of the crime charged, you must
23 find the defendant guilty. On the other hand, if you think
24 there is a real possibility that the defendant is not
25 guilty, you must give the defendant the benefit of the doubt

JURY CHARGE

1 and find him not guilty. There are two types of evidence
2 that are generally presented throughout a trial; direct
3 evidence and circumstantial evidence. Direct evidence is
4 the testimony of a person who claims to have actual
5 knowledge such as an eyewitness. It is evidence which
6 immediately establishes the main fact to be proved.
7 Circumstantial evidence is proof of a chain of facts and
8 circumstances indicating the existence of a fact. It is
9 evidence which immediately establishes collateral facts from
10 which the main fact can be inferred. Circumstantial
11 evidence is based upon inference and not on personal
12 knowledge or observation. The law makes absolutely no
13 distinction between the weight or value to be given either
14 direct or circumstantial evidence, nor is a greater degree
15 of certainty required of circumstantial evidence. You
16 should weigh all of the evidence in this case, and after
17 weighing all of the evidence if you are not convinced of the
18 guilt of the defendant beyond a reasonable doubt you must
19 find the defendant not guilty. Necessarily you must
20 determine the credibility of the witnesses who have
21 testified in this case. Credibility simply means
22 believability. It becomes your duty as jurors to analyze
23 and evaluate the evidence and to determine which evidence
24 convinces you of its truth. In determining the
25 believability of the witnesses who have testified in this

JURY CHARGE

1 case you may believe one witness over several witnesses or
2 several witnesses over one witness. You may believe a part
3 of the testimony of a witness and reject the remaining part
4 of the testimony of that same witness. You may believe the
5 testimony of a witness in its entirety or reject the
6 testimony of a witness in its entirety. You may consider
7 whether the witness has exhibited to you any bias, interest,
8 prejudice or other motive in this case. You may also
9 consider the appearance and the manner of the witness while
10 on the witness stand. The rules of evidence ordinarily do
11 not permit witnesses to testify to opinions or to
12 conclusions, an exception to this rule exists for witnesses
13 we call expert witnesses. A witness who by education or
14 experience has become an expert in some art, science,
15 profession or calling may state an opinion as to relevant
16 and material matter in which the witness claims to be an
17 expert and may also state the reasons for that opinion. You
18 should consider any expert opinion in this case and like any
19 other evidence give it the weight you think it deserves. If
20 you decide that the opinion of an expert witness is not
21 based on sufficient education and experience, or if you
22 conclude that the reasons given in support of the opinion
23 are not sound, or that the opinion is outweighed by other
24 evidence you may disregard the opinion entirely. An expert
25 witness' testimony is to be given no greater weight than

JURY CHARGE

1 that of any other witness simply because the witness is an
2 expert. Further, you are not required to accept an expert's
3 opinion even though it is not contradicted. A person who
4 has a past criminal record is competent to testify during a
5 trial. A past record does not affect the ability of that
6 witness to testify. The past record may only be considered
7 by you, if at all, in determining the witness'
8 believability. Remember, you are the sole judges of the
9 facts in this case and of the believability of any and all
10 of the witnesses. I instruct you and emphasize the fact
11 that the defendant did not testify is not a factor to be
12 considered by you in any way in your deliberations and in
13 your consideration on the question of the guilt of the
14 defendant. It must not be considered by you in any manner
15 whatsoever. A defendant has a constitutional right to
16 remain silent and the assertion of this right must not be
17 considered by you in your deliberations. I repeat, under
18 your oath you are to draw no conclusion whatsoever from the
19 fact that the defendant in this case did not testify. Mr.
20 Foreman, the fact that the defendant did not testify should
21 not even be discussed in the jury room. The burden of
22 proof, as I have stated to you, is on the State to prove
23 guilt beyond a reasonable doubt. The defendant is not
24 required to prove his innocence, the burden of proof remains
25 on the State to prove guilt beyond a reasonable doubt. You

JURY CHARGE

1 have heard evidence that the defendant was adjudicated
2 delinquent or convicted of a crime other than one for which
3 the defendant is now on trial. This evidence may be
4 considered by you if you conclude it is true only in
5 deciding whether the testimony is believable and for no
6 other purpose. You must not consider the defendant's prior
7 record as any evidence of the defendant's guilt of the
8 charge we are trying today. The defendant has presented
9 evidence of his good reputation and character to show that
10 it would be inconsistent with the defendant committing the
11 crime. The weight that you give to that testimony like all
12 other testimony in this case is for you to decide. You may
13 consider testimony of the defendant's good character along
14 with all other evidence in deciding whether or not the
15 defendant committed the crime. In order to establish
16 criminal liability criminal intent is required. For
17 example, the mental state required to be proven by the State
18 for a particular crime might be purpose, intent, knowledge,
19 recklessness or criminal negligence. Criminal intent must
20 be proven by the State beyond a reasonable doubt. Criminal
21 intent is always a matter that must be determined by the
22 jury shown from the circumstances surrounding the situation.
23 There is no way to prove intent to a mathematical certainty
24 because there's no way to tell with exact certainty what the
25 person had in mind. The law says that criminal intent may

JURY CHARGE

1 be inferred from the circumstances shown to have existed.
2 This is how you make a determination of whether or not the
3 element requiring intent was present. It is not necessary
4 to establish intent by direct and positive evidence, but
5 intent may be established by inference in the same way as
6 any other fact by taking into consideration the acts of the
7 parties and all the other facts and circumstances of the
8 case. Criminal intent is a mental state, a conscious
9 wrongdoing. It is up to you to determine what the defendant
10 intended to do based on the circumstances shown to have
11 existed. Criminal intent can arise from action or a failure
12 to act, it may arise from negligence, recklessness or an
13 indifference to duty or to consequences that is considered
14 by the law to be the equivalent of criminal intent. An
15 issue in this case is the identification of the defendant as
16 the person who committed the crime charged. The State has
17 the burden of proving identity beyond a reasonable doubt.
18 You must be satisfied beyond a reasonable doubt of the
19 accuracy of the identification of the defendant before you
20 may convict the defendant. Identification testimony is an
21 expression of belief or impression by a witness. You must
22 determine the accuracy of the identification of the
23 defendant. You must consider the believability of the
24 identification witness in the same way as any other witness.
25 You may consider whether the witness had an adequate

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1 opportunity to observe the offender at the time of the
2 offense. This will be affected by things like how long or
3 short a time was available, how far or close the witness
4 was, the lighting conditions and whether or not the witness
5 had a chance to see or know the person in the past. Once
6 again I instruct you, the burden of proof on the State
7 extends to every element of the crime charged and this
8 specifically includes the burden of proving beyond a
9 reasonable doubt the identity of the defendant as the person
10 who committed the crime. If after examining the testimony
11 you have a reasonable doubt as to the accuracy of the
12 identification you must find the defendant not guilty. Mere
13 presence at the scene is not sufficient to prove someone
14 guilty. A defendant's presence where a crime is being
15 committed or mere association with a person who commits a
16 crime does not make the defendant an accomplice or an aider
17 and abetter of the person committing the crime. The burden
18 is on the State to prove every element of the crime charged.
19 If you find after reviewing all of the evidence that the
20 State has proved that the defendant was only present at the
21 scene of the crime and that they have not proved beyond a
22 reasonable doubt any other participation in the crime then
23 you must find the defendant not guilty. The law is that
24 proof at the scene of the crime is not sufficient to find
25 someone guilty. If a crime is committed by two or more

JURY CHARGE

1 people who are acting together in committing a crime, the
2 act of one is the act of all. A person who joins with
3 another to commit an unlawful act is criminally responsible
4 for everything done by the other person which happens as a
5 nature or probable consequences of the acts done in carrying
6 out the common plan and purpose. Ladies and gentlemen, if
7 two or more people are together acting together assisting
8 each other in committing the offense, the act of one is the
9 act of all, or as it is sometimes said, the hand of one is
10 the hand of all. Prior knowledge that a crime is going to
11 be committed without more is not sufficient to make a person
12 guilty of that crime. Mere knowledge that another person is
13 going to commit a crime, even if the defendant is present
14 when the crime is committed, is not sufficient to convict
15 the defendant as a principal. Guilt as a principal is shown
16 by actual or constructive presence at the scene as a result
17 of a prior arrangement. Therefore a finding of a prior
18 arranged plan or scheme is necessary for a finding of guilt
19 as a principal. The State must prove beyond a reasonable
20 doubt by competent evidence the theory of hand of one is the
21 hand of all. A principal in a crime is one who either
22 actually commits the crime or is present aiding, abetting or
23 assisting in committing a crime. When a person does an act
24 in the presence of and with the assistance of another the
25 act is done by both. Where two or more acting with a common

JURY CHARGE

1 plan or intent are present at the commission of a crime it
2 does not matter who actually commits the crime, all are
3 guilty. The hand of one is the hand of all. Present at the
4 commission of a crime means to be sufficiently near to aid
5 and abet and assist in the commission of a crime, however
6 mere presence at the scene of a crime is not sufficient to
7 convict one as a principal on the theory of aiding and
8 abetting. Intent is a necessary element for there must have
9 been some common design or intent to commit the crime and
10 the crime must have been committed pursuant thereto with the
11 person aiding and abetting by some overt act. Intent means
12 intending the result which actually happens, not
13 accidentally or involuntarily. Intent may be shown by acts
14 and conduct of the defendant and other circumstances from
15 which you may naturally and reasonably infer intent. The
16 State must prove these elements beyond a reasonable doubt.
17 An attempt is an effort to accomplish a crime which does not
18 succeed. An attempt includes a specific intent to do a
19 particular criminal act along with an act falling short of
20 the act intended. The State must show more than mere
21 preparation and attempt, there must some overt act committed
22 in the effort to commit the crime. Intent means intending
23 the result which actually occurs, again not accidentally or
24 involuntarily. Intent may be shown by acts and conduct of
25 the defendant and the circumstances from which you, the

JURY CHARGE

1 jury, may naturally and reasonably infer intent. The
2 defendant is charged with attempted armed robbery. A person
3 is guilty of attempted armed robbery if the person has a
4 specific intent to commit armed robbery. For the offense of
5 armed robbery the State must prove the defendant took
6 personal property from the person or presence from another
7 person. Property is in the presence of a person if it is
8 within the person's reach, inspection, observation or
9 control so that the person could not -- excuse me, so that
10 the person could if not overcome with violence or prevented
11 by fear keep possession of the property. For the offense of
12 armed robbery the State must also prove that the defendant
13 carried the property away intending to permanently deprive
14 the owner of the property and to keep the property for the
15 defendant's own use. The slightest removal of the property
16 for the complete possession of the property even for an
17 instance by the defendant is sufficient to show a taking and
18 carrying away of the property. The taking and carrying away
19 of the property must have been done with violence or putting
20 the owner of the property in fear of violence. Finally for
21 the offense of armed robbery the State must prove that the
22 defendant was armed with a deadly weapon during the robbery.
23 A deadly weapon is any article, instrument or substance
24 which is likely to cause death or great bodily harm.
25 Whether an instrument has been used as a deadly weapon

JURY CHARGE

1 depends on the facts and circumstances of each case. The
2 defendant is charged with attempted murder. In order to
3 prove this crime the State must prove that the defendant
4 attempted to kill another person with malice aforethought
5 either expressed or implied. Malice is hatred, ill-will or
6 hostility towards another person. It is the intentional
7 doing of a wrongful act without just cause or excuse and
8 with an intent to inflict an injury or under circumstances
9 that the law will infer an evil intent. Malice aforethought
10 does not require that malice exists for any particular time
11 before the act is committed, but malice must exist in the
12 mind of the defendant just before and at the time the act is
13 committed, therefore there must be a combination of a
14 previous evil intent in the act. Malice aforethought may be
15 either express or inferred. These terms, express or
16 inferred, do not mean different types of malice but merely
17 the manner in which malice may be shown to exist, that is
18 either by direct evidence or by inference from the facts and
19 circumstances which are proved. Express malice is shown
20 when a person speaks words which express hatred or ill-will
21 for another or when the person prepared beforehand to do the
22 act which is later accomplished. Malice may be inferred
23 from conduct showing a total disregard for human life.
24 Inferred malice may also arise when the deed is done with a
25 deadly weapon. A deadly weapon is any article, instrument

JURY CHARGE

1 or substance which is likely to cause death or great bodily
2 harm. Whether an instrument has been used as a deadly
3 weapon depends upon the facts and circumstances of each
4 case. If facts and circumstances are proved beyond a
5 reasonable doubt sufficient to raise an inference of malice
6 to your satisfaction, this inference would simply be an
7 evidentiary fact for you to be considered along with any
8 other evidence in this case and you may give it the weight
9 that you decide it should receive. You have heard testimony
10 concerning the penalty a person can serve for the crimes
11 alleged in these indictments. In determining the guilt or
12 innocence of the defendant you cannot consider any possible
13 punishment for any particular crime. The punishment for the
14 crimes is a matter for this Court to determine and should
15 never be considered by you in any way whatsoever at arriving
16 at a fair and impartial verdict as to the guilt or innocence
17 of the defendant. Again, Mr. Foreman, that is something
18 that must not be discussed in any way in the jury room.
19 Ladies and gentlemen, I am now going to go over the verdict
20 forms with you, it is your responsibility to complete the
21 verdict form. Please remember there is no significance in
22 the way that I go over the verdict form, it is simply
23 something has to go on the paper first. Ladies and
24 gentlemen, the court of general sessions 9th Judicial
25 Circuit, 2010-GS-10-8190, State of South Carolina vs.

JURY CHARGE

1 Denorris Hall, defendant, the verdict: Number one, we, the
2 jury, find the defendant not guilty; or we, the jury, find
3 the defendant guilty of attempted armed robbery. It must be
4 a unanimous decision meaning all 12 of you must agree. Once
5 you have reached a unanimous decision on this verdict form,
6 please sign the verdict form and date it. In the Court of
7 General Sessions 9th Judicial Circuit 2010-GS-10-8191, State
8 of South Carolina vs. Denorris Hall, we, the jury, find the
9 defendant not guilty; or we, the jury, find the defendant
10 guilty of attempted murder. Once again, Mr. Foreman, once
11 you have reached a unanimous decision, meaning all 12 of you
12 must agree on this verdict, you will sign it and date it.
13 Ladies and gentlemen, once the verdict has been reached on
14 each verdict form you will alert the bailiff and we will
15 receive you back in the courtroom. Ladies and gentlemen,
16 hopefully this, I believe, will be the last time I say this
17 to you, do not begin your deliberations, do not discuss this
18 case amongst yourselves. We will be gathering the evidence
19 to come back to you along with the verdict form, once we
20 have done that the bailiff will let you know when you may
21 begin your deliberations. Mr. Robinson, this completes your
22 service to this case but I ask that you remain with us, do
23 not discuss this case with anyone and do not begin your
24 deliberations, I will come and release you from service at
25 the appropriate time. Ladies and gentlemen, please take

JURY CHARGE

1 your notepads with you and please rise for the jury.

2 (The jury left the courtroom.)

3 THE COURT: Thank you, be seated. Any objection to the
4 charge as read?

5 MR. YOUNG: Judge, respectfully -- and I probably just
6 heard you wrong -- sounded like you said attempted armed
7 robbery but sounded like it was on the charge of armed
8 robbery. Did I hear that wrong?

9 THE COURT: Say that one more time.

10 MR. YOUNG: I thought you said attempted armed robbery
11 then the charge that you read was armed robbery, you said
12 they must take the items -- again, I'm sure --

13 THE COURT: How I read it was that he's charged with
14 attempted armed robbery, it's on the verdict form as
15 attempted armed robbery, but in order to explain the
16 elements of attempted armed robbery I have to explain the
17 elements of armed robbery, I explained what an attempt was
18 and then went through what the elements of armed robbery is.

19 MR. YOUNG: Okay. Thank you, Judge.

20 THE COURT: Thank you.

21 MR. GRIMES: May it please the Court? I think -- we
22 renew or objection, I don't believe your charge on witness
23 credibility covered number two -- charge number two
24 adequately or charge number three. Case law State vs.
25 Green, State vs. Harrison do say the evidence of good

JURY CHARGE

1 character and good reputation may in and of itself create a
2 doubt as to guilt and I don't believe that language was read
3 to the jury. On charge number four, I believe second
4 paragraph, I don't think that was given to the jury. On
5 paragraph number one that the witness had the adequate
6 opportunity to observe the person, I don't believe all of
7 those factors --

8 THE COURT: The court reporter -- when you are looking
9 down, Mr. Grimes, the court reporter is having a really hard
10 time hearing you and the reason that I know that she's
11 having a hard time hearing you is because I am as well. All
12 right.

13 MR. GRIMES: Should I start over?

14 THE COURT: Start with the last about identification.

15 MR. GRIMES: Also our request to charge number four, we
16 don't believe the Court instructed the jury on the second
17 paragraph, we had the testimony, you heard identification,
18 the witness' expression, his or her belief or impression,
19 that language, we would respectfully request that that be
20 charged. Subparagraph one as to the factors listed, I don't
21 believe those were adequately charged to the jury.

22 THE COURT: Mr. Grimes, I indicated before close --
23 before you closed that I would be charging the standard
24 identification charge. Your charges are marked in Court's 1
25 so I don't believe you need to go over what was not and what

JURY CHARGE

1 is charged, I think it is very clearly marked for appellate
2 purposes.

3 MR. GRIMES: Thank you, Your Honor. Then as to request
4 to charge number five I don't believe the Court instructed
5 the jury that Mr. Smith's guilty plea cannot be held against
6 this defendant, I think the Court's instruction goes sort of
7 credibility of one's past criminal record. And we renew or
8 request or objection to hand of one, hand of all charge, and
9 we would renew, or request for the lesser-included charge
10 that we discussed in the charge conference and based upon
11 the same grounds.

12 THE COURT: All right. The jurors are requesting a
13 smoke break, I'm going to go ahead and let them have a smoke
14 break. There was no objection to the verdict form, Mr.
15 Young?

16 MR. YOUNG: No, Your Honor.

17 THE COURT: Mr. Grimes?

18 MR. GRIMES: Nothing.

19 THE COURT: Thank you. Anything before we await the
20 verdict? All right. We are at ease in this matter until a
21 verdict or a question.

22 (The jury began deliberations at 2:17 p.m.)

23 THE COURT: There is a verdict. Anything before we
24 bring in the jury from the State?

25 MR. YOUNG: Nothing from the State.

JURY VERDICT

1 THE COURT: From the defense? Where is Ms. Ehrlick?

2 MR. GRIMES: I haven't had the chance to call her or
3 text her, but if I could --

4 THE COURT: You may step out, she's been here the whole
5 trial. Mr. Young, have you not seen your victim?

6 (Break in proceedings.)

7 THE COURT: Anything before we bring in the jury from
8 the State?

9 MR. YOUNG: No, Your Honor.

10 MR. GRIMES: No, Your Honor.

11 THE COURT: Let's bring in the jury.

12 (The jury returned to the courtroom at 2:58
13 p.m.)

14 THE COURT: Thank you, be seated. I understand the
15 jury has reached a verdict, if you'll hand up the verdict
16 forms, please close them for me, fold the paper -- thank
17 you -- and hand them to the bailiff.

18 THE CLERK: Please have the defendant stand. The
19 verdict forms in the matter of State of South Carolina vs.
20 Denorris Hall, defendant: We, the jury, find the defendant
21 guilty of attempted murder. Signed by the foreperson of the
22 jury on October 17th, 2012. Ladies and gentlemen of the
23 jury, if this was your verdict please raise your right hand.
24 Thank you. Please let the record reflect that all 12 jurors
25 raised their right hand. The second verdict form: We, the

JURY VERDICT

1 jury, find the defendant guilty of attempted armed robbery.
2 Signed by the foreperson of the jury on October 17th, 2012.
3 Ladies and gentlemen of the jury, if this was your verdict
4 raise your right hand. Thank you. Please let the record
5 reflect that all 12 jurors raised their right hand.

6 THE COURT: Thank you. Please be seated. Mr. Grimes,
7 are you asking for the jury to be polled?

8 MR. GRIMES: Yes, Your Honor.

9 THE COURT: All right, sir.

10 THE CLERK: Ladies and gentlemen what's going to happen
11 now is called polling the jury. When I call your juror
12 number if you would please raise your hands I'll
13 acknowledge, you can put your hand down, I'll then ask you
14 two questions, were those your verdicts and are they still
15 your verdicts, please respond verbally to me. Juror number
16 215, were those your verdicts?

17 THE JUROR: Yes, sir.

18 THE CLERK: Are they still your verdicts?

19 THE JUROR: Yes, sir.

20 THE CLERK: Thank you. Juror number 16, were those
21 your verdicts?

22 THE JUROR: Yes, sir.

23 THE CLERK: Are they still your verdicts?

24 THE JUROR: Yes, sir.

25 THE CLERK: Juror number 34. Were those your verdicts?

JURY VERDICT

1 THE JUROR: Yes, sir.

2 THE CLERK: Are they still your verdicts?

3 THE JUROR: Yes, sir.

4 THE CLERK: Juror number 36. Were those your verdicts?

5 THE JUROR: Yes, sir.

6 THE CLERK: Are they still your verdicts?

7 THE JUROR: Yes, sir.

8 THE CLERK: Juror number 72. Were those your verdicts?

9 THE JUROR: Yes, sir.

10 THE CLERK: Are they still your verdicts?

11 THE JUROR: Yes, sir.

12 THE CLERK: Juror number 81. Were those your verdicts?

13 THE JUROR: Yes, sir.

14 THE CLERK: Are they still your verdicts?

15 THE JUROR: Yes, sir.

16 THE CLERK: Juror number 169. Were those your

17 verdicts?

18 THE JUROR: Yes, sir.

19 THE CLERK: Are they still your verdicts?

20 THE JUROR: Yes, sir.

21 THE CLERK: Thank you. Juror number 183. Were those

22 your verdicts?

23 THE JUROR: Yes, sir.

24 THE CLERK: Are they still your verdicts?

25 THE JUROR: Yes, sir.

JURY VERDICT

1 THE CLERK: Thank you. Juror number 196. Were those
2 your verdicts?

3 THE JUROR: Yes, sir.

4 THE CLERK: Are they still your verdicts?

5 THE JUROR: Yes, sir.

6 THE CLERK: Thank you. Juror number 199. Were those
7 your verdicts?

8 THE JUROR: Yes, sir.

9 THE CLERK: Are they still your verdicts?

10 THE JUROR: Yes, sir.

11 THE CLERK: Thank you. Juror number 217. Were those
12 your verdicts?

13 THE JUROR: Yes, sir.

14 THE CLERK: Are they still your verdicts?

15 THE JUROR: Yes, sir.

16 THE CLERK: Thank you. Juror number 247. Were those
17 your verdicts?

18 THE JUROR: Yes, sir.

19 THE CLERK: Are they still your verdicts?

20 THE JUROR: Yes, sir.

21 THE CLERK: Was there any jurors whose number I did not
22 call could you please raise your hand? Your Honor, the jury
23 has been polled and the verdicts stand.

24 THE COURT: Mr. Young, Mr. Grimes, please approach.

25 (Bench conference was held.)

JURY VERDICT

1 THE COURT: All right. Ladies and gentlemen, I'm now
2 going to send back with you a special verdict form, and,
3 again Mr. Foreman, you will be responsible for completing
4 this. There was one question, was the defendant the
5 principal shooter, meaning was the defendant the actual
6 shooter. Again, this will need to be a unanimous decision
7 of the jury and please, again, let the bailiff know and
8 we'll receive you back in the courtroom. Thank you. Please
9 rise for the jury.

10 (The jury left the courtroom.)

11 THE COURT: Mr. Young, is the State prepared to go
12 forward for sentencing?

13 MR. YOUNG: Judge, we are for sentencing, give me just
14 a moment just a moment, my fellow attorney is bringing down
15 the sentencing sheets, she's on her way right now.

16 THE COURT: And Mr. Grimes, are you prepared to go
17 forward with sentencing?

18 MR. GRIMES: I may need five minutes to try to find
19 some of the character letters and prepare our argument.

20 THE COURT: All right. And so let me know when you are
21 ready for sentencing. Still waiting on sheets; isn't that
22 correct?

23 MR. YOUNG: Yes, ma'am.

24 THE COURT: If the victim wishes to address the Court,
25 I notice the victim is in the courtroom, just let me know

JURY VERDICT

1 what we need to do for sentencing. And Mr. Grimes, do you
2 need time to meet with your client before I impose
3 sentencing?

4 MR. GRIMES: Yes, Your Honor.

5 THE COURT: For all practical purposes, we are finished
6 with the jury, just waiting on the special verdict form, is
7 there anything -- any motions or matters?

8 MR. GRIMES: Yes, Your Honor, again --

9 THE COURT: Probably need him back out, we need the
10 defendant back out for posttrial motions. Mr. Grimes, let
11 me hear from you regarding posttrial motions if you have
12 any.

13 MR. GRIMES: Your Honor, I think at this time just in
14 the abundance of caution I would rather take the ten days
15 and file a written motion and make sure I have everything
16 covered adequately to preserve the record.

17 THE COURT: I have indicated to you that I hear
18 posttrial motions immediately upon the verdict so I am
19 hearing them now.

20 MR. GRIMES: Well, Your Honor, with all due respect the
21 rules allow ten days and, you know, I don't think I'm
22 prepared at this time to make them.

23 THE COURT: The rule gives at least ten days, Mr.
24 Grimes, it does not say you are entitled to ten days so let
25 me hear from you now.

JURY VERDICT

1 MR. GRIMES: First we would renew our motion I guess
2 for a mistrial based upon the reasons that we expressed
3 before, the last minute disclosure and ambush of the
4 eyewitness, Mr. Thomas, identifying Mr. Hall. And we make
5 another motion for a mistrial based upon the State's
6 improper closing argument mischaracterizing the record.
7 There were several objections, at least two objections
8 commenting upon defense counsel confusing the issues, making
9 a motion to appeal to the jury based -- have the verdict
10 based upon emotion rather than on the facts of the case, I
11 think speed in which the jury came back is evidence of that.
12 So those would be our first two motions, Your Honor.

13 THE COURT: All right. Do you have any additional
14 motions?

15 MR. GRIMES: Yes, Your Honor. We'd also ask again for
16 a directed verdict based upon the grounds that we asked
17 before. All the evidence in the light most favorable to the
18 State is still not sufficient for them to meet their burden.
19 Additional motion for a mistrial, we renew our motion on the
20 grounds that we did not get a key eyewitness -- an expert
21 and was deprived a fair trial, he was deprived of his right
22 to a defense, he was deprived of counsel not presenting a
23 defense -- or actually the chance to impeach Mr. Thomas
24 without an expert. Allowing the State to have last close,
25 violating his right to due process and the 6th Amendment

JURY VERDICT

1 right to present a defense as well as the right to equal
2 protection clause. We also make a motion for a mistrial
3 based upon the jury instructions that were not given, did
4 not adequately present the jury a defense, deprived Mr. Hall
5 the right to a fair trial, his right to due process. The
6 failure to charge lesser-included charges also deprived him
7 of the right to due process and a fair trial. Grounds for a
8 mistrial -- additional grounds would be the State's --
9 failure to admit Mr. Smith's statement under State vs.
10 Copeland I think would be evidence of showing Mr. Smith was
11 the actual shooter and acted alone. Not allowing us to play
12 some of the jail tapes to refresh his memory or to introduce
13 those to the jury. And in an abundance of caution we renew
14 all prior objections and any ones that were overruled, I
15 think we would add those as grounds for a mistrial. Thank
16 you, Your Honor.

17 THE COURT: Any response from the State?

18 MR. YOUNG: Judge, just briefly. I think the Court has
19 heard and correctly ruled on a lot of these motions. We
20 would ask you to deny a new trial. The jury has spoken on
21 this case, you've heard the testimony and seen the evidence,
22 the jury has spoken so we would ask you to deny the request
23 for a new trial.

24 THE COURT: Any response to that, Mr. Grimes?

25 MR. GRIMES: No, Your Honor.

JURY VERDICT

1 THE COURT: All right. I'm going to allow you to meet
2 with your client, I have the sentencing sheet so whenever
3 you are ready to proceed with sentencing please let me know.
4 Take all the time you need to meet with your client and go
5 over the essential fact with your client that he has the
6 right to appeal this case within ten days and that this is a
7 violent -- both are violent and most serious offenses. I
8 am -- once the jury has completed their decision on the
9 special verdict form I am just going to go in, accept the
10 verdict form, make it part of the record as Court's 4 and
11 will be releasing the jury. All right. Thank you. Let me
12 know when you are ready for sentencing.

13 MR. GRIMES: Thank you, Your Honor.

14 (Break in proceedings.)

15 THE COURT: The State ready?

16 MR. YOUNG: The State's ready.

17 THE COURT: The defendant ready.

18 MR. GRIMES: I don't know if the jury came back with a
19 finding.

20 THE COURT: The jury did not, Mr. Grimes, but that has
21 no impact on sentencing here today. Are you prepared to go
22 forward on sentencing?

23 MR. GRIMES: No, Your Honor. I think -- with all due
24 respect I believe that whether he's the principal or actual
25 shooter versus being out there and is an accomplice would

JURY VERDICT

1 make a difference in sentencing and that would be one of the
2 arguments we would have.

3 THE COURT: Mr. Grimes, the Court charged hand of one
4 so that is what the jury found. Just for the record Court's
5 4 will be the verdict form, Court's 5 will be the note. The
6 questions were defined, the principal shooter and what is
7 the burden of proof and so it became clear to me that I was
8 going to need to instruct them exactly as I had already
9 instructed them, the jury came back with a verdict of guilt
10 on both charges and that is what we are going forward an
11 will be sentencing Mr. Hall on an attempted murder and
12 attempted armed robbery. He was charged under the hand of
13 one, hand of all and that is how we are proceeding. Mr.
14 Young?

15 MR. YOUNG: Go ahead and speak on sentencing, Your
16 Honor?

17 THE COURT: Yes.

18 MR. YOUNG: Judge, you've heard the facts in this case.
19 Looking at his record, got a 2010 conviction for possession
20 of marijuana but that's not where it starts. As you've seen
21 his juvenile record -- I know we can't into that, that
22 started back in '04. This guy has been in trouble
23 constantly, multiple, multiple problems with the law, Judge.
24 It is important I think to note when sentencing an
25 individual such as this that look at the crime. This wasn't

SENTENCING HEARING

1 a drug deal gone bad, this wasn't revenge for a fight, this
2 was about as cold-blooded as it gets, Judge. This is a
3 random person walking down the street and I indicated that
4 in my closing and I think that's very important to note when
5 you are sentencing a person such as this. I will tell you,
6 Judge, we gave him an opportunity to cooperate, okay, he
7 told us no, he would not cooperate with us, would not try to
8 seek justice in this case with us, would not take
9 responsibility. All of these things, Your Honor, I think
10 you need to take into account when sentencing this man.

11 THE COURT: You're certainly not asking me to penalize
12 him for exercising his constitutional right to a trial, are
13 you?

14 MR. YOUNG: Not asking you to do that, Judge, just want
15 to give you a full picture.

16 THE COURT: Thank you.

17 MR. YOUNG: I'll tell you the victim does want to
18 speak, he'd like to say a word and I would like to say one
19 more thing. Is this the appropriate time?

20 THE COURT: You may come forward or if you are
21 comfortable speaking there you need to speak loudly.

22 THE VICTIM: I will come forward. Is this loud enough?

23 THE COURT: Yes. Thank you.

24 THE VICTIM: My name is Absalom Thomas. And I just
25 wanted to thank all of those involved, especially the State,

SENTENCING HEARING

1 in this matter. This is truly a sad, sad day for how this
2 came out. I know in this country I have a right to walk
3 wherever I want to walk wherever I want to walk in a public
4 space at any time of the day, 3:00 a.m. or 3:00 p.m. as long
5 as I'm not committing a crime or harming anyone else. I
6 will never receive any kind of closure for what transpired
7 because the scar that runs from here to down here reminds me
8 every day. My digestive system is all out of whack so I
9 will never receive closure. All I wanted was justice and
10 when I take a breath I can feel, you know, the injury to my
11 diaphragm, I can feel what wasn't there before is there now.
12 So it's not about me seeking closure or seeking revenge, I
13 am just seeking what is right. Whatever sentencing you all
14 determine is appropriate for this matter I will accept just
15 like I accept the verdict that was given to the Court by a
16 jury of my peers. I would also like to remind those who
17 commit such acts that we are all brothers and sisters and we
18 should help one another instead of commit violent acts
19 against each other. Again, I'm not looking for any revenge
20 or to put anyone down or speak to belittle anyone or below
21 anyone, I am not better than anyone else, I just want
22 whatever sentencing is appropriate. And again, thank you,
23 for all of those involved in doing your jobs here and I know
24 it's not an easy thing, and like I said, it's just a sad
25 day. I thank you, the Court. Thank you, Your Honor.

SENTENCING HEARING

1 THE COURT: Thank you.

2 MR. YOUNG: Thank you, Mr. Thomas. Judge, again in
3 closing I would just like to say, you know, most robberies,
4 they start with somebody wanting to take something, a
5 robbery happens, the person maybe runs away. Here we have
6 that scenario but instead of just letting the man go away
7 they unload a gun on him, or multiple guns on him. I think
8 anything less than 30 years in this case is inappropriate.
9 That's where I stand on it, I know the victim is upset about
10 it, I know he wants some serious time. I think we need to
11 send a message that cold-blooded shootings like this are not
12 acceptable in Charleston County and I ask you to consider
13 that, Judge.

14 THE COURT: Mr. Grimes, first did you advise your
15 client of his appellate rights?

16 MR. GRIMES: Yes, Your Honor.

17 THE COURT: Mr. Hall, you understand that you have the
18 right to appeal this decision and any sentence that I'm
19 about to impose upon you, but you or your attorney must do
20 so within ten days. Do you understand that?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Any questions about your appeal rights?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: You also understand that both of these
25 offense are a violent and a most serious offense?

SENTENCING HEARING

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Do you understand what that classification
3 means for you?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Do you have any questions for me or for
6 your attorney at this time?

7 THE DEFENDANT: No, ma'am.

8 THE COURT: Do you need any additional time to meet
9 with your attorney before he presents your -- what he wishes
10 to present as far as sentencing?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: Thank you. Mr. Grimes, I'll be happy to
13 hear from anyone regarding sentencing to Mr. Hall.

14 MR. GRIMES: Thank you, Your Honor. I think that Ms.
15 Ehrlick will start off.

16 MS. EHRLICK: Your Honor, I know I was quite during the
17 trial but I spent a lot of time with Denorris --

18 THE COURT: You may have a seat, Mr. Hall and Mr.
19 Grimes.

20 MS. EHRLICK: I spent a lot of time with him over the
21 past few days helping him get ready for trial. I got
22 involved with him probably about a month ago, Mr. Grimes
23 asked me to get involved and work with him some. Just
24 briefly, he has been in jail 330 days, he's 20 years old
25 now, he was only 18 then. I do think that when was out on

SENTENCING HEARING

1 bond he made kind of the most of the opportunity that he got
2 when he got out of jail temporarily. He did go get his GED,
3 based on what he has told me that was a really big deal for
4 the whole family, I think they had a big family party for
5 him, everybody was extremely proud of him and I think that
6 he should be proud of himself for making strides to try to
7 better himself. He started going to school in Alabama but
8 got homesick, then moved back to Charleston County where
9 he's been studying -- I don't know the correct terminology
10 but wants to be able to work on airplanes, and I think
11 that's an interesting goal he has, it's not something we
12 hear about every day from our clients. In talking to the
13 paralegal who works with both Mr. Grimes and me, Michelle
14 Tremble, she's had a lot of contact with him one the phone,
15 he was always calling to check on his case, very polite.
16 Her impression of him was kind of like a scared little kid.
17 With me he's always been extremely polite, very sweet, he
18 took the rules of the Court very seriously. Typically we
19 might bring in some candy for the defendant kind of like as
20 a nice gesture for them, he was like, "No, not in this
21 court, I'm not going to play around with any of that." He
22 knew to behave appropriately in the courtroom. I think he
23 has the ability to be a very kind person. Whatever the
24 jury's verdict, I've had contact with him in a very
25 different way. Just during the trial he would whisper over

SENTENCING HEARING

1 to me every once in awhile asking a lot of questions, what
2 was going on, and even, you know, making a comment about Mr.
3 Grimes, "Isn't he kind of a weird guy sometimes?" And I
4 think that kind of shows his youth, his immaturity and I
5 think he takes this situation very seriously. And we just
6 ask you take into account his youth at the time of the
7 offense and also kind of what he's done since then and my
8 hope is that you would in some ways limit his exposure to
9 prison.

10 THE COURT: Okay. I'll be happy to hear from anyone
11 else.

12 MR. GRIMES: Thank you, Your Honor. I think his
13 mother, Ms. Regina Lee, would like to address the Court.

14 THE COURT: Okay. Ma'am, I know you are kind soft
15 spoken so I need for you to come forward and stand at the
16 podium.

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Whatever you want to tell me regarding
19 sentencing.

20 THE WITNESS: First of all I want to say thank God.
21 I'm sorry to Mr. Thomas for everything that happened to him,
22 I'm sorry about that. Second of all I would like to say I
23 apologize for my family and I being in your court. I am
24 just Denorris' mother and I'm asking the Court to have mercy
25 on him, and just have mercy. Thank you.

SENTENCING HEARING

1 THE COURT: Thank you.

2 MR. GRIMES: Ms. Brown also would like address the
3 Court, Your Honor.

4 THE WITNESS: Your Honor, can I look --

5 THE COURT: I'm sorry. I would prefer you not at this
6 time.

7 THE WITNESS: I want to say to Mr. Thomas I'm sorry for
8 what happened to him, and I hope and pray that some day
9 what's healing on the inside would heal on the outside of
10 his heart but I am so sorry for him. And second I want
11 today say that Denorris is a good kid, he's a good kid and
12 I'm sorry that we had to be here today.

13 MR. GRIMES: I think his brother, Triston, is also here
14 in support of his brother, I'm not sure if he wants to speak
15 or not.

16 THE COURT: Just stand there and I need you -- because
17 you haven't testified, if you could state your full name for
18 the record and please spell your last name.

19 THE WITNESS: Triston Keith, K-e-i-t-h. First of all I
20 would like tell Mr. Thomas I apologize for all that he's
21 going through. It's awkward for me right now. I just would
22 like to ask the Judge to take mercy on my brother, he is a
23 good kid. Before he got into this trouble me and him would
24 do a lot together. I started a photography business and
25 started a lot of businesses and I just would like for you to

SENTENCING HEARING

1 take mercy on my brother, I need my brother. And I'd like
2 to apologize to the Court for being here and apologize to
3 Mr. Thomas for that day. And just thank you.

4 THE COURT: Thank you.

5 MR. GRIMES: Thank you, Your Honor. May it please the
6 Court? First I also would like to apologize to Mr. Thomas
7 myself for having some health problems with liver and kidney
8 issues, a little bit of what he's going through. And I
9 think I'd also agree with a lot of what he said, that given
10 the jury's verdict he's absolutely right, people should have
11 a right to walk down the street whenever they want without
12 the fear of being robbed, mugged, shot, harassed in any way,
13 and that, you know, everyone should be trying to help each
14 other out because we are one big family in this country.
15 And Denorris does have a lot of family support,
16 unfortunately a lot of his family is in Alabama and those
17 are a lot of the letters we sent up. It seems to be a
18 common theme in letters is that his father had a lot better
19 control over him, able to discipline him a little bit
20 better, maybe it's because they lived in the country, but
21 not as much temptation, not so much people out there with
22 guns floating around and he seemed like he was doing very
23 well out there. And he moved back to South Carolina and
24 started to get in trouble picking up some of the school
25 records. And it is kind of ironic in this case that now Mr.

SENTENCING HEARING

1 Young is making a big deal about it because before he wasn't
2 saying anything about it. I just find it ironic that Mr.
3 Young would ask for 30 years before when he wanted him to
4 cooperate with Mr. Hall and use him as a witness against Mr.
5 Smith. I understand, you know, the State has a job to do
6 and they've done a good job in the case thoroughly and
7 vigorously, but at the end of day their job is to seek
8 justice and I don't know anything that changed between the
9 time they offered to cooperate with Mr. Hall to them asking
10 for 30 years, a significant change. As Ms. Ehrlick said Mr.
11 Hall was 18 years old at the time, and there are a lot of
12 case studies in the supreme court, they talk about when
13 someone is a minor they're a lot more impulsive, lack self
14 control --

15 THE COURT: He wasn't a minor, Mr. Grimes, when this
16 crime was committed.

17 MR. GRIMES: Your Honor, I understand that he was 18,
18 he was young, immature and susceptible to following older
19 people. Mr. Smith in this case was a couple of years older,
20 getting him out of school, paying for him to go into clubs,
21 kind of having him around, kind of using him I think to help
22 meet girls quite frankly from talking to Mr. Hall. And I
23 think from the evidence presented obviously he was out there
24 with Mr. Smith and if he was the hand of one, hand of all
25 then you've heard Mr. Smith say he was the shooter in the

SENTENCING HEARING

1 shooting, and if Mr. Hall was not an actual shooter I think
2 he would not be as culpable as Mr. Smith, although Mr. Smith
3 may have redeemed himself by cooperating with the State.

4 THE COURT: Did your client call the police after this
5 happened, Mr. Grimes?

6 MR. GRIMES: No, ma'am. And although Mr. Smith may
7 have redeemed himself a little bit by cooperating with the
8 State, you know, Mr. Hall thought he wanted to go to trial
9 and was not willing to do it because he thought he had a
10 good defense, and unfortunately he was wrong and misjudged
11 the evidence in the case. But when he was taken into
12 custody he did cooperate with the police, Detective Evans
13 stated he was very cooperative. Detective Evans agreed to
14 reduce his bond to \$20,000 at the preliminary hearing. So
15 it's a lot of good stuff out there for Mr. Hall. He made a
16 horrible decision that night but that decision does not
17 define who he is. He understands he has to pay the
18 consequences and we just ask the Court to, as Mr. Thomas
19 said, give a fair and appropriate sentence for someone who
20 is 18 years old and who was involved in the shooting. Thank
21 you, Your Honor.

22 THE COURT: And Mr. Grimes, what do you think a fair
23 and appropriate sentence considering everything that you
24 know about this case would be?

25 MR. GRIMES: Between 10 and 15 years.

SENTENCING HEARING

1 THE COURT: Anything further, Mr. Young?

2 MR. YOUNG: Nothing from the State, Judge.

3 THE COURT: Mr. Hall, please rise. Mr. Hall, I'm sure
4 that your attorneys have heard this many times but, one of
5 the most toughest things that a judge has to do is impose
6 sentencing. And you are facing 50 years in the department
7 of corrections, are you aware of that, sir?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: And as the victim was speaking and as your
10 mother was speaking I looked around and there were tears in
11 many people's eyes, and the reason for that is justice to
12 Mr. Thomas, justice to the State, justice to Mr. Grimes,
13 justice to your mother, depending on what point of view you
14 are looking from, it's all different. And I have sat here
15 and even assuming, Mr. Hall, that I take it word for word as
16 true what is contained in your statement, you were hanging
17 out with somebody that you knew was going to rob Mr. Thomas.

18 THE WITNESS: No.

19 THE COURT: That's what your statement says, "He was
20 talking about he was going to rob him," and you saw the guy
21 walking on the sidewalk and that's when you approached the
22 guy, that's what your statement says, State's Exhibit Number
23 2. So assuming, Mr. Hall, that you clearly were in the area
24 when this happened, even assuming as it is what's contained
25 in your statement you heard a gunshot, you didn't bother to

SENTENCING HEARING

1 go back and see what happened to Mr. Thomas, you didn't
2 bother to call the police, you knew that there had been a
3 gunshot and you just left him there. You are asking for
4 mercy, your family is asking for mercy, did you show mercy?
5 Mercy was not shown to the victim. Of all people you have
6 had chance after chance at rehabilitation since 2004 and
7 it's unfortunate that for whatever reason that
8 rehabilitation has failed you. Mr. Hall, you were playing a
9 game with those guns, a pink handled pistol, a .25, and
10 there seems to be some belief that guns are play things.
11 Mr. Thomas will for the rest of his life have the
12 repercussions and the affects of what's going on, for the
13 rest of your mother's life she will deal with what you
14 decision to play with guns will be. It is the order of the
15 Court -- and I am taking into consideration your age and all
16 of the things that your attorneys have done. Mr. Grimes and
17 Ms. Ehrlick and Ms. Badger, you have done an incredible job
18 on behalf of your client faced with what he has given you to
19 work with. Based upon his previous juvenile record and his
20 convictions, his continued disregard for following the law,
21 I thank you on behalf -- to the State on behalf of the
22 victim and for his very eloquent words, I could not have
23 said it better, Mr. Thomas, and thank you. It's the order
24 of the Court, Mr. Hall, on indictment 2010-GS-10-8190 and
25 8191, they will run concurrent, that you be committed to the

SENTENCING HEARING

1 State department of corrections for a term of 20 years.
2 I'll give you credit for the time that you have served.
3 Good luck to you.

4 (END OF TRIAL PROCEEDINGS.)

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1 I, the undersigned, Michael C. Watkins, Official Court
2 Reporter for the Sixth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of record of the proceedings
5 had and evidence introduced in the trial of the captioned
6 case, relative to appeal, in the Court of General Sessions
7 for Charleston County, South Carolina, on the 15th-17th days
8 of October, 2012. The proceedings were reported by Sharon
9 Vizer, Official Court Reporter.

10 I do further certify that I am neither of kin, counsel,
11 nor interest to any party hereto.

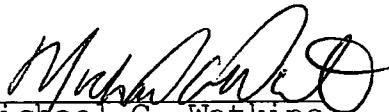
12

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March 29, 2013

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Michael C. Watkins
Court Reporter

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NINTH JUDICIAL CIRCUIT

CASE NO.: 2010-GS-10-8190

VERDICT FORM

VERDICT

1. We, the Jury, find the Defendant NOT GUILTY. _____

OR

2. We, the Jury, find the Defendant **GUILTY** of Attempted Armed Robbery. ✓

I certify that this decision is the unanimous decision of the Jury.

Foreperson

Foreperson
October 17, 2012

STATE'S EXHIBIT 1 (ADVISEMENT OF RIGHTS FORM)

State's Exhibit 1 from the jury trial held October 15-17, 2013 before The Honorable Kristi Harrington, to be released to the Office of the Attorney General, or its designee, for transporting to the Court of Appeals of South Carolina for purposes of review

STATE'S EXHIBIT 2 (STATEMENT OF DEFENDANT)

State's Exhibit 2 from the jury trial held October 15-17, 2013 before The Honorable Kristi Harrington, to be released to the Office of the Attorney General, or its designee, for transporting to the Court of Appeals of South Carolina for purposes of review

STATE'S EXHIBIT 3 (MAP)

State's Exhibit 3 from the jury trial held October 15-17, 2013 before The Honorable Kristi Harrington, to be released to the Office of the Attorney General, or its designee, for transporting to the Court of Appeals of South Carolina for purposes of review

STATE'S EXHIBIT 4 (MAP)

State's Exhibit 4 from the jury trial held October 15-17, 2013 before The Honorable Kristi Harrington, to be released to the Office of the Attorney General, or its designee, for transporting to the Court of Appeals of South Carolina for purposes of review.

STATE'S EXHIBIT 5 (CD)

State's Exhibit 5 from the jury trial held October 15-17, 2013 before The Honorable Kristi Harrington, to be released to the Office of the Attorney General, or its designee, for transporting to the Court of Appeals of South Carolina for purposes of review

STATE'S EXHIBIT 6 (CD)

State's Exhibit 6 from the jury trial held October 15-17, 2013 before The Honorable Kristi Harrington, to be released to the Office of the Attorney General, or its designee, for transporting to the Court of Appeals of South Carolina for purposes of review

STATE'S EXHIBIT 7 (SHELL CASINGS)

State's Exhibit 7 from the jury trial held October 15-17, 2013 before The Honorable Kristi Harrington, to be released to the Office of the Attorney General, or its designee, for transporting to the Court of Appeals of South Carolina for purposes of review

STATE'S EXHIBITS 24-43 (PHOTOGRAPHS)

State's Exhibits 24-43 from the jury trial held October 15-17, 2013 before The Honorable Kristi Harrington, to be released to the Office of the Attorney General, or its designee, for transporting to the Court of Appeals of South Carolina for purposes of review

STATE'S EXHIBITS 8-12 (PHOTOGRAPHS)

State's Exhibits 8-12 from the jury trial held October 15-17, 2013 before The Honorable Kristi Harrington, to be released to the Office of the Attorney General, or its designee, for transporting to the Court of Appeals of South Carolina for purposes of review

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.
Denorris Hall

AKA:

Race: Sex: M Age: 20DOB: SS#: Address: City, State, Zip: DL#: SID#: SC01931139*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: ATTEMPTED ROBBERY (ARMED)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS1008190A/W#: K404177Date of Offense: 9/17/2010S.C. Code §: 16-11-0330(B)CDR Code #: 0026

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Young, Adam D.SC Bar# 77452

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2010-GS-10-8191
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk: CalderCourt Reporter: Sharon Vizer-Hicks

SCCA/217 (03/2011)

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: B/w rescinded
☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge: Christina AnzilJudge Code: 215Sentence Date: 10/17/12

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.Denorris Hall

AKA: _____

Race: _____ Sex: M Age: 20DOB: [REDACTED] SS#: [REDACTED]

Address: _____

City, State, Zip: [REDACTED]DL#: _____ SID#: SC01931139*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: MURDER / ATTEMPTED MURDER

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS1008191A/W#: K404178Date of Offense: 9/17/2010S.C. Code §: 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____

Young, Adam D.SC Bar# 77452

Defendant

Attorney for Defendant

SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed 1 years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2010-GS-10-8190
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$

\$100

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\$12

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\$25

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\$500

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Clerk of Court/ Deputy Clerk CallahCourt Reporter: SARON Vizes-Hales

SCCA/217 (03/2011)

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge [Signature]Judge Code: 215Sentence Date: 10/17/12

ADM20100904925

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2010039226

ARREST WARRANT NUMBER

K404177

DATE OF ARREST

September 17, 2010

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: DEC 07 2010

VERDICT

GUILTY

[Signature] 10-17-12
Foreperson of Petit Jury Date:

INDICT

DOCKET NO. 2010GS1008190

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

December Term 2010

THE STATE

vs.

10-4987 (01)

DENORRIS HALL

DOB: [REDACTED]
B/M

Indictment for

Attempted Armed Robbery

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on December 6, 2010 the Grand Jurors of Charleston County present upon their oath:

Attempted Armed Robbery

That on or about September 13, 2010, in Charleston County, South Carolina, at Spruill Avenue, North Charleston, South Carolina, the Defendant, DENORRIS HALL, by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a pistol, did attempt to take and carry away goods and/or monies from the person or immediate presence of Absalom Thomas with the intent to permanently deprive him of possession thereof; in violation of Section 16-11-330(B) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ADAM D. YOUNG
ASSISTANT SOLICITOR

ADM20100904925

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2010039226

ARREST WARRANT NUMBER

K404178

DATE OF ARREST

September 17, 2010

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: DEC 27 2010

VERDICT

GUILTY

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2010GS1008191

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

December Term 2010

THE STATE

vs.

10-4987 (02)

DENORRIS HALL

DOB: [REDACTED]
B/M

Indictment for

Attempted Murder

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on December 6, 2010 the Grand Jurors of Charleston County present upon their oath:

Attempted Murder

That in Charleston County, South Carolina, on or about September 13, 2010, the Defendant, DENORRIS HALL, did, with intent to kill and malice aforethought, attempt to kill Absalom Thomas. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ADAM D. YOUNG
ASSISTANT SOLICITOR

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Kristi Harrington, Circuit Court Judge

Case Nos.: 2010GS1008190 and 2010GS1008191
Appellate Case No.: 2012-213248

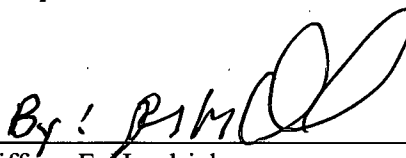
THE STATE OF SOUTH CAROLINA Respondent,

v.

DENORRIS HALL Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the April 15, 2014, revised order concerning personal identifying information and other sensitive information in appellate court filings from the South Carolina Supreme Court.

By: 

Tiffany F. Hendricks
S.C. Bar No.: 70678
SOWELL GRAY STEPP & LAFFITTE, LLC
1310 Gadsden Street (29201)
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
thendricks@sowellgray.com

—and—

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Robert M. Dudek
Chief Appellate Defender
S.C. COMMISSION ON INDIGENT DEFENSE
1330 Lady Street, Ste. 401
Columbia, South Carolina 29201
(803) 734-1330
rdudek@sccid.sc.gov

Attorneys for Appellant

May 28th, 2014